

U.S. Department of
Homeland Security

United States
Coast Guard



Commandant
United States Coast Guard

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JUN 2 2009

BY ELECTRONIC MAIL

Mr. William E. Reukauf
Acting Special Counsel
U. S. Office of Special Counsel
1730 M Street, N.W.
Suite 300
Washington, DC 20036-4505

RE: OSC File No. DI-08-0563

Dear Mr. Reukauf:

I write on behalf of Secretary Napolitano, the Department of Homeland Security (the Department), and the U. S. Coast Guard (CG), to respond to your letter of December 8, 2008 in the above-referenced matter involving allegations that a former CG employee, Mr. Leroy Falconi, was improperly exposed to asbestos while working at the U. S. Coast Guard Academy (USCGA). Office of Special Counsel (OSC) requested that the Department investigate this matter, and Coast Guard Investigative Service (CGIS) performed the investigation. The CGIS investigation was intended to supplement a previous investigation conducted by Environmental Protection Agency Criminal Investigative Division (EPA CID). The attached CGIS report outlines the findings of the investigation. This report is not meant for public dissemination. A version for public use will be provided to your office as soon as the redactions are complete.

Mr. Falconi alleged that, in July 2007, he was knowingly and intentionally exposed to hazardous asbestos by his CG supervisor, Mr. Brent Bensick. Although Mr. Falconi, who was employed at the USCGA as a carpenter for 17 years, denied receiving any training concerning the identification and/or abatement of asbestos, this contention was disputed by Mr. Bensick, as well as CG Captain (CAPT) Joseph Phillips, the USCGA Public Works Director. Mr. Bensick stated that Mr. Falconi had attended an 8 hour training course on asbestos at the USCGA as recently as the spring of 2007, and CAPT Phillips stated that such course was held biannually.

A USCGA Work Order request was issued, which directed the removal of floor tiles in Smith Hall. Mr. Falconi stated that he had no concerns the tiles contained any asbestos, since the tiles to be removed measured 12" by 12," and there was no reason to suspect there would be asbestos in the rooms where work was to be performed. Mr. Bensick denied having any knowledge of asbestos in the classrooms in Smith Hall, and he (like Mr. Falconi) stated he had no reason to suspect the existence of asbestos because the tiles appeared to be 12" by 12." Mr. Bensick and Mr. Falconi used ice scrapers to remove the tiles.

The existence of asbestos was first suspected, shortly after the tiles were removed, when a CG Commander (CDR (b)(6) & (b)(7)(C)) recalled the existence of asbestos in the location in question. No environmental reports could be immediately located, and Mr. Bensick stated he was directed to consider the waste as asbestos at that point. Although a report was later found, which confirmed

Subj: RESPONSE TO MR. WILLIAM E. REUKAUF REGARDING
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the asbestos in the tiles, the USCGA also hired a contractor to test the material the day after the incident, and the presence of asbestos was indicated. The asbestos was not friable.

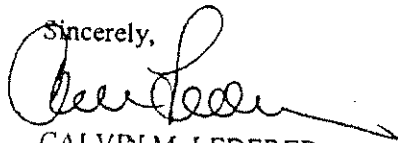
An instruction, SUPTINST 6260.16A, entitled "Asbestos Exposure Control Procedures," in effect at the time of the incident in July 2007, states that "In the event suspected asbestos-containing material is encountered, contact the Safety Officer within Facilities Engineering If records cannot positively identify material as non-asbestos, the Safety Officer will arrange for sample collection and verification of material before work proceeds." After the incident involving Mr. Bensick and Mr. Falconi in the removal of tiles containing asbestos, CAPT Phillips directed the issuance of a new policy that he states requires testing of materials for asbestos if a worker has "the faintest suspicion" of the presence of asbestos; in his view, the prior policy did not call for testing unless the employee thought it was necessary. The language of the new policy, SUPTINST 6260.16, dated December 19, 2007, states that, "Unless clear documentation exists that floor tiles, mastic, insulating or other suspect materials do not contain asbestos, these materials shall be tested for ACM prior to any work proceeding."

No disciplinary action will be taken against any employee, military or civilian, based upon the allegations forming the basis of this CGIS investigation. There was no intentional exposure of any employee to asbestos-containing material. In fact, Mr. Falconi's own supervisor, Mr. Brent Bensick (whom Mr. Falconi alleges exposed him to asbestos by calculation and design), actually performed the tile removal work with Mr. Falconi. Neither Mr. Falconi nor Mr. Bensick believed the tiles contained asbestos at the time the work was performed, and proper measures were taken when the suspicion of asbestos was first raised by CDR (b)(6) & (b)(7)(C)

There are, however, further measures that can and should be taken, in order to improve employee awareness of asbestos, as well as employee sensitivity to the need to follow proper asbestos control procedures. First, SUPTINST 6260.16 should be further refined and clarified to reflect what is believed to be the proper intent of USCGA management that workers should err on the side of caution when working with material that they have the slightest suspicion or belief may contain asbestos. The updated instruction may not accurately reflect this intent of management. Second, the locations of hazardous material on campus should be accurately and routinely conveyed to employees who work around such material.

Thank you for your efforts and for bringing this issue to the attention of the CG. Please do not hesitate to contact Ms. (b)(6) & (b)(7)(C) of my staff at (202) 372-3759, should you wish to further discuss this matter.

Sincerely,



CALVIN M. LEDERER
Deputy Judge Advocate General
U.S. Coast Guard

cc: The Honorable Janet Napolitano, Secretary DHS
The Honorable Jane Holl Lute, Deputy Secretary DHS
Admiral Thad W. Allen, Commandant USCG
CDR (b)(6) & (b)(7)(C) USCGA Legal Officer

Index of Acronyms w/Definitions
Report of Investigations – Leroy E. Falconi

<u>Acronyms</u>	<u>Definition</u>
ASAC	Assistant Special Agent in Charge
AUSA	Assistant United States Attorney
CDR	Commander
CGIS	Coast Guard Investigative Service
EPA	Environmental Protection Agency
EPA-CID	Environmental Protection Agency – Criminal Investigative Division
FNU	First Name Unknown
LCDR	Lieutenant Commander
LNU	Last Name Unknown
LT	Lieutenant
MAT3	Chief Warrant Officer, Material Specialists 3
RAC	Resident Agent in Charge
S/A	Special Agent
SAC	Special Agent in Charge
USCGA	United States Coast Guard Academy

DEPARTMENT OF HOMELAND SECURITY U.S. COAST GUARD CG-4608 (Rev. 03-03)	REPORT OF INVESTIGATION	CLASSIFICATION STAMP FOR OFFICIAL USE ONLY
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PI	NOCI	ROI X	RR	VR	RLD CCN	DLD	STATUS (Pend, Closed, etc.) PENDING	TA	SR	GF
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SUBJECT FALCONI, LEROY E/WM (b)(6) & (b)(7)(C) USCGA PUBLIC WORKS DEPT (FORMER EMPLOYEE)	
CHARACTER OIG INVESTIGATIONS-OIG ASSISTANCE	CCN 0200-08 GNE 0495 10B GK
PREDICATION SAC, NE REGION DATED 19 DEC 2008	CONTROL AGENT RAC (b)(6) & (b)(7)(C)
PARTICIPATING AGENTS	REVIEW SUPERVISOR ASAC (b)(6) & (b)(7)(C)

REMARKS

CROSS REFERENCE: CCN: 0214 07 GNE 0000 4X GF

This investigation was predicated on 19 December 2008 by the Special Agent in Charge (SAC), CGIS, New England Region, based upon a request for investigative assistance from the U.S. Office of Special Council (OSC), dated 08 December 2008. OSC has requested a CGIS investigation to supplement a previous criminal investigation conducted by the Environmental Protection Agency (EPA), Criminal Investigative Division, New England Region. The EPA-CID investigation was originally based on a complaint filed by Leroy E. FALCONI, through the District of Connecticut United States Attorney's Office on 10 December 2007 alleging improper removal of asbestos material at the United States Coast Guard Academy (CGA), New London, CT. OSC specifically requested additional information pursuant to 29 CFR 1910.1001 as set forth in 5 USC 1213, to make a proper determination of FALCONI's whistleblower status request. FALCONI is a former USCG civilian employee (carpenter) who was removed for cause on 11 November 2007. EPA-CID investigation (FALCONI case file #0101-0115) was fully reviewed and a full clarification determined for OSC. USCG CGA legal files have been reviewed. This investigation is pending more interviews. There are no security concerns associated with this matter. This is a PENDING Report of Investigation.

