

May 20, 2011

Ms. Mary J. Wilkes
Regional Counsel and Director
Environmental Accountability Division
Environmental Protection Agency, Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, Georgia 30303-3104

Re: Petition to Investigate Potential Violations of the Federal Clean Water Act That May Require Withdrawal of Approval for the Florida, Department of Environmental Protection to Administer NPDES Permitting.

Dear Ms. Wilkes:

On February 23, 2011 Florida Public Employees for Environmental Responsibility (PEER) and the Florida Clean Water Network (FCWN), jointly submitted a petition to the EPA asking that EPA investigate the appointment of Herschel T. Vinyard, Jr. to head Florida's Department of Environmental Protection (FDEP). The petition was based on several factors centered upon the issue of Mr. Vinyard's employment during the two year period prior to his appointment as FDEP Secretary. On April 8, 2011 your office wrote to now Secretary Vinyard and asked him to respond to PEER's petition on or before April 25, 2011. He responded on May 2, 2011 and we have now received a copy of said response. Due to the nature of the Secretary's response to your office we felt it necessary to correct what I will charitably characterize as misstatements contained therein.

From the outset, it bears restating that U.S.C. § 1314(i)(2)(D) does not require a direct association for there to be a cognizable conflict of interest. Rather, the statute specifically says that "directly or indirectly" receiving a significant portion of income creates the conflict. Secretary Vinyard's response is completely silent on the issue of whether he indirectly received income from permitted sources. A close review of the facts suggests that his silence is deafening.

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What is very troubling is Secretary Vinyard's clear effort to rewrite history such that his associations with BAE Systems is forgotten. Instead of owning up to his prior association with BAE Systems, he is asserting that he only worked for them for a two week period, January 1, 2011 through January 14, 2011, which conveniently coincides with the announcement of his appointment by Governor Scott. What he did not tell your office is that on January 11, 2011, Governor Scott issued a press release announcing the appointment. The Governor stated in that press release that:

“About Herschel Vinyard:

Vinyard has more than twenty years of experience in environmental laws and business management. In his current role as director of business operations at BAE Systems Southeast Shipyards, Vinyard is responsible for strategic planning, business development and regulatory and government affairs. BAE is the world's second largest defense contractor. He also serves on a number of professional and civic associations that draw upon his expertise in environmental and complex business practices. This includes board service on the Jacksonville Port Authority, the Jacksonville Regional Chamber of Commerce and the Manufactures (sic) Association of Florida. During his decade in private practice at Smith, Hulsey and Busey, Vinyard counseled clients in state and federal environmental compliance and permitting, was heavily involved in the siting of an electrical cogenerating facility and assisted in industry waste minimization efforts. He received his undergraduate and law degrees from Louisiana State University.”

A copy of this press release is enclosed herewith. We do not know what the Governor was told about Secretary Vinyard's employment history. But what we do know is that the Governor told all Floridians that he was appointing a man to head the FDEP who held vast environmental experience as the director of business operations at BAE Systems Southeast Shipyards. But, if the Secretary is to be believed, all of his extensive work as director of business operations for BAE Systems Southeast Shipyards took place in ten days, because prior to that he was allegedly employed by Classic Act, LLC, something which the press release omits.

The above press release points to other positions held by Secretary Vinyard, one of which is as a director for the Jacksonville Port Authority (JPA). According to the JPA's current website, Secretary Vinyard served as Vice President of Atlantic Marine Holding Company since 1999¹, a position that one would assume is a paid position. Atlantic Marine Holding

¹ See, attached copy of JPA description of its board of directors, including Secretary Vinyard.

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Company is the same company for which Secretary Vinyard is a registered lobbyist with the Florida Legislature.

Secretary Vinyard's response was apparently meant to leave EPA with the impression that he had no significant environmental experience in the two year period immediately prior to his appointment. In the first place, this is a curious position for one to take when one has been placed in charge of the largest environmental agency in the State of Florida. But more importantly, his assertion is simply untrue. It is based on the creation of a legal framework meant to shield him from responsibility for the time he spent working for companies under the umbrella of BAE Systems, Inc. A review of the corporate filings of that company easily demonstrates the fallacy of his response to the EPA.

