

February 15, 2006

Via Facsimile (850) 488-6701

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

**Re: Request for Prosecution for Acts Associated with the
Violation of § 119.07, Fla. Stat., i.e. Florida's Public Records Law**

Dear Mr. Meggs:

I am writing to you in regards to an issue that has arisen regarding the production of public records by the Florida, Department of Environmental Protection (FDEP). In short, the issue involves a public records request that I, on behalf of Florida PEER, made to the FDEP. A response was provided by the FDEP leading us to believe that the records produced were complete for the time period requested. In fact, however, we learned some time later that all records requested were not produced. When confronted, the FDEP eventually produced additional records to us. Under the circumstances it seems rather apparent that the initial failure to comply with Florida's Public Records law, as codified in Chapter 119, Florida Statutes, was deliberate. We are therefore asking that your office investigate and prosecute the individual(s) involved in this matter at the FDEP.

A. The Applicable Statute

§ 119.07(1)(a), Fla. Stat. requires state agencies to produce public records when asked to by the public. The production must be made within a reasonable time of the request being made. Exceptions to the production of records are allowed under § 119.071, Fla. Stat. However, if the agency seeks to assert one or more of these exemptions the agency must so advise the person requesting production. § 119.07(1)(c), Fla. Stat.

§ 119.10(2)(a), Fla. Stat., provides that “[a]ny person who willfully and knowingly violates: (a) Any of the provisions of this chapter commits a misdemeanor of the first degree, punishable as provided in s. [775.082](#) or s. [775.083](#).”¹

B. The Factual Basis For This Complaint

On April 2, 2004, an email exchange began between Florida PEER, in Tallahassee, and FDEP’s Northwest District Office (NWD) in Pensacola, the purpose of which was PEER’s attempt to obtain copies of the compliance and enforcement files related to a landfill in Bay County, Florida. The landfill is known as the Big Wheel C&D Landfill. The landfill is operated by a company called Aztec Environmental, Inc. (Aztec). At the time that these matters were unfolding the property on which it is located was owned by another company, Big Wheel Recyclers, Inc. (BWRI).

The emails were between me and the media spokesperson for the NWD, Sally Coeey. Ms. Coeey 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. After an exchange of emails, it was agreed that FDEP would supply all compliance and enforcement files from 2001 to the time of the request, i.e. April 2004. Inasmuch as files were located in both the Panama City Branch Office (PCBO) and the District Office in Pensacola (NWDO) the files were subsequently mailed to Florida PEER from each office.

Shortly after we received the records from the FDEP we published several reports (white papers), dealing with the landfill. The white papers were highly critical of the FDEP’s handling of various issues involving the landfill and its noncompliance with its FDEP permit. On May 26, 2004, we submitted our first two white papers to Ms. Mary Jean Yon² (the District Director of the NWD) with a request that enforcement be initiated against the permittee. Ms. Yon responded on June 16, 2004,³ 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,⁴ 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. Additionally, the FDEP did not claim any exemptions to production of the records.

¹ The statute of limitations on the prosecution of these offenses is 2 years under §775.15(2)(c), Fla. Stat.

² A copy was sent to FDEP Secretary, Colleen N. Castille.

³ A copy of this letter is attached as Exhibit A, hereto.

⁴ A copy of this letter is attached as Exhibit B, hereto.

Last year we learned that the Air Force had initiated debarment proceedings on September 8, 2005, against both Big Wheel Recyclers, Inc. and Aztec Environmental, Inc. Upon learning of this we pursued efforts to obtain a copy of the Air Force debarment file from the Air Force under the federal Freedom of Information Act. Only one document was produced by the Air Force. It is called a debarment memorandum. To our surprise, the debarment memorandum 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. None of these issues were mentioned in the records produced by the FDEP in April 2004 when the agency produced its records to us even though Mr. Landry's dealings with the Air Force began in July 2003, well before the document request that we made under Chapter 119.

Once we learned that Mr. Landry had been investigating the two entities and that the records had not been provided to us 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, demand⁵ 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, 2006, letter accompanying the production of the documents,⁶ Assistant Northwest District Director Darryl Boudreau indicated that the files were once again being produced both from the PCBO and the NWDO.

The records now produced by the FDEP clearly include documents that were within the scope of Florida PEER's initial request. The withheld documents are significant in that they paint a much different picture of the situation at the landfill at a time in which the FDEP was telling Florida PEER and the press that the landfill was in compliance with its permit. The records likewise directly contradict the statements made to Florida PEER by Mary Jean Yon in response to our request that her district initiate enforcement against the entities involved.

C. Why We Believe That § 119.10(2)(a), Fla. Stat., Has Been Violated

The records that were withheld show that Aztec was undertaking an asbestos removal operation at the Air Force's Hurlburt Field when Mr. Landry found that the operation was not proceeding properly. He further learned that Aztec had improperly taken the material to the Big Wheel C&D Landfill, rather than another landfill that was authorized to accept such material. The Big Wheel C&D Landfill was not authorized to accept asbestos containing material and, in fact, less than a year earlier the FDEP's PCBO had found that the site had been receiving such material in violation of its permit. Thus, this finding by Mr. Landry was evidence of subsequent violations of the permit. Such evidence provided more than enough justification for the FDEP to proceed against the violators. Indeed, it would have justified criminal prosecution of the violators.

⁵ A copy of this letter is attached as Exhibit C, hereto.

⁶ A copy of this letter is attached as Exhibit D, hereto.

From the Air Force debarment memorandum it is also known that several federal agencies were investigating Aztec and BWRI for numerous civil and criminal violations associated with the operation of their businesses. Simply stated, this was a major investigation that involved both state and federal agencies.

Logistically, Greg Landry is located in the NWDO. He handled the inspection at Hurlburt Field. However, the landfill where the materials were buried was located within the area normally handled by the PCBO. While the NWDO is a sizeable office, the PCBO is a satellite office with, we believe, only about 10 employees at the time that these events were taking place. The two offices communicate regularly. This landfill has a history of employees from both offices being involved in oversight responsibilities.

Assistant Northwest District Director Darryl Boudreau is alleging that this failure to provide the records to us in April 2004 was the result of a simple miscommunication. His assertion is that the asbestos issue was being handled by the Air Program and that the records we requested were held by the Solid Waste Program. His assertion is disingenuous for the following reasons: First, the files that were produced to us in April 2004, included records from both program areas, i.e. solid waste and asbestos. Asbestos regulation is under the federally delegated NESHAP Program which is part of the Clean Air Act. As previously indicated, the earlier records specifically noted findings in 2002 of asbestos being illegally dumped at the landfill. Second, the files produced to us in April 2004, were provided by both offices, Pensacola and Panama City. As Ms. Coe clearly indicated, there was much discussion internally at the FDEP about responding to our request. It is inconceivable that the matter of the federal and state investigation into this landfill was not mentioned in the course of those discussions. This was a major investigation. The Air Force has advised us that its file contains at least 800 pages of documents.

The underlying motive for withholding the requested documents is, we submit, rather straightforward. The landfill at the center of this controversy was owned and operated by persons who had very deep ties to the Governor, the Republican Party, and to the White House. At one point, two men, William Harrison and Randall McElheney, were directors of BWRI. Both men are politically influential, having served on transition teams for the Governor. Harrison, an attorney and registered lobbyist for St. Joe/Arvida, served on a transition team for President Bush. For its part, Aztec and its directors have made significant contributions to Governor Bush and the Republican Party during the time in which these investigations were underway. It is hardly a stretch to believe that someone wanted to avoid adverse actions or publicity against either company.

The records that were first produced to Florida PEER painted a picture of a company with a history of violations. However, Mary Jean Yon, on behalf of the FDEP alleged that the company was working with the agency, thus not requiring the use of formal enforcement. The records subsequently produced paint a much different picture, a picture diametrically opposed to the assertions made by Mary Jean Yon to Florida PEER in May 2004.

D. The Implications Of Allowing This Behavior To Continue

PEER is a non-profit organization dedicated to assisting public employees in the environmental sector when those employees find that they are being asked to compromise their integrity or otherwise being pressured to avoid the proper administration of state and/or federal environmental laws. Our review of cases and ability to assist these employees is directly compromised when a public agency deliberately withholds public records to which we and the public are entitled. Needless to say, we should likewise not have to spend scarce resources evaluating cases with only half the information, only later to find that we must reevaluate those cases at additional cost to us.

Moreover, in this case the FDEP, through Ms. Yon and Ms. Cooley, aggressively defended against our assertions that the FDEP had dropped the ball by not enforcing the applicable environmental laws at the FDEP's disposal. They did this not just to us, but to the press and hence the public as well. The attached newspaper articles attest to this. It is impossible to have an informed public if the employees who work for the public engage in such behavior.

E. Requested Relief

We are asking that your office pursue all available remedies against the person or persons who were involved with the refusal to produce public records in violation of Chapter 119, Florida Statutes. There is no question that two individuals, Mary Jean Yon and Sally Cooley were involved in this matter at the time. We have no evidence to suggest that Mr. Landry was in any way involved in the decision not to produce the records. In addition, it is beyond question that someone in the Panama City Branch Office was involved in responding to our April 2004 requests. We do not know who that person(s) was; however, it would be disingenuous to think that no one in the office had any knowledge of the size and scope of the joint state and federal investigation that had been underway for nine (9) months at the time that we submitted our public records request.

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.