

ORIGINAL

MEMORANDUM

December 14, 1998

TO : DIVISION OF RECORDS AND REPORTING (BAYO)

FROM : DIVISION OF WATER AND WASTEWATER (REDEMANN) *from bl*

RE : DOCKET NO. 981781-SU, APPLICATION FOR AMENDMENT OF CERTIFICATE NO. 247-S TO EXTEND THE SERVICE AREA TO THE BUCANNEER ESTATES IN LEE COUNTY BY NORTH FORT MYERS UTILITY, INC.

Enclosed please find a letter dated December 9, 1998 from Mr. Martin S. Friedman from the Law Firm of Rose, Sundstrom & Bentley, which should be placed in the Docket File.

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ACK \_\_\_\_\_

AFA \_\_\_\_\_

APP \_\_\_\_\_

CAF \_\_\_\_\_

CMU \_\_\_\_\_

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SEC 1 \_\_\_\_\_

WAS \_\_\_\_\_

OTH \_\_\_\_\_

CC: Division of Legal Services (Ferguson)  
Division of Records and Reporting (Security File)

DOCUMENT NUMBER-DATE

14514 DEC 23 88

FPSC-RECORDS/REPORTING

LAW OFFICES

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DIANE D. TREMOR, P.A.  
JOHN L. WHARTON

December 9, 1998

MAILING ADDRESS  
POST OFFICE BOX 1567  
TALLAHASSEE, FLORIDA 32302-1567

TELECOPIER (850) 656-4029

VIA HAND DELIVERY

RECEIVED

ROBERT M. C. ROSE  
OF COUNSEL

DEC 23 1998

Florida Public Service Commission  
Division of Water and Wastewater

Mr. Richard Redemann  
Florida Public Service Commission  
Water and Wastewater  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Re: Docket No. 981781-SU; Application for Extension of Service in  
Lee County, Florida to Buccaneer Estates  
Our File No. 16319.29

Dear Richard:

You asked that I provide you with a copy of the DEP Consent Order which required the Buccaneer Mobile Estates Wastewater Treatment Plant to connect to North Fort Myers Utility, Inc. I believe that some historical information will help put this matter into perspective. In 1991, Lee County adopted Ordinance No. 91-01, which required mandatory hook-ups to central sewer systems when they are available to property previously served by an on-site disposal system. A copy of that Ordinance is enclosed for your information. On November 19, 1997, this law firm, on behalf of North Fort Myers Utility, Inc., advised Mobile Home Communities, the owner of Buccaneer Estates, that it was invoking the provisions of Ordinance 91-01 and that NFMU expected connection within 365 days of that date, which coincidentally coincided with the expiration of the Buccaneer Estates wastewater treatment plant operating permit. A copy of that letter is also enclosed.

The DEP, in order to resolve the outstanding environmental problems at the Buccaneer Estates wastewater treatment plant, sent Mobile Home Communities a proposed Consent Order, a copy of which is enclosed. Buccaneer Estates did not enter into the Consent Order for fear that it would appear as if it was consenting to the DEP action, which would have possibly had an adverse effect in its actions under Chapter 723, Florida Statutes, for passing through the costs to the park residents. However, that proposed Consent Order does set forth the problems that existing at the wastewater treatment plant. You will also note at paragraph 10 the reference to connecting into a regional sewer system which refers to NFMU.

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MAILING ADDRESS  
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TALLAHASSEE, FLORIDA 32302-1567  
TELECOPIER (850) 856-4029

November 19, 1997

Mr. Larry Knight  
Mobile Home Communities  
28050 U.S. Highway 19, North  
Suite 406  
Clearwater, Florida 34621

Re: Buccaneer Village Mobile Home Park  
Wastewater Treatment Plant

Dear Mr. Knight:

On several previous occasions we have advised you, on behalf of our client, North Fort Myers Utility, Inc. ("NFMU") that central sanitary sewer service is available to the Buccaneer Village community in North Fort Myers, and further, that NFMU has a 16 inch force main abutting the entire northern perimeter of the subject Park. The first such notice was by my letter of November 18, 1996 to Paul Adams of STES, your agent. Therefore, pursuant to Lee County Ordinance No. 91-01, you are again reminded that Buccaneer had one year from that date of Notice of Service Availability from the central system (NFMU) to interconnect.

