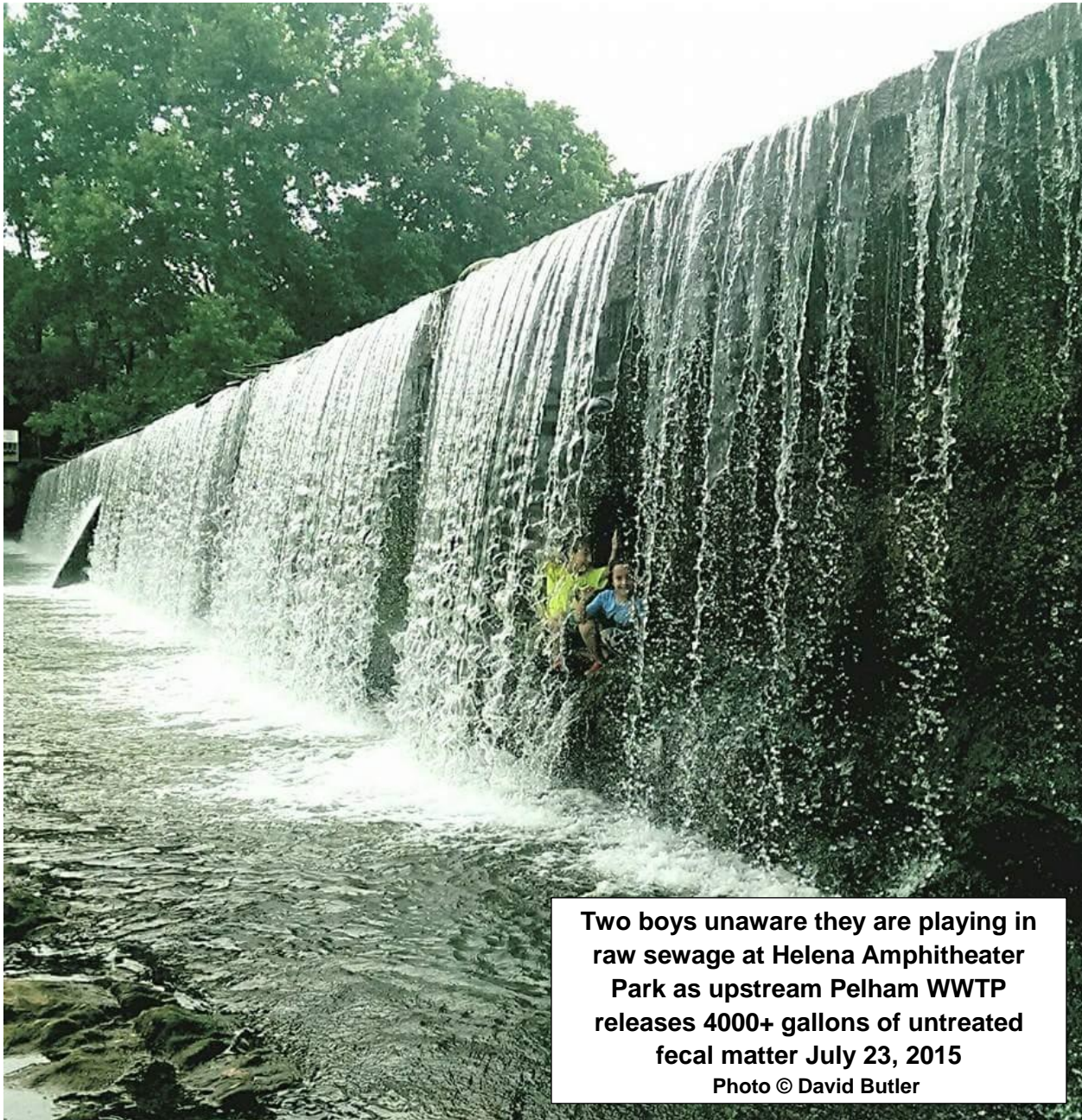


PETITION TO AMEND ADEM ADMIN. CODE R. 335-6-6-.12



BY Alabama Rivers Alliance, Inc.; Black Warrior Riverkeeper, Inc.; Cahaba Riverkeeper, Inc.; Choctawhatchee Riverkeeper, Inc.; Coosa Riverkeeper, Inc.; Friends of Hurricane Creek; Little River Waterkeeper; Mobile Baykeeper, Inc.; and Tennessee Riverkeeper, Inc., PETITIONERS.

March 7, 2017

**BEFORE THE
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION**

IN THE MATTER OF:

PETITION TO AMEND ADEM ADMIN. CODE R. 335-6-6-.12

ALABAMA RIVERS ALLIANCE, INC., BLACK WARRIOR
RIVERKEEPER, INC., CAHABA RIVERKEEPER, INC.,
CHOCTAWHATCHEE RIVERKEEPER, INC., COOSA
RIVERKEEPER, INC., FRIENDS OF HURRICANE CREEK,
LITTLE RIVER WATERKEEPER, MOBILE BAYKEEPER, INC.,
and TENNESSEE RIVERKEEPER, INC.

Petitioners.

PETITION TO AMEND ADEM ADMIN. CODE R. 335-6-6-.12

I. INTRODUCTION

1. *Code of Alabama* § 41-22-8 and ADEM Admin. Code r. 335-2-2 authorize any person to petition the Environmental Management Commission to engage in rulemaking. These provisions are “intended to provide the members of the public with a mechanism for affecting the content of an agency’s rules.” Commentary to *Code of Alabama* § 41-22-8. This mechanism allows any person to induce the Environmental Management Commission “to engage in a reasoned reconsideration of the existing state of the law and to change it if . . . that seems appropriate.” *Summary of Reasons Supporting Adoption of Rules on “Petitions for Rulemaking,” ADEM Admin. Code Chapter 335-2-2* (quoting Bonfield, *The Iowa Administrative Procedure Act: Background, Construction, Applicability, Public Access to Agency Law, The Rulemaking Process*, 60 Iowa L. Rev. 731, 894-95 (1975)). Granting a petition for rulemaking does not mean or imply that the proposed rule will be adopted; it only means that public comment on the

proposed rule will be solicited and that a decision whether to adopt the proposed rule will be made later.

2. This Petition seeks to have the Environmental Management Commission amend the provision of ADEM Admin. Code r. 335-6-6-.12 titled “Immediate Notification.” Presently, this regulation requires a permittee to “report 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 sanitary sewer overflow.” ADEM Admin. Code r. 335-6-6-.12(1)(6)(v). However, the regulation provides no minimum notification standard nor does it prescribe the content for such a report to the public.

3. As a result, permittees are failing to provide immediate, adequate or consistent notification to the public when they become aware of a notifiable sanitary sewer overflow. Amending the regulation to provide a minimum standard of notification will assist permittees in the execution of their permit and public responsibilities. Moreover, such an amendment is critical to ensure that the affected public obtains timely and sufficient information to protect themselves and their families from the adverse consequences of exposure to sanitary sewer overflows. *See* ADEM Admin. Code r. 335-6-6-.12.

