

REQUEST TO ESTABLISH DOCKET

(Please type or print. File original *plus* 1 copy with CLK.)

RECEIVED-FPSC
 APR 19 PM 4:05
 COMMISSION
 CLERK

Date:	4/19/2012	Docket No.:	120104-WU
1. From Division / Staff:	Division Of Economic Regulation / Melissa Jones-Alexis		
2. OPR:	ECR		
3. OCR:			
4. Suggested Docket Title:	<u>Notice of abandonment of water system in Lee County by Bayshore Utilities, Inc.</u>		
5. Program/Module/Submodule Assignment:	B1h (Service Reg/Certification/Abandonment)		
6. Suggested Docket Mail List.			
a. Provide NAMES/ACRONYMS, if registered company.		<input checked="" type="checkbox"/> Provided as an Attachment	
Company Code, if applicable:	Parties (include address, if different from MCD):	Representatives (name and address):	
WU013	Bayshore Utilities, Inc.	Wayne Wampler, address in MCD	
	Lee County Attorney's Office	Gregory Hagen, P.O. Box 398, Fort Myers, FL	
	Lee County Attorney's Office	Ashley Roberts, 2115 Second Street, 6th Flr., Ft. Myers, FL	
	Lee County Board of County Commissioners	Commissioner Frank Mann, P.O. Box 398, Ft. Myers, FL	
b. Provide COMPLETE NAME AND ADDRESS for all others. (match representatives to companies)			
Company Code, if applicable:	Interested persons, if any, (include address, if different from MCD):	Representatives (name and address):	
	Lee County Department of Utilities	Pam Keyes, 1500 Monroe St., 3rd Flr., Fort Myers, FL	
	Florida Department of Health	Denise Duque, 2295 Victoria Ave., Rm 206, Fort Myers, FL	
	Lee County Clerk of Circuit Court	PO Box 310, Ft. Myers, FL	
7. Check one:	<input checked="" type="checkbox"/> Supporting Documentation Attached		<input type="checkbox"/> To be provided with Recommendation
Comments: Please provide copies of all docket information to all parties and interested persons listed above.			

APR 19 4 14 20
 RECEIVED-FPSC

FPSC-COMMISSION CLERK

Request to Establish Docket
April 19, 2012
Bayshore Utilities, Inc.

Parties Address List:

Wayne Wampler, President
Bayshore Utilities, Inc.
MCD address:
2259 Clubhouse Road
North Fort Myers, FL 33917
Additional address:
14965 Kimberly Lane
Fort Myers, FL 33908

Gregory Hagen
Lee County Attorney's Office
P.O. Box 398
Fort Myers, FL 33902
Phone: (239) 533-2236
Fax: (239) 485-2118

Ashley D. Roberts, Assistant County Attorney
Lee County Attorney's Office
2115 Second Street, 6th Floor
Ft. Myers, FL 33902
Phone: (239) 533-2236
Fax: (239) 485-2118
E-Mail: ARoberts@leegov.com

Commissioner Frank Mann
Lee County Board of County Commissioners
P.O. Box 398
Ft. Myers, FL 33902
Phone: (239) 533-2225
Fax: (239) 485-2092
E-Mail: dist5@leegov.com

Interested Persons Address List:

Pam Keyes, P.E., Director
Lee County Department of Utilities
1500 Monroe Street, 3rd Floor
Fort Myers, FL 33901
Phone: (239) 533-8181
E-Mail: PKeyes@leegov.com

Request to Establish Docket
April 19, 2012
Bayshore Utilities, Inc.

Denise Duque, Chief Legal Counsel
Florida Department of Health
Southwest Alliance of County Health Departments
Office of the General Counsel
2295 Victoria Avenue, Room 206
Fort Myers, FL 33901
Phone: (239) 461-6130
Fax: (239) 461-6176
E-Mail: Denise_Duque@doh.state.fl.us

Lee County Clerk of Circuit Court
P.O. Box 310
Fort Myers, FL 33902
Phone: (239) 533-5000
E-Mail: Info_Civil@leeclerk.org

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: April 19, 2012
TO: Ann Cole, Commission Clerk, Office of Commission Clerk
FROM: Melissa C. Jones-Alexis, Regulatory Analyst II, Division of Economic Regulation *mca*
RE: Request to Establish Docket, Bayshore Utilities, Inc.

Please include the attached documents in the above-referenced docket, as follows:

- Lee County Circuit Court's Order on Plaintiff's Second Amended Application for Order to Show Cause in Case No. 11-CA-003289, dated April 5, 2012.
- Lee County Circuit Court's Order on Plaintiff's Motion to Strike and/or Deny Respondent's "Answer" and Request for Enlargement of Time and Final Default in Case No. 11-CA-003289, executed January 6, 2012.
- Florida Department of Health's Amended Application for Order to Show Cause, filed with the Lee County Circuit Court in Case No. 11-CA-003289.
- Public Service Commission's letter to Wayne Wampler, President of Bayshore Utilities, Inc., dated on or about January 25, 2012.
- Florida Department of Health's letter to Wayne Wampler regarding final order and final default in Case No. 11-CA-003289, dated January 13, 2012.
- Wayne Wampler's letter to the Lee County Circuit Court requesting an extension of time, dated November 3, 2011.
- Florida Department of Health's letter to Wayne Wampler regarding denial of request for extension of time and notification of violation, dated September 20, 2011.
- Florida Department of Health's Petition for Enforcement of Agency Action and Verified Complaint for Injunctive Relief
- Florida Department of Health's letter to Wayne Wampler regarding compliance with the terms and conditions of an April 15, 2010 Consent Order, dated July 14, 2011.
- Florida Department of Health's letter to Wayne Wampler regarding compliance with the terms and conditions of an April 15, 2010 Consent Order, dated June 30, 2011, with Consent Order attached.

Thank you.

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA CIVIL DIVISION

STATE OF FLORIDA
DEPARTMENT OF HEALTH
LEE COUNTY HEALTH DEPARTMENT,
ON BEHALF OF STATE OF
FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

Plaintiff,

CASE NO: 11-CA-003289

vs.

Judge: Kyle, Keith R.

BAYSHORE UTILITIES, INC.,
a/k/a BAYSHORE UTILITY COMPANY,

Defendant.

**ORDER ON PLAINTIFF'S SECOND AMENDED APPLICATION
FOR ORDER TO SHOW CAUSE**

On review 4/5/2012, the Court considered the Plaintiff's Amended Application for an Order to Show Cause and attached Verification.

The Court, having been advised that:

1. The Defendant has failed to comply with this Court's Order on the Plaintiff's Motion to Strike and/or Deny Respondent's "Answer" and Final Default ("Order") entered by this Court on January 6, 2012, nunc pro tunc December 12, 2011.

2. Specifically, the Defendant has failed to commence construction of the reverse osmosis system ("RO"), or, in the alternative, abandon its Utility in accordance with the requirements of Section 367.165, Florida Statutes and surrender its certificate of authorization to the Florida Public Service Commission.

