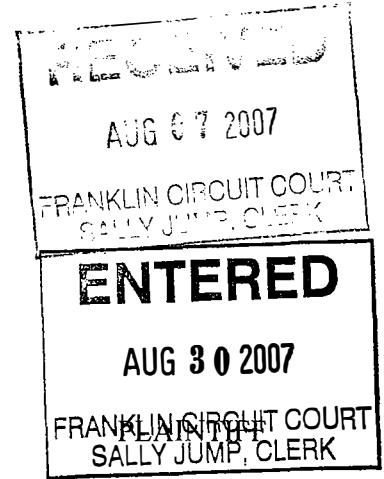


COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
CIVIL ACTION NO. 07-CI-CI-1250
DIVISION NO. I



COMMONWEALTH OF KENTUCKY
ENVIRONMENTAL AND PUBLIC
PROTECTION CABINET

V.

CITY OF HENDERSON
and HENDERSON WATER UTILITY

DEFENDANTS

CONSENT JUDGMENT

The parties to this Consent Judgment, the Commonwealth of Kentucky, by and through its Environmental and Public Protection Cabinet (hereinafter the "Cabinet"), and the City of Henderson (hereinafter "Defendant" or "Henderson") by and through its municipal wastewater utility (hereinafter "Henderson Water Utility" or "HWU") state:

RECITALS

1. The Cabinet is charged with the statutory duty of enforcing Kentucky Revised Statutes ("KRS") Chapter 224, the Clean Water Act (CWA) and the regulations promulgated pursuant thereto.

2. The Defendant is a city of the second class that at all times pertinent to this complaint, owned and operated a wastewater collection system with treatment plants and permitted outfalls in Henderson County, Kentucky (hereinafter "system" or "sewage system.") The Henderson Water Utility serves a population of approximately 28,000 people. The

Defendant through HWU holds KPDES Permit No. KYR104131 issued by the Division of Water for discharges into the waters of the Commonwealth.

3. The Defendant owns and operates a wastewater collection system in Henderson County. The wastewater collection system consists of separate sanitary sewer systems (“SSS”) and combined sewer systems (“CSS”).

4. This Consent Judgment between the Cabinet and the Defendant addresses sanitary sewer overflows (“SSOs”), other unauthorized discharges, and discharges from the combined sewer overflow outfalls (“CSO Outfalls”) identified in the KPDES Permit, and requires the Defendant to finalize, develop, submit and implement plans for the continued improvement of the sewage system, including the WWTPs.

5. Pursuant to KPDES Permit No. KY0020711 for the Henderson No. 1 WWTP, the Defendant is required to maintain an approved combined sewer operational plan (“CSOP”) implementing combined sewer overflow (“CSO”) controls for the CSS in accordance with EPA’s 1994 CSO Policy, 59 Fed. Reg. 18688 (“CSO Control Policy”). The KPDES permits require the Defendant to implement the nine minimum controls (“NMC”) delineated in EPA’s 1994 CSO Control Policy. EPA’s 1994 CSO Control Policy also provides for the development and implementation of a Long-Term CSO Control Plan (“LTCP”).

6. The continued existence of SSOs in the SSS constitute unauthorized discharges under the CWA, 33 U.S.C § 1251 *et seq.*, and KRS Chapter 224. The SSOs and unauthorized wet weather discharges into surface waters of the Commonwealth constitute a discharge of pollutants within the meaning of KRS 224.70-110 through “point sources,” as defined by 401 KAR 5:002 Section 1 (220) and Section 502(14) of the CWA, 33 U.S.C. § 1362 (14).

7. Section 402 (q)(1) of the CWA, 33 U.S.C. § 1342(q)(1) and the CSO Control Policy incorporated by reference into the CWA require the Defendant to develop a LTCP and implement measures to abate the impact of CSOs on water quality in waters of the United States. The CSO Control Policy is incorporated by reference in the Cabinet's regulations at 401 KAR 5:002 Section 3. The Defendant qualifies for small system considerations under the CSO Control Policy.

8. The Defendant implemented programs in 1996 designed to comply with the NMC delineated in the CSO Control Policy and the KPDES permit and continues to maintain and upgrade those programs. The Defendant prepared and implemented a CSOP in 1996, as required by the KPDES permit and EPA's CSO Control Policy. Defendant provides the Cabinet with an annual update of its CSOP program as required. Defendant implemented a CSO stormwater management plan in 1997 and is using that plan as an interim long term control plan (but it has not been approved by the Cabinet as such) until a final LTCP is approved by the Cabinet and implemented. Since 1997 more than \$14 million has been spent by Defendant on projects to reduce the impacts of CSOs and improve water quality. More than 40% of the CSO area contributing to Defendant's CSO outfalls has been converted to sanitary sewers.

9. The Defendant's CSO improvement efforts to date include the following projects:

Year/ Location of Project/ Project Description

- 1980 Problem area 5 (Letcher / Powell / Mill St.) 46.4 acres - Separated stormwater in CSO Area
- 1980 Problem area 12 (Outer Second St.) 8.1 acres - Separated stormwater in CSO Area
- 1994 Problem Area 7 (Fourth Street) 9.7 acres - Separated stormwater in CSO Area
- 1997 Atkinson St. P.S. Service Remove Atkinson St. pump service area from CSS Garden Mile Sewer Extension (1998 CSOP Update, Table 1)
- 1998 Problem Area 1 (Jackson/Audubon St.) 31.1 acres - Separated stormwater in CSO Area

