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



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 (b)(6) Privacy, (b)(7)(C) Enf. Privacy

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,

Anthony Incristi

Regional Supervisory Investigator

and Incress

Enclosure: Copy of complaint

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

09-20-2010

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

Line 1

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: v. Southwestern Oklahoma Development Authority.

Dear Ms. Tolek:

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"). **Source was terminated one week 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.

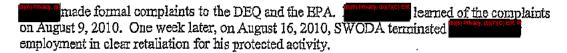
While an employee at SWODA, and other DEQ-licensed wastewater treatment experts. Specifically, complained that SWODA was violating numerous DEQ regulations for maintenance of a total retention lagoon system that runs through the golf course. These violations resulted in workers' and patrons' direct contact 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. Despite these complaints, SWODA took no corrective action for years.

Throughout his tenure, between took steps to bypass SWODA's standard procedures to ensure that it complied with the law and protected the public and SWODA employees. After becoming DEQ-licensed in April 2010, between the public and SWODA employees. After becoming DEQ-licensed in April 2010, between the proposed reforms. Realizing that the utilization of internal channels was fruitless, on August 1, 2010, between the proposed reforms.

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

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employment with SWODA began in March 2006, when he was hired to perform landscaping and maintenance work on a golf course that sits on the Clinton-Sherman Industrial Airpark ("CSIA") on land owned by the Oklahoma Space Industry Development Authority ("OSIDA") near Burns Flat, Oklahoma. Shortly after joining SWODA, began to learn about the total retention lageon system that runs through the course. With little experience in wastewater treatment, began to learn about the total retention lageon system that runs through the course. With little experience in wastewater treatment, began to learn about the total retention lageon system that runs through the course. With little experience in wastewater treatment, began to learn about the total retention lageon system that runs through the provided to him by coworkers who were wastewater specialists licensed by the DEQ. They told him that there were too types of water running through the golf course — treated city water and untreated wastewater. The purpose of the total retention lageon system was to filter the harmful toxins from the untreated wastewater through several stages of natural evaporation and chemical disinfectant.

By June 2006, however, it became apparent that the effluent water SWODA used to irrigate the golf course was untreated wastewater that had not undergone filtration, and begin to take steps to circumvent this process and protect employees and the public. As it was late spring, the golf course was being irrigated on a regular basis, and Oklahoma Department of Corrections immates were enlisted to change the irrigation sprinklers, which resulted in them having direct contact with the untreated wastewater. By July 2006, began instructing the immates to use rubber boots and heavy-duty rubber gloves when changing the irrigation sprinklers. He also instructed them to turn off the water pumps and wait a few minutes for the pressure to fall prior to changing the sprinklers so that there would be no contaminated water spewing from the sprinklers when they approached to change them. There were still golfers playing through the sprinklers, however, which believed posed a , still new to wastewater treatment, raised the issue with serious health risk. , a DEQ-certified coworker, who dismissed his concerns, telling him that that was simply the way things were done.

In Angust 2006, convinced that SWODA's procedures presented a danger to public health, began switching exclusively to city water when irrigating the golf course. This was accomplished by turning off the water pumps, closing the lagoon valves, and opening the city water valves. Now the golf course irrigation system was using clean city water, and there was no danger of infecting employees or golfers or polluting the downstream bodies of water through contaminated runoff. The natural evaporation caused by the summer sun and heat kept the retention lagoons at the required depth. During the fall, to keep the lagoon levels at the required depth, and his staff conducted a ground application in an area known as "the

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north pasture," where they pumped untreated wastewater into an area designated for such use.² He continued to take the extra steps necessary to ensure that only clean city water was used to irrigate the course.

In the spring of 2007, it became clear to that the air park maintenance crew³

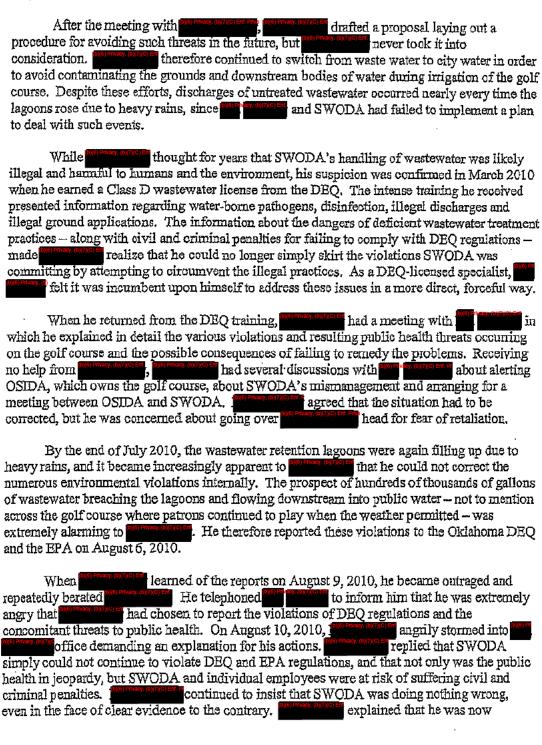
upon whom he had relied for advice, were well aware of the environmental violations taking place on the course but had no intention of addressing them. In March and April 2007, the area was experiencing heavy rains, and the wastewater retention lagoons levels were rising, which posed a serious threat to public health. When 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. [attempted to contact the licensed personnel charged with managing the lagoons, but none returned his calls. Faced with choice between releasing a controlled amount of wastewater onto the course through the sprinklers or allowing the lagoons to overflow -- resulting in a much larger-scale disaster -chose to run the irrigation sprinklers for a time to prevent a breach. On the next workday, learned that someone had filed a complaint with the local DEQ office regarding the irrigation of the golf course during wet weather. suspected that and , who were charged with maintaining the wastewater facility and whom had attempted to contact over the weekend, had made the was vindicated, Along with complaint.4 Later that afternoon, however, of the local DEQ office. , he met with discussed the complaint and asked why would turn on all of the sprinklers during a rainstorm, particularly in light of the fact that he was not licensed by the DEQ to make explained that he had attempted to contact the licensees to no avail, such decisions. and he asked whether he should simply have allowed the lagoons to breach. Apparently realizing the danger posed to the public health had not taken action, agreed that he had taken the proper action. No charges or fines were levied against SWODA, understanding of the gravity of the situation and the threat to the surrounding areas was well-founded.

