

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
CIVIL ACTION NO. 07-CI- _____

COMMONWEALTH OF KENTUCKY
ENVIRONMENTAL AND PUBLIC
PROTECTION CABINET

PLAINTIFF

V. **CONSENT JUDGMENT**

PADUCAH MCCRACKEN
COUNTY JOINT SEWER AGENCY

DEFENDANT

The parties to this Consent Judgment, the Commonwealth of Kentucky, by and through its Environmental and Public Protection Cabinet (hereinafter the "Cabinet"), and Paducah McCracken County Joint Sewer Agency (hereinafter "Defendant" or "JSA") state:

RECITALS

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

2. The Defendant is a joint sewer agency established pursuant to KRS Chapter 76. JSA serves a population of 34,500 people. JSA owns and operates a sewage system with treatment plants and permitted outfalls in McCracken County, Kentucky (hereinafter "system" or "sewage system"). The Defendant holds KPDES Permit Nos. KY0022799, KY0025810 and KY0025828 issued by the Division of Water for discharges into the waters of the Commonwealth.

3. The Defendant owns and operates wastewater collection systems in McCracken County. The wastewater collection systems consist of separate sanitary sewer systems ("SSS")

and combined sewer systems (“CSS”). The wastewater collection system transports wastewater to a treatment plant (WWTP) owned and operated by the Defendant.

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 WWTP.

5. Pursuant to KPDES Permit Nos. KY0022799, KY0025810, and KY0025828 for the JSA Wastewater Treatment Plants, 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”) and the state CSO control strategy. The KPDES permit requires the Defendant to implement the nine minimum controls (“NMC”) delineated in EPA’s 1994 CSO Policy. EPA’s 1994 CSO 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 the 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 Policy incorporated by reference into the CWA and 401 KAR 5:002 Section 3, require the Defendant to develop an LTCP and implement measures to abate the impact of CSOs on water quality in

waters of the United States. The Defendant qualifies for small system considerations under the CSO Control Policy.

8. 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; and
- d. 401 KAR 5:045 - Failure to apply secondary treatment to point source discharges to waters of the Commonwealth.

9. 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 any unauthorized wet weather discharges, including SSOs, from the SSS and CSS as required by the CWA, KRS Chapter 224 and 401 KAR Chapter 5.

10. The Cabinet and the Defendant agree and recognize that the process to comply with the KPDES permits and upgrade the Defendant's SSS, CSS and WWTP 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.

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

12. **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

13. By 90 days of entry of this consent judgment, JSA shall submit a map of its entire sewage system, including any satellite systems which discharge wastewater to the JSA system. The map shall delineate the combined and separate sanitary portions of the system and shall indicate all CSO outfalls, recurring SSOs and other recurring points of unauthorized discharges from the JSA 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.

14a. Within forty-five (45) days of entry of this Consent Judgment, JSA shall submit to the Division of Enforcement (DENF) a copy of the current version of Sewer Use Ordinances (SUO) governing JSA's sewage systems, indicating the portions of that ordinance which pertain to and prohibit illicit discharges to the JSA sewage system, including discharges from roof drains, downspouts, sump pumps, yard drains, patio drains, leaks in private laterals, and other illicit connections of stormwater to the sanitary sewer system.

b. If JSA's SUO is deemed by the Cabinet to be inadequate in addressing illicit connections to JSA's sewage system, JSA shall, within one hundred twenty (120) days of receipt of notification from the Cabinet that the SUO is inadequate, revise its SUO to adequately address such illicit connections and submit the revised SUO within sixty (60) days of SUO revision to DENF for Cabinet review and approval.

c. JSA shall, upon receiving notification from the Cabinet that its SUO adequately addresses illicit connections to its sanitary sewers, notify its customers within forty-five (45) days of the existence of the SUO. Within ninety (90) days of receipt of such notification from the Cabinet, JSA shall commence enforcement of these SUOs with respect to illicit connections to the sanitary sewers. This does not extend any requirement to SUOs that arise under other regulatory authority.

15. JSA shall, in its documentation and reporting of overflows to the Division of Water, provide estimated volumes of all reported overflows, bypasses and other releases. While these volumes to be reported are estimates, the method of estimation shall be rationally justifiable, and the same method shall be utilized for all reportable events in the absence of different circumstances.

