

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.; )  
Marshall County Environmental Services LLC; ) No. 2019-00104  
LH Treatment Company, LLC; Kingswood )  
Development, Inc.; Airview Utilities, LLC; )  
Brocklyn Utilities, LLC; Fox Run Utilities, )  
LLC; and, Lake Columbia Utilities, Inc. )

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**1st Supplemental Response to  
Attorney General's Initial Data Requests**

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On behalf of the Applicants, Bluegrass Water Utility Operating Company, LLC (“Bluegrass”) herewith submits first supplemental responses to the Attorney General’s Initial Data Requests Nos. 10-13, 15-16. Signed, notarized verifications for this Supplemental Response and for other responses filed after May 31, 2019, will be filed concurrently with the responses to supplemental requests for information due June 14, 2019. The undersigned counsel is responsible for any objection noted for a particular response.

Respectfully submitted,

/s/ Kathryn A. Eckert

Katherine K. Yunker  
[kyunker@mcbayerfirm.com](mailto:kyunker@mcbayerfirm.com)  
Kathryn A. Eckert  
[keckert@mcbayerfirm.com](mailto:keckert@mcbayerfirm.com)  
MCBRAYER PLLC  
201 East Main Street; Suite 900  
Lexington, KY 40507-1310  
859-231-8780  
fax: 859-231-1175

*Attorneys for Applicants*

**Request**

10. For each purchase price of an acquired system that is equal to net book value, provide support for the net book value amount.
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**Response**

In general, the purchase prices are expected to be equivalent to the depreciated net book value of assets acquired at closing. The purchase prices for the acquired systems stated in the Purchase Agreement for the respective utility (attached as Exhibits D-K to the Joint Application) were based on the net book value information available to Bluegrass Water by the date of the Agreement from the most recent publicly-available Annual Report; some purchase prices reflect anticipated investments made in the system after the calendar year end of that Annual Report but before the Agreement date.

**Request**

11. For each purchase price of an acquired system that is other than the net book value, state so.
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**Supplemental Response**

Please see Response to 1 PSC 14 and to 1st Supplemental Response to 1 AG 10.

## Request

12. Provide any current notice of violations issued by the Energy and Environment Cabinet or the Kentucky Division of Water to any of the Joint Applicants. Provide copies of each outstanding violation and state how the violations will be resolved.
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## Response

Bluegrass Water has not had any such notice of violations (NOV) issued to it.

Per the report of the most recent PSC inspection (on the indicated date):

- Brocklyn (1/15/19), Kingswood (1/18/19), and P.R. Wastewater (10/17/18) were in compliance with the Division of Water; and
- no unresolved NOV and no noncompliance with the Division of Water was noted for Lake Columbia (2/13/18) or Airview (7/1/14; report mailed 8/9/16).

Documents relating to notices of violations issued by the Division of Water and attached to the report of the most recent PSC inspection of the respective transferring utility are provided herewith as follows:

- LH Treatment: 5/23/18 Notice of Violations (at JA\_00213). The report of the 11/14/18 inspection (p.11) notes that LH Treatment was in the process of finalizing an Agreed Order regarding those violations.
- MCES (Great Oaks): 4/20/18 Order to Discontinue, Abate, and Alleviate pursuant to KRS 224.10-410 (at JA\_00216), with 4/17/18 Notice of Violation (at JA\_00222), and 5/24/18 Agreed Order resolving the 4/20/18 Order (at JA\_00227)
- MCES (Golden Acres): The report of the May 21-22, 2018, PSC inspection notes (p.14) that a 5/29/18 Division of Water inspection documented violations for

failure to operate and maintain the disinfection unit of the Golden Acres system.

No NOV related to these violations documented in the 5/29/18 Division of Water inspection was included with the 2018 PSC inspection report.

- Fox Run: The report of the 7/3/18 PSC inspection notes noncompliance with the Division of Water (p.13) and lists deficiencies regarding the facilities and their operation, including damage to a tank “to the point that raw sewage was leaking out of the tank onto the ground” (p.17); however, no NOV (which may have been attachment A) was provided to Bluegrass Water with the report.

In general, Bluegrass Water’s current plans to address outstanding violations and to make operational improvements to ensure that compliance is achieved in the long term are contained in the engineering reports provided in response to 1 PSC 13.

COMMONWEALTH OF KENTUCKY  
ENERGY and ENVIRONMENT CABINET  
DEPARTMENT FOR ENVIRONMENTAL PROTECTION  
Division of Enforcement

NOTICE OF VIOLATION

To: LH Treatment Co LLC  
Kevin Hammond  
134 Prater Dr  
Georgetown, KY 40324

AI Name: Longview Country Club    AI ID: 8083    Activity ID: ENV20180003  
County: Scott  
Enforcement Case ID: DOW180005  
Facility Number: KY0081591  
Date(s) Violation(s) Observed: 05/23/2018

This is to advise that you are in violation of the provisions cited below:

- 1 Violation Description for Subject Item AIOO0000008083():  
No person shall, directly or indirectly, throw, drain, run or otherwise discharge into any of the waters of the Commonwealth, or cause, permit or suffer to be thrown, drained, run or otherwise discharged into such waters any pollutant, or any substance that shall cause or contribute to the pollution of the waters of the Commonwealth in contravention of the standards adopted by the cabinet or in contravention of any of the rules, regulations, permits, or orders of the cabinet or in contravention of any of the provisions of this chapter. [KRS 224.70-110]