- 1998 Russell Dr. P.S. Redirected flow out of the CSS (1998 CSOP Update, Page 2)
- 1998 McKinley Ave. Area - 100 acres separated (1998 CSOP Update, Page 2)
- 1998 Hancock St. and South Main St. - Removed 7 stormwater intakes
- 1998 Highlander / Cooper Park / Gardenside Pump Station Service Areas - Remove Highlander, Cooper Park, and Gardenside Pump Stations from Second St. CSO (1998 CSOP Update, Table 1)
- 1998 Atkinson St. Pump Station Service Area - Remove area from CSS + Cooper Lane Sewer Extension (1998 CSOP Update, Table 1)
- 1998 Eighth Street Alley Stormwater Project (1999 CSOP Update, Table 1)
- 1998 McKinley St. Stormwater Project (1999 CSOP Update, Table 1)
- 1998 O'Byrne St. Stormwater Project (1999 CSOP Update, Table 1)
- 1998 Walnut Lane Stormwater Project (1999 CSOP Update, Table 1)
- 1998 Powell St. Alley Stormwater Project (1999 CSOP Update, Table 1)
- 1999 WWTP Expansion Average daily flow design increased from 7.5 MGD to 15 MGD
Peak flow increased from 18.75 MGD to 25 MGD
- 1999 Problem Area 2 (N. Main / Merritt Dr.) 31.7 acres - Separated stormwater in CSO Area
- 1999 Third St. Detention Basin 407.2 acre watershed - Constructed 15 million gallon CSO basin with primary treatment
- 1999 Center / Julia St. Interceptor Construct interceptor from Center / Julia St. to Third St. Detention Basin (1999 CSOP Update, Table 1)
- 1999 Monitor Flow Meters (Canoe Creek) Install Monitor Flow Meters at Canoe Creek
- 2000 N. Adams St. Separation 67.9 acres - Separated stormwater in CSO Area
- 2000 Problem Area 10 (N. Water St.) 21.7 acres - Separated stormwater in CSO Area
- 2000 Problem Area 11 (S. Water St.) 11.3 acres - Separated stormwater in CSO Area
- 2000 Third St. Detention Basin - Install bar screens in Third Street Detention Basin
- 2001 Pringle St. Separation 50.2 acres - Separated stormwater in CSO Area
- 2001 Meadow / Pond Street Stormwater Project (2001 CSOP Update, Table 1)
- 2001 Eighth Street Alley - Upgraded lines (2001 CSOP Update, Table 1)
- 2002 Problem Area 4 (Part) (Third St.) 10.2 acres - Separated stormwater in CSO Area
- 2002 Problem Area 13 (Part) (Fifth St.) 32.1 acres - Separated stormwater in CSO Area
- 2002 Problem Area 17 (Bob Posey St.) 32.5 acres - Separated stormwater in CSO Area
- 2003 Problem Area 4 (Part) (Center St.) 64.9 acres - Separated stormwater in CSO Area

- 2003 Problem Area 13 (Part) (Fifth St.) 82.1 acres - Separated stormwater in CSO Area
- 2003 Problem Area 18 (S. Alves St.) 3.0 acres - Separated stormwater in CSO Area
- 2003 First St. (900 Block) Remove stormwater intake, tie into box culverts that lead to Third St. Detention Basin (2003 CSOP Update, Table 1)
- 2003 Remove CSO Outfall 017 (Outer Fifth St.) Remove CSO Outfall 017
- 2004 Problem Area 19 (Alves /Alvasia St.) 43.1 acres - Separated stormwater in CSO Area
- 2004 Remove CSO Outfall 011 (Fourth St.) Remove CSO Outfall 011
- 2004 Remove CSO Outfall 012 (Fifth St.) Remove CSO Outfall 012
- 2004 North Adams St. Install 24" stormwater line/ intakes (2004 CSOP Update, Page 2)
- 2005 N. Elm St. Separation 17.5 acres - Separated stormwater in CSO Area
- 2005 Problem Area 15 (McKinley St.) 35.0 acres - Separated stormwater in CSO Area
- 2005 Problem Area 20(Clark/Winstead St.)5.7 acres - Separated stormwater in CSO Area
- 2005 Remove CSO Outfall 013 (Eighth St.) Remove CSO Outfall 013
- 2005 Canoe Creek Interceptor (Phase I) Sanitary sewer interceptor (Reroute sewer flow around CSS)

10. Authorized representatives of the Cabinet have identified the following alleged violations of KRS Chapter 224 in its complaint in this action which include the following:

- a. KRS 224.70-110 -- Discharge of contaminants or pollutants into waters of the Commonwealth resulting in degradation of water quality.
- b. 401 KAR 5:065 -- Failure to properly operate and maintain the system.
- c. 401 KAR 5:055 -- Unpermitted discharge of pollutants from a point source to waters of the Commonwealth.
- d. 401 KAR 5:045 -- Failure to apply secondary treatment to point source discharges to waters of the Commonwealth.

11. The Defendant is hereby placed under a Consent Judgment to resolve these alleged violations and establish an enforceable mechanism and schedule for completing efforts to:

- a. Ensure its CSOs are in compliance with the CWA, KRS Chapter 224 and 401 KAR Chapter 5, and its KPDES permit for its sewage system; and
- b. Eliminate non-CSO related unauthorized wet weather discharges, including SSOs, from the SSS as required by the CWA, KRS Chapter 224 and 401 KAR Chapter 5.

12. The Cabinet and the Defendant agree and recognize that the process to comply with the KPDES permits and upgrade the Defendant's sewer system to eliminate unauthorized discharges and remediate discharges from the CSO locations identified in Defendant's KPDES permit and CSOP is an ongoing and evolving effort from the assessment process to the design and construction of necessary infrastructure to meet permit conditions. This process requires efforts that may include, but are not limited to, characterizations, modeling, assessments, engineering design studies, implementation of compliance measures, and construction projects that shall adequately ensure compliance with permit conditions under applicable law. The Cabinet and the Defendant recognize that it will take many years to implement these efforts and that this Consent Judgment is the appropriate mechanism for controlling these efforts.

13. The Defendant neither admits nor denies the violations described above but agrees to the entry of this Consent Judgment to resolve these alleged violations.

14. **NOW, THEREFORE**, in the interest of settling and resolving all civil claims and controversies involving the alleged violations described above and in the Cabinet's Complaint filed in Franklin Circuit Court, before taking any testimony and without adjudication of any fact or law, the Parties hereby consent to the entry of this Consent Judgment. **ACCORDINGLY, IT IS HEREBY ORDERED AND ADJUDGED** as follows:

REMEDIAL MEASURES

15. **Definitions.** The following definitions control for purposes of this Consent Judgment:

- a. “Capacity, Management, Operation, and Maintenance” or “CMOM” shall mean, for the purpose of this Consent Decree only, a flexible program of accepted industry practices to properly manage, operate, and maintain sanitary wastewater collection and transmissions systems, investigate capacity-constrained areas of these systems, and respond to SSO events.
- b. “Combined Sewer Overflow” or “CSO” means the flow from a combined sewer in excess of the interceptor or regulator capacity that is discharged into a receiving water without going to a POTW.
- c. “Combined Sewer System” or “CSS” shall mean the portion of the Defendant’s sewer system designed to convey municipal sewage (domestic, commercial, and industrial wastewaters) and stormwater runoff through a single-pipe system to the Defendant’s Henderson No. 1 Treatment Plant or CSOs.
- d. “Sanitary Sewer Overflow” or “SSO” shall mean, for the purpose of this Consent Decree only, any discharge to waters of the United States from the Defendant’s sanitary sewer system not through point sources specified in any KPDES permit, as well as any release of wastewater from the Defendant’s sanitary sewer system to public or private property that does not reach waters of the United States, such as a release to a land surface or structure that does not reach waters of the United States; provided, however, that releases or wastewater backups into buildings that are

caused by blockages, flow conditions, or malfunctions in a building lateral, or other piping or conveyance system that is not owned or operationally controlled by the Defendant are not SSOs for the purposes of this Consent Decree.

