

In the Matter of:

PUBLIC SERVICE  
COMMISSION

ALTERNATIVE RATE ADJUSTMENT FILING )  
OF COOLBROOK UTILITIES, LLC )

CASE NO. 2011-00433

**COOLBROOK UTILITIES, LLC'S  
OBJECTIONS TO COMMISSION STAFF'S REPORT**

Comes Coolbrook Utilities, LLC ("Coolbrook"), by counsel, and for its Objections to Commission Staff's Report, states as follows:

1) The Public Service Commission issued its Staff Report Order on March 5, 2012 relative to the new monthly water rates proposed by Coolbrook Utilities, LLC. In response, Coolbrook strongly disagrees with three of the Staff's recommendations. The three particular areas of disagreement relate to the Staff's proposed Owner/Manager Fee of \$3,600; Staff's proposed Agency Collection Fee of \$17,534; and Staff's proposal to disallow Coolbrook's proposed surcharge of \$6.75 to fund the Inflow and Infiltration Study mandated by the Kentucky Division of Water.

2) While Coolbrook has three particular areas of disagreement with the Staff's Report, it recognizes that the Owner/Manager Fee and the Agency Collection Fee issues have been heavily contested in the past, and therefore Coolbrook does not wish to rehash these positions once again in this case. Coolbrook does note for the record that it continues to contest the Commission's treatment of these both expenses for Coolbrook and other small sewer systems, and Coolbrook will continue to examine how to recover these legitimate costs in future rate cases.

3) As to the Staff's recommendation to disallow the proposed surcharge to fund the Division of Water mandated Inflow and Infiltration study ("I&I Study"), Coolbrook contests in

this case the Staff Report's total disallowance of any means to fund the study. As a small and aging sewer system with negative cash flow, Coolbrook has a responsibility to continue to pursue a means of funding the study in this rate case. Based upon past experience, Coolbrook believes it will be unable to obtain a bank loan for such a study, but it will nonetheless pursue such a loan to fund the study. Given that Coolbrook needs more time to fully pursue loans with at least three banks, Coolbrook requests that any informal conference or hearing be postponed in this case until after it has provided evidence from the banks in this regard.

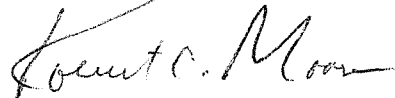
4) Coolbrook also objects to Commission Staff's question concerning the need to perform the I&I study. Attachment 1 sets forth the Energy & Environment Cabinet's requirement that the I&I Study be performed. Any finding that Coolbrook is not required to perform the I&I Study is without merit.

5) Coolbrook disagrees with Commission Staff's rejection of any legal fees attributable to the subject rate case. Attachment 2 sets forth the legal fees incurred to date by Coolbrook in connection with this rate case, and states that additional legal fees will be incurred until this case is concluded. Accordingly, Coolbrook requests the Commission to amortize over three years the legal fees incurred to date, as well as the additional attorneys fees that will be incurred through the conclusion of this matter.

6) Coolbrook notes that a surcharge remains the most cost effective option to fund the I&I Study because any surcharge proceeds should be applied dollar-for-dollar to the study. In contrast, the cost of any I&I Study funded through general rates will be at least 15% more expensive to Coolbrook since the Farmdale Water District's 15% billing and collection charge is based on general rates, and it has previously waived this charged on surcharge receipts. The Commission should not ignore the fact that it is therefore imposing an additional cost – in this case

15% of \$35,200, or an additional \$5,280 - on Coolbrook if it disallows a surcharge and instead funds the I&I Study through a general rate increase. The Commission Staff and the Commission have criticized Coolbrook and other neighboring sewer utilities in the past for their perceived failure to control billing and collection costs, but may be preventing Coolbrook from controlling this cost in this case if the surcharge is ultimately disallowed. This would be contrary to the Commission's responsibility to ensure that its small utilities have cash flow sufficient to meet operating expenses and such a result is unfair, unjust, and unreasonable.

