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Issue Date: 27 May 2015

**CASE NOS. : 2013-SWD-1
2013-SWD-3**

IN THE MATTER OF

**GLEN SICKLER, JR.
CLINT AZELIA**

Complainants

v.

BATTELLE MEMORIAL INSTITUTE

Respondent

DECISION AND ORDER

This proceeding arises under the employee protective provisions of the Solid Waste Disposal Act, (herein SWD), 42 U.S.C. § 6971, et seq.; the Clean Air Act, (CAA), 42 U.S.C. § 7622; the Toxic Substances Control Act, (TSCA), 15 U.S.C. § 2622; and the Comprehensive Environmental Response, Compensation and Liability Act of 1980, (CERCLA), 42 U.S.C. § 9610(a)-(d) and the regulations thereunder at 29 C.F.R. Part 24 brought by Glen Sickler, Jr. and Clint Azelia (Complainants) against Battelle Memorial Institute (Respondent).

I. PROCEDURAL BACKGROUND

Complainant Glen Sickler ("Sickler") filed a complaint with the Occupational Safety and Health Administration (herein OSHA) on or about May 25, 2012, alleging that Respondent Battelle Memorial Institute ("BMI") placed him on unpaid leave on April 19, 2012, and subsequently terminated him on July 2, 2012, for voicing safety concerns to management. Complainant alleged that he engaged in protected activity when he discovered and reported several Resource Conservation and Recovery Act (RCRA) Compliance Monitoring violations to monitoring managers and environmental compliance officials at the facility.

Specifically, Complainant argues that he engaged in protected activity on April 13, 2012 (sic), when he responded to an Access Control and Alarm Monitoring System (ACAMS) alarm, and noticed that the air monitoring tubes were disconnected at the chemical agent sample line which led to confirmation at the Depot Area Air Monitoring System (DAAMS). Complainant Sickler alleged that three of Respondent's managers witnessed him responding to the alarm and attempted to persuade him that the alarm was false and did not reflect the presence of a chemical agent. Complainant Sickler averred that he filed a monitoring report on the incident, and in retaliation Respondent placed him on unpaid leave on April 19, 2012, and ultimately terminated his employment on July 2, 2012.

The OSHA Regional Administrator dismissed Complainant's complaint on October 2, 2012, after determining that Respondent had a legitimate, non-retaliatory basis for terminating Complainant's employment. Specifically, the Secretary's Findings indicated that although Complainant engaged in protected activity, a preponderance of the evidence supported Respondent's position that the protected activity was not a contributing factor in Complainant's placement on unpaid leave and termination. It was determined that Respondent took action against Complainant for behavioral issues, more specifically the harassment of a fellow employee and an attempt to cover up such behavior with misrepresentation. Respondent asserted that on March 13, 2012, a co-worker (Clint Azelia) under the supervision of Complainant Sickler placed inappropriate items on an employee's locker in an attempt to humiliate and demean the employee, about which Complainant Sickler had full knowledge yet did nothing to stop the activity. Respondent concluded such behavior was unbecoming of a supervisor.

Complainant Azelia also filed a complaint with the Occupational Safety and Health Administration (herein OSHA) on or about May 25, 2012, alleging that Respondent placed him on unpaid leave on April 19, 2012, and subsequently terminated him on July 2, 2012, for voicing safety concerns to management. Complainant Azelia alleged that he engaged in protected activity when he discovered and reported several Resource Conservation and Recovery Act (RCRA) Compliance Monitoring violations to his supervisor, Complainant Sickler.

Specifically, Complainant Azelia argues that he engaged in protected activity on April 10, 2012, when he responded to an Access Control and Alarm Monitoring System (ACAMS) alarm, and noticed that the air monitoring tubes were disconnected at the

chemical agent sample line which led to confirmation at the Depot Area Air Monitoring System (DAAMS). Complainant Azelia alleged that three of Respondent's managers witnessed him responding to the alarm and attempted to persuade him that the alarm was false and did not reflect the presence of a chemical agent. Complainant Azelia averred that he filed a monitoring report on the incident, and in retaliation Respondent placed him on unpaid leave on April 19, 2012, and ultimately terminated his employment on July 2, 2012.

The OSHA Regional Administrator dismissed Complainant Azelia's complaint on October 2, 2012, after determining that Respondent had a legitimate, non-retaliatory basis for terminating Complainant's employment. Specifically, the Secretary's Findings indicated that although Complainant engaged in protected activity, a preponderance of the evidence supported Respondent's position that the protected activity was not a contributing factor in Complainant's placement on unpaid leave and termination. It was determined that Respondent took action against Complainant for behavioral issues, more specifically the harassment of a fellow employee and an attempt to cover up such behavior with misrepresentation. Respondent asserted that on March 13, 2012, Complainant Azelia, who worked under the supervision of Complainant Sickler, placed inappropriate items on an employee's locker in an attempt to humiliate and demean the employee.

Based on Complainants' Request for Hearing filed on November 5, 2012, these matters were referred to the Office of Administrative Law Judges for a formal hearing. Pursuant thereto, an Order Consolidating Cases, Amended Notice of Hearing and Pre-Hearing Order was issued scheduling a formal hearing, which commenced on January 6, 2014, in Salt Lake City, Utah, after two formal hearing dates were rescheduled. This matter was heard over a period of eight days during the weeks of January 6, 2014 and January 13, 2014. All parties were afforded a full opportunity to adduce testimony, offer documentary evidence, and submit oral arguments and post-hearing briefs.¹

The following exhibits were received into evidence at the formal hearing: Administrative Law Judge Exhibit Numbers 1-23; Complainant Exhibit Numbers 1-102; and Respondent Exhibit Numbers 1-115.

¹ References to the transcript and exhibits are as follows: Transcript: Tr.____; Complainant's Exhibits: CX-____; Respondent's Exhibits: RX-____; and Administrative Law Judge Exhibits: ALJX-____.

Post hearing briefs were timely received from Complainant and Respondent by the final briefing date of July 23, 2014. Complainants filed a reply brief which was received on August 4, 2014.

Based on the evidence introduced and having considered the arguments and positions presented, I make the following Findings of Fact, Conclusions of Law and Order.

II. STIPULATIONS

The parties stipulated that Respondent is subject to coverage under the Clean Air Act and the Solid Waste Disposal Act, as amended by RCRA, the Resource Conservation and Recovery Act. (Tr. 256).

1. Respondent is a person within the meaning of the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substance Control Act, and the Comprehensive Environmental Response Compensation and Liability Act. (Tr. 256).

2. Respondent is a subcontractor operating an air monitoring system at the Army's Tooele Chemical Demilitarization Facility near Salt Lake City, Utah. (Tr. 256).

3. Clint Azelia and Glen Sickler were employees of Respondent at the time of the events giving rise to the present litigation. (Tr. 257).

III. ISSUES

1. Whether Complainants engaged in protected activity within the meaning of the Solid Waste Disposal Act and the alleged Environmental Acts?

2. Assuming Complainants engaged in protected activity, whether their alleged activity was a contributing factor in Respondent's alleged discrimination against Complainants?

3. Whether Respondent demonstrated a legitimate, non-discriminatory business reason for its actions towards Complainants?

4. Whether Respondent has demonstrated by clear and convincing evidence that it would have taken the same unfavorable personnel actions against Complainants irrespective of their having engaged in alleged protected activity?

IV. SUMMARY OF THE EVIDENCE

Factual Background

Battelle Memorial Institute, herein Respondent, is a subcontractor to URS which operates the air monitoring system at the U.S. Army's Tooele Chemical Demilitarization Facility near Salt Lake City, Utah. The ATLIC, at which the events which comprise this matter arose, is the Area Ten Liquid Incinerator facility constructed for the destruction of GA and Lewisite agent from World War II. The GA agent destruction was completed in November 2011 and Lewisite destruction was completed in January 2012. (Tr. 1189).

Shane Ray Perkins was the Monitoring Manager at the ATLIC. His deputy was Ty Tate. Randy Roten, to whom Perkins reported, was the Site Monitoring Manager at the ATLIC. Employees who worked at the ATLIC were grouped in teams with a Team lead and foreman for each team. Rezi Karimi was the Lab Manager and Monitoring Site Manager to whom Roten reported.

It is undisputed that the culture at the ATLIC was one in which reports were generated for any irregularity or mistake found. A condition report (CR) is a procedurally driven report of any incident that took place at the facility. Any employee could file a CR over any issue which is then tracked to closure. There is no record evidence of any employee at the ATLIC being told not to document a problem or pursue a reporting requirement, nor was any evidence presented of the concealment of a monitoring or environmental or safety issue. URS, Respondent's customer, supported reports and encouraged reporting at yearly meetings of all employees. Aside from the allegations raised by Complainants, there is no record evidence of any employee being treated unfavorably because they reported an issue. The record is devoid of any evidence that Respondent and URS considered Sickler and Azelia to be problems because they reported issues.

In addition to the 27 employees and seven inspectors employed by the Environmental Safety and Health Department of URS who provided coverage of the ATLIC facility 24 hours a day, seven days a week, a full-time inspector monitored the ATLIC daily. It was an environment where State regulators visited the ATLIC one to three times per week and had full access to the facility and its documentation. The U.S. Army had ten to 15

shift representatives and contractors overseeing URS and Respondent at the ATLIC.

The Testimonial Evidence

Complainant Azelia

Azelia testified at the formal hearing that he is married and has two twin daughters. He loves his wife, tries to be active in his children's lives, and tries to be a good employee. He began employment with Respondent in 2005 and worked for Respondent until April 2012. (Tr. 27-28). He has a General Equivalency Diploma (GED) and completed one semester at Salt Lake Community College. He began working after his college semester. (Tr. 28).

After his termination from Respondent, Azelia worked at Dugway for AAI as a senior electronics test specialist from July 2012 to April 2013. (Tr. 29). Azelia next began employment with the National Security Administration (NSA) in April 2013 as a control room operator at the Utah Data Center. He monitored temperature, water flow and responded to equipment malfunctions. He has been unemployed since November 15, 2013. (Tr. 28).

Azelia began with Respondent in 2005 as a monitoring technician I. (Tr. 30). He worked at the Tooele Chemical Demilitarization Facility (TOCDF) and monitored the Automatic Continuous Monitoring Systems (ACAMS) for VX, a lethal nerve agent; collected waste samples; changed DAAMS tubes; responded to equipment malfunctions; and transferred hazardous waste and chemical agents to the lab. (Tr. 30-31). After one year, he became a monitoring technician II stack technician, which included more complicated responsibilities. (Tr. 31). He received training in Maryland for six weeks and was certified in ACAMS monitoring. He worked as a monitoring tech II for three and one-half to four years. (Tr. 32).

Azelia applied for the monitoring tech II position and was hired by Randy Roten, monitoring manager. (Tr. 34). Mike Medina was his shift lead, and Glen Sickler was his foreman. (Tr. 34-35). Azelia performed this job until late 2009 or early 2010. (Tr. 35).

In late 2009, Respondent built a separate facility two miles from the TOCDF to destroy Lewisite and GA agent. The facility was referred to as Area Ten Liquid Incinerator (ATLIC). (Tr. 35). Azelia also applied to and interviewed for a position

as monitoring foreman at this facility. He was hired by Shane Perkins, the Area Ten manager. (Tr. 36).

The ATLIC contained storage igloos that held chemical weapons (GA and Lewisite), which were "kind of like WWI mustard gas." (Tr. 35-36). Azelia worked at the ATLIC during its construction, meeting with Respondent's engineer to discuss ways to improve the efficiency of the site. He also was in charge of interferant testing. (Tr. 37). In late 2010 or early 2011, following the interferant testing, the ATLIC construction team entered into method development, which is a precision and accuracy study for the concentration of agents that were to be monitored. (Tr. 37-38). During that time, Azelia also installed sample lines and was in charge of making cylinder sheds. (Tr. 38). Azelia was instrumental in making wall mounts to switch the flow of gas to facility machines. Azelia performed these duties until the ATLIC was operational. Azelia then took up duties as a monitoring foreman, working under Sickler. (Tr. 39).

Azelia prepared a demonstrative drawing of the layout of ATLIC, which was not offered as an exhibit at the formal hearing. (Tr. 39). Essentially, the ATLIC consisted of several buildings: Igloo 1638, where employee lockers were housed, along with computers and work desks (Tr. 43); the Processing Bay with air flow into the toxic room, from which air further flowed into the liquid incinerator room, where agent was burned (Tr. 41); next to the toxic room were "B" air lock, "A" air lock and on the Toxic room side of the building and next to the liquid incinerator room were the toxic monitoring room and the pollution abatement system (PAS) room; on the air lock side of the building, and next to the liquid incinerator room, was the observation corridor. (Tr. 59).

A typical day for Azelia included passing through security and going to Igloo 1638. Azelia would go to his locker and get his tool box and confer with the "off going" team lead and foreman about the previous shift, a process called "turnover." (Tr. 43). If there had been a problem during the night shift, the leaving team would explain precautions that needed to be taken or trouble with machines that may still need to be fixed. (Tr. 44). Azelia also received a daily work order that detailed the tasks for the day, including challenging Near Real Time Monitors (NRTs), changing DAAMS tubes, challenging PAS every four hours, maintaining and configuring the stations, and challenging the sample lines. Azelia testified that if anyone

saw something not operating properly, a team lead was called to fix the problem. (Tr. 45).

Azelia explained that "challenging" a machine required injecting a known amount of agent twice a day to verify the equipment was in control, that it was in the set parameters that the procedure outlined to detect agent. (Tr. 42).

Azelia identified CX-36, his six-month periodic review of performance as a demil tech I, dated October 26, 2005. (Tr. 46). His rater was Mike Medina and his reviewer was Ryan Russell. He was rated at a 3.0, or "satisfactory." (Tr. 47). On December 11, 2006, Azelia received a yearly review as a demil tech II and received an "A" rating as achieving expectations. (CX-36, p. 41; Tr. 48-49). He had discussions with Mr. Roten, his manager, who told him his work performance was good, without any complaints. (Tr. 51).

Azelia received another favorable performance evaluation of "A", after being promoted to a demil tech II, indicating that he had a good work ethic, but needed more familiarity with the PAS system. (CX-36, p. 43; Tr. 51). On December 8, 2009, Azelia again received an "A" for his work for achieving expectations. (CX-36, p. 45; Tr. 51-52). When Azelia became a monitoring foreman, demil tech III at the ATLIC facility, Shane Perkins rated him as achieving expectations in every aspect without any issues. (CX-36, p. 50; Tr. 52). From September 2010 to September 2011, in the same position at the ATLIC, Shane Perkins again granted Azelia the "achieved-expectations" rating, as well as having reached one-hundred percent of his self-attained goals. (CX-36, pp. 51-54; Tr. 53). Generally, both Mr. Roten and Mr. Perkins evaluated Azelia's performance throughout his employment with Respondent. (Tr. 53-54).

Azelia testified that Randy Roten was the site monitoring manager responsible for the TOCDF, ATLIC and Area Ten facilities and never expressed any dissatisfaction with Azelia's work prior to his April 19, 2012 suspension. Neither did Supervisor Perkins, nor did any other employee or supervisor, have any issues with his performance. (Tr. 54). After his promotions and at his highest earning point, Azelia received a base salary of \$5,130 per month with full benefits, including medical, dental, health and life insurance. (Tr. 55).

On January 20, 2012, "D" team, on which Azelia served with Glen Sickler, was on the night shift. The team went to the toxic monitoring room to do challenges and take readings.

There was a three-way valve on the ECL machine which allowed the valve to be turned from monitoring the toxic room to monitoring a ten foot sample line connected to the monitor in the toxic monitoring room. (Tr. 55-56). Peer review is conducted after a challenge, but the nut was not on the sample line and the valve was in an incorrect position and was not monitoring agent correctly in the toxic room. (Tr. 56-58). Respondent's customer, URS, had personnel who made entries into the toxic room in protective suits on the same day of the challenge. While in the toxic room, the URS personnel were under the impression that conditions were fine, as reported by the control room. (Tr. 57-58). "They had no idea that that machine was not even sampling in that [toxic] room." (Tr. 58).

Regarding hazard assessment, "A" areas are designated areas where agent would be expected (i.e., the liquid incinerator room, the toxic room, the corridor outside of the toxic room and "A" air lock) (Tr. 58-59); "B" areas normally would not have agent present, but could be upgraded to a category "A" if necessary; and "C" areas were processing bay areas, where entrants could enter and exit freely, and which could also be upgraded to a category "B" area, the observation corridor, the monitoring rooms, the PAS room and the filter farm monitoring room as well. (Tr. 59).

Level A demilitarization protective equipment (DPE) suits with a self-contained breathing apparatus are worn in "A" areas. On January 20, 2012,² personnel again entered the toxic room to purge agent lines. That morning, the last employee to perform readings on the three-way valve was Dennis Griffin. Griffin challenged the station that was monitoring the toxic room and it was in control, but never switched the valve back to monitor the toxic room. (Tr. 60). Azelia discovered the error, and reported it to Sickler, who then documented the matter. (Tr. 61). CX-7, page 464, contains a Potential Missed Monitoring Report filled out by Sickler concerning the incident in the toxic monitoring room on January 20, 2012. (CX-7, p. 464; Tr. 62, 64).

Azelia then created a NRT daily operational log report when he challenged the machine. (CX-7, p. 466; Tr. 63). The monitoring station recorded was TEN 727L, and the agent tested for was Lewisite. (Tr. 63). Azelia put in a daily work packet,

² The transcript contains several conflicts regarding the date of the January 20, 2012 incident discussed. Counsel mistakenly refers to April 20, 2012 upon occasion, but it is clear that January 20, 2012 is the correct date regarding Dennis Griffin's valve mishap. See Tr. 55, 58, 60, & 64.

signed the document, and indicated the importance as "IDLH," immediate danger to life and health. (CX-7, p. 466; Tr. 64-65). Dennis Griffin had performed a challenge 12 hours earlier at approximately 06:38 am (Tr. 65, 67), and he filled out a similar operational report. (CX-7, p. 467; Tr. 65). Griffin's report shows the time he challenged the system, and that "[the valve] wasn't turned back." (Tr. 65). Azelia identified the calibration data sheet (CX-7, p. 468; Tr. 66); the strip chart which records the challenges (CX-7, p. 469; Tr. 66-67); and his notation of a RCRA violation since the station was clearly not in proper configuration to monitor the toxic room (CX-7, p. 473; Tr. 67-68).

URS self-reported the RCRA violation by letter. (CX-7, p. 422; Tr. 68). Azelia testified that this was the second time Dennis Griffin left the same valve misconfigured, the first time having no personnel entries into the toxic room. (Tr. 68-69). Azelia stated he thought the January 20, 2012 incident caused the root cause analysis to be implemented, which was the general consensus among other employees and some supervisors, as well. (Tr. 69).

On January 20, 2012 (sic), a work order was placed to remove the valve on Station 727L to convert it to a lower limit, from IDLH to VSL-vapor screening limit, and the machine was taken off line sometime in February. (Tr. 67, 73). While Azelia was working to remove the valve, he believed Sickler made a comment that they ought to frame the valve and give it to Dennis Griffin. According to Azelia, Supervisors Perkins and Tate, who were also present, laughed at Sickler's comment. (Tr. 74). Azelia had to pull the heat tape off the valve to get to the fittings. (Tr. 75). Azelia stated that he then placed the removed valve in the tox monitoring room container for solid hazardous waste. (Tr. 76-77).

Azelia returned to the location and continued calibrating the machine. After the "second shot [came] out . . . high," Azelia was forced to "start all over again," and he noticed "a bunch" of valves "sitting in [his] toolbox" from when he installed the cylinder sheds. Azelia "grabbed one of them," and thought, "[T]his would be funny to harass Dennis with." Azelia wrapped the valve in heat tape "because that's what it had looked like on the station." (Tr. 77). After finishing his calibration efforts, Azelia entered the processing bay and ran into Brett Doner, a monitoring foreman at Area Ten. (Tr. 77-78). Azelia testified that Brett Doner asked about the change out of the valve, and Azelia responded that he had a "little

present" for Dennis "to harass him." Doner did not respond. (Tr. 78).

Azelia returned to Igloo 1638, where the team lead desk and employee lockers are located, and he taped the old valve from his toolbox onto Dennis Griffin's locker with a sign that read "Squirrel's Nemesis." (Tr. 78).

Griffin's nickname was "Squirrel" because he was attacked by a squirrel in a hunting accident. Griffin never complained about the nickname of "Squirrel." Azelia stated that he was good friends with Griffin, and they went fishing together on several occasions. They have also boated and carpooled together. (Tr. 79). At one point, Griffin and Sickler lived together, and Azelia visited them to watch TV and barbeque. (Tr. 79-80).

After configuring the valve and sign above Griffin's locker, Azelia took a photo of the display with his cell phone and returned to his daily duties. He showed Shane Colledge the photo, but Colledge made no comment about it. CX-27, p. 63 is the photo he took and it fairly and accurately represents the sign and valve he placed on Griffin's locker. (CX-27, p. 63; Tr. 81-82). He did not take any other photos. (Tr. 83). Azelia asked Brian Kimber, a team lead, if he had seen what Azelia had put on Griffin's locker; Kimber went to see the valve and sign and shook his head. (Tr. 81-82). Azelia testified that the valve he placed on Griffin's locker had not been in use at the facility. He was never asked if the valve on the locker was the actual valve he had removed from Station 727L. (Tr. 83). Azelia provided a statement which indicated he placed the valve and sign on Griffin's locker on Tuesday morning, March 12, 2012. (Tr. 84; CX-13, p. 355). Sickler asked him to remove the valve and sign on Wednesday morning, March 13, 2012 at 7:00 am, since he thought it was inappropriate. (Tr. 84, 86). Azelia removed the valve and sign and placed it on a table for a day, but put it back up again when he left in the afternoon. (Tr. 86-87). He does not recall if anyone else was there at the time he replaced the valve and sign. Azelia was off work from Wednesday afternoon until Friday evening. (Tr. 87).

On Friday morning around 10:00 am, Sickler telephoned Azelia to inform him that Ty Tate reported Griffin was upset because there was a valve and a noose on his locker. Tate sent a photo of the noose to Sickler and wanted statements from Sickler and Azelia. Azelia testified that he did not place the noose on Griffin's locker. (Tr. 88).

Azelia stated that the noose had been in the Igloo for a few weeks before he placed the valve and sign on Griffin's locker. (Tr. 88-89). The noose had even been circulating around the igloo during a management meeting a month prior where Randy Roten, Ty Tate, and Shane Perkins were present. Azelia could not remember if Reza Karimi, Randy Roten's supervisor who was in charge of site "monitoring and analytical," was present or not. (Tr. 88-90).

Sickler requested that Azelia write a statement. (Tr. 90). Azelia typed up a report on the team lead's computer and emailed it to Ty Tate on Friday, March 16, 2012. (Tr. 91). In his statement, Azelia indicated that the valve used in the prank was "a new three-way valve". (Tr. 92).

Azelia recalled a conversation he had with Griffin after the valve incident. Griffin said that he thought the taped valve "was funny" and that he "actually chuckled at that," but the noose, however, "bothered" and "upset" him. Azelia told Griffin he had put up the valve and sign, but he did not know who put the noose on his locker. Griffin told Azelia he heard Azelia was responsible for both. (Tr. 93). On March 16, 2012, when Azelia returned to complete a night shift, the noose was hanging on Alden Johnson's locker. (Tr. 93-94). Sickler then threw the noose in the trash saying, "What is it still doing here[?]" (Tr. 94).

Nine or ten days later, Azelia was called to a meeting with Randy Roten and Maria (last name unknown) in Maria's office. (Tr. 94). They went over his statement for about ten minutes. Roten did not tell him he would be disciplined, and other employees knew about the incident. Azelia said "it was rampant conversation" that "wasn't a secret." (Tr. 95).

On the morning of April 10, 2012, Azelia was in the filter farm monitoring room changing DAAMS tubes when he heard an ACAMS alarm go off in the "C" area. He went to the Tox monitoring room, where he observed Sickler on the phone with the control room. (Tr. 96). Sickler was attempting to find out the level of the alarm. Cameron Dick, another team employee, was also present. (Tr. 97). Sickler pointed out that the sample line of the DAAMS, which is co-located with the ACAMS, was disconnected from the back of the manifold and was not sampling the corridor where the alarmed sounded. It was determined the observation corridor was the location where the alarm went off. When alarms go off, there is a possibility that agent may be in the area.

On this occasion, Casey Youngbird and Terry Jacobs were present in that corridor without any protective gear or breathing protection. (Tr. 98).

Azelia identified CX-10 as a 729K alarm email from Karsten Hansen, who is an URS environmental representative for ATLIC. (Tr. 100). In the email, Hansen stated that he considered evidence of retention times, but Azelia testified that this was an impossibility because Sickler was not at the scene in time to collect the retention time. The ACAMS cycles do not hold data or memory and will continue to cycle. (CX-10, p. 657; Tr. 103-104). Hansen's email also indicated that he received results of monitoring downstream, which Azelia stated was a fabrication because the only station that was downstream monitoring was monitoring at a higher concentration level of agent, ECL rather than VSL; thus, anything that would have come through the corridor would not have even registered. (Tr. 104).

Also included was a Condition Report (CR) prepared by Ty Tate. Azelia testified that team leads usually submit CRs, and that on April 10, 2012, Sickler should have submitted it. (Tr. 107; CX-10, p. 652). The submitted CR reported the incident at a "3" or "low priority" level. There was a failure code, which indicated that there was a "mechanical issue." Azelia testified that there was, in fact, no mechanical issue; the issue was "human-caused" because someone had disconnected the sample line from the back of the DAAMS manifold. (Tr. 108). Azelia stated that from his experience working with Respondent from 2009 to his termination, there had never been a mechanical error causing the disconnection of a DAAMS tube. Azelia felt that the report should have been a human-error noncompliance, which would have been a violation of the RCRA permit, because it was an improperly configured monitoring station. (Tr. 109). Further, because the DAAMS were disconnected, there was no way to confirm or deny if the alarm was an actual agent alarm. (Tr. 109-110). Azelia testified that employees are instructed to assume the worst—an agent release—when there is neither a confirmation nor a denial. (Tr. 110).

Supervisors Perkins and Tate arrived at the station. Perkins looked at the strip chart and said, "Ah, that's not agent, that's not agent." Azelia recalled thinking to himself that there was no way to know if it was or not. Tate instructed Sickler to reconnect the sample line. He wanted to "flow [the] tubes for five to ten minutes," and then take them off and "send them to the lab." (Tr. 110). Sickler questioned this plan, stating that it would validate nothing: the tubes were not

connected when the alarm sounded. Azelia was surprised by the comments Perkins made. (Tr. 111).

Azelia read the notations on the chart, recorded by Sickler, which indicated there was no retention time for the 1.22 GA alarm. (CX-10, p. 657; Tr. 111). Thus, Azelia agreed that Karsten's email stating there was a retention time was untrue. (Tr. 112). On another log report, Sickler indicated that at 7:04 am, he "[n]oticed sample line disconnected from manifold, immediately connected sample line to manifold." (CX-10, p. 661; Tr. 112).

The actual ACAMS trend report showed that the 1.22 alarm occurred at 6:57:42 am. (CX-10, p. 664; Tr. 113). Sickler indicated in his log that he did not arrive on the scene until 7:04 am. (CX-10, p. 661; Tr. 113). Accordingly, there would have been no way for the lines to have been reconnected during the cycle. Additionally, Azelia stated that ACAMS did not hold cycles in memory. (Tr. 113). The nature of the NRT (Near Real Time) is that it runs off of a 300-second cycle; thus, when the machine alarmed, the result read would have been from the previous five minutes of the cycle. (Tr. 113-114). Azelia stated, "There's no way you could hook it up in the same cycle that caused the alarm." Consequently, when Sickler arrived at 7:04 am to make his report, the reading for the NRT monitor registered as "zero" on the next cycle after the alarm at 7:02:42. (Tr. 114; CX-10, p. 664).

After the April 10, 2012 incident, Azelia continued to work for Battelle, and he was called to Randy Roten's office on that same day around 9:00 am. Amanda Price, a corporate HR representative for Battelle, was also present by telephone. (Tr. 116). The subject matter of the meeting was a "broad scope discussion," and Azelia was asked nearly 60 questions. Azelia was also asked about the Dennis Griffin locker incident. (Tr. 117). At one point, Azelia was asked if he had placed the noose on the locker, which he denied, and why he had taped the valve to the locker, to which Azelia stated he was joking and thought it would be funny. The meeting lasted about two hours. (Tr. 117-118). Other Battelle employees were also interviewed that day, but Azelia had no other meetings with management before he was suspended. (Tr. 118).

On April 19, 2012, Azelia reported for his 5:30 am shift. Tate met him at the security gate. Azelia was told by security to pull over, and his car was searched. His security badge was taken. (Tr. 119). Azelia was instructed to "go up Stark Road

to the trailer for a meeting." Roten, Price, and Tate were present, but Azelia could not remember if Reza also attended. Dr. Matravers, the TOCDF's physician, was present. Roten told Azelia he was being suspended without pay pending termination because they "believed" he falsified a statement. Dr. Matravers had him sign a medical release form, and he left. (Tr. 120). Glen Sickler was also suspended on April 19, 2012. (Tr. 121).

Azelia filed for unemployment compensation and received compensation after a hearing in which Respondent participated. Roughly 25 or 26 days after Azelia's suspension, he filed an OSHA complaint alleging retaliation, which was filed before his compensation hearing. (Tr. 121-123). On July 2, 2012, Azelia was terminated from Respondent because he placed a "hazardous" valve and a noose on Griffin's locker. (CX-43; Tr. 122). Azelia stated the termination made him "an emotional and mental wreck for a month or two." The termination has been hard on him, causing him to avoid interactions and stay home. (Tr. 123). Azelia testified that he has been detached from his wife and children, and that he is unable to take care of them. (Tr. 123-124).

Around July 15 or 16, 2012, Azelia went to work for AAI Corp. Following that, he worked as a site technician for McDean, a contractor for NSA, from April 2013 to November 2013. He has since been unemployed. (Tr. 124). His tax returns for 2011 and 2012 were received as CX-87. (CX-87, p. 70; Tr. 124-125). His income from Respondent in 2011 was \$82,499.00, and his income from Respondent through the date of his suspension in April 2012 was \$29,767.00. (Tr. 125-126).

Before his termination from Respondent, Azelia stated that he was social and outgoing. He was "friends with everybody" and had no enemies at the ATLIC or Battelle. He now feels judged by Respondent's employees. (Tr. 126). On his days off, his family would go out to the movies, the aquarium, and the planetarium, and his daughters played soccer and softball. They can no longer play, however, because of the expense. (Tr. 126-127). Azelia sleeps a lot now, and he has gained 25 pounds. He argues with his wife and their sexual relationship has suffered and continues to suffer. Sometimes, his wife sleeps at her father's house to escape the fighting, and when she does sleep at home, Azelia will sleep on the couch. In addition, he snaps at his daughters, and his credit "went to crap." (Tr. 127-128).

Azelia's confidence level has been affected because he was the primary earner for his family. (Tr. 128-129). He missed

his wife's graduation from college on April 24 or 25, 2012, because he had to meet with an attorney to discuss his unemployment issues. (Tr. 129-130). Azelia's wife had worked part-time as a medical assistant, earning \$300 every other week. Because of this minimal income, the couple had to borrow money from his wife's grandmother. (Tr. 130). Before, Azelia handled conflicts with his daughters by "sit[ting] down and talk[ing] about it," but now he argues with them frequently, and they resent him because he cannot afford to keep them in sports. (Tr. 131-132).

Azelia testified that there was no hostile or intimidating work environment at Respondent's work site. (Tr. 132). His assigned team helped each other, if anyone had an issue. Employees socialized outside of work, and horseplay at work was common. (Tr. 133). Azelia recalled that in 2005 through 2010, a picture of a "heavysset", "special needs" child was placed on his locker multiple times. The child was wearing a shirt that said, "I fuck on the first date." (Tr. 134). The picture remained on his locker for three or four days. (Tr. 135). On another occasion, Azelia gained the nickname "PAS 702" because he had made a monitoring error on the PAS 702 while he was at TOCDF in 2006 or 2007. (Tr. 135-136).

In 2008, a photo of Azelia's face was superimposed on male anatomy as a practical joke. His colleagues teased and joked about it. (Tr. 136). Other employees had similar pictures of their faces superimposed on male genitalia, which were placed on their lockers. Specifically, Azelia recalls seeing such pictures on the lockers of Ron Emphy and Paul Vigil in 2008, who were monitoring techs, as well. (Tr. 137).

Azelia had several nicknames such as "PAS 702", "Mugsy," "Clitoris," and "Bobble Head." Joking events happened daily, and the nicknames were used when supervisors and management were present. (Tr. 138). Randy Roten did not participate in such jokes, but Azelia's supervisor at TOCDF, Mike Medina, participated in the name calling. (Tr. 138-139). In 2011 or 2012 at the ATLIC, Azelia's tool box was decorated with rainbows and ponies, implying that he was homosexual. (Tr. 139). At one point, Dennis Griffin's locker was covered with a picture of a squirrel holding male genitalia, which read "Squirrel Nut." The picture reappeared on Griffin's locker several times, and Griffin never complained about the image. "Squirrel" was Griffin's nickname. Bruce Vario had "Bruce Bruce" slapped all over his locker with some drawings of "homosexual innuendo." (Tr. 140). Azelia again confirmed that management would come

into the Igloo and observe the displays. (Tr. 140). Roten would come into the Igloo usually once a week, Ty Tate and Shane Perkins almost every morning. (Tr. 141).

Azelia testified that upon occasion, he witnessed some threatening and intimidating behavior. Specifically, during the construction of the ATLIC, he witnessed Cameron Dick and Burt Beacham "bump[] shoulders" and "[get] in each other's faces." Sickler stepped in and separated them. Neither employee was disciplined to his knowledge. (Tr. 141). In another incident, in 2011-2012, Heath Fackrell, a monitoring foreman, threatened employees, such as Kevin Kimber and Brian Kimber, because they were not doing their job well enough, and he stated he would "kick their asses" and "hurt them." Specifically, Fackrell told Kevin Kimber he would "take [him] out back and kick [his] fucking ass." (Tr. 141-142). He never saw Fackrell physically touch any employee. (Tr. 143). Ole Wilson, an individual of Indian heritage, was harassed by Ty Tate, Brandon Snell, and Rich Shawstead. (Tr. 145-146). Wilson called the police at one point because they showed up at his house, "threatening to kick his ass over him talking to HR at work." They also pulled his hair and made "Indian sounds". Wilson spent a year off of work with pay, and Azelia was not sure what Battelle did. Joking was ongoing and occurred daily, according to Azelia. (Tr. 146).

On cross-examination, Azelia testified that he felt part of why Battelle fired him was because he questioned Ty Tate's actions on April 10 of "hooking a sample line to take a sample of something that didn't make a difference." Azelia also felt that he was fired because he found a three-way valve in the wrong configuration on January 20. (Tr. 147-148). Azelia stated he was doing his job pursuant to Respondent's practices and procedures when he found the mistake on January 20, 2012. This was not the first mistake he had found, and he called Sickler according to procedure. He also thinks Sickler made all the reports necessary to management about the valve mistake which was his job. (Tr. 149-150).

Azelia was presented with RX-60, and he was instructed to turn to the NRT Daily Operational Log for January 20, 2012. Azelia confirmed that this document was not a report of an incident; instead, it was a routine procedural recording of the challenging of an instrument which he signed at the bottom. (RX-60, pp. 113, 118; Tr. 152-153). Azelia was then instructed to turn to page 140 of RX-60. He stated he was not involved in the January 23, 2012 incident. (RX-60, p. 140; Tr. 153). Azelia confirmed that page 142 of the exhibit was a Missed

Monitoring Report. (RX-40, p. 142; Tr. 153). As the exhibit showed, Burt Beacham sent an email to the State, along with his log entry and the Potential Missed Monitoring Report. (RX-60, p. 144; Tr. 154). Azelia admitted he never sent an email himself, had no input in the Root Cause Analysis investigation, and was not interviewed. Azelia stated he was not aware of anyone attempting to suppress the January 20 incident or telling Sickler how it should be reported. (Tr. 155).

Azelia testified that Randy Roten or Respondent wanted to retaliate against him because he found the mistake on January 20, 2012. He stated he was not claiming that Roten or Respondent wanted him to ignore and just disregard the valve which was in the wrong configuration. (Tr. 155).

Azelia identified CX-20 as a set of interview questions he was asked on April 10, 2012, with Mandy Price and Randy Roten. (CX-20; Tr. 156). He stated he did not agree with the statement at page 10, paragraph 37 of RX-20 regarding Battelle's policy of treating safety procedures like the "Bible." (CX-20, p. 10; Tr. 156-157). Azelia clarified his testimony by saying he agreed with the importance of safety procedures and the need to follow them, but he did not agree that management found procedure important or applied it consistently. (Tr. 157). Azelia stated that an example of management's inconsistencies was on April 10, 2012 when Tate, instead of Sickler, reported the incident, and Sickler did not catch the retention time of the machine. (Tr. 158). He further stated no one was downplaying the January 20, 2012 incident with Griffin and the misconfigured valve. (Tr. 158-159). On December 25, 2011, Cameron Dick found a similar problem with a valve mistake by Griffin. Azelia stated he was not aware of anybody suggesting that the information be kept from anyone concerning the incident, and that no one responded negatively to the report. (Tr. 159-160). Dick continued to be employed until April 2013, and was later reduced-in-force, but not fired, due to the plant closure. Azelia stated he was aware of eight other incidents that were involved in the Root Cause Analysis, but that he was not involved in them. (Tr. 160).

RX-49 is the Root Cause Analysis dated February 16, 2012, conducted on nine incidents, two of which were after the January 20, 2012 incident. (RX-49; Tr. 161-162). Battelle was the contractor for URS. (Tr. 161). Two incidents were involved in the Root Cause Analysis, dated after the January 20, 2012 incident in which that Azelia was involved. (Tr. 162). Azelia believed that URS requested the Root Cause Analysis, and he was not aware of anyone being disciplined for bringing up any issue

leading to the Root Cause Analysis. (Tr. 162-163). Azelia further testified he knew of no information about management trying to suppress any of the Root Cause Analysis incidents. (Tr. 163).

He acknowledged it would be wrong to put a valve from Station 727 through which waste had flowed on a locker. He put a new valve and new tape on the locker. (Tr. 163-164). Azelia took a picture of the locker because he "thought it was funny." He did not see a noose on the locker on the Wednesday morning after constructing the display on the locker on Tuesday. (RX-19, p. 1; Tr. 164). Azelia further stated he never saw the noose on the locker. (Tr. 165). He took the sign and valve down on Wednesday morning around 830-900 am, since Sickler told him it was "inappropriate." (Tr. 165-166). He put the sign and valve back on the locker after the management meeting which was held about noon. (Tr. 166). Azelia stated that he did not recall ever thinking the incident was "harassment," and that it was merely a joke. He did not recall admitting the locker incident was harassment. He recalled during a past Christmas when a Christmas tree was brought in and decorated with pieces of station monitoring equipment, namely valves, fittings, and gloves. (Tr. 167). He also recalled employees sliding V to G pads in co-workers gloves. (Tr. 168).

On April 10, 2012, Azelia was interviewed about the incident. Sickler was interviewed directly after him, and had plenty of time to fill out his own incident report, according to Azelia. As such, he does not know why Tate filled out the paperwork about the event. Azelia was confident that the April 10, 2012 incident was an agent alarm. (Tr. 168). In his deposition taken on April 3, 2013, at page 102, Azelia testified he had no evidence to think the alarm was an agent alarm, other than speculation. Azelia pointed out that at the time of his deposition, he had not looked at the strip chart, nor had he seen the letters from Ty Tate and Karsten Hansen to the State. (Tr. 169). With what he knows now, it was still Azelia's impression that the April 10, 2012 incident was "blatant[ly]" suppressed. (Tr. 170).

RX-59, page 10, notes that Sickler made an entry stating, "Noticed sample line disconnected from manifold, immediately connected sample line to manifold." (RX-59, p. 10; Tr. 170). Azelia thought that Tate wanted Sickler to reconnect the line. (Tr. 170). The disagreement between Sickler and Tate instead centered around the running of the lines after reconnecting the tubes; Tate told Sickler to reconnect the lines, let the station

run for 10 minutes, then flow the tubes, and send them to the lab for analysis. Sickler questioned why they would send the tubes to the lab when they were not representative of the alarm. While the protocol was to flow the tubes and send them to the lab, this situation was different, according to Azelia, due to the fact that the machine was not in an ACAMS-DAAMS configuration because the sample line was disconnected. Finally, Azelia was not aware of anyone ever being told not to document a problem or issue. (Tr. 171). Azelia knew of no concealment of environmental or safety violations. (Tr. 171-172).

He affirmed that he did not think the teams worked in a hostile environment. (Tr. 172-173). No concerns were raised to management about items put on his locker in 2005, 2007 or 2008, and he did not report the incidents to management. (Tr. 173-174).

Azelia testified that he had panic attacks before his termination, but not depression. In his deposition, however, at page 153, Azelia states he saw a doctor about panic attacks and depression which started in 2010. (Tr. 174). He also acknowledged in his deposition at page 189 that pressure at Battelle was giving him depression. Since his termination, he no longer has panic attacks. He was not aware of any health issues related to his termination. (Tr. 175). Azelia was making \$82,000.00 annually at Battelle. (Tr. 176).

Azelia stated he engaged in a limited job search because he wanted to stay in Tooele, Utah. He knew Respondent's plant was going to close in the future, but he thought it would be in 2014 or 2015. (Tr. 176). Azelia has not kept in touch with any of his co-workers at the ATLIC and was not aware that they are all gone. His largest problems at the time of his deposition were financial problems, mental problems, and family problems. Had Azelia worked through the closing of the plant, he would have applied to be relocated to Kentucky with Respondent to do similar work after his children graduated. (Tr. 177).

On re-direct examination, Azelia testified that he thinks Respondent was trying to conceal the April 10, 2012 incident. He also believes that Respondent misrepresented the circumstances of the incident. (Tr. 178). The January 20, 2012 incident put people at risk and was different from the eight other root cause violations because there was no monitoring whatsoever while entrants were in the hazardous area. RX-49 is the Root Cause Analysis. (Tr. 179). The analysis showed the

January 20, 2012 incident that Azelia reported was the only RCRA permit violation contained in the report. (RX-49, p. 9; Tr. 179). It was Azelia's opinion that the April 10, 2012 incident was also a RCRA violation because the DAAMS line was disconnected. (Tr. 180). Azelia testified that Perkins's assertion that "it was not agent" was the beginning of downplaying the violation because Battelle did not want to report a potential release to anybody. (Tr. 180-181).

Azelia noted the difference between the pictures he took of Griffin's locker and the pictures that Respondent submitted of the locker as exhibits was in the placement of the "Squirrel's Nemesis" sign in relation to the four diamonds underneath the vents of the locker, the position of the actual valve and the position of the lock on the locker. (CX-27; RX-19; Tr. 181-183). He stated that he never saw the noose placed on Griffin's locker at any point. (Tr. 183).

Azelia testified he intended to apply with URS in Kentucky at the conclusion of the Respondent's operation before he was terminated. (Tr. 184). Azelia reported that his depression worsened after his termination. (Tr. 184).

On re-cross examination, Azelia affirmed that the only time he took a picture of Griffin's locker was at the time he placed the valve and sign on it. He then stated he took down the display before the management meeting, and took another picture after replacing the display after the meeting contrary to his earlier testimony. (Tr. 185, 83). After realizing the discrepancy in his testimony, Azelia relied on the time and date notated on the picture to confirm when he took it which was at 3:22pm on January 13, 2012. (Tr. 186). Finally, Azelia agreed that his mood and relationship with his wife was improving since his termination. (Tr. 187).

Chanda Day

Mrs. Day testified that she has been married to Clint Azelia for 6-7 years. They have twin daughters, who are 15 years of age. They live in Tooele, Utah. (Tr. 189). Before his termination, Azelia was outgoing, happy, and social. He loved his job and his friends at Battelle. He was "great with our kids." Day also had friends and family working at Battelle. Day testified that Azelia enjoyed his job because he "learned" while working there and "was good at math." (Tr. 190). The couple's marriage was good before Azelia's termination. They were best friends, talked frequently, and had good intimacy.

(Tr. 191-192). They had no problems before his termination. They did not separate or consider divorce. Complainant Azelia was good with his daughters and played with and coached them in softball and enjoyed golfing, hiking, boating, and barbequing. (Tr. 192-193).

She learned of Azelia's suspension on April 19, 2012, the day before her graduation from Weber State Nursing School. Day had previously worked part time to be home with the children. Azelia was the "bread winner." (Tr. 193).

After his termination, Azelia and Day did not communicate well. He started going down to the basement and "sleeping a lot." Day thought he seemed depressed and reported that he gained 20 to 30 pounds. He began ignoring their daughters and not participating in their sporting activities. He also dropped hobbies that he had previously enjoyed. (Tr. 194). After the official termination, Azelia completely secluded himself in the basement, and Day spoke to an attorney about divorce because "[i]t wasn't the guy I married." The couple fought and stressed about finances. Intimacy was no longer a part of their relationship. (Tr. 195).

The couple is working on their relationship, and they are regaining their intimacy gradually. Azelia is more cautious and questioning than before his termination. He asks for reassurance frequently because his confidence is shaken. (Tr. 196). Azelia's relationship with his daughters has slightly improved, and they are "doing better." Day hopes that Azelia improves further. (Tr. 197).

When asked to describe their financial troubles, Day revealed that the couple almost lost their home. They borrowed money from her dad and grandmother for gas and groceries. While one daughter has had braces, they could not afford to finance orthodontics for the other daughter. (Tr. 197). In one instance, Day took her daughter to the dentist the week after Azelia was suspended. Azelia's insurance thereafter retroactively terminated, and the appointment was not covered. Collection agencies came after Day and Azelia for payment of the appointment. Azelia was applying for other jobs. (Tr. 198).

Jennifer Liebert

Ms. Liebert is Glen Sickler's fiancée. They began dating in October 2011. She had her own home before Sickler's termination, and he moved in with her after he was fired. (Tr.

200). Liebert was attracted to how good of a father Sickler was to his young daughter as a single Dad. Sickler was very job-oriented and prioritized his work and his daughter. (Tr. 201). He was very knowledgeable about his job, and he never complained about his job or people he worked with. (Tr. 202).

Sickler would ride his motorcycle, go boating, and offered to help others. He and Liebert had a healthy relationship and communication was good. (Tr. 203). Sickler told her that there was an investigation ensuing at work, but he "didn't seem concerned" because "it wasn't him that did it [the locker prank]." The day Sickler learned of his termination (sic), he called Liebert on the way home from work. He was "freaking out," "his words were stumbled[,] and he was crying. (Tr. 204). Liebert testified that Sickler thought "something like that would never happen." Besides not wanting to lose his job, Sickler did not want to lose his daughter back to her mother. (Tr. 205).

After his official termination, Sickler "just kind of climbed up into a shell." (Tr. 205-206). Once he had moved in with Liebert, Sickler secluded himself to the bedroom, filling out job applications online and watching TV in bed. Sickler started taking less interest in his daughter and avoiding people. (Tr. 206).

Sickler has remained introverted, and the couple decided to move away from the area. Their intimate relationship has suffered. (Tr. 207). Sickler "became consumed with what had happened" and felt betrayed by Respondent. Sickler was not able to contribute to household expenses. The couple talked about seeking help from a therapist for Sickler's troubles, but the cost was expensive, and Sickler did not want to admit that he was "breaking down." (Tr. 208). Sickler was angry, combative, and withdrawn. The couple stopped interacting with others and going on date nights. (Tr. 209).

Sickler still struggles. (Tr. 209). He no longer goes to the gym, and he has gained weight. Liebert feels like he is still depressed. (Tr. 210).

