



NEPC

NATIONAL ENVIRONMENTAL PROTECTION CENTER

December 14, 2002

Paul Goldberg
U.S. Nuclear Regulatory Commission
T9C24
Washington, D.C. 20555-0001

RE: 10 C.F.R. 2.206 (Oct. 1st, 2002) SUPPLEMENTAL PETITION SUBMITTAL

Dear Mr. Goldberg:

Enclosed herewith please find the National Environmental Protection Center ("NEPC") supplemental petition submittal to NEPC's October 1st, 2002 10 C.F.R. 2.206 Petition filed with the U.S. Nuclear Regulatory Commission ("NRC") requesting certain and specific actions be taken by the NRC regarding the General Electric Company, GE Medical Systems, Adecco, Inc. and Adecco Technical relating to circumstances surrounding the illegal discharge of a whistleblower on August 2nd, 2002 from the GE Medical Systems facility.

Should you have any questions regarding the foregoing, please don't hesitate to contact us.

Best regards,

Thomas Saporito
Executive Director

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE OFFICE OF ADMINISTRATIVE LAW JUDGES

DATE: December 13th, 2002
CASE NOS. 2003CAA00001/00002

In the Matter of

THOMAS SAPORITO

Complainant,

v.

GE MEDICAL SYSTEMS,

and,

ADECCO TECHNICAL,

Respondents.

**COMPLAINANT'S OPPOSITION TO RESPONDENT ADECCO
AND RESPONDENT GEMS MOTION FOR SUMMARY JUDGMENT**

COMES NOW, the undersigned complainant pro se, and submits complainant's opposition to a motion for summary judgment ("Motion") filed by Respondent Adecco Technical ("ADECCO") and complainant's opposition to a separate motion for summary judgment filed by Respondent GE Medical Systems ("GEMS") in the above-styled proceeding and states the following:

Both Respondents in their respective Motions argue at length that the complainant cannot establish a *prima facie* case of retaliation pursuant to the environmental statutes under which the complainant brought the consolidated complaint in the instant action. Essentially, the gravamen of both Respondents' arguments is centered on a basic misinterpretation and ignorance of well settled law under the employee protection provisions of the environmental statutes under which the complainant brought his complaints against both Adecco and GEMS. Incredibly, both respondents argue in their respective

motions that they did not have knowledge of the complainant's "protected activity" and that the complainant did not engage in "protected activity" under any environmental statute for which the complainant brought any of his complaints in the instant action.

COMPLAINANT'S PRIMA FACIE CASE OF ILLEGAL DISCRIMINATION, ILLEGAL HOSTILE WORK ENVIRONMENT, ILLEGAL RETALITATION, ILLEGAL DISCHARGE, AND ILLEGAL CONTINUING VIOLATION OF BLACKLISTING

The various environmental whistleblower statutes under which the complainant brings the instant action are similar in construction and generally hold that:

"No person shall fire or in any way discriminate against, or cause to be fired or discriminated against, any employee or any authorized representative of employees by reason of the fact that such employee or representative has provided information to a State or to the Federal Government, filed, instituted, or caused to be filed or instituted any proceeding under this chapter, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this chapter."

42 U.S.C. 9610(a). Both the Clean Air Act and the Toxic Substances Control Act contain employee protection provisions, which serve to protect employees from any retaliation or discrimination resulting from "protected activity." Under both the CAA and the TSCA, an employee is protected if he:

1. Commences, or caused to be commenced, or is about to commence or cause to be commenced a proceeding under this chapter,
2. testified or is about to testify in any such proceeding; or
3. assisted or participated, or is about to assist or participate in any manner in such a proceeding or in any other action to carry out the purposes of this chapter.

42 U.S.C. 7622(a)(1988); 15 U.S.C. 2622(a)(1988).

To establish a *prima facie* case, the complainant must prove the following elements:

1. That the complainant engaged in protected activity;
2. that the complainant was subject to adverse action; and
3. that the employer ("respondent") was aware of the protected activity when it took adverse action.

See, Larry v. Detroit Edison Co., 86-ERA-32 (Sec'y June 28, 1991). In the instant complaint, the complainant engaged in protected activity numerous times during his period of

employment at the GEMS facility. *See, Dec. 13th, 2002 affidavit of Thomas Saporito* attached hereto.

COMPLAINANT'S ENGAGEMENT IN PROTECTED ACTIVITY

On June 21, 2002, the complainant raised a safety concern about laser dye to Michael Triana a GEMS manager. The complainant was concerned about the removal of the laser dye from used medical lasers at the GEMS facility. The complainant was also concerned about GEMS' budget regarding the hiring of an outside contractor to remove the laser dye.

On July 22nd, 2002, the complainant raised a safety concern about leaking laser dye to Triana and insisted that the area of concern be posted to alert people of the hazard. The complainant also believed that laser dye had been dumped into a sink in the area where the used lasers were being stored. The complainant was concerned that dumping dye into the sink could harm the public and harm the environment, and such conduct violated environmental laws and regulations under the EPA act. The complainant's mind-set in raising this particular safety concern and EPA violation is well documented in his August 26th, 2002 DOL-OSHA complaint at p.7. In this same time period, the complainant assisted Pat McQueary a GE manager in stopping the air shipment of the GEMEX and the shipment of the GEMEX gases to hospitals around the United States. *Saporito affd. at p.3.*

On July 24th, 2002, the complainant notified Triana about a safety concern regarding Graylon Rector a GE Laser Engineer. The complainant informed Triana that Rector had spilled Laser DYE on his person and that Rector was traveling in public places with contaminated clothing and that Rector needed training. The complainant reiterated his safety concerns about Rector to McQueary later that day. *Saporito affd. at p.3.*

On July 29th, 2002, the complainant expressed his safety concerns about the GEMEX project to Triana and to Able Sierra a plant engineer at GEMS.

On July 30th, 2002, the complainant expressed safety concerns to Triana about the GEMEX project and about the air shipment of the GEMEX gases. *Saporito affd. at p.4.*

On July 31st, 2002, the complainant sent an email letter to Karen Zaborowski a GEMS manager, attaching a Microsoft Word formatted letter which specifically delineated his safety concerns about the GEMEX and the GEMEX gases. The complainant's intent in sending his safety concerns to Zaborowski was to prevent Triana from sending the GEMEX unit and the GEMEX gases by public air transport to public hospitals across the United States. The complainant believed that the air transportation and use of the GEMEX prototype and the GEMEX gases violated EPA laws and regulations and posed significant safety and health risks to the environment, to the public, and to the GE laser field engineers who transported and operated the GEMEX unit and GEMEX gases. The complainant sent a copy of his safety concerns to Triana and to others at the GEMS facility. *Saporito affd. at p.4.*

On July 31st, 2002, after receiving a copy of the complainant's safety concerns about the GEMEX project and the GEMEX gases, Triana ordered the complainant to a private discipline meeting in Triana's office. At the discipline meeting, the complainant explained to Triana that he "the complainant" had a legal right under existing OSHA environmental laws and regulations to raise health and safety issues to any level of GE management and to express safety concerns that he believed violated EPA environmental laws and regulations. The complainant further explained to Triana at the discipline meeting that the GEMEX FSAR conveyed his belief that EPA environmental laws and regulations were being violated and reiterated that under existing OSHA laws, he had a right to go outside the chain-of-command at GE and raise safety concerns at any level of management at GE. *Saporito affd. at p.5.*

On July 31st, 2002, the complainant explained his safety concerns about the GEMEX project to Able Sierra a plant engineer assigned to work with the complainant on the GEMEX project. *Saporito affd. at p.5.*

On July 31st, 2002, the complainant and Sierra visited the PACE machine shop in Jupiter, Florida to obtain pricing information about construction of the GEMEX frame. The

complainant explained his safety concerns about the GEMEX to PACE employees and showed them pictures of the GEMEX. Upon returning to the GEMS facility, the complainant copied the pictures from the digital camera to a folder on the GE computer server to continue his safety investigation of the GEMEX project.

