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DOCKET NO.: 960576-WS - [Mad Hatter Utility, Inc.]

WITNESS: Direct Testimony of Peter H. Burghardt, Florida Department
of Environmental Protection, Appearing on Behalf of the Florida
Public Service Commission

DATE FILED: April 8, 1997

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DIRECT TESTIMONY OF PETE BURGHARDT

1 |
2 | Q. Please state your name and business address.

3 | A. Peter H. Burghardt, Environmental Specialist II, Florida Department of
4 | Environmental Protection, 3804 Coconut Palm Drive, Tampa, Florida 33619.

5 | Q. Please state a brief description of your educational background and
6 | experience.

7 | A. 1980 - B.A. Biology, University of South Florida at Tampa. 1981 to 1982.
8 | Environmental Consulting under contract with Margrove Systems, Inc. 1982 to
9 | 1990 - State of Florida, Environment Health Specialist - Pasco County Public
10 | Health Unit. 1990 to present, Environmental Specialist at the Florida
11 | Department of Environmental Protection (DEP or Department)

12 | Q. By whom are you presently employed?

13 | A. I am employed by the DEP.

14 | Q. How long have you been employed with the DEP and in what capacity?

15 | A. I have been employed with the DEP as an Environmental Specialist in
16 | Domestic Wastewater Compliance/Enforcement since October 31, 1990.

17 | Q. What are your general responsibilities at the DEP?

18 | A. My responsibilities involve all aspects of Domestic Wastewater
19 | compliance and enforcement activities. Compliance activities include
20 | inspection of wastewater treatment plants to determine compliance levels with
21 | statutes, rules and operating permits, and preparing compliance, noncompliance
22 | and warning letters. Enforcement activities include negotiating and drafting
23 | consent orders as well as the preparation of case reports for the DEP Office
24 | of General Counsel, and ensuring compliance with enforcement documents.

25 | Q. Are you familiar with Mad Hatter Utility, Inc. (Mad Hatter or utility)

1 | in Pasco County?

2 | A. Yes.

3 | Q. Does the utility have current operating or construction permits from the
4 | DEP its Linda Lakes wastewater treatment plant?

5 | A. Yes, the utility has an operating permit for this plant.

6 | Q. Please state the issuance date and the expiration date of the operating
7 | permit.

8 | A. Operating Permit D051-250709 was issued on July 8, 1994, and expires on
9 | September 30, 1999. Under this permit, capacity is limited to 0.020 MGD.

10 | Q. Is the Linda Lakes plant in compliance with its permit?

11 | A. No, because of insufficient chlorine detention time and the disposal
12 | ponds lack the requisite overflow structures.

13 | Q. Please describe deficiencies, recommended corrective action, and whether
14 | the utility is currently complying with any schedules.

15 | A. On January 22, 1997, the Department sent an "intent to issue" permit
16 | revision and modification of conditions to Permit D051-250709. The corrective
17 | actions include increasing chlorine contact chamber capacity, increasing
18 | detention time, and installing emergency overflow structures into the berms
19 | of the effluent disposal ponds. As of this testimony, Mad Hatter has failed
20 | to publish and the permit has not yet issued.

21 | Q. Are the wastewater collection, treatment and disposal facilities
22 | adequate to serve present customers based on permitted capacity?

23 | A. Linda Lakes has approximately 4 thousand GPD of reserve capacity Permit
24 | No. CS51-295723 was issued on November 15, 1996 for 4,050 GPD. This is Mad
25 | Hatter's only wastewater treatment plant. All other waste is currently

1 | treated by agreement by Pasco County utilities.

2 | Q. Approximately how many additional customers could the utility's
3 | treatment facilities and distribution system adequately serve?

4 | A. Optimistically, 15 to 20 homes, depending on size.

5 | Q. Are the treatment and disposal facilities located in accordance with
6 | Rule 62-600.400(2)(c), Florida Administrative Code?

7 | A. Linda Lakes is located as per the rule that was in place when it was
8 | constructed.

9 | Q. Has the DEP required the utility to take any action so far as to
10 | minimize possible adverse effects resulting from odors, noise, aerosol drift
11 | or lighting?

12 | A. Not to date.

13 | Q. Does the utility have certified operators as required by Rule 62-699,
14 | Florida Administrative Code?

15 | A. Yes.

16 | Q. Is the overall maintenance of the treatment, collection and disposal
17 | facilities satisfactory?

18 | A. The overall maintenance of the Linda Lakes treatment facility is
19 | satisfactory, as is the disposal facility, as per the last inspection. It is
20 | unknown whether the collection system is satisfactory, because it has not been
21 | inspected.

22 | Q. Does the facility meet the effluent disposal requirements of Rules 62-
23 | 600 and 62-610, Florida Administrative Code?

24 | A. No. It lacks emergency flow structure in the Rapid Rate Infiltration
25 | Basins (RRIBs).

1 Q. Are the Linda Lakes collection, treatment and disposal facilities in
2 compliance with all the other provisions of Chapter 62, Florida Administrative
3 Code, not previously mentioned?

