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## **Analysis of Disclosures, Agency Investigation and Report, and Whistleblower Comments**

**OSC File No. DI-06-2424**

### **Summary**

Antonio Vierra, Painter, disclosed to the Office of Special Counsel (OSC) allegations of a substantial and specific danger to public safety arising out of actions by employees at the Department of the Navy, Pearl Harbor Naval Shipyard (PHNS), Pearl Harbor, Hawaii. Specifically, he alleged that a shipyard employee illegally manufactures and sells dangerous cooling vests to painters and sandblasters working in main ballast tanks on nuclear submarines. Mr. Vierra also alleged that the employee assembles the cooling vests from stolen government equipment.

PHNS investigators and technical experts investigated Mr. Vierra's allegations. The agency report concludes that Mr. Vierra's allegations were substantiated in part. The investigators found widespread use of homemade cooling vests, such as those made and sold by the subject employee, by painters at the shipyard. Although the agency determined that these cooling vests did not pose a substantial risk to employee safety, the investigators found that supervisors and employees failed to obtain the approval of health and safety officials before using the vests, in violation of applicable safety regulations. Finally, the investigators did not find any evidence that the subject employee assembled cooling vests from stolen government equipment. In response to the investigative findings, PHNS banned homemade cooling vests and designed a new government-issued cooling vest that it plans to distribute among shipyard painters. The agency also took disciplinary action against several individuals implicated by the investigative findings.

### **The Whistleblower's Disclosures**

Mr. Vierra, who consented to the release of his name, began working at PHNS in October 2005. He previously worked as a painter for 20 years. Mr. Vierra was terminated from his position at the shipyard in July 2006.

According to Mr. Vierra, the painters in Shop Code 971 are responsible for painting and sandblasting the interior of main ballast tanks (MBTs) on nuclear submarines. The MBTs allow submarines to ascend and descend in the water: the MBTs fill with water to submerge the submarine, or fill with pressurized air to allow the submarine to surface. Mr. Vierra advised the temperatures within the MBTs often reach uncomfortably high levels. Mr. Vierra stated that Rudy R. Salcedo, Jr., Tank Leader, sells homemade cooling vests to painters in the shop. Mr. Vierra explained that cooling vests are designed to pump cool air into the user's coveralls.

According to Mr. Vierra, management prohibits the use of cooling vests because the vests are unsafe. Mr. Vierra explained that the vests are attached to an air pump; if a vest fills with too much air, it can explode and the hose may spring loose. Mr. Vierra contended that he has been personally injured on two separate occasions when hoses from coworkers' cooling vests came loose and struck him in the face. Mr. Vierra also advised that it is possible for a vest to over-inflate, trapping a worker in one of the tanks, or a vest could become snagged on a piece of equipment and accidentally trap or hang a worker.

In addition, Mr. Vierra alleged that Mr. Salcedo assembles the cooling vests out of government property he has stolen from the base's supply center. The materials used to assemble the vests include plastic piping, hoses, connectors, and valves. Mr. Vierra asserted that he knows that the equipment belongs to the government because it is marked with government bar codes. Mr. Vierra admitted that he personally purchased a vest from Mr. Salcedo in October 2005. He estimated that Mr. Salcedo has sold approximately 25 cooling vests to Shipyard employees, at prices ranging from \$45 to \$125 per vest. Mr. Vierra maintained that he reported the allegations to his supervisors; however, they failed to take any corrective or disciplinary action.

### **Department of the Navy Investigation and Report**

At the instruction of Naval Sea Systems Command, PHNS investigators and technical experts investigated Mr. Vierra's allegations. The investigators interviewed Mr. Vierra and 20 other shipyard personnel, including painters, shop supervisors, and Occupational Safety Health and Environment (OSHE) professionals. The investigators also conducted worksite surveillance, collected physical evidence and reviewed applicable rules and regulations. In addition, the investigators collaborated and exchanged information with Naval Criminal Investigative Service (NCIS) agents, who were already in the process of investigating other criminal allegations raised by Mr. Vierra. The agency investigation substantiated Mr. Vierra's allegation that Painters throughout Code 971 improperly used cooling vests that had not been approved by the OSHE Department. However, the investigation did not substantiate his allegations that the cooling vests pose a substantial danger to public safety or that Mr. Salcedo assembles cooling vests out of stolen government property.

According to the agency report, the investigators found widespread and longstanding use of cooling vests at the shipyard. They observed that many PHNS painters and sandblasters wear cooling vests while working inside of MBT tanks in order to prevent heat exhaustion. The investigators reviewed applicable regulations and concluded that the regulations do not prohibit the use, fabrication or sale of cooling vests. The agency regulation NAVSHIPYDPEARLINST 5100.1A CH-149, Control of Heat Stress: PHNS Safety and Health Supplement No. 0410A authorizes employees to use engineering controls and air-cooled vests that have been approved by the OSHE Department. A second regulation, Supplement 0113F, authorizes employees to connect approved cooling vests to the shipyard breathing air system.

Mr. Salcedo confirmed that he has manufactured, distributed and repaired cooling vests for PHNS painters and sandblasters. He claimed that he accepted money in exchange for the vests as reimbursement for parts and labor. Mr. Salcedo testified that he was not aware that employees were required to obtain approval from OSHE before using the vests. The investigators found that, along with Mr. Salcedo, other employees also constructed or modified their own cooling vests.

On December 5, 2006, the investigators recalled all cooling vests from the workplace, pending a safety evaluation of the equipment. They confiscated a total of 51 cooling devices. Upon evaluating the vests, Vincent Amoroso, OSHE Manager, determined that some of the cooling vests appeared to be safe and well-designed. On the other hand, he found that several of the vests were poorly designed and potentially unsafe. Specifically, he found that these vests used unreliable clamping devices, had end caps or bolts that were capable of ejecting under pressure, and used hoses that appeared capable of flailing violently and striking someone. Mr. Amoroso also noted that many of the cooling vests were dirty and poorly maintained.

Although Mr. Amoroso found that several of the homemade cooling vests were poorly made and maintained, he nevertheless concluded that none of the vests posed a significant danger to employee safety. Mr. Amoroso explained to the investigators that cooling vests are not capable of over-inflating and will not trap a worker in a tank, as Mr. Vierra claimed, because the vests are designed to release air and, thus, they do not allow internal pressure to build up. He also advised that the vests are not attached to an air pump, but are instead attached to the shipyard breathing air system. In accordance with the Navy Occupational Safety and Health Program Manual (December 30, 2005), Mr. Amoroso assigned the homemade cooling vests a Risk Assessment Code of "4," which signifies a minor safety risk.<sup>1</sup>

Mr. Amoroso reviewed PHNS mishap records and injury reports from 2003 through 2006 and did not find any reported accidents associated with the use of the cooling vests. Although there were no accident reports on file related to the use of cooling vests, Mr. Vierra testified that he was personally injured when his cooling vest failed. Mr. Vierra stated that he reported the incident to his supervisor, but his supervisor advised him against filing an accident report because the vest was homemade, and, therefore, it was not included in PHNS inventory. All of the Code 971 supervisors who were interviewed claimed that no employee had ever reported to them an injury or illness associated with the use of a cooling vest. Nevertheless, the agency report concedes that, "the fact that PHNS has no record of vest-related injuries does not completely prove there were none."

Although the cooling vests were not deemed to be a serious safety risk, the investigators found that none of the vests had been approved for use at the shipyard. According to the agency report, none of the cooling vests had been submitted to OSHE for approval, as required by Supplement No. 0410A. The investigators also found that Shop 971 failed to comply with Supplement 0113F, which requires the shop to inventory the vests within its equipment maintenance and tracking system. The tracking system insures that equipment is periodically

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<sup>1</sup> Under the risk assessment system described in the manual, there are five risk assessment levels: (1) critical, (2) serious, (3) moderate, (4) minor, and (5) negligible.

inspected, cleaned, maintained, and repaired. Because the cooling vests were not entered into the system, many of them were dirty and in poor condition.

