



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

DEC 27 2007

CERTIFIED MAIL 7007 1680 0001 0750 4015
RETURN RECEIPT REQUESTED

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

Re: Administrative Order
Docket No. CWA-04-2008-4757
City of Henderson
NPDES Permit No. KY0020711

Dear Mayor Davis:

The Administrator of the U.S. Environmental Protection Agency ("EPA") has determined that the City of Henderson, located in Henderson County, Kentucky ("the Facility") has violated the Clean Water Act ("Act"), 33 U.S.C. §§ 1318 and 1319(a) and its implementing regulations. Enclosed you will find an Administrative Order ("AO"), issued pursuant to Sections 308 and 309(a), 402 and 502(5) of the Act, 33 U.S.C. §§ 1318, 1319(a), 1342, 1362(5), which sets forth the violation(s) by the Facility and requires the Facility to comply with the Act and its implementing regulations. Also enclosed as Exhibit A is a copy of the Commonwealth of Kentucky's August 30, 2007, Consent Judgment for this Facility.

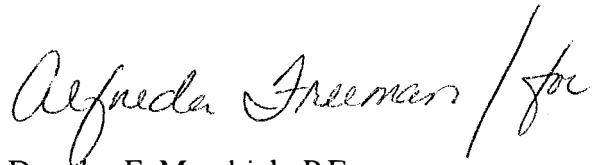
This AO does not replace, modify, or eliminate any other requirement of the Act or the Permit. Notwithstanding the issuance of this AO, EPA retains the right to bring further enforcement action under Sections 309(b) or 309(g) of the Act, 33 U.S.C. §§ 1319(b) or 1319(g), for the violations cited therein or for any other violation of the Act. Violations of the Act, including requirements contained in a National Pollutant Discharge Elimination System ("NPDES") permit or an AO issued under Section 309(a) of the Act, remain subject to a civil penalty of up to \$32,500 per day for each violation, pursuant to Sections 309(d) or 309(g) of the Act, 33 U.S.C. §§ 1319(d) or 1319(g), as amended by the *Civil Monetary Penalty Inflation Adjustment Rule*, 69 *Fed. Reg.* 7121 (February 13, 2004). Such violations may also be subject to criminal penalties pursuant to Section 309(c) of the Act, 33 U.S.C. § 1319(c).

Also, enclosed is a document entitled *U.S. EPA Small Business Resources-Information Sheet* to assist you in understanding the compliance assistance resources and tools available to you. Any decision to seek compliance assistance at this time does not, however, relieve you of your obligation to EPA, nor does it create any new rights or defenses and will not affect EPA's decision to pursue enforcement action. In addition, the Securities and Exchange Commission

requires its registrants to periodically disclose environmental legal proceedings in statements filed with the Commission. To assist you with these potential reporting obligations, EPA has also enclosed a document entitled *Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings*.

Should you have any questions concerning the requirements contained in the enclosed AO, please contact either Alfreda Freeman, Chief of the Central Enforcement Section, at (404) 562-8977 or Sean Ireland, Enforcement Officer, at (404) 562-9776, or address written comments to the address on the letterhead. Legal inquiries should be directed to Adam Dilts or William Bush, Associate Regional Counsel, at (404) 562-9581 or (404) 562-9538 respectively.

Sincerely,

A handwritten signature in cursive script that reads "Douglas F. Mundrick, P.E." with a large, stylized flourish at the end.

Douglas F. Mundrick, P.E.
Chief
Water Programs Enforcement Branch
Water Management Division

Enclosures

cc: Jeff Cummins
Kentucky Department for Environmental Protection

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF

City of Henderson
and Henderson Water Utility

NPDES Permit No. KY0020711

Administrative Order

Docket No.: CWA-04-2008-4757

ADMINISTRATIVE ORDER

I. Statutory Authority

The following **FINDINGS OF FACT** and **VIOLATIONS** are made, and this **ORDER** issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Sections 308 and 309(a) of the Clean Water Act (“Act”), 33 U.S.C. §§ 1318 and 1319(a). The Administrator has delegated this authority to the Regional Administrator of EPA, Region 4, who has in turn delegated this authority to the Director of the Water Management Division (“Director”), who hereby issues this Administrative Order (“Order”).

II. Findings of Fact

The Director finds:

1. The City of Henderson Water Utility, Kentucky (“Respondent”) is a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
2. Respondent owns and operates a wastewater collection system with a treatment plant and permitted outfalls in Henderson County, Kentucky (“Sewage System”), which discharges “pollutants” into “navigable waters” of the United States as defined in Section 502 of the Act, 33 U.S.C. § 1362.
3. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into waters of the United States except as in compliance with a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.
4. The Commonwealth of Kentucky, through its Environmental and Public Protection Cabinet (“EPPC”), issued NPDES Permit No. KY0020711, which became

effective April 1, 2001 (“2001 Permit”) and authorized Respondent to discharge pollutants in compliance with the terms therein.

5. Respondent applied for a new NPDES permit prior to the April 30, 2005, expiration date of the 2001 Permit. EPPC has not issued Respondent a new NPDES permit, thus the terms of the 2001 Permit remain effective until such time as Respondent is issued a new NPDES permit.

6. The 2001 Permit, at Part II, Subpart “Sewer System Overflows,” Section A, requires Respondent to maintain an approved Combined Sewer Operational Plan (“CSOP”) implementing combined sewer overflow (“CSO”) controls in accordance with EPA’s 1994 CSO Policy, 59 Fed. Reg. 18688 (“CSO Control Policy”). Section 402(q)(1) of the Act, 33 U.S.C. § 1342(q)(1), requires that each permit, order or decree issued for a CSO discharge must conform to the CSO Control Policy. The CSO Control Policy is also incorporated by reference into the Commonwealth of Kentucky’s regulations at 401 Ky. Admin. Regs. 5:002, Section 3.

7. Respondent was previously required to implement these CSO controls pursuant to its earlier 1999 NPDES Permit (“1999 Permit”) issued by EPPC.

8. The CSO Control Policy requires the development and implementation of nine minimum controls (“NMC”) and a long-term CSO control plan (“LTCP”) to minimize the impact of CSOs on water quality in waters of the United States. The CSOP required pursuant to 1999 and 2001 Permits serves as the functional equivalent to the LTCP.

9. On August 30, 2007, the Commonwealth of Kentucky issued Respondent a Consent Judgment (“EPPC Consent Judgment”), which is attached as Exhibit A, addressing discharges from Respondent’s CSO outfalls. The EPPC Consent Judgment requires Respondent to finalize, develop, submit and implement plans for the continued improvement of its Sewage System and wastewater treatment plants, including a LTCP. The EPPC Consent Judgment, however, does not require implementation of the LTCP by a date certain as required by the CSO Control Policy.

10. Based on the information available to EPA, Respondent has failed to comply with the Act and NPDES Permit requirements to maintain an approved LTCP (or CSOP, the functional equivalent to the LTCP required by the CSO Control Policy) implementing CSO controls as set forth in the 1999 and 2001 Permits.

11. EPA is issuing this Order to establish an appropriate compliance schedule including enforceable compliance dates consistent with the CSO Control Policy for implementation of Respondent’s LTCP.

III. Violation

12. Respondent has violated Section 301(a) of the Act, 33 U.S.C. § 1311(a), and the 1999 and 2001 Permits, issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, in that Respondent:

- a) Failed to develop and maintain an adequate LTCP consistent with the CSO Control Policy; and
- b) Discharged pollutants from CSOs into waters of the United States, resulting in degradation of water quality.

IV. ORDER

Based on the foregoing **FINDINGS**, and having taken into account the nature, circumstances, and gravity of the **VIOLATION**, Respondent's prior history of compliance, degree of culpability, and such other matters as justice may require, under the authority of Section 308 and 309(a) of the Act, 33 U.S.C. §§ 1318 and 1319(a), **THE DIRECTOR HEREBY ORDERS RESPONDENT TO COMPLY WITH THE PROVISIONS OF THE PARAGRAPHS BELOW:**

13. Respondent shall, simultaneously with its submittal to EPPC, submit to EPA for review and comment, the Final LTCP required by the EPPC Consent Judgment. Submittal of the Final LTCP shall occur on or before February 28, 2009. The Final LTCP shall comply with the CSO Control Policy and be consistent with EPA's "Guidance for Long-Term Control Plan," EPA 832-B-95-002, September 1995. Specifically, the Final LTCP shall include schedules, deadlines, and timetables for remedial measures that achieve full compliance with the water quality criteria listed for the demonstrative approach or the presumptive approach at the earliest practicable compliance date considering physical and financial feasibility. Such schedules shall be as expeditious as possible but shall not exceed ten (10) years from the effective date of this Order unless Respondent can demonstrate additional time is needed as a result of a high financial burden determination consistent with EPA's "Guidance for Financial Capability Assessment and Schedule Development," EPA 832-8-97-004, February 1997.

