



DEPARTMENT OF THE AIR FORCE
ARLINGTON, VA 22203-1613

SEP 08 2005

Office of the Deputy General Counsel

MEMORANDUM IN SUPPORT OF THE PROPOSED DEBARMENTS OF:

AZTEC ENVIRONMENTAL, INC.
AZTEC RECYCLERS, INC.
AZTEC CIVIL CONSTRUCTION, INC.
BIG WHEEL RECYCLING, INC.
AZTEC TOWING AND RECOVERY, LLC d/b/a
WHITES AZTEC TOWING
HOMETOWN LAND, LLC
T&L CONSTRUCTION, LLC
NORTH FLORIDA ENVIRONMENTAL SERVICES, INC.
DEBORA KING LIVINGSTON a/k/a
K. LIVINGSTON a/k/a
DEBBIE K. LIVINGSTON
JAMES FRANKLIN LIVINGSTON a/k/a
JIMMY F. LIVINGSTON
BENJAMIN J. LIVINGSTON a/k/a
BJ LIVINGSTON
ROBERT P. LIVINGSTON a/k/a
ROBBIE LIVINGSTON
WAYNE C. LOPER
BILLY E. TOLSON
LINGANI L. MATIWANE a/k/a
LEE MATIWANE
JONATHAN ROY DANIELS
DEBRA KAY DANIELS
ROBERT MELL CASON
KENNETH DEWAYNE WASHINGTON
RICHARD CLAY FENNELL
TERRI FENNELL
ZACK KNIGHT
LEE JAY KINNER
JESSIE ALLEN HYSMITH
RUBEN DARBIO MEDINA
SCOTT MEGARY

Effective this date the Air Force has proposed the debarments of Aztec Environmental, Inc. (AEI), Aztec Recyclers, Inc. (ARI), Aztec Civil Construction, Inc. (ACCI), Big Wheel Recycling, Inc. (BWR), Aztec Towing and Recovery, LLC d/b/a Whites Aztec Towing (ATR), Hometown Land, LLC (HL), T&L Construction, LLC (T&L), North Florida Environmental Services, Inc. (NFES), Debora King Livingston, a/k/a K. Livingston, a/k/a Debbie K. Livingston

Freedom Through Air Power

Nov. 21 2005 10:40AM P2

FAX NO. : 850-942-5264

FROM : FLORIDA PEER

(D. Livingston), James Franklin Livingston, a/k/a Jimmy F. Livingston (J. Livingston), Benjamin J. Livingston, a/k/a BJ Livingston (B. Livingston), Robert P. Livingston, a/k/a Robbie Livingston (R. Livingston), Wayne C. Loper (Loper), Billy E. Tolson (Tolson), Lingani L. Matiwane, a/k/a Lee Matiwane (Matiwane), Jonathan Roy Daniels (J. Daniels), Debra Kay Daniels (D. Daniels), Robert Mell Cason (Cason), Kenneth Dewayne Washington (Washington), Richard Clay Fennell (R. Fennell), Terri Fennell (T. Fennell), Zack Knight (Knight), Lee Jay Kinner (Kinner), Jessie Allen Hysmith (Hysmith), Ruben Darbio Medina (Medina), and Scott Megary (Megary) from Government contracting and from directly or indirectly receiving the benefits of federal assistance programs. The actions are initiated pursuant to Federal Acquisition Regulation (FAR) Subpart 9.4.

INFORMATION IN THE RECORD

Information in the record indicates that at all times relevant here:

1. AEI was an 8(a), woman-owned, HUBZone certified business incorporated in Florida. In July 2003, AEI was awarded a subcontract by All Cities Enterprises, Inc. (ACE), an Air Force prime contractor, to perform work on ACE's Building 90333 demolition and renovation contract at Hurlburt Field (HFLD), Florida (the demolition and renovation contract). AEI was responsible for the asbestos removal for the demolition and renovation contract. In November 2002, AEI was also awarded contract number F08637-03-C-4002 (contract 4002) for the removal of oil, grease, and sump pump waste from approximately 28 tanks on Tyndall Air Force Base (TAFB).
2. AEI was licensed to do business in Florida, Georgia, Alabama, and Mississippi.
3. ACCI, ARI, ATR, and BWR were businesses incorporated in Florida.
 - a. BWR provided refuse services and specialized in waste materials recycling. The corporation's field office was located at 1420 Industrial Road, Port Saint Joe, Florida or 11640 Steel Field Road, Panama City, FL 32412.
 - b. ATR provided automotive services, specializing in towing services.
4. HL and T&L were limited liability companies incorporated in Florida. T&L was in the business of construction.
5. AEI, ARI, ACCI, BWR, ATR, HL, and T&L shared employees and facilities and were all located at 475 Harrison Avenue, Panama City, FL 32401.
6. J. Livingston was the Vice-President of AEI, the President of ARI, the owner and sole director of ACCI, the President, CEO and 50% owner of BWR, and an officer of T&L.
7. D. Livingston was the President and Chief Executive Officer (CEO) of AEI, and was married to J. Livingston.

8. B. Livingston was an officer of ATR and HL, the son of J. and D. Livingston, and the brother of R. Livingston.

9. R. Livingston was an officer of ATR and HL, the son of J. and D. Livingston, and the brother of B. Livingston.

10. Loper was the Chief Financial Officer (CFO) of AEI, controller of BWR, the CFO of ATR, and an agent of T&L.

11. D. Livingston, J. Livingston, and Loper together owned 100% of the capital stock of AEI.

12. Tolson was a director of AEI, and the director and sole officer of T&L.

13. Matiwane was a systems administrator for AEI and an officer of HL.

14. Cason was Vice President of Operations, J. Daniels, R. Fennell, Knight, Medina, and Washington were supervisors, and D. Daniels was an employee of AEI. J. Daniels was the nephew of J. and D. Livingston, and was married to D. Daniels.

15. T. Fennell, Hysmith, and Kinner were BWR employees. R. Fennell was married to T. Fennell.

16. NFES was a Florida company in the business of air monitoring. NFES was an AEI subcontractor responsible for monitoring the air at the Hurlburt Field job site for the demolition and renovation contract. Megary was the President of NFES.

17. Violation of Asbestos Demolition and Renovation Standards

a. Federal and Florida law, including the Clean Air Act, the Occupational Safety and Health Act (OSHA), Florida public health statutes, and implementing regulations prescribe the proper handling of asbestos containing material in connection with demolition and renovation activities. These standards include techniques designed to prevent or limit the release of asbestos into the environment and worker exposure. Asbestos is a hazardous air pollutant. 42 U.S.C. § 7412. AEI's subcontract and contract 4002 both required compliance with all applicable federal, state, and local laws.

b. On July 23, 2003 Greg Landry (Landry), a compliance inspector with the Air Resources Management Division of the Florida Department of Environmental Protection (FDEP), identified numerous violations of the National Emissions Standards for Hazardous Air Pollutants (NESHAP) at the demolition and renovation contract site, relating to the improper handling of regulated asbestos containing material (RACM) including the lack of containment, dry removal of RACM, and use of improperly marked open dumpsters. On July 25, 2003, J. Livingston acknowledged the material removed from Building 90333 contained RACM.

c. On August 19, 2003, investigators found two open dumpsters next to the demolition and renovation site. Analysis revealed the waste from one of the dumpsters contained more than one-percent asbestos, making it subject to NESHAP regulations.

d. AEI employees related that J. Daniels, R. Fennell, Knight, and Washington instructed workers to employ methods that violated the applicable standards.

