

July 15, 2003

**Certified Mail**  
**Return Receipt Requested**

Administrator  
U.S. Environmental Protection Agency  
401 M Street, SW  
Washington, DC 20460

Mr. James Palmer, Regional Administrator  
U.S. Environmental Protection Agency  
Region 4, Atlanta Federal Center  
61 Forsyth Street, SW  
Atlanta, GA 30303

Ms. Betsy Child, Commissioner  
TN Department of Environment and Conservation  
L&C Tower, 21<sup>st</sup> Floor  
401 Church Street  
Nashville, TN 37243-0435

Mr. Larry Fleming (or representative)  
President & Chief Executive Officer  
Knoxville Utilities Board  
P.O. Box 59017  
Knoxville, TN 37950-9017

**RE: 60 Day Notice of Intent to Sue for  
Violations of NPDES Permits:**  
TN0023582-Kuwahee STP;  
TN0021822-Loves Creek STP;  
TN0023574-Fourth Creek STP;  
TN0061743-East Bridge STP.

Dear Ms. Whitman, Ms. Child, Mr. Palmer and Mr. Fleming:

On behalf of the Tennessee Clean Water Network, Inc., (TCWN), a Tennessee non-profit corporation, domiciled in Knoxville, Knox County, Tennessee, you are each placed on notice pursuant to 33 USC § 1365(a) (1) and (b)(1)(A) [Clean Water Act, Section 505] that the Knoxville Utilities Board (KUB) has violated and continues to violate the following NPDES permits: TN0023582, allowing for the discharge of treated municipal wastewater into the Tennessee River at River Mile and at 646.2 (Ft. Loudoun Reservoir); TN0021822, allowing for the discharge of treated municipal wastewater into the Holston River at River Mile 5.0; TN0023574, allowing for the discharge of treated municipal wastewater into the Tennessee River at River Mile 640.0 (Ft. Loudoun Reservoir); and TN0061743, allowing for the discharge of treated municipal wastewater into the Holston River at River Mile 14.2. Each of these permits were issued to KUB on June 30, 2000 (referred to collectively herein as the “2000 permits”) and are conditioned with effluent limitations, monitoring requirements, reporting mandates, and other terms and conditions outlined generally in this notice.

### Tennessee Clean Water Network

Tennessee Clean Water Network is a statewide, Tennessee non-profit corporation, headquartered in Knox County, Tennessee, composed of approximately 171 individual and organizational members. The stated purpose of TCWN, as recorded in its by-laws, includes the “education and promotion of the protection, restoration and enhancement of Tennessee’s waters and the communities which depend upon them.”

At least 35 TCWN members live in KUB’s district boundaries and are directly injured and adversely affected by numerous sanitary sewer overflows (SSO’s) and bypasses of untreated or partially treated raw sewage into streams, creeks, and rivers in the Fort Loudoun watershed as well as into public streets, public parks, storm drains and other public areas from at least the year 2000 to the present day in 2003.

### Knoxville Utilities Board

KUB operates a system of utilities in Knoxville, Knox County, Tennessee, and in several surrounding counties. Included within the utility system is a sanitary sewer system (or waste water system) which KUB operates within a 200 square mile service area both inside and outside the city limits of Knoxville Tennessee. KUB has operated this wastewater system since 1987. Within its service area, KUB exclusively controls the provision of sewer services, and no other business or utility operates a sanitary sewer system.

The wastewater system is intended to receive raw sewage from homes and businesses in and around Knoxville and to convey these wastes to the four sewage treatment plants operated by KUB. After treatment of the sewage, the treated wastewater is discharged into the Tennessee and Holston Rivers. Because the system collects and conveys raw sewage, KUB’s system of pipes, conduits, mains, trunklines, and pumping stations should

be so constructed and maintained that raw sewage does not escape from the system before it reaches a particular treatment plant.

