

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA

COOSA RIVERKEEPER, CENTER FOR
BIOLOGICAL DIVERSITY, ADVANCE
ETOWAH, and OUR CHILDREN'S
EARTH FOUNDATION,

Plaintiffs,

v.

THE WATER WORKS AND SEWER
BOARD OF THE CITY OF GADSDEN,

Defendant.

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF AND
CIVIL PENALTIES**

(Federal Water Pollution Control
Act, 33 U.S.C. §§ 1251 to 1387)

Coosa Riverkeeper, Center for Biological Diversity, Advance Etowah, and Our
Children's Earth Foundation, (collectively, "Plaintiffs"), by and through their counsel,
hereby allege as follows:

I. INTRODUCTION

1. For years, the Water Works and Sewer Board of the City of Gadsden (the
"Board") has allowed sanitary sewers in Gadsden to fall into disrepair. Cracked and
broken sewers, leaking manholes, uncleared blockages, pump station failures, and other
problems cause untreated sewage to discharge from manholes, underground breaks in
sewer pipes, and other points. These discharges, called sanitary sewer overflows
("SSOs"), are endemic in Gadsden.

2. The problem originates with the Board's neglect of its basic
responsibilities to maintain sewage infrastructure. The sewer system defects allow

rainwater and groundwater to enter the sanitary sewer system, a problem referred to as “inflow and infiltration.” The excess water in the system overwhelms the hydraulic capacity of sewer pipes, manholes, and other sewer infrastructure, leading to overflows of untreated sewage.

3. All these sanitary sewage overflows enter streets, homes, and ultimately the waters surrounding the City of Gadsden – the Coosa River, Neely Henry Lake, Big Wills Creek, Black Creek, and their tributaries and surrounding wetlands.

4. The Board’s failure to maintain sewage infrastructure and the resulting regular discharges of untreated sewage to the waters in and around Gadsden, Alabama, both violate the terms of the Board’s National Pollutant Discharge Elimination System (“NPDES”) permits, which were issued to it pursuant to the federal Clean Water Act.

5. As noted, the illegal discharges are the outcome of earlier, more foundational violations of the Board’s NPDES permits. The Board’s NPDES permits require it: to carefully maintain the sewers, manholes, and treatment equipment that make up the “publicly owned treatment works”; to report accurately on the pollution it discharges; and to assure that sewage pollution discharges do not compromise water quality standards established to protect local waters and ensure that these waters remain drinkable, swimmable, fishable, and supportive of healthy populations of fish and wildlife. The Board violates these and other standards, terms, and limitations of its NPDES permits routinely, in a variety of ways.

6. As a result of the Board’s rampant failures to maintain its sanitary sewage infrastructure, failures to report accurately on its discharges of pollution, and its failures

to protect local waterbodies, the Board has violated and continues to violate the Clean Water Act and its NPDES permits.

II. JURISDICTION AND VENUE

7. This is a civil suit brought under the citizen suit enforcement provision of the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251, et seq. (“Clean Water Act” or “CWA”) (see 33 U.S.C. § 1365). This Court has subject matter jurisdiction over the parties and this action pursuant to Section 505(a)(1) of the Clean Water Act, 33 U.S.C. § 1365(a)(1), and 28 U.S.C. §§ 1331 and 2201 (an action for declaratory and injunctive relief arising under the Constitution and laws of the United States).

8. The venue is proper in the Northern District of Alabama pursuant to Section 505(c)(1) of the Clean Water Act, 33 U.S.C. § 1365(c)(1), because the source of the violations is located within this judicial district.

III. PLAINTIFFS HAVE COMPLIED WITH THE CLEAN WATER ACT'S PRE-SUIT NOTICE REQUIREMENTS

9. On November 18, 2021, Plaintiffs issued a sixty (60) day notice letter (“Notice Letter”) to the Board, as required by Section 505(b)(1)(A) of the Clean Water Act, 33 U.S.C. § 1365(b)(1)(A). The Notice Letter informed the Board that Plaintiffs intended to sue the Board for violating numerous, identified requirements of its NPDES permits and the Clean Water Act. The Notice Letter was sent also to the Administrator of the United States Environmental Protection Agency (“EPA”), the Administrator of EPA Region IV, and the Director of the Alabama Department of Environmental Management

(“ADEM”), as required by the above Section of the Clean Water Act. A true and correct copy of Plaintiffs’ Notice Letter is attached as Exhibit A and is incorporated by reference.

10. On January 12, 2022, 54 days after receiving the Notice Letter, ADEM filed a complaint against the Board in the Circuit Court of Etowah County, Alabama, seeking to enforce certain provisions of the Board’s permits and certain provisions of Alabama law.

11. ADEM’s complaint in the Etowah County Circuit Court does not seek to enforce compliance with many of the permit requirements that Plaintiffs identified in the Notice Letter as standards and limitations that the Board has violated and continues to violate.

12. More than sixty (60) days have passed since the Notice Letter was issued to the Board, the state, and federal agencies.

13. Neither EPA nor the state of Alabama has commenced or is diligently prosecuting an action to redress the violations alleged in the Notice Letter and this Complaint. This action is not barred by any prior administrative penalty matter issued under Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g). Accordingly, because the requirements of 33 U.S.C. § 1365(b)(1)(B) have been met, this matter may be commenced.

IV. PARTIES

14. Coosa Riverkeeper is a nonprofit organization whose mission is to protect, preserve, and restore the ecological integrity and productivity of the Coosa River through enforcement, field work, and community action. Coosa Riverkeeper’s mission includes

safeguarding the environmental, recreational, and commercial integrity of the Coosa River and its ecosystem. Coosa Riverkeeper achieves its mission through public education, advocacy for sound public policies, and participation in legal and administrative forums. To further its mission, Coosa Riverkeeper actively seeks federal and state implementation of the Clean Water Act and, where necessary, directly initiates enforcement actions on behalf of itself and its members.

15. The Center for Biological Diversity (“Center”) is a national nonprofit, conservation organization dedicated to the preservation, protection, and restoration of biodiversity, native species, and ecosystems. The Center was founded in 1989 and is based in Tucson, Arizona, with offices throughout the country. The Center works through science, law, and policy to secure a future for all species, great and small, especially those hovering on the brink of extinction. The Center is actively involved in species and habitat protection issues and has more than 89,600 members throughout the United States and the world, including in Alabama. The Center advocates for the protection and recovery of species existing throughout the southeastern United States and Alabama, including for water-dependent species such as mussels and fish.

16. Advance Etowah is a nonprofit organization with the goal of bringing together the community of Etowah County by informing citizens of how their community is governed, promoting transparency and accountability in their local government, and encouraging the citizens of Etowah County to understand that they have a responsibility in the county’s governance. Advance Etowah’s mission is to give a voice to the people of the Etowah County community.

17. Our Children's Earth Foundation is a nonprofit organization dedicated to protecting the environment. Our Children's Earth promotes public awareness of domestic and international environmental impacts through information dissemination, education, and private enforcement of environmental protection statutes. Our Children's Earth enforcement cases aim to achieve public access to government information, ensure proper implementation of environmental statutes and permitting, and enjoin violations of environmental and government transparency laws.

18. Plaintiffs represent members and supporters in and around Gadsden who have personally suffered harm to their aesthetic, recreational, and economic interests due to the Board's sanitary sewage overflows and failure to maintain its sanitary sewage infrastructure. Plaintiffs' members and supporters use, repeatedly visit, and will continue to use and visit the waterbodies that the Board is polluting.

19. Carolyn Parker, a member of Coosa Riverkeeper, is deeply affected by the Board's discharges of raw sewage and concerned about how these discharges affect her community and local waterbodies. Sanitary sewer overflows often occur on the streets leading into the subdivision where she lives. When she served on the Etowah County Commission, her constituents would often complain to her about the widespread sewage problems in Gadsden. She is still contacted regularly about this issue, leading her to be concerned for the health, safety, and wellbeing of herself and her community. Ms. Parker walks along the Coosa River around two to three times per week, and, in the summer, she boats and swims in the Coosa River. She often smells sewage when she visits the Coosa River and is worried about how the Board's discharges of sewage affect the Coosa

River's water quality, its ecosystems, and the health of the people that use and recreate on the Coosa River. The Board's discharges of sewage into the Coosa River detract from Ms. Parker's enjoyment of her visits to the Coosa River. She would recreate in and along the Coosa River more often if Gadsden's widespread sanitary sewer overflow problem was under control.

20. Joshua Tidwell, a member of the Center for Biological Diversity, is also personally affected by the Board's discharges of raw sewage and is deeply concerned about the impacts of the sewage on local waterbodies that he cares about and frequently recreates in and upon. Mr. Tidwell owns a canoe and kayak rental business on Big Wills Creek. When a sanitary sewer overflow reaches Big Wills Creek, fewer people frequent his business, which harms him economically. Mr. Tidwell often fishes, boats, and kayaks on Big Wills Creek and Lake Neely Henry, and as such he is both directly at risk of exposure to the Board's sewage and his enjoyment of his outings on these lakes is reduced. He is worried about how the Board's sanitary sewer overflows affect these waterbodies and the wildlife that rely on the continuing health of these ecosystems for their own survival. He has seen people swimming near areas where sewage has reached surface waters and is concerned about these members of his local community becoming sick due to the pollutants in sanitary sewer overflows. He is also concerned about his own health and safety, and that nutrient pollution caused by sanitary sewer overflows will negatively impair these freshwater ecosystems, including the habitats that they provide for threatened and endangered species.

