

**STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

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<b>IN THE MATTER OF:</b>	)	
	)	<b>DIVISION OF WATER</b>
	)	<b>RESOURCES</b>
	)	
<b>HALLSDALE-POWELL UTILITY DISTRICT</b>	)	
	)	
	)	
<b>RESPONDENT</b>	)	<b>CASE NO. WPC14-0044</b>
	)	

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**CONSENT ORDER AND ASSESSMENT**

This Agreement is made and entered into by and between the Tennessee Department of Environment and Conservation, Division of Water Resources (hereinafter “Division”) and Hallsdale-Powell Utility District (hereafter “Respondent”).

**PARTIES**

**I.**

Robert J. Martineau, Jr., is the duly appointed Commissioner of the Department. The Commissioner is responsible for administering the *Water Quality Control Act*, (hereinafter the “Act”), Tennessee Code Annotated (T.C.A.) §69-3-101 *et seq.*

**II.**

Hallsdale-Powell Utility District (hereinafter the “Respondent”) is a publicly owned, governmental utility district that owns and operates a municipal wastewater treatment system which provides service to residents in Anderson, Union, and Knox Counties, Tennessee (hereinafter the “site” or the “system”). The wastewater treatment

plant (WWTP) has a treatment capacity of 9.7 million gallons per day (MGD). Service of process may be made on the Respondent through Mr. Darren Caldwell, President/CEO, Hallsdale-Powell Utility District, P.O. Box 5199, Knoxville, Tennessee 37928-0199.

### **JURISDICTION**

#### **III.**

Whenever the Commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) §69-3-101 *et seq.*, the Water Quality Control Act (the “Act”), has occurred, or is about to occur, the Commissioner may issue a complaint to the violator and may order corrective action be taken pursuant to T.C.A. §69-3-109(a) of the Act. Further, the Commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. §69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. §69-3-116 of the Act. Department Rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. §69-3-105 and are effective as the *Official Compilation Rules and Regulations of the State of Tennessee*, Chapters 0400-40-03 and 0400-40-04 (hereinafter the “Rule”). Pursuant to T.C.A. §69-3-107(13), the Commissioner may delegate to the Director of the Division any of the powers, duties, and responsibilities of the Commissioner under the Act.

#### **IV.**

The Respondent is a “person” as defined at T.C.A. §69-3-103(25) and, as hereinafter described, has violated the Act.

## V.

Beaver Creek, described herein, is “waters of the state” as defined by T.C.A. §69-3-103(42). Pursuant to T.C.A. 69-3-105(a)(1), all waters of the state have been classified by the Tennessee Board of Water Quality, Oil and Gas for suitable uses. Department Rule 0400-40-04, “Use Classifications for Surface Waters”, is contained in the *Official Compilation of Rules and Regulations for the State of Tennessee*. Accordingly, all waters of the state have been classified at a minimum for the following uses: fish and aquatic life, recreation, irrigation, and livestock watering and wildlife, and may additionally be classified for use as industrial water supply, domestic water supply, and navigation.

## VI.

Tennessee Code Annotated §69-3-108 requires a person to obtain a permit from the Department prior to discharging into waters of the state, or to a location from which it is likely that the discharged substance will move into waters of the state. Rule 0400-40-05-.08 states in part that a set of effluent limitations will be required in each permit that will indicate adequate operation or performance of treatment units used and that appropriately limit those harmful parameters present in the wastewater. Rule 0400-40-05-.07 states in part that the permittee shall at all times properly operate and maintain all facilities and systems of treatment and control which are installed or used by the permittee to achieve compliance with the conditions of the permit. Furthermore, it is unlawful for any person to increase, in volume or strength, any wastes in excess of the permissive discharges specified under any existing permit.

## **FACTS**

### **VII.**

On August 20, 2004, the Division of Water Resources (hereinafter the "Division") issued to the Respondent, Consent Order 04-0242, for effluent violations of their permit and overflows from the Respondent's collection system. The Consent Order required the Respondent to submit a Corrective Action Plan and Engineering Report (CAP/ER), a Sewer Overflow Response Plan (SORP), implement the approved SORP, prepare a Sanitary Sewer Overflow Evaluation Report (SSOER), submit a Management, Operation, and Maintenance (MOM) program, and submit annual reports detailing their yearly progress to the Division.

### **VIII.**

The Order assessed a total civil penalty of \$131,600.00, of which \$13,600 was to be paid up-front or in lieu of payment the Respondent was required to propose a Supplemental Environmental Project (SEP). The remaining \$118,000.00 was contingent upon the Respondent completing the requirements of the Order.

Due to the number of overflow events, constituting unpermitted discharges, reported by the Respondent since Consent Order 04-0242 became final, and the necessity of additional corrective actions, all requirements of Consent Order 04-0242 shall be superseded by this Order and Assessment, and Consent Order 04-0242 shall be closed as of the date this Order is final.

