STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

TROY AND TRACEY LEE; JOSEPH ACQUAOTTA AND LISA GABLER; ANTHONY AND VERONICA DALY; MICHAEL D'ORDINE AND ANN E. HAWKINS; LISA LANDER; and INDIAN TRAIL IMPROVEMENT DISTRICT,	)	
Petitioners,	)	Case Nos. 05-2979
	)	05-2980
vs.	)	05-2981
	)	05-2982
PALM BEACH COUNTY and DEPARTMENT OF ENVIRONMENTAL PROTECTION,	)	05-2983
	)	05-2984
Respondents.	)	

RECOMMENDED ORDER

Pursuant to notice, these matters were heard before the Division of Administrative Hearings by its assigned Administrative Law Judge, Donald R. Alexander, on September 13, 14, and 15, 2005, in West Palm Beach, Florida.

APPEARANCES

For Petitioners: (Case No. 05-2982)
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Ann E. Hawkins
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For Petitioner: (Case No. 05-2983)
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For Petitioner: (Case No. 05-2984)	Anthony D. Lehman, Esquire Hunton & Williams, LLP Bank of America Plaza, Suite 4100 600 Peachtree Street, Northeast Atlanta, Georgia 30308-2216
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For Respondent: (Department)	Francine M. Ffolkes, Esquire Justin G. Wolfe, Esquire Department of Environmental Protection 3900 Commonwealth Boulevard Mail Station 35 Tallahassee, Florida 32399-3000
For Respondent: (County)	Edward P. de la Parte, Jr., Esquire de la Parte & Gilbert, P.A. Post Office Box 2350 Tampa, Florida 33601-2350
	Amy Taylor Petrick, Esquire Palm Beach County Attorney's Office 301 North Olive Avenue, Suite 601 West Palm Beach, Florida 33401-4705

STATEMENT OF THE ISSUE

The issue is whether Palm Beach County's application for a permit to construct a domestic wastewater collection/transmission system in Palm Beach County should be approved.

PRELIMINARY STATEMENT

On May 12, 2005, Respondent, Department of Environmental Protection (Department), issued its Notice of Permit Issuance (Notice), which proposed to issue Permit No. 0048923-017-DWC

(Permit) to Respondent, Palm Beach County (County), authorizing the construction of a domestic wastewater collection/transmission system. The Permit allows the construction of a wastewater collection and transmission system to serve the Palm Beach County Research Village (Village), which will be home of the Scripps Florida Biomedical Research Institution and Campus (Scripps Project) in an unincorporated area of the County.

On August 15, 2005, Petitioners, Troy and Tracey Lee, Joseph Acquaotta and Lisa Gabler, Anthony and Veronica Daly, Michael D'Ordine and Ann E. Hawkins, and Lisa Lander, who reside in the area where the transmission line will be constructed, filed with the Department five identical, untitled papers challenging the proposed agency action. These papers were treated as formal petitions and were forwarded by the Department to the Division of Administrative Hearings (DOAH) on August 18, 2005, with a request that an administrative law judge be assigned to conduct a hearing. The Petitions have been assigned DOAH Case Nos. 05-2979 through 05-2983. On August 15, 2005, Petitioner, Indian Trail Improvement District (ITID), also filed with the Department a Petition for Formal Administrative Hearing (Petition) challenging the same proposed agency action. That Petition was forwarded to DOAH on August 18, 2005, and has been

assigned DOAH Case No. 05-2984. By Order dated August 23, 2005, all cases were consolidated.

On August 22, 2005, the Department filed a Motion for Summary Hearing Pursuant to Section 403.973(15)(b), F.S. (Motion). The Motion was later joined in by the County. That statute requires in part that "summary proceedings must be conducted within 30 days after a party files the motion for summary hearing, regardless of whether the parties agree to the summary proceeding." Because the project qualifies for an expedited hearing, the Motion was granted and the cases were scheduled for a final hearing on September 13-15, 2005, in West Palm Beach, Florida.

At the beginning of the final hearing, the undersigned granted the Department's and County's ore tenus motion in limine to exclude the introduction of evidence regarding certain real estate disputes between ITID and the County on the ground that those disputes should be adjudicated by the circuit court.

