

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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In re: Application for increase in water/wastewater rates in Alachua, Brevard, DeSoto, Hardee, Highlands, Lake, Lee, Marion, Orange, Palm Beach, Pasco, Polk, Putnam, Seminole, Sumter, Volusia, and Washington Counties by Aqua Utilities Florida, Inc.

DOCKET NO. 100330-WS

DATED: October 6, 2011

COMMISSION CLERK

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Direct Testimony of

Jeffry S. Greenwell has been served by U.S. Mail this 6th day of October, 2011, to the following:

D. Bruce May / Gigi Rollini  
Holland & Knight LLP  
Post Office Drawer 810  
Tallahassee, FL 32302-0810

Kimberly A. Joyce,  
Aqua America Inc.  
762 W. Lancaster Avenue  
Bryn Mawr, PA 19010

Aqua Utilities Florida Inc.  
Post Office Box 2480  
Lady Lake, FL 32158-2480

Kenneth M. Curtin  
Adams and Reese LLP  
150 Second Avenue N. Suite 1700  
St. Petersburg, FL 33701

Kelly Sullivan  
570 Osprey Lakes Circle  
Chuluota, FL 32667-6652

Office of Public Counsel  
J. R. Kelly/ Patricia Christensen  
c/o The Florida Legislature  
111 W. Madison Street, Room 812  
Tallahassee, Florida 32399-1400

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APA 1  
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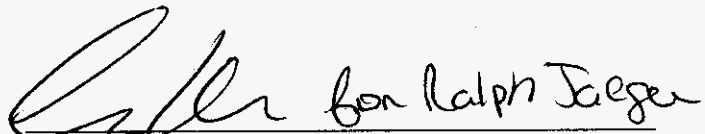
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CERTIFICATE OF SERVICE  
DOCKET NO. 100330-WS  
PAGE 2

Cecilia Bradley / Pamela Jo Bondi  
Office of the Attorney General  
The Capitol PL01  
Tallahassee, FL 32399-1050

Pasco County Board of County  
Commissioner  
c/o Joseph D. Richards  
Pasco County Attorney's Office  
87321 Citizens Drive, Suite 340  
New Port Richey, FL 34654

A handwritten signature in black ink, appearing to read "Ralph R. Jaeger", written over a horizontal line.

RALPH R. JAEGER  
SENIOR ATTORNEY

FLORIDA PUBLIC SERVICE COMMISSION  
Gerald L. Gunter Building  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850  
Telephone: (850) 413-6199

**DOCKET NO. 100330-WS** - Application for increase in water/wastewater rates in Alachua, Brevard, DeSoto, Hardee, Highlands, Lake, Lee, Marion, Orange, Palm Beach, Pasco, Polk, Putnam, Seminole, Sumter, Volusia, and Washington Counties by Aqua Utilities Florida, Inc.

**WITNESS:** Direct Testimony of Jeffrey S. Greenwell  
Appearing on Behalf of the Staff of the Florida Public Service Commission.

**DATE FILED:** October 6, 2011

DOCUMENT NUMBER DATE

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FPSC-COMMISSION CLERK

DIRECT TESTIMONY OF JEFFRY S. GREENWELL

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- Q. Please state your name and business address.
- A. Jeffrey S. Greenwell, Florida Department of Environmental Protection (FDEP), 13051 North Telecom Parkway, Tampa, Florida 33637.
- Q. Please provide a brief description of your educational background and experience.
- A. I received a B.S. in Geology in 1985 and a B.S. in Civil Engineering in 1989 from Louisiana State University. I received my Professional Engineering License in the State of Florida in 1995. From 1989 to 2000, I was a private environmental consultant working on general civil and waste clean-up sites. I have been employed by the FDEP since May 18, 2000, as a Domestic Wastewater Program permitting engineer, Potable Water Program Manager, Domestic Wastewater Program Manager, and Water Facilities Administrator performing permitting, compliance and enforcement activities.
- Q. What are your general responsibilities at the FDEP?
- A. I oversee permitting compliance and enforcement activities for Wastewater Treatment Facilities (WWTFs), Water Treatment Plants (WTP), and Underground Injection Control to ensure compliance with the FDEP's rules and the facilities' permits as appropriate.
- Q. Are you familiar with the Aqua Utilities Florida, Inc. (AUF) water systems in the counties of Desoto (Lake Suzy), Hardee (Peace River Heights), Marion (Ridge Meadows), Pasco (Jasmine Lakes, Palm Terrace, and Zephyr Shores), Polk (Gibsonia Estates, Lake Gibson, Orange Hill/Sugar Creek, Rosalie Oaks, and Village Water), and Sumter (The Woods)?
- A. Yes, I am familiar with all of those systems with the exception of the Polk County water systems which are regulated by the Polk County Department of Health. FDEP does not regulate the water systems but does continue to regulate the wastewater.

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1 systems in Polk County.

2 Q. Are these water systems in compliance with all applicable construction permits?

3 A. Yes

4 Q. Have any of these AUF systems been the subject of any FDEP compliance  
5 enforcement action within the past three years?

6 A. For Lake Suzy PWS, Ridge Meadows PWS, Palm Terrace PWS, and The Woods  
7 PWS, there are no violations or enforcement actions. For Peace River Heights PWS, there  
8 were two consent orders with one remaining open and the other being closed. The active  
9 Consent Order – OGC# 10-0606-25-PW, issued June 25, 2010, was for Gross Alpha RAA  
10 being above MCL (15 pCi/L) for the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> quarters of 2009, and for the March and  
11 April 2010 Public Notice for Gross Alpha MCL exceedance not being timely issued. This  
12 order is attached as Exhibit JSG-1. The other Consent Order - OGC# 10-1956-25, issued  
13 February 11, 2011, has been settled and closed. In March 2010, the system exceeded the  
14 Bacteriological MCL and a Public Notice was completed with notification being sent to DEP  
15 April 6, 2010, and no formal enforcement was needed. For Jasmine Lakes PWS, in May  
16 2010, there was a Violation Type 28 (Monthly Average MCL – Total Coliform Rule) which  
17 required Tier 2 Public Notice, and the system delivered that notice in June 2010. So, no  
18 further action was required for that system. For Zephyr Shores (American Condo) PWS, in  
19 August 2010, there was a Violation Type 01 (Single Sample Maximum Contaminant Level)  
20 for Secondary Contaminant Iron, which showed results of 0.42 mg/L (MCL 0.3 mg/L). In  
21 2008, the Quarterly Arsenic Results for the 4<sup>th</sup> Quarter were not timely submitted and a  
22 Warning Letter was issued March 12, 2009, followed by a Consent Order which was executed  
23 in August 2009. This Consent Order is now closed.

24 Q. Other than any violations discussed above, is AUF in compliance with all DEP  
25 requirements for their water systems in Desoto, Hardee, Marion, Pasco, and Sumter Counties?

1 A. Yes, I would note that the systems did have multiple Precautionary Boil Water Notices  
2 (PBWN). Lake Suzy PWS had two PBWNs in April 2011 associated with a planned outage  
3 and a water main break. Peace River Heights PWS had three PBWNs issued, one each in  
4 August 2009, December 2010, and January 2011. Ridge Meadows PWS had a PBWN issued  
5 in December 2009 for a planned outage. Jasmine Lakes PWS had PBWNs issued associated  
6 with water main breaks on 2/17/09, 6/24/09, 9/02/09, 10/27/09, 2/24/10, 4/05/10, 4/13/10,  
7 5/20/10 (two separate breaks), 6/18/10, 8/25/10, 9/28/10, 10/14/10, 12/15/10, 1/27/10,  
8 2/24/10, and 6/2/11. Also, a PBWN associated with Ground Water Rule, Ecoli (+), Well 7C,  
9 Tier 1 Public Notice, was issued on 4/16/10. For Palm Terrace PWS, PBWNs associated with  
10 water main breaks were issued on 4/16/10, 4/28/10, 9/13/10, 9/15/10, 9/24/10, 2/1/11, and  
11 8/10/11. Also, PBWNs were issued on 11/17/10 for a planned outage, and on 2/21/10 and  
12 2/28/11 for a leaking valve. For Zephyr Shores (American Condo) PWS, a PBWN was issued  
13 on 3/16/09 and 11/05/09 for water main breaks. Also, PBWNs were issued 8/24/10 and  
14 3/27/11 for a Well No. 2 pump and motor replacement, and for a Well No. 1 pump, motor, and  
15 check valve replacement, respectively. For The Woods PWS, PBWNs were issued on  
16 10/11/09, 10/06/10, and 11/11/10 for well control malfunctions, and another PBWN was  
17 issued on 3/25/10 for a loss of power and generator malfunction.

18 Q. Is the overall operation and maintenance of these water treatment plants and  
19 distribution facilities satisfactory?

20 A. To the best of my knowledge the overall operation and maintenance of these systems  
21 meets the minimum requirements of the FDEP.

22 Q. Are you familiar with the Aqua Utilities Florida, Inc. (AUF) wastewater systems in the  
23 counties of Desoto (Lake Suzy), Hardee (Peace River Heights), Pasco (Jasmine Lakes, Palm  
24 Terrace, and Zephyr Shores), Polk (Breeze Hill, Lake Gibson, Rosalie Oaks, and Village  
25 Water), and Sumter (The Woods)?

A. Yes, I am familiar with all of those systems.

1 Q. Are these systems in compliance with all applicable construction and operating  
2 permits?

3 A. Lake Suzy WWTF and The Woods WWTF are in compliance. Peace River Heights  
4 WWTF, Jasmine Lakes WWTF, and Palm Terrace WWTF are out of compliance for  
5 maintenance issues. Jasmine Lakes WWTF and Palm Terrace WWTF each received Warning  
6 Letters on June 23, 2011, which remain open at this time. Both facilities have taken corrective  
7 action and are substantially in compliance. These warning letters are attached as Exhibit JSG-  
8 2.

9 For Zephyr Shores and Lake Gibson, the wastewater treatment facilities (WWTF)  
10 serving these areas were taken off line a number of years ago. AUF maintains the sanitary  
11 sewer systems and no overflows were reported in the past year.

12 The Breeze Hill WWTF had what was considered a minor out of compliance.

13 The Rosalie Oaks WWTF was out of compliance. Monitoring reports reviewed from  
14 February 2010 through July 2011, showed five exceedances of permit limit for total plant flow  
15 reported as a three-month rolling daily average. Village Water WWTF was significantly out  
16 of compliance and has been unable to address the long-term disposal solution for the ponds  
17 and the inadequate maintenance of the ponds.

18 Q. Have any of these AUF systems been the subject of any FDEP compliance  
19 enforcement action within the past three years?

20 A. The Lake Suzy WWTF, Peace River Heights WWTF, The Woods WWTF, Palm  
21 Terrace WWTF, Zephyr Shores WWTF, Breeze Hill WWTF, Lake Gibson WWTF, and The  
22 Woods have had no compliance enforcement action within the past three years.

23 For Jasmine Lakes WWTF, a consent order was executed on September 10, 2010 for  
24 maintenance issues and groundwater exceedances. The fine of \$23,000.00 was paid and the  
25 case was closed.

1 For Rosalie Oaks WWTF, a consent order was executed on August 19, 2010 for  
2 operating the facility without a permit. The fine of \$1,750.00 was paid and the case was  
3 closed.

4 For Village Water WWTF, a consent order was executed on August 21, 2007, for  
5 operating the facility without a permit and failure to maintain the ponds, including proper  
6 access control. The order has been amended multiple times and remains open. AUF is not in  
7 compliance with the terms of the order. The original Consent Order and the Second and Third  
8 Amendment are attached as Exhibit JSG-3.

9 Q. Other than any violations discussed above, is AUF in compliance with all FDEP  
10 requirements for their wastewater systems in Desoto, Hardee, Pasco, Polk, and Sumter  
11 Counties.

12 A. To the best of my knowledge the AUF facilities referenced above are substantially in  
13 compliance with the FDEP's minimum requirements.

14 Q. Is the overall operation and maintenance of these wastewater treatment plants and  
15 collection facilities satisfactory?

16 A. To the best of my knowledge the overall operation and maintenance of these systems  
17 meets the minimum requirements of the FDEP.

18 Q. Do you have anything further to add?

19 A. No, I do not.

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Florida Department of  
Environmental Protection  
Southwest District Office  
13051 North Telecom Parkway  
Temple Terrace, Florida 33637-0926

Charlie Crist  
Governor

Jeff Kottkamp  
Lt. Governor

Michael W. Sole  
Secretary

June 25, 2010

Mr. John Lihvarcik  
Aqua Utilities Florida, Inc.  
1100 Thomas Avenue  
Leesburg, FL 34748

Re: Executed Consent Order  
Peace River Heights  
PWS-ID No. 625-1954  
OGC File No. 10-0606-PW  
Hardee County

Dear Mr. Lihvarcik:

I am enclosing a copy of the Consent Order that was executed by our District Director. Please note that the effective date of the Consent Order is June 25, 2010 the day it was filed by the clerk.

If you have any questions or concerns, please contact me at, (813) 632-7600, extension 431.

Sincerely,

A handwritten signature in black ink that reads "Gerald B. Foster".

Gerald Foster  
Environmental Manager  
Drinking Water Section

GF/rm/m

Enclosure

cc: Lea Crandall, Agency Clerk, OGC, (Douglas Building, M/S 35)

BEFORE THE STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT )  
OF ENVIRONMENTAL PROTECTION )

IN THE OFFICE OF THE )  
SOUTHWEST DISTRICT )

vs. )

OGC FILE NO. 10-0606-25 )

AQUA UTILITES FLORIDA, INC )  
\_\_\_\_\_ )

Certified Mail: 7007 2680 0000 5033 1006

CONSENT ORDER

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

The Department finds and 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 water resources and to administer and enforce the provisions of the Florida Safe Drinking Water Act, Sections 403.850, et seq., Florida Statutes, ("F.S."), and the rules promulgated and authorized in Title 62, Florida Administrative Code, ("F.A.C."). The Department has jurisdiction over the matters addressed in this Order.

2. Respondent is a person within the meaning of Section 403.852(5), F.S.

3. Respondent is the owner of a community water system, PWS No. 625-1954, located at Parcel ID Number 15-34-25-0000-05630-0000, in Hardee County, Florida, ("System").

4. The Department finds that Respondent is in violation of Rule 62-550.310(6), F.A.C, which establishes the maximum contaminant level, ("MCL"), for Gross alpha particle activity. The running annual average results for samples collected between July 2008 and June 2009 from the system and analyzed for Gross alpha particle activity is 18.7 pCi/L.

5. The Department finds that Respondent is in violation of Rule 62-550.310(6), F.A.C, which establishes the MCL for Gross alpha particle activity. The running annual average results for samples collected between October 2008 and September 2009 from the system and analyzed for Gross alpha particle activity is 21.67 pCi/L.

6. The Department finds that Respondent is in violation of Rule 62-550.310(6), F.A.C, which establishes the MCL for Gross alpha particle activity. The running annual average results for

samples collected between January 2009 and December 2009 from the system and analyzed for Gross alpha particle activity is 17.14 pCi/L.

