



Key Largo Wastewater Treatment District Board of Commissioner's Meeting Agenda

**4:00 PM Wednesday, January 14, 2004
Key Largo Civic Club, 209 Ocean Bay Drive
Key Largo, Monroe County, Florida**

Board Members Present

Gary Bauman, Chairman
Cris Beaty
Jerry Wilkinson
Charlie Brooks
Andrew Tobin

Staff Members Present

Robert Sheets, General Manager
Tom Dillon, Board Attorney
David Miles, Chief Financial Officer
Ed Castle, Board Engineer
Jeff Weiler, Board Engineer
Faith Doyle, Board Clerk

Guests Present

Peter Kinsley, The Haskell Company
Ted Hortenstine, Brown and Caldwell
u Oppenheim, Brown and Caldwell
Marguerite McCauley, Government Services Group, Inc.
Gaile Jalenlek, Key Largo Resident
Robert Burt, Key Largo Resident
Steve Gibbs, Reporter
Ann Henson, Reporter
Dick Morton, Key Largo Resident
Richard Lancaster, Key Largo Resident
Nos Espat, Randazza

A. Call to Order

Chairman Bauman called the meeting to order at 4:11 pm

B. Pledge of Allegiance

All stood and recited the Pledge.

C. WORKSHOP – ADMINISTRATIVE PROCEEDURES

Please see below.

D. Additions, Deletions or Corrections to the Regular Meeting Agenda

It was the consensus of the Board to move the workshop to the end of the meeting to accommodate the members of the Key Largo Federation of Homeowners who wish to attend their meeting that was scheduled to begin at 7:00 P.M. Commissioner Brooks noted that he was concerned that several items on the agenda that were of interest to the public who had not arrived at the meeting because a workshop was advertised to be held at 4:00 P.M. Chairman Bauman noted the concern and suggested that agenda items not pertaining to the secondary treatment process be considered first.

Chairman Bauman requested that an additional public comment period be added to the agenda prior to the workshop. There were no objections to the change.

Commissioner Brooks stated that after the concerns stated by Commissioner Tobin at the last meeting that there are issues in related to the contract that should be considered prior to the action items. He believes an executive session is necessary. Mr. Dillon stated that with no complaint pending the Board is prohibited from calling an executive session. He noted that an executive session can only be called to discuss a pending claim and it would require a special notice to be advertised and a court reporter present to provide an official transcript.

E. Public Comment

Chairman Bauman asked for public comment. Mr. Dick Morton of Riviera Village addressed the Board. Mr. Morton inquired if the projects were a negotiated contract or if they had been part of a competitive bid. Mr. Sheets stated that the Haskell contract was an awarded as a result of a response to a request for proposals. The process of after the award was to finalize the terms of the contract. Mr. Morton believes that all of these disputes should have been taken up before this time. Mr. Sheets stated that the issue being discussed at present was the secondary treatment process. Mr. Morton asked if the secondary treatment process decision was the Board's responsibility. Mr. Sheets stated that it is a provision of the contract to permit the Board to issue a purchase order for equipment if they desire and to participate in the treatment process selection. Mr. Morton stated that he is concerned with the controversy over this issue and that the Board continues to question the recommendations.

Mr. Dick Lancaster, President of the Hammer Point Board of Director's addressed the Board. Mr. Lancaster commended the Board for their progress in the tight time frame they have been up against. Mr. Lancaster stated concern with the Board's continuing debates over the treatment system issues. Mr. Lancaster believes that the USBF treatment system has a greater potential for problems and because the contractor (Haskell), the engineering company (Brown and Caldwell), board engineer (WEC), the manager and the Monroe County coordinator of wastewater opposes it and with the lack of a guarantee that the process will work he urged the Board to rethink and proceed carefully.

The clerk was requested to reflect for the record that Mr. Nos Espot arrived at 5:10 P.M.

F. Legal Counsel's Report

1. Response to Commissioner Tobin's concerns raised at the 1/7/04 meeting

Mr. Dillon reviewed his memorandum in detail. The memorandum is made part of this record as Attachment A.

Mr. Kinsley of the Haskell company commented that the TSC Jacobs Company has worked with Haskell prior and he is confident that they will sign the purchase order and payment terms and would provide payment and performance bonds.

Commissioner Brooks asked about KLWTD purchasing the equipment. Mr. Dillon states that per the contract they could purchase it.

Discussion ensued on the issue of 'good faith' in honoring the contract. Mr. Dillon cautioned that the KLWTD must act reasonably and Haskell needs to demonstrate that they are acting reasonably and their action of requesting further information from Fluidyne was done to demonstrate this. Direct purchases were also discussed.

Commissioner Brooks believes that the contract terms are negating the Board's desires. Commissioner Brooks questioned if Board members could attend the design phase meetings. Discussion ensued on the possible sunshine law implications of members attending the design meetings. Commissioner Wilkinson stated that from past practice the Board had given comments during design discussions, which the engineers have addressed but not always to the Board member's liking.

Mr. Sheets is confident that the contract has a provision that beyond the monthly status report there is a meeting to be held monthly and these could be held in conjunction with a board meeting, however this may preclude the staff from reviewing information prior to the Board.

Chairman Bauman suggested that staff recommend a procedure to the Board. Mr. Castle stated that the contract requires Haskell to provide submittal protocol and once the 30% design is received a recommendation to approve them would be provided. Mr. Kinsley of Haskell stated that he welcomes the participation of the Board. Commissioner Wilkinson asked what the deadline for 30% design approval was. Mr. Kinsley stated that presently there is a two-week time frame in the present schedule.

Commissioner Bauman asked WEC to have a recommended submittal protocol available for the February 4, 2004 meeting.

2. Warranty Form to Nos Espat
 - a. Randazza suggested form
 - b. Dillon suggested form
3. Fluidyne Warranty

Mr. Dillon presented a revision to items F2a and F2b he addressed items F2 and F3 in his memorandum all of which are made part of the record as Attachment B. The attached warranties were the final versions that were signed by the vendors. Discussion ensued concerning the various warranties.

Discussion ensued on the characteristics of the sewage. Assumptions were made during the RFP process per Dillon and he stated that if they are not realistic they should not be adhered to.

Commissioner Brooks questioned influent characteristics and its possible negation of the warranties. Mr. Dillon had suggested different verbiage to protect the district. Further discussion ensued.

Chairman Bauman objected to the attempts to re-negotiate the warranties during the meeting. He believes that with three signed warranties there should be a decision made immediately. Commissioner Brooks stated that he had a problem with that. Mr. Dillon suggested making a motion on approving the signed documents as presented. Commissioner Brooks stated that he hasn't had time to review what was sent on the 1-12-04.

Commissioner Tobin asked if the Fluidyne warranty was substantially the same as what had been provided in the agenda book. Mr. Dillon stated all except the two items that he detailed.

Commissioner Brooks stated there is confusion by placing three warranties together. Mr. Dillon stated that Randazza and Purestream had split out the responsibilities listed in the original warranty. Commissioner Tobin stated that he would prefer one warranty with the manufacture and vendor with only one document.

Discussion ensued on the bonding requirements. Mr. Dillon stated that bonds during the initial year are not as important because Haskell holds a bond. He noted that two bonds are not necessary, but that if Haskell is not willing to take responsibility on a process they could not support, there would be no bonding to secure the performance of the person providing the secondary treatment system. Discussion ensued concerning the function of a performance bond and payment bond and the fact that legal counsel reiterated that has never heard of a "process bond". It was noted that the performance bond requirement was struck from the Purestream/Randazza warranty.

5. Haskell Company Purchase Order

Mr. Kinsley answered questions concerning the purchase order and added that vendors he has worked with do provide support and if it is not stated in the warranty it is either stated in the contract or the purchase order.

6. Haskell Design Calculations Request

7. Informational copy of the December 29, 2003 Haskell Company Correspondence

Items F6 and F7 were discussed. Mr. Dillon reviewed the issue of delay. Mr. Dillon had requested Haskell to get information to prove or disprove that USBF would not work. The calculation requested had not provided by Randazza. Commissioner Brooks stated the design calculation had been available since 1st February. Mr. Dillon countered that a statement made in a Randazza's letter says that the district staff could not verify the cost increase because they don't have the information. Please see Item G-2 below for further discussion.

The Chairman recessed the meeting at 6:55 p.m.

The Chairman reconvened the meeting at 7:10 p.m.

G. Action Items

1. Pending Payments List

Mr. Sheets stated that the payment list was modified to show what funds the payments come out of as directed by the Board. The GSG time sheets and hourly activity sheets were supplied for informational purposes as per the Board's request.

Mr. David Miles reported the funds on hand at present were \$62,585.66 and that a deposit from FCAA of FEMA Phase 1 money in the amount of \$232,108.21. The MSTU money has not been disbursed as previously reported. The amount is approximately \$140,000.00. It was noted that the County's policy is to not pay by wire transfer. Commissioner Wilkinson requested the current cash balance. Mr. Miles stated that it was \$294,693.87 the bills payable today will be deducted from the stated balance.

Chairman Bauman asked if there should be a separate capital and administrative funds. Mr. Miles stated that it would be more difficult and is not necessary because it creates an administrative burden to track the accounts.

Commissioner Tobin stated the routine for approval of the bills should be to let the Board review the legal invoices, that GSG invoices should include accounting of the time spent on KLWTD activities and that he would not approve the Haskell pay applications until he understands the process. Mr. Sheets stated that he had provided pages of breakdown at item H2. Mr. Tobin stated that the Mull & Associates invoice could be paid if Mr. Miles could explain it. Mr. Miles stated that it was for the hours spent for the annual audit less 10 percent retainage.

Commissioner Brooks question the Board's payroll checks being process prior to the payments pending list being approved. Mr. Miles stated that by resolution of the Board he has the authority to disburse up to \$2,500.00 and that the payroll is being paid under that authority. Also the payroll and federal taxes have been paid.

