

U.S. Department of Labor
Occupational Safety & Health Administration
Houston North Area OSHA Office
507 N. Sam Houston Pkwy E., Suite 400
Houston, TX 77060

2010 SEP 21 PM 1:47
OFFICE OF WHISTLEBLOWER PROTECTION DIVISION



Reply to the attention of Office of Whistleblower Protection

September 21, 2010

Regional Administrator (Al Armendarez)
U.S. Environmental Protection Agency
Fountain Place, 13th Floor, Suite 1
1445 Ross Avenue
Dallas, TX 75202-2733

Re: Southwest Oklahoma Development Authority [REDACTED]/6-3550-10-027

Dear Mr. Armendarez:

The above referenced matter is a complaint of discrimination under one or more of the Environmental Protection Agency statutes.

Enclosed is a copy of the complaint for your information and assistance. Complainant and Respondent are being notified of the investigative procedures of this office under separate cover.

If you require additional information regarding this matter, please do not hesitate to contact me at: 512-34-0590; or you may contact the Regional Investigator assigned to this matter (named below).

Sincerely,

A handwritten signature in cursive script, appearing to read "Anthony Incristi".

Anthony Incristi
Regional Supervisory Investigator

Regional Investigator:

Ronald C. Richards
OSHA Houston North Area Office
507 N. Sam Houston Pkwy E., Ste 400
Houston, TX 77060
Phone: (281) 591-2438 x244
Fax: (281) 999-7457
Email: Richards.ronald@dol.gov

Enclosure: Copy of complaint

KATZ, MARSHALL & BANKS, LLP

David J. Marshall, Partner
Direct Dial: 202-299-1146
marshall@kmblegal.com

By Electronic Mail
September 15, 2010

Ms. Nilgun Tolek
Director, Office of Whistleblower Protection
United States Department of Labor
Occupational Safety and Health Administration
200 Constitution Avenue NW
Washington, DC 20210

Re: [REDACTED] v. Southwestern Oklahoma Development Authority.

Dear Ms. Tolek:

[REDACTED] has retained the law firm of Katz, Marshall & Banks, LLP to represent him with respect to claims he holds against the Southwestern Oklahoma Development Authority ("SWODA") for violation of the anti-retaliation provisions of the Federal Water Pollution Control Act, Amendments of 1972, 33 U.S.C. § 1367 ("FWPCA") and the Safe Drinking Water Act, 42 U.S.C. § 300(j)-9(i) ("SDWA"). [REDACTED] was [REDACTED] after SWODA learned that he had reported illegal wastewater treatment practices on a golf course managed by SWODA to the Environmental Protection Agency ("EPA") and the Oklahoma Department of Environmental Quality ("DEQ"). These unsafe practices not only posed a hazard to golf course patrons and employees, but also resulted in the unlawful discharge of untreated wastewater into tributaries and reservoirs.

[REDACTED] repeatedly raised serious public health concerns with [REDACTED] and other DEQ-licensed wastewater treatment experts. Specifically, [REDACTED] complained that SWODA was violating numerous DEQ regulations for maintenance of a total retention lagoon system that runs through the golf course. These violations resulted in workers' and patrons' direct contact with contaminated effluent and the discharge of untreated or inadequately treated wastewater into the Clinton-Sherman Reservoir and an adjacent creek, which in turn flow into the Little Elk Creek, a source of drinking water for residents of Washita County.¹ Despite these complaints, SWODA took no corrective action for years.

[REDACTED] on August 1, 2010, Mr.

¹ See map of Clint-Sherman Industrial Airpark and surrounding areas, attached as Exhibit 1.