At the final hearing, the Department presented the testimony of Robert E. Heilman, a professional engineer, Pretreatment Coordinator, and accepted as an expert; Timothy W. Powell, a professional engineer, Wastewater Permitting Supervisor, and accepted as an expert; and Michael W. Bechtold, a professional engineer, Senior Permitter, and

accepted as an expert. Also, it offered Department Exhibits 1-3, and 7, which were received in evidence. The County presented the testimony of Robert Walker, a professional engineer, Executive Director of UniBell PVC Pipe Association, and accepted as an expert; Brian A. Shields, a professional engineer, Director of Engineering of the Water Utilities Department, and accepted as an expert; Leisha Pica, a professional engineer, Deputy Director of the Water Utilities Department, and accepted as an expert; and Bevin A. Beaudet, a professional engineer, director of the Water Utilities Department, and accepted as an expert. Also, it offered County Exhibits 1-21, 23, 36, 39, 92, 93, 107, 122, 124-127, 129, 142-145, 151A and B, 152, and 153, which were received in evidence.

Petitioners in Case Nos. 05-2979 and 05-2981 did not appear at the final hearing. One of the Petitioners in Case No. 05-2980, Joseph Acquaotta (but not Lisa Gabler, who also signed the Petition), appeared as a witness on the final day of the hearing. Petitioners in Case No. 05-2982, Michael D'Ordine and Ann E. Hawkins, testified on their own behalf. Petitioner in Case No. 05-2983, Lisa Lander, testified on her own behalf and presented the testimony of Alexandria Larson, who resides in the area. Also, she offered Lander Exhibits 1, 2, 3A-W, and 4-6, which were received in evidence.

ITID presented the testimony of Christopher Karch, a professional engineer and vice-president of its Board of Supervisors; and David L. Farabee, a professional engineer and accepted as an expert. Also, it offered ITID Exhibits 1 and 2, which were received in evidence.

Finally, official recognition has been taken of the following matters: a copy of an Order denying ITID's Renewed Motion for Temporary Injunction in Case No. 502005CA000965XXXXMB, Indian Trail Improvement District v. Palm Beach County (Cir. Ct., 15th Jud. Cir.); the Recommended and Final Orders issued in DOAH Case No. 04-4492GM; the Recommended Order issued in DOAH Case Nos. 04-4336GM, 04-4337GM, and 04-4650GM; and the Recommended Standards for Wastewater Facilities (1997 Edition), more commonly referred to as the Ten State Standards.

The Transcript of the hearing (five volumes) was filed on September 19, 2005. By agreement of the parties, proposed findings of fact and conclusions of law were due on September 29, 2005. Filings were timely made by Lander and D'Ordine (jointly), ITID, the County, and the Department, and they have been considered by the undersigned in the preparation of this Recommended Order.

FINDINGS OF FACT

Based upon all of the evidence, the following findings of

fact are determined:

A. Parties

1. The County is a political subdivision of the State of Florida and is the permittee in this matter. The County Water Utilities Department currently serves approximately 425,000 persons, making it the largest utility provider in Palm Beach County and the third largest in the State of Florida.

2. ITID is an independent water control special district created by special act of the legislature in 1957 and whose boundaries lie within the County. Portions of the transmission line to be constructed by the County will cross easements and roads, and pass under canals, owned by ITID.

3. Petitioners Joseph Acqualotta, Michael D'Ordine, Ann E. Hawkins, and Lisa Lander all live in areas in close proximity to the proposed transmission line. Lander lives adjacent to the proposed route of the line along 40th Street North, while Acqualotta, D'Ordine, and Hawkins live adjacent to the proposed route along 140th Avenue North. Acqualotta, Hawkins (but not D'Ordine, who resides with Hawkins), and Lander own the property where they reside. Petitioners Troy and Tracey Lee (Case No. 05-2979), Lisa Gabler (Case No. 05-2980), and Anthony and Veronica Daly (Case No. 05-2982) did not appear at the final hearing.

4. The Department is an agency of the State of Florida

authorized to administer the provisions of Part I of Chapter 403, Florida Statutes, and is the state agency charged with the responsibility of issuing domestic wastewater collection/ transmission permits under Section 403.087, Florida Statutes (2004).[1]

B. Background

5. On December 15, 2004, the County filed its application with the Department for an individual permit to construct a domestic wastewater collection/transmission system (Transmission Line). The Transmission Line is one element of the County's Northern Region Utilities Improvement Project (Project) and will be approximately 41,050 feet long and comprised of approximately 32,350 linear feet of 20-inch force main and 18,700 linear feet of 30-inch force main (or nearly ten miles in length).

