

November 6, 2013

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Francis (Buddy) Rowland, Chairman
Mr. Michael S. Maddox, General Manager
The Water Works, Sewer and Gas Board of the City of Childersburg
117 6th Avenue, SW
Childersburg, Alabama 35044

Re: **Notice of Intent to File Suit under the Clean Water Act for Violations of NPDES Permit No. AL0021466**

Dear Messrs. Rowland and Maddox:

Pursuant to the Clean Water Act § 505, 33 U.S.C. § 1365, and 40 C.F.R. Part 135, Subpart A, you are hereby notified that after the expiration of sixty (60) days following the date of this notice, Coosa Riverkeeper, Inc. may file suit against The Water Works, Sewer and Gas Board of the City of Childersburg (a/k/a Childersburg Water Works, Sewer, Gas Board) for discharges of pollutants from the Childersburg South Bailey Branch Lagoon located at Southern Street near County Road 8 in Childersburg, Talladega County, Alabama into the Coosa River (Lay Lake) in violation of the Clean Water Act, 33 U.S.C. § 1251 et seq., and NPDES Permit No. AL0021466.

History of Previous Violations and Enforcement Actions

On August 30, 2004, the Alabama Department of Environmental Management sent a Notice of Violation to The Water Works, Sewer and Gas Board of the City of Childersburg for exceedences of discharge limitations in NPDES Permit No. AL0021466 for Carbonaceous Biochemical Oxygen Demand (monthly average and weekly average mass and concentration), Carbonaceous Biochemical Oxygen Demand Percent Removal (monthly average), Total Suspended Solids Percent Removal (monthly average), and Total Suspended Solids (monthly average mass) during the period of June 2003 through June 2004.

On March 6, 2006, the Alabama Department of Environmental Management sent a Notice of Violation to The Water Works, Sewer and Gas Board of the City of Childersburg for an unpermitted sanitary sewer overflow that occurred on January 20, 2006.

On May 18, 2007, the Alabama Department of Environmental Management sent a Letter of Violation to The Water Works, Sewer and Gas Board of the City of Childersburg for exceedences of discharge limitations in NPDES Permit No. AL0021466 for Total Suspended Solids Percent Removal (monthly average) during March 2007.

On October 13, 2011, the Alabama Department of Environmental Management sent a Notice of Violation to The Water Works, Sewer and Gas Board of the City of Childersburg for exceedences of discharge limitations in NPDES Permit No. AL0021466 for Carbonaceous Biochemical Oxygen Demand (monthly average and weekly average mass and concentration), Carbonaceous Biochemical Oxygen Demand Percent Removal (monthly average), Total Suspended Solids Percent Removal (monthly average), and Total Phosphorus (monthly average mass) during the period of July 2009 through April 2011. In addition, the Notice of Violation cited The Water Works, Sewer and Gas Board of the City of Childersburg for failure to submit discharge monitoring data as required by NPDES Permit No. AL0021466 during February 2011. Finally, the Notice of Violation cited The Water Works, Sewer and Gas Board of the City of Childersburg for seven unpermitted sanitary sewer overflows occurring in 2009 and 2011.

On February 21, 2013, the Alabama Department of Environmental Management sent a Warning Letter to The Water Works, Sewer and Gas Board of the City of Childersburg for exceedences of discharge limitations in NPDES Permit No. AL0021466 for Carbonaceous Biochemical Oxygen Demand (monthly average and weekly average mass and concentration), Carbonaceous Biochemical Oxygen Demand Percent Removal (monthly average), Total Suspended Solids Percent Removal (monthly average), Total Phosphorus (monthly average mass), and e. Coli (daily maximum and monthly average) during the period of February 2011 through November 2012. In addition, the Notice of Violation cited The Water Works, Sewer and Gas Board of the City of Childersburg for failure to submit discharge monitoring data required by NPDES Permit No. AL0021466 during February 2011. Finally, the Notice of Violation cited The Water Works, Sewer and Gas Board of the City of Childersburg for twelve unpermitted sanitary sewer overflows occurring between March 2011 and December 2012.

The foregoing enforcement actions by the Alabama Department of Environmental Management failed to deter The Water Works, Sewer and Gas Board of the City of Childersburg from causing additional violations of the Clean Water Act and NPDES Permit No. AL0021466. Despite this failure, on September 25, 2003, the Alabama Department of Environmental Management once again sent a Notice of Violation to The Water Works, Sewer and Gas Board of the City of Childersburg. This Notice documented exceedences of discharge limitations in NPDES Permit No. AL0021466 for e. Coli (monthly average and daily maximum), Total Suspended Solids Percent Removal (monthly average), Carbonaceous Biochemical Oxygen Demand (monthly average and weekly average), Carbonaceous Biochemical Oxygen Demand Percent Removal (monthly average), and Total Phosphorus (monthly average) during the period of August 2011 through July 2013. In addition, the Notice of Violation cited The Water Works, Sewer and Gas Board of the City of Childersburg for ten unpermitted sanitary sewer overflows between April 2012 and August 2013.

Violations of NPDES Permit No. AL0021466

Pursuant to § 402 of the Clean Water Act, 33 U.S.C. § 1342, The Water Works, Sewer and Gas Board of the City of Childersburg has been issued NPDES Permit No. AL0021466 authorizing the discharge of pollutants from the Childersburg South Bailey Branch Lagoon into the Coosa River (Lay Lake) subject to specific discharge limitations. The Water Works, Sewer and Gas Board of the City of Childersburg has discharged pollutants from Outfall 001 into the Coosa River (Lay Lake) in violation of the discharge limitations of NPDES Permit No. AL0021466 from January 2009 to July 2013 as described below.

