

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

INVESTIGATION INTO THE CONDITION AND)	
QUALITY OF SERVICE OF HILLRIDGE)	CASE NO. 2011-00371
FACILITIES, INC.)	

ORDER

On September 12, 2011, the Commission initiated an investigation to determine whether Hillridge Facilities, Inc. (“Hillridge”) has failed to provide reasonable and adequate service and to identify the measures that are necessary to ensure Hillridge’s provision of reasonable and adequate service. We initiated this investigation as a result of numerous complaints received during Hillridge’s recent rate adjustment proceeding¹ from Hillridge customers in which they alleged that the sewer utility was failing to provide adequate service.

Recent actions of the Kentucky Division of Water (“DOW”) have rendered this investigation moot. On April 12, 2012, DOW denied Hillridge’s application for a Kentucky Pollutant Discharge Elimination System (“KPDES”) permit for its wastewater treatment plant.² Hillridge’s wastewater treatment plant discharges effluent into Fern Creek in Jefferson County, Kentucky. A wastewater treatment plant that discharges

¹ Case No. 2010-00426, *Alternative Rate Filing of Hillridge Facilities, Inc.* (Ky. PSC Aug. 31, 2011) at 3-4.

² Letter from Sandra L. Gruzesky, Director, Kentucky Division of Water, to Donald Ridge, President, Hillridge Facilities, Inc. (Apr. 12, 2012). This letter, as well as the other documents that DOW issued in connection with its denial of Hillridge’s application, are found at Appendix A of this Order.

effluent into the waters of the Commonwealth is required to have a KPDES permit.³ Without such permit, Hillridge's wastewater treatment plant cannot lawfully operate.

In issuing its denial, DOW found that Hillridge's collection facilities and wastewater treatment plant are located within the regional facility planning area of Louisville and Jefferson County Metropolitan Sewer District ("MSD") and that MSD's existing sewers are within one mile of Hillridge's facilities and have sufficient integrity and capacity to carry the additional flow and strength of flow. Based upon this finding, DOW determined that Hillridge's application for a KPDES permit should be denied and that Hillridge's collection system be connected to MSD's facilities. Concurrent with the denial of Hillridge's application for a KPDES permit, DOW directed MSD to exercise its authority as a regional wastewater treatment facility and to connect Hillridge's collection facilities to MSD's facilities within 120 days.⁴

As the connection of Hillridge's collection system to MSD's system will remove the facilities from the Commission's jurisdiction,⁵ we find that further proceedings in this matter would serve no purpose and that this investigation should conclude. We note that on several occasions the Commission has found MSD to have the technical,

³ 401 KAR 5:055, Section 2(1).

⁴ Letter from Sandra L. Gruzesky, Director, Kentucky Division of Water, to Greg Heitzman, Interim Executive Director, Louisville-Jefferson County Metropolitan Sewer District (Apr. 12, 2012) (appended to this Order as Appendix B).

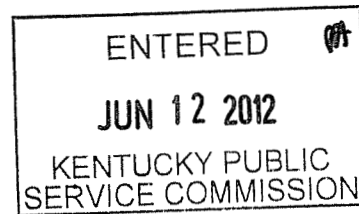
⁵ To the extent that Hillridge transfers the ownership or control of any of its collection or treatment facilities to MSD, KRS 278.020(5) and (6) require it and MSD to apply to the Commission for approval of such transfer.

managerial, and financial ability to provide reasonable utility service.⁶ We are of the opinion that the actions mandated by the DOW will likely improve the quality of service that Hillridge's customers currently receive.

IT IS HEREBY ORDERED that this case is closed and removed from the Commission's docket.

By the Commission

Commissioner Breathitt Abstains.



ATTEST:


Executive Director

⁶ See, e.g., Case No. 2009-00494, *Application of the Louisville and Jefferson County Metropolitan Sewer District for an Order Approving a Transfer of Ownership and Control* (Ky. PSC Feb. 26, 2010).

