

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Notice of abandonment of)	DOCKET NO. 900812-SU
sewer system in Lee County by)	ORDER NO. 24189
THREE "S" DISPOSAL, INC.)	ISSUED: 3-4-91
_____)	

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
 J. TERRY DEASON
 BETTY EASLEY
 GERALD L. GUNTER
 MICHAEL McK. WILSON

ORDER ACKNOWLEDGING ABANDONMENT OF THREE "S"
DISPOSAL, INC., AND ACKNOWLEDGING APPOINTMENT OF RECEIVER

BY THE COMMISSION:

Three "S" Disposal, Inc. (Three "S"), is a class C wastewater utility serving 202 customers in Lee County, Florida. Three "S" filed a notice of abandonment pursuant to Section 367.165(1), Florida Statutes, on October 8, 1990. On December 6, 1990, Judge R. Wallace Pack, of the Circuit Court for the Twentieth Judicial Circuit, appointed Bonita Springs Water System (Bonita Springs) receiver for the utility. Bonita Springs is a large nonprofit water cooperative in Lee County which currently serves several developments in the area.

The circuit court order appointing Bonita Springs receiver is appended to this order. Among other things, the circuit court order requires the owners of Three "S" to surrender all property, assets, documents, and facilities pertaining to Three "S" to the receiver. The order requires the receiver to operate and maintain the utility, collect all revenues, and provide adequate and uninterrupted service to customers as well as pay all operating expenses from the revenues received. The order directs Bonita Springs to maintain a separate account and separate records for the management of the Three "S" wastewater treatment plant. The order also directs the receiver to make extensions, expansions, repairs, replacements, and improvements to Three "S" as necessary.

After Three "S" filed its notice of abandonment, this Commission performed an audit of the utility and an engineering investigation of the utility's physical condition and operational status. The audit revealed that the utility had not adjusted its account balances to comply with Order No. 21535, issued July 21, 1989, in Docket No. 881276-SU. In that staff assisted rate case,

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plant-in-service, including land, was established at \$244,710.00. In our audit, we used the account balances set forth in Order No. 21535 as a beginning point and updated the account balances to August 31, 1990. We note that the tariffs currently on file with this Commission for Three "S" remain in effect until further notice.

In the course of this docket, a question has arisen regarding compliance with the Commission's annual reporting requirement for 1990. The receiver is responsible for filing the annual report pursuant to Rule 25-30.110, Florida Administrative Code. See Sections 367.021(12) and 367.165(3), Florida Statutes. However, because Bonita Springs became receiver for Three "S" with only a few weeks remaining in 1990, and because the utility's records are apparently in unsatisfactory condition, we are directing our staff to work together with Bonita Springs to compile an abbreviated report containing essential information using estimated figures if necessary. As the temporary holder of the certificate of authorization of the utility, the receiver, in addition to filing the annual report, is required to pay regulatory assessment fees and do all things required of a regulated utility.

It is therefore

ORDERED that the abandonment of Three "S" Disposal, Inc., is hereby acknowledged. It is further

ORDERED that the appointment of Bonita Springs Water System as receiver for Three "S" Disposal, Inc., is hereby acknowledged. It is further

ORDERED that this docket is closed.

By ORDER of the Florida Public Service Commission, this 4th
day of MARCH, 1991.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.

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IN THE CIRCUIT COURT OF THE
TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA
CIVIL ACTION

CASE NO. 90-8279 CA RWP

LEE COUNTY, FLORIDA
A POLITICAL SUBDIVISION
OF THE STATE OF FLORIDA.

PETITIONER

vs.

JAMES O. SHANNON, SR.,
JAMES O. SHANNON, JR.,
AND JERRY SHANNON,
individually and
THREE "S" DISPOSAL, INC.,

RESPONDENTS

FILED

DEC 6 1990

CHARLIE GREEN

CLERK, CIRCUIT COURT

BY *[Signature]* D.C.

ORDER APPOINTING RECEIVER

This matter having come before the Court upon the Petition of Lee County, and the Court after hearing the advice and recommendations of Counsel, and being fully advised in the premises, hereby finds:

Respondents operate a 0.03 mgd Residential Wastewater Treatment Plant within the jurisdictional boundaries of Lee County, specifically in Bonita Springs, Florida, pursuant to the provisions of Chapter 367, Florida Statutes (1989). At the time of this action, Respondents' Wastewater Treatment Plant was operating under a Department of Environmental Regulation Temporary Operating Permit, Number

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OGC 89-1052. On or about October 1, 1990, Respondents formally filed a Notice of Abandonment for the Wastewater Treatment Facility, per §367.165, Florida Statutes. Lee County subsequently filed its Petition to Appoint a Receiver to take possession of and operate Respondents' facilities.

