



DEPARTMENT OF THE NAVY  
OFFICE OF THE SECRETARY  
1000 NAVY PENTAGON  
WASHINGTON, D.C. 20350-1000

U.S. OFFICE OF  
SPECIAL COUNSEL  
WASHINGTON, D.C.  
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April 26, 2013

Ms. Carolyn N. Lerner  
Special Counsel  
U.S. Office of Special Counsel  
1730 M Street, N.W., Suite 300  
Washington, DC 20036-4505

Re: OSC DI-11-2144

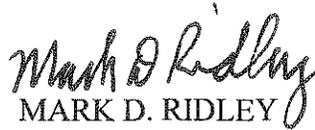
Dear Ms. Lerner:

This is a final response by the Department of the Navy (DON) to your letter of August 1, 2011, in which you requested that the Secretary of the Navy investigate allegations that employees at the Marine Corps Base Camp Lejeune Landfill/Recycling Center misappropriated government-owned materials and property for their personal use. The Secretary of the Navy has delegated his authority to me to respond on his behalf. Enclosure (1) is a cumulative report of the investigation of the allegations, the findings and conclusions of the investigation, and the corrective actions taken. Enclosure (1) includes the names of the persons associated with the investigation and is provided to you for your official use, which I understand will entail providing a copy to the President, the House and Senate Armed Services Committees, and the complainant for their review.

Enclosure (2) is a redacted version of enclosure (1) in which the names of the persons associated with the investigation have been substituted with their titles or positions. Enclosure (2) is suitable for public disclosure, consistent with Department of Defense policy and relevant laws and regulations regarding the release of names of witnesses to the general public. As has been the case with other reports that the DON has provided to your office since September 11, 2001, I request that you make only enclosure (2) available to members of the public.

Thank you for bringing this matter to the attention of the Secretary of the Navy and for your patient consideration.

Sincerely,

  
MARK D. RIDLEY

Acting Director  
Naval Criminal Investigative Service

Enclosures: 1. For Official Use Copy of Cumulative Report  
2. Public Release Copy of Cumulative Report

## **Department of the Navy Report on Whistleblower Allegations of Employee Misappropriation of Government-owned Materials and Property for their Personal Use at Marine Corps Base, Camp Lejeune, North Carolina**

This report is in further response to the August 1, 2011 referral by the Office of Special Counsel to the Secretary of the Navy of allegations that employees of the Department of Public Works, Landfill/Recycling Center, Camp Lejeune, North Carolina, had misappropriated government-owned materials and property for their personal use. The Department of the Navy conducted an investigation of the allegations and provided a response on June 1, 2012, detailing the results of the investigation and the corrective measures that had been taken up to that time. The below report provides the results of additional investigation and corrective measures and constitutes a cumulative response to the August 1, 2011 referral.

### **A. Allegations and evidence**

The allegations were investigated by the Naval Criminal Investigative Service (NCIS), which had previously received a similar complaint of misappropriations and had opened an investigation on May 6, 2011. The complaint to NCIS had been made by **Government Landfill Driver #3** at the Landfill/Recycling Center. (**Government Landfill Driver #3** might be the same person referred to by a similar name in the August 1, 2011 Office of Special Counsel referral letter.) The whistleblower allegations, together with the investigative findings, are as follows:

**Government Landfill Driver #2, Government Landfill Driver #4, Government Landfill Driver #5, Government Landfill Driver #1, an Environmental Protection Specialist,** and a person identified only by a first name that is the same as the first name of **Contractor Landfill Driver #1** misappropriated government property, such as gasoline, steel, gravel, and copper wire, for personal use.

Specific misappropriated items included 4x4 pieces of steel (or beams) used to repair **Government Landfill Driver #2's** personally-owned trailer, 50 government-owned dumpster bottoms, a large pile of metal, numerous vehicle rims for large government-owned vehicles, metal motor tubes or casings, diesel and unleaded gasoline, gravel, small refrigerators, and copper wire.

These allegations were partially substantiated and establish violations of 18 U.S.C. 661 (Larceny). The investigation produced evidence that **Government Landfill Driver #2** and **Contractor Landfill Driver #1** had misappropriated numerous pieces of scrap metal, which they sold to a private scrap processor

and converted the proceeds to personal use. (**Contractor Landfill Driver #1** might be the same person referred to only by first name in the whistleblower referral, but was developed in parallel as a suspect during the NCIS investigation.) Specifically:

1. As background, NCIS agents interviewed the **Deputy Public Works Officer**, Camp Lejeune. He stated that no metal is allowed to go into the landfill. Some metal is kept at a staging area at the landfill until a large quantity can be accumulated and sent to the Defense Reutilization and Marketing Office (DRMO), where it is sold at auction, with the proceeds reverting to Camp Lejeune for improvement of the recycling program.