6. A primary purpose of the Project is to provide water and wastewater service to the Village, a 1,900 acre parcel located in the unincorporated part of the County several miles west of the Florida Turnpike, south of State Road 710, and north of the Villages of Wellington and Royal Palm Beach. The Village will be the home of the Scripps Project and Campus. The Transmission Line will run from the southeastern corner of the Village south to Northlake Boulevard, then east to 140th Avenue North, then south along that roadway to 40th Street

North, where it turns east until it interconnects with existing facilities.

7. The wastewater will be collected in a regional pump station on the Scripps Project site, where it will be pumped through the Transmission Line to the East Central Plant, which will be the primary treatment facility. The East Central Plant is owned and operated by the City of West Palm Beach (City), but the County owns between forty and forty-five percent of the treatment capacity. Because the wastewater system is interconnected, the wastewater could also be treated at the County's Southern Regional Plant. Ultimately, the flow from the Scripps Project will be one or two million gallons per day.

8. The Transmission Line is the only way that wastewater can be handled at the Scripps Project. A preliminary analysis by the Department and the South Florida Water Management District determined that on-site treatment was not feasible because of the environmentally sensitive nature of the area.

9. The Scripps Project will include residential units, commercial entities, and institutional uses, such as medical clinics. Besides serving these customers, the Transmission Line will also serve other customers in the area. The County has already signed agreements with the Beeline Community Development District (which lies a few miles northwest of the

Village) and the Village of Royal Palm Beach (which lies several miles south-southeast of the Village). At the time of the hearing, the County anticipated that it would also sign an agreement with Seacoast Utility Authority (whose service area is located just southeast of the Village) to transport wastewater through the Transmission Line.

10. All of the treatment facilities have sufficient existing capacity to treat the estimated amount of domestic wastewater that will be generated by the Scripps Project and the other users that will discharge to the Line.

11. The County commenced construction of the Transmission Line in May 2005 when the Department issued the Permit. On August 2, 2005, the County published the Department's Notice to issue the Permit, and once the Petitions were filed, the County stopped construction pending the outcome of this hearing. Approximately seventy percent of the Transmission Line is now completed. The Permit does not allow the Transmission Line to be used until it is pressure tested and certified complete. Upon completion, the County must receive an Approval to Place a Domestic Wastewater Collection/Transmission System into Operation from the Department. Such approval is given only after the County has given reasonable assurance that adequate transmission,

treatment, and disposal is available in accordance with Department standards. See Fla. Admin. Code R. 62-604.700.

12. On August 15, 2005, Petitions challenging the issuance of the Permit were filed by ITID and the individual Petitioners. ITID contends that the Transmission Line will convey not only domestic wastewater, but also industrial waste; that the County did not comply with all applicable technical standards and criteria required under the Department's rules; that the Project will be located on ITID's right-of-way, on which the County has no right to occupy; that the Project will be located within seventy-five feet from private drinking wells and does not provide an equivalent level of reliability and public health protection; and that the pipe material and pressure design is inappropriate for the Transmission Line's requirements. The individual Petitioners (who filed identical Petitions) are mainly concerned about the location of the Transmission Line in relation to their private drinking wells and property, the possibility of the pipe bursting or leaking once it becomes operational, and the restoration of their property to its original condition after construction is completed.

13. As to the property claims by all Petitioners, the County plans to place the Transmission Line in property that it either owns or has an easement, in property that it is in

the process of condemning, or in a public right of way. While the County acknowledges that it has already placed, and intends to place other portions of, the Transmission Line in easements that ITID says it has the exclusive right to use and for which a permit from ITID is required, the County alleges that it also has the right to use those easements without an ITID permit. The dispute between the County and ITID is the subject of a circuit court proceeding in Palm Beach County, and neither the Department nor DOAH has the authority to decide property interests.

C. Petitioners' Objections

a. Domestic wastewater and pretreatment

14. The wastewater that will be generated by the Scripps Project is considered domestic wastewater; it will not include industrial wastewater. Waste that is industrial or non-domestic must be pretreated to protect the wastewater plant, collection system, and the health of system workers and the general public.