On cross-examination, Ms. Liebert testified that Sickler got a welding job, which involved learning a new skillset. (Tr. 210-211). Sickler was motivated to change his financial situation, but was not happy doing the new job. As far as his relationships are concerned, Sickler remains disconnected, from Liebert and his daughter. After paying for some of his personal

obligations, Sickler was still unable to contribute to the household and filed for bankruptcy. (Tr. 212).

Glen C. Sickler

Sickler testified at the formal hearing and was deposed by the parties. Sickler began employment with Respondent in February 1999 as a tech I at the TOCDF plant at Tooele Chemical Demilitarization Facility in Tooele County. (Tr. 213). He pulled DAAMS tubes, pulled hazardous waste samples and changed gas cylinders. Sickler explained that DAAMS tubes are a confirmation method for ACAMS, and they gathered air samples for the lab. (Tr. 214). ACAMS, Automatic Continuous Air Monitoring System, was a NRT, Near Real Time, monitor, which monitors the air and analyzes samples. (Tr. 214-215). The first chemical he worked with at the beginning of his employment with Respondent was GB, a chemical nerve agent that blocked nerve communication. (Tr. 215). He served as a tech I for two years. (Tr. 216).

Sickler applied for a tech II position and served for four years as a tech II. His supervisor was Randy Roten. (Tr. 216). In 2003 or 2004, Sickler became a foreman in the Pollution Abatement System (PAS), where his supervisor was Mike Medina. (Tr. 216-217). Sickler supervised three other tech IIs for three to four years as a PAS foreman. (Tr. 217-218).

Sickler identified CX-38 as his annual evaluation for October 2006 to September 2007 for the position of demil tech III or PAS foreman where he was evaluated as "achiev[ing] expectations of [his] employer." (CX-38, pp. 87-88; Tr. 218-220). In 2008, Sickler was a demil tech three and evaluated as "exceeded or achieved expectations" by his manager, Shane Perkins. (CX-37, pp. 89-90; Tr. 221-223). In 2009, he again received an "A" rating as achieving expectations as a demil tech III. (CX-37, pp. 91-92; Tr. 222-223). In 2010, Sickler was evaluated as a demil lead over four subordinates by supervisor Shane Perkins and thinks his rating was "superb." (CX-37, pp. 93-97; Tr. 225). On October 3, 2011, Shane Perkins nominated Sickler for an Outstanding Performance Award. (CX-39, pp. 508-509).

Sickler testified he has never been disciplined or received any verbal warnings. (Tr. 226). Sickler testified that he received CX-30, an email performance initiative, from Ryan Russell, for coming up with the idea to install fittings. (CX-30; Tr. 226-227). He also received an email from a senior research scientist, who had worked with Sickler in Jefferson,

Ohio to save a Battelle contractor a large amount of money. (CX-31; Tr. 228). Sickler was nominated for an outstanding performance award for his "fitting" idea. (CX-32; Tr. 228-229). Mike Medina and Ryan Russell had nominated him, and the award was given to Sickler for the fitting he designed and installed on DAAMS tubes to correct a back flow problem with the tubes. (Tr. 228-229). Sickler received yet another award for being the first to monitor Lewisite agent, and he was nominated by Supervisor Perkins. (CX-39; Tr. 229-230). Sickler received a letter from Reza Karimi, Ph.D, the TOCDF site Senior Manager, for his accomplishments in the ISO and VPP programs. (CX-58, p. 38; Tr. 231). Sickler also received three certificates or awards as demonstrated by CX-77. (CX-77; Tr. 233). Sickler's managers would issue the nominations for these awards, and they were approved and issued by Battelle. (Tr. 233). His annual evaluation for 2011 reveals he "achieved expectations" and "exceeded expectations." (CX-59; Tr. 234). In the comments of his evaluations, Sickler was noted to have been of "great value to the project and to Battelle." (Tr. 234). Sickler testified that he loved to "train people" for proper ACAMS procedure, and that he believed he was a valuable employee. (Tr. 235).

Sickler testified that he participated in the construction of the ATLIC facility for the destruction of GA and Lewisite agent from World War II. The building was bare and empty with no equipment and he was involved in setting up every station in the ATLIC which comprised numerous monitoring equipment, ACAMS, and/or mini-CAMS, DAAMS stations, sample pumps, exhaust lines, sample lines, heat trace and all the numerous fittings that go to the sampling systems and penetration ports. He, Kale Gilman and Steve Alder were the first to be hired to go down to the ATLIC. (Tr. 236-237). Sickler explained the process that Battelle took "to demil," or destroy, the agents. Only one agent at a time was processed. If GA agent was being processed, no Lewisite was on the site. The ton containers would be transported by flatbed truck, unloaded and put in the Processing Bay and thereafter put in the two airlocks. The ton containers would then be drained into tanks inside the Tox room. The agent would then be fed into the liquid incinerator where the agent would be vaporized into affluent gas which would travel to the exhaust stack into the atmosphere. (Tr. 238-239). To destroy these chemicals, Battelle needed certain permits as part of their Agent Monitoring Plan (AMP). The facility is controlled by a RCRA permit. (Tr. 239-240).

Sickler testified that his "big thing was to take care of the customer." Sickler indicated that his "customer" was URS

and his fellow employees. (Tr. 240). Sickler testified that he was very "pro vigilant," and that one of his biggest "pet peeves" was hazardous waste laying around. When he saw hazardous waste, either in plain sight or concealed in a desk, he would dispose of it and write notes to his managers. (Tr. 241).

In May 2011, Sickler sent an email to all ATLIC employees in addition to his manager, Shane Perkins, about hazardous waste found at the facility. The procedure required that hazardous waste be disposed of after an operation. (CX-29; Tr. 241). In practice, employees did not always follow Respondent's hazardous waste policies. Tackle boxes were used by employees to carry agent vials, syringes to challenge ACAMS, fittings and new V to G pads. After challenges, employees would take off their gloves which were now considered hazardous waste, V to G pads after their intended use were considered hazardous waste, as were Knox filters. These items would be stuffed in the tackle boxes and put in the employee's lockers. (Tr. 242). Raymond Harris was responsible for mishandling such hazardous waste by placing it in a white bag that he would "stuff [] in [his] desk" when he went home. (Tr. 243). Specifically, Sickler described PCTs, disposable V to G pads, and blue nitrile gloves, all of which are potentially agent-contaminated after use, not being properly disposed of. (Tr. 243-245). Approximately six days later, Perkins responded to the email stating, "Please [e]nsure waste is properly taken care of." (Tr. 245). Sickler was not aware of Respondent conducting an investigation following the email. (Tr. 245-246, 267). Raymond Harris was not written up or terminated for mishandling hazardous waste, but Sickler was vocal about his concerns. (Tr. 246). Prior to this email, Sickler had raised the issue of improperly disposed hazardous waste before with Shane Perkins who did not do anything. He had been very vocal on the safety concern. (Tr. 246).

In May 2011, Sickler questioned the integrity of samples and reported problems with the interferant trailer in an email about loose fittings and samples not being representative and also verbally to Perkins. (Tr. 247-248; CX-48). Perkins instructed Sickler to note it in the log book, but nothing was done otherwise. (CX-48; Tr. 248). Sickler also voiced a concern in 2011 about a ladder which employees had to climb with various equipment, reaching a height of about 20-30 feet. He reported the safety issue to Perkins and Veronica Riley, who did a walk-through of the site. Randy Roten eventually also received notice of the issue. The final solution was to place grip tape on the rungs of the ladder. Sickler felt like these

individuals where "shooing aside [his] concerns." Sickler said he had to "fight for . . . any type of concessions on safety." (Tr. 249-250).

On May 31, 2011, Sickler sent an email to supervisors and his manager, Shane Perkins, about an unacceptable amount of hazardous waste lying around. Sickler stated this is an issue which had happened numerous times. He found PCTs, V to G pads and blue nitrile gloves, all of which were used in challenging the ACAMS, and if there was an agent contamination risk, such items would be considered hazardous waste. (Tr. 262-266; CX-29). He had raised the issue about the gloves with Perkins in his office a couple of times. (Tr. 266-267). Perkins took no action in response to Sickler's concerns. On June 6, 2011, Perkins sent an email to employees to "ensure waste is properly taken care of." (Tr. 267).

On June 29, 2011, Sickler sent yet another email to Shane Perkins and Jason Hunt, a quality control employee, and Randy Roten. (CX-29; Tr. 268). Sickler expressed that after conducting his walk-throughs, he noticed no improvement in the disposal of V to G pads, PCTs, and nitrile gloves. (Tr. 269). Perkins responded, but no other actions or investigations were taken to address the concerns. (Tr. 270). Roten subsequently told Perkins that he thought the emails were not professional, and Perkins relayed that information to Sickler. (Tr. 270-271). Sickler understood this to mean that he should not be writing emails reporting hazardous waste, which he assumed apparently "wasn't a big concern." (Tr. 271-272).

Sickler recalled his monitoring duties as a supervisor on Team "D" in the ATLIC. (Tr. 272). His duties included making sure work was complete; completing alarm reports; completing Potential Missed Monitoring Reports; notifying URS Environment of any potential violations of RCRA permits; notifying the plant shift manager of any upset conditions in the monitoring systems; coordinating with plant shift managers on operation duties; reviewing lab operating procedures (LOPs) issued by Battelle Lab Management; and making sure that work order packets were complete. (Tr. 272-273). Sickler was also responsible for attendance of his subordinates; making sure their timecards were completed and turned in; and making sure that all challenges and DAAMS runs were completed. (Tr. 273).

Sickler had access to and read the Root Cause Analysis. (Tr. 273). Sickler understood that the analysis detailed ACAM sample lines being disconnected; silastic coming off tubes; a

human noncompliance of the RCRA permit on January 20, 2012, which he considered the "big one;" and "some other situations." Sickler admitted that Team "D" was involved in some of the violations reported in the Root Cause Analysis. Specifically, he and Azelia had reported some of the incidents. (Tr. 274).

Sickler recalled one specific incident from the Root Cause Analysis Report that occurred in the PAS monitoring room on November 16, 2011. (Tr. 275-276, 280; CX-3). According to the RCRA permit, there were supposed to be two ACAMS or mini-CAMS online at all times while monitoring the exhaust stack. One of Sickler's technicians on Team "D," Cameron Dick, injected one of the ACAMS that was online and monitoring at the time; he put agent into the device when he was not supposed to. (Tr. 276-277).

Sickler completed an ATLIC Monitoring Operation Shift Report, which was completed at the end of every shift. The report would be scanned and sent to Perkins and Roten and also placed in a binder for the oncoming shift leader. (CX-3, pp. 547-548; Tr. 277-278). The report detailed what happened during the shift, if there were any upset conditions, if any reports were completed, and if any cylinders were changed. (Tr. 278). The November 16, 2011 report noted that the number of bottles changed out by the team and all work completed on the work order. (Tr. 279-280). The report also indicated that all NRT challenges and DAAMS runs were completed and delivered to the "SAF." (Tr. 280). Finally, the report included information about an alarm on TEN 70 LBL. A Condition Report (CR) was completed and placed in the CR log. (CX-3, p. 633; Tr. 281-282). Sickler typically filled out the CR reports for his team. (Tr. 282). The CR report was not classified as a high or problematic issue because a back-up system was in place to validate the data; and the accident was a procedural violation, but not a RCRA violation. (Tr. 283).

CX-5 references a Potential Missed Monitoring Report of TEN 727L, which monitors the toxic room, a category "A" room where agent is expected. (CX-5; Tr. 284). On December 25, 2011, Cameron Dick, a tech II on Team D, found a nut that was off the station and was supposed to be connected to the 12-foot sample line, which prevented flow to that line. As a result, "the missed mini-CAMS would go into negative flow, that in turn, would cause a malfunction on the machine, which, in turn would signal the control center that something was wrong with the station." (Tr. 285). A malfunction alarm occurred, and it was

concluded that the valve should have been configured, according to the RCRA permit, to monitor the toxic room. (Tr. 285-286).

Sickler completed a Potential Missed Monitoring Report where he indicated that a "[t]echnician found [a] three-way ball valve in incorrect position, NRT was monitoring the Tox monitoring room, instead of Tox room." (Tr. 286). The incident was not deemed a major issue because there was no agent being processed that day. URS management also stated that no people were present in the Tox room, but Sickler disagreed with that assessment "[a] little bit." Sickler wanted to know what the readings were inside the rooms for contamination levels. (Tr. 287).

Dennis Griffin, a tech II, had caused this incident by not turning the nut to the proper configuration. (CX-5, p. 482; Tr. 288). Cameron Dick completed the NRT Daily Operational Log. (CX-5, p. 483; Tr. 288-289). The ACAMS log book, where any type of maintenance or upset condition is recorded, reflects the last entry by Dick stating that he found the three-way valve in the incorrect position. (CX-5, p. 485; Tr. 290). The strip chart, which reads out the ACAMS concentrations, did not produce any readings because it charted the valve while it was in the incorrect configuration. (Tr. 292). Sickler's understanding was that the event was not reported as a non-compliance with the RCRA permit. (CX-5, p. 491; Tr. 294).

On January 20, 2012, the Team "D" was working the night shift. (Tr. 295). Azelia went to the Tox monitoring room to check on station TEN 727L. Azelia called Sickler and told him he needed to come to the Tox room immediately. Sickler arrived and determined there was no upset condition on the ACAMS or malfunction alarm. The plug was not on the 12-foot sample line and the valve was sampling the monitoring room air, which was the same thing that happened on December 25, 2011; it was not the proper configuration. (Tr. 296). The difference this time was that agent was being processed in the Tox room, and two entrants had entered the Tox room in DPE suits to purge lines that had agent. (Tr. 296-298). The Tox room was not being monitored according to the RCRA permit. Sickler considered this a very serious issue which put people's lives in danger. (Tr. 298). Dennis Griffin failed to put the valve in the correct configuration again. (Tr. 298-299). Battelle put out a "user aid" which was taped to the top of the station to ensure correct configuration. (Tr. 299-300). Steve Adler was the team leader for Griffin, and he completed a work order for the challenge,

but Sickler did not know if the Station configuration was verified. (Tr. 301).

CX-7 is a self-report of the incident. The report identifies the incident as a Potential Missed Monitoring Report with a time frame from 06:38, when Griffin challenged the machine, to 19:00 hours when Azelia challenged it and put it on line, a period of time in excess of 12 hours, when the monitoring system would not have been doing what it was designed to do. (CX-7, p. 464; Tr. 302-304). Sickler verified the proper configuration of the Station in the last two entries of the log. (CX-7, p. 473; Tr. 304). The plant shift manager for URS when the accident was discovered, Christian VanDall, was upset about people going into the Tox room and Battelle not being able to properly monitor according to the permit. (Tr. 305). The January 20, 2012 incident was the most significant reported in the Root Cause Analysis since it was a RCRA violation. (Tr. 306-307). Dennis Griffin was given a written warning for the incident. (CX-7, p. 650).

CX-11 represents Root Cause Analysis events in a timeline, with the January 20, 2012 incident reported as the only RCRA violation. (CX-11, pp. 378-379; Tr. 307). Sickler testified that team leaders met and discussed the Root Cause Analysis and how to move forward. Sickler stated he never discussed the Root Cause Analysis with or joked with Dennis Griffin about the events of January 20, 2012. (Tr. 208).

Sickler testified that the Root Cause Analysis concluded the January 20, 2012 event was a result of management's failure to "implement an effective management structure at the ATLIC." The Root Cause Analysis stated that management's failure was common to all nine reported events. (Tr. 309). Sickler did not discuss any of the Root Cause Analysis issues with Randy Roten. (Tr. 309-310). He went over supervisory issues with Perkins, such as use of cell phones, but did not discuss implementing an effective management structure with Perkins or Ty Tate. (Tr. 310).

The Root Cause Analysis Report issued on February 16, 2012. Sickler was involved in the reporting of two other events that occurred at the ATLIC following the issuance of the Root Cause Analysis. In one event, Sickler found a sample line disconnected from NRT 730 AL, but it still had the DAAMS monitor in it, so it was not as significant an event. (Tr. 311). There was still a system in place that was monitoring toxic levels. (Tr. 312).

On April 10, 2012, Sickler was in either the control room or the igloo when an agent monitor went off. He called the control room for the location of the alarm. He went to the Tox monitoring room Station 729K, where the alarm was sounding. The station monitors a corridor with a "quarter half inch teflon sample line;" one for NRT and one for DAAMS tubes. (Tr. 312-313). When he arrived, Kevin Kimber was in the room. Sickler then silenced the audible alarm. (Tr. 313). The ACAMS had cleared only one cycle; Sickler wrote on the strip sheet, "Did not catch retention time or full width half mass." (Tr. 314).

Azelia arrived shortly after as his back-up. Sickler noticed that on a three-way T, the sample line was disconnected from the T. (Tr. 314). Because of this misconfiguration, there was no way to confirm or deny agent was present through the DAAMS system. Instead, the ACAMS alarmed because it became the primary monitor, and it detected agent. When the ACAMS alarms, "you have to assume the worst, and call it an agent alarm." Three other people entered the Tox monitoring room: Ty Tate, Bryan Stewart and Shane Perkins. (Tr. 315). After looking at the log books and strip chart, Perkins announced, "It's not agent. It's not agent." Sickler questioned Perkins and asked, "How can you tell? We don't have DAAMS tubes." (Tr. 316).

CX-10 is the strip chart which reveals nothing to show there was no agent release. (CX-10, p. 657; Tr. 316-317). Additionally, the log book does not contain anything to confirm there was no agent release. (CX-10, pp. 660-661; Tr. 317). Sickler reconnected the sample line. Tate asked when Sickler reconnected the sample line and directed they run it for ten minutes and send it to the lab. Sickler expressed disagreement and questioned the validity of that sample. (Tr. 317). He thought Analytical Management needed to get involved to discuss how to run the tubes. (Tr. 318). Tate directed that the DAAMS tubes be taken down and sent to the SAF lab and run as a single confirmation method. (Tr. 319).

Sickler believed that the situation should have been handled differently. His professional opinion was that the sample would be invalid and a different calibration and method should have been used. (Tr. 320-321). If Tate had not been there, Sickler would have made the decision and would have called the Battelle Quality Control and Analytical Branch. (Tr. 320). Two Battelle employees, Casey Youngbird and Terry Jacobs, were in the observation corridor changing Lewisite DAAMS tubes at the time of the alarm. (Tr. 322).

CX-10 contains an email from Karsten Hansen about the April 10, 2012 event, which states that there was not an agent alarm; that there was no potential sources for agent since there were no ton containers on site; that there was no monitoring downstream indicating an agent release; that there were only partial results from the co-located DAAMS; and that the retention time was only a tool to use and had not been retained. (CX-10, p. 426; Tr. 323-332). Sickler disagreed with these conclusions. (Tr. 323-332).

CX-10 also contains a strip chart, which includes a notation by Sickler stating, "1.22 GA alarm. Did not catch retention time or the full width half mass." (CX-10, p. 657; Tr. 332-333). The logbook indicates on April 10, 2012, at 7:04 am, it was noticed that the sample line was disconnected from the manifold and Sickler immediately connected the sample line to the manifold. (CX-10, p. 661; Tr. 334). The ACAMS trend report is also included in CX-10. (CX-10, pp. 662-664; Tr. 335). At 6:57 am, the alarm went off with a 1.22 reading; Sickler arrived at the station at 7:04am. (Tr. 335-336). It would have been impossible for Sickler to reconnect the DAAMS tubes during that time because he was not present during the alarm. In addition, GA runs for 300 seconds or five minutes, which had occurred before his arrival, concluding a full cycle. (Tr. 336).

Sickler was suspended on April 19, 2012, nine days after the incident. (Tr. 336). Sickler testified that the April 10, 2012 alarm incident should have been reported as a RCRA violation because people were present in the observation corridor; no monitoring of an agent was taking place; and there was no confirmation of the absence of agent. (Tr. 337). Sickler reported his concerns to Ty Tate, and there was no medical evaluation of the two employees or the two entrants into the tox area. (Tr. 338-339).

When Sickler arrived at work on April 19, 2012, he was stopped by Ty Tate, Dean Williams (the Chemical Agency Munitions Disposal System (CAMDS) Monitoring Manager), and the head of DCD Security. (Tr. 339). After searching his car and person at the request of Williams, Sickler was driven to a conference room on Stark Road where Dr. Matravers (head physician for URS), Dean Williams, and Randy Roten were present. Amanda Price (Human Resources) participated via telephone. (Tr. 340). Around 6:00 am, it was decided that Sickler would be put on suspension, pending management approval for termination. Sickler stated he

got upset and felt betrayed. (Tr. 341). He stated he was going to seek counsel and thought Respondent's actions were retaliation for a prior law suit against Battelle for unpaid wages. (Tr. 342). Roten mentioned Sickler had made an untruthful statement and had not lived up to Battelle's vision and values as reasons for his suspension. Sickler testified that he never received any discipline of any type as an employee of Battelle prior to this incident. (Tr. 343). He did not receive written confirmation of his suspension until July 2, 2014, when he was officially terminated. (Tr. 344).

Sickler recalled that "March 13, 2012, a Tuesday," was the date that the sign and valve were placed on Griffin's locker. (Tr. 344). Sickler was doing a temporary change, converting a Station, which started on Monday night. He tasked Azelia with the removal of equipment and conversion of Station 727L from ECL to VCL. (Tr. 345-347). This was the same station where the equipment was not properly configured twice by Griffin in the past. (Tr. 347). Sickler had not seen Azelia dispose of the valve he had removed from the 727L, and per the temp change, a new valve was not required to be put on the station. (Tr. 348).

On March 14, 2012, a Wednesday, between 10:00 am and 11:00 am, Azelia told Sickler, "Look what I did to Dennis's locker." (Tr. 348). CX-27 is a photo of the locker, which resembled what Sickler saw that morning. (CX-27, p. 63; Tr. 348-349). Sickler testified he shook his head in disbelief and told Azelia to take down the sign and valve because it was not appropriate for the work place. Sickler testified he was busy with end of shift reports and turnover to the next shift and did not see the sign and valve back up again. (Tr. 349).

On March 16, 2012, a Friday, Sickler returned to the facility for the night shift. (Tr. 352). Prior to that, he was snowboarding with friends in Park City. At some point between snowboarding and his return to work, Sickler received pictures of a sign with a valve and a noose hanging from the locker. Sickler stated he had never seen the noose on Griffin's locker prior to leaving his shift on "Wednesday March 14, 2012." Thereafter, Tate called Sickler, and Sickler told him that "he knew who did it." Sickler was told that Tate would need statements from his crew on the matter. (Tr. 353). Sickler called Azelia and told him he was going to need a statement as requested by Tate. On Friday, when Sickler returned, the noose was hanging from a locker, but he saw no sign or valve. (Tr. 354). He could not remember whose locker the noose was on. Sickler grabbed the noose and stated, "Why is this still here?"

He threw the noose into the trash can. (Tr. 355). Prior to seeing the pictures Tate sent him, Sickler testified he had seen the noose around the igloo for three to four weeks in various locations. (Tr. 355-356). Sickler saw Doner with the noose at a management meeting on Wednesday, March 14, 2012, and Perkins commented, "God, is it that bad that you have to hang yourself?" (Tr. 356).

Sickler provided a statement to Respondent in a Word document saved to his M drive, in accordance with Tate's prior instructions. In confirming his statement, he stated there were "a few things [] fishy about it." (CX-14, p. 353; Tr. 357-358). He disputes a comment set forth in the statement, which he contends was added stating that he "did not notice the valve and sign had been put up until end of shift while walking out of Igloo 1638." Sickler stated he did not believe the comments was in his statement but was added to the statement. He told Respondent in his statement that Azelia had put up the sign and valve. (CX-14, p. 353; Tr. 358-359). He testified he did not tell Tate that Azelia put up the noose on the locker when he was sent the picture of the locker. (Tr. 360). Sickler provided the statement on March 16, 2012. (Tr. 361).

On March 22, 2012, Sickler met with Roten and Maria Martinez to go over his statement in Martinez's office at the CAMDS facility. (Tr. 361). The meeting lasted 15-20 minutes and was held to seek clarification. (Tr. 361-362). Sickler was not told he would be investigated or disciplined for the locker incident. (Tr. 362).

After his suspension, Sickler did not return to work prior to his termination. On April 20, 2012, Sickler applied for unemployment compensation because he needed the income immediately. He also looked for other work online for unemployment. Respondent challenged his unemployment claim a month or two after he filed. (Tr. 363). Sickler hired an attorney, Mick Harrison, and subsequently filed an OSHA complaint on May 25, 2012, before his termination, based on his protected activities from the April 10, 2012 and January 20, 2012 incidents. (Tr. 364).

On July 2, 2012, Sickler was terminated. (CX-42; Tr. 365). In his termination letter, it was stated that he was "complicit in Mr. Azelia's placement of a noose, a valve that should have been disposed of as hazardous waste, and a sign that read *Squirrel's Nemesis* to the exterior of another employee's locker." (CX-42; Tr. 366). When he had interviewed with Roten

on March 22, 2012, they did not discuss the valve as hazardous waste. (Tr. 366).

Sickler was out of work from April 2012 to January 2013. He obtained a welding job with Intermountain Temporary Service for about one and one-half months at \$15.00 an hour. In February 2013, he was hired permanently by East Jordan Metal Works at \$16.50 an hour and worked there from February 2013 to July 2013. (Tr. 368-369). His fiancée accepted a job in the State of Washington, and he moved to Washington State and found a new job in September 2013 in metal fabrication, which was sporadic and paid \$15.00 an hour. (Tr. 369-370). He averaged 15-20 hours per week for about one month. (Tr. 370). On October 17, 2013, Sickler was hired by Exotic Metals Forming Company as a laborer de-burring edges at \$13.00 per hour with a 70 cents shift differential. He is still employed with Exotic. (Tr. 371).

When he worked for Respondent, Sickler testified his annual earnings were \$103,000.00. (Tr. 372). His pay stubs from East Jordan are set forth in CX-80. (CX-80, pp. 220-229; Tr. 372). His pay stubs from Intermountain Staffing are set forth in CX-88. (CX-88; Tr. 373). His benefits and compensation with Respondent are set forth in CX-89, which include base salary, medical and dental insurance, life insurance, a 401K plan, and overtime. (CX-89, p. 34; Tr. 374). His W-2 for 2011 shows he earned \$103,521.08. (CX-89, p. 69; Tr. 374-375); his W-2 for 2012 through his April 19, 2012 suspension shows total earnings of \$45,468.13. (CX-89, p. 129); his W-2 from Ivy League Image and Sound, where he worked from October to November 2012, shows earnings of \$2,464.13. (CX-89, p. 130; Tr. 375).

After his termination, Sickler looked for jobs, but received no offers. Sickler testified that he "loved his job at Battelle." He stated, "I felt like I was important, like I was part of something, like I was helping the environment, helping safety." The constant rejection from new job applications hurt his relationship with his daughter. He was a single Dad and had no health insurance for his daughter. (Tr. 376). In addition, his relationship with his fiancée, Jennifer Liebert, became distant; his termination consumed him; he felt angry and betrayed; did not want to associate with friends; and he felt hopeless. (Tr. 376-377). He could not pay for school activities. He did not seek counseling because of his lack of health insurance. The jobs he did obtain were not fulfilling because of poor pay and no room for advancement. (Tr. 377).

Sickler testified before his termination he knew Respondent's work was coming to an end and he was actively seeking a job at Pueblo Chemical Depot where Respondent had another facility. (Tr. 378). Because of his high performance evaluations, he believed he would have been retained until the last layoff at Battelle. (Tr. 378-379). He would have been offered a severance package and a bonus upon leaving Battelle. (Tr. 379). Specifically, URS offered both a retention bonus and a "stay and perform" bonus to employees. When Sickler calculated his bonus using Respondent's home page, he determined his bonus would have been equivalent to a year's salary, at approximately \$100,000.00. (Tr. 379).

Sickler testified the loss of his job also caused detrimental physical effects to his body. His eating habits were inconsistent, and he slept more than when he was working. He was not as active as he had previously been, giving up on the outdoors, snowboarding, wake boarding, and hiking. He still thinks about his termination daily. (Tr. 380).

At the ATLIC, Sickler recalled other employees calling co-workers nicknames, putting little ponies and rainbows on Azelia's tool chest, and engaging in inappropriate banter about sexual content. (Tr. 380-381). At the TOCDF such activity was rampant. (Tr. 382). Employees would urinate on others in the shower, and on one occasion, taped a naked employee to a bench in 2003-2004. (Tr. 382, 384-385). In 2000, supervisor Roten slapped Sickler in the testicles with a wrench multiple times, which went on through 2002/2003. (Tr. 383-384). Other employees were struck with the wrench, as well. (Tr. 383). At the TOCDF from 2006-2009, Azelia's locker was often covered with lewd flyers and pictures. (Tr. 385-386). In one instance, a picture of a "chubby," "handicapped kid" wearing a shirt that said, "I fuck on the first date" was taped to Azelia's locker. On another occasion, "PAS 702" was fastened to his locker, which references a mistake Azelia had made on 702. Others on Team "D" would taunt Azelia by chanting, "Change the PCT, change the PCT." Azelia was "the brunt of all the jokes" from 2006-2009. (Tr. 387). In 2010/2011, Brian Kimber belittled Alden Johnson in the parking lot, calling him a "dumb ass". (Tr. 388). In 2011, when Sickler called Ty Tate for clarification on a project at work, Tate cussed at Sickler and "caught [him] off guard". Generally, at the ATLIC from 2009 until Sickler was terminated, Sickler testified that there was a lot of name calling, cursing, a lot of teasing, and a lot of banter. (Tr. 389-390).

On cross-examination, Sickler acknowledged he had a high school diploma, some technical college education in electronics, and a welding certificate from Tooele Pipe Technical College. (Tr. 391).

Dennis Griffin rented a room from Sickler from March to November 2011, and Sicker and Griffin had a good relationship. (Tr. 391). Sickler eventually asked Griffin to leave because he owed him some rent, and Griffin had crashed his motorcycle into Sickler's barbeque. (Tr. 391-392). Around the time Griffin moved out, Sickler and Steve Adler arranged for Griffin to be transferred to a different crew. Sickler initiated the move with Steve Alder in 2011. (Tr. 392). There was no physical altercation between Sickler and Griffin. (Tr. 392-393).

Sickler testified he was not present on the Tuesday when Azelia removed the valve from station 727L. (Tr. 393). On that Wednesday, Sickler saw the sign and valve on Griffin's locker at about 10:30 am-11:30 am, before the management meeting. Sickler asked Azelia to take down the sign and valve since he thought it was inappropriate. (Tr. 394).

Sickler confirmed that his statement was written on the Friday of the locker incident, and thereafter, an entire sentence was added that he did not author. (CX-14, p. 353; Tr. 396). Sickler did not print a copy of his statement or email it to himself. (Tr. 369-397). The next time he saw the statement was at his unemployment hearing with Battelle. Sickler suspects Ty Tate changed the statement. (Tr. 397). RX-5 represents a statement produced to Respondent from Counsel for Complainant, which has the same sentence in the statement. (RX-5; Tr. 398-399). In RX-111, p. 29, Complainant's interrogatory responses, the alteration was noted to be "until end of shift, while walking out of Igloo 1638." (RX-11, p. 29; Tr. 400-402). Sickler persisted with his opinion that the whole sentence had been changed. (Tr. 402).

In his deposition, Sickler was asked if he saw the sign and valve go back up to which he answered, "Yeah, I would say I did." He deposed his Interrogatory was incorrect and that the document had not been falsified. (Tr. 402-404). He testified he did not see the sign and valve back on the locker later in the shift. (Tr. 404-405). However, he deposed that he saw the display back up on Wednesday after it was taken down. (Tr. 406). Sickler testified that he now disagreed with these statements in his deposition. (Tr. 402-406). He stated that he did not recall seeing the valve back up on the locker at the end

of the Wednesday shift. (Tr. 406). In his deposition, he was asked when he saw the sign and valve back up, did he ask Azelia to take it down, and he responded "no," but that did not refresh his recollection of the event. Initially, Sickler found the sign and valve funny and chuckled at it because Griffin had made a mistake twice. (Tr. 407).

Other than Station 727L, the only other place which used that type of valve was on some gas cylinders at the ATLIC that he estimated to be 250 valves. Sickler stated that of all the valves, however, Station 727L was the only one to have heat trace tape on its valve. (Tr. 408). He testified that during the systemization, heat trace tape was used on the gas cylinders experimentally to "try to get the EDT to travel," but that it was not a requirement. Sickler stated that they "didn't go with that method," and that heaters were installed instead. (Tr. 410). Sickler testified that "probably zero" cylinders had heat trace tape on them. (Tr. 411). RX-19, p. 3 is a photo of heat trace tape holding a valve. (RX-19; Tr. 411).

Sickler reaffirmed that he asked Azelia to take down the sign and valve not because of the management meeting, but because it was inappropriate. (Tr. 413).

In his deposition, pages 30-32, regarding the March 22, 2012 interview with Randy Roten, Sickler acknowledged the statement he made to Roten, that he did not know the valve had gone back up until the receipt of the text from Ty Tate on Friday, was wrong. (Tr. 413-417). Sickler confirmed that it was an incorrect statement, but he denied that it was false. (Tr. 417-22). Sickler stated he did not see the sign and valve on the locker at any time after Wednesday. He saw a photo sent to him by Tate on Friday with a sign, valve and noose on a locker. (Tr. 423).

RX-19 includes six photos. (RX-19; Tr. 423). One of the photos was the photo Tate sent to Sickler with the sign, valve, and noose. (RX-19; Tr. 424). Sickler did not remember receiving a picture of the noose on a cart. The scene that Azelia showed to Sickler on the Wednesday of the locker incident looked like the pictures on pages 339 or 341 of RX-19, with only a sign and valve on a locker. (RX-19, pp. 341, 339; Tr. 424). Sickler again denied making any sort of false statement to Randy Roten during his interview, although he acknowledged that he made a false statement to Roten in his deposition about the next time he saw the locker scene was when Tate sent him a picture. (Tr. 425).

Sickler never did any independent investigation to determine if the valve placed on Griffin's locker was clean or hazardous waste. (Tr. 425-426). He accepted Azelia's declaration that he put up a clean valve. If Azelia put up the valve from Station 727L, Sickler acknowledged that it would have been hazardous waste. (Tr. 426). Hazardous waste is "anything that was used for its intended purpose, and then no longer used". (Tr. 426). Sickler confirmed the valve from Station 727L should have been properly disposed of by placing it in a hazardous waste drum. (Tr. 427).

Sickler admitted that he felt betrayed at his suspension meeting, and his emotions were pretty high. He initially denied being angry, and he stated that he did not yell at anyone. When read a line from his deposition, Sickler admitted being "a little bit" angry. (Tr. 428). Sickler also then stated that he "raised [his] voice a little bit[,] " but that no one else got angry or was rude to him. He affirmed he is also a plaintiff in a Wage and Hour lawsuit against Battelle. He stated he mentioned the lawsuit at his suspension meeting, but did not specifically mention any allegations of retaliation during the suspension meeting over the environmental issues he raised, other than he was "being retaliated against." (Tr. 429-430).

Sickler testified he thought he corrected Azelia's behavior at the time as a supervisor without the need to report the matter any higher to management by telling him to take down the sign and valve. (Tr. 430). In his deposition, Sickler stated he told Roten during his interview that in hindsight, he should have reported Azelia's conduct. (Tr. 431).

RX-44 is Sickler's unemployment claim. (RX-44, p. 676; Tr. 431). When asked to explain what happened and why he was terminated in his separation discharge, he did not mention the April 10, 2012 incident as a basis of retaliation, but instead mentioned his class action involvement in a Wage and Hour lawsuit against Battelle. (Tr. 431-434). Sickler testified that he did not mention any other basis for retaliation in his unemployment claim, but he did believe at the time that the April 10, 2012 incident was the reason for his termination and retaliation. (Tr. 434-435).

Sickler confirmed there were nine events that were the basis of the Root Cause Analysis. Of the nine events comprising the Root Cause Analysis, Sickler was involved in reporting three: November 16, 2011; December 25, 2011; and January 20,

2012. (Tr. 435-436). CX-3 involves the November 16, 2011 event, which was part of the Root Cause Analysis, and the only documents Sickler completed were a shift report and a condition report. The incident involved a technician on Team D improperly injecting a machine which caused an alarm. (CX-3; Tr. 436-437). Sickler testified that monitoring system malfunctions were almost always a high priority, and he reports them almost as soon as he can to the plant shift manager at the control center. (Tr. 438). The control center will be notified of a malfunction and will reach out to a team leader to respond. (Tr. 439). The individuals working in the control center are not Battelle employees; they are URS personnel. (Tr. 440). Sickler testified that part of reporting incidents included creating the shift report, which was a requirement of doing a "good job," but would not necessarily lead to discipline if it had been missed. (Tr. 442-443). Sickler was never told by any manager not to document anything on November 16, 2011, and he met no resistance in reporting the event. (Tr. 443). Azelia had nothing to do with the November 16, 2011 incident, nor its reporting. (Tr. 444).

CX-5 is the paperwork that details the December 25, 2011 event, which was the first Dennis Griffin incident involving the valve on Station 727L. (CX-5; Tr. 443-444). Sickler authored the Potential Missed Monitoring Report that is the first page of CX-5. (CX-5; Tr. 444). Two daily log sheets, the NRT calibration sheet, the station logbook sheet, a copy of the strip chart, and a trend report were collected to become part of the Potential Missed Monitoring Report. (CX-5, pp. 482-488; Tr. 445). Sickler described the incident as a "pretty significant" event, because it was not following the RCRA permit, and it was reported to a URS Environmental shift rep that same day. (Tr. 445-447). Sickler testified that preparing the Potential Missed Monitoring Report was part of his duties as a shift supervisor. (Tr. 447). Cameron Dick actually discovered the problem and notified Sickler. (Tr. 448).

Sickler stated that if his Interrogatory responses identified Azelia as the individual who reported the issue, then the Interrogatories would be incorrect. (Tr. 449). Sickler sent an email to Shane Perkins and Brian Stewart ("Fro"), which stated that Perkins and "Fro" were notified by Cameron, but Cameron made no notifications except to Sickler who informed Perkins and "Fro." (CX-5, p. 491; Tr. 449). Azelia played no role in the December 25, 2011 incident. (Tr. 451). Sickler testified that there was an instance involving Alden Johnson for which in his opinion a report should have been completed, but

was not. (Tr. 451-452). In his deposition, however, he stated that there were no incidents where a Missed Monitoring Report should have been complete, but was not. (Deposition of Sickler, p. 97; Tr. 452-453). Sickler notified his plant shift manager of the December 25, 2011 incident, who in turn instructed him to pull the DAAMS tubes. No one with Respondent told him or suggested he should not report the December 25, 2011 event. (Tr. 453). It was part of Sickler's job requirements to make such a report. Cameron Dick was not the subject of any adverse actions for his involvement in the December 25, 2011 event. (Tr. 454). Sickler completed a condition report about the December 25, 2011 incident which, once entered into the CR system, can be read by everyone who works for Battelle and URS. (CX-5, p. 634; Tr. 454-455).

CX-7 involves paperwork related to the January 20, 2012 incident, which is the most significant event of the Root Cause Analysis because entrants had been present in the toxic area. (CX-7; Tr. 455, 457). Sickler prepared the Potential Missed Monitoring Report. (CX-7, p. 464; Tr. 456). This was the second valve incident involving Dennis Griffin. (Tr. 456). Azelia discovered the incident and notified Sickler. Sickler stated this was the only incident in which Azelia had involvement in the Root Cause Analysis incidents. (Tr. 457). Sickler called Perkins within 10-15 minutes after notification. At that point, Sickler had already first talked to the plant shift manager who informed Sickler there had been an entry earlier that day. (Tr. 458). Perkins was told by Sickler of the entry and was upset stating, "God damn Dennis. He did that a month ago." Perkins told Sickler to fill out a Missed Monitoring Report. (Tr. 459). Perkins did not express anger towards Sickler and did not tell Sickler not to report the incident. (Tr. 459-460). Neither Perkins, nor Roten, ever expressed disapproval of the reporting he had done. (Tr. 461). Chris VanDall, the plant shift manager, was "very angry and pissed off about Battelle not being able to keep people safe, and "us" not doing "our" job[," but he was grateful, according to Sickler's deposition, that Sickler reported the event to him. (Tr. 461-462). Sickler testified, however, that VanDall was "not grateful" per se for the report. (Tr. 461). No one discouraged Sickler from collecting any of the information he needed to prepare the Potential Missed Monitoring Report. (Tr. 462). Sickler also notified the URS Environmental Office, Fred Eakins. (Tr. 462). Sickler testified that "sometimes" there can be false ACAMS alarms from other interferants, but the DAAMS is a secondary confirmation system of the alarm event. (Tr. 463).

Sickler testified that the April 10, 2012 incident is the primary event that caused him to get fired. (Tr. 466). During the April 10, 2012 incident, Sickler does not recall if he donned his M-40 mask, which is issued by the government and filters the air. (Tr. 466-467). Sickler did not feel comfortable estimating the amount of time it would have taken him to walk from Igloo 1638 to the Tox monitoring room. (Tr. 467). He called the control room from the igloo to find out the location of the alarm. (Tr. 468). The alarm procedure does not state how to proceed to the alarm, whether an employee should run or walk to the location of the alarm. Sickler testified that "you drop what you're doing, and you proceed to the location [of the alarm]." (Tr. 468-469). No alarm sounded in the igloo, so it was the control room who contacted him to respond. (Tr. 470). When asked whether he called the control room or the control room contacted him, Sickler responded, "I don't know if I notified, or if they notified. I just know I was notified." (Tr. 471).

Sickler stated he proceeded immediately to the alarm site, but had to get his tool kit in his locker and his flow meter first, as well as print off his alarm report check list and get sheets for DAAMS tubes. (Tr. 472). When Sickler arrived, Kevin Kimber was present. (Tr. 472). Kevin Kimber did not respond to the alarm because responding was a team leader's duty. Sickler discovered that the sample line was disconnected after Azelia arrived. (Tr. 473). Sickler re-connected the DAAMS line immediately after he found it disconnected at 7:04 am and made a log entry. (CX-10, p. 661; Tr. 474-475). Sickler affirmed that no machine generated the time he reported, and no one checked the time entered. (Tr. 475). This incident occurred after the Root Cause Analysis, and Sickler believes it was what caused him to be fired. (Tr. 476). Sickler was suspicious of the timing that the incident occurred on April 10, 2012 and he was suspended on April 19, 2012. (Tr. 476-477). Sickler stated that "how Battelle covered it up" was another reason why he believed he was fired. No one told him to hide the fact that the sample line was disconnected. (Tr. 479). No one discouraged Sickler from collecting any information and reporting the April 10, 2012 incident. Sickler believed, however, that Perkins and Tate hindered him in performing his duties in connection with the alarm by instructing him to connect the sample line, run it for an extra 10 minutes, and run it on a confirmation cycle. (Tr. 480).

CX-10 involves an email sent from Karsten Hansen to various persons. (CX-10, p. 426; Tr. 481). Hansen worked in the URS Environmental Department, and he recounted a discussion he had with the state regulator, Tom Ball. (CX-10, p. 426; Tr. 481-482). The email stated that there was "no potential source[,]"" but it was Sickler's opinion that there was a potential source until the building could be "triple X'ed." Sickler does not remember if there was any processing of agent in April, but there may have been "residual" agent in pipes. (Tr. 482). Tate told Sickler he would write the CR for the April 2012 incident. Sickler testified he was interviewed about the locker incident on April 10, 2012, before the April 10, 2012 alarm incident. (Tr. 483). Sickler remembered Tate telling him shortly after the alarm incident that he would write the CR, but before the interview. His deposition testimony, however, stated that Tate told him later in the day after the interview that he would write the CR. (Tr. 484).

The CR notes that the sample line was disconnected, but Sickler testified the fact that the confirmation method was lost and the primary monitor, the ACAMS, alarmed was the most serious feature of what happened on April 10, 2012, which was not mentioned in the CR. (CX-10, p. 652; Tr. 485-486). The CR also fails to mention that there were personnel in the observation corridor when the alarm sounded. (Tr. 486).

Sickler testified he does not recall a celebration in January 2012 to commemorate the last of the destruction of munitions. Sickler stated that it was not technically improper for Tate to write up the CR, but that it was something he would usually do as supervisor. (Tr. 487). Tate did not indicate to Sickler why he would write the CR rather than Sickler. (Tr. 488). Sickler testified that there were several things he would have done differently about the CR. He would have stated the retention time and full width half mass was not caught and added the presence of personnel in the corridor to the CR, as well as no retention rate. He would not have put downstream NRT data was pulled. He stated the statement the "alarm retention time was off from the daily and post-alarm challenge" was false. Sickler did not know what "peak" Tate was referring to about being off in the actual challenge data. (Tr. 489). He also would have categorized the problem more seriously: Tate categorized the problem as a mechanical issue, and Sickler would not have because of people being present. (Tr. 490). Sickler would have reported the incident as a "1", not a "3", in priority as Tate did. Reporting the incident as a "1" would "kick it to a CRG group, which is a Condition Report Group, a

committee of URS employees that would actually look at the CR a little more closely." (Tr. 491). The only thing Sickler identified that he would have changed in the CR when deposed was the alarm retention time was off from the daily challenge and past alarm challenges was false. (Deposition of Sickler, pp. 144-146; Tr. 492). Sickler also identified that the peak being off from the actual challenge data would not have added to the CR. Sickler then stated, "It is my testimony today that those other things I would have changed." (Tr. 493).

Sickler testified that he could not determine whether Perkins was trying to persuade him that agent was not present, when he stated "That's not agent," but his deposition testimony indicates that Sickler thought Perkins was not trying to persuade him when Perkins said, "That's not agent." (Deposition of Sickler, pp. 131-133; Tr. 494). The deposition indicates that Sickler agreed Perkins's statement might have been an offhand comment. (Deposition of Sickler, p. 131; Tr. 495). Despite the contradiction, Sickler stated he was going to do what he had to do in responding to the alarm, notwithstanding Perkins's comment. (Tr. 496). Sickler stated he did not have the tools, data, or basis to form an opinion on whether there was agent present. (Tr. 497).

Sickler opined that the wrong testing method was used to test the DAAMS tubes. (Tr. 497). He believed SAAGC was the method used to test the DAAMS. (Tr. 497-498). Sickler stated he had a justifiable belief that the incorrect method was used, but had no proof because the DAAMS Sample Collection Record (DSCR) had never been produced. Sickler filled out the DSCR and believes he wrote the confirmation method to be used by the lab. He did not disagree that the DAAMS tubes should have been sent to the lab. (Tr. 498-500). The Quality Control (QC) or Analytical Branch would be better qualified to determine what the right analytical method should have been used. (Tr. 500).

RX-47 and RX-48, Sickler's emails of May 31, 2011 and June 29, 2011, regarding hazardous waste left in the work area addressed to all monitoring personnel, is protected activity in Sickler's view and part of the reason he believes he was fired. (RX-47; RX-48; Tr. 500-502). Roten thought the second email was unprofessional. (RX-48, p. 429; Tr. 503). Sickler does not know why Roten thought it unprofessional; he speculated it was because he "sent two emails back to back". Perkins forwarded the second email and directed training on leaving hazardous waste in the area and to complete an attendance sheet for the training. (Tr. 503-504). Sickler was never told why. (Tr.

505). After the second email, Sickler conducted training on the problem of leaving hazardous waste around, and filled out an attendance sheet as evidence of the training. (Tr. 504-505). Sickler never discussed the emails with Roten. (Tr. 505-506).