4 A. Yes.

5 Q. Has Mad Hatter been the subject of any DEP enforcement action which
6 regard to the Linda Lakes wastewater treatment plant within the past two
7 years?

8 A. No.

9 Q. If Mad Hatter applied for another construction permit which was in
10 compliance with all applicable DEP statutes and rules, is there any reason DEP
11 might not issue the permit?

12 A. As long as the utility can provide the Department with reasonable
13 assurance that the facility will be constructed, operated and maintained in
14 accordance with Department rules and regulations, a permit can be obtained.

15 Q. Do you have anything further to add?

16 A. Yes. I understand that this case involves expansion of Mad Hatter's
17 service area. The following comments and observations may be pertinent:

18 Currently Mad Hatter sends all new sewage that was previously treated
19 at the Foxwood and Turtle Lakes Wastewater Treatment Plants to Pasco County
20 utilities for treatment and disposal at the County's Land O'Lakes subregional
21 wastewater treatment plant. The agreement calls for the County to treat up
22 to 0.350 MGD from Mad Hatter.

23 It is our understanding that the County is now treating approximately
24 0.340 MGD from Mad Hatter. A review of the County's billing records is
25 recommended to determine actual usage. However, billing records will not

1 | address future committed flows.

2 | The Linda Lakes wastewater treatment plant is operating at approximately
3 | 0.011 MGD 3 monthly average daily flow (MADF) (routinely). Maximum flow is
4 | 0.020 MGD (Note: 3 MADF's have reached 0.013 MGD within the last two years).
5 | To provide "reasonable assurance", it is unlikely that Mad Hatter will be able
6 | to construct future wastewater treatment plants in the Land O'Lakes area using
7 | disposal ponds (aka RRIBs) due to the high ground water in the area. This is
8 | demonstrated by the fact that area wastewater treatment plants that rely on
9 | RRIBs are either going off line or have already gone off line -- some by
10 | prudent choice, and others through Department enforcement action. These
11 | facilities include: Turtle Lakes, Foxwood, Winter Quarters, and Waters Edge
12 | (which is currently off line through Department- initiated enforcement action
13 | for failed effluent disposal pond systems).

14 | Future pending off line systems include: Paradise Lakes Utility (via
15 | consent order); and Land O'Lakes Village Apartments. Systems with consent
16 | orders under negotiation include: Lake Padgett MV (no Department action has
17 | been taken since Department of Transportation Road Project at U.S. 41 will
18 | result in facility being abandoned. However, the ponds are improperly
19 | maintained).

20 | In light of the above, Mad Hatter will most likely be required to
21 | utilize "Slow Rate" disposal or the very expensive "public access" (Rule
22 | 62.610 Part III) process for the disposal of the treated effluent for any
23 | future wastewater treatment plants constructed in this area.

24 | This will require considerably more property than the use of RRIBs have
25 | in the past.

1 Q. Are you familiar with Pasco County's wastewater systems in the Land
2 O'Lakes/Central South Pasco County area/State Road No. 54 area?

3 A. Yes.

4 Q. What is the name(s) of the wastewater systems?

5 A. Pasco County Land O'Lakes subregional, Wesley Chapel subregional, Trout
6 Creek and the under construction 3.0 MGD Wesley Center subregional.

7 Q. Does Pasco County (County or utility) have current operating or
8 construction permits from the DEP for these wastewater treatment plants?

9 A. Yes.

10 Q. Please state the issuance dates and the expiration dates of the
11 operating or construction permits.

12 A. Land O'Lakes subregional Domestic Operating Permit No. D051-200681 was
13 issued on October 19, 1994, and expired on February 21, 1997. Application No.
14 293860 was received by the Department on August 23, 1996 and is currently
15 being processed. Wesley Center Wastewater Permit D051-271109 to
16 construct/operate was issued on April 3, 1996, and expires on March 1, 2001.
17 Wesley Chapel Permit No. D051-194674 was issued on February 27, 1995, and
18 expires on October 31, 1999. Trout Creek Permit No. D051-277503 was issued
19 on February 12, 1996, and expires on February 13, 2001.

20 Q. Are these plants in compliance with their permits?

21 A. Land O'Lakes is in compliance with its permit. Wesley Chapel and Trout
22 Creek are in compliance with a consent agreement which arose from OGC Case No.
23 95-0978.

24 Q. For Wesley Chapel and Trout Creek, please describe deficiencies.
25 recommended corrective action and whether the County is currently complying

1 | with any schedules.

2 | A. This information is contained in the consent agreement, a copy of which
3 | is attached to my testimony as Exhibit PHB-1. The County is currently
4 | complying with the schedules contained in the consent agreement, except that,
5 | due to circumstances beyond its control, the County has requested, and will
6 | receive, a four-month extension for construction completion of Wesley Center.

7 | Q. Are the wastewater collection, treatment and disposal facilities
8 | adequate to serve present customers based on permitted capacity?

9 | A. Yes.

10 | Q. If so, approximately how many additional customers could the utility's
11 | treatment facilities and distribution system adequately serve?