3. In addition to Defendant's failure to comply with this Court's Order, the Defendant has continuously engaged in acts and practices that constitute constructive abandonment of the Utility, including but not limited to Defendant's failure to supply water

that meets the minimum standards of the Florida Safe Water Drinking Act, Florida Statutes 403.850, et seq., and Department of Environmental Protection standards; failure to provide its customers with safe, efficient and sufficient services; failure to ensure the proper operation of the Utility; and failure to take any steps to construct the necessary RO in order to ensure the water supplied by the Utility complies with the minimum standards of the Florida Safe Water Drinking Act.

IT IS THEREFORE ORDERED that, the Defendant is found in contempt of this Court's Order On Plaintiff's Motion to Strike and/or Deny Respondent's "Answer" and Final Default.

IT IS FURTHER ORDERED that, the Defendant has constructively abandoned its Utility. This Order on Plaintiff's Application for Order to Show Cause shall act as the 60 days' notice of abandonment required by Section 367.165, Florida Statutes.

DONE and ORDERED at Fort Myers, Lee County, Florida this ____ day of _____, 2012.

Honorable Keith Kyle
Circuit Court Judge

Conformed copies to:

Denise Duque, Esquire
Bayshore Utilities, Inc., through
Registered Agent Wayne Wampler

cc: Wayne Wampler, Registered Agent, Bayshore Utilities, Inc.
Mary Ann Helton, Deputy General Counsel, Florida Public Service Commission
Gregory Hagen, Chief Assistant County Attorney, Lee County

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA

STATE OF FLORIDA)
DEPARTMENT OF HEALTH, LEE COUNTY)
HEALTH DEPARTMENT, ON BEHALF OF)
STATE OF FLORIDA DEPARTMENT OF)
ENVIRONMENTAL PROTECTION)

Plaintiff,)

vs.)

CASE NO: 11-CA-003289

BAYSHORE UTILITIES, INC.)
a/k/a BAYSHORE UTILITY COMPANY)

Defendant.)

**ORDER ON PLAINTIFF'S MOTION TO STRIKE AND/OR DENY RESPONDENT'S
"ANSWER" AND REQUEST FOR ENLARGEMENT OF TIME AND FINAL DEFAULT**

This action came before the undersigned at a duly noticed hearing on December 12, 2011 on Plaintiff's Motion to Strike and/or Deny Respondent's Answer and Request for Extension of Time, and Motion for Default and the undersigned having heard the arguments of counsel, having reviewed the file and being otherwise fully advised in the premise, states as follows:

1. On October 14, 2011, Defendant, Bayshore Utilities, Inc. a/k/a Bayshore Utility Company ("Bayshore") was served with the State of Florida, Department of Health's (the "Health Department") Petition for Enforcement of Agency Action and Verified Complaint for Injunctive Relief (the "Petition"). The Petition alleged that Bayshore failed to comply with the terms and conditions of a Consent Order entered into between Bayshore and the Health Department on April 20, 2010.

2. Bayshore entered into the Consent Order after violating several provisions of Rules 62-550.320 and 62-555.530, Florida Administrative Code and Section 403.853, Florida Statutes, in connection with the operation of its Public Water System (the "Utility").

3. In the Petition, the Health Department requested relief in the form of an Injunction and Order compelling Bayshore to comply with the Consent Order requirement that it construct a reverse osmosis system to cure the ongoing violations of Florida's Primary and Secondary Drinking Water Standards or, in the alternative, that Bayshore abandon the Utility in accordance with Section 367.165, Florida Statutes and surrender its certificate of authorization to the Florida Public Service Commission, in addition to the imposition of statutorily mandated fines.

4. Bayshore's response to the Petition was due on or before November 3, 2011.

5. On November 3, 2011, Bayshore, through its Registered Agent and President Wayne Wampler, submitted a letter to the Lee County Clerk of Courts (the "Letter") requesting an extension of time to file an Answer. The Letter was authored by Wayne Wampler and was docketed by the Clerk of Courts in Case Number 11-CA-003289 on November 3, 2011 as the "Answer." A true and correct copy of the Letter is attached hereto as Exhibit "A".

6. The Letter indicated that Wayne Wampler had met with several potential attorneys regarding this case in order to secure representation for Bayshore. Wayne Wampler further indicated that a meeting with potential counsel was to take place around November 10, 2011 and requested an extension of time to respond to the Petition until that time. However, as of the date of the hearing, December 12, 2011, Bayshore has failed to respond to the Petition and no counsel has entered an appearance in this case on Bayshore's behalf.

7. Although an individual is authorized to represent themselves without the necessity of employing an attorney, a corporation cannot do the same.

8. The Letter was incorrectly docketed as an "Answer" by the Clerk of Courts, and should have been docketed as a Motion for Enlargement of Time to file an Answer to the Health Department's Petition.

9. On November 18, 2010, the Health Department filed a Motion to Strike and/or Deny the "Answer" and Request for Enlargement of Time and Motion for Default. The Health

Department's Motion was subsequently scheduled for hearing before this Court on December 12, 2011.

10. Appearing before this Court at the hearing on December 12, 2011 was Jennifer L. O'Connell, Esq., counsel for State of Florida, Health Department.

11. Defendant, Bayshore, failed to appear at the hearing despite being served with a Notice of Hearing on December 6, 2011.

It is thereby ORDERED and ADJUDGED that:

1. The Health Department's Motion to Strike Bayshore Utilities, Inc.'s "Answer" is GRANTED and the Letter dated November 3, 2011 shall be stricken from the record.

2. Defendant's request for an enlargement of time to respond to the Petition filed by the Health Department is DENIED.

3. Health Department's motion for final default is GRANTED. Therefore, a default is entered in this action against the Defendant, Bayshore Utilities, Inc., also known as Bayshore Utility Company, for failure to serve or file any paper as required by law.

4. WHEREFORE, the Health Department on behalf of the Department of Environmental Protection is entitled to the following relief:

a. Defendant Bayshore Utilities, Inc., its agents, servants and employees is hereby permanently enjoined and mandated to take the following action:

i. Defendant must commence construction of the reverse osmosis system ("RO") as per the Consent Order directive in compliance with Florida law and the Permit issued by the Health Department on August 6, 2010 within twenty (20) days of the entry of this order.

ii. Defendant must complete construction of the RO within one hundred twenty (120) days of the entry of this order.

iii. In the alternative, if the Defendant fails to commence construction of the RO within twenty (20) days of the entry of this order, the Defendant must, upon the expiration of the twenty days from the entry of this order, abandon the utility in accordance with the requirements of Section 367.165, Florida Statutes and surrender its certificate of authorization to the Florida Public Service Commission and provide proof to this Court of said surrender so that a receiver may be appointed to operate the water service.

b. Further, Plaintiff, State of Florida Department of Health Lee County Health Department shall recover from the Defendant, Bayshore Utilities, Inc., the sum of Twelve Thousand Eight Hundred Dollars (\$12,800) and no/100, in accordance with the One Hundred Dollar (\$100) per day penalties agreed to in the Consent Order, which shall bear at the legal rate of 4.75 % per year, for which let execution issue ~~which is~~ 8

c. Defendant, Bayshore Utilities, Inc., shall pay the Plaintiff a fine in the amount of One Thousand Dollars (\$1,000.00) pursuant to Section 120.69(2), Florida Statutes, for which let execution issue.

