



COMMONWEALTH of VIRGINIA

M. Norman Oliver, MD, MA
State Health Commissioner

Department of Health
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RICHMOND, VA 23218

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STATE BOARD OF HEALTH ORDER BY CONSENT ISSUED TO PULASKI COUNTY PUBLIC SERVICE AUTHORITY FOR THE BROOKMONT AREA WATERWORKS (PWSID No. 1155055)

Section A. Purpose

This is an Order by Consent issued under authority granted by Va. Code § 32.1-26 between the State Board of Health and the Pulaski County Public Service Authority for the Brookmont Area Waterworks to resolve certain violations of the Public Water Supplies Law and the applicable regulations. This Order supersedes and terminates the Consent Order between the State Board of Health and the Pulaski County Public Service Authority, which became effective on August 21, 2018 (Order No. 07-2018-06).

Section B. Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned below:

1. “AFO” means the ODW Abingdon Field Office located in Abingdon, Virginia.
2. “August 2018 Order” means the Consent Order between the Board and the Pulaski County Public Service Authority that became effective on August 21, 2018 (Order No. 07-2018-06).
3. “Board” means the State Board of Health, a permanent citizens’ board of the Commonwealth of Virginia, as described in Va. Code § 32.1-15.
4. “Brookmont” means Brookmont Area Waterworks, a consecutive community waterworks located in Pulaski County, which serves piped water for human consumption to 75 service connections and approximately 100 year-round residents.

5. “Commissioner” means the State Health Commissioner, who supervises and manages the Department, as described in Va. Code §§ 32.1-16 and 17.
6. “Community system” means a waterworks that serves at last 15 service connections used by year-round residents or regularly serves at last 25 year-round residents.
7. “Consecutive system” means a waterworks that has no water production or source facility of its own and that obtains all of its water from another permitted waterworks or receives some or all of its finished water from one or more wholesale waterworks.
8. “DBPs” means disinfection byproducts, which include total trihalomethanes (TTHM).
9. “Department” or “VDH” means the Department of Health, an agency of the Commonwealth of Virginia, as described in Va. Code § 32.1-16.
10. “LRAA” means locational running annual average.
11. “NOV” means a type of notice of alleged violation issued under 12VAC5-590-110 of the Regulations.
12. “ODW” means the VDH Office of Drinking Water.
13. “Order” means this document, also known as an “Order by Consent,” which the Board is authorized to issue to require any person to comply with the provisions of any law administered by it, the Commissioner or the Department or any regulations promulgated by the Board or to comply with any case decision, as defined in Va. Code § 2.2-4001, of the Board or Commissioner.
14. “Permit” means written Waterworks Operation Permit No. VA1155055.
15. “PMCL” means primary maximum contaminant level.
16. “Public Water Supplies Law” or “PWSL” means Article 2, Chapter 6 of Title 32.1 of the Va. Code.
17. “Pulaski County PSA” means the Pulaski County Public Service Authority, a government entity that supplies or proposes to supply water to any person within this Commonwealth from or by means of any waterworks.

18. "Pure water" means water fit for human consumption that is (i) sanitary and normally free of minerals, organic substances, and toxic agents in excess of reasonable amounts and (ii) adequate in quantity and quality for the minimum health requirements of the persons served.
19. "PWSID" means Public Water System Identification.
20. "Regulations" means the Waterworks Regulations, 12VAC5-590-10, *et seq.*
21. "Town of Pulaski" means the Town of Pulaski, a government entity that supplies or proposes to supply water to any person within this Commonwealth from or by means of any waterworks.
22. "Town Waterworks" means the Town of Pulaski waterworks located in Pulaski County, which serves piped water for human consumption to 4,438 service connections and approximately 9,473 year-round residents.
23. "TTHM" means total trihalomethanes, and includes trichloromethane (chloroform), dibromochloromethane, bromodichloromethane, and tribromomethane (bromoform), which are DBPs.
24. "Va. Code" means the Code of Virginia (1950), as amended.
25. "VAC" means the Virginia Administrative Code.
26. "Waterworks" means a system that serves piped water for human consumption to at least 15 service connections or 25 or more individuals for at least 60 days out of the year. Waterworks includes all structures, equipment, and appurtenances used in storage, collection, purification, treatment, and distribution of pure water except the piping and fixtures inside the building where such water is delivered.

