

1 **OFFICE OF SPECIAL COUNSEL REFERRAL FILE NO. DI-22-000146**

2 **SUMMARY OF THE REPORT OF INVESTIGATION**

3 **I. INFORMATION INITIATING THE INVESTIGATION**

4 By correspondence dated 5 January 2022, the Office of Special Counsel (OSC)
5 forwarded to the Secretary of the Army allegations from a whistleblower that officials at
6 the Department of the Army (Army), U.S. Army Installation Management Command
7 (IMCOM), Aberdeen Proving Ground (APG), and U.S. Army Corps of Engineers
8 (USACE) may have engaged in actions that constitute a violation of law, rule, or
9 regulation resulting in a substantial and specific danger to public health at APG,
10 Aberdeen, Maryland. There is a large-scale demolition project under the Facilities
11 Reduction Program (FRP) underway at APG, which is being managed by the USACE.
12 The whistleblower, a former APG Safety Manager, alleged that APG and USACE
13 officials engaged in a pattern of non-compliance with asbestos safety requirements. The
14 following allegations were referred by the OSC:

15 (1) Allegation #1: APG and USACE officials have not collaborated on
16 implementation of a required asbestos management program;

17 (2) Allegation #2: APG and USACE officials have failed to ensure that required
18 asbestos mitigation is carried out, placing employees, contract employees, and
19 the public in danger of potential exposure to hazardous material; and

20 (3) Allegation #3: Any additional or related allegations of wrongdoing discovered
21 during the investigation of the foregoing allegations.

22 The OSC requested that the Army investigate and provide a comprehensive
23 analysis of the allegations and any corrective actions deemed appropriate.

24 **II. CONDUCT OF THE INVESTIGATION**

25 On 17 January 2022, the Army General Counsel forwarded the OSC referral to
26 the Staff Judge Advocate for the U.S. Army Communications-Electronics Command, for
27 appropriate action, including the initiation of an investigation into the allegations pursuant
28 to Army Regulation (AR) 15-6, *Procedures for Investigating Officers and Boards of*
29 *Officers*, 01 May 2016.

30 On 18 January 2022, the Commanding General, U.S. Army Communications-
31 Electronics Command, appointed an Investigating Officer (IO) pursuant to AR 15-6,
32 directing the IO to investigate allegations that APG and USACE officials failed to comply
33 with asbestos safety requirements. Specifically, the IO was directed to:

34 (1) Document and determine the facts and details concerning the allegations
35 raised by the whistleblower (see Allegations 1-3, listed above), to include identifying the
36 date and times of alleged incidents, individuals involved, witnesses present, and what
37 specifically occurred (or failed to occur).

38 (2) Document and determine the extent that APG and USACE officials
39 collaborated on implementation of a required asbestos management program and
40 determine whether efforts complied with applicable law, regulation, and/or policy.

41 (3) Document and determine the extent that APG and USACE officials carried-out
42 asbestos mitigation and determine whether efforts complied with applicable law,
43 regulation, and/or policy.

44 (4) Investigate any other matters deemed relevant, to include any additional or
45 related allegations of wrongdoing discovered during the investigation of the
46 whistleblower's allegations.

47 The IO received the mandated legal briefing on 20 January 2022 and initiated the
48 investigation on 21 January 2022. The IO made initial contact with the whistleblower
49 through his attorney and provided the whistleblower a questionnaire to respond to in
50 writing. The completed questionnaire would serve as the whistleblower's official
51 statement. On 01 and 02 February 2022, the IO received four documents from the
52 whistleblower containing 542 pages, which included (1) a response to the IO's questions,
53 (2) a deposition transcript, (3) a large, bate-stamped .pdf document named "WFA 0000-
54 0379," and (4) an addendum. The contents of the bate-stamped pdf document included
55 email correspondence, a draft asbestos management plan, and additional
56 documentation.¹ The addendum document provided an allegation regarding the
57 contracting award for the FRP contract and a question on the qualifications of a
58 contractor. These questions are outside the scope of this investigation, and therefore,
59 the IO did not investigate these allegations.

60 After examining the documentation from the whistleblower, the IO prepared and
61 arranged for interviews. Initial contact was made with each potential witness via email or
62 phone and was specifically arranged through leadership, so as not to interfere with the
63 organizations' mission. Each person contacted was willing to be interviewed. At the
64 beginning of each interview, the witness was advised of the purpose of the interview; the
65 allegations being investigated; and that the IO was seeking evidence to inform the
66 investigation. From 10 February 2022 until 04 May 2022, the IO interviewed twenty-five
67 witnesses from the following organizations: (1) APG Directorate of Public Works (8
68 interviewed); (2) USACE (5 interviewed); (3) Installation Safety Office (2 interviewed); (4)
69 Project Management Office (PMO) (5 interviewed); (5) contractors outside the PMO (4
70 individuals interviewed); and the U.S. Army Environmental Command (1 Interviewed).
71 Ten interviews were conducted in person on APG, and the rest of the interviews were
72 conducted virtually or by telephone. After the interviews, the witnesses were asked to
73 provide sworn, written responses to questions, recorded on the DA Form 2823. The IO
74 obtained twenty-three sworn statements.

¹ The deposition transcript is of the whistleblower's deposition in his appeal before the Merit System Protection Board (MSPB). The matters raised before the MSPB are not subject to the investigation regarding the OSC referred allegations addressed herein. The deposition transcript provided by the whistleblower contains an explanation for much of the supporting documents found in the bate-stamped .pdf document from the MSPB case.

75 One witness, from USACE, was interviewed by the IO on March 14, but did not
76 provide a response to the questions in writing or a written statement; instead, the IO
77 documented the interview in a Memorandum for Record (MFR). (See Tab W). Another
78 witness, the USACE Project Manager for the Facilities Reduction Program FY18 contract
79 at APG, provided a response to the IO's questionnaire, but did not sign the DA Form
80 2823. The IO documented the interview in a MFR. (See Tab V). The IO made
81 considerable efforts to obtain signed sworn statements from both individuals.

82 The IO requested Asbestos Abatement Plans for the twelve buildings listed in the
83 whistleblower's statement alleging that non-compliant abatement work took place
84 (specifically that abatement plans were not provided, or asbestos inspections were not
85 completed properly). For the buildings listed under the Facility Reduction Plan, the IO
86 received thousands of pages of documentation including Activities Hazardous Analysis,
87 Asbestos Abatement Plans, Hazardous Materials Surveys, asbestos manifests, and
88 photographs. For the remaining buildings that were listed in the complaint where
89 maintenance or remodeling projects were performed by or contracted by the Directorate
90 of Public Works (DPW), the IO received little documentation concerning those buildings.
91 (See Tabs E, F, H – Sworn Statements).