12 | A. Upon completion in mid-1997 of all current construction, Wesley Center
13 | will have approximately 1.5 MGD of reserve capacity and Land O'Lakes
14 | subregional will have approximately 0.5 MGD reserve capacity. Wesley Chapel
15 | and Trout Creek will go off line. In mid-1997, 2.0 million gallons per day
16 | of unused capacity will be available to Pasco County in this area.

17 | Q. Are the treatment and disposal facilities located in accordance with Rule
18 | 62-600.400(2)(c), Florida Administrative Code?

19 | A. They are located as per the applicable rule in place when they were
20 | constructed.

21 | Q. Has the DEP required the utility to take any action so as to minimize
22 | possible adverse effects, resulting from odors, noise, aerosol drift or
23 | lighting?

24 | A. No.

25 | Q. Does the utility have certified operators as required by Chapter 62-699.

1 Florida Administrative Code?

2 A. Yes.

3 Q. Is the overall maintenance of the treatment, collection and disposal
4 facilities satisfactory?

5 A. Yes.

6 Q. Do the facilities meet the effluent disposal requirements of Rules 62-
7 600 and 62-610, Florida Administrative Code?

8 A. All facilities are in compliance with their permits and/or consent
9 agreements with the Department.

10 Q. Are the collection treatment and disposal facilities in compliance with
11 all the other provisions of Chapter 62, Florida Administrative Code, not
12 previously mentioned?

13 A. Under the draft permit being prepared for Land O'Lakes subregional,
14 modifications to the Groundwater Monitoring Plan (GWMP) are being implemented
15 in conjunction with additional reliability features at the plant, such as the
16 addition of an emergency generator.

17 Q. Has Pasco County been the subject of any DEP enforcement action with
18 regard to these wastewater treatment plant(s) within the past two years?

19 A. Yes, Wesley Chapel & Trout Creek.

20 Q. If yes, please explain the circumstances and indicate if the utility is
21 now in compliance.

22 A. Consent agreement OGC No. 95-0978 has resulted in the County
23 constructing the 3.0 MGD Wesley Center Plant and it is in compliance with this
24 agreement.

25 Q. If Pasco County applied for another construction permit which was in

1 | compliance with all applicable DEP statutes and rules. is there any reason DEP
2 | might not issue the permit?
3 | A. No.
4 | Q. Do you have anything further to add?
5 | A. No.
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BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION,)

Complainant,)

vs.)

PASCO COUNTY, BY AND THROUGH
THE BOARD OF COUNTY
COMMISSIONERS,)

Respondent.)

IN THE OFFICE OF THE
SOUTHWEST DISTRICT

OGC File No. 95-0978

CONSENT AGREEMENT

This Consent Agreement is made and entered into between the State of Florida Department of Environmental Protection ("Department") and Pasco County, by and through The Board of County Commissioners ("Respondent") to reach settlement of certain matters at issue between the Department and Respondent.

The Department finds and the Respondent neither admits nor denies 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, Florida Administrative Code Title 62. The Department has jurisdiction over the matters addressed in this Consent Agreement.

2. Respondent is a person within the meaning of Section

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403.031(5), Florida Statutes. Respondent is a political subdivision of the State of Florida.

3. Respondent is the owner and is responsible for the operation of the Wesley Chapel Wastewater Treatment Plant, a .675 MGD Type I wastewater treatment plant with high level disinfected chlorinated effluent disposal to:

A. 0.100 MGD to "Saddlebrook Corporate Ponds" which consists of 4 Rapid Rate Infiltration Basins ("RRIBs") of approximately 4.5 acres total bottom area,

B. 0.075 MGD to "Oakley Groves" which consists of 20 RRIBs of approximately 23.78 acres total bottom area,

C. 0.250 MGD "Wildcat Groves" 62-610 Part III slow rate reuse site of approximately 170 acres of citrus, there is also a 2.0 million gallon storage tank located on this site,

D. 0.250 MGD "Quail Hollow Golf Course" 62-610 Part III slow rate reuse site of approximately 150 acres of golf course, ("Wesley Chapel"). Wesley Chapel's mechanical plant is located approximately 1 mile west of State Road 581 and 2.5 miles south of State Road 54, Pasco County, Florida, in the area of latitude 27 12' 01", longitude 82 22' 39", in Section 23, Township 26S, Range 19E, ("Wesley Chapel Property").

4. Respondent operates Wesley Chapel under Department Permit No. D051-194674 which was issued February 1, 1995, and expires October 31, 1999.

5. Inspections of Wesley Chapel were conducted on September 23, 1993, October 12 & 13, 1993, November 4, 1993, December 7, 1993, April

27, 1994, May 19, 1994, and October 25, 1994. As a result of these inspections and a review of information on file with the Department, the Department alleges that:

A. The facility's required recording flow meter with totalizer was out of service from February 16, 1993 through November 16, 1993.

B. During the time that the WWTP flow meter was disconnected the Respondent estimated WWTP flows at .175 MGD. At no time did the Respondent take into consideration the flows that the WWTP was receiving through an interconnect from Respondent's Saddlebrook WWTP, even though Saddlebrook WWTP has a recording flow meter with totalizer online to measure flow diversion to Wesley Chapel WWTP.

