



SECRETARY OF THE ARMY
WASHINGTON

February 2, 2009

Acting Special Counsel William Reukauf
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 300
Washington, D.C. 20310-0101

RE: Whistleblower Investigation –
22d Chemical Battalion, Aberdeen
Proving Ground, Maryland (OSC File
DI-07-2722, DI-07-3064, DI-07-3065)

Dear Mr. Reukauf:

In accordance with Title 5, United States Code (USC), Section 1213(c) and (d), the enclosed report is submitted in response to your referral of information requesting an investigation of allegations and a report of findings in the above referenced case.

The Secretary of the Army (SA) has delegated to me his authority, as agency head, to review, sign, and submit to you the report required by Title 5, USC, Section 1213(c) and (d) [Tab A]

Note that this report and its exhibits contain the names and duty titles of employees of the Chemical, Biological, Radiological, Nuclear and High Yield Explosives (CBRNE) Analytical and Remediation Activity (CARA), 20th Support Command (SUPCOM) (CBRNE), headquartered at the Army's Aberdeen Proving Ground (APG), Maryland,¹ as well as of other Department of the Army soldiers and civilian employees. Subsequent release of this information may result in violations of the Privacy Act² and breaches of personal privacy interests. Accordingly, those releases required by Title 5, USC, Section 1213(e) excepted, the Department of the Army requests the opportunity to coordinate in advance, on any release of this report outside the Office of the Special Counsel (OSC).

¹ Aberdeen Proving Ground (APG), Maryland is an Army installation located near Baltimore, Maryland. APG is comprised of two main subdivisions: the northern portion of the installation houses principally ordnance related activities; the southern portion of the installation, Edgewood, houses arsenal related activities. Of the approximately 66 tenant organizations at APG, eight of these employ persons potentially eligible to receive Hazard Duty Pay (HDP).

² The Privacy Act of 1974, Title 5, USC, Section 552a.

INFORMATION INITIATING THE INVESTIGATION

By letter dated October 3, 2007, the OSC referred to the Secretary of the Army an allegation submitted by [REDACTED] and [REDACTED] Army APG Toxic Material Control Operator Supervisors, together with their supervisor, [REDACTED] Chief, Echo Company, 22d Chemical Battalion (CM BN), Technical Escort (TE), APG, Maryland [hereinafter "Whistleblowers"]. The OSC had concluded that there existed a substantial likelihood that information provided by the Whistleblowers revealed that the authorization of hazard duty pay (HDP) differentials for Equipment Specialists (Explosive Ordnance Disposal (EOD))³ at APG and Pine Bluff Arsenal (PBA), Pine Bluff Arkansas, may have constituted a violation of law, rule, or regulation; gross mismanagement; and an abuse of authority [Tab B; ROI-I, Exhibit A].⁴ On October 11, 2007, the Army Office of the General Counsel (OGC) forwarded the OSC referral to the U.S. Army Materiel Command (AMC), Office of the Command Counsel, for action.⁵ Subsequently, it was determined that the unit at issue, the 22d CM BN (TE), 20th SUPCOM (CBRNE) had been realigned from AMC to U.S. Army Forces Command (FORSCOM). Accordingly, on November 7, 2007, the OGC transferred the OSC-referred allegation to the Office of the Staff Judge Advocate,⁶ FORSCOM, Fort McPherson, Georgia, for investigation [Tab D; ROI-I, Exhibit B].

The Whistleblowers alleged to OSC that the Army was erroneously paying a HDP differential to six Equipment Specialist (EOD) employees,⁷ who at various times, were under the supervision of [REDACTED] and/or [REDACTED]. According to the referral,

³ Equipment Specialist (EOD), GS-1670, is one of 15 different position series held by employees of the 22d CM BN (TE). Employees categorized as Equipment Specialist (EOD), GS-1670, may qualify for receipt of HDP.

⁴ This footnote prescribes the citation convention that will be employed throughout this report with a view to facilitating the reader's understanding of, and reference to, the specific document from which facts or assertions set forth herein are drawn. The term "ROI-I" refers to the original Army Regulation (AR) 15-6 Report of Investigation (and its exhibits) into the allegation referred by OSC. This investigation was conducted by COL [REDACTED] the Investigating Officer (IO) [all ROI-I documents may be found in Binder 2]. The term "ROI-II" refers to the Supplemental AR 15-6 Report of Investigation and its associated exhibits, also completed by the IO, COL [REDACTED] [all ROI-II documents may be found in Binder 3]. A third investigation, "February 2007 ROI" refers to an AR 15-6 Investigation initiated by LTC [REDACTED] on January 17, 2007 into allegations that [REDACTED] had engaged in misconduct and/or mismanagement. The allegations that comprised this AR 15-6 investigation stemmed from employee complaints received from 22d CM BN (TE) Command Sergeant Major [REDACTED] and the Research, Development and Engineering Command Office of the Inspector General. The allegations included theft of U.S. government property, time card fraud, nepotism, threatening subordinates with loss of employment if the subordinates lodged complaints, and intimidation.

⁵ The APG installation falls under the general jurisdiction of AMC. Accordingly, Army OGC presumed that the CBRNE Analytical and Remediation Directorate (CARA), 22d CM BN (TE), located on APG, and the organization at issue in the OSC referral, was under AMC's functional command responsibility, as it had been previously [Tab C].

⁶ Under Army doctrine, all Army lawyers servicing an installation or command are consolidated in the Office of the Staff Judge Advocate. The Office of the Staff Judge Advocate is led by the Staff Judge Advocate, a military judge advocate, generally serving in the grade of COL.

⁷ One of the attachments included with the OSC-referred allegation was a list, provided by Mr. White, of the names of the Equipment Specialists (EOD) under Position Descriptions AG153575 (Equipment Specialist (EOD), GS-1670-11) and AG11759 (Ordnance Removal Specialist, GS-0301-12) [Tab B]. The allegation referred by OSC to the Army addressed only the alleged erroneous payment to employees encumbering the Equipment Specialist (EOD) positions.

law and regulations prohibited the payment of HDP when the hazardous duty or physical hardship associated with the employee's performance of duties had been taken into account in classifying the position. The Whistleblowers contended that the inherent hazards and the physical exertion associated with the performance of duties as an Equipment Specialist (EOD) had been specifically addressed in both the duty description and the factors analysis used to determine the pay grade of those positions, and that accordingly, Equipment Specialists (EOD) were not entitled to receive HDP. OSC found the Whistleblowers' allegation to be credible based on a review of documents the Whistleblowers provided⁸ and given the Whistleblowers' direct supervisory experience in addressing HDP issues.

This report provides the information required by Title 5, USC, Section 1213(d). In addition, the report includes a "Background" section that sets forth the organizational history of the 20th SUPCOM (CBRNE); a history of the classification actions related to the conversion of the civilian positions at issue in the OSC referral from Wage Grade (WG) to General Schedule (GS); and the rules and regulations governing entitlement to HDP.

CONDUCT OF THE INVESTIGATION

FORSCOM forwarded the OSC and OGC referral memoranda to the 20th SUPCOM (CBRNE), on November 8, 2007 [ROI-II, Exhibit B-1]. On November 9, 2007, Brigadier General (BG) Kevin Wendel, Commander, 20th SUPCOM (CBRNE), appointed Colonel (COL) [REDACTED] as an Investigating Officer (IO) under provisions of AR 15-6, *Procedures for Investigating Officers and Board of Officers*, with a mandate to investigate the allegations forwarded by OSC.⁹ [Tab E; ROI-I, Exhibit C; ROI-II, Exhibit B-2]. At the time of his appointment, COL [REDACTED] served as the Deputy Commander, 20th SUPCOM (CBRNE) and was senior in rank to those potentially implicated in the OSC allegations. COL [REDACTED] gathered documentary evidence and interviewed six key witnesses, to include the three Whistleblowers; LTC [REDACTED] who had served as commanding officer of the 22d CM BN (TE) during the period in question; [REDACTED] former Deputy Commander of 22d CM BN (TE) and current Director of CARA, assigned to the 20th SUPCOM (CBRNE); and [REDACTED], a Human Resource Specialist assigned to the APG Civilian Personnel Advisory Center (GPAC). Although COL [REDACTED] proceeded diligently, the expanding scope of his inquiry necessitated multiple extensions of time to permit him to complete his investigation and compile his report.

By statute, an agency is afforded 60 days to complete the report required by Title 5 USC, Section 1213. On November 29, 2007, anticipating a lengthy review process that

⁸ Included in the referral package from OSC was a position description for an Equipment Specialist (EOD), GS-1670-11, Position Description AG153575, as well as a memorandum, dated March 26, 2007, from [REDACTED] to LTC [REDACTED] advising that personnel in the 22d CM BN (TE) were being paid HDP differential notwithstanding that the hazardous duties associated with the position already had been taken into account in the classification of the employees' job [Tab B].

⁹ AR 15-6 promulgates guidelines for Army administrative investigations. Army commands and organizations frequently appoint investigating officers under provisions of AR 15-6 to investigate all manner of allegations and concerns [TAB F].

would involve both FORSCOM and OGC, the FORSCOM Staff Judge Advocate requested that OGC request a 60-day extension from OSC. OGC requested an extension [Tab G], which was granted by OSC on December 1, 2007, extending the Army's reply period until February 5, 2008. On December 4, 2007, COL ██████ submitted his report to BG Wendel [ROI-II, Exhibits C-1, C-4, and D].¹⁰ The Office of the Staff Judge Advocate, FORSCOM, reviewed the IO's report of investigation (ROI) and on December 5, 2007, determined it to be legally sufficient [ROI-II, Exhibit C-2]. BG Wendel approved the IO's findings and recommendations on December 7, 2007 [ROI-II, Exhibits C-3 and D] and FORSCOM forwarded the ROI to Army OGC.

In the first week of January, 2008, OGC contacted FORSCOM to express concern about several aspects of the ROI. Ultimately, OGC and FORSCOM agreed that further investigation of the matter referred by OSC was required.¹¹ On January 8, 2008, the FORSCOM Staff Judge Advocate advised BG Wendel of the need to conduct a follow-on investigation [ROI-II, Exhibits A-1, A-3, and A-4].

BG Wendel directed COL ██████ to serve as the AR 15-6 IO for any and all required supplemental investigation [ROI-II, Exhibit AA]. COL ██████ conducted a supplemental investigation, completing a draft supplemental report on January 17, 2008. The FORSCOM Staff Judge Advocate determined that the draft supplemental report was insufficient to address OGC's concerns, however [ROI-II, Exhibit A-2] and advised OGC of his intent to detail an attorney from his office to assist COL ██████ if needed [ROI-II, Exhibit A-5].¹² On February 1, 2008, the FORSCOM Staff Judge Advocate requested that OGC obtain an additional 60-day extension from OSC to facilitate COL ██████ completion of his supplemental investigation and report [ROI-II, Exhibit A-5]. On February 5, 2008, OGC requested that OSC grant a second extension

¹⁰ To facilitate the integration of ROI-I and ROI-II, the IO inserted a placeholder tab sheet referencing the December 4, 2007 ROI-I investigative report as Exhibit D in Binder 3 for ROI-II. However, ROI-I in its entirety is contained in Binder 2.

¹¹ ROI-I was deficient in several key aspects and its findings set forth several overbroad conclusions unsupported by credible evidence [ROI-II, Exhibits A-1, A-2, A-3]. Although the IO had found sufficient credible evidence that beginning at some time in years 2003-2004, the 22d CM BN (TE) authorized and paid HDP to assigned Equipment Specialists (EOD) [ROI-I, AR 15-6 Report, p. 3, para 1; p. 7, paras 2(a), 2(b), and 2(c); Exhibits P, Q, and R; ROI-II, Exhibit C-4], the IO opined that COL ██████ then-Commander of the 22d CM BN (TE), "had made a reasonably informed and well intentioned interpretation of the governing regulations in authorizing and awarding HDP" and did so "in good faith to compensate civilian workers who were routinely placed in unknown, dangerous, and potentially life threatening environments." [ROI-I, AR 15-6 Report, p. 3, para 6; ROI-II, Exhibit C-4]. Further, the IO determined that ██████ the CARA Director, was "continuing the business practice in good faith to her employees." [ROI-I, AR 15-6 Report, pp. 10-11, para 3(c); ROI-II, Exhibit C-4]. All-in-all, the IO gathered insufficient evidence to ascertain management's rationale for paying HDP to its Equipment Specialist (EOD) employees and without more, simply presumed that prior business practices, pursuant to which HDP had been paid, had been premised on appropriate determinations that hazards from explosive and chemical materials to which the Equipment Specialists (EOD) were exposed remained significant enough to justify HDP. However, the IO concluded that "the command should conduct a formal review of all the effected position descriptions to determine how HDP/EDP applies." [ROI-I, AR 15-6 Report, p. 10, para 3(a); ROI-II, Exhibit C-4]. In effect, the IO did not answer the questions referred by OSC: had the Equipment Specialists (EOD) received HDP erroneously, and if so, did those payments violate law, rule or regulation [ROI-II, Exhibit A-3].

¹² Ultimately, the Staff Judge Advocate assigned Lieutenant Colonel ██████ an attorney under his supervision in the FORSCOM Office of the Staff Judge Advocate, to assist COL ██████

of time [Tab H]; OSC granted this extension request on February 27, 2008, extending the response period to April 7, 2008. Continued status reports concerning the substantive aspects of the ongoing investigation prompted OGC to conduct an extensive teleconference with the FORSCOM/20th SUPCOM (CBRNE) team on March 26, 2008. The need for continued investigation to address fully and finally the allegation referred by OSC served as the basis for a third request to OSC for an extension of time; this third extension, granted by OSC on April 8, 2008, extended the response period until June 9, 2008 [Tab I]. OGC and FORSCOM continued actively to improve the draft supplemental report of investigation, necessitating a June 6, 2008 request to OSC for a fourth extension [Tab J]. OSC granted the extension on June 9, 2008, extending the reply period until August 1, 2008. With each inquiry, the investigation took on new complexity, leading OGC to conduct another teleconference with the FORSCOM/20th SUPCOM (CBRNE) team on August 4, 2008, and subsequently to request a fifth extension of time for the Army to respond to the OSC-referred allegation [Tab K]. OSC granted this request on August 19, 2008, further extending the Army's suspense through October 14, 2008. As a result of the August 4, 2008 teleconference, the 20th SUPCOM (CBRNE) provided additional documents to address several of the issues that had surfaced during the teleconference [Tabs N1-N8]. Several additional teleconferences were held between September 29, 2008 and October 21, 2008 to address further new lines of inquiry.¹³

New issues continued to manifest in the investigation. Thus, on October 10, 2008, OGC requested that OSC grant a sixth extension of time to permit the Army to complete its report [Tab L]. OSC granted this request on October 14, 2008, extending the Army's suspense to December 15, 2008. Even as the final draft of the Army report was being completed, additional documentary and testimonial evidence was being gathered to address emergent issues. On December 22, 2008, OGC requested a seventh and final extension of time from OSC [Tab M]. OSC granted that request, extending until February 2, 2009, the Army's response period.

BACKGROUND

To facilitate a better understanding of the Army's investigation of the OSC-referred allegation and the resultant findings and corrective actions, it is important to understand the organizational history of the 20th SUPCOM (CBRNE); past classification efforts undertaken relative to the Equipment Specialist (EOD) employees at the heart of the OSC-referred allegation; and the laws, rules, and regulations that impacted the payment of HDP to those employees.

¹³ As a result of these ongoing discussions, OGC requested that [REDACTED], and [REDACTED] provide statements that would address and clarify additional issues that had been raised and to supplement the testimonial and documentary evidence that had been gathered for ROI-I and ROI-II. Their statements are at Tab AA, Statement of [REDACTED], dated January 30, 2009; Tab BB, Statement of [REDACTED], dated August 18, 2008; and Tab CC, Statement of [REDACTED], dated January 30, 2009.

Organizational History of the 20th SUPCOM (CBRNE)

20th SUPCOM (CBRNE) is a tenant activity of APG, Maryland, directly subordinate to FORSCOM. The 20th SUPCOM (CBRNE) mission statement, a detailed unit reorganization plan, a command organization chart, and a chart depicting the planned future growth of the unit are at Exhibit GG of ROI-II.

Over the years, the Whistleblowers were employed by units that, as the result of numerous organizational realignments, ultimately became part of the 20th SUPCOM (CBRNE). Originally, the Whistleblowers were employed by the U.S. Army Technical Escort Unit (TEU), located in the Edgewood area of APG. At that time, the TEU was directly subordinate to AMC.¹⁴ In 1993, the TEU was absorbed into the U.S. Army Chemical and Biological Command (CBDCOM), a major subordinate command of AMC. CBDCOM existed from 1993-1998, when it was reorganized and re-designated as the U.S. Army Soldier and Biological Chemical Command (SBCCOM), under which name it operated from 1998-2004. Subsequently, with a view to consolidating its CBRNE assets, AMC divided SBCCOM into components, merged each with other AMC elements, and created several new organizations: the U.S. Army Research, Development and Engineering Command (RDECOM) (provisionally established in 2002); the Chemical Material Agency (CMA) (provisionally established in 2003); and the Guardian Brigade (provisionally established in 2003) [Tabs P-3, P-4]. The Guardian Brigade provided a single operational headquarters for Army Materiel Command CBRNE forces by “consolidating, integrating and growing existing CBRNE operational capabilities under a provisional headquarters.” [Tab P-5; see also Tabs P-3 and P-6]. The Guardian Brigade served as the TEU’s higher headquarters through October 16, 2004 [Tab P-7]; from the moment the TEU was established under the Guardian Brigade, it was no longer affiliated with SBCCOM in any way [Tab P-5; see also Tabs P-3, P-6].¹⁵

¹⁴ The genesis of TEU dates back to World War II, when a need arose for an organization “with the right training, equipment and personnel to handle the movement of hazardous chemical weapons. In addition to knowing the effects and dangers of the agent and how to move hazardous material without accidents, those personnel needed to know what to do in the case of an accident.” [Tabs P-1, P-2]. The Army’s TEU was initially established as the Guard and Security Division of the Chemical Warfare Service on January 20, 1943, at Camp Sibert, Alabama, with the mission of ensuring the safe transport of unconventional munitions and material—nuclear, biological, and chemical. A year later, the organization moved to the Chemical Warfare Center in Maryland, formerly known as Edgewood Arsenal [Tabs P-1, P-2].

¹⁵ Over time, TEU capabilities with regard to emergency preparedness and response produced a globally deployable, highly trained, explosive and chemical/biological response team [Tab P-3]. The TEU mission evolved to include providing chemical/biological advice, sampling, detection, identification, monitoring, limited decontamination, packaging, escort, rendering safe procedures, disposal, and mitigating explosive chemical and biological devices; TEU provided these capabilities to both the civil authorities in the homeland as well as to the combatant commanders of the U.S. Armed Forces. Additionally, TEU has worked with the Army Corps of Engineers, playing a vital role in the remediation of formerly used defense sites, and providing an emergency response capability in the event that chemical or biological material was discovered anywhere in the continental United States [Tab P-4]. The TEU has undertaken a myriad of different missions over the years, to include supporting the U.S. Secret Service on protective service missions for senior U.S. government officials such as the President and Vice President of the United States; the recovery of World War I chemical weapons from a construction site in Spring Valley, Washington, D.C.; and stand-by “first responder” support for high-profile events, such as the 1996 Atlanta, Georgia, Olympic Games, the National Boy Scout Jamboree, the Presidential Inauguration, and the annual State of the Union Address [Tab P-1].

