IN THE SUPREME COURT
STATE OF FLORIDA

LEGAL ENVIRONMENTAL ASSISTANCE FOUNDATION, INC.,

Petitioner,

vs. CASE NO. 83,039

BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA,

Respondent.
_____/

ON THE CERTIFIED QUESTION FROM THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
CASE NO. 92-3200

ANSWER BRIEF OF RESPONDENT

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ISSUE PRESENTED FOR REVIEW

Under existing Florida Law, not limited to the State's EPA-Approved Underground Injection Control Program, where a holder of an exploratory well construction and testing permit has made a timely application for an injection well operating permit, does the construction and testing permit continue in effect past its expiration date until the Florida Department of Environmental Regulation has acted on the pending application?

STATEMENT OF THE FACTS

Although the Respondent agrees with most of the factual statements provided in the Petitioner's statement of facts, there are significant facts that are either not supported by the Record or mischaracterized by the Petitioner. Accordingly, the Respondent provides a brief statement of facts to correct those facts.

Congress enacted the Safe Drinking Water Act in 1974 and extensively amended it in 1986.[1] The Act created a program for states to regulate underground injection wells for the protection of sole source aquifers.[2] Underground injection is the subsurface emplacement of fluid through a well or dug-hole whose depth is greater than its width.[3] To protect present and potential underground sources of drinking water from endangerment caused by underground injection of waste, Congress mandated the establishment of a regulatory program to be administered by either the U.S. Environmental Protection Agency ("EPA") or a state if EPA approval of the state program is obtained.[4] Once a UIC program is in existence, no underground injection may occur except as authorized by permit or rule.[5]

The Florida underground injection control program administered by the Florida Department of Environmental Regulation since 1983 is

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[1] 42 USC § 300f - 300j-11.

[2] 40 CFR § 144, *et seq.*

[3] 40 CFR § 144, *et seq.*

[4] 42 USC § 300(h)-1 (1988).

[5] 40 CFR § 144.11.

regulated by Chapter 403, Florida Statutes (the Florida Air and Water Pollution Control Act); Chapter 17-4, Fla. Admin. Code (permitting) and Chapter 17-28, Fla. Admin. Code (underground injection control).[6]

On December 21, 1982, Brevard County submitted an application for a Class I Exploratory Injection Well Construction and Testing Permit at the South Beaches Regional Wastewater Treatment Plant ("Plant") to the Florida Department of Environmental Regulation ("DER").[7] Approximately one year later, on December 23, 1983, the Florida DER issued Permit No. UD05-64536 to Brevard County for the construction and testing of a Class I Exploratory Test Injection Well at the South Beaches Plant.[8] This permit contained an initial expiration date of January 1, 1985.[9] The permit was modified by the

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[6] 40 CFR § 147.500 (1992).

[7] R-27, Joint Pretrial Stipulation, Page 10. Now known as the Department of Environmental Protection or the "DEP."

[8] R-27, Joint Pretrial Stipulation, Page 10. Although the original application was for an "exploratory" well, at some point in time both the DER and the County considered the status of the well as an "injection" well. See; December 26, 1985 memo from Alex Alexander, DER District Manager to the County ("[c]onstruction of the injection well was authorized by [permit] UD05-64536"); Letter from Alex Alexander, DER District Manager to Brevard County, authorizing injection of treated effluent dated February 26, 1987 (The DER would not have allowed the injection of effluent, i.e. treated wastewater; unless the DER considered the County's well as an "injection" well rather than an "exploratory" well); Consent Order, Appendix A, Para. 5 ("[o]n December 23, 1983, the Department issued Permit No. UD05-64536 which authorized the construction and testing of a Class I underground injection well system"). This action was consistent with F.A.C. Rule 17-28.320(2)(g) which provides that by DER approval an exploratory well may be converted to an injection well.

[9] R-27, Joint Pretrial Stipulation, Page 10.

parties several times, ultimately extending the expiration date to December 10, 1988.[10]

On December 29, 1986, prior to the expiration date of the Construction and Testing Permit, Brevard County timely submitted an application for a Class I Well Operating Permit for the injection well located at the South Beaches Regional Wastewater Treatment Plant.[11]

In February of 1987, the DER verbally authorized the County to begin utilizing the Class I well for injection of treated domestic wastewaters, and confirmed this modification of the County's permit by a letter dated February 26, 1987.[12] Subsequent to the DER's authorization, the County has continuously used the Class I deep injection well at the facility to dispose of treated domestic wastewaters (sewage) by injection into the subsurface.[13]

On January 2, 1991, LEAF filed with the EPA a "Petition for Withdrawal of the Florida Underground Injection Control Program."[14]

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[10] R-27, Joint Pretrial Stipulation, Pages 10-11.

[11] R-27, Joint Pretrial Stipulation, Page 11.

[12] The original permit conditions provided that water for injection testing must come from the Indian River. However, by authorizing the County to inject treated effluent (sewage), the DER modified the original permit conditions. See, letter dated February 26, 1987 from DER District Manager, Alex Alexander to Chuck Striffler ("[t]his letter becomes part of the permit and should be attached to the original permit"). Defendant's Request to Plaintiff's First Request for Admission, R-16-2, P.4, Attachment "C."

[13] R-27-12, Joint Pretrial Stipulation. Through the present date, the DER has never requested the County to stop injecting treated wastewater into the well.

[14] Deposition of Cynthia Valencic, Exh. D-5.

In this Petition, LEAF asked the EPA to commence proceedings to take away the State of Florida's approval to operate the Florida Underground Injection Control Program.[15] In that Petition, LEAF asserted that the County's facility was operating without a permit.[16] On April 15, 1991, the DER filed a "Response to the LEAF Petition" with the EPA.[17] The DER's position was that the County was operating under a valid permit, concluding that "all injection activity" at the South Beaches Facility "is fully authorized under Rule 17-4.090, Fla. Admin. Code."[18]

Pursuant to Section 403.0867, Fla. Stat., a permit application is required to be processed within ninety days "after receipt of the last item of timely requested material." As part of the processing of the County's permit application between 1988 and 1991, the DER made numerous requests for additional data, sampling, and monitoring at the site.[19] On March 20, 1991, Brevard County received a draft "Notice of Permit" package from the DER under the

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[15] Depo. of Cynthia Valencic, D-5, P. 43.

[16] Depo. of Cynthia Valencic, D-5, P. 35.

[17] Depo. of Cynthia Valencic, D-6.

[18] Depo. of Cynthia Valencic, D-6, P. 39.

[19] For example, Letter to County from John Armstrong, DER Program Manager, dated November 9, 1988; Letter to the County from Carlos Rivero-deAguilar, Program Administrator, dated June 20, 1989; Letter to County from Carlos Rivero-deAguilar, Program Administrator, dated May 20, 1990; DER Interoffice Memo dated July 30, 1991 from Marian Fugitt, Environmental Specialist to Carlos Rivero-deAguilar ("an off site monitor well should be constructed to demonstrate its [freshwater's] presence in this area...continued monitoring with a focus on TKN trends is essential at this site"). Depo. of Cynthia Valencic, Exh. P-2, 4, 5 and 6.

designated number of UC05-169184, to test operate IW-1 at the South Beaches Regional Wastewater Treatment Plant.[20] On April 18, 1991, Brevard County submitted responsive comments to the DER concerning the proposed text of the "draft" permit.[21]

On June 19, 1991, the DER Technical Advisory Committee met to review the data pertaining to the South Beaches Wastewater Treatment Plant.[22] On July 30, 1991, the UIC, Criteria and Standards Section determined that rather than issue an operating permit, that a Consent Order would be the proper way to allow the continued operation of the well while further testing was conducted at the facility.[23] On October 10, 1991, the DER held a meeting to discuss Brevard County's Facility.[24] At that meeting the DER staff concluded that a permit could not be issued because the County had not been able to provide data showing a reasonable assurance that there was adequate confinement separating the injection zone from overlaying

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[20] Affidavit of Richard Martens, R1-25-4, Exh. 6.

[21] Affidavit of Richard Martens, R1-25-4, Exh. 7.

[22] DER interoffice memo to Carlos Rivero-deAguilar from Marian Fugitt dated July 30, 1991, Depo. of Cynthia Valencic, Exh. P-6.

[23] DER interoffice memo to Carlos Rivero-deAguilar from Marian Fugitt dated July 30, 1991. ("Since IW-1 at the South Beaches Facility has been operating for four years and the issue of confinement remains unresolved, we feel that the Department should not issue a construction or operation permit for this injection well...Since temporary operation permits (TOP) are not allowed in the UIC Program, we feel that the only mechanism available to the Department which will allow the continued operation of this well is a Consent Order"). Depo. of Cynthia Valencic, Exh. P-6.

[24] Internal DER Meeting Documentation memo dated October 10, 1991, noting discussion of proposed Consent Order. Depo. of Cynthia Valencic, Exh. P-7.

aquifers.[25] The DER concluded that a Consent Order addressing this issue was the best way to proceed with the County's application.[26]

On November 8, 1993, subsequent to the oral argument before the U.S. Court of Appeals, the County entered into a Consent Order with the Florida Department of Environmental Protection (DEP, previously DER) authorizing the temporary operation of the County's Class I Injection Well System in accordance with Section 403.088, Florida Statutes, and Title 40 Code of Federal Regulations 144.34.[27] The Consent Order authorizes operation of the injection well for a maximum period of 5 years and is considered final agency action on the County's permit application.[28]

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[25] Internal DER Meeting Documentation memo dated October 10, 1991, noting discussion of proposed Consent Order. Depo. of Cynthia Valencic, Exh. P-7. In layman's terms, the data indicated that the aquifer above the injection zone was freshening, inferring that the injectate was migrating vertically upwards and not remaining in the injection zone. Although not considered an environmental threat, (if so, the DER would have immediately required cessation of the injection well) vertical migration is a technical violation of the administrative code rules.

[26] Internal DER Meeting Documentation memo dated October 10, 1991, noting discussion of proposed Consent Order. Depo. of Cynthia Valencic, Exh. P-7.

[27] Copies of the Consent Order and the published "Notice of Consent Order" are attached as Appendix A and B. The execution of the Consent Order concluded a two-year period of negotiation initiated in late 1991 between DER and the County. LEAF states that "the DER has neither granted nor denied the Board's application for a Class I Injection Well Operating Permit." Brief of Petitioner at 9. Prior to execution of the Consent Order, this fact was correct. However, execution of the Consent Order concluded the DER's action on the County's application.

[28] Consent Order, Paragraphs 6 and 45. ("[t]he Department finds that the requirements of Section 403.088(3), Florida Statutes, allowing for temporary operation of the facility have been satisfied.")

SUMMARY OF ARGUMENT

Under the applicable federal law, an expiring state-issued construction and testing permit may be continued until the effective date of a new permit if "state law allows" for such a continuation. 40 CFR § 144.37. Based upon this federal regulation, the United States Court of Appeals determined that the proper inquiry in this case was whether "existing" Florida law allowed the DER to extend the duration of the County's Construction and Testing Permit.

Chapter 403, Fla. Stat., known as the "Florida Air and Water Pollution Control Act," authorizes the State (through the DER) to regulate "underground injection." The DER's statutory authority to issue a permit to operate a Class I injection well is governed by Chapter 403, Fla. Stat., as well as Fla. Admin. Code Chapters 17-4 (permitting) and 17-28 (underground injection control). Chapter 17-28 provides that the DER is the administering agency for the underground injection control rules.

The Record before this Court shows that the top officials of the DER interpreted Rules 17-4 and 17-28 to extend the County's permit until the DER acted upon the application. To reach this conclusion, the DER Secretary and Bureau Chief looked to the Rules governing underground injection control. First, Rule 17-4.090(1), Fla. Admin. Code, provides that when an application is timely the existing permit shall remain in effect until the DER renders final agency action on the submittal application. Since an operation permit application was submitted to the DER on December 30, 1986,

operational testing may continue as the construction permit conditions remain in effect due to the submittal of a timely application. Second, Rule 17-28.330(3)(a), F.A.C., specifically allows injection for the purpose of long-term testing (i.e., operational testing). Third, there are no rule specified limits to the length of the operational testing period. Therefore, the DER in its discretion determined that the County's injection well was operating under the "operational testing phase" of the construction permit which remained in effect due to the timely submittal of an application for an operation permit.

The Florida statutory authority regulating underground injection declares that it is the State's policy that the DER shall "insure that existing and potential drinking water resources of the state remain free from harmful quantities of contaminants." Section 403.021(10), Fla. Stat. The legislature has charged the DER with the authority and primary responsibility to use its technical expertise to adopt specific rules implementing that statutory directive. Section 403.061(7), Fla. Stat. The DER's interpretation that the operational testing phase of the County's construction permit continues while the application is pending, allows the DER to maintain regulatory oversight and control of the facility by extending the "permit conditions" of the construction permit. This interpretation accords with the public policy enunciated in both the Safe Drinking Water Act and Chapter 403, Fla. Stat., directing the DER to regulate underground injection to protect the state's potential drinking water resources.

A Florida agency's interpretation of its own Rules and statutes it administers is entitled to great weight and should not be disregarded, unless "clearly erroneous." Bolam v. Mobil Oil Corp., 893 F.2d 311 (11th Cir. 1990); Pan American World Airways v. Florida Public Service Commission, 427 So.2d 716 (Fla. 1983). The DER's interpretation does not have to be the only one, or even the most desirable or preferable, however, as long as the DER's interpretation is a "reasonable" one, the Court must defer to the DER's interpretation. Little Munyon Island v. Department of Environmental Regulation, 492 So.2d 735 (Fla. 1st DCA 1986). A reviewing court must defer to an agency's interpretation of an operable rule as long as the interpretation is consistent with legislative intent and is supported by substantial, competent evidence. Reedy Creek Improvement District v. Department of Environmental Regulation, 486 So.2d 642 (Fla. 1st DCA 1986).

