

DOCKET NO.: 060368-WS - Application for increase in water and wastewater rates in Alachua, Brevard, Highlands, Lake, Lee, Marion, Orange, Palm Beach, Pasco, Polk, Putnam, Seminole, Sumter, Volusia and Washington Counties by Aqua Utilities Florida, Inc.

WITNESS: Direct Testimony of John J. Davis,
Appearing on Behalf of the Staff of the Florida Public Service Commission.

DATE FILED: August 21, 2007

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DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

DIRECT TESTIMONY OF JOHN J. DAVIS

- 1
- 2 Q. Please state your name and business address.
- 3 A. John J. Davis, Florida Department of Environmental Protection, Northeast District
4 Office, 7825 Baymeadows Way, Suite B-200, Jacksonville, FL 32256
- 5 Q. Please state a brief description of your educational background and experience.
- 6 A. I received a Bachelor of Science degree in Geology from the University of Florida in
7 1985, and immediately began work with the Duval County Health Department as an
8 Environmental Health Specialist in the Drinking Water Section. My work entailed
9 sanitary surveys, compliance inspections, chemical and microbiological data reviews,
10 complaint investigations, and well placement and construction issues for public water
11 systems within Duval County. After completing one year with the Duval County
12 Health Department, I transferred to a similar position with the Florida Department of
13 Environmental Protection.
- 14 Q. By whom are you presently employed?
- 15 A. Florida Department of Environmental Protection (FDEP)
- 16 Q. How long have you been employed with the FDEP and in what capacity?
- 17 A. I began with the FDEP Drinking Water Section in 1986 as an Environmental Specialist
18 and remained in that program for approximately eighteen months. I then progressed in
19 responsibility and position through the Hazardous Waste, Ground Water, and the
20 Technical Support Sections before returning to the Drinking Water Section as
21 Supervisor in April 2005. My current position title is Professional Geologist III, and I
22 have completed twenty-one years of employment with the FDEP.
- 23 Q. What are your general responsibilities at the FDEP?
- 24 A. As section supervisor for Drinking Water, I am responsible for section personnel
25 issues, as well as program direction and oversight on compliance and enforcement

1 within the twenty counties that comprise the FDEP Northeast District.

2 Q. Are you familiar with Aqua Utilities Florida, Inc. (utility) water systems in Alachua
3 and Putman Counties, particularly the water treatment systems in Alachua County,
4 including Arredondo Estates and Arredondo Farms, and the water treatment systems in
5 Putman County including, Beecher's Point, Hermits Cove/St. John's Highlands,
6 Interlachen Lake Estates, Palm Port, Pomona Park, River Grove, Saratoga Harbour,
7 Silver Lake Oaks, Welaka, and Wootens?

8 A. Yes, through the review of inspections, sanitary surveys, and enforcement documents
9 prepared by my section staff.

10 Q. Does the utility have any current construction permits from the FDEP?

11 A. No.

12 Q. Are the utility's treatment facilities and distribution systems sufficient to serve its
13 present customers?

14 A. Yes.

15 Q. Does the utility maintain the required 20 psi minimum pressure throughout the
16 distribution system?

17 A. Yes.

18 Q. Does the utility have certified operators as required by Chapter 62-602, Florida
19 Administrative Code?

20 A. Yes.

21 Q. Is the overall maintenance of the treatment plant and distribution facilities satisfactory?

22 A. Yes, though minor maintenance issues were noted for the systems serving Arredondo
23 Estates (undersized well pad and lack of well vent), Arredondo Farms (missing well
24 pad, lack of well vent, and incorrectly placed raw tap), Hermit's Cove (threaded tap
25 without vacuum breaker), and Wootens (algae on aerator screens and rust on high

- 1 service pump).
- 2 Q. Can you comment on the type and number of corrections above?
- 3 A. It is not uncommon to find a number of small deficiencies at facilities. In general the
4 utility is doing a good job of maintaining these facilities.
- 5 Q. Does the finished water produced by the utility meet the State and Federal maximum
6 contaminant levels for primary and secondary water quality standards?
- 7 A. Yes.
- 8 Q. Does this include the lead and copper rule?
- 9 A. The action level for Lead was exceeded at the 90th percentile in 2004 at Palm Port.
10 Sampling is again due in the third quarter 2007.
- 11 Q. Has the utility's compliance with the lead and copper rule resulted in a lessening of the
12 monitoring requirements?
- 13 A. Monitoring has been established at a triennial frequency for these facilities.
- 14 Q. Does the utility monitor for the inorganic contaminants (VOCs) listed in Section 62-
15 55.513, Florida Administrative Code, volatile organic contaminants (VOCs) listed in
16 Section 62-55.515, Florida Administrative Code, synthetic organic contaminants
17 (VOCs) listed in Section 62-55.516, Florida Administrative Code and all other
18 compounds listed in Section 62-550, Florida Administrative Code?
- 19 A. Typically yes, though the utility failed to conduct their annual test for Disinfection
20 Byproducts in 2005 for Interlachen Lake Estates, Pomona Park, River Grove, and
21 Silver Lake Oaks. Enforcement has been undertaken for the failure.
- 22 Q. Do recent chemical analyses of raw and finished water, when compared to FDEP
23 regulations, suggest the need for additional treatment?
- 24 A. No.
- 25 Q. Does the utility maintain the required chlorine residual or its equivalent throughout the

1 | distribution system?

