

May 3, 2005

Honorable, William N. Meggs
State Attorney
Office of the State Attorney
301 S. Monroe Street
Tallahassee, FL 32301-1881

Via Facsimile (850) 488-6701

Honorable, Bill Eddins
State Attorney
Office of the State Attorney
P.O. Box 12726
Pensacola, FL 32575-2726

Via Facsimile (850) 595-4212

**Re: Request for Investigation of Activities within the
Florida, Department of Environmental Protection**

Dear Sirs:

I write to you in hopes that you will initiate an investigation, through grand jury if needed, of activities that have occurred within the State of Florida, Department of Environmental Protection's Northwest District Office (NWD) in Pensacola and/or the agency's headquarters (HQ) in Tallahassee. The activities involved implicate violations of Section 110.105(2), Fla. Stat., which states that:

(2) All appointments, terminations, assignments and maintenance of status, compensation, privileges, and other terms and conditions of employment in state government shall be made without regard to age, sex, race, religion, national origin, political affiliation, marital status, or handicap, except when a specific sex, age, or physical requirement constitutes a bona fide occupational qualification necessary to proper and efficient administration. (Emphasis added)

The Florida Legislature takes the violation of this statute seriously, as is evidenced by Section 110.127(1), which elevates the violation to a criminal offense. The violation constitutes a second degree misdemeanor. Section 110.127(2) disqualifies those convicted of violating Section 110.105 from employment with the State of Florida for a period of five (5) years.

A. A Known Incident of Violation of Section 110.105(2), Fla. Stat.

Florida PEER has learned of various illegal activities including violations of Florida's groundwater regulations and the handling of asbestos. The activities were allegedly taking place at a landfill in Bay County, Florida. The landfill is the Big Wheel C&D Disposal Facility (Landfill) and it is allowed to operate pursuant to a permit issued to it by the FDEP. The property upon which the Landfill is operated is owned by Big Wheel Recycling, Inc., a Florida corporation (BWRI of Florida). However, the application for the FDEP permit was applied for by a non-existent corporation, Aztec Environmental, Inc.

During the course of its investigation Florida PEER learned that Mr. Gary Shaffer, the Branch Manager of the NWD's Panama City Office, had resigned in December 2002. Mr. Shaffer's job included, inter alia, oversight of that office's enforcement activities. This included the investigation of the Landfill. Ultimately Mr. Shaffer reported to the NWD District Director, Ms. Mary Jean Yon. Mr. Shaffer's resignation obviously created an immediate vacancy to be filled in the Panama City Office.

One of the individuals who applied for Mr. Shaffer's position was Mr. Henry B. Hernandez, who was already employed by the NWD and worked in the Panama City Office. During the course of Florida PEER's investigation we submitted a public records request to FDEP, pursuant to Section 119.07, Fla. Stat, asking to review the personnel files belonging to Messrs. Shaffer and Hernandez.¹ Due to Mr. Shaffer's long tenure with the FDEP, his file was still a paper file, whereas Mr. Hernandez' file was maintained electronically. The two files were otherwise similar, except for one striking difference—**that being the consideration of Mr. Hernandez' campaign contributions.**

Mr. Hernandez' file includes, in pertinent part, an application for the position of Environmental Administrator, i.e. the position Branch Manager for the Panama City Office. The application was submitted on January 15, 2003, along with his resume. As previously stated, he was already working for the NWD at the time that he submitted his application.

Mr. Hernandez was quickly elevated to the position of Acting Environmental Administrator shortly after Mr. Shaffer resigned. Nevertheless, according to FDEP records, he was interviewed by NWD District Director Yon on February 10, 2003. That

¹ Florida PEER had already received and reviewed FDEP's compliance and enforcement file pertaining to the Landfill. That review was also conducted after submission of a public records request.

same day she submitted a Personnel Action or Change Notice to HQ, requesting that Mr. Hernandez be appointed to the position, effective February 17, 2003.

The file reflects no additional activity until February 13, 2003, when Mr. Allen Bedwell, Deputy Director of Regulatory Programs, approved the request. Mr. Bedwell works in the HQ in Tallahassee. In his position, Mr. Bedwell reported to the then-FDEP Secretary, David Struhs. The form also reflects that Ms. Lisa Edg approved the request, possibly on that date. The final approval was obtained on February 28, 2003, when an individual named Jennifer signed the form. Jennifer's last name is illegible.

February 13, 2003, is significant. It is significant because included in Mr. Hernandez' official personnel file were copies of campaign contributions that he had made in reference to Florida's 2002, General Election, as well as to the then-upcoming 2003 Special Election for Senate District 26 and House District 30. The search for that information was performed, according to the printout, on February 13, 2003, the same day that Mr. Bedwell approved Director Yon's request.

