



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

April 17, 2013

The Special Counsel

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

Re: OSC File No. DI-11-0165

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 the reports in several of those matters.¹ I have received two updates from DOT regarding its progress in correcting disparate readings from two wind measurement instruments at Detroit Metropolitan Airport (DTW), Detroit, Michigan, and in implementing standard instrument departure procedures to frequent destinations. These problems were disclosed to me by Vincent Sugent, an Air Traffic Controller at DTW. I am enclosing copies of DOT's updates. See Enclosures A and B. Mr. Sugent provided comments on the updates. See Enclosures C and D.

In my May 8, 2012, letter, I concluded that the findings of the agency head did not appear to be reasonable because the FAA had not provided controllers and pilots with adequate tools to confidently perform their jobs or to support FAA's mission. Given recent information received from Mr. Sugent reflecting continued safety issues with the wind instruments, I remain concerned that this deficiency has yet to be satisfactorily resolved. As such, I will not alter my finding that the agency's position does not appear to be reasonable with regard to the continued discrepancies in the wind reading instruments.

* * *

Mr. Sugent first brought these allegations to OSC in 2008.² A DOT investigation conducted in response to OSC's referral of his 2008 allegations substantiated inconsistent wind

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, and OSC File No. DI-10-0680, concerning an air traffic departure procedure affecting Teterboro Regional and Newark International Airports. The remaining updates are under review by OSC.

² A complete history of Mr. Sugent's allegations and DOT's responses is set out in the May 8, 2012 letter and Analysis, copies of which are enclosed as Enclosure E.

speed readings between the two wind detection devices available to controllers in the Air Traffic Control Tower.³ According to DOT's investigative report, DTW officials were then awaiting higher level approval to fund repair requests. The report noted that FAA concurred, with qualification, in the finding that the wind instruments had shown contradictory results, explaining that the two wind instruments drew measurements from different locations and heights, and that as a result, discrepancies were to be expected. It concluded that the equipment was functioning as designed. FAA determined, therefore, that no additional funding for repairs would be sought. After OSC requested additional information, DOT responded that the two instruments that provide wind readings were operating properly and that any difference in their measurements did not constitute a safety threat.

On August 9, 2010, OSC transmitted the DOT report and whistleblower comments to you and to the congressional oversight committees. OSC determined that the report contained all of the information required by statute, and that the findings of the agency head appeared reasonable, but noted its concern with regard to ongoing whistleblower reports that the wind source instruments were not operating in a manner that enabled controllers to confidently issue wind advisories to aircraft landing and departing at DTW. OSC commented that another evaluation of these essential controller tools may be warranted.

On February 28, 2011, Mr. Sugent again disclosed that the wind source instruments continued to provide inconsistent readings and that the inconsistency presented a substantial and specific danger to public safety. He reported that on October 27, 2010, FAA conducted further assessments of the wind source instruments, which determined that the height and location of the equipment impeded its accuracy and safety. Moreover, the assessment found that "[g]iven the height and location of [nearby aircraft hangars], the DTW ASOS is in violation of the ASOS Siting Order." A report dated December 6, 2010, based on this assessment, recommended that the wind source instruments be relocated. In his February 28, 2011 disclosure, Mr. Sugent asserted that the facility had taken no action to relocate or replace the equipment, despite continuing reports of inconsistent readings and the failure of the equipment to record wind gusts. In addition, Mr. Sugent stated that in the event that the TDWR, the primary wind source instrument, was non-functioning or inoperative due to routine maintenance, controllers would be required to rely on the ASOS equipment. According to Mr. Sugent, although the ASOS

³ 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).

equipment was the secondary source pursuant to DTW Standard Operating Procedures, the equipment was intended to be for information only, and was not certified by FAA for use by controllers in issuing wind advisories to aircraft.

Based on the above, Mr. Sugent asserted that there had been no change in the status of the wind source instruments since his original disclosures to OSC, and that more recent evaluations confirmed the inaccuracies in the readings provided by these instruments. As such, the equipment was not sufficient to provide controllers with the essential tools they required to issue wind advisories to aircraft landing and departing at DTW, or to safely control air traffic in periods of heavy wind or when there were wind gusts. He maintained that FAA's insistence -- since prior to his first disclosures -- that the wind instruments were working as designed contributed to this unsafe and untenable situation for controllers and the flying public.

As stated above, the DOT updates reflect that FAA continues to collect historical wind information and has noted periods during which differences in wind measurements between the primary and secondary instruments warranted continuing analysis. The latest update indicates that the National Weather Service, the owner of the back-up source, the Automated Surface Observing System (ASOS), has declined FAA requests for replacement of internal parts of the ASOS, and FAA is unable to alter equipment it does not own. Nevertheless, FAA continues to assert that both sensor systems are reliable and provide sufficient wind information necessary to safely conduct air traffic operations. As such, FAA's future analysis will focus solely on the primary wind source, the Wind Measuring Equipment (WME). FAA will compare data from the two sensors and associated analysis until July 2013, which will complete one full year since the WME was re-designated the primary sensor.

In addition to concerns over the wind instruments, Mr. Sugent also disclosed for a second time that the lack of an electronic system for use by controllers in issuing standard instrument departure procedures (SID) to aircraft departing for Ohio airports constituted a substantial and specific danger to public safety. The SID provides the aircraft with a safe route for departing from the airport, as well as the waypoints to the air corridor in which it will travel.

The DOT updates on this issue reflect that safety and efficiency have been enhanced through the publication of SIDs to airport locations that are frequent destinations. Mr. Sugent provided comments reflecting that the SID changes are in place and are effective. He noted that although the issue is now resolved, the amount of time taken to implement this simple safety enhancement is unacceptable.

Mr. Sugent also commented on the continued discrepancies in the reported wind information. He noted that although the agency maintains that the ASOS and WME are two separate systems that are not designed to be used at the same time or in comparison with one another, the systems are in fact being used at the same time with unacceptable results. He stated that the broadcast of wind information via an electronic system drawing information from one wind source, while controllers report wind to pilots directly from another source, has caused

The Special Counsel
The President
April 17, 2013
Page 4

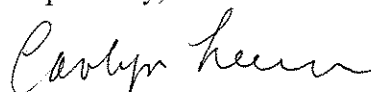
confusion. He asserted that controllers and supervisors are distracted from the safe movement of air traffic as a result of this confusion.

Mr. Sugent commented that even after software updates that were intended to alleviate the differences between the wind sources, the WME has either failed or has been taken out of service at least 40 times since July 2012. He pointed out that DTW is the 17th busiest tower in the nation, yet the DOT and FAA seem unable to supply the controllers with properly located and operating wind instruments. The latest briefing to controllers, dated March 1, 2013, recommends that the controllers estimate the winds from the centerfield windsock if both the WME and ASOS winds are logged out of service. Mr. Sugent commented that controllers should be directing traffic, not observing the weather by watching a windsock.

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 the corrective actions implemented by DOT and FAA have not resolved the discrepancies in the wind instruments. Given the recent information received from Mr. Sugent reflecting continued safety issues with the wind instruments, I will not alter my finding that the agency's position does not appear to be reasonable.

As required by law, 5 U.S.C. § 1213(e)(3), we have sent copies of DOT's updates and Mr. Sugent's comments 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 updates, Mr. Sugent's comments, 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