KUB is governed by a board of Commissioners composed of citizens. The present members of the Board of Commissioners are Gloria Ray (Chairman), Bruce Anderson, Samuel P. McKenzie, Thomas Jones, H. E. Berry, III, Sharon Miller, and George W. Archer. KUB is authorized and required to fix rates to be charged to industrial, commercial, and residential users for services rendered by the wastewater system. These rates are set by the Board of Commissioners. KUB's designated President and Chief Executive Officer is Larry Fleming, and its Senior Vice-President/Chief Operating Officer is Bill Elmore.

#### Existing NPDES 2000 Permits

KUB operates the wastewater system pursuant to 4 NPDES permits issued by the Tennessee Department of Environment and Conservation (TDEC) for the 4 drainage basins in which KUB operates: Kuwahee, Permit No. TN0023582, issued on June 30, 2000. This permit expired June 30, 2002; Fourth Creek, Permit No. TN0023574, issued on June 30, 2000. This permit expired June 30, 2002; Loves Creek, Permit No. TN0021822, issued on June 30, 2000. This permit expires on June 30, 2004; and East Bridge, Permit No. TN0061743, issued on June 30, 2000. This permit expires on January 31, 2004.

Each of these permits expressly prohibits “overflows”, “bypasses and washouts” as non-compliance.<sup>1</sup> (2000 Permits, Part II, C)

#### PART II, C. 3. Overflow

- a. “Overflow means the discharge of waste from any portion of the collection, transmission or treatment system other than through permitted outfalls...”
- b. “both sanitary sewer overflows and dry weather overflows are prohibited...”
- c. “the permittee shall operate the collection system so as to avoid overflows...”

#### PART II, C. 6. Bypass

- a. “Bypass is the intentional diversion of wastewater away from any portion of a treatment facility”

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<sup>1</sup> KUB has copies of all relevant permits identified in this notice; therefore, TCWN has used an ellipsis (...) where appropriate to reduce the length of this notice. Where an ellipsis is used, it is intended that the entire portion of the provision be included.

- b. "Bypasses are prohibited..."

PART II, C. 7. Washout

- a. "For domestic wastewater plants only, a washout shall be defined as loss of Mixed Liquor Suspended Solids (MLSS) of 30.00% or more. This refers to the MLSS in the aeration basin(s) only. ...a washout can be caused by aeration or from peak flows due to infiltration and inflow."
- b. "a washout is prohibited..."

Additionally, each permit sets forth in Part I precise effluent limitations for each pollutant discharged, the daily minimum percentage of removal of certain pollutants, the monitoring frequency, and provides explicitly: "note: the permittee shall achieve 85% of CBOD5 and TSS on a monthly average basis. The permittee shall report all instances of overflow and or bypasses." (40 CFR § 133.102(4).

Other 2000 permit provisions pertinent to this notice are:

1. PART I, A. Effluent Limitations and Requirements

"The wastewater discharge must be disinfected to the extent that viable coliform organisms are effectively eliminated..."

"There shall be no distinctly visible floating scum, or other matter contained in the wastewater discharge. ..."

"The wastewater discharge shall not contain pollutants in quantities that will be hazardous or otherwise detrimental to humans, livestock, wildlife, plant life, or fish and aquatic life in the receiving stream".

2. PART I, C. Definitions

"A dry weather overflow event is defined as one day or any portion of a day in which discharge of wastewater from the collection or treatment system other than through the permitted outfall occurs and is not directly related to a rainfall event. ..."

"A sanitary sewer overflow event is defined as an unpermitted discharge of wastewater from the collection or treatment system other than through the permitted outfall that is directly related to a rainfall event. ..."

3. PART I, D. 5. Bypass and Overflow Reporting

“A summary report of known or suspected instances of overflows in the collection system or bypass of wastewater treatment facilities shall accompany the Discharge Monitoring Report. The report must contain the date and duration of the instances of overflow and/or bypassing and the estimated quantity of wastewater discharged and/or bypassed.

...

“On the DMR the permittee must report the number of sanitary overflows, dry-weather overflows and in-plant bypasses separately.

...”