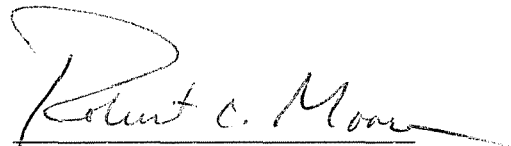
Respectfully Submitted,



Robert C. Moore  
Hazelrigg & Cox, LLP  
415 West Main Street, 1<sup>st</sup> Floor  
P.O. Box 676  
Frankfort, Kentucky 40602-0676

### CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served by hand delivery upon Jeff Derouen, Executive Director, Public Service Commission, 211 Sower Blvd., P.O. Box 615, Frankfort, Kentucky 40602, and by U.S. Mail, postage prepaid on David Edward Spenard, Assistant Attorney General, 1024 Capital Center Drive, Suite 200, Frankfort, KY 40601-8204, by placing same in the U.S. Mail, postage prepaid, this the 19<sup>th</sup> of March, 2012.



Robert C. Moore

# **ATTACHMENT 1**



STEVEN L. BESHEAR  
GOVERNOR

LEONARD K. PETERS  
SECRETARY

**ENERGY AND ENVIRONMENT CABINET**  
DEPARTMENT FOR ENVIRONMENTAL PROTECTION  
DIVISION OF ENFORCEMENT  
300 FAIR OAKS LANE  
FRANKFORT KENTUCKY 40601  
www.kentucky.gov

June 9, 2011

Coolbrook Utilities, LLC  
Attention: Mr. Lawrence Smither  
P.O. Box 91588  
Louisville, KY 40291

Re: Post Conference Letter  
AI ID: 1380  
AI Name: Coolbrook Subdivision  
WWTP  
Case #: DOW 100186  
Activity ID: ERF20100001  
Permit#: KY0044351  
County: Franklin

Dear Mr. Smither:

Thank you for participating in the Administrative Conference held on June 9, 2011, to address the Notices of Violation (NOV's) that have been issued to the Coolbrook Subdivision WWTP (Coolbrook).

We discussed the following remedial measures and conditions that may be included in an Agreed Order between the Cabinet and Coolbrook to resolve the outstanding violations cited against the above noted facility:

- A. At all times, Coolbrook shall report to the Cabinet all spills, bypass discharges, upset condition discharges or other releases of substances from its WWTP and sewer collection system which would result in or contribute to the pollution of the waters of the Commonwealth, including emergency and accidental releases, in accordance with KRS 224.01-400, and 401 KAR Chapter 5. Coolbrook shall make its initial report of the above discharges or releases by telephone to the DOW Frankfort Regional Office, 502-564-3358 or the Cabinet's 24-hour notification number, 800-928-2380 or 502-564- 2380;
- B. At all times, Coolbrook shall provide for proper and regular operation and maintenance (O & M) of its sewage collection system and WWTP in accordance with, 401 KAR 5:065 and its permit condition. This includes, but is not limited to providing adequate fencing and a lockable gate to the facility; *Call Delrish*
- C. By July 1, 2011, Coolbrook shall submit to DENF for review and acceptance, a written



Corrective Actions Plan (CAP). The CAP shall include, but not be limited to, a schedule of completion dates to ensure compliance with permit requirements, including, but not limited to, providing proper disinfection of the facility's effluent, E. coli, Total Suspended Solids (TSS), and Total Residual Chlorine (TRC) at the facility. Upon written notification that DENF does not accept the CAP, Coolbrook has fifteen (15) days from the date of written notification by DENF to submit an amended CAP. If Coolbrook has received no response from DENF within thirty (30) days of receipt of the CAP, such plan shall become effective upon the expiration of that thirty (30) day period;