15. The Department administers a pretreatment program through which it requires a public wastewater utility to police the entities that discharge to their wastewater plants. A central part of the pretreatment program is the local ordinance that gives legal authority to the utility to permit, inspect, and take enforcement action against industrial users

who are part of the pretreatment program. The utility files an annual report with an industrial user survey, and the Department periodically inspects and audits local pretreatment programs to ensure they are being operated as intended. The system is not failsafe but is designed to ensure that potentially harmful wastes are rendered harmless before discharge. For example, the utility has the authority to immediately shut water off if a harmful discharge is occurring.

16. Both the County and the City have pretreatment programs approved by the Department. The City has an ordinance that allows it to enforce the pretreatment standards for all entities that discharge to its wastewater system. The County Water Utilities Department has a written pretreatment manual, and the County has zoning restrictions on the discharge of harmful material to the wastewater system. It has also entered into an interlocal agreement under which it agrees to enforce the City ordinance. The County provides wastewater treatment to industrial, educational, and medical facilities, and it has never experienced a discharge from any of these facilities that has caused adverse health or environmental impacts. The County pretreatment program for the Southern Regional Facility was approved in 1997. The City

pretreatment program for the East Central Regional Facility was approved in 1980.

17. The Scripps Project must apply for a permit from the County and provide a baseline monitoring report, data on its flow, and information on the flow frequency and raw materials. Medical waste from the Scripps Project will be pretreated to render it safe before it is discharged into the Transmission Line.

b. Transmission Line Design

18. The Transmission Line was designed in accordance with the technical standards and criteria for wastewater transmission lines in Florida Administrative Code Rule 62-604.300(5). That rule incorporates by reference a set of standards commonly known as the Ten State Standards, which contain several of the standards used in the design of this project. These standards are recommended, but are not mandatory, and a professional engineer should exercise his or her professional judgment in applying them in any particular case.

19. The Transmission Line also meets the design standards promulgated by the America Water Works Association (AWWA). Specifically, the County used the AWWA C-905 design standard for sizing the polyvinyl chloride, or PVC, pipe used in the project. The County has received written certification

from the manufacturer that the PVC pipe meets the standards in AWWA C-905.

20. The Transmission Line is designed with stub-outs, which will allow for future connections without an interruption of service, and inline isolation valves, which allow the line to be shut down for maintenance.

c. The Use of PVC Pipe

21. There is no standard regulating the selection of PVC pipe material in the Department's rules. Instead, the Department relies on the certification of the applicant and the engineer's seal that the force main will be constructed to accepted engineering standards. The only specification applicable to the Transmission Line is the Ten State Standard, adopted and incorporated by reference in Florida Administrative Code Rule 62-604.300(5)(g). That document contains a general requirement that the material selected have a pressure rating sufficient to handle anticipated pressures in wastewater transmission lines.

22. The Transmission Line will be constructed with PVC piping with a thickness of Dimension Ratio (DR) 32.5, which is the ratio of the outside diameter of the pipe to its thickness. Higher ratios mean thinner-walled pipes. This is not the first time the County has used 32.5 PVC piping for one of its projects, and other local governments in the State have

used 32.5 or thinner pipe. The County is typically conservative in requiring thicker-walled pipe, because most transmission lines are built by developers, and the County is unable to design the entire line or control or inspect its installation. The specifications for wastewater transmission lines built in the County call for the use of DR 25 pipe. On this project, however, the County determined that thicker-walled pipe would have been an over-design of the system because the County controls the pump stations and oversees the installation; therefore, the Director of the Water Utilities Department has waived that requirement.

23. The County considers the use of DR 32.5 PVC to be conservative. Although this pipe will be thinner than what is typically used in the County, it satisfies the Department's requirements. The Department has permitted many miles of similar PVC force mains in South Florida, and none have failed.

24. PVC has benefits over other transmission line material, such as ductile iron. For example, PVC is more corrosion resistant. Wastewater generates hydrogen sulfide as it decomposes, which can form highly corrosive sulfuric acid. Some of the older transmission lines in the County that were made of ductile iron have corroded. PVC also has a superior ability to absorb surges, such as cyclical surges, than

ductile iron. It is easier to install, and its interior flow characteristics are smoother than ductile iron or pre-stressed concrete pipe.

