

**ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF: )

**City of Tuscaloosa** )  
**Ed E. Love Water Treatment Plant** )  
**1125 Jack Warner Parkway** )  
**Tuscaloosa, AL 35404** )  
**Tuscaloosa, Tuscaloosa County, AL** )  
**General NPDES Permit ALG640061** )

**Consent Order No. 22-XXX-CWP**

***PREAMBLE***

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (“the Department”) and the City of Tuscaloosa (“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 (“AWPCA”), Ala. Code §§ 22-22-1 to 22-22-14, as amended, and the regulations promulgated pursuant thereto.

***STIPULATIONS***

1. The City of Tuscaloosa (“Permittee” or “Operator”) operates a water treatment facility known as Ed E. Love Water Treatment Plant (“Facility”) located at 1125 Jack Warner Parkway in Tuscaloosa, Tuscaloosa County, Alabama. The Permittee discharges pollutants from a point source into an Unnamed Tributary to the Black Warrior River, a water of the State.

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 § 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.

**DEPARTMENT'S CONTENTIONS**

4. The Department reissued National Pollutant Discharge Elimination System ("NPDES") Permit No. ALG640061 ("the NPDES General Permit") to the Permittee on June 5, 2018, effective July 1, 2018, establishing limitations on the discharges of pollutants from such point source, designated therein as outfall number DSN001-1 into an Unnamed Tributary to the Black Warrior River, a water of the state. The Permit requires that the Permittee monitor its discharges and submit 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 and that the Permittee maintain documentation and implementation of a Best Management Practices (BMP) Plan.

5. Ala. Code § 22-22-9(i)(3) (2006 Rplc. Vol.) requires every person to apply for and obtain a permit before discharging any new or increased pollution into any waters of this state. Permit condition II. E. 1. c. states that the discharge of a pollutant from a source not specifically identified in the Notice of Intent (hereinafter "NOI") to be covered under the General Permit and not specifically included in the description of an outfall in the Permit is not authorized and shall constitute noncompliance with the Permit.

6. Permit Condition II. B. 3. requires the permittee to provide spill prevention, control, and/or management sufficient to prevent any spills of pollutants from entering a water of the state or a publicly or privately owned treatment works. Any containment system used to implement this requirement shall be constructed of materials compatible with the substance(s) contained and which shall prevent the contamination of groundwater and such containment system shall be capable of retaining a volume equal to 110 percent of the capacity of the largest tank for which containment is provided.

7. On March 30, 2022, the Department received notification via a National Response Center ("NRC") Report that the City of Tuscaloosa had reported a leak of hydrofluorosilicic acid from a storage tank at the Ed Love Water Treatment Plant. The report stated that the spill reached a storm drain that goes to a tributary of the Black Warrior River.

8. On April 4, 2022, the Permittee submitted a non-compliance report and written documentation stating that on March 30, 2022, at approximately 5:00 pm, hydrofluorosilicic acid was pumped from a tank truck into a new fluoride bulk tank. At approximately 8:00 pm on the same date,

facility personnel noticed acid draining from the berm. Plant personnel were able to contain the acid so that it did not discharge offsite onto Campus Drive. Sand bags were used to divert the leak to a storm drain. The contents of the tank, approximately 4,500 gallons of acid, drained from the tank and discharged to an Unnamed Tributary to the Black Warrior River, a water of the State. A complete failure of the containment berm was reported with acid leaking through seams in the concrete berm. There were pitted areas in the concrete from exposure to the acid. An initial inspection of the exterior of the tank did not indicate visible cracks; however, there appeared to be damage on the interior of the tank near the discharge line. It was stated that a more thorough inspection would be performed on the tank after its removal. In addition, an Engineering Firm was contacted to assess the secondary containment area on potential upgrades necessary to make the containment area resistant to hydrofluorosilicic acid.

9. On March 31, 2022, ADEM personnel conducted an onsite investigation at the Facility. No negative impacts to fish were observed in the Unnamed Tributary to the Black Warrior River during the onsite investigation.

10. The Permittee's discharge of hydrofluorosilicic acid into an Unnamed Tributary to the Black Warrior River, violated Ala. Code § 22-22-9(i)(3) and Permit condition II. E. 1. c. The Permittee also violated Permit Condition II. B. 3 by failing to ensure the containment system was constructed of materials compatible with the substances contained.

11. Permit Condition I A. DSN001-1 requires that discharges be limited and monitored as specified in the Permit. The Permittee submitted DMRs to the Department indicating discharges in violation of its permit as noted below:

<b>Monitoring Period</b>	<b>Outfall</b>	<b>Parameter</b>	<b>Permit Limit</b>	<b>Reported</b>	<b>Unit</b>	<b>Violation Type</b>
September 2021	DSN001-1	Chlorine	0.019	0.5	mg/l	Maximum Daily
September 2021	DSN001-1	Chlorine	0.011	0.5	mg/l	Monthly Average
December 2020	DSN001-1	Chlorine	0.019	0.1	mg/l	Maximum Daily
December 2020	DSN001-1	Chlorine	0.011	0.1	mg/l	Monthly Average
December 2020	DSN001-1	TSS	30.0	35.0	mg/l	Monthly Average
October 2020	DSN001-1	Chlorine	0.019	0.2	mg/l	Maximum Daily

<b>Monitoring Period</b>	<b>Outfall</b>	<b>Parameter</b>	<b>Permit Limit</b>	<b>Reported</b>	<b>Unit</b>	<b>Violation Type</b>
October 2020	DSN001-1	Chlorine	0.011	0.2	mg/l	Monthly Average
October 2020	DSN001-1	Iron	1.0	1.5	mg/l	Maximum Daily
October 2020	DSN001-1	TSS	45.0	86.0	mg/l	Maximum Daily
October 2020	DSN001-1	TSS	30.0	86.0	mg/l	Monthly Average

12. Permit Condition I. C. 1. b. was violated by submitting the following DMRs past the required due dates:

<b>Monitoring Period</b>	<b>Outfall</b>	<b>Due Date</b>	<b>Received Date</b>
December 2020	DSN001-1	01/28/2021	02/13/2021
November 2020	DSN001-1	01/28/2021	02/13/2021
October 2020	DSN001-1	01/28/2021	02/13/2021
September 2020	DSN001-1	01/28/2021	02/13/2021
August 2020	DSN001-1	01/28/2021	02/13/2021
July 2020	DSN001-1	01/28/2021	02/13/2021

13. Permit Condition I. C. 2. b. and c. requires that if for any reason the permittee's discharge does not comply with any limitation of the permit, the permittee shall submit to the Director a written report using a Noncompliance Notification Form 421 with the next DMR indicating a description of the discharge, cause of noncompliance, period of noncompliance and description of the steps taken and or being taken to reduce or eliminate the noncomplying discharge and to prevent its recurrence. The Department received the Noncompliance Notification Forms (Form 421) for the numeric permit limit exceedances in October 2020 and December 2020, late on May 27, 2022.

14. The Department neither admits nor denies Permittee's contentions, which are set forth below. The Department has agreed to the terms of this Consent Order in an effort to resolve the alleged

violations cited herein without the unwarranted expenditure of State resources in further prosecuting the above violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

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, 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, 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:** The Permittee failed to implement a proper standard of care by failing to ensure the secondary containment was compatible with the materials stored therefore resulting in the unpermitted discharge. 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 is unaware of evidence indicating that the Permittee received an economic benefit resulting from the violations cited herein.

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:** The Permittee has a history of 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. This Consent Order is a negotiated settlement and, therefore, the Department has determined the amount of the penalty it believes is warranted in this matter in the spirit of cooperation and the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

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

I. The civil penalty is summarized in Attachment 1.

***PERMITTEE'S CONTENTIONS***

1. On March 29, 2018, the Permittee submitted a notice of intent for reissuance of coverage under NPDES General Permit Number ALG640000, which is the general permit authorizing discharges of filter backwash, sedimentation basin wash down, and decant water from water treatment plants, for the Ed E. Love Water Treatment Plant located at 1125 Jack Warner Parkway in Tuscaloosa, Alabama. The Plant had previously been covered under Permit No. ALG640061, and has been so covered throughout the time of the Plant's operation.

2. The notice of intent described the plant's processes and land use as "potable water production from Lake Tuscaloosa with coagulation, flocculation, sedimentation, and filtration." The notice of intent identified iron removal, manganese and/or turbidity removal, pathogen removal, and phosphate-based inhibitors as processes that applied to the Plant.

3. The notice of intent identified *inter alia* fluoride as an additive that the Plant would use in the water treatment process. The notice of intent also identified *inter alia* fluoride as a chemical additive that may be found in wastewater discharge from the Plant.

4. On June 5, 2018, the Department reissued coverage under General NPDES Permit Number ALG640061 for the Plant, with an effective date of July 1, 2018, and established limitations on discharges of pollutants from the Plant into an Unnamed Tributary to the Black Warrior River.

5. The Department conducts periodic inspections of the Plant. The Department's most recent routine inspection occurred on December 12, 2019. The Department's inspection report identified all chemical storage tanks located at the Plant. The inspection report identified Tank 3 as the hydrofluorosilicic acid (fluoride) tank, with a capacity of 6,700 gallons. The inspection report identified Tank 3 as located in a concrete secondary containment area at the south end of the Plant. The Department's inspection report did not identify any deficiencies with the fluoride tank's secondary containment system. The Department's prior periodic inspections also did not identify any deficiencies with the secondary containment system.

6. On March 30, 2022, at about 5:00 p.m., the Permittee received a delivery of approximately 4,500 gallons of 23% fluorosilicic acid (fluoride) solution at the Plant. The Permittee uses the fluoride solution in the process of fluoridating drinking water. The fluoride solution was pumped from the delivering tanker truck into the fluoride tank without any issues or incident.

7. The fluoride solution was manufactured by Sibelco North America, Inc. The manufacturer's materials safety data sheet (MSDS) identifies the fluoride solution as "not hazardous" to the environment.

8. At about 8:00 p.m., one of the Plant operators was leaving the Plant through the south gate, by the fluoride tank. The operator noticed something draining from the secondary containment area for the fluoride tank. The operator exited his vehicle to investigate, and recognized that it was fluoride based on the smell.

9. In accordance with his training, at about 8:05 p.m., the operator notified the Permittee's Chief Operator for water treatment of the leak, and called one of the Permittee's Maintenance Technicians to come to the Plant to assist in containing the leak.

10. The operator also called 911 emergency services to report the leak. 911 connected the operator to Tuscaloosa Fire and Rescue, and the operator notified TFR of the incident. Due to tornado warnings in the area and other severe weather that existed at the time, TFR did not come to the Plant site.

11. The Permittee's Chief Operator notified the Water Treatment Plant Operations Manager of the leak, and the Operations Manager notified the Permittee's Associate Director of Logistics and Asset Management.

12. The Chief Operator and the Operations Manager began implementing the Permittee's spill prevention, control, and countermeasure (SPCC) plan. In accordance with the SPCC plan, Plant personnel notified the following agencies of the leak:

- U.S. Coast Guard
- U.S. Environmental Protection Agency
- Alabama Department of Environmental Management
- Alabama Department of Public Safety
- Alabama Emergency Management Agency
- Tuscaloosa County Emergency Management Agency

Plant personnel promptly complied with all notification requirements of the Permittee's SPCC plan. No other agencies responded to the leak.

13. When the operator initially discovered the leak, the fluoride solution was draining away from the tank area in a southerly direction towards Campus Drive. Plant personnel were able to use sand bags to create a berm, and divert the fluoride solution away from Campus Drive. However, due to heavy rains that were occurring at the time, Plant personnel were not able to completely contain the leak. The fluoride solution was diverted to the nearby storm drain, where it entered the City's storm water system and eventually reached the Unnamed Tributary of the Black Warrior River.



14. The Permittee's SPCC plan requires that, "if safe to do so, field personnel must use resources available at the facility to stop the spilled material from spreading." Plant personnel implemented this requirement by deploying sand bags to create a berm and prevent the fluoride solution from spreading off of the property and onto Campus Drive. Due to the safety issues created by the tornado warnings and other severe weather that existed at the time of the incident, Plant personnel were not able to deploy further countermeasures.

15. The manufacturer's MSDS includes a section on accidental release measures. For environmental precautions, the MSDS calls for "report[ing] spills and releases as required to appropriate authorities." Plant personnel complied with this requirement by promptly and timely notifying all agencies identified above.

16. The MSDS also calls for the spilled solution to be contained and collected with absorbent material, and placed in an appropriate container for disposal. Plant personnel were able to contain the leak and prevent the fluoride solution from spreading off the property to Campus Drive, but due to the heavy rains that existed at the time of the leak, they were not able to use absorbent material to collect the fluoride solution.

17. Finally, the MSDS calls for the affected area to be flushed with water. The heavy rains that occurred at the time of the leak effectively flushed the affected area, and further diluted the fluoride solution before it entered the storm water system or the Unnamed Tributary of the Black Warrior River.

18. At about 10:45 p.m., all fluoride solution had drained from the tank, and Plant personnel began an initial assessment of the area. Plant personnel discovered a complete failure of the concrete secondary containment berm. The fluoride solution had leaked through all seams in the concrete berm, and concrete areas were pitted from exposure to the fluoride solution. An initial inspection of the exterior of the tank itself showed no visible cracks, but there did appear to be damage on the interior of the tank near the discharge line. However, Plant personnel were not able to inspect the area of damage closely, and the initial assessment ended at about 11:45 p.m.

19. On March 31, 2022, Department personnel conducted an onsite investigation at the Plant. The Department's inspector and the Permittee's Plant Operations Manager inspected the outfall, and found the outfall to be in good condition. The Department's inspector observed no negative impacts to fish, and there was no other visible harm to wildlife.

20. Shortly after the incident, the Permittee engaged TTL, Inc., an Alabama professional engineering firm, to perform an assessment of the secondary containment system for the fluoride tank, and to recommend steps that need to be taken to repair the secondary containment system and prevent future failures.

21. Permit Condition I.C.1.b. requires the Permittee to submit discharge monitoring reports (DMRs) on a semiannual basis, so that they are received no later than the 28th day of July and the 28th day of January, with each submittal reporting the results of all testing performed during the six month period preceding the reporting month.

22. The Permittee's DMRs for the period of July 2020 through December 2020 were due on or before January 28, 2021. On Friday, February 12, 2021, at 4:39 p.m., the Permittee received an email notification from the Department that the DMRs had not been received. The email notification stated that the past due DMRs should be submitted without delay. The Permittee promptly submitted the DMRs on Saturday, February 13, 2021. The Permittee received no further communications from the Department concerning the DMRs.

23. Permit Condition I.A. requires that discharges be limited and monitored as specified in the Permit. The Permittee submitted DMRs for the months of October 2020 and December 2020 on February 13, 2021. The Department took no action with respect to those DMRs prior to sending the Permittee this consent order.

24. The Permittee submitted the DMR for the month of September 2021 on or before January 28, 2022. The Department took no action with respect to those DMRs prior to sending the Permittee this consent order.

25. Permit Conditions I.C.2.b. and I.C.2.c. requires that if for any reason the Permittee's discharge does not comply with any limitation of the Permit, the Permittee shall submit to the Director a written report using a Noncompliance Notification Form 421 with the next DMR indicating a description of the discharge, cause of noncompliance, period of noncompliance, and description of steps taken and/or being taken to reduce or eliminate the noncomplying discharge and to prevent its recurrence. As of the date of this consent order, the Permittee has submitted all Noncompliance Notification Form 421s required by the Permit.

26. The Permittee's position with respect to each of the penalty factors is as follows:

- A. Seriousness of the Violations and Base Penalty: The Permittee agrees that Ala. Code § 22-22A-5(18)(c) sets out the factors the Department must consider in assessing any penalty for any alleged violations.
- B. The Standard of Care: The Permittee vigorously disputes that it violated any applicable standard of care. The secondary containment system for the fluoride tank had previously been inspected by the Department, without any noted deficiencies or other comment. The Permittee vigorously disputes that any penalty or enhancement is appropriate.
- C. Economic Benefit Which Delayed Compliance May Have Conferred: The Permittee derived no economic benefit whatsoever from any of the alleged violations.
- D. Efforts to Minimize or Mitigate the Effects of the Violations Upon the Environment: The Permittee attempted to minimize and mitigate the environmental effects of the alleged violations. The Permittee's response to the events of March 30, 2022, complied with the Permittee's written SPCC plan. The Department has identified no evidence of any environmental harm caused by the alleged violations.
- E. History of Previous Violations: The Permittee vigorously disputes that it has a history of previous violations, or that any penalty or enhancement is appropriate.
- F. The Ability to Pay: The Permittee is able to pay the Department's proposed penalty.

27. Permittee neither admits nor denies the Department's contentions set out in this consent order. The Permittee has agreed to the terms of this Consent Order in an effort to resolve the disputed issues cited herein, to avoid the expense of litigation, and to buy peace.

**ORDER**

THEREFORE, without admitting that it has violated any statutes, regulations, or other law, the Permittee, along with the Department, desires to resolve and settle the alleged violations cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code, §§ 22-22A-5(18)c, as amended, as well as the need for timely and effective enforcement, the Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Permittee agree to enter into this Consent Order with the following terms and conditions:

A. The Permittee shall pay to the Department a civil penalty in the amount of **\$22,600.00** in settlement of the violations alleged herein within **forty-five (45) 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

All checks shall reference the Permittee's name and address and the ADEM Order number of this action.

C. The Permittee shall prepare and submit to the Department an Engineering Report that addresses the cause(s) of the failure of the secondary containment system for the fluoride tank, and repairs necessary to make the secondary containment system resistant to hydrofluorosilicic acid. In addition, the Engineering Report should address the need for changes in maintenance and operating procedures to correct those violations listed in this Order and to prevent such violations in the future, as necessary to achieve compliance with applicable rules and regulations and Permit. 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 (90) 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 (30) days** after receipt of the Department's comments. The Permittee shall complete implementation of the recommendations provided in the Engineering Report not later than **180 days** after the date of issuance of this Order.

D. The Permittee shall comply will all terms, conditions, and limitations of the Permit immediately upon the issuance of this Order.

E. 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 **210 days** after the date of issuance of this Order.

F. 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 C and E 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 C and E, the Department reserves the right to file a new action against the Permittee.

G. Cumulative stipulated penalties described in Paragraph F above shall under no circumstances exceed \$15,000.00. Once stipulated penalties of \$15,000.00 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.

H. 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.

I. 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, except that no elected official, employee, or other representative of the Permittee shall be personally liable for any civil penalty, and stipulated penalties due under this Consent Order. 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.

J. 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.

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

L. 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 (10) 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.

M. 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 facility name 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. 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.

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

O. Final approval and entry into this Consent 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 Consent Order.

P. 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.

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

R. 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 Tuscaloosa

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

EXECUTED AND ISSUED:

Kimberly Michael, P.E.

By: Kimberly Michael By: \_\_\_\_\_

Its: Associate Director, Logistics and Asset Management Its: \_\_\_\_\_

Date: August 30, 2022 Date: \_\_\_\_\_



**Attachment 1**


**City of Tuscaloosa  
Ed E. Love Water Treatment Plant, Tuscaloosa County  
ALG640061**

Violation*	Number of Violations*	(A)	(B)	(C)
		Seriousness of Violation*	Standard of Care*	History of Previous Violations*
Unpermitted discharge (3/30/2022)	1	\$ 7,500.00	\$ 2,500.00	\$ -
Failed to properly provide spill prevention, control, and/or management sufficient to prevent any spills of pollutants from entering a water of the state - stored material incompatible with secondary containment	1	\$ 5,000.00	\$ 5,000.00	
Exceedances of numeric permit limits	10	\$ 2,100.00		\$ 500.00

\$14,600.00	\$7,500.00	\$500.00
<b>Total (A)</b>	<b>Total (B)</b>	<b>Total (C)</b>
<b>Base Penalty Total</b> [Total (A) + Total (B) + Total (C)]		\$22,600.00
<b>Mitigating Factors (-)</b>		
<b>Economic Benefit (+)</b>		
<b>Ability to Pay (-)</b>		
<b>Other Factors (+/-)</b>		
<b>INITIAL PENALTY</b>		\$22,600.00

**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>Total Adjustments (+/-)</b>	\$0.00
<b>FINAL PENALTY</b>	\$22,600.00

Footnotes

\*See the "Department's Contentions" portion of the Order for a detailed description of each violation and the penalty factors