

BACKUP MATERIAL

WP-286-09

<u>DATE</u>	<u>FROM</u>	<u>TO</u>	<u>SUBJECT</u>
2/4/10	City Attorney	Asst City Mgr	Request to Review Sample Proposed Settlement Language-Water Treatment Plant
1/27/10	FL/PBC HD	USD	Proposed settlement of FL/PBC HD vs. USD with Respect to violations of Drinking Water Regulations
1/12/10	USD	City Attorney	Request to Review Sample Proposed Settlement Language-Water Treatment Plant
1/6/10	FLPBC HD	USD	Proposed Settlement
12/22/9	FL/PBC HD	USD	CRB WTP (possible violations)

FL/PBC HD-Florida Department of Health PBC

286-09

MEMORANDUM

TO: GLORIA SHUTTLESWORTH, ASST. CITY MANAGER

FROM: ^{PHR}PAMALA H. RYAN, CITY ATTORNEY

DATE: FEBRUARY 4, 2010

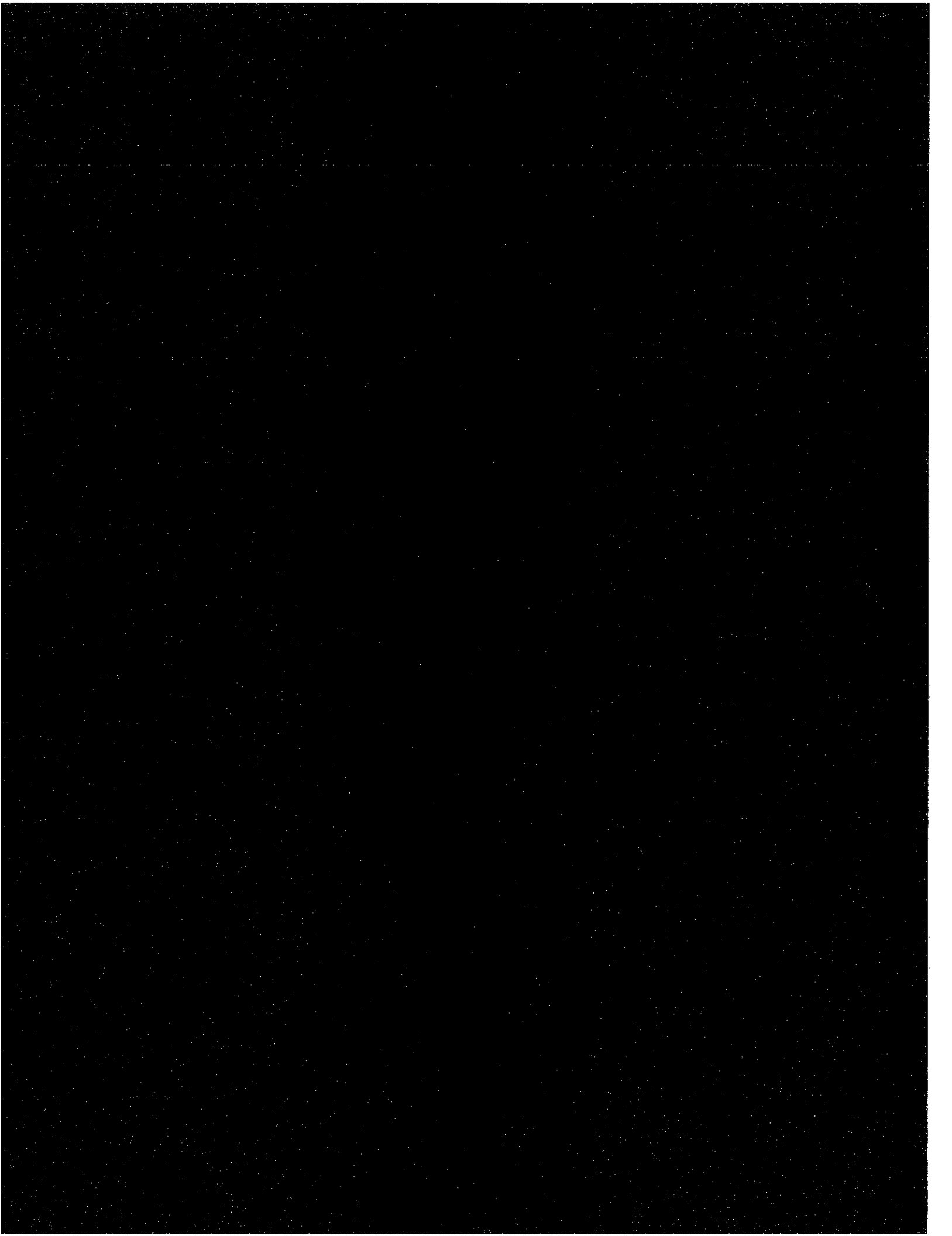
**RE: REQUEST TO REVIEW SAMPLE PROPOSED SETTLEMENT
LANGUAGE - RIVIERA BEACH WATER TREATMENT PLANT**

