

COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION

RECEIVED
APR 26 2004
PUBLIC SERVICE
COMMISSION

IN THE MATTER OF :

THE JOINT APPLICATION OF ORCHARD)
GRASS UTILITIES INC. AND OLDHAM)
COUNTY SANITATION DISTRICT FOR)
APPROVAL OF THE TRANSFER OF)
WASTE WATER TREATMENT FACILITIES)
PURSUANT TO STOCK PURCHASE)
AGREEMENT BETWEEN THE PARTIES)

CASE NO.
2004 - 00029

ENCLOSURES:

22. REVENUES FOR ALL OLDHAM COUNTY SEWAGE PLANTS
ACQUIRED BY OCSD WITH NO CHANGE IN RATES.

23. 18 MAR 2004 COURIER JOURNAL ARTICLE CONCERNING
TRAILS END SEWAGE PLANT.

POST HEARING BRIEF OF ROBERT L. MADISON

THIS IS THE POST HEARING BRIEF OF OF ROBERT L. MADISON IN THE
ABOVE REFERENCED CASE.

SUMMARY OF RECOMMENDATIONS

II DO NOT FEEL THE OCSD HAS THE FINANCIAL, TECHNICAL AND
MANAGERIAL ABILITIES TO PROVIDE REASONABLE UTILITY SERVICE. (KRS
278.020 (4)) I DO NOT FEEL THE OCSD TRANSFER WILL BE IN ACCORDANCE
WITH LAW, FOR A PROPER PURPOSE AND IS CONSISTENT WITH THE PUBLIC
INTEREST. (KRS 278.020 (5)) MY PRIMARY RECOMMENDATION IS THAT THE
PSC NOT APPROVE THE TRANSFER. MY SECONDARY RECOMMENDATION
IS THAT IF THE PSC DOES MAKE A DETERMINATION TO APPROVE THE
TRANSFER THAT THE PSC APPROVAL BE CONDITIONED ON CERTAIN TERMS
AND CONDITIONS.

**THE TRANSFER WILL RESULT IN A 56.04 PERCENTAGE INCREASE
IN THE WILLOW CREEK CUSTOMER MONTHLY SEWAGE RATES
AND A 88.66 PERCENTAGE INCREASE IN THE ORCHARD GRASS
CUSTOMER SEWAGE RATES, FOR THE AVERAGE CUSTOMER.
THIS IS NOT REASONABLE SERVICE. (KRS 278.020 (4))**

A REASONABLE CONDITION AND TERM IMPOSED BY THE PSC, IF THE PSC
DETERMINES TO APPROVE THE TRANSFER, WOULD BE TO HAVE A FIXED

MONTHLY RATE FOR WILLOW CREEK RESIDENTIAL SEWAGE CUSTOMERS AND A FIXED MONTHLY RATE FOR ORCHARD GRASS RESIDENTIAL CUSTOMERS. IN PSC CASE 97-426, IN AN ORDER DATED 09 OCT 1998, THE PSC APPROVED A FIXED MONTHLY RATE FOR WILLOW CREEK RESIDENTIAL SEWAGE CUSTOMERS OF \$ 18.45. ASSUMING THE SAME DATE FOR ORCHARD GRASS, WITH THE CURRENT FIXED MONTHLY RATE OF \$ 15.59 AND CALCULATING AN ANNUAL 3 % INCREASE, THE CURRENT FIXED MONTHLY RATE FOR WILLOW CREEK WOULD BE \$ 21.38, FOR ORCHARD GRASS \$ 18.07. THE FOLLOWING CHART SHOWS THE CALCULATIONS :

YEAR	WILLOW CREEK	ORCHARD GRASS
1998	\$ 18.45	\$ 15.59
1999	\$ 19.00	\$ 16.05
2000	\$ 19.57	\$ 16.53
2001	\$ 20.16	\$ 17.03
2002	\$ 20.76	\$ 17.54
2003	\$ 21.38	\$ 18.07

IF OCSD DID NOT CHANGE THE REVENUE COMING IN FROM THE PLANTS THEY HAVE ALREADY ACQUIRED, THEIR AVERAGE REVENUE PER MONTH PER CUSTOMER WOULD BE \$ 22.74 (SEE MADISON ENCLOSURE 22). IF THE WILLOW CREEK AND ORCHARD GRASS CUSTOMERS ARE INCLUDED, WITH NO CHANGE IN REVENUE, THEIR AVERAGE REVENUE PER MONTH PER CUSTOMER WOULD BE \$ 21.43. (MADISON ENCLOSURE 22) NOTE THE NAME OF THE OCSD PLANT, THE NUMBER OF CUSTOMERS AND THE SEWAGE RATE WAS TAKEN FROM THE OCSD ANSWER TO MADISON DATA QUESTION # 7, DATED 08 MAR 2004.

OCSD HAS ALREADY SHOWN THAT THEY DO NOT HAVE UNIFORM RATES FOR SEWAGE CUSTOMERS (SEE OCSD ENCLOSURE TO MADISON DATA REQUEST # 26, DATED 08 MARCH 2004). THIS OCSD ENCLOSURE SHOWS 12 DIFFERENT SEWAGE RATES. OCSD HAS ALSO ADOPTED ANOTHER SEWAGE RATE FOR RESIDENTIAL CUSTOMERS THAT BRINGS THE TOTAL NUMBER OF DIFFERENT RATES TO 13. OCSD CAN NOT LEGITIMATELY ARGUE THAT OCSD MUST CHARGE UNIFORM RATES TO ALL RESIDENTIAL CUSTOMERS.

AT THE 05 APR 2004 HEARING, ITEM # 4 WAS INTRODUCED BY THE OCSD WITH THE TESTIMONY OF MR. BENNETT. THIS DOCUMENT SHOWED THE COST OF SEWAGE FOR 24 DIFFERENT SEWAGE PROVIDERS IN KENTUCKY. OCSD CHARGES WERE RANKED (FROM LOW TO HIGH) AT 18 OUT OF 24, \$ 3.80 (\$ 28.60 - \$ 24.83) ABOVE THE AVERAGE. THIS INDICATES A HIGH CHARGE TO RESIDENTIAL SEWAGE CUSTOMERS OF OCSD RELATIVE TO THE SELECT OCSD DATA.

IN THE ANSWER OF OCSD TO MADISON DATA QUESTION # 3. E., DATED 08 MAR 2004, THEY STATED THE REVENUE REQUIREMENT FOR ALL CURRENT OCSD RESIDENTIAL CUSTOMERS WITH THE ADDITION OF THE WILLOW CREEK AND ORCHARD GRASS RESIDENTIAL CUSTOMERS WAS \$ 1,617,000. IN THE OCSD SUPPLEMENTAL DATA RESPONSE NUMBER 2 TO PSC STAFF

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DATED 20 APR 2004, THEY STATE THE REVENUE REQUIREMENT IS NOW \$ 1,704,000, A DIFFERENCE OF \$ 87,000. IT APPEARS THAT THE AMOUNT OF REVENUE AND THE COST TO RESIDENTIAL CUSTOMERS IS NOT KNOWN AND MEASURABLE.

PRIMARY RECOMMENDATION : THE PSC NOT APPROVE THE TRANSFER.

SECONDARY RECOMMENDATION : IF THE PSC DOES APPROVE THE TRANSFER, THE TRANSFER BE CONDITIONED ON OCSD AGREEING TO CHARGE WILLOW CREEK RESIDENTIAL SEWAGE CUSTOMERS A FIXED MONTHLY RATE OF \$ 21.38 PER MONTH AND ORCHARD GRASS RESIDENTIAL SEWAGE CUSTOMERS A FIXED MONTHLY RATE OF \$ 18.07 PER MONTH. THE SAID RATES COULD NOT BE INCREASED BY MORE THAN 3 PERCENT PER YEAR. THE YEARLY DATE FOR INCREASE WOULD BE THE DATE OF PSC APPROVAL. ANY RESIDENTIAL WILLOW CREEK OR RESIDENTIAL ORCHARD GRASS SEWAGE CUSTOMER COULD ACCEPT THE PROPOSED VARIABLE RATES OF OCSD CHARGED IN THE REST OF THE COUNTY, AT THE OPTION OF THE RESIDENTIAL CUSTOMER.

**OCSD DOES NOT HAVE THE FINANCIAL, TECHNICAL AND
MANAGERIAL ABILITIES TO PROVIDE REASONABLE SERVICE.**

IN MADISON ENCLOSURE 5, OCSD BOARD MEMBER AND TREASURER TOM DAVIS STATES :

‘ RIGHT NOW IT’S (OCSD) LOSING \$ 25,000 TO \$ 30,000 PER MONTH ... “ PEOPLE COMPLAIN REPAIRS AREN’T BEING DONE, BUT WE DON’T HAVE THE MONEY TO DO THEM, “ ... SAID TOM DAVIS, WHO JOINED THE BOARD THIS FALL. ‘

IN MADISON ENCLOSURE 9, IT STATES :

‘ TRAIL’S END HAS BEEN OPERATING UNDER A SANCTION FROM THE KENTUCKY DIVISION OF WATER SINCE EARLY JANUARY. ... BOARD MEMBER TOM DAVIS SAID IN A WORSE CASE SCENARIO, THE SEWER DISTRICT COULD HAVE TO SPEND \$ 487,000 TO GET THE PLANT WORKING ... ‘

MADISON ENCLOSURE 23 STATES :

‘ THE OLDHAM COUNTY SEWER BOARD HAS APPROVED \$ 189,875 WORTH OF REPAIRS AND IMPROVEMENTS AT THE 41 - YEAR - OLD PLANT TO MEET STATE OPERATING STANDARDS ... TRAILS END HAS DRAWN REPEATED COMPLAINTS FROM NEIGHBORS WHO SAY THE BLOWERS ARE SO LOUD AND SO FOUL SOME DAYS THEY CAN NOT GO OUTSIDE ...

OCSD HAS REFUSED TO PROVIDE THE NAMES, TITLES AND ANNUAL SALARIES OF THE EMPLOYEES OF THE OCSD. OCSD IS PROPOSING TO PAY A SUBSTANTIALLY HIGHER PRICE FOR THE TWO PLANTS THAN THE VALUE OF THE LAND AND THE PROPERTY. OCSD WILL THEN PASS THOSE UNREASONABLE COSTS ON TO THE SEWAGE CUSTOMERS.