**Description of Non Compliance:**

Failing to comply with 401 KAR 5:065, which cites 40 CFR 122.41(a), by failing to comply with the terms and conditions of KPDES Permit No. KY0081591, Outfall 001-1, for Total Suspended Solids (TSS) during the months of December 2017; and January and February 2018. The permitted limits for TSS Loading are a monthly average of 25 lbs/day and a maximum weekly average of 37.5 lbs/day. The reported results were a maximum weekly average of 48.44 lbs/day for December 2017; a monthly average of 28.24 lbs/day and a maximum weekly average of 80.89 lbs/day for January 2018; and a maximum weekly average of 62.38 lbs/day for February 2018. The permitted limits for TSS Concentration are a monthly average of 30 mg/l and a maximum weekly average of 45 mg/l. The reported results were a monthly average of 44 mg/l and a maximum weekly average of 121 mg/l for December 2017; a monthly average of 56 mg/l and a maximum weekly average of 159 mg/l for January 2018; and a maximum weekly average of 68 mg/l for February 2018.

**The remedial measure(s), and date(s) to be completed by are as follows:**

LH Treatment Co LLC shall comply with the terms and conditions of KPDES permit #KY0081591. The KDEP will continue to monitor your DMRs. [KRS 224.70-110]

- 2 Violation Description for Subject Item AIOO0000008083():  
No person shall, directly or indirectly, throw, drain, run or otherwise discharge into any of the waters of the Commonwealth, or cause, permit or suffer to be thrown, drained, run or otherwise discharged into such waters any pollutant, or any substance that shall cause or contribute to the pollution of the waters of the Commonwealth in contravention of the standards adopted by the cabinet or in contravention of any of the rules, regulations, permits, or orders of the cabinet or in contravention of any of the provisions of this chapter. [KRS 224.70-110]

AI: Longview Country Club -- 8083

**Description of Non Compliance:**

Failing to comply with 401 KAR 5:065, which cites 40 CFR 122.41(a), by failing to comply with the terms and conditions of KPDES Permit No. KY0081591, Outfall 001-1, for Total Residual Chlorine (TRC) during the months of December 2017; and February 2018. The permitted limits for TRC Concentration are a monthly average of 0.011 mg/l and a maximum weekly average of 0.019 mg/l. The reported results were a maximum weekly average of 0.02 mg/l for December 2017; and a monthly average of 0.11 mg/l and a maximum weekly average of 0.44 mg/l for February 2018.

**The remedial measure(s), and date(s) to be completed by are as follows:**

LH Treatment Co LLC shall comply with the terms and conditions of KPDES permit #KY0081591. The KDEP will continue to monitor your DMRs. [KRS 224.70-110]

**3 Violation Description for Subject Item AIOO0000008083():**

No person shall, directly or indirectly, throw, drain, run or otherwise discharge into any of the waters of the Commonwealth, or cause, permit or suffer to be thrown, drained, run or otherwise discharged into such waters any pollutant, or any substance that shall cause or contribute to the pollution of the waters of the Commonwealth in contravention of the standards adopted by the cabinet or in contravention of any of the rules, regulations, permits, or orders of the cabinet or in contravention of any of the provisions of this chapter. [KRS 224.70-110]

**Description of Non Compliance:**

Failing to comply with 401 KAR 5:065, which cites 40 CFR 122.41(a), by failing to comply with the terms and conditions of KPDES Permit No. KY0081591, Outfall 001-1, for Dissolved Oxygen (DO) during the month of February 2018. The permitted limit for DO Concentration is a minimum of 7 mg/l. The reported result was a minimum of 5.2 mg/l.

**The remedial measure(s), and date(s) to be completed by are as follows:**

LH Treatment Co LLC shall comply with the terms and conditions of KPDES permit #KY0081591. The KDEP will continue to monitor your DMRs. [KRS 224.70-110]

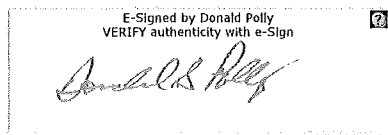
Violations of the above cited statute(s) and/or regulation(s) are subject to a civil penalty per day per violation. Violations carry civil penalties of up to \$25,000 per day per violation depending on the statutes/regulations

AI: Longview Country Club -- 8083

violated. In addition, violations may be concurrently enjoined. Compliance with remedial measures and their deadlines does not provide exemption from liability for violations during the period of remediation, nor prevent additional remedial measures from being required.

If you have questions or need further information, write or call the undersigned:

Department for Environmental Protection  
Division of Enforcement  
300 Sower Blvd, 3<sup>rd</sup> Floor  
Frankfort, KY 40601  
502-782-6859 (7:45 AM – 3:45 PM)  
Donald Polly, Enforcement Specialist



Issued By:

Donald Polly  
Environmental Enforcement Specialist  
Compliance and Operations Branch  
Date: May 23, 2018

How Delivered: Certified Mail Certified/Registered # 7017 0530 0000 5314 4831



**COMMONWEALTH OF KENTUCKY  
ENERGY AND ENVIRONMENT CABINET  
FILE NO. AAO-34434**

**FILED**  
**APR 20 2018**  
Office of Administrative Hearings

**ENERGY AND ENVIRONMENT CABINET**

**PETITIONER**

**VS.**

**ALLEN ARTIS**

**RESPONDENT**

**Serve by certified mail and return to OGC for service by hand delivery to:**

**Allen Artis  
P.O. Box 541  
Benton, KY 42025**

**and**

**Allen Artis  
P.O. Box 431  
Benton, KY 42025**

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**ORDER TO DISCONTINUE, ABATE, AND ALLEVIATE**

