

ORIGINAL

DOCKET NO.: 981781-SU - Application for amendment of Certificate No. 247-S to extend service area by the transfer of Buccaneer Estates in Lee County to North Fort Myers Utility, Inc.

WITNESS: DIRECT TESTIMONY OF ANDREW BARIENBROCK APPEARING ON BEHALF OF THE STAFF OF THE FLORIDA PUBLIC SERVICE COMMISSION

DATE FILED: JULY 21, 1999

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FPSC-RECORDS/REPORTING

1 DIRECT TESTIMONY OF ANDREW BARIENBROCK

2 Q. Please state your name and business address.

3 A. Andrew Barienbrock, Florida Department of Environmental Protection
4 (Department or DEP), 2295 Victoria Avenue, Ste. 364, P.O. Box 2549, Fort
5 Myers, FL 33901

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

8 A. I have a Bachelors Degree in Zoology from The Ohio State University and
9 a Masters Degree in Marine Science from Nova Southeastern University.

10 I have had numerous on-the-job training experiences and I have attended
11 numerous seminars and training classes sponsored by the Environmental
12 Protection Agency (EPA) and the Department.

13 Q. How long have you been employed with the DEP and in what capacity?

14 A. I have been employed by the Department for approximately eight years.
15 I began my career with the Department as an Environmental Specialist I in the
16 domestic wastewater section. I then worked in the tanks management section.
17 Following that, I worked in the shellfish environmental assessment section.
18 I accepted a promotion and returned to the domestic wastewater section. In
19 October of 1995 I was promoted into my current position.

20 Q. What are your general responsibilities at the DEP?

21 A. I am the Manager for the Domestic Wastewater Compliance and Enforcement
22 section. I am responsible for directly supervising 5 personnel and indirectly
23 supervising 3 staff members in a branch office. I am responsible for
24 overseeing employees who perform inspections of domestic wastewater
25 facilities, residual's application sites, and reclaimed water sites. My

1 | program is responsible for implementing and enforcing provisions of the
2 | Florida Administrative Code and 40 Code of Federal Regulations. I am
3 | responsible for submitting detailed reports to the EPA, initiation of
4 | enforcement activities by preparing non-compliance letters, Consent Orders,
5 | Case Reports, and Notices of Violation, conducting enforcement negotiations
6 | and representing the Department in formal public hearings and trials. I also
7 | conduct on site-sampling, inspections, and laboratory audits. I have been a
8 | member of the Department's Emergency Response Team since 1992. This entails
9 | responding to incidents involving hazardous material spills, abandoned drums,
10 | and acting as on-scene coordinator for cleanup of environmental emergencies.
11 | I have extensive experience dealing with hazardous materials transport and
12 | disposal.

13 | Q. Have you testified on behalf of the DEP in previous Commission
14 | proceedings?

15 | A. Yes. I testified in the Florida Cities Waterway Estates case. I have
16 | also submitted prefiled testimony on the Southern States Utilities and Gulf
17 | Utilities cases.

18 | Q. What is the purpose of your testimony in this docket?

19 | A. The purpose of my testimony is to provide information on the condition
20 | of the wastewater treatment plant operated by the Buccaneer Mobile Home Park
21 | in Lee County Florida prior to the interconnection of its wastewater system
22 | to North Fort Myers Utility, Inc.

23 | Q. Could you discuss the permit renewal process, and whether Buccaneer had
24 | properly complied with this process?

25 | A. Yes. The permit for this wastewater treatment plant expired on November

1 | 23, 1998. The consulting engineers of Riddle-Newman were hired and submitted
2 | a permit application that was received by the Department on June 5, 1998.
3 | However, Rule 62-620.335(1), Florida Administrative Code, states that a
4 | permittee shall submit an application to renew an existing permit at least 180
5 | days before the expiration date of the existing permit. Therefore, the June
6 | 5, 1999 permit application was considered untimely. The Department does not
7 | seek enforcement based on this rule until such time as the permit has actually
8 | expired.

9 | Q. Was the application considered complete at the time of submission?

10 | A. No. In a letter dated July 20, 1998, the DEP outlined 13 additional
11 | items that would need to be furnished by Buccaneer for the application to be
12 | considered complete. This is identified as Exhibit AB-1, attached to my
13 | testimony.

14 | Q. Were these items ever completed by the utility and provided to DEP?

15 | A. No, completion was not necessary based on the fact that the utility was
16 | connected to North Fort Myers Utilities.

17 | Q. At the time of the application for permit renewal, was the Buccaneer
18 | wastewater system in compliance with DEP standards?

19 | A. No. As a result of field inspections on February 2 and 18, 1998, a
20 | warning letter was sent March 18, 1998 which addressed failures to notify the
21 | Department of abnormal events, failures to maintain the facility, unauthorized
22 | discharges from the percolation ponds, collection system problems and flow
23 | concerns. A copy of the warning letter is identified as Exhibit AB-2,
24 | attached to my testimony. The Department met with the facility owners on
25 | April 7, 1999 and proposed a Consent Order to address the violations at the

1 facility. On June 10, 1998, a proposed consent order was sent to the utility.
2 A copy of the proposed Consent Order is identified as Exhibit AB-3, attached
3 to my testimony. The proposed Consent Order addressed the violations listed
4 in the Department's March 18, 1998 warning letter and proposed to required
5 that the Utility hire a Florida registered professional engineer to evaluate
6 the facility including the effluent disposal system and associated collection
7 system. In the event that modifications to the facility were needed, then the
8 utility would have been required to submit applications and complete
9 construction within certain time frames. The proposed Consent Order also
10 would have required a detailed operation and maintenance report within thirty
11 days and full compliance or connection to a regional wastewater system within
12 ninety days. Finally, a civil penalty of \$10,000.00 with \$500.00 costs and
13 expenses was proposed. On June 18, 1998, Mr. Klaus Voss of Buccaneer MHC
14 contacted me and requested that if the facility were off-line by October 1,
15 1998, that the Department forego entry into the proposed Consent Order. Based
16 on the fact that the Department had handled other cases in a similar fashion,
17 the Department agreed that this solution would be acceptable. This option
18 actually provided the most environmental benefit by eliminating a problem
19 facility which would have been extremely costly to repair.

20 Q. Could you further explain or provide more detail on the areas of
21 greatest concern for the DEP with respect to the Buccaneer wastewater
22 treatment plant?

23 A. Yes. The Department had several major concerns with this facility. One
24 was the adequacy of the facility's disposal system. The Department's
25 discovery of illegal discharge pipes during the February inspections created

1 | serious questions of whether the disposal capacity for the facility was
2 | adequate. The Department would have required that a complete hydrogeologic
3 | evaluation of the disposal system be conducted as part of the Consent Order.
4 | Due to the problems with the disposal system it also would have been required
5 | to meet all of the requirements in Rule 62-610, Florida Administrative Code,
6 | including a minimum separation from seasonal high groundwater. Experience has
7 | shown that this would have not only required the utility to acquire more land
8 | for expanded percolation ponds, but it was most likely that fill dirt would
9 | have had to be added to the site to raise the bottoms of the percolation
10 | ponds. Most facilities find that this is an inordinate cost and seek other
11 | remedies (i.e., connection to a regional facility). A second concern was the
12 | serious infiltration and inflow problems that the facility had been
13 | experiencing. The proposed Consent Order would have required a detailed
14 | inspection of the collection system to determine the problems that existed
15 | throughout the system. The collection system would then have had to be
16 | repaired and brought into compliance with the Department's current standards.
17 | Based on the history of the facility, the problems in the collection system
18 | were numerous and would have required extensive repairs. The Department's
19 | conversations with facility operators indicated that leaks in the collection
20 | system were so extensive that they could only run one lift station pump at a
21 | time in an effort to prevent surcharging the collection system and creating
22 | hydraulic surges at the wastewater facility. Other items such as overgrown
23 | percolation ponds and problems with notifying the Department would have been
24 | relatively easy to resolve. However, the total picture of the system's
25 | problems would have been extremely difficult for a mid-sized utility to

1 | adequately address without large capital expenditures.

2 | Q. With respect to the items of major importance to DEP, are these
3 | considered "easy" and/or relatively inexpensive items to address by a utility,
4 | or would addressing these items incur a substantial investment by the utility?

5 | A. As I stated previously, the items the Department considered major would
6 | have been extremely costly and would have required a substantial investment
7 | by the Utility. In similar instances, hydrogeologic investigations have
8 | ranged from \$15,000 to \$60,000. The costs for acquisition of additional land
9 | and bringing in fill material to raise the height of the existing and new
10 | percolation ponds would have been expected to be significant (\$100,000 or
11 | greater). Conversations with several reputable local engineering firms have
12 | indicated that a review of the scope necessary for the Buccaneer MHP system
13 | would range from \$30,000 - \$60,000. Required repairs would be expected to
14 | have been significant (\$100,000 or greater).

15 | Q. Are these problems specific to only Buccaneer, or are some of these
16 | problems a part of a larger problem faced by other utilities in this area?

17 | A. No, these problems are not specific only to Buccaneer. Many utilities
18 | are faced by these same situations. A number of facilities in the North Fort
19 | Myers area have had similar problems (i.e., Tamiami Village Utilities,
20 | Carriage Village, Windmill Village MHP, and Jones Motel). While lack of
21 | maintenance may have contributed to some of the problems at each of these
22 | facilities and the facility in question, there is no question that the design
23 | standards for which these facilities were built did not adequately address the
24 | conditions these facilities would encounter. New and more stringent
25 | regulations like Rule 62-610, Florida Administrative Code, have tightened

1 requirements and required things like a two foot separation between the bottom
2 of a percolation pond and the seasonal high water table. Previously,
3 percolation ponds were likely dug directly into the groundwater table, as was
4 the case with the subject facility and those that are mentioned above. This
5 type of design has historically failed and these failures and concerns about
6 protection of the groundwater were the reasons for the new design standards.

7 Problems in collection systems can come from many areas. However, two
8 of the most common are the materials used for construction and poor
9 installation. Technological advances have aided in correcting these problems.
10 However, in systems which were built prior to the existence of this
11 technology, problems will continue to manifest themselves.

12 Q. Could you name other utilities in this area that have been affected by
13 this problem, and which resulted in interconnections with regional utilities?

14 A. Yes. In addition to those that I previously mentioned, I also believe
15 that Forest Park Mobile Home Park, FountainView RV Resort, Lake Arrowhead and
16 Laurel Estates, and Lazy Days Mobile Village all had similar problems.

17 Q. Did the DEP receive a response from the utility with respect to the
18 actions required by the DEP in the warning letter and proposed Consent Order?

19 A. Yes. Mr. Klaus Voss, a representative for Buccaneer, contacted the DEP
20 on June 18, 1998, stating that the system would be interconnected to North
21 Fort Myers Utility by October 1, 1998. A subsequent letter from Mr. David
22 Fell indicated the same. Based on the removal of the facility evaluations of
23 the facility and its components were not deemed to be necessary.

24 Q. At what point did the DEP realize that the utility was not going forward
25 with its permit request and had in fact, interconnected with North Fort Myers

1 Utility?

2 A. The Department initially received information on June 18, 1998
3 indicating that the facility would be connected to North Fort Myers Utility.
4 An inspection of the facility on November 4, 1998 verified that the facility
5 had been connected to North Fort Myers Utilities and that the old treatment
6 facilities had been drained and disinfected.

7 Q. Was the interconnection of the utility to North Fort Myers Utility an
8 acceptable option for the DEP?

9 A. Yes. The connection to North Fort Myers Utility eliminated a source of
10 pollution and provided a net environmental benefit.

11 Q. To your knowledge, has DEP required/mandated the interconnection of the
12 wastewater system of Buccaneer to North Fort Myers Utility?

13 A. No. The Department did not require the connection to North Fort Myers
14 Utility. However, based on the facts of the case, connection appeared to be
15 the most environmentally beneficial and economically feasible solution.

16 Q. Do you know whether there was a governmental mandate for Buccaneer to
17 connect to Fort Myers Utility?

18 A. No, I do not know.

19 Q. Does this conclude your testimony?

20 A. Yes.

21

22

23

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25



Lawton Chiles
Governor

Department of Environmental Protection

FILE

South District
P.O. Box 2549
Fort Myers, Florida 33902-2549
(941) 332-6975

Virginia B. Wetherill
Secretary

July 20, 1998

David Fell, Vice President
MHC, QRS DeAnza, Inc.
2 N. Riverside Plaza, Suite 800
Chicago, Illinois 60606

Re: Lee County - DW
Buccaner Mobile Estates WWTP
Appl. No.: FLA014668-001-DW2P

Dear Mr. Fell:

The application for renewal of a wastewater permit for a domestic wastewater facility, [DEP Forms 62-620.910(1) and 62-620.910(2)] has been received. A site inspection conducted by Department personnel and review of the application indicates that the application is incomplete and requires the following additional information.

1. It was observed during the inspection that the distribution of the influent flow to the two treatment trains is not controlled appropriately. Please evaluate the distribution of influent to the two treatment trains and submit the evaluations. Also list the corrective actions and a time schedule to complete them.
2. Please evaluate the design capacity and operation of the surge tanks and submit the evaluations. Provide the pumping rate of the lift station pumps and surge pumps. List the corrective actions and a time schedule to complete them.
3. Please provide a detailed report on how the infiltration and inflow problem will be eliminated. Also include a schedule to complete the necessary corrective actions.
4. Please submit the calibration records for the flow meter.
5. The scale used for weighing chlorine gas cylinders is not working. Please provide the time schedule to fix the scale.
6. Please submit the recent reclaimed water analysis report as required by F.A.C. Rule 62-620.455.
7. Please submit the recent ground water monitoring report.
8. Please submit an updated site plan showing the current capacity of each unit process. Also include the piping details.

Continued...

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David Fell, Vice President
Buccancer Mobile Estates WWTP
July 20, 1998
Page 2

9. Please provide the bottom area and disposal capacity of each percolation pond.
10. Please provide the loading and resting cycle for the percolation ponds.
11. Please provide a schedule for completing the cleaning all the four percolation ponds.
12. Please submit a complete hydrogeologic analysis (which includes but is not limited to a mounding analysis) of the percolation pond system. This analysis shall address any actions to resolve recent non-compliance issues regarding the ponds and how these actions will effect disposal capacity.
13. Please submit an agricultural use plan for a back up residual land application site.

The application will remain incomplete until receipt of the requested information. Please refer to this letter in your response and submit two (2) copies of your response and supporting documentation. Also, note that your response to this letter must be signed, sealed and dated by an engineer registered in the State of Florida.

Pursuant to Section 120.60, Florida Statutes, the Department may deny a permit application if the applicant, after receiving timely notice, fails to correct errors, omissions or supply additional information within a reasonable period of time. Please submit the requested information within 30 days of receipt of this letter.

Should you have any questions, please contact Selvi Kongara of this office at (941) 332-6975.

The South District Office has changed its mailing address to more effectively serve you. Our new address is: Florida Department of Environmental Protection, P.O. Box 2549, Fort Myers, FL 33902-2549.

For deliveries requiring a street address, please continue to use 2295 Victoria Ave., Suite 364, Fort Myers, FL 33901-3881

Please update your records and begin using this address as soon as possible. Thank you for your cooperation.

Sincerely,


Andrew R. Barienbrock
Environmental Manager

ARB/SK/dd

cc: Richard O. Newman, P.E.
Keith Kleinmann - FDEP

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Department of Environmental Protection

FILE

Lawton Chiles
Governor

South District
2295 Victoria Avenue, Suite 364
Fort Myers, Florida 33901-3881

Virginia B. Wetherell
Secretary

Mailing Address:
P. O. Box 2549
Fort Myers, FL 33902-2549

March 18, 1998

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

Re: Lee County - DW
Buccaneer WWTP
D036-224510

Dear Mr. Knight:

The purpose of this letter is to advise you of possible violations of law for which you may be responsible, and to seek your cooperation in resolving the matter. Field inspections of the above referenced facility on February 3, and 18, 1998 indicate that violations of Florida Statutes (P.S.) and Rules may exist at the above described facility.

Department personnel observed the following at the facility:

1. A review of the log book at this facility indicated that the facility was washing out on January 8, 9, and February 3, 1998 and that the park management was notified by the operator. It was also noted in the log book on January 10, 1998 that the chlorine line was broken and not fixed until January 14, 1998. Department records indicate that the Department was not notified of the events on January 8 through 10. Florida Administrative Code (F.A.C.) Rule 62-600.750(1) requires 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.

Continued....
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Mr. Larry Knight
March 18, 1998
Page 2

2. The percolation ponds are heavily overgrown with vegetation. F.A.C. Rule 62-610.523(6) states that rapid infiltration basins, percolation ponds, basins, trenches, or cells shall be routinely maintained to control vegetation growth and to maintain percolation capability by scarification or removal of deposited solids.
3. Unauthorized effluent discharge pipes were found in the two most southern percolation ponds. The south pond was discharging effluent into the adjacent field through a broken emergency overflow pipe. F.A.C. Rule 62-600.740(2)(a) states that the release or disposal of excreta, sewage, or other wastewaters or domestic wastewater residuals without providing proper treatment is prohibited.
4. Conversations with on-site personnel indicated that the facility's liftstations were being run with one of the pumps off. F.A.C. Rule 62-600.410(6) requires that all facilities and equipment necessary for the treatment, reuse, and disposal of domestic wastewater or domestic wastewater residuals shall be maintained at a minimum, so as to function as intended. Both lift station pumps should be operable.
5. A review of the 1997 Discharge Monitoring Reports indicates that the three-month average daily flow exceed 50 percent of the permitted flow for the months of January, February, March, August, September, and October. F.A.C. Rule 62-600.405(3) states when the three-month average daily flow for the most recent three consecutive months exceeds 50 percent of the permitted capacity of the treatment plant or reuse and disposal systems, the permittee shall submit to the Department a capacity analysis report.

