



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
OFFICE OF GENERAL COUNSEL
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25th Floor, William R. Snodgrass Building
Nashville, Tennessee 37243-1548
Telephone: (615) 532-0131
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May 15, 2012

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
RECEIPT #7011 3500 0001 0067 7677

Luna Law Group
Michael D. Pearigen
333 Union Street
Suite 300
Nashville, Tennessee 37201

RE: CITY OF GALLATIN
CASE NO. WPC11-0066
DOCKET NO. 04.30-116140A

Dear Mr. Pearigen:

Enclosed please find an executed copy of the Agreed Order approved by the Tennessee Water Pollution Control Board on May 15, 2012.

If you have any questions, please feel free to contact me at 532-0131.

Sincerely,

Austin Payne /mbb

Austin S. Payne
Assistant General Counsel

Enclosure

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

RECEIVED

2012 MAY 15 PM 12:29

IN THE MATTER OF:)	DIVISION OF WATER	SECRETARY OF STATE
)	POLLUTION CONTROL	
)		
CITY OF GALLATIN)	CASE NO. WPC11-0066	
)		
)		
RESPONDENT)	APD Docket No. 04.30.116140A	

AGREED ORDER

Upon consent of the parties, this matter came before the Tennessee Water Quality Control Board. After consideration of Commissioner's Order and Assessment WPC11-0066 (hereinafter "Commissioner's Order"), the Petition for Review filed by the City of Gallatin, (hereinafter "Respondent"), and the agreement of the parties, the Board made the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. The facts set out in paragraphs I through X of the Commissioner's Order issued on or about August 18, 2011 are incorporated herein by reference.

CONCLUSIONS OF LAW AND OTHER STIPULATIONS

2. For Conclusions of Law, Section XI of the August 18, 2011 Commissioner's Order is adopted by the Board and incorporated herein by reference.

3. Respondent has filed a Petition for Review. It is agreed by the parties and jointly recommended for approval of the Board that the respondent shall pay a total of ELEVEN THOUSAND DOLLARS (\$11,000.00) in civil penalties, which should be

remitted to the Department in accordance with the terms of this Agreed Order (hereinafter "Order"). This Order also provides for additional civil penalties that shall become due in the event that the Respondent fails to meet other requirements of this Order.

ORDER

WHEREFORE, PREMISES CONSIDERED, the Water Quality Control Board hereby ORDERS that:

1. The Respondent shall, within ONE HUNDRED AND EIGHTY (180) DAYS of entry of this Order in the Administrative Procedures Division (APD), submit for approval by the Division of Water Pollution Control (hereinafter "Division") a Corrective Action Plan/Engineering Report (CAP/ER) on the collection system. The CAP/ER shall include, but shall not be limited to, modifications to equipment or operations necessary to comply with all provisions of the subject NPDES permit and a project schedule including timetables for beginning and completing all activities. The Respondent shall submit the CAP/ER in duplicate to the manager of the Division's Environmental Field Office in Nashville (NEFO) at 711 R.S. Gass Boulevard, Nashville, Tennessee 37243, and to the manager of the Enforcement and Compliance Section of Water Pollution Control at 401 Church Street, 6th Floor L&C Annex, Nashville, Tennessee 37243. In addition, all correspondence regarding this Order shall include the Order number, item number, and county.

2. The Respondent shall, within SIXTY (60) DAYS of receipt of the Division's written approval, initiate the actions outlined in the CAP/ER, including those items required by the Division as comments in the approval of the CAP. At the time of first action on the CAP/ER, the Respondent shall notify the Division in writing of the action. This written notification shall be submitted to the Division's manager at the NEFO and a copy sent to the manager of the Enforcement and Compliance Section of Water Pollution Control at the addresses provided in Item 1.
3. The Respondent shall complete all scheduled activities in the approved CAP/ER no later than December 31, 2016. A notice of completion of the CAP/ER activities should be sent to the Division's manager at the NEFO and a copy sent to the manager of the Enforcement and Compliance Section at the respective addresses in Item 1. The notice of completion will be considered late if not received by the Division on or before February 1, 2017.
4. Within ONE HUNDRED AND EIGHTY (180) DAYS of entry of this Order in the APD, the Respondent shall submit to the Division a sewer overflow response plan (SORP). The SORP shall include procedures for minimizing health impacts and shall include measures to be taken when overflows discharge on local streets or other public areas. The SORP shall also include appropriate measures for the notification of affected property owners and stream users, and shall include notification of the news media when necessary to protect public health. The SORP shall state specific procedures for notifying known downstream users in the event that untreated

