



WHITE	PAPER
-------	-------

Number Forty-Five

**FDEP Ignores Asbestos And Other
Violations At Construction & Debris Site
Adjacent To Bay County's Steelfield
Landfill**

About PEER

Public Employees for Environmental Responsibility (PEER) is a national alliance of local state and federal resource professionals. PEER's environmental work is solely directed by the needs of its members. As a consequence, we have the distinct honor of serving resource professionals who daily cast profiles in courage in cubicles across the country.

Public employees are a unique force working for environmental enforcement. In the ever-changing tide of political leadership, these front-line employees stand as defenders of the public interest within their agencies and as the first line of defense against the exploitation and pollution of our environment. Their unmatched technical knowledge, long-term service and proven experiences make these professionals a credible voice for meaningful reform.

PEER works nation-wide with government scientists, land managers, environmental law enforcement agents, field specialists and other resource professionals committed to responsible management of America's public resources. Resource employees in government agencies have unique responsibilities as stewards of the environment. PEER supports those who are courageous and idealistic enough to seek a higher standard of environmental ethics and scientific integrity within their agency. Our constituency represents one of the most crucial and viable untapped resources in the conservation movement.

Objectives of PEER

- *Organize* a broad base of support among employees within local, state and federal resource management agencies.
- *Monitor* natural resource management agencies by serving as a "watch dog" for the public interest.
- *Inform* the administration, Congress, state officials, media and the public about substantive environmental issues of concern to PEER members.
- *Defend* and strengthen the legal rights of public employees who speak out about issues concerning natural resource management and environmental protection. Provide free legal assistance if and when necessary.

Contact Info

National PEER

2001 S. St. NW Ste. 570
Washington, DC 20009
Phone (202) 265-7337
Fax (202) 265-4192
Email info@peer.org
Website www.peer.org

Florida PEER

PO Box 14463
Tallahassee FL 32317
Phone (850) 877-8660
Email flpeer@earthlink.net
Website www.peer.org/florida

In a report issued on May 4, 2002, a state grand jury sitting in Pensacola issued a report that sharply criticized the Florida, Department of Environmental Protection ("FDEP"), and others, for failing to enforce Florida's groundwater regulations in Escambia County. As a result, serious groundwater contamination has been allowed to go unchecked for over five years in Escambia County, while the public was continually exposed to the health-jeopardizing pollution. The FDEP office that oversees the activities in Escambia County is the same office that oversees the administration of environmental regulations in Bay County.

In its last White Paper entitled *Bay County's Steelfield Landfill Meets FDEP Enforcement*¹ Florida PEER disclosed significant, continuing groundwater violations in a construction and debris facility on property adjacent to Bay County's Steelfield Landfill. These violations have existed at least since 2002, and probably longer. No enforcement has been taken by the agency. The groundwater violations that exist at the Facility are serious and ongoing. However, the problems are not limited to groundwater contamination. Indeed, Florida PEER can now disclose that there are also serious violations of federal asbestos laws. Other violations existed as well. These violations, like the groundwater violations, have gone unpunished. Indeed, the [Emerald Coast Insider](#), a local publication, first reported the finding of asbestos in June 2003. Yet, the FDEP did nothing in response. Once again, Florida PEER asks if this is an example of FDEP's motto of "More Protection, Less Process." So far, the only outstanding quality of FDEP's performance under its motto is an unhealthy reliance upon "Less Process" while simultaneously abandoning the concept of "More Protection."

¹ This White Paper is posted at PEER's website, www.peer.org in the Florida section.

A. THE FDEP PERMIT

For the benefit of the reader, the following summary of the FDEP Permit is again offered:

On May 31, 2001, Aztec Environmental, Inc. ("Aztec"), applied to the FDEP for a permit to construct and operate what is commonly known as a Construction and Debris Facility on Steel Field Road, just to the west of the Bay County Landfill. According to the application, the property owner was Aztec Environmental, Inc. and the facility name was to be the Big Wheel C & D Disposal Facility ("the Facility"). The application was signed by Debbie Livingston, as well as the engineer of record, Sean McNeil² of McNeil Engineering.

FDEP issued Permit Number 0161334-002-SO ("the Permit") on August 2, 2001. The Permit is commonly referred to as a "C&D permit," indicating that it is a permit authorizing construction and debris activities at the site. The Permittee is Big Wheel C & D Disposal Facility ("the Permittee"). The FDEP file reflects that at some point Aztec filed an "Application to Transfer Permit." This application was granted on November 8, 2002, and the Permit was officially transferred to Aztec.³ The Permit authorizes the operation of the Facility as a construction and debris landfill ("Landfill"). The Permit expires on August 2, 2006.

B. THE INSPECTIONS CONDUCTED AT THE FACILITY

As was described in the previous White Paper issued by Florida PEER ("the Groundwater White Paper") Florida PEER requested that FDEP produce, pursuant to § 119.07, Fla. Stat., all compliance and enforcement files concerning the Facility for calendar years 2001

² Sean McNeil is also a member of the Bay County Planning Commission.

to the present, i.e. April 2004. FDEP subsequently produced records from its compliance and enforcement files. The records encompass years 2002 to the present.

FDEP's compliance and enforcement files reveal a highly disturbing failure on the part of the agency to come to terms with the fact that Aztec was violating federal and state regulations pertaining to the handling of asbestos. Other violations also existed and will be discussed herein, with the exception of the groundwater violations that were the subject of Florida PEER's Groundwater White Paper. The pertinent aspects of the compliance and enforcement files, as they pertain to the present issues, follow:

On August 1, 2002, FDEP inspector, Brad Grimes, inspected the Facility. His report noted two relatively minor deficiencies: access to the Facility was not properly controlled, in violation of F.A.C.⁴ 62-701.730(7)(c), and there were an insufficient number of spotters on duty at the site, in violation of F.A.C. 62-701.730(7)(d). According to the FDEP files, no warning letter was sent to the Permittee formally notifying the Permittee of the violations.

September 2002 saw an increase of activity at the Landfill. FDEP's files reflect that it was in September that FDEP began receiving complaints about illegal dumping that was occurring at the site. These files begin with a report received by FDEP on September 16, 2002. According to the report, an employee of Aztec Recyclers, Inc. reported that "...a landfill in Panama City [is] dumping used motor oil and other hazardous materials into a spring." The agency tried to contact the employee, Mr. Vern Griffith, but was told that he no longer worked there. According to a subsequent email on September 20, 2002 concerning the site, the hazardous materials included asbestos. There is no indication that the FDEP ever actually talked to Griffith.

³ November 8, 2002, letter from Charles F. Goddard, Program Administrator, Waste Management Program.

⁴ F.A.C., as used herein, stands for "Florida Administrative Code."

The telephone number was apparently incorrect, and it appears that the matter was not pursued, because the files are silent on any follow-up taking place.

September 18, 2002 saw the filing of another complaint. This time Mr. Danny Walker (a former BWRI employee) alleged that "...asbestos waste buried in 'groundwater' at Big Wheel C & D debris facility – also 'oil cans,' still containing material, with kerosene oder (sic), being buried . . . in groundwater . . . – said C&D facility accepting 'lint-like' insulation, which could be 'friable' asbestos material. . . ." There is no indication of any further conversations held with Mr. Walker.

On September 20, 2002, another complaint was filed against the Facility. This time, Lt. Tommy Jackson, a Florida, Department of Transportation employee, relayed an anonymous tip that he had received about unauthorized dumping at the landfill.

One week later, on September 27, 2002, Brad Grimes (FDEP employee) inspected the site. His notes indicate that he found no evidence that "ACM was buried in the groundwater." However, his notes also seem to indicate that the scope of his investigation was limited to the C&D section of the property: "I looked at the C&D debris area of the site-did not see any debris buried/located in the groundwater."

Approximately three weeks later, on October 21, 2002, Grimes' notes indicate that he spoke with Chuck Webb (a Bay County employee) about the Facility. Webb informed Grimes that he had also received complaints about asbestos at the site.⁵ Grimes' notes indicate that he mentioned the asbestos complaints to Richard Brookins' (his colleague in the Air Section at

⁵ According to at least one individual who is very familiar with Bay County's supervision of the Facility, Bay County had consistently warned the FDEP that Bay County officials had witnessed illegal dumping taking place at the site, and that the subsequent handling of the material was suspect, because it was never transferred to licensed landfills in Bay County. These concerns were so prevalent that Bay County installed monitoring wells between the Facility and its own Steelfield Landfill so that it would know of any contamination in the aquifer. FDEP files contain no information pertaining to these warnings.

FDEP) "...who is looking into the asbestos issue (i.e. air release issue)—we agreed to go to the site this coming Wed., 10-23". Grimes notified his supervisor, Henry Hernandez, about the issue.