LEAF has the burden to advance credible, competent evidence to show that the DER's interpretation of the rules at issue is either arbitrary, capricious, an abuse of discretion, or not reasonably related to the statutory purpose. LEAF v. Monsanto, 12 FALR 1762, 1784 (1990). LEAF has provided no administrative or judicial authority or legislative history showing that the DER's interpretations of Rules 17-4 and 17-28 are inconsistent with the intent of Chapter 403, Fla. Stat. Thus, LEAF failed to meet its burden to advance credible, competent evidence to show that the DER's interpretations are "clearly erroneous." LEAF v. Monsanto, 12 FALR 1762 (1990).

Accordingly, the District Court correctly deferred to the DER's interpretation of the Florida UIC permitting rules in holding that, under existing Florida law, the County's construction and testing permit continued in effect until the DER acted upon the County's application for an operating permit. Based upon the District Court's determination that "Florida law allows" the extension of an expiring permit until a new permit is issued as provided in federal regulation 40 CFR § 144.37, the District Court correctly found that the Safe Drinking Water Act had not been violated by the County's continued operation of the underground injection well at the South Beaches Plant.

ARGUMENT

I. THE DISTRICT COURT CORRECTLY DEFERRED TO THE INTERPRETATION AND JUDGMENT OF THE DER, AS THE AGENCY IMPOSED WITH THE DUTY TO IMPLEMENT THE STATE OF FLORIDA UNDERGROUND INJECTION CONTROL PROGRAM, BY HOLDING THAT THE COUNTY'S TIMELY APPLICATION FOR AN INJECTION WELL OPERATING PERMIT SERVED TO EXTEND THE OPERATIONAL TESTING PHASE OF THE CONSTRUCTION AND TESTING PERMIT UNTIL THE DER ACTED UPON THE PENDING APPLICATION, CONCLUDING THAT THE COUNTY'S OPERATION OF A CLASS I WASTEWATER TREATMENT PLANT DID NOT VIOLATE THE SAFE DRINKING WATER ACT.

Under the Safe Drinking Water Act, the federal government is empowered to regulate the discharge of wastewater into the ground through a federal program administered by the EPA or through delegation of "primacy" to a State. On April 1, 1982, the Florida DER adopted its rules governing underground injection control. ("UIC"). These rules were designed to enable the DER to obtain authorization from the United States Environmental Protection Agency ("EPA") to implement the federally mandated Underground Injection Control Program in Florida. On March 9, 1983, the DER obtained "primacy" authorization from the EPA to implement the Florida underground injection control program, in lieu of the federal program.[29]

A. Federal law authorizes DER to continue an expiring permit as long as Florida Law allows for such a continuation.

Once a program is established, all underground injections are unlawful unless authorized by a permit or a rule.[30] A "permit" is

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[29] 40 CFR § 147.500 (1983).

[30] 40 CFR § 144.1.

defined as an authorization, license, or equivalent control document issued by an approved State to implement the requirements of the Safe Drinking Water Act.[31] Pertinent federal law provides that:

> A state authorized to administer the UIC Program may continue either EPA or state issued permits until the effective date of the new permits, if state law allows. Otherwise, the facility or activity is operating without a permit from the time of expiration of the old permit to the effective date of the State issued new permit.[32] [Emphasis added]

Pursuant to that section, upon application for a "new" permit, the DER may continue a previously issued State permit until the effective date of the new permit if "state law allows."

In determining the common and ordinary meaning of a term, the court may look to the standard, non-legal dictionary definition of the word. GEICO v. Novak, 453 So.2d 1116 (Fla. 1984). The plain meaning of the term "new" is something "used for the first time...different and distinct from what was before." The American Heritage Dictionary (1983 ed.). The federal law does not limit extension of the existing permit to "renewal" of the same type of permit, but provides for extension of an expiring old permit (whatever type of permit that might be) by submittal of a new

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[31] 40 CFR § 144.3.

[32] 40 CFR § 144.37(a) & (d). Interestingly, in the federally administered program, if the permittee has submitted a timely application for a new permit and the new permit is not issued by EPA (through no fault of the permittee) prior to the expiration date of the previous permit, the conditions of an expired permit issued by EPA continue until the effective date of a new permit. The DER's interpretation of the F.A.C. Rules at issue is consistent with the federally administered program.

permit application. Thus, the Court of Appeals correctly determined that the resolution of this case depends on one simple determination; whether "Florida law allows" the DER to continue the County's Class I Construction and Test Injection Permit (the old permit) until the DER takes final action upon the County's timely application for a Class I Operation Permit (the new permit) at the same facility.

B. The applicable Florida law.

Chapter 403, Fla. Stat., known as the "Florida Air and Water Pollution Control Act," authorizes the State (through the DER) to regulate "underground injection." The Act declares that state policy shall "insure that existing and potential drinking water resources of the State remain free from harmful quantities of contaminants."[33] The Florida Legislature charged the DER with the primary authority and responsibility to use its expertise to adopt, modify and repeal specific rules to regulate underground injection in the state.[34] The DER's statutory authority to issue a permit to operate a Class I injection well is governed by Chapter 403, Fla. Stat., as well as Fla. Admin. Code Chapters 17-4 (permitting) and 17-28 (underground injection control). Chapter 17-28 provides that the DER is the administering agency for the underground injection control rules.[35]

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[33] § 403.021(10), Florida Statutes (1993).

[34] § 403.061(7) and (14), Florida Statutes (1993).

[35] Rule 17-28.310(1), Fla. Admin. Code.

An "exploratory well"[36] is defined as "a cased well drilled in an area in which there is limited hydrologic and geologic data, to obtain sufficient data to determine feasibility of injection." An "injection well" is defined as "a well into which fluids are being or will be injected by gravity flow or under pressure."[37] With prior DER approval, an exploratory well may be "used as an injection well if it meets all applicable standards for a Class I well."[38] A "construction permit" is defined as the "legal authorization granted by the Department to construct, expand, modify, or make alterations to any installation and to temporarily operate and test such new or modified installations."[39]

Rule 17-4.210(3),[40] Fla. Admin. Code, pertaining to construction permits provides in part:

> When the Department issues a permit to construct, the permittee shall be allowed a period of time, specified in the permit, to construct, and to operate and test to determine compliance with Chapter 403, F.S., and the rules of the department. [Emphasis added]

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[36] Rule 17-28.120(25), Fla. Admin. Code.

[37] Rule 17-28.120(37), Fla. Admin. Code.

[38] Rule 17-28.120(25), Fla. Admin. Code.

[39] Rule 17-4.020(4), Fla. Admin. Code.

[40] This Rule applies to all DER construction permits. The statutory authority for this Rule includes Florida Statutes, § 403.021, § 403.031, § 403.061, and § 403.088.

Rule 17-28.330(3)(a),[41] Fla. Admin. Code, reads as follows:

> (3) Testing. (a) For Class I, the construction permit includes a period of temporary injection operation for the purposes of long term testing. Each well shall first be tested for integrity of construction, and shall be followed by a short term injection test of such duration to allow for the prediction of the operating pressure. [Emphasis added]

Rule 17-4.090(1),[42] Fla. Admin. Code, reads as follows:

> Renewals. Prior to sixty days before the expiration of any Department operation permit, the permittee shall apply for a renewal of a permit on forms and in a manner prescribed by the Department. A renewal application shall be timely and sufficient. If the application is submitted prior to sixty days before expiration of the permit, it will be considered timely and sufficient. If the renewal application is submitted at a later date, it will not be considered timely and sufficient unless it is submitted and made complete prior to the expiration of the operation permit. When the application for renewal is timely and sufficient, the existing permit will remain in effect until the renewal application has been finally acted upon by the Department or, if there is court review of the Department's final agency action, until a later date is required by Section 120.60, F.S. [Emphasis added]

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[41] The statutory authority for this rule includes Florida Statutes, § 403.061, Florida Statutes, § 403.087, § 403.101, § 403.704, and § 403.721. LEAF asserts that the DER's reliance on this Rule is inappropriate because Rule 17-28.330 applies to a "Class I - Test/ Injection Well Construction and Testing Permit" and the County's original permit was for a "Class I Exploratory Well Construction and Testing Permit." While LEAF is partially correct that the original permit application was for an exploratory well, Rule 17-28.320(3)(g) allows the conversion of an "exploratory" well to an "injection" well with DER's approval. There are several actions in the Record that show that DER considered the well as an "injection" well, culminating with the DER's authorization to the County in 1987 to inject treated effluent (sewage) through the well. See FN 12.

[42] The statutory authority for this rule includes Fla. Stat., § 403.021, § 403.031, § 403.061, § 403.087, and § 403.088. The rule was amended in 1988 and renumbered (previously 17-4.09). This rule is consistent with the federally administered UIC Permit Program found at 40 CFR § 144.37(a) and (d). See FN 32.

The above-referenced Rules are based primarily upon the statutory authority found in Chapter 403, Fla. Stat., the "Florida Air and Water Pollution Control Act."

C. The DER's interpretation of the Florida law.

As the agency responsible for the permitting of underground injection wells in the State of Florida, the DER is charged with the responsibility of interpreting these rules and regulations in accordance with the intent of Chapter 403, Fla. Stat. As explained below, the highest officials of the DER Department that has jurisdiction over underground injection, have interpreted Chapters 17-4 and 17-28 to mean that applying for an operation permit for an underground injection well prior to expiration of a construction and testing permit extends the authorization of the existing permit until the new permit application is finally acted upon by the DER.

1. DER's official response to the LEAF Petition.

On January 2, 1991, LEAF filed a Petition with the E.P.A. Administrator challenging, among other things, the DER's interpretation of the permitting rules, specifically demanding withdrawal of the DER's delegated authority over the Florida Underground Injection Control (UIC) Program.[43] LEAF's Petition alleged that:

> The Brevard County South Beaches Regional Wastewater Treatment Plant operated without a valid permit from December, 1988, when the term of the existing injection well construction permit expired, until as recently as

[43] Depo. of Cynthia Valencic, Exh. D-5.

> December 27, 1990. The Department failed to require the cessation of unauthorized injection activities...[44]

The DER's official response to LEAF's Petition dated April 15, 1991, submitted by Carol Browner, Secretary of the DER[45], provides:

> Construction Permit No. UD05-64536 for the South Beaches Regional Wastewater Treatment plant injection wells expired on December 20, 1988. An application to operate this facility dated December 30, 1986 was received by DER from Brevard County. In accordance with Rule 17-4.090, F.A.C., this was a timely submittal and hence extends the construction permit, including the operational testing phase with effluent, until such time as the operating permit application is either issued or denied...Thus, the Department has made no effort to require the cessation of activity at the South Beaches facility because all injection activity there is fully authorized under Rule 17-4.090, F.A.C. No enforcement action is necessary.
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> * * *
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> LEAF claims that the Department did not report to EPA that South Beaches has operated without a permit since December, 1988... Under current Department policy, this facility is not in violation since a timely application was received by the Department. Since this facility was (and is) not in violation, no reporting of noncompliance was necessary.[46] [Emphasis added]

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[44] LEAF's petition also alleged that other facilities in Florida suffered from the same permit expiration problem, specifically, the Palm Beach County System and the Pinellas County Pollution Control Facility. Depo. of Cynthia Valencic, Exh. D-5, Pages 15-16 and 20.

[45] In her cover letter to the EPA administrator, dated April 25, 1991, the DER Secretary Browner states, ("[a]s background for the preparation of this written response...the Florida UIC staff and EPA Region IV representatives met to review the petition in detail. The State and Region agreed to coordinate their participation in the state UIC rule amendment process during the coming year. Rule revisions will respond to several issues raised in the petition, as well as some others raised by the EPA"). Depo. of Cynthia Valencic, Exh. D-6.

[46] Depo. of Cynthia Valencic, Exh. D-6, pages 39, 50. To this date, the U.S. Environmental Protection Agency has not relieved the DER of its authority over the Florida Underground Injection Control (UIC) Program.

In the same Petition to the EPA, LEAF alleged that the Palm Beach County Wastewater Treatment Plant was operating without a permit from 1986 (when its construction permit expired) to 1990 when the DER acted upon Palm Beach County's outstanding operating permit application.[47] In its official Response, the DER stated:

> [W]hile operating under timely submittal of a permit application as allowed under Rule 17-4.090(1), F.A.C., and 40 CFR 144.37, the conditions of the existing permit remain in effect until the new permit is either issued or denied.[48] [Emphasis added]

The DER officially concluded that Florida law (Rule 17-4.090(1)) and federal law (40 CFR § 144.37) allowed the conditions of an existing permit to remain in effect until a new permit was issued. This consistent interpretation was made by the DER pertaining to the status of the County's facility, Palm Beach County's facility, Pinellas County's facility and the South Port St. Lucie facility.[49]

2. The DER Bureau Chief's position.

On July 26, 1991, in response to a request from LEAF, Charles Aller, the DER Chief of the Bureau of Drinking Water and Ground Water Resources, specifically interpreted Rules 17-4.090 and 17-

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[47] LEAF's "Petition for Withdrawal of the Florida UIC Program," Depo. of Cynthia Valencic, Exh. D-5, Page 15.

