

981609-WS

Southlake Utilities
333 US Hwy 27
Clermont, FL 34711



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Southlake

SOUTHLAKE UTILITIES, INC.

333 U.S. Highway 27, Clermont, FL 34711

Telephone (352) 394-8898 Facsimile (352) 394-8894

Florida Public Service Commission Certs. 464-S 533-W

December 23, 1999

Mr. Bart Fletcher
Division of Water and Wastewater
Florida Public Service Commission
24550 Shumard Oak Boulevard
Tallahassee, FL 32399-0873

RE: Emergency Petition by D. R. Horton Custom Homes, Inc., to Eliminate Authority of Southlake Utilities, Inc. ("Southlake Utilities") to Collect Service Availability Charges and AFPI Charges in Lake County, Docket No. 981609-WS ("Petition")

Dear Bart:

You were kind to give us this opportunity to respond to the letter by D. R. Horton Custom Homes, Inc. Inc.'s attorney F. Marshall Deterding of September 23, 1999 ("Letter"), which was addressed to you and subsequently forwarded to us by fax.

Because we are a small company with limited resources, it has taken us a long time to digest their lengthy and complex letter. Please understand that this case has already cost us around \$65,000 in attorney and accountant fees, which is approximately 15% of our total projected revenue for the year.

According to a November 9, 1999, press release D.R. Horton, Inc., parent company of D. R. Horton Custom Homes, Inc., ("D.R. Horton"), is a \$3.1 billion company listed on the New York Stock Exchange (www.drhorton.com).

As D. R. Horton has built a business by providing a quality product, so have we. Mr. Ted Davis of your staff visited our service area, inspected our facilities, and spoke with many customers at random throughout our service area. He found our customers to be very positive and pleased with our responsiveness, business practices and the quality of the water that we provide. He even spoke with field construction personnel from D. R.

Horton who reported that they were very pleased with our service and our prompt response to their needs.

As D. R. Horton has built a business known for value and fair prices, so have we. Our plant capacity, service availability and gallonage charges are lower than the respective charges of all three of the other providers whose service areas are contiguous to our service area. Our plant capacity charges are lower than all three and are less than one-half of those charged by two of the three adjoining providers. A chart setting forth such a comparison of rates and charges is attached as Exhibit A. Quite frankly, we are at a loss to understand why D. R. Horton is dissatisfied with us, particularly since we think we are probably the lowest cost service provider of the many water and sewer service providers they work with across the Orlando region.

The Letter raises the following issues:

1. Related Party Land Lease.

We believe the only real issue is whether Southlake Utilities is now required to account for the land lease as a capital lease?

It is our opinion and the opinion of our accountants that utility accounting principles require this capitalization to be done. The Uniform System of Accounts ("USOA") by the National Association of Regulatory Utility Commissioners ("NARUC") provides, in part, the following:

Leases shall be accounted for by the utility as described in Statement of Financial Accounting Standards Nos. 13 (as amended) and 71 published by the Financial Accounting Standards Board. ... Capitalized leases shall be recorded in the appropriate plant in service account(s) which describe the type of asset leased.

See USOA for Class A Water Utilities (1996), Accounting Instruction 22.

According to Financial Accounting Standards Board Statement No. 71,

... leases will be classified (as capital or operating leases) in accordance with FASB Statement No. 13, Accounting for Leases, as amended. Because Statement 13 has not been applied by some utilities in the past, this Statement provides a four-year transition period [from December 15, 1982 "until the first fiscal year beginning

after December 15, 1986"] before retroactive application of lease capitalization is required.

See Accounting Standards, Current Text, General Standards (1999), summary of Statement No. 71, and Accounting Standards, Original Pronouncements (1999), Statement of Financial Accounting Standards No. 71, Accounting for the Effects of Certain Types of Regulation, Financial Accounting Standards Board, Norwalk, CT.

According to Statement No. 13, leases involving related parties, though requiring disclosure, are classified as either capital leases or operating leases in the same manner as leases not involving related parties:

Capital leases are treated as the acquisition of assets and the incurrence of obligations by the lessee. ... A lessee classifies a lease as either a capital lease or an operating lease. If a particular lease meets any one of the following classification criteria, it is a capital lease:

- a. The lease transfers ownership of the property to the lessee by the end of the lease term.
- b. The lease contains an option to purchase the leased property at a bargain price.
- c. The lease term is equal to 75 percent of the estimated economic life of the property.
- d. The present value of rental and other minimum lease payments equals or exceeds 90% of the fair value of the leased property less any investment tax credit retained by the lessor.

See Accounting Standards, Current Text, General Standards (1999), summary of Statement No. 13, and Accounting Standards, Original Pronouncements (1999), Statement of Financial Accounting Standards No. 13, Accounting for Leases, Financial Accounting Standards Board, Norwalk, CT.

The Southlake Utilities land lease meets not one but three of the classification criteria (a., b., and d.) and therefore must be capitalized. Following ordinary and proper accounting procedures, we have capitalized this the net present value ("NPV") of the lease payments, as was substantiated in your recently completed audit. (Audit Request No. CV-9.)

Whether the NPV equals the fair market value of the property substantiated by a MAI appraisal of adjacent identically zoned property prior to this parcel's devotion to public service does not affect the accounting requirement that the present value be recorded. However, in our case the NPV and the fair market value do happen to be nearly identical numbers. This simply reaffirms the Commission's original judgment that the lease was fairly priced to begin with.

While most of the Letter's statements about the land lease are not germane to proper accounting, they do contain factual errors that we feel compelled to correct.

A. The Pardue Heid Church Smith and Waller, MAI, appraisal reflects the true market value of an adjacent parcel within the Southlake PUD with identical zoning, equivalent highest and best use potential, equivalent physical characteristics, equivalent location, equivalent replacement value, and equivalent income potential. In 1993, 29 +/- acres of adjacent property within the same PUD (and adjacent to the Sewer Plant parcel) was appraised by Pardue, Heid, Church, Smith and Waller, MAI, as worth \$1,736,000, i.e. approximately \$59,862 per acre. At the same per acre valuation, the 12.53 acre lease parcel was worth approximately \$750,071.

