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**FINAL REPORT  
IN RE:  
CITY OF RIVIERA BEACH UTILITIES SPECIAL  
DISTRICT (“DISTRICT”)  
WATER/SEWER UTILITY VIOLATIONS**

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**DELIVERED**

**SEPTEMBER 15, 2016,**

**MICHAEL D. BROWN, ESQ.,  
ON BEHALF OF THE DISTRICT  
BOARD OF DIRECTORS  
FLA BAR NO. 0727180,  
BROWN & ASSOCIATES, P.A.  
2620 Lakeshore Drive  
Suite 100  
Riviera Beach, Florida 33404  
(561) 848-4306, Fax (561) 842-6845**

## DISCLOSURES

**THE PRINCIPAL OF BROWN & ASSOCIATES P.A. MAKE THE FOLLOWING DISCLOSESURES, NONE OF WHICH AFFECTED HIS ABILITY OR ETHICAL OBLIGATION TO INVESTIGATE, REVIEW, OR GATHER INFORMATION REGARDING THE COMPLETION OF THIS RPEORT:**

- 1. He served as mayor of the city of Riviera Beach from 1999 until 2007.**
- 2. An attorney who previously was employed by this firm, also served as an assistant city attorney at the city of Riviera Beach. She relocated to another place of employment before the matters which are the subject of this report became known, and, does not appear to have had any significant involvement in these matters.**
- 3. Prior to the time that Allen Davis became employed by the District, this firm wrote a letter on his behalf, and provided limited legal advice, at no charge to him regarding a personal matter.**
- 4. Sometime after August of 2014, he met briefly with Mr. David Danford regarding the tragic loss of his son. Mr. Danford's son estate did not retain this firm to represent it in that matter.**

## ISSUES

- I. TO INVESTIGATE THE CIRCUMSTANCES UNDERWHICH REGULATORY AGENCIES DETERMINED THAT PORTIONS OF THE DISTRICT'S OPERATIONS VIOLATED FEDERAL, STATE, OR LOCAL WATER SAFETY REGULATIONS OVER AN EXTENDED PERIOD OF TIME;
  
- II. TO REVIEW RELEVANT MUNICIPAL RECORDS TO DETERMINE WHAT ROLE, IF ANY, DISTRICT (OR CITY) EMPLOYEES OR DEPARTMENTS PLAYED OR SHOULD HAVE PLAYED, TO ENSURE THAT THE DISTRICT COMPLIED WITH APPLICABLE WATER AND WASTE WATER SAFETY REGULATIONS, AND WHETHER ANY EMPLOYEE(S), OR DEPARTMENT(S) RECEIVED NOTICE(S) OR OTHER RELEVANT INFORMATION FROM ANY REGULATORY AGENCY(IES) WHICH INDICATED THAT THE DISTRICT WAS IN VIOLATION OF WATER SAFETY REGULATIONS;
  
- III. TO IDENTIFY ANY INDIVIDUAL(S), OR DISTRICT DEPARTMENT(S) WITH KNOWLEDGE OF, OR WHO SHOULD HAVE HAD KNOWLEDGE OF THE DISTRICT'S

FAILURE TO COMPLY WITH WATER OR  
WASTE WATER SAFETY REGULATIONS,  
AND IF SO, WHEN THE KNOWLEDGE WAS  
OBTAINED; AND,

IV. TO DETERMINE WHAT ACTION, IF ANY,  
WAS TAKEN OR SHOULD HAVE BEEN  
TAKEN TO ADDRESS THE VIOLATIONS BY  
THOSE WITH KNOWLEDGE OF THE  
VIOLATION(S)?

## **OVERVIEW**

Several city employees who provided services to the City of Riviera Beach Utility Special District (“District”) from November 2008 through June of 2016 were aware that the District violated several rules, regulations and standards pertaining the District’s potable (drinking) and waste water operations that it was required to comply with pursuant to federal, state, and administrative law.

The District’s executive staff as well as some supervisory personnel were aware of the numerous warnings, notices of violations, sanctions, compliance requests, consent orders and settlement agreements that were entered into by the District with the Palm Beach County Health Department (“PBCHD”) during this time. Those with knowledge of the violations received emails, phone calls, site visits, and other correspondence, and attended several meetings with the PBCHD personnel regarding the violations.

The District employees who were aware of all of the violations related to the drinking water are, Mr. Louis Aurigemma, the Former Director (“Former Director”), Mr. Giles Rhoads, the former Assistant Director (“Former Asst. Director), Mr. David Danford, the Water Plant Superintendent (“Superintendent”), and Mr. Mario E. Loaiza, a former District Engineer (“Engineer”).

The District employees who had limited knowledge of the violations were Ms. Ruth Jones, the City Manager (“City Manager”), Ms. Pamela Ryan, Esq., the former District Attorney (“Former District Attorney”), Mr. Randy Sherman, the Director of Finance and Administrative Services (“Finance Director”), Ms. Marie Sullin, the Risk Manager for the City of Riviera Beach (“Risk Manager”), and Ms. Gloria Shuttlesworth, the Former Assistant City Manager and Former Interim Utilities Director (“Former Interim Director”).

The District employees who were aware of all of the violations regarding to the waste water operations were the Former Assistant Director, the Former Assistant Director, the Superintendent, and Mr. Allen Davis, the District’s Water and Sewer System Superintendent (“Sewer Superintendent”).

The Former Interim Director served in that capacity at the time that a November 1, 2010 Warning Letter was issued to the District by PBCHD. However, by the time the District entered into a Consent Order with the PBCHD on February 7, 2011 regarding the November 1, 2010 violation the Former Director had been hired as District Director.

From November 1, 2010 through June 30, 2016 the District was either cited, issued warning letters, fined, sanctioned, or entered into Consent Orders or Settlement Agreements as a result of enforcement proceedings with the PBCHD at least twenty times for violations of

federal, state or administrative water safety violations. The genesis of the November 1, 2010 violation was a November 18, 2008 District water plant inspection conducted by the PBCHD. The District failed to take the proper steps to address the deficiencies within the specified time, resulting in the commencement of violations which continued to occur through June 30, 2016, and which remain today as obstacles to the lawful safe operation of the District's water and waste water operations.

From November 2010 through the time of his separation from the District, the Former Director and several District employees met and conferred with the PBCHD and FDEP representatives on several occasions regarding numerous violations which were never corrected.

The District was established by city resolution in 2004 to operate the city's water and waste water system. The Utility Services Agreement executed between the District and the city requires it to provide employees to the District for operational purposes. City department heads provide the same services to the District that they provide to the city, and therefore like virtually all city employees, with the exception of the City Attorney, answer to the City Manager.

The Environmental Protection Agency ("EPA") pursuant to the Clean Water Drinking Act, and other rules regulations and companion laws, has established guidelines and procedures to be followed by utility operators to produce clean and safe drinking water and to safely dispose

of wastewater. The authority is delegated by the EPA to the states which in turn enforce the rules and regulations through state and local agencies.

As a community water supply utility, the District by law is required to:

- (1) Maintain the appropriate licenses for the plant and water distribution system;
- (2) Perform tests, maintain records, and submit reports to the appropriate regulatory agency;
- (3) Maintain the proper level of chlorine in the water system;
- (4) Monitor the contaminant levels of the water system by conducting monthly bacteriological sampling of District wells or other locations in the distribution system;
- (5) Develop and provide a chemical and bacteriological monitoring sampling plan for collecting samples at various sites throughout the water distribution system;
- (6) Prepare monthly operation reports for submittal to various regulatory agencies;
- (7) Report any abnormal occurrences or emergencies to the appropriate regulatory agency, upon occurrence;
- (8) Notify affected water customers in writing or via telephone, newspaper or television prior to taking the water system out of operation or planned maintenance repair if the work is expected to

adversely affect the water quality or interrupt water service to any service connection;

(9) Issue boil water notices in the event of microbiological contamination, zero or negative water pressure, interruption of service or flooding of wells, or water main breaks or low water pressure;

(10) Issue “boil water” notices pursuant to regulatory guidelines;

(11) Maintain operation and maintenance logs at the drinking water treatment plants;

(12) Keep records of inspections or flushing and valve exercises;

(13) Develop a written emergency preparedness/response plan; and

(14) Maintain a map of the water distribution system.