wastewater is discharged to waters of the state by sanitary sewer overflow (SSO). These procedures shall include, but not be limited to, provisions for posting warning signs at places where the general public could gain access to polluted waters. Further, posted signs shall remain in place until in-stream monitoring reveals that the water body has returned to normal background conditions. In the event that the Division requires the Respondent to modify/revise the SORP, the Respondent shall submit the modified/revised SORP to the Division within thirty days of the date of notification. The Respondent shall submit the SORP in duplicate to the Division's manager at the NEFO and a copy to the manager of the Enforcement and Compliance Section of Water Pollution Control at the respective addresses provided in Item 1. In addition, all correspondence regarding this Order shall include the Order number, item number, and county.

5. Within NINETY (90) DAYS of written approval by the Division, the Respondent shall fully implement the SORP. The Respondent shall notify the Division, in writing, once the SORP has been fully implemented. The notification shall be submitted to the NEFO and a copy to the manager of the Enforcement and Compliance Section at the respective addresses provided in Item 1.

6. Within EIGHTEEN (18) MONTHS of entry of this Order in the APD, the Respondent shall prepare a Sanitary Sewer Overflow Evaluation Report (hereinafter "SSOER") evaluating each overflow that occurs during the year-long evaluation period starting at

the entry of this order in the APD and ending one year thereafter. The remaining six months shall be used to prepare the SSOER.

(a). The Respondent shall make the SSOER available to the public for review and comment prior to submitting the SSOER to the Division. The Respondent shall maintain the SSOER as a public document and invite public review and comment by advertising in the local newspapers and posting on the internet. The Respondent shall receive and compile public comments over a 60 day period. These comments shall be incorporated into the SSOER as the Respondent deems appropriate and all public comments received by the Respondent shall be kept in a permanent file and made available to the Division upon request.

(b). Within 30 days of the close of the public comment period, the SSOER shall be submitted to the manager of the Enforcement and Compliance Section for review, comment, and approval. The Respondent shall submit a copy of the SSOER to the NEFO.

(c). If the Division determines the language of the SSOER must be altered, the Respondent shall incorporate the Division's written comments into the SSOER within 30 days of receipt and resubmit the SSOER for the Division's approval.

(d). The Respondent shall maintain the SSOER as a public document no later than 60 days after the Respondent receives written approval from the Division of the SSOER. The approved SSOER shall be maintained by the Respondent until such time that it is replaced by the annual update to the SSOER as described in item 10 below.

(e). The SSOER shall analyze the specific cause(s) of each sanitary sewer overflow and shall categorize the cure for each overflow into short-term controls, long-term planning and remediation, or both if necessary. The SSOER shall include a listing of all sanitary sewer overflow locations, including addresses, manhole and line unit identification numbers, basin, sub-basin, mini-system, date(s) of each overflow, specific cause(s) of each overflow, and estimated volumes for each event. Overflow locations which have been placed on the short-term controls list and which have demonstrated occurrences of two or more overflow events during the evaluation cycle must be identified on the long-term planning and remediation list and may also be placed on the short-term controls list. This would be appropriate if short-term actions are underway or planned to occur within the next 24 months from the date of submittal of the SSOER. Items which are placed only on the short-term list, and which are not on the long-term list, must be accompanied by a description of the measure(s) and associated time frames or schedules for conducting activities necessary to prevent further overflows at each particular location.

