

April 5, 2023

Via Email Only

David Tuteur, Esquire U.S. Office of Special Counsel 1730 M St NW, Suite 218 Washington, DC 20036

RE: OSC File No. DI-22-000146

Dear Mr. Tuteur:

Included with this correspondence are the following:

- 1. Whistleblower's Comments to Summary of the Report of Investigation;
- Whistleblower's Comments as Rebuttal to Witnesses' Sworn Statements and IO's Findings;
- 3. Exhibit List and Exhibits numbered 1 to 66; and
- 4. A list of Acronyms used in the forementioned documents.

The Whistleblower's Comments to Summary of the Report of Investigation is rather concise. Although, there is an abundance of information and references to Exhibits in the Whistleblower's Comments as Rebuttal to Witnesses' Sworn Statements and IO's Findings. This is critical information that is relevant to the Investigating Officer's investigation and findings and should serve as a basis for the Investigating Office to further investigate matters to reconsider and revise the findings.

There is a lot of information contained within the enclosures. Should you have any questions or concerns regarding the enclosures, or if more information or documentation is needed, then please communicate with me. Thank you.

Very Truly Yours,

Enclosures

# Whistleblower's Comments as Rebuttal to Witnesses' Sworn Statements and IO's Findings

#### Introduction

The WB received and reviewed the Summary of the Report of Investigation ("Report") that included 26 statements, most of which are sworn statements, but some are not (individually "Statement" or collectively "Statements")(Tabs A through Z of Report), for OSC File No. DI-22-000146.

In this Whistleblower's Comments as Rebuttal to Witnesses' Sworn Statement and IO's Findings ("Rebuttal"), the WB addresses false, misleading and/or inaccurate remarks and findings/conclusions identified in the Statements and the IO's Report. The WB has included Exhibits to substantiate the comments herein addressing the false, misleading and/or inaccurate remarks in the Statements. It is imperative that these contradictions and findings/conclusions be addressed in this Rebuttal for two reasons. First, the misleading and inaccurate remarks may have swayed the IO's findings and conclusions. Second, failing to address these misleading and inaccurate remarks may be perceived as a form of acquiescence which would be prejudicial to WB.

This Introduction section does not include any personally identifiable information (PII). Thereafter, is a Sequence of Events (page 6, *infra*) for context as it relates to all phases of the investigation and prosecution of WB's OSC matter,<sup>2</sup> and then WB's Comments Rebutting Sworn Statements & Comments Regarding Individuals Not Named in Sworn Statements (page 9, *infra*).

Separately, an Exhibit List is included that includes a description of the Exhibits, and Exhibits numbered 1 through 66 are also provided. To consolidate information and in an to attempt to ease review, the WB highlighted information within the Exhibits (mostly emails) which are considered relevant and link together the contradictions found in numerous Statements and the IO's Report.

The Exhibits substantiate that there was a pattern of providing false and misleading information and/or inaccurate statements to the IO. There were some instances which the IO did not address it and, in WB's opinion, these matters should be further investigated and answered accordingly. Also, there are Statements in the IO's report that reference addendums, yet these were not provided to the WB.

Overall, many of the *ad hominem* attacks should not sway IO in the factual context of his investigation and findings, and WB is compelled to refute these personal attacks. Further, WB is compelled to correct the misinformation and inaccuracies and, where applicable, select findings and conclusions by the IO for the record. The WB

<sup>&</sup>lt;sup>1</sup> A separate document lists all the Exhibits with a brief description of the Exhibit.

<sup>&</sup>lt;sup>2</sup> Whistleblower retaliation is a separate part of WB's OSC matter and, although it is not part of this investigation and prosecution of WB's protected disclosures, it is relevant for purposes of weighing individuals' credibility and their Statements.

reserves the right to supplement the Whistleblower's Comments to Summary of the Report of Investigation and this Rebuttal, and welcomes further communications with any individual or entity that has any questions or comments.

WB identified non-compliant situations that were violations of laws, rules and regulations that exposed not just what was wrong, but also who was wrong. There were numerous safety, health, and other compliance issues that the WB recognized and/or was required to address, especially those including asbestos issues – a well recognized health hazard that is highly regulated.

WB's disclosures overlapped into other areas too. WB was not going to compromise on compliance, because one cannot compromise on the compliance of laws, rules and regulations. WB was taunted and called juvenile names for not compromising. The WB stated this in writing to his supervisor.

The Agency was aware for years of the ongoing non-compliance issues regarding asbestos at APG. The Agency even developed a policy in 2011 that stated that the asbestos program was non-complaint, and the Garrison Commander agreed and signed the policy admitting to the non-compliance. In the past, APG had been issued hazard correction lists/cited by OSHA for asbestos program and related issues. Yet over a decade later, the Directorate of Public Works Environmental system wanted the WB to approve or sign off on the non-compliant situations.

There was actual knowledge by all concerning these ongoing asbestos issues. The management systems over the years failed to address the serious non-compliant issues. Yet, they wanted the WB to continue to agree with the issues. In sum, the WB shared the problems, but the agencies simply desired for the WB to agree with the non-compliance.

When the WB shared ideas and emergency procedures to address the non-compliance, the various Agency personnel personally attacked the WB. Agency personnel belittled WB and called him juvenile names in written communications, and at the same time, admitted to the problems WB pointed out.

Agency personnel fabricated inaccuracies and there are written statements amongst the WB attackers in which they themselves have contradicted each other. The WB was accused of not compromising. The Statements prove these points and WB's Exhibits thereto evidence the misrepresentations and personnel attacks.

Matters regarding the WB's involvement with demolition projects significantly unraveled in Spring, 2021. This program was executed by the COE, first with Huntsville District then later with Baltimore District. The APG Public Works Director took the demolition project from Huntsville District and moved it to Baltimore District because of many shortcomings of the Huntsville District including, but not limited to, the failure of the contractor to execute work, communication breakdowns, etc. Yet, the COE hired the

same contractor to execute the work and the overall Report points out serious problems with this contractor that simply carried over into the newly executed contract.

When the Garrison removed the demolition from Huntsville COE District to the Baltimore COE District, the APG Public Works Director was emphatic regarding the WB's 100% involvement in the review processes. As time wore on, however, the Public Works Director completely waffled on this demand. He wanted the Garrison ISO out of the demolition projects.

Contractor, COE and the Garrison all started pointing fingers at each other for delays. There was a written admission in the record evidencing that the sole source awarded demolition contractor lacked expertise and competence to get the job done. All were aware of the Garrison's Environmental Department's failure to have a compliant asbestos program. Any efforts by the WB to bring about compliance was met with resistance. The COE was failing in their oversight too. Pressure was coming from up the chain of command regarding the failure of expenditure of appropriated funds, whereby command started to get involved. The WB was not invited to any command level meetings and received secondhand information from various senior leaders, but not from command, regarding the allegations. It was obvious the WB's direct supervisor was petrified of the Commander. Instead of pointing out requirements that the Agency failed to meet OSHA standards regarding a requirement to budget for programs necessary to meet compliance (see 29 CFR 1960.7(a)), senior leaders from Safety and DPW and others were simply afraid to communicate these problems to the Commander because, if they did so, they would be pointing out their own deficiencies. The WB was delivering accurate information to comply with laws, rules and regulations and obviously it was unwelcomed by management chain. When the demolition was under the Huntsville and Baltimore Districts, there was also a failure of the COE systems ensuring that reasonable field quality assurance at APG was met.

APG DPW did appoint a Garrison liaison to have some semblance of oversite, however that also became a problem because there was an intentional practice of excluding ISO from the processes. The WB shared this concern in writing. That individual was <u>not</u> a COR. Matters were quite out of control and there were instances where asbestos was being bundled with rubble waste after <u>not</u> being compliantly removed in the wake of asbestos having been identified. The Garrison liaison stated in the Statement contradictions to Professional Engineering written reports and directing work that was in contradiction to Occupational Safety findings that had been already completed by safety experts, which action by the liaison cost the government money and delayed contract execution. The Garrison liaison made remarks about the cost of compliance, something completely outside the scope of his duties or responsibilities and not up to him. These remarks, when read, indicate a support for non-compliance.

There were serious disconnects for the reasons regarding asbestos identification by the APG Garrison, the facility "owner." The Garrison did not have a complete repository of asbestos containing building materials, as required. For the demolition, in select cases, there were surveys for asbestos executed, but the surveys were <u>not</u>

overseen by qualified government employees. Also, contractors were turning in survey reports that were incomplete, but the performing contractor was <u>not</u> being held accountable. Recommendations to temporally rectify this were ignored to include belittlement of the WB.

There were incomplete survey reports performed by government contractors in which there were admissions that all required areas were <u>not</u> sampled. Yet, the government paid for this service. When the WB identified these types of issues, sometimes additional surveys were performed. Some surveys were performed by the same imbedded contractor, EA Engineering, that performed the incomplete/non-compliant original surveys. The government was spending money paying for services over and over again. And yes, additional asbestos was being noted. Resubmissions for abatement plans (i.e. scope of work) would then be required compounding delays and adding costs.

The WB became the brunt of attacks for <u>not</u> accepting, or in other people's words, <u>not</u> approving the faulty incomplete submittals. The WB's non-acceptance did, however, in select cases prevent indiscriminate tear out of asbestos. Unfortunately, when the WB would not sign off on submittals, Agency personnel would challenge him. The WB was told by his supervisor that, "In order to get along, he had to go along." WB was not inaccurate or wrong, nor willing to compromise on compliance. Further, at any time, management could have elevated the matter by going above the WB and approved any proposed submittals. In addition, the WB's supervisor admitted to the WB that the COE had a "shit contract and shit contractor," and that WB needed to learn to look away.

Ultimately, things went disastrously wrong regarding the demolition of Building E2354. For the demolition of this building, a project design abatement plan signed by a licensed (asbestos) abatement project designer was submitted to abate asbestos (floor tile) that no longer existed in the building. (NOTE that floor tile had been identified in a survey report completed in 2009). The WB continually inquired about the removal of the asbestos floor tile and was holding out for answers. Investigation confirmed the asbestos was, at minimum, gone for a few years. This still was no excuse for the information in the signed project design, which report was written in late March, 2021, a few days before the WB saw the circumstance. In fact, there was a follow up survey done in December, 2020 of this location (a few months earlier) by the same embedded government contractor that did <u>not</u> point out the missing tile.

The COE reviewed the asbestos abatement project design and the COE commented that it was a "great report." This was before the WB was provided a copy of the report. When WB questioned the issues about the missing floor tile, no answers were provided. At one point, an individual with Garrison environmental department, the gatekeeper of such information, suggested that if the WB was so interested in trying to ascertain the issues with E2354 asbestos, then he could go look for the answers himself. What is also to be noted and very troubling, the IO concluded in his Report that

the floor tile was "probably" removed compliantly. There is absolutely <u>no</u> information or evidence for the IO to draw such a conclusion.

WB's persistence for answers regarding the removal of floor tile that contained asbestos in Building E2354 led to a tumultuous meeting in July, 2021. An individual in that meeting, notably the individual responsible for the demolition project/contract, mischaracterized WB's behavior in that meeting. These mischaracterizations are supported by internal emails and an affidavit of an individual that participated in the meeting. This ultimately led to WB's reassignment, i.e. an adverse personnel action.

Moreover, the IO concluded that WB caused delays in the execution because of not approving (or accepting) submittals. The IO based this conclusion on information from select individuals that were interviewed. The contradiction to this conclusion is noteworthy considering people that were interviewed claimed the WB delayed work. There is supporting evidence that these same people in their respective Statements point the delay problems to the contractor, not the WB. WB has provided emails within the Exhibits substantiating that: the contractor and the COE were responsible for the delays, including written remarks that the ignorance and incompetence of the contractor was a causal delay factor; that an interim COE COR concurred, in writing, with shortcomings found with the contractor's safety submittals and this individual was attempting to work towards resolution; the COE in writing shut down the projects executed by their demo contractor due to discovered indiscriminate tear out of asbestos and non-compliant work practices; and finding other information from the demo contractor that were technically insufficient and inaccurate. The credibility can be called into question as some of these COE personnel were found to be contradicting each other regarding alleged behavior of the WB. This is substantiated by the written email communications included in the Exhibits herewith.

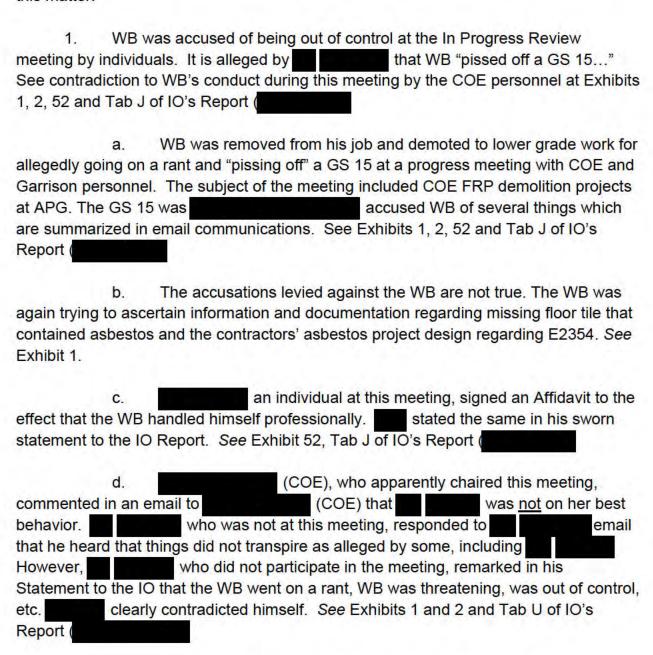
It should be pointed out that the WB called to attention the sole sourcing of this contractor and collusion between other embedded government contractors and the demolition contractor. The IO did not address these issues.

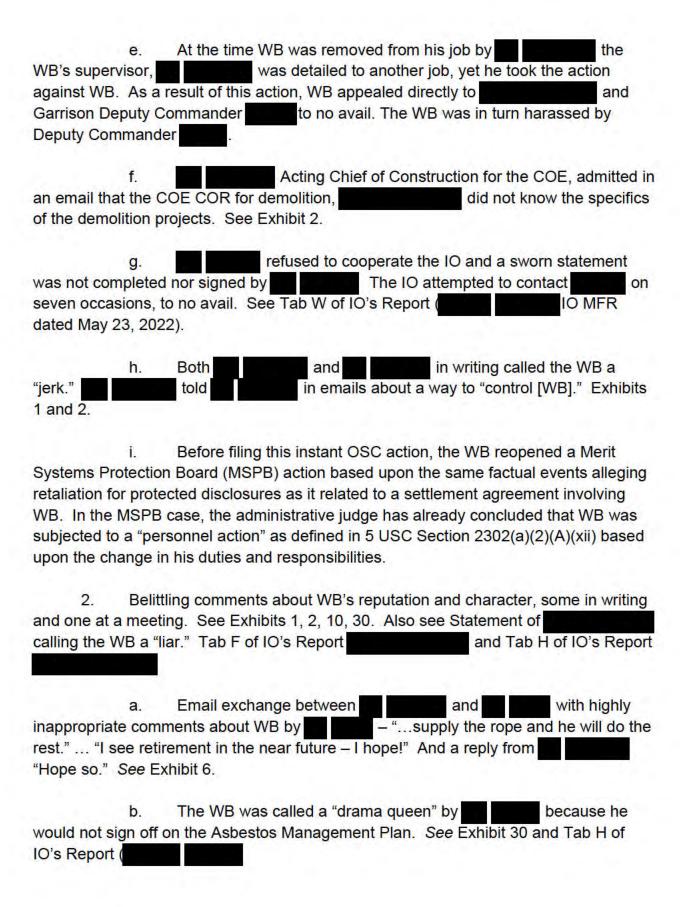
Lastly, the IO stated in his summary on page 2, footnote 1, that the matters raised before the MSPB are not subject to the investigation regarding the OSC referred allegations. It shall be recognized and understood that the matters raised before the MSPB are the same matters referred to the OSC.

In closing, WB welcomes any questions or concerns and reserves the right to provide additional information or documentation.

#### Sequence of Events

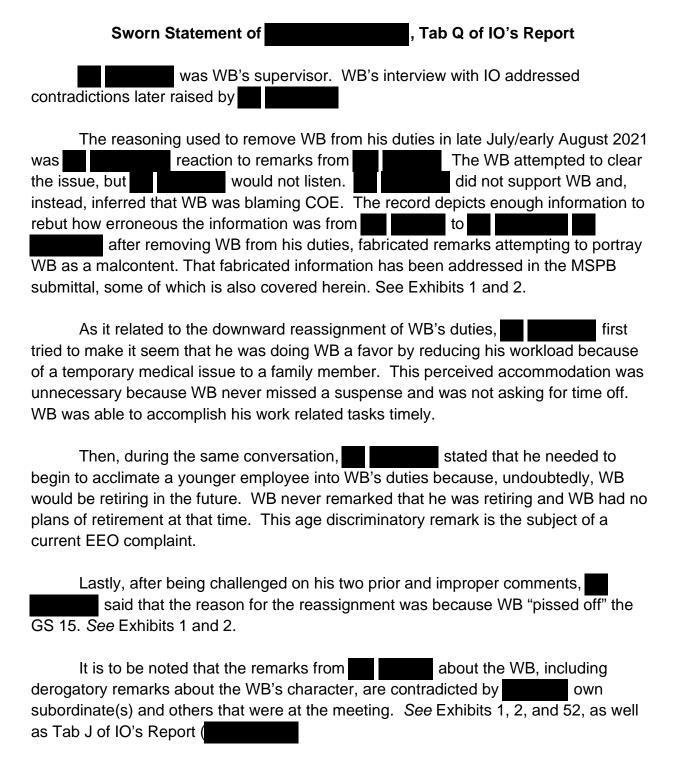
The WB received and reviewed the Summary of the Report of Investigation ("Report") that included 26 statements, most of which are sworn statements (individually "Statement" or collectively "Statements")(Tabs A through Z of Report), for OSC File No. DI-22-000146. Before addressing the Statements, the following is a brief sequence of events regarding what occurred and the actions taken against the WB as context for the OSC referral and related matters in connection with the investigation and prosecution of this matter.

