

ORIGINAL  
COPY

SHADY OAKS MOBILE-MODULAR ESTATES, INC.

DOCKET NO. 930944-WS

DIRECT TESTIMONY OF PETE BURGHARDT

ON BEHALF OF THE STAFF OF THE FLORIDA PUBLIC SERVICE COMMISSION

DIVISION OF WATER AND WASTEWATER

FILED: MARCH 31, 1994

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- AFA \_\_\_\_\_
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**03041 MAR 31 94**  
 FPSC-RECORDS/REPORTING

DIRECT TESTIMONY OF PETE BURGHARDT

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

3 A. My name is Pete Burghardt and my business address is 3804 Coconut Palm  
4 Drive, Tampa, Florida 33619.

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

7 A. I have a 1980 B.A. degree in Biology from the University of South  
8 Florida, 3 1/2 years experience with the Department of Environmental  
9 Protection (DEP), and 8 years experience with the County Public Health Unit  
10 for the Department of Health and Rehabilitative Services.

11 Q. By whom are you presently employed?

12 A. I am employed by DEP.

13 Q. In what capacity are you employed with DEP?

14 A. I have been employed since October 31, 1990 as an Environmental  
15 Specialist in the Domestic Wastewater Section.

16 Q. What are your general responsibilities at DEP?

17 A. My duties are to assure that all wastewater treatment plants in Pasco  
18 County are in compliance with pertinent state regulations.

19 Q. What is the purpose of your testimony in this proceeding?

20 A. The purpose of my testimony is to provide the Florida Public Service  
21 Commission (Commission) with facts and background on the quality of service  
22 provided by Shady Oaks Mobile-Modular Estates, Inc. (Shady Oaks or utility),  
23 and the status of the recent circuit court order requiring Mr. Sims, the  
24 utility owner, to interconnect with Pasco County and decommission the  
25 wastewater plant or to abandon the wastewater plant following the procedures

1 set forth by the Commission statutes and rules. I have also provided the  
2 results of my most recent inspection of the utility's wastewater system.

3 Q. Have you ever testified before?

4 A. Yes. I testified before the Commission in Dockets Nos. 920199-WS  
5 (Southern States Utilities rate case), 920148-WS (Jasmine Lakes Utilities rate  
6 case), and 910637-WS (Mad Hatter Utilities rate case).

7 Q. Have you testified in any Court proceedings initiated by DEP involving  
8 Shady Oaks?

9 A. No. I was prepared to testify in the last Court proceeding initiated  
10 by DEP. My testimony was not needed, however, because DEP and the utility  
11 entered into an Agreed Order Granting DEP's Motion for Contempt, which I will  
12 discuss further in a later portion of my testimony.

13 Q. Are you familiar with the quality of service provided by Shady Oaks?

14 A. Yes.

15 Q. How are you familiar with the utility's quality of service?

16 A. I have reviewed all of the records on file with DEP relating to Shady  
17 Oaks. I have performed on-site wastewater plant inspections. I have also  
18 reviewed the DEP consent orders applicable to Shady Oaks, as well the  
19 Commission orders relating to quality of service. I have reviewed Order No.  
20 PSC-93-0542-FOF-WS, wherein the Commission found the quality of service  
21 provided by Shady Oaks to be unsatisfactory.

22 Q. What exactly did the Commission state in Order No. PSC-93-0542-FOF-WS  
23 with respect to the utility's quality of service?

24 A. On pages 4 and 9 of Order No. PSC-93-0542-FOF-WS, the Commission once  
25 again stated that the utility's quality of service is still unsatisfactory.

1 Specifically, on page 4 the Commission stated that:

2 By Order No. 25296, issued November 4, 1991, the Commission (1)  
3 suspended the \$2,000 fine until February, 1992; (2) required the  
4 utility to escrow the fine as previously ordered; (3) found that  
5 the quality of service had deteriorated, noting numerous customer  
6 complaints against the utility and the derelict condition of the  
7 utility systems; (4) required the utility to interconnect its  
8 wastewater system with Pasco County as agreed to in a court-  
9 approved settlement between the utility and DER; and (5) found  
10 that the utility had failed to spend the minimum of the monthly  
11 preventative maintenance allowance, but announced it would review  
12 the situation again before further action.

13 Q. In your review of that Commission order, did you find that in part, the  
14 unsatisfactory rating was based on DEP compliance problems regarding the  
15 utility's treatment and disposal system?

16 A. Yes, there were several instances within that order that referred to the  
17 utility failing to comply with a DEP consent order and a court-approved  
18 settlement between DEP and the utility.

19 Q. Are you familiar with the compliance problems that the utility has with  
20 DEP.

21 A. Yes.

22 Q. Briefly explain what those problems are?

23 A. They primarily deal with the utility's failure to comply with DEP  
24 requirements to remove its sewage treatment plant from operation and divert  
25 all of its flow to Pasco County's sewage collection system. It also addresses

1 | the utility's failure to maintain minimum treatment levels at the wastewater  
2 | facility, as well as maintaining minimum operation and maintenance  
3 | requirements.

4 | Q. Briefly, can you give some history as to why the utility is required to  
5 | do this?

6 | A. Yes. The utility's wastewater treatment facility has had treatment and  
7 | effluent disposal problems for years. In June of 1985, the utility was issued  
8 | a warning notice which addressed the unpermitted discharge from the  
9 | percolation pond to a ditch. The warning notice was apparently ignored. In  
10 | October of 1986, the utility signed a consent order with DEP that specified  
11 | timeframes for corrections to be made. Those timeframes were not adhered to.  
12 | As a result, our agency was forced to take the case to circuit court to seek  
13 | corrective action. I have attached the Consent Order dated October 21, 1986,  
14 | as EXH PB-1.

15 | In March of 1989, a consent final judgement through the court was  
16 | reached, which gave deadlines for the utility to eliminate unauthorized  
17 | discharge from the plant site. This was to be accomplished by way of  
18 | constructing additional effluent disposal capacity. Failing to comply with  
19 | that judgement, a motion for contempt was filed and the utility was again  
20 | taken back to circuit court. I have attached as EXH PB-2 the Consent Final  
21 | Judgement dated March 7, 1989.

22 | In July of 1991, another stipulated settlement was reached and the  
23 | utility was ordered to remove its sewage treatment plant from operation and  
24 | divert all of its flow to Pasco County's sewage collection system within six  
25 | months of that order. This Order dated July 8, 1991 is attached to my

1 | testimony as EXH PB-3. Despite the utility's promises, compliance was not  
2 | reached and DEP was forced to file another motion for contempt of a court  
3 | order in December of 1993. I have attached as EXH PB-4 the most recent court  
4 | order concerning this case. It is entitled "Agreed Order Granting DEP's  
5 | Motion for Contempt," and is dated February 18, 1994. EXH PB-4 includes a  
6 | copy of Order No. PSC-93-0542-FOF-WS.

7 | Q. What is the utility required to do pursuant to the Agreed Order Granting  
8 | DEP's Motion for Contempt (EXH PB-4)?

9 | A. The Court found that the utility had the ability to comply with the  
10 | previous 1991 order (EXH PB-3) but did not do so, and is in contempt of that  
11 | order. The most recent Order (EXH PB-4) ordered the utility to remove the  
12 | plant from service, took notice that the Commission has ordered that a  
13 | revocation proceeding be initiated to revoke the utility's certificate for  
14 | failure to comply with, among other things, the court's order, and found the  
15 | utility's president, Richard Sims, as the person responsible for complying  
16 | with the court's order.

17 | Q. Did the February 18, 1994, Court Order require the utility to do  
18 | anything further?

19 | A. Yes, the Court found that the utility may purge itself from contempt by  
20 | complying with one of the following options: Connect with the Pasco County  
21 | collection system in 120 days and decommission the plant within 30 days after  
22 | the connection, sell or convey ownership to a non related party within 120  
23 | days, or if failing to do the above mentioned options, the court shall order  
24 | the Sheriff to incarcerate Mr. Sims in the county jail until such time as the  
25 | utility complies. If the utility fails to purge itself of contempt, DEP may

1 | request from the court that a receiver be appointed.

2 | Q. To date, has Shady Oaks connected its wastewater facilities to Pasco  
3 | County?

4 | A. No.

5 | Q. To date, has Shady Oaks sold or conveyed the wastewater facilities?

6 | A. No.

7 | Q. Does the utility's wastewater treatment facility currently have an  
8 | active operating permit with DEP?

9 | A. No, the operating permit expired March of 1986.

10 | Q. Has the utility been fined or penalized for being out of compliance with  
11 | your agency?

12 | A. Yes, as part of a previous court order, the utility has been penalized.

13 | Q. Has the utility satisfied the penalty requirement?

14 | A. Yes, the utility has paid a total of \$12,400 to the Department's  
15 | "Pollution Recovery Fund."

16 | Q. In your opinion, has the utility acted responsibly when it comes to  
17 | compliance with your agency's rules and regulations?

18 | A. No.

19 | Q. To the best of your knowledge, what is the present compliance status  
20 | with the most recent court order (EXH PB-4)?

21 | A. On March 11, 1994, DEP issued collection system permit #C551-243569.  
22 | This permit is for the construction of the interconnect with Pasco County.

23 | Q. In your official capacity with DEP, approximately how many times have  
24 | you visited the plant site?

25 | A. Three times.

1 | Q. Does the utility's lift station and collection system meet DEP  
2 | requirements with respect to location, reliability and safety?  
3 | A. No.  
4 | Q. Is the overall maintenance of the treatment, collection, and disposal  
5 | facilities satisfactory?  
6 | A. No.  
7 | Q. Does the utility have certified operators as required by Chapter 17-602,  
8 | Florida Administrative Code?  
9 | A. Not at the time of my last visit on February 17, 1994.  
10 | Q. Do you have anything further to add?  
11 | A. Yes. During my February 17, 1994 inspection it was evident that no  
12 | operation and maintenance work was being conducted at the facility. There was  
13 | no chlorine residual and no treatment occurring as all of the solids had been  
14 | washed out of the plant. The plant was hydraulically overloaded, apparently  
15 | due to inflow and infiltration problems with the collection system. I have  
16 | attached as EXH PB-5 my inspection report from the February 17, 1994,  
17 | inspection of the utility wastewater plant.  
18 | Q. Based on your analysis and review of the circumstances involved with  
19 | Shady Oaks and your findings with respect to quality of service, should Mr.  
20 | Sims continue to operate the utility?  
21 | A. No.  
22 | Q. Does this conclude your testimony?  
23 | A. Yes.  
24 |  
25 |



**SHADY OAKS MOBILE-MODULAR ESTATES, INC.**

**DOCKET NO. 930944-WS**

**EXHIBIT PB-1**

**WITNESS: PETE BURGHARDT**

**ON BEHALF OF THE STAFF**

**OF THE FLORIDA PUBLIC SERVICE COMMISSION**

**DIVISION OF WATER AND WASTEWATER**

**DESCRIPTION**

**CONSENT ORDER DATED OCTOBER 21, 1986**

DOCUMENT NUMBER-DATE

03041 MAR 31 1986

FPSC-RECORDS/REPORTING

BEFORE THE STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL REGULATION

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL REGULATION,	:	IN THE OFFICE OF THE SOUTHWEST DISTRICT
Complainant,	:	
vs.	:	OGC Case No.: <u>85-0792</u>
SHADY OAKS MOBILE MODULAR ESTATES,	:	
Respondent.	:	

CONSENT ORDER

This Consent Order is made and entered into between The State of Florida Department of Environmental Regulation ("Department") and Shady Oaks Mobile Modular Estates, Inc. ("Respondent").

The Department finds and Respondent admits the following:

1. The Department is the administrative agency of the State of Florida charged with the responsibility to protect Florida's air and water resources and to administer and enforce the Florida Air and Water Pollution Control Act, Chapter 403, Florida Statutes, and the rules and regulations promulgated thereunder in Florida Administrative Code Chapter 17.

2. Respondent is a corporation authorized to conduct business in the State of Florida. Respondent is the owner of property ("property"), a mobile home park known as Shady Oaks, located at 1702 Highway 39 South, Zephyrhills, Pasco County, Florida 33599, in the area of latitude 28°12'35" and longitude 82°10'46". Respondent owns and operates a 0.04 MGD Type III extended aeration sewage treatment plant with chlorinated effluent to a percolation pond of 23,400 square feet total bottom area ("plant") which is located on the property. The plant operates under Department permit number DO51-089602 which expired on March 1, 1986.

3. On June 18, 1985, the Department issued Warning Notice #51-85-06-139 to Respondent for an unpermitted discharge from the percolation pond to a ditch via the emergency overflow pipe. This discharge is a violation of Section 403.161(1)(b), Florida Statutes.

This Warning Notice also cited Respondent for a Total Suspended

Solids value of 15,667 mg/L in the plant's effluent. This value constitutes a violation of Florida Administrative Code Rule 17-6.180(1)(b)1.d.

4. A review of Respondent's Monthly Operating Reports ("MOR's") reveals values consistently below 0.5 mg/L in the effluent for Total Chlorine Residual. These values constitute a violation of Florida Administrative Code Rule 17-6.060(1)(c)3.a.

5. On July 3, 1985, and April 28, 1986, Department personnel and Respondent met to discuss and resolve these issues. Therefore, having reached a resolution of the matter, pursuant to Florida Administrative Code Rule 17-103.110, Respondent and the Department mutually agree and it is hereby

ORDERED:

6. That the purpose of this Consent Order is to ensure that Respondent modifies the plant to provide satisfactory wastewater treatment and expands the plant's effluent disposal system to eliminate any unpermitted effluent discharge from the plant.

Within 180 days of the effective date of this Order, Respondent shall submit to the Department a complete construction permit application for any modifications necessary to ensure that the plant's effluent meets the requirements of Florida Administrative Code Rule 17-6.180(1)(b)1. and for an additional effluent disposal system which shall eliminate the discharge from the plant. This application shall be prepared by a professional engineer registered in the State of Florida. In the event that the application is incomplete, within 45 days of written request from the Department for additional information required to process the application, Respondent shall submit all requested information to the Department. Within 180 days from issuance of the construction permit, Respondent shall construct and have in use the additional effluent disposal system and any modifications necessary to ensure that the plant's effluent meets the requirements of Florida Administrative Code Rule 17-6.180(1)(b)1. However, in any event, there shall be no effluent discharge from the plant after June 30, 1987.

