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RECEIVED

2008 MAR 14 P 4: 37

AZ CORP COMMISSION  
DOCKET CONTROL

ORANGE COUNTY  
PHOENIX  
SALT LAKE CITY  
TUCSON

2802

March 14, 2008

**VIA HAND-DELIVERY AND E-MAIL**

Blessing Chukwu  
Utilities Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Keith Layton, Staff Attorney  
Legal Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Re: **Perkins Mountain Water Company and Perkins Mountain Utility Company  
Docket Nos. W-20380A-05-0490 and SW-20379A-05-0489  
Sixth Supplemental Response to Staff's Second Set of Data Requests Dated  
February 8, 2008**

Dear Ms. Chukwu and Mr. Layton:

Perkins Mountain Water Company and Perkins Mountain Utility Company ("Applicants") hereby submit the attached Supplemental Response to BNC 2.12 of Staff's Second Set of Data Requests dated February 8, 2008. An electronic version of this response is also being sent to you via e-mail. This supplement to the response provides information regarding the state of Florida and provides additional information and context at the beginning of the South Carolina section that was previously submitted. Please note that the documents attached to this Supplemental Response relate only to the supplemental information provided herein.

Arizona Corporation Commission

DOCKETED

MAR 14 2008

DOCKETED BY  
nr

Blessing Chukwu  
Keith Layton  
March 14, 2008  
Page 2

Please do not hesitate to contact me if you have any questions.

Sincerely,

Snell & Wilmer



Bradley S. Carroll

BSC/jyb

Enclosure

cc: Docket Control (Original plus 15 copies)  
Robin Mitchell, Esq. (Via e-mail only)  
Michele Finical (Via e-mail only)

**RESPONSE OF PERKINS MOUNTAIN WATER COMPANY  
AND PERKINS MOUNTAIN UTILITY COMPANY  
TO ARIZONA CORPORATION COMMISSION  
STAFF'S SECOND SET OF DATA REQUESTS  
DOCKET NOs. W-20380A-05-0490, SW-20379A-05-0489  
February 8, 2008 (Response Supplemented March 14, 2008)**

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**BNC 2.12**      **In March 2007, the Illinois Commerce Commission in Docket No. 06-0360, cited five (5) affiliates of Utilities, Inc., for failure to comply with Commission Orders and with Commission Rules. Please provide a history of Citations issued by regulatory agencies in other jurisdictions against Utilities, Inc. and/or any of its respective affiliates since the year 2000.**

Response:      Utilities, Inc. is a holding company that owns the stock of approximately 90 operating utilities in 17 states. As such, to the best of my knowledge and belief, there have been no citations that have been issued by regulatory agencies against Utilities, Inc. in connection with utility compliance obligations. With respect to its utility operating company affiliates, the requested information is set forth below for each of the applicable states:

Arizona            None

Georgia            None

Kentucky           None

Louisiana      On August 11, 2004, the Louisiana Department of Environmental Quality issued a Compliance Order to *Louisiana Water Service, Inc.* following an inspection by the Department. A copy of the Compliance Order is attached.

On May 21, 2002, the Louisiana Department of Environmental Quality issued a Compliance Order to *Utilities, Inc. of Louisiana* following an inspection by the Department. A copy of the Compliance Order is attached.

Mississippi        None

New Jersey        None

Ohio                None

Tennessee         None

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Nevada – On October 25, 2000, the Public Utilities Commission of Nevada (“Commission”) issued an order in Docket No. 98-0-5008 relating to an application by *Spring Creek Utilities Company* to withdraw from its Capital Projects and Hydrant Fund. During the review of this application, the Commission’s Regulatory operations Staff identified three compliance issues including a failure to obtain a permit to construct pursuant to the Nevada Utility Environmental Protection Act (“UEPA”) for construction of a 500,000 gallon storage tank. *Spring Creek Utilities Company* entered into a Stipulation wherein it agreed to pay a \$5,000 fine that would be suspended for three years and expunged if the utility obtained all necessary construction permits and there were no further violations of the UEPA. A copy of the order is attached.

On October 17, 2006, the Commission issued an order approving a Settlement Agreement and Stipulation Agreement between the Commission Staff and *Spring Creek Utilities Company* relating to a Petition for an Order to Show Cause that alleged that *Spring Creek Utilities Company* failed to provide reasonably continuous and adequate service to its customers. A copy of the order is attached.

Maryland     None

Pennsylvania   None

Indiana - On August 24, 2004, as part of an order involving the sale of assets and approval of an acquisition adjustment, the Indiana Utility Regulatory Commission (“Commission”) found in Cause No. 41873 that certain records of *Indiana Water Services, Inc.* (“IWSI”) were being kept out of state (in Northbrook, Illinois) contrary to the requirement that a utility's books be kept in the state and not be removed except upon conditions prescribed by the Commission. *IWSI* did this because one of its Indiana affiliates, Twin Lakes Utilities, had already been given permission by the Commission to keep its books in Illinois. The Commission found that notwithstanding its authorization for the affiliate to keep its books and records out of state, *IWSI* should have asked for permission. The Commission did not require *IWSI* to transfer the books and records back to Indiana, but merely ordered that *IWSI* would have to pay the costs of the Commission and the Office of Utility Consumer Counselor related to any necessary visits to Northbrook.

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Virginia - On January 21, 2005 *Massanutten Public Service Corporation* ("MPSC") filed an application with the Virginia State Corporation Commission ("Commission") under the state's Affiliates Act requesting approval of a water services agreement with Water Service Corporation ("WSC") (an affiliate of MPSC) under which MPSC and WSC had already been operating. At the time MPSC and WSC had entered into the agreement, MPSC was exempt from the Affiliates Act because it did not meet the financial threshold that would have required approval of the agreement. On April 20, 2005, MPSC filed a request to withdraw its application because certain provisions of the agreement needed to be revised. On April 21, 2005, the Commission granted the application and dismissed the case without prejudice. By order dated June 7, 2005, MPSC was directed to file a new application with a Revised Agreement. MPSC filed a new application for approval of the Revised Agreement in Case No. PUE-2005-0063. On October 19, 2005, the Commission issued an order granting approval of the Revised Application. In its order approving the Revised Agreement, the Commission found that MPSC and WSC had been operating under the prior agreement which had not been approved by the Commission and ordered that MPSC "take the necessary steps to ensure that prior approval is obtained by the Commission under the Affiliates Act for any future affiliate transactions." A copy of the order is attached for your convenience.

On March 15, 2006, MPSC, entered into a Consent and Special Order ("Consent Order") with the Virginia Department of Environmental Quality to resolve alleged violations of environmental laws and regulations. MPSC without admitting or denying the factual findings or conclusions of law contained in the Consent Order, agreed to perform the actions described in Appendix A to the Consent Order and to pay a civil charge of \$19,700. A copy of the Consent Order is attached.

Illinois - On January 3, 2007, the Illinois Environmental Protection Agency ("EPA") accepted a Compliance Commitment Agreement proposed by *Galena Territory Utilities, Inc.* ("Galena") to resolve a notice of alleged violations under the Illinois Environmental Protection Act. A copy of the EPA's acceptance letter is attached as BNC 2.12 IL-A.

On March 21, 2007, the Illinois Commerce Commission ("Commission") issued an order in Docket No. 06-0360 relating to *Apple Canyon Utility Company, Cedar Bluff Utilities, Inc., Charmar Water Company, Cherry Hill Water Company* and *Northern Hills Water Company* ("collectively

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*"Companies"*). The Commission found, in part, that the *Companies* failed to maintain and file on April 7, 2005, continuing property reports ("CPRs") as was required by the Commission. The *Companies* had testified that the in-house data base system that was designed to track the CPRs did not interface properly with other older systems and there was a delay in getting the data entry work completed in time for the April 7, 2005 deadline. Notwithstanding, the Commission issued an order that required that future rate base additions for the *Companies* must be supported by CPRs and assessed a civil penalty totaling \$5,000. A copy of the order is attached as BNC 2.12 IL-B.

On May 18, 2007, Circuit Court for the 15th Judicial Circuit of Stephenson County, Illinois, entered an order (No. 0CH96) approving a Consent Order between the Illinois Environmental Protection Agency and *Northern Hills Water and Sewer Company* ("*Northern Hills*") wherein *Northern Hills*, without admitting the allegations of violations contained in the complaint, agreed to comply with the conditions of the Consent Order and pay a civil penalty of \$9,750. The allegations of the complaint were that *Northern Hills* had violated various provisions of the Illinois Environmental Protection Act relating to its waste water treatment plant in Freeport, Illinois. A copy of the Consent Order is attached as BNC 2.12 IL-C.

On August 30, 2006, the Commission issued an order in Docket No. 05-0452 relating to an application for a 2.95 acre extension of the CC&N for *Galena Territory Utilities, Inc.* ("*Galena*") to provide sanitary sewer service to an existing 71-unit condominium development contiguous to its existing service territory. In approving the application, the Commission found, in part, that *Galena* had provided service prior to the issuance of the CC&N and ordered *Galena* to pay a \$1,000 fine. A copy of the order is attached as BNC 2.12 IL-D.

On July 12, 2005, Circuit Court for the Nineteenth Judicial District of Lake County, Illinois, entered an order (No. 05CH1009) approving a Consent Order between the Illinois Environmental Protection Agency and *Charmar Water Company* ("*Charmar*") wherein *Charmar*, without admitting the allegations of violations contained in the complaint, agreed to comply with the conditions of the Consent Order and pay a civil penalty of \$5,000. The allegations of the complaint were that *Charmar* had failed to obtain a construction permit for a hydropneumatic storage tank and

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operate such tank without a permit. A copy of the Consent Order is attached as BNC 2.12 IL-E.

On or about November 6, 2003, the United States Environmental Protection Agency and *Northern Hills Water and Sewer Company* ("*Northern Hills*") entered into a Consent Agreement and Final Order ("Consent Agreement") in Docket No. CERCLA-05-2004 wherein *Northern Hills*, without admitting or denying the factual allegations of the complaint, agreed to pay a civil penalty of \$1,000 for failing to timely report release of chlorine from its Freeport facility. A copy of the Consent Agreement is attached as BNC 2.12 IL-F.

*North Carolina* – Although not a citation *per se*, on April 15, 2005, the North Carolina Utilities Commission ("Commission") issued an order granting a partial rate increase in connection with an application by *Carolina Water Service, Inc. of North Carolina* ("*CWS*") for a water and sewer rate increase in Docket No. W-354, Sub 266. As part of this rate case review, the Commission found that *CWS* had not complied with several requirements. Although the Commission specifically ruled in its order it was not appropriate to impose any penalties, it did take some of these items into consideration in setting rates and further ordered *CWS* to comply with the requirements in the future. A copy of this rate case order is attached as BNC 2.12 NC.

*South Carolina* – Attached (as identified) are copies of Consent Orders entered into between the South Carolina Department of Health and Environmental Control ("DHEC") and the Utilities, Inc. affiliates listed below. Pursuant to DHEC regulations to address system deficiencies through their enforcement process, Consent Orders would be issued to identify, correct and in many cases, assess civil penalties as part of the standard process.

*Note:* Six (6) of the nine (9) Consent Orders below involved *Utilities Services of South Carolina, Inc.* which was acquired by Utilities, Inc. in 2002 which had some deficiencies that were previously identified by DHEC.

- *Utilities Services of South Carolina, Inc. (Charleswood Subdivision)* – No. 06-098 DW, June 15, 2006. No civil penalty was required if the utility complied with the Consent Order. BNC 2.12 SC-A

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- *Utilities Services of South Carolina, Inc. (Purdy Shores)* – No. 06-225 DW, December 4, 2006. No civil penalty was required if the utility complied with the Consent Order. BNC 2.12 SC-B
- *Utilities Services of South Carolina, Inc. (Barney Rhett Subdivision)* – No. 05-149 DW, October 18, 2005. No civil penalty was required if the utility complied with the Consent Order. BNC 2.12 SC-C
- *Utilities Services of South Carolina, Inc. (Foxwood Subdivision)* – No. 05-099-W, July 21, 2005. An \$8,400 civil penalty was agreed to. BNC 2.12 SC-D
- *Carolina Water Service, Inc. (Glenn Village II Subdivision)* – No. 05-094-DW, July 19, 2005. No civil penalty was required if the utility complied with the Consent Order. BNC 2.12 SC-E
- *United Utility Company, Inc. (Briarcreek Subdivision I WWTF)* – No. 04-180-W, October 6, 2004. A \$3,000 civil penalty was agreed to. BNC 2.12 SC-F
- *Carolina Water Service, Inc. (River Hills Subdivision)* – No. 04-140-W, July 30, 2004. A \$9,600 civil penalty was agreed to. BNC 2.12 SC-G
- *Utilities Services of South Carolina, Inc. (Farrowood Estates)* – No. 04-073 DW, April 6, 2004. No civil penalty was required if the utility complied with the Consent Order. BNC 2.12 SC-H
- *Utilities Services of South Carolina, Inc. (Washington Heights)* – No. 04-072 DW, April 6, 2004. No civil penalty was required if the utility complied with the Consent Order. BNC 2.12 SC-I

Florida – Attached (as identified) are copies of “short form” settlements entered into between the Florida Department of Environmental Protection (“DEP”) and the Utilities, Inc. affiliates listed below. Pursuant to DEP regulations that address system deficiencies through its enforcement process, settlements would be entered into to identify, correct and in many cases, assess civil penalties as part of the standard process.

- *Sanlando Utilities Corporation (Wekiva Hunt Club WWTF)* – No. OGC-06-0800, June 16, 2006. A civil penalty totaling \$2,500 was agreed to. BNC 2.12 FL-A
- *Bayside Utility Services, Inc.* – No. OGC 06-2421-03-DW, March 6, 2007. A civil penalty totaling \$2,200 was agreed to. BNC 2.12 FL-B

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- *Mid-County Services, Inc.* – No. OGC 06-1742, November 22, 2006. A civil penalty totaling \$4,500 was agreed to. BNC 2.12 FL-C
- *Miles Grant Water and Sewer Company* – No. OGC 06-1249, July 17, 2006. A civil penalty totaling \$350 was agreed to. BNC 2.12 FL-D
- *Miles Grant Water and Sewer Company* – No. OGC 06-0302, May 2006. A civil penalty totaling \$600 was agreed to. BNC 2.12 FL-E
- *Miles Grant Water and Sewer Company* – No. OGC 04-0892, July 9, 2004. A civil penalty totaling \$600 was agreed to. BNC 2.12 FL-F
- *Sanlando Utilities Corporation (Wekiva Hunt Club WWTF)* – No. OGC 02-1204, August 27, 2002. A civil penalty totaling \$4,650 was agreed to. BNC 2.12 FL-G

Attached is a copy of a “short form” settlement entered into between the Florida Department of Health and the following Utilities, Inc. affiliate pursuant to DEP regulations:

- *Cyprus Lakes Utilities, Inc.* – No. OGC 06-653PW5055A, December 13, 2006. A civil penalty totaling \$1,200 was agreed to. BNC 2.12 FL-H

Attached (as identified) are copies of Consent Orders entered into between the DEP and the Utilities, Inc. affiliates listed below. Pursuant to DEP regulations that address system deficiencies through its enforcement process, Consent Orders would be entered into to identify, correct and in many cases, assess civil penalties as part of the standard process.

- *Sandy Creek Utility Services, Inc.* – No. OGC 07-1887-03-DW, January 22, 2008. A civil penalty totaling \$1,225 was agreed to. BNC 2.12 FL-I
- *Utilities, Inc. of Florida* – No. OGC 06-100-51-PW, June 8, 2006. A civil penalty totaling \$500 was agreed to. BNC 2.12 FL-J
- *Miles Grant Water and Sewer Company* – No. OGC 05-2873, March 20, 2006. A civil penalty totaling \$500 was agreed to. BNC 2.12 FL-K
- *Utilities, Inc. of Eagle Ridge* – No. OGC 05-2747-36-DW, January 30, 2006. A civil penalty totaling \$2,000 was agreed to. BNC 2.12 FL-L

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- *Alfaya Utilities, Inc.* – No. OGC 05-0505, June 22, 2005. A civil penalty totaling \$3,500 was agreed to. BNC 2.12 FL-M

The following related to Florida Public Service Commission (“Commission”) rate case orders for the following Utilities, Inc. affiliates:

- *Utilities, Inc. of Sandalhaven* – Docket No. 020409-SU, Order No. PSC-03-0602-PAA-SU, May 13, 2003. The Commission found that the Company entered into a modified contract with a country club to provide reuse that included an annual fee of \$4,000 intended to cover the increase in cost for testing and operating the reuse system, which was not included in the original contract. The Commission subsequently learned that the charge was not included in the Company’s tariff. The Company subsequently requested approval of a tariff covering the fee. The Commission did recognize that the \$4,000 annual fee, paid in quarterly amounts of \$1,000, benefited the remaining customer base by reducing the portion of the revenue requirement generated from residential and other general use customers. In the rate case order, the Commission found that i) a show cause proceeding would not be initiated since the Company properly recorded the revenue from the charge; ii) the Company submitted a proposed tariff once it was informed that it did not have a tariff on file; and iii) the Commission wanted to encourage reuse. The Commission did not assess any administrative penalty and put the Company on notice that it may only charge those rates and charges approved by the Commission. The relevant pages from the Commission’s order are attached as BNC 2.12 FL-N

Prepared by: Michael T. Dryjanski  
Manager, Regulatory Accounting  
Utilities, Inc.  
2335 Sanders Road  
Northbrook, IL 60062

# **BNC 2.12 FL-A**

CERTIFIED MAIL RECEIPT No. 7005 2570 0001 9833 7386



## Department of Environmental Protection

Jeb Bush  
Governor

Central District  
3319 Maguire Boulevard, Suite 232  
Orlando, Florida 32803-3767

Colleen Castille  
Secretary

SENT VIA E-MAIL TO: [p.c.flynn@utilitiesinc-usa.com](mailto:p.c.flynn@utilitiesinc-usa.com)

April 20, 2006

SANLANDO UTILITIES CORPORATION  
200 WEATHERSFIELD AVENUE  
ALTAMONTE SPRINGS FLORIDA 32714

OCD-C-WW-06-0304

ATTENTION PATRICK C FLYNN  
REGIONAL DIRECTOR

SUBJECT: **SHORT FORM CONSENT ORDER**  
Proposed Settlement of Wekiva Hunt Club WWTF  
OGC File No.: 06-0800

Dear Mr. Flynn:

The purpose of this letter is to complete the resolution of the matter previously identified by the Department in the Warning Letter dated January 13, 2006, a copy of which is attached. The corrective actions required to bring your facility into compliance have been performed. The Department finds that you are in violation of the rules and statutes cited in the attached Warning Letter. In order to resolve the matters identified in the attached Warning Letter, you are assessed civil penalties in the amount of \$2,250.00, along with \$250.00 to reimburse the Department costs, for a total of \$2,500.00.