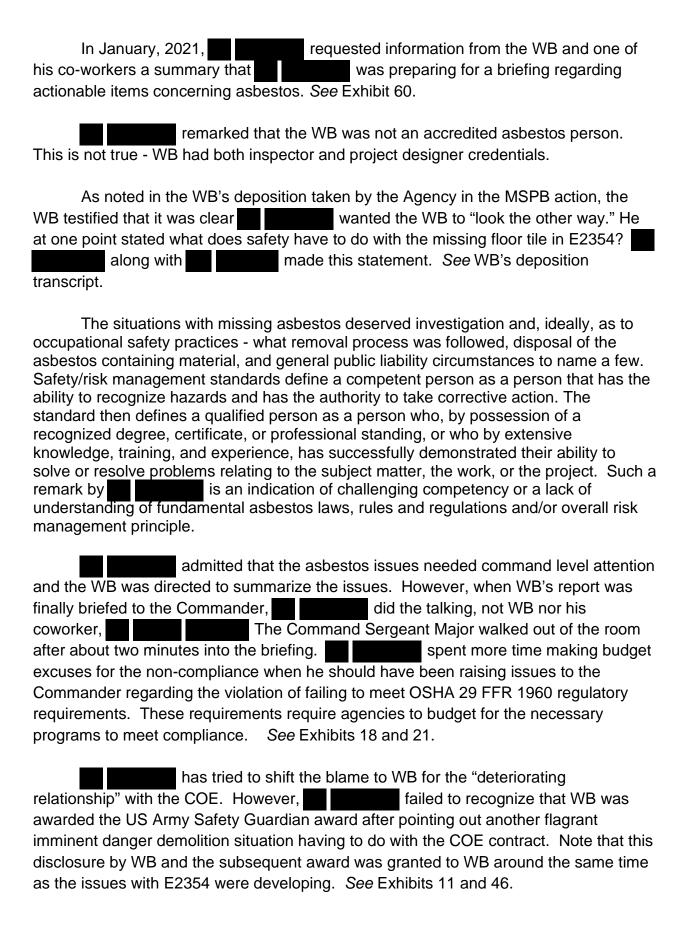


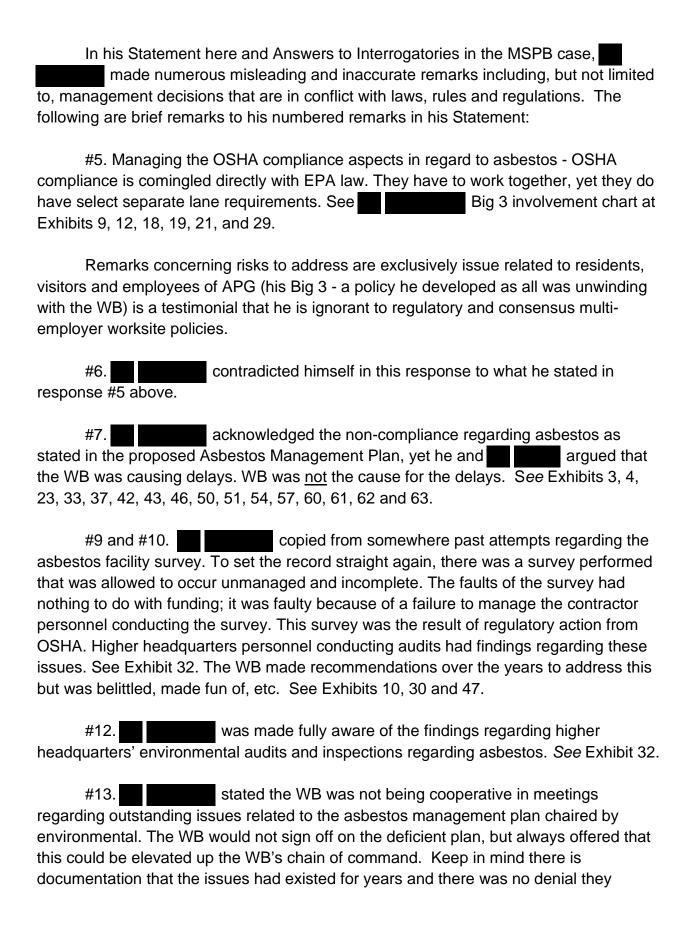


- and wrote in an email to a government a government contractor, that WB "threw a stupid grenade" following a meeting held for government in nature employees only. Contractors should not attend all government meetings, only meetings that they are invited to. It was recommended by the WB at this meeting that all future asbestos surveys completed by contractors should be physically overseen by a government accredited asbestos inspector considering all the disconnects that continued occurring as a result of the surveys being performed exclusively by contractors. See Exhibits 10 and 47.
- d. WB was called a "jerk" by COE personnel during the E2354 issues.
   See Exhibits 1 and 2.

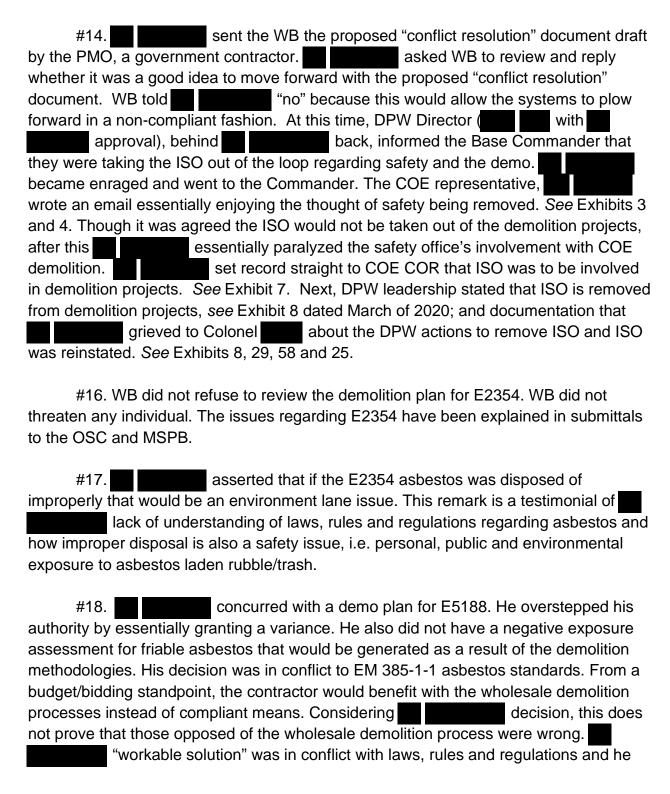
# WB's Comments Rebutting Sworn Statements & Comments Regarding Individuals Not Named in Sworn Statements