According to the agency report, the investigators did not find any evidence that Mr. Salcedo had stolen government equipment. Mr. Salcedo insisted that he did not use government time, material, tools or equipment when manufacturing the cooling vests. He maintained that, in assembling the vests, he only used materials he purchased from private hardware vendors. In support, he produced a single Home Depot receipt listing plumbing components used in the cooling vests. He also offered to show investigators receipts from his personal credit card as proof of purchase. NCIS agents searched Mr. Salcedo's home, automobile, and work area lockers, and they did not uncover any evidence that he had stolen government property.

Based on the findings of the investigation, the agency instituted new policies and implemented corrective action. First, the agency concluded that homemade cooling vests are not an acceptable substitute for approved personal protective equipment. Although the OSHE Department determined that the homemade vests pose only a minimal risk to safety, the agency report acknowledges that there nevertheless remains a potential for employees to be injured when using the vests. As a result, PHNS decided to provide painters with government-issued cooling vests. To implement this plan, PHNS assembled a research and development team to identify an optimal cooling vest design. The OSHE Department approved the final cooling vest design on January 6, 2007. According to the agency report, the approved cooling vest was deployed for field testing on March 17, 2007, and will be available for general use by shipyard employees in the near future.

The agency also decided to pursue disciplinary action against several individuals. The investigators concluded that the painters and their supervisors knew that the homemade cooling vests had not been approved by OSHE, yet continued to use them anyway. The agency report also states that management is responsible for training employees and familiarizing them with applicable safety regulations and requirements, yet they failed to educate the painters regarding the authorized use of cooling vests. Accordingly, PHNS management decided to take disciplinary action against four Code 971 supervisors and one employee for failure to comply with Supplements 0113F and 0410A. At the time the agency report was submitted to OSC, PHNS had not yet issued disciplinary proposal letters.

On June 29, 2007, the agency provided OSC with updated information regarding steps PHNS has taken, or is in the process of taking, to discipline these individuals. According to the agency, PHNS issued Letters of Caution to Mr. Salcedo and Chris Byas, Shop Supervisor. A PHNS official verbally counseled Tim Harai, Shop Supervisor. Lastly, a PHNS official has arranged to hold an investigatory discussion with Jose Vargas-Lebron, Shop Supervisor, and Vince Yokoyama, Shop Supervisor, in order to determine the appropriate disciplinary action to take against them.

Lastly, the agency report notes that the culture in Code 971 is not conducive to open communication, and, consequently, employees are reluctant to raise safety concerns with their

supervisors. Therefore, the investigators recommended that the shop increase safety training efforts and encourage employees to report safety concerns. They also recommended that shop employees and supervisors actively participate in the Occupational Safety and Health Administration's Voluntary Protection Program, which encourages cooperative efforts to enforce workplace safety programs.

### **The Whistleblower's Comments**

Mr. Vierra commented on the agency report. He expressed satisfaction that some of his allegations were substantiated by the investigation and that the agency had taken steps to correct many of the problems he reported. On the other hand, Mr. Vierra expressed disappointment that PHNS had not yet disciplined any supervisors for their failure to comply with agency regulations.<sup>2</sup>

### **Conclusion**

Based on the representations made in the agency report and Mr. Vierra's comments, I have determined that the agency report contains all of the information required by statute and findings of the agency head appear to be reasonable.

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<sup>2</sup> As discussed above, the Navy had not yet taken disciplinary action against any individuals at the time the agency report was finalized and submitted to OSC. The agency has since reported to us that they have taken disciplinary action against two supervisors and one employee, and are in the process of pursuing disciplinary action against two other supervisors.