

I'd Rather Be Fishing (Case 1039)

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The Case:

Shariq Farhoud, CET is a senior field technician recently employed by Everclere Consultants, Inc., an environmental engineering firm. Having formerly worked as a quality control technician for a large remediation contractor, Shariq is highly-trained, safety conscious, and well aware of the sampling methods, testing protocol, chain-of-custody requirements, and the analytical chemical tests frequently required during clean-up of urban/industrial sites.

Life is definitely better as a consultant. For starters, there is less travel, and some weekends off. Also, since joining Everclere, the work is familiar – he routinely performs quality assurance testing not unlike what he performed as a contractor, which consists of monitoring and documenting the clean up of impacted sites. And even more important for Shariq, he no longer faces daily pressure from job superintendents to “wink” at questionable environmental clean-up practices for the sake of increased production. Not that he ever compromised himself – Shariq’s personal morals would not allow this – but it is nice to have some relief. Consulting engineers, after all, must not only comply with the law but are also bound by strict codes of ethics.

It is the Friday before Memorial Day and Shariq is looking forward to mountain biking with friends over the long weekend. The weather forecast shows excellent conditions. As is his custom, Shariq arrives at the office at 6:00am, well ahead of the engineers. Going over the day’s planned activities, he muses that it will be hard to get anything done today. By the looks of the schedule, some – including his supervisor, Chuck Ashby, PE – are already heading to the lake for an early start on the holiday weekend.

From the paperwork on Shariq’s desk, it seems that Chuck worked late last night, getting things in order so he could take off early without a guilty conscience. On personalized notepaper showing the watermark image of a largemouth bass and the inscription, “*I’d rather be fishing,*” – words that Chuck scribbled out and replaced with “*Gone Fishing!*” – Chuck has left Shariq his instructions for the day.

The note explains that one of Everclere’s clients has a property for which Chuck has proposed to provide “preliminary reconnaissance.” This means (a) go to the site, (b) have a look around, (c) collect a few samples for possible testing, (d) make personal notes for the file, and (e) identify first impression conclusions that should be verbally reported to Chuck.

The objective in offering this service, Chuck explains, is to give the client a preliminary

idea about the environmental condition of the property. Further, Chuck directs Shariq to give him a call to report his findings as soon as Shariq returns from the site. The reason for the telephone call is that Chuck and the client's representative will be spending the day together – "relationship building" out at the lake – and Chuck wants to impress the client with the speed at which Everclere can deliver results.

Thinking that when it comes to client relationships, engineers and contractors seem to have a lot in common, Shariq travels to the project site and performs the reconnaissance. Among other things, he observes two drums on the property, and per Chuck's instructions, Shariq gathers samples from these drums, properly stowing the samples in an ice chest he keeps in his truck for this very purpose. Completing his notes, Shariq returns to the office and makes his verbal report to Chuck.

Certain that Chuck's cell phone is picking up the telltale strains of jukebox music from the "Fisherman's Lounge" in the background, Shariq informs Chuck of his observations in general, and about the drums in particular. Further, Shariq notes that, based on past experience, it is his opinion that analysis of the samples will most likely determine that the drum contents would be classified as hazardous waste. Of course, both he and Chuck know that if the material is hazardous waste, certain steps will legally have to be taken to transport and properly dispose of the drums, including notifying the proper federal and state authorities.

Chuck abruptly ends the call, excitedly claiming to have hooked the biggest largemouth bass he has ever seen. "Yeah, right – I think you mean "long-neck bass," Shariq smiles to himself.

A short while later, Chuck calls Shariq and explains that (a) it was a huge bass, and (b) it got away. Thanking Shariq for his expeditious work, Chuck briefly mentions that he apprised Sam (the client) of Shariq's verbal report, and it turns out that the client doesn't want to do anything about the site – including the drums – at this time. Also, and Shariq found this rather odd, Chuck asked Shariq to remind him of the name of his former employer – the remediation contractor.

Before Chuck could get off the phone, Shariq had the presence of mind to ask what to do with the samples – and now Shariq could clearly make out the sounds of laughter and a pool game under way in the background. Chuck tells Shariq only to document the existence of the samples. Further, Chuck informs Shariq that he will tell the client where the drums are located, and that Shariq need do nothing else other than, of course, "Have a nice weekend."

