

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: March 29, 2017
TO: Carlotta S. Stauffer, Commission Clerk, Office of Commission Clerk
FROM: Kelley F. Corbari, Senior Attorney, Office of the General Counsel *KFC*
RE: **Docket No. 140219-WU** – Application for staff-assisted rate case in Polk County by Alturas Utilities, LLC.
Docket No. 140220-WU – Application for staff-assisted rate case in Polk County by Sunrise Utilities, LLC.

Attached please find a copy of the Notice of Settlement and Joint Motion for Remand to Agency Clerk and Consent Order filed with the Division of Administrative Hearings in Case No. 16-7254, *State of Florida, Department of Health in Polk County” v. Sunrise Utilities, LLC and Alturas Utilities, LLC*. Please file the attached documents in the documents tab of the above-referenced dockets file.

Thank you for your assistance in this matter. Should you have any questions, please do not hesitate to contact me.

KFC

Attachments:

- Consent Order
- Notice of Settlement and Joint Motion for Remand to Agency Clerk

Kelley Corbari

From: Reis, Roland <Roland.Reis@flhealth.gov>
Sent: Wednesday, March 29, 2017 2:10 PM
To: Kelley Corbari
Subject: DOH v Sunrise CO and Settlement
Attachments: 17-03-29 Consent Order.pdf; 17-03-29 Settlement.pdf

Kelley, fyi and records, this was filed with DOAH today...

Roland Reis, Chief Legal Counsel
Department of Health
Heartland Legal Consortium
1290 Golfview Ave., 4th Floor
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Tel. (863) 578-2105
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Roland.Reis@flhealth.gov

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

**DEPARTMENT OF HEALTH IN
POLK COUNTY**

Petitioner,

CASE NO.:16-7254

v.

**SUNRISE UTILITIES, LLC and
ALTURAS UTILITIES, LLC,
Respondents.**

**NOTICE OF SETTLEMENT AND JOINT
MOTION FOR REMAND TO AGENCY CLERK**

COMES NOW the Petitioner, Department of Health in Polk County, by and through its undersigned counsel and after communication with Counsel for Respondent, files this Consent Order entered by the Parties and states:

1. The Parties have reached a resolution to the instant case. The Consent Order is attached hereto and marked 'Exhibit A'.
2. The Parties request that the hearing officer recognize this Settlement and remand this case to the Agency Clerk of the Department of Environmental Protection for Final Agency Action consistent with the terms therein.

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by electronic filing to the Division of Administrative Hearings at www.doah.state.fl.us; and by email to Martin Friedman, Esq., at mfriedman@coensonfriedman.com; and to Erik Sayler, Esq., at Sayler.Erik@leg.state.fl.us, this 29th day of March, 2017.



ROLAND REIS, FBN 562653
Department of Health
1290 Golfview Ave., 4th Floor
Bartow, Florida 33830
Tel. (863) 578-2105

BEFORE THE FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION

FLORIDA DEPARTMENT OF HEALTH IN
POLK COUNTY

Complainant,

DEP CASE NO.: 16-1398
DOAH CASE NO.: 16-7254
OGC CASE NO.: 15-653PW1739

vs.

SUNRISE UTILITIES, LLC

Respondent.
_____ /

CONSENT ORDER

This Consent Order is made and entered into between the Florida Department of Health in Polk County ("Department"), and Sunrise Utilities, LLC, ("Respondent" or "Sunrise") to reach settlement of certain matters at issue between the Department and Respondent.

On October 18, 2016, the Department issued a Notice of Violation and Orders for Corrective Action (NOV) against Sunrise Utilities, LLC, and Alturas Utilities, LLC, for violations of Chapter 62 of the Florida Administrative Code. On November 10, 2016, Respondent filed a timely Request for Informal Hearing on this matter with the Agency Clerk for the Department of Environmental Protection.

On December 9, 2016, the Agency Clerk transferred the case to the Division of Administrative Hearings for appointment of a hearing officer, and a hearing on this matter was ultimately scheduled for April 6, 2017.

As a preliminary matter, Alturas Utilities, LLC, (Alturas), was named as a Co-Respondent in the NOV, inasmuch as Alturas owned the property on which the Sunrise Water Treatment Plant was located. After filing the NOV, the Department received information that the property had been quit-claimed by Alturas to Sunrise. Accordingly, the Department at this time announces the **VOLUNTARY DISMISSAL** of Alturas from this Action.

