

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF KENTUCKY  
AT PADUCAH

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FILED  
US DISTRICT COURT CLERK  
WESTN. DIST. KENTUCKY

UNITED STATES OF AMERICA, )  
*ex rel.* GARY VANDER BOEGH )

PLAINTIFF )

vs. )

BECHTEL JACOBS COMPANY LLC )  
Highway 58, Blair Road )  
Oak Ridge, Tennessee 37830 )

Serve: )  
CT Corporation System )  
Kentucky Home Life Building )  
Louisville, KY 40202 )

DEFENDANT )

Civil Action No: 5:02CV-300-M

COMPLAINT FILED *IN CAMERA*  
AND UNDER SEAL

Pursuant to 31 U.S.C. § 3730(b)(2)

TRIAL BY JURY REQUESTED

FIRST AMENDED COMPLAINT

Plaintiff United States of America, *ex rel.* Gary Vander Boegh, states as follows for its cause of action against Defendant Bechtel Jacobs Company LLC (“Bechtel”):

JURISDICTION AND VENUE

1. This is an action to recover damages and civil penalties arising out of false claims presented by Bechtel to the United States. The actions arises under the provisions of Title 31 U.S.C. § 3729, *et. seq.*, the False Claims Act (the “Act”), which provides that the United States shall have exclusive jurisdiction of actions brought under the Act.

2. Subject matter jurisdiction in this Court is therefore based upon 28 U.S.C. § 1331 and 31 U.S.C. § 3732.

3. Section 3732(a) of the Act provides that “[a]ny action under 3730 may be brought in any judicial district in which the defendant or, in the case of multiple defendants, any one defendant can be found, resides, transacts business, or in which any act proscribed by section 3729 occurred.”

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Bechtel transacts business in the Western District of Kentucky, including business in Paducah, McCracken County, Kentucky.

4. Under the False Claims Act, this Complaint is to be filed *in camera* and remain under seal for a period of at least sixty days and shall not be served on Bechtel until the Court so orders. The United States may elect to intervene and proceed with the action within sixty days after it receives the complaint, material evidence, and any other necessary information.

5. As required by the Act, 31 U.S.C. § 3730(b)(2), Relator Gary Vander Boegh has provided to the Attorney General of the United States and to the United States Attorney for the Western District of Kentucky, simultaneously with the filing of this Complaint, a statement of substantially all material evidence and information related to this Complaint. This disclosure statement is supported by evidence establishing Bechtel's submission of false claims to the government.

#### **PARTIES**

6. The United States of America is the Plaintiff in this action. At all times material to this Complaint, the Department of Energy ("DOE") was an agency and instrumentality of the United States, and its activities, operations, and contracts were paid from federal funds.

7. Relator Gary Vander Boegh is a resident and citizen of the United States of America and of the Commonwealth of Kentucky. From June 15, 1992 to April, 2006, Vander Boegh worked as the landfill manager/operator for Martin Marietta Energy Systems, Lockheed Martin Energy Systems, Bechtel, and Weskem, a Bechtel subcontractor.

8. Bechtel is a foreign limited liability company licensed to do business, and doing business, in McCracken County in the Commonwealth of Kentucky and having its principal office at Highway 58, Blair Road, Oak Ridge, Tennessee.

**FACTS**

9. From in or about April, 1998, DOE contracted with Bechtel to perform waste removal and environmental remediation work at the Paducah Gaseous Diffusion Plant (the "Paducah Plant") in Paducah, Kentucky (the "Contract"). Pursuant to the Contract, the United States paid Bechtel for its services out of federal funds.

10. The Contract is a contract in which Bechtel is paid a certain sum to perform its activities and is given performance based incentives/award fees when it met certain performance objectives.

11. One of the onsite landfills Bechtel managed and used in waste removal under the Contract was designated C-746-U (the "U-Landfill"), located in Paducah, Kentucky. For all times relevant to this Complaint, Vander Boegh was the landfill manager/operator of the U-Landfill, licensed with the Commonwealth of Kentucky in accordance with 401 KAR 47:070.

12. The U-Landfill is a contained, Subtitle D landfill licensed by the Kentucky Division of Waste Management and is not authorize to receive any hazardous waste, meaning any waste that is classified as hazardous under the Resource Conservation Recovery Act ("RCRA"), 42 U.S.C. § 6901, *et. seq.*, and under Commonwealth of Kentucky regulations, including 401 KAR 48:090, Section 2.

13. As the U-Landfill's operator, Vander Boegh maintained records of the waste placed in his facility. He relied upon the certifications of the individuals and companies who placed such waste that it was not hazardous under RCRA and the Kentucky Administrative Regulations.

