



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
INSTALLATIONS, ENERGY AND ENVIRONMENT
111 ARMY PENTAGON
WASHINGTON, DC 20310-0111

FEB 05 2023

Mr. Henry Kerner
U.S. Office of Special Counsel
1730 M Street, N.W. Suite 300
Washington, D.C. 20310-0101

SUBJECT: Whistleblower Investigation- Alleged violation of law, rule, or regulation at Aberdeen Proving Ground (APG), Maryland (Office of Special Counsel File Number DI-22-000146)

Dear Mr. Kerner:

In accordance with Title 5, United States Code, Sections 1213(c) and (d), the enclosed summary report is submitted in response to your referral of information requesting an investigation of allegations and a report of findings in the above referenced case.

The Secretary of the Army (SA) has delegated to me her authority, as Agency head, to review, sign, and submit to you the statutorily required report. The report has been constructed to eliminate references to privacy protected information. Both redacted and unredacted versions of the exhibits referenced in the report are provided, as is an unredacted table of contents which identifies each exhibit by the name and position of the person providing the statement. We request that the unredacted exhibits and table not be made available on your website, in your public library, or in any other forum in which it will be accessible to persons not expressly entitled to this privacy protected information.

The Department of the Army takes very seriously its responsibility to address, in a timely and thorough fashion, matters referred by OSC. In this case, the Army conducted a thorough and comprehensive investigation in response to the OSC's referral of the allegations submitted by the Whistleblower, [REDACTED], in which he asserted that Aberdeen Proving Grounds (APG) and U.S. Army Corps of Engineers (USACE) officials engaged in a pattern of non-compliance with asbestos safety requirements. Specifically, among other allegations, [REDACTED] alleged that APG and USACE officials did not collaborate on implementation of a required asbestos management program and failed to ensure that asbestos-related requirements, including mitigation, were carried out, placing employees, contract employees, and the public in danger of potential exposure to hazardous material.

An investigation into [REDACTED] allegations was directed by the Commander, U.S. Army Communications-Electronics Command (CECOM), the senior Commander on APG with authority to review the activities of both the U.S. Army Garrison APG as well as USACE activities in support of APG. [REDACTED] was given the opportunity to provide additional evidence in support of his allegations and, through his attorney, he provided both documentary evidence and a statement supplementing his allegations. In total, the investigating officer (IO) investigated 17 specific allegations. In addition to [REDACTED], the IO interviewed 25 witnesses from APG, USACE, and

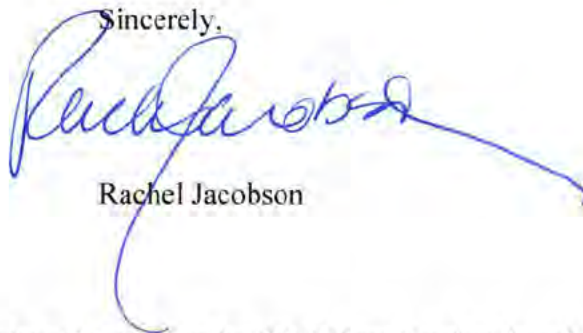
private contractors involved in the demolition projects in question. The IO also collected and reviewed numerous documents provided by the witnesses in support of their statements.

Based upon the information collected regarding the allegations referred by the OSC, the IO found that an approved asbestos management plan was not in place as required by Army regulations, and APG and USACE officials did not adequately collaborate on implementation of an asbestos management plan; however, while this collaboration is prudent, it is not required and therefore, this allegation was determined to be “partially substantiated.”¹ The IO also found that APG and USACE officials occasionally failed to ensure required asbestos mitigation measures were appropriately carried out during building repair, renovation, or demolition projects on APG. Specifically, based on the findings of the IO, two allegations were partially substantiated, ten allegations were substantiated, and five allegations were unsubstantiated. There were confirmed instances of technical non-compliance with required asbestos mitigation measures (whether required by Army or federal regulations) between 2014 and 2020. On 16 September 2022, the CECOM Commander approved the IO’s Report of Investigation, and its findings. He modified the recommendations, by directing that the Report of Investigation be provided to the USAG APG Garrison Commander and the USACE Baltimore District Commander for review and any follow-up action deemed appropriate.

I am satisfied with the investigation in this matter, which is summarized in the attached report, and I am directing the Deputy Assistant Secretary of the Army for Environment Safety and Occupational Health (DASA(ESOH)) and her staff, having oversight over both environmental compliance and safety and occupational health related matters, to work with Army Materiel Command, USACE, and other appropriate Army activities at all echelons to review the recommendations made by the IO and take any additional actions needed to address any programmatic issues identified. Once the reviews by the USAG APG Garrison Commander, the USACE Baltimore District Commander and DASA(ESOH) are complete, I will request a report detailing what procedures will be implemented and what remedial measures will be taken to ensure projects on APG or at any Army facility where asbestos containing materials are handled comply with all applicable asbestos-related requirements to ensure safe and healthy work environments.

The attached report, with enclosures, is submitted in satisfaction of my responsibilities under Title 5 U.S.C. §§1213(c) and (d). At this time, the Army has made no referral of alleged criminal violations to the Attorney General pursuant to Title 5 U.S.C. §1213(d)(5)(d). Please direct any further questions you may have regarding this matter to Mr. Joseph A. Fedorko, Office of The Judge Advocate General, at 571-256-2870.

Sincerely,



Rachel Jacobson

¹ Allegations have been categorized as (1) ‘substantiated’ where the IO’s findings based on the evidence supported the an alleged violation; (2) ‘unsubstantiated’ where the IO’s findings did not support an alleged violation; and (3) ‘partially substantiated’, where the IO’s findings supported only a portion of an alleged violation.