The inspection actually took place on October 24, 2002. Grimes' notes reflect that there was "exposed debris: floor tile, transite, etc." Grimes considered the compliance to be "mainly" improper cover and exposed asbestos fiber release. The actual inspection report was completed by FDEP Environmental Specialist, Richard S. Brookins. The report is dated November 12, 2002, and details the joint inspection that was conducted on October 24, 2002. The narrative section of the report, in its entirety, reads as follows:

I received a complaint from Mr. Mark Cannady, Bay County Solid Waste Code Enforcement Officer on October 21, 2002. In his complaint Mr. Cannady stated that he had observed heavy equipment running over non-friable asbestos material at the above mentioned landfill, thereby rendering it friable. **As this was one of several complaints received in the Panama City Branch Office,** a joint inspection was planned with the Solid Waste section.

On Thursday, October 24, 2002, the joint inspection was conducted with Mr. Brad Grimes of the Department. **During this inspection a significant amount of ACM was noted exposed in the Asbestos area of the landfill. This ACM showed evidence of having been crushed by heavy equipment.** Material was broken into pieces from approximately 2-3 inches to smaller than a dime. **Material rendered to, and identified as RACM included both VAT and Transite.** During the inspection a double handful of samples were picked up from the surface of the cover. Also, the cover was pine bark from a nearby sawmill rather than the soil specified in the ACM Management Plan that was submitted to the Department.

After surveying the site and obtaining samples, I left the facility for another appointment while Mr. Grimes performed a record review.

(Emphasis added)⁶ The inspection is noteworthy for several reasons. First, the report notes that non-friable asbestos had been crushed by heavy equipment, thus rendering it friable. Second, the material included RACM that was made up of both VAT and Transite. Third, Mr. Brookins obtained samples of the material. Though not stated, the purpose would have been to test the same.

Another field inspection was conducted nine days after Brookins' inspection report was completed. The November 21, 2002, field inspection was conducted by Brad Grimes and Mike Stephens. This time the inspection report noted that there was an unauthorized disposal/storage of items "in any natural or artificial body of water including ground water," a violation of F.A.C. 62-701.300(2)(e). There were violations of F.A.C. 62-701.300(8)(d), i.e. the unauthorized disposal of white goods⁷. There were also violations of F.A.C. 62-701.300(8)(e) pertaining to the unauthorized disposal of waste tires. The report also documents **(1)** improper disposal and management of C& D wastes (F.A.C. 62-701. 701.730(4)(c), (6) & (7)(d)), **(2)** lack of a trained operator or sufficient spotters (F.A.C. 62-701.730(7)(d)), **(3)** improper training of spotters or operators (F.A.C. 62-701.730(8)), and **(4)** a failure to follow all specific conditions of the Facility's Permit (F.A.C. 62-701.320(1)).

As a result of the November 21, 2002 inspection, the agency sent a warning letter to the permittee advising it that a failure to correct the identified problems could result in formal legal action being taken. The warning letter was sent, not by Mr. Grimes, but by Charles F. Goddard, Program Administrator in the Waste Management section of FDEP's Northwest District Office in Pensacola. Mr. Goddard sent the letter on December 18, 2002, almost a month after the

⁶ Mark Cannady, who is referenced in Mr. Brookins' report, is now employed by Aztec. Previous to that he was an environmental inspector for Bay County.

⁷ F.A.C. 62-701.200(141) defines "white goods" as "... inoperative and discarded refrigerators, ranges, washers, water heaters, freezers, and other similar domestic and commercial large appliances."

inspection. Aztec responded to the letter on December 23, 2002, claiming that all violations had been rectified.

Shortly after the warning letter was sent to Aztec more problems were identified in Mr. Charlie Reyes memo dated December 27, 2002. These were groundwater violations. Florida PEER's Groundwater White Paper discusses Mr. Reyes' memo.

More inspections pertaining to non-groundwater issues were then conducted. On March 26, 2003, FDEP conducted another inspection of the Facility. This time the inspectors were Thomas Dillard and Mike Stephens. This inspection identified more violations. There continued to be an unauthorized disposal/storage "in any natural or artificial body of water including ground water," a violation of F.A.C. 62-701.300(2)(e). In addition, prohibited "asbestos-containing waste materials regulated pursuant to 40 CFR. Part 61, Subpart M" were found. Other violations were noted in the inspection report, which was signed two days later. This report identified violations of F.A.C. 62-701.300(2)(e) that had been the subject of a warning letter three (3) months earlier—these violations consisted of the unauthorized disposal of debris into natural or artificial bodies of water including groundwater. In spite of these continuing violations the inspector noted what he termed "marked improvement" evidenced since the November 21, 2002, inspection. FDEP issued no warning letter as a result of this inspection.

