

**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**In the Matter of:**

City of Franklin and The General	:	
Authority of the City of Franklin	:	Safe Drinking Water Act
430 13 <sup>th</sup> Street	:	
Franklin, PA 16323	:	

**CONSENT ORDER AND AGREEMENT**

This Consent Order and Agreement is entered into this 5<sup>th</sup> day of April 2019, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection (“Department”) and the City of Franklin and The General Authority of the City of Franklin.

**Findings**

The Department has found and determined the following Findings:

- A. The Department is the agency with the duty and authority to administer and enforce the Pennsylvania Safe Drinking Water Act, Act of May 1, 1984, P.L. 206, *as amended*, 35 P.S. §§ 721.1-721.17 (“Safe Drinking Water Act”); Section 1917-A of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, *as amended*, 71 P.S. § 510-17 (“Administrative Code”); and the rules and regulations promulgated thereunder (“Regulations”).
- B. The City of Franklin is a Third Class City organized under a Home Rule Charter and the laws of the Commonwealth of Pennsylvania with a mailing address of 430 13<sup>th</sup> Street, Franklin, PA 16323.
- C. The General Authority of the City of Franklin is a Municipal Authority with a mailing address of 430 13<sup>th</sup> Street, Franklin, PA 16323 (“General Authority”).
- D. The General Authority owns a public water system and holds multiple Public Water Supply permits for the public water system which consists of ten drilled wells, two water treatment plants (“Barrett Flats WTP” and “9<sup>th</sup> Street WTP”) each equipped with gaseous disinfection,

fluoridation, and corrosion control inhibitor fee equipment and other appurtenances, multiple storage tanks and pump stations, and the distribution system serving customers in the City of Franklin and portions of surrounding municipalities (“Water Supply”).

E. The City of Franklin operates the Water Supply on behalf of the General Authority, under an agreement with the General Authority.

F. Fred Leyda is the supervisor directly responsible for the operation of the Water Supply and the City of Franklin has designated Fred Leyda as the “certified operator” and the “operator-in-responsible-charge,” of the Water Supply, as those terms are defined in Section 2 of the Operators’ Certification Act, 63 P.S. §1002, and 25 Pa. Code §302.101.

**Fluoride Overfeed**

G. Pursuant to Public Water Supply Permit No. 6114503, issued July 30, 2015 to the General Authority, the City of Franklin fluoridates the Water Supply by, among other things, adding hydrofluorosilicic acid before the entry point at the Barret Flats WTP from two chemical feed tanks located on the second floor of the Barrett Flats WTP.

H. On February 1, 2018, the City of Franklin and the General Authority received a complaint about discolored water in the vicinity of Cauvel’s Trailer Court. The complainant indicated there was a blue tint to the water.

I. On February 6, 2018, approximately 317 gallons of hydrofluorosilicic acid was delivered to the chemical feed tanks on the second floor of the Barrett Flats WTP.

J. On February 7, 2018, City of Franklin personnel discovered that a malfunction had occurred at the Barrett Flats WTP allowing a large volume of hydrofluorosilicic acid to empty into the Water Supply (“Fluoride Overfeed”).

K. On February 7, 2018, City of Franklin personnel reported the Fluoride Overfeed to Fred Leyda, as the operator-in-responsible-charge of the Water Supply, and the City of Franklin water treatment personnel disconnected the hydrofluorosilicic acid feed pump at the Barrett Flats WTP.

L. Neither Fred Leyda, as the operator-in-responsible-charge, the City of Franklin personnel, the General Authority, nor any other person reported the Fluoride Overfeed to the Department on February 7, 2018.

M. On the morning of February 8, 2018, Fred Leyda met with City of Franklin personnel to address the complaints of green/blue water and metallic taste and discussed the Fluoride Overfeed.

N. On the morning of February 8, 2018, the City of Franklin and the General Authority reported to the Department that they received complaints from drinking water consumers in the Third Ward of the City of Franklin of green/blue water discoloration and a metallic taste.

O. On February 8, 2018, the Department met with City of Franklin personnel and initiated an investigation of the complaints of green/blue water and metallic taste and collected water samples from three locations within the Third Ward of the City of Franklin for analysis by the Department's Bureau of Laboratories ("DEP February 8<sup>th</sup> Samples").

P. On February 8, 2018, the City of Franklin and the General Authority hand-delivered a Tier 1 "Do Not Use" public notice to all service connections located within the area of the distribution system located West of Orchard Street within the Third Ward of the City ("Initial Impacted Area").

Q. On February 9, 2018, the Department received preliminary results from the DEP February 8<sup>th</sup> Samples that showed elevated fluoride levels over the maximum contaminant level ("MCL") of 2 mg/L.

R. On February 9, 2018, after being informed that the DEP February 8<sup>th</sup> Samples showed elevated fluoride levels, Fred Leyda informed the Department of the Fluoride Overfeed and that a water test measured a fluoride level of 3.25 mg/L in the finished water from the Barrett Flats WTP earlier in the week.

S. The monthly operational reports, including, daily operational logs, for the Barrett Flats WTP for the months of December 2017, January 2018, and February 2018, provided by the City of Franklin and the General Authority, do not include the finished water fluoride result of 3.25 mg/L verbally-reported to the Department by Fred Leyda on February 9, 2018, do not include a record of the Fluoride Overfeed or any maintenance performed at the Barrett Flats WTP, and do not include any notations indicating when hydrofluorosilicic acid was delivered to the Barrett Flats WTP, added to bulk tanks, or the amount of hydrofluorosilicic acid or phosphate chemicals used each day at the Barrett Flats WTP.

T. On-site water tests conducted on February 9, 2018 by the City of Franklin personnel measured fluoride levels greater than 2.0 mg/L at eight locations in the Water Supply distribution system. Two of the water tests taken on February 9, 2018, measured fluoride greater than 2.5 mg/L.

U. On February 12, 2018, the Department inspected the Water Supply and conducted on-site water tests which measured fluoride levels greater than 2.0 mg/L at three locations in the Water Supply distribution system.

V. On February 12, 2018, the City of Franklin and the General Authority issued an updated public notice to all customers informing them of the Fluoride Overfeed at the Barrett Flats WTP and the fluoride MCL exceedances by posting the notice on the City of Franklin's website and Facebook page, notifying local news outlets, and making the notice available to customers that stopped by the Franklin Fire Department.

W. On February 14, 2018, the Department issued Field Order No. 18-62-1638-001 to the City of Franklin and the General Authority which required the City of Franklin and the General Authority to: (1) immediately distribute and post an updated public notice to all customers of the Water Supply and keep the updated public notice in place until the City of Franklin and the General Authority received authorization from the Department to issue a Problem Corrected Notice to all customers; (2) continue to flush the distribution system and manipulate storage tanks to move pockets of water with elevated fluoride levels out of the Water Supply, collect grab sampling of the Water Supply, and report the results to the Department; and (3) by February 26, 2018, submit to the Department, in writing, a report which summarizes the events which led to the Fluoride Overfeed ("Field Order").

X. On February 21, 2018, based upon sampling results submitted by the General Authority and the City of Franklin, the Department concurred that the City of Franklin and the General Authority should issue a Problem Corrected Notice to the customers of the Water Supply, including the consecutive public water suppliers for the Fluoride Overfeed.

Y. On February 26, 2018, the Department received a report of the Fluoride Overfeed from the City of Franklin and the General Authority.

Z. On February 28, 2018, the Department received a Design Engineer's Report from the General Authority's engineering consultant describing the cause of the Fluoride Overfeed.

AA. On March 14, 2018, the Department received Public Water Supply Permit Application No. 6114503-MA1 from the General Authority proposing improvements to the hydrofluorosilicic acid feed system at the Barrett Flats WTP.

BB. On May 7, 2018, the Department determined, among other things, that the liquid chemical feeds for hydrofluorosilicic acid and polyphosphate at the Barrett Flats WTP and the 9<sup>th</sup>

Street WTP were not installed according to accepted standards of engineering and design and sent a Technical Deficiency Letter to the General Authority outlining multiple deficiencies determined to exist with Public Water Supply Permit Application No. 6114503-MA1.

CC. On May 21, 2018, the City of Franklin and the General Authority provided to the Department an "After-Action Report" and "Improvement Plan," which among other things, identified a lack of proper emergency planning or procedures.

DD. Based on the "After-Action Report" and "Improvement Plan," the City of Franklin and the General Authority did not have an operation and maintenance plan that adequately addresses the required public notification elements and did not have an Emergency Response Plan that provides for safe and adequate drinking water under emergency circumstances and adequate notifications to all customers of the Water Supply, including the consecutive public water suppliers.

EE. On June 12, 2018, the Department received an updated Emergency Response Plan from the City of Franklin and the General Authority.

FF. On June 12, 2018, the General Authority voted to remove fluoridation from the treatment process at the Barrett Flats WTP and the 9<sup>th</sup> Street WTP and to request a modification of its permits to reflect this change.

#### **4-Log Treatment**

GG. On August 13, 2018, the City of Franklin and the General Authority submitted to the Department daily log sheets for multiple months, including, but not limited to, February and July 2018, with maintenance, continuous analyzer data, instrument calibration, and other information and documentation to show how the City of Franklin and the General Authority determines the lowest entry point disinfectant residual concentration result to report to the Department each day for both Entry Point 110 and Entry Point 111.

HH. Based upon the information submitted to the Department on August 13, 2018, the City of Franklin and the General Authority failed to provide 4-log treatment of viruses for more than four hours during the periods of January 31, 2018 through February 1, 2018, February 8, 2018 through February 9, 2018, and July 18, 2018 through July 20, 2018.

II. Neither the City of Franklin nor the General Authority notified the Department within one hour of a breakdown in treatment during the periods of January 31, 2018 through February 1, 2018, February 8, 2018 through February 9, 2018, and July 18, 2018 through July 20, 2018.

