

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL

In re: Application for transfer )  
of Certificate Nos. 592-W and )  
509-S from Cypress Lakes )  
Associates, Ltd., to Cypress Lakes )  
Utilities, Inc., in Polk County. )  
\_\_\_\_\_ )

DOCKET NO. 971220-WS

Submitted for Filing:  
September 10, 1999

UTILITY'S RESPONSE TO  
COMMISSION STAFF'S  
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the attached Utility's Response to Commission Staff's First Request for Production of Documents has been sent to Harold McLean, Esq. Office of Public Counsel, 111 W. Madison St., Tallahassee, FL 32399-1400; Roger A. Larson, Esq., attorney for Cypress Lakes Associates, Ltd., P.O. Box 1368, Clearwater, FL 33757; and to Jennifer Brubaker, Esq., Division of Legal Services, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee FL 32399-0850, by U.S. mail this 10<sup>th</sup> day of September, 1999.



Ben E. Girtman  
FL BAR NO. 186039  
1020 E. Lafayette St.  
Suite 207  
Tallahassee, FL 32301

Attorney for Utilities, Inc. and  
Cypress Lakes Utilities, Inc.

DOCUMENT NUMBER-DATE

10933 SEP 10 1999

FPSC-RECORDS/REPORTING

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

**Docket No. 971220-WS**

**Application for Transfer to of Certificate Nos. 592-W and 509-S from Cypress Lakes Associates, Ltd. To Cypress Lakes Utilities, Inc. in Polk County**

**Commission Staff's First Request for Production of Documents**

- 1. Please provide copies of any documents used in responding to Staff's First Set of Interrogatories, Interrogatory No. 4, relating to an evaluation of the Cypress Lakes Utility system by Utilities, Inc.**

See attached.

MEMORANDUM

TO: James Camaren, Andrew Dopuch, Donald Rasmussen  
FROM: Jerry Buhr *JB*  
SUBJECT: First Report - Cypress Lakes  
DATE: June 26, 1997

I have completed my preliminary review of the above-referenced site, and selected documents. I have not conducted an exhaustive review of every document available, however, I have obtained and reviewed copies of documents from Polk County, DEP, and Andy Dopuch. As a part of my site review, I observed the wastewater treatment plant ("WWTP") in operation, observed the water treatment plant in operation, one effluent storage pond at the golf course, and observed one (1) typical lift station. I discussed the utility with an official at Polk County, DEP inspectors Joe Squitieri and Michelle (Hennessy) Duggan, N.D. Walker of the PSC water and sewer division, former owner's agent Tom Goodell, P.E., William Murchie, P.E., the project's engineer under a prior owner (prior to current owner), and briefly with George macFarlane, C.P.A., who handled the financial aspects of the utility. I have a call into George MacFarlane to discuss the utility in more detail, however, he will not be back from his vacation until July. Prior to concluding my review, someone should contact the current owners and engineers

about several questions raised in my review.

PSC documents should be reviewed once the PSC has completed its review, and the client should request a number of documents from the seller as part of the purchase agreement. The client should also have an engineer review the most critical aspects of treatment plant compliance (i.e. capacity of WWTP and effluent disposal). In addition, I always advise that commercial real estate purchases be preceded by environmental assessment of the site. Supplemental environmental reviews should be performed if indicated by the Phase I assessment. Failure to perform these assessments could cause you to incur to significant cleanup liability for prior owners' unlawful discharges of hazardous substances on the site.

My impression of the WWTP after site observation of the facility is that the facility appears clean, and there were no immediately apparent operational faults. Utilities, Inc., should by now be familiar with the good, the bad and the ugly in this respect by now, having operated the facilities for a few months. However, you should note, and probably have noted that you are not operating the facility at its peak. The DEP records appear to show the peak period for this facility between November and March, with some peaking in October and April.

### **Capacity**

It appears clear from the records that the facility has reached its effective capacity, if not its rated capacity, as surges are reported as a major problem. It is possible that the effective

capacity could be improved with improved operation provided by Utilities, Inc. B. Murchie said that in 1994 - 1995 he observed that the facility had a lot of potential, but was poorly operated. As for capacity, he had designed a new surge tank which he believed had been installed. He said he felt that the golf course probably could not handle the full build-out (1500 units) of the subdivision because it lacked adequate storage capacity at that time. If the storage is provided, the golf course could handle the effluent. Tom Goodell felt that there was adequate storage capacity "if adequately operated." He commented that poor operation was the plant's primary problem. My conclusion from the records and phone conversations is that an engineer needs to verify capacity of both the WWTP (including surge capacity) and the golf course reuse system.

