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July 21, 2009

Kevin Wilson
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 300
Washington, D. C. 20036-4505

Dear Kevin,

Thank you for time and effort you have put forth with the allegations I have made over mold and moisture problems and the associated health issues at Detroit Metro Airport. To say the least, I was overwhelmed with the amount and technical nature of documents. My response will include documents and comments from Michael Pinto, CSP, CMP and CEO of Wonder Makers Environmental, Inc. (WME). Due to the technical nature and specificity of the documents; Mr. Pinto's comments will be incorporated and referenced for the sake of brevity and so as not to be lost in translation.

The memorandum dated December 5, 2008, (Attachment 1), Joseph Figliuolo, Manager, Motown District and Dave Sanders, Manager, E. Michigan, regarding DTW Base Building Roof Project states, "Prior to relocating employees back into the TRACON, indoor air quality will be tested and confirmed acceptable." The sampling plan, (Attachment 1a), was for chemicals related to the installation of roofing materials rather than mold and other biological contaminants released by the activities that were being performed on the roof. In addition, the sampling scheme proposed by the Agency for the roofing project did not address hazards that were likely to affect the performance of the controllers working in the areas affected. For example, carbon monoxide (CO) was a part of the sampling plan due to the welding that was expected on the roof, however, the sampling plan did not address the carbon dioxide (CO₂) or the nitrates (NO₃) that would also be produced by the welding fumes. Further confusion is added in attachment 1a, memorandum dated November 17, 2008, where Mr. Figliuolo and Sanders state that carbon dioxide was one of the hazards to be monitored. The sampling plan is further addressed in attachment 1b by Mr. Pinto.

Mr. Figliuolo also noted that "NATCA representatives suggested the use of air scrubbers during roof work. It is unclear what benefit this measure would provide beyond the measures employed however, to continue our efforts toward building a collaborative relationship, the FAA will employ air scrubbers during roof work." This is just one example that indicates that the FAA does not understand the nature of indoor air quality. The air scrubbers were requested so that the impact of contaminants would be minimized and not affect the controllers once they returned to work in the TRACON.

Mr. Figliuolo went on to say that “NATCA representatives did further suggest the use of poly hangers and/or Smart Seal System however, because employing either of these measures would reduce indoor air quality and increase the likelihood of adverse impacts to National Airspace System (NAS) systems and operations, neither of these measures will be employed.” The FAA does not understand how their actions or inactions impact air quality. Building a contained work area with poly hangers or Smart Seal in the TRACON and other areas affected by the roof project, along with air scrubbing, would have provided the controllers with a level of protection from the contaminants distributed by the roofing activities. Protecting the controllers from the hazards created by the roof work is critical since they hold the lives of the flying public in their hands.

This reluctance to include reasonable protections such as a plastic barrier under the interior ceiling tiles is even more puzzling given the history of building contamination problems the FAA has experienced with roofing projects across the country over the past few years. In fact, the FAA’s *Indoor Air Quality Implementation Guidance* dated September 25, 2006 was developed primarily in response to IAQ incidents from roofing projects. The Agency would do well to review that document in light of NATCA’s request and read again where it states on page 32, item B, “Contaminants can also migrate from the work area through any openings such as pipe chases, abandoned duct, or holes in walls, floors, and ceilings. Any opening will convey contaminants if not sealed. Pay particular attention to the barrier between the construction area and the adjacent non-construction areas. For some renovation projects, the contractor may need to build an extensive barrier wall system between the occupied and construction areas. (Attachment 1c) We would like the Agency to at least follow their own guidance during these types of projects.

The March 20, 2009 email from Debra Rosen, Senior Attorney, Office of General Counsel, U.S. Department of Transportation, to OSC is a recap of a discussion about the DOT’s investigation into the mold and moisture problems at DTW. This email is of particular interest due to Ms. Rosen’s contradictory statements in the second and third paragraphs that indicate confusion of the issues and/or facts. Ms. Rosen incorporates information from NIOSH, Tom Black, DOT Safety and Occupational Health Manager and excerpts from the May 2008 inspection.