SPECIAL HANDLING REQUIRED

DISTRIBUTION	(b)(6) & (b)(7)(C)	DATE
CGIS HQ	ORIG	12/26/08
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RAO NEW LONDON	COPY 2	NEW ENGLAND

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REPORT OF INVESTIGATION (continuation sheet)

SUBJ: FALCONI, LEROY E

CCN: 0200-08GNE 0495 10B[GK]

Details:

1. This investigation was predicated on 19 December 2008 by the Special Agent in Charge (SAC), CGIS, New England Region, based upon a request for investigative assistance from the U.S. Office of Special Council (OSC), dated 08 December 2008. OSC has requested a CGIS investigation to supplement a previous criminal investigation conducted by the Environmental Protection Agency (EPA), Criminal Investigative Division, New England Region. The EPA-CID investigation was originally based on a complaint filed by Leroy E. FALCONI (subject), through the District of Connecticut United States Attorney's Office on 10 December 2007 alleging that asbestos material was improperly removed at the United States Coast Guard Academy, New London, CT and that he was knowingly exposed to this hazardous material during the removal process.
2. On 18 December 2008, RAC (b)(6) & (b)(7)(C) CGIS, RAO New London, received an email from SAC (b)(6) & (b)(7)(C) (b)(6) & (b)(7)(C), CGIS, NE REGION, stating that an investigative request was received from the Office of Special Council (OSC) alleging that FALCONI was knowingly exposed to asbestos material while he was employed at the U.S. Coast Guard Academy. The OSC request cites several questions remaining as a result of the EPA-CID investigation. Included in this 4 page request were the following documents:
1. Air quality report from Mystic Air Quality Consultants, Inc dated 24 July 2007
 2. Several work order requests (USCGA internal document),
 3. 1993 Asbestos Survey for the U.S. Coast Guard Academy from the Department of the Navy, Northern Division, Naval Facilities Engineering Command, Lester, PA,
 4. EPA-CID investigative activity report dated 03 June 2008 (two pages)
 5. EPA-CID investigative activity report dated 18 December 2008 (ten pages)
 6. US Coast Guard Academy Memorandum titled Notice of Proposed Removal dated 17 October 2007
 7. US Coast Guard Academy Memorandum titled Notice of Decision on Proposed Removal dated 07 November 2007, correspondence from OSC to (b)(6) & (b)(7)(C) Office of General Law, US Coast Guard Headquarters, 2100, Second Street, SW, Suite 1410, Washington, DC, OSC file # MA-08-1009; Falconi, Leroy
 8. Correspondence from the Office of Inspector General, Office of Investigations, dated 17 June 2008.
3. On 19 December 2008, RAC (b)(6) & (b)(7)(C) contacted S/A (b)(6) & (b)(7)(C) EPA-CID, New Haven, CT and requested to review his case file associated with the FALCONI investigation. S/A (b)(6) & (b)(7)(C) stated he needed to obtain approval from his supervisor for this review to take place. During this conversation, S/A (b)(6) & (b)(7)(C) stated at the conclusion of his investigation, he and (b)(6) & (b)(7)(C), EPA Legal Council, met with AUSA (b)(6) & (b)(7)(C) District of CT, to present the case for consideration of federal prosecution. S/A (b)(6) & (b)(7)(C) stated at the conclusion of this meeting, a decision was made that this matter would no longer be considered for federal prosecution.
4. Continuing on the same day, RAC (b)(6) & (b)(7)(C) spoke to Karen GORMAN, Office of Special Council, based on a voicemail RAC (b)(6) & (b)(7)(C) left for Catherine MCMULLEN, Chief, Disclosure Unit, OSC. During this conversation, RAC (b)(6) & (b)(7)(C) requested clarification on the OSC request to investigate FALCONI's allegation he was exposed to asbestos. RAC (b)(6) & (b)(7)(C) also requested clarification on the OSC correspondence, file #MA-08-1009 sent to (b)(6) & (b)(7)(C) at U.S. Coast Guard Headquarters. GORMAN stated this correspondence is unrelated to the request for investigation and should not be considered part of FALCONI's asbestos exposure investigative request.
5. On 22 December 2008, RAC (b)(6) & (b)(7)(C) contacted AUSA (b)(6) & (b)(7)(C) to clarify the reason the EPA investigation is not being considered for prosecution. AUSA (b)(6) & (b)(7)(C) stated evidence was lacking in the EPA investigation to establish elements of a criminal violation and therefore the matter was not going to be pursued for criminal prosecution.
6. On 05 January 2009, RAC GEMPP attempted to contact (b)(6) & (b)(7)(C) EPA Legal Council.

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SUBJ: FALCONI, LEROY E

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7. On 09 January 2009, RAC (b)(6) & (b)(7)(C) contacted LCDR (b)(6) & (b)(7)(C) USCGA Legal Department, and requested to review any/all documents his office retains on FALCONI. LCDR (b)(6) & (b)(7)(C) stated this would be permissible and his office maintains several files on FALCONI related to various matters for the last few years.

8. Continuing on 09 January 2009, RAC (b)(6) & (b)(7)(C) received a call from S/A (b)(6) & (b)(7)(C). During this conversation, S/A (b)(6) & (b)(7)(C) stated his supervisor has authorized a review of the EPA-CID investigative case file on FALCONI.

9. On 13 January 2009, RAC (b)(6) & (b)(7)(C) met with S/A (b)(6) & (b)(7)(C) and reviewed the entire investigative case file. During this meeting, RAC (b)(6) & (b)(7)(C) requested and received a copy of the entire FALCONI case file #0101-0115, including investigative reports. RAC (b)(6) & (b)(7)(C) received copies of the nine (9) investigative activity reports dating from December 2007 - June 2008. It should be noted, only two (2) of these reports were included with the OSC request for investigation. The following is a synopsis of the EPA-CID investigative activity reports received from S/A (b)(6) & (b)(7)(C).

EPA Investigative Action Report #1

On 18 December 2008, S/A (b)(6) & (b)(7)(C) interviewed FALCONI concerning his allegation that he was knowingly exposed to hazardous asbestos. During this interview, FALCONI stated he had been employed as a carpenter at the USCGA for approximately 17 years. When questioned, FALCONI stated that he never attended any training concerning the identification and/or abatement of asbestos while employed at the USCGA. FALCONI stated that he learned during his time as a carpenter at the USCGA that 9"x9" floor tiles may contain asbestos and should not be removed by untrained personnel. FALCONI described an incident that took place on 18 July 2007 when he was ordered by Brent BENSICK, USCGA Structure Shop Supervisor, to remove approximately 360 square feet of floor tiles and related mastic from two classrooms (rooms 333/335) in Smith Hall, USCGA. FALCONI stated BENSICK ordered him to remove approximately 180 square feet of tiles and related mastic from each classroom. FALCONI stated he believed that BENSICK requested the tiles be removed in order for new tiles to be installed. FALCONI stated that all of the construction and removal activities within the two classrooms were documented on the USCGA Work Order Requests # 541239, 55078 and 551754. Upon reviewing the referenced work orders, S/A (b)(6) & (b)(7)(C) noted there was no mention of any floor tiles and related mastic. S/A (b)(6) & (b)(7)(C) questioned FALCONI about this and stated that on 18 July 2007, BENSICK ordered him (Falconi) to take all of the tools necessary for tile and mastic removal in classrooms 333/335. FALCONI stated later in the morning, BENSICK arrived at the rooms and explained what work he wanted completed. FALCONI stated he questioned BENSICK asking why there was no mention made of the tile/mastic removal on the work order. FALCONI stated BENSICK told him "a command decision was made not to put it in the work order." FALCONI stated BENSICK made it clear that he was the boss and the tile/mastic removal was to be completed whether it was on the work order or not. FALCONI stated he didn't question BENSICK any further. FALCONI stated he then asked BENSICK if there were any issues concerning hazardous waste in this project; to which BENSICK responded there were none. FALCONI stated no other people were present during this conversation with BENSICK. When questioned by S/A (b)(6) & (b)(7)(C), FALCONI stated he didn't have any concerns that there may be asbestos in the tiles/mastic because the tiles measured 12"x12" in size and there was no reason to suspect there would be asbestos in the two rooms. FALCONI stated he used hand tools and an ice scraper to remove the tiles. FALCONI stated many of the tiles broke in to smaller pieces while being removed and the mastic, which was brownish/black in color, turned to dust as it was scraped off the floor. FALCONI stated he wore his regular clothes, a pair of gloves and a set of goggles while removing the tiles/mastic. FALCONI stated no other precautionary measures were taken to prepare the room for the tile/mastic removal. FALCONI stated when he completed the job, there were no remnants of mastic remaining on the floor. FALCONI stated both rooms were swept and he recalled that dust was being generated while he was sweeping. FALCONI stated that he's not aware of anyone that was exposed to the dust created while he was working. However, FALCONI stated some of the dust was likely circulated in to the building through the air handlers. When asked how the tiles were disposed of, FALCONI stated he placed the tiles in four piles (2 in each room). FALCONI stated he then asked Captain Michael ALFULTIS, USCGA, if he could dispose of the tiles in one of the dumpsters nearby. Captain ALFULTIS stated the tiles could be disposed of in a dumpster if