The tax value for the overall Southlake PUD is significantly lower than the appraised value, on a per acre basis, because at the time of the tax appraisals cited in the Letter, the entire property was actively in use for agriculture. Under Article VII Section 4(a) of the Florida Constitution: "Agricultural land, ... may be classified by general law and assessed solely on the basis of character or use." This constitutional provision is implemented by section 193.461(6)(a) F.S. which states that "In years in which proper application for agricultural assessment has been made and granted pursuant to this section, the assessment of land shall be based solely on its agricultural use." All the property in question, including the parcels that subsequently would be used by Southlake Utilities, were granted agricultural classification, and assessed solely on the basis of agricultural use.

B. The Utility property is now, and was in 1991, zoned for 13.53 residential units gross (22 net) per acre. Had our water and sewer plants not been built, those residential units could have been built. Were we to remove the plants today, 13.53 residential units gross (22 net) could be built on the parcels tomorrow without further PUD/FQD/DRI or comprehensive plan approvals.

C. Prior to its 1990 rezoning, property within which the Southlake Utilities water plant was later located was zoned "highway commercial" on four-lane U.S. 27. It was also zoned "urban node" with a gross density of 13 units per acre as a result of an August 14, 1984, comprehensive plan amendment and the Bramalea PUD ordinance which applied to all property within Section 36, Township 24 South, Range 26 East lying east of U.S. Highway 27 in Lake County. Prior to its 1990 rezoning the property within which the wastewater plant was later located was contiguous to land zoned "highway commercial" on four-lane U.S. 27.

The entire 617 acre Southlake parcel, including the land later used for both the water and wastewater plants, was rezoned from agricultural to PUD with a gross density of 13.53 dwelling units per acre and net density of 22 units per acre by the Lake County Board of County Commissioners by Land Plan Amendment 90-1-3 and by PUD Ordinance 62-1990, adopted on September 26, 1990. The ordinance contained the following provisions regarding utilities.

Section 3.05 A. The project shall be served by County designated regional water and wastewater treatment facilities when such facilities are made available. ... Should the developer elect to assist the County in the establishment and construction of regional water and wastewater treatment facilities that will provide service to the region in which the project is located, the developer shall, within 180 days, enter into a Lake County-Developer Utility Agreement that shall establish the framework for the construction of facilities and provision of service to the project and dedication of the facilities to the County, siting and standards, ...

Section 3.05 B. Should the developer elect to construct on-site water and wastewater treatment facilities, site location plans for facilities and effluent disposal areas shall be submitted to and approved by the Lake County Environmental Services Department and Board of County Commissioners prior to construction. The developer recognizes that said site locations may be different from those submitted in the PUD plans.

Section 3.05 H. ... Within sixty (60) days prior to availability of County designated regional water and wastewater service, the County shall notify the developer of the schedule for connection to County designated facilities. The Lake County Board of County Commissioners may extend the time period for use of Polk County facilities should such extension be in the best interest of Lake County.

As can be seen from the September 26, 1990, Lake County PUD rezoning ordinance, no final decisions had been made concerning dedication of any property to public utility use. In fact, immediately following this rezoning decision, the developers of the entire 617 acre Southlake PUD were seeking to utilize water and sewer provided from the Polo Park plants operated by Polk County located on the Polk County-Lake County line (Southlake PUD to the north). Please see the letter from Donald A. Crawford, P.E., Utilities Director, Polk County, dated October 3, 1990, attached as Exhibit B. It was not until later that they determined that Southlake Utilities could offer them lower cost service on the condition that the developers provide the necessary land to Southlake Utilities.

D. The proposed lease rental rate was fully disclosed to the Commission. The 99 year lease for the property was executed and recorded in 1994 and made effective as of August 17, 1993 when the utility took physical possession of the land and began plant construction. It has been again reviewed by the Commission staff during subsequent territory expansion petitions.

With respect to the Rolling Oaks case, Southlake Utilities disputes the Letter's characterization of the case. As noted in the Court's decision, "the Commission was presented with the testimony of competing experts" and "the Commission's determination of the issue constitutes a reasonable alternative...." *Rolling Oaks Utilities, Inc. v. Florida Public Service Commission*, 533 So.2d 770, 773 (Fla. 1st DCA 1988). In *Rolling Oaks*, the Commission determined that it could not rely upon the utility's valuation of the land. Unlike *Rolling Oaks*, the appraisals submitted by Southlake Utilities do not rely upon unconsummated sales and non arms length transactions. Further, the value of the property in question was achieved through rezonings which occurred prior to the property was being dedicated to public service. This is not a case of a utility company swapping parcels with a related development company with no transfer of funds and then seeking to use a value established with an appraisal with bad data. No one disputes that Southlake Utilities is transferring funds to make scheduled payments for the capital lease, which amounts are constant with the fair market value of the land. As noted above, the 617 acre Southlake Parcel was zoned at the higher density level. There was no area which was limited to only utility use. Southlake Utilities, in an arms length transaction, would have had to pay based upon the costs for the higher density level land. The valuation by Southlake Utilities can be relied upon, unlike the case in *Rolling Oaks*.

2. Plant in Service.

We appreciate the fact that the Letter makes no adjustments to our planned wastewater treatment additions for 1999 and 2000. However, we disagree with the Letter's comments regarding water treatment plant additions. Our proposed water treatment plant additions are based on a thorough study prepared by Conklin Porter & Holmes, Engineers, Inc. We stand by that study and we are following it although, quite frankly, because we are a small company the enormous time and expense required by this case has, itself, caused delays in implementation.

With regard to the questioning of the expenditure of funds for a well which is not permitted, we point out that the questions reveal a lack of understanding about an essential element of the water plant permitting process. In order to apply for a permit from FDEP for a new water treatment plant or to add a well to an existing plant, an applicant must first construct a well or bring an existing well up to public water supply well standards. Only after the well exists, can its water output be analyzed using various sophisticated and expensive chemical and biological test procedures performed by licensed testing labs. Those test results must be submitted with the application to FDEP. If the well completes these rigorous water quality analyses, flow tests, then, and only then, may a permit application be submitted.

With respect to the comments about the need for water capacity, including the disparity with the wastewater capacity, please refer to my December 17, 1999, letter, in which I pointed out that D. R. Horton's homes are using 871 gallons per day ("GPD") or 521 gallons above the 350 GPD/ERC level. In addition, please note that the FDEP advised Southlake Utilities that its plant was rated for maximum flow - not average flow, and that Southlake Utilities needed to build additional capacity to serve committed customers. See Response of Southlake Utilities, Inc. To Staff's Second Data Request, Question 1(a) and Exhibit 1 A2. With respect to the statement that expenses be "imminent", such a statement is contrary to the purpose of having service availability charges to fund the building of plants for capacity to be available when it is needed.

