

COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET
DIVISION OF ENFORCEMENT
CASE NO. DOW 100121

RECEIVED
9/15/10
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IN RE: Kentucky American Water
2300 Richmond Road
Lexington, Kentucky 40502
Agency Interest No. 84662
Activity ID No. ERF20100001

FILED
OCT 1 8 2010
Office of Administrative Hearings

AGREED ORDER

WHEREAS, the parties to this Agreed Order, the Energy and Environment Cabinet (hereinafter "Cabinet") and Kentucky American Water state:

STATEMENTS OF FACT

1. The Cabinet is charged with the statutory duty of enforcing KRS Chapter 224, and the regulations promulgated pursuant thereto.
2. Kentucky American Water is a Corporation registered with the Kentucky Secretary of State to do business in the Commonwealth of Kentucky.
3. On February 2, 2010, authorized representatives of the Cabinet identified the following violations of KRS Chapters 151 and 224 and the regulations promulgated pursuant thereto at the work site of Kentucky American Water located at the installation of Buck Run Creek waterline (hereinafter, "the site"): KRS 151.310, 401 KAR 4:060 Section 2, KRS 151.250, KRS 151.280(2), KRS 224.70-110, and 401 KAR 10:031 Section 2.
4. On February 12, 2010, the Cabinet issued Kentucky American Water a Notice of Violation for the violations described in paragraph 3 above.
5. On March 23, 2010, Kentucky American Water submitted a restoration plan for

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Buck Run Creek to the Cabinet and the U.S. Army Corps of Engineers (“Army Corps”) to address remedial measures required by the Notice of Violation. The Cabinet approved the restoration plan on April 27, 2010.

6. Kentucky American Water completed the restoration work as set forth in the restoration plan in March 2010. On July 1, 2010, Kentucky American Water submitted a 5-year monitoring plan to the Cabinet and Army Corps for review and approval.

7. Kentucky American Water neither admits nor denies any of the violations alleged above but agrees to the remedial measures and civil penalties to resolve the civil liability for the alleged violations of KRS Chapter 224 and the administrative regulations promulgated pursuant thereto.

NOW THEREFORE, in the interest of settling all civil claims and controversies involving the violations alleged above, the parties hereby consent to the entry of this Agreed Order and agree as follows:

REMEDIAL MEASURES

8. Kentucky American Water submitted a 5 year monitoring plan to the Division of Water on July 26, 2010 (See Exhibit A). The Cabinet approved the 5 year monitoring plan on July 26, 2010. The 5 year monitoring plan shall be deemed incorporated into this Agreed Order as an enforceable requirement of this Agreed Order.

SUPPLEMENTAL ENVIRONMENTAL PROJECTS

9. Within three hundred and sixty-five (365) days from the date of entry of this Agreed Order, Kentucky American Water shall complete the following Supplemental Environmental Projects (SEP) as described herein:

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a. Kentucky American Water shall implement and complete a Supplemental Environmental Project (SEP) involving rainwater catchment systems and water resource education in central Kentucky in accordance with the SEP proposal dated August 2, 2010, a copy of the proposal is attached to this Agreed Order as Exhibit B. Kentucky American Water shall provide the resources for the SEP project totaling no less than twenty thousand dollars (\$20,000).

10. After completion of the SEP, Kentucky American Water will submit to the DENF documentation that verifies that Kentucky American Water spent no less than twenty thousand dollars (\$20,000) on the SEP referenced above.

CIVIL PENALTY

11. Kentucky American Water shall pay the Cabinet a civil penalty of ten thousand dollars (\$10,000) within thirty (30) days of entry of this Agreed Order. Payment of penalties shall be by cashier's check, certified check, or money order, made payable to "Kentucky State Treasurer" and sent to the attention of Director, Division of Enforcement, Department for Environmental Protection, 300 Fair Oaks Lane, Frankfort, Kentucky 40601. Note "Case No. DOW 100121" on the instrument of payment.

MISCELLANEOUS PROVISIONS

12. This Agreed Order addresses only those violations specifically alleged above. Other than those matters resolved by entry of this Agreed Order 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 Kentucky American Water 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 that is not inconsistent with this Agreed Order, including the

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right to order all necessary remedial measures, assess penalties for violations, or recover all response costs incurred, and Kentucky American Water reserves its defenses thereto.

13. This Agreed Order shall not prevent the Cabinet from issuing, reissuing, renewing, modifying, revoking, suspending, denying, terminating, or reopening any permit to Kentucky American Water. Kentucky American Water reserves its defenses thereto, except that Kentucky American Water shall not use this Agreed Order as a defense.

14. Kentucky American Water waives its right to any hearing on the matters alleged herein. However, failure by Kentucky American Water to comply strictly with any or all of the terms of this Agreed Order shall be grounds for the Cabinet to seek enforcement of this Agreed Order in Franklin Circuit Court and to pursue any other appropriate administrative or judicial action under KRS Chapters 224, and the regulations promulgated pursuant thereto.

