

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

IN THE MATTER OF:)	DIVISION OF WATER RESOURCES
)	
)	
METRO MOORE COUNTY)	
UTILITY DEPARTMENT,)	
)	
)	
)	
)	
RESPONDENT.)	CASE NO. DWS23-0016

DIRECTOR’S ORDER AND ASSESSMENT

NOW COMES Jennifer Dodd, Director of the Tennessee Division of Water Resources,
and states:

PARTIES

I.

Jennifer Dodd is the duly appointed Director of the Tennessee Division of Water Resources (“Division”) by the Commissioner of the Tennessee Department of Environment and Conservation (“Department”).

II.

Metro Moore County Utility Department (the “Respondent”) owns, operates, and/or controls a community public water system (the “System”) existing in Moore County, Tennessee. The Public Water System Identification (PWSID) number is TN0000416. Process may be served on the Respondent through Keith Moses, Chairman, Metro Moore County Utility Department, 705 Fayetteville Highway, P. O. Box 503, Lynchburg, Tennessee 37352.

JURISDICTION

III.

Whenever the Commissioner has reason to believe that a violation of the Safe Drinking Water Act, Tenn. Code Ann. §§ 68-221-701 to -720 (“Act”), has occurred, is occurring, or is about to occur, the Commissioner may order corrective action be taken. Tenn. Code Ann. §§ 68-221-705 and 68-221-712. Further, the Commissioner has authority to assess civil penalties against any violator of the Act. Tenn. Code Ann. §§ 68-221-705 and 68-221-713. The Commissioner also has authority to assess damages incurred by the State resulting from the violation. Tenn. Code Ann. § 68-221-713. The Board of Water Quality, Oil and Gas has promulgated rules governing operation of public water systems. Tenn. Comp. R. & Regs. Chapter 0400-45-01. The Commissioner may delegate to the Director any of the powers, duties, and responsibilities of the Commissioner under the Act, Tenn. Code Ann. § 68-221-705(12), and has delegated such authority to Jennifer Dodd (“Director”).

IV.

The Respondent is a “person” under the Act. Tenn. Code Ann. § 68-221-703(17). The Respondent is a “supplier of water” under the Act, because it owns, operates, and/or controls a “public water system.” Tenn. Code Ann. §§ 68-221-703(22) and 68-221-703(19). The System is a “community water system.” Tenn. Comp. R. & Regs. 0400-45-01-.04(11).

FACTS

V.

The Respondent obtains its source water from Tims Ford Lake. The Respondent’s System is classified as a Subpart H system, which includes systems using surface water sources or ground

water sources under the direct influence of surface water. The Respondent's System serves 2,828 connections and a population of approximately 6,405 persons.

VI.

The Division issued a chemical waiver/triennial monitoring schedule letter to the Respondent dated January 31, 2020, notifying the Respondent of the requirements for sampling during the 2020 through 2022 triennial period that included the Synthetic Organic Chemicals (SOCs) Atrazine, Simazine, 2,4-D, Lasso (Alachlor) as well as nitrate. The letter instructed the Respondent to monitor for Atrazine annually during the April through June period of 2020, for nitrate annually during the second quarter of each year and for 2,4-D, Lasso (Alachlor) and Simazine during the April through June period of 2022. The Division performed a file review and determined that the required SOC and nitrate had not been monitored for in the April through June period of 2022 as required. The Division issued a letter notifying the Respondent of the failure to monitor for SOC and nitrate on August 15, 2022.

VII.

Division personnel performed file reviews and determined that the Respondent had failed to perform complete total coliform monitoring for the monthly compliance periods ending August 31 and September 30, 2020. In both monthly compliance periods, only 6 valid total coliform samples were taken instead of the required 7 samples. As a result of the missed total coliform sample, the accompanying disinfectant residual monitoring for chlorine was also not performed. The Division notified the Respondent of the August and September 2020 monitoring violations in letters dated October 12 and November 9, 2020, respectively.