Michelle Duggan stated that capacity was a big issue because there has been so much "erroneous information" provided to DEP in the past. They question the reliability of flow measurements. The owners might have used the wrong "cams" for the flow meter; calibration may be wrong; they could have been reading wrong chart; according to Duggan, "anything is possible". It is possible, nonetheless, that all of the problem could have been operational. Only one filter had automatic backwash and so only one of the two separate treatment "trains" was working at night. During the peak season, it was too much flow with sidestreams, and the plant would send to reject; then the reject would pump back to the plant

overloading the surge capacity - it became a domino effect. Duggan said that she had calculated a \$44,500 penalty and presented it to them at a meeting, however, they do not believe that they will actually make them pay that much. Joe Squitieri had told me earlier that if Utilities, Inc. purchases, they might not charge any penalty. Duggan said that whether Utilities, Inc. buys or not it will not affect the enforcement. It is my understanding that Squitieri is Duggan's supervisor. When asked regarding a consent order, Duggan said she felt that only a "short form" consent order would be needed, as they will likely have corrected the problems by the time a long form consent order was negotiated and approved. This normally tells me that they do not consider the facility to be in severe need of structural improvement.

Duggan said that the utility has committed 162,800 gallons per day at their 160,000 gallon per day WWTP, so no new connections will be approved without plans for expansion, or reasonable assurances that the facility has not over-committed its capacity. It should be noted, however, that correspondence from the file in 1993 & 1994 show that the facility had committed .166 MGD and .166, respectively. Needless to say, a close review of the capacity issues needs to be made by an engineer in order to determine the magnitude of your exposure to lose for this issue. Further, it is not clear whether additional surge capacity is also needed, as the DEP sent a letter to the owners in 1995 saying that an operator believed it was inadequate, yet, it is entirely possible that

inadequate or incompetent operations caused the surges with sidestream flows. In spite of all these issues and DEP's apparent belief that the project has over-committed already, Gaylor Engineering (owner's engineers) signed off on a Capacity Analysis Report dated November 6, 1996, stating that the facility only exceeded 50% capacity on a peak three month basis in February 1995, and would need expansion to meet flows expected in January, 2000.

Gaylor Engineering wrote letter on March 31, 1997, in response to noncompliance letters from DEP, saying that the flow meter was not calibrated on an annual basis as required, and that peaking problems were caused by shutting down the 60,000 gallon per day portion of the plant at night because it lacks automatic backwashing (see above). Duggan told me that DEP would not close the enforcement matter until the utility had:

1. Modified the filter at the 60,000 gpd plant to backwash automatically. The Gaylor Engineering letter promises to accomplish that.
2. Replace the present chlorine meter with an appropriate meter. The Gaylor Engineering letter promises to accomplish that.
3. Provide "O & M" manual. The Gaylor Engineering letter does not address an O & M manual, but makes reference to providing an Operating Protocol for the reuse system.

In addition, in a letter dated May 12, 1997, Gaylor Engineering states that the flow meter is being replaced.

### **Miscellaneous WWTP Issues**

While at the site, I observed that the storage ponds did not have the required warning signs, and there were severe tears in the reject pond lining. There was a generator at the WWTP, however, the operator told me it would not run the necessary facilities in a power outage. If this is so, it will need to be replaced. Tom Goodell told me that they picked that generator up "used", and he felt that it would not be long before it would have to be replaced. Other than these issues, the effluent was very clear, and the biomass appeared in good health.

### **Water Treatment Plant**

The WTP facility is regulated by the Polk County Public Health Unit (HRS) by delegation from DEP, with DEP only taking a secondary role. I could not contact Gene Jeffers at Polk County at this writing because he was on annual leave, however, a friend of mine at DEP looked the facility up on the DEP/Polk County computer. According to Bill Dunn of DEP, the WTP has a design capacity of 940,000 gpd, with a 940,000 max day, and average consumption of 400,000 or roughly half of the design, and has 20,000 gallons of storage capacity. There are no outstanding enforcement issues, and the last noncompliance letter was sent to them in 1995 regarding failure to sample. Bill could find no enforcement issues back to 1994 except for other failures to sample in 1994 and 1996. At one time a bacteriological analysis ostensibly for potable water was performed on the wastewater effluent in error. DEP records show 766 connections, but do not rely on that number.



