

**BEFORE THE UNITED STATES DEPARTMENT OF LABOR
OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION**

In the Matter of:

DAVID LEE

Complainant,

v.

**WASHINGTON RIVER PROTECTION
SOLUTIONS, INC.**

Respondent.

Case No. _____

COMPLAINT OF DISCRIMINATION

Complainant David Lee hereby files this Complaint of Discrimination against his employer, Washington River Protection Solutions, Inc., a contractor at the Hanford Nuclear Site, under the Toxic Substances Control Act, 15 U.S.C. § 2622, the Energy Reorganization Act, 42 U.S.C. § 5851, the Solid Waste Disposal Act, 42 U.S.C. § 6971, and alleges as follows:

I. JURISDICTION

1. This action was filed on June 1, 2016 by Complainant David Lee—under the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2622, the Energy Reorganization Act, 42 U.S.C. § 5851 (“ERA”), and the Solid Waste Disposal Act, 42 U.S.C. § 6971 (“SWDA”) (collectively referred to as, the “Acts”)—against Respondent Washington River Protection Solutions, Inc. before the U.S. Department of Labor Occupational Safety & Health Administration.
2. Complainant filed this complaint within 30 days of being notified of an adverse action—his suspension on Tuesday, May 3, 2016.

II. PARTIES

3. David Lee (“Complainant”), located at _____ is an employee of Washington River Protection Solutions, Inc. (“Respondent”) at the Hanford

Nuclear Site (“Hanford”). Complainant is an Instrument Specialist at the 222-S Laboratory (“Lab”) as of the date of this Complaint. Complainant is a member of the International Brotherhood of Electrical Workers, Local 77.

4. Washington River Protection Solutions, Inc. (“Respondent”) is a limited liability corporation incorporated in the state of Delaware and owned by AECOM and Energy Solutions. Respondent’s primary place of business is 2425 Stevens Center Place, Richland, WA 99352.
5. Respondent performs work for the United States Department of Energy (“DOE”) as a prime contractor at Hanford. Respondent is responsible for the Tank Operations Contract, which involves the operation of the high-level nuclear waste tanks and the Lab. Respondent also operates the Lab, located in the 200-West Area of Hanford.

III. FACTS

A. The Hanford Nuclear Site

6. The 586-square-mile Hanford Nuclear Site (“Hanford”) is a legacy of World War II and the Cold War. In 1943, the federal government selected Hanford as a Manhattan Project site, to enrich plutonium for nuclear weapons. Major site activities included the fabrication of nuclear reactor fuel assemblies in the 300 Area, irradiation of the fuel assemblies in reactors in the 100 Areas, dissolution of fuel assemblies and chemical separations in the 200 Areas, and the storage of waste primarily in the 200 Area Tank Farms. Many of these tanks have leaked or are leaking high-level nuclear waste into the ground.
7. Since 1989, Hanford has become one of the world’s largest environmental remediation projects as the DOE develops new waste treatment and disposal technologies, transfers waste from leaking tanks, as well as demolishes buildings and contains waste from historical operations.

B. The Hanford Tank Farms

8. Hanford has 177 underground storage tanks that hold a total of 56 million gallons of high-level nuclear waste and toxic chemical waste. These tanks are managed primarily by DOE contractor WRPS.
9. The Hanford tanks contain solid and liquid wastes (many of which are hazardous) as well as particulates, vapors, gases, and fumes that originate from those wastes. The waste in many of the Hanford tanks is very hot from radioactive decay and some of it is volatile.

10. Over 1800 chemicals have been detected in the vapors contained within Hanford's tank headspaces. The toxic chemicals found in the tanks, many of which are recognized carcinogens, include ammonia, nitrous oxide, mercury, hydrocarbons, alcohols, ketones, aldehydes, furans, phthalates, nitriles, amines, nitrosamines, and polychlorinated biphenyls (PCBs). Many more toxic vapors are known to be in the tanks, and have been measured in the tank headspace at concentrations well above occupational exposure limits. Many of these chemicals are covered under TSCA.

C. The 222-S Laboratory

11. The 222-S Laboratory, located in Hanford's 200-West Area, is operated by Respondent. The Lab is a 70,000 square foot full-service analytical facility that handles highly radioactive samples for purposes of organic, inorganic, and radio-chemistry analysis. It contains 11 hot cells, which gives the lab the capability to remotely handle highly radioactive samples of tank waste while minimizing radiation dose to workers.
12. The Lab complex contains over 100 pieces of analytical equipment, 156 fume hoods, and 46 manipulators to perform work. The Lab plays many roles, which include testing of waste compatibility and physical characteristics to support tank-to-tank waste transfers, performing corrosion rate studies and chemical testing to support tank corrosion inhibition, and providing input to the engineering specifications for each of the 343-A Evaporator campaigns.
13. The Lab studies the physical and chemical characteristics of waste necessary to enable waste retrievals, provides data to support tank closure requirements, and supports the Vadose Zone Program.

