

State of Florida



Public Service Commission

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

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

DATE: April 23, 2012
TO: Ann Cole, Commission Clerk, Office of Commission Clerk
FROM: Melissa C. Jones-Alexis, Regulatory Analyst II, Division of Economic Regulation *MCA*
RE: Request to Establish Docket, Bayshore Utilities, Inc.

Please replace the following item, listed on staff's April 19, 2012 memo to the Commission Clerk (copy enclosed), with the enclosed document in the above-referenced docket. The original document provided was an incomplete copy.

Florida Department of Health's letter to Wayne Wampler regarding compliance with the terms and conditions of an April 15, 2010 Consent Order, dated June 30, 2011, with Consent Order attached.

Thank you.

Enclosures

RECEIVED-FPSC
APR 23 PM 12:05
COMMISSION
CLERK

DOCUMENT NUMBER-DATE

02500 APR 23 12

FPSC-COMMISSION CLERK

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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

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

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

Thank you.

DOCUMENT NUMBER DATE
02500 APR 23 2012
FPSC-COMMISSION CLERK



Florida Department of Environmental Protection

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

Rick Scott
Governor

Jennifer Carroll
Lt. Governor

Herschel T. Vinyard Jr.
Secretary

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

COPY

June 30, 2011

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

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

Dear Mr. Wampler:

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

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

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

Thank you for your cooperation in this matter.

Sincerely

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

ABA/OJO/isc

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

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF HEALTH

10 APR 15 PM 1:32

OFFICE OF THE CLERK

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

Complainants,
vs.

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

Respondent.

CONSENT ORDER

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

The Department finds and the Respondent admits the following:

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

4. The Department finds that the following violations occurred:

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

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

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

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

ORDERED:

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

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

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

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

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

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

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

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

Total Dissolved Solids (TDS) 1200 mg/L

Chlorides 500 mg/L

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

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

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

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

8. Respondent agrees to pay the Department stipulated penalties in the amount of One Hundred Dollars (\$100.00) per day for each and every day Respondent fails to timely comply with any of the requirements of paragraphs 5, 6 and 7 of this Consent Order. The Department may demand stipulated penalties at any time after violations occur. Respondent shall pay stipulated penalties owed within 30 days of the Department's issuance of written demand for payment, and shall do so as further described in paragraph number 9 below. Nothing in this paragraph shall prevent the Department from filing suit to specifically enforce any of the terms of

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

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

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

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

12. If any event, including administrative or judicial challenges by third parties unrelated to Respondent, occurs which causes delay or the reasonable likelihood of delay in complying with the requirements of this Order, Respondent shall have the burden of proving the delay was or will be caused by circumstances beyond the reasonable control of Respondent and could not have been or cannot be overcome by Respondent's due diligence. Neither economic circumstances nor the failure of a contractor, subcontractor, material man, or other agent (collectively referred to as "contractor") to whom responsibility for performance is delegated to

meet contractually imposed deadlines shall be considered circumstances beyond the control of Respondent (unless the cause of the contractor's late performance was also beyond the contractor's control). Upon occurrence of an event causing delay, or upon becoming aware of a potential for delay, Respondent shall notify the Department by the next working day and shall, within seven calendar days notify the Department in writing of (a) the anticipated length and cause of the delay, (b) the measures taken or to be taken to prevent or minimize the delay, and (c) the timetable by which Respondent intends to implement these measures. If the parties can agree that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of Respondent, the time for performance hereunder shall be extended. The agreement to extend compliance must identify the provision or provisions extended, the new compliance date or dates, and the additional measures Respondent must take to avoid or minimize the delay, if any. Failure of Respondent to comply with the notice requirements of this paragraph in a timely manner constitutes a waiver of Respondent's right to request an extension of time for compliance for those circumstances.

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

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

does not relieve Respondent of the need to comply with applicable federal, state, or local laws, rules, or ordinances.

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

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

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

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

19. The terms and conditions set forth in this Order may be enforced in a court of competent jurisdiction pursuant to sections 120.69 and 403.121, F.S. Failure to comply with the terms of this Order constitutes a violation of section 403.161(1)(b), F.S.

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

21. Persons who are not parties to this Consent Order, but whose substantial interests are affected by it, have a right to petition for an administrative hearing under sections 120.569 and

120.57, Florida Statutes. Because the administrative hearing process is designed to formulate final agency action, the filing of a petition concerning this Consent Order means that the Department's final action may be different from the position it has taken in the Consent Order.

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

The name, address, and telephone number of each petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding;

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

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

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

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

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

A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the Department to take with respect to the Consent Order.

The petition must be filed (received) at the Department's of Health, Agency Clerk's Office, 4052 Bald Cypress Way, Bin A02, Tallahassee, Florida 32399-1703 Facsimile (850) 410-1448 within 21 days of receipt of this notice. Failure to file a petition within the 21-day period constitutes a person's waiver of the right to request an administrative hearing and to participate as a party to this proceeding under sections 120.569 and 120.57, Florida Statutes. Before the deadline for filing a petition, a person whose substantial interests are affected by this Consent Order may choose to pursue mediation as an alternative remedy under section 120.573, Florida Statutes. Choosing mediation will not adversely affect such person's right to request an administrative hearing if mediation does not result in a settlement. Additional information about

mediation is provided in section 120.573, Florida Statutes and Rule 62-110.106(12), Florida Administrative Code.


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

FOR THE RESPONDENT:

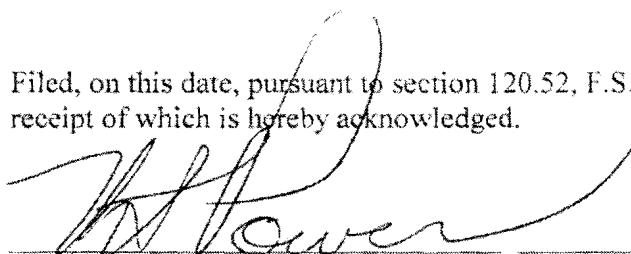
 4/10/10
WAYNE WAMPLER
BAYSHORE UTILITIES INC.

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

STATE OF FLORIDA
DEPARTMENT OF HEALTH

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

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

 4/15/2010
Clerk Date

Copies furnished to: