

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: May 17, 2018

TO: Carlotta S. Stauffer, Commission Clerk, Office of Commission Clerk

FROM: Margo A. DuVal, Senior Attorney, Office of the General Counsel *ms*

RE: **Docket No. 20140220-WU** – Application for staff-assisted rate case in Polk County by Sunrise Utilities, L.L.C.

Attached, please find a copy of the Florida Department of Health's "Petition for Enforcement of Agency Action and Verified Complaint for Injunctive Relief," filed in the Circuit Court of the Tenth Judicial Circuit in Polk County on March 23, 2018. Please place this document in the above-referenced docket file.

**IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT
IN AND FOR POLK COUNTY, FLORIDA**

STATE OF FLORIDA,)	
DEPARTMENT OF HEALTH, POLK)	
COUNTY HEALTH DEPARTMENT)	
)	CASE NO.
Plaintiff,)	
v.)	
)	
SUNRISE UTILITIES, LLC)	
)	
Defendant.)	
<hr/>		

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

COMES NOW the State of Florida, Department of Health in Polk County (hereafter, the "Health Department" or "Department"), by and through the undersigned Counsel, and moves this Honorable Court for an Order enforcing the terms of a Consent Order entered into between the Parties, and in support thereof would show:

1. This is an action for enforcement of agency action and verified complaint for injunctive and other relief brought pursuant to Sections 120.69, 403.121, 403.860 and Chapter 381, Florida Statutes (FS), and Rule 1.610, Florida Rules of Civil Procedure.
2. This Circuit Court has jurisdiction over this action pursuant to Section 26.012(3), Florida Statutes.
3. The Health Department, pursuant to Interagency Agreement with the Department of Environmental Protection (DEP), is the administrative agency of the State of Florida charged with the duty to administer and enforce the provisions of the Florida Safe Drinking Water Act, Sections 403.850, et seq., FS, and the rules promulgated

thereunder, Florida Administrative Code (FAC) Chapter 62, within Polk County, Florida.

4. The Health Department, an agency of the State of Florida as defined by Section 120.52, FS, is charged with the duty to protect the health, safety and welfare of the citizens of this community.
5. Section 403.860, FS empowers the Health Department to file for injunctive relief restraining anyone from violating or continuing to violate any order, rule or regulation issued pursuant to Chapter 403, FS and Chapter 62, FAC.
6. Defendant Sunrise Utilities, LLC (“Sunrise”), owns and operates a Community Public Water System (PWS), as defined by Section 403.852(3), FS, PWS ID No. 6531739, located at Sunrise Terrace in Auburndale, Polk County, Florida.
7. Defendant is a “person” within the meaning of Section 403.852(5), Florida Statutes.
8. Defendant supplies water to approximately 258 service connections (“Customers”) consisting mainly of residential homes.
9. On March 29, 2017, Defendant admitted to multiple violations of Chapter 62, FAC, and entered into a Consent Order with the Health Department for the maintenance, upgrade and repair of the PWS, to include replacement of the drinking water holding and treatment tanks, to be completed by September 30, 2017. See Consent Order attached and incorporated herein as Attachment “A”.
10. The Health Department issued Defendant a permit, #354615-01, on June 6, 2017 for replacement of the two drinking water tanks and other structural and capital improvements.

11. Beyond that, the Defendant has failed to complete any further steps towards compliance with the Consent Order, and continues to willfully operate its Community Water System in violation of Florida law and the Consent Order.
12. The Defendant continues to jeopardize the public health of its Customers by failing to upgrade its facility in accordance with the Consent Order and maintain it according to DEP Rules and standards. The Defendant's failure to replace the drinking water tanks, or to otherwise bring the PWS into compliance, has put at significant and urgent risk the continuous and uninterrupted delivery of safe drinking water to its Customers.
13. The Defendant, by and through its management and ownership, has demonstrated or indicated over time, that it lacks the necessary technical and operational skills and abilities, along with the necessary financial viability, to successfully provide water service in a safe, reliable, and affordable manner.
14. The Defendant's willful acts, negligence, failure to act or mismanagement as described in the above paragraphs will cause or increase the likelihood of harm to the health and safety of the community by failing to assure that its Customers and other consumers are supplied water in conformance with the Primary and Secondary Drinking Water Standards as required under Florida law.
15. The Department has expended costs and fees in initiating this action.

