



## ENERGY AND ENVIRONMENT CABINET

**Matthew G. Bevin**  
Governor

DEPARTMENT FOR ENVIRONMENTAL PROTECTION  
DIVISION OF WATER  
200 FAIR OAKS LANE, 4<sup>TH</sup> FLOOR  
FRANKFORT, KENTUCKY 40601  
PHONE (502) 564-3410  
[www.dep.ky.gov](http://www.dep.ky.gov)

**Charles G. Snaveley**  
Secretary

April 28, 2016

RECEIVED

MAY 3 2016

PUBLIC SERVICE  
COMMISSION

Aaron Greenwell, Acting Executive Director  
Public Service Commission  
211 Sower BLVD  
P.O. Box 615  
Frankfort, KY 40601

RE: Ridgelea Investments, Inc., Case No. 2016-00106

Dear Mr. Greenwell,

The Kentucky Division of Water writes concerning the above referenced matter. On or about February 29, 2016, Ridgelea Investments, Inc. ("Ridgelea") filed its notice initiating the above referenced abandonment case ("Notice"). In October of 2015, our Office of General Counsel filed a motion for summary judgment in the Franklin Circuit Court case No. 14-CI-00616 seeking to enforce an Agreed Order related to numerous violations of Kentucky's environmental laws arising from Ridgelea's operation of three wastewater treatment plants ("WWTPs") in Franklin County, Kentucky. That motion was argued at the Franklin Circuit Court on February 8, 2016, and on April 8, 2016 the Court granted judgment in the Energy and Environment Cabinet's favor.

Since the middle of 2015, Division of Water ("DOW") has been engaged in discussions with local Franklin County officials and the representatives of the Farmdale Sanitation District ("Farmdale") regarding the future operation of Ridgelea's Franklin County WWTPs. The DOW is also aware that there may be a funding mechanism through the Kentucky Infrastructure Authority to provide Farmdale capital to help rehabilitate the WWTPs and their collection systems. As such, the DOW concurs that a transfer of operations of Ridgelea's Franklin County WWTPs to Farmdale is the best interest of human health and the environment. Accordingly, DOW supports the transfer to Farmdale whether by abandonment or by sale.

As stated in its Notice, Ridgelea owns a fourth WWTP in Grant County serving the residents of Grantland Estates Subdivision ("Grant County WWTP") which Ridgelea wants to continue to own and

operate. Ridgelea's discussed some of the Cabinet's concerns regarding the potential partial abandonment in its Notice. In fact, Ridgelea attached a PSC Staff Opinion 2015-014 requested by the Cabinet's Office of General Counsel regarding the legality of a partial abandonment. In the event the Commission determines a partial abandonment cannot be authorized under KRS 278.021, Ridgelea requests the Commission to allow it to transfer its interest to Perfecto Properties, LLC. It is unclear from the Notice whether the proposed transferee is an existing Kentucky LLC, a foreign LLC, or an LLC that has yet to be established, however, DOW did not find Perfecto Properties, LLC after searching the Kentucky Secretary of State's website.

In its April 21, 2016 response to the Commission Staff's information request, Ridgelea states that its Grant County WWTP is in compliance with Kentucky Division of Water regulations except an existing sludge issue with its polishing lagoon. Ridgelea further states that Grant County WWTP "has better equipment and physical facilities and remains reasonably profitable. . ."

Removing and properly disposing of accumulated sludge from the Grant County WWTP polishing lagoon was a remedial measure required by an agreed order Ridgelea entered into with the Energy and Environment Cabinet on June 6, 2013. A copy of that Agreed Order, which DOW believes Ridgelea has never fully complied, is attached for reference. DOW has not recently assessed whether other compliance problems exist at the Grant County WWTP, however, the continued non-compliance with the sludge removal remains a concern.

The DOW is troubled by the potential precedent that might be set by an order allowing a private utility to effectively dislodge itself of poor performing assets but allowing it to retain the control of its one "reasonably profitable." Likewise, DOW believes it is inequitable to allow the abandoning utility to continue operating its "reasonably profitable" asset in a questionable state of compliance, while moving the costs to repair the poor performing assets to the broader public.

To be clear, DOW does not want to stop, or even slow the operational transfer of Ridgelea's Franklin County WWTPs to Farmdale. However, DOW believes that any order of abandonment should include abandonment of the Grant County WWTP, or minimally, that any transfer of ownership in the Grant County WWTP should be more thoroughly scrutinized to prevent the unjust enrichment Ridgelea or its shareholders.