On August 1st, 2002, the complainant expressed his safety concerns about the GEMEX project to John Lezinski a GE laser engineer and provided Lezinski with a copy of the July 31st, 2002 safety concerns letter that the complainant had sent to Zaborowski and copied to Triana. The complainant communicated to Zaborowski, to Lezinski, to Tim Bridges a GE laser zone manager, to Paul Presti a GE laser engineer, and to Sierra that Triana was out to fire him because of the safety concerns he raised about the GEMEX project. *Saporito affd. at p.7.*

On August 1st, 2002, the complainant again sent Zaborowski an email letter regarding the storage of GEMEX gases at client locations. The complainant subsequently explained his safety concerns about the GEMEX project and about the GEMEX gases to Tim Trent a member of the GEMS safety committee. *Saporito affd. at p.7.*

On August 1st, 2002, the complainant explained his safety concerns about the storage of GEMEX gases to Triana and to Adams another GE manager at GEMS. The complainant's coworkers heard the complainant raise safety concerns about the GEMEX gases to Triana. Later that day, Triana ordered the complainant to a meeting held in David Burrage's office stemming from the complainant's safety concern about the storage of the GEMEX gases. During this meeting, the complainant explained his safety concerns about the GEMEX project and the GEMEX gases regarding the storage of the GEMEX gases at the GEMS facility. The complainant attempted to explain his involvement with the review of the GEMEX procedure but Triana interrupted and order the complainant to stop his review. Burrage discussed the NEON gas product but did NOT discuss the Hydrogen Chloride gas product use in operation of the GEMEX. As the meeting progressed, the complainant perceived that Burrage appeared to have already read a copy of his July 31st, 2002 safety

letter that he, "the complainant" had sent to Zaborowski and copied to Triana. Based on that perception, the complainant expected that Burrage would investigate all of his safety concerns regarding the GEMEX. The complainant informed Burrage that he had not received any safety training at the GEMS facility. *Saporito affd. at p.8-9.*

At the end of the meeting, it was perceived by the complainant that Burrage had read a copy of his safety concerns letter regarding the GEMEX FSAR and the complainant expected Burrage to investigate all his safety concerns including the air transport of the GEMEX and the GEMEX gases to hospitals around the United States. The complainant did not feel comfortable in discussing Triana's retaliation and hostility directed at him because of his safety concerns as Triana was present throughout the meeting. At all times during the complainant's meeting with Burrage, he was as truthful and direct regarding his safety concerns as could reasonably be expected of an employee who was the subject of retaliation and a hostile work environment. *Saporito affd. at p.9.*

Subsequent to the meeting with Burrage and Triana, the complainant started to view the safety training CD at his computer work station and was specifically reading a print out of a computer screen shot displaying OSHA and how to file a complaint. *Saporito affd. at p.9.* Triana arrived at the complainant's work station and observed the complainant's activity.

On night of August 1st, 2002, the complainant sent an email letter to Burrage from the complainant's home computer. The complainant attached two MS-Word formatted files to the email letter. The first attached file was a letter entitled "SAFETY CONCERNS AND RETALIATORY DISCRIMINATION" dated August 2nd, 2002, and address to David Burrage. The letter detailed the complainant's safety concerns about the GEMEX project and his complaint of retaliation by Triana and concern for his coworkers. The second file attachment was a "draft" copy of a letter entitled "Final Safety Analysis Review - (GEMEX-00000)" dated July 30th, 2002 and originally intended for Zaborowski and which detailed the complainant's safety concerns about the GEMEX project and about the GEMEX gases similar

to the July 31st, 2002 letter sent to Zaborowski earlier. To be sure that Burrage received both of those safety concerns letters, the complainant resent those safety concerns letters to Burrage the next day on August 2nd, 2002 from his GE workstation computer. The complainant copied his transmittal to Zaborowski, to Trent, to Hirschberg, to Sierra and forwarded to his home computer. *Saporito affd. at p.10.*

On August 2nd, 2002, the complainant told Paul Presti a GE Laser Engineer that Triana was out to fire him over his safety concerns regarding the GEMEX project. The complainant explained his safety concerns about the GEMEX project to Presti and gave Presti a copy of the July 31st, 2002 safety concerns letter that the complainant had sent to Zaborowski about the GEMEX project. While walking towards the lab, Burrage met the complainant and Presti in the warehouse area just outside the lab. Burrage was extremely upset and angry. Burrage dressed the complainant down in front of Presti because of two safety concerns documents Burrage received from the complainant earlier. Burrage admonished the complainant for bypassing the GE chain-of-command and told the complainant that he, "Burrage" wanted a meeting with the complainant later that day. Burrage stated that he had read the complainant's safety concerns letters and that he disagreed with 95% of the safety concerns. Burrage then turned to Presti and asked if he had seen the GEMEX. Presti replied that he did see the GEMEX earlier that morning. Burrage asked Presti's opinion of the GEMEX and Presti stated that he would not send it out in the field to be used in public places. *Saporito affd. at p.10.*

Based on the complainant's discussions with Burrage and on Presti's response to Burrage's inquiry about the GEMEX FSAR, the complainant believed that Burrage clearly understood about the complainant's belief and safety concern that the air transport of the GEMEX and the GEMEX gases to hospitals around the United States violated EPA laws and regulations. *Saporito affd. at p.10.*

On December 7th, 2002, during the deposition testimony of Adecco's former Branch Manager Greg Bradley, Bradley admitted under oath that he had a telephone discussion

about the complainant on July 31st, 2002 and a subsequent telephonic conference call with Triana and with Burrage on August 2nd, 2002. Although Bradley denies any discussion of the complainant's safety concerns with Triana on July 31st, 2002, it strains the mind to believe that Triana would not have raised that issue with Bradley. Notably, Bradley testified that on August 2nd, 2002, during a telephonic conference call with Triana and with Burrage, he "Bradley" became aware that the complainant had raised safety concerns at the GEMS facility. In fact, during the conference call, Burrage sent a letter to Bradley via email concerning the complainant's safety concerns and Bradley admitted to reading the email letter during the telephone conference call. Within hours of learning about the complainant's safety concerns, Bradley called the complainant at his workstation at GEMS and angrily ordered him to leave immediately because of two safety concerns letters that the complainant had sent to GEMS management over the GE email system. *Saporito affd. at p.11*. Thus, Triana, and Burrage, and Bradley together conspired to end the complainant's employment at GEMS on August 2nd, 2002 immediately after discussing the complainant's safety concerns. Notably, during the discovery phase of the instant proceeding, the complainant discovered that on September 26, 2002, Bradley emailed his boss Zuzet Menedez a copy of the complainant's FSAR-GEMEX document along with a copy of the complainant's Burrage document. Therefore, it can be readily seen that Bradley was provided a copy of all of the complainant's safety concerns about the GEMEX and the GEMEX gases along with the complainant's safety concern sent to Burrage about the GEMEX project and retaliation and hostile actions taken against the complainant by Triana because of the complainant's safety concerns.¹

¹ Through this reference, the complainant renews his strong objection to the admission and use of Bradley's deposition at the hearing in this matter as it would be extremely prejudicial to the complainant and wholly unfair. The complainant cannot cross examine papers and the court cannot make any witness credibility assessments to Bradley's testimony. Thus, the court should not allow the admission and use of Bradley's deposition testimony at hearing.

THE COMPLAINANT WAS SUBJECT TO ADVERSE ACTIONS

The complainant was subject to adverse actions many times over during his period of employment at the GEMS facility. The complainant was subject adverse action including but not limited to, an illegal hostile work environment, retaliation by senior managers at the GEMS facility and by a senior manager at Adecco, and the complainant was effectively discharged on August 2nd, 2002 by Respondent GEMS and Respondent Adecco. All acts of retaliation and adverse action suffered by the complainant occurred after he raised safety concerns at the GEMS facility and after GEMS managers and an Adecco manager became aware of the complainant's safety concerns. See, Dec. 13th, 2002 affidavit of Thomas Saporito attached hereto. Notably, both Respondent GEMS and Respondent Adecco were fully aware of the complainant's engagement in protected activity in raising safety concerns at the GEMS facility. See, Dec. 13th, 2002 affidavit of Thomas Saporito attached hereto. Indeed, on December 7th, 2002, Greg Bradley's deposition testimony was taken regarding the circumstances surrounding the complainant's discharge from employment at the GEMS facility on August 2nd, 2002. Bradley admitted under oath that on August 2nd, 2002, he participated in a telephone conference call with GEMS employee Michael Triana and GEMS employee David Burrage, and that during this telephone conference call Burrage sent him by email a letter describing the complainant's safety concerns raised at the GEMS facility, and that he "Bradley" read the letter during the telephone conference call.

