U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

The Special Counsel

April 17, 2013

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

Re: OSC File No. DI-11-1675 and DI-11-1677

Dear Mr. President:

On May 8, 2012, I sent to you seven reports prepared by the Department of Transportation (DOT) based on whistleblower disclosures regarding various safety lapses at major airports and Federal Aviation Administration (FAA) facilities. I consolidated those reports because of their close proximity in time and to highlight FAA's pattern of insufficient responses to safety concerns. As noted in my May 8 letter, I requested that DOT provide updates on the corrective actions outlined in several of the reports.[1] I have received two updates from DOT regarding its progress in correcting unsafe procedures when operating simultaneous arrivals and departures on parallel runways at Detroit Metropolitan Airport (DTW), Detroit, Michigan. These problems were disclosed to me by Vincent Sugent and Brian Gault, Air Traffic Controllers at DTW. I am enclosing copies of DOT's updates. See Enclosures A and B. Mr. Sugent provided comments on the updates (Enclosures C, D, and E); Mr. Gault declined to provide comments.

In my May 8, 2012, letter, I concluded that the findings of the agency head did not appear reasonable. Although the agency substantiated the allegations, and despite having been on notice of the potential dangers for more than two years, the problems had yet to be resolved. More recently, Mr. Sugent has provided new examples that reflect that the safety procedures finally implemented may not be sufficient to fully resolve the conflicts presented when the airport operates simultaneous arrivals and departures on parallel runways. As such, I will not alter my finding that the agency's position does not appear reasonable with regard to the safety of these operations.

* * *

In the original disclosure, Mr. Sugent and Mr. Gault reported that two FAA rules were in direct conflict with each other and could not be simultaneously observed. They alleged that the

[1] We have received all of the updates requested from DOT in my May 8, 2012, letter. I have transmitted updates to you in OSC File No. DI-11-0747, concerning Foreign Facility Deviations in Puerto Rico, OSC File No. DI-10-2602, concerning unsafe modifications to night vision equipment on emergency medical service helicopters, OSC File No. DI-10-0680, concerning an air traffic departure procedure at Teterboro Regional and Newark International Airports, and OSC File No. DI-11-0165, concerning wind instruments at Detroit Metropolitan Airport. This is the final case in which OSC requested an update.

inconsistent requirements created confusion, put controllers in the untenable position of committing regular operational errors, and created a threat to public safety. [2]

Controllers in the air traffic control tower are charged with keeping aircraft properly and safely apart while efficiently landing and departing. At DTW, controllers land and depart aircraft simultaneously on parallel runways. They are required to keep these aircraft a certain distance apart while also protecting airspace in the event that an arriving aircraft cannot land and must "go around" for another attempt. Mr. Sugent and Mr. Gault alleged that in poor weather conditions, when aircraft are not visible and radar is used for separation, the controllers are not always able to follow all of the requirements for keeping planes apart.

The investigation, conducted by DOT's Office of Inspector General (OIG), substantiated Mr. Sugent and Mr. Gault's allegations. The OIG reported that under certain circumstances, it is impossible for air traffic controllers to simultaneously comply with the two FAA directives in question (Paragraphs 5-8-3 and 5-8-5 of FAA Order 7110.65). Additionally, OIG found that some air traffic control staff in DTW, including management, misunderstood these FAA directives. As a result, some staff received inadequate guidance or training on them. The OIG report also concluded that operational errors occurred at DTW and were not reported.

The agency implemented corrective action, including revising 18 of 21 published missed approach procedures to increase separation between the aircraft on a missed approach and a departing aircraft. FAA reviewed the directives at issue, and determined that no corrections or improvements were required. FAA conducted local (DTW) and national training on the policies found in Paragraphs 5-8-3 and 5-8-5, as well as local training on the revised missed approach procedures. Training materials used for the cited paragraphs warranted a "proactive restatement of the correct application of air traffic policy."

DOT provided the enclosed update dated July 27, 2012. The update reiterated that new procedures for aircraft executing missed approaches to DTW runways were implemented in April, 2012, and that monitoring and auditing of air traffic at DTW continued. Based on the audit results thus far, FAA concluded that "duplication of the same circumstances that

---

[2] The Office of Special Counsel (OSC) is authorized by law to receive disclosures of information from federal employees alleging violations of law, rule, or regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health and safety. 5 U.S.C. § 1213(a) and (b). OSC does not have the authority to investigate a whistleblower's disclosure; rather, if the Special Counsel determines that there is a substantial likelihood that one of the aforementioned conditions exists, she is required to advise the appropriate agency head of her determination, and the agency head is required to conduct an investigation of the allegations and submit a written report. 5 U.S.C. § 1213(c) and (g).

Upon receipt, the Special Counsel reviews the agency report to determine whether it contains all of the information required by statute and that the findings of the head of the agency appear to be reasonable. 5 U.S.C. § 1213(e)(2). The Special Counsel will determine that the agency's investigative findings and conclusions appear reasonable if they are credible, consistent, and complete based upon the facts in the disclosure, the agency report, and the comments offered by the whistleblower under 5 U.S.C. § 1213(e)(1).

precipitated the [disclosure to OSC] would be rare," and that DTW has taken significant measures to ensure that operational personnel are compliant with current requirements while conducting simultaneous approaches on parallel runways during inclement weather conditions. National training on the policy contained in the FAA Order at issue in the disclosure was expected to be complete in July 2012. FAA recommended that audits continue for at least another 60 days.

DOT's second update, dated December 17, 2012, reported that since the July update, there had been no missed approaches for the past 180 days of the audit, and that of the three missed approach events that did occur during the audit period, all were prior to the effective date of the new procedures. National training was completed in August 2012, and DOT considers the corrective action plan to be complete.

Mr. Sugent provided comments reflecting that the audit period ended immediately prior to the onset of winter weather conditions, which would be more likely to result in the type of air traffic incident that generated the original disclosure. He pointed out that in the week following the issuance of the final update, and again on February 28, 2013, air traffic controllers experienced similar incidents at DTW that illustrated the ineffectiveness of the new procedures against the safety concerns raised in the original disclosures. Recordings of those events are included with his comments. See Enclosure E.

As stated in my May 8 letter, by law, I am charged with providing you and Congress a report on the resolution of disclosures. In this case, it appears that safety concerns persist. Mr. Sugent has provided recent examples reflecting that the safety procedures finally implemented may not be sufficient to fully resolve the conflicts presented when the airport operates simultaneous arrivals and departures on parallel runways. As such, I will not alter my finding that the agency's position does not appear reasonable with regard to the safety of these operations.

As required by law, 5 U.S.C. § 1213(e)(3), we have sent copies of DOT's update to the Chairman and Ranking Member of the House Committee on Transportation and Infrastructure and the Chairman and Ranking Member of the Senate Committee on Commerce, Science and Transportation. We have also placed the update and this letter in our public file, which is available online at www.osc.gov, and closed our file in this matter.

Respectfully,

Carolyn N. Lerner

Enclosures