

September 2, 2005

VIA FACSIMILE: 404-562-2295

Cindy Coe Laseter
Regional Administrator
Occupational Safety & Health Administration
Region IV
61 Forsyth Street, SW
Rm. 6T50
Atlanta, Georgia 30303

Re: Whistleblower Complaint of Donald Van Winkle pursuant to RCRA, 42 U.S.C. § 6971, and the Clean Air Act, 42 U.S.C. § 42 U.S.C. § 7622.

Dear Regional Administrator Laseter:

Public Employees for Environmental Responsibility (PEER) represents Donald Van Winkle. Mr. Van Winkle is a civilian employee in the U.S. Army who works as an air systems monitoring operator / mechanic at the Blue Grass Army Depot (BGAD) located near Richmond, Kentucky.

BGAD stores over 500 tons of chemical warfare agents in approximately forty-five igloos. The storage and ultimate disposal of the chemical warfare agents stockpiled at BGAD are regulated under the federal Resource, Conservation and Recovery Act (RCRA, 42 U.S.C. § 6901, *et seq.*)¹ and the Clean Air Act (42 U.S.C. § 7601, *et seq.*). Mr. Van Winkle, along with other BGAD staff, monitors and inspects the igloos to determine if there are stored munitions that are leaking chemical warfare agents.

Recently, Mr. Van Winkle raised concerns to BGAD management about the configuration of air monitoring equipment that is used to sample the air in the igloos to detect leaks of chemical warfare agents. His concern was that the improper configuration of monitoring equipment was causing the monitoring

¹ RCRA is also referred to as the Solid Waste Disposal Act (SWDA).

devices to fail to detect deadly chemical warfare agents that may have been present in the igloos. Inadequate monitoring could lead to exposure of workers and visitors to chemical warfare agents. Even non-lethal exposures to these agents can negatively impact human health.²

On August 3, 2005, Mr. Van Winkle had his Chemical Personnel Reliability Program (CPRP) security clearance removed. This action disqualified Mr. Van Winkle from working in the area where chemical warfare agents are stored and has resulted in damage to his reputation, loss of hazard pay, and loss of overtime. In addition, if BGAD management decides to permanently remove Mr. Van Winkle's CPRP security clearance, he could lose his job.

The removal of Mr. Van Winkle's CPRP security clearance was an act of retaliation for raising concerns about the inadequacy of BGAD's chemical warfare agent monitoring program. Mr. Van Winkle has heard that BGAD management is out to get him and he has been advised by co-workers to watch his back.

As a result of his concern about the monitoring of chemical warfare agents at BGAD, Mr. Van Winkle filed a request with the Department of Defense's Deputy Inspector General for Inspections and Policy seeking a prompt inspection and review of BGAD's monitoring activities. Mr. Van Winkle provided a sworn affidavit to the DOD IG in support of his concerns. The letter requesting an inspection and his affidavit are attached and are offered as further support for Mr. Van Winkle's Complaint.

Since publicly raising his concerns to the DOD IG, Mr. Van Winkle has become even more concerned about his job. Rumors abound at BGAD regarding actions that may be taken to demote, transfer, or terminate him.

As the regional representative for OSHA, Mr. Van Winkle wishes to express his additional concern to you that there is insufficient staffing of trained personnel at BGAD to safely address routine or emergency operations involving the forty-five igloos that store munitions containing chemical warfare agents. In

² See, e.g., American Journal of Public Health Vol 95, Issue 8: "Mortality in US Army Gulf War Veterans Exposed to 1991 Khamisiyah Chemical Munitions Destruction" by Tim A. Bullman, Clare M. Mahan, Han K. Kang, and William F. Page. The article notes an increased risk of brain cancer deaths in Gulf War Veterans who were exposed to non-lethal concentrations of certain chemical warfare agents. An abstract of the article can be reviewed at <http://www.ajph.org/cgi/content/abstract/95/8/1382>.

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the event of an emergency in one or more of the igloos, the current staff of trained workers could not safely address such an event.

Moreover, Mr. Van Winkle is not aware of any on-site or nearby fire or hazardous material staff that could be called upon for immediate support. BGAD would have to call upon other trained Army staff located out of state. It is unlikely that out of state support could arrive at BGAD in a sufficiently timely manner to address a serious emergency.

In conclusion, Mr. Van Winkle requests the following relief: (1) a determination that BGAD officials violated the employee protection provisions of RCRA and the CAA; (2) back pay plus interest for lost hazard and overtime pay; (3) reinstatement of his CPRP security clearance; (4) compensatory damages for pain, suffering, stress, and damage to his reputation in an amount no less than \$10,000; (5) attorneys' fees and costs; and (6) such other relief as may be deemed just and appropriate.

Please advise me at your earliest convenience of the schedule for investigating Mr. Van Winkle's Complaint. I will be glad to facilitate an interview with Mr. Van Winkle and provide other assistance to the investigator assigned to the case.

Respectfully submitted,

Richard E. Condit
PEER General Counsel

Counsel for Donald Van Winkle

Enclosures:

- (1) Letter to DOD IG
- (2) Affidavit of Donald Van Winkle