

State of Florida



Public Service Commission

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

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**DATE:** October 4, 1999  
**TO:** Division of Records and Reporting  
**FROM:** Patricia Brady, Division of Water and Wastewater *pb BSNJW*  
**RE:** Docket No. 980731-WS, Application for certificate to provide water and wastewater service in Charlotte County by Hunter Creek Utilities, LLC.

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Attached is a copy of the June 9, 1999 Consent Order between the State of Florida Department of Environmental Protection and River's Edge, Inc. (Hunter Creek Utilities, LLC). Please place a copy in the docket file. Thank you.

Attachment

cc: Division of Legal Services (Crossman, Redemann)

- EA \_\_\_\_\_
- FP \_\_\_\_\_
- AF \_\_\_\_\_
- DMU \_\_\_\_\_
- CTR \_\_\_\_\_
- EAG \_\_\_\_\_
- LEG \_\_\_\_\_
- MAS \_\_\_\_\_
- OPC \_\_\_\_\_
- PAI \_\_\_\_\_
- SEC \_\_\_\_\_
- WAW \_\_\_\_\_
- OTH \_\_\_\_\_

DOCUMENT NUMBER-DATE

12224 OCT-7 99

FPSC-RECORDS/REPORTING



# Department of Environmental Protection **COPY**

Jeb Bush  
Governor

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

David B. Scrubs  
Secretary

**CERTIFIED MAIL NO. Z 519 782 755  
RETURN RECEIPT REQUESTED**

June 8, 1999

Mr. John Leonette  
River's Edge  
1601 Hunter Creek Drive  
Punta Gorda, Florida 33982

Re: Charlotte County - PW  
River's Edge WTP  
PWS I.D. Number: 5084074  
OGC Case Number: 99-544-08-PW

Dear Mr. Leonette:

Enclosed is a copy of the signed and entered Consent Order for the referenced Case. This copy is for your records.

Please note that all compliance dates begin from the date of entry of this Order which is June 9, 1999. Upon satisfactory completion of all the conditions of the Order, we will close this case and place it in our inactive file.

If you have any questions, please contact Mark Charneski at the letterhead address or at 941-332-6975. Your cooperation in this matter will be appreciated.

Sincerely,

  
Margaret F. Highsmith  
Director of  
District Management

MFH/mac  
Enclosures  
cc: Mr. Tim Banks (w/enclosure) ✓

"Protect, Conserve and Manage Florida's Environment and Natural Resources"

Printed on recycled paper.

BEFORE THE STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION

IN THE OFFICE OF THE  
SOUTH DISTRICT

Complainant,

OGC FILE NO.99-0544-08-PW

vs.

RIVER'S EDGE, INC.

Respondent.

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CONSENT ORDER

This Consent Order is made and entered into between the State of Florida Department of Environmental Protection ("Department"), and River's Edge, Inc. ("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 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 ("F.A.C.") Title 62. 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 of a community public water system, PWS #5084074 located at 113 Hunters Creek Drive, Punta Gorda, Florida, Section 12, Township 40 south, Range 23 east at 27° 00' 35" north latitude, 81° 59' 09" west longitude, Charlotte County, Florida ("drinking water system" OR "system").

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

I ACCEPT THE TERMS OF THE SETTLEMENT OFFER.

For River's Edge, Inc.:

By: *John Leonette* Date: 6/2/99  
John Leonette  
President

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

ENTERED into this 9<sup>th</sup> day of June, 1999, in Ft. Myers, Florida.

For the DEP:

**FILING AND ACKNOWLEDGEMENT**

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

*Lavend. Mialy* 6-9-99  
CLERK DATE

*Margaret F. Highsmith*  
Margaret F. Highsmith  
Director of  
District Management  
State of Florida Department  
of Environmental Protection

**Attachments**

Copies furnished to:

- Larry Morgan - Deputy General Counsel, OGC
- Kathelyn M. Jacques, Assistant General Counsel, OGC

4. Results from a samples collected on March 11, 1998, April 23, 1998, September 4, 1998, December 10, 1998, and December 18, 1998, from tests of the drinking water at the Respondent's system revealed that the system's water exceeded the maximum contaminant levels for radionuclides as specified in Rules 62-550.310, F.A.C.