- e. "Sanitary Sewer System" or "SSS" shall mean all portions of the Defendant's sewer system that are not part of the Defendant's combined sewer system. The SSS does not include any sewer systems which are owned by others and are not operationally controlled by the Defendant.
- f. "Unauthorized Discharge" shall mean any discharge to waters of the United States from the Defendant's sewer system or Treatment Plants not through a point source specified in any KPDES permit or from the Defendant's Treatment Plants which constitutes a prohibited bypass (as defined in 401 KAR 5:065, Section 1(13)(c)).

16. **Map of Sewer System.** No later than one hundred and twenty (120) days after entry of the Consent Judgment, Henderson shall submit a map of the sewage collection and conveyance system that is under the direct control of the Henderson Water Utility to the Cabinet. The map shall delineate the combined and separate sanitary portions of the system and shall indicate all CSO outfalls, recurring SSOs, and any other recurring points of unauthorized discharges from the Henderson North system. The map shall clearly display all sewer collection lines, with the exception of service laterals, with directional flows and sizes of those lines being clearly shown. Additionally, the map shall indicate sewer system sub-basins, manholes and pump stations.

17. **Sewer Use Ordinance.**

- a. Within thirty (30) days of entry of this Consent Judgment, Henderson shall submit to the Cabinet's Division of Enforcement ("DENF") a copy of the current version of its Sewer Use Ordinance (SUO), indicating the portions of that ordinance which pertain to and prohibit illicit discharges to the Henderson sanitary sewer system.
- b. If Henderson's SUO is determined by the Cabinet to be in conflict with the CWA and 401 KAR Chapter 5 with respect to its prohibitions of illicit connections to Henderson's sewage system, Henderson shall, within sixty (60) days of receipt of such notification from the Cabinet that the SUO does not comply with the CWA and/or applicable regulations, prepare draft revisions to its SUO to adequately address such illicit connections and submit the draft revised SUO to the Cabinet for review and approval.
- c. Henderson shall, within sixty (60) days of receiving notification from the Cabinet that its draft revised SUO adequately addresses illicit connections to its separate sanitary sewers, adopt the revised SUO. Within sixty (60) days of adoption of the SUO, Henderson shall notify its customers of the revised ordinance and of the requirement that the SUO be properly enforced by Henderson. Henderson shall document and inform the Cabinet of all reportable overflow events. The documentation shall provide estimated volumes of all reported overflows. While these volumes to be reported are estimates, the method(s) of estimation shall be

rationality justified and the same method(s) shall be utilized for all reportable events in the absence of different circumstances.

18. **Early Action Plans.** After the entry of this Consent Judgment, the Defendant shall prepare and submit Early Action Plans for Cabinet review and approval according to the timeframes set forth herein. The Early Action Plans shall include the following components and independent deadlines:

- a. **Nine Minimum Controls (NMC) Compliance.** No later than twelve (12) months after entry of this Consent Judgment, the Defendant shall submit documentation demonstrating the status of Defendant's compliance with the NMC requirements within the CSS as set forth in the CSO Control Policy. If the Defendant cannot document in the Early Action Plan that all NMC requirements are being implemented in accordance with the NMC guidance, the Early Action Plan shall specify the activities to be performed, including schedules, so that compliance with the NMC requirements is achieved by no later than twenty four (24) months after entry of this Consent Judgment unless the Cabinet approves additional time due to complicating factors that require longer construction schedules. The documentation of the compliance status and the proposed activities shall be consistent with the "Guidance for Nine Minimum Controls," EPA 832-B-95-003, May 1995. The documentation submitted shall demonstrate compliance with the following controls:

- (i) Proper operation and regular maintenance programs for the CSS and the CSOs;

- (ii) Maximum use of the collection system for storage;
- (iii) Review and modification of pretreatment requirements to assure CSO impacts are minimized;
- (iv) Maximization of flow to the WWTP for treatment;
- (v) Prohibition of CSOs during dry weather;
- (vi) Control of solid and floatable materials in CSOs;
- (vii) Pollution prevention;
- (viii) Public notification to ensure that the public receives adequate notification of CSO occurrences and CSO impacts,
- (ix) Monitoring to effectively characterize CSO impacts and the efficacy of CSO controls.

Upon review of the NMC Compliance portion of the Early Action Plan, the Cabinet may, in whole or in part, (1) approve or (2) provide comments to the Defendant identifying the deficiencies. Upon receipt of Cabinet comments, the Defendant shall have sixty (60) days to revise and resubmit the NMC Compliance portion of the Early Action Plan for review and approval, subject only to Defendant's rights under the dispute resolution provisions of this Consent Judgment. If the Defendant believes that partial approval by the Cabinet of any portion of the Early Action Plan to achieve compliance with the NMC will interfere with the Defendant's ability to implement any other portion of the Early Action Plan, the Defendant's submittal shall document this problem and either provide additional

support for its initial Plan or propose an alternative course of action for NMC compliance.

Upon resubmittal, the Cabinet may, in whole or in part, (1) approve or (2) disapprove and provide comments to the Defendant identifying the deficiencies.

Upon such resubmittal, if any part of the NMC Compliance portion of the Early Action Plan is disapproved, the Cabinet may deem the Defendant to be out of compliance with this Consent Judgment for failure to timely submit such portion and may assess stipulated penalties pursuant to this Consent Judgment, subject only to Defendant's rights under the dispute resolution provisions of this Consent Judgment.

Upon Cabinet approval of all or any part of the NMC Compliance portion of the Early Action Plan, the NMC Compliance portion or any approved part thereof shall be deemed incorporated into this Consent Judgment as an enforceable requirement of this Consent Judgment. This does not require an amendment request pursuant to paragraph 47 of this Consent Judgment.

- b. **Capital Improvement Project.** This Consent Judgment includes Capital Improvement Projects, listed below, that will be initiated by the Defendant to continue its efforts to date in addressing CSOs. Estimated project costs are based on Defendant's estimates. The Defendant shall certify to the Cabinet the completion of this project in the annual report following the project's completion.

Project Name: Center & Julia Street Sewer and Storm Water Separation Project.

Completion Date: January 31, 2009.

Project Description: Installation of over 14,000 linear feet of large diameter pipeline that will, when completed, remove an additional 152 acres from the Combined Sewer System.

