

**U. S. Department of Labor**

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**Issue Date: 01 May 2019**

**CASE NO.: 2017-SDW-00001**

*In the Matter of:*

**ARON YELLOTT,**  
*Complainant*

v.

**PACKAGING CORPORATION OF AMERICA,**  
*Respondent*

Appearances: Sudduth & Associates LLC  
*For Complainant*

Katten Muchen Rosenman LLP  
*For Respondent*

BEFORE: **CLEMENT J. KENNINGTON**  
Administrative Law Judge

**DECISION AND ORDER**

This case arises from the employee protection provisions of the Safe Water Drinking Act (SWDA), 42 U.S.C. § 300j-9(i), the Solid Waste Disposal Act (SWDA), 42 U.S.C. § 6971(a), and the implementing regulations at Title 29, Part 24, of the Code of Federal Regulations brought by Aron Yellott (Yellott) against Packaging Corporation of America (PCA). The issues were fully litigated during a five-day hearing (June 18-20 and July 24-25, 2018) in Lake Charles, Louisiana.<sup>1</sup>

**I. STATEMENT OF THE CASE**

PCA operates a container board and corrugated box mill in DeRidder, Louisiana, covering 3,600 acres and consisting of a pulp mill, lime kiln, powerhouse, wood yard, baker

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<sup>1</sup> The following abbreviations are used in this Decision: “CX” for Complainant’s Exhibits; “RX” for Respondent’s Exhibits; and “Tr.” for the transcript of the hearing. At the hearing the following exhibits were admitted: CX 1 through CX 55; and RX 1, 3, 4, 9, 11, 12, 14-15, 20, 22, 24, 32-41, 43, 45-46, 48-50, 52, 55, 57, 59-60, 72, 74, 76, 82, 85, 94-95, 101-03, 106, 111, 133, 135, 147, 173, 177, 181, 184, 186, 193-96, 198-99, 210, 212, 215-17, 221, 228, 230, 232, 238, 256, 295, 297-98, 300-16, 318-35, 338-51, 354-59, 361, and 371-77.

machines, shipping and maintenance buildings, clarifier, five sludge ponds, and aeration units. The clarifier removes solids from wastewater after which the wastewater is treated by aerators, goes into a holding basin, and is released into Cypress and Anococo Creeks for eventual transfer to the Sabine River. PCA treats about 25 million gallons of water per day. Within its mill complex, PCA operates a potable water system, which includes four well batteries and nine wells supplying drinking water to its employees. PCA employed three environmental specialists and six laboratory technicians who assist the specialists in daily or weekly testing of chlorine and pH levels.

During Yellott's employment from September 2015 to January 20, 2017, PCA employed the following corporate and mill managers: Mark Kowlzan, CEO; Jack Carter, Senior Vice President; Chris Changnon, Director of Human Resources; John Piotrowski, Director of Environmental Operations; Eric Snelgrove, Mill Manager; Brent Hansen, Human Resources Manager; and Blaine Butaud, Mill Environmental Manager. Reporting to Butaud were Tim Byrd (Environmental Air Specialist) and Yellott (Environmental Affairs Specialist). Working with Yellott were Denna DuVall and Jeffery Meadows, laboratory technicians, and David Spears, an electrician who occasionally assisted Yellott on the potable water system and, for a portion of Yellott's employment, was married to her.

Yellott contends that (1) she engaged in protected activity, (2) the protected activity was a motivating factor in PCA's decision to terminate her, (3) PCA's proffered reason for her termination (gross dishonesty) was false, (4) her concerns about PCA's potable water system, waste reports miscalculations, and the dumping of green liquor into pond #1 were reasonable, true, and centered on violations of environmental rules and regulations, and (5) PCA corrected the issues she raised after it terminated her, thereby dispelling any notion that such concerns were dishonest. Yellott contends that PCA's decision to terminate her stemmed from two emails—the first sent to Eric Snelgrove on January 13, 2017, which triggered an investigation, and the second, sent six days later, to Butaud asking how they were going to handle the green liquor issue.

On the other hand, PCA argues that Yellott (1) had a poor attendance record and a lack of commitment, which negatively impacted her job performance, (2) failed to correct miscalculations in PCA's reports to Louisiana's Department of Environmental Quality (LDEQ), (3) made bad faith complaints concerning PCA's potable water system and the LDEQ reports, (4) possessed neither a reasonable objective nor a subjective belief that green liquor was dumped into pond #1 rather than green liquor dregs, and (5) possessed neither reasonable objective nor subjective beliefs that the miscalculations in LDEQ reports or the potable water system constituted violations of either the SDWA or the SWDA. Assuming Yellott can establish that she engaged in protected activities, PCA argues that it would have terminated her anyway because she knowingly made bad faith and false claims against her direct supervisor that he "swept under the rug" her environmental complaints and that Butaud instructed her to consult only his girlfriend, Madeline Murphy, under a consulting contract. PCA contends that it interpreted Yellott's email to Snelgrove as an attempt to malign Butaud professionally and accuse him of giving Murphy improper preference because of their relationship.

## II. RELEVANT EVIDENCE<sup>2</sup>

### A. Testimony of Cody Yarbrough

PCA employed Yarbrough from August 2014 to May 2015 as its Environmental Affairs Waste Division Specialist. Yarbrough has a bachelor's degree in toxicology with work experience as a safety manager/disease control specialist, environmental specialist in the hazardous waste division for Texas's Commission on Environmental Quality (TCEQ), and laboratory technician. While at PCA, one of Yarbrough's greatest safety concerns was employee exposure to hydrogen sulfide (H<sub>2</sub>S) in higher than personal exposure limits in main processing areas and the cavalier treatment of such exposure by management (Butaud and Byrd).

Laboratory technicians brought Yarbrough mini-ray or atmospheric samples very high in H<sub>2</sub>S. In turn, Yarbrough informed Butaud and Byrd of the H<sub>2</sub>S findings. Butaud and Byrd responded that they would take care of it but maintained it was likely a faulty reading from the "idiots in the lab." Tr. 24-25. On other occasions, when Yarbrough expressed concern about cross-contamination of non-potable water from the collapse of a large process tank with chemicals in plant ditches, Butaud and Byrd told him not to inquire or worry about it since it was above his pay grade. Tr. 26-27. On other more frequent occasions, when laboratory technicians and Yarbrough informed Butaud or Byrd of high readings of black liquor, chemical and oxygen demands, and nitric acid levels in process wastewater streams that were required to be reported to the State of Louisiana on daily monitoring reports (DMRs), Butaud or Byrd challenged the test results, told them it was the result of malfunctioning equipment and not to worry, and assigned Yarbrough to look into it further. When Yarbrough confirmed the high readings, Butaud or Byrd responded that they would handle it but never informed either Yarbrough or the laboratory technicians what had been done. Tr. 28-36.

Yarbrough was nonplussed by Butaud and Byrd's cavalier treatment of water samples taken from process outfall locations and their references to the laboratory technicians as "f\*\*king idiots." Tr. 36-41. Yarbrough filled out the DMRs and noticed inconsistencies between the DMRs and the daily readings reported to Butaud or Byrd. Yarbrough trusted his superiors to properly investigate and/or or resolve the inconsistent or high readings when reported but did not independently verify if appropriate action had been taken. Tr. 41, 45. PCA terminated Yarbrough for missing work. Tr. 43-47. Prior to his termination, Yarbrough was written up or reprimanded on three different occasions for lack of proper communication with Butaud, failing to follow a check list as requested by Hansen, and getting company vehicles stuck in mud while he tried to take test samples. Tr. 59-62.

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<sup>2</sup> To summarize the entire record would take a herculean effort. The hearing transcript is nearly 1,500 pages, documentary evidence far exceeds that number, and the parties' briefs are, collectively, about 150 pages. Thus, while the summary that follows does not remark on every page in the record or detail each witness's testimony, I have reviewed and considered the entire record in rendering my findings and conclusions herein. *See Austin v. BNSF Railway Co.*, ARB No. 2017-0024, OALJ No. 2016-FRS-00013, slip op. at 2 n.3 (ARB Mar. 11, 2019) ("[A] summary of the record is not necessary as we assume that the ALJ has reviewed and considered the entire record in making his or her decision.").

Yarbrough testified that faulty equipment caused the occasional high H<sub>2</sub>S readings and reported the readings to Butaud or Byrd who told him they would handle it. Yarbrough did not inquire further about these readings. Tr. 56-58. On other occasions, when the high readings were apparently accurate and not due to malfunctioning equipment as verified by additional tests, Yarbrough talked directly to department heads. He was later instructed by Butaud not to do so but to let Butaud do the talking because he could resolve the problem more quickly. Tr. 51-52, 62-64. Yarbrough filled out the DMRs and certified them as accurate, trusting that Butaud had in fact dealt appropriately with the issue. He described the relationship between Butaud and the laboratory technicians as one of complete distrust. Butaud never told the laboratory technicians what he ultimately did with the results. Tr. 34-36.

## **B. Testimony of Denna DuVall**

Yellott's second supporting witness, DuVall, has experience working as a pharmaceutical laboratory technician before being employed by PCA. Tr. 73. DuVall began working for PCA on July 14, 2014, as a laboratory analyst performing environmental and in-house testing of liquors, side streams, and end product, and ran analytical machines. In addition, DuVall did chlorine residual testing along with Jeffery Meadows, pulling daily samples at various locations from effluent potable waters and side streams and conducting meter testing. In performing these tests, DuVall discovered high (not quite at the threshold 5.0 milligrams per liter) and "out of spec" (over threshold) readings. Tr. 76. DuVall considered Yellott to be competent, knowledgeable, and concerned, with no attempt to exaggerate. Tr. 77-78.

DuVall testified that Byrd told her to hold and not report high or out of spec readings, which is contrary to her pharmaceutical training and to what Yellott told her to do. Tr. 81, 140, 144-146. On December 5, 2017, DuVall took a reading between 8:00 a.m. and 10:30 a.m., which she did not record because of Byrd's previous instructions to withhold high readings.<sup>3</sup> Tr. 144-46. DuVall considered Yellott to be responsible for improving working conditions by opening up lines of communication between the laboratory and the environmental managers, including additional training. Tr. 147.

Regarding the green liquor incident on January 19, 2017, DuVall testified that it was raining when, in the process of counting aerators at the aeration ponds, she saw a driver of an 18-wheeler sucker truck parked next to and discharging green liquor into pond #1. DuVall identified the green liquor by its pungent smell and its liquid form in contrast to green liquor dregs that are solids. Tr. 97, 127-28. In response to DuVall's inquiry, the driver indicated that Byrd authorized the dumping. Tr. 98. In turn, Meadows, who was working with DuVall, called Yellott and informed her of what had occurred. DuVall did not testify to the contents of that conversation or exactly what had been said by Meadows. Tr. 96-98. DuVall later testified that the driver had not actually been at pond #1 but had been on the side of the road—"as far as he knew, that was the pond. The side of the [road is] the pond." Pond #1 "sits off" the road. Had the

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<sup>3</sup> DuVall testified that readings were usually taken between 8 and 10 a.m. The recorded readings on December 5 were taken at 3:19 p.m. and 3:25 p.m. and were documented by JAM, likely Jeffrey Meadows. CX 51.

driver actually been parked at pond #1, DuVall and Meadows “wouldn’t have thought anything about it....” Tr. 126-27.

DuVall testified that PCA failed to make repairs to a large motorized gate that regulated billions of gallons of process or treated water through a 48-inch pipe to the outside creeks. The gate had broken and needed to be closed manually, which required the assistance of a cheater bar. Tr. 133. DuVall testified that, despite repeated requests over the course of a year, PCA never repaired the gate although it controlled the flow of processed water from holding ponds (outfall) to natural waterways. Tr. 104-05, 147-50.

### **C. Testimony of Jeffrey Meadows**

Meadows has a bachelor’s degree in agriculture with a minor in animal science from McNeese State University. His prior work experience was in construction and as a salesman and truck driver for a feed store. Meadows began working for PCA in June 2014 as a laboratory technician along with Jonathan Walker and DuVall collecting and running samples and tests on various products. Tr. 155, 157. In addition, Meadows took water samples at inlets and outlets and sent them out for testing at various companies while personally checking for dissolved oxygen, pH, and zinc levels throughout the mill. Tr. 159-61.

Meadows worked with Yellott for about a year, during which time he had daily contact with her. According to Meadows, Yellott took his reported concerns seriously. Tr. 162. On December 5, 2016, Meadows tested the chlorine residuals at 3:19 p.m. because earlier results exceeded the guidelines. As instructed by Byrd, he retested later to record an appropriate result, i.e., one within the guidelines, rather than the earlier results, which were out of spec. Tr. 172-77. In January 2017, Meadows and DuVall had been making their rounds “around the sludge ponds to check the aerators” when they came upon an 18-wheeler truck backed up to pond #1. He noticed that the truck was releasing some liquid and, on closer inspection, thought the liquid was green liquor. The driver confirmed Meadows’s belief. Meadows then called Yellott to report the incident. He testified that he contacted Yellott “that morning and asked her if we were supposed to be dumping any liquids into the pond.... I just told her, I said there was a Performance truck there, and I wasn’t for sure.” Meadows then went about his day—“And I didn’t talk to her probably until later that afternoon, I would say.” Tr. 179-81.

### **D. Testimony of David Spears**

Spears, Yellott’s former husband, has a high school education plus two years of vocational training in electronics and electrical instrumentation. He also took courses in criminal justice for two years at McNeese State University. Spears has worked for PCA and its predecessor for 29 years on the power house, water wells, aeration holding ponds, and sludge clarifier. In 1993, he completed a four-year apprentice program after which he became a journeyman electrician. Tr. 203-04. During Yellott’s employment with PCA from September 2015 to January 2017, Spears worked with her at the outfall gate on the potable water system and at the clarifier sludge plant. Tr. 205.

Spears testified that the outfall gate controls the affluent or processed water released from the holding ponds to the outside environment. The gate has a 45-inch valve and a 12-inch valve that usually operate on electricity. The motorized operating valve had not been operating properly due to water intrusion and required replacement of an actuator. Without replacement, the valve has to be operated manually, which is very difficult for even two men to accomplish because of water pressure. Tr. 206-07. Spears testified that the processed water outflow is aerated by 35 or 36 aerators and then moved to holding or outflow ponds for release into the environment. Tr. 208.

On December 5, 2016, PCA lost power to the mill due to a massive thunderstorm. When power was restored, a booster injection pump pushed chlorine into the potable system without benefit of the requisite water. The water was supplied by underground pumps that had to be turned on manually. The solution to this problem was to interlock the booster pumps with the well pumps so that the chlorination system would not turn on until the well pumps were back online. Tr. 209-21.

Spears met Yellott in September 2015 when she began working at PCA. Yellott initially had close working relationships with Butaud and Byrd. The three went to lunch daily and met for dinner at Byrd's house. Butaud and Byrd also went to Yellott's wedding to Spears in March 2016. He believed from Yellott that her relationships with Butaud and Byrd began to change when Yellott reported discrepancies or miscalculations on annual waste reports in May and June 2016 that had been sent to LDEQ. He testified that Yellott became upset when Butaud and Byrd stopped lunching with her in summer 2016.<sup>4</sup> Spears and Yellott separated in July 2016, and he testified that the separation caused Yellott to take a leave of absence from work the following month. After Yellott's termination, Spears found that she was extremely upset, crying, and did not want to leave the house. He believed it was an extremely stressful time for her. Tr. 238-71.

In January 2017, the potable water system was investigated, and PCA implemented plans to amend the engineering system and interlock the pumps. Tr. 274, 276-78, 280-81, 283-95.

#### **E. Testimony of Aron Yellott**

Yellott's formal education included a bachelor's degree in secondary education with a minor in geology and a master's degree in environmental and chemical science from McNeese State University. Tr. 314-16. Before being hired by PCA in September 2015, Yellott worked for Kinder Morgan and Intercontinental Terminals Company in Texas performing environmental work. When hired, Yellott advised Butaud, Hansen, and Byrd that she had no paper or pulp work experience. Yellott testified that Louisiana and Texas have "completely different" environmental

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<sup>4</sup> However, subsequent conversations between Yellott and Butaud in August 2016 show that Yellott confided in Butaud and thanked him for his assistance in dealing with domestic problems involving Spears. Tr. 263-67, 269-70. In July, Yellott told Butaud that she believed Spears had sabotaged her vehicle and expressed concern that she had been "extraordinarily sick" and that her family suggested bloodwork and hair follicle testing. Butaud offered to go to the Sheriff's Office with Yellott to address these concerns. Yellott also reached out to Butaud for emotional support in August. RX 195; RX 332; RX 334. She acknowledged some of these text messages to Butaud. Tr. 460-64.

regulations and that her experience did not include submitting reports, a task she would be assigned at PCA. Yellott had only managed individuals responsible for submitting environmental reports. Tr. 317-23. Yellott was hired at PCA with a yearly salary of \$105,000 with a possible 20% bonus and future promotion.<sup>5</sup> Tr. 324-25.

On December 9, 2016, Yellott emailed Butaud and Hansen in reference to a meeting earlier that week in which Butaud told Yellott she had to “take over” and assume responsibility for her assigned fields. Yellott requested additional training to understand Louisiana and other regulations.<sup>6</sup> In particular, she was concerned about calculating and certifying to the State of Louisiana amounts of waste that PCA’s facility generated over a year of operation. These certificate of compliance reports document the annual amount of waste produced by each waste stream. Yellott found discrepancies in past certificates and reported it to Butaud who told her not to worry. When she persisted, Butaud called her pedantic and stupid. Tr. 345-58.

On Wednesday, January 18, 2017, Butaud and Hansen notified Mike Hahn of the Louisiana Waste Permits Division that Butaud was going to submit corrected copies of waste disposal totals for the solid waste landfill at the DeRidder mill associated with an “employee performance issue and that LDEQ may be contacted in the near future by an individual no longer associated with PCA about the issue.” Tr. 358-64.<sup>7</sup> In a letter to Mike Hahn dated February 8, 2017, Madeline Murphy submitted revised certificates for 2014, 2015, and 2016. Murphy informed Hahn that an investigation into employee performance issues discovered discrepancies in unit conversions and calculations for volumes and waste tonnages going into the mills waste units for 2014, 2015, and 2016.<sup>8</sup> Murphy stated that no standard conversion factors were consistently used for calculating waste amounts. Accordingly, the mill developed a database with standardized factors and calculations for reporting waste tonnages and volumes. In

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<sup>5</sup> PCA’s written offer does not include any bonus potential. PCA offered Yellott \$105,000 annually, a signing bonus of \$10,000, relocation benefits, healthcare coverage subject to the payment of premiums, one of three matching 401(k) plans, and three weeks of vacation. RX 194.

<sup>6</sup> Yellott complained to Butaud that her training on waste regulations had consisted of receiving a manifest binder, being shown accumulation and staging areas, receiving an abbreviated explanation of a waste spreadsheet, and two assisted runs with a waste movement. She requested additional training on waste and asked to attend all meetings concerning the areas for which she was responsible. Yellott also took issue with the negative review of her performance. She had been “under the impression that [she] was doing a good job until Tuesday morning” and disagreed with Butaud’s assessment that “no one trusts” her. CX 16. That Tuesday was December 6, 2016. Yellott also raised concerns to Hansen in emails the next day. CX 10.

<sup>7</sup> Butaud sent an email summary of his conversation with Mike Hahn to Snelgrove, Hansen, and Piotrowski. CX 41. Butaud submitted the corrections to the 2015 report the next day. CX 44.

<sup>8</sup> Butaud revised the letter to Hahn and sent a copy of the letter to Murphy. CX 53.

testimony, Yellott was surprised to learn that revised reports were submitted because she had been informed by both Butaud and Murphy that no revisions would be.<sup>9</sup> Tr. 364, 367, 371-73.

Because Yellott believed that Byrd intentionally withheld waste manifests from her, she had been communicating with Hansen about the waste calculations and her interactions with Butaud and Murphy. After December, Butaud never did discuss the 2014 calculations with Yellott. She forwarded to Hansen the many emails among the three; she wanted Hansen to know that she had done all she could but that nothing had been done about the concerns she raised. Tr. 376-79, 382-86.

On January 13, 2017, Yellott forwarded to Snelgrove several emails exchanged among her, Butaud, and Murphy concerning the certificates.<sup>10</sup> She believed she had no other option than to go up the chain of command and believed the issues would ultimately be laid at Snelgrove's feet. She also wanted to maintain a paper trail for her own protection. Yellott testified that she felt relieved by Snelgrove's response though somewhat humiliated by having "to go all the way to the mill manager to have something corrected."<sup>11</sup> Tr. 399-402. After that email, Yellott received no further communication from Snelgrove. Tr. 403-04.

Yellott has a potable water license in Texas. She went to class in April 2016 for the Louisiana license, which she ultimately obtained in summer 2016. She had requested specific training at PCA because it has a different potable water system that a general training class would not cover. Concerning PCA's potable water system, Yellott testified that she reported to work on a rainy day on December 5, 2016. At about 10:00 a.m., Meadows called Yellott and told her the chlorine system was out of compliance. Yellott went out to the potable water system and verified that the meter readings were out of compliance whereby she notified Butaud and Byrd, who were out of the office, and called Spears. As a result of heavy rainfall, the mill had lost power, which caused the absence of normal water flow due to lack of power to the water pumps. When power was restored, the chlorinating system began to supply chlorine in an automatic

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<sup>9</sup> Nonetheless, December emails between Murphy, Butaud, and Yellott indicate that the three anticipated submitting a revised report for 2015 if there had been "significant issues," that they were working on revisions to 2016 due to miscalculations, and that they were looking at the 2014 numbers. CX 14; CX 15. Yellott and Murphy continued communicating. CX 21. The next month, on January 12, 2017, Yellott asked Butaud how to handle "the miscalculations [Byrd] sent to [Murphy] for the 2015 certificate." CX 27.

<sup>10</sup> She also raised other concerns. Specifically, Yellott complained to Snelgrove that she "was finding issues that were out of compliance and need to be addressed," but that Butaud chastised her, told her she was stupid, and "swept [the problem] under the rug." She also stated, "This is something that I feel you need to be aware of..." and told Snelgrove that she "tried to discuss the issue with the consultant, who is Blaine's girlfriend-and whom I have been told is the only consultant that I can use-and she was no help." Yellott ended the email with an offer to discuss "the issue... or the issue with the potable water..." CX 27.

<sup>11</sup> Snelgrove responded to Yellott that he would discuss the email with her the following week and iterated the priority the mill places on compliance. Snelgrove forwarded Yellott's email to Hansen with the subject "Blaine/Aron Issue" and planned to discuss "our path forward" on the following Monday. He also indicated that they would have to address significant allegations and issues. Hansen replied, "Will do. I agree. I will bring you up to speed on the latest too." CX 38.



mode; but, the water pumps had to be reset manually. Yellott and Spears later discovered the cause of the high readings was the smart valve that delivered chlorine, which was not wired to run automatically with the result that it did not come on until the wells were started and allowed chlorine gas to run through the system. Yellott was concerned about the high concentrations of chlorine gas with little flow of water because of the possibility of plant personnel opening a valve in the restroom and unexpectedly consuming chlorine gas. Spears provided a temporary fix by restoring power to the water wells thereby allowing the lines to be opened and flushed. The excess chlorine was cleared by a chlorine slug, which pushed through the system by 3:30 p.m. Yellott and Spears suggested a permanent solution, which involved an automated booster pump interlocking with the chlorine feed system. In this way, one of the water wells would be running before the chlorine booster pumps. This solution was proposed by Yellott to Butaud.<sup>12</sup> Instead, Butaud and Byrd considered adding an additional tap to the system, which would not control or regulate the flow of chlorine. Yellott challenged their proposal and explained that the power outage allowed the flow of chlorine gas with no water flow, which caused the high readings. Tr. 404-14.

On January 17, 2017, Yellott organized and conducted training, along with the vendor (Richard Blank), at well battery 3 for the potable water chlorination system. In the course of that meeting, the concern that a slug of chlorine was pushed through the system before the water pumps were re-engaged had been raised.<sup>13</sup> Without Yellott's knowledge, Byrd and Butaud arranged for the solution she recommended to be implemented.<sup>14</sup> Tr. 415-29.

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<sup>12</sup> By email on December 7, 2016, Butaud asked Yellott to arrange for vendor training on the maintenance and repair of the potable water chlorination system. Yellott replied that she would and suggested an interim safeguard (a solenoid valve) in case of another power outage. CX 8. Many additional emails among Yellott, Butaud, and Byrd on January 11 the next month discussed the issue with the potable water system and the meters and valves controlling the chlorine flow. Butaud was apparently concerned about "the accuracy of the measurement system during upset periods like... the power outage." Byrd had suggested the installation of a new sample line to ensure the accuracy of the meter reading. A sample line would measure chlorine at the chlorinator, not at the initial point of chlorination. Doing this would eliminate major fluctuations and variability introduced by the lag in the system. Yellott responded with an explanation that the issue lies not with the meter but with the valve that remained open. Butaud responded that he was "done with this discussion" and did not "need any more overly pedantic discussion from you of information that I already know." Yellott forwarded these emails to Hansen the next day. CX 30; CX 31; CX 32.

<sup>13</sup> Yellott sent a summary of the issues addressed to Butaud and Byrd, among others. CX 34. Among the recipients was Eric Snelgrove, who had been blind copied. Snelgrove apparently forwarded the email to Butaud with the instruction to "get involved and support getting the chlorination system functioning properly." Butaud took issue with Yellott's claim that the chlorination system was not automatic and with her blind copying Snelgrove without his knowledge. He asked to meet with Snelgrove and Hansen the following morning to discuss Yellott's email. CX 39. The next day, January 18, 2017, Byrd, who had spoken with Richard Blank the previous evening, informed Butaud (who then informed Snelgrove) of the solution to automate the water pump to interlock with the chlorinator. Byrd agreed that the chlorinator had always been automatic. CX 40.

<sup>14</sup> On January 18, 2017, Byrd confirmed with Louisiana's Department of Health and Hospitals representative that no written approval was needed to implement the change. The next day, a work order was issued providing for the interlocking of the booster pump to the well pump. CX 42; CX 45.

On the December 2016 chlorine residual report that Yellott submitted, she did not report the out of compliance reading Meadows brought to her. She testified that she reported only what the computer showed. Because the 10:00 a.m. reading Meadows conveyed to Yellott was not documented in the computer, Yellott did not include it in the report. To her knowledge, Meadows did not document the out of compliance reading because Byrd had instructed all operators (DuVall, Meadows, and others) not to record any readings that were out of compliance. Yellott complained to Butaud and Byrd about these discrepancies and was told to leave it alone.<sup>15</sup> Tr. 432-35. Yellott was concerned about potential chlorine gas emission from the faucets if the chlorine pump was on but not the water pump. She believed this to be “very dangerous” and a “huge safety issue.” Tr. 436.

On January 19, 2017, Yellott received a call from Meadows indicating that green liquor was being wrongly dumped in pond #1 by a contractor (Performance).<sup>16</sup> In turn, Yellott called Performance and spoke to Keith Myers who confirmed that Byrd authorized the dumping of green liquor into pond #1. Yellott also walked across the hall and personally informed Butaud of the dumping who responded that green liquor was not supposed to be dumped into pond #1. Yellott then sent an email to Butaud and Byrd to confirm the incident in writing. When she arrived at the scene, Yellott noticed that the area was “saturated with liquid material. Definitely not solids.” She testified to the sour, pungent, distinctive odor of green liquor that “you can’t mistake for anything else.” Yellott emailed Butaud about the issue and, when he dismissed it, notified Snelgrove.<sup>17</sup> She testified that only solids were to be dumped in pond #1, which is not lined with concrete. Green liquor is not part of the reclamation process; rather, green liquor is a contaminant. The dumping of green liquor directly to the soil in pond #1 created health and safety issues. Yellott was terminated the next day (January 20). Tr. 441-47.

Yellott has no knowledge of any investigation into her performance issues or any other issues outlined in Hansen’s investigation report, which was sent to Chris Changnon and which detailed the reasons for her termination. Hansen determined that (1) Yellott made false allegations about employees with the intent of adversely affecting their employment, (2) she needed to improve in skill utilization, team support behaviors, making decisions, owning issues

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<sup>15</sup> Butaud emailed the December 2016 reports to Byrd, stating, “For all of her carping about the chlorination system, she failed to note the high chlorine residual measurement from the 12/5 power outage on the December report.” CX 51.

<sup>16</sup> Although Yellott did not see the truck, she understood from Meadows that an 18-wheeler vacuum truck had delivered the dumped material. Tr. 653. The disposal list documented deliveries only by dump trucks. RX 367.

<sup>17</sup> Yellott asked Butaud how he wanted to handle the green liquor issue. He replied, “It wasn’t a green liquor issue,” and explained that Performance was hauling wet green liquor dregs, which “are a component of the beneficial use mixture that goes in pond #1 as part of the reclamation.” Butaud also indicated that the dregs are normally transported dry for efficiency and that Performance should, in the future, notify the environmental department when the haul is different than described (i.e., wet rather than dry). CX 37. Butaud also forwarded Yellott’s initial email to Hansen, stating, “This is the thing with... the green liquor that I discussed with you. She’s going to try to make an issue of this. We need to get her out today!” CX 36.

for which she was responsible, and initiating action, and (3) she lacks engagement.<sup>18</sup> Yellott denied being told she needed improvement in these areas.<sup>19</sup> She also denied threatening the mill manager and denied failing to rectify the issues before sending the email to Snelgrove. Tr. 448-51.

On January 20, 2017, PCA directed Yellott to attend a meeting at 6:30 a.m. After the meeting, around 7:00 a.m., she went to her office. As she was unlocking her door, Butaud approached and told her she had to go to Human Resources. Butaud accompanied Yellott to Hansen's office where Hansen told her she was being terminated for gross dishonesty. In response, Yellott asked, "[G]ross dishonesty on what accounts?" Hansen cited the potable water system, the lime discharge into pond #1, and waste calculations. Hansen then asked for her keys, badge, and company cell phone and told her that her personal things would be mailed to her. She testified that she was crying and that Butaud was calling her stupid. She asked Hansen to "get [Butaud] out of here" and also asked to speak to Snelgrove. When Snelgrove approached, she told him that she thought she was doing her job well and that she had trusted him and Hansen. Yellott testified that Butaud told Yellott to take off her fire resistant shirt, which she did, and that they walked her through the plant in her underwear to her car. Tr. 452-54.

Upon leaving the mill, Yellott called Spears who came to see her. She stated, "I was a complete and total mess. I completely fell apart." Yellott has been diagnosed with anxiety and depression. She felt humiliated and was unable to shop or go to church because "everybody knows everybody" in DeRidder. Yellott also found herself unable to secure employment because PCA "continued to bad mouth" her. She sought counseling and was prescribed strong anxiety medication "that basically knocked [her] out." Yellott was eventually able to find employment in Tennessee, which put a great strain on her marriage and resulted in divorce. She missed spending time with her parents and was not in Louisiana when her father unexpectedly passed. Although at the time she and Spears had been separated since July 2016, which Yellott attributed to the stresses at work due to the waste reports, Yellott testified that they continued to spend nights together. Her termination for gross dishonesty has made it difficult to find a job. She testified, "[Gross dishonesty] is the worst label that you can put on an" environmental specialist. Tr. 454-59.

In addition to the issues Yellott discussed in testimony, she stated that she also reported other spills and issues throughout the mill. Tanks frequently overflowed with green and black liquors leaching into ditches and contaminating water. Overhead pipelines leaked, requiring mill workers to wear fire resistant clothing. Yellott had to specially order a shirt because others were too big and allowed liquid to drip down her back causing burns. Butaud shrugged off her reports

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<sup>18</sup> Hansen sent his investigation report and recommendation for termination to Changnon on the morning of January 19, 2017. The investigation had been triggered by Yellott's January 13 email six days earlier to Snelgrove "alleging a number of improprieties and potential compliance violations." The email outlined performance issues, addressed the statements Yellott made in her email, and cited other incidents "demonstrating unprofessional behavior." CX 46.

<sup>19</sup> However, Yellott acknowledged in an email dated December 9, 2016, a meeting between her and Butaud in which he apparently took issue with her job performance and indicated that "no one trusts" her. CX 16.

as “no big deal” and “just part of the manufacturing process.” After some time, Butaud responded to Yellott’s complaints by referring to her as annoying, stupid, and pedantic. Tr. 465-67.

On cross-examination, Yellott refused to acknowledge many of the text messages that PCA had apparently retrieved from the company phone. She denied recognizing any of the phone numbers, though one message included a photograph of her and Spears. When asked if she sent the picture to someone as the message indicated, Yellott replied, “I have no clue, ma’am.”<sup>20</sup> Tr. 468-69, 473-75, 477-80.

