

September 27, 2019

Phil Stutzman
Public Disclosure Commission
711 Capitol Way S. #206
P.O. Box 40908
Olympia, WA 98504

Re: PDC Case No. 55698

Mr. Stutzman,

This is a supplement to the Freedom Foundation's complaint against Waste Treatment Completion Company (WTCC) of July 26, 2019, addressing several issues raised by WTCC's response.

Allegation 1: Failure to permit inspection of employee PAC deduction authorizations that complies with RCW 42.17A.495(4).

In its response, WTCC attempts to justify its illegal actions by misstating the facts and downplaying its unprofessional behavior.

a. WTCC claims it made arrangements for me to review the authorization forms "as soon as the Payroll Supervisor returned from vacation."

This is false. WTCC delayed review for two weeks *after* the payroll supervisor returned to work. Moreover, WTCC did not prepare forms for my review, either during the initial time nor during these extra two weeks.

In his June 19, 2019 letter, Victor Serna, WTCC's workforce resources manager, stated the unnamed payroll supervisor would "be out of town until [Monday] July 8, 2019" but that WTCC "can make the records available for your review any regular business day after July 9, 2019." See **original Appendix page 430**. Accordingly, in a June 28, 2019 email to Mr. Serna, I asked to inspect the authorization forms on either July 15 or 16, 2019. See **Original App. 433**.

On July 9, 2019, Mr. Serna responded via email that the unnamed payroll supervisor "just returned Monday [July 8]" and was "available to meet with you and provide the documents you wish to inspect on the afternoon of Monday July 22 or July 29," two or three weeks, respectively, *after* the return of the payroll supervisor on July 8. See **Original App. 433**.

In hindsight, the significance of the unnamed payroll supervisor to the inspection process is entirely unclear. No one I interacted with at WTCC identified themselves as “payroll supervisor” and such person was never named in WTCC’s correspondence. The lengthy delay in scheduling the inspection might have been worthwhile had it resulted in appropriate WTCC staff having a chance to prepare the authorization forms for inspection. Unfortunately, during the day of my inspection, it became clear that no WTCC staff, “payroll supervisor” or otherwise, had used the 46 days between my June 6 request and July 22 appointment to prepare anything.

b. WTCC suggests I waited in the Tri-Cities for two hours before heading to the first security checkpoint at 1:00 pm.

This is incorrect. In my July 9 email to Mr. Serna, I stated I would be driving over from Olympia and would be willing to arrive as early as 11:00 a.m. In his response, Mr. Serna set the meeting time at 1:00 p.m. I planned my travel accordingly to arrive at 1:00 p.m. instead of 11:00 a.m. While I intended to arrive in the Richland area (I had no address when I departed Olympia) early as a precaution, unexpected construction detours and having to stop to call and obtain directions from Kathy Vargas meant that I arrived at the first security site at 1:00 p.m., having come directly from Olympia.

c. WTCC states I was informed that “the WTCC is a Department of Energy Hanford Site and visitors must comply with badging requirements” and that “the facility’s business hours are Monday - Thursday, 6:30 am to 5:00 pm.”

This is correct, as far as it goes. Nonetheless, WTCC staff did not explain the process for locating the initial security checkpoint (the only address provided led to an office building with no receptionist; the small security trailer was out of sight), the amount of time required to clear security, or the substantial distance to travel from the initial security checkpoint to the WTCC facility.

Further, despite the fact that business hours extend to 5:00 p.m., WTCC staff prematurely ended my inspection at 4:35 p.m. for no apparent reason. None of the other WTCC staff I observed left the building before I did. Once directed to leave by Nate Izquierdo, it took me no more than a few minutes at most to end my review, pack my laptop and leave the building. Perhaps most telling, Mr. Izquierdo’s directive for me to leave early came only *after* I informed him that WTCC appeared to be largely out of compliance with RCW 42.17A.495(3), that I intended to work until the close of business, and that I did not intend to return the following day.

d. WTCC states that Ms. Vargas emailed me “at approximately 9:30 am [on July 22] with instructions on where to obtain a security badge, and a map demonstrating the required travel between the location [to] obtain a security badge and the site of the facility,” contending my “decision to travel from Olympia to the Tri-Cities on the same day as [the] scheduled meeting and to not plan for the time necessary to obtain a security badge and travel to the site was exclusively within [my] control.”