C. Respondent constructed and placed into use a "temporary blowoff" device (6" discharge pipe with valves) from the Wildcat Groves storage tank through which Respondent then discharged effluent to the storm water ditch system located at the Oakley Groves disposal site. This device has since been removed.

D. Respondent failed to report this unpermitted construction and discharge to the Department. This discharge was subsequently discovered by Department personnel.

E. Respondent placed the Wildcat Groves effluent disposal site into operation prior to the Respondent receiving written authorization from the Department. This occurred even though Respondent was notified by the Department, in writing, that to do so would be a violation of Section 17-610.840, F.A.C. This issue was corrected with the issuance of Permit DO51-194674.

F. Quail Hollow Golf Course effluent disposal system was allegedly

placed into operation May 4, 1994 after receiving written authorization from the Department.

The Department granted this authorization on April 28, 1994, via a modification to Permit No. DC51-205143. On May 10, 1994, Respondent filed a petition for an Administrative Hearing on the permit modification. An inspection of this disposal site's totalizing flow meter on May 19, 1994, revealed that the site had received a total flow of approximately 5,987,000 gallons in seven days. According to Respondent's records the WWTP Monthly Average Daily Flows for April were 225,000 Gallons per day, for a seven day total plant flow of 1.575 million gallons. Therefore, the disposal site had been receiving flow for more than the permitted seven days. This issue was corrected with the issuance of Permit DO51-194674.

G. Ground Water Monitoring Plan reports submitted to the Department demonstrate violations of ground water Maximum Contaminant Levels at the Wildcat Groves and the Oakley Groves disposal sites. This issue was subsequently addressed within the conditions of Permit DO51-194674.

6. Respondent is the owner and is responsible for the operation of the Saddlebrook Resorts Wastewater Treatment Plant, a .200 MGD (AADF) Type II wastewater treatment plant with chlorinated effluent to two lined holding ponds of approximately 42,000 square feet total bottom area with spray irrigation of approximately 90 acres of golf course and landscape area ("Saddlebrook"). Saddlebrook is located 0.5 miles east of State Road 581 on the south side of State Road 54, Pasco County, Florida, in the area of latitude 28 14' 06", longitude 82 20' 09",

in Section 7, Township 26S, Range 20E ("Saddlebrook Property").

7. Respondent operates Saddlebrook under Department Permit No. DO51-244628 which expires March 10, 1997. Respondent has the ability to divert raw wastewater from Saddlebrook to Wesley Chapel through interconnection Permit No. CS51-172832.

8. Respondent is the owner and is responsible for the operation of the Trout Creek Wastewater Treatment Plant, a 0.175 MGD Type II wastewater treatment plant with chlorinated effluent to a 23 acre restricted access spray-field ("Trout Creek"). Trout Creek is located north of the Pasco/Hillsborough County Line and east of State Road 581, Pasco County, Florida, in the area of latitude 28 10' 17", longitude 82 20' 23", in Section 31, Township 26S, Range 20E ("Trout Creek Property").

9. Respondent operates Trout Creek under Department Permit No. DO51-186424 which expires February 13, 1996.

10. Inspections of Trout Creek were conducted on July 22, 1994, September 19, 1994, and October 25, 1994. As a result of these inspections and a review of information on file with the Department, the Department alleges that:

A. On July 22, 1994 the restricted access, effluent disposal sprayfield (slow rate disposal system) was severely ponded. On August 17, 1994, Respondent reported via phone that the berm surrounding the ponded sprayfield had breached at the N.W. side and effluent had discharged off-site. A follow-up letter was received by the Department on August 23, 1994. In this letter it was estimated that approximately 50,000 gallons of effluent was lost with portions of the effluent

reaching the cypress head located to the west of the site. During the September 19, 1994, inspection, Department Personnel observed an ongoing effluent discharge through the N.W. corner of the disposal site into adjacent wetlands. This issue has been resolved by the action taken by the Respondent as described in Paragraph 15.

B. The chlorine residual of the effluent during the September 19, 1994 inspection was 0.0 mg/l. Also the clarifier weir was uneven and the scum baffle was broken.

C. June 1994 MOR records indicate the flow meter was out of service June 7-21, 1994. During the September 19, 1994 inspection the flowmeter recording chart system was malfunctioning.

D. June, July and August 1994 MORs indicate facility MADF is in excess of the .175 MGD permitted capacity. This issue has been resolved by the action taken by the Respondent as described in Paragraph 15.

E. A review of the 1994 MORs to date shows several nitrate violations and occasional failures to perform various required samples on schedule.

F. Additional items observed during the September 19, 1994, inspection include: No RPZ on the onsite well; digester blowers could not be engaged (out of service); block house floor flooded; underdrain alarm sounding; no scale for the in-use gas chlorine cylinder; the integrity of the holding pond liner is in question; the pond is overgrown and needs cleaning; and the chlorine contact chamber contained abundant algae growth.