[48] DER Response to LEAF Petition, Depo. of Cynthia Valencic, Exh. D-6, Page 17. The Palm Beach County System operated for four years between expiration of its construction permit and DER's final action on its operation permit application.

[49] The Pinellas County Pollution Control Facility's construction permit expired in 1988. Two years later, the DER issued an operating permit. In both cases, a significant period of time elapsed between expiration of the construction permit and issuance of an operating permit. The same position was taken by the DER to a fourth facility, the South Port St. Lucie Wastewater Treatment Plant. Depo. Exh. D-5, Pages 15-17 and 20.

28.330(3)(a) as they relate to the status of Brevard County's South Beaches Regional Wastewater Treatment Plant by stating:

> A timely submittal of a permit application is defined in rule 17-4.090(1), Florida Administrative Code (F.A.C.). In addition to defining a timely submittal, this rule states that when an application is timely the existing permit shall remain in effect until the Department renders final agency action on the submittal application. In the example of the South Beaches facility, the construction permit expired on December 20, 1988, however, since an operation permit application was submitted to the Department on December 30, 1986, operational testing may continue as the construction permit conditions remain in effect due to the submittal of a timely application. Thus, the continued testing has Department authorization.
>
> Rule 17-28.330(3)(a), F.A.C., specifically allows injection for the purpose of long-term testing (i.e., operational testing). Although not specifically required by rule, a "Letter of Authorization" must be received by the permittee before effluent may be injected under the operational testing phase of the construction permit. This letter allows the operational testing phase of the construction permit to begin and specifies the conditions under which the well may be operated during the testing phase. Authorization is not granted until key items such as mechanical integrity testing results and confinement data have been thoroughly reviewed. There are no rule specified limits to the length of the operational testing period.[50]
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> In the case of the South Beaches facility in Brevard County, the well is currently operating under the operational testing phase of a construction permit which remains in effect due to the timely submittal of an application for an operation permit.[51] [Emphasis added].

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[50] This "Letter of Authorization" authorizing the injection of effluent under the "long-term testing" phase of the construction permit was received by the County on February 26, 1987. R-16-2, Attachment "C." See, FN 12.

[51] Letter from Charles Aller, DER Chief of the Bureau of Drinking Water and Ground Water Resources, to Andy Smith, LEAF research assistant, dated July 26, 1991. LEAF argues that Mr. Aller's letter was based upon "an earlier opinion by an attorney employed by the DER concerning a different injection well." [Petitioner's Brief at 13.] Nothing in the Record supports this claim. In fact, Mr.

3. **The plain meaning of the DER's official position.**

The above discussed agency interpretations depend not only on Fla. Admin. Code Rule 17-4.090(1), but on the interplay with Chapter 17-28, specifically Rule 17-28.330(3)(a). Rule 17-4.090(1)'s importance lies with the issue of timely submission and renewal. This Rule is based upon Section 403.087, Fla. Stat., which provides that upon expiration, a "new" permit may be issued by the DER in accordance with the provisions of Chapter 403, and the DER's rules and regulations. It is undisputed that the County's application for an operating permit was "timely" since the application for the new permit was submitted two years prior to expiration of the old permit.

More importantly, under Rule 17-28.330(3)(a), the DER permitted the County to "operate" under the "long term testing" phase of its construction and testing permit.[52] The DER has considered the County's continuous injection activity as an extension of that prior authorization to perform operational

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Aller's letter was written as a direct response to a letter from Andy Smith, LEAF's research assistant questioning the operation of deep injection wells after permit expiration. ("I am writing in response to your letter of June 11..."). R1-24-1. Depo. of Cynthia Valencic, Exh. D-3.

[52] At an early stage of the application process, the DER local representative requested the County to submit a new Injection Well Construction and Testing Permit application to "cover the additional injection and testing" which will be necessary. The County did submit this additional permit application. Although the DER indicated that a permit would be issued, the DER never formally acted on that permit application until the issuance of the Consent Order. Depo. of Cynthia Valencic, Exh. P-2.

testing with effluent.[53] As stated by Charles Aller, the DER Chief of the UIC program, "[t]here are no rule specified limits to the length of the operational testing period."[54]

Accordingly, it is totally within the DER's discretion, as the permitting agency, to determine what is meant by "long term operational testing under a construction permit". Since the testing requirements are technical in nature, the DER is the best authority to determine what "long term operational testing" entails. In Brevard County's case, the DER has determined that the County's continued injection activity at the plant fits within the "long term operational testing" provisions and is allowed by both federal and Florida law.

The DER's ultimate conclusion, after thorough review of this issue was that "all injection activity" at the South Beaches facility "is fully authorized".[55] Based upon the position taken by Secretary Browner and Bureau Chief Aller, the County's construction and testing permit would remain in effect until the DER acted upon

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[53] DER Response to LEAF Petition For Withdrawal. Depo. of Cynthia Valencic, Exh. D-6. Rule 17-28.310(3), Fla. Admin. Code, specifies the duration of a permit. Specifically, that rule provides in pertinent part; "[a]ll Department permits shall expire five years from the date of issuance...however, construction permits shall be issued for a period of time as necessary. (Emphasis added). If the DER had intended to limit construction permits to the five year provision, it could have done so. However, by specifically excluding construction permits from this time limitation, the DER is left with the discretion to choose the duration of a construction permit.

[54] R-24-1, Exh. D, Letter from Charles Aller to Andy Smith dated July 26, 1991.

[55] Florida DER Underground Injection Control Response to LEAF Petition. Depo. of Cynthia Valencic, Exh. D-6.

the operation permit application, even though the DER final action on the operation permit did not occur until after the listed expiration date of the existing construction and testing permit.[56]

D. The Standard of Review - Deferral to Agency Expertise.

Florida law provides that a Florida administrative agency's interpretation of the rules and statutes it administers is entitled to great deference. Department of Environmental Regulation v. Goldring, 477 So.2d 532 (Fla. 1985); LEAF v. Monsanto, 12 FALR 1762 (1990).[57] For example, in Pan American World Airways, Inc. v. Florida Public Service Commission, 427 So.2d 716, 719 (Fla. 1983), the Florida Supreme Court stated:

> We have long recognized that the administrative construction of a statute by an agency or body responsible for the statute's administration is entitled to great weight and should not be overturned unless

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[56] LEAF argues quite extensively that Chief Aller's July 26, 1991 written interpretation should be disregarded by this Court claiming that "Mr. Aller's interpretation is derived from the February 4, 1991 opinion of Doug MacLaughlin." [Brief of Petitioner, Pages 13 and 25.] Nothing in the Record supports this claim. In fact, Mr. Aller's position is stated in a letter to LEAF responding to LEAF's request to Mr. Aller. LEAF spends a great deal of time attempting to discredit the DER's position on this issue through attacking a legal opinion issued by Doug MacLaughlin, a DER Attorney. However, Mr. MacLaughlin's opinion pertains to the "Grant Street Injection Well, not Brevard County's Facility. Interestingly, LEAF chose not to address and completely ignores the official position taken by the DER in its Response to LEAF's Petition to the EPA, which pre-dates Mr. Aller's opinion and is probably what Mr. Aller based his opinion on, which is the official position of the DER, signed off by Secretary Carol Browner, the highest DER official.

[57] Federal Courts follow this interpretation. Bolam v. Mobil Oil Corp., 893 F.2d 311, 313-314 (11th Cir. 1990). In Curtis v. Taylor, 625 F.2d 645, 654 (5th Cir.), modified, rehearing denied, 648 F.2d 946 (5th Cir. 1980), the Circuit Court of Appeals held that an agency's interpretation of a regulation it has promulgated is entitled to deference when the meaning of the regulation is not clear.

> clearly erroneous. [citation omitted] The same deference has been accorded to rules which have been in effect over an extended period and to the meaning assigned to them by officials charged with their administration. [Emphasis added]

A court need not find that the interpretation by an agency of its regulations is the only "permissible"[58] construction, but that the agency's understanding of the statute or regulation is a sufficiently rational one to preclude a court from substituting its judgment for that of the agency. U.S. v. Riverside Bayview Homes, Inc., 474 U.S. 121 (1985); Chemical Manufacturers Association v. Natural Resources Defense Council, Inc., 470 U.S. 116 (1985); Environmental Protection Agency v. National Crushed Stone Association, 449 U.S. 64 (1980); and E.I. duPont de Nemours & Co. v. Train, 430 U.S. 112 (1977). If an agency's interpretation of its own regulation is merely one of several reasonable alternatives, it must stand even though it may not appear as reasonable as some other alternatives. Expedient Services, Inc. v. Weaver, 614 F.2d 56 (5th Cir. 1980).[59]

Florida courts have followed this standard that permissible interpretations of agency regulations by that agency must, and will

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[58] As Justice Traynor wisely said, "[r]are are the statutes that rest in peace beyond the range of controversy. Large problems of interpretation inevitably arise. Plain words, like plain people, are not always so plain as they seem." Traynor, No Magic Words Could Do It Justice, 49 Cal.L.Rev. 615, 618 (1961).

[59] See also, Gulick v. Department of Health and Rehabilitative Services, 615 So.2d 192 (Fla. 1st DCA 1993); Gregory v. Indian River County, 610 So.2d 547 (Fla. 1st DCA 1992); Friends of the Everglades, Inc. v. State Department of Environmental Regulation, 496 So.2d 181 (Fla. 1st DCA 1986); and Reedy Creek Improvement District v. State Department of Environmental Regulation, 486 So.2d 642 (Fla. 1st DCA 1986).

be sustained, even though other interpretations are possible and may even seem preferable according to some views. Motel 6 v. Department of Business Regulation, 560 So.2d 1322 (Fla. 1st DCA 1990). It is not necessary that an agency's interpretation be the most desirable interpretation, merely that it not be unreasonable or outside the range of possible interpretations. Little Munyon Island, Inc. v. Department of Environmental Regulation, 492 So.2d 735 (Fla. 1st DCA 1986).[60] The judiciary may not restrict the range of an agency's interpretative powers once such agency has responded to rule-making incentives and has allowed affected parties to help shape rules. Retail Grocers Association of Florida Self Insurers Fund v. Department of Labor and Employment Security, 474 So.2d 379 (Fla. 1st DCA 1985).

E. Applying The Standard of Review to Brevard County's Permit.

The DER officially interpreted the UIC permitting rules to allow Brevard County to continue the operation of its wastewater treatment plant as operating under the conditions of the County's construction and testing permit. Acknowledging this interpretation, the District Court determined that existing Florida law allowed the DER to extend the duration of the County's construction permit. The District Court, relying on the entire record before it, and

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[60] See also, Tri-State Systems, Inc. v. Department of Transportation, 491 So.2d 1192 (Fla. 1st DCA 1986) (Agency's interpretation of critical term does not have to be only one, it is enough if it is permissible); Florida Power Corp. v. State Department of Environmental Regulation, 431 So.2d 684 (Fla. 1st DCA 1983), (DER's interpretation does not have to be the only one, or even the most desirable. It is enough if it is a permissible one).

legal arguments put forth by the parties, chose to defer to the DER's interpretation of its own rules.

LEAF contends that the District Court misapplied the rule of law and should not have deferred to the DER's judgment. LEAF's argument with respect to the District Court's reliance on the DER's interpretation is summarized as follows: First, the DER's interpretation is not entitled to special deference to the extent it is based on Section 120.60(6), the Florida Administrative Procedure Act, because the DER has no special expertise interpreting that Act. Second, the plain meaning and intent of Rule 17-4.090, precludes the applicability of that Rule to the facts in this case.[61] For this Court to adopt LEAF's position, it must find that the DER's interpretations of Rule 17-4 and 17-28 are "clearly erroneous." Pan American World Airways, Inc. v. Florida Public Service Commission, 427 So.2d 716 (Fla. 1983).

1. Application of Section 120.60(6), Fla. Stat.

LEAF provides a lengthy recitation of the legislative intent of Section 120.60(6), Fla. Stat.[62] LEAF maintains that its

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[61] If the rules were "clear and unambiguous" both parties would not be before this Court arguing about the interpretation of the rules. In asserting that the Court should look at the "plain meaning" of Rule 17-4.090, LEAF, in its own analysis, recites its own interpretation of the Rule requirements. Since the Rules at issue are not "clear and unambiguous," this Court must look at the Rule's interpretations. See, LEAF v. Monsanto, 12 FALR 1762 (1990).

[62] According to LEAF, the legislative history of Sec. 120.60(6) shows that the legislature expressly considered, but rejected, language favorable to the DER's position because the Senate rejected an amended bill substitute that contained the language "or for a new license with reference to any activity of a continuing nature." The Senators who killed that amendment may well have done so because it was too broad or too narrow or for a dozen other

interpretation of the legislative history behind the enactment of Section 120.60(6), Fla. Stat., mandates a ruling in its favor.[63] The County acknowledges that the U.S. Court of Appeals has already opined that the DER is not entitled to deference regarding the interpretation of the Administrative Procedure Act, specifically Section 120.60(6), Fla. Stat. The County's argument was and still is that the DER's interpretation of Rules 17-4, 17-28, Fla. Admin. Code, and Chapter 403, Fla. Stat., is entitled to deference. In fact, the U.S. Court of Appeals opined that the Florida DER "should interpret all relevant Florida law, including the amended Rule 17-4.090(1)." Therefore, the County's position is limited to the interpretation of those rules and regulations that the DER it is authorized to administer.