Pollutant Parameter	Discharge Limit	Discharge Measurement	Violation Date(s)	Days in Violation
Phosphorous, Total (as P)	8.34 lbs/day (monthly average)	9.39 lbs/day	May 2013	31
		9.39 lbs/day	April 2013	30
		10.34 lbs/day	Sep 2011	30
		37 lbs/day	Apr 2011	30
Carbonaceous Biochemical Oxygen Demand	173 lbs/day (monthly average)	260 lbs/day	May 2013	31
		260 lbs/day	April 2013	30
		177 lbs/day	Mar 2013	31
		182 lbs/day	Feb 2013	28
		176 lbs/day	Mar 2012	31
		286 lbs/day	Apr 2011	30
		175 lbs/day	Mar 2011	31
		174 lbs/day	Apr 2010	30
		337 lbs/day	Mar 2010	31
		348 lbs/day	Feb 2010	28
		332 lbs/day	Jan 2010	31
		184 lbs/day	Apr 2009	30
		232 lbs/day	Mar 2009	31
		259 lbs/day (weekly average)	345 lbs/day	May 2013
	345 lbs/day		Apr 2013	7
	426 lbs/day		Apr 2011	7
	267 lbs/day		Apr 2010	7

Pollutant Parameter	Discharge Limit	Discharge Measurement	Violation Date(s)	Days in Violation
		337 lbs/day	Mar 2010	7
		373 lbs/day	Feb 2010	7
		368 lbs/day	Jan 2010	7
	25 mg/L (monthly average)	27 mg/L	Apr 2011	30
		26 mg/L	Mar 2010	31
		26 mg/L	Feb 2010	28
		30 mg/L	Jan 2010	31
		34 mg/L	Feb 2009	28
	37.5 mg/L (weekly average)	287 mg/L	Feb 2010	7
		38 mg/L	Feb 2009	7
	85 Percent Removal (monthly average)	83 Percent Removal	May 2013	31
		76 Percent Removal	Feb 2013	28
		82 Percent Removal	Oct 2012	31
		78 Percent Removal	Apr 2011	30
		75 Percent Removal	Feb 2011	28
		67 Percent Removal	Jun 2010	30
		82 Percent Removal	Apr 2010	30
		57 Percent Removal	Mar 2010	31
		79 Percent Removal	Feb 2010	28
		78 Percent Removal	Jan 2010	31
79 Percent Removal		Dec 2009	31	
78 Percent Removal		Nov 2009	30	
80 Percent Removal		Oct 2009	31	
84 Percent Removal		Aug 2009	31	
68 Percent Removal		Jun 2009	30	
78 Percent Removal	May 2009	31		
82 Percent Removal	Apr 2009	30		
80 Percent Removal	Mar 2009	31		

Pollutant Parameter	Discharge Limit	Discharge Measurement	Violation Date(s)	Days in Violation
		77 Percent Removal	Feb 2009	28
Solids, Total Suspended	65 Percent Removal (monthly average)	51 Percent Removal	Mar 2013	31
		56 Percent Removal	Feb 2013	28
		62 Percent Removal	Jul 2012	31
		55 Percent Removal	Apr 2012	30
		28 Percent Removal	Feb 2011	28
		63 Percent Removal	Nov 2010	30
		55 Percent Removal	Oct 2010	31
		11 Percent Removal	Mar 2010	31
		-10 Percent Removal	Nov 2009	30
		-164 Percent Removal	Jul 2009	31
		-39 Percent Removal	Jun 2009	30
E. Coli	235 colonies/100 ml (daily maximum)	243 colonies/100 ml	July 2013	1
		380 colonies/100 ml	Mar 2013	1
		340 colonies/100 ml	Feb 2013	1
		300 colonies/100 ml	Sep 2012	1
		270 colonies/100 ml	Dec 2011	1
		280 colonies/100 ml	Oct 2011	1
	126 colonies/100 ml (monthly average)	241 colonies/100 ml	Jul 2013	31
		165 colonies/100 ml	Feb 2013	28
		133 colonies/100 ml	Nov 2012	30
		184 colonies/100 ml	Sep 2012	30
		137 colonies/100 ml	Jun 2012	30
		175 colonies/100 ml	Dec 2011	31
		153 colonies/100 ml	Aug 2011	31
		TOTAL VIOLATIONS		

The Court may assess civil penalties of up to \$37,500 per violation. Suit may be avoided if these violations have been permanently abated before the expiration of sixty (60) days following the date of this notice. Please advise the undersigned of any measures that you may undertake which you contend have permanently abated these violations before suit is filed.

Sincerely,



David A. Ludder
Attorney for Coosa Riverkeeper, Inc.

cc: Hon. Gina McCarthy, Administrator
U.S. Environmental Protection Agency
Ariel Rios Building (AR)
1200 Pennsylvania Avenue N.W.
Washington, D.C. 20004

Hon. A. Stanley Meiburg, Acting Regional Administrator
Environmental Protection Agency
Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, GA 30303-3104

Hon. Lance LeFleur, Director
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, AL 36130-1463

Justinn Overton, Executive Director
Coosa Riverkeeper, Inc.
13521 Old Hwy 280, Suite 133
Birmingham, Alabama 35242
(205) 981-6565



**THE CIRCUIT COURT OF
TALLADEGA COUNTY, ALABAMA**

STATE OF ALABAMA ex rel.,)
LUTHER STRANGE,)
ATTORNEY GENERAL)
and the ALABAMA DEPARTMENT of)
ENVIRONMENTAL MANAGEMENT,)

Plaintiffs,)

Civil Action No.
CV-2013-_____

v.)

CHILDERSBURG WATER WORKS,)
SEWER, AND GAS BOARD,)

Defendant.)

COMPLAINT

The Parties

1. The Attorney General is authorized by Ala. Code § 22-22A-5(1), § 22-22-9(m), § 22-22A-5(12), and § 22-22A-5(18) (2006 Rplc. Vol.) to enforce the provisions of the Alabama Water Pollution Control Act (hereinafter “AWPCA”), which is found at Ala. Code §§ 22-22-1 through 22-22-14 (2006 Rplc. Vol.). Specifically, Ala. Code § 22-22A-5(18)(b) (2006 Rplc. Vol.) authorizes the Attorney General to bring a civil action for violation of permits issued under the AWPCA and for unpermitted discharges of pollutants in violation of said Act. In addition, Ala. Code § 22-22A-5(18)(c) (2006 Rplc. Vol.) authorizes the Attorney General to recover civil penalties for such permit violations and unpermitted discharges of pollutants, providing for a maximum of \$25,000.00 per violation. The Attorney General is authorized by Ala. Code § 36-15-12 (2006 Rplc. Vol.) to institute and prosecute, in the name of the State, all civil actions and other proceedings necessary to protect the rights and interests of the State.

