

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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COMMISSION
CLERK

DATE: June 30, 2009
TO: Office of Commission Clerk (Cole)
FROM: Division of Economic Regulation (Clapp) *PC*
RE: Docket No. 090154-SU – Notice of abandonment of wastewater system for The Village of Lakeland Mobile Home Park in Polk County, by West Lakeland Wastewater, Inc.

Attached is a copy of Order on Petition for Appointment of Receiver for West Lakeland Wastewater, Inc. for Case Number: 53-2009CA-005284 issued by the Tenth Judicial Circuit Court. This order appoints Michael Smallridge as the receiver for West Lakeland Wastewater, Inc. Please add the attached Order to this docket.

Should you have any questions regarding this matter, feel free to contact me.

Attachment

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

**IN THE CIRCUIT COURT
OF THE TENTH JUDICIAL CIRCUIT
IN AND FOR POLK COUNTY, FLORIDA**

POLK COUNTY, a political subdivision)
of the State of Florida,)
)
Petitioner,)
)
v.)
)
WEST LAKELAND WASTEWATER,)
INC., SAM AVERETT and SUZZANE)
A. BRITT,)
)
Respondents.)
_____ /

Case Number: 53-2009CA-005284
Section: 11

**ORDER ON PETITION FOR APPOINTMENT OF RECEIVER FOR
WEST LAKELAND WASTEWATER, INC.**

THIS MATTER having come before the Court upon the Petition of Polk County and the Court being fully advised of the premises, hereby finds:

Respondents, Sam Averett and Suzzane Britt, own and operate West Lakeland Wastewater, Inc., a residential wastewater system within the jurisdictional boundaries of Polk County, Florida. On March 30, 2009, Respondents formally filed a Notice of Abandonment with the Public Service Commission stating their intention to abandon the plant on or before June 30, 2009. Pursuant to Florida Statute 367.165(2), Polk County subsequently filed its Petition for Appointment of Receiver to take possession of and operate Respondents' Utility.

Based upon the foregoing and further evidence presented concerning the appropriateness of the Receiver, pursuant to Section 367.165(2), Florida Statutes, it is hereby

ORDERED AND ADJUDGED as follows:

1. APPOINTMENT OF RECEIVER AND TERM.

Michael Smallridge is hereby appointed to act as Receiver for West Lakeland

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Wastewater, Inc. The term of this Receivership shall begin on the date of this Order and shall continue until such time as the Receiver disposes of the Utility as provided for in this Order or is relieved of any further duty by the Court.

2. SURRENDER OF PROPERTY, ASSETS, DOCUMENTS AND FACILITIES

Respondents shall surrender all property, assets, documents and facilities of the Utility to the Receiver at the time of this Order, including but not limited to, all customer account records, contracts, agreements, correspondence, legal pleadings, business records, easements, and any other documents related to the Utility including property, assets and liabilities associated therewith in order that the Receiver may then operate and maintain said Utility. Respondents shall turn over and produce all bank accounts, bank account records, customer deposits, cash and accounts receivable balances to the Receiver.

3. POWERS OF THE RECEIVER

Once the property, assets, documents and facilities outlined above have been turned over to the Receiver, the Receiver shall send written notice of the receipt of the receipt thereof to this Court. Such notice shall indicate his acceptance as Receiver, shall cause the operation of the Utility until such time as provided for in Section 1, and shall continue the lawful operation and maintenance of the wastewater service to customers of the Utility. In order to effectively carry out the duties and responsibilities under this Order, the Receiver shall have the following powers and authority:

- a. to provide and maintain wastewater service within the designated service area, in compliance with all applicable permits, regulations and statutes;
- b. to make extensions, expansions, repairs, replacements and improvements to the Utility as appropriate and necessary;
- c. to collect rates, fees, charges and deposits for all services provided by the Utility in accordance with all applicable state laws;
- d. to apply for an increase in rates charged to customers served by the Utility or to obtain a special assessment which may be necessary to pay for costs incurred by the Receiver in the operation, maintenance and improvement of the Utility and for complying with the terms of this Receivership;
- e. to borrow funds and to pledge and encumber the facilities, assets and revenues of the system for repayment thereof;
- f. to enter into contracts or agreements with any public agency or private entity

providing for or relating to the operation and maintenance of the Utility or the connection of customers to any other public or private utility;

