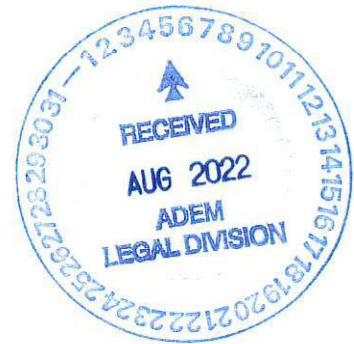


ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT



IN THE MATTER OF: )  
 )  
Guin Water and Sewer Board )  
Marion County, Alabama )  
 )  
PWSID No. AL0000924 )  
Permit No. 2016-675 )  
 )

Proposed  
CONSENT ORDER

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (“the Department”) and the Guin Water and Sewer Board (“the Permittee”) pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-17, as amended; the Alabama Safe Drinking Water Act, Ala. Code §§ 22-23-30 to 22-23-53, and the ADEM Administrative Code of Regulations (“ADEM Admin. Code”) promulgated pursuant thereto.

STIPULATIONS

1. The Permittee operates a “public water system” as defined at Ala. Code § 22-23-31, located in Guin, Marion County, Alabama. The Permittee’s public water system is a “Community Water System” as defined at Ala. Code § 22-23-31.
2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 through 22-22A-17, as amended.
3. Pursuant to Ala. Code § 22-22A-4(n), the Department is the state agency responsible for the promulgation and enforcement of drinking water regulations in accordance with the Federal Safe Drinking Water Act, 42 U.S.C. §§ 300f to 300j-27

Additionally, pursuant to Ala. Code § 22-23-49(2), as amended, the Department is authorized to administer and enforce the provisions of the Alabama Safe Drinking Water Act.

4. On May 8, 2016, the Department issued Water Supply Permit No. 2016-675 (hereinafter the "Permit") to the Permittee, which authorizes the operation of its "public water system" under certain terms, limitations, and conditions.

5. The Permit authorizes the operation of the Guin Water Treatment Plant, a one million gallon-per-day mechanical treatment plant that utilizes Purgatory Creek as its raw water source.

6. Special Condition No. 1 of the Permit requires that "An ADEM-certified operator of the appropriate grade must be on duty and in responsible charge of water treatment plants at all times plants are operating."

7. General Condition No. 2 of the Permit requires that "ADEM must be provided written notification of personnel changes which affect certification compliance within 30 days of the change."

8. ADEM Admin. Code r. 335-7-10-.02 requires that "Community and NTNC water systems shall employ operators certified in accordance with ADEM Division 10 regulations to be responsible for system or plant operations."

9. ADEM Admin. Code r. 335-10-1-.01 states that "The purpose of this Chapter is to protect the public health and welfare and prevent pollution by classifying all water and wastewater treatment plants, water distribution systems, and public wastewater collection systems, and by establishing a program for the certification of the competency of operators to operate such plants and systems."

10. ADEM Admin. Code r. 335-10-1-.03 classifies treatment facilities that utilize surface water sources as Grade IV surface water treatment plants.

11. ADEM Admin. Code r. 335-10-1-.04 requires that "All Grade IV surface water treatment plants must have a certified operator of the same grade present at the plant during all hours of operation."

#### DEPARTMENT'S CONTENTIONS

12. On March 31, 2022, the Department became aware that Guin Water Works and Sewer Board employs only one Grade IV water operator, and assigns non-certified individuals to operate the plant when the certified Grade IV water operator is not on duty.

13. On April 4, 2022, the Department mailed a letter to the Permittee requesting an accounting of all dates and times the water treatment plant was in operation and a Grade IV certified operator was not on duty and in responsible charge, for the period of April 4, 2020 through April 4, 2022.

14. On April 18, 2022, the Permittee provided copies of the operator log sheets for the Guin Water Treatment Plant for the period in question, along with a listing of dates and times that non-certified personnel operated the facility.

15. A review of the records provided by the Permittee reveals that beginning on November 6, 2020, the Permittee assigned non-certified individuals to operate its Grade IV water treatment plant at least one shift per day through April 5, 2022.

16. The Permittee failed to notify the Department in writing of personnel changes affecting its certification compliance within 30 days as required by General Condition No. 2 of the Permit.

17. Surface water treatment plants, such as the Guin Water Treatment Plant, are complex and require careful attention to ensure they are operating properly. Surface water sources tend to be more variable in quality than ground sources, and are subject to contaminants from upstream sources such as spills or upsets. A certified Grade IV water operator is the highest classification of drinking water operator in Alabama, and is deemed to have the minimum competency necessary to operate surface water treatment plants. Certified Grade IV operators can be reasonably expected to make the proper adjustments and/or discontinue operation in response to changing water quality or equipment failures.