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

**ORDERED:**

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

6. The effective date of this Consent Order shall be either the date that the Director of District Management executes this Consent Order or the date in which the South District Office receives notification from the Bureau of Water Facilities Funding whether or not assistance will be provided to remediate the radiological MCL violation at the Respondent's drinking water system, whichever date is later. The Department shall provide written notification to the Respondent informing him of the effective date of this Consent Order.

7. Within 60 days of the effective date of this Consent Order, Respondent shall submit to the Department a construction permit application that proposes modifications to the drinking water system by either providing a new well that will meet State Drinking Water Standards, or provide adequate treatment, pursuant to Rule 62-560, F.A.C., to correct the violations of the maximum contaminant level ("MCL") for radionuclides. The application shall be prepared and certified by a professional engineer registered in the State of Florida. If the Department finds that the application is incomplete, Respondent shall submit to the Department all requested information within 30 days of any such request.

8. Within 60 days of issuance of the construction permit the Respondent shall complete construction, as permitted by the Department, to provide corrective action for the above listed maximum contaminant level violations and submit the following for Department approval:

- a. Certified record drawings of the system;
- b. Engineer's Certification of Completion of Construction and Request for Letter of Release, submitted on DEP form 62-555.900(9);
- c. Satisfactory radionuclide analysis results as required in Rule 62-550.310, F.A.C.;  
and
- d. Satisfactory bacteriological test results for clearance of the modified system collected from the plant tap and two distribution points for two consecutive days.

9. Respondent shall not place the system into service until the Department has issued a clearance letter for the system.

10. If upon review of the record drawings, engineer's certification of completion of construction, and other submitted information for the system, the Department determines that a clearance letter cannot be issued because the system was not properly constructed, the Department will notify the Respondent of the deficiencies of the system which prevent the Department from issuing a clearance letter. The Respondent shall correct the deficiencies noted by the Department within 60 days of receipt of notice from the Department that modifications are required. The system shall not be used until such time as clearance for the modification is obtained.

11. Respondent shall complete modifications to the system no later than the expiration date of any construction permit issued to the Respondent by the Department to make such modifications.

12. If the MCL violations identified in this Consent Order are not corrected by the permitted modifications as determined by the Department, the Respondent shall, within 60 days of written notification by the Department, submit a plan for changing or modifying the operation or equipment of the drinking water system to correct the MCL violations. The plan shall be prepared and certified by a professional engineer registered in the State of Florida. If the Department finds that the plan is incomplete, Respondent shall submit all requested information within 30 days of the request.

13. Within 30 days of the Department's approval of the plan, as mentioned in paragraph 12, Respondent shall complete all of the changes or modifications required in the approved plan. If a particular modification requires a permit, Respondent shall apply for and obtain the permit prior to constructing the modification. If the changes in the plan submitted to the Department are inadequate to correct the violations, the Department reserves the right to take further enforcement action.

14. Within 10 days of the effective date of this Consent Order, Respondent shall re-issue the Public Notice in accordance with Rule 62-560.410, F.A.C. The Respondent shall submit proof to the Department that the Public Notice was reissued every quarter, until the radionuclide MCLs have been corrected in accordance with Rule 62-560.410, F.A.C..

15. All analyses required under this Consent Order shall be performed in a laboratory, certified by the State of Florida Department of Health to perform analyses for drinking water standards.

16. Respondent agrees to pay the Department stipulated penalties in the amount of \$25.00 per day for each and every day Respondent fails to timely comply with any of the

requirements of paragraphs seven through fourteen of this Consent Order. A separate stipulated penalty shall be assessed for each violation of this Consent Order. Within 30 days of written demand from the Department, Respondent shall make payment of the appropriate stipulated penalties to "The Department of Environmental Protection" by cashier's check or money order and shall include thereon the OGC number assigned to this Consent Order and the notation "Ecosystem Management and Restoration Trust Fund". Payment shall be sent to the Department of Environmental Protection, Post Office Box 2549, Fort Myers, Florida 33902-2549. The Department may make demands for payment at any time after violations occur. Nothing in this paragraph shall prevent the Department from filing suit to specifically enforce any of the terms 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.

