

**Response of Tom White to the Allegations of the
Florida, Department of Environmental Protection**

I offer the following response to the issues raised in your January 3, 2007, letter to me wherein you notified me of the Florida, Department of Environmental Protection's ("FDEP") intention to take disciplinary action against me. It is my request that the following comments be considered as a formal response by me and that they be included in my main personnel file in the FDEP Headquarters.

Request For Incorporation By Reference

You will recall that I gave a statement to the Florida, Department of Environmental Protection's, Office of Inspector General ("OIG") on October 31, 2006. This statement is contained in OIG Report Number II-01-18-2006-066, bearing an issuance date of December 20, 2006. ("Report") I request that the OIG Report be fully incorporated by reference into this response, as if restated completely herein.

A. There Was No Data Fraud

1. Above all, I want to say that I have at no time engaged in any "data fraud" or otherwise falsified any FDEP documents. I likewise strongly dispute the allegation that I was negligent in the performance of my duties as an employee of the FDEP. I have worked for the FDEP for over twenty years. This is the first and only time that I have ever been accused of such conduct. The accusations are entirely false. Furthermore, it is my belief that those who are making the allegations are doing so knowing that the allegations are false.

2. The FDEP's Findings are a misinterpretation of the evidence and of the testimony given to the OIG. They represent an approach that essentially decided the desired outcome and then attempted to skew the evidence in that direction. The primary example of this faulty line of reasoning is the OIG's position that the data is too clean, i.e. that the absence of data qualifiers necessarily means that the data is flawed. This approach fails to acknowledge one of the approaches of this lab under then QA Officer, Greg Graves. Over the past years our lab has been severely stressed in the amount of work that was required in order to complete the water quality sampling needed for the TMDL Program. Given few resources, we were tasked with enormous responsibility. There were times when there were simply too many samples brought into the lab to be able to analyze them all in a timely fashion. Rather than proceed with an analysis, these samples were discarded and the area was resampled. The new samples were then analyzed. Therefore, there would have been no need for data qualifiers that would otherwise have been applied. This would explain, for example, the lack of "J" and "Q" qualifiers.

3. "I" qualifiers indicate that the reported value is between the laboratory method detection limit and the laboratory quantitation limit. These qualifiers have not been used in this lab for the twenty years that I have worked there. No one has ever said that this was a problem before now.

4. The FDEP is now taking the position that all data qualifiers are of equal importance. This is simply not the case. It has never been the case at the FDEP, or with NELAC certification. The OIG's findings neglect to take this factor into consideration.

5. Because data qualifiers are not of equal importance does not mean that all qualifiers are not considered. Nor does it mean that the failure to use a qualifier necessarily means that the data are unusable. To the contrary, in some cases the data can easily be reevaluated and the appropriate qualifier applied, if necessary. This is true in the case of the Port St. Lucie lab.

a. My Previous Work As An Auditor

6. *As you also know, over the course of my career I have gone to other labs on behalf of the FDEP and audited them for the FDEP. There have been times when I have found data qualifiers to be lacking. In those instances I have always found the lab to have been deficient in that area. A finding of a deficiency is a standard approach. It is not standard to allege that the data is fraudulent unless there is specific evidence that the samples were fraudulently obtained, or that the data was simply made up. This is not the case with the Port St. Lucie lab. Yet, you are attempting to nevertheless charge me with fraud.*

B. Disparate Treatment

7. There are a number of areas in which the treatment of my case has been handled differently from the FDEP's other actions. Those areas are touched on throughout this response. However, I would like to point out an additional issue at this time. As you are also aware, there was a time when our lab had difficulty meeting the holding times for fecal coliform samples. Such samples need to be analyzed within six (6) hours in order to be considered valid under NELAC and EPA rules. The lab's approach to such situations was to either discard the sample and to then resample and

analyze within the required holding deadline, or to analyze the sample and qualify it with a "J". Nowhere in the rules does it state that a "J" cannot be used in place of a "Q". This is significant, because you claim I willfully used the wrong qualifier. In fact, the practice of using "J" qualifiers was discontinued once a microbiologist was hired who's job was to maintain a full micro program, and samples analyzed past 6 hrs were "Q"d. When the FDEP's Tallahassee laboratory found out about the problems meeting holding times their response was not to continue in this manner; but rather, *they arbitrarily extended the holding time to twenty-four (24) hours and instructed us that no data qualifiers should be used in those situations*. I ask you why this was considered to be proper behavior by Tallahassee, but would not be considered proper behavior for Port St. Lucie?

