

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the Department of Energy (collectively the "United States"), defendant Bechtel Jacobs Company LLC ("Bechtel Jacobs"), and Gary Vander Boegh and George Johnson (collectively the "Relators") (the United States, Bechtel Jacobs, and the Relators hereinafter collectively referred to as the "Parties"), through their authorized representatives.

RECITALS

A. Bechtel Jacobs entered a management and oversight contract with the Department of Energy ("DOE") in April 1998.

B. Gary Vander Boegh filed a *qui tam* action in the United States District Court for the Western District of Kentucky captioned *United States ex rel. Vander Boegh v. Bechtel Jacobs Company LLC*, Civil Action No. 5:02CV-300-M, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b). Relator's action was twice amended, and alleged in short that Bechtel Jacobs: (1) billed the United States for services in connection with remediation and removal of wastes that were improperly handled as "nonhazardous" when Bechtel Jacobs should have known the wastes were F-listed hazardous wastes during the period April 1998 to January 2002; (2) improperly stored "no radiation added" waste at the Paducah Plant and disposed of those wastes at a site designated for radioactive wastes (the Nevada Test Site), when those wastes could have been disposed of more cheaply at the plant's sanitary landfill; and (3)

disposed of waste at the plant's sanitary landfill even though those wastes contained excessive amounts of free liquids in February, May, June, and July of 2004.

C. Gary Vander Boegh and George Johnson filed a *qui tam* action in the United States District Court for the Western District of Kentucky captioned *United States ex rel. Vander Boegh & Johnson v. Bechtel Jacobs Company LLC and WESKEM LLC*, U.S. District Court for the Western District of Kentucky at Paducah, Civil Action No. 5:02CV-348-M, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (collectively with the action identified in Paragraph B herein, the "Civil Action"). Relators filed an amended complaint, which alleged in short: (1) Defendants failed to comply with waste certification requirements; (2) WESKEM as subcontractor overbilled for employee time for SAIC, and then Bechtel Jacobs as prime contractor passed these costs on to DOE; (3) WESKEM as subcontractor improperly billed for idle workers on the DMSA subcontract with Bechtel Jacobs and Bechtel Jacobs as prime contractor passed these costs on to DOE; (4) WESKEM falsely obtained a subcontract by impermissibly underbidding the contract, which Bechtel Jacobs had responsibility for overseeing; (5) Defendants billed impermissibly for a performance based incentive for the Scrap Metal Removal Project in 2002; and (6) WESKEM billed for work on DOE subcontracts and failed to comply with Whistleblower Protection Requirements.

D. The United States contends that it has certain civil claims against Bechtel Jacobs arising from certain of the conduct alleged above (the handling of "listed" hazardous waste during the period 1998 to early 2002) (the allegations in Paragraphs B, C and D herein referred to hereinafter as the "Covered Conduct").

E. This Agreement is neither an admission of liability by Bechtel Jacobs nor a

concession by the United States that its claims are not well founded. By entering this Agreement, Bechtel Jacobs does not admit any wrongdoing or liability, or that any such allegations listed above have merit.

F. Relators claim entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Agreement and to Relators' reasonable expenses, attorneys' fees and costs.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. Bechtel Jacobs shall pay to the United States \$200,000 (the "Settlement Amount") by electronic funds transfer pursuant to written instructions to be provided by the Office of the United States Attorney for the Western District of Kentucky no later than ten days after the Effective Date of this Agreement.
2. Conditioned upon the United States receiving the Settlement Amount from Bechtel Jacobs and as soon as feasible after receipt, the United States shall pay \$44,000 to the Relators by electronic funds transfer.
3. Bechtel Jacobs shall pay \$30,000 in full satisfaction of any and all claims for Relators' expenses, and attorneys' fees and costs.
4. Subject only to the exceptions in Paragraph 5 (concerning excluded claims) below, and conditioned upon Bechtel Jacobs' full payment of the Settlement Amount, the United States (on behalf of itself, its officers, agents, agencies and departments) releases Bechtel Jacobs, together with its current and former parent

corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former owners; and officers, directors, attorneys, agents, servants, representatives, and employees; and the successors and assigns of any of them (collectively, the "released persons and entities") from any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or under the common law or equitable theories of breach of contract, payment by mistake, unjust enrichment, and fraud.