92 III. ORGANIZATIONS AND RESPONSIBILITIES

93
94 **U.S. Army Corps of Engineers (USACE).** Under Army General Order 2020-01,
95 the Chief of Engineers is the principal military adviser to the Secretary of the Army and
96 the Chief of Staff of the Army for the development of policy related to and the planning,
97 management, and execution of engineering, construction, geospatial engineering, and
98 real property for Army and other Defense activities. The USACE is responsible for
99 serving as the design and construction agent for Army construction; as well as advising
100 and executing military construction and environmental management and remediation
101 initiatives and programs. The USACE is organized into nine Divisions and 43 Districts.
102 The USACE Baltimore District manages numerous military construction projects on APG.
103 In addition, the USACE manages Contaminated Building Demolition Program projects
104 and Fiscal Year (FY) 18 and FY20 Facility Reduction Program (FRP) projects on APG.
105 On 30 September 2018, the USACE Baltimore District awarded a sole source contract to
106 All Phase Solutions LLC to carry-out the demolition of unused facilities on the
107 installation. The contract encompasses the demolition of 34 buildings on the Edgewood
108 and APG North areas of APG. Twenty-two (22) of these buildings are known to have
109 Asbestos-Containing Material (ACM) that requires abatement prior to demolition. (See
110 Tab O – Sworn Statement) The USACE oversees and manages the Program
111 Management Office (PMO) on APG through a single Program Manager. (See Tab U –
112 Sworn Statement)

113
114 **Project Management Office (PMO).** The PMO is a USACE managed office that
115 was stood up on APG in March of 2020. The PMO acts as the primary hub for
116 coordination and communication between USACE, DPW, Installation Safety Office (ISO),
117 Emergency Services, and tenant organizations on APG. (See Tab U – Sworn
118 Statement). It is staffed by government and contract professionals that are proficient in
119 their respective areas of expertise, including environmental laws and regulations,

120 asbestos abatement, building demolition, remediation, and health and safety. (See Tab
121 U – Sworn Statement).

122
123 **Directorate of Public Works APG (DPW).** The U.S. Army Garrison, APG, DPW
124 is responsible for design, construction, maintenance and repair of facilities, operation of
125 utility systems, management of environmental programs, including, natural and cultural
126 resources programs, and provides centralized management for Army Family Housing.
127 The DPW is organized into six divisions (1) Master Planning Division, (2) Operations &
128 Maintenance Division, (3) Business Operations Integration Division, (4) Engineering and
129 Construction Division, (5) Housing Division, and (6) Environmental Division.
130 Responsibilities for asbestos and hazardous material are split between the
131 Environmental Division and the Engineering and Construction Division of the DPW. The
132 Environmental Division is responsible for asbestos compliance, including record-keeping
133 of asbestos maintenance plans. The Engineering and Construction Division is
134 responsible for the safe handling and disposal of asbestos containing material that is
135 found in construction and demolition projects that they execute. (See Tab I – Sworn
136 Statement).

137
138 **Installation Safety Office (ISO).** The USAG Installation Safety Office educates,
139 promotes, and enhances the safety, health, and welfare of personnel within the Garrison
140 and the installation as a whole, by managing and implementing safety and occupational
141 health policy, procedures, standards, and objectives for the Army Safety and
142 Occupational Health Program within the Garrison and the installation.² The ISO is
143 manned with five technical personnel who administer the installation safety program for
144 APG Garrison, including Adelphi Laboratory Center and the Blossom Point Research
145 Facility. Regarding asbestos, the ISO manages compliance with asbestos-related laws
146 and regulations by reviewing contractor safety submittals focusing on areas where
147 contractor operations could result in risk to residents, visitors, or employees of APG; the
148 mission of APG; or U.S. government property located on APG. (See Tab Q – Sworn
149 Statement).

150 **IV. RULES AND REGULATIONS**

151
152
153 The primary laws regulating asbestos include the Occupational Safety and Health
154 Act (OSH Act) and its implementing regulations within Title 29 of the Code of Federal
155 Regulations (CFR), administered by the Occupational Safety and Health Administration
156 (OSHA) of the U.S. Department of Labor; the Clean Air Act's National Emissions
157 Standards for Hazardous Air Pollutants (NESHAP), administered by the U.S.
158 Environmental Protection Agency (EPA)³; and the Toxic Substances Control Act (TSCA)
159 and its Asbestos related regulations, also administered by the EPA⁴. Additionally, the

² Retrieved information from the USAG Installation Safety Office webpage at URL:
<https://home.army.mil/apg/index.php/about/Garrison/safety-office>

³ Additionally, states may be delegated authority to implement portions of the CAA NESHAP requirements, while EPA retains authority over certain requirements.

⁴ Certain TSCA regulations are not required pursuant to the rules, but are required pursuant to Army policy, and here EPA does not administer these requirements (e.g., 40 CFR §763.86 applies to schools, but Army also applies its requirements for other buildings).

160 Comprehensive Environmental Response, Compensation, and Liability Act applies if a
161 reportable quantity of asbestos is released into the environment. OSHA ensures
162 protection of workers and maintenance of a safe work environment, while the EPA's
163 jurisdiction relates to protecting the environment from the harmful release of hazardous
164 or toxic substances.

165

166 **A. 29 CFR §1910.1001 Asbestos**

167 Title 29 CFR §1910.1001 applies to all occupational exposures to asbestos in all
168 industries covered by the OSH Act, except construction (where 29 CFR §1926.1101
169 applies). Relevant provisions include the following:

170 29 CFR §1910.1001 (j)(3)(i) provides duties of employers and building and facility
171 owners. "Building and facility owners shall determine the presence, location, and quantity
172 of [asbestos containing material (ACM)] and/or [presumed asbestos containing material
173 (PACM)] at the work site. Employers and building and facility owners shall exercise due
174 diligence in complying with these requirements to inform employers and employees
175 about the presence and location of ACM and PACM."

176 29 CFR §1910.1001 (j)(3)(ii) provides duties of employers and building and facility
177 owners. "Building and facility owners shall maintain records of all information required to
178 be provided pursuant to this section and/or otherwise known to the building owner
179 concerning the presence, location and quantity of AMC and PACM in the
180 building/facility. Such records shall be kept for the duration of ownership and shall be
181 transferred to successive owners."

182 29 CFR §1910.1001 (j)(3)(iii) provides duties of employers and building and
183 facility owners. "Building and facility owners shall inform employers of employees, and
184 employers shall inform employees who will perform housekeeping activities in areas
185 which contain ACM and/or PACM of the presence and location of ACM and/or PACM in
186 such areas which may be contacted during such activities."

187 **B. 29 CFR §1926.1101 Subpart Z – Toxic and Hazardous Substances**

188 Title 29 CFR §1926.1101 regulates asbestos exposure in all work including, but
189 not limited to, demolition of structures that may contain asbestos, projects where the
190 removal and/or encapsulation of asbestos is being performed, and in case of asbestos
191 spills/emergency cleanup. Relevant provisions include the following:

192 29 CFR §1926.1101 (g)(8)(ii)(A) provides: "[f]or removing roofing material which
193 contains ACM the employer shall ensure that the following work practices are followed:
194 roofing material shall be removed in an intact stage to the extent feasible." In addition, 29
195 CFR 1926.1101 (g)(8)(ii)(E) states, "[ACM] that has been removed from a roof shall not
196 be dropped or thrown to the ground. Unless the material is carried or passed to the
197 ground by hand, it shall be lowered to the ground via covered dust tight chute, crane or
198 hoist."

199 29 CFR §1926.1101 (g)(8)(vi) provides alternative work practices and controls.
200 Title 29 CFR §1926.1101 (g)(8)(vi) allows employers to use different or modified
201 engineering and work practice controls if the following provisions are complied with: the
202 employer shall demonstrate by data that employee exposure during the use of such
203 method under conditions which closely resemble the conditions under which the method
204 is to be used, that the employee exposure will not exceed the Permissible Exposure
205 Limits (PELs) under any anticipated circumstances; and a competent person will
206 evaluate the work area, the project work practices and the engineering controls, and
207 shall certify in writing, that the different or modified controls are adequate to reduce direct
208 and indirect employee exposure to below PLEs under all expected conditions of use and
209 that the method meets the requirements of the standard.