2. On June 30, 2011, NCIS agents conducting surveillance at the Camp Lejeune Landfill/Recycling Center followed and photographed a truck (later determined to be registered to **Government Landfill Driver #2**) containing scrap metal, from the Landfill/Recycling Center to Foss Recycling, Inc. in Jacksonville, North Carolina, where the scrap metal was sold for what was later determined to be \$517.50. Investigation revealed that **Government Landfill Driver #2** and **Contractor Landfill Driver #1** were the occupants of the truck and that **Contractor Landfill Driver #1** had received the proceeds of the sale of the scrap metal. NCIS agents obtained from Foss Recycling, Inc. the records of that sale, as well as the records of sales of scrap metal by both **Government Landfill Driver #2** and **Contractor Landfill Driver #1** on previous occasions. At the request of the NCIS agents, Foss personnel were able to search company records from January 1, 2009 through June 30, 2011 to identify those records reflecting purchases of scrap metal from **Government Landfill Driver #2** or **Contractor Landfill Driver #1**. The records identified in that search revealed that **Government Landfill Driver #2** had sold scrap metal to Foss Recycling, Inc. on numerous occasions between March 2009 and June 2011, receiving total payments of \$35,048.01, and that **Contractor Landfill Driver #1** had done so on numerous occasions between February 2011 and June 2011, receiving total payments of \$14,867.00. The records do not establish the origin of the scrap metal sold, but include photos and the personal identifying information of **Government Landfill Driver #2** and **Contractor Landfill Driver #1**.

3. On June 30, 2011, **Government Landfill Driver #2** was interrogated and provided a sworn, written statement in which he described scrap metal that DRMO will not accept and that is normally stored in cans on top of a hill. According to **Government Landfill Driver #2**, his boss, the **Landfill Manager**, authorized employees to remove that scrap metal for personal use and that either a person referred to only by nickname, **Government Landfill driver #4**, **Government Landfill Driver #1**, or **Government Landfill Driver #5** would load the scrap metal into employee's personal trucks or trailers. **Government Landfill Driver #2** acknowledged taking scrap metal in this manner on numerous occasions, sometimes once or twice per week, to a scrap yard, where he would receive between three hundred and one thousand dollars per load. He stated that he and **Contractor Landfill Driver #1** would take the money they received back to the Landfill/Recycling Center and give it to the **Landfill Manager**, although recently **Contractor Landfill Driver #1** had been retaining all the proceeds from his sales for himself. Of the monies given to the **Landfill Manager**, the **Landfill Manager** would distribute it among **Government**

**Landfill Driver #2, Government Landfill Driver #5, Government Landfill Driver #1, Government Landfill Driver #4, and the Landfill Material Identifier. Government Landfill Driver #2** also stated that a **former Contractor Landfill Driver** and a **person identified only by name** used to sell "high dollar wire" to the scrap yards. According to **Government Landfill Driver #2**, recently a **Former Contractor Landfill Driver** and **Government Landfill Driver #3** stole copper wire from a can at the recycling center to sell. After twenty-seven unsuccessful attempts to re-contact **Government Landfill Driver #2**, NCIS agents were finally able to do so on October 4, 2012. **Government Landfill Driver #2** was asked whether he stole steel beams, gravel, copper wire, dumpster bottoms, dorm-size refrigerators, truck rims, metal motor tubes, or fuel. **Government Landfill Driver #2** affirmed that he had previously admitted to having stolen scrap metal, but he denied stealing the additional specified materials and further denied even owning a trailer.

4. On June 30, 2011, **Contractor Landfill Driver #1** was interrogated and provided a sworn, written statement in which he admitted that he had been hiding scrap metal at the landfill and that on June 30 he loaded the scrap metal onto a truck, after which he and **Government Landfill Driver #2** drove it from Camp Lejeune to Foss Recycling, Inc. and received \$517 in cash. **Contractor Landfill Driver #1** and **Government Landfill Driver #2** then split the cash. **Contractor Landfill Driver #1** stated that shortly after beginning work at the recycling center as a contractor employee in September 2010, he started gathering scrap metal, including box fans and other "stuff that marines would throw out," to sell. He admitted taking scrap metal to the salvage yard approximately ten times and estimated that he received a total of approximately \$5,000 for the sales. **Contractor Landfill Driver #1** did not admit knowledge of or participation in the misappropriation of government property other than scrap metal and implicated only **Government Landfill Driver #2** as also being involved in it. In a follow-up interview on February 22, 2012, **Contractor Landfill Driver #1** denied any knowledge of the theft of gravel or fuel at Camp Lejeune.

5. The **Landfill Manager** was interviewed by NCIS and acknowledged that he was aware that employees were taking small items such as chairs and tables from the landfill and that employees had taken items from the landfill prior to him becoming the supervisor, but that he neither authorized nor was aware of employees taking metal to sell at a recycling center.

6. **Government Landfill Driver #4** was interviewed about his knowledge of or participation in the theft of items from the landfill. **Government Landfill Driver #4**, who was often in charge of the day operations of the landfill, stated that he was not aware of any thefts and has not accepted monies from the sale of items from the landfill. Specifically, **Government Landfill Driver #4** stated that he was not aware that **Government Landfill Driver #2** and **Contractor Landfill Driver #1** had sold items from the landfill, and he denied authorizing it. **Government Landfill Driver #4** was subsequently re-interviewed regarding his knowledge of stolen fuel, refrigerators or wheel rims. **Government Landfill Driver #4** denied knowledge of the thefts of any of those items, of anyone siphoning fuel, or anything else of a suspicious nature at the landfill.