14. During the 1990s, contractors at the Paducah Plant dredged, excavated, and cleaned surface water drainage ditches in and around the Paducah Plant. The waste soils obtained from these drainage ditches, along with waste soils generated from spill clean-up activities, were placed into fifty-five (55) gallon drums and temporarily stored on site at the Paducah Plant.

**F Listed Waste**

15. Beginning in 1998 and continuing through November 1999, Bechtel disposed of several thousand drums of these waste soils (the "Drums") in the U-Landfill as part of its Contract duties involving environmental remediation activities.

16. Representatives and employees of Bechtel made representations to Vander Boegh that the Drums were characteristically non-hazardous. As purportedly non-hazardous waste, they were allowed to be disposed of in the U-Landfill.

17. In actuality, Bechtel had deliberately and falsely classified the Drums as characteristically non-hazardous when Bechtel knew that the Drums were contaminated with spent solvent Trichloroethylene ("TCE") that had been used in "degreasing" operations performed in and around the Paducah Plant.

18. Any waste materials that have been contaminated with TCE must be classified under federal law as source listed hazardous waste materials and be disposed of in a hazardous waste landfill, rather than in a non-hazardous waste landfill such as the U-Landfill.

19. Under RCRA, TCE is a source listed hazardous waste if it was generated from degreasing operations, from past spills, or from deliberate dumping in plant drainage ditches. Therefore, any waste contacting or commingling with TCE contaminated soils would be designated as "F Listed" hazardous waste under RCRA. The Drums were required to bear the RCRA hazardous waste code of F-001 because of the spilling and illegal dumping of TCE as a degreasing solvent into the waste soils in and around the Paducah Plant. Any disposal of the Drums in a non-hazardous waste landfill, such as the U-Landfill, would be a violation of RCRA.

20. Bechtel knew that the Drums contained F Listed hazardous waste at the time the Drums were placed in the U-Landfill.

21. Bechtel knew that disposing the Drums at the U-Landfill was in direct violation of RCRA and other environmental laws and regulations.

22. Pursuant to the Contract, Bechtel was required to operate in accordance with all federal and state environmental regulations.

23. Pursuant to the Contract, Bechtel executed "Waste Certification Statements" and presented these to DOE, falsely and fraudulently verifying that the Drums disposed of in the U-Landfill met the established criteria for DOE disposal facilities.

24. These certification statements were provided in the form of "Landfill Waste Certification" statements and Quarterly Waste Report Information and forwarded to the Kentucky Division of Waste Management.

25. The contaminated, hazardous Drums created TCE contaminated landfill leachate. All such leachate is required to carry the F-039 RCRA waste code. Through its actions, Bechtel has breached terms of the Contract by carrying out the discharge of hundreds of thousands of gallons of hazardous landfill leachate from the U-Landfill in violation of Commonwealth of Kentucky discharge permit requirements established for KPDES Outfalls 004 and 008, Environmental Performance Standards 401 KAR 47:030, and provisions of the federal Clean Water Act.

26. Through its actions, Bechtel has breached the terms of the Contract by accepting RCRA waste into the U-Landfill and, consequently, compromising the U-Landfill's contained design standards and specifications, making them not in compliance with RCRA Subtitle C facility design standards.

27. Bechtel submitted to the United States claims for services in connection with the remediation and removal of hazardous wastes pursuant to the award fees and performance incentives as contained in the Contract.

28. In so doing, Bechtel filed Quarterly Solid Waste reports with the United States in which Bechtel represented that the remediation and disposal of these waste materials were being conducted in accordance with applicable Federal and state laws, rules, and regulations.

29. In actuality, Bechtel knew that the disposal of the waste materials in question violated Federal and state laws, rules and regulations. Such violations were a direct breach of the Contract terms.

**Failure to Dispose of Non-Radiological Waste at the Landfill**

30. Bechtel improperly stored "no radiation added" waste at the Paducah Plant to obtain performance based incentives ("PBI") and, by not disposing of it in the U-Landfill, failed to perform under the obligations of its Contract.

31. On February 6, 2001, Vander Boegh made a presentation to the Department of Energy ("DOE") about the impacts of a new operational permit issued by the Kentucky Division of Waste Management ("KDWM") dated February 1, 2001. At this meeting, Vander Boegh informed Bechtel's legal counsel, Patrick Willison, that wastes that had no "residual radiation" could still be placed in the landfill even though DOE had temporarily suspended disposal of the "radiation added" wastestreams in November of 1999, pending further radiological determinations and evaluations.