Yellott admitted that PCA held manager meetings at 6:30, 7:00, and 8:00 a.m. but had no idea whether the assistant mill managers, Thomas McClure and Hank Weber, voiced concerns about Yellott’s lack of attendance at those meetings. In like manner, Yellott was unaware that Snelgrove had received complaints about Yellott’s absences. She denied being counseled by Butaud in August or September 2016 about these meetings. Butaud instructed Yellott not to leave on lunch breaks to pick up her daughter and take her home and not to schedule medical appointments between 6:30 a.m. and 5:00 p.m. Yellott admitted taking off for her wedding, honeymoon, and to sell her home in Houston.<sup>21</sup> Tr. 499-506.

The day of the December 2016 power outage, Yellott testified that she believed the high reading meant PCA was out of compliance. She stated compliance is measured daily, weekly, monthly, and annually. The reading that day meant the water was over-chlorinated. The issue resolved by 3:30 p.m. Tr. 516-20. Yellott testified that she was counseled the next day for bringing up the potable water issue while Butaud and Byrd were in Baton Rouge and “for not knowing the exact cause of what happened.” She stated that she had actually discovered an issue no one had previously noticed. Although Yellott was responsible for the potable water system, she reached out to Byrd as the more experienced authority. The valve was not wired to automatic, though the screen indicated it was, and is supposed to measure the flow of water and release chlorine accordingly.<sup>22</sup> Yellott testified the valve does not indicate the chlorine residual level. She agreed that one could compute the chlorine residual based upon the valve settings. Tr. 522-26.

Yellott was ultimately responsible for pulling waste data for the 2016 certificate. She admitted to an inadvertent error in the data that showed zero asbestos waste. She testified that she had asked Byrd for the reports, but he withheld them. Once Byrd saw the completed

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<sup>20</sup> When PCA represented that it retrieved these messages from the phone, Yellott responded, “How do I know that?” She became combative and questioned whether PCA created the messages. Many messages reference individuals named Mia and Mollie (the names of Yellott’s daughters) and David, and are beyond doubt authentic. RX 354. The messages in January 2017 include romantic exchanges between Yellott and an unnamed male. RX 357; RX 358; RX 359; RX 361.

<sup>21</sup> Several messages between Yellott and Butaud document absences or shortened work days on multiple occasions throughout her employment. RX 256; RX 299 through RX 331; RX 333; RX 335 through 351.

<sup>22</sup> Days after Yellott’s termination, Byrd sent to Piotrowski several photographs that Yellott had sent to him on December 5, 2016. The photograph of the valve panel read “auto.” RX 85.

certificate, he told Yellott that she omitted asbestos data. Then, Yellott corresponded with Murphy to determine whether and what revisions should be made. Tr. 533-43. When Yellott forwarded the emails to Hansen, she wanted to make him aware of how many years PCA had been out of compliance. Although she was speaking of miscalculations at that time, Yellott testified, “It is a miscalculation until you refuse to file an update. And then, it is an issue of non-compliance.” She believed that PCA did not want to amend the certificates so as to avoid “a huge tax issue.” As of January 3, 2017, Yellott still had been trying to understand the process and gain an understanding of the regulations. She acknowledged that she had taken training classes in graduate school and online, but was unsure whether PCA was a large or small quantity generator.<sup>23</sup> Tr. 545-58.

In addition to the waste calculations, potable water system, and green liquor issue, Yellott maintains that she has also complained of “all kinds of spills, leaks and things going to the soil and contaminations occurring....” Tr. 592. Yellott acknowledged that she sent a picture by text message to Butaud of an overflowing tank, which she thought was self-explanatory. She testified that she “got in trouble” after sending the message.<sup>24</sup> Yellott contacted the appropriate person to issue a work order for the tank. Tr. 596-601.

Yellott was terminated on January 20, 2017, and received an offer of employment from Iconex about two months later on March 13, with a beginning date of employment on April 3, 2017. She testified that she had to request time off for a settlement meeting in this case. Yellott denied telling Iconex that she had to take time off for an issue relating to the explosion at PCA. She stated that she was terminated when PCA began contacting Iconex.<sup>25</sup> Tr. 609-13. Yellott claims that the human resource manager at Iconex told her she was being fired because she “had a bad attitude.” The manager also discussed the safety concerns Yellott raised with Iconex and with PCA. Yellott testified, “They brought up the fact that my previous employer had been in contact with them and they were aware of safety concerns that I had reported. They said that I had been fired for gross dishonesty....”<sup>26</sup> Tr. 680-81.

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<sup>23</sup> Yellott was tasked with ensuring compliance with updated rules in November 2016. On January 4, 2017, Butaud asked her to prepare a corrective action plan. Yellott did so about two weeks later but does not recall ever seeing the documents apparently attached to the email she sent. On the corrective action plan, the author identified the mill as a small quantity generator. RX 50.

<sup>24</sup> Butaud responded by telling Yellott not to send pictures with no explanation. RX 296.

<sup>25</sup> Yellott was offered a severance package from Iconex on September 22, 2017, with an effective termination date of October 6, 2017. RX 212. Yellott has a pending claim against Iconex in which she alleges that Iconex terminated her in retaliation for her pending litigation against PCA and for raising safety issues at Iconex. Tr. 615. Iconex’s stated reason for Yellott’s termination is disrespectful and disruptive behavior. In its letter to OSHA, Iconex disavowed any knowledge of Yellott’s litigation against PCA until January 30, 2018, when it received a subpoena for records. Rather, Iconex stated that Yellott informed her supervisor that she was a witness in a wrongful death lawsuit filed by family members of deceased PCA employees. RX 377.

<sup>26</sup> Such a statement could constitute direct evidence that Iconex terminated Yellott for engaging in protected activity at PCA. But, Yellott did not make this allegation in her letter to OSHA against Iconex. RX 376.

After her termination from Iconex, Yellott interviewed with Modine Manufacturing. She testified that she lost the job opportunity after Modine Manufacturing contacted PCA. Tr. 619-20. Modine had questions about the dates of employment Yellott provided and requested references. Yellott testified that she provided three references in response to the email and, when she spoke on the phone, “I gave him Brent Hansen’s office number.” Two of her references, Ray Lester and Todd Harlow, told Yellott that Modine contacted them, which is reflected in Modine’s documentation.<sup>27</sup> Later, Modine informed Yellott that it would not be moving forward due to the confusion in the dates of employment for PCA. In response, Yellott explained that she departed from employment in January 2017 but that insurance and other payments continued through February and April 2017. She also explained that she was involved in a project closeout and investigation until she began employment with Iconex. Yellott believes that Modine had spoken with someone at PCA by that point. Tr. 623-36. Yellott also recalls providing Hansen’s personal cell phone number. When asked whether Modine reached out to Hansen, Yellott replied, “Yes, they did.” But, neither Hansen nor a representative from Modine documented or communicated any such contact. Tr. 684-91.

Yellott reviewed the results of the audit that was conducted the week after her termination. She testified that the audit validated several issues that she raised—in particular, personal protective equipment, respirators, gas monitors, fire resistant clothing, and hands-on training. Yellott had spent several weeks preparing for the audit and expected to be involved. Tr. 693-94, 697-704.

#### **F. Testimony of Tim Byrd**

Byrd began his employment with PCA’s predecessor on May 15, 1978, as a student and, later, a laboratory technician. As a technician, Byrd eventually assumed additional responsibilities throughout the mill and was promoted to Senior Environmental Affairs Specialist in 2009. Byrd has a potable water license (Class IV) and a wastewater license (Class I). He became manager over the air emissions in 2014. Tr. 749-51.

PCA’s facility covers 3,600 acres and consists of a pulp mill, lime kiln, powerhouse, wood yard, baker machines, and shipping and receiving buildings. PCA treats 25 million gallons of wastewater per day, which flows through a 300-foot clarifier. The clarifier removes solids and pumps liquids through an aeration basin to a holding basin. PCA regulates the flow of water from that basin to ditches that empty into the Cypress and Anococo Creeks and, eventually, to the Sabine River. The water stays in the holding basin for PCA to regulate oxygen dissolve levels before the water is released. PCA also regulates the release of stormwater and cooling water (water that is not used in contact with any particular material) from the facility. PCA uses sludge ponds to dump waste materials such as ash and dregs, rather than dumping those materials in a landfill. The ponds are lined with clay, and any liquids that flow from the ponds into groundwater release into wells that PCA checks semi-annually for contaminants. Byrd testified that PCA does not release any compounds into the effluent water that meet “HazWaste” criteria.

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<sup>27</sup> Modine did not document any contact with Brent Hansen or document that Yellott had provided his information by telephone. RX 295.

He stated the clay prevents “leachate from coming out of the pond.” The potable water system consists of four well batteries that feed the mill. Tr. 753-61.

Six laboratory technicians, three Environmental Department employees, and Powerhouse employees are responsible for testing and maintaining the wastewater system. The technicians run samples every day and take pH levels three times per week. Twice a year, groundwater samples are tested by a contractor. The potable water system is tested for chlorine residuals once per day from the inlet and maximum residence time, with a continuous meter running at the injection point. Tr. 765-67.

Byrd testified that Yellott was hired to assume duties managing water and waste, which he had been performing since May 2015. Yellott was also tasked with reporting test data and averages on discharge monitoring reports. Byrd took Yellott around the mill and showed her the effluent system, potable water system, chlorination system, HazWaste storages, and other areas. He was aware that Yellott had a potable water license in Texas. He described the training as “fairly intense,” lasting one or two hours per day for six months. Byrd testified that 40-hour HazWaste training is for persons involved with large quantity generators or who served on emergency response teams.<sup>28</sup> While Byrd had the training long ago, he was never on the team. Rather, he testified the team consists of shift mechanics in various areas of the mill and two foremen. PCA is a small quantity generator, producing less than 2,200 pounds of hazardous waste per month. To Byrd’s knowledge, PCA’s only hazardous waste stems from painting activities throughout the mill. Tr. 768-73.

On December 5, 2016, Byrd was in Baton Rouge with Butaud, meeting with a consultant and LDEQ officials. Yellott called to inform him that the potable water system produced high (4.0 to 5.0) readings at the entry point and a reading of “two-something” at the building. Yellott did not know how to proceed. Byrd recommended flushing and clearing the “very long” sample line, which could address the large disparity between the two readings. If the line had not been flushed properly, technicians would not get a good test sample. At that time, Yellott was responsible for the potable water system. Tr. 774-78. Byrd “wouldn’t worry” about the first test if the sample line produced a normalized reading after the system had been flushed. He has reported numbers out of compliance in the past.<sup>29</sup> Though he has never instructed a technician to withhold a test result, Byrd testified that he would not report a reading that resulted from a sampling issue. Tr. 783-84. Byrd contacted Yellott once he returned from Baton Rouge that evening and intended to go to the mill to address the issue. Yellott, who had already left for the day, told him the issue had been resolved. Byrd expressed his disappointment that Yellott had not earlier informed him. Tr. 787-88. At the 6:30 morning meeting the next day, Byrd suggested to the Powerhouse supervisors, Tim Wohlers and David Shin, to install a sample line at the

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<sup>28</sup> The Resource Conservation and Recovery Act (RCRA) is the public law that creates the framework for the proper management of hazardous and non-hazardous solid waste. The SWDA is Section 7001 of the RCRA.

<sup>29</sup> On the report for January 2015, which Byrd signed and submitted, one reading was below specification. The free chlorine residual reading was 0.62; 0.8 is the regulatory minimum. Low readings were also logged for the month of April 2017. The State requires a description of action taken to correct a low reading. Further, on one occasion, Byrd reported a reading above 4.0. RX 368, pp. 1, 4, 73-74.

potable water system to allow technicians to verify and compare that reading with the reading at the chlorination system. Yellott was not present at the meeting. David Shin followed up with an email to Yellott outlining the parts needed to install a sample line. Yellott responding by indicating that a sample line was not necessary and that State approval would be necessary for one in any case. Byrd confirmed that was not true because the installation of a line would not alter the chlorination system. Tr. 806-11.

Byrd testified that he confirmed with Richard Blank that the chlorine dosing system was wired to run in automatic and actually did run in automatic. When the booster pump turned on after the power outage and circulated water through the chlorination system and across the flow meter, the chlorinator automatically started dosing chlorine. The chlorinated water “just sat there” until the wells started, which caused the heightened reading inside the mill. The situation was not dangerous. The saturation point of chlorine is 4,000 parts per million, considerably less than the reading of five parts per million that barely affects the taste of water. The booster pump was rewired and now does not turn on until one of the wells is running. Tr. 813-18.

On January 19, 2017, Hampton Howell, the mill engineer in charge of the lime kiln area, called Byrd late at night and asked to dump dregs into pond #1. Usually, dregs are dumped into pond #4. After the morning meeting, Byrd discovered that the dregs had been hauled with the sucker truck because the filter on the clarifier was broken and that the contractor used pond #1 because the road to #4 had been washed out with the rain. Byrd informed Butaud what had occurred. Byrd understands that the sucker truck cannot haul green liquor and confirmed with Ray Lester, superintendent of the pulp mill, that green liquor had not been pulled from the green liquor clarifier that night. Tr. 824-33. Green liquor is a “valuable commodity” and is not wasted. Yellott was present when Byrd spoke with Keith Myers by telephone about the use of the sucker truck. Otherwise, he had no interaction with Yellott concerning the dumping of green liquor dregs. Tr. 835-37.

Byrd had been responsible for generating solid waste reports from 2009 until 2013 when the State changed the form and PCA began using a contractor to generate the reports. He had inherited the duty during a reduction in force and learned how to perform the waste calculations on the job. PCA is responsible for providing waste analysis data to the contractor for the preparation of the solid waste reports. For the year 2015, Byrd multiplied rather than divided certain numbers by mistake. He was unaware of the errors until after Yellott was terminated. Butaud gave the report back to Byrd and told him to figure out the error, which he did within about five minutes. Byrd stated the error was “previous obvious” on the “first page.” He worked with the State and reviewed the reports back to 2013. For 2016, Byrd provided Yellott with information and told her to come to him with any problems. He does not recall specifically if she ever did. Byrd testified that he did not intentionally withhold anything from Yellott. While the asbestos waste information was in his office because he used the same data for air compliance reports, Byrd stated that the information is accessible in the environmental database. After submitting the revised waste reports, PCA owed the State about \$1,900, which did not account for the amounts PCA had actually overpaid. Tr. 838-48.

Byrd explained that the potable water system must provide a reading above 0.8 on any given day, but the yearly average cannot exceed 4.0. Occasional high readings do not raise



concern. Chlorine does not start “gassing off” until 4,000 parts per million. PCA’s potable water system would not put that much chlorine in water. Byrd doubts the system could reach 19. He does not know at what level the water would be unsafe. Tr. 849-56. The automatic chlorinator measures the flow of water to adjust the chlorine feed. The booster pump is a small line of water that “catches” the chlorine and brings chlorinated water into the main line. Tr. 863-65. The system now interlocks the booster pump and the well pump. Tr. 880.

Green liquor is a clarified liquid, and the dregs “are the innards that didn’t get burned in the... burning of the black liquor...” Green liquor dregs can be dumped in pond #1. Initially, Byrd did not understand why Howell called him for permission to do so. Later, he realized that Howell called for permission to use the sucker truck. The “liquidy” dregs are like a thick mud. The clarifier usually filters as much liquid as possible from the dregs but was not operating properly. The sucker truck hauled the remaining mixture, which Byrd conceded was a mixture of green liquor and green liquor dregs, to pond #1. Because the dregs filter was down, Byrd explained, “[T]here was more fluid with them than... would normally be with them.” He considered the dumped waste to be dregs. Tr. 887-91.

#### **G. Testimony of Keith Myers**

Myers is the site manager for Performance Contractors. Performance provides production service activities, small maintenance projects, and capital projects for PCA, including trash hauling, dirt work, and truck service. Myers does not recall specifically January 19, 2017, but testified that Performance daily dumps into pond #1 at PCA. Myers denied ever hauling green liquor to pond #1. He testified, “[Green liquor is] too corrosive. The truck I have has got aluminum housing on it.... [T]hat green liquor... will eat that aluminum up.” He does, however, haul green liquor dregs. Myers reiterated that he does not recall that specific date (January 19, 2017) but testified that he would not have permitted anyone to haul green liquor if he had been asked. He would be able to tell if his truck had been used to do so. Tr. 893-98.

#### **H. Testimony of Hampton Howell**

Howell has been employed by PCA for four years and is now the superintendent of the wood yard. In his initial job as a caustic and lime kiln supervisor, which he held in January 2017, Howell was responsible for converting green liquor into white liquor for the pulp mill and converting lime mud for the caustic plant. From time to time, Howell would respond to Yellott’s questions about the process in the lime kiln and caustic plant. Tr. 915-16.

