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**A Profile of the Northwest District
of the
Florida Department of
Environmental Protection**

August 1997

About PEER

Public Employees for Environmental Responsibility (PEER) is an association of resource managers, scientists, biologists, law enforcement officials and other government professionals committed to upholding the public trust through responsible management of the nation's environment and natural resources.

PEER advocates sustainable management of public resources, promotes enforcement of environmental protection laws, and seeks to be a catalyst for supporting professional integrity and promoting environmental ethics in government agencies.

PEER provides public employees committed to ecologically responsible management with a credible voice for expressing their concerns.

PEER's objectives are to:

1. **Organize** a strong base of support among employees with local, state and federal resource management agencies;
2. **Inform** the administration, Congress, state officials, the media and the public about substantive issues of concern to PEER members;
3. **Defend** and strengthen the legal rights of public employees who speak out about issues of environmental management; and
4. **Monitor** land management and environmental protection agencies.

PEER recognizes the invaluable role that government employees play as defenders of the environment and stewards of our natural resources. PEER supports resource professionals who advocate environmental protection in a responsible, professional manner.

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About This Report

This white paper is written by employees within the Florida Department of Environmental Protection (DEP). They describe the purposeful dismantling of environmental permitting and enforcement programs in one of DEP's District offices, the Northwest District, based in Pensacola and covering the region known as the Florida Panhandle.

This report is the second in a series documenting how Florida's environmental superagency has failed in its mission to protect Florida's environment and the public health. An earlier report entitled **Paving Paradise** detailed the systematic subversion of Florida's wetlands protections and the resultant destruction of critical environmental resources.

The purpose of this report is to let the public see (from the inside looking out) how their environmental agency operates. This insider account reflects the perception of the public servants whose jobs and careers are dedicated to the faithful execution of environmental laws.

According to these professionals, the Northwest District management's preoccupation with pleasing members of the regulated community has resulted in the

violation of numerous environmental safeguards and the evasion of public oversight. While the conduct of the Northwest District is not an anomaly within DEP, this District stands out as the most extreme example of thoroughgoing malfeasance in the state. The troubling quotes attributed to Northwest District Director Bobby Cooley in this white paper have been uttered, in some cases repeatedly, in the presence of agency staff.

The authors of this report remain anonymous not only to avoid further retaliation by DEP management but to allow the information presented to speak for itself. The employee authors in many instances have directly witnessed the events described. They invite others to review the public record to verify their account.

PEER extends a special thanks to Linda Young, Publisher of *Pro Earth Times*, for her assistance in this project.

PEER is proud to assist the courageous DEP staff members who authored this report and whose commitment to environmental ethics has been sorely tested.

Jeffrey Ruch
PEER Executive Director



Oh, Blackwater, Keep on Rolling. Aerial view of Anderson Columbia asphalt plant, located on the banks of the scenic Blackwater River.

I. Executive Summary

The Northwest District (NW) of the Florida Department of Environmental Protection (DEP) has a demonstrable record of disregarding environmental regulations, ignoring massive discharges of pollution, intimidating its professional staff, purging public files and resisting public oversight. Improper issuance of pollution permits is common. Denials are exceedingly rare. Major polluters are routinely allowed to operate without permits and enforcement actions are actively discouraged. As a result, citizens living in the Northwest District, based in Pensacola and covering the Florida Panhandle, are accorded the weakest environmental protections in the State.

This white paper is a candid assessment of the NW District and the performance of its Director, Bobby Cooley. Written by DEP employees, this report is based upon the (remaining) public records of the events described.

Under its current director, Bobby Cooley, an "anything goes" attitude prevails on environmental violations. As a consequence, the NW District has :

- ▶ stopped denying permits on grounds of adverse environmental impacts;
- ▶ halted enforcement actions to such an extent that compliance with permit conditions is no longer expected by either the regulated community or by the technical staff of DEP;
- ▶ instituted a routine practice of indefinitely extending "temporary" operating permits to such an extent that public review of industrial and municipal pollution discharge is largely circumvented.

The report describes nine cases of regulatory malpractice in the NW District. These cover a range of large scale polluters, including a chemical company, an asphalt and cement facility, a paper mill, a municipal wastewater treatment operation, a magnesium plant, as well as other industrial sewage dischargers. While the settings are different, the common element is the avoidance of environmental enforcement via a pattern of novel and questionable (exceedingly generous) variances, exten-

sions and waivers of environmental regulations to the detriment of the air, soil and water of Northwest Florida.