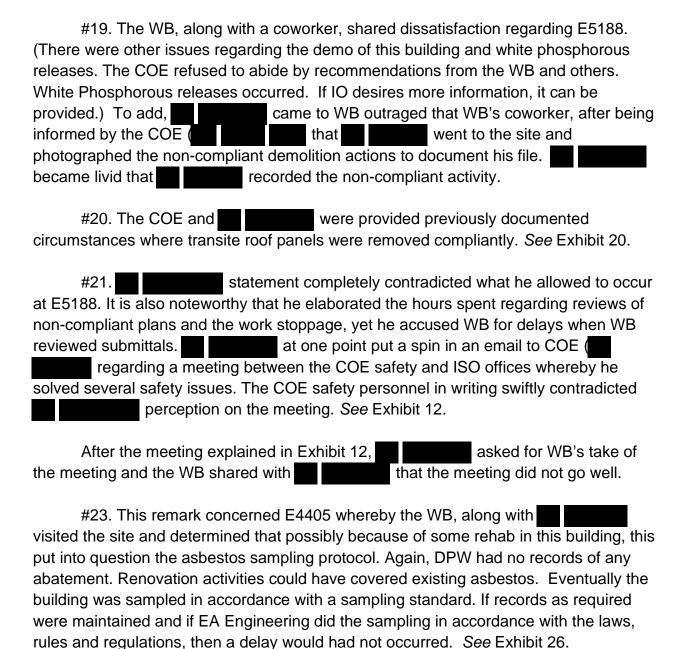




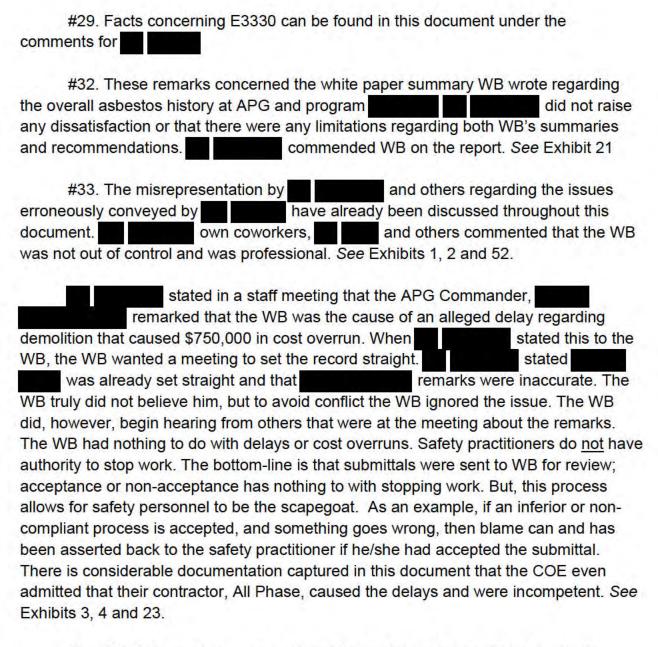
continued to exist nor was there any action to follow/accept the WB's recommendations for correction - outlining a way forward to address the issues. The deficient issues wreaked havoc on day to day facility/construction issues. See Exhibits 9, 28, 31, 32, 54 and 63.



further conflicted his theories by stopping the demolition of B4035. In sum, he allowed E5188 to proceed with wholesale demolition with the roof intact, yet stopped B4035 because the demo was to allow for the building to be dropped with the roof still intact. To my knowledge this building has not yet been demolished. See Exhibits 19 and 20.



- #25. Does this actually refer to B5112?
- #28. Facts concerning the Mulberry Point Tower can be found in Exhibit 13.



The CARA issue concerned a referral WB addressed regarding a contractor digging, etc. in an area where there was potential for exposure to legacy chemical warfare material (CWM). A DPW contractor that was having issues had this contract and the SOW involved utility repairs.

The Edgewood area is a Superfund Site in its entirety. This was the result of sins from the past - waste dumping, lack of controls and oversight, etc. Considering that over \$700,000,000 had been spent to study the study that had been studied, WB went to Environmental and knowing they knew there were in fact areas that could be ruled

essentially clean. They immediately bulked in any effort to delist any location from the Superfund category because of a possibility of losing future funding.

There were several meetings regarding categorizing the areas as Superfund which triggered restrictive work place standards found in the hazardous waste operations emergency response section of the OSHA standard (HAZWOPER).

Over the years there were numerous inappropriate decisions made regarding worker safety when especially performing excavation work.

Considering Environmental positively would not petition for delisting areas, the WB suggested an explanation to the DOL OSHA about the APG situation and suggest looking at the history of the locations and make conclusions by subject matter experts after reviewing data, sample results, etc. and identify whether compliance with HAZWOPER was necessary. The WB warned that this RFI may backfire and that OSHA consider that everything needs to comply with HAZWOPER.

That is exactly what occurred. The WB then engaged in discussion with OSHA, whereby OSHA eventually agreed to the WB's suggestions and responded in a policy to APG.

So to excavate in the bad or potentially contaminated areas, the contractor would be required to meet the employee HAZWOPER training requirements, draft programs, develop required written plans and implement accordingly. A critical element was the hired ordinance detecting contractor, a specialty contractor that has equipment to scan for UXO and equipment to gross monitor for chemical warfare materials (CWM). This information was forwarded via the excavation permitting process.

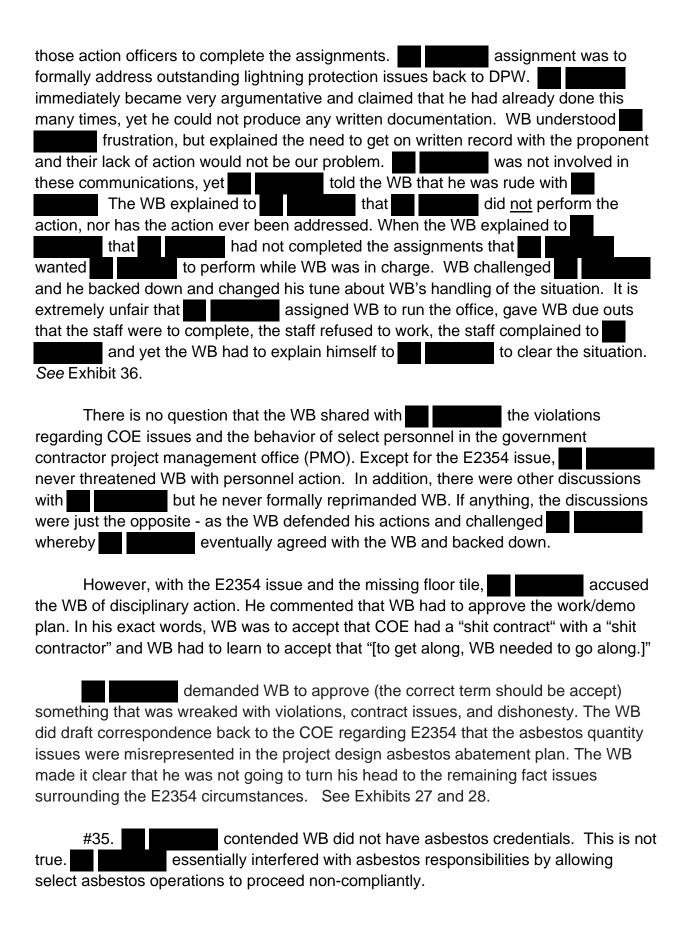
The contractor performing the work had EA Engineering write a required plan but never read the plan or understood the hazards. Nothing was implemented.

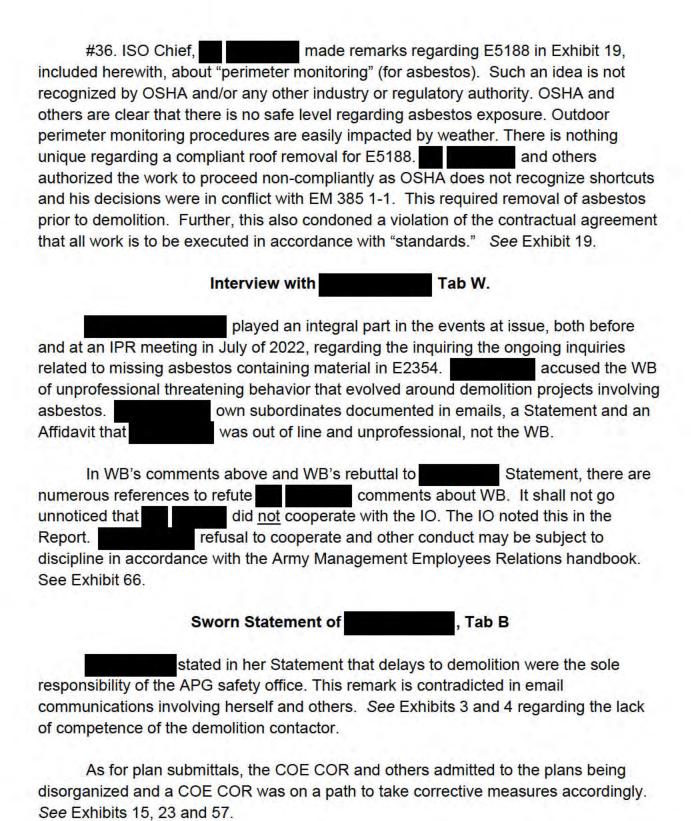
CARA, the UXO contractor, is a government entity competing directly against the private sector qualified UXO contractors. CARA was the onsite UXO contractor. But the situation only got worse. The DPW COR directly hired CARA, wherein all other cases UXO contractor was secured by the contractor, not DPW. The contractor performing the work had no authority over CARA. DPW COR was not in any way ensuring CARA was doing what they were supposed to do.