C. Improper Use Of Statistics

8. I also object to the use of statistics in this personnel action. You have not found any specific evidence of fraud or negligence. That is because there was no fraud or mishandling of data. In fact, on page one of your January 3, 2007, notice you state, in part, that "[t]he results of the audit completed in August 2006, 'by the general lab had caused some very broad concerns relating to the possibility of data fraud being an ongoing practice in the Port St. Lucie Lab....'" (Emphasis added) Therefore, no fraud was actually found in the audit. In the absence of such a finding you have used statistics to try and make your case. Your approach is essentially that the data is too clean to be true. In other words, you are finding fault if a laboratory such as Port St. Lucie is doing its job such that it can properly avoid extensive use of data qualifiers. Conversely, if the laboratory were limping along such that data qualifiers had to be routinely used, your

approach would be to reward the laboratory. This sends the signal to all FDEP employees that proper performance of their jobs can put them at risk and that poor performance will be rewarded. It is a disingenuous and counterproductive position to take. It shows a complete disregard for FDEP employees and their families. I ask that you properly analyze the "questionable" data and then base any personnel actions on those findings, not upon a statistical analysis.

D. Conduct Of Prior QA Officer & The Prior Investigation

9. I am not saying that our laboratory was without faults. Every laboratory has problems. Some more so than others. In fact, you will recall that our laboratory has had times of turmoil. Over the course of my tenure there I have witnessed such times. They have largely been the result of the management style and approach of the former laboratory manager, Greg Graves. I believe that Mr. Graves sincerely wanted the laboratory to carry out its assignments, including the sampling and analyzing of water samples for the TMDL Program in a timely manner. The problem was, in part, that our laboratory was seriously understaffed. In addition, there was a significant concern on the part of Mr. Graves that Tallahassee was not exactly attempting to secure the success of the TMDL Program. As a result, there were problems under his supervision. Chain of custody was not always maintained by other employees. He knew it and did nothing. To the contrary, he (not I) entered the data anyway without qualifiers. As I pointed out to Investigator Roy Dickey, Mr. Graves told us not to use qualifiers if they weren't absolutely necessary. He was extremely forceful on this point—something that he and I discussed many times. He routinely refused to follow proper protocols in a misguided

effort to process as many samples as possible with as few personnel as possible. Those of us who protested were punished. The prior "disciplinary actions" that you referenced were a direct result of his misguided efforts to keep me "in line."

10. You should recall that a former FDEP OPS microbiologist, Mirna Alpizar, complained repeatedly about Graves' failure to follow proper protocols. The same protocols that you reference on Page 5 in your January 3, 2007, letter. Ms. Alpizar was concerned for her career if she complied with Graves' demands. She did not want to violate NELAC standards. When nothing was done about the situation she filed a complaint against Mr. Graves. The OIG investigated this matter and I gave them a statement regarding the same. I substantiated Ms. Alpizar's allegations. I raised these issues with the OIG¹, yet the OIG issued findings that failed to find an actionable basis upon which to bring disciplinary action against Mr. Graves. He then resigned his position and now works for the South Florida Water Management District.

E. My Performance As QA Officer

11. In January 2004, that I became the QA Officer. *In that position I corrected 90% of the deficiencies that had been found in the laboratory.* This was confirmed by the TMDL audit that was conducted by Tallahassee. The high performance of the laboratory continued until this personnel action was taken against me. *In fact, it was under my management that the laboratory was certified by NELAC for the first time.* Yet, in spite of these improvements the OIG has issued a report that in all material respects recharacterizes the issues that it was aware of over a year ago and did nothing about (in

¹ I maintain that this revealing of information to the OIG constituted whistleblower actions under §112.387, Fla. Stat.

the case against Mr. Graves). The OIG now alleges fraud and sustains the allegations.

This behavior is seriously suspect. I maintain that it is direct retaliation for my prior disclosures to them about the problems in the Port St. Lucie laboratory under Mr. Graves.

F. Management's Prior Knowledge And Complicity

12. The simple fact is that to the extent that there were any problems with this laboratory those problems were known to exist by management over the course of the previous six (6) years. They were known to exist because we complained repeatedly about the problems to them. This includes the Tallahassee Laboratory, the TMDL Group and District Management. Management, however, did nothing so long as Mr. Graves was at the helm. Then, after I took over and began correcting any existing problems the FDEP has chosen to take action against me. *I would respectfully suggest, that under these circumstances, if there were deficiencies, if there was fraud, if there was negligence, it was knowingly allowed to continue while persons friendly to management were overseeing the operations.* As such, if a personnel action were justified against me, then it would also be justified against all of the persons who knew about the alleged problems but knowingly allowed them to continue.

G. Suspect Timing

13. I must also question the timing of the action against me. The alleged problems were known to Tallahassee and District personnel long ago. Had a course correction been made much earlier the data would not have been significantly jeopardized. Yet, the effort to correct any alleged problems is coming only *after the water*

segments for the TMDL Program have been all but completed and the data entered. This necessarily jeopardizes the use of all of this data. The FDEP's actions are highly suspect under these circumstances.

