

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of

Electronic Proposed Acquisition by Bluegrass)
Water Utility Operating Company, LLC and)
the Transfer of Ownership and Control of)
Assets by: P.R. Wastewater Management, Inc.;) No. 2019-00104
Marshall County Environmental Services LLC;)
LH Treatment Company, LLC; Kingswood)
Development, Inc.; Airview Utilities, LLC;)
Brocklyn Utilities, LLC; Fox Run Utilities,)
LLC; and, Lake Columbia Utilities, Inc.)

Response to
6/20/19 Order Appendix B

Joint Applicants hereby submit their response to the Commission’s Data Request contained in Appendix B, in accordance with the Commission’s Order issued June 20, 2019.

Signed, notarized verifications for this Response appear on the following pages. The undersigned counsel is responsible for any objection noted for a particular response.

The undersigned counsel have reviewed the Complaint filed by the Kentucky Energy and Environment Cabinet (“the Cabinet”) in Franklin Circuit Court on June 21, 2019, against Allen Artis, requesting *inter alia*, appointment of a temporary receiver to operate and manage the assets of the Great Oaks Subdivision Wastewater Treatment Plant (“Great Oaks WWTP”). *See* Complaint copy attached to this Response at page 15 (¶4). The Great Oaks WWTP, located in McCracken County, Kentucky, is among the assets of Marshall County Environmental Services LLC (“MCES”) proposed to be transferred to and acquired by Bluegrass Water Utility Operating Company, LLC (“Bluegrass”). Through their counsel, Joint Applicants take the position that the appointment of a temporary receiver, as provided in KRS 224.73-150(6), would neither moot the

Joint Application as to the Great Oaks WWTP, nor prevent the proposed transfer/acquisition of ownership and control of those utility assets, nor alter the prerequisite of Commission approval for the proposed transfer/acquisition. By the statute and the relief requested by the Cabinet in its Complaint, the appointment of the receiver is temporary and is for the operation and management of the Great Oaks WWTP. Ownership *per se* of the assets is not affected, and to the extent that control of the assets is shifted to the receiver, that control is temporary and, with the approval of the Franklin Circuit Court, may be ended or shifted to another party. Thus, it is the Joint Applicants' position that if the Commission approves the transaction and all the other usual regulatory approvals are obtained, the Closing of the proposed transaction between MCES and Bluegrass can occur and the transfer to Bluegrass of full ownership and control of the Great Oaks WWTP can be effected, subject to the possible additional step of obtaining the approval of the Franklin Circuit Court.

The following Response to the 6/20/19 Order Appendix B data request relies on the positions stated in the preceding paragraph, and if those positions are contested or court/agency rulings are to the contrary, then how the Joint Applicants will respond to the Cabinet's request for a receiver or their assessment of the effect on the proposed transfer to Bluegrass may change.

Respectfully submitted,

/s/ Kathryn A. Eckert

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Attorneys for Applicants

VERIFICATION

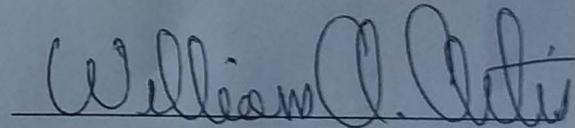
on behalf of

Applicant Marshall County Environmental Services LLC

Commonwealth of KENTUCKY)

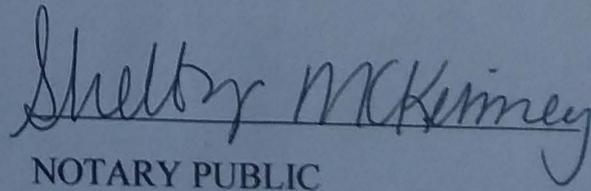
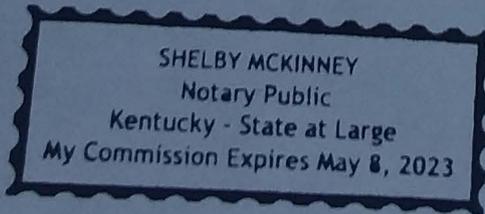
County of Marshall)

I, **William A. Artis**, a member/owner of **Marshall County Environmental Services LLC**, being duly sworn, state that I prepared or supervised the preparation of the following response or part thereof for which I am identified as a witness. I state that the matters and things set forth in those responses are true and correct to the best of my knowledge, information, and belief formed after reasonable inquiry.



