



U.S. OFFICE OF SPECIAL COUNSEL

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July 25, 2002

The Special Counsel

The President
The White House
Washington, DC 20500

Re: OSC File No. DI-00-1284

Dear Mr. President:

In accordance with 5 U.S.C. § 1213(e)(3), I am transmitting a report provided to me pursuant to 5 U.S.C. §§ 1213(c) and (d) by the Honorable Thomas E. White, Secretary of the Army. The report sets forth the findings and conclusions of the Secretary upon investigation of disclosures of information allegedly evidencing violations of law, rule, or regulation and a substantial and specific danger to public health and safety arising out of actions by U.S. Army Corps of Engineers (USACE) officials at Liberty Glen Campground, Lake Sonoma in Geyserville, California.

The whistleblower, James Browning, a Maintenance Worker, consented to the release of his name. He also provided comments on the agency report to this office pursuant to 5 U.S.C. § 1213(e)(1), which I am also transmitting.

These allegations were referred to the Secretary of the Army for investigation on August 30, 2001. According to the agency report, the Associate Deputy General Counsel of Human Resources forwarded the matter to the USACE Office of the Chief Counsel, who then referred the matter to the USACE South Pacific Division. The USACE South Pacific Division, in turn, directed the Office of the Commander, San Francisco District to conduct an investigation. The Secretary sent a report to this office on January 17, 2002.

We have carefully examined the original disclosures and reviewed the agency's response and Mr. Browning's comments. Pursuant to 5 U.S.C. § 1213(e)(2), I have determined that the findings in the agency's report appear to be reasonable and contain all of the information required by statute.

The Whistleblower's Disclosures

Mr. Browning has been employed as a maintenance worker by USACE for over 14 years. He is licensed by the State of California as a Grade 2 Water Treatment Plant Operator

and has extensive experience in the technical and legal issues surrounding water treatment plants.

Mr. Browning alleged that Danny Summit, a Maintenance Worker and Grade 2 Water Treatment Plant Operator, ~~caused a substantial and specific danger to the health and safety of~~ individuals at the Liberty Glen Campground when he produced non potable water for human consumption. He also alleged that Mr. Summit submitted falsified documents to the California Department of Health Services (CDHS) and rigged safety controls on the water treatment plant turbidimeter. Lastly, Mr. Browning alleged that Perry Crowley, Park Manager, endangered the public's health by failing to take appropriate corrective action when Mr. Browning notified him of Mr. Summit's actions.

The Liberty Glen Water Treatment Plant, Lake Sonoma, provides potable water to the Liberty Glen Campground. Specifically, the water treatment plant takes water from Lake Sonoma and filters the water to ensure it is fit for human consumption. Liberty Glen's water treatment plant uses a conventional surface water filtration system with a continuous method of sampling. The water filtration system continuously measures the turbidity¹ of the filtered water on a Hach 1720 Turbidimeter and records the results onto a 7-day/24-hour circular chart.

As Lead Operator, Mr. Browning was responsible for proper flocculation², filtration³, disinfection⁴, and ensuring correct chemical solution strengths in the water treatment plant. In addition, Mr. Browning was responsible for ensuring that the plant operated in compliance with all state and federal regulations. USACE also asked Mr. Browning to train other water treatment operators and to write the standard operating procedures for the Liberty Glen Water Treatment Plant.

From May to August 1999, Mr. Browning trained Mr. Summit on the proper operation of the Liberty Glen Water Treatment Plant. On August 22, 1999, the USACE assigned Mr. Summit to be the lead operator for the water treatment plant. Mr. Browning immediately informed Mr. Crowley that he had concerns over Mr. Summit's professionalism and ability to operate the water treatment plant.

¹ Turbidity is the clarity of water expressed as nephelometric turbidity units (NTUs) and measured with a calibrated turbidimeter.

² Flocculation is a process to enhance agglomeration or collection of smaller floc particles into large, more easily settleable or filterable particles through gentle stirring by hydraulic or mechanical means.

³ Filtration is a process for removing particulate matter from water by passage through porous media.

⁴ Disinfection is a process which inactivates pathogenic organisms in water by chemical oxidants or equivalent agents.

In December 1999, the USACE closed down the water treatment plant and drilled a well to obtain potable water for the next recreational season. Due to insufficient quantities of water from the new well, the water treatment plant was reopened in March 2000. On March 20, 2000, the USACE again assigned Mr. Summit as the lead operator of the water treatment plant. ~~On May 30, 2000, Mr. Browning was assigned to operate the water treatment~~ plant while Mr. Summit was on vacation. During this time, Mr. Browning reviewed documents concerning the plant's operation and noted many discrepancies, which form the basis of his allegations described below.