D. Complainant at 222-S Laboratory

14. Complainant is an Instrument Specialist. As an Instrument Specialist, Complainant installs and maintains highly complex instruments, contamination control systems, and related equipment at the Lab. This equipment is used to generate, accumulate, and record scientific data from experimental operations and processes.
15. Over several months, beginning in approximately November 2015, Complainant began to raise issues related to his assigned work area in the Lab, which included the operation and maintenance of Gas Chromatograph/Mass Spectrometer (GC-MS) instruments, which can measure the presence of selected chemicals in materials fed into the machine.
16. The GC-MS machines in Complainant's portion of the Lab have been put to use to analyze chemical constituents from samples taken from the headspace of the high-level nuclear waste tanks at Hanford. The headspace is the portion of the tank from the top level of the waste to the ceiling of the tank—where gases and vapors accumulate.

17. In or about the November 2015 – May 2016 timeframe, Complainant raised concerns about inadequate venting of the laboratory equipment in the rooms, including where GC-MS testing was taking place, likely resulting in the presence of toxic vapors in an enclosed space. There is no live monitoring for chemicals in the air inside this lab, nor is there a requirement or expectation for the use of respirators or other Personnel Protective Equipment (“PPE”). Complainant himself is worried about his own exposures and believes that his own health has been affected by exposures in the Lab.
18. In or about the November 2015 – May 2016 timeframe, Complainant raised concerns that the GC-MS machines were not undergoing required preventive maintenance for at least the previous two years. Complainant also raised concerns about dermal exposures.
19. In or about the November 2015 – May 2016 timeframe, Complainant’s research indicated that the oil in the GC-MS machines and other Lab equipment is subject to getting cross-contaminated with tank headspace chemicals that are being sampled, according to the Manuals from the manufacturer, but 1) the now possibly-contaminated oil was being disposed of as regular clean oil, and 2) when workers open the machines for maintenance, this oil can get on their hands and clothes.
20. In or about November 2015, Complainant began to raise the abovementioned issues and concerns at Lab staff meetings in which his direct manager and other managers were present.
21. On or about February 9, 2016, Complainant reported his issues and concerns about the GC-MS ventilation and oil issues to the Maintenance Manager of the Lab,
22. On or about February 22, 2016, Complainant submitted a Problem Evaluation Request (“PER”) concerning the venting of some analytical instruments into the Lab building vacuum system.
23. On or about February 22, 2016, Complainant reported his issues and concerns about the Lab ventilation/vacuum to the Sitewide Manager of the Lab, Complainant, _____, and _____ also completed a walk down of the Lab vacuum system in concern.
24. On or about March 14, 2016, Complainant sent an email to the President of Respondent WRPS, Mark Lindholm, concerning his February 22, 2016 PER and venting of the instruments in the Lab.
25. In or about the January-February 2016 timeframe, Complainant raised a concern with a field representative from the Defense Facilities Nuclear Safety Board (“DNFSB”) who thereafter visited the Lab and requested access to the room where the GC-MS machines were operating. Complainant’s manager learned of this visit and witnessed Complainant pointing out the safety issues to the DNFSB representative.

26. On or about April 28, 2016, Complainant met with DOE Employee Concerns Program to discuss his concerns at the Lab and the GC-MC machines, which resulted in a visit from the DOE Employee Concerns Program Manager,
27. On or about April 29, 2016, as a result of Complainant contacting the DOE Employee Concerns Program, Roger Gordon visited the Lab. Mr. Gordon involved Complainant's managers in the investigation of the concern.
28. On or about the morning of May 2, 2016, Complainant issued a Stop Work to prevent technicians from servicing the GC-MS machines and changing the oil until there was an analysis of the oil to determine contamination. The Stop Work was also initiated to prevent disposal of the oil as a benign waste until the oil had been analyzed to see if it had become hazardous waste—which would subject the oil to a more rigorous and expensive disposal protocol.
29. On or about May 3, 2016, Complainant was told to report to Human Resources (“HR”) first thing in the morning and to bring his badge. When he arrived, HR took his badge and told him he was being suspended for “extremely serious misconduct.” However, HR would not specify the charges or otherwise explain the charges.
30. On or about May 5, 2016, Complainant was told to report to HR. He was shown a few magazines and asked if he recognized any of them. Complainant responded that he recognized one of the magazines from a Pre-Job Meeting he attended on May 2, 2016. The magazine was a gun magazine sitting in a chair in his supervisor's office. HR asked Complainant if the magazine in question was his magazine. Complainant responded by saying something to the effect that it was not his magazine, the magazine was already in his supervisor's office when he arrived for the meeting, and that he assumed it was his supervisor's magazine. Complainant asked HR if they had asked the supervisor if it was his, and the HR person said yes, they had asked, and the supervisor said that it was indeed the supervisor's magazine.
31. On or about May 5, 2016, HR told Complainant to report back to work on Monday, May 9, 2016 and that the allegations were unsubstantiated and the matter was concluded. U.S. Senator Ron Wyden and Washington State Attorney General Bob Ferguson were in Richland, WA meeting with Hanford workers and giving media interviews on May 5, 2016.
32. When Complainant reported back to work on or about May 9, 2016, he discovered that his Stop Work had been bypassed and the oil had been changed in the GC-MS machine. Lee discovered that: 1) a Millwright had changed the oil, the Millwright did not use any PPE when he changed the oil, and did not take any precautions to protect against hazardous exposure; 2) the oil had not been analyzed; and 3) Complainant could not determine, and no one could inform him, where the oil had been disposed.