When the WB arrived onsite, the CARA personnel that were supposed to be monitoring accordingly were sitting in their truck playing with their phones. CARA

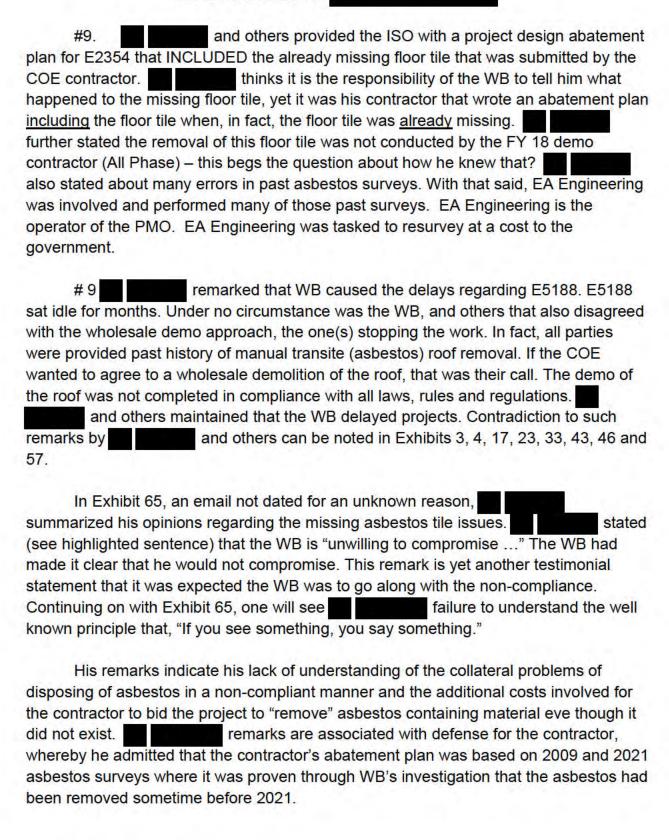
personnel became argumentative when the WB asked if they were following the plan drafted for this site.

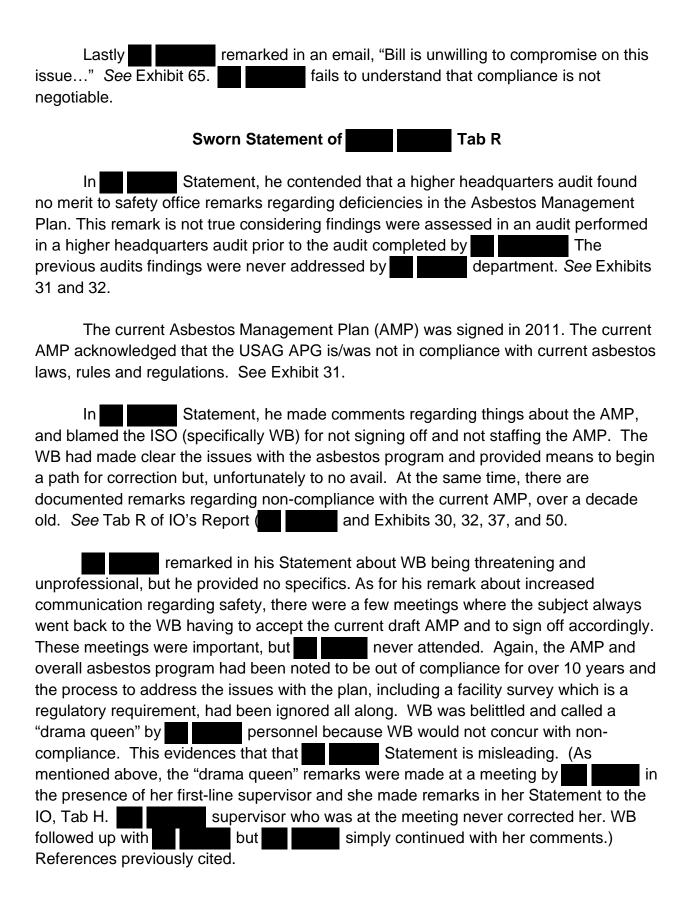
In sum, what unfolded was that DPW COR was not monitoring the work, CARA was not following the plan. But, in all fairness to CARA, WB was informed that the plan was never shared with CARA. The contractor's contract failed and was unable to accurately and technically respond. The WB strongly recommended to DPW not to renew the contractor's contract.
Continuing, asserted blame to the WB regarding COE demolition issues and delays. This document has already explained fact issues regarding such erroneous allegations. The Exhibits included herewith document admission by the COE whereby the causal factors for delays was their contractor. As of this time B4035 the subject of delays remains standing. See Exhibits 3 and 4.
again went into the issues that the WB failed in coming to favorable or "workable solutions." failures to understand the specification requirements of the standards is not the WB's fault. The WB had informed relevant personnel, orally and in writing, that there was no compromise to compliance. in writing, stated the WB was to understand that there were budget issues and that WB was supposed to fix the Solving the problems required resources and money. See Exhibits 9 and 18.
developed his Big 3 in addressing COE projects. As shared, this procedure demonstrated a failure in adhering to multi-employer responsibilities.  never included the WB in any meetings or decisions regarding this policy. See Exhibit 29.
Regardless of his Big 3 policy, the WB received the Guardian Safety award (information shared herein that the COE and their PMO allowed for imminent danger safety situation to exist). Under no circumstances could or should the WB walk past egregious life-threatening and/or imminent danger situations and ignore them.  Note - Regardless of his Big 3 policy, the WB received the Guardian Safety
As for coworkers' complaints as alleged by there was an instance when WB was temporarily promoted for 120 days to manage the ISO.  gave WB a list of due outs for personnel to complete. The WB immediately received resistance from coworkers, and and an analysis of the WB was merely delegating the due outs handed to him by an analysis of the was an instance.

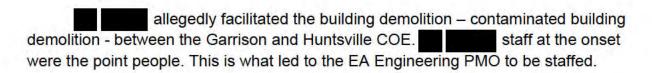




#### Sworn Statement of







To that end, the initial kick off for this large project ran into significant asbestos issues that derailed the kick off for about two months.

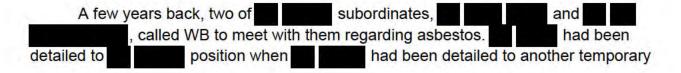
At the onset, along with his subordinate decided that the Garrison ISO was not to be involved. The safety support would be through the COF and the tenant ECBC and the PMO

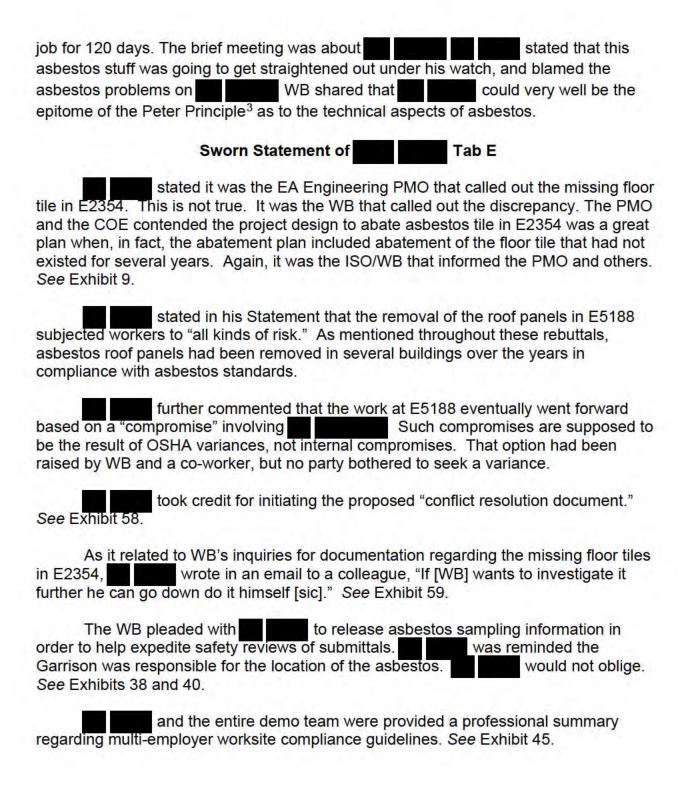
There were a few phases regarding the demolition - first removal of components, such as vent shafts, fume hoods, etc. that were potentially exposed to what is called chemical warfare material (CWM) followed by wholesale straight forward demolition. To perform the CWM demolition, the ECBC blue collar work force (CBARR) was secured as they were supposedly renowned for their ability to perform such work. At the last minute, a decision was made to include the WB in the kick off.

WB attended a telephone conference, listened and then questioned about asbestos. Their response was to send to the WB a contracted asbestos survey, which evidenced asbestos throughout many buildings including the building to be demolished, E3300, but no plans to address abatement. In sum, the asbestos was identified and then it all stopped there.