The civil penalties are apportioned as follows: \$2,000.00 for violation of Sections 403.121(3)(b) and 403.161(1)(b), Florida Statutes, and Rules 62-620.300(5) and 62-4.030, Florida Administrative Code; \$250.00 for violation of Sections 403.121(6) and 403.161(1)(b), Florida Statutes, and Rules 62-620.300(5) and 62-4.030, Florida Administrative Code.

The Department acknowledges that the payment of these civil penalties by you does not constitute an admission of liability. This payment must be made payable to the Department of Environmental Protection by cashier's check or money order and shall include the OGC File Number assigned above and the notation "Ecosystems Management and Restoration Trust Fund." Payment shall be sent to the Department of Environmental Protection, Central District Office, 3319 Maguire Boulevard, Suite 232, Orlando, Florida 32803-3767, within 30 days of your signing this letter.

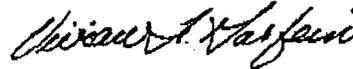
Your signing this letter constitutes your acceptance of the Department's offer to resolve this matter on these terms. If you elect to sign this letter, please return it to the Department at the address indicated above. The Department will then countersign the letter and file it with the Clerk

Sanlando Utilities Corporation  
OGC File No.: 06-0800  
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of the Department. When the signed letter is filed with the Clerk, the letter shall constitute final agency action of the Department which shall be enforceable pursuant to Section 120.69 and 403.121, Florida Statutes.

If you do not sign and return this letter to the Department at the District address by May 8, 2006, the Department will assume that you are not interested in settling this matter on the above described terms, and will proceed accordingly. None of your rights or substantial interests are determined by this letter unless you sign it and it is filed with the Department Clerk.

Sincerely,



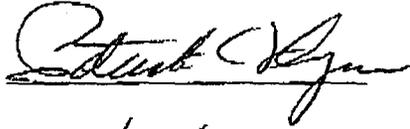
Vivian F. Garfein  
Director, Central District

VFG//ca

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**FOR THE RESPONDENT:**

I, Patrick C. Flynn, Regional Director, on behalf of Sanlando Utilities Corporation, **HEREBY ACCEPT THE TERMS OF THE SETTLEMENT OFFER IDENTIFIED ABOVE.**

By: 

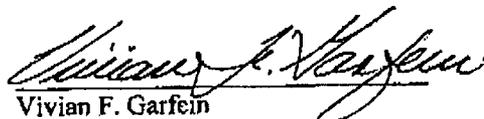
Date: 6/16/06

Sanlando Utilities Corporation  
OGC File No.: 06-0800  
Page 3

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FOR DEPARTMENT USE ONLY

DONE AND ENTERED this 21<sup>st</sup> day of June, 2006 in  
Orlando, Florida.

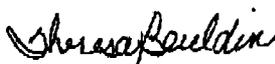
STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION



Vivian F. Garfein  
Director, Central District

*W*

FILED, on this date, pursuant to  
§120.52, Florida Statutes,  
with the designated Department  
Clerk, receipt of which is hereby  
acknowledged.



Clerk

6/22/06

Date

VFG: ca

Enclosures

Copies furnished to: Lea Crandall, Agency Clerk, Mail Station 35



## Department of Environmental Protection

Jeb Bush  
Governor

Central District  
3319 Maguire Boulevard, Suite 232  
Orlando, Florida 32803-3767

Colleen M. Castille  
Secretary

SENT VIA E-MAIL TO: [p.c.flynn@utilitiesinc-usa.com](mailto:p.c.flynn@utilitiesinc-usa.com)

January 13, 2006

SANLANDO UTILITIES CORPORATION  
200 WEATHERSFIELD AVENUE  
ALTAMONTE SPRINGS FLORIDA 32714

WARNING LETTER No. OWL-WW-06-0002

ATTENTION PATRICK FLYNN  
REGIONAL DIRECTOR

Seminole County - DW  
Wekiva Hunt Club WWTF  
Wastewater Facility - Permit No. FL0036251

Dear Mr. Flynn:

The purpose of this letter is to advise you of possible violations of law for which you may be responsible, and to seek your cooperation in resolving the matter. A file review conducted on December 29, 2005, of Wekiva Hunt Club WWTF indicates that a violation of Florida Statutes and Rules may exist at the above described facility. A copy of the inspection report is enclosed for your review. Department of Environmental Protection personnel noted the following at the above described facility:

A review of the Discharge Monitoring Reports (DMRs) and records on file indicated the following violations:

- a. The total phosphorus monthly maximum results reported on the D001 DMRs for June, September and October 2005 were 0.84; 1.1 and 0.54 mg/L, respectively, which exceeded the permit limit of 0.5 mg/L.
- b. The total phosphorus monthly average results reported on the D001 DMRs for June and September 2005 were 0.84 and 0.67 mg/L, respectively, which exceeded the permit limit of 0.4 mg/L.
- c. The Carbonaceous Biochemical Oxygen Demand (CBOD<sub>5</sub>) monthly average result reported on the D001 DMR for July 2005 was 5.2 mg/L, which exceeded the permit limit of 5.0 mg/L.
- d. The annual average daily flow results to the percolation ponds (R001) reported on the DMRs for August through October 2005 were 0.426, 0.432 and 0.418 MGD, which exceeded the permit limit of 0.40 MGD.

Sanlando Utilities Corporation  
Warning Letter No. OWL-WW-06-0002  
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Section 403, Florida Statutes, provides that:

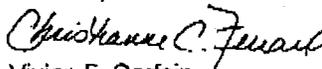
- A. **Florida Statutes, Chapter 403.161 Prohibitions, violations, Intent.** (1) It shall be a violation of this chapter, and it shall be prohibited for any person: (b) To fail to obtain any permit required by this chapter or by rule or regulation, or to violate or fail to comply with any rule, regulation, order, permit, or certification adopted or issued by the Department pursuant to its lawful authority.
- B. **Florida Administrative Code Rule 62-620.300 General Prohibitions.** (5) A permitted industrial or domestic wastewater facility or activity shall not be operated, maintained, constructed, expanded, or modified in a manner that is inconsistent with the terms of the permit.
- C. **Florida Administrative Code Rule 62-4.030 General Prohibition.** Any stationary installation which will reasonably be expected to be a source of pollution shall not be operated, maintained, constructed, expanded, or modified without the appropriate and valid permits issued by the Department, unless the source is exempted by Department rule. The Department may issue a permit only after it receives reasonable assurance that the installation will not cause pollution in violation of any of the provisions of Chapter 403, F.S., or the rules promulgated thereunder. A permitted installation may only be operated, maintained, constructed, expanded or modified in a manner that is consistent with the terms of the permit.

The activities noted during the Department's file review and any other activities at your facility that may be contributing to violations of the above described statutes or rules should be ceased. Operation of a facility in violation of state statutes or rules may result in the potential liability for damages and restoration, and the judicial imposition of civil penalties, pursuant to Sections 403.141 and 403.161, Florida Statutes.

You are requested to contact Clarence Anderson or Daniel Hall of this office at (407) 893-3313 within 15 days of receipt of this Warning Letter to arrange a meeting to discuss this matter. The Department is interested in reviewing any facts you may have that will assist in determining whether any violations have occurred. You may bring anyone with you to the meeting that you feel could help resolve this matter. The Department has tentatively calculated penalties for the violations addressed above and may discuss the penalties at the meeting.

Please be advised that this Warning Letter is part of an agency investigation, preliminary to agency action in accordance with Section 120.57(4), Florida Statutes. We look forward to your cooperation in completing the investigation and resolution of this matter.

Sincerely,



for Vivian F. Garfein  
Director, Central District

VFG/ca  
Enclosure: Inspection Report  
cc: DW Permitting Section  
David O'Brien, DEP/Tallahassee

wekive hunt club OFI 122905.doc WHC 12/29/05

COMET ENTRY DATE  
 \_ \_ / \_ \_ / \_ \_

FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

@ = Optional

WASTE WATER COMPLIANCE INSPECTION REPORT

FACILITY AND INSPECTION INFORMATION

Name and Physical Location of Facility WEKIVA HUNT CLUB WWTF 144 LEDBURY DRIVE LONGWOOD FL 32779	WAFR ID: FL0036251	County Seminole Phone	Entry Date/Time 12/29/05 @ Exit Date/Time
Name(s) of Field Representative(s) TOM KEYES	Title LEAD OPERATOR	Phone 407 682-5651	
Name and Address of Permittee or Designated Representative PATRICK FLYNN UTILITIES INC OF FLORIDA 200 WEATHERSFIELD AVENUE ALTAMONTE SPRINGS FL 32714	Title REGIONAL DIRECTOR	Phone	@ Operator Certification # TOM KEYES A-3090

Inspection Type <input checked="" type="checkbox"/> Domestic <input type="checkbox"/> Industrial	Were Photos Taken (Y/N): N	@ Sample ID#	Samples Split (Y/N):
		@ Log book Volume:	@ Page

PERMITS/ORDERS	SELF MONITORING PROGRAM	FACILITY OPERATIONS	EFFLUENT DISPOSAL
IC 1. ♦ Permit	NE 3. Laboratory	NE 6. ♦ Facility Site Review	SC 9. ♦ Effluent Quality
NE 2. ♦ Compliance Schedules	NE 4. Sampling	NE 7. Flow Measurement	NE 10. ♦ Effluent Disposal
	NE 5. ♦ Records & Reports	NE 8. ♦ Operation & Maintenance	NE 11. Residues/Sludge
NE 13. Other:		NE	NE 12. Groundwater

Recommended Action: WARNING LETTER

Name(s) and Signature(s) of Inspector(s) David Smicherko <i>David Smicherko</i>	District Office/Phone Number Central District 407-893-3313	Date 12/29/05
@ Signature of Reviewer Kalina Warren <i>Kalina Warren</i>	District Office/Phone Number Central District 407-893-3313	Date 01/04/06

Fill Out This Section For All Surface Water Discharger Inspections (CBI, CSI, CBI, PAL, XSI, RI)

Transaction Code N 5	NPDES Number F L 0 0 3 6 2 5 1	YR/MO/DA	Insp Type	Inspector 2 S	Fac Type 3 2
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ADDITIONAL NPDES COMMENTS

Inspection Type (Field 1): A=PAI, B=CBI, C=CBI, S=CSL, X=XSI, R=RI  
 Inspection Code (Field 2): S=State, J=Joint EPA/State, EPA=Lead, T=Joint State/EPA, State Lead, L=Local Program  
 Facility Type (Field 3): 1=Municipal (Publicly Owned), 2=Industrial and Privately Owned Domestic, 3=Agricultural, 4=Federal  
 Every other field is self-explanatory

wekive hunt club OFI 122905.doc WHC 12/29/05

### INSPECTION COMMENTS

**PERMIT: In Compliance**

The FDEP Permit FL0036251 was issued January 4, 2005. The permit expires on January 2, 2010. The permit authorizes the operation of an existing 2.9 MGD annual average daily flow (AADF) design capacity wastewater treatment facility (WWTF), consisting of three contiguous package wastewater treatment plants (0.97 MGD design capacity each) connected in parallel with manual influent screening, aeration, clarification, chemical feed facilities, disinfection by chlorination, tertiary filtration, dechlorination, aerobic digestion of residuals and dewatering by two vacuum assisted drying beds.

**EFFLUENT QUALITY: Significant Out of Compliance**

The file review of the DMRs from June to October 2005 showed the following exceedences of the permit limits:

**The total phosphorus monthly maximum results reported on the D001 DMRs for June, September and October 2005 were 0.84 mg/L, 1.1 mg/L and 0.54 mg/L, respectively. These exceeded the permit limit of 0.5 mg/L.**

**The total phosphorus monthly average results reported on the D001 DMRs for June and September 2005 were 0.84 mg/L and 0.67 mg/L, respectively. These exceeded the permit limit of 0.4 mg/L.**

**The monthly average CBOD<sub>5</sub> result reported on the D001 DMR for July 2005 was 5.2 mg/L, which exceeded the permit limit of 5.0 mg/L.**

**The annual average daily flow results to the percolation ponds (R001) reported on the DMRs for August to October 2005 were 0.426 MGD, 0.432 MGD and 0.418 MGD. These exceeded the permit limit of 0.40 MGD.**

**Carroll, Bradley**

---

"Attached (as identified) are copies of Consent Orders entered into between the Florida Department of Environmental Protection ("DEP") and the Utilities, Inc. ("UI) affiliates listed below. Pursuant to DEP regulations to address any system deficiencies through its enforcement process, Consent Orders would be issued to identify, correct and in many cases, assess civil penalties as part of the standard process."

# **BNC 2.12 FL-B**



## Florida Department of Environmental Protection

Northwest District  
160 Governmental Center  
Pensacola, Florida 32502-5794

Charlie Crist  
Governor

Jeff Kottkamp  
Lt. Governor

Michael W. Sole  
Secretary

February 15, 2007

**SENT VIA E-MAIL**

p.c.flynn@utilitiesinc-usa.com

Mr. Patrick Flynn  
Bayside Utility Services Inc.  
200 Weathersfield Avenue  
Altamonte Springs, FL 32714

Mr. Flynn:

The purpose of this proposed Settlement (OGC File No. 06-2421-03-DW) is to resolve the matters concerning the Bayside Utility Services Inc., wastewater collection/transmission system, located in Bay County, previously identified by the Department in the enclosed Warning Letter dated September 22, 2006. The Department found that you were in violation of Chapters 62-604.130(1) and 62-604.500(3), Florida Administrative Code (Fla. Admin. Code) and Sections 403.088(1) and 403.161(1)(a), Florida Statutes (Fla. Stat.) for the unauthorized discharge of sewage to surface waters on March 10 and April 1, 2006. In order to resolve these matters, you are assessed civil penalties in the amount of \$2,000.00, along with \$200.00 for reimbursement of Department costs, for a total of \$2,200.00.

The Department acknowledges that the payment of these civil penalties by you does not constitute an admission of liability. This payment must be made payable to the Department of Environmental Protection by cashier's check or money order and shall include the OGC File Number and the notation "Ecosystems Management and Restoration Trust Fund." Payment shall be sent to the Department of Environmental Protection, 160 Governmental Center, Pensacola, Florida 32502-5794, within 30 days of your signature.

Mr. Patrick Flynn  
Page 2

Your signature on this letter indicates your acceptance of the Department's offer to resolve these matters on these terms. If you elect to sign this letter, please return it to the Department at the address indicated above. The Department will then countersign the letter and file it with the Clerk of the Department. When the signed letter is filed with the Clerk, the letter shall constitute final agency action of the Department that shall be enforceable pursuant to Sections 120.69 and 403.121, Fla. Stat.

If you do not sign and return this letter to the Department at the District address within 15 days of the receipt of this letter, the Department will assume that you are not interested in settling these matters on the above described terms, and will proceed accordingly. None of your rights or substantial interests are determined by this letter unless you sign it and it is filed with the Department Clerk.

Sincerely,



David P. Morres, P.E.  
Program Administrator  
Water Facilities

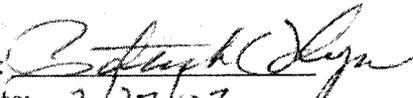
DPM/jg

Encl: Notice of Rights

Warning Ltr. dtd. 09/22/06

**FOR THE RESPONDENT:**

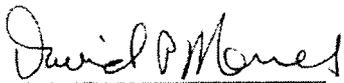
I, Patrick Flynn, on behalf of Bayside Utilities, Inc., **HEREBY ACCEPT THE TERMS OF THE SETTLEMENT OFFER IDENTIFIED ABOVE.**

By:   
Date: 2/27/07

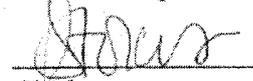
.....  
**FOR DEPARTMENT USE ONLY**

DONE AND ENTERED this 6<sup>th</sup> day of MARCH, 2007.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION

  
David P. Morres, P.E.  
Program Administrator  
Water Facilities

Filed, on this date, under Section 120.52, Fla. Stat., with the designated Department Clerk, receipt of which is hereby acknowledged.

 3/16/07  
Clerk Date

Executed Copies furnished to:  
DEP Office of General Counsel, Clerk (lea.crandall@dep.state.fl.us)  
DEP Panama City Branch Office  
Scotty L. Haws, Regional Compliance & Safety Manager (slhaws@uiwater.com)



Jeb Bush  
Governor

## Department of Environmental Protection

Northwest District  
160 Governmental Center  
Pensacola, Florida 32502-5794

Colleen M. Castille  
Secretary

September 22, 2006

**SENT VIA EMAIL**

p.c.flynn@utilitiesinc-usa.com

Patrick Flynn  
Bayside Utility Services  
200 Weathersfield Avenue  
Altamonte Springs, FL 32714

Mr. Flynn:

The purpose of this Warning Letter (NW DW 03-1539) is to advise you of possible violations of law for which you may be responsible, and to seek your cooperation in resolving these matters. On March 10, 2006, personnel from the Department of Environmental Protection (Department) conducted a site inspection of the pump station located at the intersection of 6301 Big Daddy Drive, and 901 Mariana Drive, in Bay County. On August 23 and 24, 2006, Department personnel conducted a site inspection of an uncapped sewer line at Lot D9 in the Bayside Mobile Home Park, located on Big Daddy Drive, in Bay County. Department records and observations indicate that violation(s) of Florida Statutes (Fla. Stat.) and Florida Administrative Codes (Fla. Admin Code) might exist regarding the following:

On March 10, approximately 500 gallons of raw sewage was overflowing from a manhole on Big Daddy Drive. The flow entered into a ditch and stormdrain that discharges into West Bay.

On April 1, approximately 1000 gallons of raw sewage was overflowing from the same manhole on Big Daddy Drive. The flow entered into a ditch and stormdrain that discharges into West Bay.

On August 23, approximately 1500 gallons of raw sewage was overflowing from an uncapped sewer line at the Bayside Mobile Home Park, located on Big Daddy Drive. The flow entered into a drainage ditch that discharges into West Bay.

Chapter 62-604.130(1), Fla. Admin. Code, prohibits the release or disposal of excreta, sewage, or other wastewaters or residuals without providing proper treatment approved by the Department or otherwise violating provisions of this rule or other rules of the Fla. Admin. Code.

Section 403.088(1), Fla. Stat., states that no person shall discharge wastes into waters of the state without written authorization of the Department.

Section 403.161(1)(a), Fla. Stat., states that it shall be a violation of this chapter, and it shall be prohibited for any person: to cause pollution, except as otherwise provided in this chapter, so as to harm or injure human health or welfare, animal, plant, or aquatic life or property.

Chapter 62-604.130(6), Fla. Admin. Code, states that it is a prohibition to fail to maintain equipment in a condition which will enable the intended function.