Charlie Reyes issued another memo concerning continued groundwater violations at the site within three months of the March inspection conducted by Messrs. Dillard and Stephens. Aluminum violations were found in all of the site's monitoring wells. This June 3, 2003, FDEP memo is discussed in Florida PEER's Groundwater White Paper.

The next action on the case occurred when Thomas Dillard conducted another facility inspection on July 10, 2003. This inspection occurred a little more than a month after the June 3

Reyes memo that dealt with the groundwater contamination at the site. This time Mr. Dillard was accompanied by three other FDEP employees: Charles Goddard, Marshall Seymore, and Henry Hernandez. No indication was given as to the need for a Program Administrator, Goddard, to be present at the inspection. This inspection was conspicuous in its glowing praise of the facility:

“Mike Owen assisted Department personnel during this visit and his participation contributed to a most thorough and efficient inspection. Mr. Owen exhibited a positive management style eager for complying with permit requirements and accepting only total compliance at the facility. His leadership is commendable and reflects highly on the observed compliance status of the facility.’

No deficiencies were observed during this site investigation.

Facility status at time of inspection: IN COMPLIANCE.”

The inspection checklist indicates that, inter alia, (1) the Facility was complying with all permit specific conditions in accordance with F.A.C. 62-701.320(1), and (2) the Facility was complying with all reporting requirements in accordance with F.A.C. 62-701.730(12). This inspection took place shortly after the Facility had acknowledged the problems with the background well, as well as aluminum violations in all of the groundwater monitoring wells—a tacit admission of Permit violations. At best, the checklist ignores this fact—at worst, it constitutes a falsification of a public document. The bottom line is that any member of the public who reviewed this report would be lead to erroneously conclude that this Facility was in full compliance with the law.

As is documented in the Groundwater White Paper, during the latter half of 2003, continual concerns were raised about the groundwater violations occurring on the site. Added to those violations, however, was the new concern that potable water wells may exist within 500 feet of the Facility.

Early 2004 saw more activity pertaining to the site. This activity included the FDEP's issuance of a March 11, 2004, letter purporting to deal with the July 10, 2003, inspection that

FDEP had performed eight (8) months earlier. The letter was authored by FDEP Environmental Manager, Josie Penton, who was not even present at the July 10, 2003, inspection. In the letter, Mr. Penton advised Aztec that, according to the July 10, 2003, inspection all deficiencies found in the March 26, 2003, inspection had been corrected. Penton's letter did not mention the continuing Permit violations associated with groundwater monitoring.

C. THE SIGNIFICANCE OF THE ASBESTOS FINDINGS

Notwithstanding FDEP's efforts to portray the Facility as a model of environmental compliance, there were serious violations found during the inspections. The most serious violations concerned the finding of asbestos at the site. FDEP was receiving complaints about the asbestos as early as September 2002.

The November 12 report authored by Richard Brookins discussed the October 24, 2002, inspection that he conducted at the Facility. That report indicates that what was found at the site was material that initially was "non-friable." In lay terms, this means that the material contained asbestos, however, in its non-friable state it is not airborne and thus does not pose a health risk. If that were the only finding, the report would be less significant. This report goes further, however. It points out that Mr. Mark Cannady (Bay County Solid Waste Code Enforcement Officer) had observed this non-friable asbestos being crushed by heavy equipment, thus rendering it airborne. Second, the report confirms that Mr. Brookins observed the same evidence as did Mr. Cannady. Brookins took samples of the material. He described the material as RACM, i.e. regulated asbestos containing material.

RACM is regulated by the Clean Air Act under the "National Emission Standards for Hazardous Air Pollutants" (NESHAP) regulations. The regulations are found at 40 C.F.R. 61,

Subpart M. FDEP has been delegated authority by the EPA to administer this and other Clean Air Act programs. In exchange, the FDEP receives federal grant money to assist it in the administration of these programs.

