

March 18, 2015

Via Email to candie.fuller@dep.state.fl.us & Hard Copy

Candie Fuller
Inspector General
Florida, Department of Environmental Protection
Office of the Inspector General
3800 Commonwealth Boulevard
MS 40
Tallahassee, FL 32399-3000

Re: Request for Investigation into the Suspension of Barton L. Bibler & Invocation of Florida Whistle-blower Act, § 112.3187, Fla. Stat.

Dear Ms. Fuller:

As you are no doubt aware, over the past several weeks an issue has arisen concerning efforts by senior administration officials to ban the use of the terms “climate change” and “global warming” from the FDEP’s lexicon. This ludicrous ban has permeated the rank and file of the agency’s personnel who have, by now, gotten the message that if they are to keep their jobs they should not seriously suggest that climate change exists.

While the Office of the Governor and senior FDEP officials continue to deny that this is, in fact, the policy of the agency, it has come to our attention that earlier this month one employee, Mr. Barton L. Bibler, was –

- Served with an Official Written Reprimand concerning his discussion of climate change, together with his position that the Keystone XL Pipeline would further aggravate this environmental problem;¹
- Summarily placed on personal leave and told to stay away from the office for two days; and

¹ A copy of that reprimand is enclosed herewith.

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- Directed to seek what appears to be a mental health evaluation from his doctor to verify his “fitness for duty.”

Mr. Bibler is the current Land Management Plan Coordinator in the Division of State Lands and has a long history of exemplary performance with the FDEP. In his current position he was asked to, and did, attend a Florida Coastal Managers Forum that was held on February 27, 2015. During the course of the meeting each participant was introduced and provided a discussion on topics of interest to them. Towards the end of the meeting on the 27th, after the meeting agenda had been largely discussed by every other participant, Mr. Bibler was asked to introduce himself and provide an agency update. He provided that update and also expressed his opinion that the Keystone XL Pipeline, if built, would further jeopardize the stability of our climate, which would also negatively impact the State of Florida.

The forum’s meeting moderator, Ann Lazar, then expressed her concern that Mr. Bibler’s statements about the Keystone XL Pipeline because she felt that they could be interpreted as FDEP’s official opposition to the same. She was also afraid that the mention of the Keystone XL Pipeline could jeopardize the ability to hold future Coastal Management Forum conference calls. Mr. Bibler readily confirmed that his position regarding the Keystone XL Pipeline is not the official position of the FDEP.

After the forum was held Mr. Bibler provided a summary of the meeting. He drafted the summary and utilized the forum header and agenda topics as the blueprint for the document. In doing so he inadvertently left the word “agenda” in the heading. The summary notes included references to discussions of climate change and sea level rise. It did not mention the Keystone XL Pipeline.

Mr. Bibler’s supervisors apparently took umbrage with two aspects of the summary. First, the summary that he provided left the term “Agenda” in the header. The second issue was the fact that he left intact references to discussions about climate change. Marianne Gengenbach, Chief of the Office of Environmental Services, therefore instructed him to change the summary, which he did by eliminating the word “Agenda” from the header and replacing it with “Meeting Summary (Partial).” He left the remainder of his summary as originally written. When he emailed the revised summary back to his supervisor he attached to the email a symbol that simply means the equivalent of “Stop the Keystone XL Pipeline.” This was not acceptable either, at which point he was asked to provide yet another summary of the meeting – supposedly one that was thoroughly devoid of any hot button issues, especially explicit references to climate change. That summary was never provided because it would have been untrue.

The Written Reprimand and Involuntary Leave

On March 9, 2015, Mr. Bibler was subsequently given a Written Reprimand (Reprimand). The Reprimand erroneously states that he was told to attend the Coastal Managers Forum on March 2, 2015 (the meeting was held on February 27, 2015). It is also erroneously dated March 4, 2015, when it was actually delivered to Mr. Bibler on the 9th. In the Reprimand Mr. Bibler’s actions were somehow magnified to be tantamount to insubordination. Ironically, the reprimand also

noted that Mr. Bibler's performance in the position has been "exceptionally good" and that he is a "valued employee in many respects." These observations were made before culminating in the official Reprimand which was followed by a threat of termination. Mr. Bibler was then ordered to leave the office and to stay away for 2 days. He was told that the agency would charge his annual leave for the time away.

The episode underlines the extent to which it demonstrates the fear that employees have in being made to appear as though they wish to discuss climate change or global warming. A close reading of the Reprimand reveals that Mr. Bibler's supposed offense was to give the impression that the meeting's moderator, Ann Lazar, had actually called a meeting to discuss climate change and apparently that the meeting had included a discussion of climate change and the Keystone XL Pipeline. This directly contradicts the Governor's recent claims that climate change is freely discussed in his administration. But equally important, it reveals the lengths that one manager in FDEP will travel in order to distance herself from any implication that she held a meeting on the topic. Moreover, it reveals the lengths to which other managers will go in order to ensure that references to climate change are excised from the agency's records.