18. On May 3, 2022, the Department received a letter from the Permittee outlining its plan to return to compliance. The plan includes:

- a. Hire additional, part-time certified Grade IV water operators;
- b. Contract with an operations company to provide additional certified Grade IV operators;
- c. Increase training of existing personnel; and,
- d. Increase efforts to recruit operator candidates.

19. The Department neither admits nor denies Permittee's contentions, which are set forth below. The Department has agreed to the terms of this Consent Order in an effort to resolve the alleged violations cited herein without the unwarranted expenditure of State resources in further prosecuting the above violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

### PERMITTEE'S CONTENTIONS

20. During the time period set forth in paragraph 15 above, Permittee was making efforts to hire new operators and to train and educate current employees for purposes of becoming operators certified in accordance with ADEM Division 10 regulations. Permittee's efforts to train and educate current employees were impacted by COVID 19 restrictions which prohibited the availability of in person education and training.

21. During the time period set forth in paragraph 15 above, Permittee verbally communicated its efforts to hire new operators and to educate and train current employees to representatives of the Department.

22. The Permittee's operator daily log sheets referenced in paragraph 14 above were maintained and kept by Permittee in the regular course of business and had been made available to representatives of the Department for regular inspections during the time period set forth in paragraph 15.

23. Because the Department provides certification for Grade IV operators, the Department would have knowledge of the level of certification, or lack thereof, of any employee identified on the operator daily log sheets which were inspected by the Department during the time period set forth in paragraph 15.

24. Permittee otherwise remained compliant with its Permit during the time period set forth in paragraph 15.

25. As of May 2, 2022, Permittee has entered into a contract with Clear Water Solutions for purposes of providing Permittee with Grade IV water treatment certified operators and Permittee has hired, on a part time basis, certified Grade IV operators from

outside water authorities to further ensure that Permittee maintains compliance with Permit requirements for operator certification. Permittee continues to educate and train current employees for purposes of obtaining Grade IV certifications and will continue to advertise for full time Grade IV operator positions. Permittee will continue to contract with Clear Water Solutions and will continue the part time employment of Grade IV operators from other water authorities so as to maintain Permit compliance.

26. Permittee neither admits nor denies the Department's contentions. Permittee consents to abide by the terms of this Consent Order and to pay the civil penalty assessed herein.

27. The Department and Permittee have agreed to the terms of this Consent Order in an effort to resolve the violations cited herein without the unwarranted expenditure of Permittee and State resources in further prosecuting and defending Permittee from the above alleged violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

#### PENALTY FACTORS

28. Pursuant to Ala. Code § 22-22A-5(18)c., as amended, in determining the amount of any penalty assessed in an order issued by the Department, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil

penalty assessed pursuant to this authority shall not exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the department shall not exceed \$250,000.00. Each day such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. **SERIOUSNESS OF THE VIOLATIONS AND BASE PENALTY:** The Department considered the general nature of each violation and any available evidence of irreparable harm to the environment or threat to the public. The Department does not allege that any evidence of any actual irreparable harm to the environment or to the public health as a result of the violations at issue. The Permittee assigned non-certified individuals to operate its water treatment plant in violation of its Permit, and the ADEM Administrative Code.

B. **THE STANDARD OF CARE:** The Permittee could have avoided the violations by retaining, hiring, or contracting with properly certified operators. In consideration of the standard of care manifested by the Permittee, the Department enhanced the penalty.

C. **ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:** The Department has estimated the avoided cost of employing certified operators. In consideration of the economic benefit, the penalty has been enhanced.

D. **EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATIONS UPON THE ENVIRONMENT:** The Department is unaware of any efforts by the Permittee to minimize or mitigate the effects of the violations upon the environment.

E. **HISTORY OF PREVIOUS VIOLATIONS:** The Permittee failed to monitor for nitrite in 2018. The Department has not enhanced the penalty as a result of this past violation.

Guin Water and Sewer Board  
 PWSID AL0000924  
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F. **THE ABILITY TO PAY:** The Permittee has not asserted an inability to pay the penalty; however, based upon the size of the water system the Department reduced the amount of the penalty.

G. The civil penalty is summarized in Attachment A.

### ORDER

THEREFORE, the Permittee, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to and believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Permittee (collectively "the Parties") agree to enter into this CONSENT ORDER with the following terms:

A. A. The Permittee shall pay to the Department a civil penalty in the amount of **\$150,000.00**. All penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check, with a notation for the Consent Order Number above, and in accordance with the following payment schedule:

Payment Number	Amount	Due Date
#1	\$12,500.00	October 15, 2022
#2	\$12,500.00	November 15, 2022
#3	\$12,500.00	December 15, 2022
#4	\$12,500.00	January 15, 2023
#5	\$12,500.00	February 15, 2023
#6	\$12,500.00	March 15, 2023
#7	\$12,500.00	April 15, 2023
#8	\$12,500.00	May 15, 2023
#9	\$12,500.00	June 15, 2023
#10	\$12,500.00	July 15, 2023
#11	\$12,500.00	August 15, 2023
#12	\$12,500.00	September 15, 2023
<b>TOTAL</b>	<b>\$150,000.00</b>	



1. In the event the Permittee fails to comply with this payment schedule or any other requirement(s) of the Order within the time provided, all assessed civil penalties shall immediately become due and payable.

