



U.S. OFFICE OF SPECIAL COUNSEL

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

The Special Counsel

February 27, 2018

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

VIA ELECTRONIC MAIL

Re: OSC File No. DI-17-3584

Dear Mr. President:

Pursuant to 5 U.S.C. § 1213(e)(3), I am forwarding to you a report from the U.S. Department of Agriculture (USDA) based on disclosures of wrongdoing at the Animal and Plant Health Inspection Service (APHIS), Riverdale, Maryland. Christopher Levy, who consented to the release of his name, disclosed that APHIS personnel improperly exposed Department of Homeland Security (DHS), U.S. Customs and Border Patrol (CBP) horses to toxic chemical sprays. OSC has reviewed the agency report and, in accordance with 5 U.S.C. § 1213(e), provides the following summary of the report and my findings. Mr. Levy chose not to comment on the agency report.

Mr. Levy's allegations were referred to USDA Secretary George E. "Sonny" Perdue III for investigation pursuant to 5 U.S.C. § 1213(c) and (d). The Agricultural Marketing Service (AMS) Compliance Branch investigated the allegations. Secretary Perdue reviewed and signed the report submitted to OSC on December 4, 2017.

Mr. Levy, an assistant chief border patrol agent, manages the CBP Horse Patrol Program (HPP). In January 2014, he learned that several CBP horses patrolling the U.S. border in western Texas¹ began to exhibit serious health problems. Mr. Levy worked with several veterinarians from January 2014 to September 2016 to identify the cause of the CBP horses' symptoms, and eventually received a conclusive diagnosis of organophosphate poisoning from a private veterinarian. After receiving the results, Mr. Levy immediately stopped the Co-Ral spray of CBP horses.²

¹ The patrolled area serves as a tick quarantine zone, which extends over 500 miles along the Gulf of Mexico. To maintain this tick quarantine zone, APHIS personnel provide chemical treatments for all livestock within the area. As a result, APHIS mandated that all CBP horses patrolling the quarantine zone undergo a biweekly spray-cycle of an organophosphate compound commonly known as Co-Ral.

² The private veterinarian's report noted that the organophosphate toxicity levels of the 71 CBP horses tested were considered highly toxic. The report also contained information related to Co-Ral spray treatment warnings, which explicitly indicate that a horse must not be sprayed more than six times a year,

The President
February 27, 2018
Page 2 of 3

APHIS personnel authorized an interim treatment program, allowing the CBP horses to temporarily switch to an alternative chemical tick spray-cycle. Nevertheless, Mr. Levy asserted that APHIS personnel failed to provide CBP with the Material Safety Data Sheet (MSDS) of the Co-Ral chemical spray solutions and other pertinent information. He also disclosed that APHIS personnel did not provide the CBP agents with personal protective equipment (PPE) when they were required to physically restrain the horses during the Co-Ral spray cycles.

AMS did not substantiate Mr. Levy's allegation that APHIS engaged in misconduct by spraying CBP horses with Co-Ral. The report included tests from several veterinary clinics, which contradicted results found by the private veterinarian in Texas.³ Although AMS found that the CBP horses' symptoms could be associated with organophosphate toxicity caused by Co-Ral, other causes could not be ruled out. The report concluded that due to substantial technical and scientific disagreement about whether exposure to Co-Ral caused CBP horses to suffer illness, the evidence was insufficient to find that APHIS personnel engaged in gross misconduct in applying the Co-Ral chemical sprays.

AMS did find that APHIS personnel were not fully cooperative and forthcoming with CBP personnel. The report stated that APHIS personnel were nonresponsive and delayed providing CBP personnel with the requested information related to the Co-Ral chemical spray. AMS also substantiated the allegation that APHIS personnel did not direct CBP personnel to take proper precautionary measures when handling horses treated with Co-Ral. The report noted that on several occasions, CBP personnel were present while the horses were being sprayed when they should not have been because of the exposure to the chemical. While neither APHIS nor CBP personnel were found to have suffered any ill effects from Co-Ral exposure, AMS determined that all personnel should have been using PPE or taking other appropriate precautions.

In response to the investigation's findings, the agency implemented several corrective actions. USDA required that APHIS personnel reach an amicable solution with CBP personnel for future tick treatment of CBP horses. On January 18, 2018, the agency confirmed to OSC that both APHIS and CBP personnel agreed that, until further notice, APHIS personnel will use permethrin, a less potent alternative chemical solution, to treat CBP horses exposed to cattle ticks. APHIS also provided the MSDS of the Co-Ral chemical spray solutions, and all requested information to CBP personnel. APHIS also reviewed its use of Co-Ral to ensure that it was in compliance with all federal and state regulations. Finally, USDA established requirements for all personnel present during any

and the treatments must be at least 10 day apart. According to Mr. Levy, the CBP horses were sprayed once every 14 days, per APHIS instruction.

³ Organophosphate testing was conducted by the following veterinary laboratories: Virginia Tech Veterinary Diagnostic Laboratory Diagnostic Laboratory, Iowa State University Veterinary Diagnostic Laboratory, and Colorado State University Veterinary Diagnostic Laboratory. Each laboratory produced different results.

The Special Counsel

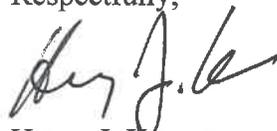
The President
February 27, 2018
Page 3 of 3

spraying or application of chemicals on CBP horses, including the development of explicit safe chemical-handling standard operating procedures and the use of PPE.

I have reviewed the original disclosure and the report, and determined that the report meets all statutory requirements and the findings appear reasonable. Mr. Levy's allegations, while troubling, appear to have been addressed by the USDA. I commend Secretary Perdue's prompt and thorough response to the matter, and his recognition that both DHS and USDA must work together to protect public safety.

As required by 5 U.S.C. § 1213(e)(3), OSC has sent a copy of this letter and the agency report to the Chairman and Ranking Member of the Senate Committee on Agriculture, Nutrition, and Forestry and the Chairman and Ranking Member of the House Committee on Agriculture. I have also filed copies of this letter and the redacted agency report in our public file, which is available at www.osc.gov. This matter is now closed.

Respectfully,



Henry J. Kerner
Special Counsel

Enclosure