Nitrate/nitrites were last sampled in 1996 and were at 0.0. There will be a requirement to perform the large chemical analysis at the end of this year (\$1,000-\$2,000). They should be monitoring quarterly for pesticides and PCBs, however, they have a waiver on VOCs to once per three years. They are on revised monitoring for lead and copper, as the only lead "hit" was in 1994 at .08 mg/l, and copper comes in at way less than 1.

As with the WWTP, at my site review the facility itself appeared clean and well maintained. There appeared to be a form of generator with automatic switchover, but I could not determine whether the generator system was sufficient to meet the rule. An engineer would need to determine the adequacy of the generator. Bill Murchie said that the generator ran fine, however, if problems arise, the electrical system is a total nightmare to repair or even figure out. The installers refused to provide a schematic of the design, and Bill recommended to the owners that they have an electrical expert do a schematic from scratch. I do not know if that was ever done. According to Bill, the problem is that the installers charge a lot to check and repair the system, and hope to keep their job by refusing to turn over the schematics.

I also noted that the WTP site is used for storage of all manner of supplies and equipment for the subdivision. It may not be included in the sale, however, this will obviously be resolved in negotiations. It does appear from the records that there are some

water mains which are leased rather than owned by the utility. Tom Goodell told me that this was done to avoid the income tax "gross up". The utility was advised that if the lines were never deeded to the utilities, they would never have to pay an income tax for the CIAC, and therefore, would never have to obtain the tax gross up from the developer to pay the taxes. Since the legislature has now eliminated that tax, you should insist that they donate those lines as part of the sale. Carl Wenz should be consulted to see what the best way of making that transfer for rate purposes is today.

Tom Goodell also informed me that, at least when they owned the system, there were 230 units of homes that did not have water meters because the service for that first phase was included in the use of the property. If this is true, it is entirely possible that those 230 units will never have to pay for service to anyone, as their "contract" could exclude them and their successors from such payment. This obviously bears further investigation, because if the property is rented, then this could be changed; however, if the property is owned, it will be unlikely that it could be changed.

#### **General Issues**

1. Any real property transfer should be evaluated under at least a phase one assessment performed by competent environmental science specialists.

2. CIAC transfers between the developer and the related utility corporation should be reviewed to ensure that there is little or no risk of future deductions for such transfers. The PSC review of the utility pursuant to taking over ownership is unlikely to have revealed such transfers, however, it is likely that John Sheahan would have performed that evaluation when he did the Polk County review of the utility's rates.

3. A complete resolution of the DEP issues should be obtained prior to transfer, or a consent order entered which states all issues and the manner and time for resolving such issues.

4. The cost of making the second filter bank automatic should be considered unless the seller has completed that work.

5. The cost of expanding the WWTP should be considered to the extent that capacity fees for additional units have already been collected or otherwise promised. Either way, such expansion plans should be initiated immediately.

6. I could find no agreement concerning the rights and duties of the utility and golf course owners for handling the reuse water. I could only find a covenant running with the land which stated the right of the utility to spray on the golf course in very broad terms. The agreement should either be obtained, or if one does not exist, a more precise description of duties between the golf course and utility should be drafted as part of the sale.

7. N.D. Walker of the PSC said that the certificates had been issued for the utility, and the rates set; however, he would not say whether any latent rate-making issues like CIAC had been

resolved by the PSC review, but said that he felt certain that if such issues existed, Sheahan would have made an issued of them in the last Polk County rate case.

**Other Issues/Review to be resolved or completed (preliminary list)**

1. Need to discuss capacity and WWTP improvement issues with the engineers at Gaylor, and the sellers.
2. Need to discuss and resolve the 230 unmetered units, the leased lines, and the golf course reuse agreement.
3. Need to discuss WTP with Jeffers of Polk County Health Unit.
4. Need to discuss any potential rate-making or tariff issues with Sheahan because the PSC has not closely reviewed those matters at this time.
5. Need to discuss the utility with Fred Babb and obtain his representations concerning the utility system operating properly except as already shown in DEP documents.
6. If possible, discuss the system with prior operators to see if they are aware of any latent defects not already discovered.
7. Easements for all lines up to and including the meters for the water and up to and including sewer lateral "wyes". You should consider the cost/benefit of having the lines located and verified in the easements, or obtaining economically-backed warranties that such lines are in the easements.

