

BIG WHEEL AND AZTEC REVISITED

In 2004 we issued four separate white papers centered around a landfill known the Big Wheel C & D Landfill (Landfill). The Landfill is a construction and debris landfill that is located in Bay County, Florida. It is operated on property owned by Big Wheel Recyclers, Inc. of Florida (BWRI). It is adjacent to Bay County's Steelfield Landfill. Aztec Environmental, Inc. (Aztec) is the permittee that is authorized to operate the Landfill. PEER's white papers dealt with the failure of the Florida, Department of Environmental Protection (FDEP) to fully investigate environmental violations at the Landfill and the subsequent failure of the FDEP to initiate formal enforcement actions against the company.

Each white paper issued by PEER dealt with a separate topic. The first such report was issued on May 17, 2004, and dealt with the issue of groundwater contamination at the Landfill.¹ On May 26, 2004, we issued another report, this time dealing with the issue of asbestos and other violations that had been discovered by the FDEP.² We next examined the issue of the company's history and significant political ties to the current state and federal administrations, as well as the permit history on June 7, 2004.³ Two weeks later, on June 21, 2004, we documented the repeated failure of the FDEP's Northwest District Office (NWDO) to conduct a credible investigation into environmental violations at the site and worse, the NWDO's alteration of an enforcement order to weaken an possible future enforcement against the company.⁴

¹ <http://www.peer.org/docs/fl/LandfillContaminatingGroundwater.pdf>

² <http://www.peer.org/docs/fl/BigWheelAsbestosWP.pdf>

³ <http://www.peer.org/docs/fl/BigWheelCompanies.pdf>

⁴ <http://www.peer.org/docs/fl/DroppingtheBall.pdf>

Through it all, the FDEP's Northwest District Office has either denied the existence of violations or denied that there was any purpose to be served by taking formal enforcement against the company. Instead, the agency, through its former Northwest District (NWD) Director, Mary Jean Yon, has repeatedly portrayed the company as being willing and eager to comply with its permit, thus negating the need for enforcement. In a letter to PEER on June 16, 2004,⁵ Yon stated that:

“The compliance and enforcement efforts initiated by the Northwest District staff have resulted in corrective action and facility operations that are now in compliance with Department rules without the need for lawsuits or other inefficient processes. When a permittee displays a willingness to address certain kinds of violations, and initiates action to prevent future problems from occurring, we evaluate whether accomplishing compliance without formal enforcement is the best use of the Department's resources. While there are situations that warrant initiating formal legal action, we do not feel that this is the case for the Big Wheel facility.”

Thus, as far as the FDEP was concerned, there was no basis for taking formal enforcement against the permittee, Aztec. Interestingly enough, Yon's letter also alleged that PEER's white papers were inaccurate because, it was FDEP's “belief that information reported in your white papers does not include the complete compliance history of this site and that it lacks a factual basis and represents a basic misunderstanding of the Department's rules governing the described activities.” Little did we know at the time that Yon accurately posited that PEER did not have the “complete compliance history of this site.” But unlike Yon's inference that a complete picture would have shown a facility in compliance, the opposite was true. In fact, it is now known that there were serious problems at the facility. And Yon's office, in an apparent attempt to

⁵ This letter was sent in response to PEER's formal request to FDEP on May 26, 2004, that it initiate formal enforcement against Big Wheel/Aztec for violations found at the site.

conceal that fact, failed to properly comply with our records request made under Chapter 119, Florida Statutes in that her office withheld significant documents even more damning to the facility.

I. PEER's Public Records Requests

A comprehensive, updated evaluation of this case must necessarily begin with PEER's first efforts to obtain the records on the Landfill. On April 2, 2004, an email exchange began between Florida PEER and FDEP's NWD, the purpose of which was PEER's attempt to obtain copies of the compliance and enforcement files related to the Landfill. The emails were between Florida PEER's Director, Jerry Phillips and the media spokesperson for the NWD, Sally Cooley.⁶ After an exchange of emails, it was agreed that FDEP would supply all compliance and enforcement files from 2001 to the present, i.e. April 2004. Ms. Cooley noted on June 16, 2004, that the FDEP's, Division of Law Enforcement had no records of a criminal case against either Big Wheel Recyclers, Inc. or Aztec Environmental, Inc. It was also agreed that the files would be produced by both the Panama City Branch Office (PCBO) and the District Office in Pensacola (NWDO). The files were subsequently mailed to Florida PEER. Our white papers were published shortly thereafter.

On May 26, 2004, Florida PEER submitted our first two white papers to Ms. Yon⁷ with a request that enforcement be initiated against the permittee.⁸ Ms. Yon

⁶ FDEP's current policy seems to be to have their "media spokesperson" respond to the public's request for public records under Chapter 119. The basis for such a policy is unclear.

⁷ A copy was sent to FDEP Secretary, Colleen N. Castille.