JJ. The City of Franklin and the General Authority do not use the data recorded by the continuous analyzers at the Barrett Flats WTP or the 9<sup>th</sup> Street WTP to report the lowest daily entry point disinfectant concentration for the Water Supply.

**Applicable Law**

KK. The City of Franklin and the General Authority are each a “person,” as that term is defined in Section 3 of the Safe Drinking Water Act, 35 P.S. § 721.3 and 25 Pa. Code § 109.1.

LL. The City of Franklin and the General Authority are each “public water suppliers,” as that term is defined in Section 3 of the Safe Drinking Water Act, 35 P.S. § 721.3 and 25 Pa. Code § 109.1.

MM. The Water Supply is a “system,” as defined by 25 Pa. Code § 109.1, and a “public water system” and “community water system,” as those terms are defined in 35 P.S. § 721.3 and 25 Pa. Code § 109.1.

NN. Pursuant to 25 Pa. Code § 109.701(a)(3)(iii)(B), a public water supplier shall report to the Department within one hour of discovery of any circumstances which may adversely impact the quality or quantity of drinking water, including, but not limited to, a failure, significant interruption, or breakdown in key water treatment processes.

OO. Pursuant to 25 Pa. Code § 109.701(b)(1), a community water supplier shall prepare a monthly operational report that includes at least the amount of water produced daily, the amount of chemical added daily, the physical and chemical determinations taken daily, water level monitoring data, maintenance performed, and any operational problems.

PP. Pursuant to 25 Pa. Code § 109.202(d), a public water system shall comply with the primary MCL for fluoride of 2 mg/L.

QQ. Pursuant to 25 Pa. Code § 109.408, a Tier 1 public notice is to be provided to customers of a public water system as soon as possible, but no later than 24 hours after the water supplier learns of the violation, situation, or an emergency that adversely affects the quality or quantity of the finished water and has a significant potential to have serious adverse effects on human health as a result of short-term exposure.

RR. Pursuant to 25 Pa. Code § 109.408(d)(1), community water systems shall provide public notice to each service connection using a form of direct delivery, which includes hand delivery, electronic mail, and automatic telephone dialing systems.

SS. Pursuant to 25 Pa. Code § 109.702(a), community water suppliers shall develop an Operation and Maintenance Plan for the water system, which must generally conform to the guidelines in the Department's Public Water Supply Manual and contain certain minimum information, including public notice fact sheets and explanation of appropriate methods of delivery for a public notice.

TT. Pursuant to 25 Pa. Code § 109.707, a community water supplier shall develop a plan for the provision of safe and adequate drinking water under emergency circumstances. The Emergency Response Plan must generally conform to the guidelines in the Department's Public Water Supply Manual and contain certain minimum information. Corrective actions for probable

emergency situations are a required element of the Emergency Response Plan, including among other things, information regarding who should be contacted in the event of an emergency, what public notification should be issued, and what corrective actions should be implemented. Further, a community water supplier shall execute the Emergency Response Plan when necessary.

UU. Pursuant to 25 Pa. Code § 109.602, a public water system shall be designed to provide an adequate and reliable quantity and quality of water to the public. Designs of public water facilities shall conform to accepted standards of engineering and design in the water industry and shall provide protection from failures of source, treatment, equipment, structures, or power supply.

VV. Pursuant to 25 Pa. Code §§ 109.504(c) and 109.1302, and Operation Permit No. 6191502-MA1 (issued on March 22, 2011), a minimum entry point disinfectant residual of 1.12 mg/L is required to be continuously maintained at the Barrett Flats WTP to provide 4-log treatment of viruses.

WW. In accordance with 25 Pa. Code §§ 109.1307(a)(1)(ii) and 109.408, a groundwater system conducting compliance monitoring under 25 Pa. Code § 109.1305 is required to notify the Department within one hour after the water system experiences a breakdown in treatment. A breakdown in treatment occurs whenever the treatment system fails to meet, for greater than four continuous hours, any Department-specified requirements relating to the minimum residual disinfectant concentration.

XX. Pursuant to 25 Pa. Code § 109.1307(a)(1)(i), a groundwater system conducting compliance monitoring under 25 Pa. Code § 109.1305 is required to report the date, time, and lowest value each day the residual disinfectant concentration remains equal to or greater than the Department-required minimum value; the initial date, time, and value for each occurrence that the residual disinfectant concentration is less than the Department-required minimum; and the

subsequent date, time, and value that the residual disinfectant concentration is equal to or greater than the Department-required minimum to the Department on a monthly basis.

YY. Pursuant to 25 Pa. Code §§ 109.4(2) and 109.4(4), public water suppliers shall: provide treatment adequate to assure that the public health is protected and take whatever investigative or corrective action necessary to assure that safe and potable water is continuously supplied to the users.

ZZ. Pursuant to 25 Pa. Code §109.4(3), public water suppliers shall provide and effectively operate and maintain public water systems facilities.

### **Unlawful Conduct**

AAA. The City of Franklin and the General Authority's failure to notify the Department of the Fluoride Overfeed until February 9, 2018, as described in Paragraphs L and R, above, violates 25 Pa. Code § 109.701(a)(3).