The Companies

In order to clarify the permitting situation in this matter, a review of the BAE chain of companies is necessary.

- BAE Systems, Inc. is a corporation incorporated in the State of Delaware and registered with the State of Florida, Department of State. Its 2010 Annual Report shows that its corporate offices are located at 1101 Wilson Boulevard, Suite 2000 in Arlington, Virginia 22209.² A review of corporate filings shows that this company essentially serves as the umbrella for a number of different companies, some of which are incorporated in Florida.
- BAE Systems Southeast Shipyards, Jacksonville LLC is incorporated in Florida, though its senior management operates out of the BAE Systems, Inc. Virginia address.³ Nevertheless, the company's Florida operations are located at 8500 Heckscher Drive, Jacksonville, Florida 32226.⁴
 - According to the company's 2009 & 2010 annual reports, the managing entity is Atlantic Marine Holding Company, whose address is also 8500 Heckscher Drive, Jacksonville, Florida 32226. These reports, copies of which are attached, also list the entity's name as Atlantic Marine Holding Company.
- Another Florida company is BAE Systems Southeast Shipyards AMHC, Inc. This is the company for which Secretary Vinyard allegedly worked for a two week period in January 2011. This company, like the other BAE companies is staffed with senior management operating out of BAE's Arlington, Virginia offices.⁵ It, like BAE Systems Southeast Shipyards, Jacksonville LLC, has a Florida address of 8500 Heckscher Drive, Jacksonville, Florida 32226. Its FEI/EIN Number is 591153028.

² See, attached copy of 2010 foreign annual report.

³ See attached corporate filing, FEI/EIN Number 591153028

⁴ It should be noted that there is also a BAE Systems Southeast Shipyards Mayport LLC, which has yet another FEI/EIN Number 591050964. Its address, like the other companies discussed, is 8500 Heckscher Drive, Jacksonville, FL 32226.

⁵ See, attached corporate filing, FEI/EIN Number 592869662

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- This company's 2009 and 2010 annual reports list the entity's name as Atlantic Marine Florida, LLC.
- This company's 2009 and 2010 annual reports list the managing entity as Atlantic Marine Holding Company, whose address is 8500 Heckscher Drive, Jacksonville, Florida 32226.
- Classic Act, LLC is the company for which Secretary Vinyard alleges he worked prior to his employment with BAE Systems Southeast Shipyards AMHC. Classic Act, LLC's address is 8500 Heckscher Drive, Jacksonville, Florida 32226, although its mailing address is in Virginia.
 - According to both its 2009 and 2010 annual reports, the managing entity for Classic Act, LLC is Atlantic Marine Holding Company, whose address is 8500 Heckscher Drive, Jacksonville, Florida 32226.
- Atlantic Marine Holding Company is listed as a separate entity by Florida's Department of State,
http://ccfcorp.dos.state.fl.us/scripts/cordet.exe?action=DETFIL&inq_doc_number=J49615&inq_came_from=NAMFWD&cor_web_names_seq_number=0000&names_name_ind=N&names_cor_number=&names_name_seq=&names_name_ind=&names_comp_name=ATLANTICMARINEFLORIDA&names_filing_type= however, it's corporate filing shows the same FEI/EIN number as BAE Systems Southeast Shipyards AMHC, Inc.⁶
 - This company's 2009 and 2010 annual reports list its address as 8500 Heckscher Drive, Jacksonville, Florida 32226.

From the above recitation of company data, several facts are apparent. All of these companies share the same address in Jacksonville and all of them are connected to the parent company, BAE Systems, in Virginia. The annual reports for these companies are all signed by the same individual, Greg H. Gay, whose address is listed as 8500 Heckscher Drive, Jacksonville, Florida 32226. More importantly, however, every company lists Atlantic Marine Holding Company as either its managing entity, or as its actual name in its annual reports.⁷

Permits

A review of both the FDEP's records and those of the EPA show that both BAE Systems, Inc., BAE Systems Southeast Shipyards Jacksonville LLC and Atlantic Marine Florida, LLC currently hold NPDES Permits. According to ECHO, Atlantic Marine Florida, LLC holds facility ID number [110000745365](http://oaspub.epa.gov/enviro/fii_query_dtl_disp_program_facility?p_registry_id=110000745365). The company holds two NPDES Non-Major permits, FL0040592 and FLR05C567. It also holds numerous air and RCRA permits.
http://oaspub.epa.gov/enviro/fii_query_dtl_disp_program_facility?p_registry_id=110000745365

⁶ See Attached.

