

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Notice of withdrawal as) DOCKET NO. 920963-SU
receiver for L.C.M. Sewer) ORDER NO. PSC-93-0374-FOF-SU
Authority in Lee County by) ISSUED: 03/09/93
Staco, Inc.)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
THOMAS M. BEARD
SUSAN F. CLARK
JULIA L. JOHNSON
LUIS J. LAUREDO

ORDER ACKNOWLEDGING RECEIVER
AND CLOSING DOCKET

BY THE COMMISSION:

On April 30, 1992, the Circuit Court of the Twentieth Judicial Circuit in and for Lee County, Florida, issued a final order appointing Staco, Inc. (Staco) receiver for L.C.M. Sewer Authority (LCM). On September 11, 1992, Staco noticed the Commission of its intent to withdraw as receiver, pursuant to Section 367.165, Florida Statutes. On the same date, Staco filed a Notice of Withdrawal as Receiver with the Circuit Court. On November 20, 1992, Water Spectrum, Inc. (Water Spectrum) was appointed receiver.

The Order Appointing New Receiver in Case No. 92-2192 CA-WCM, signed by Judge William C. McIver on November 20, 1992, states the following:

- 1) The previous owner must surrender all property, assets, documents, and facilities pertaining to L.C.M. Sewer Authority to the receiver;
- 2) The receiver must operate and maintain the utility and collect all revenues and provide adequate and uninterrupted service to the customers;
- 3) The receiver must pay all operating expenses from the revenues received;

DOCUMENT NUMBER-DATE

02639 MAR-93

REGISTRATION/REPORTING

ORDER NO. PSC-93-0374-FOF-SU
DOCKET NO. 920963-SU
PAGE 2

- 4) The receiver shall make extensions, expansions, repairs, replacements, and improvements to L.C.M Sewer Authority as necessary.

In consideration of the foregoing, we acknowledge that Water Spectrum, Inc., has been appointed receiver of L.C.M. Sewer Authority by the Lee County Circuit Court in accordance with Section 367.165, Florida Statutes. Water Spectrum, Inc., shall comply with all of the terms set forth in the Order Appointing Receiver.

It is therefore,

ORDERED by the Florida Public Service Commission that the appointment of Water Spectrum, Inc., as receiver of L.C.M. Sewer Authority is hereby acknowledged. It is further

ORDERED that Water Spectrum, Inc., shall comply with all of the terms set forth in the Order Appointing Receiver. It is further

ORDERED that this docket be closed.

By ORDER of the Florida Public Service Commission this 9th day of March, 1993.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

LAJ

by: Kay Flynn
Chief, Bureau of Records

ORDER NO. PSC-93-0374-FOF-SU
DOCKET NO. 920963-SU
PAGE 3

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 Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.

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

LEE COUNTY, a political subdivision
of the State of Florida,

Petitioner,

CASE NO. 92-2192 CA-WCM

vs.

L.C.M. SEWER AUTHORITY, INC.,
d/b/a LEITNER CREEK MANOR
WASTEWATER TREATMENT PLANT

Respondent,

RECEIVED

JUN 22 1993

Florida Public Service Company
Department of Regulatory Services

ORDER GRANTING FORMER RECEIVER'S MOTION
TO WITHDRAW AS RECEIVER, AND APPOINTING NEW RECEIVER

THIS MATTER having come before the Court upon the motion of
the Receiver, Staco, Inc., and the Court after receiving the
advice and recommendations of counsel, and being fully advised in
the premises, hereby finds:

Respondent owns a 0.05 mgd residential Wastewater Treatment
System within the jurisdictional boundaries of Lee County,
specifically in Bonita Springs, Florida, pursuant to the
provisions of Chapter 367, Florida Statutes. Respondent's
Wastewater Treatment System is operating without a Department of
Environmental Regulation Temporary Operating Permit, Number OGC
90-1301 (expired as of November 30, 1991). On or about February
4, 1992, Respondent formally filed a Notice of Abandonment for

the Wastewater Treatment System, per Section 367.165, Florida Statutes. LEE COUNTY filed its Petition to Appoint a Receiver to take possession of and operate Respondent's facilities. By Order dated April 30, 1992, this Court appointed Staco, Inc. as Receiver for the Respondent's Wastewater Treatment System.

On November 2, 1992, this Court heard the Receiver's Motion to Withdraw as Receiver.

The Court was further advised in the premises by counsel relative to the appointment of a new Receiver for the L.C.M. Sewer Authority, Inc.

Based upon the foregoing and the further evidence as to the appropriateness of the new Receiver pursuant to Section 367.165(2), Florida Statutes, (Exhibits A. and B., attached hereto), it is HEREBY ORDERED AND ADJUDGED:

A. Receiver's Motion to Withdraw as Receiver, is hereby GRANTED.

B. SECTION 1. APPOINTMENT OF NEW RECEIVER AND TERM.
Water Spectrum, Inc. is hereby appointed to act as the new Receiver for the Respondent's residential Wastewater Treatment System. 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 Respondent's Wastewater Treatment System, or is relieved as Receiver by this Court by formal motion. 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, shall constitute a disposition of the property, for purposes of this Order. Upon termination and expiration of the receivership as provided for herein, the Receiver shall be released from all further obligations to operate and maintain the L.C.M. SEWER AUTHORITY, INC. Wastewater Treatment System. Should the term of the Receiver terminate and expire due to the sale of the Respondent's 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. All property, assets, documents, and facilities of the L.C.M. SEWER AUTHORITY, INC. shall be turned over to Water Spectrum, Inc. by Staco, Inc. (former Receiver) at the time of this Order. Former Receiver's obligations regarding the surrender of property, assets, documents and facilities shall be as outlined herein. Former Receiver shall, to any extent that it may not have already done so: (1) turn over and produce to the new Receiver all customer account records, contracts, agreements, correspondence, legal pleadings, business records, easements, and any other documents related to the L.C.M. SEWER AUTHORITY, INC. Wastewater Treatment System, to include the property, assets and liabilities associated therewith in order that the new Receiver may then operate and maintain said System, and (2) surrender control of all real and personal property to the new Receiver. Upon entry of this Order, the former Receiver shall turn over and produce all bank accounts, bank account records, customer

deposits, cash, and accounts receivable balances to the new Receiver.

SECTION 3. RECEIVER POWERS. Once the documents from the L.C.M. SEWER AUTHORITY, INC. Wastewater Treatment System and the real and personal property associated therewith are surrendered to the new Receiver in accordance with Section 2. above, the new Receiver shall send written notice of receipt thereof to this Court, shall indicate its acceptance of appointment as Receiver, shall cause the operation of the L.C.M. SEWER AUTHORITY, INC. Wastewater Treatment System until such time as provided for in Section 1., and shall continue the lawful operation and maintenance of the utility service to the customers of the L.C.M. SEWER AUTHORITY, INC. Wastewater Treatment System. In order to effectively carry out its responsibilities under this Order, the new Receiver shall have the following powers and authority:

(1) to provide and maintain sewer service within the designated Service Area, in compliance with all applicable permits, regulations and statutes;

(2) to make extensions, expansions, repairs, replacements, and improvements to the L.C.M. SEWER AUTHORITY, INC. as appropriate and necessary;

(3) to collect rates, fees, charges, and deposits for all services provided by the L.C.M. SEWER AUTHORITY, INC. Wastewater Treatment System in accordance with all applicable state laws;

(4) to borrow money, and to pledge or encumber the facilities, assets and revenues of the L.C.M. SEWER AUTHORITY, INC. Wastewater Treatment System for the repayment thereof;

(5) to enter into contracts or agreements with any other public agency or private entity providing for or relating to the operation and maintenance of the L.C.M. SEWER AUTHORITY, INC. Wastewater Treatment System or the connection of the customers to any other public or private sewer system;

(6) to accept any gifts, grants, or contributions in kind in connection with the management, operation, and maintenance of the L.C.M. SEWER AUTHORITY, INC. Wastewater Treatment System;

(7) to retain and pay the fees, costs, and salaries of accountants, architects, engineers, attorneys, employees, or other professional consultants as necessary or desirable in the management, operation, or maintenance of the L.C.M. SEWER AUTHORITY, INC. Wastewater Treatment System 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 L.C.M. SEWER AUTHORITY, INC. Wastewater Treatment System, 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;

(9) to connect the customers of the L.C.M. SEWER AUTHORITY, INC. Wastewater Treatment System to any other public or private 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 systems;

(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 L.C.M. SEWER AUTHORITY, INC. Wastewater Treatment System. The Receiver shall give due notice to the owner and all creditors of the L.C.M. SEWER AUTHORITY, INC. Wastewater Treatment System of its receivership prior to any disposal of the facilities;

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

(12) to apply for and obtain any applicable federal, state, and local governmental permits, certificates, licenses, or other approvals in order to operate and maintain the L.C.M. SEWER AUTHORITY, INC. Wastewater Treatment System;

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

SECTION 4. CONTINUING JURISDICTION. This Court shall retain jurisdiction in this cause to enter such further orders or

take any action as it deems appropriate. Nothing in this Order is intended to determine what entity may be ultimately and/or permanently responsible for the operation and maintenance of the L.C.M. SEWER AUTHORITY, INC. Wastewater Treatment System 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 any sale with this Court no later than ten (10) business days following the date of any such sale.

SECTION 5. IMMUNITY FROM LIABILITY AND VIOLATIONS. As consideration for Receiver assuming the responsibility for the continued operation and maintenance of the L.C.M. SEWER AUTHORITY, INC. Wastewater Treatment System, 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 L.C.M. SEWER AUTHORITY, INC. Wastewater Treatment System. 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 L.C.M. SEWER AUTHORITY, INC. Wastewater Treatment System prior to the date of appointment of the Receiver.

SECTION 6. RESPONDENT'S LIABILITY. L.C.M. SEWER
AUTHORITY, 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 any Receiver.

SECTION 7. RECEIVER'S SEPARATION OF FUNDS. Water
Spectrum, Inc. as new Receiver, is hereby directed by this Court to maintain separate accounts and records for the management of the Respondent's Wastewater Treatment System. Additionally, this Court hereby directs that the revenues from the Respondent's Utility are not to be considered the revenues of the new Receiver, nor are the revenues of the new Receiver to be considered those of the Respondent's Utility.

SECTION 8. RECEIVER'S OBLIGATIONS FOR OPERATION. The
Receiver in this cause is hereby directed to operate the Respondent's Utility until said Utility is disposed of per the provisions of this Order. The Utility shall be operated by the new Receiver in such a manner so as to provide efficient, effective and environmentally sound continuous service to the customers of the Utility during the term of this receivership, and as can be provided from the revenues of the System.

SECTION 9. RECEIVER'S ACCOUNTING TO THE COURT. The
Receiver shall submit to the Court, through LEE COUNTY for prior review and analysis, quarterly financial and operational reports for the L.C.M. SEWER AUTHORITY, INC. Wastewater Treatment System for the duration of its receivership.

SECTION 10. RECEIPT OF FORMER RECEIVER'S FINAL ACCOUNTING

The Court hereby acknowledges receipt of former Receiver's final accounting documents as submitted to Lee County on November 16, 1992 (Exhibit C, composite).

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 20 day of Nov., 1992.

S/ WILLIAM C. McIVER

William C. McIver
Circuit Judge

Pursuant to Rule 1.080
Florida Rules of Civil Procedure,
a copy of the foregoing was
mailed to:

DAVID M. OWEN, ESQ., Assistant County Attorney
CURTIS TOMLINSON
DAN BATCHELOR, ESQ.
DR. ABDUL AHMADI, P.E., Ph.D.
A. GLENN GREER, P.E.
JOHN ENGLE, ESQ.
JOYCE STAIGER
HANK LANDIS