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[REDACTED]

In the spring of 2007, it became clear to [REDACTED] that the air park maintenance crew³ [REDACTED] were well aware of the environmental violations taking place on the course but had no intention of addressing them. In March and April 2007, the area was experiencing heavy rains, and the wastewater retention lagoons levels were rising, which posed a serious threat to public health. When [REDACTED] raised this issue with the air park maintenance crew, who again were DEQ-licensed, they expressed no concern and indicated that there was no plan in place in the event the retention lagoons continued to rise. On one weekend in April 2007, the lagoons were within inches of breaching. [REDACTED] attempted to contact the licensed personnel charged with managing the lagoons, but none returned his calls. [REDACTED]

[REDACTED]

[REDACTED] learned that someone had filed a complaint with the local DEQ office regarding the irrigation of the golf course during wet weather. [REDACTED] suspected that [REDACTED] and [REDACTED], who were charged with maintaining the wastewater facility and whom [REDACTED] had attempted to contact over the weekend, had made the complaint.⁴ Later that afternoon, however, [REDACTED] was vindicated. Along with [REDACTED] and [REDACTED], he met with [REDACTED]

[REDACTED]

[REDACTED] explained that he had attempted to contact the licensees to no avail, [REDACTED]. Apparently realizing the danger posed to the public health had [REDACTED] not taken action, [REDACTED] agreed that he had taken the proper action. No charges or fines were levied against SWODA, confirming that [REDACTED]'s understanding of the gravity of the situation and the threat to the surrounding areas was well-founded.

² [REDACTED]

³ The air park maintenance crew consists of all SWODA employees who work on the CSIA. They are charged with the complete upkeep of the grounds and buildings, including the golf course water and lagoon systems.

⁴ A person who was not familiar with the irrigation system would not be aware that the water being applied to the golf course was wastewater. That person would simply believe that there was a problem with the system. [REDACTED]

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[REDACTED]
[REDACTED] therefore continued to switch from waste water to city water in order to avoid contaminating the grounds and downstream bodies of water during irrigation of the golf course. Despite these efforts, discharges of untreated wastewater occurred nearly every time the lagoons rose due to heavy rains, since [REDACTED] and SWODA had failed to implement a plan to deal with such events.

While [REDACTED] thought for years that SWODA's handling of wastewater was likely illegal and harmful to humans and the environment, his suspicion was confirmed in March 2010 when [REDACTED]. The intense training he received presented information regarding water-borne pathogens, disinfection, illegal discharges and illegal ground applications. The information about the dangers of deficient wastewater treatment practices -- along with civil and criminal penalties for failing to comply with DEQ regulations -- made [REDACTED] realize that [REDACTED]

[REDACTED]

[REDACTED] had a meeting with [REDACTED] in which he explained in detail the various violations and resulting public health threats occurring on the golf course and the possible consequences of failing to remedy the problems. [REDACTED]

[REDACTED]

By the end of July 2010, the wastewater retention lagoons were again filling up due to heavy rains, [REDACTED]. The prospect of hundreds of thousands of gallons of wastewater breaching the lagoons and flowing downstream into public water -- not to mention across the golf course where patrons continued to play when the weather permitted -- was extremely alarming to [REDACTED]. He therefore reported these violations to the Oklahoma DEQ and the EPA on August 6, 2010.

[REDACTED]

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[REDACTED]

[REDACTED] asked why SWODA could not simply take the necessary steps to come into compliance with applicable rules and regulations, but [REDACTED] again warned [REDACTED] that he was "forcing [his] hand."

Also on August 10, 2010, [REDACTED] again witnessed SWODA employees watering the golf course heavily with untreated wastewater, [REDACTED] he complained about the practice. [REDACTED] witnessed inmates changing sprinkler couplers and getting soaked with the untreated wastewater. [REDACTED] he added that SWODA was again in violation of many environmental rules and regulations. [REDACTED] only response was that SWODA had been using the same practices for 20 years. One hour later, golfers were driving their carts past the sprinklers shooting untreated wastewater and splashing through puddles of the same. [REDACTED]

[REDACTED]

[REDACTED] These DEQ violations included, *inter alia*:

- Discharges of wastewater in violation of Okla. Admin. Code. § 252:619-1-4 (2005);⁵
- Applications of untreated wastewater to public use areas, i.e., the CSLA golf course, in violation of Okla. Admin. Code § 252:619-3-3 (2005);⁶
- Failure to maintain and secure the pump station for the total retention lagoon system in violation of Okla. Admin. Code § 252:619-3-1 (2005);⁷

⁵ See Exhibit 2, attached hereto.