Commissioner Brooks stated that legal fees for two months in the amount of approximately \$16,000 concerns him and that if the cost of on issue is over \$5,000 there should be an accounting. Mr. Dillon stated that the contract states that his invoice is to be submitted in detail and forwarded to the manager. Mr. Sheets stated that his had been done in the past, however at the transition of Mr. Dillon to legal counsel it was assumed that it was no longer necessary this can be changed. Mr. Sheets asked the Board if it were requesting copies of all the invoices listed on the pending payments list. Discussion ensued. Mr. Sheets requested direction to provide backup on all pending payments. Commissioner Brooks and Commissioner Tobin would like to see a dollar threshold. Discussion ensued. Commissioner Beaty would like Commissioner Tobin to review all legal bills. Chairman Bauman asked the other service providers if they had difficulty providing detailed invoices. It was noted that consideration must be given to the prompt pay act because when the Board has money the prompt pay act comes into play so a specific procedure should be enacted.

MOTION TO APPROVE ALL BUT ITEMS NO. 3, 4, 5, 6, (DILLON'S, GSG'S AND HASKELL'S) AND TO PAY THE BALANCE OF THE PAYMENT PENDING LIST WAS MADE BY COMMISSION TOBIN. Discussion ensued. Commissioner Tobin stated that Haskell might be approved at the end of the meeting after the pay application process was reviewed. Commissioner Beaty seconded the motion. Chairman Bauman requested a roll call vote as follows:

Commissioner Beaty	Yes
Commissioner Brooks	Yes
Commissioner Tobin	Yes
Commissioner Wilkinson	Yes
Chairman Bauman	Yes

All were in favor and the motion was unanimously approved.

Commissioner Tobin requested an item be added to the agenda. The item was to reconvene the meeting after the workshop to approve payment of the Haskell pay application if it were in order. The Board gave its consensus.

2. Resolution of Haskell Contract Concerns
RE: Secondary Treatment Selection
 - a. Resolve to Mediate with the Haskell Company
 - b. Resolve to Relieve Haskell from AWT Warranty

c. Select Modified SBR Technology

Mr. Dillon concluded his presentation on the letter from Haskell and stated that staff had examined the other information provided by Randazza and Purestream and continues to conclude that the USBF process would not work. Mr. Kinsley and Mr. Hortenstine summarized that from the design calculations that were evaluated and after consulting with Purestream's engineers that none of the information received had changed their position. Mr. Hortenstine gave specific details of the process used in analyzing the addition information, which included speaking with Dr. John Smith with Smith Environmental of Cincinnati Ohio. A modeling scenario was run with the information but it didn't address the bio kinetics. Dr. Bratby of Brown and Caldwell also spoke with Mr. Smith and are in agreement with Mr. Hortenstine's deductions. Dr. Bratby used Biowind to model and couldn't achieve 3.0. Mr. John Smith provided information from a plant in Long Island, NY and one from Italy to demonstrate that 3.0 could be achieved however, out of 3-5 months of data provided only several days reached 3.0 the consistent numbers were from 5 to 8. Mr. Kinsley and Mr. Hortenstine concluded that they did not find out anything that changed their opinion.

Chairman Bauman asked Mr. Dillon for his opinion on the issue. Mr. Dillon stated that the short answer is that neither Haskell or Brown & Caldwell, nor Weiler believes that USBF can meet the standards and Haskell cannot go forward without resolution to the problem. Mr. Castle has received the same information and he stated that it did not include the kinetic values to achieve the levels required. Mr. Castle purchased a different process model program from the EECS Group and he couldn't achieve the required nitrate level. Discussion ensued. It was noted that a program was not sent just the input information. Mr. Castle of WEC concluded that no significant information to change his mind was provided and the fact that he used an independent model and obtaining the same results aided his conclusion.

Commissioner Tobin asked if the process calculations were first received on the 10th January. Mr. Castle stated that the first useable information was received on January 10, 2004.

Chairman Bauman asked for comments from Mr. Espat of Randazza. Mr. Espat noted that he was not on the call with Brown and Caldwell and the Purestream representatives so he could not dispute what was said. Mr. Espat believes there are two issues, one why the process name had changed, because four major competitors had claimed rights to their patent. Mr. Espat noted that there was no change to the process. Mr. Espat noted that John Smith was not only the consultant, but is the co-owner of the patent. Mr. Espat addressed Mr. Dillon on the warranty and clarified that when design is discussed the only reason we say 'actual' is because we must have some parameter of where you are starting. It is Mr. Espat's opinion that no one will guarantee from a specific starting point. Mr. Espat stated that it was clear when Boyle sent out the RFP criteria that there would not be 250 B.O.D. you would have a food distribution supplement to provide the nitrogen results. Mr. Espat stated that as far as consequential damages, the warranty is signed by both owners of the Purestream Company and Randazza provided an additional warranty. Mr. Espat stated that in the disclaimer where Mr. Dillon addressed the issue was contradictory.

Mr. Espat stated that concerning bonding that if Haskell is providing the opportunity for Fluidyne to bond through them so he should be given the same opportunity. Mr. Espat believes that Fluidyne can't get one on their own either, he is not sure of this but he should be given the same opportunity. If he needs to have one he would like to add it to his proposal. The cost of the bond should be included in the original bid he would buy it if it were made available to him. Mr. Espat stated that concerning process or performance bonds it is important that the District clarify what performance means and he believes as far as performance bonding it should be clearly stated as what it includes if it is a process warranty it has to be defined so that you are protected for 5531. Mr. Espat thanked the Board.

Chairman Bauman asked for further Board comment. Commissioner Brooks requested to read information into the record. Commissioner Tobin requested to question Mr. Espat. The Chair granted the request.

Commissioner Tobin asked Mr. Espat to please tell the Board why the information that was asked for months ago had only been provided last week and why according to both engineers it was not sufficient data. Mr. Espat stated that he had arranged the discussion with Mr. Smith and that the calculations and all the required information had been on record in the District and was issued by CPH Engineering and he had spent 5 hours going over the information with Mr. Stu Oppenheim in February. Mr. Espat stated that he had difficulty defining whom he should be in contact with and that he had answered Mr. Kinsley's requests but Mr. Oppenheim requests were extensive and costly. Commissioner Tobin stated that the information received from Randazza hasn't established 3.0. Mr. Espat stated that the USBF BESST technology is patented and they cannot divulge the essence of their process with the calculations that others could copy their process. Discussion ensued on the patent process and the information divulged and if it is public record. Commissioner Brooks stated that on patents some are never divulged Polaroid had hundreds on film process and Coca Cola's ingredients. Mr. Espat stated that there are portions of the information, which were not disclosed to WEC and Brown and Caldwell. Commissioner Tobin stated that without this information the Board cannot prudently spend 8 million dollars on something they cannot see or have proven them. Mr. Espat stated that there is no engineering that can present SBR has produced 5531.

Commissioner Brooks contacted John Smith of Smith Environmental Engineering. He responded with a letter dated January 13, 2004, which is made part of this record as Attachment C. Commissioner Brooks noted a point made in the letter that as the consultant for Purestream's USBF BESST system that the KLWTD project had been reviewed in detail by him and the current design will meet the requirements of 3.0 per liter of total nitrogen. It further explains that Mr. Smith had discussed with Ted Hortenstine and attempted to describe that the process is unique and combines the internal recycle and doesn't fit the mold and doesn't fit standards. It also notes that during Mr. Smith's tenure at the EPA he was part of a pilot program that operated many plants in various places. Commissioner Brooks also noted that he had talked with David Refling of Boyle Engineering who claims USBF BESST could meet the requirements and so stated in the PDR that a chemical feed and possibly a denitrifying filter on the end would be required for the other process. Mr. Refling provided an email verifying his opinion, which is made part of this record as Attachment D. Commissioner Brooks also referred to a letter from Osvaldo Ojito who worked with Gartek (Attachment E) and a letter from Gartek (Attachment F) stating that both processes have been used and they believe both systems could meet 5531. In total Commissioner Brooks had four engineers that claim it would reach 5531.

Chairman Bauman stated the issue is not whether he believes it or could find engineers to certify the process the issue is Brown and Caldwell doesn't believe it and the Board needs to decide if we need to get new engineer, or begin dispute resolution or consider a new vendor. It is a legal issue at this point; Haskell has a contract with Brown and Caldwell.

COMMISSIONER WILKINSON MADE A MOTION TO APPROVE THE ISAM FLUDIYNE PROCESS. CHAIRMAN BAUMAN RULED THE MOTION OUT OF ORDER UNTIL DISCUSSION IS CONCLUDED. Commissioner Tobin interjected with several more questions. Commissioner Brooks stated that concerning parliamentary procedure if the Board wants to take this up the Board may need to motion to reconsider the previous motion and for it to come forth it must come from one of the yes votes for the USBF system.

Commissioner Tobin inquired that if Boyle is comfortable with USBF and with three board members vacillating he thought that with cooperation with Nos they might come to some determination.

Commissioner Tobin asked for Haskell's opinion of Dave Refling's email stated that both technologies have the potential and his recommendation for the KLWTD to hold a performance bond. Commissioner Brooks added the Mr. Refling had spent about 30 minutes on the phone with him and stated that both can achieve 5531 and for this size plant the USBF would be best for this application and would produce a saving. Mr. Kinsley stated that he knows, likes and respects Mr. Refling along with Mr. Betancourt of Gartek, however, they have not been privileged to all the information and exchange of information nor had the benefit of the study and at the end of the project neither Gartek nor Boyle will stamp the drawings Brown & Caldwell is going to stamp them. The Haskell Company is not swayed by the comments versus the study. Mr. Kinsley concluded that the Board's engineer Ed Castle of WEC is also getting the same numbers with all the same information.

Chairman Bauman closed the legal report and asked the Board members for any final comments. Commissioner Tobin asked Mr. Dillon that in light of the recent memos what his opinion was of the legal issues the Board might face. Mr. Dillon stated the main question is who will take the risk for performance. If we demand that Haskell take USBF and install it, Haskell would be justified in invoking the dispute resolution process, and that it is not reasonable to ask someone to build a plant after so much detailed study showing that the technology won't work. We would be unreasonable if we demand that they do so. Commissioner Tobin asked if they had signed a contract saying we can choose a process and could they find remedy by getting out of the contract. Mr. Dillon stated that not only could they seek a remedy they can declare KLWTD in breach and demand payment for the time they spent and without a clause in the contract covering termination the District could be liable. This is not the type of contract where the Board can demand performance that is not objectively reasonable. If the Board does so, the District will lose time and money.