Wednesday morning of the following week, Shariq happens to be in the vicinity of that client's property, and he is somewhat surprised to see a truck and crew from his former employer (the remediation contractor) on site. Compelled by curiosity, Shariq stops to have a friendly chat with his former co-workers, and notices that the two drums he sampled the previous week are now loaded in the truck, apparently for disposal. Not saying anything about his sampling, Shariq casually asks what the crew is up to, and one

of them replies, “Nothing much. We got a call yesterday that these two drums had been tested and were shown to be clean, so we’re hauling them to a “fill dirt” site in a residential area south of town.

Shariq doesn’t say anything to his friends – he knows they are only responding to a dispatch from the boss – but as he drives back to the office, he mulls over the series of events. Clearly there was not sufficient time for another environmental firm to collect samples and get results back this quickly – the claim that tests show the drums contain no hazardous material is bogus. In fact, the drums have not been tested at all, and the only samples that exist are the ones in Shariq’s ice chest back at the lab.

What should Shariq do?

NOTE: This case is adapted, with permission, from the *Opinions of the National Society of Professional Engineers (NSPE) Board of Ethical Review (BER)*, Case 92-6, “Public Welfare – Hazardous Waste.” We modified the facts and discussion for purposes of clarity and pedagogical effectiveness, and all person, place and business names herein are purely fictional. To view the original case and the actual findings of the NSPE BER, please access this case on-line at the website of the National Institute for Engineering Ethics: <http://www.niece.org/cases/index.htm>

Alternative Approaches

1. *Don’t worry, be happy.* Two drums of something aren’t likely to cause harm to anyone, especially if mixed with lots of other fill dirt. After all, isn’t “dilution the solution to pollution?” Shariq should ignore the matter and get on with his next project.
Percentage of votes agreeing: 1%
2. *Don’t worry.* Shariq has done his job and reported his findings accurately and promptly. Chuck is the person with the issue since he is bound by a professional engineer’s code of ethics and Shariq is not. Shariq can sleep at night. Maybe Chuck won’t.
Percentage of votes agreeing: 0%
3. *Worry.* Obviously the client is in violation of several laws and Chuck is abetting this. Shariq can take some comfort in the fact that he has notified the right people and they aren’t inclined to take action. But it would probably cost Shariq his job if he were to make waves about it. Fortunately for Shariq, he is not a PE and has no legal obligation to do anything more. So the best thing for Shariq to do is to say nothing and hope there are no problems.
Percentage of votes agreeing: 0%
4. *Notify the remediation contractor, quietly.* Shariq is not in a position to directly address the issue – he has been assigned to other projects. But he can warn a friend to be careful. Shariq should inform his previous employer, the remediation contractor, about the possible liability they are assuming by disposing of these drums. By giving them this notice, the remediation contractor is now in a position to challenge the situation if they think there is a valid concern.

Percentage of votes agreeing: 7%

5. *Get the facts, quickly.* One test is worth a thousand expert opinions. Shariq should quietly notify his previous employer, the remediation contractor, of the situation and request that they delay in disposing of the drums. At the same time, Shariq should submit one of his samples from the drums to an analytical testing laboratory, requesting expedited *RUSH* results. If the test results come back negative, there is no problem. But if the results show that the material is hazardous, Shariq should confront Chuck.

Percentage of votes agreeing: 34%

6. *Talk with Chuck, nicely.* Shariq should return to the office and mention to Chuck what he has observed. While the drum disposal might not be correct according to the regulations, Shariq has no definitive proof otherwise. He only has his “gut feel.” The situation will go better if Shariq gives Chuck the benefit of the doubt.

Percentage of votes agreeing: 20%

7. *Talk with Chuck, pointedly.* Shariq should return to the office and closely question Chuck about the matter. Their firm has an obligation to ensure the drum contents are properly disposed of, and Shariq should communicate his expectation that Chuck to do the right thing.

Percentage of votes agreeing: 17%

8. *Challenge Chuck, directly.* Shariq must confront Chuck and let him know that unethical behavior – ignoring harm to the environment – is intolerable. It is one thing for Chuck to choose to place his livelihood and professional credentials on the line, but bringing Shariq unwillingly into the mess is not fair. Shariq should insist that Chuck correct the situation or Shariq will resign.

