

M E M O R A N D U M

April 11, 2000

TO : DIVISION OF RECORDS AND REPORTING *PRR B Sm OW*

FROM : DIVISION OF WATER AND WASTEWATER (REDEMANN) *BP*

RE : DOCKET NO. 000277-WS - APPLICATION FOR TRANSFER OF FACILITIES AND CERTIFICATES NOS. 353-W AND 309-S IN LEE COUNTY FROM MHC SYSTEMS, INC. D/B/A FFEC-SIX TO NORTH FORT MYERS UTILITY, INC. HOLDER OF CERTIFICATE NO. 247-S, AMENDMENT OF CERTIFICATE NO. 247-S, AND CANCELLATION OF CERTIFICATE NO. 309-S.

Enclosed please find a consent order dated April 5, 2000, from the Department of Environmental Protection which should be placed in the docket file.

If you have any questions, please contact me.

- AFA _____
- APP _____
- CAF _____
- CMU _____
- CTR _____
- EAG _____
- LEG _____
- MAS _____
- OPC _____
- RRR _____
- SEC _____
- WAW _____
- OTH _____

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cc: Division of Records and Reporting (Security File)

Division of Water and Wastewater (Johnson)

Division of Legal Services (Vanleuven)

DOCUMENT NUMBER-DATE

04754 APR 18 8

FPSC-RECORDS/REPORTING



Department of Environmental Protection

COPIES

Jeb Bush
Governor

South District
P.O. Box 2549
Fort Myers, Florida 33902-2549

David B. Struhs
Secretary

April 5, 2000

CERTIFIED MAIL NO. P 482 251 039
RETURN RECEIPT REQUESTED

RECEIVED

APR 10 2000

Florida Public Service Commission
Division of Water and Wastewater

Mr. Roger Maynard, Regional Manager
Manufactured Home Communities, Inc.
P.O. Box 4535
North Fort Myers, Fl 33918

Re: Lee County - DW
Lake Fairways Country Club WWTP
OGC Case No. 00-0784-36-DW
FLA014463

Dear Mr. Maynard

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 or wish to schedule a meeting to discuss the items in the Consent Order, please contact **Andrew Barienbrock** at (941) 332-6975, ext. 117. Your cooperation in resolving this case is appreciated.

00 APR 10 MAIL ROOM

Sincerely,

Richard W. Cantrell
Director of
District Management

RWC/AB/klm

Enclosure

cc: Richard Redamen ✓

"More Protection, Less Process"

Printed on recycled paper.

Facility is located at Latitude 26° 46' 26" N, Longitude 81° 56' 05" W, U.S. 41 at Lake Fairways, Fort Myers, FL 33918.

4. Respondent operates the Facility under Department permit No. FLA014463 which expires on September 22, 2002.

5. Respondent violated F.A.C. Rule 62-600.410(6) which states 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 to function as intended. A January 28, 2000 inspection indicated that solids were discharging into one of the percolation ponds due to a high blanket in the clarifier. The chlorine contact chamber had an accumulation of sludge, the flow meter probe was not operating, the lined pond was missing a section of liner and the surge tank was not being aerated.

6. Respondent violated F.A.C. Rule 62-610.523(6) which 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. The January 28, 2000 inspection indicated that one percolation pond was heavily overgrown with vegetation and contained solids.

7. Respondent violated F.A.C. Rule 62-600.410(8) which states that in the event that the treatment facilities or equipment no longer function as intended, are no longer safe in terms of public health and safety, or odor, noise, aerosol drift, or lighting adversely affect the neighboring developed areas at the levels prohibited by Rule 62-600.400(2)(a), F.A.C., corrective action (which may include additional maintenance or modification of the treatment plant) shall be taken by the permittee. Other corrective action may be required to ensure compliance with the rules of the Department. The January 28, 2000 inspection indicated that the facility had an offensive odor.

8. Respondent violated F.A.C. Rule 62-600.740(1)(b)1.d. which requires any reclaimed water or effluent grab sample not to exceed 60 milligrams /Liter (mg/L) of sample for Total Suspended Solids (TSS). A grab sample of effluent taken during the January 28, 2000 inspection indicated that the TSS was 144 mg/L.

9. Respondent violated F.A.C. Rule 62-610.510(1) and specific condition I.A.1. of the facility permit, which set the maximum allowable discharge limit for Nitrate at 12.0 mg/L. A review of the facility's Discharge Monitoring Report (DMRs) indicated that the results for Nitrate analysis from June, July, and August 1999 were 17.2 mg/L, 15.5mg/L 12.2 mg/L, respectively.

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

ORDERED:

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

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

a. 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 the evaluation shall be submitted to the Department **within thirty (30) days** of the effective date of this Consent Order.

b. 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.

c. Completing an application for a Department wastewater permit to construct the modifications listed in subparagraph b, above, if such a permit is required. An application shall be submitted to the Department **within sixty (60) days** of the effective date of this Consent Order.

d. Overseeing the construction of any modifications to the Facility, effluent disposal system, or collection system.

e. 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 c, above, if applicable.

f. 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 a and b, above.

g. 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.

h. Respondent shall complete the construction of the sewage treatment modification referred to in sub-paragraph 12(d), above, and submit an engineer's certification of completion to the Department **within six months (180 days)** after the wastewater permit authorizing said construction is issued and no later than the date specified in paragraph 14, below.

