



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
TOWN OF PULASKI
FOR THE
TOWN OF PULASKI WATERWORKS (PWSID No. 1155635)**

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 Town of Pulaski for the Town of Pulaski 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 Town of Pulaski, which became effective on August 15, 2018 (Order No. 07-2018-07).

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 Town of Pulaski that became effective on August 15, 2018 (Order No. 07-2018-07).
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 the Brookmont Waterworks, a consecutive community system 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 least 15 service connections used by year-round residents or regularly serves at least 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 haloacetic acids (HAA5) and total trihalomethanes (TTHM).
9. "Department" or "VDH" means the Department of Health, an agency of the Commonwealth of Virginia, as described in Va. Code § 32.1-26.
10. "HAA5" means haloacetic acids (five) and includes monochloroacetic acid, dichloroacetic acid, trichloroacetic acid, monobromoacetic acid, and dibromoacetic acid, which are DBPs.
11. "LRAA" means locational running annual average.
12. "NOV" means a type of notice of alleged violation issued under 12VAC5-590-110 of the Regulations.
13. "ODW" means the VDH Office of Drinking Water.
14. "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 § 2.2-4001, of the Board or Commissioner.
15. "PER" means the Town of Pulaski's Preliminary Engineering Report titled "Pulaski Water Treatment Plant and Water Distribution System Improvements," which ODW approved on July 23, 2021.
16. "Permit" means written Waterworks Operation Permit No. VA1155635.
17. "PMCL" means primary maximum contaminant level.

18. "Public Water Supplies Law" or "PWSL" means Article 2, Chapter 6 of Title 32.1 of the Va. Code.
19. "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.
20. "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.
21. "PWSID" means Public Water System Identification.
22. "Regulations" means the Waterworks Regulations, 12VAC5-590-10, *et seq.*
23. "TTHM" means total trihalomethanes, and includes trichloromethane (chloroform), dibromochloromethane, bromodichloromethane, and tribromomethane (bromoform), which are DBPs.
24. "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.
25. "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.
26. "Va. Code" means the Code of Virginia (1950), as amended.
27. "VAC" means the Virginia Administrative Code.
28. "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 Town of Pulaski 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.
2. On March 27, 1992, ODW issued the Permit to the Town of Pulaski to operate the Town Waterworks in compliance with the PWSL and Regulations.
3. The Town of Pulaski sells finished drinking water from the Town Waterworks to the Pulaski County PSA, which owns and operates Brookmont, 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 hydro-pneumatic pressure tanks, and a distribution system.
4. In August 2018, the Town of Pulaski entered into the August 2018 Order with the Board to resolve certain violations of the PWSL and Regulations for exceeding the PMCL for HAA5, a class of compounds known as disinfection byproducts or DBPs. The August 2018 Order established corrective actions and schedule for compliance, and required that the Town of Pulaski 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 water the Pulaski County PSA buys for Brookmont complies with the law and regulations.
5. During the 2020 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

6. The August 2018 Order, at Section D.4, states that the Town of Pulaski shall “[p]erform bench scale testing, full scale testing, and pilot studies, based on the sample matrix provided in the Preliminary Engineering Report, titled ‘Brookmont Water Age Improvements Project,’ approved on March 14, 2018, by VDH, to evaluate potential changes in treatment at the water treatment plant. The Town of Pulaski will complete the testing and pilot studies by December 1, 2018.” The Town of Pulaski began full scale testing on March 22, 2021.
7. The August 2018 Order, at Section D.5, requires that the Town of Pulaski “[d]evelop a report based on the results from the bench and full scale testing and pilot studies of Item D.4. Submit the report to the VDH Office of Drinking Water Abingdon Field Office by March 1, 2019.” To date, the Town of Pulaski has not completed testing and pilot studies.
8. The August 2018 Order, at Section D.8, requires that the Town of Pulaski “...submit plans and specifications to the Abingdon Field Office for a construction permit for the modifications identified in the FCAP Construction Project Funding Application by June 1, 2019.” To date, the Town of Pulaski has not submitted plans and specifications to AFO for a construction permit for the modifications identified in the FCAP Construction Project Funding Application.
9. The August 2018 Order, at Section D.9, requires that the Town of Pulaski “...complete construction authorized in the VDH construction permit within 12 months from the effective date of the permit.” To date, the Town of Pulaski has not submitted plans and specifications to AFO for a construction permit for the modifications identified in the FCAP Construction Project Funding Application; therefore AFO has not issued a construction permit and construction is not complete.
10. Based on a review of ODW records, AFO staff observed that the Town of Pulaski failed to operate the Town Waterworks in compliance with the August 2018 Order and Regulations, as follows:
 - a. The Town of Pulaski failed to perform bench scale testing, full scale testing, and pilot studies, based on the report dated March 14, 2018 (the “Brookmont Water Age Improvements Project”), and to evaluate the potential changes in treatment at the water treatment plant by December 1, 2018, as required by Section D.4 of the August 2018 Order;