2. The Alabama Department of Environmental Management (hereinafter “the

Department” or “ADEM”) is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 through 22-22A-16 (2006 Rplc. Vol.). Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.), the Department is the state agency responsible for the promulgation and enforcement of water pollution control regulations in accordance with the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 to 1387. In addition, the Department is authorized to administer and enforce the provisions of the AWPCA.

3. The Childersburg Water Works, Sewer, and Gas Board (hereinafter “the Permittee”) operates a wastewater treatment facility known as the Childersburg South Bailey Branch Lagoon, located at Southern Street near County Road 8, in Childersburg, Talladega, Alabama. The wastewater treatment facility discharges pollutants from from a point source, designated therein as outfall number 0011, to the Coosa River (Lay Lake), a water of the State.

Jurisdiction and Venue

4. The Court has jurisdiction and venue over this Complaint pursuant to Ala. Code § 22-22A-5(18)(b) and § 22-22A-5(19) (2006 Rplc. Vol.).

General Allegations

5. Pursuant to the National Pollutant Discharge Elimination System (hereinafter “NPDES”) administered by ADEM and approved by the Administrator of the U.S. Environmental Protection Agency pursuant to § 402 of the Federal Water Pollution Control Act, 33 U.S.C. § 1342, the Department issued NPDES Permit Number AL0021466 (hereinafter “the Permit”) to the Permittee. Said Permit was originally issued January 21, 2011, effective February 1, 2011. The Permit establishes limitations, terms, and conditions on the discharge of pollutants from a point source, designated therein as outfall number 0011, to the Coosa River (Lay Lake), a water of the State. The Permit requires that the Permittee monitor its discharges

and submit periodic Discharge Monitoring Reports to the Department describing the results of the monitoring. The Permit also requires that the Permittee maintain in good working order all systems used by the Permittee to achieve compliance with the terms and conditions of the Permit.

6. Discharge Monitoring Reports submitted to the Department by the Permittee indicate that the Permittee has discharged pollutants from such point source into the aforementioned outfall number 0011, to the Coosa River (Lay Lake) in violation of the limitations established in the Permit. The months the violations occurred along with the parameters violated are listed in Attachment 1, which is incorporated by reference as if fully set forth herein.

Count I

7. Plaintiffs repeat, replead and incorporate by reference paragraphs 1 through 6, above.

8. The above violations are due to be abated by injunction.

Count II

9. Plaintiffs repeat, replead and incorporate by reference paragraphs 1 through 8, above.

10. Pursuant to Ala. Code § 22-22A-5(18) (2006 Rplc. Vol.), a civil penalty is due to be assessed for the referenced violations.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

- A. Take jurisdiction over this matter.
- B. Adjudge and declare that the Permittee violated the limitations, terms, and

conditions of the Permit.

C. Adjudge and declare that the Permittee caused or allowed unpermitted discharges of pollutants from its wastewater treatment facility into a water of the State.

D. Order the Permittee to take action to ensure that similar violations of the AWPCA will not recur in the future.

E. Assess a civil penalty against the Permittee and in favor of Plaintiffs pursuant to Ala. Code §§ 22-22A-5(18)(b) and (c) (2006 Rplc. Vol.) for each and every violation of the Permit alleged in this Complaint.

F. Tax the costs of this action against the Defendant.

G. Order such other relief that the Court deems proper.

Respectfully submitted,

s/ Robert D. Tambling
Robert D. Tambling (TAM001)
Assistant Attorney General

ADDRESS OF COUNSEL:

Office of the Attorney General
501 Washington Avenue
Montgomery, AL 36130
Telephone: (334) 242-7445
Email: rtambling@ago.state.al.us

s/ Laura T. Eubank
Laura T. Eubank (EUB011)
Assistant Attorney General

ADDRESS OF COUNSEL:

Alabama Department of Environmental Management
Office of General Counsel
P.O. Box 301463
Montgomery, AL 36130-1463
Telephone: (334) 271-7855
Fax: (334) 394-4332
Email: leubank@adem.state.al.us



AlaFile E-Notice

61-CV-2013-900568.00

To: ROBERT D. TAMBLING
rtambling@ago.state.al.us

NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF TALLADEGA COUNTY, ALABAMA

STATE OF ALABAMA, EX REL LUTHER STRANGE, ATTORNEY ET AL V. CHILDERSBUR
61-CV-2013-900568.00

The following complaint was FILED on 1/2/2014 12:19:25 PM

Notice Date: 1/2/2014 12:19:25 PM

BRIAN YORK
CIRCUIT COURT CLERK
TALLADEGA COUNTY, ALABAMA
P O BOX 6137
TALLADEGA, AL 35160

256-761-2102
brian.york@alacourt.gov



**THE CIRCUIT COURT OF
TALLADEGA COUNTY, ALABAMA**

STATE OF ALABAMA ex rel.,)
LUTHER STRANGE,)
ATTORNEY GENERAL)
and the ALABAMA DEPARTMENT of)
ENVIRONMENTAL MANAGEMENT,)

Plaintiffs,)

Civil Action No.
CV-2013-900568

v.)

CHILDERSBURG WATER WORKS,)
SEWER, AND GAS BOARD,)

Defendant.)

FIRST AMENDED COMPLAINT¹

The Parties

1. The Attorney General is authorized by Ala. Code § 22-22A-5(1), § 22-22-9(m), § 22-22A-5(12), and § 22-22A-5(18) (2006 Rplc. Vol.) to enforce the provisions of the Alabama Water Pollution Control Act (hereinafter “AWPCA”), which is found at Ala. Code §§ 22-22-1 through 22-22-14 (2006 Rplc. Vol.). Specifically, Ala. Code § 22-22A-5(18)(b) (2006 Rplc. Vol.) authorizes the Attorney General to bring a civil action for violation of permits issued under the AWPCA and for unpermitted discharges of pollutants in violation of said Act. In addition, Ala. Code § 22-22A-5(18)(c) (2006 Rplc. Vol.) authorizes the Attorney General to recover civil penalties for such permit violations and unpermitted discharges of pollutants, providing for a maximum of \$25,000.00 per violation. The Attorney General is authorized by Ala. Code § 36-15-12 (2006 Rplc. Vol.) to institute and prosecute, in the name of the State, all civil actions and other proceedings necessary to protect the rights and interests of the State.

