

070413-WS

BEFORE THE STATE OF FLORIDA

POLK COUNTY HEALTH DEPARTMENT

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COMMISSION  
CLERK

FLORIDA DEPARTMENT OF HEALTH  
POLK COUNTY HEALTH DEPARTMENT

IN THE OFFICE OF THE  
SOUTHWEST DISTRICT

Complainant,

vs:

OGC CASE NO. 08-653PW2715A

Century Realty Funds  
PO Box 5252  
Lakeland, FL 32807-5252

Respondent.

CONSENT ORDER

This Consent Order is made and entered into between the Florida Department of Health, Polk County Health Department ("Department"), and Century Realty Funds ("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 owner of a community water system that serves Swiss Village MHP, Winter Haven, Florida.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

4. Respondent failed to monitor quarterly for Nitrate following a sample test result exceeding fifty percent of the maximum contaminant level, as required by Chapter 62-550.512 (1)(a) of the Florida Administrative Code (F.A.C.).
5. Respondent failed to monitor quarterly for 1,2-Dichloropropane following a sample test result exceeding 0.0005 milligrams per liter, as required by Chapter 62-550.515 (3)(a) of the Florida Administrative Code (F.A.C.).
6. Respondent failed to monitor for Uranium following a compliance test result taken on December, 15, 2006 in which the Gross Alpha result was 30.1 pCi/L. According to Chapter 62 550.519(1)(d)(2) of the Florida Administrative Code (F.A.C.), when the gross alpha result exceeds 15 pCi/L, the system must sample for uranium. Quarterly monitoring for Gross Alpha, Uranium, Radium226 and Radium228 was performed for the first two quarters of 2007. Four consecutive quarters monitoring for Gross Alpha, Uranium, Radium226 and Radium228 must be completed.
7. Respondent failed to provide public notification for not monitoring Nitrate, 1,2-Dichloropropane and Gross Alpha contaminants. Respondant has also failed to properly prepare, post, or notify Department when conditions requiring "precautionary boil notices" were indicated, as required by Chapter 62-550 and Chapter 62-560 of the Florida Administrative Code (F.A.C.).
8. Respondent failed to distribute and submit a copy of the 2006 Consumer Confidence Report as required by Chapter 62-550.824(3)(e) 1a of the Florida Administrative Code (F.A.C.)
9. Respondent failed to submit the Certification of Delivery of the 2006 Consumer Confidence Report as required by Chapter 62-550.824(3)(e) 1a of the Florida Administrative Code (F.A.C.)
10. Respondent failed to correct multiple operational and structural deficiencies. These deficiencies are outlined in Warning Letter No. 08-653PW2715A dated 4/14/2008.
11. Respondent failed to establish and implement a cross-connection control program.

Respondent and the Department met on May 1, 2008 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:

12.

- (a) Begin quarterly sampling for Nitrate and Nitrite Contaminants. Each quarterly test result is due the tenth day of the month following the end of the quarter.
- (b) Begin quarterly sampling for 1,2-Dichloropropane (VOC). Each quarterly test result is due the tenth day of the month following the end of the quarter.
- (c) Begin quarterly sampling for Gross Alpha, Uranium, Radium<sup>226</sup> and Radium<sup>228</sup>. Each quarterly test result is due the tenth day of the month following the end of the quarter. Please continue monitoring quarterly until this office tells you not to monitor.
- (d) Respondent shall submit to the Department copy of required public notification and certification of delivery on or before July 20, 2008.
- (e) Submit draft of the 2006 Consumer Confidence Report to the Polk County Health Department for review and approval by July 20, 2008. Mail an approved Consumer Confidence Report to your billing customers and have a copy available for the public with a copy to the Polk County Health Department by July 20, 2008. Attach DEP form 62-555-900(19) Certification of CCR Delivery to the Polk County Health Department's copy of the distributed CCR.
- (f) Prepare and distribute "boil water notices" when required by Chapter 62-550 and Chapter 62-560 of the Florida Administrative Code (F.A.C.).
- (g) Make all necessary repairs and operational procedural changes to ensure violations noted on Warning Letter No. 08-653PW2715A have been corrected.
- (h) The parties acknowledge that the DOH has cited Respondent for alleged violations concerning its Cross-Connection Control Plan and certain backflow prevention devices, and the parties have agreed to reserve all rights with respect to those issues.

13. Within thirty days of execution of this Consent Order, Respondent shall pay the Department \$1540.00 in settlement of the matters addressed in this Consent Order. This amount includes \$1290.00 in civil penalties for alleged violations of Section 403.859, Florida Statutes, and of the Department's rules and \$250.00 for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of this Consent Order. 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.
14. 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.

15. 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.
16. 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.*
17. 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.
18. 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.
19. 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.
20. 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.
21. 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.

22. 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.
23. No modifications of the terms of this Consent Order shall be effective until reduced to writing and executed by both Respondent and the Department.
24. 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.
25. 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 Law, nor does it address settlement of any violation which may be prosecuted criminally or civilly under federal law.
26. 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.

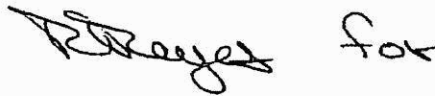
FOR THE RESPONDENT:

7-11-08  
Date

  
Name  
VP  
Title

DONE AND ORDERED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2008,  
in Bartow, Florida

FLORIDA DEPARTMENT OF HEALTH  
POLK COUNTY HEALTH DEPARTMENT

 for

\_\_\_\_\_  
Donald Ehlenbeck, P.E.  
Administrator  
Environmental Engineering  
2090 East Clower Street  
Bartow, Florida 33830

\_\_\_\_\_  
Daniel O. Haight, M.D.  
Director  
Polk County Health Department  
1290 Golfview Avenue 4th Floor  
Bartow, Florida 33830

Entered this \_\_\_ day of \_\_\_\_\_, 2008 in Bartow, Florida

\_\_\_\_\_  
Robert Ingrahm  
Department Clerk

Copy furnished to:

Roland Reis, Legal Council  
Polk County Health Department  
1290 Golfview Avenue, 4th floor  
Bartow, Florida 33830