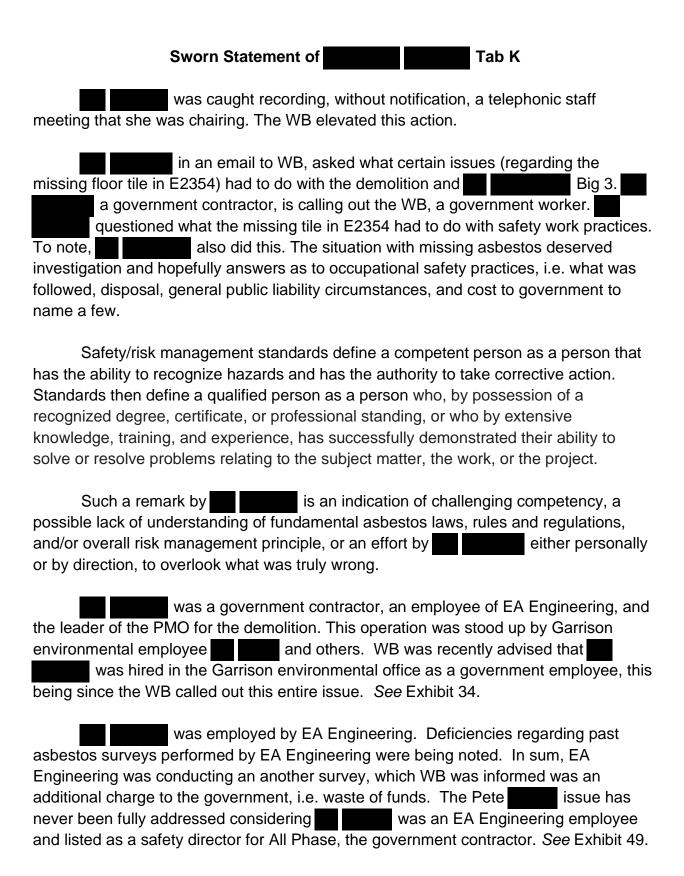
Quite a bit back and forth ensued. ECBC, an APG tenant, ECBC's safety office, and CBARR, an organization under ECBC, argued that they and the buildings were exempt from asbestos regulations. These buildings fall under federal asbestos requirements, but they were going to ignore the requirements.

Eventually realizing the WB would not buy into this nonsense, they realized they had to comply with the rules. The blue collar workers had to be credentialed, which is a weeklong training program. An abatement project design had to be written, which WB drafted for CBARR as WB was credentialed to do so, but the stoppage, which lasted about two months, was blamed on the WB. Again, the COE, tenant safety office, the CBARR organization, the contracted PMO, and DPW Environmental were all watching this unravel.



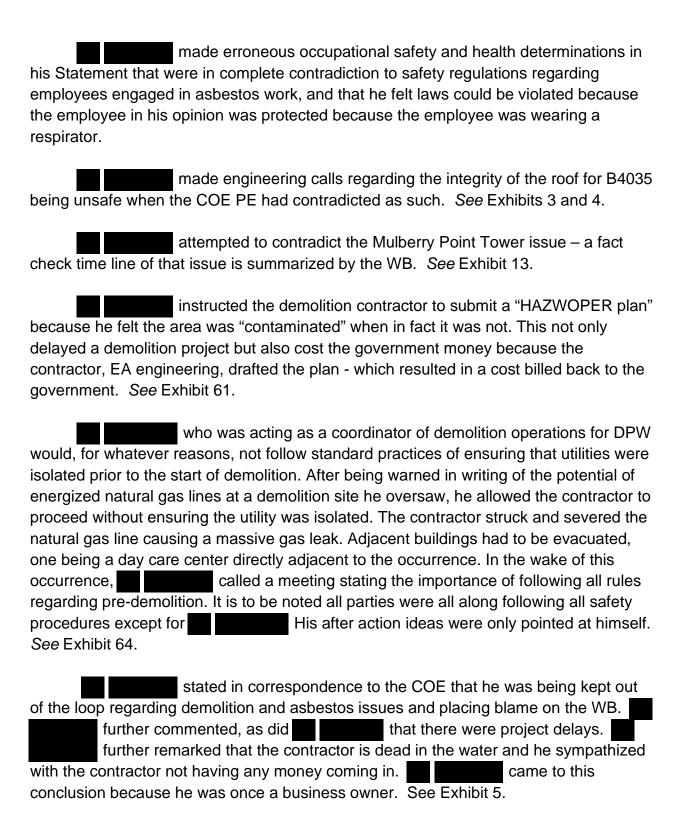


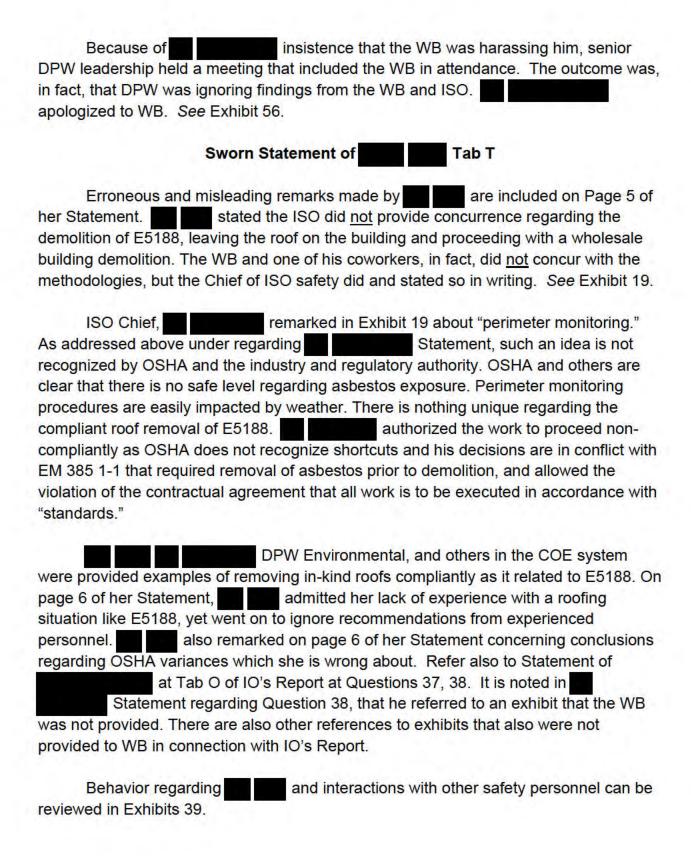
<sup>&</sup>lt;sup>3</sup> The Peter Principle is a management principle whereby one is promoted beyond his/her capabilities.



properly, yet also admitted that the floor tile was missing. Thus, she cannot make such a conclusion about whether the floor file was properly abated from E2354. In sum, these activities and issues press for reasonable investigation regarding the business/contractor/ government relationship. Tab F Sworn Statement of To start, the most reasonable means to address the sworn statement of is to review the attached exhibits. This will shed light upon behavior. See Exhibits 13 and 14. WB's supervisor, became so concerned about behavior that he, not the WB, filed a complaint to the Violence in the Work Place Department. That organization came and interviewed the WB, but never generated a report. defended WB on allegations asserted against WB by All Phase. See Exhibit 15. was filmed by a coworker mocking safety by standing on a 5-6' cubicle wall, a few inches wide, to cover a window in the office - a dangerous situation. Video will be provided if requested. management chain found actions comical. blamed delays with B4035 on ISO, yet as already explained in this report, the COE asserted delays to include B4035 on the contractor's incompetence, ignorance, etc. also asserted blame of the delays regarding B4035 to the COE. At the time of drafting this report, B4035 has not yet been demolished. See Exhibits 3, 4, 5 and 57. Environmental ( had been advised that who was acting as a Garrison POC for demolition when the demolition was under the Huntsville COE, was not sharing safety submittals to the Garrison ISO – contradicting a process that had been previously agreed to. commented in his Statement about unfounded opinions regarding the WB and a fellow employee with no consequence. See Tab F of IO's Report (

stated in her Statement that the floor tile in E2354 was abated





### Sworn Statement of Tab Z Included are Exhibits that contradict remark regarding any hostility to All Phase workers from the WB. See Exhibits 15 and 55. In Statement, he responded to a question about the issue. At the relevant time, was employed as the Safety Director of EA is also listed as the Safety Director for All Phase. Engineering. admitted using EA Engineering, which ran the PMO for the COE, and employed as consultants. The issue has not been addressed, nor explained by the IO. This issue was raised by the WB and it befalls the OSC to determine if it will be investigated. See Exhibit 49. stated in his sworn statement that WB made an allegation regarding illegal grinding asbestos during demolition of E5026. Involved employees were observed using large malls and shattering asbestos roof panels, and power cutting asbestos consequently rendering the asbestos friable. WB also noted there were serious employee fall exposures and that reasonable employee fall arrest/protection was not being followed. See Exhibit 48. The WB was advised that All Phase was supposed to be compromising the head of the roof fasteners, which secured the roof panels in place, with large type snippers. The head of the fastener would be separated. Consequently, the asbestos panel could then be lifted from the building without rendering the panel friable. If All Phase desired to grind the head of the fastener, this also could be done safely by using an offhand