DONE and ORDERED at Fort Myers, Lee County, Florida this 6 day of July

2011.
2012. none pro
none 12/12/11.

Keith F. Kyle
Honorable Keith Kyle
Circuit Court Judge
1/6/12

Conformed copies to:

Denise Duque, Esquire
Bayshore Utilities, Inc., through
Registered Agent Wayne Wampler

1/6/2012
1/4

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA CIVIL DIVISION

STATE OF FLORIDA
DEPARTMENT OF HEALTH
LEE COUNTY HEALTH DEPARTMENT,
ON BEHALF OF STATE OF
FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

Plaintiff,

CASE NO: 11-CA-003289

vs.

Judge: Kyle, Keith R.

BAYSHORE UTILITIES, INC.,
a/k/a BAYSHORE UTILITY COMPANY,

Defendant.

AMENDED APPLICATION FOR ORDER TO SHOW CAUSE

Comes now the Plaintiff, State of Florida, Department of Health, Lee County Health Department on behalf of the Department of Environmental Protection and files this Application for an Order to Show Cause, and alleges the following:

1. Plaintiff filed and served a Petition for Enforcement of Agency Action and Verified Complaint for Injunctive Relief on the Defendant, Bayshore Utilities, Inc. through its Registered Agent, sole corporate officer and sole operator Wayne Wampler on October 14, 2011.
 2. Plaintiff subsequently filed a Motion to Strike and/or Deny Respondent's "Answer" and Request for Enlargement of Time and Motion for Default on November 18, 2011, which was served on the Defendant on November 23, 2011.
 3. A hearing on the Motion to Strike and Motion for Default was held on December 12, 2011. The Defendant failed to appear at the hearing.
 4. An Order on the Plaintiff's Motion to Strike and Final Default was entered by this Court on January 6, 2012, nunc pro tunc December 12, 2011. Said Order required the Defendant to do the following in connection with his Community Water System (hereinafter referred to as "Utility":
-

- a. Commence construction of the reverse osmosis system ("RO") as per the Consent Order directive in compliance with Florida law and the Permit issued by the Health Department within twenty (20) days of the entry of the Order.
- b. Complete construction of the RO within one hundred twenty (120) days of the entry of the Order.
- c. If the Defendant fails to commence construction of the RO within twenty (20) days of the entry of the Order, the Defendant must, upon expiration of the twenty (20) days, abandon the utility in accordance with the requirements of Section 367.165, Florida Statutes and surrender its certificate of authorization to the Florida Public Service Commission and provide proof to the Court of said surrender so that a receiver may be appointed to operate the water service.

Pursuant to the Consent Order, the Defendant was also ordered to pay the sum of Twelve Thousand Eight Hundred Dollars (\$12,800.00) in accordance with the One Hundred Dollar (\$100.00) per day penalties, with interest accruing per year of 4.75%; along with a fine in the amount of One Thousand Dollars (\$1,000.00) pursuant to Section 120.69(2) Florida Statutes.

5. On January 13, 2012, the Plaintiff sent a courtesy copy of this Court's Order along with a letter explaining the requirements of the Order. See correspondence attached and incorporated herein as Attachment "A".

6. On March 5, 2012, Charles Walther, P.E., Lee County Health Department Environmental Engineering Director, performed an inspection the Defendant's Utility and found there were no signs of construction or improvements to the Utility. Although operating, water samples obtained from the Utility showed there were no signs of chlorine in the water, in violation of the Florida Safe Drinking Water Act, Florida Statutes 403.850, et seq. See the Affidavit and photographs attached and incorporated herein as Composite Attachment "B".

7. As of the date of the filing of this Application, the Defendant has failed to comply with this Court's Order directing the Defendant to commence construction of the RO within twenty (20) days of the entry of the Order or, in the alternative, provide this Court with proof it surrendered its certificate of authorization to the Florida Public Service Commission.

8. Since the initial filing of this case, the Defendant has continuously engaged in acts and practices that constitute constructive abandonment of the Utility. These acts and practices include the following:

- a. Failure to take any steps to construct the necessary RO in order to ensure the water supplied by the Utility complies with Florida law and meets the minimum standards of the Florida Safe Water Drinking Act. See Affidavit attached and incorporated herein as "Attachment A".
 - b. Failure to ensure the water supplied by the Utility meet the minimum Standards of the Florida Safe Water Drinking Act, and failure to provide its customers with water service that meets the standards promulgated by the Department of Environmental Protection, in violation of Section 367.111, Florida Statutes. See Affidavit attached and incorporated herein as "Attachment A". Specifically, water samples taken from the Defendant's community water system violated the Primary and Secondary Drinking water standards as follows:
 - i. On October 21, 2011, November 18, 2011, December 14, 2011 and February 22, 2012, testing results showed that the water supplied by the Defendant to its customers exceeded the allowable maximum contaminant level ("MCL") for total dissolved solids
 - ii. On the same dates, testing results showed that the water supplied by the Defendant to its customers exceeded the allowable MCL for chlorides.
 - iii. On October 21, 2011, testing results showed that the water supplied by the Defendant to its customers exceeded the allowable MCL for Sodium.
 - c. Failure to bill customers in accordance with the accepted practices of the Public Service Commission, which issues the Defendant's Certificate of Authorization to operate the Utility, and Chapter 367, Florida Statutes, governing water systems.
 - d. Failure to provide its customers with safe, efficient and sufficient services in violation of Section 367.101(2), Florida Statutes.
 - e. Failure to ensure the proper operation of the Utility. Specifically, on or about March 4, 2012, the Utility's feed pump failed. As a result, chlorine levels fell way below the accepted levels under the Florida Safe Water Drinking Act. See Affidavit attached and incorporated herein as "Attachment A".
9. The failure of the Defendant to comply with this Court's order has necessitated the filing of this application for an Order to Show Cause. The court should find that the Defendant has

constructively abandoned the Utility and require the appointment of a receiver for the Utility in accordance with the timelines in Section 367.165, Florida Statutes.

WHEREFORE, the Plaintiffs requests that the Court enter an Order to Show Cause why the Defendant should not be held in Contempt of the Court's Order and grant the relief sought in this application and such other and further relief that may be awarded at law or in equity.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was furnished to Wayne Wampler, Registered Agent and President of Bayshore Utilities, Inc., also known as Bayshore Utility Company, 14965 Kimberly Lane, Fort Myers, Florida 33908, via U.S. Mail this ___ day of March, 2012.