2 | A. Yes.

3 | Q. Are the plant and distribution systems in compliance with all the other provisions of

4 | Title 62, Florida Administrative Code, not previously mentioned?

5 | A. Yes.

6 | Q. Has the utility been the subject of any FDEP enforcement action within the past two

7 | years?

8 | A. Yes. Consent Orders for Pomona Park and River Grove have been executed for failure

9 | to conduct their annual test of the Disinfection Byproducts in 2005. Consent Orders

10 | remain pending for the same violation at Interlachen Lake Estates and Silver Lake

11 | Oaks.

12 | Q. Are you sponsoring any exhibits?

13 | A. Yes, attached to my testimony are four exhibits: Exh. No. JJD-1 is OGC Consent

14 | Order No. 06-2268, for Pomona Park; Exh. No. JJD-2 is OGC Consent Order No. 06-

15 | 2267, for River Grove; Exh. No. JJD-3 is OGC Consent Order No. 07-1145 (Pending),

16 | for Interlachen Lake Estates; and Exh. No. JJD-4 is OGC Consent Order No. 07-1228

17 | (Pending), for Silver Lake Oaks.

18 | Q. Do you have anything further to add?

19 | A. No, I do not.

20 |

21 |

22 |

23 |

24 |

25 |

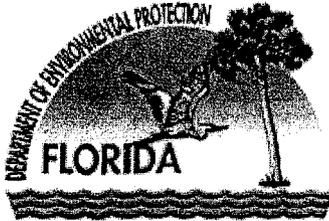
JOHN J. DAVIS

EXH. NO. JJD-1

Charlie Crist
Governor

Jeff Kottkamp
Lt. Governor

Michael W. Sole
Secretary



Florida Department of Environmental Protection

Northeast District
7825 Baymeadows Way, Suite B200
Jacksonville, Florida 32256-7590

July 6, 2007

CERTIFIED MAIL - RETURN RECEIPT

Ms. Candice McClure
Aqua Utilities Florida, Inc.
P. O. Box 490310
Leesburg, FL 34749

Putnam County - Potable Water
OGC Consent Order No. 06-2268
DEP vs. AQUA UTILITIES FLORIDA, INC.

Dear Ms. McClure:

Enclosed is an executed copy of the Pomona Park WTP Long Form Consent Order to resolve Case No. 06-2268. July 5, 2007 is the effective date of this Order, and all time frames will be referenced from this date.

Please ensure the following items are completed. Item 6 states that within 60 days of the effective date of this Consent Order, the Respondent shall pay \$530.00 in settlement of the matters addressed in this Consent Order. Item 5a states that Disinfection Byproduct monitoring must be completed in the required timeframe (July - September), with the results submitted to the Department no later than October 10th in the year of sampling.

Should you have any questions concerning the Consent Order, please feel free to contact Benjamin Piltz at (904) 807-3334. Your continued cooperation is appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Melissa M. Long".

Melissa M. Long, P.E.
Water Facilities Administrator

cc: Mr. Patrick Farris, Aqua Utilities Florida, Inc. (pafarris@aquaamerica.com)
Ms. Alik Moncrief, OGC (executed copy only)
Ms. Ollie Henderson, Data Processing FDEP, NED
Ms. Lea Crandall, Agency Clerk

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT)	IN THE OFFICE OF THE
OF ENVIRONMENTAL PROTECTION,)	NORTHEAST DISTRICT
)	
Complainant,)	OGC FILE NO. 06-2268
)	
vs.)	
)	
AQUA UTILITIES FLORIDA, INC.)	
)	
Respondent.)	
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CONSENT ORDER

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

The Department finds and the Respondent admits the following:

1. The 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., Florida Statutes, and the rules promulgated thereunder, Title 62, Florida Administrative Code. 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 water system, PWS# 2540905, located at 110 Church Street, Pomona Park, Putnam County, Florida, which serves the city of Pomona Park ("system").

4. The Department finds that Respondent is in violation of the following Florida Administrative Code (Fla. Admin. Code) Rules:

a. The respondent failed to submit Disinfection Byproduct (DBP) monitoring results in 2005 in violation of Rule 62-550.514(2), Fla. Admin. Code.