4. PART II, A. 4. Proper Operation and Maintenance

“The permittee shall at all time properly operate and maintain all facilities and systems (and all related appurtenances) for collection and treatment which are installed or used by the permittee to achieve compliance with the terms and conditions of this permit. Proper operation and maintenance also includes adequate laboratory and process controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems, which are installed by permittee only when the operation is necessary to achieve compliance with the conditions of the permit. ...”

5. PART II, C. 1. Effect of Non-Compliance

“All discharges shall be consistent with the terms and conditions of this permit. Any permit non-compliance constitutes a violation of applicable state and federal laws and is grounds for enforcement action, permit termination, permit modification or denial of permit reissuance.”

6. PART II, C. 5. Adverse Impact

“The permittee shall take all reasonable steps to minimize any adverse impact to the waters of Tennessee resulting from non-compliance of this permit...”

7. PART III, E. Placement of Signs

“Within sixty (60) days of the effective date of this permit, the permittee shall place and maintain a sign(s) at each outfall and any by-pass/overflow point in the collection system. For the purposes of this requirement any by-pass/overflow point that has discharged five (5) or more times in this last year must be so posted. ...”

## 8. PART III, F. Antidegradation

“Pursuant to the rules of the Tennessee Department of Environment Conservation, Chapter 1200-4-3-.06, titled ‘Tennessee Antidegradation Statement,’ and in consideration of the department’s directive in obtaining the greatest degree of effluent reduction achievable in municipal, industrial, and other waste, the permittee shall further be required, pursuant to the terms and conditions of this permit, to comply with the effluent limitations and schedules of compliance required to implement applicable water quality standards, with a State Water Quality Plan or other state or federal laws or regulations, or where practicable, to comply with a standard permitting no discharge of pollutants.”

### The KUB’s Appeal

On July 31, 2000, the KUB filed administrative “protective appeals” for all four permits and requested that the cases not be set for hearing before the Tennessee Water Quality Control Board. (Letter from Attorney for KUB to former Commissioner Hamilton, TDEC, dated July 31, 2000) Although the appeals objected to certain terms and conditions of all four NPDES permits, each appeal sought the same general result, that is:

- (1) to change and define “bypass” and the application of the redefinition of KUB’s treatment and collection system contrary to valid CWA regulations at 40 CFR § 122.41(m);
- (2) to redefine how KUB should report overflows of raw sewage from its collection and transmission system to the state avoiding language in the 2000 NPDES permits requiring them to officially report such overflows on official state Discharge Monitoring Reports;
- (3) to eliminate language in the 2000 NPDES permits imposing on KUB a moratorium on new or additional flows added “upstream of any point in the collection system, which experiences chronic overflows (greater than five events per year) or would otherwise overload any portion of the system.” Instead, KUB requested they be permitted to rehabilitate its collection system on its own time table regardless of the number or intensity of the overflows;
- (4) to retain the definition of “diversion” of sewage wastes allowed in KUB’s 1994 NPDES permits but removed by TDEC in the 2000 NPDES permits because of valid changes in CWA regulations which includes the term “diversion” in the definition of “bypass”. (40 CFR 122.41(m) and 40 CFR 122.4(a) and;
- (5) to oppose a new requirement for more accurate and reliable biomonitoring methodology

On June 30, 2003, two of the 2000 NPDES Permits that were appealed by KUB expired (Kuwahee and Fourth Creek), and those permits have not been reissued as of the date of this notice. Meanwhile, KUB failed to prosecute or pursue resolution on any of its appeals before the Tennessee Water Quality Control Board. No evidentiary hearing of any issue raised in those appeals has been heard by the State Board.