Section C. Findings of Fact and Conclusions of Law

1. The Pulaski County PSA owns and operates Brookmont. Brookmont is a consecutive community system that consists of a re-chlorination station, a 44,000-gallon ground level storage tank, a booster pump station, two 1,600-gallon hydropneumatic pressure tanks, and a distribution system.
2. On July 22, 1996, ODW issued the Permit to the Pulaski County PSA to operate Brookmont in compliance with the PWSL and Regulations.

3. Brookmont purchases all of its finished drinking water from the Town of Pulaski, which owns and operates the Town Waterworks. The Town Waterworks is a community system that consists of a conventional filtration water treatment plant, pump stations, storage tanks, and distribution system.
4. In August 2018, the Pulaski County PSA entered into the August 2018 Order with the Board to resolve certain violations of the PWSL and Regulations for exceeding the PMCL for TTHM, a class of compounds known as disinfection byproducts or DBPs. The August 2018 Order established a corrective action plan and schedule for compliance, and required Pulaski County PSA to work with the Town of Pulaski to implement changes in its infrastructure and operational procedures to provide finished water with characteristics that support DBP compliance. The Town of Pulaski agreed to modify operation or treatment of the Town Waterworks as necessary to ensure that the Pulaski County PSA complies with the law and regulations (with respect to the water the Town of Pulaski provides to Pulaski County PSA for Brookmont).
5. During the 2019, 2020, and 2021 quarterly monitoring periods, the Pulaski County PSA reported to VDH laboratory results for LRAAs for the DBP TTHM at Brookmont, as follows:

Contaminant	Compliance Period Ending Quarter	LRAA (mg/L)	Sample Point	PMCL (mg/L)
TTHM	December 31, 2019	0.084	3245 Schrader Hill Rd	0.080
TTHM	March 31, 2020	0.097	3245 Schrader Hill Rd	0.080
TTHM	June 30, 2020	0.097	3245 Schrader Hill Rd	0.080
TTHM	September 30, 2020	0.11	3245 Schrader Hill Rd	0.080
TTHM	December 31, 2020	0.11	3245 Schrader Hill Rd	0.080
TTHM	March 31, 2021	0.11	3245 Schrader Hill Rd	0.080
TTHM	June 30, 2021	0.12	3245 Schrader Hill Rd	0.080
TTHM	September 30, 2021	0.11	3245 Schrader Hill Rd	0.080

6. The Regulations¹, at 12VAC5-590-110 (Enforcement.), state, “B.... the board may issue orders to require any owner to comply with the provisions of any law administered by it,

¹ The Regulations were amended, effective June 23, 2021. Regulatory requirements cited in this Order are from the amended Regulations but the requirements are substantively the same as the Regulations that were effective before June 23, 2021.

the commissioner, or the department; any regulations promulgated by the board, including any section of this chapter; or any case decision of the board or commissioner.... C.... The commissioner may act as the agent of the board to enforce all effective orders and this chapter. Should any owner fail to comply with any effective order or this chapter, the commissioner may: 1. Institute an administrative proceeding to revoke the owner's permit in accordance with 12VAC5-590-320 and § 32.1-174 of the Code of Virginia or other appropriate administrative remedies; 2. Request the criminal prosecution by a Commonwealth's attorney with the appropriate jurisdiction in accordance with § 32.1-27 of the Code of Virginia; 3. Request civil action by the Attorney General to impose a civil penalty, seek injunctive relief, or other appropriate legal remedies pursuant to §§ 32.1-27 and 32.1-176 of the Code of Virginia; or 4. Do any combination of subdivision C 1, C 2, or C 3 of this section.”

