



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF WATER RESOURCES
William R. Snodgrass - Tennessee Tower
312 Rosa L. Parks Avenue, 11th Floor
Nashville, Tennessee 37243-1102

February 3, 2016

Mr. George McDonald
President
Twenty Five Utility District
P.O. Box 87
Ridgely, Tennessee 37151

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
RECEIPT #7009 2820 0003 6034 6480

Subject: DIRECTOR'S ORDER NO. DWS15-0062
TWENTY FIVE UTILITY DISTRICT
SMITH COUNTY, TENNESSEE

Dear Mr. McDonald,

Enclosed is a Director's Order and Assessment of Civil Penalty issued by Tisha Calabrese Benton, Director of the Division of Water Resources, under the delegation of Commissioner Robert J. Martineau, Jr. Read the Order carefully and pay special attention to the NOTICE OF RIGHTS section.

Corporations, limited partnerships, limited liability companies, and other artificial entities created by law must be represented in any legal proceeding resulting from an appeal of this Order and Assessment by an attorney licensed to practice law in the State of Tennessee. Non-attorneys may participate in any such proceedings to the extent allowed by law.

If you, or your attorney, have questions concerning this correspondence, contact Christy Morgan at (615) 532-0685.

Sincerely,

Jessica Murphy, Manager
Compliance and Enforcement Unit

cc: CKEFO – Johnny Walker
OGC – Patrick Parker
Case File DWS15-0062

**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

IN THE MATTER OF:)	DIVISION OF WATER RESOURCES
)	
TWENTY FIVE)	
UTILITY DISTRICT)	
)	
)	
)	
)	
RESPONDENT		CASE NO. DWS15-0062

DIRECTOR'S ORDER AND ASSESSMENT

NOW COMES Tisha Calabrese Benton, Director of the Tennessee Division of Water Resources, and states:

PARTIES

I.

Tisha Calabrese Benton is the duly appointed Director of the Tennessee Division of Water Resources (hereinafter the "Division") by the Commissioner of the Tennessee Department of Environment and Conservation (hereinafter the "Department"). The Commissioner is responsible for administering the Tennessee Safe Drinking Water Act (hereinafter the "Act"), Tennessee Annotated Code (hereinafter "T.C.A.") § 68-221-701 *et seq.*

II.

The Twenty Five Utility District (hereinafter the "Respondent") owns, operates, and/or controls a public water system (hereinafter the "System") existing in Smith County, Tennessee. The System (Public Water System Identification TN0000718), obtains its source water from Smith Utility District and serves 842 connections and a population of approximately 2,181 people. Process may be served on the Respondent through President George McDonald, Twenty Five Utility District, P.O. Box 87, Riddleton, Tennessee 37151.

JURISDICTION

III.

Whenever the Commissioner has reason to believe that a violation of the Act has occurred or is about to occur, he is authorized to take corrective action pursuant to T.C.A. §§ 68-221-705 and 68-221-712. Further, the Commissioner has authority to assess civil penalties and damages against any person who violates the Act, pursuant to T.C.A. §§ 68-221-705 and 68-221-713. Rules governing operation of public water supply systems have been promulgated pursuant to T.C.A. § 68-221-704 and are effective as the Tenn. Comp. R. & Regs. 0400-45-01 (hereinafter the "Rules"). Pursuant to Tenn. Code Ann. § 68-221-705(12), the Commissioner may designate the Director of Water Resources as his duly authorized representative to exercise the powers, duties, and responsibilities of the commissioner under the Act. Robert J. Martineau, Jr., Commissioner of the Department of Environment and Conservation, has delegated such authority to Tisha Calabrese Benton, Director of the Tennessee Division of Water Resources.

IV.

The Respondent is a "person" as defined at T.C.A. §68-221-703(17) and a "supplier of water" within the meaning of T.C.A. §68-221-703(22) and as herein described, has violated the Act.

FACTS

V.

