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The Special Counsel

September 21, 2000

The President
The White House
Washington, D.C. 20500

Re: OSC File No. DI-98-2193

Dear Mr. President:

In accordance with 5 U.S.C. § 1213(e)(3), I am transmitting a report from the Honorable Ruby B. Demesme, Assistant Secretary of the Air Force, Manpower, Reserve Affairs, Installations & Environment, sent to me pursuant to 5 U.S.C. §§ 1213(c) and (d). I transmitted the disclosure to the Honorable F. Whitten Peters, Secretary of the Air Force. Secretary Peters delegated authority to Assistant Secretary Demesme to respond pursuant to 5 U.S.C. § 1213(c). The report sets forth the findings and conclusions of the Air Force's review of disclosures of information allegedly evidencing violations of law, rule, or regulation, gross mismanagement, abuse of authority, and a substantial and specific danger to public health and safety at the Department of the Air Force, McClellan Air Force Base, California.

The whistleblower, Mr. Daniel A. Nelson, provided comments on the agency report to this office pursuant to 5 U.S.C. § 1213(e)(1), which I am also transmitting.

We have carefully examined the original disclosures and reviewed the agency's response and Mr. Nelson's comments. Pursuant to 5 U.S.C. § 1213(e)(2), I have determined that the agency's report contains all of the information required under section 1213(d), and that the conclusions drawn from the investigation appear reasonable.

Mr. Nelson, who consented to the release of his name, alleged that for a period of approximately twelve years, he and his co-workers worked with hazardous chemicals without appropriate protective equipment and for periods longer than allowed under standards established by the Occupational Safety and Health Administration (OSHA) and the Air Force. He alleged that officials in the Air Force perpetuated a danger to public health and safety and engaged in gross mismanagement when they instructed workers to enter confined spaces with no protective equipment or with faulty or inadequate equipment. Mr. Nelson also alleged that an official in his supervisory chain of command engaged in an abuse of authority when she directed the amendment of an Occupational Illness/Injury Report (Form 190) that was damaging to the Air Force, in order to cast doubt on Mr. Nelson's claims of overexposure to hazardous substances, by suggesting that he never performed confined space operations because of his size.

Mr. Nelson worked as a Metal Tank Sealer from 1986 to 1998, in the F-111 Mod Center (ReSeal/DeSeal Section). His duties included de-sealing and re-sealing the insides of the fuel tanks of F-111 aircraft. Mr. Nelson stated that he entered the fuel tanks an average of two to three times each week for approximately two hours at a time. Mr. Nelson alleged that, from 1990 to 1996, he and his co-workers sprayed chemicals such as methyl ethyl ketone (MEK) on the insides of tanks to clean them. Mr. Nelson alleged that he and his co-workers brushed and ground to a respiratory dust asbestos-containing paint and structural epoxy, without adequate respiratory protection.

He alleged that the protective equipment provided was inadequate or faulty, that his supervisors directed or expected him and others to work whether the equipment was functioning or not, that workers exceeded the time periods allowed for confined space operations, and that the chemical concentrations in the confined spaces were exceeded.

The Assistant Secretary originally sent a report dated December 30, 1999, to OSC, pursuant to 5 U.S.C. §§1213(c) and (d). The December report concluded that at least one of Mr. Nelson's allegations had been substantiated. Mr. Nelson was allowed or ordered to work in unsafe/unhealthy conditions in a confined space in which the Lower Explosive Level (LEL) was regularly exceeded as a part of his duties in the F-111 Reseal Unit at McClellan AFB. The December report found that management took measures to attempt to control the excessive LEL levels. The December report found no danger to public health or safety or abuse of authority, and recommended no further action.

OSC found that the December report did not meet all of the requirements of Section 1213(d), and that the findings did not appear reasonable. Several of Mr. Nelson's specific allegations were not addressed, no employees other than Mr. Nelson were interviewed, and the evidence of prior violations and excessive LEL readings did not support the agency's conclusions. Moreover, the report contained a broad statement of the agency's intention to resolve any problems identified in the confined space program, without stating the actions taken or planned, as required by Section 1213(d)(5).

After OSC notified the agency of the deficiencies in the December report, the agency re-opened its investigation and completed another report, dated April 6, 2000. While acknowledging the accuracy of several of Mr. Nelson's allegations, the April report concluded that there was no evidence of a danger to public health or safety, gross mismanagement, or an abuse of authority. In addition, although there was evidence of past violations of law, rule, or regulation, the report found that any such violations were corrected, either by the agency or in cooperation with OSHA.

The December report compressed Mr. Nelson's allegations into three issues: (1) Did management allow or order Mr. Nelson to work in unsafe/unhealthy conditions (a) without protective equipment (or with nonfunctional protective equipment), and (b) in a confined space in which the Lower Explosive Level (LEL) was regularly exceeded as part of his duties in the F-111 Reseal Unit at McClellan AFB; (2) Did the supervisory chain of command engage in abuse of authority in directing revision or amendment of an Occupational Illness/Injury Report

Mr. Nelson provided comments on the report. He asserts that the report is inaccurate and contains denials of facts stated in his disclosures. He believes that the Air Force has withheld documentation, including reports that he alleges show the results of heat stress tests when employees were performing operations wearing Saranex suits. He clarifies in his comments that he did not allege working in the tanks with MEK five days a week, but rather that he worked "over 7 to 5 gallons of MEK a night." He maintains that the numerous chemicals he worked with are known to be dangerous, and that he was overexposed because his equipment malfunctioned and his supervisors required that he work without adequate breaks. He stated that he did not have the luxury of breaks when spraying sealant, and asserts that "sometimes there is a silent way to make this clear to your employees." Mr. Nelson believes that employees should have been given better training about the chemicals and their effects, and states that the training consisted of little more than "you work with some bad chemicals wear your protection." Mr. Nelson includes photographs that he alleges show bio-environmental employees wearing no respiratory protection around MEK and PR 29-11.

I have determined, pursuant to section 1213(e)(2), that the agency's report contains all of the information required under section 1213(d), and that the findings of the agency head appear to be reasonable, for the reasons stated above.

As required by section 1213(e)(3), I have sent a copy of the report and Mr. Nelson's comments to the Chairmen of the House and Senate Committees on Armed Services. We have also filed copies of the report and Mr. Nelson's comments in our public file and closed the matter.

Respectfully,



Elaine Kaplan

Enclosures