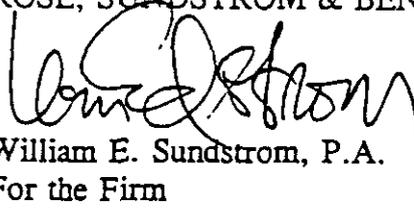
Further, we note that the Florida Department of Environmental Protection Operating Permit for the subject facility expires on November 23, 1998, which coincides with the second anniversary of your date of mandatory interconnect. The cost and expense, and six month lead time involved in preparing an application for renewal of the operating permit for the subject wastewater treatment plant is substantial. According to our client's information, the wastewater treatment plant at Buccaneer Village cannot pass the required mounding test at the percolation ponds, and further (on information and belief) the plant cannot handle, either hydrologically or biologically, the through-put of the system during both the peak months of occupancy and also the peak rainfall months. Therefore, it is only proper that we begin at this time designing the most favorable interconnect terms and conditions that we can on behalf of the subject Park and its residents.

Mr. Larry Knight  
November 19, 1997  
Page 2

I look forward to working with you in negotiating an acceptable service agreement.

Sincerely,

ROSE, SUNDSTROM & BENTLEY, LLP



William E. Sundstrom, P.A.  
For the Firm

WES:jmt

cc: David Fell, Esq., MHC  
A. A. Reeves, NFMU

LEE COUNTY ORDINANCE NO. 91-01

AN ORDINANCE OF LEE COUNTY, FLORIDA, TO PROVIDE FOR THE MANDATORY CONNECTION OF ON-SITE SEWAGE DISPOSAL SYSTEMS TO PUBLICLY OWNED OR INVESTOR-OWNED WASTEWATER COLLECTION SYSTEMS AFTER NOTICE THAT SUCH A SYSTEM IS AVAILABLE; PROVIDING FOR DEFINITIONS; PROVIDING FOR AN ADMINISTRATIVE WAIVER OF THE MANDATORY CONNECTION; PROVIDING FOR PENALTIES FOR VIOLATION; PROVIDING FOR REPEAL OF ORDINANCE 76-17; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, Section 1, Chapter 69-234, Laws of Florida, 1969, provides that in accordance with the provisions of Article VIII, § 1 of the Florida Constitution, counties shall have all powers of local self government including government, corporate, and proprietary powers to enable them to conduct county government, perform county functions, and render county services, and may exercise any such powers for county purposes for health, safety, or welfare of its citizens not inconsistent with general or special law; and,

WHEREAS, the Board of County Commissioners have previously adopted a Lee County Comprehensive Plan (the "Lee Plan") which incorporates the valid state and federal law objectives, which include, respectively, re-use of treated sewage effluent for groundwater recharge purposes and the elimination of as many source points of pollution as possible, as is mandated by federal public law 92-500, and this ordinance is in furtherance thereof; and

WHEREAS, the Board of County Commissioners of Lee County, Florida, recognizes that Lee County currently has, and will continue to have in the foreseeable future, far too many

package sewage treatment plants and septic tanks to allow and provide for the continued protection, planning, and management of Lee County's water resources; and,

WHEREAS, the county desires to encourage the re-use of wastewater and to prevent the increasing degradation of Lee County's water resources, both surface and ground waters resulting in a lower quality of life and potentially substantial increases in cost for water and sewerage services in the future, and to protect and provide for the continued health, safety, and welfare of the citizens of Lee County; and

WHEREAS, the Board of County Commissioners recognizes that in the general interest of the public and to promote the general health and welfare of said public it is necessary to encourage the use of publicly owned or investor-owned sewerage systems and to minimize the use of on-site sewage disposal systems.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA:

SECTION ONE: MANDATORY HOOKUPS TO CENTRAL SEWERAGE SYSTEMS

The Board of County Commissioners declares that it is the policy of Lee County to require that each on-site sewage disposal system in Lee County, developed under the provisions of applicable law (except approved on-site gray water systems developed under the provisions of law and administrative rules), shall connect to a public, non-profit, or investor-owned central wastewater collection system within 365 days after notification

by mail or by publication that such a system's collection lines have been installed immediately adjoining the property served by the on-site system. Upon such connection, the owner or beneficiary of such on-site system shall cease to use any other method for the disposal of sewage, sewage waste, or other polluting matter. All such connections shall be made in accordance with the applicable rules and regulations for such connections, which applicable rules and regulations may provide for, among other things, a charge for making any such connection in such reasonable amounts as shall be determined by the appropriate authority and pursuant to applicable law.

