

PERMIT IRREGULARITIES, FEDERAL CONVICTIONS, POLITICAL CONNECTIONS, AND FDEP SENIOR MANAGEMENT—THE TROUBLING HISTORY OF THE BIG WHEEL C & D DISPOSAL FACILITY

Over the past two weeks Florida PEER has disclosed several significant problems associated with the Big Wheel Construction and Debris Landfill that is adjacent to Bay County's Steelfield Landfill. These problems include groundwater contamination that is documented in the files of the Florida, Department of Environmental Protection ("FDEP"). These problems are, in turn, discussed in Florida PEER's White Paper¹ entitled *Bay County's Steelfield Landfill Meets FDEP Enforcement*. On May 24, 2004, Florida PEER released a subsequent White Paper entitled *FDEP Ignores Asbestos and other Violations at Construction & Debris Site Adjacent to Bay County's Steelfield Landfill*. The latter White Paper detailed FDEP's receipt of complaints involving the illegal dumping of materials, including asbestos and oil at the Facility. Moreover, FDEP personnel documented the existence of friable asbestos at the site but the agency has yet to take formal enforcement as a result of the asbestos findings. There were repeated problems associated with worker training at the Facility as well. Despite all of these issues, the FDEP has failed to take any formal enforcement (beyond the issuance of a Warning Letter) against the Permittee of the Facility.

In this White Paper Florida PEER discusses the permit issued by the FDEP and then the background of the company that owns the Facility. In addition, Florida PEER is now able to confirm that two individuals, prominent Bay County attorney, William

Harrison, and Bay County businessman Randall McElheney were directors of the company that owns the site on which the Facility is operated. Harrison was a member of President Bush's 2001 transition team and was also on Governor Bush's 1999 transition team. He is also a registered lobbyist of the St. Joe Company. McElheney is a local businessman who was the Republican Party's Bay County representative in the November 2000 election recount. The two men's involvement with the company spanned the time when the Facility was coming under what was increasing FDEP scrutiny for failing to abide by Florida's environmental laws.

I. The FDEP Permit Is Issued

A. Background Information

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

On May 31, 2001, Aztec Environmental, Inc. ("Aztec"), applied to the Florida Department of Environmental Protection 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

¹ This, and the subsequent White Paper, may be found at PEER's website, www.peer.org.

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

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. Other Relevant Permitting Information

As stated above Aztec applied for the Permit on May 31, 2001. Aztec’s application, was signed by Sean McNeil, the Engineer of Record. Item 10 on the application asks for the following information, “Landowner (if different than applicant):” If there is a different landowner the applicant is required to include the landowner’s address, contact person and telephone number at this point in the application. Mr. McNeil, acting on Aztec’s behalf, left this section blank, thus inferring that Aztec owned the property on which it would operate the Facility.

In addition, attachments were included with the application. One of those attachments, Attachment E, is entitled, “Proof of Ownership or Authorization to Use Property.” This attachment, according to FDEP, included a single document, a Warranty Deed showing that the property had been sold on April 19, 2000. The purchaser of the property was Big Wheel Recyclers of Alabama, Inc. The seller of the property was GAC Contractors, Inc. Aztec was not mentioned in the exchange.

Two months after the application was filed, on August 2, 2001, the FDEP issued the Permit. The Permit, as noted above, was issued to Big Wheel C&D Disposal Facility.

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

This “company” is not listed with the Florida, Department of State. Moreover, the actual company that would be operating the Facility, Aztec Environmental, Inc., is not mentioned in the Permit. Finally, the property owner at the time, Big Wheel Recycling of Alabama, Inc., is not mentioned in the Permit. Thus, the Permit technically put performance requirements on a non-existent entity.

More fundamentally, however, is the fact that the FDEP issued the Permit to a non-existent entity that did not have any ownership interest in the property on which the Facility operated. The permit applicant, Aztec, likewise had no ownership interest in the property. Furthermore, the FDEP did not have even a hint from the application and attachment that Aztec even had any permission to operate the Facility on this property. In fact, the documents provided to the FDEP by Mr. McNeil conflicted—the application itself suggested that Aztec owned the property, whereas the attachment showed that the property was owned by a foreign, i.e. out-of-state, corporation. In spite of this, the FDEP went forward with the permit issuance, just as requested by Aztec.

II. The Companies Behind The Permit

A. Big Wheel Recycling, Inc. of Alabama

The environmental violations found at the Facility, and lack of FDEP response to them, are significant. But that is not the whole story. In fact, the Facility has a sordid history that needs to be understood when evaluating FDEP’s failure to fully enforce the Permit. Much of the information set forth below was first disclosed by the Bay County publication, The Emerald Coast Insider. The reporter, John Caylor, initiated a significant

investigation into this issue, an investigation that has greatly assisted Florida PEER in its development of this issue as it affects Florida's environment.

The Facility's history begins with a company called Big Wheel Recycling, Inc. of Alabama. Big Wheel Recycling, Inc. ("BWRI of Alabama") was first incorporated⁴ on March 16, 1995, in the State of Alabama. The company's address is P.O. Box 658 Luverne, AL 36049. The corporate officers were Linda West, President, Pamela Ferraro, Vice President, Tiffany Fussell, Secretary, and Tiffany Fussell, Treasurer. The Chief Executive Officer of the company is Dwight Faulk. As the name suggests, the corporation is engaged in recycling, principally recycling of construction and demolition debris.

1. BWRI of Alabama Acquires Bay County, Florida Property

Approximately five years after it was incorporated, BWRI of Alabama executed a Warranty Deed in which it purchased three parcels of land from a Florida corporation, GAC Contractors, Inc. One of the Directors of GAC Contractors, Inc. is Florida State Representative, Allan G. Bense, who serves on several committees including the Committee on National Defense and Space Related Economic Development. Another Director is Charles L. Hilton, Jr., a prominent Bay County attorney.

The parcels that were purchased from GAC Contractors, Inc. constitute the property upon which the Facility would later be operated. They are adjacent to the Steelfield Landfill. The Warranty Deed was filed with the Bay County Clerk of Court on April 19, 2000.⁵ The Warranty Deed generally reflects that GAC reserved the right to

⁴ FEI number 63-1142370.

⁵ Book 1941, Pages 1061-1063.

remove sand and fill for 15 years, and to dispose of C&D material at the site for 15 years.⁶ Thus, GAC retains a right to dispose of C & D material at this Facility at its leisure.

On October 26, 2000, six months after it purchased the Florida parcels, BWRI of Alabama filed an application with the Florida, Secretary of State to transact business in Florida. The application does not identify the corporate directors. However, the officers at the time were listed as Linda West, President, Pamela Ferraro, Vice President, Tiffany Fussell,⁷ Secretary and Tiffany Fussell, Treasurer.

On May 31, 2001, seven months after BWRI of Alabama applied to transact business in Florida, Aztec filed its permit application with FDEP to operate a C & D facility on the property owned by BWRI of Alabama. As previously indicated, Aztec's application was somewhat ambiguous on the issue of the property owner's identity.

2. The Federal Indictment of BWRI Directors

Court records reveal that on June 27, 2001, Dwight Faulk, Brian McKee, Jennifer McKee and Linda West⁸ were indicted in the District Court of the United States for the Middle District of Alabama, Northern Division⁹ June 27, 2001, of course, is approximately one month after Aztec filed its permit application with the FDEP.

The four individuals were indicted on multiple counts that included conspiracy to commit mail fraud, mail fraud, conspiracy to commit money laundering, money laundering to promote illegal activity. In addition, the United States served notice in the

⁶ Charles Hilton, Esq., was involved in this conveyance.

⁷ Tiffany Fussell is Dwight Faulk's daughter.

⁸ West was actually indicted under the name, Linda Williamson. Apparently, "Linda West" was an alias.

⁹ Cr. No.: 01-106-N.

indictment that it intended to seek forfeiture of any assets associated with the alleged criminal activity. An arrest warrant was issued for Faulk on June 28, 2001.

The basic thrust of the allegations in the indictment were that Brian McKee, as the administrator for the Etowah Solid Waste Disposal Authority (ESWDA) arranged for BWRI of Alabama to be billed at reduced rates for waste disposal when, in fact, BWRI did not qualify for the discounts. BWRI had contracts with four mobile home manufacturers to remove their construction debris. ESWDA set up separate accounts for BWRI and the four BWRI clients. ESWDA then sent the monthly bills for all five companies to a BWRI address. BWRI then sent separate bills to each company. The companies, in turn, paid BWRI, which deposited the monies into a BWRI account. BWRI then paid ESWDA. The total “savings” to BWRI was \$1,362,554.16. Each defendant was accused of receiving substantial funds as a result of this arrangement.

What was particularly troubling about the alleged crimes was the social status of the individuals associated with them. The indictment identifies Dwight Faulk, the CEO of BWRI of Alabama, as a probate judge of Crenshaw County, Alabama. According to the indictment, Faulk was essentially the brains behind BWRI of Alabama. Linda West was the county administrator for Crenshaw County, Alabama. At the time of the indictment, she owned 998 of the outstanding 1000 shares of BWRI stock. As mentioned above, Brian McKee was the administrator for the Etowah Solid Waste Disposal Authority. Jennifer McKee, Brian McKee’s wife, was an employee of BWRI of Alabama and was allegedly used to funnel a portion of the excess profits from BWRI of Alabama to her husband.

According to court documents, Faulk, West and Brian McKee were eventually convicted in 2001 on Counts 19 through 31 of the indictment, i.e. conspiracy to commit money laundering and mail fraud. Their convictions were upheld in a written opinion issued by the Eleventh Circuit Court of Appeals on July 30, 2003.¹⁰ The United States Supreme Court denied the defendants' appeal on March 8, 2004.

As a result of the United States Supreme Court ruling, Dwight Faulk began serving his 78-month incarceration. Linda West is serving 63 months. Brian McKee is serving 94 months and his wife, Jennifer McKee, is serving 15 months.

B. Big Wheel Recycling, Inc. of Florida Enters the Picture

The above actions on the part of the defendants would normally have been of little consequence to Floridians, except for two things: The first was GAC Contractors, Inc., since GAC had reserved an interest in the three Bay County parcels owned by BWRI of Alabama. The second (and perhaps more significant) exception was FDEP's interest, because FDEP had issued the Permit to the Big Wheel C & D Disposal Facility on August 2, 2001. BWRI of Alabama owned the property on which the Facility was located. The principals of BWRI were now facing a serious criminal indictment that could also mean the ultimate forfeiture of the Florida parcels to the U.S. government if the defendants were convicted.

Shortly after issuance of the FDEP Permit, BWRI of Alabama filed an Application to Withdraw Authority to transact business in Florida. The application was filed with the Florida Secretary of State on August 24, 2001. Jimmy Livingston, not

¹⁰ Case No.: 02-12765.

Dwight Faulk, signed as chairman or vice chairman of the board. Thus, on paper at least, BWRI was no longer transacting business in Florida after August 24, 2001.