CHAIRMAN BAUMAN BROUGHT ITEM G-2 RESOLUTION OF THE HASKELL CONTRACT CONCERNS TO THE FLOOR FOR CONSIDERATION. THE THREE OPTIONS PROVIDED WERE: A. RESOLVE TO MEDIATE; B. RESOLVE TO RELIEVE HASKELL FROM AWT WARRANTY; OR C. SELECT MODIFIED SBR TECHNOLOGY. COMMISSIONER WILKINSON MOTION TO SELECT 2C TO SELECT MODIFIED SBR TECHNOLOGY. Brooks states he is out of order. Mr. Dillon noted that a motion to reconsider applies on the day of the vote only. Mr. Dillon's professional opinion is that Commissioner Wilkinson is in order. **CHAIRMAN BAUMAN ASKED TO WAIVE THE RULES TO MAKE A SECOND AND SECONDED.** Chairman Bauman asked for further discussion. Commissioner Beaty asked what the exposure would be if we relieve them of the warranty. Mr. Dillon stated that the exposure would be to give up the 8 million dollar performance bond the benefit of the engineer selected to design and seal the project and to give up the performance warranty that Haskell provides and substitute it with an engineer that KLWTD did not choose. Also Purestream would be without a performance bond and there would be a conflict from the obligations of Haskell to complete the work and we would lose the meat of the contract. Mr. Dillon concluded that the team was selected by the Board and the District would lose the benefit of the team and that replacing it with an engineer to be named later and an un-bonded technology would not be prudent. Commissioner Brooks stated that he has low confidence with fluidyne due to the information distributed and the form of reports from various plants, for example the Bartow plant being identified as an AWT plant. He questioned who generated the reports and the internet claims that Bartow is an AWT plant. Commissioner Brooks stated that he could not support the motion. Commissioner Tobin stated that he is glad the board takes the time to hammer out the issues and glad the public is interested. He feels trapped because the lawyer advises voting a certain way, which is a lesson that the legal counsel is the sixth Commissioner. He continued that the KLWTD is lucky they have an experienced, ethical attorney, but Commissioner Tobin is not happy to be in the present position. Commissioner Tobin stated that the Board has done all it can to support the original decision but he is disappointed that Mr. Espat continues to be the loner trying to make the point for the company that the

USBF system has a lower cost but with the little amount of information given late in the game there is not much else that can be done and we may regret Mr. Espat not being there and there may be problems in the future but we are trapped with no choice. Commissioner Wilkinson stated the public should have been permitted to speak prior to the vote and the solicited letters presented this evening were no proof. The public needs some proven system and the Haskell warranty system is best and he supports SBR and the technology committee has recommended SBR. Commissioner Wilkinson stated that he was sorry it is this way but a selection must be made and the board was elected to make the tough decisions. He thanked all involved for their exceptionally hard work after we continue to slap them and say they don't know what they are talking about. **WITH NO FURTHER DISCUSSION CHAIRMAN BAUMAN REQUESTED A ROLL CALL VOTE AS FOLLOWS:**

COMMISSIONER BEATY	NO
COMMISSIONER BROOKS	NO
COMMISSIONER TOBIN	YES
COMMISSIONER WILKINSON	YES
COMMISSIONER BAUMAN	YES

THE MOTION WAS APPROVED BY A VOTE OF THREE IN FAVOR AND TWO NOT IN FAVOR.

H. General Manager's Report

1. Transition Committee Status Report No. 2

Mr. Sheets stated that this item would be covered during the workshop or postponed to a later date.

2. Presentation of GSG Time Sheets and Hourly Activity Descriptions
- 3.

Mr. Sheets stated that this information was provided at the direction of the Board and would be provided with each invoice. Commissioner Wilkinson commented on the time sheets and breakdowns submitted by GSG and asked if it is necessary to have this information with every invoice. He believes it is not necessary for a fixed fee contract.

4. Discussion with FEMA concerning the EA

Mr. Sheets reviewed the information provided which included an email log forwarded from Science Kilner. Mr. Sheets stated that he would be meeting with Miles Anderson on Monday the 19th.

I. Engineer's Report

1. Conceptual Review of the Impacts of Connection of the Calusa Camp Resort to the KLWTD (Please see the enclosed report)

Mr. Castle offered to postpone the presentation due to the late hour. Commissioner Tobin requested a summary of the Calusa report that had been provided. Mr. Castle stated that several synopses were provided. The first deals with quality of influent and the system that is in place. The wastewater will be strong and greasy but with no toxic effects however, there is a great deal of infiltration but once the system is rehabilitated it could be accepted. Discussion ensued on the age of the system and financing the connection from the Calusa Campground to the KLWTD system. Mr. Castle notes that the positive aspects are that the KLWTD system picks up flow and adds 350 customers and pointed out that on page of the report was a summary of how much income could potentially be generated.

J. Commissioner's Items

1. Discussion of Strategic Planning and Consulting Strategic Planning Firm
-- Chairman Bauman
2. Discussion of near shore water testing – Chairman Bauman

It was the consensus of the Board to table the Commissioner's Items until the February 4, 2004 meeting.

K. Meeting Adjournment

Mr. Sheets introduced Ms. Marguerite McCauley who was present to conduct the Administrative Procedures Workshop. Mr. Sheets stated that the Administrative Procedure should be scheduled as a separate meeting if it is to get undivided attention. He added that the document would take many meetings to become a working document on how to address issues facing the KLWTD. The Board gave its consensus to hold the Administrative Procedure Workshop at a future meeting. Ms. McCauley offered to provide a brief overview of the information provided. Chairman Bauman declined but thanked Ms. McCauley for her attendance and invited her back to present the manual at a future meeting. Ms. McCauley would advise the Board of her availability.

Mr. Sheets stated that the Transition Plan was to be discussed as part of the workshop but could be postponed to discuss the Haskell pay application. It was the consensus of the Board to postpone the discussion of the Transition Plan until a future agenda.

The chairman adjourned the regular meeting at 8:50 pm to begin the workshop.

The chairman reconvened the regular meeting at 9:17 p.m. Commissioner Brooks made a motion approve the Haskell Company's pay application NO. 1. Commissioner Tobin seconded the motion. All were in favor and the motion was unanimously approved.

All were in favor of a motion to adjourn at 9:18 p.m.

Thomas M. Dillon

Memo

To: Key Largo Wastewater Treatment District
From: Thomas M. Dillon
CC: Robert Sheets, Charles Sweat, David Miles, Faith Doyle
Date: 1/11/04
Re: Various issues raised by Board members

Note: This memorandum constitutes attorney work product and attorney communications.

At the Board meeting of January 7, 2004 and in emails thereafter, members of the Board have raised the following issues:

1. Comment on the advisability of assuming certain obligations in connection with the choice of the USBF secondary treatment system
2. Comment on the Haskell delay issue
3. Comment on the Haskell Purchase Order form and design calculation requests
4. Comment on the Purestream/Randazza warranty and the Fluidyne warranty
5. Does the Board have a responsibility to review or approve the 30% design drawings?
(Attachment B - TO memo of 1-12-04)
6. May Board members attend a progress meeting under the Haskell contract?

1. I recommend against the District assuming obligations not already assumed in the Design-Build Agreement in connection with the choice of the USBF secondary treatment system.

I addressed this issue in my memorandum to the Board dated December 16, 2004. Briefly summarized, it is my opinion that the Design-Build Agreement places certain responsibilities on Haskell as the design-builder in connection with the secondary treatment system.

These responsibilities include the obligation to design the Project, including the secondary treatment system, to assure that the Project is constructed to a standard of quality, integrity,

durability and reliability that is equal to or better than the standard established by the Scope of Work; and to warrant equipment and materials purchased by Haskell. The District can rely on Haskell to perform these obligations based on the same factors that led the District to select Haskell as its design-builder, i.e., the experience and reputation of Haskell and its design engineer to do so competently. In addition, Haskell's performance of these obligations is secured by a performance bond in a penal sum equal to 100% of the contract price.

The evidence presented to the District to date does not include any evidence that the USBF system or the ISAM/SBR system has ever met the standard established by the scope of work, i.e., 5,5,3,1. The engineering analysis of Brown & Caldwell and Weiler Engineering, and the expert opinion of GSG suggest that the USBF system, as that system is understood by those experts, cannot meet the standard, but that the ISAM/SBR system can meet the standard. The only expert who has provided an opinion that USBF can meet the standard is the engineer proffered by Randazza at the October 17, 2003 meeting.

In correspondence and at the January 7, 2004 Board meeting, Haskell has proposed a solution under which the District would purchase the USBF system directly and would relieve Haskell of any obligation to provide engineering services or a performance warranty for the USBF system. Haskell made that proposal because of its belief, based on Brown & Caldwell's previous analysis, that the USBF system will not achieve the contract standard of 5,5,3,1. However, as of January 7, 2004, Haskell apparently had not yet been provided with design calculations for the USBF system that Randazza actually intends to provide. I am in receipt of a January 10, 2004 email from Randazza that purports to provide the requested calculations. I understand that Haskell and its design engineer, Brown & Caldwell, will review these calculations in order to determine whether the proposed USBF system is likely to achieve the standards.

If, after reviewing and evaluating the USBF system, Haskell in good faith determines that it cannot accept responsibility to design and warrant the USBF system and if Haskell on that basis insists that it will not accept that responsibility, there will be a serious issue whether the District can declare that Haskell has breached its obligations under the Design-Build Agreement.

It is my opinion that, if, based on an engineering analysis of the engineering information provided by Randazza, Haskell takes the position that the USBF system will not perform and the District takes the position that Haskell must design and construct the USBF system anyway, and Haskell invokes the dispute resolution provisions of the Design-Build Agreement, the District will not prevail unless it first retains additional expert assistance. The dispute resolution process, even using the streamlined procedures in the Design-Build Agreement, will be costly and time-consuming.

I do not recommend that the District resolve this issue by assuming Haskell's present responsibility to design and warrant performance of the secondary treatment system. Doing so would give up important District contract rights and leave the District without the services of its chosen design-build contractor to design and warrant system performance. Instead, the District would have to rely on an unknown design engineer that the District did not select,

and the District would have to rely on the promises of Randazza and Purestream to ensure system performance. These promises would be secured only by a \$75,000 cash deposit, which, in the opinion of District staff, would be insufficient to effect any significant redesign or alteration of the secondary treatment system.