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

**ORDERED:**

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

a) Respondent shall sample every other calendar month, ("bimonthly"), for Gross alpha particle activity, Radium 226 and Radium 228, ("combined Radium"), with no more than 60 days between samples, and the first samples collected within 30 days of the effective date of this order. Bimonthly sampling will continue for 24 consecutive months or until permitted modifications required by subparagraphs 7(e) through 7(h) are necessary and have been constructed and cleared for service, at which time Respondent shall begin sampling quarterly once notified in writing.

b) Respondent shall submit all bimonthly samples, to the Department within 28 days following the month in which samples were collected. The results for all samples collected within a sampling month shall be averaged to determine the bimonthly result for compliance with this Order. If, 2 bimonthly results during any consecutive 12 month period exceed 15 pCi/L for Gross alpha particle activity and/or 5 pCi/L combined Radium, the Respondent shall continue bimonthly sampling and comply with subparagraphs 7(e) through 7 (h) below, within the specified time frames. In the event Respondent fails to complete a required bimonthly sampling during the 24 consecutive month sampling period, as described in subparagraph 7(a) above, the Respondent shall initiate and complete another 24 consecutive month sampling period as described in paragraph 7(a) above.

c) Respondent shall continue to issue public notices regarding Radiological MCL violation(s) within 30 days after learning of a violation, as required by Rule 62-560.410(1), F.A.C. Respondent shall submit certification of delivery of public notices, using DEP Form 62-555.900(22), F.A.C. to the Department within 10 days of issuing each public notice.

d) Respondent shall coordinate all Radiological sampling with the Department 7 days prior to sample collection. The Department may choose to split samples with the Respondent. Respondent shall coordinate with Gerald Foster, Environmental Manager, via email at [Gerald.Foster@dep.state.fl.us](mailto:Gerald.Foster@dep.state.fl.us).

e) Within 60 days of learning of a violation, as described in subparagraph 7(b) above, Respondent shall retain the services of a professional engineer, registered in the State of Florida,

to evaluate the System and submit an application, along with any required application fees, to the Department for a permit to construct any modifications needed to address the violation(s).

f) If the Department requires additional information, modifications, or specifications to process the permit application described in subparagraph 7(e) above, the Department will issue a written request for information, ("RFI"), to Respondent. Respondent shall submit the requested information in writing to the Department within 15 days of receipt of the request. Respondent shall provide all information requested in any additional RFIs issued by the Department within 15 days of receipt of each request. Within 60 days of the Department's receipt of the application described in subparagraph 7(e) above, Respondent shall provide all information necessary to complete the application.

g) Within 180 days of issuance of any required permit described in subparagraph 7(e) above, Respondent shall complete the permitted modifications and submit a Certification of Completion, prepared and sealed by a professional engineer registered in the State of Florida, along with all supporting documentation. Respondent shall not place the System modifications into service until Respondent receives written Department clearance.

h) Respondent shall submit written monthly updates on the status of the permitted modifications. Updates shall be sent to Gerald Foster, Environmental Manager, and shall be sent to the Florida Department of Environmental Protection, Southwest District, 13051 North Telecom Parkway, Temple Terrace, FL 33637-0926, within 10 days following the end of each calendar month until the modifications are complete and cleared for service.

8. Within 30 days of the effective date of this Order, Respondent shall pay the Department \$1,500.00 in settlement of the regulatory matters addressed in this Order. This amount includes \$1,500.00 for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of this Order.

9. 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 subparagraphs 7(b), 7(d), 7(e), 7(f) and 7(h) of this Order. Respondent shall pay stipulated penalties owed within 30 days of the Department's issuance of written demand for payment, and shall do so as further described in paragraph 10, below. Nothing in this paragraph shall prevent the Department from filing suit to specifically enforce any terms of this Order. Any stipulated penalties assessed under this paragraph shall be in addition to the civil penalties agreed to in paragraph 7 of this Order.

10. Respondent agrees to pay the Department stipulated penalties in the amount of \$1,000.00 per day for each and every day Respondent fails to timely comply with any of the requirements of subparagraphs 7(c) and 7(g) of this Order. Respondent shall pay stipulated penalties owed within 30 days of the Department's issuance of written demand for payment, and shall do so as further described in paragraph 10, below. Nothing in this paragraph shall prevent the Department from filing suit to specifically enforce any terms of this Order. Any stipulated penalties assessed under this paragraph shall be in addition to the civil penalties agreed to in paragraph 7 of this Order.

11. Respondent agrees to pay the Department stipulated penalties in the amount of \$2,000.00 per day for each and every day Respondent fails to timely comply with any of the requirements of subparagraph 7(a) of this Order. Respondent shall pay stipulated penalties owed within 30 days of the Department's issuance of written demand for payment, and shall do so as further described in paragraph 10, below. Nothing in this paragraph shall prevent the Department from filing suit to specifically enforce any terms of this Order. Any stipulated penalties assessed under this paragraph shall be in addition to the civil penalties agreed to in paragraph 7 of this Order.

12. Respondent shall make all payments required by this Order by cashier's check or money order. Payment instruments shall be made payable to the "Department of Environmental Protection" and shall include both the OGC number assigned to this Order and the notation "Ecosystem Management and Restoration Trust Fund."

13. Except as otherwise provided, all submittals and payments required by this Order shall be sent to Ms. Gwen Shofner, P.E., and shall be sent to the Florida Department of Environmental Protection, Southwest District, 13051 North Telecom Parkway, Temple Terrace, FL 33637-0926.

14. Respondent shall allow all authorized representatives of the Department access to the Facility and the Property at reasonable times for the purpose of determining compliance with the terms of this Order and the rules and statutes administered by the Department.

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 Order have not been fully satisfied, Respondent shall, at least 30 days prior to the sale or conveyance of the Facility or Property, (a) notify the Department of such sale or conveyance, (b) provide the name and address of the purchaser, operator, or person(s) in control of the Facility, and (c) provide a copy of this Order with all attachments to the purchaser, operator, or person(s) in control of the Facility. The sale or conveyance of the Facility or the Property does not relieve Respondent of the obligations imposed in this Order.

16. If any event, including administrative or judicial challenges by third parties unrelated to Respondent, occurs which causes delay or the reasonable likelihood of delay in complying with the requirements of this Order, Respondent shall have the burden of proving the delay was or will be caused by circumstances beyond the reasonable control of Respondent and could not have been or cannot be overcome by Respondent's due diligence. Neither economic circumstances nor the failure of a contractor, subcontractor, material man, or other agent, (collectively referred to as "contractor"), to whom responsibility for performance is delegated to meet contractually imposed deadlines shall be considered circumstances 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 by the next working day and shall, within seven calendar days notify the Department in writing of, (a) the anticipated length and cause of the delay, (b) the measures taken or to be taken to prevent or minimize the delay, and (c) 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. The agreement to extend compliance must identify the provision or provisions extended the new compliance date or dates, and the additional measures Respondent must take to avoid or minimize the delay, if any. Failure of Respondent to comply with the notice requirements of this paragraph in a timely manner constitutes a waiver of Respondent's right to request an extension of time for compliance for those circumstances.

17. The Department, for and in consideration of the complete and timely performance by Respondent of all the obligations agreed to in this Order, hereby conditionally waives its right to seek judicial imposition of damages or civil penalties for the violations described above up to the date of the filing of this Order. This waiver is conditioned upon Respondent's complete compliance with all of the terms of this Order.

18. This Order is a settlement of the Department's civil and administrative authority arising under Florida law to resolve the matters addressed herein. This 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. Entry of this Order does not relieve Respondent of the need to comply with applicable federal, state, or local laws, rules, or ordinances.

19. The Department hereby expressly reserves the right to initiate appropriate legal action to address any violations of statutes or rules administered by the Department that are not specifically resolved by this Order.

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

21. Respondent acknowledges and waives its right to an administrative hearing pursuant to sections 120.569 and 120.57, F.S., on the terms of this Order. Respondent also acknowledges and waives its right to appeal the terms of this Order pursuant to section 120.68, F.S.

22. No modifications of the terms of this Order will be effective until reduced to writing, executed by both Respondent and the Department, and filed with the clerk of the Department.

23. The terms and conditions set forth in this 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 Order constitutes a violation of section 403.161(1)(b), F.S.

24. 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 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.

**STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
**NOTICE OF CONSENT ORDER**

Persons who are not parties to this Consent Order, but whose substantial interests are affected by it, have a right to petition for an administrative hearing under sections 120.569 and 120.57, Florida Statutes. Because the administrative hearing process is designed to formulate final agency action, the filing of a petition concerning this Consent Order means that the Department's final action may be different from the position it has taken in the Consent Order.

The petition for administrative hearing must contain all of the following information:

- a) The OGC Number assigned to this Consent Order;

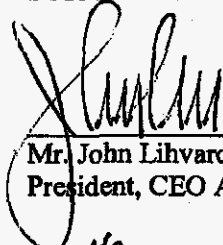
- b) The name, address, and telephone number of each petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding;
- c) An explanation of how the petitioner's substantial interests will be affected by the Consent Order;
- d) A statement of when and how the petitioner received notice of the Consent Order;
- e) Either a statement of all material facts disputed by the petitioner or a statement that the petitioner does not dispute any material facts;
- f) A statement of the specific facts the petitioner contends warrant reversal or modification of the Consent Order;
- g) A statement of the rules or statutes the petitioner contends require reversal or modification of the Consent Order; and
- h) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the Department to take with respect to the Consent Order.

The petition 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 at Department of Environmental Protection, Southwest District, 13051 North Telecom Parkway, Temple Terrace, FL 33637. Failure to file a petition within the 21-day period constitutes a person's waiver of the right to request an administrative hearing and to participate as a party to this proceeding under sections 120.569 and 120.57, Florida Statutes. Before the deadline for filing a petition, a person whose substantial interests are affected by this Consent Order may choose to pursue mediation as an alternative remedy under section 120.573, Florida Statutes. Choosing mediation will not adversely affect such person's right to request an administrative hearing if mediation does not result in a settlement. Additional information about mediation is provided in section 120.573, Florida Statutes and Rule 62-110.106(12), Florida Administrative Code.

25. Rules referenced in this Order are available at:  
<http://www.dep.state.fl.us/legal/Rules/rulelistnum.htm>.



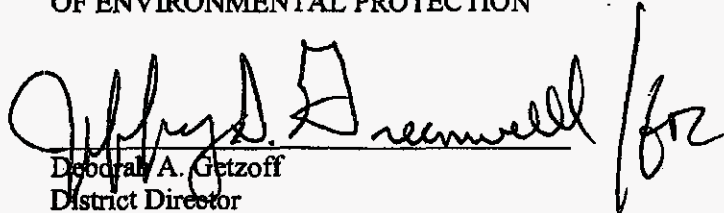
FOR THE RESPONDENT:

  
\_\_\_\_\_  
Mr. John Lihvarcik  
President, CEO Aqua Utilities Florida, Inc.

6-21-2010  
Date

DONE AND ORDERED this 24<sup>th</sup> day of June, 2010, in Hialeah Florida.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION

  
\_\_\_\_\_  
Deborah A. Getzoff  
District Director  
Southwest District

Filed, on this date, pursuant to section 120.52, F.S., with the designated Department Clerk, receipt of which is hereby acknowledged.

Deane S. Mussano  
Clerk

June 25, 2010  
Date

Copies furnished to:  
Lea Crandall, Agency Clerk  
Mail Station 35





Florida Department of  
Environmental Protection  
Southwest District Office  
13051 North Telecom Parkway  
Temple Terrace, Florida 33637-0926

Rick Scott  
Governor

Jennifer Carroll  
Lt. Governor

Hershel T. Vineyard Jr.  
Secretary

June 23, 2011

Ms. Judy Wallingford  
President and Chief Operating Officer  
Aqua Utilities Florida, Inc.  
P.O. Box 2480  
Lady Lake, FL 3215-2480  
jewallingford@aquaamerica.com

Re: Warning Letter No. WL11-0015DW51SWD  
Jasmine Lakes WWTF  
Facility ID No. FLA012768  
Pasco County

Dear Ms. Wallingford:

The purpose of this letter is to advise Aqua Utilities Florida, Inc. of possible violations of law for which it may be responsible, and to seek your cooperation in resolving the matter. Field inspections on February 15 and May 26, 2011 and a file review of the Jasmine Lakes Wastewater Treatment Facility indicate that a violation of Florida Statutes (Fla. Stat.) and Rules may exist at the above-referenced facility. Department of Environmental Protection personnel observed the following:

1. On February 15, 2011, the Department observed:
  - a. There was uneven flow over the southern clarifier weir due to algae build-up.
  - b. There were excessive solids in the chlorine contact chamber. Solids in the chlorine contact chamber were attributed to maintenance of the clarifier's weirs.
2. On May 26, 2011, the Department observed:
  - a. The return activated sludge pumps were leaking, causing pooling around the concrete pad.
  - b. The sludge blanket in the southern clarifier was seven feet high. The total depth of each clarifier is 10 feet.
  - c. Solids covered the surface of the southern clarifier. Solid waste was at the surface of the northern clarifier.
  - d. There was over one foot of solids in the chlorine contact chamber.

Warning Letter No. WL11-0015DW51SWD  
Jasmine Lakes WWTF  
Facility ID No. FLA012768-Pasco County  
Page 2 of 3

- e. The flow chart recorder stopped on Saturday. Consequently, flow was not recorded for five days.
  - f. Pond number four's bottom was covered with dried solids.
3. No ice or refrigeration was provided during influent and effluent composite sampling.
  4. A review of the March 2011 R-001 discharge monitoring report (DMR) revealed that the fecal coliform maximum limit was exceeded once.
  5. The fourth quarter of 2010 ground water monitoring report- Part D DMRs was not submitted.
  6. The first quarter 2011 ground water monitoring report- Part D DMRs was submitted in an incorrect format.

Rule 62-600.410(6), Florida Administrative Code (Fla. Admin. Code), provides that all facilities and equipment necessary for the treatment, reuse, and disposal of domestic wastewater and domestic wastewater residuals shall be maintained, at a minimum, so as to function as intended.

Rule 62-600.740(2)(a), Fla. Admin. Code, prohibits the release or disposal of excreta, sewage, or other wastewaters or domestic wastewater residuals without providing proper treatment approved by the Department or otherwise violating provisions of this rule or other rules of the Florida Administrative Code.

Rule 62-600.740(2)(c), Fla. Admin. Code, prohibits the failure to maintain equipment in a condition which will enable the intended function.

Rule 62-601.300(3)(c), Fla. Admin. Code, provides that ground water monitoring reports shall be completed and submitted in a timely manner so as to be received by the appropriate District Office by the date specified in the permit.

Rule 62-601.500(2), Fla. Admin. Code, provides that the minimum schedule for sampling and testing parameters to be monitored at a wastewater treatment plant is specified in Figure 2. Ground water monitoring wells shall be tested according to the schedule specified in Figure 3.

Rule 62-610.523(6), Fla. Admin. Code, provides 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.

Rule 62-160.200(1), Fla. Admin. Code, provides that all entities that conduct or support field activities and field measurements shall follow the applicable procedures and requirements described in DEP-SOP-001/01 (March 31, 2008), which is incorporated by reference in Rule 62-

Warning Letter No. WL11-0015DW51SWD  
Jasmine Lakes WWTF  
Facility ID No. FLA012768-Pasco County  
Page 3 of 3

160.800, Fla.Admin.Code, unless specifically exempted by the rules of a particular Department program.

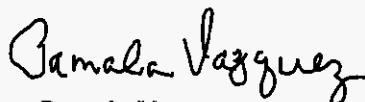
Section 403.161(1)(b), Fla. Stat., provides that it shall be prohibited for any person to violate or fail to comply with any rule, regulation, order, permit or certification adopted or issued by the Department pursuant to its lawful authority.

The activities observed during the Department's field inspections, file review, and any other activities at the Jasmine Lakes WWTF that may be contributing to violations of the aforementioned statutes or rules should be ceased. The operation of a facility in violation of state statutes or rules may result in liability for damages and restoration, and the administrative imposition of penalties up to \$10,000.00 pursuant to Section 403.121, Fla.Stat., or the judicial imposition of civil penalties up to \$10,000.00 per violation per day pursuant to Sections 403.141 and 403.161, Fla.Stat.

You are requested to contact Frank L. Fulghum III at the Southwest District address or telephone number (813) 632-7600, extension 411, 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 part of an agency investigation, preliminary to agency action in accordance with Section 120.57(5), Fla.Stat. We look forward to your cooperation in completing the investigation and resolution of this matter.

