



Alabama Department of Environmental Management
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June 27, 2019

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

91 7199 9991 7038 0611 2990

Mr. Michael Johnson, General Manager
The Water Works Board of the City of Birmingham
P.O. Box 830110
Birmingham, Alabama 35283

RE: Consent Order No. 19-084-CDW
PWSID Number: AL0000738
Permit Number: 2014-500
The Water Works Board of the City of Birmingham
Jefferson County

Dear Mr. Johnson:

Please find the enclosed ADEM Consent Order No. 19-084-CDW which requires you to take certain actions at The Water Works Board of the City of Birmingham, Jefferson County, AL in regard to alleged violations of the Alabama Safe Drinking Water Act. This Consent Order has been issued with the consent of The Water Works Board of the City of Birmingham and the Department. Please note that a revised Lead and Copper plan shall be submitted for review 90 days prior to monitoring and a Corrective Action Plan is due within 180 days.

Sincerely,

Glenda L. Dean

Glenda L. Dean, Chief
Water Division

GLD/ rec

File: ECO / 19-084-CDW

Enclosures

cc: Shawn S. Sibley /ADEM, Office of General Counsel
Carrie T. Blanton /ADEM, Office of General Counsel
Jeffery W. Kitchens /ADEM, Water Division
Aubrey H. White III /ADEM, Drinking Water Branch / Water Division
Ross E. Caton / ADEM, Drinking Water Branch / Water Division
William D. McClimans / ADEM, Drinking Water Branch / Water Division

Executed: 06-26-2019

Mailed: 06-27-2019



ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:)	
)	
The Water Works Board of the City)	
of Birmingham)	
)	Consent Order No. 19-084-CDW
)	
PWSID No. AL0000738)	
PERMIT NO. 2014-500)	

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "Department") and The Water Works Board of the City of Birmingham (hereinafter "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, 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.

DEPARTMENT'S CONTENTIONS

1. The Permittee operates a "public water system" as defined at Ala. Code § 22-23-31 (2015 Rplc. Vol.) located in Jefferson County, Alabama. The Permittee's public water system is a "Community Water System" as defined at Ala. Code § 22-23-31 (2015 Rplc. Vol.).
2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-17, as amended.
3. Pursuant to Ala. Code § 22-22A-4(n) (2015 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. In addition, the Department is authorized to administer and enforce the provisions of the ASDWA.

4. On September 23, 2013, the Department issued Water Supply Permit No. 2014-500 (hereinafter the "Permit") to the Permittee which authorizes the operation of its "public water system" under certain terms, limitations, and conditions.

5. ADEM Admin. Code r. 335-7-11-.05 requires the Permittee to monitor for lead and copper once every three years. The most recent monitoring results were due to the Department on October 10, 2016, and were timely received by the Department on September 25, 2016.

6. ADEM Admin. Code r. 335-7-11-.06 requires the Permittee to collect lead and copper samples from fifty monitoring sites.

7. ADEM Admin. Code r. 335-7-11-.07 requires the Permittee to complete a materials evaluation of its distribution system to identify targeted monitoring sites; to select monitoring sites according to a tiered approach; and, for any distribution system that contains lead service lines, to conduct at least 50% of the monitoring from sites served by a lead service line during each monitoring period. ADEM Admin. Code r. 335-7-11-.07 requires a community water system to conduct all lead and copper monitoring utilizing "tier one" sites, which are defined as sites including "single family structures containing lead pipe or plumbing, are served by a lead service line, or contain copper pipes with lead solder and were constructed after 1982." A community water system must document a lack of sufficient "tier one" sites in order to conduct remaining monitoring from "tier two" sites. Water systems with insufficient "tier one" and "tier two" sites may then utilize "tier three" sites.

8. ADEM Admin. Code r. 335-7-8-.04, which became effective January 4, 1989, prohibits the use of lead solder. Therefore, a site containing copper pipe with lead solder must be constructed after 1982 and before January 4, 1989, to meet the definition of a "tier one" site.

9. ADEM Admin. Code r. 335-7-11-.08(b) requires the Permittee to use a special procedure for collecting samples from a lead service line.