KUB submitted an application to renew the 2000 permits within the allotted 180 days prior to expiration [TAR 1200-4-1-.05, (June 2001 Revised, State NPDES Rules) ], and TDEC authorized KUB to continue discharging pursuant to the 2000 NPDES permits. The 2000 NPDES permits remain valid until reissued and expressly prohibit the bypass and the overflow of untreated sewage from any portion of the treatment facilities, and from any portion of the collection and transmission systems other than the permitted outfalls, except where the bypass or overflow meet all of the very specific criteria or conditions written into the permits. (Part II, C. 3 and 6, 2000 NPDES Permits)

#### State Commissioners Order and Civil Penalty Assessment and KUB's Administrative Appeal

On January 17, 2003, former TDEC Commissioner Milton Hamilton, Jr., issued a Commissioner's Administrative Order and Assessment to KUB as a result of multiple sanitary sewer overflow violations, and as a result of KUB's failure to eliminate those overflows. The Commissioner's order charged KUB with violating certain provisions of its 2000 NPDES permits and ordered KUB to correct those violations pursuant to a compliance order detailing increment dates for the completion of certain tasks. Finally, the Commissioner assessed a civil penalty pursuant to his authority to do so in the sum of Five Hundred Thousand Dollars (\$500,000.00) payable in increments.

On February 18, 2003, KUB by and through legal counsel appealed the Commissioner's order and assessment. KUB maintained that its appeal of the 2000 NPDES permits on July 31, 2000 automatically stayed those permits and reinstated the previously issued 1994 NPDES permits until all issues between it and TDEC were resolved. Moreover, KUB maintained that it was not required to comply with the 2000 NPDES permits due to the fact that those appeals were not yet resolved with TDEC nor yet presented to the Tennessee Water Quality Control Board for a hearing. In effect, KUB sought to take advantage of its intentional neglect to prosecute or pursue its appeals to an evidentiary hearing before the State Board, preferring instead to negotiate its demands while continuing to violate the 2000 NPDES permits.

Permittees of EPA-issued NPDES Permits may appeal provisions of those permits to the Federal Environmental Appeals Board (EAB). In that event, the effect of the contested permit conditions are stayed and are not subject to judicial review pending final agency action. Uncontested conditions or terms of the permit are not stayed and remain in full force and effect. [40 CFR §124.16,124.19, and 124.60]

The EPA code sections, however, expressly do not apply to state programs. There is no comparable regulation in Tennessee nor is there any comparable provision in the

Tennessee Water Pollution Control Act, TCA § 69-101 thru 69-3-137. TCA § 69-3-108(c) provides that any person “operating or planning to operate a sewage system shall file an application with the commissioner for a permit or, when necessary, for modification of such persons existing permit. Unless a person holds a valid permit, it is unlawful to operate a sewage system.”

TCA § 69-3-115(a)(2) explicitly provides how and in what matter a civil penalty is assessed by the commissioner. TCA § 69-3-116 provides that the commissioner may assess the liability of any polluter or violator for damages to the state resulting from that person’s pollution or violation or failure to comply with rules, regulations or water quality standards or permits. The section also provides for a manner in which an appeal from that assessment may be made.

None of the above cited sections of the Tennessee Water Pollution Control Act make any provision for an automatic stay of the permits or orders or assessments appealed from, nor is there any other section within the act that provides for a stay. Additionally, State rule 1200-4-1-.05(6), June, 2001(Revised) provides for the review of permit denials, terms and conditions but makes no provision for any stay of contested provisions of a permit or commissioner’s order or civil assessment. In fact, that regulation provides: “any action by the commissioner regarding a previously issued permit other than action regarding its reissuance, such as modification or revocation of an existing permit, may only be reviewed by the board.”

For the reasons stated, the 1994 permits are not in effect, having been replaced by validly issued 2000 NPDES Permits; and KUB’s July 31, 2000 appeal of all four permits did not stay the effectiveness of those permits, and they remain in full force and effect today.

#### KUB’s Violation of the Clean Water Act

The four KUB NPDES permits state that KUB must comply with all the conditions of the permit. Any non-compliance constitutes a violation of the Clean Water Act and Tennessee Law and is grounds for an enforcement action. 40 CFR § 122.41 The history of KUB’s operation of its collection system is replete with violations of the Clean Water Act, including the release of millions of gallons, of raw, untreated sewage that has been discharged onto private property, greenways, parks, streets and into streams, creeks, the storm drain system serving the City of Knoxville and into the Tennessee River. Such unpermitted and illegal discharges come from manholes, sewer pipes, pumping stations, and other parts of the KUB’s system. For each illegal discharge, large quantities of harmful pollutants, including but not limited to fecal coliform, are released. Such releases of raw sewage, without treatment and at locations other than permitted discharge points do not meet the effluent limitations and other standards established by the Clean Water Act nor the Tennessee Water Pollution Control Act. Sanitary sewer overflows are unpermitted discharges of pollutants, and violations of 33 USC § 1311(a)[CWA § 301].