7. **Government Landfill Driver #3** was re-interviewed on October 6, 2011 to determine the extent to which he had first-hand knowledge of thefts of government property at the Camp Lejeune Landfill/Recycling Center. **Government Landfill Driver #3** stated that he had never witnessed anyone stealing items from Camp Lejeune, but had observed **Government Landfill Driver #2, Contractor Landfill Driver #1, and Government Landfill Driver #5** staging metal at the landfill and loading it into **Government Landfill Driver #2's** personally-owned truck. **Government Landfill Driver #3** stated that he speculated that the proceeds from the metal sales were turned in to **Landfill Manager** because **Landfill Manager** bought several acres of land and a new home while complaining about not having money. **Government Landfill Driver #3** stated that he could not substantiate any of the thefts, but only suspects that **Government Landfill Driver #2, Contractor Landfill Driver #1, and Government Landfill Driver #5** were stealing metal and other commodities. **Government Landfill Driver #3** further stated that **Government Landfill Driver #6** was usually in the vicinity of the staging area when metal was being loaded into **Government Landfill Driver #2's** truck, although **Government Landfill Driver #6** was not involved in the thefts.

8. **Government Landfill Driver #6** was interviewed regarding his knowledge of the theft of government property from the landfill. **Government Landfill Driver #6** stated that, other than hearing about **Government Landfill Driver #2** and **Contractor Landfill Driver #1** being caught for the truckload of metal, he had no knowledge of any thefts from the landfill. **Government Landfill Driver #6** acknowledged that, after receiving permission to do so, he took end tables, a mop bucket, and similar items that had been designated to be placed in the landfill and covered with dirt.

9. A **Former Contractor Landfill Driver** at the Camp Lejeune Public Works Department, was interviewed regarding his knowledge of theft of government property at the landfill. He acknowledged that he had heard rumors that other landfill personnel had stolen metal, but that he had never witnessed it. In addition, he denied ever stealing or selling stolen metal himself or having knowledge about anyone else having done so.

10. **Government Landfill Driver #1** at the Camp Lejeune Public Works Department was interviewed. **Government Landfill Driver #1** stated that in March or April 2011, **Government Landfill Driver #2** approached him and asked if he would like to make some extra money on the side, without elaborating on the details. **Government Landfill Driver #1** declined interest and stated that **Government Landfill Driver #2** never approached him again on the subject. **Government Landfill Driver #1** stated that he had no direct knowledge of thefts at the landfill. (Note: **Government Landfill Driver #1** might be the same person referred to by the whistleblower by a similar name.)

11. **Government Landfill Driver #5** was interviewed regarding his knowledge of thefts of government property at the landfill. **Government Landfill Driver #5** stated that although he has

taken small items, such as a vacuum cleaner, from the landfill for personal use approximately three times, he did not have any direct knowledge of thefts occurring at the landfill.

12. **Landfill Material Identifier** was interviewed regarding his knowledge of thefts of government property at the landfill. **Landfill Material Identifier** stated that he had not seen or participated in the theft of scrap metal, nor did he have knowledge of any monies from the sale of scrap metal. **Landfill Material Identifier** stated that he was aware that there was a long-running feud between **Government Landfill Driver #3** and **Government Landfill Driver #2** stemming from an incident in which **Government Landfill Driver #3** had fixed a large bay fan that he wished to remove for personal use, but which he later accused **Government Landfill Driver #2** of stealing before he could do so.

13. **The Cyber Security Division**, Camp Lejeune, was interviewed on February 15, 2012 regarding the availability of video surveillance camera images at the fuel farm during the months of January 2011 through September 2011. **The Cyber Security Division** stated that such images were not available because the video cameras write over the medium every 30 days, thus deleting the previous images.

14. **Contractor Fuel Truck Driver #2** at the fuel farm, Camp Lejeune, was interviewed regarding his knowledge of any illegal activity at the fuel farm. **Contractor Fuel Truck Driver #2** stated that since the time he began work in January 2010 he has not seen anything suspicious, specifically anyone illegally removing fuel or siphoning fuel or placing fuel into inoperable vehicles.

15. **Contractor Fuel Truck Driver #4**, was interviewed and asked whether he had knowledge of the theft of fuel at the fuel farm or landfill at Camp Lejeune. He related that in his three years delivering fuel to different locations at Camp Lejeune, including the landfill, he has never stolen fuel or been asked by anyone to provide them fuel illegally, nor has he put fuel in an inoperable vehicle or been requested to do so. He also denied putting fuel in privately owned vehicles or having knowledge of any stolen fuel or fuel being siphoned from vehicles at the landfill.

16. **Contractor Fuel Truck Driver #3**, fuel truck driver for approximately two years, was interviewed regarding his knowledge of the theft of fuel from the fuel farm or landfill at Camp Lejeune. He stated that he delivered fuel to numerous locations on Camp Lejeune, including the landfill. **Contractor Fuel Truck Driver #3** stated that he had never stolen fuel or been approached by anyone asking him to supply them with fuel illegally, nor had he put fuel in an inoperative vehicle or been requested to do so. He claimed to have no knowledge of stolen fuel or of fuel being siphoned from vehicles.

17. **Contractor Fuel Truck Driver #1**, fuel farm employee since 2011, was interviewed regarding his knowledge of any illegal activity at the fuel farm. **Contractor Fuel Truck Driver #1** stated that in the short time since he began work at the fuel farm, he had not seen anything suspicious, specifically anyone illegally taking fuel, siphoning fuel, or fueling inoperable vehicles.