210 29 CFR §1926.1101 (g)(1)(ii) contains engineering controls and work practices for
211 all operations covered by the section and states that “[t]he employer shall use the
212 following engineering controls and work practices in all operations, regardless of the
213 levels of exposure: ... Wet methods, or wetting agents, to control employee exposures
214 during asbestos handling, mixing, removal, cutting, application, and cleanup....”

215 **C. 40 CFR §61.145 – Asbestos Standard for Demolition and Renovation**

216 40 CFR §61.145 (a) of the NESHAP regulations states, “[t]o determine which
217 requirements . . . apply to the owner or operator of a demolition or renovation activity and
218 prior to the commencement of the demolition or renovation, thoroughly inspect the
219 affected facility or part of the facility where the demolition or renovation operation will
220 occur for the presence of asbestos, including Category I and Category II non-friable
221 ACM.”

222 **D. 29 CFR §1960.7 - Financial Management**

223
224 29 CFR §1960.7 of the OSH Act regulations provides that the Designated Agency
225 Safety and Health Official, management officials in charge of each establishment, safety
226 and health officials at all appropriate levels, and other management officials shall be
227 responsible for planning, requesting resources, implementing, and evaluating the
228 occupational safety and health program budget in accordance with all relevant Office of
229 Management and Budget regulations and documents. Appropriate resources for an
230 agency’s occupational safety and health program shall include, but not be limited to: (1)
231 Sufficient personnel to implement and administer the program at all levels, including
232 necessary administrative costs such as training, travel, and personal protective
233 equipment; (2) Abatement of unsafe or unhealthful working conditions related to agency
234 operations or facilities; (3) Safety and health sampling, testing, and diagnostic and
235 analytical tools and equipment, including laboratory analysis; and (4) Any necessary
236 contracts to identify, analyze, or evaluate unsafe or unhealthful working conditions and
237 operations.
238

239

240 **E. 40 CFR Part 763 - Asbestos**

241
242 40 CFR §763.86(a)⁵ - “Surfacing material. An accredited inspector shall collect, in
243 a statistically random manner that is representative of the homogeneous area, bulk
244 samples from each homogeneous area of friable surfacing material that is not assumed
245 to be ACM, and shall collect the samples as follows: (1) At least three bulk samples shall
246 be collected from each homogenous area that is 1,000 ft² or less... (2) At least five bulk
247 samples shall be collected from each homogenous area that is greater than 1,000 ft² but
248 less than or equal to 5,000 ft²...(3) At least seven bulk samples shall be collected from
249 each homogeneous area that is greater than 5,000 ft²...”

250
251 40 CFR Part 763, Subpart E, Appendix C —Asbestos Model Accreditation Plan,
252 section I.B.3.: “All persons who inspect for ACM in schools or public and commercial
253 buildings must be accredited. All persons seeking accreditation as an inspector shall
254 complete at least a 3–day training course as outlined below. The course shall include
255 lectures, demonstrations, 4 hours of hands-on training, individual respirator fit-testing,
256 course review, and a written examination.”

257
258 **F. 40 CFR §§ 61.149(c)(2), 61.150(a)(4), and 61.152(b)(3), and COMAR**
259 **26.11.21.06 - Control of Emissions from an Asbestos Project Subject to**
260 **NESHAP**

261
262 Code of Maryland Regulations (COMAR) 26.11.21.06 paragraph (e) provides
263 procedures for requesting alternative procedures. “The Department may, on a case-by-
264 case basis, approve an alternative procedure for control of emissions from an asbestos
265 project provided that the person submits a written description of the alternative
266 procedure to the Department and demonstrates to the satisfaction of the Department that
267 compliance with the prescribed procedures is not practical or not feasible, or that the
268 proposed alternative procedure provides equivalent control of asbestos. The
269 Department, following its review, may approve an alternative procedure if it determines
270 that it will minimize the emission of asbestos into the air. Pursuant to 40 CFR §61.157,
271 EPA retains the authority to approve alternative emission control or air-cleaning methods
272 under 40 CFR §§61.149(c)(2), 61.150(a)(4), and 61.152(b)(3) and requires prior written
273 approvals by the Administrator for planned alternatives.

274 **G. Army Regulation 420-1 (Army Facilities Management), 12 February 2008**

275 The AR 420-1 addresses the management of Army facilities and provides
276 requirements related to asbestos in paragraphs 5-19, 5-23, 5-24, and 5-25, including
277 discussion of compliance with laws described above. Specifically, it outlines the
278 management of public works activities, housing and other facilities operations and
279 management, and military construction program development and execution. As for
280 hazardous building materials including asbestos, AR 420-1 paragraph 5-19, a-d provides

⁵ While the scope of 40 CFR Part 763 of the TSCA regulations does not include certain federal buildings, Army requires broader application. For example, while 40 CFR §763.86 only applies to school buildings, Army Pamphlet 40-513 incorporates certain requirements for use in all buildings.

281 the policy that the Garrison level shall: “[c]omply with Federal, State, and local
282 requirements concerning hazard identification and control activities related to materials
283 known or suspected to contain . . . asbestos. Such activities include surveys; hazard
284 assessments and control; training; medical monitoring; worker protection; occupant
285 notification; solid waste disposal; laboratory accreditation; and sale, lease or demolition
286 of facilities.” Additionally, Garrisons shall “Perform surveys to identify the presence of
287 asbestos hazards (asbestos hazard risk assessments), including ongoing monitoring, in
288 all installation facilities constructed prior to 1990.”⁶

289
290 **H. Army Regulation AR 385-10, (The Army Safety Program), 11 May 2017**

291 AR 385-10, paragraph 1-9, on conflict resolution provides: “The Army will comply
292 with the standards promulgated by the OSHA under 29 USC Chapter 15 . . . in all
293 nonmilitary–unique DOD operations and workplaces, regardless of whether work is
294 performed by military, DA Civilian, or contract personnel. When an Army Headquarters
295 commander determines that an OSHA standard should be modified for application to
296 particular nonmilitary-unique working conditions, a proposed alternate standard will be
297 developed and submitted to Office of the Director of Army Safety....”

298 **I. Department of the Army Engineering Manual 385-1-1 (Safety and Health**
299 **Requirements), 30 November 2014**

300 EM 385-1-1, section 06.C.01 paragraph b provides that all construction or
301 maintenance projects will be evaluated for the potential to contact ACM. (See Tab A)

302 **J. Department of Army Engineering Pamphlet (EP) 1110-1-22 (Asbestos**
303 **Surveys and Assessments - Standard Scope of Work), 15 September 2000**
304

305 EP 1110-1-22 paragraph 2.2.2 requires contractors to ensure that all personnel
306 collecting bulk samples to be currently certified as Asbestos Hazard Emergency
307 Response Act (AHERA) Asbestos Inspectors.

308
309 **K. Department of the Army Pamphlet (DA Pam) 40-513 (Occupational and**
310 **Environmental Health Guidelines for the Evaluation and Control of Asbestos**
311 **Exposure), 10 July 2013**

312 The DA PAM 40-513 provides guidance for implementing the essential elements
313 of both an environmental and an occupational asbestos program, and it includes
314 guidance on installation implementation the OSH Act regulations at 29 CFR
315 §§1910.1001, 1919.1001, and 1926.1101.

316 DA PAM 40-513, paragraph 2-1. provides the elements of the Installation
317 Asbestos Management Plan: “... (t)he installation DPW, or the equivalent, organizes and
318 manages the program to locate, assess, and control all the [asbestos-containing building
319 material (ACBM)] in Army-managed buildings. The DPW is required to establish an

⁶ The AR 420-1 extends, by policy, asbestos survey requirements to buildings built between 1980-1990.