21. Mary Carolyn Machen, a member of Our Children's Earth Foundation, is also personally affected by the Board's discharges of raw sewage. Ms. Machen owns a stand-up paddle board outfitting business on Neely Henry Lake. Whenever a sanitary sewer overflow reaches Neely Henry Lake, Ms. Machen must suspend operations at her business to protect the health of her customers. She is concerned that the Board's frequent sanitary sewer sewage overflows are negatively impacting the public perception and reputation of Neely Henry Lake, a waterbody that she cares deeply about. Ms. Machen often swims and paddles in Neely Henry Lake but cannot recreate in or on the water whenever a sewage overflow reaches the lake, since she does not want to be exposed to raw sewage. Through her business, she operates an eco-tour where customers can observe the local wildlife in the lake. She is concerned that this wildlife is negatively impacted by the nutrient pollution caused by the Board's sanitary sewer overflows. Additionally, the Board's failure to properly report its sanitary sewage overflows causes her harm. Without transparent and accurate reports from Defendant, she is left uninformed about sewage pollution that can affect her recreation, her health, and her business.

22. Fred Zackery, a member of Advance Etowah, is also affected by the Board's sanitary sewer overflows on a regular basis. Nearly every time it rains, there are sanitary sewage overflows in the streets around his office. Mr. Zackery constantly passes by sewage overflows during his commute to work, and he often needs to change his route to work to avoid sewage in the streets. There are also sanitary sewer overflows in the neighborhood where he lives. Mr. Zackery must deal with the foul odor of sewage

whenever there is a sanitary sewer overflow in his neighborhood. When these overflows are left to dry in the streets, they leave behind residual sewage on the ground. This leads him to be concerned about the health and safety of the members of his community, especially children. Mr. Zackery also wishes for transparent and accurate reporting from the Board in order for his community to be better informed about sanitary sewer overflows and the extent of the sewage problem facing Gadsden.

23. The Board is a municipal corporation of the City of Gadsden, incorporated under the laws of the State of Alabama.

V. STATUTORY BACKGROUND

24. Congress enacted the Clean Water Act in 1972 to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” CWA Section 101(a), 33 U.S.C. § 1251(a). In furtherance of this goal, the Act provides a comprehensive approach for the regulation of pollution discharged into the waters of the United States.

25. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants from a point source into navigable waters of the United States, unless in compliance with various enumerated sections of the Act.

26. A “point source” is “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14).

27. Under section 402 of the Clean Water Act, 33 U.S.C. § 1342, the Administrator of the EPA can issue NPDES permits, and can authorize states to issue NPDES permits, to the owners or operators of point sources that authorize and carefully circumscribe their discharges of pollution.

28. Discharges not authorized by, or in violation of, the terms of a NPDES permit issued by the EPA or a designated state agency are prohibited pursuant to section 301 of the Clean Water Act, 33 U.S.C. § 1311.

29. Under section 402(a), (b) of the Clean Water Act, 33 U.S.C. § 1342(a), (b), the Administrator of the EPA has authorized ADEM to implement a NPDES permitting program in Alabama.

30. The discharges from a municipal sewer system, referred to under the Clean Water Act as a “Publicly Owned Treatment Works” (“POTW”), are point source discharges that require authorization under a NPDES permit.

31. 40 C.F.R. § 403.3(q) defines a POTW as a “a treatment works as defined by section 212 of the Act, which is owned by a State or municipality . . . [it] includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW Treatment Plant.”

32. Sections 212(2)(A) and (B) of the Clean Water Act, 33 U.S.C. § 1292(2)(A) and (B) states a treatment works includes “sewage collection systems, pumping, power and other equipment, and their appurtenances” and “sanitary sewer systems.”

33. Section 301(b)(1) of the Act, 33 U.S.C. § 1311(b)(1), requires POTWs with NPDES permits to meet effluent limitations based upon secondary treatment and to comply with any more stringent limitation that may be necessary to protect state water quality standards.

34. Section 308 of the Clean Water Act, 33 U.S.C. § 1318, requires NPDES permittees to maintain records; install, use, and maintain monitoring equipment; sample effluent; and report regularly to the permit-issuing agency regarding the facility's discharge of pollutants. The reports are called Discharge Monitoring Reports (“DMRs”).

35. The citizen suit provision of the Clean Water Act, section 505(a)(1), 33 U.S.C. § 1365(a)(1), authorizes any citizen to commence a civil action against any person alleged to be in violation of “an effluent standard or limitation” or “an order issued by the Administrator or a State with respect to such a standard or limitation.”

36. As relevant here, an “effluent standard or limitation” includes: any unlawful discharge under Section 301(a) of the Act, 33 U.S.C. § 1311(a); any effluent limitation established under Sections 301 and 302 of the Act, 33 U.S.C. §§ 1311 and 1312; any condition of a NPDES permit; or any “order issued by the Administrator or a State with respect to such a standard or limitation.” 33 U.S.C. § 1365(f).

37. Declaratory relief in this case is authorized by 28 U.S.C. § 2201–02 (power to issue declaratory relief in case of actual controversy and further necessary relief based on such a declaration).

38. Injunctive relief is authorized by section 505(a) of the Act, 33 U.S.C. § 1365(a).

39. Violators of the Act are also subject to an assessment of civil penalties of up to \$59,973 per day per violation for violations occurring after November 2, 2015. CWA §§ 309(d), 505(a), 33 U.S.C. §§ 1319(d), 1365(a); 40 C.F.R. §§ 19.1–19.4.

VI. STATEMENT OF FACTS

The Board's POTWS and Their NPDES Permits

40. The Board operates two POTWS in Gadsden, referred to on their NPDES permits as the East River Wastewater Treatment Plant (“East River POTW”) and the West River Wastewater Treatment Plant (“West River POTW”). Each POTW consists of both a sewage treatment plant adjacent to the Coosa River and a network of sewers that connects homes and businesses to the plant.

41. The Board is authorized to discharge pollutants pursuant to the standards, limitations, and conditions of two different NPDES Permits: No. AL0022659, issued by ADEM for the East River POTW, and No. AL0053201, issued by ADEM for the West River POTW. Below, these permits are referred to as the East River NPDES Permit and the West River NPDES Permit.

42. Both POTWs discharge into the Coosa River.

43. Discharges from certain enumerated outfalls at the two POTWs to the Coosa River are authorized pursuant to the Board's NPDES permits.

44. Each of these NPDES permits contains terms and limitations regulating how and where the Board is authorized to discharge pollution from each POTW to the Coosa River.

45. The outfalls listed in these NPDES permits are the only locations from which Gadsden is authorized to discharge pollution, and only if the discharges comply with all terms and limitations stated in the permit.

46. Each permit also contains other terms and limitations that regulate maintenance, monitoring, recordkeeping, and other matters, all designed to ensure that Gadsden's sewers and sewage treatment plants are well maintained, well managed, and that problems are observed, reported accurately, disclosed to the public, and addressed in a timely manner.

47. The environmental problems and Clean Water Act violations arising in the East River POTW and West River POTW originate from the Board's poor maintenance and management practices. The Board allows excessive inflow and infiltration that overloads the sewer system and allows other problems to develop too, such as sewer blockages, pipe leaks, and equipment failures. These problems result in discharges of raw sewage and excess discharges of pollution at the sewage treatment plants.

The Board's Failures to Maintain Sewage Infrastructure

48. Adequate maintenance and management of the Board's sanitary sewers is essential to controlling inflow and infiltration, preventing sewer overflows, and forestalling problems at the sewage treatment plants.

49. 40 C.F.R. § 122.41(e) states that a "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 [its NPDES permit]."

50. The East River and West River NPDES permits require that the Board:

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.

East River NPDES Permit, Section II.A.1; West River NPDES Permit, Section II.A.1.

51. The Board has violated the standards and limitations contained within the maintenance provisions of its NPDES permits in many ways.

52. Frequent and widely distributed sewage blockages indicate that the Board is not effectively performing basic maintenance, such as routine sewer pipe inspection and cleaning, with adequate frequency and that the Board is not proactively addressing structural or behavioral causes of blockages.

53. The Board is not performing basic inspection, cleaning, or repair duties in sewers and manholes in line with industry standards and in a manner adequate to ensure that they maintain integrity and keep groundwater and rainwater out of the sewer system.

54. The Board also is not effectively performing one of the most fundamental duties of a sewer operator: to monitor and control the inflow of sewage from the "lateral lines" that connect homes and businesses to the sewer mains to ensure that excessive flow is not overwhelming the system. Put differently, the Board is not properly matching the flow from laterals into main sewers against the capacity of the sewer system to handle that flow. The Board is not effectively or correctly performing, funding, or staffing its efforts to monitor and control the volume of wastewater discharged from laterals into main sewers, nor engaging in quality assurance of this process.

55. The Board does not effectively perform its operational and maintenance duties as a POTW operator in that it does not adhere to a Capacity, Management, Operations, and Maintenance Program that meets industry best practice standards. The Board's practices fall short of industry best practice in areas ranging from funding to proactive repairs to frequency of cleaning and inspection and measures to address fats, oils, and grease that cause blockages and overflows.