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**WHEREAS**, the Energy and Environment Cabinet (hereafter "Cabinet"), is charged with the duty to enforce the laws of the Commonwealth of Kentucky relating to human health and the environment under KRS Chapter 224 and the regulations adopted pursuant thereto;

**WHEREAS**, KRS 224.10-100(5) grants to the Cabinet the power and duty to prevent, abate and control water, land and air pollution;

**WHEREAS**, KRS 224.10-410 provides that whenever the Secretary finds, after investigation, that any person or combination of persons is causing, engaging in or maintaining a condition or activity which, in his judgment, presents a danger to the health or welfare of the

people of the state or results in or is likely to result in damage to natural resources, and relates to the prevention and abatement powers of the Secretary, and it therefore appears to be prejudicial to the interest of the people of the state to delay action until an opportunity for a hearing can be provided, the Secretary may, without prior hearing, order such person or combination of persons by notice, in writing wherever practicable, to discontinue, abate or alleviate such condition or activity, and thereupon such person or combination of persons shall immediately discontinue, abate or alleviate such condition or activity;

**WHEREAS**, Cabinet inspectors from the Division of Water (“DOW”) determined that the wastewater treatment plant at the Great Oaks Subdivision is actively discharging wastewater by overflows from manhole(s) and lift station(s) and by leaks from the tank(s);

**WHEREAS**, the discharge flows onto the ground surrounding the wastewater treatment plant and into the Blizzard Pond Drainage Canal;

**WHEREAS**, Blizzard Pond Drainage Canal runs near Great Oaks Subdivision, a subdivision where families and children reside;

**WHEREAS**, upon information provided by Allen Artis (“Artis”), the business formerly operated as Marshall County Environmental Services LLC, but that company was administratively dissolved on or about September 28, 2013;

**WHEREAS**, Artis currently owns and operates the wastewater treatment plant;

**WHEREAS**, the wastewater treatment plant is in a state of general disrepair that causes or contributes to the overflows and discharges referenced above;

**WHEREAS**, a Notice of Violation was issued on or about March 23, 2016 for exceedances of Total Ammonia Nitrogen (TAN), Biochemical Oxygen Demand (BOD), and E.Coli at Outfall 001-1;

**WHEREAS**, a Notice of Violation was issued on July 19, 2017 for exceedances of Biochemical Oxygen Demand (BOD) at Outfall 001-1 and for failing to submit discharge monitoring reports;

**WHEREAS**, on August 1, 2017, an incident investigation determined that stream degradation had occurred as a result of a discharge from the wastewater treatment plant which resulted in E.Coli exceedances;

**WHEREAS**, Artis has known that the wastewater treatment plant had overflows since at least June 17, 2017 and has failed to make the necessary repairs;

**WHEREAS**, contamination of the surface water through the discharges described above damages aquatic life through the reduction of the amount of available dissolved oxygen in the water;

**WHEREAS**, contamination of the surface water through the discharge of waste as described above increases the risk of the spread of the following diseases: adenovirus, gastroenteritis, SARS, Hepatitis E, Hepatitis A, Hand Foot and Mouth Disease, Meningitis, Polio, and Progressive multifocal leukoencephalopathy, among others;

**WHEREAS**, during the inspection of the facility conducted on or about April 16, 2018, inspectors found that the Defendants had engaged in the following violations:

- a. 401 KAR 5:065(2)(1): failure to properly operate and maintain;
- b. 401 KAR 5:005(11): failure to meet regulatory requirements for the disinfection process;
- c. KRS 224.70-110: discharging a pollutant or substance that causes or contributed to the pollution of the waters of the Commonwealth in contravention of the standards

adopted by the cabinet or in contravention of any of the rules, regulations, permits, or orders of the cabinet or in contravention of any of the provisions of this KRS 224;

- d. 401 KAR 10:031(2): degradation of surface waters;
- e. 401 KAR 5:065(2)(1): failure to report a spill, bypass, or noncompliance which may endanger health or the environment;
- f. 401 KAR 5:015(2): failure to notify the Division of Water in the event of a discharge or spill; and
- g. 401 KAR 5:005(10)(7); failure to place a fence with a lockable gate around a wastewater treatment plant.

**WHEREAS**, as a result of the inspection conducted on April 16, 2018, a Notice of Violation was issued on April 17, 2018 documenting the violations listed above. A copy of that NOV is attached at Exhibit 1;

**WHEREAS**, it is the Secretary's judgment that the Defendant is causing, engaging in or maintaining 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, and which relates to the prevention and abatement powers of the Secretary; and

**THEREFORE**, the Secretary hereby determines that it appears to be prejudicial to the interest of the people of the state to delay action until an opportunity for a hearing can be provided;

**THEREFORE**, the Secretary is hereby, and without prior hearing, authorized pursuant to KRS 224.10-410 to order the Defendant herein and any person or combination of persons acting on behalf of or in concert with Defendant, to discontinue, abate or alleviate such condition or activity; and

**THEREFORE**, the Defendant and any person or combination of persons who may be acting on behalf of or in concert with the Defendant are hereby **ORDERED** to immediately discontinue, abate and alleviate such condition or activity and **SHALL** immediately conduct the following activities:

1. Cease any and all overflows and non-compliant discharges from the wastewater treatment plant; and
2. Until the wastewater treatment plant can operate in compliance, collect the wastewater and dispose of it at a properly permitted facility.