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Details:

documentation could be produced that the tiles are asbestos free. FALCONI stated he immediately contacted BENSICK on his USCG issued radio and requested a copy of the report certifying the tiles were asbestos free. FALCONI stated that BENSICK responded that he had the report and would bring it to him shortly. While waiting for BENSICK, FALCONI stated that Commander FNI (b)(6) & (b)(7)(C) USCGA, walked in and initiated a conversation with Captain ALFULTIS regarding the removal of the tiles/mastic. Commander (b)(6) & (b)(7)(C) stated that he recalled the existence of asbestos in the building in question. Commander (b)(6) & (b)(7)(C) reiterated that a report showing the tiles were asbestos free would be needed in order to dispose of the tiles in the dumpster. FALCONI stated approximately 45 minutes later BENSICK arrived. However, he didn't have the paperwork that was previously discussed. FALCONI stated that BENSICK and Commander (b)(6) & (b)(7)(C) then unsuccessfully searched LT (b)(6) & (b)(7)(C)'s office looking for the paperwork. FALCONI stated BENSICK announced that he would contact the USCGA's Environmental Department's Hazardous Materials Response Team to determine if they had a copy of the report. FALCONI stated BENSICK and Commander (b)(6) & (b)(7)(C) then began to bicker about the existence of asbestos in the tiles/mastic in question. FALCONI stated shortly after lunch on the day in question, BENSICK returned with several large, heavy duty brown bags. BENSICK then told FALCONI that the USCGA's Environmental Department instructed him to bag the tiles and leave them in the classrooms. BENSICK also told FALCONI that the Environmental Department informed him they would handle the tile disposal. FALCONI stated after completing his work in the classrooms, he left as BENSICK sent him to another job. FALCONI stated on the morning of 19 July 2007, BENSICK ordered him to immediately return to the two classrooms in question to retrieve all of his tools. FALCONI stated he was unsure why BENSICK wanted this done immediately. FALCONI stated later that morning he returned to the classrooms as instructed. However, during the second trip to the classroom, FALCONI noted the classroom doors were closed/locked and asbestos placards/signs on the doors. FALCONI stated he then informed BENSICK the rooms were closed and asbestos signs were posted on the doors. According to FALCONI, "BENSICK was pissed" that FALCONI had not removed all of his tools first thing in the morning as instructed. FALCONI then stated he asked BENSICK why he was sent to rooms 333/335 if he (Bensick) was aware there was asbestos in the rooms to which BENSICK responded that he just learned there was asbestos in the rooms. FALCONI stated BENSICK remained quiet and refused to answer when questioned by him (Falconi) about the timing that he learned when there was asbestos in the rooms. FALCONI stated he prepared a memorandum for BENSICK and Captain ALFULTIS on 20 July 2007 requesting all paperwork associated with the conditions in the two classrooms. FALCONI stated that Captain Joseph PHILLIPS, Head of Public Works, USCGA, indirectly provided him with the requested documents. FALCONI stated the documents were emailed to BENSICK who, in turn, selectively provided them to him. FALCONI stated the documents provided to him indicate that the tiles contained 2% asbestos and the mastic contained 15% asbestos. FALCONI stated on 19 July 2007, Mystic Environmental Inc., conducted sample tests and analysis in the areas in question. According to FALCONI, these tests and analysis clearly showed asbestos was present in the mastic. FALCONI stated he was then summoned to the USCGA medical facility on 25 July 2007 so a physical exam could be completed. FALCONI stated immediately following this exam, he was ordered off the USCGA and told he would not be allowed to return until he was "deemed fit for duty" by a USCGA appointed psychologist. When asked why he was required to meet with the psychologist, FALCONI stated the USCGA medical doctor felt he was acting erratically. FALCONI stated he met with the psychologist several weeks later and it was clear to him during this appointment that the doctor was determined to satisfy his client (the USCGA) and did not have an open mind during his evaluation. FALCONI stated he subsequently had a follow up appointment with his doctor and a psychologist who found him physically and mentally fit to do his job and they did not see any erratic or worrisome behavior. FALCONI stated his immediate removal was clearly the USCGA's attempt to get back at him for being a "whistle blower". FALCONI further stated that he found it odd the USCGA found him unfit for duty immediately after he alerted management of materials containing asbestos. FALCONI stated he received a letter on 07 August 2007 from Captain PHILLIPS informing him that he had been exposed to asbestos. However, FALCONI stated the letter indicated that he had not been exposed to any acute levels of asbestos. FALCONI provided SA (b)(6) & (b)(7)(C) with a number of documents, including copies of work orders and emails. The documents are being maintained with the EPA-CID case file and a copy of the documents were included as part of the

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investigative activity report. When questioned, FALCONI stated he was aware of other illegal asbestos abatement activities at the USCGA. FALCONI stated he had knowledge that two other employees were ordered to remove pipe wrap insulation containing asbestos in rooms 333/335 which was outlined in work order number 541239.

EPA Investigative Action Report #2

On 15 January 2008, S/A (b)(6) & (b)(7)(C) interviewed Brent BENSICK, USCGA Structure Shop Supervisor. During this interview, BENSICK was asked if he ever attended any course or received any training pertaining to asbestos materials. BENSICK stated that several years ago he attended an eight hour asbestos class sponsored by the USCG. BENSICK stated part of this course focused on how to identify materials containing asbestos. BENSICK was then asked if he's aware if anyone else at the USCGA attended these training classes. BENSICK responded by stating that all of his subordinates, including FALCONI, attended a similar course in the Spring 2007. BENSICK stated the course was approximately eight hours in length and was taught by a representative from Mystic Air Quality Inc. When questioned about his knowledge of asbestos in classrooms 333/335, BENSICK denied having any knowledge about its existence. BENSICK stated he had no reason to suspect this because the tiles appeared to be 12"x12" in size and he was under the impression tiles of this size do not contain asbestos. When questioned about the work completed in classrooms 333/335, BENSICK stated his shop received a request to remove some floor tiles and install new floor tiles. BENSICK denied that he was asked to work on any pipes, pipe wrap or anything else that may contain asbestos. BENSICK stated the work was requested because a cabinet with a stone top had been removed leaving a void in/on the floor. BENSICK stated the science department placed a work order for new vinyl tiles to be installed in the area(s) that was affected by the removal of the cabinet. When asked what steps would be taken to determine if asbestos potentially existed, BENSICK stated the employees and/or their supervisors would conduct a visual examination of the area and make a judgment call if there appeared to be any asbestos materials that could possibly be disturbed during the work. BENSICK stated that if anything appeared to be suspect (9"x9" tiles, pipe wrap, insulated elbows), attempts would be made to locate an environmental report addressing the areas in question. BENSICK stated if no report was available, a request would be made to have the environmental department seek out a licensed contractor to sample/analyze the questionable materials. BENSICK acknowledged that it had been the USCGA's previous policy that they not check for environmental reports unless they suspect asbestos material may be affected. BENSICK reiterated that he did not see anything suspicious within rooms 333/335. He stated that the tiles were 12"x12" and that he did not observe any pipes, pipe wrap, insulated elbows. BENSICK stated it took he and FALCONI approximately one to two hours to remove the tiles and clean up both classrooms. BENSICK stated he and FALCONI used ice scrapers to remove the tiles in question and did not take any further safety measures while removing the tiles. When asked if any of the tiles broke or shattered during their removal, BENSICK stated some of them broke in to smaller pieces. BENSICK stated that all of the tiles were then placed in separate piles for final removal. BENSICK admitted that "a little bit of dust was created" during this project. However, BENSICK believes the dust that was created had to do with the layers of wax on the tiles and not due to the tiles/mastic. BENSICK stated after the project was completed, he returned to his office and FALCONI went to lunch. After lunch, both returned to the classrooms to bag the tiles and finish cleaning the area. BENSICK stated asbestos disposal bags were used for the tile disposal. BENSICK stated that he was erring on the side of caution by using these bags for disposing of the tiles. BENSICK stated he didn't see any benefit in bagging the tiles in a standard garbage bag, only to find out later the same waste should have been bagged in an asbestos disposal bag. BENSICK stated that he checked with the USCGA Environmental Department within his division and was informed they could not locate any reports concerning rooms 333/335. BENSICK stated he was informed by someone in the Environmental Department that he should consider the waste as asbestos until it can be determined otherwise. BENSICK stated based on these series of events, the USCGA contracted with Mystic Air Quality Consultants Inc. to sample the tiles/mastic that were removed. Several days later a report from Mystic Air Quality Consultants Inc. provided a report stating the tiles were asbestos free but the mastic contained asbestos. BENSICK claims that FALCONI's assertion that he had been ordered the following morning to retrieve his tools from rooms 333/335 was false. BENSICK stated he directed FALCONI to collect all of his tools in the

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afternoon after the tiles were disposed of. BENSICK also denies the floor was swept after they retrieved their tools. BENSICK stated the area was not swept until he was certain the materials in question did not contain asbestos. BENSICK characterized FALCONI as a problem employee and has received several complaints about him in the past. Examples of these complaints range from erratic behavior, use of foul language and false allegations. BENSICK stated FALCONI was a problem employee and was already facing a series of administrative actions and potentially facing a seven day suspension for his destruction of government property. BENSICK provided details of the incident related to the destruction of government property. According to BENSICK, FALCONI was tasked with removing and install name plates/plaques outside the offices in one of the administrative buildings. BENSICK stated FALCONI caused significant damage, totaling several thousand dollars by possibly using a hammer and a crowbar to remove the plaques. BENSICK stated it took multiple employees a few days to repair the damage caused by FALCONI. BENSICK stated that due to the numerous complaints received concerning FALCONI, his violent behavior, use of foul language and his demeaning remarks toward the USCGA, Admiral Dan MAY, USCGA Assistant Superintendent, and a Crisis Intervention Team would be formed to discuss FALCONI's actions and any remedies. BENSICK stated in the following days, FALCONI was instructed to have a fitness for duty physical examination performed at the USCGA medical facility. BENSICK stated the USCGA doctor deemed FALCONI not fit for duty and recommended a psychiatric evaluation. BENSICK stated that FALCONI's termination was not a decision that was made hastily or lightly and had nothing to do with his complaints concerning the removal of tiles/mastic and exposure to asbestos.

