



COMMONWEALTH of VIRGINIA

M. Norman Oliver, MD, MA
State Health Commissioner

Department of Health
P O BOX 2448
RICHMOND, VA 23218

TTY 7-1-1 OR
1-800-828-1120

STATE BOARD OF HEALTH SPECIAL ORDER ISSUED TO Mr. Dale Kyser FOR THE **Glendale Subdivision Waterworks (PWSID No. 6047255)** **Brenridge Subdivision Waterworks (PWSID No. 6047490)**

This is a Special Order issued by the State Board of Health to Mr. Dale Kyser under authority granted by Va. Code § 32.1-175.01 for the purpose of resolving certain violations of the Public Water Supplies law, the Waterworks Regulations, and the Waterworks Operation Fee Regulations.

Section A. Definitions

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

1. “Board” means the State Board of Health, a permanent citizens’ board of the Commonwealth of Virginia, as described in Va. Code § 32.1-15.
2. “Brenridge” means the waterworks serving the Brenridge Subdivision, which serves piped water for human consumption to 56 service connections and approximately 175 year-round residents for at least 60 days out of the year.
3. “CFO” means the ODW Culpeper Field Office located at 400 South Main Street in Culpeper, Virginia.
4. “Commissioner” means the State Health Commissioner, who supervises and manages the Department, as described in Va. Code §§ 32.1-16 and 17.
5. “Community waterworks” means a waterworks that serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents, as defined in 12VAC5-590-10 of the Regulations.

6. “Department” or “VDH” means the Department of Health, an agency of the Commonwealth of Virginia, as described in Va. Code § 32.1-16.
7. “Fee Regulations” means the Waterworks Operation Fee Regulations, 12VAC5-600-10, *et seq.*
8. “Glendale” means the waterworks serving the Glendale Subdivision, which serves piped water for human consumption to 13 service connections and approximately 42 year-round residents for at least 60 days out of the year.
9. “Mr. Kyser” means Mr. Dale Kyser, an individual who supplies or proposes to supply water to any person within this Commonwealth from or by means of any waterworks.
10. “Notice of Violation” or “NOV” means a type of notice of alleged violation issued under 12VAC5-590-110 of the Regulations.
11. “ODW” means the VDH Office of Drinking Water.
12. “Permit” means a written operation permit, which ODW issued to operate a waterworks in compliance with the law and regulations.
13. “Public Water Supplies law” or “PWSL” means Article 2, Chapter 6 of Title 32.1 of the Va. Code.
14. “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.
15. “PWSID” means Public Water System Identification.
16. “Regulations” means the Waterworks Regulations, 12VAC5-590-10, *et seq.*
17. “Special Order” means this document, which the Board may issue, pursuant § 32.1-175.01 of the Code and as defined as defined in § 32.1-167 of the Code, to the owner of a waterworks who violates the Public Water Supplies law or any order or regulation adopted thereto by the Board following an informal fact finding proceeding, as provided in § 2.2-4019 of the Code. The issuance of a special order shall be considered a case decision as defined in Va. Code § 2.2-4001 and may include injunctive relief and civil penalties.

18. "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.
19. "Va. Code" means the Code of Virginia (1950), as amended.
20. "VAC" means the Virginia Administrative Code.

Section B. Findings of Fact and Conclusions of Law

1. Mr. Kyser owns and operates Glendale and Brenridge located in Culpeper County.
2. Glendale is a community waterworks consisting of one drilled well, treatment for radium removal, hypochlorination disinfection, one 4,000-gallon bulk storage tank, one 3,347-gallon hydropneumatic tank, two booster pumps, a water treatment building, and a distribution system. Glendale serves 13 service connections and approximately 42 year-round residents.
3. Brenridge is a community waterworks consisting of two drilled wells. Well 1 includes hypochlorination disinfection, corrosion control treatment with an ortho-phosphate blend, an atmospheric bulk storage tank, a hydropneumatic storage tank, two transfer pumps, and a distribution system. Well 2 is inoperable. Brenridge serves 56 service connections and approximately 175 year-round residents.
4. Glendale and Brenridge are subject to the Regulations because they each serve more than 25 individuals for at least 60 days out of the year.
5. The CFO administers the Regulations for Glendale and Brenridge.

Technical Findings

6. On October 23, 2015, ODW issued a temporary permit to operate Brenridge in compliance with the law and regulations. The permit expired on October 23, 2016.
7. On October 11, 2019, ODW staff conducted a sanitary survey of Brenridge. Based on the sanitary survey and a review of VDH records, ODW staff observed the following:
 - a. Mr. Kyser is operating Brenridge and Glendale without an operation permit and approved waterworks business operations plan demonstrating sufficient technical, managerial, and financial capacity to operate a waterworks.

