

ONIS "TREY" GLENN, III  
DIRECTOR



BOB RILEY  
GOVERNOR

Alabama Department of Environmental Management  
adem.alabama.gov

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Montgomery, Alabama 36130-1463  
(334) 271-7700  
FAX (334) 271-7950

February 25, 2008

Hon. Dan Hilyer, Mayor Pro-Tem  
Waverly Water System  
P. O. Box 115  
Waverly, Alabama 36879



RE: Waverly Water System  
Consent Order NO. 08-102-CDW

Dear Mayor Hilyer:

Please find enclosed ADEM Consent Order No. 08-102-CDW which requires Waverly Water System to take certain actions in regard to alleged violations of the Safe Drinking Water Act. This Consent Order has been issued with the consent of Waverly Water System and the Department.

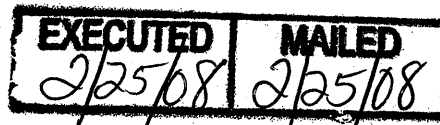
If you have any questions, please do not hesitate to contact Mr. Jeff Williams at (334) 271-7780.

Sincerely,

James E. McIndoe  
Water Division, Chief

cc: Olivia H. Rowell, ADEM-General Counsel  
ADEM – Public Affairs Office

Enclosures



Birmingham Branch  
110 Vulcan Road  
Birmingham, AL 35209-4702  
(205) 942-6168  
(205) 941-1603 (Fax)

Decatur Branch  
2715 Sandlin Road, S.W.  
Decatur, AL 35603-1333  
(256) 353-1713  
(256) 340-9359 (Fax)

Mobile Branch  
2204 Perimeter Road  
Mobile, AL 36615-1131  
(251) 450-3400  
(251) 479-2593 (Fax)

Mobile - Coastal  
4171 Commanders Drive  
Mobile, AL 36615-1421  
(251) 432-6533  
(251) 432-6598 (Fax)

**ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF: )

Waverly Water System )  
Waverly, Alabama )

CONSENT ORDER No.  
08-102-CDW

PWSID No. 0000823 )  
Permit No. 2004-787 )

***PREAMBLE***

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter, "Department") and Waverly Water System (hereinafter, "Permittee") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), the Alabama Safe Drinking Water Act, Ala. Code §§ 22-22-30 to 22-23-53, (2006 Rplc. Vol.), the ADEM Administrative Code of Regulations (hereinafter, ADEM Admin. Code R.) promulgated pursuant thereto, and the Federal Safe Drinking Water Act, 42 U.S.C. §§ 300f to 300j-26.

***STIPULATIONS***

1. The Department is a duly constituted department of the State of Alabama pursuant to §§ 22-22A-1 through 22-22A-16, Ala. Code (2006 Rplc. Vol.).
2. Pursuant to Ala. Code §§ 22-22A-4(n) (2006 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. Additionally, pursuant to Ala. Code § 22-23-49(2) (2006 Rplc. Vol.), the Department is authorized to administer and enforce the provisions of the Alabama Safe Drinking Water Act, Ala. Code §§ 22-23-30 to 22-23-53 (2006 Rplc. Vol.).

3. The Permittee was issued the above referenced Water Supply Permit by the Department which authorizes the operation of a “public water system” as defined at §22-23-31, Ala. Code (2006 Rplc. Vol.). The Permittee’s public water system is a “Community Water System” as defined at §22-23-31, Ala. Code (2006 Rplc. Vol.)

4. ADEM Admin Code R. 335-7-2-04(3) requires the Permittee to monitor for disinfection byproducts. ADEM Admin. Code R. 335-7-2-.04(1)(b) sets Maximum Contaminant Levels (MCLS) of 0.080mg/L for Total Trihalomethanes (TTHM) and 0.060 mg/L for Haloacetic Acids (HAA5).

