

## Complaint Narrative

After a 15-month long hiring process, I was hired by the Navy Office of the General Counsel as an environmental and real property law attorney. I started work on June 26, 2017, at Treasure Island in San Francisco, California. I performed unclassified legal work for the Base Realignment and Closure (BRAC) Program Management Office, which is within the Naval Engineering and Facilities Command (NAVFAC).

I was assigned lead responsibility for five former bases in California that were undergoing environmental remediation and conveyance: Alameda, Treasure Island, Moffett Field, Tustin and El Toro. Each base had many sites undergoing remediation for different contaminants, and each base was divided into numerous conveyance parcels. The work had been going on for years and involved challenging technical and legal issues as well as public controversy. Prominent among the issues I handled were radiological contamination, contaminants listed as hazardous substances under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), and EPA-designated “emerging contaminants” such as PFAS, a substance in the fire-fighting foam used on Navy bases across the country to train naval aviation fire-fighting crews.

### PFAS

In 2017 and 2018, my clients sought legal advice and legal opinions on PFAS, including legal opinions to support their conclusion that the Navy was not required to provide notice in the conveyance documents for certain parcels at former bases in Tustin and El Toro where the Navy had sampled for and detected PFAS.

In the fall of 2017 I reviewed documents related to, and participated in a conference call on, the next steps at areas of Tustin where recent Navy sampling had found levels of PFAS thousands of times higher than the non-promulgated EPA Lifetime Health Advisory (LHA) for drinking water.

As the aquifer was a source of drinking water, the high levels found in the shallow groundwater samples threatened to impact drinking water, and required further investigation and delineation under new Navy policy on PFAS issued in September 2017. I advocated for further investigation and delineation consistent with the policy. I also told the team on the conference call about the proposed California regulation, which was promulgated shortly thereafter, which used the EPA LHA.

The base closure team [REDACTED], and his superior, [REDACTED], both of whom were on the call, seemed resistant when I discussed California's proposed regulations and advocated for further sampling. [REDACTED] said, well, [REDACTED] you've got someone on your side now. He was referring to [REDACTED] who had experience with PFAS-contaminated Navy properties on the East Coast.

On the east coast, the Navy had already been forced to shut residential drinking water wells after PFAS-contaminated groundwater on former Navy property migrated offsite. The Navy was providing alternate drinking water to those residents, and was facing mass toxic tort litigation. Navy lawyers were trying to determine whether there were legal mechanisms to force residents to accept connections to public drinking water systems, so that the Navy could cease providing alternate drinking water.

The Tustin team later requested a legal memorandum that would conclude that notice of PFAS was not required in the conveyance documents for certain Tustin parcels. I discussed with the team that I would conduct additional research, but intended to prepare a memo that would advise that notice should be provided in the conveyance documents. Before I drafted the memo, the conveyance was postponed because additional PFAS sampling was determined to be necessary.

I discussed the issue of providing a PFAS section in all Finding of Suitability for Transfer (FOSTs) for parcels where PFAS had been sampled for and detected with [REDACTED], a senior BRAC team member, while we were attending a Navy remediation conference in March of 2018.

In May 2018, I advised the El Toro team on another matter involving conveyance documents for property that had been sampled for PFAS. The clients sought a legal memo concluding that notice of the presence of PFAS was not required in the conveyance documents. I was aware that the client had completed the FOST two years earlier, before the PFAS sampling was conducted, and would find revision of the FOST either costly, or time-consuming, or both. I reviewed relevant sampling and other documents, and provided my legal opinion to the client in May 2018. My memo cited recent changes in California law and Navy policy in regard to PFAS, and recommended including notice of the PFAS sampling and detection in the FOST.

In another matter involving PFAS, I advised the El Toro clients on compliance with settlement agreement provisions governing "new discoveries" – in this case,

the detection of PFAS in groundwater being treated by the Navy before being provided to the local water districts for greywater. I conducted additional research and consulted with the attorney at the Department of Justice who was charged with monitoring the settlement agreement. I provided written advice on complying with the terms of the settlement agreement and with new Navy policy, which supplemented the September 2017 policy and had been issued in written form in early 2018. The 2018 policy was discussed and confirmed by ██████████ in a public presentation he made at the March 2018 NAVFAC environmental remediation conference.

My advice was that, pursuant to the Navy policy, the water provided to the water districts should comply with the EPA LHA level. I discussed the matter on conference calls with the client, and later discussed the matter on the phone with ██████████ who was a member of the client team that was tasked with oversight of PFAS issues, and who had also been at the Navy conference. He said the Navy policy was not binding, and I said that based on what I had read and heard at the conference, I believed it was.

Both the El Toro and Tustin aquifers provide drinking water to area residents, and given the high levels of PFAS on some areas of both former bases, it was clear there was a potential threat to the public drinking water supply. DuPont and 3M, the makers of PFAS, had already lost legal battles and paid millions in fines and settlements for the health impact from PFAS on workers and communities. And while EPA has no promulgated standard, many states, including California, are enacting regulations on PFAS.