25. Mr. Farabee, a professional engineer who testified on behalf of ITID, recommended a DR 14 pipe, which is thicker-walled than the DR 32.5 pipe used by the County. While he opined that the DR 32.5 pipe was too thin for the project, he could not definitively state that it would not pass the 150 per square inch (psi) pressure test. He also opined that the pipe is undersized because it will be unable to withstand the surge pressures during cleaning. The witness further testified that the pipe would be subject to much higher pressures than 150 psi, and therefore it was impossible to know whether the pipe would fail. In his opinion, this means the Department did not have reasonable assurance for the project.

26. The County consulted with the Unibell PVC Pipe Association (Unibell) in the planning of this project. Unibell is a trade association that provides technical support for PVC pipe manufacturers. Robert Walker, a registered professional engineer and Unibell's executive director who testified on behalf of the County, disagreed with Mr. Farabee's conclusions concerning the adequacy of the PVC pipe in this project. The AWWA C-905 standard uses a safety factor

of two, which means the pipes are tested at pressures that are at least twice their stated design strength.

27. Mr. Walker explained the different standards that apply to PVC pipe. DR 32.5 pipe, which is used in this project, has a minimum interior pressure rating of 125 pounds per square psi. Each pipe section is tested before it is shipped at 250 psi, and the minimum burst pressure for the material is in excess of 400 psi. The pipe also meets a 1000-hour test at 270 psi. In light of these standards and testing, the pipe will pass the two-hour 150 psi test required by the Department.

28. Mr. Farabee expressed some concern that the PVC pipe would be more prone to breakage than ductile iron or thicker PVC. However, the PVC pipe standards provide that the pipe can be flattened at sixty percent without splitting, cracking, or breaking. At shallow depths on dirt roads, ovalation, which occurs when PVC is flattened through pressure, will initially occur, but over time the soil around the pipe will become compacted and result in re-rounding of the pipe. The joints are three times stiffer than the body of the pipe, which will protect the joint from excessive ovalation and leaking, and the use of mechanical restrained joints will further strengthen the joints. There has been no joint leakage in Florida due to deflection of the joints. Finally,

there have been no failures of PVC pipe caused by three-feet of fill, which is the depth to which the Transmission Line pipe will be buried.

29. To further protect the pipe, the County optimized its pumping system to avoid cyclical surges by using variable frequency drive pumps that gradually increase and decrease speed rather than just turning on or off. In addition, the pump stations are fed by two power lines that come from different directions and emergency generators, which should lessen the chances of harmful surging.

d. Testing the Installation

30. The anticipated pressures in the Transmission Line will likely be about 50 psi. After installation, the Line will be pressure tested at 150 psi for two hours, which is sufficient to provide the Department with reasonable assurance that the Line will hold pressure and will not leak. Also, the County contract inspectors are on the construction site daily. If problems with the installation arise later, the County has committed to promptly fix the problem, even if it means digging up the line.

31. During the hearing, ITID asserted that the Uniform Policies and Procedure Manual standards, which the County has adopted for use by developers when constructing wastewater transmission lines, should be applied to the County as well.

This standard, which requires pressure testing to 200 psi for PVC pipes larger than 24 inches, has not been adopted by the Department and is not an applicable Department permitting standard. Even if it did apply, the Transmission Line would meet this criterion because it is designed to withstand 270 psi for at least 1,000 hours.

32. Mr. Farabee believed that the entire Transmission Line would be pressure tested after the construction was complete, which would require digging up sections of the pipe to install bulkheads. However, this assessment of the County's testing program is incorrect.

33. Leisha Pica, Deputy Director of the Water Utilities Department, developed the schedule for the project, helped develop the phasing of the work and budget, and oversaw the technical aspects. She stated that the County has successfully tested approximately fifty percent of the line that was already installed at 150 psi for two hours and not a single section of the line failed the test.

e. Compaction

34. The County has stringent backfilling and compaction requirements, which are sufficient to ensure the pipe will be properly installed and that there will be adequate compaction of the fill material. The County plans and specifications

provide that compaction must be to ninety-five percent of the American Association of State Highway and Transportation Officials (AASHTO) standards for non-paved surfaces and one hundred percent of AASHTO standards for paved surfaces. Even ITID's expert agreed that the compaction specifications are sufficient.

35. Mr. Farabee contended, however, that even though the standards are stringent, the County cannot properly test the installation for compliance with the standards. Mr. Farabee believed that testing of the backfill would be done after all of the construction was complete. In that case, he did not see how the testing could be done without digging many holes to check for the density of the backfill. These assumptions, however, are incorrect.