LEAF claims that the DER's interpretations are incorrect because they are based on Section 120.60(6), Fla. Stat. LEAF's argument is incorrect. LEAF's argument ignores the fact that the interpretations relied upon by the County, (the opinion of the DER Secretary and the Bureau Chief) do not rely on Chapter 120, but more importantly pertain to Fla. Admin. Code Rules 17-4.090(1), Rule 17-28.330(3)(a) and Chapter 403, Fla. Stat., the authorizing

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reasons. See, State Department of Insurance v. Insurance Service Office, 434 So.2d 908 (Fla. 1st DCA 1983), dissenting opinion of Chief Judge Robert P. Smith, Jr., Pages 915-925.

[63] LEAF ignores the fact that Chapter 403, Fla. Stat., is the authorizing legislation for the state's UIC program, not § 120.60(6). The DER's interpretations do not rest on the legislative history of § 120.60(6), but on Rules 17-4 and 17-28, Fla. Admin. Code, which are based on the policies enunciated in Chapter 403, Fla. Stat.

legislation for Florida's UIC Program.[64] Instead of attempting to divine the collective intent of the Florida Legislature in amending Section 120.60(6), Fla. Stat., Brevard County asserts that the focus of this Court's attention should be directed toward the manner in which the DER has interpreted its rules and regulations concerning the permitting of underground injection wells in the State of Florida.

2. DER's interpretation of Rules 17-4 and 17-28 are reasonable and consistent with the legislative and regulatory intent of Chapter 403, Fla. Stat.

Underground injection control is governed by Chapter 403, Fla. Stat. Section 403.021(10), Fla. Stat., declares that it is the public policy of the state to ensure that "the existing and potential drinking water resources of the state remain free from harmful quantities of contaminants." Section 403.087(1), Fla. Stat., provides that:

> No stationary installation which will reasonably be expected to be a source of air or water pollution shall be operated, maintained, constructed, expanded, or modified without an appropriate and currently valid

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[64] LEAF claims that since the legal opinion of Doug MacLaughlin, a lawyer for the DER, states that "Rule 17-4.090 is based on Florida Statute 120.60," that the DER's interpretations must all be dismissed. *Assuming arguendo*, that Mr. MacLaughlin's opinion is dismissed, the interpretations relied upon by the County are from the two highest DER officials pertaining to the UIC Program; the Secretary and Bureau Chief. Additionally, Sec. 120.60(6), Fla. Stat., was amended in 1974. LEAF's legislative history of that Statute pertains to what happened in 1974. However, Rule 17-4.090 was amended in 1988, four years later. There is nothing in the Record to show that the DER contemplated or even had knowledge of the prior legislative gyrations pertaining to Sec. 120.60(6)'s amendments. Moreover, LEAF does not cite any legislative history pertaining to the amendment of Rule 17-4.090 to show that the permitting of "activity of a continuing nature" was ever addressed and/or dismissed by the DER in amending Rule 17-4.090.

> permit issued by the department...However, upon expiration, a new permit may be issued by the department in accordance with this Act and the rules and regulations of the department. (Emphasis added)

In this statute the legislature has delegated to the DER the "discretion" as to how new permits will be issued.

In 1986, two years prior to expiration of its construction permit, the County applied for an operating permit. At the time that the County applied for the operating permit, Rule 17-4.090 read:

> Renewals. Prior to sixty days before the expiration of any Department permit, the permittee shall apply for a renewal of a permit on forms and in a manner prescribed by the Department.

On August 31, 1988, prior to expiration of the County's construction permit, that Rule was amended adding language to address covering the timely application for renewal of a permit.[65] Rule 17-4.090 currently reads:

> (1) Renewals. Prior to sixty days before the expiration of any Department operation permit, the permittee shall apply for a renewal of a permit on forms and in a manner prescribed by the Department. A renewal application shall be timely and sufficient. If the application is submitted prior to sixty days before expiration of the permit, it will be considered timely and sufficient. If the renewal application is submitted at a later date, it will not be considered timely and sufficient unless it is submitted and made complete prior to the expiration of the operation permit. When the application for renewal is timely and sufficient, the existing permit shall remain

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[65] In its published notice of proposed Rule amendments the DER states that, the "department is reviewing its rules to clarify, reorganize and simplify them where possible...There are also amendments to the existing rules in Chapter 17-4 to clarify their meaning, reduce confusion, and in some cases to better reflect present department policy. 14 Florida Administrative Weekly 20, Page 1847, May 20, 1988.

in effect until the renewal application has been finally acted upon by the Department.

The DER interpreted Rule 17-4.090 together with Rule 17-28.330 to mean that the County's timely application for an operating permit served to extend the "operational testing phase" of the County's expiring construction permit. In reaching this conclusion, the DER first interpreted Section 17-28.330 which provides for a period of "long term operational testing," under a construction permit. The DER pointed out that there are no time limitations to the length of "long term operational testing." Additionally, "long term operational testing" is not defined in the UIC Rules. However, Rule 17-4.210(3) provides that "when the Department issues a permit to construct, the permittee shall be allowed a period of time...to operate and test to determine compliance with Chapter 403..." Additionally, Rule 17-28.310(3) provides that "[a]ll Department permits shall expire five years from the date of issuance... however, construction permits shall be issued for a period of time as necessary." Based upon these Rules, the DER is not prohibited from extending the operational testing phase of the County's construction permit at its discretion.[66]

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[66] Although the DER interpretations do not discuss Rule 17-4.080(3), Fla. Admin. Code, that Rule appears to also provide a means to extend the construction permit. That Rule provides in part, "[a] permittee may request that a permit be extended as a modification of the permit. Such a request must be submitted to the Department in writing before the expiration of the permit. Upon timely submittal of a request for extension, unless the permit automatically expires by statute or rule, the permit will remain in effect until final agency action is taken on the request. For construction permits, an extension shall be granted if the applicant can demonstrate reasonable assurances that, upon completion, the extended permit will comply with the standards and

As the party challenging an agency rule interpretation, LEAF has the burden to advance credible, competent evidence to show that the DER's interpretation of the rules at issue is clearly erroneous. LEAF v. Monsanto, 12 FALR 1762 (1990).[67] LEAF cites no Florida judicial or administrative authority or legislative history showing that the DER's interpretation of Rules 17-28.330(3)(a) and Rule 17-4.090 is inconsistent with Chapter 403, Fla. Stat. The DER's interpretation keeps the County's injection well within the "permit conditions" such that the DER maintains regulatory oversight of the facility. The DER's interpretation is consistent with the public policy enunciated in Chapter 403, Fla. Stat., that the purpose of the DER regulating UIC wells is to protect the State's drinking water supply.

The interpretation of Rule 17-28.330(3)(a) and Rule 17-4.090 by the DER Secretary and Bureau Chief must be upheld as the interpretations of administrative officers with special expertise, who are charged to administer a law are entitled to judicial deference and will be given great weight in the courts of Florida.

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conditions required by applicable regulation." Since the County applied for the operating permit long before the original expiration date of the construction permit, and had no reason to believe that the DER would not timely act upon their application prior to the construction permit's original expiration date, Rule 17-4.080(3) was apparently not utilized.

[67] The only evidence that LEAF addresses are some letters from other DER employees that appear facially inconsistent with the official DER interpretations relied upon by the County. It is immaterial that there may be one or more Department personnel who disagree with the Department's interpretation. LEAF has cited to no final orders or other official DER applications of the Rules that differ from the official positions taken by Secretary Browner and Bureau Chief Aller. LEAF v. Monsanto, 12 FALR 1762, 1767 (Fla. 1990).

Raffield v. State, 565 So.2d 704 (Fla. 1990). Who is better prepared to interpret the meaning of a UIC Rule than the agency responsible for the operation of the UIC program? While LEAF may not like the result of the DER's interpretation of its UIC rules, as long as DER's interpretation is a permissible one and not clearly erroneous, this Court should not disturb the DER's interpretation. Bolam v. Mobil Oil Corp., 893 F.2d 311 (11th Cir. 1990); Pan American World Airways, Inc. v. Florida Public Service Commission, 427 So.2d 716 (Fla. 1983); Legal Environmental Assistance Foundation, Inc. v. Monsanto, 12 FALR 1762 (1990).

CONCLUSION

LEAF has chosen not to sue the DER even though it is the DER's action that LEAF ultimately challenges. By suing the County, and not including the DER in this litigation, LEAF has put this Court in the posture of second guessing the policies of the DER without that agency's presence or participation. As LEAF's legal guinea pig, Brevard County has been placed in the unfortunate position of first an Appellee in a federal appeal, and now as Respondent in this proceeding, defending the practices and legal positions of the DER. The County recognizes that seven years elapsed between the County's application for the operating permit and the DER's ultimate issuance of a Consent Order. It was not Brevard County whom decided to defer action on its own application for an operating permit.

The County, as the permit applicant, complied with each and every request of the DER relative to the injection well permit, and was never issued a Notice of Violation by the DER that Brevard County's activity at the South Beaches Regional Wastewater Treatment Plant violated any provision of either Chapter 17-4 or 17-28, Fla. Admin. Code, Chapter 403, Fla. Stat., or the Safe Drinking Water Act. Yet, it is upon Brevard County that LEAF seeks to impose liability for the alleged violation of those laws. The County would assert that the record in this cause cannot logically support such an outcome.

Moreover, Brevard County's scenario is not an isolated issue. At least two other wastewater facilities in Florida applied for

Class I operating permits in this same manner and waited several years before receiving their operating permits. Following LEAF's theory, those other two plants were operating without a permit until their operating permits were issued.

The County recognizes that the UIC permitting Rules are somewhat vague as they pertain to the process followed in the progression from permitting a facility under a construction testing permit to moving forward with an operating permit. The rule-makers did anticipate situations arising that would require "long term testing". However, they failed to contemplate, by Rule, how to treat a situation such as the County's wherein the permitting agency failed to act on the permit application for seven years. If this is so, clearer Rule-making may be in order that would clarify the DER's policy, and a Rule challenge would appear to be the appropriate avenue to pursue. The County asserts that this Court should not be persuaded to penalize Brevard County because of LEAF's distaste for the way the DER operates the state's UIC program.

The Florida Pollution Control Act and the Safe Drinking Water Act mandate that the DER have a program in place that protects the State's sources of drinking water. The conditions of a permit provide the DER with the assurance that a permitted facility (construction or operation) will not contaminate that water source. By de facto, extending the operational testing phase and the permit conditions of the County's construction permit, the DER was able to maintain its regulatory oversight function as protector of the

State's drinking water sources while gathering data to process the County's application.[68] This reasonable interpretation by the DER of the rules and regulations it administers should not be disturbed by this Court.

Based upon the foregoing authorities and argument, the County submits that the certified question presented by the United States Court of Appeals be answered in the affirmative, and the judgment of the District Court granting the County's request for Final Summary Judgment and denying LEAF's Motion for Partial Summary Judgment, should be affirmed.

Respectfully submitted,

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SCOTT KNOX, COUNTY ATTORNEY
2725 ST. JOHNS STREET
BUILDING C, 3RD FLOOR
MELBOURNE, FLORIDA 32940
(407) 633-2090

By: _____
NINA L. BONISKE
Assistant County Attorney
Florida Bar No. 0788430
Attorney for Respondent
Board of County Commissioners
of Brevard County, Florida

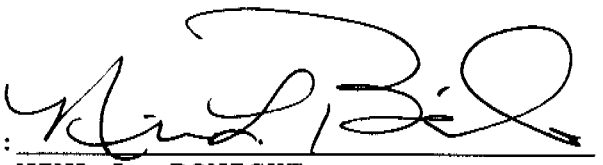
[68] DER Response to LEAF Petition. Depo. of Cynthia Valencic, Exh. D-6, Page 17.

CERTIFICATE OF SERVICE

I, NINA L. BONISKE, hereby certify that I have served a copy of the foregoing Answer Brief of Respondent upon the Petitioner, LEGAL ENVIRONMENTAL ASSISTANCE FOUNDATION, INC., by placing the same in the United States Mail, postage prepaid, and addressed to DAVID A. LUDDER, ESQUIRE, Legal Environmental Assistance Foundation, Inc., 1115 North Gadsden Street, Tallahassee, Florida 32303.

Done this 25th day of February, 1994.

OFFICE OF BREVARD COUNTY ATTORNEY
SCOTT KNOX, COUNTY ATTORNEY
2725 St. Johns Street
Building C, 3rd Floor
Melbourne, Florida 32940
(407) 633-2090

By: 

NINA L. BONISKE
Assistant County Attorney
Florida Bar No. 0788430

APPENDIX

INDEX TO APPENDIX

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, Complainant,	)	IN THE OFFICE OF THE CENTRAL DISTRICT
vs.	)	OGC FILE NO. 91-2212
BREVARD COUNTY, Respondent.	)	

CONSENT ORDER

Pursuant to the provisions of Sections 403.121(2) and 120.57(3), Florida Statutes, and Florida Administrative Code Rule 17-103.110, this Consent Order is entered into between the State of Florida Department of Environmental Protection ("Department") and Brevard County ("Respondent" or "County") 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 having the power and duty to control and prohibit pollution of air and water in accordance with Chapter 403, Florida Statutes, and rules promulgated thereunder in Title 17, Florida Administrative Code. The Department has jurisdiction over the matters addressed in this Consent Order.

2. Respondent is a political subdivision of the State of Florida and is a person within the meaning of Section 403.031(5), Florida Statutes.

