



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

Bruce

APR 18 2008

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CERTIFIED MAIL 7003 1680 0001 0750 4077
RETURN RECEIPT REQUESTED

The Honorable Thomas E. Davis
Mayor, City of Henderson
222 First Street
Henderson, Kentucky 42420

Re: Administrative Order
Docket No. CWA-04-2008-4757
Kentucky Consent Judgment
Civil Action No. 07-CI-1250
City of Henderson
NPDES Permit No. KY0020711

Dear Mayor Davis:

On December 21, 2007, the U.S. Environmental Protection Agency ("EPA") issued an Administrative Order ("AO") pursuant to Sections 308 and 309(a) of the Clean Water Act (the "Act") to the City of Henderson (the "City"). This followed an August 30, 2007, Consent Judgment ("CJ") between the Commonwealth of Kentucky and the City. It has come to our attention that there may be some confusion as to the submittal dates for various documents required by these two enforcement actions.

The CJ requires the City to develop, among other items, a Final Long Term Control Plan ("LTCP"). EPA intentionally made the submittal dates required by the AO identical to those in the CJ. However, EPA added two additional requirements in the AO. The first required reports to be submitted by February 24, 2008, regarding Sanitary Sewer Overflow ("SSO") and Combined Sewer Overflow ("CSO") events for the past five (5) years. The second requires submission of an annual update regarding SSO and CSO events by January 30th of each year. It is the due date established in the AO for this second requirement that this letter is modifying.

In this letter, EPA is hereby modifying the due date for the required annual update regarding SSO and CSO events to September 1st of each year to correspond with the submission of the Annual Report required under the Kentucky CJ. The updated information required by EPA's AO may be made a part of the CJ's Annual Report provided, however, that the specific information sought by the AO is easily discernable within the Annual Report. EPA and the Commonwealth have conferred and agree that the Annual Report, with these revisions, will satisfy the regulatory reporting expectations for both Agencies under the CJ and AO.

For your convenience, we have enclosed a table that contains a summary of the compliance due dates required by the AO and the CJ. EPA will be closely monitoring the City's compliance with the AO, CJ and the Act including the enforceable compliance dates consistent with EPA's 1994 CSO Control Policy for implementation of the LTCP.

Except as modified herein, the AO remains unchanged and in full force and effect. This letter does not replace, modify, or eliminate any other requirement of the CJ, the AO, the Act or the National Pollutant Discharge Elimination System ("NPDES") Permit. EPA retains the right to bring further enforcement action under Sections 309 (a), (b) or (g) of the Act, 33 U.S.C. §§ 1319(a), (b) or (g), for the violations cited therein or for any other violation of the Act. Violations of the Act, including requirements contained in a NPDES permit remain subject to a civil penalty of up to \$32,500 per day for each violation, pursuant to Sections 309(d) or 309(g) of the Act, 33 U.S.C. §§ 1319(d) or 1319(g), as amended by the Civil Monetary Penalty Inflation Adjustment Rule, 69 Fed. Reg. 7121 (February 13, 2004).

Should you have any questions concerning this matter, please contact either Ms. Alfreda Freeman, Chief of the Central Enforcement Section, at (404) 562-8977 or Mr. Sean Ireland, Enforcement Officer, at (404) 562-9776. Legal inquiries should be directed to Mr. William Bush, Associate Regional Counsel, at (404) 562-9538.

Sincerely,



for James D. Giattina
Director
Water Management Division

Enclosure

cc: Jeff Cummins
Kentucky Department for Environmental Protection

Compliance Dates, KY CJ & EPA AO

Henderson KY0020711

| Completed Requirements | |
|---------------------------------------|--|
| <i>Due Date</i> | <i>Compliance Activity</i> |
| 9/29/2007 | Sewer Use Ordinance submittal |
| 12/28/2007 | Sewer Collection and Conveyance System Map submittal |
| 2/24/2008 | List of SSO and CSO events for past 5 years submittal to EPA |
| Future Compliance Requirements | |
| <i>Due Date</i> | <i>Compliance Activity</i> |
| 5/30/2008 | Capacity, Management, Operations and Management Programs Self-Assessment |
| 5/30/2008 | Sewer Overflow Response Plan submittal |
| 8/30/2008 | Nine Minimum Controls, report compliance status |
| 8/30/2008 | Sanitary Sewer Overflow Plan submittal |
| 9/1/2008 | **Report Annual SSOs & CSOs to EPA, recurring requirement for each fiscal year |
| 9/1/2008 | Annual Reports, recurring requirement for each fiscal year |
| 2/28/2009 | *Final Long-Term Control Plan submittal |
| 8/30/2009 | Nine Minimum Controls, achieve compliance |
| 8/30/2014 | Complete construction projects for the elimination of recurring SSOs |
| 12/26/2017 | **Long-Term Control Plan, achieve compliance |

* Both KDEP Consent Judgment and EPA Administrative Order submittal

** EPA Administrative Order submittal and compliance dates, as modified