17. If any event occurs which causes delay or the reasonable likelihood of delay, in complying with the requirements or deadlines of this Consent Order, (with the exception of any delay caused by the Department), Respondent shall have the burden of proving the delay was or will be caused by circumstances beyond the reasonable control of the Respondent and could not have been or cannot be overcome by Respondent's due diligence. Economic circumstances shall not be considered circumstances beyond the control of Respondent, nor shall the failure of a contractor, subcontractor, materialman or other agent (collectively referred to as "contractor") to whom responsibility for performance is delegated to meet contractually imposed deadlines be a cause beyond the control of Respondent, unless the cause of the contractor's late performance was also beyond the contractor's control. Upon occurrence of an event causing delay, or upon becoming aware of a potential for delay, Respondent shall notify the Department orally within 24 hours or by the next working day and shall, within seven calendar days of oral notification to the Department, notify the Department in writing of the anticipated length and cause of delay, the measures taken or to be taken to



prevent or minimize the delay and the timetable by which Respondent intends to implement these measures. If the parties can agree that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of Respondent, the time for performance hereunder shall be extended for a period equal to the agreed delay resulting from such circumstances. Such agreement shall adopt all reasonable measures necessary to avoid or minimize delay. Failure of Respondent to comply with the notice requirements of this paragraph in a timely manner shall constitute a waiver of Respondent's right to request an extension of time for compliance with the requirements or deadlines of this Consent Order.

18. Persons who are not parties to this Consent Order but whose substantial interests are affected by this Consent Order have a right, pursuant to Sections 120.569 and 120.57, Florida Statutes, to petition for an administrative hearing on it. The Petition must contain the information set forth below and must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS-35, Tallahassee, Florida 32399-3000, within 21 days of receipt of this notice. A copy of the Petition must also be mailed at the time of filing to the District Office named above at the address indicated. Failure to file a Petition within the 21 days constitutes a waiver of any right such person has to an administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes.

The Petition shall contain the following information:

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

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

A person whose substantial interests are affected by the Consent Order may file a timely petition for an administrative hearing under Sections 120.569 and 120.57, Florida Statutes, or may choose to pursue mediation as an alternative remedy under Section 120.573 before the deadline for filing a petition. Choosing mediation will not adversely affect the right to a hearing if mediation does not result in a settlement. The procedures for pursuing mediation are set forth below.

Mediation may only take place if the Department and all the parties to the proceeding agree that mediation is appropriate. A person may pursue mediation by reaching a mediation agreement with all parties to the proceeding (which include the Respondent, the Department, and any person who has filed a timely and sufficient petition for a hearing) and by showing how the substantial interests of each mediating party are affected by the Consent Order. The agreement must be filed in (received by) the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, by the same 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 fourteen 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.

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

20. The terms and conditions set forth in this Consent Order may be enforced in a court of competent jurisdiction pursuant to Sections 120.69 and 403.121, Florida Statutes. Failure to comply with the terms of this Consent Order shall constitute a violation of Section 403.859, Florida Statutes.

21. Respondent is fully aware that a violation of the terms of this Consent Order may subject Respondent to judicial imposition of damages, civil penalties up to \$5,000.00 per offense, and criminal penalties.

22. 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.

23. All plans, applications, penalties, costs and expenses, and information required by this Consent Order to be submitted to the Department should be sent to Department of Environmental Protection, Post Office Box 2549, Fort Myers, Florida 33902-2549.

24. 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.

25. 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 judicial imposition of damages or civil penalties for alleged violations outlined in this Consent Order. Respondent acknowledges but waives its right to an administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes, on the terms of this Consent Order. Respondent acknowledges its right to appeal the terms of this Consent

Order pursuant to Section 120.68, Florida Statutes, but waives that right upon signing this Consent Order.

26. 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.

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

28. 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.

29. 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.