



August 24, 2015

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Honorable Claudia Wigglesworth, Mayor
 City of Daleville
 P.O. Box 187
 Daleville, Alabama 36322

Re: **Notice of Intent to File Suit under the Clean Water Act for Violations of NPDES Permit No. AL0050261**

Dear Mayor Wigglesworth:

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 60 days following service of this notice, the Choctawhatchee Riverkeeper may file suit against the City of Daleville.

Violations of NPDES Permit No. AL0050261

Suit may be filed against the City for discharges of pollutants from Outfall 0011 at the Daleville Southeast Lagoon at Clark Street to the Choctawhatchee River in violation of the discharge limitations of NPDES Permit No. AL0050261 as reported in Discharge Monitoring Reports submitted by the City to the Alabama Department of Environmental Management from June 2013 to July 2015, including but not limited to, the following:

Pollutant Parameter	Discharge Limit	Discharge Violation	Violation Date(s)	Days in Violation
E. Coli	≤548 col/100 ml Monthly Average	1000 col/100ml	Apr 2014	30
	≤126 col/100 ml Monthly Average	320 col/100ml	Jun 2013	30
Solids, Total Suspended	≥65% Removal	47.6%	Jul 2015	31
		-71.4%	Jun 2015	30
		58%	May 2015	31
		46.7%	Sep 2014	30
		28.0%	May 2014	31
		15%	Apr 2014	30

Pollutant Parameter	Discharge Limit	Discharge Violation	Violation Date(s)	Days in Violation
Solids, Total Suspended	≤90 mg/L Monthly Average	96.0 mg/L	Jun 2015	30
BOD, Carbonaceous (5-day)	≤78.1 lbs/day Monthly Average	86.5 lbs/day	Jul 2013	31
	≤25 mg/L Monthly Average	29.5 mg/L	Jun 2015	30
		33.3 mg/L	May 2015	31
	≥85 % Removal Monthly Average	57.2%	Jun 2015	30
		71%	May 2015	31
		83.9%	Mar 2015	31
		75.4%	Dec 2014	31
		77.6%	Jun 2014	30
		71.2%	May 2014	31
		42.1%	Apr 2014	30
		82.3%	Jan 2014	31
83.4%	Jun 2013	30		
TOTAL VIOLATIONS				640

History of Prior Enforcement Actions

On June 3, 2014, the Alabama Department of Environmental Management issued a Warning Letter to the City. The Letter alleged violations of discharge limitations in NPDES Permit No. AL0050261 for E. Coli during the months of June 2013 and April 2014; BOD, Carbonaceous (CBOD₅) during the months of June and October 2013 and January and April 2014 and TSS for the months of October and November 2013 and April 2014. There were earlier Warning Letters to the City in March 2009, January 2008 and December 2005.

No further enforcement actions have been undertaken by the Alabama Department of Environmental Management to secure compliance with the discharge limitations of NPDES Permit No. AL0050261 since June of 2014 despite continuing violations.

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). 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

cc: Gina McCarthy, Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Heather McTeer Toney, Regional Administrator
U.S. Environmental Protection Agency-Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960

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



AlaFile E-Notice

26-CV-2015-900141.00

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

NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF DALE COUNTY, ALABAMA

STATE OF ALABAMA EX REL., LUTHER STRANGE AG ET AL V. CITY OF DALEVILLE
26-CV-2015-900141.00

The following complaint was FILED on 10/16/2015 11:24:49 AM

Notice Date: 10/16/2015 11:24:49 AM

DELORES WOODHAM
CIRCUIT COURT CLERK
DALE COUNTY, ALABAMA
P.O BOX 1350
OZARK, AL 36361

334-774-5003

State of Alabama
Unified Judicial System

Form AR Civ-93 Rev.5/99

**COVER SHEET
CIRCUIT COURT - CIVIL CASE**

(Not For Domestic Relations Cases)

Case Number:
26-CV-201

Date of Filing:
10/16/2015



ELECTRONICALLY FILED
10/16/2015 11:24 AM
26-CV-2015-900141.00
CIRCUIT COURT OF
DALE COUNTY, ALABAMA
DELORES WOODHAM, CLERK

GENERAL INFORMATION

**IN THE CIRCUIT OF DALE COUNTY, ALABAMA
STATE OF ALABAMA EX REL., LUTHER STRANGE AG ET AL v. CITY OF DALEVILLE**

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 10/16/2015 11:24:25 AM /s/ ROBERT D. TAMBLING

MEDIATION REQUESTED: Yes No Undecided



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

STATE OF ALABAMA ex rel.,)	
LUTHER STRANGE,)	
ATTORNEY GENERAL)	
and the ALABAMA DEPARTMENT of)	
ENVIRONMENTAL MANAGEMENT,)	
)	
Plaintiffs,)	Civil Action No.
)	CV-2015-_____
v.)	
)	
THE CITY OF DALEVILLE,)	
)	
)	
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 Daleville (hereinafter “the Permittee”) operates a wastewater treatment facility known as the Daleville Southeast Lagoon. The wastewater treatment facility discharges pollutants from the Daleville Southeast Lagoon located on Clark Street, in Daleville, Dale County, Alabama, into the Choctawhatchee River, 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 AL0050261 (hereinafter “the Permit”) to the Defendant on October 21, 2010, effective November 1, 2010. The Permit establishes limitations and conditions on the discharge of pollutants from a point source, described therein as outfall 0011, into the Choctawhatchee River, 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 properly operate and maintain all facilities and systems of treatment and control which are installed or used by the Defendant to achieve compliance with the 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 the Choctawhatchee River 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.B.7 requires that, at a minimum, flow measurement devices shall be calibrated at least once every twelve months. During an inspection on December 17, 2013, the Department observed that the flow meter had been calibrated on December 12, 2012.

8. 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. On May 9, 2015, 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”). This violation is listed in Attachment 1.

9. Permit Condition I.C.1.b requires that discharge monitoring reports be submitted so that they are received by the Department no later than the 28th day of the month following the reporting period. The discharge monitoring reports that were submitted late are listed in Attachment 1.

Count I

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

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

Count II

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

13. 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



City of Daleville
NPDES Permit No. AL0050261

ATTACHMENT 1

Limitation Violations

Monitoring Period	Outfall	Parameter	Limit	Reported	Unit	Limit Type
August 2011	0011	E. Coli	126	220	col/100mL	Monthly Average
June 2013	0011	E. Coli	126	320	col/100mL	Monthly Average
June 2013	0011	CBOD ₅ % Removal	85.0	83.4	%	Monthly Average Minimum
October 2013	0011	CBOD ₅ % Removal	85.0	63.70	%	Monthly Average Minimum
October 2013	0011	TSS % Removal	65.0	28.80	%	Monthly Average Minimum
November 2013	0011	TSS % Removal	65.0	53.20	%	Monthly Average Minimum
January 2014	0011	CBOD ₅ % Removal	85.0	82.3	%	Monthly Average Minimum
April 2014	0011	CBOD ₅	78.1	86.50	lbs/day	Monthly Average
April 2014	0011	CBOD ₅ % Removal	85.0	42.1	%	Monthly Average Minimum

Monitoring Period	Outfall	Parameter	Limit	Reported	Unit	Limit Type
April 2014	0011	TSS % Removal	65.0	15.0	%	Monthly Average Minimum
April 2014	0011	E. Coli	548	1000	col/100mL	Monthly Average
May 2014	0011	CBOD ₅ % Removal	85.0	71.2	%	Monthly Average Minimum
May 2014	0011	TSS % Removal	65.0	28.0	%	Monthly Average Minimum
June 2014	0011	CBOD ₅ % Removal	85.0	77.6	%	Monthly Average Minimum
September 2014	0011	TSS % Removal	65.0	46.7	%	Monthly Average Minimum
December 2014	0011	CBOD ₅ % Removal	85.0	75.4	%	Monthly Average Minimum
March 2015	0011	CBOD ₅	25.0	31.80	mg/l	Monthly Average
March 2015	0011	CBOD ₅ % Removal	85.0	83.9	%	Monthly Average Minimum
April 2015	0011	NH ₃ -N	62.5	65.27	lbs/day	Monthly Average
April 2015	0011	CBOD ₅	78.1	87.86	lbs/day	Monthly Average

Monitoring Period	Outfall	Parameter	Limit	Reported	Unit	Limit Type
April 2015	0011	CBOD ₅ % Removal	85.0	71.7	%	Monthly Average Minimum
April 2015	0011	TSS % Removal	65.0	26.9	%	Monthly Average Minimum
April 2015	0011	E. Coli	548	1800	col/100mL	Monthly Average
May 2015	0011	CBOD ₅	117	175	lbs/day	Weekly Average
May 2015	0011	CBOD ₅	25.0	33.3	mg/l	Monthly Average
May 2015	0011	CBOD ₅ % Removal	85.0	71	%	Monthly Average Minimum
May 2015	0011	TSS % Removal	65.0	58	%	Monthly Average Minimum
June 2015	0011	TSS	90.0	96	mg/l	Monthly Average
June 2015	0011	CBOD ₅	25.0	29.5	mg/l	Monthly Average
June 2015	0011	CBOD ₅ % Removal	85.0	57.2	%	Monthly Average Minimum
June 2015	0011	TSS % Removal	65.0	-71.4	%	Monthly Average Minimum
July 2015	0011	TSS % Removal	65.0	47.6	%	Monthly Average Minimum

Monitoring Period	Outfall	Parameter	Limit	Reported	Unit	Limit Type
August 2015	0011	CBOD ₅ % Removal	85.0	76.6	%	Monthly Average Minimum
August 2015	0011	TSS % Removal	65.0	-3.1	%	Monthly Average Minimum
August 2015	0011	E.coli	126	360	col/100mL	Monthly Average

SSO Violation

Date/Time	Location	Volume	Duration
May 9, 2015	130 Hwy 134 East.	<1000	30 mins

Late DMRs

Monitoring Period	Outfall	Due Date	Received Date	Days Late
October 2010	0011	November 28, 2010	December 8, 2010	10
November 2010	0011	December 28, 2010	January 5, 2011	8
January 2011	0011	February 28, 2011	March 4, 2011	4
February 2011	0011	March 28, 2011	April 13, 2011	16
March 2011	0011	April 28, 2011	May 4, 2011	6
April 2011	0011	May 28, 2011	June 13, 2011	16
May 2011	0011	June 28, 2011	July 7, 2011	9
June 2011	0011	July 28, 2011	August 3, 2011	6
July 2011	0011	August 28, 2011	August 30, 2011	2
August 2011	0011	September 28, 2011	October 5, 2011	7
October 2011	0011	November 28, 2011	December 2, 2011	4
November 2011	0011	December 28, 2011	January 3, 2012	6
December 2011	0011	January 28, 2012	February 2, 2012	5
January 2012	0011	February 28, 2012	February 29, 2012	1
February 2012	0011	March 28, 2012	March 30, 2012	2
March 2012	0011	April 28, 2012	May 3, 2012	5
April 2012	0011	May 28, 2012	June 1, 2012	4

Monitoring Period	Outfall	Due Date	Received Date	Days Late
May 2012	0011	June 28, 2012	July 9, 2012	11
June 2012	0011	July 28, 2012	August 1, 2012	4
July 2012	0011	August 28, 2012	August 30, 2012	2
August 2012	0011	September 28, 2012	October 3, 2012	5
September 2012	0011	October 28, 2012	November 1, 2012	4
October 2012	0011	November 28, 2012	November 30, 2012	2
November 2012	0011	December 28, 2012	January 2, 2013	5
March 2013	0011	April 28, 2013	April 29, 2013	1
April 2013	0011	May 28, 2013	May 29, 2013	1
February 2015	0011	March 28, 2015	March 30, 2015	2



AlaFile E-Notice

26-CV-2015-900141.00

Judge: KIMBERLY A. CLARK

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

NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF DALE COUNTY, ALABAMA

STATE OF ALABAMA EX REL., LUTHER STRANGE AG ET AL V. CITY OF DALEVILLE
26-CV-2015-900141.00

The following matter was FILED on 1/13/2017 9:01:38 AM

Notice Date: 1/13/2017 9:01:38 AM

DELORES WOODHAM
CIRCUIT COURT CLERK
DALE COUNTY, ALABAMA
P.O BOX 1350
OZARK, AL, 36361

334-774-5003



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

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

Plaintiffs,)

Civil Action No.
CV-2015-900141

v.)

THE WATERWORKS AND SEWER)
BOARD OF THE CITY OF)
DALEVILLE¹,)

Defendant.)

CONSENT ORDER ON SETTLEMENT AGREEMENT AND DISMISSAL

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 October 16, 2015, alleging that the City of Daleville 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 Daleville Southeast Lagoon (hereinafter “Lagoon”), located 192 Clark Street, Daleville, Dale County, Alabama, under the authority of National Pollutant Discharge Elimination System (hereinafter “NPDES”) Permit No. AL0050261 (hereinafter “the Permit”).

¹ The Waterworks and Sewer Board of the City of Daleville (hereinafter “the Defendant”) was substituted as a party for the City of Daleville in this action by Order of this Court on September 30, 2016.

The Permit establishes limitations, terms, and conditions on the discharge of pollutants from the Lagoon into the Choctawhatchee River, a water of the State.

B. On May 27, 2016, ADEM reissued NPDES Permit No. AL0050261 to the Daleville Water and Sewer Board. The Permit became effective on June 1, 2016.

C. Defendant, the Waterworks and Sewer Board of the City of Daleville, is a "person" within the meaning of § 22-22-1(b)(7) of the Act.

D. 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.

E. 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 Dale County, Alabama because it is the judicial circuit 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 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, 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 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. The Defendant submitted a Corrective Action Plan to ADEM indicating that the Defendant has taken actions to address the violations noted in the Complaint and to prevent future violations related to the wastewater treatment facility. The Department received the Corrective Action Plan on January 28, 2016.

B. The Defendant shall maintain compliance with all terms, conditions, and limitations of the Permit immediately upon entry 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 Permit modifications, extensions or reissuances.

IX.
CIVIL PENALTY

A. Defendant has been assessed and has paid a civil penalty in the amount of Three Thousand Two Hundred Dollars (\$3,200.00), disbursed as follows:

1. One Thousand Six Hundred Dollars (\$1,600.00) 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. One Thousand Six Hundred Dollars (\$1,600.00) to the Alabama Department of Environmental Management for reasonable costs incurred to recover such civil penalty. This sum shall be deposited to the credit of the operating funds of the Alabama Department of Environmental Management.

X.
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. 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.

XI.

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.

XII.

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.

XIII.

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).

XIV. **NON-WAIVER PROVISIONS**

A. This 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.

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.

XV.
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.

XVI.
FORM OF NOTICE

A. Unless otherwise specified or agreed to in writing by all Parties, 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.

XVII.
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.

XVIII.
DISMISSAL OF ACTION

Upon entry of this Settlement Agreement, this cause is dismissed; provided, however, the Complaint shall be subject to reinstatement before this Court upon a motion filed by either Party with supporting affidavit(s) sufficiently demonstrating that a Party has failed to comply with the terms and conditions of this Settlement Agreement.

XIX.
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. Waterworks and Sewer Board of the City of Daleville*, Civil Action No. CV-2015-900141.

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

Date: _____

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: _____

s/ Schuyler K. Espy
Schuyler K. 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
(334) 271-7855
sespy@adem.alabama.gov

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

Date: _____

s/ Henry B. Steagall, III
Henry Steagall, III (STE048)

ADDRESS OF COUNSEL:

P.O. Box 280
Ozark, Alabama 36361
(334) 774-2501

Dated and entered this 13th day of January 2017.

/s/ Kimberly A. Clark
CIRCUIT COURT JUDGE OF
DALE COUNTY