WHEREFORE the Health Department is entitled to injunctive and other relief against the Defendant and requests this honorable court:

- (1) Enter a Temporary and Permanent Injunction and Order compelling the Defendant to comply with the Health Department's Consent Order directing that the following actions be taken by the Defendant:
 - (A) Complete replacement of the holding and treatment tanks, as per the Consent Order directive in compliance with Florida law and the Permit issued by the Health Department within twenty (20) days of the entry of the Order enforcing agency action and awarding injunctive relief.
 - (B) In the alternative, mandate the Defendant to abandon the utility in accordance with the requirements of Section 367.165, Florida Statutes and surrender its Certificate of Authorization to the Florida Public Service Commission so that a receiver may be appointed to operate the water service.
- (2) Enter an Order compelling the Defendants to comply with the Health Department's Consent Order, paragraph 19, mandating the payment of stipulated penalties in the amount of Five Thousand Three Hundred Dollars (\$5,300.00) for failure to complete replacement of the holding and treatment tanks by December 1, 2017.
- (3) Grant the Health Department reasonable costs and attorney's fees pursuant to Section 120.69(7) Florida Statutes.
- (4) Enter an Order imposing an additional fine in the amount of \$1,000.00 pursuant to Section 120.69(2), Florida Statutes.
- (5) To award such other relief that is deemed necessary and proper.

Respectfully submitted this 23rd day of March, 2018.



ROLAND REIS, FBN 562653
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VERIFICATION

STATE OF FLORIDA COUNTY OF POLK


Before me, the undersigned authority, Gerald Robinson personally appeared, who is personally known to me, and after being first duly sworn deposes and says:

1. My name is Gerald Robinson and I work for the Department of Health, Polk County Health Department (PCHD) as the Professional Engineer (PE). I have been in this position since July, 2015.
2. I am licensed as a Professional Engineer in the State of Florida and designated as a Model Law Engineer, by the National Council of Examiners for Engineering and Surveying. Model Law Engineers have earned a bachelor's degree in engineering from an Engineering Accreditation Commission of the Accreditation Board for Engineering and Technology, Inc., - accredited program, gained four years of acceptable engineering work experience, passed the Fundamentals of Engineering and Professional Engineering exams, and maintained a clean disciplinary record.
3. Part of my job duties include application and interpretation of the Florida Safe Drinking Water Act, Sections 403.850 et seq, FS, and the rules promulgated thereunder, including Title 62, Florida Administrative Code.
4. The Department of Health, Polk County Health Department, has been authorized by the Department of Environmental Protection ("DEP") interagency agreement with the Department, to review, evaluate, and take enforcement against public water systems in Polk County pursuant to the Florida Safe Drinking Water Act. The Department of Health is also charged with the duty to investigate and abate any condition deemed to constitute a sanitary nuisance.
5. The facts set forth in this Petition for Enforcement and Verified Complaint for Injunctive Relief ("Petition") are based upon my personal knowledge, information relayed to me by fellow employees with the PCHD, and information obtained from PCHD business records and are true and correct.
6. As indicated in the Petition, after numerous and ongoing violations of the provisions of the Florida Administrative Code relating to the operation of a community water system, the PCHD entered into a Consent Order (CO) with Sunrise. Per the CO, Sunrise was required to obtain new or replacement tanks for its PWS by September 30, 2017.
7. During the time period which Sunrise has had to comply with the CO, the PCHD warned and reminded Defendant of the compliance deadlines.


8. Despite these warnings and reminders, Defendant has failed to take appropriate and necessary steps towards replacement of the tanks.

9. Sunrise is jeopardizing the public health of its Customers by failing to upgrade its facility in accordance with the CO, or otherwise come into compliance with DEP regulations. Sunrise's failure to comply with the terms of the CO will cause or increase the likelihood of harm to the health and safety of the community by failing to assure that its Customers and other consumers are supplied water in conformance with the Primary and Secondary Drinking Water Standards.

Further Affiant sayeth not.


GERALD ROBINSON

SWORN and SUBSCRIBED to before me on this 23rd day of March 2018, by GERALD ROBINSON, who is personally known to me, in Polk County, Florida.


NOTARY PUBLIC
(Notary stamp)



MERCEDES F. WILLIAMSON
MY COMMISSION # FF 180438
EXPIRES: December 2, 2018
Bonded Thru Budget Notary Services

BEFORE THE FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION

FLORIDA DEPARTMENT OF HEALTH IN
POLK COUNTY

Complainant,

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

vs.

