



U.S. OFFICE OF SPECIAL COUNSEL
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August 9, 2010

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

Re: OSC File Nos. DI-08-3157 and DI-08-2777

Dear Mr. President:

Pursuant to 5 U.S.C. § 1213(e)(3), the Office of Special Counsel is forwarding to you agency reports concerning disclosures from Vincent Sugent and Paul Mueller, whistleblowers at the Department of Transportation (DOT), Federal Aviation Administration (FAA), Detroit Metropolitan Airport (DTW), Detroit, Michigan. Messrs. Sugent and Mueller, who consented to the release of their names, alleged that DTW management officials directed controllers to manage air traffic in a manner that violated local and national FAA Orders and resulted in operational errors and deviations, some of which went unreported. They also disclosed that wind source instruments at DTW are unreliable, and that these practices have compromised safety at DTW.

The whistleblowers' allegations were referred to the Honorable Mary E. Peters, then-Secretary of Transportation, to conduct an investigation into these disclosures pursuant to 5 U.S.C. § 1213(c) and (d). Secretary Peters tasked the investigation of the matter to the Honorable Calvin Scovell, III, DOT Inspector General. OSC received a report dated January 14, 2010, from the Honorable Ray LaHood, Secretary of Transportation, and two supplemental reports dated May 21, 2010, and June 25, 2010, from DOT's Office of General Counsel.

The agency investigation substantiated the majority of the whistleblowers' allegations. As reflected in the initial report, the OIG found that on July 21, 2008, a front line manager improperly directed controllers to authorize the departure of three Boeing 747 jets in a manner contrary to DTW local policy. During the investigation, OIG found six additional violations of local policy. None of the incidents violated national standards regarding minimum separation between aircraft.

The agency investigation did not substantiate allegations that DTW officials failed to report violations of wake turbulence criteria contained in FAA Order 7110.65.¹ According to the report and the first supplemental report, the paragraphs of FAA Order 7110.65 that the whistleblowers alleged were violated, paragraphs 3-9-8 and 3-10-4, do not apply because they concern only intersecting runways or runways with intersecting flight paths. Neither of these conditions, according to the report, applies to the runways at issue in the July 21, 2008, incident.

¹ Wake turbulence is turbulence that forms behind an aircraft as it passes through the air. This may create a hazard for an aircraft flying across or into the wake of another aircraft.

Finally, the investigation did substantiate inconsistent wind speed readings between the two wind detection devices available to controllers in the Air Traffic Control Tower. DTW officials have repeatedly attempted to address this problem. The initial report indicated that they were still awaiting higher-level approval to fund repair requests.

FAA Administrator J. Randolph Babbitt accepted the report's findings of three of the four allegations. Regarding the wind instruments, Administrator Babbitt accepted the findings with qualification. He noted that in March 2009, a sensor was replaced on one of the devices, and both now function as designed. As noted below, in response to continuing concerns raised by the whistleblowers after the initial report was received, DOT further evaluated the wind instruments and took additional action based on that evaluation.

In response to the investigative findings, DTW management suspended the responsible front line manager, counseled the Quality Assurance Manager for failing to identify the six additional violations of the local order, and re-briefed controllers on DTW Local Notice N7110.156. FAA further provided assurances that the implementation of a Safety Management System, which includes greater emphasis on the safety culture, will help ensure that future incidents are reported and investigated, and that corrective actions are taken.

The first supplemental report addressed additional questions regarding the local order violations that occurred on July 21, 2010, and the reporting requirements surrounding local and national orders. According to the report, a violation of a local order is not necessarily an operational deviation, unless the same event is also a violation of a national order. In this case, the facility's local order requirement goes beyond the national standards found in FAA Order 7110.65, yet a violation of the local order does not result in a violation of the national order. The report states that OIG found no evidence that DTW officials incorrectly charged controllers with operational deviations for violating local orders.

Additionally, the first supplemental report stated that FAA is still working on more specific instructions for dealing with go-arounds and wake turbulence.² In the meantime, controllers at DTW are expected to be aware of the guidance provided in FAA Order 7110.65, including the requirement to use their best judgment to apply safe separation during, for example, a go-around and to minimize the adverse affects of wake turbulence in such an instance.