Estimated Project Cost: \$2.1 million.

- c. **CMOM (Capacity, Management, Operation, and Maintenance) Programs Self-Assessment.** Not later than nine (9) months after entry of the Consent Judgment, the Defendant shall submit a CMOM Programs Self-Assessment of the Defendant's separate sewer collection system, which assessment shall be consistent with the U.S. EPA Region IV methodology to ensure that the Defendant has CMOM Programs in place that are effective at eliminating SSOs within the separate sewer collection system. This Self-Assessment shall include an evaluation of, and, if appropriate, recommendations of improvements to, the CMOM Program components deemed to be deficient. Any recommended improvements shall include schedules for implementation. The Cabinet shall have forty-five (45) days to review the CMOM Programs Self-Assessment and any recommended improvements and schedules. If the Cabinet does not accept the CMOM Programs Self-Assessment or recommended improvements and schedules, modifications to the CMOM Programs Self-Assessment shall be made in accordance with the Cabinet's comments and

resubmitted by the Defendant within forty-five (45) days of receipt of the aforementioned comments, subject only to the Defendant's rights under the dispute resolution provisions of this Consent Judgment. If the Defendant believes that partial approval by the Cabinet of any portion of the recommended improvements will interfere with the Defendant's ability to implement any other improvements, the Defendant's submittal shall document this problem and either provide additional support for its initial Plan or propose an alternative course of action for CMOM compliance.

Upon resubmittal, the Cabinet may, in whole or in part, (1) approve or (2) disapprove and provide comments to the Defendant identifying the deficiencies. Upon such resubmittal, if any part of the CMOM Programs Self-Assessment portion of the Early Action Plan is disapproved, the Cabinet may deem the Defendant to be out of compliance with this Consent Judgment for failure to timely submit such portion and may assess stipulated penalties pursuant to this Consent Judgment, subject only to the Defendant's rights under the dispute resolution provisions of this Consent Judgment.

Upon Cabinet approval of all or any part CMOM Programs Self-Assessment, of the Early Action Plan, including the CMOM Programs and recommended improvements and schedules, or any approved part thereof (provided that the approved part is not dependent upon implementation, or a key consideration of planning with respect to implementation, of any part not yet approved), these shall be deemed incorporated into this

Consent Judgment as an enforceable requirement of this Consent Judgment. This does not require an amendment request pursuant to paragraph 47 of this Consent Judgment.

- d. **Sewer Overflow Response Protocol ("SORP").** Not later than nine (9) months after entry of the Consent Judgment, the Defendant shall submit a SORP in compliance with 401 KAR 5:015 for review and approval by the Cabinet, to establish the timely and effective methods and means of: (1) responding to, cleaning up, and/or minimizing the impact of all overflows, including unauthorized discharges; (2) reporting the location, volume, cause and potential impact of all overflows, including unauthorized discharges, to the Cabinet; and (3) notifying the potentially impacted public. The Cabinet shall have thirty (30) days to review the SORP. If the Cabinet does not accept the SORP, the Defendant shall address the Cabinet's comments identifying deficiencies and resubmit the SORP within sixty (60) days of receipt of the aforementioned comments, subject only to the Defendant's rights under the dispute resolution provisions of this Consent Judgment. If the Defendant believes that partial approval by the Cabinet of any portion of the SORP will interfere with the Defendant's ability to implement any other portion of the SORP, the Defendant's submittal shall document this problem and either provide additional support for its SORP or propose an alternative course of action for the SORP.

Upon resubmittal, the Cabinet may, in whole or in part, (1) approve or (2) disapprove and provide comments to the Defendant identifying the deficiencies. Upon such resubmittal, if any part of the SORP is disapproved, the Cabinet may deem the Defendant to be out of compliance with this Consent Judgment for failure to timely submit the SORP portion of the Early Action Plan and may assess stipulated penalties pursuant to this Consent Judgment, subject only to the Defendant's rights under the dispute resolution provisions of this Consent Judgment. If approved, the Defendant shall implement the SORP within thirty (30) days of receiving the Cabinet's approval. By the anniversary date of the approval of the SORP, the Defendant shall annually review the SORP and propose changes as appropriate subject to Cabinet review and approval. A copy of any future updates to the SORP shall also be provided to the Madisonville Regional Office of the Division of Water within thirty (30) days of incorporation of the update.

Upon Cabinet approval of all or any portion of the Early Action Plan, the SORP, or any approved part thereof, and any subsequently approved changes, shall be deemed incorporated into this Consent Judgment as an enforceable requirement of this Consent Judgment. This does not require an amendment request pursuant to paragraph 47 of this Consent Judgment.

19. **Sanitary Sewer Overflow Plan** – Not later than twelve (12) months after entry of the Consent Judgment, the Defendant shall prepare and submit, for Cabinet review and approval, a Sanitary Sewer Overflow Plan ("SSOP") designed to eliminate recurring unauthorized

discharges and recurring SSOs within the SSS. An SSO or unauthorized discharge is considered recurring if it discharges at a frequency rate of at least two times per consecutive twelve months. The Cabinet may in its sole discretion exclude overflows caused by highly unusual atypical weather conditions caused by precipitation events from consideration in determining if a SSO or unauthorized discharge is recurring. The SSOP shall specify the long-term SSOP projects planned to minimize the frequency, volume and water quality impacts of SSOs, including proposed schedules, milestones, and deadlines related to those long-term projects. The SSOP shall include, at a minimum, the following elements:

- a. A map that shows the location of any known recurring SSOs and recurring unauthorized discharges to waters of the United States. The map shall include the areas and sewer lines that serve as a tributary to each recurring SSO or unauthorized discharge. Smaller maps of individual tributary areas also may be included to show the lines involved in more detail.
- b. A description of each known recurring SSO and any known recurring unauthorized discharge location that includes:
 - (i) The frequency of the overflow or discharge;
 - (ii) The estimated volume of the overflow or discharge, both annually and by overflow event;
 - (iii) A description of the type of overflow, i.e. manhole, pump station, constructed discharge pipe, etc.;
 - (iv) The cause of overflows at that location;
 - (v) The receiving stream;

- (vi) The immediate area and general land use, including the potential for public health concerns;
 - (vii) A description of any previous (within the last 5 years), current, or proposed studies to investigate the overflow; and
 - (viii) A description of any previous (within the last 5 years), current, or proposed rehabilitation or construction work to remediate or eliminate the overflow..
- c. A prioritization of recurring SSOs and recurring unauthorized discharge locations, based upon the frequency, volume and impact on the receiving stream, and upon public health. Based upon this prioritization, the Defendant shall develop expeditious schedules for design, initiation of construction and completion of construction. Such schedules shall be phased based upon sound engineering judgment and in no case shall extend beyond seven (7) years after the entry of this Consent Judgment.