Division personnel conducted file reviews for the following compliance periods: the third quarter of 2014 (July 1, 2014, through September 30, 2014) and the fourth quarter of 2014 (October 1, 2014, through December 31, 2014). As a result of the file reviews, Division staff determined that the Respondent failed to maintain the disinfectant byproduct residuals below the maximum contaminant levels (hereinafter "MCL"). An MCL exists on the locational running annual average (hereinafter "LRAA") for total haloacetic acids (hereinafter "HAA5") monitoring sites. The LRAA is calculated as the average of analytical results for samples taken at a particular monitoring location during the previous four calendar quarters. The MCL for HAA5 is 0.060 mg/L.

For the third quarter of 2014, the LRAA for HAA5 exceeded the MCL of 0.060 mg/L for site #206, with a testing result of 0.061 mg/L. The Division issued a Compliance Status Notification Letter (hereinafter “CSNL”) on November 13, 2014, detailing the third quarter 2014 HAA5 violations.

For the fourth quarter of 2014, the LRAA for HAA5 exceeded the MCL of 0.060 mg/L for site #206, with a test result of 0.061 mg/L. The Division issued a CSNL on January 29, 2015, detailing the fourth quarter HAA5 violations.

VIOLATIONS

VI.

By failing to maintain an LRAA below the MCL for HAA5, the Respondent has violated T.C.A. § 68-221-711(1) and Rule 0400-45-01-.06(6)(b)2.

T.C.A. § 68-221-711(1) states:

The following acts are prohibited:

1. Failure by a supplier of water to comply with this part, any order issued hereunder, or the drinking water regulations.

Rule 0400-45-01-.06(6)(b)2 states:

2. LRAA compliance (Rule 0400-45-01-.38)
 - (i) Compliance dates. The subpart V MCLs for TTHM and HAA5 must be complied with as a locational running annual average (LRAA) at each monitoring location beginning the date specified for subpart V compliance in subparagraph (1)(c) of Rule 0400-45-01-.38.

Disinfection by-product	MCL (mg/L)
Total trihalomethanes (TTHM)	0.080
Haloacetic acids (five) (HAA5)	0.060

ORDER AND ASSESSMENT

VII.

WHEREFORE, pursuant to the authority vested by T.C.A. §§ 68-221-705, 68-221-712, and 68-221-713 and delegated by the Commissioner under the provisions of the Safe Drinking Water Act, I, Tisha Calabrese Benton, hereby issue the following Order and Assessment to the Respondent:

1.) The Respondent is hereby ORDERED to operate the public water system under its control in compliance with the provisions of the Act and the drinking water Rules. Receipt of a NOV for violation of the rules within one (1) year following receipt of this Order shall constitute grounds for the requirement to pay the contingent penalty, as outlined below.

2.) Within ninety (90) days of receipt of this ORDER, the Respondent shall submit to the Division a written Corrective Action Plan (hereinafter "CAP"). The CAP must outline methods the System has taken or will take to ensure that the MCL for HAA5 is not exceeded. The Division must approve the proposed CAP. The CAP shall include an anticipated deadline for completion of the methods of corrective action contained therein within one (1) year of approval of the CAP.

The CAP shall be submitted for approval in duplicate to the manager of the Compliance and Enforcement Unit, Jessica Murphy, State of Tennessee, Division of Water Resources, 11th Floor, William R. Snodgrass Bldg., 312 Rosa Parks Avenue, Nashville, Tennessee 37243 and a copy of the CAP sent to the manager of the Cookeville Environmental Field Office, Johnny Walker, Division of Water Resources, 1221 South Willow Avenue, Cookeville, Tennessee 38506. Upon approval of the CAP, the milestone dates and items contained within the CAP shall become an enforceable part of this Order.

3.) The Respondent shall have the Division-approved CAP fully implemented and operational in adherence with the anticipated deadline included in the CAP.