⁸ A copy of this letter is attached as Exhibit A, hereto.

responded on June 16, 2004,⁹ by stating that we did not have a complete copy of the compliance and enforcement file and that the file demonstrated a facility that was fully cooperating with the FDEP and that no formal enforcement was therefore necessary. One week later, Florida PEER wrote again to Ms. Yon,¹⁰ refuting her contentions and stating:

“If you contend that there were no violations at this site then I would appreciate receiving the documentation that substantiates that contention. However, I would assume that all documents were already provided inasmuch as we asked for a complete copy of FDEP’s compliance and enforcement files for this permit. If such was not the case please advise me immediately.”

No additional files were produced by the FDEP at that time.

After PEER learned that the Air Force had initiated debarment proceedings on September 8, 2005, against both Big Wheel Recyclers, Inc. and Aztec Environmental, Inc. we pursued efforts to obtain a copy of the Air Force debarment file from the Air Force under the federal Freedom of Information Act. Though only one document (the debarment memorandum) was produced, the Air Force indicated that over 800 additional pages comprise the entire Air Force file. The debarment memorandum, however, clearly indicated that Greg Landry, Environmental Specialist III, with the FDEP’s NWD had been consulting with the Air Force on issues involving the illegal handling of asbestos by Aztec. Other issues, including the use of illegal immigrants and labor law violations also existed. Armed with this knowledge, we once again demanded from FDEP Secretary Castille that the FDEP produce all records in its possession regarding BWRI and Aztec. Our December 2, 2005, demand¹¹ upon Secretary Castille resulted in the production of over 300 pages of documents dating from July 10, 2003 to the present. In a January 5,

⁹ A copy of this letter is attached as Exhibit B, hereto.

¹⁰ A copy of this letter is attached as Exhibit C, hereto.

¹¹ A copy of this letter is attached as Exhibit D, hereto.

2006, letter accompanying the production of the documents,¹² Assistant Northwest District Director Darryl Boudreau indicated that the files were once again being produced both from the PCBO and the NWDO. The following analysis deals with these files and the light that they shed upon the FDEP's exercise of its regulatory authority over this Landfill. Once again we are reminded of the FDEP's motto, "More Protection, Less Process" in conducting our analysis of the situation.

II. Protection From Exposure To Asbestos

A. 2002 & 2003

The white paper that PEER released on May 26, 2004, dealt with the issue of asbestos. We pointed out in that white paper that asbestos containing materials had been crushed and illegally dumped at the Landfill, according to an FDEP inspection conducted by Richard Brookins on October 24, 2002.¹³ This inspection had been prompted by a Bay County employee who had received complaints about the illegal dumping. A subsequent inspection in November 2002, did not find any illegal dumping of asbestos, however, other illegal dumping had occurred. Consequently, a warning letter was sent to the permittee on December 18, 2002. This letter, which normally would have begun formal enforcement against the facility, resulted in no civil penalties being assessed. Neither was a consent order issued by the FDEP.

Another FDEP inspection on March 26, 2003, found more illegal dumping of asbestos at the Landfill. However, in spite of the fact that a warning letter had been sent barely three months earlier, no enforcement was initiated. Then, on July 10, 2003,

¹² A copy of this letter is attached as Exhibit E, hereto.

¹³ White paper at 5.

another FDEP inspection was conducted at which time the facility was found to be in full compliance. Eight months later, on March 11, 2004, Environmental Manager Josie Penton sent a letter to Aztec informing them that the July 10, 2003, inspection had found no deficiencies.¹⁴

The July 10, 2003, inspection conducted by the FDEP at the site was notable for reasons other than giving the Landfill a clean bill of health. As our previous white paper pointed out, this inspection was attended by not only the inspector, Thomas Dillard, but also by the Panama City Branch Manager, Henry Hernandez, Charles Goddard (Waste Program Administrator) and Marshall Seymore (Solid Waste Section Supervisor). The latter two gentlemen worked in the Pensacola office. The presence of three mid and upper level managers at such a routine inspection was abnormal.

In addition, it was on July 10, 2003, that Messrs. William Harrison and Randall McElheney resigned as directors of BWRI. The two men had joined the company as directors on January 9, 2003, shortly after the FDEP's warning letter was sent to Aztec.¹⁵ Both men were significant supporters of Governor Jeb Bush and President G. W. Bush. William Harrison is a prominent lawyer in Bay County and also a registered lobbyist for St. Joe/Arvida. William McElheney is a registered lobbyist for Aztec in Washington, D.C.

Notwithstanding the rather murky situation presented by the files produced by the FDEP in mid-2004, the impression was left that as of July 10, 2003, the Landfill was in compliance, so far as asbestos issues were concerned.

B. 2004 & 2005

¹⁴ White paper at 9.

¹⁵ See PEER's white paper released on June 7, 2004, which covered this issue and others, <http://www.peer.org/docs/fl/BigWheelCompanies.pdf> at 16.