Howell described green liquor dregs as the innards and ash compounds that come out of a recovery boil of black liquor. He recalled an issue with the dregs filter on January 19, 2017. He called Byrd to get clearance to dump dregs into pond #1 because the filter was broken and the usual pond was blocked due to heavy rainfall. Howell has never authorized dumping pure green liquor into pond #1. To his knowledge, only dregs were loaded and dumped that night. Howell had no recollection of speaking to Yellott about the dumping and denied telling anyone that green liquor was being dumped into pond #1. Tr. 917-18.

Howell denied ever transporting green liquor in the mill. Green liquor travels throughout the plant in vacuum sealed pipes. Howell is unaware of any situation in which a pipe busted and green liquor had to be transported to an evacuation site. If absolutely necessary, green liquor would be hauled by sucker truck. The truck that went to pond #1 on January 19 was a sucker truck. Howell thought it would be reasonable for Meadows and DuVall to think that green liquor had been dumped from the truck. Tr. 919-21.

Raw green liquor goes from the Powerhouse into the clarifier where the dregs are separated from the bottom and the liquor comes off the top. The dregs are then pumped through a filter into a surge tank. Because the filter was not operating normally, a sucker truck pulled the dregs for dumping. The dregs were more liquid on January 19th because they had yet to be washed through the filter and probably contained some green liquor. Tr. 919-25.

#### **I. Testimony of Blaine Butaud**

Butaud retired on July 2, 2018. He was hired by PCA's predecessor as an environmental supervisor in February 1991. Butaud began working as the environmental manager when he returned from a short, one-year period of employment with a consulting firm. As the manager, Butaud provided compliance assistance, permitting, and oversight of the environmental program. He had two subordinates—one overseeing air compliance and the other overseeing waste and water. Byrd had been responsible for both positions for some time but ultimately oversaw air compliance. From October 2015 to January 2017, Yellott handled waste and water. Butaud has a bachelor's degree in zoology and a master's degree in environmental science. Tr. 926-29.

Butaud was part of the hiring group that interviewed Yellott during which the group informed Yellott that PCA wanted an experienced environmental person who could replace Butaud when he retired. Yellott informed the group she had no paper mill experience but expressed no reservations about being able to do the job with no need for additional training other than acquiring a Louisiana potable water license, which she subsequently obtained. PCA officials were impressed with Yellott's credentials in environmental compliance and her willingness to learn the job. Yellott was hired as a senior environmental specialist and was expected to attend production meetings and interface with operations personnel. Butaud gave Yellott maps showing the water shed, effluent system, water sampling stations, and mill and storm water drainage, as well as manuals and handbooks for pulp and paper mill compliance. In addition, Butaud told Yellott she needed to schedule half-day tours with the area superintendents to learn their operations and processes. Butaud also brought Yellott to the potable water system and showed her how it worked. He testified that he provided Yellott with the same training he provided to others who held the air, waste, and water environmental positions. Butaud provided Yellott with on-the-job training and expected her to get up to speed in six to eight months. He did not provide HazWaste training because Yellott's position did not involve hazardous waste cleanup, which PCA contracted out. Further, as a small quantity generator, PCA was not required to provide that training but did provide it for its HazWaste team. Tr. 929-39.

On January 4, 2017, Butaud emailed Yellott and asked her to review PCA's hazardous waste status and develop an action plan to address new regulations pertaining to small quantity generators. Butaud testified that Yellott had difficulty distinguishing between HazWaste and

solid waste and difficulty interpreting regulations. He arranged with John Piotrowski for Curt Chatterton, corporate's subject matter expert in hazardous waste, to give a seminar at the mill on the new regulations. That seminar resulted in the plan attached to Yellott's January 17 email in response to Butaud. The plan identifies PCA as a small quantity generator, a fact Yellott knew. Tr. 940-43. PCA does not offer RCRA training. Butaud believed Yellott had already had the 40-hour initial RCRA training when she was hired. Following that initial training, one obtains refresher training annually through an eight-hour course. Because Yellott was apparently struggling with waste termination and regulatory interpretation, PCA established a general consulting helpline with Providence Engineering for Yellott at a cost of \$5,000 to PCA. To Butaud's knowledge, Yellott availed herself of the helpline and the three consultants available to her (Madeline Murphy, Elizabeth Smith, and Dawn Brown). Providence Engineering had been responsible for assigning those consultants for Yellott's use. Unsolicited, the consultants expressed puzzlement that someone in Yellott's position had "entry level" questions. Butaud also permitted Yellott her requested waste management training at the Golden Nugget Casino in Lake Charles, which most people did online. But, Yellott asked for PCA to sponsor an overnight stay to allow her to bring her daughters, which PCA did not have the budget to approve. At that time, Butaud had been scheduled to be offsite, but Byrd was present at the mill. Tr. 943-47.

Butaud testified that Yellott did not "get up to speed" as he had expected or anticipated. He attributed this lack of progress to Yellott's not "putting in the time to learn the regulations or learn the mill processes." Despite counseling Yellott in the first or second quarter of 2016, her attendance was sporadic. The operations meeting (for managers to address issues, liabilities, and daily plans) was held at 8:00 a.m., which Yellott was expected to attend. At Jack Carter's behest, the meeting permanently rescheduled to 7:00 a.m., and the backend meeting (which addressed environmental areas) consequently moved to 6:30 a.m. Yellott's attendance at these meetings was sporadic. Butaud and Hansen discussed placing Yellott on a performance improvement plan, in part to address attendance issues. On January 11, 2017, he and Hansen agreed that Butaud would email Yellott and instruct her to attend the backend meetings beginning on February 16, to inform him in advance of any missed time, and to schedule appointments later in the day. Tr. 948-54.

In October 2016, Butaud prepared performance reviews for Yellott and Byrd and sent them to Hansen for review and feedback. He had previously asked Yellott for a listing of her accomplishments in anticipation of the performance review. The performance evaluation indicated that Yellott needed improvement in communicating, understanding mill processes and environmental regulations, attendance, decision making, initiating action, and owning responsibilities. Butaud also wanted Yellott to obtain a wastewater treatment operator's license. Butaud did not share this plan with Yellott directly. He testified that Hansen did. Butaud discussed Yellott's attendance issues and "seemingly deficient technical skills" with Snelgrove and Thomas McClure. Tr. 955-61.

Butaud's relationship with Yellott was "very good initially" and until December 2016. Yellott shared personal information with Butaud, and he and Byrd attended Yellott's wedding to David Spears. Yellott referred to him and Byrd as her DeRidder "dads." Yellott messaged Butaud on 49 occasions from October 2015 through January 2017 reporting either tardiness or absence for a variety of reasons including medical appointments, car problems, power surges,

family transportation problems, and marital issues. In July 2016, Butaud had discussions with Snelgrove and Hansen about Yellott's attendance. At that point, she was running out of vacation days. Butaud suggested that she get into the Employee Assistance Program. He recalled Yellott took leave through the program in August 2016. Tr. 963-90.

Concerning the potable water incident of December 5, 2016, Butaud testified he and Byrd went to Baton Rouge for a meeting with LDEQ when Yellott called to report the potable water system produced high readings of 4.4 or 4.5. The high readings did not alarm Butaud because "after a system has been down, it is better to have a lot of chlorine go through to suppress any bacterial activity that might have happened while the system was down." Butaud told Yellott to determine what went wrong with the system and get it back online and functioning. Following a few calls to mill personnel, Byrd determined that there was a complete power outage at the mill, something Yellott failed to report. Butaud thought Yellott handled the situation poorly because "she didn't have her facts straight as to what the situation was" and "didn't follow up with communication... that everything was back to normal until 6:00 that evening when it had been... back to normal by 3:30 that afternoon." At no time was Butaud concerned about the safety of the potable water. On occasion, PCA will push through an extra amount of chlorine "to shock the system." Tr. 990-95.

At no time did Yellott ever express concern about the high chlorination readings or express safety issues regarding the potable water system, and Butaud saw no violation. The follow morning, December 6, 2016, Butaud and Hansen met with Yellott during which Butaud told her he was disappointed with the way she handled the situation and told her that her performance was not up to par. He and Hansen discussed "other issues on attendance and owning her areas of responsibility and being able to provide technical input to the operation folks. The whole gamut of issues." Yellott became defensive. The next day, Yellott again met with Hansen and Butaud, this time to explain her understanding of what the issue had been. She explained that the booster pump came on before the well was turned on, causing the water to circulate past the flow meter and trigger the chlorinator to release chlorine. Butaud agreed with that assessment—"that's what I had already determined." Butaud told Yellott she needed to get the vendors to figure out what caused this problem, to determine a resolution, and to provide training. Butaud was not happy with the response from Yellott, the laboratory, or engineering personnel. Yellott expressed surprise that she was being criticized for a poor performance. The final implemented solution interlocked the booster pump and the well motors. Also during the meeting on December 7, 2016, Yellott expressed her dismay that she had been criticized for her performance, which had never before happened. Tr. 996-1001.

On December 9, 2016, Yellott emailed Butaud and Hansen, with a blind copy to Snelgrove, in which Yellott said she was sorry to learn of Butaud's disappointment and of his considering her to be "just a cute, dumb southern girl." Butaud denied calling Yellott a cute, dumb southern girl at any time. Rather, in November 2015, Yellott had suggested using that "act" during an inspection by LDEQ; and, during the December 6, 2016, meeting, Butaud told

Yellott that using the “cute, dumb southern girl act” to avoid responsibility was doing her no good.<sup>30</sup> Tr. 1002-08.

In around July 2016, Yellott approached Butaud about inconsistencies between the waste report for 2016 and the one for the previous year. He told her to “figure it out” but, first, to submit the 2016 report by the deadline. Yellott did not communicate having any difficulties with that report. By the December 2016 meeting, the report had not been completed, and Butaud instructed Yellott to work with Byrd, who had done the prior year’s report. Yellott had never informed Butaud what was wrong with the report or ever corrected the report. She also never complained that the miscalculations were intentional. Butaud testified that the issue with the waste reports continued through January 2017 despite having instructed Yellott repeatedly to address the miscalculations. Later, Yellott asked about an industrial generator’s report, which PCA did not need to submit. He instructed her to review the Louisiana regulations, which Yellott should have known. Ultimately, Byrd and Murphy revised and submitted reports for 2013 through 2016 in February or March 2017. PCA paid LDEQ to cover the mathematical errors. LDEQ did not assess any penalties. The errors had caused PCA to overpay in some areas and underpay in others. Butaud denied retaliating against Yellott for initially reporting these errors or otherwise being upset. He “was more upset that it hadn’t gotten corrected.” Tr. 1011-23.

Butaud testified that he was not involved in the decision to terminate Yellott or to investigate her. The decision “was made at higher levels than” his, though he was apprised of it. The investigation was conducted by Hansen and corporate. Tr. 1024.

In January 2017, PCA’s contractor was hauling solid waste to beneficial use areas. The lime kiln area needed green liquor dregs pumped out of the clarifier. Rather than hauling the dregs to pond #2 or pond #4, they were dumped into pond #1. PCA then tasked the contractor with mixing the dregs in pond #1. Yellott emailed Butaud to report that green liquor had been dumped, and Butaud responded, “[N]o, it was green liquor dregs” as part of the beneficial use mixture. He instructed Yellott to have the contractor go to pond #1 “and mix it up.” The situation had been discussed before and during the backend meeting. The issue, according to Butaud, was that the dregs had been dumped in the wrong place—pond #1 rather than where instructed. There was no violation of law. Butaud thought Yellott should have known that the sucker truck could transport dregs and that dregs could be dumped into pond #1. Yellott was in charge of waste. When she emailed Butaud and asked how he wanted the green liquor issue handled, Butaud had already spoken with Yellott. He then emailed Hansen, “We need to get her out today!” Butaud testified,

In the email, she’s trying to characterize this as a green liquor issue. It’s not. It’s a dregs issue. And I already explained it to her. And to me, this is a

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<sup>30</sup> In November 2015, Butaud had a conversation with Madeline Murphy in which he told her of Yellott’s intent to use the “stupid little girl card.” Butaud related his conversation with Murphy to Yellott. Yellott responded to Butaud’s message relating Murphy’s comments thusly: “That’s exactly right... I don’t have a lot of cards in my deck right now- so I’ll play the ones I do have... and while I have it, I’ll use it... And by the way, I love Madeline!” RX 373. Butaud has worked with Murphy for 12 years and has been in a personal relationship with her since the fall of 2015. He disclosed his relationship to Snelgrove and Hansen. Yellott was aware as well. Tr. 1005-06.

culmination, or guerilla warfare, that she'd been waging ever since the -- the meeting on December the 6th.... Just undermining me verbally with other folks in the mill. Engaging in these convoluted pedantic email exchanges. And I was frustrated and fed up.

At that point, Butaud believed the decision to terminate Yellott had already been made.<sup>31</sup> Tr. 1025-31.

LDEQ investigated waste complaints regarding green liquor in July 2018. Investigators spoke with the driver, Jacob McMillan, who recalled the incident and said he dumped green liquor dregs into pond #1. Investigators also spoke with Meadows and DuVall. LDEQ found no areas of concern. Tr. 1032-37.

During Yellott's employment, PCA experienced an active leak of sulfuric acid through a corroded tank in June 2016. As a result, PCA contracted with a hazardous waste cleanup contractor and hired Providence Engineering to conduct sampling and preparation of the remediation report to LDEQ. Butaud testified that Yellott was only tasked with observing and learning from the experience. Otherwise, she was not involved in the cleanup and did not report any issues or make any complaints. PCA was not fined or penalized. Tr. 1037-40. On one occasion, Yellott sent Butaud a photograph of a "clean condensate tank" that had soap coming out of it without caption or explanation. Butaud testified, "[T]he boiler heats are carrying over into the clean condensate tank and carrying soap over. And so, when it gets in there, it foams up." Other than saying she had talked to John Reddin, Yellott never again spoke with Butaud about the tank or asked him to take any action. Tr. 1040-41.

In response to receiving a blind copy of Yellott's email, Snelgrove contacted Butaud. Butaud informed Snelgrove that Yellott's report on the chlorinator was incorrect and that engineering was working on a fix for the potable water system. Yellott had never complained to Butaud that the potable water system was creating an unsafe issue. Tr. 1042-43.

Butaud agrees with Yellott's termination for "gross dishonesty and lack of professional behavior." He believed she "misrepresented issues and just her performance." Butaud testified that Yellott misrepresented the chlorination issue, dishonestly reported to Snelgrove that Butaud and Murphy were in an improper relationship, and dishonestly implied that he was not addressing the solid waste reports. Butaud and Hansen spoke with Yellott for five to ten minutes and told her about the investigation, issues, and causes for her termination. Snelgrove spoke with Yellott outside of Butaud's presence. He and Hansen then escorted Yellott from the mill. He does not recall asking Yellott to remove her fire resistant shirt. When asked whether Yellott was in her underwear or not wearing a shirt, Butaud replied, "No, no, not at all." Butaud has never had any communication with any of Yellott's prospective employers. Tr. 1047-51.

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<sup>31</sup> Hansen had emailed Chris Changnon at 9:07 a.m. on January 19, 2017, recommending termination. CX 46. Later in the day, at 2:56 p.m., Changnon replied to Hansen. He disagreed with the recommendation and suggested placing Yellott on a PIP. He discussed his thoughts with Jack Carter. CX 47. By 6:47 p.m. that evening, Hansen responded to Changnon, "I have been instructed to terminate [Yellott] first thing in the morning." CX 48.

Butaud had not formally disciplined or counseled Yellott for her attendance. He testified that he was “[g]iving her some leeway” and had not intended to “build a record.” He stated he sometimes gives verbal counseling. Tr. 1053-54. Butaud prepared Yellott’s performance evaluation in October 2016 and submitted the report to human resources. He usually sits with employees in mid-January to discuss the previous year’s performance evaluation and possible merit increase. Despite Yellott’s attendance and other performance issues, Butaud did not recommend termination but assigned a “needed improvement” rating. Even after the potable water issue, Butaud had not intended to terminate Yellott. Tr. 1057-59.

