

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:)
)
The Water, Sewer, and Gas Board of the Town)
of Wedowee)
Wedowee, Randolph County, Alabama)
)
PWSID No. AL0001131)
Permit No. 2016-707)
)

**PROPOSED
CONSENT ORDER
No. XX-XXX-CDW**

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (“Department” or “ADEM”) and The Water, Sewer, and Gas Board of the Town of Wedowee 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 ("ASDWA"), Ala. Code §§ 22-23-30 to 22-23-53, as amended, and the ADEM Administrative Code of Regulations (“ADEM Admin. Code”) promulgated pursuant thereto.

STIPULATIONS

1. The Water, Sewer, and Gas Board of the Town of Wedowee (“Permittee”) operates a “public water system” as defined by Ala. Code § 22-23-31 located in Wedowee, Randolph County, Alabama. The Permittee’s public water system is a “Community Water System” as defined by 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 to 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 ASDWA.

4. On December 18, 2015, the Department issued Water Supply Permit No. 2016-707 (“Permit”) to the Permittee which authorizes the operation of its “public water system” under certain terms, limitations, and conditions.

5. ADEM Admin. Code r. 335-7-10-.06(1) requires that the Permittee submit a Monthly Operating Report (“MOR”) to the Department no later than the tenth of the month following the end of the required monitoring period and shall contain all daily monitoring results required by the Department. The Permittee has failed to submit timely MORs to the Department for the following monitoring periods:

Monitoring Period	Due Date	Receipt Date	Status
December 2018	January 10, 2019	October 24, 2019	Late
January 2019	February 10, 2019	October 24, 2019	Late
February 2019	March 10, 2019	October 24, 2019	Late
March 2019	April 10, 2019	October 24, 2019	Late
April 2019	May 10, 2019	October 24, 2019	Late
May 2019	June 10, 2019	October 24, 2019	Late
June 2019	July 10, 2019	October 24, 2019	Late
July 2019	August 10, 2019	October 24, 2019	Late
August 2019	September 10, 2019	October 24, 2019	Late
September 2019	October 10, 2019	October 24, 2019	Late
December 2019	January 10, 2020	February 12, 2020	Late
January 2020	February 10, 2020	June 11, 2020	Late
February 2020	March 10, 2020	June 11, 2020	Late
March 2020	April 10, 2020	June 11, 2020	Late
April 2020	May 10, 2020	June 11, 2020	Late
May 2020	June 10, 2020	June 11, 2020	Late
August 2020	September 10, 2020	September 18, 2020	Late
September 2020	October 10, 2020	December 22, 2020	Late
October 2020	November 10, 2020	December 22, 2020	Late
November 2020	December 10, 2020	December 22, 2020	Late

6. On August 13, 2019, the Department sent a Sanitary Survey letter to the Permittee which requested the submittal of overdue MORs for the months of January 2019 through August 2019, along with previously overdue reports from December 2017, July 2018, August 2018, and September 2018.

7. ADEM Admin. Code r. 335-7-2-.17 requires water systems utilizing surface water to conduct cryptosporidium, E. coli, and turbidity monitoring. The Department issued a non-compliance letter to the Permittee on December 10, 2019, for failure to collect and report results for cryptosporidium, E. coli, and turbidity samples for the months of April 2019 – November 2019.

8. The Permittee has a history of previous non-compliance including, but not limited to, the following:

- a. The Department issued a Notice of Violation (“NOV”) to the Permittee on October 20, 2017. The NOV cited the Permittee’s failure to submit MORs for the time period of January 2017 through September 2017.
- b. ADEM Admin. Codes rs. 335-7-2-.21(4), 335-7-2-.21(4)(a), and 335-7-2-.20(1)(d) state that any public water system which fails to perform required monitoring shall provide notification within one year of being notified of the violation and shall submit a certification to the Department within ten days of completion of the public notification. The Department issued an NOV to the Permittee on April 19, 2018. The NOV cited the Permittee’s failure provide the required public notice and certification to the Department for the March 2017 bacteriological monitoring violation.