In order to implement this "new approach" toward environmental protection, the NW District Director, Bobby Cooley, has instituted and maintained a campaign of intimidation of his own professional staff. When threats and bluster do not work to cow subordinates a practice of transfer called "cross-training," removes the recalcitrant employee completely from his or her area of expertise in order to neutralize all resistance to the agency's continued retreat from enforcing the laws. These employees are assigned to new areas and replaced by other employees with little or no knowledge of the grim histories of favored industrial polluters.

To prevent citizen challenges against environmental degradation of Pensacola and the surrounding communities, District Director Cooley has erected barriers against access to public records and public access to the civil servants employed within that public agency. Cooley has actually spent taxpayer money to restrict the taxpayer's ability to oversee how their money is being spent in the NW District.

More disturbing, Director Cooley has ordered that publicly available regulatory files be purged of potentially troublesome or inconvenient information. Private files not accessible to the public but accessible to industry and their consultants are being maintained. The DEP staff also reports a thorough-going effort by Northwest District managers (who must answer to Cooley) to create largely fictitious records of compliance in order to stifle any legal challenges by citizens to regulatory decisions.

The net result is a wholesale suspension of environmental protection in Northwest Florida with the apparent approval of top departmental leadership.

Dereliction of Duty is the second in a continuing series of white papers written by DEP employees. An earlier report, **Paving Paradise**, documents the demise of Florida's wetlands protection program.

II. Introduction

“This Department is the Virginia [Wetherell] Train now, and things are going to be different. You’ll either get on the train or be run over by the train.”

—Bobby Cooley

The DER/DNR Merger

Until 1993, the Florida’s environmental protection was conducted primarily by the Department of Environmental Regulation (DER). DER’s “sister” state agency was the Department of Natural Resources (DNR). There has always been a dramatic difference between the two. DER, created in 1975, was charged primarily with enforcing the state’s environmental regulations. DNR, created in 1846, soon after Florida became a state, was charged with managing state lands.

DNR managed parks, bought and sold land and checked and defined title to sovereign lands of the State of Florida. In contrast to the DER, DNR had no active regulatory enforcement in its history (only one token person was assigned to do enforcement for all lease and state lands violations in the entire state). DNR had few court cases or administrative hearings in its history, other than those where they were dragged into proceedings by third party interests.

DNR did have a history of corruption. Two of its recent Secretaries, Harmon Shields and Elton Gissendanner, were driven from office while under investigation for various improprieties. Both were identified with special interest land deals. Few were surprised to see these deposed DNR Secretaries go on to become industry lobbyists and land consultants. Virginia Wetherell was appointed DNR Secretary just prior to the 1993 merger of “her” agency with DER.

DER, on the other hand, was known as a more proactive environmental agency. Charged with enforcing the state’s environmental laws, the agency had in its employ numerous indi-

viduals with the environmental enforcement expertise required to assist the agency in carrying out its charge. Although the performance of former DER chiefs would be given mixed reviews by most, agency staff were known to be fairly vigilant in enforcing the state’s environmental laws. DER’s most recent Secretary, Carol Browner, well-respected by most, headed the agency prior to being tapped by the Clinton Administration to head the U.S. Environmental Protection Agency in early 1993.

When Browner left DER, rather than appoint a new DER Secretary, Governor Lawton Chiles called for and achieved the merger of the two agencies into one environmental “super-agency”, called the Department of Environmental Protection (DEP). Governor Chiles appointed then-acting Secretary of DNR, Virginia Wetherell as Secretary of DEP.

With the literal takeover of DER by DNR, there was a total shift of management philosophy. First, DNR took over the money. In a symbolic gesture of how things were going to be “different,” DER staff members were given DNR paychecks and required to fill out DNR time sheets. Next, DER administrative personnel were demoted to secondary positions, and the exodus had begun.

Secretary Wetherell placed DNR administrators into key positions of authority within DEP as the agency discontinued its previous enforcement efforts. Today almost no former DER top level managers remain in positions of authority at DEP. As a result, top regulatory decisions are now made solely by former DNR managers such as Nevin Smith, Kirby Green, Dale Patchett (resigned to become a lobbyist for the regulated community), Ken Plante (resigned following the Tampa/Orimulsion scandal) and other individuals hand-picked by Wetherell.

This change in managers also brought decimation to the environmental enforcement functions of the former DER. Since the merger, no state lands or DNR programs have ever been cut, yet significant numbers of former DER staff have been dismissed under the guise of declared “budget shortfalls.”

“Anybody but a total loser can hold a state job.”

—Bobby Cooley

Bobby Cooley

Bobby Cooley became acting District Director of the Northwest (NW) District Office of the then-DER in October of 1992. He was appointed District Director two months later. Prior to being brought on as District Director, Cooley spent two and a half years as the Program Administrator of the NW District’s Water Facilities program, supervising the staff who reviewed and finalized permits for major industrial dischargers and sewage treatment plants.

