



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-254-3600

April 27, 2011

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

Re: OSC File No. DI-09-2095

Dear Mr. President:

Pursuant to 5 U.S.C. § 1213(e)(3), enclosed please find agency reports based on disclosures made by Mr. Vincent Sugent, an Air Traffic Controller with the Department of Transportation (DOT), Federal Aviation Administration (FAA), Detroit Metropolitan Airport (DTW), Detroit, Michigan. Mr. Sugent, who consented to the release of his name, alleged that DTW management implemented the "Northeast Flow" air traffic procedure without completing the required environmental, noise, and safety risk assessments, or properly notifying FAA and DTW officials.¹ He contended that DTW management operated this configuration in a manner that created a safety hazard.

On August 25, 2009, the Office of Special Counsel (OSC) referred Mr. Sugent's allegations to the Honorable Ray LaHood, Secretary of Transportation, to conduct an investigation pursuant to 5 U.S.C. § 1213(c) and (d). Secretary LaHood delegated responsibility for investigating the matter to DOT's Office of Inspector General (OIG). OSC received the agency's report on September 9, 2010, and a supplemental report on January 20, 2011. According to the reports, the investigation did not substantiate Mr. Sugent's allegations. As discussed below, however, some of the agency's findings do not appear to be supported by the evidence and, therefore, do not appear reasonable.

Mr. Sugent disclosed that DTW air traffic controllers (controllers) were briefed on the Northeast Flow in March 2007 and March 2008. He stated that he and other controllers raised concerns regarding the operation of runway 9R for departures, including increased noise, aircraft having to cross an active runway and taxi a further distance, and the proximity of the approach-end of runway 9R to Taxiway Quebec and a service road and potential hazards to aircraft and vehicles caused by jet blast from aircraft departing on runway 9R.² Controllers questioned whether environmental, noise, and safety risk assessments or a staff study had been conducted prior to implementing the Northeast Flow procedure. Mr. Sugent contended that DTW management failed to adequately address these issues or produce evidence that the necessary

¹ The Northeast Flow at DTW refers to an air traffic procedure in which landings are conducted on runways 4R and 4L and departures are conducted on runways 3L and 9R. Typically, Runway 9R (operating as runway 27L) is used as an arrival runway, and until the implementation of the Northeast Flow, was used for departures only in rare instances.

² Taxiway Q, referred to as Taxiway Quebec, and runway 9R are approximately 1,700 feet apart. A service road runs in between the approach-end of runway 9R and Taxiway Quebec.

assessments had been completed, and began running the procedure using runway 9R for departures in April 2008.³

Mr. Sugent explained that there are no blast fences to protect Taxiway Quebec and the service road from jet blast from aircraft departing on runway 9R; nor is there any signage posted to warn vehicles of this potential danger. He also asserted that the Wayne County Airport Authority (WCAA) and the Airport District Office (ADO) were not notified that DTW had established the Northeast Flow procedure designating runway 9R for departures. Rather, he claimed that DTW management advised WCAA that runway 9R would be used for departures only in rare instances and that this operation would not be incorporated into a formalized air traffic procedure. Thus, the need for blast fences and signage was not considered by WCAA or ADO.

As noted, the investigation did not substantiate Mr. Sugent's allegations. It is critical to note, however, that the report confirms that after OSC referred this matter to the Secretary of Transportation for investigation, DTW management cancelled the Northeast Flow procedure on November 30, 2009, and removed the procedure from DTW's Standard Operating Procedures (SOPs). The report states that "this operation is no longer in use and is no longer an authorized procedure; therefore, it does not pose a substantial and specific threat to public safety."

The investigation did not substantiate the allegation that DTW officials operated the Northeast Flow in an unsafe manner. OIG acknowledged that FAA Advisory Circular (AC) 150/5300-13, Chapter 8, indicates that jet blast velocities of 20 miles-per-hour or more can occur over 2,000 feet behind certain aircraft operating at takeoff thrust, and that blast fences may be necessary near runway ends to shield pedestrian and vehicular traffic. Nevertheless, OIG determined that the provisions in AC 150/5300-13 constitute a recommendation rather than a requirement. Thus, WCAA was not obligated to erect blast fences west of runway 9R. The report further states that none of the WCAA officials interviewed considered the lack of blast fences a safety issue. They did not recall any safety concerns at the time the Northeast Flow was used or receive any complaints regarding jet blast from aircraft departing runway 9R. Regarding aircraft crossing active runways, OIG stated that FAA's Air Traffic Safety Oversight Service (AOV) reviewed the Northeast Flow procedures and determined they "did not constitute a specific and substantial threat to public health or safety." AOV advised that departing aircraft cross active runways daily at other airports.

