

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:)	Proposed
)	
Woodland Water Board)	CONSENT ORDER No.
Woodland, Randolph County, Alabama)	16-XXX-CDW
)	
PWSID No. AL0001132)	
Permit No. 2010-752)	
)	

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter, "Department") and the Woodland Water Board (hereinafter, "Permittee") 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.), 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 (2006 Rplc. Vol.), located in Woodland, Randolph 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 Alabama Safe Drinking Water Act, Ala. Code §§ 22-23-30 to 22-23-53 (2006 Rplc. Vol.).

4. The Permittee was issued Water Supply Permit No. 2010-752 (hereinafter the "Permit") by the Department on July 7, 2010, which authorizes the operation of its "public water system."

DEPARTMENT'S CONTENTIONS

5. ADEM Admin. Code r. 335-7-11-.05 requires the Permittee to monitor for lead and copper.

6. ADEM Admin. Code r. 335-7-11-.11(a) requires the Permittee to install and maintain adequate corrosion control treatment equipment to ensure that the lead/copper compliance limit can be met.

7. ADEM Admin. Code r. 335-7-4-.09 requires the Permittee to have prior approval of the Department for any modification of present treatment method.

8. ADEM Admin. Code r. 335-7-11-.17 requires the Permittee to deliver public education materials according to the methods specified in the regulations upon a lead or copper action level exceedance.

9. In June 2015, the Permittee discontinued its corrosion control treatment at Well #1 without notifying or having prior approval from the Department.

10. The Permittee exceeded the lead action level of 0.015 mg/L and the copper action level of 1.3 mg/L in the monitoring period of June-September 2015.

11. The Permittee notified the individual customers where the lead action level exceedances occurred. However, the Permittee failed to provide every customer with public notification of the lead and copper action level exceedances in accordance with ADEM Admin. Code r. 335-7-11-.11(e).

12. The Permittee discontinued the use of Well #1 on February 3, 2016 and began purchasing water from Wedowee Water, Sewer, & Gas Board.

13. A Notice of Violation (hereinafter "NOV") was sent to the Permittee by the Department on March 29, 2016.

14. 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.

PERMITTEE'S CONTENTIONS

15. The Permittee neither admits nor denies the Department's contentions.

PENALTY FACTORS

16. Pursuant to Code of Alabama (1975), § 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. Attachment A to this Order identifies the portion of the penalty attributable to each factor. 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 failed to notify the Department of its discontinuance of corrosion control at Well #1 in June 2015, although required to do so by ADEM Admin. Code r. 335-7-4-.09. The Permittee also failed to provide public notification to its customers as required by ADEM Admin. Code r. 335-7-11-.11(e). Because there were both lead and copper action level exceedances which appear to correspond to the discontinuance of corrosion control, the Department enhanced the penalty.

B. **THE STANDARD OF CARE:** The Permittee could have easily avoided the violations by operating in accordance with the Permit and by making the required public notifications. In consideration of the care manifested by the Permittee, the Department enhanced the penalty.

C. **ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:** The Permittee realized an economic benefit by not having the expense of

corrosion control treatment for its source. In consideration of the economic benefit by the Permittee, the Department enhanced the penalty.

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 no history of violations prior to those noted herein.

F. THE ABILITY TO PAY: The Permittee has not alleged an inability to pay the civil penalty.

G. It should be noted that this Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty it believes is warranted in this matter in the spirit of cooperation and the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

H. 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 "the Parties") agree to enter into this CONSENT ORDER with the following terms:

A. The Permittee shall pay to the Department a penalty of \$8,300 no later than forty-five days after the issuance of this Order.

B. The Permittee shall immediately comply with the Permit, ADEM Admin. Code chap. 335-7-4, and ADEM Admin. Code chap. 335-7-11 and shall continue to do so as long as it operates a public water system.

C. The Permittee shall not place Well #1 back into service until Well #1 is in compliance with the Permit and the Permittee is authorized to do so by the Department in writing.

D. The Permittee shall monitor for lead and copper at twenty sites every six months beginning with the monitoring period of January to June 2016. The Permittee shall continue to monitor lead and copper every six months until it meets the action levels for two consecutive six month periods.

E. Once Well #1 is back in service, the Permittee shall monitor for lead and copper at twenty sites every six months. The Permittee shall also monitor for lead and copper at any school(s) served by their public water system during each six month monitoring period. The Permittee shall continue to monitor lead and copper every six months until it meets the action levels for two consecutive six month periods with Well #1 in service.

F. 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

G. The Permittee shall comply with the terms, limitations, and conditions of the Permit each and every day hereafter until such time as all requirements of this Consent Order are satisfied.

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 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. 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 modifications 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.

WOODLAND WATER BOARD

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT



The Honorable Tim Prince
Mayor

Lance R. LeFleur
Director

Date: 5/3/16

Date: _____

Attachment A

**Woodland Water Board
Randolph County
AL0001132**

Violation*	Number of Violations*	(A)	(B)	(C)
		Seriousness of Violation*	Standard of Care*	History of Previous Violations*
Failure to Notify Customers of Results	1	\$ 1,800.00	\$ 900.00	
Failure to obtain prior approval of treatment change	1	\$ 3,400.00	\$ 1,700.00	

\$5,200.00	\$2,600.00	\$0.00
Total (A)	Total (B)	Total (C)
Base Penalty Total [Total (A) + Total (B) + Total (C)]		\$7,800.00
Mitigating Factors (-)		
Economic Benefit (+)		\$500.00
Ability to Pay (-)		
Other Factors (+/-)		\$0.00
INITIAL PENALTY		\$8,300.00
Total Adjustments (+/-)		\$0.00
FINAL PENALTY		\$8,300.00

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

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



Footnotes

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