Almost immediately following the telephone conference call on August 2nd, 2002, Bradley telephoned the complainant at his work station at the GEMS facility and angrily told the complainant to immediately leave the facility because of two letters of safety concerns that the complainant had sent to GEMS managers over the GEMS computer email system. Saporito Dec. 13th affd. Since his discharge on August 2nd, 2002 from the GEMS facility, both Respondents have engaged in the illegal blacklisting of the complainant from further employment. Thus, the complainant has unquestionably made out his *prima facie* case against both Respondent GEMS and against Respondent Adecco.

RESPONDENTS' REASONS FOR DISCHARGE ARE PRETEXTUAL

Respondent Adecco asserts that it ended the complainant's employment at GEMS at the request of GEMS managers and because the complainant violated Adecco policies in failing to advise Adecco about his safety concerns. The complainant contends that Adecco's policy and requirement that the complainant must bring his safety concerns to Adecco is *inherently* discriminatory and therefore illegal on its face. Moreover, such a policy if allowed to exist and allowed to be enforced on the Adecco workforce would serve to "chill" Adecco employees from raising safety concerns for fear of discharge in bringing safety concerns to the attention of a U.S. Government agency such as the Occupational Safety and Health Administration ("OSHA") or to the attention of an Adecco client such as GEMS. Therefore, Respondent Adecco's reason for discharging the complainant must fail as a matter of law as it is an inherently discriminatory and an illegal policy under the law.

Respondent GEMS, after the fact, scrambled to find reasons to have caused the complainant's employment to end at the GEMS facility. Notably, it was only after the complainant raised significant safety and health concerns to GEMS senior managers that Respondent GEMS acted to contact Adecco Branch Manager Greg Bradley to have the complainant fired. Subsequent to the complainant's discharge Respondent then conspired to with Respondent Adecco in creating reasons to justify the complainant's discharge separate and apart from his raising safety concerns. Below is a partial outline of Respondent GEMS' defense and reasons for having the complainant fired from his employment at the GEMS facility:

GEMS reasons for discharge: (GEMS Response to Interrogatory No.13)

- GEMS expectation that employees and/or contractors be honest and forthright with GEMS in all matters relating to their employment or assignment
- GEMS expectation that employees and/or contractors perform the work that is assigned to them as opposed to work of their own choosing
- GEMS expectation that employees and/or contractors will not be insubordinate

- GEMS policy prohibiting unauthorized access to its computer systems
- GEMS expectation that employees and/or contractors not create workplace disruptions (as by sending numerous e-mails to individuals without justifiable reason for sending such correspondence to those individuals)
- GEMS procedure with regard to reporting safety concerns

(GEMS Response to Interrogatory No. 12)

- Complainant was insubordinate towards management
 - Attempted to gain unauthorized access to restricted computer systems on July 8, 2002 and on August 2, 2002
 - Failed to perform his job assignments
 - Disrupted the workplace
 - Was dishonest with management at GEMS
- * Respondent relied on documents GE-001, 004, 005, 006, 013, and 038 in firing complainant. See, GEMS response to production request #13.

In addition to the above reasons for discharge, Respondent GEMS has recently filed pleadings with the court which now allege that the complainant is a "professional" whistleblower. The complainant hereby denies each and every allegation of Respondent GEMS as described above and asserts that Respondent GEMS' reasons for causing the complainant's discharge are pretextual and are not the real reason that Respondent GEMS acted to end the complainant's employment in August 2002.

As stated above, it was Respondent GEMS managers Michael Triana and David Burrage who contacted Greg Bradley by telephone on August 2nd, 2002 and made Bradley aware of the complainant's safety concerns brought at the GEMS facility. It was only after Respondent GEMS became aware of the complainant's safety concerns on July 31st, 2002 that GEMS acted to contact the Adecco Branch Manager Greg Bradley and communicate the complainant's safety concerns and the complainant's conduct in raising safety concerns at the GEMS facility. It was only after Respondent GEMS communicated the complainant's safety concerns to Respondent Adecco that both Respondent GEMS and Respondent Adecco acted to end the complainant's employment at the GEMS facility and subsequently at Adecco. Therefore, Respondent GEMS and Respondent ADECCO reason(s) for causing the complainant's employment to end at the GEMS facility must fail because they are pretextual

and not the real reason(s) that Respondents acted to end the complainant's employment at the GEMS facility.

PROTECTED ACTIVITY UNDER THE ENVIRONMENTAL ACT(S)

Under the environmental whistleblower protection provisions for which the instant action was brought an employee was found to have engaged in protected activity when he authored a draft report concerning toxicology and carcinogenesis studies which the EPA contemplated using in regulating fluoride levels. See, February 7, 1994, SOL Case No. 92-TSC-5, *William L. Marcus v. U.S. Environmental Protection Agency*. In another case, the Sec'y of Labor determined that the Administrative Law Judge ("ALJ") was correct to find that the complainant's contact with OSHA was a protected activity even if it concerned solely occupational safety and health. See, August 9, 1995, SOL Case No. 94-CAA-13, *Albert Post v. Hensel Phelps Construction Company*. In the instant case as in *Marcus*, and as in *Post*, the complainant raised safety concerns internally and the complainant was preparing to contact a U.S. Government agency, OSHA regarding his safety concerns about the air transport and use of the GEMEX and the GEMEX gases in public hospitals around the United States. Triana was aware of the complainant's OSHA investigation at GEMS and the complainant's intentions to contact OSHA. The record in the instant action indicates that Triana communicated the complainant's protected activities to Bradley and to Burrage.

The issue about whether an employee's conduct in raising safety concerns is ~~protected activity under the environmental statutes is well settled. The primary purpose of~~ the employee protection provisions are to ensure that violations of the act are reported. See, *Marshall v. Intermountain Electric Co.*, 614 F.2d 260, 262 (10th Cir. 1980). Reporting violations of environmental statutes internally to one's employer is protected activity under the whistleblower provisions. See, *Guttman v. Passaic Valley Sewerage Comm'rs*, 85-WPC-2 (Sec'y Mar. 13, 1992). An informal safety complaint to a supervisor is sufficient to establish protected activity. See, *Samadurov v. General Physics Corp.*, 89-ERA-20 (Sec'y Nov. 16, 1993). Further, a claimant's questioning of his supervisor about an issue related to safety

constituted protected activity. See, *Crosier v. Portland General Elec. Co.*, 91-ERA-2 (Sec'y Jan. 5, 1994); *Nichols v. Bechtel Constr., Inc.*, 87-ERA-44 (Sec'y Oct. 26, 1992).

Notably, in an April 19, 1995, SOL Case No. 94-CAA-15, *Don A. West v. Systems Applications International*, the Sec'y found that,

"... the allegation that West constantly circumvented the chain of command by going directly to Hart is evidence of protected activity. . . Under the whistleblower statutes it is not permissible to find fault with an employee for failing to observe established channels when making safety complainants. . ."

See, e.g., *Pillow v. Bechtel Construction, Inc.*, Case No. 87-ERA-35, Sec. Dec., July 19, 1993, slip op. at 22; *Pogue v. United States Dep't of Labor*, 940 F.2d 1287, 1290 (9th Cir. 1991). Moreover, "The substance of the complaint determines whether activity is protected under the particular statute in issue." See, Case Nos. 86-CAA-3, 86-ERA-4,5 (Sec'y May 29, 1991), *Johnson v. Old Dominion Security*. In the instance case as in *West*, the complainant went outside the GE "chain-of-command" in raising his environmental safety concerns about the air transport of the GEMEX and the GEMEX gases. See, August 26th, 2002 complaint at p.9 and p.15. Moreover, in the instant case as in *Johnson*, the "substance" of the complaints filed in the instant action make clear that the complainant expressed a reasonable belief that the air transport and use of the GEMEX prototype and the GEMEX gases at public hospitals around the United States "violated EPA laws and regulations and posed significant health and safety risks to the environment, the public, and the Laser Field Engineers." See, August 26th, 2002 complaint at p.9. In this same vein, the complainant's safety concerns

raised to GEMS management about the laser dye constitute protected activity under the act. See, August 26th, 2002 complaint at p.7. Thus, the complainant has unquestionably demonstrated that he engaged in "protected activity" during his period of employment at GEMS, and that both Respondent GEMS and Respondent ADECCO were aware of the complainant's protected activities, and that both Respondent GEMS and Respondent ADECCO took adverse actions against the complainant immediately after they became aware of the complainant's protected activities.