Prior to coming to work for DEP, Cooley was employed by some of the very same NW District industries he is now charged with regulating, including Monsanto, where he worked for a brief period, and Air Products and Chemicals, Inc., where he worked for a period of seven years. These two former employers of Cooley also happen to be operating within the jurisdiction of the NW District on expired permits for the past several years. In Air Products’ case, their permit has not been current during Cooley’s entire tenure as District Director.

One of the first policy announcements to come out of the Wetherell Administration was that “regulation has been a failure” and that “Ecosystem Management” will be replacing it. Each individual program was



Case In Point. District Director Bobby Cooley now regulates his former employers.

given an introductory presentation on this “new” policy direction. Bobby Cooley saw to it that employees in the NW District received this message loud and clear. Being a ‘Team Player’ was strongly advised.

To Cooley, Secretary Wetherell’s pronouncements were a green light to dismantle the environmental regulatory protections once provided to NW District Floridians.

III. What Part Of "No" Don't You Understand?

*"It's easy to deny a permit.
The real challenge is finding a
way to issue them."*

-Bob Kriegel

The DER of years past always attempted to negotiate an acceptable permit within rule and statutory guidelines, but sometimes proposed projects posed such deleterious impact to the environment that they necessitated denial. These permit denial cases frequently were petitioned by the applicant to a Department of Administrative Hearings (DOAH) proceeding to argue their case. DER's reasoning and result were usually upheld in these cases.

A close look at more recent DEP records will show that in the NW District almost no applications for a permit have been denied for environmental impact reasons in the last several years. DEP doesn't have a single court case currently pending in the NW District, and not a single permit has been denied in the last two and a half years for environmental reasons (the 30 to 40 that have been denied were denied for application incompleteness or simple lack of response by the applicants).

Many industrial and domestic wastewater facilities have no permit; have been operating without a permit for extended periods of time;



No Permit, No Problem. Illegal outfall of polluted water into Blackwater River generated by Anderson Columbia's asphalt operations.

and/or have never been cited for violations since Cooley began instigating his changes (see summary chart, bottom of page, of many of the NW Districts' unregulated industrial and domestic wastewater sources), yet these facilities are all actively polluting.

Since Cooley took over at the NW District, there has been a deliberate effort to change the way site inspections are evaluated. Now, and in keeping with his wishes and instructions, violations are shown as 'marginal' in compliance regardless of how serious the violation that occurs. A quick summary of enforcement actions in the Domestic and Industrial Waste-

Summary of Enforcement Actions in the Domestic & Industrial Wastewater Programs								
	1990	1991	1992	1993	1994	1995	1996	1997
Domestic wastewater Facility WNS	41	51	36	21	32	9	4	0
Domestic wastewater Facility COS	21	14	9	5	0	2	6	3
Industrial wastewater Facility WNS	28	19	33	15	34	6	1	1
Industrial wastewater Facility COS	9	3	2	1	4	1	1	1



Cloudy Enforcement. Under Bobby Cooley's watch, polluting industries have little to fear from DEP.

water programs will show that there have been dramatic reductions in program enforcement actions [Warning Notices (WNs) and Consent Orders (COs)] since Cooley became NW District Director in 1993, and again when Cooley's enforcement personnel relocation took place in July of 1996.

In the Domestic/Industrial Wastewater Section, there has been only one new enforcement action (via a Warning Notice) initiated since July of 1996. As to be expected, it is focused on a small industrial discharger, Shear Concrete, that has very little political influence.

Recently, EPA delegated the administration of the NPDES (National Pollution Discharge Elimination System) program in Florida to DEP. The NPDES program is a federally-mandated program to eliminate surface water pollution discharges through the permitting and enforcement regulatory process. It is an important federal program because there is nothing comparable to it in the state environmental regulatory body of law. It is designed to bring in federal money and support to eliminate point

sources of pollution to surface waters. In order to receive this delegation, the Department had to assure EPA that all federal regulations would be complied with by NPDES permitted sources (i.e. all domestic and industrial wastewater surface water dischargers). This includes issuing NPDES permits, conducting inspections to insure compliance with federal requirements and taking appropriate action against those facilities that violate federal regulations.

Since EPA's delegation of the NPDES program, several conditional authorizations have been improperly issued to polluters by the Department. These authorizations have more or less been artfully configured to secure an advantage to the polluters, not what EPA intended when it delegated the NPDES program to DEP. These conditional authorizations to operate are referred to variously as Consent Orders and the stringency of their requirements or lack thereof can translate into millions of dollars for the polluter. In virtually every instance, these major polluters are not only unable to comply with ordinary requirements of state and federal pollution laws, they don't even come close, nor do they have any credible expectation of achieving compliance.