8. Need to reconcile commitments for service with capacity at the treatment plants, and to the extent possible, collection/distribution systems.

**Further documents helpful in review (if they exist)**

1. Contracts for service to existing homes.
2. Contracts showing obligation to provide service to future units. -
3. Any other contracts which will obligate new owner.
4. Effluent reuse agreement for golf course.
5. Hydrogeologic reports predicting golf course capability to dispose of effluent (for review by engineer).
6. Prospectus for subdivision (if any) showing rights and obligations concerning water and wastewater service - especially concerning the initial 230 units discussed above.

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

**Docket No. 971220-WS**

**Application for Transfer to of Certificate Nos. 592-W and 509-S from Cypress Lakes Associates, Ltd. To Cypress Lakes Utilities, Inc. in Polk County**

**Commission Staff's First Request for Production of Documents**

- 2. Please provide copies of any documents used in responding to Staff's First Set of Interrogatories, Interrogatory No. 1, relating to letters, notices of violation or consent orders from the Florida Department of Environment of Protection or Polk County**

See attached.



# Department of Environmental Protection

Lawton Chiles  
Governor

Southwest District  
3804 Coconut Palm Drive  
Tampa, Florida 33619

Virginia B. Wetherell  
Secretary

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

January 28 1997  
Polk County-DW

Mr. M. Steven Sembler  
Cypress Lakes Associates, Ltd.  
c/o Sembler Investments  
5858 Central Avenue  
St. Petersburg, FL. 33707

re: Warning Letter No. WL970001DW53SWD  
Cypress Lakes Wastewater Treatment Plant

Dear Mr. Sembler:

The purpose of this letter is to advise you of possible violations of law for which you may be responsible, and to seek your cooperation in resolving the matter. A field inspection and file review conducted on January 17, 1997 indicate that a violation of Florida Statutes and Rules may exist at the above described facility. Department of Environmental Protection personnel observed the following:

1. Monthly Operating Reports indicate that influent CBOD5 and TSS and effluent CBOD5, TSS and Nitrate are not being sampled every two weeks, as required.
2. Monthly Operating Reports indicate that the permit limit for Fecal Coliform counts was exceeded once in May and once in June, 1996.
3. The May and June, 1996 Monthly Operating Reports indicate that the geometric mean of the Fecal Coliform results was incorrectly calculated.
4. The February and March, 1996 Monthly Operating Reports indicate that Fecal Coliform was not sampled daily, as required.
5. Monthly Operating Reports indicate that Percent Capacity is being incorrectly calculated.
6. Monthly Operating Reports indicate that CBOD5, TSS and Nitrate are not being correctly recorded on the summary page.
7. The November, 1996 Monthly Operating Report indicates that the Fecal Coliform sampling and analysis times are the same.
8. The flow measuring device has not been calibrated annually as required.
9. The surge tank was completely full and bypassing into the aeration tank. Therefore, the surge tank was not functioning properly.
10. Several air diffusers were leaking.

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

Printed on recycled paper.

11. There were excessive solids on the surface of both clarifiers.
12. The stilling well of the east plant contained foam which was carrying over into the clarifier.
13. Solids were observed going over both weirs and entering the chlorine contact chamber.
14. The gas chlorination system lacked proper safety features. There was no ammonia solution and the scales were not being used.
15. The east sand filter was clogged.
16. The reuse system reject alarm light was lit. There was, however, no diversion of effluent to the reject pond taking place, indicating an override of the automatic reject system.
17. The reject pond had recently overflowed its berms and flowed into a nearby wetland. However, the Department did not receive notification of this abnormal event.
18. The Department has not received the annual summary report of sludge removed from the plant.
19. The reject pond completely full, therefore, one day of storage in the pond was not being maintained.

Although not a violation, you are hereby requested to provide to the Department an update to your Operating Protocol required for public access reuse systems, pursuant to the guidelines for Operating Protocols established in Rule 62-610.320(6), Florida Administrative Code.

Rule 62-601.300(1), Florida Administrative Code, provides that wastewater treatment facilities shall monitor the influent for CBOD5 and suspended solids, and the reclaimed water for all reclaimed water limitations which are identified in the wastewater permit.

