

June 11, 2007

J. I. Palmer, Jr.
Regional Administrator
United States Environmental Protection Agency
Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, GA 30303-8960

RE: OVERFILE REQUEST – Big Wheel Landfill, Bay County, Florida

Dear Mr. Palmer:

Public Employees for Environmental Responsibility (PEER) formally requests that the U.S. Environmental Protection Agency initiate enforcement action against the Big Wheel Landfill (Landfill) located in Bay County, Florida for violations of the federal National Emission Standards for Hazardous Air Pollutants (NESHAP), Section 112 of the Clean Air Act, and the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §6901 et seq. With respect to these violations, the Florida Department of Environmental Protection (FDEP), the state agency with delegated authority to enforce NESHAP and RCRA in Florida, has failed to take adequate enforcement action.

Overview

In the past, PEER has issued several white papers detailing the chronic violations that have occurred at the Landfill.¹ It has been PEER's contention that the FDEP ignored these violations in large part because of political connections that the owners of the Landfill had to the then-Governor, Jeb Bush. These contentions were met with strenuous denials on the part of the FDEP, and the agency then embarked upon a campaign of trying to show that there were no problems of any consequence.

At the time that this situation was developing, the landfill was owned and/or operated by a company known as Big Wheel Recyclers, Inc. (Big Wheel). A company closely tied to Big Wheel was Aztec Environmental, Inc. (Aztec). The two companies had the same owners and essentially the two worked in tandem. Aztec dealt primarily in asbestos demolition and removal, whereas Big Wheel operated the landfill where much of the debris was dumped.

PEER had received a tip into problems with the illegal dumping of friable asbestos at the landfill and this tip led to our investigation. As it turns out, during the time that PEER was reviewing the files of the FDEP,

¹ The last of these papers may be found at http://www.peer.org/news/news_id.php?row_id=646. This link will lead to the other analyses performed by *Florida* PEER on this matter.

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several federal agencies were investigating the two companies in connection with what was believed to be the improper demolition and removal of ACM and RACM from buildings at an Air Force Base, Hurlburt Field, located in the Florida Panhandle. EPA's CID was involved in the investigation, together with investigators from the Air Force, INS, IRS, FBI and OSHA. The U.S. Attorney's Office was also directly involved.

At the conclusion of the Air Force investigation, that agency determined that debarment proceedings should be initiated against Aztec and Big Wheel. The proceedings were begun and ultimately the companies were debarred from participating in federal contracts. As a result, Aztec recently announced that it was shutting down its business. See, "Federal restrictions close doors on Aztec," Panama City News Herald, May 17, 2007.

In addition, on August 14, 2006, the FDEP levied a civil penalty against Aztec in the amount of \$5,000.00 for violations in connection with the illegal handling of asbestos at the Air Force installation. This amount was levied via what is known as a short-form consent order that required no further work to be done by Aztec. It also provided for no additional oversight by the FDEP in the operations of the company. No further investigation was apparently deemed necessary by the FDEP.

It has also been reported that the Landfill has been sold to another company, Emerald Waste Services. We do not know what, if any, connections this company has to Aztec and/or Big Wheel. However, the landfill remains in operation. It is not our contention that the present owners of the Landfill are operating the facility in violation of state and/or federal laws. Indeed, we have no records reflecting any wrongdoing on the part of said owners. **Rather, the reason for our concern and the referral to the EPA is the likely presence of contaminates at the Landfill, said contaminates being deposited at the site during the time that Aztec and/or Big Wheel were in charge.** This situation has not been addressed by the FDEP and under the circumstances, there is no reason to believe that the situation will change.

Federal and State Agency Responses

In order to appreciate the present situation one needs to understand the collective responses of the governmental agencies to the situation at the landfill.