18. **Heavy Equipment Operator #1** at the Camp Lejeune landfill for approximately six years, was interviewed regarding his knowledge of the theft of materials from the landfill. **Heavy Equipment Operator #1** stated that he had not seen anyone steal metal, gravel or fuel, nor had he been approached by anyone asking him to assist in the theft of such materials.

19. **Heavy Equipment Operator #2**, heavy equipment operator at the landfill at Camp Lejeune for approximately six years, was interviewed regarding his knowledge of the theft of materials at the landfill. **Heavy Equipment Operator #2** stated that he had never seen anyone steal metal, gravel, or fuels, nor had he been approached by anyone asking him to assist in the theft of those materials.

20. **Government Landfill Driver #1** at the Camp Lejeune landfill was re-interviewed to determine whether he had knowledge of the theft of fuel from the fuel farm or from vehicles parked at the landfill. **Government Landfill Driver #1** stated that he had no knowledge of such thefts or of the theft of gravel or any other items at the landfill.

21. **Government Landfill Driver #3** was interviewed for the third time on February 16, 2012 regarding his knowledge of the theft of fuel at Camp Lejeune. **Government Landfill Driver #3** stated that on an unspecified date in 2011 he observed **Government Landfill Driver #2** and **Government Landfill Driver #5** occupying a government pickup truck at the fuel farm, at which time **Government Landfill Driver #2** was pumping fuel into the truck. **Government Landfill Driver #3** stated that he then observed **Government Landfill Driver #5** go into the back of the truck and begin filling several 5-gallon gas cans. **Government Landfill Driver #3** stated that he notified **Landfill Manager** of what he observed, but he did not think any disciplinary action was taken against **Government Landfill Driver #2** or **Government Landfill Driver #5**. During this interview, **Government Landfill Driver #3** denied having any information regarding other incidents of the theft of fuel or the theft of gravel at Camp Lejeune.

22. **Government Landfill Driver #5** was re-interviewed regarding his alleged participation in the theft of fuel. He denied any information regarding the theft of fuel or the siphoning of fuel from inoperable vehicles. **Government Landfill Driver #5** stated that he did remember one incident in 2011 when he was driving his government truck with some loose propane tanks in the back, which tipped over and were sliding around in the back of the truck. **Government Landfill Driver #5** stated that he stopped to refuel his government truck at the fuel farm, and while the fuel was being pumped into the tank, he jumped into the back of the truck to secure the propane tanks. **Government Landfill Driver #5** recalled seeing **Government Landfill Driver #3** staring at him from the corner of a building at the fuel farm, after which he, **Government Landfill Driver #5**, finished pumping gas and returned the truck to the landfill. In addition, **Government Landfill Driver #5** stated that he sometimes worked overtime at the landfill to assist with spraying chemicals over trash. The chemical spraying machine required gasoline, and when he

assisted the machine operator, he would sometimes drive a government truck to the fuel farm and fill a 5-gallon can with gasoline to fill the chemical spraying machine.

23. **Environmental Protection Specialist**, currently with the Defense Logistics Agency, Disposition Services Europe & Africa, was interviewed by phone from his office in Germany. **Environmental Protection Specialist** previously worked at the landfill at Camp Lejeune. He related that he had heard an allegation of **Government Landfill Driver #2** siphoning fuel from government dump trucks in the parking lot of the landfill. **Environmental Protection Specialist** stated that one morning in July 2011 he arrived for work at about 4:00 a.m. and observed **Government Landfill Driver #2** with one end of a hose in a dump truck's fuel tank, and the other end of the hose in a gas can, attempting to use an electronic siphoning device. **Environmental Protection Specialist** stated that he asked **Government Landfill Driver #2** what he was doing, whereupon **Government Landfill Driver #2** snatched the hose from the vehicle's fuel tank very quickly, causing fuel to get on **Government Landfill Driver #2's** clothing. **Environmental Protection Specialist** stated that he confronted **Government Landfill Driver #2** later that morning but could not prove that what he had seen was the attempted theft of fuel. **Environmental Protection Specialist** stated that he could not recall any additional incidents regarding the theft of fuel, but he did recall that there was a possible theft of some gravel from the landfill in 2011, although he could not remember the month. **Environmental Protection Specialist** recalled that there had been a large pile of gravel at the landfill to be used on the roads within Camp Lejeune. When he came to work one morning, the pile was significantly lower than it had been in the late afternoon the previous day when he left work. **Environmental Protection Specialist** had no knowledge of who might have taken the gravel. In a follow-up interview, **Environmental Protection Specialist** stated that he was not aware of any copper wire being stolen from Camp Lejeune, nor had he falsified documents to obtain copper or other types of metal for personal profit. He further stated that several electrical contractors and Marine Corps units, such as the Engineer Battalion and base telephone personnel, produced large volumes of copper scrap, which was recycled at the landfill. **Environmental Protection Specialist** expressed that he had no information about the theft of copper or any recyclable materials at Camp Lejeune.