There have always been situations in which polluters needed temporary permission to violate the law for limited periods of time while they were working toward abating an unpermissible pollution source. This temporary permission to operate in a manner which would be otherwise unlawful, is called a Temporary Operating Permit, or TOP. In the past, many of the situations referred to above would have resulted in the issuance of a TOP, and in rare circumstances, in the issuance of a Consent Order. But rarely is even this type of "lukewarm" enforcement action taken against any of the major industrial dischargers in the NW District. And what actions are taken are pretend enforcement. They are so watered down and convenient to the polluter (i.e. there are never any penalties or court dates to help assure compliance) as to be totally ineffectual.

IV. Cases In Point

"Frankly, I don't give a damn about the environment!"

—Bobby Cooley

Anderson-Columbia

A good example of the District's "hands off" approach to major industries in northwest Florida is Anderson-Columbia. This asphalt/cement plant, located near Bagdad on the banks of the Blackwater River (an Outstanding Florida Water), has for all practical purposes been operating without a permit since 1995. Although a Consent Order was signed by DEP in May of 1996, it was never adhered to or enforced. DEP issued an Amended Consent Order in December of 1996. However, the agreement addressed only two minor aspects of the environmental problems being created by the company's operations. In spite of the numerous unpermitted and polluting activities in which Anderson-Columbia is involved, DEP narrowed their concerns only to stormwater discharges and the lack of a submerged land lease from the Governor and the Cabinet. Nowhere in the Amended Consent Order does DEP even mention that Anderson-Columbia is an asphalt plant engaged in an industrial activity.



See No Evil. DEP has turned a blind eye toward harmful industrial activity.

The plant, which discharges untreated industrial wastewater directly into the Blackwater River, is frequented by barges—sometimes arriving under the cover of darkness, sometimes in broad daylight—which slam into the fragile shore-



No Concrete Solutions. Pond Creek (upper right) and Blackwater River converge at site of asphalt plant.

line. Many of the trees growing along the white sandy shoreline have been ripped up by their roots left to drift downstream. The barges are propelled by tug boats which in turn use their props to slice new channels into the shallow sandy river bottom, creating even more damage. Tons of aggregate and other road construction materials are also off-loaded by cranes, which spill these materials into the river.

Several citizen activists frustrated at DEP's refusal to enforce the law decided to seek redress in the courts. These local residents formally requested hearings on the Consent Order before an administrative hearing officer. DEP quietly "withdrew" the Consent Order in a contrived effort to avoid a hearing.

Cooley exercises a similar hands off approach with other major industrial dischargers in the Panhandle, including: Champion Paper Company (permit expired in 1994); Air Products and Chemicals (permit expired in 1992); Monsanto (permit expired in 1995, continues to discharge an acutely toxic effluent into the Floridan aquifer); Stone Container (permit expired in 1988, Consent Order issued in 1990, but the facility has not taken the corrective actions, which puts them in a position of operating without any legal authority. Stone discharges some of its most polluted waste into groundwater which finds its way into surrounding surface waters—St. Andrews Bay, Watson Bayou and Martin Lake); Premiere Services (permit expired in 1993); and the City of Port St.

Joe Wastewater Treatment Plant (was issued an illegal permit in 1993 by Wetherell and never met the conditions of that permit. Since then St. Joe Paper Company was purchased by Stone Container). The same "hands off" approach to major industries can also be shown in the other NW District regulatory programs (e.g. Air & Waste Management).

Champion Paper Company

This Pensacola company discharges approximately 25 million gallons of industrial sewage



Under the Boardwalk. The Champion facility pumps millions of gallons of sludge daily into the Perdido Bay.

into Eleven-Mile Creek every day, which then discharges into Perdido Bay. It has no permit.

Champion was issued a TOP and a Consent Order in 1989 because it couldn't qualify for a permit. The TOP required the facility to come into full compliance prior to the expiration (in 1994) of that temporary authorization. This



The Heart of a Champion. The paper giant continues to operate without a permit while DEP avoids taking action.

TOP has expired. Champion still continues to discharge waste water that does not meet State standards for unionized ammonia, dissolved oxygen, biological integrity, toxicity, conductivity, and periodically biochemical oxygen demand (BOD5). An application for a new permit was received in 1994 but remains "in the works." Champion continues to discharge without an appropriate permit and no enforcement action has been taken. Oddly, a new permit and Consent Order requiring specific corrective actions was being drafted in early 1996, but upon the hiring by DEP of Ella Brown (formerly a paid consultant for Champion) to be the administrator in charge of these decisions in early spring of 1996, this scrutiny of Champion was abandoned. The company continues to operate in "permit limbo."