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OCSD FAILED TO PROVIDE ANY PRE FILED TESTIMONY IN THIS CASE. THE RESUME OF MR. BENNETT WAS PROVIDED IN THE APPLICATION. DURING THE 15 APR 2004 HEARING, THE RESUMES OF OCSD BOARD MEMBERS DAVIS (ITEM # 1) AND MALUEG (ITEM # 2) WERE PROVIDED. OCSD BOARD MEMBER EWEN'S RESUME WAS NOT PROVIDED. NONE OF THE OCSD BOARD MEMBERS WERE MADE AVAILABLE FOR QUESTIONING AT THE HEARING. PRESUMABLY OCSD IS MAKING THE CASE THAT THESE ABILITIES ARE CONTAINED WITH THE BOARD MEMBERS.

BASED ON THE RECORD, OCSD DOES HAVE SOME TECHNICAL ABILITY FROM THE ENGINEERS BENNETT AND ENGINEER BOARD MEMBER MALUEG. BOARD MEMBER DAVIS HAS AN ACCOUNTING DEGREE.

DURING THE 15 APR 2004 HEARING BENNETT SEEMED TO BE LACKING IN KNOWLEDGE CONCERNING ANSWERS TO QUESTIONS ABOUT FINANCIAL AND MANAGERIAL ABILITIES.

A REVIEW OF THE INTERLOCAL COOPERATION AGREEMENT (ICA) BETWEEN THE OCSD AND MSD (OCSD SUPPLEMENTAL RESPONSE TO PSC STAFF DATA REQUEST NUMBER 3 DATED 20 APR 2004) SHOWS A VERY HIGH DEGREE OF INVOLVEMENT OF MSD. IT APPEARS THAT MUCH OR ALL OF THE TECHNICAL ABILITIES WILL BE PROVIDED BY MSD. MSD WAS NOT RESPONSIBLE FOR DATA REQUESTS, DID NOT FILE PRE FILED TESTIMONY AND DID NOT HAVE WITNESSES AVAILABLE FOR QUESTIONING AT THE HEARING. THIS RAISES SERIOUS QUESTIONS AS TO THE TECHNICAL ABILITIES OF OCSD.

THE ICA WAS APPROVED BY THE KENTUCKY OFFICE OF THE ATTORNEY GENERAL ON 10 FEB 2000. AS OF THAT DATE, THE LOUISVILLE AND JEFFERSON COUNTY METRO GOVERNMENT HAD NOT MERGED.

OCSD HAS FAILED TO PROVE THAT THEY HAVE THE FINANCIAL, TECHNICAL AND MANAGERIAL ABILITIES TO PROVIDE REASONABLE SERVICE. OCSD HAS THE BURDEN TO MAKING AN AFFIRMATIVE SHOWING THAT THEY HAVE THESE ABILITIES.

PRIMARY RECOMMENDATION : THE PSC NOT APPROVE THE TRANSFER.

SECONDARY RECOMMENDATION : IF THE PSC DOES APPROVE THE TRANSFER, THE TRANSFER BE CONDITIONED ON OCSD AGREEING TO ONLY PLACE THE ACTUAL VALUES OF THE PURCHASED PLANTS AND REAL ESTATE IN THE REVENUE REQUIREMENT THAT WILL DETERMINE THE RATES CHARGED TO CUSTOMERS. THE PREMIUM PAID TO THE FORMER OWNERS OF OLDHAM COUNTY PLANTS WILL NOT BE PASSED ON TO CUSTOMERS.

**THE PROPOSED TRANSFER IS NOT CONSISTENT WITH THE
PUBLIC INTEREST AND NOT FOR A PROPER PURPOSE
(KRS 278.020 (5), KRS 278.218 (2))**

ONE OF THE EFFECTS OF THE OLDHAM COUNTY SEWER DISTRICT (OCSD) HAVING REGIONAL SEWAGE TREATMENT FACILITIES WILL BE TO ENABLE A

HIGH RATE OF INDUSTRIAL, COMMERCIAL AND RESIDENTIAL DEVELOPMENT. NOW, THE LACK OF SEWAGE FACILITIES IS A BOTTLE NECK IN PREVENTING DEVELOPMENT. WITH MORE DEVELOPMENT THERE WILL BE AN INCREASE IN THE POPULATION, ROAD DEVELOPMENT, POLLUTION, DESTRUCTION OF FARMLAND, WOODS AND WILDLIFE, INCREASES IN PROPERTY TAX REVENUE, THE NEED FOR MORE SCHOOLS, A BIGGER LOCAL GOVERNMENT BUREAUCRACY, HIGHER TAXATION RATES FOR RESIDENTS AND HIGHER TAX BURDENS. A COMPARISON OF MY 2002 PROPERTY TAX (\$ 722.25, MADISON ENCLOSURE 19 PAGE 1) WITH THE COMBINED 2003 TAX (\$ 812.25 MADISON ENCLOSURE 19 PAGE 2 & 3) SHOWS AN INCREASE OF 12.46 % AND A DOLLAR INCREASE OF \$ 90, WITH NO INCREASE IN THE ASSESSMENT.