Butaud does not think Yellott’s reports about the potable water issue and need for resubmitted waste calculations were grossly dishonest. His issue was Yellott’s lack of knowledge and lack of communication. Tr. 1068-70. On the morning of the green liquor incident, Butaud had spoken with Byrd and discovered that green liquor dregs had been dumped in pond #1. He and Byrd went to the pond either that day or the following day. Butaud heard after the fact that DuVall and Meadows may have witnessed the truck dumping into pond #1. Pond #1 is lined with clay, which is an acceptable liner for solid waste. Butaud testified that the amount of “free liquids” in the green liquor dregs “is vague.” Usually, the dregs do not contain free liquids. The logs for the January 19, 2017, show the use of a dump truck, and Jacob McMillan’s initials are not on the logs. Butaud testified that Meadows had identified McMillan as the truck driver. Tr. 1070-78. LDEQ authorized PCA to dump green liquor dregs as lime residue. Green liquor is not acceptable to dump. If Yellott received reports that green liquor had been dumped in pond #1, that would be cause for concern and should be reported to supervisors, which she did. In response, Butaud explained green liquor dregs were dumped, not green liquor, based on information from Byrd. Butaud also personally observed green liquor dregs when he went to the pond. Butaud testified, “Coming from a visual look. An appearance is no different -- I mean, it’s not -- green liquor has a green color. This had -- this was black. It’s pretty easy to distinguish the two.” He did not order a pH test. Tr. 1078-85.

Butaud testified that the decision to terminate Yellott was made on January 18, 2017, the day before his email to Hansen, by CEO Mark Kowlzan, Vice President Jack Carter, and Eric Snelgrove. He does not believe that his frustrated email had any bearing on Yellott’s termination. He stated that he, Kowlzan, Carter, Snelgrove, and Hansen had spoken on the phone either on the 17th or the 18th at which time the decision to terminate Yellott for gross dishonesty and lack of professional behavior had been made. Butaud testified that he “was still working on the PIP route” and had not wanted to terminate Yellott until January 19. He was frustrated “about a lot of stuff.” Tr. 1086-91. Butaud believed Yellott had been grossly dishonest about his relationship with Murphy. Yellott never expressed any dissatisfaction with using Providence Engineering. Tr. 1092-94.

Butaud does not recall an internal safety audit beginning Monday, January 23, 2017. He does not participate in audits. PCA has an independent environmental office. Yellott did not conduct safety inspections or audits. Butaud differentiated between environmental and safety regulations. Tr. 1094-1102.

Butaud acknowledged that the dregs dumped on January 19, 2017, were different in consistency—fluid and sludgy rather than dry. The materials are still considered dregs. Yellott was supposed to know the parameters of PCA’s waste permit and should have known the difference when looking at green liquor and green liquor dregs. Tr. 1111-13. Butaud testified that he had no obligation to test the pH level of pond #1. Tr. 1115.

#### **J. Testimony of Eric Snelgrove**

Snelgrove has been the mill manager at PCA’s DeRidder plant since January 1, 2016. When he became mill manager, Jack Carter requested that he move the manager’s meeting to 7:00 a.m., which affected the backend meeting schedule. Tr. 1129-31. In April 2016, Hansen informed Snelgrove of attendance problems with Yellott. Other individuals had also reported to Snelgrove that Yellott was not attending the backend meetings. Yellott missed 27 days of work in six months, which Snelgrove characterized as “unacceptable at PCA.” Tr. 1132-35. On November 14, 2016, Snelgrove sent Carter a compilation of employee performance ratings at the mill based on the evaluations that had been prepared. Yellott’s rating was “needs improvement,” which meant that Yellott would not receive a merit increase. Snelgrove instructed Hansen and Butaud to place Yellott on a performance improvement plan. Of the approximately 140 salaried employees at the mill, Yellott was one of seven who received a “needs improvement” evaluation. Tr. 1136-38.

After Hansen and Butaud met with Yellott to discuss her evaluation, Hansen reported back to Snelgrove that Yellott was not understanding and did not accept that she had issues. Snelgrove received Yellott’s email the next day by blind copy. The email summarized her meeting with Hansen and Butaud. Snelgrove thought it “alarming” for an employee to blind copy her supervisor’s superior on an email discussing performance issues. Between the time of the email and the end of December 2016, an employee—Thomas McClure—approached Snelgrove to report comments Yellott had been making about her performance evaluation. Snelgrove spoke with Yellott to discuss the overall process and explain that “she didn’t have to be concerned. That everything would be done fairly.” Yellott did not discuss any issues other than her performance rating but continued to blind copy Snelgrove on several emails regarding the potable water system. Tr. 1140-50.

On January 13, 2017, Yellott emailed Snelgrove directly. He was alarmed at the comments, the context, and the allegations around potential compliance items and misconduct or conflict of interest between Butaud and Murphy. At that point, he understood that the allegations were not correct. Butaud’s relationship had already been disclosed, and PCA implemented certain controls to prevent a conflict of interest. Snelgrove removed Butaud from the requisition process; rather, Yellott would have to approve invoices. He had already addressed the “cute, dumb southern girl” comment with Butaud. Snelgrove was also aware that there was no significant issue with the potable water system and that Butaud was working with Yellott on the waste reports. Snelgrove did not believe Butaud was “sweeping anything under the rug.” He testified that he had total confidence in Butaud. Each time an issue was raised, Snelgrove had Hansen investigate. He thought the January 13th email raised no new information but “was just putting allegations out that... from his understanding were false.” Snelgrove contacted Hansen to start an investigation immediately. He thought the allegations were “very serious.” Snelgrove



was also concerned about Yellott's dishonesty in addition to her performance issues—"that's very bad also." Tr. 1150-57.

Following Hansen's investigation, Snelgrove based his conclusion on Yellott's cumulative performance issues starting with attendance, poor work performance, feedback associated with the December 7, 2016 meeting, the PIP determination, and the dishonesty of her allegations. By the time Hansen sent his report to Chris Changnon on January 19, 2017, Snelgrove had recommended termination. He believed Yellott's dishonesty about Butaud "was a thought-out process" intended to hurt Butaud. Yellott was terminated on January 20, 2017. Butaud and Hansen pulled Snelgrove from his morning meeting to explain the process to Yellott, who did not want to leave behind her cell phone or a flash drive. He assured Yellott that her personal belongings would be secured and returned to her according to PCA's policy. Shortly after Yellott's termination, PCA's corporate environmental expert, John Piotrowski, reviewed the plant processes and investigated the issues Yellott raised. He concluded there were no significant issues. Tr. 1164-69.

After Hansen sent the recommendation to terminate Yellott to Changnon, Changnon replied that he had spoken with Jack Carter, recommended against termination, and was awaiting a consult. Hours later, Carter gave Snelgrove permission to terminate Yellott. Snelgrove does not recall whether this occurred face-to-face or by telephone. He recalls a group telephone call in which he, Carter, Kowlzan, Butaud, and Hansen participated. He gave his recommendation to terminate at that time. Snelgrove could not remember whether he received permission from Carter then. Tr. 1172-76. On that group call, PCA agreed that the reason for Yellott's termination would be "gross dishonesty." Snelgrove testified, "[T]he conversation was about what she had done and with the intent of the dishonesty." He does not know if Hansen spoke with Yellott in the course of his investigation. Tr. 1177-78.

Snelgrove's concern about Yellott's January 13, 2017 email centered on her allegation that Butaud was covering up compliance items. Tr. 1186-87. Snelgrove had no recollection of Butaud's email to Hansen on January 19, 2017. He testified that the green liquor issue had no impact on his recommendation to terminate Yellott. Tr. 1195-96. He does not remember when the green liquor issue occurred prior to Yellott's termination. Tr. 1198-99.

#### **K. Testimony of Brent Hansen**

Hansen has been PCA's human resources manager since March 20, 2014. In that capacity, Hansen is responsible for staffing, employee relations, and hiring, including the hiring of Yellott. He was impressed with her master's degree and work history.<sup>32</sup> During the panel interview, PCA informed Yellott of its desire to hire an experienced environmentalist who had the ability to replace Butaud upon his retirement. Yellott's only expressed reservation was a lack of experience in Louisiana but that was overcome by an expressed willingness to get the job done. Tr. 1205-12.

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<sup>32</sup> Hansen further testified, "I like Aron. I don't have anything against her." Tr. 1213.

Hansen testified that Yellott's performance became an issue when a labor relations person, Hank Weber, produced Yellott's attendance record, which showed 27 out of 123 work days missed – the worst attendance record of any salaried employee. Hansen followed up with Butaud, who told Hansen that he had spoken with Yellott about her attendance. Hansen subsequently learned from Butaud that Yellott's attendance improved initially but then backslid. Tr. 1216-19.

On Friday, October 28, 2016, Butaud prepared Yellott's performance evaluation and emailed it to Hansen. He found Yellott deficient in skills utilization, team support behaviors, and overall performance. In turn, Hansen sent the evaluation to Snelgrove. Tr. 1220-21. Hansen discussed her rating with Yellott on December 6, 2016, following the power outage and resulting complications on December 5, 2016. Yellott did not report any high chlorine readings or environmental or safety concerns. During this brief meeting, which lasted no longer than 15 to 20 minutes, Hansen told Yellott that she was not going to get a raise. Tr. 1225-26. The next day, December 7, 2016, Yellott asked to meet with Butaud and Hansen to explain what had happened with the potable water system. Tr. 1227. Days later, Yellott reported an issue with the waste at the mill. Hansen subsequently met with Butaud who said the issue was "minimal," that it was Yellott's job to address the issue, and that PCA would have to resubmit reports to the State. Tr. 1230-32. Following this meeting, Hansen thought Yellott and Butaud's relationship appeared strained. Yellott forwarded Hansen several emails between her and Butaud, which "further validated what her performance rating was." Yellott also complained to Hansen about being yelled at by Butaud and his refusal to answer her questions concerning waste reports and zinc testing. When confronted, Butaud told Hansen, "I'm not going to give her the answer. She needs to get the answer.... [S]he should know this already." Tr. 1235-40. Yellott continued to copy Hansen on email threads about the waste calculations and potable water system. From Hansen's perspective, Butaud and Murphy both responded appropriately and appeared to be working with Yellott on the issues she raised. Hansen gleaned from the emails that Yellott did not understand the systems though she had been working at PCA for 15 months. Hansen discussed Yellott's performance with Snelgrove on a daily basis with the intention to place Yellott on a performance improvement plan. He believed Yellott was capable of doing the job but had missed opportunities to grow. Tr. 1241-56.

On January 11 and 12, 2017, Hansen and Butaud communicated and developed an improvement plan for Yellott's performance. Hansen had a conversation with Yellott and intended to conduct the PIP meeting on the next day, January 13. That meeting never occurred because Yellott sent an email with "serious allegations" on that day, one allegation of which was that Butaud and Murphy had a relationship that presented a conflict. Hansen testified, "And that, flat out, wasn't true." He had a conversation with Yellott about that relationship "sometime before." Yellott also raised anew the "dumb southern girl" comment and accused her supervisor of sweeping environmental violations under the rug. Hansen contacted PCA's corporate environmentalist to research Yellott's complaints and conducted his own investigation. Hansen then recommended termination. Tr. 1257-67.

The decision to terminate Yellott came from Jack Carter. Hansen had concluded that Yellott violated corporate policy by knowingly bringing false accusations against Butaud with

the intent to impact his employment. He defined gross dishonesty as saying something knowingly untrue that could negatively impact someone's career. Tr. 1270-88.

Hansen testified that he never spoke with anyone at Iconex, Modine Manufacturing, or any other prospective employer about Yellott and never told any employer that Yellott was discharged for gross dishonesty. Tr. 1292. Hansen understood that Butaud was "at his wit's end" by January 19, 2017. Butaud's email had no bearing on Yellott's termination because the decision had already been made, and Hansen had not spoken with Butaud after receiving his email. Tr. 1293-94.

Hansen admitted that Yellott's personnel file had no mention of attendance issues. But, every manager has a performance file, which are notes of conversations "that aren't necessarily leading to discipline." Yellott was scheduled to be told about her performance on January 13 in conjunction with merit increase discussions with all plant employees. Hansen had previously discussed Yellott's performance with her on December 6 and 7, 2016, and he is also aware of other discussions between Butaud and Yellott about her performance. Hansen told Yellott that she was not meeting expectations and would not be getting a raise. He did not then inform her about the upcoming PIP or "needs improvement" performance rating. Rather, Hansen told Yellott on January 12, 2017. Tr. 1296-1306. The PIP was placed on hold, and Hansen began investigating Yellott's January 13 email to Snelgrove. He concluded his investigation on January 19, 2017, when he emailed his report and recommendation. Hansen testified that he did not speak with Yellott about her email. He concluded that Yellott was grossly dishonest with malicious intent. Hansen testified that he and Yellott had already addressed the several comments she made in her email. Tr. 1306-10. He believed Yellott implied that the relationship between Butaud and Murphy was inappropriate.<sup>33</sup> Hansen understood that Murphy was offering help to Yellott based on the emails he received from Yellott. He did not directly speak with Yellott about her allegation she could not use any other consultant than Murphy. Tr. 1312-15. Yellott had also alleged that PCA had been out of compliance for years, which Hansen determined was untrue based on data and information from other members of the Environmental Department (Byrd, Butaud, and Piotrowski). Tr. 1318-19.

Hansen testified that Piotrowski conducted the investigation into the environmental allegations. He and Piotrowski spoke by telephone "sometime before the 18th" of January 2017. Tr. 1325-27. Hansen believed Yellott was attempting to get Butaud fired and had been lashing out following unfavorable discussions about her performance. Tr. 1331-32. Hansen sent his recommendation for termination to Chris Changnon on January 19. Changnon replied that he spoke with Carter and that he (Changnon) decided that a PIP was the preferred course pending consult with the legal department. Later that evening, Piotrowski, Carter, Snelgrove, Butaud, and Hansen spoke by telephone, during which the decision was made to terminate Yellott. Hansen testified that the green liquor incident was not discussed. Tr. 1338-44. Hansen also determined Yellott's malicious dishonesty from an email she sent to Snelgrove that the potable water system was "out of spec for years." Tr. 1353. Ultimately, Yellott "was terminated for the -- the

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<sup>33</sup> Specifically, Yellott stated in her email, "This is something that I feel you need to be aware of... I tried to discuss the issue with the consultant, who is Blaine's girlfriend-and whom I have been told is the only consultant that I can use-and she was no help." CX 27.

dishonesty and the malicious intent that she had in bringing those allegations forward in retaliation for a poor performance review” and for the anticipated PIP. Yellott had been told about performance issues in December 2016, had gone to several other managers in the mill to complain, and then, when she received “another set of feedback” in January, went to Snelgrove with false allegations. Hansen thought Yellott’s past behavior exhibited a refusal to accept feedback, unprofessional behavior, and a refusal to accept personal responsibility—“It’s always someone else’s fault.” Tr. 1356-58. In response to asking why Hansen did not speak with Yellott during his investigation, Hansen testified,

...all of those issues, we were aware of. I think a reasonable person, when you’ve crossed and you’ve addressed an issue, you can move forward. There was no moving forward. It was going to keep coming around. If she wasn’t, to me, she was going to go to Eric. If she went to Blaine, she was going to go to [someplace] else. And it was like it was brand new ground.

Tr. 1360.

Hansen recalls that Yellott sent an email on January 12, 2017, that the potable water system had been “pumping straight chlorine gas,” which was “a huge safety issue.” She also complained that she was getting pushback about fixing that issue. Prior to that email, Yellott had not raised safety issues about the water system. This allegation was part of Hansen’s investigation. He is unaware whether Yellott actually got pushback on the fix. Tr. 1370-73.

#### **L. Testimony of John Piotrowski**

Piotrowski has worked for PCA since 1995, first as an environmental engineer. He is now the senior director of Corporate Environmental Operations. As the senior director, Piotrowski oversees eight mills and is responsible for compliance with regulations. He became aware of Yellott’s performance issues in the fourth quarter of 2016 when Butaud reported his concerns about her understanding and responsibility. Tr. 1375-77.

Subsequent to Yellott’s termination, Piotrowski conducted an audit to determine whether Yellott’s environmental claims were legitimate. His audit of January 25, 2017, focused on two principle issues—the accuracy of solid waste reports submitted to LDEQ and the alleged deficiency in the potable water system. He did not investigate the dumping of green liquor and green liquor dregs until February 2017 following an anonymous complaint to LDEQ. An identical complaint was filed with LDEQ in June 2018. Both investigations identified no compliance issues. Tr. 1377-79. Piotrowski reviewed the waste reports for 2015 and 2016 and discovered mathematical errors in the former, which had not resulted in any increased tax liability.<sup>34</sup> Based on the repetitive nature of the error (multiplying rather than dividing), Piotrowski believed the errors were not intentional. For 2016, which was prepared by Yellott, he discovered that the asbestos waste had not been reported. To ensure the mistakes would not recur, Piotrowski developed an Excel workbook. PCA gained no advantage by the reporting errors. Tr. 1381-84.