10. The lead testing report submitted to the Department by the Permittee on

September 19, 2016, included results from fifty-five sites. One site was resampled after the service line was replaced. All sites sampled were listed as containing a lead service line. On September 20, 2016, the Department received a resubmittal of the lead testing report from the Permittee indicating that none of the sample sites contained lead service lines. Eighteen sites were designated as "tier one" and thirty-seven were designated as "tier three." Of the eighteen "tier one" sites listed in the report, nine were marked as constructed after 1989 and thus do not meet the definition of a "tier one" site. The Permittee did not submit any documentation with the report to demonstrate a lack of sufficient "tier one" or "tier two" sites, or to demonstrate a lack of available lead service lines for monitoring.

11. During a phone conversation on August 13, 2018, and in an email on August 14, 2018, a representative of the Permittee informed the Department that all lead and copper samples are collected by the customer, and no special instructions are given for collecting samples from lead service lines.

12. On August 28, 2018, the Department sent a letter to the Permittee inquiring about the lack of lead service line monitoring and requesting an explanation for how the monitoring sites were chosen.

13. On September 7, 2018, the Department received a response letter via email dated September 6, 2018, from the Permittee. The letter stated that "[t]here are not sufficient records detailing where lead service lines are, and which lead service lines have been replaced." The letter stated that "the number of potential lead service lines installed prior to 1945 was estimated to be around 24,030" and that "records indicate we have possibly replaced or abandoned approximately 21,683 lead service lines." The letter concluded that, as of May 31, 2016, an estimated 2,347 lead service lines remained in service. The letter also stated that "we contacted customers in the areas where potential lead service lines may exist and found that these customers' homes have had plumbing upgrades over the last 73 years or more and do not have lead service lines." As for an explanation for the selection of monitoring sites, the Permittee's

response letter stated that there were insufficient "tier one" customers who agreed to participate in monitoring, and that the Permittee next selected sites from "tier three".

14. In its September 6, 2018 letter, the Permittee stated it was unaware of the actual service line materials for its chosen sampling sites. The methodology used by the Permittee to select its sampling sites did not follow the procedure outlined in ADEM Admin. Code r. 335-7-11-.07, as evidenced by its inclusion of "tier three" sites without exhausting "tier one" and "tier two" sites first. Because the Permittee was unaware of the actual service line materials for its chosen sampling sites, it could not ensure compliance with ADEM Admin. Code r. 335-7-11-.07 (1), which requires "[a]ny water system whose distribution system contains lead service lines shall conduct at least 50% of the monitoring from these sites during each monitoring period."

15. The Department issued a Notice of Violation (hereinafter "NOV") to the Permittee on October 2, 2018. The NOV cited the Permittee's failure to maintain an adequate inventory of lead service lines and "tier one" sites for monitoring purposes, for improperly selecting "tier three" sites for monitoring, and for failing to select at least 50% of the sites from lead service lines.

16. In response to the October 2, 2018, NOV, the Department received a written response from the Permittee dated October 30, 2018, on October 31, 2018. In its response, the Permittee stated that it "initiated a Lead Service Tracker system on November 16, 2017 to document known and discovered lead service lines in the distribution system" and that it "is aware of lead and partial lead service lines in its system." On December 14, 2018, the Permittee delivered to the Department an inventory of 16,876 addresses titled "Inventory of Potential Lead or Partial Lead Services," along with lists of customer service lines replaced since 1992.

17. On January 4, 2019, the Department sent a letter to the Permittee requesting clarification of certain information provided by the Permittee in its responses of September 6, 2018, October 30, 2018, and December 14, 2018.

18. On January 25, 2019, the Department received Permittee's written response to

the January 4, 2019, letter stating that the inventory of 16,876 lead service lines “do consist of lead or partial lead pipe material.” The Permittee also submitted a copy of the inventory under a revised title of “Inventory of Lead and Partial Lead Services”.

19. During a phone conversation on February 15, 2019, and in a follow-up email on March 6, 2019, a representative of the Permittee indicated that the Permittee believed, based on hydroexcavation of sampling sites listed in the aforementioned September 25, 2016 submittal, that some or all of the sample results received from the Permittee on September 25, 2016 were collected from sites served by lead service lines.

20. Based on reports and information provided by the Permittee, the lead monitoring results received by the Department on June 28, 2016, and revised on September 25, 2016, are considered to be noncompliant due to failure to follow the site selection procedure in ADEM Admin. Code r. 335-7-11-.07, and for failure to use the correct collection procedure for lead service lines required by ADEM Admin. Code r. 335-7-11-.08(b). The Permittee has been in non-compliance since October 11, 2016, the day after lead monitoring results were due for the monitoring period ending September 30, 2016.