5. Notwithstanding the releases given in Paragraph 4 of this Agreement, or any other term of this Agreement, the following claims of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Any administrative liability, including the suspension and debarment rights of any federal agency;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;
- f. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- g. Any liability for failure to deliver goods or services due;

h. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

8. a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of Bechtel Jacobs, and its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;**
- (2) the United States' audit(s) and civil and/or criminal investigations of the matters covered by this Agreement;**
- (3) Bechtel Jacobs' investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil and any criminal investigation(s) in connection with the matters covered by this Agreement (including attorneys' fees);**
- (4) the negotiation and performance of this Agreement; and**
- (5) the payment Bechtel Jacobs makes to the United States pursuant to this Agreement and any payments that Bechtel Jacobs may make to Relators, including costs and attorneys' fees,**

are unallowable costs for government contracting purposes (hereinafter referred to as Unallowable Costs).

b. Future Treatment of Unallowable Costs: Unallowable Costs will be separately determined and accounted for by Bechtel Jacobs, and Bechtel Jacobs shall

not charge such Unallowable Costs directly or indirectly to any contract with the United States.

c. Treatment of Unallowable Costs Previously Submitted for Payment.

Within 90 days of the Effective Date of this Agreement, Bechtel Jacobs shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by Bechtel Jacobs or any of its subsidiaries or affiliates from the United States. Bechtel Jacobs agrees that the United States, at a minimum, shall be entitled to recoup from Bechtel Jacobs any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted requests for payment. The United States, including the Department of Justice and/or the affected agencies, reserves its rights to audit, examine, or re-examine Bechtel Jacobs' books and records and to disagree with any calculations submitted by Bechtel Jacobs or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by Bechtel Jacobs, or the effect of any such Unallowable Costs on the amount of such payments.

7. Conditioned upon Bechtel Jacobs' full payment of the Settlement Amount and the attorneys' fees and costs specified in Paragraph 3, Relators, for themselves and for their heirs, successors, executors, attorneys, agents, assigns, affiliates, administrators, representatives, next of kin, insurers, any and all subrogees or other derivative claimants, and anyone acting or claiming on their behalf, fully and finally release Bechtel Jacobs from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Relators have asserted, could have asserted, or may assert in the future against Bechtel Jacobs, related to the Covered

Conduct and/or the filing of the two False Claims Act *qui tam* actions that are the subject of this Agreement, provided, however, that nothing in this Agreement shall prevent Relator Gary Vander Boegh from pursuing his appeal relating to the matter *Gary Vander Boegh v. Energy Solutions, Inc.; Bechtel Jacobs Co., LLC; and Paduoa Remediation Services, LLC*, No. 5-10-CV-31, U.S. District Court for the Western District of Kentucky (appeal at No. 12-5643, Sixth Circuit Court of Appeals), and any subsequent proceedings in that matter in the District Court resulting from the appeal (the "Employment Action").

8. Conditioned upon the dismissal of the Civil Action, Bechtel Jacobs, together with parent corporations, subsidiaries, divisions, agents, assigns, affiliates, representatives, insurers, any and all subrogees or other derivative claimants, and anyone acting or claiming on their behalf, fully and finally releases Relators from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Bechtel Jacobs has asserted, could have asserted, or may assert in the future against the Relators, related to the Covered Conduct and/or the filing of the two False Claims Act *qui tam* actions that are the subject of this Agreement, provided, however, that nothing in this Agreement shall prevent Bechtel Jacobs from pursuing costs, attorneys' fees or other legal remedies relating to the Employment Action.

9. Relators and their heirs, successors, attorneys, agents, and assigns shall not object to this Agreement but agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). Conditioned upon Relators' receipt of the payment described in Paragraph 2, Relators and their heirs, successors, attorneys, agents, and assigns fully

and finally release, waive, and forever discharge the United States, its agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action or under 31 U.S.C. § 3730, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action.

10. Relators, for themselves, and for their heirs, successors, attorneys, agents, and assigns, release Bechtel Jacobs and WESKEM LLC, and their officers, agents, and employees, from any liability to Relators arising from the filing of the Civil Action, or under 31 U.S.C. § 3730(d) for expenses or attorney's fees and costs.

11. Bechtel Jacobs waives and shall not assert any defenses Bechtel Jacobs may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

12. Bechtel Jacobs fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Bechtel Jacobs has asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct and the United States' investigation and prosecution thereof.

13. This Agreement is intended to be for the benefit of the Parties only.

14. Upon receipt of the Settlement Amount described in Paragraph 1, above, the Parties shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal with prejudice of the Civil Action pursuant to Rule 41(a)(1), in the form attached hereto as Exhibit A.

15. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

16. Each Party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

17. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the Western District of Kentucky. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

18. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.


19. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

20. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

21. This Agreement is binding on Bechtel Jacobs' successors, transferees, heirs, and assigns.
22. This Agreement is binding on Relators' successors, transferees, heirs, and assigns.
23. All parties consent to the United States' disclosure of this Agreement to the public.
24. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

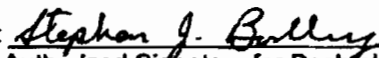
THE UNITED STATES OF AMERICA

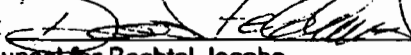
DATED: July 31, 2012 DAVID J. HALE
UNITED STATES ATTORNEY



William F. Campbell
Assistant U.S. Attorney

DEFENDANT BECHTEL JACOBS COMPANY LLC

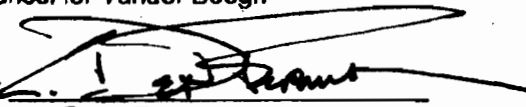
DATED: July 31, 2012 BY: 
Authorized Signatory for Bechtel Jacobs
Stephen J. Buckley
Vice President

DATED: July 31, 2012 BY: 
Counsel for Bechtel Jacobs
David A. Feldman
Nixon Peabody LLP

RELATOR GARY VANDER BOEGH

DATED: BY: _____
Relator Gary Vander Boegh

DATED: BY: _____
Attorney Mick Harrison
Counsel for Vander Boegh

DATED: BY: 
Attorney Dean Furman
Counsel for Vander Boegh

THE UNITED STATES OF AMERICA

DATED: DAVID J. HALE
UNITED STATES ATTORNEY

William F. Campbell
Assistant U.S. Attorney

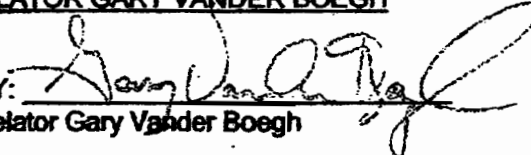
DEFENDANT BECHTEL JACOBS COMPANY LLC

DATED: BY: _____
Authorized Signatory for Bechtel Jacobs

DATED: BY: _____
Counsel for Bechtel Jacobs

RELATOR GARY VANDER BOEGH

DATED: July 30, 2012

BY: 
Relator Gary Vander Boegh

DATED: 7/30/12

BY: 
Attorney Mick Harrison
Counsel for Vander Boegh

DATED: BY: _____
Attorney Dean Furman
Counsel for Vander Boegh

RELATOR GEORGE JOHNSON

DATED: 7/30/2012 BY: George Johnson
Relator George Johnson

DATED: 7/30/12 BY: Mick R. Harrison
Attorney Mick Harrison
Counsel for Johnson

DATED: BY: _____
Dean Furman
Counsel for Johnson

EXHIBIT A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
PADUCAH DIVISION

UNITED STATES OF AMERICA)
ex rel. GEORGE JOHNSON &)
GARY VANDER BOEGH)
)
Plaintiffs,)
)
v.)
)
BECHTEL JACOBS COMPANY LLC,)
)
and)
)
WESKEM, LLC,)
)
Defendants.)

Civil Action No. 5:02CV-348-M

**JOINT NOTICE OF VOLUNTARY
DISMISSAL OF THIS ACTION**

The United States and Relators Gary Vander Boegh and George Johnson hereby seek dismissal of this action pursuant to Rule 41 (a) of the Federal Rules of Civil Procedure and 31 U.S.C. § 3730(b)(1) and in accordance with the terms of their settlement agreement with Defendant Bechtel Jacobs Company LLC. (Attached as Exhibit 1). In accordance with the settlement agreement, the United States and Relators hereby seek dismissal of this action with prejudice.

In addition, we request that only the Complaint, this Motion, and the accompanying Order be unsealed. All other contents of the Court's file in this matter (including, but not limited to, any applications filed by the United States for an extension of the sixty-day investigative period

or for any other reason, memoranda, and supporting documents) should remain under seal and not be made public.

A proposed order accompanies this notice.

Respectfully submitted,

DAVID J. HALE
United States Attorney

William F. Campbell
Assistant United States Attorney
717 W. Broadway
Louisville, Kentucky 40202
Phone: (502) 582-6773
Fax: (502) 625-7110

Dated: _____

Mick G. Harrison
The Caldwell Center
323 S. Walnut Street
Bloomington, Indiana 47401

Counsel for the Relators

Dated: _____

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing "Joint Notice of Voluntary Dismissal" and Proposed Order were mailed, by first class mail, postage prepaid, on this ___ day of _____

2012 to the following:

Mick G. Harrison
The Caldwell Center
323 S. Walnut Street
Bloomington, Indiana 47401
Counsel for the Relators

David A. Feldman
Nixon Peabody LLP
437 Madison Avenue
New York, NY 10022
Counsel for Bechtel Jacobs

William F. Campbell
Assistant United States Attorney

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
PADUCAH DIVISION

UNITED STATES OF AMERICA)
 ex rel. GEORGE JOHNSON &)
 GARY VANDER BOEGH)
)
 Plaintiffs,)
)
 v.)
)
 BECHTEL JACOBS COMPANY LLC,)
)
 and)
)
 WESKEM, LLC,)
)
 Defendants.)