As requested I have reviewed the December 22, 2009 letter from the Department of Health along with the email of January 11, 2010 from Pamela Lape. Unfortunately, I am confused about the email sent to you. Is the letter referenced in the email the actual Consent Order? Or is there a separate Consent Order that the City is being required to execute? Although \$750.00 is a minor penalty and if the City did in fact violate standards set out in the December 22, 2009 letter, then the City should pay the penalty. However, please be certain as to exactly what it is the City is admitting liability on prior to executing the letter and sending payment. If there are additional documents please send the same to my attention.

Thank you for your attention to this matter.

Attachments

PHR:syj





Charlie Crist
Governor

Ana M. Viamonte Ros, M.D., M.P.H.
Secretary of Health

January 27, 2010

Consent Order (CO) # WP-286-09
Certified Mail # 7008 2810 0000 4119 6186
Return Receipt Requested

Ms. Gloria Shuttlesworth, Interim Utilities Director
P.O. Box 9757
Riviera Beach, FL 33419

Re: Proposed Settlement of Palm Beach County Health Department (Consent Order #WP-286-09) v. City of Riviera Beach with respect to violation of Drinking Water Regulations

Dear Ms. Shuttlesworth:

The purpose of this letter is to complete the resolution of the matter previously identified by the Palm Beach County Health Department (Health Department) in the Warning Letter dated December 22, 2009 copy of which is attached. In order to resolve the matters identified in the attached Warning Letter, you are assessed civil penalties in the amount of \$750 (seven hundred fifty dollars). This payment shall be made payable to the Palm Beach County Health Department (PBCHD) by cashier's check or money order and shall include the Consent Order number assigned above (WP-286-09). Payment shall be sent to the Enforcement Section, Environmental Public Health, 800 Clematis Street, West Palm Beach, Florida 33402, attention Pamela Lape, along with this letter after you have signed it. Payment must be received by February 28, 2010.

Your signing this letter constitutes acceptance of the Department's offer to resolve this matter on these terms. If you elect to sign this letter, please return it to the Department at the address indicated above. The Department will then countersign the letter and file it with the Clerk of the Department. When the signed letter is filed with the Clerk, the letter shall constitute final agency action of the Department, which shall be enforceable pursuant to **Section 120.57, Florida Statutes**.

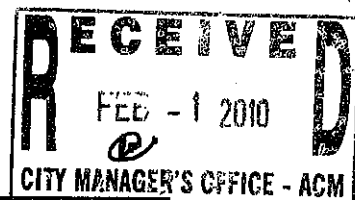
By countersigning this letter, the PBCHD waives its right to seek judicial imposition of damages or civil penalties arising from this case for the violation described in the Warning Letters. By the signature of the responsible official, City of Riviera Beach waives its right to appeal the provisions of this consent order.

If you do not sign and return this letter to the Palm Beach County Health Department address by February 28, 2010, the Department will assume you are not interested in settling this matter on the above described terms, and will proceed accordingly. None of your rights or substantial interests are determined by this letter unless you sign it and it is filed with the Department Clerk within the designated time frame.

Should you have any questions, please call Pamela Lape, Enforcement Coordinator at (561) 837-5947.