First, Mr. Browning alleged that Mr. Summit violated Title 22, Sections 64662 and 64664 of the California Code of Regulations (C.C.R.) by submitting falsified reports to the CDHS.⁵ Specifically, Mr. Browning alleged that Mr. Summit falsified the surface water treatment regulation form filed for April 2000. The form states that the water treatment plant was shut down from April 21, 2000, through April 31, 2000. However, Mr. Browning located the circular turbidimeter charts for those days, and the charts reflect that the water treatment plant was operating. Mr. Browning notes that on several of those days, the turbidity reading was consistently above the permissible amount. Thus, Mr. Browning surmised that Mr. Summit chose to submit falsified chart readings rather than file forms that indicated an impermissible turbidity reading.

Mr. Browning also alleged that, during the month of April when Mr. Summit was monitoring the plant, the plant produced water that was not in compliance with 22 C.C.R. § 64653(c)(1) and, therefore, not fit for human consumption. Section 64653(c)(1) provides that the turbidity performance standard of filtered water for conventional treatment plants shall be equal to or less than 0.5 NTU⁶ in ninety-five percent of the measurements taken each month. However, Mr. Browning maintained that the 7-day circular turbidity charts⁷ for this time period show that the water was consistently recorded at 80 or 0.8 NTU. Thus, the turbidity readings appear to exceed California's requirement that ninety-five percent of all turbidity readings be equal to or less than 0.5 NTU. Consequently, Mr. Browning asserted that the water was not fit for human consumption and posed a threat to public health and safety.

⁵ Section 64662 requires each water supplier with an approved surface water treatment facility to maintain accurate and complete operation records for each treatment plant, and section 64664 requires each water supplier to submit a monthly report on the operation of each facility, including the results of all turbidity measurements, to the CDHS.

⁶ NTU stands for nephelometric turbidity unit. It is a measurement of the turbidity of water as determined by the ration of the intensity of light scattered by the sample to the intensity of incident light.

⁷ The chart records readings between 0 – 1.0 NTUs on a 1-100 scale. For example, 0.1 is recorded on the chart as 10.

Moreover, Mr. Browning alleged that Mr. Summit improperly calibrated the turbidimeter so that the readings reflected on the 7-day circular chart were lower than the actual NTU readings. He explained that the chart is intended to record readings from 0 – 1.0 NTU. Because 1.0 NTU is the highest reading that can be recorded on the circular chart, any NTU greater than 1.0 is recorded as 1.0 on the chart but an accurate NTU reading would be displayed on the digital NTU display. A review of the circular chart for April reveals that the turbidity level was consistently being recorded at the same level of 0.8. According to Mr. Browning, the only possible way that the turbidity readings could consistently be recorded at 0.8 is if the machine were calibrated to record actual NTU readings of 1.0 NTU or higher at the 0.8 level. Thus, Mr. Browning surmised that Mr. Summit calibrated the turbidimeter so that a turbidity level of 1.0 or higher was recorded on the chart as 0.8.

Lastly, Mr. Browning alleged that he brought the above allegations to the attention of Perry Crowley, the Liberty Glen Park Manager, but Mr. Crowley failed to adequately address them. According to Mr. Browning, Mr. Crowley spoke to Mr. Summit but failed to take any other corrective action, such as removing him as lead operator of the water treatment plant. Mr. Browning asserted that Mr. Crowley's failure to remove Mr. Summit as lead operator perpetuated the danger to public health and safety.

The Department of the Army Investigation and Report

Mr. Browning's allegations were investigated by the USACE, Office of the Commander, San Francisco District. The Investigating Officer conducted telephone interviews with Mr. Browning, Mr. Summit, and Mr. Crowley at the Liberty Glen Campground, as well as Lori Hanson at the CDHS, Drinking Water Field Operations Branch, Santa Rosa, California. After interviewing the witnesses, researching applicable laws and regulations, and reviewing relevant documents, the Investigating Officer found several of the allegations to be substantiated. Specifically, the investigation substantiated Mr. Browning's allegations that (1) the water treatment plant produced nonpotable water in April 2000, when Mr. Summit was operating the plant, (2) Mr. Summit submitted a falsified monthly report for April 2000 to the CDHS, and (3) Mr. Crowley knew that Mr. Summit was operating the water treatment plant improperly, but failed to take adequate corrective action. However, the allegation that Mr. Summit purposefully miscalibrated the turbidimeter was not substantiated.

First, the investigation confirmed that nonpotable water was produced in April 2000, when Mr. Summit was operating the water treatment plant. The circular turbidity charts show that the turbidity readings during this time period exceeded the turbidity level allowed under 22 C.C.R. § 64653. Thus, the report concluded that Mr. Summit's operation of the plant during the month of April violated the California Safe Drinking Water Act and created a substantial and specific danger to public health and safety.

