

HOW FOXES GUARD THE CHICKEN COOP

Executive Summary

In PEER's latest White Paper, *Conclusions of IG's Political Contributions Review A Foregone Conclusion*,¹ we examined the "investigation" conducted by the Florida, Department of Environmental Protection, Office of Inspector General (OIG), into PEER's complaint regarding the use of an applicant's political campaign contributions in the hiring/promotion process. The investigation also considered evidence of the supposed need for at least one applicant to interview with a well-connected lobbyist prior to being given the job of Branch Manager. The investigation ended with a whimper. Not all witnesses were interviewed. Some of the witnesses (notably those witnesses in the Office of the Secretary) who were interviewed were not placed under oath. Some witnesses were specifically told that their statements could not be used against them in any future criminal cases against them. Some of the witnesses statements were not recorded and once again, those witnesses were in the Office of the Secretary. The OIG's files also reflect a complete failure on the part of the investigators to take any notes pertaining to their handling of the case. The result of the investigation is that the public has no realistic idea what, if any, crimes were committed because much of the evidence gathered in the investigation was never memorialized in writing or recorded for later review.

This White Paper addresses another investigation by the OIG. This investigation was occasioned by the complaint of a Special Agent for the EPA's, Criminal Investigations Division. The Special Agent notified the Florida Department of Law Enforcement about allegations of criminal conduct in the FDEP's Northwest District

Office. The goal of this conduct was the non-enforcement of environmental laws. The FDLE failed to investigate the matter, instead referring it to the FDEP's OIG.

The OIG interviewed thirty witnesses for its investigation. Those witnesses corroborated the allegations to varying degrees. In addition, allegations surfaced of yet more interference with the enforcement of Florida's environmental laws. The OIG report quickly branded the allegations of interference as "unfounded." It did not address the new allegations at all. Instead, it focused on numerous allegations of mismanagement within the Northwest District Office.

The allegations involving failure to enforce environmental laws ultimately coalesce around one individual, former District Director Mary Jean Yon. Ms. Yon allegedly intervened to prevent the enforcement of violations at (1) a site involving illegal filling of wetlands in Wakulla County after the violator contacted the Governor's Office, (2) numerous dredge and fill violations including the wholesale dumping of cattle carcasses into wetlands at the Veit's Dairy, (3) illegal discharges and asbestos removal from barges in Watson Bayou, (4) illegal discharges by the St. Joe Company into St. Andrews Bay, (5) a Progress Energy facility that conducted illegal fill operations in Gulf County,² (6) violations of dredge and fill laws by the Bay Point Marriott in Bay County, Florida,³ and (7) a Gulf Power facility that was accused of fish kills as a result of its operations. All allegations were deemed "unfounded" by the OIG.

In addition, however, the OIG investigation uncovered allegations of numerous other problems including the wholesale failure to properly analyze dredge and fill permit

¹ This White Paper may be viewed online at www.peer.org.

² Yon's husband's law firm represents Progress Energy.

³ Yon stayed at the hotel when she visited the Panama City Branch Office of the FDEP. She continued to stay there after the violations surfaced.

applications, and multiple other failures to conduct enforcement. The latter failures include: (1) the knowing failure of management to allow the FDEP inspectors to enter containment in asbestos removal areas, thus preventing effective enforcement of the Clean Air Act, (2) allowing an asbestos removal company charged with intentional violations involving asbestos removal to avoid paying a civil penalty by removing asbestos from houses owned by a church. The church had violated the asbestos removal laws itself and was allowed to circumvent enforcement without a showing of financial inability to pay, (3) allowing the Florida Drum Company at the Pensacola Shipyard to repeatedly violate the terms of its submerged lands lease which doesn't expire until 2009, (4) allowing a Red Lobster restaurant to avoid enforcement by taking out a public service ad. The OIG failed to substantiate whether the ad was placed, and FDEP records do not reflect the payment of a civil penalty. The violator is allegedly a strong supporter of Governor Bush, (5) allowing Big Wheel Recyclers, Inc. and Aztec Environmental, Inc. to avoid enforcement. This case was not investigated by the OIG despite PEER's request to do so and despite disturbing allegations of staff and management regarding the case. In addition, the Air Force has debarred both companies from contracting with the federal government as a result of their activities in the environmental arena, as well as the alleged use of illegal immigrants by Aztec.

Based on the information gleaned from the sworn statements taken by the OIG investigators PEER recommends the dismissal of Mary Jean Yon from the FDEP. In addition, given repeated calls for corrective actions by two grand juries, as well as the OIG reports, PEER recommends a wholesale change in upper level management in the Northwest District. In order to make a clean break with the manner in which business has

been conducted over the past decade, new blood needs to be brought in so that a new direction can be charted.

Given the OIG's failure to follow leads and to document its actions, as well as its failure to once again produce a report that is genuinely reflective of evidence obtained from the witnesses, PEER recommends the removal of Pinky G. Hall as Inspector General of the FDEP.

Report

Another Investigation Involving the FDEP's, Northwest District Office

The IG report (Report) was issued on October 13, 2005. It was assigned Investigations Report No. II-01-15-2005-014. The investigation was initiated upon receipt of a referral of the matter to the OIG from the Florida, Department of Law Enforcement (Report at 1).

I. The FDLE Referral

The Florida, Department of Law Enforcement (FDLE) had previously determined that the information that it had been given did not, in its opinion, justify the filing of criminal charges. It therefore referred the matter to the OIG. As the Report points out, the FDLE had received the information from Special Agent Paul Bouffard, an employee with the United States, Environmental Protection Agency (EPA), Criminal Investigations Division in Tampa (Report at 1).

What is not mentioned in the OIG Report is that, according to FDLE files, SA Bouffard briefed an FDLE agent in Clearwater on or about March 1, 2005. This agent, in turn, referred the allegations to FDLE's Executive Investigations office in Tallahassee via

Memorandum on March 3, 2005. (Report, Appendix F, at 35-36) The referral was made, in part, due to the severity of the allegations. (Report, Appendix F, at 36) This referral Memorandum states that SA Bouffard has “a great degree of expertise in environmental crime.” (Report, Appendix F, at 36) On March 25, 2005, FDLE Chief Inspector, Richard E. Lober, submitted his referral letter to Pinky G. Hall, Inspector General, FDEP. His referral letter to Ms. Hall states that the FDLE case was closed on March 3, 2005, the day after SA Bouffard briefed the FDLE agent in Clearwater on these matters.⁴ The FDLE file contains no notes, witness interview summaries or any other indication that the FDLE actually investigated the allegations that a sworn federal law enforcement officer deemed serious enough to warrant referral for investigation.⁵ The entire file, according to the FDLE’s Office of General Counsel, consists of seven (7) pages that include the initial lengthy referral letter, the transmission memorandum, the FDLE referral to General Hall and a letter from the FDLE’s attorney stating that the file contains no other documents.

As pages 3 and 4 of the Report make clear, SA Bouffard received what appears to have been the initial complaint in this matter from an FDEP employee who alleged that senior management in FDEP’s Northwest District Office repeatedly failed to take formal enforcement against environmental violators. The employee further alleged that the District Director at the time, Mary Jean Yon, personally intervened in cases in order to prevent enforcement.

⁴ In addition, the FDLE, Office of Executive Investigations date stamp on the Rhodes March 3 Memorandum is date stamped March 14, 2005. Thus, the investigation was completed in Tallahassee before the actual referral was even received (Report, Appendix F, at 35).

⁵ Interestingly, the current Commissioner of the FDLE, Guy Tunnell, is the former sheriff of Bay County—the area at the epicenter of many of the allegations covered in the Report. Tunnell was appointed by Governor Bush.

II. The PEER Referral

On May 3, 2005, PEER referred the issue of campaign contributions review to the two State Attorneys that PEER felt had jurisdiction over the matter. In addition to that issue, however, PEER asked the State Attorneys to review the FDEP's handling of the enforcement case against a local Bay County landfill, known as the Steelfield Landfill. This landfill is owned and operated by Big Wheel Recyclers and/or Aztec Environmental, Inc. William Harrison, the man who met with Henry Hernandez over lunch while Hernandez was seeking the position as FDEP Branch Manager, was on the Board of Directors of Big Wheel Recyclers. The two State Attorneys, in turn, referred both of these issues to Steve Meadows, the State Attorney located in Bay County.

On May 3, 2005, at the same time that we referred these matters to the State Attorneys for investigation, we also referred them to the FDEP OIG. Therefore, as of May 2005, the OIG had received complaints from both the FDLE (acting in response to a request for investigation from Paul Bouffard, EPA CID) and from PEER.

III. The FDEP's OIG Investigation

A. The PEER Public Records' Request

PEER asked to review the complete OIG files accumulated in that office's investigation into these issues. Those files were provided to PEER after the investigation was completed. They included:

- The October 13, 2005, Report
- Drafts of the final Report
- Emails between the OIG staff pertaining to the investigation.

- Exhibits identified in the Report
- Interview summaries
- Transcribed interviews
- Interview tapes

What was notably absent from the OIG's file was investigative notes of the four investigators involved in this matter. No notes were produced. The OIG claims that the investigators interviewed thirty (30) witnesses and reviewed files and took not one single note regarding the investigation. Also absent are any emails prior to June 15, 2005, well after some of the sworn statements had been taken by the OIG investigators. It should be noted that the practice of failing to take notes appears to be endemic of the OIG. In our previous White Paper, *Conclusions of IG's Political Contributions Review A Foregone Conclusion*, we noted on pages 9 and 10 that no investigative notes or emails were produced by the OIG in response to our request concerning that OIG investigation.

