

**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**IN THE MATTER OF:**

Fred C. Leyda, Sr.	:	Safe Drinking Water Act and
145 Baker Hill Road	:	Water and Wastewater Systems Operators'
Franklin, PA 16323	:	Certification Act

**CONSENT ORDER AND AGREEMENT**

This Consent Order and Agreement is entered into this 1<sup>st</sup> day of April 2019, by and between the Commonwealth of Pennsylvania Department of Environmental Protection ("Department") and Fred C. Leyda, Sr. ("Fred Leyda").

**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"); the Water and Wastewater Systems Operators' Certification Act, Act of November 18, 1968, P.L. 1052, *as amended*, 63 P.S. §§ 1001-1015.1 ("Operators' Certification 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. Fred Leyda is an adult individual with a mailing address of 145 Baker Hill Road, Franklin, PA 16323-6901, that holds Water System Operators' Certificate Number W4481 ("Certificate W4481"), issued by the State Board for Certification of Water and Wastewater System Operators ("Certification Board"), pursuant to Section 4 of the Operators' Certification Act, 63 P.S. § 1004, and 25 Pa. Code § 302.302. Fred Leyda holds a Class A, E and Subclass 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and Certificate W4481 expires September 30, 2020.

C. 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.

D. 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”).

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

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

G. 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**

H. 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 Barrett Flats WTP from two chemical feed tanks located on the second floor of the Barrett Flats WTP.

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 fluoride 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 Fred Leyda regarding the complaints of green/blue water and metallic taste, but Fred Leyda, as the operator-in-responsible-charge, did not report the Fluoride Overfeed to the Department on February 8, 2018.

P. On February 8, 2018, the Department 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").

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. Fred Leyda's failure to notify the Department or take other action in response to the Fluoride Overfeed directly placed consumers of the Water Supply at risk to high levels of fluoride, is negligent operation of a water system, and a failure to use reasonable care or professional judgement in performance of his duties as the operator-in-responsible-charge of the Water Supply.

T. Routine maintenance and repair was not performed on the chemical feed pumps that introduce the hydrofluorosilicic acid into the Water Supply at the Barrett Flats WTP, resulting in the Fluoride Overfeed.

#### **Operational Reports and Operating Procedures**

U. The monthly operational reports, including, daily operational logs, for the Barrett Flats WTP for the months of December 2017, January 2018, and February 2018 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, a record of the Fluoride Overfeed or any maintenance performed at the Barrett Flats WTP, or any notations indicating when chemicals were delivered to the Barrett Flats WTP,

added to bulk tanks, or the amount of fluoride or phosphate chemicals used each day at the Barrett Flats WTP.

V. The monthly operational reports, including, daily operational logs, for the 9<sup>th</sup> Street WTP for the months of December 2017, January 2018, and February 2018 do not include a record of any maintenance performed or operational problems encountered at the 9<sup>th</sup> Street WTP, and do not include any notations indicating when chemicals were delivered to the 9<sup>th</sup> Street WTP, added to bulk tanks, or the amount of fluoride or phosphate chemicals used each day at the 9<sup>th</sup> Street WTP.

W. Neither the City of Franklin, the General Authority, nor Fred Leyda have developed or applied adequate standard operating procedures for the routine operation, maintenance, and collection and reporting of compliance monitoring requirements for the Water Supply.

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

X. 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, 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.

Y. 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 through February 1, 2018, February 8 through February 9, 2018, and July 18 through July 20, 2018.

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

AA. 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**

BB. The City of Franklin, the General Authority, and Fred Leyda 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.

CC. 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.

DD. 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.

EE. Fred Leyda is 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.

FF. 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.

GG. Pursuant to 25 Pa. Code § 302.1201(c), certified operators shall report to the system owner known violations or system conditions that may be or are causing violations of Federal or State law or rules and regulations promulgated thereto or permit conditions and requirements applicable to the operation of water or wastewater systems.

HH. Pursuant to Section 13 of the Operators' Certification Act, 63 P.S. §§ 1013(b) and (e), and 25 Pa. Code §§ 302.1201 and 302.1203, all process control decisions must be made by a certified operator and the certified operator is required to, among other things: 1) report to the system owner any system conditions that may be causing violation of any Department regulation; 2) provide for the suitable operation and maintenance of a water or wastewater system to comply with applicable laws and regulations; 3) make or implement appropriate process control decisions or take direct actions related to process control decisions for the water or wastewater system; 4) take an action to maintain a system's equipment to prevent pollution or a permit violation; and 5) prepare, review, and submit applicable reports to the Department.

II. Pursuant to 25 Pa. Code §§ 302.1201(a), a certified operator shall comply with, among other items, Federal and State laws and/or rules and regulations applicable to the operation of water or wastewater systems to protect the environment and public health and safety. Additionally, a certified operator shall provide for the suitable operation and maintenance of a water or wastewater system utilizing available resources needed to comply with applicable laws, rules and regulations, and permit conditions or requirements.

