



DEPARTMENT OF THE ARMY  
OFFICE OF THE GENERAL COUNSEL  
104 ARMY PENTAGON  
WASHINGTON DC 20310-0104  
27 AUG 2002

The Honorable Elaine Kaplan  
Special Counsel  
U.S. Office of Special Counsel  
1730 M Street, N.W., Suite 300  
Washington, D.C. 20036-4505

Re: Transmittal to Office of Special Counsel of Report of Investigation of Whistleblower Allegations, Investigation File Nos. DI-01-0572, DI-01-0573, DI-01-0574, DI-01-0575, DI-01-0576, DI-01-0577, and DI-01-0578

Dear Ms. Kaplan:

Enclosed with this letter is the Army's Report of Investigation into allegations of violations of law, rule or regulation and a substantial and specific danger to public health and safety arising out of actions by officials at the Department of the Army, Directorate of Public Works (DPW), Public Works Division (PWD), Utility Monitoring Control System (UMCS), Fort Gordon, Georgia (Tabs DD, EE, GG and HH).

The Secretary of the Army has delegated to me his authority, as agency head, to review, sign and submit to you the report required by Title 5, United States Code, Section 1213.

I have reviewed the Report of Investigation and concur with the findings stated therein. My review indicates that the investigation was conducted in a thorough, fair, and impartial fashion. It appears that the Army has properly addressed the allegations of violation of law, rule or regulation or abuses of authority and a substantial and specific danger to public health and safety by officials at Fort Gordon that have been raised by the seven whistleblowers. The Report is internally consistent, its conclusions are supported by substantial evidence, and nothing has been brought to my attention that would justify overruling or modifying the conclusions of the report. The Report:

- a. Summarizes the information with respect to which the investigation was initiated, at Tab DD, Enclosure 2, page 3.
- b. Describes the conduct of the investigation, at Tab DD, Enclosure 2, page 3. Additionally, the following information is provided: Due to changes in mail handling procedures brought on by concerns for anthrax mail contamination, the original Office of the Special Counsel letter to the Secretary of the Army dated November 29, 2001, was re-routed to special remote mail handling facilities for processing. The Office of the Special Counsel had to hand-deliver a copy of the original correspondence to the Secretary of the Army on February 13, 2002, thus the delay in forwarding the initial Office of the Special



Counsel letter to the appropriate office for action. The Office of Special Counsel request for an Army investigation was forwarded to the Army Office of the General Counsel (Army OGC) for appropriate action. The subject action was forwarded to Headquarters, Training and Doctrine Command (TRADOC), Office of the Staff Judge Advocate, on February 19, 2002 (Tab BB). The tasking memorandum from TRADOC to Fort Gordon was dated February 25, 2002.

(1) By statute, the agency has sixty days to complete the report. On April 11, 2002, the Army OGC requested an extension of time to file the Department of the Army's report based on a request made by COL James Rosenblatt, Staff Judge Advocate for TRADOC. To support the extension request, he explained the reasons why the investigation into the allegations took so long to be completed by Fort Gordon and the need to provide adequate time for his office to review the investigation report. Given the delay on that end, and the fact that additional time would also be required for Army OGC review of the TRADOC draft report before it could be referred to me for my review and approval, Army OGC requested that Ms. Catherine McMullen, Chief, Disclosure Unit, Office of Special Counsel, grant a 60 day extension (Tab CC). The extension was granted.

(2) Fort Gordon coordinated its Investigative Report with the TRADOC Staff Judge Advocate Office before forwarding it to Army OGC for review and further processing within the Department of the Army. The TRADOC Staff Judge Advocate Office forwarded to Army OGC the Investigative Report dated April 15, 2002 (Tab DD). Upon Army OGC review of the Investigative Report, there were several issues that needed to be further addressed in the report. Army OGC requested that this additional work be undertaken under the direction of COL James Rosenblatt, Staff Judge Advocate for TRADOC (Tab EE). A second request for an extension was made on June 18, 2002, so that these issues could be addressed (Tab FF). This extension was granted. The Supplemental Report, dated June 24, 2002, was completed and was forwarded to Army OGC for review and inclusion with the initial report (Tab GG).

(3) Army OGC requested further clarifying information from the Fort Gordon investigative team that included a statement from and supporting documentation from Mr. Pavlisacsak regarding examples of actions taken by Fort Gordon's UMCS to address safety-related issues before the OSHA inspection of October 13, 2000. Fort Gordon submitted this Supplemental Report dated July 17, 2002 (Tab HH).

