



Public Service Commission

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

DATE: June 25, 1996
TO: Alice Crosby, Division of Legal Services
 Division of Records and Reporting
FROM: Patricia Brady, Division of Water and Wastewater *pb LHM GDM*
RE: Docket No. 960229-SU, Application for amendment of Certificate No. 300-S in Lee County by Forest Utilities, Inc.

Forest Utilities, Inc. (Forest or the utility) is a Class B utility providing wastewater services to approximately 1,884 customers in Lee County. The utility has operated under Certificate No. 300-S since December of 1981. According to the 1995 Annual Report on file with the Commission, Forest had annual operating revenues of \$522,000 and a net operating income of \$17,000. Forest is 100% owned by Mr. David W. Swor.

On February 23, 1996, an application for a territory amendment was filed on behalf of Forest pursuant to Section 367.045, Florida Statutes. The application was filed in accordance with Rule 35-30.036(3), Florida Administrative Code, for territory extensions intended to serve greater than 25 equivalent residential connections at buildout and contained the following requirements, statements and evidence:

1. A check in the amount of \$500.00 which is the correct filing fee pursuant to Rule 25-30.020(2)(b), Florida Administrative Code, for an extension with the proposed capacity to serve from 201 to 500 equivalent residential connections (ERCs). According to the application, the proposed service territory will serve 280 ERCs.

- ACK _____
- AFA _____
- APP _____
- CAF _____
- CMU _____
- CTR _____
- EAG _____
- LEG _____
- LIN _____
- OPC _____
- RCH _____
- SEC 1
- WAS _____
- OTH _____

2. A statement that Forest has the financial and technical ability to provide water and wastewater service to the proposed extension. With regard to technical ability the applications states that :

The Utility's wastewater systems are well run and in fact have not been cited by any environmental authorities in their 15 year history.

However, staff would note that, according to the attached Warning Letter dated February 2, 1995, from the Department of Environmental Protection (DEP) to Mr. Swor, field inspections resulted in twelve observations. The most serious observation was Item 11 on Page 4 in which the "inspection indicated that the area south of the weir structure had eroded and that reclaimed water and stormwater were discharged during low tide events."

DOCUMENT NUMBER-DATE
 06927 JUN 27 96
 FPSC-RECORDS/REPORTING

According to the resulting Short Form Consent Order dated March 24, 1995 (also attached), the "corrective actions required to bring your facility into compliance have been performed. However, you must pay to the Department the amount of \$2340.00 in civil penalties to complete settlement of the violations described in the attached Warning Letter...." While the Consent Order was signed voluntarily by Mr. Swor, the letter indicated that failure to sign would result in a recommendation for "formal enforcement action."

Based on the above, staff is troubled by what appears to have been an inaccurate statement in the utility's application for amendment. However, the key issue is not whether Forest has ever been cited for violation but whether it has any outstanding, unresolved violations. The utility does not.

Forest's 1995 Regulatory Assessment fees have been appropriately paid and the utility has no outstanding fees, fines, penalties or customer complaints with the Commission. Copies of DEP construction and operating permits were provided.

3. A statement that the utility and its representatives have concluded that the proposed service within the new territories is consistent with all sections of the Local Comprehensive Plan, as approved by the Department of Community Affairs, specifically the water and wastewater sections.
4. As evidence that the utility owns the land upon which the utility treatment facilities are located, the application included quit-claim deeds. At staff's request, the applicant furnished a title insurance policy from Chicago Title Insurance Company showing title vested in Forest Utilities, Inc.
5. Pursuant to Rule 25-30.030, Florida Administrative Code, at the time of filing a notice of the application was provided to all utilities and government agencies in the area of the proposed extension on February 23, 1996, and in a newspaper of general circulation in the area on February 27, 1996. A late-filed exhibit was provided to attest to customer notification. However, it would appear that notification was given on March 21, 1996, which exceeds the requirement for notice to be provided to customers within seven days of the filing. Staff is requesting a legal determination whether the date of customer notice requires review by the Commission at agenda conference.

One protest to the filing was timely received on March 29, 1996. By letter received May 31, 1996, the customer withdrew the protest. No other protests have been received by the Commission and the time for filing such protest has expired.

6. The application included a description of the territory to be served, a system map and a territory map. The territory description is appended to this recommendation as Attachment A.

7. Although the utility will not be required to undertake any plant expansion or effluent disposal expansion in order to provide service to the proposed extension service area, the application indicates that Forest has been providing reclaimed water to the Forest Golf Course for the past 12 years. It is the utility's intent to continue to utilize spray irrigation to the golf course.

