

Terry Schaedig: OIG Complaint of Whistleblower Retaliation
Complaint under 41 U.S.C. § 4712
December 19, 2014

Summary

Mr. Terry Schaedig was discharged on September 22, 2014 from his job as an employee of a government contractor after disclosing to management officials of the contractor as well as to Federal employees responsible for contract oversight what Mr. Schaedig reasonably believed to be gross mismanagement of a Federal contract, an abuse of authority related to a Federal contract, and/or a violation of regulation related to a Federal contract. The contract was between the United States Forest Service (USFS) and Mr. Schaedig's employer, contractor National Wild Turkey Federation; its purpose was to enhance wildlife habitat in the Ottawa National Forest.

This complaint is filed under 41 U.S.C. § 4712, which protects employees of federal contractors from reprisal. This complaint details the retaliation Mr. Schaedig experienced after informing his NWTF supervisor and USFS officers about rampant violations of restrictive terms in the USFS-NWTF contract. After informing these parties of the violations, and continuing to voice concerns when no remedial action was taken, Mr. Schaedig was fired. He challenges his firing as illegal retaliation for his protected disclosures.

Analysis

A. The Federal contract and its restrictive terms

USFS contracted with Mr. Schaedig's employer, contractor National Wild Turkey Federation (NWTF), on a project designed to enhance wildlife habitat in the Ottawa National Forest by enlarging existing clearings by removing encroaching trees and shrubs. The USFS-NWTF contract first required NWTF to identify and flag wildlife habitat areas, then to complete clearing activities within them. Certain restrictions and specifications, attached as **Exhibit A**, applied to both site identification and site clearing activities, for example:

- Cutting specifications restricted the size and types of trees and shrubs to cut or preserve. For example, the specifications generally prohibited the felling of trees 12" dbh or larger in the middle of openings. Similarly, the specifications mandated that fruit and nut producing trees such as oak, cherry, hawthorn, and apple should be left alive;

- With regard to riparian resources, the contract required that openings containing aquatic features apply certain defined riparian area and corridor protections. For example, a one half tree length no-cutting buffer was required adjacent to certain riparian and wetland areas.
- No mechanized clearing equipment was permitted within archaeological and historic sites, and felled trees were not to be dropped onto or dragged across artifacts; and
- Soil protection measures included a prohibition on mechanized equipment on all slopes greater than 35% except under special circumstances requiring consultation with a soil scientist, and the use of equipment on slopes of 18-35% in grade required the consultation of the Forest Service soil personnel.

Please see Exhibit A for specific restrictions.

Subsequent minor changes were made to the original contract during meetings with USFS staff, NWTF, and the private contractor hired to do the vegetation removal work, Eric Anderson of ABR Trails. These changes included a prohibition on cutting white birch trees. Many of the openings to be worked on were ancient home sites, old logging camps, and former town sites. Much of the work was to be done with machines, although some sites were restricted to hand tools only (chainsaws and brush saws). Cut material was to be left in place.

B. Mr. Schaedig's qualifications and employment with contractor NWTF

Mr. Schaedig has a Bachelor of Science in Biology - Fisheries and Wildlife Management from Lake Superior State College. He has taken courses on Soil Morphology at the University of Minnesota and Agricultural/Forestry Appraisal and Core Assessment at the Montana Department of Revenue. He has extensive experience with habitat development and managed a statewide native plant program in Michigan where sources of native plant material were limited.

Mr. Schaedig began working for NWTF on the wildlife habitat enhancement job at the Ottawa National Forest on June 2, 2014. His responsibilities were to identify and flag boundaries for clearing (including reviewing and correcting the field work of his predecessor who had been in the same position for the prior 6 months) and to inspect work done by contractors who were carrying out the actual clearing of vegetation within the flagged areas.