Reality was a different matter, however, because BWRI still owned the three parcels, that were permitted for use as a construction and debris facility by the FDEP. Relinquishing its right to transact business in Florida did not affect that ownership—but it did make it problematic. On January 3, 2002, another event took place that began to affect that situation. It is on that date (after the defendants had been convicted) that records of the Florida, Department of State reveal that a new corporation was formed in Florida. This corporation was named Big Wheel Recycling, Inc.¹¹ (“BWRI of Florida”) The corporation’s principal place of business was listed as 460 Harrison Avenue, Panama City, Florida 32401. According to the articles of incorporation filed on that date, the initial directors were Dwight Faulk and another man, Jimmy Livingston.¹²

C. Unusual Transfers of Property Involving BWRI

Seventeen days after BWRI of Florida was born, the federal court in Montgomery, Alabama issued its Preliminary Order of Forfeiture¹³. This order required several actions to be taken. First, it ordered the forfeiture of property in Montgomery, Alabama that belonged to BWRI of Alabama. Second, it entered a money judgment of \$1,106,822.60 against the three main defendants. Third, it authorized the seizure of the defendants’ property. Fourth, and most significant, it ordered the immediate delivery of all corporate records of BWRI of Alabama to the US Marshals Service. The US Marshals

¹¹ FEI Number 593194335. Document number P02000001003.

¹² A year later, on January 9, 2003, the company filed its 2003 Uniform Business Report with the Florida, Secretary of State. That report shows two additional directors as William Harrison and Randall McElheney. Their involvement is discussed below.

Service was given authority to operate BWRI of Alabama and to shut the company down if economically necessary.

Within a month of the above court order being issued BWRI of Alabama executed a Warranty Deed to BWRI of Florida conveying its three parcels in Bay County to the latter company. Faulk's daughter, Tiffany Fussell, signed this Warranty Deed. It was dated February 15, 2002, and filed with the Bay County Clerk of Court.¹⁴

In exchange for the Warranty Deed, BWRI of Florida executed a mortgage on the three Bay County parcels in favor of BWRI of Alabama. The mortgage was executed on February 15, 2002, and signed by James F. Livingston, Faulk's co-director of BWRI of Florida. The mortgage was filed with the Bay County Clerk of Court.¹⁵ The mortgage was accompanied by a Promissory Note that identified the amount of the mortgage as \$269,959.39. Arguably, James F. Livingston signed the promissory note in his individual capacity, though the signature line states, "James F. Livingston, President of Big Wheel Recycling." The promissory note, like the mortgage, was filed with the Bay County Clerk of Court.¹⁶

At some point shortly after the attempted transfer of the real property, Faulk and Livingston's actions became known to the United States. The actions led to the filing of a Motion to Show Cause on the part of the United States. On July 17, 2002, defendant Faulk responded and alleged several facts. First, he alleged that on January 30, 2002, (ten days after entry of the court order requiring forfeiture) Faulk and Linda West notified several individuals, including James F. Livingston, of the forfeiture order. Second, Faulk

¹³ The order is dated January 20, 2002.

¹⁴ Book 2117, Pages 1055-1056.

¹⁵ Book 2117, Pages 1057-58.

¹⁶ Book 2117, Pages 1059-1061.

alleged that on February 8, 2002, Livingston submitted an offer to purchase the three parcels in Bay County, Florida for the sum of \$375,000.00. Third, Livingston's offer was allegedly submitted to the US Marshal¹⁷ in Arlington, Virginia. Fourth, the documents filed with the pleading revealed that, according to Livingston, a company called Aztec Environmental "holds the permits for the land use." Fifth, Faulk tried to shift the blame for the conveyance by alleging that Livingston expressed urgency to conclude the deal and that he persuaded Tiffany Fussell (Faulk's daughter and secretary/treasurer of BWRI of Alabama) to sign the warranty deed transferring the property to him. Finally, the defendant's pleading indicated that Livingston hastily acted to transfer the property back to BWRI of Alabama after the conveyance was discovered by the government.¹⁸

In fact, Bay County records do reflect that BWRI of Florida executed a QuitClaim Deed to BWRI of Alabama conveying the three parcels back to the latter company on June 14, 2002. The deed was signed by Jimmy Livingston, notarized by Nevin Zimmerman and filed with the Bay County Clerk of Court.¹⁹ In exchange, a Satisfaction of Mortgage was executed by BWRI of Alabama on August 27, 2002, in favor of James F. Livingston. It was likewise filed with the Bay County Clerk of Court.²⁰

The move by Livingston and Faulk to transfer the property back to BWRI of Alabama ultimately served its purpose. It resulted in a Stipulation of Parties Regarding Civil Contempt being filed in the federal court case on August 21, 2002. Thus, the U.S. Government ended its civil contempt proceeding against Faulk and West.

¹⁷ A man named Leonard Briskman.

¹⁸ The pleading also asserts that Nevin Zimmerman, Esq. was Livingston's lawyer and that Zimmerman indicated that Livingston believed that Briskman had essentially approved of his actions.

¹⁹ Book 2183, Pages 1574-1575.

²⁰ Book 2185, Pages 265-266.

But that did not end Faulk's efforts. Indeed, with the approval of the United States government, the same three parcels again were conveyed from BWRI of Alabama to BWRI of Florida. Livingston signed on behalf of BWRI of Florida. The actual agreement of sale was signed on May 28, 2003, by Jimmy Livingston on behalf of BWRI of Florida. An order approving the conveyance was entered by the court on August 1, 2003. Therefore, Faulk and Livingston ultimately accomplished their goal.