4.) Respondent is hereby assessed a CIVIL PENALTY of THREE THOUSAND, TWO HUNDRED DOLLARS (\$3,200.00) to be paid to the Division of Water Resources as follows:

- A) The Respondent shall pay ONE THOUSAND, AND SIXTY-FIVE DOLLARS (\$1,065.00) to the Division within THIRTY (30) days of the receipt of this ORDER.
- B) The Respondent shall pay EIGHT HUNDRED AND FIFTY-FIVE DOLLARS (\$855.00) to the Division if, and only if, Respondent fails to comply with item 1 above.
- C) The Respondent shall pay EIGHT HUNDRED AND SIXTY DOLLARS (\$860.00) to the Division if, and only if, Respondent fails to comply with item 2 above.
- D) The Respondent shall pay FOUR HUNDRED AND TWENTY DOLLARS (\$420.00) to the Division if, and only if, Respondent fails to comply with item 3 above.

The Director of the Division of Water Resources may, for good cause shown, extend the compliance dates contained within this Order and Assessment. In order to be eligible for this time extension, the Respondent shall submit a written request to be received a minimum of thirty (30) days in advance of the compliance date. The request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension will be in writing.

Further, the Respondent is advised that the foregoing Order and Assessment is in no way to be construed as a waiver, expressed or implied, of any provision of the law or regulations. However, compliance with the Order and Assessment will be one factor considered in any decision whether to take enforcement action against the Respondent in the future.

Issued by the Director of the Division of Water Resources on behalf of the Commissioner of the Tennessee Department of Environment and Conservation on this 25 day of January 2016.



Tisha Calabrese Benton
Director, Division of Water Resources

NOTICE OF RIGHTS

Tennessee Code Annotated §§ 68-221-712 and 68-221-713(b)(2), allows the Respondent to secure review (appeal) of this Order and Assessment. To do so, a written petition setting forth grounds (reasons) for requesting a hearing before the Commissioner must be RECEIVED by the Commissioner within THIRTY (30) DAYS of the date the Respondent received this Order and Assessment or it will become final (not subject to review).

If an appeal is filed, an initial hearing of this will be conducted by an Administrative Law Judge (ALJ) as a contested case hearing pursuant to the provisions of T.C.A. §68-221-714, T.C.A. §4-5-301 *et seq.* (the Uniform Administrative Procedures Act), and Rule 1360-04-01 *et seq.* (the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies). Such hearings are legal proceedings in the nature of a trial. Individual Respondents may represent themselves or be represented by an attorney licensed to practice law in Tennessee. Artificial Respondents (corporations, limited partnerships, limited liability companies, etc.) cannot engage in the practice of law and therefore may only pursue an appeal through an attorney licensed to practice law in Tennessee. Low income individuals may be eligible for representation at reduced or no cost through a local bar association or legal aid organization.

At the conclusion of any initial hearing the ALJ has the authority to affirm, modify, or deny the Order and Assessment. This includes the authority to modify (decrease or increase) the penalty within the statutory limits of T.C.A. §68-221-713 (from \$50 to \$5,000 per day per violation). Furthermore, the ALJ on Behalf of the Board has the authority to assess additional damages incurred by the Department including, but not limited to, all docketing expenses associated with setting of the matter for a hearing and the hourly fees incurred due to the presence of the ALJ and a court reporter.

Any petition for review (appeal) must be directed to the Commissioner of the Department of Environment and Conservation, c/o E. Joseph Sanders, General Counsel, Department of Environment and Conservation, 2nd Floor William R. Snodgrass Bldg., 312 Rosa Parks Avenue,

Nashville, Tennessee 37243. Payments of the civil penalty and/or damages shall be made payable to the "Treasurer, State of Tennessee" and sent to the Division of Fiscal Services - Consolidated Fees Section, Tennessee Department of Environment and Conservation, 10th Floor Snodgrass Bldg., 312 Rosa Parks Avenue, Nashville, Tennessee 37243. Technical questions and other correspondence involving compliance issues should be sent to Jessica Murphy, State of Tennessee, Division of Water Resources, 11th Floor, William R. Snodgrass Bldg., 312 Rosa Parks Avenue, Nashville, TN 37243. The case number, **DWS15-0062**, should be written on all correspondence regarding this matter.