16. **Early Action Plan** –The Defendant shall prepare and submit an Early Action Plan for Cabinet review and approval according to the timeframes set forth herein. The Early Action Plan shall include the following components:

a. **Nine Minimum Controls (NMC) Compliance.** No later than twelve (12) months after the 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 thirty (30) months after the entry of this Consent Judgment. 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:

- (1) Proper operation and regular maintenance programs for the CSS and the CSOs;
- (2) Maximum use of the collection system for storage;
- (3) Review and modification of pretreatment requirements to assure CSO impacts are minimized;
- (4) Maximization of flow to the WWTP for treatment;
- (5) Prohibition of CSOs during dry weather, including provision for

backup power where appropriate;

(6) Control of solid and floatable materials, including installation of devices where appropriate;

(7) Pollution prevention;

(8) Public notification to ensure that the public receives adequate notification of CSO occurrences and CSO impacts, including, if appropriate, improving the current signage at each CSO location to an easily readable type size and style; and

(9) 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.

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 (provided that the approved part is not dependent upon implementation of any part not yet approved), 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 45 of this Consent Judgment.

- b. Capital Improvement Project List.** The Early Action Plan shall include lists that identify (1) projects that have been completed by September 30, 2006 and (2) projects that shall be initiated by the Defendant prior to the implementation of the SSOP and LTCP. The Capital Improvement Project List shall include, at a minimum, the projects listed in the table below, which the Defendant represents either are completed or shall be completed before the dates listed below on the following charts. Estimated project costs are also based on Defendant's estimates. Those projects completed are included to demonstrate the efforts the Defendant maintains it has been making to date to address compliance. The Defendant shall certify to the Cabinet the completion of any project in the annual or semi-annual report following the project's completion. The following are capital improvement projects which JSA has completed before September 1, 2006:

<u>Project Description</u>	<u>Project Purpose</u>	<u>Cost</u>
Woodlawn interceptor mains and pumping Stations Phase I & II	Elimination of SSOs in the Woodlawn System	\$3,195,000
Anita Drive Pumping Station Force Main	Eliminate SSO	\$51,000
Matthew Drive Pumping Station	Eliminate private package treatment plant (SSO elimination)	\$108,000
Sanitary Sewer System Rehabilitation	Line and repair mains to reduce I&I and prevent blockages; control CSOs and SSOs by reducing flow in system	\$727,000
Sewer main cleaning (9500 lineal ft. of mains)	Improve hydraulic efficiencies; increase storage capacities; identify structural deficiencies (one of the nine minimum controls)	\$208,000
Enhance pumping capacity at Harrison Street (CSO #4) and Husbands Street (CSO #6)	Reduction of CSO frequency	\$41,000
Improvements to Paducah WWTP grit removal system (increase from 9 MGD to 24 MGD)	Improve ability to receive wet weather flow (CSO flow)	\$725,000
	Total	\$5,055,000

The following are capital improvement projects which JSA has planned for completion before the implementation of the SSOP and LTCP:

<u>Project Description</u>	<u>Project Cost</u>	<u>Scheduled Commence Date</u>	<u>Scheduled Completion Date</u>
Reconstruction of Cook St. lift station and sewer main rehabilitation to eliminate SSOs in the Cook St. drainage basin (Woodlawn Phase III project)	\$850,000	FY 2007/2008	06/31/08

Increase JSA Wastewater Treatment Plant hydraulic capacity to 17 MGD to facilitate management of wet weather flow	\$2,550,000	FY 2008/2009	06/31/10
Sewer Separation (1.5 MGD of sanitary flow to be removed from the combined sewer system: the Perkins Creek Lift Station will be rerouted to the JSA WWTP via new force main)	\$2,450,000	FY 2008/2009	06/31/10
Sewer main rehabilitation to reduce CSOs and SSOs by correcting I/I	\$350,000	FY 2007	06/31/08
Sewer main rehabilitation to reduce CSOs and SSOs by correcting I/I	\$350,000	FY 2008	06/31/09

c. **CMOM (Capacity, Management, Operation and Maintenance) Programs**

Self-Assessment. Not later than twelve (12) months after the entry of this Consent Judgment, the Defendant shall submit a CMOM Programs Self-Assessment of the Defendant's combined and separate sewer collection systems, consistent with US EPA Region IV methodology, to ensure that the Defendant has CMOM Programs in place that are effective at eliminating SSOs, including unauthorized discharges, within the combined and separate sewer collection systems. This Self-Assessment shall include an evaluation of, and recommendation of improvements to, each CMOM Program to ensure that such Programs contain the following key CMOM elements: defined purpose(s) and written defined goal(s) that are documented in writing with specific details; implemented by well trained personnel; established performance measures; and written procedures for periodic review. Recommended improvements shall include schedules for implementation. The Cabinet shall have forty-five (45) days

to review the CMOM Programs Self-Assessment and 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 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. 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 of the CMOM Programs Self-Assessment, the CMOM Programs and recommended improvements and schedules, or any approved part thereof (provided that the approved part is not dependent upon 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 45 of this Consent Judgment.

