



**U.S. OFFICE OF SPECIAL COUNSEL**

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The Special Counsel

**March 13, 2000**

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

Re: OSC File No. DI-99-0611

Dear Mr. President:

In accordance with 5 U.S.C. § 1213(e)(3), I am transmitting a report from the Honorable Daniel R. Glickman, Secretary of Agriculture, sent to me pursuant to 5 U.S.C. §§ 1213(c) and (d). The report sets forth the findings and conclusions of the Secretary's review of disclosures of information allegedly evidencing violations of law, rule, or regulation, a substantial and specific danger to public health or safety, and an abuse of authority by officials of the United States Department of Agriculture (USDA), Food Safety and Inspection Service (FSIS), Sioux Falls, South Dakota.

The whistleblower, Dr. Duane Wyatt, 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 Dr. Wyatt's comments. Pursuant to 5 U.S.C. § 1213(e)(2), I have determined that the findings in the agency's report are reasonable and contain all of the information required by statute.

Dr. Wyatt, who consented to the release of his name to the agency, alleged that beginning in 1989 and continuing until his reassignment in 1994, officials and employees at the FSIS failed and refused to comply with USDA regulations concerning the condemnation of diseased and dead animals prior to slaughter at the John Morrell, Inc. meat processing plant in Sioux Falls, South Dakota. According to Dr. Wyatt, animals exhibiting elevated temperatures and signs of central nervous system disorders, which can be indicative of diseases causing dangerous food-borne illnesses, were allowed to be sent into the plant for processing. Dr. Wyatt alleged that in addition to their failure to appropriately cull and isolate diseased animals, in many cases his supervisors overrode his decisions to condemn these animals and directed the animals into the plant for slaughter.

The report stated that the Secretary referred the allegations to FSIS for response, and that it was not possible or practical for FSIS to respond in detail to each of Dr. Wyatt's specific and extensive allegations because: 1) there were no new issues identified, and the

agency had previously addressed all of his allegations; 2) 5-10 years have elapsed since the events were alleged to have occurred; and 3) most of the key officials have retired. The report stated that a paper review was conducted, and that FSIS was unable to substantiate Dr. Wyatt's allegations.

The report concluded that Dr. Wyatt exhibited adequate performance in his job until his assignment to the John Morrell plant. There, his supervisors observed that he had difficulty making sound and consistent veterinary diagnoses and dispositions in the post-mortem work to which he was assigned. In 1990, he began doing antemortem inspections, and exhibited repeated errors in his dispositions, resulting in his being placed on a Performance Improvement Plan. The report states that the agency offered Dr. Wyatt training and supervision during his assignment.

According to the report, inspection operations at the John Morrell plant were examined in 1987, 1992, and 1994, and no problems were found. In 1994, the FSIS review and inspection staff conducted an unscheduled and unannounced program assessment in response to Dr. Wyatt's 1993 complaint to the Office of Inspector General (OIG). With the exception of a minor recordkeeping deficiency, the FSIS concluded that antemortem inspection procedures complied with the approved program and FSIS regulations, and that no evidence of unsafe product being passed for human consumption could be substantiated.

The OIG conducted investigations in response to Dr. Wyatt's complaints in 1990, 1991, and 1993. The 1990 and 1991 investigations concluded that Dr. Wyatt had performance deficiencies and needed to improve his communication skills and professional judgment. The 1993 complaint, which included an unannounced inspection in 1994, again resulted in the OIG's conclusion that Dr. Wyatt lacked sufficient experience and proper judgment. In 1998, the OIG twice declined to investigate further complaints made by Dr. Wyatt, because further review would be difficult given the age of the complaints, and redundant in view of the three previous investigations.

The report set forth the specific findings of the FSIS paper review of Dr. Wyatt's allegations, as transmitted to the Secretary. The report stated that FSIS examined all available documents pertaining to Dr. Wyatt, and looked for evidence sustaining his allegations.

Dr. Wyatt alleged that officials violated USDA regulations and the Meat and Poultry Inspection Manual of Procedures (MPI Manual) regarding alternative antemortem inspection procedures, which permit the inspection of only 5%-10% of the animals if certain conditions are met, such as segregation of abnormal animals. If these conditions are not met, the regulations require 100% inspection of animals. The report indicates that program reviews conducted in 1992 and 1994 found that alternative procedures were operating acceptably and in compliance with the alternate inspection program. The 1994 review found minor procedures lacking. These procedural deficiencies were corrected and did not justify a return to 100% antemortem inspection.

