

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:)
)
Town of Lexington)
Lexington Lagoon and Sprayfield)
Lexington, Lauderdale County, Alabama)
)
NPDES PERMIT NO. AL0072834)

Unilateral Order No. XX-XXX-WP

FINDINGS

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 (“AWPCA”), Ala. Code §§ 22-22-1 to 22-22-14, as amended, and the regulations promulgated pursuant thereto, the Alabama Department of Environmental Management (“the Department”) makes the following FINDINGS:

1. The Town of Lexington (“the Permittee”) operates a wastewater treatment facility known as the Lexington Lagoon and Sprayfield, located on County Road 497, in Lexington, Lauderdale 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), as amended, 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 (“NPDES”) Permit No. AL0072834 (“the Permit”) to the Permittee on March 21, 2019, effective April 1, 2019, establishing limitations on the discharge of pollutants from a point source, designated therein as outfall number 0011, to a sprayfield. The Permit also establishes monitoring of stormwater from the sprayfield, the water of the State that receives the stormwater, and groundwater. The Permit requires that the Permittee monitor its discharges and submit periodic Discharge

Monitoring Reports (“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. The DMRs for the monitoring periods listed in Attachment I indicate that discharges from Outfall 0011 did not comply with the permit limitations for Fecal Coliform (“FC”) and pH.

6. Ala. Code § 22-22-9(i)(3), as amended, requires that a permit be obtained prior to discharging any new or increased pollution into any water of the state. The sanitary sewer overflow (“SSO”) reports listed in Attachment II indicate that wastewater in the form of SSOs was discharged without a permit.

7. The Department issued a Warning Letter to the Permittee on June 16, 2020, to address Permit limit exceedances of FC and pH, SSOs, untimely notification of SSOs to the Department, missing and incomplete Noncompliance Notification Forms (“NCFs”), untimely DMRs, and elevated bacteria levels in the storm water and stream monitoring.

8. The Department issued a Notice of Violation to the Permittee on October 21, 2021, to address Permit limit violations for FC and pH, missing and incomplete NCFs, SSOs, untimely notification of SSOs to the Department, and elevated bacteria levels in the storm water and nearby stream.

9. Pursuant to ADEM Admin. Code r. 335-6-6-.18(2), any person required to have a NPDES permit who violates applicable orders of the Department is subject to enforcement action(s), including an administrative order requiring abatement, compliance, mitigation, cessation of discharge, clean up, and/or penalties.

10. The Department entered into Consent Order 16-083-CWP (“the Consent Order”) with the Permittee effective July 18, 2016. The Consent Order required the Permittee to take corrective actions to eliminate the occurrence of SSOs, submit revised storm water DMRs, and submit an Engineering Report and Semi-annual Progress Reports. The Consent Order further required the Permittee to comply with the Permit limitations for pH and Fecal Coliform not later

than July 18, 2017. On August 27, 2019, the Department acknowledged the Permittee's compliance with the Consent Order. However, as noted in Attachment I, discharges from the Lexington Lagoon and Sprayfield are again exceeding the same Permit limitations.

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 3), 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 div. 335-6, 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 Department believes the civil penalty sought in this matter is sufficient and has not enhanced the penalty based on this factor.

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. The Department has estimated the economic benefit associated with noncompliance and has adjusted the penalty accordingly.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATIONS UPON THE ENVIRONMENT: The Department is unaware of any efforts by the Permittee to minimize or mitigate the effects of the violations upon the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: As noted herein, 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 has not alleged an inability to pay the civil penalty.

G. The civil penalty is summarized in Attachment 3.

ORDER

Based on the foregoing FINDINGS and pursuant to Ala. Code §§ 22-22A-5(10), 22-22A-5(12), 22-22A-5(18), and 22-22-9(i), as amended, it is hereby ORDERED:

A. The Permittee shall pay to the Department a civil penalty in the amount of \$5,900.00 in settlement of the violations alleged herein within forty-five days from the issuance date of this Order. Failure to pay the civil penalty within forty-five days from the issuance date may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. All penalties due pursuant to this Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

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 include a plan for continued maintenance and assessment of the collection system to minimize future infiltration and inflow. The Engineering Report shall also include an assessment of the upstream and downstream monitoring locations in the Unnamed Tributary to Mill Creek and a recommendation on more appropriate monitoring locations, if applicable. 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 the date of issuance of this 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 365 days after obtaining funding or within 730 days after the date of issuance of this Order, whichever date is earlier.

