

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: Delaplain Disposal Company; )  
Herrington Haven Wastewater Company, Inc.; )  
Springcrest Sewer Company, Inc.; and )  
Woodland Acres Utilities, LLC. )  
)

Case No. 2020-00297

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**Response to  
Commission Staff's First Request for Information**

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Applicants Bluegrass Water Utility Operating Company, LLC (“Bluegrass”), Delaplain Disposal Company (“Delaplain”), Herrington Haven Waste Water Company, Inc. (“Herrington Haven”), Springcrest Sewer Company, Inc. (“Springcrest”) and Woodland Acres Utilities, LLC (“Woodland Acres”) herewith submit responses to the Commission Staff’s First Request for Information. Signed, notarized verifications for these Responses appear on the following pages. Bluegrass has verified the responses to 1 PSC 1-5, 6b-c, 7-14, and 16-23. The transferring utilities have verified their respective responses to 1 PSC 6a and 6d-i and 15. The undersigned counsel is responsible for any objection noted for a particular response.

Respectfully submitted,

*/s/ Kathryn A. Eckert*

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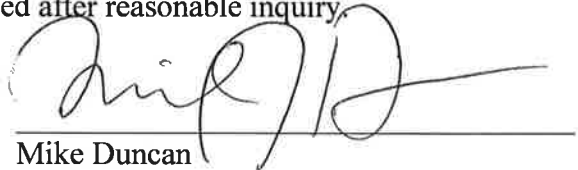
**VERIFICATION**

On behalf of Applicant Bluegrass Water Utility Operating Company, LLC

State of Missouri )

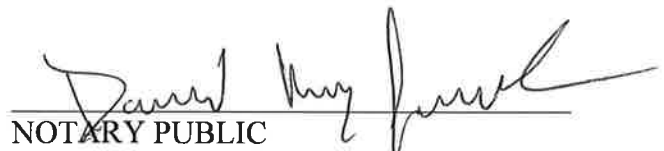
County of St Louis )

I, Mike Duncan, Director of Business Operations of Central States Water Resources, Inc. the manager of Applicant Bluegrass Operating Company, LLC being duly sworn, state that I prepared or supervised the preparation of the following responses to PSC's First Request for Information, and that the matters and things set forth in the responses are true and correct to the best of my knowledge, information and belief formed after reasonable inquiry.

  
Mike Duncan

Subscribed, sworn to, and acknowledged this 4<sup>th</sup> day of November, 2020, before me, a Notary Public in and before said County and State.



  
NOTARY PUBLIC

My Commission expires: 5/4/24

VERIFICATION

On behalf of Applicant Delaplain Disposal Company

Commonwealth of KENTUCKY )

County of Fayette )

I, Dona Ray, President of Delaplain Disposal Company, being duly sworn, state that I prepared or supervised the preparation of the following responses to PSC's First Request for Information 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.

Dona Ray  
Dona Ray

Subscribed, sworn to, and acknowledged this 4<sup>th</sup> day of November, 2020, before me, a Notary Public in and before said Commonwealth and County.

Krista Power  
NOTARY PUBLIC

KRISTA LAINE POWER  
NOTARY PUBLIC  
Kentucky, State At Large  
My Commission Expires 11/30/2020

My Commission expires: 11/30/2020



VERIFICATION

On behalf of Applicant Herrington Haven Wasterwater Company, Inc.

Commonwealth of KENTUCKY )

County of Garrard )

I, Charles Melvin Price, President of **Herrington Haven Wastewater Company, Inc.**, being duly sworn, state that I prepared or supervised the preparation of the following responses to PSC's First Request for Information 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.

Charles Melvin Price  
Charles Melvin Price

Subscribed, sworn to, and acknowledged this 4 day of November, 2020, before me, a Notary Public in and before said Commonwealth and County.

Christina Farrell  
NOTARY PUBLIC

My Commission expires: 6/21/2021



VERIFICATION

On behalf of Applicant Springcrest Sewer Company

Commonwealth of KENTUCKY )

County of Garrard )

I, Charles Melvin Price, President of **Springcrest Sewer Company**, being duly sworn, state that I prepared or supervised the preparation of the following responses to PSC's First Request for Information 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.

Charles Melvin Price  
Charles Melvin Price

Subscribed, sworn to, and acknowledged this 4 day of November 2020, before me, a Notary Public in and before said Commonwealth and County.

Christina Farrell  
NOTARY PUBLIC

My Commission expires: 6/21/2021



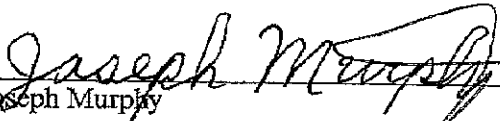
**VERIFICATION**

On behalf of Applicant Woodland Acres Company, Inc.

Commonwealth of KENTUCKY )

County of Franklin )

I, Joseph Murphy, President of **Woodland Acres Utilities, LLC**, being duly sworn, state that I prepared or supervised the preparation of the following responses to PSC's First Request for Information 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.

  
\_\_\_\_\_  
Joseph Murphy

Subscribed, sworn to, and acknowledged this 4<sup>th</sup> day of Nov, 2020, before me, a Notary Public in and before said Commonwealth and County.

PEGGY JO TIPTON  
NOTARY PUBLIC  
STATE AT LARGE, KENTUCKY  
COMM. #615436  
MY COMMISSION EXPIRES 01/21/2023

  
\_\_\_\_\_  
NOTARY PUBLIC

My Commission expires: \_\_\_\_\_

**Request**

1. Refer to paragraph 22 of the Application for approval of acquisition and transfer of ownership and control of utility assets. State whether the agreements require the sellers to maintain any cash or other assets to settle and liabilities that arose prior to the transfer, and if so, identify those provisions. If no, explain how the sellers could settle any liabilities that arose prior to the transfers but did not become know until after the transfers.
- 

**Response**

The agreement does not require sellers to maintain cash or assets to settle liabilities that arose prior to the transfer. Because this is an asset transaction where the buyer is only purchasing tangible assets owned by the sellers, the sellers retain liability for any such liabilities. The sellers have the option to use the proceeds from the sale to settle liabilities.



**Request**

2. Refer to paragraph 24 of the Application. Provide an itemized breakdown of the costs that Central States Water Resources, Inc. (Central States) has incurred to date and is expected to incur until such time as the closings for each transferring utility occurs.
- 

**Response**

The pre-closing costs to be funded by Central States are expected to total [REDACTED] by the time of the respective Closing(s). The breakdown of that total is:

Delaplain	[REDACTED]
Herrington Haven	[REDACTED]
Springcrest Sewer	[REDACTED]
Woodland Acres	[REDACTED]
TOTAL	[REDACTED]

Attached as KY PSC 2020-297JA 00001 is a redacted copy of an itemized per-system breakdown of those anticipated costs. Confidential treatment for the redacted information is being sought in a concurrently-filed motion. As indicated by the column headings on the attached spreadsheet, components of these costs funded by Central States include professional services such as engineering design, surveying, and legal title work, as well as third-party costs (such as title insurance and recording fees) paid at closing. Most of the total costs are for due diligence work relating to transferring utilities' assets and compliance efforts. As of October 31, 2020, approximately 20% of the total expected costs have been paid or accrued. All of the costs incurred by this date were for professional services.

System	Engineering Design	Facility Report	Construction Services	Surveying Services	GIS database	Legal Fees	Closing Costs	Organizational Expenses	Total:
Delaplain									
Herrington Haven									
Springcrest Sewer									
Woodland Acres									
TOTAL									

### **Request**

3. Refer to paragraph 26 of the Application in which Joint Applicants state that each transferring utility will require various improvements and repairs post-closing, but in which they also state that each of the utilities and Bluegrass Water have begun the process of working through these issues, if necessary, to move the facilities in the right direction prior to closing to ensure continuity of service to the affected customers.
    - a. For each transferring utility, explain what work needs to be completed to bring each system into full compliance. Also, explain what work each transferring utility has done to date to bring the respective utility system into full compliance, and provide an itemized breakdown of costs incurred as a result.
    - b. Confirm whether the statement made in paragraph 26 of the Application is a contingency required to be met by the transferring utilities in the respective agreements reached by Joint Applicants. If so, state whether there is a date certain by which full compliance by each transferring utility needs to be completed.
- 

### **Response**

- a. For an explanation of the work that needs to be completed to bring each system into full compliance, please see the third-party engineering reports attached to the application in Exhibits C, D, E, and F.<sup>1</sup> At this time, Bluegrass Water is not aware of additional work done by any of the transferring utilities on the respective systems outside of the work mentioned in the inspection reports discussed in response to 1 PSC 14 and believes any additional steps to currently be unnecessary for purposes of continuity of service to affected customers.
- b. The statement in paragraph 26 is not a contingency, and no date certain exists.

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<sup>1</sup> Confidential treatment is being sought for these engineering reports in the Motion for Confidential Treatment which was filed on the same date as the Joint Application.

**Request**

4. Refer to paragraph 36 of the Application in which Bluegrass Water states that it anticipates that there will be regionalization and other consolidation benefits from its acquisition of the systems. Identify and describe those anticipated regionalization and other consolidation benefits, and quantify them if possible.
- 

**Response**

Bluegrass Water will seek to consolidate and regionalize these systems with other systems it has already acquired in order to pool financial, managerial, and technical resources that achieve economies of scale or efficiencies of service. Through CSWR, LLC and Central States, Bluegrass Water has access to experienced technical and managerial expertise and experience not usually available to water/sewer systems of this size. Furthermore, CSWR, LLC's business model makes these assets available to its affiliates at a lower cost than otherwise would be available because of the economies of scale the affiliated structure is able to achieve for its member utility operating companies. No quantitative studies have been conducted at this time.