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

ORDERED:

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

a. DBP monitoring for 2007 and all future sampling shall be completed within the required time frame (July – September) and submitted to the Department no later than October 10th in the year of sampling.

6. Within 60 days of the effective date of this Consent Order, Respondent shall pay the Department \$530.00 in settlement of the matters addressed in this Consent Order. This amount includes \$250.00 for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of this Consent Order. The civil penalties are apportioned as follows: \$280.00 for violation of Rule 62-550.514(2). Payment shall be made by cashier's check or money order. The instrument shall be made payable to the "Department of Environmental Protection" and shall include thereon the OGC number assigned to this Consent Order and the notation "Ecosystem Management and Restoration Trust Fund".

7. Respondent agrees to pay the Department stipulated penalties in the amount of \$100.00 per day for each and every day Respondent fails to timely comply with any of the requirements of paragraph 5 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 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, 7825 Baymeadows Way, Suite B200, Jacksonville, Florida 32256. 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. Any penalties assessed under this paragraph shall be in addition to the settlement sum agreed to in paragraph 6 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.

8. If any event, including administrative or judicial challenges by third parties unrelated to the Respondent, occurs which causes delay or the reasonable likelihood of delay, in complying with the requirements of this Consent Order, 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, material man 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 the 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 of this Consent Order.

9. 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, Florida Administrative Code.

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, Florida Statutes, before the deadline for filing a petition. Choosing mediation will not adversely affect the right to a hearing if mediation does not result in a settlement. The procedures for pursuing mediation are 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, MS #35, Tallahassee, Florida 32399-3000, within 10 days after the deadline as set forth above for the filing of a petition.

The agreement to mediate must include the following:

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

- d. The agreement of the parties on the confidentiality of discussions and documents introduced during mediation;
- e. The date, time, and place of the first mediation session, or a deadline for holding the first session, if no mediator has yet been chosen;
- f. The name of each party's representative who shall have authority to settle or recommend settlement;
- g. Either an explanation of how the substantial interests of each mediating party will be affected by the action or proposed action addressed in this notice of intent or a statement clearly identifying the petition for hearing that each party has already filed, and incorporating it by reference; and
- h. The signatures of all parties or their authorized representatives.

As provided in Section 120.573, Florida Statutes, the timely agreement of all parties to mediate will toll the time limitations imposed by Sections 120.569 and 120.57, Florida Statutes, for requesting and holding an administrative hearing. Unless otherwise agreed by the parties, the mediation must be concluded within sixty days of the execution of the agreement. If mediation results in settlement of the administrative dispute, the Department must enter a final order incorporating the agreement of the parties. Persons whose substantial interests will be affected by such a modified final decision of the Department have a right to petition for a hearing only in accordance with the requirements for such petitions set forth above, and must therefore file their petitions within 21 days of receipt of this notice. If mediation terminates without settlement of the dispute, the Department shall notify all parties in writing that the administrative hearing processes under Sections 120.569 and 120.57, Florida Statutes, remain available for disposition

with applicable federal, state or local laws, regulations or ordinances.

11. 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.

12. 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 day per violation, and criminal penalties, except as limited by the provisions of this Consent Order.

13. Respondent shall allow all authorized representatives of the Department access to the facility at reasonable times for the purpose of determining compliance with the terms of this Consent Order and the rules and statutes of the Department.

14. All submittals and payments required by this Consent Order to be submitted to the Department shall be sent to the Florida Department of Environmental Protection, 7825 Baymeadows Way, Suite B200, Jacksonville, Florida 32256.

15. 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 addressed in this Consent Order.

16. Respondent acknowledges and 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, and waives that right upon signing this Consent Order.

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

18. In the event of a sale or conveyance of the facility or of the property upon which the facility is located, if all of the requirements of this Consent Order have not been fully satisfied, Respondent shall, at least 30 days prior to the sale or conveyance of the property or facility, (1) notify the Department of such sale or conveyance, (2) provide the name and address of the purchaser, or operator, or person(s) in control of the facility, and (3) provide a copy of this Consent Order with all attachments to the new owner. The sale or conveyance of the facility, or the property upon which the facility is located shall not relieve the Respondent of the obligations imposed in this Consent Order.

19. This Consent Order is a settlement of the Department's civil and administrative authority arising under Florida law to resolve the matters addressed herein. This Consent Order is not a settlement of any criminal liabilities, which may arise under Florida law, nor is it a settlement of any violation, which may be prosecuted criminally or civilly under federal law.

20. 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.