Figure 1 summarizes the corporate transactions that took place pertaining to Big Wheel Recycling, Inc. up to this point in time:

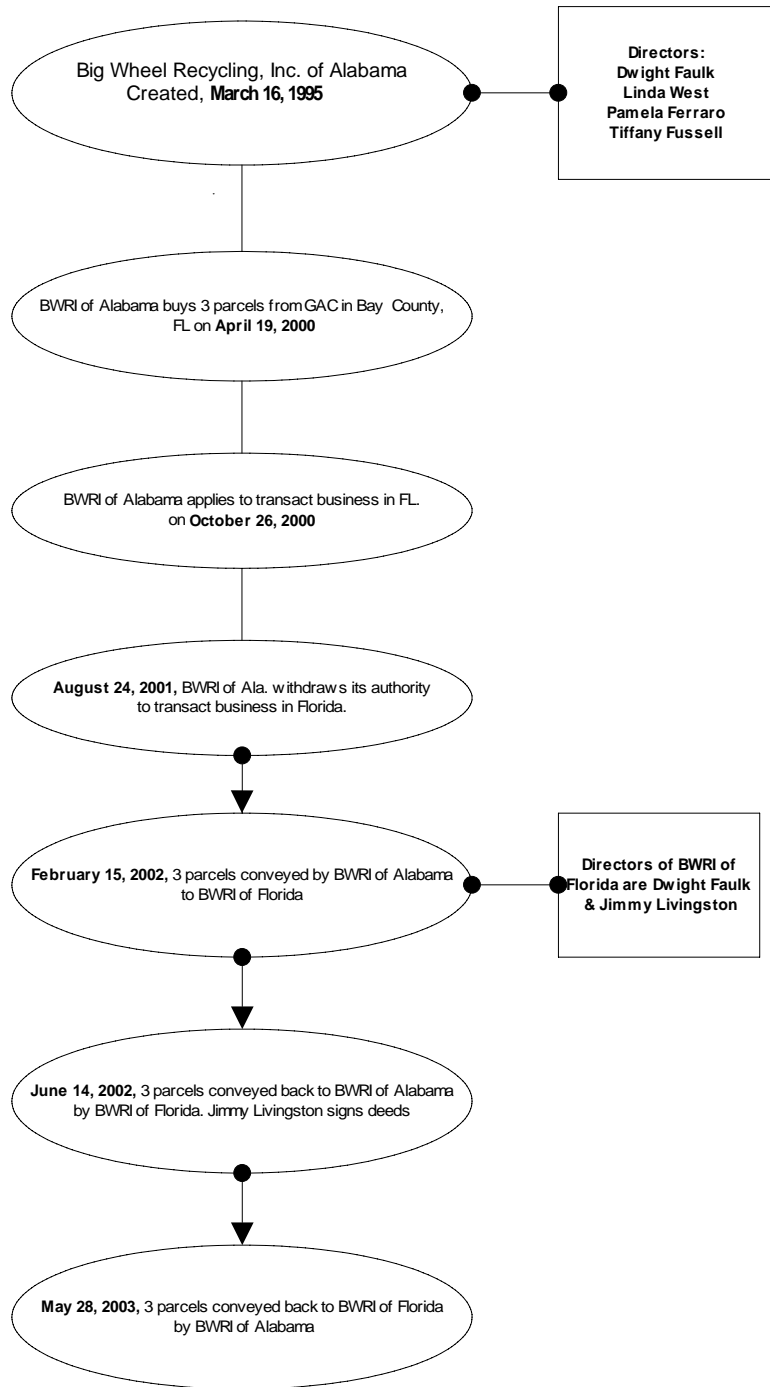


Figure 1

Finally, it should be recalled that at some point during this process Aztec filed an “Application to Transfer Permit.” This application was granted on November 8, 2002, and the Permit was officially transferred to Aztec.²¹ There was still no mention that the actual owner of the property was BWRI, whether it was BWRI of Alabama or BWRI of Florida.

D. Aztec Environmental, Inc., Aztec Recyclers, Inc. and Aztec Civil Construction, Inc.

It does not appear to be a mere coincidence that Jimmy Livingston was one of the directors of BWRI of Florida. In fact, he is also a director of three other Florida corporations, Aztec Environmental, Inc. (Aztec), Aztec Recyclers, Inc., and Aztec Civil Construction, Inc. all of which are located in Bay County. All three companies have the same principal address in Panama City, Florida. In addition, all three companies have the same principal address as BWRI of Florida.

According to the Florida, Department of State,²² Aztec was first incorporated on or about February 28, 1995. The directors are Jimmy Livingston and Debbie K. Livingston. Debbie K. Livingston is the company’s president and has filed each of the company’s annual reports from 1996 through the present.

The Articles of Incorporation for Aztec Recyclers, Inc. were filed with the Florida, Department of State on April 20, 2001.²³ The Articles of Incorporation were filed by Franklin R. Harrison an attorney with the firm of Harrison, Sale, McCley, Thompson & Harrison, Chartered of Panama City. The only director, besides Jimmy

²¹ November 8, 2002, letter from Charles F. Goddard, Program Administrator, Waste Management Program.

²² Document number P93000054942(6), FEI number 59-3194335.

²³ Document number P01000040135, FEI number 59-3685482.

Livingston, is Todd Schweizer. Schweizer is also a director in a Fort Walton Beach company, Solid Waste Haulers of Florida, L.L.C.

On February 4, 2003, Livingston incorporated Aztec Civil Construction, Inc.²⁴ He is the registered agent and sole director.

Figure 2, below describes the interconnection of the companies.

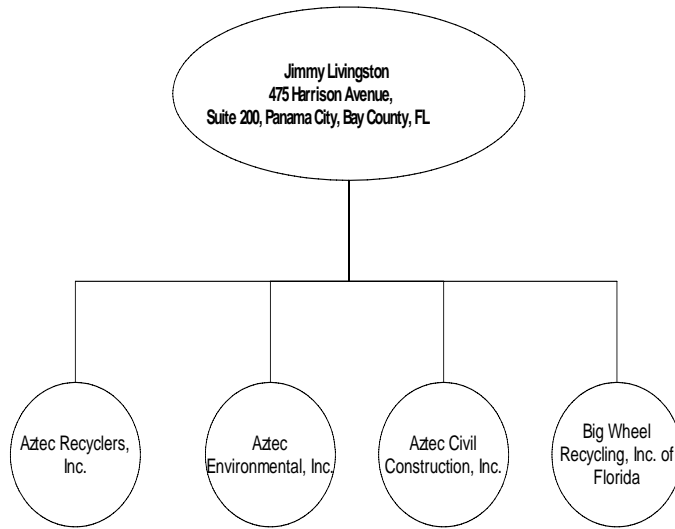


Figure 2

²⁴ Document number P03000013264. There is no FEI number.

III. Power And Influence Enters The Picture

On January 9, 2003, yet another significant event transpired with BWRI of Florida. It was at that time that the Florida, Department of State was first notified that two other individuals had been added as directors of the corporation. Those two men, William Gerald Harrison, Jr. and Randall McElheney, are both politically influential people within the Florida Republican Party.

William Gerald Harrison, Jr. is an attorney and partner with the firm of Harrison, Rivard, Zimmerman, Bennett in Panama City, Florida. At the time that he became a director of BWRI of Florida, he was also a registered lobbyist for the St. Joe Company and a member of Governor Jeb Bush's 1998-1999 transition team. He was also a member of President George W. Bush's transition team in 2000-2001. One of his current law partners, Nevin Zimmerman (in addition to representing Bay County from 1980 through 2002) had represented BWRI of Florida in its efforts to acquire the Bay County property owned by BWRI of Alabama.²⁵

Randall McElheney, the other man added to BWRI of Florida's board of directors, is also a director of several corporations. One of those corporations is a not-for-profit corporation, Citizens to Protect Florida's Economy, Inc., which is an advocacy group, headquartered in Tallahassee, that deals with health care issues in Florida. McElheney was also on Governor Bush's transition team that oversaw the Department of Health. According to the Panama City News Herald McElheney also represented President Bush's campaign during the election recount in November 2000.²⁶ Chairman

²⁵ At the time that Zimmerman was involved in the transfer of property on behalf of BWRI of Florida he was a partner at the Panama City law firm of Burke and Blue, P.A. In 2002, he joined Harrison in Harrison's firm.

²⁶ <http://www.newsherald.com/articles/2000/11/18/lo111800a.htm>

Al Cardenas of the Republican Party of Florida then appointed him to an Ad Hoc Committee. The purpose of the committee was to review the experiences of the November 2000 election and to recommend any necessary changes to the Republican Party.²⁷

According to filings with the Florida, Department of State, both Harrison and McElheney, resigned as directors of BWRI of Florida on July 10, 2003. Thus, on paper, their terms were limited to six months.

IV. Bay County Property Assessments

The three parcels that together serve as the Big Wheel C & D Disposal Facility are total fifty (50) acres. They are identified in the Bay County Property Appraisers Office as parcel numbers 35123-010, 35123-000, and 35123-005. According to that office, the most recent deed that shows ownership of the parcels is still the Warranty Deed dated April 19, 2000. This is the deed conveying the property from GAC Contractors, Inc. to BWRI of Alabama. Moreover, the three parcels are listed as vacant lots. Not ongoing commercial enterprises.

We know from pleadings filed in federal court in Montgomery, Alabama that on February 8, 2002, Livingston submitted an offer to purchase these three parcels in Bay County, Florida for the sum of \$375,000.00. A mortgage was also involved in this transaction and the mortgage was filed with the Bay County Clerk of Court. It was accompanied by a Promissory Note that identified the amount of the mortgage as \$269,959.39. The Promissory Note indicates that the sale price was reduced to \$269,959.39 from the original amount.

²⁷ <http://www.rpof.org/publications/triumph/documents/v6i1.pdf>

It will be recalled, however, that this sale was invalidated after the federal authorities discovered the same. The sale was allowed to go through later, but by then the price was significantly higher. The court order signed on August 1, 2003, by Myron H. Thompson, United States District Judge, reflect that the sale that was approved by the federal district court was in the amount of \$600,000.00, more than double the original sales price in February 2002.

In spite of these official documents, the property that is now being used as an ongoing commercial enterprise is currently assessed by the Bay County Property Appraiser's Office as being worth a total of \$152,500.00. This amount is 74.58% below the sale price approved by the federal court in j2003. It is 43.5% below the mortgaged amount in early 2002.

V. The FDEP Branch Manager

Henry Hernandez is now the Panama City Branch Office Manager for FDEP. He was formally promoted to that position in early 2003. Until January 2003 the Branch Manager had been Gary Shaffer, to whom Hernandez reported. Shaffer had been with the Department for many years. He was experienced and viewed as someone who took the job seriously. That included the enforcement of Florida's environmental laws. However, the Northwest District Director, Mary Jean Yon, had suddenly brought about Shaffer's departure in December 2002. Hernandez was thereupon put in the position as acting branch manager.

What is significant about Mr. Hernandez is the manner in which he was promoted to that position. As was first reported in The Emerald Coast Insider,²⁸ Hernandez had applied for his position when he suddenly received a call from William Harrison in early 2003 advising him that he, Hernandez, needed to interview with Harrison before being given the job. Harrison was not a state employee. Then, as now, he was a private attorney and registered lobbyist for the St. Joe Company. Given that Harrison was not a state employee Mr. Hernandez sought and obtained approval from his superiors, after which he consented to and attended the interview. The interview took place over dinner. At the time that the interview took place Harrison was a director of BWRI of Florida, having assumed that position on January 9, 2003.

Hernandez apparently passed the interview because he was then promoted to the new job on April 18, 2003. Within the year, on July 10, 2003, he found himself inspecting the Facility to which Mr. Harrison was connected by virtue of his directorship of BWRI of Florida.

VI. Conclusions To Be Drawn

A. Corporate Relationships

Taken separately, the events surrounding BWRI and Aztec would not seem to be interconnected, much less connected to the FDEP Permit. In addition, the activities involved form a complex string of events that are not easily dissected. However, as Figure 3, below, indicates when they are placed together it is apparent that more was involved than a simple corporate startup:

²⁸ The Emerald Coast Insider, Vol. 1, Issue 6, June 2003, page 24.

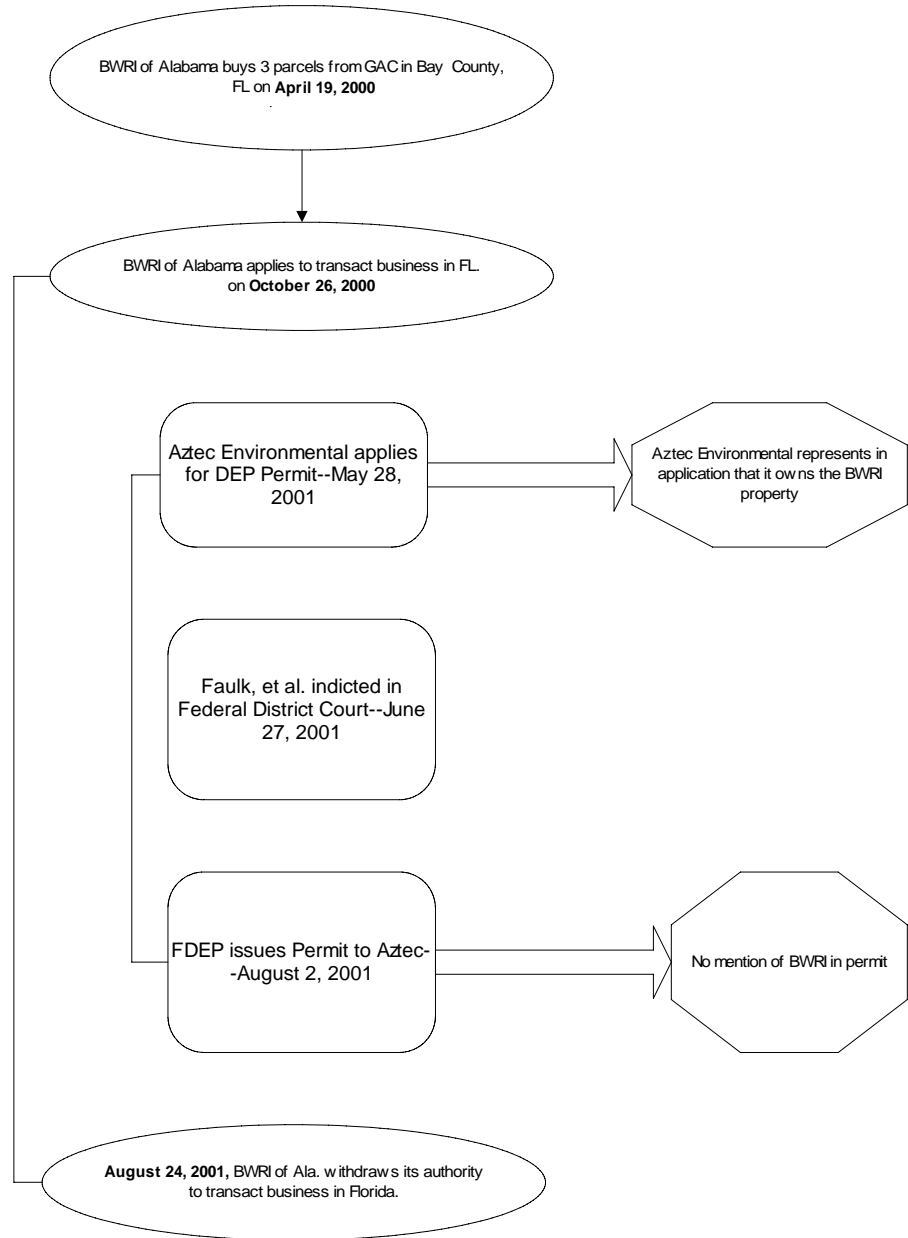


Figure 3

As Figure 3 demonstrates, Aztec, which is owned by Jimmy Livingston and Debbie K. Livingston, applied for the Permit from FDEP one month before the federal

court indictment of the directors of BWRI of Alabama. Whether the Livingstons knew that BWRI of Alabama was under investigation is unknown. However, it cannot be disputed that there was a connection between them and BWRI of Alabama that dated back to May 2001 at the very least. The closeness of that connection is unclear.

What is equally troubling is the obvious fact that (as Figure 3, above shows) for reasons unknown the property owner remained entirely out of the permitting process. BWRI of Alabama didn't apply for a permit. It left that task to Aztec, a company that had no demonstrable ties to the property.

Figure 4 shows the direct result of the permitting process involving this site:

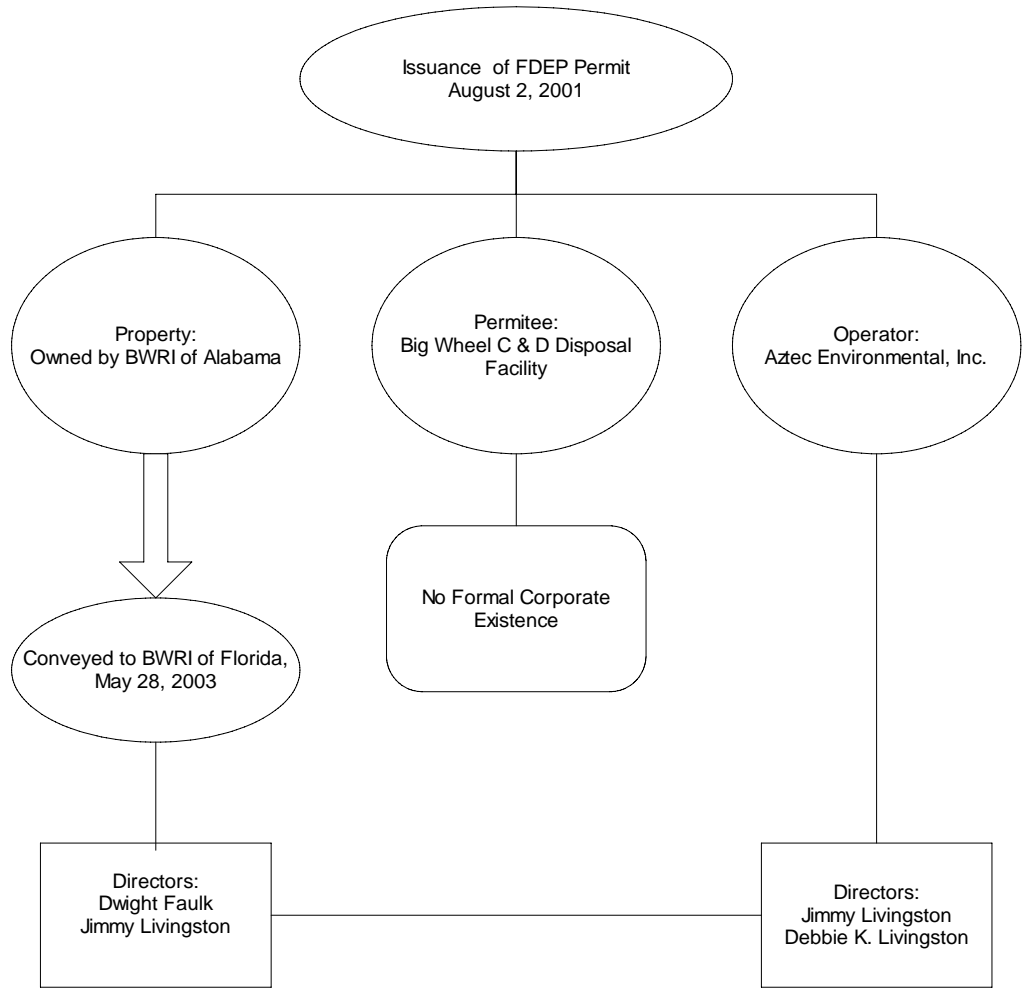


Figure 4

As Figure 4 shows, at this juncture, FDEP had issued a construction and debris permit to Aztec authorizing it to operate on property that it did not own. The principal figure behind the corporate owner was under indictment on felony charges in Alabama. It appears that no one told FDEP: (a) that as of the date of Permit issuance the corporation that owned the property was served by a board of directors that was under a multi-felony

indictment, and (b) that the corporation that owned the property was in jeopardy of forfeiting the property to the federal government.

After the permit was issued, BWRI of Alabama quickly moved to sever its overt ties to Florida, notifying the Florida, Department of State that it would no longer conduct business in Florida.

The January 3, 2002, incorporation of BWRI of Florida was the first event that formally disclosed that Jimmy Livingston was the common denominator linking BWRI of Florida and Aztec. Moreover, Livingston's position directly connected him to Dwight Faulk, since Aztec and Faulk are both directors of BWRI of Florida

Less than a month after the formation of BWRI of Florida the land that was permitted by FDEP to be used as a construction and debris facility was conveyed to BWRI of Florida. BWRI of Alabama had thus divested itself of its Florida holdings—even if it was on a temporary basis.²⁹

Finally, it should be noted that BWRI of Florida and each of the Aztec companies currently have the exact same address in Panama City.

B. Individual Relationships

The companies that are involved with the ownership of the property upon which the Facility is operated are not large companies. Each company's board of directors is relatively small. The same is true for the operator, Aztec. We therefore consider the individual relationships involved with these companies:

²⁹ After protracted litigation in which the U.S. Attorney contested the land transfer, the federal court ultimately settled the matter seventeen months later on August 1, 2003. The court approved the parties' request to allow the transfer of the property to BWRI of Florida.