On-site sewage disposal systems other than standard septic tank systems shall be exempt from this section provided that such a system has maintained continuous compliance with all rules, orders, statutes, and/or regulations, relating to the operation and maintenance of the facility, of any regulatory agencies or governmental authorities having jurisdiction over that facility.

The Board of County Commissioners shall be the final administrative decision-making body with respect to all issues relating to the mandatory sewer connections pursuant to the terms and conditions of this Ordinance.

#### SECTION TWO: DEFINITIONS

(1) "Continuous Compliance" shall mean that the on-site sewage disposal system has not been out of compliance at any time during the preceding 12 months before the notification

by mail or by publication as referenced in Section One of this Ordinance; with any rule, order, statute, and/or regulation relating to the operation and maintenance of the facility of any regulatory agencies or governmental authorities having jurisdiction over that facility. If an equipment malfunction that causes a transitory or temporary violation is immediately repaired by the owners of any affected system, such malfunction shall not be deemed or construed to cause the system to be out of "continuous compliance" for purposes of Section One, herein.

(2) "On-site sewage disposal system" shall mean any sewage treatment or disposal facility not equipped for effluent re-use, whether serving individual buildings or units, or several buildings or units, which treats or disposes of human body or household type wastes. Such systems include, but are not limited to, standard septic tank systems, laundry wastewater systems, and individual "package" sewage treatment plants which are installed or proposed to be installed on land of the owner or on other land to which the owner or owners have the legal right to install a system and which primarily serves or proposes to serve the owner's property or development.

### SECTION THREE: ADMINISTRATIVE WAIVER

The requirement of mandatory connection as set forth above may be waived administratively by the County Administrator if he or she, or an authorized representative or agent, with the approval of the Department of Health and Rehabilitative Services, determines that such connection should not be

required. Any such waiver shall be limited to a specified time period, not to exceed 365 days, and shall be based on a written finding that one or more of the following conditions exists:

(A) The central wastewater system does not have sufficient capacity to serve the additional demand; or

(B) Connection to the central wastewater system imposes an undue financial hardship if such connection is made within the time period as specified in this ordinance.

#### SECTION FOUR: PENALTIES

A violation of the provisions of this Ordinance shall constitute a misdemeanor of the second degree, punishable as provided by Florida Statutes, for each day or time of occurrence. Additionally, a violation of the provisions of this Ordinance may be punishable by a civil fine of up to \$1,000.00 per day for each day or time of occurrence.

#### SECTION FIVE: REPEALER

Lee County Ordinance No. 76-17 is superseded by this ordinance and is therefore repealed and of no further force and effect.

SECTION SIX: SEVERABILITY

If any section, subsection, sentence, clause, or phrase or if any portion of this Ordinance is found for any reason to be invalid, or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate and distinct, an independent provisions, and such holding shall not affect the validity of any remaining portions thereof.

SECTION SEVEN: EFFECTIVE DATE

The provisions of this Ordinance shall become effective immediately upon receipt from the Secretary of State that said Ordinance has been duly filed with the Secretary of State of the State of Florida.

THE FOREGOING ORDINANCE was offered by Commissioner Judah, who moved its adoption. The motion was seconded by Commissioner St. Cerny, and being put to a vote, the vote was as follows:

JOHN E. MANNING	<u>AYE</u>
DOUG ST. CERNY	<u>AYE</u>
RAY JUDAH	<u>AYE</u>
VICKI LOPEZ-WOLFE	<u>AYE</u>
DONALD SLISHER	<u>ABSENT</u>

DONE AND ADOPTED this 2nd day of January, 1991.

ATTEST:

5045  
CHARLIE GREEN, CLERK

BY: *Barbara E. Rast*  
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

By: *Ray Judah*  
Vice-Chairman

APPROVED AS TO FORM:

BY: *[Signature]*  
Office of County Attorney

**Charlie Green**

Clerk Of Circuit Court  
Lee County, Florida

STATE OF FLORIDA

COUNTY OF LEE

I, Charlie Green, Clerk of the Circuit Court, Lee County, and ex-Officio Clerk to the Board of County Commissioners, Lee County, Florida, do hereby certify that acknowledgment has been received from the Secretary of State on this 11th day of January, 1991, at 8:48 a.m., of the filing of Lee County Ordinance No. 91-01 duly adopted by the Board of County Commissioners at their meeting held on the 2nd day of January, 1991.