VIII.

Division personnel performed a file review and determined that the Respondent failed to include violations in the calendar year 2020 Consumer Confidence Report (CCR). The CCR failed

to include the violations for the failure to perform disinfectant residual monitoring as the result of missing total coliform samples in the monthly compliance periods ending August 31 and September 30, 2020. The Division notified the Respondent of the violation for the failure to include the violations in the CCR in a letter dated December 30, 2021.

IX.

Division personnel performed a file review and determined that the Respondent had not followed the Division approved disinfection byproduct sampling plan for the first quarter of 2022, ending March 31, 2022. The Respondent conducted the sampling for total trihalomethanes (TTHM) and haloacetic acids 5 (HAA5) on January 14, 2022, instead of the week of February 9, 2022, as stated in the plan. The Division notified the Respondent of the monitoring schedule violation in a letter dated April 25, 2022.

X.

Division personnel performed a sanitary survey on November 29, 2022, and determined that the Respondent had failed to install duplicate pumps at the Coy Hill pump station to adequately supply the Coy Hill water storage tank and the Griffin water storage tank. The Respondent had previously been notified in the 2019 and 2021 sanitary surveys that duplicate pumps were required. Division personnel also determined during the November 29, 2022 sanitary survey that the tube settlers at the water plant were covered with sediment and unable to properly perform their function. This violation was also noted in the 2021 sanitary survey. Division personnel also determined that bacteriological sampling after disinfection for a new line extension was not properly performed. The Division issued a sanitary survey letter to the Respondent on January 12, 2023, notifying the Respondent of these violations.

XI.

Division personnel performed a file review and determined that the Respondent had failed to perform complete total coliform monitoring during the compliance month ending February 28, 2023. During the monthly compliance period, only 6 valid total coliform samples were taken instead of the required 7 samples. Consequently, the Respondent also failed to collect the accompanying chlorine residual for the missing bacteriological sample. The Division issued a letter notifying the Respondent of the violation on April 19, 2023.

XII.

In the course of the investigation, the Division incurred a cost of \$12.40 in damages.

VIOLATIONS

XIII.

By failing to monitor for the SOCs Atrazine; Simazine; 2,4-D; and Alachlor during the April through June compliance period in 2022, the Respondent has violated Rule 0400-45-01-.10(1)(d)1. and (e), which state:

(d) Monitoring frequency.

1. Each community and non-transient non-community water system shall take four consecutive quarterly samples for each contaminant listed in paragraph (2) of Rule 0400-45-01-.06 during each compliance period beginning with the initial compliance period.

....
(e) Each community and non-transient water system may apply to the Department for a waiver from the requirement of subparagraph (d) of this paragraph. A system must reapply for a waiver for each compliance period.

Atrazine; Simazine; 2,4-D; and Alachlor are four of the contaminants listed in subparagraph (2)(a) of Rule 0400-45-01-.06.

XIV.

By failing to monitor for nitrate within the 2022 compliance period, the Respondent violated Rule 0400-45-01-.09(5), which states, in pertinent part:

- (5) All public water systems . . . shall monitor to determine compliance with the maximum contaminant level for nitrate.
 - (a) Community and non-transient non-community water systems served by ground water system shall monitor annually beginning January 1, 1993. Community and non-transient systems served by surface water shall monitor quarterly beginning January 1, 1993.

XV.

By failing to collect the proper number of bacteriological samples for the monthly compliance periods ending August 31, 2020, September 30, 2020, and February 28, 2023, the Respondent violated Rule 0400-45-01-.41(7)(b), which, in pertinent part, states:

- (b) Monitoring frequency for total coliforms. The monitoring frequency for total coliforms is based on the population served by the system, as follows:

Total Coliform Monitoring Frequency for
Public Water Systems Serving More than 1,000 People

Population Served	Minimum number of samples per month
1,001 to 2,500	2
2,501 to 3,300	3
3,301 to 4,100	4
4,101 to 4,900	5
4,901 to 5,800	6
5,801 to 6,700	7
...	