Thank you for your consideration of DOW's concerns. If you have any questions, please contact me at [Peter.Goodmann@ky.gov](mailto:Peter.Goodmann@ky.gov) or at (502) 564-3410, or contact Daniel Cleveland at [Daniel.Cleveland@ky.gov](mailto:Daniel.Cleveland@ky.gov) or at (502) 564-2356.

Sincerely,

A handwritten signature in black ink, appearing to read "P. Goodman", with a stylized flourish at the end.

Peter T. Goodman, Director  
Division of Water



D. Cleveland



COMMONWEALTH OF KENTUCKY  
ENERGY AND ENVIRONMENT CABINET  
FILE NO. DOW- 33526



ENERGY AND ENVIRONMENT CABINET

PLAINTIFF

vs.

**AGREED ORDER**

RIDGELEA INVESTMENTS INC., et al.

DEFENDANTS

\*\*\*\*\*

WHEREAS, the parties to this Agreed Order, the Energy and Environment Cabinet ("Cabinet") and Ridgelea Investments, Inc. ("Ridgelea"), and Charles G. Hungler, Jr. ("Hungler") (collectively "Defendants") state:

**STATEMENTS OF FACT**

1. The Cabinet is charged with the statutory duty of protecting human health and the environment by enforcing KRS Chapter 224 and the regulations promulgated pursuant thereto.
2. Ridgelea is a Kentucky for-profit corporation, in good standing, that owns multiple sewage systems, as defined in KRS 224.01-010(25), including a residential wastewater treatment plant located at Spillman Dr., Sherman, KY 41035, that provides sewer service to the residents of Grantland Estates Subdivision ("Grantland WWTP") in Grant County, Kentucky.
3. Ridgelea holds Kentucky Pollutant Discharge Elimination System ("KPDES") Permit No. KY0074284 issued by the Cabinet's Division of Water on September 1, 2007. The permit authorizes the discharge of treated effluent to the waters of the Commonwealth from the Grantland WWTP.

4. The Grantland WWTP is designed to treat up to 0.044 million gallons per day of sanitary sewage before discharging the treated wastewater into a polishing lagoon then to a chlorinator contact tank before discharging into an unnamed tributary of an unnamed tributary of Arnolds Creek in Grant County, Kentucky.

5. Defendant Hungler is Ridgelea's president, primary shareholder, and registered agent. Hungler also owns and operates Perfect-A-Waste Sewage Treatment Co. ("Perfect-A-Waste") as a sole proprietorship from an office in Cincinnati, Ohio. At Perfect-A-Waste, Hungler employs licensed wastewater treatment operators to operate sewage systems in Kentucky and other states.

6. At all times pertinent to this Agreed Order, Perfect-A-Waste operated the Grantland WWTP. As such, certified operators employed by Hungler through his ownership of Perfect-A-Waste conducted the day-to-day operations of the Grantland WWTP.

7. On July 28, 2009 the Cabinet's Division of Water ("DOW") issued a Notice of Violation ("NOV") to Ridgelea alleging violations of 401 KAR 5:065 Section 1(1)(a) and 401 KAR Section 5:065 Section 1(5) for failing to comply with the KPDES permit and the improper operation and maintenance of the Grantland WWTP.

8. On January 25, 2010 DOW issued a NOV to Ridgelea alleging violations of 401 KAR 5:065 Section 1(1)(a); 401 KAR 5:065 Section 1(5); and 401 KAR 5:005 Section 11(1) for failing to comply with the KPDES permit and improper operation and maintenance of the Grantland WWTP.

9. On November 21, 2011 DOW issued a NOV to Ridgelea alleging violations of 401 KAR 5:065 Section 2(1); 401 KAR 5:005 Section 1(2); 401 KAR 5:005 Section 11; and 401 KAR 5:005 Section 12 for, among other things, failing to report a spill of solids from the

Grantland WWTP onto the ground; improper operation and maintenance of the Grantland WWTP; noncompliance with permit conditions T-22, T-37, and T-52; failing to have a flow measuring device; and failing to obtain a permit modification to install a bypass.