- b. The Town of Pulaski failed to submit a report based on the results of the bench scale testing, full scale testing, and pilot studies listed in D.4 of the August 2018 Order by March 1, 2019, as required by Section D.5 of the August 2018 Order;
 - c. The Town of Pulaski failed to submit plans and specifications to the AFO for a construction permit for the modifications identified in the construction project funding application by June 1, 2019, as required by Section D.8 of the August 2018 Order; and
 - d. The Town of Pulaski failed to complete construction authorized by the construction permit within 12 months from the effective date of the permit, as required by Section D.9 of the August 2018 Order.
11. 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, 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.”
12. 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.”

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

13. 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."
14. 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.
15. On March 2, 2020, September 3, 2020, February 24, 2021, March 5, 2021, April 8, 2021, and July 22, 2021, VDH issued NOVs to the Pulaski County PSA for exceeding the PMCL for TTHM in the distribution system.
16. 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 § 2.2-4001, of the Board or Commissioner.
17. Based on VDH records, the Board concludes that the Town of Pulaski violated the August 2018 Order, the Regulations, and the Va. Code, as described in paragraphs C.4. and C.6. through C.10.above.

Section D. Agreement and Order

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

1. Pay a civil charge for **\$2,804.00** within 30 days of the effective date of this Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and shall be delivered to:

Office of Drinking Water
Virginia Department of Health
109 Governor Street, 6th Floor
Richmond, Virginia 23219

The Town of Pulaski shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Water Supply Assistance Grant Fund. If VDH has to refer collection of moneys due under this Order to the Department

of Law, the Town of Pulaski shall be liable for attorneys' fees of 30% of the amount outstanding.

2. Perform the actions described in Appendix A of this Order.

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 Town of Pulaski'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 Town of Pulaski 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 Town of Pulaski 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 Town of Pulaski, 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 by the Town of Pulaski in writing to be considered for approval by the Board or its designee.
6. Failure of the Town of Pulaski 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. Any plans, reports, schedules, or specifications submitted by the Town of Pulaski and approved by the Department pursuant to this Order are incorporated into this Order, including the PER. Any non-compliance with such approved documents shall be considered a violation of this Order.
9. The Town of Pulaski 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.
10. This Order shall become effective on the 15th day after a copy of it is mailed to the Town of Pulaski. Va. Code § 32.1-26.
11. This Order shall continue in effect until:
 - a. The Commissioner or his designee terminates the Order after the Town of Pulaski has completed all of the requirements of this Order;
 - b. The Town of Pulaski 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 Town of Pulaski.
12. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the Town of Pulaski from its obligation to comply with any statute, regulation, permit condition, other order, certificate, standard, or requirement otherwise applicable.
13. The undersigned representative of the Town of Pulaski 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 Town of Pulaski to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of the Town of Pulaski.
14. By its signature below, the Town of Pulaski voluntarily agrees to the issuance of this Order.

It is SO ORDERED.

STATE BOARD OF HEALTH
Commonwealth of Virginia

DocuSigned by:

M. Norman Oliver, MD

11/19/2021 | 12:03:24 PM EST

M. Norman Oliver, MD, MA
State Health Commissioner

The Town of Pulaski voluntarily agrees to the issuance of this Order:

<u>Darlene L Burcham</u>	<u>Town Manager</u>
Name	Title
<u>10-21-2021</u>	<u>Darlene Burcham</u>
Date	Signature

Appendix A

Corrective Action Plan and Schedule

The Town of Pulaski shall:

1. By or before the effective date of this Order, implement the water treatment plant non-capital operational modifications.
2. By January 31, 2022, complete full scale testing of the recommended operational modifications identified in the PER and submit a report to the AFO.
3. By January 31, 2022, submit a construction permit application with plans and specifications for the Phase 1 Distribution System improvements identified in the PER.
4. Within 60 days of ODW issuing a construction permit, solicit bids on the Phase 1 Distribution System Improvements projects.
5. For one year following the completion of the Phase 1 Distribution System Improvement projects, ODW will evaluate results of the TTHM compliance monitoring data submitted by the Town of Pulaski for the Town Waterworks and the Pulaski County PSA for Brookmont. If, after the one year period, the Phase 1 Distribution System Improvements projects 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 this 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. In the event that issues arise that impact this Corrective Action Plan and Schedule, submit any proposed modifications to this Corrective Action Plan and Schedule, or other plans or reports, pursuant to this Order, to ODW in writing for review, discussion, and approval prior to taking action.
7. Submit all requirements of Appendix A of this Order to:

Brian Blankenship, PE, Field Director
VDH-ODW – Abingdon Field Office
407 East Main St, Suite 2
Abingdon, VA 24210
Brian.Blankenship@vdh.virginia.com