William A. Artis

Subscribed, sworn to, and acknowledged this 26 day of June, 2019, before me, a Notary Public in and before said Commonwealth and County.



NOTARY PUBLIC

{seal}

My Commission expires: May 8, 2023

Appendix B

1. Refer to the notice from the Energy and Environmental Cabinet that it will seek a receiver for the Marshall County Environmental's Great Oaks Subdivision Treatment Plant.
 - a. Explain how the Joint Applicants' will respond to the notice.
 - b. State whether this will affect the proposed transfer of Marshall County Environmental to Bluegrass Water.
-

Response

- a. Joint Applicants will respond to the 6/13/19 notice from the Energy and Environment Cabinet to the Commission as follows:
 - i. Bluegrass Water will cooperate as is required in such a manner as to not delay the proposed acquisition. Bluegrass Water believes that a temporary receiver will actually assist the proposed transfer as indicated in subpart (b). Bluegrass Water would also be willing to look to other options as indicated by the needs at Great Oaks for purposes of allowing an efficient and timely transition of operation control to address the concerns identified by the EEC. This could include appointment of affiliate Central States Water Resources ("CSWR") as the operator under the receiver appointed by Franklin Circuit Court. To minimize delay, additional costs, or inefficiencies for the proposed transfer/acquisition as a result of the receivership, Bluegrass's affiliate Central States Water Resources, Inc. ("CSWR") is willing to operate and manage the Great Oaks system under the court-appointed receiver to ensure continued operations and resolution for the issues identified in the Cabinet's Complaint, as well as allow expedited, efficient

transfer of the Great Oaks WWTP if the proposed transfer/acquisition is approved.

- ii. MCES will not oppose appointment of a temporary receiver for the Great Oaks system or its otherwise being run by some third party for the interim period before the Commission's decision regarding the proposed transfer/acquisition of its assets and, if the Commission grants approval, before the closing transaction by which Bluegrass Water will acquire ownership and control of MCES assets.

- b. If the EEC does move forward with a receiver, Bluegrass Water anticipates that the effect of the appointment of a temporary receiver pursuant to KRS 224.73-150(6) for the purposes of continuing operations of the Great Oaks system until the parties are ready to close the transaction (if the acquisition is approved), will actually assist with a smooth transition to new ownership and management of the system. Interim operation by the appointed receiver is likely to ameliorate any existing threat to public health, safety, or the environment or to the continued availability of service to customers of the system and will allow Bluegrass Water to incorporate its anticipated improvements in a much more efficient manner.

**COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION _____
CIVIL ACTION No. 19-CI-_____
AI No. 3041**

**COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET**

PLAINTIFF

vs.

VERIFIED COMPLAINT

ALLEN ARTIS

DEFENDANT

**SERVE VIA MARSHALL COUNTY
SHERIFF:**

Hon. Eddie McGuire
Marshall County Sheriff
52 Judicial Drive
Benton, KY 42025

For Service On:

Allen Artis
8571 Scale Road
Benton, KY 42025

Alternative Address:

522 US Highway 68
Benton, KY 42025

Electronically Filed

Comes now Plaintiff Commonwealth of Kentucky, Energy and Environment Cabinet (“Cabinet”), by counsel, and for its Complaint against Defendant Allen Artis states as follows:

1. The Cabinet is the administrative agency duly charged with the statutory duty to enforce all rules, regulations and orders promulgated pursuant to environmental protection including KRS Chapter 224 and the regulations promulgated thereto, which include those relating

to wastewater treatment and permitting, and the prevention of degradation of the waters of the Commonwealth.

2. Allen Artis is an individual who, based upon information and belief, is a resident of the Commonwealth of Kentucky and, at all times relevant hereto, transacted business in the Commonwealth of Kentucky.

3. Allen Artis is the current owner and operator of the Great Oaks Subdivision Wastewater Treatment Plant ("Great Oaks WWTP") in McCracken County, Kentucky.

4. On May 1, 2012, the Cabinet's Division of Water ("DOW") issued a Kentucky Pollutant Discharge Elimination System ("KPDES") permit to Purchase Public Service Commission, authorizing it to discharge from the Great Oaks WWTP to the Blizzard Pond Drainage Canal. A true and accurate copy of the original KPDES permit is attached hereto and incorporated herein as Exhibit No. 1.

