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Whistleblower Complaint/Safe Drinking Water Act: Occupational Safety and Health Administration Addresses Alleged North Dakota Department of Environmental Quality Retaliation Against Staff Environmental Scientist

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The Occupational Safety and Health Administration (“OSHA”) issued an August 23rd news release summarizing the results of a whistleblower investigation that it undertook regarding the North Dakota Department of Environmental Quality (“NDEQ”).

OSHA alleges that NDEQ retaliated against an environmental scientist that had reported safety concerns about a public water system to both management and subsequently the United States Environmental Protection Agency (“EPA”).

The following federal environmental statutes include whistleblower protection provisions:

- Clean Water Act
- Clean Air Act
- Safe Drinking Water Act (“SDWA”)
- Toxic Substances Control Act
- Solid Waste Disposal Act
- Comprehensive Environmental Response, Compensation, and Liability Act

The SDWA prohibits employers from retaliating against employees for engaging in protective activities pertaining to alleged violations of actual or potential drinking water from above or underground sources designed for consumption.

Coverage extends to all private sector, federal, state, and municipal employees.

The SDWA prohibits the discharge or in any manner retaliation against an employee because the employee:

- Provided (or is about to provide) information relating to a violation of the SDWA to the EPA or other appropriate federal agency or department;

- Testified (or was about to testify) on any such proceeding under the statute;
- Refused to perform duties in good faith, based on a reasonable belief that the working conditions are unsafe and unhealthful;
- Participated or assisted in a proceeding under the SDWA

The August 23rd OSHA news release states that NDEQ's actions violated the SDWA.

OSHA stated that it determined that the NDEQ employee:

. . . raised safety concerns to their supervisor over a six-month period and alerted the EPA about defects in reporting and data collection and concerns that sanitary violations were being downgraded to minor violations.

The NDEQ supervisor is stated to have requested that the employee stop communicating with EPA and issued a written reprimand for doing so.

OSHA has ordered NDEQ to remove the written reprimand from the employee's personnel file.

NDEQ and the employee may file objections or request a hearing with the Office of Administrative Law Judges within 30 days of receiving OSHA's order.

A copy of the news release can be downloaded [here](#).