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2011-00371 DATED JUN 12 2012



STEVEN L. BESHEAR
GOVERNOR

ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION
DIVISION OF WATER
200 FAIR OAKS LANE
FRANKFORT, KENTUCKY 40601
www.kentucky.gov

LEONARD K. PETERS
SECRETARY

April 12, 2012

Mr. Donald Ridge
Hillridge Facilities, Inc.
17825 Bradbe Road
Fishersville, Kentucky 40023

Re: Final Decision to Deny KPDES Permit
KPDES No: KY0036226
Hillridge Facility
Jefferson County, Kentucky

Dear Mr. Ridge:

The Division of Water has made a final determination to deny the Kentucky Pollutant Elimination System (KPDES) permit for the above referenced facility. This action constitutes a final permit decision under 401 KAR 5:075, Section 11(1), pursuant to KRS 224.16-050 and KRS 224.10-100. The reasons for this denial are identified on the attached Fact Sheet.

The denial of the KPDES permit shall be effective one hundred twenty (120) days from the date of this letter or the date of MSD connection, whichever occurs first.

Any demand for a hearing concerning this determination shall be filed in accordance with the procedures specified in KRS 224.10-420, 224.10-440, 224.10-470 and any regulations promulgated thereto. Any person aggrieved by this final decision may demand a hearing, pursuant to KRS 224.10-420(2) within thirty (30) days of the date of this letter. Two (2) copies of the request for hearing should be submitted in writing to the Energy and Environment Cabinet, Office of Administrative Hearings, 35-36 Fountain Place, Frankfort, Kentucky 40601 and the Department for Environmental Protection, Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky 40601. For your record keeping purposes, it is recommended that these requests be sent by certified mail. The written request must conform to the appropriate statutes referenced above.

If you have any questions concerning this permit decision, please contact William Shane by phone at (502) 564-3410, extension 4893 or by email at William.Shane@ky.gov. Further information on procedures and legal matters pertaining to the hearing request may be obtained by contacting the Office of Administrative Hearings at (502) 564-7312.

Sincerely,

Sandra L. Gruzesky, P.E., Director
Division of Water

JMB: wts



STEVEN L. BESHEAR
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LEONARD K. PETERS
SECRETARY

April 12, 2012

Hillridge Facilities, Inc.
17825 Bradbe Road
Fishersville, KY 40023

Re: KPDES Intent to Deny Response to Comments
KPDES No.: KY0036226
AI No.: 2067
Jefferson County, Kentucky

Dear Applicant:

Comments concerning the above-referenced draft intent to deny have been reviewed and responses prepared in accordance with Kentucky Pollutant Discharge Elimination System (KPDES) regulation 401 KAR 5:075, Section 12. The comments have been briefly described below and our responses to those comments follow:

COMMENT 1: The Kentucky Division of Water (DOW) has violated Hillridge's constitutional and statutory rights by waiting more than 4 years to make a permitting decision. Section 2 of the Kentucky Constitution prohibits arbitrary action by a state agency; therefore, DOW cannot deny this permit.

RESPONSE 1: The subject wastewater treatment plant (WWTP) serving the Hillridge neighborhood is within the 201 Facility Planning Area for the Louisville Metropolitan Sewer District (MSD). The sewer line which will serve the neighborhood meets the definition of "available" in 401 KAR 5:002, Section 1(10). A Notice of Intent to Deny the permit re-issuance was published August 1, 2011 in accordance with 401 KAR 5:075, Section 3 and 40 CFR 124.6(b). This final permit determination is consistent with procedures contained in 401 KAR 5:075, Section 11 and 40 CFR 122.6(c)(2).

COMMENT 2: Hillridge has spent a substantial amount of money in order to maintain and upgrade its treatment plant and collection system to ensure compliance with its now-expired KPDES permit. These costs would not have been incurred had DOW responded in a timely manner. However, since these repairs and upgrades have been completed, Hillridge can treat wastewater in a more efficient manner than can the Louisville and Jefferson County Metropolitan Sewer District (MSD). An increased rate sought from the Public Service Commission will allow for additional repairs to the Hillridge collection system.