RESPONDENTS' REASONS FOR COMPLAINANT'S DISCHARGE ARE PRETEXTUAL

The complainant has demonstrated that Respondent Adecco's reason(s) for discharging the complainant on August 2nd, 2002 were inherently discriminatory and therefore illegal and pretextual, and the complainant has demonstrated that Respondent GEMS' reasons for causing complainant's employment at the GEMS facility to end on August 2nd, 2002 were pretextual and not the real reason(s) that Respondent GEMS acted to end the complainant's employment at the GEMS facility. Therefore, the complainant need not discuss a "dual motive" analysis of the law in opposing and overcoming Respondents' motion for summary judgment. Instead, the complainant moves the court to grant his earlier motion for summary judgment against both Respondents in this matter.

JURISDICTION

In accordance with 29 C.F.R. 18.40(d), summary decision may be ordered "if the pleadings, affidavits, material obtained by discovery or otherwise, or matters officially noticed show that there is no genuine issue as to any material fact and that a party is entitled to summary decision." *See, Han v. Mobil Oil Corporation*, 73 F.3d 872, 874-875 (9th Cir. 1995). The standard for granting summary decision under 18.40 is essentially the same one used in Fed. R. Civ. P. 56 – the rule governing summary judgment in the federal courts. With regard to Fed. R. Civ. P. 56, the Supreme Court has stated:

"... In our view, the plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. In such a situation there can be "no genuine issue as to any material fact," since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. The moving party is "entitled to a judgment as a matter of law because the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof."

See, Celotex Corp. v. Catrett, 477 U.S. 317 (1986).

In order to survive a motion for summary decision under the CAA, the complainant must make a showing sufficient to overcome the respondents' arguments that the

complainant failed to make out a *prima facie* case. As shown above, both Respondent GEMS and Respondent Adecco allege pretextual reasons for causing the discharge of the complainant from his employment at the GEMS facility and his employment at Adecco. As the Supreme Court has noted, where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial. See, *Matshushita Elec. Industrial Co. v. Zenith Radio*, 475 U.S. 574, 587 (1986). Therefore, the complainant requests that the Court issue an Order of summary judgment in the Complainant's favor along with an Order of reinstatement and an Order for such other relief as more fully described in the numerous complaints brought in the instant action.

Respectfully submitted this 13th day of December 2002.

NATIONAL ENVIRONMENTAL PROTECTION CENTER



Thomas Saporito, Complainant pro se
Post Office Box 1021
Tonopah, Arizona 85354
623-386-6863 (Phone)
309-294-1305 (FAX)
NEPC@THEPOSTMASTER.NET (EMAIL)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was provided to those individuals named below by means indicated, on this 13th day of December 2002.

SENT VIA U.S. MAIL

Hon. Jennifer Gee
Administrative Law Judge
Office of Administrative Law Judges
50 Fremont Street - Suite 2100
San Francisco, CA 94105
415-744-6577 (Voice)
415-744-6569 (FAX)

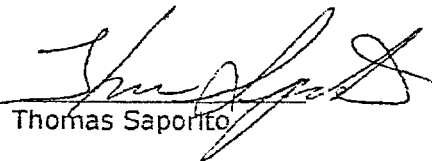
SENT VIA EMAIL

David T. Barton *+ E. Malasky MR Scullen*
QUARLES & BRADY
411 East Wisconsin Avenue
Suite 2040
Milwaukee, WI 53202-4497
414-277-5000 Phone
414-271-3552 FAX

SENT VIA EMAIL

Dudley C. Rochelle *+ ms malasky*
LITTLER MENDELSON
3348 Peachtree Road, N.E.
Suite 1100, N.E.
Atlanta, Georgia 30326-1008
404-233-0330 Phone
404-233-2361 FAX

By:


Thomas Saporito

AFFIDAVIT OF THOMAS SAPORITO

1. I, Thomas Saporito, am the complainant represented pro se in U.S. Department of Labor ("DOL") Case Nos. 2003CAA00001/00002 filed against GE Medical Systems ("GEMS") and against Adecco Technical ("ADECCO"). Complainants against GEMS and ADECCO were filed on August 26th, 2002, August 27th, 2002, August 28th, 2002, August 29th, 2002, September 3rd, 2002, and September 26th, 2002. The above-described complaints were consolidated by the court in November 2002 with the consent of the parties and will be presented at hearing in January 2003.
2. On March 15th, 2002, Michael Triana a GEMS manager, offered me employment at the GEMS facility as an Electronics Technician and requested that I report to work on March 18th, at 08:00 A.M. Triana extended an offer of employment to work part-time, 20-hours per week, on a Monday through Friday schedule working 4-hours per day. Triana told me that if I performed well at GEMS, I would be afforded a full-time and permanent position at GEMS as a GE employee with a comprehensive benefits package after a one-year period of continuous employment at GEMS. See, August 26th, 2002 DOL-OSHA complainant at p.3.
3. On March 16th, 2002, Triana's communication to me of a full-time and permanent employment offer as a GE employee after a one-year period was affirmed to me by Adecco recruiter Rhonda Johnson at the Adecco Ft. Lauderdale, Florida office. See, August 26th, 2002 DOL-OSHA complaint at p.3. I note here that the date of March 15th, indicated at p.3 in the August 26th complaint is a typo and should indicate March 16th, 2002. Notably, during the December 7th, 2002 deposition testimony of Bradley, Bradley also confirmed under oath that Adecco placed employees at the GEMS facility and that GEMS management used a one-year bench mark of performance as an indicator on whether or not to offer permanent employment to the Adecco employee as a permanent GE employee. Also, Adecco advertised jobs at the GEMS facility and at other Adecco client locations indicating that the position would become permanent based on performance. Moreover, during the course of my employment at GEMS, I learned that the practice of Adecco employees becoming full-time permanent GE employees after a year of employment was common knowledge. I had discussions to this effect with Alan Blockhous and with Justo and others at the GEMS facility.
 - a. On March 16th, during my meeting with Johnson, I was asked to sign a number of documents of which one document appeared to be an employment agreement. Johnson never explained the context of the employment agreement-to-me-nor-did-she-explain-any-of-the-other-documents-to-me. Johnson did not provide me with a copy of the Adecco "Associates Handbook" but Johnson did promise to later send me a copy of that item and she provided me with a copy of 3-documents that Johnson claimed to be representative of the Associates Handbook. Johnson failed to later send me a copy of the Adecco "Associates Handbook". Johnson also failed to provide me with a copy of the executed employment agreement signed by both parties. Johnson made no effort to explain any of the documents presented to me for signature. Johnson had her children with her at the meeting and was addressing their concerns at the time. The only documents that Johnson actually provided to me are identified in this proceeding as NEPC 0021-0028. Thus, during my employment period at GEMS, I was not aware of any Adecco requirement to report safety concerns to Adecco. Furthermore, if I was made of such a reporting requirement by Adecco, it might have dissuaded me from raising safety concerns to government agencies such as OSHA. At no time

during my meeting with Johnson, was I told that Johnson was my supervisor or that Bradley was the Adecco Branch Manager. According to the documents that Johnson provided to me at the meeting on March 16th, NEPC 0026, it appears that,

" . . . According to the policies of Adecco Technical, and it's affiliates, an employee must, contact Adecco Technical at the address mentioned below, to report lateness, absence or completion of an assignment . . . "

Therefore, I was not aware of any requirement on my part to report safety concerns to Adecco Technical or to Rhonda Johnson or to Greg Bradley. Moreover, Johnson did not explain to me any requirement on my part to report safety concerns to Adecco Technical or to herself or to Bradley. Over the course of my career path on assignment as a contract or temporary worker, I always communicated my safety concerns to the "client" such as GEMS and not to the "employer" such as Adecco. Johnson never told me that I was required to report safety concerns to Adecco while I was on assignment at GEMS.

