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The Special Counsel

June 14, 2018

The President
The White House
Washington, D.C. 20510

VIA ELECTRONIC MAIL

Re: OSC File No. DI-16-3546

Dear Mr. President:

Pursuant to 5 U.S.C. § 1213(e)(3), I am forwarding a report, supplemental reports, and whistleblower comments based on disclosures of wrongdoing at Region 4¹ of the U.S. Environmental Protection Agency (EPA). Ms. Elizabeth Wilde, a former regional lead advisor in EPA Region 4, who consented to the release of her name, disclosed that EPA Region 4 violated the law and created a substantial and specific danger to public health and safety by: (1) sending inspectors who lacked required training and credentials to perform lead-based paint inspections; and (2) conducting substandard lead-based paint inspections of residential and child-occupied facilities. As a result, Ms. Wilde alleged the EPA was failing to fulfill its statutory mandate to protect the public—particularly pregnant women and children—from lead-based paint hazards.

The investigation, conducted by the EPA's Office of Inspector General (EPA-OIG), largely substantiated Ms. Wilde's disclosures.² The agency's reports concluded that:

- None of the individuals conducting lead-based paint inspections in EPA Region 4 from mid-2013 to late-2014 met training or credentialing requirements, and so should not have been conducting inspections.³
- Twenty-five percent of EPA Region 4's lead-based paint inspection files reviewed for fiscal years (FY) 2012 through 2017 lacked documentary

¹ EPA Region 4 covers Kentucky, Tennessee, North Carolina, South Carolina, Alabama, Georgia, Florida, and Mississippi.

² OSC referred Ms. Wilde's allegations to Administrator Scott Pruitt for investigation pursuant to 5 U.S.C. §1213(c). Acting Deputy Administrator Michael P. Flynn reviewed and signed the agency's report and supplemental reports.

³ Ms. Wilde alleged inspectors lacked credentials and training until at least mid-2015.

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evidence required to show whether renovators had taken required steps to protect the public from lead-based paint hazards during renovations.⁴

- Less than 2 percent of those inspection files reviewed for FY 2012 through 2017 revealed whether children occupied the premises at the time of renovation.

In June 2017, following OSC's referral, the EPA's Office of Enforcement and Compliance Assurance (OECA) initiated a National Credentials Documentation Audit to track and review the training and credentials of its inspectors across the country. The EPA reported to OSC its commitment to continuing this national audit program, and created more robust monitoring requirements at the regional level. The EPA asserted that, as of its initial response to OSC's referral, all Region 4 inspectors had current training and credentials. The EPA also reported that it has updated the procedures for its lead program, and is requiring branches with enforcement functions, including Region 4, to submit their procedures for review. The Chemical Safety and Enforcement Branch, which houses the lead-based paint inspection program, also now requires a lead enforcement coordinator and supervisor to review and approve all files "to ensure that all data is accurate, including the proper characterization of the field activity." In addition, the EPA has hired a contractor to assist with records management and is requiring quarterly branch chief reviews of file maintenance systems beginning in FY 2018, among other corrective measures outlined in its supplemental reports to OSC.

The EPA has also clarified the steps it will take to ensure that inspectors check for pregnant women and children who occupy renovation sites.⁵ Specifically, OECA will issue a national policy statement to all 10 EPA regions "re-emphasizing the importance of inspectors and enforcement officers trying to obtain information about occupants who are pregnant women or children" at renovation sites. EPA Region 4 has also added a specific line item to inspectors' documentation checklists verifying whether inspectors have checked for occupants at renovation sites who are pregnant women and children. Region 4 will also direct case development officers to follow-up if inspectors are unable to obtain this information. The EPA will incorporate this case development officer follow-up practice into its online "Q&A" materials for inspectors nationwide.

Ms. Wilde and her counsel, the Public Employees for Environmental Responsibility, reviewed the agency's reports and submitted comments. The EPA

⁴ Ms. Wilde asserts this percentage is much higher—at least 50%—and noted in her comments that the EPA-OIG investigator did not review a significant number of deficient inspection files because, according to Ms. Wilde, the investigator mistakenly categorized those files as non-inspections.

⁵ The EPA noted that inspectors were not required by law to check for pregnant or minor occupants, though their own guidance required it and their enforcement scheme calculated penalty amounts based on whether there were in fact such occupants when violations occurred. Ms. Wilde commented, and OSC agrees, that failing to check for pregnant women and children during lead-based paint inspections creates an increased danger to public health and safety.

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responded to some of Ms. Wilde's concerns, particularly by identifying steps it planned to take to ensure inspectors verified pregnant women and children occupants at renovation sites. One of Ms. Wilde's remaining concerns is that the EPA "does not address the lack of accountability that caused the failures in the Lead-based Paint Program that [she] disclosed." The EPA asserts that its recent and proposed measures, however, will do so.

I have determined that the EPA's reports contain the information required by statute and that its findings are reasonable.

As required by law, I am submitting the EPA's reports and the whistleblower's comments to you, the U.S. House Committee on Science, Space, and Technology, and the U.S. Senate Committee on Environment and Public Works. I am also making these documents available to the public.⁶ Our file is now closed.

Respectfully,



Henry J. Kerner
Special Counsel

Enclosures

⁶ See 5 U.S.C. § 1219(a)(1); <https://osc.gov>.