- A. Attached herewith and made a part of this notice, as though stated verbatim herein, as Exhibit A, is a compilation of violations of NPDES Numbers TN0023582 (Kuwahee), TN0023574 (Fourth Creek), TN0021822 (Loves Creek) from November, 2002 through May, 2003 totaling an estimate of 218 violations of the numeric effluent limits stated in Part I of those three permits.
- B. The reported effluent violations shown in Exhibit A also reveal that the Kuwahee STP experienced a “washout” at least once in January, 2003, and at least once in February, 2003; that the Loves Creek STP experienced a “washout” at least once in February, 2003; and that the Fourth Creek STP experienced a “washout” at least once in January, 2003, and at least once in February, 2003.

A “washout” occurs when more wastewater (sewage) comes into a sewage treatment plant (STP) than the plant is designed to treat and discharge, resulting in the plant discharging high volumes of untreated and/or inadequately treated wastewater into the receiving river. “Washouts” are indicated in the months of January and February, 2003 where the TSS (Total Suspended Solids) daily minimum percentage of removal is less than the forty percent required by the permits; and where the TSS monthly average load or weekly average load greatly exceeds the allowed pounds per day (lbs/da.) Example is the Kuwahee STP in February, 2003).

“Washouts” are prohibited and each day of a “washout” is a separate violation of the NPDES permits. (NPDES Permits, Part II, No. 7.)

- C. Attached herewith and made a part of this notice, as though stated verbatim herein, as Exhibit B, is a compilation of overflow violations of NPDES permits: TN0023582 (Kuwahee), TN0023574 (Fourth Creek), TN0021822 (Loves Creek), and TN0061743 (East Bridge) from January, 2000 through May, 2003 totaling an estimate of 766 violations of Part II C. 3. of the NPDES Permits prohibiting overflows.
- D. Attached herewith and made a part of this notice, as though stated verbatim herein, as Exhibit C, is a compilation of violations of NPDES Numbers TN0023582 (Kuwahee) and TN0023574 (Fourth Creek) from January, 2000 through May, 2003 totaling an estimate of 198 violations of Part II C. 6. of the NPDES Permits prohibiting bypasses.
- E. KUB has failed and refused to comply with Part I, D. 5. of each of its NPDES permits which require and command it to report on its Discharge Monthly Reports (DMRs) the “number of Sanitary Sewer Overflows, Dry-Weather Overflows and In-Plant Bypasses separately.” KUB, in open defiance of this permit mandate, states at the bottom of each of its DMRs the following: “all bypasses are reported separately pending appeal of our NPDES permit.” This is a direct violation of the plain language of the permit in violation of 33 USC § 1318(a)(c)[Clean Water Act, § 308], 40 CFR § 122.41(l)(2)(4).

Additionally, as reported on Exhibit A, KUB has failed on frequent occasions to provide an explanation for TSS, BOD and other permit violations or explain preventive actions which it is required to do in Part I, D. 5. of its NPDES permits. 33 USC § 1318(a)(c) [Clean Water Act 308], 40 CFR 122.41(l)(6)(7)(8)

- F. In addition to the above violations, KUB has violated Part III, E. of the four NPDES permits which mandate KUB to “place and maintain sign(s) at each outfall and any bypass/overflow point in the collection system,” within 60 days of the effective date of the permit. For purposes of this requirement, the permit provides that “any bypass/overflow point that has discharged five (5) or more times in the last year must be so posted.”

In particular KUB has failed to post the required signs to warn the public of any pass/overflow points in the collection system, and, on the limited occasions where signs have been placed, these warning signs have been later removed by KUB. In the NPDES permits issued to KUB, it is not allowed to remove warning signage once the signs have been displayed.