21. The Department considered the possibility of invalidating the 2016 sampling results using the procedure in ADEM Admin. Code r. 335-7-11-.09, but determined it would not be appropriate for the following reasons:

a. Improper sample collection procedure is not among the four reasons listed in the rule for invalidation.

b. The Permittee was unaware of the actual service line materials for its chosen sample sites and did not have adequate records of lead service lines, thus the Department determined that it was not possible for the Permittee to select new sites and resample within the 20 day time limit in ADEM Admin Code r. 335-7-11-.09.

22. The Department is obligated to promulgate and enforce state primary drinking water regulations that at no time shall be less stringent than the national primary

drinking water regulations; these state regulations may, however, vary or be more stringent. The Permittee is only authorized to furnish and supply water *subject to* the conditions set forth in its Permit and in accordance with the ASDWA, the AEMA, and the regulations adopted thereunder. The Permittee's reliance on guidance documents or materials does not excuse its compliance with legally-binding statutes and regulations.

23. The Department neither admits nor denies the Permittee's contentions, which are set forth in paragraphs 24 to 70 below. 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

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

25. The Permittee's distribution system is comprised of approximately 4,000 miles of piping and many different materials including, cast iron, ductile iron, copper, polyvinyl chloride, galvanized steel, and lead.

26. ADEM Admin Code R. 335-7-11-.07 states that water systems shall complete a "materials *evaluation*" of its distribution system to identify targeted sample sites. The federal Lead and Copper Rule also requires public water systems to complete a "materials *evaluation*" of distribution systems in order to identify a pool of targeted sampling sites that is sufficiently large enough to allow the system to collect the requisite number of tap samples. See 40 CFR 141.86(a).

27. On March 2, 2016, the Department sent an email containing a Memorandum to public water systems, including the Permittee, regarding Lead and Copper Materials Inventory. The Memorandum stated the Department would now require all systems to

include a "materials inventory" with their 2016 Lead and Copper Sampling Plans on or before May 31, 2016.

28. The Permittee contends that a materials "*inventory*" is not required under either the Department Admin. Code R. 335-7-11-.07 or 40 CFR 141.86(a) and is distinctly different from the required "evaluation."

29. On March 9, 2016, Dennis Harrison, the Department, sent an email reply to questions posed by Mike Doyle with the City of Florence Gas and Water/Wastewater Department concerning the Memorandum requiring the lead and copper materials inventory. This email was subsequently shared with other utilities, including the Permittee on May 12, 2016.

30. In the March 9, 2016 email, the Department stated that water systems should provide the best information they have regarding the types of materials within their systems and suggested looking at their permit. The Department also stated that water systems would not be held legally accountable for submitting unknown reconstructed information as long as systems state that the information is from best existing records or a similar conditional statement. The Department also stated that it wanted the materials inventory report "to contain the best information you currently have."

31. In preparing the "inventory" requested in the Department's March 2, 2016 Memorandum, the Permittee relied on the state and federal regulations, as well as the Department's responses to the Florence Water Department. In accordance with the regulations and the Department guidance, the Permittee conducted a review of its system records and information on water mains content, meters and meter materials, materials used in service lines, tap order files and reviews of systems that Permittee had taken over in the course of its existence. This was the "best information" Permittee "currently" had regarding the lead and copper materials in its system.

32. The Permittee submitted its 2016 Lead and Copper Sampling Plan and Materials Inventory on May 27, 2016 to the Department. Page 5 of this plan included the sites that would be sampled for the 2016 monitoring period. Each of these sites

indicated customer supplied information regarding their interior plumbing materials. It also included the year of plumbing for each of the sites.

33. The year of plumbing is an indication of the materials that may be present anywhere in the home or in the service line. Pages 22 through 24 includes the Materials Inventory of distribution mains, service lines and meters that may have lead and/or copper materials, as well as a map indicating the locations of these areas.