### **Request**

5. Refer to the purchase and sales agreements attached as Exhibits G, H, I, and J to the Application.
    - a. Explain why the purchase and sales agreement for the Delaplain Disposal Company indicates that the purchase price will be allocated in Exhibit D to that contract, but the purchase price will not be allocated in the other contracts.
    - b. Explain how Bluegrass Water could establish a purchase price for the assets of the various utilities without first identifying the real and personal property that will be purchased in the contracts.
    - c. Explain whether Bluegrass Water's purchase of the assets of the utilities to be acquired in this matter includes the purchase of any intangible assets.
- 

### **Response**

- a. The purchase and sales agreement for Delaplain contains terms indicating that the purchase price will be allocated because of negotiations specific to this contract, as the seller requested the allocation for income tax purposes due to the amount of the purchase price.
- b. Bluegrass Water established purchase prices for the assets of the transferring utilities through arms-length negotiations. To determine the reasonableness of the purchase prices, Bluegrass Water utilized the most recent annual reports to identify each system's net book value and estimated the value of any real and personal property through third-party appraisal and best estimates based on knowledge of the properties at the time the purchase agreements were negotiated.
- c. The purchase does not include intangible assets.

## Request

6. For each system that is proposed to be acquired, provide the following information:
    - a. The number of employees currently employed by each utility.
    - b. The number of employees to be retained by the new owners.
    - c. The number of employees to be employed at each utility.
    - d. A copy of the current permits.
    - e. If no current permits exist, a copy of the most recent expired permits and any applications to renew permits.
    - f. Customer deposits held, if any, and identify how those customer deposits will be credited to the customers.
    - g. The number of customers served and the rates charged.
    - h. For each system, provide the location of the nearest sewer regional facility.
    - i. For each system, state whether a study has been considered or completed to determine the cost of connecting to the nearest regional facility versus rebuilding or rehabilitating the current system. If so, provide the study. If not, explain why the study has not been conducted.
- 

## Response

- a. See the table of information provided at the end of this response.
- b. None
- c. None
- d, e. KPDES Permits and applications for renewal:

Delaplain Disposal Company: Current permit is attached at KYPSC 2020-297JA 00002

Herrington Haven Wastewater Company, Inc.: Current permit is attached at KYPSC 2020-297JA 00003

Springcrest Sewer Company, Inc.: None. Springcrest does not have a KPDES permit because it is a ground discharge and low-pressure system.

Woodland Acres Utilities, LLC: Current permit is attached at KYPSC 2020-297JA 00004

- f. No customer deposits are held by Delaplain Disposal Company, Herrington Haven Wastewater Company, Inc., Springcrest Sewer Company, Inc. or Woodland Acres Utilities, LLC.
- g. *See* the table of information provided at the end of this response.
- h. The sewer service providers with the nearest known facilities are as follows:  
Delaplain Disposal Company: Georgetown Municipal Water and Sewer Service  
Herrington Haven Wastewater Company, Inc.: Danville STP  
Springcrest Sewer Company, Inc.: South Elkhorn District  
Woodland Acres Utilities, LLC: Shepherdsville WWTP
- i. Delaplain Disposal Company: No official study regarding the cost feasibility of a connection to the regional facility vs an upgrade of the Delaplain facility has been considered given that the regional facility was not accepting of such connection.

Herrington Haven Wastewater Company, Inc.: No study has been conducted to determine the cost of connecting Herrington Haven to a regional facility. This is due to lack of funding and no grants available.

Springcrest Sewer Company, Inc.: No study has been conducted to determine the cost of connecting Springcrest Sewer to a regional facility. This is due to lack of funding and no grants available.

Woodland Acres Utilities, LLC: No study has been conducted by Woodland Acres. The Salt River Regional Wastewater Workgroup reviewed the wastewater treatment while planning for a super sewer system in the region surrounding Woodland Acres, but the Salt River Regional Wastewater Study Report found that this would not be economically feasible. The cost to connect Woodland Acres to the nearest regional facility was either not part of the study or not reported.

Response to 1 PSC 6(a) & (g):

<b>Utility</b>	<b>(a) # of employees</b>	<b>(g)1: # of customers</b>	<b>(g)2: flat rate/month (per current tariff)</b>
Delaplain Disposal Company	0	300 residential customers  34 industrial/commercial customers	\$12.50 (single family residential)  \$8.89 per 1,000 gallons



Herrington Haven	2 part-time	20	\$49.66
Springcrest Sewer Co.	2 part-time	42	\$27.43
Woodland Acres Utilities, LLC	0	121	\$19.47

**KPDES**

**KENTUCKY POLLUTANT  
DISCHARGE ELIMINATION  
SYSTEM**

**PERMIT**

PERMIT NO.: KY0079049

AI NO.: 3901

**AUTHORIZATION TO DISCHARGE UNDER THE  
KENTUCKY POLLUTANT DISCHARGE ELIMINATION SYSTEM**

**Pursuant to Authority in KRS 224,**

Delaplain Disposal Company  
PO Box 4382  
Lexington, KY 40544

**is authorized to discharge from a facility located at**

Delaplain Disposal Company  
249 West Yusen Drive  
Georgetown, Scott County, Kentucky

**to receiving waters named**

Unnamed Tributary to Dry Fork (38°17'11.2"N, 84°33'24.5"W)

**in accordance with effluent limitations, monitoring requirements and other conditions set forth in this permit.**

This permit shall become effective on April 1, 2016.

This permit and the authorization to discharge shall expire at midnight, March 31, 2021.

February 12, 2016

**Date Signed**

**Peter T. Goodmann, Director**

**Division of Water**

**DEPARTMENT FOR ENVIRONMENTAL PROTECTION  
Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky 40601**

**THIS KPDES PERMIT CONSISTS OF THE FOLLOWING SECTIONS.**

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**SECTION 1**  
**EFFLUENT LIMITATIONS AND MONITORING**  
**REQUIREMENTS**

**1. EFFLUENT AND MONITORING REQUIREMENTS**

**1.1. Compliance Monitoring Locations (Outfalls)**

The following table lists the outfalls authorized by this permit, the latitude and longitude of each and the DOW assigned KPDES outfall number.

TABLE 1.					
No.	Treatment Provided	Latitude (N)	Longitude (W)	Receiving Waters	Description of Outfall
001	Bar Screen, Equalization, Activated Sludge, Extended Aeration, Settling, Rapid Sand Filtration, Post Aeration, Chlorine Disinfection, Dechlorination, Aerated Sludge Holding Tank, Discharge to Surface Water	38° 17' 11"	84° 33' 25"	Unnamed Tributary to Dry Run	Domestic (Sanitary) Wastewater

**1.2. Effluent Limitations and Monitoring Requirements**

Beginning on the effective date and lasting through the term of this permit discharges from Outfall 001 shall comply with the effluent limitations.

TABLE 2.									MONITORING REQUIREMENTS	
EFFLUENT LIMITATIONS										
Effluent Characteristic	STORET Code	Units	Loadings (lbs/day)		Concentrations				Frequency	Sample Type
			Monthly Average	Maximum Weekly Average	Minimum	Monthly Average	Maximum Weekly Average	Maximum		
Flow	50050	MGD	Report	Report	N/A	N/A	N/A	N/A	Continuous	Recorder
CBOD <sub>5</sub> <sup>1</sup>	80082	mg/l	20.0	30.0	N/A	10	15	N/A	1/Week	24-Hr Composite
Total Suspended Solids	00530	mg/l	60.1	90.1	N/A	30	45	N/A	1/Week	24-Hr Composite
Ammonia (as mg/l NH <sub>3</sub> N)										
May 1 – October 31	00610	mg/l	4.0	6.0	N/A	2	3 <sup>2</sup>	N/A	1/Week	24-Hr Composite
November 1 – April 30	00610	mg/l	10.0	15.0	N/A	5	7.5 <sup>2</sup>	N/A	1/Week	24-Hr Composite
E. Coli <sup>3</sup>	51040	#/100 ml	N/A	N/A	N/A	130 <sup>4</sup>	240 <sup>5</sup>	N/A	1/Week	Grab
Dissolved Oxygen	00300	mg/l	N/A	N/A	7.0	N/A	N/A	N/A	1/Week	Grab
pH	00400	SU	N/A	N/A	6.0	N/A	N/A	9.0	1/Week	Grab
Total Residual Chlorine	50060	mg/l	N/A	N/A	N/A	0.011	0.019 <sup>2</sup>	N/A	1/Week	Grab
Total Phosphorus	00665	mg/l	N/A	N/A	N/A	Report	Report <sup>2</sup>	N/A	1/Month	24-Hr Composite
Total Nitrogen <sup>6</sup>	00600	mg/l	N/A	N/A	N/A	Report	Report <sup>2</sup>	N/A	1/Month	24-Hr Composite

TABLE 2.										
EFFLUENT LIMITATIONS									MONITORING REQUIREMENTS	
Effluent Characteristic	STORET Code	Units	Loadings (lbs/day)		Concentrations				Frequency	Sample Type
			Monthly Average	Maximum Weekly Average	Minimum	Monthly Average	Maximum Weekly Average	Maximum		
Chronic WET <sup>7</sup>	03598	TU <sub>c</sub>	N/A	N/A	N/A	N/A	N/A	1.00	1/Quarter	( <sup>8</sup> )
The Design Flow of the facility is 0.240 MGD. The Average Annual Flow of the facility is 0.199 MGD										
<sup>1</sup> CBOD <sub>5</sub> – Carbonaceous Biochemical Oxygen Demand, 5-day										
<sup>2</sup> Daily Maximum										
<sup>3</sup> E. Coli – Escherichia Coli Bacteria										
<sup>4</sup> Thirty (30) day Geometric Mean										
<sup>5</sup> Seven (7) day Geometric Mean										
<sup>6</sup> Total Nitrogen is the summation of the analytical results for Total Nitrates, Total Nitrites, and Total Kjeldahl Nitrogen										
<sup>7</sup> WET – Whole Effluent Toxicity										
<sup>8</sup> Three 24-hour composite samples collected every other day for a period of five days, i.e., days 1, 3, & 5										

**1.3. Standard Effluent Requirements**

The discharges to waters of the Commonwealth shall not produce floating solids, visible foam or a visible sheen on the surface of the receiving waters.

# **SECTION 2**

## **STANDARD REQUIREMENTS**



## **2. STANDARD CONDITIONS**

The following conditions apply to all KPDES permits.

