



**U.S. Department of
Transportation**

Office of the Secretary
of Transportation

The Inspector General

Office of Inspector General
Washington, D.C. 20590

February 22, 2007

The Honorable Steve Israel
U.S. House of Representatives
150 Motor Parkway, Suite 108
Hauppauge, NY 11788

Dear Representative Israel:

This responds to your letter of June 15, 2006 (copy enclosed) and confirms the telephone conversations of February 16, 2007 and September 26, 2006 between your district office staff and the Special Agent-in-Charge of my New York investigations staff, regarding concerns raised by your constituent, Philip C. Nolan, Jr, now Islip Town Supervisor. Mr. Nolan contacted your office, citing a June 9, 2006 *Newsday* article entitled "Risk Near Runway" and requested an investigation into the safety and propriety of the construction of an apron outside the Southwest Airlines terminal at MacArthur Airport in Islip, New York.

The *Newsday* article reported, in part, that the apron, constructed in 2004, had developed cracks and posed a potential safety problem due to the possible ingestion of foreign object debris (FOD) into aircraft engines. It was also noted that the work was part of an \$82 million airport expansion project and that the contractor, Pav-Co Asphalt, a firm facing Federal fraud charges for bid-rigging, worked on the job with the Scalamandre firm, whose founders plead guilty to criminal conduct in 2001.

As requested, our New York investigations office undertook a review of the matter, the results of which are provided below. Additionally, as will be discussed herein, your request has highlighted an apparent gap in regulations designed to protect Federal programs; this situation allows contractors debarred for criminal convictions or other reasons to work, nonetheless, on some airport projects.

Pending Litigation

The apron is the subject of pending civil litigation. In July 2006, Southwest Airlines filed a civil action, in U.S. District Court for the Eastern District of New York, against the general contractor, Pav-Co Asphalt, as well as its bonding company, seeking unspecified damages in relation to the performance of work on

the apron. Southwest Airlines hired Pav-Co Asphalt as the general contractor for the apron work. The Scalamandre firm was the subcontractor to Pav-Co Asphalt.

Safety Concerns

As aviation safety issues fall within the purview of the Federal Aviation Administration (FAA), we made a formal referral to the FAA for their review and appropriate action. The FAA assigned agency engineers to assess the conditions of the apron and an FAA engineer specializing in pavement has inspected the apron in question. The Town of Islip and Southwest Airlines also retained engineering consultants to examine the apron.

Additionally, we were advised that MacArthur Airport officials and Southwest Airlines have taken steps to mitigate the damage to the apron via sealing of the cracks and regularly inspecting it for FOD that could be ingested by an aircraft engine. The FAA has reported that, "aircraft can still operate on the apron as long as the airport continues with the maintenance program to seal the cracks and sweep the pavement to remove all FOD." The FAA is currently in the process of reviewing independent engineering test results.

Alfred Werner, the Town's Commissioner of Aviation, advised the FAA by letter, dated June 23, 2006, that the Airport and Southwest Airlines are working cooperatively to address the situation and that, "the apron is safe and will continue to be safe."

Funding of East-side Apron Expansion

Contrary to media reports, neither the U.S. Department of Transportation (DOT) nor the FAA funded the east-side apron expansion. This apron is primarily used by Southwest Airlines. It is the airline, not the Town or FAA, which hired Pav-Co Asphalt as its general contractor for the apron work with the Scalamandre firm as its sub-contractor.

Southwest Airlines actually incurred all the costs associated with the apron's design and construction, with the expectation of reimbursement by the Town from Passenger Facility Charge (PFC) revenue. PFCs are ticket fees that airports may impose, which are collected by carriers and remitted to the airport. Although the imposition of PFCs requires FAA approval, the funds are not Federal grant funds such as Airport Improvement Program (AIP) grants. Rather, they are considered local revenue generated from passenger ticket sales. Airports are permitted to use this revenue to fund a broad array of projects that enhance safety, security or capacity, reduce noise, or increase air carrier competition.

Airports must seek FAA approval both to levy PFCs and to use PFC revenues for specified projects. With respect to the latter, the FAA determines whether a project is eligible, meets a program objective, and is adequately justified, which is generally assessed in the context of how well a proposed project meets the program's objectives.