Sincerely yours,



Pamala Vazquez  
Program Administrator  
Southwest District

PV/ff

cc: Patricia Williams, Aqua Utilities Fla, Inc., prwilliams@aquaamerica.com  
Steve Fuller, Aqua Utilities Fla, Inc., slfuller@aquaamerica.com  
Steve Thompson, FDEP, steve.thompson@dep.state.fl.us  
Joe Richards, PCUSB, jrichards@pascocountyfl.net

# Jasmine Lakes WWTF, 05/26/11

- Photographer: Frank L. Fulghum III
- Facility Name: Jasmine Lakes WWTF
- Facility ID No.: FLA012768
- Photographed on: May 26, 2011
- Type of Camera: Canon PowerShot A530
- Recording Media: MMC Plus memory card
- Digital photos copied by: Frank L. Fulghum III
- Digital photos copied to: C:\Documents and Settings\fulghum\_f\My Documents\My Pictures\05-26-11
- Original copies stored: "Photo Archives" CD

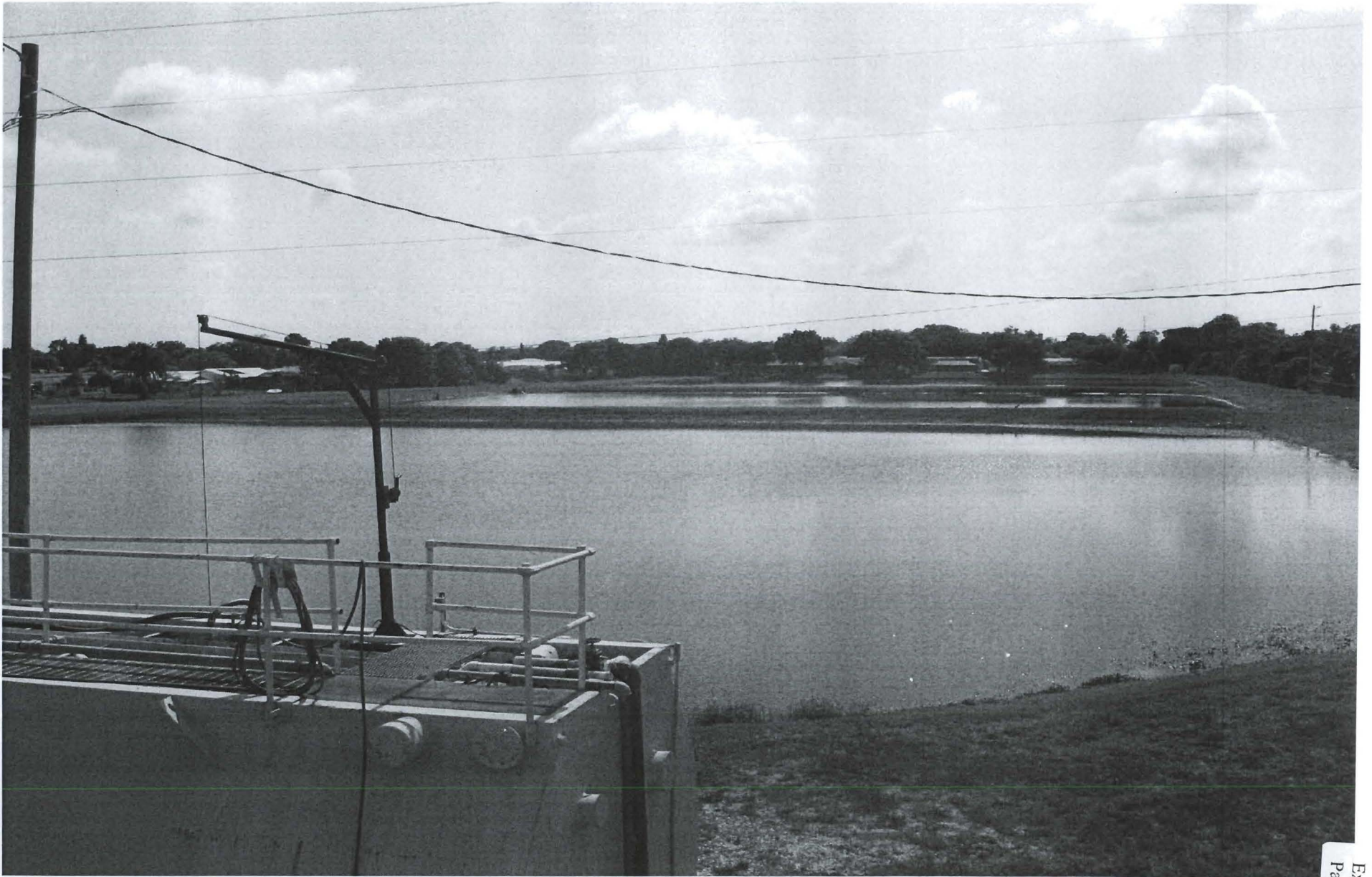
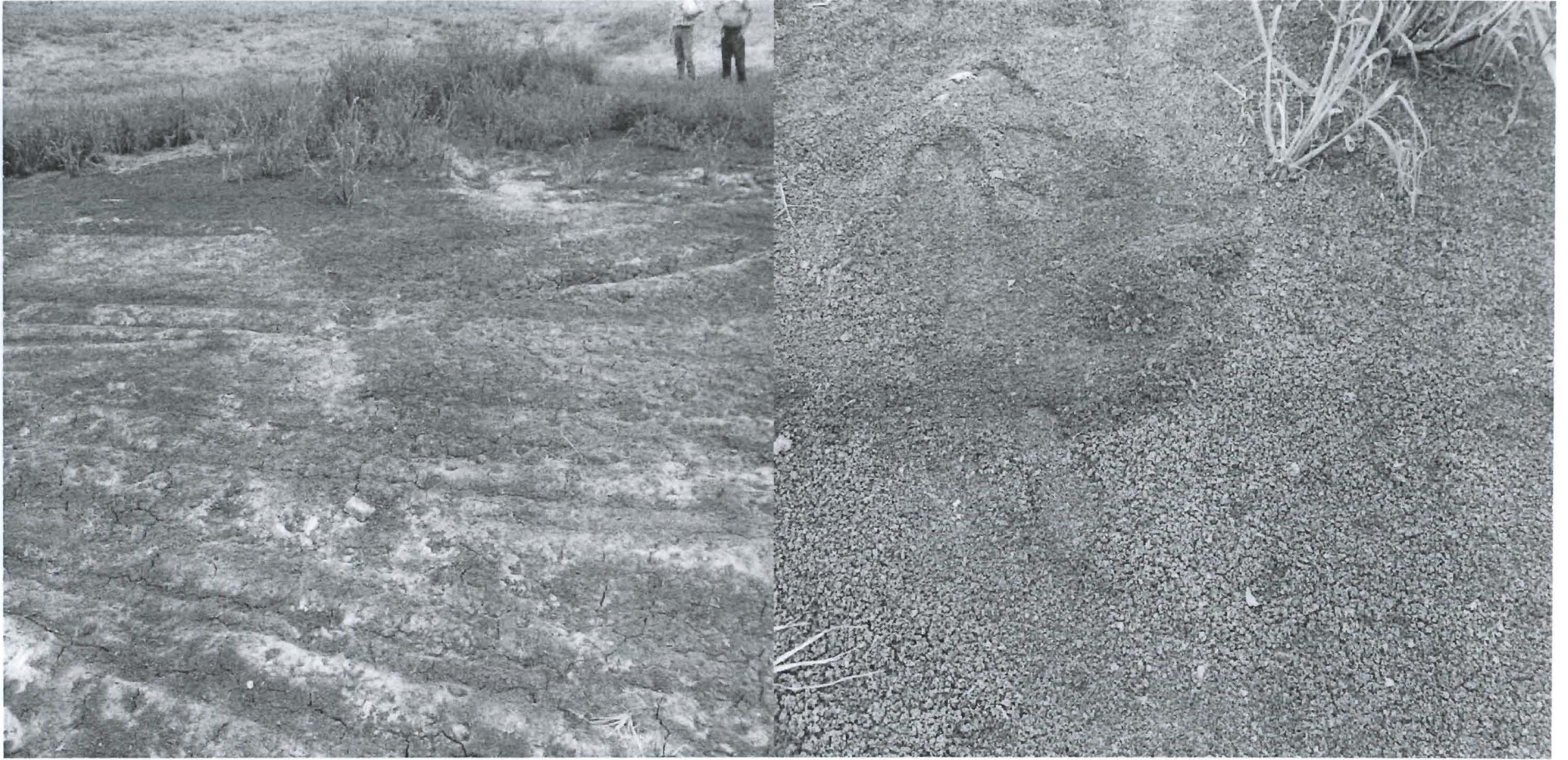


Photo above of ponds #1-3. Photo taken on the southern clarifier.



Photos of solids in pond #4



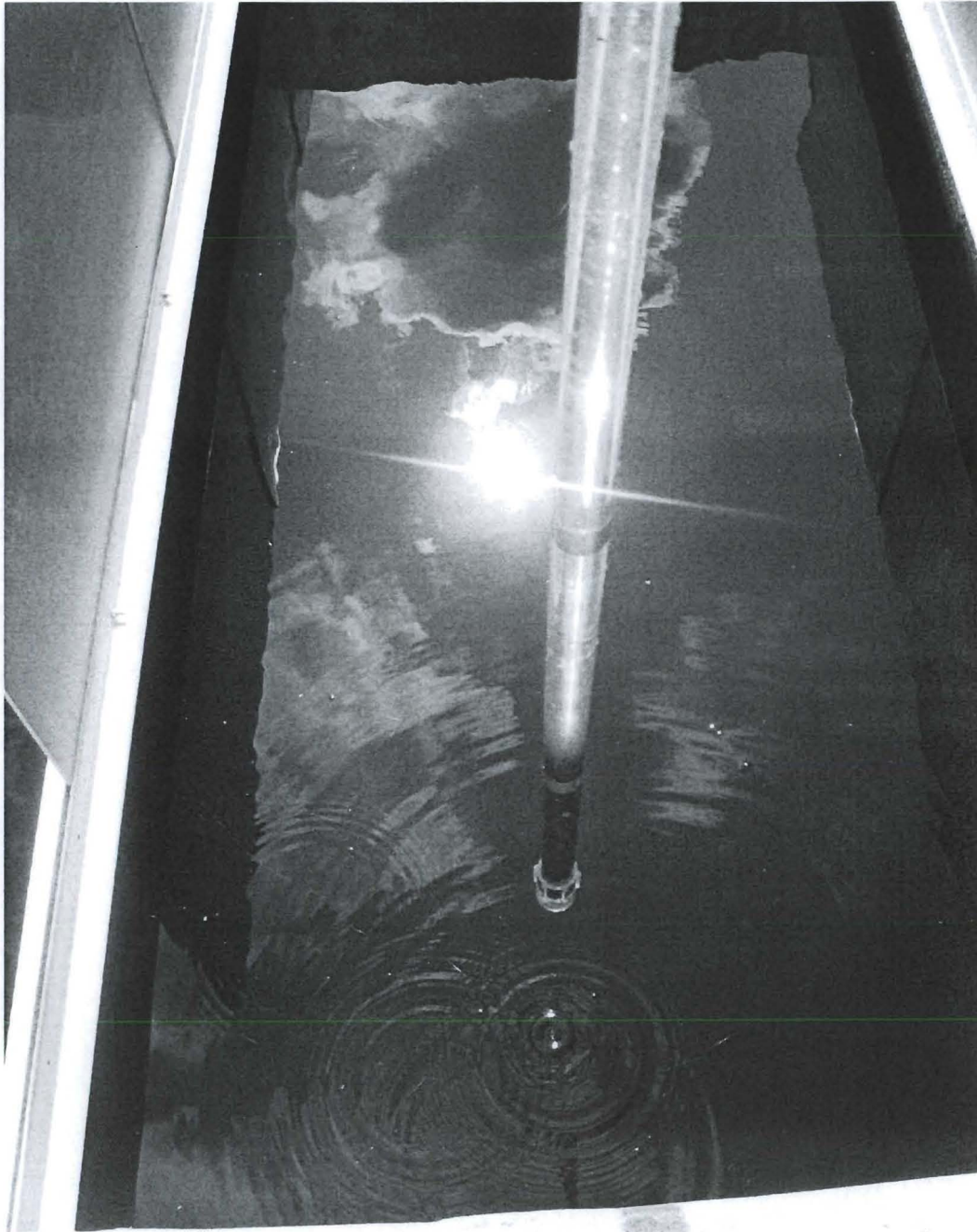


Photo of the amount of solids  
at the bottom of the chlorine  
contact chamber.



Photo of the sludge blanket in  
the southern clarifier

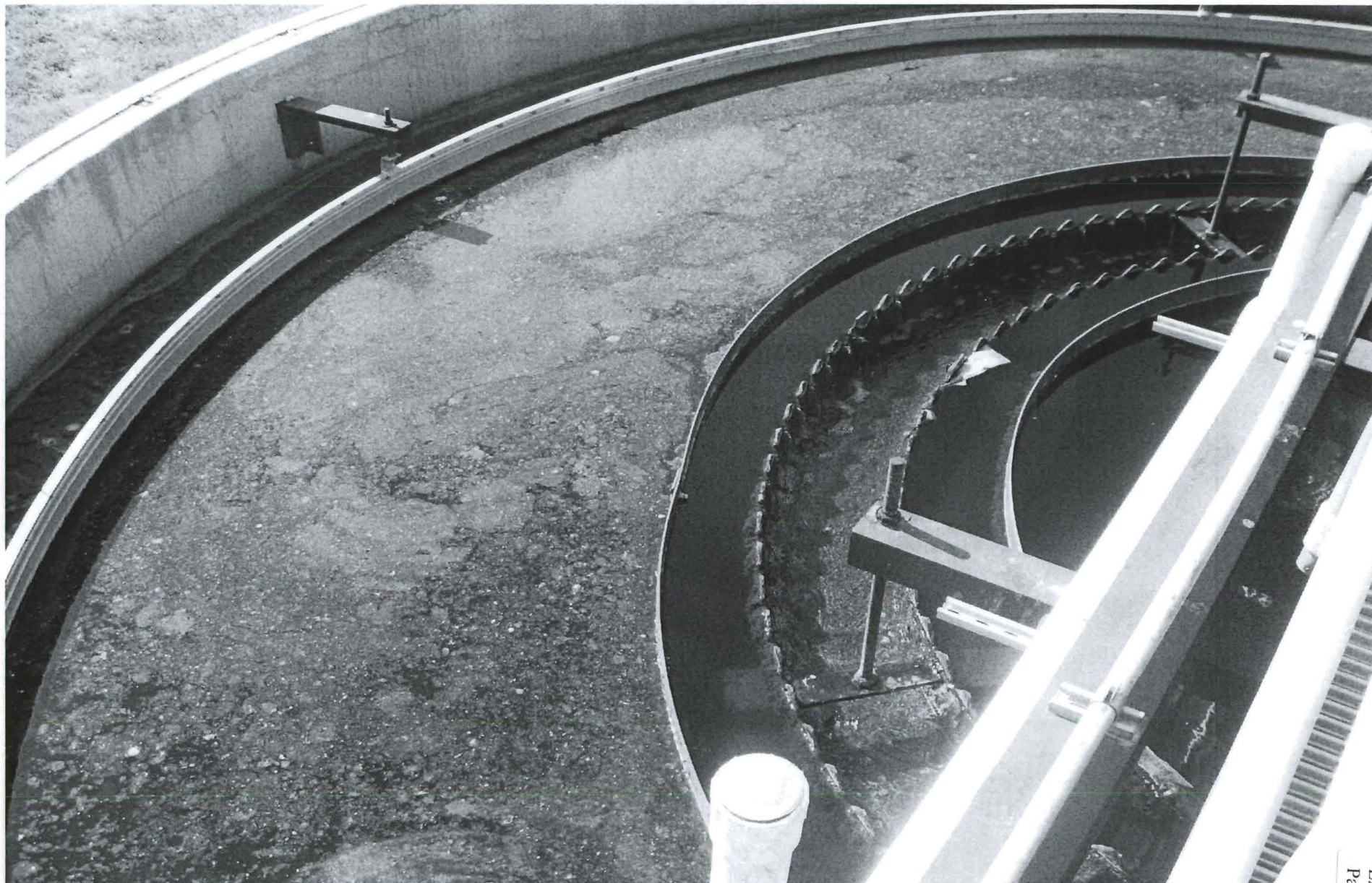


Photo of the surface of the southern clarifier.