⁷ Classic Act, LLC deviates slightly in that it lists its own name in its 2009 annual report. Atlantic Marine Holding Company is listed as its managing partner, however.

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The FDEP also lists both permit numbers FL0040592⁸ and FLR05C567 (cited above by the EPA) as belonging to BAE Systems Southeast Shipyards Jacksonville LLC.⁹ The former permit expires on January 26, 2015. The latter expires on August 7, 2015.

According to the FDEP's website, BAE Systems, Inc. holds stormwater permit FLRNEE702 that expires on September 6, 2013, although it is unclear if this company, whose address the FDEP lists as 1371 SW 8th St in Pompano, Florida, is the same company.¹⁰ Its permit expires on September 6, 2013.

Secretary Vinyard's Involvement and the Clean Water Act

This brings us back to Secretary Vinyard's principle assertion that he was somehow not affiliated with BAE Systems Shipyards because, he alleges, he was employed by Classic Act, LLC. The Secretary's position is simply not credible. Even assuming, *arguendo*, that he was employed by Classic Act, LLC in 2009 and 2010, the fact remains that Classic Act, LLC is directly tied to BAE Systems, Inc. and Classic Act, LLC lists Atlantic Marine Holding Company as its managing partner in both of those two years. And, we know from Florida's Legislature that Secretary Vinyard is a registered lobbyist for Atlantic Marine Holding Company, which seems to be the only fact he isn't disputing. What he also neglected to tell the EPA, however, is that he was vice president of that company for at least nine (9) years.

Inasmuch as Secretary Vinyard was directly involved with Atlantic Marine Holding Company as a registered lobbyist and vice president it bears consideration that this company is listed as the managing entity of every company that now holds a Clean Water Act NPDES permit issued by the FDEP. In other words, he received income, either directly or indirectly or both, from a company that managed other affiliates with NPDES permits. This, we submit, easily falls within the prohibitions of the Clean Water Act.

Distilled to its essence the situation is thus; either Secretary Vinyard was directly and deeply involved in environmental matters on behalf of the BAE Systems chain of companies, as the Governor's press release would indicate, or if Secretary Vinyard's current claim is to be believed, the Governor lied to the Florida Legislature and the public when he claimed that the Secretary had significant environmental experience at BAE Systems. Both cannot be true.

Finally, we would submit that Secretary Vinyard's conflict of interest must be found to disqualify him from oversight of water quality standards and TMDL programs, as well as decisions on NPDES permits. Oversight of water quality standards and TMDL programs is critical to subsequent determinations of permit conditions in NPDES permits. To

⁸ This permit was also listed on the September 2004 Quarterly Non-Compliance Report as being out of compliance. It does not appear that any enforcement was taken against it.

⁹ See, Wastewater Facility Information, NPDES Facilities (both Domestic and Industrial) and NPDES Stormwater Facilities at <http://www.dep.state.fl.us/water/wastewater/facinfo.htm>.

¹⁰ Florida's Department of State does not list any other companies named BAE Systems, Inc.

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arbitrarily allow the Secretary to have oversight of all Clean Water Act programs except for NPDES permitting would essentially negate the intent of U.S.C. § 1314(i)(2)(D) that Clean Water Act programs be free from the corrupting influence of persons with a financial stake in the outcome of decisions on the administration of said programs.

Thank you for your kind assistance in this matter.

Sincerely,

Jerry Phillips
Director
Florida PEER

Encl.

cc.: Paul Schwartz, Associate Regional Counsel, Region 4
Herschel T. Vinyard, Secretary, FDEP
Tom Beason, General Counsel, FDEP