Given under my hand and seal, at Fort Myers, Florida, this 14th day of January, 1991.

CHARLIE GREEN,  
CLERK, Circuit Court  
Lee County, Florida

By Clara O. Whisk  
Deputy Clerk

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# Department of Environmental Protection **COPY**

James M. Fike  
Governor

REGISTRATION  
PUBLIC WORKS  
(941) 333-6975

Margaret F. Highsmith  
Secretary

June 10, 1998

**CERTIFIED MAIL NO. P 506 011 516**  
**RETURN RECEIPT REQUESTED**

Klaus Voss  
MHC  
2 N. Riverside Plaza Suite 800  
Chicago, IL 60606

Re: Lee County - DW  
OGC Case No. 98-1791-36-DW  
Buccaneer Mobile Estates WWTP

Dear Mr. Voss:

Please find the enclosed information regarding the above-captioned case. A copy and return it to the Department within fifteen (15) days.

If you have any questions please contact Andrew Barlenbrock at (941) 332-6975. Your cooperation in resolving this case is appreciated.

Sincerely,

Margaret F. Highsmith  
Director of  
District Management

MFH/KCK/dd

Enclosure

cc: OGC (w/enclosure)  
management plan

JUN 24 09 00 AM '61

PUBLIC USE ONLY



BEFORE THE STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT )  
OF ENVIRONMENTAL PROTECTION, )

IN THE OFFICE OF THE  
SOUTH DISTRICT

Respondent

CCO FILE NO. 88-1777-10-00

Manufactured Home  
Communities, Inc.

Respondent.

CONSENT ORDER

This Consent Order is made and entered into between the State of Florida Department of Environmental Protection ("Department") and Manufactured Home Communities Inc. ("Respondent") to reach settlement of certain matters at issue between the Department and Respondent.

The Department finds and the Respondent admits the following:

1. The Department is the administrative agency of the State of Florida having the power and duty to protect Florida's air and water resources and to administer and enforce the provisions of Chapter 403, Florida Statutes ("F.S."), and the rules promulgated thereunder, Florida Administrative Code (F.A.C.) Title 62. The Department has jurisdiction over the matters addressed in this

Consent Order.

2. Respondent is a person within the meaning of Section 192.022(2), F.S.

3. Respondent is the owner and is responsible for the operation of the Buccaneer Mobile Estates, a U.I/O MGD contact

stabilization wastewater treatment facility ("Facility") with chlorinated effluent to percolation ponds. The Facility is located at Latitude: 26° 41' 29" N Longitude: 81° 52' 53" W.

4. Respondent violated Florida Administrative Code (F.A.C.) Rule 62-600.750(1) which requires that in the event that any treatment plant, reuse, or disposal system is temporarily unable to comply with any of the conditions of the permit due to the breakdown of equipment, power outages, destruction by hazard of fire, wind or by other cause, the permittee shall notify the Department and the local program (where existing). Notification shall be made in person, by telephone, or by telegraph to the nearest office of the Department and the local program within 24 hours of breakdown or malfunction. A review of the facility's log book indicated that the facility was washing out on January 8 and 9, 1998. It was also noted in the log book on January 10, 1998 that the chlorine line was broken and not repaired until January 14, 1998. Department records indicate that the Department was not notified of these events.

5. Respondent violated F.A.C. Rule 62-600.740(2)(a) which states that the release or disposal of excreta, sewage, or other wastewater's or domestic wastewater residuals without providing proper treatment is prohibited. Pipes were found in the percolation ponds discharging effluent from the South pond onto the adjacent ground surfaces.

6. Respondent violated F.A.C. Rule 62-600.410(6) requires that all facilities and equipment necessary for the treatment, reuse and disposal of domestic wastewater of domestic wastewater

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residuals shall be maintained at a minimum, so as to function as intended. The facility's liftstations were being run with one of the pumps off. Collection system lift stations are designed to be operated with two pumps.