4. Sewage can include “untreated human and animal wastes, household chemicals, industrial chemicals, pesticides, oxygen-demanding pollutants, suspended solids, nutrients, toxicants, floatable matter, radioactive materials and pathogens.” Lalor, Meyland and Pitt, *Monitoring and Assessing the Environmental and Health Risks of Separate Sanitary Sewer Overflows (SSOs)*, found at <https://acwi.gov/monitoring/nwqmc.org/98proceedings/Papers/14-MEYL.html> (last accessed February 9, 2017).

5. Citizens have a fundamental right to know when their local streams and rivers are unsafe for swimming, fishing and other recreation due to sewage pollution. Given the extent of sewage spills and overflows in the State and nation, it is essential that Alabama citizens have ready access to this information so they can keep themselves and their families safe. The bacteria, parasites and viruses in sewage cause a wide array of short and long term illnesses that are dangerous, and especially so for children, the elderly and the immuno-compromised. In addition to human waste, sewage typically contains household chemicals and personal hygiene products. It can contain industrial chemicals and other waste from indirect dischargers. Estimates vary for how many people are sickened or killed each year, but they are all large. American Rivers, *How Sewage Pollution Ends Up in Rivers*, found at <https://www.americanrivers.org/threats-solutions/clean-water/sewage-pollution/> (last accessed February 3, 2017).

6. Because they handle a potentially dangerous and harmful waste stream, wastewater treatment facilities should provide timely and accurate information about spills and overflows to keep their customers, neighbors and communities safe.

7. The kind of immediate, effective public notification requested by Petitioners is capable of being done in Alabama and would not unduly burden permittees, as some Alabama systems already employ similar notification methods. *See generally U. S. and Alabama v. Bd. of Water and Sewer Comm'rs of Mobile*, Civ. No. 02-0058-CB-S (S. D. Al. 2002), and *Mobile Bay Watch, Inc. v. Bd. of Water and Sewer Comm'rs of Mobile*, Civ. No. CV-99-0595-CB-S (S.D. Al. 2002), (consent decree settling both cases). The City of Mobile has been engaging in multi-faceted public notification for almost fifteen years under this consent decree.

8. The kind of immediate, effective public notification requested by Petitioners is not only capable of being done in Alabama, but in fact is being done in neighboring states. *See, e.g., Ga.*

Comp. R. & Reg. 391-3-6-05 (Regulation titled “Emergency Actions” provides that it is “the duty of the person in charge” of a publicly owned treatment works “to take all reasonable and necessary steps to prevent injury to property and downstream users of said water.” Such steps include complying with a detailed monitoring plan specified by the regulation; placing notices in local media (television, radio and print media) within 24 hours of becoming aware of the spill; in case of a “major spill” (defined as >10,000 gallons and/or causing a water quality violation and/or exceeding permit limits beyond a certain established percentage), providing notice to every county, municipality or other public agency whose public water supply is within a distance of 20 miles downstream and to any others which could potentially be affected by the major spill; ensure that any required notice includes the date of the spill, the location and cause, the estimated amount and name of receiving stream, and any corrective action taken. The operator must also “immediately” post a notice as close as possible to where the spill occurred and where the spill entered State waters in order to notify citizens, who could come into contact with the affected water. Finally, the operator must post additional notices of the spill “along the portions of the waterway affected by the incident (*i.e.*, at bridge crossings, trails, boat ramps, recreational areas, and other points of public access to the affected waterway)” and the notices must remain in place for a minimum of seven days after the spill has ceased.)

9. One of the best ways to reach people is via phone or email. American Rivers, *What’s In Your Water? The State of Public Notification in 11 U. S. States* at 17 (2007).¹ Some municipalities and counties (*e.g.*, Portland, Oregon) send interested residents emails when there is an overflow. *Id.* Others (*e.g.*, Kentucky’s Sanitation District No. 1) maintain a phone hotline

https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=4&ved=0ahUKEwjU2b_T9fTRAhVB7SYKHU5NB6gQFggvMAM&url=https%3A%2F%2Faahealth.org%2Fpdf%2Famerican-rivers-07.pdf&usq=AFOjCNF6XmFmTl4grk-EGlrt0nqWVMwFQg&sig2=Uh00ThO6jsT-2i51QgXDUw&bvm=bv.146094739,d.eWE&cad=rja, (last accessed February 3, 2017).

that tells local residents when an overflow is in effect. *Id.* These methods of notification offer “a cheap and effective,” easily implemented means of communicating with affected citizens, especially “regular recreational users that are at the highest risk of contact with sewage.” *Id.*

10. The kind of immediate notification requested by Petitioners is supported by USEPA, which outlines what an adequate notification plan should contain. *Optimizing Operation, Maintenance and Rehabilitation of Sanitary Sewer Collection Systems*, found at https://www.epa.gov/npdes/pubs/sso_optimizing_ch8.pdf (last accessed February 3, 2017) (“Appropriate public notification of these overflows can significantly reduce potential public exposure to raw or partially treated sewage,” especially in “high-exposure areas, such as protection areas for public drinking water intakes, swimming beaches, waters where primary contact recreation occurs, and shellfish harvesting areas.” Appropriate mechanisms for immediately notifying the public “need to be incorporated into the . . . emergency response plan” and can include “hand delivery of information bulletins or door hangers where the population “is limited, easily defined, and accessible;” temporary posting at affected use areas “where recreational uses are affected on a short-term basis” as well as at “selected public places with affected use areas such as a bulletin board or public information center at a park or beach;” notices in newspapers or in radio/television public announcements, and messages on local access cable TV; E-mail list server.” Moreover, “the emergency response plan should identify mechanisms to provide this notification and identify the entities to be notified”).

II. PETITIONERS

11. The Petitioners are:

Alabama Rivers Alliance, Inc.
2014 6th Ave N #200
Birmingham, Alabama 352031
(205) 322-6395

Black Warrior Riverkeeper, Inc.
712 37th Street South
Birmingham, Alabama 35222
(205) 458-0095

Cahaba Riverkeeper, Inc.
4650 Old Looney Mill Road
Birmingham, Alabama 35243
(205) 967-2600

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

Coosa Riverkeeper, Inc.
102-B Croft Street
Mt Laurel, Alabama 35242
(205) 981-6565

Friends of Hurricane Creek
P. O. Box 40836
Tuscaloosa, Alabama 35404
(205) 310-3739

Little River Waterkeeper
215 Grand Ave SW
Fort Payne, Alabama 35967
(256) 516-2877

Mobile Baykeeper, Inc.
450 Government Street
Mobile, AL 36602
(251) 433-4229

Tennessee Riverkeeper, Inc.
P.O. Box 2594
Decatur, AL 35602
(423) 451-6807

III. STATEMENT OF INTERESTS

12. Members of Petitioner organizations use and enjoy the surface waters of the State of Alabama for drinking water, fishing, wimming, boating, canoeing, kayaking, aquatic and wildlife observation, hunting and other recreational activities. The failure to provide immediate notification to the public deprives those members of the full use of such waters for drinking water, fishing, swimming, boating, canoeing, kayaking, aquatic and wildlife observation, hunting and other recreational activities. Because immediate notification is not occurring, members of Petitioner organizations are unaware of and unable to know about or protect themselves from the known harmful effects of sanitary sewer overflows.

