

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

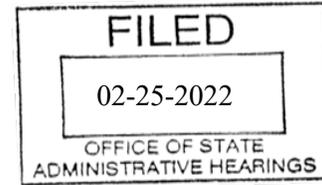
**RICHARD E. DUNN, DIRECTOR,
ENVIRONMENTAL PROTECTION
DIVISION, DEPARTMENT OF NATURAL
RESOURCES, STATE OF GEORGIA**
Petitioner,

v.

**CJT GROUP, LLC AND JAMES BOWMAN
WILEY, JR.,**
Respondents.

**Docket No.: 2122467
2122467-OSAH-BNR-SDW-129-Howells**

Agency Reference No.: EPD-AO-WP-8980



FINAL DECISION

This matter originated with the Petition for Civil Penalties filed by Petitioner Richard E. Dunn, Director (“Petitioner” or “Director”), of the Environmental Protection Division (“EPD”), of the Georgia Department of Natural Resources on April 13, 2021, in which the Director seeks to impose civil penalties upon the Respondents CJT Group, LLC (“CJT Group”) and James Bowman Wiley Jr. The first Notice of Hearing was issued on April 20, 2021. The hearing was scheduled for May 26, 2021.

On May 18, 2021, Dorothy Williams, Esq. filed an Entry of Appearance for Respondents and requested a 60-day continuance, as Respondents only retained her on May 14, 2021. Petitioner did not oppose a continuance but did not agree that 60 days was necessary. Respondents’ request for a continuance was granted and the hearing was reset for June 30, 2021. On June 23, 2021, the parties filed a Joint Request for Continuance. The parties averred that they were in settlement negotiations involving a third party and requested a 60-day continuance. The parties’ request was granted, and the hearing was reset for September 2, 2021. On August 31, 2021, the parties filed another Joint Request for Continuance. The parties stated that Respondent James Wiley signed a contract to sell the five water systems at issue and that he needed additional time to close on the

sale. Petitioner averred that once the sale was completed Petitioner would withdraw his Petition for Civil Penalties. The parties' request was granted, and the hearing was reset for November 4, 2021.

On November 4, 2021, Petitioner's counsel, Petitioner's representative, and Petitioner's witness appeared. Respondent's counsel also appeared, but Respondent James Wiley did not.¹ Petitioner's witness testified, and Respondents' counsel had the full opportunity to cross examine Petitioner's witness. The court continued the remainder of the hearing to December 13, 2021, by video conference to give Respondents an opportunity to present their case.

On November 12, 2021, Respondents' counsel, Dorothy Williams, Esq. filed a request to withdraw as counsel for the Respondents. Ms. Williams' request was granted on November 29, 2021. On December 8, 2021, Kermit Dorough, Esq. filed an Entry of Appearance and a motion for continuance. Mr. Dorough stated that he was retained on December 3, 2021, he needed additional time to prepare, and he had a conflict for the date of December 13, 2021. Respondent's request for a continuance was granted and the hearing was reset for January 11, 2022.

On January 7, 2022, Respondents' counsel notified the court that he tested positive for COVID on December 29, 2021 and January 1, 2022, he would be tested again on Monday January 10, 2022, and he would be unable to proceed with the hearing on January 11, 2022 unless his test was negative. Additionally, he informed the court that he had been in isolation and had been unable to meet with Mr. Wiley to prepare for the hearing. A prehearing conference was conducted on January 11, 2022 and the hearing was continued to January 25, 2022.

¹ Respondent's counsel placed a phone call to her client to determine his whereabouts. In an off the record prehearing discussion, Respondent's counsel told the court that Respondent was not present because he did not think he needed to be there. At no time prior to or on the day of the hearing did Mr. Wiley or his counsel notify the court that his absence was due to illness, as he claimed during the hearing on January 25, 2022. Respondent's counsel requested a continuance so her client could be present; however, she provided no good cause for his absence. Given the lengthy history of this case, the numerous continuances, and the fact that Petitioner's witness travelled to the hearing site and Petitioner was prepared to go forward, Respondent's request for a continuance was denied, in part.

The parties appeared for the second day of the hearing on January 25, 2022, via video conference and the hearing was concluded that day.

Findings of Fact

1.

James Bowman Wiley, Jr. is the sole Member and Registered Agent for the CJT Group, which owns and operates five public water systems that provide water for a monthly fee to subdivisions and mobile home parks near Americus in Sumter County, Georgia. (Petition for Hearing on Civil Penalties (“Petition”), at ¶21; Respondents’ Answer to Petition for Hearing on Civil Penalties (“Respondents’ Answer”), at ¶1.)

