

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

FLORIDA CITIES WATER COMPANY

RATE APPLICATION FOR RECOVERY OF LEGAL EXPENSES

TESTIMONY OF MICHAEL ACOSTA

Q. Please state your name and business address.

A. Michael Acosta, 4837 Swift Road, Suite 100, Sarasota, Florida 34231.

Q. By whom are you employed and in what capacity?

A. I am employed by Florida Cities Water Company (FCWC) as Vice President, Engineering & Operations.

Q. Is a summary of your educational and professional background attached as Appendix A?

A. Yes, it is.

Q. What is the purpose of your testimony?

A. The purpose of my testimony is to explain significant events, especially permitting, and progress pertaining to meeting the requirements set forth in the United States Environmental Protection Agency (EPA) Administrative Orders and the Florida Department of Environmental Protection (FDEP), formerly known as the Florida Department of Environmental Regulation, Consent Orders for the upgrade of Waterway Estates Advanced Wastewater Treatment Plant (Waterway) in Lee County.

Q. Were you directly involved in the process, in

*note:*  
*exhibits marked*  
*as Exh. 9 at 8/98 hearing*

1           1986, of renewing the National Pollution  
2           Discharge Elimination System (NPDES) permit for  
3           Waterway?

4    A.    No, my testimony in this regard is based on my  
5           review of Company records.

6    Q.    When you began employment at FCWC in October  
7           1985, was there a valid NPDES permit?

8    A.    Yes, the permit had been issued on September 24,  
9           1981 and expired on September 24, 1986.

10   Q.    Based on your review, was FCWC in compliance with  
11          this permit?

12   A.    Yes.

13   Q.    When did FCWC apply for renewal of the NPDES  
14          permit?

15   A.    May 9, 1986 (Exhibit \_\_\_\_ MA-1).

16   Q.    Did EPA notify FCWC that renewal of the permit  
17          might be denied?

18   A.    Yes, the EPA notified FCWC on July 22, 1986 that  
19          it had tentatively concluded that the renewal  
20          application should be denied (Exhibit \_\_\_\_ MA-2).

21   Q.    What was the reason the EPA gave for considering  
22          denial of renewal of the NPDES permit?

23   A.    The EPA stated that denial was being considered  
24          because FCWC did not have a wasteload allocation  
25          for discharging from the plant in the

1 Caloosahatchee River.

2 Q. What is a wasteload allocation?

3 A. A wasteload allocation is the allocation granted  
4 a particular facility for discharging pollutants  
5 into waters of the United States. The  
6 allocations take into account the maximum  
7 pollutant loading a water body can assimilate  
8 without degradation.

9 Q. What is the significance of a wasteload  
10 allocation?

11 A. A wasteload allocation is necessary, in a water  
12 quality limited stream, for the issuance of an  
13 NPDES permit.

14 Q. Was a wasteload allocation established for the  
15 Caloosahatchee River?

16 A. Yes.

17 Q. When was the wasteload allocation established?

18 A. 1975.

19 Q. Who established the wasteload allocation to the  
20 Caloosahatchee River where the effluent from the  
21 Waterway was discharged?

22 A. The FDEP established the wasteload allocation for  
23 the Caloosahatchee River.

24 Q. As part of the wasteload allocation established  
25 by FDEP for the Caloosahatchee River was part of

1           that allocation allotted to Waterway?

2    A.    Yes.

3    Q.    What was the wasteload allocation for the WWE

4           plant in 1981?

5    A.    The wasteload allocation in 1981 for the WWE

6           plant was 1.5 million gallons per day (mgd),

7           however this was limited by the capacity of the

8           plant which was 1.08 mgd.

9    Q.    Had FDEP changed Waterway's wasteload allocation

10           between 1981 and 1986?

11   A.    No.

12   Q.    What changed from the time of the NPDES permit

13           issuance in 1981 to when FCWC applied for permit

14           renewal in 1986 that would have caused EPA to say

15           that no wasteload allocation existed for

16           Waterway?

17   A.    Nothing had changed officially during this period

18           with respect to the wasteload allocation.

19           However, the FDEP's wasteload allocation

20           documentation report, a planning document, issued

21           in January of 1981 states in one part "The

22           Waterway Estates Treatment Plant was eliminated

23           from further modeling due to the assumed tie-in

24           to the Cape Coral facility and the assumed

25           impracticality of upgrading to AWT and relocating

1           the outfall."