4. Prior to June 2002, Roberto Lopez another Adecco employee and technician at the GEMS facility also expected to be offered a full-time and permanent position as a GE employee. However, Triana and Dan Beatty, another GEMS manager and my assigned supervisor, decided to end Lopez's employment at GEMS due to Lopez's poor performance. I was an eye witness to discussions between Triana and Beatty to the extent that Lopez's employment at GEMS was being terminated due to Lopez's poor performance and for no other reason. Triana and Beatty wanted to terminate Lopez's employment before Lopez completed one year of employment at GEMS because then Lopez would be entitled to a full-time permanent position as a GE employee. In fact, I commented to Beatty and to Triana that a legal decision involving the Microsoft Corporation required that contractor or temporary employees be afforded a full-time and permanent positions at Microsoft once they complete one-year of employment at Microsoft. The decision to end Lopez's employment at GEMS was based solely on Lopez's poor performance was made between Beatty and Triana in my presents. Notably, the decision to terminate Lopez because of Lopez's poor performance was also discussed between myself, Triana and Tim Bridges a GE Laser field engineer in June 2002.
5. During my employment period at GEMS, I intended to make a good effort to later secure a position as a full-time GE employee with benefits. During my interview with Beatty, I was told that at some point I could be considered for a Biomedical Technician position as a GE employee. See, August 26th, 2002 DOL-OSHA complainant at p.3.
6. On March 18, 2002, I began employment with ADECCO as an Electronics Technician on assignment at the GEMS facility located in Jupiter, Florida and worked in that position until I was discharged by ADECCO and by GEMS on August 2nd, 2002 after I raised safety and health concerns to GEMS management which I believed violated Environmental Protection Agency ("EPA") statutes and/or regulations.
7. During the period of my employment at GEMS, I raised safety concerns to GEMS employees and managers requesting that the safety concerns be resolved. In general, I requested that a door closure be placed on a fire door entrance to the laboratory; that a defective fire exit lamp be replaced; that a fire extinguisher be installed in the laboratory equipment tear down area; that the laser test room be modified; I raised

safety concerns about the GEMS procedure for receiving biologically contaminated equipment; I reported safety concerns about laser dye; I reported safety concerns about the storage of compressed gases; and I reported safety concerns about the GEMEX and the GEMEX gases.

8. On June 21, 2002, I raised a safety concern about laser dye to Michael Triana a GEMS manager regarding the removal of laser dye from used medical lasers at the GEMS facility. I also raised a safety concern to Michael Triana about GEMS management's budget regarding the hiring of an outside contractor to remove the laser dye.

- a. Triana retaliated against me in failing to resolve my safety concerns about the laser dye removal, and my safety concern about the lack of funds budgeted by GE management for the removal of toxic waste by a contractor. Triana's reaction to me was angry and Triana was not receptive to my safety concern about the laser dye removal or about my suggestion that GE management budget funds to have a contractor remove the laser dye. Triana failed to encourage me to raise safety concerns at GEMS.

9. On July 22nd, 2002, I raised a safety concern about leaking laser dye to Michael Triana and insisted that the area of concern be posted to alert people of the hazard. I also believed that laser dye had been dumped into a sink in the area where the used lasers were being stored. I was concerned that dumping dye into the sink could harm the public and the environment and violated environmental laws and regulations under the EPA act. See, August 26th, 2002 DOL-OSHA complaint at p.7.

- a. Triana reacted very negatively towards me when I expressed my safety concerns about leaking laser dye. Triana's mannerisms and body language and his tone of voice were all negative. Triana subsequently told me that he would not follow-up on my concerns regarding Tim Rawls' solicitation that I steal a GE computer in exchange for \$1,000. Triana falsely accused me of fabricating the entire story about Rawls and inferred that I was lying. Triana communicated that message to others at GEMS.

10. During the week of July 22nd, 2002, I assisted Pat McQueary in stopping the shipment of the GEMEX and the GEMEX gases.

11. On July 24th, 2002, I notified Michael Triana about my safety concern that Graylon Rector a GE Laser Engineer spilled laser dye on his person and that Rector was traveling in public areas with contaminated clothing and that Rector needed training.

- a. Triana reprimanded me regarding my interactions and safety concerns with Graylon Rector. Triana angrily directed me to drop my safety concerns about Rector and the laser dye spilled on Rector's clothing.

12. On July 24th, 2002, I notified Pat McQueary about my safety concern that Rector spilled laser dye on his person and that Rector was traveling in public areas with contaminated clothing and that Rector needed training.

13. On July 29th, 2002, I expressed my safety concerns about the GEMEX project to Michael Triana and to Able Sierra a plant engineer.

- a. Triana adamantly refused to listen to my complaints about Tim Rawls and vials that Rawls had stolen from GE. Triana also refused to listen to my

complaints or investigate that Rawls had ordered "pirated" software, a service disk for the Coulter analyzers, and that Rawls had bartered the purchase of hundreds of dollars of tubing with GE funds in exchange for the pirated software.

14. On July 30th, 2002, I expressed my safety concerns about the GEMEX project to Michael Triana, and to Able Sierra, and to Justo a respiratory technician during a lunch break at the GEMS café.

- a. Triana refused my safety concerns about the shipment of GEMEX gases. Triana expressed anger because of my raising these safety concerns. Triana failed to acknowledge and to resolve my safety concerns.

15. On July 31st, 2002, I sent an email letter to Karen Zaborowski a GEMS manager, attaching a MS Word formatted letter which specifically delineated my safety concerns about the GEMEX and the GEMEX gases. My intent in sending my safety concerns to Zaborowski was to prevent Triana from sending the GEMEX unit and the GEMEX gases by public air transport to public hospitals across the United States. I believed that the transportation and use of the GEMEX prototype and the GEMEX gases violated EPA laws and regulations and posed significant safety and health risks to the environment, to the public, and to the GE laser field engineers.

- a. Zaborowski failed to acknowledge and resolve my safety concerns about the GEMEX project.
- b. On or about July 31st, 2002, Triana and/or Zaborowski acted to remove me from a scheduled teleconference call regarding laser parts that Zaborowski had earlier arranged for my participation.
- c. Zaborowski failed to act on my complaints sent to her by email and communicated to her by Tim Bridges, that Triana was trying to fire me because of my raising safety concerns at GEMS.
- d. On July 31st, 2002, I sent a copy of my July 31st, 2002 MS Word safety concerns letter about the GEMEX project via the GEMS email server to Michael Triana, and to Able Sierra, and to Steve Hirschberg the GEMS safety committee chairman, and to Tim Trent a GEMS safety team member.

- ~~1. Hirschberg failed to acknowledge or resolve my safety concerns and Trent became angry with me regarding my safety concerns, and Triana reprimanded me for sending Hirschberg and Trent my safety concerns.~~

- a. On July 31st, 2002, Triana sent me angry email letters about my safety concerns.
- e. On July 31st, 2002, I explained my safety concerns about the GEMEX project to Michael Triana at a private meeting held in Triana's office at GEMS.
 1. On July 31st, 2002, Triana called me to a discipline meeting in his office because of my safety concerns. Triana admonished me at this meeting and he spoke to me in a very condescending manner. Triana yelled at me at this meeting. Triana screamed at me at this meeting.

Triana threatened to fire me several times during this meeting, Triana yelled at me for going outside the GE chain-of-command in raising my safety concerns. Triana ridiculed me and attacked the substance of my safety concerns. Triana threatened to cut-off my email. Triana directed me to never again contact anyone outside the GE chain-of-command about my safety concerns or he would fire me. Triana told me that he would not permit me to complete the GEMEX FSAR. Triana took away ownership of the GEMEX project from me. Triana tried to coerce me into retracting my safety concerns in exchange for a GE full-time job at the GEMS facility. I viewed Triana as being extremely hostile and aggressive towards me during the meeting which lasted about 45-minutes. I felt that Triana admonished me in a very condescending manner over the GEMEX FSAR. Triana screamed at me in a very loud voice stating "what gives you the right" in sending the FSAR to Zaborowski and to the others. Triana was red in the face, showed inflamed facial veins, screamed at me, and pointed his finger at me while I was seated. I explained to Triana that I had a legal right under existing OSHA environmental laws and regulations to raise health and safety issues to any level of GE management and to express safety concerns that I believed violated EPA environmental laws and regulations. Triana became more hostile and aggressive standing over me yelling that I didn't have a right to go outside the GE chain-of-command, that there existed a protocol that I was required to follow. Triana reminded me over and over again at the discipline meeting that I was a contract employee at GE and that my job could be terminated at any time. Triana ridiculed and attacked the substance of the FSAR attempting to nit pick it apart in an effort to admonish and discredit me. I continued stating to Triana that the FSAR conveyed my belief that EPA environmental laws and regulations were being violated. I reiterated that under existing OSHA laws, I had a right to go outside the chain-of-command and raise safety concerns at any level of management at GE.