The ATLIC had a stack from which fumes from the furnace were emitted after they go through the Pollution Abatement System. (Tr. 506-507). The stack should contain a probe that draws air from the stack for sampling of different constituents. Sickler helped design a probe for the stack, and won an award. An incident involving Alden Johnson occurred before the ATLIC was operational, and there was never any agent at the ATLIC when it occurred. (Tr. 507). Sickler, however, still felt that a Missed Monitoring Report should have been filled out as good practice, but he did not state that it was a permit violation. (Tr. 507-508). Sickler felt it should have been reported that "the probe was not in the stack sampling like it should be." No one with Respondent told Sickler not to report the lack of a probe, and he received no retaliation about not reporting the omission. (Tr. 508). Sickler did not complete a report on the incident. (Tr. 509).

In February 2012, a sample line was found disconnected, and Sickler reported the incident. The event was not one of the incidents included in the Root Cause Analysis. (Tr. 509). Raymond Harris, a technician II non-supervisor, was responsible for leaving the sample line off, and he was upset with Sickler for reporting it. (Tr. 509-510). It was Sickler's duty to report the sample line disconnection, and management did not react negatively to his report. (Tr. 510).

RX-111, pages 24-26, is a list of 38 persons allegedly motivated to retaliate against Sickler. (Tr. 511). None actually ever said anything directly to Sickler about his activities that would make him think they were retaliating or wanted to retaliate against him. (Tr. 512). Sickler believed, however, that besides comments, there was "absolutely" evidence that made him believe he was being retaliated. Sickler believed that his reporting on environmental issues and safety concerns motivated Roten to retaliate because "if they get rid of me, then these reports go away." If Sickler was replaced, he could not say whether his replacement would report the issues like he had according to the duties of the job. (Tr. 513-514). Sickler believed URS put pressure on Respondent about safety. (Tr. 516). Respondent could have lost their contract by a "cure notice," and they could have lost their jobs. (Tr. 516). Sickler thought that

Respondent received a "cure notice," but he was not privy to such information. (Tr. 516-517). Sickler testified that a Cure Notice was a notice given by the U.S. Army stating that Battelle was not doing its job, and that they needed to implement corrective actions and report back. (Tr. 517-518). All of the incidents from his testimony were bad enough to have caused cure notices, in Sickler's opinion. (Tr. 518-520). Sickler stated half of his job was identifying and solving problems. Sickler was not aware of any managers of Respondent who saw the locker with the sign and valve on it. (Tr. 520). A DAAMS tube found in the laundry in 2005 or 2006 led to more accountability in keeping track of the DAAMS tubes. (Tr. 520-521).

Managers engaged in horseplay, but Sickler does not know if it was reported to any officials at Battelle higher than the managers who participated in the behavior. (Tr. 522). Some of the horseplay was by Battelle personnel and EG&G personnel alike. Sickler stated, "It was guys being guys, boys being boys, slapping each other with towels." (Tr. 523).

On re-direct examination, Sickler confirmed his hearing testimony to Roten on March 22, 2012, that he never saw Azelia put the sign and "noose" back up on the locker when he left his shift on Wednesday, March 13, 2012, to go home. He also affirmed his unemployment application where he stated he told Azelia to take the sign down, and Azelia put the sign back up afterwards behind his back and had no knowledge of it being put back up. (RX-44; Tr. 524-525). Sickler used this information in filing his unemployment benefits claim on May 29, 2012. (Tr. 524-526). He filed an OSHA complaint on May 25, 2012. Thus, even though he had already been part of a lawsuit with Battelle over wage and hour issues, he had already filed an environmental complaint before filing for unemployment compensation and before his termination. (Tr. 526).

Sickler's interrogatories were filed by Attorney Steven D. Smith, who represented him for only a couple of weeks. (Tr. 527). There are other errors in the interrogatories, such as noting the date of the ACAMS alarm incident as April 13, 2012, rather than April 10, 2012, on page 3, and noting Sickler's suspension date as April 20, 2012, rather than April 19, 2012, on page 4. (RX-111, pp. 3-4; Tr. 527-528). In addition, when asked about the discrepancy between his Interrogatories, deposition, and current testimony regarding the alteration of this statement to Battelle, Sickler stated he testified differently at his deposition because he was nervous and intimidated. (Tr. 528-530). Despite testifying otherwise,

Sickler has always subjectively believed that his statement was altered. (Tr. 530-532).

On further cross-examination, Sickler acknowledged that his attorney at the unemployment hearing told him not to bring up the alteration in his statement. (Tr. 537). Sickler testified that at the unemployment hearing, he did not state that he did not recall writing the statement, just that he did not recall seeing the valve up at the end of the shift. (Tr. 538-539). Sickler did not agree that his testimony at the unemployment hearing implied that he did not recall writing the added/alterred sentence. (RX-46, pp. 95-100; RX-5; Tr. 539-544). Instead, Sickler testified, he thought he was being asked a question of whether or not he had seen the sign and valve up on the locker or not. Sickler was simply following the advice of his previous attorney from the unemployment hearing, Sharon Preston. (Tr. 545). Ms. Preston told him to not answer directly; Sickler testified she said, "'Don't talk about the added sentence. Don't talk about what you saw. Just say that you don't recall.'" (Tr. 546-547). Sickler agreed that it was not truthful that he stated he did not recall whether he saw the sign and valve up because, in actuality, he did recall at the time of the unemployment hearing. (Tr. 549).

Sickler's interrogatories indicated that he did not write the added statement. At his deposition, Sickler testified that the sentence was written by him. Sickler clarified the inconsistency by stating that Battelle had not produced the meta data on the document they had asked for. (Tr. 550). Again, Ms. Preston's instructions were not to answer anything directly at the unemployment hearing about the added statement or what he saw at the end of the shift. (Tr. 552). The unemployment hearing was held on June 21, 2012, Interrogatories were written on March 8, 2013, and Sickler was deposed on April 2, 2103. (RX-46; RX-111; Tr. 552-553).

Sickler further affirmed that he did not have the meta data when he provided his Interrogatory responses stating the added sentence was false. (Tr. 556).

Sickler testified that his idea of being under oath was "when I raise my right hand, and I'm in front of a judge, then I am under oath." He had signed and dated his interrogatories, but he did not understand the implications of perjury under 28 U.S.C. Section 1746. (Tr. 557). In explaining the difference between his answer about the added statement in his

interrogatories versus his deposition, Sickler explained he was scared and intimidated. (Tr. 560).

On re-direct examination, Sickler testified he did not retain a copy of the statement when he created it. (Tr. 560-561). When Sickler received a copy of the statement that Respondent produced at his unemployment hearing, he immediately thought something had been altered; specifically, the part about walking out of the igloo. (Tr. 561-562). Sickler stated he did not see the valve and sign up when he left his shift on Wednesday, which is why he believed he did not write that part of the statement. (Tr. 562). He also thought the fact he sent the statement in a Word document was further evidence that it could have been altered. (Tr. 563). At the time he signed his interrogatory statements, Sickler still believed the sentence had been altered. He understands how serious it is to claim someone fabricated a document. (Tr. 564). Sickler testified he never could have been wrong about believing the statement was altered. (Tr. 566).

Heath Fackrell

Fackrell is a high school graduate and attended Salt Lake Community College for plumbing for four years. (Tr. 568). He was a journeyman plumber and owned his own business before his employment with Battelle. (Tr. 569).

He began with Respondent on January 1, 2010. He was interviewed by Supervisor Perkins for a monitoring foreman job. (Tr. 569). Fackrell did not have a direct supervisor when he started working, but Perkins "was over everybody." When the crews were established, Kale Gilman was his lead. Fackrell started working on the ATLIC, installing sample lines and equipment, about a year after he was hired. (Tr. 570). Fackrell trained for one year in Maryland and Tooele. (Tr. 571). In Maryland, he was trained for four months on mini-CAMS and ACAMS. (Tr. 571-572).

Fackrell stated the interferant trailer was used for testing anything brought on site to ensure it was not setting off ACAMS or mini-CAMS. (Tr. 574-575). Sickler was the lead doing the interferant testing, although other employees were present. Fackrell learned a lot under Sickler—things that he would not have gained from basic training. (Tr. 575). Fackrell considered Sickler "pretty sharp" who knew the ACAMS and mini-CAMS inside and out. (Tr. 576). Ron Argyle, Alden Johnson, and Burt Beacham were also working in the trailer. (Tr. 577).

Fackrell also did trouble-shooting on the machines. (Tr. 577). Kale Gilman was his team lead, and Gilman also asked questions of Sickler in training sessions. (Tr. 579-580). Sickler had been there longer and was more experienced with mini-CAMS and ACAMS. (Tr. 580).

In constructing the ATLIC, Fackrell installed and built sample lines throughout the plant. (Tr. 580). He worked in the processing bay, the Tox room, and the filter farm. (Tr. 581). His team consisted of Lead Gilman, Kevin Kimber, and Fackrell. He remained on Gilman's team until Sickler and Azelia were let go. (Tr. 582).

The ATLIC took approximately five to six months to construct. (Tr. 582). Team leads oversaw the technicians, and Shane Perkins oversaw the Team leads. Teams were competitive with one another. (Tr. 583).

Before Sickler and Azelia were suspended, Fackrell recalled seeing a noose and valve hanging on a locker. He stated the company made "a huge deal out of it." (Tr. 583). There might have also been a note on the locker, but Fackrell could not recall specifically. (Tr. 584).

Fackrell worked rotating hours on 12-hour shifts, some at night and some during the day. (Tr. 584). He did not remember whether it was day or night when he saw the noose and the valve. (Tr. 585). He accessed his locker every day and at the beginning of every shift. (Tr. 586).

Teams split up because members did not get along. (Tr. 587). He recalls "Ron" was "slow" at the majority of his tasks, and "Burt" was a "jokester" and did not take things seriously. (Tr. 587-588). Burt went missing during a laundry tubes check, and Fackrell had to call Ty Tate, who yelled at Fackrell. Fackrell yelled back. (Tr. 588). Fackrell was still a foreman at the time, but doing Team lead duties. Fackrell took on a crew after Sickler and Azelia left Respondent until he quit. His team consisted of Ron Sinclair and Dustin Lawrence. (Tr. 589).

Fackrell was in the control room on one occasion and Burt Beacham should have been in the monitoring room, but he could not be found. Beacham was one of the individuals on his team at the time. (Tr. 590). He called Tate who yelled at him because he should have known where his team members were. (Tr. 591).

He yelled back at Tate saying he was doing readings and could not know the location of all his members. (Tr. 592). Fackrell hung up on Tate. (Tr. 597). No one filled out any reports about what happened. (Tr. 593). In the laundry room, his team had to clear the laundry tubes where all clothing worn during the day was washed. They tested tubes to make sure they were not "hot" or contained agent. (Tr. 591).

Fackrell recalled that Burt Beacham took tubes with no readings from the laundry room, and they had to get new tubes and re-do the readings. He did not see Burt until the next day. The lab cannot analyze the start and end times on DAAMS tubes, only when one tube started. (Tr. 594-596). Fackrell initiated a conversation with Perkins and Tate soon after the incident because Burt was reckless, and he did not want Burt on his team. (Tr. 597). Fackrell called Burt to find out what happened, and Brian Stewart, who was superior to a Team lead and nicknamed "Fro," was also brought down. To Fackrell's knowledge no one was disciplined over the incident, and management did nothing. (Tr. 601-602). Without proper readings, the laundry employees would not know if the clothing was "hot" or had agent on them. (Tr. 602).

Fackrell stated he did not know whose locker the noose and valve were on. (Tr. 602). He did not think anything of it at the time. The noose had been "floating around" throughout the igloo, and people were "playing with it." It was not the first time he had seen the noose. (Tr. 603). Fackrell saw the noose on more than one shift. (Tr. 604).

Fackrell did not say anything about the noose because pranks were played "every day." (Tr. 604). On one occasion, before Azelia and Sickler left, underwear had been placed in his locker with chili in it. (Tr. 604-605). Alden Johnson was the culprit because he knew Fackrell had a problem with wearing the work-issued underwear. (Tr. 605-606).

Fackrell also admitted to drawing flowers and ponies on Azelia's toolbox. Playing pranks was common, "as long as you're friends." Fackrell stated that Brian Kimber and Alden Johnson did not get along, and they were switched to different teams. In Fackrell's opinion, this was because Brian was "not a nice guy." Brian Kimber was mean, ignorant, and "talk[ed] to you like you're an idiot." (Tr. 607). Kimber made Fackrell feel "stupid." He was mean to Fackrell because his little brother, Kevin, was on Fackrell's team. (Tr. 608). Tim Doxey, Fackrell's brother-in-law, told him Brian Kimber was out to get

Fackrell. Kevin would do what he wanted to do, and Fackrell would come down on Kevin. Fackrell did not want Kevin Kimber on his team. (Tr. 609-610).

Kevin Kimber would urinate outside of the Tox room, which was against the rules because any unidentified liquid was required to be treated like agent; even "if somebody spilled a Coke on the ground." (Tr. 609). Fackrell stated Kevin Kimber is ignorant like his brother. Tim Doxy was on Brian Kimber's team. (Tr. 610). Fackrell and the rest of his crew requested Perkins and Tate remove Kevin Kimber from his team, but he could not recall if action was taken because he quit shortly thereafter. (Tr. 611).

Fackrell quit employment with Respondent in July 2012. Fackrell "wanted to get out of there." He stated that people abused power. (Tr. 611). Brian Kimber was a bully and a "king," and Fackrell did not like the way Tate talked to people and handled problems. (Tr. 612). Employees had nicknames like "GB," or "Golden Boy," for Shane Colledge and "Bobble Head" for Azelia. (Tr. 612-613). Fackrell would not shower at the facility because of things that he heard went on, such as "genitalia" issues and "credit carding," which involved "tak[ing] your hand when you're showering, and run[ning] it up your butt." (Tr. 614-615). It was likely a policy to shower at the facility, but Fackrell would not; he showered exclusively at home. (Tr. 615).

Fackrell never saw any hazardous waste laying around in the Igloo, where he had a locker. (Tr. 615). There was, however, used equipment in the igloo, such as mini-CAMS, ACAMS onto which sampling lines were connected, and pumps. (Tr. 615-616). Fackrell said that he did not perform any testing on the used equipment when it was brought into the igloo. (Tr. 620). The equipment was never bagged, but there was a process of "red tagging" it with the issues, date, and time. (Tr. 618-620). Fackrell stated that mini-CAMS and ACAMS that were used in service were not hazardous waste to his knowledge, but he "probably was not educated enough to answer that." (Tr. 621).

Fackrell testified that he was not interviewed about the locker incident, and he did not prepare a statement. (CX-23, p. 268; Tr. 622). The crew members talked amongst themselves, however. (Tr. 622). Fackrell testified that on two occasions he made a statement that he was going to "kick someone's ass." (Tr. 624). On one occasion, Matt Harris was "making fun" of Fackrell, and Fackrell threatened to get up and "kick his old

ass." (Tr. 624). Thereafter, Fackrell and Harris became good friends. (Tr. 625). On another occasion, while they were in Maryland on their time off, Andy DeMartini told Fackrell that he could not chew tobacco in the car. Fackrell waited for Andy outside the store to fight. Steve Alder intervened and told Fackrell he would lose his job, and it was not worth it. (Tr. 625-626).

Fackrell testified he never threatened to do a drive-by shooting while he worked at Battelle. (Tr. 628). He does not recall anything written on ATLIC lockers. (Tr. 629).

On cross-examination, Fackrell stated he had no reason to think ACAMS and mini-CAMS were contaminated when brought into the Igloo because they did not come from a toxic area. Sample lines, which do come from toxic areas, are never taken into the Igloo. (Tr. 630). Gloves were worn as a rule. (Tr. 631).

On re-direct examination, Fackrell testified he observed V to G pads laying on the ground of the Igloo, which was considered hazardous waste. The pads could have been new or used; Fackrell was not sure. Employees would pick up the pads and put them in a bag and dispose of them. (Tr. 632-633). No reports were made, and no one was disciplined for it. (Tr. 632-633). He was also never disciplined or terminated for making threats. (Tr. 633).

Cameron Dick

Dick is a high school graduate. (Tr. 634). He began working with Respondent on March 31, 2010, after interviewing with Supervisors Perkins and Sickler. (Tr. 635). As a demil tech II, he received training and worked in the Gas Light office area. (Tr. 635-636). He went into the interferant trailer with Sickler and learned how ACAMS and mini-CAMS worked. (Tr. 636).

During the construction of the ATLIC, Dick built sample lines, prepared sample stations, drilled tables, and hooked up the air filters. (Tr. 637). In July 2010, Dick returned from Maryland where he received training. He was assigned to work with Sickler and Azelia. Teams did not always work together and were not cohesive. (Tr. 638). There were fights between teams over materials needed. (Tr. 638-639). Brian Kimber stayed at the TOCDF until the ATLIC was built and then critiqued everything on the project. (Tr. 639-640). It seemed like he wanted to take credit for the projects. There was a lot of animosity. All crews disliked Sickler's crew. (Tr. 640). The

facility did not have a friendly atmosphere. (Tr. 640-641). Other crews were hesitant to help Dick's crew. He does not know why comments were made, but Sickler was not liked. (Tr. 641).

Dick stated Bruce Vario thought they were all cheating the system because Sickler was their lead. (Tr. 642). Dick felt that there was no basis to this accusation. (Tr. 643). In Spring 2012, Dick confronted Vario about his claims that Dick was a bad tech, cheating his shots, and "everything. . . [he] was doing wrong." Dick stated Bruce criticized him mainly because he worked for Sickler. (Tr. 644). This aggravated Dick because Sickler did everything "by the book" and followed procedures. Sickler taught the team that procedures were "above and beyond everything." (Tr. 646). Dick never talked to Matt Harris, who thought he was "the greatest thing in the world, and everyone else was idiots." Dick called Perkins and told him, "Matt and Bruce are just dragging me through the mud, and I'm sick of it. . . Get them to stop." (Tr. 647). This conversation occurred just after Sickler and Azelia were let go. (Tr. 648). Despite talking with Perkins, the bad behavior did not stop. (Tr. 648).

Dick was not present when the locker items were put up. (Tr. 648). Because the harassment from Vario and Harris had not stopped, Dick called Randy Roten. Roten stated that they "can't have that out here," but again, the behavior did not stop until Dick left a year later. He never heard anything back from Roten or Perkins. (Tr. 649, 651). Dick testified that the rumors were not true, and he had never been disciplined. Dick considered the comments by Vario and Harris to be harassment and so informed Perkins and Roten. (Tr. 650). No investigation or discipline ever ensued from Dick's complaints about Vario and Harris. (Tr. 651).

Dick left Respondent on April 6, 2013. Kale Gilman had become his lead and went behind him to check challenges. He was glad Gilman did because it validated his work. (Tr. 650).

Regarding the general environment at the facility, Dick stated he tried to keep to himself. He got along with his crew. (Tr. 651). In the Fall 2011, Burt Beacham elbowed him, and "as a knee[-]jerk reaction", he shoved Burt. Sickler got in between the two men. Dick was brought to the conference room to meet with Perkins and Roten. Sickler was present and described what he saw happen. (Tr. 652-653). Burt was also called to the conference room at a different time. (Tr. 653). Dick told Roten that Burt should not have elbowed him. (Tr. 653-654).

Perkins and Roten stated they could not have that kind of conduct, but Dick never heard anything after and had no knowledge of any investigation into the matter. (Tr. 654-655). Dick was not sure if Burt had been disciplined, but "it seemed like [he] could do whatever he wanted out there, and nothing would happen." (Tr. 655).

Burt was written up for "time card fraud" because he clocked in before work. In 2012, he was also caught falsifying DAAMS flows, which is "a huge deal." (Tr. 655, 657). Brian Kimber was the one who discovered the falsification, and again, Burt was not written up, nor was he fired. (Tr. 657-658, 660). "Burt could do what he wanted to do, a slap on the wrist, even for something serious like that." (Tr. 660).

Dick stated hazardous waste was laying around in the ATLIC, such as used gloves. (Tr. 661-662). Dick understood hazardous waste to be anything associated with challenging a machine with a chemical agent. (Tr. 662). Lab coats hanging up in the monitoring room had used V to G pads in the pockets, as well as used gloves. (Tr. 662-663). "[T]here was always hazardous waste laying around." (Tr. 663). Dick testified there was also hazardous waste in the Igloo, such as non-operational machines and used Swage lock fittings and Teflon tubing. Dick did not personally talk to management about the waste. (Tr. 664-665). Dick recalled when Sickler sent an email to Perkins, and he stated that management "came around once" and asked him to open his tool box. (Tr. 665).

Dick stated that in one instance in 2011 he found the silastics to "A" and "B" tubes switched at the ATLIC, and Sickler made a Missed Monitoring Report. Dick stated Alden Johnson told him, "'You guys shouldn't have to write reports for everything.'" He recalled being called a glory hog who was "trying to get everybody in trouble." Alden Johnson, a foreman on Brian Kimber's crew, was responsible for the switched lines. (Tr. 667-669).

Dick left Battelle on April 6, 2013. He received a retention bonus of \$13,000 because he worked at the facility until he was contractually released due to a reduction in force. (Tr. 670).

On cross-examination, Dick stated that he did not recall Burt Beacham finding a silastic tubing mistake on January 24, 2012. (Tr. 671).

Sue Renzello

Renzello began employment with Respondent in 1994. (Tr. 674). She last worked for Respondent in July 2013. (Tr. 674-675). She served as a DAAMS technician at the TOCDF and in the labs. (Tr. 675). She moved to Area Ten (ATLIC) three years ago and worked in several Igloos and trailers. She worked five minutes from the ATLIC in Secondary Waste destroying equipment, such as used DPE suits, drums of waste, gloves, boots, and liquid waste. (Tr. 676). She also worked in the autoclave 1631, which was an Igloo where munitions and hazardous waste were stored. (Tr. 677-678).

Renzello was on a team supervised by Waco Cowan and consisted of Ms. Renzello, Brandon Fails, and Casey Youngbird. (Tr. 678). Ty Tate supervised Waco Cowan, and Shane Perkins supervised all of them. (Tr. 678-679). Tate came to the ATLIC in the summer of 2011 "to whip them into shape." (Tr. 680). Co-workers got along well, and she never saw any harassment. She did not see any jokes or pranks at the ATLIC or any inappropriate acts. (Tr. 681-682). She did see such behavior at the TOCDF plant. (Tr. 680). She saw no items on lockers at the ATLIC. (Tr. 682).

At the TOCDF, she observed lockers with photos of body builders or "fat people" with workers' faces pasted on them. No one confessed to creating them, and no one "took it to heart." (Tr. 682). There were few women at the TOCDF, and she stayed away from the men because there was inappropriate language, videos, and male employees looking at Playboy magazines. (Tr. 683). Mike Medina, a team lead, looked at such magazines. In early 2000, her badge was stolen, and a copy of her face from her photo was placed on playing cards, which made it appear she was naked. Lorraine LeMans was also a victim of this prank. (Tr. 684-686). Renzello told her supervisor, Randy Roten, who told her he would take care of it, and she did not see the playing cards again. She never heard that anyone was punished for the prank. (Tr. 685). She described such activities as common behavior. Another prank included a dead snake placed in a lab cooler. (Tr. 686). She did not see any inappropriate videos being viewed on phones, but she knew they were doing so. None of such conduct occurred at Secondary Waste, only at the TOCDF. (Tr. 687).

At the TOCDF, one male employee, Paul Vigil, referred to women as "douche bags," and was yelled at by supervisor, Johnny Myers. (Tr. 687-688). It was easier for her to stay away from

such individuals, or to go to lunch. (Tr. 688). When she did interact with her male coworkers, there was horseplay, including ripping coveralls off of each other. (Tr. 688-689). This occurred at the TOCDF, but not at Secondary Waste. (Tr. 689). She worked with Brian Stewart at TOCDF and never witnessed Stewart harassing anyone. (Tr. 690). She overheard other coworkers talking in 2006 at the TOCDF that Stewart placed his "private part" on the shoulder of a sleeping co-worker. (Tr. 691).

Renzello did not see any hazardous waste laying around at the TOCDF or at Secondary Waste. (Tr. 692-693).

Shane Colledge

Colledge is a high school graduate and attended some college. He began with Respondent in April 2010, after an interview with Ty Tate and Jeff Jolly. He was hired as a monitoring tech. (Tr. 695). He underwent training in Maryland and worked with Sickler and Azelia. (Tr. 696).

Colledge helped construct the ATLIC. He ran air lines and placed equipment and machines at stations. He received training from Sickler as they went along. (Tr. 696).

Destruction of agent started in early 2011. He was on "D" Team with Sickler, Azelia, and Dick. Colledge had good interaction with the other teams and got along with everybody. (Tr. 697). He saw pranks on computer screens in the Igloo where their work lockers were located, such as "My Little Pony" and other "girlie" things. There was joking and teasing between teams and within teams. (Tr. 698). Employees would write remarks on or paste stickers to tool boxes, such as flowers, hearts, or "I like boys." Azelia had a lot of writings and markings on his toolbox. Azelia's toolbox was often left out of his work locker and was "fair game." (Tr. 699).

Dennis Griffin, who was on another team, was nicknamed "Squirrel." (Tr. 699). Colledge was called "GB," which stood for "Gut Buster," a sandwich he would frequently order. (Tr. 700). He saw Griffin's locker with the three-way valve and "Squirrel's Nemesis" note fixed to it. He did not see a noose. (Tr. 701-702). Colledge submitted a statement about the incident to Battelle via email. (Tr. 702). He identified the date of his statement as March 14, 2012, in CX-26. (CX-26; Tr. 703). Colledge stated he saw the valve display in a photo on a phone first before he saw it with his own eyes. (Tr. 703). He

does not remember there being a noose in the picture. Clint Azelia was the individual who showed him the photo. (Tr. 704). Colledge testified the noose had been around for two or three weeks on different lockers, on the floor, and on top of lockers. (Tr. 705-706). Colledge stated he did not like to talk about the situation with other workers because of the interviews that were conducted on the matter. (Tr. 706). He "tried to stay out of it as much as [he] could." (Tr. 706-707).

Colledge recalled attending a management meeting in the Igloo, but the valve and note were not on Griffin's locker during the meeting. He did not see the valve or note after the meeting, but it might have been put back up. (Tr. 707).

Colledge stopped working for Respondent on June 6, 2013. He first heard of a noose on Griffin's locker when employees were called in for interviews. (Tr. 708).

Techs would work 12-hour shifts, and team turnover usually went smoothly. (Tr. 708-709). Beyond disagreements, he did not see any major problems between teams. (Tr. 709).

Colledge considered hazardous waste to be materials that have been used and cannot be used again for what they were intended. Colledge observed hazardous waste lying around the ATLIC, such as used V to G pads under desks, machines, and tables. The pads were used to sample air on agents. He would pick them up, but did not report their presence. (Tr. 710, 713). PCTs are glass tubes with sorbent materials that collect agent. They were changed quite frequently and were left out on tables. (Tr. 711). Used gloves were seen in the garbage, instead of the hazardous waste bin. (Tr. 711-712). There were 90-day containers in different areas of the ATLIC for disposing waste. He would carry around hazardous waste until he got to a hazardous waste bin, where he would discard it. Colledge saw hazardous waste, usually used V to G pads or PCTs or gloves, in Igloo 1638 under the lockers and desks. (Tr. 712).

Colledge was interviewed on April 20, 2012, by Randy Roten, Maria Martinez, and Amanda Price via conference call about the locker incident. (Tr. 714-715).

Steve Alder

Alder is presently unemployed. He last worked as a monitoring Team lead for Respondent on November 13, 2013. (Tr.

717). He last worked at the TOCDF, after the ATLIC was no longer operational, where Dean Williams was his supervisor. (Tr. 717-718). Adler was reduced-in-force as part of a layoff by Battelle, and he received a retention bonus based on his length of service. (Tr. 718).

Alder began with Respondent in February 2010 as a Team lead, the same position that Glen Sickler held. (Tr. 719). At the ATLIC, he was lead for "A" Team, which consisted of Jerry Fails, Dennis Griffin, and Bruce Vario. Shane Perkins was monitoring manager, Ty Tate was deputy monitoring manager, and they reported to Randy Roten. (Tr. 720). Rezi Karimi was over the operation. (Tr. 721).

Alder was asked by Tate to provide a statement about Griffin's locker incident. (Tr. 722). RX-8 is his statement of March 15, 2012. (RX-8; Tr. 722). He was not doing turnover with Sickler's team which was not on the site on that date. (Tr. 723). When Alder arrived for his shift, he saw something on Griffin's locker, but did not see a noose. He testified he saw the noose on the end of the lockers. (Tr. 725-726). The noose had been seen around for a couple of days. (Tr. 726-727). He saw the noose on a bench, but did not see employees handling the noose. (Tr. 726). Griffin did not complain that he felt threatened by the noose; nor did any other employee. Alder did not find it threatening or racially harassing in any manner. (Tr. 727).

RX-12 is the statement of Jerry Fails, an employee on Team "A." Fail's statement does not state that the noose was on Griffin's locker on March 15, 2012. (Tr. 728). Bruce Vario was the first to inform Alder about the noose. Like Alder, Fails also stated he did not see the noose on the locker. Alder stated he started hearing rumors that a noose may have been on Griffin's locker at some point. (Tr. 729). Alder stated at some point, Dennis Griffin was told there was a noose on his locker. Griffin had told Alder that he had never actually seen the noose. (Tr. 730). Griffin told Alder that he was going to HR to report the noose. (Tr. 731). According to Alder, Vario and Azelia got along, as did Vario and Sickler. RX-1, a photograph, looks similar to what Alder saw on the locker on March 15, 2012. (Tr. 732).

Concerning the Root Cause Analysis, Alder gave a statement about one event in which he was involved where he set off an alarm by challenging the mini-CAMS in the wrong mode. He and Brian Stewart made a condition report (CR) on the event. (Tr.

733). The Root Cause was centered on missed monitoring events, which were not rare because mistakes happen, according to Alder. Alder was not interviewed for any other Root Cause events. (Tr. 735).

CX-1 is a statement from Alder, dated November 14, 2011, describing his setting the site alarm and notifying the Control Center, a violation of Battelle Procedure. Alder considered the event a level 6-7 of 10 in severity. (CX-1; Tr. 736-737). Alder was not disciplined. (Tr. 737). CX-5 describes the event of December 25, 2011, involving Griffin, a member of Alder's team, in which Griffin did not turn the valve back to proper configuration at Station 727L to monitor the Tox chemical room. (Tr. 738). Alder should have checked behind Griffin, but did not peer review the configuration. (Tr. 739). The severity of the event was also a six to seven out of ten in significance. (Tr. 740). Griffin's second mistake was more severe, nine out of ten, because an entry had been made into the Tox room, which was a Category "A" space. (Tr. 741-742). With the valve not properly configured, the station was monitoring the Tox monitoring room and not the Tox room. Subsequently, Respondent changed the policy, which now required the lead or foreman to check behind the tech on valve re-configurations. (Tr. 742-743).

CX-7 is a self-report of Griffin's second violation which violated the RCRA permit. (CX-7; Tr. 743). Griffin received a written warning for the second incident. (CX-7, pp. 650-651; Tr. 743-744). Alder also received a written warning, but was not terminated. (Tr. 744).

Alder has seen the Root Cause Analysis dated February 16, 2012, which is available on the network. (RX-49; Tr. 746). Page 49.05 shows a change made on December 29, 2011, to the Daily Work Order and reflects the implementation of a Battelle work procedure that requires a member from the technician's team to verify that the line is changed back from the challenge. (RX-49.05; Tr. 747). Alder could not recall if he had followed this procedure for the first incident. He did not think he did for the second incident. (Tr. 747).

The Quality Peer review was not properly followed since the station was not verified. (RX-49.11, p. 381; Tr. 748). Alder signed the Work Order and provided his identification number, G-03. (RX-49.21; Tr. 749). Alder completed the NRT challenge work order verifying that he had reviewed the station in compliance with the work order, and he made sure it was turned back to the proper configuration. (RX-49.22; Tr. 751). The

Root Cause Analysis, however, found that he did not verify the configuration or the procedure entered into. (Tr. 753).

RX-49.24 relates to the daily peer observation. (RX-49.24; Tr. 754). The peer observation reflects that Alder had verified the PAS on January 20, 2012, which is a different station than tox. Alder signed off on both as the employee and the reviewer that the stations were reviewed. (Tr. 754). Kale Gilman verified the Tox monitoring room. (Tr. 755). Alder agreed that the work orders reflected that the peer review process was done, but in reality, it was not. (Tr. 756).

Alder denied knowledge of an incident at the ATLIC on April 10, 2012. He testified that if a sample line is disconnected there is no monitoring and no readings. (Tr. 756). The only way to be able to tell if anything happened would be if there is a DAAMS tube on a separate line. Alder stated that if an entry was made in an area where the sample line was disconnected, the severity of the incident would be an eight, nine, or possibly even ten, out of ten. (Tr. 757).

Alder does not recall being interviewed by Randy Roten about the locker incident. (Tr. 758). RX-23 contains interview questions posed to Alder concerning the April 10, 2012 incident. (RX-23; Tr. 759). Alder never had seen or reviewed RX-23 prior to testifying. He stated he did not recall being interviewed by Roten about the locker incident or any other issue. (Tr. 759). Alder then stated he was interviewed by Randy Roten, Maria Martinez, and Amanda Price, who was present by phone. (Tr. 760).

Alder recalled a situation in which Heath Fackrell made threats of violence. Alder attended training in Maryland with Fackrell and Andy DeMartini. He broke up an argument between Fackrell and DeMartini over use of tobacco in the rental car. Fackrell threatened to beat up DeMartini, but did not actually touch him. (Tr. 761-762). Alder told Fackrell that he would be fired if he got in a fight. He thinks Fackrell's threat was a violation of Battelle's policy, but he did not report it to Respondent. (Tr. 763). Alder was not disciplined for not reporting the incident. (Tr. 764). To Alder's knowledge, no other Team lead reported any other threatening conduct of Fackrell's. Alder was not aware of Fackrell ever being disciplined. (Tr. 765).

Horseplay and joking were commonplace, as were pranks to a certain extent. Alder was nicknamed "Cow Killer" because he hit

a cow while driving to work at approximately 70 mph. (Tr. 766). He does not recall, however, any items put on Azelia's locker. Alder stated that people disagreed which was also common place, but there were never any fights or threats among employees. (Tr. 767).

There were times when Alder saw hazardous waste not properly disposed of at the ATLIC. (Tr. 767). He saw PCTs and V to G pads laying around. He would put them in a bag in his tool box until the bag got full, which he would then place in the hazardous waste barrel. Alder knew he was violating policy by carrying around a bag of hazardous waste in his tool box; Battelle's policy was to dispose of hazardous waste immediately. (Tr. 768). He did not report the hazardous waste to management. (Tr. 769).

Alder testified he had seen the noose in the Igloo, but also did not report it to management. He saw a sign and valve on Griffin's locker, but did not report that to management either. (Tr. 770).

On cross-examination, Alder testified that if he found an issue, depending on the type of problem, he would report it to Tate, Roten, or Perkins. (Tr. 771). A shift leader should report issues such as missed monitoring or alarm reports that occur on their shifts. (Tr. 772). He saw V to G pads about three times, PCTs about three times, and used gloves two or three times, or more. (Tr. 773).

Alder was disciplined for the January 20, 2012 incident for not making sure the valve was in the correct position, and because he was Dennis Griffin's supervisor. (Tr. 773). As a result of the written warning, Alder did not get a safety bonus for that quarter. The safety bonus was usually about \$500-\$700. (Tr. 775). He did not believe that his reduction in force was affected by the written warning, but he had been told by management that warnings could contribute to an earlier RIF. (Tr. 776).

RX-51 is a shift report for November 14, 2011, regarding the report of a challenge by Alder which set off a site alarm. The CR from that incident was part of the Root Cause Analysis. (RX-51.04; Tr. 777-778). The CR for a November 16, 2011 incident is set forth at RX-52.01. (RX-52.01; Tr. 779). He did not cause this mishap, but it was his duty to create the condition report. This incident was also evaluated as part of the Root Cause Analysis. He was not disciplined for creating

either of the two reports, and he did not feel like he suffered any adverse consequences. (Tr. 780). Alder felt it was his duty to create the CRs, if no one else did, as creating CRs were mandatory. (Tr. 780-781).

Alder was interviewed by the Root Cause Team two times and had no constraints placed on him to answer freely. (Tr. 781). Alder never saw a manager of Respondent cover-up or discourage reports. No managers ever stated to him they were upset with Azelia or Sickler for reporting issues. (Tr. 782).

RX-49, page 24, is a document noting work order details, which reveal that Kale Gilman peer-reviewed the Tox area and Alder reviewed the PAS. (Tr. 783-784). On January 18 or 20, 2012, Alder testified verification may have been done, but incorrectly. (Tr. 784-785). Alder stated he did not feel like he was in his supervisory capacity on his day off when Heath Fackrell made threats to Andy DeMartini over chewing tobacco in the rental car. Andy was also involved in the incident by offering to fight Fackrell. (Tr. 787-789). CX-23 is a statement containing "rumors" about Fackrell. Alder heard Fackrell making threatening remarks a couple of times, but not as stated in CX-23. (CX-23, p. 268; Tr. 789-790). Alder stated jokes were commonplace, but pranks were not. (Tr. 791). He affirmed carrying around hazardous materials violates some Battelle policy, but he was never instructed it was a specific violation to carry around hazardous materials. (Tr. 792-793).

On re-direct examination, Alder understood that he was given a warning letter about the January 20, 2012 incident based on the fact that he was Dennis Griffin's supervisor, not because he was lying or negligent about verifying the procedure. (Tr. 793). Alder was not disciplined for the November incident in which he made a mistake, yet he was written up for the January 20, 2012 incident, which was not his mistake. (Tr. 794). Again, Alder testified he did not know whether he was reduced-in-force earlier because of the January 20, 2012 incident. Alder confirmed that regardless of who submits a CR, the CR should be accurate and contain truthful information. (Tr. 795). Alder stated co-workers placed a sign on his locker referencing his nickname, "Cow Killer" on one occasion. (Tr. 798).

Upon examination by the undersigned, Alder stated that it was impossible to incorrectly verify a station. It is incorrect to state that one verified a station, if they did not actually verify and simply recorded that they did with their G number;

such a falsification is not a verification at all. (Tr. 799-800).

Brian Kimber

Kimber last worked for Respondent on December 12, 2013, when he was laid off due to a reduction-in-force. He is now employed by Miller Engineering. He received a retention bonus, but does not recall the amount of his retention bonus. (Tr. 802). Kimber was a monitoring Team lead at the ATLIC. (Tr. 803).

Kimber began as a monitoring tech I with Respondent in February 2006 at the TOCDF, and he became a tech II at the TOCDF in October 2006. (Tr. 803-804). At the ATLIC, Kimber was a monitoring Team lead, the same position Sickler held. (Tr. 804).

He was the lead for "C" Team, which included Ron Argyle, Matt Harris, Alden Johnson, Burt Beacham, Tim Doxy, Brad Carries, Joan Schubert, and Ron Potter. (Tr. 804).

Concerning the March 2012 locker incident involving Dennis Griffin, Kimber saw a sign stating "Squirrel's Nemesis," a valve, and a noose on the locker. He came in on night shift on Tuesday night and received turnover from Sickler. Kimber testified that when he walked in that night and went pass the locker he did not notice the items on Griffin's locker. Azelia asked him, "Did you see what we did to Squirrel's locker?" Azelia then showed Kimber the locker. (Tr. 806).

Kimber testified Shane Colledge was present, somewhere behind the lockers. (Tr. 807-809). When Azelia showed Kimber the valve display, Sickler could not have seen what Azelia was showing Kimber; Kimber did not say anything in response. He then received turnover from Sickler, and there were no comments by Sickler about Griffin's locker. (Tr. 812). Kimber did not report the locker incident to management. He does not recall telling any employees about the locker. (Tr. 813). At the end of the shift, he went back to the locker room, but does not recall if he saw anything on the locker at that time on Wednesday morning. (Tr. 813-815).

Kimber returned to the ATLIC locker room on Wednesday night to report for his shift, and he saw the sign, valve, and noose on Griffin's locker again. (Tr. 815-816). He did not report the item on Griffin's locker to management on the second

occasion either. He did not discuss the items on the locker with anyone. (Tr. 816). On Thursday morning, at the end of his next shift, the same items were still on Griffin's locker. (Tr. 817). He did not then report the items to management or take the items off the locker. (Tr. 817-818). Kimber recalls Steve Alder asking, "What's this all about?" At the time Alder asked that question, the noose was still affixed to the locker. (Tr. 818). In response to Alder's question, Kimber stated, "I don't know." (Tr. 820). Kimber did not discuss the valve display with anyone else other than Alder on Thursday morning. (Tr. 821).

RX-15 is Kimber's statement dated March 19, 2012, regarding the locker incident. Ty Tate asked Kimber to provide the statement. (Tr. 822). His statement does not include his observations on Wednesday morning, Wednesday night, or Thursday morning; he was under the impression that they wanted him to record what he saw the first time he viewed the valve display. He did not report that the valve on the locker was a contaminated valve. (Tr. 823). Kimber did not consider removing the valve or disposing of it. After Kimber submitted his statement, Tate asked Kimber to determine if the valve was contaminated, and he had a photo of the valve. (Tr. 824). Tate wanted to know if the valve had been used. (Tr. 824-825). Based on the photo of the valve, Kimber told Tate that it was his opinion the valve had been in use at Station 727L. Kimber stated he personally installed the valve on Station 727L, and he wrapped fiberglass tape, heat trace tape, and installed fittings on it. In the picture, Kimber stated he could still see the fiberglass tape across the valve in the same fashion he had put it on, and the fitting on the bottom of the valve was still installed. (Tr. 826). RX-19.01 was a picture similar to the one he looked at to determine the valve was from Station 727L; the picture he saw, however, contained the noose and the entire valve. (RX-19.01; Tr. 827).

Kimber testified at the unemployment hearing held for Azelia and Sickler. In his testimony at the unemployment hearing, he stated that the valve from Griffin's locker had the same fiberglass tape he had wrapped on it, which led him to believe it was the same valve from Station 727L. (RX-46.60, p. 4178; Tr. 828-829). He did not mention the union and configuration of the valve in his unemployment testimony, and Kimber could not explain why. (Tr. 829-830). He placed the heat tape on the valve and then wrapped fiberglass tape over the valve a number of times. (Tr. 831-832). A clearer photo of the valve, which he saw, was wrapped in a similar way. (Tr. 834-

835). Kimber admitted, however, that in order to remove the valve from Station 727L, the tape would have needed to be cut, which would have damaged the fiberglass tape. (Tr. 832-834).

On cross-examination, Kimber testified that he had a duty to report issues. (Tr. 836). Kimber testified Sickler did not report more issues and was not known to others to do so. To his knowledge, no one in management had anything against Sickler and Azelia or wanted to take any action against them for raising issues. (Tr. 837). Kimber stated that failure to make a report at Battelle is a cause for action. (Tr. 838).

RX-69 is a written warning Kimber received on July 30, 2012, for failing to report the locker incident. (RX-69; Tr. 839). RX-16 is emails exchanged between Tate and Kimber, which express Kimber's opinion that the valve from Griffin's locker was the valve from Station 727L. (RX-16; Tr. 840).

RX-57 is a Monitoring Operations Shift Report from January 24, 2012, in which Kimber prepared a missed monitoring report. (RX-57.04; Tr. 841-842). Kimber did not recall whether the incident was part of the Root Cause Analysis. (Tr. 842). RX-58 is a CR Kimber prepared about a mistake Alden Johnson made on February 2, 2012. (RX-58; Tr. 842-843). He had no sense that management was unhappy for his reporting these mistakes. (Tr. 843).

Kimber has observed hazardous waste materials lying around, such as V to G pads in plastic bags to be disposed of in the hazardous waste bins. (Tr. 843). He did not see V to G pads laying around otherwise. PCT tubes were not seen in places they should not be, and he did not see any used nitrile gloves. (Tr. 844).

Matt Harris was on Kimber's team for a year to two years. (Tr. 844). Harris had a white bag during construction of the ATLIC, but Kimber did not recall him carrying a white bag full of used V to G pads. (Tr. 845).

Kimber never caught Burt Beacham falsifying DAAMS data, and he never told anyone he had evidence of such action. (Tr. 845).

Kimber stated that there were never any things posted on employees' lockers, and it was not common for joking and horseplay to occur at the ATLIC. (Tr. 845).

Ole Wilson

Wilson worked at Battelle for almost 20 years. (Tr. 851). Wilson began employment with Respondent in 1992 or 1994. His last date of employment was May 2, 2013. He began as an ACAMS Tech at the TOCDF. (Tr. 852). He was promoted to a XRF technician, performing x-rays, and then he became a SLT (senior lab tech). (Tr. 853).

Wilson testified he got along with the average workers, but not the group called "gangs" or "good old boys." (Tr. 853). He experienced a lot of harassment, beginning before the TOCDF "turned hot" in 1996-1998. (Tr. 854). He told Randy Roten that he was going to the stack house to learn how to adjust the dilution, the ADC and ACAMS, so he would know how to respond to alarms and malfunctions. (Tr. 854-855). He did not know that someone was reporting he was sabotaging the equipment. He had to talk to Martin Morris, the branch chief, and explained to Morris what he was doing. Morris seemed to think what he was doing was okay. (Tr. 855). Morris never spoke to him again, nor did Human Resources. (Tr. 856).

Wilson reported cheating on ACAMS shooting in 1996-1998 to Roten. There was a tolerance within which ACAMS had to be challenged to assure the ACAMS were running within specifications. A group of employees were misrepresenting the function of the ACAMS in 1996 to 1998. After he reported the cheating is when the harassment began. (Tr. 857-858). Wilson felt he was being targeted. He was accused of being slow because he took his time challenging and testing tolerances. He was called into Roten's office every two weeks about doing things wrong; then every week; then every other day; and then daily. (Tr. 858-859). Roten did not tell Wilson who was filing complaints against him. Ty Tate was one of the techs cheating. (Tr. 859).

Wilson testified that in the mid-1990s, he had his first evaluation from Roten, which was half blacked-out. (Tr. 860-861). He asked why the evaluation was blacked-out, and he was told, "[T]here were some things I put on there, and I decided to change it, not a big deal." Wilson never found out what was blacked-out, even after trying to read the inscribing through the light. (Tr. 861).

Wilson stated that the harassment became more and more personal. He explained that employees were transferred to other teams. Roten's team was considered the elite team. One Team

did not want Wilson, and he moved to another team. (Tr. 862). Wilson is Native American, and he stated that "these people don't like minorities." (Tr. 863-864). He stated that in 2000 other employees, including, Ty Tate, Richard Chowstead and Brandon Snell, would jump on his back and ride him like a horse, and threaten to take his pony tail, wrap it around his neck, and hang him with it. (Tr. 864-865). Steve Strickland was his team leader to whom he complained. Strickland just told him, "Boys will be boys." Wilson described coming to work every day "underneath the stressful environment that they produced." (Tr. 865).

Wilson wrote a resignation letter in about 2000. His letter was interpreted as a threat, and it was claimed that he was going to "shoot everybody down," so he was escorted off the premises the same day. He felt he was being bullied, and he compared his situation to the Columbine shooting. He was not terminated and remained on the payroll for a year with pay. He was interviewed by "corporate" about things "that was happening." (Tr. 866). Wilson was under "house arrest" and had to report in at 6:00 am in the morning to Martin Morris. Wilson wanted to change the environment to be a safe place, and not be pushed around, bullied, and humiliated. A criminal investigation was conducted, and he had to go see a psychiatrist. (Tr. 867).

Wilson returned to work after one year and was then working for Ty Tate, one of the individuals who had harassed him before. (Tr.868). Tate did not do anything to him and he worked for a few years. Wilson stated he was told by "several people" he was on the "black list," and his name was number one to be fired. To his knowledge, no one was disciplined for what he considered harassment. He considered being escorted off the premises and being on the payroll for one year as discipline. (Tr. 869). He did not see any written write-ups, but he saw his evaluations. (Tr. 869-870). Respondent brought him back to work, even though Respondent felt he had made threats of violence to co-workers. Wilson consulted with an attorney, who told him it seemed more likely that he made the threats of violence because he went to see a psychiatrist. (Tr. 870).

