

### WATER AND/OR WASTEWATER UTILITIES

(Gross Revenue of Less Than \$200,000 Each)

### ANNUAL REPORT

OF
SU648-02-AR
Fairmount Utilities the 2nd, Inc.
Exact Legal Name of Respondent

357-S Certificate Number(s)

Submitted To The

STATE OF FLORIDA





**FOR THE** 

YEAR ENDED DECEMBER 31, 2002

Form PSC/WAW 6 (Rev. 12/99)

### **GENERAL DEFINITIONS**

ADVANCES FOR CONSTRUCTION - This account shall include advances by or in behalf of customers for construction which are to be refunded either wholly or in part. (USOA)

ALLOWANCE FOR FUNDS USED DURING CONSTRUCTION (AFUDC) - This account shall include concurrent credits for allowance for funds used during construction based upon the net cost of funds used for construction purposes and a reasonable rate upon other funds when so used. Appropriate regulatory approval shall be obtained for "a reasonable rate". (USOA)

AMORTIZATION - The gradual extinguishment of an amount in an account by distributing such amount over a fixed period, over the life of the asset or liability to which it applies, or over the period during which it is anticipated the benefit will be realized. (USOA)

CONTRIBUTIONS IN AID OF CONSTRUCTION (CIAC) - Any amount or item of money, services, or property received by a utility, from any person or governmental agency, any portion of which is provided at no cost to the utility, which represents an addition or transfer to the capital of the utility, and which is utilized to offset the acquisition, improvement, or construction costs of the utility's property, facilities, or equipment used to provide utility services to the public. (Section 367.021 (3), Florida Statutes)

CONSTRUCTION WORK IN PROGRESS (CWIP) - This account shall include the cost of water or wastewater plant in process of construction, but not yet ready for services. (USOA)

DEPRECIATION - The loss in service value not restored by current maintenance, incurred in connection with the consumption or prospective retirement of utility plant in the course of service from causes which are known to be in the current operation and against which the utility is not protected by insurance. (Rule 25-30.140 (i), Florida Administrative Code)

EFFLUENT REUSE - The use of wastewater after the treatment process, generally for reuse as irrigation water or for in plant use. (Section 367.021 (6), Florida Statutes)

EQUIVALENT RESIDENTIAL CONNECTION (ERC) - (WATER) - (Rule 25-30.515 (8), Florida Administrative Code.)

- (a) 350 gallons per day;
- (b) The number of gallons a utility demonstrates in the average daily flow for a single family unit; or
- (c) The number of gallons which has been approved by the DEP for a single family residential unit.

EQUIVALENT RESIDENTIAL CONNECTION (ERC) - (WASTEWATER) - Industry standard of 80% of Water ERC or 280 gallons per day for residential use.

GUARANTEED REVENUE CHARGE - A charge designed to cover the utility's costs including, but not limited to the cost of the operation, maintenance, depreciation, and any taxes, and to provide a reasonable return to the utility for facilities, a portion of which may not be used and useful to the utility or its existing customers. (Rule 25-30.515 (9), Florida Administrative Code)

LONG TERM DEBT - All Notes, Conditional Sales Contracts, or other evidences of indebtedness payable more than one year from date of issue. (USOA)

PROPRIETARY CAPITAL (For proprietorships and partnerships only) - The investment of a sole proprietor, or partners, in an unincorporated utility. (USOA)

RETAINED EARNINGS - This account reflects corporate earnings retained in the business. Credits would include net income or accounting adjustments associated with correction of errors attributable to a prior period. Charges to this account would include net losses, accounting adjustments associated with correction of errors attributable to a prior period or dividends. (USOA)

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### FINANCIAL SECTION

### REPORT OF

	Fairmount Uti	lities the 2nd, Inc.	
	(EXACT NA	ME OF UTILITY)	
P.O. Box 488		3625 Valerie Blvd.	
Avon Park, FL 338	26-0488	Sebring, FL 33870	Highlands
	Mailing Address	Street Address	County
Telephone Number	(863) 385-8542	Date Utility First Organized	10-14-91
Fax Number		E-mail Address	
Sunshine State One-C	all of Florida, Inc. Member No.		
Check the business er	ntity of the utility as filed with the Inter	nal Revenue Service:	
Individual	X Sub Chapter S Corporation	1120 Corporation	Partnership
Name, Address and ph	none where records are located:	3625 Valerie Blvd. Sebring, FL 33870	
Name of subdivisions v	where services are provided:	Fairmount Mobile Estates	

### CONTACTS:

Name	Title	Principle Business Address	Salary Charged Utility
Person to send correspondence: Roger E. Miller	President	P.O. Box 488 Avon Park, FL 33826-0488	
Person who prepared this report: The NCT Group CPA's, L.L.P.	СРА	435 South Commerce Ave. Sebring, FL 33870	
Officers and Managers: Roger E. Miller Karen J. Berry	President Manager	Same Same	\$ 8,881 \$ 14,455 \$ \$ \$

Report every corporation or person owning or holding directly or indirectly 5 percent or more of the voting securities of the reporting utility:

	Percent		Salary
	Ownership in		Charged
Name	Utility	Principle Business Address	Utility
Roger E. Miller	37%	P.O. Box 488	\$ 8,881
		Avon Park, FL 33826-0488	\$
Karen J. Berry	63%	P.O. Box 488	\$ 14,455
		Avon Park, FL 33826-0488	\$
			\$
			\$
			\$

### **INCOME STATEMENT**

	Ref.				Total
Account Name	Page	Water	Wastewater	Other	Company
Gross Revenue:  Residential  Commercial  Industrial  Multiple Family  Guaranteed Revenues		\$ 	\$ <u>105,570</u>	<b>\$</b>	<b>\$</b> 105,570
Other (Specify)  Total Gross Revenue		\$	\$ <u>105,570</u>	\$	\$ <u>105,570</u>
Operation Expense (Must tie to pages W-3 and S-3)	W-3 S-3	\$	\$73,741_	\$	\$ 73,741
Depreciation Expense	F-5		6,944		6,944
CIAC Amortization Expense_	F-8		(91)		(91)
Taxes Other Than Income	F-7		11,212		11,212
Income Taxes	F-7				
Total Operating Expense		\$	91,806		\$ 91,806
Net Operating Income (Loss)		\$	\$13,764_	\$	\$13,764
Other Income:  Nonutility Income		\$	\$	\$	\$
Other Deductions: Miscellaneous Nonutility Expenses Interest Expense		\$	\$(20,989)	\$	\$ (20,989) 0
Net Income (Loss)		\$	\$(7,225)	\$	\$(7,225)

### COMPARATIVE BALANCE SHEET

	Reference	Current	Previous
ACCOUNT NAME	Page	Year	Year
Assets:			
Utility Plant in Service (101-105)  Accumulated Depreciation and	F-5,W-1,S-1	\$ 216,076	\$ 208,640
Amortization (108)	F-5,W-2,S-2	(161,557)	(158,909)
Net Utility Plant		\$54,519	\$49,731
Cash Customer Accounts Receivable (141) Other Assets (Specify): Other Receivables Loan Cost		2,446 11,134	10,548 6,800 114
Total Assets		\$ 68,179	\$ 67,193
Liabilities and Capital:			
Common Stock Issued (201) Preferred Stock Issued (204) Other Paid in Capital (211) Retained Earnings (215) Propietary Capital (Proprietary and partnership only) (218)	F-6 F-6 F-6	1,000 46,418 (336,031)	1,000 46,418 (322,006)
Total Capital		\$ (288,613)	\$ (274,588)
Long Term Debt (224)	F-6	\$ 42,005 40,234 	\$ 44,555 26,814 
Contributions in Aid of Construction - Net (271-272)	F-8	884	976
Total Liabilities and Capital		\$ 68,179	\$ 67,193

UTILITY NAME: Fairmount Utilities the 2nd, Inc.

YEAR OF REPORT DECEMBER 31, 2002

### GROSS UTILITY PLANT

Plant Accounts: (101 - 107) inclusive	Water	Wastewater	Plant other Than Reporting Systems	Total
Utility Plant in Service	\$	\$ 216,076	\$	\$ 216,076
Construction Work in Progress (105)				
Other (Specify)				
Total Utility Plant	\$	\$216,076	\$	\$216,076

### ACCUMULATED DEPRECIATION (A/D) AND AMORTIZATION OF UTILITY PLANT

Account 108	Water	Wastewater	Other Than Reporting Systems	Total
Balance First of Year	\$	\$158,909	\$	\$ 158,909
Add Credits During Year:  Accruals charged to  depreciation account Salvage Other Credits (specify)	\$	\$6,944	\$	\$6,944
Total Credits	\$	\$6,944	\$	\$6,944
Deduct Debits During Year:  Book cost of plant retired Cost of removal Other debits (specify)	\$	\$4,296	\$ 	\$4,296
Total Debits	\$	\$ 4,296	\$	\$4,296
Balance End of Year	\$	\$161,557	\$	\$161,557

### CAPITAL STOCK (201 - 204)

	Common Stock	Preferred Stock
Par or stated value per shareShares authorizedShares issued and outstanding Total par value of stock issued Dividends declared per share for year	\$ 1.00 1,000 1,000 \$ 1,000 0	

### RETAINED EARNINGS (215)

	Appropriated	Un- Appropriated
Balance first of year	\$	\$ (322,006)
Changes during the year (Specify):		
Net income (loss) for current year		(7,225)
Non-dividend distribution to shareholders		(6,800)
Balance end of year	\$	\$(336,031)

### PROPRIETARY CAPITAL (218)

	Proprietor Or Partner	Partner
Balance first of year Changes during the year (Specify):	\$	\$
Balance end of year	\$	\$

### LONG TERM DEBT (224)

	Interest	Principal
Description of Obligation (Including Date of Issue	Rate # of	per Balance
and Date of Maturity):	Pymts	Sheet Date
Note payable to Wachovia Bank, N.A.	8.5% 60	\$ 42,005
Total		\$ 42,005

### TAXES ACCRUED (236)

(a)	Water	Wastewater	Other	Total
	(b)	(c)	(d)	(e)
Income Taxes: Federal income tax State income Tax Taxes Other Than Income: State ad valorem tax Local property tax Regulatory assessment fee Other (Specify) Florida Intangible Florida Tangible Licenses and other taxes Payroll taxes Total Taxes Accrued	\$	\$  2,564 4,776  185 408 240 3,039 \$ 11,212	\$ 	\$ 2,564 4,776  185 408 240 3,039 \$ 11,212

### PAYMENTS FOR SERVICES RENDERED BY OTHER THAN EMPLOYEES

Report all information concerning outside rate, management, construction, advertising, labor relations, public relations, or other similiar professional services rendered the respondent for which aggregate payments during the year to any corporation, partnership, individual, or organization of any kind whatever amounting to \$500 or more.

Killa whatever amounting to \$500	or more.	<del></del>	T
Name of Recipient	Water Amount	Wastewater Amount	Description of Service
H & H Sludge Disposal Inc.	\$	\$ 2,205	Maintenance
Highlands Utility Co	\$	\$ 705	Maintenance
Pugh Utility Services, Inc.	\$	\$ 3,991	Maintenance
The NCT Group CPA's, L.L.P.	\$	\$ 3,090	Accounting and consulting
C & C Plumbing Inc.	\$	\$ 2,310	Maintenance
Short Environmental Labs	\$	\$ 1,368	Water testing
	\$	\$	
	\$	\$	
	\$	\$	
	\$	\$	
	\$	\$	

### **CONTRIBUTIONS IN AID OF CONSTRUCTION (271)**

	(a)	Water (b)	Wastewater (c)	Total (d)
1) 2)	Balance first of year Add credits during year	\$	\$ <u>2,463</u>	\$ <u>2,463</u>
3) 4) 5) 6)	Total_ Deduct charges during the year Balance end of year Less Accumulated Amortization		2,463 2,463 (1,579)	2,463 2,463 (1,579)
7)	Net CIAC	\$	\$884	\$884

### ADDITIONS TO CONTRIBUTIONS IN AID OF CONSTRUCTION DURING YEAR (CREDITS)

	Report below all developers or contractors Indicate agreements from which cash or property was "Cash" or received during the year. "Property"			Wastewater
			Water a Trade also have been a label as a la	
Sub-total			\$	\$
extension charges	Report below all capacity charges, main extension charges and customer connection charges received during the year.			
Description of Charge	Number of Connections	Charge per Connection		
		\$	\$	\$
Total Credits During Year (Must ag	ree with line # 2 abov	/e.)	\$	\$

### ACCUMULATED AMORTIZATION OF CIAC (272)

Balance First of YearAdd Credits During Year:	<u>Water</u> \$	<u>Wastewater</u> \$ 1,488 91	Total \$ 1,488 91
Deduct Debits During Year:			
Balance End of Year (Must agree with line #6 above.)	\$	\$1,579	\$1,579

### \*\* COMPLETION OF SCHEDULE REQUIRED ONLY IF AFUDC WAS CHARGED DURING YEAR \*\*

**UTILITY NAME** Fairmount Utilities the 2nd, Inc.

YEAR OF REPORT DECEMBER 31, 2002

N/A

### **SCHEDULE "A"**

### SCHEDULE OF COST OF CAPITAL USED FOR AFUDC CALCULATION (1)

Class of Capital (a)	Dollar Amount (b)	Percentage of Capital (c)	Actual Cost Rates (d)	Weighted Cost [ c x d ] (e)
Common Equity	\$	%	%	%
Preferred Stock		%	%	%
Long Term Debt		%	%	%
Customer Deposits		%	%	%
Tax Credits - Zero Cost		%	0.00 %	%
Tax Credits - Weighted Cost		%	%	%
Deferred Income Taxes		%	%	%
Other (Explain)		%	%	%
Total	\$	100.00_%		%

(1) Must be calculated using the same methodology used to calculate AFUDC rate approved by the Commission.

### **APPROVED AFUDC RATE**

Current Commission approved AFUDC rate:	 %
Commission Order Number approving AFUDC rate:	

### \*\* COMPLETION OF SCHEDULE REQUIRED ONLY IF AFUDC WAS CHARGED DURING YEAR \*\*

UTILITY NAME Fairmount Utilities the 2nd, Inc.

YEAR OF REPORT DECEMBER 31, 2002

N/A

### SCHEDULE "B"

### SCHEDULE OF CAPITAL STRUCTURE ADJUSTMENTS

Class of Capital (a)	Per Book Balance (b)	Non-utility Adjustments (c)	Non-juris. Adjustments (d)	Other (1) Adjustments (e)	Capital Structure Used for AFUDC Calculation (f)
Common Equity Preferred Stock Long Term Debt Customer Deposits Tax Credits-Zero Cost Tax Credits-Weighted Cost of Capital Deferred Income Taxes Other (Explain)	\$  \$	\$	\$	\$	\$  \$

(1) Explain below all adjustments made in Column (e):

· · · · · · · · · · · · · · · · · · ·
217 August 200 August

WATER
OPERATING
SECTION

## WASTEWATER OPERATING SECTION

### **WASTEWATER UTILITY PLANT ACCOUNTS**

Acct. No. (a)	Account Name (b)	Previous Year (c)	Additions (d)	Retirements (e)	Current Year (f)
351 352 353 354 355 360 361 362 363 364 365 370 371	Organization Franchises Land and Land Rights Structures and Improvements Power Generation Equipment Collection Sewers - Force Collection Sewers - Gravity Special Collecting Structures Services to Customers Flow Measuring Devices Flow Measuring Installations Receiving Wells Pumping Equipment	\$	3,884	(3,212)	\$
380 381 382 389	Treatment and Disposal  Equipment  Plant Sewers  Outfall Sewer Lines  Other Plant and Miscellaneous  Equipment	74,493	8,383	(1,619)	81,257
390 391 392 393 394 395	Office Furniture and Equipment Transportation Equipment Stores Equipment Tools, Shop and Garage Equipment Laboratory Equipment Power Operated Equipment	3,178			3,178
396 397 398	Communication Equipment Miscellaneous Equipment Other Tangible Plant Total Wastewater Plant	\$\$	\$\$	\$(4,831)	\$ <u>216,076</u> *

<sup>\*</sup> This amount should tie to sheet F-5.

UTILITY NAME: Fairmount Utilities the 2nd, Inc.

YEAR OF REPORT DECEMBER 31, 2002

# ANALYSIS OF ACCUMULATED DEPRECIATION BY PRIMARY ACCOUNT - WASTEWATER

Accum. Depr. Balance End of Year (f-g+h=i) (i)	\$ 25,856  1,429  40,277  22,339  16,542	\$ 161,557 *
Credits (h)	\$ 177 55 1,359 888 578 3,839	\$ 6,944
Debits (g)	\$ 3,000	\$ 4,296
Accumulated Depreciation Balance Previous Year (f)	\$ 28,679 1,374 38,918 21,441 15,964 50,333	\$ 158,909
Depr. Rate Applied (e)	Various %  Various %	
Average Salvage in Percent (d)		
Average Service Life in Years (c)	Various Various	
Account (b)	Structures and Improvements Power Generation Equipment Collection Sewers - Force Collection Sewers - Gravity Special Collecting Structures Services to Customers Flow Measuring Devices Flow Measuring Installations Receiving Wells Pumping Equipment Treatment and Disposal Equipment Outfall Sewer Lines Outfall Sewer Lines Outfall Sewer Lines Other Plant and Miscellaneous Equipment Office Furniture and Equipment Transportation Equipment Transportation Equipment Tools, Shop and Garage Equipment Tools, Shop and Garage Equipment Communication Equipment Communication Equipment Miscellaneous Equipment Office Furniture Equipment Communication Equipment Communication Equipment Miscellaneous Equipment	Totals
Acct. No. (a)	354 355 360 361 362 363 364 370 371 382 382 389 391 392 393 394 395 396 396	

\* This amount should tie to Sheet F-5.