**WHEREAS**, this Order only addresses the immediate threat to human health and the environment from the illegal discharge by Allen Artis at the Great Oaks wastewater treatment plant and does not resolve issues of liability or remedial action arising from conditions which might be cited in NOV's issued to Allen Artis.

**File No. AAO-34434**

**WHEREAS BE ADVISED**, that, pursuant to KRS 224.10-410, in a time not to exceed ten (10) days from this **ORDER** the Secretary shall provide the Defendant an opportunity to be heard and to present proof that such conditions and activity do not violate the provisions of this section.

**SO ORDERED** this the \_\_\_\_ day of April, 2018.

ENERGY AND ENVIRONMENT CABINET



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R. BRUCE SCOTT, DEPUTY SECRETARY



MATTHEW G. BEVIN  
GOVERNOR

CHARLES G. SNAVELY  
SECRETARY

**ENERGY AND ENVIRONMENT CABINET**  
**DEPARTMENT FOR ENVIRONMENTAL PROTECTION**  
DIVISION OF WATER  
130 EAGLE NEST DR  
PADUCAH KY 42003-9435

AARON B. KEATLEY  
COMMISSIONER

April 17, 2018

Certified No. 7014 0510 0002 3570 1530  
Return Receipt Requested

Mr. Allen Artis  
Great Oaks Subd  
P.O. Box 541  
Benton, KY 42025

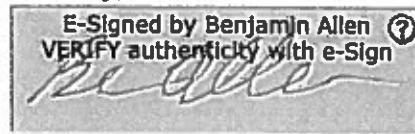
**Re:** Notice of Violation  
AI ID: 3041  
AI Name: Great Oaks Subd  
Activity ID: ENV20180001  
Permit No. KY0080845  
McCracken County, KY

Dear Mr. Artis:

The Kentucky Department for Environmental Protection (DEP) has issued the enclosed Notice of Violation for violations discovered at your facility. Please review this Notice of Violation carefully to ensure that all remedial measures are completed by the specified deadlines.

Your cooperation and attention to this matter is appreciated. If you have any questions, please contact me at 270-898-8468.

Sincerely,



Mr. Benjamin Allen,  
Environmental Inspector  
Division of Water



Enclosure

COMMONWEALTH OF KENTUCKY  
ENERGY AND ENVIRONMENT CABINET  
DEPARTMENT FOR ENVIRONMENTAL PROTECTION  
Division of Water

NOTICE OF VIOLATION

To: Mr. Allen Artis  
Great Oaks Subd  
P.O. Box 541  
Benton, KY 42025

AI Name: Great Oaks Subd AI ID: 3041 Activity ID: ENV20180001

Discovery ID: CIN20180001 County: McCracken

Enforcement Case ID:

Date(s) Violation(s) Observed: 04/16/2018

This is to advise that you are in violation of the provisions cited below:

**1 Violation Description for Subject Item AIOO0000003041():**

Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls, and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit. [401 KAR 5:065 Section 2(1)] as in [40 C.F.R. 122.41(e)].

**Description of Non Compliance:**

The facility is not being properly operated and maintained as required. During this inspection, partially treated waste water was observed on the grounds. It appeared the water on the grounds surrounding the plant was coming from a leak on the bottom of the tank. The water is flowing from the sludge return basin bottom. The outfall was observed and there was no flow.

On April 16, 2018 a second visit was made. Waste water was flowing out from the bottom of the tank, the water is standing on the grounds and flowing into a drainage ditch behind the plant, the drainage ditch flows into Blizzard Pond Drainage Canal.

**The remedial measure(s), and date(s) to be completed by are as follows:**

The permittee must, at all times, properly operate & maintain the facility. With proper approval(s) from the Division of Water, upgrade/update the facility in order to meet the regulatory requirements and facility permit conditions. Immediately cease unpermitted discharge. Within thirty (30) days of the receipt of this notice, the permittee shall submit a written notification to the undersigned that the permittee complies with all requirements of its permit. Failure to comply with the remedial measures or repeated violations of this requirement may subject you and/or your company to an immediate referral to the Division of Enforcement. [401 KAR 5:065 Section 2(1)]

**2 Violation Description for Subject Item AIOO0000003041():**

All wastewater treatment plants shall have a disinfection process which meets the following requirements: An ultraviolet disinfection system designed to treat the anticipated peak hourly flow; a chlorination system with a flow or demand proportional feed system. The chlorine contact tank shall have a minimum detention time of thirty (30) minutes based on the average flow, or fifteen (15) minutes based on the peak hourly flow, whichever requires the larger tank size, wastewater treatment plants shall also have a



dechlorination system with a flow or demand proportional feed system if necessary to meet the effluent limits; or a chlorination system with a manually controlled feed system and a flow equalization basin designed to eliminate the diurnal flow variations. Tablet type chlorination equipment shall not be used in an intermediate or large WWTP. [401 KAR 5:005 Section 11].

**Description of Non Compliance:**

The facility has failed to properly maintain and / or operate the disinfection unit. No Chlorine tablets were observed in the chlorine contact chamber. Sewage that has not been disinfected is bypassing the chlorine contact chamber and being directly discharged onto the ground.