For the Division Director,

Darrel J. Graziani, P.E., R.S.
Environmental Administrator-Water Programs
Division of Environmental Health & Engineering
Palm Beach County Health Department



Post Office Box 29 / 800 Clematis Street, West Palm Beach, FL 33402
Alina Alonso, MD, Director
www.pbchd.com

I, Ruth C. Jones, on behalf of the City of Riviera Beach
Responsible Official

HEREBY ACCEPT THE TERMS OF THE SETTLEMENT OFFER IDENTIFIED ABOVE.

FOR THE RESPONDENT:

By: Ruth C. Jones Date 2-10-2010
Responsible Official
City of Riviera Beach
Riviera Beach, FL

FOR THE DEPARTMENT:

DONE AND ORDERED this ____ day of _____, 2010, in West Palm Beach, Florida

By: _____ Date _____
Darrel J. Graziani, P.E., R.S.
Environmental Administrator-Water Programs
Division of Environmental Public Health
Palm Beach County Health Department
Florida Department of Health

FILING AND ACKNOWLEDGMENT

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

Clerk Date _____

NOTICE OF RIGHTS

Persons who are not parties to this Consent Order but whose substantial interests are affected by this Consent Order have a right, pursuant to Sections 120.569 and 120.57, Florida Statutes, to petition for an administrative hearing on it. The Petition must contain the information set forth below and must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS-35, Tallahassee, Florida 32399-3000, within 21 days of receipt of this notice. A copy of the Petition must also be mailed at the time of filing to the District Office named above at the address indicated. Failure to file a petition within the 21 days constitutes a waiver of any right such person has to an administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes.

The petition shall contain the following information:

(a) The name, address, and telephone number of each petitioner; the Department's Consent Order identification number and the county in which the subject matter or activity is located; (b) A statement of how and when each petitioner received notice of the Consent Order; (c) A statement of how each petitioner's substantial interests are affected by the Consent Order; (d) A statement of the material facts disputed by petitioner, if any; (e) A statement of facts which petitioner contends warrant reversal or modification of the Consent Order; (f) A statement of which rules or statutes petitioner contends require reversal or modification of the Consent Order; (g) A statement of the relief sought by petitioner, stating precisely the action petitioner wants the Department to take with respect to the Consent Order.

If a petition is filed, the administrative hearing process is designed to formulate agency action. Accordingly, the Department's final action may be different from the position taken by it in this Notice. Persons whose substantial interests will be affected by any decision of the Department with regard to the subject Consent Order have the right to petition to become a party to the proceeding. The petition must conform to the requirements specified above and be filed (received) within 21 days of receipt of this notice in the Office of General Counsel at the above address of the Department. Failure to petition within the allowed time frame constitutes a waiver of any right such person has to request a hearing under Sections 120.569 and 120.57, Florida Statutes, and to participate as a party to this proceeding. Any subsequent intervention will only be at the approval of the presiding officer upon motion filed pursuant to Rule 28-106.205, Florida Administrative Code. Mediation under Section 120.573, Florida Statutes, is not available in this proceeding.