### **WASTEWATER OPERATION AND MAINTENANCE EXPENSE**

Acct. No.	Account Name	Amount
		7 tinodite
701	Salaries and Wages - Employees	\$ 18,787
703	Salaries and Wages - Officers, Directors, and Majority Stockholders	23,336
704	Employee Pensions and Benefits	
710	Purchased Wastewater Treatment	
711	Sludge Removal Expense	2,205
715	Purchased Power	5,004
716	Fuel for Power Production	
718	Chemicals	6.483
720	Materials and Supplies	
730	Contractual Services:	
ŀ	Billing	
1	Professional	3,090
	Testing	1,368
	Other	2,107
740	Rens	2,354
750	Transportation Expense	846
755	Insurance Expense	397
765	Regulatory Commission Expenses (Amortized Rate Case Expense)	
770	Bad Debt Expense	
775	Miscellaneous Expenses (Repairs & maintenance, office exp., & loss on asset disposal)	7,764
	Total Wastewater Operation And Maintenance Expense	\$ 73,741 *
	* This amount should tie to Sheet F-3.	

### **WASTEWATER CUSTOMERS**

			Number of Active (	Customers	Total Number of
	Type of	Equivalent	Start	End	Meter Equivalents
Description	Meter **	Factor	of Year	of Year	(c x e)
(a)	(b)	(c)	(d)	(e)	(f)
Residential Service					
All meter sizes	D	1.0			
1					
General Service					
5/8"	D	1.0	425	425	425
3/4"	D	1.5			
1"	D	2.5		,	
1 1/2"	D,T	5.0			
2"	D,C,T	8.0			
3"	D	15.0			
3"	С	16.0			ACCOUNTS AND ACCOU
3"	Т	17.5			
Unmetered Customers					
Other (Specify)					
Comm 5/8 x 3/4			2	2	
Comm 1"					2
Commi		44	<u></u>	<u> </u>	1
** D = Displacement					
C = Compound		Total	428	428	428
T = Turbine					- Commence ( to the Control of Co

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Fairmount Utilities the 2nd, Inc.

YEAR OF REPORT DECEMBER 31, 2002

### **PUMPING EQUIPMENT**

Lift Station Number Make or Type and nameplate	Main St.	 	 	
data on pump Gorman Rupp 13a 25	2	4		
Year installed	2002	 	 	
Rated capacitySize	200GPM 3"	 		
Power: Electric	3HP	 	 	
Mechanical		 	 	··
Nameplate data of motor	3HP	 		

### **SERVICE CONNECTIONS**

Size (inches)	4"	Ì			
Type (PVC, VCP, etc.)	VCP			-	
Average length	50'	 		****	
Number of active service					
connections	428				
Beginning of year	428	 			
Added during year	0	 			
Retired during year	0	 			
End of year	428	 	***************************************		
Give full particulars concerning		 		***************************************	
inactive connections	N/A				
		 			7 a de 1904

### **COLLECTING AND FORCE MAINS**

	Collecting Mains				Force	e Mains	
Size (inches) Type of main Length of main (nearest	<u>8"</u>	6"	4" PVC	 			
foot) Begining of year Added during year	610 0	3,200	1,200 0			***************************************	
Retired during year End of year	610	3,200	1,200				

### MANHOLES

Size (inches) Type of Manhole Number of Manholes:	8" Brick	 	
Beginning of year	46	 	
Added during year Retired during year	0		
End of Year	46		

**UTILITY NAME:** 

Fairmount Utilities the 2nd, Inc.