As the Chief Executive Officer of the city, the City Manager is in charge of all functions of the government including District operations, and has the power to hire and fire all city employees, except the City Attorney, who is hired by, and reports to the City Council.

When interviewed for this report, the City Manager advised that she was unaware of the numerous violations committed by the District, that the Former Director did not advise her of the numerous violations, and, that she relied upon his expertise to manage District affairs and comply with all applicable technical rules and regulations. However, there were additional sources of information from which the City Manager

could have, or should have obtained knowledge of the District violations which are addressed later in this report.

The City Attorney is hired by the City Council to represent the city to address all municipal legal matters, and serves the District in the same capacity. She indicated that the Former Director failed to notify her of the continuing violations incurred by the District from November 1, 2010 through January of 2016, and that she did not have knowledge of the numerous violations, with the exception of Violation No. WP-13-14, issued on July 14, 2014. However, there is evidence that she was aware of at least one other violation, and a question as to whether she should have had knowledge of additional violations which occurred during the time in question since there were other credible sources from which she should have obtained knowledge of the multiple violations.

Regarding the payments made on behalf of the District by the Finance Department, although checks were issued by it on behalf of the District regarding fines and penalties imposed on it by regulatory agencies, the Finance Director advised that he did not have full knowledge of the numerous violations committed by the District. He also advised that his department did not have a system in place to identify or categorize expenditures made for the payment of fines, penalties, Consent Orders, Settlement Agreements, etc.

Several District employees were aware of the repeated violations,

attended several meetings, and communicated directly with the PBCHD and FDEP regarding the repeated violations. However, under the city's and District's "chain of command" model the "day to day" operations of District employees rested with the Former Director who was responsible to ensure that all District employees were properly licensed, trained, and capable of complying with the various rules and regulations mandated by law. Therefore, any knowledge, actions, or failures of District employees were the responsibility of the Former Director, who answered to the City Manager, both of whom were required by contract, policy and law to ensure that the District complied with all applicable water and sewer safety rules and regulations.

## **FINDINGS**

From November of 2010 through the time of his separation from the District the Former Director failed to manage the District in a manner to ensure that it complied with all federal, state and administrative water and waste water safety regulations. During that time the District retained the services of multiple consultants who had the contractual obligation and abilities to provide professional services to the District which could have assisted it with compliance issues.

Because the Former Director did not submit to an interview regarding the preparation of this Final Report, an explanation as to why he did not utilize the services of the retained consultants to assist with

compliance matters has not been provided by him. This is especially troublesome since several consultants were either aware of, or identified the deficiencies, weaknesses, and compliance problems faced by the District, and appeared to have been ready, willing and able to assist it in meeting compliance requirements. Furthermore, during this time the District retained a consultant to address utility matters and to prepare a Water/Wastewater Master Plan to address the short term, midterm, and long term issues and problems that the District faced. Hazen & Sawyer, the Master Plan Consultant, was retained in November of 2011 to prepare a Water/Wastewater Master Plan at a cost of \$534,270.00. It identified District deficiencies and included specific recommendations to address matters that were the subject of enforcement actions by various regulatory agencies, and completed the Master Plan in February of 2013. From the time that Hazen & Sawyer was retained to complete the Master Plan in November 2011, through April 22, 2016, it does not appear that the Director adopted any significant practices or recommendations addressed in the Master Plan.

From November of 2010 through April 22, 2016, the City Manager failed to maintain proper oversight over the District to ensure that the Director and the District complied with mandatory water and waste water rules and regulations in place to ensure the safety of the District's water and waste water operations.

Although the City Manager advised that she relied on the expertise

of the Former Director to ensure that the District complied with all of the applicable rules and regulations, all of the contracts of the consultants retained by the District included provisions which permitted them to provide professional services to assist it with compliance matters.

The City Manager's assertion that she deferred to the Former Director's expertise regarding the operation of the District because it involved technical and scientific knowledge does not relieve her of the responsibility of maintaining oversight of District operations. Although the consultants retained by the District reported directly to the Former Director, they ultimately answered to the City Manager. Therefore, the failure of the Former Director to utilize District consultants to ensure compliance with water and waste water regulations was also the responsibility of the City Manager.

The unanswered question is "Why did neither the Former Director, nor the City Manager, utilize District consultants to assist them in ensuring that the District's water and waste water system complied with various laws and regulations?"

The rules and regulations required by law to be followed by the District are based upon historical scientific research, testing and procedures developed by the EPA with assistance and input from scientists, researchers and other professionals which have been developed over many years of testing and study. Natural and man-made contaminants sought to

be eliminated or reduced from the drinking water supply are known to the scientists and other professionals who were relied upon by the regulatory agencies which created the standards. Once the rules and procedures become law a utility is required to conduct the tests in the manner prescribed and follow the procedures put in place to protect the public water supply. Thus, it is of paramount importance that is incumbent upon the persons responsible for the operation of a utility, including the Chief Executive Officer, to ensure that the lawfully required testing procedures are implemented and followed pursuant to law. That did not occur in this case.

The Master Plan was delivered to the District on February 23, 2015 and addressed virtually all of the compliance issues faced by it District from 2008 through 2015, and identified short term, midterm, and long term goals and resolutions to address the problems. Despite its recommendations, neither the Former Director nor the City Manager implemented any significant portions of the Master Plan to address the longstanding deficiencies.

There is no evidence that the Former Director brought the District's violations to the attention of the Former District Attorney. Although the Former District Attorney indicated that it was her policy that all legal matters affecting the District were to be brought to the attention of her office, a written policy did not exist which required that all legal matters pertaining to District operations,( i.e., stipulations, consent orders,

administrative proceedings, or sanctions of any kind) be timely brought to that office's attention, and that all legal or equitable documents of any kind be presented to that office prior to execution by the District.

Although it does not appear that the Former Director brought the violations to the attention of the Former District Attorney, at least two Violations, WP-286-09, a Warning Letter dated December 22, 2009 pertaining to a failed District plant equipment inspection which resulted in the execution of a Consent Order by the City Manager on behalf of the District on January 27, 2010, and No. WP-154-14, a Notice of Violation dated August 28, 2014, regarding an Order Setting Prehearing Conference which was served on the Former District Attorney on behalf of Judy Davis, the former Chairperson of the District Board. Furthermore, the issuance of District Sewer Revenue Refunding Bonds on July 25, 2014 imputed knowledge of additional historical violations to the Former District Attorney (as well as the Finance Director and the City Manager) since the history of at least one other violation was specifically identified in the body of the Bond Offering Statement, and, the Former District Attorney, City Manager, Former District Director and District Finance Director are all identified as District representatives who by law or practice expressly or implicitly represented to bond purchasers that the District was in compliance with all rules and regulations that it was required to comply with at the time that the bonds were sold, other than those disclosed in the offering statement.

The names of the District's Board members as well as the Mayor also appear in the Bond documents. However, because the city is a "Manager" form of government, District Board members' powers are limited to policy making decisions in the same manner that they are limited as council members. Therefore, neither the current nor former District board members are responsible for the compliance deficiencies incurred by the District.

There is also some question as to what responsibility, if any, the District's Bond Counsel retained by it regarding the issuance of District Sewer Revenue Bonds had to investigate and disclose the additional violations which occurred prior to the issuance of the bonds. However, that issue is beyond the scope of this firm's assignment in this matter.

Between November of 2010 and June 10, 2016 the District's water and waste water operations were intermittently chronically in violation of mandatory water and sewer safety regulations. Neither the drinking water nor the waste water operations were compromised to the point that either or both could have been classified as completely "unsafe". However, but for the consistent efforts of the PBCHD and FDEP to enforce the applicable rules, standards and regulations, it is very likely that the District's water and wastewater operations would have been severely compromised to the point of being classified as "unsafe".

