

May 17, 2005

Honorable Steve Meadows
State Attorney
Fourteenth Judicial Circuit
Post Office Box 1040
Panama City, FL 32402

**Re: Request for Grand Jury Investigation of Activities within the
Florida, Department of Environmental Protection and Big
Wheel Recycling, Inc./Aztec**

Dear Mr. Meadows:

On May 3, 2005, we wrote to State Attorneys William N. Meggs and William Eddins requesting that they initiate investigations into the issue of the Florida, Department of Environmental Protection (FDEP) basing its hiring decisions, at least in part, on the political contributions that applicants have made to candidates for elective office. On May 5, 2005, both gentlemen responded by letter wherein they indicated that they were referring our complaint to your office for investigation. I therefore assume that by now you have received our complaint and that you are beginning your review of the same.

The reason for this correspondence is to more formally request that your office, in carrying out this investigation, empanel a grand jury, under the provisions of Section 905.01, Fla. Stat., et seq. and that the selection of said grand jurors be in accordance with the provisions generally applicable to the selection of petit jurors as enunciated in Section 40.01, Fla. Stat. We ask that the grand juror selection process be open, as is the case for the selection of petit jurors.

From the outset, please note that this is not the first time that PEER has sought an investigation into activities that have occurred in Bay County. On June 14, 2000, PEER filed a Petition ("2000 Petition") with Jeb Bush, Governor of the State of Florida. In that petition PEER asked Governor Bush to appoint a special prosecutor for the purpose of

investigating activities in the Fourteenth Judicial Circuit (which includes Bay County).¹ Those activities requiring investigation included (a) the construction of an underwater pipeline across St. Andrews Bay in violation of Chapter 403, Florida Statutes by Phoenix Construction, (b) the illegal destruction of wetlands associated with the expansion of Frank Brown Park in Panama City Beach, (c) the existence of at least 50 stormwater discharge pipes from Panama City Beach directly into the Gulf of Mexico without routine bacterial or nutrient monitoring, (d) the existence of at least 90 stormwater outfalls in Panama City Beach that discharge into stormwater treatment ponds with the potential to leach into the ground water, (e) the operation of the Bay County Incinerator without required dioxin monitoring of its air emissions and without normally required acid-gas scrubbers, (f) the existence of a 60-acre solid waste site with unlined disposal ponds owned by Smurfit-Stone and adjacent to Martin Lake with resulting contamination possibly including dioxin, (g) the disposal of up to 125,000-cubic yards per year of sludge at Gulf Farms, said sludge likely being contaminated with cadmium, copper, lead, nickel and zinc, (h) DEP's failure to conduct dioxin testing in St. Andrews Bay, despite numerous dioxin sources discharging directly into the bay and air in Bay County, and (I) the continued and increased discharge of effluent from Panama City Beach's sewage treatment plant into a small channel that flows directly into the Class II waters of West Bay—a shellfish harvesting area.

As noted in the 2000 Petition, Phoenix Construction (one of the entities under suspicion) was represented by members of a law firm that employed two attorneys who were also employed by Jim Appleman, the State Attorney for the Fourteenth Judicial Circuit. In addition, Mr. Appleman's daughter was also employed as an attorney by the same law firm. The same law firm represented the City of Callaway, a part owner of the Military Point Advanced Wastewater Treatment ("AWT") Facility implicated in the sewage pipeline controversy. Again, the same law firm represented the city of Panama City Beach in the matter involving Frank Brown Park. The overwhelming appearance of a conflict of interest by the Office of the State Attorney fully justified the appointment of a special prosecutor under these circumstances. Yet, Governor Bush denied the request on July 12, 2000, stating that a special prosecutor would not be appointed unless the local State Attorney, i.e. Mr. Appleman, requested the same.

In February 2001, PEER submitted another petition ("2001 Petition") to Governor Bush asking him to direct the Florida Department of Law Enforcement ("FDLE") to investigate alleged misconduct of public officials in Bay County, Florida.² The 2001 Petition informed Governor Bush of his statutory authority under § 943.03(2), Fla. Stat., to direct FDLE to undertake such an investigation into the alleged misconduct of public officials and employees who are subject to suspension or removal by the Governor. The allegations contained in the 2001 Petition involved activities that violated Florida's Sunshine Law. In addition to that, there was evidence of undue influence being placed upon members of the Bay County Planning Commission, as well as the forced resignation