### **2.1. Duty to Comply**

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of KRS Chapter 224 and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. Any person who violates applicable statutes or who fails to perform any duty imposed, or who violates any determination, permit, administrative regulation, or order of the cabinet promulgated pursuant thereto shall be liable for a civil penalty as provided at KRS 224.99.010.

### **2.2. Duty to Reapply**

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for a new permit.

### **2.3. Need to Halt or Reduce Activity Not a Defense**

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

### **2.4. Duty to Mitigate**

The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

### **2.5. 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.

### **2.6. Permit Actions**

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

### **2.7. Property Rights**

This permit does not convey any property rights of any sort, or any exclusive privilege.

### **2.8. Duty to Provide Information**

The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The permittee shall also furnish to the Director upon request, copies of records required to be kept by this permit.

### **2.9. Inspection and Entry**

The permittee shall allow the Director, or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon presentation of credentials and other documents as may be required by law, to:

- (1) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
- (2) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
- (3) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
- (4) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

## **2.10. Monitoring and Records**

- (1) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
- (2) Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five (5) years (or longer as required by 401 KAR 5:065 Section 2(10) [40 CFR 503]), the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three (3) years from the date of the sample, measurement, report or application. This period may be extended by request of the Director at any time.
- (3) Records of monitoring information shall include:
  - (i) The date, exact place, and time of sampling or measurements;
  - (ii) The individual(s) who performed the sampling or measurements;
  - (iii) The date(s) analyses were performed;
  - (iv) The individual(s) who performed the analyses;
  - (v) The analytical techniques or methods used; and
  - (vi) The results of such analyses.
- (4) Monitoring must be conducted according to test procedures approved under 401 KAR 5:065 Section 2(8) [40 CFR 136] unless another method is required under 401 KAR 5:065 Section 2(9) or (10) [40 CFR subchapters N or O].
- (5) KRS 224.99-010 provides that any person who knowingly violates KRS 224.70-110 or other enumerated statutes, or who knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall be guilty of a Class D felony and, upon conviction, shall be punished by a fine of not more than \$25,000, or by imprisonment for not more than one (1) year, or both. Each day upon which a violation occurs shall constitute a separate violation.

## **2.11. Signatory Requirement**

- (1) All applications, reports, or information submitted to the Director shall be signed and certified pursuant to 401 KAR 5:060, Section 4 [40 CFR 122.22].
- (2) KRS 224.99-010 provides that any person who knowingly provides false information in any document filed or required to be maintained under KRS Chapter 224 shall be guilty of a Class D felony and upon conviction thereof, shall be punished by a fine not to exceed twenty-five thousand dollars (\$25,000), or by imprisonment, or by fine and imprisonment, for each separate violation. Each day upon which a violation occurs shall constitute a separate violation

## **2.12. Reporting Requirements**

### **2.12.1. Planned Changes**

The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

- (i) The alteration or addition to a permitted facility may meet one (1) of the criteria for determining whether a facility is a new source in KRS 224.16-050 [40 CFR 122.29(b)]; or
- (ii) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under KRS 224.16-050 [40 CFR 122.42(a)(1)].
- (iii) The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

### **2.12.2. Anticipated Noncompliance**

The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

### **2.12.3. Transfers**

This permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under KRS 224 [CWA; see 40 CFR 122.61; in some cases, modification or revocation and reissuance is mandatory].

### **2.12.4. Monitoring Reports**

Monitoring results shall be reported at the intervals specified elsewhere in this permit.

- (i) Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Director for reporting results of monitoring of sludge use or disposal practices.
- (ii) If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 401 KAR 5:065 Section 2(8) [40 CFR 136], or another method required for an industry-specific waste stream under 401 KAR 5:065 Section 2(9) or (10) [40 CFR subchapters N or O], the results of such monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Director.
- (iii) Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Director in the permit.

### **2.12.5. Compliance Schedules**

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than fourteen (14) days following each schedule date.

### **2.12.6. Twenty-four-Hour Reporting**

- (i) The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within twenty-four (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.

(ii) The following shall be included as information which must be reported within twenty-four (24) hours under this paragraph.

(A) Any unanticipated bypass which exceeds any effluent limitation in the permit. (See §122.41(g))

(B) Any upset which exceeds any effluent limitation in the permit.

(C) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Director in the permit to be reported within twenty-four (24) hours.

(iii) The Director may waive the written report on a case-by-case basis for reports under paragraph (1)(6)(ii) of this section if the oral report has been received within twenty-four (24) hours.

### **2.12.7. Other Noncompliance**

The permittee shall report all instances of noncompliance not reported under Sections 2.12.1, 2.12.4, 2.12.5 and 2.12.6, at the time monitoring reports are submitted. The reports shall contain the information listed in Section 2.12.6.

### **2.12.8. Other Information**

Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information.

## **2.13. Bypass**

### **2.13.1. Definitions**

(i) Bypass means the intentional diversion of waste streams from any portion of a treatment facility.

(ii) Severe property damage means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

### **2.13.2. Bypass Not Exceeding Limitations**

The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Section 3.13.1.

### **2.13.3. Notice**

(i) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten (10) days before the date of the bypass.

(ii) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Section 3.12.6.

### **2.13.4. Prohibition of Bypass**

(i) Bypass is prohibited, and the Director may take enforcement action against a permittee for bypass, unless:

(A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of

reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(C) The permittee submitted notices as required under Section 3.13.3.

(ii) The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three (3) conditions listed above in Section 3.13.3

## **2.14. Upset**

### **2.14.1. Definition**

Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

### **2.14.2. Effect of an Upset**

An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of Section 3.14.3 are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

### **2.14.3. Conditions Necessary for a Demonstration of Upset**

A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

- (i) An upset occurred and that the permittee can identify the cause(s) of the upset;
- (ii) The permitted facility was at the time being properly operated; and
- (iii) The permittee submitted notice of the upset as required in Section 3.12.6; and
- (iv) The permittee complied with any remedial measures required under Section 3.4.

### **2.14.4. Burden of Proof**

In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

**SECTION 3**  
**WET TESTING REQUIREMENTS**

### 3. WET TESTING REQUIREMENTS

The permittee shall initiate, within thirty (30) days of the effective date of this permit, or continue the series of tests described below to evaluate wastewater toxicity of the discharge from Outfall 001.

#### 3.1. Sampling Requirements

Tests shall be conducted on a minimum of three (3) 24-hour composite samples shall be collected at a frequency of one (1) 24-hour composite every other day. For example, the first sample would be used for test initiation on day 1 and for test solution renewal on day 2. The second sample would be used for test solution renewal on days 3 and 4. The third sample would be used for test solution renewal on days 5, 6, and 7. Each 24-hour composite shall be collected using a refrigerated automatic sampler. Each 24-hour composite sample shall consist of not less than forty-eight (48) discrete aliquots of effluent. Aliquots shall be of equal volume and time-proportional unless effluent flow is expected to vary by more than 10% from one hour to another or by 50% over the 24-hour collection period (as predicted from historical trends, significant rainfall events, etc.). With anticipated effluent flow variation of greater than 10% per hour or 50% overall, the frequency, and volume of each aliquot shall be flow-proportional. The lapsed time from collection of the last aliquot of the composite and its first use for test initiation or for test solution renewal shall not exceed 36 hours.

Samples shall be iced and maintained at not greater than 6 °C during collection, storage, transport and until used in the test by the laboratory.

#### 3.2. Test Requirements

The Chronic WET test requirements consists of 1 short-term static-renewal water flea (*Ceriodaphnia dubia*) life-cycle test and 1 short-term static-renewal fathead minnow (*Pimephales promelas*) growth test on 100% effluent (1.00 TU<sub>C</sub>) at the frequency specified. The test shall begin within 36 hours of the collection of the day 1 sample. The test shall be renewed daily using: samples collected on days 1, 3; and 5 in accordance with test method specified in the Test Methods Section below.

### 3.3. Serial Dilutions

Effluent concentrations for the tests must include the percent effluent required by the permit and at least four additional effluent concentrations as in the following table.

Required Percent Effluent	Dilution 1 Percent	Dilution 2 Percent	Dilution 3 Percent	Dilution 4 Percent	Dilution 5 Percent
100	20	40	60	80	100

For a required percent effluent of 100%, test concentrations shall be 20%, 40%, 60%, 80% and 100%.

For a required percent effluent less than 100% but greater than or equal to 75%, the test concentrations shall include the required percent effluent, two (2) concentrations below that are based on a 0.5 dilution factor, and two (2) concentrations above: one (1) at mid-point between 100% and the required percent effluent, and one (1) at 100% effluent.

For a required percent effluent less than 75%, test concentrations shall include the required percent effluent, two (2) concentrations below on a 0.5 dilution factor, and two (2) concentrations above the required percent effluent based on a 0.5 dilution factor if possible, one (1) at mid-point between 100% and the required percent effluent, and one (1) at 100% effluent.

Selection of different effluent concentrations must be approved by DOW prior to testing. Controls shall be conducted concurrently with effluent testing using synthetic water.

### 3.4. Controls

Control tests shall be conducted concurrent with effluent testing using synthetic water. The analysis will be deemed reasonable and good only if the minimum control requirements are met.

Any test that does not meet the control acceptability criteria shall be repeated as soon as practicable within the monitoring period.

Within 30 days prior to initiating an effluent toxicity test, a reference toxicant test must be completed for the method used; alternatively, the reference toxicant test may be run concurrent with the effluent toxicity test.

For the Ceriodaphnia test: at least 80% survival of all control organisms and an average of fifteen (15) or more young per surviving female in the control solutions; and 60% of surviving control females must produce three broods.

For the fathead minnow test: at least 80% survival in controls and the average dry weight per surviving organism in control chambers equals or exceeds 0.25 mg.

### 3.5. Test Methods

All test organisms, procedures and quality assurance criteria used shall be in accordance with Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms (4<sup>th</sup> Edition), EPA-821-R-02-013, the most recent edition of this publication, or as approved in advance by DOW.

### 3.6. Reduction to Single Species Testing

After at least six (6) consecutive passing toxicity tests using both, the water flea and the fathead minnow, a request for testing with only the most sensitive species may be submitted to DOW. Upon approval, the most sensitive species may be considered as representative and all subsequent compliance tests may be conducted using only that species unless directed at any time by DOW to change or revert to both.