XVI.

By failing to perform residual disinfectant monitoring as the result of failing to take sufficient total coliform samples during the monthly compliance periods ending August 31, 2020,

September 30, 2020, and February 28, 2023, the Respondent violated Rule 0400-45-01-.36(6)(c)1.(i), which states, in pertinent part:

- (i) Routine monitoring... Beginning April 1, 2016, community and non-transient non-community water systems that use chlorine or chloramines must measure the residual disinfectant level in the distribution system at the same point in the distribution system and at the same time as total coliforms are sampled, as specified paragraphs (4) through (8) of Rule 0400-45-01-.41. ...

XVII.

By failing to include violations in the calendar year 2020 CCR for incomplete total coliform monitoring in the monthly compliance periods ending August 31, 2020, and September 30, 2020, and the violation for failure to perform disinfectant residual monitoring for chlorine as the result of the missed total coliform samples, the Respondent violated Rule 0400-45-01-.35(3)(f), which states:

- (f) Compliance with NPDWR. In addition to the requirements of part (d)7. of this paragraph, the report must note any violation that occurred during the year covered by the report of a requirement listed in parts 1 through 7 of this subparagraph, and include a clear and readily understandable explanation of the violation, any potential adverse health effects, and the steps the system has taken to correct the violation.

XVIII.

By failing to perform disinfection byproduct monitoring for TTHM and HAA5 in accordance with the System's Division-approved plan, the Respondent violated Rule 0400-45-01-.38(3), which states, in pertinent part:

- (3) LRAA monitoring plan.
 - (a) 1. You must develop and implement a monitoring plan to be kept on file for Department and public review. The monitoring plan must contain the elements in subpart (i) through (iv) of this part and be complete no later than the date you conduct your initial monitoring under this rule.
 - (i) Monitoring locations;
 - (ii) Monitoring dates;
 - (iii) Compliance calculation procedures; and

- (iv) Monitoring plans for any other systems in the combined distribution system if the Department has reduced monitoring requirements under the State authority in 40 CFR 142.16(m).

XIX.

By failing to install duplicate pumps at the Coy Hill pump station, the Respondent has violated Rule 0400-45-01-.17(13), which states, in pertinent part:

- (13) All community water systems serving 50 connections or more shall install duplicate pumps for the raw water, finished water, and distribution pumping stations. A water system will not be required to have duplicate pumps in a distribution pumping station under the following conditions: limited number of service connections, availability of replacement pumps, maintaining adequate flows and pressures without the pumping station, and for emergency use only. . .

XX.

By failing to properly maintain the tube settlers to keep them free from sediment such that they could properly function, the Respondent has violated Rule 0400-45-01-.17(17), which states:

- (17) All buildings and equipment used in and for the production and distribution of water (to include chemical and other storage buildings) must be well maintained and be reliable and fit for the purpose for which they are used. This includes, but is not limited to:
 - (a) When a water treatment plant is not producing water and an operator is not in attendance, plant entrances must be locked.
 - (b) Equipment such as chemical feeders, pumps, turbidimeters, pumpage meters, alarm systems, and air tanks shall be maintained and in good working condition. Pumps, tanks, hoses, and other equipment used by system personnel shall be disinfected and dedicated to its use if it comes into contact with water that may be consumed by humans.
 - (c) Duplicate or backup equipment shall be available as necessary to maintain the production of water meeting drinking water standards. Backup equipment or alternate treatment means shall be available for feeding all chemicals critical for adequate water treatment.

XXI.