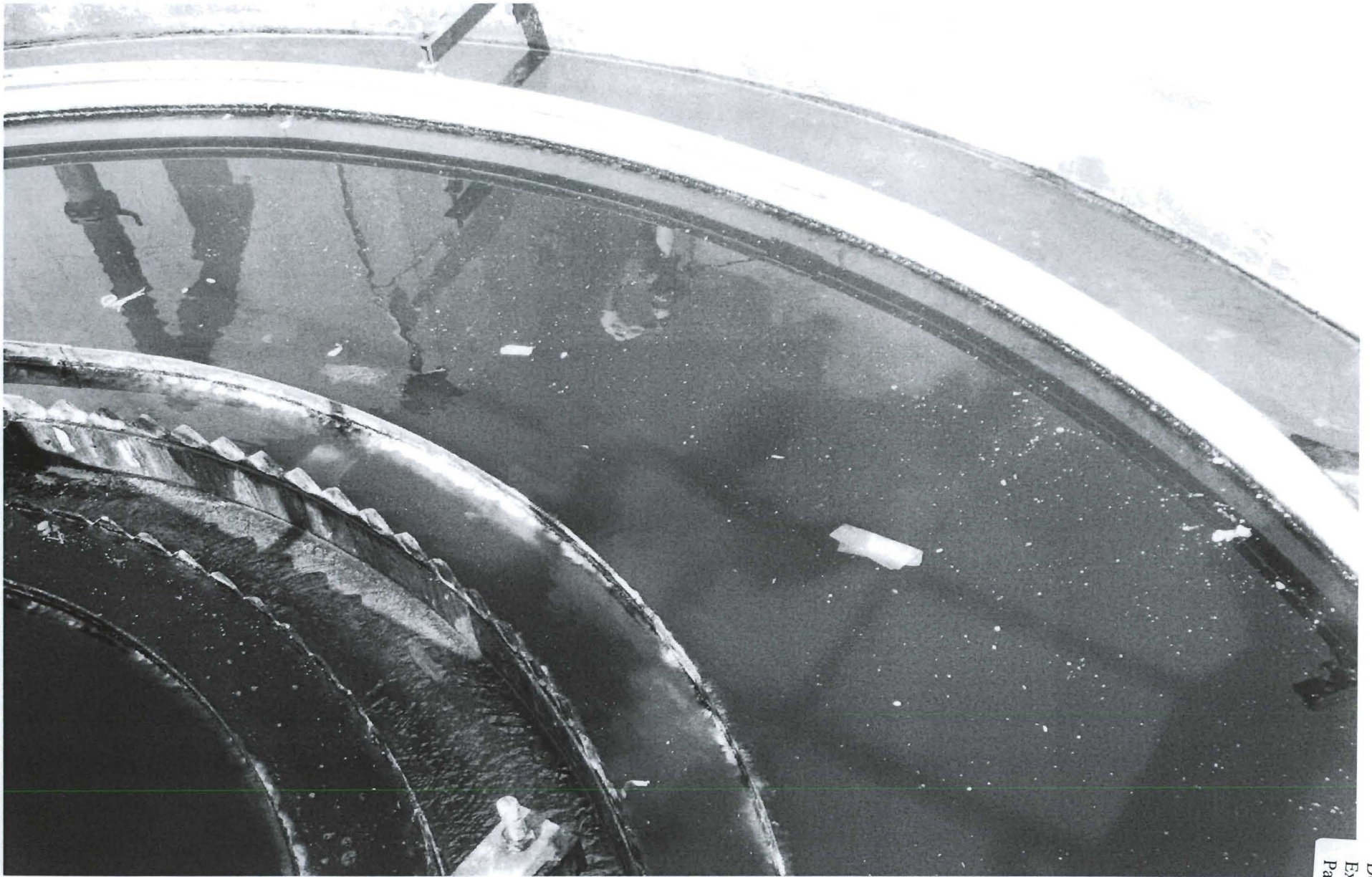


Photo of the surface of the  
northern clarifier.

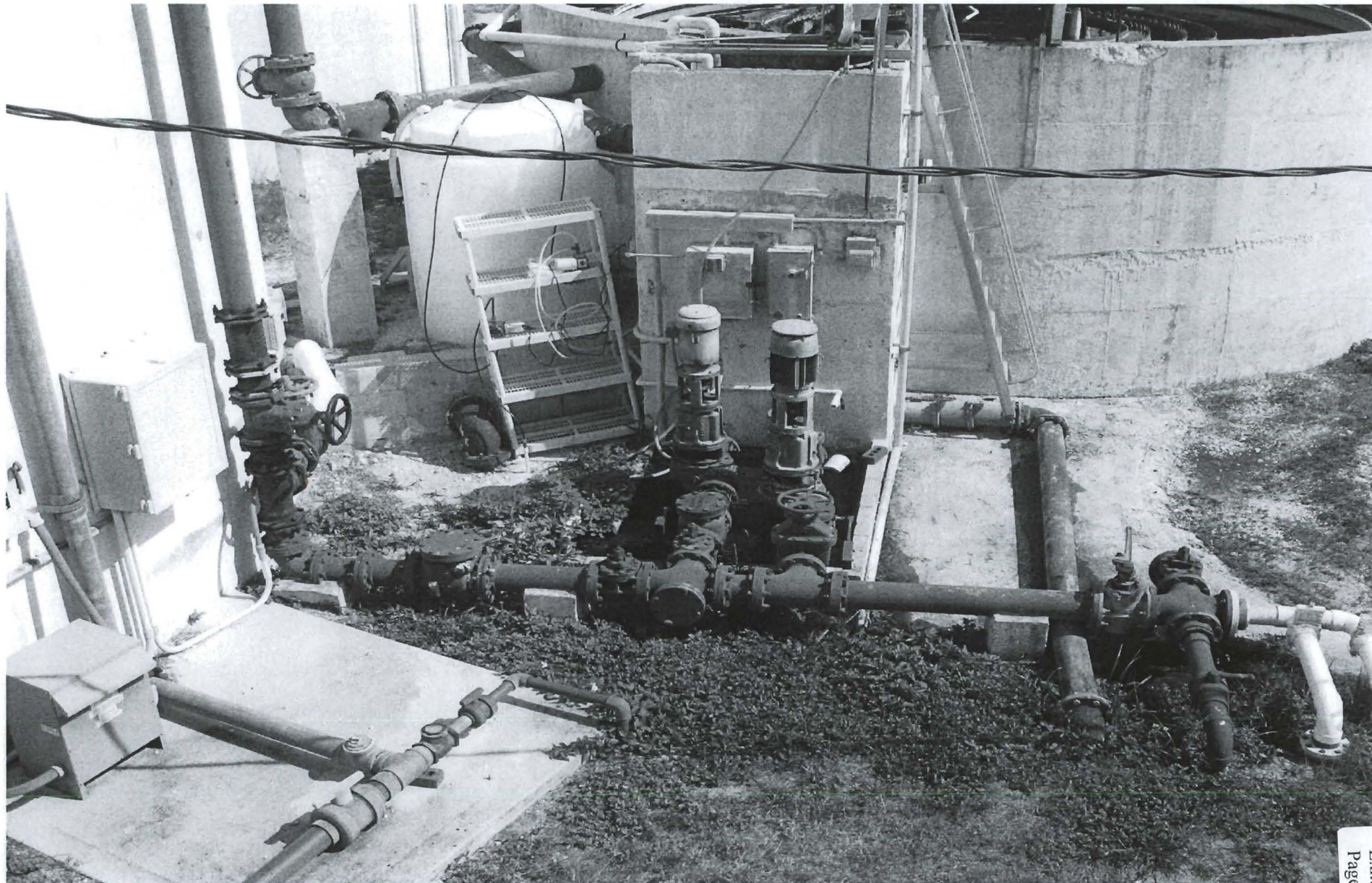


Photo of the RAS pumps  
leaking.



Photo of the biosolids in the  
sludge holding tank.

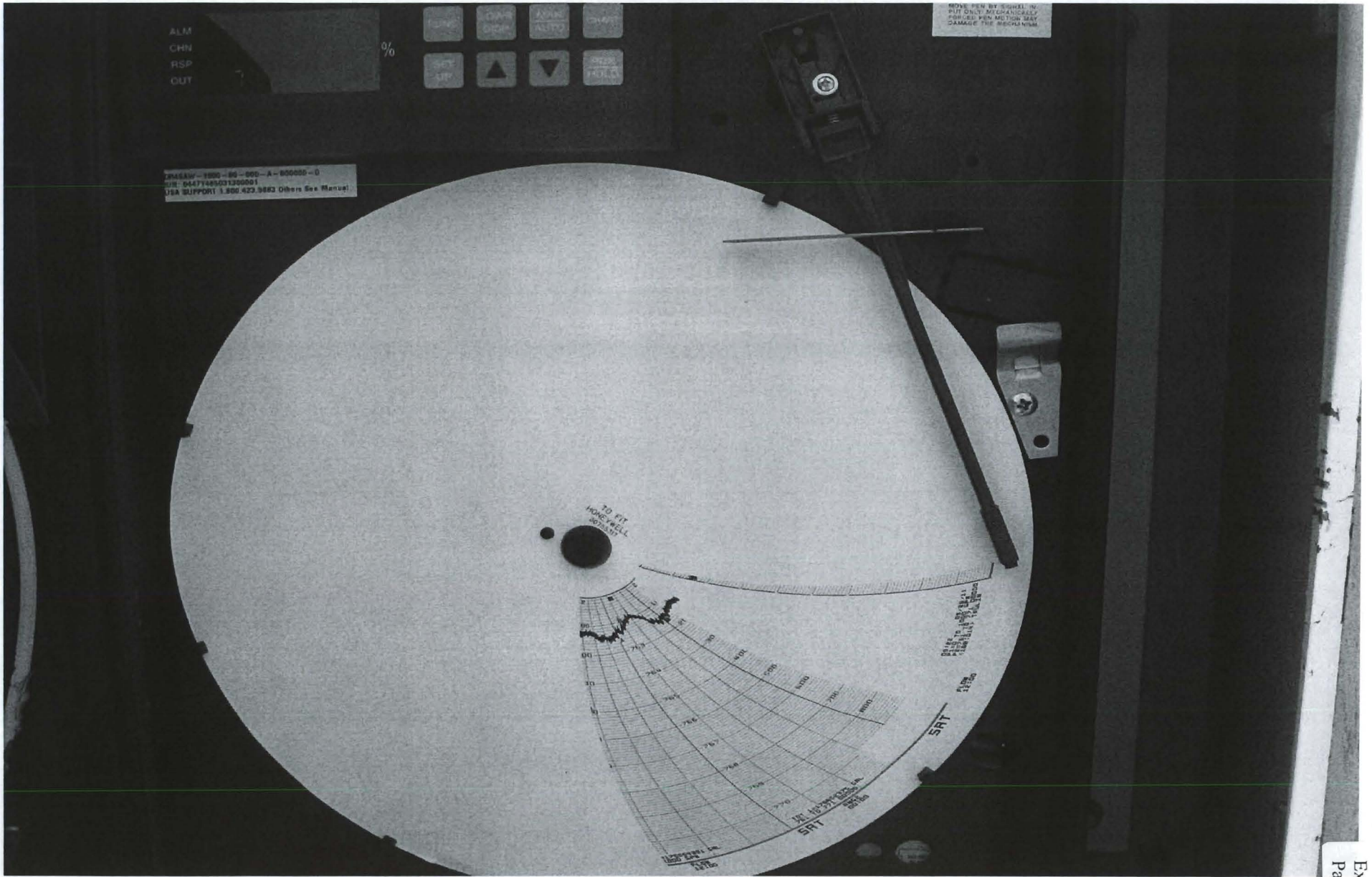


Photo of the flow recorder stopped on Saturday.



Florida Department of  
Environmental Protection  
Southwest District Office  
13051 North Telecom Parkway  
Temple Terrace, Florida 33637-0926

Rick Scott  
Governor

Jennifer Carroll  
Lt. Governor

Hershel T. Vineyard Jr.  
Secretary

June 23, 2011

Ms. Judy Wallingford  
President and Chief Operating Officer  
Aqua Utilities Florida, Inc.  
P.O. Box 2480  
Lady Lake, FL 3215-2480  
[jewallingford@aquaamerica.com](mailto:jewallingford@aquaamerica.com)

Re: Warning Letter No. WL11-0013DW51SWD  
Palm Terrace Gardens WWTF  
Facility ID No. FLA012773  
Pasco County

Dear Ms. Wallingford:

The purpose of this letter is to advise Aqua Utilities Florida, Inc. of possible violations of law for which it may be responsible, and to seek your cooperation in resolving the matter. Field inspections on February 15 and May 26, 2011 and a file review of the Palm Terrace Gardens Wastewater Treatment Facility indicate that a violation of Florida Statutes (Fla. Stat.) and Rules may exist at the above-referenced facility. Department of Environmental Protection personnel observed the following:

1. On February 15, 2011, the Department observed:
  - a. The influent lift station's visual and audio alarms were inoperable. The visual alarm was operable only when reset.
  - b. Excessive solid waste was passing through the facility. This was evident by the amount of floatables in the facility tanks and ponds.
  - c. The plant appeared very high in solids. The mixed liquor in the aeration tanks was a dark brown color and the return activated sludge was dark brown. There was a heavy foam blanket in the aeration tanks. There were tennis ball-sized clumps of solids floating in the clarifier (pop-ups), which was evidence of denitrification of the sludge at the bottom of the clarifier. This was again observed on May 26, 2011.
  - d. Solid waste was observed in the southern pond. Large solids were on the surfaces of both ponds.



Warning Letter No. WL11-0013DW51SWD  
Palm Terrace Gardens WWTF  
Facility ID No. FLA012773-Pasco County  
Page 2 of 4

2. On May 26, 2011, the Department observed:
  - a. The visible alarm for the influent lift station was inoperable.
  - b. Solids covered the surfaces of both clarifiers. The sludge blanket in the southern clarifier was measured at 11 feet. Eight feet was measure in the northern clarifier. The total depth of each clarifier is 13 feet. High sludge blankets may lead to solids loss out of the clarifiers.
  - c. There was over one foot of solids in the north chlorine contact chamber (CCC) and one foot of solids in the second CCC. There was over one foot of solids in the flow measuring device and effluent lift station.
  - d. The seven-day flow chart recorder paper had not been changed since May 13, 2011, and was 13 days old.
  - e. Both ponds were covered with duckweed and the berms were overgrown with vegetation.
  - f. Ground water monitoring well MWC-03 was sloping into the storm water retention pond. Its casing was damaged.
3. No ice or refrigeration was provided during influent and effluent composite sampling.
4. Section VI, Compliance Schedules, of the permit required that within 90 days after permit issuance, or by December 23, 2009, the permittee was to provide the results of the evaluation conducted towards the use of an intermediate well. To date, no evaluation was submitted.
5. On May 17, 2011, the Department was notified that the effluent transmission line from the facility to the spray field broke, discharging 2,000 gallons into a storm water retention pond. The line is installed atop of a concrete pad and is not secured from damage.
6. On February 15 2011, the Department performed an instantaneous check of the flow meter. At a staff gauge reading of 0.34 feet of head, the associated totalizer (used to report flow on the discharge monitoring reports (DMRs)) read 57.2 GPM. On May 26, 2011, the Department performed an instantaneous check of the flow meter. At a staff gauge reading of 0.32 feet of head, the associated totalizer (used to report flow on the DMRs) read 53.1 GPM. The table value in the fifth edition *Isco Open Channel Flow Measuring Handbook* for a 90° V-notch weir for 0.34 feet is 99.87 GPM and 0.32 is 64.99. The readings were not within ten percent of the table value.
7. A review of the March 2011 R-001 DMR revealed that the fecal coliform maximum limit was exceeded once.