EPA Investigative Action Report #3

On 23 January 2008, S/A (b)(6) & (b)(7)(C) and S/A (b)(6) & (b)(7)(C), EPA-CID, New Haven, CT, interviewed Captain Jay PHILLIPS. During this interview, Captain PHILLIPS stated he is a Facility Engineering Division Chief and oversees approximately 80 employees. Captain PHILLIPS stated the Facility Engineering Division handles approximately 5000-5500 work orders on an annual basis. Captain PHILLIPS stated once a work order is received and approved, it is transferred out to the respective shop supervisors for completion. Captain PHILLIPS stated that each shop supervisor is required to complete the requested work in a timely fashion. Once the work has been completed, each respective shop chief is required to inspect the work and close out the work order. When questioned about materials containing asbestos that could be disturbed during a work request, Captain PHILLIPS stated the decision to proceed is made by the employee and his/her supervisor. Employees were required to make a visual observation of areas to be affected by the work and determine whether any asbestos material could be present. If the employees determine that asbestos could be present, they were required to contact the Environmental Safety Branch to determine if an asbestos survey for the rooms existed. If an asbestos survey was not present, the Environmental Branch would hire a contractor to sample/analyze the suspect materials. Captain PHILLIPS stated this policy changed after the discovery of asbestos in rooms 333/335. Captain PHILLIPS stated the new policy signed and introduced on 19 December 2007. When questioned, Captain PHILLIPS stated he was confident his employees could identify asbestos because everyone within the Division is provided with training that assists them in the identification of asbestos materials. Captain PHILLIPS stated that all of his employees were aware of the fact that older buildings with 9"x 9" floor tiles, pipe wrap and boiler insulation could possibly contain asbestos. Employees were instructed that if they came across items they believe to contain asbestos, they are to contact the Environmental Safety Branch and report the suspicious materials. Captain PHILLIPS also stated that all of his employees are provided with the required workplace hazards training. Captain PHILLIPS stated he was confident that identifying materials containing asbestos was provided during the course of the workplace hazards training. Captain PHILLIPS stated FALCONI's personnel file indicated that he received this training on an annual basis for the past 5 years, at a minimum. Captain PHILLIPS also stated that FALCONI also attended workplace training provided by USCG Headquarters personnel on a biannual basis. During these visits, USCG Headquarters personnel would also review safety and environmental issues/policies that were in effect. The USCG Headquarters training would last for 2-3 days with each training session lasting between 3-4 hours. Captain PHILLIPS stated this training would typically address the identification/handling of asbestos and lead containing materials. Captain PHILLIPS was then questioned on the USCGA hazardous materials policy. Captain PHILLIPS again stated under the previous USCGA policy, a decision was made by a

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field employee and his/her supervisor whether any suspect materials might be present. Pursuant to this policy, no search was required for any asbestos surveys and/or environmental reports. The previous policy did not call for any sampling, analysis or testing within the areas to be worked on, unless the field employee thought it was necessary. Under the new policy, Captain PHILLIPS stated that if any of his staff had the faintest suspicion that any asbestos materials were present or that asbestos materials would be disturbed, the employees and their supervisors were required to contact the Environmental Safety Branch to ensure a thorough search was made of all available surveys and environmental reports to determine what course of action should be taken. Captain PHILLIPS stated if a report was located, the report would be turned over to the requesting personnel. If it was determined that no report existed, an outside firm would be contacted to sample the suspect materials. Captain PHILLIPS stated that if asbestos is identified within the surveys or through the contemporaneous analysis of the suspect materials, the Environmental Safety Branch is authorized to hire an asbestos abatement firm to address the materials discovered. When questioned if sampling had been conducted on the cabinets removed from rooms 333/335, Captain PHILLIPS stated he was not aware because the cabinets were removed by members of the Science Department without his knowledge to make room for additional seating. Captain PHILLIPS stated the work request specifically addressed the installation of new tiles to match the existing tiles. Captain PHILLIPS stated the removal of the cabinets by members of the Science Department left the bare concrete exposed that was beneath the cabinet and damaged some of the surrounding tiles. Captain PHILLIPS stated the work order from the Science Department was requesting that his staff remove any loose or broken tiles and install new vinyl tiles that would match the existing scheme in the classrooms. Captain PHILLIPS again stated the job was completed in accordance with the USCGA's previous policy concerning the identification and sampling of suspect materials. When asked if he was aware of the discussions between Commanders (b)(6) & (b)(7) and Captain ALFULTIS regarding the handling/disposal of the tiles, Captain PHILLIPS stated he was not aware of this conversation. Captain PHILLIPS stated he became aware of this project after its completion when BENSICK requested if any asbestos surveys existed through the Environmental Services Branch. Captain PHILLIPS stated later analysis also indicated that the mastic was composed of approximately 15% asbestos. When asked about the existence of a prior asbestos survey, Captain PHILLIPS stated this document was discovered after the job had been completed. Captain PHILLIPS stated the old survey was also incomplete and confusing. When asked if he was aware if any dust had been created during the removal of the tiles, Captain PHILLIPS stated to the best of his knowledge the tiles were removed rather easily with no breakage and no dust. Captain PHILLIPS stated that he was also informed the tiles and mastic had not been made friable. Since this incident, Captain PHILLIPS stated the Environmental Safety Branch is now required to examine each work order and determine if there is/are any suspect materials within the proposed areas of work. He stated if there is a possibility that any hazardous materials exist, including asbestos, they are required to make an immediate search of the database to determine if there is an existing asbestos survey and/or environmental report. If no report exists, the Environmental Safety Branch is authorized, and required, to hire an outside contractor to sample and analyze the suspect material(s). A copy of this policy was formally adopted on 17 December 2008 and is included as part of EPA-CID's investigative activity report. When questioned about the termination of FALCONI, Captain PHILLIPS stated his employment with the USCG was terminated for reasons other than the tile removal incident. Captain PHILLIPS stated FALCONI was employed for the USCG for approximately 16 years. He stated the problems with FALCONI began approximately 4-5 years ago. Captain PHILLIPS stated that within the last 4-5 years, the entire division has changed the way it is managed and operated. Captain PHILLIPS stated since this transition, FALCONI was not used to the new workloads and higher expectations of productivity/quality. Captain PHILLIPS stated that during the last 4-5 years, he has received numerous complaints about FALCONI's behavior and questionable work practices. Captain PHILLIPS stated some of the most concerning items were:

- *FALCONI's aggressive pursuit of female employees at the USCGA in an attempt to initiate relationships. Captain PHILLIPS stated supervisors of the female employees had to inform him that his advances were unwelcome and needed to stop.
- *FALCONI was occasionally in places at the USCGA that he should not have been.
- *In 2005, a Lieutenant with the USCGA's Officer Candidate School (OCS) filed a complaint against FALCONI alleging that FALCONI had cut in line ahead of the OCS candidates in the cafeteria/ward room that he refused to remove

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his hat when requested, that he disobeyed a direct order, that he was yelling and screaming, that he was using profane and vulgar language, that he was unruly and disrespectful to the OCS candidates, the USCGA and the reporting Lieutenant. *FALCONI has also made complaints to OSHA for a confined entry space issue at the USCGA and allegations against his immediate supervisor, Brent BENSIK. These allegations were proven to be incorrect and intentionally false and misleading. Captain PHILLIPS stated he made a command decision not to seek administrative action or prosecution against FALCONI for the false statements. When questioned why administrative action was not pursued against FALCONI for his false statements, Captain PHILLIPS stated the USCGA wanted to avoid any appearance that it was punishing him for making this report to OSHA.