34. The vast majority of the 2016 sites from the sampling pool came from the areas identified in the map contained in the Materials Inventory. The Materials Inventory contained charts with information for service lines containing lead and partial lead materials as well as copper. It also contained information on water meters and water mains with such materials. It stated that the estimated number of lead service lines was 2,347. The information that was prepared then was the *best available information* based on the current records and information at that time.

35. The Materials Inventory that was sent to the Department on May 27, 2016 was in compliance with the regulations (both state and federal) which require a materials "evaluation" to identify a pool of sampling sites large enough to collect the requisite number of samples. It also complied with the Department's advice for completing the inventory as set out in its March 9, 2016 email.

36. EPA's lead and copper regulations require samples to be first draw tap samples, "one liter in volume and have stood motionless in the plumbing system of each site for at least six hours. First draw samples for residential housing shall be collected from the cold-water kitchen tap or bathroom sink tap." 40 CFR 141.86(b)(2).

37. In November 23, 2004 EPA issued a Memorandum regarding Lead and Copper Rule - Clarification of Requirements for Collecting Samples and Calculating Compliance. In this Memorandum, EPA clarified what is a proper sample. EPA stated "the LCR also defines a proper sample as a first draw sample, 1 liter in volume, that is taken after water has been standing in plumbing for at least six hours, and from an interior tap typically used for consumption - cold water kitchen or bathroom sink tap in

residences. [40 CFR 141.86(b)(2)].” The Memorandum does not mention a collection procedure for samples from the lead service line.

38. EPA’s website currently contains a document entitled “Lead and Copper Rule: A Quick Reference Guide” (as of April 10, 2019). In this Guide, EPA states under the heading “Major Monitoring Provisions” that all community water systems “must collect first draw samples at taps in homes/buildings that are at high risk of Pb/Cu contamination.”

39. The Department’s website currently contains similar information (as of April 10, 2019) on its Drinking Water page under the heading Lead and Copper Rule (LCR). This information states that the LCR prescribes a “specific sampling protocol for water systems to utilize for collecting lead and copper samples at a residence or business” and provides a numbered outline of the protocol steps set out above, none of which mention a different collection procedure for sampling of lead service lines. This web page also references EPA’s website for more information and guidance, including the EPA Quick Reference Guide.

40. In 2012, 2015 and 2016 the Department made presentations at the Surface Water Meeting concerning the Lead and Copper rule.

41. In the 2012 presentation the Department had a slide entitled “Clarification of Sampling Requirements” and stated that sampling sites refer to taps that can be used for human consumption (ex: kitchen and bathroom taps, not hose bibs or taps at utility sinks).”

42. In the 2015 presentation the Department had a slide entitled “Clarification of Sampling Requirements” and stated that sampling sites refer to taps that can be used for human consumption (ex: kitchen and bathroom taps, not hose bibs or taps at utility sinks).”

43. In the 2016 presentation the Department stated that the LCR prescribed a specific sampling protocol which was from an interior cold water kitchen or bathroom

sink faucet; first draw – one liter; no point of use treatment devices – do not remove aerators; use wide mouth bottles; and no pre-stagnation flushing.

44. In all of these presentations, the Department's directions on sampling requirements were consistent with EPA's rules and guidance. No mention was made of a separate protocol for sampling from lead service lines in any of these presentations.

45. In February 2016, Tom Deloach (the Department) sent an email to Stacy Littleton (Permittee) and others requesting copies of the lead and copper sample collection procedures furnished to clients. On February 9, 2016 Stacy Littleton emailed Tom Deloach copies of the requested procedures.

46. The sample collection procedures sent to the Department in February 2016 contained the procedure for the collection of first draw samples at taps and did not contain a separate procedure for sample collection of lead service lines.

47. On March 1, 2016 Tom Deloach (the Department) sent an email to various entities, including the Permittee, which attached an EPA memo clarifying EPA's lead and copper sampling procedures.

48. Mr. Deloach stated in his email "please review your sampling plan and *ensure it includes the material in the memo.*" The EPA Memorandum noted that the Lead and Copper Rule requires monitoring at consumer taps and contained revised directions for tap sample collection procedures which set out the above described method for collecting first draw tap samples. No other procedure for service line samples was mentioned.

49. In March 2016, Permittee received a Memo dated March 2, 2016 from the Department which contained EPA's memo and letter to State primacy agencies on lead and copper dated Feb. 29, 2016.