On October 16, 2004, the Guardian Brigade was re-designated as the 20th SUPCOM (CBRNE) and a subordinate command of FORSCOM. On that same date, the TEU sub-element of the Guardian Brigade was re-designated as the 22d Chemical Battalion (CM BN) (Technical Escort (TE)), a sub-component of the 20th SUPCOM (CBRNE) [Tabs P-5, P-6]. The TEU assumed the 22d CM BN's lineage and honors, dating back to November 26, 1917, when it was established in the National Army at Washington, D.C. as Company C, 30th Engineers. In the ensuing years, the 22d CM BN also had undergone a series of reorganizations, in-activations, and activations [Tab P-5]. The creation of the 20th SUPCOM (CBRNE) was intended to bring together under one umbrella headquarters all of the Army's CBRNE response elements, with a view to providing more effective and responsive command and control of CBRNE specialized operational assets, eliminating redundancies, and facilitating more efficient management and employment of these unique and limited resources to support the homeland and other Regional Combatant Commands [Tabs P-5, P-6].¹⁶

Both the 20th SUPCOM (CBRNE) and its sub-component, the 22d CM BN (TE) are headquartered at APG, Maryland, with company-sized detachments at both APG and at PBA, Arkansas. The Whistleblowers were initially AMC TEU employees, but as the result of the numerous command reorganizations and realignments detailed above, they ultimately became employees of the 22d CM BN (TE) at APG, nested under the 20th SUPCOM (CBRNE) and FORSCOM.

In 2007, the 20th SUPCOM (CBRNE) established the CBRNE Analytical and Remediation Activity (CARA) as a subordinate provisional organization and populated it with civilian employees from the 22d and 110th Chemical Battalions, to include the three Whistleblowers.¹⁷ CARA is headquartered at APG with detachments at APG and PBA. Among other things, the CARA Charter called for reclassifying the organization's Federal Wage System (FWS) (or Wage Grade)¹⁸ workforce into the General Schedule (GS) system. CARA is scheduled to complete its restructuring on October 1, 2009.

***Position Classification Actions Related to the Conversion of
Toxic Material Control Operator (Ordnance Removal), WG-6501-11 Positions to
Equipment Specialist (EOD), GS-1670-11 Positions***

The manpower composition of the TEU has evolved throughout the years. Beginning in 1988, the Army decided to move a large number of its military personnel out of administrative and technically-oriented positions to serve with the Army in the field. Faced with the choice of either contracting out for support or converting the military positions to civilian positions, the TEU chose to hire civilian employees. As a result, many former and retired military ordnance specialists were hired by the Army in a civilian capacity to man the TEU. To this day, the pool of military-trained specialists

¹⁶ In October 2004, the 20th SUPCOM (CBRNE) was comprised of the 52nd Ordnance Group (EOD) and the 22d CM BN (TE) (formerly the Army TEU).

¹⁷ [REDACTED] and [REDACTED] are now assigned to CARA at APG. [REDACTED] retired from Federal service on November 30, 2007.

¹⁸ For purposes of this report, the terms Federal Wage System (FWS) and Wage Grade (WG) are interchangeable.

continues to provide the primary source of fill for the for the unit's civilian employee positions [Tabs P-1, P-2].¹⁹

The organizational and cross-command realignments of the civilian employees at issue in this investigation complicated related efforts to change the classification of the employees' duty positions. Over time, these employees' duty positions evolved from WG positions, with entitlement to Environmental Differential Pay (EDP)²⁰ into General Schedule (GS) positions, with eligibility for HDP.

In November 2003, Guardian Brigade TEU employees classified as Toxic Material Control Operators (Ordnance Removal), WG-6501-11, were reclassified and converted to Equipment Specialists (EOD), GS-1670-11.²¹ According to [REDACTED] former Deputy Commander of the 22d CM BN (TE), "I was not part of the command when this action was decided, however, the Toxic Material Control Operator (Ordnance Removal) personnel were performing GS work and this action corrected any possible discrepancy in their classification. As Wage Grade (WG) they received Environmental Differential Pay (EDP). After being upgraded to General Schedule (GS), they received Hazardous Duty Pay (HDP). Although the PDs [position descriptions] were different, the personnel were performing the same duties." [Tab AA, Statement of [REDACTED] dated January 30, 2009, p. 1, para 1]. According to [REDACTED], even though the TEU was no longer a part of SBCCOM, TEU employees received HDP based on SBCCOM "certificates" set forth in Aberdeen Proving Grounds Regulation (APGR) 690-28, *Hazardous Duty Pay for Class Act Employees*, dated August 23, 2000.²² [Tab AA, Statement of [REDACTED] dated January 30, 2009, p. 1, para 1e].²³ The newly established Guardian Brigade should have applied to the APG CPAC for authorization to pay HDP and the establishment of a new HDP certificate reflecting the unit's new organizational status and affiliation, but no such request was ever initiated. Subsequently, in May 2004, the TEU WG employees stationed at PBA were reclassified and converted to GS-1670-11 status; however, the PBA employees did not receive HDP at that time [Tab AA, Statement of [REDACTED], dated January 30, 2009, p. 1, para 1g].

On October 16, 2004, the Guardian Brigade TEU element was reflagged as the 22d CM BN (TE), 20th SUPCOM (CBRNE), a subordinate unit of FORSCOM.²⁴ With this change, the newly formed 22d CM BN (TE) should have applied to the APG CPAC for

¹⁹ Against the backdrop of the proliferation of weapons of mass destruction and the Global War on Terrorism, the extensive and specialized training required to perform in this line of work has grown continuously more sophisticated, rendering military training and experience in these areas more critical and valuable to one's subsequent employment as a civilian in the field of CBRNE response.

²⁰ See *infra* pp. 11-15 for a discussion of EDP.

²¹ Copies of these position descriptions are at Tabs EE-1 and EE-3.

²² Aberdeen Proving Grounds Regulation (APGR) 690-28, *Hazardous Duty Pay for Class Act Employees*, dated August 23, 2000, *SBCCOM HDP Certificates* at Appendix B, Certificates 9, 10, and 11. For a discussion of "certificates," see *infra* pp. 14-18.

²³ By November 2003, TEU already had been decoupled from SBCCOM to become the Guardian Brigade, which remained subordinate to AMC. Hence, the SBCCOM certificates were no longer applicable to these Guardian Brigade positions.

²⁴ The creation of the 20th SUPCOM (CBRNE) brought together all of the Army's CBRNE response forces, to include both those that had been subordinate to AMC and those that had been subordinate to FORSCOM, in a single organization [Tabs P-5, P-6].

authorization to pay HDP and the establishment of a new HDP certificate reflecting the Battalion's new organizational/command status and affiliation with FORSCOM, but no such request was ever initiated [Tab AA, Statement of ██████████, dated January 30, 2009, p. 2, para 1h]. Rather, although no longer subordinate to AMC or SBCCOM, 22d CM BN (TE) Equipment Specialists (EOD) continued to receive HDP based on the original SBCCOM certificates set forth in APGR 690-28.

In June 2005, the 22d CM BN (TE) migrated to the new Automated Time, Attendance and Production System (ATAAPS), for the first time bringing Equipment Specialist (EOD) employees stationed at APG and PBA under the same pay system [Tab AA, Statement of ██████████, dated January 30, 2009, p. 2, paras 1i-j]. It was in this general timeframe that PBA Equipment Specialist (EOD) employees began claiming and receiving HDP, like their counterparts at APG, citing as authorization the SBCCOM HDP certificates set forth in APGR 690-28, despite the fact that neither they nor their unit remained affiliated with AMC or SBCCOM.

Prior to June 2005, the 22d CM BN (TE) employees sited at PBA had been subject to PBA CPAC governance on personnel matters. The PBA CPAC had refused to authorize the payment of HDP to PBA employees. In an unsigned memorandum, dated July 27, 2004, that had been prepared in an effort to justify the payment of HDP to employees of the PBA detachment of the 22d CM BN (TE) [ROI-I, Exhibit W], LTC ██████████, former 22d CM BN (TE) Commander, used the SBCCOM certificates set forth in APGR 690-28 to justify his request to the PBA CPAC for HDP parity between his APG and PBA Equipment Specialist (EOD) employees. LTC ██████████ claimed that the PBA Equipment Specialists (EOD) should be authorized payment of the HDP differential because they worked in an environment in close proximity to a toxic chemical material and that protective measures, which include a "full range of protective clothing and devices do not practically eliminate the hazard." LTC ██████████ attached to his request a strongly worded endorsement of this initiative from the Director of the APG CPAC [ROI-I, Exhibit W]. LTC ██████████ request was denied, however. ██████████ Chief of the Remediation and Response Section (West) at PBA (the PBA-sited portion of the 22d CM BN (TE)) explained that "prior to November 2004, the PBA CPAC had disapproved HDP for Ordnance Removal Specialists and Equipment Specialists (EOD) with his detachment. The CPAC Committee, charged with reviewing all installation HDP requests, [had] concluded that the hazards encountered by these employees were already taken into account in their position descriptions. ██████████ knew that the APG detachment workers were receiving HDP for equivalent work and recalled raising the issue on various occasions with ██████████, then Deputy Commander of the 22d CM BN (TE). In response to a request from the AR 15-6 IO tasked to investigate this OSC-referred allegation, ██████████ checked his records and determined that PBA detachment personnel in Equipment Specialist (EOD) positions began to receive HDP in November 2005 once the unit began processing timecards [through] the new ATAAPs." [ROI-II, Tab JJ, para 2a].

██████████ confirmed that the 22d BN CM (TE) "felt that one standard should be applied to all unit HDP claims, regardless of detachment location." Further, she stated that once the PBA detachment began using ATAAPS, HDP was approved for their employees based upon the long-standing SBCCOM certificates in APGR 690-28. Because ATAAPS was a centralized system and did not involve the PBA CPAC HDP

committee in its operations, the PBA CPAC HDP Committee was bypassed and no longer was involved in the decision making process for HDP payments [ROI-II, Tab JJ, para 2b]. The AR 15-6 IO, COL ██████████, discovered that this was not unusual; the 22d CM BN (TE) chain of command had historically relied on APGR 690-28 and its certificates as a justification for awarding the HDP to the APG and PBA employees.

On October 30, 2006, a revised APGR 690-28 was published. The 22d CM BN (TE) Equipment Specialist (EOD) employees continued to receive HDP under SBCCOM's certificate(s), despite the fact that the certificates ceased to apply to them when they became part of FORSCOM in October 2004 [Tab AA, Statement of ██████████, dated January 30, 2009, p. 2, paras 1j]. The 2006 version of the regulation failed to update its certificates to reference the newly established FORSCOM organization that had been in existence since 2004. Rather, the new 2006 version of the APGR still contained the same SBCCOM certificates that had been included in the 2000 version.

In May 2007, all Equipment Specialist (EOD) positions assigned to the 22d CM BN (TE) transferred to the 20th SUPCOM (CBRNE) CARA [Tab AA, Statement of ██████████, dated January 30, 2009, p. 1, para 1k].

With each of the realignments described above, the newly formed organization should have applied to the APG CPAC for authorization to pay HDP and the creation of a new HDP certificate reflecting the organization's new status and affiliation. No such request ever was initiated, however.

In October/November 2008, CARA Equipment Specialist (EOD), **GS-1670-11**, positions were re-classified as Unexploded Ordnance (UXO) Technicians III (UXOTIII), **GS-0301-12** [Tab AA, Statement of ██████████, dated January 30, 2009, p. 4, para 6].²⁵ The work performed by these 20th SUPCOM's employees newly classified as

²⁵ In order to keep up with an ever increasing dangerous world situation where the need to appropriately react to threats from weapons of mass destruction, the demand for a more highly skilled and diversified workforce of trained military and civilian personnel became increasingly more important. The Department of Defense Explosives Safety Board (DDESB), formerly called the Armed Forces Explosives Safety Board, was established in 1928. The DDESB promulgated Technical Paper (TP) 18, *Minimum Qualifications for Unexploded Ordnance (UXO) Technicians and Personnel*, dated December 20, 2004. According to ██████████, this document "provides the minimum qualification standards for personnel performing unexploded ordnance (UXO)-related operations in support of the Department of Defense [DoD] with the exception of DoD Explosives Ordnance Disposal (EOD) personnel. Such operations include, but may not be limited to: military munitions responses, range clearance activities, range maintenance, and inspection or certification of munitions debris and range-related debris being considered for transfer or release from DoD control." [Tab AA, Statement of ██████████, dated January 30, 2009, p. 5, para 10c, and its Attachment 7, pp. 7-23]. Additionally, DDESB TP 18 establishes the minimum training standards for UXO expertise, UXO-Technician I (UXOTI), UXO Technician II (UXOTII), and UXO Technician III (UXOTIII), as well as other related positions [Tab AA, Statement of ██████████, dated January 30, 2009, see its Attachment 7, pp. 7-23]. The minimum training standards for the entry-level personnel to fill the UXOTI positions "consists of both knowledge and skills requirements, and candidates must demonstrate the requisite knowledge of explosive operations and the ability to perform required tasks in compliance with existing operational and safety guidelines." [Tab AA, Statement of ██████████, dated January 30, 2009, see its Attachment 7, pp. 12-23]. A minimum qualifications standards matrix included in TP 18 reflects that UXOTI, UXOTII, and UXOTIII personnel each must possess a minimum number of years of EOD/UXO experience and meet other special

UXOTIII was exactly the same work they performed when classified as Equipment Specialists (EOD) [Tab AA, Statement of ██████████, dated January 30, 2009, p. 4, para 6].²⁶

The Rules and Regulations Governing Entitlement to HDP

Two different hazard duty pay schemes apply to the federal work force: Environmental Duty Pay (EDP) is geared to FWS (or WG) employees and HDP to GS employees. An understanding of both pay differential programs is necessary to an understanding of this report.²⁷

Generally, both EDP (applicable to WG employees) and HDP (applicable to GS employees) provide an employee with some additional compensation for exposure to hazards, physical hardships, or working conditions of an unusually severe nature that cannot be eliminated or significantly reduced by preventive measures, including the use of safety equipment and protective clothing.²⁸ The Department of the Army's Personnel Management Information and Support System (PERMISS) guidance article on the subject states that EDP and HDP "are not substitutes for safe practices, *not paid for the customary hazards of a trade or craft*, nor authorized if the employee refuses to apply the safety measures provided by management." [Tab X, *emphasis added*].²⁹

According to ██████████, the 22d CM BN (TE) civilian employees at APG and PBA were appropriately reclassified to from WG to GS-1670-11s in November 2003 and May 2004, respectively, to "correct any possible discrepancy in their classification" as well as

requirements, including prior military EOD and/or commercial UXO experience in munitions response actions or range clearance activities, or specific project/explosives safety training, as appropriate [Tab AA, Statement of ██████████, dated January 30, 2009, Attachment 7, pp. 22-23]. Given the positions' requirements, it is not surprising that the applicant pool comprises predominantly former military and retired military personnel.

²⁶ The grades and work performed met or exceeded the DDESB criteria for these positions [Tab AA, Statement of ██████████, dated January 30, 2009, p. 4, para 6; Attachment 7].

²⁷ For purposes of this report, insight into the EDP and HDP entitlement schemes was provided by two Army subject matter experts: ██████████ Classification Specialist, APG CPAC, and ██████████ Human Resources Specialist, Civilian Human Resources Agency (CHRA). ██████████ outlined the general requirements and procedures used to determine eligibility for EDP and HDP [Tab BB, Statement of ██████████, dated August 18, 2008, pp. 1-3, 5-6]. ██████████ emphasized that eligibility for HDP compensation is premised on the performance of duties involving unusual physical hardship or hazard. He explained that proper application of the rules in this complex regulatory scheme requires extensive knowledge, training, and experience with the federal classification system and processes as well as experience with the personnel regulations that allow payment for the hazardous duty. More importantly, the appropriate interpretation of the HDP regulations involves difficult to understand "gray" areas. Further, ██████████ noted that with regard to the cases relevant to this OSC referral, the numerous organizational realignments and associated position reclassifications significantly complicated an already challenging analysis. In addition, ██████████ noted that the supervisors and managers involved in this case appeared unsure of the appropriate application of these complex rules [Tab BB, Statement of ██████████, dated August 18, 2008, p. 1, General Background, para 1; pp. 4-6].

²⁸ The Army's guidance on EDP and HDP derives from Title 5 of the USC, 5 CFR Section 532.511, and 5 CFR Part 550, Subpart I.

²⁹ PERMISS is a web-based decision support system accessible through the U.S. Army Civilian Personnel on Line (CPOL) portal. PERMISS provides general guidance and information on all areas of Army civilian personnel management.

to bring them in line with the requirements of DDESB TP 18 [Tab X, Statement of ██████████, dated January 30, 2009, p. 1, paras 1, 1e and 1g; p. 4, para 6]. This change in status automatically brought with it a new set of "rules" for determining eligibility for hazard duty pay. The law and regulations applicable to a WG employee's eligibility for the payment of EDP, are significantly more liberal than the law and regulations applicable to a GS employee's eligibility for HDP, even though the WG and GS employees may be performing the same work, under the same circumstances. Unfortunately, the leadership of the 22d CM BN (TE) failed to appreciate the distinctions between the rules governing eligibility for EDP and HDP.

The OSC-referred allegation challenges the entitlements of six employees assigned for duty to the 20th SUPCOM (CBRNE) and stationed with units at APG and PBA. When originally classified as WG, it appears that these employees properly qualified for and received EDP. Upon reclassification as GS employees, they no longer qualified to receive HDP, despite the fact that their performance of duties involved the same workplace hazards. When classified as WG, these employees were compensated for placing themselves in hazardous situations on a *per se* basis. When reclassified as GS employees, they received higher salaries based, in major part, on their performance of duties requiring exposure to the same hazards; classification as a GS, however, was attended by the presumption that the employee possessed more sophisticated knowledge, skills, and abilities, and thus was better equipped than a WG employee to perform these duties.

Title 5, USC, Section 5343(c)(4) [Tab R] authorizes the payment of EDP, and is implemented at 5 CFR Part 532 [Tab T]. Local agency regulation APGR 690-29, *Environmental Differential Pay (EDP) Federal Wage Employees*, dated August 29, 2000, further supplements the CFR guidance [ROI-I, Exhibit T; Tab Z]. EDP is the hazard pay program for prevailing rate or FWS (or WG) employees—those employed in recognized trades or crafts, or other skilled mechanical crafts, or in unskilled, semi-skilled, or skilled manual-labor occupations, and other employees including foremen and supervisors in positions having trade, craft, or laboring experience and knowledge as the paramount requirement [Tab BB, Statement of ██████████, dated August 18, 2008, p. 1, General Background, para 2].