15. The Agreed Order may not be amended except by a written order of the Cabinet's Secretary or his designee. Kentucky American Water may request an amendment by writing the Director of the Division of Enforcement at 300 Fair Oaks Lane, Frankfort, Kentucky 40601 and stating the reasons for the request. If granted, the amended Agreed Order shall not affect any provision of this Agreed Order unless expressly provided in the amended Agreed Order.

16. The Cabinet does not, by its consent to the entry of this Agreed Order, warrant or aver in any manner that Kentucky American Water's complete compliance with this Agreed Order will result in compliance with the provisions of KRS Chapters 224, and the regulations promulgated pursuant thereto. Notwithstanding the Cabinet's review and approval of any plans formulated pursuant to this Agreed Order, Kentucky American Water shall remain solely

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responsible for compliance with the terms of KRS Chapter 224 and the regulations promulgated pursuant thereto, this Agreed Order and any permit and compliance schedule requirements.

17. Kentucky American Water shall give notice of this Agreed Order 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 Agreed Order, 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, Kentucky American Water shall remain fully responsible for payment of all civil penalties and for performance of all remedial measures identified in this Agreed Order.

18. The Cabinet agrees to allow the performance of the above-listed remedial measures and payment of civil penalties by Kentucky American Water to satisfy Kentucky American Water's obligations to the Cabinet generated by the violations alleged above.

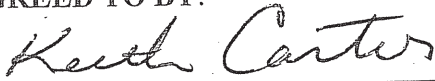
19. The Cabinet and Kentucky American Water agree that the remedial measures agreed to herein are facility-specific and designed to comply with the statutes and regulations cited herein. This Agreed Order applies specifically and exclusively to the unique facility referenced herein and is inapplicable to any other site or facility.

20. This Agreed Order shall be of no force and effect unless and until it is entered by the Secretary or his designee as evidenced by his signature thereon. If this Agreed Order contains any date by which Kentucky American Water is to take any action or cease any activity, and the Secretary enters the Agreed Order after that date, then Kentucky American Water is nonetheless obligated to have taken the action or ceased the activity by the date contained in this Agreed Order.

TERMINATION

21. This Agreed Order shall terminate upon Kentucky American Water's completion of all requirements described in this Agreed Order. Kentucky American Water may submit written notice to the Cabinet when it believes all requirements have been performed. The Cabinet will notify Kentucky American Water in writing of whether it intends to agree with or object to termination. The Cabinet reserves its right to enforce this Agreed Order, and Kentucky American Water reserves its right to file a petition for hearing pursuant to KRS 224.10-420(2) contesting the Cabinet's determination.

AGREED TO BY:

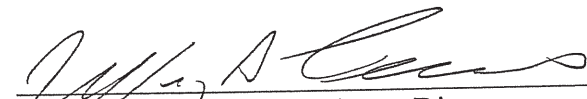


Keith Cartier, Vice President
Kentucky American Water

9.22.10

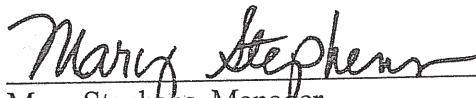
Date

APPROVAL RECOMMENDED BY:


Jeffrey A. Cummins, Assistant Director
Division of Enforcement

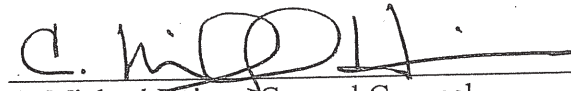
9/28/10

Date


Mary Stephens, Manager
Water Legal Section
Environmental Protection Legal Division

10-6-10

Date


C. Michael Haines, General Counsel
Energy and Environment Cabinet

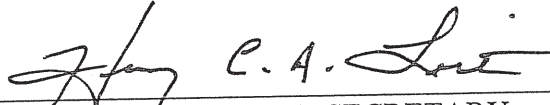
10-8-10

Date

ORDER

Wherefore, the foregoing Agreed Order is entered as the final Order of the Energy and Environment Cabinet this 18th day of ~~August~~ ^{October}, 2010.

ENERGY AND ENVIRONMENT CABINET



LEONARD K. PETERS, SECRETARY

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing **AGREED ORDER** was mailed, postage prepaid, to the following this 18th day of October, 2010.

Kentucky American Water
Keith Cartier, Vice President
2300 Richmond Road
Lexington, Kentucky 40502

and mailed, messenger to:

Jeffrey A. Cummins, Assistant Director
Division of Enforcement
300 Fair Oaks Lane
Frankfort, Kentucky 40601

Mary Stephens, Esq.
Office of General Counsel
200 Fair Oaks Lane, 1st floor
Frankfort, Kentucky 40601



DOCKET COORDINATOR

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