Mr. Hernandez' file thus contains clear evidence that his political affiliation was used as a factor in deciding whether or not he should be approved for the position of Environmental Administrator over the NWD's Panama City Office. This constitutes a direct violation of Section 110.105(2), Fla. Stat. However, there is also another piece of evidence that is illuminating on the subject. This evidence deals with the Landfill that was the subject of investigation by the Panama City Office during this time.

Records from the State of Florida, Department of State, reflect that on January 9, 2003, two individuals were added to the Board of Directors for Big Wheel Recycling, Inc. These two individuals are William Gerald Harrison, Jr. and Randall McElheney. Both men are politically powerful individuals in the State of Florida.

William Gerald Harrison, Jr. is an attorney and partner with the firm of Harrison, Rivard, Zimmerman, Bennett in Panama City, Florida. At the time that he became a director of BWRI of Florida, he was also a registered lobbyist for the St. Joe Company and a member of Governor Jeb Bush's 1998-1999 transition team. He was also a member of President George W. Bush's transition team in 2000-2001. One of his current law partners, Nevin Zimmerman (in addition to representing Bay County from 1980 through 2002) had represented BWRI of Florida in its efforts to acquire the Bay County property owned by BWRI of Alabama.²

Randall McElheney, the other man added to BWRI of Florida's board of directors, is also a director of several corporations. One of those corporations is a not-for-profit corporation, Citizens to Protect Florida's Economy, Inc., which is an advocacy group, headquartered in Tallahassee, that deals with health care issues in Florida. McElheney was also on Governor Bush's transition team that oversaw the Department of Health.

² At the time that Zimmerman was involved in the transfer of property on behalf of BWRI of Florida he was a partner at the Panama City law firm of Burke and Blue, P.A. In 2002, he joined Harrison in Harrison's firm.

According to the Panama City News Herald, McElhenny also represented President Bush's campaign during the election recount in November 2000.³ Chairman Al Cardenas of the Republican Party of Florida then appointed him to an Ad Hoc Committee. The purpose of the committee was to review the experiences of the November 2000 election and to recommend any necessary changes to the Republican Party.⁴

The significance of these two individuals being added to the Board of Directors for BWRI of Florida to this case is that Mr. Hernandez has reported that prior to his being approved for the position of Environmental Administrator over the NWD's Panama City Office he was asked to, and did, interview with Mr. Harrison over lunch. This is a clear circumstantial indication that Harrison, a politically influential member of the Republican Party with close ties to the Governor, used his influence in order to ensure that, in their opinion, the person chosen for the position would be of their own political persuasion. This behavior is, we believe, prohibited by Section 110.105, Fla. Stat.

B. The Situation Today

While the above-described incident took place after the applicable statute of limitations for prosecution of a second degree misdemeanor had expired, the incident is indicative of the politicizing of the FDEP over the past few years. This is particularly true of the NWD, a district that has, itself, been the subject of Grand Jury inquiry in Escambia County. ASA Russell G. Edgar, Jr. handled that investigation and is thus well aware of the NWD's colorful history. In two reports within the past five (5) years the Escambia County Grand Jury has criticized the office of mismanagement and questionable decisions made by the NWD. It is thus clear that the NWD has been put on notice of the problem. It has chosen to do little about it.

Last year, Florida PEER published several White Papers detailing the mishandling of the enforcement case involving the Landfill. One of those White Papers directed attention to the matter of Mr. Hernandez being asked to interview with a lobbyist of the St. Joe Paper Company. Instead of investigating the matter further, the NWD chose to deny that the interview took place. The enforcement case against the Landfill was dropped by the NWD, after which Messrs. Harrison and McElhenny resigned as directors of BWRI of Florida.

We have now learned that enforcement responsibilities for the area covered by the NWD's Panama City Office have been curtailed and are now being handled out of the NWD's Pensacola Office, which is the headquarters for the NWD. This stands in stark contrast to the Tallahassee Office of the NWD, which is allowed to handle its own enforcement cases. The inference is clear that there is undue political pressure being placed upon the Panama City Office. It is therefore, quite reasonable to suspect that the practice of considering applicants' political affiliations prior to hire will continue. We

³ <http://www.newsherald.com/articles/2000/11/18/1o111800a.htm>

⁴ <http://www.rpof.org/publications/triumph/documents/v6i1.pdf>

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therefore ask you to initiate an investigation into the matter and any other matters that grow out of the same.

C. Florida PEER's Interest

Florida PEER (Public Employees for Environmental Responsibility) is a not-for-profit organization that is organized for the purpose of protecting the ability of public employees in the environmental sector to do their jobs, unencumbered by the inappropriate pressures that are often exerted by administrations. As such, we investigate issues that are brought to us, most often by those employees and where necessary we attempt to rectify the problems presented. It is for that reason that we are referring this matter to you in hopes that you will look into the same further.

Finally, I have enclosed copies of the relevant documents cited in this letter so that you may review the same. Should you have any further questions please feel free to contact me at (850) 877-8097.

Sincerely,

Jerry Phillips
Director

Encl.