56. A review of the Board's Municipal Wastewater Pollution Prevention Reports shows that the asset management efforts detailed are generally reactive to problems – sanitary sewer overflows, pump station failures, and pipe failures.

57. Proactive asset management is considered best practice in the sanitary sewer industry to maintain a collection system within its useful service life, prevent structural or mechanical asset failures, prevent blockages, and prevent sanitary sewer overflows from occurring.

58. The Board is not following best practice standards to reduce discharges of untreated sewage. The Board's reactive approach is unacceptable to Plaintiffs and to residents of Gadsden generally. The Board should not wait for sewer systems to fail and for untreated sewage to run into streets, into people's homes, and into the Coosa River before acting.

59. The Board does not adequately fund the operation and maintenance of the POTWs, including particularly the cost of repairing and keeping sewers and manholes in good condition. This is evident from the fact that, despite carrying out some amount of repair work every year, (1) the Board admits that the sewers suffer from severe inflow

and infiltration and (2) the POTWs discharge raw sewage at a rate far higher than well managed or even average sewer systems.

60. The Board's failure to maintain its sewer infrastructure has allowed excessive infiltration and inflow into the East River POTW and West River POTW, causing sanitary sewer overflows.

61. Additionally, the Board's improper maintenance of its systems has resulted in blockages, pipe leaks, equipment failures, and other failures that lead to sanitary sewer overflows. Defendant's failures to properly operate and maintain the POTWs are discussed further in the Notice Letter (attached as Exhibit A).

62. The Board's neglect of its POTWs directly violates the terms of its individual NPDES permits, which mandate proper operation and maintenance. These permit violations also violate the Clean Water Act.

63. The Board's numerous failures to properly operate and maintain the sewers are in and of themselves violations of the NPDES permits. They have also resulted in hundreds of other permit violations: discharges that exceed effluent limitations and overflows of raw sewage (SSOs) from the Board's sewer lines, manholes, pump stations, and various other POTW equipment/conveyances. Raw sewage discharges occur because the Board's neglect of the sewers allows inflow and infiltration to overwhelm the sewer system's capacity.

The Problem of Inflow and Infiltration in Gadsden

64. Because the Board fails to properly operate and maintain the POTWs, the functioning of the sewers and treatment plants is compromised by severe volumes of inflow and infiltration.

65. Inflow generally refers to water other than wastewater—typically rain or snowmelt—that enters a sanitary sewer system through a direct connection to the sewer.

66. Infiltration generally refers to other water that enters the sanitary sewer underground, for example through defects in the sewer pipes or other infrastructure.

67. Infiltration can be long-term seepage of water into a sanitary sewer system from the water table, or a rapid increase in sanitary sewer flow during and immediately after a rainfall event due to rapidly rising groundwater.

68. Significant quantities of inflow and infiltration also enter the main sewer lines from the sewer “laterals” that connect to individual buildings.

69. Inflow and infiltration cause a cascade of environmental problems because sanitary sewer systems are not designed to collect large amounts of runoff from precipitation events or to provide widespread drainage. Sanitary sewers systems are built with some allowance for extraneous flow (i.e., inflow and infiltration), but large volumes of extraneous flow cause sanitary sewers to back up and overflow or overload the treatment plant and degrade its performance.

70. The Board’s sanitary sewer systems play a critical role in protecting human health and the environment. The purpose of sanitary sewers is to transport wastewater uninterrupted from its source to the treatment plants associated with the two

POTWs. Proper operation and maintenance of the sewers is integral to ensuring that wastewater is collected, transported, and treated at the plants.

71. Failure to adequately maintain sewers results in: blockages, backups, and overflows of untreated sewage; underground leakage of untreated sewage into groundwater (exfiltration) and of groundwater into sewer pipes (infiltration); other forms of reduced structural integrity; reduced capacity of the collection system; and reduced treatment plant performance because of inflow and infiltration-related hydraulic overloading.

The Board's Sanitary Sewer Overflows

72. As a result of poor maintenance, blockages, and excessive inflow and infiltration, the Board regularly releases raw sewage from manholes, sewers, and other parts of the POTW into streets, homes, and waterbodies. Frequently, these sanitary sewer overflows result in discharges of pollution to waters of the United States.

73. The most immediate health risks associated with sanitary sewer overflows is the potential for exposure to bacteria, viruses, and other pathogens. Human health impacts occur when people become ill due to contact with water or ingestion of water or shellfish that have been contaminated by SSO discharges. In addition, sanitary sewer systems can back up into buildings, including private residences. These discharges provide a direct pathway for human contact with untreated wastewater.

74. Sanitary sewer overflows are a systemic problem in Gadsden. Plaintiffs listed 154 of the Board's reported sanitary sewer overflows in Figures 1-3 of the Notice

Letter (Exhibit A to this complaint). The occurrence and severity of sanitary sewer overflows is directly caused by the Board's neglect of the sewer infrastructure.

75. In both 2014 and 2020, the Board informed ADEM that inflow and infiltration was a key cause of its sanitary sewer overflows. In the Municipal Wastewater Pollution Prevention Report that the Board submitted to ADEM in 2019, the Board described its sanitary sewers as experiencing "severe" inflow and infiltration.

76. Because its significant SSO problem is still ongoing despite years of reports from the Board to ADEM indicating that the Board's repair, management, and rehabilitation efforts are "continual," Plaintiffs allege that the Board's efforts to manage, repair and rehabilitate its systems are insufficient. According to an analysis of SSOs in Gadsden commissioned by Plaintiffs, the rate of SSOs and the nature of these SSOs suggests a systemic inflow and infiltration problem caused by the Board's failure to properly operate and maintain its POTWs. Further support for this conclusion is provided in the Notice Letter.

The Board's Inaccurate Reporting

77. The East River and West River NPDES permits impose several reporting requirements on the Board in the event of a sanitary sewer overflow. For instance, the Board must report to ADEM the cause, location, and ultimate destination of each sanitary sewer overflow.

78. Part I.C.2.e of the West River NPDES Permit and Part I.C.2.f of the East River NPDES permit require that "The Permittee shall keep an updated record of all

known wastewater discharge points that are not authorized as outfalls, including but not limited to SSOs.”

79. Further, Part I.C.2.e.5 of the West River NPDES Permit and Part I.C.2.f.5 of the East River NPDES permit also state that the Board shall report to ADEM annually, for each unpermitted instance of a discharge, “the ultimate destination of the flow (e.g., surface waterbody, municipal separate storm sewer to surface waterbody).”

80. The Board has failed to state the ultimate destinations of multiple sanitary sewer overflows reported to ADEM.

81. The Board repeatedly reports that sanitary sewer overflows discharge to storm drains and drainage ditches but fails to provide the name of the surface water that receives the flow from the storm drain or drainage ditch.

82. The failures to accurately report these sanitary sewer overflows constitute violations of the Board’s NPDES permits and the Clean Water Act.

83. The Board has failed, and continues to fail, to describe the ultimate destinations for its discharges.

84. Moreover, Plaintiffs are informed and believe that the Board has failed to report several sanitary sewer overflows to ADEM at all. Plaintiffs have received complaints from community members of sanitary sewer overflows that the Board has failed to report to ADEM.

85. This failure to report likewise constitutes a violation of its NPDES permits and the Clean Water Act.

86. Further details related to these unpermitted discharges are set forth in Exhibit A, Figures 1 and 3, and incorporated by reference.

87. Additionally, the NPDES permits require the Board to conduct sampling for most pollutants at East River POTW Outfall 0011 and West River POTW Outfall 0011 more frequently than monthly, and report on results more frequently than monthly.

88. However, the Board only reports one value per month for all such parameters.

89. For example, at the East River POTW, Outfall 0011, the Board is required to measure and report on the daily values for flow, to sample three times weekly and report the data collected each day for E. coli and dissolved oxygen, and to sample three times weekly and report on the weekly average value for total suspended solids, various forms of nitrogen, phosphorus, and biological oxygen demand (BOD). *See* East River POTW Permit, Section I.A.1 and I.C.1.

90. Similar requirements apply at the West River POTW. *See* West River POTW Permit, Section I.A.1 and I.C.1 (requiring daily calculation and reporting of flow, two day per week sampling and daily value reporting for dissolved oxygen, pH, chlorine, and E. coli, and two day per week sampling and weekly value reporting for suspended solids, various forms of nitrogen (total ammonia and total Kjeldahl), and biological oxygen demand).

91. However, the Board routinely provides just a single monthly value at both the East River POTW and West River POTW for each parameter that the Board is required to monitor for and report upon on a more frequent than monthly basis.

92. Each failure to report on each parameter, at each less than monthly time interval, is a separate violation of the Clean Water Act.

93. The Board's failures to properly report on discharges and pollution levels impedes the ability of citizens, including Plaintiffs' members, to observe and understand the causes and extent of sewage pollution.

The Board's Violations of Water Quality Standards

94. The Board's sanitary sewer overflows also violate the Board's NPDES permits because these discharges cause or contribute to violations of water quality standards set by the State of Alabama to protect the waters in and around Gadsden.

95. Section 402(a)(1), 33 U.S.C. § 1342(a)(1), of the Clean Water Act requires that NPDES permits shall contain effluent limitations that will assure compliance with water quality standards.