The result of this failure to document their files results in the public's inability to evaluate the contemporaneous impressions of the investigators, i.e. what they thought about each witness' demeanor and truthfulness. Thus, there is no way for the public to evaluate the investigators' judgments about the weight of the evidence presented to them. There is also no indication that the investigators attempted to piece together conflicts in testimony, or, if they did, how they went about doing so.

In addition, there is no indication in the OIG files that there was ever any discussion with FDLE as to the evidence that they had been given by SA Bouffard. No attempts were made to obtain any such evidence. There was likewise no discussion with the FDLE about why that agency did not conduct its own investigation or why the FDLE

believed that the charges, if proven, would not have warranted criminal prosecution. Instead, the OIG investigators conducted this investigation without any consideration of the FDLE’s handling (or lack of handling) of this matter.

The Report does include a blanket statement that “[i]nvestigators involved in this case have contacted Paul Bouffard, with the US Environmental Protection Agency and any other parties who were referred as having information regarding this matter.” (Report at 6) Interestingly, however, the Report does not contain any specifics (beyond his written referral to FDLE) regarding SA Bouffard’s concerns and evidence that he may have developed. And once again, there are no notes memorializing any conversations that the OIG investigators may have had with SA Bouffard or any other witnesses.

B. The OIG Investigation and Report

Investigative Report number 11-01-15-2005-014 (Report), issued by the OIG on October 13, 2005, failed to find any wrongdoing on the part of FDEP officials.⁶

1. The Allegations

The OIG, in questioning witnesses, identified several areas of concern. The first complaints addressed in the Report were raised by EPA’s source (whose identity has been withheld by the OIG). Those complaints, which will be cumulatively referred to as the “Source Complaints,” are:

- That District Director, Mary Jean Yon, was secretly going behind the back of her employees in order to prevent formal enforcement of cases.
- That Yon prevented enforcement in the Progress Energy case through contacts with the U.S. Army Corps of Engineers (USACOE).

⁶ A copy of the Report is attached hereto.

- That Yon acted to prevent enforcement in the Progress Energy case because her husband was a partner in the law firm that represented Progress Energy.
- That there was a lack of enforcement in the Veit's Dairy case.
- That Yon otherwise prevented enforcement cases from moving forward in the NWD.
- That Yon's promotion to FDEP Director of Waste Management was tied to her ability to prevent formal enforcement in the NWD.

In addition, the Report indicates that through witness interviews the OIG was told that enforcement was curtailed in the Sherman Tugs case, the St. Joe Paper Mill case, the Bay Point Marriott case, the Gulf Power case and the Henry Jones case. All of these cases were enforcement cases. Employees also raised concerns about the transfer of the SLERP (Submerged Lands and Environmental Resource Permitting) Program away from Panama City to Pensacola. There were also complaints involving mismanagement of the SLERP Program in the NWD including disparate treatment of SLERP employees and a lack of enforcement in the program. Employees further complained about inappropriate disciplinary action being taken against an employee as a result of his investigation into the Big Wheel matter. The lack of asbestos enforcement was raised as a concern. Finally, there were general complaints of mismanagement in the NWD, including improper handling of personnel issues, to wit, employee performance evaluations. All of the above complaints will generally be referred to as the "Employee Complaints."

Finally, the Report entirely ignores PEER’s complaint (PEER’s Complaint) regarding the failure to bring formal enforcement against the violators in the Big Wheel Recyclers case.

2. The Findings—Generally

The OIG labels as “Unfounded”⁷ all of the Source Complaints. The Employee Complaints (to the extent they were addressed in the Report at all) were all labeled as Unfounded, except for the allegation of mismanagement of the Panama City Branch Office (PCBO), which was “not sustained,”⁸ and the allegation of improper handling of employee performance evaluations, which was “sustained.”⁹ There was no finding pertaining to the PEER complaint involving Big Wheel, since the complaint was not mentioned in the Report.

3. Specific Findings & Relevant Evidence

a. *Henry Jones/Wakulla*

This dredge and fill case was raised in importance after the violator, Henry Jones, complained to the Governor that the FDEP was threatening to take enforcement against him. Jones had allegedly constructed a road through a protected wetland area in Wakulla County and did not have a permit. The violation appears from the Report to have been clear. According to the sworn testimony of Jessica Kleinfelter, FDEP Environmental Specialist III, a meeting was held between Jones, Yon, Thomas Franklin and Kleinfelter in order to discuss the violation and resolution of the enforcement case. Kleinfelter was

⁷ “Unfounded” allegations are those “which are demonstrably false or not supported by facts.” (Report at 33)

⁸ “Not Sustained” findings are made when there is “[i]nsufficient evidence available to prove or disprove allegation. In some instances, not sustained may reflect that the alleged actions occurred but were not addressed by departmental policy.” (Report at 33)

⁹ A “Sustained” allegation is one that is “supported by sufficient evidence to justify a reasonable conclusion that the actions occurred and were violations.” (Report at 33)

the ES assigned to the case. During the meeting Yon would not allow Kleinfelter or Franklin to speak. (Statement Summary at 122)¹⁰ Kleinfelter’s recollection was corroborated by Franklin. (Statement Summary at 75) Yon denied the accusation. (Statement Summary at 233) The penalty against the violator was reduced during the meeting. The penalty had been set at \$1,650, which included the permit fee. Yon reduced the penalty to \$500, i.e. the cost of the permit. (Statement Summary at 122)

In addition, however, Yon directed the employees to act as consultants for Jones by showing Jones how to make any necessary changes to the roadway. (Statement Summary at 75, 122 & 234) Yon, rather than denying her direction in this matter, confirmed it. (Statement Summary at 234) Her rationale was that this action helped Jones to come into compliance. (Statement Summary at 234)

Yon’s statement is contradicted somewhat by Branch Office Manager, Gerry Neubauer, who advised the OIG that he, not Yon, directed his staff to assist Jones in his dredge and fill project. Neubauer advised that this was not an isolated incident. Rather, it is his office’s policy to act as consultants for the public where the dredge and fill area is 1 acre or less. Although the Jones’ area exceeded that 1 acre delineation Neubauer agrees with the decision. (Statement Summary at 174)

The Report finds that the above actions took place. According to the uncontradicted testimony, the use of FDEP employees as environmental consultants for the regulated community is commonplace. What is equally disturbing, however, is that the Report specifically finds that Yon (and Neubauer by extension) had the authority to direct FDEP employees to act as consultants for violators. (Report at 8) The problems

¹⁰ References to “Statement Summary at ____” are to the Investigative Interview Summaries produced by the OIG. The volume summarizes each sworn statement. The page number refers to the page number in the

with such an approach are that by acting as a consultant for the violator (1) the FDEP is incurring additional potential liability as a result of decisions made by the employees, (2) such actions discriminate against those members of the public who abided by the law and incurred the costs associated therewith by hiring their own consultants, and (3) the FDEP is effectively weakened should third party challenges be brought against the offending activity. That the OIG countenances such activities is incredible.

b. *Veit's Dairy*

Kortney Koch was an Environmental Specialist II, located in the Panama City Branch Office at the time that this case arose. He was asked by Connie Lasher (Program Administrator) to go to the site to evaluate dredge and fill issues. (Statement Summary at 128) While there he observed numerous dredge and fill violations including ditches that had been dug leading to jurisdictional wetlands. The ditches were apparently used to carry runoff from animal feces and herbicides/pesticides used on site. In addition, Koch found dead cattle buried in the wetlands. There were also industrial waste violations. (Statement Summary at 128) Koch prepared a memorandum and sent it to Connie Lasher regarding his findings on the case. (Statement Summary at 128)

Connie Lasher alleged that she knew very little about the case, other than that she and Diana Athnos (Environmental Manager, Panama City Branch Office) had rewritten the memorandum and forwarded the findings to the water facilities staff. (Statement Summary at 141). Lasher denied any further involvement in the case. Athnos confirmed that she and Lasher had been involved in the case and that their involvement was minimal. (Statement Summary at 4)

volume where the referenced information may be found.

Greg Smith was the Environmental Manager of the Wastewater/Water Facilities section in Pensacola at the time of the Veit's Dairy case. Smith confirmed the violations and also confirmed that water samples had been obtained and that those samples showed water quality violations. (Statement Summary at 215) A case report was then prepared and sent to the Office of General Counsel for formal enforcement. The case was moving towards issuance of a Consent Order at the time of the OIG investigation.

What is unusual about the case is that, according to the testimony of the PCBO Branch Manager at the time, Henry Hernandez, the site is in the territory normally handled by the PCBO, yet there was an active wastewater case being handled out of Pensacola some time before personnel in Panama City even knew of the site's existence. It was not until Lasher called Athnos that the PCBO even became involved. (Statement Summary at 85) Hernandez further testified that, according to Lasher, Mary Jean Yon wanted to avoid enforcement at the site. (Statement Summary at 85) Hernandez also alleged that when he located the file in the computer system there were indications that a warning letter had been sent and that he was copied on the letter. However, Hernandez denied ever receiving notice of the warning letter. (Statement Summary at 86).