BBB. The City of Franklin and the General Authority's failure to record each of the items identified in Paragraph OO, above, as described in Paragraph S, above, on the monthly operational logs and reported altered or inaccurate fluoride results for February 7, 8, and 9, 2018, violates 25 Pa. Code § 109.701(b)(1).

CCC. The City of Franklin and the General Authority's failure to comply with the primary MCL for fluoride of 2 mg/L, as described in Paragraphs Q, R, T, and U, above, violates 25 Pa. Code § 109.202(d).

DDD. The City of Franklin and the General Authority's failure to issue a Tier 1 public notice to all customers of the Water Supply, including the consecutive public water suppliers, within 24 hours of the discovery of the Fluoride Overfeed, as described in Paragraph K and P, above, violates 25 Pa. Code § 109.408.

EEE. The City of Franklin and the General Authority's failure to directly deliver the February 12, 2018 public notice to each customer of the water system, as described in Paragraph V, above, violates 25 Pa. Code § 109.408(d)(1).

FFF. The City of Franklin and the General Authority's failure to develop an Operation and Maintenance Plan that adequately addresses the required public notification elements, as described in Paragraphs DD and SS, above, violates 25 Pa. Code § 109.702(a).

GGG. The City of Franklin and the General Authority's failure to maintain an Emergency Response Plan that provides for safe and adequate drinking water under emergency circumstances and adequate notifications to all customers of the Water Supply, including the consecutive public water suppliers, as described in Paragraphs DD and TT, above violates 25 Pa. Code § 109.707.

HHH. The City of Franklin and the General Authority's failure to install liquid chemical feeds for hydrofluorosilicic acid and polyphosphate at the Barrett Flats WTP and the 9<sup>th</sup> Street WTP according to accepted standards of engineering and design, as described in Paragraph BB, above, violates 25 Pa. Code § 109.602.

III. The City of Franklin and the General Authority's: 1) breakdown in treatment and failure to provide 4-log treatment of viruses , as described in Paragraph HH, above; and 2) failure to notify the Department within one hour of a breakdown in treatment, as described in Paragraph II, above, violates 25 Pa. Code §§ 109.408, 109.504(c), 109.1302, and 109.1307(a)(1)(ii).

JJJ. The City of Franklin and the General Authority's failure to provide 4-log treatment of viruses adequate to assure that the public health is protected at the Barrett Flats WTP, as described in Paragraph HH, above, violates 25 Pa. Code §§ 109.4(2) and 109.4(4).

KKK. The City of Franklin and the General Authority's failure to utilize data recorded by the continuous chlorine analyzers at each water treatment plant to report the lowest daily entry point

disinfectant concentration, as described in Paragraph JJ, above, violates 25 Pa. Code § 109.1307(a)(1)(i).

LLL. The City of Franklin and the General Authority's failure to provide documentation of routine maintenance and calibrations of laboratory equipment and chemical feed pumps, as described in Paragraph S, above, violates 25 Pa. Code § 109.4(3).

MMM. The City of Franklin and the General Authority's failure to accurately conduct compliance monitoring, as described in Paragraph JJ, above, violates 25 Pa. Code § 109.1305(a)(1).

NNN. On April 12, 2018, the Department issued a Notice of Violation to the City of Franklin and the General Authority notifying each party of the violations identified in Paragraphs AAA through EEE, above.

OOO. On August 30, 2018, the Department issued a Notice of Violation to Franklin and the General Authority notifying each party of the violations identified in Paragraphs III, JJJ and KKK, above.

PPP. The violations described in Paragraphs AAA through MMM, above, constitute public nuisances to Section 12 of the Safe Drinking Water Act, 35 P.S. § 721.12, and subject the City of Franklin and the General Authority to a claim for civil penalties under Section 13(g) of the Safe Drinking Water Act, 35 P.S. § 721.13(g).

### **Order**

After full and complete negotiation of all matters set forth in this Consent Order and Agreement, and upon mutual exchange of the covenants contained herein, the parties desiring to avoid litigation and intending to be legally bound, it is hereby ORDERED by the Department and AGREED to by the City of Franklin and the General Authority as follows:

1. **Authority.** This Consent Order and Agreement is an Order of the Department

authorized and issued pursuant to Section 5(c) of the Safe Drinking Water Act, 35 P.S. § 721.5(c), and Section 1917-A of the Administrative Code.

2. ***Findings.***

a. The City of Franklin and the General Authority agree that the findings in Paragraphs A through PPP, above, are true and correct and, in any matter or proceeding involving the City of Franklin, the General Authority, and the Department, the City of Franklin and the General Authority shall not challenge the accuracy or validity of these findings.

b. The parties do not authorize any other persons to use the findings in this Consent Order and Agreement in any matter or proceeding.