G. The groundwater monitoring plan reports have contained

continuing exceedences of ground water standards for sodium, chlorides, TDS & specific conductance.

11. On January 5, 1995, Modification to Operating Permit DO51-186424 was issued to Respondent. This modification reduced Trout Creek flows to "0" MGD due to the failure of the effluent disposal system. This action was taken with the understanding that Trout Creek raw influent flows were to be diverted to Wesley Chapel until such time as the effluent transmission line from Trout Creek to Wesley Chapel, Construction Permit DC51-268678, is completed and placed into service. Upon completion of the construction authorized by Construction Permit DC51-268678, Trout Creek shall have 0.175 MGD of treatment capacity.

12. Respondent is the owner and is responsible for the operation of the Pasco Center Wastewater Treatment Plant, a 0.100 MGD Type II wastewater treatment plant with chlorinated effluent to a single lined holding pond of 3 days effluent holding capacity and then to a 10.2 acre spray irrigation site ("Pasco Center"). Pasco Center is located on the east side of McKendree Road, north of Tucker Road and south of State Road 52, Pasco County, Florida, in the area of latitude 28 17' 59", longitude 82 18' 11", in Section 21, Township 25S, Range 20E ("Pasco Center Property").

13. Respondent operates Pasco Center under Department Permit No. DO51-209758 which expires March 31, 1997.

14. On October 6, 1992, Modification to Operation Permit DO51-209758A was issued to Respondent. This modification reduced Pasco Center flows to .040 MGD with provisions to increase Pasco Center's capacity when flows increase to .040 MGD annual average daily flow.

15. As of January 1995, all raw wastewater from the Trout Creek collection systems have been diverted to Wesley Chapel by redirecting the wastewater flows through existing collection/transmission lines.

16. On March 2, 1995, Respondent submitted Permit Application No. CS51-266297 to construct a collection system to send an estimated 44,000 gallons of raw wastewater from the Williamsburg West Subdivision directly to Wesley Chapel.

17. Construction Permit Application No. DC51-257362 was received by the Department September 9, 1994. This application was originally to address expansion of Wesley Chapel. However, on December 1, 1994, Respondent requested that the Department convert this application to address the construction of the 3.0 MGD Type I Wesley Center Subregional WWTP ("Wesley Center") which is intended to eventually replace the following interim WWTP's: Wesley Chapel, Trout Creek, Saddlebrook, and Pasco Center. At this time this permit application is pending the submittal of plans and specifications by the Respondent.

18. On February 20, 1995, Respondent modified a previously issued collection system permit (PCCS-156) for Meadow Pointe Parcel 4A, Unit 2, which has 13,200 gpd of flow assigned to Wesley Chapel. This raw wastewater flow will be treated at Trout Creek along with all existing and future flow from the Meadow Pointe Subdivision upon completion of the construction authorized by Construction Permit DC51-268678. The flow diversion shall continue until Trout Creek is abandoned and flow is diverted to Wesley Center.

Having reached a resolution of the matter pursuant to Florida Administrative Code Rule 62-103.110(3), Department and the Respondent

mutually agree and it is, ORDERED:

19. By October 1, 1995, Respondent shall submit to the Department the information needed to complete wastewater permit application PATS No. 257362, including the preliminary engineering design report, including provisions to comply with the reject water storage and wet weather disposal/storage capacity provisions of Rule 62-610.464, F.A.C. In the event the wastewater permit application is incomplete, within 30 days of receipt of a request for additional information to complete the application, Respondent shall ensure that the information is submitted.

By March 1, 1997, Respondent shall complete the construction as authorized by the wastewater permit. Within 30 days of completion of construction as authorized by the wastewater permit, Respondent shall submit a Notification of Completion of Construction signed and sealed by the project engineer. Upon completion of this construction all wastewater flows from Trout Creek, Wesley Chapel and Saddlebrook will be diverted to Wesley Center. If the Respondent is unable or unwilling to complete the permitted construction as provided in this paragraph, the Department reserves the right to seek other relief to require the Respondent to comply with its rules and permits.

20. By July 1, 1995, in order to consolidate and redirect flows from the area south of State Road 54 to Wesley Center, Respondent shall submit to the Department a collection system permit application and an environmental resource (dredge-and-fill) permit application, if applicable, along with the appropriate fees, to construct a dry line force main from the master pump station at I-75 and State Road 54 to Wesley Center. The application shall be prepared and sealed by a

professional engineer registered in the State of Florida. In the event the application is incomplete, within 30 days of receipt of a request for additional information to complete the application, Respondent shall ensure that the information is submitted. By January 1, 1997, Respondent shall complete the construction as authorized by the collection system permit. Within 30 days of completion of construction, Respondent shall submit the appropriate certification of completion of construction signed and sealed by the project engineer. The collection system shall not be placed into service until the Respondent has obtained a clearance letter from the Department.

21. In the event the Williamsburg West collection system permit application No. CS51-266297 is incomplete, Respondent shall submit to the Department the information needed to complete the application within 30 days of receipt of a request for additional information. By October 1, 1995, Respondent shall complete the construction of the collection system as authorized by the permit and Respondent shall submit a certification of completion of construction signed and sealed by the project engineer.