Even in this area, however, was unable to properly conduct a ground application, as SWODA used a large, leaky hose connected to a water cannon in this area, resulting in the saturation of the soil in certain areas and the pooling of untreated wastewater.

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. The complaint, therefore, seems to have been a targeted attempt to discourage from taking independent action to safeguard public health.

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licensed by the state of Oklahoma	in wastewater treatment and was obliged to abide by
applicable rules and regulations.	responded in a hostile manner that property was
"forcing [his] hand," which	took to be an implicit threat to his continued
employment, occupios occupios asked w	hy SWODA could not simply take the necessary steps to come
into compliance with applicable ru	
that he was "forcing [his] hand."	

Also on August 10, 2010, 2010 again witnessed SWODA employees watering the golf course heavily with untreated wastewater, and, despite employment, he complained about the practice. Upon arriving at the golf course that morning, r witnessed inmates changing sprinkler couplers and getting soaked with the untreated and approached to ask him a question about the location of a particular valve. answered the question, but he added that SWODA was again in violation of many environmental rules and regulations. 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. Frustrated by management's refusal to take the necessary steps to come into compliance with regulations and protect the public health, posterior returned to his office. The next day, he returned to work with the intention of hand-watering the greens with city water using a 200-gallon tank, only to find that again had used wastewater for watering all of the greens.

After several days of sick leave, of

- 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 CSIA 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 Okia. Admin. Code § 252:619-1-4(b) (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

employment after he raised serious concerns about violations In terminating of DEQ wastewater treatment regulations that resulted in serious threats to public health and the contamination of downstream waterways, 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"). SWODA's significant financial harm, damage to his career and unlawful conduct has caused professional reputation, as well as anxiety and emotional distress. Based on these facts, 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

Sincerely,

David J. Marshall

Attachments

cc:

Regional Director, OSHA Region 6 (by facsimile)

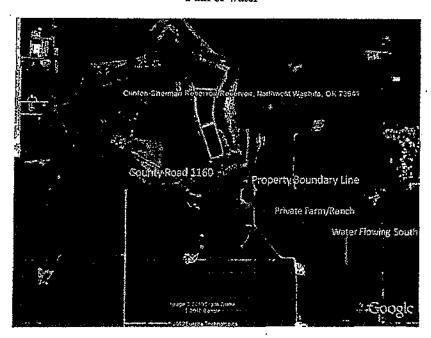
⁸ See Exhibit 5, attached hereto.

⁹ See Exhibit 6, attached hereto.

¹⁰ See Exhibit 7, attached hereto.

Line 1

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.

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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.

Line 1

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.

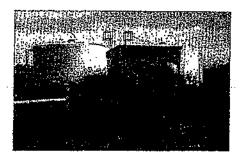


Above is the pump house for the golf course, which lacks a chlorinator to disinfect water prior to irrigation. Prior to the DEQ investigation in August 2010, SWODA had purchased no chlorine since the summer of 2006. The barrel pictured above was part of that purchase, but due to the lack of a chlorinator,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

Line 1

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.

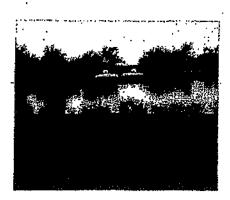


Inside the pump house, there are dangling, exposed electrical wires; a missing panel on a three-phase power supply; and a missing exhaust fan on the window. In the foreground is one of two water pumps. The second pump has been out of operation for 6-9 months.



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)



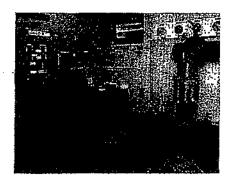
Here, the lagoon levels are well above the three-foot freeboard and - as happened on several occasions - are in danger of breaching in the event of heavy rains.

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Exhibit 6

Katz, Marshall & Banks, LLP

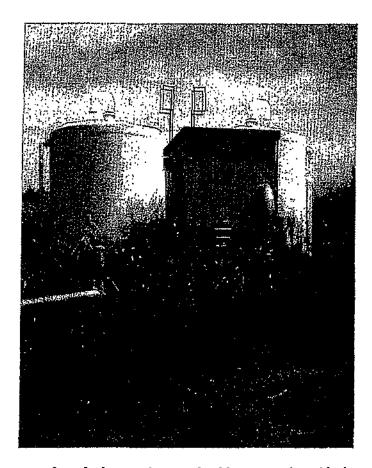
Failure to ensure that the water flow measurement devices are in working order, in violation of Okla. Admin. Code § 252:619-1-4(g)



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.