As a result of the continuous violation of the rules, regulations

and procedures enacted to ensure that utilities deliver safe drinking water and properly dispose of its waste water, from January of 2010 until June of 2016, the Former Director's failure to properly manage the District, and the City Managers' failure to maintain proper oversight of District operations deprived the residents and District customers of the benefit of the water and waste water safety rules, regulations, and standards established under federal, state, and administrative law to ensure the safe operation of the District's water and waste water operations.

### **FUNCTION OF THE DISTRICT**

The District was created as a dependent special district of the city of Riviera Beach for the purpose of acquiring, promoting, planning, operating, maintaining, improving, and disposing of the city's water and wastewater.

It also owns, operates and maintains wastewater facilities which cover the same general service area as the drinking water distribution system.

The District has use of approximately sixty (60) full-time city employees, who work for it pursuant to the Utilities Services Agreement. The city pays all of the employee's salaries and benefits. All property utilized by the district is held for the benefit of the citizens

of Riviera Beach.

The City's Utilities Director, Assistant Utilities Director, Attorney, Director of Finance and Administrative Services, and Clerk, also serve as the District's Executive Director, Assistant Director, Attorney, Finance Director, Chief Financial Officer, and Clerk, respectively. The District also retains independent engineering consulting services, audit services, and special utilities legal services, as needed.

The District operations are separated into three divisions:

- (1) water treatment;
- (2) water distribution; and
- (3) sewage collection.

The water treatment division is responsible for the daily operations of the drinking water system, including the water treatment plant, and a water line softening treatment plan. This division is supervised by Mr. David Danford, ("Superintendent") who is a "Class A" Water Treatment Plant Operator.

The water distribution division is responsible for repairing existing and installing new water mains for the management of the water system's "back-flow" prevention program, customer service and all customer complaints relating to water meters.

The sewage collection division is responsible for the maintenance of sewer lines and pumping stations of the wastewater system, the installation of new service connections, and the inspection of new user tie-ins from customer sewer lines. This division is administered by Mr. Allen Davis, the Water and Sewer System Superintendent. (“Sewer Superintendant”)

The District maintains a training program for its system of field crews and operations maintenance staff to ensure compliance with all appropriate regulations.

### **GOVERNMENT REGULATIONS**

The water and wastewater system are subject to federal, state, administrative, regional and local regulations. The federal regulation is vested in the United States Environmental Protection Agency (“EPA”) and the drinking water system must comply with the Federal Safe Drinking Water Act. The primary responsibility for enforcement of drinking water standards is delegated by the EPA to the state of Florida, which designates its local enforcement authority to the Palm Beach County Health Department (“PBCHD”).

The state of Florida also regulates the drinking water and

wastewater system through the Florida Department of Environmental Protection (“FDEP”).

The South Florida Water Management District (“SFWMD”) controls the amount of water the District is permitted to withdraw from groundwater wells.

### **WATER SYSTEM**

The water system provides potable (drinking) water to all of the City of Riviera Beach, Peanut Island, the Town of Palm Beach Shores, a portion of the City of West Palm Beach (generally west of Haverhill Road, east of the Florida Turnpike, north of 45<sup>th</sup> Street, and south of the Beeline Highway) and in portions of unincorporated Palm Beach County that are contiguous to city borders. The total service area of the water system service area is approximately 9.5 miles.

### **WATER SUPPLY SYSTEM**

The District obtains all of its raw water supply from an underground aquifer known as the Biscayne Aquifer System via two active well fields which are permitted under a water use permit issued by the SFWMD. The eastern well field total seventeen (17) wells. The

western well field totals eleven (11) wells.

The well fields also include three monitoring wells, two of which are located near the eastern well field and one located near the western well field. The monitoring wells are required to be tested monthly with the results being sent to the SFWMD quarterly.

Raw water from the well fields is pumped to the Water Treatment Plant by 58,000 feet of water transmission system piping.

### **WATER TREATMENT FACILITY**

The Water Treatment Plant is regulated by the FDEP. Key elements of the Water Treatment Plant include:

- A one million (1,000,000) gallon storage tank;
- Four lime storage silos;
- A disinfection system by which free gaseous chlorine is mixed with free ammonia injected from a hydrous ammonia system;
- Alum and other chemicals are added to the treatment system to act as a coagulant;
- Lime solids which are generated in the water softeners are moved from the system through the use of District pumps; and
- Two emergency power diesel generators are in place for emergencies.

### **WATER DISTRIBUTION SYSTEM**

The water distribution system consists of approximately 186 miles of piping which exports the finished water from the Water Treatment Plant to individual customers. The piping is comprised of a variety of materials, including cast iron, ductile iron, galvanized steel, asbestos cement, high density polyethylene, and polyphenol chloride. The piping system also includes approximately 1,100 fire hydrants and 16,000 water meters. Chloramine is used for disinfection of the water distribution system.

### **STATE REGULATORY MATTERS**

The water system requires permits that are subject to renewal on a periodic basis issued by the PBCHD on behalf of the FDEP. The SFWMD issues permits for withdrawal of raw water needed for the system.

The key city and District personnel who provided services to the District during the relevant time covered in this report are:

- 1. *Mr. Louis C. Aurigemma (Former District Director)*** Mr. Aurigemma is a Florida licensed professional engineer who previously served as a manager of a Florida engineering firm where he was involved in the design of water, sewer, paving, and drainage improvement projects. He also previously

worked for the City of Coral Springs, Florida, as a city Engineer/Assistant Public Works Director, and served as a civil engineer for the City of Fort Lauderdale.

2. ***Mr. Giles M. Rhoads (Former Assistant District Director)***  
Mr. Rhoads is a licensed professional engineer who previously served as a project engineer and special project engineer for several engineering firms.
3. ***Mr. Randy M. Sherman (Director of Finance and Administrative Services)*** Mr. Sherman is a certified public account, certified government finance officer, and a certified treasury professional who has been employed by the city since October of 2012. Prior to his employment at the city, Mr. Sherman served as the Finance Director for the city of West Palm Beach, Florida.
4. ***Ms. Pamela Ryan Esq. (Former District Attorney)***  
Ms. Ryan is the Former City Attorney who also served as the District Attorney.
5. ***Ms. Gloria Shuttlesworth (Former Assistant City Manager and Former Interim District Director)*** Ms. Shuttlesworth is a Former Assistant City Manager who served in that capacity from August 2000, until September 2011 and also served as the Interim District director in the later part of 2010 and the early part of 2011.
6. ***Ms. Marie Sullin (Risk Manager)*** Ms Sullin is the Risk Manager for the City of Riviera Beach, and has served in the

capacity at the District since 2009.

7. ***Mr. David Danford (Water Plant Superintendant) Mr Danford*** is the District Water Plant Superintendent and has served in that capacity since 2000.
8. ***Mr. Allen Davis (Sewer System Superintendant) Mr. Davis*** is the District Water and Sewer System Superintendent and has served in that capacity since 2004.

### **REVIEW PROCESS**

This firm reviewed files, documents, reports, emails, various communications and information produced by the District, the city, the Former District Attorney, the District Finance Director, and the public enforcement records of the PBCHD, FDEP and SFWMD.

Interviews were conducted of Ruth Jones, the City Manager (“City Manager”), Randy Sherman, the city Finance Director (“Finance Director”), Marie Sullin, the city Risk Manager (“Risk Manager”), David Danford, the District Water Plant Supervisor (“Water Plant Supervisor”), Allen Davis the District Sewer Superintendent (Sewer Superintendant”), Pamela Ryan, Esq., the Former District Attorney, (“Former District Attorney”), and Gloria Shuttlesworth (“Former

Assistant city Manager/Former Interim District Director”).

The Former Director, through his attorney, declined to be interviewed for this report unless he was compensated. This firm advised his attorney that this firm did not have the authority to compensate him for submitting to an interview and that the current District administrator advised this firm that it did not have the authority to compensate him for an interview.