Florida

As mentioned above, *Florida* PEER requested and obtained documents concerning this matter from the FDEP. However, the FDEP's document production was less than forthcoming. The documents were requested pursuant to Chapter 119, Florida Statutes, the public records law governing Florida agencies. While documents were initially produced, it was later learned that the agency had withheld documents concerning Aztec's improper handling of ACM and RACM at the Air Force base. The intentional withholding of public records is a criminal offense in Florida. We therefore asked former FDEP Secretary, Colleen Castille, to investigate the matter and to remove the then District Director, Mary Jean Yon. We took this unusual step because Ms. Yon had publicly stated that any violations at the Landfill were essentially minor and that there was no cause for concern—a position demonstrably at odds with the agency's own records. Secretary Castille responded by asking then Deputy Secretary, Mike Sole, to look into the matter. Deputy Secretary Sole consequently assured us that the FDEP intended to enforce Florida's environmental laws. After that, Mr. Sole promoted Ms. Yon to the position of Director of Waste Management where she oversees the solid waste program for the entire State of Florida. Since his own promotion to Secretary, Mr. Sole has continued to keep Ms. Yon in that position.

In May 2005, *Florida* PEER also asked that an investigation be undertaken at the grand jury level to identify problems associated with the FDEP's enforcement of Florida's environmental laws. Inasmuch as our

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complaint dealt largely with the Big Wheel/Aztec situation, the matter was referred to Mr. Steve Meadows, the sitting State Attorney in Bay County, Florida. Mr. Meadows never contacted our office about our complaint. Then, after receiving no response, we asked for a copy of his files under Florida's public records statute. When his office ignored those requests, we sought the assistance of Florida's Attorney General, at which point Meadows' Office responded that they had submitted the matter to a state grand jury and that the grand jury had elected not to investigate. Meadows' Office claimed that they had no records (including notes) on the matter other than our original complaint. Thus, their claim that they asked a grand jury to look into the matter is hardly credible.

On October 5, 2005, the FDEP-OIG issued its findings into a PEER complaint that one of the supervisors in the agency's Northwest District Office had been asked to, and did, meet with an industry attorney prior to being promoted to his position. The attorney who met with the employee was a close associate of the Aztec/Big Wheel owners. The FDEP-OIG found no wrongdoing on the part of the agency.

Also as a result of our complaint to Meadows, the FDEP's Office of Inspector General (FDEP-OIG) initiated what it characterized as an investigation into the District's handling of the Big Wheel/Aztec and other matters. On October 13, 2005, the FDEP-OIG predictably issued a report affirming the FDEP's handling of the case.

In yet another tortured report, the FDEP-OIG, in May 2006, went out of its way to try to legitimize the FDEP's initial failure to provide us with all public records. Thus, the official stamp of approval was placed on the agency's conduct. On June 9, 2006, the local state attorney in Pensacola, Bill Eddins, likewise declined to prosecute the criminal activity based solely upon the FDEP's OIG report.

Given the history of this case, there is no reason to suspect that the agency will now admit any failures. Instead, we fully expect them to continue with repetitive denials.

Federal

On February 23, 2006, we submitted a complaint to EPA's OIG (OIG) asking that they investigate the FDEP's handling of the NESHAP program in Florida. We specifically pointed to the Big Wheel/Aztec matter. On August 22, 2006, the OIG responded by issuing a report that ignored the Big Wheel case and stated, in essence, that the state was free to administer the program as it saw fit. On February 28, 2006, we submitted a companion complaint to the OIG asking that they look into the FDEP's administration of the NPDES program.² We have yet to receive a response to that complaint.

We submitted a FOIA request to EPA Region IV for records pertaining to EPA's investigation of the Big Wheel/Aztec matter. On March 21, 2005, the EPA denied our request. We appealed that decision and in response, the agency provided us with three pages of records. All other aspects of EPA's files were withheld citing exemptions.

We have also submitted FOIA requests to the Department of Justice and the INS for records related to this case. Thus far, no records have been produced by either agency. The Department of Justice has denied our appeal of its failure to produce any records from the U.S. Attorney's Office handling the case.

² The two complaints were interlinked inasmuch as they arose out of the failure of the FDEP's Northwest District to properly investigate and enforce environmental cases. The FDEP-OIG had conducted what amounted to a sham investigation minimizing any problems and pronouncing the office healthy.

