



Genuine Souvenir Letterhead

January 25, 2015

**Message to South Carolina Legislature and Governor
regarding Legal, Ethical, and Governmental Fidelity Issues Associated with
the South Carolina Department of Health and Environmental Control's (DHEC's) Actions
Involving the Pinewood Site and Twelve Mile River**

Dear Elected Public Servants*:

(*with copies to SC DHEC/Safety-Kleen Settlement Agreement Interveners, principal stakeholder representatives for both sites, selected non-elected government officials, and selected media entities – see distribution list at end of message)

On October 31, 2014 Kestrel Horizons, LLC closed its doors after 16½ years of environmental engineering and scientific consulting. From the firm's beginning in the spring of 1998 Kestrel attracted team members with extraordinary talents and commitment to excellence. The firm was a lightning rod for difficult engagements with high stakes. The "go to" firm when ordinary results would not do.

In two engagements Kestrel encountered behavior not typical of Kestrel's many clients. Those were the Twelve Mile River Dam Removal and Restoration project by Schlumberger Technology Corporation in cooperation with the Twelve Mile River Natural Resource Trustees (a group of seven state and federal agencies) and the Pinewood Site Custodial Trust.

A common element of these two projects is the pivotal role of the South Carolina Department of Health and Environmental Control. (SC DHEC or DHEC).

Kestrel served as consultant to Schlumberger on the Twelve Mile River Project from 2002 through June 2008. Schlumberger performed the Twelve Mile River Dam Removal and River Restoration Project in lieu of accepting a fine approaching \$50 million for natural resource damages pursuant to a federal Consent Decree with the Twelve Mile River Natural Resource Trustees. SC DHEC was and is a pivotal member of the TMR Natural Resource Trustee group, and was responsible for all environmental permitting and regulatory oversight of the project.

Kestrel served as Trustee of the Pinewood Site Custodial Trust from December 24, 2003 through October 31, 2014. SC DHEC was and is the Beneficiary of the Trust as well as the primary agency responsible for all permitting and regulatory oversight.

Documents pertinent to those projects will remain indefinitely on the www.kestrelhorizons.com web site, since Kestrel and its professionals have been criticized publicly as a means of intimidation. In both projects Kestrel's work was altered or taken out of context to deliberately

misrepresent the actual conditions, and, in effect, to cause real environmental damage and very serious potential risks to human health and the environment. Some have contended that, in both projects, these acts by managers and agents of DHEC and others constitute intentional fraud to citizens of South Carolina. Kestrel believes those matters will ultimately be resolved in the courts, as the various regulatory processes have clearly failed, and their integrity destroyed.

Twelve Mile River

Kestrel Horizons was involved in various aspects of the restoration for nearly seven years. During that time, we have served the Natural Resource Trustee Council, the Easley Central Water District, and Schlumberger in providing scientific, engineering, stream restoration, landscape architecture, project management, public and property owner communications, and regulatory interface services.

Our services as consultant to Schlumberger on this project began in 2002 and effectively ended the beginning of July, 2008. From July, 2008 through March, 2009 we provided nominal assistance to Schlumberger through the McNair Law Firm – primarily with regard to historical project information and access agreements with property owners along Twelve Mile River.

In 2010, we assisted the Easley Central Water District with a survey of the depth and composition of a large portion of the floodplain behind the ECWD Dam.

From January, 2010 through June, 2011, we conducted the an investigation of environmental conditions and a conceptual alternatives review for removal of the Easley Central Water District Dam and restoration of the upstream portion of Twelve Mile River affected by the dam. That work was done under contract to Upstate Forever, which served as project fiduciary trustee in administering funding for the TMR Natural Resource Trustee Council.

As with the Woodside I and Woodside II dams that were part of Schlumberger's downstream dam removal and restoration project, the impoundment created by the Easley Central Water District Dam held a large volume of sediment. Sampling by Kestrel Horizons determined that substantial quantities of PCB's were present in the floodplain sediments above the Easley Central Water District Dam.

Periodic flushing of sediments had minimized the amount and concentrations of PCB's in the main channel sediment behind the Easley Central Water District Dam; however, Schlumberger and their "project sponsor", Twelve Mile River Natural Resource Trustee Council repeatedly complained to the US EPA and Federal Judge G. Ross Anderson that the routine operational releases by Easley Central Water District made "their project" more difficult and expensive. The US EPA and the Judge publicly chided the Easley Central Water District into smaller and less



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frequent releases. The result was increases in operating costs for purification (fine sediment removal) of potable water.

Kestrel's Discovery of Potentially Serious Deficiencies or Inaccuracies

Kestrel became aware of serious deficiencies or inaccuracies in the representation of the floodplain composition between Norris Highway and the Woodside II Dam as presented in the drawings submitted to the various state and federal agencies which together make up the Natural Resource Trustee Group as well as the US EPA early in 2011. During that period, we were performing the feasibility investigation for restoration of the ECWD reach of Twelve Mile River then being completed for the TMR Natural Resource Trustee Council. Also during that time we were responding to a subpoena for our files in relation to a law suit brought against Schlumberger and Arcadis by Schlumberger's second restoration contractor, Weston Solutions.

The representations of the floodplains prepared by Arcadis we saw in early 2011 were dramatically different than those prepared by Kestrel based on our 2007 sediment investigation performed for our then-client Schlumberger, and used in presentations to the Natural Trustee Council and Craig Zeller of the US EPA in June 2008, shortly before the Schlumberger-Kestrel contract was terminated.

