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June 12, 2009

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

Re: OSC File No. DI-07-2724

Dear Mr. President:

The U.S. Office of Special Counsel (OSC) received a disclosure from Ms. Maria E. Garzino, Civil Engineer, Department of Defense (DoD), U.S. Army Corps of Engineers (USACE), regarding the flood protection system in New Orleans, Louisiana. Specifically, Ms. Garzino made serious allegations about the reliability of the pumping equipment manufactured and installed by a contractor, Moving Water Industries (MWI), and USACE's related lack of proper oversight and contract management.[1] In sum, Ms. Garzino alleged that the pumping equipment was defective and largely untested.

On May 14, 2008, in response to OSC's referral pursuant to 5 U.S.C. §1213(c) to Secretary of Defense Robert Gates dated September 21, 2007, DoD Inspector General Claude M. Kicklighter substantiated several of Ms. Garzino's allegations. However, that report concluded that, "... these deficiencies were performance-related shortcomings that did not rise to the level of a serious violation of law or regulation, abuse of authority or gross mismanagement. Nor did they result in a gross waste of funds or a danger to public health or safety."

Given the enormity of information to the contrary, as outlined in OSC's findings and Ms. Garzino's comments to the agency report, OSC found the May 2008 agency report not reasonable pursuant to 5 U.S.C. § 1213(e)(2), and closed the matter. As required by 5 U.S.C. § 1213(e)(3), OSC transmitted our findings together with the agency report and Ms. Garzino's comments to you, the Chairmen of the Senate and House Armed Services Committees, and the Acting Inspector General, Department of Defense. Thereafter, on August 8, 2008, upon reviewing our findings, Acting Inspector General Gordon S. Heddell notified OSC that he had agreed with our assertion "... that every effort must be made to assure the citizens of New Orleans that pumps designed for flood protection will perform as specified during hurricanes." Acting Inspector General Heddell also informed OSC that he directed his staff to determine whether the pumps were, in fact, adequately tested and to evaluate the likelihood that the pumps could be vulnerable to failure in the event of a

[1] Ms. Garzino has worked as a DoD employee for approximately 17 years, including ten years as a USACE engineer.

hurricane. As a result of Acting Inspector General Heddell's response to OSC's concerns, OSC re-opened the above-referenced case in order to allow the Acting Inspector General to submit additional information. In a correspondence dated March 29, 2009, Acting Inspector General Heddell stated that his office entered into a contract with Parsons, Inc., for an assessment of the pumping system at issue, which he forwarded to OSC.

Ms. Garzino had an opportunity to review the additional information. By way of background, Ms. Garzino is a mechanical and civil engineer working at USACE, Construction Operations, Contract Administration Branch, Los Angeles, California. From March to September 2006, Ms. Garzino was detailed to USACE New Orleans District, and served as Team Leader of Pumping Systems Installation. Ms. Garzino had direct oversight responsibility regarding the pumping equipment installed at the three outfall canal closure structures. Ms. Garzino's comments are direct and unambiguous, and, with her consent, I enclose them for your review.

Given the complexity of the technical issues raised by Ms. Garzino's allegations, and the inconsistencies raised between Acting Inspector General Heddell's report and her assessments, OSC entered into a contract with Mr. Gil Lucas, Apariq, Inc., Professional Engineer, who provided an independent technical opinion of Acting Inspector General Heddell's report and Ms. Garzino's allegations and comments. I enclose a copy of his opinion for your review, which I hope you will find valuable. I will not repeat Mr. Lucas' comprehensive report here, but several of his points deserve to be highlighted.

There appears to be little logical justification for: (1) restricting the emergency pumping capability solicitation No.W912P8-06-R-0089 to only the untested hydraulic pump systems, especially when the MWI hydraulic pump systems took longer to procure, design, factory test, and install than proven direct drive pumps (428 days vs. 236 days); (2) not requiring the installation of a reliable pumping system which would adequately protect New Orleans, should additional funding be delayed or cancelled; (3) spending hundreds of millions of dollars to install forty MWI hydraulic pumps for pump procurement and pump infrastructure installation in 2007, which are scheduled to be replaced at an estimated cost of greater than $430 million within 3-5 years, when the purchase of proven direct drive pumps could have been accomplished more quickly, more reliably, and without planning for pump capacity replacement[2]; (4) selecting and installing hydraulic pumping equipment that could not be maintained at the lowest operating and maintenance (O&M) costs; (5) installing

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[2] Ms. Garzino raises this point clearly in her comments; "3.5. Permanent Enhancement of the ICS Facilities Final Report dated April 27, 2009. This Report, prepared for USACE, MVD, NOD by ECM-GEC Joint Venture, investigates and reports forward on what modifications are required to extend the life of the Interim Control Structures (ICS) at all three outfall canals to a 50 year design life. Amazingly this report recommends all the currently installed direct drive pumps remain and all the currently installed hydraulic pumps and their associated piping with support structures be removed and replaced with direct drive type pumps and associated structures. This Report goes on to state problematic operational and maintenance issues surrounding the hydraulic pumps are the main reason for recommending they be removed and replaced. This Report goes on further to recommend improving pumping capacity at all three outfall canals by adding direct drive type pumps to the existing ICS in order to meet the pumping capacity associated with a 100 year storm event."

hydraulic equipment which was not adequately protected against corrosion, which further decreased reliability, decreased operating lifetime, and increased O&M costs; and (6) installing hydraulic equipment without containment protection to prevent hydraulic leaks (from system failures and storm damage) from polluting waterways, potentially violating the Clean Water Act.

After a review of the agency report, and the assessment conducted by Parsons, Inc., as well as the whistleblower's comments, given the scope of the design and installation failures, I am not persuaded to reverse our previous determination that the findings of the agency head do not appear reasonable under the statute. As required by 5 U.S.C. § 1213(e)(3), I have sent a copy on disk of Acting Inspector General Heddell's latest correspondence and enclosure, as well as Ms. Garzino's comments and Mr. Lucas' opinion, to the Chairmen of the Senate Armed Services Committee and the House Armed Services Committee, and the Committees' Ranking Members. If you would like a hard copy of these reports, please contact Catherine A. McMullen, Chief, Disclosure Unit, at 202-254-3604. We have also filed a copy of the agency's letter and the assessment conducted by Parsons, Inc., and Ms. Garzino's comments and Mr. Lucas' opinion, in our public file and closed the matter. The documents contained in OSC's public file are now available online at www.osc.gov.

Respectfully,

William E. Reukauf
Associate Special Counsel

Enclosure