



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF WATER RESOURCES
William R. Snodgrass - Tennessee Tower
312 Rosa L. Parks Avenue, 11th Floor
Nashville, Tennessee 37243-1102

Mar 21, 2024

The Honorable Marilyn Parker, Mayor
Town of Tellico Plains
405 Veterans Memorial Drive
Tellico Plains, Tennessee 37385

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
RECEIPT 9414 7266 9904 2120 5254 68

Subject: **DIRECTOR'S ORDER NO. DWS23-0190**
TOWN OF TELLICO PLAINS
MONROE COUNTY, TENNESSEE

Dear Mayor Parker,

Enclosed is a Director's Order and Assessment DWS23-0190 issued by Jennifer Dodd, 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, not the date that it was signed by the Director. The previous cover letter for the Order had an incorrect amount for contingent penalties. The Order itself was correct.*

These violations have resulted in a civil penalty assessment of \$25,530.00, of which \$5,106.00 is due on or before the 31st day after the receipt of this Order. The remaining \$20,424.00 in penalties are contingent 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 \$5,118.40.**

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-K
DWR – Enforcement File
OGC (via email)

**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>)	
v.)	CASE NUMBER DWS23-0190
)	
TOWN OF TELLICO PLAINS,)	
TENNESSEE)	
<i>Respondent.</i>)	

Waiver of Service of Process

I am the Mayor of the Town of Tellico Plains, Tennessee. I acknowledge receipt of your request that I waive service of process concerning Director's Order No. DWS23-0190. I have also received a copy of Director's Order DWS23-0190 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 Town of Tellico Plains 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. DWS23-0190. I understand that a judgment may be entered against the Town of Tellico Plains if the Town of Tellico Plains does not either comply with, or file a timely appeal of, Director's Order No. DWS23-0190.

The Honorable Marilyn Parker, Mayor
Town of Tellico Plains
405 Veterans Memorial Drive
Tellico Plains, Tennessee 37385

Date

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

IN THE MATTER OF:)	DIVISION OF WATER RESOURCES
)	
)	
TOWN OF TELLICO PLAINS,)	
)	
)	
)	
)	
RESPONDENT.)	CASE NO. DWS23-0190

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 Tennessee 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.

The Town of Tellico Plains (the “Respondent”) owns, operates, and/or controls a community public water system (the “System”) existing in Monroe County, Tennessee. The Public Water System Identification (PWSID) number is TN0000693. Process may be served on the Respondent through the Honorable Marilyn Parker, Mayor, Town of Tellico Plains, at 405 Veterans Memorial Drive, Tellico Plains, Tennessee 37385.

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 eight wells that are classified as not under the direct influence of surface water, commonly referred to as “true groundwater.” The Respondent serves 3,154 connections and a population of approximately 7,759 persons.

VI.

Division personnel performed a file review and determined that the Respondent had taken 6 of the required 7 bacteriological samples in the monthly monitoring period ending July 31, 2023, and failed to monitor for free chlorine residual as a result of the missed bacteriological sample. Division personnel also determined that the Respondent failed to report the disinfectant residual leaving the water treatment plant for the July 2023 monitoring period. The Division issued notification letters to the Respondent for the violations during the July 2023 monitoring period on September 14, 2023.

VII.

Division personnel performed a file review and determined that the Respondent had taken 6 of the required 7 bacteriological samples in monthly monitoring period ending August 31, 2023, and failed to monitor for free chlorine residual as a result of the missed bacteriological sample. Division personnel also determined that the Respondent failed to report the disinfectant residual leaving the water treatment plant for the August 2023 monitoring period. The Division issued a notification letter to the Respondent on October 16, 2023, for the failure to monitor disinfectant residual leaving the water treatment plant. The Division issued a notification letter to the Respondent on October 23, 2023, for the failure to perform the bacteriological monitoring.

VIII.

Division personnel performed a sanitary survey from September 28 – 29, 2023, and determined that the System's continuous chlorine analyzer had not been working properly during the months of July and August 2023. The Respondent failed to repair the continuous chlorine analyzer within 14 days. The Respondent failed to monitor for chlorine residual on September 15,

2023, due to a failure in the continuous chlorine analyzer. The Respondent also failed to perform grab samples to compensate for the failure in continuous monitoring.