7. Having reached a resolution of the matter the Department and the Respondent mutually agree and it is

**ORDERED:**

8. Respondent shall comply with the following corrective actions within the stated time periods:

(A) Within five (5) days after the effective date of this Consent Order Respondent shall retain the services of a Florida professional engineer for the purpose of:

- (1) Evaluating the subject Facility including the effluent disposal system and associated sewage collection system to discover the cause or causes of the noncompliance. A copy of this evaluation shall be submitted to the Department within thirty (30) days of the effective date of this Consent Order.
- (2) Designing modifications of the Facility, effluent disposal system, and/or sewage collection systems to ensure the Facility and effluent disposal system will function in full and consistent compliance with all applicable rules of the Department.
- (3) Completing an application for a Department wastewater permit to construct the modifications listed in subparagraph 2, above, if such a permit is required. An application shall be submitted within

sixty (60) days of the effective date of this Consent Order.

- (4) Overseeing the construction of any modifications to the Facility, effluent disposal system, or collection system.
- (5) Submitting to the Department an engineer's certification of completion stating that the construction of modifications to the Facility, effluent disposal system, or collection system have been constructed in accordance with the provisions of the wastewater permit referenced in subparagraph 3, above, if applicable.
- (6) Contacting the Department's Domestic Waste Compliance Inspector by telephone or in person prior to the initiation of the treatment system evaluation listed in subparagraphs 1 and 2, above.
- (7) Providing all requested information in writing within thirty (30) days after receipt of such a request in the event the Department requires additional information in order to process the wastewater permit application listed in subparagraph c, above.
- (8) Respondent shall complete the construction of the sewage treatment modification referred to in sub-paragraph 3.(A)(2), above, and submit an engineer's certification of completion to the Department within thirty (30) days after the

wastewater permit authorizing said construction is issued.

(B) Every calendar quarter after the effective date of this Consent Order, Respondent shall submit in writing to the Department a report containing information concerning the status and progress of projects being completed under this Consent Order, information as to compliance or noncompliance with the applicable requirements of this Consent Order including construction requirements and effluent limitations, and any reasons for noncompliance. Such reports shall also include a projection of the work to be performed pursuant to this Consent Order during the following 12 month period. The reports shall be submitted to the Department within thirty (30) days following the end of the quarter.

9. Within thirty (30) days of the effective date of this Consent Order, Respondent shall submit to the Department a detailed Operation and Maintenance Performance Report meeting all of the requirements of Chapter 62-600.735, F.A.C.

10. Within ninety 90 days of the effective date of this Order the facility shall be in full compliance with Chapter 403, Florida Statutes ("F.S."), and the rules promulgated thereunder, Florida Administrative Code (F.A.C.) Chapter 62 or connected to a regional sewer system.

11. In the event of a sale or conveyance of the Facility or of the property upon which the Facility is located, if all of the requirements of this Consent Order have not been fully satisfied, Respondent shall, at least 30 days prior to the sale or

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conveyance of the property or Facility, (1) notify the Department of such sale or conveyance, (2) provide the name and address of the purchaser, or operator, or person(s) in control of the Facility, and (3) provide a copy of this Consent Order with all attachments to the new owner. The sale or conveyance of the Facility, or the property upon which the Facility is located shall not relieve the Respondent of the obligations imposed in this Consent Order.

12. Within thirty (30) days of the effective date of this Consent Order, Respondent shall pay the Department \$10,500.00 in settlement of the matters addressed in this Consent Order. This amount includes \$10,000.00 in civil penalties for alleged violations of Section 403.161, F.S., and of the Department's rules and \$500.00 for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of this Consent Order. Payment shall be made by cashier's check or money order. The instrument shall be made payable to "The Department of Environmental Protection" and shall include thereon the OGC number assigned to this Consent Order and the notation "Ecosystem Management and Restoration Trust Fund." The payment shall be sent to the Department of Environmental Protection, P.O. Box 2549 Fort Myers, Florida 33902-2549.

13. Respondent agrees to pay the Department stipulated penalties in the amount of \$100.00 per day for each and every day Respondent fails to timely comply with any of the requirements of Paragraphs 7 through 13 of this Consent Order. A separate stipulated penalty shall be assessed for each violation of this

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Consent Order. Within thirty (30) days of written demand from the Department, Respondent shall make payment of the appropriate stipulated penalties to "The Department of Environmental Protection" by cashier's check or money order and shall include thereon the OGC number assigned to this Consent Order and the notation "Ecosystem Management and Restoration Trust Fund." Payment shall be sent to the Department of Environmental Protection, P.O. Box 2549 Fort Myers, Florida 33902-2549. The Department may make demands for payment at any time after violations occur. Nothing in this Paragraph shall prevent the Department from filing suit to specifically enforce any terms of this Consent Order. Any penalties assessed under this Paragraph shall be in addition to the settlement sum agreed to in Paragraph 9 of this Consent Order. If the Department is required to file a lawsuit to recover stipulated penalties under this Paragraph, the Department will not be foreclosed from seeking civil penalties for violations of this Consent Order in an amount greater than the stipulated penalties due under this Paragraph.