RESPONSE 2: Whether or not the Hillridge WWTP was operating under a "current" KPDES (i.e. a permit which is within its issuance and expiration dates) or it is operating under the administrative continuance allowed by the regulations in 401 KAR 5:045, Section 3, and 40 CFR 122.6(a), it was required to maintain and operate its system so as to comply with applicable regulations and its valid KPDES permit. The work identified by the commenter was in response to Notice of Violations (NOVs) issued to the permittee and subsequent enforcement. These corrective actions would have been necessary regardless of the status of the permit, as the collection system and wastewater treatment plant must comply with applicable regulations, including 401 KAR 5:065, Section 2(1) and 40 CFR 122.41 (3)(e), which requires proper operation and maintenance of a facility.

RESPONSE TO COMMENTS

KPDES Permit No: KY0036226

AI No. : 2067

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COMMENT 3: The MSD sewer system that would accept the flow from Hillridge does not have the required integrity and capacity to handle the increased flow. A contracted study of the Lee Ann Way Pump Station and service area showed numerous problem areas. An increase in flow from Hillridge would cause new or expanded sanitary sewer overflows and/or significant I&I issues in this service area.

RESPONSE 3: The line which was constructed adjacent to the facility was designed to accept the flow from the Hillridge facility. Throughout calendar year 2009, MSD worked to upgrade the Lee Ann Way pump station and capacity issues down sewer of the subject facility. DOW received a letter dated March 16, 2011 from MSD certifying the capacity of the collection system in accordance with the Capacity Assurance Plan required by the consent decree.

COMMENT 4: The consent decree entered into by MSD, the Commonwealth of Kentucky, and the United States of America serves as a sewer sanction (or tap on ban), particularly when the requirements of MSD's System Capacity Assurance Program have not been fully satisfied.

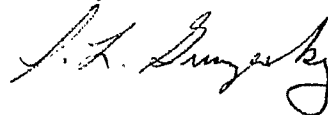
RESPONSE 4: See Response 3.

Any person aggrieved by the issuance of a permit final decision may demand a hearing pursuant to KRS 224.10-420(2) within thirty (30) days from the date of the issuance of this letter. Any demand for a hearing on the permit shall be filed in accordance with the procedures specified in KRS 224.10-420, 224.10-440, 224.10-470, and the regulations promulgated thereto. The request for hearing should be submitted in writing to the Energy and Environment Cabinet, Office of Administrative Hearings, 35-36 Fountain Place, Frankfort, Kentucky 40601 and the Commonwealth of Kentucky, Energy and Environment Cabinet, Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky 40601. For your record keeping purposes, it is recommended that these requests be sent by certified mail. The written request must conform to the appropriate statutes referenced above.

If you have any questions regarding these responses, please contact Jory Becker, Surface Water Permits Branch, at (502) 564-3410, extension 4850.

Further information on procedures and legal matters pertaining to the hearing request may be obtained by contacting the Office of Administrative Hearings at (502) 564-7312.

Sincerely,



Sandra L. Gruzesky, P.E., Director
Division of Water

SLG:JMB:wts



STEVEN L. BESHEAR
GOVERNOR

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LEONARD K. PETERS
SECRETARY

FACT SHEET

**KENTUCKY POLLUTANT DISCHARGE ELIMINATION SYSTEM
PERMIT TO DISCHARGE TREATED WASTEWATER
INTO WATERS OF THE COMMONWEALTH**

KPDES No.: KY0036226
AI No.: 2067

Permit Writer: William Shane

Date: April 12, 2012

1. **SYNOPSIS OF APPLICATION**

a. Name and Address of Applicant

Hillridge Facilities, Inc.
17825 Bradbe Road
Fishersville, Kentucky 40023

b. Facility Location

Hillridge Facility
Kirby Lane at Watterson Trail
Jeffersontown, Jefferson County, Kentucky

c. Description of Applicant's Operation

Treatment of domestic wastewater from a residential development

d. Design Capacity of Facility

0.3268 MGD

e. Description of Existing Pollution Abatement Facilities

Treatment consists of screening, extended aeration, settling, rapid sand filtration, chlorine disinfection

f. Permitting Action

Denial of a KPDES permit for an existing sanitary treatment plant that treats domestic wastewater from a residential development.

2. **RECEIVING WATERS**

Facility discharges to Fern Creek at latitude 38°11'03"N and longitude 85°35'42"W (mile point 29.17).