3. ***Corrective Actions.***

a. **Within 30 days after the date of this Consent Order and Agreement**, the City of Franklin and the General Authority shall revise and submit to the Department a template operational log for the City of Franklin and/or General Authority personnel to utilize for the Barrett Flats WTP and 9<sup>th</sup> Street WTP, designed to record, at a minimum, the following information: water produced daily; free and total chlorine residual concentrations; phosphate residual concentrations; fluoride residual concentrations (until chemical discontinued); amount of chemical used daily for chlorine gas, fluoride, and phosphate; operator initials (either certified operator or personnel utilizing standard operating procedures); and the time the samples are collected (and analyzed, if different).

b. **On or before May 1, 2019**, the City of Franklin and the General Authority shall provide a Tier 2 public notice to customers of the Water Supply (including the consecutive systems) informing customers of its failure to properly report disinfectant residual results to the Department and each date that a breakdown in treatment occurred as defined at 25 Pa. Code § 109.1307(a)(1).

c. **On or before May 1, 2019**, the City of Franklin and the General Authority shall submit to the Department, in writing, for review and approval, a draft 2018 Consumer Confidence Report which addresses all requirements set forth at 25 Pa. Code § 109.416.

d. **Within 30 days after the Department's written approval of the draft 2018 Consumer Confidence Report**, the City of Franklin and the General Authority shall mail or otherwise directly deliver the 2018 Consumer Confidence Report to all customers of the Water Supply, including the bulk purchasers, and submit to the Department a Consumer Confidence Report Certification Form (3930-FM-BSDW0084) in accordance with 25 Pa. Code § 109.416.

e. **On or before July 1, 2019**, the City of Franklin and the General Authority shall submit to the Department, in writing:

- i. a request to withdraw Public Water Supply Application No. 6114503-MA1; and
- ii. an Administratively Complete Public Water Supply Permit application to permanently remove the hydrofluorosilicic acid feed equipment and associated appurtenances from the Barrett Flats WTP and the 9<sup>th</sup> Street WTP and address the design and construction standard deficiencies that exist for the phosphate feed equipment and associated appurtenances at the Barrett Flats WTP.

f. **On or before July 1, 2019**, the City of Franklin and the General Authority shall submit a report, in writing, to the Department that includes an implementation schedule and identifies modifications the City of Franklin and the General Authority will make to the continuous chlorine analyzers and/or SCADA system to provide call-out alarms for low chlorine levels at Entry Point 110 and Entry Point 111, and to properly record data from the continuous chlorine analyzers, differentiating between periods of water treatment plant operation and periods not in operation, necessary to accurately report the lowest entry point disinfectant residual concentration result daily at Entry Point 110 and Entry Point 111 in accordance with 25 Pa. Code §§ 109.1305 and 109.1307 ("Chlorine Compliance Monitoring Report"). The proposed modifications to the chlorine analyzers

and/or SCADA system for low chlorine call-out alarms shall trigger an alarm at a measured chlorine level greater than the Department-required minimum at the respective entry point.

g. **On or before July 1, 2019**, the City of Franklin and the General Authority shall update and submit to the Department, in writing, an Operation and Maintenance Plan, utilizing the Department's template (3800-FM-WSFR0301), including relevant Tier 1 and Tier 2 public notice templates for probable emergency situations and how these notices are to be provided, including by direct delivery, to the water system customers in accordance with 25 Pa. Code §§ 109.408 and 109.409.

h. **On or before July 1, 2019**, the City of Franklin and the General Authority shall develop and submit to the Department, in writing, Standard Operating Procedures for the daily monitoring of all chemicals (chlorine gas, fluoride, and phosphate) at the Barrett Flats WTP and the 9<sup>th</sup> Street WTP, including how and at what locations all grab samples are to be collected, procedures for proper analysis of the grab samples, recording of all grab sample results and reporting to the Department the amount of each chemical used daily, operational problems, and maintenance performed.

i. **On or before August 1, 2019**, the City of Franklin and the General Authority shall submit corrected information, through the Department's electronic reporting system, for the actual daily entry point disinfectant residuals for Entry Point 110 and Entry Point 111 for the period January 1, 2018 through October 31, 2018 in accordance with 25 Pa. Code §§ 109.1307 and 109.1305. The corrected information shall be based on a review of all available records from the continuous chlorine analyzers at the Barrett Flats WTP and the 9<sup>th</sup> Street WTP and any information or records that identify actual times of operation of the Barrett Flats WTP and the 9<sup>th</sup> Street WTP to determine the actual time and lowest disinfectant residual value each day at each entry point.

j. **On or before August 1, 2019**, the City of Franklin and the General Authority shall submit a report to the Department, in writing, that identifies the initial date, time, and value for each occurrence at each entry point that the residual disinfectant concentration was less than the Department-required minimum, and the subsequent date, time, and value that the residual disinfectant concentration returned to a level equal to or greater than the required minimum for the period of January 1, 2018 through October 31, 2018 (“Breakdown in Treatment Report”).