22. On April 28, 1995, Construction Permit DC51-267128, was issued to modify Wesley Chapel. This modification includes an expansion of the Wesley Chapel Plant's treatment capacity to 0.900 MGD as well as expansion of the filtration system, the installation of flow equalization and expansion of the chlorination system. By January 1, 1996, Respondent shall complete all construction as authorized by the construction permit. Within 30 days of completion of construction of

each phase of construction, as authorized by the construction permit, and prior to placing that phase into operation, Respondent shall submit the appropriate Certification of Completion of Construction signed and sealed by the project engineer. If the Respondent is unable or unwilling to construct modifications to the WWTP's systems, or allows the flows to exceed the WWTP's permitted capacities, as provided for in this paragraph, the Department reserves the right to seek other relief to require the Respondent to comply with its rules and permits.

23. On April 28, 1995, The Department issued Construction Permit DC51-268678, to modify Trout Creek in such a way as to provide for the diversion of all secondary effluent from Trout Creek to the Wesley Chapel Plant's filtration, chlorination and reuse/disposal systems so as to achieve "High-Level Disinfection" prior to reuse/disposal. Respondent shall ensure that the Trout Creek and Wesley Chapel are at all times operating within their permitted treatment limits and that flows do not exceed the completed treatment capacity of each plant. By January 1, 1996, Respondent shall complete all construction as authorized by Construction Permit DC51-268678. Within 30 days of completion of construction and prior to placing the transmission line into operation, Respondent shall submit the appropriate Certification of Completion of Construction signed and sealed by the project engineer. If the Respondent is unable or unwilling to construct modifications to the WWTP's systems, or allows the flows to exceed the WWTP's permitted capacities, the Department reserves the right to seek other relief to require the Respondent to comply with its rules and permits.

24. Upon the Department declaring the Wesley Center Wastewater

Permit Application, PATS No. 257362, complete, the Department will resume processing collection/ transmission construction permit applications for Wesley Chapel, TroutCreek, and Saddlebrook service areas up to a total committed flow of 3.0 MGD. The Department agrees to prioritize the processing of collection system permits for public projects such as schools and hospitals with flow intended to be treated at the above referenced plants. Respondent shall limit the issuance of building permits in each Plants service area such that the estimated total wastewater flows from all previously issued and newly issued building permits, based on Respondents Estimated Residential Units ("ERUs") of 200 gallons per day per unit, does not exceed the actual permitted treatment capacity of each plant. If Respondent can provide the Department with reasonable assurance, in writing, that the issuance of additional new building permits, for any of the above referenced Plants, will not result in the total wastewater flows for that Plant to exceed its actual permitted treatment capacity, the Department shall, within 30 days, provide to Respondent written approval to issue additional building permits. Respondent shall ensure that the above referenced Plants are at all times operating within their permitted limits and that flows do not exceed the completed treatment capacity for each plant.

25. The Department recognizes that during the interim period of this Consent Agreement the Respondent will require extra capacity from the Oakley Groves disposal site. The Department is also aware that until Wesley Center is constructed and operational that unpermitted wet weather discharges may occur from the Oakley Groves site to area surface

waters via storm water discharges off-site. Within 90 days of the execution of this Consent Agreement, Respondent shall begin to monitor and record the daily volume of effluent sent to Oakley Groves, the daily rainfall and the daily volume of any off-site discharges in order to establish the capacity of this disposal site and the volume of any off-site discharges. Within 90 days of the effective date of this Consent Agreement Respondent shall construct and install flow totalizers at the Oakley Grove storm water discharge structures. All data collected under the provisions of this paragraph shall be submitted to the Department no later than the 28th day of the following month. In any event these discharges will not occur after Wesley Center is completed or April 1, 1997, whichever occurs first.

26. It is the intent of this Consent Agreement to require the Respondent to divert flow from Saddlebrook to Wesley Chapel through the existing wastewater collection/ transmission system, Permit No. CS51-172832, and then decommission Saddlebrook. By January 1, 1996, Respondent shall divert all Saddlebrook flows to Wesley Chapel. Upon the permanent diversion of wastewater flows from Saddlebrook to Wesley Chapel, Respondent shall notify the Department, in writing, of the transfer of the 186,081 gallons of committed flows from Saddlebrook to Wesley Chapel.

27. On or before August 18, 1995, Respondent shall submit to the Department a wastewater permit application, along with the appropriate fees, for Trout Creek. The application shall be prepared and sealed by a professional engineer registered in the State of Florida. In the event that the permit application is incomplete, within 30 days of

written request by the Department for additional information necessary to process the application, Respondent shall submit all requested information to the Department. Upon issuance of the wastewater permit, Respondent shall comply with the terms contained in the permit.