- d. **Sewer Overflow Response Protocol ("SORP").** Not later than nine (9) months after the 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 any unauthorized discharges; (2) reporting the location, volume, cause and impact of overflows, including SSOs and 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 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.

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. The Defendant annually shall review the SORP and propose changes as appropriate subject to Cabinet review and approval. The first review shall be completed no later than one year after the approval of the initial SORP. A copy of any future updates to the SORP shall

also be provided to the Paducah Regional Office of the Division of Water within thirty (30) days of incorporation of the update.

Upon Cabinet approval of all or any part of the SORP, the SORP, or any approved part thereof (provided that the approved part is not dependent upon implementation of any part not yet approved), 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 45 of this Consent Judgment.

17. **Sanitary Sewer Overflow Plan** – The Defendant shall, by 30 months after entry of this consent judgment, prepare and submit, for Cabinet review and approval, an updated Sanitary Sewer Overflow Plan ("SSOP") designed to eliminate SSOs and unauthorized discharges in the SSS and CSS. An SSO or unauthorized discharge is considered recurring if it discharges at a frequency rate of at least twice in a successive twelve month period. The SSOP shall contain the long-term SSOP projects designed to minimize the frequency, volume and water quality impacts of SSOs, including 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. The map shall include the areas and sewer lines that serve as a tributary to each recurring SSO or any recurring 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 recurring SSO and 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 downstream 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. Known Recurring SSOs and Recurring Unauthorized Discharge Locations at Entry of the Consent Judgment. Known SSOs and recurring unauthorized discharge locations at the time of entry of

the Consent Judgment are identified in Exhibit A. The SSOP shall include a prioritization of these known recurring SSOs and recurring unauthorized discharge locations, based upon the frequency, volume and impact on the receiving stream and upon public health, and in coordination with the CMOM programs. Based upon this prioritization, the Defendant shall develop remedial measures based on sound engineering judgment and in no case shall extend beyond eight (8) years after the entry of this Consent Judgment.

- d. Unknown Recurring SSOs and Recurring Unauthorized Discharge Locations at Entry of the Consent Judgment. The SSOP shall also prioritize all unknown recurring SSOs and unauthorized discharge locations based on upon frequency, volume and impact on the receiving stream and upon public health which are not known at entry of the Consent Judgment. The Defendant shall prioritize all recurring SSOs and recurring unauthorized discharge locations not known at entry of the Consent Judgment as required in paragraph 17(c) above. Based upon this prioritization, the Defendant shall develop remedial measures based on sound engineering judgment . In no case shall the completion of the remedial measures extend beyond eight (8) years after the determination of the existence of recurring SSOs or recurring unauthorized discharges not identified under paragraph 17(c).

- e. If at any time during the term of this agreement, the Cabinet determines the existence of recurring SSOs not identified in the map submitted pursuant to paragraph 17(a) above, the Defendant shall amend its SSOP to include all recurring SSOs identified in the JSA sewer system. Based upon this prioritization, the Defendant shall develop remedial measures based on sound engineering judgment and in no case shall extend beyond eight (8) years after the determination of the existence of recurring SSOs or recurring unauthorized discharges not identified under paragraph 17(a).

18. The Defendant may consider conventional and innovative or alternative designs as part of its SSOP. 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.

19. 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 revise 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.

Upon Cabinet approval of all or any part of the SSOP, the SSOP or any approved part thereof (provided that the approved part is not dependent upon implementation of any part not yet approved), 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 45 of this Consent Judgment.

20. Long Term Control Plan.

a. By no later than eighteen (18) months after the entry of this Consent Judgment, the Defendant shall submit to the Cabinet for review and approval an interim LTCP.