- G. As a holder of a Tennessee NPDES permit, KUB is subject to the Tennessee Anti-Degradation Statement (TAR 1200-4-3-.06) which requires KUB as a permittee to comply with effluent limitations and schedules of compliance required to implement applicable water quality standards, to comply with other state or federal laws and regulations, and to comply with a standard permitting no discharge of pollutants. Part II, F.
- H. KUB has and violated and continues to violate its NPDES permits, Part A. 4. – Proper Operation and Maintenance - quoted in pertinent part on page 5 of this notice.
- I. In addition to the above-stated violations, at least four (4) streams and tributaries in the Fort Loudoun Reservoir Watershed (within KUB’s District) are listed as impaired for pathogens (fecal coliform bacteria) and other pollutants on Tennessee’s 2000 303(d) list and on Tennessee’s proposed 2002 303(d) list. Those streams are, First creek, Second creek, Third creek and Goose creek. On April 12, 2002, KUB was warned by certified letter from TDEC that the state agency was greatly concerned with KUB’s continued sanitary sewer overflows without a permit into these 303(d) listed streams in violation of the Clean Water Act.

In April, 2002, TDEC submitted Tennessee’s proposed fecal coliform TMDLs (Total Maximum Daily Loads) for the above stated 303(d) listed streams to the EPA for approval. The EPA approved those TMDLs on

February 11, 2003. Fecal coliform is an indicator of the presence of pathogens in a stream. 33 USC § 1313 (d) [CWA, Section 303(d)]

Quoting directly from the fecal coliform TMDL Paragraph 4 page 4 (TMDL, fecal coliform, Fort Loudoun Lake Watershed);

“Of the use classifications with numeric criteria for fecal coliform bacteria, the recreation use classification is the most stringent and will be used as the target level for TMDL development. The fecal coliform water quality criteria, for protection of the recreation use classification, is established by State of Tennessee water quality standards, Chapter 1200-4-3, General Water Quality Criteria, October, 1999. Section 1200-4-3-03(4)(f) states that the concentration of the fecal coliform group shall not exceed 200 per 100 ml as a geometric mean based on a minimum of ten samples collected from a given sample site over a period of not more than 30 consecutive days with individual samples being collected at intervals not less than 12 hours. In addition, the concentration of the fecal coliform group in any individual sample shall not exceed 1000 per 100 ml. The geometric mean standard is the target value for the TMDL’s.”

Multiple individual samples were taken at multiple monitoring sites on each of the four creeks in the Fort Loudoun Watershed and the data collected showed that the individual samples exceeded 1000 counts/100 ml. maximum at all sites.

The TMDL included a source assessment and extensive modeling which resulted in the conclusion that direct inputs of fecal coliform bacteria from direct sources such as leaking sewer collection lines, failing septic systems, illicit discharges of fecal coliform bacteria, and animal excess to streams, have a significant impact on bacteria loading in the watershed (page TMDL, page 11).

Paragraph 9.3 of the TMDL identified KUB as the primary wastewater control authority within the Fort Loudoun watershed impacted by the TMDL.

J. On May 20, 2003, an Administrative Agreed Order was filed with the Tennessee Secretary of State for resolution of the TDEC Commissioner’s Order and Assessment dated January 17, 2003. The Agreed Order concludes that KUB violated its 2000 NPDES Permits, Part II, A. 4. and Part II, C. 3. c.; and the Tennessee Water Control Acts § 69-3-108(b)(1)(3)(6) and TCA 69-3-114(b) by allowing “ a large number of collection system overflows” in 2001, “including overflows into streams listed by the department as impaired due to high bacterial levels”(Agreed Order pages 3-5). Additionally, the Agreed Order details hundreds of overflows into public streets and public parks near public recreational

facilities. For calendar year 2002, KUB reported 252 overflows. (Agreed Order page 5)

The Agreed Order did not address significant number of the Clean Water Act sewage overflow violations already alleged by this letter outlined in Section C. Specifically, the Agreed Order addressed only a portion of the Sanitary Sewer Overflow violations highlighted by January 17, 2003 Order and Assessment. The Agreed Order did not address hundreds of Sanitary sewer overflows that occurred after November 30, 2002. Most importantly, the Agreed Order will not address hundreds of sanitary sewer overflows and bypasses that are highly likely to occur and continuing to occur in the present day.