VIOLATIONS

To continue, the Department and Respondent pursuant to settlement negotiations, have reached resolution of the matter, pursuant to Rule 62-103.110(3), FAC, with regards to the violations of FAC Chapter 62 as alleged in the Notice of Violation.

EXHIBIT A

Accordingly, the Department **FINDS** and Respondent **ADMITS** the following:

1. The Department, pursuant to Interagency Agreement with the Department of Environmental Protection (DEP), is the administrative agency of the State of Florida charged with the 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, Florida Administrative Code (FAC) Title 62, within Polk County, Florida. 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 Sunrise Utilities, LLC (Sunrise), owns and operates a Community Public Water System (PWS), PWS ID No. 6531739, located on Sunrise Terrace in Auburndale, Polk County, Florida.
4. The Managing Partner of Sunrise Utilities, LLC, is Stuart Sheldon. Stuart Sheldon has by affidavit assigned Leslie Szabo, an active partner and de facto manager, to represent Sunrise Utilities, LLC in this matter.
5. The current configuration and design of the Water Treatment Plant which constitutes the PWS known as Sunrise consists of two well heads, each with their own pumps, that feed the water first into a 3000-gallon hydropneumatic holding tank (Tank 1) and then sequentially into a 6000-gallon hydropneumatic holding tank (Tank 2), before feeding into the distribution system. This system was originally placed into service around 1970.
6. On January 14, 2016, the Department and Sunrise entered into a Consent Order (2016 CO) for overdue maintenance of Tank 1. Required maintenance included abrasive blast cleaning and interior recoating. Respondent at no point in time managed to come into compliance with the 2016 CO.
7. The 2016 CO provided for both violations of FAC Rule 62 and for progressive and cumulative fines for delays in the maintenance requirements. Respondent is responsible for the violations cited in the 2016 CO and related fines of \$3,000.
8. On or about July 19, 2016, Tank 1 developed a pinhole which lead to a temporary shutdown of the system due to loss of pressure, and disruption in the water supply to the customers.
9. Respondent Sunrise welded a metal plate over the hole to patch the leak. The welder Sunrise secured for the repair was not certified or authorized by the National Board of Boiler and Pressure Vessel Inspectors (National Board) to repair pressurized vessels. Further, neither was the repair performed under the direction of a professional engineer with expertise with American Society of Mechanical

Engineers (ASME) pressure vessel codes, nor re-inspected before the tank was re-pressurized and placed back into service.

10. The result of the breakdown and unauthorized repair to Tank 1 means the PWS no longer meets the standards of Rule 62-555.330(3), Florida Administrative Code (FAC), Recommended Standards for Water Works; and Rule 62-555.330(4), FAC, Standards of the American Water Works Association (AWWA).
11. The facts as outlined in Paragraphs 7-9 above constitute a violation of FAC Rule 62-555.350(2), which requires suppliers of water to keep all necessary public water system components in operation and shall maintain such components in good operating condition so the components function as intended.
12. Further, the pinhole leak and unauthorized repair created an emergency or abnormal operating condition for which the Department must be notified. The Department was never formally notified by Sunrise and only discovered the breach to the integrity of the PWS from a third party several days after it occurred. The failure to immediately and properly notify the Department of the breakdown in this PWS constitutes a violation of FAC Rule 62-555.520(1)(d), which holds suppliers of water responsible for notifying the Department about emergency or abnormal operating conditions.
13. Further, during the time the water supply to the system was disrupted, the only measure Respondent took to notify its customers of the system breakdown was to post a notice in a nearby convenience store. The failure of Respondent Sunrise to provide boil water notices according to Department of Health "Guidelines for the Issuance of Precautionary Boil Water Notices," as adopted by the Florida Administrative Code, constitutes a violation of Rule 62-555.335, FAC.
14. On May 1, 2013, Riddle-Newman Engineering issued an Inspection Report (Report) for Tank 2. The Report concluded that Tank 2 should be blast cleaned and recoated "as soon as possible". To this date, almost 4 years later, Respondent Sunrise has yet to abrasively blast clean and recoat the interior of Tank 2, with an NSF-approved interior coating system for potable water.
15. The failure of Respondent Sunrise to follow the recommendations of the Report for Tank 2 in a timely manner constitutes a violation of Rule 62-555.350(2), FAC, which requires that suppliers of water shall keep all necessary public water components in operation and shall maintain such components in good operating condition so as the components function as intended.