Rules 62-4.130 and 62-600.750, Florida Administrative Code, provide that if the permittee is temporarily unable to comply with any of the conditions of the permit due to breakdown of equipment or destruction by hazard of fire, wind or by other cause, the permittee shall immediately notify the Department.

Rule 62-600.740(2)(g), Florida Administrative Code, provides that the submission, by the owner, manager or operator of a domestic wastewater facility, or agent thereof, of false, misleading or inaccurate information or operational reports to the Department, either knowingly or through neglect, is prohibited.

Rule 62-600.440(5)(f), Florida Administrative Code, provides that for facilities to provide high-level disinfection shall be designed to result in a reclaimed water in which any one fecal coliform sample shall not exceed 25 fecal coliform values per 100mL of sample.

Rule 62-601.200(17), Florida Administrative Code, provides that a flow measuring device shall be calibrated annually.

Rule 62-600.410(6), Florida Administrative Code, provides that all facilities and equipment necessary for the treatment, reuse and disposal of domestic wastewater and domestic wastewater residuals shall be maintained, at a minimum, so as to function as intended.

Rule 62-600.740(2)(a), Florida Administrative Code, provides that it is a violation, and therefore prohibited, to release wastewater effluent or residuals without proper treatment.



Warning Letter No. WL970001DW53SWD  
Page Three

Section 403.088, Florida Statutes, and Rule 62-3.404, Florida Administrative Code, provide that it is a violation, and therefore prohibited, for a facility to cause or allow the disposal of pollutant materials onto the ground, if the disposal results in a discharge to groundwater.

Rule 62-610.462(1), Florida Administrative Code, provides that public access reuse systems shall have a minimum Class I reliability as described in Rule 62-610.300(4)(c), Florida Administrative Code.

Rule 62-640.700(3)(p), Florida Administrative Code, provides that records of residuals application rates must be maintained by the wastewater treatment plant permittee and must be available for inspection upon request by the Department. Rule 62-640.700(3)(p), F.A.C. further provides that a summary of the total domestic wastewater residuals, nitrogen and heavy metals applied on an annual basis shall be provided.

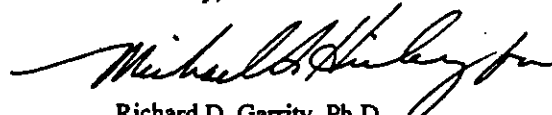
Rule 62-610.464(3), Florida Administrative Code, provides that reject water storage shall have, at a minimum, the volume equal to one day flow at the average daily design flow of the treatment plant, or the average daily permitted flow of the wastewater treatment plant, whichever is less.

The activities observed during the Department's field inspection and any other activities at your facility that may be contributing to violations of the above described statutes or rules should be ceased. Operation of a facility in violation of state statutes or rules may result in liability for damages and restoration, and the judicial imposition of civil penalties up to \$10,000.00 per violation per day pursuant to Sections 403.141 and 403.161, Florida Statutes.

**YOU ARE HEREBY REQUESTED TO CONTACT MICHELE HENNESSY DUGGAN at (813) 7446100, extension 335 within 15 days of receipt of this Warning Letter to arrange a meeting to discuss this matter. The Department is interested in reviewing any facts you may have that will assist in determining whether any violations have occurred. You may bring anyone with you to the meeting that you feel could help resolve this matter.**

PLEASE BE ADVISED that this Warning Letter is part of an agency investigation, preliminary to agency action in accordance with Section 120.57(4), Florida Statutes. We look forward to your cooperation in completing the investigation and resolution of this matter.

Sincerely,



Richard D. Garrity, Ph.D.  
Director of District Management  
Southwest District

RDG/mhd  
cc: Michael Christopher, COS

RECEIPT FOR CERTIFIED MAIL  
 NO INSURANCE COVERAGE PROVIDED  
 NOT FOR INTERNATIONAL MAIL  
 (See Reverse)

Sent to	Steven Sembler
Street and No	5858 Central Ave.
P.O. State and ZIP Code	St. Petersburg, FL 33707
Postage	
Certified Fee	
Special Delivery Fee	
Registered Delivery Fee	
Return Receipt (Form 3800)	
Date and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	Polk Cypress Lake WTP Jan. 28, 1997

PS Form 3800, June 1985

Is your RETURN ADDRESS completed on the reverse side?