Title 5, USC, Section 5545(d) authorizes agencies to pay HDP when a worker is exposed to hazards not usually involved in carrying out the duties of his position. The statute specifies that HDP is not appropriate where the hazards were already "taken into account" in the classification of the position (Title 5, USC, Section 5545(d)(1)) [Tab Q]. The Office of Personnel Management (OPM) implementing regulations are at 5 CFR Part 550 [Tab S]. OPM rules on Hazard Pay Differentials, dated June 29, 1994, were amended by the Federal Employees Pay Comparability Act of 1990 (FEPCA) (Title 5, USC, Section 5545(d)).³⁰ Local agency regulation APGR 690-28, *Hazardous Duty Pay for Class Act Employees*, August 23, 2000, revised October 30, 2006, provides further

³⁰ A good primer for understanding HDP can be found at OPM's *Frequently Asked Questions about Hazardous Duty Pay for Federal Employees* and OPM's *Pay Questions and Answers on Grade and Pay Retention Hazard Duty Pay* [Tabs U, V]. Additionally, the final OPM Rules on Hazard Pay Differentials, dated June 29, 1994, provide relevant background as to the basis of OPM regulations [Tab W].

implementing guidance regarding HDP [ROI-I, Exhibit S; Tabs Y-1, Y-2].³¹ HDP is the hazard duty pay differential applicable to GS positions. A position is subject to the General Schedule, even if it requires physical work, if its primary duty requires knowledge or experience of an administrative, clerical, scientific, artistic, or technical nature not related to trade, craft, or manual-labor work [Tab BB, Statement of ██████████, p. 1, General Background, para 2].

Attached as Appendices to the APG Regulations pertaining to both EDP and HDP are approved "certificates" that enumerate more specifically than does the CFR the "approved categories of environmental conditions for which payment of a differential may be warranted" for covered employees. While the certificates contained in the local regulations outline the conditions, environments and/or situations peculiar to the specific local activity described in the local regulation, 5 CFR Part 550, Appendix A, Subpart I (as provided for by 5 CFR 550.903(a)), lists the approved categories of hazardous duties or duties involving physical hardship for which a hazard pay differential may be warranted. This list which is approved by OPM, supersedes Appendix A of the local regulation with its accompanying certificates. To be authorized to receive an EDP or HDP payment, an employee's actual and exact qualifying work or duties and the organizational entity performing that work or duties must be expressly set forth in a "certificate."

The payment of EDP is grounded in several concepts, one of which is "close proximity" which speaks to the immediacy, distance, and inherent present danger of an exposure to a hazardous material or situation. If a hazard has been "practically eliminated" through the use of protective clothing, device or procedure, EDP may not be paid [Tab T, 5 CFR Part 532, Appendix A to Subpart E of Part 532, Part II, para 2, *Explosives and incendiary material-high degree hazard*]. EDP regulations do "not preclude compensation if the working conditions are taken into consideration in grading the position." [Tab BB, Statement of ██████████, dated August 18, 2008, p. 2, para 2]. Additionally, EDP payment is "almost automatic if the work is listed on a locally issued "certificate", performed in close proximity, and the hazard has not been practically eliminated." [Tab BB, Statement of ██████████, dated August 18, 2008, p. 2, para 2].

HDP is paid for all hours in a duty status once the recipient has been determined to be in an environment that exposes him to hazard [Tab S, 5 CFR Section 905(a)]. As with EDP, HDP may not be paid if the hazard has been "practically eliminated" or "adequately eliminated" through the use of protective clothing, device or procedure [Tab S, 5 CFR Section 550.902, *Definitions, Duty Involving Physical Hardship*; 5 CFR Section 550.906]. However, the rules governing HDP differ from those applicable to EDP in that HDP may not be paid if the hazardous duty is "taken into account in the classification of [the] position" regardless if it actually affects the grade [Tab S, 5 CFR Section 550.904(a), (c)]. Essentially, absent an express exception, HDP may be paid, *if*

³¹ APGR 690-28 addresses "all activities at [Aberdeen Proving Grounds] that employ GS/GM employees (including full-time, part-time and intermittent personnel)." The regulation "does not cover any employee in the Federal Wage System or those covered by the Non-Appropriated Fund Personnel System." [ROI-I, Exhibit S; Tabs Y-1 and Y-2, APGR 690-28, para 2].

and only if, the hazardous duty was not taken into account in classifying the position [Tab S, 5 CFR Section 550.904(b)].³² The most commonly invoked exceptions to this strict rule provide that notwithstanding consideration of the hazard in classifying the duty position, HDP *may be* paid when the actual circumstances of the specific hazard or physical hardship have changed from those taken into account and described in the position description [Tab S, 5 CFR Section 550.904(b)(1)], or in circumstances in which an employee is unable to control the hazard or physical hardship, even through the use of the knowledge, skills, and abilities required for the position and described in the position description, thus preventing the reduction of risk to a less than a significant level [Tab S, 5 CFR Section 550.904(b)(2)].

These are two definitions to consider when assessing an employee's eligibility for HDP: 5 CFR Section 550.902 defines "Duty involving physical hardship" as "duty that may not in itself be hazardous, but causes extreme physical discomfort or distress and is not adequately alleviated by protective or mechanical devices, such as duty involving exposure to extreme temperatures for a long period of time, arduous physical exertion, or exposure to fumes, dust, or noise that causes nausea, skin, eye, ear, or nose irritation." Additionally, 5 CFR Section 550.902 defines "Hazardous duty" as "duty performed under circumstances in which an accident could result in serious injury or death, such as duty performed on a high structure where protective facilities are not used or on an open structure where adverse conditions such as darkness, lightning, steady rain, or high wind velocity exist." These definitions must be properly applied when determining, under provisions of 5 CFR Section 550.904(a), that an agency *has not* taken a specific physical hardship or hazardous duty into account in the classification of the position and that the employee experiencing such physical hardship or exposed to such hazardous duty is thus authorized payment of HDP [Tab S, 5 CFR Section 550.904(a), (c), *emphasis added*].

Within the Department of the Army, there has been an evolution regarding which management and staff elements bear the ultimately responsibility for determining an employee's eligibility for HDP. [REDACTED] traced this evolution to the late 1980s. He found that initially, civilian personnel specialists were responsible for determining which Army employees were entitled to HDP.³³ In 1994, "the Federal Personnel Manual (FPM) was abolished, leaving a void in the guidance available to decision makers, and the OPM initiated a general deregulation of Human Resource Management (HRM) systems by authorizing, to the greatest extent possible within the parameters of the Merit Systems Principles, delegation of regulatory authorities to management [Tab BB,

³² The most common management error in authorizing HDP results from the mistaken perception that HDP is always authorized if the duties at issue are described in Appendix A of 5 CFR Part 550, Subpart I. In fact, HDP is authorized only if the duties at issue are described in Appendix A *and* the listed duties were not considered in the classification of the position. This HDP rule differs from the rule applicable to EDP in that EDP may be paid *even if* the knowledge, skills, and abilities required to perform the hazardous duty were considered in the classification of the position.

³³ Department of the Army Pamphlet (DA PAM) 37-2, January 6, 1988, paragraph 4-19a, which stated that for hazardous duty pay for GS employees, "[t]he CPO (Civilian Personnel Office) determines the entitlement to HDP. The CPO must furnish a list to the payroll office of all employees who are authorized HDP and the appropriate percentage." [Tab BB, Statement of [REDACTED], dated August 18, 2008, p. 4, Personnel System History].

Statement of ██████████, dated August 18, 2008, p. 4, Personnel System History].

Additionally, ██████████ noted that in 1996, the Department of the Army reorganized its civilian personnel human resources (HR) community assets by dissolving the local Civilian Personnel Offices (CPO) that previously had provided a full range of services and support to management. In place of the CPO, the Army established both local Civilian Personnel Advisory Centers (CPACs) that provided operational advice and assistance, and regionally based Civilian Personnel Operations Centers (CPOC), that centralized the automation of civilian personnel actions and the performance of certain civilian personnel related advisory functions.³⁴ With respect to HDP entitlements, the combination of the OPM deregulation mandate and the Army HR reorganization effectively reduced the authority of local civilian personnel offices to determine HDP entitlement and further eliminated their ability to provide meaningful guidance on the subject [Tab BB, Statement of ██████████ dated August 18, 2008, p. 4, Personnel System History].³⁵ On November 17, 1997, a revised and reissued *Delegation of Position Classification Authority (DCA)* regulation delegated the classification of work, and the consequent assignment of EDP and HDP compensation directly to management. Managers were authorized to render decisions on EDP and HDP based on their best judgment and interpretation of the applicable regulations, subject only to coordination with the CPOC [Tab BB, Statement of ██████████ dated August 18, 2008, p. 4, Personnel System History]. This development further diluted the Army's ability to maintain comprehensive standards and accountability for many civilian personnel matters, to include the payment of hazard

³⁴ The Army again reorganized its HR assets in the beginning of 2008. By July 2008, the Army had eliminated the CPOCs and re-designated them as CPACs so as to be more in line with the traditional civilian personnel office roles and responsibilities. Consequently, while some of the former CPOC HR Specialists are now "technicians" processing civilian personnel actions in the newly created HR Regional Processing Centers, most former CPOC HR Specialists have been assigned to the CPACs to perform the more "traditional" civilian personnel functions that have been returned to the CPACs for execution.

³⁵ Reflective of the Army's reorganization of its HR assets into a CPAC and CPOC, there is a significant difference between the 2000 and 2006 versions of APGR 690-28 relative to the role of the local CPAC and the regional CPOC in providing advice and assistance to line managers/supervisors on HDP. Both versions were written after the 1996 HR reorganization and both provide that the CPAC will "[p]rovide for the administrative oversight and staff supervision of the HDP program on the installation, including development of pertinent implementing regulations and providing required training to installation supervisors." [Tabs Y-1, Y-2, AR 690-28, para 6c(1)]. The 2000 version goes on to state that the CPAC will "[e]nsure that appropriate, periodic information and feedback are provided to line managers and supervisors on the status of their HDP programs to include providing periodic statistical information on HDP costs and trends" and "[i]nterpret[ing] and provid[ing] advice to line management on rules and regulations governing the HDP program, particularly those aspects which deal with classification-related matters" such as determining whether the physical hardship or hazardous duty was "taken into account in the classification of the position." [Tab Y-1, APGR 690-28, paras 6c(2), 6(3)]. The 2006 version states that the CPAC will "[p]articipate with the Civilian Personnel Operations Center (CPOC) classification specialists when responding to questions concerning the rules and regulations governing the HDP program. The CPOC, not CPAC, is the final authority on HDP aspects dealing with classification issues." [Tab Y-2, APGR 690-28, para 6c(2)]. Although the 2006 iteration of the regulation clearly assigns a more active role to the CPOC, one must question whether line managers/supervisors generally would be able to determine whether the CPAC or the CPOC would be the better source of advice and assistance on HDP. Nevertheless, in regard to the matters referred by OSC, the CARA management chain did act appropriately by approaching the CPAC for assistance in resolving its questions about employees' entitlements to HDP.

duty pay.³⁶ As will be discussed in more detail later in the report, actions in the instant case were adversely impacted by the absence of a close working relationship between the APG civilian personnel office and 22d CM BN (TE) management.

PERMISS database guidance further emphasizes the Army's policy that the execution and oversight of hazard duty pay programs are a "management responsibility" that is to be exercised "in conjunction with" the safety and occupational health office, and that the HR community, in which significant expertise in these matters resides, is relegated to an advisory role [Tab CC, Statement of ██████████, p. 4, para 6].³⁷

Both the 2000 and 2006 iterations of APGR 690-28 similarly define who may exercise authority and responsibility for the payment of HDP, specifying that "HDP will not be paid if the hazardous duty has been taken into account in the classification of the employee's job". [ROI-I, Exhibit S; Tabs Y-1, Y-2, APGR 690-28, para 5(b)]. The regulation goes on to provide instructions as to how to assess if HDP is appropriate, once it has been determined that the hazardous duty was not considered in classifying the position, and publishes the HDP "certificates" describing the specific duties for which HDP has been approved in particular organizations in accordance with Appendix A of 5 CFR Part 550, Subpart I [ROI-I, Exhibit S; Tabs Y-1, Y-2, APGR 690-28, para 5a].³⁸

³⁶ Both the 2000 and 2006 versions of APGR 690-28 provide, at paragraph 6a(7), that "[i]n keeping with the authority under the Delegated Classification Authority Program, [supervisors and line management] will make the final determination on whether a particular duty has been 'taken into account' in the classification process. Such determinations will be made after appropriate recommendations and advisories are provided by the Civilian Personnel Operations Center."

³⁷ ██████████ cites to PERMISS guidance that "[m]anagement is responsible for determining whether the additional pay is warranted" . . . "[t]he organization which has the hazardous working condition requests EDP/HDP for the employee, not the HR community." Further, he states that "[w]henver unsafe or unhealthy working conditions are identified, the first course of action must be an attempt to eliminate or reduce the hazards, and occupational health, safety and environmental engineering personnel are available to help." [Tab CC, Statement of ██████████, pp. 4-5, para 6]. Entitlement to "EDP/HDP is not determined by HR" but "[o]nce [management] believes there is a hazardous work condition", . . . "they are to use the OSHA and/or the environmental engineering staff to assist . . . [in] ameliorat[ing] the hazard in the work environment. PERMISS goes on to direct, "[i]f these efforts are not successful, management submits a Request for Approval of Environmental Differential Pay or Hazard Duty Pay." [Tab CC, Statement of ██████████, p. 5, para 6]. Additionally, ██████████ notes that the PERMISS guidance provides that after management has submitted its Request for Approval of EDP or HDP, the next step "[b]efore approval by the commander, [is that] the Request is reviewed by safety and occupational health personnel to assure the work situation meets payment criteria, that preventive measures do not adequately protect employees' health and safety, and that the compensation is warranted." According to ██████████ it is the Army policy that the "OSHA staff in conjunction with the employee's organization, not HR, which determines the EDP/HDP compensation to be paid to the employee." [Tab CC, Statement of ██████████, p. 5, para 6].

³⁸ The scope of APGR 690-28's coverage is "all activities at this installation that employ GS/GM employees (including full-time, part-time and intermittent personnel). This regulation does not cover any employee in the Federal Wage System or those covered by the Non-Appropriated Fund Personnel System." [ROI-I, Exhibit S; Tabs Y-1 and Y-2, APGR 690-28, para 2]. Specific categories of employees performing particular duties in the following tenant activities are subject to APGR 690-28, as reflected at Appendix B of both the 2000 and 2006 versions: U.S. Army Aberdeen Test Center; U.S. Army Research Laboratory; National Ground Intelligence Center; Edgewood Research, Development and Engineering Center; U.S. Army Center for Health Promotion and Preventive Medicine; *U.S. Army Soldier and Biological Chemical Command*;³⁸ and U.S. Army Garrison, Aberdeen Proving Ground. Both the 2000 and 2006 iterations of APGR 690-28 refer to the organization at the heart of the OSC referral as an element SBCCOM, a major subordinate command of AMC. However, SBCCOM existed only from 1998-2004 and

The regulation establishes that “[o]nly those situations, events and/or environmental outlined in Appendix A [5 CFR Part 550, Subpart I] will warrant payment of HDP. These situations are supplemented by locally developed certifications which outline conditions and/or situations peculiar to APG and/or its tenants which have been determined to meet the requirements for payment of HDP. Local certificates are at Appendix B.” [ROI-I, Exhibit S; Tabs Y-1, Y-2, APGR 690-28, para 5c]. According to both versions of the regulation, the “[c]ertificates in Appendix B will be reviewed by management officials and their supporting safety, industrial hygiene and/or medical office(s) at least annually to ensure conditions continue to support payment of HDP.” [ROI-I, Exhibit S; Tabs Y-1, Y-2, APGR 690-28, para 5d]. These offices are to notify the CPAC, USA Army Garrison, APG (USAGAPG), immediately upon determination that a condition outlined in an existing certificate no longer supports and justifies payment of HDP.” [ROI-I, Exhibit S; Tabs Y-1, Y-2, APGR 690-28, para 5d].

According to both iterations of APGR 690-28, supervisors and line managers are responsible to “carry out all tasks necessary to ensure proper payment of HDP differentials to subordinates. This includes evaluating work situations under their supervision and determining when payment of HDP differentials [is] warranted, authorizing payment of HDP when appropriate, and explaining to the work force the basis for approval and/or disapproval of the differential as appropriate.” [ROI-I, Exhibit S; Tabs Y-1, Y-2, APGR 690-28, para 6a(6)]. Further, in “keeping with the authority under the Delegated Classification Authority (DCA) program, [supervisors are responsible] to make [a] final determination on whether a particular duty has been ‘taken into account’ in the classification process. Such determinations will be made after appropriate recommendations and advisories are provided by the Civilian Personnel Operations Center.” [ROI-I, Exhibit S; Tabs Y-1, Y-2, APGR 690-28, para 6a(7)]. Additionally, when “the work/environment does not match a certificate or if the work is certified for [performance by] another organization on post, a request for approval of HDP must be initiated by the supervisor. Until approval is obtained, HDP will not be paid.” [ROI-I, Exhibit S; Tabs Y-1, Y-2, APGR 690-28, para 7a(3), 5d].

In addition, similar to the Army philosophy on staff assistance found in the PERMISS guidance, APGR 690-28 details the role of safety officers on the installation and industrial hygiene and medical advisory staff. APGR 690-28 states “Certificates in Appendix B will be reviewed by management officials and their supporting safety, industrial hygiene and/or medical office(s) at least annually to ensure conditions continue to support payment of HDP. These offices are to notify the CPAC, USA Army Garrison, APG (USAGAPG), immediately upon determination that a condition outlined in an existing certificate no longer supports and justifies payment of HDP.” [ROI-I, Exhibit S; Tabs Y-1 and Y-2, APGR 690-28, para 5d]. Further, both iterations of the regulation assign to the CPAC duties as “primary staff advisor(s) to line management and supervisors on matter related to hazardous work environments, and hazardous tasks and risk analysis and assessment.” The CPACs are charged to “[p]rovide professional advice and assistance on matters related to the activity’s HDP program, including serving on standing and ad hoc” HDP oversight committees, . . . and to “[p]rovide advice and guidance to the Personnel Office on the safety/industrial

had been disestablished almost two years prior to the 2006 publication. See *supra* pp. 6-11 for further details about command reorganizations and realignments.

hygiene/medical aspects of the activity's HDP program. This includes making final determinations as to whether a hazard actually exists and/or whether it has been practically eliminated through the use of engineered controls, personal protective equipment and/or other procedures and processes." [ROI-I, Exhibit S; Tabs Y-1, Y-2, APGR 690-28, paras 6b(1)-(2), (4)].