24. **Landfill Manager** was re-interviewed to ascertain his knowledge of the theft of gas, diesel fuel, gravel, refrigerators or wheel rims. **Landfill Manager** provided a written statement saying that he had no knowledge of refrigerators or wheel rims being delivered to the landfill or taken from the landfill. He was aware of the allegation that **Government Landfill Driver #2** had been seen attempting to siphon fuel from a government dump truck's fuel tank, that allegation having been brought to his attention by **Environmental Protection Specialist** on July 8, 2011. **Landfill Manager** stated that there was no proof of the incident and that he had no knowledge of anyone stealing fuel. **Landfill Manager** further stated that the dump trucks used at the landfill are old ones provided by DRMO after they have been turned in to DRMO when they are no longer needed by the units to which they were originally assigned. According to **Landfill Manager**, the DRMO dump trucks, which use diesel fuel, cannot be programmed back into the

system and, thus, cannot be issued fuel keys. As a result, the DRMO dump trucks are fueled through other means, such as having bulk fuel trucks fill them. The DRMO dump trucks sometimes break down and are left out of service for months. Regarding the theft of gasoline, **Landfill Manager** stated that the landfill has several pieces of equipment that use gasoline, but which cannot be driven to the fuel farm for refueling. For that reason, landfill employees will fuel these pieces of equipment by using 5-gallon cans that they fill at the fuel farm. **Landfill Manager** denied any knowledge of anyone stealing gasoline. Regarding the theft of gravel, **Landfill Manager** stated that the gravel at the landfill is produced by a contractor under a service contract for wood grinding and concrete crushing. The contractor crushes the concrete to produce a size approved by the North Carolina Department of transportation, after which the contractor is free to sell or dispose of the gravel as it sees fit. **Landfill Manager** denied knowledge of the theft of gravel.

25. NCIS agents interviewed **Project Manager/Site Superintendent, Murphy Environmental & Land Management LLC**, who stated that his company is the only one used by Camp Lejeune to grind demolished, discarded concrete into gravel. Murphy is able to sell some of the gravel commercially for \$2.11 per ton, while the remaining material is waste, cannot be sold commercially, and is sometimes given at no cost to the landfill, landfill employees, or units aboard Camp Lejeune or Marine Corps Air Station New River, NC. **Project Manager/Site Superintendent, Murphy Environmental & Land Management LLC** stated that he was not aware of any gravel being stolen from his company.

26. NCIS agents interviewed **Owner, Murphy Environmental & Land Management LLC**, who stated that his company makes three types of gravel at Camp Lejeune, one type that can be sold commercially and two lesser types which cannot be sold, but which he donates to the landfill, landfill employees, and units at Camp Lejeune and Marine Corps Air Station New River, NC.

27. **Manager, Foss Recycling, Inc.** was interviewed regarding whether it would be possible to determine what types of scrap metal had been sold to the company by customers. **Manager, Foss Recycling, Inc.** stated that once a truckload of metal is weighed, it is commingled with other metals in the scrap yard of the same type. Unless a person knew exactly what item to look for and where it was dumped, there would be no way find it.

## **B. Findings**

1. The evidence substantiated that **Government Landfill Driver #2** and **Contractor Landfill Driver #1** misappropriated scrap metal from within the Camp Lejeune Landfill/Recycling Center, sold it to a commercial scrap processor, and converted the proceeds to personal use. **Government Landfill Driver #2** and **Contractor Landfill Driver #1** were both observed and photographed doing so on June 30, 2011 by NCIS agents. The business records of the scrap processor, Foss Recycling, Inc., corroborate that transaction, as well as numerous previous

transactions in which **Government Landfill Driver #2** and **Contractor Landfill Driver #1** sold scrap metal to Foss Recycling, Inc. In addition, during interrogation both **Government Landfill Driver #2** and **Contractor Landfill Driver #1** admitted to having misappropriated and sold scrap metal on numerous occasions, as shown in the Foss business records.

a. The evidence did not substantiate that other individuals misappropriated scrap metal for personal use. **Government Landfill Driver #2** and **Contractor Landfill Driver #1** each identified the other as having misappropriated and sold scrap metal, and **Government Landfill Driver #2** additionally named several other Camp Lejeune employees as either misappropriating scrap metal, receiving the proceeds, or both. The named employees, as well as numerous other employees, were interviewed. None of those interviewed claimed to have direct knowledge of the theft of scrap metal, although some stated that they had indirect knowledge of the theft of scrap metal or of the theft of other items.

i. **Government Landfill Driver #3**, who made the original complaint to NCIS, stated that he never actually saw any thefts. He stated that he saw **Government Landfill Driver #2**, **Contractor Landfill Driver #1**, and **Government Landfill Driver #5** stage metal and load it into **Government Landfill Driver #2's** privately-owned truck in the presence of **Government Landfill Driver #6**, who **Government Landfill Driver #3** stated was not involved in theft. **Government Landfill Driver #6** denied observing this. Although independent evidence substantiates that **Government Landfill Driver #2** and **Contractor Landfill Driver #1** misappropriated metal and sold it for personal gain, there is no independent evidence implicating **Government Landfill Driver #5**.

ii. **Former Contractor Landfill Driver** stated that he had heard rumors about theft of scrap metal, but he denied any direct knowledge of such thefts.

iii. **Landfill Manager** stated that he was aware that employees had taken small items such as chairs and tables before he became the landfill manager, but he denied approving or being aware of employees taking metal to sell.

iv. **Government Landfill Driver #5** admitted taking small items such as a vacuum cleaner, but he denied direct knowledge of thefts occurring at the landfill.

b. The evidence did not substantiate that **Landfill Manager** authorized employees to misappropriate scrap metal to sell or that he shared in the proceeds of sales.