96. EPA regulation 40 C.F.R. § 122.44(d) states that such effluent limitations must be established for any discharge that may cause or contribute to a violation of water quality standards.

97. EPA regulation 40 C.F.R. § 122.4 prohibits the issuance of any permit whose conditions do not provide for compliance with water quality standards.

98. The effluent limits in the Board's NPDES permits include a prohibition on SSOs and numeric limits on the pollution that can be discharged from the treatment plants – compliance with these limits is necessary to assure compliance with water quality standards.

99. Any SSO that causes or contributes to a violation of water quality standards at the point of discharge violates the terms of the relevant NPDES permit and the Clean Water Act.

100. Moreover, Part III.F.1. of the East River and West River NPDES permits states that ADEM “has determined that compliance with the terms and conditions of this permit should assure compliance with the applicable water quality standards.”

101. But, as detailed above, the Board is not complying with many of the terms and conditions of the NPDES permits. As a result, the Board continues to discharge pollutants through sanitary sewer overflows that release raw sewage into the Coosa River, Big Wills Creek, Black Creek and their tributaries. The Board also continues to discharge pollutants from its treatment plants at levels that exceed permitted concentrations.

102. As set forth below, The Board’s discharges, permit violations, and poor maintenance practices cause or contribute to violations of Alabama water quality standards. Thus, the Board is violating the water quality related “standards and limitations” of its NPDES permit and of the Clean Water Act.

103. One of the most important functions that a state performs under the Clean Water Act is to promulgate water quality standards. As part of this process, a state identifies the potential uses of each waterbody regulated under the Clean Water Act. See Clean Water Act Section 303(c)(2), 33 U.S.C. § 1313(c)(2). For example, a waterbody may be designated as suitable for recreation, or for the propagation of fish and wildlife. States also set numeric and narrative criteria that specify the extent to which pollutants

may be present in the waterbody without impairing its suitability for those designated uses. *Id.*

104. As part of its water quality standards, Alabama sets numeric and narrative criteria for different water pollution parameters. A waterbody must meet these numeric and narrative criteria to support its designated uses.

105. Waters whose use is designated by ADEM as “Fish and Wildlife” must be “suitable for fish, aquatic life and wildlife propagation. ADEM Rule 335-6-10-.09(5)(b).

106. Waters whose use is designated by ADEM as “Public Water Supply” may be used for drinking and food-processing purposes if subjected to ADEM-approved treatment. ADEM Rule 335-6-10-.09(2)(b).

107. Such waters may also be used for swimming and other whole body water-contact sports. ADEM Rule 335-6-10-.09(2)(d).

108. Sewage that is not effectively controlled under the ADEM waste treatment requirements is prohibited from reaching both Fish and Wildlife waters and Public Water Supply Waters. ADEM rules also establish numeric water quality standards for Fish and Wildlife and Public Water Supply waters related to *E. coli* and dissolved oxygen, and numerous other water quality standards related to swimming, toxic substances taste, odor, and color-producing substances, and turbidity.

109. The Board’s SSOs have reached segments of the Coosa River designated as a Fish and Wildlife waters and Public Water Supply waters.

110. Specifically, the portion of the river from McCardney’s Ferry to the City of Gadsden’s water supply intake has been designated by ADEM as a Fish and Wildlife

water. Big Wills Creek and Black Creek have also been designated by ADEM as Fish and Wildlife waters, and the portion of the river from City of Gadsden's water supply intake to the Weiss Dam powerhouse has been designated by ADEM as a Public Water Supply water.

111. The Board's SSOs have caused untreated sewage to flow into these Fish and Wildlife and Public Water Supply waterbodies. These SSOs contribute excess nutrients, pathogens, and other deleterious substances to these waters, violating multiple different water quality standards established by ADEM.

112. All of the Board's SSOs violate the Board's NPDES permits – which prohibit SSOs and any other discharges that cause or contribute to violations of water quality standards – and violate the Clean Water Act.

VII. CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

Failure to Prevent Blockages; Violations of Parts II.A.1 of the Board's NPDES Permits and Violations of Clean Water Act Section 402, 33 U.S.C. § 1342

113. Part II.A.1 of the East River and West River NPDES Permits require the Board to properly operate and maintain the POTWs and related appurtenances. The permit states that 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.

114. The Board violates the requirements of Part II.A.1 by not effectively performing, funding, or staffing efforts to prevent sewer blockages. Sewer blockages are

generally caused by inadequate maintenance allowing for the buildup of grease, accumulation of sediment and debris, and root intrusion.

115. Blockages of sewer pipes appear widely distributed in the POTWs.

116. For example, of 32 blockage-related SSOs in the West River POTW reported by the Board to ADEM between 2015 and 2019, only one location (799 Tarrant Court) experienced a repeat blockage.

117. The distribution of blockages widely throughout the West River POTW suggests that the Board is not effective in carrying out routine operation and maintenance measures, such as pipe cleaning.

118. The Board has not adequately corrected the operational and maintenance failures that cause sewer blockages. The ongoing blockages evidence a failure to properly operate and maintain the POTWs, including neglect and mismanagement of the POTWs and all related appurtenances. The Board's failure to adequately operate maintain, repair, replace, and/or update the POTWs in a manner sufficient to prevent sewage blockages results in other NPDES permit violations, including discharges of raw sewage.

119. Each day the Board fails to properly operate and maintain its POTWs is a separate and distinct violation of the Clean Water Act.

120. The Board's failure to properly operate and maintain its POTWs is ongoing and continuous.

SECOND CAUSE OF ACTION

Failure to Maintain Sewers and Manholes in a Condition that Prevents Direct Entry of Inflow and Infiltration into the POTWs; Violations of Parts II.A.1 of the Board's NPDES Permits and Violations of Clean Water Act Section 402, 33 U.S.C. § 1342

121. The Board is also violating several of the requirements contained in Part II.A.1 of the East and West River NPDES permits by not maintaining the integrity of sewers and manholes. Defects in sewer pipes and manholes—cracks, holes, breaks, improper connections, collapses, etc.—allow rainwater and groundwater to penetrate the sewer system.

122. The Board's poor practices have led to sewer system defects that allow excessive amount of rainwater and groundwater to enter the POTWs.

123. This inflow and infiltration overwhelms the hydraulic capacity of sewer pipes, manholes, and other sewer infrastructure, leading to overflows of untreated sewage and to capacity-related violations of numeric effluent limitations at the treatment plants.

124. The Board has failed to adequately inspect, maintain, and repair sewer pipes and manholes, thereby allowing inflow and infiltration to continue to overwhelm the POTWs.

125. The Board has not effectively addressed locations of known hydraulic capacity limitations through rehabilitation to increase capacity or eliminate inflow and infiltration.

126. The Board has not adequately corrected the operational and maintenance failures that allow sewers and manholes to deteriorate, lose integrity, and admit excessive levels of inflow and infiltration. The ongoing high levels of inflow and infiltration and

backlogged sewer repairs evince a failure to properly operate and maintain the POTWs, including neglect and mismanagement of the POTWs and all related appurtenances. The Board's failure to adequately operate maintain, repair, replace, and/or update the POTWs in a manner sufficient to prevent inflow and infiltration and maintain the integrity of sewers and manholes results in other NPDES permit violations, including discharges of raw sewage.

127. Each day the Board fails to properly operate and maintain the integrity of sewers and manholes to prevent inflow and infiltration is a separate and distinct violation of the Clean Water Act.

128. The Board's failure to properly operate and maintain its POTWs is ongoing and continuous.

THIRD CAUSE OF ACTION

Failure to Address Inflow and Infiltration from Private Sewer Laterals; Violations of Parts II.A.1 of the Board's NPDES Permits and Violations of Clean Water Act Section 402, 33 U.S.C. § 1342

129. The Board is also violating several of the requirements contained in Part II.A.1 of the East and West River NPDES permits by allowing excessive levels of inflow and infiltration to enter the sewers from lateral lines. The board does not effectively perform, fund, or staff efforts to monitor, inspect, and regulate the flow of sewage and inflow and infiltration from lateral lines.

130. These poor practices have allowed excessive amount of rainwater and groundwater to enter the POTWs from lateral lines.

131. This inflow and infiltration overwhelms the hydraulic capacity of sewer pipes, manholes, and other sewer infrastructure, leading to overflows of untreated sewage.

132. The responsibility to address inflow and infiltration from sewer laterals is part of the Board's duty, under its NPDES permits, to properly operate and maintain the POTWs.

133. To adequately maintain the POTWs, the Board must prevent inflow and infiltration inputs from private sewer laterals from overwhelming the capacity of its sewage infrastructure.

134. The Board has not adequately corrected the operational and maintenance failures that allow excessive levels of inflow and infiltration from sewer laterals. The ongoing high levels of inflow and infiltration and the absence of any concerted effort by Gadsden to monitor laterals or take measures to require or encourage their repair evince a failure to properly operate and maintain the POTWs, including neglect and mismanagement of the POTWs, their connections to laterals, and all related appurtenances. The Board's failure to adequately operate and maintain the POTWs in a manner sufficient to prevent excessive inflow and infiltration from sewer laterals results in other NPDES permit violations, including discharges of raw sewage.

135. Each day the Board fails to properly operate and maintain its POTWs is a separate and distinct violation of the Clean Water Act.

136. The Board's failure to properly operate and maintain its POTWs is ongoing and continuous.

FOURTH CAUSE OF ACTION

Failure to Adopt Effective Maintenance and Management Procedures (Inadequate Capacity, Management, Operations, and Maintenance Program); Violations of Parts II.A.1 of the Board's NPDES Permits and Violations of Clean Water Act Section 402, 33 U.S.C. § 1342

137. The Board is also violating several of the requirements contained in Part II.A.1 of the East and West River NPDES permits by failing to develop and implement an adequate Capacity, Management, Operations, and Maintenance Program (“CMOM”) that would, among other things, implement a proactive asset management approach and other industry best practices. Adoption of a CMOM that sets forth maintenance and management procedures that reflect sewer industry best practices is necessary for “effective performance” and “proper operation and maintenance” as required by the NPDES permits.

138. According to EPA guidance, “[a] CMOM program is what an owner or operator should use to manage its assets; in this case, the collection system itself. The CMOM program consists of a set of best management practices that have been developed by the industry and are applied over the entire life cycle of the collection system and treatment plant.” *See* U.S. Environmental Protection Agency Office of Enforcement and Compliance Assurance, Guide for Evaluating Capacity, Management, Operation, and Maintenance (CMOM) Programs at Sanitary Sewer Collection Systems (Jan. 2005).

139. EPA Guidance states the proactive CMOM approach “helps the owner or operator provide a high level of service to customers and reduce regulatory noncompliance.” *See id.*

140. The Board's reactive approach to overflows—i.e., waiting for sewers to fail and overflows to occur before taking action to address them—does not meet such industry best practice, and does not effectively maintain a collection system within its useful service life, prevent structural or mechanical asset failures, prevent blockages, and prevent sanitary sewer overflows from occurring.

141. The Board has not adopted a proactive approach to sewer system management that reflects industry best practices and has not adopted a CMOM that reflects industry best practices. This evinces a failure to properly operate and maintain the POTWs in that the Board is not maintaining the collection system within its useful service life, preventing structural or mechanical asset failures, preventing blockages, and preventing sanitary sewer overflows from occurring. The Board's failure to adequately operate and maintain the POTWs through adoption of a CMOM Program reflecting industry best practices results in other NPDES permit violations, including discharges of raw sewage.

142. Each day the Board fails to properly operate and maintain its POTWs is a separate and distinct violation of the Clean Water Act.

143. The Board's failure to properly operate and maintain its POTWs is ongoing and continuous.

FIFTH CAUSE OF ACTION

Inadequate Funding for the Operation and Maintenance of the East River POTW and West River POTW; Violations of Parts II.A.1 of the Board's NPDES Permits and Violations of Clean Water Act Section 402, 33 U.S.C. § 1342

144. The Board is violating a key standard or limitation found in Part II.A.1 of the East and West River NPDES permits by chronically underfunding the POTWs.

145. Part II.A.1 of the Board's NPDES permit for the West River POTW and Part II.A.1 of the Board's NPDES permit for the East River POTW both state: "Proper operation and maintenance includes . . . adequate funding."

146. The Board has failed to comply with these provisions through its long history of inadequate investment in its sewer systems. Chronic underfunding is evident from the fact that: the Board has admitted that the POTWs are severely affected by inflow and infiltration and have been in this condition for many years; the Board responds to sewer failures and sewage overflows reactively rather than investing in repairs and replacements before problems emerge; and the shockingly high rate of sewage overflows in Gadsden year after year, which suggests strongly that the Board is chronically underinvesting in repair and replacement of dilapidated sewers.

147. Each day the Board underfunds its maintenance and capital budgets is a separate and distinct violation of the Clean Water Act.

148. The Board's failure to properly operate and maintain its POTWs is ongoing and continuous.

SIXTH CAUSE OF ACTION

Failure to Report Multiple SSOs; Violations of Part I.C.2.e of the West River NPDES Permit and Part I.C.2.f of the East River NPDES Permit and Violations of Clean Water Act Section 402, 33 U.S.C. § 1342

149. Part I.C.2.e. of the West River NPDES Permit and Part I.C.2.f of the East River NPDES Permit require that the Board report to ADEM the cause, location, and ultimate destination of each SSO.

150. However, Plaintiffs are informed and believe that the Board has failed to report several SSOs to ADEM. Plaintiffs have received complaints from community members of SSOs that the Board has failed to report to ADEM.

151. Exhibit A, Figure 3, details the dates and locations of five SSO events that Plaintiffs allege occurred in Gadsden but that the Board did not report to ADEM.

152. Since at least February 26, 2021, the Board has discharged and continue to discharge such unreported SSOs.

153. Therefore, since at least February 26, 2021, the Board has violated its NPDES permits by failing to report to ADEM the cause, location, and ultimate destination of multiple SSOs.

154. Each day the Board fails to comply with the SSO reporting requirements of its NPDES permits is a separate and distinct violation of the Clean Water Act.

155. The Board's failure to report each of its SSOs is ongoing and continuous.

SEVENTH CAUSE OF ACTION

**Failure to Keep an Updated Record of All Known Wastewater Discharge Points;
Violations of Part I.C.2.e of the West River NPDES Permit and Part I.C.2.f of the
East River NPDES Permit and Violations of Clean Water Act Section 402, 33 U.S.C.
§ 1342**

156. Part I.C.2.e of the West River NPDES Permit and Part I.C.2.f of the East River NPDES Permit require that: “The Permittee shall keep an updated record of all known wastewater discharge points that are not authorized as outfalls, including but not limited to SSOs.”

157. However, the Board has failed to report several sanitary sewer overflows to ADEM. Plaintiffs have received complaints from community members of sanitary sewer overflows at wastewater discharge points that the Board has failed to report to ADEM.

158. Exhibit A, Figure 3, details the dates and locations of five sanitary sewer overflow events that Plaintiffs allege occurred in Gadsden but that the Board did not report to ADEM.

159. Typically, the Board reports all sanitary sewer overflows and discharge points for which the Board is keeping updated records to ADEM.

160. Based on the Board’s failure to report these sanitary sewer overflows, Plaintiffs believe and allege that the Board has not kept updated records of sanitary sewer overflows from these wastewater discharge points.

161. Since at least February 26, 2021, the Board has discharged and continue to discharge such unreported sanitary sewer overflows.

162. Therefore, since at least February 26, 2021, the Board has violated its NPDES permits by failing to “keep an updated record of all known wastewater discharge points.”

163. Each day the Board fails to keep an updated record of all known wastewater discharge points is a separate and distinct violation of the Clean Water Act.

164. The Board’s failure to keep an updated record of all known wastewater discharge points is ongoing and continuous.

EIGHTH CAUSE OF ACTION

Failure to Report the Ultimate Destinations of Multiple Sanitary Sewer Overflows; Violations of Part I.C.2.e of the West River NPDES Permit and Part I.C.2.f of the East River NPDES Permit and Violations of Clean Water Act Section 402, 33 U.S.C. § 1342

165. Part I.C.2.e. of the West River NPDES Permit and Part I.C.2.f of the East River NPDES Permit require the Board report to ADEM the cause, location, and ultimate destination of each sanitary sewer overflow.

166. However, the Board has failed to report the ultimate destinations of multiple sanitary sewer overflows.

167. The Board repeatedly reports that sanitary sewer overflows discharge to storm drains and drainage ditches but fails to provide the name of the surface water that receives the flow from the storm drain or drainage ditch.

168. Plaintiffs have reviewed the Board's sanitary sewer overflow reports and concluded that in 80 cases, which are collected in Figure 1 of Exhibit A to this complaint, the Board incorrectly reported the ultimate destination of the discharge as being the ground ("ground absorbed") or a drainage ditch. Based on consideration of the location of the overflow, volume of the overflow, and local conditions, Plaintiffs allege that the ultimate destination of these discharges was a local waterbody (the waterbody identified for each such event in the last column of Exhibit A).

169. The failure to accurately report these sanitary sewer overflows constitutes a violation of the Board's NPDES permits and the Clean Water Act.

170. Exhibit A, Figures 1 and 2, detail sanitary sewer overflows that the Board has reported as flowing to storm drains and drainage ditches without identifying the ultimate destination of the discharge. The Board has failed, and continues to fail, to describe the ultimate destinations for its discharges.

171. Since at least November 2, 2016, the Board has failed, and continues to fail, to describe the ultimate destinations for its discharges.

172. Each day the Board fails to comply with the sanitary sewer overflow reporting requirements of its NPDES permits is a separate and distinct violation of the Clean Water Act.

173. The Board's failure to describe the ultimate destinations of its sanitary sewer overflows is ongoing and continuous.

NINTH CAUSE OF ACTION

**Failure to Notify the Public of Sanitary Sewer Overflows;
Violations of Part I.C.2.d of the NPDES Permits and Violations of
Clean Water Act Section 402, 33 U.S.C. § 1342**

174. Part I.C.2.d of the Board's permits state that "[t]he permittee shall provide notification to the Director, the public, the county health department, and any other affected entity such as public water systems, as soon as possible upon becoming aware of any notifiable sanitary sewer overflow. The Permittee shall also report notification of the noncompliance event to any other affected entity such as the public."

175. The Board does not effectively notify the public of sanitary sewer overflows and other noncompliance events.

176. To the Plaintiffs' knowledge, the only public notice of sewage overflows provided to the public by the Board is buried on the Board's website, on a page reached by a link at the bottom of the Board's home page. There is no public signage of common overflow points, and the Board makes no effort to reach the public and warn of a sewage spill that may affect publicly accessible lands and waters.

177. To the Plaintiffs' knowledge, apart from mandatory reporting to ADEM, there is no notification whatsoever to the public of other non-compliance events that may affect the public, such as periods when a sewage treatment plant's discharges do not meet the Permits' standards, which are set to protect water quality for purposes including swimming and other human contact.

178. Each failure to notify the public of a sanitary sewer overflow or other non-compliance event that affects the public is a separate violation of the Board's NPDES permits.

179. The Board's failures to notify the public of sanitary sewer overflows and other non-compliance events that affect the public are ongoing and continuous.

TENTH CAUSE OF ACTION

Failure to Report Daily Flow at the East and West River POTWs; Violations of Parts I.A.1 and I.C.1 of the NPDES Permits and Violations of Clean Water Act Section 402, 33 U.S.C. § 1342

180. Part I.A.1. of the East and West River NPDES permits require the Board to measure and report on the daily values for flow at Outfall 0011.

181. Specifically, Part I.A.1 requires the Board to measure flow on a continuous basis 7 days per week and report the daily maximum and monthly average flow. Part III.H of the permits defines "daily maximum" as "the highest value of any individual sample result obtained during a day."

182. For monitoring that is required monthly or more frequently, Part I.C.1. of the NPDES permits requires the Board to conduct the monitoring every month of the permit term (I.C.1.a) and to submit DMRs monthly (I.C.1.b). Part I.C.1.c further clarifies that all monitoring results should be reported by stating that even if the Board "monitors any discharge from a point source . . . *more frequently than required by this permit*, the results of such monitoring shall be included in the calculation and reporting of values on the DMR form." (Emphasis added).

183. However, Plaintiffs have reviewed the DMRs submitted by the Board and found that the Board does not report on flow at the required frequency.

184. Rather, the Board routinely provides just a single monthly value and single daily maximum value for flow at each POTW.

185. Each failure to report the daily flow at the East and West River POTWs is a separate violation of the Clean Water Act.

186. The Board's failures to report flow at the POTWs at the required frequency are ongoing and continuous.

ELEVENTH CAUSE OF ACTION

Failure to Report E. Coli at the East River POTW at the Required Frequency; Violations of Parts I.A.1 and I.C.1 of the East River NPDES permit and Violations of Clean Water Act Section 402, 33 U.S.C. § 1342

187. Part I.A.1. of the Board's NPDES permits requires the Board to measure and report on E. coli at the East River POTW at the frequency of three times per week and twice weekly at the West River POTW.

188. Specifically, Part I.A.1 requires the Board to measure E. coli two or three times per week (depending on the POTW) and report daily maximum and monthly average values. Part III.H of the permits defines "daily maximum" as "the highest value of any individual sample result obtained during a day."

189. The Board does not report on the daily maximum of E. coli at the required frequency.

190. Rather, the Board routinely provides just a single monthly value for the daily maximum e. coli value at each POTW.

191. Each failure to report daily maximum E. coli levels at the East River POTW or at the West River POTW is a separate violation of the Clean Water Act.

192. The Board's failures to report E. Coli levels at the POTWs at the required frequency are ongoing and continuous.

TWELFTH CAUSE OF ACTION

Failure to Report Dissolved Oxygen at the East and West River POTWs at the Required Frequency; Violations of Parts I.A.1 and I.C.1 of the Board's NPDES permits and Violations of Clean Water Act Section 402, 33 U.S.C. § 1342

193. Part I.A.1. of the Board's NPDES permits requires the Board to measure and report on dissolved oxygen at the East River POTW at the frequency of three times per week and twice weekly at the West River POTW.

194. Specifically, Part I.A.1 requires the Board to measure dissolved oxygen two or three times per week (depending on the POTW) and report the daily minimum values. Part III.H of the permits defines "daily minimum" as "the lowest value of any individual sample result obtained during a day."

195. The Board does not report on dissolved oxygen at the required frequency.

196. Rather, the Board routinely provides just a single monthly value for dissolved oxygen at each POTW.

197. Each failure to report daily minimum dissolved oxygen is a separate violation of the Clean Water Act.

198. The Board's failures to report dissolved oxygen levels at each POTW at the required frequency are ongoing and continuous.

THIRTEENTH CAUSE OF ACTION

Failure to Report Total Suspended Solids at the POTWs at the Required Frequency; Violations of Parts I.A.1 and I.C.1 of the Board's NPDES permits and Violations of Clean Water Act Section 402, 33 U.S.C. § 1342

199. Part I.A.1. of the Board's NPDES permits requires the Board to measure total suspended solids at the East River POTW at a frequency of three times per week and twice weekly at the West River POTW, and to report weekly average results at each POTW.

200. Specifically, Part I.A.1 requires the Board to measure suspended solids two or three times per week (depending on the POTW) and report weekly averages and monthly average values in both units of mass/time (lbs./day) and concentration (mg/L).

201. The Board does not report on total suspended solids at the required frequency.

202. Rather, the Board routinely provides just a single value for the weekly averages of total suspended solids at each POTW.

203. Each failure to report on the weekly average of total suspended solids at each POTW is a separate violation of the Clean Water Act.

204. The Board's failures to report weekly average levels of total suspended solids at the POTWs at the required frequency are ongoing and continuous.

FOURTEENTH CAUSE OF ACTION

Failure to Report the Values for Various Forms of Nitrogen at the POTWs at the Required Frequency; Violations of Parts I.A.1 and I.C.1 of the Board's NPDES permits and Violations of Clean Water Act Section 402, 33 U.S.C. § 1342

205. Part I.A.1. of the Board's NPDES permits requires the Board to measure total ammonia nitrogen and total Kjeldahl nitrogen at the East River POTW at the frequency of three times per week, and twice weekly at the West River POTW, and report weekly average results at each POTW.

206. Specifically, Part I.A.1 requires the Board to measure each of these forms of nitrogen two or three times per week (depending on the POTW) and report weekly average and monthly average values in both units of mass/time (lbs./day) and concentration (mg/L).

207. The Board does not report on total ammonia and total Kjeldahl nitrogen at the required frequency.

208. Rather, the Board routinely provides just a single monthly value for the weekly averages of total ammonia and a single monthly value for the weekly averages of total Kjeldahl nitrogen at the East River POTW.

209. Each failure to report on the weekly average value of these forms of nitrogen at each POTW is a separate violation of the Clean Water Act.

210. The Board's failures to report on nitrogen at the POTWs at the required frequency are ongoing and continuous.

FIFTEENTH CAUSE OF ACTION

**Failure to Report Phosphorus at the East River POTW at the Required Frequency;
Violations of Parts I.A.1 and I.C.1 of the East River NPDES permit and Violations
of Clean Water Act Section 402, 33 U.S.C. § 1342**

211. Part I.A.1. of the East River NPDES requires the Board to measure phosphorus at Outfall 0011 at the frequency of three times per week from April through October and report on the monthly and weekly average values.

212. Specifically, Part I.A.1 requires the Board to measure phosphorus at Outfall 0011 three times weekly and report the weekly average and monthly average values in both units of mass/time (lbs./day) and concentration (mg/L).

213. The Board does not report on weekly average phosphorus values at the required frequency.

214. Rather, the Board routinely provides just a single value each month for the weekly averages for phosphorus mass/time and concentration at the East River POTW.

215. Each failure to report the weekly average mass and concentration of phosphorus at the East River POTW is a separate violation of the Clean Water Act.

216. The Board's failures to report on phosphorus at the East River POTW at the required frequency are ongoing and continuous.

SIXTEENTH CAUSE OF ACTION

Failure to Report Biological Oxygen Demand at the POTWs at the Required Frequency; Violations of Parts I.A.1 and I.C.1 of the Board's NPDES permits and Violations of Clean Water Act Section 402, 33 U.S.C. § 1342

217. Part I.A.1. of the Board's NPDES permits requires the Board to measure biological oxygen demand ("Carbonaceous, 5 Day BOD") at the East River POTW at the frequency of three times per week and twice weekly at the West River POTW, and to report the monthly average and weekly average values at each POTW.

218. Specifically, Part I.A.1 requires the Board to measure biological oxygen demand two or three times per week (depending on the POTW) and report weekly average and monthly average values in both units of mass/time (lbs./day) and concentration (mg/L).

219. The Board does not report on biological oxygen demand at the required frequency.

220. Rather, the Board routinely provides just a single value for the weekly average mass/time and concentration for biological oxygen demand at each POTW.

221. Each failure to report the weekly average concentration and mass/time biological oxygen demand at each POTW is a separate violation of the Clean Water Act.

222. The Board's failures to report on biological oxygen demand at the POTWs at the required frequency are ongoing and continuous.

SEVENTEENTH CAUSE OF ACTION

Violation of Water Quality Standards; Violations of the Board's Permits, including Part III.F, and Violations of Clean Water Act Section 402, 33 U.S.C. § 1342

223. Under Section 301 of the Clean Water Act, no discharge of a pollutant to waters of the United States is permitted except in accordance with a NPDES permit.

