

ONIS "TREY" GLENN, III
DIRECTOR



Alabama Department of Environmental Management
adem.alabama.gov

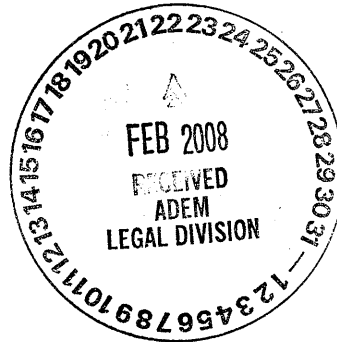
1400 Coliseum Blvd. 36110-2059 ♦ Post Office Box 301463
Montgomery, Alabama 36130-1463
(334) 271-7700
FAX (334) 271-7950

BOB RILEY
GOVERNOR

February 22, 2008

CERTIFIED MAIL 7004 2510 0001 3987 5686
RETURN RECEIPT REQUESTED

Honorable Allen Cole, Mayor
Newton Water Authority
P.O. Box 385
Newton, Alabama 36352



RE: Newton Water Authority
Consent Order No. 08-099-CDW

Dear Mayor Cole:

Please find enclosed ADEM Consent Order No. 08-099-CDW which requires Newton Water Authority 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 Newton Water Authority.

If you have questions, please do not hesitate to contact Laura A. Taylor at (334) 271-7820.

Sincerely,

Dennis D. Harrison, Chief
Drinking Water Branch

Cc: Olivia H. Rowell, ADEM-General Counsel
James McIndoe, ADEM-Water Division
ADEM - Public Affairs Office



Enclosures

DDH/lat

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:)

Newton Water Works Board)
Newton, Alabama)

CONSENT ORDER No.
08-099-CDW

PWSID No. 0000439)
Permit No. 2006-530)

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter, "Department") and Newton Water Works Board (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 t

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 Ala. Code §22-23-31 (2006 Rplc. Vol.). The Permittee's public water system is a "Community Water System" as defined at Ala. Code §22-23-31 (2006 Rplc. Vol.)

4. ADEM Admin. Code r. 335-7-14-.06(1) requires the Permittee to deliver to the Department, no later than July 1 of each year, both a copy of its Consumer Confidence Report (hereinafter, "CCR") and its Certification Form for the previous calendar year's water quality information.

5. The Permittee failed to deliver the calendar year 2006 CCR and/or Certification Form on or before July 1, 2007.

6. 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.).

7. 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.

CONTENTIONS

8. Pursuant to Ala. Code § 22-22A-5(18)c. (2006 Rplc. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not be less than \$100.00 or exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATION: Although the Permittee operated in violation of ADEM Admin. Code r. 335-7-14-.06(1), there is no evidence of any harm to human health or the environment.

B. THE STANDARD OF CARE: The Permittee operated in violation of ADEM Admin. Code r. 335-7-14-.06(1).

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: No economic benefit has been realized by this violation.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: There are no known environmental effects as a result of the alleged violations.

E. HISTORY OF PREVIOUS VIOLATIONS: The Permittee does not have a record of past violations of ADEM Admin. Code r. 335-7-14-.06(1).

F. THE ABILITY TO PAY: When the Department first proposed the issuance of an Order to the Permittee, the Department assumed that the Permittee had the ability to pay a civil penalty. However, the Permittee has demonstrated that it is unable to pay a civil penalty.

G. OTHER FACTORS: It should be noted that this Special Order by Consent is a negotiated settlement. The Permittee has agreed in the spirit of cooperation and the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation, to take the actions required in this Consent Order, and that factor is an additional consideration in the Department's decision regarding the assessment of a civil penalty in this matter. The Department has carefully considered the six statutory penalty factors above and concludes that no civil penalty is warranted in this case.

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. That the Permittee agrees to meet all the requirements of ADEM Admin. Code chap. 335-7-14, by furnishing a CCR to its customers and the Department and a Certification Form to the Department within sixty days after the effective date of this order.

B. That the Permittee agrees to pay to the Department a stipulated penalty of \$3,000, if the Permittee fails to deliver the calendar year 2007 CCR or Certification Form to the Department by July 1, 2008. This stipulated penalty will be due no later than August 31, 2008. Notification to the Permittee of the assessment of the stipulated penalty is not required of the Department.

C. That the Permittee agrees to comply immediately with the provisions of ADEM Admin. Code chap.. 335-7-14 and shall continue to do so as long as it operates a public water system.

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

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

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

M. That by agreement of the parties, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management

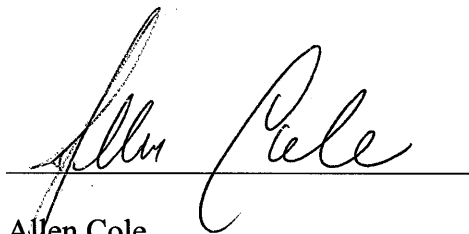
Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

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

O. That 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.

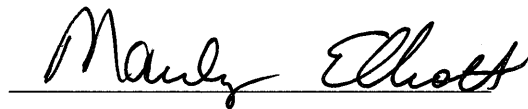
Newton Water Works Board

A handwritten signature in cursive script, appearing to read "Allen Cole", written over a horizontal line.

Allen Cole
Chairman

Date: 2-11-08

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

A handwritten signature in cursive script, appearing to read "Onis 'Trey' Glenn, III", written over a horizontal line.

Onis "Trey" Glenn, III
Director

Date: 2/22/08