1. *PEER's Second Public Records Request*

With the exception of Josie Penton's March 11, 2004, correspondence (which was simply a follow-up letter to the July 10, 2003, inspection) no other files were produced in mid-2004 by the FDEP with respect to the Landfill's compliance status vis-à-vis asbestos issues under the permit. Thus, the impression was left that no activity regarding this site had taken place between the July 10 inspection and the time of PEER's public records request in April 2004. Records received in response to PEER's latest demand establish that this was misleading, at best.

2. *The Hurlburt Field Issue*

Documents now produced by the FDEP show that on July 8, 2003, Debbie K. Livingston, Aztec's president, filed a Notice of Asbestos Renovation or Demolition¹⁶ (Notice) with the FDEP's NWDO. The Notice informed the FDEP that a renovation would be taking place at Building 90333, Hurlburt Field Air Force Base in Okaloosa County, Florida. The removal operation was to begin on July 21, 2003, and end on August 15, 2003. The Notice indicated that Aztec would remove the asbestos and transport it to the Santa Rosa Central Landfill in Milton, Florida.

On July 23, 2003, FDEP's Greg Landry performed a site inspection at Building 90333 and found what he believed to be regulated asbestos containing material (RACM) falling from the ceiling. The material was being collected and then put into a nearby dumpster. Aztec was told to stop work and to "develop appropriate corrective action."

The FDEP file also includes an environmental survey that was faxed to FDEP on July 24, 2003, from David Volkert & Associates, Inc. in Mobile, Alabama. The survey had been performed on April 8, 2003, and had confirmed the presence of RACM in

¹⁶ Attached as Exhibit F hereto.

building 90333 in the areas that were to undergo renovation. The survey was provided to the FDEP by Aztec.

Landry's notes further reflect that he returned to the site on July 25, 2003, and found that the dumpster containing the RACM had been removed. No one admitted to knowing where the dumpster had gone, however. Landry contacted the asbestos survey company on the case and then confirmed that the material was, in fact, RACM.

On July 29, 2003, a meeting was held at Hurlburt Field to discuss the project. According to Landry's notes, Aztec advised at that time that the dumpster had been taken to the Big Wheel C & D Landfill—as opposed to the Santa Rosa Central Landfill indicated on the Notice. The notes from one of Mr. Landry's colleagues, Andy Allen, indicated that the bags containing the asbestos were not even sealed.¹⁷

Mr. Landry's notes reflect that Jimmy Livingston (Debbie Livingston's husband), vice-president of Aztec, called him on July 30, 2005.¹⁸ Mr. Landry sent an email to Jim Long (Air Force Special Agent) wherein he stated, in pertinent part:

“Mr. Livingston returned the call requesting that the friable acm from the ceiling of bldg 9033 that went to his landfill be reclassified as nonfriable acm. He made this request since his landfill is permitted to receive nonfriable acm but not friable acm. This would prevent him from having to dig up the friable acm, properly containerize it, and transfer it to a landfill permitted to receive friable acm. I explained that once acm became friable it could not be arbitrarily be (sic) reclassified as nonfriable and that I was denying his request. He agreed to go ahead with the reclaiming of the friable acm material for proper disposal. This was to be documented to the Department with pictures, copies, of chains of custody, hauling manifests, tipping receipts, etc.

¹⁷ Thus inferring that deadly asbestos fibers could become airborne during the handling of the bags.

¹⁸ Originally Landry indicated that this call took place on July 31. However, telephone records confirmed that it was on July 30.

I call (sic) Mr. Livingston on 8/5/03 to again inquire about the report documenting the friable acm. He indicated the project was completed on 8/1/03 and that the report would be coming to the Department. He also indicated he would include a cover letter reviewing the entire process from beginning to end.”

The significance of this call cannot be understated. Mr. Landry was reporting that he had been asked by Mr. Livingston to alter government records to reflect that no friable asbestos had been disposed of at the Landfill. The alteration of such records would have constituted a crime under Florida law. §837.06, Fla. Stat.

While it is highly commendable that Mr. Landry refused to accede to Livingston’s request what is troubling is the decision to allow Aztec to excavate the material and dispose of it without any FDEP representatives being present. Without the presence of FDEP representatives there was no ability for the FDEP to realistically confirm that the friable asbestos was removed. Furthermore, there was no ability for the FDEP to take representative samples of the excavated material to confirm that it was, in fact, asbestos. Likewise, there is no indication that manifests were checked to see if accurate reporting to the landfill was made. If manifests were not issued, or falsified, it would be a further indication of a practice of illegal dumping at the site. A simple phone call to the PCBO would have been sufficient to arrange for a FDEP environmental specialist to be on site during the excavation. Yet, no arrangements were made and Aztec was allowed to dispose of the material with no oversight.