3. The Respondent is responsible for the operation and maintenance of the South Beaches Regional Wastewater Treatment

Facility ("Facility") which is located at 2800 South A1A, Melbourne Beach, Latitude 28° 02′ 30" North and Longitude 80° 32′ 50" West in Brevard County, in the State of Florida (Section 20, Township 28 South, Range 38 East).

4. The Facility is a 9.0 million gallon per day municipal sewage treatment facility with disposal to one 20-inch (outside diameter) Class I injection well.

5. On December 23, 1983, the Department issued Permit No. UD05-64536 which authorized the construction and testing of a Class I underground injection well system adjacent to the South Beaches Regional Wastewater Treatment Plant. On December 30, 1986, the Respondent applied for an operating permit for the injection well (DER File No. 128886). The Department has determined that an operation permit cannot be issued for the following reasons:

The Respondent has not provided an adequate explanation for the anomalous water quality data observed in the monitoring wells, which indicates vertical movement of injectate into an unpermitted zone above the injection zone. Failure to contain the migration of injected fluid within the injection zone constitutes a violation of Florida Administrative Code Rules 17-4.160(5), 17-28.210(1)(a), 17-28.210(2)(a), 17-28.310(2)(b), and the intent of Chapter 17-28, Florida Administrative Code.

6. A meeting was held on September 19, 1991 between the Department and Respondent's representatives during which all disputed issues were discussed. A subsequent meeting was held on January 25, 1993 in which additional issues were identified for

consideration in this Consent Order. The Department finds that the requirements of Section 403.088(3), Florida Statutes allowing for temporary operation of the facility have been satisfied.

THEREFORE, having reached resolution of the matter, pursuant to Florida Administrative Code Rule 17-103.110(3), the Department and the Respondent mutually agree and it is,

ORDERED:

OPERATION

7. This Consent Order authorizes the temporary operation of the Respondent's Class I Injection Well System in accordance with Section 403.088, Florida Statutes and Title 40 Code of Federal Regulations 144.34. Respondent shall operate the Facility's Class I injection well system in accordance with the conditions of Exhibit I. Respondent's temporary authorization to operate the Facility's injection well system shall terminate upon the earlier of issuance or denial of an operation permit for the injection well system pursuant to paragraphs 12 and 27, the plugging and abandonment of the injection well system and/or the implementation of an alternative disposal system pursuant to paragraphs 20 and 22, or five years from the effective date of this Consent Order. The alternative actions and aquifer exemption provisions of paragraphs 12, 14, 18, 25, and 26 cannot be used to extend the termination date.

8. Upon execution, this Consent Order supersedes Department Permit Number UD05-64536 and all pending underground injection

control permits. Subsequently, within 10 days of the effective date of this Consent Order, pursuant to Florida Administrative Code Rule 17-4.100(1), Respondent shall return to the Department permit number UD05-64536 and withdraw all pending underground injection control permit applications including permit application file numbers 128886, 152627 and 169184.

9. Within 30 days of execution of this Consent Order, Respondent shall pay the Department $12,000 in processing fees, for the temporary operation of the injection well system authorized in this Consent Order, pursuant to Florida Administrative Code Rule 17-4.050(4)(k). Payment shall be made payable to the Department of Environmental Protection and shall include the OGC number assigned to this Order and the notation "Florida Permit Fee Trust Fund". The payment shall be sent to the Department of Environmental Protection, Central District Office, 3319 Maguire Boulevard, Suite 232, Orlando, Florida 32803-3767.

10. Within 30 days of execution of this Consent Order, Respondent shall pay the Department $500.00 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 payable to the Department of Environmental Protection and shall bear the notation "OGC File No. 91-2212" and the notation "Pollution Recovery Fund". The payment shall be sent to the Department of Environmental Protection, Central District Office, 3319 Maguire Boulevard, Suite 232, Orlando, Florida 32803-3767.

PENALTIES

11. Respondent agrees to pay the Department stipulated penalties in the amount of $500.00 per day for each and every day Respondent fails to comply with any of the actions and timeframes agreed to herein, unless an extension of time has been granted by the Department pursuant to paragraph 30 of this Consent Order. A separate stipulated penalty shall be assessed for each violation of this Order. Within 30 days of written demand from the Department, Respondent shall make payment of the appropriate stipulated penalties to "The Department of Environmental Protection" and shall include thereon the OGC number assigned to this Order and the notation "Pollution Recovery Fund". Payment shall be sent to the Department of Environmental Protection, Central District Office, 3319 Maguire Boulevard, Suite 232, Orlando, Florida 32803-3767. The Department may make demands for payment at any time after violations occur. Nothing in this paragraph shall prevent the Department from filing suit to specifically enforce any of the terms of this Consent Order.

ALTERNATIVE ACTION

12. Within 120 days of the effective date of this Consent Order, Respondent shall submit to the Department an alternative action plan, prepared by a Professional Engineer registered in the State of Florida with a time frame for completion and implementation of each alternative action, addressing the vertical movement of injected fluid out of the injection zone due to the operation of the

Facility's Class I injection well system. The environmental concerns and the technical and economic feasibility of each option shall be considered in the evaluation. However, the Department is not required to base any aspects of the results of the evaluation on economic feasibility. The plan shall address the following options:

a) alternative disposal methods,

b) plugging and abandonment of injection well system,

c) reuse objectives - Respondent shall submit a reuse feasibility study prepared in accordance with the Department's "Guidelines for Preparation of Reuse Feasibility Studies for Applicants Having Responsibility for Wastewater Management".

d) aquifer exemption - The Respondent may apply for an Aquifer Exemption in the manner described in paragraph 25 which would exempt the entire aquifer at the injection well site. In the event the Exemption is approved, the Respondent may then apply for a Class V Injection Well Operation Permit. In the event the Exemption is denied or in the event the Department denies a Class V Injection Well Operation Permit, the Respondent shall implement the remaining options in the alternative action plan.

e) injection zone redesignation - The Respondent may continue to pursue the option of redesignation of the injection zone.

The Department agrees to review the request in an expeditious manner. To the extent that information contained in the Department's South Beaches permitting files is available for review of the redesignation proposal, such information need not be submitted unless the Department determines that the information needs to be updated, summarized or tabulated for review purposes. The County shall specifically identify what this previously submitted information is, when it was submitted, and in what part of the files this information is located. In the event the Department approves the redesignation of the injection zone, the Respondent may then apply for a class I injection Well Operation Permit. In the event a Class I Injection Well Operation Permit is issued, this Consent Order shall terminate in the manner described in paragraph 7. In the event the Department denies the redesignation of the injection zone, the Respondent shall implement the remaining options in the alternative action plan.

13. The Department shall review the alternative action plan required in paragraph 12. In the event additional information, modifications or specifications are necessary to evaluate the plan, the Department shall issue a written request for additional information. Respondent shall submit any required additional information within thirty days of receipt of each request.

14. Within 60 days of Department approval, Respondent shall begin alternative actions in accordance with the time frames specified in the approved alternative action plan referenced in

paragraph 12. All options approved for alternative action by the Department shall be completed and implemented in accordance with the approved alternative action time frames and permits, if any. However, notwithstanding the above, Respondent shall achieve compliance with all applicable Underground Injection Control statutes, regulations and permits within 5 years from the effective date of this Consent Order.

15. In the event that any alternative action proposed by the Respondent, as referenced in paragraph 12, requires a permit from the Department, the Respondent shall submit said permit application in a timely manner and in the form normally required by the Department for such applications. The application and all supporting documentation shall conform to the requirements of all applicable Department rules.

16. The Department will review any permit application(s) and supporting documentation submitted pursuant to paragraph 15 of this Consent Order. In the event additional information, modifications or specifications are necessary to process the application(s), the Department shall issue a written request for additional information. Respondent shall submit any required additional information within 30 days of receipt of each request.

17. If a construction permit is issued pursuant to paragraph 15, Respondent shall begin on-site construction within 90 days of issuance of the permit and shall complete construction and any required testing program, where applicable, in accordance with the permit and within the time frames specified in the approved

alternative action plan referenced in paragraph 14.

18. In the event the County is issued a denial of permit pursuant to paragraph 12(d)(e) or otherwise fails to obtain an operation permit under this Consent Order, it is required to plug and abandon the injection well system pursuant to paragraph 12(b).

19. In the event that the County plans or is required to discontinue use of the injection well system pursuant to paragraph 18, it shall submit to the Department the following within 120 days following the Department's approval of the alternative action plan required in paragraph 12:

A. A permit application and supporting documentation with any required processing fees to plug and abandon the injection well system at the Facility. The permit application will be prepared by a Florida registered/certified Professional Engineer/Professional Geologist, as applicable; and

B. A permit application with any required processing fees to construct an alternative disposal system.

20. The Department, including the District Domestic Waste Permitting Program, will review any permit application(s) and supporting documentation submitted pursuant to paragraph 18 of this Consent Order. In the event additional information, modifications or specifications are necessary to process the application(s), the Department shall issue a written request for additional information. Respondent shall submit any required additional information within 30 days of receipt of each request.

21. In the event a plugging/abandonment permit is issued pursuant to paragraph 19, Respondent shall not be required to commence on-site construction and/or well abandonment sooner than four and one half years from the date of execution of this Consent Order unless the Department determines that there is an imminent danger to a usable source of drinking water or to public health. Plugging and abandonment will proceed in accordance with the permit and with any applicable time frames specified in the approved alternative action plan, and shall be completed not later than five years from the date of execution of this Consent Order.

22. All options approved for alternative action by the Department shall be completed and implemented in accordance with the approved alternative action time frames and permits, if any.

23. Within 120 days of completion of all alternative actions referenced in paragraphs 12 and 18, Respondent shall submit a final report. The report shall be prepared by a Florida registered/certified Professional Engineer/Professional Geologist, as applicable.

24. The Department will review the final alternative action report submitted pursuant to paragraph 23 of this Consent Order. In the event additional information, modifications or specifications are necessary to evaluate the report, the Department shall issue a written request for additional information. Respondent shall revise the report and submit the revised version in writing to the Department within 30 days of receipt of the request. Respondent

shall provide any required additional information within 30 days of receipt of each request.

AQUIFER EXEMPTION

25. Should an aquifer exemption be pursued, Respondent shall file a petition for aquifer exemption within 90 days of the Department's acceptance of the alternative action plan required in paragraph 12. The petition shall be filed with the Bureau of Water Facilities Planning and Regulation, Department of Environmental Protection, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400, Attention: Mr. Richard Drew, in accordance with the criteria in Rule 17-28.130(3), Florida Administrative Code, and guidelines attached hereto as Exhibit II in this Consent Order. A copy of the petition and supporting documentation shall be sent to the Department of Environmental Protection, Underground Injection Control Program, 3319 Maguire Boulevard, Suite 232, Orlando, Florida 32803-3767. A processing fee must accompany the petition, $7,500 (minor exemption - 3,000-10,000 mg/l TDS) or $15,000 (major exemption - 3,000 mg/l TDS or less), pursuant to Rule 17-4.050(4)(n), Florida Administrative Code. Payment shall be made payable to the Department of Environmental Protection and shall include the OGC number assigned to this Order and the notation "Florida Permit Fee Trust Fund". The payment shall be sent to the Department of Environmental Protection, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400. Petitioning for an aquifer exemption will not suspend the requirements of paragraphs 7 and 12 through 24 until an

exemption is granted and an operation permit for a Class V injection well system is issued pursuant to the exemption.

26. In the event the Department or the Environmental Protection Agency proposes to deny the Respondent's petition for an aquifer exemption pursuant to applicable federal or state environmental law, any appeals or continued pursuit of any aquifer exemption by the Respondent shall in no way alter or affect the Respondent's obligation under this Consent Order to be in compliance with all applicable Underground Injection Control statutes, regulations and permits within five years of the execution of this Consent Order unless otherwise approved by the Department.

27. In the event the Department and the Environmental Protection Agency propose to approve the Respondent's petition for an aquifer exemption pursuant to applicable federal or state environmental law, within 30 days of written approval by the Department, Respondent shall submit a Class V injection well operation permit application with any required processing fees to the Department's Central District office. The application and all supporting documentation shall conform to the requirements of all applicable Department rules.

28. The Department will review any permit application(s) and supporting documentation submitted pursuant to paragraph 27 of this Consent Order. In the event additional information, modifications or specifications are necessary to process the application(s), the Department shall issue a written request for additional information.

Respondent shall submit any required additional information within 30 days of receipt of each request.

29. Within 120 days after execution of this Consent Order, Respondent shall disinfect the injectate to a minimum of 1.0 mg/l Total Chlorine Residual prior to injection. This requirement shall remain in effect unless the Department waives the requirement after receipt of an aquifer exemption. All equipment necessary to achieve this level of disinfection must be in place and ready to operate within 120 days of the effective date of this Consent Order.

