

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF: )  
 )  
Water Works and Sewer Board )  
of the City of Prichard )  
Mobile County, Alabama )  
 )  
PWSID No. AL0001015 )  
PERMIT NO. 2022-753 )

- Proposed -  
Consent Order No. 23-XXX-CDW

PREAMBLE

This Special Order by Consent is made an entered into by the Alabama Department of Environmental Management (“the Department”) and the Water Works and Sewer Board of the City of Prichard (“the Permittee”) pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-17, as amended, the Alabama Safe Drinking Water Act, Ala. Code §§ 22-23-30 to 22-23-53 (“ASDWA”), Ala. Code §§ 22-22-1 to 22-22-14, as amended, and the regulations promulgated pursuant thereto.

STIPULATIONS

1. The Permittee operates a “public water system” as defined at Ala. Code § 22-23-31, as amended, located in Mobile County, Alabama. The Permittee’s public water system is a “Community Water System” as defined at Ala. Code § 22-23-31, as amended.
2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-17, as amended.
3. Pursuant to Ala. Code § 22-22A-4(n), as amended, 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. In addition, the Department is authorized to administer and enforce the provisions of the ASDWA.
4. The Department issued Water Supply Permit No. 2016-812 to the Permittee on July 28, 2016, effective August 1, 2016, which authorized the operation of its public water system under certain terms, limitations, and conditions. The Department issued Water

Supply Permit No. 2022-753 (“Permit”) to the Permittee on July 25, 2022, effective August 1, 2022, which authorizes the operation of its public water system under certain terms, limitations, and conditions.

5. Public water systems must demonstrate technical, managerial, and financial capacity to maintain a public water supply permit. ADEM Admin. Code r. 335-7-4-.08 states that a water supply permit issued by the Department may be revoked for, among other things, “[f]ailure to comply with the general or special conditions of the permit; [f]ailure to establish and maintain such records, make such reports, maintain treatment equipments or provide satisfactory operation of water facilities; [or] [f]ailure to demonstrate the water system has technical, managerial, and financial capacity.” *See also* ADEM Admin. Code r. 335-7-4-.06 (permit applications for existing systems “must demonstrate technical, managerial, and financial capabilities to reliably meet performance requirements on a long term basis and be self sustaining”) and ADEM Admin. Code r. 335-7-4-.13 (a condition of continuing expired permits includes demonstrating technical, managerial and financial capacity).
6. ADEM Admin. Code r. 335-7-1-.01(bbb) defines “Technical, Managerial, and Financial Capacity” as “the overall capability or wherewithal of a water system to consistently produce and deliver satisfactory drinking water and consistently meeting all Departmental regulations. Technical means the physical infrastructure of the water system including water source(s), treatment facilities, water storage, distribution and service connections. Managerial means the management and operational structure of the water system, including but not limited to ownership accountability, staffing and organization, and effective linkages to customers and regulatory agencies. Financial means the financial resources of the water system, including but not limited to revenue sufficiency, credit worthiness, and fiscal controls.”

DEPARTMENT’S CONTENTIONS

Technical and Managerial Capacity

7. Part II.C.1. of the Permit and ADEM Admin. Code r. 335-7-10-.06(5) requires the Permittee to maintain a purchase water contract that allows sufficient water to be

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purchased to meet all system demands during normal operating periods. This permit condition also requires that, upon expiration of such contract, the system shall not exceed a period of more than 30 consecutive days without a revised contract.

8. On August 1, 2022, the Department notified the Permittee that the purchase water contract had been expired for more than thirty days and requested the submission of a revised contract by September 15, 2022.
9. On January 20, 2023, the Department issued a Notice of Violation (“NOV”) to the Permittee for failure to submit a revised purchase water contract and required a revised contract be submitted by February 20, 2023. On February 9, 2023, the Department acknowledged receipt of the revised contract between the Permittee and the Mobile Area Water and Sewer System.
10. Part II. C. 3. of the Permit requires that “[d]rinking water equipment and facilities shall be maintained in a safe, clean, and operable condition.”
11. On January 21, 2022, the Department conducted a sanitary survey of the Permittee’s public water system. The inspection cited, among other things, a leak at the Vigor storage tank, mildew visible on all of the system’s storage tanks, and rust spots visible on some of the tanks. The Permittee reported to the Department that the leak was repaired on May 24, 2022.
12. On January 25, 2023, the Department performed a sanitary survey of the Permittee’s public water system. The Department transmitted the inspection report to the Permittee on February 23, 2023 and required the Permittee to submit a Corrective Action Plan (“CAP”) to the Department by April 10, 2023. The report noted the following significant deficiencies:
  - a. The water system does not continuously maintain a free chlorine residual of at least 0.2 mg/L in the distribution system.
  - b. The backflow prevention devices are not being tested as required according to the Cross Connection Plan.
  - c. All water storage tanks have mildew and varying amounts of corrosion.
  - d. All water tanks were lacking sufficient screens and covers for their overflow drain pipes. Additionally, the overflow pipes for all tanks were not