Consistent with Mr. Sugent's allegation, however, the report does not reflect that WCAA officials ever considered or assessed the need for blast fences prior to the implementation of the Northeast Flow. Rather, the report states that after OIG raised the whistleblower's concerns, WCAA Director of Airfield Operations Diane Walker asked her staff to determine whether blast

³ In February 2009, Mr. Sugent submitted a Freedom of Information Act (FOIA) request for the documents he was unable to obtain from DTW management. He received a response to his request in March 2009, indicating that there were no records found for waivers, assessments or studies relating to the Northeast Flow. The response stated that a "waiver is not required to depart aircraft from runway 9R with taxiway Quebec and the service road less than 2000 feet from the approach end." It further indicated that no documents associated with staff studies or safety risk management for the Northeast Flow were retained.

fences were needed. Ms. Walker advised OIG in June 2010 that blast fences were not feasible, because they would interfere with the Runway Object Free Area and Obstacle Free Zone that extend beyond the end of runway 9R. She noted that the issue could be revisited if FAA granted a waiver for these restricted areas.

OIG acknowledged that Mr. Sugent provided a copy of an Aviation Safety Reporting System (ASRS) safety complaint filed by another controller, which stated that on April 28, 2008, the controller observed a minimum of 12 aircraft on Taxiway Quebec pass behind departing aircraft on runway 9R. Mr. Sugent alleged that FAA never responded to the complaint. OIG stated, however, that the complaint “cited only the controller’s own concerns rather than complaints or reports from the pilots of aircraft using the taxiway.” OIG noted that Mr. Sugent was unable to provide any complaints from pilots using the taxiway or airport personnel using the access road. Although Mr. Sugent urged OIG to interview the controller who filed the safety complaint, the initial report does not reflect that OIG looked into the complaint, nor does it explain why a safety complaint from a controller does not warrant the same level of review or response as complaints filed by pilots or ground crew. Further, the initial report does not address Mr. Sugent’s allegation that other controllers raised safety concerns during the briefings on the Northeast Flow, nor does it indicate that any other controllers were interviewed.

The supplemental report reflects that, after OSC raised these concerns, OIG interviewed the controller who filed the ASRS complaint. He explained that he observed dust and grass being blown onto the taxiway by the jet blast of departing aircraft, and he confirmed that he never received a response to his complaint. OIG and FAA conducted a search of the ASRS on-line database and found no record of the complaint. OIG therefore determined that it was not clear whether the complaint was ever received. The supplemental report states that WCAA and FAA’s Airports Division personnel advised OIG that the locations of Taxiway Quebec and the service road comply with FAA safety regulations. OIG further found that DTW ran the Northeast Flow without incident until the procedure was cancelled. The supplemental report does not indicate whether OIG interviewed any other controllers during its supplemental investigation. Nevertheless, the supplemental report states that OIG relayed the controllers’ concerns to WCAA officials, who advised that WCAA will ask ADO to examine whether blast fences are necessary, in the event the Northeast Flow is resumed.

According to the reports, OIG did not substantiate Mr. Sugent’s allegation that DTW management failed to conduct a safety risk assessment prior to implementing the Northeast Flow. The initial report states that “[a]lthough DTW officials told investigators they considered safety issues when developing and implementing the Northeast Flow in 2007, no corresponding safety risk assessment-related documentation exists, and we therefore could not verify this claim.” The report further notes that DTW and Central Service Area officials advised OIG that DTW was not required to document a formal safety assessment within the Air Traffic Organization (ATO) Safety Management System at the time the Northeast Flow was created. Detroit Terminal Radar Approach Control (TRACON) Support Manager Patricia Bynum advised that the requirement to document safety assessments did not exist within the Central Service Area until September 2008, when FAA Order JC 7232.15, *Safety Risk Management*

Implementation, was issued by the Central Service Area Director.⁴ However, Ms. Bynum told investigators that she and other DTW officials “would have assessed the safety risks of the Northeast Flow to ensure it was a safe operation. . .” As the initial report does not include any evidence that anyone in fact recalled conducting a safety assessment on the Northeast Flow, OSC requested clarification of OIG’s finding and confirmation that DTW was not required to document a safety assessment pursuant to any FAA order or requirement, such as FAA Order 8040.4, cited in OSC’s referral.