k. **On or before August 1, 2019**, the City of Franklin and the General Authority shall submit a report to the Department, in writing, that demonstrates compliance with EPA Method 334.0 for daily monitoring and analysis of residual chlorine (“Method 334.0 Compliance Report”). The Method 334.0 Compliance Report shall demonstrate each colorimeter’s and analyzer’s ability to meet the requirements of Method 334.0 and the ability of each water treatment plant personnel’s ability to meet the requirements of Method 334.0 by including the Initial Calibration Verification for each instrument and the Initial Demonstration of Capability for each individual who conducts chlorine analysis in accordance with the requirements of Method 334.0.

l. **Within 60 days after the Department’s issuance of a Public Water Supply Construction Permit for the application submitted under Paragraph 3.e.ii., above**, the City of Franklin and the General Authority shall start the construction approved in the Public Water Supply Construction Permit.

m. **Within 120 days after the Department’s issuance of a Public Water Supply Construction Permit for the application submitted under Paragraph 3.e.ii., above**, the City of Franklin and the General Authority shall complete the construction approved in the Public Water Supply Construction Permit and submit to the Department a Certificate of Construction Completion Form (3900-FM-BSDW0062).

n. **Within 30 days after the Department's issuance of a Public Water Supply Operation Permit for the application submitted under Paragraph 3.e.ii., above,** the City of Franklin and the General Authority shall place into operation the facilities approved in the Public Water Supply Operation Permit.

4. **Monthly Progress Reporting. Beginning May 1, 2019,** and continuing monthly thereafter, the City of Franklin and the General Authority shall submit to the Department a written progress report indicating their efforts to comply with the requirements of this Consent Order and Agreement. The progress reports are due by the 1<sup>st</sup> of each month, and shall be sent to the individual at the address set forth in Paragraph 12 (Correspondence with the Department), below.

5. **Civil Penalty Settlement.** The City of Franklin and/or the General Authority consent to the assessment of a civil penalty of **\$25,000.00**, which shall be paid in full upon signing this Consent Order and Agreement. The payment is in settlement of the Department's claim for civil penalties for the violations set forth in Paragraphs AAA through MMM, above. The payment shall be made by corporate check or the like made payable to "Commonwealth of Pennsylvania – Safe Drinking Water Fund" and sent to the individual at the address set forth in Paragraph 12 (Correspondence with the Department), below.

6. **Submission of Documents.** With regard to any document that the City of Franklin and the General Authority are required to submit pursuant to Paragraphs 3.a., 3.c., 3.f., 3.g., 3.h., 3.i., 3.j., or 3.k., above, of this Consent Order and Agreement, the Department will review the document and will approve or disapprove the document, or portion thereof, in writing. If the Department disapproves the document, or any portion thereof, the City of Franklin and the General Authority shall submit a revised document to the Department that addresses the Department's concerns within a reasonable time, as specified by the Department. The Department will approve, or

modify and approve, the revised document in writing. Upon approval by the Department, the document shall become a part of this Consent Order and Agreement for all purposes and shall be enforceable as such.

7. ***Stipulated Civil Penalties.***

a. If the City of Franklin and/or the General Authority fail to comply in a timely manner with any term or provision of this Consent Order and Agreement other than Paragraph 4 above, the City of Franklin and the General Authority shall be in violation of this Consent Order and Agreement and, in addition to other applicable remedies, shall pay a civil penalty in the amount of \$2,000 for each occurrence that either party has not complied with such term or provision.

b. If the City of Franklin and/or the General Authority fail to comply in a timely manner with Paragraph 4 above, the City of Franklin and the General Authority shall be in violation of this Consent Order and Agreement and, in addition to other applicable remedies, shall pay a civil penalty in the amount of \$50 for each occurrence that either party has not complied with such term or provision.

c. Stipulated civil penalty payments shall be payable monthly on or before the 15<sup>th</sup> day of each succeeding month. The payment shall be made by corporate check or the like made payable to the "Commonwealth of Pennsylvania - Safe Drinking Water Fund" and sent to the individual at the address set forth in Paragraph 12 (Correspondence with the Department), below.

d. Any payment under this paragraph shall neither waive the City of Franklin or the General Authority's duty to meet the obligations under this Consent Order and Agreement nor preclude the Department from commencing an action to compel the City of Franklin and the General Authority's compliance with the terms and conditions of this Consent Order and Agreement. The payment resolves only the City of Franklin and the General Authority's liability for stipulated civil

penalties arising from the violation of this Consent Order and Agreement for which the payment is made.

e. Stipulated civil penalties shall be due automatically and without notice.

8. ***Additional Remedies.***

a. If the City of Franklin or the General Authority fail to comply with any provision of this Consent Order and Agreement, the Department may, in addition to the remedies prescribed herein, pursue any remedy available for a violation of an order of the Department, including an action to enforce this Consent Order and Agreement.

b. The remedies provided by this paragraph and Paragraph 7 (Stipulated Civil Penalties), above, are cumulative and the exercise of one does not preclude the exercise of any other. The failure of the Department to pursue any remedy shall not be deemed to be a waiver of that remedy. The payment of a stipulated civil penalty, however, shall preclude any further assessment of civil penalties for the violation for which the stipulated civil penalty is paid.