Hernandez further alleged that another PCBO industrial waste employee, Keith Butchikas, had discussed the case with Kortney Koch. Koch had allegedly informed Butchikas that, according to Greg Smith in Pensacola, the facility's action of burying over 300 dead cows in jurisdictional wetlands was not a violation. Butchikas, an industrial wastewater inspector, confirmed that such activities were definitely in violation of state regulations. (Statement Summary at 85-86)

Butchikas later told Hernandez that Greg Smith had held a closed door meeting with representatives of the dairy and that Smith had told the representatives that there was no violation and that they should just engage in “Best Management Practices.”

(Statement Summary at 86)

Smith was questioned approximately 3 weeks after Hernandez. Thus, the OIG knew of Hernandez’ allegations when they spoke with Smith. Smith told the OIG that he first visited the site with another employee, Chad Nowling. (Statement Summary at 214) Smith told the OIG that the site inspection revealed clear violations. Yet, he was not interrogated about the claim that he viewed the acts as legal.

In addition, the witness statements revealed that the two employees who could have shed the most light on the case development, Keith Butchikas and Chad Nowling, were not questioned by the OIG. In addition, Mary Jean Yon was never asked about the case. (Statement Summary at 233-253) No interviews were conducted with the violator’s representatives. No interviews were conducted of any of the attorneys within the FDEP’s Office of General Counsel (which had allegedly been asked to take formal enforcement against the dairy).

After failing to interview all of the involved witnesses, the OIG found Hernandez’ allegations to have been “unfounded,” meaning that the allegations were “demonstrably false” or not supported by the facts. (Report at 9)

c. *Sherman Tugs*

According to PCBO manager, Henry Hernandez, this case involved several violations, including the unlawful discharge of oil from sunken tug boats in Watson Bayou, as well as improper removal of asbestos containing material from inside the tug

boats. Hernandez alleged that both he and another inspector had personally observed the violations. (Statement Summary at 77)

The allegation was that Yon did not want enforcement to be taken because the Fish and Wildlife Commission had a contract with the salvage company that owned the tugs. Hernandez alleged that Dick Fancher (then Assistant Director for the NWD) told him that Yon did not want enforcement. Hernandez also alleged that he received a call from Yon herself and that she told him not to take enforcement. (Statement Summary at 77) Yon also allegedly believed that the Environmental Specialist on the case, Richard Brookins, was overzealous and should not write a formal report of the violation. (Statement Summary at 77) Ultimately no enforcement was taken. (Statement Summary at 78)

For his part, Richard Brookins testified that before he even went out to the site, Sandra Veazey, the Environmental Administrator for the Air Program, told him that there would be no enforcement in this case!¹¹ (Statement Summary at 16) Veazey informed him that it was Yon's decision. (Statement Summary at 16) He went ahead and wrote the report on the violations and was therefore told that he was overzealous. Brookins further confirmed that Fancher had spoken with Hernandez about not taking enforcement in the case. (Statement Summary at 16)

Another employee, Greg Landry (working in the FDEP Pensacola Office) advised the OIG that he seemed to recall Veazey saying that there was to be no enforcement in this case. (Statement Summary at 135)

¹¹ It should also be noted that at the beginning of Veazey's sworn statement she was told that any evidence that she gave could not be used in a criminal case against her. This, despite the fact that according to DEP Directive 290 5.d. the OIG is specifically authorized to investigate allegations of criminal conduct.

For her part, Veazey said that she didn't recall Yon saying that there was to be no enforcement. Indeed, Veazey indicated that she really didn't remember the case.

(Statement Summary at 224)

On June 21, 2005, the OIG interviewed Dick Fancher. He was not asked about the case.

On June 22, 2005, the OIG interviewed Mary Jean Yon. She said that she was not familiar with the case. (Statement Summary at 234)

No other witnesses were interviewed about this case. With all of the testimony (except for Veazey's lack of recollection) stating that Yon had stopped enforcement of the case (through Veazey), the OIG incredibly found the allegations to the contrary to be "unfounded." (Report at 9) There is no mention in the Report of the testimony of Hernandez or Landry. Yon and Veazy's testimony that Brookins was "overzealous" appears to have been fully credited.

d. *St. Joe Paper Mill*

The OIG learned from Henry Hernandez that the St. Joe Paper Mill had been illegally discharging pollutants directly into a drainage ditch that led to the open waters of the St. Joe Bay. The facility was permitted to discharge to a storm water retention pond which was being bypassed. (Statement Summary at 82) Keith Butchikas and Richard Brookins, both from the PCB office went to the site and documented the violations.

The PCB manager at the time was Gary Shaffer (Hernandez's predecessor). According to the OIG file, Shaffer was not interviewed by the OIG in connection with this case.

Brookins confirmed Hernandez' recollection of the events on this case. He also testified that he had visited the site every day for almost a month at Gary Shaffer's direction. The discharge itself was described on some days as "the color of chocolate milk going into the bay from the plant." (Statement Summary at 15-16) Brookins further testified that he had also visited the site with Josie Penton, another PCBO employee. Brookins documented his findings and forwarded the same through appropriate channels for action.

Butchikas was never interviewed by the OIG. Josie Penton, though interviewed, was not questioned about this case. (Statement Summary at 199-204)

For her part, Yon testified that she directed the matter into the Brownfields Cleanup Plan. The area was then cleaned up. She testified that she did not believe that the company was fined. (Statement Summary at 235) Hernandez corroborated the effort to have the matter handled via the Brownfields Cleanup Plan. (Statement Summary at 15) The site was then cleaned up.

No one explained why this company with its substantial assets could not have been required to cleanup its own mess and to pay a sizable civil penalty for knowingly violating the FDEP's regulations. There is every indication that the discharges were knowing and willful, a factor that would also have justified criminal prosecution. This, however, appears to never have been considered.

The OIG "exonerated" Yon on this case. (Report at 9)

e. *Progress Energy*

According to the Report, the allegations are twofold. First, the allegations are that Yon intentionally diverted handling of this case from the PCB office to the Tallahassee

Branch Office in an effort to prevent the PCB Office from taking enforcement. (Report at 10) Second, it is alleged that she did so because her husband is a stockholder and partner in the law firm of Radey, Thomas, Yon & Clark. The law firm represents Progress Energy. Yon's husband is also an officer of the Florida Association of Power Generators. (Report at 12)

The violations involved with this case essentially involve two program areas, NPDES and dredge and fill. Geoffrey Rabinowitz, an Environmental Administrator in the Tallahassee Branch Office (TBO) testified that he received a telephone call from Yon informing him that the company had voluntarily reported an adverse impact to approximately ten (10) acres. Yon wanted him to refrain from taking NPDES enforcement because the company had self-reported the violation, was a "good player" and "just made a mistake." (Statement Summary at 205) Rabinowitz testified that he considered the violation to be serious. (Statement Summary at 207) He likewise stated that such NPDES violations almost always result in assessment of a civil penalty. (Statement Summary at 206)

The U.S. Army Corps of Engineers (ACOE) was also involved with the dredge and fill violations in this case. In fact, according to Rabinowitz, Yon also acknowledged that she had received a copy of a cease and desist order that the ACOE had sent to Progress Energy. She furthermore told Rabinowitz that she intended to allow the ACOE to take the lead in this case, even though their basis for asserting jurisdiction was different from that held by the FDEP. (Statement Summary at 207)

For his part, the ACOE representative, Rick Holden, testified that he "stumbled onto" the violation. (Statement Summary at 97-98) The ACOE ultimately assessed a

\$45,000 civil penalty for the dredge and fill violations. Yon agreed with the assessment. (Statement Summary at 98-99)

i. The initial referral to the TBO

There is no question that Yon asked the Tallahassee Branch Office (TBO) to handle this case. All witnesses seem to agree on that point. Rather, the first concern that was raised was why the TBO was involved in this case at all. The facility was, in fact, located in Gulf County, the area normally handled by the PCBO. Hernandez testified that Diana Athnos advised him that Yon had informed her that she was sending Tom Franklin (TBO) to the site because she didn't want Kortney Koch going to the site. Koch, Yon apparently believed, would want to take formal enforcement. (Hernandez Statement Summary at 86)

Kortney Koch testified that Yon called him and informed him that she had mistakenly assigned the case to the TBO. (Statement Summary at 126-127). He also informed the OIG that the rumor in the office was that Yon had bypassed the PBCO because Koch was unafraid to take enforcement. (Statement Summary at 127)

Diana Athnos told the OIG that she had received the call from either Lasher or Yon, but that the transfer of the case did not bother her, because it was less work and the site was at the far end of their territory. (Statement Summary at 3)

Environmental Specialist III, Thomas Franklin works in the TBO. He confirmed that he had been asked to attend two meetings at Progress Energy. He also said that it seemed unusual that the case was not being handled by the PCBO. (Statement Summary at 73) He found nothing unusual with allowing the ACOE to handle the dredge and fill case. At the conclusion of the case he reported his findings to Connie Lasher and Matt

Dimitroff. (Statement Summary at 74) Franklin also noted that the handling of dredge and fill cases was transferred from the PCBO to Pensacola after the Progress Energy case was closed. (Statement Summary at 74)