sufficiently air gapped.

- e. Not all deficiencies in the most recent water storage tank inspections were addressed.

13. During the January 25, 2023, sanitary survey, the US Environmental Protection Agency (“EPA”) conducted its own inspection alongside Department staff. EPA’s inspection report contained several findings and observations, consistent with those noted in the Department’s inspection report. On August 2, 2023, the Department mailed a letter to the Permittee detailing the results of EPA’s January 25, 2023 inspection, including the areas of noncompliance and areas of concern. In addition to the areas of noncompliance noted by the Department, EPA also noted that there was an overflow that emptied into the storm drain for the Clark Avenue Standpipe and that the Permittee did not have a maintenance plan for all water storage tanks. The letter requested a CAP to be submitted within thirty days. Despite several reminders, as of the date of this Order, a CAP has not been submitted for the EPA sanitary survey.

14. On May 8, the CAP responding to the Department’s sanitary survey was still overdue. As a result, the Department mailed an NOV to the Permittee establishing a new due date of May 31, 2023. The CAP was received on May 31, 2023. It provided information regarding actions the Permittee was taking to address the deficiencies noted in the sanitary survey. The Department requested a status report on items listed in the CAP on June 30, 2023, and July 14, 2023. On August 2, 2023, the the Permittee called the Department to inform it that a detailed report on the status of the CAP items was forthcoming. As of the date of this Order, that status report has not been submitted.

15. Part II.D.4.c. of the Permit and ADEM Admin. Code r. 335-7-10-.06 requires the Permittee to submit monthly operating reports, including water loss information. The Permittee has reported water loss as follows:

<u>Month</u>	<u>Corrected</u> <u>Water</u> <u>Loss (%)</u>	<u>Uncorrected</u> <u>Water Loss</u> <u>(%)</u>	<u>Line Breaks</u> <u>(gal)</u>	<u>Flushing</u> <u>(gal)</u>
July 2021	49	51	189,394	2,955,500
August 2021	48	55	5,295,212	3,190,700
September 2021	31	51	19,381,170	6,191,600

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October 2021	10	55	55,247,297	3,503,300
November 2021	53	60	6,887,741	2,513,400
December 2021	42	57	16,953,809	2,963,800
January 2022	28	56	35,338,701	-
February 2022	56	62	6,604,397	2,342,544
March 2022	28	55	27,559,393	3,515,000
April 2022	45	58	14,918,820	2,271,075
May 2022	11	57	55,893,599	3,152,300
June 2022	1	60	79,422,382	-
July 2022	54	57	1,056,175	2,390,749
August 2022	27	61	45,047,054	2,322,781
September 2022	54	59	3,846,537	2,421,324
October 2022	32	59	34,252,913	2,196,079
November 2022	51	64	14,913,524	1,881,824
December 2022	46	59	13,348,758	2,437,951
January 2023	39	64	38,263,088	3,222,236
February 2023	38	66	42,218,807	3,670,897
March 2023	21	56	38,532,842	3,142,300
April 2023	25	57	35,752,640	4,162,062
May 2023	48	57	8,381,952	3,264,530
June 2023	49	57	7,042,411	3,871,076
July 2023	46	52	2,028,884	4,872,548

16. On April 10, 2023, Waggoner Engineering issued a memorandum to the Permittee regarding a water loss study in the Alabama Village area of Prichard. The study noted a water loss for the entire system in February 2023 of 66% and stated “[t]his is over six times the industry’s best management practice goal of 10% [which] has a significant impact on the Board’s financial stability.” The study concluded that leaks in that area alone were costing the Permittee \$75,000 per month in water loss. Further, due to the system’s “age and lack of maintenance along the right-of-way and utility easements” the Board “has no easily affordable way to repair and maintain the water system in this area.”