18. Violation of Disposal Standards

a. Federal and Florida law, including the Clean Air Act, U.S. hazardous material transportation statutes, Florida public health statutes, and implementing regulations prescribe the proper disposal of asbestos waste. These standards include techniques designed to prevent or limit the release of asbestos into the environment, proper documentation and transportation of asbestos waste, and the prompt disposal of asbestos waste in authorized disposal sites. The Clean Water Act and its implementing regulations prohibit unauthorized releases of pollutants into regulated waters of the U.S., including wastewater treatment facilities. These requirements are designed to protect the public health and environment. AEI's subcontract and contract 4002 both required compliance with all applicable federal, state, and local laws.

b. On July 29, 2003, J. Livingston admitted that waste containing friable asbestos was removed from the demolition and renovation contract site and dumped at BWR, a landfill that is not certified to handle friable asbestos. Michael Lee Owens (Owens), a BWR employee, stated that the waste was delivered to BWR without the required shipment documents and was disposed of with nonasbestos contaminated construction and demolition debris.

c. On July 29, 2003, Landry directed J. Livingston to remove the friable asbestos from BWR and dispose of it at a landfill certified to receive friable asbestos. On July 30, 2003, J. Livingston asked Landry to reclassify the friable asbestos waste as nonfriable asbestos. Landry refused. In August 2003, J. Livingston falsely advised Landry that the friable asbestos waste had been removed from BWR and disposed of at a certified landfill.

d. Billy Eldridge (Eldridge), a BWR truck driver, admitted removing a dumpster containing asbestos from the demolition and renovation contract site and delivering it to BWR in July 2003. Eldridge dumped the contents without the required documentation because Washington assured him that he would have the documentation at a later time. Eldridge signed the Building 90333 waste shipment record after the fact, although he admitted he did not know what had been in the shipment. Eldridge also admitted signing at least two other waste shipment records after the dates on the documents, in violation of applicable standards.

e. Jonathan Blackburn (Blackburn), a former AEI employee, saw R. Fennell dumping friable asbestos waste at BWR in 2002.

f. In connection with contract 4002 and under the direction of J. Livingston, Hysmith illegally dumped oil and grease at Port St. Joe, FL wastewater facility. J. Livingston subsequently paid Port St. Joe compensation for the illegal release, but falsely stated that AEI

dumped septic waste and not grease and oil. Hysmith admitted he illegally dumped the material at Port St. Joe, FL.

g. On behalf of BWR, Kinner illegally disposed of sludge material collected from TAFB.

19. Interference with Environmental Inspections and Record Keeping Violations

a. Federal and Florida law, including the Clean Air Act, Florida Public Health Statute § 403.091, and implementing regulations require federal and state compliance inspections. Interference with inspections, falsification of documentation, and implementation of methods to conceal violations of applicable standards are prohibited.

b. On July 23, 2003, J. Livingston arrived at the demolition and renovation site before a FDEP inspector was expected to arrive and ordered employees to hide evidence of the improper handling of asbestos. Asbestos-covered carpets were thereupon commingled with ceiling tiles and bagged asbestos, and dumped into open dumpsters outside Building 90333.

c. In September 2003 R. Fennell told T. Fennell that in order to avoid detection during an upcoming FDEP inspection of BWR, T. Fennell should cover the asbestos contaminated areas with clean dirt.

d. AEI interfered with the efficacy of air sampling by operating negative air machines and not properly enclosing the affected area.

e. D. Daniels completed waste shipment records, required to be provided to disposal site operators at the time of delivery of asbestos waste, after the fact. D. Daniels required BWR truck drivers, whom she knew did not transport the waste, to sign certifications falsely stating that they had transported the asbestos waste.

f. D. Livingston forged Mark Carr (former AEI employee) and Owens' names on a required hazardous material handling course certificate before performing a lead mining contract at TAFB.

20. Violation of Employment and Labor Practices

a. Immigration and nationality statutes, including the Immigration Reform and Control Act and the Immigration and Nationality Act, establish employer responsibilities with respect to the hiring of immigrants. Employers may hire only U.S. citizens, U.S. nationals, and aliens authorized to work in the U.S. Employers must verify the identity and employment eligibility of anyone hired. The Fair Labor Standards Act, OSHA, and other labor statutes, prescribe employer obligations with respect to minimum wage, working conditions, and worker safety.