- b. Mr. Kyser failed to provide notice of individual tap results from lead and copper tap water monitoring to persons at the sampling sites from which samples were taken within 30 days of learning the results reported on September 8, 2016 and November 30, 2017, and to certify to ODW that the notices were distributed in a manner consistent with the requirements.
 - c. Mr. Kyser failed to submit monthly operation reports for the July 2018 and the September 2018 to July 2019 monitoring periods by the 10th day following the end of the monitoring period.
 - d. Mr. Kyser failed to provide ODW, within three months of July 1 of the relevant year, with certification that he distributed the 2017 and 2018 annual consumer confidence reports to his customers and that the information in the reports is correct and consistent with the compliance monitoring data previously reported.
 - e. Mr. Kyser failed to provide two sources of water supply with adequate water metering and electrical service, as required for community waterworks serving 50 or more residential connections with groundwater wells as the source of water supply.
8. 12VAC5-590-190 (Permits.) of the Regulations states, in part, "...no owner or other person shall cause or permit any waterworks or water supply to be operated without a written operation permit issued by the commissioner which authorizes the operation of the waterworks or water supply. Conditions may be imposed on the issuance of any permit, and no waterworks or water supply may be constructed, modified, or operated in violation of these conditions."
9. 12VAC5-590-405.D.4 (Lead and Copper Treatment Techniques) of the Regulations states, in part, "[t]he owners of all community and nontransient noncommunity waterworks shall provide a notice of the individual tap results from lead tap water monitoring carried out under the requirements of 12VAC5-590-375 B to the persons served by the waterworks at the specific sampling site from which the sample was taken (e.g., the occupants of the residence or buildings where the tap was tested)."
10. 12VAC5-590-530.A (Reporting.) of the Regulations states, "The results of any required monitoring activity shall be reported by the owner (or their authorized agent) to the ODW no later than (i) the 10th day of the month following the month during which the test results were received, or (ii) the 10th day following the end of the monitoring period, whichever is shorter, unless stipulated otherwise by the commissioner. The results of any required monitoring activity shall be reported by the owner in a format prescribed by the commissioner."

11. 12VAC5-590-530.F.6 (Reporting) of the Regulations states, in part, “[o]wners shall report the following information to the district engineer to demonstrate compliance with the requirements of 12VAC5-590-405 D . . . c. No later than three months following the end of the monitoring period, the owner shall mail a sample copy of the consumer notification of tap results to the district engineer along with a certification that the notification has been distributed in a manner consistent with the requirements of 12VAC5-590-405 D 4.”
12. 12VAC5-590-545.A and B (Consumer Confidence Reports.) of the Regulations state, “Each community waterworks owner shall deliver to his customers a report by July 1 annually that contains information on the quality of the water delivered by the waterworks and characterizes the risk, if any, from exposure to contaminants detected in the drinking water.”
13. 12VAC5-590-545.G.3 (Consumer Confidence Reports) of the Regulations states, in part, “No later than July 1 of each year[,] community waterworks owners shall deliver a copy of the annual report to [ODW] followed within three months by a certification that the report has been distributed to its customers and that the information in the report is correct and consistent with the compliance monitoring data previously submitted to the [C]ommissioner.”
14. 12VAC5-590-690.E (Capacity of Waterworks.) of the Regulations states, “Waterworks serving 50 or more residential connections with wells as the source of supply shall provide at least two water sources that do not hydraulically interfere with another source of public water supply. Consideration shall be given to requiring each source to be of a minimum yield so its reliability is realistic. The secondary well should be rated at 20% of the waterworks capacity as a minimum.”
15. 12VAC5-590-700.E (Metering Total Water Production.) of the Regulations states, “[a]ll waterworks shall provide metering of total water production.”
16. Va. Code § 32.1-172.A (Permit required.) states, “[n]o owner shall establish, construct or operate any waterworks or water supply in the Commonwealth without a written permit from the Commissioner . . .”
17. Va. Code § 32.1-172.B (Permit required.) states, in part, “[t]he application also shall include a comprehensive business plan detailing the technical, managerial, and financial commitments to be made by the owner in order to assure that system performance requirements for providing the water supply will be met over the long term.”

18. Mr. Kyser was provided notice of the above-mentioned violations by letters dated March 3 and July 23, 2018, during a meeting held on April 16, 2018, by notices of violation dated January 10, 2018 and August 19, 2019, during a sanitary survey on September 9, 2019, and by sanitary survey report dated October 11, 2019.
19. On April 16, 2018, ODW met with Mr. Kyser to discuss requirements necessary for Mr. Kyser to comply with the Regulations applicable to community waterworks. During the meeting, ODW discussed with Mr. Kyser the requirements to submit permit applications with a waterworks business operations plan for Brenridge, Glendale, to install adequate metering, and electrical service at well 2 for Brenridge, and to submit plans and reports for Brenridge and Glendale on time in compliance with the Regulations.

Waterworks Operation Fee Findings

20. Based on a review of VDH records, ODW staff made the following observations:
 - a. Mr. Kyser failed to pay annual waterworks operation fees for Glendale and Brenridge from 2015 to the date of the Proceeding in the amount of \$1,526.80.
 - b. On July 5, 2013, July 1, 2014, July 13, 2015, July 5, 2016, July 14, 2017, July 9, 2018, and July 1, 2019, ODW sent invoices indicating the annual amount due for Glendale and Brenridge operation fees.
 - c. On October 13, 2015, January 30, 2017, September 14, 2017, October 16, 2017, September 19, 2018, November 8, 2018, and October 31, 2019, ODW sent notices to Mr. Kyser for past due amounts for Glendale and Brenridge.
21. Va. Code § 32.1-171.1.A (Waterworks operation fee required; special fund established; certain technical assistance program to be provided) states, “Every owner of a waterworks shall pay the Department a waterworks operation fee of no more than \$160,000 per year.” Through regulation, and “[b]ased upon the number of persons served, the number of connections, or the classification of the waterworks,” the Board establishes the fee including any exemptions from the fee based on size or class. Va. Code § 32.1-171.1.A.

Subsequent Enforcement Actions

22. On May 7, 2020, ODW staff issued Mr. Kyser a Notice of Informal Fact Finding Proceeding via email and certified mail to the street address on file. Delivery attempts were made on May 29 and June 13, 2020. On July 13, 2020, the United States Postal Service returned the mailing to ODW marked “return to sender.” On June 26, 2020, the CFO attempted to contact Mr. Kyser by email and telephone (text message and voice

message) regarding the Proceeding. As of the date of the Proceeding, ODW had not received a response from Mr. Kyser to the Notice of Informal Fact Finding Proceeding.

23. On July 15, 2020, ODW held an informal fact finding proceeding (Proceeding) pursuant to Code § 2.2-4019. The Proceeding was held to determine whether Mr. Kyser violated certain provisions of the PWSL, the Regulations, and the Fee Regulations, and to recommend an appropriate course of action for addressing the alleged violations. The Proceeding took place at the CFO. Mr. Kyser did not participate in the Proceeding. The Field Director for the ODW Abingdon Field Office served as the Presiding Officer for the case. After reviewing the record and exhibits presented at the Proceeding, the Presiding Officer concluded that Mr. Kyser is operating Glendale and Brenridge in violation of the PWSL, the Regulations, and the Fee Regulations, and recommended that the Board issue Mr. Kyser this Special Order.
24. Pursuant to § 32.1-175.01 of the Va. Code, the Commissioner, acting for the Board when it is not in session pursuant to Va. Code § 32.1-20, has the authority to issue special orders that may include injunctive relief and civil penalties.
25. After reviewing the record and exhibits from the Proceeding, and the Presiding Officer's Recommendation in the above-referenced matter, the Board adopts those Recommended Findings of Fact and Conclusions of Law and incorporates them into this Special Order.

Conclusions of Law

26. Based on the agency record, the Board concludes that Mr. Kyser violated the Regulations at 12VAC5-590-190, 12VAC5-590-405.D.4, 12VAC5-590-530.A, 12VAC5-590-530.F.6.c, 12VAC5-590-545.A.1, 12VAC5-590-G.3, 12VAC5-590-690.E, 12VAC5-590-700.E, 12VAC5-600-50 and the PWSL at Va. Code §§ 32.1-171.1A and 32.1-172.A, as described in paragraphs B.6 through B.17 and B.20 through B.21 of this Special Order.

