



**U.S. OFFICE OF SPECIAL COUNSEL**  
**1730 M Street, N.W., Suite 300**  
**Washington, D.C. 20036-4505**

**The Special Counsel**

January 18, 2024

The Honorable Christine E. Wormuth  
Secretary  
U.S. Department of the Army  
101 Army Pentagon  
Washington, D.C. 20310-0101

Re: OSC File No. DI-24-000271  
Referral for Investigation – 5 U.S.C. § 1213(c)

Dear Secretary Wormuth:

I am referring to you for investigation a whistleblower disclosure that employees at the Department of the Army (Army), U.S. Army Tank-Automotive and Armament Command (TACOM), Red River Army Depot, New Boston, Texas, are engaging in conduct that may constitute a violation of law, rule, or regulation, and a substantial and specific danger to public health and safety. A report of your investigation of these allegations and any related matters is due to the Office of Special Counsel (OSC) by March 18, 2024.

The whistleblower, [REDACTED], who consented to the release of his name, is a [REDACTED]. [REDACTED] disclosed that employees at the Red River Army Depot have violated Sections 608 and 609 of the Clean Air Act.<sup>1</sup> Although [REDACTED] reported the alleged violations to management, they remain unresolved. The allegations to be investigated include:

- Since approximately August 2023, employees servicing motor vehicle air conditioners (MVACs) at Red River Army Depot have been releasing an air conditioning refrigerant, hydrochlorofluorocarbon-134a (HFC-134a), into the environment in violation of the Clean Air Act<sup>2</sup> and its regulations<sup>3</sup>;

<sup>1</sup> 42 U.S.C. §§ 7671g -7671h; *see also* Army Regulation 200-1 *Environmental Quality Environmental Protection and Enhancement* at Ch. 1 and Ch. 4 (implementing Federal, State, and local environmental laws and Department of Defense policies regarding the environment including the Clean Air Act and its regulations).

<sup>2</sup> *See id.*

<sup>3</sup> 40 C.F.R. § 82.154 (prohibiting individuals who work on MVACs from releasing into the environment any refrigerants or non-exempt substitute refrigerants from MVACs and requiring those working on MVACs to follow the applicable practices in Sections 82.155, 82.156, and 82.157).

- Red River Army Depot has not properly maintained the equipment used to evacuate HFC-134a from MVACs, and as such, the equipment leaks HFC-134a into the environment;<sup>4</sup>
- Employees working on MVACs at Red River Army Depot are not trained and certified as required by the Clean Air Act's implementing regulations;<sup>5</sup>
- Red River Army Depot does not retain records regarding its MVAC recovery equipment or its employee training and certification as required by Clean Air Act regulation;<sup>6</sup> and
- Any additional, related allegations of wrongdoing discovered during the investigation of the foregoing allegation.

According to [REDACTED], the air conditioning units in the agency's ambulances hold an estimated 10 pounds of refrigerant and Red River Army Depot employees have been overhauling the units so that they will run on 3½ pounds of refrigerant. [REDACTED] stated that Sections 608 and 609 of the Clean Air Act prohibit individuals working on MVACs from intentionally releasing—also called venting—into the environment ozone depleting (OD) refrigerants and OD refrigerant alternatives, which includes HFC-134a—also known as R-134a. However, [REDACTED] asserted that on November 16 and December 6, 2023, he saw employees, [REDACTED] and [REDACTED], intentionally release HFC-134a from a temporary storage tank into the air in the maintenance shop. [REDACTED] also asserted that Red River Army Depot employees, generally, repair and maintain MVACs as needed for any vehicle the depot receives.

[REDACTED] explained that to vent HFC-134a properly, a machine transfers the refrigerant from the MVAC into a tank, which can hold up to 30 pounds of the gas, for temporary storage; when the tank is full<sup>7</sup> the HFC-134a is emptied into a larger tank, which stores the refrigerant until it is sent to a facility for recovery or recycling. [REDACTED] stated that employees working on the ambulances acknowledged to him that they are not filling the 30-pound-capacity tank with the HFC-134a but releasing it from the tank directly into the air. [REDACTED] reported the improper venting in the agency's Complex Assembly Manufacturing Solutions—a computer program that tracks paperwork for vehicles being serviced and informs management of any reported issues. Employees working on the ambulances also acknowledged to [REDACTED] that they do not have the required training or certification to work on MVACs.

---

<sup>4</sup> [REDACTED] stated that when the evacuation machine was idle, a pressure gauge on the machine lost pressure, which indicated the machine had a leak.