¹ The Plaintiffs are amending their complaint to add “Attachment 1” and Plaintiffs’ First Set of Interrogatories to the Defendant which were inadvertently omitted when originally filed on December 30, 2013. No other changes have been made to the Complaint.

2. The Alabama Department of Environmental Management (hereinafter “the Department” or “ADEM”) is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 through 22-22A-16 (2006 Rplc. Vol.). Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.), the Department is the state agency responsible for the promulgation and enforcement of water pollution control regulations in accordance with the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 to 1387. In addition, the Department is authorized to administer and enforce the provisions of the AWPCA.

3. The Childersburg Water Works, Sewer, and Gas Board (hereinafter “the Permittee”) operates a wastewater treatment facility known as the Childersburg South Bailey Branch Lagoon, located at Southern Street near County Road 8, in Childersburg, Talladega, Alabama. The wastewater treatment facility discharges pollutants from from a point source, designated therein as outfall number 0011, to the Coosa River (Lay Lake), a water of the State.

Jurisdiction and Venue

4. The Court has jurisdiction and venue over this Complaint pursuant to Ala. Code § 22-22A-5(18)(b) and § 22-22A-5(19) (2006 Rplc. Vol.).

General Allegations

5. Pursuant to the National Pollutant Discharge Elimination System (hereinafter “NPDES”) administered by ADEM and approved by the Administrator of the U.S. Environmental Protection Agency pursuant to § 402 of the Federal Water Pollution Control Act, 33 U.S.C. § 1342, the Department issued NPDES Permit Number AL0021466 (hereinafter “the Permit”) to the Permittee. Said Permit was originally issued January 21, 2011, effective February 1, 2011. The Permit establishes limitations, terms, and conditions on the discharge of pollutants from a point source, designated therein as outfall number 0011, to the Coosa River

(Lay Lake), a water of the State. The Permit requires that the Permittee monitor its discharges and submit periodic Discharge Monitoring Reports to the Department describing the results of the monitoring. The Permit also requires that the Permittee maintain in good working order all systems used by the Permittee to achieve compliance with the terms and conditions of the Permit.

6. Discharge Monitoring Reports submitted to the Department by the Permittee indicate that the Permittee has discharged pollutants from such point source into the aforementioned outfall number 0011, to the Coosa River (Lay Lake) in violation of the limitations established in the Permit. The months the violations occurred along with the parameters violated are listed in Attachment 1, which is incorporated by reference as if fully set forth herein.

Count I

7. Plaintiffs repeat, replead and incorporate by reference paragraphs 1 through 6, above.

8. The above violations are due to be abated by injunction.

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9. Plaintiffs repeat, replead and incorporate by reference paragraphs 1 through 8, above.

10. Pursuant to Ala. Code § 22-22A-5(18) (2006 Rplc. Vol.), a civil penalty is due to be assessed for the referenced violations.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

A. Take jurisdiction over this matter.

B. Adjudge and declare that the Permittee violated the limitations, terms, and conditions of the Permit.

C. Adjudge and declare that the Permittee caused or allowed unpermitted discharges of pollutants from its wastewater treatment facility into a water of the State.

D. Order the Permittee to take action to ensure that similar violations of the AWPCA will not recur in the future.

E. Assess a civil penalty against the Permittee and in favor of Plaintiffs pursuant to Ala. Code §§ 22-22A-5(18)(b) and (c) (2006 Rplc. Vol.) for each and every violation of the Permit alleged in this Complaint.

F. Tax the costs of this action against the Defendant.

G. Order such other relief that the Court deems proper.

Respectfully submitted,

s/ Robert D. Tambling
Robert D. Tambling (TAM001)
Assistant Attorney General

ADDRESS OF COUNSEL:

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Email: rtambling@ago.state.al.us

s/ Laura T. Eubank
Laura T. Eubank (EUB011)
Assistant Attorney General

ADDRESS OF COUNSEL:

Alabama Department of Environmental Management
Office of General Counsel
P.O. Box 301463
Montgomery, AL 36130-1463
Telephone: (334) 271-7855
Email: leubank@adem.state.al.us



ATTACHMENT 1 - VIOLATIONS

Limitation Violations

<u>Limit Basis</u>	<u>Monitoring Period End Date</u>	<u>Parameter</u>	<u>Unit</u>	<u>Result Reported</u>	<u>Limit</u>
Monthly Average	March 2012	CBOD	lbs/day	176	173
Monthly Average Minimum	April 2012	TSS % Removal	%	55	65
Monthly Average	June 2012	E. Coli	col/100ml	137	126
Monthly Average Minimum	July 2012	TSS % Removal	%	62	65
Monthly Average	September 2012	E. Coli	col/100ml	184	126
Daily Maximum	September 2012	E. Coli	col/100ml	300	235
Monthly Average Minimum	October 2012	CBOD % Removal	%	82	85
Monthly Average	November 2012	E. Coli	col/100ml	133	126
Monthly Average	February 2013	E. Coli	col/100ml	165	126
Daily Maximum	February 2013	E. Coli	col/100ml	340	235
Monthly Average	February 2013	CBOD	lbs/day	182	173
Monthly Average Minimum	February 2013	TSS % Removal	%	56	65
Monthly Average Minimum	February 2013	CBOD % Removal	%	76	85
Daily Maximum	March 2013	E. Coli	col/100ml	380	235
Monthly Average	March 2013	CBOD	lbs/day	177	173
Monthly Average Minimum	March 2013	TSS % Removal	%	51	65
Monthly Average	April 2013	TP	lbs/day	9.39	8.34
Monthly Average	April 2013	CBOD	lbs/day	260	173
Weekly Average	April 2013	CBOD	lbs/day	345	259
Monthly Average Minimum	April 2013	CBOD % Removal	%	83	85
Monthly Average	May 2013	TP	lbs/day	13	8.34
Monthly Average	May 2013	CBOD	lbs/day	175	173
Weekly Average	May 2013	CBOD	lbs/day	357	259
Weekly Average	May 2013	CBOD	mg/l	38	37.5
Monthly Average	July 2013	E. Coli	col/100ml	241	126
Daily Maximum	July 2013	E. Coli	col/100ml	243	235