5. Purchase Public Service Commission subsequently transferred ownership and operation of the Great Oaks WWTP to Marshall County Environmental Services ("MCES"). The DOW approved the transfer of the KPDES permit from Purchase Public Service Commission to MCES, with Allen Artis as the owner or authorized representative, on January 17, 2013. A true and accurate copy of the KPDES Permit Transfer is attached hereto and incorporated herein as Exhibit No. 2.

6. Jurisdiction and venue are vested in the Franklin Circuit Court pursuant to KRS § 224.99-010(9) and the terms of the Agreed Order entered into by the Cabinet and Allen Artis on May 24, 2018.

7. On June 13, 2019, the Cabinet provided notice to the Public Service Commission via a letter electronically mailed and hand delivered to the Executive Director.

COUNT I

8. Paragraphs 1 through 7 are incorporated into this Count as if fully set out herein.

9. On or about March 23, 2016, an authorized representative of the DOW inspected Defendant's discharge monitoring reports ("DMRs") for the months of August 2014, November 2014, May 2015, July 2015, and November 2015 and observed, among other things, that the discharge from outfall 001-1 failed to comply with the terms and conditions of the KPDES permit for total ammonia nitrogen ("TAN"), biochemical oxygen demand ("BOD"), and E. Coli. These conditions constitute the following violations:

- a. KRS 224.70-110: failure to comply with the terms and conditions of the KPDES permit for TAN Loading during August 2014 (monthly average);
- b. KRS 224.70-110: failure to comply with the terms and conditions of the KPDES permit for TAN Concentration during August 2014 (monthly and weekly averages);
- c. KRS 224.70-110: failure to comply with the terms and conditions of the KPDES permit for TAN Concentration during July 2015 (monthly and weekly averages);
- d. KRS 224.70-110: failure to comply with the terms and conditions of the KPDES permit for BOD Loading during August 2014 (monthly and weekly averages);
- e. KRS 224.70-110: failure to comply with the terms and conditions of the KPDES permit for BOD Loading during May 2015 (monthly average);

- f. KRS 224.70-110: failure to comply with the terms and conditions of the KPDES permit for BOD Concentration during August 2014 (monthly and weekly averages);
- g. KRS 224.70-110: failure to comply with the terms and conditions of the KPDES permit for BOD Concentration during May 2015 (monthly and weekly averages);
- h. KRS 224.70-110: failure to comply with the terms and conditions of the KPDES permit for BOD Concentration during November 2015 (monthly average);
- i. KRS 224.70-110: failure to comply with the terms and conditions of the KPDES permit for E. Coli Concentration during November 2014 (30-day and 7-day geometric means).

10. On March 23, 2016, the Cabinet's Division of Enforcement ("DENF") issued a Notice of Violation ("NOV") to Defendant for the violations listed in paragraph 8 above. A true and accurate copy of the March 23, 2016 NOV is attached hereto and incorporated herein as Exhibit No. 3.

COUNT II

- 11. Paragraphs 1 through 10 are incorporated into this Count as if fully set out herein.
- 12. Authorized representatives from the DOW inspected the Great Oaks WWTP on November 15, 2016, and observed, among other things, vegetation growing in the clarifier, a high amount of solids in the clarifier with a thick brown foam and debris, and no groundwater protection plan. These conditions constitute violations of the following regulations:

- a. 401 KAR 5:037, Section 3: failure to develop and submit a groundwater protection plan.
- b. 401 KAR 5:065, Section 2(1): failure to properly operate or maintain the facility.

COUNT III

13. Paragraphs 1 through 12 are incorporated into this Count as if fully set out herein.
14. Authorized representatives from the DOW inspected the Great Oaks WWTP on June 23, 2017, in response to a complaint describing a sewage overflow. The investigation revealed wastewater overflowing from the Great Oaks WWTP's manhole and lift station, into a ditch behind the Great Oaks WWTP, and subsequently into the Blizzard Pond Drainage Canal.
15. Allen Artis admitted that he failed to notify the DOW despite knowing about the overflow since June 17, 2017. These conditions constitute the following violations:
 - a. 401 KAR 5:065, Section 2(1): failure to report any noncompliance which may endanger health or the environment;
 - b. 401 KAR 5:015, Section 2: failure to notify the DOW after a spill or discharge resulting in pollution of the waters of the Commonwealth;
 - c. 401 KAR 5:065, Section 2(1): failure to properly operate or maintain the facility;
 - d. KRS 224.70-110: discharging a pollutant or substance that causes or contributes to the pollution of the waters of the Commonwealth; and
 - e. 401 KAR 10:031, Section 2: degrading the waters of the Commonwealth.