i. **Government Landfill Driver #2** claimed that **Landfill Manager** authorized the misappropriation of scrap metal, received some of the proceeds of sales from

both him and **Contractor Landfill Driver #1**, and distributed the proceeds among several other employees.

ii. **Contractor Landfill Driver #1**, while admitting misappropriating and selling scrap metal, stated that he and **Government Landfill Driver #2** split the proceeds and that he spent his share on paying bills and child support.

iii. **Government Landfill Driver #3**, who made the original complaint to NCIS, stated that he speculated that **Landfill Manager** received a share of the proceeds because **Landfill Manager** bought a house and land despite complaining that he did not have any money.

iv. **Landfill Manager** denied authorizing or being aware of employees taking metal to sell.

v. There is no independent evidence, such as the Foss business records, to substantiate that **Landfill Manager** authorized or received the proceeds from the misappropriation of scrap metal. The only evidence that he did so is the speculation by **Government Landfill Driver #3** and the allegation by **Government Landfill Driver #2**.

2. The evidence partially substantiated the misappropriation of copper wire.

a. Misappropriation of copper wire, to the extent that copper wire might have been mixed among other types of stolen scrap metal, was substantiated. As noted above, the investigation substantiated that **Government Landfill Driver #2** and **Contractor Landfill Driver #1** misappropriated scrap metal and sold it for personal gain. The records of Foss Recycling, Inc. show that scrap metal was sold by the truckload by weighing the laden truck, subtracting the weight of the truck after dumping, and paying for the contents by the pound. The company records do not differentiate among types of metal that were purchased by the truckload, and **Manager, Foss Recycling, Inc.**, stated that once a truckload or scrap metal is purchased from a customer, the various types of metal are commingled with similar types and cannot be identified afterward.

b. **Government Landfill Driver #2** claimed that **Former Contractor Landfill Driver** and **Government Landfill Driver #3** stole copper wire, but neither witness interviews nor independent evidence confirmed that allegation. **Government Landfill Driver #2** denied stealing copper wire.

c. **Environmental Protection Specialist**, stated that although he was not aware of the theft of copper wire, he was aware that electrical work at Camp Lejeune resulted in large volumes of scrap copper wire that was recycled at the landfill.

3. Misappropriation of wheel rims was not substantiated.

a. The whistleblower alleged that **Government Landfill Driver #2** stole several dumpsters full of wheel rims and that **Landfill Manager** informed the whistleblower that **Government Landfill Driver #2** took the rims to Kinston, North Carolina to sell. NCIS interviewed numerous Camp Lejeune employees regarding possible thefts of government property at Camp Lejeune, but none of them, including **Government Landfill Driver #3**, the original NCIS complainant, claimed to have information regarding theft of wheel rims.

b. **Landfill Manager**, Landfill Manager, provided a written statement in which he claimed to have no knowledge of any wheel rims being delivered to or taken from the landfill.

c. ***Government Landfill Driver #2** denied stealing wheel rims.*

d. Employees who were asked whether they had knowledge of the theft of wheel rims denied having such knowledge.

4. Misappropriation of dorm-size refrigerators was not substantiated.

a. The whistleblower alleged that **Government Landfill Driver #2**, **Government Landfill Driver #4**, the person who might be **Government Landfill Driver #1**, and **Contractor Landfill Driver #1** moved government-owned dorm-size refrigerators in open top containers and sold them at an auction or garage sale. Although the whistleblower stated that he had actually seen the refrigerators moved, he apparently did not claim to have seen the refrigerators taken to or sold at either an auction or garage sale. None of the Camp Lejeune employees NCIS interviewed, including **Government Landfill Driver #3**, the original NCIS complainant, claimed to have information regarding theft of refrigerators.

b. **Government Landfill Driver #4** denied having knowledge of the theft of refrigerators.

c. **Government Landfill Driver #1** denied having knowledge of the theft of any items at Camp Lejeune.

d. **Government Landfill Driver #2** denied stealing dorm-size refrigerators.

e. **Landfill Manager** provided a written statement in which he claimed to have no knowledge of any refrigerators being delivered to or taken from the landfill.

5. Misappropriation of diesel fuel or gasoline was not substantiated.

a. As noted above, although there is a surveillance camera at the fuel farm that might have identified persons stealing diesel fuel or gasoline at that location, the camera recycles the video every 30 days and by the time NCIS sought the videos, it had overwritten any images that might have depicted thefts at that location.

b. With two exceptions, all the Camp Lejeune employees who were interviewed denied knowledge of theft of diesel fuel or gasoline.

i. **Government Landfill Driver #3** claimed to have seen **Government Landfill Driver #2** and **Government Landfill Driver #5** at the fuel farm refueling a government truck and then filling numerous 5-gallon cans in the back of the truck.

(A) **Government Landfill Driver #5** denied knowledge about the theft of fuel. He recalled what might be the same incident described by **Government Landfill Driver #3**, when he was refueling a government truck and, while the fuel tank was being filled, he jumped into the back of the truck to secure some loose propane tanks. According to **Government Landfill Driver #5**, he observed **Government Landfill Driver #3** staring at him during this event. In addition, **Government Landfill Driver #5** stated that on occasion he would fill 5-gallon cans at the fuel farm with which to refuel gasoline-powered equipment at the landfill.