In June 2005, the FAA approved the Town of Islip's request to apply PFC revenue to offset costs associated with many projects at the airport, including the construction of the apron in question. Although some of the projects identified in the Town's request proposed the utilization of a combination of Federal, state, and PFC funding, the apron expansion project sought 100 percent funding via PFC revenue.

The comptroller for the Town of Islip has advised us that to date, no PFC funds have been released for the apron's cost. Airport authorities have advised both the FAA and our office that the Town of Islip will not release any PFC monies to Southwest Airlines until this matter is satisfactorily resolved, including a pending cost audit by the Town and a determination by the FAA that the pavement meets FAA specifications.

We share your concern that both the prime contractor on this project and its subcontractor have been the subject of Federal criminal charges, albeit unrelated to the airport project. As a result of an investigation in which our office was a significant participant, in 2001 the founders of the Scalamandre firm pled guilty to criminal conduct and were accordingly debarred by DOT from Federally funded projects. The debarment ran from April 2002 to April 2005, meaning that it was in effect during the period in which that firm as subcontractor performed the apron work. The prime contractor, Pav-Co Asphalt, however, was neither criminally charged nor debarred when the contract was awarded and performed. It was first indicted in December 2005 and suspended in March 2006, both actions occurring long after the apron work was completed in 2004.

As noted above, however, the apron expansion project involves potential reimbursement from PFC funds, rather than the expenditure of Federal funds. Unlike the restrictions regarding the use of Federal grant money there presently is no provision in the Suspension and Debarment regulations specifically excluding debarred companies from PFC funded work. We have conferred with DOT and FAA officials who concluded that the FAA lacks the authority to prevent airports from paying PFC funds to debarred companies.

Under this state of affairs, the particular source of funding may dictate who is eligible to work on a public infrastructure project. Contractors debarred by the Federal government are excluded from projects funded, even in part, by Federal grants, but can still work on projects funded instead by PFCs. This is significant because of the large number of airport projects nationwide financed by PFCs without Federal grants.

For example, of the 838 projects approved by the FAA in FY 2006 to receive PFC funding, 194 are to be funded solely by PFCs, and 93 others via a combination of PFCs and other non-AIP funding sources. Moreover, of the \$2.7 billion in anticipated PFC revenues, airport sponsors estimate that approximately two-thirds will go for projects funded either solely by PFCs or via a combination of PFC and other non-AIP funding sources.

Moreover, fraud can and does occur on airport projects. During the past 5 years, our office has investigated 20 cases nationwide concerning allegations of fraud pertaining to airport construction and noise abatement projects, resulting to date in 23 indictments, 18 convictions, and fines and financial recoveries exceeding \$4.5 million.

It is expected that during this session, Congress may consider FAA Reauthorization legislation and the gap in suspension and debarment protection may be an area it wants to address as part of any PFC program modifications. If so, our office would be happy to provide technical assistance with curative legislative language.

In light of the foregoing, absent new, actionable information, we plan no further inquiries regarding this matter. If I can answer any questions or be of further assistance, please contact me at (202) 366-1959, or my Deputy, Todd J. Zinser, at (202) 366-6767.

Sincerely,



Calvin L. Scovel III
Inspector General

cc: Andrew Lederman
Senator Charles E. Schumer
Washington, D.C. Office

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www.house.gov/israel

June 15, 2006

Hon. Todd J. Zinser
Acting Inspector General
US Department of Transportation
400 7th St. S.W., Room 9210
Washington, D.C. 20590

Dear Mr. Zinser:

I commend to your attention the enclosed correspondence from my constituent, Mr. Philip C. Nolan, Jr., requesting a formal investigation of allegations of misuse of federal government transportation funding at MacArthur Airport in Islip, New York.

As you will see from the attached letter and article from *Newsday*, potentially hazardous cracks have formed on the apron at MacArthur Airport, which might cause the closure of four gates. Initial reports indicate that the apron, which was funded at least in part with federal monies, may not have been developed according to the appropriate standards.

Obviously, I am concerned that about the safety of my constituents and the entire flying public at MacArthur Airport, as well any potential improprieties with the use of federal funds. For this reason, I commend this case to you attention and request that you give it your full and fair consideration.

Sincerely,

A handwritten signature in black ink that reads "Steve Israel". The signature is fluid and cursive, with a long, sweeping tail that extends to the right.

