

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:)

**City of East Brewton Water & Sewer Board)
East Brewton, Escambia County, AL)**

**PWSID No. AL0000558)
PERMIT NO. 2016-813)**

Unilateral Order No. 20-XXX-DW

FINDINGS

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 (“ASDWA”), Ala. Code §§ 22-22-1 to 22-22-14, as amended, and the regulations promulgated pursuant thereto, the Alabama Department of Environmental Management (“the Department”) makes the following FINDINGS:

1. The City of East Brewton Water and Sewer Board (“the Permittee”) operates a “public water system” as defined at Ala. Code § 22-23-31, as amended, located in East Brewton, Escambia 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 to 22-22A-17, as amended.

3. Pursuant to Ala. Code § 22-22A-4(n), as amended, 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. In addition, pursuant to Ala. Code § 22-23-49(2), the Department is authorized to administer and enforce the provisions of the ASDWA.

4. On August 12, 2016, the Department issued Water Supply Permit No. 2016-813 (“the Permit”) to the Permittee, which authorizes the operation of its “public water system” under certain terms, limitations, and conditions.

5. Pursuant to ADEM Admin Code r. 335-7-14-.03(1), “An existing community water

system shall distribute its first Consumer Confidence Report (CCR) by July 1, 2000. Subsequent reports shall be delivered by July 1 annually thereafter. The first CCR shall contain data collected during or prior to calendar year 1999. Each CCR thereafter shall contain data collected during, or prior to, the previous calendar year.”

6. The Permittee furnished a calendar year 2018 CCR to its customers on September 11, 2019, after the required date of July 1, 2019.

7. Pursuant to ADEM Admin Code r. 335-7-14-.07(1), “Each system shall deliver a copy of its CCR and certification form to the Department no later than July 1 of each year for the previous calendar year's information.”

8. The Permittee furnished a copy of its CCR and the certification form to the Department on October 29, 2019, after the required date of July 1, 2019.

9. Pursuant to ADEM Admin. Code r. 335-7-2-.20(1)(a), “Except where a shorter reporting period is specified in these regulations, the supplier of water shall report to the Department the results of any test, measurement, or analysis within the first 10 days following the month in which the result is received or the first 10 days following the end of the required monitoring period as stipulated by the Department, whichever is shortest.”

10. The bacteriological samples for the monitoring period of November 1 – 30, 2018, were due to the Department by December 10, 2018, but were not received by the Department until December 20, 2018.

11. 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. 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 that such violation continues shall constitute a separate violation. In arriving at this civil penalty (summarized in Attachment A), 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 considers the Permittee's failure to provide its customers with a timely CCR report to be a serious violation.

B. **THE STANDARD OF CARE:** The violations noted are reporting violations and could have easily been avoided. 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 delayed compliance may have conferred an economic benefit upon the Permittee; however, any benefit should have been minimal.

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 was issued a consent order (18-022-CDW) on December 13, 2017 for lack of a certified operator, late MORs and various other 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

Based on the foregoing FINDINGS and pursuant to Ala. Code §§ 22-22A-5(10), 22-22A-5(12), 22-22A-5(18), and 22-22-9(3)(i), as amended, it is hereby ORDERED:

A. The Permittee shall pay to the Department a civil penalty in the amount of \$7,920.00. All payments due pursuant to this Unilateral Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check, with a notation for the Unilateral Order No. above, and in accordance with the following payment schedule:

Payment Month	Payment Amount
Month 1	\$660.00
Month 2	\$660.00
Month 3	\$660.00
Month 4	\$660.00
Month 5	\$660.00
Month 6	\$660.00
Month 7	\$660.00
Month 8	\$660.00
Month 9	\$660.00
Month 10	\$660.00
Month 11	\$660.00
Month 12	\$660.00
TOTAL	\$7920.00

B. All penalties due pursuant to this 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

C. The Permittee shall provide notice of these violations in the calendar year 2019 Consumer Confidence Report (CCR) to be completed and provided to its customers and the Department no later than July 1, 2020. The notice shall include the following language, "Our water system failed to meet its calendar year 2018 CCR requirements, and we failed to report our bacteriological test results for November, 2018 in a timely manner. These violations resulted in a unilateral order issued by ADEM and a penalty assessed in the amount of \$7,920.00."

D. No later than 45 days after the issuance of this Order, the Permittee shall submit a corrective action plan (CAP) to the Department. The CAP shall include a contact person and contact information (name, telephone number, mailing address, email address) for issues involving drinking water compliance, and the steps the Permittee will be taking to ensure compliance with the CCR requirements.

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

F. For purposes of this 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 Order, the Permittee shall be limited to the defenses of *Force Majeure*, compliance with this Order 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 Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, or failure to obtain federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline shall 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. This Order shall not affect the Permittee's obligation to comply with any Federal, State, or local laws or regulations.

H. 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.

I. Should any provision of this 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.

J. Except as otherwise set forth herein, this 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.

K. Failure to comply with the provisions of this Order shall constitute cause for commencement of legal action by the Department against the Permittee for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this _____ day of _____, _____.

Lance R. LeFleur
Director
Alabama Department of Environmental Management
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Montgomery, AL 36110-2059
(334) 271-7700