**SENDER:**  
 Complete items 1 and/or 2 for additional services.  
 Complete items 3, 4a, and 4b.  
 Print your name and address on the reverse of this form so that we can return the card to you.  
 Attach this form to the front of the package, or on the back if space does not permit.  
 Write "Return Receipt Requested" on the package below the article number.  
 The Return Receipt will show to whom the article was delivered and the date delivered.

3. Article Addressed to:  
 M. Steven Sembler  
 Cypress Lakes Associates  
 c/o Sembler Investments  
 5858 Central Ave.  
 St. Petersburg, FL 33707

5. Received By: (Print Name)

6. Signature: (Address or Agent)

7. Date of Delivery: 2/4/97

8. Addressee's Address (Only if requested and fee is paid)

4b. Service Type  
 Certified  
 Registered  
 Express Mail  
 Return Receipt for Merchandise  
 COD

4a. Article Number: P 079 940 617

1.  Addressee's Address  
 2.  Restricted Delivery  
 Consult postmaster for fee.

I also wish to receive the following services (for an extra fee):

Thank you for using Return Receipt Service.

PS Form 3811, December 1984  
 Domestic Return Receipt



Department of  
**Environmental Protection** Florida Department of  
**Environmental Protection**

Lawton Chiles  
 Governor

Southwest Florida  
 3804 Coconut Palm Drive  
 Tampa, Florida 33619

Virginia B. Wetherell  
 Secretary

**Memorandum**

TO: Richard D. Garrity, Ph.D.      RETURN TO: Michele Duggan

THROUGH: Michael S. Hickey, P.E. *MSH 1/28*  
 Ed Snipes, P.E.  
 Tom Gucciardo *TG 1/27*  
 Joe Squitieri *JS*

FROM: Michele Duggan

DATE: January 24, 1997

SUBJECT: Compliance/Enforcement File Routing Form  
 Domestic Wastewater Program COUNTY: Polk

FILE NAME: Cypress Lakes Associates, Ltd. (Cypress Lakes WWTP)

- |   |   |
|---|---|
| <input checked="" type="checkbox"/> Warning Letter<br><br><input type="checkbox"/> Draft NOV (to OGC)<br><br><input type="checkbox"/> Revised NOV (to OGC)<br><br><input type="checkbox"/> Final NOV (D.D.M. sign)<br><br><input type="checkbox"/> Draft CO (to OGC)<br><input type="checkbox"/> Revised CO (to OGC)<br><br><input type="checkbox"/> Final CO (Respondent sign)<br><br><input type="checkbox"/> Final CO (D.D.M. sign)<br><br><input type="checkbox"/> Short Form CO (D.D.M. sign)<br><input type="checkbox"/> Case Report (to OGC) | <input type="checkbox"/> Draft Final Order (to OGC)<br><br><input type="checkbox"/> Final Order (D.D.M. sign)<br><br><input type="checkbox"/> Press Release Request to be sent to Talla. (see attached form)<br><br><input type="checkbox"/> NOV/CO Closure<br><input type="checkbox"/> OGC Case Closure<br><input type="checkbox"/> Action Item<br><br><input type="checkbox"/> Draft Correspondence for D.D.M./W.F.A./Program Mgr/Compl/Enf Mgr<br><br><input type="checkbox"/> Approval for Penalty by Secretary verified by OGC<br><br><input type="checkbox"/> Other |
|---|---|

COMMENTS: Warning Letter addressing chronic operation/maintenance violations as well as failure to notify of an abnormal event and continuing reporting violations.

**FACILITY OVERVIEW**

Facility: Cypress Lake GMS ID No.: 4053P10096  
 County: Polk Permit No.: D053-231915C Expiration Date: 7.23.98