In the supplemental report, OIG confirmed that it was unable to substantiate the allegation that “safety risks were not assessed when the Northeast Flow was developed.” OIG stated that during a supplemental interview with Ms. Bynum on December 15, 2010, she then “recalled that, during several meetings, the DTW air traffic team that developed the Northeast Flow conducted a ‘safety analysis’ of the procedure to ensure it complied with applicable safety regulations, notably FAA Orders 7110.65 and 7210.3.” OIG also interviewed DTW Air Traffic Control Tower Support Specialist Rodney Harris, who was a member of the team that developed the Northeast Flow. Mr. Harris acknowledged that the team did not conduct the “Safety Risk Management” meeting that is now required, but they held team meetings to review various aspects of the procedure to ensure it complied with FAA Order 7110.65. The supplemental report notes that the team did not consider the need for blast fences, because WCAA was responsible for that determination. Ms. Bynum and Mr. Harris advised OIG that they did not formally document the team’s analysis.

OIG further explained in the supplemental report that FAA Order 8040.4, *Safety Risk Management*, “establishes the safety risk management policy and prescribes procedures for implementing safety risk management policies within the agency.” OIG stated, however, that Order 8040.4 does not provide specific methods and documentation requirements for a safety risk analysis; rather, it provides that each program office shall be responsible for interpreting, establishing and executing the policy stated therein.

OSC notes that the policy set forth in Order 8040.4 states, in pertinent part:

The FAA shall use a formal, disciplined, and documented decision-making process to address safety risks in relation to high-consequence decisions. . . The critical information resulting from a safety risk management process can thereby be effectively communicated in an objective and unbiased manner to decision makers, and from decision makers to the public. All decision-making authorities within the FAA shall maintain safety risk management expertise appropriate to their operations, and shall perform and document the safety risk management process prior to issuing the high-consequence decision. The choice of methodologies to support risk

⁴ FAA Order JC 7232.15 supplements the ATO Safety Management System Implementation Plan by providing guidance for the Central Terminal Service Area. This Order establishes district and facility responsibilities and procedures to be used to achieve Safety Risk Management compliance, in accordance with the policy and requirements of the Safety Management System (SMS) established by ATO Order JO 1000.37. The SMS requires that a Safety Risk Management analysis be conducted, documented and retained for all changes impacting the National Airspace System.

management efforts remains the responsibility of each program office. The decision-making authority shall determine the documentation format.

OSC also observes that Paragraph 6 of Order 8040.4, *Principles for Safety Risk Assessment and Risk Characterization*, outlines the specific principles to be applied when preparing safety risk assessments. Paragraph 6(b)(6) requires that all safety risk assessments include or summarize information pertaining to certain outlined principles, such as all relevant data, basic assumptions, policy or value judgments, and the bases for choices. Paragraph 6(b)(6) further states, "This record should be maintained by the organization performing the assessment in accordance with Order 1350.15B, *Records Organization, Transfer, and Destruction Standards*." Thus, while Order 8040.4 provides that the program offices will interpret, establish and execute the safety risk management policy using their choice of methodologies and documentation format, Order 8040.4 and the policy established therein, which were in effect at the time the Northeast Flow was developed, mandate that a formalized safety risk assessment be conducted and documented. OSC notes that the evidence and findings presented in the agency reports establish that DTW management did not fulfill these requirements with respect to the Northeast Flow procedure.

Additionally, the investigation did not substantiate the allegation that DTW officials failed to conduct a staff study or the required environmental assessment and noise analysis prior to implementing the Northeast Flow. According to the report, District Manager Joseph Figliuolo, TRACON Operations Manager Kevin Grammes, and Ms. Bynum advised OIG that they did not believe DTW officials were required to conduct a staff study. Further, Dorothy Davis, Operations Evaluation Team Manager, FAA Central Service Area Quality Control Group, advised OIG that the applicable order, FAA Order 1800.2G, *Evaluations, Appraisals and Staff Studies*, was cancelled by FAA on February 26, 2007, and has not been replaced. OIG found that, even if FAA Order 1800.2G required DTW officials to perform staff studies prior to implementing the Northeast Flow, the order lapsed prior to the effective date of the flow on May 2, 2007.