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<sup>34</sup> PCA also reviewed the 2013 and 2014 reports and filed amendments. The adjusted fees amounted to approximately \$3,700. Piotrowski was not involved in these reviews. Tr. 1383.

Concerning the incident of December 5, 2016, Piotrowski understood that an electrical outage affected the potable water supply wells. When electricity was restored, the potable water supply pumps had to be manually restarted. However, a booster pump began to pump water immediately upon electrical restoration, which sent a signal to the chlorination system to release chlorine into a “relatively small quantity of water.” The chlorine was not diluted until the water supply pumps were restarted. This incident did not create an unsafe level of chlorination because the compliance limit depends on an annual average. “A single day does not constitute a violation.” Tr. 1385-87. At the 5.0 level, chlorinated water is not unsafe but may have unpleasant odor and taste. For chlorine to escape water is “a function of the water column temperature”: at 60 degrees, water can absorb 9,000 milligrams per liter; at 85 degrees, 5,700 milligrams per liter; and, at 105 degrees, chlorine solubility drops to 4,500. In Piotrowski’s estimation, the water at the mill was never unsafe or at risk for massive over-chlorination. Someone in Yellott’s position with a potable water license would know these figures—“That would be a normal and customary job expectation.... That would be my clear expectation, yes.” He would also expect someone in a position junior to Yellott’s to know the mathematical equation to determine the concentration of chlorine by looking at the chlorine valve. Piotrowski explained that the solution to the water problem was to link together the booster pump and well supply pump. The root problem was corrected by the installation of logic with no connection to the chlorination system. The chlorination dosing system—the chlorine valve and booster pump water line—automatically resumed with the power. Tr. 1389-95.

The DeRidder mill has permits from the State of Louisiana for the disposal of lime, grits, and caustic dregs. Green liquor has a pale greenish color and consists principally of sodium sulfide and sodium hydroxide. Green liquor dregs are precipitated solids that are insoluble and that settled to the bottom of the green liquor clarifier. Green liquor dregs are calcium salts that have an economic or agriculture value that can be used to improve the fertility or organic matter of the soil to which they are applied. Like at landfills, PCA’s sludge ponds are lined with clay as an impediment to leachate. Any liquid in the sludge ponds would take 850 years to travel to the Calcasieu River. To dump green liquor into a sludge pond is like “somebody deciding to start a campfire with money. You don’t throw away a valuable chemical like that. It has too much economic value to the facility.” Piotrowski testified he was not at the mill on January 19, 2017, but he understood that green liquor dregs had been dumped, which is a “normal practice and customary practice.” Tr. 1396-1401.

The RCRA sets forth the requirements for hazardous waste training and management. Requirements for each facility depends on the facility’s status as a large or small quantity generator. “A large quantity generator has a much more elaborate training requirement, very prescriptive in terms of the number of hours of training required, which personnel are required to be trained. A small quantity generator is not so.” The DeRidder mill “is unquestionably a small quantity generator.” The regulations do not require annual refresher training. PCA produces as hazardous waste only paint waste and aerosol cans, together comprising less than 2,200 pounds of waste in any given month. Tr. 1401-05.

Piotrowski recalled a phone conversation he had with Butaud, Hansen, Snelgrove, Carter, Kowlzan, and Bruce Ridley in January 2017 concerning allegations Yellott had made about

Butaud. He thought the allegations against Butaud “were serious in their scope and nature in terms of willful and intentional practices that she alleged were being performed by him and arguably others. And it constituted illegal environmental activity.” Butaud communicated that he had been increasingly frustrated with Yellott’s performance, intended to place her on a PIP, and did not believe that she would be capable of assuming his role. In that telephone conversation, the participants determined that Yellott had raised the allegations intending to harm Butaud and, “in all likelihood, result in Mr. Butaud’s firing....” Ultimately, Mark Kowlzan made the decision to terminate Yellott. Neither green liquor nor green liquor dregs was discussed. Piotrowski first learned of the green liquor complaint in February 2017. Tr. 1405-07. He thought Yellott was “way in over her head, in terms of her background and experience... [and was] a mismatch with the demands and rigors of environmental management at a paper mill.” In contrast, both Byrd and Butaud were “fluent” in air, water, and waste regulations. None of the issues Yellott raised constituted actual safety or environmental violations. Tr. 1409.

Prior to Piotrowski’s audit on January 25, 2017, he had not expressed any opinion on the merits of Yellott’s claims. He was not at the plant on January 19, 2017, when materials were dumped into pond #1. Piotrowski agreed that pond #1 is closer to the water table than the Calcasieu River but could not answer how close or how quickly seepage would reach the water table. Vertical seepage and lateral seepage occur at different speeds. Lateral seepage occurs at six feet per year. Vertical seepage depends upon the saturation level of the soils. “[L]iquids trying to migrate into a saturated clay zone are going to have a very difficult time doing that because they’re impeded by water molecules that already occupy space in the interstitial media between the clay particles.” Tr. 1410-14. Piotrowski did not know at what level chlorine would be unsafe for human consumption. He does not believe any organization has made such a determination. Tr. 1415. For chlorination to occur in the potable water system, water movement pushed from the booster pump has to stream past the flow valve. On December 5, 2016, the booster pumps automatically came on because they had been left in the “on” position. Conversely, the water supply pumps switched to the “off” position when PCA lost power and, so, had to be started manually. Thus, if no change in the system was made, the problem would recur. Tr. 1416-17.

Piotrowski would expect someone with Yellott’s knowledge to distinguish between green liquor and green liquor dregs by visual observation. Green liquor is “a clear clarified liquid, greenish,” and dregs are “solidish” and “dark in color.” The design deficiency in the water system did not render it out of compliance. Tr. 1422-23. A substance cannot be both green liquor and green liquor dregs. Green liquor is like coffee, and dregs are like the coffee grounds. Even when the dregs are “a little bit more liquidy,” they are still considered dregs. Likewise, unwashed dregs and unfiltered dregs are still considered dregs. Tr. 1424-25. Piotrowski conceded that dregs “always have green liquor in them.” Tr. 1428. He testified, “[I]t is a... semantic stretch because [green liquor] is the transparent pale green liquid that we receive for the pulping process. Dregs constitute everything else.” Piotrowski never went to the pond to test it or to refute what Meadows and DuVall reportedly observed. He does not know if pond #1 had been tested but testified the consistency of dregs varies from day to day. On some days, the dregs may have a slightly different signature depending on the liquidity but are still dregs. The clarifier is the tank, and the materials evacuated from the bottom of the tank pass through the filter to separate liquid from solid. The resulting material is disposed at the solid waste facility. Tr. 1430-37.

Piotrowski testified there was no possibility that chlorine gas escaped when the power failed. The application rate of chlorine was 8.6 pounds per day at 60 degrees, which is nominal ground water temperature in December in Louisiana. That water had the capacity to absorb 6.3 pounds of chlorine in one hundred gallons of water. The amount of water going to the mill was in excess of 3,000 gallons. Thus, there was no chance of chlorine escaping in gas form given its high degree of solubility in water and the application rate with which it was applied. Tr. 1438-39.

### III. APPLICABLE LAW

The Safe Drinking Water Act protects whistleblowing employees thusly:

(1) No employer may discharge any employee or otherwise discriminate against any employee with respect to his compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee) has—

(A) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this title [42 USCS §§ 300f et seq.] or a proceeding for the administration or enforcement of drinking water regulations or underground injection control programs of a State,

(B) testified or is about to testify in any such proceeding, or

(C) 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 title [42 USCS §§ 300f et seq.].

42 U.S.C. § 300j-9(i)(1).

Similarly, the Solid Waste Disposal Act provides the following:

(a) General. No person shall fire, or in any other 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 filed, instituted, or caused to be filed or instituted any proceeding under this Act [42 USCS §§ 6901 et seq.] or under any applicable implementation plan, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this Act [42 USCS §§ 6901 et seq.] or of any applicable implementation plan.

42 U.S.C. § 6971(a).

The Code of Federal Regulations implements procedures for the handling of retaliation complaints under the SDW and SWD Acts. 20 C.F.R. 24.100, *et seq.* The implementing regulation provides a burden-shifting scheme under which a complainant may prove a violation, to wit:

(2) In cases arising under the [SDW and SWD Acts], a determination that a violation has occurred may only be made if the complainant has demonstrated by a preponderance of the evidence that the protected activity caused or was a motivating factor in the adverse action alleged in the complaint. If the complainant has demonstrated by a preponderance of the evidence that the protected activity caused or was a motivating factor in the adverse action alleged in the complaint, relief may not be ordered if the respondent demonstrates by a preponderance of the evidence that it would have taken the same adverse action in the absence of the protected activity.

29 C.F.R. § 24.109(b)(2).

Yellott must prove that 1) she engaged in protected activity, 2) PCA took an unfavorable action against her, and 3) her protected activity was a motivating factor in the adverse action. 29 C.F.R. § 24.109(b)(2); *Allen v. Admin. Rev. Bd.*, 514 F.3d 468, 475-76 (5th Cir. 2008). If Yellott succeeds in establishing these three elements, the burden then shifts to PCA to establish by a preponderance of the evidence that it would have terminated Yellott in the absence of her protected activity. 29 C.F.R. § 24.109(b)(2); *Tyler v. U.S.A. Debusk LLC*, ARB No. 12-006, OALJ No. 2018-SWD-00002 (ARB Apr. 16, 2018). “Evidence meets the preponderance of the evidence standard when it is more likely than not that a certain proposition is true.” *Joyner v. Georgia-Pacific Gypsum, LLC*, ARB No. 12-0028, OALJ No. 2010-SWD-00001, slip op. at 11 (ARB Apr. 25, 2014). I note that the Acts sued upon herein place a heavier burden on complainants and a lighter burden on employers than several other whistleblower acts. For example, the Energy Reorganization Act requires an employee to prove that his protected activity was “a contributing factor” to the adverse employment action whereas the SDW and SWD Acts require an employee to establish that his protected activity “caused or was a motivating factor.” An employer under the SDW and SWD Acts need only show by a preponderance of the evidence that it would have taken the adverse employment action in the absence of protected activity; conversely, the Energy Reorganization Act requires proof by clear and convincing evidence. *Cf.* 29 C.F.R. § 24.109(b)(1) *with* 29 C.F.R. § 24.109(b)(2).<sup>35</sup>

To obtain whistleblower protection, an employee’s complaints must be grounded in conditions constituting violations of environmental acts. *Powell v. City of Ardmore, Okla.*, ARB No. 09-071, OALJ No. 2007-SDW-00001, slip op. at 5 (ARB Jan. 5, 2001). Yellott need not establish actual violations, however; rather, her complaints must be subjectively (made in good faith) and objectively reasonable. *Lee v. Parker-Hannifin*, ARB No. 10-0021, OALJ No. 2009-SWD-00003, slip op. at 9 (ARB Feb. 29, 2012). Moreover, a detailed knowledge of the substantive law or a recitation of the specific law, regulation, or permit requirement allegedly violated is not necessary for a complaint to be protected under the SWDA. *Tomlinson v. EG&G*

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<sup>35</sup> The burdens of proof applying to the SDW and SWD Acts also apply to the Federal Water Pollution Control Act; the Toxic Substances Control Act; the Clean Air Act; and the Comprehensive Environmental Response, Compensation and Liability Act. The following acts contain language identical to the Energy Reorganization Act: the Surface Transportation Assistance Act; Wendell H. Ford Aviation Investment and Reform Act for the 21st Century; the Sarbanes-Oxley Act; the National Transit Systems Security Act; and the Federal Railroad Safety Act.



*Defense Materials, Inc.*, ARB Nos. 11-024, -27, OALJ No. 2009-CAA-00008, slip op. at 11 (ARB Jan. 31, 2013), citing *Zinn v. Am. Commercial Lines, Inc.*, ARB No. 10-029, OALJ No. 2009-SOX-00025, slip op at 61-62 (ARB Mar. 28, 2012) (holding that complainants “need not describe an actual violation of law, as an employee’s whistleblower communication is protected where based on a reasonable, but mistaken, belief that the employer’s conduct constitutes a violation.”).

The reasonableness of a whistleblower’s belief regarding statutory violations by an employer is determined on the basis of the knowledge available to a reasonable person in the circumstances within the employee’s training and experience. *Tyler v. U.S.A. Debusk, LLC*; *Melendez v. Exxon Chemical Americas*, ARB No. 96-051, OALJ 1993-ERA-00006, slip op. at 27 (ARB Jul. 14, 2000). Where an employee raises a concern and his employer addresses it, the concern loses any protected status it may have had. *See Stockdill v. Catalytic Indust. Maint. Co.*, OALJ No. 1990-ERA-00043, 1996 WL 171409 at \*2 (Sec’y Jan. 24, 1996) (employee’s initial safety complaint lost protected status after employer properly addressed the issue); *Rocha v. AHR Util. Corp.*, ARB No. 07-0112, 2009 WL 1898237 at \*5-7 (ARB Jun. 25, 2009) (affirming finding that employees were properly terminated for insubordination because their conduct lost its protected status after the employer agreed with and addressed their concerns); *Sartain v. Bechtel Construct. Corp.*, OALJ No. 1987-ERA-00037, 1991 WL 733605 at \*8 (Sec’y Feb. 22, 1991) (employee’s refusal to work lost protection after employer addressed his concerns).

If she establishes that she engaged in protected activity, Yellott must next prove that she suffered an adverse employment action.<sup>36</sup> 29 C.F.R. § 24.109(b)(2). By their terms, the Safe Drinking Water Act and the Solid Waste Disposal Act explicitly prohibit employers from terminating employees who engage in protected activity. 42 U.S.C. § 300j-9(i)(1) (“No employer may discharge any employee....”); 42 U.S.C. § 6971(a) (No person shall fire... any employee....”). Adverse employment actions consist of “ultimate employment decisions.” Undisputedly, termination is one such decision. *Thompson v. City of Waco, Texas*, 764 F.3d 500, 503 (5th Cir. 2014).

The third element of the prima facie case requires proof that Yellott’s protected activity “caused or was a motivating factor in” PCA’s decision to terminate her employment. 29 C.F.R. § 24.109(b)(2). “A ‘motivating factor’ is ‘conduct [that is]... a ‘substantial factor’ in causing an adverse action.” *Onysko v. State of Utah, Dep’t of Envtl. Quality*, ARB No. 11-0023, OALJ No. 2009-SDW-00004, slip op. at 10 (ARB Jan. 23, 2013), citing *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 287 (1977)). To meet this standard, complainants “need only establish that th[e] protected activity was a motivating factor, not the motivating factor....” *Joyner v. Georgia-Pacific Gypsum, LLC*, ARB No. 12-0028, OALJ

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<sup>36</sup> Yellott asserted allegations in testimony that, subsequent to her termination, PCA interfered with her ability to maintain employment with Iconex and, later, to obtain employment with Modine Manufacturing. Her testimony arguably accuses PCA of “blacklisting,” though she has alleged only termination as an adverse employment action. *See* Comp.’s Brief, p. 41. Nonetheless, I find her allegations unsupported in the record; and further find that PCA did not engage in blacklisting Yellott and did not otherwise contact Iconex or Modine Manufacturing for the purpose of interfering with Yellott’s ability to obtain employment subsequent to her termination from PCA.

No. 2010-SWD-00001, slip op. at 14 (ARB Apr. 25, 2014), *quoting Abdur-Rahman v. DeKalb County*, ARB Nos. 08-003, 10-074; OALJ Nos. 2006-WPC-00002, -03, slip op. at 10, n.48 (ARB May 18, 2010); *cf. Cosa v. Desert Palace, Inc.*, 299 F.3d 838, 848 (9th Cir. 2002) (discussing the definition of “motivating factor” as used in discrimination cases under 42 U.S.C. § 2000e-2(m)).