10. On May 31, 2012, the Cabinet filed an administrative complaint against the Defendants alleging they committed the violations cited in the July 28, 2009, January 14, 2010, and November 21, 2011 NOVs and alleging violations of 401 KAR 5:065 Section 1(1)(a), 401 KAR Section 5:065 Section 1(5), 401 KAR 5:005 Section 11(1), 401 KAR 5:065 Section 2(1), 401 KAR 5:005 Section 1(2), and 401 KAR 5:005 Section 12.

11. On December 20, 2012 DOW issued a NOV to Ridgelea alleging violations of 401 KAR 5:065 Section 2(1); 401 KAR 5:005 Section 11; and 401 KAR 5:065 Section 2 for failing to maintain required records; improper operation and maintenance of the Grantland WWTP; improper operation or maintenance of the disinfection unit; and for failing to comply with the KPDES permit.

12. Defendants neither admit nor deny the violations alleged by the Cabinet.

**NOW THEREFORE**, in the interest of settling all civil claims and controversies involving the violations described above, the parties hereby consent to the entry of this Agreed Order and agree as follows:

#### **REMEDIAL MEASURES**

13. Sludge Removal: No later than one (1) year after the date the Secretary executes this Agreed Order, the Defendants shall properly dispose of the accumulated sludge from the polishing lagoon located at the Grantland WWTP and shall submit written proof of proper disposal.

a. Proper disposal shall mean removing and handling the sludge from the

polishing lagoon in compliance with all applicable statutes and regulations and delivering the sludge to a municipal or regional wastewater treatment plant, landfill, or other facility permitted by the Cabinet to accept such waste.

b. Should Defendants, as part of their sludge removal, handling, or disposal, plan to temporarily place or store sludge on the ground, the Defendants shall notify the Cabinet prior to such temporary sludge placement or storage and shall comply with all applicable statutory and regulatory requirements.

c. Notice pursuant to paragraph b., above shall be sent to: Division of Waste Management, Attn: Solid Waste Branch, 200 Fair Oaks Lane, Frankfort, KY 40601. The notice to SWB shall reference "AI# - 1487" and shall include a brief description of the proposed storage/management plan explaining the process employed to reduce pathogens as required by 401 KAR 30:031 Section 8 and outlined in 401 KAR 45:100 Section 11, or acceptable sample results that demonstrate no threat to human health from pathogens exists.

d. Ten (10) days prior to installing any lagoon bypass or other temporary modification to the Grantland WWTP, Defendants shall notify the Cabinet by writing to Director, Division of Enforcement, 300 Fair Oaks Lane, Frankfort KY 40601.

e. No later than thirty (30) days after delivering the sludge to a permitted facility, Defendants shall send receipts evidencing proper disposal to the Director, Division of Enforcement.

14. Outfall Markers: No later than thirty (30) days after the date the Secretary executes this Agreed Order, Defendants shall post and maintain the approved marker on the boundary fence at the point estimated to be the point nearest to the outfall, and shall identify the

actual outfall by marking the pipe with the words "WARNING: Wastewater Discharge, KPDES KY0074284."

15. Operations and Maintenance Plan: The Defendants shall create and implement an acceptable operations and maintenance ("O&M") plan for the Grantland WWTP in compliance with this provision.

a. *Review and Acceptance* - No later than thirty (30) days after the date the Secretary executes this Agreed Order, the Defendants shall submit a proposed O&M plan for the Grantland WWTP to the Cabinet for acceptance. The Cabinet shall review the proposed O&M plan for compliance with paragraph 14.b below. The Cabinet shall respond with a letter of acceptance or a letter of non-acceptance with comments identifying deficiencies. Defendants shall have thirty (30) days from the receipt of a letter of non-acceptance to propose an amended O&M Plan correcting any deficiencies. The Cabinet shall review the amended O&M plan and respond with a letter of acceptance or a letter of non-acceptance with comments identifying deficiencies. Two (2) letters of non-acceptance shall constitute a violation of this Agreed Order.

b. *Contents* The O&M plan shall include:

1. Procedures and protocols that Grantland shall implement to achieve compliance with the monitoring, testing, proper treatment and chlorination, recordkeeping, and reporting requirements for DMRs under its KPDES Permit
2. A list of regular and reoccurring maintenance performed at the Grantland WWTP. The list shall include, but need not be limited to, removing solids from the clarifier; testing the blower motors and time table for repairs if needed; general ongoing equipment repair and replacement; and a schedule for lagoon remediation and sludge removal.
3. A schedule of maintenance identifying the dates, or intervals, at which maintenance identified in b. 2, above, shall be performed, to be kept at the plant in a location that is easily accessible to DOW inspectors.

4. A maintenance log to be kept at the plant with the maintenance schedule. The maintenance log shall include a description of maintenance that was performed; when the maintenance was performed; by whom it was performed; and, if the maintenance was not in the maintenance schedule, why the work was performed.

16. Laboratory: No later than thirty (30) days after the date the Secretary executes this Agreed Order, the Defendants shall employ a laboratory that has submitted to the DOW an acceptable demonstration of capability of compliance with 40 C.F.R. 136.1 - 136.7 for all future laboratory testing, analysis and reporting for the Grantland WWTP. The failure of the Defendants, or any laboratory which they employ, to properly maintain laboratory and sampling records in accordance with permit condition 3.10 of KPDES Permit No. KY0074284 shall constitute a violation of this Agreed Order.

17. Defendants shall be in full compliance with all terms of this Agreed Order and with all terms and conditions of KPDES Permit No. KY0074284 no later than one (1) year after the date the Secretary executes this Agreed Order.

18. Unless otherwise stated by a specific paragraph, all correspondence, documents, notices, and/or requests required to be sent or submitted to the Cabinet by this Agreed Order shall be sent to the Director, Division of Enforcement, 300 Fair Oaks Lane, Frankfort, KY 40601.

#### CIVIL PENALTY

19. The Defendants shall be jointly and severally liable for civil penalties in the amount of twelve thousand dollars (\$12,000.00) for the violations described above, payable in three (3) annual payments of four thousand dollars (\$4000.00). The first payment shall be due on the fifteenth (15<sup>th</sup>) day of the month after this Agreed Order is entered by the Secretary or his designee and subsequent payments shall be made on the same day of each year thereafter for the



next two (2) years. If Defendants fail to pay any of the installment payments on the due-date stated in this paragraph or default in the performance of any requirements of this Agreed Order, the remaining unpaid balance of the civil penalty shall be immediately due and payable in full at the option of the Cabinet upon notice to the Defendants.

20. Payment of civil penalties shall be by cashier's check, certified check, or money order, made payable to "Kentucky State Treasurer" and sent to the attention of Accounts Payable, Office of Administrative Hearings, Energy and Environment Cabinet, 35-36 Fountain Place, Frankfort, Kentucky 40601. Please note "FILE NO. DOW - 33526" on the instrument of payment.

#### **MISCELLANEOUS PROVISIONS**

21. This Agreed Order addresses only those violations specifically described above. Other than those matters resolved by entry of this Agreed Order nothing contained herein shall be construed to waive or to limit any remedy or cause of action by the Cabinet based on statutes or regulations under its jurisdiction, or permits issued by the Cabinet, and the Defendants reserve their defenses thereto. The Cabinet expressly reserves its right at any time to issue administrative orders and to take any other action it deems necessary that is not inconsistent with this Agreed Order, including the right to order all necessary remedial measures, assess penalties for violations, or recover all response costs incurred, and the Defendants reserve their defenses thereto.

22. This Agreed Order shall not prevent the Cabinet from issuing, reissuing, renewing, modifying, revoking, suspending, denying, terminating, or reopening any permit to Ridgelea or Hungler. Ridgelea and Hungler reserve their defenses thereto, except that Ridgelea and Hungler shall not use this Agreed Order as a defense.

23. The Defendants waive their right to any hearing on the matters admitted herein. However, failure by the Defendants to comply strictly with any or all of the terms of this Agreed Order shall be grounds for the Cabinet to seek enforcement of this Agreed Order in Franklin Circuit Court and to pursue any other appropriate administrative or judicial action under KRS Chapter 224, and the regulations promulgated pursuant thereto.

24. The Agreed Order may not be amended except by a written order of the Cabinet's Secretary or his designee. The Defendants may request an amendment by writing the Director of the Division of Enforcement at 300 Fair Oaks Lane, Frankfort, Kentucky 40601 and stating the reasons for the request. If granted, the amended Agreed Order shall not affect any provision of this Agreed Order unless expressly provided in the amended Agreed Order.