2.

The systems – Arlington Terrace Mobile Home Park Water System , Graystone Village Subdivision Water System, Koinonia Village Water System, Koinonia Forest Park Water System, and Southern Hills Mobile Home Park Water System – are permitted for a maximum of 250 service connections, which means as many as 250 households could receive their drinking water from Mr. Wiley and CJT Group.² Each system meets the definition of a “public water system”: Arlington Terrace Mobile Home Park Water System is permitted for a maximum of 59 service connections; Graystone Village Subdivision Water System is permitted for a maximum of 40 service connections; Koinonia Forest Park Water System is permitted for a maximum of 35 service connections; Koinonia Village Water System is permitted for a maximum of 31 service connections; and Southern Hills Mobile Home Park Water System is permitted for a maximum of 85 service connections. (Petition, at ¶22; Respondents’ Answer, at ¶1.)

3.

² Koinonia Forest Park and Koinonia Village is an historic area in Sumter County, Georgia. It is an area where homes were built for low-income people. (Jan. 25, 2022 Tr. 33-34.)

The five water systems depend on groundwater which is withdrawn from wells. (Petition, at ¶23; Respondents' Answer, at ¶1.)

4.

The Director issued a ten-year Permit to Operate a Public Community Water System to CJT Group for each of its five water systems. The current Arlington Terrace Mobile Home Park Water System Permit was issued on April 20, 2020. The current Graystone Village Subdivision Water System Permit was issued on May 30, 2014. The current permits for the Koinonia Forest Park Water System and the Koinonia Village Water System were issued on May 31, 2012. The current Southern Hills Mobile Home Park Water System Permit was issued on April 20, 2020. (Petition, at ¶24; Respondents' Answer, at ¶1.)³

5.

Condition number 1 in each of Respondents' permits requires the permittee to operate the public water system in full compliance with the Georgia Safe Drinking Water Act of 1977 and the Rules adopted thereunder, at all times. (Exs. P-1A – P-1E.)

6.

Condition number 6 in each of Respondents' permits requires the permittee to analyze or have analyzed all microbiological and chemical samples required by the Rules for Safe Drinking Water located in Chapter 391-3-5. Additionally, the collection and analysis of each contaminant must be performed as scheduled by the EPD's Watershed Compliance Program ("WCP") and the results must be provided to the WCP within the time frames specified in the schedules. (Exs. P-1A – P-1E.)

³ Respondent has owned the Arlington Terrace Mobile Home Park Water System since 2004 or 2005. He purchased the Graystone Village Subdivision Water System and the Southern Hills Mobile Home Park Water System from Dale Gay around 2007. He has owned the Koinonia Forest Park Water System and the Koinonia Village Water System since at least May 2012. (Jan. 25, 2022 Tr. pp. 22-24, 49-50; Exs. P-1C, P-1D.)

7.

Under condition number 8, contained in each of Respondents' permits, the permittee is required to ensure the "public water system is operated in compliance with the Georgia Certification of Water and Wastewater Treatment Plant Operators and Laboratory Analysts Act." (Exs. P-1A – P-1E.)

8.

Lisa Myler is the District Manager of EPD's southwest district office. She has been in that position for five years. Prior to that Ms. Myler was a program manager over the drinking water program and the air quality program. Before her stint as a program manager, she was a district engineer. During her 15-year career with EPD, Ms. Myler has been involved with regulating drinking water systems. (Nov. 4, 2021 Tr. 10-11.)

9.

Ms. Myler became aware of Mr. Wiley and his public water systems around September 2008. At the time, she was a district engineer. The permits for two of Mr. Wiley's systems had expired. Ms. Myler discovered that the two permits had been issued to the previous owner of the water systems. It took approximately two years to get the paperwork from Mr. Wiley to transfer and renew the permits. (Nov. 4, 2021 Tr. 13-15.)

10.

In or around 2010, the then Director of EPD began enforcement actions regarding Respondents' five public water systems, including Letters of Noncompliance and Notices of Violations for violations occurring around that time. These enforcement actions eventually

culminated with five Orders on Contempt in the Superior Court of Sumter County for Respondents' failure to abide by the Safe Drinking Water Act.⁴ (Nov. 4, 2021 Tr. 27-29.)

11.

The fifth Order on Contempt, dated January 12, 2016, required Respondents to retain a full-service management company to operate the waters systems, handle billing and collections, perform all required maintenance, conduct the day-to-day operations, provide a Class IV licensed operator, and conduct all sampling and reporting. (Ex. P-3.)