320 installation asbestos management team (or equivalent) and appoint an asbestos
321 management control officer (or team leader). The team's responsibilities include
322 preparation, coordination, and execution of the [Installation Asbestos Management
323 Program (IAMP)].”

324 DA PAM 40-513, paragraph 2-1.a. provides the three basic elements of the IAMP.
325 (1) Inventory- An AHERA-accredited asbestos building inspector will conduct a building-
326 by-building inspection to locate and identify all presumed ACBM and determine its
327 condition as outlined in 40 CFR Part 763.... Records must be maintained on what
328 building materials contain asbestos, how much and/or what type of asbestos the
329 materials contain, where these materials are located, and what is the condition of the
330 materials. The inventory must be updated to include any changes due to asbestos
331 abatement. (2) Assessment- Requires subjective evaluation and assessment of the
332 health hazards posed by the ACBM identified in the asbestos building inspection by
333 asbestos management planners accredited under 40 CFR Part 763. (3) Control-
334 Requires control (or abatement) of the potential health hazards posed by the ACBM
335 includes both engineering and administrative solutions.

336

V. FINDINGS

337 **Summary of findings.** Based upon the relevant and material evidence collected
338 during the investigation, ***the facts revealed that APG and USACE officials failed to***
339 ***comply with asbestos safety-related requirements on APG, as specifically detailed***
340 ***below.*** The IO thoroughly examined each of the whistleblower's claims included in both
341 the OSC referral and in supporting documentation provided with his detailed statement.
342 (See Tab D). The paragraphs below discuss each allegation in chronological order,
343 along with relevant background facts. (See Tab D).

344 ***A. OSC Referred Allegation 1: APG and USACE Officials have not collaborated on***
345 ***implementation of required installation asbestos management program (IAMP).***

346 **Discussion:** Based on an examination of all existing records and witness
347 interviews, it was substantiated that APG does not have a current, approved IAMP,
348 signed by the Garrison Commander as required by AR 420-1, paragraph 5-19(c) (See
349 Tabs D, H, R, Q – Sworn Statements). AR 420-1 requires the establishment of an
350 asbestos hazard management team consisting of representatives from public works,
351 medical, environmental, housing, safety, legal, and public affairs offices, under the
352 direction of the garrison commander. According to several witnesses interviewed, there
353 are several contributing factors for the lack of an IAMP: (1) the Installation Safety Office's
354 unwillingness to sign-off on the plan; (2) lack of funding; and/or (3) lack of consistent
355 management and oversight. (See Tabs G-I, R – Sworn Statements). Based on witness
356 interviews, APG asbestos management program lacks a comprehensive catalogue or
357 inventory of asbestos, which is a required element of an installation asbestos
358 management program, pursuant to DA PAM 40-513 and AR 420-1. Pursuant to these
359 authorities, records must be maintained on what material on APG contains asbestos,
360 how much and/or what type of asbestos the materials contain, where those materials are

361 located, and the condition of those materials. This information is also to be updated if
362 asbestos abatement is conducted.

363 **Finding for OSC Referred Allegation 1- Partially Substantiated:** A current,
364 approved IAMP is required by AR 420-1, para.5-19(c) and APG does not have a current
365 approved IAMP. Additionally, APG's lack of a comprehensive catalogue or inventory of
366 asbestos violates AR 420-1 and DA PAM 40-513. These authorities require records to be
367 maintained on what material on APG contains asbestos, how much and/or what type of
368 asbestos the materials contain, where those materials are located, and the condition of
369 those materials. The records are to be updated as asbestos abatement activities occur.
370 While an Asbestos Hazard Management Team is also required by Army regulation, there
371 is no specific requirement as to the manner of collaboration with USACE. Therefore,
372 while it would be prudent and helpful for this information to be included in the IAMP, the
373 portion of the allegation discussing lack of *required* coordination is not substantiated.

374 ***B. OSC Referred Allegation 2: APG and USACE Officials have failed to ensure that***
375 ***required asbestos mitigation is carried out, placing employees, contract***
376 ***employees, and the public in danger of potential exposure to hazardous material.***

377 **(1) OSC Referred Allegation 2, subsection 1: Whether an asbestos fiber**
378 **release occurred in building E4585 during remodeling in 2014, and whether the**
379 **contractor sent safety submittals to ISO for acceptance.**

380 **Discussion.** There were no records provided by the DPW during the investigation
381 related to the remodeling of building E4585, asbestos abatement activities, or potential
382 exposures. Based on the statement of the whistleblower, and USAG APG's TSCA
383 manager, the contractor began work in building E4585 prior to having an Activities
384 Hazard Analysis (AHA), a hazardous material survey, or an asbestos abatement plan
385 completed, reviewed and accepted by the ISO as required by EM 385-1-1, section
386 06.C.01. (TAB D, H). According to available statements, the contractor requested a
387 hazardous material survey from the DPW, but none were produced. Based on the
388 whistleblower and the TSCA Manager's statements, the IO found that an asbestos fiber
389 release likely occurred within building E4585 due to the penetration of the drywall without
390 prior knowledge of the existence of the ACM joint compound. (TAB D, H).

391 **Finding for OSC Referred Allegation 2, subsection 1-Substantiated:** The
392 contractor began work prior to AHA and hazardous material survey being conducted as
393 required by EM 385-1-1, section 06.c.01 (TAB D, H). Based upon the statements of the
394 whistleblower and the TSCA Manager, the IO found that an asbestos fiber release likely
395 occurred within building E4585 during renovations in 2014, due to the penetration of the
396 drywall without prior knowledge of the existence of the ACM joint compound. (TAB D, H).

397 **(2) OSC Referred Allegation 2, subsection 2: Whether, in March 2017, a**
398 **transite pipe was cut in a non-compliant manner and whether an asbestos**
399 **exposure occurred.**

400 **Discussion:** Based on the witness statement of a DPW employee who had
401 conducted an informal investigation concerning the incident in September 2018, DPW
402 workers in fact cut a transite pipe in a manner without ensuring compliance with 29 CFR
403 §1926.1101, when repairing a waterline break in March 2017. (TAB Y). According to the
404 DPW employee’s statement, the pipe was not identified by the asbestos team as PACM,
405 and transite and concrete pipe are considered PACM unless this assumption is rebutted
406 by sampling and testing. Another DPW employee who worked on the project confirmed
407 that no sampling or testing for asbestos was conducted prior to starting the repair. (TAB
408 X). The cutting of the pipe was completed using a gasoline powered chop saw while
409 being wetted with amended water (water with a surfactant added), applied to the point of
410 the cutting operations using a garden sprayer type water bottle.⁷ (TAB Y). Based on
411 witness statements, the IO found that the DPW asbestos team cut the transite pipe in a
412 non-compliant manner. (See Tabs D, Y). 29 CFR §1926.1101 (9) (i-v) describes the
413 conditions for Class III work (i.e., repair or maintenance activities) and states that when
414 cutting is involved, the employer must use impermeable drop-cloths, and isolate the
415 operation using mini-enclosures or a glove bag system. DPW did not use a mini-
416 enclosure or glove bag system, and a plume of smoke was witnessed coming from the
417 source of the cutting. It is underdetermined whether the source of the smoke was from
418 the gas-powered chop saw, or if it was from the actual cutting of the transite pipe.
419 Accusations were made of workers being exposed to asbestos. It was undetermined
420 during the investigation that an exposure occurred, but the DPW asbestos team
421 measures were not adequate to prevent an asbestos exposure. Collection and on-site
422 analysis of the air samples should have been conducted to provide as near “real-time”
423 results as possible. (TAB Y).