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The Air Force is the sole agency to actually produce records under FOIA. That agency provided us with a copy of the debarment memorandum, after which we sought a copy of the investigative file amassed by the Air Force. The Air Force recently produced its investigative file to us. It is after review of that file that we bring this matter to your attention and ask that your agency overfile in this case.

The Air Force File

The files amassed by the Air Force are voluminous. They document successful efforts by that agency to interview individuals who were employed by Aztec/Big Wheel as well as individuals employed by the FDEP. The results of the investigation are appalling. Parts of the investigation do not directly impact upon the environmental concerns that we are asking your agency to address. However, the sheer number and seriousness of the violations brings to the forefront the question of why no other agency besides the Air Force was capable of taking action against these companies. Simply stated, with respect to non-environmental issues the agency concluded that:

- Fully one-third (1/3) of the employees of Aztec/Big Wheel were either confirmed illegal immigrants, or individuals who could not provide conclusive evidence of citizenship.
- The use of false social security numbers and other fictitious forms of identification was rampant.
- There were multiple incidents of employees (most of whom were illegal) working protracted hours, sometimes between 60 and 80 hours per week, for the company and yet being paid for less than 40 hours per week.
- There was evidence of illegal immigrants being housed in substandard housing.

Despite these serious violations, to our knowledge no agency brought criminal prosecutions against the companies involved. Instead, many of the illegal immigrants were deported and the companies suffered only the debarment action brought by the Air Force.

Instead of prosecuting the perpetrators of the above offenses, we believe that a federal grand jury was convened in Pensacola, Florida. Yet, for some unexplained reason,³ no criminal charges were filed against the companies at issue. Indeed, it appears as though the investigation was abruptly brought to a halt by other government officials. Interestingly, the U.S. Attorney for Northern Florida, Greg Miller, was, at the time of this investigation, under consideration for dismissal by the Attorney General. His dismissal was somehow avoided.⁴

At least one witness, a company employee, confirmed the close ties with the Governor when that worker was interviewed by the Air Force investigators. While heavily redacted, the report states:

“[REDACTED], Panama City, FL Attorney, financed all vehicles for AZTEC and [REDACTED] name was signed on many of [REDACTED] assets. [REDACTED] owned a plane with a hired pilot, [REDACTED] (NFI), who often flew attorneys and JEB BUSH, the Governor of Florida. Sun Trust Bank stopped doing business with AZTEC because they were always late on vehicle payments, and they bounced payroll checks.”

³ The U.S. Attorney's Office has refused to provide us with any records on this case.

⁴ See, <http://www.washingtonpost.com/wp-dyn/content/article/2007/05/17/AR2007051700605.html>

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The records from the Florida, Department of State, do more than document the providing of campaign assistance by the companies to the Governor. They also show that this assistance was being given both before and during the investigations that were ongoing against the companies. Obviously, this was significant enough of an issue for an employee of Aztec to bring up the matter to the Air Force investigators.

The documents on file with the State of Florida, together with the evidence obtained by the Air Force, point to a close relationship between the Governor and Aztec/Big Wheel. **In light of this close relationship, together with the all-but-complete lack of serious enforcement and the almost complete refusal of governmental agencies to provide their records on this case, it is more than reasonable for the public to question whether or not political influence was exerted in order to prevent a full prosecution of the companies.**

The Environmental Issues Presented

This brings us to the environmental issues that we believe your agency needs to address.

NESHAP Issues

On February 15, 2006, we issued another press release⁵ and White Paper on this matter wherein we discussed documents that the FDEP had belatedly produced. Those documents dealt with an investigation into Aztec's activities at an asbestos demolition and removal site on the Air Force's Hurlburt Field in Florida's Panhandle. It was this case that had apparently caused the ultimate debarment of the companies by the Air Force. The FDEP was well aware of the case. The allegation was that RACM and ACM had been illegally handled by Aztec's workers, rendering it friable. There was a lack of containment, as well as a lack of protective gear for the workers. The asbestos was bagged and thrown into a dumpster on site. It was then trucked to the Big Wheel landfill where it was allegedly buried in violation of the facility's FDEP-issued permit. When this activity was discovered by the FDEP, the agency ordered the company to dig up the asbestos and remove it to a landfill that was authorized to accept the same. The company then provided photographs to the FDEP. The photographs were accepted and the matter considered resolved.