Respectfully Submitted,

NICHOLAS W. ROMANELLO
General Counsel
Florida Department of Health

DENISE DUQUE
Chief Legal Counsel

DENISE DUQUE
Florida Bar #565921
Florida Department of Health
Southwest Alliance of County Health Departments
Office of the General Counsel
2295 Victoria Avenue, Room 206
Fort Myers, Florida 33901
Telephone: (239) 461-6130
Facsimile: (239) 461-6176
denise_duque@doh.state.fl.us

COMMISSIONERS:
RONALD A. BRISÉ, CHAIRMAN
LISA POLAK EDGAR
ART GRAHAM
EDUARDO E. BALBIS
JULIE I. BROWN

STATE OF FLORIDA



OFFICE OF THE GENERAL COUNSEL
S. CURTIS KISER
GENERAL COUNSEL
(850) 413-6199

Public Service Commission

January 25, 2012

Mr. Wayne Wampler
Bayshore Utilities Company
2259 Clubhouse Road
North Ft. Myers, FL 33917

Re: Case No. 11-CA-003289, Circuit Court Order, Twentieth Judicial Circuit, dated January 6, 2012

Dear Mr. Wampler:

I have reviewed the Court's order that discusses the requirements imposed upon Bayshore Utilities, Inc. as specified on the third and fourth pages of that order. One of those requirements is that if construction of the new RO plant fails to commence within twenty days of the order, abandonment must occur pursuant to Section 367.165, Florida Statutes (F.S.).

Enclosed is a copy of Section 367.165, F.S., which essentially provides that notice is to be given to the County at least 60 days in advance. When notice is given, please also provide a copy by regular mail to:

Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

If you have any questions, you can reach me at my office phone at 850-413-6212.

Sincerely yours,

Martha F. Barrera,
Senior Attorney

enclosure
MFB



ATT. L. Roberts

Rick Scott
Governor

H. Frank Farmer, Jr., M.D., Ph.D., FACP
State Surgeon General

Sent Via FedEx No.: 7931 1707 9042 and 797947578212

January 13, 2012

Mr. Wayne Wampler
Registered Agent and President for Bayshore Utilities, Inc.
2259 Clubhouse Road
North Fort Myers, Florida 33917

14965 Kimberly Lane
Fort Myers, Florida 33908

**RE: Department of Health on behalf of Department of Environmental Protection vs.
Bayshore Utilities, Inc., Case No. 11-CA-003289
Final Order and Final Default**

Dear Mr. Wampler:

On January 6, 2012, the Honorable Keith Kyle entered a Final Order and Default Judgment in the above referenced case after Bayshore Utilities, Inc. failed to have anyone appear on its behalf for a scheduled hearing on December 12, 2011. Enclosed, you will find a copy of said Final Order.

Amongst the several actions that Bayshore is required to take to comply with the Final Order, Bayshore must either commence construction of the reverse osmosis system in compliance with Florida law and the construction permit issued by the Department of Health on August 6, 2010 **or**, in the alternative, abandon its utility in accordance with the requirements of Section 367.165, Florida Statutes by **January 26, 2012**.

Should Bayshore choose to abandon its utility, it **must** comply with all of the requirements of Section 367.165, Florida Statutes. Anyone who violates the provisions of Section 367.165, Florida Statutes is guilty of a first degree misdemeanor and may also incur administrative fines. I've attached a copy of the statute for your review. In order to comply with the statute, Bayshore will be required to provide the Florida Public Service Commission **and** Lee County government with 60 days' notice that Bayshore will be abandoning the utility. Therefore, in order to comply with the enclosed January 6, 2012 Final Order, Bayshore must provide such notice by **January 26, 2012**.

2295 Victoria Avenue, Room 206, Fort Myers, FL 33901

Att. L. Roberts

From: Bayshore Utility's, Inc.
2259 Clubhouse Road
Nt. Ft. Myers, Florida
33917

11/03/11

11 - CA - 003289
Judge: Kyle, Keith R

To: Lee County Courthouse Clerk of Courts
P. O. Box 310
Fort Myers, Florida 33902

Dear Sir,

Bayshore Utility's is requesting an extension of time in order to secure legal council to represent Bayshore Utility's in the lawsuit filed against the company. Bayshore Utility's sent an information package to Martin S. Friedman late September concerning the expiring consent order and the probable lawsuit pending. Mr. Friedman sent a letter on October the 26th and advised Bayshore Utility's that due to a conflict of interest the firm would not be able to represent Bayshore Utility's. See attached letter.

After contacting numerous lawyers, I found a lawyer with experience with D.E.P. rules and regulations at the firm of Fowler, White, and Boggs and dropped off an information package in the morning on the 28th of October. Later that evening Mrs. Miller sent an e-mail [attached] indicating the firm would represent Bayshore Utility's if the required retainer fee of \$10000.00 would be paid. Bayshore Utility's was not able to acquire the required retainer fee. Mrs. Miller called me on the 31st of October. I informed Mrs. Miller that Bayshore Utility's would not be able to meet the \$10000.00 retainer fee.

Since the 31st Bayshore Utility' has been searching for legal council. The attorney's referral guide listed in the phone book was unable to locate a lawyer with the experience in the required area and would not take the \$50.00 fee. The pro-bono service indicated that that were not available either. I have located a lawyer in Ocallia. He will not be available for a meeting until after the 10th of November.

Due to the lack of proper legal council I respectfully request an extion of time to acquire either the money to retain a lawyer or a lawyer who would allow terms on their retainer.

Thank You,

[Signature]
Wayne Wampler
President of Bayshore Utility's

COPY TO LEE COUNTY HEALTH DEPT

ATTACHMENT "B"



ATI
L. Robbins

Rick Scott
Governor

H. Frank Farmer, Jr., M.D., Ph.D., FACP
State Surgeon General

September 20, 2011

Sent Via Certified Mail Nos. 7003 0500 0003 6839 5030, 7003 0500 0005 6839 5047
Return Receipt Requested

Mr. Wayne Wampler
Registered Agent and President for Bayshore Utilities, Inc.
2259 Clubhouse Road
North Fort Myers, Florida 33917

SEP 26 2011

Rose Buchanan & Gordon, LLP

14965 Kimberly Lane
Fort Myers, Florida 33908

**RE: DOH on Behalf of DEP vs. Bayshore Utilities, Inc.
Denial of Request for Extension of Time and Notification of Violation**

Dear Mr. Wampler:

On September 12, 2011, the Department of Health visited your utility to determine the status of the water plant construction project called for in the Consent Order you signed on April 10, 2010. Our inspection revealed that no action had been taken to construct this plant as called for in Section 5 (C) of the Consent Order. You have also failed to show that your failure to take any actions towards compliance with said provision of the Consent Order is the result of circumstances beyond your reasonable control or circumstances that could not have been overcome by due diligence. As a result, your September 9, 2011 request for extension of time to comply with the Consent Order is denied.