424 **Finding for OSC Referred Allegation 2, Subsection 2- Substantiated:** The
425 cutting of the transite pipe with a gas-powered chop saw without using a mini-enclosure
426 or a glove bag system did not comply with requirements of 29 CFR §1926.1101 (9) (i-v)
427 methods for class III work (i.e., repair and maintenance) and was inadequate to prevent
428 potential exposure. (See Tabs D, Y). In addition, the lack of air monitoring at the jobsite
429 to produce a negative exposure assessment also violated 29 CFR §1926.1101(9)(iv).

430 **(3) OSC Referred Allegation 2, subsection 3: Whether samples were taken**
431 **from building E3330 by non-accredited personnel in late 2017.**

432 **Discussion:** Based on the sworn witness statement of a DPW employee, in late
433 2017, the employee performed a hazardous material survey and collected samples from
434 building E3330 without possessing a current asbestos inspection accreditation. The
435 employee was serving as the Project Manager to rehabilitate parts of building E3330. His
436 experience included working on the DPW asbestos team and supporting renovation and
437 demolition projects. While working for the government and in the private sector, this
438 employee held four state accreditations (i.e., AHERA Building Inspector, Management
439 Planner, Project Designer, and Contractor/supervisor) and was viewed as an expert in
440 asbestos-related issues for the Design Branch of Engineering Division of DPW. (TAB Y).

⁷ Amended water means water to which surfactant (wetting agent) has been added to increase the ability of the liquid to penetrate ACM.

441 On 22 January 2018, the contractor performed a hazardous material survey confirming
442 that 2,100 square foot of floor tile were ACM. (TAB Y). It is in dispute whether the initial
443 samples taken by this employee tested negative or positive for ACM. The whistleblower
444 alleged that the initial samples taken by this employee were negative and the second set
445 of samples were positive. (TAB D). According to the employee, the initial samples that he
446 took were positive yielding the same results of second survey. (TAB Q). Neither the
447 employee nor the whistleblower produced the first sampling report for the initial
448 hazardous material survey conducted by the employee.

449 **Finding for OSC Referred Allegation 2, subsection 3- Substantiated:** Based
450 on his interview with a DPW employee (the individual who collected the PACM samples
451 from building E3330), the IO found that the employee collected samples without
452 possessing a current AHERA inspector accreditation, despite the employee's training,
453 expertise, and years of experience. (TAB D, Y). According to the Army Regulation which
454 requires compliance with 40 CFR Part 763, Subpart E, Appendix C(3), all persons who
455 inspect for ACM in a public or commercial building must be accredited.

456 **(4) OSC Referred Allegation 2, subsection 4: Whether a hazardous material**
457 **survey was conducted for building 645 (Mulberry Point Tower).**

458 **Discussion:** Based upon the relevant witness statements, the Mulberry Point
459 Tower was a 79-foot-tall self-supported tower built around 1918, which had fallen into a
460 state of disrepair. The tower had been deemed inaccessible through a structural
461 engineering study conducted in November 2017. (See Tab F). On 18 October 2018, the
462 tower was removed from its support structure and lowered to the ground with a crane.
463 Once on the ground, it was still deemed inaccessible, and the contractor planned to
464 demolish the entire building, treating it entirely as PACM, and dispose of it accordingly.
465 Based on relevant witness statements, the whistleblower advised DPW that a hazardous
466 material survey would need to be conducted prior to any demolition. (See Tab F). The
467 EM 385-1-1 requires a survey to be completed if asbestos is going to be disturbed. EM
468 385-1-1 (06.C.01) (b) states that "all construction or maintenance projects will be
469 evaluated for the potential to contact ACM..." (See Tab A). The contractor resubmitted a
470 revised AHA for the ACM abatement activity on 1 November 2018. The contractor hired
471 a subcontractor, who performed abatement activities on 14 November 2018. The ACM
472 waste manifest, air samples, and final clearance documents were provided by the
473 contractor. (TAB F). Based on witness testimony and email correspondence, the facts
474 indicate that the contractor submitted to the DPW an asbestos abatement plan on 7
475 September 2018, and subsequently the ISO. (See Tab F). Additionally, an AHA was
476 submitted on 16 October 2018 and was accepted by the ISO. (See Tab F).

477 **Finding for OSC Referred Allegation 2, subsection 4- Substantiated:** Based
478 on the available witness statements and documents provided by the witnesses, the IO
479 found that the contractor decided to forego conducting a hazardous material survey.
480 Instead, the contractor planned to treat the entire structure as ACM and dispose of it as
481 asbestos to save time and money. (See Tab F). The IO found that the contractor
482 submitted an AHA and abatement plans, the ISO accepted the plans, and therefore,
483 there was no violation of federal or Army regulations related to the requirements for an

484 AHA or asbestos abatement plan. However, the decision to forego the hazardous
485 material survey did not comply with requirements of the EM 385-1-1, section 06.C.01.
486 (See Tab A).
487

488 **(5) OSC Referred Allegation 2, subsection 5: Whether the contractor has**
489 **submitted asbestos abatement plans for the pending demolition of Building 4035**
490 **that are non-compliant with 29 CFR §1926.1101 (Roof with ACM).**

491 **Discussion:** The whistleblower alleged that the contractor submitted multiple
492 asbestos abatement plans that included demolition of building 4035 with the ACM roof
493 materials intact, which is non-compliant with 29 CFR §1926.1101. (See Tab D)
494 According to witness statements, engineering reports and other documentary evidence,
495 the facts indicate that the initial engineering survey was conducted by a “manufacturing”
496 engineer licensed in the State of California, not in the State of Maryland, and contained
497 inaccuracies. (See Tabs F, O, and Q). A follow-on structural engineering survey on 27
498 October 2020, concluded that the roof was unsafe and should not be used to support
499 workers, material, or equipment. (See Tab F). According to relevant witness statements,
500 there has been disagreement between the ISO, DPW, and USACE over the structural
501 integrity of the roof, whether it is safe to access, and appropriate methods used to abate
502 the ACM roofing material. (See Tabs P, Q). The ISO, out of abundance of caution, has
503 scrutinized the abatement plans, because the prevailing winds blow over a military
504 housing area, and a childcare facility is also in the area. (TAB Q).

505 The contractor has submitted multiple demolition plans and ACM abatement plans
506 for review, but they had all been repeatedly rejected by the ISO. (See Tabs D, F, I, and
507 Q). The ISO contends that none of the plans submitted by the contractor comply with EM
508 385-1-1 or 29 CFR §1926.1101. All of the plans that have been submitted call for the
509 roof material, which is ACM, to be left in place and demolished using wet demolition
510 method. The ISO has repeatedly objected to leaving the ACM roofing material in place,
511 stating that the abatement methods are non-complaint. 29 CFR §1926.1101 (g)(8)(iii)(A)
512 states, “[f]or removing roofing material which contains ACM the employer shall ensure
513 that the following work practices are followed: roofing material shall be removed in an
514 intact stage to the extent feasible.” In addition, 29 CFR §1992.1101 (g)(8)(ii)(E) states,
515 “[a]sbestos containing material that has been removed from a roof shall not be dropped
516 or thrown to the ground. Unless the material is carried or passed to the ground by hand,
517 it shall be lowered to the ground via covered dust tight chute, crane, or hoist.” (TAB Q).