20. The Defendant may consider conventional and innovative or alternative designs as part of its SSOP, which may include: sewer rehabilitation, sewer replacement, sewer separation, relief sewers, above ground or below ground storage, high rate clarification, illicit connection removal, remote wet weather treatment facilities, pollution prevention, and other appropriate alternatives. Designs shall be based on sound engineering judgment and shall be in accordance with generally accepted engineering design criteria and may include interim remedial measures to reduce pollutant loading and improve water quality in the short term while alternatives for final remedial measures are being developed, evaluated, and implemented.

21. Upon review of the SSOP, the Cabinet may, in whole or in part, (1) approve or (2) provide comments to the Defendant identifying the deficiencies. Upon receipt of Cabinet comments, the Defendant shall have sixty (60) days to address and resubmit the SSOP for review and approval, subject only to the Defendant's rights under the dispute resolution provisions of this Consent Judgment. Upon resubmittal, the Cabinet may, in whole or in part, (1) approve or (2) disapprove and provide comments to the Defendant identifying the deficiencies. Upon such resubmittal, if any part of the SSOP is disapproved, the Cabinet may deem the Defendant to be out of compliance with this Consent Judgment for failure to timely submit such portion and may assess stipulated penalties pursuant to this Consent Judgment, subject only to the Defendant's rights under the dispute resolution provisions of this Consent Judgment. If the Defendant believes that partial approval by the Cabinet of any portion of the SSOP will interfere with the Defendant's ability to implement any other portion of the SSOP, the Defendant's submittal shall document this problem and either provide additional support for its SSOP or propose an alternative course of action for SSOP compliance.

Upon Cabinet approval of all or any part of the SSOP, the SSOP, or any approved part thereof, shall be incorporated into this Consent Judgment by proposed material amendment under paragraph 47 of this Consent Judgment and, upon entry by the Court, become an enforceable requirement of this Consent Judgment.

22. **Long Term Control Plan.**

No later than eighteen (18) months after the entry of this Consent Judgment, the Defendant shall submit a LTCP to the Cabinet for review and approval that complies with the CSO Control Policy and is consistent with EPA's "Guidance for Long-Term Control Plan," EPA 832-B- 95-002, September 1995. The LTCP shall include schedules, deadlines, and timetables

for remedial measures that achieve full compliance with the criteria listed for the demonstrative approach or the presumptive approach as soon as practicable at the earliest practicable compliance date considering physical and financial feasibility. The Defendant may consider conventional and innovative or alternative designs as part of each plan, which may include sewer rehabilitation, sewer replacement, sewer separation, relief sewers, above-ground or below-ground storage, high rate clarification, illicit connection removal, remote wet weather treatment facilities, pollution prevention, and other appropriate alternatives. Designs shall be based on sound engineering judgment and shall be in accordance with generally accepted engineering design criteria and may include interim remedial measures to reduce pollutant loading and improve water quality in the short term while alternatives for final remedial measures are being developed, evaluated, and implemented.

- a. The LTCP shall meet the following goals:
 - (i) Ensure that if CSOs occur, they are only as a result of wet weather;
 - (ii) Bring all wet weather CSO discharge points into compliance with the CWA and KRS Chapter 224; and
 - (iii) Minimize the impacts of CSOs on water quality, aquatic biota, and human health.
- b. In accordance with the CSO Guidance for Long Term Control Plan Document (Chapter 1.6), the nine (9) elements of a LTCP are listed below. Development of the LTCP shall include consideration of those nine (9) elements from the CSO Control Policy unless the Defendant requests consideration based on the small system provisions of the CSO Control Policy and the Defendant provides an explanation as to why such consideration is appropriate. After review of such request, and at the discretion of the Cabinet, the Defendant may not need to complete each of

the steps outlined in (1) through (9) below, but in accordance with the CSO Control Policy they must at a minimum comply with the nine minimum controls, public participation, sensitive areas, and post construction monitoring portions of the Policy.

- (1) Characterization, monitoring, and modeling activities on the combined sewer system as the basis for selection and design of effective CSO controls.
- (2) A public participation process that actively involves the affected public.
- (3) Consideration of sensitive areas as the highest priority for controlling overflows.
- (4) An evaluation of alternatives that will assist in selecting CSO controls to meet CWA requirements.
- (5) Cost/performance considerations to demonstrate the relationships among a comprehensive set of reasonable control alternatives.
- (6) Operational plan revisions once long-term CSO controls are agreed upon.
- (7) Maximization of treatment at the existing POTW treatment plant for wet weather flows.
- (8) An implementation schedule for CSO controls.
- (9) A post-construction compliance monitoring program adequate to verify compliance with water quality-based CWA requirements and ascertain the effectiveness of CSO controls.

Upon review of the LTCP, the Cabinet may, in whole or in part, (1) approve or (2) provide comments to the Defendant identifying the deficiencies. Upon receipt of Cabinet comments, the Defendant shall have one-hundred twenty (120) days to revise and resubmit the LTCP for review approval, subject only to the Defendant's rights under the dispute resolution provisions of this Consent Judgment. If the Defendant believes that partial approval by the Cabinet of any

portion of the LTCP will interfere with the Defendant's ability to implement any other portion of the LTCP, the Defendant's submittal shall document this problem and either provide additional support for its LTCP or propose an alternative course of action for LTCP compliance.

Upon resubmittal, the Cabinet may, in whole or in part, (1) approve or (2) disapprove and provide comments to the Defendant identifying the deficiencies.

Upon such resubmittal, if the LTCP is disapproved, the Cabinet may deem the Defendant to be out of compliance with this Consent Judgment for failure to timely submit the LTCP and may assess stipulated penalties pursuant to this Consent Judgment, subject only to the Defendant's rights under the dispute resolution provisions of this Consent Judgment. Upon Cabinet approval of all or any part of the LTCP, the LTCP, or any approved part thereof, shall be incorporated into this Consent Judgment by proposed material amendment under paragraph 47 of this Consent Judgment and, upon entry by the Court, become an enforceable requirement of this Consent Judgment.

REPORTING REQUIREMENTS

23. The Defendant shall submit an annual report to the Cabinet that describes its progress in complying with this Consent Judgment. The annual reporting period shall be based upon the Defendant's fiscal year (July 1 - June 30), with the report being due on September 1 of each year. The report shall include:

- a. A detailed description of projects and activities conducted and completed during the past reporting period to comply with the requirements of this Consent Judgment.