25. The Cabinet does not, by its consent to the entry of this Agreed Order, warrant or aver in any manner that the Defendants' complete compliance with this Agreed Order will result in compliance with the provisions of KRS Chapter 224, and the regulations promulgated pursuant thereto. Notwithstanding the Cabinet's review and approval of any plans formulated pursuant to this Agreed Order, the Defendants shall remain solely responsible for compliance with the terms of KRS Chapter 224 and the regulations promulgated pursuant thereto, this Agreed Order and any permit and compliance schedule requirements.

26. The Cabinet agrees to allow the performance of the above-listed remedial measures and payment of civil penalties by the Defendants to satisfy their obligations to the Cabinet generated by the violations described above.

27. The Cabinet and Defendants agree that the remedial measures agreed to herein are facility specific and designed to comply with the statutes and regulations cited herein. This Agreed Order applies specifically and exclusively to the unique facility referenced herein and is

inapplicable to any other site or facility owned and/or operated by Ridgelea and/or Hlungler.

28. Ridgelea shall give notice of this Agreed Order to any purchaser, lessee or successor in interest prior to the transfer of ownership and/or operation of any part of its now-existing facility occurring prior to termination of this Agreed Order, shall notify the Cabinet that such notice has been given, and shall follow all statutory and regulatory requirements for a transfer. Whether or not a transfer takes place, Ridgelea shall remain fully responsible for payment of all civil penalties and response costs and for performance of all remedial measures identified in this Agreed Order.

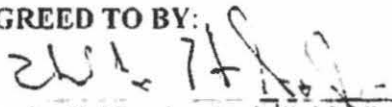
29. Compliance with this Agreed Order is not conditional on the receipt of any federal, state, or local funds, or upon the approval of rate increases or surcharges by local or state boards, commissions, or other agencies that regulate private utilities.

30. This Agreed Order shall be of no force and effect unless and until it is entered by the Secretary or his designee as evidenced by his signature thereon. If this Agreed Order contains any date by which Defendants are to take any action or cease any activity, and the Secretary enters the Agreed Order after that date, then the Defendants are nonetheless obligated to have taken the action or ceased the activity by the date contained in this Agreed Order.


#### TERMINATION

31. This Agreed Order shall terminate upon Defendants' completion of all requirements described in this Agreed Order. The Defendants may submit written notice to the Cabinet when they believe all requirements have been performed. The Cabinet will notify the Defendants in writing of whether it intends to agree with or object to termination. The Cabinet reserves its right to enforce this Agreed Order, and the Defendants reserve their right to file a petition for hearing pursuant to KRS 224.10-420(2) contesting the Cabinet's determination.

AGREED TO BY:

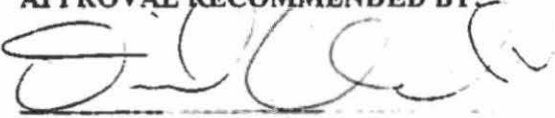
  
Charles G. Hungler, Jr., individually and  
as President of Ridgelea Investments, Inc.

4-1-13  
Date

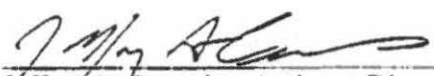
  
John B. Baughman  
Attorney for the Defendants

4-1-13  
Date

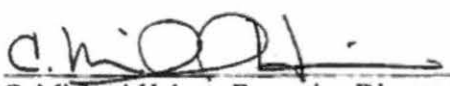
APPROVAL RECOMMENDED BY:

  
Daniel Clark Cleveland, Attorney  
Office of General Counsel

4/8/13  
Date

  
Jeffrey A. Cummins, Assistant Director  
Division of Enforcement

4/22/13  
Date

  
C. Michael Haines, Executive Director  
Office of General Counsel

4-29-13  
Date



**ORDER**

Wherefore, the foregoing Agreed Order is entered as the final Order of the Energy and Environment Cabinet this 6<sup>th</sup> day of June, 2013.

ENERGY AND ENVIRONMENT CABINET

  
LEONARD K. PETERS, SECRETARY

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing **AGREED ORDER** was mailed, postage prepaid, to the following this 6 day of June, 2013.

Hon. John B. Baughman  
Hazelrigg and Cox, LLP  
P.O. Box 676  
415 West Main Street  
Frankfort, KY 40602

and hand delivered to:

Hon. Daniel C. Cleveland  
Office of General Counsel  
200 Fair Oaks Lane, 1<sup>st</sup> Floor  
Frankfort, Kentucky 40601

  
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