



A RIVER LOST?

Decision time on the Duwamish

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Duwamish whistle-blower paid a steep price Ron Slater lost his job, health and his 'justice' in court

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After decades in the construction trade, Ron Slater had finally moved up. Management. A company truck. A healthy salary. Life was good.

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But then Slater and his crew began to suffer mysterious nosebleeds, headaches and fatigue as they unearthed spots on a construction site with rainbow-hued water, metal shavings and a powerful industrial stench.

Soon, one of his workers passed out mysteriously and had to be taken to the hospital.

Slater began to have deep doubts about his superiors at Morrison Knudsen Corp. when they had his crew drain contaminated water off Harbor Island, a Superfund site, into the Duwamish River.

Morrison Knudsen, one of the largest and best-known construction firms in the world, was clearing the decades-old industrial property owned by the Port of Seattle.

Slater's breaking point came when a bulldozer ruptured an underground tank of diesel fuel. Slater called on the radio asking for help -- only to have the project's safety officer speed over in his truck and bark, "How many ... times have I got to tell you -- don't get on the radio talking about fuel spills or calling 911."

"After a number of these confrontations over testing, over contaminated waste ... it was clear that if I didn't get along and go along, I was going to be going down the highway," Slater said.

Slater kept complaining anyway, and soon he was on his way down the road.

He contacted the state's Department of Labor & Industries. He also called the U.S. Environmental Protection Agency, launching a major investigation -- and providing a cautionary tale for the Duwamish River Superfund site, next to Harbor Island.

The lesson from Slater: Unless cleanup contractors and everyone else involved are constantly and carefully watched, the job won't get done right.

After investigating the allegations brought by Slater and his crew, the state in October 2000 issued 34 citations for violations, including failing to protect employees from hazardous substances. It imposed a \$48,500 fine.

Company challenges fine

Morrison Knudsen denied all of the charges and contested the fine.

"The Port of Seattle gave us the project. They told us that all known hot spots of contamination would be removed," said Aaron Owada, a lawyer representing Morrison Knudsen. "That's the context in which we accepted the job."

However, state records show the firm applied for a state sales tax exemption in connection with the work, citing the Superfund designation and the presence of lead, arsenic, cadmium, chromium and other pollutants. The bid documents on the \$110 million job made it clear it was a Superfund site.

And the federal cleanup plan shows that only certain classes of pollutants were supposed to be cleaned up before Morrison Knudsen arrived on the scene.

After he left Morrison Knudsen, Slater could never get work as a construction supervisor in Seattle. He says he was blackballed.

Slater got an attorney and sought a judgment against Morrison Knudsen, but his attorney gave up after the company's corporate parent, Washington Group International, filed for Chapter 11 bankruptcy protection.

What followed for Slater were years of depression and bitter anger before he found peace. Recently, he was diagnosed with prostate cancer and diabetes.

"I paid a heavy price," Slater said. "It's the price you pay when you go against the grain."

Slater's ordeal started in October 1999, when he arrived at Harbor Island, just north of the West Seattle Bridge, and was handed job specifications the size of a couple of Seattle phone books.

In there, he discovered, were explicit instructions about what to do if his crew encountered contaminated soils. He was in charge of demolishing the footings and foundations of old buildings, tearing out underground utilities and other work to prepare the land for redevelopment.

With four laborers helping him, he began fencing off the old buildings that needed to be demolished and doing other preparatory work. With no protection, they tromped all over the contaminated site.

A state inspector would later recount how the workers had to move "leaky drums of unknown materials." One worker was splashed with the chemicals. They had no bathrooms -- and no training in how to work around hazardous waste.

Still, "I was thrilled to have a job in the middle of winter, and I was thrilled to have a job where, finally, I was on salary," Slater recalled.

After several weeks, Slater and his expanding crew went to a week's worth of training on hazardous waste and how to properly handle it. It was eye opening.

He asked his boss, Roger Accornero, why he wouldn't go. Accornero replied: "I've been around (construction) 47 years. Nothing has happened to me and nothing ever will."

Even with the training, Slater and his workers didn't recognize it was hazardous waste their earthmovers were uncovering that was giving them headaches and nosebleeds and making them feel "flu-ish."

Only later would Slater learn that members of an ironworkers' union, who were in even more frequent contact with contaminated soils, also had developed nosebleeds, diarrhea, headaches and other symptoms. At least one passed blood in his urine.