The 2011 representations by Arcadis credited Kestrel with the survey work and employed transects (cross sections) prepared by Kestrel in 2007, but were modified by depicting the transects in mirror image, truncated at both ends to eliminate the steep rock sides above the floodplain - and inferring that the floodplain was underlain by bedrock. The last element is particularly critical in the Kestrel depicted the floodplains as being composed of thick layered sediments of sand and silty organic soils, which would be inherently unstable with channel sediments removed and would likely contain PCB's in the silty organic layers.

In 2008, prior to Kestrel's termination of consulting services to Schlumberger, the US Army Corps of Engineers had developed detailed physical and mathematical models of the hydrodynamics of Twelve Mile River between Norris Highway and the Woodside II Dam. Those models, which were prepared using Kestrel's sediment and bedrock survey information and river transects, showed that all un-stabilized sediment in the channel and below a high-flow elevation approximately 14 feet above the low-flow water level, would be washed downstream. Any un-stabilized sediment above that high-flow elevation would also be washed downstream if it eroded or collapsed into that zone. This process would continue until new floodplains were established by natural or engineered processes.

Obligations of Professional Engineers and Engineering Firms

The regulations and code of ethics governing the practice of Professional Engineering in South Carolina, cited here, require Professional Engineers to hold paramount the safety, health, and welfare of the public:

49-301. Responsibility to the Public.

The Engineer or Surveyor shall hold paramount the safety, health, and welfare of the public in the performance of his professional duties.

- A. The Engineer or Surveyor shall at all times recognize that his primary obligation is to protect the safety, health, property and welfare of the public and shall conduct his practice to fulfill this obligation.
- B. If the judgment of the engineer or surveyor is overruled under circumstances where the safety, health, and welfare of the public are endangered, he shall inform his employer of the possible consequences and notify other proper authority of the situation, as may be appropriate.

“Paramount” means “more important than anything else”. This is an unambiguous statement contained in the South Carolina regulations and the Code of Ethics of the National Society of Professional Engineers.

Kestrel’s Response to the Discovery

On three separate occasions, in January, March, and April 2011, we reported to the representatives of all of the TMR Natural Resource Trustee Council, the federal court, and the US EPA that actual conditions of the floodplains unsafe and that the sediments likely contained thin layers of sediments which contained PCB’s in significant quantities.

In January 2011, Kestrel Horizons notified the Twelve Mile River Natural Resource Trustee Council and the Special Receivers during a meeting to discuss the preliminary results of Kestrel’s feasibility investigation study for the dam removal and restoration of the Twelve Mile River upstream of the Easley Water District Dam. That meeting was held at the SC Department of Natural Resource offices on the shore of Lake Thurman (aka Lake Russell) in January 2011, Dr. Larry Dyck and I were co-presenters.

The second two notifications were made in writing in to memoranda dated March 2011 and April 20, 2011. Those memoranda were addressed to the Administrator of the US EPA, with individual copies sent the official distribution list for matters related to the federal Consent Decree under which Schlumberger is conducting the Twelve Mile Dam Removal and Restoration Project.

The April 20, 2011 notification was titled, *Notification of Imminent Threat to Public Safety and Urgent Issues related to Floodplains of Twelve Mile River from State highway 137 (aka Norris Highway) to Woodside II Bridge*. The document is 23 pages in length including drawings of river transects, photographs, and results of laboratory analyses paid for by Kestrel to illustrate the issues. The title speaks for itself. (See www.kestrelhorizons.com).

The notifications we made in 2011 to government representatives regarding the conditions of Twelve Mile River between Norris Highway and the Woodside II Dam were made in compliance with the regulations and Code of Ethics governing the practice of Professional Engineering in South Carolina. Since Kestrel's former client, Schlumberger, clearly already knew of the dramatic differences in the representations and the inherent consequences of those differences, our responsibility was to notify proper authorities.

Responses to Kestrel's April 2011 Notification of Imminent Threat

The McNair Law Firm as agent for Schlumberger attempted, in a letter dated May 9, 2011, to refute the validity of the warnings in the April 18, 2011 notification of imminent threat by Kestrel. McNair's May 9 letter presumably incorporated a technical response by Arcadis, though the letter was remarkably thin on science and engineering. The McNair letter was, however, thick with spurious legalistic diversions. A half-cooked rhetorical stew of irrelevant bluster and nonsense clearly intended to intimidate and discredit Kestrel and its principals. The McNair response definitely had the effect of intimidating Kestrel's principals. Verbal and written requests by Kestrel of McNair to clarify in writing that there was no intent to intimidate or discredit Kestrel or its principals were unanswered.

More curious than the McNair/Schlumberger/Arcadis response were the responses of US EPA's Region IV Administrator and SC DNR on behalf of the Natural Resource Trustee Council. In my 35 years of experience as a Professional Engineer practicing in the civil and environmental fields, these government regulatory responses were uncharacteristically dismissive of critical issues and appeared to "pass the buck". The gist of the agency responses was:

- that Schlumberger, not the EPA or the Natural Resource Trustees or their representatives, is responsible for all aspects of the project, including safety;
- that Schlumberger had assured the Trustee Council, EPA, and Judge Anderson the banks were stable and presented no safety or environmental concern;
- that a limited walking tour of readily accessible banks by non-engineer members of the Trustee Council resulted in no observations which caused concern over potential bank stability;
- that "public safety" concerns were not evident, apparently because the lay observers saw no bank stability concerns - and property owners, residents, and their guests are not considered by the agency representatives to be members of "the public", in any case; and

- that people walking on the banks should “use caution”.