You are hereby notified that you are in violation of the terms of the Consent Order. Your utility continues to be in violation of Federal and State Safe Drinking Water Acts and poses a danger to public health. As such, you are subject to the penalties prescribed by the CO and all other penalties allowed by law.

Sincerely,

Charles J. Walther, P.E., Director
Environmental Engineering Division, Lee County Health Department

Cc: Dr. Judith Hartner, Director, Lee County Health Department
Ms. Denise Duque, Chief Legal Counsel, Lee County Health Department
Dr. Abdul Ahmadi, P.E., Professional Engineering Administrator, FDEP South District



Environmental Engineering Division
60 Danley Drive, Unit 1 • Fort Myers, FL • 33907
Phone: (239) 274-2200 Fax: (239) 274-2201
www.lcehd.com



IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR
LEE COUNTY, FLORIDA

STATE OF FLORIDA)
DEPARTMENT OF HEALTH, LEE)
COUNTY HEALTH DEPARTMENT, ON)
BEHALF OF STATE OF FLORIDA)
DEPARTMENT OF ENVIRONMENTAL)
PROTECTION)
Plaintiff,)
-vs-)
BAYSHORE UTILITIES, INC.)
a/k/a BAYSHORE UTILITY COMPANY)
Defendant,)

CASE NO.

**PETITION FOR ENFORCEMENT OF AGENCY ACTION AND VERIFIED
COMPLAINT FOR INJUNCTIVE RELIEF**

The State of Florida, Department of Health ("HEALTH DEPARTMENT") on behalf of the State of Florida, Department of Environmental Protection ("DEP"), by and through its undersigned counsel hereby files its Petition for Enforcement of Agency Action and Injunctive Relief and states:

1. This Circuit Court has jurisdiction over this action pursuant to Section 26.012(3), Florida Statutes.
2. This is an action for enforcement of agency action and verified complaint for injunctive and other relief brought pursuant to Sections 120.69, 403.121, 403.860 and Chapter 381, Florida Statutes, and Rule 1.610, Florida Rules of Civil Procedure.

3. The HEALTH DEPARTMENT, an agency of the State of Florida as defined by Section 120.52 Florida Statutes, is charged with the duty to protect the health, safety and welfare of the citizens of this community.

4. The HEALTH DEPARTMENT is the administrative agency of the State of Florida having the power and duty to administer and enforce the provisions of the Florida Safe Drinking Water Act, Sections 403.850, et seq., and the rules promulgated thereunder, including Title 62, Florida Administrative Code, within Lee County under the authority granted the HEALTH DEPARTMENT by DEP.

5. Section 403.860, Florida Statutes empowers the HEALTH DEPARTMENT to file for injunctive relief restraining anyone from violating or continuing to violate any order, rule or regulation issued pursuant to Chapter 403, Florida Statutes and Title 62, Florida Administrative Code.

6. The Defendant is a "person" within the meaning of Section 403.852(5), Florida Statutes.

7. The Defendant is the owner and/or operator of a Community Water System as defined by Section 403.852(3), Florida Statutes. Said Community Water System is known as Bayshore Utility Company and is located at 2259 Clubhouse Road, North Fort Myers, Lee County, Florida, Public Water System number 5360016.

8. The Defendant supplies water to approximately 192 service connections ("Customers") consisting mostly of residential homes with a population of approximately 350 people and located in an area referred to as the Yacht Club Colony in North Fort Myers, Florida.

9. On December 13, 2009, the Defendant's service pumps failed as a result of electrical problems, resulting in little to no water being distributed to the Defendant's Customers

from December 13, 2009 until approximately 12 P.M. on December 16, 2009. The Defendant failed to notify the HEALTH DEPARTMENT/DEP of this interruption in service in violation of Rule 62-555.350 (10)(b)(3), Florida Administrative Code, which requires a supplier of water to notify the HEALTH DEPARTMENT/DEP of such an interruption as soon as possible but by no later than noon of the next business day. The HEALTH DEPARTMENT/DEP only became aware of the interruption of service after the Defendant's Customers reported the occurrence.

10. Analysis on September 23, 2009 of a water sample collected from the Defendant's facility on September 21, 2009 revealed that the total dissolved solids concentration at the facility was 672 milligrams per liter ("mg/l") in violation of Section 403.853, Florida Statutes and the Secondary Drinking Water Standards established by Rule 62-550-320(1)(Table 6), Florida Administrative Code, which sets the maximum contaminant level ("MCL") for total dissolved solids at 500 mg/l.

11. The above violation constituted a repeat violation of Section 403.853, Florida Statutes and Rule 62-550-320(1)(Table 6), Florida Administrative Code based on the following prior water sampling analysis results:

December 19, 2008:	588 mg/l total dissolved solids
March 19, 2009:	592 mg/l total dissolved solids
June 19, 2009:	620 mg/l total dissolved solids

12. Analysis on September 24, 2009 of a water sample collected from the Defendant's facility on September 21, 2009 revealed the chloride concentration of the water was 275 mg/l in violation of Section 403.853, Florida Statutes and the Secondary Drinking Water Standards established by Rule 62-550.320(1)(Table 6), Florida Administrative Code, which sets the MCL for chloride at 250 mg/l.

13. The above violation constituted a repeat violation of Section 403.853, Florida Statutes and Rule 62-550-320(1)(Table 6), Florida Administrative Code based on a prior water sample collected on December 17, 2008 which revealed the chloride concentration of the water was 267 mg/l.

14. The aforementioned violations subjected the Defendant to a fine of up to Five Thousand Dollars (\$5000.00) for each separate violation. See Section 403.860, Florida Statutes.

15. As is evident from the periodic increases in total dissolved solids and chloride levels, the quality of the water supplied by the Defendant's facility was increasingly deteriorating.

16. Subsequently, the HEALTH DEPARTMENT/DEP evaluated the Defendant's Community Water System and determined nothing could be done to the *existing* facility to ensure the water supplied to Customers met the Primary and Secondary Drinking Water Standards.

17. On April 12, 2010, the Defendant and the HEALTH DEPARTMENT/DEP entered into a Consent Order. See Consent Order attached and incorporated herein as Attachment "A". Per the Consent Order, the Defendant was found to have committed the aforementioned violations.

18. As contained in the Consent Order, the Defendant agreed to take necessary corrective actions within prescribed time periods and in exchange, the HEALTH DEPARTMENT/DEP, agreed to forego imposing the fines allowed by Section 403.860, Florida Statutes.

20. Additionally, the HEALTH DEPARTMENT/DEP agreed to forego penalizing the Defendant for continued violations of the Primary and Secondary Drinking Water Standards until the corrective action was completed within the prescribed periods of time. The HEALTH

DEPARTMENT/DEP accomplished this by agreeing to allow the Defendant to temporarily operate its Community Water System under alternate Primary and Secondary Drinking Water Standards as follows:

Total Dissolved Solids:	1200 mg/l instead of 500 mg/l
Chlorides	500 mg/s instead of 250 mg/l

20. The corrective action required by the Consent Order mandated that the Defendant either (1) connect his Community Water System to Lee County Utilities or (2) construct a membrane water treatment facility to ensure the water supplied by its Community Water System met the Primary and Secondary Drinking Water Standards.