<sup>5</sup> 40 C.F.R. § 82.161 (requiring certification of individuals who maintain, service, or repair MVACs that contain applicable refrigerants and non-exempt substitute refrigerants); and 40 CFR § 82.34 (prohibiting individuals from repairing or servicing MVACs without proper training and certification through an approved certification program).

<sup>6</sup> See 40 C.F.R. § 82.42.

<sup>7</sup> [REDACTED] explained that the temporary storage tanks hold roughly 30 pounds of refrigerant, and as such, they must rest on a scale that weighs them as they fill, which allows employees to know when the tank is full and must be emptied but the whistleblower did not see any type of scale under the tank.

The Honorable Christine E. Wormuth

January 18, 2024

Page 3 of 3

Additionally, [REDACTED] asserted that HFC-134a converts to a poisonous gas if it is released in the air near a running engine or open flame, explaining that the running motor will pull in the HFC-134a and discharge phosgene gas, which is poisonous. An open flame makes the same conversion. [REDACTED] alleged there could be a running motor in the vicinity at any given time because vehicles are driven in and around the depot.

Pursuant to my authority under 5 U.S.C. § 1213(c), I have concluded that there is a substantial likelihood that the information provided to OSC discloses a violation of law, rule, or regulation, and a substantial and specific danger to public health and safety. Please note that specific allegations and references to specific violations of law, rule or regulation are not intended to be exclusive. If, in the course of your investigation, you discover additional violations, please include your findings on these additional matters in the report to OSC. As previously noted, your agency must conduct an investigation of these matters and produce a report, which must be reviewed and signed by you. Per statutory requirements, I will review the report for sufficiency and reasonableness before sending copies of the agency report along with the whistleblower's comments and any comments or recommendations I may have, to the President and congressional oversight committees and making these documents publicly available.

Additional important requirements and guidance on the agency report are included in the attached Appendix, which can be accessed at <https://osc.gov/Services/Pages/DU-Resources.aspx>. If your investigators have questions regarding the statutory process or the report required under 5 U.S.C. § 1213, please contact Catherine A. McMullen, Chief, Disclosure Unit, at (202) 804-7088 or [cmcmullen@osc.gov](mailto:cmcmullen@osc.gov) for assistance. I am also available for any questions you may have.

Sincerely,



Karen Gorman  
*Acting Special Counsel*

Enclosure

cc: Lieutenant General Donna W. Martin, Army Inspector General

## **APPENDIX**

### **AGENCY REPORTS UNDER 5 U.S.C. § 1213**

#### GUIDANCE ON 1213 REPORT

- OSC requires that your investigators interview the whistleblower at the beginning of the agency investigation when the whistleblower consents to the disclosure of his or her name.
- Should the agency head delegate the authority to review and sign the report, the delegation must be specifically stated and include the authority to take the actions necessary under 5 U.S.C. § 1213(d)(5).
- OSC will consider extension requests in 60-day increments when an agency evidences that it is conducting a good faith investigation that will require more time to complete.
- Identify agency employees by position title in the report and attach a key identifying the employees by both name and position. The key identifying employees will be used by OSC in its review and evaluation of the report. OSC will place the report without the employee identification key in its public file.
- Do not include in the report personally identifiable information, such as social security numbers, home addresses and telephone numbers, personal e-mails, dates and places of birth, and personal financial information.
- Include information about actual or projected financial savings as a result of the investigation as well as any policy changes related to the financial savings.
- Reports previously provided to OSC may be reviewed through OSC's public file, which is available here: <https://osc.gov/Pages/Resources-PublicFiles.aspx>. Please refer to our file number in any correspondence on this matter.

#### RETALIATION AGAINST WHISTLEBLOWERS

In some cases, whistleblowers who have made disclosures to OSC that are referred for investigation pursuant to 5 U.S.C. § 1213 also allege retaliation for whistleblowing once the agency is on notice of their allegations. The Special Counsel strongly recommends the agency take all appropriate measures to protect individuals from retaliation and other prohibited personnel practices.

#### EXCEPTIONS TO PUBLIC FILE REQUIREMENT

OSC will place a copy of the agency report in its public file unless it is classified or prohibited from release by law or by Executive Order requiring that information be kept secret in the interest of national defense or the conduct of foreign affairs. 5 U.S.C. § 1219(a).

#### EVIDENCE OF CRIMINAL CONDUCT

If the agency discovers evidence of a criminal violation during the course of its investigation and refers the evidence to the Attorney General, the agency must notify the Office of Personnel Management and the Office of Management and Budget. 5 U.S.C. § 1213(f). In such cases, the agency must still submit its report to OSC, but OSC must not share the report with the whistleblower or make it publicly available. See 5 U.S.C. §§ 1213(f), 1219(a)(1).