

August 5, 2014

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Hon. Johnny Register, Chairman
Water Works and Sewer Board of the Town of Slocomb
P.O. Box 1147
Slocomb, Alabama 36375

Re: **Notice of Intent to File Suit under the Clean Water Act for Violations of NPDES Permit No. AL0056111**

Dear Mr. Register:

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, Choctawhatchee Riverkeeper, Inc. may file suit against the Water Works and Sewer Board of the Town of Slocomb, a/k/a City of Slocomb Water Works & Sewer Board, for discharges of pollutants from the Slocomb Lagoon located on Highway 103 South in Slocomb, Geneva County, Alabama into Hurricane Creek at approximately Latitude 31.09322° N, Longitude 85.65032° W, in violation of the Clean Water Act, 33 U.S.C. § 1251 et seq., NPDES Permit No. AL0056111.

I. Discharge Violations of NPDES Permit No. AL0056111

Pursuant to § 402 of the Clean Water Act, 33 U.S.C. § 1342, the Water Works and Sewer Board of the Town of Slocomb has been issued NPDES Permit No. AL0056111 authorizing the discharge of pollutants from the Slocomb Lagoon into Hurricane Creek subject to specific discharge limitations. The Board has discharged pollutants from Outfall 0011 into Hurricane Creek in violation of the discharge limitations in Part I., A. of NPDES Permit No. AL0056111 from August 2009 to June 2014 as indicated in Tables 1 and 2 attached hereto.

II. History of Previous Enforcement Actions

On February 29, 2000, the Alabama Department of Environmental Management sent a Notice of Violation to the Board for exceedences of discharge limitations in NPDES Permit No. AL0056111 for Biochemical Oxygen Demand (monthly and weekly average lbs/day and mg/L), Total Suspended Solids (monthly average lbs/day and mg/L and weekly average mg/L) during the period of October through November, 1999.

On April 13, 2005, the Alabama Department of Environmental Management sent a Warning Letter to the Board for exceedences of discharge limitations in NPDES Permit No. AL0056111 for Total Suspended Solids (monthly average percent removal) during December 2004.

On June 15, 2005, the Alabama Department of Environmental Management sent a Warning Letter to the Board for exceedences of discharge limitations in NPDES Permit No. AL0056111 for Total Suspended Solids (monthly average percent removal), Total Suspended Solids (monthly average lbs/day), and Carbonaceous Biochemical Oxygen Demand (monthly average lbs/day) during April 2005.

On November 30, 2005, the Alabama Department of Environmental Management sent a Notice of Violation to the Board for exceedences of discharge limitations in NPDES Permit No. AL0056111 for Total Suspended Solids (monthly average percent removal and monthly average lbs/day) and Carbonaceous Biochemical Oxygen Demand (monthly average percent removal and monthly average lbs/day) during the periods of October 2003, January through August 2004, October through December 2004, February 2005, April through May 2005, and August 2005.

On May 8, 2006, the Alabama Department of Environmental Management and the Board entered into Consent Order 06-085-CWP for exceedences of discharge limitations in NPDES Permit No. AL0056111 for Total Suspended Solids (monthly average percent removal and monthly average lbs/day) and Carbonaceous Biochemical Oxygen Demand (monthly average percent removal and monthly average lbs/day) during the periods of May through August 2004, October through December 2004, February 2005, April through May 2005, August 2005 and February 2006. The Order required that the Board comply with the discharge limitations in NPDES Permit No. AL0056111 no later than August 16, 2009.

On May 16, 2011, the Alabama Department of Environmental Management sent a Warning Letter to the Board for exceedences of discharge limitations in NPDES Permit No. AL0056111 for Total Suspended Solids (percent removal), Carbonaceous Biochemical Oxygen Demand (percent removal), and Fecal Coliform during the periods from August through September 2009, February 2010, July through September 2010, January 2011 and March 2011.

On October 21, 2013, the Alabama Department of Environmental Management sent a Warning Letter to the Board for exceedences of discharge limitations in NPDES Permit No. AL0056111 for Total Suspended Solids (percent removal), Carbonaceous Biochemical Oxygen Demand (percent removal), and Carbonaceous Biochemical Oxygen Demand (monthly and weekly average lbs/day and monthly average mg/L) during the period April through May 2012, March 2013, and May through July 2013.

The foregoing enforcement actions by the Alabama Department of Environmental Management have failed to deter the Board from causing violations of the Clean Water Act and NPDES Permit No. AL0056111.

IV. Sanctions

The Court may assess civil penalties of up to \$37,500 per violation. Each day a violation continues is a separate violation. Violations of monthly average limits and weekly average limits are counted as violations for each day of the month and each day of the week, respectively. *See Atlantic States Legal Found., Inc. v. Tyson Foods, Inc.*, 897 F.2d 1128 (11th Cir. 1990). Accordingly, there are 576 discharge violations alleged herein. In addition, the Court may award litigation expenses and attorney fees. 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 Choctawhatchee 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. Heather McTeer Toney, 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

Michael William Mullen, Choctawhatchee Riverkeeper
Choctawhatchee Riverkeeper, Inc.
P.O. Box 6734
Banks, AL 36005
(334) 807-1365

TABLE 1

PERCENT REMOVAL OF TOTAL SUSPENDED SOLIDS IN EFFLUENT DISCHARGED FROM OUTFALL 0011			
Monitoring Period End Date	MONTHLY AVERAGE		
	Permit Limit (percent removal)	Measured Value (percent removal)	Violation Days
Apr 30, 2014	≥65.0	19	30
Feb 28, 2014	≥65.0	46.2	28
Jul 31, 2013	≥65.0	60	31
Jun 30, 2013	≥65.0	38.1	30
May 31, 2013	≥65.0	52.5	31
May 31, 2012	≥65.0	55	31
Apr 30, 2012	≥65.0	56	30
Jan 31, 2011	≥65.0	64	31
Feb 28, 2010	≥65.0	33.3	28
		TOTAL	270

TABLE 2

PERCENT REMOVAL OF CARBONACEOUS BIOCHEMICAL OXYGEN DEMAND IN EFFLUENT DISCHARGED FROM OUTFALL 0011			
Monitoring Period End Date	MONTHLY AVERAGE		
	Permit Limit (percent removal)	Measured Value (percent removal)	Violation Days
Jun 30, 2014	≥85.0	83.4	30
May 31, 2014	≥85.0	65.5	31
Apr 30, 2014	≥85.0	47.3	30
Mar 31, 2014	≥85.0	62.7	31
Jan 31, 2014	≥85.0	83.7	31
Sep 30, 2013	≥85.0	82	30
Jun 30, 2014	≥85.0	20.4	30
Mar 31, 2013	≥85.0	82.3	31
Mar 31, 2011	≥85.0	78.6	31
Aug 31, 2009	≥85.0	62.6	31
		TOTAL	306



AlaFile E-Notice

34-CV-2014-900091.00

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

NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF GENEVA COUNTY, ALABAMA

STATE OF ALABAMA EX REL, LUTHER STRANGE AG ET AL V. CITY OF SLOCOMB WA
34-CV-2014-900091.00

The following complaint was FILED on 9/29/2014 3:36:33 PM

Notice Date: 9/29/2014 3:36:33 PM

GALE LAYE
CIRCUIT COURT CLERK
GENEVA COUNTY, ALABAMA
200 NORTH COMMERCE STREET
GENEVA, AL 36340

334-684-5620
gale.laye@alacourt.gov

**COVER SHEET
CIRCUIT COURT - CIVIL CASE**

(Not For Domestic Relations Cases)

Case Number:
34-CV-201

Date of Filing:
09/29/2014



ELECTRONICALLY FILED
9/29/2014 3:38 PM
34-CV-2014-900091.00
CIRCUIT COURT OF
GENEVA COUNTY, ALABAMA
GALE LAYE, CLERK

GENERAL INFORMATION

IN THE CIRCUIT OF GENEVA COUNTY, ALABAMA

STATE OF ALABAMA EX REL, LUTHER STRANGE AG ET AL v. CITY OF SLOCOMB WATERWORKS AND

First Plaintiff: Business Individual
 Government Other

First Defendant: Business Individual
 Government Other

NATURE OF SUIT:

TORTS: PERSONAL INJURY

- WDEA - Wrongful Death
- TONG - Negligence: General
- TOMV - Negligence: Motor Vehicle
- TOWA - Wantonnes
- TOPL - Product Liability/AEMLD
- TOMM - Malpractice-Medical
- TOLM - Malpractice-Legal
- TOOM - Malpractice-Other
- TBFM - Fraud/Bad Faith/Misrepresentation
- TOXX - Other: _____

OTHER CIVIL FILINGS (cont'd)

- MSXX - Birth/Death Certificate Modification/Bond Forfeiture
Appeal/Enforcement of Agency Subpoena/Petition to Preserve
- CVRT - Civil Rights
- COND - Condemnation/Eminent Domain/Right-of-Way
- CTMP-Contempt of Court
- CONT-Contract/Ejectment/Writ of Seizure
- TOCN - Conversion
- EQND- Equity Non-Damages Actions/Declaratory
Judgment/Injunction Election Contest/Quiet Title/Sale For
Division
- CVUD-Eviction Appeal/Unlawful Detainer
- FORJ-Foreign Judgment
- FORF-Fruits of Crime Forfeiture
- MSHC-Habeas Corpus/Extraordinary Writ/Mandamus/Prohibition
- PFAB-Protection From Abuse
- FELA-Railroad/Seaman (FELA)
- RPRO-Real Property
- WTEG-Will/Trust/Estate/Guardianship/Conservatorship
- COMP-Workers' Compensation
- CVXX-Miscellaneous Circuit Civil Case

TORTS: PERSONAL INJURY

- TOPE - Personal Property
- TORE - Real Property

OTHER CIVIL FILINGS

- ABAN - Abandoned Automobile
- ACCT - Account & Nonmortgage
- APAA - Administrative Agency Appeal
- ADPA - Administrative Procedure Act
- ANPS - Adults in Need of Protective Services

ORIGIN: F **INITIAL FILING**

A **APPEAL FROM
DISTRICT COURT**

O **OTHER**

R **REMANDED**

T **TRANSFERRED FROM
OTHER CIRCUIT COURT**

HAS JURY TRIAL BEEN DEMANDED? Yes No

RELIEF REQUESTED: **MONETARY AWARD REQUESTED** **NO MONETARY AWARD REQUESTED**

ATTORNEY CODE: TAM001

9/29/2014 3:38:11 PM

/s/ ROBERT D. TAMBLING

MEDIATION REQUESTED: Yes No Undecided



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

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

Plaintiffs,)

Civil Action No.
CV-2014-_____

v.)

THE CITY OF SLOCOMB)
WATERWORKS AND SEWER)
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 City of Slocomb Waterworks and Sewer Board (hereinafter “the Permittee”) operates a wastewater treatment facility known as the Slocomb Lagoon. The wastewater treatment facility discharges pollutants from the Slocomb Lagoon located on Highway 103 South in Slocomb, Geneva County, Alabama, into Hurricane Creek, 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”) program 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 reissued NPDES Permit Number AL0056111 (hereinafter “the Permit”) to the Defendant on June 26, 2008, effective July 1, 2008. Said Permit was again reissued December 20, 2013, effective January 1, 2014. The Permit establishes limitations and conditions on the discharge of pollutants from a point source, described therein as outfall 0011, into Hurricane Creek, a water of the State. The Permit requires that the Defendant monitor its discharges and submit periodic Discharge Monitoring Reports to the Department describing the

results of the monitoring. The Permit also requires that the Defendant maintain in good working order all systems used by the Defendant to achieve compliance with the terms and conditions of the Permit.

6. Discharge Monitoring Reports (hereinafter “DMRs”) submitted to the Department by the Defendant indicate that the Defendant has discharged pollutants from the aforementioned point source, outfall number 0011, to Hurricane Creek 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.

7. Permit Condition I.C.2.b requires that a noncompliance notification report be submitted to the Department should a discharge not comply with any limitation of the permit. Noncompliance notification reports are to be submitted to the Department with the next DMR after the Defendant becomes aware of the noncompliance. The Defendant failed to submit noncompliance notification reports as described in Attachment 1.

8. Permit Condition I.B.7 requires that, at a minimum, flow measurement devices shall be calibrated at least once every twelve months. During an inspection of the facility on March 18, 2014, the Department noted that the flow meter had not been calibrated within twelve months.

9. Ala. Code §22-22-9(i)(3) (2006 Rplc. Vol.) requires that a permit be obtained prior to discharging any new or increased pollution into any water of the State. From September 2009 through September 2014, the Defendant, without a permit, discharged new or increased pollution into the waters of the state in the form of Sanitary Sewer Overflows (hereinafter “SSOs”). These are listed in Attachment 1.

10. The submitted SSO reports indicate that the public and county health department

were not notified of all reported SSOs. Permit Condition I.C.2.d states, “The Permittee [Defendant] shall provide notification to the Director, the public, the county health department and any other affected entity such as public water systems, as soon as possible upon becoming aware of any notifiable SSO.” Permit Condition III.H.30 defines a notifiable SSO as “an overflow, spill, release or diversion of wastewater from a sanitary sewer system that either: 1) Reaches a surface water of the state; or 2) May imminently and substantially endanger human health based on potential for public exposure including by not limited to close proximity to public or private water supply wells or in areas where human contact would be likely to occur.”

Count I

11. Plaintiffs repeat, replead and incorporate by reference paragraphs 1 through 10, above.

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

Count II

13. Plaintiffs repeat, replead and incorporate by reference paragraphs 1 through 12, above.

14. 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 Defendant violated the limitations, terms, and conditions of the Permit.
- C. Adjudge and declare that the Defendant caused or allowed discharges of

pollutants from its wastewater treatment facility into a water of the State in violation of the limitations set forth in the Permit.

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

E. Assess a civil penalty against the Defendant 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/ Schuyler Espy
Schuyler Espy (KEA009)
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: sespy@adem.state.al.us



Facility Name: Slocomb Lagoon
 Permit Number: AL0056111

SSOs

Date/Time	Location	Volume	Duration
1/21/2010	285 Highway 52 E, 181 Railroad	20000	4 hrs
2/11/2013	Highway 52 E	>100000	6 hrs
04/18/2014	County Rd. 28 Railroad Ave. Hwy. 52 E Hwy. 103 S Cell No. 3 & Lagoon Facility	25000.00	8 hrs 30 mins

Limitation Violations

Monitoring Period	Outfall	Parameter	Limit	Reported	Limit Type	Unit
August 2009*	0011	CBOD % Removal	85.0	62.6	Monthly Average Minimum	%
August 2009*	0011	Fecal Coliform	200	350	Monthly Average	Col/100 ml
September 2009*	0011	Fecal Coliform	200	253	Monthly Average	Col/100 ml
February 2010*	0011	TSS Percent Removal	65.0	33.3	Monthly Average Minimum	%
July 2010*	0011	Fecal Coliform	200	292	Monthly Average	Col/100 ml
August 2010*	0011	Fecal Coliform	200	310	Monthly Average	Col/100 ml
September 2010*	0011	Fecal Coliform	200	360	Monthly Average	Col/100 ml
January 2011*	0011	TSS Percent Removal	65	64	Monthly Average Minimum	%
March 2011*	0011	CBOD % Removal	85.0	78.6	Monthly Average Minimum	%
April 2012	0011	TSS Percent Removal	65.0	56.0	Monthly Average Minimum	%
May 2012	0011	TSS Percent Removal	65.0	55.0	Monthly Average Minimum	%
March 2013	0011	CBOD % Removal	85.0	82.3	Monthly Average Minimum	%
May 2013	0011	TSS Percent Removal	65.0	52.5	Monthly Average Minimum	%
June 2013	0011	CBODCBOD	25.0	26.5	Monthly Average	mg/l
June 2013	0011	CBOD	50.8	89.5	Monthly Average	lbs/day
June 2013	0011	CBOD	76.3	89.5	Weekly Average	lbs/day
June 2013	0011	CBOD % Removal	85.0	20.4	Monthly Average Minimum	%

Monitoring Period	Outfall	Parameter	Limit	Reported	Limit Type	Unit
June 2013	0011	TSS Percent Removal	65.0	38.1	Monthly Average Minimum	%
July 2013	0011	TSS Percent Removal	65.0	60.0	Monthly Average Minimum	%
August 2013*	0011	CBOD	50.8	82.2	Monthly Average	lbs/day
August 2013*	0011	CBOD	76.3	82.2	Weekly Average	lbs/day
September 2013	0011	CBOD % Removal	85.0	82.0	Monthly Average Minimum	%
January 2014	0011	CBOD % Removal	85.0	83.7	Monthly Average Minimum	%
February 2014*	0011	TSS	183	230.3	Monthly Average	lbs/day
February 2014*	0011	CBOD	50.8	63.6	Monthly Average	lbs/day
February 2014	0011	TSS Percent Removal	65.0	46.2	Monthly Average Minimum	%
March 2014*	0011	CBOD	50.8	63.6	Monthly Average	lbs/day
March 2014	0011	CBOD % Removal	85.0	62.7	Monthly Average Minimum	%
April 2014	0011	CBOD % Removal	85.0	47.3	Monthly Average Minimum	%
April 2014	0011	TSS Percent Removal	65.0	19.0	Monthly Average Minimum	%
May 2014*	0011	CBOD	50.8	61	Monthly Average	lbs/day
May 2014	0011	CBOD % Removal	85.0	65.5	Monthly Average Minimum	%
June 2014	0011	CBOD	25.0	28	Monthly Average	mg/l
June 2014	0011	CBOD % Removal	85.0	83.4	Monthly Average Minimum	%

*NCF not submitted

CBOD – Carbonaceous Biochemical Oxygen Demand

TSS – Total Suspended Solids



AlaFile E-Notice

34-CV-2014-900091.00

Judge: KAC

To: ESPY SCHUYLER KEAT
sespy@adem.alabama.gov

NOTICE OF COURT ACTION

IN THE CIRCUIT COURT OF GENEVA COUNTY, ALABAMA

STATE OF ALABAMA EX REL, LUTHER STRANGE AG ET AL V. CITY OF SLOCOMB WA
34-CV-2014-900091.00

A court action was entered in the above case on 9/21/2016 9:18:38 AM

ORDER

[Filer:]

Disposition: GRANTED
Judge: KAC
Notice Date: 9/21/2016 9:18:38 AM

GALE LAYE
CIRCUIT COURT CLERK
GENEVA COUNTY, ALABAMA
200 NORTH COMMERCE STREET
GENEVA, AL, 36340

334-684-5620
gale.laye@alacourt.gov



IN THE CIRCUIT COURT OF GENEVA COUNTY, ALABAMA

STATE OF ALABAMA EX REL, LUT,)
 ALABAMA DEPARTMENT OF ENVIRO,)
 Plaintiffs,)
)
 V.) Case No.: CV-2014-900091.00
)
 CITY OF SLOCOMB WATERWORKS A,)
 Defendant.)

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 September 29, 2014, alleging that the City of Slocomb Waterworks and Sewer Board, (hereinafter the "Defendant") is in violation of the Alabama Water Pollution Control Act, § 22-22-1, *et seq.*, Code of Alabama, 1975 (hereinafter "the Act or AWPCA"). 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 facility, known as the Slocomb Lagoon (hereinafter "Lagoon"), located on Highway 103 South in Slocomb, Geneva County, Alabama, and is operated by the Defendant under the authority of National Pollutant Discharge Elimination System (hereinafter "NPDES") Permit No. AL0056111. The Permit establishes limitations, terms, and conditions on the discharge of pollutants from the Lagoon into Hurricane Creek, a water of the State.

B. Defendant, the City of Slocomb Waterworks and Sewer 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 Plaintiffs pursuant to Section 22-22A-5, Code of Alabama, 1975.

III. VENUE

Venue is proper in the Circuit Court of Geneva County, Alabama because it is the judicial district in which the Defendant's Lagoon 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 (hereinafter "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 ADEM and their representatives.

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, interalia, 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 permit 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 any and all actions that have been taken by the Defendant, including any changes in maintenance and operating procedures, any actions taken to address potential infiltration and inflow, any modifications of existing treatment and collection system works, or additions to the Defendant's treatment and collection system works that were undertaken to achieve compliance with applicable rules and regulations and permit conditions. The Engineering Report must include any implementation schedule and/or project completion dates along with an itemization of the cost of equipment and/or repairs needed to achieve compliance. 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 and implementation schedule accepted by ADEM shall be incorporated by reference into this Settlement Agreement.
- B. Within one hundred thirty-five (135) days following the date of entry of this

Settlement Agreement, the Defendant shall prepare and submit a detailed Compliance Report to the Alabama Attorney General's Office and ADEM describing the Defendant's progress toward maintaining compliance with applicable rules and regulations and with the terms and conditions of its permit. Should the Compliance Report indicate a failure to maintain compliance with the applicable rules and regulations and existing permit conditions, Defendant shall state the cause of noncompliance and the corrective action taken and shall also describe the Defendant's ability to comply with any remaining requirements of this Settlement Agreement.

- C. Defendant shall maintain compliance with all permit conditions upon entry of this Settlement Agreement.
- D. Within one hundred eighty (180) days following the date of entry of this Settlement Agreement, Defendant 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 Defendant is in compliance with all requirements of Section VII 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

Eighteen Thousand Dollars (\$18,000.00) for reasonable costs incurred to recover such civil penalty to be disbursed as follows:

1. Nine Thousand Dollars (\$9,000.00) 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. Nine Thousand Dollars (\$9,000.00) 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 pay said civil penalty assessed by this Settlement Agreement of Eighteen Thousand Dollars (\$18,000.00) in twenty-four (24) monthly payments of Seven Hundred and Fifty Dollars (\$750.00) by certified checks as follows:

<u>Payment Number</u>	<u>Amount</u>	<u>Due Date</u>
#1	\$750.00	7/1/16
#2	\$750.00	8/1/16
#3	\$750.00	9/1/16
#4	\$750.00	10/1/16
#5	\$750.00	11/1/16
#6	\$750.00	12/1/16
#7	\$750.00	1/1/17
#8	\$750.00	2/1/17
#9	\$750.00	3/1/17

#10	\$750.00	4/1/17
#11	\$750.00	5/1/17
#12	\$750.00	6/1/17
#13	\$750.00	7/1/17
#14	\$750.00	8/1/17
#15	\$750.00	9/1/17
#16	\$750.00	10/1/17
#17	\$750.00	11/1/17
#18	\$750.00	12/1/17
#19	\$750.00	1/1/18
#20	\$750.00	2/1/18
#21	\$750.00	3/1/18
#22	\$750.00	4/1/18
#23	\$750.00	5/1/18
#24	\$750.00	6/1/18

C. The Defendant shall submit said payments to the following address:

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

X.

STIPULATED PENALTIES

A. Milestones

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The Defendant shall pay to the Plaintiffs 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, 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 Plaintiffs 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 Plaintiffs of the assessment of any stipulated penalty is not required.

C. Stipulated civil penalties shall be paid by splitting the total amount due and submitting equal portions via cashier's or certified checks payable to the State of Alabama at Office of the Attorney General, 501 Washington Avenue, Montgomery, AL 36130-0152; and ADEM at ADEM, Attn: Office of General Counsel, P.O. Box 301463, Montgomery, AL 36130-1463.

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). All stipulated penalties collected shall be deposited to Plaintiffs' respective operating funds.

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, they 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 their 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 treatment and

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 treatment or 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 treatment or 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 treatment or 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 AWPCA, 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 permit(s), 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 and ADEM reserve 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 Plaintiffs' 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 Plaintiffs 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 Plaintiffs 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 Plaintiffs reserve the right to elect to file a civil action for statutory penalties or injunctive relief against the Defendant for any violations of the AWPCA 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 Plaintiffs agree to use their best efforts to expeditiously review all documents, plans and other deliverables that the Defendant is required to submit to the Plaintiffs pursuant to the terms and conditions of this Settlement Agreement. The

Plaintiffs agree to use their 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. City of Slocomb Waterworks and Sewer Board*, Civil Action No. CV-2014-900091.

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

Date: September 20, 2016

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

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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: September 20, 2016

s/ Schuyler Espy
Schuyler Espy (KEA009)
Assistant Attorney General

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ADDRESS OF COUNSEL:

Alabama Department of Environmental Management
Office of General Counsel
P.O. Box 301463
Montgomery, AL 36130-1463
(334) 271-7855
sespy@adem.alabama.gov

**FOR THE DEFENDANT
CITY OF SLOCOMB WATERWORKS
AND SEWER BOARD:**

Date: September 20, 2016

s/ Jason R. Eubanks
Jason R. Eubanks (EUB004)

ADDRESS OF COUNSEL:

P.O. Box 309
Slocomb, Alabama 36375
(334) 886-3123

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DONE this 21st day of September, 2016.

/s/ KIMBERLY A. CLARK

CIRCUIT JUDGE