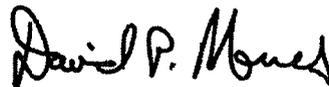
Chapter 62-604.500(3), Fla. Admin. Code, states that all equipment necessary for the collection/transmission of domestic wastewater, including equipment provided pursuant to Rule 62-604.400(2), Fla. Admin. Code, shall be maintained so as to function as intended.

Section 403.161.(1)(b), Fla. Stat., and Chapter 62-4.030, Fla. Admin Code, state that it is a violation to fail to comply with any rule, regulation, order, permit, or certification adopted or issued by the Department pursuant to its lawful authority.

You are requested to contact Erica Mitchell at (850) 595-8300, extension 1186, or via e-mail, at *Erika.Mitchell@dep.state.fl.us* within 15 days of receipt of this Warning Letter to arrange a meeting to discuss these matters. The Department is interested in reviewing any facts you may have that will assist in determining whether any violations have occurred. You may bring anyone with you to the meeting that you feel could help resolve these matters.

Please be advised that this Warning Letter is part of an agency investigation, preliminary to agency action in accordance with Section 120.57(5), Fla. Stat. We look forward to your cooperation in completing the investigation and resolution of these matters.

Sincerely,



David P. Morres, P.E.  
Program Administrator  
Water Facilities

DPM/cr  
cc:

FDEP Panama City Branch Office (marlane.castellano@dep.state.fl.us)  
FDEP Panama City Branch Office (charlotte-ann.filloramo@dep.state.fl.us)

# **BNC 2.12 FL-C**



Jeb Bush  
Governor

Department of  
**Environmental Protection**

RECEIVED

UTILITIES, INC

Southwest District  
13051 North Telecom Parkway  
Temple Terrace, FL 33637-0926  
Telephone: 813-632-7600

Colleen M. Castille  
Secretary

November 28, 2006

CERTIFIED MAIL 7004 0750 0003 0516 8880  
RETURN RECEIPT REQUESTED

Mr. Patrick Flynn, Regional Manager  
Mid-County Services, Inc.  
200 Weathersfield Avenue  
Altamonte Springs, FL 32714

Re: Proposed Settlement of Mid-County Services, Inc.  
OGC File No. 06-1742  
Mid-County WWTF  
Facility ID No. FL0034789  
Pinellas County

Dear Mr. Flynn:

Enclosed is a copy of the executed Consent Order, OGC File No. 06-1742, regarding the above-referenced facility. The effective date of the Consent Order is November 22, 2006.

The payment of \$4,500.00 in penalties and Department costs is due no later than December 9, 2006.

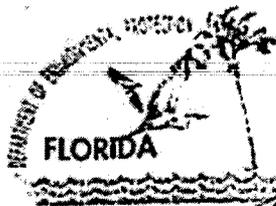
Should you have any questions, please contact Michele Duggan at (813) 632-7600, extension 335, or via e-mail: [michele.duggan@dep.state.fl.us](mailto:michele.duggan@dep.state.fl.us).

Sincerely,

Thomas Gucciardo  
Environmental Manager  
Domestic Wastewater Section

TG/mdd

Enclosure



# Department of Environmental Protection

NOV 14 2006

UTILITIES, INC.

Jeb Bush  
Governor

RECEIVED

NOV 14 2006

Southwest District  
13051 North Telecom Parkway  
Temple Terrace, FL 33637-0926  
Telephone: 813-632-7600

Colleen M. Castille  
Secretary

Department of Environmental Protection  
SOUTH  
Domestic

August 23, 2006

Mr. Patrick Flynn, Regional Manager  
Mid-County Services, Inc.  
200 Weathersfield Avenue  
Altamonte Springs, FL 32714

Dept. of Environmental  
Protection

NOV 13 2006

Re: Proposed Settlement of Mid-County Services, Inc.  
OGC File No. 06-1742  
Mid-County WWTF  
Facility ID No. FL0034789  
Pinellas County

Southwest District

Dear Mr. Flynn:

The purpose of this letter is to complete the resolution of the matter previously identified by the Department in the Warning Letter No. WL05-0011DW52SWD, dated March 29, 2005, a copy of which is attached. The corrective actions required to bring the facility into compliance have been performed. The Department finds that Mid-County Services, Inc. was in violation of the rules and statutes cited in the Warning Letter. In order to resolve the matters identified in the Warning Letter, Mid-County Services, Inc. is assessed civil penalties in the amount of \$4,000.00, along with \$500.00 to reimburse the Department costs, for a total of \$4,500.00.

The civil penalty of \$4,000.00 is for violation of Section 403.161(1)(b), Florida Statutes, and Rules 62-600.400(2)(a) and 62-600.410(6), Florida Administrative Code, in accordance with Section 403.121(4)(b), Florida Statutes.

The Department acknowledges that the payment of these civil penalties by Mid-County Services, Inc. does not constitute an admission of liability. This payment must be made payable to the Department of Environmental Protection by cashier's check or money order and shall include the OGC File Number assigned above and the notation "Ecosystem Management and Restoration Trust Fund". Payment shall be sent to the Department of Environmental Protection, 13051 North Telecom Parkway, Temple Terrace, Florida, 33637-0926, within 30 days of your signing this letter.

Your signing this letter constitutes Mid-County Services, Inc.'s acceptance of the Department's offer to resolve this matter on these terms. If you elect to sign this letter, please return it to the Department at the address indicated above. The Department will then countersign the letter and file it with the Clerk of the Department. When the signed letter is filed with the Clerk, the letter shall constitute final agency action of the Department, which shall be enforceable pursuant to Sections 120.69 and 403.121, Florida Statutes.

If you do not sign and return this letter to the Department at the District address by September 11, 2006, the Department will assume that Mid-County Services, Inc. is not interested in settling this matter on the above described terms, and will proceed accordingly. None of Mid-County Services, Inc.'s rights or substantial interests are determined by this letter unless you sign it and it is filed with the Department Clerk.

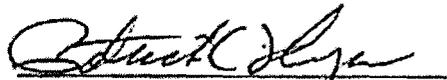
Sincerely,

  
J.M. Farley  
Interim District Director  
Southwest District

FOR THE RESPONDENT:

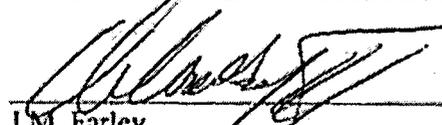
I, Mr. Patrick Flynn, hereby accept the terms of the settlement offer identified above.

11/8/06  
Date

  
Mr. Patrick Flynn, Regional Manager—DIRECTOR  
Mid-County Services, Inc.

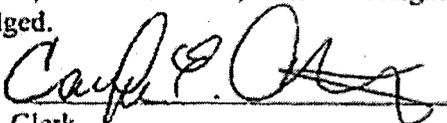
DONE AND ENTERED this 2<sup>nd</sup> day of November, 2006.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION

  
J.M. Farley  
Interim District Director  
Southwest District

Filed, on this date, pursuant to Section 120.52, Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.

11/22/06  
Date

  
Clerk

### NOTICE OF RIGHTS

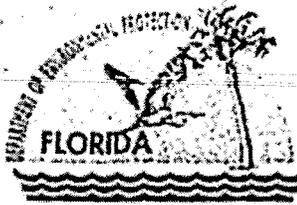
Persons who are not parties to this Consent Order but whose substantial interests are affected by this Consent Order have a right, pursuant to Sections 120.569 and 120.57, Florida Statutes, to petition for an administrative hearing on it. The Petition must contain the information set forth below and must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS-35, Tallahassee, Florida 32399-3000, within 21 days of receipt of this notice. A copy of the Petition must also be mailed at the time of filing to the District Office named above at the address indicated. Failure to file a petition within the 21 days constitutes a waiver of any right such person has to an administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes.

The petition shall contain the following information:

(a) The name, address, and telephone number of each petitioner; the Department's Consent Order identification number and the county in which the subject matter or activity is located; (b) A statement of how and when each petitioner received notice of the Consent Order; (c) A statement of how each petitioner's substantial interests are affected by the Consent Order; (d) A statement of the material facts disputed by petitioner, if any; (e) A statement of facts which petitioner contends warrant reversal or modification of the Consent Order; (f) A statement of which rules or statutes petitioner contends require reversal or modification of the Consent Order; (g) A statement of the relief sought by petitioner, stating precisely the action petitioner wants the Department to take with respect to the Consent Order.

If a petition is filed, the administrative hearing process is designed to formulate agency action. Accordingly, the Department's final action may be different from the position taken by it in this Notice. Persons whose substantial interests will be affected by any decision of the Department with regard to the subject Consent Order have the right to petition to become a party to the proceeding. The petition must conform to the requirements specified above and be filed (received) within 21 days of receipt of this notice in the Office of General Counsel at the above address of the Department. Failure to petition within the allowed time frame constitutes a waiver of any right such person has to request a hearing under Sections 120.569 and 120.57, Florida Statutes, and to participate as a party to this proceeding. Any subsequent intervention will only be at the approval of the presiding officer upon motion filed pursuant to Rule 28-106.205, Florida Administrative Code.

Mediation under Section 120.573, Florida Statutes, is not available in this proceeding.



Jeb Bush  
Governor

# Department of Environmental Protection

FILE COPY

Southwest District  
3804 Coconut Palm Drive  
Tampa, Florida 33619

Colleen M. Castille  
Secretary

March 29, 2005

Mr. Patrick Flynn, Regional Manager  
Mid-County Services, Inc.  
200 Weathersfield Avenue  
Altamonte Springs, FL 32714

Re: Warning Letter No. WL05-0011DWS2SWD  
Mid-County WWTF  
Facility ID No. FL0034789  
Pinellas County

Dear Mr. Flynn:

The purpose of this letter is to advise Mid-County Services, Inc. of possible violations of law for which it may be responsible, and to seek its cooperation in resolving the matter. A file review conducted on March 11, 2005 of Mid-County WWTF indicates that a violation of Florida Statutes and Rules may exist at the facility. Department of Environmental Protection personnel observed the following:

1. The Mid-County WWTF was inspected on June 21, 2004. There was a very noticeable and persistent odor around the Doral Mobile Home Park clubhouse to the east and downwind of the facility. The treatment facility headworks and dumpster appeared to be the source. Although the dumpster was emptied during the inspection, the odor persisted for at least an hour after.
2. Between February 2004 and February 2005, the Pinellas County Environmental Management, Division of Air Quality received 58 complaints of odor from the residents of Doral Mobile Home Park in Palm Harbor. Representatives from the Pinellas County Environmental Management, Division of Air Quality inspected the Mid-County WWTF 20 times between February 2004 and February 2005, in response to continuing odor complaints. Odor was detected during all 20 inspections. From the continued complaints, it appears that current operational controls are not sufficient to control the odors produced.

*"More Protection, Less Process"*

*Printed on recycled paper.*

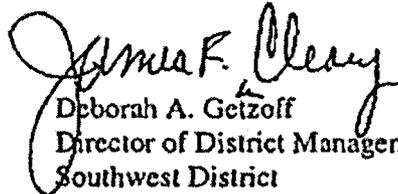
Warning Letter No. WL05-0011DW52SWD  
Mid-County Utilities WWTF  
Page 3 of 3

Any activities at the Mid-County Utilities WWTF that may be contributing to violations of the above-described statutes or rules should be ceased. Operation of a facility in violation of state statutes or rules may result in liability for damages and restoration, and the judicial imposition of civil penalties up to \$10,000.00 per violation per day pursuant to Sections 403.141 and 403.161, Florida Statutes.

You are requested to contact Michele Duggan at the address indicated or telephone number (813) 744-6100, extension 335, within 15 days of receipt of this Warning Letter to arrange a meeting to discuss this matter. The Department is interested in reviewing any facts Mid-County Services, Inc. may have that will assist in determining whether any violations have occurred. You may bring anyone with you to the meeting that you feel could help resolve this matter.

Please be advised that this Warning Letter is part of an agency investigation, preliminary to agency action in accordance with Section 120.57(5), Florida Statutes. We look forward to your cooperation in completing the investigation and resolution of this matter.

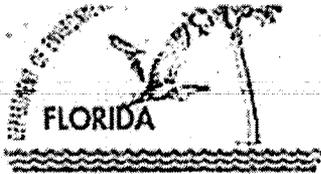
Sincerely yours,

  
Deborah A. Getzoff  
Director of District Management  
Southwest District

DAG/mdd

cc: Shea Jackson, Pinellas County Environmental Management

# **BNC 2.12 FL-D**



# Department of Environmental Protection

MAR 29 2006

UTILITIES, INC

Jeb Bush  
Governor

MAR 29 2006

Southeast District  
400 N. Congress Avenue, Suite 200  
West Palm Beach, Florida 33401

Colleen M. Castille  
Secretary

RECEIVED

MAR 07 2006

DEPT OF ENV PROTECTION  
WEST PALM BEACH

**CERTIFIED MAIL #7001 2510 0006 1575 3203  
RETURN RECEIPT REQUESTED**

Mr. Richard W. Retz *Richard W. Retz*  
Utilities of Florida  
C/O Miles Grant Water and Sewer *C. W. Miles*  
200 Weathersfield Avenue  
Altamonte Springs, FL 32714

Re: Proposed Settlement DEP vs. Miles Grant Water and Sewer  
OGC No.: 06-1249

The purpose of this letter is to complete the resolution of the matter previously identified by the Department in the Warning Letter dated April 18, 2006, a copy of which is attached. The corrective actions required to bring your facility into compliance have been performed. The Department finds that you are in violation of the rules and statutes cited in the attached Warning Letter. In order to resolve the matters identified in the attached Warning Letter, you are assessed civil penalties in the amount of \$250.00, along with \$100.00 to reimburse the Department costs, for a total of \$350.00.

The Department acknowledges that the payment of these civil penalties by you does not constitute an admission of liability. This payment must be made payable to the Department of Environmental Protection by cashier's check or money order and shall include the OGC File Number assigned above and the notation "Ecosystems Management and Restoration Trust Fund". Payment shall be sent to the Department of Environmental Protection, Southeast Florida District, 400 North Congress Avenue, Suite 200, West Palm Beach, Florida 33401, within 30 days of your signing this letter.

Your signing this letter constitutes your acceptance of the Department's offer to resolve this matter on these terms. If you elect to sign this letter, please return it to the Department at the address indicated above. The Department will then countersign the letter and file it with the Clerk of the Department. When the signed letter is filed with the Clerk, the letter shall constitute final agency action of the Department, which shall be enforceable pursuant to Sections 120.69 and 403.121, Florida Statutes.

If you do not sign and return this letter to the Department at the above referenced address within 30 days of receipt, the Department will assume that you are not interested in settling this matter on the above described terms, and will proceed accordingly. None of your rights or substantial interests are determined by this letter unless you sign it and it is filed with the Department Clerk.

Sincerely,

*Kevin R. Neal*

*6/23/06*

Kevin R. Neal  
District Director  
Southeast District Office  
KRN/LAH/TRB/RSJ

Date

cc: Drinking Water Section - DEP/PSL  
Jose Calas - DEP/WPB  
Patrick Flynn - Regional Director, Utilities, Inc. of Florida: 200 Weathersfield Avenue  
Altamonte Springs, FL 32714  
Scotty Haws - Regional Compliance, Utilities, Inc. of Florida: 200 Weathersfield Avenue  
Altamonte Springs, FL 32714

FOR THE RESPONDENT:

I, Richard W. Retz, HEREBY ACCEPT THE TERMS OF THE SETTLEMENT OFFER IDENTIFIED ABOVE.

FOR THE RESPONDENT:

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION

By: *Richard W. Retz* *6/28/06*  
Mr. Richard W. Retz Date  
Regional Manager  
*PATRICK C. FLYNN*  
*REGIONAL DIRECTOR*

for *Kevin R. Neal* *7/14/06*  
Kevin R. Neal Date  
District Director  
Southeast District Office

DONE AND ENTERED this *17<sup>th</sup>* day of *July*, 200*6*, in *Del Rio, TX*,  
Florida.

FILED, on this date, pursuant to §120.52, Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.

*Linda Schoppa*  
Clerk

*7-17-06*  
Date

FLORIDA

# ENVIRONMENTAL PROTECTION

Jeb Bush  
Governor

Southeast District  
400 N. Congress Avenue, Suite 200  
West Palm Beach, Florida 33401

RECEIVED  
Cecilia M. Castille  
Secretary

JUL 07 2006

DEPT OF ENV PROTECTION  
WEST PALM BEACH

APR 18 2005

CERTIFIED MAIL # 7001 2510 0006 1575 3302  
RETURN RECEIPT REQUESTED

Miles Grant Water and Sewer Company  
Patrick Flynn, Regional Director  
200 Weathersfield Ave.  
Altamonte Springs, FL 32714

**WARNING LETTER**

#WL 06-0069PW43SED

PW - Martin County

Miles Grant Public Water System

PWS #4430917

RE: Failure to Timely Submit Lead and Copper Sample Results

Dear Mr. Flynn:

The purpose of this letter is to advise you of violations of law for which you may be responsible, and to seek your cooperation in resolving the matter. Department records indicate the following deficiencies for the referenced Public Water System:

40 CFR 141.90 (a) requires that water systems report lead and copper monitoring results to the Department within the first 10 days following the end of the applicable monitoring period. The lead and copper sampling results for 2005 were due to be submitted to the Department by January 10, 2006; the Department did not receive the required results until March 27, 2006.

Furthermore, Chapters 373 and 403, Florida Statutes (Fla. Stat.), provide that it is a violation to fail to obtain any permit or to violate or fail to comply with any rule, regulation, order, permit, or certification adopted or issued by the Department pursuant to its lawful authority. Any activities at your facility that may be contributing to violations of the above-described statutes or rules should be ceased.

Violations of Florida Statutes or administrative rules may result in liability for damages and restoration, and the judicial imposition of civil penalties up to \$5,000.00 per violation per day, pursuant to Sections 403.121, 403.161 and 403.860, Florida Statutes.

You are requested to contact Ms. Robyn James at (561) 681-6737 within 15 days of receipt of this Warning Letter to arrange a meeting to discuss this matter. The Department is interested in receiving any facts you may have that will assist in determining whether any violations have occurred. You may bring anyone with you to the meeting that you feel could help resolve this matter.

Please be advised that this Warning Letter is part of an agency investigation, preliminary to agency action in accordance with Section 120.57(5), Florida Statutes. We look forward to your cooperation in completing the investigation and resolution of this matter.

Sincerely,

Kevin R. Neal      4/12/06  
Kevin R. Neal      Date  
District Director  
Southeast District

① ABQ  
KRN/LAH/TRB/RJ/crl

cc: Charles LeGros, Drinking Water Compliance Section, DEP/PSL

# **BNC 2.12 FL-E**



Department of Environmental Protection

ORIG: PF  
CC JH, RE, SA

Response DE  
5-20-06

Jeb Bush  
Governor

Southeast District  
400 N. Congress Avenue, Suite 200  
West Palm Beach, Florida 33401

Colleen M. Castille  
Secretary

APR 18 2006

**COPY**

*Get  
attest request!*

CERTIFIED MAIL #7005 2570 0001 9601 9369  
RETURN RECEIPT REQUESTED

Mr. Patrick Flynn, Regional Director  
Miles Grant Water and Sewer Company  
200 Weathersfield Avenue  
Altamonte Springs, FL 32714

Re: Proposed Settlement of DEP vs. Miles Grant Water and Sewer Company  
OGC File Number 06-0302

Dear Mr. Flynn:

The purpose of this letter is to complete the resolution of the failure to monitor for haloacetic acids for the referenced public water system in the fourth calendar quarter of 2005. The Department finds that you are in violation of Rule 62-550.514, Florida Administration Code and 40 CFR 141.132(b), subpart L, which states that a system must perform increased quarterly monitoring following a monitoring period in which the system exceeds 0.060 milligrams per liter for haloacetic acids. In order to resolve this matter, you are assessed civil penalties in the amount of \$500.00, along with \$100.00 to reimburse the Department costs, for a total of \$600.00.

The Department acknowledges that the payment of these civil penalties by you does not constitute an admission of liability. This payment must be made payable to the Department of Environmental Protection by cashier's check or money order and shall include the OGC File Number assigned above and the notation 'Ecosystems Management and Restoration Trust Fund'. Payment shall be sent to the Department of Environmental Protection, Southeast Florida District, 400 North Congress Avenue, Suite 200, West Palm Beach, Florida 33401, within 30 days of your signing this letter.

Your signing this letter constitutes your acceptance of the Department's offer to resolve this matter on these terms. If you elect to sign this letter, please return it to the Department at the address indicated above. The Department will then countersign the letter and file it with the Clerk of the Department. When the signed letter is filed with the Clerk, the letter shall constitute final agency action of the Department which shall be enforceable pursuant to Sections 120.69 and 403.121, Florida Statutes.

If you do not sign and return this letter to the Department at the above referenced address within 30 days of receipt, the Department will assume that you are not interested in settling this matter on the above described terms, and will proceed accordingly. None of your rights or substantial interests are determined by this letter unless you sign it and it is filed with the Department Clerk.

Sincerely,

*Kevin R. Neal*      *4/12/06*

Kevin R. Neal      Date  
District Director  
Southeast District Office  
KRN/LAH/TRB/mo

cc: Charles LeGros - DEP/PSL

DEP vs. Miles Grant Water and Sewer Company  
File No. OGC 06-0302  
Page 2 of 3

**FOR THE RESPONDENT:**

I, Patrick Flynn, on behalf of Miles Grant Water and Sewer Company, **HEREBY ACCEPT THE TERMS OF THE SETTLEMENT OFFER IDENTIFIED ABOVE.**

**FOR THE RESPONDENT:**

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION

By:   
Patrick Flynn Date 5/2/06

\_\_\_\_\_  
Kevin R. Noal Date  
District Director  
Southeast District

DONE AND ENTERED this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_, in West Palm Beach, Florida.

FILED, on this date, pursuant to §120.52, Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.

\_\_\_\_\_  
Clerk

\_\_\_\_\_  
Date

# **BNC 2.12 FL-F**



# Department of Environmental Protection

PF  
CC: MW

Job Bush  
Governor

Southeast District  
400 N. Congress Avenue, Suite 200  
West Palm Beach, Florida 33401

Colleen M. Castillo  
Secretary

RECEIVED

JUN 11 2004

CERTIFIED MAIL # 7001 2510 0006 1575 1889  
RETURN RECEIPT REQUESTED

JUN 14 2004

UTILITIES, INC.

Mr. Patrick Flynn, Regional Director  
Miles Grant Water and Sewer  
200 Weathersfield Avenue  
Altamonte Springs, Florida 32714

SUBJECT: Proposed Settlement of DEP vs. Miles Grant Water and Sewer.  
OGC File No.: 04-0892

Dear Mr. Flynn:

The purpose of this letter is to complete the resolution of the matter previously identified by the Department in the Warning Letter dated April 28, 2004, a copy of which is attached. The corrective actions required to bring your facility into compliance have been performed. The Department finds that you are in violation of the rules and statutes cited in the attached Warning Letter. In order to resolve the matters identified in the attached Warning Letter, you are assessed civil penalties in the amount of \$500.00, along with \$100.00 to reimburse the Department costs, for a total of \$600.00.

The Department acknowledges that the payment of these civil penalties by you does not constitute an admission of liability. This payment must be made payable to the Department of Environmental Protection by cashier's check or money order and shall include the OGC File Number assigned above and the notation "Ecosystems Management and Restoration Trust Fund". Payment shall be sent to the Department of Environmental Protection, Southeast Florida District, 400 North Congress Avenue, Suite 200, West Palm Beach, Florida 33401, within 30 days of your signing this letter.

Your signing this letter constitutes your acceptance of the Department's offer to resolve this matter on these terms. If you elect to sign this letter, please return it to the Department at the address indicated above. The Department will then countersign the letter and file it with the Clerk of the Department. When the signed letter is filed with the Clerk, the letter shall constitute final agency action of the Department, which shall be enforceable pursuant to Sections 120.69 and 403.121, Florida Statutes.

If you do not sign and return this letter to the Department at the above referenced address within 30 days of receipt, the Department will assume that you are not interested in settling this matter on the above described terms, and will proceed accordingly. None of your rights or substantial interests are determined by this letter unless you sign it and it is filed with the Department Clerk.

Sincerely,

Kevin R. Neal  
District Director  
Southeast District Office

**FOR THE RESPONDENT:**

I, Patrick Flynn, on behalf of Miles Grant Water and Sewer, HEREBY ACCEPT THE TERMS OF THE SETTLEMENT OFFER IDENTIFIED ABOVE.

By: Patrick Flynn  
Patrick Flynn

Date: 6/18/04

.....  
**FOR DEPARTMENT USE ONLY**

DONE AND ENTERED this 9<sup>th</sup> day of July, 2004, in West Palm Beach, Florida.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION

Kevin R. Neal  
Kevin R. Neal  
District Director  
Southeast District Office

**FILING AND ACKNOWLEDGMENT**

FILED, on this date, pursuant to §120.52, Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.

Linda Schappat  
Clerk

7-9-04  
Date

KRN/LAH/TRB/dah

Copies furnished to:

Larry Morgan, Office of General Counsel, DEP/TAL  
Kathy Carter, Agency Clerk, MS #35, DEP/TAL  
David O'Brien, Enforcement Coordinator, Water Facilities, DEP/TAL



# Department of Environmental Protection

Jeb Bush  
Governor

Southwest District  
400 N. Congress Avenue, Suite 200  
West Palm Beach, Florida 33401

Colleen M. Castilla  
Secretary

APR 28 2004

**FILE**

CERTIFIED MAIL # 7001 2510 0006 1575 1926  
RETURN RECEIPT REQUESTED

WARNING LETTER  
WL 04-0086 DW43SED

Mr. Patrick Flynn, Regional Director  
Miles Grant Water and Sewer  
200 Weathersfield Avenue  
Altamonte Springs, Florida 32714

Miles Grant WWTF  
Martin County  
Permit No: FLA013842

**SUBJECT:** Residuals Annual Summary, 2003

Dear Mr. Flynn:

The purpose of this letter is to advise you of possible violations of law for which you may be responsible, and to seek your cooperation in resolving the matter. A review of Department files for the above referenced facility has revealed the Residuals Annual Summary for the year 2003 was not received in a timely manner as required, indicating that a violation of Florida Statutes and Rules may exist at the above described facility.

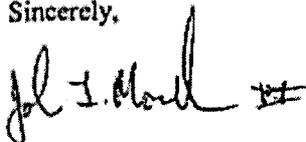
As specified in Rule 62-640.650(3)(b), Florida Administrative Code (F.A.C.), domestic wastewater permittees utilizing land application sites to dispose of their residuals are required to submit to the Department a Residuals Annual Summary no later than February 19 of each year. In particular, this report is required to summarize a permittee's land application activities for the prior calendar year.

You are requested to contact Debora House at (561) 681-6782 within fifteen (15) days of receipt of this Warning Letter to arrange a meeting to discuss this matter. The Department is interested in reviewing any facts you may have that will assist in determining whether any violations have occurred. You may bring anyone with you to the meeting that you feel could help resolve this matter.

Miles Grant WWTF  
Warning Letter # WL 04-0086 DW43SED  
Page 2 of 2

Please be advised that this Warning Letter is part of an agency investigation, preliminary to agency action in accordance with Section 120.57(5), Florida Statutes. We look forward to your cooperation in completing the investigation and resolution of this matter.

Sincerely,



John F. Moulton, III  
Assistant Director of District Management  
Southeast District

JFM/LAH/TRB/dah

cc: Maurice Barker, DEP/TAL  
Brad Akers, Permitting/WPB  
Bill Thiel, DEP/PSL

# **BNC 2.12 FL-G**



Jeb Bush  
Governor

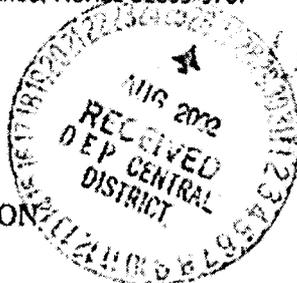
# Department of Environmental Protection

Central District  
3319 Maguire Boulevard, Suite 232  
Orlando, Florida 32803-3767

ORIG: DR  
cc: GC w/o  
SH enc

CERTIFIED MAIL  
7001 2510 0006 9052 0431

SANLANDO UTILITIES CORPORATION  
200 WEATHERSFIELD AVENUE  
ALTAMONTE SPRINGS FL 32714



AUG 19 2002

David B. Struhs  
Secretary

OCD-C-WW-02-0925

ATTENTION DONALD RASMUSSEN  
VICE PRESIDENT

SUBJECT: Proposed Settlement of Wekiva Hunt Club WWTF  
OGC File No.: 02-1204

Dear Mr. Rasmussen:

The purpose of this letter is to complete the resolution of the matter previously identified by the Department in the Warning Letter dated April 2, 2002, a copy of which is attached. The corrective actions required to bring your facility into compliance have been performed. The Department finds that you are in violation of the rules and statutes cited in the attached Warning Letter. In order to resolve the matters identified in the attached Warning Letter, you are assessed civil penalties in the amount of \$4,400.00, along with \$ 250.00 to reimburse the Department costs, for a total of \$4,650.00.

The civil penalties are apportioned as follows: \$1,500.00 for violation of Sections 403.121(3)(b) and 403.161(1)(b), Florida Statutes; \$500.00 for violation of Sections 403.121(4)(e) and 403.161(1)(b), Florida Statutes, and Rule 62-620.610(20), Florida Administrative Code; \$2,400.00 for violation of Sections 403.121(4)(b) and 403.161(1)(b), Florida Statutes, and Rule 62-620.300(5), Florida Administrative Code.

The Department acknowledges that the payment of these civil penalties by you does not constitute an admission of liability. This payment must be made payable to the Department of Environmental Protection by cashier's check or money order and shall include the OGC File Number assigned above and the notation "Ecosystems Management and Restoration Trust Fund." Payment shall be sent to the Department of Environmental Protection, Central District Office, 3319 Maguire Boulevard, Suite 232, Orlando, Florida 32803-3767, within 30 days of your signing this letter.

Your signing this letter constitutes your acceptance of the Department's offer to resolve this matter on these terms. If you elect to sign this letter, please return it to the Department at the address indicated above. The Department will then countersign the letter and file it with the Clerk of the Department. When the signed letter is filed with the Clerk, the letter shall constitute final agency action of the Department which shall be enforceable pursuant to Section 120.69 and 403.121, Florida Statutes.

If you do not sign and return this letter to the Department at the District address by August 30, 2002, the Department will assume that you are not interested in settling this matter on the above described terms, and will proceed accordingly. None of your rights or substantial interests are determined by this letter unless you sign it and it is filed with the Department Clerk.

Sincerely,

  
Christiane C. Fenwick, PE.  
Vivian F. Garfein  
Director of District Management  
Date: 8/16/02

VFG/ga  


**FOR THE RESPONDENT:**

I, Donald Rasmussen, Vice President, on behalf of Sanlando Utilities Corporation, HEREBY ACCEPT THE TERMS OF THE SETTLEMENT OFFER IDENTIFIED ABOVE.

By:   
Date: 8/21/02

**FOR DEPARTMENT USE ONLY**

DONE AND ENTERED this 27<sup>th</sup> day of August, 2002.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION

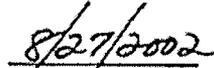
  
Christiane C. Fenwick, PE.  
Vivian F. Garfein  
Director of District Management

Sanlando Utilities Corporation  
OGC File No.: 02-1204  
Page 3

**FILING AND ACKNOWLEDGMENT**

FILED, on this date, pursuant to  
§120.52, Florida Statutes,  
With the designated Department  
Clerk, receipt of which is hereby  
Acknowledged.

  
Clerk

  
Date

VFG: ca

Enclosures

Copies furnished to: Kathy Carter, OGC  
Steven Kelly, Wastewater Enforcement Coordinator

# **BNC 2.12 FL-H**

RECEIVED



Jeb Bush  
Governor

NOV 17 2006

M. Rony François, MD, MSPH, PhD  
Secretary

UTILITIES, INC.

SHORT FORM CONSENT ORDER

NOV 15 2006

UTILITIES, INC.  
November 21, 2006

Patrick Flynn, ~~Vice President~~  
Cypress Lakes Utilities, Inc.  
200 Weathersfield Ave.  
Altamonte Springs, FL. 32714

SUBJECT: Proposed Settlement of Cypress Lakes Utilities, Inc. Water System  
OGC File # 06-653PW5055A.

Dear Water System Owner:

The purpose of this letter is to complete the resolution of the matter previously identified by the Department in the Warning letter dated October 26, 2006, a copy of which is attached. The Department finds that you were in violation of the rules and statutes cited in the warning letter. The corrective actions required to bring your facility into compliance have been performed. In order to resolve the matters identified in the attached Warning Letter, you are assessed civil penalties in the amount of \$700.00, along with \$500.00 to reimburse the Department costs, for a total of \$1200.00.

The Department acknowledges that the payment of these civil penalties by you does not constitute an admission of liability. This payment must be made payable to the Polk County Health Department by cashiers check or money order and should include the OGC File Number assigned above. Payment shall be sent to the Polk County Health Department, 2090 East Clower Street Bartow, Florida, 33830, within of 10 days of your signing this letter.

Your signing this letter constitutes your acceptance of the Department's offer to resolve this matter on these terms. If you elect to sign this letter, please return it to the Department at the address indicated above. The Department will then countersign the letter and file it with the Clerk of the Department. When the signed letter is filed with the Clerk, the letter shall constitute final agency action of the Department which shall be enforceable pursuant to Section 120.69 and 403.121, Florida Statutes.

**POLK COUNTY HEALTH DEPARTMENT**

Daniel O. Haight, MD  
Director

Environmental Engineering Division  
2090 East Clower Street, Bartow, FL 33830-6741  
Phone (863) 519-8330 / SC 515-7365 / Fax (863) 534-0245

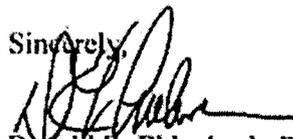
Lynne M. Saddler, MD, MPH  
Assistant Director

printed on recycled paper

OGC # 06-653PW5055A  
PAGE TWO

If you do not sign and return this letter to the Polk County Health Department at 2090 East Clower Street, Bartow, Florida 33830 by December 5, 2006, the Department will assume that you are not interested in settling this matter on the above described terms, and will proceed accordingly. None of your rights or substantial interests are determined by this letter unless you sign it and it is filed with the Department Clerk.

Sincerely,

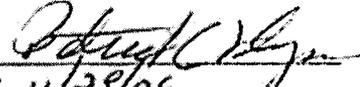


Donald R. Ehlenbeck, P.E.  
Professional Engineering Administrator

OGC # 06-653PW5055A  
PAGE THREE

**FOR THE RESPONDENTS:**

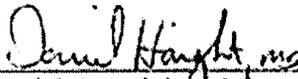
I, Patrick Flynn, on behalf of Cypress Lakes Utilities, Inc.  
HEREBY ACCEPT THE TERMS OF THE SETTLEMENT OFFER IDENTIFIED ABOVE.

By:   
Date: 11/28/06

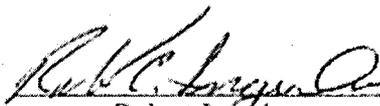
**FOR DEPARTMENT USE ONLY**

DONE AND ENTERED this 13<sup>th</sup> day of December, 2006.

FLORIDA DEPARTMENT OF HEALTH  
POLK COUNTY HEALTH DEPARTMENT

  
Daniel O. Haight, M.D.  
Director  
Polk County Health Department

**FILING AND ACKNOWLEDGEMENT FILED**, on this date, pursuant to  
§120.52 Florida Statutes, With the designated Department Clerk, receipt of which is hereby  
Acknowledged.

 Department Clerk  
Robert Ingrahm

12/13/06  
Date

Copy furnished to:  
Xe: Roland Reis. Legal Council

NOTICE OF RIGHTS

Persons who are not parties to this Consent Order but whose substantial interests are affected by this Consent Order have a right, pursuant to Sections 120.569 and 120.57, Florida Statutes, to petition for an administrative determination hearing on it. The Petition must contain the information set forth below, and must be filed (received) at the Department of Environmental Protection's Office of General Counsel, 3900 Commonwealth Boulevard, MS-35, Tallahassee, Florida, 32399-3000, within twenty-one (21) days of receipt of this notice. A copy of the Petition must also be mailed at the time of filing to the District Office above at the address indicated. Failure to file a petition with the twenty-one (21) days constitutes a waiver of any right such person has to an administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes.

The petition shall contain the following information:

- a) The name, address, and telephone number of each petitioner; the Department's Consent Order identification number and the county in which the subject matter or activity is located;
- b) A statement of how and when each petitioner received notice of the Consent Order;
- c) A statement of how each petitioner's substantial interests are affected by the Consent Order;
- d) A statement of the material facts disputed by petitioner, if any;
- e) A statement of facts which petitioner contends warrant reversal or modification of the Consent Order;
- f) A statement of which rules or statutes petitioner contends require reversal or modification of the Consent Order;
- g) A statement of the relief sought by petitioner, stating precisely the action petitioner wants the Department to take with respect to the Consent Order;

If a petition is filed, the administrative hearing process is designed to formulate agency action. Accordingly, the Department's final action may be different from the position taken by it in this Notice. Persons whose substantial interests will be affected by any decision of the Department with regard to the subject Consent Order have the right to petition to become a party to the proceeding. The petition must conform to the requirements specified above and be filed (received) within 21 days of receipt of this notice in the Office of General Counsel at the above address of the Department. Failure to petition within the allowed time frame constitutes a waiver of any right such person has to request a hearing under Sections 120.569 and 120.57, Florida Statutes, and to participate as a party to this proceeding. Any subsequent intervention will only be at the approval of the presiding officer upon motion filed pursuant to Rule 28-106.205, Florida Administrative Code.

