



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

The Special Counsel

October 11, 2022

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

Re: OSC File No. DI-21-000266

Dear Mr. President:

I am forwarding to you a report transmitted to the Office of Special Counsel (OSC) by the U.S. Department of the Army (Army), in response to the Special Counsel's referral of disclosures of wrongdoing at the Army Joint Munitions Command (JMC), Crane Army Ammunition Activity (CAAA), Crane, Indiana. The whistleblower, [REDACTED], consented to the release of his name. 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 The following is a summary of those findings and comments.

The Allegations

[REDACTED], the former CAAA Safety & Occupational Health Manager, alleged that CAAA management failed to follow federal safety regulations, placing employees at risk. [REDACTED] filed eight allegations as detailed below. The report partially or fully substantiated five allegations and explained the corrective measures that have been taken and are underway.

The Department of the Army's Findings

CAAA is an ammunition plant that receives, stores, and handles ammunition and related components. The Department of Defense Instruction (DoDI) 6055.01 requires DoD Components, including CAAA, to comply with Occupational Safety and Health Administration's (OSHA) standards. Army Regulation (AR) 385-10 contains responsibilities and procedures to prevent accidental loss and protect public safety. The report's findings follow.

¹ OSC referred the allegations to John E. Whitley, former Acting Secretary of the Army, for investigation pursuant to 5 U.S.C. § 1213(c) and (d). JMC investigated the allegations. The authority to review and sign the agency report was delegated to Senior Official Performing the Duties of the Assistant Secretary of the Army (Installations, Energy and Environment) J.E. Surash.

1. The Report Substantiated CAAA Did Not Properly Classify Areas with Powered or Explosive Processes that are Hazardous or Maintain an Accurate List of the Areas.

OSHA and Army regulations² require CAAA to classify all hazardous areas and/or processes. These areas are classified individually, and classification depends on the properties of the flammable substances that may be present and the likelihood that a flammable concentration is present. Classified areas must also be documented, and the equipment and wiring used in such areas and processes must be safe or approved for use.

The report stated that, during initial construction, CAAA correctly classified the facility's areas and that the electrical equipment in those areas conformed to OSHA protection levels. However, noting that hazardous location information must be updated as necessary, the report found that CAAA has not maintained complete, up-to-date hazard analyses for present processes or those that may have changed over the years. The report also found that employees did not know how to use classified location hazard analyses.

As a result of this finding, CAAA is contracting for a new hazard analysis/risk assessment of the estimated 2,000 areas that involve energetic activities. The assessment, which CAAA anticipates completing by January 2024, will be used to update and label classified areas. CAAA is also conducting annual safety workplace inspections and pre-operational safety walk downs, which are added triggers that identify when a classified system falls out of maintenance. Further, CAAA is developing awareness training for employees to understand hazardous classifications and how to identify them.

2. The Report Substantiated CAAA Lacks a Process Safety Management (PSM) Plan to Control Hazardous Substances.

CAAA has not properly implemented a PSM standard for controlling and handling hazardous substances as required by AR 385-10 and 29 C.F.R. § 1910.119 *et. seq.* The report stated that implementing a PSM at CAAA is an ongoing and challenging effort. Since 2013, JMC and CAAA have pursued implementing a PSM after a fire in a pyrotechnic building injured employees and an OSHA investigation cited the lack of a PSM as a contributing factor. Subsequently, Army Material Command, JCM Safety Office leadership, and other working groups created and revised draft PSM regulations, requirements, and recommendations. In 2016, however, CAAA's then-commander asserted the facility did not need to comply with OSHA standards given its unique military operations, and the PSM stalled.

Current management confirmed CAAA requires a PSM and is working to implement a compliant standard. To that end, CAAA is analyzing related assessments such as pre-operational, in-operations, and design reviews to determine if they meet PSM requirements. CAAA is also reviewing standard Army Deliberate Risk Assessment Worksheets to determine if this risk analysis methodology can be used for a PSM. CAAA implemented a pilot program in the

² See 29 C.F.R § 1910.307 *et. seq.*; Army Pamphlet 385-64 *Ammunition and Explosives Safety Standards*, at § 17-2.

pyrotechnic building. Management also received approval to hire a Coordinator to oversee PSM implementation. In the interim, CAAA assigned a current employee to receive PSM Training. Further, CAAA now provides training under OSHA's PSM standard, which includes training each operator and supervisor working a process—i.e., an activity with a hazardous chemical, and require employees to affirm they understand the training. Additionally, the JMC Systems Safety Engineering Team is updating a PSM survey of all JMC sites regarding PSM implementation, which will be used to develop a path forward across the military energetics production base.