JJ. 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 operational problems.

KK. Pursuant to 25 Pa. Code § 302.1201(b)(15), available operator tasks necessary to control the operation and provide for the maintenance of a water or wastewater system may include: preparing, reviewing, and submitting applicable notices and reports to the appropriate persons or agencies.

LL. Pursuant to 25 Pa. Code §§ 109.504(c) and 109.1302, and Operation Permit No. 6114503 (issued on July 30, 2015), a minimum entry point disinfectant residual of 1.12 mg/L is required to be continuously maintained at Barrett Flats WTP to provide 4-log treatment of viruses.

MM. 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.

NN. Pursuant to 25 Pa. Code § 302.1201(b)(13), available operator tasks necessary to control the operation and provide for the maintenance of a water or wastewater system may include: taking an action to maintain a system's equipment to prevent pollution or a permit violation.

OO. Pursuant to 25 Pa. Code §§ 302.1206(f), the operator-in-responsible-charge as designated in subsection (a), is accountable for violations of Federal or State law or rules and regulations promulgated thereto or permit conditions and requirements applicable to the operation of water or wastewater systems, which may occur when an operator follows these standard operating procedures, provided that the violation occurred as a direct result of a provision in the standard operating procedure approved by the operator-in-responsible-charge.



PP. Pursuant to Section 4(a)(3) of the Operators' Certification Act, 63 P.S. § 1004(a)(3), and 25 Pa. Code § 302.308(b), the Certification Board may revoke, suspend, or modify an operator's certificate for misconduct, including, but not limited to, negligence in the operation of a water or wastewater system, fraud, falsification of application, falsification of operational records, and incompetence or failure to use reasonable care or professional judgement in performance of duties specified in the Operators' Certification Act or other applicable laws administered by the Department.

### **Unlawful Conduct**

QQ. As the operator-in-responsible-charge of the Water Supply, Fred Leyda's failure to notify the City of Franklin or the General Authority of the Fluoride Overfeed violates 25 Pa. Code § 302.1201(c) and caused the City of Franklin and the General Authority to violate 25 Pa. Code §109.701(a)(3).

RR. As the operator-in-responsible-charge of the Water Supply, Fred Leyda's failure to ensure that a record of each of the items identified in Paragraphs U and V, above, are reported on the monthly operational log and Fred Leyda's failure to ensure accurate reporting of the fluoride result on the log for February 7, 8, and 9, 2018, violates 25 Pa. Code §§ 109.701(b)(1) and 302.1201(b)(15).

SS. As the operator-in-responsible-charge of the Water Supply, Fred Leyda's failure to provide 4-log treatment of viruses for more than four hours and failure to notify the Department within one hour after the Water Supply experienced a breakdown in treatment violates 25 Pa. Code §§ 109.1307(a)(1)(ii) and 109.408, and 25 Pa. Code § 302.1201(c).

TT. As the operator-in-responsible-charge of the Water Supply, Fred Leyda's failure to provide routine maintenance of the chemical feed pumps and/or direct staff to provide routine

maintenance of the chemical feed pumps at the Barrett Flats WTP, which led to the Fluoride Overfeed violates 25 Pa. Code § 302.1201(b)(13).

UU. As the operator-in-responsible-charge of the Water Supply, Fred Leyda's failure to utilize the data recorded by the continuous analyzers at each water treatment plant to report the lowest daily entry point disinfectant concentration violates 25 Pa. Code §§ 109.1307(a)(1)(i), 302.1201(b)(14), and 302.1201(c).

VV. Fred Leyda's failure to adequately perform his duties as a certified operator and as the operator-in-responsible-charge, as described in Paragraphs S, T, U, V, W, and Z, above, violates Section 13 of the Operators' Certification Act, 63 P.S. §§ 1013, and 25 Pa. Code §§ 302.1201 and 302.1206.

WW. The violations described in Paragraphs QQ, RR, SS, UU, and VV, above, subject Fred Leyda to a claim for civil penalties under Section 13(g) of the Safe Drinking Water Act, 35 P.S. § 721.13(g).

XX. Pursuant to 25 Pa. Code § 302.308(b), the Certification Board may permanently revoke Certificate W4481 for Fred Leyda's violations described in Paragraphs QQ through VV, above.

YY. Fred Leyda has agreed to the revocation of Certificate W4481 through this Consent Order and Agreement to avoid the Department petitioning the Certification Board to revoke Certificate W4481.

ZZ. Fred Leyda has been advised of his right to have an attorney review this document prior to signing below.

AAA. Upon execution of this Consent Order and Agreement, the Department will provide a copy of this document to the City of Franklin, the General Authority, and the Certification Board.

## 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 Fred Leyda 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), Section 4 of the Operators' Certification Act, and Section 1917-A of the Administrative Code.