12.

Although Mr. Wiley did not hire a management company, he did hire a certified operator and EPD continued to work with him to resolve the past violations. EPD staff actually collected all of the necessary samples and shipped them to the lab so they could be analyzed in time. Additionally, they worked with the operator to ensure that all of the public notices were completed, which included EPD staff generating the paperwork,⁵ and made site visits to ensure that all necessary repairs were completed. (Nov. 4, 2021 Tr. 28-29.)

13.

By December 2016, Respondents were in compliance. However, that compliance was short-lived. Respondents remained in compliance for approximately 25 days. (*Id.* at 29.)

⁴ In the Fourth Order on Contempt, the court noted that Mr. Wiley failed to appear for a hearing on November 25, 2013, despite having been personally served with the notice. (Ex. P-2.)

⁵ According to Ms. Myler, this is not something the agency would ordinarily do. Rather, it is the responsibility of the owner or operator.

14.

The majority of the more recent violations for which the Director seeks civil penalties occurred between the end of 2016 and the end of 2019.⁶ These violations are the same kind of violations that occurred between 2010 and 2016. Respondents continue to violate the same provisions year after year. (Nov. 4, 2021 Tr. 47; Exs. P-6, P-11.)

15.

Between January 4, 2018 and February 10, 2021, EPD's Southwest District office sent Mr. Wiley approximately 17 Notices of Violation ("NOVs") for violating National Drinking Water Regulations under the Federal Safe Drinking Water Act, Georgia's Safe Drinking Water Rules, and Condition 7 of his permits.⁷ The violations included leaking pressure tanks, broken sanitary seals on wells, improper chlorine testing procedures, the failure to collect various samples, and the failure to prepare and distribute Consumer Confidence Reports ("CCRs") to customers. (Exs. P-4A through P-4Q; Nov. 4, 2021 Tr. 30.)

16.

EPD also sent Mr. Wiley twenty-two Letters of Noncompliance ("LONs") between August 8, 2018 and July 22, 2020, primarily for failing to monitor his five community water systems for contaminants and chemicals. LONs are generally the first step to notify permittees that they have violated the Safe Drinking Water Rules or a permit condition.⁸ They also specify the particular

⁶ Respondents' replacement of a damaged storage tank without approval and with a tank that does not meet minimum standards was discovered at Arlington Terrace on July 8, 2020. Respondents' failure to have a certified water treatment plant operator occurred in February 2021.

⁷ Condition number 7 in each of Respondents' permits requires the permittee to maintain all reports on the premises of the water system and make them available for inspection. Additionally, it requires the permittee to send copies of the operation records and other reports to EPD by the tenth day of the month following the month being reported. (Exs. P-1A – P-1E.)

Petitioner's exhibit 6 mentions an April 13, 2018 NOV, which would bring the total to 18. (Ex. P-6.)

⁸ When a permittee has violated the Safe Drinking Water laws or a permit condition, EPD initially issues a LON. Then if the permittee fails to come into compliance, EPD will issue an NOV, which may identify multiple violations.

rule or permit condition that was violated and instruct the permittee what is required to return to compliance. (Exs. P-5A – P-5V; Nov. 4, 2021 Tr. 24, 35-37.)

17.

Over the course of approximately two and a half years, EPD made repeated attempts to assist Mr. Wiley to bring his five public community water systems into compliance.⁹ Despite those efforts, Mr. Wiley failed to bring his water systems into compliance. (Exs. P-4A – P-4Q, P-5A – P-5V; P-6; Nov. 4, 2021 Tr. 41-45.) ,

18

On August 13, 2020, EPD proposed a consent order, which outlined the necessary steps to bring his water systems into compliance. Mr. Wiley did not respond to the consent order. (Ex. P-6.)

19.

On September 14, 2020, the Director issued Administrative Order EPD-AO-WP-8980. The Administrative Order provided Mr. Wiley with a series of deadlines to comply with the Safe Drinking Water Rules and his permit conditions. Respondents failed to meet almost all of the deadlines. (Ex. P-6; Nov. 4, 2021 Tr. 43-45.)

20.

Because Respondents failed to comply with the majority of the conditions in the Administrative Order, the Director filed it with the Superior Court of Sumter County, Georgia. On

For continued noncompliance, EPD may propose a consent order. If the permittee is unwilling to sign the consent order, then the Director can issue an administrative order, which would be filed in court for the purposes of enforcement. (Nov. 4, 2021 Tr. 24-25; see also Ex. P-6.)