Based upon the foregoing and the testimony and evidence presented at hearing, it is HEREBY ORDERED:

SECTION 1. APPOINTMENT OF RECEIVER AND TERM. The Bonita Springs Water System is hereby appointed to act as Receiver for Respondents' residential Wastewater Treatment System. The Receiver is hereby granted party status and shall be entitled to receive copies of all pleadings, orders or other documents subsequently filed in this matter. The term of this receivership shall begin on the date of this Order and shall continue until such time as the Receiver sells or otherwise disposes of the property of the Respondents' Wastewater Treatment System. The connection of these facilities, and/or the customers receiving service from these facilities, to a regional or central wastewater utility, upon the availability of the same, will constitute a disposition of the property for purposes of this Order. Upon termination and expiration of the receivership as provided herein, the Receiver shall be released from all further obligations to operate and maintain the Three "S" Disposal, Inc. Wastewater Treatment Plant.

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Should the term of the Receiver terminate and expire due to the sale of Respondents' Wastewater Treatment System by the Receiver, then the obligations and responsibilities of the Receiver shall terminate and expire as of the date of closing of any such sale.

SECTION 2. SURRENDER OF PROPERTY, ASSETS, DOCUMENTS, AND FACILITIES. On or before December 1, 1990, the Respondents shall:

(1) turn over and produce to the Receiver all customer account records, contracts, agreements, correspondence, legal pleadings, business records, easements, and any other documents related to the Three "S" Disposal, Inc. Wastewater Treatment Plant, to include the property, assets and liabilities associated therewith in order that the Receiver may operate and maintain said System, and (2) surrender control of all real and personal property to the Receiver. Upon entry of this Order, the Respondents shall turn over and produce all bank accounts, bank account records, customer deposits, cash, and accounts receivable balances to the Receiver. If the Respondents fail to deliver all documents, property, assets, and access to the facilities and lands such that the Receiver can operate said System, the Receiver may, at its option, elect to refuse to act as Receiver. In such event, Lee County shall, upon written notice of such refusal, proceed to have a replacement receiver appointed by this Court.

SECTION 3. RECEIVER POWERS. Once the documents from Three "S" Disposal, Inc. Wastewater Treatment Plant and the real and personal property associated therewith is surrendered to the Receiver in accordance with Section 2. above, the Receiver shall send written notice of receipt thereof to this Court, shall indicate

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its acceptance of appointment as Receiver, and shall commence operating the Three "S" Disposal, Inc. Wastewater Treatment Plant until such time as provided for in Section 1. and to continue the lawful operation and maintenance of utility service to the customers of Three "S" Disposal, Inc. Wastewater Treatment Plant. In order to effectively carry out its responsibilities under this Order, the Receiver shall have the following powers and authority:

(1) to provide and maintain sewer service in the service area as described in the Certificate of Service, or as that Certificate may hereafter be amended from time to time by the Florida Public Service Commission or for as long as the Public Service Commission Certificate may apply, and in compliance with all applicable permits, regulations and statutes;

(2) to make extensions, expansions, repairs, replacements, and improvements to Three "S" Disposal, Inc. as necessary;

(3) to fix and collect rates, fees, charges, and deposits for all services provided by Three "S" Disposal, Inc. Wastewater Treatment Plant and the Receiver in accordance with applicable state law (including, without limitation, the right to a fair rate of return on any such rates, fees, and charges);

(4) to borrow money, and to pledge or encumber the facilities, assets and revenues of Three "S" Disposal, Inc. Wastewater Treatment Plant for the repayment thereof;

(5) to enter into contracts with any public agency or any private entity providing for or relating to the operation and maintenance of the Three "S" Disposal, Inc. Wastewater Treatment Plant or the connection of the customers to any other public or

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private sewer system:

(6) to accept any gifts, grants, or contributions in kind in connection with the management, operation, and maintenance of the Three "S" Disposal, Inc. Wastewater Treatment Plant;

(7) to retain and pay the fees, costs, and salaries of accountants, architects, engineers, attorneys, employees, and other professional consultants as necessary or desirable in the management, operation, or maintenance of the Three "S" Disposal, Inc. Wastewater Treatment Plant and to ensure compliance with all the provisions of this Order for the rates, fees, and charges authorized under this Section 3.;

(8) to pay from the revenues collected from the customers of the Three "S" Disposal, Inc. Wastewater Treatment Plant, all necessary and reasonable operating expenses (including the costs and expenses contemplated in this Section 3.) in a manner designed to continue the efficient, effective and environmentally sound operation of said utility, to include the trucking of excess sewage flows to prevent drainfield leaching;

(9) to connect the customers of the Three "S" Disposal, Inc. Wastewater Treatment Plant to any other public or private sewer sewer system with adequate sewer service capacity to accept said customers in accordance with and subject to applicable requirements and payment of fees to said public or private sewer system;

(10) upon connection thereto, the Receiver, with written approval from this Court, may discontinue the operation of the sewer system and dispose of all lands, facilities, assets, and revenues to satisfy all outstanding obligations of the Three "S" Disposal, Inc.

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Wastewater Treatment Plant. Receiver shall give due notice to all creditors of the Three "S" Disposal, Inc. Wastewater Treatment Plant of its Receivership, and prior to any disposal of the facilities:

(11) to sue or be sued, to implead or be impleaded, to complain and defend in any court, and to seek legal or equitable relief in accordance with applicable state law;

(12) to apply for and obtain all necessary federal, state, and local governmental permits, certificates, licenses, or other approvals in order to operate and maintain the "Three "S" Disposal, Inc. Wastewater Treatment Plant;

(13) to perform generally any other lawful acts necessary or desirable to the express powers and authority granted and imposed herein.

SECTION 4. CONTINUING JURISDICTION. This Court shall retain jurisdiction in this cause to enter such orders or take any such action as it deems appropriate. Nothing in this Order is intended to determine what entity may be ultimately and permanently responsible for the operation and maintenance of the Three "S" Disposal, Inc. Wastewater Treatment Plant. Prior to any sale of the Three "S" Disposal, Inc. Wastewater Treatment Facilities, the Receiver shall file with the Court and publish, a "Notice of Intent to Sell" said facilities. Upon any subsequent sale of the Three "S" Disposal, Inc. Wastewater Treatment Plant to any person, firm or entity, then, on the date of closing of such sale, this Order shall terminate and expire, and this matter shall be closed. The Receiver shall file notification of the sale with this Court no later than ten (10) business days following the date of any such sale.

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SECTION 5. IMMUNITY FROM LIABILITY AND VIOLATIONS. As

consideration for Receiver assuming the responsibility for the continued operation and maintenance of the Three "S" Disposal, Inc. Wastewater Treatment Plant, the Receiver and its agents and employees are hereby declared to be held harmless and not legally responsible for any or all claims, liability, demands, damages, expenses, fees, fines, penalties, suits, proceedings, actions and fees, including attorneys' fees, that have arisen or may arise out of the past design, construction, operation, and maintenance of the Three "S" Disposal, Inc. Wastewater Treatment Plant. This immunity shall include but not be limited to: immunity from injury to persons, damage to property or property rights, or violation of any governmental law, rule, regulation or requirement that may arise from the design, construction, operation, or maintenance of the Three "S" Disposal, Inc. Wastewater Treatment Plant prior to the date of appointment of the Receiver.

SECTION 6. RESPONDENTS' LIABILITY. Three "S" Disposal,

Inc. shall remain liable under all applicable laws for any claims, violations, demands, penalties, suits, proceedings, actions or fees occurring prior to the appointment and acceptance by the Receiver.

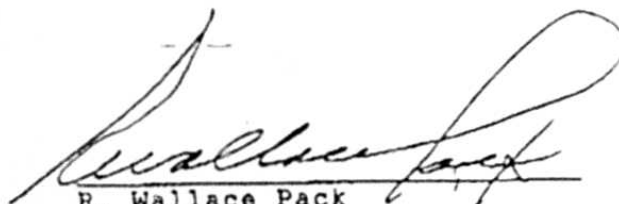
SECTION 7. RECEIVER'S SEPARATION OF FUNDS. Receiver, as a

not-for-profit Utility franchised by Lee County, is hereby directed by this Court to maintain a separate account and records for the management of Respondents' Wastewater Treatment Plant. Additionally, this Court hereby directs that the revenues from Respondents' Utility are not to be considered the revenues of the Bonita Springs Water System, nor are the revenues of the Bonita Springs Water System to be considered those of Respondents' Utility.

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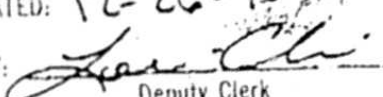
Receiver in this cause is hereby directed to operate Respondents' Utility until said Utility is disposed of per the provisions of this Order. The Utility shall be operated by the Receiver in such a manner so as to provide efficient, effective and environmentally sound continuous service to the customers of Utility during the term of this Receivership.

Done and Ordered in Chambers at Port Myers, Florida this 6
day of ~~November~~ ^{December}, 1990.



R. Wallace Pack
Circuit Judge
20th Judicial Circuit

I CERTIFY THIS DOCUMENT TO BE A
TRUE AND CORRECT COPY OF THE
ORIGINAL ON FILE IN MY OFFICE,
CHARLIE GREEN, CLERK CIRCUIT COURT
LEE COUNTY, FLORIDA.
DATED: 12-26-90

BY: 
Deputy Clerk