- b. An accounting of the current year and the cumulative reductions in volume and in number of occurrences of unauthorized discharges from the SSS, CSS and WWTP and discharges from the Defendant's CSO locations identified in its KPDES permit;
- c. The anticipated projects and activities that will be performed in the upcoming year to comply with the requirements of this Consent Judgment, in Gantt chart or similar format;
- d. A summary of the CMOM program implementation, including a comparison of actual performance with any performance goals.
- e. An update of the progress of the Early Action Capital Project; and
- f. Any additional information necessary to demonstrate that the Defendant is adequately implementing its Early Action Plan, SSOP, and LTCP.

The requirement for the submittal by the Defendant of an annual update to the CSOP will cease upon execution of this Consent Judgment.

CIVIL PENALTY

24. Defendant shall pay the Cabinet a civil penalty in the amount of twenty-two thousand dollars \$22,000.00 for violations described above. The amount of the civil penalty shall be tendered by Defendant to the Cabinet within thirty (30) days after the Consent Judgment is entered by the Court.

STIPULATED PENALTIES

25. These provisions concerning stipulated penalties shall take effect upon entry of this Consent Judgment by the Court. Defendant shall pay the Cabinet a stipulated penalty within fifteen (15) days of receipt of written notice from the Cabinet for failure to comply with any requirement of this Consent Judgment. The stipulated penalties shall be assessed as follows:

- a. For failure to timely submit the Early Action Plan, or any specified portion thereof, the Cabinet may assess against the Defendant a stipulated penalty of two thousand dollars (\$2,000). For each additional day that the Defendant remains out of compliance for failure to timely submit the Early Action Plan, or any specified portion thereof, the Cabinet may assess against the Defendant a stipulated penalty of one hundred dollars (\$100) per day. This penalty is in addition to, and not in lieu of, any other penalty that could be assessed.
- b. For failure to timely submit the Sanitary Sewer Overflow Plan, the Cabinet may assess against the Defendant a stipulated penalty of two thousand dollars (\$2,000). For each additional day that the Defendant remains out of compliance for failure to timely submit the SSOP, the Cabinet may assess against the Defendant a stipulated penalty of one hundred dollars (\$100) per day. This penalty is in addition to, and not in lieu of, any other penalty that could be assessed.
- c. For failure to timely submit the Long Term Control Plan, the Cabinet may assess against the Defendant a stipulated penalty of two thousand dollars (\$2,000). For each additional day that the Defendant remains out of compliance for failure to timely submit the LTCP, the Cabinet may assess against the Defendant a stipulated penalty of one hundred dollars (\$100) per day. This penalty is in addition to, and not in lieu of, any other penalty that could be assessed.

- d. For each day that the Defendant fails to timely complete approved projects under the SSOP or LTCP, or any approved amendments thereof, the Cabinet may assess against the Defendant stipulated penalties for each project of one hundred dollars (\$100) per day. This penalty is in addition to, and not in lieu of, any other penalty that could be assessed.
- e. For failure to timely submit any report as required under this Consent Judgment, the Cabinet may assess against the Defendant a stipulated penalty of five hundred dollars (\$500). For each day that the Defendant remains out of compliance for failure to timely submit any report as required under this Consent Judgment, the Cabinet may assess against the Defendant a stipulated penalty of two hundred dollars (\$200) per day. This penalty is in addition to, and not in lieu of, any other penalty that could be assessed.

If the Defendant believes the request for payment of a stipulated penalty is erroneous or contrary to law, it may invoke the dispute resolution provisions of this Consent Judgment. Invoking the dispute resolution provisions does not automatically excuse timely payment of the penalty or the continuing accrual of stipulated penalties, unless agreed to by the Cabinet or stayed by the Court. If the Defendant invokes the dispute resolution provisions of this Consent Judgment with respect to a request for payment of a stipulated penalty, the Defendant shall, within thirty (30) days of invoking the dispute resolution provision, deposit the amount of the stipulated penalty into an escrow account bearing interest on commercially reasonable terms, in a federally-chartered bank. The Defendant's deposit of the amount of the stipulated penalty into an escrow bearing account shall be deemed compliance with these requirements until final

resolution of the dispute. Upon final resolution of the dispute, the Defendant shall, within fifteen (15) days thereof, serve written instructions directing that the escrow agent, within fifteen (15) days thereof, cause the monies in the escrow account to be paid to the Cabinet in accordance with the procedures set forth in Paragraph 26 below, or returned to the Defendant, depending on the outcome of the dispute resolution process. The Defendant's failure to make timely payment of stipulated penalties shall constitute an additional violation of this Consent Judgment.

PAYMENT OF PENALTIES AND STIPULATED PENALTIES

26. Payment of all sums due to the Cabinet shall be by cashier's check, certified check, or money order, made payable to "Kentucky State Treasurer", and sent to:

Kentucky Department for Environmental Protection
Division of Enforcement
300 Fair Oaks Lane
Frankfort, KY 40601
Attention: Director

REVIEW OF SUBMITTALS

27. The Cabinet agrees to use its best efforts to expeditiously review and comment on submittals that the Defendant is required to submit for acceptance or approval pursuant to the terms and provision of this Consent Judgment. If the Cabinet cannot complete its review of submittal within ninety (90) days of receipt of the submittal, the Cabinet shall so notify the Defendant before the expiration of the 90-day period. If the Cabinet fails to approve, provide comments, or otherwise act on a submittal within ninety (90) days of receipt of the submittal, any subsequent milestone date set forth in the submittal or other approved plan that is dependent upon such action by the Cabinet shall be extended by the number of days beyond the 90-day review period that is used by the Cabinet to act on that submittal.

SUBMITTALS AND NOTICES

28. Unless otherwise specified or as may be changed from time to time, all plans, reports, notices, or any other written communications required to be submitted under this Consent Judgment by the Defendant to the Cabinet shall be sent to the following address:

Kentucky Department for Environmental Protection
Division of Enforcement
300 Fair Oaks Lane
Frankfort, KY 40601
Attention: Director

For verbal notifications: Director, Division of Enforcement (502) 564-2150.

29. Unless otherwise specified, or as may be changed from time to time, all notices or any other written communications sent to the Defendant by the Cabinet shall be sent to the following address:

General Manager
Henderson Water Utility
111 5th Street
Henderson, KY 42420

For verbal communications: Bruce Shipley, Henderson Water Utility (270) 826-2421.

30. Notices, transmittals, and communications shall be deemed submitted on the date they are postmarked and sent by regular U.S. Mail or deposited with an overnight mail/delivery service.