The 2000 and 2006 iterations of APGR 690-28 depart from Army-wide PERMISS guidance in only one material respect. Both versions of the regulation assign to the CPAC the responsibility to "[p]rovide for the administrative oversight and staff APGR 690-28 supervision of the HDP Program on the installation, including development of pertinent implementing regulations and providing required training to installation supervisors" and participate on standing and ad hoc HDP oversight committees." [Tab Y-1, APGR 690-28, paras 6c(1), 6c(4), year 2000 iteration; Tab Y-2, APGR 690-28, paras 6c(1), 6c(5), year 2006 iteration]. The iteration of year 2000 goes on to state that the CPAC will "[e]nsure that appropriate, periodic information and feedback are provided to line managers and supervisors on the status of their HDP programs to include providing periodic statistical information on HDP costs and trends" and "[i]nterpret and provide advice to line management on rules and regulations governing the HDP program, particularly those aspects which deal with classification-related matters such as "taken into account in the classification of the position." [Tab Y-1, APGR 690-28, paras 6c(2)-(3)]. In contrast, the 2006 publication states that the CPAC will "[p]articipate with the Civilian Personnel Operations Center (CPOC) classification specialists when responding to questions concerning the rules and regulations governing the HDP program. The CPOC, not CPAC, is the final authority on HDP aspects dealing with classification issues." [Tab Y-2, APGR 690-28, para 6c(2)].³⁹

SUMMARY OF EVIDENCE OBTAINED FROM THE INVESTIGATION AND AGENCY DISCUSSION

OSC Allegation:

The OSC referral alleged that the Army was erroneously paying HDP to six Equipment Specialists (EOD) at APG and PBA. OSC alleged that these payments were improper because applicable regulations did not authorize the payment of HDP when the hazardous duty or physical hardship had been taken into account in the classification of the position. The referral asserted that the inherent hazards and the physical exertion duties of an Equipment Specialist (EOD) had been specifically addressed in both the duty description and the factors analysis used to determine the pay grade of these positions.

³⁹ *Supra* note 33 (discussing the Army's 2008 reorganization of its HR assets and the changed role of the CPAC, CPOC, and HR Regional Processing Centers).

Discussion:

Discovery of Possible Inappropriate Payment of HDP

In late July 2006, [REDACTED], Chief, Echo Company, 22d CM BN (TE), requested that [REDACTED] and [REDACTED] for whom [REDACTED] served as first-line supervisor, review the unit's Equipment Specialist (EOD)/UXO⁴⁰ job descriptions and grade structure as part of the unit's conversion of its Toxic Material Control Operators from WG to GS [ROI-I, AR 15-6 Narrative Report, p. 5, para1(a)]. At the time, [REDACTED] was serving as a Toxic Material Control Operator Supervisor, having held that position for eight (8) of the 18 total years of his employment with the 2d CM BN (TE) and its predecessor organizations dating back to the TEU.⁴¹ [REDACTED] had been employed by the 22d CM BN (TE) and its predecessor organizations for almost 21 years at Edgewood and had served as a Toxic Material Control Operator Supervisor for the last 12 years [ROI-I, AR 15-6 Narrative Report, p. 5, para 1(a)].

[REDACTED] testified to the IO charged to investigate the matters referred by OSC that in the context of conducting the review requested by [REDACTED], he realized that all of his Explosive Ordnance Disposal (EOD) employees had been erroneously receiving HDP [ROI-I, Exhibit E, Statement of [REDACTED], p. 1, paras 1, 2, 4].

With [REDACTED] in attendance [ROI-I, Exhibit E, Statement of [REDACTED] pp. 2-3, para 9] [REDACTED] notified [REDACTED] of the erroneous payments. [REDACTED] asked [REDACTED] to provide him with documentation of the problem and indicated that he would research the issue [ROI-I, Exhibit E, Statement of [REDACTED] p. 1, para 5; ROI-I, Exhibit I, Statement of [REDACTED] pp. 2-3, para 9]. [REDACTED] told the AR 15-6 IO that he believed that the erroneous HDP payments began in September 2004 after the EOD technicians were converted from WG to GS positions [ROI-I, Exhibit I, Statement of [REDACTED], p. 1, para 2].

Even after reaching his own determination that his Equipment Specialist (EOD) employees were not eligible for HDP, [REDACTED] continued to approve their HDP payments, albeit with some degree of concern. [REDACTED] advised LTC [REDACTED] the 22d CM BM (TE) Commander, that [REDACTED] and his "colleagues were uncomfortable" with the situation. According to [REDACTED] LTC [REDACTED] responded that he would look into the matter, but needed more information from [REDACTED] [ROI-I, Exhibit E, Statement of [REDACTED], pp. 3-4, paras 10, 15]. [REDACTED] did not undertake to speak with [REDACTED] or the CPAC about the erroneous HDP payments. The only other discussion [REDACTED] recalls on the matter is one with [REDACTED] the 22d CM BN (TE) Deputy Operations Officer; [REDACTED] testified that [REDACTED] had telephoned and told him that "HDP was authorized for EOD workers and to 'back off.'" [ROI-II, Exhibit X, Memorandum Statement of CPT [REDACTED] p. 2, para 2e]. Other employees in the organization, became "defensive and borderline unprofessional in tone (raised voices) and mannerisms" when [REDACTED] raised with

⁴⁰ The terms "EOD" and "UXO" are used interchangeably in the subject position description for Equipment Specialist (EOD), GS 1670-11, and in the IO's AR 15-6 Report.

⁴¹ [REDACTED] supervised anywhere from 10-40 people, "depending on the mission." [ROI-I, Exhibit E, Statement of [REDACTED] p. 1, para 3; p. 5, para 19].

them his questions about the HDP payments [ROI-I, Exhibit E, Statement of ██████████, p. 5, para 20].

██████████ testified that like ██████████ he too first became aware of the erroneous HDP payments in late July 2006 when ██████████ had asked him to review the UXO job descriptions. ██████████ concluded that all six of the UXOs in Echo Company at APG had been receiving HDP erroneously [Tab F, Statement of ██████████, p. 1, paras 1-3; p. 4, para 13]. According to ██████████, once ██████████ was informed of the situation, he agreed with ██████████ assessment. Subsequently, ██████████ discussed the issue with ██████████ UXO team leader, who in turn indicated that he would discuss the issue with ██████████, Battalion Ordnance Removal Manager; ██████████, Ordnance Removal Manager; and ██████████, Battalion Deputy Operations Officer. ██████████ advised ██████████ that he did not believe that ██████████ and ██████████ would agree with ██████████ conclusions [ROI-I, Exhibit E, Statement of ██████████, pp. 2-3, para 11; Exhibit F, Statement of ██████████, pp. 1-2, paras 4-5; ROI-I, Exhibit O]. According to ██████████, ██████████ and ██████████ had been receiving HDP [ROI-I, Exhibit E, Statement of ██████████, p. 4, para 12]. ██████████ also recalls a telephone conversation during which ██████████ told him that "HDP was authorized for EOD workers and to 'back off.'" [ROI-II, Exhibit X, Memorandum Statement of CPT ██████████, p. 2, para 2d; ROI-I, Exhibit F, Statement of ██████████, p. 3, para 9]. ██████████ did not discuss his concerns about erroneous HDP payments with LTC ██████████ or with CPAC officials [ROI-II, Exhibit X, Memorandum Statement of CPT ██████████, p. 2, para 2d]. Like ██████████, ██████████ continued to recommend approval of HDP payment "because [he] was told the leadership was reviewing the policy and [to] continue as normal until it was resolved." [ROI-I, Exhibit F, Statement of ██████████, p. 3, para 9].

██████████ recollection as to how he first learned about the erroneous HDP payments is consistent with the testimony of ██████████ and ██████████. ██████████ stated that in July 2006, when he and his subordinate supervisors, ██████████ and ██████████ began to review the position descriptions of their employees, they realized that those position descriptions contained references to the hazardous duties the employees were to perform. Because this reference in the position description indicated that the listed hazards had been taken into account in classifying the position, ██████████ realized that the affected employees were not eligible to receive HDP. ██████████ knew that these same employees had been receiving HDP since September 2004 when they were converted from WG to GS EOD employees [ROI-I, Exhibit I, Statement of ██████████, p. 1, paras 1, 2]. ██████████ recalls that shortly thereafter, he discussed the matter with his first-line supervisor, ██████████ [ROI-I, Exhibit I, Statement of ██████████, p. 1, para 4; ROI-II, Exhibit CC, Statement of ██████████]. The disclosure to ██████████ most likely occurred in September 2006, but may have been as late as October of that year [ROI-I, Exhibit I, Statement of ██████████, pp. 1, 2, para 4; Exhibit L, Statement of ██████████, p. 2,

para 5; ROI-II, Exhibit CC, Statement of [REDACTED] p. 2].⁴² [REDACTED] stated that [REDACTED] responded that the unit was involved in preparing for a deployment, that the issue would be reviewed later, and that a policy would be developed at that time [ROI-I, Exhibit I, Statement of [REDACTED] p. 2, para 5].

[REDACTED] testified to her belief, at that time, that the HDP payments were proper and that the APGR addressed the hazardous duty being performed by her employees [ROI-II, Exhibit CC, Statement of [REDACTED] p. 2]. [REDACTED] recalled that the practice of paying HDP to employees of the 22d CM BN (TE) had been in place "for as long as I've been there and before." [ROI-I, Exhibit L, Statement of [REDACTED] p. 2, para 4]. However, [REDACTED] conceded that she had not had any training with regard to the recommendation and approval of HDP payments [ROI-II, Exhibit CC, Statement of [REDACTED] p. 2]. [REDACTED] testified to the fact that she had discussed [REDACTED] concerns with LTC [REDACTED] and advised him that she would contact [REDACTED] of the APG CPAC for assistance, "since neither of us [neither LTC [REDACTED] nor [REDACTED]] had classified the positions. . . . I had no role in classifying the job so I had [no] direct knowledge of what the classifying officials took into account." [ROI-II, Exhibit CC, Statement of [REDACTED]. [REDACTED] discussed the matter with [REDACTED] and asked her to review the relevant position descriptions and to provide her professional opinion as to whether "the hazardous duty [had] been taken into consideration when the PDs were classified." [ROI-I, Exhibit L, Statement of [REDACTED] p. 3, para 7].

According to [REDACTED], [REDACTED] responded that the unit should first submit a formal package requesting CPAC review of the propriety of the HDP payments. [REDACTED] acknowledged that "several tenant organizations, to include the U.S. Army Aberdeen Test Center (ATC),⁴³ ECBC, and MRICD, had experienced similar confusion" and had requested clarification and assistance from her office. [REDACTED] offered to send [REDACTED] a copy of the relevant ATC documentation.⁴⁴ [ROI-I, Exhibit L, Statement of [REDACTED] p. 3, para 8]. Ultimately, [REDACTED] did forward to [REDACTED] the draft ATC report,⁴⁵ which is attached to ROI-I as Exhibit M-2 [ROI-II,

⁴² There is no evidence that [REDACTED] and [REDACTED] ever discussed the erroneous payments with [REDACTED] [ROI-I, Exhibit E, Statement of [REDACTED] Exhibit F, Statement of [REDACTED] Swinson; ROI-II, Exhibit X, Memorandum Statement of [REDACTED] p. 2, para 2d-e].

⁴³ The Aberdeen Test Center (ATC) is another tenant activity located on APG. ATC is aligned organizationally under AMC, not under FORSCOM. ATC employees are subject to the provisions of APGR 690-28, *Hazardous Duty Pay for Class Act Employees*; ATC is listed among the tenant activities enumerated in APGR 690-28, Appendix B, to which the regulation applies.

⁴⁴ It should be noted that the ATC report was highly critical of the support provided by the local APG CPAC. ATC asserted that "not all current CPAC procedures and policies were in agreement with those in [APGR 690-28]," including the need for appropriate supervisory training, feedback on the status of the HDP programs and "the lack of a HDP oversight committee that CPAC participates in." [ROI-I, Exhibit M, p. 8]. The report's observations and recommendations may be of some relevance in assessing the quality of programmatic support that the APG CPAC provided to the 22d CM BN (TE) in regard to its HDP program.

⁴⁵ [REDACTED] learned of the existence of the draft report from [REDACTED] some time in or after July 2006. [REDACTED] subsequently provided a copy of the draft to [REDACTED]. A copy of the draft was included in ROI-II [ROI-II, Exhibit U]. The 22d CM BN (TE) took no action with regard to the draft report, however. The final ATC report was not secured by 22d CM BN (TE) until [REDACTED], Command Judge Advocate, 20th SUPCOM, made inquiries as to its status, subsequent to the AR 15-6 IO's initiation of his supplemental investigation [ROI-II, AR 15-6 Supplemental Narrative Report, p. 14, para 2f].

Exhibit X, Memorandum Statement of CPT [REDACTED] p. 1, para 2a]. [REDACTED] did acknowledge that [REDACTED] had forwarded to her attention certain position descriptions and that she ([REDACTED]) had then "attempted" to forward them to [REDACTED], a Human Resources Specialist at the CPAC and one of [REDACTED] subordinates. [REDACTED] conceded that she was "unsure if he ([REDACTED]) ever received them." [ROI-II, Exhibit X, Memorandum Statement of CPT [REDACTED] p. 1, para 2a].

Although neither [REDACTED] nor [REDACTED] recalled when this discussion with [REDACTED] occurred [ROI-II, Exhibit X, Memorandum Statement of CPT [REDACTED] p. 1, para 2a], the AR 15-6 IO appointed to investigate the OSC-referred allegations did locate copies of some email messages from [REDACTED] to [REDACTED], dated March 30, 2007 and April 11, 2007, wherein [REDACTED] forwarded certain position descriptions and inquired as to whether ATC was willing to release its final report to the 22d CM BN (TE) [ROI-I, Exhibits M-1, M-3—M-5]. In her testimony to the IO charged to investigate the OSC-referred allegations, [REDACTED] indicated that as of November 20, 2007, CPAC had not provided a "formal review" and that this review was necessary to "write the policy for the CARA and 22 CM BN." [ROI-I, Exhibit L, Statement of [REDACTED] pp. 3-4, para 9].

[REDACTED] indicated that he did not recall having received the position descriptions from [REDACTED]. [REDACTED] did recall that during a 2006 deployment briefing to the 22d CM BN (TE), [REDACTED] "voiced his opinion that the Code of Federal Regulations prohibited some of the unit's HDP practices," But that it was "ultimately management's discretion" regarding when employees would be paid HDP [ROI-II, Exhibit X, Memorandum Statement of CPT [REDACTED] p. 1, para 2b]. Further, [REDACTED] testified that he did not recall ever receiving any "formal" request for assistance from the 20th SUPCOM (CBRNE). [REDACTED] also testified that, to the best of his knowledge, no review of the 22d CM BN (TE) HDP policies and procedures or of the classification of its employees' position descriptions ever was requested or conducted [ROI-I, Exhibit N, Statement of [REDACTED], pp. 1, 2, paras 3, 5].

[REDACTED] indicated that she had limited contact with [REDACTED] regarding HDP during 2007 [ROI-II, Exhibit X, Memorandum Statement of CPT [REDACTED], p. 1, para 2a]. Both [REDACTED] and [REDACTED] indicated that neither [REDACTED], nor anyone else with the unit, ever had followed up "formally" regarding any review of affected position descriptions or a review of the payment of HDP to 22d CM BN (TE) employees [ROI-I, Exhibit N, Statement of [REDACTED], pp. 1, 2, paras 3 and 5].

In addition to discussing the matter of the erroneous payments with [REDACTED], in August or September 2006, [REDACTED] raised the issue to the attention of LTC [REDACTED] and [REDACTED] [ROI-I, Exhibit E, Statement of [REDACTED], pp. 1-2, para 5; Exhibit I, Statement of [REDACTED], p. 2, paras 4, 5; Exhibit J, Memorandum Statement of LTC [REDACTED], p. 1; and Exhibit N, Statement of [REDACTED], p. 1, para 3]. According to [REDACTED], LTC [REDACTED] responded as had [REDACTED]: that the matter would be addressed after the unit deployed [ROI-I, Exhibit I, Statement of [REDACTED], p. 2, para 5]. In his testimony, LTC [REDACTED] confirmed that [REDACTED] had told him they "may be wrong and that they should not be receiving it [HDP] as it may have been built into their base pay as part of the conversion to GS." LTC [REDACTED]

commented that it "had been common practice for several years, potentially dating back to their conversion from WG to GS" for the EOD employees to receive HDP. Further, LTC [REDACTED] recalled that while on a detail to the battalion staff, [REDACTED] had been tasked to research the regulation, and that "CPAC/CPOC" had been asked for a determination regarding unit members' HDP eligibility [ROI-I, Exhibit J, Memorandum Statement of LTC [REDACTED], p. 1, paras 1, 3; and Exhibit L, Statement of [REDACTED] p. 2, para 5]. [REDACTED] provided LTC [REDACTED] with a report on the 22d CM BN (TE)'s Toxic Material Control Operators prior to his retirement on November 30, 2007, but he did not complete a report on the 22d CM BN (TE)'s UXOs. [ROI-I, Exhibit J, Statement of LTC [REDACTED] p. 1, para 3]. [REDACTED] confirmed that [REDACTED] did not complete the final work product on the proposed HDP policy [ROI-I, Exhibit L, Statement of [REDACTED], p. 2, asterisked comment]. LTC [REDACTED] indicated that CPAC never provided "a clear interpretation" on the issue, however [ROI-I, Exhibit J, Statement of LTC [REDACTED], p. 1, para 3].

Additional testimony by LTC [REDACTED] revealed that the company assigned to APG had been using a different standard for the payment of HDP than had the company assigned to PBA; each had relied on, and operated under its own local installation regulation [ROI-I, Exhibit J, Statement of LTC [REDACTED], p. 1, para 3]. [REDACTED], CARA Supervisor, PBA, provided detailed testimony on the different treatment accorded APG and PBA employees of the 22d CM BN (TE) [ROI-II, Exhibit JJ, Memorandum Statement of CPT [REDACTED], p. 1, para 2a]. [REDACTED] testified that both the APG and PBA detachments employed persons classified as Equipment Specialists (EOD) and Ordnance Removal Specialists, but that prior to November 2004, HDP was regularly approved for employees of CARA's Aberdeen detachment, but was not approved for employees at the PBA detachment—all due to a difference in the processing chain. [REDACTED] attributed this difference to the fact that the PBA detachment processed its time cards locally⁴⁶—[REDACTED] was required to certify each time card and claims for payment of HDP were reviewed by a local CPAC committee in accordance with the PBA HDP policy. The PBA CPAC had determined that as to the positions at issue, the hazards associated with the performance of duties already had been taken into account in the classification process and that accordingly, employees were not entitled to the HDP differential [ROI-II, Exhibit JJ, Memorandum Statement of CPT [REDACTED], p. 1, para 2a].

[REDACTED] testified that he had raised concerns about the disparate treatment of APG and PBA employees with [REDACTED] on several occasions [ROI-II, Exhibit JJ, Memorandum Statement of CPT [REDACTED], p.1, paras 2a-b]. [REDACTED] and the other leaders of the 22d BN CM (TE) "felt that one standard should be applied to all unit HDP claims, regardless of detachment location" and that "once the PBA detachment began using ATAAPS, HDP was approved for [PBA] employees based upon the certifications in APG Regulation 690-28. ATAAPS was a centralized system and did not involve the PBA CPAC HDP committee." [ROI-II, Tab JJ, para 2b].

⁴⁶ Only [REDACTED] time card was processed through APG because [REDACTED] was his certifying official. [REDACTED] did not claim any HDP.

Under the ATAAPS time-keeping program, an employee would receive HDP based solely on his supervisor's certification, whether erroneous or correct, that the employee was eligible for the HDP differential. Thus, once PBA converted to the ATAAPS system in June 2005, PBA employees began receiving the same HDP as did their APG counterparts; supervisors relied on the certificates in APGR 690-28 to justify the employees' eligibility for HDP [ROI-II, Exhibit JJ, Memorandum Statement of CPT ██████████, p.1, paras 2a-b; Tab AA, Statement of ██████████, dated January 30, 2009, p. 2, para 1i]. We note that despite his concerns that PBA Equipment Specialists (EOD) may not have been entitled to HDP, once ATAAPS began to be used at PBA, ██████████ certified time cards validating his employees' receipt of HDP and did not further address the issue with the 22d CM BN (TE) chain of command.

Sometime later, ██████████ followed up with ██████████ and was told that CPAC had reviewed the matter and advised that HDP was authorized for the employees classified as Equipment Specialists (EOD) [ROI-I, Exhibit I, Statement of ██████████, p. 3, para 7]. In January 2007 ██████████ was tasked to "research the regulation and come up with a recommendation on HD pay." [ROI-I, Exhibit I, Statement of ██████████, p. 2, para 5]. ██████████ did not complete the final work product on a proposed HDP policy before his retirement in November 2007, however [ROI-I, Exhibit L, Statement of ██████████, p. 2, asterisked comment].

Given all that they had learned, ██████████, ██████████, and ██████████ were uneasy about whether their employees were entitled to HDP. Nevertheless, they continued to recommend and approve HDP for their employees because their supervisors told them that the matter was under review and to continue with the payments until the matter was resolved [ROI-I, Exhibit E, Statement of ██████████, p. 4, para 15; Exhibit F, Statement of ██████████, p.3, para 9; and Exhibit I, Statement of ██████████, p. 3, para 9].

Organizational Response to the OSC Referred Allegation of Erroneous HDP Payments

In October 2007, OSC referred this matter to the Secretary of the Army. The referral and the resultant investigation prompted ██████████ to conduct a thorough review of the rules and regulations governing HDP and EDP. Based on her review, ██████████ determined that the OSC-referred allegations had merit. On January 18, 2008, acting with the approval of her chain of command and the Staff Judge Advocate, ██████████ terminated all HDP payments to 22d CM BN (TE) employees [ROI-II, Exhibit CC, Statement of ██████████, p. 2; Tab AA, Statement of ██████████, dated January 30, 2009, pp. 2-3, paras 3 and 4]. She went on to establish the 20th SUPCOM (CBRNE) HDP/EDP Oversight Committee (OC) [Tab AA, Statement of ██████████, dated January 30, 2009, p. 3, para 3B; p. 6, para 14; see also its Attachment 4] to review HDP/EDP claims and determine each claimant's eligibility for the pay on a case-by-case basis, applying the criteria set forth in the CFR [Tabs DD-1—DD-8].⁴⁷ The voting members of the OC were and are the Deputy Commanding Officer,

⁴⁷ To aid the HDP/EDP decision making process, the OC developed a CARA Request for Hazardous Duty Pay Form (Tab DD-1). Representative examples of OC denials of requests for the payment of HDP and EDP are found at [Tabs DD-2—DD-8].

CARA; the Director, Chief of Risk Management (Safety and Environmental Hygiene); the command G-1 (personnel); G-8 (programs and budget); the Staff Judge Advocate; the Inspector General; a CPAC Classification Specialist; and CARA Supervisors as required [ROI-II, Exhibit CC, Statement of ██████████, p.2; and Tab AA, Statement of ██████████ dated January 30, 2009, and its Attachment 4, p. 2, para 3]. ██████████ testified that "[t]o date, no HDP requests have been approved. When asked to provide an example of a circumstance in which HDP might be paid, ██████████ indicated that were an employee required to handle an improvised explosive device (IED), HDP might be warranted. "[Handling IEDs] is not covered in their PD, nor have they been trained in handling IEDs." [Tab AA, Statement of ██████████ dated January 30, 2009, p. 3, para 4]. In January 2008, ██████████ also met with her subordinate supervisors and informed them that no HDP/EDP would be approved without prior review and approval of the HDP/EDP OC [ROI-II, Exhibit CC, Statement of ██████████, p. 2; and Tab AA, Statement of ██████████ dated January 30, 2009, pp. 2-3, para 3a].

██████████ testified that she provided a briefing and training information to all CARA supervisors and affected employees with a view to promoting an understanding of her decision to terminate HDP, of the new policies and procedures applicable to future requests for HDP/EDP payment, and the rules and procedures management and the OC would apply in evaluating those requests. She also placed this information on the CARA shared drive where it is available to all CARA employees [Tab AA, Statement of ██████████, dated January 30, 2009 x, p. 2, paras 3-3a; Attachment 1, PowerPoint presentation, Hazardous Duty Pay (HDP) & Environmental Differential Pay (EDP), dated 18JAN2008; Attachment 3A (GS) and 3B (WG)].

Analysis of Equipment Specialist (EOD) Position Descriptions

HDP payments were erroneously paid to the 22d CM BN (TE)'s Equipment Specialist (EOD) employees in violation of 5 CFR Section 550.904. In accordance with this rule, HDP may not be paid to an employee when the hazardous duty has been taken into account in the classification of the employee's Federal job description. Essentially, if the hazard to which the employee is exposed in the context of performing the duties of his position was considered in establishing the grade and classification of the position, and presuming that the job description of record is accurate, payment of an additional HDP differential is prohibited. In his statement [Tab CC, Statement of ██████████, p. 1, para 3], Mr. Flanagan analyzed the position description applicable to Equipment Specialists (EOD), GS 1670-11, assigned to the 20th SUPCOM (CBRNE) and concluded that the hazardous duties had been taken into account in the classification of the position. His conclusions were grounded in the following findings:

"[i]n this particular instance, the subject's job description (#AG153575, EQUIPMENT SPECIALIST-Explosive Ordnance Disposal (EOD), GS-1670-11, clearly accounts for the job hazards in both the *major duty* assignments as well as the point factors which determine the pay grade. Specifically, the employee is a trained and certified EOD expert whose job description calls for the employee to perform "hands-on" and senior team member high risk work. The duties the employee performs, as described in the job description, include:

- a. Participates in the performance of actual downloading of live, often first seen foreign ordnance items;
- b. Disassembly, stripping and inerting of all US and Foreign ordnance;
- c. Assisting with directing/leading of team operations involved with the location, access, render safe, disposal, transportation and processing of all types and conditions of US and Foreign ordnance;
- d. Performs the preparation of electric and non-electric demolition firing systems for the purposes of ammunition/UXO/Recovered Chemical Warfare Material (RCWM) disposal operations;
- e. Directs the use of non-destructive diagnostic equipment used for identifying the fill and condition of chemical, biological and conventional munitions;
- f. Performs recovery and exploitation of US and Foreign conventional, chemical and biological ammunition; and
- g. Performs duties as a Radiation Safety Officer (RSO) when operating radiographic instruments.”

[Tab BB, Statement of ██████████, pp. 1-2, para 3].

██████████ further explained his finding that management had fully taken into account the hazardous nature of the work in its classification of the Equipment Specialist (EOD) job description—

“Management has fully taken the hazardous nature of the work into account in their highly comprehensive classification of the job description by requiring the following knowledge, skills, and abilities of 5 CFR 550 Section 550.904 in the *pay grade* of the job. Examples of these position classification elements, as stated in the subject job description, include:

- a. Must be a graduate of a Department of Defense approved military bomb disposal school. These currently include the former US Naval School, Explosive Ordnance Disposal, Naval Ordnance Station, Indian Head, MD, or the current military EOD school located at Eglin Air Force Base, Fla. This position requires the incumbent to have a minimum of ten (10) years combined military and civilian EOD/UXO experience;
- b. Mobility for temporary duty (TDY) or temporary change of station (TCS) both CONUS and OCONUS are conditions of employment;
- c. Comprehensive knowledge of Army EOD doctrine and Unit operations, as well as a working knowledge of the care, handling,

safety, and use of explosives, chemical and biological materials which are used worldwide;

d. Technical knowledge required to identify and categorize ammunition of all types to include its filler and fuze condition;

e. Technical knowledge of specialized EOD techniques, tools and equipment used by military personnel for render safe of every type of ordnance and explosive related device, including homemade bombs;

f. Ability to assist with leading/directing the utilization of both electric and non-electric firing systems for the purpose of demolition operations in conjunction with all EOD/UXO operations;

g. Performs independently at EOD/UXO sites containing unknown ordnance, contents and conditions. Incumbent must deal with any and all eventualities as they occur. Items may be fused and armed and may or may not contain chemical agents. Failure to exercise the utmost care and diligence could result in death or severe bodily injury to incumbent or other personnel, major violations of regulations resulting in fines and/or criminal penalty and significant impact on the environment and health of surrounding communities.

In addition to accounting for the hazardous nature of the work in the classification and pay grade of the job, a review committee hears requests by employees to consider potentially hazardous work which is outside the parameters of the written job description, as described in 5 CFR Section 550.904(b), which may allow the payment of HDP in addition to regular salary received for hazardous work. By carefully describing the hazardous work and creating a review process to prevent misassignments to potentially hazardous new work, management has met and exceeded all CFR requirements to correctly capture proper pay for hazardous duty work and HDP is not authorized for the subject job #AG153575 [Tab CC, Statement of ██████████ p. 2-3, para 4].

Evidentiary Findings and Conclusions:

The allegation that the Army erroneously paid HDP to Equipment Specialists (EOD) assigned to the 22d CM BN (TE), 20th SUPCOM (CBRNE), is substantiated. Law and regulations prohibited the payment of HDP in cases in which the physical hardship borne or hazardous duty performed had been taken into account in the classification of the position. Because the physical exertion and hazards inherent in the duties of an Equipment Specialist (EOD) were specifically addressed in both the duty description and the factors analysis used to determine the pay grade of the position, Equipment Specialists (EOD) were not entitled to receive the HDP differential.

LISTING OF VIOLATIONS OR APPARENT VIOLATIONS OF LAW, RULE, OR REGULATION

- 5 USC, Section 5545(d)
- 5 CFR Section 550.904

• Aberdeen Proving Ground Regulation 690-28, *Civilian Personnel Hazardous Duty Pay For Class Act Employees*, (iterations of both August 23, 2000 and October 30, 2006), in that CARA supervisors and management failed to "carry out all tasks necessary to ensure proper payment of HDP differentials to subordinates."

There is no evidence that the employees identified in unit records as having received HDP faced hazards beyond those anticipated by their position descriptions.

The supervisory chain of the 22d CM BN (TE) acted in contravention of Title 5, USC, 5545(d), 5 CFR Section 550.904, and APGR 690-28, by relying on the unit's historical practice of paying EDP and HDP to employees working with UXO and Recovered Chemical Warfare Material and on the outdated certificates published in APGR 690-28 to continue authorizing HDP for such work. When the employee duty positions were reclassified from WG Toxic Material Control Operator (Ordnance Removal), WG-6501-11, to GS Equipment Specialist (EOD), GS-1670-11, the CARA supervisory chain should have thoroughly reviewed the new position descriptions and researched whether there existed any difference between the entitlement procedures that had applied to their WG employees with regard to EDP (5 CFR Part 532 and APGR 690-29) and the new HDP entitlement criteria applicable to these same employees in a GS status (5 CFR Section 550.904 and APGR 690-28).

CORRECTIVE ACTIONS UNDERTAKEN

Analysis of Individual Culpability

As analyzed in light of the evidence collected during this investigation, neither the approval of unauthorized HDP by supervisors and management, nor the receipt of unauthorized HDP by employees constituted a criminal offense. Rather, these acts constituted a violation of a non-punitive statute and non-punitive regulations—Title 5, USC, Section 5545(d)(1), 5 CFR Section 550.904(a), and APGR 690-28. Accordingly, no criminal violation inquiry referral will be made to the Attorney General in accordance with Title 5, USC, Section 1213(d)(5)(d).

According to APGR 690-28, para 6, responsibility for ensuring that each employee's request for HDP was properly evaluated and processed for payment or disapproval vested in the supervisory chain and line management, primarily with [REDACTED] and LTC [REDACTED]

[REDACTED], [REDACTED], [REDACTED], and [REDACTED] would not have continued the practice of requesting and/or approving HDP for their employees had LTC [REDACTED] and [REDACTED] promptly and appropriately researched and remedied the issue once it was brought to their attention.

With respect to [REDACTED], the evidence reflects that although she took initial action to elevate the issue to her servicing civilian personnel office and to seek assistance, from [REDACTED], [REDACTED] did not timely undertake to determine if the hazardous duty performed by her employees had been taken into consideration when their position

descriptions were classified, or to determine, with any [redacted] continuing HDP payments was appropriate. Further, [redacted] testified that when [redacted] first surfaced the matter of the erroneous HDP payments in or around September 2006, she was focused on the impending deployment of her subordinates and thus decided to task [redacted] to research the appropriate rules and to develop the appropriate policy. [redacted] testified that even though [redacted] had advised her of his concerns about the potentially erroneous HDP payments, she remained firmly of the belief that HDP was properly being paid because the APGR addressed the hazardous duty work being performed by her employees and the practice of paying HDP to 22d CM BN (TE) employees had been ongoing since before she had arrived at the organization [ROI-II, Exhibit CC, Statement of [redacted], p. 2; ROI-I, Exhibit L, Statement of [redacted], p. 3, para 7].

[redacted] actions and failures to act are attended by mitigating and extenuating circumstances. [redacted] testified that she had surfaced [redacted] concerns to LTC [redacted] and because neither of them had classified the positions nor "had any direct knowledge of what the classifying officials took into account,"⁴⁸ she decided to contact [redacted] at the CPAC. According to [redacted], when she requested [redacted] assistance in resolving questions about the potentially erroneous HDP payments, [redacted] responded that APGR 690-28 required that as a prerequisite to CPAC review of the matter, [redacted] needed to submit a formal written request and a package of documentation. [redacted] bureaucratic reaction to [redacted] request for assistance on a matter squarely within [redacted] portfolio was inappropriate. That [redacted] chose essentially to ignore the strong possibility that numerous GS employees in a unit under her CPAC's jurisdiction were erroneously receiving HDP payments reflects poorly on her conduct as a federal employee. Interestingly enough, [redacted] informed [redacted] that another APG tenant, ATC, had made similar requests for assistance in resolving HDP entitlement questions. [redacted] offered, and subsequently sent to [redacted], a copy of the ATC documentation in the hopes that it would be helpful to [redacted] in evaluating the circumstances in her own organization. That the problems associated with HDP did not appear to be isolated in a single unit should have further encouraged [redacted] immediate effort to resolve the issue. In testimony in the context of the AR 15-6 investigation, [redacted] conceded that [redacted] had forwarded to her attention certain position descriptions applicable to 22d CM BN (TE) employees, with a request that [redacted] review the documents and assist [redacted] in analyzing whether the employees at issue were properly receiving HDP. [redacted] claimed that she had forwarded the documents to [redacted] one of her subordinates, but stated that she was "unsure if he ever received them." [ROI-II, Exhibit X, Memorandum Statement of CPT [redacted], p. 1, para 2a]. Given the general confusion exhibited by numerous APG tenants with respect to the rules applicable to HDP authorization and the specific responsibilities assigned to the APG CPAC Director and the CPAC staff,⁴⁹ it is fair to categorize the APG CPAC office staff as wholly ineffective.

⁴⁸ [redacted] was not involved in the initial classification action since it pre-dated her arrival to the organization. [ROI-II, Exhibit CC, Statement of [redacted] and Tab AA, Statement of [redacted] dated January 30, 2009, p. 1, para 1].

⁴⁹ Pursuant to APGR 690-28, paras 6c(1), (2) and (4), the CPAC was required to provide administrative oversight and staff supervision for the development of pertinent implementing regulations, provide HDP training to installation supervisors, and to assist in responding to questions concerning the rules and regulations governing the HDP program.

First and foremost, [REDACTED] was deeply involved in her unit's reorganization and realignment under the newly-created CARA, as well as preparing her organization for a deployment. And, being unfamiliar with the complexities of the different rules applicable to the payment of EDP and HDP, [REDACTED] maintained a belief that her GS employees were entitled to HDP because in their prior WG status they had properly received EDP and, post-conversion, were continuing to perform essentially the same duties.

When the AR 15-6 investigation was initiated to address the allegation referred by OSC, it was [REDACTED] who led the effort to ascertain whether the allegation had merit. On January 18, 2008, after determining that her GS employees were not entitled to the payment of HDP, [REDACTED] terminated all such payments and initiated a complete overhaul of the unit's HDP program.

At the direction of BG Wendel, Commander, 20th SUPCOM (CBRNE), the 20th SUPCOM Deputy Commanding Officer, COL [REDACTED] formally counseled [REDACTED] on January 14, 2008 [ROI-II, AR 15-6 Supplemental Report Narrative, p. 13, para 2d(5)]. COL [REDACTED] stated that he was "satisfied that [REDACTED] appreciates and fully understands her obligation, as a senior member of the agency and as a senior approving official, to ensure proper compliance with applicable HDP regulations. I am also satisfied that she appreciates and fully understands her obligation to promptly research and resolve matters involving an employee's pay. [REDACTED] has already overhauled CARA's HDP policies and procedures to ensure compliance with the applicable regulations, and provided training to employees and supervisors. I am confident that she will not repeat her past errors regarding HDP." [ROI-II, AR 15-6 Supplemental Narrative Report, p. 19, para 1d].

LTC [REDACTED] first became aware of allegations of erroneous HDP payments on or about July 2006, but failed to take prompt action either to research or to correct the erroneous payments. LTC [REDACTED] actions in continuing to approve HDP for persons not authorized such pay and his inaction in failing to take prompt action to resolve the allegations evidenced a degree of disregard not expected of a person occupying a similar position of authority and responsibility.

At the direction of BG Wendel, COL [REDACTED] formally counseled LTC [REDACTED] 15-6 Supplemental Report Narrative, p. 13, para 2d(5) on January 14, 2008. COL [REDACTED] stated that he was "satisfied that [REDACTED] now appreciates and fully understands his obligation, as a senior member of the Department of the Army, to ensure proper compliance with applicable HDP regulations. I am also satisfied that he appreciates and fully understands his responsibility to promptly research and resolve matters involving employee pay. If LTC [REDACTED] is currently involved with special employee pay, his current command should provide appropriate training commensurate with his responsibilities." [ROI-II, AR 15-6 Supplemental Narrative Report, p. 19, para 1d].

In the context of ROI-I, the IO made two recommendations for corrective action, both of which ultimately were approved by the 22d CM BN (TE) chain of command. First, the IO recommended that the command undertake a comprehensive review of CARA's HDP and EDP policies and procedures, and second, the IO recommended the establishment of a "HDP/EDP standing working group that included representation from management, supervisors, workers, safety/industrial hygiene, resource management, personnel, JAG, and CPAC . . . charged with developing a policy and procedures to manage this program." [ROI-I, AR 15-6 Narrative Report, p. 11, para 3c]. Both of these recommendations were fully implemented by the chain of command.

In ROI-II, COL ██████ made further recommendations that were accepted by BG Wendel [ROI-II, AR 15-6 Supplemental Narrative Report, ps. 18-21]. These recommendations overlapped somewhat with those of the original investigative report and included:

Changes in HDP Practices: At BG Wendel's direction, ██████ personally researched the CFR rules applicable to the payment of HDP and conducted the initial review of employee position descriptions. ██████ determined HDP pay had not been warranted after the WG employees were converted to GS Equipment Specialist (EOD), GS-1670-11. Additionally, ██████ established the 20th HDP/EDP Oversight Committee (OC), comprised of managers, the command safety officer, the command judge advocate, the command human resources, a CPAC representative, and CARA supervisors, as required [Tab AA, Statement of ██████ dated January 30, 2009, p. 3, para 3B, and its Attachment 4], to examine the HDP procedures and review position descriptions that potentially qualified for HDP to ensure each position's current grade level accurately and fairly reflected the actual duties performed by the employee. ██████ briefed the 20th SUPCOM (CBRNE) Deputy Commanding Officer on the working group's conclusions and corrective actions on January 18, 2008 [Tab AA, Statement of Ms. ██████ dated January 30, 2009, Attachment 1]. As a result, that same day, January 18, 2008, ██████ stopped all further HDP payments. The HDP OC charter also requires that it evaluate the merits of all future HDP claims and approve HDP payments when those claims meet the proper standard. No payment of HDP may be made absent approval by the OC. CARA, which by now employed all of the 20th SUPCOM (CBRNE) civilian Equipment Specialists (EOD) and Ordnance Removal Specialists, created and implemented a new HDP request form that explicitly identifies the correct standards for authorizing HDP under 5 CFR Section 550.904 [Tabs DD-1—DD-8]. Once the form is submitted by the employee to the OC for review, each OC member must complete his portion of the form signifying his or her approval of the requested HDP payment before the requested payment may be made [Tab AA, Statement of ██████, January 30, 2009, pp. 2 and 3, paras 3a and 3B, and its Attachment 4].

Since these changes have been initiated and the OC established, no HDP claim has been approved [Tab AA, Statement of ██████, dated January 30, 2009, p. 3, para 4]. Additionally, ██████ directed a review of past HDP payments and

charged to customers⁵⁰ between Fiscal Year 2006 and Fiscal Year 2008.

Additionally, on January 18, 2008, [REDACTED] briefed CARA supervisors on the new HDP policy, the CFR standards for the payment of HDP and the new procedures for requesting and evaluating HDP requests. All CARA employees who might be eligible for HDP were briefed by their supervisors on the new policy and procedures regarding eligibility requirements for and the approval of HDP [Tab AA, Statement of [REDACTED] dated January 30, 2009, p. 3, para 3a].

Recoupment of Erroneous Payments: The employees of the 22d CM BN (TE) were responsible only for ensuring that their duty hours and duty functions were properly documented. There is no evidence to indicate that any employee failed to properly execute these obligations or that any employee applied for and received HDP on a false or fraudulent basis.

The 20th SUPCOM (CBRNE) Human Resources Officer and Resource Manager will coordinate with CPAC to determine which employees received erroneous payments of HDP (including those who worked under position descriptions for Equipment Specialist (EOD), GS-1670-11 (Position Description AG153575) and Ordnance Removal Specialist, GS-0301-12 (Position Description AG11759),⁵¹ and will take all appropriate actions to determine whether those employees are subject to recoupment to recover amounts improperly paid. Additionally, the 20th SUPCOM (CBRNE) will request that CPAC coordinate with the Defense Finance Accounting Service, or other appropriate office, to initiate all necessary actions either to effect the recoupment action(s) or to forgive any such debts to the U.S. Government. As necessary and requested by Commanding General, 20th SUPCOM (CBRNE), FORSCOM will provide guidance and assistance to his command with this action.

Repayment of Amounts Reimbursed by Customers: The 22d CM BN (TE)/CARA was responsible to ensure that it charged customers only for those costs it incurred in providing CBRNE support services to those customers. It is likely that the amount of HDP pay received by a 22d CM BN (TE) employee over the period during which that employee was providing CBRNE response services to a particular "customer" was included in the amount billed to that customer. Because the employee was not authorized to receive HDP, HDP costs should not be included in the total cost passed on to the customer.

⁵⁰ The 22d CM BN (TE)/CARA is authorized to provide CBRNE response services to "customers," namely civil authorities who may confront CBRNE-related situations in the context of performing their duties to serve and protect the public and may require the expert services that the 22d CM BN(TE)/CARA can provide. These "customers" pay the 22nd CM BN (TE)/CARA for services received, usually on a cost-reimbursable basis. Accordingly, it is likely that the amount of HDP pay received by a 22d CM BN (TE) employee over the period during which that employee was providing CBRNE response services to a particular "customer" was included in the amount billed to that customer.

⁵¹ See *supra* note 7. Copies of these position descriptions are at Tab EE-1 and EE-2. A copy of the Wage Grade position description, Toxic Material Control Operator (Ordnance Removal, WG-6501-11 (Position Description AG00861) that was reclassified as Equipment Specialist (EOD), GS-1670-11 (Position Description AG153575) is at Tab EE-3.

The 20th SUPCOM (CBRNE) Resource Manager will determine and will determine the appropriate course of action with regard to any customer overcharges that resulted from the erroneous payment of HDP to 22d CM BN (TE)/CARA employees.

Status of Actions Undertaken at APG Installation Level

Revision of the HDP Regulation: [REDACTED] of the APG CPAC revised the local HDP regulation, APGR 690-28 [Tab FF]. The draft revision is under review by his Director. Once approved by the CPAC, the draft will be forwarded to the APG Office of the Staff Judge Advocate for legal review, then to the APG Garrison for final approval and publication [Tabs GG and HH; ROI-II, AR 15-6 Supplemental Narrative Report, p. 14, para 2e]. The most important changes incorporated in the draft include: an acknowledgment of the CPAC's enhanced role in HDP management in light of the Army's reorganization of its HR assets and elimination of the CPOCs [Tab FF, pp. 2-3, Section I, paras C2(d), C3]; an update of the enclosed HDP certificates to reflect the current names of the tenant organizations and the positions in which employees are performing HDP-related duties [Tab FF, pp. 4-5, Section II, paras B, C1, C1(c) and C1(d)]; an emphasis on the rule that "Hazardous Duty Pay (HDP) will not be paid if the hazardous duty has been taken into account in the classification of the employee's job" [Tab FF, p. 4, Section II, para 2]; and the promulgation of the requirement that "[i]n keeping with best practices, management should form an oversight committee to review HDP conditions, approved certificates, recent HDP payments, and employee situations on a case-by-case basis." [Tab FF, Section II, para c1(a)].

Training Initiatives and Other CPAC Assistive Efforts:

On April 2, 2008, [REDACTED], Human Resources Specialist, Productivity Enhancement Division, Civilian Enhancement Division, APG, provided an update on the corrective actions undertaken by the APG CPAC [ROI-II, Exhibit KK]. These include:

- Issuance of a CPAC request that the Processing Center provide HDP training to all staffing specialists involved with HDP.
- CPAC's development of training for managers charged to administer an HDP program. [REDACTED], APG CPAC Director, confirmed by email dated January 14, 2009, that the training for all staffing specialists as well as for all managers responsible for administering HDP programs had been completed [Tab HH].
- On April 24, 2008, [REDACTED] issued a memorandum to all APG Commanders and Directors, emphasizing the importance of proper oversight of the HDP program. The memorandum explained that HDP should be authorized only in compliance with applicable regulations and guidelines. The memorandum further suggested that local activities review their HDP procedures to ensure compliance with regulations and guidelines. [REDACTED] concluded the memorandum by offering CPAC assistance to APG Commands and Directorates in reviewing their HDP programs [Tabs II-1 to II-3].⁵²

⁵² Ms. Smith's memo states:

The initial AR 15-6 Report of Investigation contained a draft review of the ATC's HDP program, conducted by the Internal Review and Audit Compliance Office (IRAC) [ROI-I, Exhibit M-2]. [REDACTED] learned of the existence of the draft report from [REDACTED] some time on or after September 2006, and [REDACTED] subsequently provided a copy to [REDACTED]. The 22d CM BN (TE) took no action with regard to the draft report. The 22d CM BN (TE) had no access to the final report until a unit attorney made inquiries as to its status and secured a copy of the final report for inclusion in ROI-II [ROI-II, AR 15-6 Supplemental Narrative Report, p. 14, para 2f].

As indicated above, the 20th SUPCOM and the APG CPAC are taking numerous actions to improve the HDP program. Although these improvements may be similar to the recommendations raised in the draft and final ATC reports, corrective action by the 20th SUPCOM (CBRNE) is unrelated to those corrective actions cited in the ATC report.

Department of the Army Actions

I am directing that the Civilian Personnel Evaluation Agency (CPEA), which operates under my direct oversight, undertake a review of the overall health of the HDP program Army-wide to assess the program's status; identify deficiencies, if any; and recommend appropriate corrective action. In the context of this broad review, CPEA will assess whether Army units are in compliance with applicable laws and regulations pertaining to the payment of HDP. I have further charged CPEA to recommend whether changes should be made to current policies setting forth the roles and responsibilities of the staff elements rendering civilian personnel advice and/or of those providing safety and occupational health-related advice and assistance to supervisors and management regarding the execution of HDP programs. Additionally, I will initiate an evaluation at Headquarters, Department of the Army level to ensure that our HDP policies are written in clear and unambiguous terms, so as to minimize confusion and facilitate comprehension by supervisors and managers charged with program implementation.

CONCLUSION

The Department of the Army takes very seriously its responsibility to address, in a timely, thorough fashion, the concerns of the OSC. This investigation revealed that the allegations referred by OSC were meritorious.

"Recently, reviews of the HDP Program have been initiated by external agencies to determine if procedures and controls were in compliance with regulations and policies. Hazard Pay should only be authorized when all the requirements of applicable regulations and guidelines are fully met.

It is suggested that activities who pay HDP review their procedures to assure those HDP procedures and controls comply with regulations and current guidelines. Outdated operating procedures/responsibilities in governing regulations can lead to ineffective controls and mismanagement of the HDP Program. One recommended process is to convene a committee to review and approve requests for payment of HDP. The Civilian Personnel Advisory Center (CPAC) is willing to assist you in this effort. You may contact your servicing CPAC Specialist for further guidance."

The investigation determined although the employees referenced in this report faced legitimate, serious hazards in the execution of their duties, their receipt of HDP was in contravention of Title 5, USC, Section 5545(d); 5 CFR Section 550.904; and APGR 690-28, because the hazards they confronted already had been taken into account in their position descriptions. Appropriate action will be undertaken to recoup these improper payments. These erroneous payments occurred because the employees' supervisors lacked a clear understanding of the applicable regulations and standards, choosing to rely instead on historical, but erroneous practices, and incomplete interpretations of local policy. Further, although the supervisory chain initiated a timely inquiry to determine whether HDP had been properly authorized, seeking the assistance of the local CPAC in the process, management did not diligently undertake the follow-on actions required to ascertain the proper standards for the payment of HDP or to resolve the propriety of HDP payments made to date. This inaction was exacerbated by the fact that the CPAC was generally nonresponsive.

The 20th SUPCOM (CBRNE) has acted to correct the faulty practices of its subordinate units with regard to the payment of HDP. CARA has conducted a comprehensive examination of its HDP practices and implemented new application and approval procedures, has trained employees and supervisors to ensure an understanding of established standards, and has established an OC to evaluate and take action on all future claims for HDP. All evidence indicates that since these initiatives began, no improper HDP has been awarded. Furthermore, this investigation prompted APG to review and update its local HDP policies; Aberdeen is in the final stages of coordinating and promulgating a revised local HDP regulation that will incorporate the lessons learned as the result of this OSC referral. In addition, I am generally satisfied that the APG CPAC has undertaken to correct its staff support deficiencies and to rectify the marked lack of support provided to management in this case.

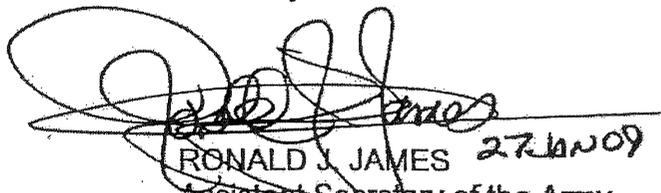
As a direct result of this OSC referral, I have personally directed CPEA to evaluate the overall health of the Army HDP program, to include assessing whether all Army units are in compliance with applicable laws and regulations pertaining to the payment of HDP. Additionally, I will initiate an evaluation at Headquarters, Department of the Army level to ensure that our policies are written in clear and unambiguous terms, so as to facilitate comprehension by supervisors and managers charged with executing HDP programs.

Although the supervisors involved in authorizing HDP acted with a certain degree of inattention to detail, the investigation revealed no intentional disregard of the law, abuse, or fraud. Further, the supervisors' conduct in approving HDP was mitigated by the complexity of the rules associated with HDP eligibility and the fact that they did not receive the appropriate degree of support and assistance from human resources personnel with expertise in these matters. As appropriate, the responsible management officials have been counseled. Accordingly, the Army has made no referral of an alleged criminal violation to the Attorney General pursuant to Title 5, USC, Section 1213(d)(5)(d).

In summary, in response to this OSC referral, the Department of Army has taken appropriate action to correct past, improper payments of HDP to employees not authorized by law or regulation to receive it. In addition, the Army has, and will continue to take action to prevent future inappropriate payments of HDP.

This letter, with enclosures, is submitted in satisfaction of my responsibilities under Title 5, USC, Section 1213(c) and (d). Please direct any further questions you may have concerning this matter to [REDACTED] at 703-614-3500.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald J. James", is written over a horizontal line. The signature is stylized and somewhat cursive.

RONALD J. JAMES 27 JAN 09
Assistant Secretary of the Army
(Manpower & Reserve Affairs)

Encls

Army Report—22nd Chemical Battalion,

Aberdeen Proving Ground, Maryland

OSC File Nos. DI-07-2722, DI-07-3064, DI-07-3065

Army Report Documents (Binder #1)

Tab A--The Secretary of the Army (SA) delegation to the Assistant Secretary of the Army (Manpower & Reserve Affairs) his authority, as agency head, to review, sign, and submit to Office of Special Counsel the report required by Title 5, USC, Sections 1213(b), (c), and (d), dated February 1, 2008

Tab B-- OSC referral dated October 3, 2007, to the SA requesting he investigate allegations of violations of law, rule, or regulation; gross mismanagement; and an abuse of authority related to activities at the Analytical and Remediation Directorate, 22nd Chemical Battalion, Aberdeen Proving Ground, Maryland

Tab C—Army Office of the General Counsel (OGC) forwarding memorandum of OSC request for investigation to U.S. Army Materiel Command (AMC) for action, dated October 11, 2007

Tab D--Army Office of the General Counsel (OGC) forwarding memorandum of OSC request for investigation to U.S. Army Forces Command (FORSCOM) for action, dated November 7, 2007

Tab E—Appointment of COL [REDACTED]; then Deputy Command, 20th SUPCOM (CBRNE), by BG Kevin Wendel, Commander, 20th SUPCOM (CBRNE), as Investigating Officer under provisions of Army Regulation (AR) 15-6, *Procedures for Investigating Officers and Board of Officers*, dated November 9, 2007

Tab F—Army Regulation 15-6, *Procedures for Investigating Officers and Board of Officers*, October 2, 2006 (extract)

Tab G--Extension 1, on November 29, 2007, OGC requested an extension of time to forward the final Army report; OSC granted this extension request on December 1, 2007 until February 5, 2008

Tab H--Extension 2, on February 5, 2008, OGC requested an extension of time to forward the final Army report; OSC granted this extension request on February 27, 2008, until April 7, 2008

Tab I--Extension 3, on April 4, 2008, OGC requested that OSC grant an extension of time to provide the final Army report; OSC granted this extension request on April 8, 2008, until June 9, 2008

Tab J—Extension 4, on June 6, 2008, OGC requested that OSC grant an extension of time to provide the final Army report; OSC granted this extension request on June 9, 2008, until August 1, 2008

Tab K—Extension 5, on August 13, 2008, OGC requested that OSC grant an extension of time to provide the final Army report; OSC granted this extension request on August 19, 2008, until October 14, 2008

Tab L—Extension 6, on October 10, 2008, OGC requested that OSC grant an extension of time to provide the final Army report; OSC granted this extension request on October 14, 2008, until December 15, 2008

Tab M-- Extension 7, on December 22, 2008, OGC requested that OSC grant an extension of time to provide the final Army report; OSC granted this extension request on January 6, 2009, until February 2, 2009

Tab N-1to N-8—August 18, 2008 Transmission from 20th SUPCOM (CBRNE) of requested documents

Tab O—Email dated October 21, 2008 from [REDACTED] on responses from CARA management on HDP entitlement

Tab P1—Article, U.S. Army Technical Escort Unit,
<http://www.teu.apgea.army.mil/ops.htm>, dated October 14, 2004

Tab P-2—Article, U.S. Army 20th Support Command, Chemical-Biological-Radiological-Nuclear-High Yield Explosives, History, by Jeff Smart, Research, Development and Engineering Command Historian,
http://www.cbrne.army.mil/22d_history.html

Tab P-3--Article, Soldier and Biological Chemical Command (SBCCOM),
<http://www.globalsecurity.org/military/agency/army/sbcom.htm>

Tab P-4—U.S. Department of Defense, Office of the Assistant Secretary of Defense (Public Affairs) News Transcript, Briefing On U.S. Army Technical Escort Unit, dated September 13, 2002

Tab P-5—U.S. Army 20th Support Command (Chemical, Biological, Radiological, Nuclear & High Yield Explosives), Transformation Ceremony, October 15, 2004

Tab P-6—Article, History, United States Army, 20th Support Command, <http://www/cbrne.army.mil/aboutus/history.html>

Tab P-7 Permanent Orders 054-3, U.S. Guardian Brigade (GB), XT (W6EMAA), Aberdeen Proving Ground, MD 21010-5424

Tab Q--5 U.S.C. 5545, Night, standby, irregular, and hazardous duty differential

Tab R--5 U.S.C. 5343, Prevailing rate determinations; wage schedules; night differentials