Mediation under Section 120.573, Florida Statutes, is not available in this procedure.



# **BNC 2.12 FL-I**

BEFORE THE STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION,

Complainant,

vs.

SANDY CREEK UTILITY SERVICES, INC.

Respondent.

IN THE OFFICE OF THE  
NORTHWEST DISTRICT

OGC FILE NO. 07-1887-03-DW

CONSENT ORDER

This Consent Order is entered into between the State of Florida Department of Environmental Protection ("Department") and Sandy Creek Utility Services, Inc. ("Respondent") to reach settlement of certain matters at issue between the Department and Respondent.

The Department finds and the Respondent admits the following:

1. The Department is the administrative agency of the State of Florida having the power and duty to protect Florida's air and water resources and to administer and enforce the provisions of Chapter 403, Florida Statutes ("Fla. Stat.") and the rules promulgated thereunder, Title 62, Florida Administrative Code ("Fla. Admin. Code"). The Department has jurisdiction over the matters addressed in this Consent Order.
2. Respondent is a person within the meaning of Section 403.031(5), Fla. Stat.
3. Respondent is the owner and is responsible for the operation of Sandy Creek Ranch, a 0.075 million gallon per day ("MGD") annual average daily flow complete mix stabilization advanced secondary domestic wastewater treatment facility ("Facility") with chlorinated effluent to a slow-rate public access sprayfield land

application to the Sandy Creek Ranch Golf Course. Residuals are aerobically digested. The Facility is located at 2405 County Road 2297, Panama City, Bay County, Florida and approximately at latitude 30° 06' 10" North, longitude 85° 29' 21" West.

4. The Department finds that Respondent operates the Facility under Department Permit No. FLA010019 ("Permit"), which was issued on September 22, 2006 and expires on September 21, 2011.

5. The Respondent submitted an Agricultural Use Plan ("AUP") in 2002 which stated that residuals generated at the Facility would be land applied at an agricultural site known as Gulf County Farms ("GCF"). Rule 62-640.650(3)(b) Fla. Admin. Code requires a permittee using an application site to submit a Residuals Annual Summary ("RAS") to the appropriate District Office of the Department on an annual basis. The RAS shall include the total amounts of residuals, nitrogen, phosphorus, potassium, and heavy metals applied to each application zone.

6. The Department finds that, based on the 2004 and 2005 RAS; the method used for vector attraction reduction is incorporation. A Residuals Site Inspection conducted on August 4, 2005, of GCF, revealed that residuals were being piled on the fields, and were not incorporated within the specified six hour time frame necessary to meet vector attraction reduction requirements.

7. The Department finds that, based on the 2004 and 2005 RAS; Sorghum/Sudan is to be grown on the fields at GCF as a summer crop. The August 4, 2005 inspection of GCF revealed that cover crops were not being sustained on all the fields.

8. The Department finds that, based on the 2004 RAS, residuals generated by the Facility and applied to GCF were not analyzed by a laboratory certified by the Department of Health, under the National Environmental Laboratory Accreditation Program ("NELAP"), for determining metal concentrations in residuals. Respondent's

failure to have the Facility's residuals analyzed as described above constitutes a violation of Rule 62-640.650(1)(h), Fla. Admin. Code, which states that any laboratory tests required by this chapter shall be performed by a laboratory certified by the Department of Health under Chapter 64E-1, Fla. Admin. Code to perform the test.

9. Rule 62-640.700(3)(f), Fla. Admin. Code states that if residuals which are subject to the cumulative loading limitations of Rule 62-640.700(3), Fla. Admin. Code have been applied to an application zone, and the cumulative loading amount of one or more pollutants is not known, no further applications of residuals may be made to that application zone. According to the 2004 RAS, the laboratory contracted by the Respondent for residuals analysis failed to properly analyze and report metals, nitrogen, and fecal coliform. The Department finds that, although the cumulative loading amount was not known for these pollutants, residuals generated by the Facility were applied at GCF throughout 2004 and thus were applied in violation of Rule 62-640.700, Fla. Admin. Code.

Having reached a resolution of the matter the Department and the Respondent mutually agree and it is

**ORDERED:**

10. Within thirty (30) days of the effective date of this Consent Order, Respondent shall pay the Department \$1,225 in settlement of the matters addressed in this Consent Order. This amount includes \$100 for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of this Consent Order. The civil penalties are apportioned as follows: \$375 for violation of Rule 62-640.600(2)(a), Fla. Admin. Code; \$375 for violation of Rule 62-640.750(2), Fla. Admin. Code; and \$375 for violation of Rules 62-640.650(1)(h), and 62-600.740(2)(e), Fla. Admin. Code. Payment shall be made by cashier's check or money order. The instrument shall be made payable to the "Department of Environmental Protection"

and shall include thereon the OGC number assigned to this Consent Order and the notation "Ecosystem Management and Restoration Trust Fund".

11. In the event of a sale or conveyance of the Facility or of the property upon which the Facility is located, if all of the requirements of this Consent Order have not been fully satisfied, Respondent shall, at least 30 days prior to the sale or conveyance of the property or facility, (1) notify the Department of such sale or conveyance, (2) provide the name and address of the purchaser, or operator, or person(s) in control of the facility, and (3) provide a copy of this Consent Order with all attachments to the new owner. The sale or conveyance of the Facility, or the property upon which the Facility is located shall not relieve the Respondent of the obligations imposed in this Consent Order.

12. If any event, including administrative or judicial challenges by third parties unrelated to the Respondent, occurs which causes delay or the reasonable likelihood of delay, in complying with the requirements of this Consent Order, Respondent shall have the burden of proving the delay was or will be caused by circumstances beyond the reasonable control of the Respondent and could not have been or cannot be overcome by Respondent's due diligence. Economic circumstances shall not be considered circumstances beyond the control of Respondent, nor shall the failure of a contractor, subcontractor, materialman or other agent (collectively referred to as "contractor") to whom responsibility for performance is delegated to meet contractually imposed deadlines be a cause beyond the control of Respondent, unless the cause of the contractor's late performance was also beyond the contractor's control. Upon occurrence of an event causing delay, or upon becoming aware of a potential for delay, Respondent shall notify the Department orally within 24 hours or by the next working day and shall, within seven calendar days of oral notification to the Department, notify the Department in writing of the anticipated length and cause of the

delay, the measures taken or to be taken to prevent or minimize the delay and the timetable by which Respondent intends to implement these measures. If the parties can agree that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of Respondent, the time for performance hereunder shall be extended for a period equal to the agreed delay resulting from such circumstances. Such agreement shall adopt all reasonable measures necessary to avoid or minimize delay. Failure of Respondent to comply with the notice requirements of this Paragraph in a timely manner shall constitute a waiver of Respondent's right to request an extension of time for compliance with the requirements of this Consent Order.

13. Persons who are not parties to this Consent Order, but whose substantial interests are affected by this Consent Order, have a right, pursuant to Sections 120.569 and 120.57, Fla. Stat., to petition for an administrative hearing on it. The Petition must contain the information set forth below and must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS# 35, Tallahassee, Florida 32399-3000 within 21 days of receipt of this notice. A copy of the Petition must also be mailed at the time of filing to the District Office named above at the address indicated. Failure to file a petition within the 21 days constitutes a waiver of any right such person has to an administrative hearing pursuant to Sections 120.569 and 120.57, Fla. Stat.

The petition shall contain the following information:

(a) The name, address, and telephone number of each petitioner; the Department's Consent Order identification number and the county in which the subject matter or activity is located; (b) A statement of how and when each petitioner received notice of the Consent Order; (c) A statement of how each petitioner's substantial interests are affected by the Consent Order; (d) A statement of the material facts disputed by petitioner, if any; (e) A statement of facts which petitioner contends warrant reversal or

modification of the Consent Order; (f) A statement of which rules or statutes petitioner contends require reversal or modification of the Consent Order; (g) A statement of the relief sought by petitioner, stating precisely the action petitioner wants the Department to take with respect to the Consent Order.

If a petition is filed, the administrative hearing process is designed to formulate agency action. Accordingly, the Department's final action may be different from the position taken by it in this Notice. Persons whose substantial interests will be affected by any decision of the Department with regard to the subject Consent Order have the right to petition to become a party to the proceeding. The petition must conform to the requirements specified above and be filed (received) within 21 days of receipt of this notice in the Office of General Counsel at the above address of the Department. Failure to petition within the allowed time frame constitutes a waiver of any right such person has to request a hearing under Sections 120.569 and 120.57, Fla. Stat., and to participate as a party to this proceeding. Any subsequent intervention will only be at the approval of the presiding officer upon motion filed pursuant to Rule 28-106.205, Fla. Admin. Code.

A person whose substantial interests are affected by the Consent Order may file a timely petition for an administrative hearing under Sections 120.569 and 120.57, Fla. Stat., or may choose to pursue mediation as an alternative remedy under Section 120.573, Fla. Stat., before the deadline for filing a petition. Choosing mediation will not adversely affect the right to a hearing if mediation does not result in a settlement. The procedures for pursuing mediation are set forth below.

Mediation may only take place if the Department and all the parties to the proceeding agree that mediation is appropriate. A person may pursue mediation by reaching a mediation agreement with all parties to the proceeding (which include the Respondent, the Department, and any person who has filed a timely and sufficient

petition for a hearing) and by showing how the substantial interests of each mediating party are affected by the Consent Order. The agreement must be filed in (received by) the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, MS #35, Tallahassee, Florida 32399-3000, within 10 days after the deadline as set forth above for the filing of a petition.

The agreement to mediate must include the following:

- (a) The names, addresses, and telephone numbers of any persons who may attend the mediation;
- (b) The name, address, and telephone number of the mediator selected by the parties, or a provision for selecting a mediator within a specified time;
- (c) The agreed allocation of the costs and fees associated with the mediation;
- (d) The agreement of the parties on the confidentiality of discussions and documents introduced during mediation;
- (e) The date, time, and place of the first mediation session, or a deadline for holding the first session, if no mediator has yet been chosen;
- (f) The name of each party's representative who shall have authority to settle or recommend settlement; and
- (g) Either an explanation of how the substantial interests of each mediating party will be affected by the action or proposed action addressed in this notice of intent or a statement clearly identifying the petition for hearing that each party has already filed, and incorporating it by reference.
- (h) The signatures of all parties or their authorized representatives.

As provided in Section 120.573, Fla. Stat., the timely agreement of all parties to mediate will toll the time limitations imposed by Sections 120.569 and 120.57, Fla. Stat., for requesting and holding an administrative hearing. Unless otherwise agreed by the parties, the mediation must be concluded within sixty days of the execution of the

agreement. If mediation results in settlement of the administrative dispute, the Department must enter a final order incorporating the agreement of the parties. Persons whose substantial interests will be affected by such a modified final decision of the Department have a right to petition for a hearing only in accordance with the requirements for such petitions set forth above, and must therefore file their petitions within 21 days of receipt of this notice. If mediation terminates without settlement of the dispute, the Department shall notify all parties in writing that the administrative hearing processes under Sections 120.569 and 120.57, Fla. Stat., remain available for disposition of the dispute, and the notice will specify the deadlines that then will apply for challenging the agency action and electing remedies under those two statutes.

14. Respondent shall allow all authorized representatives of the Department access to the property and facility at reasonable times for the purpose of determining compliance with the terms of this Consent Order and the rules and statutes of the Department.

15. All submittals and payments required by this Consent Order to be submitted to the Department shall be sent to the Florida Department of Environmental Protection, 160 Governmental Center, Pensacola, Florida 32502-5794.

16. This Consent Order is a settlement of the Department's civil and administrative authority arising under Florida law to resolve the matters addressed herein. This Consent Order is not a settlement of any criminal liabilities which may arise under Florida law, nor is it a settlement of any violation which may be prosecuted criminally or civilly under federal law.

17. The Department hereby expressly reserves the right to initiate appropriate legal action to prevent or prohibit any violations of applicable statutes, or the rules promulgated thereunder that are not specifically addressed by the terms of this Consent

Order, including but not limited to undisclosed releases, contamination or polluting conditions.

18. The terms and conditions set forth in this Consent Order may be enforced in a court of competent jurisdiction pursuant to Sections 120.69 and 403.121, Fla. Stat. Failure to comply with the terms of this Consent Order shall constitute a violation of Section 403.161(1)(b), Fla. Stat.

19. Respondent is fully aware that a violation of the terms of this Consent Order may subject Respondent to judicial imposition of damages, civil penalties up to \$10,000.00 per day per violation, and criminal penalties.

20. Entry of this Consent Order does not relieve Respondent of the need to comply with applicable federal, state or local laws, regulations or ordinances.

21. No modifications of the terms of this Consent Order shall be effective until reduced to writing and executed by both Respondent and the Department.

22. Respondent acknowledges and waives its right to an administrative hearing pursuant to Sections 120.569 and 120.57, Fla. Stat., on the terms of this Consent Order. Respondent acknowledges its right to appeal the terms of this Consent Order pursuant to Section 120.68, Fla. Stat., and waives that right upon signing this Consent Order.

23. This Consent Order is a final order of the Department pursuant to Section 120.52(7), Fla. Stat., and it is final and effective on the date filed with the Clerk of the Department unless a Petition for Administrative Hearing is filed in accordance with Chapter 120, Fla. Stat. Upon the timely filing of a petition this Consent Order will not be effective until further order of the Department.

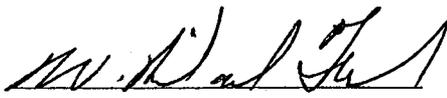
FOR THE RESPONDENT:

1/10/08  
DATE

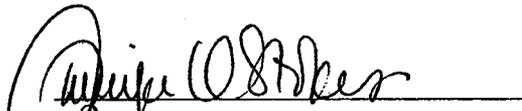
  
~~Donald Rasmussen~~ **PATRICK C. FLYNN**  
~~Vice President~~ **REGIONAL DIRECTOR**  
Sandy Creek Utility Services, Inc.

DONE AND ORDERED this 22nd day of January, 2008  
in PENSACOLA, Florida.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION

  
W. Richard Fancher  
District Director

Filed, on this date, pursuant to Section 120.52, Fla. Stat., with the designated  
Department Clerk, receipt of which is hereby acknowledged.

  
Clerk

January 22, 2008  
Date

Copies furnished to:

Lea Crandall, Agency Clerk (lea.crandall@dep.state.fl.us)

# **BNC 2.12 FL-J**



level ("MCL") for total trihalomethanes ("TTHMs") as 0.080 milligrams per liter ("mg/L") and the five haloacetic acids ("HAA5s") as 0.060 mg/L. The running annual average results for samples collected from the system during the 2<sup>nd</sup> Quarter 2005 through the 1<sup>st</sup> Quarter 2006 and analyzed for TTHMs and HAA5s are 0.105 mg/L and 0.078 mg/L, respectively.

Having reached a resolution of the matter the Department and the Respondent mutually agree and it is

**ORDERED:**

5. Respondent shall comply with the following corrective actions within the stated time periods:

a. Within 60 days of the effective date of this Consent Order, Respondent shall retain the services of a Florida-registered professional engineer to evaluate the system and submit an application, along with any required application fees, to the Department for a permit to construct any modifications needed to address the MCL violation(s).

b. The Department shall review the application submitted pursuant to paragraph 5a. above. In the event additional information, modifications or specifications are necessary to process the application, the Department shall issue a written request for information ("RFI") to Respondent for such information. Respondent shall accordingly submit the requested information in writing to the Department within 15 days of receipt of the request. Respondent shall provide all information requested in any additional RFIs issued by the Department within 15 days of receipt of each request.

c. Within 180 days of issuance of any required permit(s), Respondent shall complete the modifications approved pursuant to the permit(s) issued in accordance with paragraphs 5a. and 5b. above, and submit to the Department the engineer's certification of

completion of construction, along with all required supporting documentation. Respondent shall receive written Department clearance prior to placing the system modifications into service.

d. Respondent shall continue to sample quarterly for TTHMs and HAA5s in accordance with Rule 62-550.514(2), Fla. Admin. Code. Results shall be submitted to the Department within ten (10) days following the month in which the samples were taken or within 10 days following Respondent's receipt of the results, whichever is sooner. Additionally, quarterly reports shall be submitted to the Department in accordance with Rule 62-550.821(12), Fla. Admin. Code.

e. In the event that the modifications approved by the Department pursuant to paragraphs 5a. and 5b. are determined to be inadequate to resolve the MCL violation(s), the Department will notify the Respondent in writing. Within 30 days of receipt of written notification from the Department that the results of the quarterly sampling indicate that the system modifications have not resolved the violation(s), Respondent shall submit another proposal to address the MCL violation(s). Respondent shall provide all information requested in any RFIs issued by the Department within 15 days of receipt of each request. Within 60 days of the date the Department receives the application pursuant to this paragraph, Respondent shall provide all information necessary to complete the application.

f. Respondent shall continue to issue public notice regarding the MCL violation(s) every 90 days in accordance with Rule 62-560.410(1), Fla. Admin. Code, until the Department determines that the system is in compliance with all MCLs. Respondent shall submit certification of delivery of public notice, using DEP Form 62-555.900(22), to the Department within ten days of issuing each public notice.

6. Within 15 days of the effective date of this Consent Order, Respondent shall pay the Department \$500 in settlement of the matters addressed in this Consent Order. This amount includes \$500 for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of this Consent Order. Payment shall be made by cashier's check or money order. The instrument shall be made payable to the "Department of Environmental Protection" and shall include thereon the OGC number assigned to this Consent Order and the notation "Ecosystem Management and Restoration Trust Fund."

7. Respondent agrees to pay the Department stipulated penalties in the amount of \$100 per day for each and every day Respondent fails to timely comply with any of the requirements of paragraph 5 of this Consent Order. A separate stipulated penalty shall be assessed for each violation of this Consent Order. Within 30 days of written demand from the Department, Respondent shall make payment of the appropriate stipulated penalties to the "Department of Environmental Protection" by cashier's check or money order and shall include the OGC number assigned to this Consent Order and the notation "Ecosystem Management and Restoration Trust Fund." Payment shall be sent to the Department of Environmental Protection, Southwest District Office, 13051 N. Telecom Pkwy, Temple Terrace, FL 33637. The Department may make demands for payment at any time after violations occur. Nothing in this paragraph shall prevent the Department from filing suit to specifically enforce any of the terms of this Consent Order. If the Department is required to file a lawsuit to recover stipulated penalties under this paragraph, the Department will not be foreclosed from seeking civil penalties for violations of this Consent Order in an amount greater than the stipulated penalties due under this paragraph.