⁹ EPD's staff went above and beyond trying to help Mr. Wiley. They generated public notice paperwork for him and supplied him with sample CCRs. They offered for him to come into the office so they could assist him with getting his paperwork together. They performed engineering work at Arlington Terrace so he would not have to hire an engineer, worked with his operators, provided him with the phone number for a lab to send his samples, and spoke to the lab on his behalf to explain what sample kits he needed. (Nov. 4, 2021 Tr. 46-47.)

January 29, 2021, Judge W. James Sizemore, Jr. signed an Order and Judgement making the Administrative Order an Order and Judgement of the court. (Ex. P-6; Nov. 4, 2021 Tr. 41.)

21.

As an additional enforcement mechanism, the Director now seeks the imposition of civil penalties in the amount of \$350,000. That amount includes \$5,000 per violation for 49 violations and \$105,000 in estimated economic benefit that Respondents gained by not complying with the Safe Drinking Water Rules and the conditions in Respondents' permits.¹⁰ (Ex. P-11; Jan. 25, 2022 Tr. 8-12.)

Alleged Violations for Which the Director Seeks Civil Penalties

22.

Respondents failed to collect microbiological (Total Coliform Bacteria) samples for all five water systems during the October 2019 compliance period, for Arlington Terrace and Graystone Village during the March 2018 compliance period, and for Southern Hills during the December 2017 compliance period.¹¹ Coliform bacteria come from the feces of warm-blooded animals. A failing septic tank is a potential source of coliform contamination if it is in the vicinity of a source

¹⁰ Initially, Ms. Myler calculated an amount using \$500 per violation per day; however, that amount was in excess of \$10 million. Because that amount seemed excessive for Respondents' small water systems, Ms. Myler decided to use a flat \$5,000 per violation. She determined the estimated economic benefit by multiplying \$7,000 (i.e., the estimated amount to operate small water systems per year) by the five water system for three years. Ordinarily, a small water system incurs around \$5,000 in costs for an operator, sampling, shipping, chemicals, and small part repairs. That does not include engineering costs or major repairs. Because Respondents water systems required some major repairs (e.g., replacing a storage tank), they should have incurred an expense for an engineer. For that reason, she estimated a yearly cost to operate Respondents' five systems at \$7,000. Given Respondents' long history of noncompliance, the repeated attempts to assist Respondents with compliance, the conversations Ms. Myler has had with Mr. Wiley, and the numerous NOV and LONs EPD has sent him, Ms. Myler is certain that Mr. Wiley is aware of his responsibilities. For that reason, she believes his continued violations are willful. (Nov. 4, 2021 Tr. 11, 14-17, 22-23, 46-47, ;Jan. 25, 2022 Tr. 8-9.)

¹¹ The Director has construed these violations as eight separate violations; one for each sample Respondents failed to collect. (Ex. P-11.)

well and the well casing is cracked.¹² (Exs. P-5A, P-5F,P-5H, P-5K, P-5N, P-5R, P-5V, P-6, P-11; Nov. 4, 2021 Tr. 19.)

23.

Respondents failed to complete groundwater sampling that was triggered by a positive coliform sample taken at Arlington Terrace in September 2019. (Exs. P-5E, P-6, P-11.)

24.

Respondents did not collect the Disinfection By-Product sample at Koinonia Village and Koinonia Forest Park during the January 1, 2017 to December 31, 2019 triannual period. (Exs. P-50, P-5S, P-6, P-11)

25.

Respondents did not collect the Inorganic Chemicals sample at all five water systems during the January 1, 2017 to December 31, 2019 triannual period. (Exs. P-5D, P-5J, P-5M, P-5P, P-5T, P-6, P-11.)

26.

Respondents failed to collect the sample for Volatile Organic Compounds at all five water systems during the January 1, 2017 to December 31, 2019 triannual period. (Exs. P-5C, P-5I, P-5L, P-5Q, P-5U, P-6, P-11.)

27.

Respondents failed to prepare and distribute the 2016, 2017, 2018, and 2019 Consumer Confidence Reports to the customers of all five water systems.¹³ (Exs. P-4C, P-4F, P-4J, P-4M, P-4O, P-6, P-11.)

¹² There are multiple septic tanks in the vicinity of the Arlington Terrace Water System.

¹³ The Director considers these violations as 20 separate violations; one for each CCR Respondents failed to prepare and distribute. (Ex. P-11.)

28.

Respondents failed to collect the 2019 nitrate sample at all five water systems. (Exs.P-4C, P-4F, P-4J, P-4M, P-4O, P-6, P-11.)

29.