As an environmental attorney with many years of experience counseling Fortune 500 clients on environmental compliance and representing them in environmental litigation, it was clear the Navy's PFAS experience on the east coast was a blueprint for what the Navy would face on the west coast unless more proactive measures were taken. I advocated for those measures in keeping with my duty to provide competent legal advice to the client, but I was aware that the client did not concur with my advice.

### Radiation

Another highly sensitive issue was the matter of radiological contamination at Treasure Island. Across San Francisco Bay, Hunter's Point Naval Shipyard (HPNS) was already the subject of controversy after the radiological cleanup conducted by Navy contractor Tetra Tech was determined to have been

fraudulent. Two Tetra Tech employees were sentenced to prison in 2018. After \$1 billion spent by the Navy on the HPNS cleanup, much, if not all, of the work was going to have to be redone.

At Treasure Island, people live in former Navy housing on top of and next to formerly and currently radiologically impacted areas. The original Navy historical radiological assessment (HRA) for Treasure Island had underestimated the radiological contamination on the island, and in 2014 a supplemental HRA was conducted and issued. Portions of the island, including the interiors of occupied housing and the areas around the houses, had to be scanned for radiation. While the housing was cleared, the radiologically impacted area next to the housing, Site 12, is still radiologically contaminated and will soon be the subject of further remediation.

In March of 2018, Navy personnel informed me that at least one of the (later convicted) Tetra Tech employees from Hunter's Point had also participated in the prior radiological cleanup at Treasure Island.

The Navy had not done a re-review of the potentially suspect work at Treasure Island. As the situation clearly had the potential to present a risk to human health and the environment, I subsequently advocated for re-review of the radiological work at Treasure Island. I did so in person and in teleconferences with the clients, and in written comments on draft responses to journalists' inquiries that I was asked to review. I was told by the acting base closure manager that management had declined to authorize re-review.

In May 2018, the BRAC PMO Deputy Director asked me to fill in for an absent colleague at a meeting at HPNS at which regulators, the attorneys for qui tam whistleblowers, and the whistleblowers themselves walked the shipyard to discuss alleged fraud in areas that were unaddressed by the planned Navy re-review. I took the opportunity to speak with a senior NAVFAC person, [REDACTED] who had flown from San Diego to attend. [REDACTED] had overseen the production of the re-review findings at HPNS. I advocated for re-review of the Treasure Island radiological data, based on the facts that people lived in housing near radiologically impacted areas on Treasure Island, the Navy had knowledge that prior radiological work involved bad actors, and upcoming Site 12 remediation would increase scrutiny of the prior and future Navy radiological cleanup of Treasure Island. [REDACTED] said that there might be room in existing contracts to accommodate such work.

The Treasure Island client team leader later wrote me that there would be no re-review, after I discussed that possibility in my comments on a draft response to yet another journalist's inquiry about the identities of Tetra Tech personnel involved in the prior radiological work on Treasure Island.

### Retaliation Motivated by Protected Activities

A public meeting held by the Navy at Treasure Island in March 2018 was disrupted by activists involved at HPNS, and had garnered adverse publicity for the Treasure Island team. As a result, I spent significant time with the Treasure Island team in the spring of 2018 to prepare for another public meeting scheduled for June 19. The focus of the June 19 meeting was for the Navy to present its plans for radiological remediation work at Site 12 to the Restoration Advisory Board (RAB) members and the public. At the request of a member of the Treasure Island team, I researched and advised [REDACTED] on the Navy's obligations to provide information on the Treasure Island cleanup to the RAB and to the public. I also provided comments on [REDACTED] draft responses to journalists about the Treasure Island radiological cleanup efforts.

I was terminated on June 18, the day before the public meeting.

I contend that this action was motivated not by the stated reasons but because my legal advice on compliance with CERCLA, the Safe Drinking Water Act, and other relevant environmental laws and Navy policy ran contrary to the BRAC PMO focus and emphasis on getting regulatory sign-off on, and conveying, the Navy property as fast as possible. My advice disclosed actual and proposed violations of law, regulations and policy by the Navy and dangers to public health and safety.

With respect to PFAS, my advice on a compliance approach to the PFAS contamination at El Toro and Tustin, while legally sound, was contrary to the BRAC push to quickly convey the West Coast properties contaminated with PFAS, despite the potential risk to human health and the environment.

With respect to Treasure Island, the contractor fraud at Hunter's Point Naval Shipyard, the subsequent criminal convictions, deficiencies in the Navy's proposal for re-review of that radiological work, and the need to redo remediation work on which the Navy had already spent \$1 billion had resulted in extremely negative publicity for the Navy and had derailed the Navy's timeline to convey the remaining Hunter's Point parcels.

When I advocated for re-review of suspect radiological work at Treasure Island, and re-review was rejected, I believe the Navy was concerned that I had provided advice indicating that the Navy's actions contravened the Navy's legal obligations under CERCLA and had the potential to endanger human health and the environment, including the health of current and future residents at risk.

I further believe that the Navy was very concerned that a re-review of the Treasure Island radiological work would further delay the conveyance and development of Treasure Island, a highly anticipated redevelopment project on some of the most valuable land in California.

I believe that these concerns, not my job performance, motivated my command to remove me from service.