21. The Defendant was to submit all required permit applications and processing fees to the HEALTH DEPARTMENT/DEP by July 15, 2010.

22. On July 6, 2010, the Defendant requested an extension of the above deadline in compliance with the provisions of the Consent Order addressing extensions. The request for extension was granted by the HEALTH DEPARTMENT on July 8, 2010. The initial deadline was extended to July 29, 2010.

23. The required application for permit was subsequently submitted to and approved by the HEALTH DEPARTMENT on August 6, 2010. See Permit Issuance attached and incorporated herein as Attachment "B". The permit was issued for the construction of a reverse osmosis system ("RO"), which is a type of membrane water treatment facility.

24. In accordance with the Consent Order, the construction of the RO was to be *completed* by August 7, 2011, 365 days after the issuance of the permit.

24. To date, the Defendant has failed to commence construction of the RO plant, in violation of the terms of the Consent Order.

25. More importantly, the quality of the water supplied by the Defendant to its Customers has continued to deteriorate and poses an imminent threat to public health. Various water samples taken from the Defendant's facility between April 2010 and September 2011 have revealed the water supplied to the Defendant's Customers violate not only Secondary Drinking Water Standards but also Primary Drinking Water Standards established by Rule 62-550.310(Table 1), Florida Administrative Code. Said rule sets the acceptable levels of total coliform and fecal coliform allowed in water supplied by community water systems.

26. In addition to the dangerously poor quality of the water, the Defendant has also been negligent in the operation of its facility by failing to keep its Customers properly informed as to the status of the water quality and boil water notices as will be discussed further below.

27. In August 2010, the HEALTH DEPARTMENT was required to notify the Defendant that water samples taken from its Community Water System exceeded the MCL for total dissolved solids and chlorides.

28. In addition to the above violation of the Secondary Drinking Water Standards, between April 15, 2010 and August 11, 2011, the HEALTH DEPARTMENT was required to notify the Defendant on at least four occasions that water samples taken from its Community Water System exceeded the MCL for sodium, in violation of the Primary Drinking Water Standards established by Rule 62-550.310(Table 1).

29. As recently as August 21, 2011, the Defendant's service pumps again failed and lost pressure, resulting in little to no water being distributed to the Defendant's customers. Due to this loss in pressure, the Defendant was forced to issue a Precautionary Boil Water Notice to its customers as required by Rule 62-555.335, Florida Administrative Code, and the Guidelines

for the Issuance of Precautionary Boil Water Notices incorporated by said Rule. See Precautionary Boil Water Notice attached and incorporated herein as Attachment "C".

30. Precautionary Boil Water Notices are required after such loss in pressure because the loss in pressure signals the existence of conditions which could allow contamination to enter the water system. Collection and analysis of water samples are required before the notice can be rescinded.

31. Although the Defendant generated a rescission of the August 21, 2011 notice on August 29, 2011, the Defendant did not actually notify its Customers of the rescission. The Defendant failed to mail out the notice of rescission to Customers and failed to take down the sign announcing the boil water notice it posted in the Customers' neighborhood. As a result, the Customers continued to boil their water.

32. On August 29, 2011, the HEALTH DEPARTMENT took three water samples from three different sample points at the Defendant's facility and submitted them for analysis. One tested positive for Total Coliform and another tested positive for E. Coli, in violation of the Primary Drinking Water Standards established by Rule 62-550.310(Table 1). See Laboratory Report attached and incorporated herein as Attachment "D". The presence of these contaminants poses an imminent health hazard.

33. The above violations prompted a second boil water notice, although as previously mentioned, the Customers were still under the impression they were under the first boil water notice.

34. Although the Defendant generated a rescission of the second boil water notice on September 6, 2011, the Defendant again failed to actually notify its customers of the rescission,

failing to mail out the notice and take down the sign posted up in the Customers' neighborhood. As a result, the Customers continued to boil their water.

35. The Customers only became aware of the rescission of the second notice after one customer contacted the HEALTH DEPARTMENT on September 16, 2011 to complain that they had been under a boil water notice since August 21, 2011.

36. The Defendant's failure to keep its Customers properly informed regarding the quality of the water and the rescission of the boil water notices was a great inconvenience and burden on its Customers.

37. To date, the Defendant continues to willfully operate its Community Water System in violation of Florida law and the Consent Order and has failed to take even the first step towards construction of the RO.

38. The Defendant has failed to file any timely request for extension of the final compliance date and has failed to establish that any delay in compliance was caused by circumstances beyond the Defendant's reasonable control. As agreed to in the Consent Order, paragraph 12, neither economic circumstances nor the failure of a contractor, subcontractor, material supplier, or other agent to whom responsibility for performance is delegated to meet the contractually imposed deadlines shall be considered circumstances beyond the control of the Defendant.

39. The Defendant continues to jeopardize the public health of its Customers by failing to upgrade its facility in accordance with the Consent Order. The Defendant's failure to construct the RO has permanently delayed the delivery of safe drinking water to its Customers. The Defendant's willful acts as described in the above paragraphs will cause or increase the likelihood of harm to the health and safety of the community by failing to assure that its

Customers and other consumers are supplied water in conformance with the Primary and Secondary Drinking Water Standards.

WHEREFORE, the HEALTH DEPARTMENT on behalf of DEP is entitled to injunctive and other relief against the Defendant and requests this honorable court:

(1) Enter a temporary and permanent injunction and Order compelling the Defendant to comply with the HEALTH DEPARTMENT's/DEP's Consent Order directing that the following actions be taken by the Defendant:

(A) Commence construction of the RO as per the Consent Order directive in compliance with Florida law and the Permit issued by the HEALTH DEPARTMENT/DEP on August 6, 2010 within twenty (20) days of the entry of the order enforcing agency action and awarding injunctive relief.

(B) Complete construction of the RO within one hundred twenty (120) days of the entry of the order enforcing agency action and awarding injunctive relief.

(C) In the alternative, mandate the Defendant to abandon the utility in accordance with the requirements of Section 367.165, Florida Statutes and surrender its certificate of authorization to the Florida Public Service Commission so that a receiver may be appointed to operate the water service.

(2) Enter an Order compelling the DEFENDANTS to comply with the HEALTH DEPARTMENT's/DEP's Consent Order, paragraph 8, mandating the payment of stipulated penalties in the amount of One Hundred Dollars (\$100.00) per day for each day the Defendant

failed to timely comply with the requirement that he complete construction of the RO by August 7, 2011.

(3) Grant the HEALTH DEPARTMENT reasonable costs and attorney's fees pursuant to 120.69(7) Florida Statutes.