(B) **Landfill Manager** stated that employees using gasoline-powered equipment at the landfill to refuel that equipment using 5-gallon cans that they fill at the fuel farm.

(C) **Government Landfill Driver #2** denied stealing fuel.

(D) **Government Landfill Driver #3's** observation would not establish that **Government Landfill Driver #2** and **Government Landfill Driver #5** actually stole the fuel that was allegedly being placed in the 5-gallon cans. Placing fuel in the cans would be consistent with the statements of **Government Landfill Driver #5** and **Landfill Manager** that gas was often placed in 5-gallon cans to refuel equipment in use at the landfill.

ii. **Environmental Protection Specialist** stated that he interrupted **Government Landfill Driver #2** with a hose connecting the fuel tank of a government dump truck with a gas can, utilizing an electronic siphoning device. Although

**Environmental Protection Specialist** was not able to tell which way the fuel was flowing, he suspected that **Government Landfill Driver #2** intended to steal fuel and reported the incident to **Landfill Manager**.

(A) **Landfill Manager** confirmed that **Environmental Protection Specialist** reported the incident to him on July 8, 2011, but stated that there was insufficient evidence that **Government Landfill Driver #2** was stealing fuel. **Landfill Manager** also stated that the trucks the landfill received from DRMO were unable to be refueled in the normal way by taking them to the fuel farm, because they were no longer eligible to be issued fuel keys. Based on **Environmental Protection Specialist's** observations, it is not clear whether what he saw was **Government Landfill Driver #2** taking fuel from a dump truck or whether it was **Government Landfill Driver #2** placing fuel in a dump truck.

(B) As noted above, **Government Landfill Driver #2** denied stealing fuel.

6. Misappropriation of gravel was not substantiated.

a. With one exception, none of the Camp Lejeune employees admitted to having knowledge of theft of gravel, including **Government Landfill Driver #3**, the original NCIS complainant, who stated that he had no knowledge of theft of gravel.

i. **Environmental Protection Specialist**, stated that there was a large pile of gravel at the landfill one afternoon when he left work, but the pile was much smaller the next day.

ii. **Landfill Manager** stated that the gravel is produced by a contractor under a contract by which the contractor crushes concrete to produce the gravel, after which the contractor may sell or otherwise dispose of the gravel as it sees fit.

iii. **Owner, Murphy Environmental & Land Management LLC and Project Manager/Site Superintendent, Murphy Environmental & Land Management LLC** stated that their company crushes the gravel from concrete, sells some of the gravel thus produced and gives some of it away. They were not aware of any of the company's gravel being stolen.

iv. Thus the gravel was not government property, and there was no evidence that any of it had been stolen.

v. **Government Landfill Driver #2** denied stealing gravel.

7. Misappropriation of dumpster bottoms was not substantiated.
  - a. None of the witnesses, including the original NCIS complainant, **Government Landfill Driver #3**, purported to have any knowledge of theft of dumpster bottoms.
  - b. **Government Landfill Driver #2**, who is the person alleged to have stolen dumpster bottoms, denied doing so despite having admitted to stealing large amounts of scrap metal.
8. Misappropriation of motor tubes was not substantiated.
  - a. None of the witnesses, including the original NCIS complainant, **Government Landfill Driver #3**, purported to have any knowledge of theft of motor tubes.
  - b. **Government Landfill Driver #2**, who is the person alleged to have stolen the motor tubes, denied doing so despite having admitted to stealing large amounts of scrap metal.

### C. Corrective actions taken

1. Regarding potential criminal prosecution for the substantiated misappropriation of scrap metal by **Government Landfill Driver #2** and **Contractor Landfill Driver #1**, in violation of 18 U.S.C. 661, the Special Assistant U.S. Attorney (SAUSA), Camp Lejeune, declined prosecution because there was insufficient evidence that **Government Landfill Driver #2** and **Contractor Landfill Driver #1** were on notice that the government intended to retain ownership of the materials. In a follow-up meeting with NCIS agents on November 8, 2012, the SAUSA reviewed the investigative findings that had occurred since he first declined prosecution. He determined that there was insufficient evidence to prosecute **Government Landfill Driver #2, Contractor Landfill Driver #1, The Cyber Security Division, Government Landfill Driver #1, Government Landfill Driver #3, Landfill Manager, Environmental Protection Specialist, Government Landfill Driver #5, Government Landfill Driver #4, Heavy Equipment Operator #2, Heavy Equipment Operator #1, Contractor Fuel Truck Driver #1, Contractor Fuel Truck Driver #3, Contractor Fuel Truck Driver #4, Contractor Fuel Truck Driver #2, Government Landfill Driver #6, Former Contractor Landfill Driver, Supervisor, Defense Reutilization and Marketing Office or Deputy Public Works Officer**. The SAUSA's stated reasons were:
  - a. There was a lack of evidence of identifiable government property.
  - b. There was no corroboration of the original complaint made by **Government Landfill Driver #3**.

c. There were allegations from some witnesses that **Government Landfill Driver #3** was involved.

d. **Government Landfill Driver #3** made subsequent statements that were inconsistent with his original complaint and that recanted some of his allegations.

2. To ensure that it is clear to Camp Lejeune employees that the government retains ownership of materials that are intended for recycling, the Commanding Officer issued a policy letter prohibiting the removal of items that have been delivered to the Landfill/Recycling Center or placed in solid waste or recycling collection containers at Camp Lejeune.