Ms. Jones

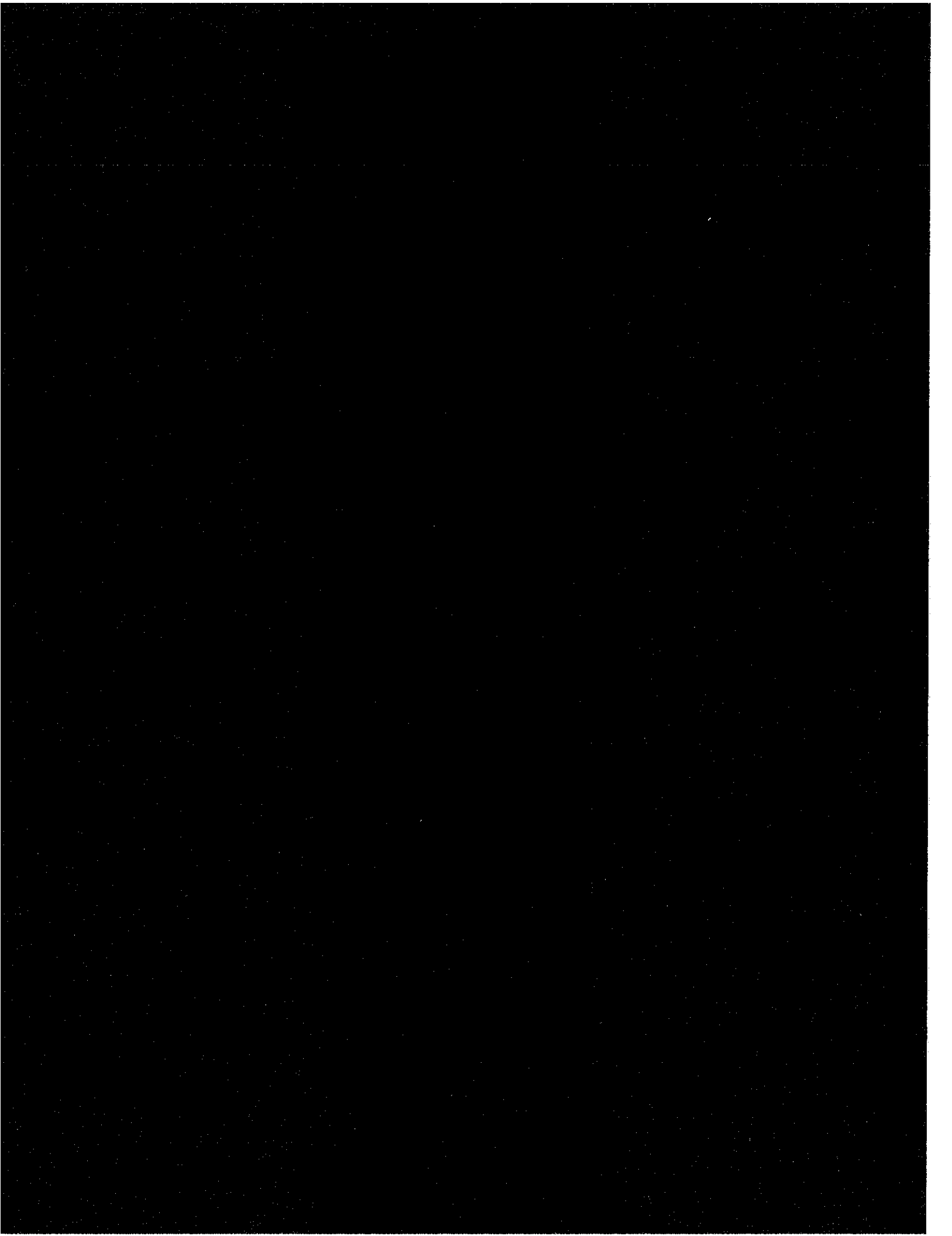
Please sign the letter where it indicates Responsible Official. This is the settlement offer from the health department as a result of our chlorine automatic switchover not being operational when they did an impromptu inspection of the facility. It is a \$1000 fine that they reduced by 25% to \$750. I have discussed this with Ms. Ryan and she has reviewed the document and stated that you are the appropriate to sign.

Anne
Pls prepare
OK request
JS 2/10/10

City of...
...

FEB - 9 2010

City of...
...



INTER-DEPARTMENTAL COMMUNICATION

RECEIVED

JAN 15 2010

CITY ATTORNEY'S OFFICE

TO: Pamala H. Ryan, City Attorney

FROM: Gloria Shuttlesworth, Interim Utilities Director *GS*

DATE: January 12, 2010

RE: REQUEST TO REVIEW SAMPLE PROPOSED SETTLEMENT
LANGUAGE – RIVIERA BEACH WATER TREATMENT PLANT
- Warning Letter # WP-286-09