3. Current CIAC Level.

We appreciate the Letter's statement that "we believe we are in agreement with the current level of CIAC." However, as noted in my December 17, 1999, letter, D. R. Horton may not have paid enough contributions-in-aid-of construction ("CIAC") yet. In addition, Southlake Utilities converted \$403,660 of AFPI into CIAC in 1996 pursuant to Order No. PSC-96-1082-FOF-WS. This sum was paid by Southlake Community Foundation, Inc.

Because was deemed a related party of Southlake Utilities, we were instructed by Staff that we could not use the AFPI/service availability charge refund approach which we used with all other developers and instead we were required to convert such AFPI into CIAC. If such funds were not eligible for the refund approach because of the relationship between the parties, such funds should be treated as a contribution to capital (i.e., additional investment)—not as additional CIAC.

4. Current and Future Service Availability Charges.

Unfortunately, the copy of the analysis provided and prepared by Mr. Mike Burton, a consultant to D. R. Horton, is a fax copy rendered illegible by reduction and re-faxing. However, the conclusion that going forward from 1998 Southlake Utilities should have a \$0 water plant capacity charge and a \$118 wastewater charge is ludicrous.

Southlake Utilities, Inc. already has one of the lowest, if not the lowest, plant capacity charges in the entire Orlando region. In our immediate area, we have the lowest plant capacity charges. For one gallon of water capacity plus one gallon of sewer capacity the Southlake Utilities capacity charges add up to \$3.78. At Lake Groves Utilities, which is contiguous with our northern boundary, the plant capacity charges total \$4.01 per gallon of water and sewer capacity. Kissimmee Utilities, contiguous with our eastern boundary, has a combined water and sewer plant capacity charge of \$9.69. Polk County Utilities, contiguous with our southern boundary, charges a total of \$13.45 for one gallon of water and one gallon of sewer capacity. It is not credible to assume that while it currently costs these reputable organizations more than it costs us to provide the same type of service in the same geographic area, Southlake Utilities can not only do so for less, but could really do it for free.

We may be good at what we do, but we are not magicians. It will take money to build the massive amount of plant required to meet the growth forecasted within our service area.

The St. Johns River Water Management District has recently distributed a study by CH2MHill which projects a greater than six thousand per cent (6,722%) increase in water demand within the Southlake Utilities service area. We will clearly require adequate CIAC of at least the low amounts currently authorized to meet the phenomenal demand. It is completely appropriate for users to pay a portion of those costs of those costs through CIAC.

5. Past AFPI Refunds and Charges.

It is our well demonstrated and extensively documented position that Southlake Utilities is required to collect AFPI through December 31, 1999. If, after that time, the plants reach their designed capacity these charges cease.

Southlake Utilities understands that AFPI charges have been an area of confusion. We also understand that the current approach followed by the Commission is not to use true up AFPI charges but to use guaranteed revenue changes. However, Southlake Utilities is currently bounded by prior Commission decisions. Southlake Utilities would recommend that its current AFPI True Up procedures be converted into a procedure using both AFPI charges and guaranteed revenue charges.

6. Conclusion.

As disclosed by the information provided by Southlake Utilities in this docket, will be continuing to add facilities for the next several years and will need CIAC as well as its own funding. Southlake Utilities is not receiving a windfall from its customers. It lost \$56,000.00 in 1996, and had income of \$183,462.00 in 1997, and lost \$ 253,501 in 1998. D. R. Horton is seeking a windfall—it is seeking to reduce Southlake Utilities service availability charges below their already low level, construct homes which require much more capacity than they should, and reduce Southlake's already low income. Southlake Utilities needs to continue to receive CIAC and to recover AFPI and guaranteed revenue charges.

Sincerely,

Robert L. Chapman, III
President

Enclosures: Rate Comparison, 1990 Polk County Utility service letter

Cc: Division of Records and Reporting, Ms. Blanco Bayo
James Ade, Esq.
✓ Samantha Cibula, Esq.
Mr. Ted Davis
F. Marshall Deterding, Esq.,
Mr. Norman Mears
Ms. Patricia Merchant, CPA
Scott Schildberg, Esq.

COMPARISON OF RATES AND CHARGES

Type of charge	Cost to customers served by Southlake Utilities	Cost to customers on Southlake north boundary served by Lake Groves Utilities	Cost to customers on Southlake east boundary served by Kissimmee Utilities	Cost to customers on Southlake south boundary served by Polk Co. Utilities
Plant Capacity Charges				
Water 350 gallons	\$420.00	\$707.00	\$2,415.00	\$996.53
Wastewater 300 gallons	\$775.00	\$597.86	\$836.50	\$3,183.33
	<u>\$1,195.00</u>	<u>\$1,304.86</u>	<u>\$3,251.50</u>	<u>\$4,179.86</u>
Monthly Charges				
Base Facilities, Water	\$8.64	\$12.10	\$2.39	\$7.92
Base Facilities, Wastewater	\$9.37	\$15.15	\$8.05	\$32.91
per 1,000 gallons water	\$0.81	\$1.20	\$1.19	\$1.35
per 1,000 gallons wastewater	\$0.98	\$1.04	\$4.03	\$1.35
Combined water and wastewater monthly charge 10,000 gallons	\$35.91	\$49.65	\$52.20	\$67.83

Note: 1) Kissimmee Utilities base facilities charge includes first 2,000 gallons

2) For purposes of comparison, per gallon plant capacity charges for each utility have been determined by dividing the price per ERC or ERU by the number of gallons per ERC or ERU for that utility. Comparison charges are based on 350 gallons of water and 300 gallons of wastewater capacity.