32. Bechtel removed the procedural document PMWM 1009 in April, 1998, and replaced it with a WAC that failed to capture the requirements set forth in DOE Order 5400.5, Chapter IV. From April, 1998, thru the addition of the corrections to the Bechtel WAC, wastes were transported to the U-Landfill without complying with DOE Order 5400.4, Chapter IV, due to the deletion of PMWM-1009 and to the lack of this requirement within the adopted replacement Bechtel WAC.

33. DOE directed Bechtel not to accept waste without first assuring "no rad added." Waste could be accepted throughout the suspended notice that met DOE "no rad added" criteria. Therefore, Bechtel was paid for landfill management while not disposing of

waste that met the DOE directive. The DOE directive was only supposed to apply to wastestreams with radiological limits above background. For example, approximately 10,000 tons of concrete rubble, at "no rad added" levels, was stored and managed in the PGDP's cylinder yard. This waste should have been disposed of in the U-Landfill, but Bechtel held it for later PBI incentives to be established. No permit was granted by KDWM for holding this waste.

### **Free Liquids Issue**

34. The U-Landfill was not permitted to take free liquids in its waste packages.

35. Despite the prohibition of accepting free liquids, Bechtel presented waste packages for acceptance and required the acceptance of waste in the U-Landfill that contained free liquids, including waste submitted in February, May, June, and July of 2004.

36. As a result of disposing of free liquids in the U-Landfill, Bechtel's knowingly breached its duties under the Contract and received payments from the United States knowing that it was not entitled to such sums for the disposal of the waste packages with free liquids.

### **CAUSE OF ACTION**

37. Plaintiff realleges and hereby incorporates by reference each and every allegation contained in paragraphs 1 to 36 contained herein.

38. As a consequence of Bechtel's actions described in this Complaint, Bechtel's claims submitted to the United States for payment under the Contract were false and fraudulent because they contained representations that Bechtel had complied with applicable Contract obligations, federal laws, and state laws when, in fact, Bechtel knew that its activities were in violation of Contract obligations, federal laws, and state laws.

39. Bechtel knowingly presented and caused to be submitted to the United States claims for payments for the disposal of waste materials that were false and fraudulent

because Bechtel falsely and fraudulently misrepresented Bechtel's compliance with Contract obligations, federal laws, and state laws.

40. Bechtel was not entitled to payments from the United States for the claims which it submitted under the Contract, as described above, because of Bechtel's violation of applicable Contract obligations and law and, as such, payment of these claims resulted in a financial loss to the United States of America.

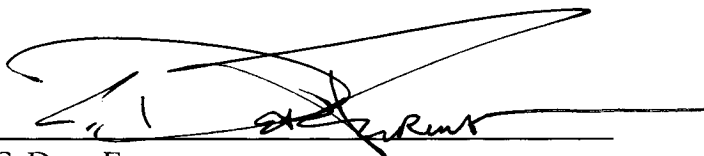
WHEREFORE, Plaintiff respectfully requests:

1. That a judgment be entered against Bechtel in the amount of the false claims paid;
2. That the amount of such judgment be trebled pursuant to 31 U.S.C. § 3729(a);
3. That a civil penalty in an amount not less than \$5,000.00, nor more than \$11,000.00, per violation be imposed upon Bechtel;
4. That judgment be entered against Bechtel and in favor of Realtor, Gary Vander Boegh, for attorneys' fees, costs, and expenses reasonably incurred, as permitted by 31 U.S.C. § 3730(d);
5. That this Court award Realtor, Gary Vander Boegh, the maximum recovery allowed under 31 U.S.C. § 3730(d);
6. That this Court grant such other and further relief, in law or in equity, as to which Plaintiff and Realtor may be entitled; and
7. That Plaintiff be granted a jury trial.



Respectfully submitted,

FURMAN NILSEN & LOMOND, PLLC

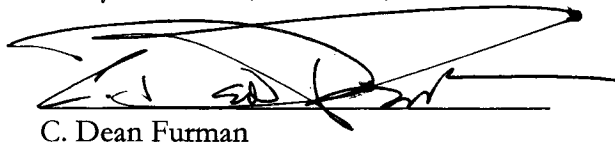


C. Dean Furman  
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(502) 245-8883  
(502) 244-8383 (facsimile)

Counsel for Relator Gary Vander Boegh

**CERTIFICATE OF SERVICE**

This will certify that a true copy of this Complaint was this 21<sup>st</sup> day of March, 2008, mailed via prepaid first class mail to William Campbell, Assistant United States Attorney for the Western District of Kentucky, 510 W. Broadway, 10<sup>th</sup> Floor, Louisville, KY 40202.



C. Dean Furman