Section C. Order for Compliance

In order for Mr. Kyser to return to compliance, and to continually operate Glendale and Brenridge in compliance with the Regulations, the Board orders Mr. Kyser to comply with the following requirements:

1. Within 90 days of the effective date of this Special Order, submit to the CFO a waterworks business operations plan for Brenridge and Glendale that demonstrates sufficient technical, managerial, and financial commitment to assure the system performance requirements for providing the water supply will be met over the long term.
2. Within 90 days of the effective date of this Special Order, install a water meter and electrical service to well 2 at Brenridge, notify CFO within 10 days of project completion, and submit sufficient documentation to CFO within 10 days of project

Mr. Dale Kyser
Special Order
Page 7 of 10

completion describing the operation controls for well 2 and how it ties into the distribution system for ODW review and approval.

3. Within 30 days of the effective date of this Special Order, distribute consumer notice of individual tap results from lead and copper tap water monitoring reported on September 8, 2016 and November 30, 2017, to persons served by Brenridge at specific sites from which the samples were taken, and certify to ODW that the consumer notice has been distributed.
4. Within 30 days of the effective date of this Special Order, pay a civil charge of **\$4,814.00** in settlement of the violations cited in this Special Order.
 - a. Payment shall be made by check, certified mail, money order or cashier's check payable to the "Water Supply Assistance Grant Fund," and delivered to:

Diedre Forsgren, Accountant Sr.
Shared Business Services
109 Governor Street, 11th Floor
Richmond, Virginia 23219

- b. Mr. Kyser shall indicate that the payment is being made in accordance with the requirements of this Special Order for deposit into the Virginia Water Supply Assistance Grant Fund. If the Department has to refer collection of moneys due under this Special Order to the Department of Law, Mr. Kyser shall be liable for attorneys' fees of 30% of the amount outstanding.
5. Within 30 days of the effective date of this Special Order, pay the waterworks operation fees for Glendale and Brenridge in settlement of their delinquent accounts in the amount of **\$1,526.80** and this Special Order.

- a. Payment of the operation fee shall be made by check, certified mail, money order or cashier's check payable to the "VDH – Waterworks Technical Assistance Fund," and delivered to:

Virginia Department of Health
Office of Drinking Water
Madison Building, 6th Floor
109 Governor Street, Room 622
Richmond, Virginia 23219

- b. If the Department has to refer collection of moneys due under the Fee Regulations or this Special Order to the Department of Law, Mr. Kyser shall be liable for attorneys' fees of 30% of the amount outstanding.

- c. Nothing in this Order suspends, minimizes, or otherwise alters Mr. Kyser's obligation to pay future operation fees as required by the law and regulations. Failure to pay future due amounts constitutes a violation of this Special Order.

Section D. Administrative Provisions

1. This Special Order does not suspend, minimize, or otherwise alter Mr. Kyser'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 Special Order.
2. To the fullest extent allowed by law, this Special Order is binding on Mr. Kyser, his agents and legal representatives, heirs, devisees, executors, administrators, and successors in interest, jointly and severally as applicable.
3. This Special Order shall become effective on the 15th day after mailing a copy of it to Mr. Kyser. Va. Code § 32.1-26. Any request for modification of this Order shall be submitted to VDH in writing to be considered for approval by the Board or its designee. The Board may revoke this Special Order in its discretion upon 30 days written notice to Mr. Kyser.
4. This Special Order addresses and resolves only those violations specifically identified in Section B of this Special Order. This Special 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 Special Order.
5. Failure by Mr. Kyser to comply with any terms of this Special Order shall constitute a violation of this Special Order. Nothing herein shall waive the initiation of appropriate enforcement action or issuance of additional orders as appropriate because of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
6. This Special Order shall remain in effect until the Commissioner or his designee terminates the Special Order after Mr. Kyser has completed all of the requirements of the Special Order, or the Commissioner or Board terminates the Special Order in their sole discretion upon 30 days written notice to Mr. Kyser.
7. Termination of this Special Order, or any obligation imposed in it, shall not relieve Mr. Kyser from his obligation to comply with any statute, regulation, permit condition, other agreement, certificate, certification, standard, or requirement otherwise applicable.

8. Mr. Kyser has the right to appeal this decision by requesting a formal hearing pursuant to Va. Code § 2.2-4020 or, in accordance with Article 5 of the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, seeking direct review thereof by an appropriate and timely court action against VDH in a manner provided by the Rules of the Supreme Court of Virginia.

It is SO ORDERED this _____ day of _____, 2020.

STATE BOARD OF HEALTH
Commonwealth of Virginia

DocuSigned by:

M. Norman Oliver, MD, MA
State Health Commissioner
9/21/2020 | 6:55:27 PM EDT
E9883CE3DE124C0...