The complainant retains the ultimate burden of proof to show causation by a preponderance of the evidence. *Joyner*, ARB No. 12-0028, slip op. at 11; *Jenkins*, ARB No. 98-0146, slip op. at 17. Linking the protected activity to the adverse action often requires inferences about the motivating factors for the adverse action because an employer rarely admits to retaliation. A complainant may show an inference of causation by a close temporal proximity between the protected activity and the employer’s adverse action. 29 C.F.R. § 24.104(e)(3); *Tomlinson*, slip op. at 21. However, temporal proximity is not dispositive in determining whether the adverse action was retaliatory. *Caldwell v. EG&G Def. Materials, Inc.*, ARB No. 05-0101, OALJ No. 2003-SDW-00001, slip op. at 13 (ARB Oct. 31, 2008); *Jackson v. Arrow Critical Supply Solutions, Inc.*, ARB No. 08-0109, OALJ No. 2007-STA-00042, slip op. at 7 n.5 (ARB Sep. 24, 2010) (“temporal proximity is ‘just one piece of evidence for the trier of fact to weigh in deciding the ultimate question [of] whether a complainant has proved by a preponderance of the evidence that retaliation was a motivating factor in the adverse action.’”), *quoting Clemmons v. Ameristar Airways, Inc.*, ARB No. 08-0067, OALJ No. 2004-AIR-00011, slip op. at 6 (ARB May 26, 2010). The “motivating factor” standard does not require a showing of pretext, but the complainant may show that the respondent’s proffered reasons for the adverse action are pretext for retaliation. *Kanj v. Viejas Band of Kumeyaay Indians*, ARB No. 12-0002, OALJ No. 2006-WPC-00001, slip op. at 6 n.4 (ARB Aug. 29, 2012); *see also, Jenkins*, ARB No. 98-0146, slip op. at 17 (“rejection of an employer’s proffered legitimate explanation for adverse action permits rather than compels a finding of intentional discrimination.... It is not enough... to disbelieve the employer; the factfinder must believe the plaintiff’s explanation of intentional discrimination.” (citations omitted)); *Guerra v. N. E. Indep. Sch. Dist.*, 496 F.3d 415, 418 (5th Cir. 2007). This means the employee must persuade the administrative law judge that “[his or her] version of events is more likely true than the employer’s version.” *Joyner*, ARB No. 12-0028, slip op. at 11. While animosity is not required to show causation, its absence is relevant when considering each piece of circumstantial evidence. *Henderson v. Wheeling & Lake Erie Ry.*, ARB No. 11-0013, OALJ No. 2010-FRS-00012, slip op. at 14 (ARB Oct. 26, 2012); *Citationshares Mgmt., LLC*, ARB No. 12-0029, slip op. at 11- 12.

Courts have rejected causation based on a “chain-of-events” principle. *See BNSF Ry. Co. v. Admin. Review Bd., United States DOL*, 867 F.3d 942 (8th Cir. 2017); *Koziara v. BNSF Ry.*, 840 F.3d 873 (7th Cir. 2017), *cert den.*, 137 S.Ct. 1449 (2017). Where an employee’s protected activity is couched in bad behavior, disciplinary measures against that behavior are not unlawfully motivated. *See Florida Steel Corp. v. NLRB*, 529 F.2d 1225, 1234 (5th Cir. 1976) (communication made in the form of threats of violence or insubordination, during the course of otherwise protected activity, is removed from protection); *Corriveau & Routhier Cement Block, Inc. v. NLRB*, 410 F.2d 347, 350 (1st Cir. 1969) (rights afforded to the employee “are a shield against employer retaliation, not a sword” with which one may threaten or curse supervisors.). In *Sayre v. Veco Alaska, Inc.*, the complainant was properly disciplined, in part, for her “discourteous and insubordinate manner” when she engaged in protected activity. ARB

No. 03-0069, OALJ No. 2000-CAA-00007, 2005 DOL Ad. Rev. Bd. LEXIS 55 \*37 (ARB May 31, 2005). The complainant expressed her safety concerns in emails that were “confrontational,” and she was rude to her colleagues, created a tense atmosphere at meetings, used inflammatory language, and was frequently uncooperative. *Sayre* at \*35. “[A]n employee’s insubordination toward supervisors and coworkers, even when engaged in a protected activity, is justification for termination.” *Id.* at \*36, citing *Kahn v. U.S. Sec’y of Labor*, 64 F.3d 271, 279 (7th Cir. 1995) (auditor’s abusive and inappropriate manner while making protected complaints was the legitimate, nondiscriminatory reason for his firing). In *Kahn*, the Seventh Circuit noted, “It is well-settled in this circuit and other circuits that an employer may terminate an employee for any reason, good or bad, or for no reason at all, as long as the employer’s reason is not proscribed by a Congressional statute.” *Kahn*, 64 F.3d at 279 (referencing *NLRB v. Knuth Bros, Inc.*, 537 F.2d 950, 954 (7th Cir. 1976) and *Ad Art, Inc. v. NLRB*, 645 F.2d 669, 679 (9th Cir. 1981)). The Ninth Circuit reached a similar conclusion in *Mackowiak v. Univ. Nuclear Systems, Inc.*, 735 F.2d 1159 (9th Cir. 1984). In *Mackowiak*, a quality control inspector brought an action against his employer alleging discrimination in violation of the whistleblower protections of the Energy Reorganization Act. 735 F.2d at 1160. The Ninth Circuit noted that whistleblower protection statutes do not require employers to “retain abrasive, insolent, and arrogant quality control inspectors if they comply technically with the requirements of the job,” but only that such statutes “forbid[] discrimination based on competent and aggressive inspection work.” *Id.* at 1163.

If Yellott establishes all three elements of her prima facie case, PCA has the burden to demonstrate by a preponderance of the evidence that it would have terminated Yellott even had she not engaged in protected activity. 29 C.F.R. § 24.109(b)(2); *Palmer v. Canadian Natl. Ry.*, ARB No. 16-035, slip op. at 34-35 (ARB Sep. 30, 2016), reissued with full dissent (ARB Jan. 4, 2017).<sup>37</sup> This final burden “is effectively that of proving an affirmative defense.” *Richardson v. Monitronics Intl., Inc.*, 434 F.3d 327, 333 (5th Cir. 2005), quoting *Machinchick v. PB Power, Inc.*, 398 F.3d 345, 355 (5th Cir. 2005). The question is whether the nonretaliatory reasons, by themselves, would have been enough to trigger the adverse action absent the protected activity. *Id.* In “dual motive cases,” the employer “bears the risk that the influence of legal and illegal motives cannot be separated....” *Mackowiak*, 735 F.2d at 1164.

If Yellott prevails, she is entitled to damages under the Acts and implementing regulations. 29 C.F.R. § 24.109(d)(1); see also 42 U.S.C. § 300j-9(i)(2)(B)(ii) and 42 U.S.C. § 6971(b)-(c). In a successful prosecution under the whistleblower provisions of the SDW and the SWD Acts, the court:

shall direct the respondent to take appropriate affirmative action to abate the violation, including reinstatement of the complainant to that person’s former position, together with the compensation (including back pay), terms, conditions, and privileges of that employment, and compensatory damages. In cases arising under the Safe Drinking Water Act..., exemplary damages may also be awarded

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<sup>37</sup> Although *Palmer* applied the burden-shifting scheme to railroad, air, and Energy Reorganization Act whistleblower complaints, which require proof by clear and convincing evidence, the analysis is essentially the same but with a lower burden of proof on PCA here.

when appropriate. At the request of the complainant, the ALJ shall assess against the respondent, all costs and expenses (including attorney fees) reasonably incurred.

29 C.F.R. § 24.109(d)(1); *see also* 42 U.S.C. § 300j-9(i)(2)(B)(ii) and 42 U.S.C. § 6971(b)-(c).

#### **IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

##### **A. Specific Credibility Findings**

While there are some inconsistencies and conflicts, I found the testimonies of Spears, Byrd, Butaud, Piotrowski, Snelgrove, Hansen, Yarbrough, Meadows, DuVall, Howell, and Myers generally credible. These witnesses testified in good faith and with credible exactitude and certainty.

On the other hand, Yellott's testimony greatly conflicted, both internally and when compared to other witnesses and documentary evidence. She became combative at times and incredibly claimed that Butaud and Hansen walked her through the mill in her underwear. This would have occurred after 7:00 a.m., when the mill was peopled with employees, but Yellott had no support for this claim. She further claimed that, as Hansen relayed the news of her termination to her, Butaud was calling her stupid. Yellott further incredibly denied that she sent many of the text messages introduced as evidence by PCA. Yellott blamed the breakup of her marriage on her termination from PCA and subsequent move to Tennessee, but evidence shows that she and Spears had already separated and that she had, in some words, believed Spears had sabotaged her vehicle and poisoned her. She also had romantic exchanges with an unknown person by text message in January 2017. Peppered throughout my summary of her testimony are footnotes indicating some, though not all, of the testimony I found particularly unbelievable. Many of her statements are unsupported, contradicted, or outright strain credulity. On the whole, I found Yellott not credible. Accordingly, I credit only the portions of her testimony that are otherwise supported by testimonial or documentary evidence in the record.

##### **B. The Reasonableness Standard to Which Yellott Should be Held**

The parties disagree about how Yellott presented her knowledge and to what standard she should be held. Yellott argues that she had little to no training. *See* Yellott Br., pp. 19-21. PCA argues that she should be held to a higher standard than the laboratory technicians, DuVall and Meadows. *See* PCA Br., pp. 31-37. To resolve this conflict, I look to the resume Yellott submitted to PCA wherein she represented the following experience and skills obtained since January 2013: managed daily activities associated with wastewater, storm water, waste, and safety; wrote numerous procedures to help accomplish safety and environmental goals; consistently managed all aspects of the environmental and safety departments; tracked environmental data; regularly communicated with TCEQ about permits, spills, exceedances, and routine operations; and successfully tracked all aspects of environmental compliance on a daily basis. She identified "drinking water," "OSHA," "EPA Standards," "Class D Potable Water License," "Waste Water," and "RCRA" as areas of expertise. RX 193. Further, at the time of her first alleged protected activity (June or July 2016), Yellott had been working at PCA for nine

months and had obtained her Louisiana potable water license. I agree with PCA that Yellott should be held to a higher standard than the laboratory technicians. With Yellott's experience and qualifications in mind, I address her alleged protected activities.

### **C. Whether Yellott Engaged in Protected Activity<sup>38</sup>**

#### **1. Miscalculated Waste Reports**

Subsequent to Byrd, Yellott was responsible for collecting data for waste reports prepared by Providence Engineering. Byrd testified that he provided Yellott with documentation concerning the prior years' reports to assist her in preparing the report due in 2016. Using the 2015 report, Yellott collected data and sent calculations to Madeline Murphy in July 2016.<sup>39</sup> She also asked to discuss the report with Murphy to make sure her calculations were correct. RX 60. Around the same time, Yellott sent an email to Butaud pertaining to potential errors in the 2015 waste report. Butaud instructed Yellott to proceed with the 2016 report and then remedy the prior year's report. RX 3; RX 4. The record is devoid of any subsequent communications between Yellott and anyone else—whether at PCA or Providence Engineering—regarding the waste reports until December 2016. Yellott testified that she repeatedly asked Byrd for assistance and continued her attempts to prepare and file corrected waste reports, but nothing in the record supports that testimony.<sup>40</sup> Moreover, although the asbestos information was in a binder in Byrd's office, Yellott could have accessed the information in the environmental database, even if Byrd

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<sup>38</sup> Other issues were raised in testimony but not actually alleged as protected activities. These include: testimony from Yarbrough, DuVall, and Meadows that Byrd instructed laboratory technicians not to report high chlorine readings above 4.0; testimony from Yellott that she reported leaks and spills; testimony from DuVall that PCA had not repaired the mechanism to close a large water gate; and Yellott's claims that she did not receive proper training. Yellott has not alleged these as issues upon which her protected activity rests. The scope of Yellott's training pertains to the reasonableness of her complaints. *See* Complainant's Post-Trial Brief, pp. 30-35. Yellott apparently never reported DuVall's complaint about the unrepaired water gate. In fact, in her closing brief, Yellott did not even mention the water gate in her summary of DuVall's testimony. *See* Complainant's Post-Trial Brief, pp. 15-16. Further, Yellott apparently only reported a high chlorine reading in connection with the power outage in December 2016, not in the context of a general objection to PCA's alleged instruction to laboratory technicians not to document such readings. Indeed, Byrd conceded in his testimony that he would not document high readings if, after taking corrective action, the system produced a normalized reading, and he regularly reported low readings under the daily compliance requirement. Finally, though Yellott testified to several instances of reporting non-compliant or unsafe incidents, there is no documentation of any such reports other than the one-time text message to Butaud of a photograph of a tank and Yellott's indication in that message that she had contacted John Reddin without further context. Accordingly, I find that these incidents do not constitute protected activity.

<sup>39</sup> On July 5, 2016, Murphy forwarded to Yellott the 2015 report that Murphy and Byrd submitted. RX 59.

<sup>40</sup> I find the absence of documentary support for this testimony particularly compelling as most communication between the individuals involved were made by email or other written messaging. Further, nothing in the record indicates that Byrd or PCA would have been served by intentionally withholding information from Yellott, and Yellott had not communicated to Hansen or Butaud that Byrd had done so.

had intentionally withheld it. At that time, Yellott, a self-professed expert in waste, environmental compliance, OSHA, EPA standards, and RCRA, could not have reasonably believed that inadvertent errors—either Byrd’s miscalculations in 2015 or her own inadvertent omission of asbestos material in 2016—constituted violations of environmental law or subjected PCA to significant penalties and liability.<sup>41</sup> Indeed, she testified that non-compliance occurred when PCA refused to file updated reports, and there is no support in the record for any claim that PCA refused to do so.

Beginning in December 2016, about five months after the initial emails and within days after Butaud met with Yellott about her performance, Yellott initiated a series of emails with Butaud and Murphy, which altogether reveal Yellott’s lack of understanding and knowledge about the reports. Butaud, with his recent instruction to Yellott to take ownership of her responsibilities in mind, left Yellott to address the waste reports on her own. On December 9, 2016, at 7:57 a.m., Yellott continued discussions with Murphy about the reports and the areas in which she needed clarification; she forwarded the emails to Brent Hansen at 1:06 p.m. and 1:07 p.m.<sup>42</sup> RX 201; RX 202; RX 203. That afternoon, Murphy provided Yellott with the revised report for 2016 and asked about the issue for the 2015 report. Discussions continued throughout the month. RX 43; CX 21. Also on the afternoon of December 9, 2016, Yellott emailed Butaud and Hansen, with a blind copy to Snelgrove, a follow up email to the meeting the previous Wednesday morning. She requested assistance “to help facilitate [her] true ‘take over’ of [her] assigned fields.” In this email, though Yellott addressed waste, she did not mention the compliance reports or otherwise raise any safety or environmental concerns. RX 106.

On December 30, 2016, Yellott and Murphy discussed categorizing hazardous waste, and Yellott asked Butaud about claiming exemptions for offsite waste, ash, and sludge on January 3, 2017. RX 204. The next day, Yellott forwarded to Hansen several December emails between her and Murphy and between her and Butaud. In the email, Yellott told Hansen that Butaud was making her job more difficult and had yelled at her. She did not raise any safety or environmental complaints. RX 32.

Yellott later asked Butaud how to handle the miscalculations for the 2015 report on January 12, 2017, with a blind copy sent to Hansen. Again, she did not raise any safety or

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<sup>41</sup> In August 2016, Yellott requested and received permission to attend RCRA refresher training. However, due either to Butaud’s mandate that she stay at the mill (according to Yellott) or to budget restrictions prohibiting an overnight stay in Lake Charles (according to Butaud), Yellott did not attend the training. RX 199. Nothing in the record indicates that the refresher training would have assisted Yellott in understanding or completing the revised waste reports.

<sup>42</sup> Among the emails forwarded to Hansen were those related to Butaud’s request that Yellott develop an action plan to address updated regulations. Butaud’s instruction was for Yellott to refer to Louisiana’s regulations to learn how the waste determination is made. After a number of exchanges, Yellott emailed Hansen and expressed her frustration with Butaud and with understanding the application of regulations. RX 32; RX 34. Yellott also complained to Hansen on January 11, 2017, about Butaud’s treatment of her and his demand that she appear for production meetings. RX 35. At no point in these emails did Yellott report that PCA was non-compliant with any environmental rule, nor did Yellott complain that Byrd had withheld information from her. Eventually, on January 17, 2017, Yellott sent Butaud, with a blind copy to Hansen, the action plan. RX 50.

environmental concerns. RX 43. That same day, Yellott emailed Hansen a chain of emails about the potable water system, sending a blind copy to Snelgrove, and stated, "As I have told you, I have found multiple issues with the waste as well- including reports that are just wrong...." RX 46.

The next day, January 13, 2017, Yellott emailed Snelgrove directly, under the subject line "FW: Annual Certification of Compliance Revision":

I hate to continually bother you. I just wanted you to be aware of what is going on, because ultimately I know you will be responsible should anything happen.

As I'm sure you are aware, Blaine is not my biggest fan lately. As I am finding issues that are out of compliance and need to be addressed, rather than allowing me to address the problem, I am chastised, told I am stupid, and the problem is swept under the rug. I am not sure who to turn to in this situation. I feel like I am in grade school again and I have honestly never been in this situation before.