14. If any event, including administrative or judicial challenges by third parties unrelated to the Respondent, occurs which causes delay or the reasonable likelihood of delay, in complying with the requirements of this Consent Order, Respondent shall have the burden of proving the delay was or will be caused by circumstances beyond the reasonable control of the Respondent and could not have been or cannot be overcome by Respondent's due diligence. Economic circumstances shall not be considered circumstances beyond the control of Respondent, nor shall the failure of a contractor, subcontractor, materialman or other

agent (collectively referred to as "contractor") to whom responsibility for performance is delegated to meet contractually imposed deadlines be a cause beyond the control of Respondent, unless the cause of the contractor's late performance was also beyond the contractor's control. Upon occurrence of an event causing delay, or upon becoming aware of a potential for delay, Respondent shall notify the Department orally within 24 hours or by the next working day and shall, within seven calendar days of oral notification to the Department, notify the Department in writing of the anticipated length and cause of the delay, the measures taken or to be taken to prevent or minimize the delay and the timetable by which Respondent intends to implement these measures. If the parties can agree that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of Respondent, the time for performance hereunder shall be extended for a period equal to the agreed delay resulting from such circumstances. Such agreement shall adopt all reasonable measures necessary to avoid or minimize delay. Failure of Respondent to comply with the notice requirements of this Paragraph in a timely manner shall constitute a waiver of Respondent's right to request an extension of time for compliance with the requirements of this Consent Order.

15. Persons who are not parties to this Consent Order, but whose substantial interests are affected by this Consent Order, have a right, pursuant to Sections 120.569 and 120.57, P.S., to petition for an administrative hearing on it. The Petition must contain the information set forth below and must be filed

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(received) at the Department's Office of General Counsel, 3000 Commonwealth Boulevard, MS# 35, Tallahassee, Florida 32399-3000 within 21 days of receipt of this notice. A copy of the Petition must also be mailed at the time of filing to the District Office named above at the address indicated. Failure to file a petition within the 21 days constitutes a waiver of any right such person has to an administrative hearing pursuant to Sections 120.569 and 120.57, F.S.

The petition shall contain the following information:

(a) The name, address, and telephone number of each petitioner; the Department's Consent Order identification number and the county in which the subject matter or activity is located; (b) A statement of how and when each petitioner received notice of the Consent Order; (c) A statement of how each petitioner's substantial interests are affected by the Consent Order; (d) A statement of the material facts disputed by petitioner, if any; (e) A statement of facts which petitioner contends warrant reversal or modification of the Consent Order; (f) A statement of which rules or statutes petitioner contends require reversal or modification of the Consent Order; (g) A statement of the relief sought by petitioner, stating precisely the action petitioner wants the Department to take with respect to the Consent Order.

If a petition is filed, the administrative hearing process is designed to formulate agency action. Accordingly, the Department's final action may be different from the position taken by it in this Notice. Persons whose substantial interests will be affected by any decision of the Department with regard to

the subject Consent Order have the right to petition to become a party to the proceeding. The petition must conform to the requirements specified above and be filed (received) within 21 days of receipt of this notice in the Office of General Counsel at the above address of the Department. Failure to petition within the allowed time frame constitutes a waiver of any right such person has to request a hearing under Sections 120.569 and 120.57, F.S., and to participate as a party to this proceeding. Any subsequent intervention will only be at the approval of the presiding officer upon motion filed pursuant to 60Q-2.010, F.A.C.

A person whose substantial interests are affected by the Consent Order may file a timely petition for an administrative hearing under Sections 120.569 and 120.57, Florida Statutes, or may choose to pursue mediation as an alternative remedy under Section 120.573 before the deadline for filing a petition. Choosing mediation will not adversely affect the right to a hearing if mediation does not result in a settlement. The procedures for pursuing mediation are set forth below.