Kestrel did not respond to the letter from the US EPA or the Natural Resource Trustee Council. We judged the responses of the Region IV Administrator of US EPA and the spokesperson for the Natural Resource Trustee Council to be curiously out-of-character for environmental and natural resources regulatory agency staff. The conclusions of agency managers regarding the very serious issues raised in Kestrel’s April 20 notification were neither supported technically nor were they appropriately considerate of protection of citizens or natural resources. Frankly, we were at a loss for words.

Developments since April 2011

The Woodside I and Woodside II dams were removed in mid-2011. Since that time, the following has occurred:

Since April, 2011 the following have occurred:

- Sections of the river banks containing thick sediments have collapsed and have been carried downstream. (photographs to be posted at www.kestrelhorizons.com).
- The bay at the mouth of the Twelve Mile River as it empties into Lake Hartwell appears to have received fresh sediment. The level of Lake Hartwell is low, as it generally is in winter months. Note that the “mud flats”, as one observer called them, take on the classic appearance of a river floodplain, complete with the lower areas (sometimes called “backwater swales”) beyond the higher terrain adjacent to the river winding through the “flats”. Only a topographic survey (called a “bathymetric survey” when the ground is under water) could determine how much sediment has accumulated since that time.
- A consultant for Schlumberger, CH2MHill, completed boring and sampling the floodplain terraces of Twelve Mile River between Norris Highway and the former location of the Woodside II Dam. CH2MHill completed the work under contract to Schlumberger. The sampling and analysis plan was approved by US EPA Region IV.

CH2MHill indicated, during the planning stage, that they were concerned about the stability of the floodplain terraces and placing boring equipment on the terraces might be too dangerous in some locations and that sampling of the slopes of the floodplain terraces would be limited to areas that could be reached with a pole from a boat. Given these constraints, review of the exact locations of the borings and samples may be needed to determine whether the sampling was representative.



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- With the sampling results, CH2MHill provided a summary of the human health risk assessment for the Norris Highway to the former location of the Woodside II Dam. The scope of the risk assessment included only incidental exposure of a swimmer and a kayaker along that portion of Twelve Mile River. We have not yet seen the residential risk assessment which is surely a part of the restoration requirements.

Similarly, we have not yet seen the results of the risk assessment for swimmers and waders in the bay at the mouth of Twelve Mile River, referred to locally as the “dogleg”. The US Army Corps of Engineers has custody of all of the channel and floodplains of Twelve Mile River below Lay Bridge, so that will be an issue for the Corps and the US EPA, as lead agency in the Sangamo Weston CERCLA NPL site.

On the basis of Kestrel’s experience, we believe the risk assessment calculations for these scenarios will likely indicate low potential exposure risks for PCB’s – probably within the standards for acceptable health risk employed by the US EPA.

The photographs to be posted at www.kestrelhorizons.com depict “before and after” condition of the floodplains, and also include a photograph of the bay area, also referred to as “the dogleg area”. The pictures speak for themselves.

Regarding the Property Owners and Residents

The most remarkable element of this situation is that the restoration project is being conducted entirely on lands owned by twenty two individual citizen taxpayers – yet neither they nor their visitors seem to qualify as members of “the public” in the responses of government agencies. Twenty two property owners own the floodplains of Twelve Mile River between Norris Highway and the former location of the Woodside II Dam – as well as the ground beneath the river channel itself. A number have children or grandchildren.

To the twenty two property owners who actually own the land adjacent to and beneath Twelve Mile River, we say that we did our best to accurately describe to you and the agencies the conditions of your land as they were and as they might be after the restoration project was completed. Our discussions with you, on behalf of Schlumberger, during the period from 2003 through the spring of 2008 regarding access easements were based on what we knew and were told at the time.

We did not attend public meetings or review in detail documents prepared by Arcadis on behalf of Schlumberger after June 1, 2008 – until early 2011 when our files were subpoenaed pursuant to a legal case against Schlumberger and Arcadis, and we were coincidentally asked by the sponsors of the ECWD study how the floodplain conditions above the ECWD Dam likely compared to the floodplains above the Woodside I and II Dams. We took appropriate action as

soon as we could after learning of the serious potential problems – and before either dam was removed.

We urge residents and their visitors to stay away from any areas above the river channel which appear to be flat. These areas will likely be unstable until the floodplain terraces have re-established themselves at a lower elevation, or until the restoration is completed in some areas. The stability of the old floodplain terraces will vary with the location relative to the former dams, and will change as the natural erosion and embankment collapses occur. Areas of the old floodplain terraces with large trees are especially susceptible to sudden collapse, and high flow in the river will create the conditions for collapse because the water will undermine bottom of the banks.