⁶ See Exhibit 3, attached hereto.

⁷ See Exhibit 4, attached hereto.

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- Failure to ensure that the lagoons had a minimum of three feet of freeboard space – which ultimately resulted in the breaching of the lagoons during heavy rains – in violation of Okla. Admin. Code § 252:619-1-4(c) (2005);⁸
- Failure to ensure that the water flow measurement devices – necessary to determine how much wastewater or city water is being released – were in working order, in violation of Okla. Admin. Code § 252:619-1-4(g) (2005);⁹ and
- Cross-connections between potable water supplies and wastewater from the total lagoon retention system, in violation of Okla. Admin. Code § 252:619-1-4(c) (2005).¹⁰

[REDACTED], SWODA is liable under the anti-retaliation provisions of the Safe Drinking Water Act of 1974, 42 U.S.C. § 300j-9(i) (“SDWA”) and the Federal Water Pollution Control Act, Amendments of 1972, 33 U.S.C. § 1367 (“FWPCA”). [REDACTED]

[REDACTED]. Based on these facts, [REDACTED] requests that OSHA investigate this matter, issue a finding that SWODA has engaged in unlawful retaliation against him, and award an appropriate remedy.

Thank you for your assistance in this matter. Please do not hesitate to contact me or Michael Filoromo of this firm if you have any questions or concerns or need additional information for your investigation of [REDACTED] claims.

Sincerely,



David J. Marshall

Attachments

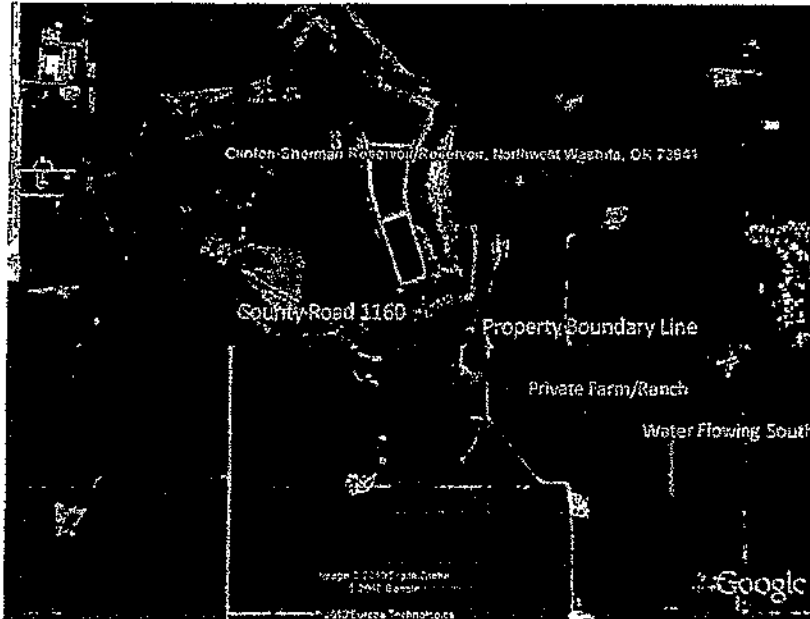
cc: [REDACTED]
Regional Director, OSHA Region 6 (by facsimile)

⁸ See Exhibit 5, attached hereto.

⁹ See Exhibit 6, attached hereto.

¹⁰ See Exhibit 7, attached hereto.