On August 20, 2003, Aztec sent a letter to Mr. Landry advising him that the materials had been excavated from the Landfill on August 3 and transported to the Santa Rosa Central Landfill on or about August 7-8, 2003. In addition, Aztec included photos of the alleged excavation and laboratory analysis of some of the allegedly excavated

material indicating that, in fact, no asbestos was found. Interestingly, the analysis of the material was performed by another company, EMSL Analytical, Inc., than the company that originally performed the environmental survey.

The improper handling of RACM is the issue that initiated the Air Force investigation into Aztec and the debarment action that was filed by the Air Force on September 8, 2005.¹⁹ On December 2, 2005, the FDEP issued a warning letter to Aztec for activities associated with the renovation operation. The letter states, in pertinent part, that “[t]he waste load out containing RACM was not taken to an approved active waste disposal site.” The northern Virginia office of Greenburg, Traurig has notified the FDEP that it will be representing Aztec in the enforcement case.²⁰

3. *Additional Site Inspections*

A site inspection was next performed on the facility on April 6, 2004, eight months after the latest issue of the illegal dumping of asbestos had occurred. Thomas Dillard, Environmental Specialist, performed the inspection.²¹ He found improvements to have been made at the site and found the facility to be in compliance with their permit.

On August 23, 2004, a complaint was made to the FDEP by “Kyle @ GAC” about paint chips named Coldec colourflakes²² being improperly disposed of at the facility. Thomas Dillard inspected the facility the next day and took samples which later

¹⁹ After the debarment was filed, Aztec and Big Wheel filed suit in the Federal District Court for the Northern District of Florida, Tallahassee Division seeking to enjoin the Air Force from enforcing the debarment. The case number is 4:05-cv-00399-RH-WCS . The litigation firm of Greenberg, Traurig is representing Aztec and Big Wheel. In addition, William Harrison is counsel of record on the case. On January 6, 2006, the court denied the plaintiff’s motion for injunctive relief against the Air Force, finding that they had not shown a reasonable likelihood of success on the merits.

²⁰ Greenburg, Traurig formerly employed lobbyist Jack Abramoff who was their Senior Director of Government Affairs from January 2001 to March 2004. Greenburg, Traurig also represents President Bush and is Governor Jeb Bush’s personal attorney.

http://www.sourcewatch.org/index.php?title=Jack_Abramoff.

²¹ Mr. Dillard also performed the July 10, 2003, inspection at the facility.

²² Manufactured by Res-Tek.

proved to be approved for disposal at the site. The site was again found to be in compliance.

Thomas Dillard inspected the facility again on January 11, 2005. This time he found that the facility (which had been accepting hurricane debris) was disposing of wastes in or near a water body on site. Dillard also surmised that mixed in with the hurricane debris were materials not authorized to be disposed of at the facility. In addition, waste material was not properly compacted thus improperly impacting storm water. There was still no electricity at the site. Dillard judged the facility to be “minor out of compliance.” Josie Penton sent written notification to Aztec on January 18, 2005. Aztec responded on February 3, 2005, indicating that corrective measures were being taken. Josie Penton accepted Aztec’s response and notified them the next day that a follow-up inspection would be conducted in the “immediate future.”

The follow-up inspection did not occur in the “immediate future.” It occurred seven months later, on September 22, 2005. Thomas Dillard was the inspector. This time Dillard found the entrance to the site to be unmanned, thus allowing for improper waste disposal. In addition, there was still an inordinate amount of hurricane debris on site. In addition, “[o]ne pallet had numerous air conditioners and another had liquid wastes (15 gallons of used oil and a gallon of muriatic acid). One container was observed to be cracked with some leakage to the ground. On-site corrections were performed by site personnel as containers were labeled, covered and contained during the visit.” Dillard found the site to once again be “minor out-of-compliance.” Josie Penton notified Big Wheel of the results on November 17, 2005. The facility responded on December 19, 2005, once again indicating that corrective measures had been taken.

III. Groundwater Monitoring

A. 2002 & 2003

In the first white paper we presented on the Landfill we dealt with the FDEP's handling of groundwater monitoring reports in its possession. Those reports indicated significantly elevated levels of aluminum and this problem was identified in a memo authored by Charlie Reyes with the FDEP on December 27, 2002. The white paper quoted Mr. Reyes' finding that:

My review revealed that aluminum, sulfate and TDS were present in concentrations above groundwater monitoring standards during the March sampling event and aluminum concentrations exceeded state standards during the September sampling event (see chart below). However, it should be noted that the aluminum concentration in background well MW-1 was higher. I discussed this issue with Mr. Brad Hartshorn of the Department's Cleanup Section. Mr. Hartshorn recommended that the facility redevelop background well MW-1.