- f. On July 31st, 2002, I reported my safety concerns about leaking laser dye to Michael Triana.
 - 1. Triana reacted angrily to my safety concerns about the laser dye. Triana failed to investigate and resolve my safety concerns. Triana avoided me at a Modality Group meeting where I brought a safety concern about the laser dye.
- g. On July 31st, 2002, I explained my safety concerns about the GEMEX project to Able Sierra. I told Sierra that I had conveyed my safety concerns about the GEMEX to Triana. Sierra told me that Triana was extremely angry with me for going outside the chain-of-command in sending the FSAR to Zaborowski and to others. Sierra expressed concern to me about how Triana was treating me. Sierra stated that Triana needed training on how to deal with people more professionally. I explained to Sierra that Triana was angry and threatened to fire me because of the safety issues that I raised in the FSAR and communicated to Zaborowski and to others. In light of the FSAR, Sierra told me that he felt confident in my abilities and that he was giving ownership of the GEMEX project back to me. Later that day, Triana interrupted a meeting

between Sierra and myself concerning the GEMEX safety concerns. Triana ridiculed my efforts to always be ready to quickly chase down parts for the field engineers. Triana ridiculed me by stating "OH, OH, aren't you afraid that you are missing one of their calls?" I viewed Triana's behavior and conduct as hostile towards me because of the GEMEX FSAR public safety issues.

- h. On July 31st, 2002, Sierra and I decided to visit the PACE machine shop located in Jupiter, Florida during my lunch break to obtain pricing information about the GEMEX frame construction. I explained my safety concerns about the GEMEX to PACE employees and showed them pictures of the GEMEX. Upon our return to GEMS, I placed a copy of the GEMEX pictures in a folder on the GE network computer.
 - i. On numerous occasions, I complained about my safety concerns to others at GEMS, including Pat Mulloy, Alan Blockhous, John Lundy, Justo, GE Laser Field Engineers, Felix Ramirez, etc.
 - j. Zaborowski, Triana, Burrage, and Hirschberg failed to encourage me to raise safety concerns at GEMS. They also failed to investigate and to resolve my safety concerns about the GEMEX project and the GEMEX gases.
 - k. Triana refused to allow me to work any overtime because of my raising safety concerns.
 - l. GE management created a hostile work environment for me at the GEMS facility.
 - m. GE management failed to comply with OSHA requirements to ensure that I had a safe work environment at the GEMS facility.
 - n. GE management failed to take corrective actions to resolve my safety concerns about the storage of the GEMEX gases at the GEMS facility.
 - o. Triana directly disciplined me on more than one occasion because of my safety concerns without going through an Adecco representative.
 - p. Triana's retaliation against me adversely affected my ability to engage in raising safety concerns at the GEMS facility and created a hostile work environment for me at GEMS. The hostile work environment caused my coworkers to shun me and to avoid me. Triana poisoned the workforce against me at the GEMS facility. The hostile work environment caused a "chilling effect" on my coworkers at the GEMS facility.
 - q. I experienced stress, mental anguish, migraine headaches, embarrassment, loss of professional reputation, humiliation, frustration, a hostile work environment, severe depression, inability to sleep at night, anxiety, nervousness, fear, and restriction from raising safety concerns, and threats to fire me, of which all events occurred after I raised safety concerns at the GEMS facility.
16. On August 1st, 2002, I turned on my GE computer workstation and discovered that I could no longer access a folder that I had created on the GE computer network server for use in addressing a database containing the modality group parts listing and

information. It was extremely important for me to have ready access to this folder to perform my job duties. I placed a repair request with the GE IT department to have this problem corrected as quickly as possible. Zaborowski had sent an email to me requesting important information from this computer folder.

17. On August 1st, 2002, GE management failed to provide me with EHS training, insofar as Burrage, and Triana and Bradley conspired on August 2nd, 2002 to fire me and they did fire me on August 2nd, 2002 because of my safety concerns, before I could properly review the EHS training disk given to me on August 1st, 2002 by Burrage.
18. On August 1st, 2002, I complained to John Lezinski a GE Laser Engineer, about my safety concerns regarding the GEMEX project, and about Triana's threats to fire me, and I provided Lezinski a copy of the July 31st, 2002 MS Word safety concerns letter about the GEMEX project that I had sent via email to Zaborowski.
 - a. On August 1st, 2002, I complained to Zaborowski, and to Tim Bridges a GE Laser Zone Manager, and to Paul Presti a GE Laser Engineer, and to Sierra, that Triana was out to fire me because of the safety concerns that I had raised about the GEMEX project.
 - b. On August 1st, 2002, I sent Zaborowski an email letter regarding the storage of GEMEX gases at client locations.
 1. Triana angrily retaliated against me and personally came to my workstation in the lab and physically removed the GEMEX unit from my cubical to Sierra's workstation across the lab. Triana's actions were seen by my coworkers in the lab. I was humiliated and embarrassed. Triana yelled at me and admonished me and ridiculed me about my safety concerns in front of my coworkers in the lab. Triana acted to completely remove me from the GEMEX project because of my raising safety concerns.
 - c. On August 1st, 2002, GE management restricted my computer access to the GE network computer to prevent me from recovering the GEMEX pictures I had stored there.
 - d. On August 1st, 2002, I explained my safety concerns about the GEMEX project and about the GEMEX gases to Trent.
 - e. On August 1st, 2002, I explained my safety concerns about the GEMEX gases to Hirschberg, and to John Lundy a technician, and to Lee Waters a technician, and to Felix Ramirez a warehouse manager. At this time, I observed these individuals reading a copy of the July 31st, 2002 MS Word safety concerns letter that I had sent to Zaborowski regarding the GEMEX project.
 1. My coworkers failed to assist me in resolving my safety concerns about the storage of the GEMEX gases. Triana's retaliation taken against me for raising safety concerns had created a hostile work environment for me at GEMS which caused a chilling effect on my coworkers who would have otherwise been more than happy to assist me upon request.

- f. On August 1st, 2002, I explained my safety concerns about the storage of the GEMEX gases to Triana and to Adams a GE manager.
1. Triana ridiculed me in front of Adams about my safety concerns concerning the GEMEX gases.
- g. On August 1st, 2002, my coworkers at GEMS heard me raise safety concerns regarding the storage of GEMEX gases to Triana.
1. Triana openly and loudly threatened to fire me in front of my coworkers, if I ever raised another safety concern at GEMS. Triana, in front of my coworkers, angrily ordered me to a meeting with Burrage stating that he was going to put an end to my raising safety concerns about the GEMEX gas storage once and for all.
 - a. Triana's retaliation taken against me became so severe that it had a chilling effect on my coworkers at the GEMS facility which dissuaded them from raising safety concerns and adversely affected my ability to engage in raising safety concerns and which resulted in a hostile work environment.
 - b. Triana became aware and acted to stop a safety investigation that I was fully engaged as of July 29th, 2002 regarding the GEMEX FSAR and the GEMEX gases and the shipment of those materials by air transport to hospitals across the United States.
- h. On August 1st, 2002, I explained my safety concerns about the GEMEX project and the GEMEX gases to David Burrage an Environmental Health and Safety manager at GEMS during a meeting in Burrage's office. This meeting was at the request of Triana and stemmed from my safety concerns about the storage of the GEMEX gases at GEMS. Triana was extremely angry at the onset of the meeting and Burrage in observing Triana's demeanor, asked Triana to take a seat. At this meeting, I explained my safety concerns regarding the storage of the GEMEX gases at the GEMS facility. I attempted to explain my involvement with the review of the GEMEX operational procedure and about how the GEMEX gases were used but Triana interrupted and ordered me to stop my review of the GEMEX procedure. Triana told me that I no longer had ownership of the GEMEX project and that Sierra would be given ownership of the GEMEX project. Burrage explained to Triana that people have died from exposure to NEON gas because it displaced air or the oxygen in the air in the immediate area of use. I told Burrage that I had ownership of the GEMEX project and that the GEMEX procedure did not contain any language to warn employees of the safety issue in using the GEMEX gases and that the procedure did not define adequate ventilation. Triana stated that he was giving ownership of the GEMEX to Sierra and would speak with Sierra. Burrage then reviewed the MSDS documents for NEON gas but not for the other GEMEX gas mixture "Hydrogen Chloride". Burrage appeared to have already read a copy of my July 31st, 2002, safety concerns letter that I had sent to Zaborowski earlier about the GEMEX project. Based on that perception, I expected that Burrage would investigate all of my safety concerns regarding the GEMEX. I then requested a copy of the MSDS documents and Burrage provided the documents from his desk top. Burrage handed me a MSDS document for the NEON gas and a MSDS document for

the Hydrogen Chloride gas mixture. Burrage then asked me if I had received any EHS training at GEMS and I said no. Burrage then looked directly at Triana with concern. Triana was quick to blame the matter on Pat McQueary who had earlier resigned from GEMS. Burrage then picked up a CD containing the GEMS EHS training program and stared at Triana for a few seconds. Burrage then handed me the EHS disk and told me to return to my workstation, that he "Burrage" wanted to speak with Triana privately.