50. In this letter, EPA stated that it urged the agencies to take action to "confirm that the state's protocols and procedures for implementing the LCR are *fully consistent* with the LCR and applicable EPA guidance" and to "use relevant EPA guidance on LCR sampling protocols and procedures for optimizing corrosion control."

51. EPA also attached to this letter a Memorandum from EPA's Office of Groundwater and Drinking Water summarizing EPA's recommendations on sampling techniques.

52. The Memorandum from EPA's Office of Groundwater and Drinking Water also included EPA's amended Suggested Directions for Homeowner Tap Sample Collection Procedures" which describes directions for taking first draw samples from the cold water kitchen tap, consistent with Permittee's samples and directions included in its 2016 Sampling Plan submitted to the Department on May 27, 2016.

53. Prior to submitting its 2016 Lead and Copper Sampling Plan, Permittee was in contact with the Department representatives regarding the proper items to include in its lead and copper plan.

54. Permittee's sample collection procedures and its instructions to customers on such procedures in its 2016 Lead and Copper Sampling Plan and its monitoring were consistent with and followed both the Department and EPA directives and guidance relevant to the 2016 time period.

55. As illustrated by the Department's October 27, 2016 presentation at the annual Surface Water Meeting, even *after* the October 10, 2016 deadline for sampling results, the Department *continued* to state that the correct sample collection procedure was to use first draw tap samples and did not mention a different procedure for samples from the lead service line.

56. Permittee sent its 2016 Lead and Copper Sampling Plan to the Department on May 27, 2016 and sent its lead monitoring results report to the Department on September 19, 2016. Based on questions from the Department regarding the column in the report titled "Lead Service Line Sample", Permittee sent a revised report on September 20, 2016.

57. The Department did not question the procedure used for lead service lines until on or about August 2018.

58. Permittee relied upon and followed all of the Department's guidance and advice in performing its 2016 Lead and Copper Sampling.

59. Permittee sent its Lead and Copper Plan to the Department on May 27, 2016.

60. The Plan included sites designated as tier one and tier three. The Department did not make any comments on this Plan or communicate to Permittee that sites were improperly designated.

61. Permittee subsequently sent its lead and copper monitoring results to the Department on September 19 and 20, 2016. All of this site selection information was contained in the Plan and monitoring results, including a listing of the tiers of the sites.

62. On September 20, 2016, the Department inquired about the response given in the "Lead Service Line Sample" column on the monitoring reports. Subsequent to that conversation, Permittee revised its lead monitoring reports to reflect "No" in all of these columns and sent the report back to the Department.

63. On September 21, 2016, the Department inquired whether BWB had any lead service lines in its system to Permittee's best knowledge.

64. Permittee replied to this email on September 21, 2016 and included the Lead and Copper Plan and materials inventory previously sent to the Department and explained its rationale for determining where lead service lines are in its system and the estimated number of such lines.

65. There was no further correspondence regarding the 2016 Sampling Plan or monitoring results until on or about August 2018.

66. With regard to its 2016 sample sites, Permittee has recently conducted visual inspections at the sites sampled in 2016 to confirm the Tiers and attempt to verify the existence of lead service lines. This work confirmed that twelve of the sites sampled in 2016 are Tier 1 sites and five of the sites had lead service lines.

67. If the Department had an issue with the 2016 sampling, it should have identified those issues well before 2018 and should have taken steps to invalidate such samples pursuant to ADEM Admin Code R. 335-7-11-.09(a)2. This would have then

required Permittee to re-sample and such samples could have been used for purposes of determining Permittee's compliance.

68. Permittee has recently proactively identified a sample pool of Tier 1 sites based on best available information and the newly developed materials inventory and sampling results from those sites are well below action limits.

69. The Permittee contends it complied with the Department's then advice on the proper sampling procedure; Permittee had a sufficient materials "inventory" and provided the Department with its materials "inventory", which complied with both the Rule and the Department's advice in 2016 as to the materials inventory; the Department itself knew of Permittee's sampling procedure and the tiers that were sampled in 2016 and did not point out any problems or potential violations until 2018.

70. Permittee does not have a history of previous drinking water violations and at no time since the implementation of this program has the Permittee exceeded any action limit for lead or copper.

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 believes that 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 and conditions:

A. The Permittee shall notify persons served by its drinking water system of its violations in its 2018 Consumer Confidence Report and its 2019 Consumer Confidence Report, in accordance with ADEM Admin Code r. 335-7-14-.04(5)(d).