(White paper at 7) The white paper also pointed out that the findings meant that the facility was in violation of Condition 30 of its permit. (White paper at 7) The background well (MW-1) was redeveloped at FDEP's request. However, a June 3, 2003, follow-up memo from Mr. Reyes indicated that the aluminum concentrations were still present in significantly elevated levels. (White paper at 8) The president of Aztec, Debbie Livingston, recommended in August 2003, that the background well be replaced. (White paper at 9) Yet by the end of 2003, the situation was unchanged. Aluminum concentrations were still excessive. Thus, the FDEP's NWD solid waste supervisor,

Marshall Seymore, P.E. wrote to the company on December 4, 2003, and recommended that all wells be redeveloped. (White paper at 10)

As our white paper pointed out, the FDEP file leads one to the conclusion that either the groundwater contamination existed prior to issuance of the permit (which calls into question the decision to issue the permit in the first place), or the groundwater was being contaminated by the operation of the Landfill by Aztec. (White paper at 12-13) The groundwater flows from Southwest to Northeast under this facility. This flow pattern, according to the FDEP file, is in the direction of Otter Creek.

B. 2004 & 2005

We also noted in our previous white paper on this subject that the FDEP had received a complaint that there was a potable water well within 500 feet of the facility, in violation of 62-701.300(2)(g), F.A.C. (White paper at 10) The FDEP requested the facility to provide the agency with a survey identifying any such wells. On April 5, 2004, Aztec provided a report²³ to the FDEP indicating that while a well was located 478 feet from the property line, the location was more than 500 feet from any disposal area. Assuming the report to be accurate, the facility was in compliance with the rule.

As indicated above, on December 4, 2003, Marshall Seymore wrote to Aztec and recommended that all wells be redeveloped. On April 20, 2004, the FDEP received Aztec's semiannual groundwater analysis report. The report was accompanied by a letter from The Water Spigot, Inc. (the laboratory that performed the analysis for Aztec) that stated that "[t]he Aluminum is over the MCL (Maximum Contaminant Level) on wells, 1,

²³ There was no survey provided to the agency, as requested. The FDEP did not issue a subsequent demand for the survey. Rather, it accepted the report.

2, & 4. We recommend that you re-sample these wells for this parameter.” The MCL is 200 ug/L.²⁴ This is a Secondary Water Standard that applies to Community Water Systems.²⁵ However, Condition 30 of the Landfill’s permit (Permit) requires adherence to this standard “at and beyond the edges of the ZOD.”²⁶ The intent is that the facility not contaminate the groundwater within the ZOD such that when it leaves the ZOD it is unfit for public consumption. In those instances in which a monitored constituent is naturally found in groundwater in concentrations greater than the MCL, the FDEP has the authority to allow the naturally occurring level to be controlling. 62-520.420 (2) & (3), F.A.C. The background well is typically used as the measuring stick to determine the naturally occurring constituent levels. Thus, its accuracy is paramount to successful monitoring of compliance with the Permit’s conditions.

The following table shows the aluminum levels for the four wells on the Aztec site for the dates shown. All results are in ug/l:

DATE	MW-1*	MW-2	MW-3	MW-4
03/08/2002	36,400	4,000	200	400
08/30/2002	34,000	2,500	<100	300
02/06/03 ²⁷	10,140	426	212	268
08/15/2003	1,310	5,766	<100	305
02/23/2004	1,062	702	337	253
09/2004 ²⁸	229	270	83.60	324

²⁴ Secondary Drinking Water Standard, 62-550.320(1) and Table 6, F.A.C.

²⁵ A Community Water System is a public water system that has at least 15 connections for year-round residents or serves at least 25 year-round residents. 62-550.200(12), F.A.C.

²⁶ ZOD is the Zone of Discharge. The criteria are more relaxed within the actual ZOD.

²⁷ The results for this date are based upon memo of Charlie Reyes, FDEP, dated 6/3/2003. No laboratory results are in the file.

02/24/2005	131	457	796	3,801
04/19/2005	33	356	96	264
	25 - Dissolved	201 - Dissolved	25 - Dissolved	50 - Dissolved
08/16/2005	155	528	406	519
	25 - Dissolved	124 - Dissolved	25 - Dissolved	25 - Dissolved

*MW-1 is the background well. The remaining wells are monitoring wells.

The file reflects that on May 12, 2004, Charlie Reyes continued to be concerned about the viability of the results reported from the background well, MW-1. His memo of that date indicates that under Condition 35 of the Permit, any of the Landfill’s wells that were not functioning properly must be reevaluated. His memo further states that MW-1 was redeveloped on July 7, 2003 in order to fix the apparent problems associated with this well. Nevertheless, on December 4, 2003, the FDEP had written to the facility again and advised them to redevelop all wells.

Given the continuing problems with MW-1, on June 10, 2004 Seymore wrote to Aztec and advised them that they were not in compliance with their permit.²⁹ He suggested that they replace MW-1, in accordance with Condition 31 of the Permit. According to a memo authored by Charlie Reyes on December 8, 2004, the background well was replaced on or about July 29, 2004. Significantly, the aluminum results were lower, however, the background well continued to show results higher than the MCL.