Late DMR submittals

<u>Monitoring Period</u>	<u>Outfall</u>	<u>Due Date</u>	<u>Received Date</u>
January 2012	0011	2/28/2012	2/29/2012
February 2012	0011	3/28/2012	3/30/2012
March 2012	0011	4/28/2012	4/30/2012
April 2012	0011	5/28/2012	5/31/2012
July 2012	0011	8/28/2012	8/29/2012
September 2012	0011	10/28/2012	10/31/2012
October 2012	0011	11/28/2012	11/29/2012
November 2012	0011	12/28/2012	12/31/2012
December 2012	0011	1/28/2013	1/30/2013
February 2013	0011	3/28/2013	3/29/2013
March 2013	0011	4/28/2013	4/30/2013
April 2013	0011	5/28/2013	6/03/2013
June 2013	0011	7/28/2013	7/30/2013
July 2013	0011	8/28/2013	9/05/2013
August 2013	0011	9/28/2013	10/02/2013

SSOs

<u>Date</u>	<u>Location</u>	<u>Amount (gallons)</u>	<u>Notify Official?</u>	<u>Notify Public?</u>	<u>Notify Health Department/Other?</u>
*4/15/2012	309 Coosa Pines Drive	250	NO	NO	NO
*4/27/2012	303 4 th Street SE	Unknown	NO	NO	NO
*5/16/2012	120 Childersburg Fayetteville Highway	200	NO	NO	NO
*7/6/2012	120 Childersburg Fayetteville Highway	20	NO	NO	NO
*7/7/2012	1124 9 th Avenue SW	50	NO	NO	NO
*8/1/2012	1215 4 th Street SE	120	NO	YES	NO
*8/11/2012	232 Childersburg Fayetteville Road	25	NO	NO	NO
*12/4/2012	1124 9 th Avenue SW	5	NO	NO	NO
*12/9/2012	22 Oak Lane	10	NO	NO	NO
*2/15/2013	140 Childersburg- Fayetteville Highway	200	NO	YES	NO
*4/27/2013	303 4 th Street SE	≤1,000	NO	NO	NO
*8/1/2013	1215 4 th Avenue SE	120	NO	YES	NO

**Did not give the Department a 24-hour verbal notice of the SSO.*



AlaFile E-Notice

61-CV-2013-900568.00

Judge: WM E HOLLINGSWORTH III

To: PATTY REBECCA EMILY
REP@adem.state.al.us

NOTICE OF COURT ACTION

IN THE CIRCUIT COURT OF TALLADEGA COUNTY, ALABAMA

STATE OF ALABAMA, EX REL LUTHER STRANGE, ATTORNEY ET AL V. CHILDERSBUR
61-CV-2013-900568.00

A court action was entered in the above case on 7/31/2015 1:39:54 PM

ORDER

[Filer:]

Disposition: GRANTED
Judge: WEH
Notice Date: 7/31/2015 1:39:54 PM

BRIAN YORK
CIRCUIT COURT CLERK
TALLADEGA COUNTY, ALABAMA
P O BOX 6137
TALLADEGA, AL 35160

256-761-2102
brian.york@alacourt.gov



IN THE CIRCUIT COURT OF TALLADEGA COUNTY, ALABAMA

STATE OF ALABAMA, EX REL LUTHER,
STRANGE, ATTORNEY,
ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT,
Plaintiffs,

V.

CHILDERSBURG WATER WORKS,
SEWER, AND GAS BOARD,
Defendant.

) Case No.: CV-2013-900568.00

ORDER ON SETTLEMENT AGREEMENT

I.

INTRODUCTION

A. The State of Alabama, by the authority of Attorney General Luther Strange and the Alabama Department of Environmental Management (hereinafter the "Plaintiffs") by and through its undersigned counsel, filed a complaint in this action on December 30, 2013, alleging that the Childersburg Water Works, Sewer and Gas Board, (hereinafter the "Defendant") is in violation of the Alabama Water Pollution Control Act, § 22-22-1, *et seq.*, Code of Alabama, 1975 ("the Act"). The Plaintiffs are seeking injunctive relief and the assessment of civil penalties, pursuant to § 22-22A-5(18)b, of the Code of Alabama, 1975. The complaint alleges that the Defendant operates a wastewater treatment lagoon, known as the Childersburg South Bailey Branch Lagoon, located at Southern Street near County Road in Childersburg, Talladega County, Alabama, and is operated by the Defendant under the authority of NPDES Permit No. ALOO21466. The Permit establishes limitations on the discharge of pollutants from a point source designated as outfall number 0011 to the Coosa River (Lay Lake), a water of the State.

B. Defendant, the Childersburg Water Works, Sewer and Gas Board, is a "person" within the meaning of § 22-22-1(b)(7) of the Act.

C. The Plaintiffs and Defendant have consented to the entry of this Settlement

Agreement without further adjudication of any of the factual or legal issues raised by the complaint herein.

D. NOW THEREFORE, without admission by the Defendant of the non-jurisdictional allegations in the complaint, without further adjudication of any issue of fact or law pertaining to this action, and upon the consent and agreement of the parties to this Settlement Agreement, it is hereby ORDERED, ADJUDGED and DECREED as follows:

II. JURISDICTION

This Court has jurisdiction over the subject matter herein and the parties to this action pursuant to Section 22-22A-5, of the Code of Alabama, 1975, as the complaint states claims for injunctive relief and civil penalties upon which relief may be granted against the Defendant. Authority to bring this suit is vested in the Attorney General pursuant to Section 22-22A-5, Code of Alabama, 1975.

III. VENUE

Venue is proper in the Circuit Court of Talladega County, Alabama because it is the judicial district in which the Defendant's lagoon and Collection System is located, and in which the alleged violations occurred.

IV. PARTIES

A. The Plaintiff, State of Alabama, is acting at the request and on behalf of the Attorney General of the State of Alabama.

B. The Plaintiff, the Alabama Department of Environmental Management ("ADEM") is the State environmental agency responsible for administering the Act.

C. The Defendant is a municipal corporation in the State of Alabama, formed under the laws of the State of Alabama, and is a "person" within the meaning of Section 22-22-1(b)(7) of the Act.

V.
BINDING EFFECT

The provisions of this Settlement Agreement shall apply to, and be binding upon, the Defendant, and its officers, directors, employees, agents, servants, successors, and assigns, and upon all persons, firms and corporations in active concert or participation with the Defendant and assigns, and upon the State of Alabama and its representative.

VI.
OBJECTIVES

It is the express purpose of the parties entering into this Settlement Agreement to further the objectives set forth in Section 22-22-2 of the Act, and to resolve certain issues alleged by the State in the complaint. In light of these objectives, the Defendant agrees, inter alia, to cause the expeditious implementation of the remedial measures as herein set forth and, in accordance with schedules approved by the Court, to take all appropriate steps necessary to correct permit limit violations, and to prevent bypasses and unpermitted discharges of untreated or partially treated wastewater. In addition, Defendant agrees to comply with the terms and conditions of its NPDES permits and to submit to ADEM all NPDES reports in a timely manner and do all lawful acts necessary to effectuate the provisions of this Settlement Agreement.

VII.
REMEDIAL ACTIONS

A. Within ninety (90) days of the effective date of this Settlement Agreement, the Defendant will submit an engineering report prepared by an engineer licensed in the State of Alabama to the Alabama Attorney General's Office and ADEM. The engineering report shall address the need for changes in maintenance and operating procedures, the potential for infiltration and inflow, the need for modification of existing treatment and

collection system works, and the need for new or additional treatment and collection system works as necessary to achieve compliance with applicable rules and regulations and permit conditions. The Engineering Report must include a schedule for implementation (i.e., a Compliance Plan) and cost of equipment and/or repairs needed to achieve compliance, if known. If ADEM determines through its review of the engineering report that the report is not sufficient to meet the terms of this Settlement Agreement, then the report shall be modified by the Defendant so that it does meet the terms. Modifications to the engineering report, if required, shall be submitted to ADEM no later than thirty (30) days after the Defendant's receipt of ADEM's comments. Any corrective action accepted by ADEM shall be incorporated by reference into this Settlement Agreement.

- B. The Permittee shall prepare and submit detailed semi-annual Progress Reports to the Alabama Attorney General's Office and ADEM describing the Permittee's progress towards achieving compliance with the items presented in the Compliance Plan, including the cost of equipment and/or repairs needed to achieve compliance. The Department must receive the Progress Reports no later than 180 days after the date of issuance of this Consent Order and continuing every 180 days thereafter that the Permittee's performance obligations under this Consent Order remain incomplete. In addition, the Permittee shall submit a written notice of noncompliance with each imposed requirement, if applicable. The Permittee shall submit the notice of noncompliance to the Department no later than fourteen days following each applicable due date contained in this Consent Order. Notices of noncompliance shall state the cause of noncompliance and the corrective action taken and shall also describe the Permittee's ability to comply with any remaining requirements of this Consent Order.
- C. Defendant shall achieve and maintain compliance with its NPDES permit by no later than 730 days following the entry of this Settlement Agreement.
- D. The Permittee shall submit a certification to the Alabama Attorney General's Office and

ADEM, signed by a professional engineer licensed to practice in the State of Alabama, indicating whether or not the Permittee is in compliance with all requirements of this Settlement Agreement. The Permittee shall submit such certification to the Alabama Attorney General's Office and ADEM no later than 760 days after the date of issuance of this Settlement Agreement.

VIII.
EFFLUENT LIMITATIONS

Nothing in this Settlement Agreement shall relieve the Defendant of its obligation to comply at all times with all effluent limitations in its NPDES Permit(s), including any modifications, extensions or reissuances.

IX.
CIVIL PENALTY

A. Defendant is assessed and agrees to pay a civil penalty in the amount of Fifteen Thousand Dollars (\$15,000.00) for reasonable costs incurred to recover such civil penalty to be dispersed as follows:

1. Defendant shall pay Seven Thousand Five Hundred Dollars (\$7,500.00) to the Attorney General's Office for reasonable costs incurred to recover such civil penalty. This sum shall be deposited to the credit of the operating funds of the Office of Attorney General.

2. Defendant shall pay Seven Thousand Five Hundred Dollars (\$7,500.00) to the Alabama Department of Environmental Management for reasonable expenses incurred in this enforcement action. This sum shall be deposited to the credit of the operating funds of the ADEM.

B. The Defendant shall submit said payment to the following address:

**ADMINISTRATIVE SERVICES DIVISION
OFFICE OF ATTORNEY GENERAL
501 WASHINGTON AVENUE
MONTGOMERY, AL 36130-0152**

X.
STIPULATED PENALTIES

A. Milestones

1. The Defendant shall pay to the State of Alabama stipulated civil penalties for each day it fails to meet any of the milestone dates or satisfy any of the requirements set forth in or established by Sections VII. A, B., and D. The stipulated civil penalties for failure to meet each milestone or any requirement date, except for Force Majeure Acts as hereinafter defined or acts which occur beyond the Defendant's control, shall be as follows:

<u>Period of Noncompliance</u>	<u>Penalty per Day per Violation</u>
1st to 30th day	\$300
31st to 60th day	\$600
After 60 days	\$1,200

B. Stipulated civil penalties shall automatically begin to accrue on the first day the Defendant fails to meet any of the schedules of performance required by Sections VII. A., B., and D. of this Settlement Agreement. Payment of stipulated civil penalties as set forth above shall not abate any other rights or remedies which may be available to the State of Alabama or its agencies by reason of the Defendant's failure to comply with requirements of this Settlement Agreement, and all applicable federal, state or local laws, regulations, NPDES permit(s) and all other applicable permits. Notification to the Defendant by ADEM of the assessment of any stipulated penalty is not required.

C. Stipulated civil penalties shall be paid by submitting a cashier's or certified check payable to the State of Alabama and tendered to the Attorney General, 501 Washington Avenue, Montgomery, Alabama 36130-0152. Copies of the registered or certified check and the transmittal letter shall be sent simultaneously to the General Counsel, Alabama Department of Environmental Management, 1400 Coliseum Boulevard, P.O. Box 301463, Montgomery, Alabama 36110-2059.