17. Part III. A. of the Permit requires the Permittee to submit an asset management plan to the Department no later than July 31, 2023.
18. On July 31, 2023 the Permittee submitted an asset management plan to the Department. The cover letter stated that “[l]imitations were encountered due to the availability and quality of attribute data such as asset age, material, and work order history. Consequently, risk assessment results should not carry significant weight until asset inventory data quality is improved. Many of the records required to obtain this critical asset data are missing due to factors outside the control of the current management team and the records that are available will require significant man hours to review and document. Over the next few months, efforts will be made to review records that are available in the hopes of improving the asset attribute data, providing more accurate risk assessments.”

### *Financial Capacity*

#### *Audit Reports*

19. On February 4, 2022, the Department received a funding request from the Permittee for \$100,000,000 to repair leaks in its water mains. Upon review of the application, the Department determined the Permittee was ineligible for funding because it had not prepared audited financial statements since at least fiscal year 2018.
20. On November 16, 2022, the Department awarded a \$400,000 grant to the Permittee for preparation of audited financial statements for fiscal years 2019, 2020, 2021, and 2022. Using the Departmental grant, the Permittee engaged Carr, Riggs & Ingram, LLC (“CRI”) to conduct an audit of the financial statements of the Permittee.
21. On April 3, 2023, prior to the completion of CRI’s audits, BMSS, LLC issued an independent auditor’s report<sup>1</sup> on the Permittee’s financial statements as of September 30, 2021. The report contained a disclaimer of opinion because the auditor was “unable to obtain sufficient appropriate audit evidence regarding several areas of the financial statements [...]” In addition, the auditor’s reported that “the Board’s significant operating losses and failure to comply with debt covenants raise substantial doubt about

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<sup>1</sup> <https://emma.msrb.org/P21733399.pdf> (Accessed: September 7, 2023)

its ability to continue as a going concern.”

22. CRI’s independent auditor’s reports have been issued to the Department for fiscal years 2019 through 2021. The 2022 report is outstanding. The CRI reports only express an audit opinion the statement of net position; CRI did not audit statements of revenues, expenses, and changes in net position and cash flows. The reports note “[m]anagement has omitted management’s discussion and analysis that accounting principles generally accepted in the United States of America require to be presented to supplement the basic financial statements. Such missing information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context.” The unaudited statement of revenues, expenses, and changes in net position reflect a deficit change in net position of \$420,421 in 2019; \$2,596,071 in 2020; and \$2,491,987 in 2021. The unaudited statement of expenses for 2021 reports a net operating loss of \$436,408 prior to nonoperating revenues and expenses, and the unaudited end of year position reported was \$5,163,556.

#### *Synovus Revenue Bonds*

23. On November 20, 2019, the Permittee issued water and sewer revenue bonds, Series 2019, in the amount of \$55,780,000, with Synovus Bank as its Trustee.<sup>2</sup>

24. In February 2022, S&P Global Ratings lowered its rating of the Series 2019 bonds from BBB+ to BBB-, citing “[t]he downgrade reflects notable environmental, social, and governance factors considered in our analysis, including weak risk management practices such as deferred maintenance, which we believe have contributed to the utility’s high rate of water loss and rising water costs, as well as social capital affordability concerns given high rates and low incomes in the service area, which could affect the board’s ability to raise rates in the future [ . . .].” The downgrade further cited declining debt service coverage, a lack of internal controls, and other factors.<sup>3</sup>

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<sup>2</sup> <https://emma.msrb.org/ER1392848.pdf> (Accessed: September 7, 2023)

<sup>3</sup> <https://emma.msrb.org/P11624990.pdf> (Accessed: September 7, 2023)