*FALCONI occasionally had violent outbursts which were punctuated by yelling, screaming and mad pacing. Captain PHILLIPS stated during the winter 2006 or spring 2007, FALCONI burst in to a meeting being conducted by BENSIK and other employees. It was alleged that FALCONI was yelling and demanding documents (which were not available). When informed the documents were not available and he needed to leave the office, FALCONI became irate, continuing to yell and scream and when he returned to the shop area, he threw a ladder across the room. Captain PHILLIPS stated the above actions were enough to terminate FALCONI. However, a conservative decision was made to place FALCONI on a seven day suspension without pay. Captain PHILLIPS stated it's not out of the norm to find FALCONI in a totally different part of the USCGA from where he is supposed to be. FALCONI repeatedly stated that his direct supervisor's desire to know his location was a discriminatory work practice. FALCONI reportedly stated that BENSIK was following him around and checking on what he was doing. Captain PHILLIPS stated on numerous occasions it was reported that FALCONI was not at his required job site/post and that he had not obtained the necessary permission from his supervisor to leave his job site. Captain PHILLIPS stated on 18 December 2006, he agreed to meet with FALCONI and a union representative, (b)(6) & (b)(7)(C) to discuss/counsel him on his work habits, particularly those concerning him leaving his post without authorization. During this meeting, FALCONI became explosive and started jumping out of his chair and pacing around the room. Shortly after this meeting, Captain PHILLIPS stated FALCONI was thrown out of the union and all his union dues were returned. Captain PHILLIPS stated he felt uneasy about FALCONI's actions and mental state. Captain PHILLIPS stated he informed FALCONI that he was being unprofessional and his language/actions were unacceptable. Captain PHILLIPS also provided his account of what took place when FALCONI was required to remove name placards outside various offices in the administration building. Captain PHILLIPS stated FALCONI was tasked with removing a number of name placards that were affixed to the wall with double sided tape. FALCONI was supposed to remove the old placards and replace them with the new placards. Captain PHILLIPS stated shortly after the job was completed, his office began to receive numerous complaints that the placards were put on crooked and that some of the placards were installed in haphazard locations. Captain PHILLIPS believes that FALCONI intentionally caused an extensive amount of damage to the placards and the walls. Captain PHILLIPS also provided his account of an incident that took place the day after the tiles were removed from rooms 333/335. Captain PHILLIPS he began receiving several complaints that FALCONI was yelling, ranting, cursing and screaming as he performed his activities in the administration building. Captain PHILLIPS stated the secretary for the division in the administration building was in fear because of FALCONI's behavior. Captain PHILLIPS stated the decision to forgo any administrative action against FALCONI was made when he was informed that FALCONI's counselor was concerned about FALCONI's behavior. Captain PHILLIPS stated he took this serious and requested a Crisis Intervention Team be organized. A Crisis Intervention Team (CIT) is convened whenever it is suspected that an employee may be a threat to himself or those around him/her. Captain PHILLIPS stated the CIT discussed FALCONI's most recent behavior and determined it was necessary to conduct a "fitness for duty examination". FALCONI was initially sent to the USCGA medical doctor for a physical examination. Captain PHILLIPS stated the attending physician remarked that FALCONI appeared to have an increased stress level and exhibited anxious behavior. Captain PHILLIPS stated the attending physician also stated that FALCONI was not fit for duty and should not be allowed to return until he had a full psychiatric examination. Captain PHILLIPS stated a psychiatric examination was immediately requested by an independent doctor. Captain PHILLIPS stated the independent doctor opined that FALCONI, in his current state, was not fit for duty. Captain PHILLIPS stated FALCONI was

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immediately placed on paid administrative leave until a determination of his fitness for duty could be completed. FALCONI was then advised of his employment rights and informed of his possible qualification for workers compensation. Captain PHILLIPS stated that FALCONI essentially took no steps in the prescribed period of time to address the fitness for duty raised by the examining doctors. Captain PHILLIPS stated the USCG had no choice but to find FALCONI unfit for duty.

EPA Investigative Action Report #4

On 29 January 2008, S/A (b)(6) & (b)(7)(C) and S/A (b)(6) & (b)(7)(C) interviewed Commander (b)(6) & (b)(7)(C) USCGA, Public Works Department. During this interview, Commander (b)(6) & (b)(7)(C) stated the Science Department sought to expand the seating capacity in classrooms 333/335 in Smith Hall. According to Commander (b)(6) & (b)(7)(C) employees of the Science Department removed a lab counter/cabinet in each of the classrooms without informing anyone in the Facilities Engineering Division. Commander (b)(6) & (b)(7)(C) stated the Science Department then requested the Facilities Engineering Division install new tiles in each classroom where the lab counter/cabinet was located. The Science Department also requested that any loose/damaged tiles be replaced to form a similar design in each classroom. Commander (b)(6) & (b)(7)(C) then escorted S/A (b)(6) & (b)(7)(C) and S/A (b)(6) & (b)(7)(C) to classroom 333. S/A (b)(6) & (b)(7)(C) photographed and measured the 10' x 19' classroom and noted that new 12" x 12" vinyl floor tiles had been installed to replace the tiles that were removed. S/A (b)(6) & (b)(7)(C) and S/A (b)(6) & (b)(7)(C) were escorted to classroom 335. S/A (b)(6) & (b)(7)(C) photographed and measured the 10' x 18' classroom and noted that new 12" x 12" vinyl floor tiles had been installed to replace the tiles that were removed. During the review of the classrooms, S/A (b)(6) & (b)(7)(C) noted that pipe insulation was visible at the ends of the remaining countertops in classrooms 333/335. When questioned, Commander (b)(6) & (b)(7)(C) stated he was under the impression that employees of the Science Department removed the pipe wrap and from his division were used to cap off the pipes for the installation of the new tile. The photographs taken by S/A (b)(6) & (b)(7)(C) are retained with the EPA-CID investigative action report.

EPA Investigative Action Report #5

On 01 February 2008, S/A (b)(6) & (b)(7)(C) received a voicemail from FALCONI reporting that a current USCGA employee, (b)(6) & (b)(7)(C), had direct involvement and/or involvement in the removal of asbestos material at the USCGA. FALCONI's voicemail stated that he had been in recent contact with (b)(6) & (b)(7)(C). (b)(6) & (b)(7)(C) stated he was concerned that employees at the USCGA were still removing suspect tiles and mastic without first testing them to determine the presence of asbestos. FALCONI stated (b)(6) & (b)(7)(C) was willing to be interviewed and could be contacted at his residence in Bozrah, CT residence. FALCONI also stated he received a telephone call from a government attorney who told him they were in the process of formerly assigning this matter to the Office of Inspector General for investigation. FALCONI further stated that he had a recent conversation with a former USCGA employee, (b)(6) & (b)(7)(C) (phonetic spelling) who stated he would be willing to be interviewed regarding the 1993 asbestos survey.

EPA Investigative Action Report #6

On 05 February 2008, S/A (b)(6) & (b)(7)(C) telephonically interviewed (b)(6) & (b)(7)(C), a current employee with the USCGA. During this interview (b)(6) & (b)(7)(C) stated he has been involved in several large asbestos tile and mastic removal processes while employed at the USCGA. (b)(6) & (b)(7)(C) stated he was assigned to remove several hundred square feet of tile and mastic from the second or third floor of Chase Hall approximately one year ago. (b)(6) & (b)(7)(C) stated this project was directly supervised by FALCONI. When questioned why he believed these tiles and mastic contained asbestos, (b)(6) & (b)(7)(C) stated that sampling and testing of the tiles and mastic was performed by the USCGA after the project was completed. (b)(6) & (b)(7)(C) stated the analysis showed that the tiles and mastic removed contained asbestos. (b)(6) & (b)(7)(C) stated he had also been tasked with removing tiles containing asbestos during the summer 2007. (b)(6) & (b)(7)(C) again stated that sampling and testing of these tiles and mastic was performed by the USCGA after the project was completed. During this conversation, S/A (b)(6) & (b)(7)(C) attempted to set up a face to face interview with (b)(6) & (b)(7)(C). However, (b)(6) & (b)(7)(C) stated that he was

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REPORT OF INVESTIGATION (continuation sheet)

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unable to be interviewed because he was too busy on nights and weekends. (b)(6) & (b)(7)(C) denied that he felt pressured by his superiors at the USCGA as the reason he was not willing to be interviewed face to face. (b)(6) & (b)(7)(C) stated he would prefer to be interviewed at his place of employment and S/A (b)(6) & (b)(7)(C) should contact his (b)(6) & (b)(7)(C) supervisors to schedule a time to be interviewed.