### 3.7. Reduction in Monitoring Frequency

The permittee may request a reduction in the frequency of WET testing from quarterly to annually upon demonstration that no test failures, incomplete tests, or invalid tests occurred during the following specified timeframes:

- 1) Existing facilities: four (4) consecutive quarters;
- 2) New or expanded facilities: eight (8) consecutive quarters.

In the event of the failure of an annual test or non-submission by January 28<sup>th</sup> of the year following the completion of the test, the permittee will again be subject to quarterly WET testing.

### 3.8. Reporting Requirements

Results of all toxicity tests conducted with any species shall be reported according to the most recent format provided by DOW (See the Section for Submission of DMRs of this permit). Notification of failed test shall be made to DOW within five days of test completion. Test reports shall be submitted to DOW within thirty (30) days of completion. A control chart including the most recent reference toxicant test endpoints for the effluent test method (minimum of 5, up to 20 if available) shall be part of the report.

### 3.9. Test Results

If noncompliance occurs in an initial test, the permittee shall repeat the test using new samples. Results of this second round of testing will be used to evaluate the persistence of the toxic event and the possible need for a Toxicity Reduction Evaluation (TRE).

Noncompliance with the chronic toxicity limit is demonstrated if the IC<sub>25</sub> (inhibition concentration) for reproduction or growth is less than 100 % effluent. If noncompliance occurs in an initial test, the permittee must repeat the test using a new set of three (3) composite samples. Sampling must be initiated within fifteen (15) days of completing the failed test. The second round of testing shall include both species unless approved for only the most sensitive species by DOW.

### 3.10. Accelerated Testing

If the second round of testing also demonstrates noncompliance, the permittee will be required to perform accelerated testing as specified in the following paragraphs.

Complete four (4) additional rounds of testing to evaluate the frequency and degree of toxicity within sixty (60) days of completing the second failed round of testing. Results of the initial and second rounds of testing specified above plus the four (4) additional rounds of testing will be used in deciding if a TRE shall be required.

If results from any two (2) of six (6) rounds of testing show a significant noncompliance with the Toxicity limit, i.e.,  $\geq 1.2$  times the TU, or results from any four of the six tests show toxicity as defined above, a TRE will be required.

The permittee shall provide written notification to DOW within five (5) days of completing the accelerated testing, stating that: (1) toxicity persisted and that a TRE will be initiated; or (2) that toxicity did not persist and normal testing will resume.

Should toxicity prove not to be persistent during the accelerated testing period, but reoccur within twelve (12) months of the initial failure at a level  $\geq 1.2$  times the TU, then a TRE shall be required.

**3.11. WET TRE**

Having determined that a TRE is required, the permittee shall initiate and/or continue at least monthly testing with both species until such time as a specific TRE plan is approved by DOW. A TRE plan shall be developed by the permittee and submitted to DOW within thirty (30) days of determining a TRE is required. The plan shall be developed in accordance with the most recent Environmental Protection Agency (EPA) and DOW guidance. Questions regarding this process may be submitted to DOW.

The TRE plan shall include Toxic Identification Evaluation (TIE) procedures, treatability studies, and evaluations of: chemical usage including changes in types, handling and suppliers; operational and process procedures; housekeeping and maintenance activities; and raw materials. The TRE plan will establish an implementation schedule to begin immediately upon approval by DOW, to have duration of at least six (6) months, and not to exceed twenty-four (24) months. The implementation schedule shall include quarterly progress reports being submitted to DOW, due the last day of the month following each calendar quarter.

Upon completion of the TRE, the permittee shall submit a final report detailing the findings of the TRE and actions taken or to be taken to prevent the reoccurrence of toxicity. This final report shall include: the toxicant(s), if any are identified; treatment options; operational changes; and the proposed resolutions including an implementation schedule not to exceed one-hundred-eighty (180) days.

Should the permittee determine the toxicant(s) and/or a workable treatment prior to the planned conclusion of the TRE, the permittee will notify DOW within five (5) days of making that determination and take appropriate actions to implement the solution within one-hundred-eighty (180) days of that notification.

**SECTION 4**  
**OTHER CONDITIONS**

#### **4. OTHER CONDITIONS**

##### **4.1. Schedule of Compliance**

The permittee shall attain compliance with all requirements of this permit on the effective date of this permit unless otherwise stated.

##### **4.2. Other Permits**

This permit has been issued under the provisions of KRS Chapter 224 and regulations promulgated pursuant thereto. Issuance of this permit does not relieve the permittee from the responsibility of obtaining any other permits or licenses required by this Cabinet and other state, federal, and local agencies.

##### **4.3. Continuation of Expiring Permit**

This permit shall be continued in effect and enforceable after the expiration date of the permit provided the permittee submits a timely and complete application in accordance with 401 KAR 5:060, Section 2(4).

##### **4.4. Reopener Clause**

This permit shall be modified, or alternatively revoked and reissued, to comply with any applicable effluent standard or limitation issued or approved in accordance with 401 KAR 5:050 through 5:080, if the effluent standard or limitation so issued or approved:

- 1) Contains different conditions or is otherwise more stringent than any effluent limitation in the permit; or
- 2) Controls any pollutant not limited in the permit.

The permit as modified or reissued under this paragraph shall also contain any other requirements of KRS Chapter 224 when applicable.

##### **4.5. Certified Operators**

The wastewater treatment plant shall be under the primary responsibility of a Class II or higher Wastewater Treatment Plant Certified Operator.

**SECTION 5**  
**MONITORING AND REPORTING REQUIREMENTS**

## **5. MONITORING AND REPORTING REQUIREMENTS**

### **5.1. KPDES Outfalls**

Discharge samples and measurements shall be collected at the compliance point for each KPDES Outfall identified in this permit. Each sample shall be representative of the volume and nature of the monitored discharge.

### **5.2. Sufficiently Sensitive Analytical Methods**

Analytical methods utilized to demonstrate compliance with the effluent limitations established in this permit shall be sufficiently sensitive to detect pollutant levels at or below the required effluent limit. It is the responsibility of the permittee to demonstrate compliance with permit parameter limitations by utilization of sufficiently sensitive analytical methods.

### **5.3. Certified Laboratory Requirements**

All laboratory analyses and tests required to demonstrate compliance with the conditions of this permit shall be performed by EEC certified general wastewater laboratories.

### **5.4. Submission of DMRs**

Monitoring results obtained during each monitoring period must be reported. The completed DMR for each monitoring period must be submitted no later than the 28<sup>th</sup> day of the month following the monitoring period for which monitoring results were obtained.

The completed DMR for each monitoring period must be entered into the DOW approved electronic system no later than midnight on the 28<sup>th</sup> day of the month following the monitoring period for which monitoring results were obtained.

For more information regarding electronic submittal of DMRs, please visit the Division's website at: <http://water.ky.gov/permitting/Pages/netDMRInformation.aspx> or contact the DMR Coordinator at (502) 564-3410.



**KENTUCKY POLLUTANT  
DISCHARGE ELIMINATION  
SYSTEM**

**PERMIT**

**AUTHORIZATION TO DISCHARGE UNDER THE  
KENTUCKY POLLUTANT DISCHARGE ELIMINATION SYSTEM**

**PERMIT NO.: KY0053431**

**AGENCY INTEREST NO.: 1469**

**Pursuant to Authority in KRS 224,**

Herrington Haven Wastewater Co., Inc.  
P.O. Box 546  
Lancaster, KY 40444

**is authorized to discharge from a facility located at**

Herrington Haven WWTP  
Herrington Haven Subdivision  
Lancaster, Garrard County, Kentucky

**to receiving waters named**

Herrington Lake

**in accordance with effluent limitations, monitoring requirements and other conditions set forth in this permit.**

This permit shall become effective on August 1, 2018.

This permit and the authorization to discharge shall expire at midnight, July 31, 2023.

June 12, 2018

**Date Signed**

**Peter T. Goodmann, Director**

**Division of Water**

**THIS KPDES PERMIT CONSISTS OF THE FOLLOWING SECTIONS:**

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# **SECTION 1**

## **EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS**

**1. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS**

**1.1. Compliance Monitoring Locations (Outfalls)**

The following table lists the outfalls authorized by this permit, the latitude and longitude of each and the DOW assigned KPDES outfall number:

TABLE 1.					
Outfall No.	Outfall Type	Latitude (N)	Longitude (W)	Receiving Water	Description of Outfall
001	External	37.661123°	84.690324°	Herrington Lake	Domestic Wastewater

**1.2. Effluent Limitations and Monitoring Requirements**

Beginning on the effective date and lasting through the term of this permit, discharges from Outfall 001 shall comply with the following effluent limitations:

TABLE 2.									
EFFLUENT LIMITATIONS								MONITORING REQUIREMENTS	
Effluent Characteristic	Units	Loadings (lbs/day)		Concentrations				Frequency	Sample Type
		Monthly Average	Maximum Weekly Average	Minimum	Monthly Average	Maximum Weekly Average	Maximum		
Flow	MGD	Report	Report	N/A	N/A	N/A	N/A	1/Quarter	Instantaneous
pH	SU	N/A	N/A	6.0	N/A	N/A	9.0	1/Quarter	Grab
BOD <sub>5</sub> <sup>1</sup>	mg/l	N/A	N/A	N/A	30	45	N/A	1/Quarter	Composite <sup>2</sup>
Total Suspended Solids	mg/l	N/A	N/A	N/A	30	45	N/A	1/Quarter	Composite <sup>2</sup>
Ammonia (as mg/l NH <sub>3</sub> N)	mg/l	N/A	N/A	N/A	20	30 <sup>3</sup>	N/A	1/Quarter	Composite <sup>2</sup>
Dissolved Oxygen	mg/l	N/A	N/A	2.0	N/A	N/A	N/A	1/Quarter	Grab
E. Coli <sup>4</sup>	#/100 ml	N/A	N/A	N/A	130 <sup>5</sup>	240 <sup>6</sup>	N/A	1/Quarter	Grab
Total Residual Chlorine	mg/l	N/A	N/A	N/A	0.011	0.019 <sup>3</sup>	N/A	1/Quarter	Grab
Total Phosphorus, Effluent	mg/l	N/A	N/A	N/A	Report	Report <sup>3</sup>	N/A	1/Quarter	Composite <sup>2</sup>
Total Nitrogen <sup>7</sup> , Effluent	mg/l	N/A	N/A	N/A	Report	Report <sup>3</sup>	N/A	1/Quarter	Composite <sup>2</sup>

<sup>1</sup>BOD<sub>5</sub> – Biochemical Oxygen Demand, 5-day

<sup>2</sup>A sample composed of four or more equal or flow-proportional aliquots collected over a period of no less than eight and no more than twenty-four hours and aggregated so that the aggregate sample reflects the average water quality of the effluent during the compositing or sample period

<sup>3</sup>Daily Maximum

<sup>4</sup>E. Coli – Escherichia Coli Bacteria

**TABLE 2.**

EFFLUENT LIMITATIONS								MONITORING REQUIREMENTS	
Effluent Characteristic	Units	Loadings (lbs/day)		Concentrations				Frequency	Sample Type
		Monthly Average	Maximum Weekly Average	Minimum	Monthly Average	Maximum Weekly Average	Maximum		
<sup>5</sup> Thirty (30) day Geometric Mean									
<sup>6</sup> Seven (7) day Geometric Mean									
<sup>7</sup> Total Nitrogen is the summation of the analytical results for Total Nitrates, Total Nitrites, and Total Kjeldahl Nitrogen									

**1.3. Standard Effluent Requirements**

The discharges to Waters of the Commonwealth shall not produce floating solids, visible foam or a visible sheen on the surface of the receiving waters.

# **SECTION 2**

## **STANDARD CONDITIONS**

## **2. STANDARD CONDITIONS**

The following conditions apply to all KPDES permits.

### **2.1. Duty to Comply**

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of KRS Chapter 224 and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. Any person who violates applicable statutes or who fails to perform any duty imposed, or who violates any determination, permit, administrative regulation, or order of the Cabinet promulgated pursuant thereto shall be liable for a civil penalty as provided at KRS 224.99.010.

### **2.2. Duty to Reapply**

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for a new permit.

### **2.3. Need to Halt or Reduce Activity Not a Defense**

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

### **2.4. Duty to Mitigate**

The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

### **2.5. 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.

### **2.6. Permit Actions**

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

### **2.7. Property Rights**

This permit does not convey any property rights of any sort, or any exclusive privilege.

### **2.8. Duty to Provide Information**

The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The permittee shall also furnish to the Director upon request, copies of records required to be kept by this permit.

**2.9. Inspection and Entry**

The permittee shall allow the Director, or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon presentation of credentials and other documents as may be required by law, to:

- (1) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
- (2) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
- (3) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
- (4) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

**2.10. Monitoring and Records**

- (1) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
- (2) Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five (5) years (or longer as required by 401 KAR 5:065, Section 2(10) [40 CFR 503]), the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three (3) years from the date of the sample, measurement, report or application. This period may be extended by request of the Director at any time.
- (3) Records of monitoring information shall include:
  - a) The date, exact place, and time of sampling or measurements;
  - b) The individual(s) who performed the sampling or measurements;
  - c) The date(s) analyses were performed;
  - d) The individual(s) who performed the analyses;
  - e) The analytical techniques or methods used; and
  - f) The results of such analyses.
- (4) Monitoring must be conducted according to test procedures approved under 401 KAR 5:065, Section 2(8) [40 CFR 136] unless another method is required under 401 KAR 5:065, Section 2(9) or (10) [40 CFR subchapters N or O].
- (5) KRS 224.99-010 provides that any person who knowingly violates KRS 224.70-110 or other enumerated statutes, or who knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall be guilty of a Class D felony and, upon conviction, shall be punished by a fine of not more than \$25,000, or by imprisonment for not less than one (1) year and not more than five (5) years, or by both fine and imprisonment for each separate violation.. Each day upon which a violation occurs shall constitute a separate violation.

**2.11. Signatory Requirement**

(1) All applications, reports, or information submitted to the Director shall be signed and certified pursuant to 401 KAR 5:060, Section 4 [40 CFR 122.22].

(2) KRS 224.99-010 provides that any person who knowingly provides false information in any document filed or required to be maintained under KRS Chapter 224 shall be guilty of a Class D felony and upon conviction thereof, shall be punished by a fine not to exceed twenty-five thousand dollars (\$25,000), or by imprisonment, or by fine and imprisonment, for each separate violation. Each day upon which a violation occurs shall constitute a separate violation

**2.12. Reporting Requirements****2.12.1. Planned Changes**

The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

(1) The alteration or addition to a permitted facility may meet one (1) of the criteria for determining whether a facility is a new source in KRS 224.16-050 [40 CFR 122.29(b)]; or

(2) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under KRS 224.16-050 [40 CFR 122.42(a)(1)].

(3) The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

**2.12.2. Anticipated Noncompliance**

The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

**2.12.3. Transfers**

This permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under KRS 224 [CWA; see 40 CFR 122.61; in some cases, modification or revocation and reissuance is mandatory].

**2.12.4. Monitoring Reports**

Monitoring results shall be reported at the intervals specified elsewhere in this permit.

(1) Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Director for reporting results of monitoring of sludge use or disposal practices.

(2) If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 401 KAR 5:065, Section 2(8) [40 CFR 136], or another method required for an industry-specific waste stream under 401 KAR 5:065, Section 2(9) or (10) [40 CFR subchapters N or O], the results of such monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Director.



(3) Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Director in the permit.

#### **2.12.5. Compliance Schedules**

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than fourteen (14) days following each schedule date.

#### **2.12.6. Twenty-four-Hour Reporting**

(1) The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within twenty-four (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.

(2) The following shall be included as information which must be reported within twenty-four (24) hours under this paragraph.

- a) Any unanticipated bypass which exceeds any effluent limitation in the permit. (See §122.41(g))
- b) Any upset which exceeds any effluent limitation in the permit.
- c) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Director in the permit to be reported within twenty-four (24) hours.

(3) The Director may waive the written report on a case-by-case basis under 40 CFR 122.41 (l), if the oral report has been received within twenty-four (24) hours.

#### **2.12.7. Other Noncompliance**

The permittee shall report all instances of noncompliance not reported under Sections 2.12.1, 2.12.4, 2.12.5 and 2.12.6, at the time monitoring reports are submitted. The reports shall contain the information listed in Section 2.12.6.

#### **2.12.8. Other Information**

Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information.

### **2.13. Bypass**

#### **2.13.1. Definitions**

(1) Bypass means the intentional diversion of waste streams from any portion of a treatment facility.

(2) Severe property damage means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

**2.13.2. Bypass Not Exceeding Limitations**

The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Section 2.13.3 and 2.13.4.

**2.13.3. Notice**

(1) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten (10) days before the date of the bypass.

(2) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Section 2.12.6.

**2.13.4. Prohibition of Bypass**

(1) Bypass is prohibited, and the Director may take enforcement action against a permittee for bypass, unless:

- a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
- b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
- c) The permittee submitted notices as required under Section 2.13.3.

(2) The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three (3) conditions listed above in Section 2.13.4

**2.14. Upset****2.14.1. Definition**

Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

**2.14.2. Effect of an Upset**

An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of Section 2.14.3 are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

**2.14.3. Conditions Necessary for a Demonstration of Upset**

A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

- (1) An upset occurred and that the permittee can identify the cause(s) of the upset;
- (2) The permitted facility was at the time being properly operated; and
- (3) The permittee submitted notice of the upset as required in Section 2.12.6; and

(4) The permittee complied with any remedial measures required under Section 2.4.

**2.14.4. Burden of Proof**

In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

# **SECTION 3**

## **OTHER CONDITIONS**

### **3. OTHER CONDITIONS**

#### **3.1. Schedule of Compliance**

The permittee shall attain compliance with all requirements of this permit on the effective date of this permit unless otherwise stated.

#### **3.2. Other Permits**

This permit has been issued under the provisions of KRS Chapter 224 and regulations promulgated pursuant thereto. Issuance of this permit does not relieve the permittee from the responsibility of obtaining any other permits or licenses required by this Cabinet and other state, federal, and local agencies.

#### **3.3. Continuation of Expiring Permit**

This permit shall be continued in effect and enforceable after the expiration date of the permit provided the permittee submits a timely and complete application in accordance with 401 KAR 5:060, Section 2(4).

#### **3.4. Antidegradation**

For those discharges subject to the provisions of 401 KAR 10:030, Section 1(3)(b)5, the permittee shall install, operate, and maintain wastewater treatment facilities consistent with those identified in the Socioeconomic Demonstration and Alternatives Analysis (SDAA) submitted with the KPDES permit application.

#### **3.5. Reopener Clause**

This permit shall be modified, or alternatively revoked and reissued, to comply with any applicable effluent standard or limitation issued or approved in accordance with 401 KAR 5:050 through 5:080, if the effluent standard or limitation so issued or approved:

- (1) Contains different conditions or is otherwise more stringent than any effluent limitation in the permit; or
- (2) Controls any pollutant not limited in the permit.

The permit as modified or reissued under this paragraph shall also contain any other requirements of KRS Chapter 224 when applicable.

#### **3.6. Connection to Regional Sewer System**

This WWTP is temporary and in no way supersedes the need of a regional sewer system. The permittee shall eliminate the discharge and WWTP plant by connection to a regional sewer system when it becomes available as defined in 401 KAR 5:002.

#### **3.7. Certified Operators**

The wastewater treatment plant shall be under the primary responsibility of a Class I Wastewater Treatment Plant Certified Operator or higher.

#### **3.8. Outfall Signage**

This KPDES permit establishes monitoring points, effluent limitations, and other conditions to address discharges from the permitted facility. In an effort to better document and clarify these locations, the permittee should place and maintain a permanent marker at each of the monitoring locations.

# **SECTION 4**

## **MONITORING AND REPORTING REQUIREMENTS**

#### **4. MONITORING AND REPORTING REQUIREMENTS**

##### **4.1. KPDES Outfalls**

Discharge samples and measurements shall be collected at the compliance point for each KPDES Outfall identified in this permit. Each sample shall be representative of the volume and nature of the monitored discharge.

