ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:	)	Proposed
	)	
CWM Water Authority	)	ORDER No.
Dickinson, Wilcox County, Alabama	)	16-XXX-DW
	)	
PWSID No. AL0001764	)	
Permit No. 2011-564	)	
	)	

FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-17 (2006 Rplc. Vol.), the Alabama Safe Drinking Water Act, Ala. Code §§ 22-23-30 to 22-23-53 (2006 Rplc. Vol.) (hereinafter "ASDWA") and the ADEM Administrative Code of Regulations (hereinafter "ADEM Admin. Code") promulgated pursuant thereto, the Alabama Department of Environmental Management (hereinafter "the Department") makes the following FINDINGS:

1. The CWM Water Authority (hereinafter "the Permittee") operates a "public water system" as defined at Ala. Code § 22-23-31 (2006 Rplc. Vol.), located in Dickinson, Wilcox 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-17 (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 ASDWA.

4. On March 17, 2011, the Department issued Water Supply Permit No. 2011-564 (hereinafter the "Permit") to the Permittee. The Permit authorizes the operation of the Permittee's "public water system" under certain terms, limitations, and conditions.

5. Pursuant to ADEM Admin Code r. 335-7-2-.12, community water systems that purchase water from another public water system are required to monitor for disinfection byproducts (hereinafter "DBPs") in the manner and according to the schedule set forth in the rule.

6. Pursuant to ADEM Admin Code r. 335-7-2-.12(a), as of January 1, 2012, systems must comply with the maximum contaminant levels (hereinafter "MCLs") for HAA5 set forth at ADEM Admin. Code r. 335-7-2-11(a).

7. ADEM Admin. Code r. 335-7-2-.12(a) further requires the Permittee to conduct DBP compliance monitoring at specific sites on a quarterly basis. The average for each sampling site is the summation of the sample results, divided by the number of quarterly samples for that particular sampling site. System compliance is based on a running annual average for each sampling site.

8. Pursuant to ADEM Admin Code r. 335-7-2-.16, public water systems must submit an operational evaluation if they exceed the operational evaluation level (hereinafter "OEL"). The operational evaluation is due within ninety days after being notified of the analytical result that causes the system to exceed the OEL or the HAA5 MCL.

9. On February 27, 2009, the Department issued Consent Order No. 09-053-CDW to the Permittee for exceeding the TTHM MCL. The Order required the Permittee to return to compliance by June 30, 2011.

10. On June 1, 2011, the Permittee returned to compliance with the TTHM MCL.

11. On November 4, 2010, the Department issued Consent Order No. 11-019-CDW to the Permittee for exceeding the HAA5 MCL. The Order required the Permittee to return to compliance by December 31, 2012.

12. On January 1l, 2012, the Permittee returned to compliance with the HAA5 MCL.

13. On August 19, 2013, the Department issued Consent Order No. 13-130-CDW to the Permittee for exceeding the TTHM and HAA5 MCLs. The Order required the Permittee to return to compliance by September 30, 2015.

14. On November 24, 2014, the Permittee returned to compliance with the TTHM and HAA5 MCLs.

15. Based upon a file review, the Department has documented that the Permittee exceeded the MCL for HAA5 during the following quarters:

a. April – June 2015

b. July – September 2015

c. October – December 2015

d. January – March 2016

16. In a letter dated August 21, 2015, the Department notified the Permittee that it exceeded the OEL for TTHM and HAA5. The letter further noted that the Permittee was

to conduct an operational evaluation and submit a report to the Department. The operational evaluation was due on November 3, 2015. The Department received the operational evaluation on November 16, 2015.

17. In accordance with ADEM Admin Code r. 335-7-2-.21(1)(b), the Permittee provided public notification for the HAA5 violations cited herein.

18. Pursuant to Code of Alabama (1975) § 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 exceeded the MCL for HAA5. The Permittee also submitted the operational evaluation late.

B. THE STANDARD OF CARE: The Permittee could have avoided one of the violations listed above by submitting the operational evaluation to the Department on time. 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 not been able to estimate an economic benefit associated with the violations cited above since 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: As noted above, the Permittee has a history of previous violations. In consideration of the Permittee's history of previous violations, the Department has enhanced the penalty.

F. THE ABILITY TO PAY: The Permittee alleged an inability to pay the civil penalty. In consideration of such, the Department determined that a reduced penalty is warranted.

H. The civil penalty is summarized in Attachment A.

ORDER

Based on the foregoing FINDINGS and pursuant to Ala. Code §§ 22-22A-10, 22-22A-5(12), 22-22A-5(18), and 22-23-33 (2006 Rplc. Vol.), it is hereby ORDERED:

A. The Permittee shall pay to the Department a civil penalty in the amount of $4,500 in settlement of the violations alleged herein within forty-five days from the issuance date of this Order, unless the Department and the Permittee agree on a different schedule. Failure to pay the civil penalty within forty-five days from the issuance date, or pursuant to any alternative, agreed-upon schedule, may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

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 prepare and submit to the Department a Corrective Action Plan (hereinafter "CAP") that details the plan of action the Permittee will initiate to achieve and maintain compliance with the TTHM and HAA5 MCLs. The CAP shall include a schedule for implementation. The CAP shall be prepared by a professional engineer licensed to practice in the State of Alabama. The CAP shall be submitted so that it is received by the Department no later than ninety days after the date of issuance of this Order. If the Department determines through its review of the submitted CAP that the submittal is not sufficient, then the Permittee shall modify the CAP. The Permittee shall submit modifications to the CAP, if required, so that they are received by the Department no later than thirty days after the Permittee's receipt of the Department's comments.

D. The Permittee shall submit an operational evaluation within thirty days of the end of each quarter until compliance with the HAA5 MCL is achieved. The operational evaluation shall include the Permittee's progress towards achieving compliance with the CAP.

E. The implementation schedule in the CAP shall be incorporated into this order by reference and noncompliance with the schedule will result in noncompliance with this Order.

F. The Permittee shall comply with the terms, limitations, and conditions of its Permit and ADEM Admin. Code div. 335-7, with the exception of TTHM and HAA5 MCLs referenced in CAP, immediately upon the issuance date of this Order.

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 a 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
1400 Coliseum Boulevard
Montgomery, AL 36110-2059
(334) 271-7700

Attachment A

CWM Water Authority
Wilcox County
AL0001764

Violation*	Number of Violations*	(A) Seriousness of Violation*	(B) Standard of Care*	(C) History of Previous Violations*
HAA5 MCL Violation	4	$ 4,500.00		$ 4,500.00
Late Operational Evaluation (OEL) Report	1	$ 450.00	$ 450.00	
		$4,950.00	$450.00	$4,500.00
		Total (A)	Total (B)	Total (C)

Base Penalty Total [Total (A) + Total (B) + Total (C)]	$9,900.00
Mitigating Factors (–)	
Economic Benefit (+)	
Ability to Pay (–)	
Other Factors (+/–)	
INITIAL PENALTY	$9,900.00
Total Adjustments (+/–)	-$5,400.00
FINAL PENALTY	$4,500.00

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

Mitigating Factors (–)	
Economic Benefit (+)	
Ability to Pay (–)	-$5,400.00
Other Factors (+/–)	
Total Adjustments (+/–)	-$5,400.00

Footnotes

*See the "Findings" portion of the Order for a detailed description of each violation and the penalty factors