Steve Israel
Member of Congress

From: Holmberg, Tracie
Sent: Wednesday, June 14, 2006 2:41 PM
To: 'brian.elson@dot.gov'
Subject: FW: MacArthur Airport

Dear Mr. Elson

The below letter was sent to my office from a former elected official in Congressman Israel's district. I would appreciate if you could address his concerns regarding misuse of federal funds at Islip MacArthur Airport, and report your finding to me in a timely manner.

Sincerely,
Tracie Holmberg
Office of Congressman Steve Israel
631-951-2210

From: Mfspana@aol.com [mailto:Mfspana@aol.com]
Sent: Wednesday, June 14, 2006 7:51 AM
To: Holmberg, Tracie
Subject: MacArthur Airport

Philip C. Nolan, Jr.
130 Saint Mark's Lane
Islip, New York 11751-4119
(631) 581-8518

June 13, 2006

Hon. Steve Israel
Member of Congress
432 Cannon House Office Bldg.
Washington, DC 20515

Dear Congressman Israel:

I am writing to ask that the Office of the Inspector General for the U. S. Department of Transportation conduct an investigation into the safety and propriety of the construction of runway aprons at Islip MacArthur Airport.

The aprons in question are adjacent to gates 5, 6, 7, and 8 which were recently added as part of an \$82 million expansion of the airport, the second phase of which is ongoing. Recent press accounts have raised serious questions about quality control standards. The principal paving contractor is also reported to be under investigation by the Suffolk County District Attorney's Office. See the enclosed **Newsday** story of June 9, 2006.

According to qualified aviation sources, cracks are developing in the apron significant enough for foreign debris to become lodged, creating a hazard to large commercial aircraft and especially the Boeing 737s that frequent MacArthur's runways.

It is very important that a timely investigation evaluate this potential hazard, initiate steps to correct it as soon as possible, and assess responsibility for any malfeasance. In addition, safeguards must immediately be put into place at the airport while this developing hazard is evaluated and corrected.

Your consideration and assistance is greatly appreciated.

Respectfully,

Philip C. Nolan, Jr.

Enclosure to follow.

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MacArthur repair may shut terminal

BY SANDRA PEDDIE AND EDEN LAIKIN
INVESTIGATIONS TEAM

June 10, 2006

Repairing potentially hazardous cracks in the apron at MacArthur Airport could mean temporarily closing down the recently expanded Southwest Airlines terminal and tearing up parts of the pavement, Islip officials said Friday.

Passenger service would not be affected, however, because airline traffic will be diverted to four new gates on the west side of the airport that are due to open in July.

"Yes, there is a problem out there," Airport Commissioner Alfred Werner said of the cracks. "We're all on the same page with that. We've just got to figure out how to fix it."

Islip Councilwoman Pamela Greene said, "The timing of it is extremely important because Southwest is moving forward on the other gates. If it's a bad situation, we can't make it worse, adding more traffic."

Southwest spokeswoman Whitney Eichinger said the repairs would not affect service.

About 32 Southwest flights to eight cities depart daily from the airport, located in Ronkonkoma.

The \$12.4 million apron, which covers the area where planes pull up to the terminal, was completed in 2004. Cracks began appearing in November 2005. By comparison, the apron that was installed when the airport was first built in 1966 is still in good shape, Werner said.

"They'll probably have to tear at least part of it up to determine in which area the problem lies," said Geoff Frank, a specialist in runway safety from the University of Dayton Research Institute in Ohio.

Apron cracks are hazardous because debris lodged in them can get sucked into airplane engines, causing structural damage. In addition, moisture leaking through the cracks can weaken the support and undermine the stability of the apron, according to aviation consultants.

Sources familiar with the problem at MacArthur said the sub-base of the apron was supposed to be 9 inches thick, elevating the 15-inch concrete apron above ground level and protecting it from heaving and damage caused by frost. However, the sub-base was only 6 inches. That made it susceptible to freezing and thawing, leading to chipping and cracking.

Werner said airport workers had patched some cracks and that both Southwest and airport employees were regularly cleaning the apron of debris.

The apron, which borders Southwest gates 5 through 8 on the east side of the airport, was part of an \$82 million expansion project at MacArthur. Southwest added the first four gates in August 2004 and is completing four new gates on the west side of the airport.

The town is interviewing engineering firms that did not work on the apron construction to test it to determine the extent of the problem, Werner said.

Werner said town officials had been surprised by the cracks, but added, "We're going to get to the bottom of this."

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