IV. PROPOSED AMENDMENT TO ADEM ADMIN. CODE R. 335-6-6-.12

13. The specific language of the proposed amendment to ADEM Admin. Code R. 335-6-6-.12 is provided below, as shown in red font. The complete text of ADEM Admin. Code r. 335-6-6-.12 is attached as Exhibit A.

335-6-6-.12 Conditions Applicable to All NPDES Permits. The following requirements apply to all NPDES permits. Provisions implementing these requirements shall be incorporated into each permit.

(l) Reporting Requirements.

* * *

6. Noncompliance Reporting.

* * *

(v) Immediate notification. The permittee shall report 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 sanitary sewer overflow.

(vi) Minimum requirements for public notification. Within twelve (12) hours of discovery of any sanitary sewer overflow that enters waters of the State, a permittee shall do the following:

(A) physically post and maintain warning sign(s) at the site of the spill and also where the spill enters the water of the State for a for a minimum of seven days after the overflow has ceased;

(B) physically post a warning at all other affected areas, including downstream areas such as bridges, fishing piers, boat launches, parks, trails, public access sites, etc;

(C) conspicuously post a physical notice describing the size and location of the spill; when it began and whether it is ongoing or when it was stopped; whether it could include industrial chemicals; any affected areas and any other relevant information at a pre-designated central public location in the community, as well as on any website or social media platforms maintained by the permittee;

(D) provide notification, including all information specified by subparagraph 335-6-6-.12(1)6.(vi)(C), to local print, radio and broadcast media; and

(E) publicly advertise and maintain a process that allows local citizens, regulatory agencies and any other public stakeholders to “opt in” to general public notification of sanitary sewer overflows via e-mail or text message or automated telephone message.

Nothing in this subparagraph shall prohibit a permittee from employing additional means of notification to reach the public.

(vii) Public notification plan. Within ninety days of the enactment of this regulation and as a part of each permit application thereafter, Permittees shall file and maintain a public notification plan with the Department for immediate public notification which specifies how the requirements of this subparagraph 335-6-6-.12(1)6.(vi) will be met; however, the plan shall not be subject to review by the Department except when the NPDES permit is modified or reissued. Failure to file or implement such a plan incorporating all minimum requirements for public notification shall be considered a violation of this permit. The filed public notification plan shall be subject to public comment whenever the permit is proposed to be issued, modified or reissued.

V. EVIDENCE, DATA, AND INFORMATION SUPPORTING PROPOSED AMENDMENT

14. Because members of Petitioner organizations live near and also frequently recreate downstream of sanitary sewer overflows, they are placed in harm's way every time there is an overflow. See Exhibit B (Petitioners' pictures of sewage spills and overflows). In addition, many of these members recreate in different jurisdictions and across jurisdictional boundaries. Because current notification procedures are completely *ad hoc*, there is no standard or predictable way for these individuals to obtain critical information about sanitary sewer overflows in any given jurisdiction. The "immediate" notification mandated by ADEM Admin. Code R. 335-6-6-.12(1)(v) is meaningless without a minimum, uniform standard that makes the requisite information about sanitary sewer overflows actually available to the public. Without a minimum standard statewide for public notification, local sanitary sewer system operators currently employ widely different and inconsistent means of notification. See ¶¶ 15 through 20. The end result is that the public is not being immediately notified as required by ADEM Admin. Code R. 335-6-6-.12(1)(6)(v).

15. For example, on July 2, 2016, there were several major sanitary sewer overflows (estimated to be between 400,000 and 4 million gallons) in Northport, Alabama which contaminated the Black Warrior River and several of its tributaries: Upper Smith Creek, Creek Mill Creek, Tater Hill Creek and two unnamed tributaries. July 2 was the Saturday of the long Fourth of July weekend when many people could be expected to be recreating downstream of the sanitary sewer overflow. The only public notification made by Northport was a brief statement via the City of Northport's Facebook social media page on July 2, 3 and 5 on a page that is not widely followed by those who have Facebook accounts and completely unavailable to those who

lack accounts or computer access. The “notification” included no information about when the spill began, how much sewage was spilled, or if any downstream public health notices or water contact warnings were being issued. No one answering Northport phones, including their 24-hour Emergency Water/Wastewater Number ((205) 333-3017), had any information for the public about the spill. Black Warrior Riverkeeper, Inc., a four-person environmental nonprofit, investigated the sanitary sewer overflow and became a *de facto* clearing house for information about the spill as many concerned residents contacted it for information which it could not obtain from the City of Northport. Black Warrior Riverkeeper, Inc. posted information on its social media platforms and contacted local media, which prompted widespread coverage of the overflow as well as belated public notification. Because no signs notifying the public were placed at the river or its affected tributaries, Black Warrior Riverkeeper, Inc. created a map showing the locations of the overflows and cautioned people to refrain from swimming downstream of the spill in Northport and Tuscaloosa. Upon information and belief, the permittee did not perform any water testing to determine whether or when it might be safe to recreate downstream of the spill. This spill and its aftermath is one of many examples across the Black Warrior River watershed and the state of Alabama where municipalities are not properly notifying the public of sanitary sewer overflows, despite a regulation that requires such notification. These operational and enforcement failures put local residents and downstream recreational users at significant risk.

16. For example, on July 22, 2015, more than 4,000 gallons of sewage overflowed from the Pelham Wastewater Treatment Plant and into Buck Creek, a 17.3-mile-long tributary of the Cahaba River that is a popular destination for swimming and recreation. Other than a Pelham plant manager who went out and asked a few children to get out of the creek at Helena's

Amphitheater Park, a popular swimming site, there was no public notification of the spill to keep residents from swimming, according to David Butler, Cahaba Riverkeeper. Butler, with Dr. Shaun Crawford, was already near the site of the spill performing routine water testing. Crawford's two children unknowingly swam nearby. As a result of the spill, the test results showed "[heavy, heavy contamination] ... You would absolutely not want to be in that water," according to Butler. While Buck Creek was primarily affected, Butler anticipated that *E coli* levels were likely still elevated on the Cahaba all the way down to Highway 52 as a result of the spill, yet there was no notification to downstream recreational users. One of Crawford's children experienced stomach discomfort the evening after his swim in the polluted water at Amphitheater Park. Butler believes it would have been easy for the City of Pelham, working with the City of Helena, to prevent the risk of illness through immediate public notification. Upon information and belief, the permittee did not perform any water testing to determine whether or when it might be safe to recreate downstream of the spill. This spill and its aftermath is one of many examples across the Cahaba River watershed and the state of Alabama where municipalities are not immediately notifying the public of sanitary sewer overflows, despite a regulation that requires such notification. These operational and enforcement failures put local residents and downstream recreational users at significant risk.