224. No discharge that causes or contributes to violations of water quality standards can be in accordance with a NPDES permit. The effluent limits and standards in a NPDES permit must assure that the permitted discharge does not cause or contribute to violations of a state's water quality standards.

225. Section 301(b)(1)(C) of the Clean Water Act, 33 U.S.C. § 1311(b)(1)(C) requires that any limitation required to meet water quality standards "shall be achieved" no later than 1977.

226. Section 302(a) of the Act, 33 U.S.C. § 1312(a), requires establishment of effluent limitations for point sources that contribute to attainment and maintenance of water quality standards.

227. Section 402(a)(1), 33 U.S.C. § 1342(a)(1), of the Clean Water Act requires that NPDES permits shall contain effluent limitations that will assure compliance with water quality standards.

228. 40 C.F.R. § 122.44(d) requires that NPDES permits contain limitations on all discharges that may cause or contribute to violations of a state's water quality standards sufficient to assure compliance with those standards.

229. Lastly, 40 C.F.R. § 122.4 prohibits the issuance of any permit whose conditions do not provide for compliance with water quality standards.

230. Part III.F.1. of both NPDES permits states “compliance with the terms and conditions of this permit should assure compliance with the applicable water quality standards.” This necessarily includes compliance with all discharge related provisions of the permit.

231. The effluent limits in the Board’s NPDES permits include a prohibition on sanitary sewer overflows – compliance with this limit is necessary to assure compliance with water quality standards.

232. The effluent limits in the Board’s NPDES permits include prohibitions on discharges that exceed numeric standards at the treatment plants – compliance with these limits is necessary to assure compliance with water quality standards as well.

233. As detailed in the Notice Letter, Exhibit A, the Board has violated these conditions of its NPDES permits hundreds of times in the past five years.

234. Any sanitary sewer overflow or numeric effluent limit exceedance that causes or contributes to a violation of Alabama water quality standards at the point of discharge violates the terms of the relevant NPDES permit and the Clean Water Act.

235. As part of its water quality standards, Alabama sets numeric and narrative criteria for different water pollution parameters.

236. A waterbody must meet these numeric and narrative criteria to support its designated uses.

237. Waters whose use is designated by ADEM as “Fish and Wildlife” must be “suitable for fish, aquatic life and wildlife propagation. ADEM Rule 335-6-10-.09(5)(b).

238. Fish and Wildlife waters must meet several specific criteria.

239. Sewage that is not effectively controlled under the ADEM waste treatment requirements is prohibited from reaching Fish and Wildlife waters. ADEM Rule 335-6-10-.09(5)(e)(1).

240. In non-coastal Fish and Wildlife waters, “bacteria of the E. coli group shall not exceed a geometric mean of 548 colonies/100 ml; nor exceed a maximum of 2,507 colonies/100 ml in any sample.” ADEM Rule 335-6-10-.09(5)(e)(7)(i).

241. Fish and Wildlife waters “under proper sanitary supervision by the controlling health authorities, will meet accepted standards of water quality for outdoor swimming areas and will be considered satisfactory for swimming and other whole body water-contact sports.” ADEM Rule 335-6-10-.09(5)(d).

242. For Fish and Wildlife waters, “daily dissolved oxygen concentrations shall not be less than 5 mg/l at all times; except under extreme conditions due to natural causes, it may range between 5 mg/l and 4 mg/l, provided that the water quality is favorable in all other parameters. The normal seasonal and daily fluctuations shall be maintained above these levels.” ADEM Rule 335-6-10-.09(5)(e)(4).

243. ADEM rules state the following about the level of toxic substances allowable in Fish and Wildlife waters: “Toxic substances attributable to sewage, industrial wastes, or other wastes: Only such amounts, whether alone or in combination with other substances, as will not exhibit acute toxicity or chronic toxicity, as

demonstrated by effluent toxicity testing or by application of numeric criteria given in Rule 335-6-10-.07, to fish and aquatic life, including shrimp and crabs in estuarine or salt waters or the propagation thereof.” ADEM Rule 335-6-10-.09(5)(e)(5).

244. ADEM rules also state the following about the level of taste, odor, and color-producing substances allowable in Fish and Wildlife waters: “Taste, odor, and color-producing substances attributable to sewage, industrial wastes, or other wastes: Only such amounts, whether alone or in combination with other substances, as will not exhibit acute toxicity or chronic toxicity, as demonstrated by effluent toxicity testing or by application of numeric criteria given in Rule 335-6-10-.07, to fish and aquatic life, including shrimp and crabs in estuarine and salt waters or adversely affect the propagation thereof; impair the palatability or marketability of fish and wildlife or shrimp and crabs in estuarine and salt waters; or unreasonably affect the aesthetic value of waters for any use under this classification.” ADEM Rule 335-6-10-.09(5)(e)(6).

245. Finally, ADEM rules state the following about turbidity in Fish and Wildlife waters: “There shall be no turbidity of other than natural origin that will cause substantial visible contrast with the natural appearance of waters or interfere with any beneficial uses which they serve.” ADEM Rule 335-6-10-.09(5)(e)(9).

246. Waters whose use is designated by ADEM as “Public Water Supply” may be used for drinking and food-processing purposes if subjected to ADEM-approved treatment. ADEM Rule 335-6-10-.09(2)(b).

247. Public Water Supply waters may also be used for swimming and other whole body water-contact sports. ADEM Rule 335-6-10-.09(2)(d).

248. Sewage that is not effectively controlled under the ADEM waste treatment requirements is also prohibited from reaching Public Water Supply waters. ADEM Rule 335-6-10-.09(2)(e)(1).

249. In non-coastal Public Water Supply waters, “bacteria of the E. coli group shall not exceed a geometric mean of 548 colonies/100 ml; nor exceed a maximum of 2,507 colonies/100 ml in any sample,” and, for incidental water contact and whole body water-contact recreation during the months of May through October, the geometric mean E. coli density “may not exceed 126 colonies/100 ml nor exceed a maximum of 298 colonies/100 ml in any single sample in non-coastal waters.” ADEM Rule 335-6-10-.09(2)(e)(7).

250. In regard to Public Water Supply waters, ADEM rules state, “[i]t is recognized that the waters may be used for incidental water contact year-round and for whole body water-contact recreation during the months of May through October, except that water contact is strongly discouraged in the vicinity of discharges or other conditions beyond the control of the Department or the Alabama Department of Public Health.” ADEM Rule 335-6-10-.09(2)(c).

251. Moreover, ADEM rules state, “[t]he waters, under proper sanitary supervision by the controlling health authorities, will meet accepted standards of water quality for outdoor swimming areas and will be considered satisfactory for swimming and other whole body water-contact sports.” ADEM Rule 335-6-10-.09(2)(d).

252. For Public Water Supply waters, “daily dissolved oxygen concentrations shall not be less than 5 mg/l at all times; except under extreme conditions due to natural

causes, it may range between 5 mg/l and 4 mg/l, provided that the water quality is favorable in all other parameters. The normal seasonal and daily fluctuations shall be maintained above these levels.” ADEM Rule 335-6-10-.09(2)(e)(4).

253. ADEM rules state the following about the allowable level of toxic substances in Public Water Supply waters: “Toxic substances; color producing; heated liquids; or other deleterious substances attributable to sewage, industrial wastes, or other wastes: Only such amounts, whether alone or in combination with other substances, and only such temperatures as will not render the waters unsafe or unsuitable as a source of water supply for drinking or food-processing purposes, or exhibit acute toxicity or chronic toxicity, as demonstrated by effluent toxicity testing or by application of numeric criteria given in Rule 335-6-10-.07, to fish, wildlife and aquatic life, or adversely affect the aesthetic value of waters for any use under this classification.” ADEM Rule 335-6-10-.09(2)(e)(5).

254. ADEM rules also state the following about the allowable level of taste and odor producing substances in Public Water Supply waters: “Taste and odor producing substances attributable to sewage, industrial wastes, or other wastes: Only such amounts, whether alone or in combination with other substances or wastes, as will not cause taste and odor difficulties in water supplies which cannot be corrected by treatment as specified under subparagraph (b), or impair the palatability of fish.” ADEM Rule 335-6-10-.09(2)(e)(6).

255. Finally, ADEM rules state the following about turbidity in Public Water Supply waters: “There shall be no turbidity of other than natural origin that will cause

substantial visible contrast with the natural appearance of waters or interfere with any beneficial uses which they serve.” ADEM Rule 335-6-10-.09(2)(e)(9).

256. The Board’s sanitary sewer overflows have reached a segment of the Coosa River designated as a Fish and Wildlife water. Examples of these sanitary sewer overflows are provided in the Notice Letter, Exhibit A, Figures 1-3.

257. Specifically, the portion of the river from McCardney’s Ferry to the City of Gadsden’s water supply intake has been designated by ADEM as a Fish and Wildlife water. ADEM Rule 335-6-11-.02(8).

258. The Board’s sanitary sewer overflows have also reached Big Wills Creek and Black Creek, which have been designated by ADEM as Fish and Wildlife waters. ADEM Rule 335-6-11-.02(8). Examples of these sanitary sewer overflows are provided in the Notice Letter, Exhibit A, Figures 1-3.