Wastewater Plant and Collection System. The type of customers anticipated to be served by the extension are various commercial and light industrial businesses. The application states that the existing sewer force main adjacent to the proposed service areas was constructed in order to eventually provide service to the new areas. As such, it has sufficient capacity to provide wastewater service to the territory addition. The utility currently operates a 500,000 gallon per day (GPD) wastewater treatment plant with average daily flows of 228,000 GPD. The estimated additional demand for wastewater service is approximately 64,000 GPD. Therefore, it appears that the existing wastewater treatment plant has ample capacity to serve the extension.

Capital Costs. The application states that no significant additional investment capital will be needed at this time in order to provide service to the proposed territories. Construction of the extensions to the proposed developments and all onsite facilities will be the responsibility of the developers. Those facilities will be required to be donated to the utility in conformance with the utility's existing approved service availability policy. Because no additional investment capital requirements are anticipated in order to provide service to the proposed territory, no impact on the utility's capital structure will result from the extension. Consequently, the application goes on to state that "no impact on monthly service charges or service availability charges is currently anticipated to result directly from this extension of the Utility's service territory." The utility anticipates that as customers are added to fully utilize existing facilities, the effect on rates will be to stabilize or lower the average cost of service.

Rates and Charges. The utility's rates and charges were established by Order No. 14557. The utility's current rates and charges are pursuant to a 1996 Price Index. The utility's service availability charges were established by Order No. 16971. The utility's current service availability charges are pursuant to a 1994 CIAC Gross-Up. The application included sample tariff sheets reflecting the additional service area and the utility's original water and wastewater certificates. Finally, the application included an affidavit from the utility that it has tariffs and annual reports on file with the Commission.

Based on the above information, staff believes it is in the public interest to grant the application of Forest Utilities, Inc., for amendment of Certificate No. 300-S for the territory described in Attachment A. The order should require that the applicant apply its existing tariff rates and charges at the time service becomes available to customers within the territory extension until authorized to change by this Commission in subsequent proceedings. Upon issuance of the order, the docket should be closed.

FOREST UTILITIES, INC.

TERRITORY DESCRIPTION - LEE COUNTY

WASTEWATER SERVICE AREA

Township 46 South, Range 24 East

Section 1

The northeast portion of Section 1, Township 46 South, Range 24 East,
lying east of US 41 (S.R. 45) in Lee County, Florida

and

Township 45 South, Range 24 East

Section 36

The south half of the south half of Section 36, Township 45 South,
Range 24 East, lying east of US 41 (S.R. 45) in Lee County, Florida

and

The northeast quarter of the southwest quarter of Section 36, Township 45
South, Range 24 East, lying east of US 41 (S.R. 45) in Lee County, Florida.



Department of FILE Environmental Protection

Lawton Chiles
Governor

South District
2295 Victoria Avenue, Suite 364
Fort Myers, Florida 33901

Virginia B. Wetherell
Secretary

February 2, 1995

Mr. David Swor, President
Forest Utilities, Inc.
6385 Presidential Court, S.W.
Fort Myers, FL 33919

Re: Lee County - DW
The Forest WWTP
Application No.: 262211

Dear Mr. Swor:

Field inspections of the above referenced WWTP on December 28, 1994 and January 23, 1995 indicate that you may be in violation of Chapter 403, Florida Statutes and the rules promulgated thereunder. The resulting observations are listed below:

1. Wastewater was leaking from the sludge drying beds and ponding on adjacent ground surfaces. The under-drain sump on the West end of the drying beds appears to have no bottom. Wastewater from the sump on the West end of the drying beds had been pumped to adjacent ground surfaces. Several small leaks were also observed in base the digester and the effluent storage tanks. Florida Administrative Code (F.A.C.) Rule 62-600.740(2)(a) states that the release or disposal of excreta, sewage, or other wastewaters or domestic wastewater residuals without providing proper treatment is prohibited.
2. Sludge from the drying beds had been mixed with dirt and used to fill in low areas around a lift station. F.A.C. Rule 62-640.300 states that no domestic wastewater residuals shall be applied to any land application site, unless a plan for the intended use of such sites is approved in a currently valid construction or operation permit. Correspondence dated June 15, 1994 (enclosed), following a meeting between Department staff and members of the Forest Utilities, addressed this matter.

Continued. . .