At first blush Ms. Gengenbach's actions in telling Mr. Bibler to revise his notes to eliminate the word "Agenda" would appear to be innocent enough. However, she admits in the Reprimand that she went further and ordered him to delete references to climate change and, by inference, the Keystone XL Pipeline, issues that were, in fact, raised in the meeting. Thus, it is apparent that the true concern was whether or not Ms. Lazar could face repercussions if a public record was allowed to show that she held a meeting with an agenda that included climate change as a topic, especially if there was any discussion of the Keystone XL Pipeline. Fearing those repercussions, management twice embarked upon the task of trying to force Mr. Bibler to sanitize his summary so that no mention of climate change or the Keystone XL Pipeline was included.

Ms. Gengenbach's actions appear to solicit Mr. Bibler to commit a crime. Her actions were supported by her supervisor, Kelley Boree, the Director of the Division of State Lands.

Section 839.13(1), Fla. Stat., concerns the act of falsifying and/or altering records by a public employee. This section clearly states that such records are not to be altered or falsified and that one may not procure the offense to be committed, lest one commit a misdemeanor of the first degree.²

Accordingly, Mr. Bibler was absolutely correct in refusing to alter his notes to suggest that the topic had not been raised in the meeting. The fact that FDEP is now calling this "insubordination," "poor performance," and "conduct unbecoming a public employee" is abhorrent and those officials who are participating in this personnel action should be disciplined.

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http://archive.flsenate.gov/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0800-0899/0839/Sections/0839.13.html

Orders to See a Doctor

The FDEP did not end its crusade against Mr. Bibler there, however. Two days later Drew Meehan, FDEP's Human Resource Officer, authored a letter dated March 11, 2015. Ms. Gengenbach hand delivered this letter to Mr. Bibler that same day. It is a notice that the agency was now demanding that he submit a form, signed by his doctor, stating that he is fit to return to work.³

Despite the fact that he has always been available to work he will not be allowed to return to work prior to the submission of this form. This has effectively turned his original two-day "suspension" into an indefinite suspension. The basis for this personnel action is supposedly found in Rule 60L-34, F.A.C., together with "information [the FDEP] have received regarding [Mr. Bibler's] medical condition and behavior, . . ." The specific information is not included in the letter. Neither did the agency disclose who submitted this information about Mr. Bibler, or to whom they submitted it. But this specious information is now being used to force him to prove that he remains fit for work.

The fact of the matter is that Mr. Bibler is ready, willing and able to return to work. In fact, he was not previously unable to do so, nor did he ever indicate anything to the contrary. Given that there are no allegations on the part of FDEP that Mr. Bibler is physically unable to work, the only inference that can therefore be drawn from the FDEP's March 11 notice is that FDEP expects him to see a psychologist.

Thus, it appears, is because the FDEP is convinced that his concern about climate change and the Keystone XL Pipeline (something that environmental scientists in other less political agencies routinely discuss) somehow makes him mentally unfit to work in an environmental public agency that is supposed to be working to find solutions to a myriad of environmental issues—climate change included. It is beyond comprehension that a public agency such as the FDEP would be acting in such an infantile way in the twenty-first century.

Requested Relief

With this correspondence we are asking that your office:

1. Investigate the full circumstances surrounding the personnel action that was taken against Mr. Bibler on March 4, 2015 (signed on March 11, 2015) and the subsequent personnel action that was taken against Mr. Bibler on March 11, 2015, including –
 - The true basis of the reprimand issued;
 - The propriety of placing him on involuntary leave; and
 - The appropriateness of ordering a medical fitness for duty certification.

³ A copy of the notice is enclosed herewith.

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2. Determine whether FDEP employees perceive that they are not allowed to use the terms “climate change” and “global warming” during the course of their official duties; and if so, why did this perception arise; and
3. Consider the referral of a criminal case to the Office of the State Attorney, 2nd Judicial Circuit, due to the efforts by Mr. Bibler’s superiors, Ms. Gengenbach and Ms. Boree, to procure the alteration of public records.

Finally, on Mr. Bibler’s behalf, we request that your office ensure that Mr. Bibler suffers no further retaliation in connection with this request and/or your investigation. The revelations made herein, we maintain, concern actions on the part of FDEP employees that

- Create a substantial and specific danger to the public’s health, safety, or welfare—namely the attempts by said employees to alter the public record in order to bring the same in line with political positions. The public is entitled to an honest record on a subject as important as climate change. These employees are trying to thwart that record.
- Involve gross mismanagement, malfeasance, misfeasance, and or gross neglect of duty.

Accordingly, Mr. Bibler is invoking his rights under Florida’s Whistle-blower’s Act, § 112.3187, Fla. Stat. This correspondence, together with the copy that is being forwarded directly to FDEP Secretary, Jonathan P. Steverson, shall serve as FDEP’s notice of Mr. Bibler’s action pursuant to § 112.3187.

Please notify us immediately concerning the results of your investigation. Should you need any additional information please do not hesitate to contact us.

Sincerely,

Jerry Phillips
Director
Florida PEER

Encl.

cc.: Mr. Barton L. Bibler (w/encl.)

Jonathan P. Steverson (w/encl.)
Secretary
Florida, Department of Environmental Protection
3800 Commonwealth Boulevard
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