EPA Investigative Action Report #7

On 07 February 2008, S/A (b)(6) & (b)(7)(C) conducted a face to face interview of (b)(6) & (b)(7)(C). During this interview, (b)(6) & (b)(7)(C) stated his employment began on/about 16 June 1991 at the USCGA. When questioned about training on the identification and/or handling of asbestos materials, (b)(6) & (b)(7)(C) stated that Mystic Air Quality Inc has provided 2-3 day training on asbestos awareness. (b)(6) & (b)(7)(C) stated he's also received asbestos awareness training from USCG Headquarters personnel. (b)(6) & (b)(7)(C) stated this training usually lasts one week. (b)(6) & (b)(7)(C) stated topics associated with this training include; electrical dangers, slip and fall, asbestos training and lead training. (b)(6) & (b)(7)(C) stated he also has attended annual hazardous materials training sponsored by the USCGA. (b)(6) & (b)(7)(C) stated this training has assisted him in identifying asbestos when encountered during the course of his duty. (b)(6) & (b)(7)(C) stated the times he has encountered a suspect material, he would immediately stop the job and notify his supervisor. When questioned if he's ever been involved in the removal of asbestos materials, (b)(6) & (b)(7)(C) stated he's not aware of ever removing and/or disposing of any material quantity of asbestos while employed at the USCGA. When questioned what he meant by material quantity, (b)(6) & (b)(7)(C) stated throughout his career at the USCGA, he has been repeatedly directed to remove/replace broken or chipped floor tiles containing asbestos. (b)(6) & (b)(7)(C) stated he was instructed this practice helped encapsulate the asbestos and mastic from being released in to the environment. (b)(6) & (b)(7)(C) stated that he's never been instructed to remove more than 5-6 floor tiles on a single project. It should be noted, on the morning of 05 February 2008, S/A (b)(6) & (b)(7)(C) stated he telephonically contacted (b)(6) & (b)(7)(C). During this conversation, (b)(6) & (b)(7)(C) stated that he had personally been involved in several large asbestos tile and mastic removal projects through the years. (b)(6) & (b)(7)(C) stated approximately one year ago, he was assigned to remove several hundred feet of floor tiles and mastic from the 2nd and 3rd floor of Chase Hall. (b)(6) & (b)(7)(C) stated FALCONI was his supervisor for this project. However, when further questioned by S/A (b)(6) & (b)(7)(C) about the discrepancy between the 05 February telephone conversation and the 07 February face to face interview, (b)(6) & (b)(7)(C) stated S/A (b)(6) & (b)(7)(C) must have misunderstood him because he has not been involved in any jobs involving the removal of floor tiles within the last two years. (b)(6) & (b)(7)(C) stated while he was not involved in the tile removal projects in Smith Hall, he does recall being directed by his supervisors to re-tile the two laboratory/classroom where FALCONI removed the tiles/mastic. When questioned who removed the plumbing and heating pipes along with the pipe wrap/insulation, (b)(6) & (b)(7)(C) stated (b)(6) & (b)(7)(C) LNU and (b)(6) & (b)(7)(C) removed all of the pipes and related insulation. (b)(6) & (b)(7)(C) stated LNU and (b)(6) & (b)(7)(C) are both employed with the USCGA Plumbing and Heating Branch. When questioned whether he was present during any discussions between FALCONI and BENSİK concerning the tile removal in classrooms 333/335, (b)(6) & (b)(7)(C) stated he was not personally present but overheard transmissions on the portable radios used by FALCONI and BENSİK. (b)(6) & (b)(7)(C) stated he recalled FALCONI informing BENSİK that he was with Commander (b)(6) & (b)(7)(C) and another USCG Commander (name unknown), who wanted to know if there was any asbestos materials in the tiles removed from the classrooms. (b)(6) & (b)(7)(C) stated BENSİK responded stating that he would meet with all of them shortly. When questioned if he'd been involved in any asbestos removal projects in Chase Hall, (b)(6) & (b)(7)(C) stated he recalled removing 5-6 asbestos floor tiles in the summer 2007. (b)(6) & (b)(7)(C) stated he believed the tiles contained asbestos because the mastic was black in color and he made the assumption that both contained asbestos. (b)(6) & (b)(7)(C) stated the USCGA has implemented a new policy related asbestos removal/abatement. (b)(6) & (b)(7)(C) stated the new policy requires a representative from the Safety Environmental Branch inform all laborers and tradesmen of the presence of any asbestos or lead materials within the rooms where work is to be performed. When questioned, (b)(6) & (b)(7)(C) denied the USCGA recently directed all its employees to stop removing asbestos floor tiles. (b)(6) & (b)(7)(C) stated employees in the Facilities Engineering Division continue to remove broken/chipped asbestos floor tiles without using proper protection equipment. (b)(6) & (b)(7)(C) also stated he had knowledge of a large quantity of asbestos tiles that had been improperly removed from Chase Hall two years ago by employees of the Facilities Engineering Division. (b)(6) & (b)(7)(C) stated the two crews were instructed to remove all of the

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"ugly brown" floor tiles and replace them with new tiles within seven to eight dormitory rooms on the 2nd and 3rd floors of Chase Hall. (b)(6) & (b)(7) stated each room was approximately 12' x 12'. When questioned about the termination of FALCONI, (b)(6) & (b)(7) stated it was a shame because he (Falconi) was a good guy and a very skilled craftsman. (b)(6) & (b)(7)(C) stated he had seen FALCONI on the day he was escorted off the USCGA. He stated he did not witness anything different that day when compared to any other day. He stated FALCONI was a loud and vocal guy with some quirks. (b)(6) & (b)(7)(C) stated one of FALCONI's quirks was his refusal to remove his hat when he dined at the mess hall. (b)(6) & (b)(7) stated it was an unwritten rule that everyone had to remove their hat as a sign of respect. FALCONI's removal to remove his hat caused an embarrassing scene each time he went in to the dining hall.

EPA Investigative Action Report #8

On 07 February 2008, S/A (b)(6) & (b)(7)(C) re-interviewed Captain PHILLIPS. During this interview, S/A (b)(6) & (b)(7)(C) questioned Captain PHILLIPS about his knowledge concerning the removal of floor tiles containing asbestos in certain dormitory rooms located in Chase Hall during the fall 2005. Captain PHILLIPS stated that since his previous interview with S/A (b)(6) & (b)(7)(C) he conducted a thorough search of all files available to him, and contacted any of his subordinates concerning projects in Chase Hall that involved the removal of floor tiles containing asbestos. Captain PHILLIPS stated that he was informed the Facilities Engineering Division received a request to repair and/or replace broken/chipped floor tiles in several locations within the cadet dormitories in Chase Hall during the fall 2005. Captain PHILLIPS stated he was not aware of this project until it was nearly completed when he was informed by his subordinates. When questioned about which employees participated in these projects, Captain PHILLIPS stated he did not specifically recall the names of the employees who worked on these projects but believed they were employees from the grounds crew and the carpentry shop. Although, Captain PHILLIPS stated he was certain that FALCONI participated in this job because he was the "go to guy" for projects involving the removal of tiles. Captain PHILLIPS stated no one working on the project was aware the tiles contained asbestos and no one questioned the availability of the 1993 Asbestos Survey Report. Captain PHILLIPS then provided S/A (b)(6) & (b)(7)(C) documentation, including emails, floor plans, work orders and excerpts from the 1993 Asbestos Survey Report. These documents are maintained as part of the EPA Investigative Action Report dated 07 February 2008. When questioned about the timing of their discovery that asbestos may be present in the floor tiles being removed from Chase Hall, Captain PHILLIPS responded by stating that (b)(6) & (b)(7)(C) a USCGA Facilities Engineering Division employee, questioned the composition of the floor tiles. Captain PHILLIPS stated a search of available records at that point revealed the tiles contained asbestos. S/A (b)(6) & (b)(7)(C) then questioned Captain PHILLIPS why the removal of the floor tiles continued. Captain PHILLIPS stated (b)(6) & (b)(7)(C) previous employee within the Safety and Environmental Branch, made the decision that it was safe to continue with the project. Captain PHILLIPS stated several times during this interview the Facilities Engineering Division made several mistakes over the last few years, but insisted he recently implemented new safeguards are in place to eliminate the removal hazardous materials. When questioned what could have caused such an oversight on this project, Captain PHILLIPS stated in the fall 2005, the Facilities Engineering Branch was in a state of reorganization and a single supervisor was overseeing the grounds crew and the carpentry shop. When questioned about the delay with informing the USCGA employees they may have been inadvertently participated in the removal and possible exposure to asbestos, Captain PHILLIPS was unable to provide an answer for the delay but stated the employees were ultimately notified by (b)(6) & (b)(7)(C) carpentry shop supervisor. Captain PHILLIPS stated, following notification, employees who participated in this project were informed they were free to contact representatives in the Environmental Safety Branch in they had any questions/concerns. Captain PHILLIPS stated that no employees approached anyone within the Employee Safety Branch. Captain PHILLIPS stated he took this as a clear indicator that none of the employees who participated in the project were concerned about their potential exposure. Captain PHILLIPS stated the recent review of the USCGA policies concerning the identification/handling of asbestos materials identified a weakness having to do with the primary contact person the Safety Environmental Branch being a military USCG employee who rotates every four years. Captain PHILLIPS stated this position would be better served by having a full time civilian employee to possess greater "in house" knowledge of all available resources,

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environmental reports, survey and procedures. Captain PHILLIPS stated he's submitted a proposal for this conversion to take place.

