



U.S. OFFICE OF SPECIAL COUNSEL

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

The Special Counsel

December 10, 2015

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

Re: OSC File No. DI-12-4797

Dear Mr. President:

Pursuant to 5 U.S.C. § 1213(e)(3), enclosed please find an agency report based on disclosures received from a whistleblower who disclosed that employees of the Department of Defense, United States Marine Corps Air Station, Cherry Point (MCASCP), North Carolina, may have violated federal law, rule, or regulation; engaged in gross mismanagement; and created a substantial and specific danger to public safety.

The whistleblower, Michael J. Cappel, Sr., who consented to the release of his name, is a plumber/ fire sprinkler mechanic in MCASCP's Facilities Maintenance Department (FMD). He alleged that Edward Andrews, another FMD plumber/ fire sprinkler mechanic, neglected his duties and responsibilities and falsified government documentation by claiming he conducted inspections and maintenance he never completed. Mr. Cappel further alleged that MCASCP management ignored his disclosures regarding Mr. Andrews.

**The investigation did not substantiate Mr. Cappel's allegations. It did, however, propose specific Marine Corps Installations Command (MCICOM) management actions to address identified weaknesses in the quality assurance/ quality control (QA/QC) process for fire sprinkler maintenance, and it formalized training requirements for fire sprinkler mechanics. MICOM has confirmed that these recommended actions have been initiated but not yet completed. I have determined that the report contains all of the information required by statute and that the agency's findings are reasonable. I encourage the agency to complete the proposed corrective actions as expeditiously as possible.**

OSC referred Mr. Cappel's allegations to then-Secretary of Defense Leon Panetta for investigation and report pursuant to 5 U.S.C. § 1213(c) and (d). Secretary Panetta delegated authority to conduct the investigation to the DoD Inspector General, who in turn directed the United States Marine Corps Inspector General (USMC IG) to investigate the allegations. DoD Principal Deputy Inspector General Lynne M. Halbrooks provided the agency report to our office on June 16, 2013. Since receipt of the agency's report, OSC sought and received updates from the agency on May 8, 2014, July 28, 2015, and November 18, 2015. Mr. Cappel

The President  
December 10, 2015  
Page 2 of 5

commented on the report pursuant to 5 U.S.C. § 1213(e)(1). As required by 5 U.S.C. § 1213(e)(3), I am now transmitting the agency report and Mr. Cappel's comments to you.<sup>1</sup>

## **I. The Whistleblower's Disclosures**

In their capacities as plumbers/ fire sprinkler mechanics, Mr. Cappel and Mr. Andrews are responsible for inspecting, testing, and maintaining the fire sprinkler systems in the approximately 300 to 400 buildings containing sprinkler systems across the MCASCP campus. According to Mr. Cappel, the standards governing their functions are established by 29 C.F.R. § 1910 and the Department of Defense, United Facilities Criteria (UFC). Technical guidelines for the inspection, testing, and maintenance of water-based fire protection systems are contained in the National Fire Protection Association Standard 25 (NFPA 25). While the tests required to be performed on the systems vary depending on the building and the sprinkler type, each building's system has an inspection test sticker which records the dates on which the system was tested and identifies the individual fire sprinkler mechanic responsible for the testing.

Mr. Cappel disclosed that Mr. Andrews consistently neglected his inspection, testing, and maintenance responsibilities. Mr. Andrews, according to Mr. Cappel, routinely falsified inspection test stickers by certifying that he conducted and completed inspections, testing and repairs. Finally, Mr. Cappel alleged that MCASCP FMD supervisors, lead inspectors, and managers ignored his repeated disclosures regarding Mr. Andrews. In support of his allegations, Mr. Cappel provided several examples of incidents in which Mr. Andrews failed to perform the inspections or repairs he claimed to have completed or did not perform the work he certified on the inspection sticker.

## **II. The Agency Investigation**

In summary, the report concluded that there was not sufficient independent corroboration of Mr. Cappel's testimony to substantiate the allegations regarding Mr. Andrews. Agency managers acknowledged they had received Mr. Cappel's disclosures regarding Mr. Andrews and had, as a result of these disclosures, monitored Mr. Andrews's "proficiency and professional conduct." Mr. Andrews's work was deemed to be satisfactory. Based on witness testimony, the report concluded that, while Mr. Andrews's work may be

---

<sup>1</sup> 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, I review 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). I 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).

The President  
December 10, 2015  
Page 3 of 5

inefficient, he puts forth a good faith effort to perform his assigned tasks and is not “culpably inefficient.”

With regard to Mr. Cappel’s allegation that Mr. Andrews falsified government documents by certifying that he performed inspections and repairs he did not perform, the investigation concluded that Mr. Cappel’s allegations were based on circumstantial evidence. Mr. Cappel relied on the same examples to support both his falsification allegation and his allegation that Mr. Andrews was negligent. The agency report deemed these scenarios “plausible” but not definitive. The investigation concluded that the maintenance failures that occurred following Mr. Andrews’s inspections or repairs were the result of “ineffective” but nonetheless “good faith efforts,” as opposed to “willful negligence” on his part.

With respect to Mr. Cappel’s allegation that management failed to intervene despite his repeated disclosures regarding Mr. Andrews’s neglect of his fire sprinkler inspection, testing, and repair responsibilities and falsification of official government records, the agency report included testimony from several supervisory employees regarding the steps taken to observe and monitor Mr. Andrews’s work. These steps were taken either as a result of Mr. Cappel’s disclosures or as a result of routine quality checks. The report indicated that Mr. Andrews was verbally counseled on at least one occasion regarding his performance.