1. The interim LTCP shall specify the activities which demonstrate the Defendant's efforts to date to achieve compliance with the following goals:

- (i) Bring all wet weather CSO discharge points into compliance with the Clean Water Act, KRS Chapter 224, 401 KAR 5:060 Section 5, and the combined sewer overflow control policy 59 Fed. Reg. 18688 April 19, 1994 as incorporated by reference in 401 KAR 5:002 Section 3;
- (ii) Minimize the impacts of CSOs on water quality, aquatic biota, and human health; and
- (iii) Bring stakeholders into the planning, prioritization and selection of

projects process.

2. In accordance with the CSO Guidance for Long Term Control Plan Document (Chapter 1.6), the nine 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.

(i) Characterization, monitoring, and modeling activities on the combined sewer system, excluding characterization, monitoring and modeling activities of the Ohio River and the Tennessee River at the confluence of the Ohio River, as the basis for selection and design of effective CSO controls

(ii) A public participation process that actively involves the affected public.

(iii) Consideration of sensitive areas as the highest priority for controlling overflows

(iv) An evaluation of alternatives that will assist in selecting CSO controls to meet CWA requirements

- (v) Cost/performance considerations to demonstrate the relationships among a comprehensive set of reasonable control alternatives
 - (vi) Operational plan revisions once long-term CSO controls are agreed upon.
 - (vii) Maximization of treatment at the existing POTW treatment plant for wet weather flows
 - (viii) An implementation schedule for CSO controls
 - (ix) A post-construction compliance monitoring program adequate to verify compliance with water quality-based CWA requirements and ascertain the effectiveness of CSO controls.
- (3) Upon review of the interim 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 ninety (90) days to revise and resubmit the interim LTCP 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 the interim LTCP is disapproved, the Cabinet may deem the Defendant to be out of compliance with this Consent Judgment for failure to timely submit the interim 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 interim LTCP, the interim LTCP, or any approved part thereof (provided that the approved part is not dependent upon implementation of any part not yet approved), 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 45 of this Consent Judgment.

- (b) By 36 months after entry of the consent judgment, the Defendant shall submit a final 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 final 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 at the earliest practicable compliance date considering physical and financial feasibility and other environmental factors. The demonstration of financial feasibility shall be based on "Combined Sewer Overflows—Guidance for Financial Capability Assessment and Schedule Development" EPA 832B-97-004, February 1997, or equivalent. 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.

1. The final 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.

2. In accordance with the CSO Guidance for Long Term Control Plan Document (Chapter 1.6), the nine 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.
 - (i) Characterization, monitoring, and modeling activities on the combined sewer system, excluding characterization, monitoring and modeling activities of the Ohio River and the Tennessee River at the confluence of the Ohio River, as the basis for selection and design of effective CSO controls

- (ii) A public participation process that actively involves the affected public.
- (iii) Consideration of sensitive areas as the highest priority for controlling overflows
- (iv) An evaluation of alternatives that will assist in selecting CSO controls to meet CWA requirements
- (v) Cost/performance considerations to demonstrate the relationships among a comprehensive set of reasonable control alternatives
- (vi) Operational plan revisions once long-term CSO controls are agreed upon.
- (vii) Maximization of treatment at the existing POTW treatment plant for wet weather flows
- (viii) An implementation schedule for CSO controls
- (ix) A post-construction compliance monitoring program adequate to verify compliance with water quality-based CWA requirements and ascertain the effectiveness of CSO controls.

3. Upon review of the final 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 sixty (60) days to revise and resubmit the final LTCP for review approval, subject only to the Defendant's rights under the dispute resolution provisions of this Consent Judgment.
4. 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 final LTCP is disapproved, the Cabinet may deem the Defendant to be out of compliance with this Consent Judgment for failure to timely submit the final 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 (provided that the approved part is not dependent upon implementation of any part not yet approved), 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 45 of this Consent Judgment.

REPORTING REQUIREMENTS

21. Annual Reports – The Defendant shall submit an annual report for the twelve month period ending on December 31st no later than February 28th of each year to the Cabinet that describes its progress in complying with this Consent Judgment. The annual report shall include, at a minimum:

- 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, in Gantt chart or similar format;
- b. An accounting of the current six month period and the cumulative reductions in

volume and in number of occurrences of any 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 twelve month period to comply with the requirements of this Consent Judgment, in Gantt chart or similar format; and
- d. Any additional information necessary to demonstrate that the Defendant is adequately implementing its Early Action Plan, SSOP and LTCP.
- e. A summary of the CMOM Programs implementation pursuant to this Consent Judgment, including a comparison of actual performance with any performance measures that have been established.
- f. A list of projects completed during the reporting period.