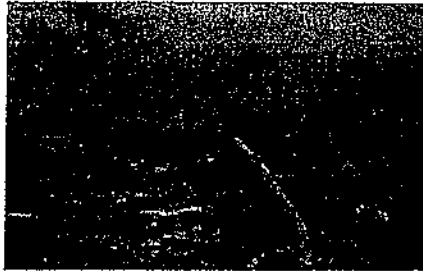
Exhibit 1
Path of water



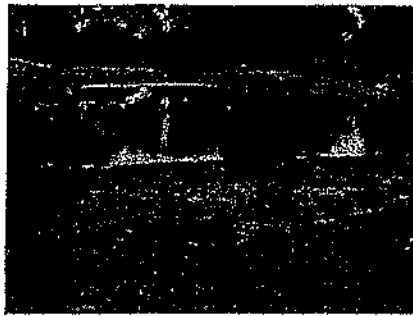
The Clinton-Sherman Reservoir, located on the golf course, is the primary source of water flowing south from the golf course. Above the word "Clinton" in the satellite view above is an overflow basin. A wide creek runs parallel to the reservoir and the three retention lagoons on the course. The creek in turn flows under County Road 1160 onto private property, where it forms a small pond. That pond runs into Little Elk Creek, which runs into Lake Hobart.

Exhibit 2

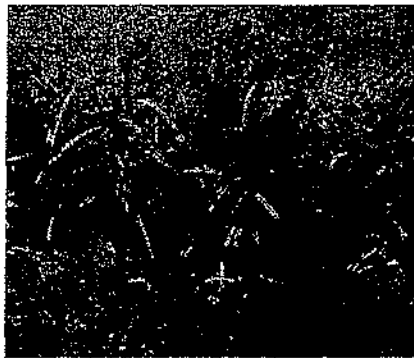
Illegal Discharges in violation of Okla. Admin. Code. § 252:619-1-4



This three-inch hose discharges untreated wastewater onto the "north pasture" described on p. 2. Due to numerous leaks in the hose, the water spewed in all directions.



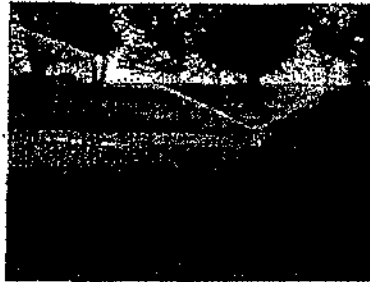
This pooled water in the north pasture consists of untreated wastewater. After a ground application or heavy rainfall, this wastewater flowed and pooled on the fairway and near the green of the fifth hole of the golf course, ultimately flowing downhill into a creek.



This is the valve used to drain one of the total retention lagoons – untreated due to a lack of chlorination and disinfecting – into a pond on the golf course.

Exhibit 3

Applications of untreated wastewater to public use areas in violation of Okla. Admin. Code § 252:619-3-3



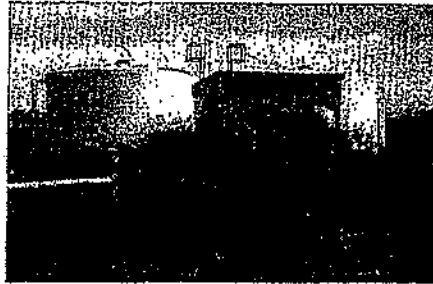
These two photos show the application of untreated wastewater to greens and fairways during normal business hours, which exposes employees and golfers to contact through wind-blown water and puddles.



Above is the pump house for the golf course, which lacks a chlorinator to disinfect water prior to irrigation. Prior to the DEQ investigation in August 2010, SWODA had purchased no chlorine since the summer of 2006. The barrel pictured above was part of that purchase, but due to the lack of a chlorinator, it went unused for four years.

