



U.S. OFFICE OF SPECIAL COUNSEL
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The Special Counsel

June 29, 2023

The Honorable Thomas J. Vilsack
Secretary
U.S. Department of Agriculture
1400 Independence Avenue, S.W.
Washington, D.C. 20250

Re: OSC File Nos. DI-23-000706; DI-23-000708; and DI-23-000719
Request for Investigation—5 U.S.C. § 1213(c)

Dear Secretary Vilsack:

I am referring to you for investigation a whistleblower disclosure concerning employees of the Department of Agriculture, Agricultural Research Service, Beltsville Agricultural Research Center (BARC) in Beltsville, Maryland. The whistleblowers alleged that BARC leadership has engaged in activity that may constitute a violation of law, rule, or regulation; gross mismanagement; a gross waste of funds; and a substantial and specific danger to public health and safety. A report of your investigation on these allegations and any related matters is due to the Office of Special Counsel (OSC) by August 28, 2023.

[REDACTED] BARC employees who consented to the release of their names, disclosed that BARC leadership has failed to provide employees a workplace that is free from recognized hazards, as required by 29 U.S.C. § 654. The allegations to be investigated include:

- BARC leadership has failed to adequately maintain many of the facility buildings and structures, resulting in an unsafe and deteriorating workplace environment for employees;
- BARC facilities employees do not have the required tools and equipment for adequate maintenance and repair of the buildings and structures;
- The unsafe and deteriorating conditions have resulted in the loss and improper handling of scientific equipment, research, and data; and

- Any additional, related allegations of wrongdoing discovered during the investigation of the foregoing allegations.

The whistleblowers alleged that BARC leadership has failed to adequately address complaints concerning workplace conditions since 2017. As a result, the facility has unsafe conditions throughout its approximately 300 buildings and structures situated on over 6,000 acres. In Building 001, the elevator was out of service 144 days in 2022 and has again been out of service since June 6, 2023. Moreover, when the elevator is operational, employees frequently get trapped. The whistleblowers alleged the lack of a working elevator has resulted in the unsafe transport of compressed gases between floors. For example, the whistleblowers alleged liquid nitrogen is used in many of the BARC laboratories and must be transported between floors. They reported it is unsafe to be trapped in an elevator with tanks of compressed liquid nitrogen because it could cause asphyxiation and requires venting. And it is impractical to transport the tanks on the stairs due to their weight and volatility.

The whistleblowers also alleged that the entire campus is frequently without running water, the temperature in most buildings is poorly regulated, many buildings have water damage or flooding from unstable plumbing, and dozens of buildings have not had working fire suppression systems since 2021. In Building 007, all five floors flooded from burst pipes in December 2022. The whistleblowers alleged that approximately 70 percent of this building is laboratories and the flooding resulted in damaged equipment and compromised experiments. The lack of temperature regulation allegedly creates possible exposure of research to mold and runoff water. Employees were required to continue working in Building 007 from December 2022 to June 2023 even though it was not remediated for mold or water damage. When the building was finally closed to employees over six months after the flood, sufficient notice was not provided to allow employees to safely move research and equipment to other locations, resulting in additional damage and loss. The whistleblowers alleged these conditions create a substantial and specific danger to the health and safety of BARC employees as well as the public who relies on the accuracy of USDA research.¹

Pursuant to my authority under 5 U.S.C. § 1213(c), I have concluded that there is a substantial likelihood that the information provided to OSC discloses a violation of law, rule, or regulation; gross mismanagement; a gross waste of funds; and a substantial and specific danger to public health and safety. Please note that specific allegations and references to specific violations of law, rule or regulation are not intended to be exclusive. If, in the course of your investigation, you discover additional violations, please include your findings on these additional matters in the report to OSC. As previously noted, your agency must conduct an investigation of these matters and produce a report, which must be reviewed and signed by you. Per statutory requirements, I will review the report for sufficiency and reasonableness before sending copies of the agency report along with the whistleblower's comments and any

¹ We have described some of the unsafe conditions disclosed to OSC for illustrative purposes in this letter, but the whistleblowers will provide a more comprehensive list of the identified hazards to investigators.

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comments or recommendations I may have, to the President and congressional oversight committees and making these documents publicly available.

Additional important requirements and guidance on the agency report are included in the attached Appendix, which can also be accessed at <https://osc.gov/Documents/Public%20Files/1213%20Appendix.pdf>. If your investigators have questions regarding the statutory process or the report required under section 1213, please contact Catherine A. McMullen, Chief, Disclosure Unit, at (202) 804-7088 or cmcmullen@osc.gov for assistance. I am also available for any questions you may have.

Sincerely,

A handwritten signature in black ink, appearing to read "Henry J. Kerner". The signature is fluid and cursive, with a prominent initial "H" and "J".

Henry J. Kerner
Special Counsel

Enclosure

cc: The Honorable Phyllis K. Fong, Inspector General