STANDARD CLAUSES

30. If any event occurs which causes delay or the reasonable likelihood of delay, in complying with the requirements of this Consent Order, Respondent shall have the burden of proving that the delay was, or will be caused by circumstances beyond the reasonable control of Respondent and could not have been or cannot be overcome by due diligence. Changed economic circumstances shall not be considered circumstances beyond the control of Respondent, nor shall the failure of a contractor, subcontractor, materialman or other agent (collectively referred to as "contractor") to whom responsibility for performance is delegated to meet contractural imposed deadlines be a cause beyond the control of Respondent, unless the cause of the contractor's late performance was also beyond the contractor's control. Upon occurrence of an event causing a delay, or upon becoming aware of a potential for delay, Respondent shall promptly notify the Department orally and shall,

within seven days of oral notification to the Department, notify the Department in writing of the anticipated length and cause of the delay, the measures taken, or to be taken, to prevent or minimize the delay, and the timetable by which Respondent intends to implement these measures. If the parties can agree that the delay or anticipated delay has been, or will be, caused by circumstances beyond the reasonable control of Respondent, the time for performance hereunder shall be extended for a period equal to the agreed delay resulting from such circumstances. Such agreement shall adopt all reasonable measures necessary to avoid or minimize delay. Failure of Respondent to comply with the notice requirements of this paragraph in a timely manner shall constitute a waiver of Respondent's right to request an extension of time for compliance with the requirements of this Consent Order.

31. No extension of time will be granted for the temporary operation of the Class I injection well system beyond the five year limit specified in paragraph 7.

32. With regard to any determination made by the Department concerning Respondent's proposals submitted to the Department as required by the alternative action plan made pursuant to this Consent Order, Respondent shall retain the right to file a Petition for Formal or Informal Administrative Hearing Proceeding pursuant to Section 120.57, Florida Statutes. If Respondent objects to the Department's determination, pursuant to Section 120.57, Florida Statutes, and Chapters 17-103 and 28-5, Florida Administrative Code, Respondent shall have the burden to establish the inappropriateness

of the Department's agency action. The petition must conform with the requirements of Florida Administrative Code Rule 28-5.201, and must be received by the Department's Office of General Counsel, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400, within 14 days after receipt of notice from the Department of any determination Respondent wishes to challenge. Failure to file a petition within this time period shall constitute a waiver by Respondent of its right to request an administrative proceeding under Section 120.57, Florida Statutes. The Department's determination, upon expiration of the 14 day time period if no petition is filed, or the Department's Final Order as a result of the filing of a petition, shall be incorporated by reference into this Consent Order and made a part of it. All other aspects of this Consent Order shall remain in full force and effect at all times. If Respondent seeks an administrative proceeding pursuant to this paragraph, the Department may file suit against Respondent in lieu of or in addition to holding the administrative proceeding to obtain judicial resolution of all the issues unresolved at the time of the request for administrative proceeding.

33. 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 waives its right to an administrative hearing pursuant to Section 120.57, Florida Statutes, on the terms of this Consent Order. Respondent acknowledges its

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.

34. Nothing herein shall be construed to limit the authority of the Department to undertake any action against any Respondent in response to or to recover the costs of responding to conditions at or from the site that require Department action to abate an imminent hazard to the public health, welfare or the environment.

35. The Respondent shall provide within a reasonable time at its expense a permanent safe drinking water supply to replace any potable water well within a one mile radius of the Facility that is shown by chemical and hydrogeologic analyses to be contaminated by the Respondent's operations. The chemical criteria to be used in order to determine whether a drinking water supply has been contaminated by the Respondent's operations are as follows:

Total Kjeldahl Nitrogen

Nitrogen, NO_2 + NO_3

Nitrogen, NH_3 + NH_4

Nitrogen, NO_2

Nitrogen, NO_3

Tritium

COD

TOC

Based on the above criteria, should the Department determine that contamination has occurred, the parameters outlined in Rule 17-550, F.A.C. shall be analyzed. Any replacement water supply shall meet the criteria outlined in Rule 17-550, F.A.C.

36. 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.

37. The terms and conditions set forth in this Consent Order 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 Consent Order shall constitute a violation of Section 403.161(1)(b), Florida Statutes.

38. Respondent is fully aware that a violation of the terms of this Consent Order may subject Respondent to judicial imposition of damages and civil penalties up to $10,000 per offense per day and to criminal penalties for knowing and willful violations of the terms of this Consent Order.

39. Respondent shall allow all authorized representatives of the Department access to the property at reasonable times for the purpose of determining compliance with the terms of this Consent Order and the rules of the Department.

40. 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.

41. No modifications of the terms of this Consent Order shall be effective until reduced to writing and executed by both the Respondent and the Department.

42. The report(s) approved by the Department herein shall become part of this Consent Order and enforceable pursuant to the terms of this Consent Order. Department determinations made with reference to the reports are subject to the administrative rights referenced in paragraph 32.

43. The Respondent shall provide a notice by letter to the Department for all tasks commenced and completed in accordance with this Consent Order.

44. All reports, plans, permit applications and data required by this Consent Order to be submitted to the Department should be sent to the Department of Environmental Protection, Underground Injection Control Program, 3319 Maguire Boulevard, Suite 232, Orlando, Florida 32803-3767. Copies of all permit applications and supporting documentation shall be sent to each TAC member listed in Exhibit III of this Consent Order.

45. This Consent Order is final agency action of the Department pursuant to Section 120.69, Florida Statutes and Florida Administrative Code Rule 17-103.110(3), and it is final and effective on the date filed with the Clerk of the Department unless a Petition for Administrative Hearing is filed in accordance with Section 120, Florida Statutes.

46. The terms and conditions of this Consent Order are subject to all applicable federal and state rules and regulations pertaining to permitting of underground injection control facilities, including, but not limited to, Chapter 17 of the Florida Administrative Code, Chapter 403, Florida Statutes, and Title 40 of the United States Code.

47. The Department shall review any permit applications and supporting documentation submitted, in accordance with the time frames provided in the applicable Florida Administrative Code Rules and Florida Statutes. In the event that additional information, modifications, or specifications are necessary to process the application, the Department shall issue timely request for such additional information in accordance with the applicable rules and regulations pertaining to processing of permit applications. The Respondent shall submit any required additional information within thirty (30) days of receipt of each request, provided, however, that if a request for additional information requires significant testing and/or document preparation, the Respondent may request additional time in which to respond. Each consecutive request for information issued by the Department shall be restricted to those issues arising from the last set of information received by the Department from the Respondent.

AGREED AND CONSENTED TO
FOR RESPONDENT, BREVARD COUNTY:

10-5-93
DATE

Karen S. Andreas, Chairman
Board of County Commissioners

APPROVED AS TO FORM:

9-29-93
DATE

Nina Boniske
Assistant County Attorney

ATTEST:

10-5-93
DATE

Sandy Crawford, Clerk

DONE AND ORDERED this 8TH day of NOVEMBER, 1993, in Orlando, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Carlos Rivero-deAguilar, P.E.

EXHIBIT I

Operating Conditions

General Conditions

1. The terms, conditions, requirements, limitations, and restrictions set forth herein are binding and enforceable pursuant to Sections 403.141, 403.727, or 403.859 through 403.861, Florida Statutes (F.S.). The Respondent is placed on notice that the Department will review this Order periodically and may initiate enforcement action for any violation of these conditions, by the permittee, its agents, employees, servants or representatives.

2. This Order is valid only for the specific processes and operations applied for and indicated in the approved drawings or exhibits. Any unauthorized deviation from the approved drawings, exhibits, specifications, or conditions of this Order shall constitute grounds for a violation of Section 403.161(1)(b), F.S.

3. The issuance of this Order does not convey any vested rights or any exclusive privileges. Neither does it authorize any injury to public or private property or any invasion of personal rights, nor infringement of federal, state or local laws or regulations. This Order is not a waiver of or approval of any other Department Order that may be required for other aspects of the total project which are not addressed in this Order.

4. This Order conveys no title to land or water, does not constitute State recognition or acknowledgment of title, and does not constitute authority for the use of submerged lands unless herein provided and the necessary title or leasehold interests have been obtained from the State. Only the Trustees of the Internal Improvement Trust Fund may express State opinion as to title.

5. This Order does not relieve the Respondent from liability for harm or injury to human health or welfare, animal, or plant life or property caused by the construction or operation of this permitted source, or from penalties therefore; nor does it allow the permittee to cause pollution in contravention of Florida Statutes and Department rules, unless specifically authorized by an order from the Department.

6. The Respondent shall properly operate and maintain the facility and systems of treatment and control (and related appurtenances) that are installed and used by the permittee to achieve compliance with the conditions of this Order, as required by Department rules. This provision includes the operation of backup or auxiliary facilities or similar systems when necessary to achieve compliance with the conditions of this Order and when required by Department rules.

7. The Respondent, by entering into this agreement, specifically agrees to allow authorized Department personnel, upon

presentation of credentials or other documents as may be required by law and at reasonable times access to the premises where the authorized activity is located or conducted to:

(a) Have access to and copying any records that must be kept under conditions of this Order;

(b) Inspect the facility, equipment, practices, or operations regulated or required under this Order; and

(c) Sample or monitor any substances or parameters at any location reasonably necessary to assure compliance with this Order or Department rules.

Reasonable time may depend on the nature of the concern being investigated.

8. If, for any reason, the Respondent does not comply with or will be unable to comply with any condition or limitation specified in this Order, the Respondent shall immediately provide the Department with the following information:

(a) A description of and cause of noncompliance; and

(b) The period of noncompliance, including dates and times; or, if not corrected, the anticipated time the noncompliance is expected to continue, and steps being taken to reduce, eliminate, and prevent recurrence of the noncompliance. The permittee shall be responsible for any and all damages which may result and may be subject to enforcement action by the Department for penalties or revocation of this Order.

9. In accepting this Order, the Respondent understands and agrees that all records, notes, monitoring data and other information relating to the construction or operation of this authorized source which are submitted to the Department may be used by the Department as evidence in any enforcement case involving the authorized source arising under the Florida Statutes or Department rules, except where such use is prescribed by Section 403.111 and 403.73, F.S. Such evidence shall only be used to the extent it is consistent with the Florida Rules of Civil Procedure and appropriate evidentiary rules.

10. The Respondent agrees to comply with changes in Department rules and Florida Statutes after a reasonable time for compliance, provided however, the Respondent does not waive any other rights granted by Florida Statutes or Department rules. A reasonable time for compliance with a new or amended surface water quality standard, other than those standards addressed in Rule 17-302.500, Florida Administrative Code (F.A.C.), shall include a reasonable time to obtain or be denied a mixing zone for the new or amended standard.

11. The Respondent shall be liable for any noncompliance of the authorized activity described herein.

12. This Order or a copy thereof is required to be kept at the work site of the authorized activity.

13. The Respondent shall comply with the following:

(a) Upon request, the Respondent shall furnish all records and plans required under Department rules. During enforcement actions, the retention period for all records will be extended automatically until a final determination is rendered by the administrative agency or judicial tribunal, including any appeals, unless otherwise stipulated by the Department. As used in the foregoing sentence, the term "rendered" shall be as defined in the same manner that the term "rendition" is defined in Rule 9.020, Florida Rules of Appellate Procedure.

(b) The Respondent shall hold at the facility or other location designated by this Order records of all monitoring information (including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation) required by this Order, copies of all reports required by this Order, and records of all data used to complete the application for this Order. These materials shall be retained at least three years from the date of the sample, measurement, report or application unless otherwise specified by Department rule.

(c) Records of monitoring information shall include:

1. the date, exact place, and time of sampling or measurements;
2. the person responsible for performing the sampling or measurements;
3. the dates analyses were performed;
4. the person responsible for performing the analyses;
5. the analytical techniques or methods used;
6. the results of such analyses.

14. When requested by the Department, the Respondent shall within a reasonable time furnish any information required by law which is needed to determine compliance with the Order. If the Respondent becomes aware that relevant facts were not submitted or were incorrect in any report to the Department, such facts or information shall be corrected promptly.

15. The following conditions also shall apply:

(a) All reports or information required by the Department shall be certified as being true, accurate and complete.

(b) Reports of compliance or noncompliance with, or any progress reports on, requirements contained in any compliance schedule of this Order shall be submitted no later than 14 days following each schedule date.

(c) Notification of any noncompliance which may endanger health

or the environment shall be reported verbally to the Department within 24 hours and again within 72 hours, and a final written report provided within two weeks.

1. The verbal reports shall contain any monitoring or other information which indicate that any contaminant may endanger an underground source of drinking water and any noncompliance with a condition or malfunction of the injection system which may cause fluid migration into or between underground sources of drinking water.

2. The written submission shall contain a description of and a discussion of the cause of the noncompliance and, if it has not been corrected, the anticipated time the noncompliance is expected to continue, the steps being taken to reduce, eliminate, and prevent recurrence of the noncompliance and all information required by Rule 17-28.230(4)(b), F.A.C.

(d) The Department shall be notified at least 180 days before conversion or abandonment of an injection well, unless abandonment within a lesser period of time is necessary to protect waters of the state.