2    Q.    Why did the FDEP make the assumption that the  
3           Waterway would be eliminated?

4    A.    A 201 facilities plan had been developed by Lee  
5           County in 1977.  This plan would have established  
6           a regional wastewater treatment plant north of  
7           the Caloosahatchee River to treat wastewater from  
8           Waterway Estates, Cape Coral, North Fort Myers  
9           Utilities, Lee County Utilities, and other  
10          service areas north of the River.

11   Q.    What is a 201 facilities plan?

12   A.    A 201 facilities plan is a document, generally  
13          done by a municipal agency that provides "for the  
14          application of the best practicable waste  
15          treatment technology before any discharge into  
16          receiving waters, including reclaiming and  
17          recycling of water, and confined disposal of  
18          pollutants so they will not migrate to cause  
19          water or other environmental pollution and shall  
20          provide for consideration of advanced waste  
21          treatment techniques".

22   Q.    Did this 201 facilities plan provide for a  
23          wasteload allocation for Waterway?

24   A.    No.  In addition, under the plan Waterway would  
25          have been phased out.

1 Q. Was this plan officially adopted or implemented?  
2 A. No.  
3 Q. Was FCWC ever notified by FDEP that its wasteload  
4 allocation had been eliminated or otherwise  
5 changed?  
6 A. No.  
7 Q. Did the FDEP also require a permit for Waterway?  
8 A. Yes, the FDEP required an operating permit.  
9 Q. Was FCWC operating under an existing operating  
10 permit issued by FDEP for the WWE plant?  
11 A. Yes.  
12 Q. When was the permit issued by FDEP?  
13 A. August 2, 1983.  
14 Q. Did this permit cover the discharge from Waterway  
15 to the Caloosahatchee River?  
16 A. Yes.  
17 Q. Was the FDEP permit in effect at the time the EPA  
18 denied renewal of the NPDES permit?  
19 A. Yes, the permit had an expiration date of August  
20 2, 1988. (Exhibit\_\_\_ MA-3).  
21 Q. To FCWC's knowledge did the EPA check with the  
22 FDEP regarding the existence of a wasteload  
23 allocation for Waterway prior to issuing the  
24 denial of the renewal of the NPDES permit on  
25 December 8, 1986?

1 A. No, to the contrary, in discovery it was  
2 determined that by letter dated May 7, 1986, the  
3 FDEP notified the EPA that the wasteload  
4 allocation for Waterway was 1.08 million gallons  
5 per day (Exhibit \_\_\_ MA-4).

6 Q. Did the EPA give FCWC any advance warning that it  
7 was considering denial of the renewal of the  
8 NPDES permit?

9 A. Yes.

10 Q. Did FCWC bring the July 22, 1986 notice from EPA  
11 that it was considering denying the permit  
12 renewal to the attention of the FDEP?

13 A. Yes, FCWC met with the Southwest District of the  
14 FDEP staff on July 29, 1986 to discuss the EPA's  
15 conclusion that the permit should be denied  
16 (Exhibit \_\_\_ MA-5).

17 Q. Was FCWC notified that the permit renewal had  
18 been denied?

19 A. Yes, by letter dated December 8, 1986 (Exhibit  
20 \_\_\_ MA-6).

21 Q. Was there a means of challenging the denial of  
22 the permit renewal?

23 A. Yes.

24 Q. Did FCWC challenge the denial?

25 A. No.

1 Q. Based on your review of the records why did FCWC  
2 not pursue the opportunity to challenge the  
3 permit denial.

4 A. FCWC immediately began the process of complying  
5 with upgrading the plant to advanced wastewater  
6 treatment standards and relocating the outfall to  
7 the six foot contour of the Caloosahatchee River.  
8 In addition, FCWC believed it was satisfying the  
9 lead permitting agency in the matter, the FDEP.  
10 FDEP had developed the wasteload allocation and  
11 was working with FCWC to establish a schedule to  
12 upgrade Waterway and relocate the outfall.

13 Q. Did the EPA consult with the FDEP prior to denial  
14 of the permit renewal?

15 A. Yes.

16 Q. Was such consultation routine in these types of  
17 permitting matters?

18 A. Yes. Generally the EPA would consult with the  
19 FDEP in a process known as certification.

20 Q. Please describe the certification process?

21 A. In the certification process one agency sends a  
22 permit application to another agency for the  
23 second agency's review. This review is for  
24 general conformance with the rules, regulations  
25 and policies\_of the second agency.



1 Q. Did the FDEP "certify" the renewal of the NPDES  
2 permit?

3 A. Yes. However, the FDEP, by July 29, 1986,  
4 recommended that, upon expiration of the current  
5 operating permit, the plant be upgraded to meet  
6 advanced wastewater treatment standards and the  
7 discharge be redirected from the canal leading to  
8 the Caloosahatchee River directly to the River  
9 itself or be eliminated. This recommendation is  
10 reflected in the NPDES worksheet prepared by  
11 FDEP. (Exhibit \_\_\_ MA-7).

12 Q. What other action did FCWC initiate in response  
13 to the EPA's notice that renewal of the NPDES  
14 permit would most likely be denied and the FDEP's  
15 position that the discharge should be relocated  
16 or eliminated?

17 A. On November 10, 1986 FCWC solicited engineering  
18 proposals for "the preparation of an engineering  
19 report to evaluate and recommend effluent  
20 discharge and wastewater treatment process design  
21 alternatives and recommend the most cost-  
22 effective and permittable alternative" and  
23 entered into an agreement with Environmental  
24 Science and Engineering, Inc. On March 27, 1987  
25 to perform these services.

1 Q. Based on your experience and a review of the  
2 record which agency, FDEP or EPA did FCWC believe  
3 was the controlling agency in regards to the  
4 permitting issues associated with Waterway?

5 A. It has been my experience that the FDEP is the  
6 lead agency in matters associated with permitting  
7 wastewater treatment and disposal facilities.  
8 The FDEP does routine inspections of the plant,  
9 permits all new connections to the collection  
10 system(s) leading to the plant, issues operating  
11 permits for the plant and received monthly plant  
12 operating statistics which are used to monitor  
13 the performance of the plant. EPA's only  
14 involvement is receiving monthly discharge  
15 reports and periodic inspections, usually during  
16 permit renewal cycles. Based on my review of the  
17 record, FCWC was working with FDEP in regards to  
18 the permitting of Waterway and believed that it  
19 was satisfying all requirements necessary for the  
20 continued operation of Waterway.

21 Q. Was FDEP satisfied with the strides made by FCWC  
22 in the permitting process and with the operation  
23 of the facility in general?

24 A. It is my opinion that FDEP was satisfied with the  
25 operation of the facility and with the progress

1           being made in the permitting process by FCWC.

2   Q.    Was the plant performance satisfactory during

3           this period of time?

4   A.    Yes, the plant was meeting all the water quality

5           parameters contained in both the NPDES permit

6           issued in 1981 by EPA and the operating permit

7           issued by FDEP in 1983.

8   Q.    What action did the EPA take after denial of the

9           renewal of the NPDES permit?

10  A.    By letter dated May 11, 1987, the EPA notified

11           FCWC that Waterway was in violation of the Clean

12           Water Act and issued a "Section 309" Order

13           (Exhibit \_\_\_ MA-8).

14  Q.    What was FCWC ordered to do?

15  A.    FCWC was ordered to cease discharging pollutants

16           to the water of the United States at the earliest

17           date practical but not later than September 30,

18           1988.

19  Q.    In your opinion, was meeting this deadline

20           possible?

21  A.    No, considering all the design, permitting and

22           construction that would be necessary this

23           deadline was not practical nor could it have been

24           met.

25  Q.    Was a new NPDES permit ever issued by EPA?

1 A. Yes on September 29, 1989. (Exhibit \_\_\_\_ MA-9)

2 Q. When and how did you become personally involved  
3 in the upgrade of the Waterway?

4 A. I first became involved in the Waterway upgrade  
5 in the late fall of 1987 when I was asked to  
6 provide site visits of the Waterway Estates  
7 facility to prospective engineering firms. The  
8 prospective firms were in the process of  
9 preparing proposals to be submitted for design  
10 services associated with the upgrade of the plant  
11 and outfall to meet FDEP and EPA requirements.

12 Q. Was an engineering firm retained as a result of  
13 the proposals?

14 A. Yes, Source, Inc. was retained in February, 1988.

15 Q. What were Source's responsibilities in regards to  
16 the upgrade of the Waterway?

17 A. Source was to design the necessary facilities in  
18 order to upgrade the plant to meet advanced  
19 treatment standards and design an outfall to the  
20 six-foot contour of the Caloosahatchee River as  
21 required by FDEP and EPA and the preparation and  
22 submission of all permit and zoning applications  
23 necessary to construct the upgrade.

24 Q. What permits, variances and exemptions were  
25 necessary for this upgrade?

1 A. A building permit, a zoning variance and a  
2 development order or exemption therefrom were  
3 required from Lee County. A FDEP construction  
4 permit for the plant, an Army Corps of Engineers  
5 permit and an exemption from South Florida Water  
6 Management District were required.