In the White Paper that we issued⁶ we stated with respect to this manner of case handling:

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

5 See, http://www.peer.org/news/news_id.php?row_id=646

6 http://www.peer.org/docs/fl/06_15_2_bw_revisted.pdf

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the excavation. Yet, no arrangements were made and Aztec was allowed to dispose of the material with no oversight.

The Air Force file reflects a similar concern on the part of its investigators. Indeed, when those investigators compared photographs taken at Hurlburt Field with photographs given to the FDEP as supposed proof that the illegal asbestos had been excavated and transferred to another landfill the investigators found that the company had allegedly failed to follow the FDEP's orders. Aztec employees were questioned at length on this issue and gave conflicting accounts to the investigators who, in the end, could not confirm that the asbestos had been removed. Therefore, the overwhelming evidence suggests that the asbestos was still buried in the landfill, indicating a clear permit violation.

Why would this have occurred? Simply because it was much cheaper for Aztec to bury the material in a landfill that it owned—thus avoiding the payment of tipping fees.

The Air Force files also reflect interviews of employees who were available to testify that:

- Friable and non-friable asbestos was frequently comingled and buried at the Big Wheel landfill.
- Friable asbestos was not infrequently removed in a dry condition repeatedly exposing the workers to contaminated particulates in the air.
- At the Hurlburt Field site, tiles were removed with embedded asbestos. The tiles were then crushed rendering the asbestos friable.
- There was a frequent lack of containment.
- Manifests were often given to truckers after the fact for signature. Thus, truckers were signing off on shipments that they might not have made.
- Training course certificates were produced for courses not taken by the employees.
- On at least one occasion, an Aztec vehicle was found by investigators to be carrying marijuana. Laboratory tests confirmed the investigators' suspicions.
- "Aztec only performs driving history checks for those employees with CDL licenses. Aztec does not conduct criminal background checks because most of their employees already have a criminal history." AF Report of Investigative Activity, November 10, 2003.

The following passage from a May 6, 2004, Report of Investigative Activity, perhaps best sums up the situation uncovered by the Air Force. The interviewee was an Aztec employee:

"[REDACTED] stated illegal activity occurred on nearly every AZTEC asbestos project. [REDACTED] AZTEC supervisor, was the worst offender and was called 'the devil.' [REDACTED] Pushed crews to work quickly and take shortcuts. Asbestos was often removed dry, but [REDACTED] sprayed water on the bags as an appearance of wetting the asbestos. For example, [REDACTED] recalled a project in 2002 on Tyndall AFB where no asbestos prep or air monitoring was performed. Pipes covered with friable asbestos were dry removed from the building. [REDACTED] emphasized that air monitoring was also bogus. AZTEC collected its own air samples, including clearance samples, from locations outside containment. This ensured the project always passed the final clearance inspection. When AZTEC was closely supervised and required to use an air monitoring consultant, supervisors such as [REDACTED] requested air monitoring consultants who helped them pass their inspection. [REDACTED] would

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say lets use [REDACTED] Southern Earth Sciences, because we can get away with not taking real air samples.

[REDACTED] said [REDACTED] regularly illegally dumped friable asbestos into Big Wheel Recycling (Big Wheel) landfill. Sometime in 2002, [REDACTED] was at Big Wheel Recycling (Big Wheel) landfill, Section 388, whereupon he observed [REDACTED] dump a load of friable asbestos in the landfill. The landfill operator (NFI) covered the asbestos with a layer of sand and then another layer of garbage.”