Specific Conditions

1. Operating Requirements

a. Flow to the injection wells shall be monitored and controlled at all times to ensure the maximum sustained pressure at the wellhead does not exceed 67 pounds per square inch on the final casing and a maximum allowable injection rate of 9.0 million gallons per day or 6250 gallons per minute (maximum injection rate at 8.0 feet per second velocity).

b. All equipment of this facility shall be operated and maintained so as to function consistently as designed in removing pollutants. The wastestream shall remain non-hazardous at all times.

c. Pumping fluids other than those authorized into the injection well will constitute a violation of this Consent Order and the Department shall impose and the County agrees to pay stipulated penalties in accordance with paragraph 11 of this Consent Order.

d. All industrial sources (including reverse osmosis reject water) must comprise less than five (5) percent of the total volume of the wastestream prior to injection.

e. In the event an emergency requires bypassing the injection well, the County shall notify the local office of the Department as soon as possible, but no later than the first working day following the event. A written detailed report shall be submitted to the Department within seven (7) days following the event. The report shall provide the detail of events causing the emergency and remedial action to prevent any further emergency discharges. Should repetitive diversions to the emergency overflow develop because of plant operating conditions rather than true emergencies the County shall undertake the necessary plant modifications to eliminate these events.

f. The County shall calibrate all pressure gauge(s), flow meter(s), chart recorder(s), and other related equipment associated with the injection well system on a semiannual basis. The County shall maintain all monitoring equipment and shall ensure that the monitoring equipment is calibrated and in proper operating condition at all times. Laboratory equipment, methods, and quality control will follow EPA guidelines as expressed in Standard Methods for the Examination of Water and Wastewater. The pressure gauge(s), flow meter(s), and chart recorder(s) shall be calibrated using standard engineering methods.

g. Injectate shall be monitoried in accordance with Domestic Waste Permit No. DO05-203046 and with Rule 17-600.420(1)(d), Florida Administrative Code. In addition, the injectate shall be monitored monthly for the following parameters:

Total Kjeldahl Nitrogen (mg/l)
Total Nitrogen (as N) (mg/l)
Ammonia (as N) (mg/l)

The injectate shall be monitored daily, 5 days per week for the following parameters:

TSS (mg/l)
$CBOD_5$ (mg/l)

The injectate shall be monitored continuously for:
pH (Standard Units)

This data shall be submitted to the Department monthly as described in Specific Condition 2 (i).

h. The ability to disinfect the effluent consistent with the alternative discharge mechanism pursuant to Rule 17-28.230(4)(c), F.A.C., must be maintained at all times.

i. Within 120 days after execution of this Consent Order the effluent shall be disinfected to a minimum of 1.0 mg/l Total Chlorine Residual prior to the injection. This level of disinfection shall be maintained unless the Department waives the requirement.

2. Testing and reporting Requirements

a. A specific injectivity test shall be performed quarterly at the injection well as required by Rule 17-28.260(2)(b), F.A.C. The specific injectivity test shall be performed with the pumping rate to the well set at a predetermined level and reported as the specific injectivity index (gallons per minute/specific pressure). The County shall propose the pumping rate to be used based on the expected flow, the design of the pump type(s), and the type of pump control used. The well shall be shut in for a period of time long enough to conduct a valid observation of the pressure fall-off curve. The proposed procedure for specific injectivity testing shall be submitted to the Department for approval prior to testing. The specific injectivity test data shall be submitted along with the monitoring results of the injection and monitoring well data.

b. Mechanical Integrity Tests (MIT) are due as follows for the injection well system:

Test	Due Date
Pressure and Television Survey	December 2, 1997
Temperature Log and Radioactive Tracer Survey (RTS)	February 8, 1994

Plans for the specific tests normally must be submitted for Department approval six months prior to the due date. The plan is due June 2, 1997, for the Pressure and Television Survey. Plans for the Temperature Log and Radioactive Tracer Survey (RTS) must be submitted within 30 days of the date of the execution of this Consent Order. All MIT plans shall be prepared by a Florida Registered and

Certified Professional Engineer or Professional Geologist as applicable.

c. The Department and the Technical Advisory Committee (TAC) will review the MIT plan and either accept it, reject it as inadequate, or request in writing that the County submit any additional information within 30 days of receipt of the request.

d. The Department shall be notified 72 hours prior to all testing for mechanical integrity on the injection well. All testing must be initiated during daylight hours, Monday through Friday.

e. Within 60 days of completion of the MIT program, the County shall submit a final report (5 copies) summarizing the results of the testing program to the Department and TAC members for review and approval. The MIT report shall be prepared by a registered/ certified Professional Engineer/Professional Geologist, as applicable. If the engineer determines that a well has failed any of the specified tests, the MIT report shall include a plan for alternative action for all discovered deficiencies.

f. The Department and the TAC will review the alternative action plan submitted pursuant to 12 and either accept it, reject it as inadequate, or request in writing that the County submit any additional information within 30 days of receipt of the request.

g. Injection Well System Monitoring

The injection well shall be monitored in accordance with Rule 17-28.260(2), F.A.C., and the frequency and the parameters listed below:

The County shall submit MONTHLY the Monitoring Data Daily Report and the Summary of the Monthly Monitoring Data with the recorded data being developed from the injection well instrumentation. The report shall include the following data:

Parameters	**Frequency**
Monthly Average Injection Pressure (P.S.I.)	Monthly
Monthly Maximum Injection Pressure (P.S.I.)	Monthly
Monthly Minimum Injection Pressure (P.S.I.)	Monthly
Monthly Average Flow Rate (G.P.M.)	Monthly
Monthly Maximum Flow Rate (G.P.M.)	Monthly
Monthly Minimum Flow Rate (G.P.M.)	Monthly
Daily Average Injection Pressure (P.S.I.)	Continuously
Daily Maximum Injection Pressure (P.S.I.)	Continuously
Daily Minimum Injection Pressure (P.S.I.)	Continuously
Daily Average Flow Rate (G.P.M.)	Continuously
Daily Maximum Flow Rate (G.P.M.)	Continuously
Daily Minimum Flow Rate (G.P.M.)	Continuously
Total Volume Discharged (Gals)	Monthly
Total Volume Discharged (Gals)	Daily

h. Monitor Well System

The monitor well system consists of three (3) monitor wells as listed below:

Well Number	Diameter/Depth	Open Hole Interval
MW-1	4 in./300 ft.	300 - 350 ft.
MW-2	6 in./1550 ft.	1550 - 1700 ft.
MW-3	6 in./1200 ft.	1200 - 1320 ft.

The monitoring parameters listed below shall be sampled, analyzed and reported for each monitor well listed above. All samples must be collected subsequent to proper purging of wells assure that representative groundwater is sampled and analyzed in accordance with the quality assurance requirements of Chapter 17-160, F.A.C.

Parameters	**Frequency**
Monthy Average Pressure (P.S.I./N.G.V.D.)	Monthly
Monthly Maximum Pressure (P.S.I./N.G.V.D.)	Monthly
Monthly Minimum Pressure (P.S.I./N.G.V.D.)	Monthly
Daily Average Pressure (P.S.I./N.G.V.D.)	Continuously
Daily Maximum Pressure (P.S.I./N.G.V.D.)	Continuously
Daily Minimum Pressure (P.S.I./N.G.V.D.)	Continuously
Well Volume purged	prior to sampling
Manganese (mg/l)	monthly
Total Organic Carbon (mg/l)	monthly
Fluoride (mg/l)	monthly
pH (Field & Lab, Standard Units)	monthly
TDS-calculated & measured (mg/l)	monthly
Bicarbonate (mg/l as CaCO3)	monthly
Calcium (mg/l)	monthly
Carbonate (mg/l)	monthly
Magnesium (mg/l)	monthly
Sulfate (mg/l)	monthly
Sodium (mg/l)	monthly
Chloride (mg/l)	monthly
Potassium (mg/l)	monthly
Nitrate Nitrogen as N (mg/l)	monthly
Iron (mg/l)	monthly
Nitrite Nitrogen as N (mg/l)	monthly
Ortho Phosphate as P (mg/l)	monthly
Ammonia Nitrogen as N (mg/l)	monthly
Total phosphorus as P (mg/l)	monthly
Total Kjeldahl Nitrogen as N (mg/l)	monthly
Hardness-carbonate (mg/l)	monthly
BOD5 (mg/l)	monthly
Hardness-total (mg/l as CaCO3)	monthly
Specific conductivity, Field & Lab (umhos/cm)	monthly
Total Suspended Solids (mg/l)	monthly

i. The County shall submit to the Department the results of all injection well, injectate and monitor well data collected no later than the 15th day of the month immediately following the end of the sampling period. The results shall be sent to the Department of Environmental Protection, Underground Injection Control Program, 3319 Maguire Boulevard, Suite 232, Orlando, Florida 32803-3767, Attention: Duane Watroba. Copies of the Injection Well Monitoring Well Data shall be sent to the Department of Environmental Protection, UIC, Criteria and Standards Section, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400.

j. Where required by Chapter 471 (P.E.) or Chapter 492 (P.G.) Florida Statutes, applicable portions of permit applications and supporting documents which are submitted to the Department for public record, shall be signed and sealed by the professional(s) who prepared them.

3. Financial Responsibility

a. The County shall maintain the resources necessary to close, plug and abandon the injection well system at all times (Rule 17-28.270(9), F.A.C.).

b. The County shall review annually the plugging and abandonment cost estimates. An increase of five (5) percent or more in any one year shall require the County to submit documentation to obtain an updated Certificate of Demonstration of Financial Responsibility.

c. In the event that the mechanism used to demonstrate financial responsibility should become invalid for any reason, the County shall notify the Department of Environmental Protection in writing within 14 days of such invalidation. The County shall then within 30 days of said notification submit to the Department for approval new financial documentation in order to comply with Rule 17-28.270(9), F.A.C., and the conditions of this Consent Order.

4. Emergency Disposal

a. All applicable federal, state and local permits shall be in place to allow for any alternate discharges due to or planned outage conditions.

b. All equipment shall be in place and operable to allow for unplanned and/or long-term emergency or alternate discharge in the event that the Class I injection well is not usable.

c. Any changes in emergency disposal methods shall be submitted for TAC review and Department approval.

d. Pursuant to paragraph 30 of this Consent Order the Respondent shall construct and maintain chlorination/dechlorination facilities in order to address emergency discharge to surface

waters. This facility shall be completed and operational within 540 days after execution of this Consent Order.

e. Should effluent discharge to the Indian River due to injection well failure or any other reason Respondent shall immediately contact:

Department of Environmental Protection
Shellfish Environmental Assessment Section (Titusville)
During working hours call (407) 383-2780.

EXHIBIT II

DRAFT EPA
GUIDELINE FOR REVIEWING
AQUIFER EXEMPTION REQUESTS
Satisfying 40 CFR 146.04(a) and (c)
and Rule 17-28.130(3), F.A.C.

The exemption request must demonstrate that the aquifer does not currently serve as a source of drinking water. To demonstrate this, the applicant should survey the proposed exempted area to identify any water supply wells which tap the proposed exempted aquifer. The area to be surveyed should cover the exempted zone and a buffer outside the area. The buffer zone should extend a minimum of 1/4 mile from the boundary of the exempted area. Any water supply wells located should be identified on the map showing the proposed exempted area. The locations of the injection wells should also be shown on the same map. If no water supply wells would be affected by the exemption, the request should state that a survey was conducted and no water supply wells are located which tap the aquifer to be exempted within the proposed area.

If the exemption pertains to only a portion of an aquifer, a demonstration must be made that the waste and USDW/non-USDW interface will remain in the exempted portion. Such a demonstration should consider for the life of the facility among other factors:

a. Pressures in the injection zone,

b. Total waste volume (past, present and future activities),

c. Injected waste characteristics (i.e. specific gravity, chemical composition, compatibility with the formation, persistence, etc.)

d. Chemistry of the native formation fluid prior to any injection,

e. Present extent and approximate location of contaminant plumes or zones and USDW/non-USDW interface within the proposed exempted area,

f. Estimates of effective migration distance possible from injection well,

g. Probability based on modeling that the contaminant plume or USDW/non-USDW interface will pass the proposed exempted area, and

h. Location of 3,000 TDS interface (if possible).

A narrative description of the exemption plus illustrations, maps, or other means that describe in geographic, and/or geometric terms

(such as vertical and lateral limits and gradient) which are clear and definite, the aquifer(s) or parts thereof that satisfy the exemption criteria.

A topographic map of the proposed exempted area. The map must show the boundaries of the area to be exempted. The map should have a minimum scale of 1:63,360 (preferably 1:24,000 standard USGS 7 1/2' topographic map) precisely depicting those areas of the state underlain by the aquifer or aquifers in question. The limits of the aquifer must be indicated in some universal unit such as longitude/latitude or distances, bearing, etc. A standard base map (USGS, DOT) should be used.

A written description of the proposed exempted aquifer including:

a. Geologic name(s) of the designated aquifer(s) or description, if name is not available,

b. Stratigraphic information,

c. The general name applied to the aquifer(s) if the aquifer(s) consists of one or more formations or groups,

d. A precise definition of the upper and lower boundaries of the aquifer, i.e., the contact with a certain aquiclude,

e. Subsurface depth or elevation of zone,

f. Vertical confinement from other underground sources of drinking water,

g. Thickness of proposed exempted aquifer,

h. Area of exemption (e.g., acres, square miles, etc.),

i. A water quality analysis of the horizon to be exempted,

j. A statement or a section showing the depth at which 10,000 mg/l total dissolved solids concentration is encountered in the exemption area, and

k. A stratigraphic column to the base of the Floridan aquifer illustrating all known formations, their lithology, and thickness, depth and any water bearing zones or aquifers.

A full and adequate consideration of environmental issues and impacts must be completed. The study must address the environmental impact of the action, possible adverse environmental effects, possible alternatives, the relationship between long and short-term uses and goals, and any irreversible commitments of resources.

Information should be submitted regarding the quality and availability of water from the aquifer proposed for exemption.

Also, the exemption request must analyze the potential for public water supply use of the aquifer. This may include, a description of current sources of public water supply in the area, a discussion of the adequacy of current water supply sources to supply future needs, population projections, economy, future technology, and a discussion of other available water supply sources within the area.