16. On June 28, 2017, the DOW issued an NOV to Defendant for the violations listed in paragraph 15 above. A true and accurate copy of the June 28, 2017 NOV is attached hereto and incorporated herein as Exhibit No. 4.

COUNT IV

17. Paragraphs 1 through 16 are incorporated into this Count as if fully set out herein.

18. On or about July 19, 2017, an authorized representative of the DOW inspected the DMRs for the Great Oaks WWTP and observed, among other things, that the discharge from outfall 001-1 exceeded the permitted limits for BOD during February 2016 and Defendant failed to submit the DMRs for the months of January, April, and May 2017. These conditions constitute the following violations:

- a. KRS 224.70-110: failure to comply with the terms and conditions of the KPDES permit for BOD; and
- b. KRS 224.70-110: failure to comply with the terms and conditions of the KPDES permit by failing to submit the DMRS for January, April, and May 2017.

19. On July 19, 2017, the DENF issued an NOV to Defendant for the violations listed in paragraph 18 above. A true and accurate copy of the July 19, 2017 NOV is attached hereto and incorporated herein as Exhibit No. 5.

COUNT V

20. Paragraphs 1 through 19 are incorporated into this Count as if fully set out herein.

21. On August 1, 2017, an authorized representative from the DOW conducted an investigation of the creek in response to a complaint and observed waste solids coloring the creek

bottom gray and black and emitting a distinct sewage odor. The representative traced the wastewater discharge to the Great Oaks WWTP's discharge pipe.

22. On August 2, 2017, the representative returned to the stream and sampled for E. Coli in three locations: (1) one hundred (100) yards upstream of the outfall, (2) directly from the discharge pipe, and (3) one hundred (100) yards downstream from the outfall. Results from samples taken at the discharge pipe and from one hundred (100) yards downstream from the outfall tested "well above the permitted limit" for E. Coli. These conditions constitute the following violations:

- a. 401 KAR 5:065, Section 2(1): failure to properly operate and maintain the facility;
- b. 401 KAR 5:005, Section 11: failure to properly maintain and/or operate the disinfection unit;
- c. KRS 224.70-110: discharging a pollutant or substance that causes or contributes to the pollution of the waters of the Commonwealth; and
- d. 401 KAR 10:031, Section 2: degrading the waters of the Commonwealth.

23. On August 10, 2017, the DOW issued an NOV to Defendant Artis for the violations described in paragraph 24 above. A true and accurate copy of the August 10, 2017 NOV is attached hereto and incorporated herein as Exhibit No. 6.

COUNT VI

24. Paragraphs 1 through 23 are incorporated into this Count as if fully set out herein.

25. On April 13, 2018, authorized representatives of the DOW inspected the Great Oaks WWTP and observed standing water surrounding the Great Oaks WWTP and a bypass from

the bottom of the Great Oaks WWTP flowing into a ditch that contributes to the Blizzard Pond Drainage Canal.

26. On the same date, Defendant Artis admitted to knowing of the bypass, stated that he believed the discharge originated from the bottom of the sludge return tank, and acknowledged that he did not notify the DOW of the bypass.

27. On April 16, 2018, representatives returned to the Great Oaks WWTP and observed wastewater flowing from a leak at the bottom of the sludge return tank, saturated ground around the tank, wastewater flowing into the ditch that contributes to the Blizzard Pond Drainage Canal, no chlorine tablets in the chlorine contact chamber, no flow from the outfall, and a broken gate on the fence surrounding the Great Oaks WWTP. These conditions constitute the following violations:

- a. 401 KAR 5:065, Section 2(1): failure to properly operate and maintain the facility;
- b. 401 KAR 5:005, Section 11: failure to properly maintain and/or operate the disinfection unit;
- c. KRS 224.70-110: discharging a pollutant or substance that causes or contributes to the pollution of the waters of the Commonwealth;
- d. 401 KAR 10:031, Section 2: degrading the waters of the Commonwealth;
- e. 401 KAR 5:065, Section 2(1): failure to report a spill, bypass, or noncompliance which may endanger health or the environment;
- f. 401 KAR 5:015, Section 2: failure to notify the DOW after a spill or discharge resulting in pollution of the waters of the Commonwealth; and

g. 401 KAR 5:005, Section 10(7): failure to place a fence with a lockable gate around a wastewater Great Oaks WWTP.