THE REASON FOR THE INCREASE IN TAXES IS A HIGH RATE OF DEVELOPMENT IN OLDHAM COUNTY. THE GENERAL ASSEMBLY HAS AUTHORIZED INCREASES IN PROPERTY TAXES FOR AREAS OF RAPID DEVELOPMENT. PART OF THE TAX IS RECALLABLE BY PETITION. A PETITION WAS INITIATED IN OLDHAM COUNTY, BUT THROWN OUT BY THE COUNTY ATTORNEY, THE COUNTY CLERK AND THE HEAD OF THE SCHOOL BOARD (MADISON ENCLOSURE 20). THE WILL OF THE PEOPLE WAS SUBVERTED BY A COALITION OF GOVERNMENT OFFICIALS. RECENTLY A DYNEGY PEAKING POWER PLANT WAS BUILT IN LAGRANGE IN OLDHAM COUNTY. THE INCREASING HUNGER FOR MORE TAX REVENUE AND POWER BY OLDHAM COUNTY GOVERNMENT AND OLDHAM COUNTY POLITICIANS IS HAVING NEGATIVE CONSEQUENCES TO THE QUALITY OF LIFE OF OLDHAM COUNTY RESIDENTS.

IN THE OCSD ENCLOSURE TO MADISON DATA REQUEST # 30 (B), FILED 08 MAR 2004, IT STATES UNDER SECTION A OBJECTIVES :

' ... THERE HAVE BEEN CONTINUING REQUESTS BY DEVELOPERS [AND] COUNTY GOVERNMENT ... TO HAVE REGIONAL SEWER SERVICE WITHIN OLDHAM COUNTY. '

ALSO ON SAID ENCLOSURE, IN SECTION B. PURPOSE AND SCOPE, IT DECLARES :

' THIS LOCATION HAS BEEN THE PRIMARY STIMULUS FOR THE TREMENDOUS EXPERIENCED IN OLDHAM COUNTY OVER THE PAST 20 YEARS ... THIS GROWTH ... ALSO HAS NEGATIVE ASPECTS, NAMELY TAXING INFRASTRUCTURE AND INCREASING POLLUTION. '

IF THE GOAL OF OCSD IS TO IMPROVE THE SEWAGE UTILITIES OF CURRENT RESIDENTS, THAT IS ONE THING. IF IT WILL HAVE FAR REACHING EFFECTS ON THE ENTIRE COMMUNITY WITH MANY NEGATIVE RESULTS, I FEEL THE SEWAGE PLANT TRANSFER IS NOT FOR A PROPER PURPOSE. IF THE COUNTY IS DEVELOPED TOO RAPIDLY IT WILL HAVE NEGATIVE ENVIRONMENTAL AND TAX BURDEN CONSEQUENCES. THEREFORE, I CONCLUDE THE TRANSFER IS NOT IN THE PUBLIC INTEREST OR FOR A PROPER PURPOSE.

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IN THE PRE FILED TESTIMONY OF ORCHARD GRASS UTILITIES (OGU) CARROLL COGAN, DATED 13 APR 2004, HE STATES ON PAGE 3 - 4 THAT :

THE ORCHARD GRASS [AND WILLOW CREEK] WASTEWATER TREATMENT PLANT[S] DISCHARGE INTO A TRIBUTARY TO THE SOUTH FORK OF HARROD'S CREEK ... THESE TRIBUTARIES ARE DETERMINED TO HAVE A ZERO FLOW DURING PARTS OF THE YEAR BY THE KENTUCKY DIVISION OF WATER. THE ELIMINATION OF THESE WASTEWATER TREATMENT PLANTS BY THE OCSD WILL ELIMINATE THE DISCHARGE INTO THESE ZERO FLOW STREAMS.

DURING QUESTIONING AT THE 15 APR 2004 HEARING COGAN STATED HE DID NOT KNOW THE DETAILS OF HOW FREQUENTLY THE SAID TRIBUTARIES WERE DRY.

THE WILLOW CREEK AND ORCHARD GRASS SEWAGE PLANTS HAVE BEEN IN OPERATION SINCE 1972 AND 1979. (COGAN TESTIMONY AT THE 15 APR 2004 HEARING) IF THERE HAS BEEN A PROBLEM WITH THE DISCHARGE INTO A ZERO FLOW STREAM AND IF THE STREAMS ARE ZERO FLOW STREAMS, IT HAS BEEN OCCURRING FOR 32 YEARS. THE PLANTS THEMSELVES DISCHARGE TREATED WATER INTO THE STREAMS SO EVEN IF THE STREAMS FLOW DOES VARY THERE IS ALWAYS SOME DISCHARGE COMING FROM THE PLANTS.

INCLUDED IN THE 13 APR 2004 PRE FILED TESTIMONY OF COGAN WAS EXHIBIT A, A LETTER FROM THE KENTUCKY DIVISION OF WATER, WHICH STATES THE TAKEOVER OF THE PLANTS IS CONSISTENT WITH THEIR FACILITY PLAN, IT WOULD MOVE TOWARD REGIONALIZING THE SEWAGE PLANTS, ELIMINATING PRIVATE TREATMENT PLANTS AND THE DIVISION OF WATER ENCOURAGES SUCH AN APPROACH.

AT THE HEARING COGAN STATED HE DID NOT KNOW WILLIAM L. CHLEBOWY, THE INDIVIDUAL WHOSE NAMES WAS AT THE BOTTOM OF THE LETTER, COGAN DID KNOW A MR. LEVY WHO SIGNED THE LETTER BUT DID NOT KNOW HIS POSITION IN THE STATE AGENCY. THE DIVISION OF WATER DID NOT OFFER PRE FILED TESTIMONY, WERE NOT AVAILABLE FOR DATA REQUESTS AND DID NOT APPEAR AT THE HEARING TO ANSWER QUESTIONS.