2. Further delay in the Project could cause it to extend beyond its contractual completion date, but Haskell has not demonstrated that fact through schedules submitted to date.

If the Project is delayed beyond its contractual completion date, there will be a possibility that the District will be entitled to liquidated damages. The District is entitled to liquidated damages to the extent that the project is actually delayed beyond its contractually established completion date as a result of events that are beyond the control of Haskell, and for which the District has assumed responsibility. Haskell contends that the Project is at risk of being delayed beyond its completion date as a result of events beyond its control and for which the District is responsible.

In support of Haskell's contention that the delays to date could delay the Project beyond its planned completion date, Haskell has provided a series of schedules depicting its planned work activities. The schedules accompanied a letter dated December 29, 2003.

These schedules are not Critical Path Method ("CPM") schedules. A CPM schedule is one that shows the shortest time in which a project can be completed by depicting major work items in a logical sequence. CPM scheduling is generally considered to be the only satisfactory method of showing project delays.

The schedules submitted by Haskell are bar charts showing the amount of time within which Haskell intends to complete various aspects of the work. However, since the schedules do not show the logical time relationship between all work items, it is not possible, based on these schedules, to infer the actual impact of each event of delay on the total time necessary to complete the work.

Haskell has cited three events that it believes have delayed the Project, including (a) alleged delays in final resolution of the FEMA Environmental Assessment ("EA"); (b) alleged delays in the District's selection of a secondary treatment process; and (c) alleged delays resulting from the District's selection of the USBF process, which Haskell believes cannot work. All of these events could contribute to a delay in Project completion. Without commenting on the merits of Haskell's contention that the District has assumed responsibility for these events, the following discussion illustrates the point that Haskell's bar chart schedules do not demonstrate that the Project will actually be delayed.

(a) Delays in final resolution of the EA

Haskell first advised the District of this alleged cause for delay by letter of October 13, 2003. The letter was sent in response to an October 13, 2003 email from Robert Sheets to Science Kilmer, in which Mr. Sheets expressed the District's concern with the progress of the EA. On the basis of that email, I believe that there is no question that the EA has been delayed beyond the date on which it was expected. However, the Preliminary Project Schedule (Design-Build Agreement Exhibit B), which is not a CPM schedule, does not show

a date by which the EA was anticipated. (I am not aware of any other schedule provided by Haskell prior to the "Sept '03 Update" submitted with Haskell's letter of December 29, 2003.

In order to determine the effect of a delay in the EA, it would be necessary to start with a CPM schedule and to determine the planned date of the first event that could not occur in the absence of EA completion. Haskell has not done so.

(b) and (c) Delays in the secondary treatment selection process

Haskell first advised the District of this alleged cause for delay by letter of October 31, 2003, in which Haskell alleged that the District improperly postponed selection of a secondary treatment system at the District's special meeting of October 17, 2003. By letter of December 12, 2003, Haskell asserted that the District's selection of USBF was continuing the delay.

Again, the Preliminary Project Schedule does not show a date by which this decision was anticipated. Although Haskell's letter of October 31 states that the decision should have been made at the October 17 meeting, the letter of December 29 states that the decision should have been made on September 17. In the absence of a CPM schedule, it is simply not possible to ascertain the effect of any delay in selecting a secondary treatment system.

Despite the fact that the exact amounts of delay cannot be determined, it is clear that major portions of the Project cannot be commenced until the EA is completed and the secondary treatment issue is resolved. Any time lost as a result of these events will be likely to consume available contract time and will put timely completion of the project at risk.

At the District meeting of January 7, 2003, Mr. Kinsley stated that there were 40 days of float on the Project and that the District had used most of them. He questioned the fairness of the District using most of the float. Float is a quantity that can be determined only through CPM Scheduling. Float is the difference between the time allowed to complete the work and the time necessary to complete the work. At the present time and in the absence of a CPM schedule, it is not possible for the District to determine the amount of float available or to know how much has been used. In any case, the questions of who owns the float, who has used it, and whether such use was fair remain to be determined.

3. A contractor's purchase order form is primarily the contractor's choice and the District should not become engaged in judging the propriety of a form unless substantial District interests are involved. The District and Haskell have agreed on the calculations required from Randazza.

At the District's January 7, 2004 meeting and in a letter to Robert Sheets dated January 6, 2004, Haskell has advised the District that the purchase order form sent to Randazza is Haskell's standard purchase order form for complex equipment for which Haskell has assumed performance obligations. Haskell has advised that it invariably requires its vendors of complex equipment to sign this form.

By email of January 9, 2004, I asked Haskell to "certify that the standard purchase order and subcontract is the form that The Haskell Company typically uses for purchase of equipment similar in nature and complexity to the secondary treatment equipment and is the form that Fluidyne has agreed to." I have not received a response to this email.

In construction contract, the contractor is an independent contractor. The owner normally specifies only the desired result, and the contractor has the right and responsibility to select such means and methods as the contractor deems appropriate. Improper interference with contractor means and methods is a fertile source of construction contract litigation, in which owners can be held liable not only to the contractor for interference, but also to third parties if the interference destroys the independent contractor relationship. Therefore, unless there is a significant owner interest involved, an owner should normally not become involved in the selection of a contractor's means and methods.

In this case, I recommend that the District not attempt to interfere with Haskell's subcontracting or purchase ordering methods unless the District perceives that the subcontracting or purchase ordering methods are unreasonable and are being used improperly to subvert the District's decision regarding secondary treatment.

Assuming Haskell's representations as to the purchase order are correct and are confirmed in writing, I believe that that the District cannot make a credible case that Haskell's purchase order is unreasonable or is being used improperly to subvert District interests.

As to the requests for calculations made by Brown & Caldwell through Haskell to Randazza, I requested staff review of the calculation requests upon receipt. After discussion between staff and Brown & Caldwell, the requests were revised somewhat, and I understand that staff believes the requests to be reasonably necessary for Brown & Caldwell to review the USBF design. I have no basis on which to disagree with staff.

4. Comment on the Purestream/Randazza warranty and the Fluidyne warranty

By email dated January 9, 2004, I reviewed the warranty form that I had earlier submitted to Randazza, with Randazza's suggested modifications. Randazza had suggested that the part of the warranty requiring it and Purestream to provide a bond or other reasonable security to Haskell should be deleted. I believe that the requirement for security to protect Haskell is a reasonable requirement in view of Haskell's significant risks if the USBF system does not achieve 5,5,3,1 and in light of the fact that the record does not include evidence that the USBF is capable of doing so. Also, since the warranty form is substantially the same as the form already signed by Fluidyne, there is little reason to believe that the warranty form is unreasonable burdensome.

Note that Fluidyne is not able to provide security for the second year of the Fluidyne warranty. Purestream/Randazza should not be required to provide greater security than Fluidyne.

Except for the second year bonding requirement, the Fluidyne warranty is as requested by the District.

5. The District has a responsibility to review and approve the 30% design drawings, but the contract does not require the Board to do so.

The question whether the Board must act on the design drawings or other approvals is not specified in the contract. I don't know the Board's desire re action on the design drawings.

6. Board members may attend a progress meeting under the Haskell contract

The Board asked whether it might attend a progress meeting with Haskell if the meeting is not publicly noticed. The Government in the Sunshine Act does not prohibit public officers from attending a non-public meeting and receiving information, as long as the discussion at the meeting is not a substitute for debate on an issue that will come before the agency. Board members may ask questions at such a meeting, but may not engage in discussion of future action items.

Thomas M. Dillon

Memo

To: Key Largo Wastewater Treatment District

From: Thomas M. Dillon

CC: N/A

Date: 1/12/04

Re: Comparisons of warranties signed by Fluidyne, Randazza, and Purestream with forms provided to them

Note: This memorandum constitutes attorney work product and attorney communications.

The purpose of this memorandum is to compare the warranties signed by Fluidyne, Randazza, and Purestream with the warranty forms provided to them by me on behalf of the District. None of the entities has signed the warranty exactly as provided. The comparison is in outline format with comments on the material changes made by each entity. I am providing along with this memorandum markups of the warranties provided and showing additions and deletions by each party.

Fluidyne has signed a warranty form that is very similar to that provided by me. Purestream and Randazza have made several changes.

- Purestream and Randazza propose a secondary treatment system called "BESST" in place of "USBF".
- Purestream and Randazza divide the warranty obligations among them, with Purestream warranting equipment and Randazza promising support and training. Where one of the two entities promises to fulfill a warranty obligation, I have not noted it as a material change.

MATERIAL CHANGES FROM THE FORMS PROVIDED.

Recitals

- Randazza and Purestream have modified the recitals, and the remainder of the document by removing the references to a "secondary treatment system" called

"USBF", and replacing them with references to an "advanced biological treatment process" called "BESST." I do not know the significance of this change.

Warranty duration of two years from Acceptance Date in Design-Build Agreement.

- Fluidyne limits duration to no later than 9/1/2007.

Conditions of warranty, sewage influent substantially as characterized for the purpose of the secondary treatment facility.

- Purestream requires the actual sewage influent characteristics to be "the same as the sewage influent design criteria as stated in the Design-Build Agreement and used in the design of the BESST plant."
- NOTE: I DO NOT BELIEVE THAT THE DESIGN-BUILD AGREEMENT STATES THE CHARACTERISTICS OF THE SEWAGE. TMD
- NOTE: THE PURESTREAM WARRANTY WOULD BE VOID IF THE ACTUAL SEWAGE VARIES IN ANY WAY FROM THE SEWAGE CHARACTERISTICS USED AS THE DESIGN BASIS FOR THE PLANT. TMD

Disclaimer of responsibility for certain consequential damages suffered by the district.

- Randazza form does not include the disclaimer

Security for warranty obligations.

- Fluidyne provides security for first year, only.
- Purestream provides no security.
- Randazza offers to pay "pay Haskell for a Process Bond if Haskell is able to obtain such a Bond in the Wastewater Treatment Industry" with the cost of the bond added to Randazza's proposal.
- Randazza to deposit \$75,000 as security for its promises.
- NOTE: THE TERM "PROCESS BOND" IS NOT A TERM WITH WHICH I AM FAMILIAR. THE FORM SOUGHT A PERFORMANCE BOND OR OTHER SECURITY FOR THE PROMISES MADE. TMD.
- NOTE: RANDAZZA'S PROMISES DO NOT INCLUDE ANY WARRANTY ON THE PLANT EQUIPMENT OR MATERIALS. TMD

Compliance with all applicable laws and regulatory requirements, including FDEP redundancy requirements.