Tab S--5 Code of Federal Register (CFR) 550, *Pay Administration, Subpart I, Pay for Duty Involving Physical Hardship or Hazard* (A copy of 5 CFR Part 550 was not included since during the period in question, 2004-2007, the CFR provisions were reissued annually but were not substantively changed)

Tab T—5 CFR Part 532, *Prevailing Rate Systems*, (A copy of 5 CFR Part 532 was not included since during the period in question, 2004-2007, the CFR provisions were reissued annually but were not substantively changed)

Tab U--*Frequently Asked Questions about Hazardous Duty Pay for Federal Employees*, U.S. Office of Personnel Management, <http://www.opm.gov/oca/pay/html/hazduty.asp>

Tab V--Pay Questions and Answers, Grade and Pay Retention, U.S. Office of Personnel Management

Tab W--Final OPM Rules on Hazard Pay Differentials for GS Employees, as amended by the Federal Employees Pay Comparability Act of 1990 (FEPCA), dated June 29, 1994

Tab X--Department of the Army, Civilian Personnel on Line PERMISS, Employee Differential and Hazardous Duty Pay

Tabs Y1 and Y-2--APGR 690-28, *Hazardous Duty Pay for Class Act Employees*, August 23, 2000 [Tab V-1], revised October 30, 2006 [Tab V-2]

Tab Z--APG 690-29, Environmental Differential Pay (EDP) Federal Wage Employees, August 29, 2000

Tab AA—Statement of [REDACTED] CARA Director, dated January 30, 2009, with Attachments 1-9

Tab BB-Statement of [REDACTED] APG Civilian Personnel Advisory Center, dated August 18, 2008

Tab CC--Statement of [REDACTED] Human Resources Specialist, Civilian Human Resources Agency, dated January 30, 2009

Tabs DD-1- DD- 8-- CARA Request for Hazardous Duty Pay Form newly established by HDP and EDP Oversight Committee (Tab DD-1) and 7 Representative examples of request denials by HDP and EDP Oversight Committee (DD-2 to DD-8)

Tabs EE-1 to EE-3-- Equipment Specialist (EOD), GS-1670-11 (Position Description AG153575) is Tab EE-1; Ordnance Removal Specialist, GS-0301-12 (Position Description AG11759) is Tab EE-2; and Toxic Material Control Operator (Ordnance Removal, WG-6501-11 (Position Description AG00861) is Tab EE-3

Tab FF—Draft APGR 690-28, *Hazardous Duty Pay for Class Act Employees*, February 1, 2009

Tab GG—Email from LTC [REDACTED], dated January 12, 2009, advising on status of draft APGR 690-28

Tab HH—Email from [REDACTED], dated January 14, 2009, advising on status update of corrective actions taken by APG CPAC on HDP program

Tab II-1 to II-3—Memorandum from [REDACTED] dated April 24, 2008, to Commanders and Directors, Aberdeen Proving Ground, Subject: Hazard Differential Pay, with 3 confirming emails that [REDACTED] sent subject memorandum electronically but did not date or sign the original memorandum

**Army Report—22d Chemical Battalion,
Aberdeen Proving Ground, Maryland
OSC File Nos. DI-07-2722, DI-07-3064, DI-07-3065**

**Army Report Documents
AR 15-6 Investigation ROI-I (Binder #2)**

Tab 1--December 11, 2007 - Memorandum from COL Goetzke to [REDACTED] Transmittal, Report of Investigation, Whistleblower Investigation, OSC Files Nos. DI-07-2722, DI-07-3064, DI-07-3065

Tab 2--December 5, 2007 – Memorandum from [REDACTED] to CPT Stephen R. Coutant: Legal Review, Report of Investigation, Whistleblower Investigation, OSC Files Nos. DI-07-2722, DI-07-3064, DI-07-3065

Tab 3--DA Form 1574, Report of Proceedings by Investigating Officer/Board of Officers, dated December 4, 2007 (AR 15-6 Investigation, ROI-I)

Tab 4--AR 15-6 (Narrative) Investigation Report of Investigating Officer, COL Raymond Van Pelt, dated December 4, 2007

TABS

- A OSC referral dated October 3, 2007, to the SA requesting he investigate allegations of violations of law, rule, or regulation; gross mismanagement; and an abuse of authority related to activities at the Analytical and Remediation Directorate, 22d Chemical Battalion, Aberdeen Proving Ground, Maryland
- B Army Office of the General Counsel (OGC) forwarding memorandum of OSC request for investigation to U.S. Army Forces Command (FORSCOM) for action, dated November 7, 2007
- C Appointment of COL [REDACTED], then Deputy Command, 20th SUPCOM (CBRNE), by BG Kevin Wendel, Commander, 20th SUPCOM (CBRNE), as Investigating Officer under provisions of Army Regulation (AR) 15-6, *Procedures for Investigating Officers and Board of Officers*, dated November 9, 2007
- D Memorandum from [REDACTED] to COL [REDACTED] requesting review of HDP of personnel working on Position Descriptions #AG 11759 and #AG153575, dated March 26, 2007
- E Statement of [REDACTED], dated November 20, 2007
- F Statement of [REDACTED], dated November 28, 2007

- G Position Description #AG153575, Equipment Specialist (EOD), GS-1670-11
- H Position Description # AG11759, Ordnance Removal Specialist, GS-0301-12
- I Statement of ██████████, dated November 20, 2007
- J Statement of LTC ██████████, undated
- K 5 Code of Federal Regulations Part 550, revised as of January 1, 2006
- L Statement of ██████████, dated November 20, 2007
- M Email from ██████████ to ██████████, dated April 11, 2007, with attached DRAFT, Internal Review Report No. 01-07, Request from U.S. Army Development Test Command on Hazardous Duty Pay Program (dated October 26, 2006)
- N Statement of ██████████, dated November 27, 2007
- O Organizational Diagram of 22d Chemical Battalion/CARA
- P Personnel/Positions Authorized to receive HDP/EDP
- Q HDP/EDP for Pay Periods 2006-2007
- R HDP/EDP Reimbursements for 2006-2007
- S APG Regulation 690-28, *Hazardous Duty Pay for Class Act Employees*, October 30, 2006
- T APG Regulation 690-29, *Environmental Differential Pay (EDP) Federal Wage Employees*, August 29, 2000
- U Individual Time Card, ██████████, dated May 24 2007
- V 2d Chemical Battalion (TE) UXO Site Operations Work Plan and Safety, Health, and Emergency Response Plan for Aberdeen Proving Ground Area (AA) & Edgewood Arsenal (EA), dated August 2/3, 2006
- W Memorandum from LTC ██████████ Thru Director, Civilian Personnel Advisory Center, Pine Bluff, Arkansas, for Director, Risk Management and Regulatory Affairs, dated July 27, 2004, unsigned; with attachments, Memorandum from ██████████ to Director, Civilian Personnel Advisory Center, Pine Bluff, Arkansas, dated July 27, 2004, unsigned (with Attachments, Certificates)

**Army Report—22d Chemical Battalion,
Aberdeen Proving Ground, Maryland
OSC File Nos. DI-07-2722, DI-07-3064, DI-07-3065**

**Army Report Documents
AR 15-6 Supplemental Investigation ROI-II (Binder #3)**

Tab 1--AR 15-6 (Narrative) Investigation Supplemental Report of Investigating Officer, COL Raymond Van Pelt, dated April 3, 2008

Tab 2--DA Form 1574, Report of Proceedings by Investigating Officer/Board of Officers, dated April 3, 2008 (AR 15-6 Supplemental Investigation, ROI-II)

TABS

- A-1 January 8, 2008 - Memorandum from Colonel (COL) [REDACTED] to Brigadier General (BG) Kevin R. Wendel: Required Follow-up Actions, Report of Investigation (ROI), Whistleblower Investigation, OSC Files Nos. DI-07-2722, DI-07-3064, DI-07-3065 (Request for AR 15-6 Supplemental ROI)
- A-2 January 24, 2008 - Memorandum from Lieutenant Colonel (LTC) [REDACTED] to BG Wendel: Required Follow-up Actions, Report of Investigation, Whistleblower Investigation, OSC Files Nos. DI-07-2722, DI-07-3064, DI-07-3065 (Request for AR 15-6 Supplemental ROI)
- A-3 January 7, 2008 – Email from [REDACTED] to COL [REDACTED] informing him of her comments on the initial investigation
- A-4 January 9, 2008 – Email from COL [REDACTED] to [REDACTED] forwarding to [REDACTED] his January 8, 2008 memorandum to BG Wendel
- A-5 February 1, 2008 – Email from COL [REDACTED] to [REDACTED] forwarding request for extension
- February 1, 2008 – Request for extension
- B-1 November 8, 2007 – Email from COL [REDACTED] to COL [REDACTED] forwarding a draft appointment memorandum
- B-2 November 9, 2007 – Appointment of Investigating Officer
- B-3 November 29, 2007 – Email from COL [REDACTED] to Ms [REDACTED] forwarding revised request for extension

- November 29, 2007 – Memorandum from COL [REDACTED] to [REDACTED], requesting extension
- B-4 November 27, 2007 – Email from COL [REDACTED] to [REDACTED] forwarding the appointment memorandum and a request for extension
- C-1 December 11, 2007 - Memorandum from COL [REDACTED] to [REDACTED] Transmittal, Report of Investigation, Whistleblower Investigation, OSC Files Nos. DI-07-2722, DI-07-3064, DI-07-3065
- C-2 December 5, 2007 – Memorandum from [REDACTED] to CPT [REDACTED]. Legal Review, Report of Investigation, Whistleblower Investigation, OSC Files Nos. DI-07-2722, DI-07-3064, DI-07-3065
- C-3 DA Form 1574, Report of Proceedings by Investigating Officer/Board of Officers, dated December 4, 2007 (AR 15-6 Investigation, ROI-I)
- C-4 December 4, 2007 – Narrative Memorandum report of COL [REDACTED]
- D December 4, 2007 –See Binder 2 containing ROI-I, Initial Report of Investigation into complaint filed with OSC (complete with all exhibits)
- E November 26, 2007 - Memorandum for Record by COL [REDACTED] Designated Grievance Receiver Decision Regarding [REDACTED] Grievance
- F February 14, 2008 – Email message from [REDACTED] to CPT [REDACTED] regarding reporting requirements to OPM.
- G November 26, 2007 - Memorandum for Record by COL [REDACTED] Designated Grievance Receiver Decision Regarding [REDACTED]
- H Packet of memoranda regarding the disqualification of [REDACTED] from the Chemical Personnel Reliability Program (CPRP)
- I Packet of memoranda regarding the disqualification of [REDACTED] from the CPRP
- J Packet of memoranda regarding the disqualification of [REDACTED] from the CPRP
- K January 3, 2008 – Memorandum from [REDACTED] to [REDACTED] Detail
- L January 3, 2008 – Memorandum from [REDACTED] to [REDACTED] Detail

- M February 20, 2008 – DA Form 2823, Sworn Statement, [REDACTED]
- N January 7, 2008 – Annual Senior System Civilian Evaluation Report, [REDACTED]
- O September 26, 2008 - Annual Senior System Civilian Evaluation Report, [REDACTED]
- P July 3, 2007 – Memorandum from LTC [REDACTED] to [REDACTED]: Notice of Decision to Suspend
- Q November 5, 2007 – Notification of Personnel Action: [REDACTED] voluntary retirement, effective 30 November 2007
- R Intentionally left blank
- S Intentionally left blank
- T February 1, 2007 – Report of Investigation into allegations of misconduct and/or mismanagement against [REDACTED] and [REDACTED] (with exhibits)
- U October 26, 2006 - Internal Review Report No. 01-07, Request from U.S. Army Development Test Command on Hazardous Duty Pay Program
- V Chain of Command diagram for 22^d Chemical Battalion
- W Current forms and procedures implemented by the CBRNE Analytical & Remediation Activity to request HDP
- X February 21, 2008 - Memorandum for Record (MFR) by CPT [REDACTED] regarding interviews he conducted on behalf of the IO, COL [REDACTED], with attachment, with members of the 20th SUPCOM (CBRNE) and APB CPAC regarding HDP practices
- Y February 22, 2008 - DA Form 2823, Sworn Statement, LTC [REDACTED] regarding a meeting with [REDACTED] and [REDACTED] and [REDACTED] on 21 February 2008
- Z February 22, 2008 – Email from LTC [REDACTED] providing additional information for the investigation
- AA February 21, 2008 – MFR by COL [REDACTED] memorializing his appointment to conduct this supplemental investigation

- BB February 27, 2008 – MFR by CPT [REDACTED] regarding his discussions with MAJ [REDACTED] DAIG, and LTC [REDACTED] IG, 20th SUPCOM. Includes May 25, 2007 memorandum from LTC [REDACTED] to The Honorable [REDACTED]
- CC February 29, 2008 – DA Form 2823, Sworn Statement, [REDACTED]
- DD May 30, 2007 – Memorandum for [REDACTED] Subject: Notice of Proposed 14 day Suspension; Undated Memorandum for LTC [REDACTED] Subject: Response to Proposed Fourteen Days Suspension and Reassignment
- EE March 4, 2008 - Memorandum for Record (MFR) by [REDACTED] concerning conversation with LTC [REDACTED] on CPRP
- FF March 11, 2008 - Memorandum for Record (MFR) by [REDACTED] concerning conversation with [REDACTED] on CPRP
- GG 20th SUPCOM Mission Statement; 20th SUPCOM Unit Reorganization Plan; 20th SUPCOM Organization Chart; 20th SUPCOM Future Growth Chart
- HH Extract of Army Regulation (AR) 50-6, Chemical Surety, June 26, 2001
- II March 27, 2008 - Email from [REDACTED] to [REDACTED] forwarding request for extension
- JJ April 2, 2008 – Memorandum For Record, CPT [REDACTED]
SUBJECT: Interviews Associated with Hazardous Duty Pay
- KK April 2, 2008 – Email from [REDACTED] CHRA, APG, to [REDACTED] Department of the Army, Office of the General Counsel, concerning corrective actions taken by APG CPAC regarding payment of EDP/HDP

A



SECRETARY OF THE ARMY
WASHINGTON

FEB 01 2008

MEMORANDUM FOR ASSISTANT SECRETARY OF THE ARMY
(MANPOWER AND RESERVE AFFAIRS)

SUBJECT: Delegation of Authority Under Title 5, Sections 1213 (c) and (d)

In accordance with Title 10, United States Code, section 3013(f), I hereby delegate to you certain authority conferred upon me as agency head under Title 5, United States Code, section 1213. Specifically you are authorized to review, sign and submit written reports of investigations of information and related matters transmitted to the Department of the Army by The Special Counsel, in accordance with Title 5, United States Code, sections 1213(c) and (d). The authority delegated herein may not be further delegated.

This delegation shall remain in effect for three years from the date of its execution, unless earlier rescinded in writing by me.



Pete Geren

CF: General Counsel

B



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

The Special Counsel

October 3, 2007

The Honorable Pete Geren
Secretary of the Army
101 Army Pentagon
Washington, DC 20310-0101

Re: OSC File Nos. DI-07-2722, DI-07-3064, DI-07-3065

Dear Mr. Secretary:

Pursuant to my responsibilities as Special Counsel, I am referring to you a disclosure from three whistleblowers who allege that hazard pay differentials are being improperly authorized for employees who serve as Equipment Specialists at the Department of the Army (Army), Analytical and Remediation Directorate, 22nd Chemical Battalion, Aberdeen Proving Ground (APG), Maryland. After a review of the information provided, I have determined that there is a substantial likelihood that the authorization of hazard pay differentials for Equipment Specialists may be a violation of a law, rule, or regulation, gross mismanagement, and an abuse of authority. Accordingly, I am referring this information to you for an investigation and to issue a report of your findings.

The U.S. Office of Special Counsel (OSC) is authorized by law to receive disclosures of information from federal employees alleging violations of law, rule, or regulation, gross mismanagement, gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety. 5 U.S.C. § 1213(a) and (b). As Special Counsel, if I find, on the basis of the information disclosed, that there is a substantial likelihood that one of these conditions exists, I am required to advise the appropriate agency head of my findings, and the agency head is required to conduct an investigation of the allegations and prepare a report. 5 U.S.C. § 1213(c) and (g).

The whistleblowers, [REDACTED] and [REDACTED] Army APG Toxic Material Control Operator Supervisors, along with their supervisor, [REDACTED] Chief, Echo Company, consented to the release of their names. In July 2006, [REDACTED] and [REDACTED] first became aware that the agency was erroneously granting hazard pay differentials while researching a personnel matter. [REDACTED] and [REDACTED] consulted with [REDACTED] who reviewed the regulations, and each concluded that the regulations did not permit hazard pay differentials for Equipment Specialists. Each of these managers, who has time and attendance responsibilities, therefore, has alleged that hazard pay differentials were being improperly authorized.

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The Honorable Pete Geren

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The whistleblowers stated that they notified agency employees that: 1) hazard pay differential was not authorized when the hazardous duty or physical hardship has been taken into account in the classification of the position; 2) the inherent hazards and physical exertion duties of an Equipment Specialist (GS-1670) were specifically addressed in both the duty description and the factors analysis used to determine the pay grade of the position; 3) regulations did not authorize the payment of hazard pay differentials where such duty was a factor in the classification of a particular position; and, thus, 4) Equipment Specialists were not entitled to receive a hazard pay differential. Yet, they allege that the agency currently continues to authorize pay differentials improperly. The improperly paid employees are allegedly six Equipment Specialists under the supervision, at various times, by [REDACTED] and/or [REDACTED]

Pursuant to 5 U.S.C. § 5545(d), agencies have the authority to introduce a schedule of pay differentials for duty involving unusual physical hardship or hazard. Section 5545(d) further entitles employees "to be paid the appropriate differential for any period in which he is subjected to physical hardship or hazard not usually involved in carrying out the duties of his position." However, 5 U.S.C. § 5545(d)(1) and 5 CFR § 550.904(a) prohibit an employee from receiving, and an agency from paying, a hazard pay differential when the "hazardous duty or physical hardship has been taken into account in the classification of [the] position, without regard to whether the hazardous duty or physical hardship is grade controlling."¹

According to the Army's job description, Equipment Specialists (EOD) are expected to perform the following duties: handling live ordnance items; performing the set-up and operation of unexploded ordnance and recovered chemical warfare material; and preparing munitions data requirements, including disassembly. I have enclosed for your review a copy of the job description, as well as employee time sheets and an internal memorandum from [REDACTED] to LTC [REDACTED], Commander, 22nd Chemical Battalion, dated March 26, 2007, describing the hazard pay differential issues and the employees affected. Despite raising these issues, his agency continues to authorize hazard pay differential payments.