Wilson worked a year and a half under Ty Tate, and "then XRF came in." (Tr. 870). At that point, Wilson "wanted off the team" because Tate was promoted to team leader after the things he had done to Wilson. (Tr. 870-871).

Wilson testified that he had a Bachelor's degree from Weber State in electronic engineering and an Associate degree in electronics, but could not get promoted "because he was Indian." He stated that others who did not have degrees were promoted ahead of him. (Tr. 871). In 2003 or 2004, he was promoted to the XRF position, where he felt "protected" and "nobody could hurt him." (Tr. 872).

On cross-examination, Wilson affirmed that he never worked at the ATLIC. (Tr. 872).

Ty Tate

Tate testified he is now employed at A.P. Montano. He previously worked for Respondent. (Tr. 873). He was Deputy Monitoring Manager for the ATLIC from January 20, 2012 to November 14, 2013. (Tr. 874). He transferred to the ATLIC because of the Root Cause Analysis to assist Perkins with oversight and prevent errors from happening. (Tr. 875). Tate reported to Perkins; Perkins reported to Roten; and Roten reported to Reza Karimi. His daily duties included assisting Team leads and assisting at the Secondary Waste site. (Tr. 876).

He spent half of his time at the ATLIC and the other half at Secondary Waste. He did not do daily challenges or complete missed monitoring reports, but did prepare CRs. (Tr. 877). Tate testified that a CR should be filed for any mishap, including slipping on ice, bumping into snow removal equipment, and if equipment dropped off a shelf and hits an employee. A large majority of the CRs that are filed every year involve issues for which Battelle wanted trending reports. (Tr. 879). Tate testified that, on average, one CR would be filed per week. He stated that the CRs filed for the events involved in the Root Cause Analysis were extraordinary. (Tr. 880).

Tate was provided and reviewed a copy of the Root Cause Analysis for monitoring issues. (CX-11; Tr. 881-882). The Analysis concluded that management failed to implement an effective management structure at the ATLIC. This conclusion was common to all nine events. (CX-11, p. 374; Tr. 883-884). Tate stated he was moved to the ATLIC before the results of the Root Cause Analysis came out because management "needed help," not because they were ineffective. (Tr. 884). Tate recalled the January 20, 2012 event, which involved a valve turned in the wrong configuration. (CX-11, p. 378; Tr. 885). The categories of the events could range from "A" to "C," with all events being

in the "C" category except the January 20, 2012 event which was in the "A" category. An "A" event is a more significant or severe event than a "C" event. (Tr. 887). Tate was not familiar with the lettering system, as CR reports ranked incidents with a numerical rating. (Tr. 886). "1" is the worst type of incident, and "5" is not as bad. (Tr. 887).

The April 10, 2012 event involved a disconnected sample line. (Tr. 887-888). He, Perkins and Brian Stewart entered the Tox Monitoring room after Sickler. Sickler explained the alarm sounded, and he went to the Tox Monitoring room and saw the sample line was disconnected from the DAAMS. (Tr. 888-889). Tate did not know the exact time he arrived. (Tr. 889-890). Tate testified Perkins did not say, "It's not agent. It's not agent." (Tr. 890). Perkins, Tate, and Sickler discussed what to do. At that time, Perkins and Tate asked Sickler to hook up the sample line to the DAAMS to collect as much sample as they could before the tubes were pulled and sent to the lab. (Tr. 889-891). Sickler had no disagreements with the instructions. (Tr. 892). Sickler had to perform the post-alarm challenge, contact environmental, let the plant manager know and let the lab know the DAAMS tubes were disconnected and were coming down. (Tr. 893). Before the tubes were reconnected, Tate believed that they had a sample for "at least an ACAMS cycle or two." Tate does not recall any discussion between him and Sickler on whether the cycle had run. (Tr. 894). Tate told Sickler he would prepare and submit the CR. Tate had not done a CR for Sickler before this event. (Tr. 894-895).

Tate's CR was received as CX-10. (CX-10, p. 652; Tr. 895). The entries are Tate's. When he wrote there was "no potential source," it was because all agents had been destroyed by April 2012. (Tr. 896-897). Tate made these determinations; no one told him what to write. (Tr. 897).

CX-10 also includes an email from Karsten Hansen dated Tuesday, April 10, 2012, at 3:21 pm. Hansen's email contains virtually the same information that Tate included in his CR, which was submitted at 3:52 pm. Hansen's email was sent to Tate 31 minutes before Tate submitted his CR. (CX-10, p. 426; Tr. 897-898). Tate agreed that the portions about no potential source, results from monitoring downstream, partial results from co-located DAAMS, and retention time were basically identical to information contained in Hansen's email. Tate stated Station 729K involved in the April 10, 2012 event monitors the observation corridor. (Tr. 899). The downstream flow from the observation corridor would be the liquid incinerator. The

monitoring system analyzing the liquid incinerator would normally be ECL, but Tate was not sure if it had been switched to VSL. (Tr. 900). As a result, the incinerator would be set to detect higher levels of agent, and the downstream monitoring would not sense if there was agent. (Tr. 900-901). Tate backtracked and stated it would be able to detect agent because, "if [he was] not mistaken, it was set to VSL." (Tr. 901).

The report Tate submitted also discusses retention time. Tate stated the retention time was determined by when the agent comes out of the instrument, which is a certain peak in the NRT on the strip chart. To determine the retention times for the April 10, 2012 incident, Tate "went off of Sickler's Missed Monitoring Report and alarm report, and from being there that morning, and Sickler telling us the retention time." (Tr. 903). Tate acknowledged, despite testifying that it was a "horrible copy," that the strip chart said, "1.22 alarm, did not catch retention time, fill width half mass," initialed by Sickler. (Tr. 904). Tate stated that if retention time was off by a certain amount of a number, one could speculate that agent was not present and, instead, it would be some type of interferant. (Tr. 904-905). Tate acknowledged he speculated about the April 10, 2012 incident. (Tr. 905).

Tate stated it was a big deal if the sample line is not connected because the area that should be monitored is not being monitored. Tate was not aware two individuals were in the observation corridor at the time of the alarm. (Tr. 906). Tate testified people being present would not have affected the severity level of his report. (Tr. 906-907). He found out about the presence of the individuals in the observation corridor after his CR. Tate did not amend his report subsequent to finding out about the presence of the individuals. (Tr. 907). He testified that two individuals from the observation corridor never came into the Tox monitoring room while he was present with Sickler and Perkins. (Tr. 908).

Regarding the Igloo locker incident, Tate testified Bruce Vario notified him on Friday, March 16, 2012, that he saw something on Griffin's locker, a sign and a valve, but not a noose. (Tr. 908-909). Vario then showed Tate Griffin's locker, and at that time, there was a noose hanging off of it, along with the sign and valve. Vario told Tate that he placed the noose on the locker valve display. Vario saw the noose lying on snow removal equipment or at the end of the locker. Tate took photos of the locker scene. (Tr. 910). Tate did not remove anything from the locker, and he told Vario to take the valve

down and put it in the hazardous waste bin. He did not retain it to determine whether the valve was hazardous; instead, he determined it was a hazardous valve from the toxic area because it looked used and heat tape was on it. (Tr. 911). Tate told Vario to remove the sign, but he could not recall if he instructed him to dispose of the noose. (Tr. 912). RX-19 contains photos taken by Tate with his company iPhone. (RX-19; Tr. 912-913). He sent the photos to Brian Kimber, who was asked to determine whether or not the valve was from station 727L. Kimber did not have any other photos, other than the ones Tate sent. (Tr. 913, 915).

CX-18 is the statement dated March 19, 2012, that Tate submitted. Tate never mentioned that he believed the valve was contaminated in his statement. (CX-18; Tr. 916-917). The statement does report that he met Bruce Vario in the Tox room and pictures were taken. (Tr. 917). Tate did not recall seeing the noose at any time prior to it hanging on the locker. (Tr. 918). Tate was interviewed by Roten and Price about a month later. (CX-18, p. 207; Tr. 918). Tate did not remember telling Roten at the interview that he had been told by Perkins that Doner had the noose on his lap during the management meeting. (CX-18, p. 186; Tr. 919-920).

CX-4 contains a series of emails. (CX-4; Tr. 921). Tate had requested on April 13, 2012, that Kimber submit a statement as to whether the valve was contaminated, almost one month after Tate wrote his own statement and after the April 10, 2012 incident in which Sickler found the sample line disconnected. (Tr. 921-922).

Regarding the April 10, 2012 incident, CX-10, page 664, is a trend report which shows that at 6:57 am the alarm went off with a reading of 1.22, and at 7:02 am the reading was 0.00, where a new cycle had started. (CX-10, p. 664; Tr. 923-924). CX-10, page 661, reveals the sample line was disconnected at 7:04 am, and Sickler reported he immediately reconnected it to the manifold. (CX-10, p. 661; Tr. 924). Tate did "not necessarily" agree that there would have been no way to get the retention time due to the fact that 7:04 am was after the alarm cycle cleared. He stated that 7:04 am was simply the time that Sickler found the disconnected line; not the time of the alarm. He stated the ACAMS cycles for five minutes. (Tr. 925). Tate further noted that 7:04 am was when Sickler recorded the disconnected line in the logbook, not the time of the actual disconnection, which could leave open the possibility that a full cycle had cleared. (Tr. 925-926). Tate stated this type

of speculation was "normal." (Tr. 926-927). Tate stated that the readings of the retention time were also still on the instrument when he arrived. (Tr. 927). The disconnected sample line was reported as a mechanical error by Tate because they did not want to speculate how the line became disconnected. (CX-10; Tr. 928).

Tate assigned the priority level as a level "3," which was before he knew individuals had entered the observation corridor. (Tr. 929). Tate testified he was not sure if the presence of individuals in the corridor would have changed the priority level assigned. Tate stated he did not think the priority level would have been higher. (Tr. 929-930). Tate stated they processed potentially contaminated waste after the incident on April 10, 2012, occurred, and they had completed processing Lewisite, so there was no potential agent. (Tr. 930). The facility had not yet been "R X 3'd," so the state required monitoring of all areas. (Tr. 930-931).

Tate testified he did not see Azelia remove the valve from Station 727L, but he knew Azelia had removed it. (Tr. 931). He was present when Azelia made a comment about Dennis Griffin, to the effect of putting the valve on a plaque for Griffin. (Tr. 932). Tate testified he did not laugh or comment at Azelia's remark. (Tr. 932-933). CX-18, page 185, the interview notes of Tate reveal Tate and Perkins both chuckled. The notes reveal three inaccuracies by Tate: that Sickler had the valve in his hand after its removal, not Azelia; that Sickler, not Azelia, made a comment about what to do with the valve; and that Tate and Perkins both chuckled. (CX-18, p. 185; Tr. 934).

Tate stated he had not seen other things on lockers during his time at the ATLIC, besides "sportsabelia." He never saw anything on a locker referring to Brett Doner, and he never saw any type of joke or harassment related to Doner. (Tr. 935). Tate then remembered a Christmas card that was given to Doner that had the phrase "I dominate" but no other specifics. (CX-18, p. 183; Tr. 936). He remembered the card was inappropriate. Tate told them to take the card down and did not report it. (Tr. 937). He said he witnessed horseplay and joking "here and there, but nothing inappropriate that [he] could remember."

Tate stated he does not remember hearing a derogatory comment in a management meeting about Karimi's national origin. (Tr. 937). Roten told him that Waco Cowan, a supervisor in Secondary Waste, made the comment. (Tr. 938-939). Tate testified he never harassed Ole Wilson, pulled his pony tail, or

jumped on his back. He was never disciplined for such allegations. (Tr. 940). When asked whether horseplay was common, Tate was noted as stating, "[B]oys will be boys." (CX-18, p. 184; Tr. 940). Tate testified, however, that horseplay is not commonplace at the facility. (Tr. 941). He stated that there was no "banter" amongst employees at the ATLIC. (Tr. 942).

Griffin told Tate the valve on his locker did not bother him, and he never saw the noose. (Tr. 942-943). Griffin was from Illinois, and he raised an issue about the noose because of the overtones it carried for African Americans. When Azelia heard Griffin was upset, he immediately called Griffin and apologized, but stated he did not put up the noose. Sickler also told Tate he did not see the noose on the locker. (Tr. 943). Tate stated Griffin had seen the noose floating around the Igloo, but it did not bother him at that point. Griffin's nickname was "Squirrel," and even Tate called him that. (Tr. 944). Tate was not aware of any nicknames for Azelia or Sickler. "Fro" was Bryan Stewart's nickname. Stewart was Hispanic. (Tr. 945).

Tate was disciplined around July 30, 2012, for the "testimony through the interviews for this incident" about a month after Sickler and Azelia were terminated. (CX-51, pp. 506-601; Tr. 946). In Tate's 19-year career, he had never received any other warnings. (Tr. 946). Azelia and Sickler were never disciplined before the locker incident. (Tr. 947). Tate did not appear to testify at the unemployment hearing for Azelia and Sickler. (Tr. 948). He heard that Sickler and Griffin had a fight when Griffin lived with Sickler. They had been drinking and Sickler punched Griffin. (Tr. 950).

On cross-examination, Tate testified that the CR he prepared for the January 20, 2012 event was submitted to document the decision that is set forth in Karsten Hansen's letter to the State of Utah. (CX-10, p. 426; Tr. 953-954). Tate had no participation in the suspension or termination of Azelia or Sickler. (Tr. 954). Tate explained the difference between hazardous and toxic: hazardous waste is equipment that is no longer intended for its use; whereas toxic means it was used in a toxic area or in use. Tate thought the valve was hazardous, not toxic. (Tr. 955).

Regarding the locker incident, Tate understood Vario put the noose on Griffin's locker, which already had a sign and valve. Tate stated Sickler told him Azelia put "the stuff" on

Griffin's locker and Sickler told Azelia to remove the items from Griffin's locker while Tate and Perkins conducted the management meeting, and Azelia put them back up following the meeting. Sickler was ready to get off shift and did not tell Azelia to take the items back down. (Tr. 956). Tate got the impression that Sickler saw the valve display again after the management meeting. Sickler told Tate he should have made sure "it" was down, and stayed down. (Tr. 957). Sickler sent a statement to Tate which Tate had requested. Tate did not alter Sickler's statement in anyway. (RX-5.01; Tr. 957-958). Tate testified that the entire phrase, "During the rest of shift, I was slightly busy, and did not notice that valve and sign had been put up till end of shift while walking out of Igloo 1638," was in Sickler's statement when he received it, and is consistent with what Sickler told him on the telephone when Tate called him. (Tr. 958).

Tate spoke with Sickler about the Root Cause Analysis. (Tr. 958). Sickler thought the analysis was "bullshit" because it was coming down hard on the ATLIC. Tate confirmed he was asked by management about behavior towards Ole Wilson, but he was not disciplined because "nothing to the stories were true." (Tr. 959).

Robert Adams was the employee who threw his gas mask on the floor. He yelled profanities at another technician. Although Tate did not witness the event, he reported it to management. Adams was subsequently terminated. (Tr. 960). RX-73A is the termination memo for the discipline of Robert Adams. (RX-73A; Tr. 960-961).

RX-49, p. 24, is a quarterly peer review or verification by Kale Gilman of the Tox monitoring room where a mistake was made. (RX-49, p. 24; Tr. 961-962). Tate testified mistakes could be made at the ATLIC. (Tr. 963).

Tate did not notice any V to G pads or PCT tubes lying around in the ATLIC Igloo. Supervisors should talk to technicians about picking up such items, and if they continually failed to properly dispose of the items, a CR could be written. Sickler never wrote a CR on V to G pads or PCT tubes lying around the ATLIC. (Tr. 964). No one was ever told not to document an issue at Battelle according to Tate. (Tr. 964-965). Tate does not know of any concealment of any environmental or safety issues. Tate did not know of any motive to conceal any environmental or safety violations because things were reported all the time; people make mistakes; and equipment makes

mistakes. (Tr. 965). Tate stated he does not know of any instance where an employee was treated unfavorably because they reported a problem. Neither Roten nor any other Battelle managers disciplined Azelia or Sickler because they reported problems or incidents. No one was upset that Azelia found the valve in the wrong configuration on January 20, 2012. (Tr. 966).

Regarding the April 10, 2012 event, Tate was speculating when he entered the room, and the NRT was still on alarm and displaying the value. (Tr. 966-967). He was not speculating when he completed the CR because a CR is not done until they have all facts in their hands, "lab results, small investigations." Tate stated the sequence of events would be an ACAMS alarm sounding, followed by the control room identifying the site of the alarm. (Tr. 967). Tate was 50 to 60 yards from the end of the building in which the Tox monitoring room is housed and walked to the Tox monitoring room. (Tr. 968). The ACAMS was still alarming when Tate arrived, and Sickler was already there. Sickler could have obtained the retention time under those circumstances. (Tr. 969). Sickler could not have been in Igloo 1638 when the alarm sounded because he would have had to pass Perkins and Tate to get to the Tox monitoring room, and they did not see him. (Tr. 970).

On re-direct examination, Tate stated the first place to check during an alarm was the Tox monitoring room, where the Team lead should be. The alarm is audible with flashing red lights. (Tr. 973).

Tate could not recall the last time a CR associated with a Missed Monitoring Report that resulted in a RCRA noncompliance was filed, other than the January 20, 2012 event. (Tr. 974-975). He could not recall any CRs that Sickler had filed. (Tr. 975).

Tate distinguished between "contaminated" and "toxic": "toxic" is a state when an item is in use on a station; whereas "contaminated" is when an item has been used in a toxic area, possibly contaminated, and becomes hazardous waste. Something can be hazardous waste and not be contaminated, and vice versa. (Tr. 976). In his statement at CX-18, Tate did not include that the valve was hazardous material. (Tr. 976-977). He agreed that Roten would have considered whether the valve was hazardous waste as a material issue. (Tr. 978).

RX-5 is Sickler's actual statement. (RX-5; Tr. 978-979). Tate saw the statement three to four times over the investigation during several weeks and was sure that he saw the entire statement to which he testified reviewing before. (Tr. 978-979).

Adams was disciplined for slamming his gas mask on the floor and cursing at the technicians. The termination occurred after an "investigation in which Tate provided information." (Tr. 980-981).

Dennis Griffin

Griffin began with Respondent in February 2010 as an air monitoring technician. (Tr. 982-983). He was reduced-in-force on April 13, 2013. (Tr. 983). He began on Sickler's team, Team "D," and then was moved to Team "A." (Tr. 984).

He moved in to live with Sickler four or five months after he began employment because Sickler's home was closer and he had less of a commute. (Tr. 985). At Thanksgiving 2011, Griffin moved out over a difference of opinion and Sickler throwing a punch at him. He did not want to deal with it. He then transferred to Team "A." (Tr. 985-986).

Matt Harris phoned him about an incident at work. (Tr. 986-987). Steve Alder was Griffin's Team lead. Griffin went to work the next day. Harris told him a noose and valve were taped to his locker. (Tr. 987). He went to his locker and saw the noose, the valve and a sign that stated "Squirrel's Nemesis." Griffin affirmed that he saw a noose on his locker. Brian Kimber told Griffin that Azelia told him "see what we did to Griffin's locker." Kimber noticed the noose and valve on Griffin's locker. (Tr. 988). The valve had to do with an earlier incident in which Griffin failed to place the valve back in the proper configuration for which he received a written warning from Steve Alder on January 23, 2012. (Tr. 989; RX-112; Tr. 1008-1009).

RX-64 is a written warning Griffin received dated January 23, 2012, for the valve incident of January 20, 2012. (Tr. 989-990). Griffin stated the discipline was warranted. Griffin testified that the locker "stuff" was not a joke. The noose was not a hate crime but a mockery. He thought it meant "like I hung myself" because of the valve incident and would be first to be let go when the reduction-in-force came. (Tr. 990). Because

of Respondent's Code of Ethics, Griffin reported the locker incident to Human Resources. (Tr. 991).

RX-13 is an email Griffin sent to Maria Martinez and Ty Tate in which Griffin stated he did not feel physically threatened by the locker incident. He stated why would it have been brought up since he had already been disciplined. (Tr. 993). Griffin had seen the noose lying around in the Igloo. It was different being on his locker because it was directed to him. He did not want to be around employees after the incident. Griffin was interviewed by Roten at some point with someone from HR on the phone. (Tr. 994).

On cross-examination, Griffin acknowledged that he was friends with Azelia. He did not go out with Azelia, but had no issues with Azelia. (Tr. 995). Harris called him the night before he was to report back to work and told Griffin there was something at work he wanted to speak to him about, but did not say what. (Tr. 996). Griffin stated he did see the noose on his locker along with the valve and sign. (Tr. 996). However, in RX-13, his email to Tate, he stated he saw the valve and taped sign and not the noose. (Tr. 997). RX-1, a photo, resembles what he saw when he went to work. (Tr. 997-998). He had seen the noose on top of the lockers and possibly on an ATV. (Tr. 998). He did not see the noose hanging from any locker. (Tr. 999). At RX-46.052, the transcript from the unemployment hearing for Sickler and Azelia, Griffin testified he thought employees were making fun of him, (RX-46, p. 4170), but did not feel threatened. (Tr. 999). Griffin stated he had a good relationship with Azelia and talked to Azelia who told him he was sorry he put the valve on his locker, but he did not have anything to do with the noose. Azelia's apology was sincere. (Tr. 1000).

On re-direct examination, Griffin acknowledged RX-14 was an email he sent to Amanda Price because "they were bragging about" the locker incident, and to inquire about what was being done about the locker incident. Griffin believed the valve was contaminated and came off of Station 727L. (Tr. 1001).

On re-cross-examination, Griffin testified Azelia and Sickler did not say anything to him or harass him about the locker incident. (Tr. 1002). Price asked Griffin to send the email to her. (Tr. 1003).

Griffin stated he did not take the sign or valve off his locker and cannot tell from the photos if the valve had a fitting or whether the tape was new or old tape. (Tr. 1004).

Griffin was aware of employees joking and harassing other employees occasionally, but was not aware of any discipline meted out as a result. (Tr. 1007).

Rob Ralston

Ralston began with EG&G, which is now URS, in September 1995. He has been the entry manager since 2008. His last date of employment was December 2, 2013, as a result of the closure of the plant. (Tr. 1010-1011).

As entry manager, he was responsible for the safe execution of toxic entries into various buildings, responsible for procedures and managing oversight. (Tr. 1011).

Ralston testified that a condition report (CR) is a procedurally driven report of any incident that takes place at the facility. (Tr. 1011). Any employee can file a CR. A CR is uploaded into the data base, sent to the CR Group and graded on its seriousness. The CR is tracked to closure. (Tr. 1012-1013).

A team is created to do root cause analysis of events and to prevent recurrence. Cause analysis is a level above CR, and is the analysis level below root cause analysis. (Tr. 1013). Ralston has been on two Root Cause Analysis teams; one involved a sample line misconfiguration in "A" and "B" air locks at the TOCDF and one at the ATLIC. The intention is to investigate for corrective actions not to discipline. (Tr. 1015).

RX-49 is the Root Cause Analysis done for the ATLIC. He was one of the team to conduct the root cause analysis. (Tr. 1016). For four to six weeks the team gathered facts and conducted interviews. (Tr. 1017). Terry Thomas and Roten got the team together, but did not sit with the team. (Tr. 1018). The team interviewed about 20 employees; 90% of the witnesses were Respondent's employees and two witnesses were from URS. Respondent did not resist supplying witnesses. (Tr. 1019). Respondent did not ask for information provided by the witnesses. (Tr. 1019-1020).

RX-49.10 is the analysis and findings of the Root Cause Analysis. They determined that the management team of the ATLIC

was away from the ATLIC and cell phones were used for communications. There was animosity between teams. (Tr. 1020-1021). RX-49.17 is the corrective actions recommended. Roten needed to set expectations with Perkins, have shift turnover meetings, and fix procedures for use of cell phones. (Tr. 1021). A CR was generated for each corrective action and it was tracked through the data base to closure. The Root Cause Analysis was posted on the home page. (Tr. 1022). Respondent did not conceal any information, hold back anything that would be considered negative, nor did Respondent conceal the results and findings. (Tr. 1023). The team was open and honest and wanted to make the ATLIC a safe place to work and correct all the missed monitoring issues. (Tr. 1024).

There were nine events which formed the basis of the analysis. The January 20, 2012, missed monitoring event was the most serious. Roten asked the team to look at the other eight events. Since entry was involved, the January 20, 2012 event was very serious. The entry procedures are the same at the ATLIC as at the TOCDF. (Tr. 1026). The January 20, 2012 event involved a recently installed three-way valve which was misaligned and there was no monitoring of the area in which two individuals entered the toxic area. (Tr. 1028-1029). The individuals were wearing OSHA-A protective clothing which is the highest level of protection. Entrants go through a cascading air lock system. (Tr. 1029). Air locks are also monitored. (Tr. 1030). DPE suits are destroyed upon departure from the toxic areas. Because of the entrants, a safety assessment was performed which determined that there was no potential exposure given the rating of the DPE suits and the level of monitoring. (Tr. 1030-1031). An incident assessment of the entry is done for safety. RX-49.42 is the incident assessment. (Tr. 1032-1033).

On cross-examination, Ralston testified URS expects accurate information in CRs. (Tr. 1033-1035). There is a CR Group which determines the severity of the CRs and all CRs go to the group. (Tr. 1036-1037).

The Root Cause Analysis determined that management was ineffective at the ATLIC on all nine events. (Tr. 1038). Responsible supervisors and managers were directed to correct the deficiencies. (Tr. 1038-1039). Respondent's monitoring management team included everyone even Roten and Dr. Karimi. (Tr. 1040).

The first Root Cause Analysis he was involved with at the TOCDF was a sample line which had been disconnected, which was a serious event. (Tr. 1041).

RX-49.11, paragraph 4.1.4, is improper verification of the valve configuration. (Tr. 1043-1044). RX-49.5 involved valve training and the Team could not substantiate whether training had happened. (Tr. 1044-1045). On December 29, 2011, a verification step was added to a challenge to verify proper configuration. (Tr. 1046-1047). Ralston testified that all nine events were potentially RCRA violations, but only one was categorized as a RCRA violation, which was the January 20, 2012 incident. (Tr. 1048-1049).

Raymond Matt Harris

Harris began work at the ATLIC on April 6, 2010, as a monitoring technician. He last worked for Respondent on October 3, 2013, at which time he was reduced-in-force. He received a bonus of \$10,600.00 and three weeks of severance pay. He stated length of service was a factor in the bonus and severance. (Tr. 1059-1061).

Harris worked the day shift for two years then was assigned to "B" team where Brian Kimber was the lead and Alden Johnson was the foreman. (Tr. 1062).

Regarding Griffin's locker, he recalled seeing a noose and note on the locker at shift change in the evening. Kimber, Sickler and Azelia were talking when he arrived in the Igloo. (Tr. 1061). Sickler was at the computer desk. Azelia was at the end of the lockers and Kimber pointed Harris to Griffin's locker. Harris asked if the valve was off of "727" and Kimber responded "yes." (Tr. 1063-1066). Harris stated it could have been a duplicate of the valve, but it looked the same since he and Kimber had configured the valve. (Tr. 1066). Harris did not touch or remove anything. (Tr. 1066-1067).

Harris was interviewed by Roten and HR by telephone. (RX-30, p. 4; Tr. 1068). He was asked during the interview if Sickler was standing, but he stated he did not remember; he did not remember whether Colledge was sitting in the Igloo and did not know if Sickler was sitting or standing. (Tr. 1068-1069). He recalled Kimber showed the locker to him, but Harris did not mention anything during the interview about the valve from 727L. (Tr. 1070-1071).

RX-3 is a statement regarding the locker incident from Harris which was requested by Tate. (Tr. 1071). He did not mention that Sickler, Azelia and Colledge were present when he was in the locker area and shown the locker. (Tr. 1071-1072). He did not mention anything about the valve being from 727L. (Tr. 1072).

Harris never told Kimber he should take the valve and noose down. (Tr. 1072). Harris did not take the items down from the locker nor did he dispose of the valve as hazardous waste. To his knowledge, Kimber did not remove any items from the locker. (Tr. 1073).

Harris called Griffin the next day and told Griffin he needed to talk to him, but did not tell Griffin what he had seen. (Tr. 1074-1075). He picked Griffin up at the front gate the following day and drove to work. He told Griffin that there was a valve and noose on his locker. (Tr. 1075). Harris testified he wanted management to see the locker and he did not take the items down since it was management's "call." Kimber did not tell him to leave the items up for management to see. (Tr. 1076). Harris testified he did not show Griffin the locker. (Tr. 1077-1078). Harris stated when Griffin returned to work, the noose was not on Griffin's locker. (Tr. 1078). Other employees told Harris that the noose and valve were taken down during a management meeting. (Tr. 1079-1080).

Harris has had his locker combination blacked out and turned backwards. He also had the pins from his tool box taken out and everything fell out of the tool box. (Tr. 1080).

Harris testified that he installed the valve on Station 727L. (Tr. 1081). He had to cut the valve really tight and put a coupler on the bottom with a nut fastened to it. He and Brian Kimber worked on the valve connection to the mini-CAM. (Tr. 1081-1082). He criss-crossed the heat tape to hold the valve onto the sample lines and put heat trace onto the valve, but not into the valve. (Tr. 1084-1085).

RX-16.03 is an email from Harris to Tate dated April 13, 2012, and RX-3 is Harris's statement dated March 13, 2012, which had nothing in it about the valve from Station 727L. (Tr. 1086). Harris testified he cannot state the valve on Griffin's locker was the exact valve from 727L, but may have been a duplicate. (Tr. 1087-1088). In RX-30.07, interview questions from April 17, 2012, Harris stated he was 99.9% sure the valve on the locker was the valve from 727L. (Tr. 1088-1089).

RX-19 is photos of the noose and valve. Ty Tate and Alden Johnson took the photos. Harris thought the valve on the locker was the valve from 727L because it had the same connection and the bottom was the same connector. (Tr. 1091). Harris stated there was nothing on RX-19.01 or 19.02 to show the fittings installed on the valve or anything else that it was the same valve as 727L. (Tr. 1092-1094).

In his deposition, Harris testified he had made complaints against Brian Kimber. He also stated he was close with Kimber, and Griffin. (Tr. 1094-1095). Harris testified he did not trust Sickler who was no longer a friend with Griffin. He may have told Roten that Sickler should not be a lead. (Tr. 1095). Harris testified Sickler was a "puppet" and "buffaloes management." (Tr. 1096; RX-30.12). He reported Sickler "tattle-tales" about disputes. (Tr. 1096-1097). Harris stated at RX-30.09 that he did not trust Azelia who was also a puppet. (Tr. 1097; RX-30.09). Harris testified he could not believe Azelia was a foreman. Harris stated Team "D" "cheated machines" to pass calibration. (Tr. 1098). He acknowledged that Sickler and Azelia had been with Respondent for more time than Harris. (Tr. 1098-1099). Harris added Sickler reported to management what he saw other people do, people he did not like, including Harris, Kimber and Griffin. (Tr. 1099-1100). Harris never stated Sickler and Azelia should be fired. He did not feel comfortable working with them though. (Tr. 1101).

On cross-examination, Harris stated there was interaction between Brian Kimber, Sickler and Azelia the evening he observed the locker, but could not recall details. RX-18 is the interview meeting with Roten and Maris Martinez on March 22, 2012, at which he stated he was 99.9% sure the valve on Griffin's locker was from 727L because he built the valve and installed it. Harris stated technicians do not carry three-way valves in their tool box, but a lot of two-way valves. (Tr. 1103). Harris testified no one was mad at Azelia for finding the valve misconfigured on January 20, 2012. (Tr. 1103-1104). Harris also affirmed no one was mad at Sickler for reporting safety issues. (Tr. 1104).

On re-direct examination, Harris acknowledged that anyone can get three-way valves from the warehouse. (Tr. 1104).

Alden Johnson

Johnson is presently not working. He began with Respondent on February 1, 2010, at the gas light as a Demil Tech III foreman. His position was the same as Azelia's position. He was on Team "B" with Brian Kimber, Matt Harris and Tim Doxy. (Tr. 1105-1106). He worked at the ATLIC. (Tr. 1107).

Regarding Griffin's locker incident, Johnson noticed a taped note that read "Dennis's Nemesis," and a valve and noose on Griffin's locker on Tuesday afternoon. (Tr. 1107). His team was in turnover with Sickler's team. Griffin's locker was two lockers down from Johnson's locker. (Tr. 1107-1108). He discussed the locker with Brian Kimber. He thought the items should be taken down, but Kimber stated he was not taking them down and did not want to touch the items. Johnson explained to Kimber that when he worked for Union Pacific Railroad he saw a noose hung from a clock which ended up in a bad situation. (Tr. 1109). Johnson testified he did not get along with Kimber. When Kimber stated "we're not taking it down," Johnson stated "Fine, it's your decision." Harris and Doxy were also present, but they made no comment about the locker. (Tr. 1110).

Johnson testified he observed Griffin's locker the next afternoon, Wednesday, when he arrived at work and saw the same items on the locker. He talked to Azelia who told him Azelia was playing a joke on Griffin. Johnson told Azelia the items should be taken down. Azelia stated it was a practical joke and there was no harm. Johnson stated he observed the locker with the items on it on Tuesday and Wednesday, but not after Wednesday. (Tr. 1111-1112).

Johnson stated he was written up two times. The first time he was written up by Brian Kimber who accused Johnson of looking at nudity on the computer at the Gas Light in February 2011. (Tr. 1112). Kimber took him to Manager Shane Perkins. Johnson told Perkins he did not do what Kimber accused him of and they would have to prove it before he signed anything. Perkins told him "Okay," but issued a written warning later. (Tr. 1114). His second discipline was a write-up for not turning the CIMS box back on a NRT which alarmed the site. (Tr. 1115). Ty Tate and Perkins wrote him up, but he did not agree with the discipline because three individuals (Steve Alder, Bruce Vario and Ron Varga) had done the same thing earlier in the month and had not been written up. (Tr. 1116). CX-9 is an email written by Johnson protesting the second write-up. The written warning was issued on February 3, 2012. (Tr. 1117-1118). He asked

Perkins why he was being written up and no one else had been written up. (Tr. 1118). Perkins had no response, but Tate became verbally loud, "yelling," and told Johnson "to deal with it." (Tr. 1118-1119). Johnson also talked to Brian Stewart, a lower level manager, about being written up and Stewart told him he was at the "wrong place at the wrong time." This write-up and discussion occurred at the end of the Root Cause Analysis. (Tr. 1120).

Johnson testified he never complained to management about any employees. (Tr. 1120-1121). Kimber called him a "lazy piece of shit." Management (Stewart and Perkins) was sitting right there. Johnson asked to speak with Perkins. He asked Perkins why he was being treated that way. Perkins's response was that Kimber was "high strung," and had a prior event earlier in the day and was upset about it. To Johnson's knowledge, no action was taken by Respondent with respect to Kimber's comment. (Tr. 1122).

On cross-examination, Johnson explained that he was complaining about being the only employee written up of the four employees who engaged in the same mistake. Johnson never heard management state they were upset with Azelia for the valve incident on January 20, 2012, or Sickler for reporting safety complaints. (Tr. 1122-1123).

Bruce Vario

Vario began with Respondent on January 9, 2009. His last date of employment was July 13, 2013. He was hired as a Technician I for interferant testing at the TOCDF. Jeff Jolley was his supervisor. (Tr. 1125-1126). He was later promoted to Technician II for interferant testing. (Tr. 1126).

Vario helped in the construction of the ATLIC. (Tr. 1126). Steve Alder was his supervisor during the construction of the ATLIC. Alder's team included Vario as foreman, Jerry Fails and Dennis Griffin. (Tr. 1127). Azelia was also a foreman. (Tr. 1128).

Vario was aware of an incident with Griffin's locker. He testified that he walked pass Griffin's locker and saw a sign and valve on the locker, but did not see a noose. He did not recall which team his team was doing turnover with at that time. (Tr. 1128-1130). Vario and Griffin discussed the locker incident. Griffin was concerned about whether "anybody was ever going to let go of what happened" about the valve configuration

mistake. Vario told Griffin he thought the items were just a practical joke. (Tr. 1130). Vario recalls the valve incident involved not being properly configured which was a big issue because it was a safety issue. He did not know if an entry was done at the time of the incorrect configuration. (Tr. 1131). Vario also talked to Alder because Griffin was concerned. Griffin told Vario he felt uncomfortable and threatened about the noose and asked Vario to take it to management. (Tr. 1132). Griffin told Vario that someone told him of the noose; Griffin did not see the noose on his locker. (Tr. 1132-1133).

Vario called Ty Tate and reported the issue and Griffin's concerns about the sign, valve and noose. Vario left the items on Griffin's locker. Vario affirmed that all employees are to report issues. (Tr. 1134). He told Griffin the valve and sign were a joke because of the verbiage on the sign. He did not tell Griffin the noose was a joke. Vario stated he had to assume in the work place the valve could be hazardous waste. (Tr. 1135-1136).

CX-16, page 362, is an email dated Friday, March 17, 2012, which Vario sent to Tate, but he did not state the valve might be hazardous waste. Vario did report in the email that the valve may be from Station 727L, "which would mean that it could be hazardous waste," but left the valve on the locker. (Tr. 1137-1138).

Vario had seen the noose around the Igloo "sometimes" at various places. He had asked where the noose came from, but no one knew. He did not throw the noose away. (Tr. 1139).

Tate told Vario to meet him at the Igloo. Vario put the noose on Griffin's locker and told Tate that was what "he had been told by Griffin who [was] told by someone else" it looked like. Tate took photos. Tate told Vario to remove the valve and dispose of it as if it was hazardous waste. Vario removed the valve with a glove and put it in a zip-lock bag and put it in the PAS disposal area of the ATLIC. Vario called Mark James, the hazardous waste manager for URS, and asked about the proper disposal of the valve since he thought it might be an issue, nevertheless he left the valve on the locker for management to see and did not feel there was an immediate need to remove it. (Tr. 1140-1144). He was never asked to retrieve the valve. (Tr. 1148).

Vario was aware an investigation was done about the locker incident. Tate asked Vario for a statement of events. (Tr.

1144-1145). On April 17, 2012, Vario gave a second statement about the valve and its disposal. Vario did not recall whether Tate took photos of the locker with and without the noose. Neither he nor Tate threw the noose away. (Tr. 1148-1149). He recalled a meeting with management where issues, programs and personnel were discussed. (Tr. 1151). Vario did not recall another investigation about the locker incident. (Tr. 1152).

Vario stated with regard to the workplace, he felt he had a good relationship with his team and other guys on other teams. There was friction between the guys on all the teams or an inability to get along. (Tr. 1152). He recalls threats made by Heath Fackrell, in response to parking issues at the Gas Light during the ATLIC construction phase, that Fackrell was a contractor before he began working for Respondent and had gone by a customer's house and was going to shoot it up for not paying his bill. (Tr. 1152-1153). Vario felt threatened about safety issues. He discussed the threats with Brian Kimber and Kimber stated he reported the threats to management. (Tr. 1154-1155). Fackrell's demeanor was belligerent and he used curse words with his threats. (Tr. 1156). Vario sent an email to Perkins about personnel issues because morale was low and Fackrell was exhibiting threatening behavior which created safety issues to other employees. He does not recall other threats but he mentioned Frackell's threats which were made before the ATLIC went into operation. (Tr. 1158, 1178). Perkins did not follow-up on his email nor did anyone from management. (Tr. 1156-1158).

Vario testified he had a phone conversation with Azelia and learned of the valve and noose on Griffin's locker. Azelia told him he put the sign and valve on the locker. Vario asked Azelia about the noose and Azelia stated he did not put the noose on the locker, that maybe a URS employee put it on the locker. Vario testified Azelia was a prankster and Vario did not feel he was threatening Griffin. (Tr. 1159-1160).

Vario testified that in the PAS area paperwork was not completed the way it should have been. Team "D," Sickler's Team, at times was not honest and trustworthy, particularly Cameron Dick. Vario discussed with Dick and Sickler inconsistencies which Vario perceived in Dick's charting of readings. (Tr. 1162). The conversation with Sickler was appropriate many times. He worked with Sickler and Sickler was only combative occasionally. Vario stated that sometimes he had concerns with Team "D" doing monitoring tests. (Tr. 1163). He

talked to Sickler and Perkins about his concerns and raised them with Quality Control. (Tr. 1164).

CX-16, page 151, is Vario's interview with management about issues at the ATLIC which refreshed his recollection about another investigation. (Tr. 1165). He noted that Sickler verbally mocked and belittled him which bothered him. (Tr. 1166). The behavior happened early on and then decreased as the ATLIC project progressed. (Tr. 1167; CX-16, p. 152).

Vario's Mother worked in Human Resources and reported to Rezi Karimi. CX-66, p. 1939, is a statement between Julie Vario and Maria Martinez dated April 16, 2012. Vario's Mother was upset about Vario being retaliated against by Sickler's sexual and homosexual jokes about Vario. Vario testified that he did not make any statements about Sickler's jokes and the statement made by his Mother was not accurate. (Tr. 1170, 1179).

Vario received a bonus of about \$15,000 when his employment ended which was calculated based on his wage and length of employment. (Tr. 1171).

On cross-examination, Vario confirmed that RX-10 was his March 17, 2012 statement in which he stated the valve on Griffin's locker appeared to be from Station Ten 727L or looked similar to the valve. He stated he would have assumed the valve was hazardous waste. (Tr. 1172). When he had his telephone conversation with Azelia, he does not recall if he asked but Azelia stated the valve on Griffin's locker was from Station 727L. (Tr. 1173).

RX-32 is his interview statement to Amanda Price in which he stated Azelia told him the valve on the locker was the valve from Station 727L. In his conversation with Griffin, they may have discussed the valve being hazardous waste, if it was indeed the valve from Station 727L. When Vario talked with Tate, they may have also discussed the valve being possibly hazardous waste. (Tr. 1174).

Vario affirmed that Fackrell's comments were made in 2010 before the Root Cause Analysis was conducted at the ATLIC. Vario sent his email to Perkins complaining about Fackrell before the ATLIC went hot or into operation. (Tr. 1175).

Vario testified he had no knowledge of Roten or management being hostile toward Azelia for finding the valve in the wrong

configuration in January 2012 or at Sickler because he reported safety issues. (Tr. 1176).

Shane Ray Perkins

Perkins was not working at the time of the formal hearing. His last day of work with Respondent was November 14, 2013. (Tr. 1183). He was a monitoring manager at the ATLIC (Area Ten Liquid Incinerator) from construction to completion of destruction of agent. (Tr. 1184). He was involved in the design of the ATLIC and managed four teams leaders. He was also involved in evaluations, budget, EVMS (valve management system), meetings and reports to URS and Respondent's management. (Tr. 1185). Perkins began with Respondent in January 1994. He worked with Sickler and Azelia. (Tr. 1187).

Sickler was the Team Lead for Team "D" and Azelia was his foreman. (Tr. 1186-1187).

CX-85 is a RCRA permit in effect as of December 2012. It is an agent monitoring plan. GA agent was completed in November 2011 and Lewisite was completed in January 2012. (Tr. 1189). CX-85, page 141, identifies the acronyms and terminology for AEL which is "airborne exposure limit;" VSL is "vapor screening Limit;" IDLH is "immediately dangerous to life and health;" and ECL is "engineering control level" which is in between VSL and IDLH. (Tr. 1192). Category "A" is the most toxic area; Category "B" is a toxic processing area; Category "C" is non-toxic adjacent to "A" and "B;" Category "D" is non-toxic; and Category "E" is filtered air environment. (Tr. 1193-1194). In the event of a violation of the RCRA permit, Respondent notified URS Environmental and URS reported to the State of Utah. (Tr. 1195).

Agent monitoring activities are shown at CX-85, page 145. ACAMS and Mini-CAMS are the primary monitors of agent. DAAMS is used for confirmation of an alarm. (Tr. 1196). It is a secondary back-up to ACAMS and the mini-CAMS. CX-85, page 147, describes a failure to monitor or "missed monitoring," such as equipment failure or an unhooked sample line. (Tr. 1197). If an alarm sounds, the protocol is to call the control room and fill out reports; CRs, alarm missed monitoring and an alarm report which requires that the DAAMS tube be pulled and sent to the lab to be sampled. The reports are sent to Perkins and URS. (Tr. 1198). CX-85, page 1551, describes the DAAMS as a backup to the primary monitoring system. (Tr. 1200). DAAMS would not monitor the Tox room or the incinerator. (Tr. 1201). DAAMS are

used exclusively for change room areas, filter farms and the PAS area. (Tr. 1201-1202).

RX-90.02 is the monitoring systems configuration management, which would apply to the ATLIC. (Tr. 1202-1203). CX-92 is the Basic Safety Rules, which also apply to the ATLIC. (Tr. 1203-1204). CX-93 is the Waste Management Turn-In Procedure for Hazardous Waste, which applied to the ATLIC and all employees and managers were to comply with this policy. (Tr. 1204-1205). CX-94 is the TOCDF Disciplined Ops Manual, which covers employee behavior and conduct at the ATLIC facility. (Tr. 1205). CX-97 is the Depot Area Air Monitoring Systems (DAAMS) policy applicable to the ATLIC. (Tr. 1205-1206). CX-98 is the NRT Alarm Response which is procedures for responding to ACAMS alarms applicable to the ATLIC. (Tr. 1206-1207).

Perkins testified that Randy Roten was the monitoring manager of the TOCDF and the ATLIC and his direct superior. (Tr. 1207). Rezi Karimi is the lab manager and monitoring site manager to whom Roten reported. (Tr. 1207-1208).

Perkins stated he has known Sickler since 1999 and Azelia since 2005 and brought Sickler and Azelia to the ATLIC. (Tr. 1208). He was not aware of any performance issues with Sickler or Azelia. (Tr. 1208-1209). They both received positive evaluations. (Tr. 1209). CX-37 is Sickler's evaluation dated December 7, 2011, in which he received 100% for keeping the ATLIC on schedule and training personnel. (Tr. 1210-1211). Sickler represented Respondent very well, was considered a great asset and had developed new monitoring methods which helped Respondent. (Tr. 1211-1212; CX-37, p. 83). CX-37, p. 93, is Sickler's evaluation of December 6, 2010, for which Roten was the reviewer. Sickler received 100% on all areas and exceeded expectations. (Tr. 1212-1213). Perkins testified he never issued Sickler any verbal or written warnings and never had any problems with Sickler. (Tr. 1213).

CX-38 is a performance evaluation for Azelia which he never directly reviewed. Azelia had no discipline and presented no problems. (Tr. 1214). Perkins was not aware that Sickler and Azelia were being suspended until the day of their suspension. (Tr. 1214-1215). Both Sickler and Azelia were very good at their jobs. (Tr. 1215).

Perkins stated some ATLIC employees did not work at the TOCDF as did Sickler and Azelia. (Tr. 1215).

Perkins testified that any employee can file a CR. Missed monitoring reports were also filed. (Tr. 1216). Several events occurred in a short period of time which gave rise to the Root Cause Analysis. He understood the Root Cause Analysis resulted in a finding that they were not performing within the monitoring plan and URS contract. Perkins was not involved in the Root Cause Analysis. (Tr. 1217-1218).

Perkins could not recall whether at the ATLIC, any written warnings to employees were issued for procedural violations related to monitoring events before the Root Cause Analysis. (Tr. 1220). CX-1 relates to an incident of November 14, 2011, by Steve Alder in which the CIMS box was not switched to the challenge mode and the alarm accidentally went off. Perkins did not write Alder up. (Tr. 1220-1221). Alarms disrupt the operation of URS and URS has to stop working. (Tr. 1222). CX-2, p. 632, is a CR involving another event by Alder on November 16, 2011, which caused an AWFCO (a waste feed cut off) that stopped production when the alarm was accidentally triggered. Alder's team caused the AWFCO alarm. (Tr. 1223). No one was disciplined for the event. (Tr. 1224). CX-3, p. 633, is a CR dated November 16, 2011, involving Sickler which was not a missed monitoring, but a problem occurred. (Tr. 1224).