IV. RETALIATORY ACTS

33. On May 3, 2016, in direct relation to Complainant's protected activities, Complainant was suspended from his employment with Respondent and did not return to work until May 9, 2016.
34. Complainant was, and continues to be, subjected to a hostile working environment, harassment, isolation, and abusive treatment, including, but not limited to: 1) being assigned to housekeeping work where he cleaned closets, 2) being told that he should request a transfer to a different job outside of the Lab, and 3) being coached for his communication of issues and concerns.

V. CAUSES OF ACTION: VIOLATION OF THE ANTI-RETALIATION PROVISIONS OF THE TOXIC SUBSTANCES CONTROL ACT (TSCA), 15 U.S.C. § 2622, THE ENERGY REORGANIZATION ACT, 42 U.S.C. § 5851 (ERA), AND THE SOLID WASTE DISPOSAL ACT (SWDA), 42 U.S.C. § 6971.

35. Complainant realleges and incorporates by reference paragraphs 1 through 34, above, as though set forth fully herein.
36. Complainant is a covered employee under the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2622, the Energy Reorganization Act, 42 U.S.C. § 5851 (ERA), and the Solid Waste Disposal Act (SWDA), 42 U.S.C. § 6971.
37. Respondent is a covered employer under the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2622, the Energy Reorganization Act, 42 U.S.C. § 5851 (ERA), and the Solid Waste Disposal Act (SWDA), 42 U.S.C. § 6971.
38. Complainant's acts in reporting inadequate operation and maintenance of Lab equipment, potential violations of laws, regulations, and safety non-compliances, are protected activities under the Acts.
39. The Respondent had knowledge of the foregoing protected activity.
40. The reasons Respondent based its decision to suspend Complainant was discriminatory and in violation of the aforesaid Acts. Complainant was treated differently, singled out, and isolated by the Respondent's decision makers.
41. Respondent subjected Complainant to verbal abuse, discriminatory treatment, threats against his job, and false allegations of misbehavior, in direct violation of the aforesaid Acts.

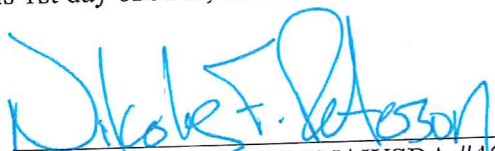
VI. REQUEST FOR RELIEF

Complainant respectfully requests the following relief:

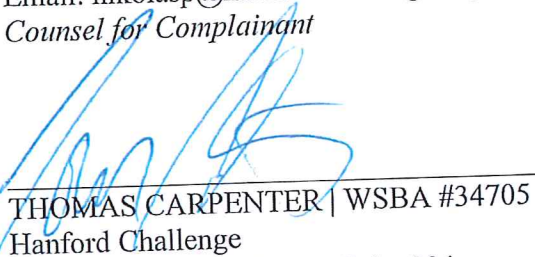


1. Compensatory damages, including an award of damages to compensate Complainant for emotional distress and the deliberate infliction of pain and suffering;
2. Expungement or removal of any and all negative personnel actions from his personnel and other company files, including his May 3, 2016 suspension;
3. Exemplary damages available under the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2622(b)(2)(B)(iv);
4. Affirmative action in the way of declaratory relief be afforded Complainant directing the institution of safety-committed work environment, free from retaliatory animus;
5. Prominent posting of the order granting relief to Complainant throughout the plant, with instructions to all Hanford employers to distribute the order to all personnel;
6. All costs for bringing this action, including attorney fees, expert witness fees, and litigation costs; and
7. Any and all such other relief to which Complainant may be entitled at law or from equity.

RESPECTFULLY SUBMITTED this 1st day of June, 2016.



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