Warning Letter No. WL11-0013DW51SWD  
Palm Terrace Gardens WWTF  
Facility ID No. FLA012773-Pasco County  
Page 3 of 4

8. The third and fourth quarters of 2010 and the first quarter of 2011 ground water monitoring report- Part D DMRs were not submitted.

Rule 62-600.410(6), Florida Administrative Code (Fla. Admin. Code), provides that all facilities and equipment necessary for the treatment, reuse, and disposal of domestic wastewater and domestic wastewater residuals shall be maintained, at a minimum, so as to function as intended.

Rule 62-600.440(4)(c)4, Fla. Admin. Code, provides that any one sample shall not exceed 800 fecal coliform values per 100 mL of sample.

Rule 62-600.740(2)(a), Fla. Admin. Code, prohibits the release or disposal of excreta, sewage, or other wastewaters or domestic wastewater residuals without providing proper treatment approved by the Department or otherwise violating provisions of this rule or other rules of the Florida Administrative Code.

Rule 62-600.740(2)(c), Fla. Admin. Code, prohibits the failure to maintain equipment in a condition which will enable the intended function.

Rule 62-601.300(3)(c), Fla. Admin. Code, provides that ground water monitoring reports shall be completed and submitted in a timely manner so as to be received by the appropriate District Office by the date specified in the permit.

Rule 62-610.523(6), Fla. Admin. Code, provides 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.

Rule 62-160.200(1), Fla. Admin. Code, provides that all entities that conduct or support field activities and field measurements shall follow the applicable procedures and requirements described in DEP-SOP-001/01 (March 31, 2008), which is incorporated by reference in Rule 62-160.800, Fla. Admin. Code, unless specifically exempted by the rules of a particular Department program.

Rule 62-520.600(6)(1), Fla. Admin. Code, provides that if any monitoring well becomes inoperable or damaged to the extent that sampling or well integrity may be affected, the permittee shall notify the Department's office that issued the permit within two business days from discovery, and a detailed written report shall follow within ten days after notification to the Department. The written report shall detail what problem has occurred and remedial measures that have been taken to prevent recurrence or request approval for replacement of the monitoring well. All monitoring well design and replacement shall be approved by the Department before installation.

Section 403.161(1)(b), Fla. Stat., provides that it shall be prohibited for any person to violate or fail to comply with any rule, regulation, order, permit or certification adopted or issued by the Department pursuant to its lawful authority.

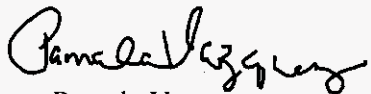
Warning Letter No. WL11-0013DW51SWD  
Palm Terrace Gardens WWTF  
Facility ID No. FLA012773-Pasco County  
Page 4 of 4

The activities observed during the Department's field inspections, file review, and any other activities at the Palm Terrace Gardens WWTF that may be contributing to violations of the aforementioned statutes or rules should be ceased. The operation of a facility in violation of state statutes or rules may result in liability for damages and restoration, and the administrative imposition of penalties up to \$10,000.00 pursuant to Section 403.121, Fla. Stat., or the judicial imposition of civil penalties up to \$10,000.00 per violation per day pursuant to Sections 403.141 and 403.161, Fla. Stat.

You are requested to contact Frank L. Fulghum III at the Southwest District address or telephone number (813) 632-7600, extension 411, 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 part of an agency investigation, preliminary to agency action in accordance with Section 120.57(5), Fla. Stat. We look forward to your cooperation in completing the investigation and resolution of this matter.

Sincerely yours,



Pamala Vazquez  
Program Administrator  
Southwest District

PV/ff

cc: Patricia Williams, Aqua Utilities Fla, Inc., prwilliams@aquaamerica.com  
Steve Fuller, Aqua Utilities Fla, Inc., slfuller@aquaamerica.com  
Joe Richards, PCUSB, jrichards@pascocountyfl.net

# Palm Terrace Gardens WWTF, 5/26/11

- Photographer: Frank L. Fulghum III
- Facility Name: Palm Terrace Gardens WWTF
- Facility ID No.: FLA012773
- Photographed on: May 26, 2011
- Type of Camera: Canon PowerShot A530
- Recording Media: MMC Plus memory card
- Digital photos copied by: Frank L. Fulghum III
- Digital photos copied to: C:\Documents and Settings\fulghum\_f\My Documents\My Pictures\05-26-11
- Original copies stored: "Photo Archives" CD

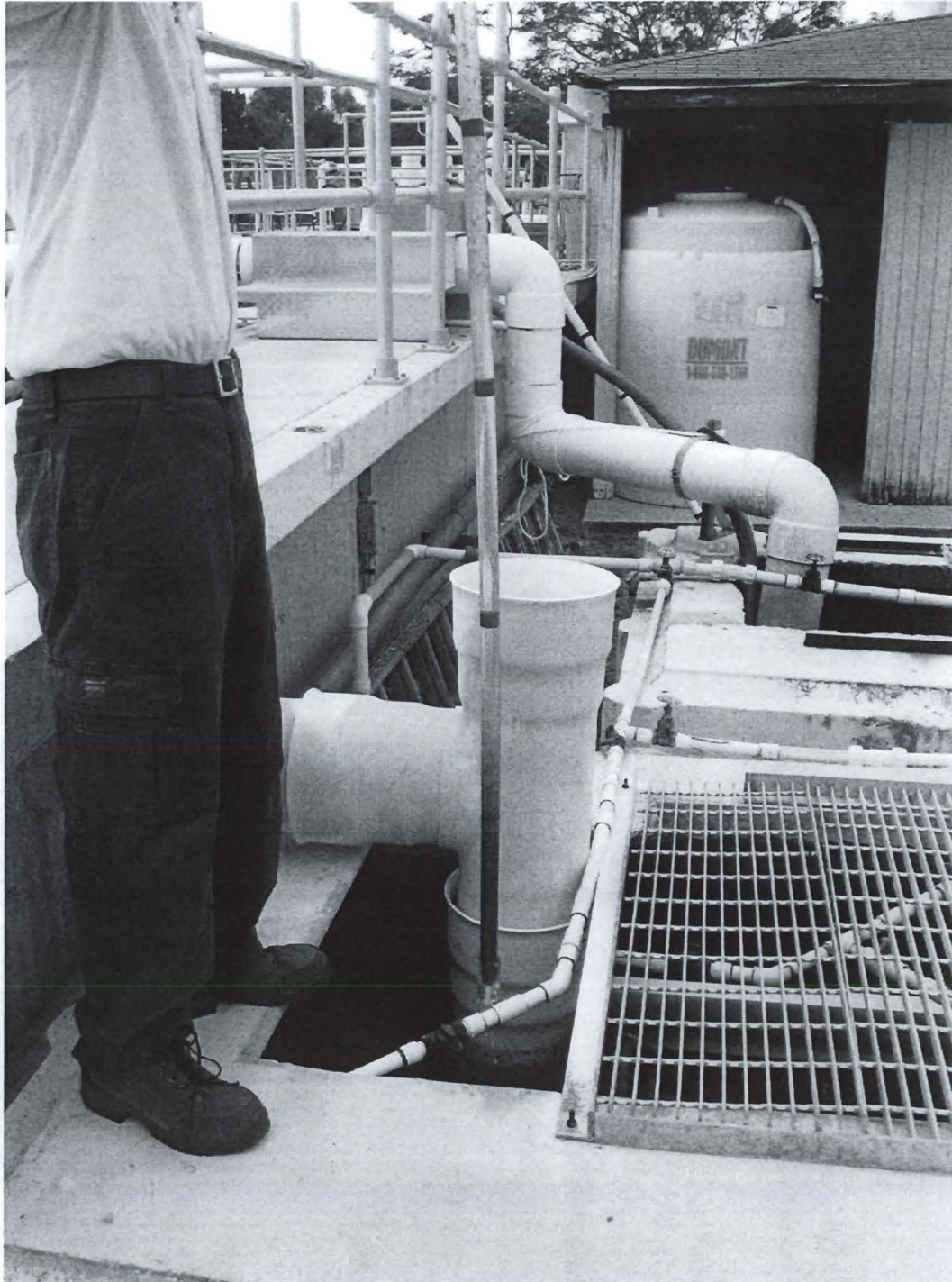


Photo of the amount of solids in the northern chlorine contact chamber



Photo above of the northern clarifier's weir

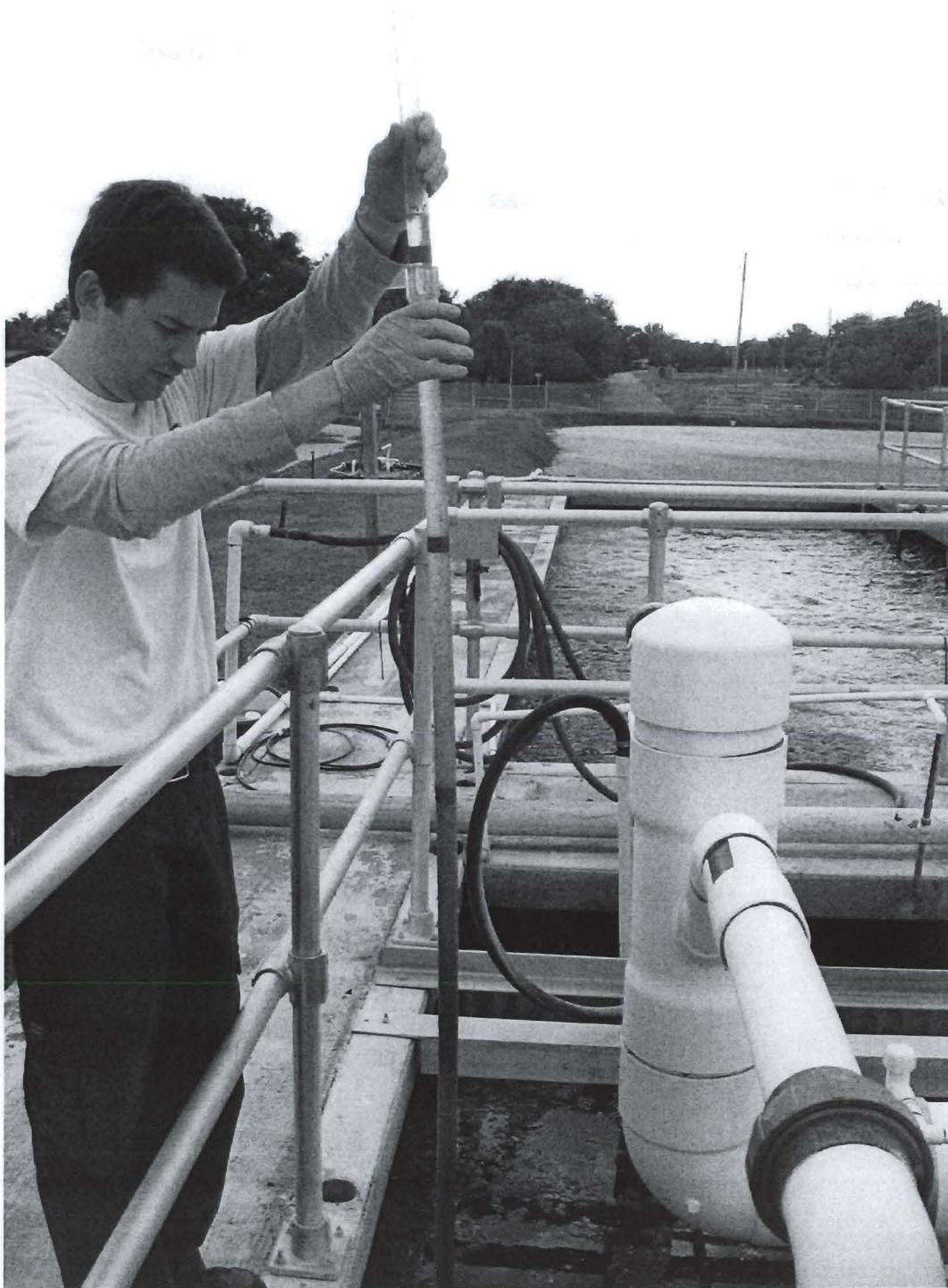


Photo above of the sludge blanket in the northern clarifier. Total height was 8'.



Photo above of the MLSS in the aeration tanks



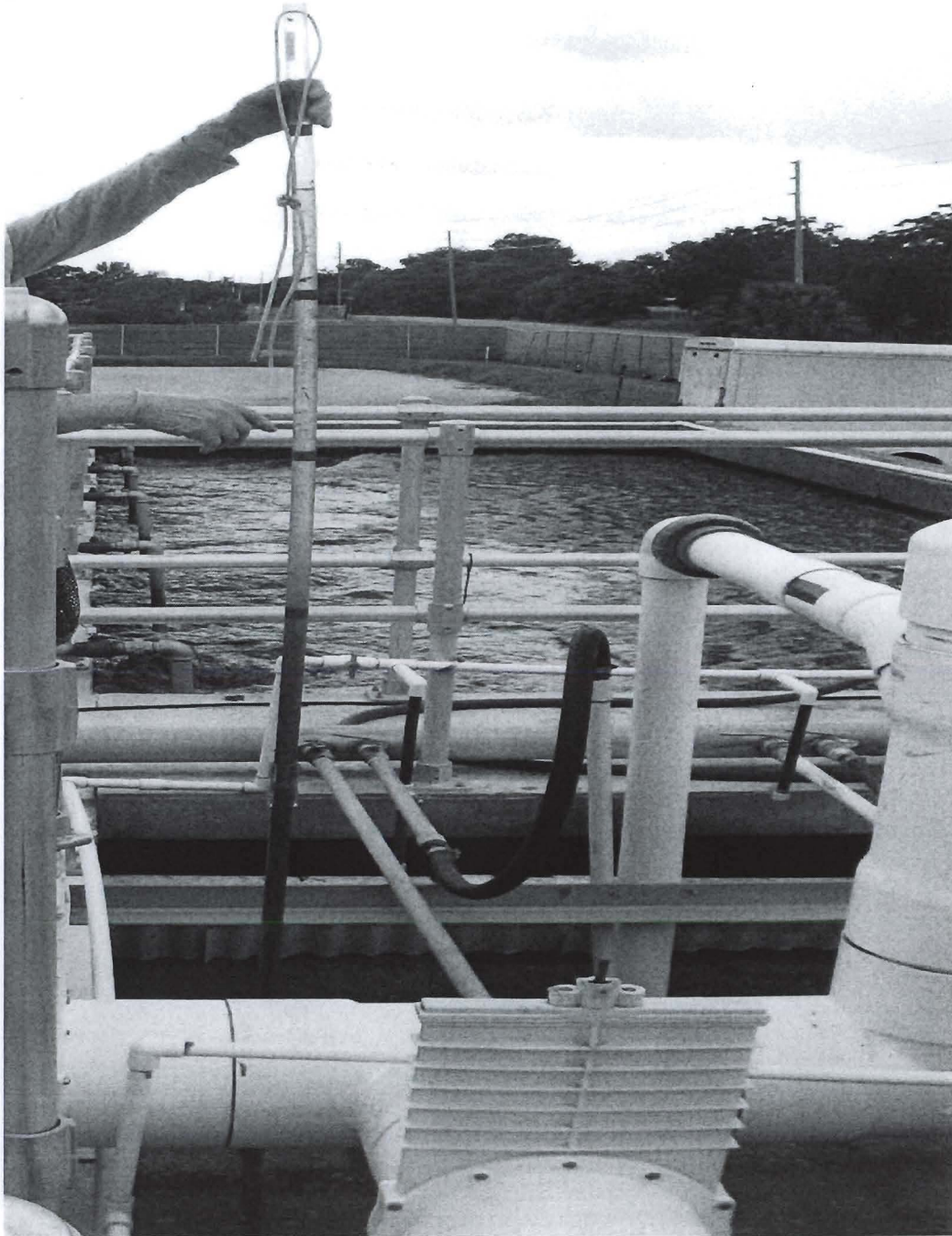


Photo of the sludge blanket in the southern clarifier.  
Total height was 11'.

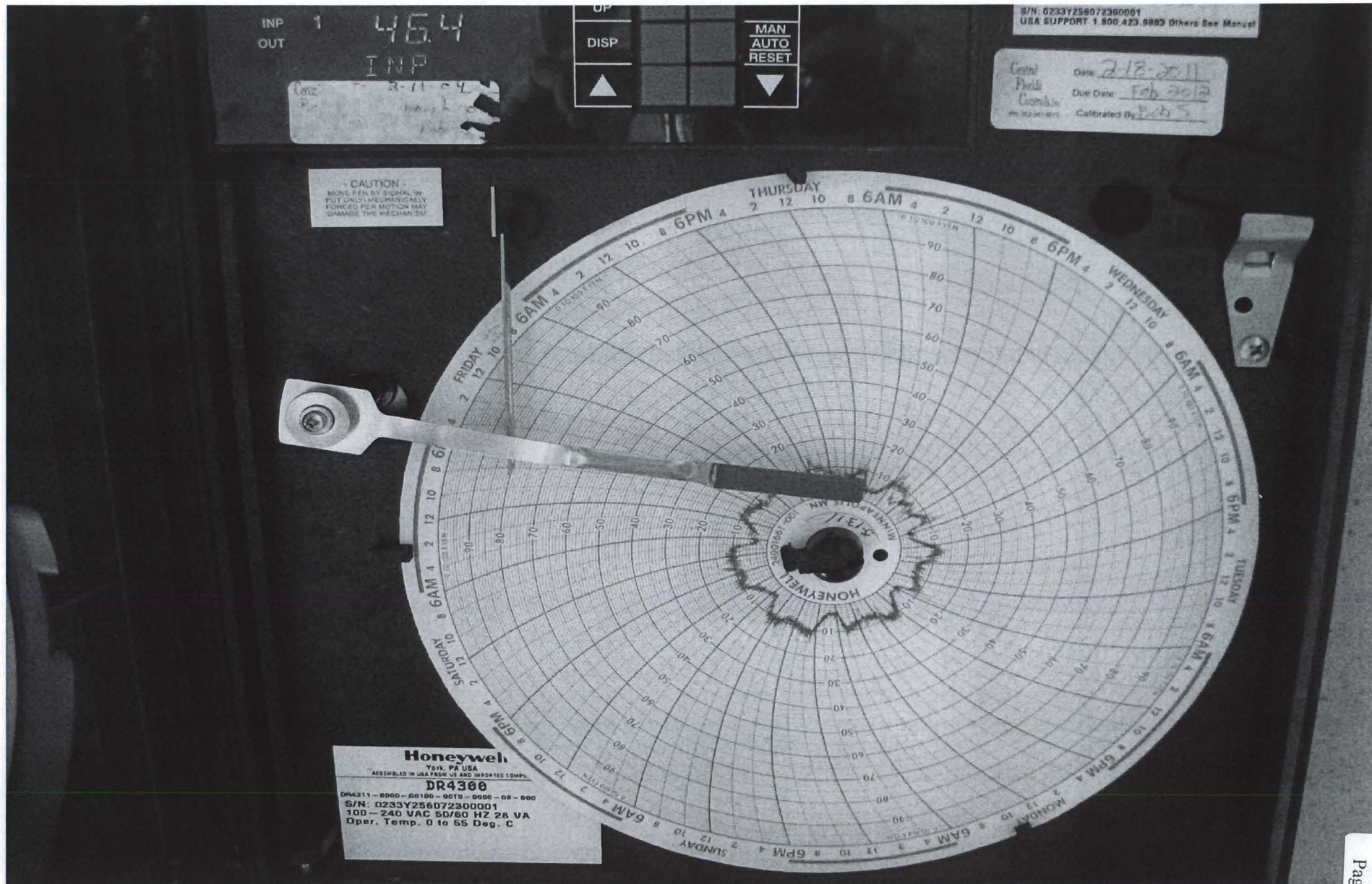


Photo above of the flow chart recorder that was for the week of May 13, 2011.



Photo above of screenings on the south side of the facility's grounds.