Involvement of SC DHEC Managers in Twelve Mile River

On or about April 17, 2011 – just before Kestrel Horizons, LLC issued a report titled *Notification of Imminent Threat to Public Safety and Urgent Issues related to Floodplains of Twelve Mile River from State highway 137 (aka Norris Highway) to Woodside II Bridge, April 20, 2011* (see www.kestrelhorizons.com) – I contacted Daphne Neel, Director of DHEC's Bureau of Land and Waste Management, by telephone to inform her personally of the Notification to be distributed. I told Director Neel that such notification was required not only be moral and ethical standards, but also by laws and regulations governing Kestrel Horizons and me – as a licensed professional engineering firm and as a licensed professional engineer, respectively. Her response was, *"You've got to do what makes you sleep at night."*

The Bureau of Land and Waste Management (BLWM) was/is the primary bureau of DHEC responsible for regulating the project. The BLWM was/is also the Bureau of DHEC the two DHEC representatives to the TMR Natural Resource Trustee Group were/are employed by. Those two gentlemen represented DHEC (and South Carolina citizens) as representatives to the Twelve Mile River Natural Resource Trustees – the consortium of seven state and federal agencies responsible to manage the Twelve Mile River Dam Removal and Restoration Project being undertaken by Schlumberger Technology Corporation as part of a federal Consent Decree in Judge G. Ross Anderson's court.

Neither DHEC nor the Twelve Mile River Natural Resource Trustees took any action and two dams 35 feet high were taken down with no floodplain stabilization. The result, as Kestrel horizons had predicted was immediate collapse of 1½ miles of floodplain as thick as 35 feet. The sediment was and is still being – transported downstream uncontrolled to the delta of the Twelve Mile River near Central, South Carolina. The river delta is at the mouth of Twelve Mile river in a part of the river referred to by some of the Natural Resource Trustees and others as "the dogleg".

This small bay empties into Lake Hartwell, and is used by residents and Clemson students for swimming, boating, and water skiing. To my knowledge, neither US EPA nor DHEC has yet evaluated the natural resource damage done to the Twelve Mile River delta area or Lake Hartwell by mass erosion and transport of approximately 200,000 cubic yards (approximately 280,000 tons) of river sediment.

The sediment contained up to 150 parts per million of PCB's, as documented by sampling performed by Kestrel Horizons and Pickens County. (One part per million in river and lake sediment is considered as a default value to indicate acceptable risks to human health and the environment.) As predicted by modeling conducted under the supervision of the US Army Corps of Engineers, those sediments would be expected to settle out near the shores – in the new floodplains created by the massive release - where the swimming and fishing is most likely to take place.

The sum total of response by DHEC and the rest of the Natural Resource Trustees was to suggest that residents “*use appropriate caution*” when walking on the floodplain banks. So..... “*be careful out there?*” DHEC, the South Carolina Department of Natural Resources (DNR), and the US EPA absolved themselves of all responsibility by taking the position that insuring public safety was/is Schlumberger's problem.

Strange that none of those agencies – and especially DHEC – took their charters seriously in that massive, critical situation – yet earthwork and dredging contractors are routinely cited and fined for small infractions such as allowing a person to stand in a trench five feet deep without a ladder. Or to allow an excavation or embankment of five feet or more without insuring the banks are stable and do not pose a significant risk to workers or the public in general.

In mid-2013 I provided Directors Templeton and Dieck copies of the notifications Kestrel Horizons had prepared and submitted in 2011, while the dams were still intact. I noted that Schlumberger and the TMR Natural Resource Trustees would soon likely be going to Judge Anderson's federal court to secure Schlumberger's release from the Consent Decree, ending the responsibility of the parties (at least to each other) regarding completion of the Twelve Mile River Dam Removal and Restoration Project.

I also noted that I had taken direct action by filing a complaint with the Office of Disciplinary Counsel of the South Carolina Supreme Court against two attorneys of the McNair Law Firm representing Schlumberger - and the law firm, itself - on the basis of their representations and actions associated with the project and with the owners of Kestrel Horizons. Lawyers of The McNair Law Firm also represented Kestrel Horizons at the time.

Director Templeton's response was to suggest that maybe South Carolina's Attorney General would be interested in pursuing this situation. My thought was DHEC's management had direct responsibility to act on this information to mitigate and control risks to public safety and to the



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environment. Today, most of the floodplains – all on lands owned by South Carolina citizens - have collapsed; however serious safety risks still exist.

By the way, I was informed by the person I spoke with at South Carolina Attorney General's office that the South Carolina State Law Enforcement Division (SLED) would have to initiate an investigation to the AG's office for the AG to pursue it. That seemed not to ring true, given that the Attorney General of the United States regularly initiates major investigations into a wide variety of misdemeanors and mobilizes federal forces to intervene in matters involving alleged socially insensitive etiquette and rudeness in dealing with criminals. Certainly SLED also has better things to do than to protect South Carolina citizens, as well.

Closing on Twelve Mile River

This passage written in 2013:

In the Twelve Mile River Project, Arcadis and the McNair Law Firm were intimately involved as agents of Schlumberger. You will note references to those entities in the Twelve Mile River Project documents. The effect of the actions by Schlumberger, McNair, and Arcadis was to cause a rift in the five then-owners of Kestrel Horizons over the bringing of the adverse actions to public light. As a result four owners departed Kestrel Horizons, along with several employees, in September 2011.

Kestrel has no interest in perpetuating our involvement in the Twelve Mile River Restoration Projects or the "Restoration Plan" to be developed by Schlumberger. Through this correspondence we are washing our hands of this project and these matters. The price we have paid in these matters for acting in full compliance with the letter and the intent of regulations and the professional code of ethics has already been very high.

Pursuing corrective actions through regulatory channels (including reporting to DHEC management and the Office of Disciplinary Counsel of the South Carolina Supreme Court) was not effective. Kestrel Horizons and its licensed professional engineers and hydrogeologists did exactly what was required by professional codes of conduct and licensing regulations, despite the devastating personal and business consequences.