Significantly, the Agreed Order includes provisions that essentially define what sanitary sewer overflows will be addressed, remediated, or otherwise eliminated by certain programmatic requirements such as the Sanitary Sewer Overflow Evaluation Report (SSOER).

First, within 12 months of May 20, 2003, KUB must identify and insure that it has adequate capacity to collect and transmit to its treatment plants additional sewage expected as a result of new sewer connections. Part of this program requires KUB to make sure additional flows are not connected to parts of the system which have experience “chronic overflows” unless or until some type of corrective action plan has been identified and completed. The applicable language in this portion of the Agreed Order states: *“For the purposes of this Section “chronic overflows” means greater than five overflows in any one location (one or more manholes that are collectively within 500 yards of each other) occurring due to the same cause during any 12 month period unless said overflow(s) is due to a storm event in excess of a 2-year 24-hour rainfall.”* (emphasis supplied) (Agreed Order, Section XIII, para. 6)

Second, beginning September 30, 2004, the Agreed Order requires KUB to update the Sanitary Sewer Overflow Evaluation Report, the basis for eliminating SSO violations, but permits KUB to exclude certain SSO occurrences: *“This SSOER and subsequent SSOERs shall include all previous overflow locations, unless there has been no overflows at that location for more than thirty-six (36) months unless said overflow was the result of a storm ever in excess of the 2-year 24 hour rainfall.”* (Agreed Order, Section XIII, para. 8)

The practical effect of the Agreed Order is not to require KUB to address, remediate, or otherwise fix all illegal sanitary sewer overflows.

This sanction of SSOs for an indefinite time is a radical departure from and a modification to the 2000 NPDES Permits, without public hearings, that expressly provide that *“the permittee shall operate the collection system so as to avoid overflows.”* Not

only is KUB allowed to discharge untreated raw sewage into the waters of the United States (and to the waters of Tennessee) without a permit in violation of 33 USC § 1311(a) [CWA, § 301], but also in violation of 33 USC § 1342(o)(1)(3)-Anti-backsliding [CWA, § 402]. See also, 40 CFR § 122.44(1).

K. In addition to failing to address all Clean Water Act violations for sanitary sewer overflows, the Agreed Order improperly attempts to resolve outstanding NPDES permit issues that remain under administrative appeal as of July 31, 2000 and completely fails to address other violations of the Clean Water Act outlined in this notice. Neither the original January 17, 2003 Order and Assessment nor the resulting Agreed Order address plant bypasses or washouts. Neither the original January 17, 2003 Order and Assessment nor the resulting Agreed Order addresses numeric effluent violations committed and being committed by KUB.

This document and attachments are notice to each of you that the following named organization intends to bring suit in the United States District Court for the Eastern District of Tennessee on behalf of their members seeking an Order and a Judgment to remedy the permit violations and the pollution to the Tennessee and Holston Rivers in violation of the Clean Water Act and the duly promulgated regulations cited herein upon the lapse of the prescribed 60 days required in 33 USC § 1365(b)(1).

Tennessee Clean Water Network,  
706 Walnut Street,  
Knoxville, Tennessee 37902.

Legal counsel for the named organization and their members is

Joe W. McCaleb  
Attorney at Law  
315 West Main Street, Suite 112  
Hendersonville, Tennessee 37075  
(615) 826-7245.

Should you have any questions about this notice or wish to discuss the issues, feel free to contact me.

Sincerely,

Joe W. McCaleb

cc: Tennessee Clean Water Network  
Michael S. Kelly, Law Director, City of Knoxville  
Paul Davis, Director, Division of Water Pollution Control  
Hiram G. Tipton, Esq.  
Barry Turner, Deputy Attorney General