b. In August of 2003, the Federal Bureau of Investigation (FBI), Defense Criminal Investigative Service (DCIS), and Immigration and Customs Enforcement (ICE) agents identified several illegal aliens employed by AEI with access to Air Force installations. These individuals had previously complained to AEI supervisors about the long hours and low pay they

were receiving from AEI to perform asbestos removal. In response, J. and D. Livingston threatened to report them to immigration authorities. The Department of Labor (DoL) substantiated that AEI workers were underpaid and overworked. DoL found that 43 workers (mostly illegal aliens) were owed \$38,754.01 in wages.

c. On September 8, 2003, AEI job submittals relating to the demolition and renovation contract listed a fictitious social security number for AEI employee Roberto Evangelista Estrada (Estrada). AEI submitted a false social security number for Estrada on certified payroll documents and on asbestos training certification documents. In October 2003, an AEI job submittal relating to asbestos abatement work listed 37 names and associated social security numbers, 21 of which were false. Between 2002 and 2003, 96 of 339 AEI employees had false social security numbers.

d. Knight and Medina advised illegal aliens to work under false names or aliases in order to have legal documentation on file at AEI headquarters. Jorge A. T. Rodriguez (Rodriguez), a former Aztec employee, stated that Medina, R. Fennell, and Cason knew Rodriguez was an illegal alien. On April 6, 2004, ten illegal aliens were arrested at the residence of Medina.

21. Contractual Violations

a. The demolition and renovation contract and AEI's subcontract required asbestos abatement per Environmental Protection Agency and OSHA regulations, and in accordance with the contracts' asbestos abatement plan (Plan). Plan requirements included site containment, wet removal, air monitoring, and proper disposal of RACM. The requirements of the Plan were not adhered to.

b. Air monitoring was not performed at the frequency required by the Plan. In July or August 2003 J. Livingston requested NFES change the dates on the air monitoring reports to make it appear that air monitoring had been performed on a daily basis. Megary changed the dates for the air monitoring reports. Megary had also previously altered air monitoring reports at J. Livingston's request in or about March or April 2002, in connection with another asbestos abatement project at HFLD.

c. The demolition and renovation contract post-job submittal included shipment documents forged by D. Livingston and results of air samples taken from outside the containment area while purporting to be from within the containment area. Knowing these documents were false, D. Livingston signed and submitted the post-job submittal to the 16th Contracting Squadron on September 26, 2003.

BASES FOR THE PROPOSED DEBARMENTS

1. AEI's willful failure to perform and history of failure to perform in accordance with the terms of Government contracts or subcontracts provides separate bases for its debarment pursuant to FAR 9.406-2 (b)(1).

2. The seriously improper conduct of AEI, BWR, NFES, D. Livingston, J. Livingston,

J. Daniels, D. Daniels, Cason, Washington, R. Fennell, T. Fennell, Knight, Kinner, Hysmith, Medina, and Megary, is of so serious or compelling a nature that it affects their present responsibility to be Government contractors or subcontractors and provides a separate basis for their debarments pursuant to FAR 9.406-2(c).

3. Pursuant to FAR 9.406-5(a), the seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a contractor may be imputed to the contractor when the conduct occurred in connection with his or her performance of duties for or on behalf of the contractor, or with the knowledge, approval or acquiescence of the contractor.

a. As officers, directors, shareholders, or employees, the seriously improper conduct of D. Livingston, J. Livingston, J. Daniels, D. Daniels, Cason, Washington, R. Fennell, T. Fennell, Knight, Kinner, Hysmith, and Medina may be imputed to AEI and BWR. These imputations provide separate bases for the debarments of AEI and BWR.

b. As an officer, director or owner, the seriously improper conduct of J. Livingston may be imputed to ARI, ACCL, and T&L, and provide separate bases for the debarments of ARI, ACCL, and T&L.

c. As president of NFES, the seriously improper conduct of Megary may be imputed to NFES, and provides a separate basis for the debarment of NFES.

4. Pursuant to FAR 9.406-5(b), the criminal, fraudulent, and seriously improper conduct of a contractor may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the contractor, who knew of, or had reason to know of the contractor's criminal, fraudulent, and seriously improper conduct.

a. The seriously improper conduct of AEI and BWR may be imputed to D. Livingston, J. Livingston, Loper, J. Daniels, D. Daniels, Cason, Washington, R. Fennell, T. Fennell, Knight, Kinner, Hysmith, and Medina as officers, directors, shareholders, partners, employees, or other individuals associated with AEI and BWR who knew of, or had reason to know of, the seriously improper conduct. This imputation provides a separate basis for the debarments of D. Livingston, J. Livingston, Loper, J. Daniels, D. Daniels, Cason, Washington, R. Fennell, T. Fennell, Knight, Kinner, Hysmith, and Medina.

b. The seriously improper conduct of NFES may be imputed to Megary as an officer of NFES who knew of, or had reason to know of, the seriously improper conduct. This imputation provides a separate basis for the debarment of Megary.

5. Pursuant to FAR 9.406-1(b), debarments may be extended to the affiliates of a contractor, as defined in the FAR 9.403.

a. D. Livingston, J. Livingston, Loper, Cason, Kinner, AEI and BWR are affiliates because directly or indirectly D. Livingston, J. Livingston, Loper, Cason, and Kinner, control or can

control AEI and BWR. That affiliation provides a separate basis for the debarments of D. Livingston, J. Livingston, Loper, Cason, Kinner, AEI and BWR.

b. J. Livingston, ARI and ACCI are affiliates because directly or indirectly J. Livingston controls or can control ARI and ACCI. That affiliation provides a separate basis for the debarments of ARI and ACCI.

c. B. Livingston, R. Livingston, Loper and ATR are affiliates because directly or indirectly B. Livingston, R. Livingston and Loper control or can control ATR. That affiliation provides a separate basis for the debarments of B. Livingston, R. Livingston, Loper, and ATR.

d. B. Livingston, R. Livingston, Matiwane, and HL are affiliates because directly or indirectly B. Livingston, R. Livingston, and Matiwane control or can control HL. That affiliation provides a separate basis for the debarments of B. Livingston, R. Livingston, Matiwane and HL.

e. J. Livingston, Loper, Tolson, and T&L are affiliates because directly or indirectly J. Livingston, Loper, and Tolson control or can control T&L. That affiliation provides a separate basis for the debarments of J. Livingston, Loper, Tolson and T&L.

f. Megary and NFES are affiliates because directly or indirectly Megary controls or can control NFES. That affiliation provides a separate basis for the debarments of Megary and NFES.

g. Pursuant to FAR 9.403, interlocking management or ownership, shared facilities and equipment, and common use of employees are "indicia of control" so as to make entities affiliates of each other. AEI, ARI, ACCI, BWR, ATR, HL, and T&L are affiliates of each other as evidenced by their interlocking management or ownership, use of shared or common facilities, equipment, and employees. That affiliation provides a separate basis for the debarments of AEI, ARI, ACCI, BWR, ATR, HL, and T&L.

h. D. Livingston and J. Livingston are affiliates of each other because as husband and wife to each other, at least indirectly each had the power to control the other, as evidenced by identity of interest among family members. The affiliation of D. Livingston and J. Livingston provides a separate basis for their debarments pursuant to FAR 9.406-1(b).

i. D. Livingston, J. Livingston, B. Livingston, and R. Livingston are affiliates of each other because as parents and children of each other, at least indirectly each had the power to control the other, as evidenced by identity of interest among family members. The affiliation of D. Livingston, J. Livingston, B. Livingston, and R. Livingston provides a separate basis for their debarments pursuant to FAR 9.406-1(b).

j. J. Daniels and D. Daniels are affiliates of each other because as husband and wife to each other, at least indirectly each had the power to control the other, as evidenced by identity of interest among family members. The affiliation of J. Daniels and D. Daniels provides a separate basis for their debarments pursuant to FAR 9.406-1(b).

k. R. Fennell and T. Fennell are affiliates of each other because as husband and wife to each other, at least indirectly each had the power to control the other, as evidenced by identity of interest among family members. The affiliation of R. Fennell and T. Fennell provides a separate basis for their debarments pursuant to FAR 9.406-1(b).



Exemption B (6)

STEVEN A. SHAW
Deputy General Counsel
(Contractor Responsibility)