Like others who have watched the progress of the restoration over the past few years, we are enthused about the emerging "look" of the ancient river gorge. We look forward to seeing the final results of the restoration and we are confident that, having seen the developments of the past year and a half, Schlumberger and the government agencies involved will take the actions necessary to insure that the restoration creates a safe and natural result.

The Pinewood Site

There are some remarkable similarities in the course of events of Pinewood Site Custodial Trust. The common denominator is not an industry, but rather the South Carolina Department of Health and Environmental Control. The Pinewood Story will become infamous in time. Possibly among the worst frauds perpetrated and perpetuated by a government agency in the United States on citizens and taxpayers. In short, a web of lies and half-truths designed to place millions of tons of hazardous waste (*real* hazardous waste – not mining, minerals processing, smelting, or coal combustion residuals) within a stone's throw of the water body that supplies potable water for nearly one million South Carolinians.

Though substantial releases of hazardous wastes and/or hazardous waste constituents from many areas of the landfill cell closest to the lake have occurred, the situation is still manageable. But not without tens of millions of dollars to be spent.

The primary cold, hard fact is that the South Carolina Department of Health and Environmental Control has and always had the responsibility to insure that no releases from the Pinewood Site of hazardous waste or hazardous waste constituents to surface water, groundwater, soils, or the lake occur.

The second cold, hard fact is that the South Carolina Department of Health and Environmental Control has systematically failed the citizens and taxpayers of South Carolina in fulfilling that responsibility – even when the agency had direct control over the funding and regulatory activities to insure protection of human health and the environment.

The third cold, hard fact is that DHEC management chose to request that Kestrel resign as Trustee of the Pinewood Site Custodial Trust rather than publicly disclose the conditions of the site. DHEC management chose to instruct Kestrel to omit critical information from public documents, rather than face the legal and ethical obligation to inform the South Carolina legislature and other state agencies, such as the South Carolina Department of Natural Resources and Santee Cooper.

When Kestrel declined to comply with the instructions of DHEC management, and instead submit, on July 18, 2014, documents with all of the information on releases and alternatives to address them, DHEC Director Catherine Templeton publicly requested, on July 25, 2014, that Kestrel resign as Trustee. Director Templeton cited the need to operate the Pinewood Site “...a *bit more frugally...*” Translation: Don't deliver bad news or bring up issues that will cost money to address.



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Epilogue for the Pinewood Site and Kestrel Horizons, LLC, as Trustee

Kestrel's last day as Trustee was October 31, 2014 – coinciding with the last day of operation of Kestrel. A check of Pinewood Site Custodial Trust operating costs and budgets since that time will reveal that costs have stayed about the same – and will likely increase in 2015 - rearrangements in scopes and duties of the Interim Administrator [trustee] and Trust Contractors notwithstanding.

As owners of Kestrel Horizons, my wife, Gail, and I decided that as a result of Director Templeton's actions, Kestrel Horizons could no longer be a viable consulting firm and that my prospects for continued expert consulting in South Carolina are not strong. A firm that took 16½ years to build was destroyed in minutes by an irresponsible government official with grand ambitions, a perverted concept of power and entitlement, and minimal knowledge of the technical, economic, and legal aspects of her job.

No doubt election year politics – and “*the optics*” as Director Templeton referred to them – played a part in her actions. And she was not alone. You will note that Governor Haley, South Carolina's two US senators and five US representatives, appropriate state senators and representatives, the SC DNR, the South Carolina Legislative Audit Counsel, the US Environmental Protection Agency, and Santee Cooper all received, by Federal Express and courier, two extensive packages of information on September 18 and September 25, 2014. The response from those twenty entities to receiving this critical information? Crickets. Zip. Zero. Nada. Not a word.

Very disappointing to Gail and me as “dyed-in-the-wool” conservatives. You see, we realize that sound business management and responsible care of human health and the environment are not mutually exclusive choices. They are two sides of the same coin.

In a recent interview with a reporter regarding the resolution of plans to address accumulations of coal ash residuals, (now former) Director Templeton is quoted as saying, “*This is an example of cooperation between industry and the environment....*”. Now, despite the nonsense inherent in attributing cooperation to “the environment”, Director Templeton revealed an archaic view of the relationship of industrial activities to protection of the environmental. The same view that caused serious problems for the Reagan administration in the early 1980's, when Anne Gorsuch Burford was “excused” by President Reagan from her position as EPA Administrator, and her deputy, Rita Lavelle, went to the federal penitentiary (twice) for lying to Congress.

Anne Gorsuch Burford, Rita Lavelle, and President Reagan learned that the road to Hell is paved with good intentions. President Reagan recovered well; Anne and Rita did not. Whether or not Director Templeton had good intentions will be a subject for others. We have no more time to waste on that puzzle.



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The ultimate irony may be that Director Templeton was trying to induce Kestrel to commit felony violations of the very law passed by a wide bi-partisan margin in 1984: The Hazardous and Solid Waste Amendments of 1984. The federal law designed specifically to restore public trust in government. The very same law employed by the then-US Attorney to vigorously prosecute a South Carolina industry and its management for felony violations – and for what turned out to be a misdemeanor.

And despite that, the government extracted a \$1 million fine and a version of “probation”. And since that was not a satisfactory result to government officials, another attempt at felony prosecution was initiated. It never got off the ground because it was even more baseless than the first. You see, I know about this because I helped defend the company and its employees.