By failing to properly sample for bacteria for the new line extension, the Respondent violated Rule 0400-45-01-.17(8)(b), which states:

- (b) Bacteriological Sampling of New Facilities-Bacteriological samples will be collected and analyzed to verify the effectiveness of the disinfection practices prior to placing new facilities in service. Bacteriological samples for finished water storage facilities, water treatment facilities, and wells shall be collected as specified by AWWA standards C- 652, C-653, and C-654. Adequacy of disinfection of new lines shall be demonstrated by collecting two sets of microbiological samples 24 hours apart or collecting a single set of microbiological samples 48 hours or longer after flushing the highly chlorinated water from the lines. In either case microbiological samples in each set will be collected at approximately 2,500-foot intervals with samples near the beginning point, the end point, and at the end of each branch line, unless written approval of alternate sampling frequency and distance between sampling points has been obtained from the Department. If the newly constructed facility yields positive bacterial samples, the line shall be flushed, and resampled. If subsequent samples are positive, the line shall be re-disinfected, flushed and sampled again.

ORDER and ASSESSMENT

XXI.

Pursuant to the Act, Tenn. Code Ann. §§ 68-221-705 and -712, the Respondent is issued the following Order and Assessment (“Order”). This case number, DWS23-0016, should be written on all correspondence concerning this matter. All documentation and submittals relating to compliance schedule items should be sent electronically to DWRWater.Compliance@tn.gov or in duplicate to both addresses below:

Sherry Glass, Manager
Columbia Environmental Field Office
Division of Water Resources
1421 Hampshire Pike
Columbia, Tennessee 38401

AND

Jessica Murphy, Manager
Enforcement and Compliance Unit
Division of Water Resources
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Ave., 11th Floor
Nashville, Tennessee 37243

All payments shall be submitted to:

Treasurer, State of Tennessee
Division of Fiscal Services, Consolidated Fees
TN Department of Environment and Conservation
William R. Snodgrass Tennessee Tower,
312 Rosa L. Parks Ave., 10th Floor
Nashville, Tennessee 37243

- (1) **The Respondent shall pay \$12.40 in damages to the Division on or before the thirty-first day after receipt of this Order.**
- (2) The Respondent is assessed a total civil penalty of \$18,765.00. **The Respondent shall pay \$3,753.00, which is the upfront portion of the total civil penalty, on or before the thirty-first day after receipt of this Order.** The Respondent shall pay the remaining \$15,012.00 only if the Respondent fails to comply with the following corrective action items.
- (3) The Respondent shall properly maintain equipment including, but not limited to, tube settlers, chemical feeders and scales, pumps, and turbidimeters. The Respondent shall pay \$750.00 for each failure to maintain equipment, not to exceed \$3,000.00, payable within 30 days of the Division's demand for payment.
- (4) Within 45 days of the receipt of this Order, the Respondent shall have the tube settlers cleared of sediment and provide proof of the clearing of sediment to the Division. The Respondent shall pay \$2,000.00 for the failure to comply with the cleaning of the tube settlers, payable within 30 days of the Division's demand for payment.
- (5) Within 60 days of the receipt of this Order, the Respondent shall submit engineering plans for the installation of duplicate pumps at the Coy Hill pump station. The Respondent shall pay \$1,000.00 for the failure to submit the engineering plans, payable within 30 days of the Division's demand for payment.

- (6) Within 60 days of the Division approval of the engineering plans for the duplicate pumps at the Coy Hill pump station, the Respondent shall have the pumps installed and provide proof of installation. The Respondent shall pay \$ \$5,012.00 for the failure to have the pumps installed and provide proof in installation, payable within 30 days of the Division's demand for payment.
- (7) The Respondent shall publish accurate CCRs. The Respondent shall pay \$250 for the failure to include required information in the CCR, not to exceed \$500.00, payable within 30 days of the Division's demand for payment.
- (8) The Respondent shall monitor for the disinfection byproducts TTHM and HAA5 in accordance with the Division approved monitoring plan. The Respondent shall pay \$250.00 for the failure to monitor in accordance with the Division approved plan, not to exceed \$500.00, payable within 30 days of the Division's demand for payment.
- (9) The Respondent shall properly disinfect and document new line installations and line repairs. The Respondent shall pay \$500.00 for the failure to properly disinfect and document disinfection of new lines or line repairs, not to exceed \$1,500.00, payable within 30 days of the Division's demand for payment.
- (10) The Respondent shall perform bacteriological monitoring and the accompanying disinfectant residual in accordance with the Division approved monitoring plan. The Respondent shall pay \$500 for each month that the monitoring is not performed, not to exceed \$1,500.00, payable within 30 days of the Division's demand for payment.