²⁸ Results obtained from Charlie Reyes’ December 8, 2004, memorandum. Actual laboratory results are not in the file.

²⁹ This letter was sent four weeks after PEER issued its first white paper on the Landfill. That white paper dealt with the groundwater contamination issues at the Landfill.

Throughout this process there has been one constant in the results reported on the background well. In addition to high aluminum concentrations, the turbidity values have been excessive. Indeed, they have been significantly higher than the three monitoring wells all of which have had consistently lower turbidity. High turbidity values can, according to an August 24, 2004, memo authored by Brad T. Hartshorn (FDEP) lead to invalid reporting results. After the background well was replaced the turbidity values dropped significantly, as did the aluminum values. Thus, it appears on the surface that there is a correlation between the two.

With that said, the sampling event on February 24, 2005, yielded results that showed the aluminum concentrations in the background well to be within state standards. However, the other three monitoring wells were significantly above the same standards. Once again, however, there are elevated levels of turbidity in the wells that show high levels of aluminum.

Given the unclear results of testing Seymore wrote to Aztec on April 12, 2005, and advised the company that a site assessment was required because the previous two sampling events had shown excessive amounts of aluminum. Six months later, Aztec hired a new engineering firm, Gallet & Associates to represent them.

On November 10, 2005, Gallet submitted additional test results and argued that additional testing for “dissolved” aluminum showed that actual aluminum concentrations were within secondary drinking water standards. Gallet further argued that the problem was turbidity, which appeared to have been resolved. Thus, they refused to undertake the site assessment required by the FDEP. As of the date of this white paper it is unknown how the FDEP will respond.

While turbidity could be the answer to the facilities high it should be noted that there have been instances of excessively high aluminum values when turbidity values were relatively low. For example, in February 2003, every well reported results in excess of the MCL. Yet, only the background well reported excessive turbidity values. Thus, it appears too early to say that the FDEP has found the answer.

All of these results point to one overriding situation. As of the date of this writing the FDEP still does not know whether or not there are problems at this site with respect to excessive aluminum concentrations in the groundwater. This is a problem that has existed for at least 3.5 years and has not been corrected.

The reason why the FDEP doesn't know whether there are aluminum violations is that they don't know whether the wells are functioning properly. If turbidity is the problem it should be corrected by redeveloping and/or replacing the wells. Until that is done, the facility remains in violation of Condition 35 of its permit. The burden to report accurate results lies with the permittee, not with the FDEP.

IV. Another Permit Transfer

On or about October 11, 2004, Jimmy Livingston, on behalf of Aztec, applied to the FDEP to transfer the Landfill's Permit to Big Wheel of Florida, LLC. The principal basis for the requested transfer was that the property would be transferred to Big Wheel of Florida, LLC. The property had previously been owned by Big Wheel Recyclers of Florida.³⁰ The FDEP found the October 11, 2004, application to be incomplete and notified the applicant accordingly. A new application was submitted on May 25, 2005, by

³⁰ See PEER's white paper released on June 7, 2004, which covered this issue and others, <http://www.peer.org/docs/fl/BigWheelCompanies.pdf> at 11-13.

Wayne C. Loper on behalf of Aztec. The application was approved and the permit transferred, effective June 8, 2005.

The Permit expires on August 2, 2006.

V. The Inspector General's Report

In our recently release white paper, How Foxes Guard the Chicken Coop, we looked at the investigation of the NWD conducted by the Office of Inspector General. On pages 41-42 of that white paper we also discussed the fact that the OIG failed to conduct a thorough investigation of the Big Wheel case.³¹ It should be noted that none of the recently received documents are mentioned in the OIG report.

V. Discussion

A. Public Records And Candor With The Press And Public

The difficulty in providing a comprehensive analysis regarding this Landfill and the FDEP's regulation of it is the overriding issue of whether or not the FDEP has provided, or ever will provide, all of the records in its possession that are responsive to PEER's request. History would countenance against a belief that all records have been provided, notwithstanding the FDEP's obligation to comply with Chapter 119, Florida Statutes. The agency withheld those records regarding the July 2003, illegal dumping of asbestos at the site, even though PEER's request for the records was initiated nine months later, in April 2004. The FDEP's excuse to date has been that their actions were unintentional, because the records that were not provided were maintained by the Air Section, as opposed to the Solid Waste Section. We would like to believe this to be the

³¹ http://www.peer.org/pubs/whitepapers/2006_fox_guarding_chicken_coop.pdf.

case, however, the fact remains that Aztec's illegal dumping of asbestos in the Landfill involved both solid waste and air issues. The NWDO, according to Mr. Landry's notes, knew in August 2003, that Aztec had buried the material in the Landfill. Furthermore, the PCBO had personnel, e.g. Richard Brookins, who were trained in NESHAP (Air/Asbestos) issues and who had been to the site to inspect for NESHAP violations. It defies credulity to suggest that the PCBO had no idea that the investigation into Aztec's illegal dumping was taking place at the time that the PCBO and the NWDO first responded to PEER's public records request.