**The remedial measure(s), and date(s) to be completed by are as follows:**

The permittee must immediately maintain and operate the disinfection unit to allow for compliance with permit conditions. Within thirty (30) days of the receipt of this notice, the permittee shall submit a written notification to the undersigned that the permittee complies with all requirements of its permit. Failure to comply with the remedial measures or repeated violations of this requirement may subject you and/or your company to an immediate referral to the Division of Enforcement. [401 KAR 5:005 Section 11]

**3 Violation Description for Subject Item AIOO00000030410):**

No person shall directly, or indirectly, throw, drain, run or otherwise discharge into any of the waters of the Commonwealth, or cause, permit or suffer to be thrown, drained, run otherwise discharged into such waters any pollutant, or any substance that shall cause or contribute to the pollution of the waters of the commonwealth in contravention of the standards adopted by the cabinet or in contravention of any of the rules, regulations, permits, or orders of the cabinet or in contravention of any of the provisions of this chapter. [KRS 224.70-110].

**Description of Non Compliance:**

Pollutants have entered and contributed to the pollution of the waters of the Commonwealth.

**The remedial measure(s), and date(s) to be completed by are as follows:**

Immediately cease all activity, which is contributing or has contributed to the pollution of the waters of the Commonwealth. Within thirty (30) days of the receipt of this notice, the permittee/responsible party shall submit a plan of action and a schedule of implementation to the undersigned describing the necessary measures taken to address the non-compliance. Failure to comply with the remedial measures or repeated violations of this requirement may subject you and or your company to an immediate referral to the Division of Enforcement. [KRS 224.70-110]

**4 Violation Description for Subject Item AIOO00000030410):**

Surface waters shall not be aesthetically or otherwise degraded. [401 KAR 10:031 Section 2].

**Description of Non Compliance:**

The waters of the Commonwealth have been degraded.

**The remedial measure(s), and date(s) to be completed by are as follows:**

Immediately cease all discharges that are aesthetically or otherwise degrading the waters of the Commonwealth. The effluent must be brought into compliance so as to eliminate stream degradation. Within thirty (30) days of the receipt of this notice, the permittee/responsible party shall submit a plan of action and a schedule of implementation to the undersigned describing the necessary measures taken to address the non-compliance. Failure to comply with the remedial measures or repeated violations of this requirement may subject you and or your company to an immediate referral to the Division of Enforcement. [401 KAR 10:031 Section 2]

**5 Violation Description for Subject Item AIOO00000030410):**

The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. [401 KAR 5:065 Section 2(1)] as in [40 C.F.R. 122.41(l)(6)].

**Description of Non Compliance:**

The facility has failed to report spills, bypasses and/or non-compliance as required by 401 KAR 5:065 Section 2(1). On April 13, 2018 I spoke with Allen Artis via telephone and Mr. Artis stated that on Thursday, April 12th, he had gone out to the plant and observed the spill/bypass from the plant onto the ground. He stated that he called AAA Septic Hauler and had over 4,000 gallons pumped out of the ditch and removed.

**The remedial measure(s), and date(s) to be completed by are as follows:**

The permittee must report spills, bypasses and non-compliance as required by 401 KAR 5:065 Section 2(1). Within thirty (30) days of the receipt of this notice, the permittee shall submit a written notification to the undersigned that the permittee complies with all requirements of its permit. Any permit non-compliance shall constitute a violation of the Clean Water Act and KRS 224, among which shall be the following remedies: Enforcement action, permit revocation, revocation and reissuance, or modification; or denial of permit renewal application. Failure to comply with the remedial measures or repeated violations of this requirement may subject you and or your company to an immediate referral to the Division of Enforcement. [401 KAR 5:065 Section 2(1)]

**6 Violation Description for Subject Item AIOO00000030410:**

Whenever, by reason of emergency or accident, a spill or discharge occurs which results in pollution of the waters of the Commonwealth, the Division of Water shall be notified by the most rapid means available. [401 KAR 5:015 Section 2]

**Description of Non Compliance:**

The responsible party/permittee has failed to report the spill or discharge to the Division of Water as required.

**The remedial measure(s), and date(s) to be completed by are as follows:**

All future spills/bypasses, which would result in or contribute to the pollution of the waters, must be reported to the Division of Water by the most rapid means available. Failure to comply with the remedial measures or repeated violations of this requirement may subject you and or your company to an immediate referral to the Division of Enforcement. [401 KAR 5:015 Section 2]

**7 Violation Description for Subject Item AIOO00000030410:**

Fencing with a lockable gate shall be provided around the wastewater treatment plant. [401 KAR 5:005 Section 10(7)]

**Description of Non Compliance:**

The facility has failed to install fencing with a lockable gate around the wastewater treatment plant site. The gate and fence around the plant is broken and in need of repairs to prevent vandalism.

**The remedial measure(s), and date(s) to be completed by are as follows:**

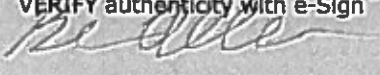
The permittee must install a fence with a lockable gate around the waste water treatment plant. Within thirty (30) days of the receipt of this notice, the permittee shall submit a written notification to the

undersigned that the permittee complies with all requirements of its permit. Failure to comply with the remedial measures or repeated violations of this requirement may subject you and/or your company to an immediate referral to the Division of Enforcement. [401 KAR 5:005 Section 10(7)]

Violations of the above cited statute(s) and/or regulation(s) are subject to a civil penalty per day per violation. Violations carry civil penalties of up to \$25,000 per day per violation depending on the statutes/regulations violated. In addition, violations may be concurrently enjoined. Compliance with remedial measures and their deadlines does not provide exemption from liability for violations during the period of remediation, nor prevent additional remedial measures from being required.

If you have questions or need further information, write or call the undersigned:

Division of Water  
Paducah Regional Office  
130 Eagle Nest Dr  
Paducah, KY 42003-9435  
270-898-8468 (8:00 AM – 4:30 PM)  
Mr. Benjamin Allen, Environmental Inspector

E-Signed by Benjamin Allen  
VERIFY authenticity with e-Sign  


Issued By:

Mr. Benjamin Allen, Environmental Inspector  
Date: April 17, 2018

E-Signed by Shannon McLeary  
VERIFY authenticity with e-Sign  


Issued By:

Ms. Shannon McLeary, Environmental Control Supervisor  
Date: April 17, 2018

How Delivered: USPS Certified/Registered # 7014 0510 0002 3570 1530

**FILED**  
MAY 24 2018  
Office of Administrative Hearings

**COMMONWEALTH OF KENTUCKY  
ENERGY AND ENVIRONMENT CABINET  
OFFICE OF ADMINISTRATIVE HEARINGS  
FILE NO. AAO-34434-049**

**COMMONWEALTH OF KENTUCKY,  
ENERGY AND ENVIRONMENT CABINET**

**PETITIONER**

**VS.**

**AGREED ORDER**

RECEIVED  
JUN - 5 2018  
DEPARTMENT FOR ENVIRONMENTAL PROTECTION  
DIVISION OF ENFORCEMENT

**RESPONDENT**

**ALLEN ARTIS**

**WHEREAS**, the Energy and Environment Cabinet (hereafter "Cabinet"), is charged with the duty to enforce the laws of the Commonwealth of Kentucky relating to human health and the environment under KRS Chapter 224 and the regulations adopted pursuant thereto;

**WHEREAS**, KRS 224.10-100(5) grants to the Cabinet the power and duty to prevent, abate and control water, land and air pollution;

**WHEREAS**, KRS 224.10-410 provides that whenever the Secretary finds, after investigation, that any person or combination of persons is causing, engaging in or maintaining a condition or activity which, in his judgment, presents a danger to the health or welfare of the people of the state or results in or is likely to result in damage to natural resources, and relates to the prevention and abatement powers of the Secretary, and it therefore appears to be prejudicial to the interest of the people of the state to delay action until an opportunity for a hearing can be provided, the Secretary may, without prior hearing, order such person or combination of persons by notice, in writing wherever practicable, to discontinue, abate or alleviate such condition or activity, and thereupon such person or combination of persons shall immediately discontinue, abate or alleviate such condition or activity;

cc

**WHEREAS**, Cabinet inspectors from the Division of Water (“DOW”) determined that the wastewater treatment plant at the Great Oaks Subdivision discharged wastewater by overflows from manhole(s) and lift station(s) and by leaks from the tank(s);

**WHEREAS**, the discharge flowed onto the ground surrounding the wastewater treatment plant and into the Blizzard Pond Drainage Canal;

**WHEREAS**, Blizzard Pond Drainage Canal runs near Great Oaks Subdivision, a subdivision where families and children reside;

**WHEREAS**, upon information provided by Allen Artis (“Artis”), the business formerly operated as Marshall County Environmental Services LLC, but that company was administratively dissolved on or about September 28, 2013;

**WHEREAS**, Artis currently owns and operates the wastewater treatment plant;

**WHEREAS**, the wastewater treatment plant was in a state of general disrepair that caused or contributed to the overflows and discharges referenced above;

**WHEREAS**, a Notice of Violation was issued on or about March 23, 2016 for exceedances of Total Ammonia Nitrogen (TAN), Biochemical Oxygen Demand (BOD), and E.Coli at Outfall 001-1;

**WHEREAS**, a Notice of Violation was issued on July 19, 2017 for exceedances of Biochemical Oxygen Demand (BOD) at Outfall 001-1 and for failing to submit discharge monitoring reports;

**WHEREAS**, on August 1, 2017, an incident investigation determined that stream degradation had occurred as a result of a discharge from the wastewater treatment plant which resulted in E.Coli exceedances;

**WHEREAS**, Artis has known that the wastewater treatment plant had overflows since at least June 17, 2017 and has failed to make the necessary repairs;

**WHEREAS**, contamination of the surface water through the discharges described above damages aquatic life through the reduction of the amount of available dissolved oxygen in the water;

**WHEREAS**, contamination of the surface water through the discharge of waste as described above increases the risk of the spread of the following diseases: adenovirus, gastroenteritis, SARS, Hepatitis E, Hepatitis A, Hand Foot and Mouth Disease, Meningitis, Polio, and Progressive multifocal leukoencephalopathy, among others;

**WHEREAS**, during the inspection of the facility conducted on or about April 16, 2018, inspectors found that the Defendants had engaged in the following violations:

- a. 401 KAR 5:065(2)(1): failure to properly operate and maintain;
- b. 401 KAR 5:005(11): failure to meet regulatory requirements for the disinfection process;
- c. KRS 224.70-110: discharging a pollutant or substance that causes or contributed to the pollution of the waters of the Commonwealth in contravention of the standards adopted by the cabinet or in contravention of any of the rules, regulations, permits, or orders of the cabinet or in contravention of any of the provisions of this KRS 224;
- d. 401 KAR 10:031(2): degradation of surface waters;
- e. 401 KAR 5:065(2)(1): failure to report a spill, bypass, or noncompliance which may endanger health or the environment;

- f. 401 KAR 5:015(2): failure to notify the Division of Water in the event of a discharge or spill; and
- g. 401 KAR 5:005(10)(7); failure to place a fence with a lockable gate around a wastewater treatment plant.