This is something that I feel you need to be aware of, I tried to discuss the issue with the consultant, who is Blaine's girlfriend- and whom I have been told is the only consultant that I can use- and she was no help. I know the calculations from the previous waste report are wrong.... I honestly have no clue of the severity of submitting a report that is wrong in the state of Louisiana- however in Texas it could become a major financial slap on the wrist. I believe it will be in our best interest to correct the report ourselves prior to the state finding the error.

CX 27.

About a week later, Yellott emailed Hansen directly about the waste reports. First, on January 18, 2017, she submitted corrected calculations based on numbers Byrd provided. RX 60. Then, the next day, Yellott asked, "I am working on the calculations still, is that what you wanted?" She explained how she discovered the issues and noted that reports further back than 2015 needed to be checked. Yellott did not discuss non-compliance in any way. RX 74.

When Yellott emailed Snelgrove about the waste certificates, she did so not in good faith but in an underhanded attempt to malign Butaud's character and the nature of his relationship with Murphy. The email on January 13, 2017, is the first indication that Yellott had any issues with Murphy. In August 2016, around the time that she apparently began having difficulties with completing and correcting the waste reports, Yellott told Butaud, "You, Tim, and Madeline mean the world to me." RX 195. Further, Providence Engineering invoices show that Yellott worked primarily with Murphy but, in addition, four other consultants. CX 33. All the emails indicate that Murphy was actively working with Yellott to complete revisions to the reports. If, as Yellott testified, non-compliance occurs only when an institution refuses to correct erroneous reports, Yellott had no reasonable belief, objectively or subjectively, that PCA management refused in any way to submit revised reports. In Yellott's email to Murphy on December 9, 2016, Yellott communicated her understanding that PCA would be filing an amended certificate for the waste she omitted from the 2016 report. Her email further communicates a lack of knowledge whether

corrections needed to be submitted for 2015—“should we file an updated certification for last year because the formulas were not calculated correctly, or do I leave it alone?” RX 201. In fact, Butaud emailed Murphy corrections for the 2015 report for submission to LDEQ on January 19, 2017, and, by the next month (specifically, on February 8), PCA submitted revised reports for the years 2014, 2015, and 2016, and explained that the errors would be prevented in the future as PCA developed a database with standardized factors and calculations. CX 44; CX 53. Furthermore, had Yellott sincerely believed that the erroneous reports constituted non-compliance, her apparent refusal to take any action between July and December 2016, and only after she was counseled about her performance and told to take ownership of her responsibility, undermines any sincerity her email to Snelgrove may have had.

Based thereon, I find that Yellott’s communications about the waste reports did not constitute subjectively and objectively reasonable complaints that PCA was somehow not in compliance with environmental rules or regulations. Accordingly, Yellott did not engage in protected activity when she reported issues with the waste reports to Butaud, Hansen, or Snelgrove.

2. *The Potable Water System Design Defect and Resulting High Chlorine Residual Reading*

On the morning of December 5, 2016, Yellott discovered a high chlorine residual reading over 5.0, which exceeds the annual allowed average.<sup>43</sup> She contacted Butaud and Byrd to report the reading, which she believed at that time had been caused by standing water. She later determined that the well power had shut off and that a slug of chlorine gas had gone into the system. Over the next few days, Yellott suggested that the chlorine spike had been caused because the chlorination system was not automated.<sup>44</sup> At a vendor training seminar, which Butaud instructed Yellott to arrange, the vendor discussed exactly what occurred on December 5, discussed the chlorinator system operation, and discussed the deficiencies he found.

In brief, Yellott contends that her concerns “were with the high chlorine residual obtained as a result of the later-detected design deficiency,” not specifically that the design deficiency violated the SWDA. However, the record shows that Yellott’s communications centered on the defect itself and the proper fix to prevent the pump failure in the event of another power outage. Yellott exchanged a significant number of emails with Butaud, Byrd, and Hansen (with copies to Snelgrove) between December 5, 2016, and January 12, 2017. During those exchanges, Yellott

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<sup>43</sup> The applicable environmental regulations limit the maximum residual level of chlorine to 4.0 milligrams per liter, compliance for which is based on a quarterly computation of monthly averages of all samples collected by the system. 40 C.F.R. §§ 141.65(a), 141.133(c).

<sup>44</sup> Perhaps indicative of the semantic confusion in the many emails exchanged among Yellott, Byrd, and Butaud, the testimony adduced here was unclear about what exactly malfunctioned. Yellott believed the chlorinator system was not on automatic; but, Byrd and others testified that it was. As a whole, the record shows that the resumption of power allowed the booster pump to flow water past the chlorinating valve, which released chlorine gas, but that the well water pumps would be off until manually restarted. Thus, chlorine released into a minimal amount of water through the booster line.



did not raise any environmental or compliance issues.<sup>45</sup> In fact, in her email dated December 22, Yellott tells Butaud of the chlorine residuals, “This is no need for alarm, we have consistently stayed within the permitted parameters, I just wanted you to be aware of the situation.” RX 22.

The first mention of a safety or environmental compliance issue came in an email dated January 12, 2017. Therein, Yellott stated, “The reason that I called you that day was because I had never experienced a power outage on the potable system, and I did not know that this was an issue, all that I knew was that we were out of compliance.” RX 41. Yellott then forwarded the chain of emails to Hansen in response to Butaud’s email stating, “I am done with this discussion. I don’t need any more overly pedantic discussion from you of information that I already know.” Specifically regarding the potable water system, Yellott stated to Hansen, “We are pumping straight CL gas into the pipes with no water flow- this is a huge safety hazard! Why am I getting push back about trying to fix it?” RX 46. The next day, January 13, Yellott communicated directly with Snelgrove about the waste calculations and, at the bottom of the email, stated, “If you would like to discuss this issue, or the issue with the potable water, I would love to chat with you.” CX 27.

Days later, Yellott blind copied Snelgrove on the email sent to several individuals at PCA following the vendor training conducted on January 17, 2017. Nowhere in that email is any environmental or safety complaint. In fact, contrary to Yellott’s claim to Hansen that “straight CL gas” was pumped into the system with “no water flow,” she summarized the vendor meeting and the conclusion that “the chlorinator will continually feed chlorine with the slightest flow of water, thus causing a slug of chlorine to go through the system.” That email did not contain any environmental or safety complaints or raise any concerns. CX 34. Nonetheless, Snelgrove forwarded the email to Butaud and instructed him to follow up and ensure the chlorination system functioned properly. Butaud responded that Yellott’s report “on the chlorinator not being in automatic is correct” and requested a discussion with Snelgrove and Hansen the next morning. RX 52; RX 55; RX 56. The next day, Butaud sent to Snelgrove and others the “actual situation and fix,” which did not include rewiring the chlorinator. RX 56; CX 42. On the morning of January 19, 2017, Butaud issued the work order for the potable water system update. CX 45.

By December 2016, Yellott had worked at PCA as the sole manager over the potable water system for more than a year and had two potable water licenses—one in Texas and one in Louisiana. Further, Yellott, with more than three years of experience in the environmental field and potable water systems since 2013, should have known that an aberrant, one-time, corrected reading would not have resulted in PCA’s exceeding compliance. Contrary to Yellott’s arguments, the 5.0 reading would not have consistently recurred—she never reported such a suspicion to Butaud or any other superior at PCA, and PCA did not recklessly ignore or show non-concern for the heightened chlorine reading after the power outage. PCA took immediate corrective action upon discovering the design defect, even as soon as the next day, when Butaud

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<sup>45</sup> Yellott emailed Hansen on December 7, 2016, after Butaud’s meeting wherein he told Yellott of her performance deficiencies. Nowhere in that email does Yellott mention anything about safety or environmental compliance issues nor does she refer to the waste reports or potable water system. RX 14; *see also*, RX 15; RX 38; RX 41; CX 8. Yellott also emailed a follow up to the Wednesday meeting on Friday. She did not raise any compliance issues. CX 16.

instructed Yellott to reach out to the vendor to determine the proper fix. Thus, even if Yellott reasonably believed that the design defect resulted in non-compliant readings, the situation on December 5 would not have been repeated.

Ultimately, Yellott's several emails to Butaud, Hansen, and Snelgrove about the potable water system are not protected activity. Yellott had no reason to believe that the potable water system was non-compliant, had in fact said so, and had incorrectly reported that PCA was "pumping straight [chlorine] gas" into the system. In any case, immediately after the power outage caused a heightened chlorine reading, Butaud instructed Yellott to reach out to vendors and determine a fix. Based thereon, I find that Yellott's communications about the potable water system did not constitute subjectively and objectively reasonable complaints that PCA was not in compliance with environmental rules or regulations.

3. *Green Liquor and Pond #1*

The timeline surrounding the green liquor incident is somewhat muddled. Yellott contends that she reported the improper dumping after receiving reports from Meadows and DuVall. There is some conflict between DuVall and Meadows, which renders it unclear what exactly Meadows called to tell Yellott. DuVall testified that, in the process of counting aerators at the aeration ponds, she saw a driver of an 18-wheeler sucker truck parked on the road discharging green liquor. DuVall did not testify to the contents of the conversation between Meadows and Yellott or exactly what had been said by Meadows, though she was apparently in the truck with him when he made the call. DuVall testified that the driver had not actually been at pond #1 but had been on the side of the road—"as far as he knew, that was the pond. The side of the [road is] the pond." Pond #1 "sits off" the road. Had the driver actually been parked at pond #1, DuVall and Meadows "wouldn't have thought anything about it..." On the other hand, Meadows testified that he and DuVall were checking aerators at the sludge ponds (rather than the aeration ponds) and saw the truck discharging into pond #1. He testified that he contacted Yellott "that morning and asked her if we were supposed to be dumping any liquids into the pond.... I just told her, I said there was a Performance truck there, and I wasn't for sure." Meadows then went about his day—"And I didn't talk to her probably until later that afternoon, I would say." He testified that his concern was that liquid had been dumped into pond #1, which he thought was used for solid waste only.

Yellott testified that Hampton Howell and Keith Myers confirmed to her on the morning of January 19, 2017, that green liquor had been dumped into pond #1. However, at the hearing, both individuals denied ever telling her so and denied any knowledge that green liquor was dumped into the sludge pond. Moreover, several PCA witnesses testified to the economic value of green liquor. Yellott speculates that the green liquor had to be emptied from the clarifier tank using the sucker trucks and, rather than holding the liquor elsewhere or in the truck pending the repair, PCA chose to dispose of the liquor in pond #1. The dumping of the materials apparently occurred overnight and into the next morning. Byrd received a telephone call late at night (midnight or 1:00 a.m.) asking permission to use the sucker truck and dump dregs into pond #1. Meadows and DuVall (daytime workers) testified that they visually observed and smelled green liquor while making their morning rounds; however, neither had apparently reported this observation to Yellott. Rather, the report Meadows made to Yellott pertained to liquids

generically. Further, PCA's manifests show that green liquor dregs were dumped in pond #1 both during the night shift and the following day shift. RX 367; RX 374. Myers testified that his truck had not been damaged. Thus, by the time the morning meeting ended, Byrd, Butaud, and others had no reason to believe that green liquor had been dumped. The aluminum sucker truck bore no telltale signs of damage—as a caustic liquid, green liquor would have warped the aluminum—and no person present reported anything out of the ordinary.

The questions here are whether Yellott had a reasonable belief that green liquor had been dumped in pond #1, whether she communicated that belief to Butaud, and whether she communicated that an environmental or safety hazard occurred. Yellott testified that she spoke with Butaud in person and informed him that green liquor had been dumped in pond #1. In turn, Butaud testified that he explained to Yellott that the issue had been raised and addressed at the morning meeting and that the materials had been wet dregs. Later, Yellott inquired, at 11:33 a.m., how Butaud “would like the green liquor issue from this morning to be handled.” CX 36. Though Butaud had already discussed the issue with Yellott in person, he responded an hour later, “It wasn't a green liquor issue, Performance was hauling wet green liquor dregs.” Yellott's last email, sent at 1:26 p.m., inquired whether anything should “be added to it.” CX 37. Nowhere is any report from Yellott to Butaud that Meadows or DuVall told her that green liquor specifically had been dumped, that she had reason to believe green liquor had been dumped, or that there existed some environmental or safety hazard as a result of the dumping of materials into pond #1. Moreover, although Yellott testified that she reported that green liquor had been dumped to Snelgrove, there is no email or other written communication in the record to support this testimony.

Thus, I find that, at the time Yellott engaged in verbal and written discussions with Butaud on the morning of January 19, 2017, she did not have a reasonable belief that green liquor had been dumped in pond #1, had not communicated any such belief, and had not complained of any environmental or safety hazard. Yellott had only a report that a liquid may have been dumped there and, when discussing the morning's events with Butaud, had been disabused of any idea that the liquid constituted green liquor. I do not credit her testimony that any PCA employee confirmed that the substance was green liquor or that she physically confirmed the presence of liquid in the pond. Accordingly, I find that Yellott's communications about green liquor do not constitute protected activity.

## V. ORDER

Based upon the foregoing and upon the entire record, the complaint filed by Aron Yellott against Packaging Corporation of America under the employee protection provisions of the Safe Water Drinking Act and the Solid Waste Disposal Act is hereby **DISMISSED**.

**So ORDERED.**

**CLEMENT J. KENNINGTON**  
Administrative Law Judge

**NOTICE OF APPEAL RIGHTS:** This Decision and Order will become the final order of the Secretary of Labor unless a written petition for review is filed with the Administrative Review Board (“the Board”) within 10 business days of the date of this decision. The Board’s address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington DC 20210, for traditional paper filing. Alternatively, the Board offers an Electronic File and Service Request (EFSR) system. The EFSR for electronic filing (eFile) permits the submission of forms and documents to the Board through the Internet instead of using postal mail and fax. The EFSR portal allows parties to file new appeals electronically, receive electronic service of Board issuances, file briefs and motions electronically, and check the status of existing appeals via a web-based interface accessible 24 hours every day. No paper copies need be filed.

An e-Filer must register as a user by filing an online registration form. To register, the e-Filer must have a valid e-mail address. The Board must validate the e-Filer before he or she may file any e-Filed document. After the Board has accepted an e-Filing, it is handled just as it would be had it been filed in a more traditional manner. e-Filers will also have access to electronic service (eService), which is simply a way to receive documents issued by the Board through the Internet instead of mailing paper notices/documents.

Information regarding registration for access to the EFSR system, as well as a step by step user guide and FAQs can be found at: <https://dol-appeals.entellitrak.com>. If you have any questions or comments, please contact: [Boards-EFSR-Help@dol.gov](mailto:Boards-EFSR-Help@dol.gov).

The date of the postmark, facsimile transmittal, or e-filing will be considered to be the date of filing. If the petition is filed in person, by hand-delivery, or other means, the petition is considered filed upon receipt. The petition for review must specifically identify the findings, conclusions, or orders to which exception is taken. Any exception not specifically urged ordinarily will be deemed to have been waived by the parties.

At the same time that you file your petition with the Board, you must serve a copy of the petition on (1) all parties, (2) the Chief Administrative Law Judge, U.S. Dept. of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8001, (3) the Assistant Secretary, Occupational Safety and Health Administration, and (4) the Associate Solicitor, Division of Fair Labor Standards. Addresses for the parties, the Assistant

Secretary for OSHA, and the Associate Solicitor are found on the service sheet accompanying this Decision and Order.

If filing paper copies, you must file an original and four copies of the petition for review with the Board, together with one copy of this decision. In addition, within 30 calendar days of filing the petition for review, you must file with the Board an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and you may file an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which the appeal is taken upon which you rely in support of your petition for review. If you e-File your petition and opening brief, only one copy need be uploaded.

Any response in opposition to a petition for review must be filed with the Board within 30 calendar days from the date of filing of the petitioning party's supporting legal brief of points and authorities. The response in opposition to the petition for review must include an original and four copies of the responding party's legal brief of points and authorities in opposition to the petition, not to exceed thirty double-spaced typed pages, and may include an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which appeal has been taken upon which the responding party relies. If you e-File your responsive brief, only one copy need be uploaded.

Upon receipt of a legal brief filed in opposition to a petition for review, the petitioning party may file a reply brief (original and four copies), not to exceed ten double-spaced typed pages, within such time period as may be ordered by the Board. If you e-File your reply brief, only one copy need be uploaded.

If a timely petition for review is not filed or the Board denies review, this Decision and Order will become the final order of the Secretary of Labor. *See* 29 C.F.R. §§ 24.109(e) and 24.110.