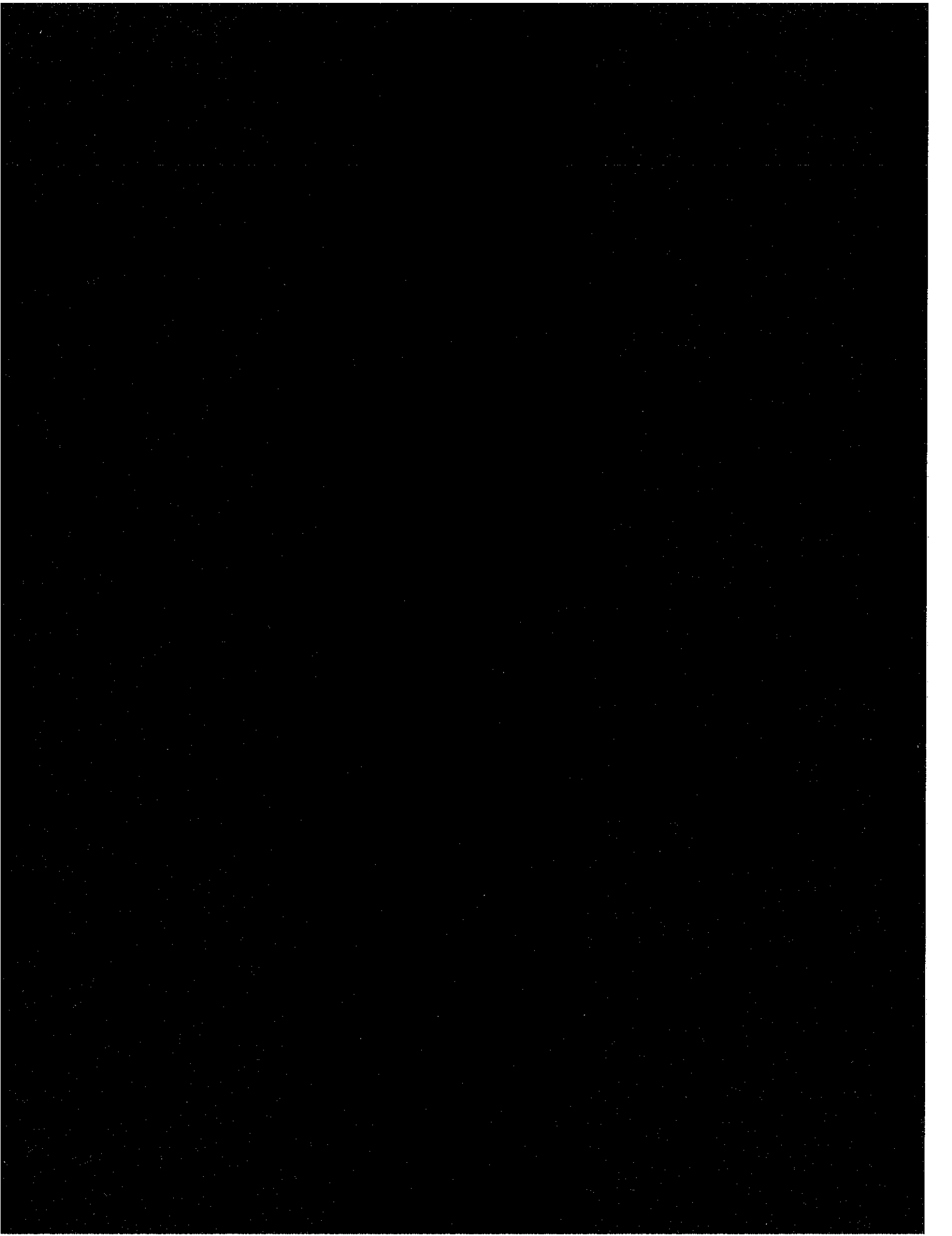
As previously discussed, please find attached a copy of Warning Letter WP-286-09, Re: Riviera Beach Water Treatment Plant, PWS ID#4501229, along with a sample proposed settlement letter provided via email by Ms. Pamela Lape, PBC Health Department.

During their inspection of the water treatment plant the Health Department observed that the chlorine automatic switchover was not functioning. I was advised by David Danford that due to the repair and painting dust accumulated and when tested, the switchover generator did not engage. He is working with the Purchasing Department to get it repaired. In order to avoid any judicial imposition or civil penalties, Ms. Lape recommends that we enter into a settlement agreement, which would resolve the matter more timely and would cost not more than \$750.00. Ms. Lape further indicated that she would recommend the use of the settlement agreement to the PBC Health Department.

Please review the language of the sample proposed settlement letter so that I can take this matter to City Manager Jones for her authorization to move forward to resolve this matter.