Given the whistleblowers' direct experiences with the differential pay issue as current Army APG supervisors, and after a review of the relevant documents provided, I have concluded that there is a substantial likelihood that the information they have provided discloses a violation of a law, rule or regulation, gross mismanagement, and an abuse of authority. As previously stated, I am referring this information to you for an investigation of these allegations and a report of your findings within 60 days of your receipt of this letter. By law, the report must be reviewed and signed by you personally. Should you delegate your authority to review and sign the report to the Inspector General, or any other official, the delegation must be specifically stated and must include the authority to take the actions necessary under 5 U.S.C. § 1213(d)(5). Without this information, I would hasten to add that the report may be found deficient. The requirements of the report are set forth at 5 U.S.C. § 1213(c) and (d). A summary of § 1213(d) is enclosed. As a matter of policy, OSC also requires that your investigators interview the

¹ Title 5 CFR 550.904(c) that explains the phrase "has been taken into account in the classification" to mean that the type of duty was an element considered in establishing the position.

The Honorable Pete Geren

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whistleblowers as part of the agency investigation whenever the whistleblowers consent to the disclosure of their names.

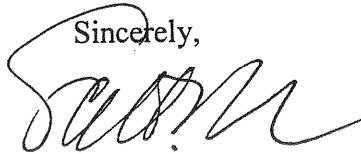
In the event it is not possible to report on the matter within the 60-day time limit under the statute, you may request in writing an extension of time not to exceed 60 days. Please be advised that an extension of time is normally not granted automatically, but only upon a showing of good cause. Accordingly, in the written request for an extension of time, please state specifically the reasons the additional time is needed. Any additional requests for an extension of time must be personally approved by me.

After making the determinations required by 5 U.S.C. § 1213(e)(2), copies of the report, along with any comments on the report from the people making the disclosure and any comments or recommendations by this office, will be sent to the President and the appropriate oversight committees in the Senate and House of Representatives pursuant to 5 U.S.C. § 1213(e)(3)).

Unless classified or prohibited from release by law or by Executive order requiring that information be kept secret in the interest of national defense or the conduct of foreign affairs, a copy of the report and any comments will be placed in a public file in accordance with 5 U.S.C. § 1219(a).

Please refer to our file numbers in any correspondence on this matter. If you need further information, please contact [REDACTED] Chief, Disclosure Unit, at (202) 254-3604. I am also available for any questions you may have.

Sincerely,



Scott J. Bloch

Enclosures

Requirements of 5 U.S.C. § 1213(d)

Any report required under subsection (c) shall be reviewed and signed by the head of the agency¹ and shall include:

- (1) a summary of the information with respect to which the investigation was initiated;
- (2) a description of the conduct of the investigation;
- (3) a summary of any evidence obtained from the investigation;
- (4) a listing of any violation or apparent violation of law, rule or regulation; and
- (5) a description of any action taken or planned as a result of the investigation, such as:
 - (A) changes in agency rules, regulations or practices;
 - (B) the restoration of any aggrieved employee;
 - (C) disciplinary action against any employee; and
 - (D) referral to the Attorney General of any evidence of criminal violation.

In addition, we are interested in learning of any dollar savings, or projected savings, and any management initiatives that may result from this review.

¹ Should you decide to delegate authority to another official to review and sign the report, your delegation must be specifically stated.

Position Description

PD#: AG153575

Replaces PD#:

Sequence#: 525056

EQUIPMENT SPECIALIST (EOD)

GS-1670-11

Servicing CPAC: ABERDEEN PROVING GROUND, MD

Agency: ARMY

Installation: AGFCWA8Q99AGA

MACOM: FORSCOM

22ND CHEMICAL BATTALION (TE)
REMEDICATION RESPONSE (TM1)

Command Code: FC
US ARMY FORCES
COMMAND

ABERDEEN PROVING GROUND, MD 21005

Region: NORTHEAST

Citation 1: OPM JFS ADMINSTRATIVE EQUIP, FACILITIES, & SERV. MAY 2003

PD Library PD: NO

COREDOC PD: NO

Classified By: NECPOC

Classified Date: 08/20/2003

FLSA: NON-EXEMPT

Drug Test Required: NO

DCIPS PD: NO

Career Program: 17

Financial Disclosure Required: NO

Acquisition Position: NO

Functional Code: 00

Requires Access to Firearms:

Interdisciplinary: NO

Competitive Area: 25

Position Sensitivity: 2

Target Grade/FPL: 11

Competitive Level: 0738

Emergency Essential: N

Career Ladder PD: NO

Bus Code: 2878

PD Status: VERIFIED

Duties:

Serves as technical authority on US, Soviet, Warsaw Pact and other foreign chemical, biological and conventional ammunition. Serves on Quick Reaction Teams for acquisition and exploitation of first seen foreign ammunition. As an Explosive Ordnance Disposal (EOD) Specialist, incumbent participates in the performance of actual downloading of live, often first seen foreign ordnance items. Interfaces with the intelligence community and other agencies to stay abreast of all munitions designs, functions, and current inventories. Directs and performs the set-up and operation of Unexploded Ordnance (UXO)/Recovered Chemical Warfare Material (RCWM) sites/activities. Assists with supervising all aspects of EOD operations during utilization of the Explosive Destruction System (EDS). Technically directs lower grade EOD specialists in the performance of all duties excluding the preparation of

Munitions Data Requirement (MDR). Duties do include the preparation of Munitions Data Requirements (MDR), including disassembly, stripping and inerting of all US and Foreign ordnance.

1. Serves as senior/journeylevel technician, assisting with directing/leading of team operations involved with the location, access, render safe, disposal, transportation and processing of all types and conditions of US and Foreign ordnance. This includes identification and technical research of guided missiles, bombs and bomb fuzes, projectile and projectile fuzes, grenades and grenade fuzes, rockets and rocket fuzes, landmines and associated components, pyrotechnic items and explosives and demolition materials. Directs and performs the preparation of electric and non-electric demolition firing systems for the purposes of ammunition/UXO/RCWM disposal operations. Directs the use of non-destructive diagnostic equipment used for identifying the fill and condition of chemical, biological and conventional munitions. Evaluates and participates in emergency EOD/UXO incident response per local SOPs and Installation Directives. Interfaces with installation and local authorities, outside the normal chain of command, with respect to EOD/UXO and incident response operations.
40%

2. Performs recovery and exploitation of US and Foreign conventional, chemical and biological ammunition. Searches, collects, interprets, analyzes and develops complete technical information and data on munitions and weapons systems for the purpose of recovery and Foreign Material Exploitation (FME). Analyzes and reduces exploitation data into an accurate and comprehensive report format. Items exploited include guided missiles, bombs and bomb fuzes, projectile and projectile fuzes, grenades and grenade fuzes, rockets and rocket fuzes, landmines and associated components, pyrotechnic items, chemical and biological munitions.
30%

3. Performs duties as Quality Control Specialist (QC) and Site Safety Officer (SSO). As QC, incumbent will implement the EOD/UXO specific sections of the quality control program by conducting inspections, generating written reports and ensuring compliance with regulations and contractual requirements. As SSO, incumbent implements the approved EOD/UXO and explosives safety programs in compliance with all DOD, Federal, State and local statutes and codes. Analyzes operational risks and hazards to ensure compliance with all site-specific safety requirements for EOD/UXO operations.
20%

4. Performs duties as a Radiation Safety Officer (RSO) when operating radiographic instruments and Portable Isotopic Neutron Spectroscopy (PINS). Controls access to radiation areas. Performs and documents radiological surveys for gamma and neutron radiation using Geiger-Muller tubes, proportional counters, and scintillation detectors. Performs shielding calculations and dose estimates for stay times and whole body exposures to ionizing radiation. Directs and evaluates radiation control measures for radiological evolutions including shielding requirements for radiographic work and monitors personnel dosimetry requirements and placement. Responsible for the security and care of radiological sources and the establishment of operational areas with respect to health and safety.
10%

Performs other duties as assigned.

Special requirements

Basic Qualifications: Must be a graduate of a Department of Defense approved military bomb disposal school. These currently include the former US Naval School, Explosive Ordnance Disposal, Naval Ordnance Station, Indian Head, MD, or the current military EOD school

located at Eglin Air Force Base, Fla. This position requires the incumbent to have a minimum of ten (10) years combined military and civilian EOD/UXO experience.

The individual selected must possess or be able to obtain and maintain a Secret security clearance. Must be able to pass a medical examination annually. Must be able to perform all duties while wearing full chemical protective ensemble up to and including OSHA level A.

This position is subject to the provisions of AR 50-6. Individuals select for this position must undergo urinalysis screening under the civilian Drug Abuse Testing Program prior to the appointment to the position and periodically thereafter.

Mobility for temporary duty (TDY) or temporary change of station (TCS) both CONUS and OCONUS are conditions of employment. This position may require the employee to perform mission requirements in hostile environments. In such situations, the position and incumbent will be designated as "Emergency Essential", IAW the current DOD Directive governing retention of DOD civilians in overseas locations.

This position may require the incumbent to obtain and maintain a Commercial Drivers License with Hazardous Material certification.

Factor 1, Knowledge Required FL 1-7 1250 points

Incumbent requires an advanced comprehensive knowledge of Army EOD doctrine and Unit operations, as well as a working knowledge of the care, handling, safety, and use of explosives, chemical and biological materials which are used worldwide. Must possess the technical knowledge required to identify and categorize ammunition of all types to include its filler and fuze condition. Must have the technical knowledge of specialized EOD techniques, tools and equipment used by military personnel for render safe of every type of ordnance and explosive related device, including homemade bombs. Must have the knowledge to locate subsurface ordnance using all modern forms of magnetometers, ground penetrating radar and related technologies. Ability to assist with leading/directing the utilization of both electric and non-electric firing systems for the purpose of demolition operations in conjunction with all EOD/UXO operations.

Factor 2, Supervisory controls FL 2-4 450 points

Supervisor makes assignments with general objectives and discusses matters of major change in approach that may affect other assignments and priorities. Incumbent is relied upon to independently solve technical problems. Completed work is reviewed for attainment of objectives and conformance with policy. When working outside the country, incumbent is responsible for independently choosing courses of action and completing work in accordance with agency policy.

Factor 3, Guidelines FL 3-4 450 points

Selects and uses a wide range of technical material such as technical manuals, bulletins, schematics, line drawings and catalogs as well as intelligence summaries and reports. In addition use is made of agency regulations and policy statements. These provide only general guidance as to the most productive approach or methods to solve the most highly complex or unusual problems.

Factor 4, Complexity FL 4-4 225 points

The specialist must be familiar with many types of ordnance used worldwide, their characteristics and effects. As EOD, the individual is responsible for adjusting plans and

procedures to changing conditions while applying knowledge of procedures and tools available. Incumbent must make decisions based on unusual circumstances and incomplete or conflicting data.

Factor 5, Scope and Effect FL 5-3 150 points

Incumbent performs independently at EOD/UXO sites containing unknown ordnance, contents and conditions. Incumbent must deal with any and all eventualities as they occur. Items may be fuzed and armed and may or may not contain chemical agents. Failure to exercise the utmost care and diligence could result in death or severe bodily injury to incumbent or other personnel, major violations of regulations resulting in fines and/or criminal penalty and significant impact on the environment and health of surrounding communities.

Factor 6/7, Personal Contacts/Purpose of Contacts; FL 3-B 110 points

Contacts are with military personnel and civilians within the Department of Defense and individuals or groups outside the agency to gain information during onsite visits and to coordinate mutual procedures and practices.

Factor 8, Physical Demands FL 8-3 50 points

The field work requires considerable physical exertion such as long periods of standing; recurring activity such as bending, crouching, stooping, stretching, reaching, and lifting of moderately heavy objects in excess of 50 pounds. Requires normal finger dexterity in both hands and normal color vision.

Factor 9, Work Environment FL 9-3 50 points

The fieldwork involves regular and recurring exposure to various weather conditions and unknown explosive devices to include chemical and biological material. Work may require the use of full chemical protective ensemble. The specialist must be continually alert to observe special safety precautions, procedures and ever-changing situations.

Total points: 2735 (GS-11 range: 2355 - 2750 Points)

Evaluation:

FLSA EVALUATION OUTLINE

NOT MET Foreign Exemption

NOT MET Executive Exemption

Exercises appropriate supervisory responsibility (primary duty)

Customarily and regularly exercises independent judgment

80% test, if applicable (GS-5/6; Sit 1 & 2 WS supervisors; law enforcement & firefighter supervisors thru GS-9)

NOT MET Professional Exemption

Professional work (primary duty)

Intellectual and varied work (more than dealing with procedures/precedents)

Discretion & independent judgment

80% test, if applicable (This virtually never applies since GS-5/6 positions are trainees and other eligible employees are not professional)

NOT MET Administrative Exemption

Primary duty

Policy or

Management or general business or supporting services or

Participation in the executive/administrative functions of a management official

Nonmanual work test

NOT MET intellectual and significant (more than dealing with procedures/precedents), or

specialized & technical in nature requiring considerable training/experience

NOT MET Discretion & independent judgment

n/a 80% test, if applicable

Comments/Explanations (State which major duties/job functions are Exempt):

CONCLUSION: Non Exempt

Classification Comments: Employee performs technical support work. Does not regularly develop new work methods or procedures. Work does not meet the spirit and intent of the exemption criteria.

REQUEST FOR APPROVAL OF OVERTIME/HOLIDAY/COMPENSATORY HOURS (APGR 616-2)

1. THRU: ██████████ TO: ██████████	2. FROM: ██████████	3. DATE OF REQUEST: 13 August 2007
4. REQUEST NO: (1-10)	5. FY APPROVED OT/HOL BUDGET:	6. FY OT/HOL EXPENDITURES: AMOUNT: DATE:
7. SHORT TITLE DESCRIPTION: UXO Projects		8. DATE(S) TO BE WORKED: 9 August 2007
9. ASSIGNED COST CENTER (11-16):	10. HOURS REQUESTED: 1130-1230hrs	
██████████	A. OVERTIME/HOLIDAY (17-21):	B. COMPENSATORY (22-25)
	1hr	
	11. TOTAL 1hr	
12. JUSTIFICATION AND IMPACT: Job Order# 7GAS11 HDP: 25% <p align="center">Overtime for working on the DIO 5400 UXO Project.</p>		
13. OVERTIME CATEGORY: <input type="checkbox"/> DISCRETIONARY <input type="checkbox"/> EMERGENCY <input checked="" type="checkbox"/> MANDATORY		14. SIGNATURE, REQUESTING OFFICIAL: ██████████
RECOMMENDING OFFICIAL		
15. RECOMMENDED ACTION: <input checked="" type="checkbox"/> APPROVAL <input type="checkbox"/> DISAPPROVAL	16. SIGNATURE, TITLE: ██████████	17. DATE: 20070813
ACTION BY APPROVING AUTHORITY		
18. ABOVE REQUEST: <input type="checkbox"/> APPROVED <input type="checkbox"/> DISAPPROVED	19. SIGNATURE, TITLE:	20. DATE:

REQUEST FOR APPROVAL OF OVERTIME/HOLIDAY/COMPENSATORY HOURS (APGR 616-2)

1. THRU: TO: [REDACTED]	2. FROM: [REDACTED]	3. DATE OF REQUEST: 13 August 2007						
4. REQUEST NO: (1-10)	5. FY APPROVED OT/HOL BUDGET:	6. FY OT/HOL EXPENDITURES: AMOUNT: DATE:						
7. SHORT TITLE DESCRIPTION: UXO Projects		8. DATE(S) TO BE WORKED: 8-10 August 2007						
9. ASSIGNED COST CENTER (11-16):	10. HOURS REQUESTED: 0700-0730/1130-1230hrs							
	A. OVERTIME/HOLIDAY (17-21):	B. COMPENSATORY (22-25)						
[REDACTED]	<table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%; text-align: center;">8 Aug</td> <td style="width:33%; text-align: center;">9 Aug</td> <td style="width:33%; text-align: center;">10 Aug</td> </tr> <tr> <td style="text-align: center;">1.5</td> <td style="text-align: center;">1.5</td> <td style="text-align: center;">1.5</td> </tr> </table>	8 Aug	9 Aug	10 Aug	1.5	1.5	1.5	
8 Aug	9 Aug	10 Aug						
1.5	1.5	1.5						
	11. TOTAL 4.5hrs							

12. JUSTIFICATION AND IMPACT:
 Job Order# 7GGJ11
 HDP: 25%

Overtime for working on the AA5 UXO Project.

13. OVERTIME CATEGORY: <input type="checkbox"/> DISCRETIONARY <input type="checkbox"/> EMERGENCY <input checked="" type="checkbox"/> MANDATORY	14. SIGNATURE, REQUESTING OFFICIAL: [REDACTED]
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RECOMMENDING OFFICIAL

15. RECOMMENDED ACTION: <input checked="" type="checkbox"/> APPROVAL <input type="checkbox"/> DISAPPROVAL	16. SIGNATURE, TITLE: [REDACTED]	17. DATE: 20070813
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ACTION BY APPROVING AUTHORITY

18. ABOVE REQUEST: <input type="checkbox"/> APPROVED <input type="checkbox"/> DISAPPROVED	19. SIGNATURE, TITLE: 	20. DATE:
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DEPARTMENT OF THE ARMY
22D CHEMICAL BATTALION (TECHNICAL ESCORT)
ECHO COMPANY
5183 BLACKHAWK ROAD, BLDG E1942
ABERDEEN PROVING GROUND, MARYLAND 21010-5424

REPLY TO
ATTENTION OF:

AFCB-CFT-ECO

26 March 2007

MEMORANDUM FOR LTC [REDACTED] Commander, 22d Chemical Battalion
(Technical Escort), 5183 Blackhawk Road, Aberdeen Proving Ground, MD 21010-5424

SUBJECT: Authorization of Hazard Pay Differential

1. References:

- a. Code of Federal Regulation (CFR), Title 5, Volume 1, Section 550-904 and Appendix A, Subpart I of part 550 (enclosure 1).
- b. APG Regulation 690-28, paragraph 5b and Appendix A (enclosure 2).

2. Purpose: Request review and correct payment of Hazard Pay Differential for personnel working in Position Description # AG11759 (enclosure 3) and AG153575 (enclosure 4).

3. Currently personnel in the 22d Chemical Battalion (TE) are being paid Hazard Pay Differential; although, the hazardous duty has already been taken into account in the classification of the employee's job. A list of personnel affected is enclosed (enclosure 5).

4. CFR 5, Volume 1, Section 550-904 and APG Regulation 690-28 both dictate that Hazard Pay Differential Pay may not be paid to an employee when the hazardous duty or physical hardship has been taken into account in the classification of his or her position, without regard to whether the hazardous duty or physical hardship is grade controlling.

5 Encls
as

[REDACTED]
Chief, Echo Company

SUBJECT: Hazardous Pay

1. The following personnel are working in Position Description AG153575 and is receiving Hazardous Duty Pay of 25%.

[REDACTED]

2. Past employees who have worked in this Position Description and received Hazardous Duty Pay.

[REDACTED]

3. The following personnel are working in Position Description AG11759 and is receiving Hazardous Duty Pay of 25%.

[REDACTED]

4. Past employees who have worked in this Position Description and received Hazardous Duty Pay.

[REDACTED]