7 Q. Why was a zoning variance required when a  
8 wastewater treatment plant already existed on the  
9 site?

10 A. A zoning variance was required because the  
11 upgrade required the use of the entire site to  
12 accommodate all the proposed treatment processes,  
13 therefore setbacks could not be maintained and a  
14 variance was required to build without setbacks.

15 Q. What is a setback?

16 A. A setback is an area of land that needs to be  
17 left between the property line to the nearest  
18 building or structure. In order to construct the  
19 plant on this site a zero setback was required.

20 Q. When did Source file the zoning variance request?

21 A. The request was filed in June 1988.

22 Q. What was Lee County's response to the request?

23 A. The request was denied in August 1988.

24 Q. Why was the request denied?

25 A. At hearing, questions were raised by members of

1 the Board of Adjustments and the general public.

2 Q. What did FCWC do in response to the denial?

3 A. FCWC appealed the denial and the zoning variance  
4 and provided additional information in response  
5 to the questions raised at the hearing. The  
6 variance was ultimately granted in October 1988  
7 without the need to pursue the appeal.

8 Q. What is a development order?

9 A. A development order is a document required by  
10 ordinance in Lee County that allows the  
11 development of a site and places the conditions  
12 on the development of the site.

13 Q. When was the application for a development order  
14 exemption submitted to Lee County?

15 A. The application for a development order exemption  
16 was submitted concurrently with the zoning  
17 variance request.

18 Q. What was the outcome of the application for a  
19 development order exemption?

20 A. The exemption to the development order was denied  
21 initially because Lee County stated that "there  
22 is over 2500 square feet of additional impervious  
23 area and the impervious calculations are not  
24 complete. Ultimately the exemption was approved  
25 in April, 1989.

1 Q. What is an FDEP construction permit?

2 A. An FDEP construction permit is a document  
3 necessary to construct the processes that would  
4 treat the wastewater to meet advanced wastewater  
5 treatment standards. Reasonable assurance must  
6 be given to FDEP that the design would meet these  
7 standards.

8 Q. When was the application for an FDEP construction  
9 permit submitted?

10 A. The application was submitted in May, 1989.

11 Q. Why was this FDEP permit application not  
12 submitted concurrently with the zoning and  
13 development order application?

14 A. The construction permit application could not be  
15 completed until the plans were finalized and the  
16 plans could not be finalized until the zoning  
17 variance and development order exemption were in  
18 place.

19 Q. Why was that the case?

20 A. If the FDEP construction permit were filed  
21 without the zoning variance and development order  
22 exemption in place then the site plan as  
23 submitted to FDEP could change if some portion of  
24 the zoning variance or development order  
25 exemption were altered during the approval

1 process. If that occurred a site plan change .  
2 would be necessary and the entire permit  
3 application would have to be resubmitted to FDEP  
4 for approval.

5 Q. When was the FDEP permit issued?

6 A. March 1990.

7 Q. What is an Army Corps of Engineers dredge and  
8 fill permit and why was it required for this  
9 project?

10 A. An Army Corps of Engineers permit is required  
11 anytime excavation in waters of the United States  
12 is undertaken. In this case, excavation was  
13 required in order to install an outfall pipeline  
14 to the six-foot contour of the Caloosahatchee  
15 River.

16 Q. When was the Army Corps of Engineers dredge and  
17 fill permit application submitted?

18 A. April 1989.

19 Q. Why was this permit application not filed sooner?

20 A. For the same reasons that the FDEP permit  
21 application could not be filed sooner. In  
22 addition, this pipeline emanates from the  
23 ultraviolet disinfection chamber and a movement  
24 of that structure by only a few feet would have  
25 caused a complete resubmission.



1 Q. When was this permit received?

2 A. April 1990.

3 Q. Why was a South Florida Water Management District

4 permit required for this project?

5 A. An exemption under the District's stormwater

6 permitting was necessary for this project.

7 Q. When was the exemption application submitted?

8 A. January 1989.

9 Q. When was the exemption received?

10 A. February 1989.

11 Q. What is a building permit and why was it

12 necessary for this project?

13 A. A building permit is the document that actually

14 allows the construction of, in this case, the

15 treatment structures and control building. It is

16 necessary in order to obtain inspections of the

17 progress of construction by local government.

18 Q. Who applies for a building permit?

19 A. A State of Florida licensed contractor is the

20 only entity that can apply for a building permit.