8. If any event, including administrative or judicial challenges by third parties unrelated to the Respondent, occurs which causes delay or the reasonable likelihood of delay, in complying with the requirements of this Consent Order, Respondent shall have the burden of proving the delay was or will be caused by circumstances beyond the reasonable control of the Respondent and could not have been or cannot be overcome by Respondent's due diligence. Economic circumstances shall not be considered circumstances beyond the control of Respondent, nor shall the failure of a contractor, subcontractor, materialman or other agent (collectively referred to as "contractor") to whom responsibility for performance is delegated to meet contractually imposed deadlines be a cause beyond the control of Respondent, unless the cause of the contractor's late performance was also beyond the contractor's control. Upon occurrence of an event causing delay, or upon becoming aware of a potential for delay, Respondent shall notify the Department orally within 24 hours or by the next working day and shall, within seven calendar days of oral notification to the Department, notify the Department in writing of the anticipated length and cause of the delay, the measures taken or to be taken to prevent or minimize the delay and the timetable by which Respondent intends to implement these measures. If the parties can agree that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of Respondent, the time for performance hereunder shall be extended for a period equal to the agreed delay resulting from such circumstances. Such agreement shall adopt all reasonable measures necessary to avoid or minimize delay. Failure of Respondent to comply with the notice requirements of this Paragraph in a timely manner shall constitute a waiver of Respondent's right to request an extension of time for compliance with the requirements of this Consent Order.

9. Persons who are not parties to this Consent Order, but whose substantial interests are affected by this Consent Order, have a right, pursuant to Sections 120.569 and 120.57, Florida Statutes, to petition for an administrative hearing on it. The Petition must contain the information set forth below and must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS #35, Tallahassee, Florida 32399-3000, within 21 days of receipt of this notice. A copy of the Petition must also be mailed at the time of filing to the District Office named above at the address indicated. Failure to file a petition within the 21 days constitutes a waiver of any right such person has to an administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes.

10. The petition shall contain the following information:

- a. The name, address, and telephone number of each petitioner; the Department's Consent Order identification number and the county in which the subject matter or activity is located;
- b. A statement of how and when each petitioner received notice of the Consent Order;
- c. A statement of how each petitioner's substantial interests are affected by the Consent Order;
- d. A statement of the material facts disputed by petitioner, if any;
- e. A statement of facts which petitioner contends warrant reversal or modification of the Consent Order;
- f. A statement of which rules or statutes petitioner contends require reversal or modification of the Consent Order;

g. A statement of the relief sought by petitioner, stating precisely the action petitioner wants the Department to take with respect to the Consent Order.

11. If a petition is filed, the administrative hearing process is designed to formulate agency action. Accordingly, the Department's final action may be different from the position taken by it in this Notice. Persons whose substantial interests will be affected by any decision of the Department with regard to the subject Consent Order have the right to petition to become a party to the proceeding. The petition must conform to the requirements specified above and be filed (received) within 21 days of receipt of this notice in the Office of General Counsel at the above address of the Department. Failure to petition within the allowed time frame constitutes a waiver of any right such person has to request a hearing under Sections 120.569 and 120.57, Florida Statutes, and to participate as a party to this proceeding. Any subsequent intervention will only be at the approval of the presiding officer upon motion filed pursuant to Rule 28-106.205, Florida Administrative Code.

12. A person whose substantial interests are affected by the Consent Order may file a timely petition for an administrative hearing under Sections 120.569 and 120.57, Florida Statutes, or may choose to pursue mediation as an alternative remedy under Section 120.573, Florida Statutes, before the deadline for filing a petition. Choosing mediation will not adversely affect the right to a hearing if mediation does not result in a settlement. The procedures for pursuing mediation are set forth below.

13. Mediation may only take place if the Department and all the parties to the proceeding agree that mediation is appropriate. A person may pursue mediation by reaching a mediation agreement with all parties to the proceeding (which include the Respondent, the Department, and any person who has filed a timely and sufficient petition for a hearing) and by

showing how the substantial interests of each mediating party are affected by the Consent Order. The agreement must be filed in (received by) the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, MS #35, Tallahassee, Florida 32399-3000, within 10 days after the deadline as set forth above for the filing of a petition.

14. The agreement to mediate must include the following:

- a. The names, addresses, and telephone numbers of any persons who may attend the mediation;
- b. The name, address, and telephone number of the mediator selected by the parties, or a provision for selecting a mediator within a specified time;
- c. The agreed allocation of the costs and fees associated with the mediation;
- d. The agreement of the parties on the confidentiality of discussions and documents introduced during mediation;
- e. The date, time, and place of the first mediation session, or a deadline for holding the first session, if no mediator has yet been chosen;
- f. The name of each party's representative who shall have authority to settle or recommend settlement;
- g. Either an explanation of how the substantial interests of each mediating party will be affected by the action or proposed action addressed in this notice of intent or a statement clearly identifying the petition for hearing that each party has already filed, and incorporating it by reference; and
- h. The signatures of all parties or their authorized representatives. As provided in Section 120.573, Florida Statutes, the timely agreement of all parties to mediate will toll the time limitations imposed by Sections 120.569 and 120.57, Florida Statutes, for requesting

and holding an administrative hearing. Unless otherwise agreed by the parties, the mediation must be concluded within sixty days of the execution of the agreement. If mediation results in settlement of the administrative dispute, the Department must enter a final order incorporating the agreement of the parties. Persons whose substantial interests will be affected by such a modified final decision of the Department have a right to petition for a hearing only in accordance with the requirements for such petitions set forth above, and must therefore file their petitions within 21 days of receipt of this notice. If mediation terminates without settlement of the dispute, the Department shall notify all parties in writing that the administrative hearing processes under Sections 120.569 and 120.57, Florida Statutes, remain available for disposition of the dispute, and the notice will specify the deadlines that then will apply for challenging the agency action and electing remedies under those two statutes.

15. Entry of this Consent Order does not relieve Respondent of the need to comply with applicable federal, state or local laws, regulations or ordinances.

16. The terms and conditions set forth in this Consent Order may be enforced in a court of competent jurisdiction pursuant to Sections 120.69 and 403.121, Florida Statutes. Failure to comply with the terms of this Consent Order shall constitute a violation of Section 403.859, Florida Statutes.

17. Respondent is fully aware that a violation of the terms of this Consent Order may subject Respondent to judicial imposition of damages, civil penalties up to \$5,000.00 per day per violation, and criminal penalties, except as limited by the provisions of this Consent Order.

18. Respondent shall allow all authorized representatives of the Department access to the facility at reasonable times for the purpose of determining compliance with the terms of this Consent Order and the rules and statutes of the Department.

19. All submittals and payments required by this Consent Order to be submitted to the Department shall be sent to the Florida Department of Environmental Protection, Southwest District Office, 13051 N. Telecom Parkway, Temple Terrace, FL 33637.

20. The Department, for and in consideration of the complete and timely performance by Respondent of the obligations agreed to in this Consent Order, hereby waives its right to seek judicial imposition of damages or civil penalties for alleged violations addressed in this Consent Order.

21. Respondent acknowledges and waives its right to an administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes, on the terms of this Consent Order. Respondent acknowledges its right to appeal the terms of this Consent Order pursuant to Section 120.68, Florida Statutes, and waives that right upon signing this Consent Order.

22. No modifications of the terms of this Consent Order shall be effective until reduced to writing and executed by both Respondent and the Department.

23. In the event of a sale or conveyance of the facility or of the property upon which the facility is located, if all of the requirements of this Consent Order have not been fully satisfied, Respondent shall, at least 30 days prior to the sale or conveyance of the property or facility, (1) notify the Department of such sale or conveyance, (2) provide the name and address of the purchaser, or operator, or person(s) in control of the facility, and (3) provide a copy of this Consent Order with all attachments to the new owner. The sale or conveyance of the facility, or the property upon which the facility is located shall not relieve the Respondent of the obligations imposed in this Consent Order.

24. This Consent Order is a settlement of the Department's civil and administrative authority arising under Florida law to resolve the matters addressed herein. This Consent Order

is not a settlement of any criminal liabilities, which may arise under Florida law, nor is it a settlement of any violation, which may be prosecuted criminally or civilly under federal law.

25. This Consent Order is a final order of the Department pursuant to Section 120.52(7), Florida Statutes, and it is final and effective on the date filed with the Clerk of the Department unless a Petition for Administrative Hearing is filed in accordance with Chapter 120, Florida Statutes. Upon the timely filing of a petition this Consent Order will not be effective until further order of the Department.

6/8/06  
Date

FOR THE RESPONDENT

*Patrick C. Flynn*  
Name  
PATRICK C. FLYNN  
Title REGIONAL DIRECTOR

DONE AND ORDERED this 8th day of JUNE, 2006, in

Altamonte Springs, Florida.

JACQUELINE TAPPAN  
NOTARY PUBLIC - STATE OF FLORIDA  
COMMISSION # DD497715  
EXPIRES 12/7/2009  
BONDED THRU 1-888-NOTARY1

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION

*Deborah Getzoff*  
Deborah Getzoff  
District Director  
Southwest District

Filed, on this date, pursuant to Section 120.52, F.S., with the designated Department Clerk, receipt of which is hereby acknowledged.

*Dianne McClain*  
Clerk

July 26, 2006  
Date  
Dept. of Environmental  
Protection

cc: Lea Crandall, Agency Clerk

OGC File No. 06-1040-51-PW  
Page 11 of 11

JUN 12 2006

Southwest District

# **BNC 2.12 FL-K**



(TTHMs) as 0.080 milligrams per liter (mg/L). The average result for samples collected from the System on July 29, 2004, December 7, 2004, March 31, 2005, and June 16, 2005, and analyzed for TTHMs is 0.129 mg/L.

Having reached a resolution of the matter the Department and the Respondent mutually agree and it is

**ORDERED:**

5. Respondent shall comply with the following corrective actions within the stated time periods:

a. Within 60 days of the effective date of this Consent Order, Respondent shall retain the services of a Florida-registered professional engineer to evaluate the System and submit an application, along with any required application fees, to the Department for a permit to construct any modifications needed to address the MCL violation.

b. The Department shall review the application submitted pursuant to paragraph 5.a. above. In the event additional information, modifications or specifications are necessary to process the application, the Department shall issue a written request for information ("RFI") to Respondent for such information. Respondent shall accordingly submit the requested information in writing to the Department within 15 days of receipt of the request. Respondent shall provide all information requested in any additional RFIs issued by the Department within 15 days of receipt of each request. Within 60 days of the date the Department receives the application pursuant to paragraph 5.a. above, Respondent shall provide all information necessary to complete the application.

c. Within 180 days of issuance of any required permit(s), Respondent shall complete the modifications approved pursuant to the permit(s) issued in accordance with paragraphs 5.a. and 5.b. above, and submit to the Department the engineer's certification of completion of construction, along with all required supporting documentation. Respondent shall receive written Department clearance prior to placing the System modifications into service.

d. Respondent shall continue to sample quarterly for TTHMs. Results shall be submitted to the Department within ten (10) days of Respondent's receipt of the results.

e. In the event that the modifications approved by the Department pursuant to paragraphs 5.a. and b. are determined to be inadequate to resolve the MCL violation, the Department will notify the Respondent in writing. Within 30 days of receipt of written notification from the Department that the results of the quarterly sampling indicate that the System modifications have not resolved the violation, Respondent shall submit another proposal to address the MCL violation. Respondent shall provide all information requested in any RFIs issued by the Department within 15 days of receipt of each request. Within 60 days of the date the Department receives the application pursuant to this paragraph, Respondent shall provide all information necessary to complete the application.

f. Within two years of the effective date of this Consent Order, Respondent shall complete all corrective actions needed to resolve the MCL violation and submit written certification of completion to the Department for all modifications.

g. Within 90 days of the effective date of this Consent Order, Respondent shall initiate submittal of quarterly status reports to the Department. Respondent shall continue to submit quarterly status reports until the Department determines that the System is in compliance with all MCLs.

h. Respondent shall continue to issue public notice regarding the MCL violation every 90 days in accordance with Rule 62-560.410(1), Fla. Admin. Code, until the Department determines that System is in compliance with all MCLs. Respondent shall submit certification of delivery of public notice, using DEP Form 62-555.900(22), to the Department within ten days of issuing each public notice.

6. Within 30 days of the effective date of this Consent Order, Respondent shall pay the Department \$500.00 in settlement of the matters addressed in this Consent Order. This amount includes \$500.00 for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of this Consent Order. Payment

shall be made by cashier's check or money order. The instrument shall be made payable to the "Department of Environmental Protection" and shall include thereon the OGC number assigned to this Consent Order and the notation "Ecosystem Management and Restoration Trust Fund."

7. Respondent agrees to pay the Department stipulated penalties in the amount of \$100.00 per day for each and every day Respondent fails to timely comply with any of the requirements of paragraphs 5 and 6 of this Consent Order. A separate stipulated penalty shall be assessed for each violation of this Consent Order. Within 30 days of written demand from the Department, Respondent shall make payment of the appropriate stipulated penalties to "The Department of Environmental Protection" by cashier's check or money order and shall include the OGC number assigned to this Consent Order and the notation "Ecosystem Management and Restoration Trust Fund". Payment shall be sent to the Department of Environmental Protection, 400 North Congress Avenue, Suite 200, West Palm Beach, FL 33401. The Department may make demands for payment at any time after violations occur. Nothing in this paragraph shall prevent the Department from filing suit to specifically enforce any of the terms of this Consent Order. Any penalties assessed under this paragraph shall be in addition to the settlement sum agreed to in paragraph 6 of this Consent Order.

8. If any event, including administrative or judicial challenges by third parties unrelated to the Respondent, occurs which causes delay or the reasonable likelihood of delay, in complying with the requirements of this Consent Order, Respondent shall have the burden of proving the delay was or will be caused by circumstances beyond the reasonable control of the Respondent and could not have been or cannot be overcome by Respondent's due diligence. Economic circumstances shall not be considered circumstances beyond the control of Respondent, nor shall the failure of a contractor, subcontractor, materialman or other agent (collectively referred to as "contractor") to whom responsibility for performance is delegated to meet contractually imposed deadlines be a cause beyond the control of Respondent, unless the cause of the contractor's late performance was also beyond the contractor's control. Upon occurrence of an event causing delay, or upon becoming aware of a potential for delay,

Respondent shall notify the Department's Southeast District Office in West Palm Beach orally within 24 hours or by the next working day and shall, within seven calendar days of oral notification to the Department, notify the Department in writing of the anticipated length and cause of the delay, the measures taken or to be taken to prevent or minimize the delay and the timetable by which Respondent intends to implement these measures. If the parties can agree that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of Respondent, the time for performance of one or more of the requirements hereunder shall be extended for a period equal to the agreed delay resulting from such circumstances. Such agreement shall adopt all reasonable measures necessary to avoid or minimize delay. Failure of Respondent to comply with the notice requirements of this Paragraph in a timely manner shall constitute a waiver of Respondent's right to request an extension of time for compliance with the requirements of this Consent Order.

9. Persons who are not parties to this Consent Order, but whose substantial interests are affected by this Consent Order, have a right, pursuant to Sections 120.569 and 120.57, Florida Statutes, to petition for an administrative hearing on it. The Petition must contain the information set forth below and must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS# 35, Tallahassee, Florida 32399-3000 within 21 days of receipt of this notice. A copy of the Petition must also be mailed at the time of filing to the District Office named above at the address indicated. Failure to file a petition within the 21 days constitutes a waiver of any right such person has to an administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes.

10. The petition shall contain the following information:

- a. The name, address, and telephone number of each petitioner; the Department's Consent Order identification number and the county in which the subject matter or activity is located;
- b. A statement of how and when each petitioner received notice of the Consent Order;

c. A statement of how each petitioner's substantial interests are affected by the Consent Order;

d. A statement of the material facts disputed by petitioner, if any;

e. A statement of facts which petitioner contends warrant reversal or modification of the Consent Order;

f. A statement of which rules or statutes petitioner contends require reversal or modification of the Consent Order;

g. A statement of the relief sought by petitioner, stating precisely the action petitioner wants the Department to take with respect to the Consent Order.

11. If a petition is filed, the administrative hearing process is designed to formulate agency action. Accordingly, the Department's final action may be different from the position taken by it in this Notice. Persons whose substantial interests will be affected by any decision of the Department with regard to the subject Consent Order have the right to petition to become a party to the proceeding. The petition must conform to the requirements specified above and be filed (received) within 21 days of receipt of this notice in the Office of General Counsel at the above address of the Department. Failure to petition within the allowed time frame constitutes a waiver of any right such person has to request a hearing under Sections 120.569 and 120.57, Florida Statutes, and to participate as a party to this proceeding. Any subsequent intervention will only be at the approval of the presiding officer upon motion filed pursuant to Rule 28-106.205, Florida Administrative Code.

12. A person whose substantial interests are affected by the Consent Order may file a timely petition for an administrative hearing under Sections 120.569 and 120.57, Florida Statutes, or may choose to pursue mediation as an alternative remedy under Section 120.573, Florida Statutes, before the deadline for filing a petition. Choosing mediation will not adversely affect the right to a hearing if mediation does not result in a settlement. The procedures for pursuing mediation are set forth below.

13. Mediation may only take place if the Department and all the parties to the proceeding agree that mediation is appropriate. A person may pursue mediation by reaching a mediation agreement with all parties to the proceeding (which include the Respondent, the Department, and any person who has filed a timely and sufficient petition for a hearing) and by showing how the substantial interests of each mediating party are affected by the Consent Order. The agreement must be filed in (received by) the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, MS #35, Tallahassee, Florida 32399-3000, within 10 days after the deadline as set forth above for the filing of a petition.