##### **4.2. Sufficiently Sensitive Analytical Methods**

Analytical methods utilized to demonstrate compliance with the effluent limitations established in this permit shall be sufficiently sensitive to detect pollutant levels at or below the required effluent limit, i.e. the Method Minimum Level shall be at or below the effluent limit. In the instance where an EPA-approved method does not exist that has a Method Minimum Level at or below the established effluent limitation, the permittee shall:

- (1) Use the method specified in the permit; or
- (2) The EPA-approved method with an ML that is nearest to the established effluent limit.

It is the responsibility of the permittee to demonstrate compliance with permit parameter limitations by utilization of sufficiently sensitive analytical methods.

##### **4.3. Certified Laboratory Requirements**

All laboratory analyses and tests required to demonstrate compliance with the conditions of this permit shall be performed by a laboratory holding the appropriate general or field-only certification issued by the Cabinet pursuant to 401 KAR 5:320.

##### **4.4. Submission of DMRs**

The completed DMR for each monitoring period must be entered into the DOW approved electronic system no later than midnight on the 28<sup>th</sup> day of the month following the monitoring period for which monitoring results were obtained.

For more information regarding electronic submittal of DMRs, please visit the Division's website at: <http://water.ky.gov/permitting/Pages/netDMRInformation.aspx> or contact the DMR Coordinator at (502) 564-3410.

**KPDES**

**KENTUCKY POLLUTANT  
DISCHARGE ELIMINATION  
SYSTEM**

**PERMIT**

PERMIT NO.: KY0091600

AI NO.: 479

**AUTHORIZATION TO DISCHARGE UNDER THE  
KENTUCKY POLLUTANT DISCHARGE ELIMINATION SYSTEM**

**Pursuant to Authority in KRS 224,**

Woodland Acres Utilities, INC.  
379 Brooksvie Circle  
Brooks, KY 40109

**is authorized to discharge from a facility located at**

Woodland Acres WWTP  
Lot 57 Hemlock Drive  
Shepherdsville, Bullitt County, Kentucky

**to receiving waters named**

Unnamed Tributary to Mud Run (38° 0' 34.113''N, 85° 43' 49.964''W)

**in accordance with effluent limitations, monitoring requirements and other conditions set forth in this permit.**

This permit shall become effective on April 1, 2016.

This permit and the authorization to discharge shall expire at midnight, March 31, 2021.

February 16, 2016

**Date Signed**

**Peter T. Goodmann, Director**

**Division of Water**

**DEPARTMENT FOR ENVIRONMENTAL PROTECTION  
Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky 40601**



**THIS KPDES PERMIT CONSISTS OF THE FOLLOWING SECTIONS.**

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**SECTION 1**  
**EFFLUENT LIMITATIONS AND MONITORING**  
**REQUIREMENTS**

**1. EFFLUENT AND MONITORING REQUIREMENTS**

**1.1. Compliance Monitoring Locations (Outfalls)**

The following table lists the outfalls authorized by this permit, the latitude and longitude of each and the DOW assigned KPDES outfall number.

TABLE 1.					
No.	Treatment Provided	Latitude (N)	Longitude (W)	Receiving Waters	Description of Outfall
001	1Y, 3E, 3M, 1U, 1R, 5A, 2F	38° 0' 34.113''	85° 43' 49.964''	Unnamed Tributary to Mud Run	DSW-Domestic (Sanitary) Wastewater

**1.2. Effluent Limitations and Monitoring Requirements**

Beginning on the effective date and lasting through the term of this permit discharges from Outfall 001 shall comply with the effluent limitations.

TABLE 2.									MONITORING REQUIREMENTS	
EFFLUENT LIMITATIONS										
Effluent Characteristic	STORET Code	Units	Loadings (lbs/day)		Concentrations				Frequency	Sample Type
			Monthly Average	Maximum Weekly Average	Minimum	Monthly Average	Maximum Weekly Average	Maximum		
Flow	50050	MGD	Report	Report	N/A	N/A	N/A	N/A	1/Quarter	Instantaneous
CBOD <sub>5</sub> <sup>1</sup>	80082	mg/l	2.09	3.14	N/A	10	15	N/A	1/Quarter	Grab
TSS, Effluent	00530	mg/l	6.26	9.38	N/A	30	45	N/A	1/Quarter	Grab
Ammonia (as mg/l NH <sub>3</sub> N)										
May 1 – October 31	00610	mg/l	0.83	1.25	N/A	4	6 <sup>2</sup>	N/A	1/Quarter	Grab
November 1 – April 30	00610	mg/l	2.09	3.14	N/A	10	15 <sup>2</sup>	N/A	1/Quarter	Grab
E. Coli <sup>3</sup>	51040	#/100 ml	N/A	N/A	N/A	130 <sup>4</sup>	240 <sup>5</sup>	N/A	1/Quarter	Grab
Dissolved Oxygen	00300	mg/l	N/A	N/A	7	N/A	N/A	N/A	1/Quarter	Grab
pH	00400	SU	N/A	N/A	6.0	N/A	N/A	9.0	1/Quarter	Grab
Total Residual Chlorine	50060	mg/l	N/A	N/A	N/A	0.011	0.019 <sup>2</sup>	N/A	1/Quarter	Grab

The Design Flow of the facility is 0.025 MGD. The Average Annual Flow of the facility could not be determined due to no DMR data being submitted.

<sup>1</sup>CBOD<sub>5</sub> – Carbonaceous Biochemical Oxygen Demand, 5-day

<sup>2</sup>Daily Maximum

<sup>3</sup>E. Coli – Escherichia Coli Bacteria

TABLE 2.										
EFFLUENT LIMITATIONS								MONITORING REQUIREMENTS		
Effluent Characteristic	STORET Code	Units	Loadings (lbs/day)		Concentrations				Frequency	Sample Type
			Monthly Average	Maximum Weekly Average	Minimum	Monthly Average	Maximum Weekly Average	Maximum		
<sup>4</sup> Thirty (30) day Geometric Mean										
<sup>5</sup> Seven (7) day Geometric Mean										

**1.3. Standard Effluent Requirements**

The discharges to waters of the Commonwealth shall not produce floating solids, visible foam or a visible sheen on the surface of the receiving waters.

**SECTION 2**  
**STANDARD CONDITIONS**

## **2. STANDARD CONDITIONS**

The following conditions apply to all KPDES permits.

### **2.1. Duty to Comply**

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of KRS Chapter 224 and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. Any person who violates applicable statutes or who fails to perform any duty imposed, or who violates any determination, permit, administrative regulation, or order of the cabinet promulgated pursuant thereto shall be liable for a civil penalty as provided at KRS 224.99.010.

### **2.2. Duty to Reapply**

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for a new permit.

### **2.3. Need to Halt or Reduce Activity Not a Defense**

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

### **2.4. Duty to Mitigate**

The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

### **2.5. 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.

### **2.6. Permit Actions**

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

### **2.7. Property Rights**

This permit does not convey any property rights of any sort, or any exclusive privilege.

### **2.8. Duty to Provide Information**

The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The permittee shall also furnish to the Director upon request, copies of records required to be kept by this permit.

### **2.9. Inspection and Entry**

The permittee shall allow the Director, or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon presentation of credentials and other documents as may be required by law, to:

- (1) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
- (2) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
- (3) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
- (4) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

## **2.10. Monitoring and Records**

- (1) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
- (2) Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five (5) years (or longer as required by 401 KAR 5:065 Section 2(10) [40 CFR 503]), the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three (3) years from the date of the sample, measurement, report or application. This period may be extended by request of the Director at any time.
- (3) Records of monitoring information shall include:
  - (i) The date, exact place, and time of sampling or measurements;
  - (ii) The individual(s) who performed the sampling or measurements;
  - (iii) The date(s) analyses were performed;
  - (iv) The individual(s) who performed the analyses;
  - (v) The analytical techniques or methods used; and
  - (vi) The results of such analyses.
- (4) Monitoring must be conducted according to test procedures approved under 401 KAR 5:065 Section 2(8) [40 CFR 136] unless another method is required under 401 KAR 5:065 Section 2(9) or (10) [40 CFR subchapters N or O].
- (5) KRS 224.99-010 provides that any person who knowingly violates KRS 224.70-110 or other enumerated statutes, or who knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall be guilty of a Class D felony and, upon conviction, shall be punished by a fine of not more than \$25,000, or by imprisonment for not more than one (1) year, or both. Each day upon which a violation occurs shall constitute a separate violation.

## **2.11. Signatory Requirement**

- (1) All applications, reports, or information submitted to the Director shall be signed and certified pursuant to 401 KAR 5:060, Section 4 [40 CFR 122.22].
- (2) KRS 224.99-010 provides that any person who knowingly provides false information in any document filed or required to be maintained under KRS Chapter 224 shall be guilty of a Class D felony and upon conviction thereof, shall be punished by a fine not to exceed twenty-five thousand dollars (\$25,000), or by imprisonment, or by fine and imprisonment, for each separate violation. Each day upon which a violation occurs shall constitute a separate violation

## **2.12. Reporting Requirements**

### **2.12.1. Planned Changes**

The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

- (i) The alteration or addition to a permitted facility may meet one (1) of the criteria for determining whether a facility is a new source in KRS 224.16-050 [40 CFR 122.29(b)]; or
- (ii) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under KRS 224.16-050 [40 CFR 122.42(a)(1)].
- (iii) The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

### **2.12.2. Anticipated Noncompliance**

The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

### **2.12.3. Transfers**

This permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under KRS 224 [CWA; see 40 CFR 122.61; in some cases, modification or revocation and reissuance is mandatory].

### **2.12.4. Monitoring Reports**

Monitoring results shall be reported at the intervals specified elsewhere in this permit.

- (i) Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Director for reporting results of monitoring of sludge use or disposal practices.
- (ii) If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 401 KAR 5:065 Section 2(8) [40 CFR 136], or another method required for an industry-specific waste stream under 401 KAR 5:065 Section 2(9) or (10) [40 CFR subchapters N or O], the results of such monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Director.
- (iii) Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Director in the permit.