However, the investigation did not substantiate the allegation that Mr. Summit purposefully miscalibrated the turbidimeter to provide NTU readings lower than the actual

readings. Mr. Summit explained that he did not intentionally miscalibrate the turbidimeter, he simply did not know how to calibrate it properly. He maintained that he had not been adequately trained by Mr. Browning on the specific details of operating the water treatment plant. Mr. Summit's assertion that he was not adequately trained was corroborated by Mr. Browning and Ms. Hanson. Mr. Browning admitted that he had not been able to train Mr. Summit sufficiently, and Ms. Hanson stated that, in her opinion, Mr. Summit did not appear to know how to operate the water treatment plant. Thus, the report concluded that Mr. Summit lacked the training and expertise to be able to calibrate the turbidimeter correctly.

According to the report, Mr. Summit denied submitting a falsified monthly report for April 2000 to the CDHS. However, a review of the water treatment plant records showed that the plant was operating on four of the days when it was reported to be shut down. In addition, the State of California issued a citation to the water treatment plant over this same period for failing to report turbidity readings when the plant was in operation. Based on the foregoing documentary evidence, the agency concluded that Mr. Summit violated 22 C.C.R. § 64664 by submitting a falsified monthly report to the CDHS for April 2000.

Lastly, the investigation substantiated Mr. Browning's allegation that Mr. Crowley knew that Mr. Summit was operating the water treatment plant improperly, yet he failed to take corrective action. According to Mr. Crowley, in the summer of 2000, he learned from Rich Ward, a former USACE leaderman, that Mr. Browning reported that Mr. Summit was capable of operating the plant. However, Mr. Browning asserted to the contrary that, in fact, he had informed Mr. Crowley that Mr. Summit was incapable of operating the plant safely. Mr. Browning stated that Mr. Crowley failed to act upon this information.

The report concluded that, given the extent of Mr. Crowley's experience operating water treatment plants, he should have been capable of determining whether Mr. Summit was sufficiently trained to run the plant. It further noted that, instead of assigning Mr. Summit to operate the plant in 1999 and 2000, Mr. Crowley could have assigned the responsibility to Mr. Browning, who was well-versed in the safe operation of the plant. Thus, the agency found that Mr. Crowley's failure to take appropriate action contributed to the creation of a substantial and specific danger to public health and safety.

The agency report includes a description of actions taken or planned in response to the investigation initiated by OSC, as well as prior investigations by the State of California. These actions are outlined below:

- (1) The Liberty Glen Water Treatment Plant was permanently closed in 2000, and, currently, the USACE is drilling wells at the campground to provide water to campers. The USACE plans to dismantle the water treatment plant within the next two years.

- (2) After several meetings were held between USACE and the State of California to resolve the problems at the Liberty Glen plant, Mr. Summit voluntarily gave up his water treatment plant operator's license. Consequently, Mr. Summit is no longer involved in the operation of water treatment plants. Because Mr. Summit cooperated fully with state and federal investigators and demonstrated remorse for his actions, the agency decided not to pursue disciplinary action against him.
- (3) The agency required Mr. Summit and Mr. Browning to attend mediation in an attempt to improve their working relationship. The report states that, although during the session they both pledged to cooperate with each other, their relationship deteriorated shortly thereafter.
- (4) Mr. Crowley was counseled in November 2000 by the San Francisco District Commander, Lieutenant Colonel Timothy S. O'Rourke, for his inadequate monitoring of the water treatment plant. In addition, he was directed to attend further leadership training, including the Army Management Staff College.
- (5) The agency hired an additional maintenance leaderman for Lake Sonoma in order to comply with its policy requiring a supervisor-to-employee ratio of one to ten.

The Whistleblower's Comments

Mr. Browning provided comments on the agency's report. Mr. Browning reiterated that he did not train Mr. Summit, nor did he ever represent to anyone that Mr. Summit was fully capable of operating the plant. He disagreed with the agency's conclusion that Mr. Summit did not purposefully miscalibrate the turbidimeter. He explained that a red warning light turns on whenever the turbidimeter is miscalibrated; therefore, Mr. Summit was alerted to the fact that the turbidimeter was not functioning properly. Mr. Browning further alleged that, during the Fall of 2000, Mr. Summit engaged in other violations similar to those investigated. He stated that he never attended mediation with Mr. Summit because he informed the mediator that his conflict was instead with Mr. Crowley. Finally, he questioned whether Lieutenant Colonel O'Rourke actually counseled Mr. Crowley in November 2000, in reference to the water treatment plant because the citation from CDHS was not issued until March 29, 2001.

Conclusion

Based on the representations made in the report and as stated above, I have determined, pursuant to section 1213(e)(2), that the findings in the agency's report appear to be reasonable and contain all of the information required by statute.

The Special Counsel

The President

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

Respectfully,



Elaine Kaplan

Enclosures