

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:
Castleberry Water System
Castleberry, Conecuh County, Alabama
PWSID No. AL0000337
Permit No. 2017-545

Proposed
CONSENT ORDER No.
19-XXX-CDW

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management ("Department") and Castleberry Water System ("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, as amended ("ASDWA"); 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(11), as amended, located in Castleberry, Conecuh County, Alabama. The Permittee's public water system is a "Community Water System" as defined at Ala. Code § 22-23-31(12), 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 November 15, 2016, the Department issued Water Supply Permit No. 2017-545 (“the Permit”) to the Permittee, which authorizes the operation of its “public water system” under certain terms, limitations, and conditions.

*DEPARTMENT'S CONTENTIONS*

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 failed to furnish a CCR to its customers for calendar year 2018 by 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 failed to furnish a copy of its CCR and the certification form to the Department by the required date of July 1, 2019.

9. Pursuant to ADEM Admin Code r. 335-7-11-.17(1) “Water systems shall provide each customer with the results of any lead and copper monitoring conducted at the customer’s tap. These results shall be provided within 30 days of receipt of the results by the water system”.

10. Pursuant to ADEM Admin Code r. 335-7-11-.18(8)(b) “ Each water system shall mail a sample copy of the consumer notification of tap results to the Department along with a certification that the notification has been distributed in a manner consistent with this chapter. The sample copy and certification shall be submitted to the Department within 3 months following the end of the monitoring period.”

11. For the monitoring period ending September 30, 2018, the Permittee collected its lead and copper samples on August 22, 2018, and reported the results on September 21, 2018. It failed to provide consumer notification required by ADEM Admin Code r. 335-7-11-.17(1) until March 11, 2019, and failed to provide the sample copy and certification required by ADEM Admin Code r. 335-7-11-.18(8)(b) until April 15, 2019.

12. 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.

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: 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 and timely lead and copper tap sample results to be serious violations.

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 does not have a history of previous violations.

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.

*PERMITTEE'S CONTENTIONS*

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

**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 Ala. 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 ("the Parties") agree to enter into this Consent Order with the following terms:

A. The Permittee shall pay to the Department a civil penalty of \$5,400 no later than forty-five days after issuance of this Consent Order. 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

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 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 also failed to timely report a lead and copper monitoring violation. These violations resulted in an ADEM consent order, and a \$5,400 penalty was issued.”

C. No later than 45 days from the issuance of this Consent Order, the Permittee will prepare its 2018 CCR, distribute the 2018 CCR to its customers, and submit a copy of the CCR with certification form to the Department, in compliance with the provisions of ADEM Admin. Code r. 335-7-14.

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

E. 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.

F. Subject to the terms agreed to by the Parties of this Consent Order 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.

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

H. 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.

I. *Force Majeure*: 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.

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. 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.

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

M. Final approval and entry into this Consent 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 Consent Order.

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

P. Not a Permit Modification: , 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.

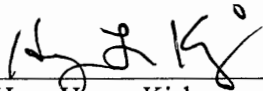


Executed in duplicate, with each part being an original.

CASTLEBERRY WATER SYSTEM

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

EXECUTED AND ISSUED:

  
\_\_\_\_\_  
Hon. Henry Kirksey  
Mayor

\_\_\_\_\_  
Lance R. LeFleur  
Director

Date: 10-31-19

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

**Attachment A**

**Castleberry Water System  
Castleberry, Conecuh County  
PWSID AL0000337**

Violation*	Number of Violations*	(A)	(B)	(C)
		Seriousness of Violation*	Standard of Care*	History of Previous Violations*
Failure/late submittal of CCR and/or CF	1	\$ 3,000.00	\$ 1,500.00	
Failure to monitor/report properly	1	\$ 600.00	\$ 300.00	

\$3,600.00	\$1,800.00	\$0.00
<b>Total (A)</b>	<b>Total (B)</b>	<b>Total (C)</b>
<b>Base Penalty Total</b>		<b>\$5,400.00</b>
[Total (A) + Total (B) + Total (C)]		
<b>Mitigating Factors (-)</b>		
<b>Economic Benefit (+)</b>		
<b>Ability to Pay (-)</b>		
<b>Other Factors (+/-)</b>		
<b>INITIAL PENALTY</b>		<b>\$5,400.00</b>

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

Mitigating Factors (-)	
Economic Benefit (+)	
Ability to Pay (-)	
Other Factors (+/-)	
<b>Total Adjustments (+/-)</b>	<b>\$0.00</b>



<b>Total Adjustments (+/-)</b>		<b>\$0.00</b>
<b>FINAL PENALTY</b>		<b>\$5,400.00</b>

Footnotes

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