That US Attorney was Ben Hagood – now leader of the PSCT Interim Administrator team. That’s why I am confident the Interim Administrator can never be coerced by DHEC management to sign permit applications or any other sorts of documents that are not “true, accurate, and complete”. Those would be knowing violations, exposing the Interim Administrator team to felony prosecution and third party citizen suits – all under both state and federal laws.

The case **Meinhard v. Salmon**, 164 N.E. 545 (N.Y. 1928), is a widely cited case in which the New York Court of Appeals Chief Judge Benjamin Cardozo said,

“A trustee is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior... the level of conduct for fiduciaries [has] been kept at a level higher than that trodden by the crowd.”

The two primary issues of the **Meinhard v. Salmon** case were “duty of communication” and “duty of loyalty”. DHEC management chose to interpret those elements to mean Kestrel Horizons, LLC, as Trustee, was to diligently obey DHEC management, as representatives of DHEC as Beneficiary. DHEC further took the position that the Trustee’s role as permit holder and DHEC’s role as government regulator did not alter Kestrel’s responsibility to obey DHEC management, as an agent of DHEC.

When DHEC management attempted to induce/coerce Kestrel into unethical and illegal behavior – both as Trustee and as permit holder – Kestrel chose not to comply. Kestrel spent many months trying to communicate the issues in meetings and in writing. The Trust’s attorney wrote letters providing legal citations. Finally, on July 18, 2014, we defied DHEC management and submitted a RCRA Part B Permit Application supplement with the very information and citations DHEC management DHEC did not want included. We took a position much like a member of the military might in dealing with an illegal, immoral, or unethical order. We chose

the “higher calling” specified in the PSCT Trust Agreement – that the Trustee was to serve for the benefit of the citizens of South Carolina.

One week later – on July 25, 2014 – Director Templeton publicly requested Kestrel’s resignation, insinuating Kestrel had been fiscally irresponsible and possibly profiteered in its role as Trustee. Director Templeton cited the need to operate the Pinewood Site “...a bit more frugally...” She was quoted as telling reporters “Kestrel has taken [emphasis added] \$10 million from the Trust – but there is no fraud here.” Taken \$10 million, but here is no fraud? If someone takes a dollar of other people’s money, that’s a problem. That’s theft. What in the Hell did she mean to infer by using the word “taken”?

How about, “...been compensated ____ including direct Trustee expenses, accounting, auditing and legal services, regulatory compliance and permitting services, short-range and long-range planning, engineering design management, construction management, remediation management, development of archive and information management systems, organization and scanning of hundreds of thousands of pages of records, etc. - over more than ten years...”?

How about “... saved the Trust substantially more than it was compensated over more than ten years..?”

How about “... managed a shoddy, unholy mess that was built under DHEC’s supervision by commercial waste companies between 1979 and 2003...”?

How about “...been required to comply with a hazardous waste facility permit that expired more than twenty years ago...”?

How about “... had to endure manipulative efforts by DHEC management to accept expired permits, as Trustee, in 2003 - and to apply for permits to be held in the Trustee’s name which may have been illegal on their faces and would have required fraud on the part of the Trustee to secure...”?

And July 25, 2014 was not the first time she used innuendo to insinuate wrongdoing on the part of Kestrel. The first time was at a large meeting on March 10, 2014 in the large conference room across from her (now former) office. All part of her tactics to control the opponent – no doubt tactics honed in her labor practice. Innuendo – an Italian term for “Up yours.”

Director Templeton reportedly said, “Just because someone sends us an invoice for \$60,000 doesn’t mean we are going to pay it.” Now, the invoice she references is for strategic analysis and planning, and cost estimating she and her managers requested of Kestrel between late December and mid-March– but she didn’t like the message. We all know what Roman Emperors did to messengers who brought bad news. DHEC paid - once top managers realized how it might look if they didn’t pay. “**Optics**”, you know.

So instead of Director Templeton agreeing to meet with Kestrel to resolve a course of action in a situation requiring cooperation and diligence by all, as we requested many times, she chose to publicly impugn Kestrel's reputation by toxic inference in a Pearl Harbor-style attack. The truth be damned.

Director Templeton apparently over-ruled her second-in-command, Director Elizabeth Dieck, who wrote to Kestrel and suggested we build on the July 18, 2014 RCRA Part B Post-Closure Permit Application Supplement – which included all the information, discussion, and proposed approaches required by RCRA/HSWA or hazardous waste facility permit applicants. Clearly, nothing but withdrawal of that information would be acceptable to Director Templeton

Far from being a “consensus builder”, as eulogized by DHEC public relations staff, Director Templeton ruled with an iron fist – in a velvet glove. At the point Director Templeton insisted on Kestrel submitting and certifying a permit application omitting critical information she knew would make the application far from being “true, accurate, and complete”, she, in effect, attempted to induce felony conduct. By doing that, coopted her staff into a conspiracy to induce felony violations of RCRA/HSWA and the South Carolina statutes adopting those laws and associated hazardous waste regulations.

