

June 24, 2014

To: Ms. Amy Heavilin, Clerk of The Courts  
Ms. Kathryn Vogel, State Attorney  
Ms. Pam Bondi, Florida Attorney General  
Robert Feldman, FKAA General Counsel  
Robert Shillinger, Monroe County General Counsel  
Heather Robinson, Investigations Manager, DEP Inspector General  
Matthew Z. Leopold, DEP General Counsel  
Larry Morgan, Chief Deputy General Counsel  
Governor Rick Scott

From: Mr. Walter P. Drabinski  
Sir Isaac Newton Coalition

Re: FKAA and Monroe County Lies and Other CRWS Failures – Are these Crimes or Violations of FKAA and County Policy?

Concerned Authorities,

We are a Country of laws and regulations and no organization(s) should be above them. In particular our local governments, environmental regulators and local utilities have a particular responsibility to obey all laws and regulations. I have spent almost 18 months embroiled in the machinations associated with the Cudjoe Regional Wastewater System (CRWS) and have examined thousands of pages of documents and become involved in two separate legal proceedings. Further, while I am not a member of the “Dump The Pumps Inc.” (DTPI), I have provided them with copies of my research and offered technical assistance where I was qualified.

I now find, as a citizen concerned about our County and the environment, that I must reach out to you as the senior federal law enforcement officials and General Counsels for the major parties<sup>1</sup>. A broad range of evidence has come to light that suggests that representatives of the Florida Keys Aqueduct Authority (FKAAA), Monroe County (MC) and the Florida Department of Environmental Conservation (DEP) have intentionally misled the citizens of Monroe County about the plans for the (CRWS) and that in doing so, they may have violated federal, state and local laws as well as professional licensing board rules. I am not an attorney and can only ask the questions that follow. I have organized my questions into eight issue topics for better clarity:

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<sup>1</sup> / Since this project uses federal, state and local tax revenues, the potential laws and regulations that apply is quite broad.

**Issue 1 – Extent of LPS Exceeds Public Notices**

**Issue 2 – Fabricated Economics**

**Issue 3 – Violations of Florida Records Request Act**

**Issue 4 – Violations of Professional Engineering Ethics Codes**

**Issue 5 – Violations of Sole Source Purchasing Rules**

**Issue 6 – FCAA Notice of Intent Published in Broward County Instead of Monroe County**

**Issue 7 – Request that DEP Violate Rules**

**Issue 8 –Lack of DEP Oversight and Review**

These are serious allegations and I do not present them to you lightly. As a resident and business man of Monroe County I put myself at odds with many political leaders and powerful interests. However, as a citizen with a conscience, and a person who despises governmental waste and corruption, I am compelled to come forward. This is our money being wasted and we will be forced to live with an inferior system for years to come. I believe that for each of the items listed below, the individuals and or entity exhibited a “mens rea” in what they said or did. It is clear from the details I present, circumstantial evidence or logic that the statements, were known to be false when made. Furthermore, the preponderance of facts may lead one to question whether there is a conspiracy among the parties to permit an inferior, low capital cost sewer system to be installed.

**ALLEGATIONS**

**Issue 1 – Extent of LPS Exceeds Public Notices**

In May 2012, September 2012 and October 2012 FCAA and MC made presentations stating that the CRWS would use gravity except in remote areas. The September and October presentations stated, unequivocally that of the 8,800 Equivalent Dwelling Units (EDU's), about 600 would be Low Pressure System (LPS) or grinder pumps and 270 would utilize decentralized onsite systems. The May presentation, a 350+ page document stated that LPS would only be used in remote areas. This document also included the notes from a DEP meeting in which the DEP Staff stated that gravity should be used wherever practicable. Further supporting this was an interview of Mr. Tom Walker, Manager of Engineering at FCAA, by the Key West Citizen on July 12, 2012, in which he stated that the system would be gravity, with a few grinder pumps in remote areas. Instead of the system we were promised, in August and September 2012 two bid packages were released that required 2,800 grinder pumps. The public was never made aware of this drastic change until January 2013 when the Cudjoe Gardens Property Owners Association invited the FCAA to explain their plans.