28. It is the intent of this Consent Agreement to require the Respondent to divert flow from Pasco Center to Wesley Center and then decommission Pasco Center. Within 30 days of Pasco Center reaching a Three Month Average Daily Flow of .070 MGD, Respondent shall submit a permit application, along with the appropriate permit fee, to the Department to construct a wastewater collection/ transmission system to divert flow from the plant to Wesley Center. The application shall be prepared and sealed by a professional engineer registered in the State of Florida. In the event that the application submitted is incomplete, within 30 days of written request by the Department for additional information necessary to process the application, Respondent shall submit all requested information to the Department. This diversion shall be constructed, certified complete and put into operation on or before Pasco Center flows reach a Three Month Average Daily Flow of .100 MGD.

29. At least 30 days prior to taking each plant off-line; Saddlebrook, Trout Creek, Wesley Chapel and Pasco Center, Respondent shall submit an abandonment plan for each plant to the Department which describes how the Respondent will abandon each plant as well as the monitoring wells and disposal system. Proper abandonment includes, as appropriate, pumping the plant dry, disinfection of the plant's components, disconnecting the force mains, disconnecting the electrical

systems, ensuring that water does not collect in the plant, removal of the plant, removing the drain plugs or installing permanent drains which will ensure that water does not collect in the plant, removing and properly disposing of any accumulated sludge and debris in the disposal system and scarifying the bottoms, and abandoning the monitoring wells according to the requirements of the Water Management District. Once the abandonment plan is approved by the Department, the Respondent shall implement the abandonment plan. The abandonment shall be completed no later than 60 days after each of the plants is taken off-line, or no later than 60 days after the Department approves the abandonment plan, whichever is later.

30. Within 20 days of the effective date of this Consent Agreement Respondent shall withdraw any request for an administrative hearing on the Notice of Permit Modification for the "0" disposal modification to Trout Creek.

31. In any event, Wesley Center shall be on line and receiving all raw wastewater from Wesley Chapel, Trout Creek, and Saddlebrook and the abandonment of these plants shall be completed no later than April 1, 1997.

32. In settlement of the matters addressed in this Consent Agreement, Respondent shall provide sewer service to the following listed wastewater treatment plant private utility systems service areas so that these existing noncompliant private utility systems plants may be hooked into the Respondent's Subregional Collection Systems and decommissioned:

WWTP

PROVIDE SERVICE BY

- | | |
|------------------------|-----------------|
| A. Shady Oaks | May 1, 1996 |
| B. Timber Lake Estates | January 1, 1996 |
| C. Forest Hills | October 4, 1996 |

It is the intent of the Department to waive the Civil Penalty of \$85,200.00 in lieu of the "In-kind services", described above, in the amount of \$128,100.00, which is at least one and one-half times the amount of the cash penalty referenced above, in accordance with the Department's in-kind penalty policy, if the Respondent provides a financial incentive to the Permittee's of these private utility systems service areas in the form of long term bulk wastewater service agreements with no prepaid commitment or impact fees, or other service agreements such as time payments for impact or commitment fees with minimal or no up-front payment. Within 30 days of execution of this Consent Agreement, Respondent shall notify the private utility systems of the financial incentives Respondent is offering to divert wastewater flows to Respondent's facility. Respondent shall provide to the Department documentation that the financial incentive was received by the private utility systems. In the event that any private utility systems refuses sewer service by Respondent, then the Department shall not hold Respondent responsible for that system. Respondent shall provide to the Department evidence of a private utility systems refusal of service. However, if the full in-kind penalty of \$128,100.00 in incentives is not used by the other participating private utility systems, the unused portion of the in-kind penalty shall be paid to the Department as a cash settlement within 60 days of notification from the Department. In any event, Respondent shall provide proof to the

Department of the private utility systems acceptance or refusal of sewerservice by October 19, 1995.

33. Respondent agrees to pay the Department stipulated penalties in the amount of \$200.00 per day for each and every day Respondent fails to timely comply with any of the requirements of paragraphs 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 and 32 of this Consent Agreement. A separate stipulated penalty shall be assessed for each violation of this Consent Agreement. 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 Agreement and the notation "Pollution Recovery Fund". Payment shall be sent to the Department of Environmental Protection, Southwest District, 3804 Coconut Palm Drive, Tampa, Florida 33619-8318. 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 Agreement. Any penalties assessed under this paragraph shall be in addition to the settlement sum agreed to in paragraph 30 of this Consent Agreement.

34. If any event occurs which causes delay or the reasonable likelihood of delay, in complying with the requirements of this Consent Agreement, 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 be confirmed in writing from the Department and 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 Agreement.

35. Respondent shall publish the following notice in a newspaper of daily circulation in Pasco County, Florida. The notice shall be published one time only within 15 days after execution of the Consent

Agreement by the Department.