- D. By July 1, 2011, Coolbrook shall develop, and implement an O&M manual which shall include, but not be limited to, adequate laboratory controls, appropriate quality assurance procedures, a detailed design of the system, daily operating procedures, and a schedule of testing procedures. Coolbrook shall review and update this manual on an annual basis. Coolbrook shall submit to the Division of Enforcement (DENF) a self-certification that the manual has been developed. The manual shall be maintained at the facility and made available upon demand by the Cabinet for review and inspection;
- E. At all times, monitoring shall be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been established in KPDES Permit No. KY0044351;
- F. At all times, records of monitoring information shall include, but not be limited to:
1. The date, exact place, and time of sampling or measurements;
  2. The individuals who performed the sampling or measurements
  3. The date the analysis was performed;
  4. The analytical technique or method used; and
  5. The result of the analysis.
- G. Commencing immediately, Coolbrook shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous instrumentation, copies of all reports required by KPDES Permit No. KY0044351, records of all data used to complete the application for the permit and other pertinent information for a period of at least three (3) years. The records shall be maintained in an orderly, sequential manner;
- H. At all times, Coolbrook shall measure the plant effluent flow as required by KPDES Permit No. KY0044351. Flow measurement devices shall be calibrated by an independent source at least once per year or as recommended by the manufacturer;
- I. At all times, Coolbrook shall accurately report all monitoring results on a Discharge Monitoring Report (DMR). The DMR's shall be submitted to the DOW, 200 Fair Oaks Lane, Frankfort, Kentucky 40601 and the DOW Frankfort Regional Office, by the 28<sup>th</sup> day of the month following the reporting period for all twelve (12) months of the year;
- J. By July 15, 2011, Coolbrook shall submit a Sanitary Sewer Overflow Plan (SSOP) to the Cabinet for review and acceptance. The SSOP shall include a map of the entire collection system, including the location of any known sanitary sewer overflows (SSO);
- frequency of overflows;
  - estimate of the annual volume of overflows;
  - type of overflow (manhole, pump station, overflow pipe, etc.);

- receiving stream for the overflow;
- immediate area of overflow and downstream land use, including potential for public health concerns;
- a description of any previous (within the last 5 years), current, or proposed rehabilitation or construction work to remediate or eliminate overflows;
- a schedule for the elimination of overflows; and
- a plan that addresses Coolbrook's approach to eliminating any sources of private Inflow and Infiltration (I&I), such as down spouts, sump pumps, roof drains, and other illegal connections to the system. The plan should include a schedule to address existing illegal connections, and a plan to prevent future connections.

The Cabinet shall review the SSOP and notify Coolbrook of any deficiencies in writing. Failure to develop an acceptable SSOP after three (3) notices of deficiency from the Cabinet shall constitute a violation of the Agreed Order;

K. By July 15, 2011, Coolbrook shall develop and submit a Sewer Overflow Response Protocol (SORP) to the Cabinet for review and acceptance. The SORP shall include, but not be limited to:

- an overflow response procedure (designated responders, response times, cleanup methods, etc.);
- a regulatory agency notification procedure; and
- a manhole and lift station inspection schedule

The Cabinet shall review the SORP and notify Coolbrook of any deficiencies in writing. Failure to develop an acceptable SORP after three (3) notices of deficiency from the Cabinet shall constitute a violation of the Agreed Order;

*I + I*  
~~X~~  
 L

L. By August 1, 2011, Coolbrook shall submit to the DENF for DOW review and acceptance; an Inflow/Infiltration Rehabilitation Project to identify and correct Inflow/Infiltration (I/I) within Coolbrook's sewage collection system. The rehabilitation project shall include, but not be limited to:

- 1) identify all significant sources of I/I into the collection system;
- 2) contain a compliance schedule and description of corrective actions to be undertaken for correcting all cost-effective sources of I/I into the collection system;
- 3) contain updated, detailed maps, sketches and schematic diagrams of the current collection system; and

If the DOW does not accept the written I/I Rehabilitation Project, modifications to the plan, including the compliance schedule contained therein, shall be made in accordance with DOW specifications. The modified written I/I Rehabilitation Project shall be resubmitted to DENF within thirty (30) days of receipt of the aforementioned specifications from DOW. Coolbrook shall initiate the I/I corrective actions in accordance with the written I/I Rehabilitation Project and its approved compliance schedule. Coolbrook shall complete the rehabilitation or modifications set forth in the accepted I/I Rehabilitation Project not later than two (2) years from the execution of the Agreed Order;

