

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:	)	Proposed
	)	
Abbeville Water Works & Sewer Board	)	CONSENT ORDER No.
Abbeville, Henry County, Alabama	)	16-XXX-CDW
	)	
PWSID No. AL0000657	)	
Permit No. 2015-549	)	
	)	

*PREAMBLE*

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter, "Department") and The Abbeville Water Works and Sewer Board (hereinafter, "Permittee") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), the Alabama Safe Drinking Water Act, Ala. Code §§ 22-23-30 to 22-23-53 (2006 Rplc. Vol.), the ADEM Administrative Code of Regulations (hereinafter, "ADEM Admin. Code r.") promulgated pursuant thereto, and the Federal Safe Drinking Water Act, 42 U.S.C. §§ 300f to 300j-26.

*STIPULATIONS*

1. The Permittee operates a "public water system" as defined at Ala. Code § 22-23-31 (2006 Rplc. Vol.), located in Abbeville, Henry County, Alabama. The Permittee's public water system is a "Community Water System" as defined at Ala. Code § 22-23-31 (2006 Rplc. Vol.).

2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 through 22-22A-16 (2006 Rplc. Vol.).

3. Pursuant to Ala. Code §§ 22-22A-4(n) (2006 Rplc. Vol.), 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) (2006 Rplc. Vol.), the Department is authorized to administer and enforce the provisions of the Alabama Safe Drinking Water Act, Ala. Code §§ 22-23-30 to 22-23-53 (2006 Rplc. Vol.).

4. The Permittee was issued Water Supply Permit No. 2015-549 (hereinafter the “Permit”) by the Department on August 25, 2015, which authorizes the operation of its “public water system.”

#### *DEPARTMENT'S CONTENTIONS*

5. ADEM Admin. Code r. 335-7-11-.05 requires the Permittee to monitor for lead and copper. ADEM Admin. Code r. 335-7-2-.05 requires the Permittee to sample for volatile organic chemicals (VOCs), and ADEM Admin. Code r. 335-7-2-.12 requires the Permittee to sample for disinfection by-products.

6. ADEM Admin. Code r. 335-7-11-.17 requires the Permittee to provide each customer with the results of any lead and copper monitoring conducted at their tap and education materials on lead and copper.

7. The Permittee failed to perform the required monitoring listed below:

- a. Lead and Copper – June thru September 2014
- b. VOCs for Well No. 3 – July thru September 2014
- c. First week of September 2014 – Stage 2 disinfection byproducts

d. Lead and Copper – June thru September 2015

8. A Notice of Violation (hereinafter “NOV”) was sent to the Permittee by the Department on January 22, 2015. The NOV addressed the failure to monitor for lead and copper, VOCs and stage 2 disinfection byproducts in 2014. It also required the Permittee to monitor for lead and copper during the months of June thru September 2015.

9. The Permittee completed the monitoring required by the NOV with the exception of the lead and copper for June – September of 2015. Sampling was conducted in February 2015. None of the sample results were above the lead or copper action levels. However, the monitoring was completed outside the compliance monitoring period.

10. After sampling in February 2015, the Permittee failed to provide each customer with a copy of their lead and copper monitoring results and education materials as required by ADEM Admin. Code r. 335-7-11-.17.

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.

*PENALTY FACTORS*

13. Pursuant to Code of Alabama (1975), § 22-22A-5(18)c., 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 be less than \$100.00 or 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 VIOLATION: The Permittee failed to complete the required monitoring for contaminants in their public water system (PWS) as required by ADEM Admin. Code r. 335-7-2-.05, ADEM Admin. Code r. 3357-2-.12, and ADEM Admin. Code r. 335-7-11-.05. The Permittee also failed to provide the customers a copy of their lead and copper monitoring results as required by ADEM Admin. Code r. 335-7-11-.17.