OIG also found that, in compliance with FAA Order 1050.1E, WCAA prepared and FAA approved an Environmental Assessment (EA) outlining the environmental impacts, including noise, of the 2007 runway paving project that prompted the operation of the Northeast Flow. ADO issued a Finding of No Significant Impact. For the 2008 project, WCAA prepared and FAA approved a request for a Categorical Exclusion. ADO approved the Categorical Exclusion, based on a finding of no significant impact to the human environment and no extraordinary circumstances. As noted in the discussion below, the evidence presented in the reports does not reflect that DTW management's plan to implement a new air traffic procedure, as opposed to the temporary, limited use of runway 9R for departures, was accurately conveyed in the EA and Categorical Exclusion.

OIG concluded that the allegation that DTW management implemented the Northeast Flow without properly notifying WCAA or ADO was unfounded. OIG found that "local and FAA officials were aware that departures would occur to the east from runway [9R]" and that these officials "worked closely with their DTW counterparts during the development of the flow and

helped to convey its impacts to the general public." In support of this finding, OIG provided the March 2007 EA prepared by WCAA and signed by ADO for the runway paving project that prompted the implementation of the Northeast Flow. The EA indicates that runway 9R-27L would be used for arrivals and departures during peak periods. Critically, however, OSC notes that the EA states on page 1 that "[t]his temporary operation would not result in the creation of any new air traffic procedures. . ." Nevertheless, the report confirms that DTW management did implement a new air traffic procedure – the Northeast Flow – with Notice DTW N7110.142, issued in May 2007.

To support its finding, OIG also provided the February 2008 Categorical Exclusion prepared by WCAA and signed by ADO for the second phase of the runway construction project. This document states that "[d]ue to the complexity of runway intersections the FAA Air Traffic Control Tower does not plan to use . . . [runway] 9R-27L as a replacement runway during construction." OIG found, however, that the Northeast Flow was operated during this construction project. OIG stated that, despite this "ambiguous information" in the Categorical Exclusion, Acting Assistant ADO Manager Ernest Gubry, who signed the document, stated that departures from runway 9R were neither prohibited nor unanticipated, and that he was aware such departures might be necessary. OSC observes that this information does not establish that WCAA or ADO were notified that DTW management had developed or implemented a new air traffic procedure designating runway 9R for departures.

Similarly, the information provided by OIG in the supplemental report confirms that WCAA and ADO officials were aware in 2007 that aircraft would depart from runway 9R on a temporary basis during the construction project; however, the supplemental information does not reflect that WCAA or ADO were notified that DTW management was creating a new air traffic procedure. OIG explained that the statement in the 2007 EA that "this temporary operation would not result in the creation of any new air traffic procedures," referred to Terminal Instrument Procedures (TERPS) developed pursuant to FAA Orders 8260.3B and 8260.46D. OIG explained that the use of runway 9R for departures during the construction project did not necessitate the development of new procedures, as existing procedures had been developed in accordance with TERPS requirements. This explanation, however, was not conveyed in the EA or other documents provided with the reports.

OIG also stated that DTW, WCAA and ADO officials discussed new air traffic patterns that might be necessary and, consequently, WCAA included the possibility that aircraft would depart from runway 9R in the 2007 EA and Public Information Session. The supplemental report further indicates that DTW officials provided WCAA officials with a general projection of feasible departures necessitated by the construction project, and "although WCAA and Airport Division officials did not review or approve the Northeast Flow, doing so was not within their authority." Based on OSC's review, this information does not establish that WCAA or ADO were advised of DTW's implementation of the Northeast Flow air traffic procedure and does not appear to be consistent with the finding that WCAA and ADO officials "worked closely with their DTW counterparts during the development of the flow and helped to convey its impacts to the general public."

Pursuant to 5 U.S.C. § 1213(e)(1), Mr. Sugent provided comments on the initial and supplemental reports, copies of which are enclosed. In general, he was highly critical of the OIG's investigation and findings. In particular, he commented that OIG's finding that WCAA officials worked closely with DTW officials in developing the Northeast Flow is not supported by the evidence presented, noting that the EA inaccurately states that the temporary operation would not result in the creation of any new air traffic procedures and no new flight tracks would be utilized. He contends the Northeast Flow was a new air traffic procedure that created new flight tracks.

In his supplemental comments, Mr. Sugent questioned OIG's explanation of the terminology "new air traffic procedures" used in the 2007 EA, and the statement that the use of runway 9R did not necessitate the development of new departure procedures because the departure procedure from runway 9R was developed in accordance with TERPS requirements. He noted that FAA Orders 7400.2G, 8260.3 and 8260.46 cover arduous processes for establishing instrument and departure procedures, which he doubts were carried out. He attached a March 2009 e-mail chain concerning "proposed airspace changes," which included the Northeast Flow. He suggested that the proposal in the e-mail concerning shaded boxes drawn on a radar scope to reflect airspace re-delegation does not appear to comport with the requirements of the noted FAA orders.