- Purestream and Randazza have deleted this requirement.
- NOTE: THE DELETION IS SOMEWHAT SURPRISING, SINCE THE PROVISION REQUIRING COMPLIANCE WITH REDUNDANCY REQUIREMENTS WAS INSERTED UPON THE REQUEST OF RANDAZZA'S REPRESENTATIVE. TMD

Other

- **Fluidyne form required it to provide advice, counsel, and technical support by telephone at no charge for not less than five years after expiration of the warranty. Fluidyne deleted this requirement but made the same promise in a cover letter.**
- **Randazza makes additional promises, as follows:**
 - **Provide construction assistance**
 - **Provide startup assistance and training**
 - **Provide on-the-job assistance and training for five years after startup**

FLUIDYNE WARRANTY COMPARISON

Variances from District proposed form shown in red

WHEREAS, effective June 25, 2003, The Haskell Company ("Haskell") and the Key Largo Wastewater Treatment District ("District") entered into a written Design-Build Agreement for construction of certain wastewater treatment facilities ("Project") located at Key Largo, Florida, and

WHEREAS, the District entered into that agreement in reliance upon, among other things, the representation by Haskell that it was offering an additional 12 months of warranty on the Fluidyne Corporation ("Fluidyne") SBR secondary treatment process equipment at no additional cost to the District, and

WHEREAS, the parties intend by this writing to memorialize that additional warranty on the part of Fluidyne,

NOW, THEREFORE, in consideration of the premises and in further consideration of the promises below, Fluidyne hereby warrants to the District as follows:

1. Fluidyne warrants that all materials and equipment provided by Fluidyne ("Fluidyne materials and equipment") to Haskell and the District in connection with the Design-Build Agreement will be new unless otherwise specified, of good quality, in conformance with the Design-Build Agreement, and free from defective workmanship and materials.
2. Fluidyne warrants that it will, at its option, commence and diligently prosecute activities to repair or replace, within a reasonable time period, but not to exceed ten calendar days after written notice from the District, and at Fluidyne's expense, any and all Fluidyne materials or equipment that fail due to faulty materials or manufacture.
3. Fluidyne warrants further that if Fluidyne equipment fails to perform in accordance with the requirements of the performance criteria defined in Exhibit D of the Design-Build Agreement as a result of defective Fluidyne materials or equipment or because of the design of the Fluidyne SBR secondary treatment process equipment, Fluidyne will, within a reasonable time period, but not to exceed ten calendar days after written notice from the District, and at Fluidyne's expense, commence and diligently prosecute all actions necessary, including redesign and reconstruction of the secondary treatment process equipment, and modification of operating procedures, to cause the Fluidyne equipment to perform in accordance with the requirements of the performance criteria defined in Exhibit D of the Design-Build Agreement, a copy of which is attached hereto and incorporated herein by this reference.
4. If Fluidyne fails to respond in accordance with Item 2 or Item 3 above after ten calendar days prior written notice from the District and If the District is reasonably required to undertake repair or replacement of the warranted materials or equipment due to exigent conditions, or to prevent harm to the Project or the public, Fluidyne will reimburse the District for the reasonable costs of such efforts within 30 days of the District providing notice to Fluidyne.

5. This warranty shall extend from and after the "Acceptance Date" as that term is defined in the Design-Build Agreement for a period of two years, but will not extend beyond September 1, 2007.
6. For purposes of this warranty, "failure" of the materials or equipment means that, due to a defect in the Fluidyne materials or equipment or due to a defect in their design or specified operating procedures, the Fluidyne equipment is, or becomes, incapable of meeting the Performance Standards set forth in Exhibit D to the Design-Build Agreement, which is incorporated herein by this reference.
7. The following are express conditions of this warranty:
 - a. That the sewage influent is substantially as characterized for the purpose of design of the SBR facility under the Design-Build Agreement and free of significant concentrations of material that can inhibit or adversely impact biological treatment processes; and
 - b. That the District has substantially complied with all of the operating instructions and maintenance requirements required for normal and proper operation and instructions communicated to the District by Haskell or Fluidyne under the Design-Build Agreement.
8. If the materials or equipment fail as a result of noncompliance with any of the express conditions of this warranty, as set out in the preceding paragraph, Fluidyne will, if the District so requests, promptly cause the failed materials or equipment to be repaired or replaced, but Fluidyne shall be entitled to compensation for the reasonable cost of repair or replacement.
9. Except for damage to the equipment caused by a condition described in Paragraphs 1 through 4, above, Fluidyne expressly disclaims responsibility for any damages caused by failure of the Fluidyne secondary treatment process equipment, including lost income to the District.
10. If the District or Fluidyne is required to retain an attorney to enforce any terms, conditions, or covenants of this warranty, or to remedy any breach, the prevailing party shall be entitled to recover the verifiable costs and fees of any enforcement proceedings, including, but not limited to, reasonable attorneys' fees (including charges for paralegals and others working under the direction or supervision of the party's attorney.)
11. The failure of the District or Fluidyne to enforce, at any time, any of the provisions of this warranty shall not be construed to be a waiver of any such provisions or of the right of either party thereafter to enforce them. No waiver shall be valid unless in writing and signed by the party against whom enforcement of a waiver is sought.
12. It is the intention of the parties that any and all actions or proceedings at law or in equity related to this warranty or to the Project or to any rights or any relationship between the parties arising therefrom shall be solely and exclusively initiated and maintained in State or Federal courts located in Monroe County, Florida. All other dispute resolution activities shall be held in Monroe County Florida. Dispute resolution under this warranty shall be conducted in accordance with Article 14 of the

Design Build Agreement and in accordance with the following procedures: negotiations, mediation, and judicial resolution.

13. ~~In addition to the foregoing warranty obligations, Fluidyne represents and warrants that it will provide advice, counsel, and technical support by telephone for a period of not less than five years after the expiration of this warranty at no expense to the District.~~ [NOTE: FLUIDYNE COVER LETTER PROMISES TO PROVIDE TELEPHONE SUPPORT TO END USERS "LONG AFTER THE EXPIRATION OF THE WARRANTY PERIOD" AND "ADVICE, COUNSEL, AND TECHNICAL SUPPORT BY TELEPHONE AT NO CHARGE TO THE DISTRICT." FLUIDYNE COVER LETTER ALSO OFFERS TO PROVIDE A SERVICE CONTRACT AT EXTRA COST. TMD.]
14. In addition to the foregoing warranty obligations, Fluidyne represents and warrants that the Fluidyne materials and equipment shall meet all of the applicable requirements of all federal, state, and local agencies having jurisdiction over the Project, including without limitation, the Florida Department of Environmental Protection redundancy requirements for 183,000 gallons per day.
15. Fluidyne will provide, through Haskell, bonding to secure performance of its obligations under this warranty and payment for labor and materials to be supplied under this warranty on the project including the initial 12-month warranty but not any extended warranty.

PES WARRANTY COMPARISON

Variances from District proposed form shown in red

WHEREAS, effective June 25, 2003, The Haskell Company ("Haskell") and the Key Largo Wastewater Treatment District ("District") entered into a written Design-Build Agreement for construction of certain wastewater treatment facilities ("Project") located at Key Largo, Florida, and

WHEREAS, PURESTREAM ES, L.L.C. ("PES") is a potential supplier of secondary treatment equipment an advanced biological treatment process, referred to herein as the USBF BESST plant, and

WHEREAS Randazza Enterprises, Inc ("Randazza") is an the sole authorized State of Florida manufacturers Representative representative of PES, and

WHEREAS, PES and Randazza, for the purpose of inducing the District to select the USBF plant BESST process for the Project, desires to make additional transferable warranty and service commitments for the benefit of the District to Randazza, and

WHEREAS, the parties intend by this writing to memorialize the additional transferable warranty and service commitments,

NOW, THEREFORE, in consideration of the premises and in further consideration of the promises below, PES and Randazza agrees as follows:

1. PES and Randazza warrants that all materials and equipment provided by PES as part of the USBF BESST plant to Randazza, Haskell, and the District in connection with the Design-Build Agreement will be new unless otherwise specified, of good quality, in conformance with the Design-Build Agreement, and free from defective workmanship and materials.
2. PES and Randazza warrants that they will repair or replace, without delay and at their expense, any and all USBF BESST plant components that fail due to faulty materials or manufacture.
3. PES and Randazza warrants further that if the Project fails to perform in accordance with the requirements of the Design-Build Agreement as a result of defective PES materials or equipment, or because of the design of the USBF BESST plant, PES and Randazza will, without delay, and at their expense, undertake all actions necessary, including redesign and reconstruction of the USBF BESST plant, including additional process equipment, if necessary, and modification of operating procedures, to cause the Project project to perform in accordance with the requirements of the Design-Build Agreement as outlined in Exhibit D of the Design-Build Agreement, a copy of which is attached hereto and incorporated herein by this reference.
4. If the District is reasonably required to undertake repair or replacement of the warranted materials or equipment due to exigent conditions, or to prevent harm to the Project or the public, PES and Randazza will reimburse the District for the reasonable costs of such efforts within thirty (30) days of the District providing notice to PES or Randazza.