3. **JUSTIFICATION**

The Division of Water received an application on June 12, 2007 for the renewal of KPDES Permit KY0036226 for Hillridge Facilities, Inc. This facility is a package wastewater treatment plant that treats domestic wastewater from a residential development. Package wastewater treatment plants treating domestic wastewaters are temporary solutions that shall be eliminated by connection to a regional wastewater treatment facility when sewers of sufficient capacity become available. "Available" is defined as:

1. Sewers with sufficient integrity and capacity to carry the additional flow that are within one (1.0) mile of the facility (i.e. the additional flow will not result in new or expanded Sanitary Sewer Overflows or Combined Sewer Overflows); and
2. The regional facility has sufficient capacity to assimilate the additional wastewater flow and strength (i.e. the regional facility is not under a sewer sanction or tap on ban).

This requirement to eliminate the package treatment plant serving this facility is consistent with the requirements of 401 KAR 5:005, Section 4(6) and 401 KAR 5:002, Section 1(21), and is required at Section I, page I-2 of the Facility's KPDES permit issued December 3, 2003.

The Hillridge Facility and its wastewater treatment plant are located within the regional facility planning area of Louisville and Jefferson County Metropolitan Sewer District ("MSD"). MSD's existing sewers are within one mile of the facility and have sufficient integrity and capacity to carry the additional flow and strength of flow. Therefore it is the decision of DOW to deny the renewal of the KPDES permit and require connection to the regional facility.

4. **PERMIT AND PUBLIC NOTICE INFORMATION**

The application, fact sheet and public notice are available on the DOW Public Notice web page and the Department of Environmental Protection's Pending Approvals Search web page at:

<http://water.ky.gov/Pages/PublicNotices.aspx>

http://dep.gateway.ky.gov/eSearch/Search_Pending_Approvals.aspx?Program=Wastewater&NumDaysDoc=30

Comments may be filed electronically at the following e-mail address: DOWPublicNotice@ky.gov

Or by sending written comments to:

Division of Water
Surface Water Permits Branch
200 Fair Oaks Lane
Frankfort, Kentucky 40601

5. **REFERENCES AND CITED DOCUMENTS**

All material and documents referenced or cited in this fact sheet are readily available at the Division of Water Central Office. Information regarding these materials may be obtained from the Division of Water's Open Records Coordinator at (502) 564-3410 or by e-mail at dowopenrecords@ky.gov.

APPENDIX B

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2011-00371 DATED JUN 12 2012



STEVEN L. BESHEAR
GOVERNOR

ENERGY AND ENVIRONMENT CABINET
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DIVISION OF WATER
200 FAIR OAKS LANE
FRANKFORT, KENTUCKY 40601-1190
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LEONARD K. PETERS
SECRETARY

April 12, 2012

Mr. Greg Heitzman, P.E.
Interim Executive Director
Metropolitan Sewer District
700 West Liberty
Louisville, KY 40203-1911

Dear Director Heitzman,

In accordance with Section 201 of the Clean Water Act, Metropolitan Sewer District (MSD) is obligated to serve the neighborhoods within its planning area. Hillridge Subdivision is located within MSD's planning area and is currently being served by a Hillridge Facilities, Incorporated.

MSD has made its comprehensive sewer system available to the Hillridge Subdivision wastewater collection and treatment facility. Today the Kentucky Division of Water has denied application to renew its KPDES permit for the Hillridge Facility. MSD shall exercise its authority and make the connection to the Hillridge Subdivision facility into the MSD comprehensive sewer system within one hundred twenty (120) days of the date of this letter.

If we need to discuss this issue, please contact me at (502) 564-3410.

Sincerely,

A handwritten signature in cursive script, appearing to read "S. L. Gruzesky".

Sandra L. Gruzesky, P.E.
Director, Division of Water

cc: Metropolitan Sewer District
Hon. D. Scott Porter,
Mr. Brian Bingham, P.E.
Mr. Mark Johnson, P.E.
Louisville Regional Office, DOW
Hillridge Facilities, Inc.
Hon. Rob Moore, Hazelrigg & Cox, LLP

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President
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