Equally troubling is the performance of former District Director, Mary Jean Yon. Yon, in June 2004, represented to PEER, and to the press, that the Landfill was in compliance with environmental laws. She suggested that our assessment of the FDEP's performance was faulty. This, of course, was at a time in which Ms. Yon knew that we had been provided only a portion of the records in this case. She has since been promoted to head the Division of Waste Management thus enabling her to oversee all solid waste facilities statewide. Despite our call to Secretary Castille for disciplinary action to be taken against Ms. Yon for her actions in this matter, nothing has been done. She remains in her senior management position. The obvious conclusion is that the Secretary approves of such conduct.

B. Aztec, Hurlburt Field and the Landfill

According to the FDEP's own file notes, Aztec's performance in the asbestos removal project at Hurlburt Field potentially violated numerous federal regulations. Most of the below-cited violations were personally observed by agency inspectors. The regulations cited in the notes are: 40 CFR 61.145(c)(1) [improper dry removal]; 40 CFR

61.145(c)(2)(i) [improper wetting of asbestos]; 40 CFR 61.145(c)(2)(ii) [improper dropping/handling of RACM]; 40 CFR 61.145(c)(6)(i) [failure to ensure that removed RACM remains properly wetted]; 40 CFR 61.150(a)(iii) [failure to properly containerize/seal removed RACM]; 40 CFR 61.150(c) [failure to properly mark vehicles that were hauling asbestos from the site]; and 40 CFR 61.154 [improper disposal of asbestos].³² The violations noted by the FDEP are not “paper violations.” They are violations that likely resulted in the exposure of employees to harmful asbestos fibers.

With this in mind the FDEP’s decision to allow Aztec to go to the Landfill with the goal being to dig up the illegally disposed of asbestos and to then submit laboratory test results to the FDEP all without direct agency supervision is astounding. It is comparable to a law enforcement officer allowing a criminal suspect to return to the scene of the crime unattended, then allowing the unattended suspect to take DNA samples and to submit the sample results to law enforcement with the expectation being that law enforcement would rely exclusively upon those results in deciding whether or not to prosecute the offender. Such an approach in routine “blue collar” criminal cases would not be tolerated by the public. It is no less offensive in this case.

Seemingly overlooked in the Aztec files is one salient point: As of August 1, 2003, the FDEP knew that asbestos had been illegally dumped at the Landfill on at least three separate occasions: (1) on October 24, 2002 when Richard Brookins found asbestos had been illegally disposed of, (2) on March 26, 2003, when Thomas Dillard and Mike Stephens found that asbestos had been illegally disposed of, and (3) on July 29, 2003,

³² Not mentioned in the notes is the filing of a false document with the FDEP, in that the notice of removal or demolition that was filed with the FDEP indicated that the asbestos that was removed would be transported to the Santa Rosa Central Landfill. Instead it was taken to the Big Wheel C&D Landfill. §837.06, Fla. Stat. makes such conduct a second degree misdemeanor.

when Greg Landry learned that asbestos had been taken to the Landfill from Hurlburt Field. Thus, as of August 1, 2003, the FDEP knew of three separate incidences in a nine month period in which asbestos had been illegally dumped in the Landfill.³³ Two of those incidents post-dated the issuance of an FDEP warning letter to Aztec. This arguably constituted repeated criminal conduct, yet there were no arrests—and the one warning letter in December 2002, was not followed up with formal civil enforcement. Likewise, there was no effort to excavate the site to determine whether other materials had been illegally buried. Given the three past occurrences, together with the information of past Aztec employees such as Danny Walker³⁴ ample evidence existed to obtain an inspection warrant allowing the FDEP to conduct such an excavation.

Moreover, during this same time period, as well as up to the present, the FDEP has been receiving multiple reports of aluminum concentrations in the groundwater that exceeded the state's maximum contaminate level. The FDEP's handling of this issue has been negligent, even if we assume, for the sake of argument, that the high readings were due to turbidity in the background and other wells. The reason is simple: the FDEP has had multiple complaints of illegal dumping of asbestos, as well as other contaminants at this site. Despite these multiple complaints, the FDEP still does not know whether the background well is fully functional. Thus, the FDEP cannot say with any certainty that the site is clean.

³³ In addition, as noted in our white paper on the asbestos issue, the FDEP had received complaints from employees of Aztec and others regarding the issue of illegal dumping. White paper at 3-4.

³⁴ In an interview with *Insider Magazine's*, John Caylor, Walker indicated that he had buried used oil and asbestos on the site. He told Caylor where to go on the site to recover the materials. Thus, the FDEP cannot say that it would be a waste of money to excavate the site because of a lack of knowledge as to where the materials are/were buried. Of course, by this time, it is plausible that the materials have been removed and relocated. See, <http://www.insider-magazine.com/AztecWalker.pdf>.