F.A.C. 62-701.730(19) governs waste disposal, including asbestos. It states: "Asbestos Waste disposal. Asbestos-containing waste materials regulated pursuant to 40 C.F.R. Part 61, Subpart M, **shall not be disposed of in a construction and demolition debris disposal unit.**" (Emphasis added) Specific Condition 25 of the Permit carries the same prohibition. Section II.A.18⁸ of the FDEP's "inspection checklist" requires FDEP inspectors to state whether the facility being inspected is in compliance with F.A.C. 62-701.730(19) and 40 C.F.R. 61, Subpart M. 40 C.F.R. 61.154 provides detailed requirements for any facility receiving RACM.

It is evident that the finding of RACM at the Facility, exposed to the elements and obviously not wetted down was not an insignificant finding. Asbestos is now known to be a hazardous substance that should not be left to circulate in the air. As one EPA Region IV document puts it: "Since inhalation of asbestos fibers has been linked to the development of respiratory and other diseases, any material which is friable, or has a high probability of releasing fibers, must be handled in accordance with the Asbestos NESHAP."⁹ Violation of the EPA requirements can result in criminal prosecution. See, 42 U.S.C. §7413(c).

It is clear that the environmental specialists within FDEP's Panama City office recognized the seriousness of the problem at the landfill. Indeed, Brad Grimes' notes from October 24 and 25, 2002, reflect that he was keeping "Gary" informed of the situation. Gary "told [Grimes] to mention the 'cover' issue in any enforcement action."

⁸ On newer FDEP forms, this is item 13.

D. THE REMAINING VIOLATIONS

As noted in the discussion of the November 21, 2002, inspection report, a violation of any of the Specific Conditions of the Permit amounted to a violation of F.A.C. 62-701.320(1), which requires compliance with the Permit.

F.A.C. 62-701.300(2)(e) provides that “. . . no solid waste shall be stored or disposed of by being placed [i]n any natural or artificial body of water including ground water[.]” The FDEP inspections conducted on November 21, 2002, and March 26, 2003, found violations of this provision. In other words, the FDEP found that the Facility was dumping debris into bodies of water, i.e. surface waters, presumably on the site. Under §403.0885, Fla. Stat., the FDEP is charged with the responsibility of enforcing provisions of the Federal Clean Water Act known as the National Pollution Discharge and Elimination Program (“NPDES”). The FDEP receives federal grant money for administering this program—a program that is designed to control the discharge of waste into surface waters. Specifically, F.A.C. 62-4.030 prohibits such discharges absent a permit. In this case, the Facility had no such permit authorizing the dumping of waste into surface waters. The FDEP was obligated to enforce the law and it failed to do so.

The November 21, 2002, inspection checklist also noted that white goods had been illegally disposed of at the Facility in violation of F.A.C. 62-701.300(8)(d). Whole waste tires were also being illegally disposed of at the site in violation of F.A.C. 62-701.300(8)(e).

Several of the violations were violations of rules promulgated specifically to address construction and debris facilities. The rules provide that “[p]utrescible household waste shall not be disposed of at a construction and demolition debris disposal facility.” F.A.C. 62-

⁹ Asbestos/NESHAP Regulated Asbestos Containing Materials Guidance, <http://www.epa.gov/region04/air/asbestos/asbmatl.htm>

701.730(4)(c). This violation was identified by the FDEP during its November 21, 2002, inspection.

In the event that the Facility inadvertently accepted non-construction and demolition debris it was obligated to hold it only on a temporary basis and to then dispose of it properly. Putrescible waste could be held for a maximum of 48 hours. Non-putrescible waste could be held for no more than 30 days. F.A.C. 62-701.730(6). The November 21, 2002, inspection found that the Facility was violating this requirement as well.

In order for landfills to operate safely, it is axiomatic that entrance into the sites be controlled. Without such controls the permittee would have no way of monitoring the types of debris dumped on location. F.A.C. 62-701.730(7)(c) thus requires that “[a]ccess to the disposal facility shall be controlled during the active life of the facility by fencing or other effective barriers to prevent disposal of solid waste other than construction and demolition debris.” On August 1, 2002, FDEP environmental specialist, Brad Grimes, found that the Facility was in violation of this rule provision.

FDEP rules also impose another requirement upon such facilities in order to assure the public that only qualified debris will be deposited on site. This requirement provides that the facilities be staffed by competent, trained personnel. In that regard, F.A.C. 62-701.730(7)(d) provides that:

A trained operator shall be on duty at the facility at all times that the facility is operating. In addition, a sufficient number of spotters shall be on duty at the working face to inspect the incoming waste at all times waste is being accepted at the site. Waste shall be inspected after it is removed from the transport vehicle and prior to placement for final disposal. Any prohibited material shall be removed from the waste stream and placed into appropriate containers or secure storage areas for disposal or recycling at a facility authorized by the Department to receive such waste.