9. ***Reservation of Rights.*** The Department reserves the right to require the City of Franklin and the General Authority to take additional measures to achieve compliance with applicable law. The City of Franklin and the General Authority reserve the right to challenge any action that the Department may take to require those measures.

10. ***Liability of the City of Franklin and the General Authority.*** The City of Franklin and the General Authority shall be jointly and severally liable for any violation of this Consent Order and Agreement, including those caused by, contributed to, or allowed by its officers, directors, agents, employees, contractors, successors, and assigns.

11. ***Transfer of the Site and/or the Water Supply.***

a. The City of Franklin and the General Authority's duties and obligations under this Consent Order and Agreement shall not be modified, diminished, terminated, or otherwise altered by the transfer of any legal or equitable interest in the Water Supply, and/or any parts thereof.

b. If the City of Franklin or the General Authority intend to transfer any legal or equitable interest in the Water Supply, or any parts thereof, the City of Franklin and/or the General Authority shall serve a copy of this Consent Order and Agreement upon the prospective transferee of the legal and equitable interest at least 30 days prior to the contemplated transfer and shall simultaneously inform the Department of such intent pursuant to Paragraph 12 (Correspondence with the Department), below.

c. No transfer of the Water Supply, or any parts thereof, shall occur unless the City of Franklin and the General Authority are in compliance with all of the obligations under this Consent Order and Agreement, have paid all stipulated civil penalties owed, and the prospective transferee has entered into a Consent Order and Agreement with the Department concerning the City of Franklin and the General Authority's remaining obligations under this Consent Order and Agreement. Franklin and the General Authority agree to waive any right that each party may have to challenge the Department's decision in this regard.

12. ***Correspondence with the Department.*** All correspondence with the Department concerning this Consent Order and Agreement shall be addressed to:

Brad E. Vanderhoof, P.E.  
Regional Manager  
Safe Drinking Water Program  
Department of Environmental Protection  
230 Chestnut Street  
Meadville, PA 16335-3481  
Telephone: 814-332-6899  
Fax: 814-332-6121

13. ***Correspondence with the City of Franklin.*** All correspondence with the City of Franklin concerning this Consent Order and Agreement shall be addressed to:

Ms. Tracy Jamieson, City Manager  
City of Franklin  
430 13<sup>th</sup> Street  
Franklin, PA 16323

The City of Franklin shall notify the Department, in writing, whenever there is a change in the contact person's name, title, or address. Service of any notice or any legal process for any purpose under this Consent Order and Agreement, including its enforcement, may be made by mailing a copy by First Class mail to the above address.

14. ***Correspondence with the General Authority.*** All correspondence with the General Authority concerning this Consent Order and Agreement shall be addressed to:

Timothy Dunkle, Chairperson  
General Authority of the City of Franklin  
430 13<sup>th</sup> Street  
Franklin, PA 16323

The Authority shall notify the Department, in writing, whenever there is a change in the contact person's name, title, or address. Service of any notice or any legal process for any purpose under this Consent Order and Agreement, including its enforcement, may be made by mailing a copy by First Class mail to the above address.

15. ***Decisions Under Consent Order and Agreement.*** The City of Franklin and the General Authority waives their right to appeal to the Environmental Hearing Board any decision that the Department makes under the provisions of this Consent Order and Agreement, including a notice that stipulated civil penalties are due, which rights may be available under Section 4 of the Environmental Hearing Board Act, the Act of July, 13, 1988, P.L. 530, No. 1988-94, 35 P.S. § 7514; the Administrative Agency Law, 2 Pa. C.S. § 103(a) and Chapters 5A and 7A; or any other provision of law. Except as provided in Paragraph 11.c., above, the Department agrees that any objection that

the City of Franklin or the General Authority may have to the decision may be raised as a defense in any Court where the Department enforces this Consent Order and Agreement.

16. **Severability.** The paragraphs of this Consent Order and Agreement shall be severable and should any part hereof be declared invalid or unenforceable, the remainder shall continue in full force and effect between the parties.

17. **Entire Agreement.** This Consent Order and Agreement shall constitute the entire integrated agreement of the Parties. No prior or contemporaneous communications or prior drafts shall be relevant or admissible for purposes of determining the meaning or intent of any provisions herein in any litigation or any other proceeding.

18. **Attorneys' Fees.** The parties shall bear their respective attorneys' fees, expenses, and other costs in the prosecution or defense of this matter or any related matters, arising prior to the execution of this Consent Order and Agreement.

19. **Modifications.** No changes, additions, modifications, or amendments of this Consent Order and Agreement shall be effective unless they are set out in writing and signed by the parties.

20. **Titles.** A title used at the beginning of any paragraph of this Consent Order and Agreement may be used to aid in the construction of that paragraph, but shall not be treated as controlling.

