

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. 20140219-WU** – Application for staff-assisted rate case in Polk County by Alturas 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.)	
)	
ALTURAS UTILITIES, LLC)	
)	
Defendant.)	
	/	

**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 Alturas Utilities, LLC (“Alturas”), owns and operates a Community Public Water System (PWS), as defined by Section 403.852(3), FS, PWS ID No. 6530057, located in Alturas, Polk County, Florida.
7. Defendant is a “person” within the meaning of Section 403.852(5), Florida Statutes.
8. Defendant supplies water to approximately 126 service connections (“Customers”) consisting mainly of residential homes.
9. On or about September 28, 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 water holding and treatment tank, and with the initial steps to be completed by November 31, 2017. See Consent Order attached and incorporated herein as Attachment “A”.
10. With regards to the Consent Order, alternatives may be available to achieve compliance with DEP Rules. However, the findings of violations are still valid, and Defendant has been advised it is still responsible for correcting the violations and

otherwise bringing the current treatment tank and drinking water system into compliance with FAC requirements.

11. Along those lines, Defendant has failed to adhere to the stipulated schedule for PWS system repairs within the CO, to complete any of the tasks required pursuant to the CO, or to otherwise correct any of the violations found within the Consent Order.
12. Furthermore, none of the tasks recommended and required by a 2011 PE Tank Inspection Report referenced in the CO has been completed. Defendant continues to willfully operate its Community Water System in violation of these recommendations and of Florida law.
13. Inasmuch as the PWS continues to operate in disrepair and neglect, the Defendant continues to jeopardize the public health of its Customers by failing to correct its facility in accordance with the Consent Order and maintain it according to DEP Rules and standards.
14. The Defendant, by and through its management and owners, has demonstrated or indicated over time, that it lacks the necessary management, operational and technical skills and abilities, along with the necessary financial viability, to successfully provide, for now and the reasonably foreseeable future, a secure and viable water service in a safe, reliable, and affordable manner.
15. The Defendant's willful acts, negligence, 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.

16. 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) Order full compliance with all terms of the Consent Order within thirty (30) days of the entry of the Order enforcing agency action and awarding injunctive relief.

(B) In the alternative, Order that Defendant secure a current Professional Engineering Inspection Report of the Tank, while completing all recommended and necessary PWS repairs and correcting all violations, in compliance with Florida law within twenty (20) days of the entry of the Order enforcing agency action and awarding injunctive relief.

(C) In the alternative, mandate the Defendant to abandon Sunrise 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) Grant the Health Department reasonable costs and attorney's fees pursuant to Section 120.69(7) Florida Statutes.

(3) Enter an Order imposing an additional fine in the amount of \$1,000.00 pursuant to Section 120.69(2), Florida Statutes.

(4) To award such other relief that is deemed necessary and proper.

Respectfully submitted this 23rd day of March, 2018.



ROLAND REIS, FBN 562653
Chief Legal Counsel
Florida Department of Health
1290 Golfview Avenue, 4th Floor
Bartow, Florida 33830
Tel. (863) 578-2105
Roland.Reis@flhealth.gov

VERIFICATION

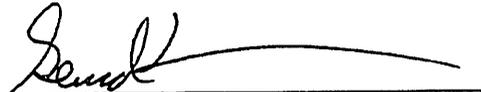
STATE OF FLORIDA COUNTY OF POLK

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

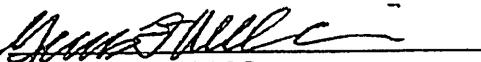
1. My name is Gerald Robinson and I work for the Department of Health, Polk County Health Department (PCHD) as the staff Professional Engineer (PE). I have been in this position since July, 2015.
2. I am licensed as a Professional Engineer in the State of Florida and designated as a Model Law Engineer, 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") 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, customers serviced by Alturas Utilities, LLC ("Alturas") 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 Alturas. Per the CO, Alturas was originally required to obtain a new or replacement tanks for its PWS, with Alturas to submit its initial Facilities Plan and Application by November 30, 2017.

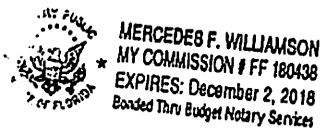
7. In January 2018, the Department has taken into consideration the possibility that the tank replacement might no longer be necessary, pending an overdue PE tank inspection report. However, other violations continue to exist and maintenance actions would still be necessary. This would include cleaning and coating the interior of the tank; repainting the exterior of the tank; repairing or replacing the saddles supporting the tank; and securing a new PE tank inspection report.
8. During the time period which Alturas has had to comply with the CO, and to the best of my knowledge and belief, Alturas has failed to make any appropriate and necessary efforts to come into compliance with the CO or with DEP regulations.
9. Alturas is jeopardizing the public health of its Customers by failing to maintain its facility in accordance with Florida law. Alturas's failure to correct the violations as outlined in 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)



BEFORE THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

FLORIDA DEPARTMENT OF HEALTH IN POLK COUNTY

IN THE OFFICE OF THE SOUTHWEST DISTRICT

Complainant,

OGC CASE NO. 17-653PW0057

vs.

ALTURAS UTILITIES, LLC

Respondent.