SYSTEM NAME:

Fairmount Mobile Estates

YEAR OF REPORT DECEMBER 31, 2002

### TREATMENT PLANT

Manufacturer Type	Extended Air	 
"Steel" or "Concrete" Total Permitted Capacity	Concrete 40,000 GPD	 
Average Daily Flow Method of Effluent Disposal_	22,000 GPD Evap. & Perk Pond	
Permitted Capacity of Disposal Total Gallons of	11,000,000	 
Wastewater treated	11,006,000	

### **MASTER LIFT STATION PUMPS**

Manufacturer Capacity (GPM's) Motor:	Gorman/ Rupp 200GPM	 	 	
Manufacturer Horsepower Power (Electric or	US Elec 3 HP	 	 	
Mechanical)	Electric	 	 	

### **PUMPING WASTEWATER STATISTICS**

Months	Gallons of Treated Wastewater	Effluent Reuse Gallons to Customers	Effluent Gallons Disposed of on site			
January February March April May June June September October November December	961,000 952,000 1,054,000 780,000 558,000 600,000 1,085,000 899,000 1,080,000 868,000 960,000 1,209,000		961,000 952,000 1,054,000 780,000 558,000 600,000 1,085,000 899,000 1,080,000 868,000 960,000 1,209,000			
Total for year						
If Wastewater Treatment is purcha	ased, indicate the vendor	: N/A				

**UTILITY NAME:** 

Fairmount Utilities the 2nd, Inc.

YEAR OF REPORT DECEMBER 31, 2002

SYSTEM NAME:

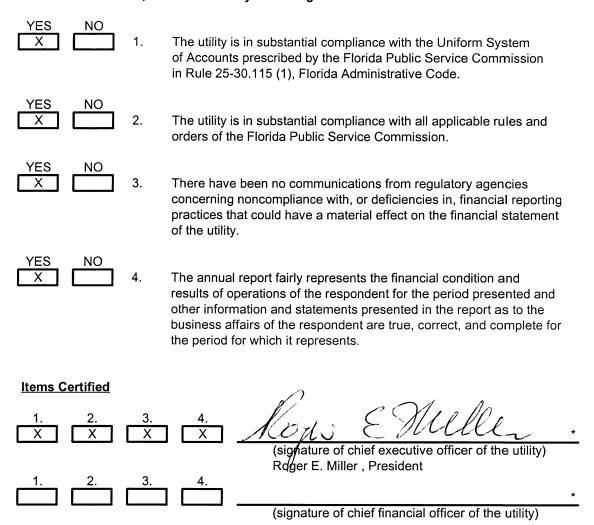
Fairmount Mobile Estates

GENERAL WASTEWATER SYSTEM INFORMATION

Furnish information below for each system. A separate page	e should be supplied where necessary.
Present number of ERCs* now being served.	108 [(11,006,000 / 365) / 280 = 107.69]
2. Maximum number of ERCs* which can be served.	143 (40,000 / 280 = 143)
3. Present system connection capacity (in ERCs*) using ex	sisting lines. 143 (40,000 / 280 = 143)
4. Future connection capacity (in ERCs*) upon service area	a buildout. No additional service.
5. Estimated annual increase in ERCs*. None	
Describe any plans and estimated completion dates for a     None	any enlargements or improvements of this system
7. If the utility uses reuse as a means of effluent disposal, p reuse provided to each, if known.  N/A	provide a list of the reuse end users and the amount of
8. If the utility does not engage in reuse, has a reuse feasible	ility study been completed? NO
If so, when?N/A	
Has the utility been required by the DEP or water manage	ement district to implement reuse?
If so, what are the utility's plans to comply with this	requirement? N/A
10. When did the company last file a capacity analysis repor	t with the DEP?
11. If the present system does not meet the requirements of	DEP rules, submit the following:
<ul> <li>a. Attach a description of the plant upgrade necess</li> <li>b. Have these plans been approved by DEP?</li> <li>c. When will construction begin?</li> <li>d. Attach plans for funding the required upgrading.</li> <li>e. Is this system under any Consent Order with DE</li> </ul>	N/A N/A N/A
12. Department of Environmental Protection ID #	D028187065
An ERC is determined based on one of the following meth  (a) If actual flow data are available from the proceding 12  Divide the total annual single family residence (SFR) ga  residents (SFR) gallons sold by the average number of period and divide the result by 365 days.	months: allons sold by the average number of single family
(b) If no historical flow data are available use:  ERC = (Total SER gallons sold (omit 000/365 days/28)	(O gallone per day)

### **CERTIFICATION OF ANNUAL REPORT**

I HEREBY CERTIFY, to the best of my knowledge and belief:



\* Each of the four items must be certified YES or NO. Each item need not be certified by both officers. The items being certified by the officer should be indicated in the appropriate area to the left of the signature.

e: Section 837.06, Florida Statutes, provides that any person who knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his duty shall be guilty of a misdemeanor of the second degree.