14. The agreement to mediate must include the following:

- a. The names, addresses, and telephone numbers of any persons who may attend the mediation;
- b. The name, address, and telephone number of the mediator selected by the parties, or a provision for selecting a mediator within a specified time;
- c. The agreed allocation of the costs and fees associated with the mediation;
- d. The agreement of the parties on the confidentiality of discussions and documents introduced during mediation;
- e. The date, time, and place of the first mediation session, or a deadline for holding the first session, if no mediator has yet been chosen;
- f. The name of each party's representative who shall have authority to settle or recommend settlement;
- g. Either an explanation of how the substantial interests of each mediating party will be affected by the action or proposed action addressed in this notice of intent or a statement clearly identifying the petition for hearing that each party has already filed, and incorporating it by reference; and
- h. The signatures of all parties or their authorized representatives. As provided in Section 120.573, Florida Statutes, the timely agreement of all parties to mediate will toll the time limitations imposed by Sections 120.569 and 120.57, Florida Statutes, for requesting

and holding an administrative hearing. Unless otherwise agreed by the parties, the mediation must be concluded within sixty days of the execution of the agreement. If mediation results in settlement of the administrative dispute, the Department must enter a final order incorporating the agreement of the parties. Persons whose substantial interests will be affected by such a modified final decision of the Department have a right to petition for a hearing only in accordance with the requirements for such petitions set forth above, and must therefore file their petitions within 21 days of receipt of this notice. If mediation terminates without settlement of the dispute, the Department shall notify all parties in writing that the administrative hearing processes under Sections 120.569 and 120.57, Florida Statutes, remain available for disposition of the dispute, and the notice will specify the deadlines that then will apply for challenging the agency action and electing remedies under those two statutes.

15. Respondent shall allow all authorized representatives of the Department access to the facility at reasonable times for the purpose of determining compliance with the terms of this Consent Order and the rules and statutes of the Department.

16. All submittals and payments required by this Consent Order to be submitted to the Department shall be sent to the Florida Department of Environmental Protection, Southeast District Water Facilities Program, 400 North Congress Avenue, Suite 200, West Palm Beach, Florida, 33401.

17. This Consent Order is a settlement of the Department's civil and administrative authority arising under Florida law to resolve the matters addressed herein. This Consent Order is not a settlement of any criminal liabilities, which may arise under Florida law, nor is it a settlement of any violation which may be prosecuted criminally or civilly under federal law and which Respondent may defend.

18. The Department hereby expressly reserves the right to initiate appropriate legal action to prevent or prohibit any violations arising after the date of this Consent Order of applicable statutes, or the rules promulgated thereunder that are not specifically addressed by the terms of this Consent Order.

19. The terms and conditions set forth in this Consent Order may be enforced in a court of competent jurisdiction pursuant to Sections 120.69 and 403.121, Florida Statutes. Failure to comply with the terms of this Consent Order shall constitute a violation of Section 403.859, Florida Statutes.

20. The Department, for and in consideration of the complete and timely performance by Respondent of the obligations agreed to in this Consent Order, hereby waives its right to seek judicial imposition of damages or civil penalties for alleged violations.

21. Respondent is fully aware that a violation of the terms of this Consent Order may subject Respondent to judicial imposition of damages, civil penalties up to \$5,000.00 per day per violation, and criminal penalties, except as limited by the provisions of this Consent Order.

22. Entry of this Consent Order does not relieve Respondent of the need to comply with applicable federal, state or local laws, regulations or ordinances.

23. No modifications of the terms of this Consent Order shall be effective until reduced to writing and executed by both Respondent and the Department.

24. Respondent acknowledges and waives its right to an administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes, on the terms of this Consent Order. Respondent acknowledges its right to appeal the terms of this Consent Order pursuant to Section 120.68, Florida Statutes, and waives that right upon signing this Consent Order.

25. This Consent Order is a final order of the Department pursuant to Section 120.52(7), Florida Statutes, and it is final and effective on the date filed with the Clerk of the Department unless a Petition for Administrative Hearing is filed in accordance with Chapter 120, Florida Statutes. Upon the timely filing of a petition this Consent Order will not be effective until further order of the Department.

FOR THE RESPONDENT:

Patrick C. Flynn 2/23/06  
Patrick C. Flynn, Regional Director Date  
Miles Grant Water and Sewer Company  
200 Weathersfield Avenue  
Altamonte Springs, FL 37214-4027

DONE AND ORDERED this 20 day of March, 2006, in West Palm Beach, Florida.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION

Kevin R. Neal Secretary  
Kevin R. Neal  
District Director  
Southeast District

FILED, on this date, pursuant to §120.52 Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.

Linda Ischappat  
Clerk

3-29-06  
Date

Copies furnished to:  
Larry Morgan, OGC/Tih  
Charles LeGros, FDEP/PSL

# **BNC 2.12 FL-L**



5. The Department finds that the facility has an on-going problem with odor control at the facility resulting in complaints from the homeowners. Department personnel detected a strong odor at the surge tank during the May 25, 2005 inspection. F.A.C. Rule 62-600.410(8) states that in the event that the treatment facilities or equipment no longer function as intended, are no longer safe in terms of public health and safety, or odor, noise, aerosol drift, or lighting adversely affect the neighboring developed areas at the levels prohibited by Rule 62-600.400(2)(a), F.A.C., corrective action (which may include additional maintenance or modification of the treatment plant) shall be taken by the permittee. Other corrective action may be required to ensure compliance with the rules of the Department.

6. Having reached a resolution of the matter the Department and the Respondent mutually agree and it is

**ORDERED:**

7. Respondent shall comply with the following corrective actions within the stated time periods:

8. Within thirty (30) days after the effective date of this Consent Order, Respondent shall retain the services of a Florida professional engineer for the purpose of:

(a) Studying, recommending, and implementing corrections to the odor control system at the facility. Collection and treatment of gases may be necessary prior to the release of the gases to the environment.

(b) Submit to the Department a schedule of corrections to be made at the facility and a time frame for completions of corrections.

9. In the event of a sale or conveyance of the facility or of the property upon which the facility is located, if all of the requirements of this Consent Order have not been fully satisfied, Respondent shall, at least 30 days prior to the sale or conveyance of the property or facility, (1) notify the Department of such sale or conveyance, (2) provide the name and address of the purchaser, or operator, or person(s) in control of the facility, and (3) provide a copy of this

Consent Order with all attachments to the new owner. The sale or conveyance of the facility, or the property upon which the facility is located shall not relieve the Respondent of the obligations imposed in this Consent Order.

10. Within thirty (30) days of the effective date of this Consent Order, Respondent shall pay the Department \$2500 in settlement of the matters addressed in this Consent Order. This amount includes \$500 for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of this Consent Order. The civil penalty is apportioned as follows: \$2000 for the violation of Florida Administrative Code Rule 62-600.410(8). Payment shall be made by cashier's check or money order. The instrument shall be made payable to the "Department of Environmental Protection" P O Box 2549, Fort Myers, FL 33902-2459 and shall include thereon the OGC number assigned to this Consent Order and the notation "Ecosystem Management and Restoration Trust Fund".

11. In lieu of making cash payment of \$2000 in civil penalties as set forth in paragraph 10, above, Respondent may elect to off-set this amount by implementing a pollution prevention project, which must be approved by the Department. A pollution prevention project must be either a source reduction, waste minimization, or on-site recycling project. If Respondent chooses to implement a pollution prevention project, Respondent shall notify the Department of its election by certified mail within 15 days of the effective date of this Consent Order. Notwithstanding, payment of the remaining \$500 in costs must be paid within 30 days of the effective date of the Consent Order. If Respondent elects to implement a pollution prevention project, then Respondent shall comply with all of the requirements and time frames in Exhibit I.

12. Respondent agrees to pay the Department stipulated penalties in the amount of \$100 per day for each and every day Respondent fails to timely comply with any of the requirements of Paragraphs 7 and 10 of this Consent Order. A separate stipulated penalty shall be assessed for each violation of this Consent Order. Within 30 days of written demand from the Department, Respondent shall make payment of the appropriate stipulated penalties to "The

Department of Environmental Protection" by cashier's check or money order and shall include thereon the OGC number assigned to this Consent Order and the notation "Ecosystem Management and Restoration Trust Fund." Payment shall be sent to the Department of Environmental Protection, P.O. Box 2549, Fort Myers, FL 33902-2549. The Department may make demands for payment at any time after violations occur. Nothing in this Paragraph shall prevent the Department from filing suit to specifically enforce any terms of this Consent Order. Any penalties assessed under this Paragraph shall be in addition to the settlement sum agreed to in Paragraph 10 of this Consent Order. If the Department is required to file a lawsuit to recover stipulated penalties under this Paragraph, the Department will not be foreclosed from seeking civil penalties for violations of this Consent Order in an amount greater than the stipulated penalties due under this Paragraph.

13. If any event, including administrative or judicial challenges by third parties unrelated to the Respondent, occurs which causes delay or the reasonable likelihood of delay, in complying with the requirements of this Consent Order, Respondent shall have the burden of proving the delay was or will be caused by circumstances beyond the reasonable control of the Respondent and could not have been or cannot be overcome by Respondent's due diligence. Economic circumstances shall not be considered circumstances beyond the control of Respondent, nor shall the failure of a contractor, subcontractor, materialman or other agent (collectively referred to as "contractor") to whom responsibility for performance is delegated to meet contractually imposed deadlines be a cause beyond the control of Respondent, unless the cause of the contractor's late performance was also beyond the contractor's control. Upon occurrence of an event causing delay, or upon becoming aware of a potential for delay, Respondent shall notify the Department orally within 24 hours or by the next working day and shall, within seven calendar days of oral notification to the Department, notify the Department in writing of the anticipated length and cause of the delay, the measures taken or to be taken to prevent or minimize the delay and the timetable by which Respondent intends to implement these

measures. If the parties can agree that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of Respondent, the time for performance hereunder shall be extended for a period equal to the agreed delay resulting from such circumstances. Such agreement shall adopt all reasonable measures necessary to avoid or minimize delay. Failure of Respondent to comply with the notice requirements of this Paragraph in a timely manner shall constitute a waiver of Respondent's right to request an extension of time for compliance with the requirements of this Consent Order.

14. Persons who are not parties to this Consent Order, but whose substantial interests are affected by this Consent Order, have a right, pursuant to Sections 120.569 and 120.57, Florida Statutes, to petition for an administrative hearing on it. The Petition must contain the information set forth below and must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS# 35, Tallahassee, Florida 32399-3000 within 21 days of receipt of this notice. A copy of the Petition must also be mailed at the time of filing to the District Office named above at the address indicated. Failure to file a petition within the 21 days constitutes a waiver of any right such person has to an administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes.

The petition shall contain the following information:

- (a) The name, address, and telephone number of each petitioner; the Department's Consent Order identification number and the county in which the subject matter or activity is located;
- (b) A statement of how and when each petitioner received notice of the Consent Order;
- (c) A statement of how each petitioner's substantial interests are affected by the Consent Order;
- (d) A statement of the material facts disputed by petitioner, if any;

(e) A statement of facts which petitioner contends warrant reversal or modification of the Consent Order;

(f) A statement of which rules or statutes petitioner contends require reversal or modification of the Consent Order;

(g) A statement of the relief sought by petitioner, stating precisely the action petitioner wants the Department to take with respect to the Consent Order.

If a petition is filed, the administrative hearing process is designed to formulate agency action. Accordingly, the Department's final action may be different from the position taken by it in this Notice. Persons whose substantial interests will be affected by any decision of the Department with regard to the subject Consent Order have the right to petition to become a party to the proceeding. The petition must conform to the requirements specified above and be filed (received) within 21 days of receipt of this notice in the Office of General Counsel at the above address of the Department. Failure to petition within the allowed time frame constitutes a waiver of any right such person has to request a hearing under Sections 120.569 and 120.57, Florida Statutes, and to participate as a party to this proceeding. Any subsequent intervention will only be at the approval of the presiding officer upon motion filed pursuant to Rule 28-106.205, Florida Administrative Code.

A person whose substantial interests are affected by the Consent Order may file a timely petition for an administrative hearing under Sections 120.569 and 120.57, Florida Statutes, or may choose to pursue mediation as an alternative remedy under Section 120.573, Florida Statutes, before the deadline for filing a petition. Choosing mediation will not adversely affect the right to a hearing if mediation does not result in a settlement. The procedures for pursuing mediation are set forth below.

Mediation may only take place if the Department and all the parties to the proceeding agree that mediation is appropriate. A person may pursue mediation by reaching a mediation agreement with all parties to the proceeding (which include the Respondent, the Department,

and any person who has filed a timely and sufficient petition for a hearing) and by showing how the substantial interests of each mediating party are affected by the Consent Order. The agreement must be filed in (received by) the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, MS #35, Tallahassee, Florida 32399-3000, within 10 days after the deadline as set forth above for the filing of a petition.

The agreement to mediate must include the following:

(a) The names, addresses, and telephone numbers of any persons who may attend the mediation;

(b) The name, address, and telephone number of the mediator selected by the parties, or a provision for selecting a mediator within a specified time;

(c) The agreed allocation of the costs and fees associated with the mediation;

(d) The agreement of the parties on the confidentiality of discussions and documents introduced during mediation;

(e) The date, time, and place of the first mediation session, or a deadline for holding the first session, if no mediator has yet been chosen;

(f) The name of each party's representative who shall have authority to settle or recommend settlement; and

(g) Either an explanation of how the substantial interests of each mediating party will be affected by the action or proposed action addressed in this notice of intent or a statement clearly identifying the petition for hearing that each party has already filed, and incorporating it by reference.

(h) The signatures of all parties or their authorized representatives.

As provided in Section 120.573, Florida Statutes, the timely agreement of all parties to mediate will toll the time limitations imposed by Sections 120.569 and 120.57, Florida Statutes, for requesting and holding an administrative hearing. Unless otherwise agreed by the parties, the mediation must be concluded within sixty days of the execution of the agreement. If

mediation results in settlement of the administrative dispute, the Department must enter a final order incorporating the agreement of the parties. Persons whose substantial interests will be affected by such a modified final decision of the Department have a right to petition for a hearing only in accordance with the requirements for such petitions set forth above, and must therefore file their petitions within 21 days of receipt of this notice. If mediation terminates without settlement of the dispute, the Department shall notify all parties in writing that the administrative hearing processes under Sections 120.569 and 120.57, Florida Statutes, remain available for disposition of the dispute, and the notice will specify the deadlines that then will apply for challenging the agency action and electing remedies under those two statutes.

15. Respondent shall allow all authorized representatives of the Department access to the property and facility at reasonable times for the purpose of determining compliance with the terms of this Consent Order and the rules and statutes of the Department.

16. All submittals and payments required by this Consent Order to be submitted to the Department shall be sent to the Florida Department of Environmental Protection, 2295 Victoria Ave, P.O. Box 2549, Fort Myers, FL 33902-2549.

17. This Consent Order is a settlement of the Department's civil and administrative authority arising under Florida law to resolve the matters addressed herein. This Consent Order is not a settlement of any criminal liabilities which may arise under Florida law, nor is it a settlement of any violation which may be prosecuted criminally or civilly under federal law.

18. The Department hereby expressly reserves the right to initiate appropriate legal action to prevent or prohibit any violations of applicable statutes, or the rules promulgated thereunder that are not specifically addressed by the terms of this Consent Order, including but not limited to undisclosed releases, contamination or polluting conditions.

19. The terms and conditions set forth in this Consent Order may be enforced in a court of competent jurisdiction pursuant to Sections 120.69 and 403.121, Florida Statutes. Failure to

comply with the terms of this Consent Order shall constitute a violation of Section 403.161(1)(b), Florida Statutes.

20. Respondent is fully aware that a violation of the terms of this Consent Order may subject Respondent to judicial imposition of damages, civil penalties up to \$10,000.00 per day per violation, and criminal penalties.

21. Entry of this Consent Order does not relieve Respondent of the need to comply with applicable federal, state or local laws, regulations or ordinances.

22. No modifications of the terms of this Consent Order shall be effective until reduced to writing and executed by both Respondent and the Department.

23. Respondent acknowledges and waives its right to an administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes, on the terms of this Consent Order.

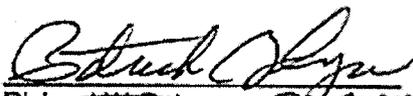
Respondent acknowledges its right to appeal the terms of this Consent Order pursuant to Section 120.68, Florida Statutes, and waives that right upon signing this Consent Order.

THIS SPACE LEFT BLANK INTENTIONALLY.

24. This Consent Order is a final order of the Department pursuant to Section 120.52(7), Florida Statutes, and it is final and effective on the date filed with the Clerk of the Department unless a Petition for Administrative Hearing is filed in accordance with Chapter 120, Florida Statutes. Upon the timely filing of a petition this Consent Order will not be effective until further order of the Department.

FOR THE RESPONDENT:

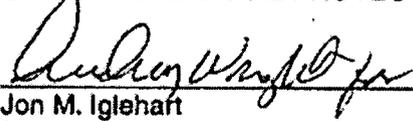
1/30/06  
DATE

  
~~Richard W. Fletz~~ PATRICK C. FLYNN  
Assistant Operations Manager  
REGIONAL DIRECTOR

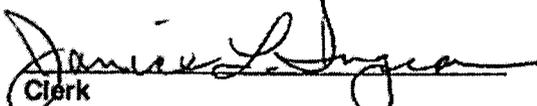
DONE AND ORDERED this 30<sup>th</sup> day of JANUARY, 2006

In Lee County, Florida.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION

  
Jon M. Iglehaft  
Director of  
District Management

FILING AND ACKNOWLEDGEMENT FILED, on this date, pursuant to §120.52 Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.

  
Clerk

2-3-06  
Date

# **BNC 2.12 FL-M**

RECEIVED  
JUN 20 2005  
Central Dist - DEP

BEFORE THE STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION, )  
Complainant, )  
vs. )  
ALAFAYA UTILITIES, INC. )  
FACILITY ID: FLA011074, )  
Respondent. )

IN THE OFFICE OF THE  
CENTRAL DISTRICT

OGC FILE NO. 05-0505

CONSENT ORDER

This Consent Order is entered into between the State of Florida Department of Environmental Protection ("Department") and Alafaya Utilities, Inc. ("Respondent") to reach settlement of certain matters at issue between the Department and Respondent.

The Department finds and the Respondent admits the following:

1. The Department is the administrative agency of the State of Florida having the power and duty to protect Florida's air and water resources and to administer and enforce the provisions of Chapter 403, Florida Statutes, and the rules promulgated thereunder, Title 62, Florida Administrative Code. The Department has jurisdiction over the matters addressed in this Consent Order.
2. Respondent is a person within the meaning of Section 403.031(5), Florida Statutes.
3. Respondent is the owner and is responsible for the operation of the Alafaya Utilities WWTF, a 2.4 MGD Annual Average Daily Flow (AADF) extended aeration wastewater treatment facility ("Facility") with chlorinated effluent to a 1.0 MGD AADF permitted capacity rapid infiltration basin system, a 0.535 MGD AADF permitted capacity slow-rate public access reuse system and a 1.5 million gallon wet weather storage tank. The Facility is located at 1067

McKinnon Avenue, Oviedo, Seminole County, Florida, 32765, Latitude 28° 38' 26" North, Longitude 81° 11' 19" West.

4. The Department finds that the Respondent operates the Facility under Department permit No. FLA011074, which expires on March 16, 2009. The Department finds that on December 16, 2004, Respondent discharged (spilled) raw untreated sewage from a break in the collection/transmission system force main to the Econlockhatchee River, Outstanding Florida Waters.