Division personnel also determined during the sanitary survey that the Respondent was in violation for not having a certified water treatment plant operator and a certified distribution system operator for an extended period. On July 21, 2023, the Division issued correspondence to the Respondent notifying the Respondent that a water treatment operator and distribution system operator needed to be obtained by August 19, 2023, as the former operator who held both licenses was no longer employed by the Respondent. The Division issued an NOV to the Respondent on August 22, 2023, for the failure to have certified operators for water treatment and distribution. Following the issuance of the NOV, the Division was informed that a water treatment operator was in the process of being hired and was subsequently hired about September 2023. However, the Respondent had not yet hired a distribution operator. The Division issued a letter to the Respondent on September 26, 2023, notifying the Respondent that a distribution system operator must be hired. The Division was notified by the Respondent in November 2023 that a distribution operator had been hired. The Division issued a letter on December 11, 2023, notifying the Respondent of the violations determined during the sanitary survey.

IX.

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

VIOLATIONS

X.

By taking only six of seven bacteriological samples for the monthly compliance periods ending July 31, 2023, and August 31, 2023, the Respondent violated Rule 0400-45-01-.41(7)(b), which states, in pertinent part:

- (b) Monitoring frequency for total coliforms. The monitoring frequency for total coliforms is based on the population served by the system, as follows:

Total Coliform Monitoring Frequency for
Public Water Systems Serving More than 1,000 People

Population Served ¹	Minimum number of samples per month
1,001 to 2,500	2
2,501 to 3,300	3
3,301 to 4,100	4
4,101 to 4,900	5
4,901 to 5,800	6
5,801 to 6,700	7
6,701 to 7,600	8
7,601 to 8,500	9
...	...

¹The Respondent is required to take 9 bacteriological samples monthly starting February 1, 2024, based on an increase in population from the November 2021 sanitary survey and the September 2023 sanitary survey.

XI.

By failing to take disinfectant residuals in the distribution system in July and August of 2023, the Respondent violated Rule 0400-45-01-.36(6)(c)1.(i), which states, in pertinent part:

- (i) Routine monitoring... Beginning April 1, 2016, community and non-transient non-community water systems that use chlorine or chloramines must measure the residual disinfectant level in the distribution system at the same point in the distribution system and at the same time as total coliforms are sampled, as specified paragraphs (4) through (8) of Rule 0400-45-01-.41. . . .

XII.

By failing to report the chlorine residual leaving the water plant for the monthly compliance periods ending July 31, 2023, August 31, 2023, and for the date of September 15, 2023, the Respondent has violated Rule 0400-45-01-.40(4)(c)1.(i), which states, in pertinent part:

- (i) A ground water system that serves greater than 3,300 people must continuously monitor the residual disinfectant concentration using analytical methods specified in subparagraph (10)(i) of Rule 0400-45-01-.14 at a location approved by the Department and must record the lowest residual disinfectant concentration each day that water from the ground water source is served to the public. The ground water system must maintain the Department-determined residual disinfectant concentration every day the ground water system serves water from the ground water source to the public. . . .

XIII.

By failing to perform grab sampling for chlorine residual when the continuous chlorine analyzer was malfunctioning during the months of July and August, as well as on September 15, 2023, and by failing to repair the malfunctioning continuous chlorine analyzer within 14 days, the Respondent violated Rule 0400-45-40(4)(c), which states, in pertinent part:

- (c) Monitoring Requirements
 - 1. A ground water system subject to the requirements of subparagraph (a), part (b)1. or part (b)2. of this paragraph must monitor the effectiveness and reliability of the treatment for that ground water source before or at the first customer as follows:
 - (i) A ground water system that serves greater than 3,300 people must continuously monitor the residual disinfectant concentration using analytical methods specified in subparagraph (10)(i) of Rule 0400-45-01-.14 at a location approved by the Department and must record the lowest residual disinfectant concentration each day that water from the ground water source is served to the public. The ground water system must maintain the Department-determined residual disinfectant concentration every day the ground water system serves water from the ground water source to the public. If there is a failure in the continuous monitoring equipment, the ground water system must conduct grab sampling every four hours until the continuous monitoring equipment is returned to service. The system must

resume continuous residual disinfectant monitoring within 14 days.

XIV.

By failing to notify the Division that the chlorine analyzer was inoperable, the Respondent violated Rule 0400-45-01-.40(6), which states, in pertinent part:

- (6) Reporting and Recordkeeping for Ground Water Systems
 - (a) In addition to the requirements of Rule 0400-45-01-.18, a ground water system regulated under this rule must provide the following information to the Department:
 - 1. A ground water system conducting compliance monitoring under subparagraphs (4)(b) and (c) of this rule must notify the Department any time the system fails to meet any Department-specified requirements including, but not limited to, minimum residual disinfectant concentration, membrane operating criteria or integrity, and alternative treatment operating criteria, if operation in accordance with the criteria or requirements is not restored within four hours. The ground water system must notify the Department as soon as possible, but in no case later than the end of the next business day. . .

XV.

By failing to have certified operators for water treatment and distribution, the Respondent violated Rules 0400-45-09-.04 and 0400-45-01-.17(1)(d):

Rule 0400-45-09-.04 states, in pertinent part:

- (1) . . .
- (2) Each person in direct charge at a water treatment plant, a wastewater treatment plant, a water distribution system, or a wastewater collection system shall hold a certificate in a grade equal to or higher than the grade of the treatment plant, distribution system, or collection system he/she operates. The grade of a facility will be established by the criteria set forth in this chapter of rules.
- (3) All operating personnel making process control/system integrity decisions about water quality or quantity that affect public health must be certified. A designated certified operator must be available for each operating shift. . .

Rule 0400-45-01-.17(1)(d) states:

- (d) Because the proper operation and maintenance of water systems is critical to a system's ability to provide safe water to the public and to comply with these rules,

all water supply systems must comply with the provisions of Chapter 0400-49-01. A violation of those rules is a violation of this rule as well.

ORDER and ASSESSMENT

XVI.

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, DWS23-0190, 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:

Michael Atchley, Manager
Knoxville Environmental Field Office
Division of Water Resources
3711 Middlebrook Pike
Knoxville, Tennessee 37921

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 \$ 25,530.00. The Respondent shall pay \$ 5,106.00, 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 \$20,424.00 only if the Respondent fails to comply with the following corrective action items.

- (3) Within 60 days of the receipt of this Order, the Respondent shall submit standard operating procedures (SOP) for the water treatment plant, which shall include grab sampling as required with breakdown of equipment, including the maximum allowable timeframe grab sampling is allowed. The Respondent shall pay a penalty of \$1,500.00 for the failure to timely submit the SOP, payable within 30 days of the Division's demand for payment.
- (4) The Respondent shall pay \$1,250.00 for each month that there is a failure to demonstrate via continuous chlorine analyzer, and grab sampling as required by Rule, that the water provided to its customers meets 4-log treatment of viruses, 0.2 ppm chlorine residual leaving the water treatment plant, and 0.2 ppm throughout the distribution system, not to exceed \$ 5,000.00, payable within 30 days of the Division's demand for payment.
- (5) The Respondent shall pay \$1,000.00 for each failure to notify the Division of a major breakdown or failure of equipment in the water treatment process within 48 hours, not to exceed \$ 5,000.00, payable within 30 days of the Division's demand for payment.
- (6) The Respondent shall pay \$250.00 for the failure to take the required number of 9 bacteriological samples and chlorine residuals each month, not to exceed \$1,000.00, payable within 30 days of the Division's demand for payment.
- (7) The Respondent shall maintain the services and availability of certified operators for both the water treatment and distribution operators in direct charge. The

Respondent shall pay \$2,000.00 for the failure to obtain operator services within 30 days of the absence of an operator and shall pay \$5,924.00 for the failure to obtain operator services after the absence of an operator for more than 60 days, 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, DWS23-0190, 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 19th day of March, 2024.


Jennifer Dodd (Mar 19, 2024 21:31 CDT)

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

Reviewed by:

Samantha Buller-Young
Samantha Buller-Young (Mar 12, 2024 09:44 EDT)

Samantha Buller-Young
BPR # 040466
Assistant Counsel
Department of Environment & Conservation
Knoxville Environmental Field Office
3711 Middlebrook Pike
Knoxville, TN 37921
p. (865) 440-8303
Samantha.Buller-Young@tn.gov



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION

OFFICE OF GENERAL COUNSEL
William R. Snodgrass, TN Tower
312 Rosa L. Parks Avenue, 2nd Floor
Nashville, Tennessee 37243

Notice of Order and Request for Waiver of Service of Process

March 21, 2024

The Honorable Marilyn Parker, Mayor
Town of Tellico Plains
405 Veterans Memorial Drive
Tellico Plains, Tennessee 37385

Dear Mayor Parker,

The Department of Environment and Conservation has commenced an enforcement action against the Town of Tellico Plains, Tennessee. A copy of Director's Order No. DWS23-0190 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. DWS23-0190 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 March 21, 2024.

Samantha Buller-Young

Samantha Buller-Young, Assistant Counsel
Tennessee Department of Environment & Conservation