I can sum up my experience with SC DHEC managers as follows:

- I/we did what was required by all ethical and legal standards in the Pinewood Trust and Twelve Mile River professional engagements.
- Certain of DHEC's management employed ethical and legal standards leaders of third world countries would consider unacceptable.
- When I/we would not commit a matched set of felonies at the behest of certain DHEC managers - we were, in effect, immediately fired by Director Templeton. The felony violations were primarily related to requirements of the federal Resource Conservation and Recovery Act (RCRA), including the Hazardous and Solid Waste Amendments of 1984 (HSWA) and the South Carolina laws adopting those federal statutes, related to public disclosure, completeness, accuracy, and truthfulness in environmental permit applications. However, multiple other ancillary violations were (would have been) involved. I would have been eligible to spend the rest of my life in prison for those felonies, had I exceeded to Director Templeton's will.
- During the 90 day termination transition period requested by DHEC, certain DHEC managers attempted to induce/persuade Kestrel's most senior employee to commit the same set of felony violations, DHEC having required that I step aside as part of the July 25, 2014 “Transition Agreement.”
- Kestrel's owners and other team members were united to the end (October 31, 2014), insisting that the hard truths be told to the other responsible elected politicians and government officials.

- To date, I have received absolutely no contact from any of twenty plus such elected politicians or government officials – other than former State Senator Phil Leventis.
- I have received several calls from government employees who wished to remain anonymous for fear of retaliation by managers and politicians. The theme was that the situation at DHEC is a result of intellectual arrogance, subject matter ignorance, and poor management by Director Templeton and the DHEC Board.
- I realize none of this will be found in the press releases written by DHEC publicists. Now the only question is will they deny all of this “vigorously”, “vehemently”, “vociferously” – or “viciously” and “vindictively” – in keeping with Director Templeton’s approach on July 25, 2014?

If we are to be a civilized society of laws, the laws must apply equally to government officials and politicians. Unless and until that happens, citizens and taxpayers are simply the pawns of two political franchises of privileged abusers.

Thomas Jefferson was right:

“Where government fears their citizens, there is freedom.

Where citizens fear their government, there is tyranny.”

Lee Iacocca was also right:

“Beware the articulate incompetent.”

Mark Twain offered a couple of thoughts for the ages:

“Do the right thing. It will gratify some people and astonish the rest.”

and

“It’s not the size of the dog in the fight; it’s the size of the fight in the dog.”

Then there’s Sylvester “Sly” Stone:

“Stand. In the end you’ll still be you -

One that’s done all the things you set out to do.”

And my observation:

““Do as I say, not as I do...” is no way to run a government. Civil disobedience becomes essential when politicians and government officials are allowed to wantonly commit felonies - and are free to induce or coerce others to commit felonies for their own

comfort and convenience. The response of responsible citizens to oligarchy begins with organized anarchy. WWJD – What would Jefferson do?”

Regarding the Future of SC DHEC and Crew

My hope is that the politicians and new management of DHEC – whoever they may be – effectively address the very serious ethical and operational dysfunction at DHEC. Acting Director Marshall Taylor is a truly good man - a fine and ethical professional who endured untold foolishness and tortured thinking, hoping that the dawn would one day come for his ambitious and enthusiastic “client”. I can identify with that hopefulness completely. Unfortunately the dawn just never came. Just a three year partial eclipse. Marshall Taylor can be part of the solution, given the appropriate colleagues and support by the Governor and the Legislature. I hope he stays for a while.

I know nothing about Director Templeton’s proposed replacement, Eleanor Kitman, but I will offer this: The new Director and her/his management team better have a far better grasp of the technical subject matter, understanding of the relevant regulations and laws, and commitment to truth, ethical and legal behavior, and service to citizens than has been the case over the last several years. If Ms. Kitman – or whoever – is allowed to perpetuate the checkered legacy of DHEC’s Environmental Division and some of its “managers”, my vote in the next South Carolina elections will be for the Anarchist Party candidates. And I will give no quarter Ms. Kitman or whoever is in the high chair.

The fact is any manager of an industrial company who tried to make happen what Director Templeton and her crew tried to make happen would be prosecuted by state and federal justice officials. I know of industry managers who have been convicted of felony violations of RCRA/HSWA and spent several years in the federal penitentiary – for far less consequential transgressions.

Then there’s the whole matter of the grasping that manufacturing and industrial companies today understand that protection of the environment is an intrinsic part of responsible, profitable, and sustainable enterprises. Director Templeton’s apparent view that healthy industry and protection of the environment are on opposite sides of a Rubik’s Cube is the same view that got Anne Gorsuch Burford fired thirty years ago by President Reagan. Industry managers know the problem is not the multiple set of goals, but rather the incredible regulatory gyrations and wasted time and effort needed to get to integrated solutions. That’s like untangling a plate of spaghetti because all of the nonsensical complexities are rooted in mountains of federal regulations.

My hope is that early retirement takes care of the principal DHEC managers involved in the recent and chronic dysfunction. No real need to pursue them. Too many managers in DHEC's Environmental Division have operated like a bunch of monkeys doing a math problem for much longer than Director Templeton's short reign. In fact, I know Catherine Templeton had good intentions, but the road to Hell is paved with good intentions.

In industry, an entity in the condition of DHEC's Environmental Division would be dealt with as a dysfunctional acquisition. The managers of the Environmental Bureaus need to be replaced – along with numerous other middle managers.

One truly talented truly talented manager and dedicated public servant persevered for about eight years in moving the Pinewood Site and the Pinewood Site Custodial Trust in the right direction – at serious personal peril. He took early retirement not so long ago. He knew the fate of people whose decisions were not in alignment of Director Templeton's "frugality narrative". Serious risks and urgent needs tend to cost money and cause controversy. Being on the wrong side of Director Templeton's "optics" imperative was career-limiting. He fought the good fight conscientiously and well – right up to the point he realized his goose was cooked. And so did Kestrel Horizons.