7. Within TWELVE (12) MONTHS from receipt of the Division's written approval of the SSOER, the Respondent shall submit to the Division for approval, a Sanitary Sewer Overflow-Corrective Action Plan/Engineering Report (hereinafter "SSO-CAP/ER"), for the elimination of recurring overflows at all overflow locations identified in the long-term planning and remediation list of the SSOER and an infiltration/inflow (I&I) reduction plan. In the event the Division requires changes to

the SSO-CAP/ER, the Respondent shall make the required modifications to the SSO-CAP/ER and resubmit for approval by the Division within 60 days of such notice. The SSO-CAP/ER shall identify the chosen actions that will be implemented to eliminate the SSO(s) and any other alternatives considered as a part of the Respondent's analysis. A project schedule shall be included with the SSO-CAP/ER and shall include timetables for beginning and completing all activities. All scheduled activities shall be complete and SSO(s) shall be eliminated by June 30, 2017. The Respondent shall submit the original SSO-CAP/ER to the manager of the Enforcement and Compliance Section and a copy to NEFO at the respective addresses provided in Item 1. Prior to submittal to the Division, the Respondent shall make a copy of the SSO-CAP/ER available to the public for inspection and comment in the same manner as the SSOER as described in this Order in item 6, above. The SSO-CAP/ER shall include, at minimum, projects currently under construction, projects planned for construction currently identified in capital improvement plans which are consistent with the SSO-CAP/ER, pertinent flow measurement data, and a map clearly identifying the project locations. The Respondent shall make available to the Division for review/inspection/copying at Respondent's offices any additional information in its possession that may be of use to the Division in assessing or evaluating the SSO-CAP/ER.

8. Within TWO HUNDRED AND FORTY (240) DAYS of entry of this ORDER in the APD, the Respondent shall revise or develop, and submit to the Division for review and approval, a comprehensive capacity management, operations, and maintenance

(CMOM) program. The CMOM program will identify priority (Level 1) programs that will need to be implemented within 180 days of completion of the CMOM Program audit. Level I programs include those programs that for technical reasons must be in place prior to Level II program implementation. Level I programs shall include those CMOM components which address, assess, and prioritize the most vulnerable points in the collection system. Level II components identified in the CMOM audit will be implemented within 365 days of completion of the audit. Both Level I and II CMOM programs must be specific to the utility's infrastructure, include milestone dates, incorporate standard procedures for maintenance, management, and operation, and establish performance measures that allow for periodic review, evaluation, and revision, if necessary. The CMOM program will address the following elements identified below:

- a. Identification of major goals of the CMOM program.
- b. Identification of the person or position within the Respondent's STP responsible for implementing each of the elements of the CMOM program.
- c. Establish procedures for training of appropriate personnel on a regular basis regarding elements of the CMOM program.
- d. Identification of the means by which the mapping of the collection and transmission system is accomplished and maintained.
- e. Identification of the physical inspection and testing procedures.
- f. Description of the preventive and routine maintenance procedures.

- g. Identification of procedures for the maintenance of right-of-ways and easements for the sanitary sewer lines.
- h. Inventory management system.
- i. List of program and procedures to identify and prioritize structural deficiencies and implementation of short term and long-term rehabilitation actions to address the identified deficiencies.
- j. List of requirements and standards for the installation of new sewers, pumps, other appurtenances, and rehabilitation and repair projects.
- k. Identification of procedures and specifications for inspecting and testing the installation of new sewers, pumps, other appurtenances, and for rehabilitation and repair projects.
- l. Implementation of an identification system for all potential overflow points (POPs) in the collection system. The system should identify the specific line that the POPs are on and should reflect the proximity of the POPs to other POPs on that line.
- m. List of procedures to update CMOM program elements as appropriate.

Each individual CMOM program will have a sufficient level of documentation to ensure the following:

- i. The program is specific to, and tailored for, the utility's infrastructure;
- ii. The program has a written purpose explaining why the program is needed;

- iii. The program has specific written goal(s) establishing the accomplishment(s) desired for the current fiscal year;
- iv. The program has the details of the standard operating procedures that are used by the utility's personnel;
- v. The program has established appropriate performance procedures which are tracked by management; and
- vi. The program has a written procedure requiring periodic review, evaluation, and any necessary revision.

9. The Respondent shall submit FIVE (5) successive annual reports to the Division, on or before May 1 of each year, beginning in 2013. Each annual report shall describe the Respondent's activities regarding the CMOM program for the collection system during the previous year, and shall also include the following elements:

- a. A completed system profile and performance summary as outlined in Exhibit A;
- b. A completed system-wide CMOM programs recent performance summary as outlined in Exhibit B;
- c. A completed sub-basin statistics summary spreadsheet as outlined in Exhibit C;
- d. A five-year capital improvement program with projected budgets for each item;
- e. A narrative description of the status of all contracted wastewater improvement projects, all in house replacement and rehabilitative projects, and the funding status of all improvement projects; and

- f. Appropriate maps and any additional documents necessary to fully describe the system status and aid in review of the program.

10. Beginning May 1, 2014, the Annual CMOM Program Status Reports shall also include an updated SSOER for the preceding 12-month period (January 1 through December 31). This SSOER and subsequent SSOERs shall be maintained as a public document and include all components described in item 6, above.

11. Within TWENTY-FOUR (24) MONTHS of entry of this Order in the APD, the Respondent shall develop, submit, and maintain capacity, collection, and treatment evaluation protocols for new connections to the collection system. These protocols shall include, but not be limited to, standard design flow rate assumptions (regarding pipe roughness, manhole head losses, “as-built” drawing accuracy [distance and slope], and water use [gallons per capita per day]), and projected flow impact modeling/calculation techniques. The program shall provide for certification of adequate capacity by a registered professional engineer. The program shall include an information management system for tracking the cumulative studies and relating studies to the I&I reduction program.

12. The Respondent shall achieve compliance with the permit no later than December 31, 2016. Completion of all of this Order’s requirements shall occur by a Final Compliance date of May 1, 2017.

13. The Respondent is assessed a CIVIL PENALTY in the amount of TWO HUNDRED TWENTY ONE THOUSAND DOLLARS (\$221,000.00), payable as follows:

a. The Respondent shall, within 30 days of entry of this Order in the APD, pay to the Division ELEVEN THOUSAND DOLLARS (\$11,000.00).

1). In lieu of the payment of ELEVEN THOUSAND DOLLARS (\$11,000.00) of the assessed CIVIL PENALTY, the Respondent may propose Supplemental Environmental Projects (hereinafter "SEP(s)"). Any proposed SEP(s) must be submitted, in writing, to the Department's Director of Water Pollution Control within 30 days of this Order being entered in the APD.

2). The written proposal must include an estimate of the anticipated cost of the project(s). Before implementing any proposed SEP(s), the SEP(s) must be approved, in writing, by the Director. 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 ELEVEN THOUSAND DOLLARS (\$11,000.00) civil penalty within 30 days of receipt of the Director's letter denying the SEP(s).

3). 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 ORDER becoming final, the ELEVEN THOUSAND DOLLARS (\$11,000.00) civil penalty will become due and payable immediately.

- b. If, and only if, the Respondent fails to comply with item 1 above in a timely manner, the Respondent shall pay, on a one-time basis only, a CIVIL PENALTY in the amount of SEVENTEEN THOUSAND FIVE HUNDRED DOLLARS (\$17,500.00), payable within 30 days of default.
- c. If, and only if, the Respondent fails to comply with item 2 above in a timely manner, the Respondent shall pay, on a one-time basis only, a CIVIL PENALTY in the amount of SEVENTEEN THOUSAND FIVE HUNDRED DOLLARS (\$17,500.00), payable within 30 days of default.
- d. If, and only if, the Respondent fails to comply with item 3 above in a timely manner, the Respondent shall pay, on a one-time basis only, a CIVIL PENALTY in the amount of SEVENTEEN THOUSAND FIVE HUNDRED DOLLARS (\$17,500.00), payable within 30 days of default.
- e. If, and only if, the Respondent fails to comply with item 4 above in a timely manner, the Respondent shall pay, on a one-time basis only, a CIVIL PENALTY in the amount of SEVENTEEN THOUSAND FIVE HUNDRED DOLLARS (\$17,500.00), payable within 30 days of default.

- f. If, and only if, the Respondent fails to comply with item 5 above in a timely manner, the Respondent shall pay, on a one-time basis only, a CIVIL PENALTY in the amount of SEVENTEEN THOUSAND FIVE HUNDRED DOLLARS (\$17,500.00), payable within 30 days of default.
- g. If, and only if, the Respondent fails to comply with item 6 above in a timely manner, the Respondent shall pay, on a one-time basis only, a CIVIL PENALTY in the amount of SEVENTEEN THOUSAND FIVE HUNDRED DOLLARS (\$17,500.00), payable within 30 days of default.
- h. If, and only if, the Respondent fails to comply with item 7 above in a timely manner, the Respondent shall pay, on a one-time basis only, a CIVIL PENALTY in the amount of SEVENTEEN THOUSAND FIVE HUNDRED DOLLARS (\$17,500.00), payable within 30 days of default.
- i. If, and only if, the Respondent fails to comply with item 8 above in a timely manner, the Respondent shall pay, on a one-time basis only, a CIVIL PENALTY in the amount of SEVENTEEN THOUSAND FIVE HUNDRED DOLLARS (\$17,500.00), payable within 30 days of default.
- j. If, and only if, the Respondent fails to comply with item 9 above in a timely manner, the Respondent shall pay, on a one-time basis only, a CIVIL PENALTY in the amount of SEVENTEEN THOUSAND FIVE HUNDRED DOLLARS (\$17,500.00), payable within 30 days of default.
- k. If, and only if, the Respondent fails to comply with item 10 above in a timely manner, the Respondent shall pay, on a one-time basis only, a

CIVIL PENALTY in the amount of SEVENTEEN THOUSAND FIVE HUNDRED DOLLARS (\$17,500.00), payable within 30 days of default.

- l. If, and only if, the Respondent fails to comply with item 11 above in a timely manner, the Respondent shall pay, on a one-time basis only, a CIVIL PENALTY in the amount of SEVENTEEN THOUSAND FIVE HUNDRED DOLLARS (\$17,500.00), payable within 30 days of default.
- m. If, and only if, the Respondent fails to comply with item 12 above in a timely manner, the Respondent shall pay, on a one-time basis only, a CIVIL PENALTY in the amount of SEVENTEEN THOUSAND FIVE HUNDRED DOLLARS (\$17,500.00), payable within 30 days of default.

RESERVATION OF RIGHTS

Respondent does not admit or deny the factual allegations or the alleged violations of law contained in this Agreed Order. Respondent agrees to comply with this Agreed Order to avoid the cost of protracted litigation. Respondent reserves the right to contest the factual allegations and alleged violations contained in this Agreed Order in any proceeding other than any enforcement proceeding brought by the Tennessee Department of Environment and Conservation. The Board makes its Findings of Fact and Conclusions of Law based upon the Commissioner's Order and representations of Counsel at the Board's meeting.

FORCE MAJEURE

The contingent civil penalties provided herein shall not apply if the Respondent's failure to comply was the result of an event of force majeure. For purposes of this Agreed Order, "Force Majeure" is defined as any event arising from causes beyond the control of Respondent, or any entity employed by Respondent, including, but not limited to, its consultants and contractors, which delays or prevents the performance of any obligation under this Agreed Order, despite Respondent's best efforts to fulfill the obligation. The Requirement that Respondent use "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any such event (a) as it is occurring, and (b) after it has occurred, to prevent any resulting delay to the greatest extent possible. A force majeure does not include the Respondent's inability to perform any obligation under this Agreed Order.

If any event occurs or has occurred that may delay the performance of any obligation under this Agreed Order, whether or not caused by a force majeure event, the Respondent shall provide notice orally or by electronic or facsimile transmission to the Division within seventy-two (72) hours of when the Respondent first knew that the event may cause delay. Within seven (7) days thereafter, the Respondent shall provide in writing to the Division an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Respondent's rationale for attributing the

delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of the Respondent, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Respondent shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure event. Failure to comply with the above requirements shall preclude the Respondent from asserting any claim of force majeure for that event for the period of time for such failure to comply, and for any additional delay caused by such failure. The Respondent shall be deemed to know of any circumstance of which the Respondent, any entity controlled by the Respondent, or the Respondent's contractors knew or should have known.

If the Division agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Agreed Order that are affected by the force majeure event will be extended for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. The Division will notify the Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

REASONS FOR DECISIONS

The above Findings of Facts and Conclusions of Law and the Orders were made in an effort to provide a coordinated system of control and management under the

Tennessee Water Quality Control Act. The purpose of said Act is to recognize the public's right to unpolluted waters of the state, abate existing water pollution, and prevent future pollution. The Board encourages settling cases in the interest of avoiding the time and expense of prolonged litigation.

Adopted and approved by a majority of the Board, a quorum being present, this
15th day of May, 2012.

**FOR THE WATER QUALITY
CONTROLBOARD**

Anthony Holcomb
Chairperson

APPROVED FOR ENTRY:

A. Payne
Austin Payne, BPR# 029335
Assistant General Counsel
Tennessee Department of Environment and Conservation
L & C Tower, 20th Floor
401 Church Street
Nashville, Tennessee 37243
(615)532-0126

Michael D. Pearigen for
Michael D. Pearigen
Attorney for the City of Gallatin
Luna Law Group
333 Union Street, Suite 300
Nashville, Tennessee 37201
(615)254-9146

RIGHTS OF APPEAL

Respondent is hereby notified and advised of its right to administrative and judicial review of this FINAL ORDER, pursuant to the Tennessee Uniform Administrative Procedures Act, Tenn. Code Ann §§ 4-5-316, 4-5-317 and 4-5-222 and the Water Quality Control Act, Tenn. Code Ann § 69-3-111.

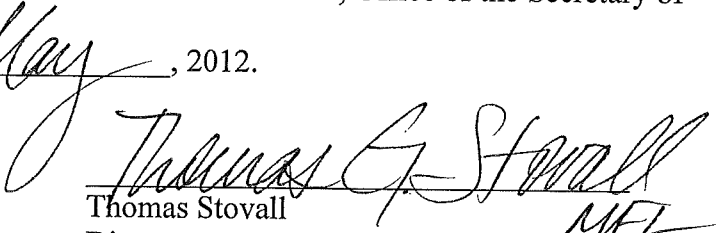
Tenn. Code Ann. § 4-5-316 gives a party the right to submit to the Board a Petition for a Stay of Effectiveness of a FINAL ORDER within seven (7) days after its entry.

Tenn. Code Ann. § 4-5-317 gives any party the right to file a Petition for Reconsideration within fifteen (15) days after the entry of a FINAL ORDER, stating specific grounds upon which relief is requested.

Tenn. Code Ann §§ 4-5-322 and 69-3-111 provide any party the right of judicial review by filing a Petition in the Chancery Court of Davidson County within sixty (60) days of this ORDER becoming effective. A copy of this FINAL ORDER shall be served upon the Respondent by certified mail, return receipt requested. This FINAL ORDER shall become effective upon entry.

ENTRY OF ORDER

Entered in the Administrative Procedures Division, Office of the Secretary of State, on this 15th day of May, 2012.


Thomas Stovall

Director

Administrative Procedures Division

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this document has been served upon all interested parties by placing a true and correct copy of same in the United States mail, postage prepaid., this 15 day of MAY, 2012.

Austin Payne mbb
Austin Payne, BPR #029335
Attorney, Office of General Counsel
Tennessee Department of Environment
and Conservation
20th Floor, L & C Tower
401 Church Street
Nashville, Tennessee 37243-1548
(615)532-0131