Both the August 1, 2002, and November 21, 2002, inspections found that the Facility was violating this provision. Thus, it is understandable that significant amounts of unauthorized material was being dumped at the site, because the Facility did not have qualified personnel to prevent the same from occurring.

The Florida Legislature has also given the FDEP the responsibility of overseeing the programs that provide for the training and employment of would-be operators at solid waste facilities such as the Steelfield Landfill:

(4) The department has authority to adopt minimum standards and other rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this section. The department **shall ensure the safe, healthy, and lawful operation of solid waste management facilities in this state.** The department may establish by rule various classifications for operators to cover the need for differing levels of training required to operate various types of solid waste management facilities due to different operating requirements at such facilities.

§403.716(4), Fla. Stat. (Emphasis added) In turn, the FDEP has adopted F.A.C. 62-701.730(8), which requires that “[o]perators and spotters employed at the facility shall be properly trained in accordance with Rule 62-701.320(15), F.A.C.” The latter rule prohibits the employment or other use of anyone as an operator or spotter unless the person is trained as such. According to the November 21, 2002, inspection report the Facility was in violation of F.A.C. 62-701.730(8).

It is noteworthy that on December 23, 2002, the Permittee responded to the December 18, 2002, warning letter. Part of the Permittee's response was to include copies of operator and spotter certificates dating back to July and August 2001. The reader will recall that on August 1, 2002, the FDEP inspected the site and concluded that there was an insufficient number of trained operators or spotters on site, and that access to the site was not controlled. The FDEP files do not reflect whether the agency knew, as of the date of permit issuance on August 2, 2001, whether

any trained operators and spotters were routinely on site. Did the agency know who the operators and spotters were? Assuming that the FDEP knew who these individuals were, there is no analysis in the file to indicate whether the Permittee's December 23, 2002, response to the warning letter supplied the agency with confirmation that the Permittee was operating the Facility in compliance with Chapter 62, F.A.C. If the FDEP was not aware of the status of the individuals employed at the Facility one must question the effectiveness of their compliance program in light of the violations that have been found at this site alone.

Finally, in an effort to further ensure that landfills are operated safely, the FDEP requires that permittees submit annual reports identifying the amounts and types of waste accepted by each permittee during the preceding year. The requirement is codified in F.A.C. 62-701.730(12). Given the fact that illegal dumping had occurred on site over the course of the past year, the idea that the Facility was in compliance with this reporting requirement is highly suspect. Yet this is what the FDEP concluded in its July 10, 2003, inspection that found the Facility to be "IN COMPLIANCE."

E. CONCLUSIONS AND COMMENTS

Several issues stand out when reviewing this file:

Failure to Conduct Thorough Investigations:

The records that FDEP produced reflect that the agency was receiving complaints from several persons. At least two of the individuals were employees of BWRI and/or one of the Aztec companies. The file also reflects that Bay County was also receiving complaints about the Facility and told the FDEP about them. With all of these complaints, however, there is no indication that any of the witnesses were actually interviewed in order to determine more

precisely the exact location of the illegal dumping, the time frame during which the dumping occurred and the full extent of the types of waste being illegally dumped. Indeed, the FDEP files that document the referral of complaints by Bay County contain no information about the specific nature of the complaints or the violations that were taking place. If this information was obtained it is not in the FDEP files provided to Florida PEER.

Finally, inasmuch as the Program Administrator saw a need to issue the warning letter to the Permittee in December 2002, we must assume that he had reviewed the files prior to acting. There is no indication that he, as a member of the senior management team, did anything to require follow-through on the investigation in order to develop an even stronger enforcement case. Instead, he knowingly allowed the investigation to remain incomplete.

Ignored Asbestos Violations:

The asbestos violations have been virtually ignored by management personnel in the agency. Even assuming, for the sake of argument that the Facility completely cleaned up the problem after the October 24 inspection the fact remains that serious violations of the Clean Air Act occurred. They have been ignored—even though FDEP personnel discovered more asbestos violations upon their March 26, 2003, inspection.

