



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF WATER RESOURCES
Davy Crockett Tower
500 James Robertson Parkway, 9th Floor
Nashville, Tennessee 37243

Sep 5, 2024

The Honorable Hurley Marsh, Mayor
City of Dayton
399 First Avenue
Dayton, Tennessee 37321

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
RECEIPT 9414 7266 9904 2152 3384 94

Subject: **DIRECTOR'S ORDER NO. DWS24-0059**
CITY OF DAYTON
RHEA COUNTY, TENNESSEE

Dear Mayor Marsh,

Enclosed is a Director's Order and Assessment of Civil Penalty DWS24-0059 issued by April Grippo, Director of the Division of Water Resources, under the delegation of Commissioner David W. Salyers, PE. Read the Order carefully and pay special attention to the NOTICE OF RIGHTS section. *The required due dates in the Order are based on the date the Respondent receives the Order, and not the date that it was signed by the Director.*

These violations have resulted in a civil penalty assessment of \$2,100.00, of which \$420.00 is due on or before the 31st day after the receipt of this Order. The remaining \$1,680.00 in penalties are based upon complying with items specified in the Order. During the course of investigating the violations listed in this order, the Division incurred damages in the amount of \$12.40, also due and payable on or before the 31st day after the receipt of this Order. **The total amount due on or before the 31st day after the receipt of this Order is \$432.40.**

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 has questions concerning this correspondence, please contact Tom Moss at (615) 917-4135 or you may contact Jessica Murphy at (615) 390-0675.

Sincerely,

Jessica Murphy, Manager
Compliance and Enforcement Unit

EJM: TAM

cc: DWR – EFO-CH
DWR – Enforcement File
OGC (via email)



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
OFFICE OF GENERAL COUNSEL
Davy Crockett Tower
500 James Robertson Parkway, 5th Floor
Nashville, Tennessee 37243

Notice of Order and Request for Waiver of Service of Process

September 4, 2024

The Honorable Hurley Marsh, Mayor
City of Dayton, Tennessee
399 First Avenue
Dayton, Tennessee 37321

Dear Mayor Marsh,

The Department of Environment and Conservation has commenced an enforcement action against the City of Dayton, Tennessee. A copy of Director's Order No. DWS24-0059 is attached to this notice.

This communication does not constitute service of process, but rather is a request that you sign and return the enclosed waiver of service of process.

The cost of service will be avoided if I receive a signed copy of the waiver within 15 days after the date designated below as the date on which this Notice and Request is sent. You may sign the attached waiver either electronically or by other means and return by electronic mail.

If you comply with this request and return the signed waiver, Director's Order No. DWS24-0059 will not be served on you. The action will then proceed as if you had been served on the date the waiver is filed.

If you do not return the signed waiver within the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Tennessee Rules of Civil Procedure, the Uniform Administrative Procedures Act, and/or the Tennessee Safe Drinking Water Act.

I affirm that this request is being sent to you on behalf of the Tennessee Department of Environment and Conservation this September 4, 2024.

Catherine Anglin

Catherine W. Anglin, Senior Associate Counsel
Department of Environment & Conservation

STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION

IN THE MATTER OF:)	DIVISION OF WATER RESOURCES
TENNESSEE DEPARTMENT OF)	
ENVIRONMENT AND)	
CONSERVATION,)	
<i>Petitioner,</i>)	
)	CASE NUMBER DWS24-0059
v.)	
)	
CITY OF DAYTON, TENNESSEE)	
<i>Respondent.</i>)	

Waiver of Service of Process

I am the Mayor of the City of Dayton, Tennessee. I acknowledge receipt of your request that I waive service of process concerning Director's Order No. DWS24-0059. I have also received a copy of Director's Order DWS24-0059 and a means by which I can return the signed waiver to you without cost to me.

I agree to waive formal service of process in the manner provided by Rule 4, the Uniform Administrative Procedures Act, and the Tennessee Safe Drinking Water Act.

The City of Dayton, Tennessee, will retain all defenses except for objections based on a defect in service of process.

I have read the Notice of Rights contained in Director's Order No. DWS24-0059. I understand that a judgment may be entered against the City of Dayton if the City of Dayton does not either comply with, or file a timely appeal of, Director's Order No. DWS24-0059.

The Honorable Hurley Marsh, Mayor
City of Dayton, Tennessee
399 First Avenue
Dayton, Tennessee 37321

Date

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

IN THE MATTER OF:)	DIVISION OF WATER RESOURCES
)	
)	
CITY OF DAYTON,)	
)	
)	
)	
)	
RESPONDENT.)	CASE NO. DWS24-0059

DIRECTOR'S ORDER AND ASSESSMENT

NOW COMES April Grippo, Director of the Tennessee Division of Water Resources, and states:

PARTIES

I.

April Grippo 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"). The Commissioner is responsible for administering the Safe Drinking Water Act ("Act"), Tenn. Code Ann. §§ 68-221-701 to -720.

II.

The City of Dayton (the "Respondent") owns, operates, and/or controls a community public water system (the "System") Dayton Water Department existing in Rhea County, Tennessee and located at 399 First Avenue, Dayton Tennessee. The System's Public Water System Identification (PWSID) number is TN0000174. Process may be served on the Respondent through Mr. Hurley Marsh, Mayor, City of Dayton 399 First Avenue, Dayton, Tennessee 37321.

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 may issue a complaint to the violator and order that the violator take corrective action. 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, and 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 April Grippo.

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 the Tennessee River. The Respondent's System is classified as a Subpart H system, which includes systems using surface water sources. The Respondent's System serves 9,100 connections and a population of approximately 23,660.

VI.

Division personnel performed a file review and determined that the Respondent failed to submit a certification of distribution to the Division by October 1, 2020 for the calendar year 2019 Consumer Confidence Report (“CCR”) to its customers by July 1, 2020. The Division issued a letter notifying the Respondent of the violation for not submitting the certification of distribution on December 11, 2020.

VII.

Division personnel performed a file review and determined that the Respondent failed to perform consumer notice activities for those customers participating in tap sampling for lead and copper during the compliance period from June 1 through September 30, 2020. The Division notified the Respondent of the consumer notice violation in a letter dated December 15, 2020.

VIII.

Division personnel performed a file review and determined that the Respondent sampled for the disinfection byproducts total trihalomethanes (TTHM) and haloacetic acids 5 (HAA5) on December 15, 2020, instead of the week of November 11, 2020, as required in the Division approved monitoring plan. The Division notified the Respondent of the violation in a letter dated February 24, 2021.

IX.

Division personnel conducted a file review for the quarterly compliance period ending March 31, 2024, and determined that the Respondent failed to maintain water served to its customers below Maximum Contaminant Levels (MCL) for the disinfection byproduct Haloacetic Acids 5 (HAA5) for the quarterly compliance period. Public water systems are required to maintain locational running annual average (LRAA) below the MCL for TTHM and HAA5 at each monitoring site. The monitoring sites are chosen as the most likely locations to have high

disinfection byproduct concentrations, calculated as the average of sample analytical results for samples taken at a particular monitoring location during the previous four calendar quarters. The LRAA MCL for TTHM is 0.080 mg/L and the LRAA MCL for HAA5 is 0.060 mg/L. The Respondent exceeded the MCL for HAA5 for the quarterly compliance period at site 209 with a result of 0.06040 mg/L. The Division issued a letter notifying the Respondent of the violation on May 1, 2024.

X.

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

VIOLATIONS

XI.

By failing to submit the certification of distribution of the calendar year 2019 CCR to customers to the Division prior to October 1, 2020, the Respondent violated Rule 0400-45-01-.35(5)(c), which states:

- (c) No later than the date the system is required to distribute the report to its customers, each community water system must mail a copy of the report to the Department, followed within 3 months by a certification that the report has been distributed to customers, and that the information is correct and consistent with the compliance monitoring data previously submitted to the Department.

XII.

By failing to provide consumer notice for the lead and copper tap monitoring results within 30 days of the Respondent receiving the results for the June 1 through September 30, 2020 compliance period, the Respondent violated Rule 0400-45-01-.33(6)(e), which states, in pertinent part:

- (e) Notification of results.
 - 1. Reporting requirement. All water systems must provide a notice of the individual tap results from lead tap water monitoring carried out under the requirements of paragraph (7) of this rule to the persons served by the water

system at the specific sampling site from which the sample was taken (e.g., the occupants of the residence where the tap was tested).

2. Timing of notification. A water system must provide the consumer notice as soon as practical, but no later than 30 days after the system learns of the tap monitoring results. ...

XIII.

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).

XIV.

By failing to maintain treated water below the MCL for HAA5 for the quarter ending March 31, 2024, the Respondent violated Rule 0400-45-01-.06(6)(b)2.(i), which states:

2. LRAA compliance (Rule 0400-45-01-.38)
 - (i) Compliance dates. The Stage 2 Disinfection Byproducts Requirements (LRAA) for TTHM and HAA5 must be complied with as a locational running annual average (LRAA) at each monitoring location beginning the date specified for Stage 2 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

XV.

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, DWS24-0059, 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:

Jennifer Innes, Manager
Chattanooga Environmental Field Office
Division of Water Resources
1301 Riverfront Parkway, Suite 206
Chattanooga, Tennessee 37402

AND

Jessica Murphy, Manager
Enforcement and Compliance Unit
Division of Water Resources
Davy Crockett Tower
500 James Robertson Parkway, 9th Floor
Nashville, Tennessee 37243

All payments shall be submitted to:

Treasurer, State of Tennessee
Division of Fiscal Services - Consolidated Fees Section
TN Department of Environment and Conservation
500 James Robertson Pkwy, 6th 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 \$2,100.00. The Respondent shall pay \$420.00, which is the upfront portion of the total civil penalty, on or before the thirty-first day after receipt of this Order.**
- (3) The Respondent shall submit a corrective action plan (CAP) to maintain water quality below the LRAA MCLs for TTHM and HAA5 within 60 days of the receipt of this Order. The Respondent shall pay \$480.00 for the failure to submit the plan,

payable within 30 days of the Division's demand for payment. Once the plan is approved by the Division, the plan becomes an enforceable part of the Order.

- (4) The Respondent shall timely perform consumer notice for the lead and copper tap monitoring results. The Respondent shall pay \$100.00 for each failure to timely perform consumer notice, not to exceed \$200.00, payable within 30 days of the Division's demand for payment.
- (5) The Respondent shall pay \$100.00 for the failure to submit an accurate, timely CCR or certification of distribution of the CCR, not to exceed \$200.00, payable within 30 days of the Division's demand for payment.
- (6) The Respondent shall pay \$100.00 for each quarterly exceedance of the LRAA HAA5 MCL or LRAA TTHM MCL, not to exceed \$300.00, payable within 30 days of the Division's demand for payment.
- (7) The Respondent must demonstrate within two years after the effective date of this Order that the CAP is fully implemented by having four quarters of TTHM and HAA5 results below the LRAA MCL and notify the Division in writing. The Respondent shall pay \$500.00 for the failure to fully implement the CAP and notify the Division.

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, any 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 two years after the effective date of this Order, 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, 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 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. 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 or this Order will become final.

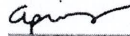
If the Respondent files an appeal, an Administrative Judge will conduct an initial hearing of this matter as a contested case hearing. Tenn. Code Ann. § 68-221-714; Tenn. Code Ann. §§ 4-

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. 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. 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, Davy Crockett Tower, 500 James Robertson Pkwy, 5th Floor, Nashville, Tennessee 37243. An appeal may also be filed by sending the petition to the following email address: TDEC.Appeals@tn.gov. Attorneys should contact the undersigned counsel of record. **The case number, DWS24-0059, should be written on all correspondence regarding this matter.**

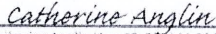
Issued by the Director of the Division of Water Resources, Tennessee Department of Environment and Conservation, on this 30 day of August, 2024.



April Grippo (Aug 30, 2024 13:39 CDT)

April Grippo
Director, Division of Water Resources
TN Department of Environment and Conservation

Reviewed by:



Catherine Anglin (Aug 23, 2024 11:36 EDT)

Catherine W. Anglin
BPR # 028120
Senior Associate Counsel
Department of Environment and Conservation
Knoxville Environmental Field Office
3711 Middlebrook Pike
Knoxville, Tennessee 37921
(865) 306-0902
Catherine.Anglin@tn.gov