The day before my appointment, having not previously received directions from WTCC, I emailed Mr. Serna to ask what address I should plan to arrive at. Instead of providing me directions himself, he emailed back that night instructing me to “call Kathy [Vargas] in the morning while on the road and she will give you instructions where to go to pick up your badge.” See **Original App. 431**. Accordingly, I left Olympia around 8:15 am, pulled over in Elbe, Washington, and phoned Ms. Vargas at 9:28 am. See **Supplemental Appendix pg. 2**.

After our phone call, at 9:34 am, Ms. Vargas emailed me a map showing the area surrounding the first security stop which suggested I needed to proceed to the Material Handling Office at 1030 Battelle Blvd. in Richland. See **Supplemental App. 3**. Also attached to Ms. Vargas’ email was a Hanford map with a highlighted route from a hard-to-identify starting point to the Wye Barricade, not my ultimate destination. WTCC claims the map shows “the site is several miles from the security building.” In reality, the map failed to specify the distance — 22 miles — from the initial security checkpoint to my ultimate destination, or even include a legend with which to measure relative distances. See **Supplemental App. 4**. Even if it had, it would have done little good because I did not receive the map until after I was already on the road and could not plan to arrive any earlier. I did not receive detailed directions to the WTCC facility until I arrived at the first security office.

e. WTCC claims it “invited” me to continue my review the following day.

This is putting it quite charitably. After my eventual arrival at WTCC, I had to overcome an initial refusal by Mr. Izquierdo to allow me to inspect the authorizations at all. After Mr. Izquierdo escalated the situation to Larry Brown, Mr. Brown tried to dissuade me from continuing by informing me that I would not have time that afternoon to inspect all the authorizations. Only *after* I informed Mr. Brown of my willingness to return the following day, if necessary, did Mr. Brown relent and assign Mr. Jansky to assist me in pulling employee files for the inspection. Later in the day, shortly before prematurely ending my inspection, Mr. Izquierdo asked if I intended to return the following day, to which I responded that I had what I needed and did not intend to return. While WTCC did not *prohibit* me from returning the next day, it certainly did not “invite” me to do so.

Any one of these incidents, taken in isolation, could be easily understood and forgiven. Taken together, however, WTCC’s repeated delays in scheduling the appointment, lack of direction for navigating a highly secure facility, hostility upon my arrival, and premature ending of the inspection simply do not add up to compliance with RCW 42.17A.495(4).

Allegation 2: Deduction of PAC contributions from employees’ wages without authorization that complies with RCW 42.17A.495.

WTCC’s defense against this allegation is two-fold.

a. First, WTCC points out that, after the Public Disclosure Commission’s (PDC) February 14, 2019 warning letter, it distributed to employees (for the first time) the

annual notice required by RCW 42.17A.495(2).

However, the four subsections of RCW 42.17A.495 impose independent requirements; compliance with one subsection does not prove compliance with the other three subsections. For instance, complying with subsection (4) (maintaining records open for public inspection) does not prove compliance with subsection (1) (prohibiting salary increases intending the employee in turn use for political contributions).

Similarly, complying with subsection (2) and providing employees with an annual notice of their rights does not prove compliance with subsection (3)'s requirement that employers receive proper authorization before deducting political contributions from an employee's wages.

Further, the annual notification WTCC provided to employees actually conflicts with the terms of the version one and version two forms on file for most employees. While the annual notice correctly informs employees that PAC deduction authorizations can be rescinded "at any time," both the version one and version two forms incorrectly state the deductions may only be cancelled "within the 60-day period preceding an automatic [annual] renewal date."