Gerry Neubauer is the TBO Branch Office Manager. He testified that he believed Yon asked his office to handle the case because she “just felt more comfortable with [the TBO].” He also said that the PCBO had problems in the dredge and fill area. (Statement Summary at 172)

Former Environmental Manager, Franklin Dimitroff¹² testified that the manner in which the case developed seemed “odd” to him because Yon was directing the wrong person, i.e. Franklin, to go to the site when it was out of his area. (Statement Summary at 27) Dimitroff also felt that this case was the case that began the complaints against Yon because Hernandez was upset that he was bypassed on the case when he was the Branch Manager of the PCBO. (Statement Summary at 28) The final resolution seemed fine with Dimitroff, except that it was odd that the ACOE had been brought into the matter, which wasn’t normal. (Statement Summary at 28)

Connie Lasher testified that Yon simply made a mistake in referring the matter to the TBO. Nevertheless, she viewed the end result as “fabulous.” (Statement Summary at 144-145)

Mary Jean Yon testified that she learned of the case from Deputy Secretary, Allan Bedwell. (Statement Summary at 239) She then spoke with Paul Lewis at Progress Energy. Lewis admitted that they had “screwed up.” She mistakenly assigned the case to the TBO, however, the PCBO was also having problems in the dredge and fill program

¹² Dimitroff reported directly to Connie Lasher and Assistant District Director Dick Fancher. (Statement Summary at 25)

area at the time. (Statement Summary at 240) The bottom line is that the property was restored and that was good enough for the FDEP. (Statement Summary at 240)

The OIG determined that the allegations against Yon were “unfounded.”

ii. Yon’s Conflict of Interest

The rumor, which turned out to be true, was that Yon’s husband works, and is a named partner, at the law firm that represents Progress Energy. Yon admitted this. (Statement Summary at 241) The lawyer who represents Progress Energy is Susan Clark. She is a former member of the Public Service Commission, which regulates utilities. Yon, knows Clark and, in fact, Clark had worked with Yon’s husband at previous law firms. (Statement Summary at 241) Yon alleged that she had not discussed this case with her husband. She had not notified the FDEP’s Office of General Counsel or the Office of the Secretary about his employment. She simply sees no conflict of interest. (Statement Summary)

The OIG conducted no interviews of members of the law firm that represents Progress Energy. There is no indication in the Report, or in the witness summaries, that the employees were asked about the firm’s involvement in this (or any other) case. There is no indication in the Report as to whether or not the file was reviewed and, if so, whether it contained any evidence to suggest whether or not the firm was involved in the case under investigation. Nevertheless, the Report says that there is “no evidence to prove that Yon used her position as (former) Director of the Northwest District to show favoritism or leniency towards her husband’s legal clientele under her jurisdiction or that he was involved with any issue over which she had oversight.” (Report at 12) Thus, the OIG simply took Yon’s word that there was no conflict. It decided that the allegations

were “unfounded” while at the same time noting that under FDEP Directive 202, potential conflicts of interest should be reported to the employee’s supervisor and the Office of General Counsel. (Report at 12)

iii. Considerations

The issue of requesting another office to handle the instant case, while unusual, frankly does not strike us as altogether out of the ordinary. This is particularly so when management believes that a certain office is not equipped to handle the case. However, what has been entirely overlooked by the OIG is the fact that there were NPDES violations committed by the company. Geoff Rabinowitz clearly informed the OIG of this fact. Jurisdiction over the NPDES Program lies not with the ACOE, but with the FDEP. The FDEP receives grant money from the EPA to administer this federal program. Thus, the fact that the ACOE fined the company is irrelevant to the issue of the FDEP’s obligation to enforce the NPDES laws.

Contrary to the OIG’s finding that the allegations were “unfounded,” the evidence seems to be virtually one-sided that Yon prevailed upon the employees to curtail any NPDES enforcement of this case. She told Rabinowitz that the facility had self-reported its violations, was cooperative and a “good player.” In fact, it appears that it was the ACOE that found the violations and forced the issue. It further appears that after that, Progress Energy called the Deputy Secretary in an attempt to forestall FDEP enforcement. Yon was then contacted by the Deputy Secretary and told to handle the matter.

Yon handled the matter by reasoning that the ACOE had taken enforcement and that the FDEP was thus satisfied. This thinking sets a terrible precedent for future cases

and tells the regulated interests that they can play agencies against each other in order to lower their exposure for environmental violations. Furthermore, there is significant circumstantial evidence to suggest that Yon, at the behest of the Office of the Secretary, leaned on FDEP employees to prevent the imposition of civil penalties against the client of her husband's law firm. Simply stated, there was more than ample evidence to sustain the allegations against Yon.

The issue of Yon's conflict of interest is clear. She should not have been allowed to dismiss it so cavalierly. The OIG, once again, simply took her word and dropped the investigation. We are therefore not surprised by the ultimate findings.

f. *Bay Point Marriott*

The issue in this case is whether or not Yon, who had stayed at the Bay Point Marriott nine times over a fifteen (15) month period intervened to prevent enforcement against the facility when serious environmental violations had been discovered. (Report at 13) The facility raised significant resistance to enforcement by the PCBO. (Report at 13) Thus, the situation is different from Yon's characterization of Progress Energy wherein she felt that the facility was a "good player." Nevertheless, the results have thus far been the same. The OIG's findings were also the same—"unfounded."¹³

Henry Hernandez testified that the facility had a submerged land easement from the State of Florida allowing a boardwalk and restaurant to be built on the site. However, when the facility refurbished the boardwalk it did so with planking that severely restricted light from penetrating to the submerged lands. This constituted a violation. A meeting was held with the facility. Then, when Kortney Koch revisited the facility he

¹³ One draft of the Report, the only other draft with actual DEP Directive findings, resulted in a finding in this case of "not sustained." The ultimate finding of "unfounded" is more beneficial to Yon.

found that the facility was continuing its work (and expanding it) in direct violation of the law. Hernandez thereupon decided to initiate formal enforcement via issuance of a Notice of Violation. (Statement Summary at 78-79)

Hernandez began the process by drafting a warning letter to be sent to the violator. When he informed Yon that he had placed the letter in the mail bin for mailing, Yon instructed him to retrieve the letter and not to send it. (Statement Summary at 79) She allegedly told him that she stayed at that facility on business and didn't want to upset them. (Statement Summary at 79) He then documented his file.

Later, after Yon had been transferred to Tallahassee, a meeting was held with the violator, their attorney, Connie Lasher, Diana Athnos and Matt Dimitroff. According to Hernandez, Lasher told the violator that no enforcement would be taken. Hernandez said that Athnos and Dimitroff were upset at Lasher's position. (Statement Summary at 80)

Athnos confirmed her displeasure that no enforcement had been taken. She also indicated, however, that she did not know if the enforcement action was halted by Yon. But she did testify that Yon continued to stay at the facility even after "enforcement" had begun. (Statement Summary at 2) No one explained to her why enforcement was not taken in this case in which, she said, the violation was clear.

Kortney Koch, however, confirmed that Yon directly intervened to prevent enforcement of the case. He advised that he was about to issue a Notice of Violation when Larry O'Donnell (Environmental Manager, Pensacola) gave him a message from Yon indicating that no enforcement could take place without her approval. (Statement Summary at 126)

Dimitroff recalled that the initial direction of the case had been to take enforcement. However, it subsequently changed. This startled the participants. However, while he acknowledged leaving the meeting he denied that he was upset over Lasher's handling of the same. (Statement Summary at 26) Nevertheless, he expected that formal enforcement would be taken. He also believed that Yon was staying at the facility even after the case against them had been initiated. (Statement Summary at 27)

For her part, Connie Lasher recalled matters entirely different. She testified that there was never any question about taking enforcement. Rather, the issue was over ownership of the state lands and the subsequent easement. Until this was resolved, there could be no formal enforcement. Several other individuals were allegedly involved in clearing this up at the FDEP. (The OIG talked to none of these individuals) The case is moving forward now, however. (Statement Summary at 142-43) Lasher also recalled that one time when Yon was staying at the facility she, Yon, inspected the violations herself. Lasher was never told not to take enforcement. (Statement Summary at 143)

Larry O'Donnell was questioned and expressed surprise that the matter had not been resolved. He acknowledged that Yon liked to stay at the facility. In fact, he also admitted that another meeting had been held at the facility after which he and Athnos went to the dock and he personally observed the violations. O'Donnell expressed support for the job that Yon was doing. (Statement Summary at 184)

Mary Jean Yon denied telling anyone not to take enforcement in the case. She admitted staying at the facility even after the case against the facility had begun. She seemed surprised that this was a problem. She liked to stay there because the facility was well situated for running. As for the allegations that she didn't want enforcement—she

stated that Hernandez had a “conspiratorial way of thinking.” (Statement Summary at 235-37)

Once again, the OIG simply took the word of management and found the staff’s allegations to be “unfounded” even though the rank and file employees agreed that Yon (possibly through O’Donnell and Lasher) had acted to prevent enforcement. Lasher’s allegations that other FDEP employees were involved in the proprietary lands issue was not explored. Thus, we are left to speculate on where the truth lies.