25. In March, S&P Global Ratings again downgraded the Series 2019 bonds from BBB- to BB+, citing, among other factors, "a lack of risk management and oversight surrounding the board's management of operating revenues, which has resulted in the alleged mismanagement of funds by former utility employees [. . .]."<sup>4</sup>
26. The following month, S&P Global Ratings downgraded the Series 2019 bonds from BB- to B, citing "further potential pressure on the utility's financial position following additional civil litigation filed against the board," and "inadequate risk management, oversight, and internal controls" among other factors.<sup>5</sup>
27. On December 9, 2022, Synovus Bank issued a notice to bondholders of the Series 2019 bonds that the Permittee failed to make a required deposit into the Debt Service Fund, as required by the Trust Indenture.<sup>6</sup> This was the first of many such notices.<sup>7</sup>
28. In the beginning of 2023, Synovus Bank issued the first in a series of Notices of Default for the Permittee's failure to comply with the terms of the Series 2019 Trust Indenture.<sup>8</sup>
29. Ultimately, Synovus Bank filed civil action CV-2023-901332.00 in the Circuit Court of Mobile County, Alabama, against the Permittee seeking the appointment of a receiver over the Permittee's water and sewer system (the "Synovus Litigation") In the complaint, Synovus Bank asserts that the Permittee "has demonstrated an unwillingness or inability to comply with the terms of the Indenture, to perform critical maintenance to its System, and to ensure proper controls to protect itself from fraud and abuse."
30. On August 9, 2023, Synovus Bank issued a notice to bondholders of the Series 2019 bonds that the Permittee continues to be in default and owes approximately \$800,000 in overdue payments.<sup>9</sup>
31. On November 10, 2023, the Circuit Court entered an order ("Receiver Order") finding

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<sup>4</sup> <https://emma.msrb.org/P21623014.pdf> (Accessed: September 7, 2023)

<sup>5</sup> <https://emma.msrb.org/P11653335.pdf> (Accessed: September 7, 2023)

<sup>6</sup> <https://emma.msrb.org/P11685937.pdf> (Accessed: September 7, 2023)

<sup>7</sup> <https://emma.msrb.org/IssuerHomePage/Issuer?id=5B0E3DEB951E8D7202786CE8536F4CF0&type=G>

<sup>8</sup> <https://emma.msrb.org/P21692653.pdf> (Accessed: September 7, 2023)

<sup>9</sup> <https://emma.msrb.org/P21753453.pdf> (Accessed: September 7, 2023)



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that an event of default occurred and is continuing, and concluded that “[a]s a result of years of mismanagement and fiscal irresponsibility, PWWSB’s assets have dissipated and fallen into ruin.” The Order granted Synovus’ Receiver Motion and appointed John S. Young, Jr., LLC as receiver for the Water Works and Sewer Board of the City of Prichard (the “Receiver”). The Receiver Order authorized the Receiver to exercise all rights and powers of the Permittee with respect to the operation and control of the System. The Receiver Order further provided that the “Receiver shall comply with the rules and regulations promulgated by ADEM applicable to public drinking water systems and public sewer systems in Alabama including with respect to providing notices to residents.”

32. The Department acknowledges that the rights, duties, powers of the Receiver and any associated liabilities of the Receiver are expressly governed by the terms of the Receiver Order.
33. On November 13, 2023, Permittee filed a motion to stay the Receiver Order with the Circuit Court.
34. On November 17, 2023, the Circuit Court entered an order denying the Permittee’s motion to stay finding: “The Court determined that there were numerous events of default by PWWSB on its obligations under the Indenture, thus justifying the appointment of a receiver without regard to any ‘compelling circumstances’ for the appointment of a receiver. Nevertheless, the Court did find compelling circumstances for the appointment of a receiver, as set out in the November 10, 2023 Order.”
35. On November 22, 2023, the Permittee filed a Notice of Appeal with the Alabama Supreme Court.
36. On December 12, 2023, the Permittee filed with the Alabama Supreme Court a motion to stay the Receiver Order pending appeal of the said order.
37. On December 13, 2023, the Receiver filed with the Circuit Court a motion to stay the underlying Synovus Litigation until July 31, 2024.
38. On January 5, 2024, the Circuit Court entered an order granting the Receiver’s motion to stay the underlying Synovus Litigation until July 31, 2024, but the appeal of the Receiver Order by the Permittee in the Alabama Supreme Court continues.
39. As set forth above, the Department contends that the Permittee has failed to

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demonstrate to the Department that it has the technical, managerial, and financial capacity, as defined by ADEM Admin. Code r. 335-7-1-.01(bbb), to consistently deliver satisfactory drinking water and consistently meet all applicable requirements of ADEM Admin. div. 335-7.

40. The Department and the Permittee mutually agree 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 alleged violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

PERMITTEE'S CONTENTIONS

41. The Permittee agrees to the terms of this Consent Order in an effort to resolve the violations and to conserve the Permittee's financial and operational resources in defending the alleged violations.

42. The rights, duties, powers of the Receiver and any associated liabilities of the Receiver are expressly governed by the terms of the Receiver Order.

43. The Receiver does not have sufficient knowledge or information to attest to the accuracy of any plans, documents, reports or other communication provided by Permittee to the Department prior to the entry of the Receivership Order on November 10, 2023.

44. On December 1, 2023, the Receiver sent a letter to the Permittee's board members advising them in part that it was taking immediate action to reduce operating expenses of the System by declining to fund the Permittee's legal expenses incurred after December 1, 2023 in the Synovus Litigation and advising the Permittee's board members that since it was exercising all rights and powers of the Permittee, they were no longer authorized to perform any services related to the operation and control of the System.

45. On December 15, 2023, the Receiver held the initial meeting of the Prichard Citizens (the "Advisory Council"), which was appointed pursuant to the terms of the Receiver Order.

46. On December 18, 2023, the Receiver filed its first Monthly Report ("Receiver Monthly

Report #1) with the Circuit Court advising:

“The PWWSB system’s financial and operational condition was not stabilized when the Receiver took over control of the system. There were insufficient funds in the bank accounts of PWWSB to timely pay the ordinary expenses of the System. The Board’s adoption of the FY2024 “operating budget” and the associated rate increase **did not** (a) stabilize the financial condition of PWWSB; (b) allow PWWSB to meet its obligations under the indenture; or (c) enable it to start making capital improvements to the water or sewer system.”

47. In an effort to (a) resolve the technical, managerial, and financial capacity issues identified by the Department, (b) meet all applicable requirements of ADEM Admin. Code Div. 335-7, and (c) satisfy the obligations outlined in the Receiver Order, the Receiver acting on behalf of the Permittee recommends a Four-Step approach.

48. **Step one** will include a hydraulic analysis of the water distribution system by professional engineer licensed in Alabama. The analysis will provide a baseline assessment of how the water system currently operates from a hydraulic standpoint, which will assist the engineer in determining how best to utilize the water tanks in the System. It is anticipated that some of the tanks in the System can be potentially decommissioned resulting in avoidance of repair expenses. The results of the hydraulic analysis and system recommendations will be contained in a report by the engineer that will be completed on or before March 1, 2024. The results of this report will be necessary in identifying the actions that will be taken to address the storage tank deficiencies noted in the sanitary surveys conducted by the Department and EPA’s inspection on January 25, 2023.

49. **Step Two** will include the commissioning of an Asset Management Plan (“AMP”) that meets the requirements of ADEM Admin. Code r. 335-7-4-.04(1)(f) and Part III.1. of the Permit. The AMP will address both the water system and the sewer system and will include a 20-year Capital Improvement Plan. The AMP will be completed on or before May 31, 2024.

50. **Step Three** consists of preparing a **Public Water System Alternatives Analysis** (“PWSAA”). The PWSAA will recommend the most cost-effective and feasible long-term

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ownership and/or operational structure solution that maintains reliable and efficient service for customers. The PWSAA will be completed on or before July 31, 2023.

**51. Step Four.** Once there is concurrence among the required entities on the appropriate solution for the long-term ownership and/or operational structure of the System, the Receiver will undertake a detailed Technical, Managerial, and Financial Capacity (“TMF”) analysis for the selected long-term solution to determine the initiatives required to consistently deliver satisfactory drinking water and consistently meet all applicable requirements of ADEM Admin. div. 335-7. It is anticipated that a report detailing the TMF analysis will be completed on or before October 31, 2024 (the “TMF Report”). The TMF Report will include a “compliance plan”, based on the TMF analysis, with a schedule for implementation (including milestones) of necessary corrective actions, revenue enhancements and costs of such necessary corrective actions reasonably anticipated.

ORDER

THEREFORE, the Permittee, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to it as well as the need for timely and effective enforcement, and the Department has determined that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Permittee (collectively “Parties”) agree to enter into this CONSENT ORDER with the following terms and conditions:

- A. No later than March 1, 2024, the Permittee shall submit to the Department a report identifying the actions that have or will be taken to address the deficiencies noted in the inspections conducted by the Department and EPA on January 25, 2023. The report shall also include a hydraulic analysis of the water distribution system prepared by a professional engineer licensed in Alabama. The report shall include a compliance timeline with a schedule for implementation of necessary corrective actions and cost of such necessary corrective actions, if known.
- B. No later than May 31, 2024, the Permittee shall submit to the Department an AMP prepared by a professional engineer licensed in Alabama that meets the requirements of

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ADEM Admin. Code r. 335-7-4-.04(1)(f) and Part III.1. of the Permit. This Plan will include a proposed 20-year Capital Improvement Program.

C. No later than July 31, 2024, the Permittee shall submit a PWSAA report which analyzes the public water system supply and management options and outlines the options for long term ownership and operational structure. This PWSAA will recommend the most cost-effective and feasible long-term ownership and operational control structure that maintains reliable and efficient service for customers (the “Structure”). The alternatives analysis shall identify, at a minimum, the following possible alternatives:

- i. Changes to the current Permittee’s operation, management, governance and finances that would enable the Permittee to provide proper water service in compliance with the Permit and applicable ADEM Admin. Code Div. 335-7.
- ii. Consolidation, sale, or transfer of ownership of the public drinking water system to another public entity permitted to supply public drinking water.
- iii. Contractual agreements with third-party entities to provide significant management and/or administrative functions.
- iv. A combination of the alternatives in subparagraphs i.-iii. above.

D. If the Structure includes a plan to sell, dispose, or transfer System assets, it will first be proposed by the Receiver to the Board of the Permittee, the Trustee, the Advisory Council, the City of Prichard and Chickasaw and the Circuit Court as required by the Receiver Order.

E. Within 90 days after notification by the Department of its concurrence with the proposed Structure and the concurrence by any other required entity (whichever is later), the Permittee shall submit a TMF Report detailing the TMF analysis and compliance plan for implementation. The TMF Report shall include at a minimum a description of the proposed Structure that addresses the:

- i. Technical Capacity of the system including its assets and their operation.
- ii. Managerial Capacity of the system including its governance and administrative structure, staffing and employees’ capabilities and training.

- iii. Financial Capacity of the system including projected revenues and water rates, operating costs, debt obligations and long-term financial sustainability.
- F. The TMF Report will include a compliance plan, based on the capacity analysis in the TMF Report, with a schedule for implementation (including milestones) of necessary corrective actions, revenue enhancements and costs of such necessary corrective actions reasonably anticipated.
- G. The Permittee shall submit modifications to the TMF Report and the Compliance Plan if required, so that they are received by the Department no later than thirty days after Permittee's receipt of the Department's comments. The Permittee shall complete implementation of the recommendations provided in the TMF Report not later than the compliance dates for the individual milestones included in the Compliance Plan as well as the final compliance date in the Compliance Plan as accepted by the Department.
- H. The Permittee shall prepare and submit detailed quarterly Progress Reports to the Department describing the Permittee's progress towards achieving compliance with the items presented in the Compliance Plan, including the cost of necessary corrective actions. The Permittee shall submit the Progress Reports so that they are received by the Department no later than ninety days after issuance of this Order and continuing every ninety days thereafter that the Permittee's performance obligations under this Order remain incomplete.
- I. The Permittee shall submit a certification to the Department indicating whether the Permittee is in compliance with all requirements of this Order. The Permittee shall submit such certification so that it is received by the Department no later than 30 days after the final compliance date in the Compliance Plan.
- J. The Permittee shall comply with all other terms, limitations, and conditions of the Permit immediately upon issuance of this Consent Order.
- K. 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 this Consent Order on behalf of the Party represented, and to legally bind such Party.

- L. Subject to the terms agreed to by the Parties of this Consent Order 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.
- M. The Permittee is not relieved from any liability if it fails to comply with any provision of this Consent Order.
- N. For purposes of this Consent Order only, the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. 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. The Permittee shall submit this information so that it is received by 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.
- O. 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

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Permittee's public water system 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. The Permittee shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order if such future orders, litigation or other enforcement action addresses new matters not raised in this Consent Order.

- P. 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.
- Q. This Consent Order shall not affect the Permittee's obligation to comply with any Federal, State, or local laws or regulations.
- R. Should any provision of this Consent 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.
- S. Any modifications of this Consent Order shall be agreed to in writing signed by both Parties.
- T. Except as set forth herein, this Consent 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.



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Executed in duplicate, with each part being an original.

THE WATER WORKS AND SEWER BOARD  
OF THE CITY OF PRICHARD

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

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John S. Young, Jr., LLC  
Receiver, by John S. Young, Jr. Sole Member

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Lance R. LeFleur  
Director

Date: \_\_\_\_\_

Date: \_\_\_\_\_