GS:dpm

Attachment



Shuttlesworth, Gloria

From: Pamela_Lape@doh.state.fl.us
Sent: Monday, January 11, 2010 10:18 AM
To: Shuttlesworth, Gloria
Subject: Sample SFCO

January 6, 2010

Consent Order (CO) # WP-246-09
Certified Mail # 7008 2810 0000 4119

6032

Return Receipt Requested

Re: Proposed Settlement of Palm Beach County Health Department (Consent Order #WP-246-09)
v.

_____ **with respect to violation of Drinking Water Regulations.**

Dear Mr. :

The purpose of this letter is to complete the resolution of the matter previously identified by the Palm Beach County Health Department (Health Department) in the Warning Letter dated November 25, 2009 copy of which is attached. In order to resolve the matters identified in the attached ~~Warning Letter~~, you are assessed civil penalties in the amount of \$750 (seven hundred fifty dollars). This payment shall be made payable to the Palm Beach County Health Department (PBCHD) by cashier's check or money order and shall include the Consent Order number assigned above (WP-246-09). Payment shall be sent to the Enforcement Section, Environmental Public Health , 800 Clematis Street, West Palm Beach, Florida 33402, attention Pamela Lape, along with this letter after you have signed it. Payment must be received by February 8, 2010.

Your signing this letter constitutes acceptance of the Department's offer to resolve this matter on these terms. If you elect to sign this letter, please return it to the Department at the address indicated above. The Department will then countersign the letter and file it with the Clerk of the Department. When the signed letter is filed with the Clerk, the letter shall constitute final agency action of the Department, which shall be enforceable pursuant to **Section 120.57, Florida Statutes**.

By countersigning this letter, the PBCHD waives its right to seek judicial imposition of damages or civil penalties arising from this case for the violation described in the Warning Letters. By the signature of the responsible official, _____ waives its right to appeal the provisions of this consent order.

If you do not sign and return this letter to the Palm Beach County Health Department address by February 8, 2010, the Department will assume you are not interested in settling this matter on the above described terms, and will proceed accordingly. None of your rights or substantial interests are determined by this letter unless you sign it and it is filed with the Department Clerk within the designated time frame.

Should you have any questions, please call Pamela Lape, Enforcement Coordinator at (561) 837-5947.

For the Division Director,

Darrel J. Graziani, P.E., R.S.
Environmental Administrator-Water Programs
Division of Environmental Health & Engineering
Palm Beach County Health Department

I, _____, on behalf of _____
Responsible Official

HEREBY ACCEPT THE TERMS OF THE SETTLEMENT OFFER IDENTIFIED ABOVE.

FOR THE RESPONDENT:

By: _____ Date _____
Responsible Official

FOR THE DEPARTMENT:

DONE AND ORDERED this _____ day of _____, 2010, in West Palm Beach, Florida

By: _____ Date _____
Darrel J. Graziani, P.E., R.S.
Environmental Administrator-Water Programs
Division of Environmental Public Health
Palm Beach County Health Department
Florida Department of Health

FILING AND ACKNOWLEDGMENT

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

Clerk Date _____

For up-to-date information about H1N1 Swine Flu visit <http://www.myflusafety.com> or call 877 352 3581



PALM BEACH COUNTY HEALTH
ENVIRONMENTAL PUBLIC HEALTH
100 Clematis Street, Fourth Floor
P.O. Box 29
West Palm Beach, FL 33402-0029