One thing is beyond question, however. Yon routinely stayed at this facility and continued to do so even after the enforcement case began. She clearly failed to see the obvious conflict of interest and the appearance of impropriety that was thus created. The public should be entitled to expect higher conduct of public employees—particularly senior management.

g. *Gulf Power*

The allegations in this matter are straightforward. The facility, Gulf Power, wanted inspections by FDEP employees to be announced in advance. The given reason for the request was security concerns after 9/11. The facility also maintained that it would need to bring personnel from Pensacola to assist in any inspections, thus it made no sense to inconvenience the FDEP inspectors who would have to wait for their arrival. (Report at 14)

What the Report does not discuss is the manner in which this issue arose. The facility in question was in the area covered by the PCBO. According to the Statement Summary of Hernandez’ testimony:

Hernandez stated his office would receive complaints from the local fisherman (sic) advising of the

fish kills; which would prompt his office to immediately send out an inspector to take pictures and collect fish. Hernandez stated now, after Yon's order to give 24-48 hour notice when calls were received from the fishermen, they had to call, wait and by the time DEP was able to get on site Gulf Power would report they had already cleaned up all the dead fish and everything was fine. Hernandez stated they were unable to evaluate or find violations related to the reported fish kills because of the 24-48 hour required notice. Hernandez stated Gulf Power was also trying to get the public canal (where the local fishermen go) next to their site blocked for security purposes.

(Statement Summary at 83) Hernandez further indicated that there were multiple instances of fish kills. It was his belief that Yon changed the procedure for dealing with this facility because her husband's law firm represented power companies. In addition, he believed that the facility contacted politicians and thereby achieved the desired result.

(Statement Summary at 83)

Richard Brookins testified that the Gulf Power facility is the only case in which his inspections are unannounced. He further testified that he was sometimes asked to inspect two such facilities in the same day, which makes meaningful inspections very difficult. He indicated that he has easier access to military bases than he does to this facility. Due to the environment in the office he eventually quit asking for clarification of Yon's directives. He now fears for his job. (Statement Summary at 17)

Greg Smith is an Environmental Manager working for the FDEP in the domestic/industrial waste section in Pensacola. He testified that there were at least three fish kills involving this facility. However, the FDEP was unable to determine the causative factor because in at least one incidence only one species of fish had been killed. He also testified that the FDEP was continuing to conduct unannounced inspections, even

after Yon's memorandum requiring 24-48 hours advance notice. (Statement Summary at 213-14)

Environmental Administrator Sandra Veazey testified that she and Yon agreed to give the facility advance notice prior to inspections, in part due to 9/11. In addition, the facility's environmental staff were located in Pensacola, therefore unannounced inspections weren't that helpful, because the FDEP inspectors would have to wait for the facility's employees to arrive. However, she then indicated that she didn't know if the policy was still being adhered to. (Statement Summary at 225-26)

The Statement Summary pertaining to Mary Jean Yon's questioning on this issue shed's considerable light on her thinking in terms of overall enforcement. The passage reads:

“Griffin advised Yon that the employees were saying that if you do unannounced visits you might be able to see some things, but if you give the facilities 24 to 48 hour (sic), they have some time to change things. Supposedly some hot water was released in an area near the facility and as a result there were some fish kills and the 24-48 notices (sic) gave them time to clean up the fish. Yon stated again, that's the thinking that everyone is bad in the world and it wasn't that far fetched to do unannounced inspections. Yon also stated that Jim Vick and others explained other phenomena responsible for the fish kills. Yon stated it wasn't because the facility was scrambling and discharging hot water because they feared Brookins coming. Yon stated that she could argue either way for announced or unannounced inspections it wasn't a huge deal for her and she deferred the issue to Veazey as to how she wanted to handle it. Griffin asked if there was a security issue because the fishermen were entering the area. Yon stated that there was a crime wave, people had been killed and women raped. Griffin asked Yon, if someone could have put a spin on it or could somebody have the perception that, well they don't want us up in there because we won't see any violations. Yon stated that sounds like the kind of thinking the Panama City Office would have. Yon

stated that they were going to have Governor and Cabinet approval to close that area off.”

(Statement Summary at 238-39) The OIG did not ask Yon whether her husband’s law firm represented Gulf Power.

The interesting thing about this situation is that one would expect the practice of giving advance notice to be continuing if, in fact, the facility needed to have unannounced visits for security reasons. But it clearly is not. Thus, the initial rationale for discontinuing unannounced visits seems to have fallen apart. The same can be said for the issue of the facility needing to bring staff from Pensacola to accommodate the inspectors.

The bottom line is that the only way to fundamentally determine the cause of the fish kills is through aggressive, prompt inspections. The facility’s Title V permit gives the FDEP the authority to conduct such inspections. It is a fundamental tool used by environmental (and other) regulators across the country. In the absence of such a practice the facility will be allowed to avoid any meaningful enforcement—if such is warranted. By the same token, it will be practically impossible to clear the facility of suspected wrongdoing if it will not allow proper inspections to be conducted.

Yon’s husband’s tie to the utility industry should have prompted the OIG to query her and others on any possible ties to this facility. The Report’s silence on this subject is deafening.

The OIG once again pronounced the employee’s concerns as “unfounded.”

(Report at 14)

h. *Mismanagement*

The bulk of the Report centers around the issue of mismanagement of the NWD. After finding all of the allegations of interference with enforcement to be “unfounded”

the investigation quickly centered around issues concerning management-employee relations. In fact, it is evident that these issues dominated the focus of the OIG investigation.

The specific issues were:

- Whether or not the SLERP Program was improperly transferred from the PCBO to Pensacola. (Report at 15) Allegation deemed “unfounded.”
- Alleged mismanagement of the NWD SLERP Program. (Report at 16-17) Allegation deemed “Sustained” overwhelmingly due to findings that one employee, Connie Lasher, had ruthlessly managed those employees under her. She was found to be in violation of Directive 435.8.(7), Conduct unbecoming a public employee. She has since resigned from the FDEP.
- Alleged disparate treatment of SLERP employees. (Report at 18-19). Allegations deemed both “unfounded” and “not sustained.”
- Alleged inappropriate disciplinary action in Big Wheel asbestos case. (Report at 20) Allegation deemed “unfounded.” Both Hernandez and Brookins alleged that Yon and Veazey ordered disciplinary action to be taken against Brookins due to wording he used in an inspection report. Hernandez testified that he was told to “write-up” Brookins. Yon and Veazey denied the allegation. Hernandez never actually followed through on their direction.
- Alleged lack of asbestos enforcement in the NWD Air Program. (Report at 21) Allegation deemed “unfounded.”

- Alleged mismanagement of PCBO. (Report at 22) Of the four separate allegations, 3 were deemed “unfounded.” One was deemed “exonerated.”
- Alleged impropriety involving employee performance evaluations. (Report at 24-25) This allegation primarily centers around Valerie Huegel’s efforts to lower Vic Keisker’s evaluation. Huegel is a Program Administrator over human resources in the NWD. Huegel essentially admitted having input into the evaluation. The Report sustains the allegation and charges Huegel with misconduct under Directive 435 8.(8) and Directive 415 5.i.(3). Huegel remains employed and in the same position in the NWD.

PEER does not agree that the OIG investigation should have been diverted from an investigation into serious allegations of obstruction of justice towards an investigation into issues involving mismanagement in the NWD. That is not to say, however, that allegations of mismanagement should have been ignored, because there are clearly serious management problems within the NWD. Rather, PEER maintains that the investigation should have placed, at minimum, equal weight on the two overriding issues—obstruction of justice in the enforcement program and mismanagement.

As for the findings on issues of mismanagement the OIG appears to have taken a decided approach aimed at placing the blame for the issues involved on two individuals, Lasher and Huegel, while ignoring the obvious fact that their managers have known of the problems for years and have done nothing of substance to rectify them. Those managers bare equal blame, in our opinion, for the problems in the office. Yet, Secretary Castille saw fit to promote Mary Jean Yon to a position in which she now oversees all

solid waste facilities in the State of Florida. Assistant Director, Dick Fancher, has been promoted to Director of the NWD.

Yon's hostility to environmental enforcement is evident in her responses to the OIG, as particularly indicated in section B.3.g., above. She was the District Director and it is to be expected that her views would filter down through the ranks. Yon's philosophy was clearly echoed by Environmental Manager, Greg Smith, who told the OIG investigators that part of the problem was that the employees just didn't understand that the workload was too great to be able to take enforcement in every case. (Statement Summary at 211) This demeaning attitude towards the employees is misplaced. From a review of the interviews it is evident that the enforcement staff is well aware that cases can be negotiated to settlement. What they object to is the wholesale elimination of enforcement as a tool in FDEP's arsenal. These employees are smart enough to understand that FDEP's adoption of this policy is myopic and will eventually result in less, not more compliance, since the regulated industry understands that there are no ramifications for illegal conduct in the environmental field.

C. What Was Left Out Of The Report

The above issues are those that were directly addressed in the Report. However, testimony obtained from the employees revealed other issues that the Report did not consider. Those issues are addressed below:

1. SLERP Permit Handling In The NWD

The Florida Panhandle is essentially the "last frontier" for the State of Florida. It is the one remaining part of the state that is not entirely over-developed. But that is changing. With growth reaching its peak in the Florida Peninsula, the inevitable

expansion into the Panhandle is now occurring. In addition, increased hurricane activity has caused unsettling in the area, resulting in more properties being made available for development.