C. Protected disclosure #1: Failure to follow contract terms in the selection of sites for clearing.

Mr. Schaedig's first disclosure was that his predecessor, in flagging areas for clearing, had violated the USFS-NWTF contract and/or Forest Service manuals and regulations. That individual had left aerial photos of all the sites to be completed in 2014 with the perimeter of enhanced openings overlain on the aerial photos, and had flagged most of the areas to be cleared with surveyor's ribbon. Mr. Schaedig had to re-do much of this work, as his predecessor had –

- Not included enough flagging for the contractor who was to clear the areas to follow;
- Improperly included wetlands in some of the clearing perimeters;
- Indicated inappropriately large areas of timber to be cut;
- Not included adequate buffers along roads; and
- Marked areas for cutting that would have severely impaired wildlife habitat.

These actions all violated the restrictions and specifications clearly spelled out in the USFS-NWTF contract.

Mr. Schaedig disclosed all of these compliance issues on or around September 3, 2014 to Jim Boyd, the Forest Service Contracting Officer for the project. When Mr. Boyd learned that Mr. Schaedig had corrected some of these flawed boundaries, he insisted that Mr. Schaedig's predecessor's boundaries be adhered to. Mr. Schaedig explained that this would mean clearing wetlands, clearing vegetation on highly erodible soils, providing no buffers along riparian areas and clearing large forested areas in contravention of the terms and purpose of the USFS-NWTF contract. He informed Mr. Boyd that such a course of action would result in poor wildlife habitat, would waste public resources, and would create tremendous eyesores visible to the public. Additionally, it would violate USFS policies and regulations, particularly with regard to riparian areas and soils. Despite this, Mr. Boyd insisted that Mr. Schaedig follow his predecessor's boundaries.

D. Protected disclosure #2: Failure to follow contract terms in the clearing of vegetation.

Mr. Schaedig disclosed to supervisors gross problems in the vegetation removal work done by a private contractor, Eric Anderson of ABR Trails. Mr. Anderson began his cutting and

clearing work on July 30, 2014. Mr. Anderson began taking numerous actions that contravened NWTF's contract with USFS. Specifically, he:

- Cut wildlife shrubs that had been clearly flagged with a colored ribbon to signify they be left as reserves;
- Buried historic sites under cut trees, branches, and limbs;
- Left debris lying across roadways;
- Caused excessive soil damage on roadways;
- Cut and cleared trees on a closed access road after specifically instructed to stop;
- Cut and cleared whole areas instead of leaving certain trees and shrubs to be preserved;
- Cut sites prior to biologist reflagging; and
- Used heavy machinery on sensitive slopes areas and within boundaries of wetlands.

These actions clearly contravened the terms and the purpose of the USFS-NWTF contract and substantially harmed the area and wildlife rather than helping them flourish. Completely cleared areas will take much time to grow back, and soil damage on slopes will lead to erosion. Working with machinery inside the boundaries of wetlands contravenes the contract as well as Forest Service manuals and will damage these very sensitive areas.

These problems began from Mr. Anderson's first day of the clearing work, June 30, 2014. Mr. Schaedig discussed the problems with Mr. Anderson the next day, but they continued. Soon thereafter, Mr. Schaedig approached Rick Horton, his supervisor at NWTF. Mr. Horton told him to "play nice guy." When Mr. Horton continued to allow the contractor's damaging work, despite Mr. Schaedig's urging, Mr. Schaedig contacted the Forest Service Contracting Officer Representative for this project, Wildlife Technician Joanne Thurber on or about August 4, 2014. On August 6, 2014, Ms. Thurber, Jeff Soltesz, Biological Technician on the Ottawa, and Paul Tiskusis of the Natural Resources Conservation Service inspected several sites where work had been done and in some cases, redone. Both Forest Service employees agreed that work performed was in violation of the contract and was not acceptable. Mr. Soltesz has experience supervising contractors; Mr. Tiskusis was there to observe contractor performance.