CX-11, p. 379, is the November 2011 timeline of the three events referenced in CX-1, CX-2 and CX-3. (Tr. 1224-1225).

CX-5 involved Sickler's team which found a three-way valve in the incorrect position on December 25, 2011, on Station 727L. (Tr. 1226). Azelia found that Griffin had made a mistake, but no written warning was issued to any employee for the incident or for any of the first four incidents. (Tr. 1227). This event caused the first potential missed monitoring non-compliance event because the Tox room was not being monitored, however there was no entry and Respondent was not processing agent in December 2011. (Tr. 1228-1229).

CX-6 is a Management Assessment Report for an event occurring on January 15, 2012, which describes how to prevent an event from happening or recurring. In this instance, a technician pricked his finger with a syringe, but there was no potential contamination. This was considered a safety factor/issue. (Tr. 1229-1231).

CX-7 is a self-report dated January 31, 2012, about the January 20, 2012 event. This was the second Griffin incident, an actual missed monitoring event and was a RCRA permit

violation. A Root Cause Analysis was recommended shortly after this incident. (Tr. 1231). Griffin was written up by Perkins for the incident, upon advice from Roten, but Griffin did not receive the write-up until February 1, 2012. (Tr. 1232). The write-up was for failing to switch the valve back to the right configuration to monitor the Tox room. The work order has a verification step; Griffin verified he had done the verification but had not done so. (Tr. 1233-1234). There was an actual entry during this mistaken configuration with potential risk of health and safety. (Tr. 1234-1235).

CX-8, page 479, involved Bert Beacham and a potential missed monitoring report incident of January 24, 2012, where silastic was found off of the port connectors which affected the DAAMS monitoring operation. A missed monitoring report was filed, but it was not considered RCRA non-compliance issue. Beacham was not written up for the incident. (Tr. 1235-1236).

CX-9 is an email from Alden Johnson about leaving the room and not switching the CIMS box to the correct mode on February 2, 2012, which caused another alarm. Perkins was told to write-up Johnson and gave the write-up to Johnson on February 16, 2012. (Tr. 1237). Johnson received a first warning for viewing explicit material at work according to Matt Harris and Tim Doxy, which violates Respondent's Ethics and Conduct policy. (Tr. 1238-1239). Randy Roten was also involved in determining Johnson's actions. It was determined that Johnson lied about not viewing the materials. Roten told Perkins to give Johnson a written warning. (Tr. 1239-1240).

CX-11 is the Root Cause Analysis. Page 379 is the February 2, 2012 incident which was reviewed. (Tr. 1241). Problems were identified and corrective actions noted. The Root Cause Analysis conclusion was management was ineffective with inadequate communications, procedural violations existed and there was a lack of discipline operations. Perkins was involved in the corrective actions. (Tr. 1242). Roten set up the management structure at the ATLIC. (Tr. 1243). As a result of the Analysis, Perkins's office was moved from the TOCDF to Area 10, one block from the ATLIC and assigned an operations manager. Roten did not move from the TOCDF/CAMDS. (Tr. 1245). However, even with corrective actions, problems continued to happen. (Tr. 1245-1246).

RX-66 is a document dated March 6, 2012, in which Perkins defined "expectations" to Tate as his operations manager. (Tr. 1246).

CX-53, page 549, is an email to Roten dated April 23, 2012, prepared by Perkins. Roten sent an email to Perkins on April 20, 2012, requesting information relating to the details of all issues concerning the ATLIC, "items in the Root Cause, of times, dates, teams that found them, teams that caused them." (Tr. 1248). Roten sought information about all events ten days after the April 10, 2012 incident. (Tr. 1250).

Perkins and Tate were walking to the ATLIC and heard the alarm for the April 10, 2012 incident where a sample line had been disconnected. (Tr. 1250). It was announced on the intercom that the Tox monitoring room was the site of the alarm. (Tr. 1253). When Perkins and Tate arrived, Sickler was present. Dick came in later. (Tr. 1253). Sickler explained he found the sample line disconnected, that he was trying to figure out "what's going on," that he missed the retention time on the NRT, had already re-connected the sample line. (Tr. 1254). Perkins stated "I don't think its agent," but was not sure exactly what he stated. (Tr. 1255). Sickler was performing his duties, gathering evidence, preparing to pull the DAAMS tubes, and doing post-alarm challenges. Sickler wrote on the strip chart which Perkins reviewed. (Tr. 1256-1257; CX-10, p. 657). The strip chart showed the alarm sounded at a 1.22 reading; ACAMS does not retain memory and a new cycle occurred after the alarm. (Tr. 1257-1258). Perkins looked at the log book to compare the challenged data, but could not determine how the sample line was disconnected. (Tr. 1258-1259). He does not recall Tate saying anything. (Tr. 1259).

CX-85, page 150, concerns "monitoring cessation" or turning off a DAAMS station and not contaminating the area with agent when tubes are pulled. (Tr. 1260-1261). Perkins would not assume agent to be present in the instant incident. (Tr. 1261). The DAAMS tubes were sent to the lab because of a partial cycle. There was no GA or Lewisite agent present in April 2012. The sample line was in the observation corridor and there was never any agent present there. (Tr. 1263). There was no source for agent, but it could have been interferant or agent, he did not know which. (Tr. 1263).

CX-10, page 652, is the CR for the April incident prepared by Tate. (Tr. 1264). There is no mention of two individuals in the observation corridor. Perkins stated he knew that two individuals were in the observation corridor because the two individuals came into the Tox monitoring room to inquire about the alarm. They talked to safety, but no medical was offered to

the individuals. (Tr. 1265-1266). Perkins stated there was downstream monitoring which did not see any agent present. Perkins stated VSL was present in the observation corridor. (Tr. 1266). The incinerator room was also at VSL on April 10, 2012. (Tr. 1267, 1269).

CX-85, Attachment A, lists the various levels at which each room was monitored. (Tr. 1270-1271). Perkins and Tate were present when Sickler and Azelia removed the three-way valve based on its work order. Azelia and Sickler were working on the valve which Griffin had misconfigured. Azelia commented "something" about using the valve for Griffin. Perkins told Azelia it was not a good idea. (Tr. 1272-1273).

Perkins identified CX-29, an email from Sickler dated May 31, 2011, concerning used PCTs, V to G pads and nitrile gloves which are hazardous waste items. (Tr. 1274). All employees are required to dispose of these items. Perkins responded to the email by sending an email on June 6, 2011, to employees to insure waste is properly taken care of. (Tr. 1275). Perkins did not discipline anyone, but talked to employees about the waste items to which no one would admit leaving items lying around. (Tr. 1275). On June 29, 2011, Perkins received another email from Sickler about V to G pads being found which are hazardous waste. (Tr. 1276). Perkins responded to the Team leads to meet with their employees and go over procedures to properly dispose of such items, but no discipline was imposed on any employee. (Tr. 1276). Perkins talked to employees on the site about waste. (Tr. 1277). Perkins told Sickler that Roten was upset about Sickler's emails as "unprofessional." Perkins suggested to Sickler that he send the emails to Perkins and he would send the emails to the Team leads. There was nothing offensive toward the other leads in Sickler's emails. (Tr. 1277-1278). The pads and gloves being dropped or left lying around violated Respondent's policies but may have been accidentally dropped by employees. (Tr. 1278-1279).

Concerning Griffin's locker, Perkins first heard of the issue on Friday from Tate. Perkins testified he did not think it was a joke. Perkins told Amanda Price that he did not think the valve posed a safety issue. (Tr. 1279). CX-19 is the interview notes of Perkins. In the interview, at page 201, Perkins stated the locker items were a joke, "not a big deal" and the noose was removed. (Tr. 1280). Perkins acknowledged the three-way valve was not unique and could be obtained from the warehouse. (Tr. 1281). Perkins denied seeing the noose, although he saw a rope in Doner's lap during a meeting. (Tr.

1281). Perkins was not told the noose was lying around the Igloo. (Tr. 1282).

Perkins stated Kale Gilman brought up a complaint about Fackrell and Kimber. He interviewed the two employees who indicated there was no trouble. (Tr. 1282). Perkins does not recall Vario raising threatening remarks by Fackrell. Perkins was also apprised of an altercation or fight between Burt Beacham and Cameron Dick. No discipline was meted out about any of these incidents. (Tr. 1283). Perkins was told by Roten to write-up Johnson, Griffin and Alder. (Tr. 1283). At one time Beacham had an attendance problem. (Tr. 1285).

Between the December 25, 2011 and January 20, 2012 events, work orders issued requiring verification for Station 727L. (Tr. 1284).

RX-112 is the write-up of Steve Alder in which he verified he signed off on work which was a falsification of the report. (Tr. 1286).

Perkins was written up by Roten on July 30, 2012, after his interview with Price. Perkins stated he did not agree with the write-up, but would take it and learn from it. Perkins admitted that he did not have a lot of time to spend at the ATLIC. (Tr. 1287-1288). Roten told Perkins he was written up after discussions with HR. (Tr. 1289; CX-51).

Perkins received a retention bonus of \$40,000.00 based on length of service. (Tr. 1290). A closure bonus has not yet been received which will be about the same amount. (Tr. 1290-1291). He also received 19 weeks of severance pay. (Tr. 1291).

On cross-examination, Perkins testified he was a Quality Control monitoring technician for five years. ACAMS are tested daily by "shooting or challenging." The ACAMS are injected with a known quantity of agent to test the system. (Tr. 1292-1293). DAAMS is co-located with the NRT and is used to sample the same air. (Tr. 1293). NRT (Near Real Time) monitors are only used on ACAMS and mini-CAMs. (Tr. 1294).

In January 2009, Perkins became the manager of the ATLIC and oversaw the construction of the ATLIC in 2010. Systemization is base line or function testing of the instruments. (Tr. 1296). In October 2011, GA agent was introduced into the ATLIC and destruction of GA agent was accomplished by January 2012. The second campaign which began

in July 2012 was secondary waste consisting of gloves, protective suits and pieces of equipment which had been containerized. (Tr. 1297). Work clothing was provided to the employees so they would not have to wear their own clothing in the facility; showers after work were required because of exposure to chemicals at work. (Tr. 1298).

Perkins stated that reports were needed for alarms, instrument potential missed monitoring reports and employee mistakes which are self-reported. All alarms would be known by the control center. If a missed monitoring or alarms occur, and reports are not provided, employees are made to complete a report. (Tr. 1299-1300). Sickler was good at reporting and reported about the same number of issues as other leads. Perkins stated he is not aware of anybody at the ATLIC being told not to document a problem or pursue a reporting requirement, nor did he see any concealment of a monitoring, environmental or safety issue. (Tr. 1300-1301). Respondent did not treat employees differently for making reports. (Tr. 1301).

Perkins stated employees received a safety performance bonus every six months which ranged from \$500.00 to \$900.00 which factored in environmental and safety matters. (Tr. 1301-1302). There was no hiding of mistakes to get a higher bonus. (Tr. 1302).

The Condition Reporting system documents problems and prevents future problems. URS, Respondent's customer, supported the reports and encouraged reporting at yearly meetings of all employees. (Tr. 1303-1304).

Perkins testified he never considered Sickler or Azelia to be a problem because they raised issues. Perkins testified he wanted all supervisors and others to report everything they found. (Tr. 1305).

A "NOV" is a Notice of Violation or non-compliance with the RCRA permit. (Tr. 1305-1306).

Regarding Griffin's locker event, Perkins was off work and played no role in the investigation. (Tr. 1306). The incident was investigated, but not because Sickler and Azelia had made complaints. (Tr. 1306). Sickler and Azelia were terminated because of the valve and noose hanging on the locker and the threatening manner in which they were used. Perkins learned of these reasons from Roten. (Tr. 1307). Perkins testified the termination of Sickler and Azelia was warranted because of the

Griffin locker event. Perkins stated the intent expressed by placing a valve on Griffin's locker was the same whether the valve was used or new: Griffin had a couple of performance issues with the valve and had screwed up. (Tr. 1308). Even if there had been no noose involved, if the items on Griffin's locker were still threatening, it would have warranted termination. Perkins did not consider the valve to be toxic. However, it was waste when not in use. (Tr.1308). Perkins has seen stickers, markers and writings on lockers before. He had concerns raised with Fackrell's incidents, but Kevin Kimber reported he did not have a problem and made no complaints about Fackrell. (Tr. 1309). Dick did not complain of harassment by Vario and Harris because of his monitoring skills. (Tr. 1310). Alden Johnson was written up because he left a high priority area while performing a challenge, which no one else had ever done. (Tr. 1311). He did not hear Brian Kimber call Johnson "a lazy piece of shit." (Tr. 1311-1312). Johnson and Kimber did not get along when they began working together. Perkins and Roten had a meeting with them, but no discipline was issued. (Tr. 1312).

In January 2012, Perkins's office was moved to the ATLIC. He does not know if Roten was ever written up. (Tr. 1313-1314).

RX-47 is a Sickler email reporting that he had found items on his shift and was concerned about the items being left around. (Tr. 1314). Sickler did not report the items had been going on extensively or pervasively. RX-48 is another email from Sickler. Perkins talked to Sickler after the second email and told him to send the emails to Perkins and he would send out the email to the teams so he did not appear to be pointing fingers. (Tr. 1315). Roten had commented that he did not think Sickler's emails were professional. (Tr. 1316).

Perkins stated he was physically present at the ATLIC in the summer of 2011 at the time of Sickler's emails sometimes often or just one time per week. He never saw V to G pads, PCTs or nitrile gloves lying around. (Tr. 1317). Employees put V to G pads in a bag and carried them around and disposed of the bag at the end of the shift. (Tr. 1317-1318). V to G pads are not potentially contaminated according to Perkins. (Tr. 1318). A broken ACAMS brought into the Igloo for repair is not hazardous waste because it was not in a toxic area. (Tr. 1319).

Regarding the April 10, 2012 incident, Perkins and Tate arrived at work together. When an alarm sounds, the employee is to hurry to the alarm to catch the data. (Tr. 1320-1321). RX-

59 is the CR prepared by Tate. It was Perkins's opinion that there was no agent present and therefore no source for agent since one month earlier agent had ceased. (Tr. 1322-1323). RX-59.10 is the log book page reflecting the sample line was challenged and performed on the DAAMS station on April 1, 2012, at which time the sample line would have been connected. (Tr. 1324-1325; RX-59.10, p. 661). On April 2, 2012, a Quality Control surveillance check was done at the same Station which verified the sample line was connected. (Tr. 1328). Perkins spoke with Hunt, the quality control person who verified he checked the sample line and it was connected. There was no determination reached why the sample line was disconnected. (Tr. 1335). Tate and URS Operations and Safety participated in the investigation. (Tr. 1336). Tate stated he would write the CR, which is normally written by the lead or one of the managers. (Tr. 1337).

RX-59.02.03 is the CR prepared by Tate who gave the incident a priority "3." His narrative reflects no indication that employees were in the observation corridor, but should have been so indicated. URS was notified that employees were in the corridor at the time the sample line was disconnected. (Tr. 1338). The DAAMS needed to be sent to the lab for testing; the expectation was nothing would be found, but it was sent because of the partial cycle/data run. (Tr. 1340). Downstream NRT data was pulled, but no readings were observed. Downstream flow of the ACAMS would have been the LIC (liquid incinerator) and Tox. The ACAMS was reading VSL. (Tr. 1341). The report was sent by Tate to Karsten Hanson of URS about the event. There was no downplaying of the disconnected sample line to the DAAMS. (Tr. 1342-1343). The disconnected sample line was "somewhat of a big deal," because "you want to know why and how it got disconnected," but he did not get an answer about the disconnection. (Tr. 1343). Perkins stated there was no release of agent into the environment on April 10, 2012, because there was no source of agent. (Tr. 1343-1344). ACAMS can pick up an interferant and cause a false alarm. (Tr. 1344). Perkins stated the April 10, 2012 event was not a non-compliance with the RCRA permit. (Tr. 1344). Perkins did not reach a conclusion about how the sample line became disconnected from the DAAMS. Someone could have undone the fitting and not put it back properly. (Tr. 1345).

The Root Cause Analysis was initiated because of performance issues. Perkins recommended the Root Cause to the CR Group and no one expressed disagreement over the Root Cause approach. The CR Group was the formal initiator of the Root

Cause Analysis. (Tr. 1345-1346). RX-49, page 9, set forth the timeline for the Root Cause. "Common cause" is less than root cause and is considered before a root cause decision. (Tr. 1347-1348). The work order for the NRT challenge is to verify that the three-way valve by Griffin was checked out on January 20, 2012. Griffin verified his own configuration work. (Tr. 1349-1350; RX-49, p. 22). Independent verification by the team lead or foreman is now required as a corrective action. (Tr. 1350; RX-49, p. 17). Before January 20, 2012, an employee could verify their own work. (Tr. 1351).

Kale Gilman replaced Sickler as the Team lead after Sickler's termination. Heath Fackrell took over Gilman's position. (Tr. 1353). Perkins continued to receive reports from Fackrell and Gilman about shift issues. (Tr. 1354). Perkins does not recall any meeting where Dr. Karimi's national origin was brought up. (Tr. 1355).

On re-direct examination, Perkins testified that he had no knowledge whether Gilman and/or Fackrell found and fixed a problem unless they reported the problem. (Tr. 1355-1356). He does not know if all problems have been reported. (Tr. 1356).

RX-49, page 22, reflects that Steve Alder was to verify a sample line was connected and verify the knob had been turned back to the challenged mode, but Alder did not verify either. (Tr. 1358-1359). The January 20, 2012 event was a RCRA non-compliance permit violation. PPE equipment was donned by the entrants, but no agent was present. The January 20, 2012 event was the most significant incident of the Root Cause Analysis. (Tr. 1360). Azelia found the disconnected line and Sickler reported it. (Tr. 1361).

CX-53 is a report dated February 6, 2012, which shows a sample line was disconnected, in a similar way as the April 10, 2012 incident, but from the top of a mini-CAM which would have been visible and required fastening with a wrench. (Tr. 1362). On March 6, 2012, another sample line was found disconnected that was connected by a spring loaded Swage lock and which was visible. (Tr. 1363). RX-59.10 is a log entry for April 10, 2012, which states the disconnection was not readily visible like the February 6 and March 6, 2012 incidents. (Tr. 1363-1364). The last entry in the log book before noting the finding of the disconnected sample line was made on April 2, 2012, and it could have been disconnected for ten days. (Tr. 1365; RX-59.10). Nor was there any verification of the connection from April 2 to April 10, 2012. (Tr. 1365-1366).

RX-59.06 is the strip chart from the April 10, 2012 event. Retention time cannot be detected from the chart and Perkins did not know what the retention time was for the event. (Tr. 1366). RX-59.07 reflects Beacham wrote "96" as the retention time, but the actual time could not be determined. (Tr. 1367). Perkins stated he did not know what the interferant may have been, but he did not believe agent was present. (Tr. 1369). There was no agent expected in the observation corridor when two individuals entered the corridor with no protective gear. Perkins did not think the individuals were exposed to agent. (Tr. 1370). Perkins acknowledged that there was no determination of sabotage on April 10, 2012 or February 6 or March 6, 2012. Perkins testified punishment was appropriate, but he did not investigate the incident or review any witness statements. (Tr. 1371). He came to his conclusion because of his understanding that it was threatening to Griffin. He does not know if Griffin did not feel threatened. (Tr. 1372). Perkins did not terminate Alden Johnson for viewing explicit materials or Fackrell for his conduct which was not substantiated. (Tr. 1373).

On re-cross examination, Perkins testified there was no information that Gilman and Fackrell failed to report anything to him. He concluded there was no agent because of the gate challenges should show middle peaks. The peak on April 10, 2012 was inconsistent since it was early in the gate. (Tr. 1374).

Amanda Price

Price is Senior Human Resources Manager. She has worked for Respondent for nine years. Her job responsibilities include work force planning, succession planning, talent review, counsel and interpretation of policy. She also participates in investigations. (Tr. 1376).

Regarding Griffin's locker incident, Price was notified by Michelle Gaines, who is no longer with Respondent, via email with pictures and statements from Brian Kimber and maybe Tate. On March 21, 2012, Price spoke with Roten about the known facts and what had been reported and how to proceed. (Tr. 1377-1378).

Respondent has an investigations process with a committee. The formal name of the committee is Investigations Oversight Committee (IOC) consisting of Human Resources, legal and internal audit. (Tr. 1378).

On April 3, 2012, IOC sanctioned an investigation. Price then talked to Roten and discussed scheduling witnesses. There was no specific directive on what to move forward on from the IOC. (Tr. 1380-1382). On April 18, 2012, the investigation developed enough information to suspend Azelia and Sickler. CX-42 is a "notification memo" of the termination of Sickler effective July 2, 2012, with conclusions stated in paragraph three which states Sickler violated Battelle's standard of conduct, policies on harassment and retaliation and site safety practices. (Tr. 1384). CX-43 is the "notification memo" of termination of Azelia effective July 2, 2012, for violations of the standards of conduct, policies on harassment, and retaliation and site safety practices. Price did not draft the letter, but reviewed them before they were issued. (Tr. 1385-1386).

CX-75 is a document entitled Monitoring Disciplined Operations. Price determined that Azelia and Sickler violated the "Standards of Business Ethics and Conduct." (Tr. 1387; CX-75, p. 20). She also determined Azelia and Sickler violated the Environmental Safety and Health Program. (Tr. 1387; CX-75, p. 582). She reviewed and determined that Azelia and Sickler violated the policy on harassment. (Tr. 1387; CX-75, p. 583). She did not review and did not determine that Azelia and Sickler violated the policy on sexual harassment or Violence in the Work Place. (Tr. 1388; CX-75, pp. 584-585). She referred to Respondent's disciplinary action policy which she used as a guide in her investigation. (Tr. 1388-1389; CX-75, p. 586). She did not refer to the sexual harassment policy at page 591 of CX-75 or the Work Place Violence Prevention Policy since neither were violated. (Tr. 1389; CX-75, p. 592). Price testified that before the suspensions of Azelia and Sickler there were no concerns about work place violations. However, Sickler's behavior during interviews conducted with the staff raised allegations that caused concerns, but she did not review the work place violence policy. (Tr. 1390). The Involuntary Termination Policy was reviewed but determined to be inapplicable since the discipline was not performance based. (Tr. 1391; CX-75, p. 596). There were no concerns about Sickler's or Azelia's performance during the investigation. (Tr. 1391). She also reviewed the Involuntary Termination Policy at page 599 of CX-75 and determined it was not applicable since it was based on lack of work. (Tr. 1391-1392).

Price testified that all employees are required to annually certify their understanding of the Respondent's Standards of

Business Ethics and Conduct and what is appropriate in the work place. (Tr. 1392; CX-75, pp. 580-581, 602). She referred to the policy and verified whether Sickler and Azelia had training in accordance with the policy. She determined that Sickler and Azelia had violated the policy. (Tr. 1393).

Price conducted interviews of employees, but did not interview "B" shift employees since they were not working at the time of the incident involving Griffin's locker. (Tr. 1394). Price drafted interview questions and sent them to Roten for review and agreement. (Tr. 1395). Employees did not review interview notes to verify that the statements were accurate. (Tr. 1396).

CX-22 is the interview of Burt Beacham of April 17, 2012. His answers were inserted and typed during the interview by Price. (Tr. 1397). At the conclusion of the interviews, the notes were sent to Maria Martinez and Roten for review for accuracy. The employees never reviewed the notes. (Tr. 1398).

Price recalls Beacham mentioning Brian Kimber referring to Alden Johnson as a "lazy piece of shit," and publically belittling Johnson. (Tr. 1398). Supervisors and managers were to follow-up on such "actions" and talk to employees about the appropriateness of such conduct in the work place. During the investigation if any observations are made that should be reported back to the IOC, the IOC determines if a separate investigation might be warranted. (Tr. 1399-1400). Price does not recall reporting comments made by Kimber to the IOC, but may have reported them to her boss. (Tr. 1400). Work Place harassment includes belittling, bullying and threatening verbal or physical conduct. (Tr. 1401; CX-75, p. 583). She does not recall an investigation regarding Brian Kimber's comments or any discipline meted out to Kimber for making such comments. (Tr. 1401-1402).

CX-19 is the interview notes with Perkins. At paragraph 15, a comment about the ethnicity of Dr. Reza Karimi and "South Arabia" or the Middle East is referenced and was brought to Price's attention by Sickler in his interview. (Tr. 1402-1404). CX-21 is the interview notes of Brett Doner in which he stated he heard about a comment being made about Karimi and the Middle East, but did not hear it. (Tr. 1404-1405; CX-21, p. 690). Price did not look into the comment or report it to the IOC because some employees stated it was hearsay, or it did not happen or heard something different. (Tr. 1406). Price agreed that a comment about a person's ethnicity would be worthy of

reporting for investigation. There was no investigation or discipline about the comment. (Tr. 1407).

CX-24 is the interview notes of Kevin Kimber in which he describes Heath Fackrell punching a door. During the investigation, supervisors and managers were asked about the incident. Price did not refer to the Work Place Violence policies in regard to Fackrell's conduct, which identifies examples of similar physical contact, intimidating and threatening behavior. (Tr. 1408-1410; CX-75, pp. 585, 592). To her knowledge the Fackrell incident was not investigated by the IOC. (Tr. 1411). Fackrell and Kimber were called into the office by Perkins and they reported "everything was fine." (Tr. 1412). Perkins stated he knew Fackrell was "hot headed." (Tr. 1411). Price agreed that Fackrell's conduct of threatening violence should have been reported to HR, but no one reported the incident. (Tr. 1412).

RX-18 is an email from Gaines to Price which was discussed with Roten. (Tr. 1413-1416). Roten and Brian Kimber had a meeting about Fackrell's threats of violent conduct. (Tr. 1413). The information should have been routed to the IOC. (Tr. 1414, 1417). Price could not recall if the information was given to the IOC, but it was information which was reportable. (Tr. 1417).

CX-16 is the interview statement of Bruce Vario. Vario discussed Fackrell's verbalized threats of doing a drive-by shooting and shooting out windows. Price could not confirm that the IOC was told of each incident involving Fackrell, but concerns were reported. Price testified that Fackrell was not disciplined, nor was there an investigation involving Fackrell's conduct. (Tr. 1418-1419).

The suspensions of Sickler and Azelia occurred on April 19, 2012. The decision to suspend them was made by Dr. Reza Karimi and Dan Taylor, Vice-President of Business Operations in Maryland. (Tr. 1420). Price did not make a recommendation for suspension, but concurred in the decision to suspend. (Tr. 1420-1421). Price does not know if Roten made a recommendation to suspend. There was no written report on the suspensions, but a final report was prepared for the terminations of Sickler and Azelia. (Tr. 1423). Assistant General Counsel Kathy Olsen was involved in the whole process. (Tr. 1424-1425).

RX-36 is a document created by Randy Roten concerning personnel issues as of May 1, 2012. Roten discussed the

document with Price regarding "a path moving forward," but no one else was involved. (Tr. 1425-1426). Price exchanged emails with Roten regarding the interview notes. (Tr. 1427).

Price relied upon her notes from the employee interviews. Dan Taylor was aware of the investigation. CX-71 is an email from Price to Taylor concerning the valve on Griffin's locker and its potential contamination. (Tr. 1430). Price reported that Matt Harris and Tate thought the valve on Griffin's locker came off Station 727. Price does not recall if "contamination" was mentioned by Harris and Tate. (Tr. 1431). Taylor did not think contamination was an issue. (Tr. 1437).

Price testified Taylor and Karimi made the ultimate decision to suspend Sickler and Azelia. (Tr. 1426). Taylor made the decision about April 18, 2012. (Tr. 1429). Price was on the phone with Sickler when he was told of his suspension; Sickler mentioned "This is retaliation," and that he was going to get an attorney. Price is aware that Sickler and Azelia thereafter filed for unemployment benefits. (Tr. 1433). Price was aware of an unemployment hearing being conducted. RX-46 is the hearing transcript of the unemployment hearing dated June 21, 2012. (Tr. 1434).

Price sent and received emails on or about May 8, 2012, to and from Taylor and Karimi about Sickler and Azelia retaining legal counsel. (Tr. 1435-1436; CX-83). Price testified they were waiting for "formalized documentation" from Dr. John Barton to address the fear of contamination or exposure from the valve on Griffin's locker for the purpose of potential future litigation. (Tr. 1436). The "paper trail" to validate whether the valve was disposed of as hazardous waste could not be found and an independent assessment by Dr. Barton was deemed necessary. (Tr. 1437). Roten spoke with Mark James of URS for site specific requirements. (Tr. 1438-1439, 1446). Roten told Price that the valve was not a reportable event several days before the suspension of Sickler and Azelia. (Tr. 1439-1441). There would be no log book entry regarding the disposal of the valve. (Tr. 1442).

Price sent emails to Taylor on April 12, 2012, in which Taylor responded that it was "imperative that we validate via paper trail to determine proper disposal" of the valve since it is federally regulated, if not, it is a reporting requirement. (Tr. 1444; CX-71).

Price identified CX-41 as an involuntary termination justification dated June 18, 2012, which she signed on June 20, 2012, the day before the unemployment hearing for Sickler and Azelia. (Tr. 1447-1448). CX-44 is another termination justification dated June 26, 2012, after the unemployment hearing. (Tr. 1448). CX-45 is draft justification memos from Roten to Price on May 4, 2012, after Sickler and Azelia were suspended. (Tr. 1449). July 2, 2012, was the date of the termination of Sickler and Azelia. (Tr. 1450). Page 2709 of CX-45 reflects a date of "August 28, 2013," which Price suspected was the date the page was printed for discovery purposes. Price and Roten did not exchange emails in August 2013 since Sickler and Azelia had been terminated before August 2013. (Tr. 1451-1452).

After the terminations of Sickler and Azelia, other employees received write-ups. (Tr. 1452). CX-51, page 503, is a written warning issued to Shane Perkins dated July 30, 2012. CX-51, page 600, is a written warning issued to Brian Kimber dated July 30, 2012. During the interviews, Matt Harris informed Price that he did not like Glen Sickler and it would be fair to say Harris did not like "D" team. Harris reported he had concerns about Sickler's conduct, behavior and ethics. (Tr. 1454). Price confirmed that Brian Kimber felt the same way as Harris about Sickler and D team. (Tr. 1454-1455). Other employees also had similar feelings or concerns about "D" team and Sickler, including Brett Doner and Burt Beacham. (Tr. 1455-1456).

Price received a statement from Maria Martinez prepared by Julie Vario. Bruce Vario was interviewed later and did not verify the information in the statement from his Mother, Julie. Julie Vario's statement was not verified. (Tr. 1456).

Price did not review the employment files of Sickler or Azelia, but looked at data on a People Soft data base or staff history report relative to performance, promotions, salaries and any changes that happened within the organization. (Tr. 1457-1458). She also pulled Sickler and Azelia's training records, but did not review their disciplinary history or performance evaluations. (Tr. 1458-1459).

On cross-examination, Price testified she has been HR manager for Respondent for nine years and has performed investigations before April 2012. As an investigator, she is engaged in fact finding. (Tr. 1461). She was also the HR

manager and the "cognizant HR manager," aligned with the business, in this case "Demil." (Tr. 1462).

Price received and reviewed CX-54, an email from Roten with statements taken from Brian Kimber, Clint Azelia, Glen Sickler, Matthew Harris, Shane Colledge and Dennis Griffin on March 21, 2012, regarding the locker incident. Price received the statements before the IOC authorized an investigation into the locker incident. (Tr. 1463-1464). CX-90 is an email for scheduling employees for interviews on April 9, 2012, after the IOC decided an investigation should go forward. (Tr. 1464-1465). Price prepared the questions for the interviews based on the original information received from Roten. She formulated questions about the work environment based on comments from Sickler and Brian Kimber. She had concerns about the valve being reported off of Station TEN 727 and whether it was exposure or contamination. (Tr. 1466). When she referred to future litigation, she was concerned about future medical conditions and exposure to the valve. (Tr. 1467). Price prepared the questions and sent them to Roten on April 9, 2012. (Tr. 1468; RX-113). The interviews began the following day on April 10, 2012. Price was not aware of an alarm incident involving a disconnected sample line the morning of the interviews of Azelia and Sickler on April 10, 2012. (Tr. 1471).

CX-74 is an email from Price to Roten concerning a report generated about whether or not the valve was off Station 727. (Tr. 1470).

After the interviews through April 18, 2012, Price reached the following conclusions: that there were a number of policy violations; the valve was off of Station TEN 727; that Griffin had been harassed; and that the valve was not properly disposed of by Azelia in terms of hazardous waste. Price considered suspension without pay pending termination to be an appropriate discipline as HR manager. (Tr. 1471-1472). The "pending termination" decision had been made, but a final report from Dr. John Barton had not been received to conclude that anyone may have come in contact with the valve and there would be no harm. (Tr. 1472-1473).

Price learned during the interviews about the April 10, 2012 alarm from employees interviewed. Price testified that "a number of employees . . . indicated Sickler had sabotaged the equipment." Those employees were Brett Doner, Brian Kimber, Dennis Griffin and Shane Perkins. (Tr. 1473). Price spoke with Roten about the allegations, but took no specific action to

investigate the allegations. CX-53, p. 1007, is a list dated April 27, 2012, after the suspensions of Sickler and Azelia, from Roten to Price of the concerns of employees about "D" team which could not be validated or verified; it was concluded "it wasn't always "D" team present when events occurred. The allegation about sabotage could not be substantiated. (Tr. 1475-1476; CX-53).

RX-37 is the report of Dr. Barton dated June 7, 2012. (Tr. 1476). After the termination of Sickler and Azelia, Price was involved in the discipline of other employees. Brian Kimber received a written warning as a Team lead who had knowledge of the locker incident and did not report it. (Tr. 1477). Perkins was disciplined because he was disengaged with the work force. Tate was disciplined because of crew concerns about how he resolved issues. Fackrell was not disciplined because events raised during the investigation were a year old, and some information was hearsay. (Tr. 1478-1479).

Price had not seen the Root Cause Analysis prior to the investigation and did not see it during the investigation. Price does not recall Roten raising any information about Sickler or Azelia reporting or finding any mistakes at the site. (Tr. 1480-1481). Price had no sense of Sickler and Azelia's contribution to the issues raised in the Root Cause Analysis. Sickler raised a safety issue about a ladder during his investigative interview, which had been resolved. Price never got any sense that Roten had any particular ill will toward Sickler or Azelia. (Tr. 1481). Roten was not present when Price reported her conclusions to Taylor. (Tr. 1482).

On re-direct examination, Price testified that she received email statements and pictures on March 21, 2012. (Tr. 1485; RX-18). She also received two emails from Griffin prior to the investigation inquiring about what Respondent was going to do. (Tr. 1486). The information and statements were reported to her as HR manager. Respondent wanted to conduct an impartial investigation. Price did not form any opinion from the investigative notes and statements before the investigation started. (Tr. 1488).

CX-16 is Bruce Vario's interview notes. Price could not recall if Vario saw the noose on the locker, but he removed the valve from the locker. (Tr. 1492). Vario stated that when Griffin showed him his locker, the noose was not attached to the locker. Price did not recall seeing this statement by Vario. (Tr. 1493). Price did not know if the IOC did anything about

investigating Fackrell's behavior. (Tr. 1494-1495). Price was told to "stay the course" on the investigation. (Tr. 1495). CX-21 is a statement from Brett Doner in which he stated he saw the noose around, but not on Griffin's locker. (Tr. 1495). Price did not see a statement from Tim Doxy or Alden Johnson and did not interview either employee during the investigation. (Tr. 1496).

CX-23 is a statement from Steve Alder in which he does not state that a noose was on Griffin's locker. Price was under the impression Alder returned to work on March 16, a Friday, but he actually returned to work on March 15. Alder was not given a warning because Price thought he did not see Griffin's locker until March 16, a Friday, after the incident had been reported to Tate. (Tr. 1497-1498). Price did not see Alder's statement as part of the investigation, but thought it would have been helpful to have seen the statement. (Tr. 1498-1499). She did not ask Roten or Maria Martinez if there were other statements not provided to her. (Tr. 1499). Price agreed that the investigation was being conducted to reach a sensible conclusion and that it is fair to say there is no way to do so if all the information is not available. (Tr. 1500).

CX-25 is a statement from Jerry Fails which does not state that Fails saw a noose on Griffin's locker. Price does not recall seeing the statement by Fails, but it may have been helpful to have the statement as part of the investigation. Fails was subsequently interviewed during the investigation. (Tr. 1500-1501). CX-26 is a statement from Shane Colledge in which he stated had seen a noose on other lockers, but did not specify Griffin's locker, however Price did not recall seeing this statement. Price indicated it would have been helpful to have seen the statement as part of the investigation, but Colledge was interviewed after Sickler and Azelia were suspended. (Tr. 1502-1503).

Price stated she was not aware of how many employees saw the valve on Griffin's locker and did nothing, but only Brian Kimber received a written warning for not doing anything. (Tr. 1504). Alder, who also saw the valve and did nothing, did not receive a written warning. (Tr. 1504-1506). Kimber did not receive a written warning until July 31, 2012, although the investigation was completed by April 19, 2012. (Tr. 1506). Price indicated the justification memo had not yet been received and they needed to have all the paperwork in order. (Tr. 1507). Price stated they did not need to know anything else to write-up Kimber, Perkins and Tate. All three could have been written up

at the conclusion of the investigation, but were not written up until July or August 2012. (Tr. 1508). Although Sickler and Azelia were suspended pending termination because of their conduct, which was harassing in nature, Fackrell, who engaged in similar reportable behavior, was never under investigation. (Tr. 1508-1509).

During the investigation, employees reported other issues centered around "D" team. (Tr. 1509). On March 6, 2012, "A" team found an ACAMS disconnected, but "A" team was not investigated for sabotage. It was concluded that "D" team was not always the team which found mistakes. (Tr. 1510). Not all employees stated the sabotage may have occurred. Price testified there was no reason to believe anybody was sabotaging at any time. Price did not investigate "D" team being sabotaged by another team. (Tr. 1511-1512). She did not investigate whether Griffin was retaliating against Sickler. (Tr. 1512). Price was aware Griffin had made a mistake on configuring a valve and received a written warning. Price discovered "D" team had found the misconfiguration, but did not investigate whether there was retaliation against "D" team for the events that had been reported. (Tr. 1512).

Price testified that Brett Doner, who was a supervisory foreman, observed the valve and sign on Griffin's locker on Tuesday, or several days before it was reported, but did not report anything to management and was not written up. (Tr. 1513).

On re-cross examination, Price confirmed that the employee statements which she had not seen before the investigation were from employees who were interviewed during the investigation. Price affirmed that there were no facts in the employee statements which would have made a difference in the outcome of the investigation. (Tr. 1514).

Randy Roten

Roten began employment with Respondent on October 26, 1992. He has served in various supervisory positions at the TOCDF. On July 1, 2009, he became site monitoring manager at the ATLIC. In January 2012, Perkins was assigned as ATLIC monitoring manager and Ty Tate was assigned as deputy monitoring manager. (Tr. 1516).

On April 10, 2012, Roten learned of an incident with Azelia and Sickler in response to a NRT alarm. Sickler reported they

found a DAAMS sample line disconnected. Tate called Roten to report the disconnected sample line and the alarm. (Tr. 1517). Roten was involved in interviewing employees about Griffin's locker incident at the time Tate called him. He had not interviewed Sickler about the locker incident when notified by Tate of the alarm. Roten testified that he was concerned about the disconnected sample line, but it did not contribute to his decision to suspend Sickler and Azelia. (Tr. 1518).

Roten was deposed and stated he did not know if Sickler had intentionally disconnected the sample line, but had to determine if he had done so. (Tr. 1521). On an audio recording played at the hearing, Roten was asked if the fact that Sickler filed a Potential Missed Monitoring Report about the incident a contributing factor in his decision to suspend Sickler to which he responded "yes." (Tr. 1521-1522). The written deposition was consulted as well (pages 170-171) which does not refer to the report, but to Roten's concerns "about this" as part of the reason contributing to his decision "to suspend, without termination."³ (Tr. 1523-1524). The decision to suspend, pending termination Sickler and Azelia was made on April 18, 2012, after a collective discussion between Roten and Price. (Tr. 1524, 1526-1526; RX-36.11).

CX-53, p. 550, is an email dated April 20, 2012, from Roten to Perkins, the day after the suspension of Sickler and Azelia on April 19, 2012, which requests details of all items identified in the root cause including times, dates, the team that found the items and the team that caused the item. (Tr. 1528). He requested the information to determine if he had a systemic problem with any particular team. (Tr. 1528). The email indicates that Roten had requested the information prior to April 20, 2012. (Tr. 1529). He then provided the information to Price, although Price was only investigating the locker incident. (Tr. 1530-1531).

Roten affirmed that the root cause analysis was completed on February 16, 2012, and involved nine significant monitoring events which occurred from November 11, 2011 through February 2, 2012. The most significant event was a RCRA noncompliance issue which identified a misconfigured valve found by Azelia and

³ The tape recording of the deposition and the written deposition do not provide similar responses. Roten was asked first if Sickler's reporting was a concern and in the deposition, whether "this" was a concern, perhaps the incident/event of the disconnected sample line, but it is not clear which is referenced in the deposition. I conclude his answer is not inconsistent.

reported by Sickler. (Tr. 1531-1532). Roten understood that ineffective management of the ATLIC was common to all nine events. (Tr. 1533). Roten was responsible for the management structure, which was contractually approved. (Tr. 1533-1535). The analysis also provided immediate and interim corrective actions that needed to take place, with target dates and who was responsible for each action. Roten's boss was not happy with the results of the Root Cause Analysis. (Tr. 1534). Additional incidents occurred after the last event in the root cause analysis such as a February 6, 2012 sample line on TEN 730L mini-CAMS was found disconnected; on March 6, 2012, another sample line was found disconnected; and on April 10, 2012, a sample line was found disconnected during an actual alarm. (Tr. 1536-1537; CX-53).

Roten agreed that if his monitoring departments were not performing properly, it was possible he could lose his job. (Tr. 1537-1538).

Roten testified there were five "contributing things for award fees that employees share with" which were management oversight, cost, schedule, safety and environmental. If environmental, safety and management oversight scores were low, the award fee could be affected. (Tr. 1538).

Roten stated that he knew Sickler since the late 1990s. He did not have any performance issues with Sickler or Azelia before their suspensions. (Tr. 1538-1539). Roten was the indirect manager of Sickler for his October 8, 2007 evaluation in which he met expectations. (Tr. 1540; CX-38). Roten was the reviewer of Sickler's 2010 evaluation wherein he exceeded expectations. (Tr. 1540-1542; CX-37, p. 97). Roten was also the reviewer of Sickler's 2011 evaluation, approximately four months before his suspension. Roten never cited or disciplined Sickler for any performance issue as of the end of 2011. (Tr. 1542). Roten never found Sickler had failed in any capacity of his monitoring duties and never made a finding that Sickler had sabotaged or did anything to any monitoring systems. Roten knew that Perkins made Sickler a team lead. (Tr. 1543). When Sickler was suspended on April 19, 2012, it was his first incident of discipline. (Tr. 1544).

Roten worked indirectly with Azelia since 2005. (Tr. 1544). Roten was a second level manager of Azelia in 2006 and approved Azelia's December 11, 2006 evaluation as achieving expectations. (Tr. 1545-1546; CX-36, pp. 39-40). Roten was Azelia's indirect manager in 2007 and approved his October 8,

2007 evaluation which achieved expectations. (Tr. 1546-1547; CX-36, pp. 41-42). Roten signed off on Azelia's December 8, 2008 evaluation as achieving expectations. (Tr. 1548; CX-36, pp. 43-44). Roten approved Azelia's ratings for 2009, 2010 and 2011 as achieving expectations. (Tr. 1548-1549; CX-36, pp. 45-54). Roten had not disciplined Azelia for any issue prior to his suspension and had not determined that Azelia had sabotaged any monitoring equipment or done any act that he was not supposed to do. (Tr. 1549).

Roten testified that during his entire tenure with Respondent he could not recall ever terminating an employee for a first offense violation. He could not recall ever suspending an employee pending termination during his period of employment with Respondent. (Tr. 1550). He recalls disciplining employee Evan Rowelle who had been disciplined for repeated performance issues. Rowelle had been written up numerous times. (Tr. 1550). Rowelle was terminated for his final event which was a RCRA noncompliance issue in addition to his past performance issues. Roten recalls employee Matt Rayall was terminated after he became disqualified from the chemical reliability surety program. (Tr. 1551-1552). Roten also recalls terminating employee Justin Shepherd who had numerous issues with punctuality and attendance. (Tr. 1552). Roten recalls employee Josh Zinger who was the subject of a harassment complaint during training for allegedly making offensive and aggressive comments towards a female employee. (Tr. 1554). Roten and a HR representative interviewed six or seven employees about the complaint. Zinger was determined to have used profane language toward the female employee and was disciplined for his conduct. Roten also determined that Zinger had misrepresented what he stated while other witnesses contradicted his statement. Roten did not recommend Zinger be terminated, but recommended Zinger be issued a final written warning. Roten could not recall terminating any individual for harassing another employee on a first offense. (Tr. 1554-1557). Roten does not recall ever terminating an employee for untruthful statements in an investigation on a first offense. Roten did not recall ever terminating an employee for a first offense related to violating a hazardous waste policy. (Tr. 1557).

During the locker investigation, Roten was made aware of conduct committed by Heath Fackrell. Fackrell was never disciplined. RX-18.03 are typed notes transcribed by Maria Martinez from her handwritten notes taken during interviews of employees on March 22, 2012. Roten confirmed that Kimber related comments of cursing and a hostile environment by

Fackrell which, if true, would violate Respondent's ethical guidelines, Code of Conduct, and the company's harassment policy and violence in the work place policy. Roten talked to his managers about the Fackrell incidents but did not interview Fackrell. Roten did not notify HR about the Fackrell incidents. Price became aware of the Fackrell incidents during the investigation of the locker incident. (Tr. 1558-1562).

Roten recalls interviewing Vario during the locker investigation in which he also raised similar issues about Fackrell "threatened generally about getting ass kicked" and punching walls. Roten believes other employees also raised issues about Fackrell during the course of the locker investigation. (Tr. 1563-1564).

Roten testified that Tate collected statements about the locker incident. Roten contacted Price on March 21, 2012, and employees were interviewed by Roten and Martinez on March 22, 2012. RX-18 is an email with attachments (statements) sent by Roten to HR. He discussed with Price who to interview. On March 26, 2012, Roten met with Perkins and Tate and asked for an improvement plan from each individual. (Tr. 1570). Roten also held a management meeting on March 27, 2012, with Sickler and other team leads about a plan for moving forward from the locker incident which was unacceptable behavior and not in line with Respondent's Code of Conduct and Ethics. (Tr. 1565-1571).

Roten created a chronology of events which was updated on May 1, 2012.

Roten stated he suspended Azelia for placing items on Griffin's locker based on Azelia's statement from which Roten had no basis to believe that anything stated in the statement was false. (Tr. 1572-1574; RX-4). During the investigation, Roten did not find anything untrue about Sickler's statement. (Tr. 1574-1575; RX-5). Tate called Roten to notify him of what he found on Griffin's locker and sent Roten pictures of Griffin's locker. (Tr. 1576). Roten did not find anything untrue in Matt Harris's statement given to Tate. (Tr. 1576-1577; RX-3). Roten did not find anything false in Brett Doner's statement or Colledge's statement. (Tr. 1577-1578; RX-6; RX-7). Steve Alder's statement contained nothing false; as a lead Alder saw the items on Griffin's locker and did nothing about it and was not disciplined. (Tr. 1579-1581; RX-8). Neither Roten nor anyone else involved in the investigation made a recommendation that Alder should be written up. (Tr. 1581). Roten testified he and Price discussed the investigation and jointly determined

to discipline Perkins, Tate and Brian Kimber from what was found during the investigation. (Tr. 1581-1583). There was nothing in Fails's statement which was determined to be untrue. (Tr. 1583-1584; RX-12).