The activities observed during the Department's field inspection and any activity at the facility that may be contributing to violations of the above described statutes and rules should be ceased.

Continued activities at the facility in violation of state statutes or rules may result in liability for damages and restoration, and the judicial imposition of civil penalties up to \$10,000 per violation per day, pursuant to Sections 403.141 and 403.161, F.S.

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Mr. Larry Knight
March 18, 1998
Page 3

Please contact Keith Kleinmann at (941) 332-6975 or at the letterhead address within 15 days of receipt of this Warning Letter to arrange a meeting to discuss this matter. The Department is interested in reviewing any facts you may have that will assist in determining whether any violations have occurred. You may bring anyone with you to the meeting that you feel could help resolve this matter.

PLEASE BE ADVISED that this Warning Letter is a part of an agency investigation, preliminary to agency action in accordance with Section 120.57(5), F.S. We look forward to your cooperation in completing the investigation and resolution of this matter.

Sincerely,



Margaret F. Highsmith
Director of
District Management

MFH/KK/dd

cc: Culligan Operating Services
Klaus Voss

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Fax: 941-332-6969

Jul 14 '99 10:22

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Department of Environmental Protection **FILE**

Lawton Chiles
Governor

SOUTH DISTRICT
P. O. Box 2549
Fort Myers, Florida 33902
(941) 332-6975

Virginia B. Wetherell
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
Buccancer Mobile Estates WWTP

1 OCT off line

Dear Mr. Voss:

Enclosed is the Consent Order to resolve the above referenced case. Please sign this copy and return it to the Department within fifteen (15) days.

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

Sincerely,

Margaret F. Highsmith
Director of
District Management

MFH/KK/dd

Enclosure

cc: OGC (w/enclosure)
Enforcement File

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**BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

STATE OF FLORIDA DEPARTMENT)
OF ENVIRONMENTAL PROTECTION,)

Complainant,)

vs.)

Manufactured Home)
Communities, Inc.)

Respondent.)

IN THE OFFICE OF THE
SOUTH DISTRICT

OGC FILE NO. 98-1791-36-DW

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 403.031(5), F.S.
3. Respondent is the owner and is responsible for the operation of the Buccaneer Mobile Estates, a 0.170 MGD contact

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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

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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 8.(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, F.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, 3900 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

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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

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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

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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 notice 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, stipulated penalties, costs and expenses, and information required by this 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

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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 120.68, F.S., but waives that right upon signing this Consent Order.

27. This Consent Order is a final order of the Department pursuant to Section 120.52(7), F.S., and it is final and effective on the date filed with the Clerk of the Department

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unless a Petition for Administrative Hearing 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

DONE AND ORDERED this _____ day of _____, 1998,
in Fort Myers, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Margaret F. Highsmith
District Director

MFH/KK/klm/dd

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Application for amendment) DOCKET NO. 981781-SU
of Certificates No. 247-S to)
extend service area by the)
transfer of Buccaneer Estates) Filed: July 21, 1999
in Lee County to North Fort)
Myers Utility, Inc.)
_____)

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the Direct Testimonies and Exhibits of John Floyd, Andrew Barienbrock and John Williams have been furnished by U.S. Mail this 21st day of July, 1999 to:

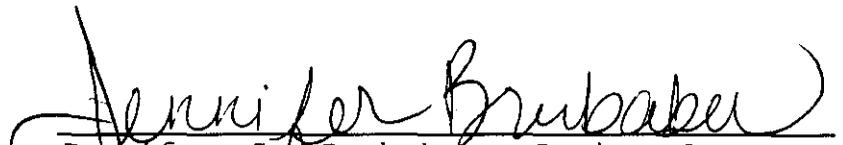
Martin Friedman, Esquire
Rose, Sundstrom & Bentley, LLP
2548 Blainstone Pines Dr.
Tallahassee, FL 32301

Office of Public Counsel
c/o The Florida Legislature
111 W. Madison St., #812
Tallahassee, FL 32399-1400

Joseph Devine
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N. Fort Myers, FL 33917

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Ronald Ludington
509 Avanti Way
N. Fort Myers, FL 33917


Jennifer S. Brubaker, Senior Attorney
FLORIDA PUBLIC SERVICE COMMISSION
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
(850) 413-6228

orig. Cert. of Service attached to DN 0866599.