DATE: JUNE 20, 2007

NAME JOHN M. LIHVARCIC
TITLE PRESIDENT

FOR DEPARTMENT USE ONLY

DONE AND ORDERED this 5th day of July, 2007, in
Jacksonville, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Will C. Strong, Ass't Director
Gregory J. Strong
District Director

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

Anthonia R. Lomen
Clerk

July 6, 2007
Date

cc: Lea Crandall, Agency Clerk
Larry Morgan, OGC (executed copy only)
Ollie Henderson, FDEP

JOHN J. DAVIS

EXH. NO. JJD-2



Florida Department of Environmental Protection

Northeast District
7825 Baymeadows Way, Suite B200
Jacksonville, Florida 32256-7590

Charlie Crist
Governor

Jeff Kottkamp
Lt. Governor

Michael W. Sole
Secretary

July 6, 2007

CERTIFIED MAIL - RETURN RECEIPT

Ms. Candice McClure
Aqua Utilities Florida, Inc.
P. O. Box 490310
Leesburg, FL 34749

Putnam County - Potable Water
OGC Consent Order No. 06-2267
DEP vs. AQUA UTILITIES FLORIDA, INC.

Dear Ms. McClure:

Enclosed is an executed copy of the River Grove Subdivision WTP Long Form Consent Order to resolve Case No. 06-2267. July 5, 2007 is the effective date of this Order, and all time frames will be referenced from this date.

Please ensure the following items are completed. Item 6 states that within 60 days of the effective date of this Consent Order, the Respondent shall pay \$530.00 in settlement of the matters addressed in this Consent Order. Item 5a states that Disinfection Byproduct monitoring must be completed in the required timeframe (July - September), with the results submitted to the Department no later than October 10th in the year of sampling.

Should you have any questions concerning the Consent Order, please feel free to contact Benjamin Piltz at (904) 807-3334. Your continued cooperation is appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Melissa M. Long".

Melissa M. Long, P.E.
Water Facilities Administrator

cc: Mr. Patrick Farris, Aqua Utilities Florida, Inc. (pafarris@aquaaamerica.com)
Ms. Alik Moncrief, OGC (executed copy only)
Ms. Ollie Henderson, Data Processing FDEP, NED
Ms. Lea Crandall, Agency Clerk

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT)	IN THE OFFICE OF THE
OF ENVIRONMENTAL PROTECTION,)	NORTHEAST DISTRICT
)	
Complainant,)	OGC FILE NO. 06-2267
)	
vs.)	
)	
AQUA UTILITIES FLORIDA, INC.)	
)	
Respondent.)	
_____)	

CONSENT ORDER

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

The Department finds and the Respondent admits the following:

1. The 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., Florida Statutes, and the rules promulgated thereunder, Title 62, Florida Administrative Code. 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 water system, PWS# 2540959, located at 1343 NE 17th Road, Ocala, Putnam County, Florida, which serves the Rivergrove Subdivision ("system").
4. The Department finds that Respondent is in violation of the following Florida Administrative Code (Fla. Admin. Code) Rules:

a. The respondent failed to submit Disinfection Byproduct (DBP) monitoring results in 2005 in violation of Rule 62-550.514(2), Fla. Admin. Code.

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

ORDERED:

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

a. DBP monitoring for 2007 and all future sampling shall be completed within the required time frame (July – September) and submitted to the Department no later than October 10th in the year of sampling.

6. Within 60 days of the effective date of this Consent Order, Respondent shall pay the Department \$530.00 in settlement of the matters addressed in this Consent Order. This amount includes \$250.00 for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of this Consent Order. The civil penalties are apportioned as follows: \$280.00 for violation of Rule 62-550.514(2). Payment shall be made by cashier's check or money order. The instrument shall be made payable to the "Department of Environmental Protection" and shall include thereon the OGC number assigned to this Consent Order and the notation "Ecosystem Management and Restoration Trust Fund".

7. Respondent agrees to pay the Department stipulated penalties in the amount of \$100.00 per day for each and every day Respondent fails to timely comply with any of the requirements of paragraph 5 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 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, 7825 Baymeadows Way, Suite B200, Jacksonville, Florida 32256. 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. Any penalties assessed under this paragraph shall be in addition to the settlement sum agreed to in paragraph 6 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.

8. If any event, including administrative or judicial challenges by third parties unrelated to the Respondent, occurs which causes delay or the reasonable likelihood of delay, in complying with the requirements of this Consent Order, 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, material man 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 the 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 of this Consent Order.

9. 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, Florida Administrative Code.

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, Florida Statutes, before the deadline for filing a petition. Choosing mediation will not adversely affect the right to a hearing if mediation does not result in a settlement. The procedures for pursuing mediation are 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, MS #35, Tallahassee, Florida 32399-3000, within 10 days after the deadline as set forth above for the filing of a petition.