Mr. Sugent was also critical of OIG's findings concerning the safety of the Northeast Flow. He noted that OIG dismissed the ASRS safety complaint concerning potential jet blast because it was filed by a controller rather than a pilot. He stated that he advised OIG that the controller who filed the complaint was highly experienced at DTW and knowledgeable about this issue; however, OIG did not interview him or any other controller or supervisor in its primary investigation. He asserted that interviewing other controllers and supervisors was critical in light of his allegations, because these interviews would have revealed their concerns regarding mandatory runway crossings necessitated by the Northeast Flow and the unprofessional and inadequate manner in which DTW management conducted the briefings on the procedures. In his supplemental comments, Mr. Sugent attached FAA's response to his FOIA request, dated March 25, 2009, and noted that not one controller listed in the response as being involved in the development of the Northeast Flow was interviewed by OIG.

Mr. Sugent also commented on OIG's finding that, while DTW officials stated that they considered safety issues, no corresponding safety risk assessment-related documentation exists, so OIG could not verify this claim. He asserted that considering safety issues and conducting safety risk assessments are two entirely different things. He stated that he was alarmed by the lack of concern from the agency and OIG over the handling of documents concerning the Northeast Flow.

Finally, Mr. Sugent took issue with OIG's statement in the supplemental report that "[a]lthough departures from [r]unway 9R occurred infrequently prior to the implementation of the Northeast Flow, the procedures for doing so are longstanding and did not change during the Northeast Flow operation." He asserted that no procedures ever existed for departing runway 9R. Departures were at the discretion of the departure controller and varied from controller to

controller. He commented on the agency's difficulty in differentiating between a flow, a procedure, and a simple infrequent departure from a runway. Despite his concerns, Mr. Sugent acknowledged that "the primary goal was accomplished by the ceasing of this unsafe operation, ultimately protecting the safety of the flying public."

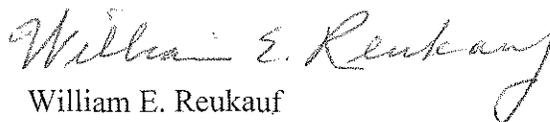
OSC has reviewed the original disclosure, the agency's reports, and Mr. Sugent's comments. We view the agency's findings regarding the safe operation of the Northeast Flow to be problematic. First, in light of the evidence presented and the requirements of FAA Order 8040.4 to conduct and document a formal safety assessment, we find it unreasonable that the agency did not substantiate Mr. Sugent's allegation that DTW failed to conduct a safety assessment. We also consider the agency's finding that DTW officials properly notified WCAA and ADO officials of the implementation of the Northeast Flow procedure to be unreasonable. The evidence presented in the reports appears to support Mr. Sugent's allegation that, while WCAA and ADO officials were made aware of the temporary, limited use of runway 9R for departures, DTW management did not notify these officials that they had established a new air traffic procedure designating runway 9R for departures.

We also note our concern with the finding that there was no obligation to erect blast fences because the provisions of AC 150/5300-13 constitute a recommendation rather than a requirement. The reports reflect that this recommendation was not even considered prior to implementing the Northeast Flow. Finally, OSC notes with concern OIG's failure to interview other controllers who raised safety concerns about the Northeast Flow. The supplemental report reflects that, even after OSC raised this concern, OIG interviewed only the controller who filed the ASRS complaint in its supplemental investigation.

Despite these concerns, we recognize that FAA has cancelled the Northeast Flow procedure at DTW and removed it from DTW's SOPs. Thus, it appears that appropriate corrective action has been taken. With respect to the other allegations, OSC has determined that the agency reports contain all of the information required by statute, and that the findings of the agency head appear to be reasonable.

As required by law, 5 U.S.C. § 1213(e)(3), OSC has sent copies of the agency's reports and Mr. Sugent's comments to the Chairmen and Ranking Members of the Senate Committee on Commerce, Science, and Transportation and the House Committee on Transportation and Infrastructure. OSC has also filed copies of the agency's reports and Mr. Sugent's comments in our public file, which is available on-line at www.osc.gov, and closed the matter.

Respectfully,



William E. Reukauf
Associate Special Counsel

Enclosures