The Landfill's history of illegal dumping cautions in favor of more aggressive handling of the groundwater issue, which means not allowing four years to pass without even knowing whether the background well is functional. The bottom line is that the Landfill's failure to have a reliable groundwater monitoring system is a violation of the Permit. Yet it is a violation that the FDEP allows to continue. And through this, Charlie Goddard, in a May 17, 2004, email on this subject stated:

“As aggressive as our program is on enforcement of secondary standards some feel it is not enough. My kneejerk on this article is that there is a major flaw in that the background for aluminum is violating standards and is higher than the downgradient well. Aluminum is found naturally in these soils and released for various reasons including disturbance and impact of leachates. In this situation we were working to get the wells developed because the high levels in the background were believed to have resulted from turbidity. We don't really have a representative sample, erratic data. We take enforcement action once we verify there is a violation. FYI Charlie.”

Thus, if a facility simply fails to provide effective monitoring it appears to be okay with the FDEP. This, according to the Program Administrator, is “aggressive” enforcement.

The oversight at this Landfill is certainly an example of “less process.” It has taken the FDEP until December 2, 2005, to issue a warning letter to Aztec for issues that surfaced at Hurlburt Field in July 2003. The FDEP will likely argue that it waited so long because it did not want to interfere with the debarment investigation that was being conducted by the Air Force. The problem with the argument is that the Air Force investigation, a federal investigation, was an investigation into activities surrounding the asbestos removal project at Hurlburt Field. It was not an investigation into violations of the Permit at the Landfill. Thus, nothing prevented the FDEP from moving forward on

the Permit violations. Even now, the warning letter references only violations at the Hurlburt field installation. The only indirect mention of the Landfill is that the asbestos was removed to an unapproved landfill. The Permit is not referenced, indeed, the name of the Landfill is not mentioned.

There have also been other violations found at the site since July 2003. These violations are labeled as “minor out of compliance” with no apparent consideration given to the Landfill’s checkered history. No formal enforcement has been initiated.

Finally, the actions reported in the FDEP files are arguably criminal in nature. As page 21 of the OIG Report³⁵ suggests should occur, FDEP employees should look to the Division of Law Enforcement to initiate criminal investigations. Yet, FDEP employees contacted the EPA’s Criminal Investigations Division in this case. They were then chastised because they went to the EPA rather than first pursuing the case internally. Under the circumstances, we fail to see why any FDEP employee who cared about environmental cases being prosecuted would elect to pursue such cases internally. Indeed, to date, it still does not appear that the Division of Law Enforcement has opened a file on this matter. The track record on this case amply demonstrates the FDEP’s complete failure to take environmental violations seriously.

C. The Permit

As previously stated, the Permit on the Landfill expires on August 2, 2006. It is interesting that Aztec has transferred the Permit to Big Wheel of Florida, LLC. The significance of the transfer is that Big Wheel of Florida, LLC, will now argue that it is new to the Permit and that violations that occurred prior to the Permit transfer should not

³⁵ Investigations Report No. II-01-15-2005-014, October 13, 2005.

be charged against it. Under the circumstances, it is entirely likely that given the FDEP's refusal to take formal enforcement against the Landfill, coupled with the status of the "new owner" the FDEP will eagerly renew the Permit for another five years.

VI. Recommendations

1. There is an overriding problem with the FDEP's handling of responses to public record requests under Chapter 119, Fla. Stat. The problem exists because the agency has implemented a structure in which record requests go through a media spokesperson rather than allowing the front line employees to produce the records, as was formally the case. The need to have public records funneled through a media spokesperson is of doubtful utility and legality. The only purpose that appears to be served is the sanitization of the record so that the agency looks better to the public. This should be discontinued immediately.
2. Those individuals responsible for the withholding of public records in this case should be terminated immediately.
3. We continue to maintain that Mary Jean Yon should be terminated. At the very least she should not be allowed to continue in any position of authority in this agency. She has a clear track record of non-enforcement coupled with misrepresentations to the public and press regarding the performance of her office. The Secretary should not tolerate such performance.

4. Formal enforcement of the Permit should be initiated on all solid waste and groundwater violations at the Facility.
5. We recommend that EPA's Office of Inspector General investigate the FDEP's handling of this case insofar as the agency's administration of the NESHAP program is unquestionably implicated.
6. Finally, we in no way believe that the performance exhibited by the FDEP in this case is in any way a reflection upon the front line employees who are in the field every day investigating these cases. Rather, management has limited the lengths to which these employees are allowed to go in enforcing FDEP's regulations. The employees should meticulously document their files so that all violations at sites are recorded, and all instructions from management to forego enforcement should be equally recorded as well.