Slater said he repeatedly confronted Accornero about the need to wash contaminated dirt off trucks before they left the site, about testing the soil and about the need for him to take the waste issue more seriously.

It was around New Year's 2000 that Theresa Smith, who supervised flaggers on Slater's crew, collapsed while directing traffic near the location of an old battery-production factory.

Slater's men began to complain, saying they shouldn't be working without protective clothing. Not long after that, Slater and his crew confronted Accornero, pointing to signs on the buildings that said, in big letters, DANGER.

What no one told Slater and his crew -- or, apparently, Accornero -- was that when EPA decided how clean the Harbor Island Superfund site would have to be, the agency approved leaving lots of contamination in the ground. PCBs at more than four times the state standard? No problem. Arsenic, cadmium, chromium -- all were left in the ground at levels exceeding state standards.

Slater and his workers appear to have dug into areas that violated even that arrangement.

Accornero relented, ordered the soil the men had been working in tested, and told them to move to another area for a few days.

'Nasty-looking material'

Slater's daily log from that day, Jan. 6, indicates there was 51 parts lead per million parts of soil at that location. That's just one part-per-million over what the crew was allowed to work in without protection. Slater says Accornero gave him the reading. Four days later, Accornero ordered them to return to the site, but specified that this time they should be wearing protective suits and respirators.

Records later would show, though, that the soil the crew worked in that day near the old battery plant had levels ranging up to 97,000 parts lead per million parts soil -- nearly 10 percent lead. Washington's lead cleanup level for industrial properties is 1,000 parts lead per million parts soil.

A few weeks later, while part of his crew was working in the old Lockheed shipyard, across the street from the old battery plant, Slater's radio cut on. It was John Wilkins, operator of an excavating machine.

"We've got some real nasty-looking material here, Ron," Wilkins said, "and it's all over the place."

Just as Slater arrived, a tractor-trailer hauling dirt ruptured its fuel tank on a piece of iron sticking out of the ground. Fuel spilled out.

Slater called on his radio. Soon Accornero arrived. Instead of having the crew clean up the spill, he ordered a crew member to grade it into the ground.

Bob Johnson, the safety officer, told Slater: "Don't break radio silence on fuel spills, and do not call 911 again unless you notify me and Roger first."

That same month, Wilkins hit a pocket of white, puttylike material -- in retrospect, probably some heavily lead-contaminated soil.

"It was sticky and goeey," Slater recalls, "like a muddy putty."

Johnson took a sample, then ordered Slater to tell Wilkins to bury it.

"Nothing leaves the island," was the order Slater said he received from Accornero. It wasn't the extra expense of transporting away contaminated soil -- the port was paying for that. But it took extra time, and to Morrison Knudsen, time was money, Slater said.

Slater's crew was responsible for managing all the water pumped out of the trenches where other crews were installing footings, foundations and utilities. They built ponds, where the water would dissipate at first. Then, with the ground underneath saturated, the water no longer soaked in.

Accornero ordered Slater to drain the material into storm drains connected to the Duwamish, Slater said, but he refused. Accornero ordered the men to do it -- and the contaminated water went straight into the Duwamish, Slater said.

It was a day in March 2000 that finally put Slater on the path to being a whistle-blower -- something he'd never conceived of.

Once again, Wilkins' voice came over the radio: "We've got some nasty material down here." It was a place where Slater had noticed wood, metal fibers and other indicators of contamination on the surface.

When Slater arrived, he could see it was another pocket of metallic fibers surrounded by water with rainbow hues.

"It was rancid," Slater recalls. "It was noxious as hell."

Just then, a bulldozer nearby tore into a buried diesel fuel tank. Once again, fuel started gushing out, this time in a stream.

"The fuel was really coming out in volume," Slater recalled.

Slater radioed for help: "We've got a serious fuel spill out here. Please call 911."

Moments later Johnson roared up in his white pickup, and that's when he scolded Slater, swearing, about breaking radio silence on fuel spills.

Appealing to a higher-up

The next day, Slater went to see his boss' boss, George Harvey, the man who originally hired him.

He had had it.

Slater ran through his complaints -- about his treatment by Johnson, about the litany of acts he considered illegal now that he had been trained in how to handle hazardous waste.

He told Harvey that he heard from Accornero that several other superintendents had been allowed to go back to being paid hourly, but remain management, while staying in the union. This way he could pay into his old, union-supported pension.

An hour later, Accornero told Slater he was being busted to foreman, and would be operating a grader. He would go back to hourly union pay -- but at about \$40,000 a year, half the salary he'd been earning. He wouldn't be a supervisor anymore; he'd be running heavy equipment.