518 **Finding for OSC Referred Allegation 2, subsection 5-Substantiated:** The
519 contractor is currently reworking the asbestos abatement plans for building 4035, which
520 will be evaluated once submitted. Based on numerous witness statements and structural
521 engineering surveys/reports (conducted by licensed professional structural engineer), the
522 IO found valid concern as to the lack of integrity of the roof making it unsafe for access
523 and creating an unsafe working condition; thereby, making it infeasible to abate the ACM
524 on the roof. (TAB F). However, 29 CFR §1926.1101(vi) allows for the use of modified
525 work practices if the work is deemed infeasible, provided the employer can demonstrate
526 that that employee exposure will not exceed the Permissible Exposure Limits (PELs)

527 under any circumstance, and a competent person evaluates the work areas and controls
528 and certifies in writing that the different control measures are adequate to reduce
529 exposure.⁸

530 **(6) OSC Referred Allegation 2, subsection 6: Whether a hazardous material**
531 **survey or asbestos abatement plan was prepared and provided to the ISO prior to**
532 **work on building 305.**

533 **Discussion:** Based on witness statements, the facts indicate that in October 2018
534 DPW began restoration and maintenance work on the veranda of building 305 in plain
535 view of the ISO's office. The ISO witnessed tiles were being removed from the veranda
536 walkway that were adhered with mastic, which is PACM. Neither a hazardous materials
537 survey nor an asbestos abatement plan was submitted to the ISO for acceptance prior to
538 the work beginning. Once the ISO raised concerns, the work was stopped, and a
539 hazardous material survey was conducted, and asbestos abatement plan was submitted.
540 (TAB D, Q). During this investigation, DPW and the TSCA Manager were not able to
541 produce any documentation related to the renovation project for building 305.

542 **Finding for OSC Referred Allegation 2, subsection 6- Substantiated:** There was little
543 information obtained by the IO regarding this incident. The DPW and TSCA Manager
544 were not able to produce any further documents related to this project. Based on the
545 available witness statements, the IO found that DPW began restoration work on building
546 305 veranda without first conducting an AHA, developing an asbestos abatement plan,
547 and submitting the plan to the ISO for acceptance prior to beginning work, in violation of
548 EM 385-1-1. (TAB D, O, Q). According to the EM 385-1-1 section 06.C.01, a hazardous
549 material survey must be conducted prior to any construction or maintenance project with
550 the potential to disturb ACM. (TAB A).

551

552 **(7) OSC Referred Allegation 2, subsection 7: Whether the USACE personnel**
553 **threatened to terminate the FRP FY18 contract for convenience due to safety**
554 **issues.**

555 **Discussion:** Based on relevant statements, on 18 October 2019, the Chief of
556 PPMD USACE Baltimore District, announced her intent to terminate the FRP FY18
557 contract for convenience to the government due to the continued impasse with the APG
558 government team. The government was already subject to a Request for Equitable
559 Adjustment (REA) from the contractor due to continued delays and cost overruns which
560 had exceeded \$700K. (See TABs D, Q, W). According to the Contracting Officer for the
561 FRP, all courses of action were considered, to include terminating a contract for
562 Convenience to the Government. She explained that her consideration of termination by
563 the government had nothing to do with the contractor's performance, but was due to the

⁸ Permissible Exposure Limits (PELs) (1) Time-weighted Average Limit (TWA). The employer shall ensure that no employee is exposed to an airborne concentration of asbestos in excess of 0.1 fiber per cubic centimeter of air as an eight-hour, time-weighted average. (2) Excursion Limit. The employer shall ensure that no employee is exposed to an airborne concentration of asbestos in excess of 1.0 fiber per cubic centimeter of air (1 f/cc) as an averaged over a sampling period of thirty minutes.

564 APG Safety Office’s refusal to either approve safety plans or provide constructive
565 comments to address deficiencies in those plans, and therefore, APG Installation Safety
566 Office was responsible for impeding the progress of the FRP contract, causing significant
567 delays (measured in years). (See Tab B).

568 **Finding for OSC Referred Allegation 2, subsection 7- Unsubstantiated:**

569 Based on numerous witness statements from personnel assigned to DPW, USACE, and
570 ISO, the IO found that sufficient justification existed for the USACE and the government
571 to consider terminating the FRP FY18 contract for the convenience of the government.
572 Based on all the witness statements that had first-hand knowledge of the safety submittal
573 process, delays in the FRP contract were attributed to the ISO. (See Tabs D, Q, W, B).
574 The IO found no violation of law or regulation in the considerations made to terminate
575 terminate the contract.

576 **(8) OSC Referred Allegation 2, subsection 8: Whether the proposed conflict**
577 **resolution policy was in violation of AR 385-10.**

578 **Discussion:** The whistleblower alleged that USACE and APG officials drafted a
579 conflict resolution policy that violated the AR 385-10, Army Safety Program. Based on
580 the statements of several witnesses, in May 2018, a “formal” written conflict resolution
581 process was in fact drafted and proposed but was never fully adopted in favor of regular
582 meetings and partnering sessions between the ISO, DPW, and USACE leadership. (See
583 Tab T). The formal conflict resolution policy was outlined in a Memorandum of
584 Agreement (MOA) between the USACE, DPW, and ISO and was intended to address all
585 safety issues that would occur in the Facilities Reduction Program and the Containment
586 Building Demolition Program. The agreement was not meant to solely address asbestos
587 issues; however, asbestos was frequently discussed. The MOA was developed to
588 improve the planning and partnering relationship between USACE and APG. (See Tab
589 S). The whistleblower and the ISO objected to this draft MOA, because it allowed for
590 binding arbitration by personnel who were not safety officials. The whistleblower also
591 objected, because it was his understanding that the AR 385-10, section 1-9 on conflict
592 resolution, requires that Commanders who seek deviation in methods of compliance with
593 the Title 29 USC requirements obtain approval from Director of Safety at HQDA.

594 **Finding for OSC Referred Allegation 2, subsection 8- Unsubstantiated:**

595 Based on numerous witness statements from the DPW, USACE, and ISO, the “conflict
596 resolution policy” that was drafted and proposed and was never fully adopted. (See Tabs
597 Q, U). Therefore, the conflict resolution policy would not violate the AR 385-10, section
598 1-9. Additionally, the conflict resolution policy/MOA contemplated by DPW, USACE, and
599 the ISO is not the type of conflict resolution addressed by AR 385-10, which provides for
600 methods of approval of more stringent standards than OSHA requires.

601 **(9) OSC Referred Allegation 2, subsection 9: Whether ACM transite tiles**
602 **were left in place during the demolition of building E5188 constituted a non-**
603 **compliant abatement method under 29 CFR §1926.1101.**

604 **Discussion:** Based on the relevant witness statements, structural engineering
605 reports, and federal regulations, the IO found that the deficiencies found in the structural
606 integrity of the roof provided adequate justification for demolition to proceed with ACM on
607 the roof in-place. On 16 December 2019, a structural engineer examined the roof and
608 could not determine the allowable load capacity to facilitate safe roof access. According
609 to witness statements, the removal of interior transite ceiling panels with a scissor/boom
610 lift and scaffolding was deemed infeasible. This method would create a hazard by having
611 the worker break the transite panel from a position underneath the heavy ceiling panel.
612 The ceiling panels weigh well over 100 pounds, and this potential removal technique was
613 deemed infeasible, because it would create an overhead crushing hazard. (See Tab R).
614 The infeasibility in this instance would justify use of an alternative work practice for
615 demolishing the ACM roof panels in place pursuant to 29 CFR §1926.1101. Under 29
616 CFR §1926.1101(g)(8)(vi), alternative work practices may be used, provided the
617 employer can demonstrate that employee exposure will not exceed the Permissible
618 Exposure Limits (PELs) under any circumstance, and a competent person will evaluate
619 the work areas and controls and certify in writing that the different or modified controls
620 are adequate to reduce exposure. This must be done prior to implementation of
621 alternative methods to control asbestos. The contractor demonstrated that the PELs
622 would not be exceeded by using historical testing from two previous projects and data
623 from those projects. One project consisted of demolition with Class I (TSI- thermal
624 system insulation, an ACM) material still present, and the PEL remained under the
625 required threshold. (TAB E).