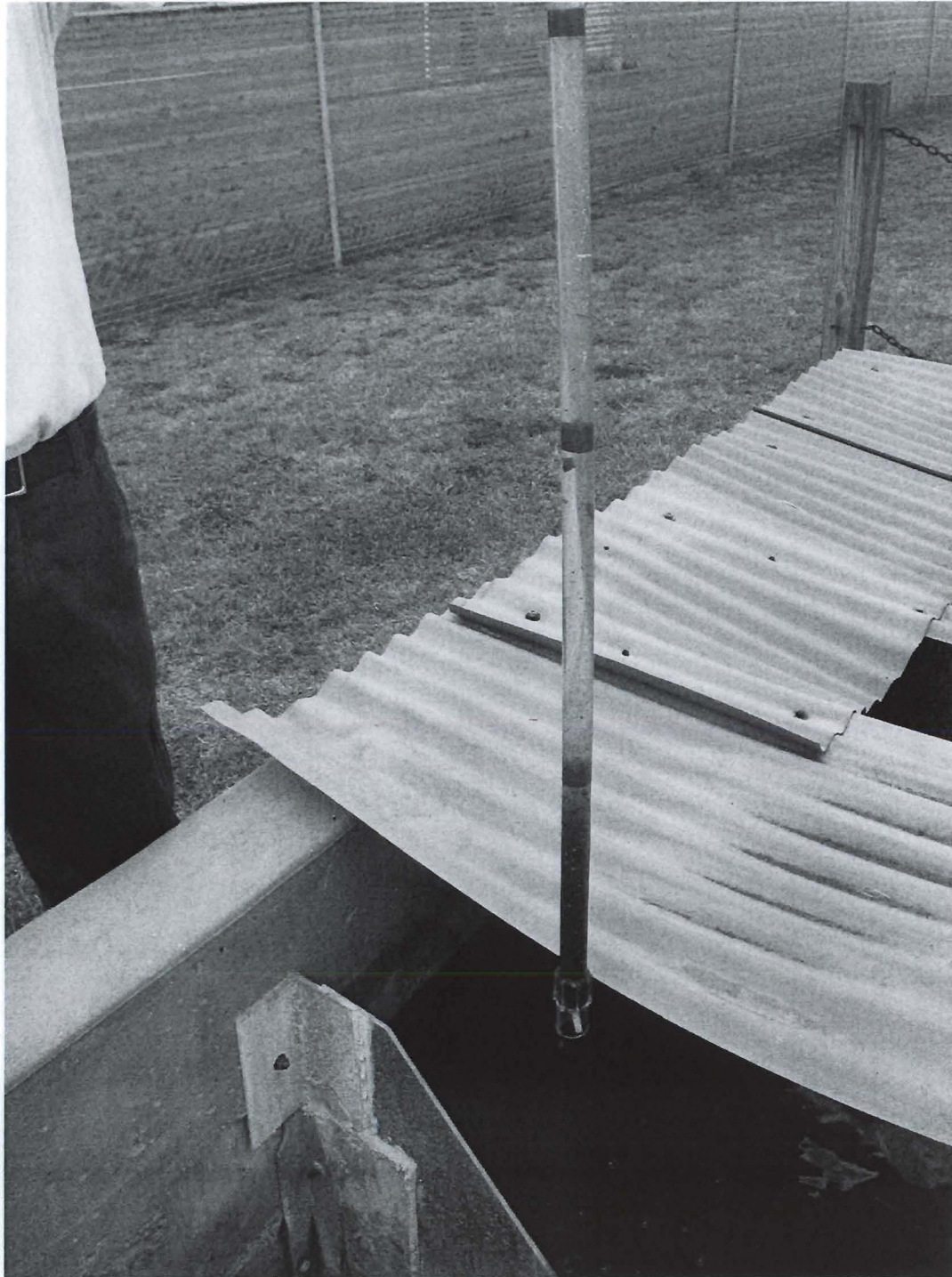


Photo above of solids at the flow measuring device

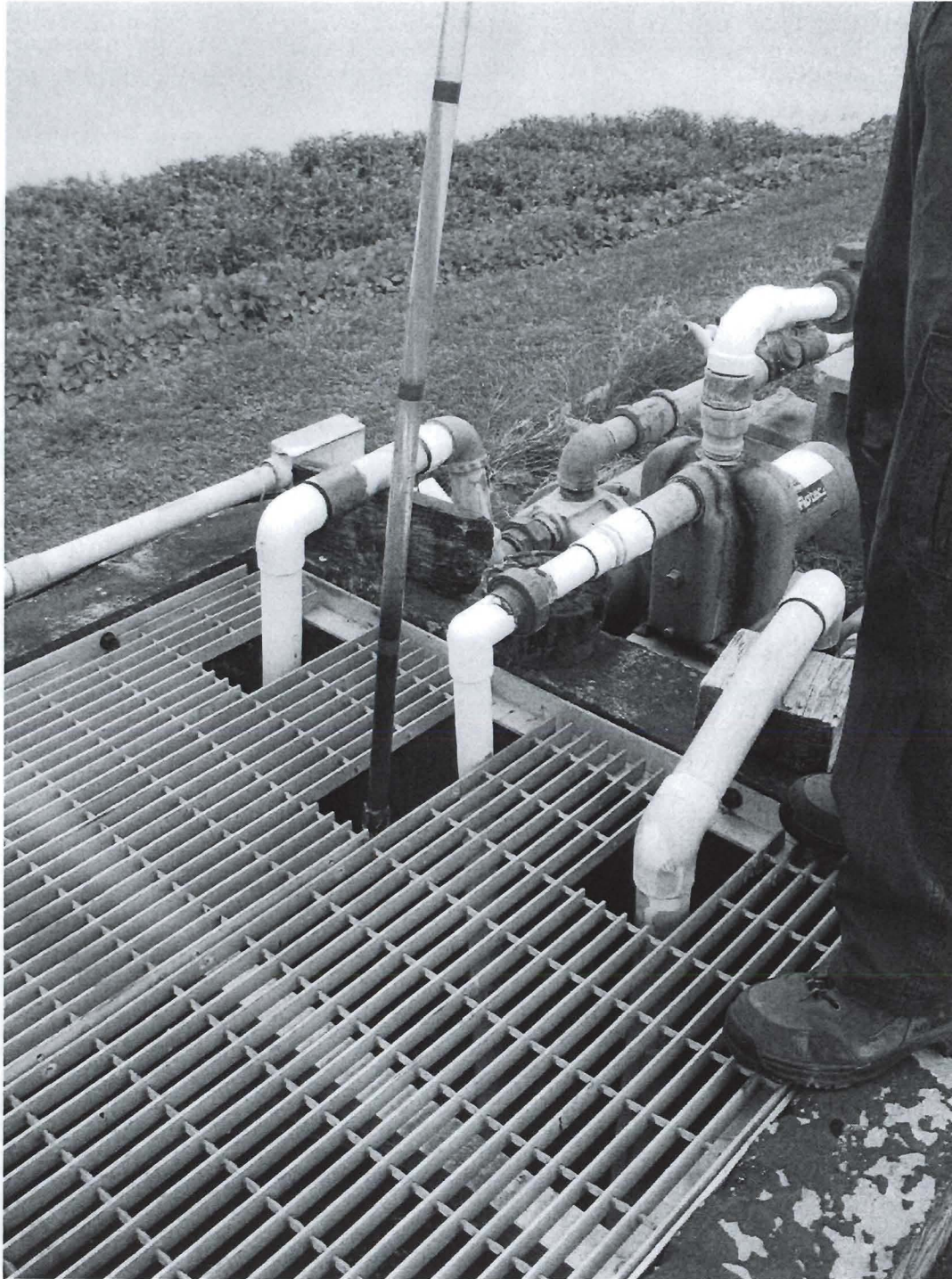


Photo above of solids at the effluent lift station

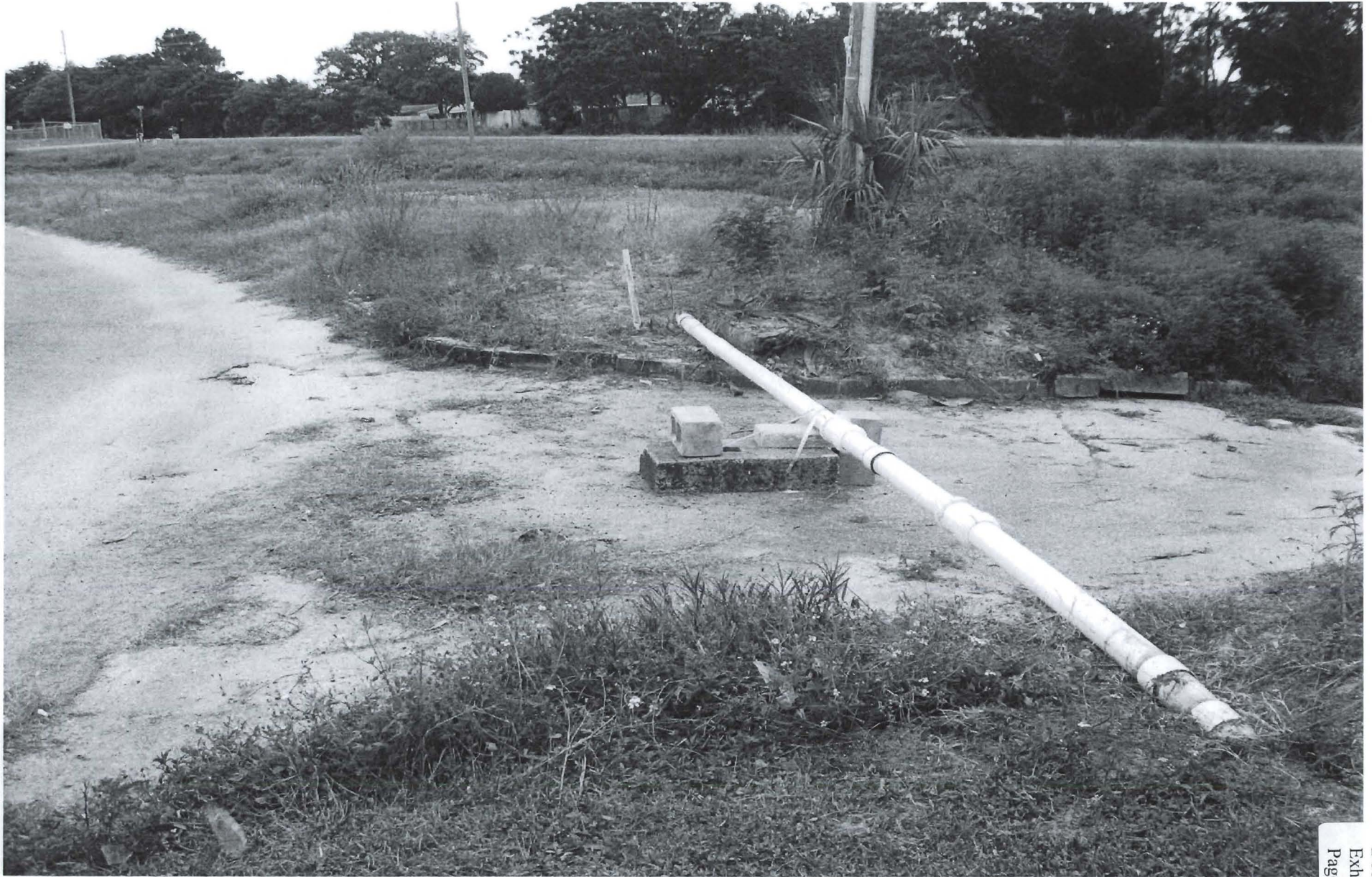


Photo above of the repaired spray field line

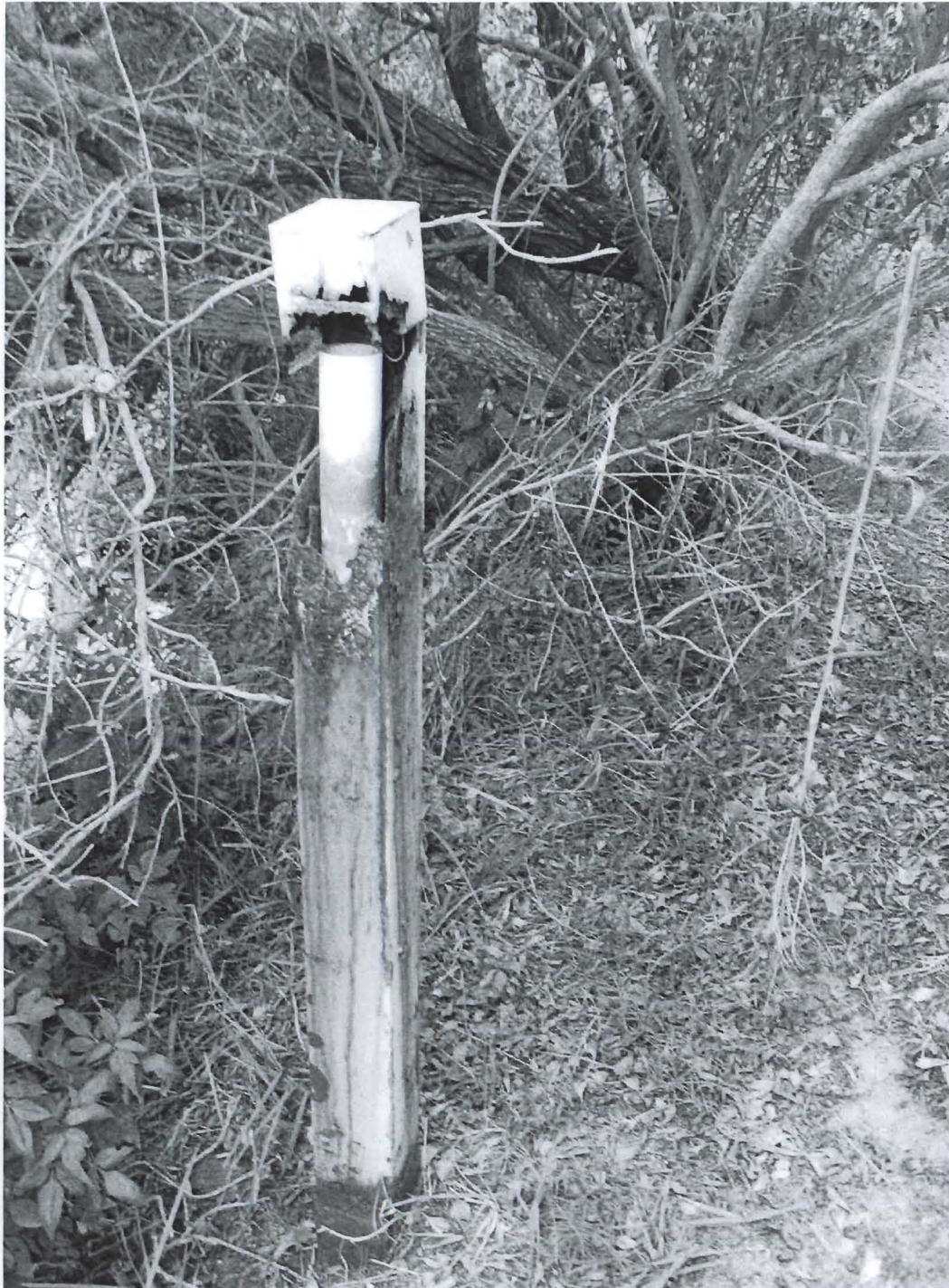


Photo above of the GW monitoring well (EN5WA) east of the facility by the storm water retention pond.



Photo above of previous run-off from the  
spray field





Photo above of the spray field

Book



# Florida Department of Environmental Protection

Southwest District Office  
13051 North Telecom Parkway  
Temple Terrace, Florida 33637-0926

Charlie Crist  
Governor

Jeff Kottkamp  
Lt. Governor

Michael W. Sole  
Secretary

August 21, 2007

CERTIFIED MAIL NO.: 7001 1940 0006 5801 1865  
RETURN RECEIPT REQUESTED

Christopher Luning  
Aqua America, Inc  
762 West Lancaster Av.  
Bryn Mawr, PA 19010

Re: Consent Order OGC File No. 06-2358  
Village Waters WWTF  
Facility ID No. FLA913087  
Polk County

Dear Mr. Luning:

Enclosed, please find a copy of the signed Consent Order regarding the above-referenced facility. The effective date of the Consent Order may be found on the last page, the day it was filed by the clerk.

Please be aware of your obligations under paragraphs eight through seventeen of the Consent Order.

Should you have any questions, please direct them to Joe Squitieri at (813) 632-7600, extension 309.

Sincerely yours,

A handwritten signature in black ink that reads "Thomas Gucciardo".

Thomas Gucciardo  
Environmental Manager  
Domestic Wastewater Section

Enclosure

cc: Joe Squitieri, DEP w/enclosure  
Gerald Buhr, w/enclosure  
John Lihvarcik, Aqua Utilities, Florida w/enclosure

BEFORE THE STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT )  
OF ENVIRONMENTAL PROTECTION, )

IN THE OFFICE OF THE  
SOUTHWEST DISTRICT

Complainant, )

OGC FILE NO. 06-2358

vs. )

AQUA UTILITIES, INC., formerly known )  
as AQUASOURCE UTILITY, INC., and )  
AQUA UTILITIES FLORIDA, INC., )

Respondents. )

CONSENT ORDER

This Consent Order is entered into between the State of Florida Department of Environmental Protection ("Department") and Aqua Utilities, Inc., formerly known as Aquasource Utility, Inc., and Aqua Utilities Florida, Inc. ("Respondents") to reach settlement of certain matters at issue between the Department and Respondents.

The Department finds and Respondents neither admit nor deny 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 ("Fla. Stat."), and the rules promulgated thereunder, Title 62, Florida Administrative Code ("Fla. Admin. Code"). The Department has jurisdiction over the matters addressed in this Consent Order.
2. Respondents are persons within the meaning of Section 403.031(5), Fla. Stat.
3. Respondent Aqua Utilities, Inc., formerly known as Aquasource Utility, Inc. is the owner of property located at Section 36, Township 28 South, Range 24 East (Parcel ID Nos. 242836271000000401 and 24836271000000602), Polk County, Florida ("Property"). Aquasource Utility, Inc. is listed as the owner of the Property on the deed. Aquasource Utility, Inc. changed its corporate name with the Florida Department of State, Division of Corporations to Aqua Utilities, Inc. on or about March 1, 2006. Respondent Aqua Utilities, Inc. is a

corporation registered to conduct business in Florida. Respondent Aqua Utilities, Inc., formerly known as Aquasource Utility, Inc., was responsible for the operation of the Village Water Wastewater Treatment Facility, a 0.075 million gallon per day Type III wastewater treatment plant with chlorinated effluent discharged to a disposal system consisting of two percolation ponds ("Facility") until approximately June 30, 2004. Respondent Aqua Utilities Florida, Inc. has been responsible for the operation of the Facility since approximately June 30, 2004. Aqua Utilities Florida, Inc. is a corporation registered to conduct business in Florida. The Facility is located at the above-identified Property.

4. Respondent Aqua Utilities, Inc., formerly known as Aquasource Utility, Inc., operated the Facility under Department permit FLA013087, which was issued on January 23, 2001 and expired on January 22, 2006 ("Permit"). On July 5, 2005, Respondent Aqua Utilities Florida, Inc. submitted a timely application to renew the Permit for the Facility. On September 14, 2006, the Department issued a Notice of Permit Denial to Respondent Aqua Utilities Florida, Inc. The Permit did not expire until the last day for seeking review of the agency order denying the application for permit, which was October 4, 2006. Respondent Aqua Utilities Florida, Inc. did not petition the permit denial. Therefore, the Department finds that Respondent Aqua Utilities Florida, Inc. has been operating the Facility without the permit required by the Department since October 4, 2006.

5. The Department finds and Respondents neither admit nor deny that the following violations occurred:

a. Respondent Aqua Utilities Florida, Inc. has been operating the Facility without the permit required by the Department since October 4, 2006.

b. Respondent Aqua Utilities, Inc., formerly known as Aquasource Utility, Inc. submitted false information to the Department in its permit application submitted on July 13, 2000, regarding the size of the Facility's percolation ponds and the ownership of the Spray field located at 2905 Jacque Lee Lane in Lakeland, Florida ("Spray field"), which was used for effluent disposal by the Facility. Respondent Aqua Utilities Florida, Inc. also submitted false information to the Department in its permit application submitted on July 5, 2005, regarding the ownership of the Spray field.

c. Respondents failed to maintain and operate the Facility's percolation ponds as intended on October 19, 2005, August 9, 2006, and January 12, 2007.

d. Respondents failed to maintain proper access control for the Facility's percolation ponds on October 19, 2005, August 9, 2006, and January 12, 2007.

6. The Department's findings in Paragraph 5 above constitute violations of Chapter 403, Fla. Stat., and Rules 62-600.740(2)(c) and (e), 62-610.518(1), and 62-620.300, Fla. Admin. Code.

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

**ORDERED:**

8. Respondents shall forthwith comply with all Department rules regarding domestic wastewater treatment and effluent disposal and shall comply with all applicable rules in Chapters 62-600, 62-610, and 62-620, Fla. Admin. Code.

9. Within 120 days of the effective date of this Order, Respondents shall submit a domestic wastewater permit application to the Department to operate the Facility as provided in Rule 62-4.050, Fla. Admin. Code. Respondents shall include the following information in its permit application:

a. A Survey that shows the following:

1. Property boundaries,
2. Size of each percolation pond, and
3. Area of the wetted area for each percolation pond with three feet of freeboard.

b. A hydro-geological study of the percolation ponds that determines the long-term effluent disposal capacity of the percolation ponds.

10. In the event that the permit application is deemed to be incomplete by the Department, Respondents shall, within 60 days of a written request by the Department, respond to the Department's written request and submit to the Department all information requested. Upon issuance of a permit, Respondents shall comply with the terms of the permit and any corresponding administrative order. Respondents shall submit a Certification of Completion (DEP Form 62-620.910(12)) to the Department, prior to placing any additional effluent disposal system into operation.

11. In the event that Respondents fail to submit an application for a domestic wastewater permit within 120 days of the effective date of this Order, Respondents shall

immediately cease all discharge from the Facility to the ground and/or surface waters of the State.

12. If, within 300 days of the effective date of this Order, Respondents have not obtained a domestic wastewater permit to authorize operation of the Facility by the Department, Respondents shall immediately cease all discharges from the Facility to ground and/or surface waters of the State.

13. Within 60 days of the effective date of this Order, Respondents shall permanently disconnect the pipes between the Facility and the Spray field located at 2905 Jacque Lee Lane in Lakeland, Florida. Within 90 days of the effective date of this Order, Respondents shall submit written notification to the Department confirming that all pipes have been disconnected, including the date(s).

14. Within 120 days of the effective date of this Order, Respondents shall submit to the Department a report on the percolation ponds ("Pond Report"), following the guidelines of Rule 62-672.500(5) and (7), Fla. Admin. Code. The Pond Report shall be completed by a person(s) with specific training on earthen dam inspections, and proof of such training shall be included with the Pond Report. The Pond Report must be signed and sealed by either a professional engineer or a professional geologist registered in the State of Florida. In the event that the Pond Report is deemed to be incomplete by the Department, Respondents shall, within 60 days of a written request by the Department, submit to the Department all information requested. Respondents shall include the following information in the Pond Report:

- a. Identify whether the trees and other vegetation located on the interior and exterior slopes and on the bottom of the percolation ponds can be removed and the reasons why or why not,
- b. The timeframe for the removal of any trees and other vegetation from the interior and exterior slopes and on the bottom of the percolation ponds,
- c. Any potential for wastewater seepage from the berms,
- d. The irregular and steep slopes of the percolation ponds,
- e. Any potential impact of wastewater seepage on the ditch located to the north of the north berm, and

f. Respondents shall include a plan to remedy any problems identified in the Pond Report. Respondents shall remedy any problems identified within 90 days of the date Respondents submit the Pond Report to the Department.

15. Within 240 days of the effective date of this Order, Respondents shall construct a fence around the percolation ponds.

16. 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, Respondents shall, at least 30 days prior to the sale or conveyance of the Property or the Facility, (1) notify the Department of such sale or conveyance, (2) provide the Department with the name and address of the purchaser 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 Property or the Facility shall not relieve Respondents from the obligations imposed in this Consent Order.

17. Within 60 days of the effective date of this Order, Respondents shall pay the Department \$15,000.00 in settlement of the matters address in this Consent Order. This amount includes \$2,000.00 for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of this Consent Order. The civil penalties are assessed pursuant to Section 403.121, Fla. Stat., for violation of Rules 62-620.300, 62-600.740(2)(c) and (e), and 62-610.518(1), Fla. Admin. Code. 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 sent to the Department of Environmental Protection, attn.: Tom Gucciardo, 13051 North Telecom Parkway, Temple Terrace, Florida, 33637-0926.

18. Respondents agree to pay the Department stipulated penalties in the amount of \$200.00 per day for each and every day Respondents fail to timely comply with any of the requirements of Paragraphs 9 through 17 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, Respondents 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, attn.: Tom Gucciardo, 13051 North Telecom Parkway, Temple Terrace, Florida, 33637-0926. 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 17 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.

19. If any event, including administrative or judicial challenges by third parties unrelated to the Respondents, occurs which causes delay or the reasonable likelihood of delay in complying with the requirements of this Consent Order, Respondents shall have the burden of proving the delay was or will be caused by circumstances beyond the reasonable control of the Respondents and could not have been or cannot be overcome by Respondents' 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 Respondents, 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, Respondents shall notify the Department orally within 24 hours or by the next working day and shall, within seven business 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 Respondents intend 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 Respondents, 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 Respondents to comply with the notice requirements of this Paragraph in a timely manner shall constitute a waiver of Respondents' right to request an extension of time for compliance with the requirements of this Consent Order.



20. 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, Fla. Stat., 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 Florida Department of Environmental Protection, Southwest District, 13051 North Telecom Parkway, Temple Terrace, Florida 33637-0926. 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, Fla. Stat.

21. 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.

22. 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, Fla. Stat., 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, Fla. Admin. Code.

23. 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, Fla. Stat., or may choose to pursue mediation as an alternative remedy under Section 120.573, Fla. Stat., 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.

24. 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.

25. 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;

- 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; and
- h) The signatures of all parties or their authorized representatives.

26. As provided in Section 120.573, Fla. Stat., the timely agreement of all parties to mediate will toll the time limitations imposed by Sections 120.569 and 120.57, Fla. Stat., 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, Fla. Stat., 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.

27. Respondents 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.

28. 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, Domestic Wastewater Section, attn: Tom Gucciardo, 13051 North Telecom Parkway, Temple Terrace, Florida, 33637.

29. 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.

30. 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, including but not limited to undisclosed releases, contamination or polluting conditions.

31. 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, Fla. Stat. Failure to comply with the terms of this Consent Order shall constitute a violation of Section 403.161(1)(b), Fla. Stat.

32. The Department, for and in consideration of the complete and timely performance by Respondents 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 addressed in this Consent Order.

33. Respondents are 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.

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

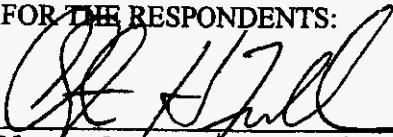
35. No modifications of the terms of this Consent Order shall be effective until reduced to writing and executed by both the Respondents and the Department.

36. Respondents acknowledge and waive their right to an administrative hearing pursuant to Sections 120.569 and 120.57, Fla. Stat., on the terms of this Consent Order. Respondents acknowledge their right to appeal the terms of this Consent Order pursuant to Section 120.68, Fla. Stat., and waive that right upon signing this Consent Order.