In order for development to take place it is often necessary for developers to obtain a permit allowing them to develop wetland areas. The purpose of the permitting program is to control the manner in which wetland areas are impacted in order to assure their continued vitality to the greatest extent possible. Florida's wetlands serve as filters for water bodies, as well as providing safe habitat for fish and wildlife indigenous to the area. By the same token, the requirement of first obtaining these permits has long been a thorn in the side of many developers across the state because such permits pose restrictions on the amount and type of development that will be allowed to occur.

It is for the above reasons that staff in the PCBO was so concerned when Yon suddenly transferred front line responsibilities for these permits away from them and given to the Pensacola office to handle. This transfer meant that inspectors were further away from the development pressures in Bay and surrounding counties. It also meant that permit writers would be less familiar with the areas whose fate they were being asked to judge with each permit application.

Time and again, in the sworn statements given to the OIG, management posited the PCBO's lack of ability to handle the SLERP program as the reason that they moved the program to the Pensacola office. The Report states that "Yon's reason for the transfer of the SLERP Program to Pensacola was the extreme turnover problems in the Panama City Branch Office. (Report at 15)

What the Report leaves out, however, is that the situation was no better in Pensacola. In fact, Matt Dimitroff, former Environmental Manager of the SLERP, Compliance and Enforcement Section, is quoted in the Report as stating this in his sworn statement:

“The referral process though as far as deferring to another agency, there were times in settings where we were actually doing a triage and I don’t know if that was mentioned in any of the interviews that you all have currently conducted, but when I took my position there was such a backlog of case (sic) that we were getting concerned about the actual statute of limitations on some of these things, being that we had such a daunting workload. A decision was made by our program administrator (Lasher) through advisement of the District Director, who is Mary Jean Yon, Mary Jean Yon was made aware of this initiative, that we would go through the file in a group setting and just make an absolute on the spot determination. I mean, this case is worthy or it is out the door, case closed by district. I don’t really recall the numbers and, you know, there were some notes that I have.”

(Statement Summary at 29) According to Dimitroff, at least sixty cases were handled in this fashion. He felt that in some cases the environment was affected. (Statement Summary at 29) For her part, Lasher confirmed such a practice was occurring, but denied that it was affecting the environment. The volume picked up after Hurricane Ivan. (Statement summary at 147-48) And what did Yon say about the situation? She agreed that the SLERP Program was in trouble in the PCBO. That is why it was transferred to Pensacola. She felt that the result would be that the public would be better served. (Statement Summary at 242) Nevertheless, Dick Fancher would tell her at every Friday’s meeting that there were big problems in the SLERP Program. (Report at 252) Thus, it was clear that the transfer to Pensacola wasn’t successful.

The Report would have the public believe that the transfer of this program to Pensacola actually resulted in bringing the problems under control. It is evident from the sworn statements, however, that such was not the case. Approval of wetlands was, and may still be, decided based upon what amounts to a roundtable vote with little or no actual review of the application.

2. Asbestos Inspections

On August 11, 2005, PEER released a White Paper entitled *The Systematic Dismantling of the Asbestos Program in Florida*.¹⁴ The White Paper detailed the problems within the program and pointed to an issue involving the restrictions placed on FDEP inspectors. Specifically, inspectors are no longer allowed to go into “containment.” This means that the ability to actually discover violations and their associated health risks and risks to the environment is significantly reduced.¹⁵

The Report contains a section entitled “Alleged Lack Of Asbestos Enforcement In NWD Air Program.” (Report at 21) The Report references allegations that FDEP personnel are not allowed to contact the EPA Criminal Investigations Division when they discover what they believe to be criminal wrongdoing in regards to the handling of asbestos. Management denied this practice, alleging instead that employees were told to first go through the FDEP’s Bureau of Environmental Investigations. (Report at 21) Other allegations that a FDEP employee had been ordered by Sandra Veazey to change information in the NWD’s database to reflect higher enforcement numbers were also denied.¹⁶ (Report at 21)

¹⁴ See the press release and White Paper at http://www.peer.org/news/news_id.php?row_id=568.

¹⁵ White Paper, pages 11-14.

¹⁶ Recall that Veazey was informed at the beginning of her sworn statement that her statements could not be used in any subsequent criminal case against her.

The OIG uncovered additional information regarding the NWD's failure to enforce, however. On May 12, 2005, they interviewed Richard Brookins, the Environmental Specialist II, in the PCBO. Brookins informed the OIG that management did not want FDEP inspectors to go into containment. The attitude was essentially that if the violations were not documented it would preclude enforcement. (Statement Summary at 19-20) Later, Environmental Consultant, Greg Landry, who works in the FDEP's Pensacola Office, testified that Sandra Veazey had previously asked him not to enter containment on asbestos investigations. (Statement Summary at 138) Veazey's supposed reasoning was that the risks incurred in entering containment were too high and that the same information could be obtained from outside of the premises.¹⁷ (Statement Summary at 138) This order from Veazey effectively emasculated asbestos enforcement in the NWD. Its existence corroborates the findings in PEER's previously issued White Paper on the subject. For her part, Veazey alleged that the order came from FDEP's headquarters in Tallahassee. (Statement Summary at 225) However, she alleged that employees were allowed to go into containment if necessary, provided that they had the proper equipment. (Statement Summary at 225) Landry's and Brookins account of the basis for not going into containment significantly contradicts that of Veazey.

The Report does not reveal any effort on the part of the OIG to delve into this issue further. Its existence is left out of the final Report.

3. Enforcement Case Against Cross Environmental

Another case about which there is no mention in the Report is that of Cross Environmental. This is an asbestos abatement contractor that Richard Brookins discovered was falsifying survey reports. The matter was written up and a penalty of

¹⁷ Henry Hernandez, the PCBO Branch Manager, was not asked about this issue by the OIG.

between \$150,000 and \$250,000 was calculated. However, the penalty was later reduced to \$30,000. (Statement Summary at 18)

What is interesting about this case is that the civil penalty was not actually paid by the violator. Instead, the violator was allowed to demolish three houses owned by a church in Pensacola. (Statement Summary at 18) Greg Landry also discussed this case with the OIG. Apparently Landry found that the church was demolishing homes that it had purchased. The homes had asbestos in them and the demolition was illegal. This demolition was taking place next to the church's daycare facility. (Statement Summary at 135)

Landry further advised the OIG in his statement that when he spoke with the church officials they became upset and eventually went to their State Senator (Cleary) and complained about Landry's "harassment." Landry eventually informed the church that he would not take enforcement against them. (Statement Summary at 135)

It was at that point that Sandra Veazey informed Landry that they would allow Cross Environmental to work off its civil penalty by removing the asbestos for the church. Landry testified that he had mixed feelings about the appropriateness of this action, although he was glad that the asbestos would be removed properly and he also wanted to help the church out. (Statement Summary at 135)

Veazey was also asked about this situation by the OIG. (Statement Summary at 227) She indicated that she was not sure how the matter was handled, but that she was particularly proud of the outcome. (Statement Summary at 227-28)

According to formal settlement guidelines issued by the FDEP on January 24, 2002, In-Kind penalties are allowed to be used in order to achieve an environmental

benefit in cases in which the benefit is had by an insolvent third party. In addition, the in-kind penalty must be of a value of at least 1.5 times the actual civil penalty assessment.

There are at least four problems with the “settlement” in this case.

- First, the action on the part of Cross Environmental is arguably egregious enough to warrant criminal prosecution. The falsification of records should not be taken lightly. Not only was no criminal prosecution sought, it does not appear that it was even contemplated.
 - Second, the civil penalty was reduced by at least 80% for this offending party when it appears there was no basis for such a reduction.
 - Third, there is no indication as to the dollar value of the demolition that took place of the homes owned by the church. Therefore, it is unclear whether or not the basis for an in-kind penalty set-off was met.
 - Fourth, there is no indication in the OIG questioning as to whether or not the church was insolvent and unable to afford the demolition.
- Furthermore, the bottom line is that the church was allowed to escape any enforcement at all through this process. There is no indication in the record as to whether or not such an approach was warranted.

While we can appreciate the desire to bring about a positive environmental result the fact remains that such actions must be directed within the guidelines and regulations that govern the FDEP and the regulated community. It hardly seems that the greater good was served when alleged criminal conduct is allowed to go unpunished while at the same time allowing a second violator to escape the consequences of its actions. Instead, this is yet one more case in which it appears that political clout was used to bring about a result

that was pleasing to a constituent. Such an approach is hardly indicative of strong enforcement that encourages compliant behavior.

4. Pensacola Shipyard Enforcement

Also not covered in the Report is an apparent issue involving the Pensacola Shipyard, a/k/a the Florida Drum Company. This is a case involving a lease on state sovereign submerged lands. The company, according to the statement of Nicole McDonald (Hazardous Waste Section), is in violation of its lease because it is operating barges in excess of the size requirements of the lease. According to McDonald, Yon made the decision to allow the company to be in continuous violation of its lease until the lease expires and/or is renewed in 2009. The decision was made with little or no input from staff. Neither was an explanation for the decision given to staff. (Statement Summary at 167-68)

Stacey Owens, Environmental Specialist II, also voiced concern over this issue, stating that the company was, in effect, being given a free pass to violate the terms of their lease. (Statement Summary at 196)

The Report says nothing about this case. Nor is there any indication that the matter was investigated further by the OIG.