21 Q. When was a contractor employed by FCWC?

22 A. The contract for the plant upgrade was signed by

23 FCWC and Cardinal Contractors in August 1990 and

24 a Notice to Proceed was issued in August 1990 for

25 the construction of the Waterway Estates Advanced

1           Wastewater Treatment Plant.

2    Q.    Why was a Notice to Proceed not issued earlier  
3           than August 1990.

4    A.    While all the permits were in place, with the  
5           exception of the building permit, in April 1990  
6           and bids were received that same month FCWC  
7           undertook a value engineering study to ensure the  
8           best possible product was being built at the best  
9           value for FCWC's ratepayers.    FCWC routinely  
10          performs value engineering studies on projects as  
11          complex and intricate as this one.

12   Q.    Did the contractor begin construction in August  
13          1990?

14   A.    No, the contractor applied to Lee County for a  
15          building permit in September 1990, however, the  
16          permit was not issued until December 1990.

17   Q.    Why did the permit take so long to issue?

18   A.    That is not entirely clear, however, a new  
19          requirement imposed by Lee County involved  
20          concurrency.  A letter of concurrency had to be  
21          issued by the County in order to issue the  
22          building permit.  A letter of concurrency was  
23          issued in October 1990.  The building permit in  
24          December 1990.

25   Q.    What is a concurrency requirement?

- 1 A. The concurrency requirement was implemented by  
2 ~~the~~ Lee County in order to ensure that basic  
3 services such as roads, water and wastewater  
4 were in place and meeting current standards prior  
5 to the development of a parcel of land.
- 6 Q. Why was the concurrency requirement not obtained  
7 sooner?
- 8 A. The concurrency requirement had been implemented  
9 after the development order exemption was issued  
10 and prior to the submission of the building  
11 permit application. The concurrency requirement  
12 is normally part of the development order  
13 process. In this case the development order  
14 exemption was already in place so Lee County  
15 required concurrency prior to the issuance of the  
16 building permit.
- 17 Q. When did the contractor begin actual  
18 construction?
- 19 A. The contractor performed some preliminary work  
20 during the time the building permit application  
21 was being processed by Lee County, however only  
22 very limited work could be done during this  
23 period. Construction began in earnest in January  
24 1991.
- 25 Q. When was the upgrade to the Waterway completed?

1 A. The plant construction was completed in April  
2 1992. The outfall main was completed in June  
3 1991.

4 Q. Is that a normal construction period for this  
5 type of work?

6 A. Considering that the existing plant had to remain  
7 in operation during the entire construction  
8 period along with the extremely tight building  
9 site, less than one acre, the time frame for  
10 building this plant was extremely timely.

11 Q. Does this conclude your testimony?

12 A. Yes.

## Appendix A

### Michael Acosta, P.E.

**Educational  
Background**

Bachelor of Science in Engineering Specializing in  
Environmental Engineering  
University of Florida, August 1985

**Registrations**

Registered Professional Engineer in the State of Florida

**Professional  
Experience**

Florida Cities Water Company/Poinciana Utilities Inc.  
October 1985 to Present

Vice President, Engineering and Operations, January 1995 to present. Responsible for all engineering management aspects of the planning, design, construction, operation and maintenance of the Company's utility systems. Specific responsibilities include development of capital, maintenance and operations budgets, management of Engineering and Operations Managers, participating in financial and environmental regulatory rulemaking, corporate recruiting of engineering staff and efficient operation of all Company facilities. Annual operations and maintenance budget: approximately \$20,000,000. Annual capital budget: approximately \$15,000,000.

Manager of Engineering and Construction, May 1992 to January 1995. Responsible for the management of engineering and construction projects throughout the six divisions of the Company within the State of Florida. Specific responsibilities included supervision of professional engineering personnel, development and implementation of capital improvement and maintenance budgets, development of project design scopes, management of professional consultants, environmental and zoning permitting, and the development of standard company policies and specifications.

Regional Engineer, South Region, May 1989 to May 1992. Responsible for the engineering and construction activities in the South Region of the Company. Specific responsibilities included supervision of eleven employees including engineering, construction, inspection, drafting and clerical personnel; development of regional budget; implementation of capital improvement budget and oversight of professional consultants.

Division Engineer, Lee County Division, October 1985 to May 1989. Responsible for engineering projects in the Lee County division of the Company. Specific responsibilities included supervision of drafting and inspection personnel, plan and specification review, contract document preparation, design of water distribution and wastewater collection systems and administration of outside developer projects.

**Professional  
Associations**

National Society of Professional Engineers, Florida  
Engineering Society, American Water Works Association, Water  
Environment Federation, American Backflow Prevention Association