Prepared by Southlake Utilities, Inc.
December 22, 1999

Exhibit to letter to Bart Fletcher, FPSC

Exhibit A



IMPERIAL
POLK COUNTY

POST OFFICE BOX 2019 BARTOW, FLORIDA 33830
TELEPHONE:
(813) 533-6491 (Administration)
(813) 534-6039 (Customer Service)
(813) 293-4892 ext. 6039 (Administration & Customer Service)
(813) 533-4049 (Operations/Maintenance)
(813) 293-4892 ext. 3860 (Operations/Maintenance)

UTILITIES DIVISION

October 3, 1990

Mr. Robert L. Chapman III, President
Southlake Development Group
800 U.S. Highway 27
Clermont, Florida 34711

RE: Southlake Development
Water and Wastewater Utility Service


Dear Mr. Chapman:

Pursuant to your recent request, I would like to advise you that Polk County Utilities has water and wastewater utility services available in the Hwy. 27/192 area. As we have discussed, the County is very interested in providing utility service to your proposed Southlake Development.

I am available at your convenience to further discuss the requirements and fees for the utilization of Polk County water and wastewater facilities.

We look forward to having the opportunity to serve your proposed development. Should you have any questions, do not hesitate to call me.

Sincerely,


Donald A. Crawford, P.E.
Utilities Director

DAC/mjm

xc: Darrell Gunn, Public Works Director
Steve Shealey, Utilities Staff Engineer
Mark Carpanini, Assistant County Attorney
Jack Brandon, Attorney at Law
Project File



Southlake

SOUTHLAKE UTILITIES, INC.
333 U.S. Highway 27, Clermont, FL 34711
Telephone (352) 394-8898 Facsimile (352) 394-8894
Florida Public Service Commission Certs. 464-S 533-W

December 23, 1999

By Facsimile: (850) 413-7018

Mr. Bart Fletcher
Division of Water and Wastewater
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

RE: Emergency Petition by D.R. Horton Custom Homes, Inc., to Eliminate Authority of Southlake Utilities, Inc. to Collect Service Availability Charges and AFPI Charges in Lake County, Docket No. 981609-WS ("Petition")

Dear Bart:

I appreciate the fact that you and Ms. Patricia Merchant ("Staff") took time to call me on Monday, December 20, regarding our December 17, 1999, letter to Samantha Cibula, Esq. That letter concerned our preliminary findings from a Water Audit we are conducting at the direction of the St. Johns River Water Management District that subdivisions within our service area constructed by D. R. Horton Custom Homes, Inc. are consuming water at an annual daily flow of 871 gallons per house per day — 249% of the capacity reserved by D. R. Horton for these houses. This consumption also is 249% the subdivision-wide flow per-house capacity authorized to D. R. Horton under F.D.E.P permits.

In our letter we pointed out that the Service Availability and Main Extension Policy of the Southlake Utilities, Inc. Tariff, as approved by the Florida Public Service Commission, contains a provision for in Section 13.0 Plant Capacity Charges [Water Tariff Sheet 31.0] which applies to "all Contributors." "If the experience of the Contributor after twelve months of actual usage exceeds the estimated gallons on which the plant capacity charges are computed, the Utility shall have the right to collect additional contributions in aid of construction."

On Monday, prior to our conversation, I also faxed to Staff a sample Application for Service form, as signed by D. R. Horton, which contains the same provision.

On Monday, Staff stated that the “all Contributors” language applied only allowed to commercial customers.

Staff further stated that we are prohibited from collecting more than \$420.00 for a connection to residential units because of our Schedule of Fees and Charges, Sheet 38.0 of the Water Tariff, reads, in part:

<u>DESCRIPTION</u>	<u>AMOUNT</u>	<u>SHEET NO.</u>
Plant Capacity Charge Residential-per ERC (350 gpd)	\$ 420.00	31.0”

She told me that Southlake Utilities is not allowed to “true-up” plant capacity charges to any residential developer for future or past construction, based on usage experience.

We respectfully disagree with Staff’s interpretation of Sheet 38.0 and respectfully suggest that this provision has precisely the opposite meaning and effect.

- The “Residential-per ERC” line on Sheet 38.0 states that one ERC is “350 gpd”, therefore 871 gallons must equal 2.49 ERCs.
- Because the line of text on Sheet 38.0 listing the “Residential-per ERC” price refers specifically to Sheet 31.0, the provisions found on Sheet 31.0 are incorporated as provisions of the price.

Sheet 31.0 contains Section 13.0, the Plant Capacity Charges section of the Service Availability and Main Extension Policy. It reads, in full, as follows, with **emphasis** added for clarity.

13.0 PLANT CAPACITY CHARGES

Utility requires that **all Contributors** pay for a pro rata share of the cost of Utility’s water and wastewater treatment plant facilities whether the facilities have been constructed or not. Such charges to Contributors pursuant to this policy **are calculated** based upon the **estimated demand** of the Contributor’s proposed installations and improvements upon the treatment facilities of the Utility and are computed **by multiplying** the number of **calculated equivalent residential connections by the plant capacity reservation charges** reflected in Sheet No. 38.0.

If the **experience of the Contributor after twelve months of actual usage exceeds the estimated gallons** on which the plant capacity charges are computed, the Utility **shall have the right to collect additional contributions** in aid of construction. The

twelve month period shall commence when certificates of occupancy have been issued for Contributor's entire project.

Staff further stated that Rule 25-30.055 FAC prohibits allocating more than 350 gallons to a residential unit. However, Section 25-50.055 is captioned "Systems With a Capacity or Proposed Capacity to Serve 100 or Fewer Persons." Its text states "Law Implemented: 367.022(6), F.S." That statutory provision reads as follows: "367.022 Exemptions.--The following are not subject to regulation by the commission as a utility nor are they subject to the provisions of this chapter, except as expressly provided:" . . . "(6) Systems with the capacity or proposed capacity to serve 100 or fewer persons."

Rule 25-30.055 FAC defines, for its purposes only, an ERC as "250 gallons per day." The table of meter sizes and types in Section 1(a) is clearly included for the purpose of determining whether a utility is exempt under section 367.022(6) F.S. For example, a utility with a 6" Displacement or Compound meter (or larger) would not be exempt because that meter exceeds the 10,000 gallon per day limit for exemption (i.e. $50 \times 250 = 12,500$ gallons per day).

We respectfully suggest that the correct procedure for defining an ERC is not to be found in the Exemption for Systems With a Capacity or Proposed Capacity to Serve 100 or Fewer Persons Rule, 25-30.055 FAC.

Instead it is to be found in Part VI – Service Availability, Water and Wastewater Systems, Service Availability Charges, 25-30.515 FAC:

25-30.515 Definitions. When used in this part or in service availability policies or in service availability contracts or agreements, the following terms have the following meanings: ...

