

Fred Fanning
3 Chandler Court
Fredericksburg, VA 22405

November 7, 2014

Mr. Kevin Wilson
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505

Dear Mr. Wilson,

I have read through the report of investigation and attachments received from the Department of Commerce in response to my allegations concerning falsities in the previous report. I was disappointed to find that the investigators concluded "that because the primary purpose of the DOC' January 20, 2011 report was to identify and remedy issues with DOC's management of asbestos in HCHB, the whistleblowers' allegations have no effect on the ultimate impact of the report." The investigators appeared to have not even considered my allegations that the report contained false information.

The Department of Commerce made a determination that the US Patent and Trademark Office would conduct an investigation to answer three questions that I believe were irrelevant and served no purpose. I alleged that the report contained false information and none of the three questions addressed that point because the investigators took the previous report as accurate and said so in their response. The investigators also noted that the file contained information that both corroborated and conflicted with my allegations, which I believe should have warranted a new investigation.

Furthermore, this report did not address my concerns over the conduct of the OIG. Commerce officials referred this concern back to the U.S. Office of Special Counsel when in fact they should know that there is an oversight route for OIG misconduct and they chose not to use it.

The US Patent Office investigators determined that since they were not experts they would accept the results of the first Commerce report that determined that people were impermissibly exposed to airborne levels of asbestos as correct. If the US Patent Office investigators were not experts in asbestos they should have hired a contractor that was qualified to answer the questions and not just assume that since Commerce determined that finding in the first report that it must be correct.

The report continues to show that I was responsible for mismanagement of the asbestos program. I have put forth evidence that the asbestos management program for the Herbert C Hoover building belonged to the General Services Administration because they owned the building. Commerce was only a tenant in the building. As a tenant there were Occupancy and Delegation Agreements that spelled out specifically the duties that Commerce was to perform with respect to maintaining the building. Those duties did not include management of the asbestos program. This was even confirmed by an attorney with the Commerce General Counsel in 2007.

The US Patent Office report still relies on air sampling that were said to show exposure to airborne asbestos levels exceeding the Occupational Safety and Health Administration (OSHA) Permissible Exposure Limit (PEL) between February 2007 and April 29007, and perhaps even earlier. I provided

evidence that showed the airborne sampling method used did not comply with appendix A to 29 CFR 1910.1001, which means it shouldn't be considered.

This US Patent Office report did not acknowledge my evidence to support that I did restrict access to the 8th floor attic prior to January 2008. The attic was placed off limits in May of 2007 by me. This was confirmed in a GSA video. The workers who had access to the attic were notified of the exposure, given a physical, training, fit tested for a respirator and provided a respirator and protective clothing. Comments in the witness statements of the first report noted that they were required to wear protective equipment prior to entering the attic. These were procedures I put in place.

The US Patent Office report fails to explain why the nine individuals that Lee believed bore responsibility for mismanagement of asbestos conditions in the 8th floor/attic were not considered. For example the Associate Director of Building Management had been in that position for several years prior to my arrival and had been the acting Deputy Director of OAS for eight months. He was the supervisor of the Building Manager and a civil engineer. It does not seem reasonable that I was somehow supposed to have known of the tests and hazards, but he would not have known. I directed the Associate Director of Building Management to place the 8th floor/attic off limits immediately upon notification of the air samples. I further directed him to work with the Safety and Occupational Health Office in Human Resources Management to get the employees the proper physicals, protective equipment and training to work in the attic safely. Furthermore he was in every meeting held on the asbestos air samples. A second person missing from Lee's list was the Asbestos Program Manager who was appointed and trained to perform the duties of Asbestos Program Manager that were in the new Occupancy Agreement that Commerce had not signed, but I thought eventually would. Again I was prepared and took action prior to the Commerce being responsible for the asbestos management program.

The July 24, 2014 letter to Justin Antonipillai, Deputy General Counsel for Commerce states on page 6 the sixth paragraph states that Jana Brooks and I provided documentation from an Certified Industrial Hygienist that called the results into question because of inappropriate testing protocols; however the first paragraph on page 7 says that since the 2007 air sample showing asbestos fibers at face value, they could reasonably support the conclusion that DOC mismanaged the asbestos program from 2003-2007. This is preposterous; tests done without using the proper protocols are meaningless. The person taking the test could have introduced asbestos fibers in the air by taking the samples improperly; this is what the protocols are for.

In summary, I believe I adequately spelled out in my complaint, testimony, and this response what I believe the issues are and I don't believe any of my allegations were addresses properly in this second investigation. As a result I have completely lost faith in the system of Inspector Generals and the Office of Special Counsel. It is obvious to me that no one cares what really happened in this case.

A handwritten signature in black ink, appearing to be 'M. Lee', written in a cursive style.