Although the Former Deputy Director initially advised District representatives that he would submit to an interview for this report, he did not respond to this firm’s numerous efforts to contact him during this process and therefore did not provide any information for this report.

### **PBCHD VIOLATIONS**

Following is a detailed history of the enforcement actions taken by the PBCHD and FDEP. There is no record of enforcement action taken by the SFWMD against the District during this time.

- (1) ***Violation No. WP-235-10; Warning Letter November 1, 2010:*** The PBCHD notified the District that it failed to correct problems regarding low chlorine levels in the water distribution system. The warning was a result of a Sanitary

Survey Report conducted by the PBCHD on November 18, 2008 regarding the operation and maintenance of the District public water system plant. Although the Warning Letter was issued on November 1, 2010, the survey which formed the basis of the agency action was completed two years earlier when the PBCHD inspected the Water Treatment Plant and detailed several deficiencies which needed to be corrected. The District failed to correct the deficiencies.

From the time of the initial survey through October 7, 2010, the PBCHD confirmed seven water system violations regarding improper chlorine levels.

From July of 2009 through September of 2010, only 133 of 600 samples collected met the proper water safety standards.

The District entered into a Consent Order on February 7, 2011, which required it to eliminate the violation, and address the deficiencies within one year of the date of the Consent Order.

Although Ms Shuttlesworth served as Interim Director at the time of the issuance of the November 1, 2010 notice, the Former Director had been retained as District Director by the time the matter was resolved when he signed a Consent Order on behalf of the District on February 7, 2011. The District also paid a fine of \$2,250.00 and agreed to comply

with the law.

2. **Violation No. *WP-113-11 – Warning Letter, May 24, 2011:***

The PBCHD notified the District that it failed to maintain proper chlorine residual levels in the distribution system.

The District entered into a Consent Order on January 4, 2012 which was executed by the Former Director, paid a \$4,000.00 fine, and again agreed to comply with Florida law pertaining to the chlorine levels in the water system within one year of the date of the Consent Order.

3. ***Public Notice, June 15, 2011:***

The PBCHD notified the District that it failed to provide “boil water” rescission notices and corresponding microbiological clearance reports regarding “boil water” orders previously issued by the District in various parts of the city. Florida law requires specific procedures regarding the issuance, rescission, and record keeping process pertaining to “boil water” notices. The District failed to follow proper procedures. No penalties were imposed against the District for this failure.

4. ***Public Notice, June 21, 2011:***

The PBCHD notified the District that it failed to adhere to the proper standards regarding providing “boil water” notices to District customers. The District acknowledged the failure

and agreed to comply with proper procedures in the future. No action was taken by the PBCHD against the District regarding this violation.

5. ***Public Notice, October 26, 2012***

The PBCHD notified the District that it failed to provide public notice of a proposed planned “chlorine burn”. The agency provided the District with the proper notice format. The PBCHD did not take any action against the District regarding this violation.

6. ***Violation WP-163-13; Warning Letter August 1, 2013:***

The PBCHD advised the District that it failed to collect additional water samples required to be collected after a prior sample revealed the existence of an excessive microbiological presence. The PBCHD did not take any action against the District regarding this violation.

7. ***Violation WP-019-14 – Compliance Assistance Letter***

***January 13, 2014:*** The PBCHD notified the District that samples collected by the District were in violation of water safety standards. The District also failed to submit other testing results to the regulatory agency. While the violation was pending, another Compliance Assistance Letter was

issued on March 4, 2014 which notified the District that it failed to issue proper public notices regarding water safety violations; failed to conduct proper testing; exceeded the maximum coliform containment levels; failed to notify the regulatory agency of containment violations; and, that it failed to respond to the previously issued Compliance Letter dated February 13, 2014.

The PBCHD accepted a Water Treatment Plant Action Plan belatedly submitted by the District for both violations and closed its enforcement proceedings without issuing additional penalties or fines against the District.

8. ***Violation No. WP -039-14-Compliance Assistance Letter dated February 13, 2014:*** The PBCHD notified the District that samples collected by it violated the same water sample standards outlined in the violations referenced in violation WP-019-14. The PBCHD closed this file as a part of the settlement with the same remedy outlined in WP-019-14 above.
  
9. ***Violation No. 154-14: - Warning Letter -*** The PBCHD issued a Notice of Violation on July 14, 2015 as a result of six positive coliform tests taken in April 2014, and for the District's failure to collect repeat samples required to be

collected when the initial tests were positive.

The District entered into a Stipulated Order signed by the Former Director on September 22, 2014 under which it agreed to comply with the law.

10. ***Violation No. WP-247-14:*** The PBCHD issued a Notice of Violation on November 26, 2014 when tests revealed that the District water system contained more than one coliform positive sample during the months of September 2014 and January 2015; failed to issue a public notice for the coliform containment level; and failed to maintain minimum chlorine residuals in the water distribution system for the months of September and October of 2014.

The District entered into a Settlement Agreement signed by the Former Director, paid a \$500.00 fine, and agreed to meet compliance goals and comply with specific procedures within an agreed upon time.

While this violation was pending, the PBCHD notified the District on April 1, 2015 that it had committed additional violations regarding excessive coliform amounts; failed to issue a public notice; failed to maintain proper chlorine levels; failed to collect lead and copper tap samples; failed to

report lead and copper results exceeding the maximum containment level for color in the year 2014; and, exceeded the maximum containment level for aluminum in 2014.

The District entered into a Settlement Agreement signed by the Former Director under which the District agreed to comply with all regulatory proceedings within a specific time.

11. ***Violation No. WP-067-15:*** The PBCHD issued a Warning Letter on June 5, 2014 which notified the District that it exceeded the maximum containment level for coliform in the water distribution system in the latter part of 2014 and the early quarter of 2015; failed to maintain the minimum chlorine residual levels within the water system during the latter part of 2014 and the early part of 2015 for a maximum containment violation during the latter part of 2014 and the early part of 2015; failed to collect lead and copper tap samples from June 2014 through September of 2014; failed to deliver public notices to persons served by the water system regarding excessive lead; exceeded the secondary maximum containment level regarding water color in 2014; and, that it exceeded the maximum containment level of aluminum for the year 2014.

The PBCHD provided the District with a proposed Settlement Agreement on September 4, 2015 which proposed a \$5,250.00 fine. The District failed to respond to the Settlement Proposal, and as a result, the PBCHD issued a Notice of Violation, Orders for Corrective Action and Administrative Penalty Assessment which adopted the findings identified in the Warning Letter. The Notice of Violation Order entered on December 8, 2015 included an Administrative Penalty of \$10,000.00. The Final Order adopted on January 20, 2016 incorporated the \$10,000.00 penalty, and required that the District take action to comply with the Notice of Violation Order.

The record also indicates that the PBCHD had difficulty serving the Final Order regarding the Notice of Violation on the District when its employees were advised that it was advised that the Former Director was unavailable to receive the Final Order and that the District employees were not allowed to accept service of the documents when PBCHD employees attempted to serve the Final Order on the District at the District office.

When the District's Attorney's office became aware of the Final Order, it requested in writing by letter dated January 22, 2016 that the PBCHD rescind the Order. That request

was denied.

The PBCHD issued a “Letter of Compliance” regarding the Final Order to the District on February 12, 2016.

12. ***Violation No. WP-020-16:*** The PBCHD issued a Warning Letter on March 11, 2016 to the District which notified the District that it failed to maintain proper chlorine levels during January of 2016; exceeded maximum containment level for coliform for the period of January 2016; and failed to submit sample results from the District wells during the January 2016 time frame.

The District entered into a Consent Order regarding the violations on April 15, 2016, was fined \$44,368.75, and was given the option to implement an “in-kind” penalty project subject to approval by the PBCHD. The District paid a portion of the fine and implemented an “in-kind” project subject to approval by the PBCHD.

13. ***Violation No. WP-032-16- Warning Letter Issued April 1, 2016:*** The PBCHD notified the District that it failed to maintain proper chlorine levels within the distribution system during the February 2016-time period; exceeded the maximum containment level for coliform during the February

2016-time period; and failed to submit triggered samples from each well which exceeded the coliform levels.

14. ***Notice of Compliance with Consent Order dated June 10, 2016:*** The PBCHD notified the District that as a result of the review of samples collected by it over a six-week period, the District was in compliance with the Consent Order entered in Case No. WP-020-16 dated April 15, 2016. As a result, the PBCHD allowed the District to reduce its testing frequency regarding specific sites.

### **FDEP VIOLATIONS**

15. ***Case Closure Request Form Enforcement, OCG No. 07-0720:*** District paid \$26,000.00 (costs, \$1,000.00, penalties in the amount of \$25,000.00) regarding Consent Order entered on April 14, 2008. The case was closed on December 18, 2013 when corrective actions were completed.
16. ***Enforcement/Compliance Case Overview:*** The FDEP was informed that on August 26, 2011 that District Utility Lift Station #47 had a system failure causing over 1,000 gallons of wastewater to flow out of the system into three storm drains and which was subsequently discharged into an adjacent canal. The same facility experienced three previous spills in May 2011 which were combined into this

enforcement case. Although the District faced a potential penalty of \$213,000.00, no penalties were imposed.

17. ***Warning Letter No. WL11-0090DW550SED.*** The FDEP notified the District on August 26, 2011 that the District's Lift Station No. 47 located at 6522 N. Haverhill Road in Riviera Beach experienced system failures and caused one thousand (1,000) gallons of wastewater to flow out of the lift station into three storm drains, and was subsequently discharged into an adjacent canal, in violation of FDEP regulations.
18. ***Warning Letter Dated June 7, 2011, WL11-0054DW50SED.***

The FDEP notified the District that on May 20, 21, and 25, 2011, Lift Station No.47 suffered several system failures which caused eight hundred (800) gallons of wastewater during each failure to flow out of the lift station and into three storm drains in the adjacent canal. The District improperly washed down the contaminated waste water inside a fenced area and flushed the sewage into an adjacent canal as a means of cleaning and disinfecting the wastewater spills, in violation of FDEP regulations.
19. On January 14, 2013 the FDEP notified the District via email that it had received numerous phone calls from businesses in the Main Street Plaza on Broadway in Riviera Beach

regarding a sewage spill in the alleyway. On January 16, 2013 the Former Director advised the FDEP that in fact a sewage spill occurred in the Main Street Plaza located at 2121 Broadway in Riviera Beach causing sewage to flow in the alleyway and on the inside of several of the businesses located in and around the plaza area. No action was taken by the FDEP in this matter.

20. ***Warning Letter No. WL15-0016DW50SED dated June 16, 2015:*** The FDEP notified the District that a wastewater inspection conducted by the FDEP on May 19, 2015 at 45<sup>th</sup> Street and Haverhill Road in West Palm Beach, revealed that a sewage spill had previously occurred which resulted in 30,000 gallons of sewage overflowing into the public street. The District responded to the spill and made a temporary repair to the system. District employees again used a fire hydrant to wash the wastewater into the storm drain in violation of FDEP rules and regulations. The District faced significant potential fines for this violation. The FDEP did not impose fines on the District and advised the district of the proper procedures and corrective actions that needed to be taken to address those issues.
21. On March 25, 2016 the District entered into a Consent Order with FDEP acknowledging the occurrences of all of the above-referenced FDEP violations and agreed to pay a fine of

\$26,400.00, and, in lieu of making the payment agreed to implement, an “in-kind” environmental restoration, or facility improvement project subject to approval by FDEP. The District elected to implement the “in-kind” project and paid costs in the amount of \$2000.00.

### **INTERVIEWS**

The following notes reflect statements made by each individual regarding interviews conducted by this firm.

#### **RUTH JONES - CITY MANAGER**

- Relied upon the expertise of the Former Director for compliance with all rules and regulations;
- Considered the Former Director as a professional and therefore he was directly responsible for compliance with all rules, regulations and standards;
- The Former Director did not advise her of the existence of any Consent Orders, Stipulations, or Orders of any type entered into by him on behalf of the District;
- All department heads are required to bring any legal proceedings to her attention. The Director’s failure to bring the legal proceedings

- to her attention constituted a violation of policy;
- The Former Director failed to mention any continuing compliance problem that the District had with the agencies which regulated the District;
  - She did not know about any other compliance issues until Violation WP-065-17 was brought to her attention in January of 2016.
  - She eventually ensured that a plan was put in place in January 2016 to ensure compliance with all rules and regulations;
  - The Former Director never mentioned that the District was facing any legal problems;
  - She was unaware of any compliance problems which occurred between 2010 and December of 2015, with the exception of violation WP-13-14, which was brought to her attention by the District Attorney;
  - She eventually learned that the Former Director met with the Board's Assistant Attorney in the latter part of 2015. She believes that the Former Director intentionally concealed the violations from her;
  - The Plant Superintendent's son died in August of 2014;
  - She believes that the majority of compliance problems may have commenced in 2014;
  - She believes that the loss of the Plant Superintendent's son in 2014 may have contributed to testing and sampling deficiency problems incurred by the District since he was responsible for testing and

water sampling at the District;

- She believes that something also may have occurred in the Former Director's personal life in 2014 which may have affected his performance;
- She believes that the Former Director's mother passed away in 2014, or the early part of 2015 and that her passing may have impacted his performance. It was during that time that it appears that the Former Director did not follow through on eliminating problems experienced by the District;
- The Former Director did not offer any solutions to the problems;
- She conducted office conferences with department heads every two weeks;
- She met with the Former Director at least once a month;
- She did not conduct an annual review of the administrative or compliance process required to be followed by the District;
- She did not conduct an annual review of compliance procedures regarding the District;
- She hires "professionals" and rely upon those professionals to do their job and to stay current on all procedures;
- She does not know why the Former Director failed to do his job;
- The Former Director was not authorized to execute legal documents on behalf of the District without bringing them to her attention;
- Prior to his termination, the Former Director never offered an explanation for the violations which occurred over an extended

period of time;

- The District did not have a process or system in place to monitor the validity of expenditures made by the District until those procedures were put in place by an auditor recently retained by the City;
- She feels that the amount of the fine (\$10,000.00) imposed on the District by the PBCHD regarding Violation No. WP-067-15 was of such a large amount that the Former Director felt that he had to bring the matter to her attention.

**GLORIA SHUTTLESWORTH –FORMER ASSISTANT CITY  
MANAGER/INTERIM DISTRICT DIRECTOR**

- While serving as Assistant City Manager she was assigned to the District by the City Manager;
- She found the District to be in disrepair and disorganized when she arrived there;
- She faced numerous important issues which had to be addressed at the time that she arrived there;
- She had to deal with the water meter crisis;
- She had to deal with the fact that the District did not have an up-to-

- date consumptive water use permit from the SFWMD;
- The District had previously obtained several extensions regarding obtaining a valid SFWMD consumptive use permit;
  - The District needed and relied upon several consultants to function;
  - BFA was retained to assist in obtaining its consumptive use water permit from the SFWMD;
  - Chen was retained to assist the District in operational issues;
  - BFA was also retained for the purpose of assisting the District with operational issues;
  - During the time that she served as Interim Director she was preoccupied with the District obtaining its consumptive use permit from the SFWMD;
  - BFA was successful in obtaining the consumptive use permit from the SFWMD;
  - She considered the obtaining of the permits a major accomplishment since the city of Riviera Beach had been operating without a permit for a significant period of time;
  - The District was also prepared to focus on preparing several lift stations that were in the sewer division;
  - When the Former Director came on board he apparently cancelled the focus that had been placed on the lift stations;
  - When she was assigned to the District, she did not have any prior experience regarding managing a water district;
  - After the Former Director was hired, she returned to her former

position as Assistant City Manager.