## **IX.**

On March 7, 9, and 11, 2011, personnel from the Environmental Field Office in Knoxville (EFO-KN) conducted a Compliance Biomonitoring Inspection (CBI) of the Respondent's WWTP. During the inspection, personnel documented that all monitoring, reporting, sampling, and testing was being conducted in accordance with their NPDES permit. A letter dated July 21, 2011, was mailed to the Respondent detailing the observations of the CBI.

## **X.**

On July 29, 2011, the Division issued National Pollutant Discharge Elimination System (NPDES) Permit TN0078905 (hereinafter the "permit") to the Respondent. The permit became effective September 01, 2008, and expired on September 30, 2013.

## **XI.**

A permit application was received by the Division on May 31, 2013. However, upon review, the application was deemed to be incomplete. In a letter to the Respondent dated June 20, 2013, the Division notified the Respondent of the deficiencies. An amended application was received by the Division on July 8, 2013, and a Notice of Complete Application was sent to the Respondent on August 1, 2013. The permit was administratively continued and authorizes the Respondent to discharge treated municipal wastewater from the WWTP to Beaver Creek at mile 23.5 in accordance with effluent limitations, monitoring requirements and other conditions set forth in the permit.

## **XII.**

On April 1, 2014, representatives from the Respondent as well as their consultants met with personnel from the Division's Compliance and Enforcement Unit. The Respondent wanted to bring the Division up to date and present documentation showing all of the work and major accomplishments achieved since entering into the Consent Order. Some of the accomplishments included but were not limited to:

- Beaver Creek WWTP improvements completed and permit compliance achieved,
- Establishment of a customer complaint tracking system,
- Inspection of over 7,000 manholes,
- Inspection of approximately 2 million linear feet of sewer pipe using Closed Circuit Television (CCTV),
- Smoke testing over 1 million linear feet of sewer pipe,
- Rehabilitation of approximately 200,000 linear feet of sewer pipe,
- Replacement of over 16,000 linear feet of sewer pipe,
- Rehabilitation and/or replacement of over 1500 manholes, and
- Inspection of over 2,000 customer owned sewer service laterals.

## **XIII.**

During the monitoring period of January 2013, to January 2014, the Respondent reported on their DMRs, the following violations of the permit:

- 197 overflows of the collection system, and
- 1 total Ammonia Nitrogen violation

## VIOLATIONS

### XIV.

By discharging wastewater effluent in violation of the terms and conditions of its NPDES permit, as stated herein, the Respondent has violated T.C.A. §§69-3-108(b)(1),(3), and (6), and 69-3-114(b), which state in-part:

T.C.A. §69-3-108(b)

It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

- (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state;
- (3) The increase in volume or strength of any wastes in excess of the permissive discharges specified under any existing permit;
- (6) The discharge of sewage, industrial wastes, or other wastes into water, or a location from which it is likely that the discharged substances will move into waters;

T.C.A. §69-3-114(b)

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in §69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the Commissioner under this part.

## ORDER AND ASSESSMENT

### XV.

WHEREFORE, PREMISES CONSIDERED, the Consenting Parties agree as follows:

1. Within 180 days of the effective date of this Agreement, the Respondent shall submit for approval by the Division an updated/detailed Collection System Corrective Action Plan/Engineering Report (CS-CAP/ER) on the system and a project schedule for implementation and completion of all activities listed therein. The CS-CAP/ER shall include at a minimum, but not be limited to: a comprehensive plan that accounts for projected population growth; a reliability study of each pump station; a hydraulic model of the collection and transport system, including both new and existing lines; identification of any known overflow locations, and shall include the use of geographic information systems (GIS) coordinates to fully map the system and prioritize areas within the system that are in need of repair based upon a holistic understanding of the system, repair and or replacement of equipment, and the operational procedures and staffing necessary to comply with the NPDES permit. The Respondent shall submit the CS-CAP/ER in duplicate to the manager of the Division of Water Resources' Knoxville Environmental Field Office at 3711 Middlebrook Pike, Knoxville, TN 37921 and to the manager of the Compliance and Enforcement Unit of Water Resources located on the 11<sup>th</sup> Floor, William R. Snodgrass Tennessee Tower, 312



Rosa L. Parks Avenue, Nashville, TN 37243-1534. In addition, the documents may be submitted electronically to [DWRWater.compliance@tn.gov](mailto:DWRWater.compliance@tn.gov).

2. The Respondent shall initiate the actions outlined in the CS-CAP/ER, including those items required by the Division as comments in the approval of the CS-CAP/ER, within 60 days of written approval of the plan by the Division. The CS-CAP/ER, including the project schedule, implementation, and completion dates contained therein, shall become enforceable as part of this agreement once approved by the division. At the time of first action on the CS-CAP/ER, the Respondent shall notify the Division in writing of the action. This written notification shall be submitted in duplicate to the manager of the Division of Water Resources' Knoxville Environmental Field Office and to the manager of the Compliance and Enforcement Unit of Water Resources in Nashville, at the respective addresses and email shown in item 1, above.
  
3. All scheduled activities in the approved CS-CAP/ER shall be completed by August 31, 2024. A notice of completion should be sent to the manager of the Division of Water Resources' Knoxville Environmental Field Office and to the manager of the Compliance and Enforcement Unit of Water Resources in Nashville, at the respective addresses shown in item 1, above. The notice of completion will be considered late if not received by the division on or before September 15, 2024.

4. The Respondent shall continue to submit annual reports detailing all updates and changes to any of the individual MOM programs. Each annual report is due by March 31<sup>st</sup> and shall be based upon activities conducted in the previous calendar year. In addition, for each capacity related recurring overflow from the previous year, the Respondent shall provide details and timeframes for eliminating the overflows at the specific locations.
  
5. The Respondent shall achieve compliance with all terms and conditions of the permit no later than March 31, 2025.
  
6. The Respondent shall pay a CIVIL PENALTY of ONE HUNDRED SIXTY-THREE THOUSAND, ONE HUNDRED DOLLARS (\$163,100.00) to be paid as follows:
  - a. The Respondent shall pay TWENTY-THREE THOUSAND, ONE HUNDRED DOLLARS (\$23,100.00) to the Division to be paid within thirty (30) days of execution of this agreement. In lieu of the payment of TWENTY-THREE THOUSAND, ONE HUNDRED DOLLARS (\$23,100.00) of the assessed penalty, the Respondent may propose a Supplemental Environmental Project (SEP) with a value of at least FORTY-SIX THOUSAND, TWO HUNDRED DOLLARS (\$46,200.00). Any proposed SEP(s) must be submitted, in writing, to the Department's Director of Water Resources (hereinafter the "Director") within 30 days of the agreement becoming final. The written proposal must include an estimate of the

anticipated cost of the project(s), a timetable for completion, and detailed plans, including but not limited to maps, schematics, listing of plant species used for vegetative cover, and any on-going monitoring plans needed. Before implementing the SEP(s), the SEP(s) must be approved, in writing, by the Director. Once approved, the SEP projects, including the timetable for completion, shall become an enforceable portion of this agreement. In the event that one or more of the proposed SEP(s) are not approved, the Director may extend the time in which to submit an alternative SEP(s) proposal.

If no extension of time is requested or granted, the Respondent shall pay the above assessed TWENTY-THREE THOUSAND, ONE HUNDRED DOLLARS (\$23,100.00) CIVIL PENALTY within 30 days of receipt of the Director's letter denying the SEP(s). To receive credit against the CIVIL PENALTY for any approved SEP(s), the Respondent must provide documentation to the Director of the actual costs expended on each SEP(s). The value credited against the civil penalty for any approved SEP(s) will be determined by the Director. In the event that the Respondent fails to propose SEP(s) within 60 days of this agreement becoming final, the TWENTY-THREE THOUSAND, ONE HUNDRED DOLLARS (\$23,100.00) CIVIL PENALTY will become due and payable immediately.

- b. The Respondent shall pay TWENTY THOUSAND DOLLARS (\$20,000.00) to the Division in the event the Respondent fails to comply with item 1 above, to be paid within 30 days of default.
  
- c. The Respondent shall pay FIVE THOUSAND DOLLARS (\$5,000.00) per item of non-compliance with the approved CS-CAP/ER, up to SIXTY THOUSAND DOLLARS (\$60,000.00) to the Division in the event the Respondent fails to comply with item 2 above, to be paid within 30 days of notice of default.
  
- d. The Respondent shall pay TWENTY THOUSAND DOLLARS (\$20,000.00) to the Division in the event the Respondent fails to comply with item 3 above, to be paid within 30 days of notice of default.
  
- e. The Respondent shall pay TWENTY THOUSAND DOLLARS (\$20,000.00) to the Division in the event the Respondent fails to comply with item 4 above, to be paid within 30 days of notice of default.
  
- f. The Respondent shall pay TWO THOUSAND DOLLARS (\$2,000.00) per year of non-compliance, up to TWENTY THOUSAND DOLLARS (\$20,000.00), to the Division in the event the Respondent fails to comply with item 5 above, to be paid within 30 days of notice of default.

**EFFECTIVE DATE**

The effective date of this Consent Order and Agreement shall be the date it is signed by the Commissioner.

**WAIVER OF RIGHT TO APPEAL**

The Respondent does ~~not~~ have the right to appeal this agreement as such and knowingly and voluntarily waives all appeal rights that may be available to it.

**AUTHORITY TO SIGN**

The undersigned representatives of TDEC and of the Respondent hereby warrant and represent that they are fully authorized and are competent to execute this Agreement on behalf of the entity for which they are signing.

**ORDERED by the Commissioner of the Department of Environment and Conservation**

**AGREED AND CONSENTED to by Hallsdale-Powell Utility District**

8/27/14  
Date

Robert J. Martineau, Jr.  
Robert J. Martineau, Jr., Commissioner *ELS*  
Tennessee Department of Environment and  
Conservation

8-26-2014  
Date

Darren Cardwell  
Hallsdale-Powell Utility District  
Darren Cardwell