Ms. Rosen first states that “NIOSH advised that health surveys are typically conducted early in the process when people are ill and the source of the problem is unknown. Here, we already know that there is a moisture and mold problem at the Detroit facility and are making every effort to remedy the problem.” It is interesting that Ms. Rosen uses this reasoning to not justify a DTW employee health survey then later in the email state that their investigation did not establish a direct link between the mold at the facility and employee health. If a link was not found and the source for the illnesses is unknown, then conduct a health survey as per NIOSH.

Ms. Rosen states there are no legal or regulatory standards or limits for determining mold exposure and then continues with “the concentrations of airborne fungal spores was considered insignificant and do not indicate elevated mold spore concentrations within

the tower or base building that would be likely to adversely impact employee health.” This statement further supports the fact that a survey should have been conducted five years ago and certainly should not be arbitrarily dismissed today.

The “the concentrations of airborne fungal spores was considered insignificant and do not indicate elevated mold spore....” statement brings into question the integrity of the DOT personnel involved in the investigation. How can Ms. Rosen state that there are no legal or regulatory standards or limits for determining mold exposure and then state fungal spores was considered insignificant and do not indicate elevated mold spore concentrations? What is Ms. Rosen basing these levels on if there are no standards or limits? And if their insignificant and non-elevated findings are accurate, then why remediate? There are industry standards, protocols and guidelines for every one of these distorted statements. They just chose to ignore the guidance.

Ms. Rosen notes that mold was discovered in unoccupied spaces, the tower elevator shaft was not a conduit for mold spores to travel within the facility, there was no visible mold found in occupied areas and falls back on the old analogy of mold concentration outside versus inside. The concentration analogy has already been disproved with the spore type comparison inside versus outside.

So where is the mold from the insignificant and non-elevated findings coming from? Well, using Ms. Rosen’s reasoning, not from the unoccupied spaces via the impenetrable elevator shaft even though the types found in the occupied samples matched the unoccupied types. So the spores had to come from the higher concentration outdoor air, right? Wrong. Again, this is very important because the mold types found inside were not found outside and the mold found inside are target spores.

Ms. Rosen speaks of open communication with employees and nothing could be further from the truth. During the November 5, 2008 roof replacement pre-con meeting it was discovered that the Agency was going to conduct another invasive inspection in December 2008. This fact was not brought up by either Mr. Figliuolo or Mr. Sanders, the meeting facilitators, but by a slip of the tongue by an individual via telephone. Here the Agency was a month away from conducting an inspection and not a word had told us. Statements of work were completed for remediation in February 2009 and June 2009 and again no one had told us these projects were going to take place. The Agency waits until the last minute to convey any information and what is conveyed is set in stone and not amendable. This is nothing more than a whitewash. This is what exactly what has been taking place over the last five years. The Agency has just made it sound palpable.

The document dated September 25, 2008, entitled DTW Project Communication Plan is what I am going to assume what Ms. Rosen touched on in her March 20, 2009 email. In this document the Agency states that a question and answer session shall take place at the end of the pre-construction meetings. The Agency has all of their personnel at all meetings and we are not warranted our experts and this puts us at a great disadvantage. The question and answer period turns into email exchanges where the Agency will not answer our questions or offer inconsequential answers that just ensures subsequent emails

that guarantees nothing gets answered so they can move forward with the doomed project. The Agency knows that if they were to allow our experts into the meetings they would be exposed for what they are, incompetent.

Another example of poor communication is noted during the roof replacement project. Toward the end of the project the controllers were told that air quality data would only be posted if there was problem. After the handling of the tower evacuation in January 2005, this lack of information made the controllers feel uneasy about entering the second floor because they were not sure what the atmospheric conditions were inside the TRACON.

The DTW: OST Recommendations Tracking Sheet is another document that is not worth the paper it is written on. The Agency again speaks of open communication and inspecting other Leo Daly towers. The reason I mention these to pieces in the same sentence is because they are not synonymous. In speaking to the other facility representatives of the inspected Leo Daly towers not only were they not given copies of the report, they were not even aware that inspections had taken place.

That being said, I find it hard to believe that and being taken from the tracking sheet, "No reports of adverse health effects or significant occupant complaints of discomfort or other symptoms were observed in the ATCTs inspected as part of this effort." Did the Agency discuss employee health with the inspectors without employee knowledge to come to the "no reports of" conclusion? Apparently they did not talk to building employees about health issues because observing them is good enough to come to these conclusions. The other Leo Daly tower issues will be addressed later in Mr. Pinto's response. Mr. Pinto's response in attachment 2 addresses the DTW Project Communication Plan, DTW: OST Recommendations Tracking Sheet and etcetera in greater detail.

In June 2008 there was another invasive inspection of the facility conducted by Barbara Hebert, CIH. We never received a copy of the inspection report, but I have submitted Mr. Pinto's report, (Attachment 3), commenting on observations from David Batts, Wonder Makers expert, who was permitted entry for the inspection. What we have received, apparently references the June inspection, were two documents from July and August 2008. There were differences between the two documents covering the same inspection and addressed in Tab 1 of the blue binder. I will not go into great detail, but will let Mr. Pinto's documents; Tab 1 and attachment 3 speak for themselves.

The editing that occurred between July and August 2008 are disturbing and in normal Agency fashion, there is no evidence as to who are the editors. They change words that down play the evidence and remove entire sentences of suggestions to misrepresent the condition of the facility.

In December 2008, yet another invasive inspection was conducted and was performed by the same individual from the OST May 2008 inspection, Michael Cecil. Mr. Cecil moved forward in December 2008 knowing he would be disturbing mold, he discovered it in May 2008, with no environmental controls and with no regard to industry standards or employee health.

As in Ms. Hebert's June 2008 inspection, Mr. Cecil's December 2008 inspection once again ignored industry protocols governing such inspections. They range from the most basic (*e.g.*, refusal to use disposable suits to minimize transference of dust and cross contamination of fungal spores from one area to another) to the most dangerous (*e.g.*, "cleaning" the HEPA-filter of the shop vacuum used for controlling dust during the removal of drywall by banging it on the floor so that the inside of the filter became contaminated and subsequent use of the vacuum dispersed contaminants at high velocity). Mr. Cecil's December 2008 assessment and Mr. Pinto's response are included in attachment 4 and 4a respectively.

Another sad part of these hap hazard invasive inspections is there are three CIH's involved; Mr. Cecil, Ms. Hebert and Wayne Vogelsburg and not one of them knew or even cared that there are industry standards, guidelines and protocols covering these types of inspections. All of them have the New York City Department of Health: Guidelines, OSHA: A Brief Guide to Mold in the Workplace, EPA: Mold Remediation in Schools and Commercial Buildings, ACGIH: Bioaerosols, Assessment and Control, Institute of Inspection, Cleaning and Restoration Certification, American Industrial Hygiene Association, the Texas Department of State Health Services, and the GAO report, to name a few, at their disposal. Yet they have chosen to ignore all of this information and reference material available to them.

This conduct raises serious concerns over how the inspection of other Leo Daly designed facilities will be conducted and how the problems encountered will be handled. This is what will be covered next.

Applied Environmental was contracted by the Agency to conduct inspections of 13 similar Leo Daly type towers and a Mr. David P. O'Konski, CIH (Certified Industrial Hygienist), CSP (Certified Safety Professional) is listed as the author of the final report. I am going to assume that Mr. O'Konski is also the inspector of the 13 towers given the fact that Applied Environmental was contacted in June 2007 to inspect our tower and Mr. O'Konski was the inspector. Attachment 5 and 5a cover the June 2007 inspection and Mr. Pinto's response.

I was with Mr. O'Konski during the inspection of DTW and I was not allowed to share any medical information, not even my own, nor discuss or give him any documents from past inspections and findings. This is the same approach that the Agency took in past inspections when different companies were hired to inspect DTW. Mr. O'Konski took no mold samples of any kind and no measures of temperature or humidity levels. He only conducted a visual inspection. You will see the same ill fated techniques between Mr. O'Konski's DTW inspection and the inspection of the 13 other towers. The visual inspection was often the inspection of choice at DTW until May 2008 when, due to the allegations I made, prompted an invasive inspection.

From May 2008 to December 2008 three invasive inspections were conducted at DTW and substantiated our claims of just how horrid of a decision it was to conduct visual inspections. Now, from September 2008 to December 2008, the Agency conducted the

inspection of those 13 other towers. That means that at least five months before they started the inspections the Agency knew the results from our May and June 2008 invasive inspections and still moved forward with the Applied Environmental visual inspections. The results from our inspection could have been extremely helpful in where and how to look and certainly proved that the visual inspection is severely faulted.

We ran into the same situation with Ms. Rosen and the inspection results of the Kansas City base building facility. When we submitted the diagram of the Kansas City base building showing areas of concern over mold and water, Ms. Rosen could not understand how this would help the DOT May 2008 DTW inspection. When I explained to her that our buildings are identical and this would be helpful to our inspectors, she still did not understand the correlation. The offering of past inspections findings is not just paramount between the different inspectors at DTW, but between DTW findings and the inspector of the 13 other towers.

In reviewing the report of the 13 towers and Mr. Pinto's response, (Attachment 6), I call into serious question the integrity of Mr. O'Konski and the Agency. How can Mr. O'Konski, a CIH and CSP, continue to move forward in this manner knowing that these facilities are similar and in some cases identical and not want to know past history? How can the Agency know what was discovered at DTW and not give Mr. O'Konski the information? There is no mention of an architect or a building engineer, actually no inspectors of any kind are listed in the report, yet they make decisions that appear to be outside their area of expertise. The entire 13 tower inspection was prompted by my allegations and issues at DTW and Mr. O'Konski even states this in the Executive Summary of the report. How in good conscience can these people continue to conduct themselves in this manner? They discount our health issues, conduct improper inspections to down play facility conditions and when more mold and water damage is found they state it holds no significance. Their conduct is abhorrent.

In the document titled DTW: OST Recommendations Tracking Sheet and final report of the 13 towers it is states, "Collectively, the inspection did not identify a consistent pattern of design or construction defects giving rise to water incursion problems and/or resulting mold growth." After reading Mr. Pinto's response I cannot see how the Agency can come to this conclusion.

The data in the blue binder is provided in two formats: a three-ring binder with paper copies and an electronic version of the documents on a CD. This submission includes copies of numerous documents submitted by the FAA, as well as Wonder Makers analysis/response. For your convenience these documents are separated and numbered. The individual FAA documents have a numeric designation and the analysis or response to that particular FAA submittal has the same number designator with alphabetic subheadings. For example, the first FAA item that was included in the package is Investigation of Mold and Moisture at the Federal Aviation Administration, Detroit Metropolitan Air Traffic Control Tower facility, July 15, 2008. It has been identified as Tab 1. Wonder Makers has one document that is germane to this FAA paper and it is

labeled Tab 1b. Because of the volume of material a table of contents is included at the front of the binder.

The information in the blue binder was reviewed and responded to by Wonder Makers. Although I spoke to Wonder Makers on a daily basis and discussed the content, there was no way with the technical aspects and unfamiliarity with some of the documents could I properly comment on their contents. I did review Wonder Makers data and some of the documents were submitted with my initial complaint and are included to avoid confusion.

One item of factual misrepresentation that I would like to address is a string of the following correspondence that involves the FAA's then acting administrator Robert Sturgell to Oversight Authorities. I believe the Agency deliberately misled Congress. This is also addressed in Tab 3.

July 21, 2008 letter to Robert Sturgell from Linda Washington Assistant Secretary for Administration, Designated Agency Safety and Health Official, Department of Transportation:

"The whistleblowers allege that despite previous remedial efforts, mold and moisture problems at the tower have not been fully remediated, causing them to continue to experience adverse health effects. **Our investigation has substantiated these allegations.**" [*emphasis ours*]

September 17, 2008 memo from R. Sturgell to L. Washington:

"Based on the corrective actions that the FAA has taken at these facilities, and the sampling and testing, which have been conducted by FAA and independent third parties, **we strongly believe that both facilities provide a safe and healthful work environment for our employees.**"

The sample results that Mr. Sturgell is referring to either do not exist or have not been shared with the building occupants.

November 7, 2008 letter from R. Sturgell replies to September 10 and October 22 letters from Congressman Dingell:

"The FAA has, to date, expended in excess of \$1 million on remediation and modification efforts..."

"Our tests have generally found the occupied tower spaces have better air quality than the outside air."

Once again, the test results that Mr. Sturgell is referring to have not been shared with the occupants.

In addition to the personal harm to the occupants that the FAA's approach to mold and IAQ issues has generated, there is another important dimension to this problem. The actions of the Agency at both DTW and other facilities represent a continued pattern of waste. This is especially apparent in their decisions to conduct remediation without comprehensive inspections. Such a policy virtually guarantees that:

1. An area with water damage will be visited multiple times before the problem is resolved.
2. Occupants' risks will be increased, particularly where engineering controls are downgraded because a large project is subdivided over time into multiple smaller projects.
3. Problems linger for years and occupants suffer from long term chronic exposure.

This waste of taxpayer money is further magnified by the FAA's reliance on a single document (New York City Guidelines) for guidance rather than understanding the mold remediation industry standard of care. They appear to have selected this as their touchstone for remediation activities because it allows them to avoid using stringent engineering controls for smaller projects. For example, the EPA guidance document directs the use of negative pressure inside remediation enclosures for any project that involves ten square feet of mold or more; but the FAA consistently writes work plans without this critical safety feature for projects up to 100 square feet.

The waste continues through every phase of the project with work that is ineffective as well as outside the standard of care. The FAA's reliance on cleaning rather than removal of mold-contaminated porous materials may appear to show a short term savings, but it has cost the taxpayers considerably more than what would have been spent to conduct these projects correctly the first time. Of course, the greater waste is the loss of health and well-being that has been suffered by so many occupants.

With this evidence in hand it is clear that a number of response steps need to be taken by the Agency to rectify the situation. This list should help move the process from complaint to resolution. Some items that we believe should be included are as follows:

1. Compel the Agency to make amends to the impacted employees at DTW (and other facilities where we have documented inappropriate activities related to mold/IAQ) from a monetary perspective by reimbursing:
 - a. The union for expenses related to medical evaluations by mold specialists and individuals for out-of-pocket expenses for their efforts to secure a proper diagnosis and treatment.
 - b. Employees' sick leave and vacation time that was utilized due to illness or for medical reviews necessitated by conditions in the structure.
2. Compel the FAA to implement reforms at their other facilities around the country that are of similar design or where health concerns have been raised by the occupants. Input and oversight by NATCA would ensure that the FAA follows their own internal IAQ policies.
 - a. Compel the FAA to acknowledge that mold and IAQ problems similar to those found at DTW are present at other facilities around the country.
 - b. Use this admission as a starting point for developing an effective nationwide policy for addressing such concerns. Since they are the ones who suffer from the conditions and policies now in place, building

- occupants should be represented on the team that develops such policies. It is important to note that such a cooperative task force was instrumental in addressing asbestos concerns throughout FAA facilities in the 1990s. This model should be revived for mold and indoor air quality concerns.
- c. Immediately initiate baseline air sampling for fungal and bacterial contaminants in all structures with reported IAQ complaints within the last two years, as well as all Leo Daly-designed towers.
 - d. Stop wasting taxpayer dollars by putting an end to mold surveys and inspections that do not involve comprehensive, invasive sampling in order to evaluate conditions and problems such as those documented at DTW.
 - e. Not only should bad inspections be stopped but comprehensive inspections, including invasive samples with proper engineering controls, should be undertaken at all Leo J. Daly-designed towers and other facilities with reported mold or IAQ issues.
3. Since the controllers are the ones who suffer from the conditions in the building, require that information and decision making be shared on items related to inspection, maintenance, or repair of the structure. The best method to ensure that the communication and decision making process is appropriate would be to have all building related efforts controlled by a task force that includes NATCA membership (and their designated experts).
 4. Mandate that the FAA allow complete access to NATCA experts for participation in meetings, inspections by FAA contractors, oversight of remediation activities, and independent inspections, testing, and monitoring.
 - a. Compel the FAA to reimburse NATCA for all the expense for their experts. The Agency had the opportunity to utilize their expertise at no cost by working in a cooperative fashion, but instead chose to ignore the measured advice and even tried to justify their decisions by attacking the credibility of the union's experts.
 5. Based on woeful past performance, building-related decisions should be subject to review by an independent outside entity on an expedited basis so that concerns about decisions that may compromise occupant health do not have to be processed through the standard grievance system. One of the ways to implement this would be to encourage the arbitrator who heard the case in 2006 to reassert jurisdiction over the case.
 6. Complete a thorough inspection of both the tower and the base building following the current mold remediation industry standard of care and recognizing that DTW is a critical use facility with sensitized occupants. This inspection would include additional invasive testing and be conducted under negative pressure by a competent inspector who collects air, surface, and bulk samples.
 7. Develop a thorough scope of work for addressing mold and other IAQ problems in the building. This scope of work should be completed before extensive

discussions begin on how to implement the scope. By separating the work scope from the work plan the initial emphasis can be on determining what is appropriate while later efforts can be focused on determining the safest and most cost-effective manner to accomplish the agreed-upon tasks.

8. Ensure that any work plan incorporates clear and objective end points so that the performance of the contractors and contract managers can be measured. Build back remediated areas with mold-resistant materials.

With this amount of material it is easy to lose sight of the forest for the trees. However, an overview of the information submitted by the FAA makes clear that the Agency's response to the problems at DTW and our attempts to get them resolved rises above apathy and neglect to deceit and intentional harm. Indeed, when these documents are analyzed in conjunction with the volume of other data that has been compiled regarding the conditions in the workplace a clear progression within the FAA from ignorance to negligence to bad management to lying/deceit/fraud and intentional harm can be seen, as well as the squandering of taxpayer dollars.

While these are strong accusations the information submitted are examples of the veracity of this conclusion. Other documents that have been reviewed also make it perfectly clear that the FAA lied to the arbitrator in June 2006 when they repeatedly emphasized that the mold and moisture problems were fixed in the building.

As you will see when you review the documents, this pattern of deceit, which has jeopardized the health of controllers and building occupants, is not restricted to a single incident or even a small subset of the documents. The neglect and intentional harm was clearly a widespread management approach to the problems that have been brought to the FAA's attention.

We are also concerned that some documents were missing from the package. While this is not surprising since the FAA has developed a history of withholding information throughout the years that the controllers have been suffering, we expected them to be comprehensive in their response to the Office of Special Counsel.

Additional missing documents that need to be procured:

Tab 22—Photographs from AUS ATCT are too small to review.

Tab 23—Two attachments were not included with the Kansas City Mold Inspection report: Aerotech Laboratories Total Fungal Spore Tape Reports and Aerotech Laboratories Total Fungal Spore Bulk Sample Reports.

Tab 25—Report on Mold and Moisture Inspection, Kansas City Airport, Airport Traffic Control Tower, author unknown, undated. Appendices 2-5 are missing.

Tab 27—Report of Exterior Building Envelope and HVAC Conditions, Kansas City International Airport and TRACON Base Building Airport Traffic Control Tower, January 22, 2008, by DMJM H&N. Appendices are missing.

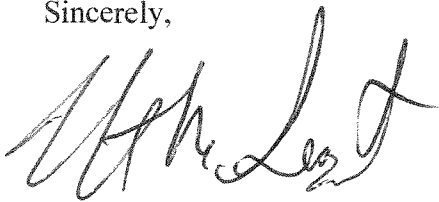
Tab 29—Corpus Christi ATCT Mold & Moisture Engineering Analysis from Ed Winkler, Civil Engineer to Richard Beyer, Acting Supervisor, December 18, 2007: “The inspection included the ATCT, base building, and ESU building. The inspection focused primarily on areas with known problems that had been identified in a report prepared by All Points Environmental, LLC, based on their September 12, 2007 inspection and assessment of the facility.” This report and any attachments or appendices are missing.

Tab 30—Trip Report from Ed Winkler to Steve Rathmeyer, December 7, 2006: A tape sample was collected. Test results showed that mold was not present. The laboratory analysis documentation was not attached. Appendix with 10 photos is missing.

Tab 31—A Supplemental Statement of Work is mentioned. This document is missing.

I know this has been and is going to continue to be a daunting task, but I would like to thank you again for the time and effort that you have and will be putting forth. I look forward to working with you in bringing this issue to closure.

Sincerely,

A handwritten signature in black ink, appearing to read "Vincent M. Sugent". The signature is fluid and cursive, with a large initial "V" and "S".

Vincent M. Sugent