

Statement for the Record
Hearing of the Senate Subcommittee on Financial and Contracting Oversight
Whistleblower Retaliation at the Hanford Nuclear Site
Senator Edward J. Markey
March 11, 2014

Chairman McCaskill, Ranking Member Johnson:

I thank you for calling today's hearing and for allowing me to submit testimony. I commend your leadership on this important issue, and I stand ready to assist you in any way possible.

On the three-year anniversary of the catastrophic meltdowns at the Fukushima reactors in Japan, it is particular disconcerting to be faced with such serious allegations of whistleblower retaliation for bravely disclosing grave safety problems at a site that stores some of the nation's most dangerously contaminated nuclear waste.

The Waste Treatment Plant (WTP) is being built to treat Hanford's high-level nuclear waste currently stored in 177 aging underground tanks, 70 of which have already leaked about 1 million gallons of waste into the groundwater, which feeds the Columbia River located about 12 miles away.¹ About 56 million gallons of this waste needs to be removed, treated and disposed of before further leaks occur.

I first wrote the Department of Energy (DOE) to relay my concerns about safety and management blunders at the WTP in November of 2011, and included questions related to the treatment of the former Manager for Research and Technology at the plant, Dr. Walter Tamosaitis. Dr. Tamosaitis, a decades-long senior official at the facility, had raised concerns about the portion of the project that involves mixing the high-level nuclear waste in tanks, including the possibility that if the safety concerns were not addressed, a potential criticality or hydrogen explosion could occur. Dr. Tamosaitis was almost immediately removed from his managerial position and assigned to sit in a basement office with essentially no responsibilities.

According to reports,² emails,³ and court documents,⁴ this demotion was directly tied to his safety complaints: "Walt is killing us," Bechtel manager Frank Russo wrote in an email on July 1, to one of Tamosaitis' bosses. "Get him in your corporate office today." The response to that email was "He will be gone tomorrow". Other emails⁵ indicate that both Ines Triay, then-Assistant Secretary for Environmental Management at DOE, and Deputy Secretary Daniel

¹ <http://www.hanfordwatch.org/introduction.htm>

² See for example the July 22, 2011 article in The New York Times Greenwire entitled "Independent Probe, Manager's Firing Raise Questions About 'Safety Culture' at DOE's Nuclear Waste Site

³ <http://sheridanlawfirm.com/SiteData/Docs/walt-is-killing-us-email-string.pdf>

⁴ See documents prepared and filed in Dr. Tamosaitis's case against Bechtel, Case NO. CV-10-5116-RHW in the United States District Court Eastern District of Washington

⁵ <http://sheridanlawfirm.com/SiteData/Docs/July-28-2010-Russo-email-exchange-protect-50-million.pdf>

Poneman had been briefed on the matter and “understand the reasons for Walt’s departure,” “support” Bechtel management, but that “DOE can’t be seen as involved.”

On October 2 2013, Dr. Tamosaitis was terminated from his job and told he would only receive the severance pay he was entitled to if he promised not to sue his employer for what can only be described as years of retaliation for his efforts to issue warnings related to the WTP’s dangerous flaws.

A second example of retaliatory actions at the WTP plant involves Donna Busche, the former manager of environmental health and safety at the WTP plant. After she testified as a witness at a public hearing that the release of radioactive contaminants would spread further outside the plant’s boundaries in the event of an accident than DOE and Bechtel officials maintained they would, Ms Busche said that she was pressured to alter her testimony and was subsequently verbally admonished by then-Assistant Secretary for Environmental Management Ines Triay. Later, the DOE and Bechtel calculations were acknowledged to be inaccurate. Ms Busche was fired last month.

The safety issues that Dr. Tamosaitis and Ms. Busche raised have all been independently validated by GAO, the Defense Nuclear Facilities Safety Board, DOE’s Inspector General and DOE itself. They have all been raised in several letters I have sent to DOE, as well as by Senator Ron Wyden and other elected officials. Yet these individuals remain without jobs, and facing what is likely to be a years-long legal fight against large government contractors who have the means to hire expensive attorneys and engage in dilatory tactics. Much of the contractors’ legal costs may even be reimbursed by DOE and thus billed to the taxpayers, despite a provision I authored in the 2005 Energy Bill that seeks to limit such awards⁶.

On September 20, 2013, DOE Secretary Moniz issued a memorandum that said, in part:

“We will foster a safety conscious work environment across all Departmental operations. Federal, laboratory, and contractor workers have the right to identify and raise issues that affect their safety and health or that of their co-workers openly, and without fear of reprisal. We must not deter, discourage, or penalize employees for the timely identification of safety, health, environmental, quality or security issues, the reporting of illnesses or injuries, or the use of Employee Concerns or Differing Professional Opinion Programs. Our workers will receive a prompt, professional, and transparent evaluation and resolution of their concerns.”

If the Department takes no action to halt these retaliatory actions, hold those responsible for them accountable, and limit the reimbursement of contractors’ legal fees in these cases, its efforts to improve safety culture at WTP and throughout the DOE complex will, quite simply, lack all credibility.

I thank the Subcommittee once again for holding this important hearing and look forward to working with you to ensure that action to remedy both the specific retaliatory acts in question and DOE’s management of its contractors occurs.

⁶ Section 627 of H.R. 6, the Energy Policy Act of 2005, Limitation on Legal Fee Reimbursement