

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

IN THE MATTER OF:)	DIVISION OF WATER RESOURCES
)	
NORTH GREENE UTILITY DISTRICT, INCORPORATED)	
)	
RESPONDENT.)	CASE NO. DWS17-0129
)	

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 (the "Division") by the Commissioner of the Tennessee Department of Environment and Conservation (the "Department"). The Commissioner is responsible for administering the Safe Drinking Water Act (the "Act"), Tennessee Code Annotated ("Tenn. Code Ann.") § 68-221-701 *et seq.*

II.

North Greene Utility District, Incorporated (the "Respondent") is properly registered to conduct business in Tennessee. The Respondent owns, operates, and/or controls a community public water system (the "System") existing in Greene County, Tennessee. The Public Water System Identification # is TN0000274. Process may be served on the Respondent through John Waddle, Jr., President, North Greene Utility District, Incorporated, 1105 Wilkerson Road, Mosheim, TN 37818-2736.

JURISDICTION

III.

Whenever the Commissioner has reason to believe that a violation of the Act has occurred, is occurring, or is about to occur, the Commissioner is authorized to issue an order and take corrective action pursuant to Tenn. Code Ann. § 68-221-705 and § 68-221-712. Further, pursuant to Tenn. Code Ann. § 68-221-705 and 68-221-713, the Commissioner has the authority to assess civil penalties and damages against any person who violates the Act. Rules governing the operation of public water supply systems have been promulgated pursuant to Tenn. Code Ann. § 68-221-704 and are effective as Tenn. Comp. R. & Regs. Chapter 0400-45-01. 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., as Commissioner of the Department of Environment and Conservation, has delegated such authority to Tisha Calabrese Benton, Director of the Division of Water Resources (the “Director”).

IV.

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

FACTS

V.

The Respondent obtains its source water from Lick Creek. The Respondent also purchases water from Mosheim Utility District (PWSID0000478), Kingsport Water Department (PWSID0000349) and Old Knoxville Highway Utility District (PWSID 0000530); all of which utilize surface water sources. The Respondent serves 2,401 connections and a population of approximately 5,907 persons. The System is classified as a Subpart H system, which includes systems using surface water sources.

VI.

Division personnel conducted a file review the week of March 28, 2016, for the monthly compliance period ending on February 29, 2016, and determined that the Respondent failed to collect sufficient total coliform samples and the accompanying disinfectant residuals during the compliance period. The Respondent collected three (3) samples instead of the required six (6) samples. The Division issued a notification letter to the Respondent on April 18, 2016.

VII.

Division personnel conducted a file review the week of June 26, 2017, for the quarterly compliance period ending June 30, 2017, and determined that the Respondent failed to maintain the haloacetic acid constituents (“HAA5”) disinfection byproducts in water served to its customers below the Maximum Contaminant Level (“MCL”). As set forth in the following table, the Respondent exceeded the MCL for HAA5 at 3 sites during the quarterly compliance period. The MCL is set on the locational running annual average (“LRAA”) for HAA5 at each monitoring site, calculated as the average of analytical results for samples taken at that

monitoring location during the previous four calendar quarters. The LRAA MCL for HAA5 is 0.060 mg/L. The Division issued a notification letter for the violation on July 24, 2017. The reported values are as follows:

Location	2nd Quarter 2017 HAA5
Site 201	0.063 mg/L
Site 202	0.071 mg/L
Site 203	0.069 mg/L

VIOLATIONS

VIII.

By failing to collect the appropriate number of total coliform samples during the monthly compliance period ending on February 29, 2016, the Respondent has violated Tenn. Comp. R. & Regs. 0400-45-01-.07(1)(c), which, in pertinent part, states:

- (c) The supplier of water for a community water system shall take coliform samples at regular time intervals and in number proportional to the population served by the system during the reporting period as set forth below:

TOTAL COLIFORM MONITORING FREQUENCY FOR COMMUNITY WATER SYSTEMS

Population Served	Minimum Number of Samples Per Month
4,901 to 5,800	6

IX.

By failing to maintain HAA5 LRAA levels below the MCL of 0.060 mg/L for the quarterly compliance period ending on June 30, 2017, the Respondent has violated Tenn. Comp. R. & Regs. 0400-45-01-.06(6)(b)2, which provides in pertinent part:

- 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

X.

WHEREFORE, pursuant to the authority delegated by the Commissioner under the provisions of the Safe Drinking Water Act, I, Tisha Calabrese Benton, hereby issue the following Order and Assessment:

- 1) The Respondent shall collect and submit the results for the required number of monthly bacteriological samples and disinfectant residuals in a timely manner.
- 2) No later than 60 days after receipt of this Order, the Respondent shall submit a Corrective Action Plan (“CAP”) to the Division detailing actions required to provide customers with drinking water below the MCL for HAA5. The CAP shall have an anticipated completion date not to exceed one (1) year. The CAP shall be submitted in duplicate to:

Manager, Compliance and Enforcement Unit
Division of Water Resources, TN Dept. of Environment and Conservation
William R. Snodgrass TN Tower
312 Rosa L. Parks Avenue, 11th Floor,
Nashville, TN 37243

Manager, Division of Water Resources
Johnson City Environmental Field Office
2305 Silverdale Drive
Johnson City, TN 37601

Any changes to the CAP required by the Division shall be made by the Respondent within 30 days of notification of deficiency. The Respondent shall submit the revisions in duplicate to the addresses listed above. The CAP must be approved by the Division. Upon approval of the CAP, the milestone dates and items contained within the CAP shall become enforceable provisions of this Order.

- 3) The Respondent shall fully implement the Division-approved CAP within one year of such approval. The Respondent shall send notice of CAP implementation to the Division at the addresses listed in item 2 above no later 30 days after the CAP implementation is complete.
- 4) The Respondent is hereby assessed a **CIVIL PENALTY of \$1,800.00 to be paid to the Division as follows:**
 - A. **The Respondent shall pay \$360.00 to the Division on or before the THIRTY-FIRST (31st) day of the receipt of this ORDER.**
 - B. The Respondent shall pay \$100.00 to the Division if, and only if, the Respondent fails to comply with item 1 above, payable within 30 days of written notice by the Division.
 - C. The Respondent shall pay \$240.00 to the Division if, and only if, the Respondent fails to comply with item 2 above, payable within 30 days of written notice by the Division.
 - D. The Respondent shall pay \$500.00 to the Division if, and only if, the Respondent fails to comply with item 3 above, payable within 30 days of written notice by the Division.

- E. Beginning with the receipt of the Order and ending one year after the receipt of the Order, the Respondent shall pay \$150.00 for each quarterly exceedance of the LRAA HAA5 MCL, not to exceed a total of \$600.00, payable within 30 days of receipt of a NOV.

The Respondent shall otherwise conduct business in accordance with the Act and Tenn. Comp. R. and Regs. Chapter 0400-45-01. 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 30 days in advance of the compliance date. The request must include sufficient detail to justify such an extension and at a minimum include 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 future enforcement action against the Respondent.

Failure to comply with any of the requirements of this Order and Assessment 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 March 31, 2018, provided the Respondent has met all requirements of the Order, paid all of the assessed damages and penalties to the Department, and is in substantial compliance with the Safe Drinking Water Act.

NOTICE OF RIGHTS

Tenn. Code Ann. § 68-221-712 and 68-221-713 allow the Respondent to appeal this Order and Assessment. To do so, a written petition setting forth the grounds (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 become final (not subject to review).

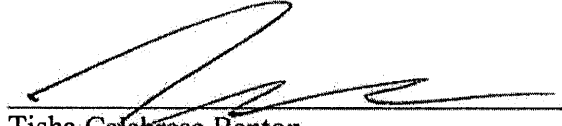
If an appeal is filed, an initial hearing of this matter will be conducted by an administrative law judge (“ALJ”) as a contested case hearing pursuant to the provisions of Tenn. Code Ann. § 4-5-301 *et seq.* (the Uniform Administrative Procedures Act) and Tenn. Comp. R. & Regs. 1360-04-01 *et seq.* (the 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 Board of Water Quality, Oil and Gas (the Board) 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 Tenn. Code Ann. § 68-221-713 (from \$50 to \$5,000 per day per violation). Furthermore, 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 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 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. 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, 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, Division of Water Resources, Department of Environment and Conservation, 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, DWS17-0129, should be written on all correspondence regarding this matter.**

Issued by the Director of the Division of Water Resources, Tennessee Department of Environment and Conservation, on this 5 day of January, 2018.



Tisha Catabrese Benton
Director, Division of Water Resources
TN Department of Environment and Conservation

Reviewed by:

Patrick N. Parker *by Boyle permission*

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