Slater appealed to Harvey, to no avail. He came back the next day and tried again. No way. So he cleaned out his desk and left.

Slater wasn't the last one to be fired. His longtime friend and employee, Joe Boehme, was fired after apparently being poisoned by lead. He was working a small earthmover that had him down near the ground -- right where he would get a good dose of whatever was in the soil.

Boehme, now 70, just felt lousy.

"I was having trouble. I was losing strength and falling down on the job all the time," he recalled. "I'm one of those guys who never quits working. I just kept struggling.

"I made the comment to somebody that if I didn't start feeling better, I was going to retire."

His boss soon said, "Since you're going to retire anyway, we're going to lay you off."

Others continued to suffer, too.

"Almost every man on this project had symptoms," said Larry Rogers, who joined the crew after Slater left. "Every one of us had headaches. I ate more friggin' aspirin than you could shake a stick at."

The headaches ended after he left that job site, Rogers said.

The man who arrived at the Harbor Island job site to check out the workers' allegations was a state Labor & Industries inspector named Mac Davis.

Incredibly, when he first inquired, Johnson -- the safety officer -- denied the men were even working in a Superfund site.

So did Harvey. Accornero later stated in a deposition that he had no experience working at contaminated sites, but that since lots of tests had been done, the landowners "should have known where everything was."

Davis inspected the job site for another year and a half.

His citations of Morrison Knudsen were thrown out by Judge Mark Jaffe of the Board of Industrial Insurance Appeals, who ruled that Harbor Island was not covered by hazardous-waste regulations in state labor regulations. The full board backed his view.

Then something uncommon happened. The state Attorney General's Office, which represents the Labor & Industries Department, appealed to Superior Court. It's common for employers to appeal there, but not the AG's office.

"It's very unusual. It's another indication of how important the department believed and continues to believe the case was and is," said Michael Hall, the assistant attorney general handling the case.

Courts, board rule in case

Superior Court Judge John Erlick reversed that decision in August 2004. Morrison Knudsen battled all the way to the Washington Supreme Court, which left intact an appeals court ruling that found for the state but sent the case back for the Board of Industrial Insurance Appeals to re-examine the factual issues.

Last week, the board ruled in favor of Morrison Knudsen, saying in part of its 54-page ruling that the trial record "establishes that the central work performed by Morrison Knudsen was not cleanup of hazardous material, but was in fact construction work," and

"not all areas within the ... project on Harbor Island were contaminated with hazardous material."

The board said it found Slater "not credible" as a witness because he was suing Morrison Knudsen at the time, and because Slater's daily one-page reports on what work was done, using which equipment, only mentioned safety problems five times.

Morrison Knudsen's attorney, Owada, said the company is vigorously contesting the citations.

"They have to demonstrate there's a hazard that employees are actually exposed to," Owada said. "Without the demonstration that there's any kind of employee exposure, there can be no violation."

'It was about the workers'

Hall, though, pointed out that the citations didn't allege the workers were harmed. Rather, they are for violations such as failing to properly test the air for contamination.

Others included failing to provide protective equipment and failing to provide policies for safe work practices.

Slater, Hall said, "really put a face on the case for me. He helped me understand that this wasn't just about the (state) and Morrison Knudsen -- more, it was about the workers."

For Slater, Hall said, "This was the last chance to get what he felt was justice."

Slater, for his part, has no regrets about blowing the whistle. He won a judgment from the Labor & Industries Department that Morrison Knudsen had improperly fired him.

Had Morrison Knudsen's parent company not declared bankruptcy, the department would have owed Slater back pay of \$141,346.

Slater ended up going back to his former occupation as a heavy-equipment operator later in 2000 -- until an accident in March 2003 forced his retirement, leaving him in frequent pain and unable to turn his head to the left.

He grew suicidal. His personal hygiene slipped and his marriage was in big trouble. He grew teary-eyed at the smallest provocation.

'I refuse to be silent'

A few months after the accident, he went to the Veteran's Administration clinic in Yakima, where he got anti-depressants, a referral for counseling -- and his life back.

Slater turned down Morrison Knudsen's offer of 5 to 10 cents on the dollar for his back pay claim -- \$7,000 to \$14,000 -- after the company declared bankruptcy. Why not take at least a partial settlement? It would have required Slater to never talk about what happened.

"I refuse to be silent," said the 64-year-old Slater, "and I never will be."

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