Respondents failed to collect the 2019 lead and copper samples at Arlington Terrace. (Exs. P-5B, P-6, P-11.)

30.

Collecting and analyzing the required samples is important to ensure that the water customers are drinking will not harm them. If water is contaminated with coliform bacteria the person consuming the water can become immediately sick with nausea and vomiting. Nitrates in the water can starve small children of oxygen, causing “blue baby syndrome,” which can be fatal. The nitrates can also negatively affect pregnant women and the elderly.¹⁴ (Nov. 4, 2021 Tr. 18-19.)

31.

Respondents replaced a damaged storage tank at Arlington Terrace with a tank that did not meet minimum standards and without prior approval. Specifically, Respondents replaced the damaged storage tank with an 86-gallon tank when it should have been replaced with a tank that could store 1,240 gallons. EPD staff discovered the replacement on July 8, 2020. (Exs. P-5G, P-6, P-11; Nov. 4, 2021 Tr. 36.)

¹⁴ Nitrates are common in agricultural areas due to fertilizer runoff. The Koinonia Village Water System is located in an agricultural area. (Nov. 4, 2021 Tr. 34.)

32.

Respondents did not have a certified water plant operator with a Class IV or higher certification to maintain the five water systems for a period of time in February 2021.¹⁵ (Exs. P-4Q, P-11; Nov. 4, 2021 Tr. 31.)

33.

Petitioner received approximately 25 complaints about Respondents' water systems between 2017 and 2019. Generally, the complaints were due to a lack of water or the absence of chlorine in the distribution. (Nov. 4, 2021 Tr. 20.)

More Recent Violations

34.

On October 27, 2021, Ms. Myler went to visit Arlington Terrace. Mr. Wiley had informed her that many of the mobile homes were vacant and in need of repairs.¹⁶ After a conversation with Sumter County Code Enforcement building inspector Heather Tyler, Ms. Myler learned that multiple mobile homes at Arlington Terrace were going to be demolished and removed. Thus, Ms. Myler visited the property to determine whether the water system continued to meet the definition of a public water system (i.e., that it continued to have 15 service connections). (Ex P-7; Nov. 4, 2021 Tr. 48-49.)

¹⁵ The Director considered this as 1 violation. (Ex. P-11.) According to Ms. Myler, in the more than ten years since she has been regulating Respondents' water systems, Respondents have had a certified operator for only one-third of the time. In or around 2008, when Ms. Myler initially became responsible for regulating Respondents' water systems, Mr. Wiley had a man named Ralph Beman (sp?) working for him. Although Mr. Beman was not a certified operator, he was very good at collecting samples, maintaining the chlorine and pressure in the water systems, and preparing the reports. When Mr. Beman died in or around 2012, the agency began having significant problems with Respondents' water systems. (Nov. 4, 2021 Tr. 58.)

¹⁶ Mr. Wiley owns the Arlington Terrace Mobile Home Park, the water system, and the majority of the mobile homes. (Nov. 4, 2021 Tr.51.)

35.

While Ms. Myler was at Arlington Terrace, the Sumter County Building Inspector condemned 14 of the mobile homes due to broken out windows and missing walls. Ms. Myler observed sewage on the ground due to damaged or improperly maintained septic tanks. She observed sewage being piped to a trench, presumably because a septic tank had failed. There were dogs throughout the park, which meant that they would be walking through the sewage. The sewage was approximately 15 to 20 feet from the source wells and Mr. Wiley had not sampled the wells during the month of September. Additionally, although there was chlorine in the day tank, the bulk chlorine tank was empty, and the chlorine pump switch was in the off position, which means there was no chlorine in the distribution system. Thus, at the time of her visit, Ms. Myler could not say whether the water was safe. (Exs. P-7, P-8; Nov. 4, 2021 Tr. 50-52.)

36.

In addition to the sewage and chlorine issues, Ms. Myler observed that the fence surrounding the pumping and water treatment equipment was not locked as is required. There was also high grass around the wells and storage tank which prohibited a proper examination of the wells. She heard water running from the piping in the fenced area, but the leak could not be located due to the high grass. (Exs. P-7, P-8.)

37.

As a result of Ms. Myler's October 27, 2021 visit, an NOV was issued, citing the violations regarding the sewage, the unsecured fence around the wells and treatment equipment, and the failure to have a certified operator for more than 60 days.¹⁷ (Exs. P-7, P-8; Tr. 51-52.)

¹⁷ The violations cited as a result of the October 27, 2021 site visit are **not** violations for which the agency currently is seeking civil penalties. However, these violations are evidence of Respondents' continued noncompliance with the Safe Drinking Water Rules despite the Director's multiple attempts to gain their compliance, and the threat to the health and safety of the residents using Respondents' water systems.