Air Products and Chemicals

This company, near Pensacola, discharges one to two million gallons of industrial wastewater per day into Escambia Bay and about half a million gallons per day into groundwater through perc (percolation into groundwater) ponds, according to the company's own information. Their permit expired in March 1992.

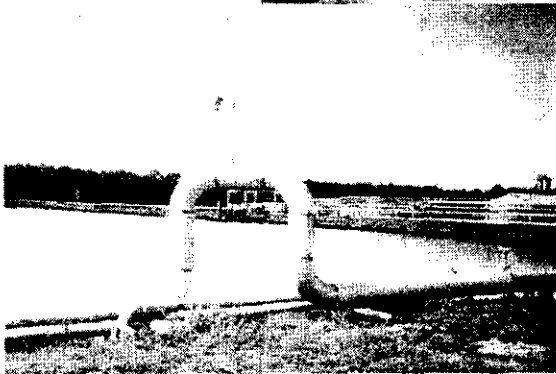
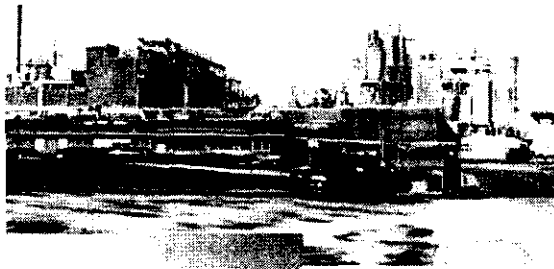
Although DEP has all the information they need from Air Products, they "haven't had any time to work on it" and "do not know when a permit will be issued." Meanwhile, the company has applied for a deep well injection permit to discharge toxic chemicals from their hazardous waste cleanup site—they want to inject up to 2.5 million gallons per day into the Floridan aquifer for at least 10 to 15 years, or for as long as their clean-up operation continues. Air Products is now in the process of expanding their production capacity.

Monsanto Chemical Company

This Pensacola company discharges roughly 3.5 million gallons of wastewater per day into the Floridan aquifer. Their permit expired in May 1995.

In Monsanto's application for a new permit, they have asked for an increase in the amount of pollution they can inject into the aquifer, which would amount to approximately one third more waste than is currently being injected. DEP says EPA is currently

reviewing this permit for the second time. A decision on the permit could be further delayed by indecision by Monsanto and the State on whether or not the permit should embrace the entire wastewater



Waste Not, Want Not. Despite operating for nearly two years on an expired permit, Monsanto expects DEP to allow the chemical company to increase its wastewater pollution.

facility (including the collection system and hazardous waste holding pond) or just focus on from the pumps down into the ground. In the past, the permit regulated the entire system. Monsanto also discharges approximately two million gallons of industrial waste water per day into the Escambia River (recently resulting in fish kills). That permit expired in February of 1997.

Stone Container

This Panama City company discharges its pollution into groundwater, to St. Andrews Bay, to Martin Lake, and to Bay County's Military Point wastewater treatment facility. The waste water discharge to Bay County is roughly 20 million gallons per day. The amount of industrial sewage being discharged into the groundwater and nearby surface waters, according to the company's own records, is about 200,000 gallons per day. Stone Container's permit expired in 1988 and an application for renewal was denied four times by DEP between 1988 and 1993.

When Virginia Wetherell became head of DEP in 1993, DEP and Stone Container were

headed to administrative hearings as a result of the then-DER's refusal to authorize their continuing pollution. That legal challenge has been stalled by DEP top management since then. DEP signed a Consent Order with Stone Container in May of 1990 which required the company to develop a contamination assessment plan, as well as a remedial

action plan. It also required Stone Container to apply for and receive a TOP. The plans submitted by the company were deemed unacceptable. Stone Container denies that their pond and ditches are contaminating the Bay and the lake. DEP disagrees, yet has allowed the company to operate without a permit since 1988. Even though Stone Container is considered to be one of the dirtiest and most recalcitrant paper mills in the state, DEP has made no real effort to bring them into compliance and is content to allow enforcement against the company to languish into oblivion.

Premiere Services

This Port St. Joe magnesium plant discharges into the Gulf Canal and then into St. Joe Bay.



Fish and Foul. Local residents eat fish (above) caught in St. Joe Bay, despite the health threat posed by the toxic pollution that washes up on shore.

Their permit expired in December of 1993.