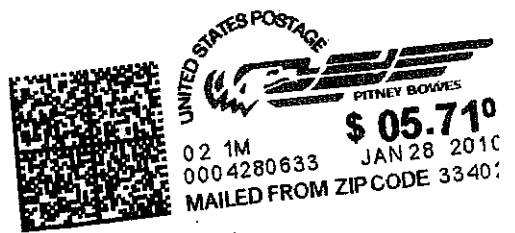
CERTIFIED MAIL



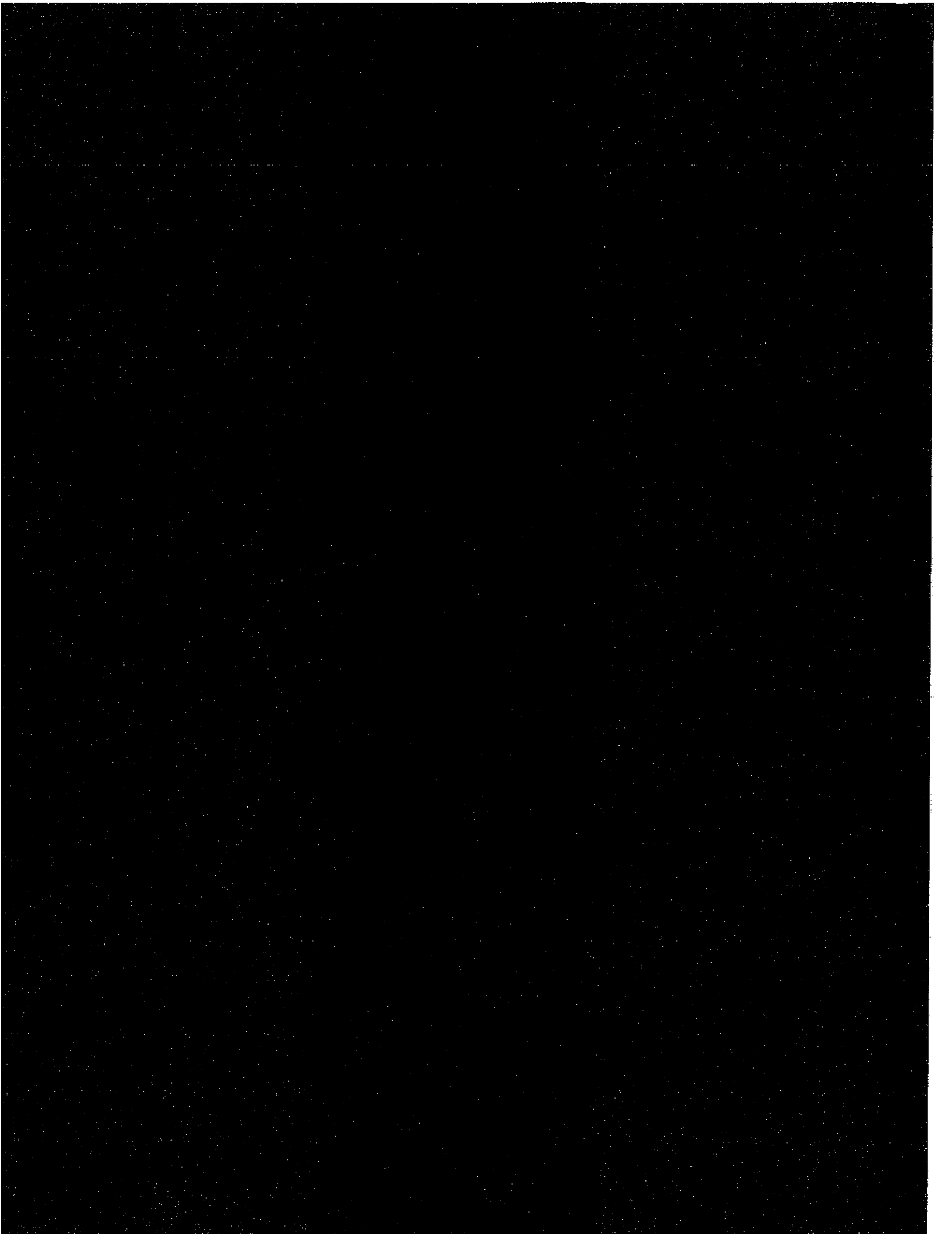
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Ms. Gloria Shuttlesworth, Interim Utilities Director
P.O. Box 9757
Riviera Beach, FL 33419

3341933



UNITED STATES POSTAGE
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MAILED FROM ZIP CODE 33401
\$ 05.71⁰
JAN 28 2010



Charlie Crist
Governor

Ana M. Viamonte Ros, M.D., M.P.H.
State Surgeon General

December 22, 2009

WARNING LETTER WP-286-09

Certified Mail #7008 2810 0000 4119 6001

Return Receipt Requested

Ms. Gloria Shuttlesworth, Interim Utilities Director
P.O. Box 9757
Riviera Beach, FL 33419

**Subject: Riviera Beach Water Treatment Plant
PWS ID #: 4501229**

Dear Ms. Shuttlesworth:

The purpose of this letter is to advise you of possible violations of law for which you may be responsible, and to seek your cooperation in resolving the matter. Information available to the Palm Beach County Health Department (Health Department) indicates that the following possible violation(s) may have occurred:

- Non-functioning Gas Chlorination System.