Percentage of votes agreeing: 4%

9. *Report Chuck, anonymously.* Since Chuck is unwilling to intervene with respect to the disposal – which might actually not be illegal – the best way to handle the situation is to anonymously inform the State PE Board and have them investigate. The truth will come out and if Chuck and Sam are innocent ... no harm done.

Percentage of votes agreeing: 7%

10. *Blow the whistle, loudly.* Shariq has reason to suspect that the contaminated dirt will be going to a residential area. A child could eat a chunk of hazardous waste and become seriously ill or die! Shariq must take action if Chuck won't. The State has a hot-line number to call and report illegal dumping, and now is the time to use it!

Percentage of votes agreeing: 10%

Forum Comments from Respondents

1. The fact that Shariq is a technician rather than a licensed professional engineer might have some significance in legal contexts, but ethically he cannot ignore this

problem. Communication is the key to addressing this issue, and the place to start is with Chuck. Giving Chuck the benefit of the doubt, or at least not accusing him, is the correct demeanor. If lines of communication with Chuck can be established, Chuck and Shariq can jointly explore next steps such as contacting the client, doing some testing, etc.

2. Shariq has lots of suspicions but no data to back them up. It is possible that both Chuck and the client are on the up and up. Therefore, Shariq should inform Chuck professionally about what he witnessed. If a satisfactory explanation is not forthcoming, Shariq should inform a principal of his firm about what he witnessed and turn over the samples as well. Once they are informed of the situation, it is the firm's obligation to see that the client, the remediation contractor, and the authorities are informed about a potentially hazardous situation. "Blowing the whistle" or reporting Chuck or his firm anonymously should be Shariq's last resort – unless it is clear that all three are in cahoots. If Shariq's firm, the contractor, and the client are clearly in cahoots on this one, poor Shariq is between a rock and a hard place. He should resign and consider retaining an attorney to protect himself from potential loss of reputation and employment. As his attorney and as an officer of the court, Shariq's attorney has the obligation to protect his client's interests and to inform the proper authorities that a law may have been broken.

Comments from Board of Review Members

1. I've got several technical problems with the scenario in the first place. Shariq goes on site to collect samples (possibly), the last day before a holiday weekend...*bad practice*. Many types of samples have a very short holding time and cannot simply be "stored on ice" for an indefinite period. Most firms would wait until the day after a holiday rather than sample the day before one. Secondly, it is both *bad practice* and *unsafe practice* for one person to sample drums with unknown contents. Thirdly, the remediation contractor suggests that the materials in the drums are solid; *viz.*, he is going to put them in site as clean fill dirt. It is very difficult for one person by himself to sample soil from drums properly. Lastly, there is no "motive" for Shariq to say from past experience that contaminated soil would be hazardous "waste" — a very important distinction from "hazardous materials" as a term that is used later. These are not the same! While both terms have specific meanings and regulatory requirements, the requirements for each are very different depending upon which you have! It is pretty much impossible to look at a drum of soil and know "from past experience" the material would be hazardous waste. While this may be the way the situation described in the story really happened, if so, it amounts to bad sampling practice.

Those technical issues aside, what should Shariq do? He knows he did not test the soil and he knows his firm did not, and he also knows nobody else could have over the weekend. However, he does not know that nobody else EVER tested the soil. Legally, the owner can also certify based on knowledge of the origin of the soil that it is not hazardous waste. So, the proper thing for Shariq to do is to call Chuck immediately – while the remediation contractor is still there – and ask if he knows what is going on. Chuck can say "don't worry" or can provide a

reasonable explanation – *e.g.*, the soils were tested months ago when they were put in the drums and are clean. If Chuck appears to be hiding the truth and the soils have not been tested, then Shariq should go to Chuck's boss and have a discussion. Shariq can also ask the contractor's foreman if they have been provided copies of the test results (they should have been); and he can ask to review them. If the contractor knows Shariq's company was not involved in the testing they may be a little more concerned themselves. Of course, if Shariq keeps getting stonewalled, he faces a dilemma of what to do next.

2. Shariq should prepare a compressive, written report detailing all his observations, including observing the remediation contractor's involvement. The report should also include summaries of all applicable laws, rules and regulations that he is aware of that are relative to the matter. The report should be submitted to Chuck with a letter of transmittal recommending what Shariq believes is the appropriate action Chuck should take. When this is done, Shariq has discharged his ethical responsibilities.