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**The Special Counsel**

February 29, 2024

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

Re: OSC File No. DI-22-000146

Dear Mr. President:

I am forwarding to you reports transmitted to the U.S. Office of Special Counsel (OSC) by the Department of the Army in response to the Special Counsel's referral of a disclosure of wrongdoing at the U.S. Army Installation Management Command, and U.S. Army Corps of Engineers (USACE), Aberdeen Proving Ground (APG), Aberdeen, Maryland. The whistleblower, [REDACTED], a Safety Manager, who consented to the release of [REDACTED] name, alleged that agency officials engaged in conduct that constituted a violation of law, rule, or regulation and a substantial and specific danger to public health. I have reviewed the disclosure, agency reports, and the whistleblower comments and, in accordance with 5 U.S.C. §1213(e), have determined the reports contain the information required by statute and the findings appear reasonable.<sup>1</sup>

*The Allegations*

[REDACTED] alleged that that APG and USACE officials engaged in a pattern of non-compliance with asbestos safety requirements. Specifically, [REDACTED] alleged that APG and USACE officials failed to collaborate on implementation of a required asbestos management program and did not complete required asbestos mitigation procedures during large-scale demolitions, placing employees, contract employees, and the public in danger of potential exposure to hazardous material.

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<sup>1</sup> The allegations were referred to Secretary of the Army Christine Wormuth for investigation pursuant to 5 U.S.C. §1213(c) and (d). The authority to review and sign the agency report was delegated to Assistant Secretary of the Army for Installations, Energy and Environment Rachel Jacobson.

### *Agency Reports*

The agency report substantiated a significant portion of [REDACTED] allegations and concluded that generally, APG and USACE officials “failed to comply with asbestos safety-related requirements on APG.” The report found that as of the date of publication, APG does not have a current, approved installation asbestos management program (IAMP) as required by AR 420-1, paragraph 5-19(c). However, the report noted that AR 420-1, does not lay out the specific manner of collaboration with USACE in maintaining an IAMP. Therefore, while the allegation pertaining to the lack of an IAMP was substantiated, the investigation did not substantiate a lack of “required coordination.” The agency report substantiated [REDACTED] allegation that APG and USACE officials failed to perform required steps for proper asbestos mitigation in a variety of circumstances. The report describes ten instances of the failure to mitigate and maintain necessary records.

The agency investigation did not substantiate that USACE personnel threatened to terminate the Fiscal Year 2018 Facilities Reduction Program contract for convenience due to safety issues or that a conflict resolution policy drafted by APG and USACE violated AR 385-10, The Army Safety Program, as the policy was never adopted. Further, the investigation did not substantiate that methods utilized in the demolition of building E5188 violated 29 CFR 1926.1101; that abatement of ACM floor tiles in building 51114 began before safety documents were submitted to the installation safety office, or that the hazardous material survey performed in APG building E5912 was not conducted in accordance with the Asbestos Hazard Emergency Response Act.

To address the investigative findings, the report listed several recommendations. First, it recommended that the APG Garrison Commander, “coordinate a formal, independent audit of the internal processes and 800 procedures for asbestos management and mitigation on APG” and then “implement measures to meet or exceed asbestos management and mitigation requirements consistent with current laws, regulations, and policies.” Second, it recommended that the APG Garrison Commander, “conduct a comprehensive asbestos inventory of all APG buildings and facilities and ensure maintenance of asbestos records in a centralized location.” Third, the report recommended HAZMAT training for the workforce and facility owners, particularly as it related to asbestos management and safety precautions. Finally, it recommended that the APG Garrison Commander facilitate the completion of the review process for the facility’s IAMP.

Following receipt of the agency report, OSC sought supplemental information regarding its findings. Specifically, OSC requested additional information about the maintenance of documentation by the APG Directorate of Public Works (DPW), and why in many cases the APG DPW could not provide requested documentation to investigators; the lack of a sworn statement provided by Army Employee [REDACTED]; the status of the recommendations listed in the agency report; and the agency’s finding that missing floor tile in building E2354 was “probably properly abated.”

