



ORDER

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. HCV 00114 OF 2010

COPY RECEIVED
DENNETT & BERNIER-BRAVO
PER: [Signature]
DATE: 6/7/2010
TIME: 2:36

**IN THE MATTER of The Public Health Act
and The Public Health (Nuisance) Regulations**

AND

**IN THE MATTER of The National Water
Commission Act**

AND

**IN THE MATTER of the Natural Resources
Conservation Authority Act**

AND

**IN THE MATTER of the Civil Procedure
Rules 2002, part 56**

COPY RECEIVED
DIRECTOR OF STATE PROCEEDINGS
NAME: [Signature]
DATE: 6/7/10 TIME: 2:30

**N.W.C.
LEGAL DEPARTMENT**
RECEIVED 6-7-10
2:49 p.m.
[Signature]

BETWEEN

JAMAICA ENVIRONMENT TRUST

FIRST CLAIMANT

CAROL LAWTON

SECOND CLAIMANT

**(For himself and several residents
of the Harbour View Community)**

AND

**NATIONAL WATER
COMMISSION**

FIRST DEFENDANT

**KINGSTON AND ST. ANDREW
CORPORATION**

SECOND DEFENDANT

NATIONAL ENVIRONMENT
AND PLANNING AGENCY

THIRD DEFENDANT

NATURAL RESOURCES
CONSERVATION AUTHORITY

FOURTH DEFENDANT

THE KINGSTON AND ST. ANDREW
HEALTH DEPARTMENT

FIFTH DEFENDANT

OPEN COURT

**BEFORE THE HONOURABLE MRS JUSTICE SINCLAIR-HAYNES
JULY 6, 2010**

Upon the Fixed Date Claim Form dated February 9, 2010 coming on for Trial and after hearing Mr. Clyde Williams, Attorney-at-Law for the Claimants, Mr. Kevin Williams, attorney-at-law for the First Defendant, Ms. Rose Bennett and Ms. Sidia Smith, Attorneys-at-law for the Second Defendant, Ms. Stephany Orr, Instructed by the Director of State Proceedings, Attorney-at-Law for the Third, Fourth and Fifth Defendants.

And upon the Claimants not proceeding with the reliefs claimed against the Second Defendant and the reliefs of certiorari claimed against the Fifth Defendant and mandamus claimed against the Third and Fourth Defendants.

It is hereby ordered and declared by consent that:

1. The Kingston and St. Andrew Health Department acted in excess of its powers under the provisions of s.4 of The Public Health (Nuisance) Regulations, in first giving to the National Water Commission (NWC) by its Notice of February 13, 2009 six months to abate the discharge of untreated and/or partially treated sewage into the sea and on to land and the beach and secondly in extending the period to abate the said nuisance by a further six months.

2. The Kingston and St. Andrew Health Department acted unreasonably, in all the circumstances, when it granted to NWC a six months extension of the February 13, 2009 Abatement Notice.
3. The National Water Commission, in all the circumstances, has failed to perform its statutory duty to operate and maintain the Sewage Treatment Plant in Harbour View, St Andrew.
4. The National Water Commission is directed to:
 - (1) Subject to paragraphs 4(4) and 4(5) of this Order Take all necessary steps to prevent the release of untreated and/or partially treated sewage effluent into the sea and on to land and the beach from its Sewage Treatment Plant in Harbour View, St. Andrew.
 - (2) Take all necessary steps to clean up and repair the damage done to the environment consequent on the over twenty-five years of discharge of untreated and/or partially treated sewage from its Sewage Treatment Plant in Harbour View, St. Andrew.
 - (3) Submit by August 9, 2010 an Application to the National Environment and Planning Agency (NEPA) and the Natural Resources Conservation Authority (NRCA) for the relevant permits and licenses including a construction permit and a discharge licence.
 - (4) Construct, operate and maintain a sewage collection and treatment facility capable of managing the volume of

sewage effluent produced by the communities which are intended to be served by its Sewage Treatment Plant in Harbour View, St. Andrew and meet all applicable effluent standards set by NEPA and NRCA within 18 months of the granting of the relevant regulatory approvals.

- (5) Within 6 months of the relevant approvals to construct, in accordance with the timelines in the Schedule, a partial interim treatment facility in Harbour View, St. Andrew which meets an interim effluent standard set by the NEPA and the NRCA until the construction and commission of a new Sewage Treatment Plant for Harbour View and its environs.
- (6) Provide a progress Report to the Claimants every 42 days during the construction of the interim treatment facility with the first Report due on August 18, 2010; and to provide a progress report every 90 days (subject to commercial confidentiality) pertaining to the construction of the permanent sewage treatment plant for Harbour View and the surrounding communities with the first Report due on October 5, 2010.
- (7) Give a guided tour to the Claimants every 42 days during the construction of the interim treatment facility with the first tour to take place by August 18, 2010 and to give a guided tour every 90 days after the completion of the interim facility.

5. NEPA and the NRCA, in all the circumstances, failed in their statutory duty under the Natural Resources Conservation Authority Act to have served an enforcement notice on NWC requiring it to take steps to abate the discharge of untreated and/or partially treated sewage into the sea and on to land and the beach.
6. NEPA and the NRCA shall within a reasonable time, but no longer than 45 days, of receipt of the applications process NWC's Application for the relevant permits and licenses, provided the technical information submitted by the NWC meets the requirements of the technical team at NEPA.
7. The National Water Commission pays the costs of the Claimants to be agreed or taxed.
8. Liberty to Apply.

BY THE COURT

A handwritten signature in blue ink, appearing to be 'Q. L. L.', is written over a horizontal line.

JUDGE

SCHEDULE

Item	Activity	Schedule - Months																	
		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
1	Establish design framework, design parameters																		
1.1	Present to NEPA Concept, design framework, schedule	>>>																	
2	Phase 1 - Interim Treatment, AFPonds																		
2.1	Outline design, Cost estimate, land ID for procurement	>>>																	
2.2	Site clearance, Flow, WQ + Land Surveys, Designs Ph1	>>>	>>>																
2.3	NEPA Permit Submission		>																
2.4	Specifications, Procurement, Supply of Materials, liners etc	>>>	>>>	>>>															
2.5	Procurement of Civil Works, Installation, Commissioning			>>>	>>>	>>>	>>>												
3	Phase 2 - Secondary Treatment, TF																		
3.1	Outline design, Cost estimate, Design	>>>	>>>	>>>															
3.2	Specifications, Procurement, Supply of Equipment			>>>	>>>	>>>	>>>	>>>	>>>	>>>									
3.3	Procurement of Civil Works						>>>	>>>	>>>	>>>									
3.4	Procurement of Process, M+E, Works, Commissioning									>>>	>>>	>>>	>>>						
4	Phase 3 - Tertiary Treatment, Reedbeds and Disposal																		
4.1	Outline design, Cost estimate, Design									>>>	>>>								
4.2	Specifications, Procurement, Supply of Components											>>>	>>>	>>>					
4.3	Procurement of Civil Works												>>>	>>>	>>>	>>>	>>>	>>>	>>>
4.4	Procurement of Process, M+E, Works, Commissioning																>>>	>>>	>>>

Filed by Clyde Williams, of 34-36 Old Hope Road, 2nd Floor, Kingston 5, and www.cwilliamslaw.com, Attorney-at-Law for the Claimants whose address for service is that of their Attorney-at-Law. Telephone: 876-851-1490; fax: 876-622-6782;
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