36. The evidence shows that a total of two hundred sixty-four compaction tests have already been done on the portion of the Transmission Line that was completed. No part of the installation failed the tests. The County has an inspector who observes the installation and pressure tests. The compaction was tested at every driveway and major roadway, as well as every five hundred feet along the route. While Lander and D'Ordine pointed out at hearing that no compaction tests have been performed on the dirt roads which run adjacent to their property and on which construction has taken place,

the Department requires that, before the work is certified as complete, non-paved roads must be compacted in accordance with AASHTO standards in order to assure that there is adequate compaction of the fill material.

f. The Sufficiency of the Application

37. When an application for an individual transmission/ collection line permit is filed with the Department, the applicant certifies that the design of the pipeline complies with the Department's standards. However, not all of the details of the construction will be included in the permit application. The Department relies on the design engineer to certify that the materials used are appropriate. The application form is also signed and sealed by a professional engineer registered in the State of Florida.

38. All plans submitted by the County, including the original, modifications, and final version, were certified by professional engineers registered in the State of Florida. After receiving the application, the Department requested additional information before issuing the permit, and the County provided all requested information. The original construction plans that were submitted with the application were changed in response to the Department's requests for additional information. The Permit issued by the Department

indicates the Transmission Line would be constructed with ductile iron pipe, but this was a typographical error.

39. ITID maintains that all of the technical specifications for the project must be included in the application, and because no separate engineering report was prepared by the County with the application, the County did not meet that standard. While the County did not submit an engineering report, it did submit sufficient data to provide reasonable assurance that the project will comply will all applicable rules of the Department. As a part of its application package, the County submitted construction plans, which contain the specifications required by the Department. Also, the general notes included in the construction drawings specify the use of restrained joints where appropriate, the selection of pipe material, the pressure testing of the Transmission Line, and other engineering requirements. In addition, the plans contain numerous other conditions, which are also specifications sufficient to fulfill the Department's requirements. Finally, further explanation and clarification of the technical aspects of the application was given by the County at the final hearing.

40. At the same time, the Department engineer who oversaw the permitting of this project, testified that a detailed engineering report was not necessary. This engineer

has extensive experience in permitting transmission lines for the Department and has worked on over five hundred permits for wastewater transmission and collection systems. The undersigned has accepted his testimony that in a relatively straightforward permit such as this, the application and attachments themselves can function as a sufficient engineering evaluation. This is especially true here since the County is seeking only approval of a pipeline project, which would not authorize the receipt of wastewater flow unless other wastewater facilities are permitted.

g. Impacts on Public and Private Drinking Water Wells

41. As part of the design of the Transmission Line, the County located public and private drinking water wells in the area of the line. County personnel walked the route of the Transmission Line and looked for private wells and researched the site plans for all of the properties along the route. No public wells were found within one-hundred feet of the Transmission Line route, but they did find seventeen private wells that are within seventy-five feet of the line. None of the Petitioners have private wells that are within seventy-five feet of the line. While Petitioners D'Ordine and Hawkins initially contended that the well on Hawkins' property was within seventy-five feet of the Transmission Line, at hearing

Mr. D'Ordine admitted that he "misread the plans and referred to the wrong property."

42. In order to protect the private drinking water wells, Florida Administrative Code Rule 62-604.400(1)(b) requires that the County provide an extra level of protection for the wells that are within seventy-five feet of the Transmission Line. The County will provide that extra level of protection by installing restrained joints that will restrain the joints between the pipe sections. The restrained joints are epoxy-coated mechanical devices that reduce the tendency for the pipes to separate under pressure. The County has used these restrained joints on its potable water and wastewater lines in other areas of the County and has never experienced problems with the devices. The restrained joints will provide reliable protection of the private wells within seventy-five feet of the Transmission Line. The Department is unaware of any instances where restrained joints have failed in South Florida. If more wells are discovered that are within seventy-five feet of the Transmission Line, then the County will excavate the Line and install restrained joints.

h. Minimum Separation Distances

43. The County has complied with all applicable pipe separation requirements in the installation of the Transmission Line. More specifically, it is not closer than

six feet horizontally from any water main and does not intersect or cross any reclaimed water lines. See Fla. Admin. Code R. 62-555.314(1)(a). It will be at least twelve inches below any water main or culvert that it crosses. See Fla. Admin. Code R. 62-555.314(2)(a). Finally, it will be a minimum of twelve inches below any culverts that it crosses. (However, the Department has no separation requirement for culverts crossed by the Transmission Line.)