17. For example, in 2008 Conservation Alabama Foundation and Choctawhatchee Riverkeeper, Inc. filed a Notice of Intent to Sue under the Clean Water Act, 33 U.S.C. 1365, against the City of Dothan for issues related to the Beaver Creek Wastewater Treatment Plant. NPDES permit violations and the infiltration of rainwater into sewer lines regularly caused large discharges of untreated sewage to the Little Choctawhatchee River and its tributaries. These sanitary sewer overflows continued largely unabated for at least a decade and through Spring

2016. Earlier this year, Choctawhatchee Riverkeeper filed a second Notice of Intent to Sue against the City of Dothan for sanitary sewer overflows to the Little Choctawhatchee River and tributaries. The City of Dothan's public notification about these spills has generally been to place signage at the spill site and occasionally along ditches near the spill site. Choctawhatchee Riverkeeper, Inc. has never observed signs at recreational access sites on the Little Choctawhatchee River nor has Choctawhatchee Riverkeeper, Inc. observed or heard reports of signage from others. Also, Choctawhatchee Riverkeeper, Inc. has never observed any radio or television coverage about such spills initiated by the City of Dothan. Earlier this year, the citizen nonprofit Environmental Defense Alliance, representing Choctawhatchee Riverkeeper, filed a third Notice of Intent to Sue for sanitary sewer overflows at the Omussee Creek and Cypress Creek Wastewater Treatment Plants which discharge to Omussee Creek and Cypress Creek. Although the City of Dothan posts signs near spill sites, no signs were placed at stream crossings downstream where people fish and recreate. Upon information and belief, the City of Dothan never performed any water testing to determine whether or when it might be safe to recreate downstream of these spills. These spills and their aftermath are one of many examples across the Choctawhatchee River watershed and the state of Alabama where municipalities are not immediately notifying the public of sanitary sewer overflows, despite a regulation that requires such notification. These operational and compliance failures put local residents and downstream recreational users at significant risk.

18. For example, on or before July 20, 2016, Rainbow City Utilities experienced a sanitary sewer overflow of between 1,200 to 1,400 gallons of sewage into Horton Creek, which flows from a populated residential and commercial area into Lake Gadsden, which then flows into the Coosa River. Local resident Bruce Payne and his neighbors smelled a foul odor emanating from

the creek and noticed the water did not look right; he notified the utility on July 20, 2016. When he saw no immediate response by Rainbow City Utilities, Payne contacted Coosa Riverkeeper, Inc. on July 21. Coosa Riverkeeper, Inc., a two-person environmental nonprofit, investigated and took samples on July 22. Riverkeeper Frank Chitwood states that the odor of sewage in Horton Creek was overwhelming and gray deposits of sewage were visible on the creek bottom. He collected a sample to check for *E. coli* and the result was greater than 2,419.6 MPN/100mL. Rainbow City Utilities' original SSO report stated that public notice was not necessary because of no immediate danger, but Coosa Riverkeeper, Inc.'s follow up testing showed *E. coli* levels were still unsafe for human contact a week later in a creek where locals play and recreate. A post-spill email from Rainbow City Utilities states that "[t]here were some signs made to notify the public," but neither Coosa Riverkeeper, Inc. nor its affected members saw any signs posted. Upon information and belief, Rainbow City Utilities did not perform any water testing to determine whether or when it might be safe to recreate downstream of the spill. This spill and its aftermath is one of many examples across the Coosa River watershed and the state of Alabama where municipalities are not immediately notifying the public of sanitary sewer overflows, despite a regulation that requires such notification. These operational and compliance failures put local residents and downstream recreational users at significant risk.

19. For example, Mobile Baykeeper, a Mobile-based environmental group, filed suit against the Prichard Water Works and Sewer Board, over a massive sewage spill in 2003 that went undetected for months. Records show that Baykeeper, then known as Mobile Bay Watch, sued in 2004 after the permittee disclosed that a cracked pipe had been pouring tens of millions of gallons of raw sewage over five months into a wooded area between Whistler Street and Rebel Road. Sewer Board officials stated that the spill amount may have been more than 400,000

gallons per day. There was no public notification by the permittee; only when Baykeeper discovered the spill was the public finally notified. Upon information and belief, the permittee did not perform any water testing to determine whether or when it might be safe to recreate downstream of the spill. This spill and its aftermath is one of many examples across the Mobile River watershed and the state of Alabama where municipalities are not properly notifying the public of sanitary sewer overflows, despite a regulation that requires such notification. These operational and enforcement failures put local residents and downstream recreational users at significant risk.

20. For example, on February 8, 2016, the Gilliam Creek Wastewater Treatment Plant had a sewage spill of an estimated 100,000 gallons into Gilliam Creek. This plant is one of two operated by the Arab Sewer Board and is the subject of a pending lawsuit, *Alabama and Black Warrior Riverkeeper, Inc. v. the Arab Sewer Board*, 50-CV-2015-900301.00 (Marshall Co. Circ. Ct. July 29, 2015). Despite the pending litigation, the Arab Sewer Board failed to notify ADEM within 24 hours and failed to notify the public at all. This spill and its aftermath is one of many examples across the Tennessee River watershed and the state of Alabama where municipalities are not properly notifying the public of sanitary sewer overflows, despite a regulation that requires such notification. These operational and enforcement failures put local residents and downstream recreational users at significant risk.

21. First and most importantly, establishing minimum standards for what constitutes adequate notification will promote and protect the public health of those Alabama's citizens who live near or use waterbodies near sanitary sewer overflows. Second, minimum standards will allow many citizens who may recreate in different areas of the community or the State to predictably, reliably and consistently obtain critical information about threats to any waterbodies

they plan to use. Finally, establishing these minimum standards will provide a template for wastewater treatment systems operators in developing a prompt and proper notification system without each individually having to devote resources into deciding what immediate notification should look like. Establishing such a plan in advance of a notifiable sanitary sewer overflow will also ensure that these operators have thought through proper notification and can simply follow a known and established protocol, as opposed to developing such a method on the fly during an actual overflow.

22. Sanitary sewer overflows pose a substantial public health and environmental challenge to the citizens of Alabama. The adverse effects of human exposure to raw sewage are well known and well-documented. “Sewer overflows are a human health issue because they can create the potential for exposure to disease-causing pathogens, including protozoa, bacteria, and viruses. Activities involving exposure to [sewage] contaminants through swimming or other contact can lead to infectious diseases such as hepatitis, gastrointestinal disorders, dysentery, and swimmer’s ear. Other forms of bacteria can cause typhoid, cholera, and dysentery. Human health also can be impacted from ingesting fish or shellfish contaminated by [sewage] discharges.” *USEPA Summary of the August 14 – 15, 2002, Experts Workshop on Public Health Impacts of Sewer Overflows* at 5.² EPA estimates that each year up to 3.5 million people in the U.S. become ill from beach contact with raw sewage from sanitary sewer overflows. (Dorfman and Rosselot, 2011). “Because SSOs contain raw sewage they can carry bacteria, viruses, protozoa (parasitic organisms), helminths (intestinal worms), and borroughs (inhaled molds and fungi). The diseases they may cause range in severity from mild gastroenteritis (causing stomach cramps and

²<https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwj37aClypLSAhWDLyYKHdbHBZwQFggcMAA&url=http%3A%2F%2Fnepis.epa.gov%2FExe%2FZyPURL.cgi%3FDocKey%3DP1001QYF.TXT&usg=AFQjCNH9120HcLB4QITF5xZNRwjUGIsP3w&sig2=7ImShVFk25JQU1HcSRpQLA> (last accessed February 15, 2017).