PENALTIES

23. Defendant shall pay the Cabinet a civil penalty in the amount of Twenty-Four Thousand dollars (\$24,000), for violations described above. The amount of the civil penalty shall be tendered by Defendant to the Cabinet within 15 days after the Consent Judgment is entered by the Court.

STIPULATED PENALTIES

24. These provisions concerning stipulated penalties shall take effect upon entry of this Consent Judgment by the Court. The 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 interim Long Term Control Plan or final 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 interim LTCP or final 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 final LTCP, or any approved amendments thereof, the Cabinet may

assess against the Defendant stipulated penalties for each project of one thousand dollars (\$1,000) 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 one thousand dollars (\$1,000). 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 one hundred dollars (\$100) per day. This penalty is in addition to, and not in lieu of, any other penalty that could be assessed.

Upon termination of this Consent Judgment, no stipulated penalty shall be assessed if the Defendant has complied with all requirements of this Consent Judgment.

25. 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 under these circumstances, the Defendant shall 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 five (5) 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 to the Cabinet pursuant to the terms and provisions of this Consent Judgment. If the Cabinet cannot complete the review of a submittal within ninety (90) days of receipt of the submittal, or within the time period otherwise provided in this Consent Judgment, the Cabinet shall so notify the Defendant before the expiration of the applicable review period. If the Cabinet fails to approve, provide comments or otherwise act on a submittal within ninety (90) days of receipt of the submittal, or within the time period otherwise provided in this Consent Judgment, any subsequent milestone date dependent upon such action by the Cabinet shall be extended by the number of days beyond the applicable review period that the Cabinet uses 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: Susan Green, or the current Director of the Division of Enforcement (502) 564-2150.

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:

Executive Director
Paducah-McCracken County Joint Sewer Agency
621 Northview Street
Paducah, KY 42001

For verbal communications: Doug Moore, JSA, 270.555-1212.

29. 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.

30. JSA may request extensions of deadlines for the submittal of documents for purposes of approval by the JSA. Any such request for extension shall be made in writing to the Director of the Division of Enforcement as described in Paragraph 38 of this Consent Judgment.

DISPUTE RESOLUTION

30. 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 30 and 31. 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.

31. If informal negotiations are unsuccessful, the position of the Cabinet shall control unless, within thirty (30) 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 (30) 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

32. 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 this Consent Judgment unless the performance is prevented or delayed solely by events which constitute a force majeure.

33. 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 due diligence and which delays or prevents performance as required by this Consent Judgment.

34. 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.

35. The Defendant shall notify the Director of the Division of Enforcement by telephone within ten (10) business days and in writing within fifteen business days after it becomes aware of events which it knows or should reasonably know may constitute 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.

36. Failure to comply with the notice provision shall 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.

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

38. 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 violation of this Consent Judgment was caused by a force majeure event.

38. In the absence of force majeure conditions, upon agreement of the parties, extensions of no more than ninety (90) days of the time requirements contained 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

39. In all notices, documents or reports submitted pursuant to this Consent Judgment, the Defendant shall, by signature of, a responsible party of the JSA, as defined by 40 C.F.R. §

122.22, 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

40. 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 contractor any time the contractor inspects the sewage system. 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

41. 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 consultants or 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 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 one-hundred and twenty 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

42. This Consent Judgment addresses only those alleged violations specifically described in the complaint in this action. The Cabinet has relied upon the factual representations of the Defendant. 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.

43. 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.

44. 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.

45. 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.

46. 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.

47. 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 response costs and for performance of all remedial measures required by this Consent Judgment.

48. 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 the alleged violations identified in the complaint.

49. 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.

50. Compliance with this Consent Judgment is not conditional on the receipt of any federal, state, or local funds. All entities who enter the Defendant's system whether voluntarily, involuntarily or by mandate from others are subject to the fees and charges applicable at the time.

TERMINATION

51. 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, recommended CMOM improvements and schedules, Sewer Overflow Response Protocol (SORP), Sanitary Sewer Overflow Plan (SSOP), Interim Long Term Control Plan (LTCP), and final 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.

52. 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 ____ day of _____, 200_.

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 PADUCAH, MCCRACKEN
COUNTY JOINT SEWER AGENCY:

**William J. Jones
Chairman of the Board**

**J. Douglas Moore
Executive Director**

**W. David Denton
Counsel to the Board
Denton & Keuler**

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P.O. Box 929
Paducah, Kentucky 42002-0929

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