28. On April 17, 2018, the DOW issued an NOV to Defendant for the violations listed in paragraph 29 above. A true and accurate copy of the April 17, 2018 NOV is attached hereto and incorporated herein as Exhibit No. 7.

COUNT VII

29. Paragraphs 1 through 28 are incorporated into this Count as if fully set out herein.

30. On April 20, 2018, the Cabinet issued to Defendant an Order to Discontinue, Abate, and Alleviate pursuant to KRS 224.10-410 because Defendant caused, engaged in, or maintained “a condition or activity which presents a danger to the health or welfare of the people of the state and results in or is likely to result in damage to natural resources.”

31. The Secretary of the Energy and Environment Cabinet (“Secretary”) found that contamination of the surface water caused by the discharge from the Great Oaks WWTP damaged aquatic life through the reduction of the amount of available dissolved oxygen in the water and increased the risk of adenovirus, gastroenteritis, SARS, hepatitis E, hepatitis A, hand foot and mouth Disease, meningitis, polio, and progressive multifocal leukoencephalopathy, among other diseases.

32. Specifically, the Order to Discontinue, Abate, and Alleviate required Defendant Artis to (1) immediately cease any and all overflows and non-compliant discharges from the Great Oaks WWTP; and (2) collect the wastewater and dispose of it at a properly permitted facility until the Great Oaks WWTP can operate in compliance. A true and accurate copy of the Order to Discontinue, Abate, and Alleviate is attached hereto and incorporated herein as Exhibit No. 8.

33. On May 24, 2018, the Secretary entered an Agreed Order signed by representatives of the Cabinet and Defendant. A true and accurate copy of the Agreed Order is attached hereto and incorporated herein as Exhibit No. 9.

34. The Agreed Order required Defendant to:

- a. Sample for the parameters E. Coli, Total Suspended Solids, and Total Residual Chlorine, submit the results of these samples to the DOW's Paducah Regional Office and the DENF, meet permitted limits within two (2) weeks, cease discharges, and dispose of wastewater in a different permitted facility until samples for the parameters meet permitted limits;
- b. Forgo normal operations until the DOW's Paducah Regional Office inspects and approves the plant to resume normal operations;
- c. Have an integrity assessment of the Great Oaks WWTP performed by a licensed engineer within three (3) months of the Agreed Order's entry that includes recommendations for repairs and improvements needed to ensure that the Great Oaks WWTP operates in compliance with the law;
- d. Make the necessary recommended repairs and upgrades to the Great Oaks WWTP within six (6) months of the Agreed Order's entry;
- e. Submit documentation of the performance of those repairs and upgrades, including receipts, to the DENF;
- f. Submit all receipts for work performed at the Great Oaks WWTP since April 16, 2018, including all pumping performed; and
- g. Provide weekly progress reports, including receipts for all work performed, to the DOW's Paducah Regional Office and the DENF.

35. The Agreed Order resolved only the April 20, 2018 Order to Discontinue, Abate, and Alleviate. *See* Exhibit No. 9 at 6. The Agreed Order did not resolve the NOV's issued prior. *Id.*

36. Defendant has failed to comply with the Agreed Order by failing to meet permit limits, make any recommended repairs, submit any documentation of repairs to the Cabinet, submit all receipts of work performed at the Great Oaks WWTP since April 16, 2018, or provide weekly progress reports to the DOW's Paducah Regional Office and the DENF.

COUNT VIII

37. Paragraphs 1 through 36 are incorporated into this Count as if fully set out herein.

38. On April 25, 2018, an authorized representative of the Cabinet inspected the Great Oaks WWTP and observed black residual stains on the ground leading from the access on the effluent pipe to the creek embankment caused by a recently-ceased sewage overflow; no evidence of any attempt to clean up the residual; trickling discharge from the Great Oaks WWTP; erosion of a wall separating the leaking tank from the aeration basin; that the entire contents of the Great Oaks WWTP was septic; gray, septic water in the ditch that contributes to the Blizzard Pond Drainage Canal and in the area around the Great Oaks WWTP; and improperly disposed solids on the ground surrounding the Great Oaks WWTP.