DISPUTE RESOLUTION

31. Any dispute that arises under or with respect to this Consent Judgment shall, in the first instance be the subject of informal negotiations between the Parties. The Defendant shall invoke the informal dispute resolution procedures by notifying the Cabinet in writing of the matters(s) in dispute and of the Defendant's intention to resolve the dispute under these

Paragraphs 31 and 32. The notice shall: (1) outline the nature and basis of the dispute; (2) include the Defendant's proposed resolution; (3) include all appropriate information or data relating to the dispute and the proposed resolution; and (4) request negotiations pursuant to this Paragraph to informally resolve the dispute. The Parties shall then attempt to resolve the dispute informally for a period of thirty (30) days from the date of the notice with the goal of resolving the dispute in good faith, without further proceedings. The period for informal negotiations shall not exceed thirty (30) days from the date of the original notice of this dispute, unless the Parties otherwise agree in writing to extend that period.

32. If informal negotiations are unsuccessful, the position of the Cabinet shall control unless, within thirty days after the conclusion of the informal negotiation period, the Defendant seeks judicial review of the dispute by filing with the Court and serving on the Cabinet a motion requesting judicial resolution of the dispute. The motion shall contain a written statement of the Defendant's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Judgment. The Cabinet shall respond to the Defendant's motion within thirty days. Either Party may request an evidentiary hearing for good cause. The burden of proof is on the Defendant to demonstrate that its position on the matter in dispute meets the objectives of the Consent Judgment, any amendment to this Consent Judgment, the CWA and KRS Chapter 224. If the dispute is not resolved within the schedule identified for orderly implementation of the Consent Judgment in the Defendant's motion, the Defendant may request additional time beyond compliance schedules or deadlines in this Consent Judgment that are dependent upon the duration and/or resolution of the dispute.

FORCE MAJEURE

33. Following the entry of the Consent Judgment by the Court, the Defendant shall perform the requirements of this Consent Judgment and complete all remedial measures within the time limits set forth in or established through this Consent Judgment unless the performance is prevented or delayed solely by events which constitute a force majeure.

34. A force majeure event is defined as any event arising from causes not reasonably foreseeable and beyond the control of the Defendant or its consultants, engineers, or contractors, including intervention in this litigation by third parties, which could not be overcome by diligence and which delays or prevents performance as required by this Consent Judgment.

35. Force majeure events do not include unanticipated or increased costs of performance, changed economic or financial conditions, or failure of a contractor to perform or failure of a supplier to deliver unless such failure is itself, the result of force majeure.

36. The Defendant shall notify the Director of the Division of Enforcement by telephone within ten (10) business days and in writing within fifteen (15) business days after it becomes aware of events which it knows or should reasonably know constitutes a force majeure. The Defendant's notice shall provide an estimate of the anticipated length of delay, including any necessary period of time for demobilization and remobilization of contractors or equipment and a description of the cause of delay, a description of measures taken or to be taken by the Defendant to minimize delay, including a timetable for implementing these measures.

37. Failure to comply with the notice provision may be grounds for the Cabinet to deny granting an extension of time to the Defendant. If any event is anticipated to occur which may cause a delay in complying with the terms of this Consent Judgment, the Defendant shall promptly notify the Director of the Division of Enforcement in writing within ten (10) business

days of learning of the possibility of a force majeure event, if the event has not already occurred. The Cabinet will respond in writing to any written notice received.

38. If the Defendant demonstrates to the Cabinet that the delay has been or will be caused by a force majeure event, the Cabinet shall extend the time for performance for that element of the Consent Judgment for a period not to exceed the delay resulting from such circumstances or time lost due to such circumstances, whichever is greater.

39. If a dispute arises over the occurrence or impact of a force majeure event and cannot be resolved, the Cabinet reserves the right to seek enforcement of this Consent Judgment and the Defendant reserves the right to invoke the dispute resolution provisions of this Consent Judgment. In any such dispute, the Defendant shall have the burden of proof that a delay was caused by a force majeure event.

EXTENSIONS BY AGREEMENT

40. In the absence of force majeure conditions, upon agreement of the Parties extensions of no more than ninety (90) days of the time requirements expressly set forth in this Consent Judgment may be agreed to by the Parties without Court approval. The Parties, by agreement, may extend deadlines in schedules set forth in plans and submittals approved pursuant to this Consent Judgment without providing notification to the Court.

CERTIFICATION OF SUBMISSIONS

41. In all notices, documents or reports submitted pursuant to this Consent Judgment, the Defendant shall, by signature of the authorized agent of the Defendant, sign and certify each such notice, document and report as follows:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the

system, or those persons directly responsible for gathering such information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

RIGHT OF ENTRY

42. The Cabinet and its authorized representatives and contractors shall have authority at all times, upon the presentation of proper credentials, to enter the premises of the Defendant to:

- a. Monitor the work required by this Consent Judgment;
- b. Verify any data or information submitted to the Cabinet;
- c. Obtain samples from any portion of the SSS, CSS or WWTPs, with the Defendant to be provided with the opportunity to collect and analyze a split sample(s);
- d. Inspect and evaluate any portions of the SSS, CSS or WWTPs;
- e. Inspect and review any records required to be kept under the terms and conditions of this Consent Judgment or any KPDES permit, the CWA and KRS Chapter 224; and
- f. Otherwise assess the Defendant's compliance with state and federal environmental laws and this Consent Judgment.

A Cabinet employee shall be present with a Cabinet contractor any time the Cabinet contractor inspects the sewage system. While the Cabinet is conducting inspections pursuant to this Consent Judgment, the Defendant or its designated representative, where practical in the Cabinet's discretion, shall be given a reasonable opportunity to accompany the Cabinet and its contractors, if any, while on the Defendant's property to document the conditions

observed. The rights created by this Paragraph are in addition to, and in no way limit or otherwise affect, the authority of the Cabinet to conduct inspections, to require monitoring and to obtain information from the Defendant as authorized by law.

RECORD RETENTION

43. The Defendant shall retain, in electronic or hard copy format, all data, documents, plans, records, and reports that relate to the Defendant's performance under this Consent Judgment which are in the possession, custody, or control of the Defendant or its contractors. The Defendant shall retain all such materials for five (5) years from the date of origination. Drafts of final documents, plans, records, or reports, as well as routine, non-substantive correspondence, do not need to be retained. This Paragraph does not limit or affect any duty or obligation of the Defendant to maintain records or information required by any KPDES permit. At the conclusion of this retention period, the Defendant shall notify the Cabinet at least sixty (60) days prior to the destruction of any such materials, and upon request by the Cabinet, the Defendant shall deliver any such materials to the Cabinet.