5. This warranty shall extend from and after the "Acceptance Date" as that term is defined in the Design-Build Agreement for a period of two (2) years.
6. For purposes of this warranty, "failure" of the materials or equipment means that, due to a defect in the PES materials or equipment or due to a defect in their design or specified operating procedures, the Project is, or becomes, incapable of meeting the Performance Standards set forth in Exhibit D to the Design-Build Agreement, which is incorporated herein by this reference.
7. The following are express conditions of this warranty:
 - a. That the actual sewage influent characteristics are the same as the sewage influent design criteria as stated in ~~is substantially as characterized for the purpose of design of the USBF plant under the Design-Build Agreement and used in the design of the BESST plant;~~ and
 - b. That the District has substantially complied with all of the operating instructions and maintenance requirements communicated to the District by PES or Randazza or Haskell under the Design-Build Agreement.
8. If the materials or equipment fail as a result of noncompliance with any of the express conditions of this warranty, as set out in the preceding paragraph, PES and Randazza will, if the District so requests, promptly cause the failed materials or equipment to be repaired or replaced, but shall be entitled to compensation for the reasonable cost of repair or replacement.
9. Except for damage to the Project caused by a condition described in Paragraphs 1 through 4, above, PES and Randazza expressly disclaims responsibility for any damages caused by failure of the USBF BESST plant, including lost income to the District.
- ~~10. Randazza will provide Haskell with all the assistance needed during the construction phase of the USBF plant at no cost to Haskell.~~
- ~~11. Randazza will assume the full responsibility, at no cost to Haskell or the District, for the startup and training of District operators once the USBF plants #1, #2 and #3 have been completely installed and electrical power has been provided to the equipment.~~
- ~~12. Randazza will continue to provide on the job supervision and technical training/assistance to the District operators at no cost to the District for a period of five years after the startup of USBF plants #1, #2 and #3 during which period, the USBF Plants will have been demonstrated to perform in accordance with the requirements of the Design Build Agreement. It is understood that plants #1, #2 and #3 will be tested to meet the Design Build Agreement by simply alternating the influent flows to either of the plants at any time after startup of all three plants in order to demonstrate their performance.~~
13. If the District or PES or Randazza is required to retain an attorney to enforce any terms, conditions, or covenants of this warranty, or to remedy any breach, the prevailing party shall be entitled to recover the verifiable costs and fees of any enforcement proceedings, including, but not limited to, reasonable attorneys' fees

(including charges for paralegals and others working under the direction or supervision of the party's attorney.)

14. The failure of the District or PES or Randazza to enforce, at any time, any of the provisions of this warranty shall not be construed to be a waiver of any such provisions or of the right of either party thereafter to enforce them. No waiver shall be valid unless in writing and signed by the party against whom enforcement of a waiver is sought all parties involved with this Agreement and the Design-Build Agreement.
15. It is the intention of the parties that any and all actions or proceedings at law or in equity related to this warranty or to the Project or to any rights or any relationship between the parties arising therefrom shall be solely and exclusively initiated and maintained in State or Federal courts located in Monroe County, Florida. All other dispute resolution activities shall be held in Monroe County Florida.
- ~~16. In addition to the foregoing warranty obligations, PES and Randazza represent and warrant that the PES materials and equipment shall meet all of the applicable requirements of all federal, state, and local agencies having jurisdiction over the Project, including without limitation, the Florida Department of Environmental Protection redundancy requirements for 183,000 gallons per day.~~
- ~~17. PES and Randazza will provide to Haskell bonding or other reasonable security to secure performance of their obligations under this warranty and payment for labor and materials to be supplied under this warranty.~~
- ~~18. In addition to the foregoing, Randazza agrees that Haskell shall deduct from the first amounts due Randazza for the PES materials and equipment the sum of \$75,000, which shall be transmitted to the District and deposited in an interest-bearing account to secure performance by Randazza of all of the Randazza and Purestream obligations hereunder. If Randazza and Purestream satisfactorily perform all of their obligations under this warranty agreement, the District shall transmit the principal and all accrued interest to Randazza upon the passing of Two years from and after the Acceptance Date of the Purestream materials and equipment under the Haskell contract. If at any time the District reasonably believes that Randazza and/or Purestream are in default under this warranty agreement, then the District shall so notify Randazza of that fact and shall thereafter be entitled to withdraw immediately all or any part of the principal and accrued interest for the purpose of remedying such default. The District may place the principal in a demand deposit account at any federally insured bank, and the District shall have no obligation to Randazza to manage the deposit for the purpose of increasing or maximizing the return on the deposit.~~

RANDAZZA WARRANTY COMPARISON

Variances from District proposed form shown in red

WHEREAS, effective June 25, 2003, The Haskell Company ("Haskell") and the Key Largo Wastewater Treatment District ("District") entered into a written Design-Build Agreement for construction of certain wastewater treatment facilities ("Project") located at Key Largo, Florida, and

WHEREAS, PURESTREAM ES, L.L.C. ("PES") is a potential supplier of secondary treatment equipment an advanced biological treatment process, referred to herein as the USBF BESST plant, and

WHEREAS Randazza Enterprises, Inc ("Randazza") is an the sole authorized State of Florida Manufacturer's Representative representative of PES, and

WHEREAS, PES and Randazza, for the purpose of inducing the District to select the USBF BESST plant for the Project, desire to make additional warranty and service commitments for the benefit of the District, and

WHEREAS, the parties intend by this writing to memorialize the additional warranty and service commitments,

NOW, THEREFORE, in consideration of the premises and in further consideration of the promises below, PES and Randazza agree as follows:

- ~~1. PES and Randazza warrant that all materials and equipment provided by PES as part of the USBF plant to Haskell and the District in connection with the Design-Build Agreement will be new unless otherwise specified, of good quality, in conformance with the Design-Build Agreement, and free from defective workmanship and materials. Randazza will provide Haskell with all the assistance needed during the construction phase of the BESST (USBF) plant at no cost to Haskell.~~
- ~~2. PES and Randazza warrant that they will repair or replace, without delay and at their expense, any and all USBF plant components that fail due to faulty materials or manufacture.~~
- ~~3. PES and Randazza warrant further that if the Project fails to perform in accordance with the requirements of the Design-Build Agreement as a result of defective PES materials or equipment or because of the design of the USBF plant, PES and Randazza will, without delay and at their expense, undertake all actions necessary, including redesign and reconstruction of the USBF plant, and modification of operating procedures, to cause the Project to perform in accordance with the requirements of the Design-Build Agreement as outlined in Exhibit D of the Design-Build Agreement, a copy of which is attached hereto and incorporated herein by this reference.~~
- ~~4. If the District is reasonably required to undertake repair or replacement of the warranted materials or equipment due to exigent conditions, or to prevent harm to the Project or the public, PES and Randazza will reimburse the District for the reasonable costs of such efforts within 30 days of the District providing notice to PES or Randazza.~~

- ~~5. This warranty shall extend from and after the "Acceptance Date" as that term is defined in the Design-Build Agreement for a period of two years.~~
- ~~6. For purposes of this warranty, "failure" of the materials or equipment means that, due to a defect in the PES materials or equipment or due to a defect in their design or specified operating procedures, the Project is, or becomes, incapable of meeting the Performance Standards set forth in Exhibit D to the Design-Build Agreement, which is incorporated herein by this reference.~~
- ~~7. The following are express conditions of this warranty:
 - ~~a. That the actual sewage influent is substantially as characterized for the purpose of design of the USBF plant under the Design-Build Agreement; and~~
 - ~~b. That the District has substantially complied with all of the operating instructions and maintenance requirements communicated to the District by PES or Randazza or Haskell under the Design-Build Agreement.~~~~
- ~~8. If the materials or equipment fail as a result of noncompliance with any of the express conditions of this warranty, as set out in the preceding paragraph, PES and Randazza will, if the District so requests, promptly cause the failed materials or equipment to be repaired or replaced, but shall be entitled to compensation for the reasonable cost of repair or replacement.~~
- ~~9. Except for damage to the Project caused by a condition described in Paragraphs 1 through 4, above, PES and Randazza expressly disclaim responsibility for any damages caused by failure of the USBF plant, including lost income to the District.~~
- ~~10. Randazza will provide Haskell with all the assistance needed during the construction phase of the USBF plant at no cost to Haskell.~~
- ~~11. Randazza will assume the full responsibility, at no cost to Haskell or the District, for the startup and training of District operators once the BESST (USBF) plants #1, #2 and #3 have been completely installed and electrical power has been provided to the equipment.~~
- ~~12. Randazza will continue to provide on the job supervision and technical training/assistance to the District operators at no cost to the District for a period of five years after the startup of BESST (USBF) plants #1, #2 and #3 during which period, the BESST (USBF) Plants will have been demonstrated to perform in accordance with the requirements of the Design-Build Agreement. It is understood that plants #1, #2 and #3 will be tested to meet the Design-Build Agreement by simply alternating the Influent flows to either of the plants at any time after startup of all three plants in order to demonstrate their performance.~~
- ~~13. If the District or PES or Randazza is required to retain an attorney to enforce any terms, conditions, or covenants of this warranty, or to remedy any breach, the prevailing party shall be entitled to recover the verifiable costs and fees of any enforcement proceedings, including, but not limited to, reasonable attorneys' fees (including charges for paralegals and others working under the direction or supervision of the party's attorney.)~~

14. The failure of the District or PES or Randazza to enforce, at any time, any of the provisions of this warranty shall not be construed to be a waiver of any such provisions or of the right of either party thereafter to enforce them. No waiver shall be valid unless in writing and signed by the party against whom enforcement of a waiver is sought.
15. It is the intention of the parties that any and all actions or proceedings at law or in equity related to this warranty or to the Project or to any rights or any relationship between the parties arising therefrom shall be solely and exclusively initiated and maintained in State or Federal courts located in Monroe County, Florida. All other dispute resolution activities shall be held in Monroe County Florida.
- ~~16. In addition to the foregoing warranty obligations, PES and Randazza represent and warrant that the PES materials and equipment shall meet all of the applicable requirements of all federal, state, and local agencies having jurisdiction over the Project, including without limitation, the Florida Department of Environmental Protection redundancy requirements for 183,000 gallons per day.~~
- ~~17. PES and Randazza will provide to Haskell bonding or other reasonable security to secure performance of their obligations under this warranty and payment for labor and materials to be supplied under this warranty. Randazza is willing to pay Haskell for a Process Bond if Haskell is able to obtain such a Bond in the Wastewater Treatment Industry. The added cost of said Process Bond will be added to the Randazza Contract/Proposal.~~
18. In addition to the foregoing, Randazza agrees that Haskell shall deduct from the first amounts due Randazza for the PES materials and equipment the sum of \$75,000, which shall be transmitted to the District and deposited in an interest-bearing account to secure performance by Randazza of all of the Randazza and Purestream obligations hereunder. If Randazza and Purestream satisfactorily perform all of their obligations under this warranty agreement, the District shall transmit the principal and all accrued interest to Randazza upon the passing of Two years from and after the Acceptance Date of the Purestream materials and equipment under the Haskell contract. If at any time the District reasonably believes that Randazza and/or Purestream are in default under this warranty agreement, then the District shall so notify Randazza of that fact and shall thereafter be entitled to withdraw immediately all or any part of the principal and accrued interest for the purpose of remedying such default. The District may place the principal in a demand deposit account at any federally insured bank, and the District shall have no obligation to Randazza to manage the deposit for the purpose of increasing or maximizing the return on the deposit.