3. During the NCIS investigation, on September 28, 2011 **Government Landfill Driver #2** threatened **Government Landfill Driver #3**, the original NCIS complainant, that he would break his legs if he (**Government Landfill Driver #2**) lost his job. As a result, the SAUSA charged **Government Landfill Driver #2** with communicating a threat, for which he was convicted on February 8, 2012 in the U.S. District Court for the Eastern District of North Carolina.

4. **Government Landfill Driver #2**, who was substantiated as having misappropriated scrap metal, was removed from his government position at Camp Lejeune.

5. **Contractor Landfill Driver #1**, who was substantiated as having misappropriated scrap metal, was terminated from employment by contractor MANCON.

6. Upon reviewing the results of the NCIS investigation, command representatives of Marine Corps Base Camp Lejeune determined not to initiate disciplinary action against additional employees. That determination was made because the substantiated allegations showed misconduct solely on the part of **Government Landfill Driver #2** and **Contractor Landfill Driver #1**. Although there were allegations against several other employees, none of those allegations were supported by unequivocal first-hand testimony, independent documentary evidence or incriminating admissions by those employees. Disciplinary actions against additional employees were not warranted because they would not have met the "preponderance of evidence" standard of 5 C.F.R., Chapter 75.

7. **Government Landfill Driver #2** and **Contractor Landfill Driver #1** were referred to the Department of the Navy Acquisition Integrity Office (AIO) for potential administrative action, specifically suspension or debarment from government contracting. The Assistant General Counsel (Acquisition Integrity), AGC (AI), considered both cases and determined that suspension and/or debarment was not warranted in either case for a number of reasons, including the fact that there was conflicting evidence concerning whether the removal of the items was impermissible during the period when **Government Landfill Driver #2** and **Contractor Landfill Driver #1** were collecting the metal. Additionally, in considering the severity of the misconduct, the AGC (AI) determined that although **Government Landfill Driver #2** and

**Contractor Landfill Driver #1** both took advantage of their access to Government property, there was no evidence that either otherwise manipulated Government procurement or a contractor's participation in Government procurement.

8. The substantiated allegations against **Government Landfill Driver #2** and **Contractor Landfill Driver #1** for misappropriation of scrap metal are based, in part, on Foss Recycling, Inc. records reflecting that during the years 2009 through June 2011 the two men received a total of nearly \$50,000 in exchange for the scrap metal. The government could seek to recoup those funds from **Government Landfill Driver #2** or **Contractor Landfill Driver #1** through administrative setoff against any debts the government might owe to either of them, such as unpaid salaries or government pensions. **Government Landfill Driver #2** was a government employee prior to his removal but is not owed any salary that could be set off against the funds he received for the misappropriated scrap metal. **Contractor Landfill Driver #1** was a contractor employee prior to his termination and is not owed any salary by the government that could be set off against the funds he received for the misappropriated scrap metal. Neither **Government Landfill Driver #2** nor **Contractor Landfill Driver #1** is currently receiving a government pension that could be used for setoff. Although **Government Landfill Driver #2** is not currently drawing a government pension, he was employed by the government for a sufficient number of years to have deferred vested pension eligibility under the Federal Employees Retirement System , beginning in 2015 when he reaches age 62. At that time he could apply to the Office of Personnel Management (OPM) to begin receiving a pension. In addition, both **Government Landfill Driver #2** and **Contractor Landfill Driver #1** might in the future be eligible to receive federal income tax refunds. This matter has been referred to the Marine Corps Installations Command to consider whether it is appropriate to initiate the issuance of debt claims to **Government Landfill Driver #2** and **Contractor Landfill Driver #1**. If those claims are adjudicated favorably to the government through the comptroller appeals process, the claims will be filed with OPM and the Internal Revenue Service to offset government pension payments in the case of **Government Landfill Driver #2** and federal tax refunds in the cases of both **Government Landfill Driver #2** and **Contractor Landfill Driver #1**.

## Appendix A

### Persons interviewed:

1. Deputy Public Works Officer
2. Environmental Protection Specialist
3. Contractor Landfill Driver #1
4. Government Landfill Driver #1
5. Heavy Equipment Operator #1
6. Owner, Murphy Environmental & Land Management LLC
7. Special Assistant United States Attorney
8. Government Landfill Driver #2
9. Contractor Fuel Truck Driver #1
10. Landfill Material Identifier
11. Government Landfill Driver #3
12. The Cyber Security Division
13. Project Manager/Site Superintendent, Murphy Environmental & Land Management LLC
14. Landfill Manager
15. Former Contractor Landfill Driver
16. Government Landfill Driver #4
17. Manager, Foss Recycling, Inc.
18. Heavy Equipment Operator #2
19. Contractor Fuel Truck Driver #2
20. Contractor Fuel Truck Driver #3
21. Government Landfill Driver #5
22. Government Landfill Driver #6
23. Supervisor, Defense Reutilization and Marketing Office
24. Contractor Fuel Truck Driver #4

## Appendix B

### Potentially misappropriated materials:

1. Scrap metal
2. Copper wire
3. Steel or steel beams
4. Gravel
5. Large vehicle wheels
6. Metal motor tubes or casings
7. Dorm-size refrigerators
8. Gasoline
9. Diesel fuel
10. Dumpster bottoms