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
NOTICE OF CONSENT AGREEMENT

The Department of Environmental Protection gives notice of agency action of entering into a Consent Agreement with Pasco County, By and Through The Board of County Commissioners, pursuant to Rule 62-103.110(3), Florida Administrative Code. The Consent Agreement addresses alleged operation, maintenance, disposal and permit violations involving the Wesley Chapel, Trout Creek, and Saddlebrook Resort Interim Subregional Wastewater Treatment Plants in the vicinity of the Wesley Chapel Area of Pasco County. The Consent Agreement is available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at the Department of Environmental Protection, 3804 Coconut Palm Drive, Tampa, Florida 33619-8318. Persons whose substantial interests are affected by this Consent Agreement have a right to petition for an administrative hearing on the Consent Agreement. The Petition must contain the information set forth below and must be filed (received) in the Department's Office of General Counsel, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400, 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 Section 120.57, Florida Statutes. The petition shall contain the following information:

- (a) The name, address, and telephone number of each petitioner;

- the Department's identification number for the Consent Agreement 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 Agreement;
 - (c) A statement of how each petitioner's substantial interests are affected by the Consent Agreement;
 - (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 Agreement;
 - (f) A statement of which rules or statutes petitioner contends require reversal or modification of the Consent Agreement;
 - (g) A statement of the relief sought by petitioner, stating precisely the action petitioner wants the Department to take with respect to the Consent Agreement.

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 Agreement 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 Section 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 60Q-2.010, Florida Administrative Code.

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

37. The terms and conditions set forth in this Consent Agreement 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 Agreement shall constitute a violation of Section 403.161(1)(b), Florida Statutes.

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

39. Respondent shall allow all authorized representatives of the Department access to the property and plant at reasonable times for the purpose of determining compliance with the terms of this Consent Agreement and the rules of the Department.

40. All plans, applications, penalties, stipulated penalties, costs and expenses, and information required by this Consent Agreement to be submitted to the Department should be sent to Mr. Thomas Gucciardo, Environmental Manager, Florida Department of Environmental Protection, Southwest District, 3804 Coconut Palm Drive, Tampa, Florida

33619-8318.

41. 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 Agreement.

42. The Department, for and in consideration of the complete and timely performance by Respondent of the obligations agreed to in this Consent Agreement, hereby waives its right to seek judicial imposition of damages or civil penalties for alleged violations outlined in this Consent Agreement. Respondent acknowledges but waives its right to an administrative hearing pursuant to Section 120.57, Florida Statutes, on the terms of this Consent Agreement. Respondent acknowledges its right to appeal the terms of this Consent Agreement pursuant to Section 120.68, Florida Statutes, but waives that right upon signing this Consent Agreement.

43. The provisions of this Consent Agreement shall apply to and be binding upon the parties, their officers, their directors, agents, servants, employees, successors, and assigns and all persons, firms and corporations acting under, through or for them and upon those persons, firms and corporations in active concert or participation with them.

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

45. If all of the requirements of this Consent Agreement have not been fully satisfied, Respondent shall, at least 14 days prior to a sale or conveyance of the property or plant, (1) notify the Department of

such sale or conveyance, and (2) provide a copy of this Consent Agreement with all attachments to the new owner.

46. This Consent Agreement is a settlement of the Department's civil and administrative authority arising from Chapters 403 and 376, Florida Statutes, to pursue the allegations addressed herein. This Consent Agreement does not address settlement of any criminal liabilities which may arise from Sections 403.161(3) through (5), 403.413(5), 403.727(3)(b), 376.302(3) and (4), or 376.3071(10), Florida Statutes, nor does it address settlement of any violation which may be prosecuted criminally or civilly under federal law.

47. This Consent Agreement is final agency action of the Department pursuant to Section 120.69, Florida Statutes, and Florida Administrative Code Rule 62-103.110(3), 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 Agreement will not be effective until further order of the Department.

Date June 6, 1995

FOR THE RESPONDENT

[Signature]
Name ED COLLINS
Title VIC CHAIRMAN
Address _____

DONE AND ORDERED this 23 day of June, 1995, in Tampa, Florida.

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

[Signature] 6-23-95
Clerk Date

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

[Signature]
Richard D. Garrity, Ph.D.
Director of District Management
Southwest District
3804 Coconut Palm Drive
Tampa, Florida 33619-8318

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for
amendment of Certificates Nos.
340-W and 297-S in Pasco County
by Mad Hatter Utility, Inc.

) DOCKET NO. 960576-WS
)
) FILED: APRIL 8, 1997
)
)

CERTIFICATE OF SERVICE


I HEREBY CERTIFY that a true and correct copy of the DIRECT
TESTIMONIES OF PETER H. BURGHARDT, PETER SCRENOCK, AND MILTON
MARTINEZ has been furnished to the following by U.S. Mail this 8th
day of April, 1997:

F. Marshall Deterding, Esquire
Rose, Sundstrom & Bentley
2548 Blairstone Drive
Tallahassee, Florida 32301

Marion Hale, Esquire
Johnson, Blakely, Pope, Bokor,
Ruppel & Burns, P.A.
911 Chestnut Street
Clearwater, FL 34616

Karla Stetter, County Attorney
Office of the County Attorney
7530 Little Road, Suite 340
New Port Richey, FL 34654

* The original copy Exhibit PHB-1 will be mailed out in the next
few days.



ROSANNE G. CAPELESS, Senior Attorney

FLORIDA PUBLIC SERVICE COMMISSION
Gerald L. Gunter Building
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
(904) 413-6224