38.

Ms. Myler described what she saw at Arlington Terrace as “shameful.” She is concerned for the residents, and particularly the children, living there. English is a second language for most of the residents living at Arlington Terrace. EPD has never received any complaints from the residents of Arlington Terrace. While she does not know for certain why they have never received any complaints, she presumes it is because the residents are unaware that there is a regulating agency. (Nov. 4, 2021 Tr. 50-54.)

Respondents’ Evidence in Mitigation

39.

Mr. Wiley testified that he still owes Dale Gay money for the purchase of the Arlington Terrace Mobile Home Park and water system, and the water systems for Southern Hills and Graystone. Mr. Wiley further testified that he intends to sell the water systems for Koinonia Village, Koinonia Forest Park, Graystone, and Southern Hills. He asserts that he has a buyer who will purchase those water systems, but the financing for the purchase has been delayed.¹⁸ He further asserts that he will not make any money on the sale of the water systems. (Jan. 25, 2022 Tr. 22-25, 49.)

40.

Respondents presented evidence of the expenditures he has made for the water systems; however, the vast majority of those expenditures were for the purchase of the water systems, not for their maintenance and operation. (Jan. 25, 2022 Tr. 25, 54-55.)

¹⁸ The court notes that Mr. Wiley has purportedly been trying to sell the water systems at least since June 2021.

41.

Mr. Wiley was diagnosed with prostate cancer in 2017. He underwent radiation treatment Monday through Friday for six weeks sometime after July 4, 2017. (Jan. 25, 2022 Tr. 25-26.)

42.

Mr. Wiley understands that he is required to have a certified operator for the water systems. In January of 2017, Robert Moore was his certified operator. Mr. Moore quit abruptly sometime in 2017.¹⁹ Sometime thereafter, Mr. Wiley hired Jimmy Nowell. When Mr. Nowell began having problems with his knees, he told Mr. Wiley that he could no longer be his certified operator.²⁰ Mr. Wiley subsequently hired Johnny Cooksey as his certified operator.²¹ (Jan. 25, 2022 Tr. 29-31.)

43.

As of January 25, 2022, Respondents have not replaced the 86-gallon storage tank at Arlington Terrace. Mr. Wiley testified that he has plans to replace the tank. (Jan. 25, 2022 Tr. 44.)

44.

Mr. Wiley testified that he believed that the previous certified operators were supposed to be completing the reports, but they did not do so.²² He has arranged for Mr. Cooksey to do the sampling and reports for the water systems going forward. (Jan. 25, 2022 Tr. 44, 51.)

¹⁹ The last payment to Mr. Moore reflected in Mr. Wiley's records was on April 11, 2017. (Ex. R-1.)

²⁰ Mr. Wiley's records show payments to Mr. Nowell beginning on September 19, 2017 through April 19, 2018. Only one payment to Mr. Nowell is reflected in Mr. Wiley's records for the entire year of 2019. That payment was on May 6, 2019. Payments to Mr. Nowell resume on January 3, 2020 and continue until February 5, 2021. (Exs. R-1, R-2.)

²¹ The first payment to Mr. Cooksey in Mr. Wiley's records is on February 28, 2021. (Ex. R-2.)

²² On one hand, Mr. Wiley appears to blame the certified operators he hired for not completing the reports; yet on the other hand he acknowledged that he ultimately was responsible. (Jan. 25, 2022 Tr. 51, 57-58.)

Conclusions of Law

1.

Petitioner seeks to impose civil penalties upon Respondents based on violations of safe drinking water laws. Accordingly, Petitioner bears the burden of proof. Ga. Comp. R. & Regs. 616-1-2-.07(1).

2.

The Georgia Safe Drinking Water Act of 1977 (“Safe Drinking Water Act” or “Act”), O.C.G.A. §§ 12-5-170 through 12-5-193, governs the operation and maintenance of public water systems. The Director exercises general supervision over the administration and enforcement of the Safe Drinking Water Act, and the rules,²³ regulations, and orders promulgated thereunder, issues permits for public water systems, and enforces compliance therewith to ensure the quality and purity of waters for public water systems of the state. O.C.G.A. § 12-5-176(a).

3.

As part of the Director’s authority to enforce the Safe Drinking Water Act, the rules promulgated thereunder, and permit conditions and limitations, the Director may seek the imposition of civil penalties. Ga. Comp. R. & Regs. 391-3-5-.36, 616-1-2-.40; *see also* O.C.G.A. § 12-5-176(a)(10).