Dr. Wyatt's allegations that his supervisors improperly overturned his antemortem condemnation decisions were not substantiated. The report states that Dr. Wyatt was found to be lacking in experience and judgment, that he made improper antemortem disposition decisions, especially on borderline cases, and that he interpreted regulations in isolation and out of context. The report states that Dr. Wyatt failed to consider a total differential diagnosis in his decision making process, resulting in his condemnation of animals for secondary conditions without evidence of primary pathology. He condemned animals erroneously for exhibiting isolated, rather than systemic, conditions. When Dr. Wyatt was observed making these errors, he was instructed to replace condemn tags with suspect tags.

The report responds to Dr. Wyatt's allegation that he was told to stop taking the temperatures of all suspect animals by stating that it is an unusual and unnecessary practice for experienced veterinarians to take the temperatures of all suspect animals. The report asserts that instructions to Dr. Wyatt to stop taking the temperatures of all abnormal animals did not contradict FSIS regulations.

With respect to Dr. Wyatt's allegations of harassment and abuse of authority, the report states that none of the involved officials was available to be questioned. Two have retired, and another is on indefinite sick leave. The report states that the agency does not deny that working relationships were strained between Dr. Wyatt and Drs. Zia, Benson and Kaiser. FSIS could not substantiate that Dr. Wyatt raised these issues with the chain of command at the time of the occurrence. The report states that the agency is not in a position to address allegations of which it was unaware. According to the report, Dr. Wyatt did not show that the events he alleged to have occurred were intentionally directed at him, and he never raised these harassment issues in an eight-hour interview with the FSIS investigator in 1994.

The agency report concludes that while Dr. Wyatt was a conscientious and well-meaning employee, he failed to use proper judgment in antemortem and postmortem dispositions, despite supervisory intervention. According to the report, he exhibited paranoid and obsessive behavior and poor communication skills affecting his performance, perception of events and relationships.

Dr. Wyatt provided extensive comments on the agency's report, responding specifically to many of the Secretary's findings and conclusions. Generally, he and the agency are at odds with respect to the interpretation of regulations governing the inspection process, and with the proper diagnosis of diseased or abnormal animals.

Dr. Wyatt denies that the report reflects a thorough and fair investigation. He identifies several individuals, not identified as subjects in his original allegations, whom he believes the agency should have interviewed. In addition, he believes that the agency should have spoken to all inspectors at the John Morrell plant.

He admits that he suffered from paranoia, obsessive traits, poor communication and relationship skills, and faulty judgment due to depression. He admits that the agency did not coerce him to retire, but feels that he was so disabled by depression that he could not enforce regulations or perform required tasks. He believes that his depression was caused by the retaliation he suffered. He admits that he was reluctant to discuss issues of harassment with the FSIS investigator, but denies the agency's statement that he never brought the issues to the attention of the FSIS or the agency. He states that he wrote several letters about these issues to the investigator and the agency. He also takes issue with the agency's use of a non-veterinarian investigator to investigate veterinary medical officers.

He admits that he may have condemned some animals that he should have passed, but only because he saw his colleagues do so. He denies that his supervisors offered him adequate training and support, and states that they did not correlate dispositions with him. He admits to having minimal experience in swine postmortem dispositions, but claims that his supervisors told him his dispositions were "ok" when they observed him. Dr. Wyatt also defends his dispositions. He refutes Dr. Zia's decision to issue a Performance Improvement Plan to him by stating that he has never condemned an animal for "paralysis," unless the animal also exhibited central nervous system signs.

Dr. Wyatt believes that plant employees and supervisors knew of the plant inspections, even when the site visits were unannounced. He states that employees were on their best behavior at these times. Overall, Dr. Wyatt maintains that despite the age of his allegations, the issues he complained about are important and relevant. He remains concerned that the USDA veterinarians and inspectors under whom he worked engaged in corrupt and inept actions. While he identifies no specific instances of public illness or contamination of meat products from the John Morrell plant, he remains concerned that the agency's failure to properly enforce inspection regulations may result in contaminated meat being passed for human consumption.

I have determined, pursuant to section 1213(e)(2), that the agency's report is reasonable and contains the information required under section 1213(d). As required by section 1213(e)(3), I have sent a copy of the report and Dr. Wyatt's comments to the Chairman of the Senate Committee on Agriculture, Nutrition, and Forestry, and the Chairman of the House Committee on Agriculture. We have also filed a copy of the report and Dr. Wyatt's comments in our public file and closed the matter.

Respectfully,



Elaine Kaplan

Enclosures