7. The Regulations, at 12VAC5-590-374.F.5.a (Residual disinfectant, disinfection byproducts, and disinfection byproduct precursors monitoring.), state, “The owner of a waterworks required to monitor at a particular location annually or less frequently than annually under subdivision F 3 or F 4 of this section, shall increase monitoring to dual sample sets once per quarter (collected every 90 days) at all locations if a TTHM sample is greater than 0.080 mg/L... at any location.”
8. The Regulations, at 12VAC5-590-384.B.1.a (Residual disinfectant, DBPs, and DBPPs compliance.), state, in part, “The owner of a waterworks required to monitor quarterly shall calculate the LRAAs for TTHM ... using monitoring results collected under 12VAC5-590-374 F and determine that each LRAA does not exceed the PMCL in order to comply with the PMCLs listed in Table 340.6.”
9. The Regulations, in Table 340.6 (Disinfection Byproducts) at 12VAC5-590-340 (Compliance standards.), state that the PMCL for TTHM is 0.080 mg/L.
10. On March 2, 2020, September 3, 2020, February 24, 2021, March 5, 2021, April 8, 2021, July 22, 2021, and November 22, 2021, VDH issued NOVs to the Pulaski County PSA for exceeding the PMCL for TTHM in the Brookmont distribution system.
11. Pursuant to Va. Code § 32.1-26 (Orders; hearing and notice.), the Board may issue orders to require any person to comply with the provisions of any law administered by it, the Commissioner or the Department or any regulations promulgated by the Board or to comply with any case decision, as defined in Va. Code § 2.2-4001, of the Board or Commissioner.

12. Based on VDH records, the Board concludes that the Pulaski County PSA violated 12VAC5-590-374.F.5.a and 12VAC5-590-384.B.1.a of the Regulations, as described in paragraphs C.5. through C.9. above.
13. The Pulaski County PSA is in compliance with the August 2018 Order. This Order supersedes the August 2018 Order and, in concert with the Order by Consent between the Board and the Town of Pulaski, effective December 8, 2021, is intended to extend the efforts between the Town of Pulaski and the Pulaski County PSA to address compliance with the TTHM PMCL at Brookmont.

Section D. Agreement and Order

Accordingly, by virtue of the authority granted in Va. Code § 32.1-26, the Board orders the Pulaski County PSA, and the Pulaski County PSA agrees, to:

1. Petition the Town of Pulaski to make necessary changes or modifications to the Town Waterworks and/or operational procedures for the Town Waterworks and comply with the Order by Consent between the Board and the Town of Pulaski effective December 8, 2021, in order to support Pulaski County PSA's compliance efforts.
2. Perform the actions described in Appendix A of this Order.

VDH acknowledges that because the Pulaski County PSA purchases all of the finished water for Brookmont from the Town of Pulaski, the Pulaski County PSA's ability to provide finished water with characteristics that support DBP compliance at Brookmont is affected by the Town Waterworks, the Town of Pulaski's operational procedures, and compliance with the Order by Consent between the Board and the Town of Pulaski, effective December 8, 2021. The Pulaski County PSA will work with the Town of Pulaski to make changes or modifications to Brookmont and/or operational procedures at Brookmont that may be necessary to support the Town of Pulaski's effort to comply with the Order by Consent between the Board and the Town effective December 8, 2021.

Section E. Administrative Provisions

1. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude VDH from taking any action authorized by law, including but not limited to taking any action authorized by law regarding additional, subsequent, or subsequently discovered violations or taking subsequent action to enforce this Order.
2. This Order does not suspend, minimize, or otherwise alter the Pulaski County PSA's obligation to comply with federal, state, and local laws and regulations. The Board

waives no lawful means of enforcing the laws it administers, the regulations it has adopted, or this Order.

3. The Pulaski County PSA agrees that it has received fair and due process under the Administrative Process Act and waives its right to any hearing or other administrative proceeding authorized or required by law or regulation related to the violations specifically identified in Section C.
4. To the fullest extent authorized by law, this Order is binding on the Pulaski County PSA and any successors in interest, designees and assigns, jointly and severally.
5. The Board may modify, rewrite, or amend this Order with the consent of the Pulaski County PSA, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000, *et seq.*, after notice and opportunity to be heard. Any request for modification of this Order shall be submitted to VDH in writing by the Pulaski County PSA to be considered for approval by the Board or its designee.
6. Failure of the Pulaski County PSA to comply with any terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or Department as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. The Pulaski County PSA shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Failure to notify the Department verbally within 24 hours and in writing within three business days shall constitute a waiver of any claim to inability to comply with a requirement of this Order.
9. This Order shall become effective on the 15th day after a copy of it is mailed to the Pulaski County PSA. Va. Code § 32.1-26.
10. This Order shall continue in effect until:
 - a. The Commissioner or his designee terminates the Order after the Pulaski County PSA has completed all of the requirements of this Order;

- b. The Pulaski County PSA petitions the Commissioner or his designee to terminate the Order after it has completed all of the requirements of the Order and the Commissioner or his designee approves the termination of the Order; or
 - c. The Commissioner or Board terminates the Order in their sole discretion upon 30 days' written notice to the Pulaski County PSA.
11. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the Pulaski County PSA from its obligation to comply with any statute, regulation, permit condition, other order, certificate, standard, or requirement otherwise applicable.
12. The undersigned representative of the Pulaski County PSA certifies that they are a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind the Pulaski County PSA to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of the Pulaski County PSA.
13. By its signature below, the Pulaski County PSA voluntarily agrees to the issuance of this Order.

It is SO ORDERED.

STATE BOARD OF HEALTH
Commonwealth of Virginia

DocuSigned by:

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2/15/2022 | 4:44:08 PM EST

Colin M. Greene, MD, MPH
Acting State Health Commissioner

The Pulaski County PSA voluntarily agrees to the issuance of this Order:

Jareal L. Linkous

Name

Executive Director

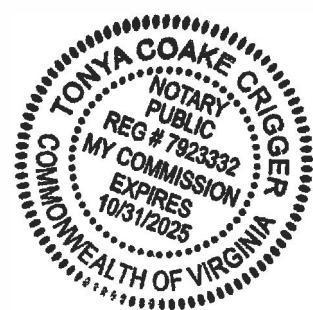
Title

2/9/2022

Date



Signature





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Appendix A **Corrective Action Plan and Schedule**

The Pulaski County PSA shall:

1. Continue to monitor and report the TTHM concentration every 90 days by collecting water samples at sample points listed in the ODW-approved monitoring plan dated January 6, 2014, or submit an updated monitoring plan if needed, and have them analyzed by a laboratory certified for TTHM analyses of drinking water in the Commonwealth of Virginia, as required by 12VAC5-590-374.
2. Provide public notification to Brookmont consumers within 30 days of VDH notification whenever there is an exceedance of the TTHM PMCL, as required by 12VAC5-590-540 of the Regulations.
3. Within 10 days of providing public notification to Brookmont consumers, submit to AFO a copy of the notice provided and a public notification completion certification, as required by 12VAC5-590-540 of the Regulations.
4. Continue to complete and submit an Operational Evaluation Report to AFO within 90 days of VDH notification that the Brookmont TTHM Operational Evaluation Level exceeds 0.080 mg/L, as required by 12VAC5-590-384 of the Regulations.
5. For one year following completion of the corrective actions as required in Appendix A of the Town of Pulaski's Order by Consent effective December 8, 2021, VDH will evaluate results of the Brookmont TTHM compliance monitoring data submitted by the Pulaski County PSA. If after the one year period, the corrective actions completed by the Town of Pulaski do not result in LRAA TTHM levels below the PMCL of 0.080 mg/L for Brookmont, the Town of Pulaski and ODW shall amend the Town of Pulaski's Corrective Action Plan and Schedule to require the Town of Pulaski to proceed with additional alternatives, to be determined at the time, that will reduce the TTHM levels for Brookmont below the PMCL.
6. Mail all requirements of Appendix A of this Order to:

Lisa Crabtree, District Engineer
VDH-ODW – Abingdon Field Office
407 East Main St, Suite 2
Abingdon, VA 24210