B. THE STANDARD OF CARE: In consideration of the standard of care manifested by the Permittee, the Department believes the civil penalty sought in this matter is sufficient and has not enhanced the penalty based on this factor.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Permittee realized an economic benefit by not having the expense of completing the required monitoring and public notifications.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: There are no known health effects as a result of the alleged violations.

E. HISTORY OF PREVIOUS VIOLATIONS: The Permittee has no history of violations prior to those noted herein.

F. THE ABILITY TO PAY: The Department has determined that the Permittee has an inability to pay some civil penalty. In consideration of the Permittee's inability to pay, the Department has decreased the penalty.

G. OTHER FACTORS: It should be noted that this Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty it believes is warranted in this matter in the spirit of cooperation and the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

H. 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 has considered the six penalty factors enumerated in AL. Code 22-22A-5(18)c., as amended, as well as the need for timely and effective enforcement, and the Department believes that the penalty assessed below and the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Permittee (hereinafter "the Parties") agree to enter into this CONSENT ORDER with the following terms:

A. That the Permittee agrees to pay to the Department a penalty of \$6,700 no later than 45 days after the effective date of this order.

B. That the Permittee agrees to conduct lead and copper monitoring as required by ADEM Admin. Code r. 335-7-11 during the month of June, 2016.

C. That the Permittee agrees to comply immediately with the provisions of ADEM Admin. Code r. 335-7-2 and ADEM Admin. Code r. 335-7-11 and shall continue to do so as long as it operates a public water system.

D. That the Permittee agrees that 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 and shall be remitted to:

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

E. That the Permittee agrees to comply with the terms, limitations, and conditions of the Permit each and every day hereafter until such time as all requirements of this Consent Order are satisfied.

F. The Parties agree that 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, the Parties agree that this Consent Order is intended to operate as a full resolution of the violations which are cited in this Consent Order.

H. The Permittee agrees that it 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 Permittee agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. The Permittee also agrees that 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 Parties agree that 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 facility 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. The Parties agree that 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.

L. The Parties agree that this Consent Order shall not affect the Permittee's obligation to comply with any Federal, State, or local laws or regulations.

M. The Parties agree that, 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.

N. The Parties agree that any modifications of this Consent Order must be agreed to in writing signed by both parties.

O. The Parties agree that, 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.

ABBEVILLE WATER WORK  
AND SEWER BOARD

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

  
\_\_\_\_\_

\_\_\_\_\_

Mr. Billy Helms, Chairperson

Lance R. LeFleur  
Director

Date: 5-9-16

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



**Attachment A**

**Abbeville Waterworks and Sewer Board  
Henry County  
AL0000657**

Violation*	Number of Violations*	(A)	(B)	(C)
		Seriousness of Violation*	Standard of Care*	History of Previous Violations*
Failure to Monitor and Report (M/R)	4	\$ 1,800.00		
Failure to Notify Customers of Results	1	\$ 450.00		

\$2,250.00	\$0.00	\$0.00
<b>Total (A)</b>	<b>Total (B)</b>	<b>Total (C)</b>
<b>Base Penalty Total</b> [Total (A) + Total (B) + Total (C)]		\$2,250.00
<b>Mitigating Factors (-)</b>		
<b>Economic Benefit (+)</b>		\$1,550.00
<b>Ability to Pay (-)</b>		
<b>Other Factors (+/-)</b>		\$12,400.00
<b>INITIAL PENALTY</b>		\$16,200.00
<b>Total Adjustments (+/-)</b>		-\$9,500.00
<b>FINAL PENALTY</b>		\$6,700.00

**Additional Adjustments due to negotiations, receipt of additional information, or public comment**

<b>Mitigating Factors (-)</b>	
<b>Economic Benefit (+)</b>	
<b>Ability to Pay (-)</b>	-\$9,500.00
<b>Other Factors (+/-)</b>	
<b>Total Adjustments (+/-)</b>	-\$9,500.00



Footnotes

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