SUNRISE UTILITIES, LLC

Respondent.
_____ /

CONSENT ORDER

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

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

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

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

VIOLATIONS

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

ATTACHMENT A

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

1. The Department, pursuant to Interagency Agreement with the Department of Environmental Protection (DEP), is the administrative agency of the State of Florida charged with the duty to administer and enforce the provisions of the Florida Safe Drinking Water Act, Sections 403.850, et seq., Florida Statutes, and the rules promulgated thereunder, Florida Administrative Code (FAC) Title 62, within Polk County, Florida. The Department has jurisdiction over the matters addressed in this Consent Order.
2. Respondent is a person within the meaning of Section 403.852(5), Florida Statutes.
3. Respondent Sunrise Utilities, LLC (Sunrise), owns and operates a Community Public Water System (PWS), PWS ID No. 6531739, located on Sunrise Terrace in Auburndale, Polk County, Florida.
4. The Managing Partner of Sunrise Utilities, LLC, is Stuart Sheldon. Stuart Sheldon has by affidavit assigned Leslie Szabo, an active partner and de facto manager, to represent Sunrise Utilities, LLC in this matter.
5. The current configuration and design of the Water Treatment Plant which constitutes the PWS known as Sunrise consists of two well heads, each with their own pumps, that feed the water first into a 3000-gallon hydropneumatic holding tank (Tank 1) and then sequentially into a 6000-gallon hydropneumatic holding tank (Tank 2), before feeding into the distribution system. This system was originally placed into service around 1970.
6. On January 14, 2016, the Department and Sunrise entered into a Consent Order (2016 CO) for overdue maintenance of Tank 1. Required maintenance included abrasive blast cleaning and interior recoating. Respondent at no point in time managed to come into compliance with the 2016 CO.
7. The 2016 CO provided for both violations of FAC Rule 62 and for progressive and cumulative fines for delays in the maintenance requirements. Respondent is responsible for the violations cited in the 2016 CO and related fines of \$3,000.
8. On or about July 19, 2016, Tank 1 developed a pinhole which lead to a temporary shutdown of the system due to loss of pressure, and disruption in the water supply to the customers.
9. Respondent Sunrise welded a metal plate over the hole to patch the leak. The welder Sunrise secured for the repair was not certified or authorized by the National Board of Boiler and Pressure Vessel Inspectors (National Board) to repair pressurized vessels. Further, neither was the repair performed under the direction of a professional engineer with expertise with American Society of Mechanical

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

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

CORRECTIVE ACTION

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

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

Accordingly, Respondent and the Department mutually agree and it is

ORDERED:

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

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

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

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

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

NOTICE OF RIGHTS

Persons who are not parties to this Consent Order but whose substantial interests are affected by this Consent Order have a right, pursuant to Section 120.57, Florida Statutes, to petition for an administrative hearing on it.

The Petition must contain the information set forth below and must be filed (received) at the Department of Environmental Protection, Office of General Counsel, 2600 Blair Stone Road, Tallahassee, Florida, 32399-2400, within 21 days of receipt of this notice. A copy of the Petition must also be mailed at the time of filing to the District Office named above at the address indicated.

Failure to file a petition within the 21 days constitutes a waiver of any right such person has to an administrative hearing pursuant to Section 120.57, Florida Statutes.

The petition shall contain the following information:

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

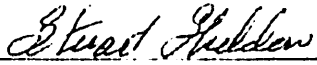
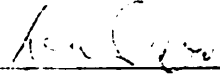
If a petition is filed, the administrative hearing process is designed to formulate agency action. Accordingly, the final action of the Department of Environmental Protection may be different from the position taken by it in this Notice.

Persons whose substantial interests will be affected by any decision of the Department with regard to the subject Consent Order have the right to petition to become a party to the proceeding. The petition must conform to the requirements specified above and be filed (received) within 21 days of receipt of this notice in the Office of General Counsel at the above address of the Department of Environmental Protection.

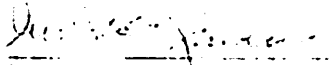
Failure to petition within the allowed time frame constitutes a waiver of any right such person has to request a hearing under Section 120.57, Florida Statutes, and to participate as a party to this proceeding. Any subsequent intervention will only be at the approval of the presiding officer upon motion filed pursuant to Rule 60Q-2.010, Florida Administrative Code.

FOR THE RESPONDENTS:

On behalf of Sunrise Utilities, LLC:

	
_____ 3/28/17	_____ 3/28/17
Stuart Sheldon Managing Partner Sunrise Utilities, LLC	Leslie Szabo Partner and Majority Owner Sunrise Utilities, LLC
Date	Date

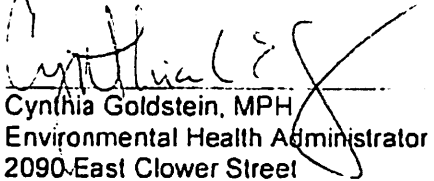
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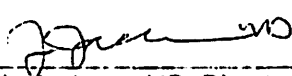


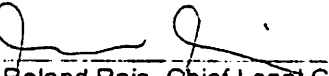
Martin Friedman, Esq. Date
Coenson Friedman, P.A.

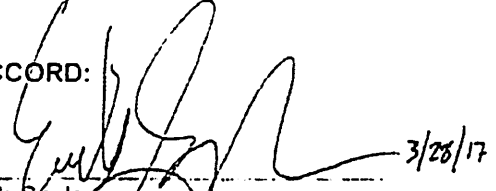
DONE AND ORDERED this 29th day of March, 2017, in Bartow, Florida

FLORIDA DEPARTMENT OF HEALTH
POLK COUNTY HEALTH DEPARTMENT


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


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


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

ACCORD:
 3/28/17
Erik Saylor
Associate Public Counsel
Office of the Public Counsel
Tallahassee, Florida