- a. During the meeting with Burrage and Triana, Burrage never discussed the GEMEX Hydrogen Chloride gas mixture nor did Burrage review the MSDS document for the Hydrogen Chloride gas mixture.
- b. At the conclusion of the meeting Burrage appeared to have already read a copy of the July 31st GEMEX FSAR letter that I had sent to Karen Zaborowski and copied to Triana. Based on that perception, I expected that Burrage would investigate all of my safety concerns regarding the GEMEX including the air transport of the GEMEX and the GEMEX gases to hospitals around the United States. Because Triana was present at this meeting, I did not feel comfortable in raising any further safety concerns and especially my safety concerns about Triana's retaliation and hostility directed at me for having raised safety concerns. At the start of this meeting, Burrage stated that I had a right to raise safety concerns and implied that my raising the safety concern about the storage of the GEMEX gases was a good thing. It was because of Burrage's comments that I had a right to raise safety concerns and that it was a "good thing", that I later constructed a letter to Burrage and attached a copy of my GEMEX FSAR to be sure that Burrage did have a copy of that document and in the hope that Burrage would resolve all of my safety concerns and act to end the retaliation and hostile work environment that I was being subject to by Triana because I raised safety concerns at GEMS. The very next day, after Burrage received my two letters of safety concerns, Burrage joined Triana in retaliating against me and conspiring with Bradley to end my employment at the GEMS facility on August 2nd, 2002.
- c. At all times during my meeting with Burrage and Triana on August 1st, 2002, I was as truthful and direct regarding my safety concerns as could reasonably be expected of an employee who was the subject of retaliation and a hostile work environment.
- i. On August 1st, 2002, I just started to view the GE EHS CD on my GE computer workstation and displayed the GE and/or OSHA procedure to file an OSHA complaint and to request an investigation. I printed a copy of that particular computer screen and was reading that document when Triana arrived at my workstation and observed my activity.
- j. On August 1st, 2002, at 10:58 PM, I sent an email letter to Burrage from my home computer system. I attached two MS Word formatted files to the email letter. The first attached file was a letter entitled "SAFETY CONCERNS AND RETALIATORY DISCRIMINATION" dated August 2nd, 2002, addressed to David Burrage detailing my safety concerns about the GEMEX project and my

complaint of retaliation by Triana and my concerns for my coworkers. The second file attachment was a "draft" copy of a letter entitled "Final Safety Analysis Review - (GEMEX-00000)" dated July 30th, 2002 and originally intended for Karen Zaborowski, and which detailed my safety concerns about the GEMEX project and the GEMEX gases similar to the July 31st, 2002 letter addressed to Zaborowski mentioned above and which detailed my safety concerns about the GEMEX project and the GEMEX gases. I had intended to send Burrage a copy of my July 31st, 2002 safety concerns letter that I had previously sent to Zaborowski. Because I was not sure about the accuracy of Burrage's email address at GEMS, I decided to resend this information to Burrage the following day when I reported for work at GEMS.

19. On August 2nd, 2002 at 5:12 AM, I sent Burrage another email letter asking Burrage to review two attached files. The first attached file was a letter to Burrage dated August 2nd, 2002, and entitled "SAFETY CONCERNS AND RETALIATORY DISCRIMINATION". The second attached file was a copy of a letter dated July 31st, 2002 and entitled "Final Safety Analysis Review - (GEMEX-08006-030)" that I had sent by GEMS email to Zaborowski on July 31st, 2002. The email letter along with the first attached letter and the second attached letter (July 31st letter) were copied via GEMS email to Zaborowski, to Trent, to Hirschberg, to Sierra, and forwarded to myself to my home email address.

- a. On August 2nd, 2002, I complained to Paul Presti a GE Laser Engineer, that Triana was out to fire me over my safety concerns regarding the GEMEX project. I explained my safety concerns about the GEMEX project to Presti. I gave Presti a copy of the July 31st, 2002, safety concerns letter that I had sent to Zaborowski about the GEMEX project and about my safety concerns regarding the GEMEX project.
- b. On August 2nd, 2002, while Presti and I were headed to the lab, Burrage met us in the general warehouse area outside the lab. Burrage was extremely upset and angry. Burrage dressed me down in front of Presti because of two safety concerns documents that I had sent to Burrage earlier that morning. Burrage admonished me for bypassing the GE chain-of-command and told me that he "Burrage" wanted a meeting with me later. Burrage then told me that he read the GEMEX FSAR and that he disagreed with 95% of the safety concerns that I raised in that document. Burrage then turned to Presti and asked Presti if he had seen the GEMEX unit. Presti replied that he did see the GEMEX earlier that morning. Burrage asked for Presti's opinion of the GEMEX and ~~Presti stated that he would not send it out in the field to be used in public~~ places. Burrage started to leave but then look back at me and angrily accused me of wondering around the facility without authorization from the Modality Group. I explained that Presti was a GE Laser Field Engineer sent to assist with the Laser parts inventory. Burrage then left the area heading towards Triana's office area.

1. Based on my discussions with Burrage and based on Presti's response to Burrage's inquiry about my safety concerns about the GEMEX FSAR that, "... he would not send it out in the field to be used in public places. ...", I believe that Burrage clearly understood about my belief and safety concern that the air transport of the GEMEX and the GEMEX gases to hospitals around the United States violated EPA laws and regulations. See, August 26th, 2002 DOL-OSHA complaint at p.15.

2. To the extent that Burrage and Triana were aware of my safety concern that the air transport and use of the GEMEX and the GEMEX gases violated EPA laws and regulations, I believe that Bradley also became aware of my safety concerns and apparent EPA violations during Bradley's communications with Triana on July 31st and later on August 2nd, 2002 when Bradley discussed my safety concerns with Triana and with Burrage during a telephonic conference call. Because of my dire economic situation, I cannot provide the court with transcripts from Bradley's deposition testimony.
- c. On August 2nd, 2002, I received a telephone call at my GE workstation from Greg Bradley. This telephone call was communicated to me by Alan Blockhous in person at GEMS. Blockhous subsequently transferred the call from his phone to the phone at my workstation. Blockhous appeared to be extremely anxious and concerned. Bradley was very angry and accused me of emailing a couple of documents about safety issues to GE management. Bradley told me to leave the GE facility immediately and that I was to call his "Bradley's" office on Monday. Shortly after that conversation, Triana arrived at my workstation and escorted me out of the facility to the parking lot. As I was leaving, Triana with a grin on his face, told me to have a nice weekend.
20. On August 5th, 2002, I placed several calls to Bradley at his office. I was only able to reach his answering machine and left several messages for him to call me. Bradley never returned any of my calls. Subsequent to those attempts to call Bradley, a series of email communications transpired between Bradley and myself. Bradley communicated to me that, "Your assignment at GE has ended... you are required to report any and all issues related to your assignment to us, your employer. You failed to do so. In the future, should you be on contract working at another employer's job site (the customer), you should report any or all issues or concerns to your actual employer... Following your violating policy and having your assignment ended, I will not re-submit you... I will be glad to put your attorney in touch with our legal department (the legal department for a \$21B company)..."
- a. After receiving that email from Bradley, I was convinced that Bradley terminated my employment with Adecco and my position at GEMS because of the safety concerns that I raised in two letters that were emailed to Burrage and apparently provided to Bradley by someone at GEMS. I felt that Adecco and GEMS were now "blacklisting" me because I raised environmental safety concerns at GEMS that I believed violated EPA environmental statutes and laws.
21. Since I was fired by Adecco and by GEMS on August 2nd, 2002, for raising safety concerns, I have applied for several advertised jobs at Adecco and at GEMS and at GE. To date, I have not been offered any further employment by either company.
22. On August 26th, 2002, I publicly raised safety concerns at a news conference which was held at the entrance to the GEMS facility and directly in front of the GE Medical Systems sign. The news conference was covered by a local affiliate of a national news agency. During my contact with the news media, GEMS employee John Lundy and another GEMS employee intentionally walked directly passed me and made a comment to me. Also, Gabe, another GEMS employee saw me at the news

conference. Notably, Greg Bradley was told that I was holding a news conference at GE and communicated this event to Zuzet Menendez at Adecco stating that, "...When I called you today, I informed you I was told Tom was in front of GE with a camera man and a microphone, doing who knows what..."

a. During the news conference, I communicated to the public that, "... Thomas Saporito, a former worker at the General Electric plant in Jupiter, Florida was fired from his job as an Electronics Technician after he identified significant environment safety concerns to plant management, which Saporito believes violated Environmental Protection Agency "EPA" laws and regulations. . "

It was my belief in raising safety concerns about Laser DYE and about the air transport of the GEMEX and the GEMEX gases to hospitals around the United States, that GEMS management was violating Environmental Protection Agency ("EPA") statutes and regulations and that such actions by GEMS management posed significant safety and health risks to the environment, to the general public, and to GE Laser field engineers who operated the GEMEX and who handled the GEMEX gases. I began my safety investigation of the GEMEX and the GEMEX gases on or about July 29, 2002 at which time I raised safety concerns about the GEMEX to Triana and to Able Sierra. On July 30th, I raised safety concerns to Triana and to Sierra and to Justo about the air transport of the GEMEX gases to hospitals around the United States. See, August 26th, 2002 DOL-OSHA complaint at p.8.

Previously, on July 31st, 2002, I communicated my EPA safety concerns about the air transport of the GEMEX and the GEMEX gases to Karen Zaborowski via an email letter with a Microsoft Word document attachment. My intent in sending the GEMEX FSAR document to Zaborowski was to 1) alert her about my belief about EPA violations in the air transport of the GEMEX and the GEMEX gases and 2) to stop Triana from sending the GEMEX and the GEMEX gases by air transport for use at hospitals around the United States. Subsequent to my sending Zaborowski the GEMEX FSAR, Triana ordered me to a discipline meeting. During this discipline meeting, I clearly explained to Triana my belief that,

"... the transportation and use of the GEMEX prototype and the GEMEX gases violated EPA laws and regulations and posed significant health and safety risks to the environment, the public, and the Laser Field Engineers. . . '

To make certain that the GEMEX and the GEMEX gases would not be air transported and used at hospitals around the United States, I provided a copy of the July 31st, GEMEX FSAR to the GEMS Safety Committee Chairman, Steve Hirschberg and a GEMS safety committee member Tim Trent as well as Sierra and Triana. See, August 26, 2002 complaint at p.9. Furthermore, during the meeting with Triana, Triana was extremely hostile towards me for having raised my safety concerns outside the GE "chain-of-command" and Triana screamed at me in a very loud voice "what gives you the right" in sending the FSAR to Zaborowski and the others. I replied to Triana that I had a "... legal right under existing OSHA environmental laws and regulations to raise health and safety issues to any level of GE management, and to express safety concerns that I believed violated EPA environmental laws and regulations. . . " Triana became more hostile and aggressive standing over me yelling that I didn't have a right to go outside the chain of command at GE, that there existed a protocol that I was

required to follow. Throughout the discipline meeting, I maintained that the "... FSAR conveyed my belief that EPA environmental laws and regulations were being violated. . . and reiterated that under existing OSHA laws, I had a right to go outside the chain of command and raise safety concerns at any level of management at GE. See, August 26th, 2002 complainant at p.9.

I have years of work experience as a technician employed at various commercial power plants around the United States. During my period of employment at one or more of these power plants, I became aware of the significant dangers and risks associated with compressed gases such as Hydrogen Chloride, (used in the GEMEX gas product), and the adverse environmental damage and harm as well as the substantial risk to public health that a release of such gas products into the environment could cause. During my period of employment at the GEMS facility, I communicated to GEMS management my belief that the shipment and use of the GEMEX and the GEMEX gas products to hospitals across the United states violated EPA laws and regulations.

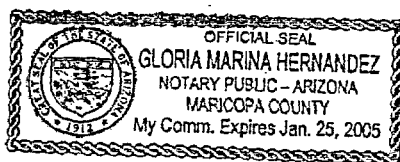
Over the years in my career path, I have previously raised environmental safety and health concerns to managers at other employer facilities. In so doing, I was subjected to retaliation by managers at those facilities and I filed DOL complainants accordingly. Throughout my career path I have received extensive environmental safety and health training and I have successfully argued whistleblower cases as a pro se litigant and have represented other whistleblowers in court during the DOL process. Therefore, I am well aware of the difference between raising a safety concern under the OSHA Act of 1970 versus raising a safety concern under the EPA environmental statutes and regulations. During my employment at the GEMS facility, it was my belief that EPA laws and regulations were being violated and/or were about to be violated with respect to the air transport and use of the GEMEX and the GEMEX gases at hospitals around the United States, and that such action posed a significant risk to the environment and to the public. In addition, it was my belief that the ground transport of the GEMEX and the GEMEX gases for operation at hospitals around the United States also violated EPA laws and regulations and posed a significant risk to the environment and to the public as well as to the GE employees using the GEMEX and the GEMEX gases.

23. On August 26th, 2002, I filed an OSHA complaint regarding my discharge from Adecco and from GEMS.
24. On August 27th, 2002, I filed an OSHA complaint regarding my discharge from Adecco and from GEMS.
25. On August 28th, 2002, I filed a complaint for injunction with the U.S. Department of Justice, Attorney General John Ashcroft seeking to enjoin GEMS from shipping the GEMEX and the GEMEX gases by air transport to public areas and public hospitals around the United States. *(The date of this action is corrected herein, a typo, from the affidavit filed with the court on December 9th, 2002 which indicated a date of August 26th. In addition, several spelling and grammar corrections were also made accordingly without any change to the substance of the earlier affidavit.)*
26. On August 28th, 2002, I filed an OSHA complaint regarding my discharge from Adecco and from GEMS.

27. On September 3rd, 2002, I filed an OSHA complaint regarding my discharge from Adecco and from GEMS.
28. On September 10th, 2002, Bradley provided a very negative job reference for me to a representative of Documented Reference Check, a company that I hired to confirm that Bradley and Adecco were blacklisting me by providing negative job references to other employers that I was seeking employment with. Subsequent to this event, I was not able to secure any further employment with any company that I had sent my resume.
29. On September 26th, 2002, I filed an OSHA complaint regarding my discharge from Adecco and from GEMS.
30. On September 26th, 2002, I filed an action with the Food and Drug Administration seeking to enjoin GEMS from shipping the GEMEX and the GEMEX gases by air transport to public areas and public hospitals around the United States.
31. On October 1st, 2002, I filed petitions with the U.S. Nuclear Regulatory Commission ("NRC") seeking actions by the agency with respect to Adecco and GEMS.
32. On October 3rd, 2002, having created the National Environmental Protection Center ("NEPC") in September 2002, I sought to intervene in a licensing action before the NRC Atomic Safety and Licensing Board ("ASLB").
33. On October 7th, 2002, OSHA issued determinations letters stating in general that my complaints against Adecco and against GEMS could not be substantiated based on OSHA's limited investigation.
34. On November 13th, 2002, NEPC acting through myself, supplemented the earlier NRC petition seeking NRC action be taken against Adecco and against GEMS.
35. To date, since my unlawful discharge by ADECCO and by GEMS on August 2nd, 2002 from my employment at the GEMS facility, I have continued to make a diligent effort to find employment. I have searched newspapers, spoke with friends, applied in person at local companies for positions such as a cashier or bartender. I have also sent numerous resumes via the Internet to companies across the USA. Notably, I have made several applications for employment at ADECCO and at GEMS and/or GE, however, neither of these two employers have offered me employment since my illegal discharged on August 2nd, 2002, caused by both of these employers because I raised environmental safety and health concerns to GEMS managers during my employment at GEMS which I believed violated EPA statues and regulations.
36. On December 7th, 2002, I participated as a party to the telephone deposition of Greg Bradley, a former employee of Respondent ADECCO and a Branch Manager at the time of my unlawful discharge on August 2nd, 2002.

I, Thomas Saporito hereby affirm that the statements made above are true and accurate to the best of my recollection and belief and made this 13th day of December 2002.

Notary Public



Thomas Saporito

Gloria Marina Hernandez