5. ADEM Admin. Code R. 335-7-2-.04(f)1 requires the Permittee to conduct disinfection byproduct monitoring at specific sites on a quarterly basis. A system-wide average is calculated from the quarterly samples (summing all sample results and dividing by the number of sample sites). System compliance is based on a running annual average (the sum of four consecutive quarterly averages, divided by four).

6. Listed below, are the monitoring periods in which an MCL was incurred by the Permittee, followed by the date an MCL violation letter was mailed by the Department:

- |    |                          |                  |
|----|--------------------------|------------------|
| a. | October – December, 2006 | January 22, 2007 |
| b. | January – March, 2007    | May 23, 2007     |
| c. | April – June, 2007       | July 30, 2007    |

7. In accordance with ADEM Admin Code R. 335-7-2-.13(1)(b), the Permittee has provided public notification for the TTHM MCL violations that have occurred.

8. The Permittee consents to abide by the terms of the following Order, and reserves its right to contest the alleged violations as against the Department or any third party in any proceedings, except as provided in Ala. Code § 22-22A-7(c) (2006 Rplc. Vol.).

9. 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.

### ***ORDER***

THEREFORE, without admitting that it has violated any statutes or regulations, the Permittee, along with the Department, desires to resolve and settle the compliance issues cited above. Therefore, the Department and the Permittee agree to enter into this Consent Order with the following terms and conditions:

A. The Permittee agrees that, within ninety (90) days of the effective date of this Consent Order, the Permittee shall submit to the Department's Drinking Water Branch a written Corrective Action Plan (CAP) that details the plan of action that the Permittee will initiate to achieve and/or maintain compliance with the TTHM MCL. Implementation of the CAP shall begin immediately upon receipt of written acceptance of the CAP from the Department.

B. The Permittee agrees that it shall achieve compliance with ADEM Admin. Code R. 335-7-2-.04(1)(b), regarding the TTHM MCL no later than February 1, 2010.

C. The Permittee agrees to pay to the Department a stipulated penalty of \$4000 if the Permittee is not in compliance with the TTHM MCL by February 1, 2010. This stipulated penalty will be due no later than April 30, 2010. Notification to the Permittee of the assessment of the stipulated penalty is not required of the Department.

D. The permittee agrees that all penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel  
Alabama Department of Environmental Management  
P.O. Box 301463  
Montgomery, Alabama 36130-1463

E. The Permittee agrees to comply with the terms, limitations, and conditions of the above referenced Water Supply Permit each and every day hereafter until such time as all requirements of this Consent Order are satisfied.

F. The parties agree that 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.

G. Subject to the terms of these presents and subject to provisions otherwise provided by statute, the parties agree that this Consent Order is intended to operate as a full resolution of the violations which are cited in this Consent Order.

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

I. For purposes of this Consent Order only, the Permittee agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. The Permittee also agrees that 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.

J. By agreement of the parties, 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 facility 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.

K. By agreement of the parties, 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.

L. By agreement of the parties, this Order shall not affect the Permittee's obligation to comply with any Federal, State, or local laws or regulations.

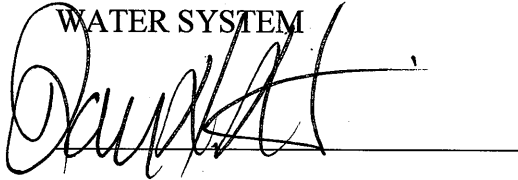
M. By agreement of the parties, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

N. By agreement of the parties, any modifications of this Order must be agreed to in writing signed by both parties.

O. By agreement of the parties, except as set forth herein, this 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.

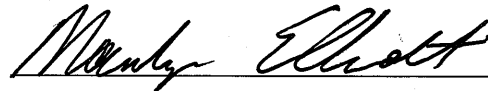
Executed in duplicate, with each part being an original.

WAVERLY  
WATER SYSTEM



<sup>Dan</sup>  
Hon. ~~Ellen~~ Hilyer  
Mayor *PRO-TEM*

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT



Onis "Trey" Glenn, III  
Director

Date:  2/1/08

Date: 2/25/2008