**RANDY SHERMAN – FINANCE DIRECTOR**

- The Finance Director does not have any special role, duties, or responsibilities regarding the District;
- During the time in question no procedures existed that he was required to follow in order for the District to expend funds for penalties and/or fines;
- There is an internal manual check request process that the Former Director (and all department heads) are required to follow in order to get a check issued by the Finance Department;
- The Finance Department does not keep a running tabulation of how funds from the District are spent so long as the expenditure is within its budget;
- There is no written or oral policy regarding the payment of fines or penalties by the District;
- The internal procedure required in order to obtain the issuance of a check from the Finance Department, is a manual process which includes providing “back-up” documentation with the request. If the department has funds in its budget and the department head complies with the internal process, the Finance Department will issue the requested check;
- He acknowledged that new policies and procedures need to be enacted regarding the issuance of checks;

- There was no process or procedure in place to keep track of District payments made for fines, penalties, liens, etc.;
- The Finance Director meets with the City Manager every other week;
- District issues were never addressed at the meeting between the Finance Director and the City Manager;
- Violations, Consent Orders or Settlement Agreements, Stipulations, etc. were not discussed at meetings conducted between the Finance Director and the City Manager;
- He assumed that the City Manager was aware of all and payments made by the Finance Department on behalf of the District regarding Consent Orders, Settlement Agreements, etc;
- One of the compliance proceedings filed against the District was referenced in the Refinancing Bond Statements dated July 25, 2014;
- The compliance issues incurred by the District prior to the issuance of the bonds did not cause a problem with the bond deal. None of the compliance issues experienced by the District during the issuance of the bonds impacted the issuance of the bonds.

**PAMELA RYAN ESQ. – FORMER DISTRICT ATTORNEY**

- Other than the 2014 Notice of Violation, WP-154-14, and WP-067-15, she was unaware of any other legal proceedings regarding

the District;

- The Former Director contacted her office sometime on January 8, 2016, regarding WP-067-15 and requested a meeting with the Assistant District Attorney Lena Busby, Esq. regarding a Notice of Violation that the District received from the PBCHD;
- After reviewing the Notice and Final Order which had been entered by the PBCHD prior to the matter being brought to her office's attention, she contacted the agency and requested that the order be rescinded. The agency refused to rescind the Final Order;
- Prior to January 8, 2016, the Former Director did not bring any legal, administrative proceedings, or notices of violations to her attention;

Prior to January 8, 2016, neither the Former Director, nor any of his employees, had any specific discussions, meetings, or forwarded any documentation to her office regarding District violations;

- The Former Director knew that all legal matters were required to be brought the attention of her office;
- There were no written procedures in place which required the Former Director to bring legal notices, violations, administrative

notices, proposed settlement agreements, consent orders, etc., to the attention of the attorney;

- The Former Director routinely brought all other legal matters such as workers compensation issues, injuries or potential injuries, or employment matters to her attention. She was surprised at the number of violations that the District had incurred when she became aware of the multiple proceedings in January 2016;
- She does not know why the Former Director did not bring legal, administrative, or enforcement matters to her office's attention;
- She does not know why the Former Director executed Settlement Agreements, Consent Orders, etc. on behalf of the District without first submitting those matters to, or making her office aware of the existing violations, proceedings, or matters.

**MARIE SULLINS – RISK MANAGER**

- She was unaware of any District violations;
- She did not have contact with anyone from the District regarding the continuous violations committed by the District;
- She was not contacted by the District regarding the issuance of any “boil water” notices;
- She was not notified by the District regarding any potential liability issues pertaining to District operations;
- If the District had notified her regarding potential liability, the District would have been required to complete a written incident

report;

- The District submitted two incident reports regarding sewer spills dated July 1, 2014 and July 4, 2014 to her department.

**DAVID DANFORD -SUPERINTENDANT**

- Was unaware of any standard procedures established by the District to comply with testing requirements;
- The District previously had a contract with a local laboratory which conducted water samples for testing. That lab was located in Riviera Beach but went out of business. A new lab was used to conduct the testing;
- The District collected the samples and dropped them off to the lab for testing;
- The District was referred to the new lab by the former lab when it went out of business;
- Until 2001, the city had an employee whose specific job was to collect and deliver the samples to the testing laboratory. Sometime after 2001, the “designated sampler’s” position was eliminated;
- Until 1999, the City had its own lab and conducted its own tests. After 1999 the lab was eliminated because it failed an inspection conducted by the regulatory agencies;
- From the year 2000 to the present, he is unaware of any specific protocols or procedures that were in place to ensure that the city or the District complied with the regulatory testing procedures and

guidelines. There were no written District procedures to ensure that the District complies with all “notice” requirements;

- No specific individuals were responsible to create notices on behalf of the District in compliance with applicable rules and regulations;
- The Former Director addressed the required “boil water” notices issued on behalf of the District;
- The Former Director was always informed of failed test samples. He does not know why he failed to act to correct the problems experienced by the District;
- He was properly licensed to carry out his duties and responsibilities. He has possessed an “A” license since 2004;
- He and his colleagues participate in obtaining “Continuing Education Units” in order to stay abreast of all current rules and regulations regarding water supply;
- He does not know why the PBCHD continuously contacted him regarding compliance matters;
- He conducted meetings with representatives from the Palm Beach Co-op Mobile Home Park who complained about water quality issues at the mobile home park. The mobile home park did its own testing and found that the water did not meet appropriate standards. The co-op has its own employee or consultant which operates its water system. Meetings were conducted between the District and the mobile home park’s operators regarding water compliance issues. He does not recall ever meeting with individual residents

from the mobile home park;

- He believes that the problems encountered by the District are the result of a lack of adequate staffing. He believes there should be employees at the District who are designated specifically to deal with compliance matters. He believes that there needs to be better communication between the management of the District and the employees who work on compliance matters at the District. He believes that the District needs broad oversight from the District Board, as well as the public, and that both need to be educated on the workings of the District;
- He is unaware of any procedures that were in place by the District to ensure that all required mandatory testing procedures were complied with.

**ALLEN DAVIS – SEWER SUPERINTENDANT**

- The District did not possess any up-to-date standard operating procedures regarding sewage spills or wastewater operations;
- His department was not provided any specific clean-up procedures by the Former Director;
- He never practiced any response procedures;
- He never conducted any drills;
- The Former Director did not conduct any meetings regarding spillage matters;
- They Former Director did not conduct any discussions regarding

- spillage matters;
- The Former Director did not conduct any training regarding spillage matters;
  - No management meetings were conducted regarding spillage matters. The only issues addressed in management meetings were daily operation matters, invoices, and agenda items;
  - He was not made aware of any warning letters or violations regarding the District unless he was advised of their existence by the Former Director;
  - There were no rules or regulations in place that served as guidelines for his department to comply with mandatory rules and regulations imposed on the District by law;
  - He was unaware that it was illegal to wash sewage into the drainage system or canals until the violation was served on the District. This is a practice that he believes was followed at the city even prior to the formation of the District;
  - He was unaware of the prohibition washing sewage into the drain until a violation was issued against the District sometime in June of 2015;
  - The Former Director did not provide any leadership regarding compliance with the rules and regulations;
  - It is standard practice for his department to hook the “Vac” truck to fire hydrants to obtain water;
  - No meetings were conducted by the Former Director to ensure that his department would comply with all state, federal, local or

administrative rules and regulations.

### *ANALYSIS*

A review of the District's enforcement procedures and compliance history from November of 2010 Through June 30, 2016 reveals a continuous effort by the PBCHD and the FDEP to obtain compliance by the District with the rules and regulations mandated by law.

A PBCHD Water Treatment Plant Survey conducted on November 8, 2008 identified problems with the District's physical plant; deficiencies with the disinfection bacteriological sampling process; bacteriological, lead and copper sampling procedures; and, site plan flow diagram deficiencies. The survey follow-up requested the District provide PBCHD with the proper written procedures for chlorine application, disinfectant, and measurement of the disinfectant residue and collection of bacteriological samples, within 45 days of the inspection report. The compliance letter was addressed to Mr. David Danford, as "Chief Operator" and copied to Ed Sierra, the District Director at that time. The deficiencies were not corrected for more than two years after the initial inspection, which resulted in the November 1, 2010 violation, and continued to contribute to numerous violations which occurred over an eight-year period of time.