Mediation may only take place if the Department and all the parties to the proceeding agree that mediation is appropriate. A person may pursue mediation by reaching a mediation agreement with all parties to the proceeding (which include the Respondent, the Department, and any person who has filed a timely and sufficient petition for a hearing) and by showing how the substantial interests of each mediating party are affected by the Consent Order. The agreement must be filed in (received by) the Office of General Counsel of the Department at 3900 Commonwealth

Boulevard, MS #35, Tallahassee, Florida 32399-3000, by the same deadline as set forth above for the filing of a petition.

The agreement to mediate must include the following:

- (a) The names, addresses, and telephone numbers of any persons who may attend the mediation;
- (b) The name, address, and telephone number of the mediator selected by the parties, or a provision for selecting a mediator within a specified time;
- (c) The agreed allocation of the costs and fees associated with the mediation;
- (d) The agreement of the parties on the confidentiality of discussions and documents introduced during mediation;
- (e) The date, time, and place of the first mediation session, or a deadline for holding the first session, if no mediator has yet been chosen;
- (f) The name of each party's representative who shall have authority to settle or recommend settlement; and
- (g) Either an explanation of how the substantial interests of each mediating party will be affected by the action or proposed action addressed in this notice of intent or a statement clearly identifying the petition for hearing that each party has already filed, and incorporating it by reference.
- (h) The signatures of all parties or their authorized representatives.

As provided in section 120.573 of the Florida Statutes, the timely agreement of all parties to mediate will toll the time limitations imposed by sections 120.569 and 120.57 for requesting and holding an administrative hearing. Unless otherwise agreed

by the parties, the mediation must be concluded within sixty days of the execution of the agreement. If mediation results in settlement of the administrative dispute, the Department must enter a final order incorporating the agreement of the parties. Persons whose substantial interests will be affected by such a modified final decision of the Department have a right to petition for a hearing only in accordance with the requirements for such petitions set forth above, and must therefore file their petitions within 21 days of receipt of this notice. If mediation terminates without settlement of the dispute, the Department shall notify all parties in writing that the administrative hearing processes under Sections 120.569 and 120.57 remain available for disposition of the dispute, and the notices will specify the deadlines that then will apply for challenging the agency action and electing remedies under those two statutes.

16. In addition to routine annual inspections, Respondent shall allow all authorized representatives of the Department access to the property and facility at reasonable times for the purpose of determining compliance with the terms of this Consent Order and the rules of the Department.

17. All plans, applications, penalties, stipulations

Consent Order to be submitted to the Department shall be sent to the Florida Department of Environmental Protection, P.O. Box 2549 Fort Myers, Florida 33902-2549.

18. This Consent Order is a settlement of the violations alleged by the Department in Paragraphs 4 through 6, above, pursuant to the Department's civil and administrative authority

under Chapters 403 and 376, F.S. This Consent Order does not address settlement of any criminal liabilities which may arise from sections 403.161(3) through (5), 403.413(5), 403.727(3)(b), 376.302(3) and (4), or 376.3071(10), F.S., nor does it address settlement of any violation which may be prosecuted criminally or civilly under federal law.

19. The Department hereby expressly reserves the right to initiate appropriate legal action to prevent or prohibit any violations of applicable statutes, or the rules promulgated thereunder that are not specifically addressed by the terms of this Consent Order.

20. The terms and conditions set forth in this Consent Order may be enforced in a court of competent jurisdiction pursuant to Sections 120.69 and 403.121, F.S. Failure to comply with the terms of this Consent Order shall constitute a violation of Section 403.161(1)(b), F.S.

21. 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 penalties for alleged violations through the date of the filing of this Consent Order as outlined in this Consent Order.

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

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

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

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

26. Respondent acknowledges but waives its right to an administrative hearing pursuant to sections 120.569 and 120.57, F.S., on the terms of this Consent Order. Respondent acknowledges its right to appeal the terms of this Consent Order pursuant to Section 120.88, F.S., but waives that right upon signing this Consent Order.

27. This Consent Order shall be effective on the date filed with the Clerk of the Department

Unless a Petition for Administrative Review is filed in accordance with Chapter 120, F.S. upon the timely filing of a petition this Consent Order will not be effective until further order of the Department.

FOR THE RESPONDENT

Klaus Voss

WIT AND ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 1998,  
in Fort Myers, Florida.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION

Margaret F. Highsmith  
District Director

MFH/KK/klr/dd