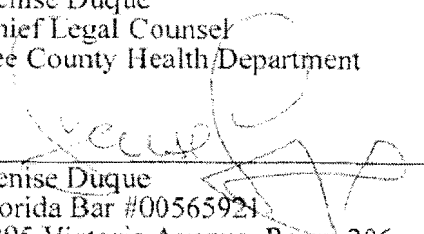
(4) Enter an Order imposing an additional fine in the amount of \$1,000.00, pursuant to Section 120.69(2), Florida Statute.

(5) To award such other relief that is deemed necessary and proper.

Respectfully submitted,

NICHOLAS W. ROMANELLO
General Counsel
Florida Department of Health

Denise Duque
Chief Legal Counsel
Lee County Health Department



Denise Duque
Florida Bar #00565924
2295 Victoria Avenue, Room 206
Fort Myers, Florida 33901
(239) 461-6130
(239) 461-6176 facsimile
denise_duque@doh.state.fl.us



Florida Department of Environmental Protection

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

Rick Scott
Governor

Jennifer Carroll
Lt. Governor

Herschel T. Vinyard Jr.
Secretary

July 14, 2011

Wayne Wampler, Owner
Bayshore Utilities Company
2259 Clubhouse Rd.
North Fort Myers, FL 33917
thewaterman@gmail.com

Ref. Lee County - PW
Bayshore Utilities Co. WTP
Certified Mail No. 7005 2570 0001 3276 7460
Dated June 30, 2011

Dear Mr. Wampler:

Please find attached the tracking and confirmation of the Certified Mail No. 7005 2570 0001 3276 7460 that was delivered to your address on July 01, 2011 and a notice was left. As of July 13, 2011 you failed to pick up the mail. Subsequently, the letter was e-mailed to you on 07/13/2011 at 4:13 p.m. (see delivery receipt).

The purpose of the letter is to put you on notice that you are required to comply with the terms and conditions of the Consent Order (CO) dated 4/15/2010.

Additionally, the quality of the water at the subject utility has deteriorated further. It appears, you are now in violation of sodium, a primary contaminant that was not included in the CO.

The Department once again reminds you that failure to comply with the provisions of the Federal and State Safe Drinking Water Acts will result in further enforcement actions.

Thank you for your cooperation in this matter.

Sincerely,

Abdul B. Ahmadi, Ph.D., P.E.
Water Facilities Administrator

ABA/isc

Enclosure

cc: Judith Hartner, M.D., M.P.H. DOH judith_hartner@doh.state.fl.us
Charles Walther, P.E. DOH charles_walther@doh.state.fl.us
Marshall Willis, Director, Public Service Commission marshall.willis@psc.state.fl.us
Amanda Bush, Esquire, DEP OGC amanda.bush@dep.state.fl.us
Jon Iglehart, DDM, DEP jon.iglehart@dep.state.fl.us
James Oni, P.E. DEP james.oni@dep.state.fl.us



Florida Department of Environmental Protection

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

Rick Scott
Governor

Jennifer Carroll
Lt. Governor

Herschel T. Vinyard Jr.
Secretary

CERTIFIED MAIL NO. 7005 2570 0001 3276 7460
RETURN RECEIPT REQUESTED

COPY

June 30, 2011

Wayne Wampler, Owner
Bayshore Utilities Company
2259 Clubhouse Rd.
North Fort Myers, FL 33917

Ref. Lee County - PW
Bayshore Utilities Co. WTP
PWS #5260050
Consent Order

Dear Mr. Wampler:

The intent of this letter is to remind you of your obligation to meet the requirements of the above referenced Consent Order (CO). Please be advised that compliance with the maximum contaminant level (MCL) for all applicable standards including total dissolved solids (TDS) and chloride must be achieved by September 13, 2011 as stipulated in the Consent Order.

Also, please provide weekly reports beginning July 5, 2011 to show the progress made toward the completion of the requirements contained in the Consent Order. The weekly report should be sent to the Lee County DOH and a copy forwarded to the Department.

Please be advised that as the owner and operator of the referenced water treatment plant, you are responsible to comply with all federal and state requirements applicable to your water system. Failure to comply with the standards and stated deadlines will result in further enforcement action against you by the State.

Thank you for your cooperation in this matter.

Sincerely

Abdul B. Ahmadi, Ph.D., P.E.
Water Facilities Administrator

ABA/OJO/isc

cc: Judith Hartner, M.D., M.P.H. DOH judith_hartner@doh.state.fl.us
Charles Walther, P.E. DOH charles_walther@doh.state.fl.us
Marshall Willis, Director, Public Service Commission marshall.willis@psc.state.fl.us
Amanda Bush, Esquire, DEP OGC amanda.bush@dep.state.fl.us
Jon Iglehart, DDM, DEP jon.iglehart@dep.state.fl.us

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF HEALTH

RECEIVED
DEPARTMENT OF HEALTH
10 APR 15 PM 1:32
OFFICE OF THE CLERK

STATE OF FLORIDA DEPARTMENT
OF HEALTH ON BEHALF OF STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Complainants,
vs.

BAYSHORE UTILITIES, INC.
a/k/a BAYSHORE UTILITY COMPANY

RECEIVED
JUN 24 2011
D.E.P. South District

Respondent.

CONSENT ORDER

This Consent Order is entered into between the State of Florida Department of Health on behalf of State of Florida Department of Environmental Protection ("Department") and Bayshore Utilities, Inc. a/k/a Bayshore Utility Company ("Respondent") to reach settlement of certain matters at issue between the Department and Respondent.

The Department finds and the Respondent admits the following:

1. The Department of Health is the administrative agency of the State of Florida having the power and duty to administer and enforce the provisions of the Florida Safe Drinking Water Act, Sections 403.850, et seq., Florida Statutes, and the rules promulgated thereunder, Title 62, Florida Administrative Code within Lee County under the authority granted the Department by the Florida Department of Environmental Protection. The Department has jurisdiction over the matters addressed in this Consent Order.
2. Respondent is a person within the meaning of Section 403.852(5), Florida Statutes.
3. Respondent is the owner and/or operator of a Community Water System known as Bayshore Utility Company located at 2259 Clubhouse Road, in North Fort Myers, Lee County, Florida, PWS# 5360016.

RECEIVED
APR 19 2010
FLORIDA DEPARTMENT OF HEALTH
OFFICE OF THE CLERK

4. The Department finds that the following violations occurred:

A). On or about December 13, 2009 due to electrical problems several of the Respondent's service pumps failed resulting in no or very little water being distributed to the approximate 192 residents at the Yacht Club Colony from December 13, 2009 through approximately 12:00 p.m. on December 16, 2009. The Respondent did not notify the Department of this interruption in service. Rule 62-555.350, F.A.C., requires a supplier of water to maintain and keep in operation water systems and distribution facilities, and expand as necessary to reliably maintain a minimum pressure of 20 psi throughout the distribution system. Rule 62-555.350 (10) (b) 3 Florida Administrative Code further requires a supplier of water to notify the County Health Department as soon as possible but no later than noon of the next business day in the event that water service is interrupted to one service connection for more than eight hours.