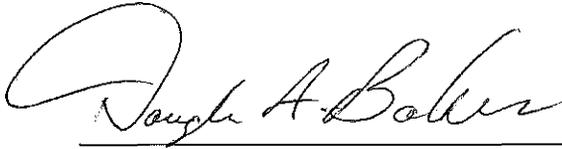
21. **Termination of Consent Order and Agreement.** The City of Franklin and the General Authority's obligations, but not the findings, of this Consent Order and Agreement shall terminate when the City of Franklin and the General Authority have: (1) completed all of the requirements of this Consent Order and Agreement; (2) achieved compliance with the Safe Drinking Water Act and its Regulations as set forth herein; and (3) paid any outstanding stipulated civil penalties due under Paragraph 7, above. The City of Franklin and the General Authority's compliance with this Consent Order and Agreement shall be determined by the Department.

22. **Resolution.** Attached as Exhibit A is a resolution of the City of Franklin authorizing its signatory below to enter into this Consent Order and Agreement on its behalf.

23. **Resolution.** Attached as Exhibit B is a resolution of the General Authority authorizing its signatory to enter into this Consent Order and Agreement on its behalf.

IN WITNESS WHEREOF, the parties hereto have caused this Consent Order and Agreement to be executed by their duly authorized representatives. The undersigned representative of the City of Franklin and the undersigned representative of the General Authority certify under penalty of law, as provided by 18 Pa. C.S. § 4904, that each is authorized to execute this Consent Order and Agreement on behalf of the City of Franklin and the General Authority, respectively; that the City of Franklin and the General Authority consent to the entry of this Consent Order and Agreement as a final ORDER of the Department; and that the City of Franklin and the General Authority hereby knowingly waive the right to appeal this Consent Order and Agreement and to challenge its content or validity, which rights may be available under Section 4 of the Environmental Hearing Board Act, the Act of July 13, 1988, P.L. 530, 35 P.S. § 7514; the Administrative Agency Law, 2 Pa. C.S. § 103(a), and Chapters 5A and 7A; or any other provision of law. Signature by the City of Franklin's attorney and the General Authority's attorney certifies only that the agreement has been signed after consulting with counsel.

**FOR CITY OF FRANKLIN:**

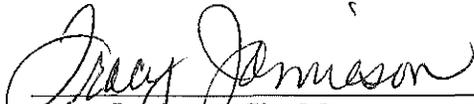


Douglas A. Baker, Mayor  
City of Franklin

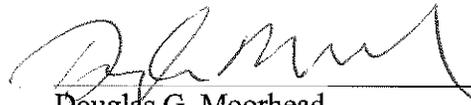
**FOR THE COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION:**



Brad E. Vanderhoof, P.E.  
Regional Manager  
Safe Drinking Water Program  
Northwest Region



Tracy Jamieson, City Manager  
City of Franklin

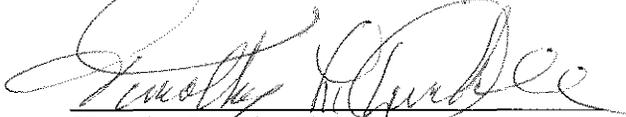


Douglas G. Moorhead  
Regional Counsel



Brian M. Spaid, Esq.  
Dale, Woodard, Gent, McFate Law Firm  
Attorneys for the City of Franklin (city solicitor)

**FOR THE GENERAL AUTHORITY OF THE CITY OF FRANKLIN:**



Timothy Dunkle, Chairperson  
General Authority of the City of Franklin



John Eckel, Secretary  
General Authority of the City of Franklin



James M. Greenfield, Esq.  
Dale, Woodard, Gent, McFate Law Firm  
Attorneys for General Authority of the City of Franklin

**RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF FRANKLIN**

BE IT RESOLVED, by the City Council of the City of Franklin (the "City") that:

1. The City shall enter into that certain Consent Order and Agreement by and among the City, the General Authority of the City of Franklin, and the Pennsylvania Department of Environmental Protection (the "COA") in the form presented to the Board prior to the adoption of this Resolution.

2. The Mayor and the City Manager are hereby authorized and directed to execute and deliver the COA on behalf of the City and to take such other actions as may be necessary or convenient to effect the intents and purposes of this resolution.

Adopted this 1<sup>st</sup> day of April, 2019.

**ATTEST:**

  
City Clerk

**CITY OF FRANKLIN**

  
Douglas A. Baker, Mayor

Number of Members Present 5

Numbers of Members Voting For 5

Number of Members Voting Against 0

RESOLUTION OF THE BOARD OF GENERAL AUTHORITY  
OF THE CITY OF FRANKLIN

BE IT RESOLVED, and it is hereby resolved, by the Board of the General Authority of the City of Franklin (the "Authority") that:

1. The Authority shall enter into that certain Consent Order and Agreement by and among the City of Franklin, the Authority and the Pennsylvania Department of Environmental Protection (the "COA") in the form presented to the Board prior to the adoption of this Resolution.
2. The Chairperson or Vice Chairperson and the Secretary or an Assistant Secretary of the Authority are hereby authorized and directed to execute and deliver the COA on behalf of the Authority.
3. The officers of the Authority are hereby authorized to take such other actions as in their judgment may be necessary or convenient to effect the intents and purposes of this resolution.

Date: March 12, 2019

Number of Members Present 4

Number of Members Voting For 4

Number of Members Voting Against -0-



Chairperson



Secretary