7. During the construction period as described in paragraph 6, Respondent shall clean and thereafter maintain the

percolation/evaporation pond so as to enable its intended function.

8. Within 30 days of the effective date of this Order and thereafter, Respondent shall maintain a Total Chlorine Residual of 0.5 mg/l in the effluent as required by Florida Administrative Code Rule 17-6.060(1)(c)3.a.

9. Within 150 days of the effective date of this Order, Respondent shall complete all repairs necessary to eliminate infiltration/intrusion into the plant's collection/transmission system.

10. Respondent shall operate the plant in such a manner as to comply with all applicable standards as established in Florida Administrative Code Chapters 17-3, 17-6, 17-7, 17-16, and 17-19 including the limitations of secondary treatment and disinfection of wastewater as outlined in Florida Administrative Code Rule 17-6.060(1)1., which provides:

"(1) Technology-Based Effluent Limitations (TBELS).

(a) Secondary Treatment

1. Surface water disposal (excluding ocean outfalls).

All domestic wastewater facilities are required, at a minimum to provide secondary treatment of wastewater. New facilities and modifications of existing facilities shall be designed to achieve an effluent after disinfection containing not more than 20 mg/L BOD and 20 mg/L TSS, or 90% removal of each of these pollutants from the wastewater influent, whichever is more stringent. All facilities shall be operated to achieve, at a minimum the specified effluent limitations (20 mg/L). All facilities, whether new or existing, shall be subject to provisions of Section 17-6.010(5), regarding the applicability of the above requirements, and Section 17-6.160, and Section 17-6.180 regarding compliance with the above requirements. Appropriate disinfection and pH control of effluents shall also be required."

For purposes of this requirement, the E.P.A. - approved analytical technique as stated in Standard Methods A.S.T.M. for determination of Total BOD concentrations shall be utilized.

11. Respondent shall sample the treatment plant for compliance with the standards stated in paragraph 10 above once per week. Grab

samples shall be collected between 9:00 a.m. and 5:00 p.m. on each respective sampling date. All sampling data shall be reported to the Department on Monthly Operating Report (MOR) forms supplied by the Department.

If the reported sampling data on the MOR's and/or inspections conducted by Respondent or the Department demonstrate that the plant is found to be out of compliance with Florida Administrative Code Chapters 17-3 or 17-6, Respondent shall immediately pursue any and all needed corrections and/or repairs to assure that the out of compliance facility is in compliance with applicable Department rules and regulations. All needed corrections and/or repairs shall be completed within thirty (30) days of the inspection or MOR which identifies the problem causing non-compliance. Reasonable extensions of time may be granted by the Department upon written request by Respondent. These sampling requirements shall continue as long as the plant continues to operate by the authorization of this Consent Order.

12. Within 180 days of completion of construction as described in paragraph 6, Respondent shall submit to the Department a complete operating permit application for the operation of the plant. This application shall be prepared by a professional engineer registered in the State of Florida. In the event that the application is incomplete, within 30 days of written request from the Department for additional information necessary to process the application, Respondent shall submit all requested information to the Department. In any event, Respondent shall not operate the plant without an appropriate and currently valid operating permit after October 31, 1988.

13. No connections shall be authorized by the Department until the discharge from the plant permanently ceases. In addition, as liquidated damages for the violations outlined in the Consent Order, Respondent shall pay to the Department one hundred dollars (\$100.00) per day for each and every day Respondent fails to meet any of the deadlines or fails to comply with any of the requirements or conditions specified in this Order. Failure to meet more than one deadline constitutes a separate violation for each failure. Respondent shall, within forty-five (45) days of written demand from

the Department, make payment of the appropriate amount to the Department's "Pollution Recovery Fund" by certified check, cashier's check or money order. Payment shall be sent to the Department of Environmental Regulation, Southwest District, 7601 Highway 301 North, Tampa, Florida 33637-9544. 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 the terms of this Consent Order.

14. Should Respondent be obstructed or delayed in the initiation, implementation or completion of any requirement of this Order, caused by a force majeure event such as a natural disaster, fire, explosion, or other occurrence beyond the control and without the fault of the Respondent, the Respondent shall, within three days, notify the Department in writing of the delay or anticipated delay. The notice shall describe in detail the anticipated length of delay, the precise cause of the delay, the measures taken and to prevent or minimize the delay, along with the time table by which the measures shall be implemented. The Department will determine if a force majeure event has occurred. If a finding is made that such an event has occurred, the Department shall determine how much delay in time can reasonably be attributed to the event and extend the compliance date in order to compensate for such delay. The increased costs of compliance with this Consent Order shall not be a force majeure; however, nothing in this force majeure provision shall prohibit, or be deemed to prohibit Respondent from raising the defense of Respondent's inability to comply with the terms of this Consent Order on the basis of financial hardship.

15. Respondent shall allow authorized representatives of the Department access to the property and plant at reasonable times for the purposes of determining compliance with this order and the rules and regulations of the Department.

16. The Department hereby expressly reserves the right to initiate appropriate legal action to prevent or prohibit the future violation of applicable statutes, or the rules promulgated thereunder.

17. 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 or criminal penalties for alleged violations outlined in this Consent Order. Respondent waives its right to an administrative hearing pursuant to Section 120.57, Florida Statutes of 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 but waives that right upon signing this Consent Order.

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

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

20. Respondent is fully aware a violation of the terms of this Consent Order may subject Respondent to judicial imposition of damages, civil penalties of up to \$10,000 per offense, and criminal penalties.

21. Persons not parties whose substantial interests are affected by this Consent Order have a right, pursuant to Section 120.57, Florida Statutes, to petition for an administrative determination (hearing) on it. The petition must conform to the requirements of Chapters 17-103 and 28-5, Florida Administrative Code and must be filed (received) in the Department's Office of General Counsel, 2600 Blair Stone Road, Tallahassee, Florida 32399, within 14 days of receipt of this notice. Failure to file a petition within 14 days of constitutes a waiver of any right such person has to an administrative determination (hearing) pursuant to Section 120.57, Florida Statutes.

22. This Consent Order is final agency action of the Department pursuant to Section 120.69, Florida Statutes, and Florida Administrative Code Rule 17-103.110(3), and it is final and effective on the date filed with the clerk of the Department unless a petition is filed in accordance with the preceding paragraph. Upon the timely filing of a petition this Consent Order will not be effective until further order of the Department.

FOR THE RESPONDENT:

10-21-86  
DATE

Richard D. Sims  
Mr. Richard D. Sims  
President  
Shady Oaks Mobile Modular  
Estates, Inc.  
1315 Eckles Drive  
Tampa, Florida

DONE AND ORDERED THIS 21 day of October, 1986, in  
Tampa, Florida.

FILING AND ACKNOWLEDGEMENT

FILED, on this date, pursuant to S120.52 (9), Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.

Anna Black 10/21/86  
Clerk Date

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL REGULATION

Richard D. Garrity  
Richard D. Garrity, Ph.D.  
District Manager  
Southwest District  
7601 Highway 301 North  
Tampa, Florida 33637

Copies furnished to:

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DER  
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**SHADY OAKS MOBILE-MODULAR ESTATES, INC.**

**DOCKET NO. 930944-WS**

**EXHIBIT PB-2**

**WITNESS: PETE BURGHARDT**

**ON BEHALF OF THE STAFF**

**OF THE FLORIDA PUBLIC SERVICE COMMISSION**

**DIVISION OF WATER AND WASTEWATER**

**DESCRIPTION**

**CONSENT FINAL JUDGEMENT DATED MARCH 7, 1989**

IN THE CIRCUIT COURT OF THE  
SIXTH JUDICIAL CIRCUIT IN AND  
FOR PASCO COUNTY, FLORIDA

CASE NO.: 87-3788CA  
DIV. Y

RECEIVED  
MAR 9 1989

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL REGULATION,

Petitioner,

vs.

SHADY OAKS MOBILE MODULAR  
ESTATES, INC.,

Respondent.

Dept. of Environmental Reg.  
Office of General Counsel

CONSENT FINAL JUDGMENT

The above-captioned action having been filed and the parties, State of Florida Department of Environmental Regulation ("DER") and Shady Oaks Mobile Modular Estates, Inc. ("Respondent"), desiring to resolve all matters arising out of the Petition for Enforcement in this action without the time and expense which would be required by litigation, by their respective attorneys, have consented to the entry of this Consent Final Judgment.

NOW, THEREFORE, before the taking of any testimony, upon the pleadings, without trial, admission, or adjudication of any issue of fact or law herein, and without this Consent Final Judgment constituting any evidence or admission of liability or fault by any party hereto with respect to any allegation or matter arising out of any allegation of the Petition for Enforcement, and upon the consent of the parties hereto, it is ORDERED, ADJUDGED AND DECREED as follows:

1. This Court has jurisdiction of the subject matter and of the parties consenting thereto.
2. The provisions of this Consent Final Judgment shall apply to and be binding upon the parties, their agents, successors, or assigns.
3. Respondent is a corporation registered to do business in the State of Florida.

4. DER is an administrative agency of the State of Florida having the authority to control and prohibit pollution of air and water pursuant to Chapter 403, F.S., and the duty to control and prohibit pollution of air and water pursuant to Chapter 403, F.S.

5. Respondent owns and operates a sewage treatment plant located at 1702 Highway 39 South, Zephyrhills, Pasco County, Florida.

6. Pursuant to this Consent Final Judgment, Respondent shall comply with the following requirements:

a. Within 60 days of the effective date of this Consent Final Judgment, Respondent shall submit to DER a complete construction permit application for an additional effluent disposal system which shall eliminate the discharge from the plant. This application shall be prepared by a professional engineer registered in the State of Florida. In the event that the application is incomplete, within 45 days of written request from DER for additional information required to process the application, Respondent shall submit all requested information to DER. Within 180 days from issuance of the construction permit, Respondent shall construct and have in use the additional effluent disposal system. If through no fault of Respondent and for good cause shown, the deadlines above may be extended by agreement between the parties.

b. Within 30 days of completion of construction as described in subparagraph a, Respondent shall submit to DER a complete operating permit application for the operation of the plant. The application shall be prepared by a professional engineer registered in the State of Florida. In the event that the application is incomplete, within 30 days of written request from DER for additional information necessary to process the application, Respondent shall submit all requested information to DER. In any event, Respondent shall not operate the plant without an appropriate and currently valid operating permit after September 1, 1989. If through no fault of Respondent and for

good cause shown, the deadlines above may be extended by agreement between the parties.

7. Respondent is prohibited from connecting more than five new lots to the existing system. No additional connections other than the five authorized in this paragraph, shall be authorized by DER until the requirements of paragraph 6.a. above are completed.

8. Until such time as an operating permit is issued, Respondent shall operate the plant in such a manner as to comply with all applicable standards in Florida Administrative Code Chapters 17-3, 17-6, 17-16, and 17-19.

9. Within thirty (30) days of the entry of this Consent Final Judgment, Respondent shall pay \$200 to the Department of Environmental Regulation (Pollution Recovery Fund). Respondent shall pay an additional \$200 each month thereafter to the Department for the next eleven (11) months with an aggregate amount of \$2,400. Payment shall be sent to the Environmental Manager, Department of Environmental Regulation, Southwest District Office, 4520 Oak Fair Boulevard, Tampa, Florida 33610-7347.

10. Within 395 days of the entry of this Consent Final Judgment, Respondent shall pay \$4,000 to the Department of Environmental Regulation "Pollution Recovery Fund." Payment shall be sent to the Environmental Manager, Department of Environmental Regulation, Southwest District Office, 4520 Oak Fair Boulevard, Tampa, Florida 33610-7347.

11. Within 760 days of the entry of this Consent Final Judgment, Respondent shall pay \$6,000 to the Department of Environmental Regulation "Pollution Recovery Fund." Payment shall be sent to the Environmental Manager, Department of Environmental Regulation, Southwest District Office, 4520 Oak Fair Boulevard, Tampa, Florida 33610-7347.

12. For and in consideration of the complete and timely performance of the obligations described in this Consent Final Judgment, DER waives its right to seek judicial or administrative

imposition of damages or civil penalties for the violations alleged in the Petition for Enforcement.

13. The court retains jurisdiction to enter such orders necessary to enforce the terms of the Consent Final Judgment.

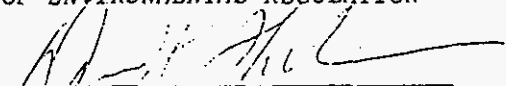
DONE AND ORDERED this 7 day of Mar., 1989.

A TRUE COPY

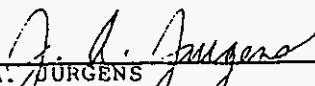
CIRCUIT JUDGE  
WAYNE L. COBB

WE CONSENT TO THE ENTRY OF THIS CONSENT FINAL JUDGMENT WITHOUT FURTHER NOTICE.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL REGULATION

  
DAVID K. THULMAN  
Assistant General Counsel  
2600 Blair Stone Road  
Tallahassee, FL 32399-2400  
Telephone: (904) 488-9730

SHADY OAKS MOBILE MODULAR  
ESTATES, INC.

  
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**SHADY OAKS MOBILE-MODULAR ESTATES, INC.**

**DOCKET NO. 930944-WS**

**EXHIBIT PB-3**

**WITNESS: PETE BURGHARDT**

**ON BEHALF OF THE STAFF**

**OF THE FLORIDA PUBLIC SERVICE COMMISSION**

**DIVISION OF WATER AND WASTEWATER**

**DESCRIPTION**

**JULY 8, 1991 COURT ORDER ON DER'S  
MOTION FOR CONTEMPT**

IN THE CIRCUIT COURT OF THE  
SIXTH JUDICIAL CIRCUIT IN AND FOR  
PASCO COUNTY, FLORIDA.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL REGULATION,

Plaintiff,

CASE NO.: 87-3788CA DIV. Y

v.

FLORIDA BAR NO.: 356115

SHADY OAKS MOBILE MODULAR  
ESTATES, INC.,

Defendant.

ORDER ON DER'S MOTION FOR CONTEMPT

This cause came before me on the State of Florida Department of Environmental Regulation's Motion for Contempt against the Defendant, Shady Oaks Mobile Modular Estates, Inc., and pursuant to the stipulation of the parties reached in chambers, the following relief is

ORDERED:

1. The purpose of this stipulated settlement is to require the Defendant to completely remove its sewage treatment plant from operation and divert all of its flow to Pasco County's sewage collection system. To that end, within six months of the entry of this Order, Defendant will have completed the connection of its sewage treatment system with Pasco County's sewage collection system. During this time period, Defendant shall acquire all permits, contracts and approvals needed to construct the connection to the Pasco County sewage collection system.

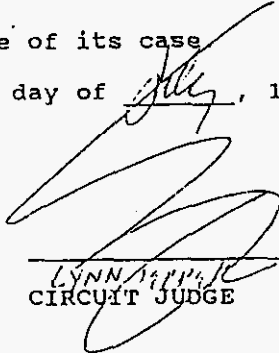
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OCT 10 1991  
Dept. of Environmental Reg.  
Atty General's Counsel

2. Within 30 days of the completion of the connection of Defendant's sewage system to the County's system, the Defendant shall decommission its sewer plant and shall modify the plant and disposal system so that they no longer pose a threat to public health or safety. As part of the decommissioning, Defendant shall drain the percolation ponds and destroy some or all of the berms of those ponds so that they no longer will retain water. Defendant shall also dismantle and remove the treatment plant and/or create enough holes in the components of the plant so that they will no longer retain water.

3. Until such time as the connection is made, Defendant shall operate the treatment plant in such a manner so as to comply with all DER treatment standards including, but not limited to, maintaining sufficient chlorine residual.

4. Upon complete compliance by the Defendant of all of the terms of this Order, this case will be closed and DER will file a voluntary dismissal with prejudice of its case.

DONE AND ORDERED this 8 day of July, 1991.

  
LYNN M. SIMS  
CIRCUIT JUDGE

cc: David K. Thulman  
Richard Sims



**SHADY OAKS MOBILE-MODULAR ESTATES, INC.**

**DOCKET NO. 930944-WS**

**EXHIBIT PB-4**

**WITNESS: PETE BURGHARDT**

**ON BEHALF OF THE STAFF**

**OF THE FLORIDA PUBLIC SERVICE COMMISSION**

**DIVISION OF WATER AND WASTEWATER**

**DESCRIPTION**

**AGREED ORDER GRANTING DEP'S MOTION FOR CONTEMPT  
DATED FEBRUARY 18, 1994**

IN THE CIRCUIT COURT OF THE  
SIXTH JUDICIAL CIRCUIT IN AND FOR  
PASCO COUNTY, FLORIDA.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION,  
(formerly known as, Department  
of Environmental Regulation,

Plaintiff,

v.

SHADY OAKS MOBILE MODULAR  
ESTATES, INC.,

Defendant.

CASE NO.: 87-3788CA DIV. Y

FLORIDA BAR NO.: 356115

AGREED ORDER GRANTING DEP'S MOTION FOR CONTEMPT

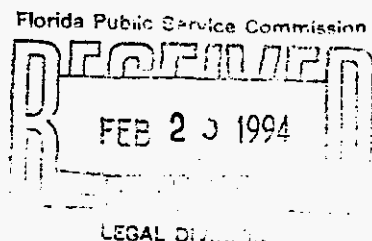
This cause came before me on Plaintiff, State of Florida Department of Environmental Protection ("DEP") moved for contempt against Defendant Shady Oaks Mobile Modular Estates, Inc. ("Shady Oaks"), and pursuant to the stipulation of the parties, it is

ORDERED:

1. On July 8, 1991, this court ruled on a previous motion by the Plaintiff for contempt against the Defendant. In the hearing on that motion, the Defendant represented that it would completely remove its sewage treatment plant from operation and divert its flow to the Pasco County sewage collection system. The Defendant did not comply with this order.

2. The parties have stipulated that the Defendant had the ability to comply with the July 8, 1991 order but that it did not do so.

3. The Court finds that the Defendant's sewage treatment plant still must be removed from service.



4. The Court takes judicial notice of Public Service Commission Order No. PSC-93-0542-FOF-WS wherein the Public Service Commission ordered that a revocation proceeding be initiated to revoke the utility's certificate for failure to comply with, among other things, this Court's order. (Exhibit 1.)

5. The Court finds that Richard Sims is the president of the Defendant and the person responsible for complying with this Court's orders concerning the sewage treatment plant.

6. The parties stipulate and this Court finds that Shady Oaks is in contempt of this Court's order of July 8, 1991. Shady Oaks may purge itself of contempt by complying with one of the following options:

a. Within 120 days from the entry of this order Shady Oaks will have completed the connection of its sewage treatment system with Pasco County's sewage collection system. During this time period, Shady Oaks shall acquire all permits, contracts and approvals needed to construct the connection to the Pasco County sewage collection system. Within 30 days of the completion of the connection of the Defendant's sewage system to the County's system, Shady Oaks shall decommission its sewer plant and shall modify the plant and disposal system so that they will not pose a threat to public health or safety. As a part of decommissioning, Shady Oaks shall drain the percolation ponds and destroy some or all of the berms of those ponds so that they no longer will retain water. All sludge from the sewer plant and any significant accumulation of sludge at the bottom of the pond shall be removed and disposed of in accordance with F.A.C. Rule 17-7. Shady Oaks

shall also dismantle and remove the sewer plant and/or create enough holes in the components of the plant so that they no longer retain water.

b. Within 120 days from the entry of this order Shady Oaks shall sell or otherwise convey the sewage treatment, collection and transmission system and the sewage treatment utility free and clear of all liens and encumbrances. The sale or conveyance shall not be to Richard Sims, his wife or any family member, or to any company or other entity owned or controlled, in whole or in part, directly or indirectly, by Richard Sims, his wife or any family member. The sale or conveyance must meet with the approval of the Public Service Commission. The new owner shall be responsible for complying with paragraph 6.a. above within the time periods specified therein. The time periods will commence from the date the sale or conveyance is complete.

7. If the Plaintiff demonstrates, upon affidavit, that Shady Oaks has failed to purge itself of contempt as provided herein, this Court shall order the Sheriff to arrest Richard Sims and incarcerate him in the county jail until such time as Shady Oaks complies.

8. In the event Shady Oaks fails to purge itself of contempt as provided herein, the Plaintiff may move for the appointment of a receiver to comply with the terms of this order.

The failure to purge shall constitute constructive notice of intent to abandon the system pursuant to section 367.165, Florida Statutes.

DONE AND ORDERED this \_\_\_\_ day of February, 1994.

SIGNED AND DATED

FEB 18 1994

LYNN TEPPERJUDGE LYNN TEPPER  
Circuit JudgeCIRCUIT JUDGE

cc: David K. Thulman  
Thomas Patrick McAlvanah

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for staff-assisted rate case in Pasco County by Shady Oaks Mobile-Modular Estates, Inc. ) DOCKET NO. 900025-WS  
) ORDER NO. PSC-93-0542-FOF-WS  
) ISSUED: 04/09/93

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD  
SUSAN P. CLARK  
JULIA L. JOHNSON

Pursuant to notice, an administrative hearing was held on January 7, 1993, in Zephyrhills, Florida, before Commissioner Thomas M. Beard, sitting as Hearing Officer.

APPEARANCES:

MATTHEW J. FEIL, Esquire, Florida Public Service Commission, 101 E. Gaines Street, Tallahassee, Florida 32399-0863  
On behalf of the Commission Staff.

RICHARD BELLAK, Esquire, Florida Public Service Commission, 101 E. Gaines Street, Tallahassee, Florida 32399-0862  
On behalf of the Commissioners.

The Hearing Officer's Recommended Order was entered on February 11, 1993. No exceptions to the order were filed. After consideration of the evidence, we now enter our Order.

FINAL ORDER FINING UTILITY AND ORDERING THAT REVOCATION PROCEEDINGS BE INITIATED

BY THE COMMISSION:

Background

Shady Oaks Mobile-Modular Estates, Inc., (Shady Oaks or utility) is a class "C" water and wastewater utility serving a 242 lot mobile-modular home park located in Pasco County, south of the City of Zephyrhills. On January 10, 1990, Shady Oaks applied for

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DOCKET NO. 90025-WS  
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a staff-assisted rate case. By proposed agency action (PAA) Order No. 24084, issued February 8, 1991, the Commission approved a rate increase for Shady Oaks and ordered it to take various actions, including, that it install meters for all of its customers within six months, improve its quality of service, file information needed to process a name change, spend a fixed amount on preventative maintenance, and escrow a set portion of revenues. By Order No. 24409, issued April 22, 1991, the Commission dismissed a protest to the PAA Order on jurisdictional grounds and revived Order No. 24084, making it final and effective.

By Order No. 25296, issued November 4, 1991, the Commission found that the utility had failed to comply with the requirements of Order No. 24084. However, since numerous customers had not paid their utility bills as a result of a court dispute over the utility's rates, the Commission decided not to order the utility to show cause why it should not be fined for its noncompliance; instead, the Commission ordered the utility to obey its prior Order and bring the escrow account up to its proper balance. Upon reviewing the utility's situation a second time several months later, the Commission found that the utility had failed to abide by the above Orders. Therefore, by Order No. PSC-92-0367-FOF-WS, issued May 14, 1992, the Commission ordered the utility to show cause why it should not be fined for its continued noncompliance with Orders Nos. 24084 and 25296. Shady Oaks requested a hearing in response to the Order to Show Cause. Pursuant to that request, an administrative hearing was held on January 7, 1993, before Commissioner Beard sitting as Hearing Officer. Shady Oaks did not appear or participate in the hearing.

In accord with Order No. PSC-93-0083-PCO-WS, establishing post-hearing procedure, staff timely filed proposed findings of fact and conclusions of law. The utility did not file anything. The Hearing Officer filed his Recommended Order on February 11, 1993.

The full text of the Hearing Officer's Recommended Order is set forth below, beginning with "Findings of Fact."

II. FINDINGS OF FACT

The following abbreviations are used herein for purposes of citation: "TR" for Transcript, "EX." for Exhibit No., and "p." and "pp." for page(s).

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I accept each and every proposed finding of fact submitted by the staff and, having considered the evidence presented at the hearing, I hereby make the following findings of fact.

ISSUE 1: Did the utility timely comply with Commission Orders Nos. 24004 and 25296 with respect to the meter installation requirements?

1. By Order No. 24004, issued February 8, 1991, the utility was to install water meters on all its customers' connections within six months, by August, 1991. (EX 5, FJL-2, pp. 6, 31)
2. In Order No. 25296, issued November 4, 1991, the Commission noted that the utility had installed 31 of the 185 meters required, but allowed the utility an additional five months, by April, 1992, to complete the meter installations. (EX 5, FJL-3, p. 5)
3. As of May 14, 1992, when the Order to Show Cause, Order No. PSC-92-0367-POP-WS, was issued, the utility had installed a total of 47 of the 185 meters required. (EX 5, FJL-4, pp. 5, 6, 11)
4. The last meters were installed on June 17, 1992, which is 74 days past the extended deadline established in Order No. 25296. (TR 59)
5. The utility does not deny it failed to timely comply, but in a letter to the Commission, the utility claimed that the meter installations were delayed because of an additional monthly expense of \$1,155 for loan service expense and for past due engineering fees. (EX 6, p. 31)
6. The utility did not timely comply with the Commission's Orders with regard to meter installations. (TR 58, 59)
7. Some of the meters that were installed were installed in a haphazard fashion. (TR 64-66, 68-71)

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ISSUE 2: Has the utility complied with Commission Orders Nos. 24004 and 25296 with respect to improving its quality of service?

1. By Order No. 24004, issued February 8, 1991, the Commission found that the utility's quality of service was unsatisfactory, so the Commission took the following action: (1) It imposed a \$2,000 fine on the utility for unsatisfactory service and required the utility to accumulate the fine in an escrow account; however, the Commission suspended the fine for nine months pending review of the utility's service for improvement; (2) It ordered the utility to comply with a Department of Environmental Regulation (DER) Consent Order requiring specific repairs and improvements necessary for the proper operation of the utility's wastewater treatment and disposal facilities within the time period prescribed by that Consent Order; and (3) It directed the utility to spend a minimum of 85% of the \$1,700 per system per month preventative maintenance expense allowance on repairs and maintenance, and it ordered that if the utility had not spent the minimum over a period of six months, the utility must submit an explanation and a detailed statement of future plans to maintain the system. (EX 5, FJL-2, pp. 3, 4, 15)
2. By Order No. 25296, issued November 4, 1991, the Commission (1) suspended the \$2,000 fine until February, 1992; (2) required the utility to escrow the fine as previously ordered; (3) found that the quality of service had deteriorated, noting numerous customer complaints against the utility and the derelict condition of the utility systems; (4) required the utility to interconnect its wastewater system with Pasco County as agreed to in a court-approved settlement between the utility and DER; and (5) found that the utility had failed to spend the minimum of the monthly preventative maintenance allowance, but announced it would review the situation again before further action. (EX 5, FJL-3, pp. 6-9)
3. By Order No. PSC-92-0367-POP-WS, issued May 14, 1992, the Commission lifted suspension of the fine and noted that the utility continued to disobey the Commission's directives. (EX 5, FJL-4, pp. 1-9)

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4. The utility believes customer relations have improved, but does not deny it failed to interconnect with Pasco County or that it failed to expend funds on preventative maintenance, but it claims to have had cash flow problems. (EX 6, pp. 31-32)
5. The utility has failed to interconnect its wastewater system with Pasco County. (TR 59)
6. The utility's customer relations have not improved. (TR 13-53, 59; EX 1-5)
7. The utility has not spent sufficient funds on preventative maintenance or provided a schedule of its maintenance plans. (TR 78-80; EX. 6, pp. 11, 31)
8. The utility has violated the Commission's Orders regarding quality of service, and its quality of service remains unsatisfactory. (TR 59, all above citations)

**ISSUE 3:** Has the utility complied with Commission Orders Nos. 24084 and 25296 with respect to the name change and restructure requirements?

1. By Order No. 24084, the Commission required the utility to file a request for acknowledgement of a restructure and a name change within sixty days of the date of the Order. (TR. 76-78; EX 5, FJL-2, pp 2-3)
2. On March 17, 1991, staff received a letter from the utility requesting official recognition of the utility's new name, S&D Utility (S&D). On April 1, 1991, staff wrote the utility that the name change could not be recognized until the utility produced evidence that the utility land and assets had been properly transferred to S&D and that S&D had been properly registered as a fictitious name. (EX 5, FJL-3, p. 4)
3. In reliance on the utility owner's representation that he would be able to correct the title to the utility land and assets as part of a payment plan he entered into in a bankruptcy proceeding, the Commission allowed the utility, in Order No. 25296, an additional sixty days to complete the name change and restructure requirements.

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If the utility failed to produce the required documentation, it was ordered to operate under its certificated name Shady Oaks Mobile-Modular Estates, Inc. (TR 76-78, EX. 5, FJL-3, p. 4)

4. Staff wrote the utility twice, by letters dated January 22, 1992, and July 21, 1992, to remind the utility of the filing requirements regarding the name change. (TR 77; EX 5, FJL-1 and FJL-5)
5. According to the utility, (1) The land upon which the utility assets are located is titled in the names of Richard D. Sims and Caroline Sue Sims, jointly, and the utility's assets are owned individually by Richard D. Sims d/b/a S&D Utility; (2) The utility is now a sole proprietorship for federal income tax purposes; and (3) The utility does not understand what it is supposed to file. (EX 6, pp. 5, 6, 30)

6. The utility is operating under the name S&D Utility. (TR 78, EX 5, FJL-6)

7. The utility has not filed the documents for a name change and restructure, nor has it complied with the Commission's order to revert to operating under its certificated name of Shady Oaks Mobile-Modular Estates, Inc.; therefore, the utility has not complied with Orders Nos. 24084 and 25296 with respect to the name change and restructure requirements. (TR 78; EX 6, pp. 5, 30, 31)

**ISSUE 4:** Has the utility complied with Commission Orders Nos. 24084 and 25296 with respect to the preventative maintenance requirements?

1. By Order No. 24084, the Commission allowed in rates a \$1,700 per system per month preventative maintenance expense allowance, directed the utility to spend a minimum of 85% of that allowance, and ordered that if the utility had not spent the minimum over a period of six months, the utility must submit an explanation and a detailed statement of future plans to maintain the system. (EX 5, FJL-2, pp. 3, 4, 15)
2. In Order No. 25296, the Commission found that the utility's failure to spend the maintenance allowance was



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likely due to decreased revenues collected due to a Court dispute, and, therefore, ordered the utility to comply with the requirements of Order No. 24004 on a prospective basis. (TR 79; EX 5, FJL-3)

3. For the months of September, 1991, through February, 1992, the utility's actual expenditures represented less than 40% of what the utility was ordered to spend. (TR 70)

4. Required expenditures for maintenance up to February, 1992, were \$8,670. Actual expenditures for maintenance by February, 1992, were \$3,291. (EX 5, FJL-7)

5. The utility does not deny it failed to expend funds on preventative maintenance, but claims to have had cash flow problems. (EX 6, pp. 31-32)

6. The utility has not submitted a written schedule to the Commission showing what monthly maintenance will be adopted, along with a statement of the reason such funds were not expended, and a detailed statement of its future plans to maintain the system, and has, therefore, violated the Commission's Orders. (TR 78-80; EX. 6, pp. 11, 31)

ISSUE 5: Has the utility complied with Commission Orders Nos. 24004 and 25296 with respect to the escrow requirements?

1. By Order No. 24004, the Commission required the utility to escrow that portion of the rate increase related to the pro forma plant allowed and the \$2,000 fine imposed, but suspended, until such time as the pro forma plant was constructed and the Commission reviewed the utility's quality of service. (TR. 80-81; EX 5, FJL-2, pp., 3, 29)

2. In Order No. 25296, the Commission recognized that the utility did not comply with Order No. 24004 regarding the escrow requirements in large part because many of the utility's customers did not pay their water and wastewater bills. However, the utility was admonished for unilaterally ceasing to escrow without Commission approval. The utility was ordered to immediately correct

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the deficiency in the escrow account, and to continue placing the appropriate portion of revenues in the escrow account. (TR 80-81; EX 5, FJL-3, pp. 4, 5)

3. As of November 30, 1991, the utility had placed \$1,201 into escrow, or approximately \$3,417 less than the appropriate escrow amount of \$4,618. (TR 81)

4. As of September, 1992, the required escrow account balance was \$20,109, but the actual escrow account balance was \$9,251. (EX 5, FJL-8 (revised))

5. The utility does not deny it has not escrowed the required amounts, but claims it has been unable to meet the escrow obligation because of cash flow problems resulting from the Chapter 11 filing wherein the utility owner must escrow \$886.00 to cover back real estate taxes and must make payments (now delinquent) to the U.S. Trustee. According to the utility, Richard D. Sims d/b/a S&D Utility filed for Chapter 11 bankruptcy on June 22, 1992. (EX. 6, p. 31)

6. The utility has violated the Commission's Orders requiring that a set amount of funds be escrowed and that the escrow account be brought up to the appropriate balance. (TR 81; above citations)

ISSUE 6: What punitive action should the Commission take against the utility?

1. The utility has failed to comply with Orders Nos. 24004 and 25296 regarding timely installation of water meters, implementing specific directives to improve quality of service, filing appropriate name change and restructuring documents, meeting preventative maintenance requirements, and escrow requirements. (See above citations)

\* 2. The utility should be fined in the amount of rate base. The Commission should initiate a proceeding to reduce the utility's rates by the amount of proforma plant and preventative maintenance expense that has not been spent by the utility. The utility's certificate should be revoked. (TR 04)

3. Total rate base, less the wastewater system proforma allowances is \$60,572. (BX 5, P.H.-2, p. 36)

### III. CONCLUSIONS OF LAW

The Florida Public Service Commission has jurisdiction over the subject matter of this proceeding pursuant to Chapters 120, 350, and 367, Florida Statutes.

In consideration of the evidence presented and the above proposed findings, I make the following conclusions of law.

**ISSUE 1:** Did the utility timely comply with Commission Orders Nos. 24084 and 25296 with respect to the meter installation requirements?

No, utility did not timely install the meters. The utility was in violation of Order No. 25296 for 74 days.

**ISSUE 2:** Has the utility complied with Commission Orders Nos. 24084 and 25296 with respect to improving its quality of service?

No. The quality of service is still unsatisfactory.

**ISSUE 3:** Has the utility complied with Commission Orders Nos. 24084 and 25296 with respect to the name change and restructure requirements?

No.

**ISSUE 4:** Has the utility complied with Commission Orders Nos. 24084 and 25296 with respect to the preventative maintenance requirements?

No.

**ISSUE 5:** Has the utility complied with Commission Orders Nos. 24084 and 25296 with respect to the escrow requirements?

No.

**ISSUE 6:** What punitive action should the Commission take against the utility?

The record supports fining the utility \$60,572 and taking action to revoke the utility's certificate. The record also supports the Commission's initiating action to reduce the utility's rates to remove from the rate calculation all pro forma plant not constructed by the utility and the allowance for preventative maintenance not performed.

Chapter 367, Florida Statutes, bestows upon the Florida Public Service Commission exclusive jurisdiction over each utility with respect to its authority, service, and rates. Section 367.011(2), Florida Statutes. Further, section 367.011(3), Florida Statutes, declares, "The regulation of utilities is declared to be in the public interest, and this [Chapter] is an exercise of the police power of the state for the protection of the public health, safety, and welfare." In order for this Commission to prevent further violations of its regulatory directives and to protect the health, safety, and welfare of the customers of this utility, we find the above punitive measures are necessary.

### IV. RECOMMENDATION

In consideration of the foregoing, I recommend that the Commission enter an Order consistent with the above findings and conclusions and recommend that the Commission fine the utility \$60,572, take action to revoke the utility's certificate, and initiate action to reduce the utility's rates to remove from the rate calculation all proforma plant not constructed by the utility and the allowance for preventative maintenance not performed.

Upon consideration, we find the Hearing Officer's findings to be supported by competent substantial evidence in the record, and therefore, adopt the Recommended Order in all respects except two. The record reflects that the proceeding related to both the utility's water and wastewater certificates, and not just one of the utility's certificates as the Recommended Order indicates.

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The second change that we believe is appropriate is that we will not revoke the utility's certificates at this time, but will initiate a proceeding to revoke the certificates. This is because Section 367.045(6), Florida Statutes, provides that the Commission shall give 30 days' notice before it initiates any such action. This was not a proceeding initiated to revoke the utility's certificates. During the 30 days following the notice, the utility will have the opportunity to file an objection to the Commission's notice of intent to initiate a revocation proceeding. If an objection is received, we will set the revocation proceeding for hearing at which time the utility will have the opportunity to put on evidence that revocation of its certificates is not appropriate. Based on the record in that proceeding, the Commission will ultimately determine if it is appropriate to revoke Shady Oaks' water and wastewater certificates.

Upon review and consideration of the complete record, we find that Shady Oaks has violated the provisions of Order Nos. 24084 and 25296 and that it is appropriate to fine the utility \$60,572. We also find it appropriate to initiate a proceeding to revoke the utility's water and wastewater certificates. Finally, we find it appropriate to initiate action to reduce the utility's rates to remove from the rate calculation all pro forma plant not constructed by the utility and the allowance for preventative maintenance not performed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that each and every finding herein is specifically approved. It is further

ORDERED that Shady Oaks Mobile-Modular Estates, Inc., is hereby fined \$60,572. It is further

ORDERED that this docket shall remain open for the proceeding discussed in the body of this order.

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By ORDER of the Florida Public Service Commission, this 2th day of April, 1993.

  
STEVE TRINDLE, Director  
Division of Records and Reporting

( S B A L )

SFS

#### 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.

**SHADY OAKS MOBILE-MODULAR ESTATES, INC.**

**DOCKET NO. 930944-WS**

**EXHIBIT PB-5**

**WITNESS: PETE BURGHARDT**

**ON BEHALF OF THE STAFF**

**OF THE FLORIDA PUBLIC SERVICE COMMISSION**

**DIVISION OF WATER AND WASTEWATER**

**DESCRIPTION**

**INSPECTION REPORT DATED FEBRUARY 17, 1994**

DEPARTMENT OF ENVIRONMENTAL REGULATION  
SOUTHWEST DISTRICT SEWAGE TREATMENT PLANT INSPECTION REPORT

ERT

FACILITY: Schaden Ditch DATE: 2/17/94 TIME: 5:06 pm - Rain Lt.

INSPECTOR: BURGHARDT CB COUNTY: PASCO

FENCED/LOCKED: Y/Y TYPE: EA-CS-AS 1020 MGD

APPEARANCE: Overgrown / unkept. ODOR: Yes

MOTORS/BLOWERS: Single

BACKFLOW: None TIME CLOCK: By Passed?

AERATION BASINS: RAW DIFFUSERS: on High

SLUDGE RETURN: Clogged or off → No Return

CLARIFIER: Raw sewage surging thru sys. STILLING WELL: Not functional

WEIR: completely over flowed; Not visible SKIMMER: ~~Not~~ Not Funct.

DIGESTOR: Unused & Aerated

CHLORINATOR: None RESIDUAL: None / RAW

CL<sub>2</sub> CONTACT CHAMBER: Discharging RAW EFFLUENT: RAW / un treated

ADDITIONAL EQUIPMENT/TREATMENT: None

EFFLUENT DISPOSAL METHOD: Single Pond - overgrown

LIFT STATION(S): One Pump out ALARMS: Audible NONE  
Last Entry Feb 16, 1992 Light NONE

OPERATOR LOG: \_\_\_\_\_ SITE TIME: NONE IN/OUT: \_\_\_\_\_

LOG ENTRIES: None (since 6/24/92)

COMMENTS: Plant is Not Functioning - Raw sewage discharging unchlorinated to overgrown pond

MORS: Last Submitted 12/93 for the month of November 1993

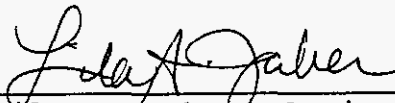
SLUDGE ANALYSIS: \_\_\_\_\_ GWMP: NA

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Revocation by Florida ) DOCKET NO. 930944-WS  
Public Service Commission of ) FILED: 03-31-94  
Certificates Nos. 451-W and 382- )  
S Issued to SHADY OAKS MOBILE- )  
MODULAR ESTATES, INC. in Pasco )  
County, Pursuant to Section )  
367.111(1), Florida Statutes. )

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Staff's Direct Testimony of Pete Burghardt with Exhibits PB-1 through PB-5 has been furnished to Shady Oaks Mobile-Modular Estates, Inc., c/o John Wharton, Esquire, Rose, Sundstrom & Bentley, 2548 Blairstone Pines Drive, Tallahassee, Florida, 32301, by U.S. Mail, and H.F. Mann, Esquire, c/o the Office of Public Counsel, Claude Pepper Building, Room 812, 111 W. Madison Street, Tallahassee, Florida, 32399-1400, by hand delivery, this 31<sup>st</sup> day of March, 1994.

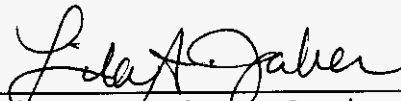
  
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Lila A. Jaber, Senior Attorney  
FLORIDA PUBLIC SERVICE COMMISSION  
101 East Gaines Street  
Tallahassee, Florida 32399-0863  
(904) 487-27406

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