diarrhea) to life-threatening ailments such as cholera, dysentery, infections hepatitis, and severe gastroenteritis.” USEPA’s Offices of Water and Wastewater Management, *Sanitary Sewer Overflows What are They and How Can We Reduce Them?* (Summer 1996) at 2.³ For example, in 1990 in Cabool, Missouri, SSOs leaked into nearby water lines, contaminating the drinking water with a pathogenic strain of *E. coli*. Four people died and about 250 were sickened. See Lalor, Meyland and Pitt, *supra*. Waterborne diseases generally result from ingesting contaminated water, but they may also be contracted through inhalation of water vapors, eating contaminated fish and swimming. USEPA, *Keeping Raw Sewage & Contaminated Stormwater Out of the Public’s Water* (2011) at 3.⁴ According to a study by the University of Alabama at Birmingham, bacteria and pathogens from human fecal matter can remain viable in water up to three weeks after the sewage has been dumped. In areas of sedimentation, such as dams, bacteria from sewage can settle and remain for up to a year. See Lalor, Meyland and Pitt, *supra*. “Sediments ... serve as a sink for pathogens (and indicators) from the water column, especially when they are attached to feces, soils, and clay particles that enhance the settling out process. A few studies have shown that particulate associated pathogens may survive for months or even years in bottom sediments under certain circumstances.” Natural Resources Defense Council, *Swimming in Sewage* (2004), found at <http://www.nrdc.org/water/pollution/sewage/sewage.pdf> (last accessed February 9, 2016).

³<https://nepis.epa.gov/Exe/ZyNET.exe/200044HE.TXT?ZyActionD=ZyDocument&Client=EPA&Index=1995+Thru+1999&Docs=&Query=&Time=&EndTime=&SearchMethod=1&TocRestrict=n&Toc=&TocEntry=&QField=&QFieldYear=&QFieldMonth=&QFieldDay=&IntQFieldOp=0&ExtQFieldOp=0&XmlQuery=&File=D%3A%5Czyfiles%5CIndex%20Data%5C95thru99%5CTxt%5C00000006%5C200044HE.txt&User=ANONYMOUS&Password=anonymous&SortMethod=h%7C-&MaximumDocuments=1&FuzzyDegree=0&ImageQuality=r75g8/r75g8/x150y150g16/i425&Display=hpfr&DefSeekPage=x&SearchBack=ZyActionL&Back=ZyActionS&BackDesc=Results%20page&MaximumPages=1&ZyEntry=1&SeekPage=x&ZyPURL> (last accessed February 15, 2017).

⁴https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEwin29PPy5LSAhVDSyYKHcckC2IQFggaMAA&url=https%3A%2F%2Fwww.epa.gov%2Fregion02%2Fwater%2Fsewer-report-3-2011.pdf&usq=AFOjCNE6DFA5IVFkZGR2h1jFIPMLY8ZcIg&sig2=huJWTCulDn3ROiuSjwu_lg&bvm=bv.146786187.d.eWE&cad=rja (last accessed February 15, 2017).

23. In order to protect Alabama citizens from contact with sewage and reliably provide the “immediate notification” specified by ADEM Admin. Code R. 335-6-6-.12, the Environmental Management Commission should grant this Petition and initiate rulemaking to amend ADEM Admin. Code R. 335-6-6-.12 to require a comprehensive and consistent system of immediate notification to the public.

VI. OTHER FACTORS FOR CONSIDERATION

24. Outdoor recreation is essential to the economy in Alabama. Annually, Alabama outdoor recreation generates \$7.5 billion in consumer spending; creates 86,000 in direct Alabama jobs; pays \$2.0 billion in wages and salaries; and generates \$494 million in state and local tax revenue. The Outdoor Industry Association, *The Outdoor Recreation Economy TAKE IT OUTSIDE for Alabama Jobs and a Strong Economy* (2012), found at <https://outdoorindustry.org/images/.../AL-alabama-outdoorrecreationeconomy-oia.pdf> (last accessed February 9, 2017). These figures do not even include hunting and fishing, *see id.*; it is estimated that recreational fishing in Alabama has a direct total value added impact of \$102.5 million per year, an indirect impact of \$24.7 million, and an induced impact of \$8.3million, or a total impact of \$135.5 million per year in total value added to the State. *See* Ojumu, Gbenga; Hite, Diane; and Fields, Deacue (2016) “Economic Impact of Recreational Fishing in Alabama,” *Professional Agricultural Workers Journal*: Vol. 3: No. 2, 5.⁵ Immediate and adequate public notice of sewage overflows and spills is important not only to protect the public, but to protect the economy. If there is not a reliable, predictable system of notification in place, recreational users may lose confidence in the cleanliness and safety of the State’s waters.

⁵https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwi3vb3mzJLSAhUFZCYKHasBCxoQFggaMAA&url=http%3A%2F%2Ftuspubs.tuskegee.edu%2Fcgi%2Fviewcontent.cgi%3Farticle%3D1064%26context%3Dpawj&usg=AFQjCNFv- QQdv7fHrJr_Y39nwz3Yi92iDA&sig2=UvvhFcf94eJCuHKlqzAlaQ&bvm=bv.146786187,d.eWE, last accessed February 15, 2017.

25. While the Environmental Management Commission has the legal authority to initiate rulemaking to require specific public notification measures to protect the citizens of Alabama from raw or partially treated sewage overflows and spills, it has not done so. There is no constitutional impediment to the adoption of the proposed amendment. The Commission is authorized to adopt the proposed amendment by the following statutory provisions: *Code of Alabama* §§ 22-22-9, 22-22A-5, 22-22A-6, and 22-22A-8.

26. The proposed amendment will promote the expressed legislative intent and general purpose of the Alabama Water Pollution Control Act which are stated as follows:

Whereas the pollution of the waters of this state constitutes a menace to public health and welfare, creates public nuisances, is harmful to wildlife, fish and aquatic life and impairs domestic, agricultural, industrial, recreational and other legitimate beneficial uses of water, it is hereby declared to be the public policy of this state and the purpose of this chapter to conserve the waters of the state and to protect, maintain and improve the quality thereof for public water supplies, for the propagation of wildlife, fish and aquatic life and for domestic, agricultural, industrial, recreational and other legitimate beneficial uses; to provide for the prevention, abatement and control of new or existing water pollution; and to cooperate with other agencies of the state, agencies of other states and the federal government in carrying out these objectives.

Code of Alabama § 22-22-2. Exposure to raw or partially treated sewage from sanitary sewer overflows is a clear and present menace to the public health, as is exposure to industrial chemicals and other dangerous wastes that may be present in the sanitary sewer collection system from industrial dischargers.

27. The proposed amendment will also promote the legislative intent and general purpose of the Alabama Environmental Management Act which is stated as follows:

It is therefore the intent of the Legislature to improve the ability of the state to respond in an efficient, comprehensive and coordinated manner to environmental problems, and thereby assure for all citizens of the state a safe, healthful and productive environment.

Code of Alabama § 22-22A-2. Exposure to raw or partially treated sewage from sanitary sewer overflows denies the citizens of the state a safe, healthful and productive environment when they are not given the immediate notification promised by regulation. Developing a minimum standard for such notification not only promotes efficiency, but also establishes the comprehensive and coordinated approach to environmental problems favored by the Environmental Management Act.