431 OHIO PIKE, SUITE 223 SOUTH
CINCINNATI, OHIO 45255
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Smith Environmental Engineering, Inc

January 13, 2004

TO: Commissioners of Key Largo Wastewater Treatment District (KLWTD)

- Mr. Gary Bauman
- Mr. Cris Beatty
- Mr. Charles Brooks
- Mr. Andy Tobin
- Mr. Jerry Wilkinson

Gentlemen:

This letter has been prepared at the request of Mr. Nos Espat, President of Randazza Enterprises, Inc. in response to questions raised by the Engineering Firm of Brown and Caldwell regarding the design of BESST Process for the subject project.

My company Smith Environmental Engineering, Inc. (SEEI) has been a process consultant for Purestream ES LLC and their predecessor companies since 1989. We have provided process design services for the Purestream Sequencing Batch Reactor Process (SBR), the USBF process and most recently the BESST process. I am coauthor of the BESST process patent, US Patent 6,620,322,B1, September 16, 2003.

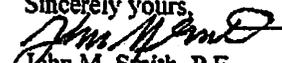
Regarding the above project, I have reviewed the Purestream process design in detail and it is my opinion that the current Purestream design will meet the project design requirements of 3 mg/l of total nitrogen.

I have discussed the technical aspects of the design in some detail with Mr. Ted Hortenstine, P.E., Orlando Office Leader. I have attempted to describe to B&C that the BESST process is unique in that the process combines the Internal Recycle with the RAS recycle and therefore does not fit the MLE and similar biological single sludge Nitrification Denitrification models.

I have provided B&C with all requested project process design documentation and further requested that Purestream ES, LLC provide B&C with operating data that documents the BESST process capability of meeting all project design requirements. I am also aware that Purestream has provided full process warranty to KLWTD.

I have also attached for your information and file SEEI qualifications and experience.

Sincerely yours,


John M. Smith, P.E.
President

Attachments: - JMS Q & E

HIGHLIGHTS OF QUALIFICATIONS AND EXPERIENCE OF SMITH ENVIRONMENTAL ENGINEERING, INC. IN THE POLLUTION CONTROL FIELD (2001)

431 Ohio Pike, Suite 223 South, CINCINNATI, OHIO 45255 Phone: (513) 688-1650 Fax: (513) 688-1657

Twenty-One (21) years in business. Offices and testing laboratories in Cincinnati, Ohio.

- \$ Completed over 400 municipal and industrial projects ranging in size from \$5,000 feasibility studies to \$600,000 per year full-scale design contracts. Includes the design of 2 and 22 mgd advanced treatment plants in Malaysia.
- \$ Completed over 50 Turn-Key industrial and/or pretreatment facilities. Clients include food processing, metal finishing, chemical manufacturing, dairy products, groundwater treatment and superfund site remediation. Provided process performance and equipment warranties on our systems.
- \$ Selected by U.S. Environmental Protection Agency (USEPA) as expert consultants to prepare USEPA design manuals, handbooks and field guides on:
 - S Odor and Corrosion design manual completed (1985)
 - S Phosphorous Removal (with emphasis on biological nutrient removal technology) completed 1987)
 - S Sewer System Infrastructure Analysis and Rehabilitation (1992)
 - S Sulfide Report to Congress (1992)
 - S Corrosion Handbook (1991)
 - S Sequencing Batch Reactor-s for Nutrient Removal (1991)
 - S Septage handling and treatment field guides (1992)
- \$ Completed over 90 odor and corrosion projects including 12 special odor and corrosion studies for the USEPA.
- \$ All senior staff members and associate consultants have degrees in civil, sanitary or chemical engineering.
- \$ Senior staff members have strong USEPA applied engineering and R/D backgrounds. Senior engineers have over 110 years combined experience.
- \$ Ninety-five percent of all jobs have been completed within budget and on schedule.
- \$ Senior project managers are intimately familiar with all State and Federal EPA programs.

Because of the strong research, process engineering and detailed design experience of our senior staff, we offer exceptional qualifications in the following areas:

- \$ Odor and VOC corrosion Control
- \$ Odor Sampling and Odor Control Chemical Testing
- \$ Industrial/ Municipal Wastewater and Solids Treatment/ Disposal Treatment with Primary Focus on Combination of Conventional and Innovative Physical/Chemical and Biological Processes.
- \$ Nutrient Removal Technologies
- \$ Biological Secondary and Tertiary Treatment Alternatives
- \$ Physical and Chemical Treatment
- \$ Sanitary Process Design, Cost Analysis and Value Engineering
- \$ Facility Planning and Analysis of Municipal Treatment Alternatives
- \$ Industrial Treatment Systems to meet USEPA Industrial Pretreatment Standards
- \$ Storm Water Permitting and treatment Alternatives
- \$ Alternative treatment Systems, Bench-Scale and Pilot Plant Testing
- \$ Solid Waste Management Odor and VOC Control
- \$ Expert Testimony on Odor Control, Conventional and AWT Plants, Construction Claims, Health and Safety
- \$ SBR, USBF and Hybrid Anaerobic Technology

NOTICE

Smith Environmental Engineering, Inc. (SEEL) was formerly operated from October 1982 to July 1, 2003 as J. M. Smith & Associates, PSC Consulting Engineers (JMS). All intellectual property of JMS is now owned by SEEL.

SECTION 5

RESUMES

**JOHN M. SMITH, P.E.
PRESIDENT
J.M. SMITH & ASSOCIATES, PSC, CONSULTING ENGINEERS**

EDUCATION:
B.S. Civil Engineering, University of Kentucky, 1964
M.S. Sanitary Engineering, University of Cincinnati, 1971

PROFESSIONAL REGISTRATION:
P.E. Civil Engineering - Kentucky (PE8205), Ohio (PE47482), Indiana (PE021215),
Louisiana (PE21840), Florida (PE47329)
P.E. Sanitary Engineering - Kentucky, Ohio, Indiana, Louisiana, Florida

ORGANIZATIONS:
Water Environmental Federation
American Society of Civil Engineers
Ohio Association of Consulting Engineers
Cincinnati Association of Consulting Engineers
Clermont County Chamber of Commerce
Life Member of Who's Who

EXPERIENCE:	
10/82 to Present	President and CEO of , J.M. Smith & Associates, PSC, Consulting Engineers
7/82 to 10/82	Chief, Systems Engineering and Evaluation Branch, USEPA Wastewater Research Division, Office of Research and Development, Cincinnati, Ohio
9/73 to 10/82	Chief, Urban Systems Management Section, Systems Engineering and Evaluation Branch, USEPA Wastewater Research Division, Office of Research and Development, Cincinnati, Ohio
1/72 to 9/73	Acting Chief, Municipal Treatment Research Program, USEPA Office of Research and Development, Cincinnati, Ohio
6/68 to 1/72	Sanitary Engineer, USEPA National Environmental Research Center, Cincinnati, Ohio
12/67 to 6/68	Civil Engineer, U.S. Army Corps of Engineers, Cincinnati, Ohio
5/64 to 9/67	Project Engineer, Barbeau Construction Management, Consulting Engineers, Batavia, Ohio

AWARDS:

EPA Bronze Medal for Commendable Service, 1973
EPA Quality Increase Award, 1969, 1976, 1977
Outstanding Performance Award EPA, 1981, 1982
NSPE Engineer of the Year in EPA, 1981

John M. Smith has over 31 years of experience in civil and sanitary engineering, including a broad background in process design of conventional and innovative wastewater treatment technologies. This experience is derived from an initial four years of sewer and wastewater treatment plant design and construction experience with the engineering firm of Barbeau Construction Management in Batavia, Ohio, followed by over 16 years of research and engineering experience with the USEPA Office of Research and Development, and over 13 years as president and CEO of J.M. Smith and Associates.

During his tenure at EPA, Mr. Smith directed the Agency's Pilot Plant Research Program that included an engineering and technical staff of approximately 60 persons who operated multi-line pilot plants in Washington, D.C., Pomona, California and Lebanon, Ohio. Basic and applied research was conducted under the direction of Mr. Smith on over 50 advanced waste treatment processes over a period of six years.

Mr. Smith later directed the three million dollar per year engineering and evaluation activities of EPA's Wastewater Research Program, including the development and management of a plant operations and design program, a small community research program, an innovative and alternative technology research program, and an engineering and technical assistance program.

Highlights of Mr. Smith's EPA experience at USEPA's Office of Research and Development include the analysis of research data from over 140 wastewater treatment processes, the development of six new treatment processes and the development and dissemination of rational design information for the full scale implementation of these technologies.

Mr. Smith is recognized internationally as a process design expert in Wastewater and Sludge Treatment Technology, and in Sewer

System Evaluation and Odor and Corrosion Control.

Mr. Smith was a lecturer in over 120 USEPA sponsored United States and International Design Seminars and was the co-author of seven USEPA Design Manuals covering the technical areas of nitrogen control, upgrading wastewater treatment plants, phosphorus removal, sulfide control, infiltration and inflow reduction, carbon adsorption, and small community wastewater treatment systems.

Mr. Smith holds patents on "Fixed Film Denitrification," "Expanded Bed Biological Treatment," and "A Rotating Disk Mechanical Evaporation Device."

Mr. Smith was selected to direct the USEPA National Innovative and Alternative (I/A) Technology Program in Cincinnati. This group provided extensive technical support and direction for the Agency's I/A program for over five years. Activities included development of agency regulations, policy guidance, and project selection criteria; preparation of an I/A Technology Assessment Manual; formation and management of a national I/A clearinghouse; and management of a I/A Technical Support Group that had responsibility for review of I/A facility plans for all ten EPA Regional Offices.

Mr. Smith reviewed over 300 separate facility plans and made recommendations to USEPA Regional Administrators regarding their acceptance of I/A technology under the applicable criteria previously established.

Mr. Smith was selected as USEPA Engineer of the Year out of 10,000 engineers for these efforts.

Mr. Smith has testified before the United States Congress "Investigation and Oversight Committee" on the impact of Innovative Technology on improving water quality and reducing the national cost of municipal wastewater treatment in the United States.