CONSENT ORDER

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

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 Alturas Utilities, LLC (Alturas) is a person within the meaning of Section 403.852(5), Florida Statutes.
3. Respondent Alturas owns and operates a Community Public Water System (PWS), PWS ID No. 6530057, located in Alturas, Polk County, Florida. Alturas PWS is serviced by a single 3,000-gallon holding and treatment tank ("Tank"). The Utility was first placed into operation in 1952.
4. On December 1, 2011, Respondent Alturas conducted a 5-year engineering tank inspection as required by Rule 62-555, FAC. The engineering report ("Report") was issued January 11, 2102.

ATTACHMENT A

5. Among its recommendations, the Report indicated that Alturas (1) as required maintenance, needed to paint the exterior, and clean and coat the inside of the Tank prior to its next required or scheduled 5-year inspection (i.e., by December 2016); and (2) needed to repair or replace the cradles within 2½ years (i.e., by June 2014).
6. In accordance with Chapter 62-555.350(2), FAC, 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.
7. Respondent Alturas has failed to undertake maintenance of the Tank, within the 5-year interim report period, as required in the 2011 Report, by painting the exterior of the Tank, and by cleaning and coating the interior, in violation of Chapter 62-555.350(2), FAC.
8. Respondent Alturas has failed to repair or replace the cradles within the 2 ½ years as required by the 2011 Report, and in violation of Chapter 62-555.350(2), FAC.
9. Respondent Alturas was last due for an inspection of its Tank in December of 2016. Alturas has failed to conduct its 5-year tank inspection in violation of Chapter 62-555.350(2), FAC.
10. The Department previously provided Alturas with Warning Notices regarding the above-noted requirements and violations on November 14, 2016, and on January 18, 2017.

The Department and Respondent pursuant to negotiations have reached resolution of the matter, pursuant to Rule 62-103.110(3), FAC. Respondent and the Department mutually agree and it is

ORDERED:

11. Respondent Alturas shall replace the Tank according to the following schedule:

DEADLINE DATE	TASK
November 30, 2017	Submit Facilities Plan and Application to Polk CHD and other agencies.
December 31, 2017	Full permit for Hydroponic Tanks Replacement and other improvements.
January 30, 2018	Complete Public Hearing to Adopt Facilities and Business Plans.
February 28, 2018	Submit Feasible Plans and Specs to Polk CHD.
March 30, 2018	Complete Financial Assistance

June 30, 2018	Application, DWSRF Public Meeting
September 30, 2018	Advertise for Bids
November 31, 2018	Start Project Construction.
December 31, 2018	Complete Project Construction. Complete operational performance of the project and close out the project.

12. The fines and administrative costs associated with these current violations shall be based on adherence to the scheduled deadlines stipulated above, according to the following schedule:

Date	Fine	Admin Costs
<30-Day Delay	\$500.00	\$200.00
30-Day Delay	\$1,000.00	\$250.00
60-Day Delay	\$2,250.00	\$275.00
>90-Day Delay	\$5,000.00	\$300.00

13. Thirty days (30) after Respondent has complied with the conditions of this Consent Order, Alturas shall pay the Department stipulated fines and administrative costs, if any, as outlined in the above table. These amounts include civil penalties for alleged violations of Section 403.859, Florida Statutes, and of the DEP rules for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of this Consent Order. Payment shall be made by check or money order. The instrument shall be made payable to the 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 Department of Health in Polk County, 2090 East Clower Street, Bartow, Florida 33830.
14. Entry of this Consent Order does not relieve Respondent Alturas of the need to comply with the applicable federal, state or local laws, regulations or ordinances. Respondent Alturas recognizes the deteriorated condition of the Tank and saddle support, and that Respondent Alturas is otherwise responsible for any emergency responsive action that may be necessary in response to failure of the PWS, pending compliance completion of this Consent Order.
15. 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.
16. Respondent Alturas 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 \$5,000.00 per offense, and criminal penalties.

17. Respondent Alturas 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 DEP Rules.
18. 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.
19. 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.
20. The Department, for and in consideration of the complete and timely performance by Respondent of the obligations agreed to in this Consent Order, hereby waives its right to seek judicial imposition of damages or civil penalties for alleged violations outlined in this Consent Order. Respondent acknowledges but waives 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.
21. 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.
22. No modifications of the terms of this Consent Order shall be effective until reduced to writing and executed by both Respondent and the Department.
23. 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.
24. 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.
25. This Consent Order is final agency action of the Department and DEP 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, 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.

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, and to the Polk County Health Department. 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 RESPONDENT:

We, on behalf of Alturas Utilities, LLC, HEREBY ACCEPT AND CONSENT TO THE TERMS OF THE SETTLEMENT OFFER AND ORDER IDENTIFIED ABOVE.

Stuart Sheldon 9-25-17 [Signature] 9/25/17
Stuart Sheldon, President Date Leslie Szabo, Owner Date
Alturas Utilities, LLC

DONE AND ORDERED this 28 day of September, 2017, in Bartow, Polk County, Florida

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

[Signature]
Cynthia Goldstein, MPH, REHS
Environmental Health Administrator
2090 East Clower Street
Bartow, Florida 33830

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

FILED AND ACKNOWLEDGED this 28 day of September, 2017.

Ron Stadelbacher
Ron Stadelbacher
Environmental Supervisor III

Copy furnished to:

Roland Reiss, Chief Legal Counsel