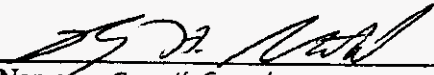
37. This Consent Order is a final order of the Department pursuant to Section 120.52(7), Fla. Stat., and it is final and effective on the date filed with the Clerk of the Department unless a Petition for Administrative Hearing is filed in accordance with Chapter 120, Fla. Stat. Upon the timely filing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

FOR THE RESPONDENTS:

8/10/2007  
DATE


  
Name: Christopher H. Franklin  
Title: President - Southern Region  
Aqua Utilities, Inc.

8/10/2007  
DATE

  
Name: Roy H. Stahl  
Title: Vice President  
Aqua Utilities Florida, Inc.

DONE AND ORDERED this 20<sup>th</sup> day of Aug, 2007, in Hillsborough County, Florida.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION

  
Richard W. Cantrell  
Interim Director  
Southwest District

Filed on this date, pursuant to Section 120.52, Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.

  
Clerk

8/21/07  
Date

RWC/js

cc: Lea Crandall, DEP  
David O'Brien, DEP  
Gerald Buhr, Esq.



# Florida Department of Environmental Protection

Southwest District Office  
13051 North Telecom Parkway  
Temple Terrace, Florida 33637-0926

Charlie Crist  
Governor

Jeff Kottkamp  
Lt. Governor

Michael W. Sole  
Secretary

May 19, 2009

CERTIFIED MAIL NO.: 7008 0150 0003 4894 2548  
RETURN RECEIPT REQUESTED

John Lihvarcik  
Aqua Utilities Florida, Inc.  
1100 Thomas Avenue  
P.O. Box 490310  
Leesburg, FL 34749

Re: Second Amendment to Consent Order OGC File No. 06-2358  
Village Waters WWTF  
Facility ID No. FLA913087  
Polk County

Dear Mr. Lihvarcik:

Enclosed, please find a copy of the signed Second Amendment to Consent Order regarding the above-referenced facility. The effective date of the amendment may be found on the last page, the day it was filed by the clerk.

Please be aware of your obligations under paragraphs eleven and twelve of this amendment. Paragraph 11A has already been satisfied with the payment of \$24,400. The Department has received and approved the monitoring plan required under Paragraph 11C; if any work has not been completed in accordance with the plan, the Department will allow 30 days from execution of this amendment to have it completed.

Should you have questions, please direct them to Joe Squitieri at (813) 632-7600, extension 309.

Sincerely yours,

Thomas Gucciardo  
Environmental Manager  
Domestic Wastewater Section

Enclosure

cc: Joe Squitieri, DEP, [joe.squiteri@dep.state.fl.us](mailto:joe.squiteri@dep.state.fl.us)  
Patricia Williams, Aqua Utilities, [prwilliams@aquaaamerica.com](mailto:prwilliams@aquaaamerica.com)

BEFORE THE STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION,	)	IN THE OFFICE OF THE SOUTHWEST DISTRICT
	)	
Complainant,	)	OGC FILE NO. 06-2358
vs.	)	
	)	
AQUA UTILITIES, INC., formerly known as AQUASOURCE UTILITY, INC., and AQUA UTILITIES FLORIDA, INC.,	)	
	)	
Respondents.	)	

SECOND AMENDMENT TO CONSENT ORDER

On August 21, 2007, Aqua Utilities, Inc., formerly known as Aquasource Utility, Inc., and Aqua Utilities Florida, Inc. ("Respondents") entered into a Consent Order, OGC File No. 06-2358, with the State of Florida Department of Environmental Protection ("Department") concerning the Village Water Wastewater Treatment Facility ("Facility"). An Amendment to Consent Order ("Amendment") was entered into on June 23, 2008.

Respondents reported to the Department that from September 4 through September 18, 2008, there was an unpermitted discharge of effluent from the emergency overflow pipe in one of the percolation ponds of the Facility to State waters. From this report, the Department finds that the Facility had a release of wastewater without proper treatment approved by the Department in violation of Rule 62-600.750(2)(a), Florida Administrative Code, and Section 403.161, Florida Statutes.

Paragraph 11 of the Consent Order required Respondents to cease discharging from the Facility if Respondents failed to submit an application to the Department for a domestic wastewater permit for the Facility. Respondents completed this requirement. Paragraph 11 of this Second Amendment requires Respondents to pay a penalty for the unpermitted discharge and to provide a long-term solution for effluent disposal for the Facility or to remove the Facility from service. Paragraph 12 of the Consent Order and the Amendment is being changed to provide additional time for Respondents to obtain a permit for the Facility. It is hereby agreed between the parties that this Second Amendment shall amend the Consent Order and the Amendment only to the extent specifically stated herein, and the provisions of the Consent Order and the Amendment not addressed herein shall remain in full force and effect. Therefore, it is

ORDERED:

Paragraph 11 is replaced to read as follows:

A. Within 30 days of the effective date of this Second Amendment, Respondents shall pay to the Department \$24,400.00 in penalties for 15 days of unpermitted discharge in violation of Rule 62-600.750(2)(a), Florida Administrative Code, in accordance with Section 403.121(3)(b), Florida Statutes. 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 File number assigned to the Consent Order and the notation "Ecosystem Management and Restoration Trust Fund". Payment shall be sent to the Department of Environmental Protection, attn: Tom Gucciardo, 13051 North Telecom Parkway, Temple Terrace, Florida, 33637-0926.

B. On October 20, 2008, Respondents submitted a plan ("Pond Plan") to the Department to increase the disposal and storage capacity of the two percolation ponds of the Facility. The Pond Plan proposed that the internal piping of the percolation ponds be raised and fill be added to sections of the berms to increase the disposal and storage capacity of the ponds without compromising the integrity of the berms. Within 30 days of the effective date of this Second Amendment, Respondents shall complete all work included in the Pond Plan to increase effluent disposal and storage capacity.

C. Within 30 days of the effective date of this Second Amendment, Respondents shall submit a plan ("Monitoring Plan") to the Department to (1) install piezometers in series in the north berm of the two percolation ponds, (2) install staff gauges in the ponds, (3) install a rain gauge at the Facility, and (4) begin to monitor water levels in the piezometers, ponds and rain gauge. Within 30 days of Department approval of the Monitoring Plan, Respondents shall install the piezometers, staff gauges and rain gauge and begin monitoring in accordance with the approved Monitoring Plan. Respondents shall comply with all conditions in the Monitoring Plan, and in the permit to be issued for the Facility concerning the Monitoring Plan.

D. Within two years of the effective date of this Second Amendment, Respondents shall have completed a long-term solution to address the lack of sufficient effluent disposal capacity for the Facility. If any permit or Permit modification is required to achieve compliance, Respondents shall govern their actions so that the permit or Permit modification is received in adequate time to achieve compliance. Within 90 days after the effective date of the Second Amendment and quarterly thereafter, Respondents shall submit a written report to the Department detailing the status and progress made to meet the terms of this paragraph.

E. Upon the effective date of this Second Amendment, Respondents shall notify the Department either by written or verbal notice within 24 hours from the time of the awareness of an unpermitted discharge of effluent from any emergency overflow pipe in the percolation ponds of the Facility.



Should an unpermitted discharge occur, a separate stipulated penalty of \$500.00 per day may be assessed for each day there is a discharge from the percolation ponds. Through this Second Amendment, the Department shall allow Respondents to haul wastewater, effluent, or both to an approved effluent disposal system, residuals land-application site or regional wastewater treatment facility to preclude an unpermitted discharge from the percolation ponds. However, should an unpermitted discharge occur despite Respondents' efforts to avoid a discharge through hauling, then a separate stipulated penalty of \$100.00 per day may be assessed for each day there is a discharge from the percolation ponds.

F. If Respondents fail to comply with the requirements of Paragraph 11.D of this Second Amendment, then by May 30, 2011, Respondents shall submit to the Department a complete permit application with appropriate processing fees to construct a sanitary collection/transmission system to divert flow from the Facility to a regional sewer system ("CT Application"). The CT Application shall be prepared and sealed by a professional engineer registered in the State of Florida. Within 30 days of a written request from the Department for additional information to complete the CT Application, Respondents shall submit the requested information to the Department. Within 30 days of permit issuance, Respondents shall commence construction of the sanitary collection/transmission system pursuant to the conditions of the permit ("CT Permit"). Within 120 days of issuance of the CT permit, Respondents shall complete the construction of the collection/transmission line and shall submit to the Department a notification of completion of construction for the sanitary collection/transmission system signed and sealed by a professional engineer registered in the State of Florida. Within five days of receipt of written approval by the Department, Respondents shall place the sanitary collection/transmission line into service.

Paragraph 12 is modified to read as follows:

By June 1, 2009, Respondents shall obtain a domestic wastewater permit to authorize the operation of the Facility from the Department. If a permit is not acquired, Respondents shall immediately cease all discharges from the Facility to ground and/or surface waters of the State.

Persons who are not parties to this Second Amendment to Consent Order, but whose substantial interests are affected by this Second Amendment to 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 Department's identification number for the Second Amendment to Consent Order and the county in which the subject matter or activity is located;
- (b) The name, address, and telephone number of each petitioner. The name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes;
- (c) A statement of how and when each petitioner received notice of this Second Amendment;
- (d) A statement of how each petitioner's substantial interests are affected by the Second Amendment to Consent Order;
- (e) A statement of the material facts disputed by petitioner, if any;
- (f) A statement of which rules or statutes petitioner contends require reversal or modification of the Second Amendment to Consent Order;
- (g) A statement of facts which petitioner contends warrant reversal or modification of the Second Amendment to Consent Order, including an explanation of how the alleged facts relate to the specific rules or statutes; and
- (h) A statement of the relief sought by petitioner, stating precisely the action petitioner wants the Department to take with respect to the Second Amendment to 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 Second Amendment to 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 Second Amendment to 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 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 Respondents, 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 Second Amendment to 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:

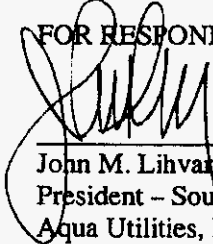
- a) The names, addresses, and telephone numbers of any persons who may attend the mediation;
- b) The name, address, and telephone number of the mediator selected by the parties, or a provision for selecting a mediator within a specified time;
- c) The agreed allocation of the costs and fees associated 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;
- 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; and
- 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.

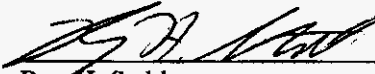
This Second Amendment to the Consent Order is final agency action of the Department pursuant to Section 120.69, Florida Statutes, and it is final and effective on the date filed with the Clerk of the Department unless a Petition for Administrative Hearing is filed in accordance with Chapter 120, Florida Statutes. Upon the timely filing of a petition this Second Amendment to Consent Order will not be effective until further order of the Department.

Feb 27, 2009  
Date

FOR RESPONDENTS:

  
John M. Lihvarcik,  
President - Southern Region  
Aqua Utilities, Inc.

May 6, 2009  
Date

  
Roy H. Stehl  
Vice President  
Aqua Utilities Florida, Inc.

DONE AND ORDERED this 12<sup>th</sup> day of May 2009, in Hillsborough County, Florida.

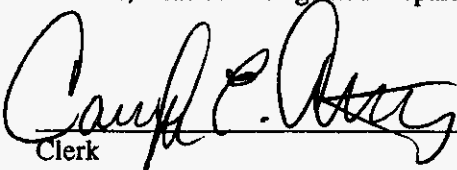
STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION

5/12/09  
Date

  
Deborah A. Getzoff  
District Director  
Southwest District

Filed, on this date, pursuant to Section 120.52, Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.

5/19/09  
Date

  
Clerk

DAG/nn

cc: Lea Crandall, DEP  
Mike Tanski, DEP  
John Lihvarcik, CFO - Aqua Utilities Florida, Inc.  
Patricia Williams, Utility Engineer - Aqua Utilities Florida, Inc.

BEFORE THE STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT )	IN THE OFFICE OF THE
OF ENVIRONMENTAL PROTECTION )	SOUTHWEST DISTRICT
)	
vs. )	OGC FILE NO. 06-2358
)	
AQUA UTILITIES FLORIDA, INC., )	
formerly known as AQUA UTILITIES, )	
INC. and AQUASOURCE UTILITY, )	
INC. )	
_____ )	

THIRD AMENDMENT TO CONSENT ORDER

On August 21, 2007, Aqua Utilities Florida, Inc., formerly known as Aqua Utilities, Inc., and Aquasource Utility, Inc. ("Respondents") entered into a Consent Order, OGC File No. 06-2358, with the State of Florida Department of Environmental Protection ("Department") concerning the Village Water Wastewater Treatment Facility ("Facility"). An Amendment to Consent Order ("Amendment") was entered into on June 23, 2008. A Second Amendment to Consent Order ("Second Amendment") was entered into on May 19, 2009.

A meeting was held on May 3, 2011, during which Respondents requested additional time to complete the long-term disposal solution. On May 16, 2011, Respondents submitted a written request for this extension based on the need to further evaluate all possible solutions.

IT IS THEREFORE ORDERED that paragraph 11 of Consent Order, OGC File No. 06-2358, originally entered into this matter on August 21, 2007, and amended in the Second Amendment on May 19, 2009, is changed to read as follows:

11.D. Within 60 days of the effective date of this Third Amendment, Respondents shall notify the Department in writing of the chosen long-term disposal solution. Within 60 days of notification of the chosen solution, Respondents shall submit an application to modify the permit or to construct a sanitary collection/transmission system to divert flow from the Facility to a regional sewer system. Within 90 days of the Department issuing a permit modification or a collection/transmission permit, Respondents shall construct the modifications or collection/transmission system necessary to complete the long-term disposal solution. Within 30

days of completion of construction, Respondents shall submit a notification of completion of construction signed and sealed by a professional engineer registered in the State of Florida to the Department for the long-term disposal solution. In any event, within one year of the effective date of this Third Amendment, Respondents shall have completed a long-term solution to address the lack of sufficient effluent disposal capacity for the Facility. Within 90 days after the effective date of the Third Amendment and quarterly thereafter, Respondents shall submit a written report to the Department detailing the status and progress made to meet the terms of this paragraph.

11.F. This item was included in the Second Amendment. Since the intent of this item is covered in paragraph 11.D., above, it has been stricken from the Third Amendment.

Persons who are not parties to this Third Amendment to Consent Order, but whose substantial interests are affected by this Third Amendment to 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 Department's identification number for the Third Amendment to Consent Order and the county in which the subject matter or activity is located;
- (b) The name, address, and telephone number of each petitioner. The name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes;
- (c) A statement of how and when each petitioner received notice of this Third Amendment;
- (d) A statement of how each petitioner's substantial interests are affected by the Third Amendment to Consent Order;
- (e) A statement of the material facts disputed by petitioner, if any;

- (f) A statement of which rules or statutes petitioner contends require reversal or modification of the Third Amendment to Consent Order;
- (g) A statement of facts which petitioner contends warrant reversal or modification of the Third Amendment to Consent Order, including an explanation of how the alleged facts relate to the specific rules or statutes; and
- (h) A statement of the relief sought by petitioner, stating precisely the action petitioner wants the Department to take with respect to the Third Amendment to 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 Third Amendment to 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 Third Amendment to 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 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 Respondents, 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 Third Amendment to 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;
- 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; and
- 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.

This Third Amendment to the Consent Order is final agency action of the Department pursuant to Section 120.69, 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 Third Amendment to Consent Order will not be effective until further order of the Department.

FOR RESPONDENTS:

June 28, 2011  
Date

Judy E. Wallingford  
Judy E. Wallingford,  
President and COO  
Aqua Utilities Florida, Inc.

DONE AND ORDERED this 7 day of July, 2011, in Hillsborough County, Florida.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION

7.7.2011  
Date

Pamala Vazquez  
Pamala Vazquez  
Program Administrator  
Southwest District

Filed, on this date, pursuant to Section 120.52, Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.

7/8/2011  
Date

[Signature]  
Clerk

PV/jl

Copies furnished to:

Lea Crandall, Agency Clerk  
Patricia Williams, Aqua Utilities Florida, Inc., JEWallingford@aquaamerica.com