M. By August 15, 2011, Coolbrook shall develop and implement a written Sludge Management Plan (SMP) which shall provide for proper management and disposal of sewage sludge generated at the facility. The SMP shall be reviewed annually and updated to reflect current

operations at the facility. Coolbrook shall submit to the Division of Enforcement (DENF) a self-certification that the manual has been developed. An up-to-date copy of the SMP shall be maintained at the facility and shall be made available upon request by the Cabinet for inspection;

- N. Commencing July 15, 2011, and for the duration of the Agreed Order, Coolbrook shall submit quarterly progress reports for compliance with this Agreed Order postmarked no later than April 15<sup>th</sup>, July 15<sup>th</sup>, October 15<sup>th</sup>, and January 15<sup>th</sup>, to DENF and the DOW Frankfort Regional Office until the Agreed Order is terminated;
- O. All submittals required of Coolbrook shall be submitted to:  
Division of Enforcement  
Attention: Director  
300 Fair Oaks Lane  
Frankfort, KY 40601
- P. By August 1, 2012, Coolbrook shall be in compliance with KPDES Permit No. KY00244351 and the Agreed Order.

Coolbrook shall pay the Cabinet a civil penalty in the amount of twelve thousand dollars (\$12,000) to address the NOV's issued to the facility.

As discussed during the Administrative Conference, Coolbrook is to respond in writing by Friday, June 24, 2011, to the remedial measures and civil penalty tendered during the Administrative Conference. DENF will consider any reasonable change in dates for Coolbrook to complete the remedial measures and any reasonable counter offer to the civil penalty assessed against the WWTP.

If you have any questions, you may contact me at (502) 564-2150, extension 168 or at [greg.wilson@ky.gov](mailto:greg.wilson@ky.gov).

564-9710

Respectfully,



J. Greg Wilson,  
Enforcement Specialist III  
Kentucky Division of Enforcement



## **ATTACHMENT 2**

**Total attorneys fees incurred through February 29, 2012**

**\$450.00**

Hazelrigg & Cox, LLP  
415 W. Main Street  
P. O. Box 676  
Frankfort, KY 40602

Invoice submitted to:  
Marty Cogan  
Coolbrook Utilities  
P. O. Box 91588  
Louisville, KY 40291  
RCM

February 03, 2012

Invoice # 22961

Professional Services

	<u>Hours</u>	<u>Amount</u>
1/17/2012 Review Commissions Order Draft Notice of Appearance of Counsel Correspondence to L. Smither and M. Cogan Calendar dates Draft Notice	0.50	75.00
1/24/2012 Review correspondence from M. Cogan and respond to same Review data requests	0.15	22.50
1/30/2012 Review correspondence from J. Kaninberg Review Order Draft Motion for Extension of Time	0.40	60.00
For professional services rendered	<u>1.05</u>	<u>\$157.50</u>

Timekeeper Summary

<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Robert C. Moore	1.05	150.00	\$157.50

WE ACCEPT VISA AND MASTERCARD

Hazelrigg & Cox, LLP  
415 W. Main Street  
P. O. Box 676  
Frankfort, KY 40602

Invoice submitted to:  
Marty Cogan  
Coolbrook Utilities  
P. O. Box 91588  
Louisville, KY 40291  
RCM

March 06, 2012

Invoice # 23105

Professional Services

	<u>Hours</u>	<u>Amount</u>
2/1/2012 Draft Motion for extension of time to file Answers to Information Requests Correspondence to L. Smither and M. Cogan	0.25	37.50
2/7/2012 Correspondence to L. Smither and M. Cogan	0.10	15.00
2/10/2012 Telephone conference with L. Smither	0.40	60.00
2/13/2012 Telephone conferences with L. Smither Review Answers to Commission Staffs First Discovery Requests and revise same Correspondence to L. Smither	1.20	180.00
For professional services rendered	<u>1.95</u>	<u>\$292.50</u>

Timekeeper Summary

<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Robert C. Moore	1.95	150.00	\$292.50