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

SUMMARY OF THE REPORT OF INVESTIGATION

I. INFORMATION INITIATING THE INVESTIGATION

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

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

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

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

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

II. CONDUCT OF THE INVESTIGATION

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

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

(1) Document and determine the facts and details concerning the allegations raised by the whistleblower (see Allegations 1-3, listed above), to include identifying the date and times of alleged incidents, individuals involved, witnesses present, and what specifically occurred (or failed to occur).
(2) Document and determine the extent that APG and USACE officials collaborated on implementation of a required asbestos management program and determine whether efforts complied with applicable law, regulation, and/or policy.

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

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

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

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

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

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

III. ORGANIZATIONS AND RESPONSIBILITIES

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

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

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

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

**IV. RULES AND REGULATIONS**

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

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

A. 29 CFR §1910.1001 Asbestos

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

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

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

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

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

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

29 CFR §1926.1101 (g)(8)(ii)(A) provides: “[f]or removing roofing material which contains ACM the employer shall ensure that the following work practices are followed: roofing material shall be removed in an intact stage to the extent feasible.” In addition, 29 CFR 1926.1101 (g)(8)(ii)(E) states, “[ACM] that has been removed from a roof shall not be dropped or thrown to the ground. Unless the material is carried or passed to the ground by hand, it shall be lowered to the ground via covered dust tight chute, crane or hoist.”
29 CFR §1926.1101 (g)(8)(vi) provides alternative work practices and controls. Title 29 CFR §1926.1101 (g)(8)(vi) allows employers to use different or modified engineering and work practice controls if the following provisions are complied with: the employer shall demonstrate by data that employee exposure during the use of such method under conditions which closely resemble the conditions under which the method is to be used, that the employee exposure will not exceed the Permissible Exposure Limits (PELs) under any anticipated circumstances; and a competent person will evaluate the work area, the project work practices and the engineering controls, and shall certify in writing, that the different or modified controls are adequate to reduce direct and indirect employee exposure to below PLEs under all expected conditions of use and that the method meets the requirements of the standard.

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

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

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

D. 29 CFR §1960.7 - Financial Management

29 CFR §1960.7 of the OSH Act regulations provides that the Designated Agency Safety and Health Official, management officials in charge of each establishment, safety and health officials at all appropriate levels, and other management officials shall be responsible for planning, requesting resources, implementing, and evaluating the occupational safety and health program budget in accordance with all relevant Office of Management and Budget regulations and documents. Appropriate resources for an agency’s occupational safety and health program shall include, but not be limited to: (1) Sufficient personnel to implement and administer the program at all levels, including necessary administrative costs such as training, travel, and personal protective equipment; (2) Abatement of unsafe or unhealthful working conditions related to agency operations or facilities; (3) Safety and health sampling, testing, and diagnostic and analytical tools and equipment, including laboratory analysis; and (4) Any necessary contracts to identify, analyze, or evaluate unsafe or unhealthful working conditions and operations.
E. 40 CFR Part 763 - Asbestos

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

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

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

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

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

The AR 420-1 addresses the management of Army facilities and provides requirements related to asbestos in paragraphs 5-19, 5-23, 5-24, and 5-25, including discussion of compliance with laws described above. Specifically, it outlines the management of public works activities, housing and other facilities operations and management, and military construction program development and execution. As for 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.
the policy that the Garrison level shall: “[c]omply with Federal, State, and local requirements concerning hazard identification and control activities related to materials known or suspected to contain . . . asbestos. Such activities include surveys; hazard assessments and control; training; medical monitoring; worker protection; occupant notification; solid waste disposal; laboratory accreditation; and sale, lease or demolition of facilities.” Additionally, Garrisons shall “Perform surveys to identify the presence of asbestos hazards (asbestos hazard risk assessments), including ongoing monitoring, in all installation facilities constructed prior to 1990.”

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

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

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

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

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

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

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

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

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

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6 The AR 420-1 extends, by policy, asbestos survey requirements to buildings built between 1980-1990.
installation asbestos management team (or equivalent) and appoint an asbestos
management control officer (or team leader). The team’s responsibilities include
preparation, coordination, and execution of the [Installation Asbestos Management
Program (IAMP)].”