B). Rule 62-550.320(1) (Table 6), Florida Administrative Code, establishes the maximum contaminant level ("MCL") for total dissolved solids at 500 milligrams per liter ("mg/l"). Laboratory analysis based upon a sample collected on September 23, 2009 indicated that the total dissolved solids concentration at Respondent's Facility was 672 mg/l. Laboratory analysis based upon a sample collected on June 19, 2009 indicated that the total dissolved solids concentration at Respondent's Facility was 620 mg/l. Laboratory analysis based upon a sample collected on March 19, 2009 indicated that the total dissolved solids concentration at Respondent's Facility was 592 mg/l. Laboratory analysis based upon a sample collected on December 19, 2008 indicated that the total dissolved solids concentration at Respondent's Facility was 588 mg/l. The Department finds that Respondent has repeatedly violated Rule 62-550.320(1), Florida Administrative Code.

C). Rule 62-550.320(1) (Table 6), Florida Administrative Code, establishes the maximum contaminant level ("MCL") for chloride at 250 milligrams per liter ("mg/l"). Laboratory analysis based upon a sample collected on September 24, 2009 indicated that the chloride concentration at Respondent's Facility was 275 mg/l. Laboratory analysis based upon a sample collected on December 30, 2008 indicated that the chloride concentration at Respondent's Facility was 267 mg/l. The Department finds that Respondent has repeatedly violated Rule 62-550.320(1), Florida Administrative Code.

Having reached a resolution of the matter Respondents and the Departments mutually agree and it is,

ORDERED:

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

(A) Within 30 days of the effective date of this Order, the Respondent shall secured the services of a professional engineer to prepare plans: (1) for the construction necessary to connect to the Lee County Utilities or (2) for the construction of a membrane water treatment plant.

(B) Within 90 days of the effective date of this Order, the Respondent shall submit to the Department of Health and the Department of Environmental Protection and Lee County Government all required permit applications and processing fees for (1) the construction necessary to connect to the Lee County Utilities or (2) the construction of a membrane water treatment plant. The applications and all reasonably necessary supporting documentation requiring professional engineer certification shall be certified

by a professional engineer registered in the State of Florida and otherwise comply with all the requirements of Chapter 62, F.A.C. If either the Department of Health or the Department of Environmental Protection finds, in its reasonable discretion, that the application is incomplete, Respondent shall submit to the respective Department all information reasonably requested by the respective Department within ten (10) days after receipt of the written request, or other time period that the parties may agree to in writing.

(C) Respondent shall complete either (1) the construction necessary to connect to the Lee County Utilities or (2) the construction of a membrane water treatment plant within three hundred and sixty five (365) days after the issue date of the permit issued by the Department of Health.

(D) Within ten days of completing the construction work, the Respondent shall submit to the Department for approval, a reasonable plan to properly abandon the Bayshore Utilities water plant equipment needing to be abandoned after the construction, if any. Within ten days of the Respondent completing the construction work, if the Respondent connects to Lee County Utilities, the Respondent shall make application to properly abandon the production well related to the public water system as required per Lee County Ordinances. The Respondent shall comply with the permit issued for the abandonment.

6. Until the Respondent completes the above referenced construction, the Department will allow the Respondent to operate the water utility under the following alternate conditions:

(A) The Respondents will be required to meet the following Primary and Secondary alternate maximum concentration levels for the following specified contaminants:

Total Dissolved Solids (TDS) 1200 mg/L

Chlorides 500 mg/L

(B) The Respondents shall monitor monthly for the parameters covered by this order and submit the results to the Florida Department of Health Environmental Engineering Office by the tenth day of the following month.

(C) The Respondents shall provide public notice of the exceedances of the alternative levels in paragraph A above, within thirty days after the exceedance is discovered and follow the public notice requirements in the same manner required for public notice of maximum contaminant level violations of chronic contaminants. The public notice shall comport with the requirements in Rule 62-560.410, (1)(a)2., 3., and (c); with the content prescribed in (5); and for multi-lingual notices (8), Florida Administrative Code (F.A.C.).

(D) The Respondents shall continue to monitor for other regulated contaminants, applicable to the type of public water system, per Chapter 62-550, F.A.C. All other sampling and analyses requirements for those contaminants contained in Chapter 62-550, F.A.C., shall be followed. The results must be submitted, within ten days of the month following the system's receipt, to the Department.

7. Within 10 days of the effective date of this consent order, Respondent shall pay the Department \$500.00 in settlement of the regulatory matters addressed in this Order. This amount includes \$500.00 for costs and expenses incurred by the Department during this investigation of this matter and preparation and tracking of this Order.

8. Respondent agrees to pay the Department stipulated penalties in the amount of One Hundred Dollars (\$100.00) per day for each and every day Respondent fails to timely comply with any of the requirements of paragraphs 5, 6 and 7 of this Consent Order. The Department may demand stipulated penalties at any time after violations occur. 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 number 9 below. Nothing in this paragraph shall prevent the Department from filing suit to specifically enforce any of the terms of

this Consent Order. Any stipulated penalties assessed under this paragraph shall be in addition to the civil penalties agreed to in paragraph number 7 of this Order.

9. Except as otherwise provided, all submittals and payments required by this Order shall be sent to Florida Department of Health, 60 Danley Drive, Unit 1, Fort Myers, Lee County, Florida, 33907, attention Charles J. Walther, P.E..

10. 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.

11. In the event of a sale or conveyance of the Facility or of the Property upon which the Facility is located, if all of the requirements of this 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.

12. 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.

13. 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.

14. 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

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:

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;

An explanation of how the petitioner's substantial interests will be affected by the Consent Order;

A statement of when and how the petitioner received notice of the Consent Order;

Either a statement of all material facts disputed by the petitioner or a statement that the petitioner does not dispute any material facts;

A statement of the specific facts the petitioner contends warrant reversal or modification of the Consent Order;

A statement of the rules or statutes the petitioner contends require reversal or modification of the Consent Order; and

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 of Health, Agency Clerk's Office, 4052 Bald Cypress Way, Bin A02, Tallahassee, Florida 32399-1703 Facsimile (850) 410-1448 within 21 days of receipt of this notice. 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.

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

FOR THE RESPONDENT:

Wayne C. Wampler 7/10/10
WAYNE WAMPLER
BAYSHORE UTILITIES INC.

DONE AND ORDERED this ___ day of February, 2010, Year, in Lee County, Florida.

STATE OF FLORIDA
DEPARTMENT OF HEALTH

Judith A. Hartner 4-12-10
JUDITH A. HARTNER, M.D., M.P.H.
DIRECTOR
LEE COUNTY HEALTH DEPARTMENT

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

W. Hower 4/15/2010
Clerk Date

Copies furnished to: