

COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET
DIVISION OF ENFORCEMENT
CASE NO. DOW 110265

IN RE: Lexington Fayette Urban Co Government Landfill
3849 Hedger Ln
Lexington, KY 40519
Agency Interest No. 1068
Activity ID No. ERF20110001

AGREED ORDER

WHEREAS, the parties to this Agreed Order, the Energy and Environment Cabinet (hereinafter "Cabinet") and the Lexington-Fayette Urban County Government (hereinafter "LFUCG"), 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. The Lexington-Fayette Urban County Government owns and operates the Lexington Fayette County Landfill, a publicly owned landfill as specified in Solid Waste Permit #SW03400007, comprised of a construction/demolition debris landfill (hereinafter "Landfill") and a wetland treatment system (hereinafter "Wetland" or "facility") that provides water treatment to the Landfill in Fayette County, Kentucky.
3. LFUCG holds Kentucky Pollutant Discharge Elimination System (KPDES) Permit No. KY0092100 for discharge from the facility, which became effective on February 1, 2006. LFUCG submitted an application for renewal of its permit on August 3, 2010.

4. An authorized representative of the Cabinet conducted a file review of LFUCG's Discharge Monitoring Reports for the time period of February of 2008 through December of 2011, and identified violations of KRS Chapter 224 and the regulations promulgated pursuant thereto at the facility described above. The Facility was issued Notices of Violation (NOV's) on the following dates: June 3, 2008; August 8, 2011; December 9, 2011; and March 22, 2012. NOV's were issued for violations of 401 KAR 5:065 Section 2(1)(a) for failure to comply with LFUCG's permit limit for Total Suspended Solids (TSS); Total Recoverable Iron (Fe); and Total Ammonia Nitrogen (TAN).

5. Representatives of LFUCG attended an administrative conference at the Cabinet's Division of Enforcement (DENF) in Frankfort, Kentucky on March 22, 2012. LFUCG represents to DOW that major modifications to the existing facilities are planned in order to address the violations described above. LFUCG admits to all the violations described above and agrees to the entry of this Agreed Order to resolve the violations.

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

REMEDIAL MEASURES

6. LFUCG shall perform the following remedial measures by the dates specified herein:
- A. At all times, LFUCG shall report to the Cabinet all spills, bypass discharges, upset condition discharges or the releases of substances from its facility which would result in or contribute to the pollution of the waters of the Commonwealth, including emergency and accidental releases, in accordance with KRS 224.01-400, 401 KAR 5:015, and 401 KAR 5:065. LFUCG shall make its initial report of the above

discharges or releases to the Division of Water (DOW) Frankfort Regional Office 502-564-3358, during normal work hours, the Cabinet's 24-hour notification number, 800-928-2380 or 502-564- 2380 or electronically through the Cabinet's E-Notification System;

- B. LFUCG shall submit a Corrective Action Plan (CAP) to the Cabinet for review and acceptance. The CAP shall identify the major modifications to its existing facilities necessary to ensure compliance with the facility permit limits, including but not limited to limits for Total Suspended Solids (TSS), Total Recoverable Iron (Fe), and Total Ammonia Nitrogen (TAN) at the facility. Upon written notification that the Cabinet accepts the CAP, LFUCG shall immediately begin implementation of the CAP. If the Cabinet does not accept the CAP, LFUCG has thirty (30) days from the date of written notification by the Cabinet to submit an amended CAP. If LFUCG has received no response from the Cabinet within thirty (30) days of the Cabinet's receipt of the CAP, such plan shall become effective upon the expiration of that thirty (30) day period. On June 14, 2012, LFUCG submitted a CAP to DENF for review and acceptance which was approved on August 16, 2012.
- C. By July 1, 2013, LFUCG shall complete the implementation of the approved CAP to modify operations associated with the discharges of TSS, Fe, and TAN that are the subject of the NOV's issued to LFUCG and are identified in paragraph 4 above.
- D. By July 1, 2014, LFUCG shall be in full compliance with the terms and conditions of KRS 224, KAR Chapter 5, KPDES Permit No. KY0092100 and this Agreed Order.

E. All submittals from LFUCG required by the Agreed Order shall be submitted to:

Division of Enforcement
Attention: Director
300 Fair Oaks Lane
Frankfort, KY 40601

F. So long as the LFUCG is in compliance with the terms of this Agreed Order, the Cabinet will hold in abeyance enforcement action for failure to meet the permit limit for TSS, Fe, and TAN until the CAP implementation completion date of July 1, 2013. DENF reserves the right to pursue all other violation not subject to this Agreed Order.

G. The following conditions shall apply to the facility upon the execution of this Agreed Order and until such time that the DOW issues a new KPDES permit: 1) the daily maximum limit for TSS shall be set at 100 mg/l; 2) the daily maximum limit for Fe shall be set at 4 mg/l; and, 3) the monthly average limits for TSS, TAN, and Fe shall be suspended.

CIVIL AND STIPULATED PENALTIES

7. LFUCG is assessed a civil penalty in the amount of thirty five thousand dollars (\$35,000) for the violations described above. LFUCG shall pay the Cabinet five thousand dollars (\$5,000) of the civil penalty for the violations described in paragraph 4 above which shall be tendered by LFUCG to the Cabinet with the return of this signed Agreed Order. The remaining amount of the civil penalty is addressed in paragraph 11.

8. Following the CAP implementation completion date of July 1, 2013, and for a period

of one year thereafter, a stipulated penalty for violations may be assessed as follows:

- A. For each instance of exceedance of the permit effluent limit for TSS, Fe, and TAN a stipulated penalty in the amount of five hundred dollars (\$500) per violation may be assessed. This penalty is in addition to, and not in lieu of, any other penalty that could be assessed. The stipulated penalty will be waived upon termination of this Agreed Order, if LFUCG has complied with all requirements of this Agreed Order.

9. If LFUCG believes the request for payment of a stipulated penalty is erroneous or contrary to law, LFUCG may request a hearing in accordance with KRS 224.10-420(2). A request for hearing does not excuse timely payment of the penalty. If an order is entered pursuant to KRS 224.10-440 that excuses payment, the Cabinet will refund the payment. Failure to make timely payment shall constitute an additional violation.

10. Payment of a civil or stipulated penalty shall be by cashiers check, certified check, or money order, made payable to Kentucky State Treasurer and sent to the attention of Assistant Director, Division of Enforcement, Department for Environmental Protection, 300 Fair Oaks Lane, Frankfort, Kentucky 40601. Note "DOW 110265" on the instrument of payment.

SUPPLEMENTAL ENVIRONMENTAL PROJECT

11. In lieu of payment of the total amount assessed as a civil penalty in paragraph 7, above, LFUCG shall pay thirty thousand dollars (\$30,000) of the assessed civil penalty towards the implementation of a Supplemental Environmental Project (SEP) that will connect the LFUCG Police Canine Facility to the sanitary sewer owned and operated by LFUCG.

- A. LFUCG shall have one (1) year from the date of execution of this Agreed Order to implement and complete the above noted SEP.

- B. Upon completion of the SEP, LFUCG shall submit to the Division of Enforcement documentation certifying the completion of and invoices verifying the total expenditures by LFUCG for the completion of the SEP referenced above.

MISCELLANEOUS PROVISIONS

13. This Agreed Order addresses only those violations specifically described 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 LFUCG 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 right to order all necessary remedial measures, assess penalties for violations, or recover all response costs incurred, and LFUCG reserves its defenses thereto.

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

15. LFUCG waives its right to any hearing on the matters admitted herein. However, failure by LFUCG 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 Chapter 224, and the regulations promulgated pursuant thereto.

16. The Agreed Order may not be amended except by a written order of the Cabinet's Secretary or his designee. LFUCG 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.

17. The Cabinet does not, by its consent to the entry of this Agreed Order, warrant or aver in any manner that LFUCG's complete compliance with this Agreed Order 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 Agreed Order, LFUCG shall remain solely 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.

18. LFUCG 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, LFUCG shall remain fully responsible for payment of all civil penalties and response costs and for performance of all remedial measures identified in this Agreed Order.

19. The Cabinet agrees to allow the performance of the above-listed remedial measures, and payment of civil penalties by LFUCG to satisfy LFUCG's obligations to the Cabinet generated by the violations described above.

20. The Cabinet and LFUCG 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.

21. Compliance with this Agreed Order is not conditioned upon the receipt of any federal, state, or local funds.

22. 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 LFUCG is to take any action or cease any activity, and the Secretary enters the Agreed Order after that date, then LFUCG is nonetheless obligated to have taken the action or ceased the activity by the date contained in this Agreed Order.

TERMINATION

23. This Agreed Order shall terminate upon LFUCG's completion of all requirements described in this Agreed Order. LFUCG may submit written notice to the Cabinet when it believes all requirements have been performed. The Cabinet will notify LFUCG in writing of whether it intends to agree with or object to termination within sixty (60) days of such notice. The Cabinet reserves its right to enforce this Agreed Order, and LFUCG reserves its right to file a petition for hearing pursuant to KRS 224.10-420(2) contesting the Cabinet's determination.

AGREED TO BY:

Jim Gray, Mayor
Lexington Fayette Urban County Government

Date

APPROVAL RECOMMENDED BY:

Jeffrey A. Cummins, Director
Division of Enforcement

Date

Mary Stephens, Attorney Manager
Environmental Protection Legal Division
Water Legal Section

Date

C. Michael Haines, General Counsel
Energy and Environment Cabinet

Date

ORDER

Wherefore, the foregoing Agreed Order is entered as the final Order of the Energy and Environment Cabinet this ___ day of _____, 201__.

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 _____ day of _____, 201__.

Department of Environmental Quality
Attn: Susan Bush, Director
200 East Main Street
Lexington, KY 40507

and mailed, messenger to:

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

Mary Stephens, Attorney Manager
Water Legal Section
200 Fair Oaks Lane, 1st Floor
Frankfort, Kentucky 40601

DOCKET COORDINATOR