Although the Former Director was not employed by the District on November 18, 2008 when the initial plant inspection was conducted, nor when the initial Warning Letter was issued on November 1, 2010, he was the District Director by February 7, 2011, when he signed a Consent Order requiring the District to comply with all utility safety rules and regulations.

Within months of the execution of the Consent Order, the District was cited again for the same violation, No. WP-113-11, and was continuously cited over a six-year period of time.

The June 15 and 21, 2011, and October 30, 2012 “Public Notices” reveal additional “soft” compliance efforts made by the PBCHD to encourage the District to comply with safety regulations. The June 15, 2011 notice pertained to the District’s failure to rescind “boil water” notices previously sent to twenty (20) different locations throughout the city covering a wide geographical area in the city, including the 1700 and 1800 block of 13<sup>th</sup> street between Jake Lane and Congress Avenue; locations on North Ocean Drive on Singer Island; and locations on west 4<sup>th</sup> and east 25<sup>th</sup> Streets.

Of the twenty (20) “boil water” notices issued to customers in the affected areas, only three customers received confirmation that the notices were rescinded. Thus, those who were previously instructed to

boil their drinking water before consumption because of the possibility of the presence of microbiological contaminants were not informed of when it was no longer necessary to do so. The PBCHD emphasized to the District that it is required to comply with established guidelines regarding rescinding the notices and, that the form of the notices had to comply with Florida law. Furthermore, the District was advised that it was required to submit microbiological clearance reports to the PBCHD with each “boil water” rescission document and that it could obtain the “boil water” guidelines from the Florida Department of Health website. Although it did not initiate enforcement action, the PBCHD was concerned that the District’s failed to comply with the correct notice procedures that the public was entitled to receive regarding potential health risks associated with defects in the District’s drinking water supply system.

The same problems continued in 2013 when the District was cited for failing to collect the correct number of water samples necessary as a result of a previous violation. That failure violated the Consent Order previously entered into by the District, and existing Florida law regarding the operation of the water system. All of the Consent Orders entered into by the District were simply reaffirmation by the District to do what it was already lawfully required to do.

During the time of the District’s compliance struggles it had access to expertise and resources available from several consultants retained by

it who could have provided assistance with the significant problems that it struggled with.

On April 21, 2010 the District retained the firm of Barnes, Ferland & Associates, Inc. (hereinafter “BAF”) to assist it to do among other things, provide professional engineering plan and design services and professional consultation with the District’s personnel.

On April 10, 2010, the District retained the firm of Chen & Associates (hereinafter “Chen”) to provide among other things, design and professional services to the District. On April 3, 2013 the District renewed its contract with Chen for an additional year, and had the right to renew the contract future an additional three years.

During the time that the District retained BAF and Chen, both consultants retained another consultant, C Solutions, Inc. to prepare several studies on behalf of the District which addressed the specific ongoing deficiencies and violations that the District struggled to correct.

On August 30, 2011 C Solutions prepared a “Water System Regulatory Review” which outlined all compliance requirements that the District was required to make, and proposed some solutions to the existing problems.

On November 16, 2011 the District entered into a \$534,270.00 contract with Hazen & Sawyer to prepare a Water/Wastewater Master Plan to assess and address the District's short and long operation capacity.

C Solutions also prepared a "Preliminary Design Report Regarding the Secondary Disinfection System at the Avenue "U" Repump Station" dated May 11, 2012. The Avenue "U" Re pump Station had been previously identified as a potential source of the contamination problems that the District experienced in the Gramercy Park area. The report addressed several contamination issues and proposed solutions to the ongoing problem.

On February 6, 2013 the District entered into a direct agreement with C Solutions in the amount of \$289,500.00 to provide engineering services for two lift stations which are a part of the District's wastewater system.

On August 5, 2015, the District entered into another direct agreement with C Solutions in the amount of \$398,710.00 to provide consulting, construction, administration and field engineering services for the rehabilitation and replacement of lift stations within the District's sewer wastewater process.

All of the consultants retained by the District had the ability, skills,

and expertise to provide professional services to assist it in meeting the compliance requirements that it struggled to meet over an extended period of time. The Former Director failed or refused to utilize the expertise of the consultants retained by it to assist the District in complying with federal, state and administrative rules and regulations enacted to ensure the safety of the District's water and wastewater disposal system.

The fact that the District had at its disposal several qualified consultants ready, willing and able to provide assistance to it to address its ongoing violations and failed to do so is inexplicable.

Although the City Manager indicated that she was unaware of the problems facing the District over this extended period of time, she executed a Consent Order regarding violation No. WP-154-14 on January 27, 2010 which provided her with institutional and actual knowledge of the District's violations. As the City's top administrative official, the District's contractual relationships with the aforementioned consultants, and retention of Hazen & Sawyer to complete the Water/Wastewater Master Plan in 2011, placed the administration on notice of the continuous water and wastewater compliance issues that the District struggled to address over this extended period of time.

The Master Plan includes a complete overview of the District's water and wastewater infrastructure. The second paragraph of the

Executive Summary of the report on page 1-1 of the Master Plan states that the District's water and wastewater infrastructure is "aging" and recognized that certain components of the system are at the end of their "expected useful life".

The third paragraph of the Executive Summary references that the PBCHD found low chlorine residuals in the Gramercy Park region of the water distribution system in the summer of 2010 which resulted in the entry of a Consent Order with the PBCHD as a result of the District's failure to comply with the administrative rules regarding chlorine. This paragraph also points out that the District developed the Master Plan to address compliance issues, to develop a hydraulic model for wastewater distribution, and to assess potential new distribution systems which would address the chlorine residual problems faced by the District. The Master Plan acknowledged that the District system had experienced compliance issues over a long period of time.

The Master Plan devoted an entire section to the District's Water Distribution System and addressed the problems experienced by it which were the subject of compliance violations over an extended period of time. It included several proposals, recommendations, projections, short term, midterm, and long term goals, which if achieved, would have addressed the ongoing continued problems faced by the District. Inexplicably, the district did not utilize either the expertise available to it possessed by its consultants, and nor did it adopt the recommendations

made by several of the consultants which would have improved the system. Even after the Master Plan was delivered to the district in February of 2013, few if any of the recommendations or proposals addressed in the Master Plan which would have improved District's operations were adopted.

The fact that the District had knowledge of the ongoing problems and access to the resources and the expertise to provide solutions to the problems, vested in the City Manager, as the Chief Executive Officer of the City and the District, at the least "constructive notice" of the ongoing deficiencies at the District, and at the most with "actual knowledge" of the deficiencies. This conclusion is further confirmed by the fact that the City Manager signed a Consent Order as the District's representative on January 27, 2010 regarding violation No. WP-286-09.

The failure of the Finance Department to maintain an internal tracking system regarding the payment of fines or penalties paid by the District is also a reflection of the deficiencies of the overall system. The failure to track, verify, monitor or distinguish payments made by it for fines penalties, Consent Orders, Settlement Agreements etc., is an internal failure which should be addressed on a "day to day" basis by the City Manager as the District's Chief Executive Officer who is responsible to ensure that all district funds are properly accounted for.

***Violations WP-019-14 and WP-039-14*** revealed the increasing

frustration that the PBCHD had with the District regarding its failure to comply with water safety regulations. File notes reveal the frustration felt by the agency in attempting to explain to the District violations committed by its employees regarding failures committed by the District in the sampling process when they did not complete nor have knowledge of the required number of samples required to be taken.

The file notes of File *No. WP-065-15* also reflects the frustration felt by the PBCHD with the District's continued violations and address deficiencies in the system in several different geographical areas throughout the District service area, and reveals that the District's failures were not limited to one section of the system but instead, impacted portions of the entire service area.