2. The Department may file suit in the Circuit Court of Montgomery County, Alabama to collect the entire unpaid amount of said penalty if any payment becomes in default and is not made before 5:00 p.m. on the nineteenth (19<sup>th</sup>) day following a scheduled due date.

3. All payments shall be remitted to:

Office of General Counsel  
Alabama Department of Environmental Management  
P.O. Box 301463  
Montgomery, Alabama 36130-1463

4. The Permittee shall be liable for all costs and expenses, including reasonable attorney's fees, incurred by the Department to judicially enforce this agreement should such enforcement become necessary.

B. The Permittee shall immediately ensure its water treatment plant has a Grade IV water operator on duty and in responsible charge at all times the plant is operating.

C. Within 30 days of the issuance of this Consent Order, the Permittee shall submit to the Department a list of the Grade IV operators assigned to work at its treatment plant, along with a copy of the operator log book clearly indicating the operators on duty while the plant is in operation. If the Permittee utilizes a contract for operation, it shall include a copy of the contract that clearly indicates the responsibilities of the contractor and the Permittee to ensure the proper operation of its treatment plant.

D. The Permittee shall include a brief description of the violations cited in this Consent Order in its 2022 annual Consumer Confidence Report, which is due to the Department by July 1, 2023.

E. The Permittee shall comply with the terms, limitations, and conditions of the Permit each and every day hereafter until Permit expiration.

F. This Consent Order shall apply to and be binding upon both Parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the Party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the Party represented, and to legally bind such Party.

G. Subject to the terms of these presents and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the violations which are cited in this Consent Order.

H. The Permittee is not relieved from any liability if it fails to comply with any provision of this Consent Order.

I. For purposes of this Consent Order only, the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. In any action brought by the Department to compel compliance with the terms of this Agreement, the Permittee shall be limited to the defenses of *Force Majeure*, compliance with this Agreement and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of the Permittee, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have

been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of the Permittee) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information shall be submitted to the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control and without the fault of the Permittee, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

J. The sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future concerning the Permittee's public water system which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate, and the Permittee shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order if future orders, litigation or other enforcement action address new matters not raised in this Consent Order.

K. Final approval and issuance of this Order are subject to the requirements that the Department provide notice of proposed orders to the public, and that the public have at least thirty days within which to comment on the proposed Order.

L. This Consent Order shall be considered final and effective immediately upon signature of all Parties. This Consent Order shall not be appealable, and the Permittee does hereby waive any hearing on the terms and conditions of same.

M. This Consent Order shall not affect the Permittee's obligation to comply with any Federal, State, or local laws or regulations.

N. Should any provision of this Consent Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

O. Any modification of this Consent Order must be agreed to in writing signed by both Parties.

P. Except as set forth herein, this Consent Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve the Permittee of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

GUIN WATER AND SEWER  
BOARD



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Mr. Steve Lolley  
Chairman

Date: 8-3-22

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

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Lance R. LeFleur  
Director

Date: \_\_\_\_\_

**Attachment A**

**Guin Water & Sewer Board  
Guin, Marion County  
AL0000924**

Description	# of Violations	(A) Seriousness of Violation*	(B) Standard of Care*	(C) Previous Violations*
No certified operator on duty (Surface Water)	468	\$210,600.00	\$105,300.00	\$-
Failure to notify of staffing change (months)	16	\$1,800.00	\$900.00	\$-

Additional Adjustments due to negotiations, receipt of additional information, or public comment	
Mitigating Factors (-)	
Economic Benefit (+)	
Ability to Pay (-)	
Other Factors (+/-)	\$(87,100.00)
<b>Total Adjustments (+/-)</b>	<b>\$(87,100.00)</b>

\$212,400.00	\$106,200.00	\$0.00
Total (A)	Total (B)	Total (C)
Base Penalty Total		\$318,600.00
[Total (A) + Total (B) + Total		
Mitigating Factors (-)		
Economic Benefit (+)		\$93,600.00
Ability to Pay (-)		\$(175,100.00)
Other Factors (+/-)		
<b>INITIAL PENALTY</b>		<b>\$237,100.00</b>
Total Adjustments (+/-)		\$(87,100.00)
<b>FINAL PENALTY</b>		<b>\$150,000.00</b>

Footnotes

\*See the "Department's Stipulations" portion of the Order for a detailed description of each violation and the penalty factors