¹ A copy of the 2000 Petition may be reviewed on PEER's website at http://www.peer.org/docs/fl/panamacity_petition.pdf

² A copy of the petition may be reviewed on PEER's website at http://www.peer.org/docs/fl/baycounty_petition.pdf

of the Bay County Planning Manager who was attempting to uphold the County's Comprehensive Plan. Moreover, there were continued conflicts of interest by the County Attorney that were routinely ignored by the attorney and Bay County officials. These types of violations have not been curtailed. Rather, they continue unabated to this day. The 2001 Petition sought an investigation into the alleged criminal actions and ethical violations taking place in Bay County. An independent investigation was more than warranted given the fact that the State Attorney for the Fourteenth Judicial Circuit, Jim Appleman, continued to operate under the same conflicts of interest that existed at the time of the filing of the 2000 Petition. Governor Bush not only refused to act on the petition—he virtually ignored it. No response was received from the Governor or anyone on his staff.

Our current request to Messrs. Meggs and Eddins sought an investigation into the extent to which undue and illegal political influence is being exerted upon the operation of the FDEP in the manner in which it hires and/or promotes employees who are in turn charged with executing the environmental laws of the State of Florida. We sought relief through their offices because they clearly had jurisdiction over the matter and, in addition, it is clear (based on the history detailed above) that seeking relief through the Governor's Office would be futile. Indeed, Governor Bush may well have a conflict of interest in considering the matter.

The political pressure in the present case, we believe, is not unlike what has historically taken place in Bay County. Some of the individuals involved in the current case were also involved in those issues. You are therefore in a unique position to be able to consider more than just the political contributions issue; but rather, you are in a position to consider other issues tied to the issue of political pandering. Indeed, we believe that it is more than appropriate for your office to review, and for a grand jury to investigate, the extent to which improper pressure was applied to FDEP employees either by FDEP administrators or by private parties or both in the handling of the FDEP's investigation into the landfill called the "Steelfield Landfill" in Bay County. That pressure resulted, we believe, in the failure to investigate and to prosecute a host of offenses in the environmental, labor and immigration arenas.

PEER's White Papers and Site History

In order to assist you in your investigation I am enclosing copies of the four (4) White Papers that PEER published after receiving and reviewing the compliance and enforcement file that was maintained by FDEP's Northwest District Office.

Our initial White Paper was issued on May 17, 2004, and was entitled "A Tale of FDEP Enforcement." This document presented an overview of identified groundwater violations that were found on the site of the landfill. The problems were first noticed by the FDEP in March 2002. They essentially centered around unusually high concentrations of aluminum that were detected in monitoring wells on the site. Despite the documented

findings of excessive amounts of aluminum, FDEP did nothing other than to continue to allegedly study the problem.

On May 26, 2004, we issued our next White Paper entitled “FDEP Ignores Asbestos and Other Violations at Construction and Debris Site Adjacent to Bay County’s Steelfield Landfill.” As the title implies, the White Paper discussed improper handling of asbestos at the site. Asbestos, as you are no doubt aware, is a deadly substance when it is airborne and inhaled by humans. It is for that reason that special precautions must be taken in the handling of the substance. However, FDEP records reflected that the facility was handling the asbestos in violation of the permit.

We issued our third White Paper on June 7, 2004. It is entitled “Permit Irregularities, Federal Convictions, Political Connections, and FDEP Senior Management—the Troubling History of The Big Wheel C&D Disposal Facility.” This document will give you a detailed account of the history behind the facility, its owners and the political connections associated with it. Simply stated, the facility has connections to a like-named facility in Alabama, Big Wheel Recycling, Inc. of Alabama (BWRI of Alabama). The principals of the Alabama company were indicted on numerous charges including mail fraud, conspiracy to commit mail fraud, conspiracy to commit money laundering and money laundering to promote illegal activity. Convictions were ultimately obtained.

BWRI of Alabama purchased the property that is now known as the Steelfield Landfill from a Florida company called GAC Contractors, Inc. The conveyance took place on April 19, 2000. Two directors of GAC Contractors are Allan G. Bense (Current Speaker of the Florida House of Representatives) and Charles Hilton. GAC Contractors retained a reversionary interest in the property. Thus, GAC still has a significant interest in the activities that occur on site.

