

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:)	Proposed
)	
Clay County Water Authority)	CONSENT ORDER No.
Lineville, Clay County, Alabama)	19-XXX-CDW
)	
PWSID No. AL0000266)	
Permit No. 2016-648)	
)	

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter “Department”) and the Clay County Water Authority (“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.

I. STIPULATIONS

1. The Permittee operates a “public water system” as defined at Ala. Code § 22-23-31, as amended, located in Lineville, Clay 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 October 27, 2015, the Department issued Water Supply Permit No. 2016-648 (hereinafter the "Permit") to the Permittee, which authorizes the operation of its "public water system" under certain terms, limitations, and conditions. Permit condition No. 6 states that "[w]ater facilities must be maintained in a safe, clean, and operable condition."

5. ADEM Admin. Code r. 335-7-2-.06(2)(a) requires that:

a. samples of the raw water shall be collected at least every other hour the plant is in operation and analyzed for turbidity;

b. samples from each clarification unit shall be collected and analyzed for turbidity every four hours the plant is in operation;

c. filtered water shall be analyzed for turbidity every 15 minutes from each filter that is in operation and the result recorded and maintained for 5 years;

d. each filter in service must be equipped with a continuous turbidity monitoring and recording analyzer;

e. all turbidimeters must be calibrated and standardized according to standard methods and the procedure specified by the manufacturer and in accordance with EPA's standard methods; and,

f. results from the continuous turbidity monitoring analyzer may be used to demonstrate compliance with these standards if records are maintained at the plant that confirm proper calibration of this instrument in accordance with manufactures recommendation and which show that the accuracy of continuous turbidity monitoring analyzers is verified weekly and bench turbidimeters is verified daily.

6. ADEM Admin. Code r. 335-7-6-.09(c) requires that the coagulation process be controlled either by zeta potential, streaming current detector or other approved methods. A high rate surface water treatment plant is defined by ADEM Admin. Code r. 335-7-6-.09 as having a permitted filtration rate greater than two gallons per minute (gpm) per square foot of filter area. The Permittee's water treatment plant is permitted for a filtration rate of three gpm per square foot of filter area.

7. ADEM Admin. Code r. 335-7-6-.09(d) requires indicating and recording turbidity monitors shall be provided for monitoring the turbidity of:

- a. Raw water;
- b. Clarified water prior to filtration at representative points; and,
- c. Filter effluent from each filter.

8. ADEM Admin. Code r. 335-7-6-.09(e) requires pH monitoring equipment shall be provided for monitoring raw water, treated water, and finished water.

9. ADEM Admin. Code r. 335-7-6-.09(f) requires Chlorine residual indicating and recording monitors shall monitor the finished water leaving the plant.

10. ADEM Admin. Code r. 335-7-6-.09(j) requires the minimum detention time for the settling basins to be two hours with sludge removal and four hours without sludge removal. Basins equipped with tube settlers or plate settlers and continuous sludge removal do not have to meet the detention time requirement, but the flow rate through the tube or plate settlers cannot exceed the manufacturer's maximum recommended flow rate.

11. ADEM Admin. Code r. 335-7-10-.06(5) requires any records or reports pertaining to the quality of water or operation of the water supply system shall be furnished to the Department upon request and must be available for public review.

12. ADEM Admin. Code r. 335-7-10-.06(6) requires the water system to maintain a copy of each monthly operating report, that the report be signed by a certified operator, and that it shall be readily available for inspection by the Department.

13. ADEM Admin Code r. 335-7-2-.02 requires that samples to be used to demonstrate compliance be collected using procedures, containers, and preservatives established by EPA. Analysis of such samples must be performed using approved EPA methodology.

II. DEPARTMENT'S CONTENTIONS

14. On October 2, 2018 Department personnel conducted a Compliance Assistance Review of the Permittee and the Permittee's facilities. On November 1 and 2, 2018, the Department conducted a Data Verification Audit of the Permittee's treatment plant. The results of the Compliance Assistance Review and the Data Verification Audit were documented in a report and a Notice of Violation ("NOV") issued to the Permittee dated December 10, 2018, and noted the following violations:

a. None of the in-line equipment was found to be in proper operational condition, including the turbidimeters, pH probes, and the streaming current detector.

b. The sludge vacuum/removal system was not operational in Settling Basin #2.

c. The system personnel were not performing/recording the weekly verifications for the on-line turbidimeters.

d. The system personnel were not performing/recording the daily verifications and weekly calibrations for the bench-top turbidimeter and spectrophotometer.

e. The system personnel were not performing/recording the daily verifications and weekly calibrations for the bench top pH meter by EPA Method 150.3.

f. The system personnel were not performing/recording the daily verifications and weekly calibrations for the on-line pH meters by EPA Method 150.3.

g. The system personnel were not performing/recording the daily verifications and calibrations when necessary for the Hach CL 17 chlorine analyzer by EPA Method 334.0.

h. The system personnel were unable to provide the Department with access to data records.

i. The monthly operating report for September, 2018, was signed by a non-certified operator (Justin Peters), without his knowledge or consent.

j. The Department received an email on November 30, 2018 from Mr. Robert C. Edmonson stating that he was not responsible for the monthly operating reports (MORs) submitted and certified by the designated operator Mr. Wayne Character through the Department's eDWRS system. He stated in the email that his signature was affixed to multiple MORs without his knowledge or approval.

15. The monthly operating report for November, 2018, was submitted to the Department on December 10, 2018 and was signed by a non-certified operator (Justin Peters).