The Director may, for good cause shown, extend the compliance dates contained within this Order. To be eligible for this time extension, the Respondent shall submit a written request to be received in advance of the compliance date. The written 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 by the Director will be in writing. Should the Respondent fail to meet the requirement by the extended date, an associated civil penalty shall become due 30 days thereafter.

Failure to comply with any of the requirements of this Order could lead to further enforcement actions, which may include additional civil penalties, assessment of damages, and/or recovery of costs.

This Order shall be considered closed no later than December 31, 2025, provided all requirements of the Order have been met, any outstanding penalties have been paid, and the Respondent is in substantial compliance with the Act.

RESERVATION OF RIGHTS

In issuing this Order and Assessment, the Department does not implicitly or expressly waive any provision of the Act or the regulations promulgated thereunder or the authority to assess costs, civil penalties, and/or damages incurred by the State against the Respondent. The Department expressly reserves all rights it has at law and in equity to order further corrective action, assess civil penalties and/or damages, and to pursue further enforcement action including,

but not limited to, monetary and injunctive relief. Compliance with this Order and Assessment will be considered as a mitigating factor in determining the need for future enforcement action(s).

NOTICE OF RIGHTS

The Respondent may appeal this Order and Assessment. Tenn. Code Ann. §§ 68-221-712 and 68-221-713. To do so, a written petition setting forth the reasons for requesting a hearing must be received by the Commissioner within 30 days of the date the Respondent received this Order and Assessment, or this Order and Assessment will become final.

If an appeal is filed, an initial hearing of this matter will be conducted by an Administrative Judge as a contested case hearing. Tenn. Code Ann. § 68-221-714; Tenn. Code Ann. §§ 4-5-301 to -326 (the Uniform Administrative Procedures Act); Tenn. Comp. R. & Regs. 1360-04-01 (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. No one may represent another person in a contested case proceeding unless they are an attorney licensed to practice law in Tennessee. Governments and 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 Administrative Judge has the authority to affirm, modify, or deny the Order and Assessment. Furthermore, the Administrative Judge 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 the setting of the matter for a

hearing and the hourly fees incurred due to the presence of the Administrative Judge and a court reporter.

Any petition for review must be directed to the Commissioner of the Department of Environment and Conservation, c/o Jenny L. Howard, General Counsel, Department of Environment and Conservation, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 2nd Floor, Nashville, Tennessee 37243. An appeal may also be filed by sending the petition to the following email address: TDEC.Appeals@tn.gov. 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, Department of Environment and Conservation, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 10th Floor, Nashville, Tennessee 37243. Technical questions and other correspondence involving compliance issues should be sent to Jessica Murphy, State of Tennessee, Division of Water Resources, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 11th Floor, Nashville, Tennessee 37243. Attorneys should contact the undersigned counsel of record. **The case number, DWS23-0016, should be written on all correspondence regarding this matter.**

Issued by the Director of the Division of Water Resources, Department of Environment and Conservation, on this 25th day of May, 2023.


Jennifer Dodd (May 25, 2023 14:52 CDT)

Jennifer Dodd
Director, Division of Water Resources
Department of Environment and Conservation

Reviewed by:

Samantha Buller-Young
Samantha Buller-Young (May 3, 2023 13:47 EDT)

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