13. Every six months 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 six month period.

14. Respondent shall be in full compliance with the terms and conditions of this Consent Order **by December 1, 2000.**

15. 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 thirty (30) days prior to the sale or 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.

16. **Within thirty (30) days** of the effective date of this Consent Order, Respondent shall pay the Department \$ 9,250.00 in settlement of the matters addressed in this Consent Order. This amount includes \$ 9,000.00 in civil penalties for alleged violations of Section 403.161, Florida Statutes, and of the Department's rules and \$ 250.00 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". Payment shall be made payable to the Department of Environmental Protection and shall include the OGC number assigned to this Order and the notation "Pollution Recovery Trust Fund". The payment shall be sent to the State of Florida Department of Environmental Protection, P.O. Box 2549, Fort Myers, Florida 33902-2549.

17. Respondent agrees to pay the Department stipulated penalties in the amount of \$100 per day for each and every day Respondent fails to timely comply with any of the

requirements of Paragraphs 6-16 of this Consent Order. A separate stipulated penalty shall be assessed for each violation of this Consent Order. Within 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, FL 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 16 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.

18. 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.

19. 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, Florida Statutes, to petition for an administrative hearing on it. The Petition must contain the information set forth below and must be filed (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, Florida Statutes.

The petition shall contain the following information:

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

Order; (g) A statement of the relief sought by petitioner, stating precisely the action petitioner wants the Department to take with respect to the Consent Order.

If a petition is filed, the administrative hearing process is designed to formulate agency action. Accordingly, the Department's final action may be different from the position taken by it in this Notice. Persons whose substantial interests will be affected by any decision of the Department with regard to the subject Consent Order have the right to petition to become a party to the proceeding. The petition must conform to the requirements specified above and be filed (received) within 21 days of receipt of this notice in the Office of General Counsel at the above address of the Department. Failure to petition within the allowed time frame constitutes a waiver of any right such person has to request a hearing under Sections 120.569 and 120.57, Florida Statutes, 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 Rule 28-106.205, Florida Administrative Code.

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, Florida Statutes, before the deadline for filing a petition. Choosing mediation will not adversely affect the right to a hearing if mediation does not result in a settlement. The procedures for pursuing mediation are set forth below.

Mediation may only take place if the Department and all the parties to the proceeding agree that mediation is appropriate. A person may pursue mediation by reaching a mediation agreement with all parties to the proceeding (which include the Respondent, the Department, and any person who has filed a timely and sufficient petition for a hearing) and by showing how the substantial interests of each mediating party are affected by the Consent Order. The agreement must be filed in (received by) the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, MS #35, Tallahassee, Florida 32399-3000, within 10 days after the 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, Florida Statutes, the timely agreement of all parties to mediate will toll the time limitations imposed by Sections 120.569 and 120.57, Florida Statutes, for requesting and holding an administrative hearing. Unless otherwise agreed by the parties, the mediation must be concluded within sixty days of the execution of the agreement. If mediation results in settlement of the administrative dispute, the Department must enter a final order incorporating the agreement of the parties. Persons whose substantial interests will be affected by such a modified final decision of the Department have a right to petition for a hearing only in accordance with the requirements for such petitions set forth above, and must therefore file their petitions within 21 days of receipt of this notice. If mediation terminates without settlement of the dispute, the Department shall notify all parties

in writing that the administrative hearing processes under Sections 120.569 and 120.57, Florida Statutes, 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.

20. 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 and statutes of the Department.

21. All submittals and payments 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, FL 33902-2549.

22. This Consent Order is a settlement of the Department's civil and administrative authority arising under Florida law to resolve the matters addressed herein. This Consent Order is not a settlement of any criminal liabilities which may arise under Florida law, nor is it a settlement of any violation which may be prosecuted criminally or civilly under federal law.

23. 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.

24. 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, Florida Statutes. Failure to comply with the terms of this Consent Order shall constitute a violation of Section 403.161(1)(b), Florida Statutes.

25. 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 violation, and criminal penalties.

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

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

28. Respondent acknowledges and waives its right to an administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes, on the terms of this Consent Order. Respondent acknowledges its right to appeal the terms of this Consent Order pursuant to Section 120.68, Florida Statutes, and waives that right upon signing this Consent Order.

29. This Consent Order is a final order of the Department pursuant to Section 120.52(7), Florida Statutes, and it is final and effective on the date filed with the Clerk of the Department unless a Petition for Administrative Hearing is filed in accordance with Chapter 120, Florida Statutes. Upon the timely filing of a petition this Consent Order will not be effective until further order of the Department.

FOR THE RESPONDENT:
MANUFACTURED HOME
COMMUNITIES, INC.

DATE

Roger Maynard, Regional Manager

Please do not write below this line. For FDEP use only.

DONE AND ORDERED this _____ day of _____, 2000,
in _____, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Richard W. Cantrell
Director of District Management

RWC/ARB/klm