### **2.12.5. Compliance Schedules**

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than fourteen (14) days following each schedule date.

### **2.12.6. Twenty-four-Hour Reporting**

- (i) The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within twenty-four (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.

(ii) The following shall be included as information which must be reported within twenty-four (24) hours under this paragraph.

(A) Any unanticipated bypass which exceeds any effluent limitation in the permit. (See §122.41(g))

(B) Any upset which exceeds any effluent limitation in the permit.

(C) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Director in the permit to be reported within twenty-four (24) hours.

(iii) The Director may waive the written report on a case-by-case basis for reports under paragraph (1)(6)(ii) of this section if the oral report has been received within twenty-four (24) hours.

### **2.12.7. Other Noncompliance**

The permittee shall report all instances of noncompliance not reported under Sections 2.12.1, 2.12.4, 2.12.5 and 2.12.6, at the time monitoring reports are submitted. The reports shall contain the information listed in Section 2.12.6.

### **2.12.8. Other Information**

Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information.

## **2.13. Bypass**

### **2.13.1. Definitions**

(i) Bypass means the intentional diversion of waste streams from any portion of a treatment facility.

(ii) Severe property damage means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

### **2.13.2. Bypass Not Exceeding Limitations**

The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Section 2.13.1.

### **2.13.3. Notice**

(i) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten (10) days before the date of the bypass.

(ii) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Section 2.12.6.

### **2.13.4. Prohibition of Bypass**

(i) Bypass is prohibited, and the Director may take enforcement action against a permittee for bypass, unless:

(A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of

reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(C) The permittee submitted notices as required under Section 2.13.3.

(ii) The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three (3) conditions listed above in Section 2.13.3

## **2.14. Upset**

### **2.14.1. Definition**

Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

### **2.14.2. Effect of an Upset**

An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of Section 2.14.3 are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

### **2.14.3. Conditions Necessary for a Demonstration of Upset**

A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

- (i) An upset occurred and that the permittee can identify the cause(s) of the upset;
- (ii) The permitted facility was at the time being properly operated; and
- (iii) The permittee submitted notice of the upset as required in Section 2.12.6; and
- (iv) The permittee complied with any remedial measures required under Section 2.4.

### **2.14.4. Burden of Proof**

In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

**SECTION 3**  
**OTHER CONDITIONS**

### **3. OTHER CONDITIONS**

#### **3.1. Schedule of Compliance**

The permittee shall attain compliance with all requirements of this permit on the effective date of this permit unless otherwise stated.

#### **3.2. Other Permits**

This permit has been issued under the provisions of KRS Chapter 224 and regulations promulgated pursuant thereto. Issuance of this permit does not relieve the permittee from the responsibility of obtaining any other permits or licenses required by this Cabinet and other state, federal, and local agencies.

#### **3.3. Continuation of Expiring Permit**

This permit shall be continued in effect and enforceable after the expiration date of the permit provided the permittee submits a timely and complete application in accordance with 401 KAR 5:060, Section 2(4).

#### **3.4. Antidegradation**

For those discharges subject to the provisions of 401 KAR 10:030 Section 1(3)(b)5, the permittee shall install, operate, and maintain wastewater treatment facilities consistent with those identified in the SDAA submitted with the KPDES permit application.

#### **3.5. Reopener Clause**

This permit shall be modified, or alternatively revoked and reissued, to comply with any applicable effluent standard or limitation issued or approved in accordance with 401 KAR 5:050 through 5:080, if the effluent standard or limitation so issued or approved:

- 1) Contains different conditions or is otherwise more stringent than any effluent limitation in the permit; or
- 2) Controls any pollutant not limited in the permit.

The permit as modified or reissued under this paragraph shall also contain any other requirements of KRS Chapter 224 when applicable.

#### **3.6. Certified Operators**

The wastewater treatment plant shall be under the primary responsibility of a Class I Wastewater Treatment Plant Certified Operator or higher.

#### **3.7. Outfall Signage**

The KPDES permit establishes monitoring points, effluent limitations, and other conditions to address discharges from the permitted facility. In an effort to better document and clarify these locations the permittee should place and maintain a permanent marker at each of the monitoring locations.

## **SECTION 4**

### **MONITORING AND REPORTING REQUIREMENTS**

#### **4. MONITORING AND REPORTING REQUIREMENTS**

##### **4.1. KPDES Outfalls**

Discharge samples and measurements shall be collected at the compliance point for each KPDES Outfall identified in this permit. Each sample shall be representative of the volume and nature of the monitored discharge.

##### **4.2. Sufficiently Sensitive Analytical Methods**

Analytical methods utilized to demonstrate compliance with the effluent limitations established in this permit shall be sufficiently sensitive to detect pollutant levels at or below the required effluent limit. It is the responsibility of the permittee to demonstrate compliance with permit parameter limitations by utilization of sufficiently sensitive analytical methods.

##### **4.3. Certified Laboratory Requirements**

All laboratory analyses and tests required to demonstrate compliance with the conditions of this permit shall be performed by EEC certified general wastewater laboratories.

##### **4.4. Submission of DMRs**

Monitoring results obtained during each monitoring period must be reported. The completed DMR for each monitoring period must be submitted no later than the 28<sup>th</sup> day of the month following the monitoring period for which monitoring results were obtained.

The completed DMR for each monitoring period must be entered into the DOW approved electronic system no later than midnight on the 28<sup>th</sup> day of the month following the monitoring period for which monitoring results were obtained.

For more information regarding electronic submittal of DMRs, please visit the Division's website at: <http://water.ky.gov/permitting/Pages/netDMRInformation.aspx> or contact the DMR Coordinator at (502) 564-3410.

**Request**

7. Confirm the pro forma income statement uses the most recently filed annual report for each utility to estimate operating revenues and expenses.
- 

**Response**

The pro forma income statement utilized the most recent annual report information for each utility.

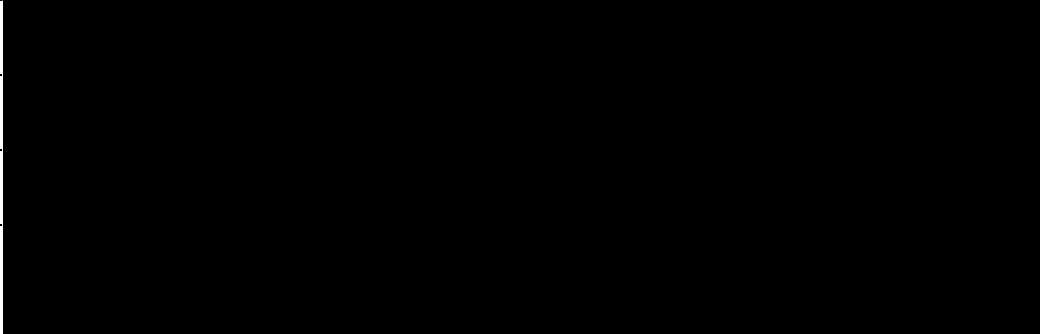
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**Request**

8. Provide an itemized breakdown of the annual operation and maintenance expenses Bluegrass Water expects to incur for each system that is proposed to be acquired.
- 

**Response**

<b>System</b>	<b>O&amp;M</b>	<b>Repairs</b>	<b>Power</b>	<b>Chemicals</b>	<b>Purchased Water</b>
Delaplain Disposal Co.					
Herrington Haven					
Springcrest Sewer					
Woodland Acres Utilities					



**Request**

9. Provide the anticipated effect on future rates of each utility in the Application.
- 

**Response**

Bluegrass Water anticipates that rates on all the systems will increase to cover the cost of providing safe and reliable service and to allow the opportunity for a fair return on the capital invested in the systems.

**Request**

10. Provide the effect on the unified rate tendered in Case No. 2020-00290 of removing the revenue and expenses for the systems proposed to be acquired in this matter from the calculation of the unified rate.
- 

**Response**

Based on preliminary estimates, removing the revenues and expenses for the systems proposed to be acquired in this matter from the calculation of the unified rate would cause the sewer rate to increase by approximately \$4.95. While the revenue requirement would drop significantly from the removal of the expenses and the capital costs associated with bringing these systems into compliance, the overall customer base would also drop significantly. This drop in the residential equivalency of the customer base would cause the rates to increase upon removing these systems. As various customer classes' rates were derived using residential equivalencies, this effect would be consistent across all customer classes.

**Request**

11. Describe the methodology that Central States will use to allocate costs to each utility for all management, financial reporting, underground utility safety and locations services, Commission and environmental regulatory reporting and management, recordkeeping, and other work performed by personnel at Central States' corporate office. Also, state whether Bluegrass Water is considered one utility or more than one utility for purposes of allocating costs.
- 

**Response**

CSWR uses the Massachusetts Formula to allocate costs to each affiliated utility operating company for the functions and work listed in the request. It plans to use the Massachusetts Formula to allocate expenses of CSWR, LLC to Bluegrass Water, which will be considered one utility for purposes of allocating costs.

**Request**

12. Provide a copy of Central States' and CSWR, LLC's cost allocation manual and any other written procedures that describe the methodology Central States and CSWR use to allocate costs among each of their subsidiaries, including any non-utility subsidiaries and out of state subsidiaries.
- 

**Response**

Neither Central States nor CSWR has a formal cost allocation manual. CSWR assigns and allocates cost on a direct basis to the greatest extent possible. Preliminary Survey and Investigation costs incurred prior to acquisition are assigned to each acquired utility on a direct basis as well. As explained in the response to 1 PSC 11, CSWR, LLC uses the Massachusetts Formula to assign indirect administrative costs for various purposes including management, financial reporting, recordkeeping, compliance, Information Technology and customer service. The Massachusetts Formula provides for allocation to all of the regulated utility subsidiaries of CSWR, LLC including those in other state jurisdictions. CSWR, LLC has no non-utility subsidiaries at this time.