- g. to accept gifts, grants or contributions in kind in connection with the management, operation and maintenance of the system;
- h. to retain and pay the fees, costs and salaries of accounts, architects, engineers, attorneys, employees, or other professional consultants as necessary or desirable in the management, operation or maintenance of the Utility and to ensure compliance with all the provisions of this Order for the rates, fees and charges authorized under Section 3;
- i. to pay from revenues collected from the customers of the Utility, all necessary and reasonable operating expenses contemplated in this Section 3, in a manner designed to continue the efficient, effective and environmentally sound operation of said Utility;
- j. to connect customers of the Utility to any other public or private water system with adequate wastewater capacity; to accept said customers in accordance with and subject to applicable requirements and payment of fees to said public or private system;
- k. upon completion thereto, the Receiver, with written approval from this Court, may discontinue the operation of the system and dispose of all land, facilities, assets and revenues to satisfy all outstanding obligations of the system. The Receiver shall give due notice to the owner and all creditors of the system of his receivership prior to any disposal of the facilities;
- l. to sue or be sued, to implead or be impleaded, to complain and defend in any court and to seek all legal or equitable relief in accordance with applicable state law;
- m. to apply for and obtain any applicable federal, state and local governmental permits, certificates, licenses, or other approvals in order to operate and maintain the Utility;
- n. to perform generally any other lawful acts necessary or desirable to carry out the express powers and authority granted and imposed herein.

4. **RECEIVER'S OBLIGATION TO OPERATE UTILITY**

The Receiver is hereby directed to operate the Utility until said Utility is disposed of pursuant to the provisions in this Order. The Utility shall be operated by the Receiver in such a manner so as to provide efficient, effective and

environmentally sound continuous service to the customers of the Utility during the term of the Receivership, and as can be provided from the revenues of the system.

5. SEPARATION OF FUNDS

Michael Smallridge, as Receiver, is hereby directed by this Court to maintain separate accounts and records for the management of the Utility. Additionally, this Court hereby directs that the revenues from the Utility are not to be considered as the revenues of the Receiver, nor are the revenues from any of Receiver's departments, divisions, businesses, or employment considered to be revenues of the Utility.

6. RECEIVER'S IMMUNITY FROM LIABILITY AND VIOLATIONS

As consideration for the Receiver assuming the responsibility for the continued operation and maintenance of the Utility, the Receiver and his agents and employees are hereby declared to be held harmless and not legally responsible for any and all claims, liability, demands, damages, expenses, fees, fines, penalties, suits, proceedings, actions and fees, including attorneys' fees, that have risen or may arise out of the past design, construction, operation and maintenance of the system. This immunity shall include but not be limited to: immunity from injury to persons, damage to property or property rights, or violation of any governmental law, rule, regulation or requirement that may arise from the design, construction, operation, or maintenance of the system to the date of the appointment of the Receiver.

7. LIABILITY OF RESPONDENTS

Respondents, Sam Averett and Suzzane Britt, shall remain liable under all applicable laws for any claims, violations, penalties, suits, proceedings, actions or fees occurring prior to the appointment of the Receiver.

8. RECEIVER'S ACCOUNTING TO THE COURT

The Receiver shall submit to the Court, through Polk County prior review and analysis, quarterly financial and operational reports for West Lakeland Wastewater, Inc. for the duration of his Receivership.

9. CONTINUED JURISDICTION

This Court shall retain jurisdiction in this cause to enter such further orders or take any action as it deems appropriate. Nothing in this Order is intended to determine what entity may be ultimately and/or permanently responsible for the

operation and maintenance of the Utility in the event of a sale to any person, firm or entity. On the date of closing of such sale, this Order shall terminate and expire and this matter shall be closed. The Receiver shall file a notification of such sale with this Court, no later than ten (10) business days following the date of the sale.

DONE AND ORDERED in Bartow, Polk County, Florida, this 22nd day of June, 2009.

/s/Roger A. Alcott

ROGER A. ALCOTT
CIRCUIT JUDGE

cc: Michael Smallridge, Receiver
Sam Averett, Respondent
Suzzane Britt, Respondent
Philip Sherwin, Asst. County Attorney
Bill Beasley, Environmental Services Director
Stephanie Clapp, Public Service Commission
Erik Sayler, Public Service Commission

**OFFICE OF THE COUNTY ATTORNEY
POLK COUNTY**

Drawer AT01
P.O. Box 9005
Bartow, Florida 33831-9005

RETURN SERVICE REQUESTED

LAKELAND FL 338

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Public Service Commission
Office of the Commission Clerk
Attn: Stephanie Clapp
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

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