- (8) Equivalent Residential Connection (ERC) means
 - (a) 350 gallons per day;
 - (b) The number of gallons a utility demonstrates is the average daily flow for a single residential unit; or
 - (c) The number of gallons which has been approved by the Department of Environmental Protection for a single residential unit.

Under our approved Tariff, the per gallon per day capacity charge is \$1.20. The charge for 350 gallons (one ERC) is therefore \$420.00 ($350 \times \$1.20 = \420.00).

Under the terms of Section 13.0 of our Service Availability Policy, a developer such as D. R. Horton which has built and continues to build houses with a demonstrated average consumption of 871 gallons per day after one-year of experience should, under our Service Availability Policy, pay for the additional 1.49 ERCs (521 gallons) of plant capacity per unit.

Southlake Utilities, Inc. desires to follow its Tariff. We wish to discuss this matter further and have enclosed these points for Staff's consideration.

Sincerely,

Robert L. Chapman, III
President

Cc: James Ade, Esq.
✓ Ms. Blanca Bayo
Samantha Cibula, Esq.
Mr. Ted Davis
F. Marshall Deterding, Esq.
Mr. Norman Mears
Ms. Patricia Merchant
Scott Schildberg, Esq.



Southlake

SOUTHLAKE UTILITIES, INC.
333 U.S. Highway 27, Clermont, FL 34711
Telephone (352) 394-8898 Facsimile (352) 394-8894
Florida Public Service Commission Certs. 464-S 533-W

December 17, 1999

By Facsimile: (850) 413-6203

Ms. Samantha Cibula, Esquire
Staff Attorney
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

RE: Emergency Petition by D.R. Horton Custom Homes, Inc., to Eliminate Authority of Southlake Utilities, Inc. to Collect Service Availability Charges and AFPI Charges in Lake County, Docket No. 981609-WS ("Petition")

Dear Samantha:

Southlake Utilities is in the process of renewing certain Consumptive Use Permits issued by the St. Johns River Water Management District ("District"). As part of that process, the District has requested that we complete a Water Audit. According to the Water Audit Form which the District provided to us on December 10, 1999, "All consumptive use permit applicants that are requesting water for public supply type use must complete a water audit using the District's Water Audit Form pursuant to section 12.2.5.1(a) of the Applicant's Handbook: Consumptive Uses of Water ... The water audit is designed to provide assurances of water accountability within the treatment and water distribution systems. The information provided below must reflect volumes covering period of at least 12 consecutive months within the three year period preceding the application submittal."

As part of complying with this requirement, we have performed metered use calculations covering the 366 day period ending November 17, 1999. We were surprised to learn from these numbers that, as a group, the houses within our service area which were constructed by D. R. Horton Custom Homes, Inc. had an overall average annual daily flow of 871 gallons per house per day. See attached Exhibit A. This flow far exceeds the 350 gallons per day per house of water plant capacity reserved from Southlake Utilities, Inc. by D. R. Horton for these houses. It also exceeds the 350 gallons per day allocated to each lot in Woodridge under Florida Department of Environmental Protection Permit WD35-247809, 115,500 GPD for 330 lots ($155,500 \text{ GPD} \div 330 = 350 \text{ GPD/ERC}$), and allocated in Clear Creek under FDEP permit WD35-80599-001, 86,100 GPD for 246 single family homes ($96,100 \div 246 = 350 \text{ GPD/ERC}$). Copies of these permits are also attached.

Based on information provided to us by the District, D. R. Horton could have followed well known water conservation practices, particularly landscaping practices, which would have greatly reduced the water demand of the houses they have sold. These practices include use of low volume micro-irrigation systems; not installing the high demand grasses they have selected, such as St. Augustine; soil conditioning to reduce excessive percolation; and xeriscaping.

The Southlake Utilites, Inc. Tariff Service Availability and Main extension policy, as approved by the Florida Public Service Commission, contains the following provision with regard to plant capacity charges:

13.0 PLANT CAPACITY CHARGES

Utility requires that all Contributors pay for a pro rata share of the cost of Utility's water and wastewater treatment plant facilities whether the facilities have been constructed or not. Such charges to Contributors pursuant to this policy are calculated based upon the estimated demand of the Contributor's proposed installations and improvements upon the treatment facilities of the Utility and are computed by multiplying the number of calculated equivalent residential connections by the plant capacity reservation charges reflected in Sheet No. 38.0.

If the experience of the Contributor after twelve months of actual usage exceeds the estimated gallons on which the plant capacity charges are computed, the Utility shall have the right to collect additional contributions in aid of construction. The twelve month period shall commence when certificates of occupancy have been issued for Contributor's entire project.

Based on the historical requirements of houses built by D. R. Horton Custom Homes, Inc., it appears that D. R. Horton Custom Homes, Inc. has not paid for it's pro rata share of the cost of the Utility's water and wastewater treatment facilities. Accordingly, it may be necessary for Southlake Utilities, Inc. to collect additional contributions in aid of construction from D. R. Horton Custom Homes, Inc.'s existing construction and its future construction.

If you need additional information, please do not hesitate to contact me.

Sincerely,

Robert L. Chapman

Enclosures: Exhibit A, DEP Permits

Cc: Mr. James Ade, Esq., Ms. Blanca Bayo, Mr. Ted Davis, Mr. F. Marshall Deterding, Esq., Mr. Bart Fletcher, Mr. Norman Mears, Ms. Patricia Merchant, Mr. Scott Schildberg, Esq.