BWRI of Alabama owned the property in Bay County during the time that the criminal proceedings were taking place in Alabama. Then, after a federal judge issued a forfeiture order, the company transferred its ownership to Big Wheel Recycling of Florida. One of the directors of BWRI of Florida was Dwight Faulk, who was also a director of BWRI of Alabama. Mr. Faulk was under indictment at the time of the transfer. Another of the directors of BWRI of Florida was a man named Jimmy Livingston. Mr. Livingston is also a director of Aztec Environmental, Inc. He was represented by Nevin Zimmerman, a local attorney and business associate of William G. Harrison, Jr.³

As is pointed out in our White Paper, Aztec Environmental, Inc. was the company that actually applied for the FDEP permit that gave it the authority to operate the Steelfield Landfill. The permit application indicated that the site would be run as the Big Wheel C&D Disposal Facility. In the application Aztec misrepresented that it owned the property. Thus, on August 2, 2001, FDEP issued a Construction and Debris Permit to Big Wheel C&D Disposal Facility, a company that did not legally exist. The operator, Aztec,

³ In fact, when Mr. Livingston incorporated another company, Aztec Recyclers, Inc., Mr. Harrison’s relative, Franklin R. Harrison, filed the Articles of Incorporation for him.

was allowed to operate the facility on property that it did not own and had not shown that it had the legal authority to use.

At some point either before or after issuance of the permit the facility began to accept C&D material. Some of the material included asbestos. This activity was the catalyst for the complaints that were made to the FDEP by workers at the site. As previously stated, however, the complaints fell on deaf ears. However, what is now known is that some employees from the FDEP's Panama City office did inspect the facility in the summer of 2002. One inspector found problems associated with the improper handling of asbestos at the site. A few months later the then branch manager in the Panama City office abruptly left his position. He was replaced in December 2002, by Mr. Henry Hernandez. Mr. Hernandez is the same individual whose campaign contributions were reviewed by FDEP prior to formal approval being given for his promotion.

What is also now known is that during this time period, i.e. on January 9, 2003, two other prominent individuals, Messrs. William G. Harrison, Jr. and Randall McElheney, were added to the Big Wheel Board of Directors. In addition, Mr. Hernandez was asked to, and did, meet with Mr. Harrison in an interview setting prior to his formal appointment to the position of Environmental Administrator, i.e. Branch Manager. On information and belief, the direction to attend this interview came from someone in Tallahassee. Mr. Hernandez formally took over as the Panama City Environmental Administrator in April 2003.

On July 21, 2004, PEER issued its fourth White Paper on the subject. This White Paper was entitled "FDEP's Continuous Efforts to Obfuscate It's Lack of Performance In the Matter of Big Wheel Recycling." This White Paper details the enforcement guidelines that apply to FDEP's handling of enforcement cases. In addition, the White Paper discussed the fact that FDEP files reflected that the agency had changed a formal warning letter that was sent to the permittee. The original warning letter had included issues involving groundwater and asbestos violations. The version that was sent failed to include these issues. The White Paper further detailed the fact that on July 10, 2003, the FDEP inspected the Steelfield Landfill and gave it a clean bill of health. On that same day, Messrs. Harrison and McElheney resigned from the Big Wheel Board of Directors.

Danny Walker Interview

At least one Big Wheel employee, Mr. Danny Walker, contacted FDEP and attempted to tell the agency about the problems. FDEP records confirm that he called them. However, the records also reflect that no in depth interview was conducted. In short, there was no follow-up. In fact, to our knowledge no governmental agency has spoken with this man. Yet, he was easily located by a local reporter and interviewed in depth. In that interview he identified violations by Big Wheel—the violations included areas involving the environment, labor, as well as illegal immigration. The interview in question was published on the website of Insider Magazine. A copy of the interview is enclosed herewith.

Site Photographs

We are including four (4) photographs of the site. These four photographs are interesting inasmuch as they show two of the larger pits located on the property. The first three photographs are of the largest pit. Immediately under the sign entitled “Buffer Area” one can clearly see trails in the sand that are suggestive of discharges from tanker hoses, i.e. tanker trails. Vegetation inside the pit is distressed—indicative of potential pollutants. The third of these photographs show that a pump was installed at the far end of the largest pit, the purpose of which is unknown at this time.

The fourth photograph is of another pit. It clearly shows vegetation that is in significant distress. Again, an indication of some type of pollutant discharge. One of the monitoring wells, MW-2 is located on the periphery of this pit. However, the extent to which discharges into this pit would have affected readings at this well is unknown. If the groundwater flow were away from the well, the same could potentially show abnormally low readings, not fully indicative of the actual dumping at the pit.