On or about August 25, 2014, when Mr. Schaedig informed Mr. Horton that he had reported continuing contract violations to Ms. Thurber and other Forest Service staff, Mr. Horton told him that he was not to speak with Ms. Thurber or other Forest Service staff about these problems. He specified that Mr. Schaedig should take his directions and talk only with

one person from the Forest Service, Wildlife Biologist Brian Bogaczyk. Mr. Schaedig disagreed and told Mr. Horton that it was Ottawa Forest land and that it was his responsibility to inform them, and in particular the USFS contracting officer representative Ms. Thurber, of what was taking place. Mr. Horton replied, “no, you don’t do that,” and shouted, “are you arguing with me?!” It seemed to Mr. Schaedig that there was something amiss in the close relationship between Mr. Anderson, Mr. Horton, and Mr. Bogaczyk.

Mr. Schaedig continued to try to stop Mr. Anderson from violating the contract and Forest Service regulations, to no avail. During August and September problems continued as Mr. Anderson cleared areas that had not been flagged by Mr. Schaedig or his predecessor, cut trees over 12” in diameter, left trees that were supposed to have been cut, and cut hemlock trees – a tree species to be reserved on the forest. Some areas were crucial to the forest and others should have been left as buffer zones. Mr. Anderson also failed to clean up debris and instead left the cut trees and branches lying across roads and historic sites. When Mr. Schaedig repeatedly approached Mr. Horton with these problems, Mr. Horton continued to ignore Mr. Schaedig’s complaints and made no move to correct Mr. Anderson’s actions.

On September 10, 2014, Mr. Schaedig brought these problems to the attention of Forest Service Contracting Officer for this project, Jim Boyd. At this meeting and at a site inspection on September 16th, Mr. Boyd refused to correct violations of the USFS-NWTF contract, in spite of witnessing contractor violations. As he had during the September 3, 2014 meeting with Mr. Schaedig, Mr. Boyd again insisted on cutting up to the boundaries created by Mr. Schaedig’s predecessor, in violation of the USFS-NWTF contract and of the Forest Service’s own mandates.

E. Retaliatory actions

On September 22, 2014, Mr. Horton fired Mr. Schaedig without providing a reason. Mr. Horton told Mr. Schaedig that he would not be paid for previously approved overtime hours. When Mr. Schaedig later inquired of Tony Brown, Human Resources at NWTF, as to the reason for the firing, Mr. Brown merely stated, “insubordination; just tell the Unemployment Office it was insubordination,” refusing to provide any details.

Conclusion

Mr. Schaedig reasonably believed that the NWTF was grossly mismanaging its Federal contract in allowing its employees to violate critical restrictive terms relating to the size and types of trees and shrubs to cut or preserve, riparian and wetland areas and areas exhibiting hydric soils; archaeological sites; fragile soils and slopes; and buffer zones. Mr. Schaedig's belief was reasonable, as practices he exposed evidenced violations of terms critical to the contract and its purpose of enhancing wildlife habitat in the Ottawa National Forest. Additionally, the practices he disclosed violated USFS manuals and policies. NWTF's failure to address these problems represents an abuse of authority related to its Federal contract.

Mr. Schaedig disclosed the problems to management officials of the contractor (NWTF, his employer) as well as to Federal employees responsible for contract oversight. Mr. Schaedig believes he was fired from his position with NWTF for making these protected disclosures. Mr. Schaedig believes that Mr. Horton fired him for contacting the proper authority, USFS, about flagging and clearing activity that violated the contract as well as USFS policies and manuals. The close proximity in time between his violation and firing, the lack of explanation for his firing, and the palpably hostile manner in which Mr. Horton reacted to Mr. Schaedig's revelation of problems all present strong circumstantial evidence that Mr. Horton acted out of a retaliatory motive.

Suggested witnesses to interview (in addition to individuals mentioned in this complaint):

The following Ottawa National Forest employees can be reached at (906) 932-1330:

Sue Trull, Botanist (Program Coordinator)

Ian Shackelford, Botanist (Noxious Weed Coordinator)

Any Amman, Soil Scientist