H. The OIG Report

14. With the above-stated issues in mind, I would like to point out some serious flaws in the Report. The Report was, I contend, the culmination of efforts undertaken to find fault, regardless of whether or not fault existed. It mattered not what I said to the investigator. The findings would have been the same.

15. The manner in which the investigation was conducted is suspect. The Report consists of the sworn and recorded testimony of only one person, me. Greg Graves refused to have his statement recorded (Report at 17), but the OIG didn't even bother to put him under oath before he told the investigator his story. This makes it much easier for him to change his story later, should he so desire. Given his refusal to allow his statement to be recorded, I would think some concern for the veracity of his statements would have been justified. Instead, the Report fully credits him while scapegoating me. Other FDEP laboratory employees, such as those employees from the Tallahassee and Port St. Lucie laboratories were not interviewed. FDEP management personnel (past and present), e.g. Melissa Meeker, John Moulton, Mary Murphy, Tom Frick etc. were not put under oath and questioned about their knowledge of the events and the use of data qualifiers. Likewise, employees connected with the TMDL Group were not questioned about the issue of the use of data qualifiers. Instead, for some reason the "investigation" consists of the interviews of only two people when many more were involved.

16. The striking fact is that after all of the extensive narratives, posturing and claims made in the twenty-two (22) page body of the Report, ***there is not one single finding that the data produced by the Port St. Lucie laboratory was, in fact, erroneous or fraudulent.*** That is because there was no fraud and I maintain that for some reason there is no desire on the part of the FDEP to discover that fact. No effort was made to actually determine if this was the case. Rather, the OIG, through their Report, has simply concluded: “. . . that the low level of usage is *practically* a statistical impossibility, the only conclusion is that the Port St. Lucie Lab has been generating and reporting deceptive or fraudulent lab results not consistent with NELAC or Departmental Standards and releasing them in published data bases for a lengthy period of time.” (Report at 21) (Emphasis added) In other words, this lack of qualifiers has caused them for some reason to *assume* that there was fraud. I would think that an employee with twenty (20) years tenure with the FDEP would be given a bit more consideration than that.

17. The Report points out that I was made the laboratory manager in 2004, when we applied for NELAC certification. (Report at 4) The laboratory was managed differently under my supervision. (Report at 11) I told the investigator that, in fact, the NELAC auditor had praised the performance of our laboratory after the NELAC audit was conducted. (Report at 14) These claims have not been contested in the Report, or, to my knowledge, by the FDEP. Yet, *no effort* has been made to look at the performance of the laboratory after 2004, when I took over. Instead, everything has been grouped together with me taking the blame for any problems. Indeed, the Report states that “[m]ost of the practices were reportedly in place for years...” This decision to ignore my impact as a manager of the laboratory is fundamentally unfair.

18. The entire claim of fraud is suspect, at best. During my interview Tom Frick interjected at one point when I noted that other programs do not always use them. The Report states: “[Tom Frick interjected ‘that was for reporting data on the DMR (Discharge Monitoring Report because instead of using the ‘U’ they use the less than sign. They just didn’t want it on the DMR report.’)]]” (Report at 5) Tom Frick was talking about the Drinking Water Program wherein *the FDEP tells permittees not to include data qualifiers on certain data*. Does that make the data “fraudulent?” Of course not. But using the “logic” of the Report this necessarily means that employees who entered the data and knowingly allowed it to be used for official consideration of compliance are guilty of fraud. This includes Mr. Frick, who obviously knew about the approach.

This same approach is used by the FDEP with respect to the DMRs and/or MORs submitted by wastewater facilities and by other permittees that are required to submit such monthly data to the FDEP. The FDEP uses this data to determine the compliance status of the facility. And the facilities and their labs do not include data qualifiers on most of the data. Yet, the FDEP knows it, accepts it and says nothing. Is that data “fraudulent?” The FDEP doesn’t seem to care about that.

For some reason, however, when it comes to the analyses conducted by our laboratory for the TMDL Program it is suddenly asserted that the lack of data qualifiers necessarily means that the data was fraudulently created and entered into STORET.² This position by the FDEP is disingenuous, at best.

19. The Investigative Summary at page 19 of the Report contains blatant falsehoods and/or mischaracterizations of the testimony and facts. In the 1st Paragraph the

² I would also like to point out that I never entered any data into STORET. This was done by other employees in the lab.

assertion is made that there was a "conflict" between Greg Graves' statement and mine about the use of qualifiers. To the contrary, both of us maintained that the intent was to avoid the use of qualifiers to the extent possible. This meant resampling at times in order to ensure that qualifiers were not needed. The investigator maintained that Greg Graves' perception was that data without qualifiers was more readily accepted. (Report at 18)

The 3rd paragraph says that I did not voice any concerns to management and that I just didn't understand the importance of qualifiers. (Report at 19-20) This directly conflicts with my testimony at pages 4, 5, 13 and *in passim*.