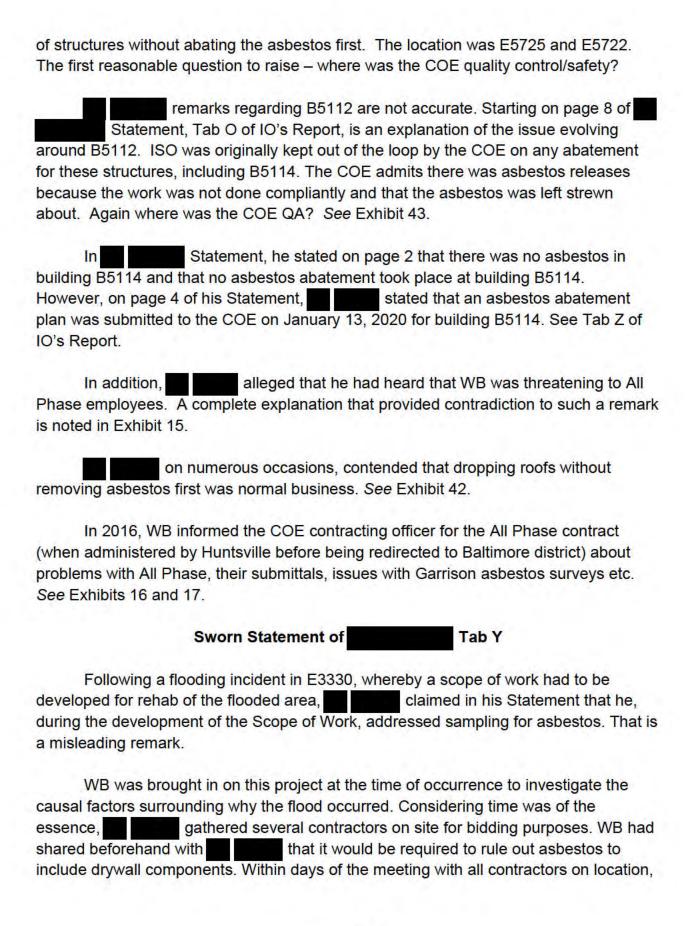
grinder and cutting the head of the fastener between the head and a washer that was located between the head of the fastener and the asbestos panel. Using this method, the worker would be grinding between metal, not on the asbestos roof panel. This occurred at a time ISO/WB was being excluded from demolition.

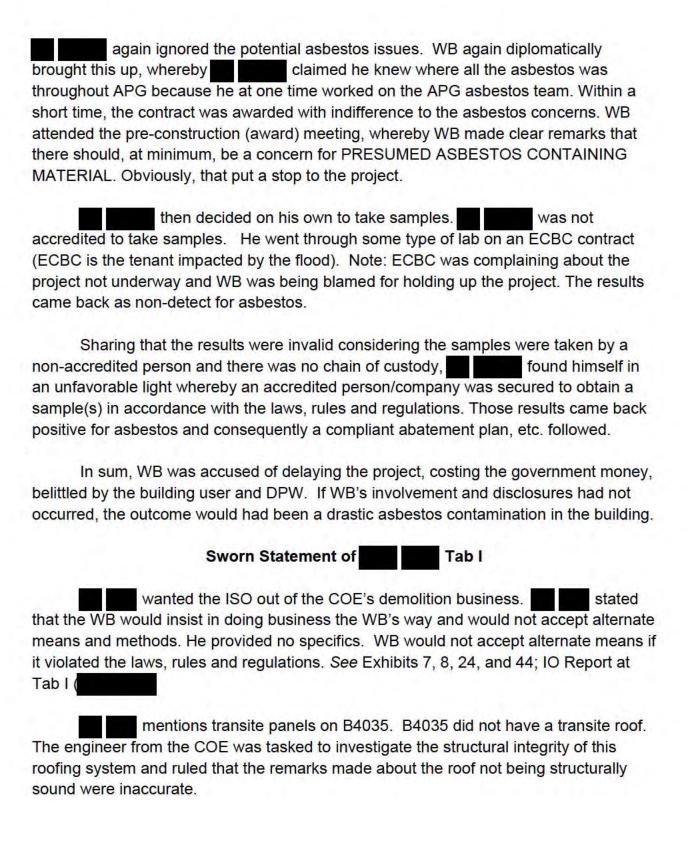
The observations were raised to the COE by the WB. WB remembered the

The observations were raised to the COE by the WB. WB remembered the contractor eventually developed a plan then proceeded with safe work practices. WB recalled delays befalling the contractor to get their safe act together. Again this work was under Huntsville COE oversight and the ISO/WB was out of the loop. See Exhibit 48.

remarks that the demolition was in complete conflict with the

Statement Tab O of IO's Report at page 7. This episode is a video documented situation, which involved another case of performing wholesale demolition





### Sworn Statement of Tab G

contradicted previous EPAS findings and stated in his Statement contradictions to the fundamental reasons for an Asbestos Management Plan. See Exhibits 31 and 32.

Briefly, an Asbestos Management Plan is required to provide documentation of the recommended asbestos response actions, the location of asbestos within the facility, and any action taken to repair or remove the material. The facility must maintain records to be included in the Asbestos Management Plan. This is fundamental business management.

In addition, in October 2011, an asbestos management policy letter signed by the base commander stated, "APG is not in compliance with the first responsibility of an employer/building owner to determine the presence, location, quantity of asbestos..." (See OSHA standards). The letter further elaborates on other gap issues. See Exhibit 31.

### **Sworn Statements of EA Engineering Employees:**



Regarding remarks about the floor tile in E2354, safety submittals, and asbestos abatement plans:

In the Statements of the above-mentioned personnel, between themselves and at times contradicting each other, there are remarks that contend that the abatement plan was satisfactory and that there were no issues with floor tile, yet at the same time the floor tile was missing.

These remarks were made after questioning from the IO. As pointed out in the WB rebuttal with substantiating documentation, the area E2354 was re-inspected by EA Engineering in late December, 2020 for yet another asbestos survey. There is no mention of the missing floor tile in the EA Engineering report in 2020/2021; however, it was substantiated that the tile had been missing; the abatement plan included abating floor tile that was already gone and had been gone for at least several years; and, the abatement plan as such was accepted by the COE.

Exhibit 54 is an email exchange including remarks from employee of EA Engineering, associated with the government contracted PMO. The overall issues with the entire situation between the COE, the contractor, and the Garrison are recognized and so stated by in this email. points out gap issues, asbestos and other regulated material survey gaps, the complete problems with the manner the demolition contract was written, and his professional frustrations. See Exhibit 54.

Exhibits 23 and 57 are emails that include remarks from the COE COR Alan Andrysiak which solidified issues with contractor's (All Phase's) safety submittals. This substantiated the COE was having to reach back to the contractor to get answers and have their plans populated with the necessary information. This proves beyond a reasonable doubt that the WB's findings were accurate and it was not the WB causing delays. The delays were brought about by what the WB was pointing out and the failure of the COE and the contractor taking necessary steps in a timely fashion to correct.

#### Management Employee Relations Handbook

Exhibit 66 is an excerpt of the official document tilted MANAGEMENT EMPLOYEE RELATIONS HANDBOOK FOR ARMY SUPERVISORS AND MANAGERS. On page 48 of this manual, it outlines behavior offenses for which progressive discipline is appropriate. It also moves into offenses warranting punitive discipline. Offenses include, but are not limited to, discourtesy, false statements, and refusal to testify or cooperate in an authorized inquiry or investigation, reprisal. The record includes numerous statements made in sworn testimony that the WB has rebutted with documentation to prove that the numerous statements are not accurate. It is duly noted that the IO did call out the lack of cooperation of and during his investigation, whereby email traffic substantiated information that these individuals provided false information. See Exhibit 66.

Citation <sup>1</sup>	Whistleblower's Comments
Page 2	Why is the sole source award to All Phase outside the scope of the investigation? Was it a compliant
lines 56-59, 105-	contractor award? There is an admission that the contract was sole sourced (See Summary of the
107	Report of Investigation at lines 105-107). Additionally, the issue involving an EA Engineering employee
	listed as the Safety Director for All Phase was not investigated. See Exhibit 41 Sole Source Justification.
Page 5	EPA and OSHA overlap compliance initiatives. They hinge on each other to meet overall compliance
lines 160-164	even though there are overlapping and differing "jurisdictions/missions."
Referred Allegation	Asbestos Management Plan (AMP)
1:	The APG Garrison does not have a current AMP. Further, the AMP dated 2011 that was signed by the
Page 9, starting at	then Commander stated that APG is not in compliance with asbestos regulations. See Exhibit 31.
line 344	
Referred Allegation	Mulberry Point Tower issue—Though substantiated, the IO fails to mention several other attempts that
2, subsection 4:	were made to mislead the WB. See Exhibits 13 and 14.
Page 12, starting at	
line 477	
Referred Allegation	B4035 roof – Though substantiated, the contractor's allegation that the roof was not safe to access
2, subsection 5:	because of structural integrity was contradicted by a COE engineer.
Page 13, lines 518-	
529	

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<sup>&</sup>lt;sup>1</sup> The Citation is to the Summary of the Report of Investigation

### Referred Allegation 2, subsection 7: Pages 14-15, lines 552-575

The IO asserted blame to the ISO regarding delays with the execution of the contract. This conclusion is not based on fact issues.