These possible violations include the following:

Chlorination facilities

Rule 62-555-320 Design and Construction of Public Water Systems.

Public water systems shall be designed and constructed to provide sufficient drinking water of a quality that will meet all applicable standards in Chapters 62-550, F.A.C., and requirements in this chapter. This section addresses the design and construction of all public water system components other than wells (but including well pumping equipment and appurtenances). Public water system wells are addressed in Chapters 62-524 and 62-532, F.A.C., and Rule 62-555.315, F.A.C.

(13) Chlorination Facilities for Disinfection of Drinking Water.

(a) Gas Chlorination Facilities.

4. At each drinking water treatment plant that is using gas chlorination facilities to achieve *Giardia lamblia* or virus inactivation in accordance with paragraph 62-555.320(12)(a) or (b), F.A.C.; at each treatment plant that is using gas chlorination facilities for disinfection and that is connected to a community water system (CWS) having an actual or design average daily chlorine consumption equaling or exceeding ten pounds per day; and at each treatment plant that has gas chlorine disinfection facilities constructed or altered under a construction permit for which the Department receives a complete application on or after August 28, 2003, and that is connected to a CWS serving, or designed to serve, 350 or more persons or 150 or more service connections, the supplier of water shall provide devices for automatic switch-over of chlorine cylinders or containers.



PALM BEACH COUNTY HEALTH DEPARTMENT
Post Office Box 29 / 800 Clematis Street, West Palm Beach, FL 33402

Alina Alonso, MD, Director

www.pbchd.com

TELEPHONE (561) 837-5900 FAX (561) 837-5293

Rule 62-555-320 Operation and Maintenance of Public Water Ssystems.

(2) Suppliers of water shall keep all necessary public water system components in operation and shall maintain such components in good operating condition so the components function as intended. Preventive maintenance on electrical or mechanical equipment – including exercising of auxiliary power sources, checking the calibration of finished-drinking-water meters at treatment plants, testing of air or pressure relief valves for hydropneumatic tanks, and exercising of isolation valves – shall be performed in accordance with the equipment manufacturer's recommendations or in accordance with a written preventive maintenance program established by the supplier of water.

Finding/Observation

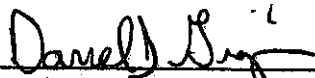
On November 30, 2009 the Health Department conducted the annual inspection of the water treatment plant. The Health Department observed that the chlorine automatic switchover was not functioning.

On December 7, 2009 the Health Department issued a Non-Compliance Letter.

Please note that this Warning Letter is part of an agency investigation preliminary to agency action in accordance with the Environmental Litigation Reform Act (ELRA) Sections 403.121(4)(a), (5), (6) and (8) and 120.57 (4), Florida Statutes. As an alternate to using ELRA, a fine not to exceed \$5,000 for each day in which a violation occurs or failure to comply continues, may be imposed by a court of competent jurisdiction upon any person who violates, fails or refuses to comply with any order issued by the Health Department pursuant to the Florida Safe Drinking Water Act.

You are requested to contact Pamela Lape of this office at 561-837-5947, within 15 days of receipt of this Warning Letter to arrange a meeting with Health Department personnel to discuss this matter. You may bring anyone with you to the meeting that you feel may help resolve this matter. We look forward to your cooperation in completing the investigation and resolution of this matter.

For the Division Director,



Darrel J. Graziani, P.E., R.S.
Environmental Administrator-Water Programs
Division of Environmental Public Health

DG/pl

cc: Linda Brien, Florida DEP – West Palm Beach Office
David Danford, 800 W. Blue Heron Drive, Riviera Beach, FL 33404
PBCHD File – WP-286-09