(4) A third extension request was made on August 16, 2002, to allow for additional time to review Tab HH and prepare the final Army Report for transmission to Special Counsel (Tab II). The extension was granted.

c. Summarizes the evidence obtained from the investigation, at Tabs DD, Enclosure 2, page 3; Tab GG; and Tab HH. The initial investigation (Tab DD) focused on practices in the UMCS section as they are today and as they have been since the UMCS work was contracted out in May 2001. The Fort Gordon investigation does

address earlier safety related issues prior to OSHA's inspection on October 13, 2000, but the availability of compliance documentation was more limited, thus, inhibiting the ability to more fully address some of the allegations. At the request of the Army General Counsel's Office, Fort Gordon provided a supplemental report to address this pre-OSHA inspection period (Tab HH) that includes a statement and supporting documentation provided by Mr. Pavliscsak. Some of the issues addressed at Tab HH include actions taken to procure appropriate safety equipment (such as requests for safety glasses, acid aprons and gloves, protective wear coveralls, splash protection, and eye exams, see pages 1-21); training provided to UMCS employees (see pages 22-23); standard operating procedures issued on health and safety matters for the UMCS employees (see pages 22-23); and the health screening and safety program at UMCS (including safety footwear, see pages 24-40). Tab HH reflects UMCS management efforts to be proactive in complying with safety and health related requirements for their affected employees.

d. Addresses whether there were violations or apparent violations of laws, rules, or regulations, at Tab DD, Enclosure 2, page 7. Based upon the Special Counsel's complaint, relevant laws, rules, regulations, contractual agreement between Fort Gordon and Noresco, and other relevant documents, the Investigative Team concluded that there were no current safety issues or unsatisfied training requirements identified. Of course, there were the five OSHA violations/citations from October 13, 2000, that had been addressed by the UMCS management officials in their response back to OSHA officials. Three of these required corrective action and two that were addressed by a reclama to those particular OSHA violations/citations. (Tab G). These OSHA citations/violations were addressed to the satisfaction of the OSHA officials since OSHA officials took no further action after this Fort Gordon correspondence. The Fort Gordon Investigative Report was reviewed for legal sufficiency by the Fort Gordon and TRADOC legal offices and they concluded that it is legally sufficient in its conclusion that no current legal or regulatory violations exist and there are no current public safety threats in the UMCS operations.

With respect to actions that the Army has taken or plans as a result of the Investigation, the following information is provided: As a result of the Investigation Team's effort, there were no recommended specific personnel actions to be taken against any individuals. Regarding the OSHA violations/citations, as some of the OSHA violations were easily corrected while others were apparently sufficiently addressed by UMCS officials in its response, it appears they were addressed to satisfaction of the OSHA Officials who did not provide any follow up comments or further action. These violations/citations were viewed as de minimus.

However, the Investigative Team did recommend that the following actions be taken: (1) prepare a draft Government Quality Assurance Plan. This plan has since been drafted and is currently being staffed for comment and approval. (2) Fort Gordon UMCS is also continuing to search for any additional Federal, state, or local standards, that relate to the requirements outlined in AR 420-49, paragraph 2-4 (Encl Q), that states that utility plant operators and maintenance personnel will be provided sufficient training to operate and maintain the plan. This regulation further states that the personnel will meet Federal, state, and local certification requirements. Despite numerous inquiries to industry

experts, Fort Gordon's investigators were unable to identify any Federal, state, or local certification requirements that apply to personnel in operator-type positions, such as the whistleblowers' positions, who operate equipment such as that at Fort Gordon. Fort Gordon's investigators are confident that the training being provided and procedures being followed by Noresco are appropriate. The installation will continue to research certification requirements and will ensure contractor compliance. (3) the installation Director of Public Works will be directed to ensure that all standards are met for the operation of emergency showers and eyewashes. (4) the installation Director of Public Works has been directed to ensure that all operational standards are met, in coordination with the Signal Branch Safety Office and the Industrial Hygiene Office.

Therefore, on the basis of this Report, the Army does not plan to take any further action regarding this matter other than those actions noted above. Finally, there is no criminal violation inquiry referral to the Attorney General pursuant to 5 USC 1213(d)(5)(d).

This letter and enclosures are submitted in satisfaction of my responsibilities under 5 USC 1213(c) and (d). Please direct any questions you have concerning the conduct of the Report of Investigation in this case to Ms. Cassandra Tsintolas Johnson, at 703-697-6493.



Reginald J. Brown  
Assistant Secretary of the Army  
(Manpower and Reserve Affairs)

Enclosures