EXHIBIT III

Technical Advisory Committee - Central District

Duane Watroba, TAC Chairman
Florida Department of Environmental Protection
Central District
3319 Maguire Boulevard
Suite 232
Orlando, Florida 32803-3767

Ann Bradner
U.S. Geological Survey
224 West Central Parkway
Suite 1006
Altamonte Springs, Florida 32714

Marian Fugitt
Florida Department of Environmental Protection
UIC, Criteria and Standards Section
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

Richard Burklew
Melbourne Field Office
St. Johns River Water Management District
305 East Drive
Melbourne, Florida 32904

PUBLIC NOTICE

The following notice shall be published one time only no less than 30 days prior to execution of the Consent Order by the Department. The notice shall be published in the legal ad section of a newspaper of general circulation in the area affected by the Consent Order. For the purpose of this proposed Order, "publication in a newspaper of general circulation in the affected area" means publication in a newspaper meeting the requirements of Section 50.011 and 50.031, Florida Statutes, in the county where the activity is to take place. Brevard County shall provide proof of publication to the Department, at the Central District Office, 3319 Maguire Boulevard, Suite 232, Orlando, Florida 32803-3767, Attention Duane Watroba, within seven (7) days of publication.

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
NOTICE OF CONSENT ORDER

The Department of Environmental Protection gives notice of agency action of entering into a Consent Order with the Brevard County pursuant to Rule 17-103.110(3), Florida Administrative Code. The Consent Order addresses the vertical movement of injected fluid, aquifer exemption and alternative disposal methods at the South Beaches Regional Wastewater Treatment Facility. The Consent Order also authorizes the temporary operation of the County's Class I Injection Well System pursuant to Section 403.088, Florida Statutes.

The Consent Order is available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at the Department of Environmental Protection, Central District Office, 3319 Maguire Boulevard, Suite 232, Orlando, Florida 32803-3767. Please contact Mr. Duane Watroba at 407/ 894-7555 for additional information or to obtain a copy of the draft Consent Order.

Written comment may be submitted to the Department for consideration in finalizing the Consent Order. For public comments to be considered, they must be received by the Central District Office, 3319 Maguire Boulevard, Suite 232, Orlando, Florida 32903-3767, Attention: Duane Watroba, no later than 30 days after publication of this notice.

Persons whose substantial interests are affected by this proposed Consent Order have a right to petition for an administrative hearing on this proposed Consent Order. The Petition must contain the information set forth below and must be filed (received) in the Department's Office of General Counsel, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400, within 30

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 30 days constitutes a waiver of any right such person has to an administrative hearing pursuant to Section 120.57, F.S.

The petition shall contain the following information: (a) The name, address, and telephone number of each petitioner; the Department's identification number for the Consent Order 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 30 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, F.S., 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 28-5.207, F.A.C.

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LEGAL ADVERTISING

TO-703371-1T-10/8,1993,Fri

ST. JOHNS RIVER WATER MANAGEMENT DISTRICT
Gives Notice of
Intended Agency Action

The District gives notice of its intent to issue a permit to the following applicant(s) on October 12, 1993.

THE CORPORATION OF THE PRESIDENT OF THE CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS (KEVKO BORROW-PIT), 13754 DESERET LANE, ST CLOUD, FL 34773, application #2-009-0327AN. The District proposes to allocate 0.79 million gallons per day of WATER TO DEWATER A 75 ACRE BORROW PIT AND 23.0 MILLION GALLONS OF WATER TO DEWATER 460 ACRES OF PASTURE LAND. The withdrawals used by this proposed project will consist of SURFACE WATER FROM LAKES OR OTHER IMPOUNDMENTS via ONE PROPOSED PUMP in Brevard County located in
NW 1/4 OF SW 1/4 OF
NE 1/4 OF NE 1/4
of Section 32, Township 27 South, Range 35 East;

The file(s) containing each of the above-listed application(s) are available for inspection Monday through Friday except for legal holidays, 8:00 a.m. to 5:00 p.m. at the St. Johns River Water Management District, Highway 100 West, Palatka, Florida.

The District will take action on each permit application listed above unless a petition for an administrative proceeding (hearing) is filed pursuant to the provisions of Section 120.57, F.S., and Section 40C-1.511, F.A.C. A person whose substantial interests are affected by any of the Districts proposed permitting decisions identified above may petition for an administrative hearing in accordance with section 120.57 F.S. Petitions must comply with the requirements of Florida Administrative Code Rules 40C-1.111 and 40C-1.521 and be filed with (received by) the District Clerk, P.O. Box 1429, Palatka, Florida 32178-1429. Petitions for administrative hearing on the above application(s) must be filed within fourteen (14) days of publications of this notice or within fourteen (14) days of actual receipt of this intent, whichever first occurs. Failure to file a petition within this time period shall constitute a waiver of any right such person may have to request an administrative determination (hearing) under section 120.57, F.S., concerning the subject permit application. Petitions which are not filed in accordance with the above provisions are subject to dismissal.

Rosie Parker
Data Control Technician
Division of Permit Data Services

TO-703362-1T-10/8,1993,Fri

NOTICE OF INTENTION TO REGISTER FICTITIOUS NAME

Notice is hereby given that the undersigned intend(s) to register the fictitious name of "PROFESSIONAL INFORMATION EXCHANGE" as provided by Section 865.09 Florida Statutes.

PAUL B. GOULDING
218A E. Eau Gallie Blvd.
Suite 19
Indian Harbour Beach, FL 32937

TO-703359-3T-10/8,11,12,1993,Fri,Mon,Tues

NOTICE OF ARCHITECTURAL, ENGINEERING, AND RELATED PROFESSIONAL SERVICES DESIRED

This is to announce that the University Athletic Association, Inc. University of Florida (the Owner) has a requirement for professional architectural, engineering services for the design of the Volleyball Practice Gymnasium/Athletic Area Field House at the University of Florida, Gainesville, Florida.

The Volleyball Practice Gymnasium/Athletic Field House is a 46,000 square foot facility which

TO-703365-1T-10/8,1993,Fri

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
NOTICE OF CONSENT ORDER

The Department of Environmental Protection gives notice of agency action of entering into a Consent Order with the Brevard County pursuant to Rule 17-103.110 (3), Florida Administrative Code. The Consent Order addresses the vertical movement of injected fluid, aquifer exemption and alternative disposal methods at the South Beaches Regional Wastewater Treatment Facility. The Consent Order also authorizes the temporary operation of the County's Class I Injection Well System pursuant to Section 403.088, Florida Statutes.

The Consent Order is available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at the Department of Environmental Protection, Central District Office, 3319 Maguire Boulevard, Suite 232, Orlando, Florida 32803-3767. Please contact Mr. Duane Watroba at 407/894-7555 for additional information or to obtain a copy of the draft Consent Order.

Written comment may be submitted to the Department for consideration in finalizing the Consent Order. For public comments to be considered, they must be received by the Central District Office 3319 Maguire Boulevard, Suite 232, Orlando, Florida 32803-3767 Attention: Duane Watroba, no later than 30 days after publication of this notice.

Persons whose substantial interests are affected by this proposed Consent Order have a right to petition for an administrative hearing on this proposed consent Order. The Petition must contain the information set forth below and must be filed (received) in the Department's Office of General Counsel, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400, within 30 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 30 days constitutes a waiver of any right such perosn has to an administrative hearing pursuant to Section 120.57, F.S.

The petition shall contain the following information: (a) The name, address, and telephone number of each petitioner; the Department's identification number for the Consent Order 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 facts which petitioner contends require reversal or modification of the Consent Order; (g) A statment 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 final Notice. Persons whose substantial interest 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 proceedings. The petition must conform to the requirements specified above and be filed (received) within 30 days 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, F.S., 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 28-5.207, F.A.C.

TO-703370-1T-10/8,1993,Fri

TO-703364-1T-10/8,1993,Fri

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
NOTICE OF PROPOSED AGENCY ACTION

The Department of Environmental Protection gives Notice of its intent to grant a variance (VE-05-640) to the W.W. Thompson Company, c/o Anita Cragg, Space Coast Management Services, Inc., 232 Fifth Avenue, Indialantic, Florida 32903 to construct a private multi-family elevated boardwalk 495 feet long by 4 feet wide through wetlands and an elevated 150 foot long by 4 foot wide fishing pier with a "T" shaped terminus (12 feet long by 6 feet wide) in the Indian River Aquatic Preserve. The project is located at 4930 South A-1-A in the Riverside Landing Subdivision within a conservation easement in Section 3, Township 29 South, Range 38 East in Brevard County.

The Department's file on this matter is available for publica inspection during normal business hours, 8:00 a.m. to 5:00p.m., Monday through Friday, except legal holidays, at FDEP, 3319 Maguire Boulevard, Suite 232, Orlando, Florida 32803.

Persons whose substantial interests are affected by the above proposed agency action have a right, pursuant to Section 120.57, F.S., to petition for an administrative determination (hearing) on the proposed action. The Petition must contain the information set forth below and must be filed (received) in the Department's Office of General Counsel, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400, within 14 days of publication of this notice. A copy of the Petition must also be mailed at the time of filing to C & D Dock Works at the address indicated. Failure to file a petition within the 14 days constitutes a waiver of any right such person has to an administrative determination (hearing) pursuant to Section 120.57, F.S.

The petition shall contain the following information: (a) The name, address, and telephone number of each petitioner, The applicant's name and address's the Department File Number and the county in which the project is proposed;(b) A statement of how and when each petitioner received notice of the Department's action or proposed action; (c) A statement of how each petitioner's substantial interests are affected by the Department's action or proposed action; (d) A statement of the material facts disputed by petitioner, if any; (e) A statement of facts which petitioner contends warrent reversal or modification of the Department's action or proposed action; (f) A statement of which rules or statues petitioner contends required reversal or modification of the Department's action or proposed action; and (g) A statment of the relief sought by petitioner, stating precisely the action petitioner wants the Department to take with respect to the Department's action or proposed action..

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 interest will be affected by any decision of the Department with regard to the application have the right to petition to become a party to the proceedings. The petition must conform to the requirements specified above and be filed (received) within 14 days 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, F.S., and to participate as a party to this proceeding. Any subsequent intervention will only be at the approval of the residing officer upon motion filed pursuant to Rule 28-5.207, F.A.C.

TO-703366-2T-10/8,15,1993,Fri

NOTICE FOR BIDS

Sealed bids will be received by the Brevard County Board of County Commissioners until 2:30 p.m. on November 2, 1993, in the

TO-703369-2T-10/8,13,1993,Fri,Wed

ADVERTISEMENT FOR BIDS
VIERA SOUTH P.U.D.
SPYGLASS ROAD PHASE IB
VIERA EAST COMMUNITY DEVELOPMENT DISTRICT
BREVARD COUNTY, FLORIDA
Project No. 93-314
October 1993

GEE & JENSON Engineers-Architects-Planners, Inc.
One Harvard Circle
West Palm Beach, FL 33409
Phone: (407) 683-3301

Sealed bids for general construction of Spyglass Road Phase IB, Water Distribution, Wastewater Collection, Stormwater Collection, roadway Construction, Earthwork, Clearing and Grubbing, etc., including all related labor and materials will be receibed by the owner, Viera East Community Development District.

Bids shall be on a unit price basis; segregated bids will not be accepted.

The Owner, VIERA EAST COMMUNITY DEVELOPMENT DISTRICT will receive bids until 1:30 PM, Eastern Time on October 20, 1993 at Conference Room, Suite 201, 7380 Murrell Road, Melbourne, Florida 32940.

Bids received after this time will be returned unopened. Bids submitted will be opened publicly and read aloud at this time.

Bidders may obtain complete sets of Bidding Documents from the Office of the Engineer upon payment of $125.00 per set, including tax, postage and handling; checks payable to Gee & Jenson Engineers-Architects-Planners, Inc. Payment amount is non-refundable.

Bid security in the amount of 5 percent of the Total Bid must accompany the Bid in accordance with the Instructions to Bidders. Surety bonds are required in accordance with the Instructions to Bidders.

The performance and payment bonds in the full amount of the contract price shall be written by a surety company, acceptable to the Owner, licensed to do business in the State of Florida, and in accordance with Article 5.1 and 5.2 of the General Condition.

The Owner reserves the right to waive technical errors and informalities, and to relect any or all proposals.

By order of Viera East Community Development District
Jack Maloy
Chairman, Board of Supervisors

TO-703379-1T-10/8,1993,Fri

NOTICE OF INTENTION TO REGISTER FICTITIOUS NAME

Notice is hereby given that the undersigned intend(s) to register the fictitious name of "ABC SEWING STUDIO" as provided by Section 865.09 Florida Statutes.

MARGUERITE GOWEN
4935 Windchester Dr.
Titusville, FL 32780

TO-703286-3T-10/8,15,22,Fri

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
NORTH CAROLINA
DARE COUNTY
NOTICE OF SERVICE OF PROCESS BY PUBLICATION
File No. 93-CVD-317

RICHARD RHODES,
Plaintiff,
V.
MARY RHODES,
Defendant,

NOTICE OF ACTION

TO: MARY RHODES,
the above-named Defendant

TAKE NOTICE that a pleading seeking relief against you has been filed the 19th day of May, 1993 in the above-entitled civil proceeding. The nature of the relief being sought is as follows:

ABSOLUTE DIVORCE

You are required to make defense against such pleading not later than the 17th day of November, 1993, said date being forty (40) days from the first publication of this Notice or from the date the Complaint is required to be filed, whichever is later; and upon your failure to do so, the pary seeking service against you will apply to the Court for the relief sought.

This the 28th day of September,

465 HOME FURN