h. The M-Canal Crossing

44. The Transmission Line must cross the M-canal, which runs in an east-west direction approximately midway between 40th Street North and Northlake Boulevard. The original design called for the Transmission Line to cross above the water, but the City and the Department suggested that it be located below the canal to eliminate the chance that the pipe could leak wastewater into the canal. In response to that suggestion, the County redesigned the crossing so that a 24-inch high density polyethylene pipe in a 48-inch casing will be installed fifteen feet below the design bottom of the canal. The polyethylene is fusion-welded, which eliminates joints, and is isolated with a valve on either side of the canal. Appropriate warning signs will be installed. See Fla. Admin. Code R. 62-604.400(2)(k)2.-5. The depth of the subaqueous line and the use of the slip line, or casing,

exceeds the Department's minimum standards. See Fla. Admin. Code R. 62-604.400(2)(k)1.

i. Flushing Protocol

45. Section 48.1 of the Ten State Standard recommends that wastewater transmission lines maintain a velocity of two feet per second. When the Transmission Line becomes operational, it will not have sufficient flow to flush (or clean) accumulated solids from the lines at the recommended two feet per second velocities. (Sufficient flow will not occur until other customers connect to the Transmission Line during the first one to three years of operation.) Accumulated solids produce gases and odors that could create a problem at the treatment plant and might leak out of the manhole covers. To address this potential problem, Specific Condition 9 of the Permit requires the County to flush the lines periodically. Pursuant to that Condition, the County plans to flush the Transmission Line with additional water which will raise the velocity to three or four feet per second, so that the accumulated solids will be flushed. The water will be supplied by large portable tanks that will be temporarily set up at several locations along the Line. During the purging of the Line, sewage will collect in the pump stations until the purge is finished. There is sufficient capacity in the pump stations to contain the

wastewater. In addition, the County will use a cleansing tool known as a pig, which is like a foam bullet that scrapes the sides of the pipe as it is pushed through the line. This protocol will be sufficient to keep the Line clean.

46. ITID asserts that the County's plan for flushing is inadequate, because it does not provide enough water for long enough to flush both the 20-inch and 30-inch lines. Mr. Farabee calculated that the County would need almost twice the proposed volume, or almost six million gallons, to adequately flush the lines.

47. ITID's analysis of the flushing protocol is flawed, however, because it assumes a constant flow in all segments of the pipe, which is not practical. In order to maintain the flushing velocity of three feet per second, the County will introduce water into the Transmission Line at three separate locations, resulting in a more constant flow velocity throughout the Transmission Line. In this way, it can maintain the proper velocity as the lines transition from a 20-inch to 30-inch to 36-inch pipe. The County has flushed other lines in the past using this protocol and has had no problems. This flushing protocol would only be in effect from one to three years. The County estimates that the necessary volumes to maintain a two-feet-per-second velocity in the 20-inch line would be reached in about one year. The 30-inch

line should have sufficient flows sometime in 2008. These estimates are based on the signed agreements the County has with other utilities in the area to take their flows into the Transmission Line. Because of these safeguards, the Transmission Line will not accumulate solids that will cause undesirable impacts while flow is less than two feet per second.

D. Other Requirements

48. The construction and operation of the Transmission Line will not result in the release or disposal of sewage or residuals without providing proper treatment. It will not violate the odor prohibition in Florida Administrative Code Rule 62-600.400(2)(a). It will not result in a cross-connection as defined in Florida Administrative Code Rule 62-550.200. The construction or operation of the Transmission Line will not result in the introduction of stormwater into the Line, and its operation will not result in the acceptance of non-domestic wastewater that has not been properly pretreated. If constructed and permitted, the Transmission Line will be operated so as to provide uninterrupted service and will be maintained so as to function as intended. The record drawings will be available at the Department's district office and to the County operation and maintenance personnel.

49. Finally, concerns by the individual Petitioners that the County may not restore their property to its original condition after construction is completed are beyond the scope of this proceeding. At the hearing, however, the Deputy Director of the Water Utilities Department represented that the County would cooperate with the individual property owners to assure that these concerns are fully addressed.

E. Reasonable Assurance

50. The County has provided the Department with reasonable assurance, based on plans, test results, installation of equipment, and other information that the construction and installation of the Transmission Line will not discharge, emit, or cause pollution in contravention of the Department's standards.