The agreement to mediate must include the following:

- a. The names, addresses, and telephone numbers of any persons who may attend the mediation;
- b. The name, address, and telephone number of the mediator selected by the parties, or a provision for selecting a mediator within a specified time;
- c. The agreed allocation of the costs and fees associated with the mediation;
- d. The agreement of the parties on the confidentiality of discussions and documents introduced during mediation;
- e. The date, time, and place of the first mediation session, or a deadline for holding the first session, if no mediator has yet been chosen;
- f. The name of each party's representative who shall have authority to settle or recommend settlement;
- g. Either an explanation of how the substantial interests of each mediating party will be affected by the action or proposed action addressed in this notice of intent or a statement clearly identifying the petition for hearing that each party has already filed, and incorporating it by reference; and
- h. The signatures of all parties or their authorized representatives.

As provided in Section 120.573, Florida Statutes, the timely agreement of all parties to mediate will toll the time limitations imposed by Sections 120.569 and 120.57, Florida Statutes, for requesting

and holding an administrative hearing. Unless otherwise agreed by the parties, the mediation must be concluded within sixty days of the execution of the agreement. If mediation results in settlement of the administrative dispute, the Department must enter a final order incorporating the agreement of the parties. Persons whose substantial interests will be affected by such a modified final decision of the Department have a right to petition for a hearing only in accordance with the requirements for such petitions set forth above, and must therefore file their petitions within 21 days of receipt of this notice. If mediation terminates without settlement of the dispute, the Department shall notify all parties in writing that the administrative hearing processes under Sections 120.569 and 120.57, Florida Statutes, remain available for disposition of the dispute, and the notice will specify the deadlines that then will apply for challenging the agency action and electing remedies under those two statutes.

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

11. 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.

12. 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 day per violation, and criminal penalties, except as limited by the provisions of this Consent Order.

13. Respondent shall allow all authorized representatives of the Department access to the facility at reasonable times for the purpose of determining compliance with the terms of this Consent Order and the rules and statutes of the Department.

14. All submittals and payments required by this Consent Order to be submitted to the Department shall be sent to the Florida Department of Environmental Protection, 7825 Baymeadows Way, Suite B200, Jacksonville, Florida 32256.

15. 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 addressed in this Consent Order.

16. Respondent acknowledges and 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, and waives that right upon signing this Consent Order.

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

18. In the event of a sale or conveyance of the facility or of the property upon which the facility is located, if all of the requirements of this Consent Order have not been fully satisfied, Respondent shall, at least 30 days prior to the sale or conveyance of the property or facility, (1) notify the Department of such sale or conveyance, (2) provide the name and address of the purchaser, or operator, or person(s) in control of the facility, and (3) provide a copy of this Consent Order with all attachments to the new owner. The sale or conveyance of the facility, or the property upon which the facility is located shall not relieve the Respondent of the obligations imposed in this Consent Order.

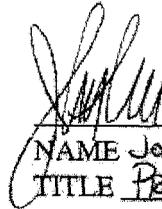
19. This Consent Order is a settlement of the Department's civil and administrative authority arising under Florida law to resolve the matters addressed herein. This Consent Order is not a settlement of any criminal liabilities, which may arise under Florida law, nor is it a settlement of any violation, which may be prosecuted criminally or civilly under federal law.

20. 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.

OGC FILE NO. 06-2267
FOR THE RESPONDENT

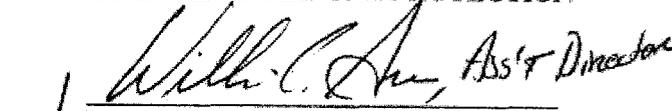
DATE: June 28, 2007


NAME John M. Litvack
TITLE President

FOR DEPARTMENT USE ONLY

DONE AND ORDERED this 5th day of July, 2007, in Jacksonville
Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION


Gregory J. Strong
District Director

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

Authenia R. Lomen
Clerk

July 6, 2007
Date

cc: Lea Crandall, Agency Clerk
Aiki Moncrief, OGC (executed copy only)
Ollie Henderson, FDEP

JOHN J. DAVIS

EXH. NO. JJD-3



Florida Department of Environmental Protection

Northeast District
7825 Baymeadows Way, Suite B200
Jacksonville, Florida 32256-7590
Phone: 904/807-3300 ♦ Fax: 904/448-4366

Charlie Crist
Governor

Jeff Kottkamp
Lt. Governor

Michael W. Sole
Secretary

July 26, 2007

CERTIFIED MAIL - RETURN RECEIPT

Ms. Candice McClure
Aqua Utilities Florida, Inc.
P. O. Box 490310
Leesburg, FL 34749

Putnam County - Potable Water
OGC Consent Order No. 07-1145
DEP vs AQUA UTILITIES FLORIDA, INC.

Dear Ms. McClure:

Enclosed is the Long Form Consent Order to resolve the matter of the Interlachen Lake Estates WTP, PWS ID# 2540545, for failing to submit Disinfection Byproduct (DBP) monitoring during 2005. This Long Form Consent Order replaces the Short Form Consent Order issued on June 28, 2007. Please review it and, if acceptable, sign and return the entire original document to this office within 14 days of receipt.