3. The Report Partially Substantiated CAAA's Lockout/Tagout Program is Incomplete.

The report found that CAAA has a lockout/tagout program, per CAAA Regulation (CAAAR) 385-14, *Control of Hazardous Energy Program (Lockout and Tagout)*, to control or prevent the inadvertent release of stored energy from machinery or mechanical systems. The regulation complies with AR 385-10 and 29 C.F.R. § 1910.147. However, the report concluded that CAAA has not performed all responsibilities under the regulation and must improve implementation. Therefore, CAAA appointed a lockout/tagout program manager who is implementing CAAAR 385-14 and managing the program. CAAA trained employees and the program manager now maintains training records. CAAA also purchased industry-best gear and hardware that will help implement the program and is reviewing the 1,500 affected pieces of equipment to develop equipment-specific tagout procedures. CAAA anticipates completing the project by December 2022.

4. The Report Substantiated CAAA Did Not Have an Adequate Fall Protection Program.

The report stated CAAA's fall protection program was inadequate per AR 385-10 and 29 C.F.R. § 1926. The local regulation, CAAAR 385-10, contains information about fall protection, but management acknowledged this is not sufficient to ensure all fall protection requirements are implemented. The report noted that as a tenant on a U.S. Navy operated installation CAAA could adopt the Navy Fall Protection Guide. As a result, CAAA is reviewing the Navy Fall Protection Guide and will incorporate it into its fall protection regulation.

5. The Report Partially Substantiated that CAAA Lacked Current Inspection Tags or Certifications for Material Handling Equipment or Weight Bearing Apparatuses.

The investigation did not find safety deficiencies with material handling equipment during the onsite inspections and a review of safety inspection records. However, the investigation found that CAAA has weight handling equipment (WHE)—such as chains and slings—that lack current inspection tags or certifications, but noted the items were not in use during the inspections. The report explained that Naval Facilities Engineering (NAVFAC) and its WHE Program Manager assist CAAA with its WHE program. The NAVFAC WHE Program Manager stated that CAAA has thousands of WHE and given its operations some of these items are not used and fall out of certification as it is not cost effective to inspect/certify unused equipment.

To alleviate any WHE programmatic deficiency or confusion, CAAA appointed a WHE Point of Contact, which NAVFAC stated has had a positive impact on the coordination of WHE inspections. NAVFAC now provides CAAA a monthly reconciliation report on its gear that also reminds CAAA to place unused equipment in an inactive status. CAAA is also reviewing all WHE to ensure any equipment with outdated inspections or certifications is tagged inactive and not used. CAAA will complete the review by January 2023.

6. The Report Did Not Substantiate that CAAA Lacked Proper Building Inspections.

The investigating officer did not find any evidence that CAAA was not performing workplace inspections³ pursuant to AR 385-10—which requires supervisors to conduct periodic, documented workplace inspections to identify hazards. The report stated that JMC monitors CAAA’s workplace inspection program via monthly reporting requirements. JMC verifies the program’s adequacy during its external Organizational Inspection Program visits and monitors the program as part of its annual Secretary of Labor Safety & Occupational Health Report.

7. The Report Did Not Substantiate CAAA Failed to Bolt Storage Pallet Racks to Floors.

The investigation did not find evidence of a general or ongoing failure to bolt pallet racks to building floors at CAAA. The report stated that prior facility inspection records corroborated this was not an ongoing issue. According to a March 2021 CAAA Occupational Health & Safety Memorandum one set of unanchored pallet racks in Building 160 was fixed, and visual inspections of all other CAAA buildings found no additional unsecured racks.

8. The Report Did Not Substantiate CAAA Posted Outdated/Obsolete Safety Data.

The report stated that OSHA regulations⁴ require employers to post occupational safety and health program posters and reports containing safety information and that DoDI 5055.01 mirrors this requirement. Before the investigation, the fire bill and evacuation plans for some buildings were out-of-date but have been corrected. The investigation also confirmed CAAA is using all public bulletin boards to post safety information—the accuracy of which is verified during safety inspections. JMC also reviewed CAAA’s posting compliance as part of the August 2021 Command Inspection Program and found no violations.

The Whistleblower Comments

██████████ disagreed with how the investigation was conducted and disputed the report’s findings as to the unsubstantiated allegations. He also criticized management, and the lack of disciplinary action taken against CAAA officials in response to the substantiated allegations. I

³ Though the referred allegation alleged CAAA lacked proper building inspections, the investigating officer stated that occupational safety and health personnel inspect workplace safety, they do not conduct building inspections.

⁴ See 29 C.F.R §§ 1904.32 and 1960.12(c).

The President
October 11, 2022
Page 5 of 5

thank [REDACTED] for bringing these important safety allegations—many of which were substantiated—to OSC’s attention.

As required by 5 U.S.C. § 1213(e)(3), I have sent copies of this letter, agency report and whistleblower comments to the Chairs and Ranking Members of the Senate and House Committees on the Armed Services. 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 black ink, appearing to read "Henry J. Kerner", with a stylized flourish at the end.

Henry J. Kerner
Special Counsel

Enclosures