Paragraph 6, on page 20 falsely says that there is no absolute way to determine the history of non-use of qualifiers. I told the investigator (Report at 11) that the data was still there and that the appropriateness of the qualifiers could easily be determined, though it would be time consuming. Furthermore, while data qualifiers can signal a problem with the data, the fact is that when the data is uploaded into STORET the meta-data is loaded with it. Therefore, anyone who really wants to look deeper into the data can readily see if there are any limiting factors.

The 6th paragraph on of the summary (Report at 20) says that Greg Graves apparently didn't know the extent of the alleged problem. This is directly contradicted by Graves' "statement" at page 19. The summary of that statement says that "Graves was asked why he thought that White would feel that he had no option but to avoid using the qualifiers and related that concern to threats and fears of discipline. Graves stated that he did threaten and discipline White and that he had advised White of the suggestion [made by upper management] that Graves dismiss him, so those concerns were not necessarily unwarranted." Taken in context, this acknowledges that Graves (1) knew of the alleged

problem and (2) notified FDEP management of the same while he was the laboratory manager. Therefore, if the findings of "data fraud" are accurate (and I deny that they are) the fair conclusion is that management knew that this alleged fraud was going on for years and did nothing.

20. The Allegations and Findings on page 21 are no less a problem. In paragraph 1 the statement is made that data qualifiers are an accepted laboratory standard. This finding is contradicted by Tom Frick's statement that the FDEP instructs people in the Drinking Water Program not to use certain qualifiers. It is also contradicted by the pattern and practice of routinely accepting DMRs and/or MORs from permittees without such qualifiers. Thus, the FDEP is choosing to accept data from permittees, while crucifying one of their own employees for allegedly engaging in the same practices.

The assertion is made in the 1st paragraph that according to the Florida Administrative Code, "their use is mandatory and even prescribe how and when they will and will not be used." This is false. 62-160.670(1), F.A.C. does require adherence to 62-160.240 and 62-160.340, F.A.C. 62-160.240(2) (d) 3., F.A.C. does require "associated data qualifier codes(s)." To that extent the Report's assertion is correct. What the Report fails to point out, however, is that 62-160.700, Table 1, Data Qualifier Codes places this guidance on their usage: "The following codes shall be used by laboratories when reporting data values that either meet the specified description outlined below *or do not meet the quality control criteria of the laboratory.*" (Emphasis added) Therefore, if the data control criteria of the Port St. Lucie laboratory were such that the qualifiers were not always needed, or should be avoided, (as both myself and Greg Graves stated) then there is no requirement that they be used. Again, if the FDEP uses the OIG's own conclusion,

then charges should be not only filed against me, they should also be filed against Tom Frick and any other people in the FDEP laboratories who are knowingly allowing the non-use of qualifiers.

Paragraph 4 (Report at 21) states that I never told anyone about the problem. This is false. As is noted on page 13, I told management about the problem. A grievance against Greg Graves had also been filed. Management told me to "suck it up." In other words, deal with it. When asked who I reported this to, I couldn't recall. But upon reflection, I can state that I told Melissa Meeker and John Moulton about it. In addition, it is abundantly clear from the record that others in management knew about the alleged problems. In fact, the Report begins on page 1 by noting that William Coppenger (in Tallahassee) is the person who asked for the investigation. Also, it should be noted that I assisted the OIG in the investigation of the first grievance that was filed against Greg Graves, so clearly people in the OIG's office knew of the allegations.

20. The report and its findings, when viewed as a whole, leave little room for doubt that this investigation was opened with the objective of "finding" evidence to be used against me in a disciplinary action. There was no effort made to objectively look at the situation and actually determine the overall performance of the Port St. Lucie laboratory and my management of it. Instead, I view this report as an effort by the FDEP to support a former employee with whom they had prior problems while at the same time destroying the career of a 20 year employee that has given the FDEP the best working years of my life. The Report is, at best, defamatory.

H. Conclusion

In conclusion, I adamantly deny that I knowingly or otherwise engaged in any acts of data fraud, entry of fraudulent data, or the concealment of such actions. And while there were certainly deficiencies in the laboratory over the years, I do not believe that my conduct or job performance in any way could have been characterized as negligence. The evidence shows that after I took over as the QA Officer I was instrumental in correcting any deficiencies in the laboratory. I therefore further deny that I was negligent in the performance of my duties as a Chemist III. I maintain that the actions brought against me are in direct retaliation for my disclosure to upper management in Tallahassee that there were problems with the manner in which this laboratory was being operated by Mr. Graves. I therefore respectfully request that the disciplinary action against me be dismissed.

Respectfully Submitted,

Thomas R. White