16. On February 1, 2019 the Department received a response to the NOV from Goodwyn, Mills and Cawood on behalf of the Permittee. The response states that the cited equipment was malfunctioning or inoperable and was not being calibrated or verified as required. Specifically, the weekly verifications of the online turbidimeters were not verified and the turbidimeters were not operational from a minimum of October 2018 through January 2019. Fifteen (15) minute turbidity readings were not recorded on a continuous basis via computer, continuous recording system or the water treatment plant daily log. The bench-top turbidimeter, pH meters (bench-top and online), online chlorine analyzer, and spectrophotometer were not properly calibrated, verified, and recorded since August 2018. The online pH probes have been nonfunctional since January 2017. The sludge vacuum/removal system in Settling Basin #2 has been inoperable for years.

17. 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.

III. PERMITEE'S CONTENTIONS

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

IV. CIVIL PENALTY

19. 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 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 Permittee is unable to provide assurance that public health was protected due to malfunctioning equipment and little to no calibrations and verifications taking place as required by state and federal regulations. The Department considered the general nature of each violation and any available evidence of irreparable harm to the environment or threat to the public.

B. THE STANDARD OF CARE: The Permittee failed to ensure that the turbidity, pH, streaming current detector, chlorine monitoring equipment and sludge removal system were functioning, calibrated and verified as required as required by the Department. In consideration of the standard of care manifested by the Permittee, the Department has enhanced the penalty.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has considered that the Permittee's 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 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 1.

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 \$27,456.00. 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 No. above, and in accordance with the following payment schedule:

Payment Number	Amount	Due Date
#1	\$2,288.00	November 1, 2019
#2	\$2,288.00	December 1, 2019
#3	\$2,288.00	January 1, 2020
#4	\$2,288.00	February 1, 2020
#5	\$2,288.00	March 1, 2020
#6	\$2,288.00	April 1, 2020
#7	\$2,288.00	May 1, 2020
#8	\$2,288.00	June 1, 2020
#9	\$2,288.00	July 1, 2020
#10	\$2,288.00	August 1, 2020
#11	\$2,288.00	September 1, 2020
#12	\$2,288.00	October 1, 2020
TOTAL	\$27,456.00	

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. Immediately upon issuance of this Consent Order and continuing until Permit expiration, the Permittee shall correctly monitor and report turbidity/chlorine and conduct all required monitoring.

C. No later than **forty-five (45) days** after issuance of this Consent Order, the Permittee shall certify to the Department that all malfunctioning or inoperable equipment (excluding the sludge vacuum/removal system) has been repaired or replaced, daily/weekly verifications and calibrations as required have been completed, and all continuous monitoring equipment is recording as required.

D. No later than **ninety (90) days** after issuance of this Consent Order, the Permittee shall submit to the Department a report detailing the schedule of the actions taken/to be taken to repair the sludge vacuum/removal system in Settling Basin #2.

E. The permittee shall prepare and submit to the Department quarterly progress reports, detailing the progress the Permittee has made towards achieving compliance with this Consent Order. The Reports shall be submitted so that they are received by the Department on March 31st, June 30th, September 30th and December 31st of each year until the Permittee has achieved compliance with all requirements of this Consent Order

F. No later than **five-hundred and forty (540) days** after issuance of this Consent Order, the Permittee shall certify to the Department that the necessary repairs or replacements have been made to the sludge vacuum/removal system in Settling Basin #2 and that the system is operating properly.

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

H. 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.

I. 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 which are cited in this Consent Order.

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

K. 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.

L. 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.

M. 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.

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

O. Final approval and entry into this Consent Order are subject to the requirements that the Department provide notice of the proposed Order to the public, and that the public have at least thirty days within which to comment on the proposed Consent Order.

P. 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.

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

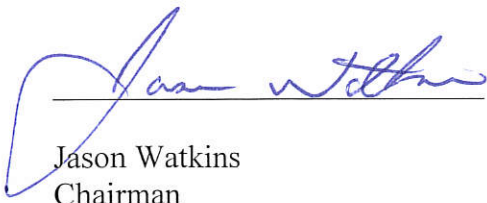
R. Except as set forth herein, this Consent Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve the Permittee of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

CLAY COUNTY WATER AUTHORITY

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

EXECUTED AND ISSUED



Jason Watkins
Chairman

Lance R. LeFleur
Director

Date: 9-16-19

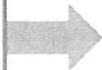
Date: _____

Attachment A

**Clay County Water Authority
Clay County
PWSID AL0000266**

Violation*	Number of Violations*	(A)	(B)	(C)
		Seriousness of Violation*	Standard of Care*	History of Previous Violations*
Failure to monitor properly/maintain equipment (Turbidimeters, Streaming Current Detecton, pH Meters, Sludge Removal System)	19	\$ 17,100.00	\$ 5,700.00	
Failure to sign MOR by certified operator	2	\$ 1,350.00	\$ 450.00	
Failure to provide requested information	1	\$ 675.00	\$ 225.00	
Failure to record turbidity	4	\$ 5,100.00	\$ 1,700.00	

Additional Adjustments due to negotiations, receipt of additional information, or public comment	
Mitigating Factors (-)	
Economic Benefit (+)	
Ability to Pay (-)	
Other Factors (+/-)	-\$4,844.00
Total Adjustments (+/-)	-\$4,844.00



\$24,225.00	\$8,075.00	\$0.00
Total (A)	Total (B)	Total (C)
Base Penalty Total		\$32,300.00
[Total (A) + Total (B) + Total (C)]		
Mitigating Factors (-)		
Economic Benefit (+)		
Ability to Pay (-)		
Other Factors (+/-)		
INITIAL PENALTY		\$32,300.00
Total Adjustments (+/-)		-\$4,844.00
FINAL PENALTY		\$27,456.00

Footnotes

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