The second supplemental report addressed the whistleblowers' continuing concern that the two wind instruments at DTW are inconsistent and unsafe. FAA responded that the Automated Surface Observing System (ASOS) and the Terminal Doppler Weather Radar (TDWR), the two instruments that provide wind readings, "are operating properly and, thus, any difference in the measurements they provide does not constitute a safety threat." The report states that FAA's position has not changed since Administrator Babbitt's memorandum, issued in response to the January 14, 2010, OIG report. In that memorandum, dated December 14, 2009, the

² A go-around, or missed approach, is an aborted landing of an aircraft on final approach to the runway.

Administrator suggests that “[a]t DTW, controllers may estimate the wind using the airport windsock if the TDWR WME [Wind Measuring Equipment] is not considered reliable.”

Messrs. Sugent and Mueller provided comments on the reports. Mr. Sugent remains concerned about contradictions both within the reports, and between the instant reports and the agency’s previous reports substantiating the use of a runway operation known as the Southwest Flow.³ He challenged the agency’s interpretation of FAA Orders as they relate to intersecting runways and wake turbulence criteria, and the definition of an operational deviation. Mr. Sugent stated that it is unsafe and reckless to expect controllers, while conducting an intersecting flight path operation, to issue avoidance instructions after a go-around is executed instead of protecting prior to the situation unfolding. He asserted that runway 27L arrival spacing should be given to ensure safety and avoid risk associated with wake turbulence. Mr. Mueller pointed out the inconsistency in the agency’s assertions that violations of local orders cannot result in operational deviations charged to a controller, by including details of two incidents occurring at the facility which were identified as both. He asserted that the report does not reflect actual practices occurring at DTW.

Significantly, both whistleblowers reported in their comments that as recently as July 2010, the wind instruments are reporting inconsistent readings. Mr. Sugent noted that the inaccuracies in the instruments persist, and the instruments have not been properly certified. Mr. Sugent responded to Administrator Babbitt’s suggestion that controllers may use the windsock to estimate the wind, by noting that the windsocks are not visible at night and that in most cases, the windsocks are located too far from the tower to be seen by controllers. Mr. Mueller noted that during periods of severe thunderstorms the displays were inconsistent, and that issuing correct wind readings is critical to safe flight.

OSC has reviewed the original disclosures, the agency’s reports, and the whistleblowers’ comments. Based on that review, OSC has determined that the agency’s reports contain all of the information required by statute, and that the findings of the agency head appear reasonable. Notwithstanding this finding, we note with concern that the whistleblowers have asserted that the wind instruments are not operating in a manner that enables them to confidently issue wind advisories to aircraft landing and departing at DTW. Although the Administrator has indicated that the instruments are working as designed, and that controllers may estimate the wind using airport windsocks located a fair distance from the Air Traffic Control Tower, perhaps another evaluation of these essential controller tools is warranted. We trust that a delay in the approval of funding requests will not prevent the agency from ensuring the safety of the flying public by repairing, replacing, or relocating wind instruments that are deemed unreliable by those making daily use of them.

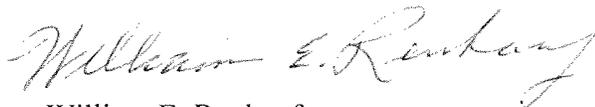
As required by law, 5 U.S.C. § 1213(e)(3), we have sent copies of the reports and the whistleblowers’ comments to the Chairmen and Ranking Members of the House Committee on Transportation and Infrastructure and the Senate Committee on Commerce, Science and

³ OSC File Nos. D1-08-0591 and D1-08-1696, Index No. 10-20, available at <http://www.osc.gov/FY%202010%20A.html>.

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Transportation. We have also filed copies of the reports and the whistleblowers' comments in our public file, available online at www.osc.gov, and closed the matter.

Respectfully,

A handwritten signature in black ink, appearing to read "William E. Reukauf". The signature is written in a cursive style with a large, sweeping initial "W".

William E. Reukauf
Associate Special Counsel

Enclosures