5. On December 27, 2004, the Department issued a Warning Letter, attached as Exhibit 1, to the Respondent for an unauthorized discharge.

6. On January 27, 2005, a meeting between the Department and the Respondent was held to discuss the issues addressed in the Warning Letter. During the meeting, the Respondent stated that an engineer had been retained to conduct an evaluation of that section of the collection/transmission system associated with the break. In a letter dated February 4, 2005, the Respondent agreed to enter a Consent Order and requested that the penalties be reduced.

7. On February 23, 2005, the Department issued a settlement letter to the Respondent, which revised the penalties. In a letter dated March 8, 2005, the Respondent agreed to the revised penalties.

8. Having reached a resolution of the matter the Department and the Respondent mutually agree and it is

**ORDERED:**

9. Within 120 days after the effective date of this Consent Order, Respondent shall submit an engineering report prepared by a Florida professional engineer, which includes proposed corrective actions to eliminate future breaks in that section of the collection/transmission

system associated with the referenced force main break, to the Department for review and approval.

10. Within 90 days after the approval of the engineering report submitted in accordance with Paragraph 9, above, Respondent shall complete the design and permitting, if required, for all of the modifications needed to implement the corrective action recommended in the engineering report.

In the event that a permit is required to implement the corrective actions: the engineer shall complete an application for a Department wastewater permit to construct the modifications listed in the engineering report, if such a permit is required and submit the application to the Department with the appropriate fee; provide all requested information in writing within thirty (30) days after receipt of such a request in the event the Department requires additional information in order to process the wastewater permit application; oversee the construction of any modifications to the Facility, effluent disposal system, or collection system; submit to the Department an engineer's certification of completion stating that the construction of modifications to the Facility, effluent disposal system, or collection system have been constructed in accordance with the provisions of the wastewater permit within 30 days of completion of construction.

11. Within 240 days of approval of the engineering report or, if necessary, issuance of a wastewater permit to construct modifications, Respondent shall implement the corrective actions recommended in the engineering report referenced in Paragraph 9, above, to attain compliance with the permitted requirements.

12. Within 30 days of completing the implementation of the corrective actions recommended in the engineering report, Respondent shall submit a Notice of Completion of Construction (if a permit was required) or a letter certifying that the corrective actions were implemented as approved by the Department. Upon clearance of the system, if a permit was

required or acknowledgement of the certifying letter, this Consent Order shall be terminated.

13. Every calendar quarter after the effective date of this Consent Order, Respondent shall submit in writing to the Department a report containing information concerning the status and progress of projects being completed under this Consent Order, information as to compliance or noncompliance with the applicable requirements of this Consent Order including construction requirements and effluent limitations, and any reasons for noncompliance. Such reports shall also include a projection of the work to be performed pursuant to this Consent Order during the following quarter. The reports shall be submitted to the Department within thirty (30) days following the end of the quarter.

14. In the event of a sale or conveyance of the Facility or of the property upon which the Facility is located, if all of the requirements of this Consent Order have not been fully satisfied, Respondent shall, at least 30 days prior to the sale or conveyance of the property or Facility, (1) notify the Department of such sale or conveyance, (2) provide the name and address of the purchaser, or operator, or person(s) in control of the Facility, and (3) provide a copy of this Consent Order with all attachments to the new owner. The sale or conveyance of the Facility, or the property upon which the Facility is located shall not relieve the Respondent of the obligations imposed in this Consent Order.

15. Within 30 days of the effective date of this Consent Order, Respondent shall pay the Department \$3,500.00 in settlement of the matters addressed in this Consent Order. This amount includes \$500.00 for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of this Consent Order. The civil penalties are apportioned as follows: \$3,000.00 for the violation of Sections 403.121(3)(b), 403.088(1) and 403.161(1)(b), Florida Statutes (F.S.), and Rule 62-302.500(1), Florida Administrative Code. Payment shall be made by cashier's check or money order. The instrument

shall be made payable to the "Department of Environmental Protection" and shall include thereon the OGC number assigned to this Consent Order and the notation "Ecosystem Management and Restoration Trust Fund".

16. Respondent agrees to pay the Department stipulated penalties in the amount of \$250.00 per day for each and every day Respondent fails to timely comply with any of the requirements of Paragraphs 9, 10, 11, 12, 13 and 15 of this Consent Order. A separate stipulated penalty shall be assessed for each violation of this Consent Order. Within 30 days of written demand from the Department, Respondent shall make payment of the appropriate stipulated penalties to "The Department of Environmental Protection" by cashier's check or money order and shall include thereon the OGC number assigned to this Consent Order and the notation "Ecosystem Management and Restoration Trust Fund". Payment shall be sent to the Department of Environmental Protection, Central District Office, 3319 Maguire Boulevard, Suite 232, Orlando, Florida 32803-3767. The Department may make demands for payment at any time after violations occur. Nothing in this paragraph shall prevent the Department from filing suit to specifically enforce any terms of this Consent Order. Any penalties assessed under this paragraph shall be in addition to the settlement sum agreed to in Paragraph 15 of this Consent Order. If the Department is required to file a lawsuit to recover stipulated penalties under this paragraph, the Department will not be foreclosed from seeking civil penalties for violations of this Consent Order in an amount greater than the stipulated penalties due under this paragraph.

17. Upon the effective date of this Consent Order, Respondent shall pay the Department stipulated penalties for any future unpermitted discharges from that section of the collection/transmission system as referenced in Paragraph 9, above, to State waters that do not qualify as excusable discharges. Respondent shall pay stipulated penalties as follows:

<u>Amount per day per discharge</u>	<u>Discharge Volume</u>
\$500	up to 5,000 gallons
\$1,000	5,001 to 10,000 gallons
\$2,500	10,001 to 25,000 gallons
\$5,000	25,001 to 100,000 gallons
\$10,000	in excess of 100,000 gallons

Each payment shall be received within 30 days of written demand from the Department. Payment shall be made by cashier's check or money order. The instrument shall be made payable to the "Department of Environmental Protection" and shall include thereon the OGC number assigned to this Consent Order and the notation "Ecosystem Management and Restoration Trust Fund". The payment shall be sent to the Department of Environmental Protection, Central District Office, 3319 Maguire Boulevard, Suite 232, Orlando, Florida 32803-3767. The Department may make demands for payment at any time after violations occur. Nothing in this paragraph shall prevent the Department from filing suit to specifically enforce any of the terms of this Consent Order. Any penalties assessed under this paragraph shall be in addition to the settlement sum agreed to in Paragraph 15 of this Consent Order. If the Department is required to file a lawsuit to recover stipulated penalties under this paragraph, the Department will not be foreclosed from seeking civil penalties for violations of this Consent Order in an amount greater than the stipulated penalties due under this paragraph.

For the purposes of this Consent Order, an excusable discharge is a discharge that resulted from a temporary, exceptional incident that was beyond the reasonable control of Respondent. Incidents beyond the reasonable control of Respondent would include:

- a. Exceptional acts of nature, including a 10-year, 24-hour storm event and lightning strikes.

b. Third party actions that could not be reasonably prevented, including vandalism.

18. If any event, including administrative or judicial challenges by third parties unrelated to the Respondent, occurs which causes delay or the reasonable likelihood of delay, in complying with the requirements of this Consent Order, Respondent shall have the burden of proving the delay was or will be caused by circumstances beyond the reasonable control of the Respondent and could not have been or cannot be overcome by Respondent's due diligence. Economic circumstances shall not be considered circumstances beyond the control of Respondent, nor shall the failure of a contractor, subcontractor, materialman or other agent (collectively referred to as "contractor") to whom responsibility for performance is delegated to meet contractually imposed deadlines be a cause beyond the control of Respondent, unless the cause of the contractor's late performance was also beyond the contractor's control. Upon occurrence of an event causing delay, or upon becoming aware of a potential for delay, Respondent shall notify the Department orally within 24 hours or by the next working day and shall, within seven calendar days of oral notification to the Department, notify the Department in writing of the anticipated length and cause of the delay, the measures taken or to be taken to prevent or minimize the delay and the timetable by which Respondent intends to implement these measures. If the parties can agree that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of Respondent, the time for performance hereunder shall be extended for a period equal to the agreed delay resulting from such circumstances. Such agreement shall adopt all reasonable measures necessary to avoid or minimize delay. Failure of Respondent to comply with the notice requirements of this Paragraph in a timely manner shall constitute a waiver of Respondent's right to request an extension of time for compliance with the requirements of this Consent Order.

19. Persons who are not parties to this Consent Order, but whose substantial interests are affected by this Consent Order, have a right, pursuant to Sections 120.569 and 120.57, Florida Statutes, to petition for an administrative hearing on it. The Petition must contain the information set forth below and must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS# 35, Tallahassee, Florida 32399-3000 within 21 days of receipt of this notice. A copy of the Petition must also be mailed at the time of filing to the District Office named above at the address indicated. Failure to file a petition within the 21 days constitutes a waiver of any right such person has to an administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes.

The petition shall contain the following information:

(a) The name, address, and telephone number of each petitioner; the Department's Consent Order identification number and the county in which the subject matter or activity is located; (b) A statement of how and when each petitioner received notice of the Consent Order; (c) A statement of how each petitioner's substantial interests are affected by the Consent Order; (d) A statement of the material facts disputed by petitioner, if any; (e) A statement of facts which petitioner contends warrant reversal or modification of the Consent Order; (f) A statement of which rules or statutes petitioner contends require reversal or modification of the Consent Order; (g) A statement of the relief sought by petitioner, stating precisely the action petitioner wants the Department to take with respect to the Consent Order.

If a petition is filed, the administrative hearing process is designed to formulate agency action. Accordingly, the Department's final action may be different from the position taken by it in this Notice. Persons whose substantial interests will be affected by any decision of the Department with regard to the subject Consent Order have the right to petition to become a party to the proceeding. The petition must conform to the requirements specified above and be filed (received) within 21 days of receipt of this notice in the Office of General Counsel at the above address of the Department. Failure to petition within the allowed time frame constitutes a waiver of any right such person has to request a hearing under Sections 120.569 and 120.57, Florida Statutes, and to participate as a party to this proceeding. Any subsequent intervention will only be at the approval of the presiding officer upon motion filed pursuant to Rule 28-106.205, Florida Administrative Code.

A person whose substantial interests are affected by the Consent Order may file a timely petition for an administrative hearing under Sections 120.569 and 120.57, Florida Statutes, or may choose to pursue mediation as an alternative remedy under Section 120.573, Florida Statutes, before the deadline for filing a petition. Choosing mediation will not adversely affect the right to a hearing if mediation does not result in a settlement. The procedures for pursuing mediation are set forth below.

Mediation may only take place if the Department and all the parties to the proceeding agree that mediation is appropriate. A person may pursue mediation by reaching a mediation agreement with all parties to the proceeding (which include the Respondent, the Department, and any person who has filed a timely and sufficient petition for a hearing) and by showing how the substantial interests of each mediating party are affected by the Consent Order. The agreement must be filed in (received by) the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, MS #35, Tallahassee, Florida 32399-3000, within 10 days after the deadline as set forth above for the filing of a petition.

The agreement to mediate must include the following:

(a) The names, addresses, and telephone numbers of any persons who may attend the mediation;

- (b) The name, address, and telephone number of the mediator selected by the parties, or a provision for selecting a mediator within a specified time;
- (c) The agreed allocation of the costs and fees associated with the mediation;
- (d) The agreement of the parties on the confidentiality of discussions and documents introduced during mediation;
- (e) The date, time, and place of the first mediation session, or a deadline for holding the first session, if no mediator has yet been chosen;
- (f) The name of each party's representative who shall have authority to settle or recommend settlement; and
- (g) Either an explanation of how the substantial interests of each mediating party will be affected by the action or proposed action addressed in this notice of intent or a statement clearly identifying the petition for hearing that each party has already filed, and incorporating it by reference.
- (h) The signatures of all parties or their authorized representatives.

As provided in Section 120.573, Florida Statutes, the timely agreement of all parties to mediate will toll the time limitations imposed by Sections 120.569 and 120.57, Florida Statutes, for requesting and holding an administrative hearing. Unless otherwise agreed by the parties, the mediation must be concluded within sixty days of the execution of the agreement. If mediation results in settlement of the administrative dispute, the Department must enter a final order incorporating the agreement of the parties. Persons whose substantial interests will be affected by such a modified final decision of the Department have a right to petition for a hearing only in accordance with the requirements for such petitions set forth above, and must therefore file their petitions within 21 days of receipt of this notice. If mediation terminates without settlement of the dispute, the Department shall notify all parties in writing that the administrative hearing processes under Sections 120.569 and 120.57, Florida Statutes, remain available for disposition of the dispute, and the notice will specify the deadlines that then will apply for challenging the agency action and electing remedies under those two statutes.

20. Respondent shall allow all authorized representatives of the Department access to the property and facility at reasonable times for the purpose of determining compliance with the terms of this Consent Order and the rules and statutes of the Department.

21. All submittals and payments required by this Consent Order to be submitted to the Department shall be sent to the Florida Department of Environmental Protection, Program Manager, Wastewater Compliance/Enforcement Section, 3319 Maguire Boulevard, Suite 232, Orlando, Florida 32803-3767.

22. This Consent Order is a settlement of the Department's civil and administrative authority arising under Florida law to resolve the matters addressed herein. This Consent Order is not a settlement of any criminal liabilities which may arise under Florida law, nor is it a

settlement of any violation which may be prosecuted criminally or civilly under federal law.

23. The Department hereby expressly reserves the right to initiate appropriate legal action to prevent or prohibit any violations of applicable statutes, or the rules promulgated thereunder that are not specifically addressed by the terms of this Consent Order, including but not limited to undisclosed releases, contamination or polluting conditions.

24. The terms and conditions set forth in this Consent Order may be enforced in a court of competent jurisdiction pursuant to Sections 120.69 and 403.121, Florida Statutes. Failure to comply with the terms of this Consent Order shall constitute a violation of Section 403.161(1)(b), Florida Statutes.

25. Respondent is fully aware that a violation of the terms of this Consent Order may subject Respondent to judicial imposition of damages, civil penalties up to \$10,000.00 per day per violation, and criminal penalties.

26. Entry of this Consent Order does not relieve Respondent of the need to comply with applicable federal, state or local laws, regulations or ordinances.

27. No modifications of the terms of this Consent Order shall be effective until reduced to writing and executed by both Respondent and the Department.

28. Respondent acknowledges and waives its right to an administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes, on the terms of this Consent Order. Respondent acknowledges its right to appeal the terms of this Consent Order pursuant to Section 120.68, Florida Statutes, and waives that right upon signing this Consent Order.

29. This Consent Order is a final order of the Department pursuant to Section 120.52(7), Florida Statutes, and it is final and effective on the date filed with the Clerk of the Department unless a Petition for Administrative Hearing is filed in accordance with Chapter 120,

Florida Statutes. Upon the timely filing of a petition this Consent Order will not be effective until further order of the Department.

FOR THE RESPONDENT:

6/16/05  
DATE

Patrick Flynn  
Patrick Flynn,  
Regional Director  
Alafaya Utilities, Inc.

.....  
FOR DEPARTMENT USE ONLY

DONE AND ORDERED this 22nd day of June, 2005.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION

Christanne C. Fenare, PE.  
Vivian F. Garfein  
Director, Central District

FILING AND ACKNOWLEDGMENT  
FILED, on this date, pursuant  
to §120.52, Florida Statutes,  
with the designated Department  
Clerk, receipt of which is hereby  
acknowledged.

Cherese Bauldin 6/22/05  
Clerk Date

Copies furnished to: Kathy Carter, OGC

# **BNC 2.12 FL-N**

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shall be effective for service rendered on or after the stamped approval date of the revised tariff sheets pursuant to Rule 25-40.475(1), F.A.C. The rates shall not be implemented until we approve the proposed customer notice, and the notice has been received by the customers. The utility shall provide proof of the date notice was given no less than 10 days after the date the notice was given.

If the utility files this reduction in conjunction with a price index or pass-through rate adjustment, separate data shall be filed for the price index and/or pass-through increase or decrease, and for the reduction in the rates due to the amortized rate case expense.

#### OTHER ISSUES

##### A. Show Cause

The utility entered into a contract with the Wildflower Golf & Country Club (Club) on March 13, 1995, to provide reuse to the Club at a rate of zero for 60 months from the date that reuse would be available (September 30, 1995). On November 7, 1997, the utility and Club entered into a contract for reuse modifying the March 13, 1995, contract. The November 7, 1997, contract included an annual fee of \$4,000 (to be paid in \$1,000 increments quarterly), which was intended to cover the increase in cost for testing and operating the reuse system, which was not anticipated in the original contract. We discovered this charge while reviewing the utility's rate filing for this case, and notified the utility that this charge was not included in its tariffs. Subsequently, the utility requested approval of the quarterly reuse rate for the Club and provided a First Revised Tariff No. 16.0 and Original Tariff No. 17.5 reflecting the quarterly reuse rate for the Club of \$1,000.

Section 367.081(1), Florida Statutes, provides that a utility may only charge rates and charges approved by us. Section 367.091(3), Florida Statutes, provides that "each utility's rates, charges, and customer service policies must be contained in a tariff approved by and on file with the Commission." It appears that the utility violated these statutes.

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Schedule E-5 of the utility's rate case filing lists revenues for reuse contract charges of \$4,000. We did not approve a reuse rate for this utility and the utility does not have an approved reuse rate tariff on file. This collection of reuse charges was unauthorized, and thus was an apparent violation of Sections 367.081(1) and 367.091(3), Florida Statutes.

Section 367.161(1), Florida Statutes, authorizes the assessment of a penalty of not more than \$5,000 per day for each offense, if a utility is found to have knowingly refused to comply with, or to have willfully violated any Commission rule, order, or provision of Chapter 367, Florida Statutes.

We find that a show cause proceeding shall not be initiated at this time for several reasons. First, the revenue was properly recorded. Second, once the utility was informed, it promptly submitted a proposed tariff. Finally, we want to encourage reuse. However, the utility is on notice that, pursuant to Sections 367.081(1) and 367.091(3), Florida Statutes, it may only charge rates and charges that we have approved.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Utilities Inc. of Sandalhaven's Petition for Rate Increase is granted in part and denied in part as described herein. It is further

ORDERED that Utilities Inc. of Sandalhaven shall submit revised tariff sheets consistent with the rates approved herein, and that Commission staff shall administratively approve the tariff sheets. It is further

ORDERED that the provisions of this Order, except for the interim rate increase, the rate reduction after the expiration of the four-year amortization period for rate case expense, and the show cause decision are issued as proposed agency action. The provisions which are proposed agency action shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard