



Alabama Department of Environmental Management  
adem.alabama.gov

1400 Coliseum Blvd. 36110-2400 ■ Post Office Box 301463  
Montgomery, Alabama 36130-1463  
(334) 271-7700 ■ FAX (334) 271-7950

September 4, 2019

**CERTIFIED MAIL 91 7199 9991 7038 0640 7317**  
**RETURN RECEIPT REQUESTED**

Pete Wolff, III, Mayor  
City of Evergreen  
Post Office Box 229  
Evergreen, AL 36401

RE: Consent Order 19-110-CWP  
**NPDES Permit Number: AL0047503**  
Evergreen Lagoon  
710 Bruner Avenue  
Evergreen, AL 36401  
Conecuh County (035)

Dear Mr. Wolff:

Please find the enclosed ADEM Consent Order No. 19-110-CWP which requires you to take certain actions at the Evergreen Lagoon, located at 710 Bruner Avenue in Evergreen, Alabama in regard to alleged violations of the Alabama Water Pollution Control Act. This Consent Order has been issued with the consent of the City of Evergreen.

Sincerely,

Jeffery W. Kitchens, Chief  
Water Division

JWK/mfc

File: ECO/19-110-CWP

Enclosure

cc: Shawn Sibley/ADEM, Office of General Counsel  
Monica Jayroe/ADEM, Office of General Counsel  
Daphne Lutz/ADEM, Industrial/Municipal Branch  
Emily Anderson/ADEM, Industrial/Municipal Branch  
Sandra Lee/ADEM, Industrial/Municipal Branch

Executed: 09-04-2019

Mailed: 09-04-2019



**ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF: )

**City of Evergreen** )  
**Evergreen Lagoon** )  
**Evergreen, Conecuh County, Alabama** )

**NPDES PERMIT NO. AL0047503** )

Consent Order No. 19-110-CWP

**PREAMBLE**

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "the Department") and the City of Evergreen (hereinafter "the Permittee") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-17, as amended, the Alabama Water Pollution Control Act (hereinafter "AWPCA"), Ala. Code §§ 22-22-1 to 22-22-14 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto.

**STIPULATIONS**

1. The Permittee operates a wastewater treatment lagoon known as the Evergreen Lagoon, located at 710 Bruner Avenue, in Evergreen, Conecuh County, Alabama.
2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-17, as amended.
3. 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 1388. In addition, the Department is authorized to administer and enforce the provisions of the AWPCA.
4. The Department reissued National Pollutant Discharge Elimination System (hereinafter "NPDES") Permit No. AL0047503 (hereinafter "the Permit") to the Permittee on August 31, 2011, effective September 1, 2011, and again on November 28, 2016, effective December 1, 2016, establishing limitations on the discharge of pollutants from a point source, designated therein as Outfall 0011, and to discharge stormwater runoff, designated therein as Outfall 002S, to Mill

Creek, a water of the state. The Permit requires that the Permittee monitor its discharges and submit periodic Discharge Monitoring Reports (hereinafter "DMRs") to the Department describing the results of the monitoring. In addition, the Permit requires that the Permittee properly operate and maintain all facilities and systems of treatment and control which are installed or used by the Permittee to achieve compliance with the conditions of the Permit.

5. Permit Condition I.A. requires that discharges be limited and monitored as specified in the Permit. For the monitoring periods listed in Attachment I, the Permittee submitted DMRs to the Department indicating that the Permittee has discharged pollutants from Outfall 0011 into Mill Creek, a water of the State, in violation of its Permit limitations for pH, Five Day Carbonaceous Biochemical Oxygen Demand (hereinafter "CBOD<sub>5</sub>"), E. Coli, Total Suspended Solids (TSS) Percent Removal, and CBOD<sub>5</sub> Percent Removal.

6. Permit Condition I.C.1.b requires the Permittee to submit the monthly monitoring reports so that they are received by the Department no later than the 28<sup>th</sup> day of the month following the monitoring period. The Permittee submitted the December 2017 DMR for Outfall 002S late on March 1, 2018.

7. Permit Condition I.C.2.b requires the Permittee to submit a noncompliance notification report (hereinafter "NCF") Form 421, to the Department should a discharge not comply with any limitation of the Permit. NCFs are to be submitted to the Department with the next discharge monitoring report after becoming aware of the noncompliance. The Permittee has failed to submit timely, complete, and correct NCFs, as detailed in Attachment II.

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 waters of this state. The sanitary sewer overflow (hereinafter "SSO") reports listed in Attachment III indicate that wastewater in the form of SSOs was discharged without a permit.

9. Permit Condition I.C.2 requires that the Permittee submit a written report to the Department no later than five days after becoming aware of an unpermitted direct or indirect discharge to a water of the state. For the August 25, 2016, SSO, the Permittee failed to submit the required written report to the Department within five days after becoming aware of the

unpermitted discharge. The required written report was not received by the Department until August 31, 2017, as part of the Permittee's response to the Department's August 4, 2017, Warning Letter.

10. Permit Condition I.C.2.d requires that "[t]he Permittee 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: a. Reaches a surface water of the State; or b. May imminently and substantially endanger human health based on potential for public exposure including but not limited to close proximity to public or private water supply wells or in areas where human contact would be likely to occur." Therefore, the public, county health department, and any other affected entity must be notified when the Permittee becomes aware of a notifiable SSO. The SSO report submitted to the Department for the August 25, 2016, SSO indicates that the Permittee notified the health department as its effort to notify the public. However, the Permittee is responsible for making appropriate public notifications; notifying the health department alone may not meet the requirement to notify the public. Therefore, the Permittee failed to meet its Permit requirement for public notification of a notifiable SSO.

11. Permit Condition I.C.2.e requires that the Permittee submit with the Annual Municipal Water Pollution Prevention Plan (hereinafter "MWPP") information as specified in Permit Condition I.C.2.e for each known unpermitted discharge that occurs. The Permittee failed to report the three SSOs which occurred in 2016 in the MWPP report received by the Department on May 31, 2017, as required by Permit Condition I.C.2.e.

12. The Department issued a Warning Letter on August 4, 2017, for pH, CBOD<sub>5</sub>, and CBOD<sub>5</sub> Percent Removal Permit limitation violations; SSOs; failure to satisfy the requirement for public notification of SSOs; failure to submit a complete SSO report for the May 10, 2016, SSO; failure to submit ADEM Form 415 for the August 25, 2016, SSO; and failure to properly submit NCFs to the Department. The Permittee submitted the missing SSO Report and NCFs with its Warning Letter response which was received by the Department on August 31, 2017. The

response indicated the City of Evergreen is attempting to obtain funds to make upgrades to the existing wastewater treatment plant. Per the Warning Letter response, these improvements will include: upgrade to the influent pump station; replacing aerators in the primary cells; repairs to all pond dikes; pH adjustment; a dissolved air floatation system; piping, electrical and other necessary appurtenances.

13. The Permittee consents to abide by the terms of this Consent Order and to pay any civil penalty assessed herein.

14. The Department has agreed to the terms of this Consent Order in an effort to resolve the violations cited herein without the unwarranted expenditure of State resources in further prosecuting the alleged violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

### **CONTENTIONS**

Pursuant to Ala. Code § 22-22A-5(18)c., as amended, in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent, and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day that such violation continues shall constitute a separate violation. In arriving at this civil penalty (summarized in Attachment IV), the Department has considered the following:

A. **SERIOUSNESS OF THE VIOLATIONS AND BASE PENALTY:** Based on the information available to the Department, violations of the Permit, ADEM Admin. Code chap. 335-6-6, and the AWPCA were noted. The Department considered the general nature of each violation, the magnitude and duration of each non-compliant discharge, the characteristics of each pollutant

discharged, the condition of the receiving waters, the violations' effects, if any, on the receiving waters, and any available evidence of irreparable harm to the environment or threat to the public.

B. THE STANDARD OF CARE: In consideration of the standard of care manifested by the Permittee, the Permittee could have easily avoided some of the violations cited herein by submitting NCFs and SSO reports in a timely manner, including SSO reports in the MWPP, providing SSO notification to ADEM within 24-hours, providing SSO public notifications, and submitting the required toxicity test reports. In consideration of the standard of care manifested by the Permittee, the Department enhanced the penalty.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has considered that delayed compliance may have conferred an economic benefit upon the Permittee but is unable to estimate the economic benefit associated with the violations cited above, as the costs for compliance are not available.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATIONS UPON THE ENVIRONMENT: The Permittee has implemented procedures and held training meetings with Sewer Department personnel to provide public notice for the local radio station or by placing a sign at the discharge point. The Permittee has also submitted an application to obtain funds from the Office of Rural Development to obtain funds for plant improvements.

E. HISTORY OF PREVIOUS VIOLATIONS: The Permittee has a history of previous violations. In consideration of such history of previous violations, the Department has enhanced the penalty.

F. THE ABILITY TO PAY: The Permittee submitted results from the EPA's MUNIPAY Enforcement Economic Model indicating that the Permittee has an inability to pay the civil penalty.

G. This Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty the Department, believes is warranted in this matter in the spirit of cooperation and desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

H. The civil penalty is summarized in Attachment IV.

## **ORDER**

THEREFORE, the Permittee, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to it, as well as the need for timely and effective enforcement, and the Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Permittee (hereinafter collectively "Parties") agree to enter into this CONSENT ORDER with the following terms and conditions:

A. If not already enrolled, the Permittee shall prepare a complete application for enrollment in the Department's Electronic Environmental SSO Reporting System Program (hereinafter "E2 Program") for all of its permitted facilities. The Permittee shall submit said application so that it is received by the Department not later than thirty days after issuance of this Consent Order. If the Department determines through its review of the submitted application that the submittal is not sufficient for the Permittee to participate in the E2 Program, then the Permittee shall modify the application so that it is sufficient. The Permittee shall submit modifications to the application, if required, so that they are received by the Department no later than fourteen days after receipt of the Department's comments. Upon acceptance by the Department into the E2 Program, the Permittee shall immediately begin the electronic submittals of SSO notifications and reports through the E2 Program. The Defendant shall fully implement all aspects of the E2 Program – including the cessation of immediate notification of SSOs through the Department's SSO Hotline and the cessation of ADEM Form 415 submittals, if applicable, immediately upon acceptance into the E2 Program, unless an extension is granted in writing by the Department. The Defendant shall abide by all terms, conditions, and limitations of the E2 Program immediately upon acceptance into the E2 Program.

B. SSO Response Plan

1. Within 120 days of the effective date of this Order, the Permittee shall develop a Sanitary Sewer Overflow (SSO) Response Plan to establish timely and effective methods for responding to notifiable sanitary sewer overflows. The SSO Response Plan shall address each of the following:



a. General Information:

- (1) Approximate population of City/Town, if applicable
- (2) Approximate number of customers served by the Permittee
- (3) Identification of any subbasins designated by the Permittee, if applicable
- (4) Identification of estimated linear feet of sanitary sewers
- (5) Number of Pump/Lift Stations in the collection system

b. Responsibility Information:

- (1) The title(s) and contact information of key position(s) who will coordinate the SSO response, including information for a backup coordinator in the event that the primary SSO coordinator is unavailable. The SSO coordinator is the person responsible for assessing the SSO and initiating a series of response actions based on the type, severity, and destination of the SSO, except for routine SSOs for which the coordinator may pre-approve written procedures. Routine SSOs are those for which the corrective action procedures are generally consistent.
- (2) The title(s), and contact information of key position(s) who will respond to SSOs, including information for backup responder(s) in the event the primary responder(s) are unavailable (i.e., position(s) who provide notification to the Department, the public, the county health department, and other affected entities such as public water systems; position(s) responsible for organizing crews for response; position(s) responsible for addressing public inquiries).

c. SSO and Surface Water Assessment

- (1) Identification of locations within the collection system at which an SSO is likely to occur (e.g., based upon historical SSOs, lift stations where electricity may be lost, etc.).
- (2) A map of the general collection system area, including identification of surface waterbodies and the location(s) of public drinking water source(s).



Mapping of all collection system piping, pump stations, etc. is not required; however, if this information is already available, it should be included.

- (3) Identification of surface waterbodies within the collection system area which are classified as Swimming according to ADEM Admin. Code chap. 335-6-11. References available to assist in this requirement include:  
<http://www.adem.state.al.us/alEnviroRegLaws/files/Division6Vol1.pdf>  
and [http://gis.adem.alabama.gov/ADEM\\_Dash/use\\_class/index.html](http://gis.adem.alabama.gov/ADEM_Dash/use_class/index.html).

- (4) Identification of surface waterbodies within the collection system area which are not classified as Swimming as indicated in paragraph c above, but are known locally as areas where swimming occurs or as areas that are heavily recreated.

d. Public Reporting of SSOs

- (1) Contact information for the public to report an SSO to the Permittee, during both normal and outside of normal business hours (e.g., telephone number, website, email address, etc.).
- (2) Information requested from the person reporting an SSO to assist the Permittee in identifying the SSO (e.g., date, time, location, contact information).
- (3) Procedures for communication of the SSO report to the appropriate positions for follow-up investigation and response, if necessary.

e. Procedures to immediately notify the Department, the county health department, and other affected entities (such as public water systems) upon becoming aware of notifiable SSOs

f. Public Notification Methods for SSOs

- (1) A listing of methods that are feasible, as determined by the Permittee, for public notifications (e.g., flyers distributed to nearby residents; signs posted at the location of the SSO, where the SSO enters a water of the state, and/or at a central public location; signs posted at fishing piers, boat launches,

parks, swimming waterbodies, etc.; website and/or social media notifications; local print or radio and broadcast media notifications; “opt in” email, text message, or automated phone message notifications)

a. If signage is a feasible method for public notification, procedures for use and removal of signage (e.g., availability and maintenance of signs, appropriate duration of postings)

(2) Minimum information to be included in public notifications (e.g., identification that an SSO has occurred, date, duration if known, estimated volume if known, location of the SSO by street address or other appropriate method, initial destination of the SSO)

(3) Procedures developed by the Permittee for determining the appropriate public notification method(s) based upon the potential for public exposure to health risks associated with the SSO

g. Standard Procedures shall be developed by the Permittee and shall include, at a minimum:

(1) General SSO Response Procedures (e.g., procedures for dispatching staff to assess/correct an SSO; procedures for routine SSO corrective actions such as those for sewer blockages, overflowing manholes, line breakages, pump station power failure, etc.; procedures for disinfection of affected area, if applicable);

(2) Procedures for collection and proper disposal of the SSO, if feasible.

(3) General procedures for coordinating instream water quality monitoring, including, but not limited to, procedures for mobilizing staff, collecting samples, and typical test methods should the Department or the Permittee determine monitoring is appropriate following an SSO. Identification of a contractor who will collect and analyze the sample(s) may be listed in lieu of the procedures.

(4) References to other documents (such as Standard Operating Procedures for SSO Responses) may be acceptable for this section; however, the referenced document shall be identified and shall be reviewed at a frequency of at least that required by the Administrative Procedures Section.

h. Date of the SSO Response Plan, dates of all modifications and/or reviews, the title and signature of the reviewer(s) for each date and the signature of the responsible official or the appropriate designee.

2. SSO Response Plan Implementation

Except as otherwise required by this Order, the Permittee shall fully implement the SSO Response Plan as soon as practicable, but no later than 180 days after the effective date of this Order.

3. Department Review of the SSO Response Plan

- a. When requested by the Director or his designee, the Permittee shall make the SSO Response Plan available for review by the Department.
- b. Upon review, the Director or his designee may notify the Permittee that the SSO Response Plan is deficient and require modification of the Plan.
- c. Within thirty days of receipt of notification, or an alternate timeframe as approved by the Department, the Permittee shall modify any SSO Response Plan deficiency identified by the Director or his designee and shall certify to the Department that the modification has been made.

4. SSO Response Plan Administrative Procedures

- a. The Permittee shall maintain a copy of the SSO Response Plan at the permitted facility or an alternate location approved by the Department in writing and shall make it available for inspection by the Department.
- b. The Permittee shall make a copy of the SSO Response Plan available to the public upon written request within 30 days of such request. The Permittee may redact information which may present security issues, such as location of public

water supplies, identification of specific details of vulnerabilities, employee information, etc.

- c. The Permittee shall provide training for any personnel required to implement the SSO Response Plan and shall retain at the facility documentation of such training. This documentation shall be available for inspection by the Department. Training shall be provided for existing personnel prior to the date by which implementation of the SSO Response Plan is required and for new personnel as soon as possible. Should significant revisions be made to the SSO Response Plan, training regarding the revisions shall be conducted as soon as possible.
- d. The Permittee shall complete a review and evaluation of the SSO Response Plan. Documentation of the SSO Response Plan review and evaluation shall be signed and dated by the responsible official or the appropriate designee as part of the SSO Response Plan.

C. The Permittee shall prepare and submit to the Department an Engineering Report that addresses 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 shall include a Compliance Plan with a schedule for implementation of necessary corrective actions and cost of such necessary corrective actions, if known. The Engineering Report shall be prepared by a professional engineer licensed to practice in the State of Alabama. The Engineering Report shall be submitted so that it is received by the Department no later than ninety days after issuance of this Consent Order. If the Department determines through its review of the submitted Engineering Report that the submittal is not sufficient, then the Permittee shall modify the Engineering Report. The Permittee shall submit modifications to the Engineering Report, if required, so that they are received by the Department no later than thirty days after Permittee's receipt of the Department's comments. The Permittee shall complete

implementation of the recommendations provided in the Engineering Report not later than 730 days after issuance of this Consent Order.

D. The Permittee shall prepare and submit detailed semiannual Progress Reports to the Department describing the Permittee's progress towards achieving compliance with the items presented in the Compliance Plan, including the cost of necessary corrective actions. The Permittee shall submit the Progress Reports so that they are received by the Department no later than one hundred eighty days after issuance of this Consent Order and continuing every one hundred eighty days thereafter that the Permittee's performance obligations under this Consent Order remain incomplete. In addition, no later than fourteen days following each due date herein, the Permittee shall submit to the Department a written notice of noncompliance, if applicable. Notices of noncompliance shall state the cause(s) of noncompliance, the corrective action taken, and shall describe the Permittee's ability to comply with any remaining requirements of this Consent Order.

E. The Permittee shall fully comply with the Permit limitations for pH, CBOD<sub>5</sub>, and CBOD<sub>5</sub> Percent Removal within 730 days from issuance of this Consent Order.

F. The Permittee shall comply with all other terms, conditions, and limitations of the Permit immediately upon issuance of this Consent Order.

G. The Permittee shall submit a certification to the Department, signed by a professional engineer licensed to practice in the State of Alabama, indicating whether the Permittee is in compliance with all requirements of this Consent Order. The Permittee shall submit such certification so that it is received by the Department no later than 760 days after issuance of this Consent Order.

H. After issuance of this Consent Order, the Permittee shall pay stipulated 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 Paragraphs A, B, C, D, and G contained herein. 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	\$ 100.00
31st to 60th day	\$ 200.00
After 60 days	\$ 300.00

If the Permittee fails to meet any milestone or any assigned date ninety days after the required dates found in Paragraphs A, B, C, D, and G, the Department reserves the right to file a new action against the Permittee.

I. Cumulative stipulated penalties described in Paragraph K above shall under no circumstances exceed \$18,000.00. Once stipulated penalties of \$18,000.00 are due to the Department, or should violations continue to occur after the final compliance date specified in the accepted Compliance Plan, the Department reserves the right to issue additional orders or file suit against the Permittee in the Circuit Court of Montgomery County or other court of competent jurisdiction to enforce compliance with this Consent Order.

J. Payment of stipulated penalties are due for violations of milestone dates under this Consent Order not later than the 28<sup>th</sup> day of the month following the month a milestone date was not achieved. Notification to the Permittee by the Department of the assessment of any stipulated penalty is not required.

K. This Consent Order shall apply to and be binding upon both Parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the Party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the Party represented, and to legally bind such Party.

L. Subject to the terms of these presents and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the violations which are cited in this Consent Order.

M. The Permittee is not relieved from any liability if it fails to comply with any provision of this Consent Order.

N. For purposes of this Consent Order only, the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. In any action brought by the Department to compel compliance with the terms of this Agreement, the Permittee shall be limited to the defenses of *Force Majeure*, compliance with this Agreement and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of the Permittee, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of the Permittee) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline shall be accompanied by the reasons (including documentation) for each extension and the proposed extension time. The Permittee shall submit this information so that it is received by the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control and without the fault of the Permittee, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

O. The sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future concerning the Evergreen Lagoon which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in other orders as may be issued by the Director, by litigation initiated by the Department, or by such other enforcement action as may be appropriate. The Permittee shall not object to such future orders, litigation, or enforcement action based on the



issuance of this Consent Order if such future orders, litigation, or other enforcement action addresses new matters not raised in this Consent Order.

P. This Consent Order shall be considered final and effective immediately upon signature of all Parties. This Consent Order shall not be appealable, and the Permittee does hereby waive any hearing on the terms and conditions of same.

Q. This Consent Order shall not affect the Permittee's obligation to comply with any Federal, State, or local laws or regulations.

R. Should any provision of this Consent Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

S. Any modification of this Consent Order shall be agreed to in writing and signed by both Parties.

T. Except as otherwise set forth herein, this Consent Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State, or local law, and shall not be construed to waive or relieve the Permittee of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

**CITY OF EVERGREEN**

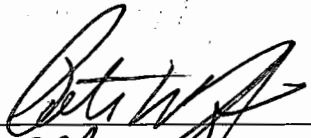
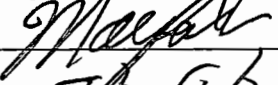
**ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**

**EXECUTED AND ISSUED:**

By:

Its:

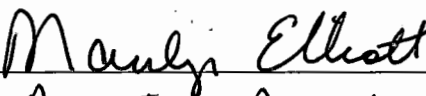
Date:

  
  
8/28/2019

By:

Its:

Date:

  
Marilyn Elliott  
Reputy Director  
9/4/2019

Attachment I  
Permit Limitation Violations

Monitoring Period	Outfall	Parameter	Limit	Reported	Unit	Violation Type
October 2017	0011	CBOD <sub>5</sub> Percent Removal	85.0	77	%	Monthly Average Minimum
October 2017	0011	CBOD <sub>5</sub>	25.0	28	mg/l	Monthly Average
November 2017	0011	CBOD <sub>5</sub> Percent Removal	85.0	67	%	Monthly Average Minimum
November 2017	0011	CBOD <sub>5</sub>	25.0	55	mg/l	Monthly Average
November 2017	0011	CBOD <sub>5</sub>	37.5	59	mg/l	Weekly Average
December 2017	0011	CBOD <sub>5</sub> Percent Removal	85.0	81	%	Monthly Average Minimum
December 2017	0011	CBOD <sub>5</sub>	25.0	33	mg/l	Monthly Average
December 2017	0011	CBOD <sub>5</sub>	37.5	43	mg/l	Weekly Average
March 2018	0011	pH	9.0	10.0	S.U.	Maximum Daily
September 2018	0011	E. Coli	126	670	col/100mL	Monthly Average
September 2018	0011	E. Coli	487	1300	col/100mL	Maximum Daily
November 2018	0011	TSS Percent Removal	65.0	51	%	Monthly Average Minimum
December 2018	0011	CBOD <sub>5</sub>	312	736	ppd	Monthly Average
December 2018	0011	CBOD <sub>5</sub>	469	1334	ppd	Weekly Average
December 2018	0011	TSS Percent Removal	65.0	57.0	%	Monthly Average Minimum
January 2019	0011	E. Coli	548	958	col/100mL	Monthly Average
March 2019	0011	E. Coli	548	773	col/100mL	Monthly Average
April 2019	0011	CBOD <sub>5</sub>	25.0	31	mg/L	Monthly Average

Attachment II  
NCFs

Monitoring Period	Incomplete	Received	Due Date
October 2017		Received November 27, 2017. Corrected NCF received April 2, 2019.	November 28, 2017
November 2017	Missing CBOD Weekly Average (mg/L) violation	Received December 22, 2017.	December 28, 2017
December 2017		Received January 17, 2018. Updated NCF submitted April 2, 2019.	January 28, 2018
March 2018		Received April 24, 2018. Updated NCF received April 2, 2019.	April 28, 2018
November 2018		Received December 19, 2018. Updated NCF submitted April 2, 2019.	December 28, 2018

Attachment III  
SSOs

Date of Discharge	Location of Discharge	Volume of Discharge (gal)	Duration of Discharge	ADEM 24-Hour Notification	Public Notification	County Health Department Notification
3/01/2018	Murder Creek	200	1 hour, 15 minutes	Yes	Yes	Yes

**Attachment IV**

**City of Evergreen  
Evergreen Lagoon  
Evergreen, Conecuh County, Alabama  
NPDES Permit No. AL0047503**

Violation*	Number of Violations*	(A)	(B)	(C)
		Seriousness of Violation*	Standard of Care*	History of Previous Violations*
Permit Limitation Violations	18	\$ 2,200.00	\$ -	\$ 900.00
Sanitary Sewer Overflows	1	\$ 50.00	\$ -	\$ 50.00
Failure to Include SSOs in 2016 MWPP	1	\$ 100.00	\$ 50.00	\$ -
Failure to Submit Toxicity Test Reports	1	\$ 500.00	\$ 250.00	\$ -
DMR >30 Days Late	1	\$ 100.00	\$ 50.00	

**Additional Adjustments due to negotiations, receipt of additional information, or public comment**

Mitigating Factors (-)	
Economic Benefit (+)	
Ability to Pay (-)	
Other Factors (+/-)	
<b>Total Adjustments (+/-)</b>	<b>\$0.00</b>

\$2,950.00	\$350.00	\$950.00
<b>Total (A)</b>	<b>Total (B)</b>	<b>Total (C)</b>
<b>Base Penalty Total</b> [Total (A) + Total (B) + Total (C)]		\$4,250.00
<b>Mitigating Factors (-)</b>		
<b>Economic Benefit (+)</b>		
<b>Ability to Pay (-)</b>		-\$4,250.00
<b>Other Factors (+/-)</b>		
<b>INITIAL PENALTY</b>		<b>\$0.00</b>
<b>Total Adjustments (+/-)</b>		<b>\$0.00</b>
<b>FINAL PENALTY</b>		<b>\$0.00</b>

Footnotes

\*See the "Stipulations" portion of the Order for a detailed description of each violation and the penalty factors