D. The Permittee shall prepare and submit detailed quarterly 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 Progress Reports shall also include the Permittee's progress towards obtaining funding for the corrective actions required for compliance with the Permit. The first Progress Report due after funding is obtained shall include the date the funding was obtained. The Permittee shall submit the Progress Reports so that they are received by the Department no later than 180 days after the date of issuance of this Order and continuing every ninety days thereafter that the Permittee's performance obligations under this 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 Order.

E. The Permittee shall fully comply with the Permit limitations for FC and pH within 365 days of obtaining funding or within 730 days from the issuance date of this Order, whichever date is earlier. Until said date, the Permittee shall take all reasonable measures to minimize these pollutants to the maximum extent practicable.

F. The Permittee shall complete repairs, rehabilitation, and upgrades to the sprayfield as necessary to reduce the bacteria levels in stormwater runoff from the sprayfield not later than 365 days of obtaining funding, or within 730 days from the issuance date of this Order, whichever date is earlier.

G. The Permittee shall complete repairs, rehabilitation, and upgrades to the sewer collection system and lift stations as necessary to minimize and mitigate SSOs not later than 365 days of obtaining funding, or within 730 days from the issuance date of this Order, whichever date is earlier.

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

I. 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 Order. The Permittee shall submit such certification so that it is received by the Department no later than 395 days of obtaining funding or within 760 days after the date of issuance of this Order, whichever date is earlier.

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

K. Final approval and issuance of this Order are subject to the requirements that the Department provide notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the proposed Order.

L. Should any provision of this 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.

M. Except as otherwise set forth herein, this 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.

N. Failure to comply with the provisions of this Order shall constitute cause for commencement of legal action by the Department against the Permittee for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this _____ day of _____, _____.

Lance R. LeFleur
Director
Alabama Department of Environmental Management
1400 Coliseum Boulevard
Montgomery, AL 36110-2059
(334) 271-7700

Attachment I
 Permit Effluent Limitation Violations

Monitoring Period	Outfall	Parameter	Limit	Reported	Unit	Violation Type	NCF Submitted?
September 2022	0011	FC	4000	4200	col/100mL	Maximum Daily	Yes
September 2022	0011	FC	2000	4200	col/100mL	Monthly Average	Yes
August 2022	0011	FC	4000	38000	col/100mL	Maximum Daily	Yes
August 2022	0011	FC	2000	38000	col/100mL	Monthly Average	Yes
July 2022	0011	pH	9.0	9.6	S.U.	Maximum Daily	Yes
May 2022	0011	FC	2000	36000	col/100mL	Monthly Average	Yes
May 2022	0011	FC	2000	36000	col/100mL	Monthly Average	Yes
January 2022	0011	FC	2000	3500	col/100mL	Monthly Average	Yes
December 2021	0011	FC	4000	4400	col/100mL	Maximum Daily	Yes
December 2021	0011	FC	2000	4400	col/100mL	Monthly Average	Yes
November 2021	0011	FC	2000	2200	col/100mL	Monthly Average	Yes
October 2021	0011	FC	4000	10091	col/100mL	Maximum Daily	Yes
October 2021	0011	FC	2000	10091	col/100mL	Monthly Average	Yes
August 2021	0011	FC	4000	92000	col/100mL	Maximum Daily	Yes
August 2021	0011	FC	2000	92000	col/100mL	Monthly Average	Yes
June 2021	0011	FC	4000	6182	col/100mL	Maximum Daily	Yes
June 2021	0011	FC	2000	6182	col/100mL	Monthly Average	Yes

Attachment II
Sanitary Sewer Overflows

Start Date	Duration (hours)	Location	Volume (gallons)
3/24/2022	20	100 McGuire Ln	1,000 - 10,000
3/1/2022	3	Southside lift station 129 County Road 497	1,000 - 10,000

CERTIFICATE OF SERVICE

I, Jeffery W. Kitchens, do hereby certify that I have served the proposed Administrative Order Number XX-XXX-WP upon the person listed below by sending the same, postage paid, through the United States Mail, Certified Mail Receipt 9489 0090 0027 6355 4780 33, with instructions to forward and return receipt to:

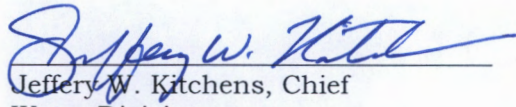
Sandra Burroughs, Mayor

Town of Lexington

P.O. Box 147

Lexington, AL 35648

Done this 28th day of November, 2022.



Jeffery W. Kitchens, Chief
Water Division
Alabama Dept. of Environmental Management