



**U.S. OFFICE OF SPECIAL COUNSEL**

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Washington, D.C. 20036-4505

**The Special Counsel**

November 14, 2017

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

Re: OSC File No. DI-16-4054

Dear Mr. President:

Pursuant to my duties as Special Counsel, I am forwarding a Department of the Interior (Interior) report based on disclosures of wrongdoing at the U.S. Fish and Wildlife Service (FWS), Inks Dam National Fish Hatchery, Burnet, Texas. I have reviewed the report and now provide the following summary of the agency report and my findings.<sup>1</sup> The whistleblower, who chose to remain anonymous, disclosed that FWS employees violated state and federal laws and endangered the health of employees.

The whistleblower's allegations were referred to Secretary Ryan Zinke for investigation pursuant to 5 U.S.C. § 1213(g)(2). The Office of the Inspector General (OIG) conducted the investigation. Secretary Zinke delegated the authority to review and sign the OIG's report to FWS Acting Director Greg Sheehan. Mr. Sheehan submitted the report to the Office of Special Counsel on July 12, 2017. The whistleblower declined to comment on the agency's report.

The agency generally substantiated the whistleblower's allegations. The investigation determined that a supervisor at Inks Dam required employees to sanitize their hands with Virkon, an aquatic disinfectant intended by the manufacturer to disinfect inanimate surfaces associated with aquaculture, such as vehicles or boots. The

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<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, he 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). 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).

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manufacturer clarified to the agency that Virkon is corrosive in powder form but is not a skin irritant when diluted. The report found that employees were directed to wear personal protective equipment when diluting powdered Virkon, but not when disinfecting their hands in the diluted Virkon.

The agency also substantiated the whistleblower's allegation that an Inks Dam supervisor violated the FWS asbestos management policy, which requires employees to comply with state certification and licensing standards for asbestos abatement and to follow federal regulations and policies. The agency found that Inks Dam employees who engaged in asbestos abatement were not trained, certified, or authorized to do so. The supervisor nevertheless required them to cut, transport, and bury sections of damaged asbestos pipe on Inks Dam property.

The agency also determined that, while an employee had the appropriate permit to apply Turf King herbicide at Inks Dam, a supervisor at the site violated the FWS Integrated Pest Management Plan by directing the continued use of Turf King without FWS approval. The agency noted that the supervisor's prior request to apply Turf King was denied because Turf King is toxic to fish, birds, and other wildlife, and because the supervisor proposed to use it on a site not authorized by the manufacturer's label.

The report noted that an unrelated investigation in June 2016 found substantiated similar wrongdoing. Because of the findings in that investigation, the FWS Regional Fisheries Supervisor proposed the removal of the subject supervisor who engaged in the wrongdoing. The subject supervisor retired in September 2016, but FWS Regional management failed to address fully the deficiencies uncovered by the June 2016 investigation.

In response to the agency's findings, the FWS Acting Assistant Director - Business Management and Operations issued a memorandum to all FWS employees titled "Safety When Using Hazardous Chemicals and Pesticides." The memorandum reinforces the need for safety and training when using hazardous materials, explains FWS policies and plans related to such activities, and notes points of contact for employee questions. In addition, the FWS Deputy Director directed the Regional Director overseeing Inks Dam to complete a full investigation into the circumstances of the unapproved asbestos abatement, to remediate the asbestos materials, and to medically monitor all employees involved in the unapproved abatement.

I am encouraged by the agency's continued focus on the remediation of asbestos-containing materials and, most importantly, the health of its employees. In light of the agency's investigation and prompt attention to corrective actions, I have determined that the report meets all statutory requirements.

I have sent a copy of this letter and the agency's report to the Chairmen and Ranking Members of the Senate Committee on Energy and Natural Resources and the

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House Committee on Natural Resources. I have also filed copies of these documents in our public file, which is available at [www.osc.gov](http://www.osc.gov). This matter is now closed.

Respectfully,



Henry J. Kerner

Enclosure