Appendix 9: Comments on FDLE Investigative Findings

R & R Investment, Ltd.

Regarding R & R Investments, Ltd., FDLE agents received statements from two DEP employees that they had heard R & R's principal owner, a developer, boast that he caused the DEP director to dismiss a wetlands program administrator by reason of his relationship to the Governor and other political figures.'

We find the director did, in fact, demote the program administrator for reasons that he did not explain to the administrator and could not explain to us.

Anderson Columbia[2]/NAS Pensacola Incinerator

In November 1994, Thermal Testings had begun a soil treatment project at NAS Pensacola without a permit, and without notice to DEP, as required. DEP inspectors discovered that Anderson Columbia equipment was being used to process soil contaminated with PCBs and pesticides. DEP sent a warning letter, dated January 19, 1995, to Anderson Columbia, followed by a penalty assessment for $41,960.

Anderson Columbia objected to the penalty, and, according to DEP employees, would not meet with them. As a result, DEP employees then sent a proposed Consent Order, dated May 26, 1995, signed by the Director, including a penalty assessment of $41,960, plus a costs assessment of $1,000.

Anderson Columbia objected and complained to a former legislator, Randy Mackey, who called Dale Patchett, the "executive liaison officer" of DEP, to intercede on their behalf.' Patchett, who claimed he did not ask for the fine to be

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'One DEP employee provided agents with a written a memorandum of the developer's statements; another DEP employee gave FDLE a sworn recorded statement that he heard the developer's statements.

'Anderson Columbia, its president, and others, including county commissioners were charged and convicted of bribery offenses in the United States District Court of the Middle District of Florida relating to the company unlawfully influencing official government action in central Florida. U.S. vs. Anderson et al., No. 85-59CR-T (Filed May 22, 1985).

[3]Secretary Wetherell appointed Patchett in 1993, when DEP was established.

reduced, had been previously convicted in the Florida Senate for ethics violations, involving other, unrelated misconduct in office.[4] (According to a DEP attorney, Patchett also interceded on behalf of another company, a lumber company, and asked the DEP attorney assigned to the case to put it "on hold.") Mackey, who insisted he did not ask for the tine to be reduced, admits he did "ask" Cooley about the case. Mackey was convicted in 1998 of tax evasion stemming for not reporting and paying taxes on cash payments he regularly took from Anderson Columbia while this matter was pending.[5]

FDLE agents received testimony under oath from a DEP employee who said that he was in Director Cooley's office when Patchett called. The employee told agents that when the conversation was over, Cooley told him that Patchett was intervening in the case to reduce the fine. After "negotiating" a settlement with Anderson Columbia directly, Cooley reduced the penalty to $6,500.

Director Cooley could not remember what factors moved him to do so, when questioned by this grand jury. We find this incident to be an example of political, or other improper, influence determining the extent and type of DEP action.

Anderson Columbia/Bagdad

In 1994, Anderson Columbia purchased a site on the Blackwater River, an Outstanding Florida Water, for an asphalt plant. The sale was brokered by the real estate offices of Bo Johnson, a former speaker of the Florida House of Representatives. Johnson, like Mackey, was convicted of tax evasion as a result of failing to disclose more than $500,000 in income received from various special

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[4]Patchett plead nolo contendre to ethics charges that he received unauthorized compensation as a legislator; the Secretary's husband, a former legislator also entered a nolo contendre plea in the same matter. Leon County Court Case No. 91-5209AM1, and 91-5211. Patchett v. Commission on Ethics, 626 So. 2d 319 (Fla. 1st DCA 1993). A Grand Jury presentment of the Second Judicial Circuit called for an investigation of the matter. The final order of Florida Commission on Ethics, filed as Fii Order and Public Report on Complaint No. 90-169, dated March 15, 1994, found that Patchett knew or should have known that the compensation was given to him to influence his official actions.

[5]Mackey was convicted of tax evasion in United States District Court of the Northern District of Florida in U.S. vs. Mackey, et al. No. 4:98CR4/RH (1998) He received, but did not report, income of $36,000 and a loan of $25,000 from Anderson Columbia He recevied the money while he was a legislator and member of the Florida House budget subcommittee that oversaw spending for Department of Transportation and the House.

interests, including $36,000 paid by Anderson Columbia to his wife's company from 1992 to 1995, during the time he was Speaker.[6]

Environmental problems occurred immediately. Anderson Columbia began clearing and filling wetlands without a permit. A DEP inspector noted the violations and sent a non-compliance letter, including a penalty assessment of more than $18,000. The inspector was told by his program administrator that the Director did not want the penalty imposed, and the assessment was later reduced to $4,800.

Anderson Columbia continued bringing barges loaded with gravel upriver to the site, docking along the river, unloading and spilling gravel on the river. DEP inspectors noted submerged lands, dredge and fill, stormwater, air, and wastewater violations. After multiple violations were noted, Director Cooley sent an E-mail to staff directing them not to contact Anderson Columbia. Cooley stated that he would be the contact henceforth. Appendix –. A consent order was signed in October 1996.

In November 1996, the Marine Patrol was about to arrest an officer of Anderson Columbia at the Bagdad site for a violation, but was stopped by a DEP attorney who advised that the Department had given Anderson Columbia a temporary use agreement ("TUA"), which allowed Anderson Columbia to dock barges along the shoreline of the River. The agreement was only verbal, however, and a written agreement was not made until December 1996, at which time Anderson Columbia paid lease fees of $10,700 for the use of state submerged lands.

Citizens living in Bagdad continued to complain about multiple violations and sued DEP asserting the TUA and Consent Order were illegal. In January and February 1997, Anderson Columbia was cited by DEP for discharging wastewater into the river, destroying wetlands, and other violations. Although the DEP attorney assigned to the case strongly recommend Director Cooley rescind the TUA, it was not rescinded until June 23, 1997. From June 4, 1997, to October 29, 1997, Anderson Columbia continued to operate without any authorization. Inexplicably, the TUA was reinstated on October 30, 1997.

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[6]Johnson was convicted of tax evasion in United States District Court of the Northern District of Florida in U.S. vs. Johnson et al., No. 3:98CR4/LAC (1999)

In response, Anderson Columbia threatened to, and did, sue DEP. The action now is pending in the Circuit Court in and for Santa Rosa County.

FDLE agents found no evidence of violations by DEP employees, even though dozens of complaints of violations by Anderson Columbia were made to DEP or the Florida Marine Patrol. Even after the temporary use agreement between DEP and Anderson Columbia was rescinded, on June 4, 1997, neighbors complained of illegal dumping of gravel in the river. In fact, a biology professor provided agents with videotapes of the dumping.

We find this to be a striking example of DEP's failure to enforce environmental laws.

Tiger Point Waste Treatment Plant

In the 1980s, the Gulf Breeze sewage treatment plant ("Shoreline WWTP") was not in compliance and was polluting Santa Rosa Sound. Rather than upgrade the facility, the City of Gulf Breeze bought the Tiger Point WWTP for additional capacity.

The Tiger Point Plant is a small, spray irrigation plant situated along Santa Rosa Sound, which receives sewage from the un-incorporated areas of the Gulf Breeze Peninsula. The plant had an agreement with a golf course on adjacent property to take its treated sewer water, and apply it to the course. The course, however, is limited in its disposal capacity.

The plant had a history of problems, which became worse when it was sold to the City of Gulf Breeze. It operated under temporary permits because it could not, and today still cannot, meet state re-use standards. Evidently, the City was aware of the limits to the plants disposal capacity. When the City bought the plant it agreed not to divert sewage from the Shoreline Plant until the Tiger Point plant increased its disposal capacity. However, when the Shoreline WTP had an "emergency breakdown," in 1992, the City diverted flow to Tiger Point.[7]

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[7]In 1992, a Consent Order between DEP, the City of Gulf Breeze, and SSRU limited disposal to .6 MGD of waste water. The Order specifically provided: "Until the Tiger Point facility has capacity to treat and dispose of 1.2 MGD of waste water, the Gulf Breeze diversion cannot proceed."

The situation was aggravated because of the terms of the sale of the plant to the utility. The sellers included builders who, like other builders, wanted DEP approve additional connections to the Tiger Point plant for their projects along Highway 98. The utility also wanted additional connections so that it could pay the high price obtained by the sellers for the plant. The plant's limited capacity left the utility with the choice of either expanding the spray fields or ceasing selling connections. Instead of expanding the spray fields, the utility sold new connections which DEP was pressured DEP to approve.

The situation was aggravated by increased growth and building on the Gulf Breeze Peninsula. The utility was pressured to sell more taps to raise revenues to make payments under the terms of the sale. It sold hundreds of new taps, and the added influent exceeded the plant's disposal capacity and either backed up into and over the holding pond or flooded the course. The excess ran into a storm water system which then flowed into Santa Rosa Sound.

In 1991, the golf course was sold, and the new owner questioned whether the spray disposal area was at, or near, capacity.[8] The utility and the golf course agreed to contract a study to determine the disposal capacity of the course. The preliminary report, called the Jamal Report, was completed in 1992, but its findings were disputed immediately by the City and the utility, apparently because it reported the course did not have the capacity to take any more connections.

The utility, the City of Gulf Breeze, and even DER knew the plant had reached capacity. In a confidential memorandum, dated December 22, 1992, the manager[9] of the utility wrote:

> In a word, we were trapped. . . In order to permit the additional effluent disposal area, the [study] would have to be submitted to DER. We knew, based upon our earlier exclusive report that is would show the need to substantially reduce the effluent disposal capacity of the existing disposal area.

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[8]In 1991, ownership of the golf course changed, and the new owner, Fairways Limited, insisted that a geotechnical study be done to determine the disposal capacity of the golf course. When the study indicated the need to reduce the effluent flow substantially, SSRU refused to accept the results.

[8]The manager, James Tanck, like Johnson and Mackey, was convicted of tax evasion in United States District Court of the Northern District of Florida in U.S. vs. Tanck, No. (19--)

The utility manager also wrote in the memo: "The result would be a moratorium on development in the area." He also wrote "we agreed that we should take all actions necessary to ensure that the [study] was not published and therefore submitted to the Department." The confidential memo was sent to DER and filed, together with other reports, records and correspondence pertaining to the utility.

Even more significant, the utility manager wrote in the same memorandum: "With the recent demotion of Bob Kreigel (former director), this has become an even greater concern as the permitting officer will be given even more authority. I am looking at some approaches which will stop this uncalled for behavior."

The "uncalled for behavior" amounted to DER staff consistently recommending against approving new applications. The enforcement officers were among those who were later "cross-trained" out of water facilities into other less controversial sections.

A DER engineer wrote in a memo dated January 19, 1993, "[t]he Tiger Point wastewater treatment plant is not in compliance. The golf course is overloaded as there is not enough area for spray irrigation and reclaimed water is running into the storm water system." He continued to recommend permit applications be denied, but, at the direction of Director Cooley, they were regularly approved.[10]

In a memo dated September 7, 1993, a DER engineer wrote: "[t]he plant is exceeding flow limitations and therefore, should not be allowed any additional permits that would generate additional flow." Later, in a memo dated December --, 1993, the same engineer wrote that there was "no reasonable assurance of enough land for disposal" and that, while the plant was limited to 1.096 MGD, the existing flow is 1.3 MGD

Golfers complained the course was over sprayed, and they were

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[10]The engineer said that he submitted between ten and twelve permit applications a month, from 1993 to 1996, which Director Cooley signed, even though they did not meet the requirements of environmental rules and regulations. When asked about this, Director Cooley said he relied on his staff to make these decisions, although he did not deny there might have been occasions when he approved permits against the advice of staff.

oftentimes ankle deep in sewer water; Country Club property owners complained that sewer water was "drowning" the course and diminishing their property values; and nearby residents complained that sewer water was running off into Santa Rosa Sound, polluting it.

The Director dismissed this as "anecdotal," even though DEP records were replete with inspection reports, biology tests, engineering studies, and even photographs that corroborated the complaints. All of this direct evidence showed the plant was a significant source of pollution to Santa Rosa Sound, a Class II waterbody.

National Park Service officials from the National Seashore, several hundred yards away, noted degraded water quality in Santa Rosa Sound at the discharge points.

Director Cooley, and others acting on his behalf, continued to grant hundreds of additional permit connections in the face of numerous and continuing complaints, substantial uncontradicted direct evidence, and strong recommendations of his staff to deny them. DEP records revealed that the flow increased to more than 2 MGD during most of 1995. From August 1995 to April 1996, DEP inspectors noted 172 days of unpermitted discharges by the utility.

DER/DEP inspectors found the golf course flooded, sewer water flowing out the doors of the plant's pump house, even sprinkler heads directed into a stormwater ditch leading to Santa Rosa Sound, with effluent flowing directly into the sound. DEP biologists found fecal coliform levels so high at the plant's stormwater outfall that residents were warned against swimming in the area. In one report, dated November 7, 1995, a DEP biologist found the plant drainage ditch exceeded EPA levels for algal growth potential by a factor of five or more.

Conditions worsened, and a group of golfers, residents and others formed the "Santa Rosa Sound Coalition" to find out why DEP would not stop issuing permits. For several years, the Coalition reviewed DEP and SSRU records, wrote letters, appeared at meetings and challenged various proposals made by the utility and DEP to fix the problem. At one point, in February 1997, a group of the citizens from the Coalition met with Director Cooley and asked him not to issue more permits. According to the citizens, Director Cooley said that he

could not stop issuing permits because the utility needed the money.

Eventually, in 1996, a "moratorium," was put in place by DEP. Although it halted additional collection systems, it did not halt additional individual connections. What is more, the backlog of issued permits, far exceeded any plans for additional disposal capacity. After the so-called moratorium, DEP and the utility tried to find ways for the plant to comply with environmental rules.

To continue operating, the utility revised its operating permit five times, because the plant could not meet nitrogen or total suspended solids limits.[11] Eventually, after submitting several proposals, including a proposal to discharge directly into Santa Rosa Sound, the utility, DEP and the challengers reached an agreement in October 1998. The agreement requires the utility to add spray field areas away from the golf course and upgrade the plant to advanced waste water.

FDLE wrote "although there was a long history of environmental violations occurring at the plant, DEP had taken some enforcement action. There was no evidence of any illegal conduct or illegal motive of any DEP employee relating to the handling of the permitting or enforcement cases at the plant."

We find that Director Cooley, and others on his behalf, failed, for reasons apparently unrelated to environmental considerations, to enforce laws.

Appendix -- FDLE Investigative Findings

R & R Investment, Ltd.

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