Campaign Contributions

Attached hereto are copies of printouts from the State of Florida, Division of Elections website. The printouts primarily cover campaign contributions that were made to candidates and political parties in advance of the 2002 General Election. A review of those campaign contributions will readily show that Aztec, Big Wheel and their principals made substantial contributions totaling thousands of dollars to the campaign of Governor Bush prior to and during the time of the “FDEP investigation” into allegations of asbestos problems at the site.

In addition, it is now known that Charles Hilton, whose company, GAC, retains a reversionary interest in the Steelfield Landfill, was also a founding member of the Club for Growth, a political action committee in Washington, D.C. The Club for Growth’s mission is, inter alia, to elect republican candidates to elective office throughout the country. In addition to Mr. Hilton, another Bay County resident, K. Earl Durden, current Chairman of the Florida Transportation Commission, is also a founding member. Both men serve on the Club for Growth’s Founder’s Committee. See, <http://www.clubforgrowth.com/staff.php>.

The simple fact is that the Steelfield Landfill has an ownership history that is highly political in nature. The men involved were, and are, closely connected to the upper levels of Florida State Government. It is also evident that during the time of the 2002 General Election, when the Steelfield Landfill was under scrutiny for environmental violations, thousands of dollars were pouring into the campaign coffers of Governor Jeb Bush.

FDEP's Response

FDEP received copies of PEER's White Papers. The agency's response has been consistent throughout. The Panama City News Herald reported on May 27, 2004, that indicated that FDEP was reviewing PEER's report on the landfill. Former District Director, Mary Jean Yon, later told a reporter for the Tampa Tribune that "As long as I'm seeing a willingness to respond to the issues, ... I'm not going to yank their permit."⁴ Then, on May 3, 2005, a FDEP spokesperson advised Greg Neumann at WEAR-TV that FDEP never intended to undertake a complete investigation of the facility. As WEAR-TV's report states:⁵

[s]he also claims the FDEP never intended to do a complete investigation of Big Wheel Recycling, Inc...saying the company was cited by the FDEP on only one occasion.

The bottom line is clear. The FDEP has admitted that it never intended to actually investigate the issues that PEER brought to its attention.

The Issues Presented

There are several issues that PEER maintains need to be addressed by your office. They include:

- FDEP's use of an applicant's campaign contributions as a factor in deciding whether to hire, fire or promote the applicant/employee. This is not a matter that turns on the amount of the contributions. Rather, it is an issue of illegally using such information in making the employment decision. It is clear that this approach has been used in at least one case. The question is whether it has been done in other cases. In order to determine the answer to that question we maintain that a review of personnel files in Pensacola and in Tallahassee must be undertaken.
- The practice of requiring applicants to "interview" with members of industry prior to the applicant being given the position sought is one of immense concern. If allowed to continue it will serve to foster a legitimate mistrust in the agency and the decisions that it makes.
- The issue of political influence peddling in the Northwest District is significant. The Big Wheel matter poses serious questions about whether campaign contributions were used as a means of illegally influencing the FDEP's decision(s) on enforcement. There is ample evidence in the Division of Elections files that significant campaign contributions were made during the time that this matter was, or should have been, under review by FDEP.
- One overriding question has yet to be answered. What is the extent of the pollution at the Steelfield Landfill? The FDEP has shown no interest in answering

⁴ Tampa Tribune, "Watchdog Hammers Pollution Oversight," June 8, 2004

⁵ WEAR-TV, "Florida DEP Denies Wrongdoing," May 3, 2005

Honorable Steve Meadows
State Attorney, Fourteenth Judicial Circuit
Re: Request for Grand Jury Empanelment
May 17, 2005

- this question. Photographs of the site indicate that large pits have been dug and that hoses have likely been used to discharge liquids onto these pits. The vegetation in the area is distressed. Further, the pits are in the immediate vicinity of the monitoring wells that we believe were showing spikes for excessive aluminum concentrations in the groundwater.
- Finally, one issue that has been raised via the Danny Walker interview is that of the use of illegal immigrants on the site. While PEER's mission does not encompass immigration issues, the fact is that Mr. Walker did identify this as a problem. Further, the environmental violations at the site directly affect these workers in a negative way. We do not know whether or not this is within the purview of your office, however, we would be remiss if we did not advise you of the same.

Thank you for your assistance in this matter. Should you have any further questions please feel free to contact me at (850) 877-8097.

Sincerely,

Jerry Phillips
Director

Encl.