2. **Findings.**

a. Fred Leyda agrees that the findings in Paragraphs A through AAA, above, are true and correct and, in any matter or proceeding involving Fred Leyda and the Department, he 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. **Water Systems Operator Certificate.**

a. Upon signing this Consent Order and Agreement, Fred Leyda shall voluntarily surrender Certificate W4481 to the Department for revocation, which the Department will remit to the Certification Board.

b. Fred Leyda hereby agrees to waive the administrative hearing which he otherwise would be entitled to under Section 4 of the Operators' Certification Act, 63 P.S. § 1004, and 25 Pa. Code § 302.501, and agrees to waive his right to appeal the revocation of Certificate W4481 to the Environmental Hearing Board or any other Court or Administrative Board.

c. Upon signing this Consent Order and Agreement, Fred Leyda shall never seek reinstatement of Certificate W4481, and shall never apply for a new water operators' certificate, by examination or otherwise, under the Operators' Certification Act or the Regulations, and shall never operate, be designated as the operator-in-responsible-charge, and/or supervise the operation of a water system, in whole or part, within the Commonwealth of Pennsylvania.

d. **By April 1, 2019**, Fred Leyda shall notify, in writing, each public water system that he currently operates or that he is designated as the operator-in-responsible-charge that he will no longer have a water operators' certificate after April 1, 2019 and shall submit a copy of the notification to the Department.

4. ***Civil Penalty Settlement.*** Fred Leyda consents to the assessment of a civil penalty of \$2,500, which shall be paid in full upon signing. This payment is in settlement of the Department's claim for civil penalties for the violations set forth in Paragraphs QQ through VV, above. 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 7 (Correspondence with the Department), below.

5. ***Additional Remedies.***

a. If Fred Leyda fails 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 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.

6. **Reservation of Rights.** The Department reserves the right to require additional measures to achieve compliance with applicable law. Fred Leyda reserves the right to challenge any action which the Department may take to require those measures.

7. **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

8. **Correspondence with Fred Leyda.** All correspondence with Fred Leyda concerning this Consent Order and Agreement shall be addressed to:

Fred Leyda  
145 Baker Hill Road  
Franklin, PA 16323

Fred Leyda 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.

9. **Decisions Under Consent Order.** Fred Leyda waives his rights 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. The Department agrees that any objection that

Fred Leyda may have to the decision may be raised as a defense in any Court where the Department enforces this Consent Order and Agreement.

10. **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.

11. **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.

12. **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.

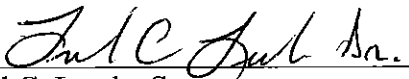
13. **Modifications.** No changes, additions, modifications, or amendments of this Consent Order and Agreement shall be effective unless they are set out in writing and signed by the parties.

14. **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.

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 Fred Leyda certifies under penalty of law, as provided by 18 Pa. C.S. § 4904, that he is authorized to execute this Consent Order and Agreement on behalf of Fred Leyda; that Fred Leyda hereby consents to the entry of the Consent Order and Agreement as a final ORDER of the Department; and that Fred Leyda hereby knowingly waives his 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 provisions of law. Signature by Fred Leyda's attorney certifies only that the agreement has been signed after consulting with counsel.

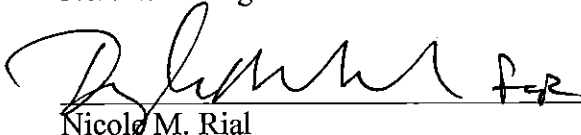
**FOR FRED C. LEYDA, SR.**

  
\_\_\_\_\_  
Fred C. Leyda, Sr.

\_\_\_\_\_  
Name  
Attorney for Fred C. Leyda, Sr.

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

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

  
\_\_\_\_\_  
Nicole M. Rial  
Assistant Counsel

# Commonwealth of Pennsylvania

## Department of Environmental Protection

*In accordance with the  
State Board for Certification of Water and Wastewater Systems Operators  
and the Regulations of the  
Department of Environmental Protection*

**FRED C LEYDA SR**

*Is Hereby Authorized to Operate*

**WATER SYSTEM**

**Class: A-E, Water**

**Subclass: 1,2,3,4,5,6,7,8,9,10,11,12,13,14**

**Client ID: 201030**

**FRED C LEYDA SR  
145 BAKER HILL RD  
FRANKLIN PA 16823-6901**

**Issue Date** Oct 01, 2017  
**Expiration Date** Sep 30, 2020

*Joseph J. Swandor*

**Board Chairman**

**Certificate No. W4481**



Fred Leyda  
145 Baker Hill Road  
Franklin, Pa 16323  
February 28, 2019

To Whom it May Concern

This Letter is to inform you that the PA. Dept. of Environmental Protection is revoking my water operator's certification so I can no longer serve as the licensed operator of your system.

This will be effective April 1, 2019.

It has been a pleasure working for you.

Thanks,

Fred Leyda