Mr. Smith also acted as senior advisor to other segments of USEPA, national organizations and congressional committees. He has presented expert testimony on design criteria and deficiencies that settled USEPA's litigation issues for three major AWT facilities.

Because of Mr. Smith's strong philosophy on the need to use research-based rational design criteria in municipal treatment works, he initiated and managed EPA's first program on "Identification and Correction of Design Deficiencies" and initiated the EPA/WPCF - sponsored Design Information Series Reports.

Mr. Smith's areas of technical expertise include process and detailed design of municipal and industrial waste treatment technologies including mechanical plant biological processes, land-based biological processes, physical-chemical treatment technologies, anaerobic suspended and fixed-film biological systems, and hazardous waste treatment and disposal technologies.

As founder and president of J.M. Smith and Associates, PSC, Consulting Engineers (JMS), Mr. Smith has directed and actively participated in the conduct of over 300 projects in the municipal and industrial treatment fields ranging from design and construction management of advanced secondary treatment plants to design of hazardous waste control facilities.

Under Mr. Smith's personal direction, JMS was retained by USEPA to prepare Design Manuals on Odor and Corrosion Control, Phosphorus Removal, Sewer System Infrastructure Analysis and Rehabilitation, a Sulfide Report to Congress, Corrosion Handbook, Sequencing Batch Reactor for Nutrient Removal and Septage Handling and Treatment Guide.

Under the direction of Mr. Smith, JMS has pioneered the development and designed the first United States full-scale application of the following technologies:

- a) deep well chemical oxidation for treatment of sludge and high strength organic wastes
- b) multiple U-Tube aeration for force main sulfide control
- c) largest vapor phase odor control system in the United States
- d) the use of high resolution sonar for inspection of sewer lines and force mains

PUBLICATIONS

Author

Smith, J.M., Hartmann, G.L., "Texas Firm Introduces New Wastewater Treatment Technology," published in Hazardous Materials Technical Center Update, pg. 4, Vol. 6, No. 2, March, 1987.

Smith, J.M., "Deep Shaft Wet Air Oxidation," published in Standard Handbook for Hazardous Waste Treatment and Disposal, McGraw-Hill, 1986.

Smith, J.M., "Supercritical Deep Well Wet Oxidation of Liquid Organic Wastes," Proceedings of the International Symposium Subsurface Injection of Liquid Wastes, presented at Royal Sonesta Hotel, New Orleans, Louisiana, March 3-5, 1986; published by National Water Well Association.

Smith, J.M., "Supercritical Deep Well Oxidation: A Potential Low Cost Final Solution," presented at APCA conference in New Orleans, Louisiana, December 8-12, 1986.

Smith, J.M., "Energy Recovery and Conservation for Low Cost Systems," Presented at Workshop on Low-Cost Wastewater Treatment, Clemson University, April 19-21, 1983.

Smith, J.M., Lubin, G.R., "The Costs, Problems, and Benefits of Innovative and Alternative Technology," Presented at National Sanitation Foundation October 20, 1981, Ann Arbor, Michigan.

Smith, J.M., Evans, F.L. III, Bender, J.N., "Improved Operation and Maintenance Opportunities at Municipal Treatment Facilities," 7th Japan Conference on Sewage Treatment Technology, Tokyo, Japan, May 20, 1980.

Smith, J.M., McCarthy, J.J., Longest, H.L. II, "Impact of Innovative and Alternative Technology in the United States in the 1980's" 7th Japan Conference on Sewage Treatment Technology, Tokyo, Japan, May 20, 1980.

Smith, J.M., Evans, F.L. III, "Innovative Municipal Energy Alternatives," presented at the 50th annual meeting of the Rocky Mountain Section of AAWA and 44th annual meeting of the Rocky Mountain Water Pollution Control Association November 5-7, 1980.

Oppelt, E.T., Smith, J.M., "U.S. EPA Research and Current Thinking on Fluidized Bed Biological Treatment," December, 1979.

Oppelt, E.T., Smith, J.M., Feige, W.A., "Expanded Bed Biological Treatment," EPA 600/2-78-177, July, 1978.

Lykins, B.W., Jr., Smith, J.M., "Interim Report on the Impact of Public Law 92-500 on Municipal Pollution Control Technology," EPA 600/2-78-018, January, 1976.

Feige, W.A., Smith, J.M., "Wastewater Applications with a Tubular Reverse Osmosis Unit," published in WATER 1973 AIChE Symposium Series, Pgs. 523-533, #136, Vol 70, 1974.

Lewis, R.F., Smith, J.M., "Upgrading Existing Lagoons," USEPA Technology Transfer Design Seminar Program, October, 1973.

Smith, J.M., Masse, A.N., Feige, W.A. "Applications of New Concepts of Physical-Chemical Wastewater Treatment," presented at Vanderbilt University, Nashville, Tennessee, September 18-22, 1972.

Smith, J.M., "Nitrogen Removal from Municipal Wastewater by Columnar Denitrification," a thesis submitted to the Department of Civil Engineering, University of Cincinnati, Ohio, 1971.

Smith, J.M., et al, "Renovation of Municipal Wastewater by Reverse Osmosis." Federal Water Quality Administration Report ORD-17040, May, 1970.

Author/CoAuthor

USEPA Process Design Manual for Upgrading Existing Wastewater Treatment Plants - first and second editions.

USEPA Process Design Manual for Suspended Solids Removal -first and second editions.

USEPA Process Design Manual for Carbon Adsorption - first and second editions.

USEPA Process Design Manual for Sulfide Control in Sewerage Systems - first edition.

USEPA Areawide assessment Procedures Manual, Volumes I, II, and III.

USEPA Process Design Manual for Phosphorus Removal, September, 1987.

USEPA Design Manual for Infrastructure Analysis and Rehabilitation

USEPA Sulfide Report to Congress

USEPA Corrosion Handbook

USEPA Manual for Sequencing Batch Reactor's for Nutrient Removal

USEPA Septage Handling Field Guide

Author Unpublished Reports

John M. Smith, Robert P.G. Bowker - Investigation of Ground Water Contamination at U.S. Refugee Camp

John M. Smith - Wastewater Treatment Plant Non-Compliance Investigation, and Energy Audit

John M. Smith - Design Review and New Design of 20 mgd AWT Plant

John M. Smith - Design Review and Process Design for a 7.5 mgd AWT Plant

John M. Smith - Capacity and Performance Evaluation of a 117 mgd Secondary Treatment Plant

John M. Smith - Feasibility Study and Analysis of Alternative Odor Control Methods for Wastewater Collection System

John M. Smith - Design Review and Re-Design of a 0.6 mgd AWT Plant

John M. Smith - Facility Plan and Design Review for a 22.5 mgd AWT Plant

John M. Smith, Robert P.G. Bowker - Design of New Generation Intra-Channel Clarifier

John M. Smith - Sewer Construction Inspection and Infiltration Analysis

John M. Smith - Project Engineer for Sewer System and Treatment Plant Inspection

John M. Smith - Design Review and Analysis of Municipal Treatment Systems

John M. Smith - Design Review and Engineering Evaluation of Non-Compliance of a 143 mgd AWT Plant

Subj: Re: Phone call
Date: 1/14/2004 10:40:59 AM Eastern Standard Time
From: DRaffina@BoyleEngineering.com
To: CBrooke442@aol.com

Charlie,

I will try to briefly describe the phone conversation we had yesterday per your request.

In my opinion both the Fluidyne SBR and the Purestream USBF have the potential to achieve "AWT" standards assuming that effluent filtration is provided and chemical addition is also provided for supplemental phosphorus and nitrogen removal. We recommended that both chemical feed systems should be provided.

For either system for a facility of this size, the most difficult effluent concentration to achieve will be the total nitrogen concentration of 3 mg/L. I recommend a performance guarantee with an associated bond would be the best way to protect the KLWTD even if there is a small additional cost for the bond.

The processes each have their advantages and disadvantages, which I would be happy to discuss in greater detail.

Please let me know if you have any questions,

Dave

-----Unmodified Original Message-----
Dave got your email heres reply to verify my email address

Thanks for the interest and info you provided

Subj: USBF v. SBR
Date: 1/13/2004 4:16:18 PM Eastern Standard Time
From: osojito@ojito.com
To: cbrooks442@aol.com

Greetings Comm. Brooks:

Mr. Robert Betancourt, PE, of GARTEK related to us your interest in learning our preference in treatment process for the KLP and KLTV projects. It is our opinion that the USBF would be the better choice based on a combination of economics and the particulars of your projects. Both process can meet the effluent requirements, but again, based on front end as well as operational considerations our recommendation is the USBF process.

Please call me if you care to discuss this further,

Sincerely,

OJITO & Associates, Inc.

Oswaldo A. Ojito, PE

GARTEK

January 12th, 2004

Commissioner Charlie S. Brooks
35 Pigeon Drive
Key Largo, FL. 33037

Via E-Mail
cbrooks442@aol.com

Re: USBF vs. SBR Waste Water Treatment Systems

Dear Mr. Brooks:

As per our previous conversations regarding the above referenced Waste Water Treatment processes, we have used both processes in the past and they both meet AWT effluent criteria standards of 5-5-3-1 BOD, TSS, TKN, P with filtration.

Gartek Engineering Corp. recommended from the beginning selection of the USBF process over the SBR process for KLP and KLTV projects due to the following reasons:

- 1) Wasting Sludge is done approximately 16 to 18 months.
- 2) Hauling Sludge is approximately 5 to 6 years.
- 3) Maintenance and Operational cost is less.

For current projects in our office of similar capacity and location (i.e. Islands remote from main lands) due to the obvious economical sludge removal advantages, we are only specifying at the present time the USBF process.

Sludge removal is very costly, if it must be removed on a monthly basis. This is a cost that is typically overlooked during the design and construction phase of the project but is a real cost that the Tax Payers will need to face during the operational phase of the project for the life of the system.

As a local Monroe County Taxpayer I would not like to be financially penalized for life, for the selection of the wrong Waste Water System for this application. I urge the Waste Water Board to consider the selection of the USBF process for these projects as well as any future Waste Water Treatment projects in the Florida Keys.

If you have any questions, please call me at your earliest convenience.

Sincerely,
Gartek Engineering Corp.

Robert L. Betancourt, P.E.
President

RLB:pcy