**WHEREAS**, as a result of the inspection conducted on April 16, 2018, a Notice of Violation was issued on April 17, 2018 documenting the violations listed above;

**WHEREAS**, the Cabinet issued an Order to Artis to discontinue, abate, and alleviate pursuant to KRS 224.10-410 on April 20, 2018;

**WHEREAS**, Artis has made progress in addressing the deficiencies underlying the Notice of Violation issued on April 17, 2018 including:

- a. Placing a temporary patch on the tank wall failure to slow leaking;
- b. Performing repairs on the tank walls in the area of structural failure;
- c. Pumping out leaking tank and setting up pump bypass into clarifier;
- d. Removing wastewater from grounds via septic hauler;
- e. Spreading lime on contaminated areas; and
- f. Communicating regularly with regional office on status of repairs and bypass.

**WHEREAS**, Artis wishes to resolve the issuance of that Order without hearing:

**TERMS**

**NOW THEREFORE**, in the interests of resolving the aforementioned claims and controversies in the above-referenced matter, the parties hereby consent to the entry of this Agreed Order and agree as follows:

1. Artis fully admits the violations cited in the Notice of Violation issued on April 17, 2018 and, as such, admits that the Order to Discontinue, Abate, and Alleviate issued on April 20, 2018 was correctly issued.

### REMEDIAL MEASURES

2. The Cabinet and Artis agree that the following remedial measures shall be required:
- a. Artis shall sample for the parameters E. coli, Total Suspended Solids, and Total Residual Chlorine. These specific parameters shall meet permitted limits within two weeks of the entry of this Agreed Order as signified by the signature of the Secretary or his designee. Until these limits are being met, Artis shall be bound by the terms of the Order to Discontinue, Abate, and Alleviate issued on April 20, 2018 which required him to cease discharges and collect wastewater and dispose of it in a permitted facility. Artis shall not resume normal operations until the Division of Water, Paducah Regional Office, inspects and approves the plant to resume normal operations. All other sampling and terms required by the KPDES permit shall remain in effect. Sampling results shall be submitted to the Division of Water, Paducah Regional Office, and the Division of Enforcement;
  - b. Within three months, Artis shall have an integrity assessment of the wastewater treatment plant performed by a licensed engineer. Artis shall provide a copy of this Agreed Order to the engineer such that the engineer may consider the issues that precipitated the assessment. The assessment shall include recommendations for repairs and improvements needed to ensure that the wastewater treatment plant operates in compliance with the law. Within six months of the assessment, Mr. Artis shall make the necessary repairs and upgrades to the wastewater treatment plant as recommended in the integrity assessment. Artis shall submit documentation of the performance of those repairs and upgrades, including but not limited to receipts, to the Division of Enforcement;
  - c. Artis shall submit all receipts for work performed at the wastewater treatment plant since April 16, 2018, including all pumping performed; and
  - d. Artis shall provide weekly progress reports to the Division of Water, Paducah Regional Office and the Division of Enforcement as he works towards compliance. Those progress reports shall include receipts for all work performed at the wastewater treatment plant during that week, including pumping and haulage of wastewater.
3. Artis acknowledges that the remedial measures specified in numerical paragraph 2 constitute interim measures only. As such, Artis acknowledges that further remedial measures



may be required of him pursuant to the Final Order resolving the Notices of Violation.

#### **MISCELLANEOUS PROVISIONS**

4. 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 and the Respondent reserves its 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 Respondent reserves its defenses thereto.

5. Specifically, this Agreed Order resolves only the issuance of the Order to Discontinue, Abate, and Alleviate issued by the Cabinet on April 20, 2018. This Agreed Order does not constitute a resolution of the Notices of Violation referenced within that Order.

6. This Agreed Order shall not prevent the Cabinet from issuing, reissuing, renewing, modifying, revoking, suspending, denying, terminating, or reopening any permit to the Respondent. The Respondent reserves its defenses thereto, except that the Respondent shall not use this Agreed Order as a defense.

7. The Respondent waives its right to any hearing on the matters admitted herein. However, failure by the Respondent 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.

8. The Agreed Order may not be amended except by a written order of the Cabinet's Secretary or his designee. The Responsible Party may request an amendment by writing the Director of the Division of Enforcement, 300 Sower Blvd., 3<sup>rd</sup> Floor, 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.


9. The Cabinet does not, by its consent to the entry of this Agreed Order, warrant or aver in any manner that Respondent's 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 Respondent 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.

10. 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 the Respondent is to take any action or cease any activity, and the Secretary enters the Agreed Order after that date, then the Respondent is nonetheless obligated to have taken the action or ceased the activity by the date contained in this Agreed Order.

11. Submittals required to be submitted to the Division of Enforcement shall be sent to 300 Sower Blvd., 3<sup>rd</sup> Floor, Frankfort, Kentucky 40601. Submittals to the Division of Water, Paducah Regional Office shall be sent to 130 Eagle Nest Drive, Paducah, KY 42003.