EPA Investigative Action Report #9

On 28 February 2008, S/A (b)(6) & (b)(7)(C) and (b)(6) & (b)(7)(C), EPA Legal Counsel, met with AUSA (b)(6) & (b)(7)(C) District of Connecticut, to review the facts associated with this investigation. Upon review of the facts, a determination was made the matter would not be considered for Federal prosecution because evidence was lacking that showed the tiles that were removed had been made friable in accordance with the most recent federal court decisions.

10. On 16 January 2009, RAC (b)(6) & (b)(7)(C) met with LCDR (b)(6) & (b)(7)(C) to review the FALCONI files. Between 16 - 21 January, RAC (b)(6) & (b)(7)(C) reviewed the twelve files the USCGA Legal Department maintains on FALCONI for various incidents/complaints from 2005 - 2007. The following is a list of incidents where FALCONI was the subject or complainant for this period:

*19 May 2005 - FALCONI was involved in an argument with MAT3 FNU (b)(6) & (b)(7)(C) USCGA. During this incident, FALCONI and (b)(6) & (b)(7)(C) were heard and observed exchanging derogatory comments to one another on the Cadet Memorial Field. An Administrative Investigation was conducted but no adverse action was taken against either individual.

*07 February 2006 - FALCONI was involved in an argument with LT (b)(6) & (b)(7)(C) because FALCONI cut in the lunch line of the Officer Candidate School students. In addition, FALCONI also refused to remove his hat when asked to do so after entering the Ward Room. LT (b)(6) & (b)(7)(C) found both of these actions to be disrespectful. LT (b)(6) & (b)(7)(C) confronted FALCONI and an argument ensued. An Administrative Investigation was conducted but no adverse action was taken against either individual.

*10 February 2006 - FALCONI, while working in proximity to LT (b)(6) & (b)(7)(C)'s office, confronted LT (b)(6) & (b)(7)(C) in her office to further discuss the 07 February 2006 incident in the Ward Room. An Administrative Investigation was conducted but no adverse action was taken against either individual.

*18 December 2006 - FALCONI and (b)(6) & (b)(7)(C) USCGA employee, received oral counseling for various incidents involving both that took place on and off the USCGA grounds.

*05 February 2007 - FALCONI received a Letter of Discussion for an incident where he completed a job but later complained the work area was unsafe.

*09 February 2007 - FALCONI received a Letter of Discussion for an incident involving the inappropriate submission and use of leave time.

*02 March 2007 - FALCONI entered Brent BENSIK's office unannounced while a meeting was taking place and began making a demand for documents in a challenging tone. FALCONI received a Letter of Reprimand for an incident involving inappropriate behavior toward BENSIK.

*04 April 2007 - FALCONI received a Letter of Discussion for failing to be in a specified work area when instructed to do so.

*22 June 2007 - FALCONI received a Letter of Discussion for an incident involving an argument with (b)(6) & (b)(7)(C) USCGA employee.

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SUBJ: FALCONI, LEROY E

CCN: 0200-08GNE 0495 10B[GK]

Details:

11. On 19 July 2007, an email was sent from a USCGA employee to FALCONI's supervisor, Brent BENSICK. The author of this email was expressing concern over FALCONI's behavior and work ethic over the previous two days. The author of this email described the incident where FALCONI was tasked with removing the name plates/placards outside certain offices in the Administration Building. FALCONI was described as hastily removing the name plates/placards, leaving large gashes on the walls next to almost every door. During this time, FALCONI was also seen kicking the box holding the box holding the signs. FALCONI also refused to return the name plates/placards when requested to do so by one of the Admission employees. FALCONI also complained to most people he came in to contact with about his issues at the USCGA. FALCONI stated he had an attorney and had been discussing his issues with the local newspaper. The author of this email complained that FALCONI's tone drew much attention from other employees that they came out of their offices to see what was going on. Following receipt of this email, BENSICK contacted (b)(6) & (b)(7)(C) USCGA Civilian Personnel Division, to inform her of what transpired. It was expressed in this notification to (b)(6) & (b)(7)(C) that there was concern for FALCONI's health and well being due to the escalation in his behavior.

12. On 23 July 2007, a USCGA physician also expressed concern over FALCONI's temperament. The physician stated he recently spoke to FALCONI and that he (Falconi) seems to have become very upset and agitated. The physician described FALCONI as seeming confused where his thoughts were racing and had a paranoid quality to them. The USCGA physician recommended that a psychiatric evaluation take place as a precaution for FALCONI and those he interacts with.

13. Continuing on the same day, a request was made to Captain Dan MAY, USCGA Assistant Superintendent, by Captain PHILLIPS, to initiate a Crisis Intervention Team (CIT) in order to review FALCONI's behavior.

14. On 25 July 2007, a USCGA Memorandum signed by Captain MAY placing FALCONI on administrative leave effective immediately. This memorandum explains this action is being taken in response to the erratic behavior. This letter also explains that FALCONI will receive full pay and benefits while on administrative leave and that no decision has been made whether any adverse action will be taken.

15. Continuing on the same day, a USCGA Memorandum was signed by Captain MAY instructing FALCONI to report for a fitness for duty examination to determine his capacity to perform his duties as a carpenter. WG-9.

16. Continuing on the same day, FALCONI was examined by the USCGA attending physician, Dr. (b)(6) & (b)(7)(C), and determined he was not fit for duty and should not be allowed to return until he had a full psychiatric examination.

17. On 23 August 2007, FALCONI received a psychological evaluation by Special Psychological Services Group, Fairfax, VA, to evaluate his fitness for duty. Recommendations following this evaluation note that FALCONI was not suited for return to duty.

18. On 19 October 2007, FALCONI met with (b)(6) & (b)(7)(C), MD (b)(6) & (b)(7)(C) CT, to review Dr. (b)(6) & (b)(7)(C)'s determination not to allow him to return to work.

19. On 22 October 2007, Dr. (b)(6) & (b)(7)(C) submitted a letter questioning the findings of Dr. (b)(6) & (b)(7)(C). Dr. (b)(6) & (b)(7)(C) noted that he did not examine but only met with FALCONI and reviewed three documents provided to him. Dr. (b)(6) & (b)(7)(C) attempted to refute or raise doubts about Dr. (b)(6) & (b)(7)(C)'s diagnosis.

20. On 07 November 2007, a USCGA Memorandum signed by Captain PHILLIPS was sent to FALCONI notifying him that a decision was made to terminate his employment effective 11 November 2007. In this letter, Captain PHILLIPS provided notable detail to support the reason for termination as well as procedures for appeal of this decision. A copy of this letter was also sent to FALCONI's attorney, Donald L. WILLIAMS, Esq.

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CG-4608

REPORT OF INVESTIGATION (continuation sheet)

SUBJ: FALCONI, LEROY E

CCN: 0200-08GNE 0495 10B[GK]

Details:

21. This is a PENDING Report of Investigation.

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DEPARTMENT OF HOMELAND SECURITY U.S. COAST GUARD CG-4608 (Rev. 03-03)				REPORT OF INVESTIGATION				CLASSIFICATION STAMP FOR OFFICIAL USE ONLY			
PI	NOCI	ROI X	R/R	SR	REL CCN	DLD	STATUS (Pend, Closed, etc.) CLOSED		TA	SR	UF
SUBJECT FALCONI, LEROY E/AWM (b)(6) & (b)(7)(C) USCGA PUBLIC WORKS DEPT (FORMER EMPLOYEE)											
CHARACTER OIG INVESTIGATIONS - OIG COMPLAINT							CCN 0200-08 GNE 0495 10B[GK]				
PREDICATION SAC, NE REGION DATED 19 DEC 2008							CONTROL AGENT RAC (b)(6) & (b)(7)(C)				
PARTICIPATING AGENTS S/A (b)(6) & (b)(7)(C)							REVIEW SUPERVISOR ASAC (b)(6) & (b)(7)(C)				
REMARKS XREF - 0214 07 GNE 0000 4X GF This investigation was predicated on 19 December 2008 by the Special Agent in Charge (SAC), CGIS, New England Region, based upon a request for investigative assistance from the U.S. Office of Special Council (OSC), dated 08 December 2008. OSC has requested a CGIS investigation to supplement a previous criminal investigation conducted by the Environmental Protection Agency (EPA), Criminal Investigative Division, New England Region. The EPA-CID investigation was originally based on a complaint filed by Leroy E. FALCONI, through the District of Connecticut United States Attorney's Office on 10 December 2007 alleging improper removal of asbestos material at the United States Coast Guard Academy, New London, CT. OSC specifically requested additional information pursuant to 29 CFR 1910.1001 as set forth in 5 USC 1213, to make a proper determination of FALCONI's whistleblower status request. FALCONI is a former USCG civilian employee (carpenter) who was removed for cause on 11 November 2007. There are no security concerns associated with this matter. This is a CLOSED Report of Investigation.											
SPECIAL HANDLING REQUIRED											
DISTRIBUTION CGIS HQ NE REGION RAO NEW LONDON			ORIG COPY 1 COPY 2			(b)(6) & (b)(7)(C)			DATE <i>[Signature]</i> REGION NEW ENGLAND		
CLASSIFICATION STAMP FOR OFFICIAL USE ONLY			<p>WARNING</p> <p>THIS DOCUMENT IS THE PROPERTY OF COAST GUARD INVESTIGATIVE SERVICE. INFORMATION HEREIN IS SENSITIVE IN CHARACTER AND ITS SECURITY MUST BE PRESERVED. CONTENTS MAY BE DISCLOSED ONLY TO PERSONS WHOSE OFFICIAL DUTIES REQUIRE ACCESS HERETO. NO COPIES SHALL BE MADE AND CONTENTS MAY NOT BE DISCLOSED TO THE PARTY(S) CONCERNED WITHOUT SPECIFIC AUTHORIZATION FROM COAST GUARD INVESTIGATIVE SERVICE.</p>								

SUBJ: FALCONI, LEROY E

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22. This report updates the ROI signed on 26 January 2009.