DEP is currently working on a permit, which will likely have an Administrative Order attached to it, since the facility cannot comply with state water quality standards. Bioassay tests show that the discharge from this plant is toxic (meaning it harms or kills things), but DEP considers it "benign" toxicity and is willing to let the company use one of the state's many "relief" mechanisms to avoid compliance with State water quality laws.

City of Port St. Joe Wastewater Treatment Plant

This Port St. Joe facility receives roughly 97 percent of its waste from the St. Joe Paper Mill and discharges about 35 million gallons per day into the Gulf Canal, which then discharges into St. Joe Bay. The facility was issued a TOP in early 1993 under Carol Browner's DER, but that restrictive permit was rescinded in August of 1993 under DEP Secretary Wetherell, when a full operating permit was issued with an Administrative Order attached to it. That Order contained a schedule for improvements in the facility which supposedly would bring the discharge into compliance with State water quality standards. The plant is currently far behind schedule and has not even begun construction for improvements. Yet DEP has taken no enforcement actions. The company's permit expires in January 1998. St. Joe Paper Company is now temporarily closed.

Holley-Navarre Sewage Plant

This project was fashioned to allow construction of the plant's reject water impoundment in a 2.6 acre wetland. However, because this was an activity within a wetland, a dredge and fill permit was required. The proposal was so unacceptably outrageous that no permit would ever have been granted. This specific permit application was actually on its way to being denied by a previous dredge and fill manager.

That manager's replacement, Bob Kriegel, fabricated a bizarre mitigation rationale to authorize this incredibly irresponsible permit: the sewage plant reject water pond will become an "education training site" for high school and college students through the construction of a

boardwalk over the pond, giving it walkover access (perhaps it *will* educate some thoughtful young people to realize the bureaucratic folly of their predecessors, inspiring them not to repeat such environmental foolishness).

The pond design violates State rules in that the pond must have a liner, in addition to being required to be built on upland property—not in wetlands. The wastewater which would go into this pond is 'reject' (i.e. inadequately treated sewage that is of too poor a quality to be spray-irrigated). The consulting engineer for the project was able to convince DEP that since the site is a wetland, it didn't need a liner.

During Secretary Wetherell's February visit to the NW District, she was presented with a jewel of environmental compromise conceived by Cooley—a purposely configured money-saving project for the Holley-Navarre wastewater treatment plant. Secretary Wetherell then unquestioningly signed the necessary variance, along with Ella Brown and Mark Sowell (both DEP professional engineers). Kriegel then ordered the dredge and fill staff to prepare an approval for the dredge and fill permit to destroy the 2.6 acres of wetlands.

This wetland happens to be forested. If a forested wetland is inundated, the trees all die (it needs a cyclic inundation to function normally). So most of these trees will simply die. And whatever vegetation does survive will be isolated from the watershed and will therefore no longer be able to provide the normal water quality treatment benefits of a wetland. It's bad enough that DEP allowed the destruction of two and a half acres of wetlands, but to then dump improperly treated sewage into it is to only add insult to injury. But it pleased the permit applicant.

Bayou Chico

This is one of many fuel tanks contamination sites. Part of the fuel contamination at Bayou Chico is in the soils beside the Bayou; part is in the soils beneath the Bayou; and part is in the waters of the Bayou. The fuel contamination is progressively moving into waters which the State's environmental laws are designed to protect. This pollution and the Department's official cognizance of it is under the mismanaged DEP tanks program. Recently, there has been a

Dereliction of Duty

second fuel spill of 14,000 gallons of gasoline. This spill resulted from a ruptured underground fuel line connecting an off loading barge to the Tank Farm. DEP has been charged with overseeing the clean-up because the Florida Legislature recently relieved all tank polluters from responsibility, giving DEP responsibility for hiring and managing contractors for clean-up.

Given that the DEP Tallahassee case manager allows only four hours of work on the site each day, and that no more is allowed (presumably to prevent fraudulent overcharging of the state), oil is gushing out into the waters of Bayou Chico along the shoreline and citizens are starting to complain. NW District Ombudsman Sava Varazo recently stated to the *Pensacola News-Journal* that the spill poses absolutely no public health

hazard or danger. The 14,000 gallons of gasoline is pushing the previous diesel oil contamination laterally through the groundwater out into the bayou. By summer, the gasoline will also be out in the water.

Although cases like those listed above can sometimes be challenged by citizen petitions where there has been an identifiable state action, there are so many bad permits being issued that concerned residents in the Panhandle simply can't keep up with the onslaught of these environmental giveaways. In addition to the examples cited above, the NW District administrators have other ways of skirting the law, like granting rule variances or just simply looking the other way, which are extremely difficult to detect and even harder to challenge.

V. The Science of Personnel Management

Cooley's efforts to insure that no substantive enforcement actions are taken in the NW District is maintained through a program of intimidation, record destruction, and abusive use of the personnel personnel system. One technique commonly employed is the internal transfer of employees by NW District management.

For the NW District, these internal problems were compounded by the recent loss of some of DEP's best and brightest enforcement attorneys; the decimation of the entire wetlands staff in Tallahassee by Secretary Wetherell; and other "top management" manipulations of regulations and programs. The result is the total collapse of environmental enforcement efforts in the NW District with repercussions felt across the State.

"Cross-training"

"Those who go along, get ahead in this agency."

—Bobby Cooley

Upon assuming command in the NW District Office, Cooley was quick to tell staff that Secretary Wetherell's office had given him broad reaching powers over personnel matters. He stressed that there were to be no contradictory memorandums or opinions in the public environmental case files that differed from his management decisions on any particular matter. He went on to emphasize his resolve by threatening to relocate or transfer individuals who did not comply with this directive. Cooley is fond of telling staff, "Those who go along, get ahead in this agency."

At a mandatory meeting for employees in the NW District, Cooley used the analogy of Ecosystem Management as being like a train, saying, "This Department is the Virginia [Wetherell] Train now, and things are going to be different. You'll either get on the train or get run over by the train." He went on to say that he could transfer people between programs without any approval other than his own.

For employees in the NW District, it has become understood that one's position could be jeopardized by any unwillingness to disregard previously enforced environmental laws of the State. Staff are typically transferred, or "cross-trained," from one section to another for not agreeing to ignore state regulations. Experienced staff are often replaced with inexperienced staff, sometimes leaving whole sections with only inexperienced people. This has resulted in a sharp decline in enforcement efforts in the NW District. And fewer complaints to top management.

Since the NW District does not deny permits to anyone for anything anymore, all it takes is a phone call from a developer complaining about an agency permitting employee and that employee gets pulled off the permitting review case.

Staff are discouraged from doing thorough inspection reports on major polluting facilities and are often directed to submit watered-down reports instead. It is commonplace for staff to be directed to alter reports. When they refuse, managers simply re-write the report (e.g. changing a 'violation' to 'passing'). It is common for staff to be told to issue permits for projects that do not meet elemental requirements of the law.

The following memo was delivered to staff in the NW District on November 5, 1996:

To: Staff
From: Bobby A. Cooley
Date: November 5, 1996
Subj: Reassignment of Personnel

This memo serves to inform you of the personnel changes we have made that are effective today, Tuesday, November 5. These changes involve the reassignment of Rick Bradburn, Robert V. Kriegel, Charles Harp, and Eric Erickson to the Air, SLERP, Waste and Water Facilities programs, respectively. These changes are a result of

Dereliction of Duty

us establishing a cross training program which has often been recommended by the employee committee and the need to place the right individual in the right job so that both the individual and the agency are best served.

In order to implement this we will periodically reallocate agency staff, funding, and other resources as appropriate to provide a means of internal training to our employees. One such form of internal training is cross-training of staff between program areas. A major benefit of this type of training is better integration of agency programs. The reassignment of these individuals parallels and supports this concept.

Each of these individuals has been and should continue to be a valuable asset to the department. Please welcome them to their new jobs and provide all support necessary to make this a smooth and successful transition.

Several of the uprooted employees have 10-20 years experience in areas requiring extremely technical understanding of specific pollutants, the technology and history of the dischargers, the interaction between federal and state regulation and the interrelationship of all the above.

One environmental advocate and knowledgeable 20 year veteran in the industrial/domestic wastewater enforcement/compliance section, used to be in charge of supervising 18 people. This individual was "transferred or reassigned" to a position in the air permitting section where he has no supervisory responsibilities. He was replaced by Eric Erickson, who has no prior experience in the wastewater section. The real reason for the transfer was to assure favored polluters that they would not be required to obey the laws.

Even more disturbing is Cooley's recent promotion of Bob Kriegel, the NW District Director before Bobby Cooley [Kriegel was demoted by Carol Browner after an extensive Florida Department of Law Enforcement (FDLE) investigation.] Kriegel was recently chosen by Cooley to replace a veteran biologist with 12 years experience as supervisor of one of the NW District's most controversial programs and the one subject to the most special interest pressures—wetlands permitting. This was a promotion for Kriegel from a non-supervisory to a supervisory position.