3. Conversations with the operator indicated that the drying beds had been leaking for several days. The Department was not notified of the leaks in the drying beds. F.A.C. Rule 62-600.750(1) requires that in the event that any treatment plant, reuse, or disposal system is temporarily unable to comply with any of the conditions of the permit due to the breakdown of equipment, power outages, destruction by hazard of fire, wind or by other cause, the permittee shall notify the Department and the local program (where existing). Notification shall be made in person, by telephone, or by telegraph to the nearest office of the Department and the local program within 24 hours of breakdown or malfunction.
4. Influent samples contain wastewater from the drying beds. F.A.C. Rule 62-601.500(4)(a) requires that influent samples shall be collected so that they do not contain digester supernatant or return activated sludge, or any other plant process recycled waters.
5. Time proportioned composite samples are being obtained for the effluent. F.A.C. Rule 62.601.500(3)(c) and Specific Condition 10a of the above reference operations permit require that you obtain flow proportioned composite samples.
6. There is no thermometer in the composite sampler to document temperature. F.A.C. Rule 62-601.400(1) states field testing, sample collection and preservation; and laboratory testing including quality control procedures, shall be in accordance with methods approved by the Department and the United States Environmental Protection Agency. Composite samples are required to be preserved at 4°C from the time of collection until analysis 40 code of Federal Regulations (C.F.R.), 136.3, (e) Table II. A thermometer in the refrigerator and a log book of daily readings will satisfy this requirement.
7. The wooden catwalk next to the filters appears to be in poor condition. F.A.C. Rule 62-600.410 (8) states that in the event that the treatment facilities or equipment no longer function as intended, are no longer safe in terms of public health and safety, or odor, noise, aerosol drift, or lighting adversely affect the neighboring developed areas at the levels prohibited by Rule 62-600.400(2)(a), F.A.C., corrective action (which may include additional maintenance or modification

of the treatment plant) shall be taken by the permittee. Other corrective action may be required to ensure compliance with the rules of the Department.

8. The influent sampler intake header was located on the bottom of the chlorine contact chamber. F.A.C. Rule 17-601.400(1) states field testing, sample collection and preservation; and laboratory testing including quality control procedures, shall be in accordance with methods approved by the Department and the USEPA. 40 CFR, 122.41, (j)(1) states that samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity. Samples should be collected where the flow is well mixed at approximately mid-depth and mid stream.
9. The continuous turbidity meter for reclaimed water is not being being calibrated daily. F.A.C. Rule 62-601.400(1) states field testing, sample collection and preservation; and laboratory testing including quality control procedures, shall be in accordance with methods approved by the Department and the United States Environmental Protection Agency. Calibration of continuous monitoring should be carried out at least daily.
10. The actual values measured during calibration of the pH meter were not being recorded. F.A.C. Rule 62-601.400(1) states field testing, sample collection and preservation; and laboratory testing including quality control procedures, shall be in accordance with methods approved by the Department and the United States Environmental Protection Agency. Records of monitoring information shall include:
 - i. The date, exact place, and time of sampling or measurements;
 - ii. The individual(s) who performed the sampling or measurements;
 - iii. The date(s) the analyses were performed;
 - iv. The individual(s) who performed the analyses;
 - v. The analytical techniques or methods used; and
 - vi. The results of such analyses.

11. Conversations with the operator indicate that reclaimed water from this facility is stored in the golf course ponds which are interconnected and have the potential to discharge to surface waters of the state. On January 23, 1995 the Department inspected the weir structure intended to prevent reclaimed from discharging to waters of the state. This inspection indicated that the area south of the weir structure had eroded and that reclaimed water and stormwater were discharged during low tide events. F.A.C. Rule 62-600.740(2)(a) states that the release or disposal of excreta, sewage, or other wastewaters or domestic wastewater residuals without providing proper treatment is prohibited.
12. The Department is currently reviewing your application for an operations permit for this facility. The issues raised in the above paragraph must be addressed before this permit application can be finalized. If the above referenced item is not addressed expeditiously, the Department may proceed with an Intent to Deny the Permit application.

Please note that 17-Florida Administrative Code, (F.A.C.) Rules have been renumbered to 62-F.A.C. effective August 10, 1994. The content of 17-F.A.C./62-F.A.C. rules remain the same.

You are advised that any activity that may contribute to violations of the above described statutes and rules should cease immediately. Continued 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 pursuant to Sections 403.141 and 403.161, Florida Statutes.

You are requested to contact Andrew Barienbrock at this office at 2295 Victoria Avenue, Fort Myers, Florida 33901 within 15 days of receipt of this Warning Notice to arrange a meeting with the Department personnel to discuss the issues raised in this Warning Notice. You may wish to contact an attorney and to have the attorney attend this meeting.