IT IS TRUE THAT IF THE OCSD ACQUISITION TAKES PLACE IT WILL ELIMINATE TWO PRIVATE PLANTS AND MOVE TOWARDS REGIONALIZATION. THE DIVISION OF WATERS POSITION OF THE OTHER ISSUES SUCH AS THE CHARGE TO CUSTOMERS, THE LEGALITY OF THE JEFFERSON / OLDHAM COUNTY CONTROL AND THE AGENCY POSITION ON THE OTHER ISSUES RAISED IN THIS CASE ARE NOT KNOWN.

AT THE 15 APR 2004 HEARING, OCSD WITNESS BENNETT PROVIDED A DOCUMENT TITLED OLDHAM COUNTY AREA CONSTRUCTION PROJECT SUMMARY (OCACPS) (ITEM # 6). PRESUMABLY, THIS IS THE COMMUNITY FACILITY PLAN REFERENCED BY THE CHLEBOWY LETTER. DURING QUESTIONING DURING THE HEARING, BENNETT DID NOT KNOW THE DATE

THE OCACPS STARTED FROM. HE THOUGHT IT MAY HAVE BEEN SOMETIME BETWEEN 1998 TO 2000. THE OCACPS DOES HAVE THE TWO PLANTS IN THIS CASE BEING SHUT DOWN DURING THE TIMEFRAMES (5 -10 YEARS) LISTED IN OCACPS. THIS IS REALLY NOT SIGNIFICANT THAT A TIMETABLE WAS DEVELOPED BY OCSD AND THEN THE CASE WAS FILED WITHIN THIS TIMEFRAME.

RECOMMENDATION : THE PSC NOT APPROVE THE TRANSFER.

DRAINAGE FEE

MSD CURRENTLY CHARGES A \$ 4.14 DRAINAGE FEE TO RESIDENTIAL CUSTOMERS. (MADISON ENCLOSURE 21) THE CURRENT PLAN OF OCSD IS TO SHUT DOWN THE WILLOW CREEK AND ORCHARD GRASS PLANTS AND HAVE THE SEWAGE TREATED BY THE JEFFERSON COUNTY MSD HITE CREEK FACILITY. RICK RASH HAS TOLD ME THAT OCSD INTENDS TO IMPLEMENT A DRAINAGE FEE AT SOME TIME IN THE FUTURE. AT THE 14 APR 2004 HEARING, OCSD WITNESS BENNETT STATED MSD WILL CHARGE A 50 % DIFFERENTIAL ABOVE WHAT IT CHARGES TO ITS OWN (JEFFERSON COUNTY RESIDENTIAL) CUSTOMERS FOR SEWAGE TREATMENT. ASSUMING THAT THE TRANSFER IS APPROVED AS PROPOSED BY THE JOINT APPLICANTS RESULTING IN A MONTHLY SEWAGE CHARGE OF \$ 28.79 FOR AN AVERAGE OCSD CUSTOMER, THAT A DRAINAGE FEE OF \$ 4.14 IS IMPLEMENTED IMMEDIATELY AND AN ANNUAL INCREASE IN THE SEWAGE CHARGE OF 9.75 % (6.5 % (MADISON ENCLOSURE 10) X 50 % DIFFERENTIAL), THE COST FOR A RESIDENTIAL CUSTOMER OF OCSD WILL BE \$ 83.49 PER MONTH IN 10 YEARS. THE CALCULATIONS ARE AS FOLLOWS :

YEAR	COST
2004	\$ 32.93
2005	\$ 36.14
2006	\$ 39.66
2007	\$ 43.53
2008	\$ 47.77
2009	\$ 52.43
2010	\$ 57.54
2011	\$ 63.15
2012	\$ 69.31
2013	\$ 76.07
2014	\$ 83.49

RECOMMENDATION : IF THE PSC DOES APPROVE THE TRANSFER, THE TRANSFER BE CONDITIONED ON OCSD AGREEING TO :

1. NOT IMPLEMENT ANY DRAINAGE FEE FOR A PERIOD OF THREE YEARS AFTER THE PSC APPROVAL DATE. AND
2. ANY DRAINAGE FEE REVENUE MUST BE USED ONLY FOR DRAINAGE PROJECTS, NOT FOR GENERAL GOVERNMENT REVENUE OR OTHER POLITICAL PROJECTS.

**THE PROPOSED TRANSFER IS NOT IN ACCORDANCE WITH THE LAW
(KRS 220.285, KRS 220.035 (2), KRS 220.135 (1) & (7) (b))**

BECAUSE THE OCSD IS PROPOSING TO SERVE 125 RESIDENTIAL SEWAGE CUSTOMERS OF WILLOW CREEK THAT ARE LOCATED IN JEFFERSON COUNTY, THIS REQUIRES OCSD TO GET PERMISSION OF THE METRO COUNCIL IN JEFFERSON COUNTY. OCSD HAS NOT DONE SO OR EVEN ATTEMPTED TO DO SO.

RECENTLY THE GOVERNMENTS OF THE CITY OF LOUISVILLE AND JEFFERSON COUNTY HAVE MERGED. THE DETAILS OF THE MERGER WERE THAT UNINCORPORATED AREAS OF THE COUNTY WERE PLACED INTO THE MERGED GOVERNMENT. THE WILLOW CREEK RESIDENTIAL SEWAGE CUSTOMERS WERE IN AN UNINCORPORATED PORTION OF JEFFERSON COUNTY AND ARE NOW UNDER THE JURISDICTION OF THE METRO GOVERNMENT.

RECOMMENDATION : IF THE PSC DOES APPROVE THE TRANSFER, THE TRANSFER BE CONDITIONED ON OCSD GETTING WRITTEN APPROVAL FROM THE LOUISVILLE METRO COUNCIL TO SERVE JEFFERSON COUNTY SEWAGE RESIDENTIAL CUSTOMERS. THE PSC APPROVAL OF THE TRANSFER SHALL NOT BE EFFECTIVE UNTIL THE WRITTEN APPROVAL OF THE LOUISVILLE METRO COUNCIL HAS BEEN GRANTED, COPIES PROVIDED TO ALL PARTIES IN THIS PROCEEDING AND A REASONABLE AMOUNT OF TIME PROVIDED FOR PARTIES IN THIS PROCEEDING TO REVIEW SAID APPROVAL. THE PSC WILL HAVE TO MAKE A DETERMINATION THAT THE WRITTEN METRO COUNCIL APPROVAL IS ACCEPTABLE AND IN ACCORDANCE WITH THE LAW.

DROUGHT CONDITIONS

IN THE PAST FEW YEARS OLDHAM COUNTY HAS HAD SUMMER DROUGHT CONDITIONS TWICE THAT I HAVE BEEN REQUIRED TO WATER THE TREES AND SHRUBS ON MY PROPERTY. IF I HAD NOT DONE SO I WOULD HAVE LIKELY HAD TO REMOVE AND REPLACE NUMEROUS TREES OR SHRUBS CAUSING POSSIBLE PROPERTY DAMAGE AND HIGH MONETARY COSTS. CURRENTLY ON THE FIXED MONTHLY SEWAGE RATE, THIS INCREASES MY WATER BILL BUT NOT MY SEWAGE BILL. IT IS NOT APPROPRIATE OR REASONABLE FOR A RESIDENTIAL SEWAGE CUSTOMER TO PAY A HIGHER SEWAGE FEE TO KEEP TREES AND SHRUBS FROM DYING ON THEIR PROPERTY DURING DROUGHT CONDITIONS.

AT THE 15 APR 2004 HEARING, A DOCUMENT TITLED ' OLDHAM COUNTY SEWER DISTRICT RESIDENTIAL SEWER ADJUSTMENT - IRRIGATION / POOL FILL ' (ITEM # 3) WAS INTRODUCED. THIS DOCUMENT REQUIRES RESIDENTIAL CUSTOMERS TO KEEP COPIES OF THEIR PREVIOUS WATER BILLS. MR. BENNETT TESTIFIED THAT THIS FORM WOULD ALSO BE USED FOR DROUGHT CONDITIONS REFUNDS.

RECOMMENDATION : IF THE PSC DOES APPROVE THE TRANSFER, THE TRANSFER BE CONDITIONED ON OCSD AGREEING TO USE THE SAID FORM

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WITH THE OCSD CALCULATION FOR A PERIOD OF 3 YEARS. OCSD BE REQUIRED TO PROVIDE A COPY OF THE FORM TO ALL RESIDENTIAL CUSTOMERS WITHIN 4 MONTHS OF THE ACQUISITION SO THE CUSTOMERS WILL BE AWARE OF THE POLICY AND BE ABLE TO SAVE THEIR BILLS FOR POSSIBLE REFUNDS.

**THE USE OF AMOUNT OF WATER IN CALCULATING BILLS
DOES NOT CONSIDER THAT NOT ALL WATER USED IS
PROCESSED AS SEWAGE**

RESIDENTIAL CUSTOMERS USE WATER THAT IS NOT PROCESSED IN THE SEWAGE SYSTEM. EXAMPLES OF ACTIVITIES THAT USE WATER BUT DO NOT RESULT IN SEWAGE PROCESSING ARE LAWN WATERING, CAR WASHING, FILLING POOLS, ETC. IT IS NOT APPROPRIATE OR REASONABLE FOR RESIDENTIAL CUSTOMERS TO BE BILLED FOR COSTS THAT OCSD IS NOT INCURRING. MSD ALREADY USES 85 % OF WATER CONSUMPTION TO DETERMINE SEWAGE RATES (MADISON ENCLOSURE 3, PAGE 1 OF 2, SECTION B WASTEWATER VOLUME CHARGES) STATES :

‘ REGULAR VOLUME RATES ... ARE CALCULATED BY USING 85 % OF THE ACTUAL METERED WATER USED BY RESIDENTIAL CUSTOMERS, PROVIDING AN AUTOMATIC YEAR - LONG 15 % DISCOUNT FOR LAWN WATERING AND OTHER USES OF WATER WHICH DOES NOT ENTER THE SANITARY SEWER SYSTEM. ‘

RECOMMENDATION : IF THE PSC DOES APPROVE THE TRANSFER, THE TRANSFER BE CONDITIONED ON OCSD AGREEING TO REDUCE THE FORMULA FOR CALCULATING SEWAGE COSTS BY USING 85 % OF THE WATER USAGE.

**OCSD IS ATTEMPTING TO HAVE THE RESIDENTIAL CUSTOMERS
OF WILLOW CREEK AND ORCHARD GRASS SUBSIDIZE THE RATES
OF OTHER OLDHAM COUNTY RESIDENTIAL SEWAGE CUSTOMERS
(KRS 278.170 (1), KRS 278.030 (1))**

THE OCSD IS TRYING TO GET THE RESIDENTIAL SEWAGE CUSTOMERS OF WILLOW CREEK AND ORCHARD GRASS TO SUBSIDIZE THE RATES OF OTHER OLDHAM COUNTY RESIDENTIAL SEWAGE CUSTOMERS. (SEE MADISON ENCLOSURE 2 AND RASH LETTER RECEIVED ON 23 FEB 2004 BY THE PSC). THIS IS ILLEGAL AND VIOLATES STATE LAW. IN THE RASH LETTER DATED 20 FEB 2004 IT STATES :

‘ THE ADDITION OF ANOTHER 1050 CUSTOMERS SHOULD ALLOW US TO LOWER THE RATE. A RATE OF \$ 7 A MONTH AND \$ 3 PER THOUSAND MIGHT BE IN ORDER. ‘

RECOMMENDATION : THE PSC NOT APPROVE THE TRANSFER.

TAP ON FEES

THE OCSD HAS STATED THAT NO TAP ON FEES WILL BE CHARGED TO

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CURRENT WILLOW CREEK OR ORCHARD GRASS RESIDENTIAL SEWAGE CUSTOMERS. SINCE THESE FEES MAY COST THOUSANDS OF DOLLARS, CUSTOMERS SHOULD BE CERTAIN THAT THIS IS WILL NOT HAPPEN IN THE FUTURE.

RECOMMENDATION: IF THE PSC DOES APPROVE THE TRANSFER, THE TRANSFER BE CONDITIONED ON OCSD AGREEING THAT CURRENT RESIDENTIAL SEWAGE CUSTOMERS OF THE WILLOW CREEK AND THE ORCHARD GRASS SEWAGE PLANT WILL NOT BE CHARGED A TAP ON FEE.

IF THE TRANSFER IS APPROVED AND THE PSC REQUIRES CONDITIONS FOR THE TRANSFER, THE APPROPRIATE POLITICAL ENTITIES SHOULD BE REQUIRED TO SIGN IT.

SINCE THE OCSD ONLY MAKES RECOMMENDATIONS TO OLDHAM COUNTY FISCAL COURT (OCFC), WITH THE OCFC HAVING THE ACTUAL AUTHORITY TO DETERMINE RATES AND POLICIES, THE OCFC SHOULD BE REQUIRED TO SIGN THE DOCUMENT THAT HAS THE PSC APPROVAL AND CONDITIONS.

RECOMMENDATION : IN THE EVENT THE PSC APPROVES THE TRANSFER AND THE PSC REQUIRES CONDITIONS OF THE TRANSFER, OCFC WILL BE GIVEN A REASONABLE AMOUNT OF TIME BY THE PSC TO SIGN THE CONDITIONS AS THE APPROPRIATE POLITICAL ENTITY. THE TRANSFER WILL NOT BE EFFECTIVE UNTIL THE OCFC HAS SIGNED THE SAID DOCUMENTS AND PROVIDED COPIES TO THE PSC AND ALL PARTIES TO THE CASE.

DISPUTE RESOLUTION AND ENFORCEMENT

IN THE EVENT THAT A DISPUTE ARISES THAT ALLEGES THE OCSD AND OR OCFC ARE NOT ADHERING TO THE CONDITIONS FOR TRANSFER THE DISPUTE CAN BE RESOLVED IN OLDHAM COUNTY CIRCUIT COURT.

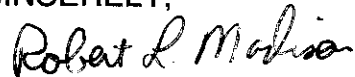
RECOMMENDATION : ANY DISPUTE AS TO THE ADHERENCE OF OCFC OR OCSD RELATED TO THE CONDITIONS OF THE TRANSFER WILL BE RESOLVED IN OLDHAM COUNTY CIRCUIT COURT.

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STATEMENT OF SERVICE

I CERTIFY THAT ON 23 APR 2004, COPIES OF THIS POST HEARING BRIEF OF ROBERT L. MADISON AND ENCLOSURE WERE MAILED, REGULAR MAIL, TO THE PSC AND WILL BE MAILED, REGULAR MAIL, TO THE REST OF THE PARTIES OF RECORD, ON 26 APR 2004.

SINCERELY,

A handwritten signature in cursive script that reads "Robert L. Madison".

ROBERT L. MADISON
5407 BAYWOOD DRIVE
LOUISVILLE KY 40241-1318
HOME PHONE: (502) 241-5079

**REVENUES FOR ALL OLDHAM COUNTY SEWAGE PLANTS
 ACQUIRED BY OCSD WITH NO CHANGE IN RATES**

THIS IS A CALCULATION BY ROBERT L. MADISON OF THE ANNUAL REVENUE THAT OCSD WOULD HAVE RECEIVED FROM THE ACQUISITION OF THE PLANTS WITH NO CHANGE IN RATES. IT ALSO ASSUMES THAT ALL CUSTOMERS ARE USING THE AVERAGE OF 6.6 THOUSAND GALLONS OF WATER PER MONTH, WHERE APPLICABLE TO A VARIABLE RATE. THE AVERAGE CHARGE FOR THE 11 PLANTS OCSD NOW HAS CONTROL OF WOULD BE \$ 22.74 PER MONTH. IF THE ORCHARD GRASS AND WILLOW CREEK PLANTS ARE ADDED IT WOULD BE 21.43 PER MONTH.