Employees also advised the Air Force that the truckloads of asbestos came not just from around Bay County. To the contrary, they informed the investigators that shipments were received from public schools in Tallahassee, as well as Florida State University and a number of other locations throughout the Panhandle. Thus, the activity was clearly widespread.

The files are replete with interviews from multiple employees claiming that the above practices took place. While we are cognizant that Aztec has closed its doors, there is every reason to believe that illegally buried quantities of RACM are still in the Landfill. Our concern is that this contaminate be identified and removed. The FDEP has the legal authority under § 403.091, Fla. Stat., to obtain an inspection warrant authorizing them to conduct excavation activities at this site. Given the political situation outlined above, however, we seriously doubt that the agency has the willingness to enforce the laws it is sworn to uphold.

NPDES and RCRA Issues

The Air Force files reflect admissions by employees that on multiple occasions they had removed sludge from “oil/water separator tanks, fuel tanks, grease traps, and septic tanks on Tyndall AFB, FL.” **This material “consisted of oil, grease, jet fuel, and septic waste.”** It was commingled with other waste in Aztec’s tanker trucks and then driven to the Port St. Joe transfer station where it was illegally disposed. This practice, which included dumping the material into storm drains, was used in order to save the company money. (Reports of Investigative Activity, June 29, 2004 and July 1, 2004)

Another employee informed the Air Force that such sludge was also disposed at the public landfill owned and operated by Bay County. In a report dated June 29, 2004, an Air Force investigator describes what the investigator was told by an Aztec employee. As the June 29 report recounts, the employee, a truck driver, stated:

“[REDACTED] did not regularly dispose of Tyndall AFB’s sludge and other waste at Big Wheel Recycling, Inc landfill because [REDACTED] was afraid of getting caught. In 2004, [REDACTED] told [REDACTED] he disposed of Tyndall AFB’s hazardous waste in Bay County landfill on Steel Field Road, Panama City, FL. Originally, this waste was moved from 2060 Sherman Avenue, Panama City, FL to Big Wheel 388 landfill because Florida Department of Environmental Protection instructed AZTEC to properly dispose of it. [REDACTED] recalled observing the thick sludge sitting at Big Wheel 388 landfill. [REDACTED] emphasized the sludge smelled awful and would turn your skin red if you touched it. While at Big Wheel landfill, [REDACTED] added dirt to the sludge and attempted to

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dispose of it legally at Bay County landfill. However, Bay County turned them down. Since its disposal was not authorized at Big Wheel 388 and Bay County landfill, [REDACTED] bribed a Bay County landfill employee to dig a hole and allow him to illegally dispose it. At approximately 0400 in the morning before Bay County landfill opened, [REDACTED] and an unknown AZTEC employee, who [REDACTED] believed was [REDACTED] disposed of the waste in Bay County landfill. Apparently, the waste was so thick [REDACTED] could not dispose of it at Port St. Joe because someone would notice it.”

But, according to Aztec/Big Wheel employees, the illegal dumping of such materials also occurred routinely at Big Wheel’s landfill on Steel Field Road, i.e. Big Wheel 388. In an April 7, 2004, interview, a Big Wheel manager told the Air Force that:

“[REDACTED] heard Aztec Environmental, Inc (AZTEC) employees illegally disposed friable asbestos and hazardous material in Big Wheel landfill. [REDACTED] believed [REDACTED] AZTEC [REDACTED] illegally dumped asbestos in Big Wheel after normal work hours. [REDACTED] never saw [REDACTED] do this, but [REDACTED] also claimed [REDACTED] AZTEC [REDACTED] illegally dumped hazardous material into Big Wheel landfill from the Oil/Water separator contract on Tyndall AFB, FL. [REDACTED] stated [REDACTED] arrived at Big Wheel landfill (sic) with a full tank of hazardous material and would depart with an empty tank. [REDACTED] never observed [REDACTED] dump this material. [REDACTED] opined [REDACTED] and [REDACTED] had direct knowledge of AZTECs illegal disposal practices. [REDACTED] was not certain if [REDACTED] or [REDACTED] AZTEC Owners, knew about these illegal disposal practices. However, [REDACTED] had [REDACTED] sign weight manifest shipments/records even though he never observed the material entering or departing Big Wheel. [REDACTED] eventually refused to sign these records because of ethical concerns.”