Finally, the report acknowledged that there are no explicit training requirements or formal certification processes for fire sprinkler systems mechanics. In addition, until 2008, the only training that occurred was on-the-job, which involved shadowing a senior mechanic. The report identified several professional courses FMD personnel have taken since 2008, and indicated that the only courses Mr. Andrews have taken were a course on fire sprinkler inspection in 2008, a course on fire pump application inspecting and testing in 2010, and a course on ansol foam system service system and maintenance in 2001.

On June 11, 2013, Major General J. A. Kessler, U.S. Marine Corps, Commander, MCICOM, Assistant Deputy Commandant, Installations & Logistics (Facilities), concurred with the results of the investigation, directed that training requirements for fire sprinkler systems mechanics be formalized, and directed that a “realistic training plan” be prepared for his approval within 60 days. In addition, Major General Kessler determined that the investigation identified weaknesses in the QA/QC process for fire sprinkler maintenance and directed that MCICOM recommend effective QA/QC procedures for his approval within 60 days. Major General Kessler stated that, based on these recommendations, he will determine best practices for fire sprinkler maintenance for implementation throughout MCICOM.

Since receipt of the agency’s report, OSC sought and received updates from the agency on May 8, 2014, July 28, 2015, and November 18, 2015. In May 2014 the agency reiterated its concurrence with the conclusions and findings of the USMC IG investigation, as well as its intent to update the Marine Corps Order (MCO) governing Real Property Facilities Manual, Volume IV, Facilities Project Manual to include QA/QC guidance for fire sprinkler maintenance systems. The update further indicated that MCICOM intended to formalize a MCICOM-wide Fire Protection Systems Inspection, Testing and Maintenance Training Plan

The President  
December 10, 2015  
Page 4 of 5

via a revision to the MCO governing Marine Corps Fire Protection and Emergency Services Program. The QA/QC guidance was scheduled to be completed by the end of fiscal year 2014 and the inspection, testing and maintenance training plan was scheduled for release in April 2015. In order to provide guidance until issuance of the updated MCO setting forth the new QA/QC provisions, interim fire sprinkler guidance was published. Similarly, until the formalization of the new inspection, testing and maintenance training plan, fire sprinkler mechanics would be required to meet the training and qualification requirements set forth by the UFC adopted for the Marine Corps in June 2010.

In the second update in July 2015, the Commander to the Inspector General, MCICOM reiterated his concurrence with the investigation and stated his intention to update the MCO to include QA/QC guidance for fire sprinkler maintenance systems. The revised MCO promulgating the QA/QC guidance was scheduled to go into "formal staffing" in August 2015. The new inspection, testing, and maintenance training plan would be incorporated into the next revision to the MCO governing the Marine Corps Fire Protection and Emergency Services Program.

In the third and final update, received on November 18, 2015, the agency informed my office that the revisions to the MCOs incorporating the new QA/QC guidance for fire sprinkler maintenance systems and the new inspection, testing, and maintenance training plans have been completed and are in the final stages of the review and approval process. The agency indicated that the estimated completion date for the formalization of the guidance and training plans via the updated MCOs is mid-January 2016 and, once formalized, will be effective throughout MCICOM world-wide.

### **III. The Whistleblower's Comments**

Mr. Cappel filed comments in response to the agency report expressing his disagreement with its findings. Specifically, Mr. Cappel contended that based on the work orders, photographs, and witness testimony, as well as their visit to the site, the investigators had evidence of Mr. Andrews's neglect and falsification of documents. According to Mr. Cappel, the investigation focused on comparing his work to Mr. Andrews's work rather than addressing his disclosure that Mr. Andrews failed to comply with the governing procedures established by the NFPA 25 or UFC. Mr. Cappel asserted that the investigators were persuaded by the testimony into assigning blame for this problem to employees who no longer work at MCASCP or to the lack of formal training.

According to Mr. Cappel, Mr. Andrews had the training he needed to perform his job, and procedures are in place for the annual and quarterly testing of the fire systems conducted by fire sprinkler mechanics but willfully elected to ignore these procedures. Mr. Cappel objected to the suggestion in the report that the age of the equipment may explain the difficulty in predicting when equipment would fail despite regular preventive maintenance inspections. Mr. Cappel asserted that if Mr. Andrews had simply followed the established procedures in conducting his assigned preventive maintenance duties, the equipment problems would have been discovered and repaired. Further, he objected to a statement made

**The Special Counsel**

The President  
December 10, 2015  
Page 5 of 5

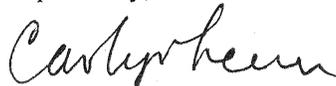
by one witness suggesting that Mr. Cappel believes his way of maintaining and repairing sprinkler systems is the only acceptable way. Again, Mr. Cappel asserts that his way of accomplishing the work involved in being a sprinkler mechanic is to follow the established policies, procedures, standards, and manufacturer's instructions.

**IV. The Special Counsel's Findings and Conclusions**

I have reviewed the original disclosure, the agency report and updates, and Mr. Cappel's comments. While I note Mr. Cappel's objections to the findings of the investigation, I have determined that the agency's report contains all of the information required by statute and that the findings appear reasonable. I encourage agency officials to implement the revised QA/QC guidance for fire sprinkler inspection, testing and maintenance and formalize training requirements for fire sprinkler mechanics as expeditiously as possible.

As required by 5 U.S.C. § 1213(e)(3), I have sent copies of the unredacted agency report and Mr. Cappel's comments to the Chairman and Ranking Member of the Senate Committee on Armed Services and the Chairman and Ranking Member of the House Armed Services Committee. I have also filed a copy of this letter, the redacted agency report, and Mr. Cappel's comments in our public file, which is available online at [www.osc.gov](http://www.osc.gov), and closed the matter.

Respectfully,



Carolyn N. Lerner

Enclosures