MISCELLANEOUS PROVISIONS

44. This Consent Judgment is entered in full and final settlement of the civil claims for violations of KRS Chapter 224 and the CWA as alleged in the complaint, but shall not affect rights or obligations not specifically addressed herein as to which the Parties specifically reserve their rights. This Consent Judgment addresses only those alleged violations specifically described in the complaint in this action. Except for those matters resolved through this Consent Judgment, nothing contained herein shall be construed to waive or to limit any remedy or cause of action by the Cabinet based on statutes or regulations under its jurisdiction, and the Defendant reserves its defenses thereto. The Cabinet expressly reserves its right at any time to issue administrative orders and to take any other action it deems necessary, including the right to order

all necessary remedial measures, assess penalties for violations, or recover all response costs incurred, and the Defendant reserves its defenses thereto.

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

46. Defendant waives its right to any hearing on the matters specifically alleged. However, failure by the Defendant to comply strictly with any or all of the terms of this Consent Judgment shall be grounds for the Cabinet to seek enforcement of this Consent Judgment in this Court and to pursue any other appropriate administrative or judicial action under KRS Chapter 224, and the regulations promulgated pursuant thereto, subject to the Defendant's right to dispute resolution under Paragraphs 31 and 32 of this Consent Judgment.

47. Except as set forth herein, this Consent Judgment may not be materially amended or modified except by Court order or written agreement of the Parties entered by the Court. Any material modification of this Consent Judgment shall be effective upon entry by the Court. Non-material modifications of the obligations of the Parties which do not significantly alter the terms of this Consent Judgment may be made in writing by the Parties. If the Defendant is involuntarily divested of its existing authority or ability to comply with this Consent Judgment due to a final court order or an act of the Kentucky General Assembly, the Defendant may seek to amend this Consent Judgment consistent with this Paragraph.

48. The Cabinet does not, by its consent to the entry of this Consent Judgment, warrant or aver in any manner that the Defendant's complete compliance with this Consent Judgment will result in compliance with the provisions of KRS Chapter 224 and the regulations

promulgated pursuant thereto. Notwithstanding the Cabinet's review and approval of any plans formulated pursuant to this Consent Judgment, the Defendant shall remain solely responsible for compliance with the terms of KRS Chapter 224 and the regulations promulgated pursuant thereto, this Consent Judgment and any permit and compliance schedule requirements.

49. The provisions of this Consent Judgment shall apply to and be binding upon the Defendant. The acts or omissions of the Defendant's officers, directors, agents, and employees shall not excuse the Defendant's performance of any provisions of this Consent Judgment. The Cabinet reserves the right to seek enforcement of this Consent Judgment against the successors and assigns of the Defendant, and the Defendant reserves its defenses thereto. The Defendant shall give notice of this Consent Judgment to any purchaser, lessee or successor in interest prior to the transfer of ownership and/or operation of any part of its now-existing facility occurring prior to termination of this Consent Judgment, shall notify the Cabinet that such notice has been given, and shall follow all statutory and regulatory requirements for a transfer. Whether or not a transfer takes place, Defendant shall remain fully responsible for payment of all civil penalties and for performance of all remedial measures required by this Consent Judgment, unless the Cabinet agrees to the transfer of such obligations.

50. The Defendant shall be responsible for implementing adequate increases in utility rates, charges, and fees, and/or undertake appropriate financing during the life of this Consent Judgment, to assure that, consistent with its financial capability, adequate revenues are available to properly operate and maintain the current CSS and CSO systems, in addition to complying with all requirements of this Consent Judgment including completing all improvements, processes, and projects identified and required in the SSOP and LTCP.

51. The Cabinet agrees to allow the performance of the required remedial measures and payment of civil penalties by the Defendant to satisfy the Defendant's obligations to the Cabinet generated by all the alleged violations identified in the complaint.

52. The Cabinet and Defendant agree that the required remedial measures are facility-specific and designed to comply with the statutes and regulations cited herein. This Consent Judgment applies specifically and exclusively to the unique facility referenced herein and is inapplicable to any other site or facility.

53. Compliance with this Consent Judgment is not conditional on the receipt of any federal, state, or local funds.

TERMINATION

54. This Consent Judgment is subject to termination on the date that the Defendant certifies that it has met all requirements of this Consent Judgment, including, without limitation, (a) completion of any SEPs, (b) payment of all penalties and stipulated penalties due, (c) submission and approval of the NMC Compliance Demonstration, CMOM Programs Self-Assessment, Sewer Overflow Response Protocol (SORP), Sanitary Sewer Overflow Plan (SSOP), and Long Term Control Plan (LTCP). The Cabinet's determination that the Consent Judgment should be terminated shall be based on a consideration of whether all of the requirements listed above have occurred.

55. The Defendant may request that the Cabinet make a determination that this Consent Judgment be terminated. Any such request shall be in writing and shall include a certification that the requirements of this Consent Judgment have been met. The Defendant shall serve a copy of any such request on the Cabinet through the Division of Enforcement. If the Cabinet agrees that the Defendant has met all of the requirements listed above, the Cabinet and the Defendant shall file a joint motion with the Court seeking an order terminating the Consent

Judgment. If the Cabinet determines not to seek termination of the Consent Judgment because it determines that all of the requirements listed above were not met, it shall so notify the Defendant in writing. The Cabinet's notice shall summarize the basis for its decision and describe the actions necessary to achieve final compliance. If the Defendant disagrees with any such determination by the Cabinet, it shall invoke the dispute resolution procedures of this Consent Judgment before filing any motion with the Court regarding the disagreement.

ORDER

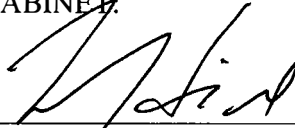
WHEREAS, the foregoing Consent Judgment is hereby entered as a Judgment of this Court this the 20th day of Aug, 2007




JUDGE, FRANKLIN CIRCUIT COURT

THE UNDERSIGNED Parties enter into this Consent Judgment and submit it to the Court for entry.

FOR THE COMMONWEALTH OF KENTUCKY,
ENVIRONMENTAL & PUBLIC PROTECTION
CABINET.



Teresa J. Hill, Secretary



Brenda G. Lowe
Sharon R. Vriesenga
Office of Legal Services
Attorneys for Plaintiff

FOR CITY OF HENDERSON & HENDERSON
WATER UTILITY:



Thomas E. Davis, Mayor

HAVE SEEN:



Jack C. Bender
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