

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:	)	Proposed
	)	
Town of Triana Water Works	)	CONSENT ORDER No.
Triana, Madison County, Alabama	)	19-XXX-CDW
	)	
PWSID No. AL0000905	)	
Permit No. 2016-769	)	

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter “Department”) and the Town of Triana Water Works (hereinafter “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 (hereinafter “ASDWA”); and the ADEM Administrative Code of Regulations (hereinafter “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 Triana, Madison 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 August 15, 2016, the Department issued Water Supply Permit No. 2016-769 (hereinafter the “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-.02 requires community water systems to employ operators certified in accordance with ADEM Division 10 regulations to be responsible for system operations. In addition, the Permit requires that the Permittee notify the Department, in writing, within thirty days of any personnel changes, which affect certification compliance. The Permittee has continued to operate without a certified operator since February 1, 2019.

6. The Department issued a Notice of Violation (hereinafter “NOV”) to the Permittee on March 21, 2019, for failure to employ a certified water operator. Additionally, the Department notified the Permittee in the May 1, 2019, annual inspection letter of the Permittee’s failure to employ a certified water operator.

7. ADEM Admin. Code r. 335-7-10-.06(1) requires that the Permittee submit a MOR to the Department no later than the tenth of the following month. A review of the Permittee’s records indicates that the Permittee failed to timely submit MORs for the following months:

<b>Report Month</b>	<b>Report Due Date</b>	<b>Report Receipt Date</b>
June 2018	July 10, 2018	July 11, 2018
October 2018	November 10, 2018	November 11, 2018
November 2018	December 10, 2018	December 11, 2018
May 2019	June 10, 2019	June 13, 2019

8. ADEM Admin. Code r. 335-7-2-.12(a)3. requires the Permittee to monitor for disinfection by-products (hereinafter “DBP”) according to the dates listed in the monitoring plan. Additionally, ADEM Admin. Code r. 335-7-2-.12(a)8. states “If a system fails to collect any required sample, the system has incurred a monitoring violation. The system will receive a monitoring violation for each quarter in which the missed monitoring result would have been used to determine compliance.” According to the Permittee’s approved sampling plan, a DBP sample was required the week of July 10-16, 2017; however, the samples were collected the week of July 17-23, 2017. This initial quarterly monitoring violation led to monitoring violations for that quarter and three subsequent monitoring periods, as indicated in the table below.

<b>Approved Sample Week</b>	<b>Sample Collection Date</b>	<b>Initial Monitoring Period</b>	<b>Subsequent Monitoring Periods</b>
July 10-16, 2017	July 19, 2017	July-September, 2017	October-December, 2017; January-March, 2018; April-June, 2018
January 8-14, 2018	January 15, 2018	January-March, 2018	April-June, 2018; July-September, 2018; October-December, 2018
January 14-20, 2019	January 10, 2019	January-March, 2019	April-June, 2019; July-September, 2019; October-December, 2019
July 8-14, 2019	Samples were not collected	July – September, 2019	October – December, 2019; January – March, 2020; April – June, 2020

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.

10. 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 Permittee failed to monitor properly and failed to employ a certified operator and failed to submit MORs in a timely manner.

B. THE STANDARD OF CARE: The Permittee could have easily avoided the violations. 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 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 has a history of previous violations. In consideration of such history of previous violations, the Department enhanced the penalty.

F. THE ABILITY TO PAY: The Permittee alleged an inability to pay the civil penalty. Based on information provided by the Permittee, the Department has adjusted the amount of 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 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 (hereinafter collectively “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 Seven thousand and no/100ths (\$7,000.00) 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. Within forty-five (45) days of issuance of this Consent Order, the Permittee shall submit a written report to the Department detailing corrective action, including action regarding management and operation of the system, taken/to be taken to prevent the compliance issues noted herein from occurring again.

C. Within forty-five days of issuance of this Consent Order, the Permittee shall employ a certified water operator and submit to the Department an executed contract between the Permittee and its certified operator, outlining respective duties of the Permittee and its certified operator. This contract shall include, but not be limited to, the following:

1. Sampling and recording daily free chlorine residual at a maximum DBP site.
2. Recording master meter readings at all points of connections.
3. Sampling monthly bacteriological contaminants at the sites included in the Bacteriological Sample Site Plan.

4. Sampling quarterly DBPs at the sites and dates included in the DBP Monitoring Plan.
5. Sampling every three years Lead and Copper contaminants at the sites and dates included in the Lead and Copper Plan.
6. Submitting each MOR via the eDWRS within ten calendar days following the end of the month.
7. A statement as to which of the parties is responsible for performing sampling.
8. A statement as to which of the parties is responsible for reporting the required data to the Department.

D. Within forty-five (45) days of issuance of this Consent Order, the Permittee shall begin to prepare and submit Quarterly Progress Reports, signed by the certified water operator, detailing the progress the Permittee has made towards achieving compliance with this Consent Order. The initial report shall be submitted so that they are received by the Department on October 10, 2019 for the July 1 – September 30, 2019 monitoring period. Subsequent reports shall be submitted so that they are received by the 10<sup>th</sup> day following the end of the previous quarter and each year until the Permittee has achieved compliance with all requirements of this Consent Order.

E. Within three hundred sixty-five (365) days of issuance of this Consent Order, the Permittee shall submit to ADEM confirmation of its attendance of board member training offered by Alabama Rural Water Association (ARWA), Alabama Water Wastewater Institute (AWWI), or similar training from a reputable water association, college, or university.

F. The Permittee shall comply with the terms, limitations, and conditions of the Permit each and every day hereafter until Permit expiration.

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

H. 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.

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. 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.

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, 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.

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. 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 to comment on the proposed Consent Order.

O. 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.

P. Any modification of this Consent Order must be agreed to in writing signed by both Parties.

Q. 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 TRIANA  
WATER WORKS



Hon. Mary Caudle  
Mayor

Date: 09-16-2019

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

EXECUTED AND ISSUED:

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Lance R. LeFleur  
Director

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

**Attachment A**

**Triana Water Works  
Triana, Madison County  
PWSID AL0000905**

Violation*	Number of Violations*	(A)	(B)	(C)
		Seriousness of Violation*	Standard of Care*	History of Previous Violations*
Failure to monitor properly	9	\$ 3,600.00	\$ 3,600.00	\$ 2,400.00
Failure to submit/late submittal MOR	4	\$ 1,300.00	\$ 1,300.00	\$ 1,000.00
Failure to employ certified operator	1	\$ 10,000.00	\$ 10,000.00	\$ 5,000.00

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

Mitigating Factors (-)	
Economic Benefit (+)	
Ability to Pay (-)	-\$31,200.00
Other Factors (+/-)	
<b>Total Adjustments (+/-)</b>	<b>-\$31,200.00</b>

\$14,900.00	\$14,900.00	\$8,400.00
<b>Total (A)</b>	<b>Total (B)</b>	<b>Total (C)</b>
<b>Base Penalty Total</b> [Total (A) + Total (B) + Total (C)]		\$38,200.00
<b>Mitigating Factors (-)</b>		
<b>Economic Benefit (+)</b>		
<b>Ability to Pay (-)</b>		
<b>Other Factors (+/-)</b>		
<b>INITIAL PENALTY</b>		\$38,200.00
<b>Total Adjustments (+/-)</b>		-\$31,200.00
<b>FINAL PENALTY</b>		\$7,000.00

Footnotes

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