



U.S. OFFICE OF SPECIAL COUNSEL
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The Special Counsel

January 5, 2022

The Honorable Christine Wormuth
Secretary
U.S. Army
1700 Army Pentagon
Washington, D.C. 20310-1700

Re: OSC File No. DI-22-000146
Referral for Investigation--5 U.S.C. § 1213(c)

Dear Secretary Wormuth:

I am referring to you for investigation a whistleblower disclosure that officials at the Department of the Army (Army), U.S. Army Installation Management Command, and U.S. Army Corps of Engineers, Aberdeen Proving Ground (APG), Aberdeen, Maryland, may have engaged in actions that constitute a violation of law, rule, or regulation and a substantial and specific danger to public health. A report of your investigation of these allegations and any related matters is due to the Office of Special Counsel (OSC) on March 7, 2022.

██████████, a Safety Manager, who consented to the release of █████ name, disclosed that APG and U.S. Army Corps of Engineers (USACE) officials engaged in a pattern of non-compliance with asbestos safety requirements. The allegations to be investigated are:

- APG and USACE officials have not collaborated on implementation of a required asbestos management program;
- 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
- Any additional or related allegations of wrongdoing discovered during the investigation of the foregoing allegations.

██████████ explained that APG has large-scale demolition operations underway, managed by USACE, that include older buildings that contain asbestos. According to ██████████, neither APG nor USACE officials have taken necessary steps to ensure that the demolitions follow asbestos management requirements, in part because APG officials have not implemented a compliant asbestos management program as required by agency regulations.¹ As a result, ██████████ identified several instances of non-compliance with asbestos mitigation requirements at APG. For example, ██████████ found that the USACE contractor, EA Engineering, did not conduct an accurate asbestos survey of APG Building E 2354 prior to completing and submitting its abatement plan, as required.² The plans prepared by the asbestos

¹AR 420-1, para. 5-19(c) and 5-24(d).

²29 C.F.R. § 1926.1101(k)(1); Army Regulation (AR) 420-1, para. 5-19.

subcontractor indicated that Building E 2354 contained asbestos floor tile, mastic, and asbestos roofing material. In reviewing the plans and conducting a site survey in April 2021, however, [REDACTED] discovered that the asbestos floor tile and mastic had already been removed. A 2009 site report indicated the presence of the asbestos. [REDACTED] determined, however, that the asbestos had been removed between 2009 and 2019. Consequently, in order to confirm that the demolition included accurate and required asbestos mitigation strategies and notifications and compliant disposal of asbestos-containing materials, [REDACTED] repeatedly requested all documentation related to the prior removal of the asbestos-containing materials, but none was produced by APG or USACE officials.

[REDACTED] alleged that these failures violate federal regulations requiring building owners to maintain and make available documentation of the presence of asbestos-containing materials.³ Further, without documentation, it is not possible to confirm that the demolition included required asbestos mitigation strategies and notifications and compliant disposal of asbestos-containing materials—potentially exposing employees, contract employees, and the public to asbestos contamination.⁴

Pursuant to my authority under 5 U.S.C. § 1213(c), I have concluded that there is a substantial likelihood that the information provided to OSC discloses a violation of law, rule, or regulation and a substantial and specific danger to public health. Please note that specific allegations and references to specific violations of law, rule or regulation are not intended to be exclusive. If, in the course of your investigation, you discover additional violations, please include your findings on these additional matters in the report to OSC. As previously noted, your agency must conduct an investigation of these matters and produce a report, which must be reviewed and signed by you. Per statutory requirements, I will review the report for sufficiency and reasonableness before sending copies of the agency report along with the whistleblower's comments and any comments or recommendations I may have, to the President and congressional oversight committees and making these documents publicly available.

Additional important requirements and guidance on the agency report are included in the attached Appendix, which can also be accessed at <https://osc.gov/Services/Pages/DU-Resources.aspx>. If your investigators have questions regarding the statutory process or the report required under 5 U.S.C. § 1213, please contact Catherine A. McMullen, Chief, Disclosure Unit, at (202) 804-7088 or cmcmullen@osc.gov for assistance. I am also available for any questions you may have.

Sincerely,



Henry J. Kerner
Special Counsel

Enclosure

cc: LTG Donna W. Martin, Inspector General

³29 C.F.R. § 1910.1001(j)(3)(i)-(iii); 29 C.F.R. § 1910.1101(k)(2)(i).

⁴40 C.F.R. § 61.145

APPENDIX
AGENCY REPORTS UNDER 5 U.S.C. § 1213

GUIDANCE ON 1213 REPORT

- OSC requires that your investigators interview the whistleblower at the beginning of the agency investigation when the whistleblower consents to the disclosure of his or her name.
- Should the agency head delegate the authority to review and sign the report, the delegation must be specifically stated and include the authority to take the actions necessary under 5 U.S.C. § 1213(d)(5).
- OSC will consider extension requests in 60-day increments when an agency evidences that it is conducting a good faith investigation that will require more time to complete.
- Identify agency employees by position title in the report and attach a key identifying the employees by both name and position. The key identifying employees will be used by OSC in its review and evaluation of the report. OSC will place the report without the employee identification key in its public file.
- Do not include in the report personally identifiable information, such as social security numbers, home addresses and telephone numbers, personal e-mails, dates and places of birth, and personal financial information.
- Include information about actual or projected financial savings as a result of the investigation as well as any policy changes related to the financial savings.
- Reports previously provided to OSC may be reviewed through OSC's public file, which is available here: <https://osc.gov/Pages/Resources-PublicFiles.aspx>. Please refer to our file number in any correspondence on this matter.

RETALIATION AGAINST WHISTLEBLOWERS

In some cases, whistleblowers who have made disclosures to OSC that are referred for investigation pursuant to 5 U.S.C. § 1213 also allege retaliation for whistleblowing once the agency is on notice of their allegations. The Special Counsel strongly recommends the agency take all appropriate measures to protect individuals from retaliation and other prohibited personnel practices.

EXCEPTIONS TO PUBLIC FILE REQUIREMENT

OSC will place a copy of the agency report in its public file unless it is classified or prohibited from release by law or by Executive Order requiring that information be kept secret in the interest of national defense or the conduct of foreign affairs. 5 U.S.C. § 1219(a).

EVIDENCE OF CRIMINAL CONDUCT

If the agency discovers evidence of a criminal violation during the course of its investigation and refers the evidence to the Attorney General, the agency must notify the Office of Personnel Management and the Office of Management and Budget. 5 U.S.C. § 1213(f). In such cases, the agency must still submit its report to OSC, but OSC must not share the report with the whistleblower or make it publicly available. See 5 U.S.C. §§ 1213(f), 1219(a)(1).