If we look to BWRI of Alabama we see that two of the three members of its board of directors are now incarcerated. Both are now convicted felons serving prison sentences in federal prison. These two individuals both played significant political roles prior to being convicted. One, Dwight Faulk, was a probate judge. His accomplice, Linda West, was a county administrator.

BWRI of Florida shares an unsavory connection with BWRI of Alabama inasmuch as one of the convicted felons, Dwight Faulk, is on both boards of directors. He is the only individual who is a director of both companies.

Jimmy Livingston, Faulk's colleague on the BWRI of Florida Board of Directors, is also on the board of directors at Aztec. Aztec's May 2001 permit application with FDEP links him to Faulk at least back to that date.

Both William Harrison, Jr. and Randall McElheney formally joined BWRI of Florida as directors in January 2003. Thus, for a period of time this company's Board of Directors was staffed by one convicted felon, another director with close ties to the felon, and two other directors who wield a significant amount of political power both locally and in the State of Florida.

Nevin Zimmerman, Esq. also warrants mention. Mr. Zimmerman is a man that has close ties with William Harrison, Jr., inasmuch as he and Harrison are now law partners. Zimmerman also represented Livingston in his efforts to purchase the property on behalf of BWRI of Florida in 2002, before Harrison joined the company in January 2003.

There is also the matter of GAC Contractors. While this company appears to be on the periphery it is nevertheless clear that through all of the events described in Florida

PEER's two previous White Papers, GAC Contractors held a reversionary interest in the property. One of this company's directors, Allan Bense, is a Florida State Representative and also a member of the Republican Party. Another director, Charles Hilton, is a prominent Bay County attorney.

Finally, it must be remembered that the permitting issues with the FDEP began when Aztec filed its permit application with that agency. The FDEP requires that such applications as this be filed by a licensed engineer. This individual is commonly referred to as an "Engineer of Record," and it is his or her responsibility to ensure that the application submitted to the FDEP is complete and accurate. In this case, the application submitted by Aztec was signed and sealed by Sean McNeil, a licensed Florida engineer. Mr. McNeil is a member of the Bay County Planning Commission.

C. Temporal Relationships

The seminal events pertaining to these corporations did not occur in a vacuum. A close scrutiny of those events connected to the environmental issues reveals a number of interesting facts:

First, Aztec filed its permit application less than one month prior to indictments being returned by the federal grand jury sitting in Alabama.

Second, during most of 2002, pleadings filed in the Federal District Court, Middle District of Alabama show that Nevin Zimmerman was actively representing Livingston in his efforts on behalf of BWRI of Florida. The purpose of the representation was to secure the transfer of the property from BWRI of Alabama. At this point in time the possibility existed that the U.S. Marshall's Service, acting on behalf of the United States, would

seize the Florida property. Zimmerman also joined Harrison's firm as Harrison's partner during this time period.

Third, as was pointed out in the second White Paper, the FDEP issued a Warning Letter to Aztec on December 18, 2002.³⁰ The issuance of a Warning Letter was significant and would not have been lost on anyone, particularly attorneys, who practice environmental law in Florida. Simply put, it was an indication that legal action against the Facility was likely. Any legal action had the potential to result in the issuance of a circuit court order that would have affected the usage of the property itself. The property was still held by BWRI of Alabama—and by this time it was obvious that BWRI of Alabama was in significant trouble with the federal court. William Harrison and Randall McElheney were added to the Board of Directors of BWRI of Florida less than a month after issuance of the Warning Letter that could affect the use of the property, notwithstanding the precarious state of affairs for BWRI of Alabama,

Fourth, Harrison and McElheney remained on the Board of Directors for BWRI of Florida during the course of the FDEP resolution of the many violations that occurred at the site in 2002 as well as the ongoing violations in early 2003.

Fifth, Harrison and McElheney resigned as directors on July 10, 2003. This was the same day that the FDEP inspected the Facility. It will be recalled from our second White Paper³¹ that this inspection was unusual in the sense that the FDEP Environmental Specialist was accompanied by an FDEP Program Administrator from Pensacola, a Solid Waste Supervisor from Pensacola, and Henry Hernandez, the Panama City Branch Manager. Thus, senior management was involved in the inspection. The inspection report

³⁰ See, White Paper issued May 26, 2004, at page 6.

³¹ See, White Paper issued May 26, 2004, at page 8.

gave the Facility an exemplary evaluation that pronounced it in compliance—even though groundwater violations continued to exist at the site.

Sixth, Henry Hernandez, one of the three members of FDEP senior management who attended the July 10, 2003, inspection at the Facility. Mr. Hernandez is the same person who, less than a year earlier, had been interviewed by William Harrison as a precursor to being given the Branch Manager’s job in the Panama City Branch Office.

D. FDEP

The events surrounding the ownership and use of the property are troubling. But in addition, there is another issue that is equally troubling. That issue is the requirement that prior to being given employment state employees submit to interviews with private members of the public who are not state employees. This is a policy that should be stopped immediately. Further, it goes without saying that requiring someone to submit to an interview with a member of the public who is on the board of directors of a company that is subject to FDEP regulatory authority is beyond the pale. To then allow the employee to become involved in the compliance and enforcement aspect of the FDEP’s case against that company is wholly unacceptable. Florida PEER submits that an immediate investigation into this matter should be initiated by a body that has oversight authority over the officials in question. At the same time, however, given the political overtones of this matter, Florida PEER also recommends that the body that conducts this investigation be completely independent from those positions that would normally be in positions of authority over the FDEP. This would include the Secretary of the FDEP and

the Governor. Simply stated, the appropriate body to investigate this issue would seem to be a special grand jury, most likely sitting in Escambia County.