39. On this same date, the representative spoke with Defendant, who admitted knowing about the bypass from the effluent pipe access and failing to report it to the DOW.

40. These conditions constitute the following violation:

- a. 401 KAR 5:015, Section 2: failure to report a spill or discharge to the DOW.

41. On May 2, 2018, the DOW issued an NOV to Defendant for the violations described in numerical paragraph 42 above. A true and accurate copy of the May 2, 2018 NOV is attached hereto and incorporated herein as Exhibit No. 10.

COUNT IX

42. Paragraphs 1 through 41 are incorporated into this Count as if fully set out herein.

43. On June 21, 2018, an authorized representative from the DOW inspected the Great Oaks WWTP and observed that Defendant Artis was not sampling according to the requirements of the KPDES permit. These conditions constitute the following violation:

- a. 401 KAR 5:065, Section 2(1): failure to conduct monitoring according to test procedures approved under 40 C.F.R. Part 136.

44. On July 9, 2018, the DOW issued an NOV to Defendant for the violations described in paragraph 45 above. A true and accurate copy of the July 9, 2018 NOV is attached hereto and incorporated herein as Exhibit No. 11.

COUNT X

45. Paragraphs 1 through 44 are incorporated into this Count as if fully set out herein.

46. On December 4, 2018, an authorized representative of the DOW inspected the Great Oaks WWTP and observed, among other things, discharge depositing solids into the creek, vegetation growing from clumps of solids floating in the aeration basin tank, inoperable return sludge from the clarifier, solid clumps floating on the surface and flowing over into the chlorination chamber, sewage solids in multiple locations around the Great Oaks WWTP, no progress towards repairs Defendant submitted in the plan to return to compliance, evidence of a recent unreported overflow from the manhole before the lift station. These conditions constitute the following violations:

- a. 401 KAR 5:065, Section 2(1): failure to properly operate and maintain the facility;
- b. 401 KAR 5:005, Section 11: failure to properly operate and/or maintain the disinfection unit;
- c. KRS 224.70-110: discharging a pollutant or substance that causes or contributes to the pollution of the waters of the Commonwealth; and
- d. 401 KAR 10:031, Section 2: degrading the waters of the Commonwealth.

47. On December 10, 2018, the DOW issued an NOV to Defendant for the violations described in paragraph 48 above. A true and accurate copy of the December 10, 2018 NOV is attached hereto and incorporated herein as Exhibit No. 12.

COUNT XI

48. Paragraphs 1 through 47 are incorporated into this Count as if fully set out herein.

49. On April 4, 2019, an authorized representative of the DOW inspected the Great Oaks WWTP and observed, among other things, multiple dead spots in the aeration basin, floating solids over a large portion of the aerator, low mixed liquor suspended solids concentration in the sludge return, water spillage over the bulkhead between the aerator and clarifier, excessive nitrification in the clarifier, no chlorine tablet, a corroded bulkhead, solids in the post-aeration and de-chlorination chamber, staining in the receiving stream below outfall 001, dried solids on the side of the Great Oaks WWTP and on the ground around it.

50. The DOW representative sampled the water for E. Coli at outfall 001 on April 4, 2019. Results from samples taken at the discharge pipe exceeded the test's ability to accurately measure the level of E.Coli. These conditions constitute the following violations:

- a. 401 KAR 5:065, Section 2(1): failure to properly operate and maintain the facility;
- b. 401 KAR 5:005, Section 11: failure to properly operate and/or maintain the disinfection unit;
- c. KRS 224.70-110: discharging a pollutant or substance that causes or contributes to the pollution of the waters of the Commonwealth; and
- d. 401 KAR 10:031, Section 2: degrading the waters of the Commonwealth.

51. On April 26, 2019, the DOW issued an NOV to Defendant for the violations described in paragraph 53 above. A true and accurate copy of the April 26, 2019 NOV is attached hereto and incorporated herein as Exhibit No. 13.