5. Red Lobster

Environmental Manager, Greg Landry informed the OIG of yet another case in which a company was allowed to avoid enforcement. The case involved a Red Lobster restaurant that he had found to be in violation of environmental regulations. He was prepared to assess a civil penalty and the restaurant was fighting the assessment. However, the restaurant owners subsequently determined that they had, in fact, been in

violation of the law. They thereupon proposed taking out full page ads in papers across the state warning the public against handling demolitions in the manner that the restaurant had done. The restaurant's name would not be in the ads; however, they were prepared to pay 1.5 times the amount of the civil penalty for this in-kind penalty arrangement. Landry indicated that he felt that this was a good resolution that would benefit the public. (Statement Summary at 139)

At some point, Landry testified that he received word from Yon's office that the matter was to be dropped. He alleges that he did, in fact, drop the case at that point. The case was apparently written up in the database as "compliance without enforcement," thus indicating that no enforcement was needed against the company. (Statement Summary at 139)

Landry further testified that his understanding was that this was done because the Red Lobster restaurant chain had been a big contributor to the Governor's campaign.

When asked, Sandra Veazey indicated that she could not recall the details of the case and whether or not the restaurant actually followed through with the public service announcement. (Statement Summary at 239)

The Report does not mention of this case.

PEER reviewed campaign finance records found on the Division of Elections website and found only minimal campaign contributions made by Red Lobster to a handful of candidates. Thus, if any significant contributions were made to the Governor they apparently were made under the names of individuals associated with the company.

PEER also checked FDEP's records of enforcement cases from 1998 through the end of 2004. This is a comprehensive listing of all enforcement cases brought by the

FDEP and recorded by the Office of General Counsel in its Legal Case Tracking (LCT) system. These records do not show any enforcement cases, including in-kind resolutions, having been brought against a Red Lobster restaurant. Thus, it would appear that the case was closed without enforcement, as Landry suspected.

6. Big Wheel

PEER has issued four White Papers¹⁸ covering events at a landfill in Bay County, Florida known as the Steelfield Landfill. Aztec Environmental, Inc. applied to the FDEP to operate a construction and debris landfill on the site. The FDEP subsequently issued the permit showing the permittee as the Big Wheel C&D Disposal Facility. The property owner is Big Wheel Recyclers, Inc. Both Aztec Environmental, Inc. and Big Wheel Recyclers, Inc. boast strong ties to both Governor Jeb Bush and President G. W. Bush.

The central issue in this case centers on alleged illegal disposal of asbestos at the site, as well as alleged dumping of toxic wastes. As for the issue of asbestos disposal, Richard Brookins inspected the site on October 24, 2002, and found significant evidence of illegal disposal of asbestos at the site. It appeared from the FDEP's enforcement files that Brookins and his supervisor, Henry Hernandez, felt that enforcement was appropriate. However, enforcement was inexplicably curtailed at the site. The FDEP's NWD District Director, Mary Jean Yon, in response to a letter from PEER asking that formal enforcement be initiated, gave a ringing defense of the company.¹⁹

At the same time that PEER asked Yon to take enforcement against the company we filed a complaint with State Attorneys William Meggs and William Eddins asking that a grand jury be impaneled to investigate the many varied issues at the landfill. These

¹⁸ See, http://www.peer.org/news/news_id.php?row_id=526 for the last press release in the series of white papers. Links to the online white papers are found at the bottom of the release.

two State Attorneys referred the complaint to Steve Meadows, the sitting State Attorney in Bay County. PEER also forwarded our complaint to the OIG asking that office to look into the matter.

The OIG’s handling of this matter is simply amazing. Instead of actually investigating allegations of corruption leading to the failure to enforce Florida’s environmental laws, the OIG investigation turned to the issue of whether or not the FDEP attempted to take inappropriate disciplinary action against Richard Brookins because he included the word “friable” in his inspection report.²⁰ The Report concludes that the allegations in this regard are “unfounded” because Veazey and Yon denied ever requesting such disciplinary action and Hernandez never actually followed through on their alleged requests. (Report at 20) The Report is silent on the FDEP’s failure to actually enforce the environmental laws in this case.

a. *Specific Issues Ignored By The Report*

i. The Air Force Debarment

On September 8, 2005, more than a month before the Report was issued, the Air Force debarred both Aztec Environmental, Inc. and Big Wheel Recyclers, Inc. from contracting with the federal government. See, September 28, 2005, PEER Press Release.²¹ The Air Force, it is now known, moved against the companies because of charges of improper asbestos disposal, efforts by the principals to have FDEP’s Greg Landry falsify inspection reports, use of illegal aliens et. al.²² Landry actually mentioned

¹⁹ http://www.peer.org/docs/fl/05_28_11_dep_letter.pdf

²⁰ The significance of the term “friable” is that friable asbestos is asbestos that is regulated under the Clean Air Act. Improper disposal of friable asbestos can lead to criminal prosecution and significant civil penalties due to the serious health effects stemming from inhalation of airborne asbestos fibers.

²¹ http://www.peer.org/news/news_id.php?row_id=592

²² See, PEER Press Release, November 28, 2005, and related Air Force Memorandum. http://www.peer.org/news/news_id.php?row_id=610.

the Air Force investigation to the OIG investigators. (Statement Summary at 133-34)

There was no follow-up, however.

ii. Media Spokesperson Involvement

Sandra Veazey was asked by OIG investigator Griffin if she documented why there was no enforcement in the Big Wheel case. She responded to him that:

“I didn’t document why. We – we had a meeting at one point with, I believe Sally Cooley and the solid waste inspector here in the district. Richard was on the phone and Greg Landry was also in the room and it was decided that basically the solid waste people would handle it since they owned the permit and it was a disposal problem with some material.”

(Statement of Sandra Veazey at 5, Statement Summary at 223) There were no follow-up questions asked of Ms. Veazey as to the need to have Sally Cooley, a FDEP media spokesperson, involved in the decision-making process concerning enforcement at the Big Wheel facility. No other witnesses were asked about her involvement. The issue is unresolved.

iii. Henry Hernandez

Allegations concerning Henry Hernandez also surfaced during the OIG investigation. They came from two individuals, Connie Lasher and Richard Brookins. They are significant with respect to the Big Wheel case, because Hernandez was Brookins’ supervisor during the majority of the time in which this case was being investigated. Therefore, the extent and direction in which he steered the investigation would be important.

The simple fact is that Richard Brookins went to the site in October 2002 and identified asbestos violations at the site. Brad Grimes, another FDEP inspector,

according to notes in the file, was keeping then Branch Manager, Gary Shaffer, apprised of the situation. Shaffer indicated that the file needed to be documented.²³ A warning letter was sent to the permittee on December 18, 2002. Then, on March 26, 2003, yet more asbestos violations were discovered.²⁴ At this point Mr. Hernandez was the Branch Manager of the PCBO. Yet, no enforcement was taken and then, on July 10, 2003, he visited the site with other FDEP officials and the front line inspector, Thomas Dillard, pronounced the site clean.²⁵ It is now known from the Air Force Memorandum that during this exact same time, Greg Landry was investigating Aztec for multiple violations including improper disposal of asbestos and falsification of records.

What was Mr. Hernandez' explanation to the OIG? Simply stated, he contended that the asbestos issues fell in a grey area and were therefore not enforced. He blamed the problems on Pensacola's failure to properly document the file. (Statement Summary at 80)

The problem is that the OIG interviewed Richard Brookins on the same day that they interviewed Henry Hernandez. We do not know which interview took place first. Regardless, the file is clear that Brookins told the OIG during his sworn statement that:

“Board Walk Beach, now, this was one that Greg Landry went with me on for the simple reason that Henry Hernandez's son used to work at Astec (sic) Environmental as a contractor on this job.”

(Statement of Richard Brookins at 23, Statement Summary at 20) Thus, Brookins gave the OIG evidence of a clear conflict of interest involving Hernandez. The conflict would have spilled over to the Big Wheel/Aztec site. Despite this, the OIG asked no other

²³ <http://www.peer.org/docs/fl/BigWheelAsbestosWP.pdf>.

²⁴ <http://www.peer.org/docs/fl/BigWheelAsbestosWP.pdf>. at 9

²⁵ <http://www.peer.org/docs/fl/BigWheelAsbestosWP.pdf>. at 9

witnesses, including Hernandez, about the allegation. They did not check with the Office of General Counsel to determine whether or not Hernandez had advised that office of the conflict.²⁶

But there was an even more incredible accusation regarding Hernandez. This one came from Connie Lasher. The specific exchange was as follows:

“CL:²⁷ Okay. Um, couple of other items, um, I think need to be brought up and, um, discussed some.

PG: Okay.

CL: There is one question that I am, something I’m curious about, I’m kind of curious how Henry Hernandez was hired by the agency without a Green Card.

PG: He was hired by DEP without a Green Card?

CL: Yes sir.

PG: How do you know that?

CL: Because Henry has told people that.

PG: Oh, okay.

CL: He is currently dealing with the INS. He has voted forever and is not a U.S. citizen and does not have a Green Card.

PG: Hmm, no, I didn’t know anything about that because, you know, we’re not involved in the hiring process. That would have been something that this agency on this side, I mean the district to find out about.

CL: I also understand that...

PG: Did they do a background on him?

CL: I do not know.

PG: I guess not. I guess not.”