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

V. FINDINGS

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

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

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

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

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

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

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

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

(2) OSC Referred Allegation 2, subsection 2: Whether, in March 2017, a transite pipe was cut in a non-compliant manner and whether an asbestos exposure occurred.
**Discussion:** Based on the witness statement of a DPW employee who had conducted an informal investigation concerning the incident in September 2018, DPW workers in fact cut a transite pipe in a manner without ensuring compliance with 29 CFR §1926.1101, when repairing a waterline break in March 2017. (TAB Y). According to the DPW employee’s statement, the pipe was not identified by the asbestos team as PACM, and transite and concrete pipe are considered PACM unless this assumption is rebutted by sampling and testing. Another DPW employee who worked on the project confirmed that no sampling or testing for asbestos was conducted prior to starting the repair. (TAB X). The cutting of the pipe was completed using a gasoline powered chop saw while being wetted with amended water (water with a surfactant added), applied to the point of the cutting operations using a garden sprayer type water bottle.7 (TAB Y). Based on witness statements, the IO found that the DPW asbestos team cut the transite pipe in a non-compliant manner. (See Tabs D, Y). 29 CFR §1926.1101 (9) (i-v) describes the conditions for Class III work (i.e., repair or maintenance activities) and states that when cutting is involved, the employer must use impermeable drop-cloths, and isolate the operation using mini-enclosures or a glove bag system. DPW did not use a mini-enclosure or glove bag system, and a plume of smoke was witnessed coming from the source of the cutting. It is undetermined whether the source of the smoke was from the gas-powered chop saw, or if it was from the actual cutting of the transite pipe. Accusations were made of workers being exposed to asbestos. It was undetermined during the investigation that an exposure occurred, but the DPW asbestos team measures were not adequate to prevent an asbestos exposure. Collection and on-site analysis of the air samples should have been conducted to provide as near “real-time” results as possible. (TAB Y).

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

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

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

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7 Amended water means water to which surfactant (wetting agent) has been added to increase the ability of the liquid to penetrate ACM.
On 22 January 2018, the contractor performed a hazardous material survey confirming that 2,100 square foot of floor tile were ACM. (TAB Y). It is in dispute whether the initial samples taken by this employee tested negative or positive for ACM. The whistleblower alleged that the initial samples taken by this employee were negative and the second set of samples were positive. (TAB D). According to the employee, the initial samples that he took were positive yielding the same results of second survey. (TAB Q). Neither the employee nor the whistleblower produced the first sampling report for the initial hazardous material survey conducted by the employee.

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

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

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

Finding for OSC Referred Allegation 2, subsection 4- Substantiated: Based on the available witness statements and documents provided by the witnesses, the IO found that the contractor decided to forego conducting a hazardous material survey. Instead, the contractor planned to treat the entire structure as ACM and dispose of it as asbestos to save time and money. (See Tab F). The IO found that the contractor submitted an AHA and abatement plans, the ISO accepted the plans, and therefore, there was no violation of federal or Army regulations related to the requirements for an
AHA or asbestos abatement plan. However, the decision to forego the hazardous material survey did not comply with requirements of the EM 385-1-1, section 06.C.01. (See Tab A).

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

**Discussion:** The whistleblower alleged that the contractor submitted multiple asbestos abatement plans that included demolition of building 4035 with the ACM roof materials intact, which is non-compliant with 29 CFR §1926.1101. (See Tab D)

According to witness statements, engineering reports and other documentary evidence, the facts indicate that the initial engineering survey was conducted by a “manufacturing” engineer licensed in the State of California, not in the State of Maryland, and contained inaccuracies. (See Tabs F, O, and Q). A follow-on structural engineering survey on 27 October 2020, concluded that the roof was unsafe and should not be used to support workers, material. or equipment. (See Tab F). According to relevant witness statements, there has been disagreement between the ISO, DPW, and USACE over the structural integrity of the roof, whether it is safe to access, and appropriate methods used to abate the ACM roofing material. (See Tabs P, Q). The ISO, out of abundance of caution, has scrutinized the abatement plans, because the prevailing winds blow over a military housing area, and a childcare facility is also in the area. (TAB Q).