It is astounding that FDEP waited for almost a month before dispatching an inspector from the Air Section to the site in October 2002. That inspection confirmed the allegations received by the citizen complainants. The agency files do not reflect whether the Permittee's records were reviewed in order to determine whether the records reflected the receipt and dumping of this material—or whether they were even accurate at all. Furthermore, the agency files do not reflect whether any consideration was given to the workers who were potentially

exposed to this deadly substance. How many were exposed during the month that preceded the inspection? How many of these workers were notified about their exposure?

Given that the agency knew that asbestos was being illegally dumped at the site one can reasonably ask what efforts the agency made to determine the source of the banned substance. Were the owners of the properties from which the asbestos was obtained aware of the manner in which it was being disposed? Were they being charged for proper disposal, contrary to what allegedly happened?

As mentioned above, soil samples were taken by FDEP personnel during the October 24 inspection. The agency file is entirely silent on (1) whether the samples were tested, and (2) the results of the tests.

It is bad enough that no formal enforcement was taken by the FDEP on this issue immediately following the discovery of the illegal dumping. But that problem was compounded on March 26, 2003, when the agency again confirmed the presence of asbestos on the site. Once again, there was no follow-up. No enforcement. The health of the workers and the public appears to have been secondary to what can only be described as an agency policy of indifference.

Ignored Groundwater Violations:

Despite repeated violations concerning the groundwater monitoring wells a warning letter has yet to be sent to the Facility concerning the same. Furthermore, FDEP's inspections confirmed illegal dumping of waste, perhaps oil and asbestos, into the groundwater. Yet, no further testing was ordered.

Once again, in spite of citizen complaints of illegal dumping in either groundwater or surface waters there appears to have been but one isolated effort to even check area surface

waters to obtain evidence of the violations. The inspection did not include taking water samples—at least the files do not reflect such actions being taken.

Finally, there is no indication that any surveillance of the site occurred so that the agency could possibly confirm the charges raised by the citizen complaints.

Catering to the Permittee:

It is obvious from a review of the file that the agency was documenting at least some of the violations. However, as the file reflects, there appears to have been a decision to yield to an upset Permittee, because an email dated December 4, 2002, reflects the Permittee's dissatisfaction. It reflects a conversation held with the Permittee's representative, Mike Livingston:

Livingston was fairly upset that the Department wanted an enforcement meeting and stated several times that he would bring his attorney to hash things out with the Department's attorney. He seemed to be taking this personal. He wanted to know why the Department wasn't willing to work with him on this. I explained to him that if we were simply talking about prohibited waste or just any one of the issues that we possibly could have handled it verbally. I explained that there are four serious issues: 1) no trained operator on site, 2) prohibited waste in the disposal area, 3) disposed debris in contact with groundwater and 4) no permit or operation plan was on site. Livingston agreed to meet with us but made statements that the inspectors were 'out to get him' and often visited the site with a 'bad attitude'."

Email of Mike Stephens, December 4, 2002. The interesting part of this email is that the Environmental Specialist, Mike Stephens, clearly tried to impress the seriousness of the violations upon the Permittee. These were not violations that could be ignored. Yet, the Permittee was apparently belligerent and refusing to acknowledge the violations. Then, the FDEP issued its warning letter shortly thereafter. However, issuance of a warning letter, without

actual consequences, means little. In this case, the warning letter was not followed by a referral to the agency's Office of General Counsel for issuance of a consent order or other legal action. The Northwest District issued no consent orders on its own. Instead, the FDEP abandoned enforcement after receiving assurances from the Permittee that everything was corrected. The FDEP did not restart the case even after it visited the site again in March 2003 and found additional asbestos violations.

Mary Jean Yon, the Director of the FDEP's Northwest District Office, in response to press inquiries into the recent grand jury report issued in Pensacola, stated, "I don't think we are doing a bad job. We've never taken the drinking-water supply for granted. I don't think we've failed in our responsibilities."¹⁰ Florida PEER would beg to differ. The Pensacola grand jury clearly believed that the agency had been lax in enforcing Florida's groundwater regulations in the ECUA case in Escambia County. Now it is evident that there is a similar failure to enforce groundwater violations in Bay County, coupled with a failure to enforce the Clean Air Act provisions pertaining to asbestos. Simply put, the FDEP needs to understand that it must represent all of the residents of Florida. It does not just represent a select few who, for reasons unknown, are able to convince the agency to look the other way when it documents serious violations of Florida's environmental laws.

¹⁰ Tallahassee Democrat, May 6, 2004, page 6B.