D. In the event that a stipulated civil penalty is not paid when due, the stipulated civil penalty shall be payable with interest from the original due date to the date of payment, at the statutory judgment rate set forth at 28 U.S.C. § 1961 (a). Under no circumstances shall the

Stipulated Penalties exceed twenty-thousand dollars (\$20,000).

XI.
FORCE MAJEURE

A. "Force Majeure" for the purposes of this Settlement Agreement is defined as an event arising from causes beyond the control of the Defendant or of any entity employed by the Defendant, including its consultants and contractors, which delays or prevents the performance of any obligation under this Settlement Agreement.

B. When circumstances are occurring or have occurred which may delay the completion of any requirement of this Settlement Agreement, whether or not due to a Force Majeure event, the Defendant shall so notify Plaintiffs in writing within fifteen (15) days after the Defendant knew, or should have known, of the delay or anticipated delay. The notice shall describe in detail the basis for the Defendant's contention that it experienced or anticipates that it will experience a Force Majeure delay, the anticipated length of the delay, the precise cause or causes of the delay, the measures taken or to be taken to prevent or minimize the delay, and the timetable by which those measures will be implemented. Failure to so notify the Plaintiffs shall constitute a waiver of any claim of Force Majeure as to the event in question.

C. If the Plaintiffs find that a delay in performance is, or was, caused by a Force Majeure event, it shall extend the time for performance, in writing, for a period to compensate for the delay resulting from such event and stipulated penalties shall not be due for such period. In proceedings on any dispute regarding a delay in performance, the dispute resolution provisions of Section XII. RETENTION OF JURISDICTION/DISPUTE RESOLUTION shall apply, and the Defendant shall have the burden of proving that the delay is, or was, caused by a Force Majeure event, and that the amount of additional time requested is necessary to compensate for that event.

D. Compliance with a requirement of this Settlement Agreement shall not by itself constitute compliance with any other requirement. An extension of one compliance date based

on a particular event shall not automatically extend another compliance date or dates. The Defendant shall make an individual showing of proof regarding the cause of each delayed incremental step or other requirement for which an extension is sought. The Defendant may petition for the extension of more than one compliance date in a single request.

XII.
RETENTION OF JURISDICTION/DISPUTE RESOLUTION

A. This Court shall retain jurisdiction of this matter for the purposes of implementing and enforcing the terms and conditions of this Settlement Agreement and for the purpose of adjudicating all disputes among the parties that may arise under the provisions of this Settlement Agreement.

B. Submission of any matter to the Court for resolution shall not extend any of the deadlines set forth in this Settlement Agreement, unless the parties agree to such extension in writing or the Court allows the extension upon motion.

XIII.
RIGHT OF ENTRY

Without limiting the authority otherwise available to it, the State, ADEM, and its authorized representatives and contractors shall have authority at all times, upon the presentation of credentials, to enter the premises of the Defendant to:

1. Monitor the program of activities required by this Settlement Agreement;
2. Verify any data or information submitted to the State or ADEM;
3. Obtain samples from the municipal treatment and collection system;
4. Inspect and evaluate any portions of the Defendant's Collection System;

and;

5. Inspect and review any records required to be kept under the terms and conditions of this Settlement Agreement or any NPDES Permit and the AWPCA. This provision of this

Settlement Agreement is in addition to and in no way limits or otherwise affects the State or ADEM's statutory authorities to conduct inspections, to require monitoring and to obtain information from the Defendant as authorized by law.

6. The State and ADEM agree to provide the Defendant an opportunity to obtain split samples of wastewater samples taken by ADEM from the Defendant's Collection System. The State and ADEM further agree to provide the Defendant with the quality assured/quality controlled laboratory analytical results of samples obtained from the Defendant's Collection System, and any non-privileged (including non-attorney work product) reports prepared concerning such results. ADEM will use its best efforts to coordinate field inspections of the Defendant's Collection System with the Defendant by notifying the Defendant, if practicable, of such inspections upon arrival at the field inspection location.

XIV.

NOT A PERMIT/COMPLIANCE WITH OTHER STATUTES/REGULATIONS

A. This Settlement Agreement is not and shall not be construed as a permit, nor a modification of any existing permit, issued pursuant to the Alabama Water Pollution Control Act, nor shall it in any way relieve the Defendant of its obligations to obtain a permit for its wastewater treatment and collection system or facilities and to comply with the requirements of any NPDES permit or with any other applicable federal or state law or regulation. Any new permit, or modification of existing permits, must be complied with in accordance with applicable federal and state laws and regulations.

B. Nothing herein shall be construed as relieving the Defendant of the duty to comply with the AWPCA, the regulations promulgated thereunder and all applicable permits issued thereunder, or as relieving the Defendant of its duty to comply with State law and the regulations promulgated thereunder. The State of Alabama reserves the right to seek additional relief should Defendant fail to achieve substantial compliance with the terms and conditions of its permit(s).

XV.
NON-WAIVER PROVISIONS

A. The Settlement Agreement in no way affects or relieves the Defendant of any responsibility to comply with any federal, state, or local law or regulation.

B. Nothing contained in this Settlement Agreement shall be construed to prevent or limit the State's rights to obtain penalties or further or additional injunctive relief under the AWPCA or other State statutes or regulations, including, but not limited to, criminal punishment under § 22-22-14 of the Act, for other violations not expressly specified in the complaint.

C. The parties agree that the Defendant is responsible for achieving and maintaining complete compliance with all applicable federal and state laws, regulations, and permits, and that compliance with this Settlement Agreement shall be no defense to any actions commenced pursuant to said laws, regulations, or permits, except as set forth herein.

D. This Settlement Agreement does not limit or affect the rights of the Defendant or ADEM or the State against any third parties which are not parties to this Settlement Agreement. The parties recognize that this Settlement Agreement resolves only matters between the Plaintiffs and the Defendant and that its execution does not preclude the Defendant from asserting any legal or factual position in any action brought against the Defendant by any person or entity not a party to this Settlement Agreement.

E. The parties reserve any and all legal and equitable remedies available to enforce the provisions of this Settlement Agreement.

F. This Settlement Agreement shall not limit any authority of ADEM under any applicable statute, including the authority to seek information from the Defendant or to seek access to the property of the Defendant nor shall anything in this Settlement Agreement be construed to limit the authority of the State to undertake any action against any person in response to conditions that may present an imminent and substantial endangerment to the

environment or to the public health or welfare.

G. Application for construction grants, State Revolving Loan Funds, or any other grants or loans, or delays caused by inadequate facility planning or plans and specifications, on the part of the Defendant shall not be cause for extension of any required compliance date in this Settlement Agreement.

H. Obligations of the Defendant under the provisions of this Settlement Agreement to perform duties scheduled to occur after the date of entry of this Settlement Agreement, shall be legally enforceable from that date. Liability for stipulated penalties, if applicable, shall accrue for violation of such obligations and payment of such stipulated penalties may be demanded by Plaintiffs as provided in this Settlement Agreement.

I. It is the intent of the parties hereto that the clauses hereof are severable, and should any clause(s) be declared by a court of competent jurisdiction to be invalid and unenforceable, the remaining clauses shall remain in full force and effect.

J. The State of Alabama reserves the right to elect to file a civil action for statutory penalties or injunctive relief against the Defendant for any violations of the Alabama Water Pollution Control Act by the Defendant discovered after the Date of Entry of this Settlement Agreement concerning different violations than these set forth herein.

K. This Settlement Agreement was negotiated, mutually drafted, and executed by the Parties in good faith to avoid further litigation and is a settlement of claims which were vigorously contested, denied and disputed. The execution of this Settlement Agreement is not an admission of any fact, liability or wrongdoing of any kind regarding any of the matters addressed in the Settlement Agreement. Accordingly, with the exception of this proceeding, this Settlement Agreement shall not be admissible in any judicial or administrative proceeding for use against any Party over the objection of that Party.

XVI.
REVIEW OF SUBMISSIONS

The State agrees to use its best efforts to expeditiously review all documents, plans and other deliverables that the Defendant is required to submit to the ADEM pursuant to the terms and conditions of this Settlement Agreement. The State of Alabama agrees to use its best efforts to coordinate with the Defendant to expedite evaluation of permit applications submitted by the Defendant consistent with Alabama law.

XVII.
FORM OF NOTICE

A. Unless otherwise specified or agreed to in writing by all parties, all reports, notices, or any other written communications required to be submitted under this Settlement Agreement shall be sent to the respective parties at the following addresses:

Alabama Department of Environmental Management
Chief of Water Division
1400 Coliseum Blvd.
Post Office Box 301463
Montgomery, Alabama 36110-2059

Office of Attorney General
Robert D. Tambling
501 Washington Avenue
Montgomery, Alabama 36130-0152.

B. Notifications to or communications with ADEM or the Alabama Attorney General's office shall be deemed submitted on the date they are received. Notifications to or communications with Defendant shall be deemed received ten (10) days after the date they are postmarked.

XVIII.
MODIFICATION

This Settlement Agreement contains the entire agreement of the parties and shall not be modified by any prior oral or written agreement, representation or understanding. Prior drafts of this Settlement Agreement shall not be used in any action involving the interpretation or enforcement of this Settlement Agreement. This Settlement Agreement may not be amended or

modified except by written order of this Court. Any modification of this Settlement Agreement by the parties shall be in writing and approved by the Court before it will be deemed effective. However, minor changes which do not significantly alter the remedial action to be conducted by the Defendant may be made by the parties, provided such changes are agreed upon in writing.

XIX.
TERMINATION

A. This Settlement Agreement shall terminate upon the granting of a motion to the Court after each of the following has occurred:

1. The Defendant has achieved compliance with all provisions contained in this Settlement Agreement;
2. The Defendant has paid all penalties and other monetary obligations due hereunder and no penalties or other monetary obligations due hereunder are outstanding or owed to the State.
3. The Defendant has certified compliance pursuant to Paragraphs 1 and 2 above to the Court and all parties; and
4. Upon receipt of such certification from the Defendant, ADEM shall review to determine if compliance has been achieved and shall then respond in writing. If the State or ADEM disputes the Defendant's full compliance, this Settlement Agreement shall remain in effect pending resolution of the dispute by the parties or the Court.

B. The Defendant may petition the State and ADEM for termination of the obligations of any paragraph of this Settlement Agreement, provided that the Defendant has satisfied each and every term and condition of that paragraph, and certified to the State that it has satisfied each and every term and condition of that paragraph.

XX.
SIGNATORIES

The Assistant Attorney General on behalf of the State of Alabama and the Associate General Counsel of the Alabama Department of Environmental Management and the

signatories for the Defendant certify that they are fully authorized to enter into the terms and conditions of this Settlement Agreement and to execute and legally bind such parties to this document.

WE HEREBY CONSENT to the entry of this Settlement Agreement in the *State of Alabama ex rel. Luther Strange, and the Alabama Department of Environmental Management v. Childersburg Water Works, Sewer and Gas Board*, Civil Action No. CV-2013-900568.

**FOR THE PLAINTIFF
THE STATE OF ALABAMA:**

Date: July 21, 2015

/s/ Robert D. Tambling
Robert D. Tambling (TAM001)
Assistant Attorney General

ADDRESS OF COUNSEL:

Office of the Attorney General
501 Washington Street
Montgomery, AL 36130
(334) 242-7300
Email: rtambling@ago.state.al.us

**FOR THE PLAINTIFF
ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT:**

Date: July 21, 2015

s/ Rebecca E. Patty
Rebecca E. Patty (PAT037)
Assistant Attorney General

ADDRESS OF COUNSEL:

Alabama Department of
Environmental Management
P.O. Box 301463
Montgomery, AL 36130-1463
(334) 271-7855
Email: rep@adem.state.al.us

**FOR THE DEFENDANT
THE CHILDERSBURG WATER WORKS,
SEWER AND GAS BOARD:**

Date: July 21, 2015

/s/ Charles P. Gaines
Charles P. Gaines (GAI002)
Attorney for the Childersburg Water Works,
Sewer and Gas Board

ADDRESS OF COUNSEL:

Gaines, Gaines & Rasco, PC
127 North Street
Talladega, AL 35160
(256) 362-2386
melissa@gainesrasco.com

DONE this 31st day of July, 2015.

/s/ WM E HOLLINGSWORTH III
CIRCUIT JUDGE