Type: Single Family Homes and
Vacation Rental Houses

Builder: D. R. Horton Homes
Location: Woodridge and Clear Creek Subdivisions,
Clermont, FL 34711

Meter size: 5/8 x 3/4"

Meter reading date:	Days in billing period:	Connections with flow during period at units constructed by D. R. Horton :	Total flow, gallons of treated water, these connections:	Total gallons provided these connections, daily average:	Average gallons of daily flow provided, per unit:	Total plant capacity acquired by Horton for these units, average daily flow at 350 gpd	Total plant capacity required for these units, average daily flow at 350 gpd	Excess demand, gallons per day:	Excess demand, ERCs:
12/16/98	30	155	3,428,000	114,267	737	54,250	114,267	60,017	171
1/17/99	32	159	3,230,000	100,938	635	55,650	100,938	45,288	129
2/17/99	31	159	2,726,000	87,935	553	55,650	87,935	32,285	92
3/17/99	28	171	3,833,000	136,893	801	59,850	136,893	77,043	220
4/19/99	33	174	5,606,000	169,879	976	60,900	169,879	108,979	311
5/15/99	26	183	4,592,000	176,615	965	64,050	176,615	112,565	322
6/17/99	33	194	5,168,000	156,606	807	67,900	156,606	88,706	253
7/16/99	29	202	4,904,000	169,103	837	70,700	169,103	98,403	281
8/14/99	29	212	7,119,000	245,483	1,158	74,200	245,483	171,283	489
9/17/99	34	214	7,877,000	231,676	1,083	74,900	231,676	156,776	448
10/18/99	31	214	6,140,000	198,065	926	74,900	198,065	123,165	352
11/17/99	30	216	5,234,000	174,467	808	75,600	174,467	98,867	282
Period:	Days:		Total annual flow:	Average Annual Daily Flow, total	Average Annual Daily Flow per unit	Plant capacity reserved, per unit	Excess demand, average per unit	Units completed or currently under construction	ERCs utilized without payment of Plant Capacity Charges
12 months	366		59,857,000	163,544	871	350	521	246	366



Florida Department of Environmental Protection

Lawton Chiles
Governor

Central District
3319 Maguire Boulevard, Suite 232
Orlando, Florida 32803-3767

Virginia B. Wetherell
Secretary

Permittee:
Condev-Orlando U.S. Highway 27, Ltd.
Post Office Box 1748
Winter Park, FL 32790-1748

Attention: Joseph J. Gardner, Partner

Permit Number: WD35-247809
Date of Issue: 5/16/94
Expiration Date: 05/16/99
County: Lake
Project: Southlake Utilities
Woodridge Subdivision (330
Lots) (115,500 GPD)

This permit is issued under the provisions of Chapter 403, Florida Statutes, and Florida Administrative Code Rule 17-555, (F.A.C.). The above named permittee is hereby authorized to perform the work shown on the application and approved drawing, plans, and other documents attached hereto or on file with the department and made a part hereof and specifically described as follows:

"Dry-line" extension of the Southlake Utilities water distribution system to serve Woodridge Subdivision (330 Lots) located on U.S. 27 one mile north of U.S. 192 in Lake County, Florida.

Conditions are attached to be distributed to the permittee only.

GENERAL CONDITIONS:

1. *The terms, conditions, requirements, limitations and restrictions set forth in this permit, are "permit conditions" and are binding and enforceable pursuant to Sections 403.141, 403.727, or 403.859 through 403.861, F.S. The permittee is placed on notice that the Department will review this permit periodically and may initiate enforcement action for any violation of these conditions.*
2. *This permit is valid only for the specific processes and operations applied for and indicated in the approved drawings or exhibits. Any unauthorized deviation from the approved drawings, exhibits, specifications, or conditions of this permit may constitute grounds for revocation and enforcement action by the Department.*
3. *As provided in subsections 403.087(6) and 403.722(5), F.S., the issuance of this permit does not convey any vested rights or any exclusive privileges. Neither does it authorize any injury to public or private property or any invasion of personal rights, nor any infringement of federal, state, or local laws or regulations. This permit is not a waiver of or approval of any other Department permit that may be required for other aspects of the total project which are not addressed in this permit.*
4. *This permit conveys no title to land or water, does not constitute State recognition or acknowledgement of title, and does not constitute authority for the use of submerged lands unless herein provided and the necessary title or leasehold interests have been obtained from the State. Only the Trustees of the Internal Improvement Trust Fund may express State opinion as to title.*
5. *This permit does not relieve the permittee from liability for harm or injury to human health or welfare, animal, or plant life, or property caused by the construction or operation of this permitted source, or from penalties therefore; nor does it allow the permittee to cause pollution in contravention of Florida Statutes and Department rules, unless specifically authorized by an order from the Department.*
6. *The permittee shall properly operate and maintain the facility and systems of treatment and control (and related appurtenances) that are installed and used by the permittee to achieve compliance with the conditions of this permit, as required by Department rules. This provision includes the operation of backup or auxiliary facilities or similar systems when necessary to achieve compliance with the conditions of the permit and when required by Department rules.*
7. *The permittee, by accepting this permit, specifically agrees to allow authorized Department personnel, upon presentation of credentials or other documents as may be required by law and at reasonable times, access to the premises where the permitted activity is located or conducted to:*
 - (a) *Have access to and copy any records that must be kept under conditions of the permit;*
 - (b) *Inspect the facility, equipment, practices, or operations regulated or required under this permit; and*
 - (c) *Sample or monitor any substances or parameters at any location reasonably necessary to assure compliance with this permit or Department rules.*

Reasonable time may depend on the nature of the concern being investigated.
8. *If, for any reason, the permittee does not comply with or will be unable to comply with any condition or limitation specified in this permit, the permittee shall immediately provide the Department with the following information:*
 - (a) *A description of and cause of noncompliance; and*
 - (b) *The period of noncompliance, including dates and times; or, if not corrected, the anticipated time the noncompliance is expected to continue, and steps being taken to reduce, eliminate, and prevent recurrence of the noncompliance.*

The permittee shall be responsible for any and all damages which may result and may be subject to enforcement action by the Department for penalties or for revocation of this permit.

GENERAL CONDITIONS:

9. In accepting this permit, the permittee understands and agrees that all records, notes, monitoring data and other information relating to the construction or operation of this permitted source which are submitted to the Department may be used by the Department as evidence in any enforcement case involving the permitted source arising under the Florida Statutes or Department rules, except where such use is prescribed by Section 403.111 and 403.73, F.S. Such evidence shall only be used to the extent it is consistent with the Florida Rules of Civil Procedure and appropriate evidentiary rules.
10. The permittee agrees to comply with changes in Department rules and Florida Statutes after a reasonable time for compliance; provided, however, the permittee does not waive any other rights granted by Florida Statutes or Department rules.
11. This permit is transferable only upon Department approval in accordance with Rule 17-4.120 and 17-30.300, F.A.C., as applicable. The permittee shall be liable for any non-compliance of the permitted activity until the transfer is approved by the Department.
12. This permit or a copy thereof shall be kept at the work site of the permitted activity.
13. This permit also constitutes:
 - () Determination of Best Available Control Technology (BACT)
 - () Determination of Prevention of Significant Deterioration (PSD)
 - () Certification of compliance with state Water Quality Standards (Section 401, PL 92-500)
 - () Compliance with New Source Performance Standards
14. The permittee shall comply with the following:
 - (a) Upon request, the permittee shall furnish all records and plans required under Department rules. During enforcement actions, the retention period for all records will be extended automatically unless otherwise stipulated by the Department.
 - (b) The permittee shall hold at the facility or other location designated by this permit records of all monitoring information (including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation) required by the permit, copies of all reports required by this permit, and records of all data used to complete the application for this permit. These materials shall be retained at least three years from the date of the sample, measurement, report, or application unless otherwise specified by Department rule.
 - (c) Records of monitoring information shall include:
 1. the date, exact place, and time of sampling or measurements;
 2. the person responsible for performing the sampling or measurements;
 3. the dates analyses were performed;
 4. the person responsible for performing the analyses;
 5. the analytical techniques or methods used;
 6. the results of such analyses.
15. When requested by the Department, the permittee shall within a reasonable time furnish any information required by law which is needed to determine compliance with the permit. If the permittee becomes aware the relevant facts were not submitted or were incorrect in the permit application or in any report to the Department, such facts or information shall be corrected promptly.

PERMITTEE:
Condev-Orlando U.S. Highway 27, Ltd.

Permit Number: WD35-247809
Date of Issue:
Expiration Date: 05/16/99

Attention: Joseph J. Gardner, Partner

SPECIFIC CONDITIONS:

1. General condition number 13 does not apply.
2. A LETTER OF CLEARANCE MUST BE ISSUED BY THE DEPARTMENT TO YOU PRIOR TO YOUR PLACING THIS PROJECT INTO SERVICE OR YOU, THE PERMITTEE, SHALL BE SUBJECT TO APPROPRIATE ENFORCEMENT ACTION. To obtain clearance of the facilities for service, the engineer of record shall submit a "Request for Letter of Release to Place Water Supply System into Service" [DER Form 17-555.910(9)] to the department, a copy of this permit, and a copy of satisfactory bacteriological sample results taken on two consecutive days from, or near, the point of connection to the existing system, from a point near Stations 110+00 and 120+00; from a point near Lots 1, 4, 8, 29, 115, 139, 155, 166, 190, 199, 204, 238, 279, 284 and 319; and from the blowoff.
3. Where water and sewer mains cross with less than 18" vertical clearance, the sewer will be 20' of either ductile iron pipe or concrete encased vitrified clay or PVC pipe, centered on the point of crossing. When a water main parallels a sewer main a separation, measured edge to edge, of at least 10' should be maintained where practical.
4. This permit does not pertain to any wastewater, stormwater or dredge and fill aspects of this project.
5. The permittee will promptly notify the Department upon sale or legal transfer of the permitted facility. In accordance with General Condition #11 of this permit, this permit is transferable only upon Department approval. The new owner must apply, by letter, for a transfer of permit within 30 days.
6. NOTE TO THE UTILITY: Pursuant to 403.859(6), Florida Statutes, do not provide water service to this project (other than flushing/testing) until the Department of Environmental Protection has issued a letter of clearance or you, the utility, shall be subject to enforcement action.
7. This "dry line" water distribution system permit allows the physical installation of a water distribution system prior to having an approved source of potable water. The issuance of this "dry line" water distribution confers absolutely no right to any service connections now or in the future.

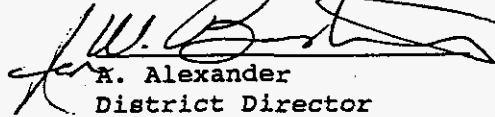
The second well and treatment plant currently undergoing construction under permit number WC35-210979 shall be cleared for service before this "dry-line" system can be cleared for service.

PERMITTEE:
Condev-Orlando U.S. Highway 27, Ltd.
Attention: Joseph J. Gardner, Partner

Permit Number: WD35-247809
Date of Issue:
Expiration Date: 05/16/99

SPECIFIC CONDITIONS:

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



A. Alexander
District Director

ISSUED 5/16/94



Department of Environmental Protection

Lawton Chiles
Governor

Central District
3319 Maguire Boulevard, Suite 232
Orlando, Florida 32803-3767

Virginia B. Wetherell
Secretary

Permittee:
D.R. Horton Custom Homes
6250 Hazeltine National Drive, Suite 102
Orlando, FL 32822

Permit Number: WD35-80599-001
Date of Issue:
Expiration Date: 07/31/99
County: Lake
Project: Southlake Utilities
Clear Creek PUD

Attention: David Auld, Vice President

This permit is issued under the provisions of Chapter 403, Florida Statutes, and Florida Administrative Code Rule 62-555, (F.A.C.). The above named permittee is hereby authorized to perform the work shown on the application and approved drawing, plans, and other documents attached hereto or on file with the Department and made a part hereof and specifically described as follows:

Extension of the Southlake Utilities water distribution system to serve Clear Creek PUD [246 single-family homes] located on Woodcrest Way. The estimated average day water demand is 86,100 GPD.

General Conditions are attached to be distributed to the permittee only.

DEP FORM 62-1.201(5) Effective November 30, 1982 Page 1 of 4

GENERAL CONDITIONS:

1. *The terms, conditions, requirements, limitations and restrictions set forth in this permit, are "permit conditions" and are binding and enforceable pursuant to Sections 403.141, 403.727, or 403.859 through 403.861, F.S. The permittee is placed on notice that the Department will review this permit periodically and may initiate enforcement action for any violation of these conditions.*
2. *This permit is valid only for the specific processes and operations applied for and indicated in the approved drawings or exhibits. Any unauthorized deviation from the approved drawings, exhibits, specifications, or conditions of this permit may constitute grounds for revocation and enforcement action by the Department.*
3. *As provided in subsections 403.087(6) and 403.722(5), F.S., the issuance of this permit does not convey any vested rights or any exclusive privileges. Neither does it authorize any injury to public or private property or any invasion of personal rights, nor any infringement of federal, state, or local laws or regulations. This permit is not a waiver of or approval of any other Department permit that may be required for other aspects of the total project which are not addressed in this permit.*
4. *This permit conveys no title to land or water, does not constitute State recognition or acknowledgement of title, and does not constitute authority for the use of submerged lands unless herein provided and the necessary title or leasehold interests have been obtained from the State. Only the Trustees of the Internal Improvement Trust Fund may express State opinion as to title.*
5. *This permit does not relieve the permittee from liability for harm or injury to human health or welfare, animal, or plant life, or property caused by the construction or operation of this permitted source, or from penalties therefore; nor does it allow the permittee to cause pollution in contravention of Florida Statutes and Department rules, unless specifically authorized by an order from the Department.*
6. *The permittee shall properly operate and maintain the facility and systems of treatment and control (and related appurtenances) that are installed and used by the permittee to achieve compliance with the conditions of this permit, as required by Department rules. This provision includes the operation of backup or auxiliary facilities or similar systems when necessary to achieve compliance with the conditions of the permit and when required by Department rules.*
7. *The permittee, by accepting this permit, specifically agrees to allow authorized Department personnel, upon presentation of credentials or other documents as may be required by law and at reasonable times, access to the premises where the permitted activity is located or conducted to:*
 - (a) *Have access to and copy any records that must be kept under conditions of the permit;*
 - (b) *Inspect the facility, equipment, practices, or operations regulated or required under this permit; and*
 - (c) *Sample or monitor any substances or parameters at any location reasonably necessary to assure compliance with this permit or Department rules.*

Reasonable time may depend on the nature of the concern being investigated.

8. *If, for any reason, the permittee does not comply with or will be unable to comply with any condition or limitation specified in this permit, the permittee shall immediately provide the Department with the following information:*
 - (a) *A description of and cause of noncompliance; and*
 - (b) *The period of noncompliance, including dates and times; or, if not corrected, the anticipated time the noncompliance is expected to continue, and steps being taken to reduce, eliminate, and prevent recurrence of the noncompliance.*

The permittee shall be responsible for any and all damages which may result and may be subject to enforcement action by the Department for penalties or for revocation of this permit.

GENERAL CONDITIONS:

9. In accepting this permit, the permittee understands and agrees that all records, notes, monitoring data and other information relating to the construction or operation of this permitted source which are submitted to the Department may be used by the Department as evidence in any enforcement case involving the permitted source arising under the Florida Statutes or Department rules, except where such use is prescribed by Section 403.111 and 403.73, F.S. Such evidence shall only be used to the extent it is consistent with the Florida Rules of Civil Procedure and appropriate evidentiary rules.
10. The permittee agrees to comply with changes in Department rules and Florida Statutes after a reasonable time for compliance; provided, however, the permittee does not waive any other rights granted by Florida Statutes or Department rules.
11. This permit is transferable only upon Department approval in accordance with Rule 17-4.120 and 17-30.300, F.A.C., as applicable. The permittee shall be liable for any non-compliance of the permitted activity until the transfer is approved by the Department.
12. This permit or a copy thereof shall be kept at the work site of the permitted activity.
13. This permit also constitutes:
 - () Determination of Best Available Control Technology (BACT)
 - () Determination of Prevention of Significant Deterioration (PSD)
 - () Certification of compliance with state Water Quality Standards (Section 401, PL 92-500)
 - () Compliance with New Source Performance Standards
14. The permittee shall comply with the following:
 - (a) Upon request, the permittee shall furnish all records and plans required under Department rules. During enforcement actions, the retention period for all records will be extended automatically unless otherwise stipulated by the Department.
 - (b) The permittee shall hold at the facility or other location designated by this permit records of all monitoring information (including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation) required by the permit, copies of all reports required by this permit, and records of all data used to complete the application for this permit. These materials shall be retained at least three years from the date of the sample, measurement, report, or application unless otherwise specified by Department rule.
 - (c) Records of monitoring information shall include:
 1. the date, exact place, and time of sampling or measurements;
 2. the person responsible for performing the sampling or measurements;
 3. the dates analyses were performed;
 4. the person responsible for performing the analyses;
 5. the analytical techniques or methods used;
 6. the results of such analyses.
15. When requested by the Department, the permittee shall within a reasonable time furnish any information required by law which is needed to determine compliance with the permit. If the permittee becomes aware the relevant facts were not submitted or were incorrect in the permit application or in any report to the Department, such facts or information shall be corrected promptly.

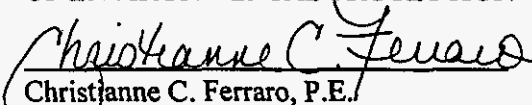
Permittee:
D.R. Horton Custom Homes
6250 Hazeltine National Drive, Suite 102
Orlando, FL 32822
Attention: David Auld, Vice President

Permit Number: WD35-80599-001
Date of Issue:
Expiration Date: 07/31/99
County: Lake
Project: Southlake Utilities
Clear Creek PUD

SPECIFIC CONDITIONS:

1. General condition number 13 does not apply.
2. A LETTER OF CLEARANCE MUST BE ISSUED BY THE DEPARTMENT TO YOU PRIOR TO YOUR PLACING THIS PROJECT INTO SERVICE OR YOU, THE PERMITTEE, SHALL BE SUBJECT TO APPROPRIATE ENFORCEMENT ACTION. To obtain clearance of the facilities for service, the engineer of record shall submit a "Request for Letter of Release to Place Water Supply System into Service" [DEP Form 62-555.900(9)] to the Department, a copy of this permit, and a copy of satisfactory bacteriological sample results taken on two consecutive days from the point of connection, the six blowoffs and Lot 9.
3. Where water and sewer mains cross with less than 18" vertical clearance, the sewer will be 20' of either ductile iron pipe or concrete encased vitrified clay or PVC pipe, centered on the point of crossing. When a water main parallels a sewer main a separation, measured edge to edge, of at least 10' should be maintained where practical.
4. This permit does not pertain to any wastewater, stormwater or dredge and fill aspects of this project.
5. The permittee will promptly notify the Department upon sale or legal transfer of the permitted facility. In accordance with General Condition #11 of this permit, this permit is transferable only upon Department approval. The new owner must apply, by letter, for a transfer of permit within 30 days.
6. NOTE TO THE UTILITY: Pursuant to 403.859(6), Florida Statutes, do not provide water service to this project (other than flushing/testing) until the Department of Environmental Protection has issued a letter of clearance or you, the utility, shall be subject to enforcement action.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION


Christjanne C. Ferraro, P.E.
Program Administrator
Water Facilities

ISSUED July 31, 1997