Sampling Frequency					0.8-lbC-22d	5-g-22d	12.8-lbC-22d	25-g-daily	
Report		Flow @ 160		CBOD	TSS	NO <sub>3</sub>	F.C.	Other	
Mo.	Dt Rcvd	MGD	%						
1/2-27	12/95	1.3196	0.074	46.3	2.9 (0.7)	0.5	28/56	<1	
1/6-24	1/96	2.2296	0.079	49.4	18/2.6	2.4/1.1	4.4/2.8	<1	
2/7-21	1/96	3.2596	0.082	51.3 (49)	2.4/2.2	1.3/2.3	5.5/5.2	<1	not sampling FC daily
3/6-20	1/96	4.2596	0.085	53.1 (51)	2.0/2.3	1.1/2.6	0.42/5.7	<1	no FC times not sampling FC daily
4/3-17	4/96	5.3196	0.073	45.6 (50)	2.0/2.1	1.1/2.6	2.87/0.08	<1	no FC + new
5/15-29	5/96	6.2696	0.084	33.8 (44)	2.5/2.2 (2.8)	1.6/1.6 (2.0)	3.70/2.82	<1 *	1 out of 40 FC No FC times No sampling times not TN/C/Nit
6/12-26	6/96	7.2496	0.052	32.5 (31)	2.2/2.0	1.1/2.7	4.96/8.39	<1 *	No sampling times not TN/C/Nit
7/10-24	7/96	8.2696	0.050	31.3 (33)	2.2/2.0	2/2.2	10.7/3.50	<1	no FC times
8/7-21	8/96	9.2596	0.050	31.3 (32)	4.3/3.6	1.1/0.6	4.96/1.80	<1	FC no sampling times/1st apt
9/5-19	9/96	10.2896	0.052	32.5 (32)	2.6 (2.5)	2.4	2.85	<1	
10/2-16	10/96	11.2696	0.062	38.8 (34)	3.0 (2.77)	1.5	0.559 (0.59)	<1	NO <sub>3</sub> not sampled 19/20
11/15-26	11/96	11.397	0.071	44.4 (37)	3.0	1.4 (3.0)	1.9 (7.2)	<1	NO <sub>3</sub> not sampled 19/20
Total		0.784		52.17				* not calc. gm correctly	
Average		0.065		2.087					

Sludge Analyses: 6 mos 7/96 2/96  
 Annual Updates: Stokis Cattle Co  
 RPZ Certification: \_\_\_\_\_  
 Flow Meter Calibration: \_\_\_\_\_

FC sampling 11.26.96 sample 2 samples times 11/15/96

Comments: Molds have additional columns on 1st pic for additional samples, rather than averaging CBOD, TSS + listing highest CBOD

Reviewed By: Michelle Duggan Date: 1.24.97

Sampling 2x monthly, not every 2 wks. for CBOD, TSS, NO<sub>3</sub>

BEFORE THE STATE OF FLORIDA

POLK COUNTY HEALTH DEPARTMENT

FLORIDA DEPARTMENT OF HEALTH  
POLK COUNTY HEALTH DEPARTMENT

IN THE OFFICE OF THE  
SOUTHWEST DISTRICT

Complainant,

vs:

OGC CASE NO.98-653PW5055A

Robert B. Young  
Cypress Lakes Utility, Inc.

Respondent.

CONSENT ORDER

This Consent Order is made and entered into between the Florida Department of Health, Polk County Health Department ("Department"), and Robert B. Young for Cypress Lakes Utility, Inc. ("Respondent") to reach settlement of certain matters at issue between the Department and Respondent.

The Department finds and the Respondent admits the following:

1. The Department is the administrative agency of the State of Florida charged with the duty to administer and enforce the provisions of the Florida Safe Drinking Water Act, Sections 403.850, et seq., Florida Statutes, and the rules promulgated thereunder, Florida Administrative Code Title 62. The Department has jurisdiction over the matters addressed in this Consent Order.
2. Respondent is a person within the meaning of Section 403.852(5), Florida Statutes.

3. Respondent is the owner of a community public water system, PWS #6535055, located at 10000 U.S. Highway 98 North, Lakeland, Florida (Latitude 28:10:30, Longitude 81:59:35) and known as Cypress Lakes Mobile Home Park.
4. System has failed to monitor for Primary Inorganics, Secondaries, Volatile Organic Contaminants, Pesticides and PCBs, Radiological and Group II Unregulated Contaminants in 1997 as required; System also failed to do public notification to users as required.

Respondent and the Department met on 02/17/98 at the Polk County Health Department in Bartow, Florida and reached a resolution of the matter, pursuant to Florida Administrative Code Rule 62-103.110(3), Respondent and the Department mutually agree and it is

