



U.S. OFFICE OF SPECIAL COUNSEL
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The Special Counsel

November 20, 2023

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

Re: OSC File Nos. DI-22-000356, DI-22-000357, DI-22-000358

Dear Mr. President:

I am forwarding to you a report transmitted to the Office of Special Counsel (OSC) by the Attorney General in response to the Special Counsel's referral of disclosures of wrongdoing at the U.S. Department of Justice (DOJ), Bureau of Prisons (BOP), Federal Corrections Institution Dublin (FCI Dublin), Dublin, California. The whistleblowers, [REDACTED], a Special Investigative Services (SIS) Technician at FCI Dublin, and former SIS Technicians [REDACTED] consented to the release of their names. The whistleblowers disclosed that FCI Dublin failed to address asbestos containing material (ACM) and mold throughout the institution and violated Occupational Safety and Health Administration (OSHA) regulations. I have reviewed the disclosure, agency report, and whistleblower comments and, in accordance with 5 U.S.C. § 1213(e), have determined that the report contains the information required by statute and the findings appear reasonable.¹ As summarized below, the agency substantiated some of the allegations.

Investigators substantiated that floor buffing practices disturbed asbestos in damaged or cracked vinyl floor tiles and that applicable OSHA safety measures were not employed during buffing operations. Though investigators did not substantiate that a shower renovation project disturbed asbestos, they noted that maintenance work, largely completed by staff and inmate laborers, could not be presumed to have been accomplished with appropriate attention to asbestos compliance. The investigation determined that a 1998 Asbestos Survey of FCI Dublin was the only reliable written record regarding ACM at the facility. That survey estimated the institution had 83,086 square feet of asbestos-containing floor tile and mastic. Even though the Safety and the Facilities Departments at FCI Dublin had the 1998 Survey available for review, neither department checked it to ensure ACM was not present in proposed work areas before authorizing work.

During a July 2022 site inspection, investigators saw a wide variety of floor tiles, many damaged with large cracks or gaps, and what appeared to be original tile either on the surface or exposed. Investigators learned that "floor buffing" included both the stripping and refinishing of floor tiles—which occurred every two to three years using specialized materials and equipment—and the weekly

¹ OSC referred the allegations to Attorney General Merrick Garland for investigation pursuant to 5 U.S.C. § 1213(c) and (d). The BOP Office of General Counsel and Review, Real Estate and Environmental Law Branch investigated the allegations. The Attorney General delegated the authority to review and sign the agency report to Associate Deputy Attorney General Bradley Weinsheimer.

or biweekly cleaning of the floors with a buffing machine. Investigators found that a self-taught inmate-orderly administered the buffing program, and inmates mainly received on-the-job training on the stripping and buffing equipment, which did not include awareness of or education about asbestos. At the inspection, investigators also observed inmates buffing floors but noted they did not avoid damaged or cracked tiles, use personal protective equipment, or limit access to the cleaning area. OSHA rules prohibit the sanding of floor tiles either known to contain asbestos or installed before 1981 that have not been proven to be asbestos free. Further, any finishes must be stripped from such floors using low abrasion equipment operating at or below 300 rpm. Investigators determined that FCI Dublin's stripping and buffing machines operated at speeds well over 300 rpm and with stripping pads that were not low abrasion. Thus, investigators concluded that FCI Dublin's practices of stripping and buffing its floor tiles violated OSHA standards.

As a result, FCI Dublin suspended all prohibited cleaning methods, and began cleaning floors using wet methods, HEPA vacuums, sweeping, and other non-buffing procedures. FCI Dublin also decided to remove all tile flooring from the inmate housing units—asbestos-containing and non-asbestos containing tiles—to ensure that no ACM flooring remains. Due to cost, FCI Dublin submitted a funding request for the project, which is under review at the BOP Western Regional Office and must be reviewed by the Central Office as well.

Investigators did not substantiate that FCI Dublin failed to adequately clean or remediate mold found in the institution or failed to sufficiently repair the Education Building's roof leaks to prevent future mold growth because the new Warden and executive team addressed these issues in 2021 and 2022. However, the report acknowledged that FCI Dublin's former Warden and executive team took an inappropriate length of time to remedy the situation, failed to comply with OSHA requirements, and intentionally withheld important information from staff and the union about health and safety matters, which created hurdles the new Warden and executive team had to overcome.

Investigators found that the roof leaks were repaired during 2021 and 2022. Neither an April 2022 Environmental and Safety Compliance Program Review conducted by the Central Office, nor the May 2022 institution-wide inspection conducted by the Western Regional Facilities Administrator found areas with mold and investigators saw no areas with mold during the July 2022 site inspection. Investigators also found no current, documented mold complaints. Further, FCI Dublin now ensures that no work order is completed without the order properly identifying the work performed, cost, hours, laborers, and any personal protective equipment used. FCI Dublin is reviewing whether the current computerized system can implement a 360° process that will allow staff who submitted a work order to receive updates on the order. In the meantime, staff may request and receive updates on work orders through an informal communications process. Investigators also noted the new Warden is committed to ensuring that this complaint and any other similar issues are adequately addressed by speaking with and listening to FCI Dublin staff. The agency determined that medical notifications or evaluations for past and present employees, contractors, and inmates who were working or incarcerated at FCI Dublin during the relevant time period are not warranted.

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The whistleblowers disputed the findings and conclusions regarding the unsubstantiated allegations concerning mold. They also criticized FCI Dublin for the length of time it took to correct the asbestos and mold issues. The whistleblowers further objected to the agency's determination that notifications about any potential exposure to asbestos or mold were unwarranted.

I thank the whistleblowers for bringing these serious allegations to OSC's attention. Their efforts resulted in significant corrective actions that will improve health and safety at FCI Dublin. As required by 5 U.S.C. § 1213(e)(3), I have sent copies of this letter, the agency report, and whistleblower comments to the Chairmen and Ranking Members of the Senate and House Committees on the Judiciary. I have also filed redacted copies of these documents and the redacted referral letter in our public file, which is available online at www.osc.gov. This matter is now closed.

Respectfully,

A handwritten signature in blue ink that reads "Karen Gorman". The signature is fluid and cursive, with the first name "Karen" and last name "Gorman" clearly distinguishable.

Karen Gorman
Acting Special Counsel

Enclosures