4.

The Safe Drinking Water Act authorizes the imposition of civil penalties upon any person who violates the Act, or any permit condition or limitation, or who negligently or intentionally fails or refuses to comply with any final order of the Director. O.C.G.A. § 12-5-192(a)(2). For public water systems serving less than 10,000 people, the civil penalty may not exceed \$1,000 for

²³ The Safe Drinking Water Rules are located at Ga. Comp. R. & Reg. 391-3-5-.01 through 391-3-5-.55.

the first day of the violation and may not exceed an additional \$500.00 per violation for each additional day the violation continues. *Id.*

5.

Furthermore, the Act authorizes a civil penalty not to exceed \$5,000 per violation per day, if any person willfully violates any provision of the Act or any permit condition or limitation, or willfully fails or refuses to comply with any final order of the Director. O.C.G.A. § 12-5-192(a)(3).

6.

The Safe Drinking Water Rules define a “public water system” as “a system that provides water to the public for human consumption through pipes or other constructed conveyances, if such system has at least fifteen (15) service connections or regularly serves an average of twenty-five (25) individuals daily at least 60 days out of the year.” Ga. Comp. R. & Regs. 391-3-5-.02(99).

7.

A “community water system” is defined as a public water system that “serves at least 15 service connections used by year-round residents, or regularly serves at least 25 year-round residents.” *Id.* at 391-3-5-.02(19). A “supplier of water” is defined as “any person who owns or operates a public water system.” *Id.* at 391-3-5-.02(120).

8.

A supplier of water using only ground water sources and serving 25 to 999 people must have a certified operator who is certified to operate a Class IV or higher public water system. *Id.* at 391-3-5-.14(6) and 391-3-5-.39(2); O.C.G.A. § 43-51-10. Respondents violated this Rule in February 2021, during the time they did not have a certified operator.

9.

Public water systems that serve fewer than 1,000 people must collect at least one monthly total coliform sample. Ga. Comp. R. & Regs. 391-3-5-.23(1). The samples must be analyzed by a laboratory certified by EPD or the U.S. EPA to analyze drinking water samples. *Id.* at 391-3-5-.55(2)(b). Respondents violated this rule eight times between December 2017 and October 2019.

10.

When a public water system using only groundwater is notified that its total coliform sample is positive, it must collect at least one groundwater source sample from each groundwater source in use within 24 hours of the notification. *Id.* at 391-3-5-.54(1)(a)1., (3)(a)1,(iii), and (3)(a)2. Respondents violated this Rule when they failed to collect the groundwater sampling after the Arlington Terrace September 2019 Coliform sample was positive.

11.

Community water systems that use chlorine or chloramines are required to measure the residual disinfectant level at the same time and same point in the distribution system as total coliforms are sampled. *Id.* at 391-3-5-.24(5)(b). Respondents violated this Rule when they failed to collect the Disinfection By-Product samples for Koinonia Forest Park and Koinonia Village during the January 1, 2017 to December 31, 2010 triannual period.

12.

Community water systems that rely on groundwater must monitor at least every three years to determine compliance with the maximum contaminant levels for inorganic chemicals (e.g., arsenic, cadmium, chromium, cyanide, mercury, nickel, and selenium). *Id.* at 391-3-5-.21(3)(b), (6)(a); *Id.* at 391-3-5-.02(21). Respondents violated this Rule five times when they failed to collect

the Inorganic Chemical Samples at each of their five water systems during the January 1, 2017 to December 31, 2019 triannual period.

13.

Public water systems using groundwater are required to take one sample every three years at every entry point to the distribution system to test for volatile organic compounds. *Id.* at 391-3-5-.22(1). When Respondents failed to collect Volatile Organic Compounds Samples at each of their water systems, during the January 1, 2017 to December 2019 triannual period, they committed five violations of this Rule.

14.

Community water systems served by groundwater systems are required to monitor for nitrates annually. *Id.* at 391-3-5-.21(7)(a). Respondents violated this Rule five times when they failed to collect the 2019 Nitrate Samples from their five water systems.

15.

Public water systems are required to monitor for lead and copper annually if they have met the requirements for reduced monitoring. *Id.* at 391-3-5-.25(7). When Respondents failed to collect the 2019 Lead and Copper Samples at Arlington Terrace, they violated this Rule.

16.

Community water systems are required to deliver to its customers an annual CCR by July 1 of each year.²⁴ *Id.* at 391-3-5-.41(2). The report must contain the data collected during, or prior to the previous calendar year. *Id.* Respondents violated this Rule twenty times when they failed to prepare and distribute the 2016, 2017, 2018, and 2019 CCRs for all five water systems.