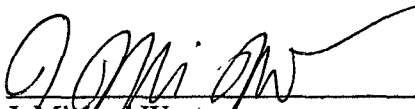
**AGREED TO BY:**

**DOW-34434-049**


  
\_\_\_\_\_  
Allen Artis

5.1.18  
Date


**APPROVAL RECOMMENDED BY:**

  
\_\_\_\_\_  
J. Michael West  
Attorney, Office of General Counsel

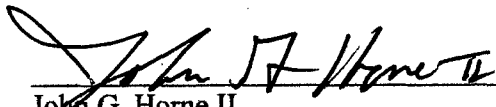
5/8/18  
Date

  
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Jeff Cummins  
Director, Division of Enforcement

5/14/18  
Date

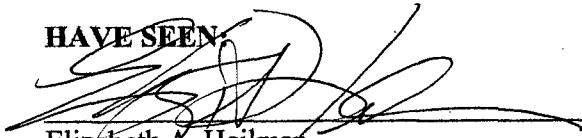
  
\_\_\_\_\_  
Peter Goodmann  
Director, Division of Water

5/18/2018  
Date

  
\_\_\_\_\_  
John G. Horne II,  
Executive Director, Office of General Counsel

5/18/18  
Date

**HAVE SEEN:**

  
\_\_\_\_\_  
Elizabeth A. Heilman  
Hearing Officer, Office of Administrative Hearings

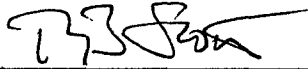
5/21/2018  
Date

**ORDER**

**DOW-34434-049**

Wherefore, the foregoing Agreed Order is entered as the final Order of the Energy and Environment Cabinet this 24 day of May, 2018.

ENERGY AND ENVIRONMENT CABINET



\_\_\_\_\_  
R. BRUCE SCOTT, DEPUTY SECRETARY

**CERTIFICATE OF SERVICE**

I hereby certify that on the 24 day of May, 2018, a true and accurate copy of the foregoing **AGREED ORDER** was mailed, postage pre-paid, to the following:

Allen Artis  
PO Box 541  
Benton, KY 42025

Allen Artis  
PO Box 431  
Benton, KY 42025

and mailed, messenger to:

Jeffery A. Cummins, Director  
Division of Enforcement  
300 Sower Blvd., 3<sup>rd</sup> Floor  
Frankfort, Kentucky 40601

J. Michael West, Attorney  
300 Sower Blvd., 3<sup>rd</sup> Floor  
Frankfort, KY 40601



DOCKET COORDINATOR

DISTRIBUTION:

Division of Enforcement  
Division of Water  
Order File

SH  
FBT  
J. Schul  
EH

**Request**

13. State how the Joint Applicants will provide notice of the transfer of customers to Bluegrass UOC.
- 

**Response**

Bluegrass Water, on behalf of the Joint Applicants, will be providing the notice of the hearing in this matter directed by the PSC's 6/4/19 Order ¶ 2; the plan is to send the notice by mail in accordance with 807 KAR 5:001 § 9(2)(b)1.

In addition, Bluegrass Water UOC intends to send an initial letter to customers explaining the intent to purchase the system, information about the company and ways to contact Bluegrass Water UOC. If the PSC approves the acquisition and once the acquisition is complete, Bluegrass Water UOC plans to adopt the existing tariff and then intends to send a letter with more specific information including rates, information about the current state of each system, along with a description of the changes and improvements planned.

**Request**

15. Provide a copy of each of the Joint Applicant's whose system is to be acquired, most current balance sheet for a period ending not more than 90 days prior to the application date. The response(s) provided to DR 2, above, should be made to the balance sheet(s) provided in this response.
- 

**Response**

The most recently-filed Annual Report for each transferring utility contains the most complete, consistent information for that utility. P.R. Wastewater, LH Treatment, Kingswood, Airview, Brocklyn, and Fox Run all filed 2018 Annual Reports, which are publicly available from the PSC; these provide balance sheets as of YE 2018, which is only about two weeks outside the 90-day period specified in the Request.

Lake Columbia has informed Bluegrass Water that it has submitted an Annual Report for 2018, but this has not yet been published. Its publicly-available 2017 Annual Report for does provide significant financial information for that time period.

MCES has not filed an Annual Report with any information resembling a balance sheet since 2016, and that 2016 Annual Report is the best available information responsive to this Request.

## Request

16. Provide an analysis of each of the Joint Applicant's whose system is to be acquired, current and long-term debts, including the lender's name, the date the debt was incurred, the original amount of the indebtedness, and the amount outstanding as of the date of the balance sheet provided in response to item 15.
- 

## Response

The long-term debt and current liabilities known to Bluegrass Water are as shown on the Balance Sheet for Liabilities and Other Credits (Ref. Page: 3) of each utilities' most recent publicly-available Annual Report. Long-term debt is identified on lines 221 and 223-224. Current and accrued liabilities are identified on lines 231-238.

For example, P.R. Wastewater on line 231 of its 2018 Annual Report lists a debt which is a line of credit with Republic Bank, with the current balance (YE 2018) of \$25,104.00.

Persimmon Ridge Development Company is owed the \$3,000.00 per line 233 of the same report. Please note that further details about its debts and other liabilities were filed and reviewed as part of P.R. Wastewater's recent Alternative Rate Adjustment case (Ky. PSC 2018-00339).

As part of its due diligence, and for each of the transferring utilities, Bluegrass Water is conducting a thorough title and lien review of all utility assets and related parties to ensure that acquired assets are free and clear. This process is conducted by an outside law firm and its findings will be reviewed by the equity and debt providers to Bluegrass Water. This process is underway for all assets for which transfer/acquisition approval is sought, but will not be substantially completed until a later date.