**Request**

13. Explain whether Bluegrass Water intends to record on its books or on the books of each utility acquired an acquisition adjustment to reflect the amount by which the purchase price of each utility exceeds the net book value of each utility acquired.
- 

**Response**

To the extent that there is a difference between net book value and purchase price at the time of the closing, Bluegrass Water intends to follow the NARUC Utility Plant Accounting Instructions in recording an adjustment on its books to reflect any amount by which the purchase price differs from the net book value of utility assets acquired. See Post-Closing Accounting Entries filed 10/30/19 in compliance with Condition #1 in the Case No. 2019-00104 Final Order Appendix.

**Request**

14.

- a. State whether Central States or Bluegrass Water has reviewed the Commission's most recent inspection reports for each of the utilities to be acquired.
  - b. Explain how Bluegrass Water will resolve each of the outstanding violations cited by Commission Staff on all plants involved in the proposed transfer.
- 

**Response**

- a. Yes. Bluegrass Water has reviewed the Commission's most recent inspection reports for each of the transferring utilities as follows:

<b>Utility</b>	<b>Inspection Date</b>
Delaplain Disposal Company	March 11, 2020
Herrington Haven	December 18, 2019
Springcrest Sewer	December 19, 2019
Woodland Acres	February 13, 2019

- b. Bluegrass Water plans to address any unresolved identified deficiencies as follows:

Delaplain Disposal Company: The most recent inspection report identified that the utility is not in compliance with the Division of Water requirements for quality of service. Please see Exhibit C in the Joint Application for an explanation of the work planned for Delaplain.

Herrington Haven Wastewater Company, Inc.: No deficiencies were identified in the most recent inspection report.

Springcrest Sewer Company, Inc.: No deficiencies were identified in the most recent inspection report.

Woodland Acres Utilities, Inc.: For Woodland Acres, two of the deficiencies were for the failure to file annual reports and failure to utilize the bill format included in its tariff. Upon acquiring the Woodland Acres system, Bluegrass Water will put in place the billing practices used in systems it currently operates -- which solves the problem of a mismatch between the tariff and bill format used -- and will incorporate the Woodland Acres system into both the Revenue Reports and the Annual Reports it will file for the relevant calendar years. The inspector also noted that “the wastewater treatment plant is 30 plus years old and shows major rust and metal degradation especially in and around the equalization basin.” Please see the engineering report contained in Joint Application Exhibit F as it discusses these issues and also identifies the work planned for Woodland Acres.

**Request**

15. Provide a copy of the current and long-term debts for each system proposed to be acquired, including lender's name, the date the debt was incurred, the original amount of the indebtedness, and the amount outstanding as of the date of Joint Applicants' Exhibit N, Pro-Forma Balance Sheet - Bluegrass Water Utility Operating Company, LLC.
- 

**Response:**

Delaplain Disposal Company: Delaplain does not have any current or long-term debt other than the monthly accounts payable. Since the agreement with Central States Water Resources is an asset acquisition there would be no responsibility on the part of Central States Water Resources for these amounts.

Herrington Haven Wastewater Company: Herrington Haven does not have any current or long-term debts, including any debt for which there is a lender or original amount of indebtedness.

Springcrest Sewer Company, Inc.: Springcrest does not have any current or long-term debts, including any debt for which there is a lender or original amount of indebtedness.

Woodland Acres Utilities, LLC: Woodland Acres does not have any current or long-term debts such that there is a lender or original amount of indebtedness.



**Request**

16. Provide a schedule showing the current capital structure of Bluegrass water in both dollars and percentages.
- 

**Response**

The current capital structure of Bluegrass Water in both dollars and percentages as of September 30, 2020 is as shown below:

***Bluegrass Water***

	<b><i>Amount (\$)</i></b>	<b><i>Percentage (%)</i></b>
<b><i>Equity</i></b>	[REDACTED]	
<b><i>Debt</i></b>	[REDACTED]	

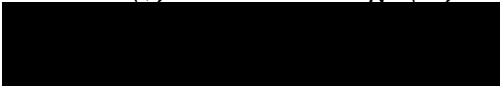
**Request**

17. Provide a schedule showing the current capital structure of Central States and CSWR, LLC's in both dollars and percentages.
- 

**Response**

The current capital structure of Central States and CSWR, LLC in both dollars and percentages as of September 30, 2020 is as shown below:

***CSWR***

	<b><i>Amount (\$)</i></b>	<b><i>Percentage (%)</i></b>
<b><i>Equity</i></b>		
<b><i>Debt</i></b>		

**Request**

18. Explain how Bluegrass Water distinguishes or will distinguish the debt financing it receives from CSWR, LLC from the equity financing it receives from CSWR, LLC if Bluegrass Water will obtain both debt and equity from CSWR, LLC.
- 

**Response**

Bluegrass Water will record debt from any source to the appropriate liability accounts and any equity to the appropriate equity account per the NARUC uniform system of accounts.

The accounting treatment for debt financing would be based on the loan parameters and the loan documentation provided by the lender.

**Request**

19. Explain the process by which CSWR, LLC raises equity capital on behalf of Bluegrass Water.
- 

**Response**

US Water Resources, LLC, provides the equity capital CSWR, LLC, invests in Bluegrass Water.

**Request**

20. Explain the process by which CSWR, LLC raises debt capital on behalf of Bluegrass Water.
- 

**Response**

CSWR has initiated discussions with third-party banks to assist Bluegrass Water in securing debt capital. Those discussions have indicated a need for a state-specific intermediary CSWR-affiliated capital company entity to be the borrower and to provide credit enhancement to the bank in the form of a pledge of the capital company's assets and a guarantee from CSWR. The capital company would then lend debt capital to Bluegrass Water, with security to be provided in the form of liens on Bluegrass Water's utility assets. The capital company is a bank requirement as well as an operational necessity and regulatory commission expectation, as the banks are requiring security beyond the assets of Bluegrass Water. The Kentucky-specific capital company is required to ensure Bluegrass Water's assets are ring-fenced and not pledged to secure loans for CSWR-affiliated utilities operating outside Kentucky.

**Request**

21. Explain why the systems managed by CSWR, LLC and Central States in Kentucky are connected to CSWR, LLC through Bluegrass Water UOC, LLC; Bluegrass Water UHC, LLC; and Kentucky CSWR, LLC; and identify which entity will own the assets for which transfer approval is requested in this matter.
- 

**Response**

The holding company structure referenced in the data request was created to give CSWR, LLC, and Bluegrass Water UOC, LLC, maximum operational and financing flexibility, and the same structure currently is utilized in every state where CSWR-affiliated companies operate or are requesting regulatory commission authorization to commence operations.

If the Commission grants the transfer authority requested in this case, prior to closing, Central States Water Resources will assign all of its rights under each purchase agreement to Bluegrass Water UOC, so that at closing all assets involved in each transaction will be transferred to and owned by Bluegrass Water UOC.

**Request**

22. State whether Bluegrass Water UOC, LLC; Bluegrass Water UHC, LLC; and Kentucky CSWR, LLC have any employees, and if so, identify the number of persons employed by each entity and describe the roll of each such person.
- 

**Response**

Bluegrass Water UOC, LLC; Bluegrass Water UHC, LLC; and Kentucky CSWR, LLC do not have any employees.

**Request**

23. Provide the most recent balance sheet for Bluegrass Water UOC, LLC; Bluegrass Water UHC, LLC; and Kentucky CSWR, LLC.
- 

**Response**

The balance sheet for Bluegrass Water UOC, LLC is attached at KYPSC 2020-29JA 00005 and the balance sheet for Kentucky CSWR, LLC is attached as KYPSC 2020-29JA 00006. There is no balance sheet for Bluegrass Water UHC, LLC because it is consolidated with Bluegrass Water UOC and is a disregarded entity for tax purposes. No separate books and records are maintained. All of the assets are held at the Bluegrass Water UOC level and are reflected on that attached balance sheet.



## Bluegrass Water UOC Balance Sheet

9/30/2020

Current Assets	
Cash	\$
Accounts Receivable	\$
Other Current Assets	\$
Total Current Assets	\$
Property, Plant & Equipment, Net	\$
Misc Long-Term Assets	
Preliminary Survey & Investigation	\$
Investment in Associated Companies	\$
Unamortized Debt Expense	\$
Receivable from Associated Company	\$
Goodwill	\$
Intangible Assets	\$
Other Long-Term Assets	\$
Total Misc Long-Term Assets	\$
Deferred Income Tax Asset	\$
<b>Total Assets</b>	<b>\$</b>
Current Liabilities	
Accounts Payable	\$
Notes Payable-Current Portion	\$
Other Current Liabilities	\$
Total Current Liabilities	\$
Long-Term Liabilities	
Notes Payable	\$
Payable to Associated Companies	\$
Contributions in Aid of Construction	\$
Other Long-Term Liabilities	\$
Total Long-Term Liabilities	\$
Deferred Income Tax Liability	\$
Capitalization	
Paid-In Capital	\$
Retained Earnings	\$
Net Income	\$
Total Capitalization	\$
<b>Total Liabilities and Capitalization</b>	<b>\$</b>

Kentucky CSWR Balance Sheet

9/30/2020

Current Assets	
Cash	\$
Accounts Receivable	\$
Other Current Assets	\$
Total Current Assets	\$
Property, Plant & Equipment, Net	\$
Misc Long-Term Assets	
Preliminary Survey & Investigation	\$
Investment in Associated Companies	\$
Unamortized Debt Expense	\$
Receivable from Associated Company	\$
Goodwill	\$
Intangible Assets	\$
Other Long-Term Assets	\$
Total Misc Long-Term Assets	\$
Deferred Income Tax Asset	\$
<b>Total Assets</b>	<b>\$</b>
Current Liabilities	
Accounts Payable	\$
Notes Payable-Current Portion	\$
Other Current Liabilities	\$
Total Current Liabilities	\$
Long-Term Liabilities	
Notes Payable	\$
Payable to Associated Companies	\$
Contributions in Aid of Construction	\$
Other Long-Term Liabilities	\$
Total Long-Term Liabilities	\$
Deferred Income Tax Liability	\$
Capitalization	
Paid-In Capital	\$
Retained Earnings	\$
Net Income	\$
Total Capitalization	\$
<b>Total Liabilities and Capitalization</b>	<b>\$</b>