At a November 18 staff meeting, two weeks after issuing the aforementioned memo, Cooley tried to explain the reasons behind the recent rotations of veteran managers out of their programs against their will into programs completely foreign to their training and expertise. He explained that it was "for their own good and best interest." The real reason was to hobble the minimal remaining enforcement effectiveness that these people represented.

Bobby Cooley prides himself on his dictatorial style and makes it clear that any employee who disagrees with him does so at his or her peril. Despite the position of unchallenged authority which he occupies, Cooley acts as if he is insecure. He has hall spies that report employees who have any negative comments or criticisms. At night, his people rummage through desks, telephone directories and garbage cans trying to find dirt on people, information that can be used against them.

*"They [the public] are so stupid,
I have them eating out of my
hand."*

—Bobby Cooley

"Total Quality Leadership"

In addition to intimidating and harassing employees, Bobby Cooley has also developed a reputation for callously dealing with members of the public. Environmentally conscientious members of the public who have met with Cooley to discuss legitimate environmental concerns have found him to be condescending

at best, verbally abusive at worst. Those citizens who publicly question his District's current mode of operation are maligned as emotional, vicious muckrakers.

Bobby Cooley, Sava Varazo (Ombudsman for the NW District) and Bob Kriegel recently became the focus of an internal investigation by the Department. This was the result of an incident in which two citizens who came to the District Office to review files about the questionable permitting of the Tarkiln Bayou dredge and fill project (to fill four acres of wetlands). The citizens were allegedly "detained" against their will by the threesome after a heated exchange. Kriegel allegedly blocked their way out of a door, with Varazo ending up stepping between Cooley and the citizens due to the intensity of the verbal exchange. The citizens filed a complaint and Cooley also filed a request for personal security. All this eventually led to a body guard for Cooley, in the form of a Florida Marine Patrol officer, being stationed in the District office.

In May, Cooley had \$5,000 worth of high-tech locks installed on each door leading into every office on every floor of his building. Citizens are now greeted in Cooley's building by glaring signs instructing everyone who has business at DEP to immediately proceed to Cooley's office, where their visit can be "processed." The process is that visitors are required to sign in, telling in addition to the date and time, their name, who they are representing, who they plan to talk to, and what they plan to discuss. Then before they can receive a visitors pass, they must surrender a photo identification, which Cooley has instructed his employees to keep and return to the visitor only at the end of their visit. Anyone refusing to surrender their personal property is not allowed to examine public agency files or speak with public employees. Cooley's employees are told that if they are caught talking with someone who does not have a visitor's pass, they will be fired immediately.

Recently, a new Cooley "policy" has emerged to deal with troublesome members of the public. It was determined that staff should not have to break away from their busy schedules of issuing all those permits to

take time to answer nuisance questions from a concerned public. It was verbally decreed by Cooley at a general staff meeting that if a concerned citizen shows up without an appointment, a staffer could refuse to talk to them.

Director Cooley further deflects public inquiry by making sure that the District's records contain nothing discordant or problematic. Files have been purged of any written DEP employee criticism concerning controversial permits. Many employee comments have been removed from files in recent months.

When a member of the public comes into the NW District to examine case files, it is not uncommon for files to be "cleansed" before they arrive. Cooley has even gone so far as to order that files be hidden. He has on many occasions told staff that the files must be "consistent" once a consensus (i.e. *his* decision) has been reached on a project. As a result, professional scientists and engineers are forced to remove their input from the review process if for any reason or in any fashion their findings or conclusions are inconsistent with the final decision.

Any time citizens request to see files about controversial projects, employees are reluctant to share them, knowing that they chance Cooley's wrath for being too cooperative with the "enemy." Early in 1997, on two separate occasions, citizens went into the air program in Cooley's office to request files for a controversial polluting industry, which has enjoyed years of regulatory favoritism. Parts of the files were denied to the citizens on both occasions. Two of the citizens filed a complaint in circuit court. The judge ordered DEP to make all files available to the public during all hours of business. It turned out that DEP was keeping a whole box full of "private" files in one employee's office which were not available to the public—just for this one industry.

In an August 3, 1997 editorial entitled "DEP Investigation is Long Overdue," the Pensacola News Journal called once again for an independent investigation of Florida's Department of Environment Protection. The editorial accurately noted, "meanwhile, a

classic Bunker mentality appears to be developing inside DEP's Pensacola office."

The editorial writer's assessment is right on

target. The Bunker is needed to protect Cooley from citizen inquiries by everyday people who wonder why laws supposedly enacted for their protection are no longer being enforced.



A View to A Kill. Monsanto is one of many industries that have benefitted from Bobby Cooley's and DEP's lax enforcement and pro-polluter policies in Florida's panhandle.