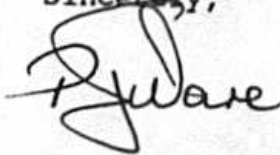
PLEASE BE ADVISED that this warning letter is part of an agency investigation preliminary to agency action in accordance with Section 120.57(4), Florida Statutes. The purpose of this letter is to advise you of potential violations and to set up a meeting to discuss possible resolutions to any potential violations that have occurred for which you may be responsible. If the Department determines that an enforcement proceeding should be initiated in this case, it may be initiated by issuing a Notice of Violation or by filing a judicial action in

Mr. David Swor
February 2, 1995
Page 5

accordance with Section 403.121, Florida Statutes. If the Department issues a Notice of Violation, and you are named as a party, you will be informed of your rights to contest any determination made by the Department in the Notice of Violation. The Department can also resolve violations through entry into a Consent Order.

If you have any questions, please do not hesitate to call Andrew Barienbrock at (813) 332-6975. Your cooperation is appreciated.

Sincerely,

A handwritten signature in cursive script, appearing to read "P. Ware".

Peter J. Ware
Director of
District Management

PJW/AB/klm

Enclosure

cc: James P. Elliott, P.E.
Bennie Shoemaker



Department of Environmental Protection

Lawton Chiles
Governor

South District
2295 Victoria Avenue, Suite 364
Fort Myers, Florida 33901

Virginia B. Wetherell
Secretary

March 24, 1995

Mr. David Swor, President
Forest Utilities, Inc.
6385 Presidential Court, S.W.
Fort Myers, FL 33919

Re: Proposed Settlement by Short Form Consent Order in Case
of Forest Utilities, Inc., OGC File No.: 95-0409-36-DW.

Dear Mr. Swor:

The purpose of this letter is to complete the settlement of the violation(s) previously identified by the Department of Environmental Protection ("DEP") in the Warning Letter dated February 2, 1995, which is attached. The corrective actions required to bring your facility into compliance have been performed. However, you must pay to the Department the amount of \$2340.00 in civil penalties to complete settlement of the violations described in the attached Warning Letter, along with \$100.00 to reimburse DEP's costs, for a total of \$2440.00. This payment must be made to "The Department of Environmental Protection" by certified check or money order and shall include thereon the OGC number assigned above and the notation "Pollution Recovery Fund." The payment shall be sent to the Department of Environmental Protection, 2295 Victoria Avenue, Suite 364, Fort Myers, Florida 33901, within thirty (30) days of your signing this letter.

Your signing of this letter where indicated at the end of page two of this letter constitutes your acceptance of DEP's offer to settle this case on these terms. If you sign this letter, please return it to DEP at the address above. DEP will then countersign the letter and file it with the Clerk of the DEP. When the signed letter is filed with the Clerk, the letter shall constitute a Consent Order, which is final agency action of the DEP, the terms and conditions of which may be enforced in a court of competent jurisdiction pursuant to Sections 120.69 and 403.121, Florida Statutes. Failure to comply with the terms of this letter once signed by you and entered by the DEP Clerk shall constitute a violation of Section 403.161(1)(b), Florida Statutes.

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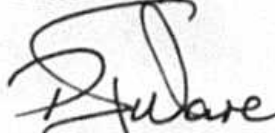
"Protect, Conserve and Manage Florida's Environment and Natural Resources"

Printed on recycled paper.

Mr. David Swor
OGC File No. 95-0409-36-DW
March 24, 1995

By countersigning this settlement offer, DEP waives its right to seek judicial imposition of damages, costs and expenses, or civil penalties for the violations described above. By accepting this settlement offer, you waive your right to an administrative hearing to contest this settlement pursuant to §120.57, Florida Statutes, and your right to appeal this settlement pursuant to §120.69, Florida Statutes. This offer to settle is open until April 15, 1995 or until DEP otherwise withdraws the offer. If you do not sign and return this letter to the Department at the South District address given above by this date, the case will be referred to the DEP's Office of General Counsel with a recommendation that formal enforcement action be taken against you. None of your rights or substantial interests are determined by this letter unless you sign it and it is filed with the DEP Clerk.


Sincerely,



Peter J. Ware
Director of
District Management

I ACCEPT THE TERMS OF THIS SETTLEMENT OFFER.

For (Forest Utilities, Inc.)

By: 
David Swor, President

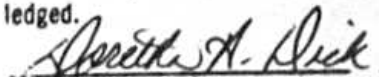
3/30/95
Date

Please do not write below this line. For DEP use only.

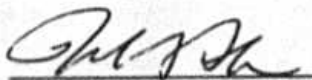
ENTERED this 5th date of April, 1995 in
Fort Myers, Florida.

FILING AND ACKNOWLEDGEMENT

FILED, on this date, pursuant to §120.52
Florida Statutes, with the designated Department
Clerk, receipt of which is hereby acknowledged.


CLERK DATE 4/5/95

For the DEP


Ronald D. Blackburn
Acting Director of
District Management
State of Florida Department
of Environmental Protection

PJW/AB/klm

Attachments

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'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.