259. The Board’s sanitary sewer overflows have also reached a segment of the Coosa River designated as a Public Water Supply water. Specifically, the portion of the river from City of Gadsden’s water supply intake to the Weiss Dam powerhouse has been designated by ADEM as a Public Water Supply water. ADEM Rule 335-6-11-.02(8). Examples of these sanitary sewer overflows are provided in the Notice Letter, Exhibit A, Figures 1-3.

260. The Board’s sanitary sewer overflows have caused untreated sewage to flow into these Fish and Wildlife and Public Water Supply waterbodies. These sanitary sewer overflows violate the prohibition against the introduction of untreated sewage into these waterbodies.

261. These sanitary sewer overflows have also violated numeric standards related to E. coli and dissolved oxygen, as there is no mixing zone at the point where the sanitary sewer overflows reach the Coosa River.

262. These sanitary sewer overflows also violate the standards related to swimming and other whole body water-contact sports, as sanitary sewer overflows render these waterbodies unsafe and unfit for these purposes.

263. These sanitary sewer overflows also violate the standards related to toxic substances, and color, taste, and odor-producing substances, as sanitary sewer overflows contribute such substances to these waterbodies and adversely affect their aesthetic value.

264. These sanitary sewer overflows also violate the standards related to turbidity, as the Board's sanitary sewer overflows cause substantial visible contrast in these waters.

265. The Board's sanitary sewer overflows have also contributed to the impairment of two different tributaries of the Coosa River. Both Black Creek and Big Wills Creek are Fish and Wildlife waters, are impaired for nutrients, and therefore have been placed on Alabama's 303(d) list of impaired waterbodies.

266. The Board's sanitary sewer overflows have reached these creeks, thereby adding excess nutrients to these waters, and contributing to their continuing impairment.

267. Further, the entirety of Neely Henry Lake is designated as impaired by the State of Alabama due to nutrients; organic enrichment; high levels of oxygen demanding pollutants (measured as CBOD and NBOD) and resulting low dissolved oxygen levels; pH; and PCBs.

268. ADEM has prepared Total Maximum Daily Loads for Neely Henry Lake – plans that strictly limit the quantity of nutrients and other wastes that can be discharged into the lake. The plans note that sanitary sewer overflows can be significant sources of organic loading to Neely Henry Lake.

269. The plans determine the quantity or load of nutrients from sewage and other sources that can be discharged to the lake and allocate that load across different sewage plants and other sources. There is no allocation for sanitary sewer overflows.

270. Further, ADEM prepared “Permit Rationales” for the East and West River NPDES permits. The permit rationale is ADEM’s statement of the basis on which effluent limitations for the permits were calculated. The Permit Rationales make clear that the levels of nutrient related pollution that the POTWs are authorized to discharge from their permitted outfalls at the treatment plants (i.e., the levels of Phosphorus; Five Day Carbonaceous BOD; Total Ammonia-Nitrogen; Total Kjeldahl Nitrogen; and Dissolved Oxygen) were set in accordance with the pollution load allocations established in the TMDL.

271. Because the allowable amount of these nutrient-related pollutants is already fully allocated to the treatment plant discharges and to other sources of pollution, every sanitary sewer overflow from the Board’s POTWs that reaches any part of Neely Henry Lake violates the TMDL and contributes to the ongoing nutrient, organic enrichment, and dissolved oxygen impairments in the lake, thus violating both the terms of the NPDES permits and the Clean Water Act.

272. Finally, Alabama has adopted water quality standards for sewage discharges that apply to all state waters. This necessarily includes the nutrient impaired waters of Neely Henry Lake, Big Wills Creek, and Black Creek. These standards, codified at Section 335-6-10-.06(a)-(c) of the Alabama Administrative Code (2020), provide that:

(a) State waters shall be free from substances attributable to sewage . . . that settle in forming bottom deposits which are unsightly, putrescent or interfere directly or indirectly with any classified water use.

(b) State waters shall be free from floating debris, oil, scum, and other floating materials attributable to sewage . . . in amounts sufficient to be unsightly, or which interfere directly or indirectly with any classified water use.

(c) State waters shall be free from substances attributable to sewage. . . in concentrations or combinations, which are toxic or harmful to human, animal, or aquatic life to the extent commensurate with the designated usage of such waters.

273. Many of the Board's sanitary sewer overflows violate these standards by causing unsightly bottom deposits and unsightly floating debris and scum on waters around Gadsden.

274. Since at least November 2, 2016, the Board has violated Alabama water quality standards through its discharges of untreated sewage.

275. Similarly, the Board's discharges of pollutants from the permitted outfalls at the East and West River POTWs in excess of the numeric effluent limitations established on such discharges also cause or contribute to violations of the above water quality standards. Examples of such discharges are provided in the Notice Letter, Exhibit A.

276. Each day the Board violates water quality standards is a separate and distinct violation of its NPDES permits and the Clean Water Act.

277. The Board's violations of water quality standards are ongoing and continuous.

VII. PRAYER FOR RELIEF

278. All of the above violations harm the interests of Plaintiffs and their members in a clean, healthy, swimmable, drinkable, and fishable aquatic environment that supports a diversity of fish, shellfish, other animals, and plants, including many of the Coosa River's remaining vulnerable species. Plaintiffs' members like to swim, boat, fish and engage in other activities that involve contact with local waters. These interests are harmed by the Board's pollution. Their enjoyment of the natural environment in and around Gadsden is harmed by unsightly discharges and offensive smells from sewage pollution. The Board's pollution reduces their willingness to eat and the enjoyment they derive from catching and eating fish in these waters. Their aesthetic enjoyment of the water and entire ecosystem of the Coosa River (Neely Henry Lake) and its tributaries (including Big Wills Creek and Black Creek) is also harmed.

279. Even before reaching the water, the Board's sewage discharges harm the interests of Plaintiffs' members when raw sewage enters their homes and the streets they walk and drive daily. The Board's pollution also causes economic harm in the form of reduced business for some members, like Mr. Tidwell and Ms. Machen, whose livelihoods depend on a clean, healthy, and sewage-free aquatic environment, and for all

members because their continued economic prosperity depends on reliable basic infrastructure that attracts others to live and do business in Gadsden.

280. Further, the Board's violations of the recordkeeping and reporting provisions of their NPDES permits also harms Plaintiffs and their members. Under the terms of the NPDES permits and federal law, Plaintiffs and their members have a legally protected interest in accessing information about the Board's discharges. Without this information, their ability to accurately track, evaluate, avoid, and respond to sewage overflows is harmed. Further, the Board's misreporting deprives Plaintiffs and their members of information they need to evaluate the full impacts of pollution, and thus impedes their efforts to participate as informed members of the public in permitting proceedings, public meetings and, when necessary, in enforcement actions like this lawsuit.

281. Thus, the Board's NPDES permit violations—failures to maintain its sewer systems, violations of water quality standards, illegal sewage overflows, and reporting violations—cause myriad harms to Plaintiffs and their members.

282. Plaintiffs respectfully request that this Court grant the following relief, as allowed by 33 U.S.C. § 1365(a) and 28 U.S.C. §§ 2201(a) and 2202:

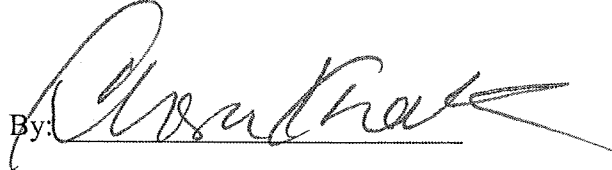
- a. Declare the Board to have violated and to be in violation of the Clean Water Act as alleged herein;
- b. Enjoin the Board from discharging pollutants except as authorized by and in compliance with its NPDES permits;

- c. Enjoin the Board from further violating the above-identified substantive and procedural requirements of its NPDES permits;
- d. Compel the Board to fully and immediately repair Gadsden's POTWs;
- e. Compel the Board to adequately and properly operate and maintain the POTWs and address the above violations of its NPDES permits by, at minimum: adopting an appropriate Capacity, Management, Operations, and Maintenance Program based on industry best practices; preventing and removing blockages; making repairs to abate inflow and infiltration into sewer lines and manholes; addressing inflow and infiltration from sewer laterals; and adequately funding the true capital and maintenance costs of the POTWs;
- f. Compel the Board to report on its discharges of pollution as required by the NPDES permits, including reporting the occurrence of all sanitary sewer overflows, reporting the cause, location, and ultimate destination of each sanitary sewer overflow, and reporting on discharges of all pollutants from the permitted outfalls at the POTWs with the frequency and in the manner required under the NPDES permits;
- g. Compel the Board to cease causing violations of water quality standards;
- h. Order the Board to pay civil penalties of up to \$59,973 per day per violation, pursuant to Sections 309(d) and 505(a) of the Act, 33 U.S.C. §§ 1319(d), 1365(a) and 40 C.F.R. §§ 19.1 - 19.4;

- i. Order the Board to take appropriate actions to restore the quality of waters impaired or adversely affected by their activities;
- j. Order the Board to pay the costs of litigation, including Plaintiffs' reasonable investigative costs, attorney fees, expert witness and consultant fees, and other costs, pursuant to CWA Section 505(d), 33 U.S.C. § 1365(d); and
- k. Award such other and further relief as this Court may deem appropriate.

Dated this 1st day of February, 2022

Respectfully submitted,

By: 

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