**ORDERED:**

5. Within fifteen (15) days of the effective date of this Consent Order, Respondent shall:
  - a) Monitor for Primary Inorganics and submit analyses results as required by Chapter 62-550.519 of The Florida Administrative Code Rule.
  - b) Monitor for Pesticides and PCBs and submit analyses results as required by Chapter 62-550.516 of the Florida Administrative Code Rule.
  - c) Monitor for Secondary Inorganic Contaminants and submit analyses results as required by Chapter 62-550.520 of the Florida Administrative Code Rule.
  - d) Monitor for Volatile Organic Contaminants and submit analyses results as required by Chapter 62-550.515 of the Florida Administrative Code Rule.
  - e) Monitor for Radionuclides and submit analyses results as required by Chapter 62-550.519 of the Florida Administrative Code Rule.
  - f) Monitor for Group II Unregulated Contaminants and submit analyses results as required by Chapter 62-550.521 of the Florida Administrative Code Rule.
  - g) Provide public notification to your customers for failure to do required monitoring in 1997 as required by Chapter 62-550 of the Florida Administrative Code Rule. This notice must be accomplished and verified to this Department in accordance with Chapter 62-560 of the Florida Administrative Code Rule.
6. Within ten days of execution of this Consent Order, Respondent shall pay the Department \$870.00 in settlement of the matters addressed in this Consent Order. This amount includes \$750.00 in civil penalties for alleged violations of Section 403.859, Florida Statutes, and of the Department's rules and \$120.00 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 cashier's check or money order. The instrument shall be made payable to the Polk County Health Department and shall include thereon the OGC number assigned to this Consent Order. The payment shall be sent to the Polk County Health Department, 2090 East Clower Street, Bartow, Florida 33830.

7. 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's 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 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 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.

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

9. 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.
10. 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 \$5,000.00 per offense, and criminal penalties.
11. 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.
12. All plans, applications, penalties, costs and expenses, and information required by this Consent Order to be submitted to the Department should be sent to Polk County Health Department, 2090 East Clower Street, Bartow, Florida 33830.
13. 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.
14. 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.
15. 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.
16. No modifications of the terms of this Consent Order shall be effective until reduced to writing and executed by both Respondent and the Department.
17. 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.



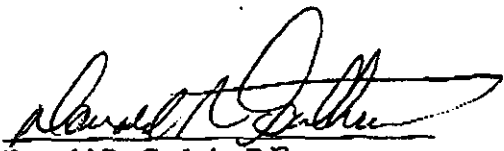
- 18. This Consent Order is a settlement of the Department's civil and administrative authority arising from Chapters 403 and 376, Florida Statutes, to pursue the allegations addressed herein. This Consent Order does not address settlement of any criminal liabilities which may arise from Sections 403.161(3) 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.
- 19. This Consent Order is final agency action of the Department 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 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.

FOR THE RESPONDENT:

Date 2/17/98  
 Name R. H. Bly for Cypress Lakes  
 Title President Ability, Inc

DONE AND ORDERED THIS 19 day of FEBRUARY, 1998,  
in Bartow, Florida

FLORIDA DEPARTMENT OF HEALTH  
POLK COUNTY HEALTH DEPARTMENT

  
 Donald R. Guthrie, P.E.  
 Administrator  
 Environmental Engineering  
 1290 Golfview Avenue 3rd Floor  
 Bartow, Florida 33830

Daniel Haight, MD

Daniel O. Haight, M.D.

Director

Polk County Health Department

1290 Golfview Avenue 4th Floor

Bartow, Florida 33830

Entered this 23 day of February, 1998 in Bartow, Florida

MaryAnn Griffin Department Clerk  
MaryAnn Griffin

Copies furnished to:

xc: Kenna Study

Department of Environmental Protection

2600 Blair Stone Road

Tallahassee, Florida 32399-3400

xc: Roland Reis, Legal Council

Polk County Health Department

1290 Golfview Avenue, 4th floor

Bartow, Florida 33830

COMMISSION STAFF'S FIRST REQUEST FOR PRODUCTION OF  
DOCUMENTS  
TO CYPRESS LAKES UTILITIES, INC.  
DOCKET NO. 971220-WS

I HEREBY DECLARE that the responses to the above interrogatories, <sup>and request for</sup> are true <sup>production</sup> and correct to my best knowledge and belief.

Carl J. Wenz  
Vice President  
Regulatory Matters  
Utilities, Inc.  
2335 Sanders Road  
Northbrook, IL 60062

By: Carl J. Wenz

STATE OF ILLINOIS

COUNTY OF COOK

SWORN to and subscribed before me at NORTHBROOK,  
COOK County, Illinois, this 9TH day of SEPTEMBER,  
1999.

Phil Ann Scully  
Notary Public  
State of Illinois  
My Commission Expires: 09-18-01