COUNT XII

52. Paragraphs 1 through 51 are incorporated into this Count as if fully set out herein.

53. On May 7, 2019, an authorized representative of the DOW inspected the Great Oaks WWTP and observed, among other things, that the main influent lift station was full of solids, not functioning, and discharging sewage; two manholes discharging sewage in the adjacent residential neighborhood; and no chlorine tablets in the disinfection chamber. These conditions constitute the following violations:

- e. 401 KAR 5:065, Section 2(1): failure to properly operate and maintain the facility;
- f. KRS 224.70-110: discharging a pollutant or substance that causes or contributes to the pollution of the waters of the Commonwealth; and
- g. 401 KAR 10:031, Section 2: degrading the waters of the Commonwealth.

54. On May 17, 2019, the DOW issued an NOV to Defendant for the violations described in paragraph 53 above. A true and accurate copy of the May 17, 2019 NOV is attached hereto and incorporated herein as Exhibit No. 14.

WHEREFORE, Plaintiff respectfully requests as follows:

1. That Defendant Artis be adjudged to have violated the statutes and regulations listed in Counts I-XII above.

2. That Defendant Artis be ordered to pay a civil penalty of twenty-five thousand dollars (\$25,000.00) per day per violation listed in Counts I through XII above for each day he has been and remains in violation of KRS Chapter 224 and the regulations promulgated pursuant thereto.

3. That Defendant Artis be ordered to perform any and all remedial measures deemed necessary by the Cabinet pursuant to KRS 224.10-100(18);

4. That a temporary receiver be appointed pursuant to KRS 224.73-150 to operate and manage the assets of the Great Oaks WWTP during the pendency of this action or until such time as a valid permit is obtained in accordance with applicable regulations;

5. In the alternative, that if a receiver is not appointed, that Defendant Artis be:

- a. temporarily and permanently enjoined to cease all bypasses from the Great Oaks WWTP and to cease all discharges from the Great Oaks WWTP until he is able to comply with KRS 224 and the regulations promulgated pursuant thereto, the requirements imposed by the May 24, 2018 Agreed Order, and the terms and conditions of the KPDES permit.
- b. ordered to complete the KPDES permit application for KPDES Permit No. KY0080845, including the payment of the required fees.

- c. be ordered to comply with the May 24, 2018 Agreed Order. Specifically, to:
- i. Sample for the parameters E. Coli, Total Suspended Solids, and Total Residual Chlorine, submit the results of these samples to the DOW's Paducah Regional Office and the DENF, meet permitted limits within two (2) weeks, cease discharges, and dispose of wastewater in a different permitted facility until samples for the parameters meet permitted limits;
 - ii. Forgo normal operations until the DOW's Paducah Regional Office inspects and approves the plant to resume normal operations;
 - iii. Have an integrity assessment of the Great Oaks WWTP performed by a licensed engineer that includes recommendations for repairs and improvements needed to ensure that the Great Oaks WWTP operates in compliance with the law;
 - iv. Make the necessary recommended repairs and upgrades to the Great Oaks WWTP;
 - v. Submit documentation of the performance of those repairs and upgrades, including receipts, to the Cabinet's Division of Enforcement;
 - vi. Submit all receipts for work performed at the Great Oaks WWTP since April 16, 2018, including all pumping performed; and
 - vii. Provide weekly progress reports, including receipts for all work performed, to the DOW's Paducah Regional Office and the DENF.
6. That Defendant Artis be ordered to pay one hundred seventy-six dollars (\$176.00) in filing fees directly to the Franklin Circuit Court Clerk; and

7. That Plaintiff be awarded its costs herein expended, and any and all other relief to which it may appear reasonably entitled.

Respectfully submitted,

ENERGY AND ENVIRONMENT CABINET

/s/ Mary Ann Lee
Mary Ann Lee, KBA No. 97705
Office of Legal Services
300 Sower Blvd., Third Floor
Frankfort, Kentucky 40601
Phone: (502) 782-2638
Fax: (502) 564-7484
Mary.Lee@ky.gov
Counsel for the Cabinet

VERIFICATION

I, Shannon McLeary, hereby state that I have read the foregoing Complaint, and that the allegations contained therein are true to the best of my knowledge and belief.



Shannon McLeary
Environmental Control Supervisor
Energy and Environment Cabinet,
Division of Water
Paducah Regional Office

COMMONWEALTH OF KENTUCKY)

COUNTY OF McCracken

Subscribed and sworn before me by Shannon McLean on this the 13 day of June, 2019.

Rebecca Bohannon
NOTARY PUBLIC, STATE AT LARGE

My commission expires: 4-21-2022

597225