Civil Action No. 5:02CV-348-M

ORDER

The United States and Relators having submitted their Joint Notice of Voluntary Dismissal of This Action pursuant to Federal Rule of Civil Procedure 41(a) and 31 U.S.C. § 3730(b)(1) and for good cause shown, the Court rules as follows:

IT IS HEREBY ORDERED that,

1. All claims in this action be and hereby are dismissed with prejudice;
2. The complaint and amendments thereto be unsealed;
3. All other contents of the Court's file in this action remain under seal and not be made public or served upon Defendants, the United States' and Relators' Joint Notice of Voluntary Dismissal of This Action, and this Order, which will be served upon Defendants by the United States; and

4. The seal be lifted as to all matters occurring in this action after the date of this Order.

IT IS SO ORDERED,

This ____ day of _____, 2012.

UNITED STATES DISTRICT JUDGE

cc: Counsel of Record

Tendered by

**William F. Campbell
Assistant United States Attorney
U.S. Attorney's Office
717 West Broadway
Louisville, KY 40202
Phone: 502/582-6773
Fax: 502/625-7110**

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
PADUCAH DIVISION

UNITED STATES OF AMERICA)
ex rel. GEORGE JOHNSON &)
GARY VANDER BOEGH)
)
Plaintiffs,)
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v.)
)
BECHTEL JACOBS COMPANY LLC,)
)
and)
)
WESKEM, LLC,)
)
Defendants.)

Civil Action No. 5:02CV-348-M

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DISMISSAL OF THIS ACTION**

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In addition, we request that only the Complaint, this Motion, and the accompanying Order be unsealed. All other contents of the Court's file in this matter (including, but not limited to, any applications filed by the United States for an extension of the sixty-day investigative period

or for any other reason, memoranda, and supporting documents) should remain under seal and not be made public.

A proposed order accompanies this notice.

Respectfully submitted,

DAVID J. HALE
United States Attorney

William F. Campbell
Assistant United States Attorney
717 W. Broadway
Louisville, Kentucky 40202
Phone: (502) 582-6773
Fax: (502) 625-7110

Dated: _____

Mick G. Harrison
The Caldwell Center
323 S. Walnut Street
Bloomington, Indiana 47401

Counsel for the Relators

Dated: _____

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing "Joint Notice of Voluntary Dismissal" and Proposed Order were mailed, by first class mail, postage prepaid, on this ___ day of _____ 2012 to the following:

**Mick G. Harrison
The Caldwell Center
323 S. Walnut Street
Bloomington, Indiana 47401
Counsel for the Relators**

**David A. Feldman
Nixon and Peabody
437 Madison Avenue
New York, NY 10022
Counsel for Bechtel Jacobs**

**William F. Campbell
Assistant United States Attorney**

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
PADUCAH DIVISION

UNITED STATES OF AMERICA
ex rel. GEORGE JOHNSON &
GARY VANDER BOEGH

Plaintiffs,

v.

BECHTEL JACOBS COMPANY LLC,

and

WESKEM, LLC,

Defendants.

Civil Action No. 5:02CV-348-M

ORDER

The United States and Relator having submitted their Joint Notice of Voluntary Dismissal of This Action pursuant to Federal Rule of Civil Procedure 41(a) and 31 U.S.C. § 3730(b)(1) and for good cause shown, the Court rules as follows:

IT IS HEREBY ORDERED that,

1. All claims in this action be and hereby are dismissed with prejudice;
2. The complaint and amendments thereto be unsealed;
3. All other contents of the Court's file in this action remain under seal and not be made public or served upon Defendants, the United States' and Relator's Joint Notice of Voluntary Dismissal of This Action, and this Order, which will be served upon Defendants by the United States; and

4. The seal be lifted as to all matters occurring in this action after the date of this Order.

IT IS SO ORDERED,

This _____ day of _____, 2012.

UNITED STATES DISTRICT JUDGE

cc: Counsel of Record

Tendered by

William F. Campbell
Assistant United States Attorney
U.S. Attorney's Office
717 West Broadway
Louisville, KY 40202
Phone: 502/582-6773
Fax: 502/625-7110