The Army provided two supplemental reports. In the first, the Army explained that the APG DPW did not provide documentation to the investigating officer because, in many cases, the documents were not kept or readily retrievable, which the Army acknowledged was in violation of Department of the Army Pamphlet 40-513, Occupational and Environmental Health Guidelines for the Evaluation and Control of Asbestos Exposure. The Army also noted that even though Army employee, [REDACTED], failed to respond to investigators' requests for a sworn statement, [REDACTED] was interviewed by the investigating officer. The investigating officer explained that [REDACTED] lacked significant details about incidents raised in the disclosures and that [REDACTED] failure to provide a sworn statement did not substantively affect the findings of the investigation. Finally, the Army provided a status update on the recommendations listed in the agency report. As of July 2023, when the supplemental report was transmitted, the Deputy Assistant Secretary of the Army for Environment, Safety and Occupational Health, [REDACTED], was coordinating with Army Materiel Command, U.S. Army Corps of Engineers, and other Army entities and had formally requested that relevant information be gathered by September 2023. The supplemental report further noted that after the coordination is complete and the information was reviewed," a report detailing procedures to be implemented and remedial measures to be taken to ensure projects...where asbestos containing materials are handled comply with all applicable asbestos-related requirements to ensure safe and healthy work environments will be provided to the ASA IEE."

In the Army's second supplemental report, the agency clarified the report's conclusion that missing floor tile in building E2354 was "probably properly abated." The Army found that the evidence relied upon by the investigating officer on this point was inconclusive and that such information was insufficient to conclude that the missing floor tile in building E2354 was probably properly abated.

#### *Whistleblower Comments*

[REDACTED] comments identified [REDACTED] major concerns with the investigation and reports. [REDACTED] stated that even though many allegations were substantiated, the sworn statements provided by [REDACTED] colleagues contained numerous factual errors and mistaken conclusions. [REDACTED] also noted that many statements could be refuted by email correspondence from the relevant time, which [REDACTED] provided. [REDACTED] explained that there were several statements from colleagues that identified [REDACTED] as overseeing decisions for which [REDACTED] was not responsible, stated [REDACTED] was not present for discussions that [REDACTED] took part in, or claimed [REDACTED] did not raise concerns about noncompliance when [REDACTED] had done so throughout [REDACTED] tenure, including during the incidents described in the agency report. [REDACTED] also noted that there were *ad hominem* attacks against [REDACTED] character within colleagues' sworn statements, which were referenced in the agency report, that could also be rebutted by documentary records from the time. Thus, [REDACTED] feared that a layperson reading the agency report would have an erroneous accounting of the incidents that led to the Army's wrongdoing.

██████████ also identified several other issues with the agency's reports, which were addressed in the supplemental reports. Specifically, APG Directorate of Public Works failed to provide documentation to the report's investigating officer; Shelley Spade never provided a sworn statement in connection with the investigation; and the seemingly speculative conclusion that the floor tile in building E2354 was "probably properly abated" despite no evidence that proper abatement occurred.

*Special Counsel's Findings*

I thank the whistleblower for bringing these allegations to OSC's attention. The investigation identified serious deficiencies in the Army's handling of asbestos containing materials. The Army addressed the allegations and proposed solutions to resolve identified safety issues. The resultant recommendations will improve the safety of employees on Aberdeen Proving Grounds and throughout the Army. As such, I have determined that the reports contain the information required by statute and the findings appear reasonable.

As required by 5 U.S.C. § 1213(e)(3), I have sent a copy of this letter, the agency reports, and whistleblower comments to the Chairs and Ranking Members of the Senate Committee on Homeland Security and Governmental Affairs and the House Committee on Homeland Security. I have also filed redacted copies of these documents and the redacted referral letter in our public file, which is available online at [www.osc.gov](http://www.osc.gov). This matter is now closed.

Respectfully,



Karen Gorman  
*Acting Special Counsel*

Enclosures