DHEC has talent; many of them have been sequestered or sidelined. Ken Taylor is an example of a very strong expert with solid ethics and judgment. He can be part of the solution. So can Marshall Taylor – if he can be persuaded to stay. If I were him, I'd only stay with solid assurances from Governor Haley and the South Carolina Legislature they will solidly support the needed reforms at DHEC and not bury or airbrush serious ethical and capability problems.

Unfortunately, Director Templeton's political ambitions and single-minded determination to have her way may cost her colleagues and staff dearly. The innocents are usually the ones who get hurt in situations like this; the same people who have ducked responsibility for the Pinewood Site and other debacles around the state for a very long time will likely remain, unscathed. That's simply how our modern government works.

I realize that's all probably academic discourse or irrelevant babble to most people, but to those who understand it is both simple and profound. Right now, the focus needs to be changing the status of SC DHEC's Environmental Division from FUBAR to fully functional and accountable. The economic and environmental health of the State of South Carolina is at stake – and nothing less.

My advice: Cleave the DHEC sasquatch in two. There is no practical or operational nexus or synergy between the public health shop and environmental shop of DHEC. Never was and not likely to be in the future. And form two separate boards, starting fresh with the "environmental" board members. They need to have some grasp of the subject matter and management

concepts; otherwise board meetings are nothing more than games of charades over coffee and donuts.

In the meantime, the only DHEC manager, employee, or Board member who can be counted on to be fully credible is Marshall Taylor. Marshall may be constrained by his former role as DHEC General Counsel and his current role as Acting DHEC Director. Some conversations simply must be held with very limited participation due to critical Homeland Security concerns. If need for limited participation in regard to some subject matter is claimed by Marshall Taylor, believe it and trust him.

Closing Comments

Now you might wonder if I am at all concerned that Director Templeton and some current or former DHEC folks might take offense to this missive and pursue me legally – or illegally. I recognize that may indeed happen; it already has - in spades. But you see, those folks know now they are looking at the potential of dismissal for cause and loss of state retirement benefits – for starters. Some are looking at the very real possibility of prison time – for primary acts or for conspiracy. All I have said is the truth and is backed by extensive written documentation – some of it available at www.kestrelhorizons.com. And real investigative journalists would not be particularly kind to the main characters of these stories. *molôn labé*.

We take up the existing and potential environmental risks of the Pinewood Site and Twelve Mile River Delta in other pieces. In the case of the Pinewood Site, written descriptions must be limited due to environmental security and public health security factors.

If you visit www.kestrelhorizons.com we hope you enjoy your walk through Kestrel's history. And we hope you find some aces you can keep. We certainly did.

Best regards,



William A. Stephens, P.E.
Co-Founder and Managing Principal
Kestrel Horizons, LLC (now closed)



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P.S. – I will be happy to meet with anyone who wishes to learn the truth, the whole truth, and nothing but the truth about the Pinewood Site or Twelve Mile River. My hourly fee is \$350 per hour – the same as Pinewood Interim Administrator Team Leader, Ben Hagood, esq.. Minimum of four hours per day. Travel time at the same rates. Expenses at cost. Speaking and interview rates based on specific engagement.

You see my company and my ability to make a living at my lifelong profession of 42 years was virtually destroyed by the actions of foolish, ambitious, devious, unethical, and illegal acts of elected, appointed, and civil service government people.

I am not interested in participating in political circle jerks or charades - or mock combat between political franchises. Anyone attempting to use or abuse the names or reputations Kestrel Horizons, former Kestrel Horizons Team Members, or me for personal gain or ambitions should learn how to point his/her toes and duck at the same time. No matter, he/she will end up in deep pucky with some large knots on the head.

Serious inquiries only. Casually interested parties may want to look for my book later this year - or the movie, which is scheduled to open concurrent with the 2016 political conventions.

And if the South Carolina Legislature and Governor Haley are truly interested in government ethics reform, I suggest they focus on these sorts of matters instead of investigating whether some part time public servant bought a beach towel and a six pack of beer in Myrtle Beach with campaign contributions totaling dozens of dollars...each can being a separate count of fraud. Otherwise, the circle jerk now playing in Columbia might be viewed as an attempt to placate and divert the attention of citizens with a relatively trivial sideshow. Just food for thought.

P.P.S. Please excuse the occasional typographical error. I typed some passages with my middle fingers or fists. I incorporate unexpected content and language as a means to determine whether people have actually read what I have written. If you mention “monkeys doing a math problem” or **Meinhard v. Salmon** to a colleague and get a blank look, you know she/he never read this message.

I realized this morning, based on an article yesterday in The State newspaper, that Catherine Templeton may simply have been doing Governor Haley’s bidding and following orders. If that is the case, Catherine Templeton would really be as much a victim as her staff – and I would be truly sorry about that. Maybe she just “took one for the team.” Now some events of 2014 – the big election year – are beginning to make more sense. That would explain why I have gotten no response from the Governor’s office from my September 18 and September 25 “bombshell” reports on the Pinewood Site and the Pinewood Site Custodial Trust.

My sincere hope is that Governor Haley read this far – and reads the companion piece also dated January 25, 2015. I guess if SLED shows up at my front doorstep to rattle my cage, I’ll



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know for sure. That would be more than a coincidence. Disappointing when our chosen leaders have feet of clay. Hope that is not the case.

Again, to learn more and find out “the rest of the stories” visit www.kestrelhorizons.com.

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