**Where is the lie?** All of the statements made by FKAA were completely false. We now know that in March 2011 Tom Walker of FKAA submitted permit applications (complete with design drawings) for the inner islands of Sugarloaf Key, Cudjoe Key and Summerland Key, that supported the plan to install 2,800 grinder pumps system wide, not 600 as previously stated. How can Mr. Walker, a Professional Engineer and Engineering Manager with FKAA be permitted to lie so blatantly when he himself prepared and submitted the permit applications? He also attended almost all public meetings, so he cannot plead ignorance. We would note that in the September and October 2012 public presentations stated the following:

- There would be 600 grinder pumps,
- 270 on-site systems, and
- That the basis for the design was a Life Cycle Analysis that showed gravity to be the most cost effective.

**What laws were violated?** In order to use the State DEP funds, there is a requirement under Section 62-503-700(2) (j), Florida Administrative Code, which requires that the planning documentation include adopting a resolution or other action establishing a commitment to implement the planning recommendations. This is required in order to obtain borrowed funds from the Florida Department of Environmental Protection's State Revolving Fund Loan Program for Water Pollution Control. MC, and its contractor, FKAA are required to disclose the plans in place to the citizens before they are finalized. This was done in May 2012. The purpose of these rules is to avoid a bait and switch in which we are promised one system and then get another. This is exactly what took place. I would also expect that both the County and FKAA have regulations requiring that public statements be truthful. I intervened in the bond validation proceeding, objecting to the loan proceeding because the notice was not accurately provided. When I could not find adequate documentation to support my argument, I withdrew my complaint. I now have evidence which was previously withheld at the time of the bond hearing that supports my allegation completely.

**Who is responsible for this?** There are four persons who, by agreement, propose and direct all activities related to the CRWS, including design changes. The InterLocal Agreement (ILA) between FKAA and MC provides that the FKAA Executive Director and Manager of Engineering and the MC Administrator and Director of Engineering work together on the design of the project and any modifications. Approvals for changes in cost are approved by the FKAA Board of Directors and the MC Board of County Commissioners. The County Commissioners all claim that they had no knowledge of these changes and the FKAA Board Chairman refused to meet with me to answer these questions. A review of original ILA and subsequent revisions does not shine any light on who made and who approved the changes.

## Issue 2 – Fabricated Economics

The September and October 2012 presentations indicate that decisions were being made based on a LifeCycle analysis of alternatives. This sounds great and one would expect that there would be an extensive analysis to support either the 600 or 2,800 grinder pump decision. In fact there is none! The only Life Cycle Analysis claimed was conducted in 2009 and this analysis was so poorly performed that if a freshman engineering student had submitted it in class, he would have failed. Even if it had been properly performed, it was not useful in making design decisions. I have submitted PRRs for all Life Cycle Analysis and have not received anything but the 2009 work by Matthews Consulting which looked at the option 100% gravity, or low pressure grinder pumps, or vacuum, or on-site systems. No analysis of a combination system was ever performed.

I have performed a number of Life Cycle Analysis related to sections of the CRWS, based on information at the time. Over a period of a year, I was able to obtain not only all of FKAA's work, but that of other utilities trying to reach similar conclusions. A recent analysis of Little Torch Basin G, which is representative of the work in the outer islands, shows gravity to be half the cost of LPS over their respective lives. This is largely because a gravity system should last 60-100 years and the industry expectation for LPS is only 25 years, along with the fact that the operating costs of LPS are significantly higher than for a gravity system. The simple conclusion is that there is no economic basis provided by FKAA or MC for the system being installed. The statements that decisions were made based on a Life Cycle Analysis are completely false.