B. The Permittee shall return to initial monitoring for lead by collecting samples from one-hundred properly selected sites every six-month compliance period, beginning with the period ending December 31, 2019. A revised monitoring plan shall

be submitted to the Department for review no later than ninety days prior to monitoring. The Permittee may request reduced monitoring upon demonstrating satisfactory lead monitoring results in accordance with ADEM Admin Code r. 335-7-11-.04 and 335-7-11-.05.

C. Should any lead sample from a lead service line listed in the monitoring plan exceed 0.015 mg/l, the Permittee shall notify the affected customer in accordance with ADEM Admin Code r. 335-7-11-.17 and shall submit a remediation plan to the Department within ninety days. The remediation plan shall include the following:

- 1) The plan shall identify the lead service line location, cost of replacement, a plan to minimize customer lead exposure before, during, and after removal (including customer education), and a schedule for implementation.

- 2) The plan shall identify the legal ownership of the line, and shall include a provision to notify the customer of the line's existence and offer by the Permittee to replace that portion of the line which is lead at a fair and equitable cost to the Permittee.

- 3) If the customer refuses the offer to replace its portion of the lead service line, the Permittee shall, in lieu of a partial lead service line replacement, provide the customer with educational materials explaining the risks of lead in drinking water and steps that can be taken to protect the customer from additional exposure.

- 4) If the customer accepts the offer to replace its portion of the lead service line, the Permittee shall complete the removal of its portion of the lead service line no later than one year from receipt of the results from the laboratory.

D. The Permittee shall prepare and submit to the Department a written Corrective Action Plan (CAP), signed and stamped by a professional engineer licensed by the State of Alabama. The CAP shall include the following:

- 1) Actions the Permittee shall initiate to identify and update its inventory of lead service lines.

2) A plan to make the current inventory of lead service lines available to the public on the Permittee's website within 6 months upon written acceptance of the CAP by the Department.

3) A plan to notify customers of the inventory's availability on customer bills, or annual Consumer Confidence Report, or direct mailer, and/or other means.

4) During the term of this Consent Order, the inventory prepared in accordance with the CAP shall be updated periodically until, based on available records, studies, and/or field investigations, the Permittee has completed its due diligence in identifying all lead service lines directly served by the Permittee's water system.

5) An implementation schedule.

E. The CAP shall be submitted so that it is received by the Department no later than one hundred eighty (180) days after 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 Permittee's receipt of the Department's comments. Upon written acceptance of the CAP by the Department, the Permittee shall implement the provisions of the CAP immediately.

F. The Permittee shall prepare and submit detailed Progress Reports to the Department describing the Permittee's progress towards achieving compliance with the items presented in the CAP. The Permittee shall submit the Progress Reports at the same time lead and copper monitoring results are submitted to the Department and continuing as long as the Permittee's performance obligations under this Order remain incomplete. In addition, no later than fourteen days following each due date herein, the Permittee shall submit to the Department a written notice of noncompliance, if applicable. Notices of noncompliance shall state the cause(s) of noncompliance, the corrective action taken, and shall describe the Permittee's ability to comply with any remaining requirements of this Order.

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

H. This Order shall terminate, subject to the Department's written approval, after each of the following has occurred:

1) The Permittee has achieved compliance with all provisions contained in this Order;

2) The Permittee has submitted a certification to the Department, signed by a professional engineer licensed to practice in the State of Alabama, indicating whether the Permittee is in compliance with all requirements of this Consent Order;

3) The Permittee has requested termination of this Consent Order along with its request to reduce monitoring to once every three years in accordance with ADEM Admin Code r. 335-7-11-.05; and

4) Upon receipt of such submittals pursuant to Paragraphs 2 and 3 above, the Department shall review the submittals to determine whether compliance has been achieved and shall then respond in writing.

I. 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.

J. 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.

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

L. 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.

M. 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.

N. 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.

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


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 modifications 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.

THE WATER WORKS
BOARD OF THE CITY OF
BIRMINGHAM


Mr. William "Butch" Burbage
Chairman/President

Date: 6/26/2019

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

EXECUTED AND ISSUED:


Lance R. LeFleur
Director

Date: 6/26/2019