Other employees did confirm the illegal disposal of hazardous substances at the Landfill. The dumping was common knowledge and routine.

The FDEP’s History Shows It Will Likely Not Enforce The Law

In 2004, the Air Force investigators also spoke with FDEP employees concerning the matters that were under consideration. In a February 13, 2004, Report of Investigative Activity, the investigators included this concise statement:

“On 18 Feb 04, a review of Florida Department of Environmental Protection (FDEP) violations issued against Aztec Environmental, Inc. (Aztec) was performed (TAB A). In all projects, FDEP closed the violation without enforcement. However, the Bldg 90333, Hurlburt Field violations were still open and subject to FDEP enforcement.”

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We now know that the Hurlburt Field case was resolved with issuance of a short-form consent order in the amount of \$5,000.00. The company paid the penalty, in full, on September 11, 2006.

But what about the other cases identified by the Air Force? **The file reflects eight (8) other cases in which the FDEP identified violations but took no enforcement.**

The FDEP's enforcement response against this chronic violator has fallen so far short of both EPA's and the FDEP's own written enforcement standards and policies, that protection of the environment and public health requires federal intervention in this case. In particular, the Air Force's investigation provided a significant body of evidence that hazardous materials, including jet fuel, were illegally and routinely disposed at the Big Wheel Landfill. In addition, as PEER reported well over two years ago, the FDEP's files showed that the FDEP knew of excessive concentrations of aluminum being reported in the facility's monitoring wells. Yet the agency has done nothing to determine the extent of the problem.

The situation was only exacerbated when the former District Director, Mary Jean Yon, publically supported Aztec and Big Wheel against PEER's charges that something was seriously wrong with the operation. The FDEP attempted to withhold documents from PEER and then tried to explain this behavior on a simple miscommunication. At the conclusion of it all, Ms. Yon was promoted. Before her promotion Ms. Yon commented on the Big Wheel facility to PEER in a letter dated June 16, 2004. In the letter, she 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.”

At the time that the above letter was written, the Air Force had already largely confirmed the multiple instances of serious and arguably criminal environmental and other violations.

For its part, the FDEP-OIG rubber-stamped the FDEP's Northwest District's handling of air cases, including the Big Wheel case by issuing a finding that allegations of mishandling were “unfounded.” In a situation when staff had been precluded from aggressively pursuing enforcement, the report ironically suggested that managers and supervisors increase the level of communication between themselves and staff. Thus, the likelihood that staff would ever go outside the bounds and aggressively enforce the law was further reduced.

EPA Overfiling Is Necessary to Protect Public Health and the Environment

Both RCRA, 42 U.S.C. § 6928(a)(2), and CWA, 33 U.S.C. § 1319(a)(3), bestow upon EPA the concurrent authority to overfile, or bring enforcement actions against violators when authorized state programs have failed to enforce these statutes properly. Moreover, EPA has repeatedly made strong public policy pronouncements regarding the agency's interest in consistency in enforcement.

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There is simply too much evidence accumulated by the Air Force to ignore the likely environmental disaster in place at the Big Wheel Landfill. The evidence of political ties to the highest offices in Florida and in the federal government is likewise impossible to ignore. We are likewise aware of the difficult position that our bringing this matter to you places you in. We are nevertheless requesting that EPA Region IV –

- Take immediate and appropriate civil enforcement action against the Landfill under its concurrent authority;
- Affirmatively ensure compliance with the requirements of NESHAP, NPDES and RCRA in Florida; and
- Undertake an analysis of the Big Wheel site in order to protect both the public health and the environment.

Thank you very much for your attention to these matters. Please do hesitate to contact me to discuss.

Sincerely,

Jerry Phillips
Director
Florida PEER

Encl.: Pertinent Air Force Investigative Reports