Exhibit 4

Failure to maintain and secure the pump station for the total retention lagoon system in violation of Okla. Admin. Code § 252:619-3-1



The outside of the pump house is overgrown with weeds, making it a haven for snakes, spiders and scorpions. The white water tank on the right has been closed off since the summer of 2009 because of a leak. A large hole was dug with a backhoe and remains uncovered and unrepaired.



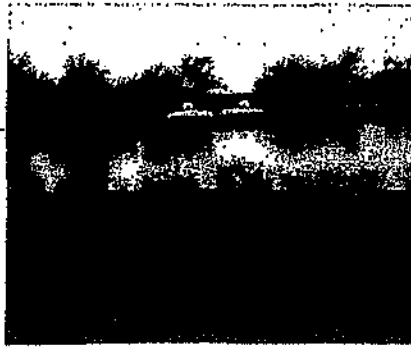
Inside the pump house, there are dangling, exposed electrical wires; a missing panel on a three-phase power supply; and a missing exhaust fan on the window. In the foreground is one of two water pumps. The second pump has been out of operation for 6-9 months.



The pump house is unsecured, with no working lock, gate or alarm system. There are no emergency procedures or maintenance schedules to ensure good working order.

Exhibit 5

Failure to ensure that the lagoons had a minimum of three feet of freeboard space in violation of Okla. Admin. Code § 252:619-1-4(b)



Here, the lagoon levels are well above the three-foot freeboard and -- as happened on several occasions -- are in danger of breaching in the event of heavy rains.

Exhibit 6

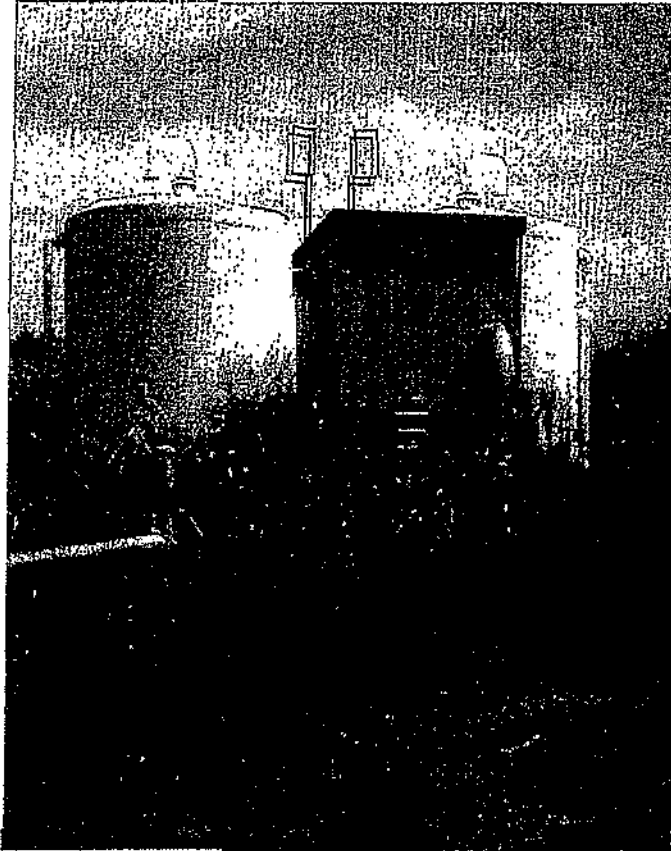
Failure to ensure that the water flow measurement devices are in working order, in violation of Okla. Admin. Code § 252:619-1-4(g)



There is no flow measurement device in the pump house. All releases of wastewater and city water are estimated.

Exhibit 7

Cross-connections between potable water supplies and wastewater from the total lagoon retention system, in violation of Okla. Admin. Code § 252:619-1-4(c)



In this area, wastewater from the lagoon shares a plumbing connection with city water. The 6-inch city water valves have been leaking badly since early 2009. If the valves are not closed very tightly – which they often are not – there is a clear danger of back-flow contamination as wastewater enters the city water pipes.