- 1. In email communications, key COE personnel involved with demolition asserted blame for delays to the contract to their contractor. They stated reasoning that the contractor was incompetent, ignorant and did not have an understanding of the requirements. The email communications also included other remarks that there were improper assessments, that the contractor did not have qualified individuals, that personnel that made recommendations were not qualified nor were there safety professionals involved, etc. Again, this was the COE personnel identifying these issues, yet at the same time such submittals were being forwarded to the ISO for review. See Exhibits 3 and 4
- 2. A short-lived COE COR for the demo identified the deficiencies in the contractor's plans and engaged in oral communications and written correspondence to have the issues rectified. See Exhibit 23
- 3. The contents of an accident prevention program are governed by standard in EM 385-1-1. The naming and appointment of a key safety person by the contractor is outlined in this standard. Experience/education is outlined. The contractor had serious problems meeting this requirement. In fact, the WB is uncertain whether it was ever met with candor and honesty, considering the issues that have been pointed out regarding the EA Engineering employee that signed off on the contractor's submittal when the EA employee was said to be an EA Engineering employee, not an All Phase employee. This is not addressed in the IO's report. See Exhibit 52
- 4. The formatting of the contractor's accident prevention plan was also critical. There was an outline that was required to be followed. As has been pointed out, the contractor's submittals were in such disarray that the contractor was populating plans with information not relevant, going as far as including in the plans for pending demolition buildings that were already demolished. Trying to sift through such submittals became a redlining task, which was nearly impossible. Again, a short-lived COE COR recognized this issue and was working towards correction. See Exhibit 23.

Citation <sup>1</sup>	Whistleblower's Comments
	5. There were key contractor personnel that were supposed to be named and their experience stated in <a href="mailto:any">any</a> Request for Proposal (RFP) submission. As recent as Fall of 2022, All Phase was rejected from an APG multi-year contract by not providing qualified individuals as required in the RFP. All Phase appealed through the Small Business Administration and lost. See Exhibit 35 or visit <a href="https://www.gao.gov/products/b-420376">https://www.gao.gov/products/b-420376</a>
	6. In sum, the customer, which was the APG Garrison Director of Public Works, insisted on 100% safety involvement with the submittals, oversight etc. of the demolition contract. The WB was the action officer assigned by his supervisor. There is significant responsibility associated with such tasks. The WB always worked from the premise that if something went wrong, it was going to go back to the contactor for not following the plan. If the plan was not right, it would not be accepted.
Referred Allegation 2, subsection 8:	The IO stated that the systems did draft a conflict resolution policy in contradiction to AR 385-10.
Page 15, lines 594-596	The WB was required to review the "draft" conflict resolution document. The DPW and COE systems were, in fact, attempting to draft and have fully implemented a policy that, if adopted, would had been in direct conflict with Army Regulations, and allowed for significant control. See Exhibit 58.

Citation <sup>1</sup>	Whistleblower's Comments
Referred Allegation	As it related the demolition for E5188 that left the roof intact or in place, the IO failed to include that the
2, subsection 9:	APG installation, through both past demolition and re-roofing projects, removed similar, in-kind roofing
Page 16,	systems and, in some cases, re-roofed the buildings accordingly. The COE system was provided
lines 604-636	examples and WB explained to them, as did another safety specialist within the ISO, that there were compliant means to get the job done safely. The COE system and/or their contractor ignored these recommendations and did <u>not</u> want to remove the asbestos roof compliantly.
	In sum, information was provided to substantiate that the roof could have been removed compliantly in accordance with asbestos regulations. (If the desire was to remove the roof in a wholesale manner, then that was the decision of select individuals.)

Referred Allegation 2, subsection 11: Pages 17-18, lines 672-690 The IO stated the delays in reviewing the asbestos and related safety submittals were the fault of the ISO and the WB. The IO stated the ISO was removed from the submittal review process by DPW. The IO admitted the required safety submittals were provided to the Government on January 13, 2020 but not to the ISO. The IO stated it was undetermined the length of time the ISO was <u>not</u> included in the review process.

On December 19, 2019, there were emails communications from DPW personnel instructing ISO to be removed from the demolition projects. It was not until March, 2020 when this issue resurfaced and ISO was again advised not to be involved in demolition projects. On that same date, within a few minutes of email exchanges, ISO was reinstated to be involved in the demolition projects. See Exhibit 8. Apparently, command was not advised of Director of Public Works' decision in December 2019 to remove ISO from demolition projects.

WB is not aware of what or whether anything occurred between the ISO Chief and the Director of Public Works between December 2019 and March of 2020. All the WB knows is that little was said between December 2019 and March 2020 regarding removing the ISO from the demolition processes. The ISO Chief became enraged after the actions to remove the ISO were shared with the Commander which occurred on March 13, 2020, some 2 months after the B5114 submittals were allegedly submitted. It is noteworthy to point out that ISO was not receiving <u>any</u> information, purposely, and non-complaint issues were occurring.

The sworn testimony record of the contractor stated that there was no asbestos in B5114 and that no asbestos abatement took place at B5114. Although, later in the same sworn statement in the same report it stated that an asbestos abatement plan was submitted to the COE on January 13, 2020 for building B5114. See Sworn Statement at Tab Z to Summary of the Report of Investigation.

The record also showed that the COE asserted in writing the contractor caused delays to execution of their work because of ignorance, incompetence, etc. and that issues with contractor's submittals were finally being addressed by the COE. See Exhibits 3, 4, and 23. This information is a critical part of the

Citation <sup>1</sup>	Whistleblower's Comments
	overall record to contradict the unsubstantiated allegations that WB had culpability regarding the delays. See Exhibits 3, 4, and 23.
Referred Allegation 2, subsection 13: Pages 18-19, lines 726-747	With regard to E5912, the asbestos survey report dated February 14, 2012, stated, under Sampling Procedures, that the ceiling/roof (and other areas) were not accessible. Thus, if the areas were not accessible, then they were not sampled. If the material was not sampled, then one cannot rule in or rule out asbestos. Additionally, one cannot make a conclusion regarding homogenous asbestos. To call homogenous asbestos, one has to have a sample from somewhere. See Exhibit 22 at p. 1.
	For E5912, there was an appurtenant structure that did <u>not</u> have a transite roof. There is no mention in the asbestos survey report dated February 14, 2012 that the roof for this part of the building was sampled. Furthermore, one cannot claim the roof for this structure as homogenous because it was not inkind to the other parts of the building.
	The WB read other reports completed by EA Engineering (circa 2012) which stated that inspectors failed to sample roofing material because the inspector did not have a ladder.
	Additionally, regarding E5912, on March 17, 2021, the WB commented to the COE that sample results in the EA Engineering asbestos survey report did not coincide with quantities in the abatement plan and the methodology to compliantly address the removal of the asbestos panels were not populated in the abatement plan.
	The PMO point of contact responded with information and the asbestos quantities were adjusted upward. See Exhibit 39.

Citation <sup>1</sup>	Whistleblower's Comments
Referred Allegation	Reference was made to a "Certified Industrial Hygienist." WB cannot locate a reference in Sworn
2, subsection 13:	Statement at Tab T to a Certified Industrial Hygienist, yet the IO stated as such. The E5912 issue is
Page 19,	thoroughly explained in the WB report.
lines 729-731	
	For E5912, the correct quantities for asbestos were only determined after the WB pointed out the discrepancies in quantities as noted in submittals. The final work may have been conducted in accordance with federal laws, rules and regulations, but the submittals provided to the WB in advance of the demolition were not compliant with laws, rules and regulations. The WB's identification of this pushed the COE to address these  The disagreement between the WB and the COE is proven because the quantities of asbestos had to be adjusted upward. There was clear evidence that if the WB did not identify the discrepancies, then the asbestos would have been demolished without regard to the requirements of laws, rules and regulations. See Exhibit 39.
Referred Allegation 2, subsection 14:	As it related to the floor tile in E2354, the IO stated, "Based upon witness observations, the IO found that the floor tile was probably properly abated sometime between 2009 and 2019." (underline added)
Page 19,	the hoof the was probably properly abated sometime between 2003 and 2013. (underline added)
lines 753-755	There is absolutely <u>no</u> scintilla of evidence regarding the abatement, inventory records, disposal manifest, etc. of the floor tile to confirm that the floor tile was or was not "properly abated." Without any proof, it is an impossibility for the IO to make such a conclusion that the floor tile was "probably properly abated."