23. Between 21-27 January 2009, RAC (b)(6) & (b)(7)(C) made several attempts to contact attorney Donald L. WILLIAMS. As of this date, RAC (b)(6) & (b)(7)(C) has been unable to speak with Attorney (b)(6) & (b)(7)(C).

24. On 23 January 2009, RAC (b)(6) & (b)(7)(C) spoke to (b)(6) & (b)(7)(C) EPA legal counsel. During this conversation, (b)(6) & (b)(7)(C) stated she recalled the meeting with AUSA (b)(6) & (b)(7)(C) and confirmed the reason why this matter was declined for criminal prosecution, as stated by AUSA (b)(6) & (b)(7)(C).

25. On 30 January 2009, RAC (b)(6) & (b)(7)(C) and S/A (b)(6) & (b)(7)(C) CGIS, RAO New London, interviewed FALCONI. During this interview, FALCONI stated he was employed by the USCGA for almost 17 years, all with the USCGA carpentry shop. When questioned if he ever received any type of training while employed by the USCGA, FALCONI replied that he hadn't. However, upon further questioning, FALCONI admitted that he received training at various times on hazardous waste (including asbestos), solvents and confined spaces. FALCONI stated some of this training by USCGA Public Works employees and other times the instructors would be from Mystic Air Quality Inc. FALCONI was unable to recall the exact number of training sessions he attended, but stated he recalls participating in approximately three sessions in recent years with Mystic Air Quality Inc. FALCONI stated he was unable to recall the name of the instructor but stated the training was attended by all members of the USCGA Public Works Department. FALCONI stated his last official day of employment with the USCGA was 11 November 2007 after being placed on administrative leave on 27 July 2007. FALCONI stated on 27 July 2007, he showed up for work like any other day. Shortly after arriving at work, he was assigned to work in Johnson Hall with (b)(6) & (b)(7)(C), USCGA employee. FALCONI stated he was contacted via handheld radio at approximately 0950 by Brent BENSICK. BENSICK requested that he report to the Sail Loft with his tools. FALCONI stated when he arrived at the Sail Loft, he was met by Brent BENSICK, LCDR (b)(6) & (b)(7)(C) and (b)(6) & (b)(7)(C) and three police officers from the USCGA Police Department. FALCONI stated he was then instructed to take a physical at the USCGA Medical Clinic by either BENSICK, (b)(6) & (b)(7)(C) or (b)(6) & (b)(7)(C). FALCONI stated he questioned the need for the physical and requested to speak to his attorney. FALCONI stated he was then told to take the physical or he would be fired. FALCONI was unable to recall who told him he would be fired if he didn't take the physical. FALCONI stated he was then escorted to the USCGA Medical Clinic by the three USCGA Police Officers. Upon arrival at the USCGA Medical Clinic, FALCONI stated he made contact with his attorney but did not provide the specifics of this conversation. FALCONI stated he was detained from 1000-1530 without being able to eat, make any telephone calls or go to the bathroom. FALCONI stated he was finally examined by Dr. (b)(6) & (b)(7)(C), USCGA Medical Clinic. FALCONI stated the doctor provided him with a cursory exam that took "six minutes". FALCONI stated he questioned Dr. (b)(6) & (b)(7)(C) during the physical but he (b)(6) & (b)(7)(C) stated he was unaware why he was performing the physical on FALCONI. FALCONI stated at the conclusion of the physical, he was then escorted and directed to collect his personal items from his locker and then escorted from the USCGA. FALCONI believes the USCGA was looking for a reason to terminate him and the physical was one more step in the process because he had made it known to others that the USCGA had exposed some of its employees to hazardous waste. FALCONI stated that it was a calculated decision to assign him to work in the Smith Hall classrooms when his work partner, (b)(6) & (b)(7)(C), and the project manager, LT (b)(6) & (b)(7)(C), were on vacation. FALCONI believes this because had either of them been present when the job was assigned, they would have questioned whether or not the room contained hazardous waste. FALCONI stated he did not pose this question because he did not want to risk being fired because he has five children. When specifically questioned about the job in classrooms 333/335, FALCONI claimed that he was the only person assigned to work on this job. FALCONI stated it took him approximately 2-4 hours to complete the job. FALCONI stated he removed the tiles with a hammer, chisel and ice scraper. Once the job was completed, FALCONI stated he contacted BENSICK and asked him what he wanted to do with the tiles. BENSICK told him to ask the building manger, Captain ALFULTIS. FALCONI stated he located Captain ALFULTIS and requested to dispose of the tiles in the building dumpster. Captain ALFULTIS

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stated it would be permissible as long as paperwork was provided to him the tiles were asbestos free. FALCONI stated he then contacted BENSICK with his handheld radio

and to inform him. According to FALCONI, BENSICK stated he would respond with the requested paperwork. FALCONI stated approximately 1 hour passed before BENSICK responded. However, he did not have the requested paperwork but stated it was likely in the office of the project manager, LT (b)(6) & (b)(7)(C). FALCONI stated BENSICK then entered (b)(6) & (b)(7)(C)'s office that was opened by CDR (b)(6) & (b)(7)(C) and searched for the report/paperwork. A short time later, BENSICK exited unable to locate the requested paperwork. FALCONI stated BENSICK then told him to place the tiles in garbage bags and the USCGA Environmental Department will take care of them. FALCONI stated he loaded three bags of tiles in each room and left at approximately 1430-1500. FALCONI stated he was not assigned any other jobs that day but BENSICK assigned him with a job for the following day to remove name plaques from the walls in Waesche Hall, USCGA. FALCONI stated the next morning, BENSICK told him to remove his tools from classrooms 333/335 before reporting to Waesche Hall. FALCONI stated he reported to classrooms 333/335 to remove the tools. FALCONI stated in his second trip to classrooms 333/335, he observed Captain ALFULTIS's secretary posting signs on the classroom doors "asbestos-no entry". FALCONI stated he was concerned and questioned the secretary who said she was notified by the USCGA Environmental Department the previous day that the room contained asbestos. FALCONI stated he then contacted (b)(6) & (b)(7)(C), USCGA Environmental Department, and requested a copy of the report but (b)(6) & (b)(7)(C) told him he was not entitled to the report. FALCONI stated he ultimately received confirmation the classrooms contained asbestos after submitting a written request to Captain PHILLIPS. FALCONI stated one of the items received from Captain PHILLIPS was the 1991 USCGA asbestos survey. FALCONI stated he was never informed and did not get examined by a doctor following the alleged asbestos exposure. However, FALCONI claims since this incident, he is examined by his personal doctor annually. FALCONI stated since he began his employment, he has never been disciplined, never been suspended without pay and has received 14 outstanding performance awards with the most recent being a \$1,000.00 cash award just prior to his termination. However, when questioned further, FALCONI stated that he has been counseled on occasion but that the reason for these were a misunderstanding. When questioned if he ever went to the union for any reason, particularly the asbestos exposure incident, FALCONI stated yes and that he was an "active union member". When asked to clarify that response, FALCONI stated that he has made a number of complaints to the union through the years but the union has not supported him in many of his complaints. FALCONI stated on/about 05 March 2007, he was asked by the union president to resign as he "has become too much for the union to represent". FALCONI stated he believes he was asked to resign because of pressure from Captain PHILLIPS. FALCONI stated the union president's office is in close proximity to Captain PHILLIPS office and he (Falconi) believes this caused an implied pressure for the union to get rid of him. FALCONI stated he believes he was terminated because many of the Command staff at the USCGA are jealous of him because of his music status, access to reporters, his complaint about being exposed to hazardous materials, because he knew too much about liberties being taken in the USCGA Public Works Department and that cadets recognized him and his efforts with a full page in the 2007 USCGA cadet yearbook. At the conclusion of the interview, FALCONI stated the only people that have interviewed him are S/As from EPA and CGIS.

26. On 02 February 2009, RAC GEMPP reviewed FALCONI's personnel file retained at the USCGA. Much of the information contained in this file duplicates the information contained in the USCGA Legal Department files and previously referenced in this report of investigation.

27. This Report of Investigation is CLOSED.

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