28. The Department was created to, among other things, “protect human health and safety.” *Code of Alabama* § 22-22A-2(1). It is the “duty of the Department to control pollution in the waters of the state” and it specifically possesses the power to “require any person discharging ... pollution into the waters of the state to establish and maintain such records, make such reports ... as the [Department] shall prescribe and provide such other information as the Department may reasonably require.” *Code of Alabama* § 22-22-9(a)(3)(c).

29. However, only the Environmental Management Commission may “establish, adopt, promulgate, modify, repeal and suspend any rules, regulations or environmental standards for” the State. Ala. Admin. Code r. § 22-22A-6(2). Thus, only the Environmental Management Commission may revise ADEM Admin. Code r. 335-6-6-.12 to ensure that the “immediate notification” of the public promised by ADEM Admin. Code r. 335-6-6-.12(1)(6)(v) actually occurs. The Environmental Management Commission possesses the necessary authority to make the requested changes, as is demonstrated by a recently advertised overhaul of Division 335-6 regulations to require electronic reporting.

30. The evidence, data, and information submitted with this petition are substantive, credible and relevant and reasonably support the adoption of the proposed amendment.

31. The Petitioners have not had a prior opportunity to present relevant evidence, data and information on the subject matter of the proposed amendment to the Environmental Management Commission.

32. Representatives of the Petitioners have had a prior opportunity to discuss the concept of a proposed amendment with representatives of the Department.

33. The Department is currently considering the development and implementation of a telephone “app” in the future which would allow the public to access real-time information from the Department’s website about potential spills or overflows in their neighborhood or favorite stream. Upon information and belief, there is no date or deadline for development of this app nor would it actually notify users; these users would have to actively access and monitor ADEM’s website to obtain information. So such an app will be a good means to offer information but it is not the “notification” mandated by ADEM Admin. Code r. 335-6-6-.12.

34. The key to proper public notification is offering information through a mix of available formats in order to reach the maximum number of citizens and it can be done without a substantial investment of time or resources. Vulnerable economic and environmental justice communities are not going to have access to an app, for example, subsistence fisherman, older or less educated Alabamians as well as those in low income households would not be reached by such a system. An app can help provide information, but it is not a means of public notification and should not excuse the responsible wastewater treatment facilities from providing such notification to their immediate communities.

35. The Petitioners believe that wastewater treatment facilities appropriately can and must bear responsibility direct for the immediate notification of the public. This is so because these plants are undertaking an activity with serious public health implications and consequences.

They are in the best position to fill in the informational gaps that presently exist in public notification and current regulation directs them to provide that notification. These wastewater treatment facilities should not be patronized with the “soft bigotry of low expectations;” much of what the Petitioners request can and is being done in cities like Mobile and in states like Georgia.

36. Alternative means of obtaining the same or similar relief are not presently available and have not in the recent past been made available to the Petitioners.

37. The proposed amendment will enhance the established program for the control of water pollution and promote the underlying policies of *Code of Alabama* § 22-22-1 *et seq.* and ADEM Admin. Code Div. 335-6.

38. There is no constitutional impediment to the adoption of the proposed amendment of Ala. Admin. Code r. 335-6-6-.12. The proposed rule is not vague so as to be unconstitutional. *See e.g., Ross Neely Express, Inc. v. Alabama Dep’t of Env’tl. Mgmt.*, 437 So. 2d 82 (Ala. 1983) (rule that is “so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application” is unconstitutional); *Alabama Dep’t of Env’tl. Mgmt. v. Legal Env’tl. Assistance Found., Inc.*, 922 So. 2d 101 (Ala. Civ. App. 2005) (the vagueness question “devolves to whether the regulation is “so incomplete, so irreconcilably conflicting, or so vague or indefinite, that it cannot be executed, and the court is unable, by the application of known and accepted rules of construction, to determine, with any reasonable degree of certainty,” what was intended”). The proposed rule is not overly broad so as to be unconstitutional. *See e.g., Ross Neely Express, Inc.* (rule that “imposes a restraint upon the use of private property that is disproportionate to the amount of evil that will be corrected” is unconstitutional); *City of Russellville v. Vulcan Materials Co.*, 382 So. 2d 525 (Ala. 1980) (same).

39. In addition, the proposed amendment of Ala. Admin. Code r. 335-6-6-.12 does not violate the separation of powers doctrine whereby agency rules may be unconstitutional if the Legislative branch has failed to provide reasonably clear standards to the Executive branch to guide the agency in its execution and administration of a law. *See e.g., Krupp Oil Company, Inc. v. Yeargan*, 665 So. 2d 920 (Ala. 1995) (“The doctrine of separation of powers does not prohibit the legislature from delegating power to execute and administer laws, so long as the delegation carries reasonably clear standards governing execution and administration”); *Morgan County Dep’t of Human Res. v. B.W.J.*, 723 So. 2d 689 (Ala. Civ. App. 1998) (same). The adoption of such a regulation is consistent with the statutes under which its promulgation is authorized and would not usurp legislative powers. *See Ex Parte Jones Mfg. Co., Inc.*, 589 So. 2d 208 (Ala. 1991).

VII. DISPOSITION OF PETITION

40. ADEM Admin Code r. 335-2-2-.06 provides:

Disposition of Petition. Within sixty days after a petition is filed with the Commission in accordance with Rule 335-2-2-.04, the Commission shall do one of the following, provided however, that upon written notice to the petitioner, such sixty day period may be extended for not more than thirty days if the Commission’s next regularly scheduled meeting is not within said sixty day period:

- (a) initiate rule-making proceedings in accordance with *Code of Alabama* 1975, §§ 22-22A-8 and 41-22-5, as amended; or
- (b) deny the petition in writing on the merits stating the reasons therefor.

See also Code of Alabama § 41-22-8.

Respectfully submitted,

s/Eva L. Dillard

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Exhibit A

335-6-6.12 Conditions Applicable to All NPDES Permits. The following requirements apply to all NPDES permits. Provisions implementing these requirements shall be incorporated into each permit.

(a) Duty to Comply.

1. The permittee must comply with all conditions of the permit.

Any permit noncompliance constitutes a violation of the AWPCA and the FWPCA and is grounds for enforcement action, for permit termination, revocation and re-issuance, suspension, modification; or denial of a permit renewal application.

2. The permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the FWPCA for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

3. Any person who violates a permit condition is subject to a civil penalty as authorized by Code of Alabama (1975) §22-22A-5(18) (1987 Cum. Supp.) and/or a criminal penalty as authorized by the AWPCA.

(b) Duty to Reapply. If the permittee wishes to continue a discharge regulated by the permit after the expiration date of that permit, the permittee must apply for re-issuance of the permit at least 180 days prior to its expiration and, except as provided in rule 335-6-6-.06 and subparagraph 335-6-6-.08(1)(k)9., must obtain a new permit prior to the expiration of the existing permit. If the permittee does not desire to continue the discharge of wastewater allowed by an expiring permit, the permittee shall notify the Department at least 180 days prior to expiration of the permit of the permittee's intention not to request reissuance of the permit.

(c) It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce production or other activities in order to maintain compliance with the conditions of the permit.

