

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

IN THE MATTER OF:)	DIVISION OF WATER RESOURCES
)	
)	
WEST POINT UTILITY DISTRICT,)	
)	
)	
)	
)	
RESPONDENT.)	CASE NO. DWS23-0057

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 Department of Environment and Conservation (“Department”). The Commissioner is responsible for administering the Tennessee Safe Drinking Water Act (“Act”), Tenn. Code Ann. §§ 68-221-701 to -720.

II.

West Point Utility District is a domestic nonprofit corporation that owns, operates, and/or controls a community public water system known as West Point Utility District (the “System”) existing in Lawrence County, Tennessee. The Public Water System Identification (PWSID) number is TN0000740. Process may be served on the Respondent through Ray Tidwell, President, West Point Utility District, P. O. Box 1, West Point, Tennessee 38486.

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 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 water from the Town of Loretto, PWSID number TN0000408, whose water source is two springs which have been classified as ground water under the direct influence of surface water. 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 and those systems purchasing from systems with such sources. The Respondent's System serves 156 connections and a population of approximately 324 persons.

VI.

Division personnel performed a file review and determined that the Respondent had failed to perform the lead consumer notice to tap sampling participants after the sampling that occurred during the June 1 through September 30, 2018, monitoring period. The Division notified the Respondent of the violation in a letter dated November 19, 2018. The Respondent subsequently failed to perform a Tier 3 public notice for the consumer notice violation by November 19, 2019.

VII.

Division personnel performed a file review and determined that the Respondent had not followed the Division approved disinfection byproduct sampling plan for Haloacetic Acids 5 (HAA5) and Total Trihalomethanes (TTHM) for the third quarter of 2021, ending September 30, 2021. The Respondent conducted the sampling for TTHM and HAA5 on September 17, 2021, instead of the week of August 4, 2021, as stated in the plan. The Division notified the Respondent of the monitoring schedule violation in a letter dated November 1, 2021.

VIII.

Division personnel performed a file review and determined that the Respondent failed to provide the lead consumer notice to the participants of tap sampling after the June 1 - September 30, 2021, monitoring period. The Division notified the Respondent of the consumer notice violation in an email dated December 1, 2021.

IX.

Division personnel performed a file review and determined that the Respondent failed to submit the calendar year 2020 Consumer Confidence Report (CCR) to the Division by July 1,

2021, and the certification of the distribution of the CCR to customers to the Division by October 1, 2021. The Division notified the Respondent of the CCR violations in a letter dated December 17, 2021.

X.

Division personnel performed a file review and determined that the Respondent failed to perform the required disinfection byproduct monitoring for HAA5 and TTHM in the third quarter of 2022 ending September 30, 2022. The Division notified the Respondent of the monitoring violation in a letter dated October 31, 2022.

XI.

Division personnel performed a file review and determined that the Respondent failed to include the failure to follow the Division approved disinfection byproduct sampling plan for HAA5 and TTHM in the third quarter of 2021 in the calendar year 2021 CCR. The Division notified the Respondent of the CCR violation in a letter dated November 30, 2022.

XII.

Division personnel performed a file review and determined that the Respondent failed to provide a Tier 3 public notice before November 1, 2022, for the failure to follow the Division approved disinfection byproduct sampling plan for HAA5 and TTHM in the third quarter of 2021. Division personnel also determined that the Respondent failed to perform a Tier 3 public notice before December 1, 2022, for the lead and copper consumer notice violation. The Division notified the Respondent of the Tier 3 public notice violations in a letter dated February 13, 2023.

XIII.

Division personnel performed a sanitary survey for the System on October 18, 2019, and determined that the Respondent failed to update the 2014 water distribution map every five years

as required by regulation. During the October 2019 sanitary survey, Division personnel reminded the Respondent to submit an updated map by November 30, 2019, which the Respondent failed to do. Division personnel performed a subsequent sanitary survey on September 17, 2021, and determined that the Respondent had again failed to update the 2014 water distribution map. The Division notified the Respondent of this failure in the October 7, 2021, sanitary survey letter.

XIV.

The Division incurred \$12.40 in damages while investigating these violations.

VIOLATIONS

XV.

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, 2018 compliance period and the June 1 through September 30, 2021 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. . .

XVI.

By failing to provide lead consumer notices to those participating in the lead and copper tap sampling, the Respondent violated primary drinking water regulations as specified in Rule 0400-45-01-.33(1)(k), which requires a Tier 3 public notice under Rule 0400-45-01-.19(1)(b):

- (k) Violation of primary drinking water regulations. Failure to comply with the applicable requirements of this rule, including requirements established by the

Department pursuant to these provisions, shall constitute a violation of the primary drinking water regulations for lead and/or copper.

The Respondent failed to perform the required Tier 3 public notice by November 19, 2019, and December 1, 2022, as required under Rule 0400-45-01-.19(1)(b):

Table 0400-45-01-.19(1)(b)
Definition of Public Notice Tiers

-
1. Tier 1 public notice—required for NPDWR violations and situations with significant potential to have serious adverse effects on human health as a result of short-term exposure.
 2. Tier 2 public notice—required for all other NPDWR violations and situations with potential to have serious adverse effects on human health.
 3. Tier 3 public notice—required for all other NPDWR violations and situations not included in Tier 1 and Tier 2.

XVII.

By failing to monitor for the disinfection byproducts HAA5 and TTHM the week of August 4, 2021, in accordance with the System’s Division-approved plan, the Respondent violated Rule 0400-45-01-.38(2)(a)2., which states, in pertinent part:

2. You must monitor at no fewer than the number of locations identified in this part.

Source water type	Population size category	Monitoring Frequency ¹	Distribution system monitoring location per monitoring period ²
Subpart H	<500	per year	2
...			

- 1 All systems must monitor during the month of highest DBP concentrations.
- 2 Systems on quarterly monitoring must take dual sample sets every 90 days at each monitoring location, except subpart H systems serving 500 – 3,300. Systems on annual monitoring and subpart H systems serving 500 – 3,300 are required to take individual TTHM and HAA5 samples (instead of a dual sample set) at the locations with the highest TTHM and HAA5 concentrations, respectively. Only one location with a dual sample set per monitoring period is needed if highest TTHM and HAA5 concentrations occur at the same location (and month, if monitored annually).

XVIII.

By failing to submit the calendar year 2020 CCR by July 1, 2021, and the certification of distribution to customers by October 1, 2021, the Respondent violated Rule 0400-45-01-.35(2)(b) and Rule 0400-45-01-.35(5)(c).

Rule 0400-45-01-.35(2)(b) states:

- (b) Each existing community water system must deliver its first report by October 19, 1999, its second report by July 1, 2000, and subsequent reports by July 1 annually thereafter. The first report must contain data collected during, or prior to, calendar year 1998 as prescribed in paragraph (3) of this rule. Each report thereafter must contain data collected during, or prior to, the previous calendar year.

Rule 0400-45-01-.35(5)(c) 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.

XIX.

By failing to monitor for the disinfection byproducts HAA5 and TTHM for the third quarter of 2022, in accordance with the System's Division-approved plan, the Respondent violated Rule 0400-45-01-.38(2)(a)2., which states, in pertinent part:

- 2. You must monitor at no fewer than the number of locations identified in this part.

Source water type	Population size category	Monitoring Frequency ¹	Distribution system monitoring location per monitoring period ²
Subpart H	<500	per year	2
...			

- 1 All systems must monitor during the month of highest DBP concentrations.
- 2 Systems on quarterly monitoring must take dual sample sets every 90 days at each monitoring location, except subpart H systems serving 500 – 3,300. Systems on annual monitoring and subpart H systems serving 500 – 3,300 are required to take individual TTHM and HAA5 samples (instead of a dual sample set) at the

locations with the highest TTHM and HAA5 concentrations, respectively. Only one location with a dual sample set per monitoring period is needed if highest TTHM and HAA5 concentrations occur at the same location (and month, if monitored annually).

XX.

By failing to include the off schedule TTHM and HAA5 monitoring violation in the calendar year 2021 CCR, 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.

XXI.

By failing to timely issue a tier 3 public notice by November 1, 2022, for the TTHM and HAA5 monitoring violation from the third quarter of 2021, the Respondent violated Rule 0400-45-01-.19(4), which states, in pertinent part:

- (4) Tier 3 Public Notice—Form, manner, and frequency of notice.
 - (a) Which violations or situations require a Tier 3 public notice? Table 0400-45-01-.19(4) lists the violation categories and other situations requiring a Tier 3 public notice . . .

Table 0400-45-01-.19(4)
Violation Categories and Other Situations Requiring a Tier 3 Public Notice

1. Monitoring violations for the primary drinking water contaminants, except where a Tier 1 notice is required under subparagraph (2)(a) of this rule or where the department determines that a Tier 2 notice is required . . .

XXII.

By failing to update the 2014 water distribution map after two sanitary surveys, the Respondent violated Rule 0400-45-01-.17(5), which states:

- (15) All community water systems serving 50 or more service connections must have and maintain up-to-date maps of the distribution system. These maps must show the locations of the water mains, sizes of mains, valves, blow-offs or flush hydrants, air-release valves, and fire hydrants. One up-to-date copy of the overall system distribution map(s) is to be submitted to the Division of Water Resources every five years.

ORDER and ASSESSMENT

XXIII.

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, DWS23-0057, 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 \$ 3,450.00. **The Respondent shall pay \$690.00, 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 \$ \$2,760.00 only if the Respondent fails to comply with the following corrective action items.
- (3) The Respondent shall perform consumer notification for lead and copper tap sampling within 30 days of receiving the results. The Respondent shall pay \$200.00 for the failure to perform consumer notification, not to exceed \$400.00, payable within 30 days of the Division's demand for payment.
- (4) The Respondent shall perform public notices as required. The Respondent shall pay \$169.00 for each failure to perform public notices in a timely fashion, not to exceed \$ 676.00, payable within 30 days of the Division's demand for payment.
- (5) The Respondent shall pay \$200.00 for the failure to sample in accordance with the Division approved disinfection byproduct monitoring schedule, not to exceed \$400.00, payable within 30 days of the Division's demand for payment.
- (6) The Respondent shall pay \$171.50 for the failure to submit a timely CCR or certification of distribution of the CCR, not to exceed \$686.00, payable within 30 days of the Division's demand for payment.
- (7) The Respondent shall publish accurate CCRs. The Respondent shall pay \$174.00 for the failure to include required information in the CCR, not to exceed \$348.00, payable within 30 days of the Division's demand for payment.

- (8) Within 45 days of the receipt of this Order, the Respondent shall submit an updated water distribution map to the Division. The Respondent shall pay \$250.00 for the failure to timely submit the map, 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 and Assessment. 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 and Assessment could lead to further enforcement actions, which may include additional civil penalties, assessment of damages, and/or recovery of costs.

This Order and Assessment shall be considered closed no later than two years after the Order becomes effective, provided all requirements of the Order and Assessment have been met, any outstanding penalties have been paid, and 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 will be considered as a mitigating factor in determining the need for future enforcement action.

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 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 Law Judge (ALJ) 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 persons (corporations, limited partnerships, limited liability companies, etc.) cannot engage in the practice of law and therefore may only pursue an appeal through an attorney licensed to practice law in Tennessee. Low-income individuals may be eligible for representation at reduced or no cost through a local bar association or legal aid organization.

At the conclusion of any initial hearing, the ALJ has the authority to affirm, modify, or deny the Order. Furthermore, the ALJ on behalf of the Board has the authority to assess additional damages incurred by the Department including, but not limited to, all docketing expenses associated with 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 must be directed to the Commissioner of the Department of Environment and Conservation, c/o Jenny L. Howard, General Counsel, 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. Attorneys should contact the undersigned counsel of record. **The case number, DWS23-0057, 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 10th day of August, 2023.


Jennifer Dodd (Aug 10, 2023 10:46 CDT)

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

Reviewed by:

Samantha Buller-Young
Samantha Buller-Young (Aug 10, 2023 10:56 EDT)

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