(Statement of Connie Lasher at 89, Statement Summary at 160) In fairness to Mr.

Hernandez, he has denied Lasher’s allegations. He insists that, although not a U.S. citizen, he is from Cuba and in this country legally.

Mr. Hernandez’s status in the United States is one issue. However, another issue in this is the OIG’s handling of this information. The OIG did not ask any other witnesses

²⁶ On Page 12 of the Report, the OIG formally recommended that Mary Jean Yon notify the OGC of her conflict regarding Progress Energy.

²⁷ CL stands for Connie Lasher. PG stands for Captain, Percy Griffin, OIG.

about this allegation. They did not go back to Mr. Hernandez and question him about it. In ignoring the allegation and leaving it hanging they did no one a service. This is particularly so given the recent revelations that Aztec Environmental, the company for whom Mr. Hernandez's son worked, has been charged by the Air Force with using illegal aliens in its work force.

iv. Considerations

PEER takes exception to the OIG's failure to genuinely investigate the issue of the FDEP's failure to enforce known violations at the Big Wheel site. But what is equally troubling is the OIG's failure, seemingly intentional, in ignoring other information that it obtained during the course of its investigation from witness interviews. The OIG's startling failure to ask follow-up questions of witnesses in an effort to get to the truth involving this case is a clear example of negligence, at best and obstruction of justice at worst. The public is entitled to better performance.

IV. Conclusion and Recommendations

A. The Northwest District

After reviewing the Report, it is evident that there are two schools of thought within the NWD, if not the FDEP as a whole. It would appear that management is quite comfortable with the idea of abandoning formal enforcement if it leads to short term compliance. We indicate "short term" because there is no data to suggest that the regulated will overwhelmingly comply when a realistic threat of formal enforcement is removed from the equation. Nevertheless, that is the clear approach taken by management—regardless of their statements to the contrary. A perfect example is Mary Jean Yon's assertion that there was no need for enforcement against Progress Energy

because they were remorseful and wanted to comply. Yet, when the opposite scenario presented itself in Bay Point Marriott her position, once again, was to move away from formal enforcement.

Juxtaposed against management are the frontline inspectors. Their sworn statements reveal a desire to enforce Florida's environmental laws. They were trained to do so. But they are placed in the position of having to forego formal enforcement and opt for "compliance" even if they know that human nature dictates such an approach to be faulty. They also know that if they are to keep their jobs they eventually must get with the plan.

While we agree with the findings as to Connie Lasher and Valerie Huegel it is abundantly clear that to a certain extent they were mere scapegoats that allowed the OIG to assert that they had done something to appease the staff. It remains to be seen whether Lasher's departure will bring about a more positive work environment. We hope that it does. With that said, the problems are likely to persist so long as the staff is restrained from enforcing Florida's SLERP laws in cases in which powerful developers who are politically connected need only make a single phone call to "resolve" each case.

The Report concludes that the decision not to enforce is a prerogative of the District Director. (Report at 8) We generally agree. However, there is a significant difference between gathering all of the facts in a case and then deciding the best approach and a situation (such as was present in at least some of the cases herein) in which the decision not to enforce is made prior to the conclusion of the investigation. Further, when the practice is such that formal enforcement is almost never taken one must question

whether or not the issue is actually environmental protection or the protection of friends. Sadly, the latter appears to routinely be the case in the NWD.

The allegations against Mary Jean Yon were and are serious. In our opinion they more than justified her removal as District Director. The fact that she was promoted to oversee all solid waste facilities in the State of Florida sends a terrible signal that ethics is not a prerequisite to being in senior management at the FDEP. Simply stated, she should have been fired.

In short, it appears to be more than justified to replace all upper management within the NWD and bring in new managers who are not tainted with the allegations raised in the Report. As long as the same “good ‘ole boy” situation is allowed to exist we suspect that these types of allegations will continue to surface. In short, the NWD will be viewed as corrupt.

B. The Office of Inspector General

1. A Prior Report and Two Grand Juries

It should be remembered that the FDEP’s Northwest District Office has been the subject of two Escambia County Grand Jury investigations. Reports criticizing the office’s failure to enforce Florida’s environmental laws were issued in 1999 and 2004.²⁸ Thus, this office is hardly an office with a clean slate that is being criticized for the first time.

It should also be noted, however, that the same OIG that issued the Report also issued Report No. IA-03-23-2004-129, entitled a “Status Review of Department

²⁸ These reports may be found at <http://www.clerk.co.escambia.fl.us/>.

Compliance and Enforcement Activities.” Report No. IA-03-23-2004-129 was issued in April 2005, one month before the OIG began taking sworn statements in the instant case.

Report No. IA-03-23-2004-129 was essentially an audit of FDEP’s performance on a statewide basis. This report failed to find any problems with the Northwest District. To the contrary, it used two cases originating out of the NWD as an example of proper compliance assistance.²⁹ The report concluded its executive summary by stating, in pertinent part, that:

“OIG concludes that the Department is complying with the Enforcement Manual and adequately enforcing the necessary environmental regulations, but is not fully interpreting, explaining, or publishing compliance and enforcement activity data. There is a need for additional compliance measurements and methods to publicize the innovative programs which are helping to protect the environment.”

(Report No. IA-03-23-2004-129 at iii) It is therefore clear that the OIG had a vested interest in not finding any significant problems within the NWD—even though an Escambia County Grand Jury had seriously criticized the NWD just one year earlier. This perhaps explains the mediocre investigation that culminated in the Report.

2. FDLE

As we pointed out at the beginning of this White Paper, this entire episode began after an EPA, CID Special Agent referred these matters for criminal prosecution to the Florida, Department of Law Enforcement. It is evident that the FDLE refused to investigate the matters and then lied to the OIG when it inferred that it was closing its case after finding no basis for a criminal investigation. This action on the part of the FDLE set the stage for the OIG to pretend that it was not necessary to seriously

²⁹ See page 3 of the report.

investigate the allegations made by Special Agent Bouffard. FDLE's misconduct does not, however, excuse the OIG. DEP Administrative Directive 290, effective June 16, 2005, authorizes the OIG to investigate allegations of criminal conduct.³⁰

3. Improper Findings

DEP Directive 290 defines the findings that the OIG shall use when it issues a report covering an investigation. Those findings have been identified throughout. Simply stated, the Report repeatedly finds allegations by employees to have been “unfounded” which by definition means that the allegations are either “demonstrably false or not supported by facts.” Directive 290, 4. Definitions, f.(4). In every case in which a finding of “unfounded” was made, there was actually evidence to support the allegation. None of the allegations were demonstrably false. The best that can be said is that there was, in some cases, a disagreement over the approach to be used in resolving the matter at hand. Such situations are more properly classified as “not sustained” or “exonerated” assuming that the proven conduct was not unlawful. The bottom line is that the Report was written in such a way as to convey an impression that the employee's concerns came from whole cloth. The sworn statements prove the exact opposite to have been the case.

4. Failure to Follow Guidelines

Directive 290, 5. Responsibility, f. states that:

“All department internal investigative activities and ensuing actions **shall be properly documented** and reviewed. When practical, all internal investigative activities shall be concluded within 60 days from the assignment of an investigator.”

(Emphasis added) In this investigation the investigators made no notes of their conversations with witnesses. No notes were made of any internal meetings, assuming

³⁰ DEP 290, 5. Responsibility, d.

that such meetings were held. Interestingly, there were no emails until June 15, 2005 after the investigation was well underway. Even then, there is little meaningful discussion between the investigators. In short, the file is very poor documented.

This is the second investigation that we have reviewed in which there were no notes taken by the investigators. Our previous White Paper, *Conclusions of IG's Political Contributions Review A Foregone Conclusion*, discussed the manner in which the OIG handled that investigation prior to its issuance of Investigative Report No. II-01-02-2005-018. Essentially there is no difference in the way in which the office handled each investigation. Neither was well documented. Neither seemed directed at actually uncovering the truth.

In addition, we see once again that the OIG took the step of advising those who were the targets of the investigation, e.g. Sandra Veazey, that their statements could not be used against them in any subsequent criminal cases. Those targets were senior management employees. Thus, the OIG effectively undercut any potential future criminal cases, even though the OIG is authorized by DEP Directive 290 to investigate allegations of criminal conduct.

5. Recommendations

Our first recommendation is that the OIG itself be investigated for obstruction of justice. While we realize that this is hardly a recommendation that will be followed in Florida, it is nevertheless clear that in two successive investigations there has been, at best, a mediocre effort to get to the truth. But we feel that the evidence points away from negligence. It points, we believe, to a willful failure to investigate legitimate claims of wrongdoing. Claims raised by a seasoned Special Agent of EPA's Criminal

Investigations Division and claims raised by seasoned inspectors within FDEP itself.

Even if the actions of this office were not intentional, they would still be highly negligent. Those employees associated with the investigations should be disciplined, at a minimum.

This brings us to the Inspector General, Pinky G. Hall. Under the circumstances, we see no other logical recommendation than to call for her removal. It was her office that produced these “investigative reports.” She had to have known the manner in which the investigations were conducted and the fact that they did not comply with a Directive that she herself produced, i.e. DEP Directive 290. One has to ask how her office can reasonably be expected to identify failures to follow other FDEP policies when the OIG investigators cannot follow their own. Accordingly, we recommend General Hall’s removal.