If the Consent Order is not acceptable as written, please respond in writing within 14 days explaining the problems that you have with the document.

Should you have any questions concerning the Consent Order, please feel free to contact Benjamin Piltz at Benjamin.Piltz@dep.state.fl.us or telephone number 904-807-3334. Your cooperation in this matter is appreciated.

Sincerely,

A handwritten signature in cursive script that reads 'Melissa M. Long'.

Melissa M. Long, P.E.
Water Facilities Administrator

Enclosure: LFCO# 07-1145

cc: Lea Crandall, Agency Clerk
Ollie Henderson, FDEP NED

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

IN THE OFFICE OF THE
NORTHEAST DISTRICT

Complainant,

OGC# 07-1145

vs.

AQUA UTILITIES FLORIDA, INC.

Respondent.

CONSENT ORDER

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

The Department finds and the Respondent admits the following:

1. The 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., Florida Statutes, and the rules promulgated thereunder, Title 62, Florida Administrative Code. 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 Operator of a Community Public Water System, PWS #2540545 located at 118 Velvet Street, Palatka, Putnam County, Florida, which serves the Interlachen Lake Estates Mobile Home Park ("drinking water system").

4. The Department finds that the following violations occurred:

a. The respondent failed to submit Disinfection Byproduct (DBP) monitoring results in 2005 in violation of Rule 62-550.514(2), Fla. Admin. Code.

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.

a. DBP monitoring for 2007 and all future sampling shall be completed within the required time frame (July – September) and submitted to the Department no later than October 10th in the year of sampling.

6. Within 60 days of the effective date of this Consent Order, Respondent shall pay the Department \$ 600.00 in settlement of the matters addressed in this Consent Order. This amount includes \$350.00 for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of this Consent Order. The civil penalties are apportioned as follows: \$250.00 for violations of Rule 62-550.514(2). Payment shall be made by cashier's check or money order. The instrument shall be made payable to the "Department of Environmental Protection" and shall include thereon the OGC number assigned to this Consent Order and the notation "Ecosystem Management and Restoration Trust Fund".

7. Respondent agrees to pay the Department stipulated penalties in the amount of \$100.00 per day for each and every day Respondent fails to timely comply with any of the requirements of paragraph(s) 5 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, 7825 Baymeadows Way, Suite B200, Jacksonville, FL 32256. 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. Any penalties assessed under this paragraph shall be in addition to the settlement sum agreed to in paragraph 6 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.

8. If any event, including administrative or judicial challenges by third parties unrelated to the Respondent, occurs which causes delay or the reasonable likelihood of delay, in complying with the requirements of this Consent Order, 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 the 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 of this Consent Order.

9. 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 Department's identification number for the Consent Order and the county in which the subject matter or activity is located;
- (b) The name, address, and telephone number of each petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes;
- (c) A statement of how and when each petitioner received notice of the Consent Order;
- (d) A statement of how each petitioner's substantial interests are affected by the Consent Order;
- (e) A statement of the material facts disputed by petitioner, if any;
- (f) A statement of which rules or statutes petitioner contends require reversal or modification of the Consent Order;

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

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, Florida Statutes, before the deadline for filing a petition. Choosing mediation will not adversely affect the right to a hearing if mediation does not result in a settlement. The procedures for pursuing mediation are 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, within 10 days after the deadline as set forth above for the filing of a petition.

The agreement to mediate must include the following:

- (a) The names, addresses, and telephone numbers of any persons who may attend the mediation;
- (b) The name, address, and telephone number of the mediator selected by the parties, or a provision for selecting a mediator within a specified time;
- (c) The agreed allocation of the costs and fees associated with the mediation;
- (d) The agreement of the parties on the confidentiality of discussions and documents introduced during mediation;
- (e) The date, time, and place of the first mediation session, or a deadline for holding the first session, if no mediator has yet been chosen;
- (f) The name of each party's representative who shall have authority to settle or recommend settlement; and
- (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.
- (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.

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

11. 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.

12. 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 day per violation, and criminal penalties.

13. Respondent shall allow all authorized representatives of the Department access to the property and facility at reasonable times for the purpose of determining compliance with the terms of this Consent Order and the rules and statutes of the Department.

14. All submittals and payments required by this Consent Order to be submitted to the Department shall be sent to the Florida Department of Environmental Protection, 7825 Baymeadows Way, Suite B200, Jacksonville, FL 32256.

15. 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.

16. 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 addressed in this Consent Order.

17. Respondent acknowledges and 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, and waives that right upon signing this Consent Order.

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

19. In the event of a sale or conveyance of the facility or of the property upon which the facility is located, if all of the requirements of this Consent Order have not been fully satisfied, Respondent shall, at least 30 days prior to the sale or conveyance of the property or facility, (1) notify the Department of such sale or conveyance, (2) provide the name and address of the purchaser, or operator, or person(s) in control of the facility, and (3) provide a copy of this Consent Order with all attachments to the new owner. The sale or conveyance of the facility, or the property upon which the facility is located shall not relieve the Respondent of the obligations imposed in this Consent Order.

20. This Consent Order is a settlement of the Department's civil and administrative authority arising under Florida law to resolve the matters addressed herein. This Consent Order is not a settlement of any criminal liabilities which may arise under Florida law, nor is it a settlement of any violation which may be prosecuted criminally or civilly under federal law.

21. 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.

OGC FILE NO. 07-1145

FOR THE RESPONDENT

DATE: _____

NAME _____

TITLE _____

FOR DEPARTMENT USE ONLY

DONE AND ORDERED this _____ day of _____, 20__

in _____, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Gregory J. Strong
District Director

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

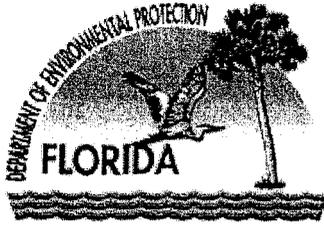
Clerk

Date

Copies furnished to:
Lea Crandall, Agency Clerk - Mail Station 35
Aliko Moncrief, OGC (executed copy only)
Ollie Henderson, FDEP NED

JOHN J. DAVIS

EXH. NO. JJD-4



Florida Department of Environmental Protection

Northeast District
7825 Baymeadows Way, Suite B200
Jacksonville, Florida 32256-7590
Phone: 904/807-3300 ♦ Fax: 904/448-4366

Charlie Crist
Governor

Jeff Kottkamp
Lt. Governor

Michael W. Sole
Secretary

July 26, 2007

CERTIFIED MAIL - RETURN RECEIPT

Ms. Candice McClure
Aqua Utilities Florida, Inc.
P. O. Box 490310
Leesburg, FL 34749

Putnam County - Potable Water
OGC Consent Order No. 07-1228
DEP vs AQUA UTILITIES FLORIDA, INC.

Dear Ms. McClure:

Enclosed is the revised Long Form Consent Order to resolve the matter of the Silver Lake Oaks WTP, PWS ID# 2544258, for failing to submit Disinfection Byproduct (DBP) monitoring during 2005. The revision includes the requirement for quarterly monitoring for Total Trihalomethanes (TTHM) following the September 2006 TTHM Maximum Contaminant Level (MCL) exceedance. Please review it and, if acceptable, sign and return the entire original document to this office within 14 days of receipt.

If the Consent Order is not acceptable as written, please respond in writing within 14 days explaining the problems that you have with the document.

Should you have any questions concerning the Consent Order, please feel free to contact Benjamin Piltz at Benjamin.Piltz@dep.state.fl.us or telephone number 904-807-3334. Your cooperation in this matter is appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Melissa M. Long".

Melissa M. Long, P.E.
Water Facilities Administrator

Enclosure: LFCO# 07-1228v.2
cc: Lea Crandall, Agency Clerk
Ollie Henderson, FDEP NED

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

IN THE OFFICE OF THE
NORTHEAST DISTRICT

Complainant,

OGC# 07-1228

vs.

AQUA UTILITIES FLORIDA, INC.

Respondent.
_____ /

CONSENT ORDER

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

The Department finds and the Respondent admits the following:

1. The 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., Florida Statutes, and the rules promulgated thereunder, Title 62, Florida Administrative Code. 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 Operator of a Community Public Water System, PWS #2544258 located at 7013 Silver Lake Drive Oaks, Palatka, Putnam County, Florida, which serves the Silver Lake Oaks Mobile Home Park ("drinking water system").
4. The Department finds that the following violations occurred:
 - a. Respondent failed to submit Disinfection Byproduct (DBP) monitoring results in 2005 in violation of Rule 62-550.514(2), Fla. Admin. Code.

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.

a. Unless specified as quarterly, all DBP monitoring shall be completed between July and September. Results shall be submitted to the Department within ten (10) days following the month in which the samples were taken or within 10 days following Respondent's receipt of the results, whichever is sooner in accordance with Rule 62-550.821(12), Fla. Admin. Code.

b. Respondent shall continue to sample quarterly for Total Trihalomethanes (TTHMs), following the September 2006 Maximum Contaminant Level (MCL) exceedance, until the Running Annual Average (RAA) is less than 60 ug/L in accordance with Rule 62-550.514(2), Fla. Admin. Code.

6. Within 60 days of the effective date of this Consent Order, Respondent shall pay the Department \$ 350.00 in settlement of the matters addressed in this Consent Order. This amount includes \$175.00 for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of this Consent Order. The civil penalties are apportioned as follows: \$175.00 for violations of Rule 62-550.514(2). Payment shall be made by cashier's check or money order. The instrument shall be made payable to the "Department of Environmental Protection" and shall include thereon the OGC number assigned to this Consent Order and the notation "Ecosystem Management and Restoration Trust Fund".

7. Respondent agrees to pay the Department stipulated penalties in the amount of \$100.00 per day for each and every day Respondent fails to timely comply with any of the requirements of paragraph(s) 5 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, 7825 Baymeadows Way, Suite B200, Jacksonville, FL 32256. 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. Any penalties assessed under this paragraph shall be in addition to the settlement sum agreed to in paragraph 6 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.

8. If any event, including administrative or judicial challenges by third parties unrelated to the Respondent, occurs which causes delay or the reasonable likelihood of delay, in complying with the requirements of this Consent Order, 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 the 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 of this Consent Order.

9. 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 Department's identification number for the Consent Order and the county in which the subject matter or activity is located;
- (b) The name, address, and telephone number of each petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes;
- (c) A statement of how and when each petitioner received notice of the Consent Order;
- (d) A statement of how each petitioner's substantial interests are affected by the Consent Order;

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

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, Florida Statutes, before the deadline for filing a petition. Choosing mediation will not adversely affect the right to a hearing if mediation does not result in a settlement. The procedures for pursuing mediation are 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, within 10 days after the deadline as set forth above for the filing of a petition.

The agreement to mediate must include the following:

- (a) The names, addresses, and telephone numbers of any persons who may attend the mediation;
- (b) The name, address, and telephone number of the mediator selected by the parties, or a provision for selecting a mediator within a specified time;
- (c) The agreed allocation of the costs and fees associated with the mediation;
- (d) The agreement of the parties on the confidentiality of discussions and documents introduced during mediation;
- (e) The date, time, and place of the first mediation session, or a deadline for holding the first session, if no mediator has yet been chosen;
- (f) The name of each party's representative who shall have authority to settle or recommend settlement; and
- (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.
- (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.

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

11. 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.

12. 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 day per violation, and criminal penalties.

13. Respondent shall allow all authorized representatives of the Department access to the property and facility at reasonable times for the purpose of determining compliance with the terms of this Consent Order and the rules and statutes of the Department.

14. All submittals and payments required by this Consent Order to be submitted to the Department shall be sent to the Florida Department of Environmental Protection, 7825 Baymeadows Way, Suite B200, Jacksonville, FL 32256.

15. 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.

16. 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 addressed in this Consent Order.

17. Respondent acknowledges and 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, and waives that right upon signing this Consent Order.

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

19. In the event of a sale or conveyance of the facility or of the property upon which the facility is located, if all of the requirements of this Consent Order have not been fully satisfied, Respondent shall, at least 30 days prior to the sale or conveyance of the property or facility, (1) notify the Department of such sale or conveyance, (2) provide the name and address of the purchaser, or operator, or person(s) in control of the facility, and (3) provide a copy of this Consent Order with all attachments to the new owner. The sale or conveyance of the facility, or the property upon which the facility is located shall not relieve the Respondent of the obligations imposed in this Consent Order.

20. This Consent Order is a settlement of the Department's civil and administrative authority arising under Florida law to resolve the matters addressed herein. This Consent Order is not a settlement of any criminal liabilities which may arise under Florida law, nor is it a settlement of any violation which may be prosecuted criminally or civilly under federal law.

21. 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.

OGC FILE NO. 07-1228

FOR THE RESPONDENT

DATE: _____

NAME _____
TITLE _____

FOR DEPARTMENT USE ONLY

DONE AND ORDERED this _____ day of _____, 20__,
in _____, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Gregory J. Strong
District Director

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

Clerk

Date

Copies furnished to:
Lea Crandall, Agency Clerk - Mail Station 35
Aliko Moncrief, OGC (executed copy only)
Ollie Henderson, FDEP NED

BEFORE THE PUBLIC SERVICE COMMISSION

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

DOCKET NO. 060368-WS

DATED: AUGUST 21, 2007

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the DIRECT TESTIMONY OF JOHN J. DAVIS has been served by U.S. Mail to Kenneth A. Hoffman and Marsha E. Rule, Esquires, Rutledge, Ecenia, Purnell & Hoffman, P. A., P.O. Box 551, Tallahassee, FL 32302-0551, on behalf of AQUA UTILITIES FLORIDA, INC., and that a true and correct copy thereof has been furnished to the following by U. S. Mail, this 21st day of August, 2007:

Stephen Burgess & Stephen Reilly, Esquires
Office of Public Counsel
c/o The Florida Legislature
111 W. Madison Street, Room 812
Tallahassee, FL 32399-1400

Cecilia Bradley, Esquire
Office of the Attorney General
The Capitol – PL01
Tallahassee, FL 32399-1050



ROSANNE GERVASI
SENIOR ATTORNEY
FLORIDA PUBLIC SERVICE COMMISSION
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850
(850) 413-6224