**Were rules violated?** The four individuals identified above who are responsible for the design of this system have testified repeatedly before the MC Board of Commissioners and the FKAA Board. They have also submitted numerous documents to the Florida DEP and other agencies. It now appears that these were fabrications and misrepresentations.

## Issue 3 – Violations of Florida Records Request Act

In 2013 I submitted a number of requests under the State of Florida Public Records Request per Florida Statutes 119.110 (11) that should have resulted in my receiving the September and October 2012 presentations. Specifically, on July 15, 2013 I requested "Copies of all public presentations made to citizens, homeowners, HOAs and other and other public groups between 1/1/2011 and 7/7/2013. I did not receive either the September 2012 or October 2012 presentations. Had I received these, I **would not** have withdrawn my complaint related to the Bond Validation proceeding.

**Were laws violated?** This was a clear and knowing failure by FKAA to comply with State law and FKAA procedures. The statutes referred to above have clear and unambiguous requirements. The penalties are also clear. Further, by not providing evidence relevant to the

bond hearing, FKAA may have violated the bond covenants themselves.

#### **Issue 4 – Violations of Professional Engineering Ethics Codes**

Both Mr. Walker of FKAA and Mr. Wilson of MC are professional engineers and as such are required to meet certain profession standards under Title XXXII, Chapter 371. Lying, manipulating evidence and not being truthful to the public may be cause for disciplinary action. I would point out that in a separate venue, “Dump The Pumps Inc.” (DTPI) have identified dozens of cases in which they claim engineering calculations were misstated or fabricated. Further, you will see documentation that the FKAA Manager of Engineering asked the DEP to violate rules on notice of intent.

**Were rules or laws violated?** Chapter 455, F.S., Chapter 471, F.S., and Chapter 61G-15, of the Florida Administrative Code details the requirements of Professional Engineers, while Title XXXII, Regulation of Professions and Occupations, Chapter 471 – Engineering addresses disciplinary proceedings. A look of the actions of key Professional Engineers working on the CRWS raises many questions as to their ethics. In addition to the issues I raise, the DTPI complaints to the DEP raise many other questions of dubious design and analysis.

#### **Issue 5 – Violations of Sole Source Purchasing Rules**

Procurements of initial and spare parts through sole source methods is generally illegal or in violation of Federal, State, County and FKAA regulations. Exceptions can be requested, but must be based on documented support for the exception. In our analysis of various procurement activities related to the CRWS, we have discovered the following areas where potential violations have occurred and warrant investigation:

1. E-1 grinder stations & pumps were effectively sole-sourced. While the bid specification says “or equivalent”, further specifications in the bid document preclude any other manufacturer. E-One is only available from one distributor.
2. Wilo-Emu centrifugal pumps and mixers (FL Bearings),
3. Kaiser blowers (also FL Bearings)
4. Schneider Electric (Square D) VFDs (also FL Bearings)
5. Modicon PLCs (also a Schneider Electric product) ,
6. Parkson screen
7. Andritz centrifuge
8. Aqua-Aerobic filtration and diffusers
9. Neptune or ABB meters depending on which application
10. Accepted HDPE grinder pits in lieu of the specified fiberglass with aluminum hatch, via submittal approval, with no change order or credit.
11. Using non-explosion-proof pumps in violation of NFPA, NEC, and even the Contract

## Specifications

### **Issue 6 – FCAA Notice of Intent published in Broward County instead of Monroe County**

FCAA has opted to provide public notice of the CRWS project by advertising in the Sun Sentinel of Broward County, rather than any or all of the publications in Monroe County that would increase the probability of viewing by interested citizens. Florida Rule 62-620.550 Public Notice addresses wastewater facility permitting, and states (1) Public notice under Chapter 120, F.S., and subsection 62-110.106(7), F.A.C., advising the applicant and all affected persons of their right to an administrative hearing shall be given.

It is ironic that FCAA in FCAA RULES AND REGULATIONS CHAPTER 48-101 GENERAL AND PROCEDURAL (page 42), which addresses customer notifications calls for publication of notices in a newspaper of general circulation within Monroe County.

### **Issue 7 – Request that DEP Violate Rules**

The FCAA Manager of Engineering made a direct request to the DEP to not publish Notice of Intent on the Big Pine North permit. An attached E-mail provides evidence of an attempt to cause actions to not be undertaken by the DEP. What is particularly troublesome is the Manager knew that DTPI was waiting for notice in order to start an administrative proceeding challenging the permit. The proceeding requested is well within the rights of this organization and any attempt to thwart it is violation of so many regulations and good utility practices, that I will not take the time to recite them.

### **Issue 8 – Lack of DEP Oversight and Review**

Throughout this project the DEP has accepted numerous filings with incomplete or erroneous information. In many cases Permit Applications had blank spaces. Rather than challenging the questions raised with the incomplete applications the DEP simply accepted whatever responses FCAA provide.

Further, in January 2014, when DTPI challenged some of the basic analysis presented by FCAA engineers, the DEP simply asked FCAA to provide additional support and did not appear to conduct any independent review. A PRR by Sir Isaac Newton Coalition asking for all analysis by DEP engineers has not yielded any documents to date.

## **REQUESTED ACTIONS**

I would request that all of the parties noticed above take the actions required under their charter.

### **Clerk of the Courts**

The Clerk of the Courts has the fiduciary and legal responsibility under the ILA and its County Charter to audit the books and records of both FKAA and MC as they relate to this issue. We have requested that this project be audited in the past to no avail. We once more request that the issues discussed above be addressed through formal audits by the Clerk of the Courts.

### **FKAA**

Based on the allegations made above and the evidence presented, the FKAA General Counsel should recommend and the Board should direct a full, independent investigation by an outside organization of all of these issues. The issue of Mr. Walker's role as lead engineer who signed off on many of the key documents, as well as other subordinate and contract engineers should be included in the investigation.

With regards to the violation of PRR laws and the harm and costs it caused Mr. Drabinski and the Sir Isaac Newton Coalition, the FKAA Board should order FKAA to reimburse the Sir Isaac Newton Coalition for all legal costs it has incurred.

### **Monroe County**

Monroe County has significant responsibility under the ILA and its own charter to protect its Citizens from this type of harm. The General Counsel should recommend and the MC Board of County Commissioners should order an independent investigation into the role of the County Administrator and County Engineer in all of the allegations above. The County should also investigate whether Mr. Wilson, the County Director of Public Works violated his Professional Engineering license requirements by the actions he either took or failed to take.

Further, given the County's refusal to investigate the matters raised by DTPI in its complaints it should reimburse and support DTPI in its current administrative hearings with the DEP and FKAA. The work being done by DTPI should have been performed by the County as part of due diligence on this project.

## **DEP Inspector General and State Attorney General**

These agencies have an overall responsibility to protect the Citizens of Florida from the very actions described above. To date, they have been unresponsive to the many individuals and parties that have complained. These are serious matters. Federal and State money, as well as the taxes of all residents, and visitors is being misused.

## **Governor Rick Scott**

The Governor is our leader and the one person we must ultimately go to for protection. He has broad and unilateral authority to intervene in matters such as this. We ask him to take all actions necessary, including removing the FCAA Board from its positions and replacing them with an interim team that gets to the bottom of this travesty.

We are a Country of laws and all of our Government officials and utility managers must comply. We need to have faith in them. I recently reviewed the definition of governmental corruption. It states: "Corruption includes the abuse of political power by the government leaders to extract resources (and public money) to be used for power preservation and power extension purposes. It includes a favoritest and politically motivated distribution of financial and material inducements, benefits, advantages, and spoils."

## **SUPPORT DOCUMENTATION**

Attached are a number of documents that highlight my complaint. Complete copies of these documents and others will be made available.