Even the annual notice is internally inconsistent. While the notice informs employees of their protections against discrimination based on their decisions regarding political contributions, it is ambiguous about whether the employee is currently having deductions from their wages. The same notice contains both of the following statements: (1) "*If you have voluntarily authorized* PAC contributions, you may rescind that authorization at any time"; and, (2) "...*you have previously voluntarily authorized* your employer to deduct 0.70% (0.0070) of your weekly gross pay to be contributed to the PAC" (emphasis added). A reasonable employee reading this notice would be unsure as to whether they had, in fact, previously authorized such deductions.

Thankfully, the law does not permit such gamesmanship.

To comply with the law, WTCC must first obtain a single authorization from employees that complies with RCW 42.17A.495(3) and WAC 390-17-100 *before* deducting political contributions from their wages. As reminders, it must subsequently provide authorizing employees with annual notices of their rights that comply with RCW 42.17A.495(2) and WAC 390-17-110. Though they act in concert to protect employees' ability to make free and voluntarily decisions regarding political contributions, these are two distinct requirements; WTCC cannot satisfy the former by complying merely with the latter.

- b. Second, WTCC contends that, after the PDC's February 14, 2019 warning letter, new employees have been currently presented the version three dispatch form, though it admits "several of the employees of WTCC worked at the company's predecessor and so may have older versions of the authorization forms on file."**

None of this refutes the Freedom Foundation's allegation that WTCC withholds

contributions to UA 598's PAC from employees' wages without legal authorization. At the time of the Freedom Foundation's July 22 inspection, three-quarters (not merely "several") of the deductions from employee wages were made pursuant to version one and two dispatch forms the PDC has already recognized as invalid. Still other forms were either unsigned, undated, or simply non-existent. *See page 10 of the original complaint and Original App. 435-444.*

Even the version three forms currently in use by WTCC fall short of legal requirements by preventing employees from deciding what amount to contribute to UA 598's PAC, instead fixing the amount at .7% of wages, an allegation WTCC failed to address.

As explained in the original complaint, the Fair Campaign Practices Act (FCPA) not only protects employees' right to choose whether to make political contributions but protects their right to choose *how much* to contribute to political causes as well.

The template authorization form set forth in WAC 390-17-100 permits employees to designate the specific dollar amount they wish to contribute. WAC 390-17-100(2)(d) further indicates that PAC deduction authorizations must allow employees to designate the dollar amount of the contribution by clarifying that, if the form authorizes contributions to multiple candidates or political committees, the form must specify "the *total dollar amount* per pay period (or per week, month or year) to be withheld *for each...*" (emphasis added).

The only proper way to understand WAC 390-17-100 is that employee authorizations must permit the designation of a *specific dollar amount(s)* to be withheld.

The default position, as clearly indicated by the PDC's template authorization form, is that the authorization must designate a specific dollar amount to be withheld. WAC 390-17-100(2)(d) clarifies that, when multiple recipients benefits from the deductions, the employee's authorization must designate the specific dollar amount to be withheld "for each," which is also reflected in the template form. Deducting political contributions based on a fixed percentage of employee wages simply is not envisioned or sanctioned by the FCPA and PDC regulations.

This requirement protects employees from being manipulated into contributing amounts larger than they otherwise would. UA 598's dispatch forms, for example, intentionally attempt to make the deduction amount appear insignificant, describing it as "0.70% (0.0070)." In reality, the deductions often amount to \$100 or more per employee per month, hardly an insignificant sum and likely more than many employees would agree to contribute if they were permitted to designate the amount of the deduction.

Conclusion

As WTCC's violations of the FCPA have been ongoing and extensive, despite warnings from the PDC, we respectfully request that the PDC initiate enforcement proceedings sufficient, at minimum, to ensure future compliance.

Please let me know if you would like any additional information or clarification regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Maxford Nelsen', with a long horizontal flourish extending to the right.

Maxford Nelsen
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PDC Case No. 55698 – Complaint Supplement – Appendix