626 **Finding for OSC Referred Allegation 2, subsection 9- Unsubstantiated:**
627 Based on the witness testimony, a structural engineering report, and federal regulations,
628 the IO found that the deficiencies in the structural integrity of roof, identified in a
629 structural engineering survey performed by a licensed Professional Engineer, provided
630 justification for demolition with ACM on the roof in place. Under 29 CFR
631 §1926.1101(g)(8)(vi), alternative work practices may be used where required work
632 practices are infeasible. In accordance with 29 CFR §1926.1101(g)(8)(vi), alternative
633 work practices may be used to control asbestos, provided the employer can demonstrate
634 that employee exposure will not exceed the Permissible Exposure Limits (PELs) under
635 any circumstance, and a competent person must evaluate the work areas and controls
636 and certify in writing that the alternative methods are adequate to reduce exposure.

637 **(10) OSC Referred Allegation 2, subsection 10: Whether Asbestos-**
638 **Containing Material (ACM) from building 5112 was dropped to the ground in 2019**
639 **and left unsecured and uncontrolled for a period of nine months.**

640 **Discussion:** According to multiple statements and photo evidence, the initial
641 hazardous materials surveys did not identify three large metal roof vents or “stacks” on
642 top of building 5112 as ACM; however, they were later confirmed to have been wrapped
643 in 2-inch pieces of transite (friable material).⁹ (TAB F). The Safety and Occupational

⁹ “Friable” means that the material can be crumbled with hand pressure and is therefore likely to emit fibers. The fibrous fluffy sprayed-on materials used for fireproofing, insulation, or sound proofing are considered friable, and they readily release airborne fibers if disturbed.

644 Specialist within the ISO had also performed a hazardous material survey on the building
645 in 2019 in his role as a private contractor. Neither he nor another contractor, who also
646 performed work, detected or tested the vents for ACM, because the asbestos was not
647 visible until the vents were removed. (TAB Z, C). Based on relevant witness statements,
648 on 16 January 2020, the Safety and Occupational Specialist discovered that the three
649 vents, which at that time were considered Presumed Asbestos-Containing Material
650 (PACM), had been dropped to the ground and left behind after abatement and demolition
651 of the building. In addition, numerous pieces of PACM were found in and about building
652 5112. (TAB O). 29 CFR 1926.1101 (g)(8) (ii) (A-F) provides the methods that should be
653 used to abate roofing material (whether intact or not intact) and states that it should be
654 lowered or handed to the ground as soon as practicable. Upon being lowered,
655 unwrapped material shall be transferred to a closed receptacle in such manner to
656 preclude the dispersion of dust. Based on numerous witness statements the PACM laid
657 on the ground for approximately nine (9) months before being removed. (TAB Q).

658 **Finding for OSC Allegation 2, subsection 10- Substantiated:** Based upon
659 numerous witness statements, photo evidence, and lab results, the IO found that vents,
660 wrapped in ACM transite material were dropped to the ground during building demolition
661 in 2019 and left on ground for approximately nine months, which does not comply with
662 requirements of 29 CFR §1926.1101. (See Tab O). According to witness statements and
663 hazardous materials surveys, the ACM was not visible during the hazardous material
664 survey and was not detected. (See Tabs D, O). The identification of the ACM on the
665 ground by the Safety and Occupational Specialist led to a “stop work” being issued to the
666 contractor. As soon as the stop work was lifted, a corrective action plan was put into
667 place, and the contractor performed cleanup and abatement. (See Tab T).

668
669 **(11) OSC Referred Allegation 2, subsection 11: Whether ACM floor tile in**
670 **building 5114 had begun to be abated in January 2020 prior to safety submittals**
671 **being submitted to the ISO for acceptance in violation of EM 385.1.1.**

672 **Discussion:** Based on multiple witness statements and documents provided to
673 the IO, including email correspondence and safety submittals, the IO found that the
674 contractor did not submit asbestos abatement plans to the ISO for acceptance; however,
675 the contractor submitted the required AHA and asbestos abatement plans to the
676 government (i.e., Contracting Officer and USACE) on 13 January 2020 prior to beginning
677 work in building 5114. During this period, the then Director of DPW instructed that all
678 safety submittals be sent to the USACE due to the continuing delays in the FRP contract
679 attributed to the ISO. Based on multiple witness statements, the whistleblower
680 continually failed to review safety submittals in a professional or timely manner, and thus,
681 the ISO was removed from the process by the Director of DPW. Although the evidence
682 confirms that the ISO did not receive nor accept safety proposals prior to abatement of
683 the floor tile at building 5114, this does not constitute a violation of Army regulations. The
684 contractor submitted safety documentation as it had been instructed by the government
685 during this period. (TAB F). As stated above, the removal of ISO from the safety
686 submittal process for FRP FY18 was temporary, as the former Garrison Commander
687 directed DPW to reestablish ISO as part of the review process. During this investigation,
688 it was undetermined the length of time the ISO was not included in the review process.

689 (TAB F). These actions did not constitute a violation of the Army Regulation or EM 385-
690 1-1.

691 **Finding for OSC Referred Allegation 2, subsection 11- Unsubstantiated:**

692 The contractor submitted safety submittals to the Contracting Officer and the USACE
693 prior to beginning work on building 5114, as it was directed to do by the government.
694 There was no violation of Army regulations or EM 385-1-1.

695 **(12) OSC Referred Allegation 2, subsection 12: Whether a hazard material**
696 **survey for building E4405, conducted in February 2020, was in accordance with**
697 **the AHERA standard [as required by DA PAM 40-513]. Whether an employee for a**
698 **contractor was serving improperly under two separate companies conducted work**
699 **at APG.**

700 **Discussion:** Based on the sworn statements of the whistleblower and the Safety
701 and Occupational Specialist within the ISO, the IO found that the hazardous material
702 survey conducted on 7 February 2020 by EA Engineering was not conducted in
703 compliance with required standards. There were a number of deficiencies noted: (1) a
704 number of samples in homogenous areas were non-compliant, (2) only one sample was
705 collected from the roof, (3) only two samples were collected from the 2nd floor, (4) only
706 one sample of most nonfriable material was collected, (5) five samples were collected in
707 room 13, instead of being collected in a statistically random manner, and (6) the
708 crawlspace was not sampled. (See Tab O). The survey was conducted by an accredited
709 AHERA inspector; however, the numbers of samples taken in the building and the
710 locations of the samples did not meet the 40 CFR §763.86 standards for numbers of
711 samples, and they were not taken in a statistically random manner. According to 40 CFR
712 §763.86, Sampling (a), “an accredited inspector shall collect, in a statistically random
713 manner that is representative of the homogenous area....” According to a contract
714 Program Manager, the contractor utilized an employee of another contractor as a safety
715 consultant to review an Accident Prevention Plan for compliance and concurrence due to
716 the difficulties experienced in the past in gaining acceptance from the ISO and the
717 whistleblower. (See Tab Z)

718 **Finding for OSC Referred Allegation 2, subsection 12- Partially**

719 **Substantiated:** Based on relevant witness statements and the hazardous material
720 surveys, the IO found that the hazardous material survey conducted for building E4405
721 was not conducted in compliance with 40 CFR §763.86, as required by DA PAM 40-513.
722 Based upon relevant witness statements, an employee of one contractor was hired as a
723 consultant by another contractor to review safety submittals. The fact that the
724 employee’s name appears on a safety submittal for another contractor does not appear
725 to constitute a violation of Army regulations.