²⁴ A CCR is an annual report that must be provided to the customers of a community water system and must contain information on the quality of the water and characterize any risks from exposure to contaminants detected in the drinking water. Ga. Comp. R. & Regs. 391-3-5-.02(27). It must provide this information accurately and in an understandable manner. *Id.*

17.

No person may make substantial additions, modifications, renovations, or repairs to any public water system, including storage components, without first obtaining EPD's approval. *Id.* at 391-3-5-.04(1). When Respondents replaced a damaged storage tank at Arlington Terrace, without EPD approval, and with a woefully inadequate 86-gallon tank, they violated this Rule.

Factors to Consider When Imposing Civil Penalties

18.

The Georgia Department of Natural Resources Rules provide a list of factors to consider when imposing civil penalties. The following factors are relevant in this case:

- (1) "The amount of civil penalty necessary to ensure immediate and continued compliance and the extent to which the violator may have profited by failing or delaying to comply;"
- (2) "The nature of the violator's conduct which resulted in the violation in terms of inadvertence, negligence, recklessness, or knowing intent;"
- (3) "The conduct of the violator to take promptly, or in failing or refusing to take promptly, all feasible steps or procedures necessary or appropriate to comply [or] to correct the violation or failure;"
- (4) "Any prior violations of, or failures by, such person to comply with statutes, rules, regulations, orders, or permits administered, adopted, or issued by a Department of Natural Resources Decision Maker;" and
- (5) "The character and degree of injury to or interference with public health and safety which is caused or threatened to be caused by such violation or failure."

Ga. Comp. R. & Regs. 391-1-2-.09(a), (c) – (e), and (g). Each of these factors weighs in favor of imposing civil penalties upon the Respondents.

19.

For more than ten years, the Director has attempted to gain Respondents' compliance by using every enforcement mechanism he has, short of seeking civil penalties. Specifically, numerous LONs and LOVs have been issued. Consent Orders have been proposed and several

contempt orders have been obtained. Additionally, EPD staff have bent over backwards to assist Respondents. Despite these efforts, Respondents' noncompliance continues.

20.

Respondents have certainly profited by their noncompliance with the Rules. When Respondents did not have a certified operator, they did not incur the expense of the certified operator. When they did not collect and have samples analyzed, they did not incur the laboratory fees. When they did not make timely repairs, they deferred the related expenses. When replacing the storage tank at Arlington Terrace, Respondents should have incurred an engineering expense, but there is no evidence that they hired an engineer for that project.

21.

Mr. Wiley was repeatedly informed of his responsibilities through the multiple LONs, LOVs, and verbal conversations with EPD staff. Given his continued noncompliance with the Safe Drinking Water Rules over the course of a decade, his actions can only be considered knowing, intentional, and willful. Mr. Wiley's failure to appear at hearings and his failure to respond to the August 18, 2020 proposed Consent Order are further indications of willfulness.

22.

The Georgia General Assembly has determined that the "quality of [the drinking waters of the state] shall be considered a major factor in the health and welfare of all people in the State of Georgia." O.C.G.A. § 12-5-171. Drinking water is a basic and necessary resource. For these reasons, operating a public drinking water system understandably comes with significant responsibilities. It requires routine sampling for various contaminants and routine reporting. The threat to public health and safety is great when a supplier of water fails to routinely collect and analyze samples for contaminants. The failure to monitor for contaminants in drinking water can

lead to sickness in those who consume the water, and in some instances can lead to death in small children. In the 21st century, Georgia citizens should not have to be concerned about their drinking water.

23.

Based on the evidence presented and for the foregoing reasons, the undersigned concludes that \$245,000 is an appropriate civil penalty in this case. That amount is derived by multiplying the 49 violations by \$5,000.²⁵

SO ORDERED, this 25th day of February, 2022.



Stephanie M. Howells

Stephanie M. Howells
Administrative Law Judge

²⁵ Petitioner did not present any evidence as to how many days each violation lasted. Therefore, the court declines to issue additional civil penalties on a per day basis. Furthermore, while the factors to consider when imposing civil penalties includes the extent to which the violator may have profited, that does not mean that it provides an additional mechanism to calculate civil penalties. Rather, it is a factor to consider when choosing the amounts listed in Georgia Code Section 12-5-192(a). Stated differently, the amount calculated pursuant to the guidelines in Section 12-5-192 should consider the extent to which the violator may have profited, but that is not to say it should be a separate line item added to the total.