The PBCHD was also contacted in March of 2015 by the Palm Lake Co-operative Association, a mobile home park located on Dr. Martin Luther King Jr. and Blue Heron Boulevard, in unincorporated Palm Beach County, to which the District provide water and waste water utility service. The co-op detected low levels of chlorine in its water after it conducted its own tests and notified the PBCHD of the results.

The Co-op retains its own water consultant since it is responsible for the water delivery system within its boundaries. It became suspicious of the District's efficiency when it discovered that the District had been billing it for water and waste water services based upon an "estimated"

after it was discovered that the water meter relied upon by the District had been inoperable for some time. Based upon that experience, the co-op began to monitor the District operations more closely, resulting in the implementation of its own testing process. Once the test results were forwarded to the PBCHD, it confirmed that in fact the chlorine levels were insufficient, resulting in the violation.

The PBCHD view of the District's failure to comply with enforcement proceedings are best reflected in a letter dated February 9, 2016 written by Cathy Linton, Senior Attorney, to Lena Busby, Esq., the Assistant District Attorney, in response to the District's request to rescind the Final Order which was entered on January 26, 2016.

It explains that the PBCHD met with the District in order to resolve violations regarding WP-065-15 as early as December 18, 2014. When the District took "no action" on the proposed agreement reached at the meeting, the PBCHD issued a Warning Letter on June 5, 2015 regarding the violations. Subsequently, on June 29, 2015 the District requested another meeting with PBCHD at which time it agreed to terms and conditions of a Settlement Agreement reached between the parties which was forwarded to it by via certified mail. The Settlement agreement was returned unopened to the PBCHD on October 7, 2015.

The District requested and obtained another meeting with the PBCHD on November 3, 2015, at which time it was advised that the

PBCHD would move forward with the Notice of Violation regarding the matter. When it attempted to serve the Notice of Violation on the District at its office, District employees refused to accept the service and advised the PBCHD employee who was attempting to serve the documents that they were not permitted to accept service of documents on behalf of the district at the office.

Even after the entry of the Final Order imposing the \$10,000.00 fine, the District was issued another Warning Letter on March 11, 2016 regarding its failure to comply with the same issues referenced in the January 21, 2016 Final Order. Then on April 1, 2016, the District was issued another Warning Letter, *Violation WP-032-16* which addressed the very same compliance issues.

Finally, on June 10, 2016 after taking acceptable corrective action the PBCHD notified the District that was in compliance with applicable rules and regulations, and that it would be removed from the heightened monitored testing status that it had been previously elevated to as a result of its continued long term violations.

As to waste water violations, although the District received several FDEP Warning Letters and other enforcement communications over an extended period of time from 2010 through 2016, the FDEP elected not to sanction the District regarding several separate waste water violations, but instead, merged all of the violations into one enforcement action and

allowed the District to enter into a Consent Order on March 25,2016, which resolved the violations.

A review of FDEP's enforcement file regarding the District revealed that as far back as April of 2008, the District entered into a Consent Order and paid a fine of \$26,000.00 regarding prior violations.

In August of 2011, the District was cited for the improper cleanup of a sewer spill at District Lift Station No. 47. That site had experienced three previous spills in May of 2011 which the FDEP combined into one enforcement action. Although the District faced a potential fine of \$213,000.00, the FDEP chose not to impose a fine on the District at that time.

The District continued to experience waste water system failure which caused sewage to flow into storm drains and an alleyway, and the FDEP was especially concerned with the fact that the District continuously used improper unsafe cleanup procedures regarding the sewage spills.

District employees were operating without any guidance or supervision pertaining to sewage cleanup procedures. Employees were operating in a manner that they felt was proper based customs and procedures utilized by their predecessors who apparently violated the law for a number of years before the District's improper cleanup

procedures came to the attention of the FDEP.

It appears that the Former Director provided little guidance to wastewater division employees regarding the proper cleanup and disposal of sewage spills. Employees were left to address those matters in the manner they saw fit.

The Superintendent indicated that the District did not have a standard operating procedure in place regarding sewage spills or wastewater operations. He also indicated that they were not provided with any specific procedures regarding wastewater cleanup, and that they did not conduct practice drills to prepare for sewage cleanup operations. His statement leads one to conclude that little if any leadership was provided to his department, or the District, by the Former Director. Employees were left to solve problems and address issues in the same manner that previous employees did when they worked at the District or at the city utility department resulting in a leaderless environment in an industry in which leadership is paramount.

## CONCLUSION

Although the District has been recently notified that it currently meets the legal compliance requirements mandated by law regarding the operation of a public utility, this system needs the immediate attention of

the District Board of Directors to address these very important ongoing operational matters. The operations and management of its facilities is in the immediate need of the proper management and professionalism that the citizens of Riviera Beach and other District customers are entitled to receive pursuant to law, and as citizens of the state of Florida, and these United States. There is nothing more basic to human existence than the availability of clean, safe drinking water, and the safe proper disposal of human waste. The District has neglected its duties over a long period of time to ensure that the citizens and other District customers are provided with water and waste water services which meet proper standards despite the availability of a mechanism in place and the resources available to do so.

The main water plant where all of the water distribution originates was constructed in the late 1950's and has been allowed to evolve into a patchwork of outdated equipment which has at times been modified to keep the water or wastewater flowing, with little or no major modifications or improvements. This unwise neglect, which is now known by all to be unlawful, must be immediately addressed, despite the District having recently temporarily obtained "compliance" status from the regulatory agencies.

The testing procedures mandated by law requires a utility to have knowledge of the type, frequency and manner of the testing required and

to follow the mandated procedures and guide lines established by the regulatory agencies who not only have access to the best and latest practices and science, but also have mandated by law that the guidelines be followed. The guidelines are designed to handle virtually every reasonably known scenario which a utility could encounter, and provide directions and protocols to address those circumstances. Thus, a major portion of compliance by a utility requires it to become knowledgeable of the procedures, mandates and rules, and to establish a testing schedule which incorporates the mandated procedures and guidelines to ensure compliance with the law. Inexplicably, this District has not done this over a long period of time, thereby leaving it vulnerable to sanctions at the least, and the inability to deliver safe drinking water and to be able to properly dispose of the city's waste water, at the most.

It is not insignificant that within the last two years, that on at least two occasions the District has had to “borrow” water from Seacoast Utilities located in northern Palm Beach County, to meet water production needs when a major equipment failure occurred at the water plant which prohibited it from producing enough water for its customers. Although the failure only impacted the system for a few days, it serves as yet another reminder that if the District was a patient receiving medical care, it is currently in the equivalent of a cardiac intensive care unit as a result of long term personal neglect, and , is just a few steps away from the need for trauma care, which would become necessary if a major portion of its infrastructure failed , or a

combination or series of events occurred which ordinarily would not have a major impact on a healthy utility.

As you read this report, the District is currently struggling with, among other things, the construction of a major sewer lift station near the intersection of avenue U and Dr. Martin Luther King Boulevard, which if not done correctly could have a major impact on current and future waste water operations. This nearly \$4,000,000.00-dollar project is currently being built without the immediate supervision of a District Director.

Furthermore, a visit to District facilities would reveal that its property and equipment is not maintained in a manner which invokes confidence. At the main water plant, the anhydrous ammonia feeder tank utilized by the District and other utilities in the water treatment process, which if ruptured, would require the immediate evacuation of city hall and the surrounding residential areas, sits at ground level adjacent to a parking lot, easily susceptible to rupture if a vehicle or other equipment or device came in contact with it. Why the tank is not enclosed, barricaded and located off the ground in area where it cannot be compromised is also inexplicable.

Although competent, capable and experienced consultants have provided necessary and important services to the District prior to, and during this current crisis, and, most importantly have stabilized the

system having obtained compliance with mandatory requirements, the District is in dire need of a person, (or persons or entities) whose primary duty and responsibility is to devote one hundred percent of his, her, or its, time to the management and operation of the District. The citizens of Riviera Beach and other District customers are entitled to and deserve nothing less.