726 **(13) OSC Referred Allegation 2, subsection 13: Whether the hazardous**
727 **material survey performed in building E5912 in January 2021 was conducted in**
728 **accordance with AHERA standards.**

729 **Discussion:** Based upon multiple witness statements, a hazardous material
730 survey was conducted by an accredited AHERA inspector and reviewed and approved
731 by a Certified Industrial Hygienist. (See Tab T). There was disagreement between the
732 whistleblower and the USACE about the validity and quality of the survey that was
733 conducted. The roof and the ceiling of building E5912 were both made of corrugated
734 transite and are PACM. The ceiling was not sampled by the AHERA inspector, because
735 it was all part of a homogenous area. 40 CFR Part 763 states that at least three bulk
736 samples shall be collected from each homogenous area under 1,000 square feet. During
737 the investigation a hazardous material survey was not produced to the IO. So long as
738 samples were taken somewhere else that was part of the homogenous area, the
739 standard set forth under 40 CFR Part 763 was satisfied. (TAB D, U). In the present case,
740 there is no evidence to suggest that the survey was conducted in a manner not in
741 compliance with AHERA standards.

742 **Finding for OSC Referred Allegation 2, subsection 13- Unsubstantiated:**
743 There was disagreement between the whistleblower and USACE concerning the validity
744 and quality of the hazardous material survey conducted for building E5912. There was
745 no evidence to suggest the survey had been conducted in a manner that was
746 inconsistent with 40 CFR Part 763, and therefore, there was no evidence of a violation of
747 federal laws or federal or Army regulations.

748 **(14) OSC Referred Allegation 2, subsection 14: Whether the ACM floor tile in**
749 **building E2354 was properly abated between 2009 and 2019.**

750 **Discussion:** Based on multiple witness statements, during the pre-demolition
751 walkthrough of building E2354 in March 2021, multiple personnel (USACE, ISO, PMO,
752 and contractor) observed that ACM floor tile had been removed from building E2354
753 since a previous hazardous material survey conducted in 2009. Based upon witness
754 observations, the IO found that the floor tile was probably properly abated sometime
755 between 2009 and 2019. (TAB D, M-P). However, according to multiple statements,
756 repeated records requests for information related to the abatement of the floor tile in
757 building E2354 were sent to the DPW, and no records were ever located.

758 **Finding for OSC Referred Allegation 2, subsection 14- Substantiated:** The
759 lack of any record related to abatement of ACM floor tile in building E2354 constitutes a
760 violation AR 420-1.

761 ***C. OSC Referred Allegation 3: Any additional or related allegations of wrongdoing***
762 ***discovered during the investigation of the foregoing allegations.***

763 **(1) OSC Referred Allegation 3, subsection 1: Whether an illegal abatement**
764 **of ACM roofing material occurred for buildings E5722 and E5725 in May 2018.**

765 **Discussion:** Based on the statement of the Safety and Occupational Specialist
766 within the ISO and video recording of the demolition of building E5725, the IO found that

767 the contractor demolished buildings E5722 and E5725, with ACM roofing material (i.e.,
768 felt paper) in place. This work practice was not in compliance with requirements of 29
769 CFR §1926.1101. The Safety and Occupational Specialist indicated in his witness
770 statement, “[o]n July 3rd, 2018, ... the contractor demolished both buildings without use
771 of water, without notification to MDE, and without a licensed supervisor. Photographs
772 and video were captured of [the] E5725 structure....” (TAB O). The demolition of the
773 building with the ACM in place is non-compliant with the 29 CFR §1926.1101 (g)(1)(ii)
774 which states that, “[t]he employer shall use the following engineering controls and work
775 practices in all operations ... Wet methods, or wetting agents, to control employee
776 exposures during asbestos handling, mixing, removal, cutting, application, and
777 cleanup....”

778 **Finding for OSC Referred Allegation 3, subsection 1- Substantiated:** Based
779 on the statement of the Safety and Occupational Specialist and video evidence, the
780 abatement methods used on building E5722 and E5725 were not conducted in
781 compliance with 29 CFR §1926.1101.

782 **(2) OSC Referred Allegation 3, subsection 2, Additional Finding, Lack of**
783 **Comprehensive Asbestos Inventories and Adequate Record-Keeping.** During the
784 investigation, there were several instances where records and relevant documentation
785 was unavailable or unable to be located by officials with the responsibility to maintain
786 such records. (See Tabs D, H, T - Sworn Statements).

787 **Finding for OSC Referred Allegation 3, subsection 2- Substantiated:** The IO
788 requested any and all documentation related to asbestos for buildings E4585, E2354,
789 and 305, and none were produced. Ultimately, the maintenance of adequate, useable
790 records is required and necessary for ensuring inventory, monitoring, and alerting
791 employees of asbestos hazards. A number of different records related to asbestos,
792 including employee exposure records, are required to be maintained by both OSHA and
793 Army regulation.

794 **VI. RECOMMENDATIONS BY IO AND APPROVAL AUTHORITY’S ACTIONS**

795 Based on the findings above, the IO recommended that the investigation be
796 furnished to the USACE Baltimore District Commander and APG Garrison Commander
797 for action as they deem appropriate. The IO made specific recommendations for the
798 APG Garrison Commander to take the following actions to address issues raised by the
799 findings of the investigation:

800 a. Coordinate a formal, independent audit of the internal processes and
801 procedures for asbestos management and mitigation on APG. Based upon the results of
802 this independent audit, implement measures to meet or exceed asbestos management
803 and mitigation requirements consistent with current laws, regulations, and policies.

804 b. Conduct a comprehensive asbestos inventory of all APG buildings and
805 facilities and ensure maintenance of related asbestos records for demolition and
806 renovation projects in a centralized location (e.g., the As-Built Inventory Tracking System

807 (ABITS)). Ensure adequate funding and/or resources are applied for development and
808 maintenance of this asbestos inventory and associated records (for future use and
809 reference). If necessary, explore and invest in viable technology that will allow for the
810 adequate upload, tracking, and retrieval of asbestos records on APG.

811 c. Conduct Hazardous Material (HAZMAT) training / re-training for facility owners
812 and the workforce, to include discussion of asbestos risks, management, mitigation, and
813 safety precautions. Additional training should also be provided to site supervisors
814 regarding the AHA submittal process.

815 d. Engage relevant stakeholders at USACE and on APG to complete the review
816 process for the Installation Asbestos Management Plan and have it signed and published
817 as soon as practicable.

818 On 16 September 2022, the Commanding General, U.S. Army Communications-
819 Electronics Command approved the Investigating Officer's Report of Investigation, and
820 its Findings. He modified the Recommendations, directing that the Report of
821 Investigation be provided to the USAG APG Garrison Commander and the USACE
822 Baltimore District Commander for review and any action deemed appropriate.