CONCLUSIONS OF LAW

51. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties pursuant to Sections 120.569 and 120.57(1), Florida Statutes.

52. Because Troy and Tracey Lee (Case No. 05-2979), Lisa Gabler (Case No. 05-2980), and Anthony and Veronica Daly (Case No. 05-2983) did not appear at the final hearing and did not submit any proof in support of the allegations in their respective Petitions, their Petitions should be dismissed for lack of standing. See, e.g., Agrico Chemical Co. v. Dept. of

Envir. Reg. et al., 406 So. 2d 478, 482 (Fla. 2nd DCA 1981); § 120.57(1), Fla. Stat. All parties agree that the remaining Petitioners have standing to bring this action.

53. As the applicant, the County has the ultimate burden of showing entitlement to the Permit. To do so, it must provide the Department with reasonable assurance that the proposed activity will not "discharge, emit, or cause pollution in contravention of Department standards or rules." Fla. Admin. Code R. 62-4.070(1). Reasonable assurance contemplates only a "substantial likelihood" that the project will be successfully implemented, Metropolitan Dade County v. Coscan Florida, Inc. et al., 609 So. 2d 644, 649 (Fla. 3d DCA 1992), and not an absolute guarantee. McCormick et al. v. City of Jacksonville et al., DOAH Case No. 88-2283, 1989 WL 224961 *8 (DOAH Oct. 16, 1989, DER Jan. 22, 1989).

54. The minimum design and operation and maintenance standards for domestic wastewater collection/transmission systems are found in Florida Administrative Code Chapter 62-604. The specific technical standards that apply to the Project are found in Florida Administrative Code Rule 62-604.300, while the design and performance considerations are found in Florida Administrative Code Rule 62-604.400.

55. By a preponderance of the evidence, the County has established that it meets all relevant criteria for issuance

of the Permit. More specifically, and in the context of the objections raised by Petitioners, it is concluded that the County has given reasonable assurance that the Transmission Line is designed in accordance with Florida Administrative Code Rule 62-604.300, which contains the general technical guidance for projects such as this; that it will be constructed in accordance with the Department's rules and the Permit Conditions; that the subaqueous crossing of the M-canal will meet the Department's criteria; that the Transmission Line will be at least one hundred feet from all public drinking wells; that in those instances where the Transmission Line is within seventy-five feet of private drinking wells the County will provide an equivalent level of reliability and public health protection through the use of mechanical restrained joints; that the County's plan for flushing the Transmission Line is adequate; that the required separation distances have been maintained; that the application and supporting data, as further clarified and explained at final hearing, are sufficient to show that there is a substantial likelihood that the Project will be successfully implemented; and that the Transmission Line will be located within rights-of-way,

property owned by the County, or easements, as contemplated by Florida Administrative Code Rule 62-604.400(1)(b).

56. As to the property issues that have arisen between ITID and the County, including the issue of whether the County may place the Transmission Line in easements owned by ITID without an ITID permit, neither the Department nor the undersigned have jurisdiction to adjudicate those claims. See, e.g., Miller v. Dept. of Envir. Reg., 504 So. 2d 1325, 1327 (Fla. 1st DCA 1987); Safe Harbor Enterprises, Inc. v. Robbie's Safe Harbor Marine Enterprises, Inc. et al., DOAH Case No. 98-3695, 1999 WL 33116615 *3 (DOAH Jan. 29, 1999, DEP March 12, 1999); Hageman et al. v. Dept. of Envir. Prot. et al., DOAH Case No. 94-6794, 1995 WL 812077 *6 (DOAH July 7, 1995, DEP Aug. 21, 1995).

57. Because reasonable assurance has been given by the County that Department standards and rules will not be contravened, and there is a substantial likelihood that the project will be successfully implemented, the Permit should be issued.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Department of Environmental Protection enter a final order denying all Petitions and issuing Permit No. 0048923-017-DWC.

DONE AND ENTERED this 18th day of October, 2005, in Tallahassee, Leon County, Florida.

DONALD R. ALEXANDER
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 18th day of October, 2005.

ENDNOTE

1/ All references are to Florida Statutes (2004).

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within two calendar days of the date of this Recommended Order and written responses to exceptions within two calendar days from the filing of exceptions. Any exceptions to this Recommended Order should be filed with the agency that will render a final order in this matter.