



U.S. OFFICE OF SPECIAL COUNSEL  
1730 M Street, N.W., Suite 218  
Washington, D.C. 20036-4505  
202-254-3600

June 10, 2011

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

Re: OSC File No. DI-10-0454

Dear Mr. President:

Pursuant to 5 U.S.C. § 1213(e)(3), enclosed please find agency reports based on a disclosure made by Edgar Dion Lee, a whistleblower at the Department of Commerce (DOC), Herbert C. Hoover Building (HCHB), Washington, D.C. Mr. Lee, who consented to the release of his name, alleged that DOC managers knowingly exposed employees, including himself, to unsafe levels of asbestos in the HCHB eighth floor attic (attic), and permitted these employees to work in contaminated areas without personal protective equipment.

Mr. Lee's allegations were referred to the Honorable Gary Locke, Secretary of Commerce, to conduct an investigation into these disclosures pursuant to 5 U.S.C. § 1213(c) and (d). Secretary Locke tasked the investigation of the matter to the DOC Office of Inspector General (OIG). OSC received a report dated February 3, 2011, and two supplemental reports dated February 28, 2011, and April 25, 2011, from DOC. Mr. Lee provided comments on the original agency report and supplemental reports.

Mr. Lee alleged that he and janitorial staff were exposed to unsafe levels of asbestos in the HCHB attic after the asbestos problem had been identified. Mr. Lee conducted 20-30 minute inspections of the attic without any protective equipment two to three times per week from June 2004 until January 2008 as part of his regular duties. According to Mr. Lee, his first-level supervisor, Jana Brooks, then-Safety and Health Specialist, Occupational Safety and Health Office, became aware no later than April 2007 that the attic contained impermissible levels of asbestos. He believes this to be accurate based on e-mails he received from Monica Barnett, an industrial hygienist who served as a contractor for DOC. Mr. Lee was never given an explanation of the dangers of exposure to asbestos, the required training, or the need for personal protective equipment until after he ceased working in the attic in January 2008. The first notice Mr. Lee received about the asbestos was a February 25, 2008, letter from Fred E. Fanning, then-Director for Administrative Services.

Mr. Lee provided four forwarded e-mails from Ms. Barnett, dated between April 25, 2007, and May 2, 2007, which contain attachments addressing the presence of asbestos. Ms. Brooks was a recipient of three of the e-mails and the author of the fourth e-mail. Three of the attachments were different versions of the same document, "Asbestos in the HCHB Attic." All versions of this document stated that "the attic area is off limits to anyone unless they have

the proper personal protective equipment.” The other attachment, entitled “Background of Asbestos,” explained that “[t]hree sampling events conducted in February and April, 2007, have consistently shown elevated levels [of asbestos] above Environmental Protection Agency (EPA) and Occupational Safety and Health Administration (OSHA) regulatory standards. The sprayed insulation located throughout the attic/8<sup>th</sup> floor area is the probable source of the asbestos fibers in the air.” In addition, this document later stated that “those [employees] that are granted access [to the attic] must take protective measures to protect them from any possible exposure.” Mr. Lee learned about the existence of these e-mails from Ms. Barnett after he retired.

The agency investigation substantiated Mr. Lee’s allegations. In the agency’s February 3, 2011, report, the OIG concluded that DOC employees and contractors, including Mr. Lee, were “subjected to potential exposure to impermissible levels of airborne asbestos between February 2007 and April 2007—and perhaps even earlier than that period.” Testing on April 25, 2007, confirmed that the airborne asbestos levels in the attic exceeded OSHA’s Permissible Exposure Limit. The report further confirmed that DOC Office of Administrative Services (OAS) management failed to satisfy its obligations under OSHA and U.S. General Services Administration (GSA) regulations to implement a comprehensive asbestos management plan that includes testing airborne asbestos at regular intervals, providing awareness training, and remediating damaged materials. The report also included a history of the asbestos issues in the attic and a status report on the OIG’s recommendations, such as the development and implementation of an asbestos management plan. Finally, the report concluded by noting that administrative action could not be recommended for any of the responsible OAS personnel because the individuals responsible for the mismanagement of the asbestos conditions were no longer employed by DOC.

In its February 28, 2011, first supplemental report, the agency stated that it anticipated that the asbestos management plan would be implemented by May 27, 2011. Furthermore, while an Asbestos Program Manager still needed to be hired, any delay in filling this position would have no adverse impact on meeting this deadline. The agency also explained that it had taken the following interim measures to ensure that HCHB employees are properly protected from asbestos hazards: the attic is accessible only through locked doors and elevators, doors to regulated areas contain padlocks, the integrity of the locks is checked daily, asbestos warning signs are posted on the eighth floor, access to regulated areas is controlled by a permit system, and DOC and GSA alternate air sampling testing every six months.

Mr. Lee submitted comments, dated March 18, 2011, on the agency’s report and first supplemental report. He recounted how the responsible individuals’ “vile actions” caused him to lose his federal career, encounter horrendous financial burdens, exacerbate his lung disease, and potentially expose his family to hazardous materials. In addition, he explained that this incident caused him to suffer stress and depression as he worried about which asbestos-related disease he will have to suffer. Mr. Lee provided a list of nine individuals whom he believed took no action to help him and were part of a cover-up to avoid responsibility for the asbestos problem. Mr. Lee believed that each of the nine individuals should have administrative action taken against them and be criminally charged for their roles in this matter.

In its second supplemental report, dated April 25, 2011, the agency identified Mr. Fanning, Ms. Brooks, and former HCHB Building Manager Mario Aquino as the officials who bore responsibility for mismanaging the HCHB's asbestos conditions. The agency also provided its findings regarding the six other individuals who Mr. Lee believed bore responsibility for the asbestos mismanagement. While Mr. Lee was contacted by the agency and given a chance to explain why he believed these six individuals were involved, the agency was unable to conclude that any of the individuals knew or should have known about the asbestos conditions in the attic.

Mr. Lee submitted comments on the second supplemental report dated May 16, 2011. He disagreed with the agency's conclusion that the responsibility for the asbestos mismanagement was limited to only three individuals. He maintained that the six additional individuals whom he identified in his first set of comments shared responsibility as well. In support of this contention, Mr. Lee submitted copies of various policies and other documents as attachments to his comments.

OSC has reviewed the original disclosures, the agency report and supplemental reports, and Mr. Lee's comments. Based on that review, we have determined that the reports contain all of the information required by statute and that the agency's findings appear to be reasonable.

As required by law, 5 U.S.C. § 1213(e)(3), we have sent copies of the reports and Mr. Lee's comments to the Chairman and Ranking Member of the Senate Committee on Commerce, Science and Transportation and the Chairman and Ranking Member of the House Committee on Energy and Commerce. We have also filed copies of the reports and Mr. Lee's comments in our public file and closed the matter.

Respectfully,

  
William E. Reukauf  
Associate Special Counsel

Enclosures