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

**Finding for OSC Referred Allegation 2, subsection 5-Substantiated:** The contractor is currently reworking the asbestos abatement plans for building 4035, which will be evaluated once submitted. Based on numerous witness statements and structural engineering surveys/reports (conducted by licensed professional structural engineer), the IO found valid concern as to the lack of integrity of the roof making it unsafe for access and creating an unsafe working condition; thereby, making it infeasible to abate the ACM on the roof. (TAB F). However, 29 CFR §1926.1101(vi) allows for the use of modified work practices if the work is deemed infeasible, provided the employer can demonstrate that employee exposure will not exceed the Permissible Exposure Limits (PELs)
under any circumstance, and a competent person evaluates the work areas and controls
and certifies in writing that the different control measures are adequate to reduce
exposure.  

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

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

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

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

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

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

*Finding for OSC Referred Allegation 2, subsection 7- Unsubstantiated:*
Based on numerous witness statements from personnel assigned to DPW, USACE, and
ISO, the IO found that sufficient justification existed for the USACE and the government
to consider terminating the FRP FY18 contract for the convenience of the government.
Based on all the witness statements that had first-hand knowledge of the safety submittal
process, delays in the FRP contract were attributed to the ISO. (See Tabs D, Q, W, B).
The IO found no violation of law or regulation in the considerations made to terminate
terminate the contract.

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

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

*Finding for OSC Referred Allegation 2, subsection 8- Unsubstantiated:*
Based on numerous witness statements from the DPW, USACE, and ISO, the “conflict
resolution policy” that was drafted and proposed and was never fully adopted. (See Tabs
Q, U). Therefore, the conflict resolution policy would not violate the AR 385-10, section
1-9. Additionally, the conflict resolution policy/MOA contemplated by DPW, USACE, and
the ISO is not the type of conflict resolution addressed by AR 385-10, which provides for
methods of approval of more stringent standards than OSHA requires.

(9) OSC Referred Allegation 2, subsection 9: Whether ACM transite tiles
were left in place during the demolition of building E5188 constituted a non-
compliant abatement method under 29 CFR §1926.1101.
Discussion: Based on the relevant witness statements, structural engineering reports, and federal regulations, the IO found that the deficiencies found in the structural integrity of the roof provided adequate justification for demolition to proceed with ACM on the roof in-place. On 16 December 2019, a structural engineer examined the roof and could not determine the allowable load capacity to facilitate safe roof access. According to witness statements, the removal of interior transite ceiling panels with a scissor/boom lift and scaffolding was deemed infeasible. This method would create a hazard by having the worker break the transite panel from a position underneath the heavy ceiling panel. The ceiling panels weigh well over 100 pounds, and this potential removal technique was deemed infeasible, because it would create an overhead crushing hazard. (See Tab R). The infeasibility in this instance would justify use of an alternative work practice for demolishing the ACM roof panels in place pursuant to 29 CFR §1926.1101. Under 29 CFR §1926.1101(g)(8)(vi), alternative work practices may be used, provided the employer can demonstrate that employee exposure will not exceed the Permissible Exposure Limits (PELs) under any circumstance, and a competent person will evaluate the work areas and controls and certify in writing that the different or modified controls are adequate to reduce exposure. This must be done prior to implementation of alternative methods to control asbestos. The contractor demonstrated that the PELs would not be exceeded by using historical testing from two previous projects and data from those projects. One project consisted of demolition with Class I (TSI- thermal system insulation, an ACM) material still present, and the PEL remained under the required threshold. (TAB E).