UTILITY	1 MONTH	1 YEAR	# CUST	TOTAL YEAR
GLEN OAKS	\$ 18.54	\$ 222.43	211	\$ 46,933.00
GOSHEN	\$ 21.82	\$ 261.91	1701	\$ 445,512.31
BUCKNER	\$ 26.43	\$ 317.26	35	\$ 11,103.96
GREEN V.	\$ 26.43	\$ 317.26	85	\$ 26,966.76
LAKWOOD V.	\$ 21.85	\$ 262.20	226	\$ 59,257.20
COVERED BR.	\$ 40.06	\$ 480.72	324	\$ 155,753.28
HEATHER H.	\$ 26.05	\$ 312.60	160	\$ 50,016.00
COUNTRY V.	\$ 26.10	\$ 313.20	138	\$ 43,221.60
MOCKINGBIRD	\$ 46.36	\$ 556.32	45	\$ 25,034.40
ASH VALLEY	\$ 16.31	\$ 195.72	953	\$ 186,521.16
LOCKWOOD	\$ 33.61	\$ 403.32	64	\$ 25,812.48
SUBTOTAL			3942	\$ 1,076,132.15
AVERAGE = \$ 22.74 (\$ 1,076,132.15 / 3942 = \$272.99 / 12)				
WILLOW CR.	\$ 18.45	\$ 221.40	338	\$ 74,833.20
ORCHARD GR.	\$ 15.59	\$ 187.08	710	\$ 132,826.80
TOTAL			4990	\$ 1,283,792.15
AVERAGE = \$ 21.43 (\$ 1,283,792.15 / 4990 = \$ 257.27 / 12)				



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Thursday, March 18, 2004

Sewer board approves upgrade at Goshen treatment plant

Oldham agency to spend \$189,875 to fix noise, odors

By LESLIE ELLIS
lellis@courier-journal.com
The Courier-Journal

MADISON ENCLOSURE 23
PGE 1 OF 2
DATE: 23 APR 2004

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People who live near the Trails End sewage-treatment plant in Goshen should get some relief in a few months from the odor and noise that have plagued them for years.

The Oldham County Sewer Board has approved \$189,875 worth of repairs and improvements at the 41-year-old plant to meet state operating standards. The plant serves about 1,400 customers.

Trails End has drawn repeated complaints from neighbors who say the blowers are so loud and the odors are so foul some days that they cannot go outside. They also complain that discharge from the plant does not meet Kentucky pollution-control standards.

The state has banned new connections to the plant because the average daily flow is well over the 314,000 gallons-per-day average that it was designed to handle. State inspectors issued a violation notice last month because the level of pollutants that the plant discharged into Little Huckleberry Creek was greater than regulations allow.

The improvements that the sewer board approved at its March 8 meeting will include a new blower that will be significantly quieter, said sewer board engineer John Bennett. Also, enclosing part of the plant should help reduce odors.

Other changes will improve treatment of the sewage, so effluent going into the creek will be cleaner, Bennett said. The improvements, which could be completed by summer, also should help the plant handle more flow, sewer officials say. They have asked the state to amend the plant's permit to increase capacity to an average of 420,000 gallons a day, from 314,000 gallons a day.

The plant's average daily flow has been 348,000 gallons a day over the past two years, according to sewer district figures, but flow sometimes exceeds 1 million gallons when rainwater gets into the system.

Cheryl Aubrey, who lives next to the plant and attended the sewer board meeting, has mixed feelings about the board's action.

The plant needs to be fixed, Aubrey said after the meeting, but she is concerned that after the improvements are made, the district will "add more homes and we'll get back to where we were before." The board needs to build a regional plant and shut down Trails End, she said.

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The sewer board also is considering an additional \$237,250 in improvements to Trails End, but those projects will first need the state Division of Water's blessing because the plant is on the sanctions list. If those projects are approved, Bennett said he will recommend that the plant's permitted capacity be increased to 480,000 gallons a day.

The improvements would help provide adequate capacity for the Goshen area while the board works on adding a regional plant, which could take five or six years to find a site and build.

Some area residents question spending that much money to gain just 10 percent more capacity, Greg Uligian said. "The real answer is the regional plant," he said, "instead of expanding the plant for the developers."

But sewer board Chairman Bing Ewen said the improvements are needed to get the plant into "correct working order."

The board also voted to provide sewer service at the Trails End plant for two buildings if the state will allow an exemption from the sanction that now prohibits new connections.

The service would be for an elementary school being built on Ky. 1793 and for St. John United Methodist Church on U.S. 42, which now uses a septic system. Bennett said the plant improvements should be completed before the proposed connections.

The board also agreed to provide service to the proposed 130-house Pond Creek subdivision on Ky. 1793 if certain conditions are met, including state approval to add those customers.

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