14. Within sixty (60) days of the effective date of this Order, provide a listing of all sanitary sewer overflows ("SSOs") for the past five (5) years. If the following information being requested is not available, provide an explanation why it is not available. An SSO is any discharge to waters of the United States from Respondent's Sewer System at a location other than an outfall permitted in an NPDES permit, as well as any release of wastewater from Respondent's Sewer System to public or private property that does not reach waters of the United States, such as backups into buildings that are caused by blockages or flow conditions in the Sewer System other than a private building lateral. Wastewater backups into buildings caused by a blockage or other malfunction of a building lateral that is privately owned is not an SSO. For each SSO provide the following:

- a) Date(s) of SSO;
- b) Time (and date if other than above) when Respondent became aware of the SSO event;
- c) Time (and date if other than above) when utility (or contractor) crew responded to the SSO;
- d) Time (and date if other than above) when SSO ceased;
- e) Time (and date if other than above) when corrective action was completed;
- f) Location of SSO, including source (pump station, manhole, etc.);
- g) Ultimate destination of overflow, such as surface waterbody (by name), storm drain leading to surface waterbody (by name), dry land, building, etc;
- h) Volume of SSO;
- i) Cause of SSO such as grease, roots, other blockages, wet weather (infiltration and inflow), loss of power at pump station; pump failure, etc;
- j) Description of corrective actions taken to stop the SSO;
- k) Description of corrective actions taken to prevent this or similar SSOs from occurring in the future; and,
- l) Indicate if the SSO is a recurring overflow, that is, an SSO that occurs in the same location more than once per twelve (12) month rolling period.

15. Within sixty (60) days of the effective date of this Order, provide a listing of all CSO events for the past five (5) years. If the information being requested is not available, please explain why. For each CSO, please provide the following:

- a) Identify the permitted CSO outfall for each CSO event (include latitude and longitude);
- b) Surface waterbody (by name) to which the CSO discharges;
- c) Date(s) of the CSO;
- d) Duration of the CSO;
- e) Estimated CSO volume; and,
- f) Indicate if the CSO was sampled, and if so, provide a summary of sampling data.

16. Within thirty (30) days after the end of each calendar year beginning January 30, 2009, Respondent shall provide to EPA an update of the information in Paragraphs 16 and 17 of this Order which shall include all SSO and CSO events occurring since the prior report.

17. Information required to be submitted by this Order shall be sent by registered mail, or its equivalent, to the following address:

Douglas F. Mundrick, P.E., Chief
Water Programs Enforcement Branch
Water Management Division
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

V. General Provisions

18. Failure to comply with all of the requirements of this Order may subject Respondent to penalties as provided in Sections 308 and 309 of the Act, 33 U.S.C. §§ 1318 and 1319.

19. This Order does not operate as an NPDES permit and does not replace, modify, or eliminate any requirement of the Act or 2001 Permit. Nothing contained herein shall be construed as prohibiting prosecution for the violations cited in this Order, for violations of the Order itself, for violation of the 2001 Permit, or for any other violations of the Act.

20. This Order applies to and is binding upon Respondent and its officers, directors, employees, agents, successors and assigns.

21. Pursuant to Section 309(a)(4) of the Act, 33 U.S.C. § 1319(a)(4), EPA has sent a copy of this Order to the Commonwealth of Kentucky.

22. Issuance of this Order shall not be deemed election by EPA to forego any civil or criminal action to seek penalties, fines, or other appropriate relief under the Act.

23. The provisions of this Order shall be deemed satisfied upon a determination by EPA that Respondent has fully completed and implemented the actions required by the Order.

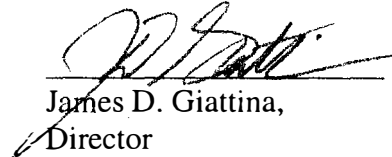
VI. Effective Date

24. The effective date of this Order shall be the date upon which it is received by Respondent.

IT IS SO ORDERED.

BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 4:

Date 10/21/06


James D. Giattina,
Director
Water Management Division