Roten stated CX-14 is the only statement from Sickler that he saw. (Tr. 1591-1592, 1594). CX-49 is a series of emails between Price and Roten in which it is observed, after reviewing Sickler's statement, that Sickler was not aware of the sign and valve being put up again. (CX-49, p. 1051). In Roten's draft justification memo, there is no reference to Sickler knowing the noose, sign and valve had been put back up. (Tr. 1607-1608; CX-45, pp. 2708-2709). Roten noted that Sickler was not aware of the noose, sign and valve being put back up until he saw Tate's text message. (Tr. 1609-1610; CX-45, p. 2724). In Roten's draft dated April 25, 2012, expressing the reasons for the suspension of Azelia and Sickler, there is no mention that Sickler saw the noose, sign and valve after it was put back up. (Tr. 1610). Further, CX-64, p. 105, indicates that Sickler did not know the sign and valve had been put back up during the April 10, 2012 investigation. (Tr. 1611-1612). Sickler did not find out that the "items" were put back up until Tate sent him a text and photo. (Tr. 1614-1615; CX-14, p. 114).

Roten testified that the decision to suspend Azelia and Sickler was made on April 18, 2012, and the suspensions were effective April 19, 2012. (Tr. 1616). Roten testified at the unemployment hearing on June 21, 2012, and stated that the decision to terminate Azelia and Sickler was made in April 2012. (Tr. 1617-1618; RX-46, p. 26). The terminations occurred in July 2012. (Tr. 1618). Roten testified that he was not aware of an OSHA complaint being filed by Azelia and Sickler in June 2012. (Tr. 1619-1620). The justification for the termination of Sickler is set forth in a letter to Karimi on June 18, 2012, drafted by Roten and Price. (Tr. 1620-1622; CX-41, p. 348). Contrary to Azelia's statement, Roten understood that Sickler made a comment about "wouldn't it be funny to frame" the valve on Griffin's locker. (Tr. 1623-1624; CX-41, pp. 344-345). Tate's interview occurred on April 16, 2012. (RX-29). Regarding the valve put on Griffin's locker, it was determined the valve was the actual valve from TEN 727L which was a hazardous waste violation. Azelia and Sickler were not sent for a medical evaluation because Lewisite had not been running through the valve at the time of removal. (Tr. 1625-1627).

Roten understood that the valve was initially put up on the locker on Tuesday, March 13, 2012, and on March 14, 2012, was

taken down and then put back up. The valve was on Griffin's locker on March 15, 2012, and Tate discovered the valve on the locker on March 16, 2012. (Tr. 1627-1628). Roten affirmed employees were concerned about the valve on the locker since it was potentially a contaminated valve in the Igloo. (Tr. 1628). Two crews worked while the valve was on the locker, but no medical exam of the crews was directed. (Tr. 1629). Roten testified that Harris and Brian Kimber confirmed the valve on the locker was from Station 727L because they had configured the Station. (Tr. 1630). No one took the valve down until March 16, 2012, when Tate contacted Roten and directed Vario to dispose of the valve in the PAS waste container, but no one was even tested for potential contamination. (Tr. 1630-1631). Managers contacted environmental about the valve and in follow-up could not find the valve. (Tr. 1633).

Roten was aware of Harris's statement in which he stated he and Griffin were "close" (Tr. 1634; RX-30, p. 5); that Griffin and Sickler lived together, but Roten did not know if they were "not good friends" (Tr. 1635); that Harris stated Sickler did not belong in leadership and he did not trust Sickler (Tr. 1636); that Harris was not a Sickler fan and Sickler had zero leadership capabilities; Harris did not know how Azelia made foreman (Tr. 1637); and "D" crew did not follow protocol. Harris also stated Sickler "has a constant puppet and buffaloes management." (Tr. 1638; RX-30, pp. 5, 8, 9 and 12).

RX-29, page 7, reflects that Perkins and Tate chuckled at Azelia's idea of putting the valve on Griffin's locker; Tate commented that it was not a good idea. (Tr. 1640). Roten concluded the three-way valve on Griffin's locker was the same valve which had been removed from Station 727L on March 13, 2012, based on the opinion of Harris and Kimber. (Tr. 1641; CX-41, p. 345). He also determined that Sickler was complicit in placing the valve on the locker based on Kimber's statement (Tr. 1641-1642); and Azelia put the noose on Griffin's locker. (Tr. 1642). Roten knew the noose had been around the Igloo for one to three weeks. (Tr. 1643). Roten was aware that Brian Kimber saw the items on Griffin's locker, but did not notify management. (Tr. 1644). Roten put nothing in his justification memo about Perkins and Tate. (Tr. 1644). CX-51 is the warnings issued on July 30, 2012, to Perkins, Kimber and Tate. (Tr. 1644-1645).

Roten is still employed by Respondent. (Tr. 1645). He is familiar with the retention bonus and its intent to "stay and perform." (Tr. 1646). Roten stated severance pay was based on

pay and years of service; an employee received one week of pay for each year of service. (Tr. 1647). Roten stated Sickler had 14 years of service and Azelia had eight years of service. (Tr. 1648). The retention bonus was based on peer group, performance, discipline, attendance with length of service as a tie breaker. (Tr. 1648-1649, 1652). Reductions in force occurred on April 4, 2012 and June 6, 2012. (Tr. 1650). The last monitoring group was reduced in force on January 9, 2014, and was comprised of Jeff Jolly, Carl Scott, Greg Vigil, Mike Medina, Brian Stewart and Wayne Cowen. (Tr. 1651). Alder was reduced in force in November 2013 and Brian Kimber was reduced in force in December 2013. (Tr. 1651).

On cross-examination, Roten confirmed that he has worked for Respondent for 22 years. (Tr. 1652). He began as a lab monitoring tech at the TOCDF and later became a TOCDF monitoring team leader. Roten explained that challenging a system is to decide whether the instrument is in control. (Tr. 1653). Corrective actions may be needed as a result of a challenge. There is an incentive to hurry without corrective action. (Tr. 1655). Sometimes there is a discrepancy between what the machine reads and what the employee records. (Tr. 1656-1657). If so, an employee could be looking at discipline, but Roten never got to the disciplinary stage. (Tr. 1658). Roten never concluded that employees were intentionally cheating the system. (Tr. 1659). He was never told not to document findings. There was no concealment of any monitoring or environmental or safety violations by management. Roten stated there was no unfavorable treatment of an employee because they reported an issue. (Tr. 1659). Management never held back information about a problem or mistake. (Tr. 1659-1660). Respondent and Roten expected issues to be reported and addressed. (Tr. 1660).

Roten testified he never heard anybody with Respondent or URS express the fact that Sickler or Azelia were considered to be a problem because they reported issues, nor did Roten. (Tr. 1660). The safety/fee award bonus was in the \$500-\$600 range. Roten testified that hiding a mistake would not increase a safety/fee award, unless the problem was discovered by URS, then it could affect an award downward. (Tr. 1661). The U.S. Army and URS commended Respondent because of issues being reported. (Tr. 1662). The site had failed to get a bonus before 2003. Since 2003, a bonus has been awarded every period. The last bonus was \$900 because there were fewer people to share. (Tr. 1663). Roten never got a fee award because he is in management. (Tr. 1664).

A Notice of Violation (NOV) is issued by the State of Utah annually for any violations of the RCRA permit and fines can be associated with the NOVs. (Tr. 1665). Respondent addresses issues and self-reports issues to the State of Utah. The culture at the site is to report issues. One year the State fined Respondent \$13,000. (Tr. 1666).

Concerning the locker incident, Tate contacted Roten and informed him that Griffin was upset. Tate was gathering statements from employees. (Tr. 1667-1668). Griffin sent emails to Price in HR because he was upset about the incident. (Tr. 1668). RX-36 is the chronology prepared by Roten for his own use and reference. (Tr. 1669). Tate notified Roten about the locker incident on March 16, 2012. (Tr. 1667; RX-36, p. 1). Roten reviewed the statements submitted by Tate on March 19, 2012. (Tr. 1671). RX-13 is an email from Griffin to Tate explaining that when Griffin arrived at work there was a valve and sign on his locker. (Tr. 1671-1673). Griffin informed Tate that he was told a noose was on his locker the day before. RX-10 is an email from Vario to Tate dated March 17, 2012, which stated that Griffin showed Vario his locker with a three-way valve that appeared to be from Station 727L, but there was no noose on the locker. (Tr. 1673-1674). Roten stated if the valve was from Station 727L, it was not properly handled as hazardous waste. (Tr. 1675).

On March 21, 2012, Roten contacted Price in HR after getting statements from Tate. (Tr. 1675). Roten stated there were issues with "gaps" in the statements. Roten and Martinez conducted interviews in an effort to fill in the gaps. (Tr. 1676). Price contacted Respondent's IOC to determine if an investigation should be conducted. Roten does not know if his interview statements were the basis of the decision by IOC. (Tr. 1677-1678). RX-18 is an email dated March 21, 2012, from Martinez to HR (Michele Gaines) with notes of their interviews and pictures which were transmitted to Price in HR. (Tr. 1678).

RX-18, page 12, is the interview notes from Roten's meeting with Griffin. Griffin stated that since the locker incident he had been avoiding Sickler, Azelia and Colledge, and did not mention Azelia calling him to apologize for putting the valve and sign on his locker. (Tr. 1679-1680). Griffin expressed concern about a potentially contaminated valve on his locker as of March 21, 2012. (Tr. 1680-1681). RX-18, page 5, is Azelia's interview notes wherein he stated the valve was not contaminated and came from his tool box. (Tr. 1681). Roten determined that Azelia statement that the valve came from his tool box was

untrue. (Tr. 1682). RX-4 is Azelia's statement to Tate wherein Azelia identified the valve as a "new valve," which Roten stated was also not true per the investigation. (Tr. 1683). Sickler's interview statement reflects that he instructed Azelia to take down the valve and sign because of the management meeting and thought it was inappropriate for management to see it. (Tr. 1684; RX-18, p. 7). Sickler also stated he was not aware the valve was taped up again on the locker after the management meeting. (Tr. 1685). Sickler also apologized for letting the incident happen and took full responsibility for the incident. (Tr. 1686-1687; RX-18, p. 8). Harris stated in his interview that he was 99.9% certain that the valve on Griffin's locker was from Station 727L because he put the valve on 727L and configured the valve which required heat trace. (Tr. 1687; RX-18, p. 9).

CX-54 is an email to Price dated March 22, 2012, in which the interview notes and documents were sent. (Tr. 1688). Roten identified CX-90 as a schedule for conducting the investigation based on an email from Price on April 9, 2012, the day before the April 10, 2012 alarm incident. (Tr. 1689). RX-113 is an email from Price to Roten with interview questions for each individual consisting of 133 pages of which 131 were questions. (Tr. 1690).

Roten testified that the investigation into Griffin's locker incident did not change course after the April 10, 2012 alarm incident. (Tr. 1691).

RX-36, page 3, is the interview notes of Azelia on April 10, 2012. (Tr. 1692). Roten was present and Martinez may have been present with Price on the telephone. Roten stated he typed the document consisting of pages 3 to 6 of RX-36. (Tr. 1693). Azelia's interview began at 800 am and ended at 955 am. (Tr. 1694). The notes reflect the "main points" of the interview which was not recorded. (Tr. 1695).

RX-20 is an email to Roten of notes typed up by Price of Azelia's interview on April 10, 2012. (Tr. 1695-1696). Roten reviewed the notes from Price. (Tr. 1696).

RX-36, pages 6 to 11, constitutes the interview notes of Roten from Sickler's interview. (Tr. 1696-1697). Roten typed the notes at some point after the interview which are the "key points" of the interview. RX-21 is Price's notes of Sickler's interview. (Tr. 1697-1698). Sickler's interview was not recorded. (Tr. 1698). Roten contacted URS Safety Manager

Anderson to make him aware of the potential issue with the valve on the locker. (Tr. 1699; RX-36, p. 11). Anderson informed Roten that as long as the valve was properly disposed of he was not concerned with any safety issue or harm to people. (Tr. 1699-1700). Roten also talked to Dr. Matravers, the TOCDF site physician for URS. (Tr. 1701).

From RX-36, page 11, and thereafter, beginning with the interview of Burt Beacham on April 11, 2012, Price captured notes of the interview, not Roten. (Tr. 1701-1702). CX-90 reveals that Azelia was to be interviewed at 1000 am and was notified on April 9, 2012, or the morning of April 10, 2012. (Tr. 1703). Sickler was to be interviewed on April 10, 2012, and was notified on April 9, 2012, or the morning of April 10, 2012. (Tr. 1703).

RX-37 is Dr. John Barton's report on the valve risk assessment as chief scientist at Bluegrass, Kentucky. He concluded, as did Safety Manager Anderson, there was "no potential exposure to employees," but that does not mean the valve was not hazardous waste. (Tr. 1704).

RX-22 to RX-34 are the interview notes of Price which Roten reviewed and made corrections where needed. Price captured most of the information and Roten corrected technical points. On April 18, 2012, Roten and Price decided to suspend Azelia and Sickler pending termination. (Tr. 1705-1706).

On April 10, 2012, during the locker investigation, Roten learned from Tate that there was an alarm at TEN 729K at which a sample line was disconnected from the DAAMS manifold. (Tr. 1706). Roten testified that he was concerned that Sickler had disconnected the sample line and did not get the retention time. Roten suspected Sickler because he did not get the retention time data and the full width half mass. There were similar intentional disconnects in 2004 and 2007, but not involving Sickler. (Tr. 1707-1709). The disconnected sample line seemed odd to Roten because the sample line is threaded. Roten was not aware Kevin Kimber was present in the room at the time of the alarm. (Tr. 1709-1710). Roten moved the suspension up to April 19, 2012, because of the sample line disconnection. Roten testified, however, that the sample line event had no impact on the termination of Azelia and Sickler. (Tr. 1711-1713). Roten testified that the decision to suspend was made after the interviews with Price. He wanted the suspension to be made sooner than later because of his suspicion about Sickler and the April 10, 2012 incident played a part in the decision to suspend

Sickler. (Tr. 1712-1713). Roten testified that there were "no consequences" imposed on Sickler because of his suspension. (Tr. 1717-1718). Roten did not take statements on the disconnection of the sample line and his suspicion of Sickler. (Tr. 1717).

Roten was aware of Azelia's statement "look what we did to Squirrel's locker." Roten believed from the investigation that Sickler stated "wouldn't it be funny to put [the valve] on Griffin's locker." Sickler's reporting of the April 10 incident did not motivate Roten to suspend or terminate Sickler. (Tr. 1714-1715). Azelia was not involved in the April 10 incident according to Roten. (Tr. 1715).

RX-40 is the justification for the termination of Azelia and Sickler. (Tr. 1718). Roten testified the investigation determined the three-way valve taped to Griffin's locker was the same valve removed from Station 727L on March 13, 2012; that Azelia admitted putting the valve and sign on the locker and told Brian Kimber "look what we did to Squirrel's locker" which had a noose, valve and sign on the locker when Kimber viewed the locker; that Azelia placed the noose on the locker even though he denied doing so because the noose was present when Kimber was shown the locker; Sickler had full knowledge, encouraged and allowed the behavior because Sickler remarked "wouldn't it be funny to frame this on Dennis's locker" when the valve was removed from the Station; and the valve created a concern there could be contamination. (Tr. 1718-1721).

Roten also concluded Sickler was untruthful because it was determined he was aware the valve was put back up after being taken down. (Tr. 1722). Azelia was also untruthful when he stated the valve was a new valve and he did not put the noose on the locker, but the noose was present when Azelia showed the locker to Brian Kimber. (Tr. 1721-1722). Kimber did not report the items on the locker and was also disciplined. (Tr. 1722). Other employees saw the valve and were not disciplined because they were not supervisors. (Tr. 1722-1723). Alder, who was a supervisor, did not identify what was on the locker. (Tr. 1723). Roten noted Sickler was "completely unacceptable as a team lead and was not credible with his peer team leads and others." (Tr. 1723-1724). Roten testified the investigation was not motivated by anything reported by Azelia or Sickler, but because of the complaint made by Griffin. (Tr. 1726). Roten stated the perception of the valve, whether used or not, would have been the same. (Tr. 1726-1727). Roten testified if there had been no noose, termination was still warranted because an

individual, Griffin, was targeted for the incident of January 20, 2012. (Tr. 1727).

RX-36, page 2, is notes of the management meeting conducted by Roten on March 27, 2012 about expectations of the leaders, but Azelia and Sickler were not identified by name. (Tr. 1728). The meeting was needed to gain focus on the performance of their job. (Tr. 1729). Roten does not recall Cameron Dick complaining of harassment by Harris, Vario and others. (Tr. 1729).

Roten recalls Sickler complained about a ladder which caused Respondent to bring in safety representatives to examine and determine if it met OSHA standards, which it did, but grip tape was put on the rungs of the ladder and a cage was installed outside to prevent an employee from falling back. (Tr. 1730-1731). The ladder was stabilized by a brace and a winch was installed to hoist up equipment. (Tr. 1731).

Roten confirmed that no "offenses" were committed by Azelia and Sickler in the April 10, 2012 incident. Azelia had no role in the April 10, 2012 incident. (Tr. 1732-1733).

RX-59 is an email dated April 10, 2012, from Karsten Hansen stating that the State of Utah agreed there was not an actual agent alarm on April 10, 2012, due to no potential source. (Tr. 1734). Tate prepared the CR which stated there was no actual alarm due to no potential source of GA. There was no GA after December 2011. (Tr. 1734). Roten acknowledged that there are false positives with ACAMS. (Tr. 1735).

RX-114 is a letter to Scott Anderson of the State of Utah dated December 8, 2011, from Gary McCloskey, URS General Manager, and Ted Ryba, Site Project Manager for the U.S. Army, requesting permission to suspend exhaust stack monitoring of the ATLIC. The letter declared that monitoring was suspended for Agent GA since GA operations were completed, to include flushing the incinerator and processing equipment of recoverable agent. (Tr. 1736-1738). RX-114, page 2, is a letter from Sheila Vance, URS Environmental Manager, to Ryba setting forth the same content requesting government approval to suspend monitoring operations. (Tr. 1738-1739). RX-114, pages 4-5, is the approval of suspension of operations from the State of Utah. (Tr. 1739). Roten affirmed there was no potential for agent to be present on April 10, 2012. (Tr. 1740).

Respondent has no role in determining whether an event is a RCRA noncompliance issue. Roten stated it makes no difference to Respondent whether the event is a violation of the RCRA permit or not in terms of what gets reported or the corrective actions taken. (Tr. 1741).

RX-59 is an email report from Karsten Hansen to Tom Ball of the State of Utah about the April 10, 2012 incident. (Tr. 1742; RX-59.01). RX-59, page 2, is Tate's CR of the April 10, 2012 event. (Tr. 1742; RX-59.02). RX-59, page 4, is the Potential Missed Monitoring Report completed by Sickler. RX-59, page 7, is the NRT Daily Operations Log the technician fills out when doing the challenges. (Tr. 1744).

Roten testified that there was no disciplinary action taken against Tate or Hansen for reporting the April 10, 2012 event. (Tr. 1744-1745).

RX-49 is the Root Cause Analysis Report. Roten testified that Respondent does five to six analyses per year. (Tr. 1745). The CR Group which makes the decision to have a root cause analysis is comprised of senior managers: two from Respondent, one from safety, one from environmental, one from performance management and one from quality control. (Tr. 1746-1747). Roten recommended the root cause analysis because of the nine issues at the ATLIC. (Tr. 1747-1748). Roten played no role in the root cause analysis investigation. Roten agreed that the most significant issue was the January 20, 2012 event. (Tr. 1748-1749).

RX-56 represents the Potential Missed Monitoring Report for the January 20, 2012 event completed by Sickler. (Tr. 1749). RX-56, page 14, is a self-report of the January 20, 2012 incident from URS Environmental to the U.S. Army. (Tr. 1750). RX-56, page 15, is a letter from Terry Thomas, a URS Senior Manager, to Anderson of the State of Utah providing notice of the January 20, 2012 incident. (Tr. 1750). RX-56, page 18, is a "discussion-with-State-regulators" document completed by URS Environmental regarding the NRT monitoring a sample line instead of the Tox room on January 20, 2012. (Tr. 1751-1752).

Of the Root Cause Analysis events, RX-51 relates to an incident of November 14, 2011, which Steve Alder reported. (Tr. 1752-1753). No adverse action was taken against Alder for reporting the incident. (Tr. 1754). RX-52 relates to an incident of November 16, 2011, for which Alder prepared a CR and reported the incident. (Tr. 1754-1755). RX-53 is Sickler's

report of an incident of December 16, 2011. (Tr. 1755). RX-54A is a CR for an incident of December 12, 2011, reported by Gilman. (Tr. 1756). RX-54 is an incident of December 25, 2011, reported by Sickler, but discovered by Cameron Dick. (Tr. 1756-1757). RX-55 is a report of a pricked finger prepared by an URS employee. (Tr. 1757). RX-57 is a report of a January 24, 2012 incident reported by Brian Kimber. (Tr. 1757-1758). RX-57, page 6, is a statement from Burt Beacham. (Tr. 1759-1760). The CR for the incident was prepared by Perkins. (Tr. 1759; RX-57, p. 7). RX-58 is an incident of February 2, 2012, reported by Brian Kimber for which Aldon Johnson wrote a statement. (Tr. 1759-1760).

CX-53 is an email from Perkins collecting four incidents which were not part of the root cause analysis: one was on January 27, 2012, reported by Brian Kimber; the second on February 6, 2012, reported by Sickler; the third reported on March 6, 2012, by Steve Alder; and the fourth incident of April 10, 2012, reported by Sickler. (Tr. 1760-1762). Roten stated he was not embarrassed by the incidents of the Root Cause Analysis. (Tr. 1763).

Roten affirmed that neither Azelia nor Sickler raised issues which were inconsistent with their job duties. (Tr. 1764).

Roten estimated that Sickler's reduction-in-force date would have been November 2013 or December 2013, but for his termination. Azelia was employed in a larger peer group, but would have been reduced-in-force sometime in 2013. (Tr. 1764). Currently, only 19 employees remain on the site. (Tr. 1765). There may have been eight-ten former employees at Respondent's Pueblo site and two to three at Respondent's Bluegrass, Kentucky site. Azelia and Sickler could have applied for jobs at other sites, but for their termination, but some employees who applied may not have been hired. 9TR. 1765-1766).

RX-109 are the CRs by year summary submitted by Azelia and Sickler. (Tr. 1767). In 2012, there were 2179 CRs generated of which Sickler prepared two, Azelia none. (Tr. 1767). In 2011, there were 3291 CRs and Sickler prepared one, Azelia none. (Tr. 1767-1768). In 2010, there were 3173 CRs and Sickler prepared one, Azelia none. (Tr. 1768).

RX-73A is a justification memo from Roten to Lori Myer, the HR manager, about Robert Adams who threw a gas mask at an employee. Ole Wilson was on Roten's team at one time, but never

made any harassment complaints according to Roten. (Tr. 1768-1770).

RX-49, the Root Cause Analysis Report, determined that management failed to implement an effective structure at the ATLIC. (Tr. 1770). The immediate corrective actions taken are set forth at page 16 where additional oversight was assigned for the week ending January 24, 2012, an all hands meeting for all shifts was held, and Perkins and Tate were moved to the ATLIC and Secondary Waste Facility. (Tr. 1771). Interim measures were implemented which set expectations and changed practices. (Tr. 1772). RX-49, page 17, is the Corrective Action Plan for which a CR was assigned to each event and all were implemented. (Tr. 1773).

RX-61 is a certification card for monitoring which required a supervisor/leader to verify the actions. (Tr. 1773-1774). RX-62 is Monitoring Disciplined Operations platform which Roten developed to place more focus on monitoring responsibilities. (Tr. 1774). RX-63 is a list of employee's signatures, including Sickler's form on April 4, 2012, which indicated he read and understood the PowerPoint presentation of RX-62. (Tr. 1775).

RX-20 is Azelia's interview statement wherein he stated on January 20, 2012, he found the valve was in the wrong position. (Tr. 1776).

On re-direct examination, Roten identified CX-94, the Disciplined Operations Manual, confirmed he did not report any concern about Sickler disconnecting the sample line or sabotage on April 10, 2012. (Tr. 1821-1822). Roten acknowledged he did not conduct an investigation of sabotage involving Sickler. (Tr. 1822; CX-94, p. 3379). Roten had no concern about Azelia being involved in sabotage, but also pushed up the date of Azelia's suspension. (Tr. 1823).

CX-10 is the email of Hansen in which he refers to retention times. No retention times are noted in CX-10. (Tr. 1824). Roten was concerned because a quality control check and DAAMS routine maintenance were performed where a full exam of the station and the sample line connection took place prior to the April 10, 2012 alarm. (Tr. 1824-1826). CX-10, p. 661, reflects an entry "performed PM on DAAMS TEN 729K" and "2-17-12." (Tr. 1826). On April 2, 2012, an earlier quality control check was performed. (Tr. 1827-1828). No further checks or maintenance entries were made thereafter until Sickler's check of 729K on April 10, 2012. (Tr. 1827).

Hansen also referred to no potential source since agent GA was completed in November 2011. (Tr. 1829). RX-114 indicates the "lines were purged," the GA campaign was over which mitigated the likelihood of any potential agent. (Tr. 1830-1831). Roten stated they could not tell what caused the April 10, 2012 alarm or if it was agent or an interferant. (Tr. 1831). A second monitoring system was not connected because of the disconnected sample line. Roten agreed that Sickler could assume the worst, a potential agent caused the April 10, 2012 alarm. (Tr. 1831-1832).

Roten testified there is a histogram program for each employee. If an abnormal reading occurs, a manager or supervisor would talk to the employee. (Tr. 1833). Data would show if an employee was cheating. (Tr. 1833-1834). CX-20, p. 208, are interview notes from Harris in which he states at paragraph three Sickler and Azelia were "horrible" and stated it was easy to get the machine to pass, but their job was to make sure it is in NRT control. (Tr. 1834-1835). Roten always looked at the histogram and yet never identified cheating by Team D. (Tr. 1835).

RX-98 is an Operating Guide or disciplinary policy in effect in 2012. Roten does not recall reviewing the policy during the locker incident investigation. (Tr. 1836). He did not talk to Price about "same or similar offenses" of other employees before deciding to suspend Sickler and Azelia. (Tr. 1837). Roten assumed Price would report other violations which came out of the employee interviews; he did not report any allegations from the employees interviewed. (Tr. 1838).

RX-18 is the findings from the investigation. It was determined that the valve on Griffin's locker came from Station 727L based on the statements of Harris and Brian Kimber and that Azelia placed the noose on Griffin's locker based on the statement of Brian Kimber. (Tr. 1840-1841). It was also determined Sickler saw the items and had them taken down because it was inappropriate prior to the management meeting, but the items went back up and Sickler did not report it, but laughed when Azelia commented "look what we did to Squirrel's locker." (Tr. 1841). Roten stated Sickler "shrugged his shoulders" when he was asked why it was inappropriate for management, but did not apply to him as leadership, when he had the items taken down for the management meeting. (Tr. 1842). Roten acknowledged Dr. Barton, Anderson and Dan Taylor had concluded that the valve posed no contamination issue. (Tr. 1844).

Roten acknowledged that Griffin stated in his interview that he did not feel harassed before this locker incident. He had been avoiding Sickler, Azelia and Colledge, but did not elaborate on his reasons for doing so. (Tr. 1843; RX-18, p. 12).

Roten testified that the additional events of February 6, 2012 and March 6, 2012, reported by Perkins involving disconnected sample lines were not suspected to be sabotage incidents. (Tr. 1845).

Reza Karimi, PH.D.

Dr. Karimi is the senior site manager for Respondent at the Tooele facility, managing the monitoring and surety and security group at TOCDF. (Tr. 1777). He has held the position since July 2008. He is responsible for the analytical aspects, surety and security. He has been employed with Respondent for five years. He has a B.S. degree in Chemistry and a M.S. in Biochemistry and Petroleum Engineering. He has also earned a Ph.D. in Chemistry. Dan Taylor is his boss. Roten reports to Karimi. (Tr. 1778). He stated employees who work in the lab have varying educational levels from a high school diploma to Ph.D. (Tr. 1779).

Dr. Karimi testified that DAAMS procedures are in place, approved by the U.S. Army and are followed. (Tr. 1779).

Dr. Karimi learned of the locker incident from Roten on March 19, 2012. Roten explained the events and Karimi contacted HR the same day. HR recommended an investigation. Karimi was not involved in the investigation. (Tr. 1780). Roten was not upset with Sickler and Azelia for anything other than the locker incident. (Tr. 1781).

Respondent follows procedures established by URS. Anyone can write a CR. (Tr. 1781). The CR Group is comprised of representatives from all groups. The Group reviews the CRs and assigns categories to the CRs. The CR Group meets daily to review the CRs. Category "A" is a root cause analysis. (Tr. 1782). Employees are required to report issues. On one occasion there was a lab spill which was not reported, but cleaned up. The spill was later reported and HR investigated the incident which resulted in four employees being terminated. (Tr. 1783).

Dr. Karimi testified that root cause analyses are done to correct mistakes. Hundreds of root cause analyses are done between Respondent and URS. A root cause analysis does not cause contractual issues with URS. (Tr. 1784-1785). He became aware of the Root Cause Analysis in January 2012 involving nine issues at the ATLIC. The findings concluded that the management structure was ineffective; and a stronger management team needed to be put in place. (Tr. 1786-1787). Karimi never considered Roten for discipline. Roten's job was not at risk. (Tr. 1787-1788). Roten had a good management style and was "a by the book person type." Issues and mistakes are ongoing. (Tr. 1788). There is no longer CRs because the contract ended and the operation is complete. (Tr. 1789).

Dr. Karimi learned of the April 10, 2012 incident involving the disconnected sample line. (Tr. 1789). Roten's performance was not called into question by additional incidents after the Root Cause Analysis. Employees are viewed as assets and resources. Respondent invests thousands of dollars into training employees. Termination is very difficult according to Dr. Karimi and Respondent does not terminate employees unless "red lines [are] crossed." (Tr. 1791). Neither Dr. Karimi nor Roten make decisions about termination which is done by HR and "legal." A cover-up on an event "can back fire big time, where the real trouble comes," and is a terminable offense. (Tr. 1792).

Dr. Karimi stated that higher managers do not receive award fees. (Tr. 1792). Lower level managers can now receive fee awards. (Tr. 1792-1793). The Root Cause Analysis results had minimal impact because Respondent is still highly rated. (Tr. 1793).

RX-40 is the justification for terminating Sickler and Azelia which was based on the locker incident. (Tr. 1794). The valve on the locker was a major safety issue; it was determined to be a used valve and had potential exposure issues. Dr. Karimi stated that even if the valve was new it would have made no difference since it should not have be put on Griffin's locker because it was threatening and employees did not know and would assume the valve had been used. He was told it was a "joke played on an employee," but Karimi did not see it as a joke. (Tr. 1795-1796). The employee who made the valve configuration mistake was disciplined. (Tr. 1797). The noose was "scary." The investigation concluded that Sickler and Azelia were involved in placing the items, including the noose, on Griffin's locker. (Tr. 1791). Karimi stated even if Azelia

and Sickler had received performance awards, the awards did not excuse their actions with the locker. (Tr. 1798).

Dr. Karimi recalled disciplining an employee Zingler with a written warning who was accused of sexual harassment of a female employee who complained about his actions while training in Maryland. The investigation was inconclusive and the female employee also received a written warning. (Tr. 1798).

RX-67 is a disciplinary termination taken against Rodney Goller who made remarks about shooting dogs and cars, yelled at employees, but did not engage in anything physical. An investigation was conducted and determined the remarks were threatening and made the work environment unsafe which was unacceptable behavior. (Tr. 1801; RX-67, pp. 693-695).

Roten had exceptional performance. Roten was not upset for Azelia finding the January 20, 2012 valve issue or Sickler filing a CR on the event or finding the disconnected sample line on the April 10, 2012 event. Respondent has a COW award given weekly to an individual who submits the best CR. Roten appreciated receiving the reports from Sickler. (Tr. 1802). Employees have been fired for not reporting or covering up events. (Tr. 1803). Respondent wants to receive reports of issues. (Tr. 1802).

On cross-examination, Dr. Karimi testified he was not involved in the locker investigation, did not review the statements obtained from employees, see the interview notes or interview any witnesses. (Tr. 1803). Roten and Price recommended suspension of Azelia and Sickler, which Dr. Karimi approved in conjunction with his boss and the legal department. (Tr. 1804). He did not receive a justification memo to review at the time Sickler and Azelia were suspended, however he received a draft report in April 2012 which was similar to RX-40 (the final report) or termination justification memo. (Tr. 1804-1805). They drafted the report and were waiting for a report from Dr. Barton on the health and safety of the valve. (Tr. 1804).

Dr. Karimi discussed and reviewed the report and agreed with its findings. (Tr. 1806). Two issues were presented: the valve and safety; and the noose as harassment, intimidation and threatening which violated Respondent's procedures. (Tr. 1806). Karimi did not see all of the statements gathered during the investigation. Reporting issues was a major concern. (Tr. 1807). Used V to G pads, gloves and PCTs were reportable events

for which a CR should have been prepared. (Tr. 1808-1809). Karimi stated that a "drive-by shooting" if off-site was not his business, but it would be reportable to security if it occurred on site. If a report is made, action should be taken. (Tr. 1809). Physical threats should be reported. Cheating should be reported. (Tr. 1810-1811).

Dr. Karimi testified there were no other root cause analyses done at the ATLIC, only the one which found the management structure to be ineffective. (Tr. 1814-1815). He was not involved in the investigation of Zingler or Goller. (Tr. 1812-1813). Dr. Karimi stated he was not pleased with the nine missed monitoring events in a two and one-half month period. (Tr. 1815). Roten was happy that Sickler reported the April 10, 2012 sample line event because if not found, "it would have been a bigger problem." (Tr. 1816-1817. Roten never mentioned sabotage by Sickler or Azelia or Sickler not getting to the alarm site and missing the retention time. (Tr. 1817, 1818-1819). Dr. Karimi is not sure what happened during the April 10, 2012 event. Dr. Karimi would report to the U.S. Army which would deal with any alleged sabotage. (Tr. 1819).

CX-94, page 3379, paragraph 12.3.9 of the TOCDF Disciplined Operations Manual relating to sabotage would require Roten to have reported sabotage. (Tr. 1820).

Karsten Hansen

Hansen has a B.S. degree in Marketing and Sustainable Environmental Management. He has been the Environmental Compliance Supervisor for URS for three years and reports to Sheila Vance. He worked at the TOCDF for 13 years and has also been an environmental auditor, inspector and hazardous waste management technician. (Tr. 1861). His duties are to insure compliance with existing permits. His responsibility involves the ATLIC. (Tr. 1862, 1864).

There were 26 employees in the Environmental Department in 2011-2012. (Tr. 1862-1863). He dealt with State regulators with Division of Solid and Hazardous Waste and the Division of Air Quality through compliance and self-reporting. Twenty percent of his duties involved dealing with regulators. (Tr. 1863-1864). Hansen received reports about monitoring operations and events from the facility. (Tr. 1864). He received 12-20 reports per year about missed monitoring from Respondent's supervisors. (Tr. 1864-1865). He would investigate and gather the facts and pursue interviews if the reports received are

insufficient. He would make decisions if self-reporting non-compliance is involved and if the event constitutes a missed monitoring notification in accordance with the RCRA permit. (Tr. 1866). He would make the initial decision about whether non-compliance with a condition of their permit existed and then work with Sheila Vance of Environmental for URS. Hansen would also contact the State of Utah to discuss their interpretation to assure agreement before self-reporting the event. (Tr. 1867-1868). Hansen stated equipment failure is not as significant as human error. Human error is more likely to be non-compliance of a permit. (Tr. 1868-1869).

RX-59 is his email to Shane Perkins relating to a conversation with Tom Ball of the State of Utah concerning the April 10, 2012 incident. Hansen used other means to determine that the alarm was not an agent alarm. (Tr. 1871). Hansen received a potential missed monitoring report by email from Sickler. (RX-59, p. 4). He reviewed the report and based on the status of operations of the facility and downstream monitoring, he determined no potential for agent was present. (Tr. 1873). State regulator Ball agreed with Hansen that it was not a non-compliance issue and recommended a CR be written for corrective action. Hansen testified it is usual for him to talk to Ball concerning permit and events for interpretation. (Tr. 1874). Hansen deemed it was not an agent alarm based on factors in his email listed in priority since there was no potential source for the agent in that the GA operations ended on November 21, 2011, and there was no GA or Lewisite agent in the building and they were converting over to do secondary waste in the building. (Tr. 1875-1876, 1879).

RX-114 is an exhibit containing two letters dated December 8, 2011, from the Department of Defense allowing the removal of stack exhaust monitoring of GA agent and the State of Utah approval. The permit for operations for agent GA was complete and all incinerator lines had been flushed of all recoverable GA agent which had been removed from the ATLIC. (Tr. 1877-1878; RX-114.01). There was no potential for an agent alarm. (Tr. 1878). In May 2012, GA secondary waste was sampled and shipped off site for disposal. (Tr. 1878-1879). Thus, on April 10, 2012, there was no potential for GA in the ATLIC. (Tr. 1879-1880).

Secondly, the monitoring downstream of cascading airflow showed no readings since the ACAMS were set at different monitoring level readings for VSL, ECL and IDLH. (Tr. 1880, 1889-1890). Station 729K monitors the observation corridor

which was downstream to the LIC room with VSL settings. (Tr. 1881). RX-115 shows Station 728K monitoring the LIC room and 729K monitoring the observation corridor. (Tr. 1882-1884). RX-115, page 2, dated September 2011, was still in effect on April 10, 2012. (Tr. 1882, 1888). As of April 10, 2012, VSL monitoring level, which is the lowest monitoring level, was in place for the observation corridor and the liquid incinerator room because there was no potential agent. (Tr. 1884-1886, 1890).

Thirdly, partial results from the co-located DAAMS could not be used as confirmation or non-confirmation of the agent alarm. (Tr. 1890-1891). Fourthly, retention time was noted, but he could not recall what was discussed. Ball agreed with these factors that there was no actual agent. (Tr. 1891). All of the foregoing factors made the alarm event a non-compliance issue. (Tr. 1892). Hansen stated that the email to Ball was accurate. (Tr. 1892).

Respondent and URS environmental departments are integrated. Respondent's auditor worked for Hansen. (Tr. 1892-1893).

Hansen stated the April 10, 2012 event was not embarrassing because it was due to equipment failure. (Tr. 1893). In terms of other missed monitoring events, the April 10, 2012 event did not stick out from others according to Hansen. (Tr. 1894). The ATLIC hazardous waste, including the Igloo, is inspected daily by Mark James, an inspector who worked for Hansen and spent 90% of his time at the ATLIC during 2011-2012. (Tr. 1894). URS received no complaints of hazardous waste. Hansen went down to the ATLIC one to two times per month to look at waste management areas and records. (Tr. 1895). He never saw used V to G pads, nitrile gloves or PCT tubes around. (Tr. 1896-1897). State regulators visited the ATLIC weekly and have not notified URS of any hazardous waste such as pads, gloves or PCTs. (Tr. 1896-1897). Employees were allowed to carry tool boxes with used V to G pads in bags until the end of the shift, which is not a violation of the permit. (Tr. 1898). The State's interpretation is that employees could do so if the pads are containerized, labeled and put in storage. (Tr. 1899). The bags of pads are still "in-transit" until they make it to storage.

Hansen testified that in three years he has reviewed 30-40 missed monitoring reports completed by managers or leads of Respondent. (Tr. 1899). He had no reason to believe Respondent

or its employees were hiding information. (Tr. 1899-1900). RX-60 is his interaction with the State of Utah regulators in the last three years and all of the missed monitoring notification reports submitted to the State in the last three years. (Tr. 1900). Not all interactions from Respondent were missed monitoring reports, some were not reportable events. (Tr. 1901). RX-60, page 101, is the NOV (Notice of Violation) which is issued annually. (Tr. 1901). The State collected all events in the year ending 2011. (Tr. 1902). RX-60, page 103, refers to a letter dated February 17, 2011, which is a self-report of non-compliance to the State by URS. Self-reports reduce penalties and fees. (Tr. 1903-1904). RX-60, page 104, refers to a letter dated August 11, 2011, which resulted in a total fine of \$3,691.00 for 2011. URS received a discount for self-reporting issues. (Tr. 1905).

Regarding the April 10, 2012 event, Hansen remembers individuals were in the observation corridor; perfume of an individual may have been the interferant which caused the alarm. (Tr. 1906-1907).

On cross-examination, Hansen testified RCRA permits, Title Five Clean Air Act permit for air quality and permits for Storm Water and Waste Water are issued by the Department of Air Quality and regulated by the State of Utah. The Title Five Clean Air Act permit controls the emissions from the stack. (Tr. 1907-1908). URS was not embarrassed by the NOVs which are available to the public. It has an effect on the perception on whether URS is compliant or non-compliant. (Tr. 1909). URS would rather have less missed monitoring reports and less NOVs. (Tr. 1910). The ATLIC had 12-20 missed monitoring reports over the short period of operation. (Tr. 1910).

Hansen was aware of the Root Cause Analysis, but he did not participate in any way. (Tr. 1910-1911). He acknowledged that alarms have the potential to stop work at URS and would affect production. Hansen testified there are mechanical and human errors. (Tr. 1912). The April 10, 2012 incident was a mechanical error because a sample line was disconnected according to Perkins and Tate. He did not discuss the incident with Roten. (Tr. 1913). Tate did not state that he thought sabotage occurred to the sample line. (Tr. 1913-1914). If the incident was a result of human error, it would have been a RCRA violation for non-compliance. (Tr. 1914). Hansen does not recall if retention time was obtained during the April 10, 2012 incident. (Tr. 1915). He does not recall if retention time had any effect on his report to Ball or if he had any discussion

with Ball about retention time. The main focus was on "no source of agent" and the airflow downstream. (Tr. 1915). Hansen acknowledged that he does not have an understanding of the importance of retention times. (Tr. 1915-1916). He understood there were partial results from the DAAMS tubes, but Hansen did not know how long the sample line had been disconnected. (Tr. 1916-1917).

RX-59.10 is a log book entry in which quality control had reviewed the sample lines eight days before the alarm and they were connected. (Tr. 1917-1918). Hansen affirmed that testing would not have told them if agent was present or provided partial results. (Tr. 1918). There was no mention of employees in the observation corridor in the entry, but he did discuss the employees in the observation corridor with Ball and did not document his discussion. The GA agent campaign was over and the lines had been purged, but the RCRA permit still required monitoring for secondary waste processing. Waste in 90-day bins does not have to be monitored because the waste is below waste control limits. (Tr. 1920-1921). Hansen stated they did not decide what caused the alarm. It was not likely agent because of the completion of the campaign and the lines being purged. (Tr. 1921). RX-115 demonstrates that in September 2011 the GA campaign was ongoing. Hansen stated monitoring could occur at any of three levels without a permit change or approval based on their determination and needs. CX-85, page 149, indicates that if monitoring is reduced, the State of Utah must be orally notified, but not if the level is increased. (Tr. 1923).

CX-93, page 3325, is a Procedure Change Form which states that hazardous waste must be turned in immediately to waste management. Hansen explained that the waste bins/drums are not turned over to waste management until it is full. (Tr. 1925-1926, 1930). A bag with V to G pads is not in compliance with waste turn-in procedure and must be placed in the 90-day bin at the end of each shift according to Hansen. (Tr. 1927, 1931-1932).

On re-direct examination, Hansen confirmed that he was 100% certain there was no potential source present during the April 10, 2012 incident. (Tr. 1928). There was no GA agent left after December 2011 to May 2012. Secondary waste contaminated with GA agent was possible, but there were no 90-day bins in the observation corridor and there was no source for GA agent alarm. (Tr. 1929-1930).

On re-cross examination, Hansen stated that entry into the observation corridor was monitored to protect employees even though there was no agent present after the GA campaign. (Tr. 1932-1933).

Sheila Vance

Vance has a B.S. degree in Physiology with a minor in Environmental Toxicology. (Tr. 1934). She has been employed with URS for 17 years and is presently the Environmental Safety and Health Manager. She has held her current position for three to four months. She previously served as an Environmental manager for six years. She has experience as an environmental regulator while in Hawaii from 1992 to 1996. She interfaces with Respondent. (Tr. 1934-1935).

In 2011-2012, her environmental department responsibilities included environmental compliance of the facility with air and RCRA permits and environmental requirements; a permitting group which was responsible for managing permits; and a trial burn group that was responsible for compliance status. (Tr. 1936). She supervised 27 employees and seven inspectors. (Tr. 1936-1937). Her department covered the facility 24 hours a day, seven days per week which included four areas: TOCDF, ATLIC, Secondary Waste and CAMDS. (Tr. 1937).

Mark James was the full-time inspector for the ATLIC who spent 90-95% of the time at the ATLIC. (Tr. 1937). James was the environmental shift representative. James walked the facility daily in an oversight role, did inspections and documented issues relating to monitoring and potential waste management issues weekly. (Tr. 1938-1939). Issues were reported "up the management chain" for potential non-compliance issues. (Tr. 1939). If there was non-compliance, it was self-reported to the regulatory agency. (Tr. 1939). URS and Respondent work hand-in-hand on the same procedures and mission for reporting incidents and taking corrective action. (Tr. 1940).

Vance testified that in the last five years an average of ten to 12 NOV's have been issued primarily by the Division of Solid and Hazardous Waste. (Tr. 1941-1942). In the last two years, three to five NOV's have been issued with no penalties. (Tr. 1942). She sends potential non-compliances to the State of Utah to check if an event is reportable. (Tr. 1942-1943). In the beginning, farther back than five years, there were 30 non-compliance issues of which 90% were self-reported. (Tr. 1943).

Now, it is 50-50% on self-reporting. (Tr. 1943). Monitoring violations are usually in the minor/minor category with fines of \$100 to \$150. (Tr. 1943-1944). State regulators would have a concern if issues were concealed which could cause harm to Respondent's relationship with the State of Utah. (Tr. 1944).

State regulators visited the ATLIC one to three times per week and have full access to the facility. The State regulators have full access to documentation and to the CRs. (Tr. 1945).

The U.S. Army has shift representatives and contractors overseeing URS. In 2011-2012, the Army had 10-15 personnel overseeing URS and Respondent. (Tr. 1946).

Safety is a full-time issue at the ATLIC with coverage 24 hours per day, seven days per week. (Tr. 1947). The CR system is not set up to identify wrongdoers, but to identify a condition that needed correcting, and is not a punitive system. (Tr. 1947-1948). The CR Group managers get together every morning to review CRs issued in the last 24 hours and assigned the CR to someone to answer. Vance sat on the CR Group. (Tr. 1948).

RX-49 is the Root Cause Analysis dated February 16, 2012. (Tr. 1949). Monitoring issues of three to four is a trend. There may be a common cause or a root cause. Roten asked for the Root Cause Analysis because of a potential systemic issue to look at the events. (Tr. 1951).

Vance reports to General Manager McCloskey. The expectation of Respondent and URS is that when issues are found, they are reported and addressed. (Tr. 1951). Vance never heard of a Respondent manager taking action against an employee for reporting issues or concealing issues. (Tr. 1951-1952).

ISO 14001 is an International Standard for environmental management systems for which the facility obtained certification by the U.S. Army in 2005, requiring continual improvement, having in place waste minimization, pollution prevention and protecting the environment. (Tr. 1952-1953). URS was also certified in 2011 by a third party, REC Star, an independent certification. (Tr. 1953). URS has a robust environmental system and compliance procedure. URS is highly regarded and recognized. (Tr. 1953-1954). Respondent worked with URS to obtain the certification. (Tr. 1954).

RX-107 is the Voluntary Protection Program (VPP) Site report dated April 7, 2009, from OSHA recommending Star approval. Star status is the highest level of recognition by OSHA of confidence in the safety programs in place. Prior to the award, 137 formal interviews and 67 informal interviews were conducted. (Tr. 1956-1957; RX-107, p. 15). It was determined employees feel free to participate and employees should have no fear of reprisal or retribution for stopping work. (Tr. 1957-1958). RX-108 is the Star Approval Recertification dated September 12, 2012, which was award by OSHA after evaluations and interviews. (Tr. 1958-1959).

Regarding the April 10, 2012 incident, Vance testified the incident was brought to the attention of the Environmental Department. She discussed the event with Hansen to determine whether it was a reportable non-compliance event or not. Respondent had nothing to be embarrassed about from the incident. Human error will occur. It was just another issue that needed to be addressed. (Tr. 1960-1961). Such an error would not jeopardize Roten's job. (Tr. 1961).

On cross-examination, Vance testified that Respondent and URS both received Star Approval and VPP plaques. (Tr. 1962). Vance was not at the ATLIC, but had interactions with upper management. (Tr. 1963-1964).

V. FINDINGS OF FACT, CONCLUSIONS OF LAW, ANALYSIS AND DISCUSSION

A. Credibility

Prefatory to a full discussion of the issues presented for resolution, it must be noted that I have thoughtfully considered and evaluated the rationality and consistency of the testimony of all witnesses and the manner in which the testimony supports or detracts from other record evidence. In doing so, I have taken into account all relevant, probative and available evidence and attempted to analyze and assess its cumulative impact on the record contentions. See Frady v. Tennessee Valley Authority, Case No. 1992-ERA-19 @ 4 (Sec'y Oct. 23, 1995).

Credibility of witnesses is "that quality in a witness which renders his/her evidence worthy of belief." Indiana Metal Products v. NLRB, 442 F.2d 46, 51 (7th Cir. 1971). As the Court further observed:

Evidence, to be worthy of credit, must not only proceed from a credible source, but must, in addition, be credible in itself, by which is meant that it shall be so natural, reasonable and probable in view of the transaction which it describes or to which it relates, as to make it easy to believe . . . Credible testimony is that which meets the test of plausibility.

442 F.2d at 52.

It is well-settled that an administrative law judge is not bound to believe or disbelieve the entirety of a witness's testimony, but may choose to believe only certain portions of the testimony. Altemose Construction Company v. NLRB, 514 F.2d 8, 16 and n. 5 (3d Cir. 1975). Moreover, based on the unique advantage of having heard the testimony firsthand, I have observed the behavior, bearing, manner and appearance of witnesses from which impressions were garnered of the demeanor of those testifying which also forms part of the record evidence. In short, to the extent credibility determinations must be weighed for the resolution of issues, I have based my credibility findings on a review of the entire testimonial record and exhibits with due regard for the logic of probability and plausibility and the demeanor of witnesses.

Generally, I found the testimony of Complainants Sickler and Azelia marginally credible. Moreover, their testimony was not without inconsistencies and contradictions which further diminishes their believability in the following respects:

The preponderance of the record suggests that when the valve was removed from Station 727L, Azelia remarked it should be framed and given to Griffin, yet, Azelia testified Sickler made such a comment in the presence of Tate and Perkins. Azelia stated he "thought" it would be funny to harass Griffin with a valve and commented to Doner that he had a little present for Griffin "to harass him," yet, when confronted with an allegation of harassment, Azelia subsequently denied he had ever harassed Griffin. After placing the valve and sign on Griffin's locker, Azelia took a photo of the items and stated he did not take any other photos of the locker, yet upon replacing the items on Griffin's locker on Wednesday after the management meeting, he stated on re-cross examination he again took a photo of the items. Even though Sickler directed Azelia to take the items down because they were inappropriate, he inexplicably replaced the items on the locker knowing Sickler thought the items were inappropriate for the workplace. Azelia further incredibly

denied placing the noose on Griffin's locker, yet Kimber observed the noose on the locker when Azelia pointed out what he had done to Griffin's locker.

Azelia's testimony regarding the April 10, 2012 incident appears to be based purely on speculation. He arrived after Sickler and opined about various issues after the fact such as alleged mistakes in Hansen's email to the State of Utah. Azelia recalled "thinking to himself" that Perkin's comment that there was no agent present could not be known, but he did not voice any such opinion at the time of the incident. Azelia did not testify to any comments made during the incident or any complaints or disagreements with the manner in which the incident was handled. He testified that he was confident the April 10, 2012 incident was an agent alarm, but contradictorily in his deposition taken on April 3, 2013, Azelia testified he had no evidence to think the alarm was an agent alarm, other than speculation.

Nevertheless, Azelia testified he "felt" part of the reason Respondent fired him was because he questioned Tate's actions on April 10 of "hooking a sample line to take a sample of something that didn't make a difference," but he did not testify to any such exchange with Tate or anyone else. Azelia believed Respondent also wanted to retaliate against him for finding and reporting the January 20, 2012 valve incident, which I hereafter find was his only protected activity, but acknowledged that he was not claiming Respondent wanted him to ignore and disregard the valve which was in the wrong configuration. On December 25, 2011, Dick found a similar problem with a valve mistake by Griffin which was reported; yet, Dick continued to be employed until April 2013 when he was reduced in force and was not fired.

Sickler's testimony regarding an important issue in the Griffin locker incident is best characterized as vacillating. The investigation into the locker incident determined that Sickler had been untruthful about observing the "sign and valve" on Griffin's locker at the end of shift on Wednesday. His hearing testimony about the same event was inconsistent and ever-changing. Sickler prepared a written statement on Friday of the locker incident and sent it to Tate. He did not retain a copy or email it to himself. The statement contains the following sentences which read: "During rest of shift I was slightly busy and did not notice that valve and sign had been put up till end of shift while walking out of Igloo 1638. At that time the noose was not present on the employee's locker." Sickler disputes that he wrote the two sentences and alleges his

statement was altered. He next time he saw the statement was at his unemployment hearing, when Respondent was provided the statement by Counsel for Complainant which has the same sentences. At his unemployment hearing, Sickler testified the sentences had been added to his statement, but did not recall if he had written the sentences and did not recall if he saw the sign and valve back up on the locker after the management meeting. Sickler then admitted lying because his attorney told him not to say that the sentence had been added, and that he did not recall seeing the valve and sign back on the locker.

Inconsistently, in responses to Interrogatories, Sickler claimed the alteration only included the words "until end of shift, while walking out of Igloo 1638." At formal hearing he testified that the whole sentence had been changed. When deposed, Sickler acknowledged that he had seen the sign and valve go back up on the locker and confirmed that his Interrogatory was incorrect and the document had been falsified. Nevertheless, incongruently, at formal hearing he testified he did not see the sign and valve back on the locker later in the shift.

Furthermore, in his deposition, Sickler acknowledged the statement made to Roten in his interview on March 22, 2012, that he did not know the valve had gone back up until the receipt of a text from Tate was wrong. Sickler confirmed the statement was incorrect, but inexplicably denied it was false. He then stated he did not see the sign and valve on the locker at any time after Wednesday. Notwithstanding the foregoing, Sickler denied at formal hearing that he made any false statement to Roten during the March 2012 interview.

Finally, despite the above vacillations in testimony, Sickler testified that he still believed the sentence was altered and that he never could have been wrong about believing the statement was altered. Sickler's credibility is clearly damaged by the foregoing inconsistencies and vacillations.

Complainants brought forth a catalog of testimony from many employees about events from the early 1990s to 2012 which they argue involved similar conduct to Azelia's and Sickler's. Aside from generalities about threats, harassment and horseplay, I find none of the events constitute comparable seriousness to the Griffin locker incident which involved a potentially contaminated valve or hazardous waste and an ominous noose which was threatening in nature.

Alder testified about an incident in Maryland involving Fackrell and DeMartini threatening to fight over the use of tobacco in a rental car. He quelled the conduct. Alder stated he did not see a noose on Griffin's locker and that Griffin did not complain to him that he felt threatened by the noose. Alder did not find the noose threatening or racially harassing in any manner. He testified he did not recall being interviewed by Roten about the locker incident or any other issue. He immediately recanted his statement when he testified he was interviewed by Roten and Price about the locker incident.

Brian Kimber observed the valve and noose of Griffin's locker while Azelia was present. Kimber acknowledge he told Alder he did not know what the valve and noose were about. He did not report the valve and noose to management and did not take either item down from the locker. Incredibly, Kimber never saw any V to G pads, PCT tubes or nitrile gloves laying around the Igloo, contrary to almost every other employee who testified. Other than the valve and noose on Griffin's locker, Kimber never saw anything else posted on employee lockers and he incredibly stated that joking and horseplay was not common at the ATLIC, contrary to almost every other employee who testified. I find Kimber's testimony wanting in credibility.

Tate's testimony contradicts Perkins regarding the April 10, 2012 incident. Comparing the two witnesses, I find Perkins more credible than Tate. Tate testified that during the April 10, 2012 incident, Perkins did not say "It's not agent. It's not agent," whereas Perkins acknowledge that he did make such a statement. Tate also testified that the two entrants into the observation corridor, did not enter the Tox monitoring room, contrary to Perkins' recollection that they did. Tate reported the disconnected sample line as mechanical error, rather than human error, because they did not want to speculate how the line became disconnected. Tate also testified that when Azelia and Sickler were removing the valve from Station 727L, Sickler, not Azelia, made a comment about what to do with the valve in relation to Griffin and, according to his interview notes, he and Perkins chuckled at the comment. Unlike practically every other witness, Tate only saw "sportsabelia" on lockers at the ATLIC and only occasionally witnessed horseplay and joking. Tate confirmed that he did not alter Sickler statement regarding having seen the items displayed on Griffin's locker at the end of shift and that Sickler told him he should have made sure "it" was down and stayed down.

Griffin and Harris differ in Harris's report to Griffin. Harris stated when he called Griffin he did not tell him what he had seen on the locker. Griffin, on the other hand, on direct examination testified Harris told him a noose and valve were taped to his locker. Griffin affirmed that when he went to his locker, he saw the noose, valve and sign. He thought the noose signified he had "hung himself" because of the valve incidents. In an email to Tate, Griffin reported he had seen the valve and sign on his locker, but not the noose. On cross-examination, Griffin stated Harris did not tell him what was on his locker when he called. Griffin believed the valve was contaminated and came off Station 727L. I find Griffin's testimony internally inconsistent.

Harris discussed having his locker combination blacked out and pins removed from his tool box allowing everything to fall out of his tool box. Harris exhibited obvious bias against Sickler and Azelia in his deposition testimony describing both as "puppets" and should not be leads or foreman. Harris did not trust Sickler or Azelia. He also believed "D" team cheated machines.

Alden Johnson acknowledged he did not get along with Brian Kimber. When he observed items on Griffin's locker he thought the items should be taken down, but Kimber stated he was not taking them down and did not want to touch the items. Johnson was written up twice by Respondent and testified that Kimber called him a "lazy piece of shit" in the presence of Brian Stewart and Perkins. Perkins denied hearing such comments from Kimber.

Vario credibly confirmed Fackrell's belligerent demeanor and that the threatened drive-by shooting remark occurred before Fackrell began working for Respondent. Vario testified that Azelia told him the valve on Griffin's locker was from Station 727L.

I was favorably impressed with the testimony of Perkins. He confirmed that Sickler and Azelia had no performance issues or disciplinary problems and were both very good at their jobs. Perkins never considered Sickler or Azelia to be problems because they raised issues because he wanted all supervisors and employees to report everything they found. Perkins stated Griffin's locker incident was investigated, but not because Sickler and Azelia made complaints. He had concerns with Fackrell's incidents, but Kevin Kimber reported he had no problems and made no complaints against Fackrell when Perkins

called both in to discuss complaints about Fackrell. Dick never complained to Perkins about harassment by Vario and Harris. Perkins stated the April 10, 2012 incident with the disconnected sample line was not downplayed, but the event was not a non-compliance with the RCRA permit in the absence of agent.

Price was a credible witness as well. Her testimony centered upon the Griffin locker investigation. She confirmed the decision to "suspend, pending termination" was made on April 18, 2012, by Dan Taylor, Vice-President of Business Operations, and Reza Karimi. She credibly testified that "formal documentation" from Dr. John Barton was sought for purposes of potential litigation which she described, not as complaints from Sickler and Azelia, but complaints of future medical conditions and exposure to the valve placed on Griffin's locker. Price acknowledged that she had no sense of Sickler and Azelia's contribution to the issues in the Root Cause Analysis during the investigation of Griffin's locker. She credibly stated that she did not investigate sabotage of "D" Team by another team or whether Griffin was retaliating against Sickler, after all it was undisputed Azelia placed the valve and sign on Griffin's locker.

I was also generally impressed with the testimony of Roten. He was forthright in responding to questions about his concerns, the investigations conducted, and discipline meted out and not enforced. He acknowledged he was familiar with the work performance of both Sickler and Azelia and had never disciplined either employee. He affirmed that he could not recall ever terminating an employee for a first offense violation or suspending an employee pending termination. Nevertheless, he had terminated employees who engaged in repeated violations. Roten could not recall terminating any employee for harassing another employee on a first offense, or for untruthful statements in an investigation on a first offense or terminating an employee for a first offense related to violating a hazardous waste policy.

Contrary to Complainant's theory that Roten sought additional information against Sickler and Azelia or "D" Team after the decision to "suspend, pending termination," it appears clear that his email instructions to Perkins on April 20, 2012, requested details of all items identified in the Root Cause Analysis, not just items associated with "D" Team. Roten candidly admitted that he never concluded any employee was intentionally cheating the system; he was never told not to document findings, there was no concealment of any monitoring or

environmental or safety violations by management and no employee was unfavorably treated because they reported an issue. His review of the histogram program for each employee revealed no one on "D" Team was cheating the system. Roten and Respondent expected issues to be reported and addressed.

I found Rob Ralston, Karsten Hansen and Sheila Vance who testified to entry and safety and environmental standards to be credible regarding Respondent's encouragement of employees to voice concerns through the Condition Reporting System and to their supervisors. Vance candidly testified about violations issued to Respondent and URS. Each credibly testified about Respondent's actions to resolve issues of concern to employees. Ralston served on the Root Cause Analysis team which investigated the nine events which comprised the need for the Analysis. He testified candidly that Respondent did not conceal any information, hold back anything that would be considered negative, nor did Respondent conceal the results and findings. Respondent was open and honest and wanted to make the ATLIC a safe place to work and correct all the missed monitoring issues. Hansen determined that there was no potential agent during the April 10, 2012 incident to which State regulator Ball agreed. Vance credibly emphasized that her Environmental Safety Department covered the ATLIC 24 hours a day, seven days a week and maintained a full-time inspector for the ATLIC to document issues relating to monitoring and potential waste management issues.

B. The Burden of Proof

To prevail in this adjudication, Complainants must demonstrate or prove their **prima facie** case by presenting evidence "sufficient to raise an inference, a rebuttable presumption, of discrimination." Morriss v. LG&E Power Services, LLC, ARB No. 05-047, Case No. 2004-CAA-14 (ARB Feb. 28, 2007); see also Schlagel v. Dow Corning Corp., ARB No. 02-092, Case No. 01-CER-1, slip op. @ 5 (ARB Apr. 30, 2004). The Complainants can satisfy this burden by showing: (1) the Respondent is subject to the CAA and other environmental statutory provisions; (2) Complainants engaged in protected activity; (3) that the Respondent was aware of their protected activity; (4) Complainants suffered an adverse employment action; and (5) their protected activity was a contributing factor to the adverse employment action. Id.; See e.g., Bechtel v. Administrative Review Board, 710 F.3d 443, 447 (2d Cir. 2013); Harp v. Charter Commc'ns, Inc., 558 F.3d 722, 723 (7th Cir. 2009); Allen v. Administrative Review Board, 514 F.3d 468,

475-476 (5th Cir. 2008); Fordham v. Fannie Mae, ARB No. 12-061, ALJ Case No. 2010-SOX-051, slip op. @ 18 (ARB Oct. 9, 2014).

After Complainants have established their **prima facie** case, the Respondent is then required to "simply produce evidence or articulate that it took adverse action for a legitimate, nondiscriminatory reason (a burden of production, as opposed to a burden of proof)." Morriss, supra @ 32. Respondent must clearly set forth, through the introduction of admissible evidence, the reasons for the adverse employment actions. The explanation provided must be legally sufficient to justify a judgment for Respondent. Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 101 S.Ct. 1089 (1981). However, the Respondent does not bear the burden of persuading the Administrative Law Judge that it had convincing, objective reasons for the adverse employment actions. Id.

If the Respondent successfully produces evidence of a legitimate, nondiscriminatory reason for the Complainants' adverse employment actions, the presumption "drops from the case" and the Complainants are then required to prove **intentional** discrimination by a **preponderance of the evidence**. Id.

Once Respondent has produced evidence that Complainants were subjected to adverse actions for a legitimate, nondiscriminatory reason, it no longer serves any analytical purpose to answer the question whether Complainants presented a **prima facie** case. Instead, the relevant inquiry is whether Complainants prevailed by a **preponderance of the evidence** on the ultimate question of whether they were discriminated against because of their protected activity. St. Mary's Honor Center v. Hicks, 509 U.S. 502, 510-511, 113 S.Ct. 2742 (1993); See Williams v. Baltimore City Pub. Schools Sys., ARB No. 01-021, Case No. 2000-CAA-15, slip op. @ 2 n.7 (ARB May 30, 2003); Carroll v. Bechtel Power Corp., ARB No. 1991-ERA-46, slip op. @ 11, n. 9 (Sec'y Feb. 15, 1995), aff'd sub nom.; Bechtel Power Corp. v. U.S. Department of Labor, 78 F.3d 352 (8th Cir. 1996); James v. Ketchikan Pulp Co., Case No. 1994-WPC-4 (Sec'y Mar. 15, 1996); Adjiri v. Emory University, Case No. 1997-ERA-36 @ 6 (ARB July 14, 1998); Schwartz v. Young's Commercial Transfer, Inc., ARB No. 02-122, Case No. 2001-STA-33, slip op. @ 9 n.9 (ARB Oct. 31, 2003); Kester v. Carolina Power & Light Co., ARB No. 02-007, Case No. 2000-ERA-31, slip op. @ 6 n.12 (ARB Sept. 30, 2003); Simpkins v. Rondy Co., Inc., ARB No. 02-097, Case No. 2001-STA-0059, slip op. @ 3 (ARB Sept. 24, 2003); Johnson v. Roadway

Express, Inc., ARB No. 99-111, Case No. 1999-STA-5 (ARB Mar. 29, 2000).

Preponderance of the evidence is the greater weight of evidence or superior evidence, weight that though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other. Brune v. Horizon Air Industries, Inc., ARB No. 04-037, Case No. 2002-AIR-8, slip. op. @ 13 (ARB Jan. 31, 2006).

A mixed or dual motive analysis is appropriate if Complainants are successful in proving their case by a **preponderance of the evidence** that the Complainants' protected activity played some part in or was a contributing/motivating factor in the adverse actions. Thus, if Respondent acted at least in part for prohibited reasons, the burden of proof then shifts to the Respondent who may avoid liability by demonstrating by a **preponderance of the evidence** that the adverse actions would have occurred even if Complainants had not engaged in protected activity. Mt. Healthy City School District v. Doyle, 429 U.S. 274 (1977); Powers v. Union Pacific Railroad Company, ARB No. 13-034, ALJ Case No. 2010-FRS-030 (ARB Mar. 20, 2015); Morriss, supra; Schlagel, supra.

Under the Environmental Acts alleged, the Complainants must have an actual, reasonable belief the environmental acts are being violated. A complainant's belief "must be scrutinized under both subjective and objective standards, i.e., [they] must have actually believed that the employer was in violation of [the relevant laws or regulations] and that belief must be reasonable." Melendez v. Exxon Chemicals Americas, ARB No. 96-051, Case No. 1993-ERA-6 (ARB July 14, 2000). The reasonableness of a complainant's belief regarding illegality of a respondent's conduct is to be determined on the basis of "the knowledge available to a reasonable [person] in the circumstances with the employee's training and experience." Melendez, supra, (quoting Minard v. Nerco Delamar Co., Case No. 1992-SWD-1 (Sec'y Jan. 25, 1995), slip op. @ 7, n.5.

C. Did Complainants engage in protected activity?

Alleged Protected Activity

Complainants allege that they engaged in protected activity under the ambit of the Solid Waste Disposal Act (SWDA), also known as the Resource Conservation and Recovery Act (RCRA) which

regulates the disposal of hazardous waste through a permit program run by the Environmental Protection Agency (EPA), but subject to displacement by an adequate State counterpart, here the State of Utah. It is alleged that Complainant Sickler prepared two emails, the first on May 31, 2011 and the second on June 30, 2011, and testified regarding his prior complaints to managers of Respondent about hazardous waste disposal of nitrile gloves, PCTs and V to G pads. It is asserted that the failure to properly dispose of such items is a violation of the ATLIC's RCRA permit and violates Respondent's hazardous waste policies.

It is also alleged that certain events made the basis of the Root Cause Analysis were reported by Complainants Sickler and Azelia which fall under the subject of the SWDA.

Such events include the November 16, 2011 missed monitoring event actually caused by Cameron Dick of "D" Team who accidentally put agent into the line and reported the issue to Sickler (CX-3; RX-49.32);

the December 25, 2011 missed monitoring event discovered by Cameron Dick in which Griffin failed to properly configure a three-way valve and Dick reported the issue to Sickler who notified Respondent and URS (CX-5); and

the January 20, 2012 missed monitoring event which was a human error non-compliance issue where Griffin again failed to properly configure the three-way valve at a time when two entrants entered the tox room, his supervisor failed to properly verify the proper configuration, which was discovered by Azelia who reported the events to Sickler who informed Respondent and URS (CX-7).

Of the nine events comprising the Root Cause Analysis, Sickler completed two of the nine CRs and two missed monitoring reports and Azelia found one mistake. The remaining six events involved ten other employees who remained employed and were not disciplined, but did not engage in conduct similar TO Griffin's locker incident. See RX-49.25 (Alder, November 16, 2011); RX-49.26 (Gilman, December 12, 2011); RX-49.27 (Pyhtila, January 15, 2012); RX-49.29 (Perkins, January 25, 2012); RX-49.30 and RX-49.35 (Martinez, January 26, 2012); RX-49.31 (Alder, December 15, 2011); RX-49.34 (Perkins, January 25, 2102); RX-57.06 (Beacham, January 24, 2012); and RX-58.01 (Alden Johnson, February 2, 2012).

Lastly, after the Root Cause Analysis, the April 10, 2012 sample line disconnection during the alarm involving Sickler discovering and reporting the event at a time when two employees entered the observation corridor. (CX-10). Azelia arrived at the alarm site late and did nothing. Sickler contends Tate and Perkins hindered his reporting of the April 10, 2012 event which he customarily would do by completing the CR. Instead, Tate completed the CR which contained omissions and misrepresentations about the events. Tate did not include in the CR that individuals were in the corridor during the alarm; Tate classified the incident as a mechanical issue rather than a human error event which would have been a violation of the RCRA permit; Tate reported Sickler hooked up the DAAMS line during the alarm which was allegedly false; and Tate represented the alarm retention time was off from daily and post alarm challenge which was also allegedly false. Sickler testified he would have included in the CR that the retention time was not caught, personnel were in the observation corridor, would not have put downstream NRT data was pulled, would have increased the severity of the incident and not classify it as mechanical.

Complainants further contend their May 25, 2012 OSHA whistleblower complaints alleging their suspension, pending termination, was retaliatory and is also protected under the SWDA.

The Clean Air Act (CAA), which is alleged by Complainants, is known to be a comprehensive scheme for reducing atmospheric air pollution. The purpose of the CAA is to enhance and protect the quality of the nation's air resources, to promote the public health and welfare, as well as to encourage and assist the development and operation of regional air pollution prevention and control programs. Complainants aver that their activity allegedly protected by the SWDA would also constitute protected activity under the CAA.

The Toxic Substance Control Act (TSCA), which is alleged by Complainants, was enacted by Congress because of the exposure of human beings and the environment to a large number of chemical substances and mixtures through manufacturing, processing, distribution, commerce and use, or that disposal may present an unreasonable risk to injury or health, or to the environment. The purpose of the TSCA is to regulate chemical substances and mixtures that present such risks, and to take actions against eminent hazards. Complainants again urge that their protected activity under the TSCA are those set forth above under the SWDA

and also includes the monitoring systems, the agents being disposed of, as well as the secondary waste created.

Complainants' also allege protection under The Comprehensive Environmental Response Compensation & Liability Act (CERCLA) which is a broad remedial statute designed to enhance the authority of the EPA to respond effectively and promptly to toxic, pollutant spills that threaten the environment and human health. CERCLA promotes two primary purposes, the prompt clean-up of hazardous waste sites, and the imposition of all clean-up costs on the responsible employer or party. Complainants rely upon the activities which support their arguments under the SWDA.

Respondent's Position regarding Protected Activity

Respondent disputes any protected activity alleged that was not set forth in Complainants' Interrogatories, specifically the allegation that their OSHA whistleblower complaints caused retaliatory conduct by Respondent. It is also observed that Complainants did not raise the whistleblower complaint filed with OSHA before their terminations as the basis of retaliation for their terminations in their formal complaint filed with the undersigned.

Respondent urges that Complainants have failed to allege a single fact showing they engaged in protected activity under the CAA, TSCA or CERCLA by a preponderance of the evidence. It is argued that Complainants' allegations are bereft of information even suggesting that their activities relate to any actual or perceived non-compliance with the CAA, TSCA or CERCLA. Of the six on-the-job events claimed to constitute protected activity, Respondent argues five instances involved one or both of the Complainants performing routine monitoring of the interior spaces of the ATLIC, which Respondent claims comprises their job duties. Respondent avers that none of the five events involve actual or perceived non-compliance with the CAA, TSCA or CERCLA. Indeed, Complainants argue that each instance is either a violation of the provisions of the RCRA permit or company policy.

Respondent claims that Complainants never actually raised any concerns or made any complaints to Respondent, but their protected activity is a list of reports describing things they did while they were working; they were simply doing their jobs-jobs that required that they find and report on any mistakes in the monitoring environment. Respondent asserts neither Sickler

nor Azelia raised any concerns outside of their routine reporting duties or which were motivated by their belief that Respondent was violating any environmental laws or regulations.

Moreover, Respondent maintains that Complainants did not identify certain alleged protected activity before the evidentiary hearing which is not cognizable in the instant action since the events were not included in their responses to Interrogatories and they are now barred from raising the events. Respondent advised the undersigned during the formal hearing that it was not consenting to trying issues of protected activity not identified in Complainants' Answers to Interrogatories. The events relied upon by Respondent are the November 16, 2012 (sic) event in which Sickler received a report from Dick; the April 10, 2012 event in which Azelia was just present and did nothing; and the whistleblower complaints filed on May 25, 2012, by Sickler and Azelia because the decision to terminate Sickler and Azelia was made by April 19, 2012, before the whistleblower complaints were filed.

In essence, Respondent's position is that all reports made by Sickler and Azelia were part of their normal monitoring job duties, that no one from Respondent told them not to document the incidents or expressed anger because reports were made and there was no resistance to their actions by anyone from Respondent. Respondent further advocates there was no evidence that anyone thought Sickler and Azelia were raising an environmental issue to management's attention or were doing anything other than the reporting required of their jobs because not making reports would result in discipline.

Protected Activity

Initially, I do not agree with Respondent's position that Complainants' normal monitoring duties preclude a determination that they reasonably believed their concerns also related to the alleged Environmental Acts and thus may arguably be protected activity. See Tomlinson v. EG&G Defense Materials, Inc., ARB No. 11-024, ALJ Case No. 2009-CAA-008 (ARB Jan. 31, 2013); Williams v. Dallas Independent School District, ARB No. 12-024, ALJ Case No. 2008-TSC-001 (ARB Dec. 28, 2012); Melendez v. Exxon Chemicals Americas, supra (Under the CAA and the other Environmental Acts, a complaint related to air quality that "touches on" concerns for public health and the environment can be sufficient).

In Joyner v. Georgia-Pacific Gypsum, LLC, ARB No. 12-028, ALJ Case No. 2010-SWD-001 (April 25, 2014), the Administrative Review Board observed:

The ARB has established that employees who report safety or environmental concerns as part of their job responsibilities engage in protected activity. See, e.g., Warren v. Custom Organics, ARB No. 10-092, ALJ Case No. 2009-STA-030 (ARB Feb. 28, 2012). As the Board noted in Lee v. Parker-Hannifin Corporation, ARB No. 10-021, ALJ Case No. 2009-SWD-003 (ARB Feb. 29, 2012), the SWDA has been interpreted to extend whistleblower protection to include internal complaints made to supervisors. See also Jenkins v. U.S. Environmental Protection Agency, ARB No. 98-146, ALJ Case No. 1988-SWD-002, slip op. @ 17 (ARB Feb. 28, 2003). Accord Bechtel Construction Co. v. Secretary of Labor, 50 F.3d 926, 931-932 (11th Cir. 1995); Passaic Valley Sewerage Commissioners v. DOL, 992 F.2d 474, 478 (3d Cir. 1993); Mackowiak v. University Nuclear Systems, Inc., 735 F.2d 1159, 1163 (9th Cir. 1984). Moreover, the ARB has consistently held that "employees who report safety concerns that they reasonably believe are violations of [federal whistleblower statutes] are engaging in protected activity, **regardless of their job duties.**" Vinnett v. Mitsubishi Power System, ARB No. 08-104, ALJ Case No. 2006-ERA-029, slip op. @ 11 (ARB July 27, 2010) (emphasis added). Federal appellate courts agree. See Trimmer v. U.S. Department of Labor, 174 F.3d 1098 (10th Cir. 1999); Stone & Webster Engineering Corporation v. Herman, 115 F.3d 1568 (11th Cir. 1997); Bartlik v. U.S. Department of Labor, 73 F.3d 100 (6th Cir. 1996); Bechtel Construction Co. v. Secretary of Labor, 50 F.3d 926 (11th Cir. 1995); Kansas Gas & Electric Co. v. Brock, 780 F.2d 1505 (10th Cir. 1985); Mackowiak, 735 F.2d 1159.

Furthermore, whistleblower protection for a complainant's activities that otherwise "touch on" the environmental acts is contingent on proof that the complainant actually believed that the respondent's activities implicated environmental or public health and safety concerns addressed by the environmental acts, under which protection is sought, or that the complainant's actions otherwise furthered the purposes of those acts. Williams v. Dallas Independent School District, supra, slip op. @ 10; Melendez, ARB No. 96-051, slip op. @ 25; Minard v. Nerco

Delamar Co., ALJ Case No. 1992-SWD-001, slip op. @ 7-16 (Sec'y Jan. 25, 1994).

The Board recognized in Erickson v. U.S. Environmental Protection Agency, ARB Nos. 04-024, -025, ALJ Case No. 2003-CAA-011,-019, ALJ Case No. 2004-CAA-001, slip op. @ 7-8 (ARB Oct. 31, 2006) that an employee who makes a complaint that is "grounded in conditions constituting reasonably perceived violations" of the environmental acts, engages in protected activity. Similarly, expressing concerns to the employer that constitute reasonably perceived threats to environmental safety is protected activity as well. An employee need not prove that the hazards he or she perceived actually violated the environmental acts. Nor must an employee prove that his assessment of the hazard was correct. An employee need not prove the condition he or she is concerned about has already resulted in a safety breakdown. Nor does a complainant need to express his reasonable belief when he engaged in protected activity so long as he reasonably believed, at the time he voiced his complaint or raised his concerns, that a threat to the environment or to the public existed. "The reasonable belief standard requires an examination of the reasonableness of the complainant's beliefs, but **not** whether the complainant actually communicated the reasonableness of those beliefs to management or the authorities." Sylvester v. Parexel International, LLC, ARB No. 07-123, ALJ Case No. 2007-SOX-039,-042, slip op. @ 14 (ARB May 25, 2011).

The May 31, 2011 Email

Sickler testified that he repeatedly informed Manager Perkins about used hazardous waste not being properly disposed of by employees. He specifically complained about Matt Harris as being an offender. He prepared an email dated May 31, 2011, to ATLIC monitoring technicians, with a "cc" to team leads and Manager Perkins, complaining of employee's failure to properly dispose of hazardous waste, particularly V to G conversion pads, PCTs and blue nitrile gloves, which were all considered hazardous waste, that potentially contained contaminated agent in the PAS Monitoring Room of the ATLIC. (CX-29, p. 66). On June 6, 2011, Perkins acknowledged the email and encouraged all team leads to insure proper waste disposal. (CX-29). Perkins did nothing more. I find Sickler reasonably perceived the used hazardous waste items to be potentially contaminated and constituted a violation of an environmental act and was a threat to the environmental safety of fellow workers. Thus, I regard

this activity to be protected of which Manager Perkins, and thus Respondent, had knowledge.

The June 30, 2011 Email

On June 30, 2011, Sickler again sent an email to ATLIC monitoring technicians, team leads and a "cc" to Perkins and Roten complaining about finding additional V to G conversion pad assemblies and fittings which are considered hazardous waste once used and should be "properly disposed of at the SAF daily." He noted that they were "required to clean up after ourselves" and dispose of waste according to procedures and guidelines. (CX-29, p. 67). On June 30, 2011, Perkins responded by email to all team leads to review with their teams the importance of waste handling and housekeeping and to complete an attendance sheet and send it to Perkins. Perkins concluded by commenting "Leaving waste and debris throughout the site is unacceptable." This email prompted Roten to inform Perkins to tell Sickler such emails were "unprofessional," and Sickler should send such concerns to Perkins who would then disseminate information to the employees. Sickler was not told to discontinue his expression of concerns or voicing his disapproval of the lack of disposal of such items. He was not discouraged in any way from continuing to raise concerns in the ATLIC. I find Sickler reasonably perceived the used V to G pads, fittings and gloves to be potentially contaminated with agent and the failure to properly dispose of such items was a violation of the ATLIC's RCRA permits and Respondent's written hazardous waste policies and procedures. Accordingly, I find his activity in this regard to be protected activity of which Respondent had knowledge.

However, I also note that this activity was not temporally proximate to any adverse action imposed upon Sickler since the emails occurred over one year before his termination. There is no further record evidence that Sickler continued to complain about disposal of such items in the ATLIC nor of any animus expressed to him by Perkins or any other supervisor of Respondent. Thus, because of the timing of such emails and the lack of animus directed toward Sickler for raising such issues, I am not impressed with his actions as being a contributing or motivating factor in any adverse action taken against him by Respondent.

The November 16, 2011 incident

This event is one of nine events evaluated by the Root Cause Analysis. (RX-49). Sickler completed an Operation Shift

Report regarding this incident in which Dick, a "D" team member, injected one of the ACAMS which was online with agent when he was not supposed to do so. The report would have been scanned and sent to Perkins and Roten. Sickler also prepared a CR in which he denoted the incident as a procedural violation and not a RCRA violation. The CR report was not classified as a high or problematic issue because a back-up system was in place to validate the data. Sickler did not testify he had a reasonable belief that this incident was a reasonably perceived threat to environmental safety, a violation of an Environmental Act or that a threat to the public existed.

Moreover, Respondent notes that this event of November 16, 2011, was never raised as a protected event in Complainant's Answers to Interrogatories and at the formal hearing Respondent consistently raised objections to matters outside Complainant's Answers as not pled and untimely and preserved Respondent's right to object to trying issues by implied consent. See Sasse v. United States DOL, 409 F.3d 773 (6th Cir. 2005). Further, Complainant Sickler did not specifically allege this event as a protected activity in his formal complaint filed with the undersigned on February 22, 2013. (ALJX-13). Therefore, I do not find this event to be protected activity engaged in by Sickler.

The December 25, 2011 Event

On December 25, 2011, Cameron Dick, a member of "D" Team, found a nut that was off of Station TEN 727L and was supposed to be connected to the 12-foot sample line, which prevented flow to that line and caused a malfunction in the mini-CAMS. A malfunction alarm occurred and it was concluded that the valve should have been configured, according to the RCRA permit, to monitor the toxic room. This was the first event in which Dennis Griffin failed to properly configure the three-way valve. Sickler completed a Potential Missed Monitoring Report indicating the technician found a three-way ball valve in the incorrect position, "NRT was monitoring the tox monitoring room, instead of the tox room." The report was sent to Respondent and URS. The incident was not deemed a major issue because no agent was being processed that day. Sickler disagreed with the assessment by URS management that no people were present in the tox room and wanted to know what the readings were inside the rooms for contamination levels. I find Sickler reasonably perceived threats to environmental safety and a potential violation of an environmental act. Thus, I find Sickler engaged in protected activity by reporting the incident which became one

of the nine subject incidents of the Root Cause Analysis of which Respondent had knowledge.

The January 20, 2012 Event

On January 20, 2012, Griffin again failed to properly configure the three-way valve on Station TEN 727L. Griffin's supervisor, Steve Alder, failed to insure that the valve was in the proper configuration. Two of Respondent's employees entered the Toxic room to perform an agent line purge on January 20, 2012. While in the Toxic room, the air monitoring system on TEN 727L was not properly monitoring the air in the Toxic room according to the RCRA permit. After turnover, Azelia went to Station TEN 727L to perform challenges and noticed that a nut was not on top of the sample line and the three-way valve was in the wrong configuration and the lines were not monitoring the Toxic room and had not been properly monitoring the Toxic room since Griffin performed a challenge at 6:38am that morning. Azelia informed Sickler, his supervisor, of the mis-configuration and completed the NRT daily operational log. Azelia believed that the missed monitoring event was a violation of Respondent's RCRA permit for the ATLIC.

CX-7 is a self-report of the incident and identifies the event as a Potential Missed Monitoring Report with a period of 12 hours when the monitoring system was not properly monitoring the Toxic room. Sickler notified Respondent and URS. Since entrants had entered the Toxic room during the period when no monitoring was occurring, URS was upset with Respondent not being able to monitor according to the RCRA permit. This incident was deemed the most significant reported in the Root Cause Analysis since it was a RCRA violation. I find Azelia and Sickler engaged in protected activity by reporting the January 20, 2012 event since both reasonably perceived the incident to be a violation of the RCRA permit and an Environmental Act that reasonably threatened environmental safety of which Respondent had knowledge.

The February 6, 2012 Event

Although Sickler contends his involvement in the February 6, 2012 incident is protected activity, the record is fairly devoid of any details concerning the event. Perkins's report to Roten on April 23, 2012, indicates "D" team found a Mini-CAMS sample line disconnected, but Sickler did not provide any testimony regarding his role in the event or whether he reported the finding. Other than Perkins's report, there is no

documentary evidence supporting the event. Therefore, I find this incident, which was not part of the Root Cause Analysis, does not constitute protected activity by Sickler.

The April 10, 2012 Event

On April 10, 2012, Sickler responded to an alarm in the Toxic Monitoring Room. When he arrived at Station TEN 729K, he attempted to catch the retention time on the ACAMS. He discovered the DAAMS sample line was disconnected. It was determined that two employees had been in the observation corridor performing work during the time the sample line was disconnected. The observation corridor was monitored by TEN 729K. Sickler testified that the incident should have been reported as a RCRA permit violation. He reasonably perceived the incident violated an Environmental Act and posed a threat to environmental safety and was a hazardous risk to two workers who entered the observation corridor. Sickler also believed supervisors Tate and Perkins hindered his reporting of the April 10, 2012 incident.

Customarily, Sickler, as the team lead, would prepare a condition report for such an incident. However, Tate told Sickler he would complete the CR. In hindsight, Sickler believed that Tate omitted crucial information from the CR such as not including the fact that individuals were in the observation corridor when the station alarmed; Tate classified the incident as a mechanical issue as opposed to a human-error issue; Tate noted that Sickler hooked up the DAAMS sample line during the alarm sample which was incorrect; and represented that the alarm retention time was off from the daily and post alarm challenge, which was false. None of these alleged deficiencies were voiced by Sickler to Tate or anyone else with Respondent on April 10, 2012. (RX-59.02-59.03).

Sickler testified that had he been allowed to complete the CR he would have included that the retention time and full width half mass was not caught and that there were personnel in the corridor not being monitored when the alarm occurred. He would not have put downstream NRT data was pulled, alarm retention time was off from daily and post alarm challenge and the peak being off in the actual challenge data. He would have increased the level of severity and not classified the event as a mechanical failure. There is no record evidence that Sickler's reporting concerns were ever reported to Respondent after the April 10, 2012 event.

Although Azelia arrived at the alarm site along with Dick and Kevin Kimber, he did not testify about anything he did to qualify as protected activity regarding the April 10, 2012 event. He did not participate in the alarm reaction, presented no evidence that he found any problems or expressed any concerns to Sickler or to Respondent. Azelia's testimony about how he thought the incident should have been reported by Respondent was not uttered contemporaneously with the event. Therefore, I find Azelia did not engage in any protected activity as a result of the April 10, 2012 event.

The May 25, 2012 OSHA Complaints

Azelia and Sickler also alleged their May 25, 2012 complaints filed with OSHA as protected activity. It is axiomatic that such a filing is protected activity. It is alleged in brief that the complaint was filed against Respondent "for being suspended for engaging in protected activities." However, the only "complaint" of record is the filing by Azelia with OSHA that alleges the actions of Respondent "in putting Complainant (Azelia) on unpaid administrative leave **and termination of Complainant's employment** was in violation of the federal environmental statutes because these actions were taken in retaliation for Mr. Azelia having engaged in protected activities." (ALJX-3) (emphasis added). Nevertheless, Complainants argue they were "suspended, pending termination" on April 19, 2012, and their filing on May 25, 2012, motivated in part their termination by Respondent on July 2, 2012.

Respondent again notes that these filings with OSHA were never raised as a protected event in Complainant's Answers to Interrogatories and at the formal hearing Respondent consistently raised objections to matters outside Complainant's Answers as not pled and untimely and preserved Respondent's right to object to trying issues by implied consent. See Sasse v. United States DOL, supra. Further, Complainants did not specifically allege their OSHA filings as a protected activity in their formal complaints filed with the undersigned on February 22, 2013. (ALJX-13). Ordinarily, such a filing originating a complaint against a respondent would not be raised in a formal complaint as protected activity, but in the factual scenario of the instant case the filings occurred between Complainant's suspensions and their terminations. Complainants aver their filing motivated in part Respondent to terminate them after their "suspension, pending termination." Notwithstanding Respondent's argument which I found compelling for the November 16, 2011 event, I find Complainant's filings with OSHA, about

which Respondent had knowledge before officially terminating Complainants, to be protected activity.

D. The Statutory Provisions

The employee protective provisions of the CAA and the Environmental Acts alleged prohibit discharge or discrimination of an employee because the employee has engaged in protected activity under these Acts. See Morriss v. LG&E Power Services, LLC, supra @ 29-30; Jenkins v. United States Environmental Protection Agency, supra @ 14.

The CAA is a comprehensive scheme for reducing atmospheric air pollution. Its purpose is "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare" as well as "to encourage and assist the development and operation of regional air pollution prevention and control programs." 42 U.S.C. § 7401(b) (2006). Under the CAA, an "air pollutant" is defined as "any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and byproduct material) substance or matter which is emitted into or otherwise enters ambient air." 42 U.S.C. § 7602(g) (2006); Smith v. Western Sales & Testing, ARB No. 02-080, Case No. 2001-CAA-17 (ARB Mar. 31, 2004).

Regulations implementing the CAA define "ambient air" as "that portion of the atmosphere, external to buildings, to which the general public has access." 40 C.F.R. § 50.1(3) (2008). See, e.g., Kemp v. Volunteers of America of Pa., Inc., ARB No. 00-069, Case No. 2000-CAA-6 (ARB Dec. 18, 2000). It is undisputed that the ATLIC has a CAA permit from the State of Utah which may arguably regulate issues about which Complainants raised concerns. However, I find that Complainants' alleged safety and environmental concerns involving ATLIC hazardous waste issues, improper configuration of a three-way valve and missed monitoring within the ATLIC, disconnected sample lines and missed monitoring within the ATLIC do not implicate the CAA and that Complainants' allegations in this regard are not properly before me pursuant to the retaliation provisions under the CAA.

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9601 (2006), et seq., is a broad remedial statute designed to enhance the authority of the EPA to respond effectively and promptly to toxic pollutant

spills that threaten the environment and human health. Congress enacted CERCLA to promote two primary purposes: "the prompt cleanup of hazardous waste sites and the imposition of all cleanup costs on the responsible party." See Pritkin v. Department of Energy, 254 F.3d 791, 794-95 (9th Cir. 2001). Reporting is generally required under CERCLA of releases, other than a federally permitted release, of a "hazardous substance" from a "facility," as those terms are defined under CERCLA. 42 U.S.C. § 9603 (2006). "Facility" in pertinent part includes "any site or area where a hazardous substance has been deposited, stored, disposed of or placed, or otherwise come to be loaded." 42 U.S.C. § 9601(9)(B) (2006). CERCLA defines "hazardous substance" as any substance so designated by the EPA pursuant to § 9602 of CERCLA or any substance designated as hazardous in referenced sections of the Clean Air Act, RCRA, and Toxic Substances Control Act. See 42 U.S.C. §§ 9601 and 9602 (2006); B.F. Goodrich Co. v. Murtha, 985 F.2d 1192, 1199-1200 (2nd Cir. 1992). In view of the foregoing, I find CERCLA applies to the instant case since the ATLIC qualifies as a facility at which hazardous substances are stored and disposed of.

The Solid Waste Disposal Act, 42 U.S.C. §§ 6901 (2006), et seq., also known as the Resource Conservation and Recovery Act (RCRA), regulates the disposal of hazardous waste through a permit program run by the Environmental Protection Agency (EPA), but subject to displacement by an adequate state counterpart. U.S. Department of Energy v. Ohio, 503 U.S. 607, 611, 112 S.Ct. 1627, 1631 (1992). It is undisputed that the ATLIC has a RCRA permit from the State of Utah which arguably regulates several issues about which Complainants raised concerns, including ACAMS functioning and missed monitoring issues and hazardous waste issues. Therefore, I find that Complainants' alleged safety and environmental concerns do implicate the SWDA and RCRA and that their allegations are properly before me pursuant to the retaliation provisions under the SWDA and RCRA.

In enacting the Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2601 (2006), et seq., Congress found that human beings and the environment are exposed to a large number of chemical substances and mixtures whose manufacture, processing, distribution in commerce, use, or disposal may present an unreasonable risk or injury to health or the environment. The purpose of the TSCA is to regulate chemical substances and mixtures that present such risks and to take action against imminent hazards. Culligan v. Am. Heavy Lifting Shipping Co., ARB No. 03-046, Case Nos. 2000-CAA-020, 2001-CAA-009-011, slip op. @9 (ARB June 30, 2004). However, I have found Complainants

did not establish by a preponderance of the evidence that they raised concerns about any chemical substances or mixtures and, therefore, I conclude the TSCA does not apply in the extant circumstances.

Conclusions

Based on the foregoing, I find Complainants engaged in protected activity when they voiced and reported concerns involving ATLIC hazardous waste issues, improper configuration of a three-way valve resulting in missed monitoring within the ATLIC (December 25, 2011 and January 20, 2012) and disconnected sample lines and missed monitoring within the ATLIC (April 10, 2012), and by filing OSHA Complaints on May 25, 2012, all of which Respondent had knowledge. Each of their concerns and reports was raised in late 2011 and 2012 within temporal proximity to their employment "suspension, pending termination."

I find Sickler's complaints about hazardous waste in the ATLIC in May 2011 and June 2011 were too remote to his suspension and termination to constitute protected activity upon which retaliation may be based. It is true that "temporal proximity" between a protected activity and termination is circumstantial evidence of causation, but "once the time between a protected [activity] and a negative employment action has stretched to two-thirds of a year there is not temporal proximity." See Payne v. D. C. Government, 722 F.3d 345, 354, 406 U.S. App. D.C. 84 (D.C. Cir. 2013). Obviously, the ten to eleven-month passage of time between the May/June 2011 emails and the April 2012 suspension exceeds the two-thirds of a year held inadequate in Payne. See also Conner v. Schnuck Markets, Inc., 121 F.3d 1390, 1395 (10th Cir. 1997) ("the four month time lag between [plaintiff's] participation in protected activity and his termination by itself would not be sufficient to justify an inference of causation"). See also Richmond v. ONEOK, Inc., 120 F.3d 205, 209 (10th Cir. 1997) (holding that a three month period is insufficient, by itself, to establish causation). Cf. Kendrick v. Penske Transp. Servs., Inc., 220 F.3d 1220, 1234 (10th Cir. 2000) (holding plaintiff failed to establish a causal connection between his participation in protected activity and discharge because "the complaints were remote in time").

Nevertheless, although temporal proximity may support an inference of retaliation, the inference is not dispositive. Complainant must prove by a preponderance of the evidence that retaliation was a contributing/motivating factor in any adverse actions against them. In Tracanna v. Artic Slope Inspection

Service, ARB No. 98-168, Case No. 1997-WPC-1, slip op. @ 8 (ARB July 31, 2001), the ARB observed:

Where the protected activity and the adverse action are separated by an intervening event that **independently** could have caused the adverse action, the inference of causation is compromised. Because the intervening cause reasonably could have caused the adverse action, there no longer is a logical reason to infer a causal relationship between the activity and the adverse action.

Id. (emphasis in original).

The foregoing applies in the instant case in view of Complainants' involvement in the placement of items on the locker of Dennis Griffin in March 2012, which I find constitutes an intervening cause which could, and did, independently cause adverse action.

E. Respondent's alleged adverse actions

Having established that they engaged in protected activity about which Respondent had knowledge, Complainants contend that they were suspended pending termination on April 19, 2012, on the pretext that they placed items on Griffin's locker and further condoned such placement. Additionally, Sickler was told he was suspended without pay pending termination for making an untruthful statement and he had not lived up to Respondent's vision and values. Azelia was suspended without pay pending termination because Respondent believed he had falsified a statement.

On July 2, 2012, Sickler and Azelia were terminated by Respondent. Sickler received a letter dated July 2, 2012, from Randy Roten of Respondent in which he was informed Respondent investigated his involvement in another employee's locker which concluded Sickler had been complicit in Azelia's placement of a noose, a valve that should have been disposed of as hazardous waste and a sign that read "Squirrel's Nemesis" on the exterior of another employee's locker. It was further noted that Sickler had acted to conceal the items by warning Azelia to remove them while management was present and allowing Azelia to replace the items after the management meeting. Lastly, it was concluded that Sickler was not truthful when questioned in the investigation regarding whether he observed the items replaced

on the locker at the end of the shift. Such behavior and Sickler's "divisive and untrustworthy workplace presence failed to comply with all reasonable expectations for a Team Lead and violated Respondent's standards of conduct, policies on harassment and retaliation and site safety practices creating concerns that staff could have been exposed." Sickler was involuntarily terminated effective April 19, 2012, the date he was placed on unpaid suspension. (CX-42).

Azelia also received a letter from Randy Roten of Respondent dated July 2, 2012, in which he was informed that Respondent had investigated his involvement in an incident involving another employee's locker. It was concluded that Azelia had placed a noose, a valve that should have been disposed of as hazardous waste and a sign that read "Squirrel's Nemesis" to the exterior of a coworker's locker and that Azelia removed the items to prevent management from seeing them and then replaced the offending items on the locker. It was also concluded that Azelia was not truthful when questioned in the investigation. It was determined that Azelia's actions were in violation of Respondent's standards of conduct, policies on harassment and retaliation and violated site safety practices creating concerns that staff could have been exposed. He too was involuntarily terminated effective April 19, 2012, the date he was placed on unpaid suspension. (CX-43).

Complainants aver that the foregoing adverse actions were taken against them in retaliation for their protected activities a short time before the adverse action, giving rise to an inference that the suspensions and terminations were motivated by the protected activity. See Dartey v. Zack Company of Chicago, ALJ Case No. 1982-ERA-2, Sec. Dec., Apr. 25, 1983, slip op. @ 7-8, citing Texas Department of Community Affairs v. Burdine, 454 U.S. 248 (1981).

If so, Respondent then must meet its burden of articulating a legitimate, non-discriminatory reason for the suspensions and terminations.

The Termination Justification Memo

On June 26, 2012, Randy Roten sent an "Involuntary Termination Justification-Clinton Azelia and Glen Sickler" document to Dr. Reza Karimi for approval. (CX-44). The document details the findings of the investigation regarding Dennis Griffin's locker incident. It is acknowledged that Griffin had non-compliance issues with switching a three-way

valve to its proper setting which was part of the Root Cause Analysis and for which Griffin received a written warning. It notes that on Tuesday, March 13, 2012, Sickler and Azelia were converting Station TEN 727L from IDLH to VSL and removed the three-way valve. Tate recalled Azelia commenting "Wouldn't it be funny to frame this and give this to Dennis." The managers present responded "no." (CX-44, p. 2361).

Based on Matt Harris's recollection, on Tuesday or Wednesday, he returned to Igloo 1638 from being off work to see Brian Kimber talking to Sickler, Azelia and Colledge. Everyone (except Kimber) was laughing at Griffin's locker which had a three-way valve taped to it, a sign, and a noose. The investigation determined that the three-way valve taped to Griffin's locker was the same valve removed from 727L on March 13, 2012. Kimber also recalled when arriving at Igloo 1638 on Tuesday or Wednesday, Sickler, Azelia and Colledge were sitting in the Igloo. Azelia asked Kimber "Did you see what we did to Squirrel's locker?" Kimber observed the valve, sign and noose on Griffin's locker.

On Wednesday, March 14, 2012, Sickler told Azelia to take the items down from Griffin's locker. A management meeting was held thereafter. The items were placed back on Griffin's locker after the meeting. Roten relied upon Sickler's written statement that he became aware at the end of the shift that the valve and sign had been put back onto the locker. Harris called Griffin prior to his return to work on March 16 and told Griffin about the valve, sign and hangman's noose which he had seen on Griffin's locker. Harris told Griffin he took the noose off the locker. When Griffin returned to work, only the valve and sign were on the locker. Vario, who saw the sign and valve, reported the incident to Tate who took pictures and began investigating the matter. The noose was placed back on the locker for the photos. Azelia admitted to Tate that he placed the valve and sign on Griffin's locker. According to Vario, Azelia admitted the valve he placed on Griffin's locker was from Station 727L, but denied he placed the noose on Griffin's locker. According to the justification memo, Sickler admitted "his involvement" to Tate. (CX-44, pp. 2361-2362).

Griffin made a complaint about the items being placed on his locker because he felt such action was retaliation by some technicians who believed an error by him had generated the need for the Root Cause Analysis review. Griffin stated a concern because of the potential hazard posed by the valve and alleged the action as harassment. Griffin reported Sickler had a

history of harassing behavior and he felt threatened by the presence of the hangman's noose.

An investigation was instituted in response to Griffin's complaint. The following conclusions were reached: (1) Azelia admitted placing the sign and valve on Griffin's locker, but denied he placed the noose on the locker. Given the incident and two employees stating Azelia pointed at the items, including the noose, laughing, it was concluded Azelia placed all the items on Griffin's locker; (2) Sickler had full knowledge of and was complicit in Azelia's actions and encouraged and allowed the behavior which, as a team lead, was not reflective of Respondent's standards of conduct and Sickler should have set the tone for appropriate behavior; (3) Sickler had Azelia remove the items knowing management was conducting a meeting in the area and assisted Azelia in concealing the activity from managers and Sickler was aware the valve and sign were replaced on the locker after the meeting, although Sickler stated he was unaware until late in the shift that the items were placed back onto the locker. Sickler took no action to remove the items, did not report the items to management and took no steps to ascertain if the valve posed a potential safety risk or to stop the behavior; (4) When the valve was removed from the monitoring device, Sickler and Azelia should have promptly disposed of the valve as hazardous waste even though it was determined by a separate risk assessment that the valve posed no hazard to others while it hung on the locker, the failure to take action in accordance with hazardous waste protocols or to ascertain if the valve was a possible safety issue was unacceptable; (5) the irresponsible handling of the used valve created a concern that there could have been contamination of those coming in contact with the valve; (6) the noose was generally perceived as a threat; (7) Sickler and Azelia were not truthful in their interviews, Azelia by denying the valve was from 727L and Sickler by denying he did not see the items replaced on the locker at the end of shift; (8) and that Brian Kimber who observed the items but failed to notify management or take appropriate actions was less culpable than Sickler since he did not participate in the wrongdoing. (CX-44, p. 2362).

It was noted that views were expressed in the interviews that Sickler was a divisive presence in the workplace, was not trusted and that "D" team was not working well with others. Roten noted it was concluded Sickler was unacceptable as a Team Lead and was not credible with his peer team leads and others. Azelia admitted placing two items on Griffin's locker and was observed showing off "his handiwork-including the noose." It

was decided to suspend Sickler and Azelia on April 19, 2012, pending finalization of the investigation and the separate review by Dr. John Barton of the possible exposure issue created by the used valve being put on the locker.

It was concluded that Azelia's actions constituted a violation of Respondent's standards of conduct and policies on harassment, retaliation and violated site safety practices creating concerns that staff could have been exposed. Sickler, as a Team Lead, was culpable for the same violations as Azelia, but he violated standards expected of anyone in any form of leadership role. Sickler acted in complicity with Azelia, acted to conceal the items on the locker by warning Azelia to take the items down while management was present and allowing the items to be put back up when he should have stopped the conduct and failed to notify management or take any other appropriate action to stop the matter. In view of the above conclusions, it was recommended that Kimber be issued a written counseling, and Azelia and Sickler be terminated. (CX-44, pp. 2363-2364).

Based on the foregoing, I find and conclude Respondent articulated legitimate, non-discriminatory reasons for Complainants' suspension and termination.

F. Were Complainants discriminated against because of their Protected Activities?

1. Complainant's claims of pretext

As noted above, the rebuttable presumption formed by Complainant's arguable **prima facie** presentation drops out of the case once Respondent produces evidence that Complainants were subjected to adverse action for a legitimate, nondiscriminatory reason. The relevant inquiry remaining is whether Complainants prevail **by a preponderance of the evidence** on the ultimate question of whether they were intentionally discriminated against because of their protected activity. To meet this burden, Complainants may prove that the legitimate reasons proffered by Respondent were not the true reasons for its actions, but instead were only pretexts for discrimination.

Because Respondent has shown legitimate, non-discriminatory reasons for Complainants' suspensions and terminations, Complainants are then required to prove by a preponderance of the evidence intentional discrimination. Complainants allege Respondent's reasons are a pretext and they have been treated

disparately given their unfavorable treatment compared to other comparable incidents and events.

The ARB and reviewing courts may apply the framework of burdens developed for use in performing a pretext analysis under Title VII of the Civil Rights Act of 1964 and other employment discrimination laws. Jenkins v. United States Environmental Protection Agency, ARB Case No. 98-146, ALJ Case No. 1988-SWD-2, slip op. @ 16, (Feb. 28, 2003); see, e.g., Kahn v. U. S. Sec'y of Labor, 64 F.3d 271, 277 (7th Cir. 1995); Couty v. Dole, 886 F.2d 147 (8th Cir. 1989).

In general under whistleblower litigation, a complainant must first establish a **prima facie** case of discrimination or retaliation. Conroy v. Vilsack, 707 F.3d 1163, 1171 (10th Cir. Utah 2013). Then, Respondent may come forward with a legitimate, non-discriminatory or non-retaliatory rationale for the adverse employment action. If Respondent does so, as here, Complainants must show that the Respondent's proffered rationale is pretextual. This framework applies to both discrimination and retaliation claims. Id.

Thus, the ultimate burden of persuasion rests always with the complainants. To meet this burden, a complainant may prove that the legitimate reasons proffered by the employer were not the true reasons for its action, but rather were a pretext for discrimination. A complainant may prove that he suffered intentional discrimination by establishing that the employer's proffered explanation is unworthy of credence. Jenkins, supra @ 16-17. Pretext requires a showing that the tendered reason for the employment decision was not the genuine motivating reason, but rather was a disingenuous or sham reason. Reynolds v. School Dist. No. 1, 69 F.3d 1523, 1535, (10th Cir. Colo. 1995). An adjudicator's rejection of an employer's proffered legitimate explanation for adverse action permits rather than compels a finding of intentional discrimination. Specifically, "**[i]t is not enough . . . to disbelieve the employer; the fact-finder must believe the [complainant's] explanation of intentional discrimination.**" Jenkins, supra, at 17; see also, St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 507-508 (1993) (emphasis added).

"[P]retex can be shown in a variety of ways," and "there is no one specific mode of evidence required to establish the discriminatory inference." Id. quoting Trujillo v. PacifiCorp, 524 F.3d 1149, 1158 (10th Cir. 2008) (internal quotations omitted). Generally, "a plaintiff can establish pretext by

showing the defendant's proffered non-discriminatory explanations for its actions are so incoherent, weak, inconsistent, or contradictory that a rational fact-finder could conclude [they are] unworthy of belief." Id. quoting EEOC v. C.R. England, Inc., 644 F.3d 1028, 1038-39 (10th Cir. 2011) and Johnson v. Weld Cnty., 594 F.3d 1202, 1211 (10th Cir. 2010) (internal quotations omitted).

For example, courts will draw an inference of pretext where the facts demonstrate that the plaintiff was better qualified than the other candidates for the position. Santana v. City & Cnty. of Denver, 488 F.3d 860, 865 (10th Cir. 2007). A plaintiff can also show pretext by demonstrating that the employer's explanation for its decision "was so implausible, incoherent, or internally contradictory" that the decision must have been made on some other basis. Rivera v. City & Cnty. of Denver, 365 F.3d 912, 925 (10th Cir. 2004). "However, an employer's exercise of erroneous or even illogical business judgment does not constitute pretext." Reynolds v. School Dist. No. 1, 69 F.3d 1523, 1535, (10th Cir. Colo. 1995).

Complainants contend the proximity between their suspension on April 19, 2012, and their involvement in the April 10, 2012 alarm is sufficient to support a finding of causation alone. Additionally, Respondent's motives for intentionally discriminating against Complainants are best illustrated by their fabrication of material facts related to the discovery and report by Azelia and Sickler on April 10, 2012. I have previously concluded that Azelia played no part in the April 10, 2012 alarm incident. The record does not support Azelia's involvement other than being present. Complainants' argument that Azelia's testimony about the incident, how it should have been reported, and the alleged suppression by Respondent is based on all self-serving statements advanced in an effort to bolster Azelia's protected activity, which were not reported at the time of the April 10, 2012 incident. In fact, Azelia acknowledged at the formal hearing the incident was handled according to protocol.

Sickler also testified that the April 10, 2012 incident should have been reported as a RCRA Permit violation and various items were omitted from or misrepresented in Respondent's CR and that Tate and Perkins hindered his reporting of the April 10, 2012 incident. Sickler questioned Perkin's comment that "it is not agent," because the DAAMS tubes were not connected. When Tate asked Sickler to reconnect the sample line and run it for ten minutes and send it to the lab, Sickler expressed

disagreement and questioned the validity of the sample. However, Sickler voiced no concerns at the time of the incident about how the event should have been reported or being hindered by Tate and Perkins in doing so. Sickler's testimony about deficiencies in Tate's CR was not contemporaneous with the event, is at best self-serving, and did not surface until **after** his suspension and termination. The record is devoid of any evidence supporting Sickler's complaints about the April 10, 2012 event before April 19, 2012, when he was suspended. Thus, I am not persuaded that the April 10, 2012 incident was the motivating factor in Respondent's decision to suspend and terminate Complainants. I also note that on February 6, 2012 and March 6, 2012, sample lines were found disconnected from TEN 730L by "D" Team and from TEN 094H by "A" Team. The record does not reflect who found the disconnected sample lines or any details about the incidents such as what action, if any, was taken as a result of the discoveries. Roten had knowledge of both incidents from Perkins and the record is devoid of any disciplinary action resulting for either earlier incident, which decreases the significance of Complainants' argument that the April 10, 2012 incident was a motivating factor in Respondent's adverse actions. (CX-53, p. 549).

Notwithstanding the foregoing, Tate's CR and Hansen's email summary to the Division of Solid and Hazardous Waste omit pertinent data such as that there were two Respondent employees in the observation corridor at the time of the agent alarm and conclude that there was no potential agent source despite the fact that the ATLIC was still under its monitoring plan and neither Perkins nor Hansen could tell whether the source of the alarm was interferant or agent.

More telling is Roten's testimony regarding the April 10, 2012 incident. Roten's testimony about the effect of the April 10, 2012 incident is rather muddled in the record. He testified that a disconnected sample line seemed odd because the line is threaded. He had a concern about Sickler disconnecting the sample line because he did not get the retention time. On April 18, 2012, Roten and Price decided to suspend Azelia and Sickler pending termination for reasons other than the April 10, 2012 incident, i.e., their involvement in Griffin's locker incident. He moved the suspension up to April 19, 2012, because of the sample line disconnection. Yet, he testified the sample line event had no impact on the termination of Azelia and Sickler. Thus, the April 10, 2012 sample line disconnection played a part in the decision to accelerate the suspension of Sickler and Azelia, who had no involvement in the April 10, 2012 incident.

However, Roten stated Sickler's reporting of the April 10, 2012 incident did not motivate him to suspend or terminate Sickler. In contrast, he acknowledged "no offenses" were committed by Azelia and Sickler in the April 10, 2012 incident. I find that the reason for Complainants' suspensions and terminations was unrelated to the April 10, 2012 incident, but the incident inspired Respondent to suspend Complainant's "sooner than later."

In view of the foregoing, I find and conclude that Respondent's proffered rationale for Complainants' suspensions and terminations as detailed in Roten's justification memo was **not** pretextual. Respondent's explanation for its actions is worthy of credence and I find its actions were not disingenuous or based on a sham. Complainants' argument about the motivating reason for their suspension and termination, i.e., their protected activity, does not diminish Respondent's detailed explanation for its actions based on the intervening locker event to a point where its actions can be termed incoherent, weak, inconsistent or contradictory and unworthy of belief. Neither can Respondent's explanation for its actions and decision be deemed so implausible, incoherent or internally contradictory that the decision must have been made on some other basis. I do not find Respondent's decision to be erroneous or even illogical such as to constitute pretext.

2. Complainant's claims of disparate treatment of similarly situated employees

In McDonald v. Santa Fe Trail Transp. Co., 427 U.S. 273 (1976), a case arising under 42 U.S.C. § 1981 and Title VII, in discussing pretext, the court cited McDonnell Douglas and stated that former employees must be afforded a fair opportunity to show that the employer's stated reason for the former employee's rejection was in fact pretext. Id. at 282, citing McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). In McDonnell Douglas, where an African American employee was terminated and white employees were retained, the court found that "[e]specially relevant to such a showing [of pretext] would be evidence that white employees involved in acts [against the employer] **of comparable seriousness** to the stall-in were nevertheless retained or rehired." Id. at 282-283. Thus, McDonald involved employees who were all engaged **in the exact same conduct**, which leads to the obvious conclusion that they were involved in "acts of comparable seriousness."

"An employee may 'show pretext on a theory of disparate treatment by providing evidence that he was treated differently from other similarly situated, non-protected employees who violated work rules of comparable seriousness.'" Glover v. NMC Homecare, Inc., 13 Fed. Appx. 896, 907, 2001 U.S. App. LEXIS 16031, 28-29 (10th Cir. 2001), citing Kendrick v. Penske Transp. Servs., Inc., supra, 1232 (10th Cir. 2000). "'An employee is similarly situated to the plaintiff if the employee deals with the same supervisor and is subject to the same standards governing performance evaluation and discipline.'" In determining whether an employee is similarly situated to the plaintiff, '[a] court should also compare the relevant employment circumstances, such as work history and company policies, applicable to the plaintiff and the intended comparable employees.'" Id., citing Kendrick, supra. "Trivial or accidental differences in treatment, or those explained by a nondiscriminatory motive, do not show the employer's reasons for the adverse employment action are pretextual." Id.

In Dysert, the complainant was a senior engineer employed by the respondent in its Nuclear Integration Division in 1981. During the complainant's employment, he made several complaints to his team leader about the procedures used in testing instruments. Dysert v. Westinghouse Electric Corp., Case No. 1986-ERA-39, slip op. @ 2 (Sec'y of Labor Oct. 30, 1991). Subsequently, the complainant and the team leader had an argument during which the complainant allegedly struck the team leader several times causing bruises and contusions. Id. The complainant argued that the record showed disparate treatment between the complainant and another member of the team of engineers. The other engineer had an argument with the team leader, and at one point grabbed the team leader's elbow and moved him toward a wall. The respondent argued this was not a comparable attack on the team leader, and the court agreed. The complainant failed to meet his burden in showing that a "'similarly situated employee . . . [was] not treated equally.'" Id. @ 4, citing, Texas Dep't of Community Affairs v. Burdine, 540 U.S. 248, 258; see also Morgan v. Mass. General, 901 F.2d 186, 191 (1st Cir. 1990); see McDonald v. Santa Fe Trail Trans. Co., supra at 283 n. 11 (1976) (**plaintiff must show offenses "of comparable seriousness" were committed by other employees who were not fired**); Moore v. Charlotte, 754 F.2d 1100, 1107 (4th Cir. 1985) (**court must assess "the gravity of the offenses on a relative scale . . . in light of the harm caused or threatened to the victim or society and the culpability of the offender."** (internal quotations omitted)).

In Speegle v. Stone & Webster Construction, Inc., ARB Case No. 06-041, ALJ Case No. 2005-ERA-006, (ARB Sept. 24 2009), the complainant alleged he was terminated for making nuclear safety complaints. He was the foreman of a crew of painters whose task was to remove old protective paint coatings and then prepare the surfaces for new paint coatings. Speegle had made a comment to management stating, "management can take that G-55 [new standards that were to be implemented that Speegle believed caused safety concerns] and shove it up their ass." Id. @ 3-4. The company alleged it terminated Speegle for insubordination, but Speegle argued that the company treated him differently than other employees who had been guilty of similar insubordination. Id. @13. "Where the employer's reason for taking adverse action is that the employee violated a work rule, the employee may prove pretext by showing either that he did not violate the rule or that, if he did, other employees who engaged in similar conduct, but who did not engage in protected activity, were not similarly treated." Id., citing Sparks v. Pilot Freight Carriers, Inc., 830 F.2d 1554, 1563 (11th Cir. 1987) (under Title VII and 42 U.S.C.A. § 2000e et seq.); McDonnell Douglas Corp. v. Green, supra, at 804; Silvera v. Orange County School Bd., 244 F.3d 1253, 1259 (11th Cir. 2001).

A whistleblower who argues disparate treatment must prove by a preponderance of the evidence that similarly situated persons were treated more favorably. "The United States Court of Appeals for the Eleventh Circuit has held that, in the Title VII context, **to meet the similarly situated requirement, the plaintiff must establish that he is 'similarly situated in all relevant aspects to the non-minority employee,' that is to say, 'whether the employees are involved in or accused of the same or similar conduct and are disciplined in different ways.'**" Id. at 13-14, citing, Holifield v. Reno, 115 F.3d 1555, 1562 (11th Cir. 1998). "'The most important factors . . . are the nature of the offenses committed and the nature of the punishments imposed.'" Id., citing, Jones v. Bessemer Carraway Med. Ctr., 137 F.3d 1306, 1311 (11th Cir. 1997). The plaintiff need not prove that the conduct was the same or nearly identical, but only that it was similar. In deciding whistleblower cases that the Secretary of Labor is authorized to adjudicate, the Secretary and the Administrative Review Board often have relied upon cases arising under Title VII of The Civil Rights Act of 1964. Id. @ 14.

a. Comparable Employees/Similar Incidents

Complainants argue that there are comparable employees who were involved in similar or worse offenses, who held the same or similar positions as Complainants, and who were not disciplined

or received discipline less severe than Complainants which demonstrates Respondent's desire to intentionally discriminate against Complainants.

In Brief, Complainants allege that Steve Alder is a similarly situated comparator who engaged in offenses of comparable seriousness as Complainants. Alder was the Team lead for the team on which Griffin worked and failed to properly follow the operator aid resulting in Griffin's failure to properly configure the three-way valve on December 25, 2011. An additional verification step was added thereafter. On January 20, 2012, Griffin again failed to properly configure the three-way valve, but Alder documented that he had verified the configuration when he had not. Alder received a written warning for failing to properly verify the Station and allegedly falsified the fact that he had verified the proper configuration "which placed lives at risk" and violated the "very same procedures that Sickler violated and was terminated for." It is further argued that Alder was equally complicit in Azelia's placement of items on Griffin's locker since he saw the sign and valve and failed to report it to management or to take steps to remove the items from the locker. Yet, Alder testified he only saw "something on Griffin's locker, but did not see a noose." He later testified he saw the valve and sign on Griffin's locker and did not report the items to management because by then Vario was doing so. Roten testified that no one even suggested Alder be punished for failing to report the valve on the locker.

Brian Kimber, who was a Team Lead like Sickler, observed the valve, noose and sign on Griffin's locker over a period of several days but did not report anything to management or take steps to remove the items from Griffin's locker and dispose of the valve. When Alden Johnson, a Team member, told Kimber the items should be removed from Griffin's locker, Kimber replied "we're not taking it down. Don't touch it." Kimber was disciplined on July 30, 2012, with a written warning "solely designed purportedly to provide support for the punitive actions taken against Sickler and Azelia," according to Complainants. Complainants also aver that Kimber engaged in harassing behavior toward other employees with Respondent's knowledge, and Respondent did nothing about it. Beacham related in his April 19, 2012 interview Kimber publically belittled Alden Johnson two months before in the presence of Perkins. Johnson confirmed the harassment. Amanda Price testified that Respondent has a policy requiring reporting bullying, but she did not report the incident nor did any investigation occur. Thus, it is argued Kimber was also complicit in allowing the items to remain on

Griffin's locker, failing to report to management and neglecting to remove the items and dispose of the valve as hazardous waste. He was not discipline for harassing his coworkers.

Heath Fackrell worked the same position as Azelia. He saw the items on Griffin's locker, but did not report anything to anyone. He also engaged in horseplay with other employees that included coloring and writing on toolboxes. During interviews about the locker incident, Kimber raised issues about Fackrell's behavior which he did not observe but involved punching doors and using inappropriate and foul language. Vario raised an issue about Fackrell "threatening a drive by and [to] shoot out windows" and a significant amount of threats and not fixing machines. Perkins talked to Fackrell and Kevin Kimber about "problems" they were having, Fackrell did not want Kimber on his team and refused to work with Kimber. Alder was aware of threats made by Fackrell, but he never told anyone. Fackrell was never disciplined. Respondent did not conduct any interviews or an investigation about the allegations made about Fackrell which violated the same policies that Azelia was terminated for violating.

Alden Johnson worked as a monitoring foreman like Azelia. He received a written warning for viewing pornography at work in March 2011. When Perkins interviewed Johnson, he denied viewing pornography, but Perkins concluded that he had. Complainants contend Johnson received only a written warning even though he lied to Perkins about his conduct. Johnson also received a Final Written warning when he left a machine in operate position during a challenge which resulted in an actual alarm and halted work activity. Johnson acknowledged seeing the valve, noose and a note on Griffin's locker and did not report the items.

Bruce Vario was a monitoring foreman like Azelia. Dick testified he contacted Perkins about harassment by Matt Harris and Bruce Vario telling everyone he was a "cheater." When Perkins did nothing about his report, Dick contacted Roten who did not do anything either. Complainants claim that these incidents violated one or more of Respondent's policies including the harassment policy which prohibits bullying, belittling or threatening verbal or physical conduct and workplace violence.

Respondent contends that none of the above-mentioned employees are "comparables" to Complainants. Respondent argues Complainants "second guess" any and every instance of employee discipline and "make unwarranted comparisons of the behavior

that resulted in their terminations and other employee behavior." Respondent contends that Complainants argue they were "making light of" Griffin's mistake and the valve and sign were a practical joke similar in nature to numerous other jokes and pranks. Respondent alleges, and I agree, that Complainants' testimony about harassing Griffin was because of the seriousness of Griffin's mistakes which "put individuals' lives at risk." It is noted that Sickler himself testified that he couldn't believe Azelia put the valve and sign on Griffin's locker and told him to take it down and that it was not appropriate for the workplace.

I find Brian Kimber and Steve Alder were not complicit in Azelia's placement of items on Griffin's locker. It was determined they did not participate in the incident to the extent Sickler did, and were not as culpable but only witnesses. Kimber and Alder also reported problems that resulted in being reviewed in the Root Cause Analysis and thus are not "comparators." They were not disciplined for reporting such incidents as Complainants allege they were. Complainants aver that Kimber was given a written warning only as a result of testimony elicited at their June 21, 2012 unemployment hearing and such discipline was "designed to provide support for the punitive actions taken against Complainants. As Respondent points out, Roten had decided to give Kimber a written warning on June 18, 2012, before the unemployment hearing for reasons set forth in his Justification Memo. (CX-41). Complainants also rely upon Kimber's belittling remark made to Johnson as harassing which occurred months before the locker investigation, in the presence of Perkins, who denied hearing such remarks. The event surfaced during the locker investigation which Price considered "bullying," but Kimber was not disciplined. I do not find this incident comparable to the seriousness of the Griffin locker incident.

Complainants also claim Alder "falsified" a verification step in properly configuring the three-way valve, which is similar to the falsification by Sickler and Azelia, but he only received a written warning. The record does not support a conclusion that Respondent perceived Alder falsified a verification, but concluded he failed to do what he claimed he did, which may be a distinction without a difference, but Alder was not considered to be untruthful as were Sickler and Azelia.

As Respondent notes, the conduct reported about Fackrell during the locker investigation was "often second or third hand, or occurred years earlier." The rental car and tobacco usage

issue occurred in 2010 while training in Maryland. No one complained to management about the incident. The "drive-by" comment was made before Fackrell began employment with Respondent according to Vario. Fackrell also saw the items on Griffin's locker and did not report anything to anyone. Fackrell also engaged in horseplay including coloring toolboxes. Fackrell and Kevin Kimber had differences and Perkins talked to both individuals and neither complained about anything. I do not accept Complainants' argument that Fackrell's conduct was comparable in seriousness to Azelia's.

Complainants also rely upon Alden Johnson's written warning for viewing explicit material at work on Respondent's computer, which he denied and thus, according to Complainants, lied about his conduct, similar to Sickler and Azelia who should have been given only a warning. Johnson also received a Final Written warning for leaving a machine in "operate position" during a challenge. Johnson, a foreman like Azelia, saw the valve, noose and sign on Griffin's locker and took no action about reporting the items to management. Johnson was not disciplined or interviewed about the locker incident. Complainants seemingly argue Johnson should have been disciplined to a greater extent because of his two warnings or Complainants should have been given only a warning. Johnson was a witness and did not participate in the locker incident as did Sickler and Azelia. I find his alleged conduct in some respects is not similar and does not rise to the level of seriousness to be comparable to Complainants actions.

The Dick and Vario dispute was brought to Perkins and Roten by Dick, but neither Perkins nor Roten recalled Dick complaining about harassment by Vario. Vario was accused of telling others that Dick was cheating the machines. Complainants allege such conduct violated one or more of Respondent's policies including harassment, workplace violence and code of conduct policy. I find Dick's complaints are not comparable to the seriousness of the Griffin locker incident and do not constitute disparate treatment.

b. Roten's Discipline of other Employees

Complainants also argue that disparate treatment is evidenced by Roten's discipline or lack of discipline of other employees who engaged in punishable conduct. They rely upon Roten's discipline of Josh Zingler with a written warning for making offensive and aggressive comments towards a female employee. Roten issued numerous written warnings to Evan

Rowelle for repeated performance issues and terminated Rowelle only after a RCRA non-compliance issue. Justin Shepherd was also terminated after repeated warnings about his attendance. They argue Roten did nothing about Fackrell's conduct which violated Respondent's ethical guidelines, code of conduct, harassment policy and violence in the work place and did not investigate Kevin Kimber's allegations, which Perkins testified he did. Roten did not know of Fackrell's conduct allegations until the statements prepared in March 2012 preliminarily for the Griffin locker investigation. The most egregious act, the threatened drive-by shooting, occurred before Fackrell even began employment with Respondent according to Vario and other conduct occurred as early as 2010. Robert Adams was terminated for threatening comments and throwing a mask at an employee's face.

None of the foregoing conduct is acceptable workplace behavior, but none equate to the comparable seriousness of the Griffin locker incident in which both Sickler and Azelia were implicated. I so find and conclude. Moreover, none of the discipline relied upon by Complainants and imposed by Roten demonstrate a discriminatory motive by Roten towards Sickler or Azelia.

c. Complainants' allegations of an Inadequate Investigation, Irregular Procedures and the Trumped-Up Fear of Contamination

In summary, Complainants contend that Respondent's failure to conduct an adequate investigation or follow its own internal procedures demonstrates pretext. They argue Respondent did not obtain statements and interview key witnesses and failed to maintain confidentiality of the investigation by holding a management meeting with supervisors and managers, not all monitoring employees, on March 27, 2012, about the locker incident, at which Roten stated he did not want "this" to happen again and expressed expectations moving forward. They contend Griffin had an agenda to retaliate against Sickler, which I find is not supported by any record evidence. Allegedly, Respondent did not review policies until after Complainants filed their OSHA complaint. Complainants alleged that Respondent's feigned concern for the safety of employees near Griffin's locker during the time the valve was exposed lacks credibility.

Admittedly, Dan Taylor informed Price that he did not believe the valve presented contamination as a concern. Roten spoke with Paul Anderson, the URS Safety and Health Manager, who

was not concerned about the valve from an exposure or hazardous waste aspect, nor was Dr. Matravers. Lastly, Dr. Barton concluded the valve would be considered to be "never contaminated at the time it was removed from service" and based on Army guidance and additional conservative risk assessment, "agent exposure and associated health effects related to working with or around the steel valve and tubing are not credible." All of these opinions were obtained during or **after** the locker investigation and after the perception of the valve on Griffin's locker had concerned employees. I am not persuaded that the after acquired evidence lessened the concern employees perceived during the pendency of the valve incident.

In effect Complainants attack Respondent's investigation of the locker incident and its decision making judgment. The Secretary of Labor has voiced reluctance to "second-guess" the business judgment of employers in whistleblower claims. In Rogers v. Multi-AMP Corporation, Case No. 1985-ERA-16 (Sec'y Dec. 18, 1992), the Secretary found that the claimant was discharged for legitimate business reasons, and not in violation of the Energy Reorganization Act's whistleblower provisions. The Secretary stated, "**It is not the prerogative of this Court to superimpose its business judgment on Employer or to determine the wisdom of [its] decisions.** It is the right of the Employer to select an Executive, . . . , and for that incumbent to impose his judgment over the business decisions of a subordinate, such as Claimant. While the Employer's actions may not be volatile of the Act, **Claimant is not immunized from legitimate business decisions, including termination, merely because she has engaged in protected activity.**" Id. (emphasis added); see also, Bassett v. Niagara Mohawk Power Co., Case No. 86-ERA-2 (Sec'y Sept. 28, 1993) (where Claimant was denied a promotion, and the Secretary failed to find discriminatory retaliation under the Energy Reorganization Act because the Employer engaged in a reorganization of its company, a valid business decision).

Circuit courts have also withheld engaging in "second guessing" an Employer's business judgment or decisions. In Allocco v. City of Coral Gables, 221 F. Supp. 2d 1317, 1367-69, (11th Cir. 2002), the court denied the plaintiffs' whistleblower claims. The plaintiffs alleged that they had been retaliated against for reporting alleged misconduct on the part of the City of Coral Gables ("the City"), but the City had a legitimate, non-pretextual reason for terminating the plaintiffs. Id. at 1370. In discussing why the City's reason for terminating the plaintiffs was legitimate, the court stated, "**[A] court will not sit as a super-personnel department and second-guess employer's**

business judgment of an employer's termination decisions." Id. at 1371 citing, Chapman v. AI Transport, 229 F.3d 1012, 1030 (11th Cir. 2000) (an age discrimination and disability discrimination case, stating that the court will not second-guess employer's business judgment where proffered reason is one that might motivate a reasonable employer) (emphasis added).

In Glover v. NMC Homecare, supra, (10th Cir. 2001), plaintiff claimed he was retaliated against for uncovering a billing problem and that he was the subject of sexual harassment. The court found that the employer's actions in terminating him were not pretextual, as the plaintiff was excessively late. Id. In discussing the employer's business judgment in terminating plaintiff, the court stated, "We consistently recognize, however, **courts 'are not in the position of determining whether a business decision was good or bad. Title VII [and Section 1981 are] not violated by the exercise of erroneous or even illogical business judgment.'**" Id., quoting Sanchez v. Phillip Morris Inc., 992 F.2d 244, 247 (10th Cir. 1993) (emphasis added).

In Conrad v. Bd. of Johnson County Comm'rs, 237 F. Supp. 2d 1204, 1247, (D. Kan. 2002), an age discrimination, disability discrimination and whistleblower case, the court stated, "To determine whether a plaintiff has shown that the defendant's stated reasons are pretextual, the court must examine the facts as they appeared to the [decision-maker]; **the court may not replace the employer's business judgment with the court's own analysis.** The court's role is to prevent unlawful employment practices, not to act as a 'super personnel department that second guesses employers' business judgments.' **Moreover, the defendant need not persuade the court that the reasons it offers to justify the plaintiff's termination were wise or correct;** the court's inquiry is limited to whether the defendant honestly believed those reasons. Also, it is the employer's perception of the employee's performance that is relevant, not the plaintiff's subjective evaluation of his/her own relative performance." (emphasis added).

Given the foregoing precedent, I conclude it is not the duty of the undersigned to second guess the Respondent's investigation and to superimpose my business judgment for Respondent's ultimate decision. Although Complainants launched a broad attack on Respondent's investigation and "irregular procedures," its failure to interview certain employees and to discipline others, or complained about the level of discipline imposed. They claim the investigation was inadequate because

Respondent did not consider retaliatory theories advanced against Complainants by Griffin. All of these matters are business judgments for which the undersigned is not in a position to second guess or replace with my own analysis of the facts. Moreover, contrary to Complainants' arguments, the undersigned is not in a position to determine whether Respondent's business decision was "good or bad." As the U.S. Tenth Circuit Court of Appeals, the Circuit within which this matter arises, has recognized, Title VII and various protective whistleblower statutes are not violated by the exercise of erroneous or even illogical business judgment. By acknowledging the Tenth Circuit standard, I do not find thereby that Respondent exercised erroneous or illogical judgment.

Nevertheless, I find no "irregular procedures" based on the instant record. Roten testified, and no other evidence was presented, that he did not have knowledge of the May 25, 2012 OSHA complaints filed in this matter. As early as May 8, 2012, Price indicated in an email to Taylor and Karimi that further action will be determined for Tate and Perkins, which was not an after thought following the OSHA complaint filings. Kimber was given a written warning for not informing management of the locker incident, but Alder was not because it was determined he was not aware of the items until Friday when Vario notified Tate of the items.

The investigation commenced with nine statements gathered from employees by Tate and thereafter 14 interviews of employees took place during the IOC investigation by Roten and Price. Complainants argue Tim Doxy and Alden Johnson were not interviewed, but as noted by Respondent, do not explain what difference their statements may have made. "A" Team was not interviewed because they were off work during the week of the locker incident. Moreover, it is undisputed that Azelia placed the valve and sign on Griffin's locker because of Griffin's configuration mistakes and that Sickler knew he had done so. Complainants note five employees who stated they did not see the noose on Griffin's locker, whereas Kimber, in the presence of Azelia did, and it was concluded Azelia placed the noose on the locker.

Lastly, Complainants aver that Respondent failed to review its own policies until notified of the OSHA complaints filed on May 25, 2012. This argument is specious. Price, who is a Senior Human Resources Manager, brought the Griffin complaint of harassment to the IOC which sanctioned an investigation on April 3, 2012. Complainants argue "nowhere in anything produced by"

Respondent was anything produced to support the claim that Sickler and Azelia had violated any policy or procedure until after Respondent learned that Sickler and Azelia filed a whistleblower complainant with OSHA on May 25, 2012. Yet, the draft memo from Roten to Karimi dated May 4, 2012, mentions that Sickler violated Corporate Policy Section 2.1.5, Harassment, Policy 2.1.5, Section 0.3.5, Retaliation, SBMS Worker Safety & Health, Corporate Policy Section 1.6 Standards of Business Ethics, and Battelle Core Values to include honesty, integrity, reliability, individual responsibility and accountability as a basis for Sickler's termination. (CX-45).

In considering the issue of rebuttal of Respondent's proffered legitimate reasons for its actions, the undersigned considered the entire record, including Complainants' version of each specific adverse employment action and the asserted reasons why the actions occurred as discussed above. I find no record evidence of any intentional discrimination by Respondent against Complainants. The undersigned has also considered the environment and culture in which Complainants' concerns were expressed and Respondent's attitude towards environmental and safety issues raised by its employees. After considering all of the record evidence of alleged discrimination, I find and conclude that Complainants have not demonstrated by a preponderance of the evidence that Respondent's adverse employment actions for legitimate business reasons were a pretext in retaliation for their protected activities.

I further find and conclude there is no record evidence supporting a finding that Complainants' protected activities motivated Respondent to intentionally retaliate against them or that Respondent held any hostility or animus towards Complainants. The record is devoid of any evidence that anyone from Respondent harbored any resentment toward Azelia or Sickler for their protected activities in reporting monitoring issues. Thus, I find that their protected activities were not a contributing factor in any alleged adverse actions taken against them by Respondent.

Nevertheless, assuming **arguendo** that Complainants' protected activity was a contributing or motivating factor in Respondent's adverse actions, I find Respondent has demonstrated by a preponderance of the evidence that the adverse actions would have occurred even if Complainants had not engaged in protected activity.

G. Would Respondent Have Implemented Adverse Action Against Complainants Regardless of Complainants' Protected Activity?

Assuming **arguendo** that Complainants established their protected activity played some part in or was a contributing or motivating factor in Respondent's adverse actions, thus creating a "dual motive case," which is completely belied by the instant record, Respondent may avoid liability by demonstrating that the adverse action would have occurred even if Complainants had not engaged in protected activity.

The instant record supports a finding and conclusion that Complainants' employment would have been terminated for the following legitimate business reasons: (1) Sickler and Azelia performed a work order on Tuesday, March 13, 2012, to remove the three-way valve from Station 727L; (2) Azelia placed the three-way valve and sign on Griffin's locker on March 13, 2012; (3) Respondent determined that Azelia also placed the noose on Griffin's locker which was observed by Brian Kimber when Azelia pointed the locker display out to Kimber; (4) Sickler had full knowledge of Azelia's behavior and instructed Azelia to remove the items from the locker on Wednesday, March 14, 2012, because the items were inappropriate for the workplace; (5) Azelia replaced the items on Griffin's locker during the afternoon of Wednesday; (6) Sickler observed the items had been replaced on Griffin's locker at the end of the shift on Wednesday and allowed the behavior to continue without further action; (7) Azelia was determined to be untruthful by stating the valve placed on Griffin's locker was a new valve and that he did not place the noose on Griffin's locker; (8) Sickler was determined to be untruthful when he stated he was not aware the items had been replaced on Griffin's locker.

The locker investigation was generated by Griffin's complaint and not motivated by any protected reports by Azelia or Sickler. The items placed on Griffin's locker gave a perception of potential contamination or hazardous waste represented by the valve and the ominous threatening vision of a noose hanging from Griffin's locker all brought on by the desire to harass Griffin for his configuration mistakes on Station 727L.

Neither the investigation nor the decision by Respondent can be scrutinized or reviewed by the undersigned as discussed above. Moreover, the record does not support a finding that Respondent disciplined Azelia for his one report to Sickler and Sickler's reports as part of the Root Cause Analysis or his

April 10, 2012 sample line disconnection incident. Respondent did not discipline anyone for finding and reporting the February 6, 2012 or March 6, 2012 sample line disconnections either.

Complainants allege discrimination for reporting monitoring issues in an atmosphere where environmental and safety concerns were uppermost in Respondent's agenda. URS was recognized by ISO 14001, an International Standard for environmental management systems for which the facility obtained certification by the U.S. Army in 2005, requiring continual improvement, having in place waste minimization, pollution prevention and protecting the environment. (Tr. 1952-1953). URS was also certified in 2011 by a third party, REC Star, an independent certification. (Tr. 1953). URS has a robust environmental system and compliance procedure. URS is highly regarded and recognized. (Tr. 1953-1954). Respondent worked with URS to obtain the certification. (Tr. 1954).

RX-107 is the Voluntary Protection Program (VPP) Site Report dated April 7, 2009, from OSHA recommending Star approval for URS and Respondent. Star status is the highest level of recognition by OSHA of confidence in the safety programs in place. Prior to the award, 137 formal interviews and 67 informal interviews were conducted. (Tr. 1956-1957; RX-107, p. 15). It was determined employees feel free to participate and employees should have no fear of reprisal or retribution for stopping work. (Tr. 1957-1958). RX-108 is the Star Approval Recertification dated September 12, 2012, which was award by OSHA after evaluations and interviews to both URS and Respondent. (Tr. 1958-1959).

There is a Condition Reporting System (CR) in place for employees to report mistake made and improvements needed. The safety department receives CRs which are assigned for analysis and resolution.

The record demonstrates that Respondent has created an atmosphere in which employees are encouraged to voice environmental and safety concerns through the Condition Reporting System as well as to their immediate supervisors. Respondent self-reports violations observed by environmental and safety inspectors.

It is within this environment and atmosphere that Complainant's protected activity must be evaluated. Complainants complained about: potential missed monitoring because of the misconfigured three-way valve on December 25,

2011; the January 20, 2012 potential missed monitoring event because of Griffin's second misconfiguration of the three-way valve which occurred while entrants were in the Toxic room; and Sickler's April 10, 2012 sample line disconnection.

The record is devoid of any direct evidence that Respondent harbored any animus or retaliatory intent or motive towards Complainants. There is no record evidence of any overt hostility exhibited toward Complainants in the workplace or at the formal hearing by Respondent. I found no record evidence of any animosity towards Complainants by Tate, Perkins, Roten or Price, all of whom were involved in the gathering of statements and interviews of the IOC investigation.

Accordingly, I find and conclude that Respondent would have implemented the same adverse actions against Complainants had they not engaged in protected activity given the foregoing analysis.

In view of the foregoing, I find and conclude that Complainants have failed to establish that Respondent singled them out for intentional discriminated for engaging in protected activities.

VI. CONCLUSION

Complainants have failed to show by a preponderance of the evidence that their protected activity in reporting any of their concerns to management was a contributing factor in their suspensions and terminations and that Respondent intentionally discriminated against them because of their protected activity.

VII. ORDER

Based upon the foregoing Findings of Fact, Conclusions of Law and upon the entire record, I find and conclude Respondent did not unlawfully discriminate against Clint Azelia and Glen Sickler because of their protected activity and, accordingly, the complaints of Clint Azelia and Glen Sickler are hereby **DISMISSED** in their entirety.

ORDERED this 27th day of May, 2015, at Covington, Louisiana.

LEE J. ROMERO, JR.
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

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.