9. The Department has agreed to the terms of this Consent Order in an effort to resolve the violations cited herein without the unwarranted expenditure of State resources in further

prosecuting 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

10. Pursuant to Ala. Code § 22-22A-5(18)c., as amended, in determining the amount of any penalty, 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. Attachment A to this Order identifies the portion of the penalty attributable to each factor. 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 Permittee failed to submit MORs in a timely manner per ADEM Admin. Code r. 335-7-10-.06(1), and failed to monitor as required per ADEM Admin. Code r. 335-7-2-.17.

B. THE STANDARD OF CARE: The Department considers the violations to be easily avoidable. 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 determined that failure to collect the samples required per ADEM Admin. Code r. 335-7-2-.17 and failure to have those samples analyzed by a laboratory conferred an economic benefit on the Permittee.

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 has a history of previous violations including late MORs, monitoring violations, and public notice violations. In consideration of such history, the Department has enhanced the civil penalty.

F. THE ABILITY TO PAY: The Permittee has not alleged an inability to pay the civil 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 it and believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Permittee ("Parties") agree to enter into this CONSENT ORDER with the following terms:

A. The Permittee shall pay to the Department a civil penalty in the amount of \$15,165 in settlement of the violations alleged herein. Payment shall be due within **forty-five (45) days** from the issuance date of this Consent Order. The penalty due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

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

Failure to pay the civil penalty pursuant to this Consent Order may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. The Permittee shall submit a written report to the Department detailing corrective actions that have been taken or that will be taken to prevent the compliance issues noted herein from occurring again, including action regarding management and operation of the system. The report shall be received by the Department no later than sixty (60) days after issuance of this Order. The Permittee shall complete implementation of the corrective actions no later than one-hundred and eighty (180) days after issuance of this Order.

C. 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 this Consent Order on behalf of the Party represented, and to legally bind such Party.

D. 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 cited in this Consent Order.

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

F. 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. The Permittee shall submit this information so that it is received by 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.

G. 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. The Permittee shall not object to such future orders, litigation or enforcement action based on the issuance of this

Consent Order if such future orders, litigation or other enforcement action addresses new matters not raised in this Consent Order.

M. 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.

N. 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.

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

P. 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.

Q. Any modifications of this Consent Order shall be agreed to in writing signed by both Parties.


R. 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.

THE WATER, SEWER, AND GAS
BOARD OF THE TOWN OF WEDOWEE

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

EXECUTED AND ISSUED:



Tim Coe
Chairman

Lance R. LeFleur
Director

Date: 1/13/2021

Date: _____

Attachment A

**The Water, Sewer, & Gas Board of the Town of Wedowee
Wedowee, Alabama
AL0001131**

Violation*	Number of Violations*	(A)	(B)	(C)
		Seriousness of Violation*	Standard of Care*	History of Previous Violations*
Failure to submit/late submittal of MOR	20	\$ 6,750.00	\$ 2,250.00	\$ 2,250.00
Failure to monitor for cryptosporidium, E. Coli, and turbidity	1	\$ 675.00	\$ 225.00	\$ 225.00
		\$7,425.00	\$2,475.00	\$2,475.00
		Total (A)	Total (B)	Total (C)
<div>Additional Adjustments due to negotiations, receipt of additional information, or public comment</div> <div><div>Mitigating Factors (-)</div><div>Economic Benefit (+)</div><div>Ability to Pay (-)</div><div>Other Factors (+/-)</div><div>Total Adjustments (+/-)</div></div> <div>\$0.00</div>		Base Penalty Total [Total (A) + Total (B) + Total (C)]		\$12,375.00
		Mitigating Factors (-)		
		Economic Benefit (+)		\$2,790.00
		Ability to Pay (-)		
		Other Factors (+/-)		
		INITIAL PENALTY		\$15,165.00
Total Adjustments (+/-)		\$0.00		
		FINAL PENALTY		\$15,165.00

Footnotes

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