

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:)

Town of Glen Allen)
Glen Allen, Fayette County, Alabama)

PWSID No. AL0000598)
Permit No. 2016-741)

DRAFT
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 Town of Glen Allen (“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 (“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 Permittee operates a “public water system” as defined at Ala. Code § 22-23-31, as amended, located in Fayette County, Alabama. The Permittee’s public water system is a “Community Water System” as defined at Ala. Code § 22-23-31, as amended.
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-26. 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 June 8, 2016, the Department issued Public Water Supply Permit No. 2016-741 (the “Permit”) to the Permittee authorizing the operation of a “public water system”.

DEPARTMENT'S CONTENTIONS

5. Pursuant to ADEM Admin Code r. 335-7-2-.12, community water systems are required to monitor for disinfection byproducts (DBPs) in the manner and according to the schedule set forth in the rule.

6. Pursuant to ADEM Admin Code r. 335-7-2-.12(a), beginning January 1, 2012, systems must comply with the maximum contaminant levels (MCLs) for total trihalomethane (TTHM) set forth in ADEM Admin. Code r. 335-7-2-.11(a).

7. ADEM Admin. Code r. 335-7-2-.12(a) further requires the Permittee to conduct DBP compliance monitoring at specific sites on a quarterly basis. The average for each sampling site is the summation of the sample results, divided by the number of quarterly samples for that particular sampling site. System compliance is based on a running annual average for each sampling site, and any site’s locational running annual average (LRAA) that exceeds the MCL will be a violation.

8. On December 31, 2019 consent order number 20-032-CDW was executed between the Permittee and the Department for violation of the MCL for TTHM during October 2018 – June 2019. The permittee was required to submit a corrective action plan (CAP) within sixty (60) days of execution of the order. The permittee was to implement the CAP upon acceptance by the

Department and comply with all provisions of ADEM Admin. Code r. 335-7-2-.12 no later than June 30, 2021.

9. A CAP was accepted by the Department on May 21, 2020, which outlined that the permittee would coordinate with the Winfield Water System to evaluate the source water and water treatment process, evaluate the operation of the Permittee’s distribution system, develop a routine flushing program, monitor tank levels, and evaluate valve configurations.

10. The Department has documented that the Permittee violated the MCL for TTHM during the October – December 2021 LRAA at the 19221 County Road 53 North site and the July – September 2021, October – December 2021, and the January – March 2022 LRAAs at the 90 County Road 73 site:

Location: 19221 County Road 53 North			
Quarter	Date	TTHM (mg/L)	LRAA (mg/L)
October - December 2020	11/13/2020	0.076	
January – March 2021	02/12/2021	0.046	
April - June 2021	05/14/2021	0.120	
July - September 2021	08/13/2021	0.047	0.072
October - December 2021	11/08/2021	0.110	0.081
January – March 2022	02/15/2022	0.037	0.079
		MCL	0.080

Location: 90 County Road 73			
Quarter	Date	TTHM (mg/L)	LRAA (mg/L)
October - December 2020	11/13/2020	0.120	
January – March 2021	02/12/2021	0.032	
April - June 2021	05/14/2021	0.091	
July - September 2021	08/13/2021	0.120	0.091
October - December 2021	11/08/2021	0.110	0.088
January – March 2022	02/15/2022	0.030	0.088
		MCL	0.080

11. 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.

PERMITTEE'S CONTENTIONS

12. The Permittee neither admits nor denies the Department's contentions but consents to abide by the terms of the Consent Order.

PENALTY FACTORS

13. 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 Permittee violated an ASDWA MCL.

B. **THE STANDARD OF CARE:** The Permittee could have implemented appropriate operational changes to reduce the TTHM levels below the MCL. 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 considered that the Permittee's noncompliance may have conferred an economic benefit upon the Permittee but is unable to estimate the economic benefit associated with the violations cited above, as the costs for compliance are not available.

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 violated the TTHM MCL during October 2018 – June 2019. In consideration of the history of previous violations by the Permittee, the Department enhanced the penalty.

F. **THE ABILITY TO PAY:** The Permittee has not asserted an inability to pay 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 it and believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Permittee (“the 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 **\$2,400.00**. 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	\$800.00	September 1, 2022
#2	\$800.00	December 1, 2022
#3	\$800.00	March 1, 2023
TOTAL	\$2,400.00	

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 fifth (5th) 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 prepare and submit to the Department a written Corrective Action Plan (CAP), signed and stamped by a professional engineer licensed by the State of Alabama, detailing the plan of action the Permittee will initiate to achieve and maintain compliance with its Permit. The CAP shall be submitted so that it is received by the Department no later than sixty (60) days after the effective date of this Consent Order.

C. Upon written acceptance of the CAP by the Department, the Permittee shall implement the provisions of the CAP immediately.

D. The Permittee shall prepare and submit to the Department Semiannual Progress Reports, signed and stamped by a professional engineer licensed by the State of Alabama, detailing the progress the Permittee has made toward achieving compliance with this Consent Order. The Reports shall be submitted so that they are received by the Department on June 30th and December 31st of each year until the Permittee has achieved compliance with all requirements of this Consent Order.

E. No later than December 31, 2023, the Permittee shall comply with all provisions of ADEM Admin. Code r. 335-7-2-.12.

F. The Permittee shall comply with all other terms, limitations, and conditions of the Permit immediately upon issuance of this Consent Order.

G. 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.

H. 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.

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

J. 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.

K. 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.

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.

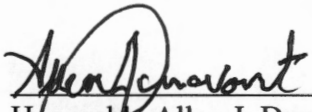
O. Any modifications of this Consent Order shall be agreed to in writing signed by both Parties.

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.

TOWN OF GLEN ALLEN

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT



Honorable Allen J. Dunavant
Mayor

EXECUTED AND ISSUED:

Lance R. LeFleur
Director

Date: 24 June 22

Date: _____

Attachment A

**Town of Glen Allen
Glen Allen, Fayette County
AL0000598**

Description	# of Violations	(A) Seriousness of Violation*	(B) Standard of Care*	(C) Previous Violations*
TTHM MCL Violation	4	\$1,200.00	\$600.00	\$600.00

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

\$1,200.00	\$600.00	\$600.00
Total (A)	Total (B)	Total (C)
Base Penalty Total		\$2,400.00
[Total (A) + Total (B) + Total		\$2,400.00
Mitigating Factors (-)		
Economic Benefit (+)		
Ability to Pay (-)		
Other Factors (+/-)		
INITIAL PENALTY		\$2,400.00
Total Adjustments (+/-)		\$-
FINAL PENALTY		\$2,400.00

Footnotes

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