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

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

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

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9 “Friable” means that the material can be crumbled with hand pressure and is therefore likely to emit fibers. The fibrous fluffy spayed-on materials used for fireproofing, insulation, or sound proofing are considered friable, and they readily release airborne fibers if disturbed.
Specialist within the ISO had also performed a hazardous material survey on the building in 2019 in his role as a private contractor. Neither he nor another contractor, who also performed work, detected or tested the vents for ACM, because the asbestos was not visible until the vents were removed. (TAB Z, C). Based on relevant witness statements, on 16 January 2020, the Safety and Occupational Specialist discovered that the three vents, which at that time were considered Presumed Asbestos-Containing Material (PACM), had been dropped to the ground and left behind after abatement and demolition of the building. In addition, numerous pieces of PACM were found in and about building 5112. (TAB O). 29 CFR 1926.1101 (g)(8) (ii) (A-F) provides the methods that should be used to abate roofing material (whether intact or not intact) and states that it should be lowered or handed to the ground as soon as practicable. Upon being lowered, unwrapped material shall be transferred to a closed receptacle in such manner to preclude the dispersion of dust. Based on numerous witness statements the PACM laid on the ground for approximately nine (9) months before being removed. (TAB Q).

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

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

**Discussion:** Based on multiple witness statements and documents provided to the IO, including email correspondence and safety submittals, the IO found that the contractor did not submit asbestos abatement plans to the ISO for acceptance; however, the contractor submitted the required AHA and asbestos abatement plans to the government (i.e., Contracting Officer and USACE) on 13 January 2020 prior to beginning work in building 5114. During this period, the then Director of DPW instructed that all safety submittals be sent to the USACE due to the continuing delays in the FRP contract attributed to the ISO. Based on multiple witness statements, the whistleblower continually failed to review safety submittals in a professional or timely manner, and thus, the ISO was removed from the process by the Director of DPW. Although the evidence confirms that the ISO did not receive nor accept safety proposals prior to abatement of the floor tile at building 5114, this does not constitute a violation of Army regulations. The contractor submitted safety documentation as it had been instructed by the government during this period. (TAB F). As stated above, the removal of ISO from the safety submittal process for FRP FY18 was temporary, as the former Garrison Commander directed DPW to reestablish ISO as part of the review process. During this investigation, it was undetermined the length of time the ISO was not included in the review process.
Finding for OSC Referred Allegation 2, subsection 11- Unsubstantiated:
The contractor submitted safety submittals to the Contracting Officer and the USACE prior to beginning work on building 5114, as it was directed to do by the government. There was no violation of Army regulations or EM 385-1-1.

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

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

Finding for OSC Referred Allegation 2, subsection 12- Partially Substantiated: Based on relevant witness statements and the hazardous material surveys, the IO found that the hazardous material survey conducted for building E4405 was not conducted in compliance with 40 CFR §763.86, as required by DA PAM 40-513. Based upon relevant witness statements, an employee of one contractor was hired as a consultant by another contractor to review safety submittals. The fact that the employee’s name appears on a safety submittal for another contractor does not appear to constitute a violation of Army regulations.

(13) OSC Referred Allegation 2, subsection 13: Whether the hazardous material survey performed in building E5912 in January 2021 was conducted in accordance with AHERA standards.
**Discussion:** Based upon multiple witness statements, a hazardous material survey was conducted by an accredited AHERA inspector and reviewed and approved by a Certified Industrial Hygienist. (See Tab T). There was disagreement between the whistleblower and the USACE about the validity and quality of the survey that was conducted. The roof and the ceiling of building E5912 were both made of corrugated transite and are PACM. The ceiling was not sampled by the AHERA inspector, because it was all part of a homogenous area. 40 CFR Part 763 states that at least three bulk samples shall be collected from each homogenous area under 1,000 square feet. During the investigation a hazardous material survey was not produced to the IO. So long as samples were taken somewhere else that was part of the homogenous area, the standard set forth under 40 CFR Part 763 was satisfied. (TAB D, U). In the present case, there is no evidence to suggest that the survey was conducted in a manner not in compliance with AHERA standards.

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

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

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

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

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

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

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

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

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

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

VI. RECOMMENDATIONS BY IO AND APPROVAL AUTHORITY’S ACTIONS

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

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

b. Conduct a comprehensive asbestos inventory of all APG buildings and facilities and ensure maintenance of related asbestos records for demolition and renovation projects in a centralized location (e.g., the As-Built Inventory Tracking System
c. Conduct Hazardous Material (HAZMAT) training / re-training for facility owners and the workforce, to include discussion of asbestos risks, management, mitigation, and safety precautions. Additional training should also be provided to site supervisors regarding the AHA submittal process.

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

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