(d) Duty to Mitigate. The permittee shall take all reasonable steps to minimize or prevent any violation of the permit or to minimize or prevent any adverse impact of any permit violation.

(e) Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the

permittee to achieve compliance with the conditions of the permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities only when necessary to achieve compliance with the conditions of the permit.

(f) Permit Actions. The permit may be modified, revoked and reissued, suspended, or terminated for cause. The filing of a request by a permittee for a permit modification, revocation and re-issuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

(g) Property Rights. The permit does not convey any property rights of any sort or any exclusive privilege.

(h) Duty to Provide Information. The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and re-issuing, suspending, or terminating the permit or to determine compliance with the permit. The permittee shall also furnish to the Director upon request, copies of records required to be kept by the permit.

(i) Inspection and Entry. The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by law to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of the permit;
2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;
3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under the permit; and
4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the AWPCA, any substances or parameters at any location.

(j) Monitoring and Records.

1. All permits shall specify:
 - (i) Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate);

- (ii) Required monitoring, including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring; and
 - (iii) Applicable reporting requirements based upon the impact of the regulated activity.
- 2. To assure compliance with permit limitations, all permits shall specify requirements to monitor:
 - (i) The mass and/or other measurement for each pollutant limited in the permit;
 - (ii) The volume of effluent discharged from each outfall; and
 - (iii) Other measurements as appropriate; including pollutants in internal waste streams, pollutants in intake water for net limitations, pollutants subject to notification requirements, frequency, and rate of discharge.
- 3. Samples and measurements taken for the purpose of monitoring shall be in accordance with the terms of the NPDES permit.
- 4. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by the permit, and records of all data used to complete the above reports or the application for this permit, for a period of at least three years from the date of the sample measurement, report or application. This period may be extended by request of the Director at any time. If litigation or other enforcement action, under the AWPCA and/or the FWPCA, is ongoing which involves any of the above records, the records shall be kept until the litigation is resolved.
- 5. Records of monitoring information shall include:
 - (i) The date, exact place, and time of sampling or measurements;
 - (ii) The individual(s) who performed the sampling or measurements;
 - (iii) The date(s) analyses were performed;
 - (iv) The individual(s) who performed the analyses;
 - (v) The analytical techniques or methods used; and
 - (vi) The results of such analyses.
- 6. All records required to be kept for a period of three years shall be kept at the permitted facility or an alternate location approved by the Department in writing and shall be available for inspection.
- 7. Monitoring shall be conducted according to EPA-approved test procedures in 40 CFR Part 136, unless other test procedures have been approved by the Director or specified in the permit. Upon the establishment of a program for certifying commercial laboratories which perform wastewater analyses, only a laboratory certified by the state may be used for contracting wastewater analyses used for NPDES reporting.

8. Any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained or performed under the permit shall, upon conviction, be subject to penalties as provided by the AWPCA.

(k) Signatory Requirements. All applications, reports, or information submitted to the Director shall be signed and certified according to the requirements of rule 335-6-6-.09.

(l) Reporting Requirements.

1. Planned Changes. The permittee shall apply for a permit modification at least 180 days in advance of any planned physical alterations or additions to a facility. Application is required only when:

(i) The alteration or addition could result in the discharge of additional pollutants or increase the quantity of pollutants discharged. This notification applies to pollutants that are or are not subject to discharge limitations in the permit, as well as to pollutants subject to notification requirements under rule

335-6-6-.13; or

(ii) The alteration or addition would result in additional discharge points that would require coverage under an NPDES permit.

2. Anticipated Noncompliance. The permittee shall give advance notice to the Director of any planned changes in or other circumstances regarding a facility which may result in noncompliance with permit requirements.

3. Any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction, be punished as provided by applicable state and federal law.

4. Transfers. The permit is not transferable to any person except by modification or revocation and re-issuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the AWPCA or FWPCA. The Director may require the submittal of a complete permit application by the new operator and may issue a new permit or the Director may, in the case of a change in operator where no significant change in operations has occurred that would affect compliance with the NPDES permit, where no additional discharges would be added that would require coverage by an NPDES permit and where no additional requirements under the AWPCA or FWPCA are necessary, accomplish transfer of the NPDES permit by the following procedure:

(i) The current permittee and the prospective permittee shall apply for a transfer of the permit at least thirty days in advance of the change in operator.

(ii) This application shall include a written agreement between the existing and new permittees containing the specific date for transfer of permit responsibilities, coverage and liability. This application shall be witnessed and accompanied by the appropriate fee required under chapter 335-1-6.

5. Monitoring Reports.

(i) Monitoring results shall be summarized for each monitoring period on a Discharge Monitoring Report form (DMR) approved by the Department and shall be submitted so that the DMR is received by the Department no later than the 28th day of the month following the reporting period specified in the permit.

(ii) Except as allowed under (v) below, monitoring reports shall be submitted with a frequency dependent on the nature and effect of the discharge, but in no case less than once per year, and as required by the NPDES permit.

(iii) If the permittee monitors any pollutant more frequently than required by the permit using EPA-approved test procedures in 40 CFR Part 136 or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR.

(iv) Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean (zero discharge days shall not be used in these calculations) unless otherwise specified by the Director in the permit.

(v) Except for those storm water discharges associated with industrial activity that are subject to an effluent limitation guideline under applicable Federal Regulations, requirements to report results of storm water discharge monitoring shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge. At a minimum, a permit for such a discharge must require:

(I) The discharger to conduct an annual inspection of the facility site to identify areas contributing to a storm water discharge associated with industrial activity and evaluate whether measures to reduce pollutant loadings identified in a best management practices plan are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed;

(II) The discharger to maintain a record for a period of three years a record summarizing the results of the inspection and a certification that the facility is in compliance with the plan and the permit, and identifying any incidents of

non-compliance;

(III) Such report and certification to be signed by a person meeting the

requirements of paragraph 335-6-6-.09(1);

(IV) Permits for storm water discharges associated with industrial activity

from inactive mining operations may, where annual inspections are impracticable,

require certification once every three years by a Registered Professional Engineer

licensed to practice in the State of Alabama that the facility is in compliance with

the permit, or alternative requirements; and

(V) Permits which do not require submittal of monitoring result reports at

least annually shall require that the permittee report all instances of noncompliance, not required to be reported by this chapter, at least annually.

6. Noncompliance Reporting.

(i) Twenty-four Hour Reporting. The permittee shall report to the Director, within 24 hours of becoming aware of the noncompliance, any noncompliance which may endanger health or the environment. This shall include, but not be limited to, the following circumstances:

(I) Violation of a discharge limitation for any pollutants identified in the permit to be reported within 24 hours;

(II) A discharge which threatens human health or welfare, fish or aquatic life, or water quality standards;

(III) A discharge which does not comply with an applicable toxic pollutant effluent standard or prohibition established under Section 307(a) of the FWPCA;

(IV) A discharge which contains a quantity of a hazardous substance which has been determined may be harmful to the public health or welfare under Section 311(b)(4) of the FWPCA; and

(V) A direct or indirect unpermitted discharge of a pollutant to a water of the state, regardless of the cause of the discharge. This requirement shall not apply to spills or releases that are properly reported to the Department under any other state or federal requirement, if the report is made in accordance with the other requirement.

(ii) In addition to the oral report, a written submission shall also be submitted to the Director no later than five days after becoming aware of the circumstances identified in subparagraph 335-6-6-.12(1)6.(i) above.

(iii) The permittee shall report all instances of noncompliance not

reported under subparagraphs 335-6-6.12(1)6.(i) and (ii) at the time monitoring reports are submitted.

(iv) Written reports required by subparagraph 335-6-6-.12(1)6.(ii) or (iii) shall include the following information:

(I) Description of the noncompliance and its cause;

(II) Period of noncompliance; including exact dates and times, or, if not corrected, the anticipated time it is expected to continue;

(III) Description of the steps taken and/or being taken to reduce or eliminate the noncompliance and to prevent its recurrence;

(v) Immediate notification. The permittee shall report 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 sanitary sewer overflow.

(vi) **Minimum requirements for public notification. Within twelve (12) hours of discovery of any sanitary sewer overflow that enters waters of the State, a permittee shall do the following:**

(A) physically post and maintain warning sign(s) at the site of the spill and also where the spill enters the water of the State for a for a minimum of seven days after the overflow has ceased;

(B) physically post a warning at all other affected areas, including downstream areas such as bridges, fishing piers, boat launches, parks, trails, public access sites, etc;

(C) conspicuously post a physical notice describing the size and location of the spill; when it began and whether it is ongoing or when it was stopped; whether it could include industrial chemicals; any affected areas and any other relevant information at a pre-designated central public location in the community, as well as on any website or social media platforms maintained by the permittee;

(D) provide notification, including all information specified by subparagraph 335-6-6-.12(1)6.(vi)(C), to local print, radio and broadcast media; and

(E) publicly advertise and maintain a process that allows local citizens, regulatory agencies and any other public stakeholders to “opt in” to general public notification of sanitary sewer overflows via e-mail or text message or automated telephone message.

Nothing in this subparagraph shall prohibit a permittee from employing additional means of notification to reach the public.

(vii) **Public notification plan. Within ninety days of the enactment of this regulation and as a part of each permit application thereafter, Permittees shall file and maintain a public notification plan with the Department for immediate public notification which specifies how the requirements of this**

subparagraph 335-6-6-.12(1)6.(vi) will be met; however, the plan shall not be subject to review by the Department except when the NPDES permit is modified or reissued. Failure to file or implement such a plan incorporating all minimum requirements for public notification shall be considered a violation of this permit. The filed public notification plan shall be subject to public comment whenever the permit is proposed to be issued, modified or reissued.

(m) Bypass.

1. Bypass Not Exceeding Limitations. The permittee may allow any bypass to occur which does not cause discharge limitations to be exceeded and which enters the same receiving water as the permitted outfall but only if it also is for essential maintenance to assure efficient operation of the waste treatment facility. The permittee shall monitor the bypassed wastewater at a frequency, at least daily, sufficient to prove compliance with permit discharge limitations. These bypasses are not subject to the provisions of subparagraph 335-6-6-.12(m)3.

2. Notice.

(i) Anticipated Bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice to the Department, if possible at least ten days before the date of the bypass.

(ii) Unanticipated Bypass. The permittee shall submit notice of an unanticipated bypass as required in subparagraph 335-6-6-.12(1)6.

3. Prohibition of Bypass.

(i) Bypass is prohibited and the Director may take enforcement action against a permittee for bypass, unless:

(I) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(II) There were no feasible alternatives to the bypass, such as the use of auxiliary waste treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition

is not satisfied if the permittee could have installed adequate backup equipment to

prevent a bypass which occurred during normal periods of equipment downtime or

preventive maintenance; and

(III) The permittee submitted notices as required under subparagraph 335-6-6-.12(m)2. and the bypass was approved by the Director.

(ii) The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the conditions listed above in subparagraph 335-6-6-.12(m)3.

(n) Upset.

1. Effect of an Upset. An upset constitutes an affirmative defense to an action brought for noncompliance with technology based permit limitations if the requirements of subparagraph 335-6-6-.12(n)2. are met.

2. Conditions Necessary for Demonstration of an Upset. A permittee who wishes to establish the affirmative defense of an upset shall demonstrate through properly signed, contemporaneous operating logs, or other relevant evidence that:

(i) An upset occurred and that the permittee can identify the specific cause(s) of the upset;

(ii) The wastewater treatment facility was at the time being properly operated;

(iii) The permittee submitted notice of the upset as required in subparagraph 335-6-6-.12(l)6.; and

(iv) The permittee complied with any remedial measures required under paragraph 335-6-6-.12(d).

3. Burden of Proof. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

(o) New, reissued, modified or revoked and reissued permits shall incorporate all applicable requirements of rule 335-6-6-.12 and rule 335-6-6-.13.

(p) An NPDES permit issued for a "new discharger" or "new source" shall expire eighteen months after issuance if "construction" has not begun during the eighteen-month period.

(q) That portion of an NPDES permit authorizing the discharge of increased quantities of pollutants to accommodate the modification of an existing facility shall expire if "construction" of the modification has not begun within eighteen months after issuance of the NPDES permit or modification of the NPDES permit to allow the discharge of increased quantities of pollutants.

(r) The permittee shall provide spill prevention, control and/or management for any stored pollutant(s) that may, if spilled, be reasonably expected to enter a water of the state or the collection system for a publicly or privately owned treatment works. Any containment system used for spill control and management shall be constructed of materials compatible with the substance(s) stored and of materials which shall prevent the pollution of groundwater and shall be capable of retaining 110 percent of the volume of the largest container of pollutants for which the containment system is provided.

Exhibit B



Fecal matter and personal care products litter the ground after Jefferson Co. Valley Creek WWTP SSOs into Opossum Creek May 14, 2009 & February 14, 2017

Photos © Nelson Brooke





**Jefferson Co. Valley Creek WWTP SSO
into Opossum Creek in Hueytown
March 10, 2009**

Photo © Nelson Brooke



**Jefferson County Village Creek
WWTP SSOs down storm drains
and into Village Creek
April 7, 2014 & January 5, 2015**

Photos © Nelson Brooke





**Tuscaloosa WWTP SSO
with industrial waste into
Black Warrior River
March 30, 2015**
Photo © Nelson Brooke



**Hanceville WWTP SSO
into Mud Creek
October 12, 2009**
Photo © Ryan Stephens



Untreated sewage cascades from the Uniontown Lagoon into Cottonwood Creek March 13, 2009; the plant's effluent overflows Sprayfield #1 into nearby Freetown Creek October 10, 2010

Photos © Nelson Brooke





**A recent 25,000 SSO at Webb
Road near the Dothan
Landfill, Dothan**
Photo © Michael Mullen



Intern Kayla Minton sampling a popular recreation spot, Coldwater Creek Memorial Park in Oxford, for *E coli* bacteria as part of Coosa Riverkeeper's Swim Guide program.

Photo © Frank Chitwood



Large scale SSO in Mobile
Photo © Mobile Baykeeper



SSO at Tonlours/Mobile
Photo © Mobile Baykeeper



**SSO St. Stephens Lift
Station/Mobile**
Photo © Mobile Baykeeper



SSOs/Mobile
Photos © Mobile Baykeeper