CORRECTIVE ACTION

The Department and Respondent pursuant to negotiations which included plans for replacement of both Tank 1 and Tank 2 with a single 5000-gallon tank, have reached

resolution of the matter, pursuant to Rule 62-103.110(3), FAC, with regards to necessary and appropriate Corrective Action.

Accordingly, Respondent and the Department mutually agree and it is

ORDERED:

16. Respondent Sunrise shall reconfigure the Water Treatment Plant (WTP) to install a bypass of Tank 1 of the water supply from the well heads directly to Tank 2. Sunrise shall immediately, but no later than 3 days from the date of this Consent Order, take Tank 1 out of service and assure that a pressure release valve is installed on Tank 2.
17. Respondent Sunrise shall submit, within 15 days, a completed application for a specific permit from the Department to remove and replace both Tank 1 and Tank 2 with a single 5000-gallon hydropneumatic holding tank. The replacement shall occur no later than September 30, 2017.
18. Respondent Sunrise shall submit to the Department a copy of the Certification of Construction Completion report from a licensed Florida Professional Engineer once the replacement has been completed, certifying the replacement tank to be in good working condition for a period of 5 years.
19. The fines and administrative costs associated with these current violations shall be based on the date of the completion report for the replacements of Tanks 1 and 2, according to the following schedule:

Date	Fine	Admin Cost
10/1/17 – 10/30/17	\$1,000.00	\$250.00
11/1/17 – 11/31/17	\$2,250.00	\$275.00
12/1/17 – Thereafter	\$5,000.00	\$300.00

20. Thirty (30) days after the Tank 1 and Tank 2 have been replaced as indicated in this Consent Order, Sunrise shall pay the Department any stipulated fines and administrative cost as may be due as outlined in the above table. These amounts include civil penalties for alleged violations of Section 403.859, Florida Statutes, and of DEP's rules for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of this Consent Order.
21. Payment shall be made by check or money order. The instrument shall be made payable to the Florida Department of Health in Polk County and shall include thereon the OGC number assigned to this Consent Order. The payment shall be sent to the Florida Department of Health in Polk County, 2090 East Clower Street, Bartow, Florida 33830.

22. Entry of this Consent Order does not relieve Respondent Sunrise of the need to comply with the applicable federal, state or local laws, regulations or ordinances.
23. The terms and conditions set forth in this Consent Order may be enforced in a court of competent jurisdiction pursuant to Section 120.69 and 403.121, Florida Statutes. Failure to comply with the terms of this Consent Order shall constitute a violation of Section 403.859, Florida Statutes.
24. Respondent is fully aware that a violation of the terms of this Consent Order may subject Respondent to judicial imposition of damages, civil penalties of up to \$5,000 per offense, criminal penalties and other injunctive action.
25. Respondent shall allow all authorized representatives of the Department access to the property and plant at reasonable times for the purpose of determining compliance with this Consent Order and the rules of the Department.
26. All plans, applications, penalties, costs and expenses, and information required by this Consent Order to be submitted to the Department should be sent to the Florida Department of Health in Polk County, 2090 East Clower Street, Bartow, Florida.
27. 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.
28. The Department, for and in consideration of the complete and timely performance by Respondent of the obligations agreed to in this Consent Order, hereby waives its right to seek further judicial imposition of damages or civil penalties for alleged violations outlined in this Consent Order. The Department otherwise reserves all available rights and remedies necessary and proper for enforcement of this Consent Order.
29. Respondent acknowledges but waives the right to an administrative hearing pursuant to Section 120.57 Florida Statutes, on the terms of this Consent Order. Respondent acknowledges the right to appeal the terms of this Consent Order pursuant to Section 120.68, Florida Statutes, but waives that right upon signing this Consent Order.
30. Respondent withdraws its Request for Hearing in DOAH Case No. 16-7254 and the Parties agree that this Consent Order shall substitute for the Notice of Violations and Orders for Corrective Action issued by the Department on October 18, 2016.
31. The provisions of this Consent Order shall apply to and be binding upon the parties, their officers, their directors, agents, servants, employees, successors, and assigns and all persons, firms and corporations acting under, through or for them and upon those persons, firms and corporations in active concert or participation with them.

32. No modifications of the terms of this Consent Order shall be effective until reduced to writing and executed by both Respondent and the Department.
33. If all of the requirements of this Consent Order have not been fully satisfied, Respondent shall, at least 14 days prior to a sale or conveyance of the property, (1) notify the Department of such sale or conveyance, and (2) provide a copy of this Consent Order with all attachments to the new owner.
34. This Consent Order is a settlement of the Department's civil and administrative authority arising from Chapters 403 and 376, Florida Statutes, to pursue the allegations addressed herein. This Consent Order does not address settlement of any criminal liabilities which may arise from Sections 403.161(3) through (5), 403.413(5), 403.727(3)(b), 376.302(3) and (4), or 376.3071(10), Florida Statutes, nor does it address settlement of any violation which may be prosecuted criminally or civilly under federal law.
35. Respondent Sunrise will be solely responsible for any fines, its compliance costs, and its legal fees associated with this Consent Order. Leslie Szabo, without assuming any personal liability, shall be the person responsible for compliance on behalf of Sunrise with this Consent Order and subsequent enforcement actions, if any, until as such time as Sunrise fulfills all the terms and obligations of this Consent Order.
36. This Consent Order is Final Agency Action of the Department of Environmental Protection pursuant to Section 120.69, Florida Statutes, and Florida Administrative Code Rule 62-103.110 (3), and it is final and effective on the date filed with Clerk of the Department of Environmental Protection.

NOTICE OF RIGHTS

Persons who are not parties to this Consent Order but whose substantial interests are affected by this Consent Order have a right, pursuant to Section 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 of Environmental Protection, Office of General Counsel, 2600 Blair Stone Road, Tallahassee, Florida, 32399-2400, 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 Section 120.57, Florida Statutes.

The petition shall contain the following information:

- A. The name, address, and telephone number of each petitioner; the Department's Consent Order identification number and the county in which the subject matter or activity is located;
- B. A statement of how and when each petitioner received notice of the Consent Order.
- C. A statement of how each petitioner's substantial interests are affected by the Consent Order;
- D. A statement of the material facts disputed by petitioner, if any;
- E. A statement of facts which petitioner contends warrant reversal or modification of the Consent Order;
- F. A statement of the relief sought by petitioner, stating precisely the action petitioner wants the Department to take with respect to the Consent Order.

If a petition is filed, the administrative hearing process is designed to formulate agency action. Accordingly, the final action of the Department of Environmental Protection 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 of Environmental Protection.

Failure to petition within the allowed time frame constitutes a waiver of any right such person has to request a hearing under Section 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 60Q-2.010, Florida Administrative Code.

FOR THE RESPONDENTS:

On behalf of Sunrise Utilities, LLC:

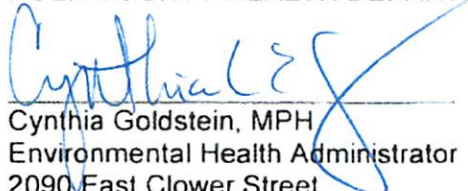
			
Stuart Sheldon Managing Partner Sunrise Utilities, LLC	Date	Leslie Szabo Partner and Majority Owner Sunrise Utilities, LLC	Date



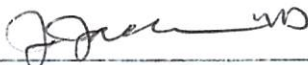
Martin Friedman, Esq. Date
Coenson Friedman, P.A.

DONE AND ORDERED this 29th day of March, 2017, in Bartow, Florida


**FLORIDA DEPARTMENT OF HEALTH
POLK COUNTY HEALTH DEPARTMENT**




Cynthia Goldstein, MPH
Environmental Health Administrator
2090 East Clower Street
Bartow, Florida 33830



Joy L. Jackson, MD, Director
Polk County Health Department
1290 Golfview Avenue 4th Floor
Bartow, Florida 33830



Roland Reis, Chief Legal Counsel
Department of Health
Heartland Consortium
1290 Golfview Ave., 4th Floor
Bartow, Florida 33830

ACCORD:


Erik Saylor
Associate Public Counsel
Office of the Public Counsel
Tallahassee, Florida