

# SOUTHERN ENVIRONMENTAL LAW CENTER

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August 3, 2016

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## VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED

The Honorable Leon Smith  
Mayor, Oxford  
P.O. Box 3383  
Oxford, Alabama 36203

Mr. Steven Waits  
Council President, Oxford  
P.O. Box 3383  
Oxford, Alabama 36203

Mr. Luke Whittle  
Chairman of the Oxford Water Board  
P.O. Box 3663  
Oxford, AL 36203

Mr. Wayne Livingston  
General Manager, Oxford Water Works and Sewer Board  
P.O. Box 3663  
Oxford, AL 36203

Ms. Meredith Holzer  
Engineer, Oxford Water Works and Sewer Board  
P.O. Box 3663  
Oxford, AL 36203

Re: 60-Day Notice of Violations and Intent to File Citizen Suit under Section 505 of the  
Clean Water Act

Dear Messrs. Waits, Whittle, Livingston, Ms. Holzer, and Mayor Smith:

This letter is sent to notify you, the City of Oxford, the Oxford Water Works & Sewer Board (“Oxford”), the Alabama Department of Environment Management (“ADEM”), the United States Environmental Protection Agency (“EPA”), and the other entities and individuals named in this letter that Coosa Riverkeeper, Inc. (“Riverkeeper”) and its members have identified violations of the Clean Water Act,<sup>1</sup> and the Alabama Water Pollution Control Act<sup>2</sup> at the Oxford Tull C. Allen Wastewater Treatment Plant. Riverkeeper hereby notifies you that it is prepared to file an action in the U.S. District Court for the Northern District of Alabama pursuant

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<sup>1</sup> 33 U.S.C. §§ 1251-1387.

<sup>2</sup> AL Code Ann. § 22-22-1 *et seq.*

to § 505(a) of the Clean Water Act (“CWA”),<sup>3</sup> sixty days from the date of this letter or soon thereafter. This lawsuit will seek injunctive relief, appropriate monetary penalties, fees and costs of litigation, and such other relief as the Court deems appropriate, in order to address and correct the violations that are described in this letter.<sup>4</sup>

## **I. LOCATION OF VIOLATIONS**

### **A. Choccolocco Creek on the Coosa River**

Choccolocco Creek runs for over thirty miles<sup>5</sup> and is a tributary of the Coosa River, an aquatically biodiverse subwatershed of the Mobile River Basin. According to the Water Resources Center at Auburn University, it “may support the largest number of endangered and threatened species found in any Alabama waterway of comparable size”.<sup>6</sup> The Geological Survey of Alabama, the U.S. Fish and Wildlife, and the Alabama Department of Conservation and Natural Resources have designated the area from the treatment plant to the Coosa River as a “priority area for conservation action.”<sup>7</sup>

Choccolocco Creek is a popular area for recreational activities such as canoeing, kayaking, and fishing. In addition, Choccolocco Creek is the base for a tubing business, Floating Fun, LLC, where tubers can float the creek in a tube. The main access point for Floating Fun, LLC is located approximately one mile downstream of the treatment plant effluent. Less than twenty-five miles downstream from the treatment plant, Choccolocco Creek empties into Logan Martin Lake on the Coosa River, where boaters fish and swim on a daily basis.

### **B. The Oxford Treatment Plant**

The Oxford Tull C Allen Wastewater Treatment Plant (“Oxford WWTP”) is located at 2975 Silver Run Road, Oxford, AL 36203. NPDES Permit No. AL0058408 authorizes the discharge of wastewater from Outfall 0011 into Choccolocco Creek. This is where a majority of the violations identified in this letter have occurred. Violations also occurred at overflow sites (*i.e.*, where sewage was released from the collection, transmission, or treatment system other than through permitted outfalls), as described in the chart labeled “*Sanitary Sewer Overflows (SSOs) and Upsets*” *See infra* Section III.G.i.

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<sup>3</sup> 33 U.S.C. § 1365(a)(1).

<sup>4</sup> *See* 33 U.S.C. §§ 1365, 1319.

<sup>5</sup> The Nature Conservancy, *Middle Coosa River, Upper Coosa River, Eightmile Creek, and Cotaco Creek Watersheds Nonpoint Source Prioritization Project*, July 2004, 125, <http://www.alnhp.org/reports/Coosa-vol-i.PDF> (last visited June 30, 2016).

<sup>6</sup> Auburn University Water Resources Center, *Rivers of Alabama Guide, Tributaries*, <http://aaes.auburn.edu/wrc/resource/rivers-of-alabama/coosa-basin/tributaries/> (last visited June 30, 2016). *See also*, US Fish and Wildlife Service, *Endangered Species, IPaC Information for Conservation and Planning*, <https://ecos.fws.gov/ipac/project/IJ2SHMYDNFD27GSRGUZDX5E4PY/resources> (last visited June 30, 2016).

<sup>7</sup> *Id.* at 277; *See also*, GSA, U.S. Fish & Wildlife, ADCNR, *Strategic Habitat and River Reach Units for Aquatic Species of Conservation Concern in Alabama Map*, available at, [http://www.gsa.state.al.us/gsa/eco/pdf/Special\\_Map\\_248.pdf](http://www.gsa.state.al.us/gsa/eco/pdf/Special_Map_248.pdf)

The WWTP serves approximately 28,700 people<sup>8</sup> and has a design flow of 4.5 million gallons per day.<sup>9</sup> It also serves approximately 12 industries that have significant industrial discharge permits.<sup>10</sup> The Oxford Water Works and Sewer Board also charges one of the lowest sewer rates in the state.<sup>11</sup>

## II. ENFORCEMENT ACTIONS

The Oxford plant has had a twenty-five year history of violations and the plant continues to violate its permit to this day. The plant applied for its first permit in 1989,<sup>12</sup> and it began violating its permit three years later.<sup>13</sup> From scanning only what was publically available, Riverkeeper ascertained that over the course of twenty-five years, it has had at least fifteen Notices of Violations.<sup>14</sup> The Oxford plant failed or has been cited for deficiencies in a large portion of its inspections and tests.<sup>15</sup> Besides problems with the operation of the plant, most of these inspections and tests noted problems with the method of Oxford's sampling.<sup>16</sup>

Additionally, it has received four administrative orders against it (in 1994, 1995, 2012, and 2013).<sup>17</sup> (Please see charts attached as Appendices 1, 2, and 3.) In the last two administrative orders alone, the plant violated its permit over 1400 times. However after twenty-five years of violations, the plant has only received one \$20,450 fine in its history.<sup>18</sup> To put that in perspective, the Board receives that amount in one year in fees from one industrial discharger alone.<sup>19</sup>

In the March 21, 2012 Consent Order, Oxford was required to “fully comply with the Permit limitations for Total Ammonia – Nitrogen” by March 21, 2014.<sup>20</sup> In the last Unilateral Order, Oxford was required to be in full compliance with the permit limitations for Total

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<sup>8</sup> ADEM and University of North Carolina Environmental Finance Center, *Water and Sewer Rates and Rate Structures in Alabama as of March 2014*, 12, [http://www.efc.sog.unc.edu/sites/www.efc.sog.unc.edu/files/AL2014WaterSewerRatesTables\\_0.pdf](http://www.efc.sog.unc.edu/sites/www.efc.sog.unc.edu/files/AL2014WaterSewerRatesTables_0.pdf) (last visited June 30, 2016) .

<sup>9</sup> Oxford, *Application for NPDES Permit*, EPA Form 3510-2A, 3.

<sup>10</sup> Letter from Wayne Livingston, Oxford WWTP, to David Phillips, EPA, Re. Information Request, Section 308 of the Clean Water Act, Nov. 18, 2014.

<sup>11</sup> ADEM and University of North Carolina Environmental Finance Center, *Water and Sewer Rates and Rate Structures in Alabama as of March 2014*, [http://www.efc.sog.unc.edu/sites/www.efc.sog.unc.edu/files/AL2014WaterSewerRatesTables\\_0.pdf](http://www.efc.sog.unc.edu/sites/www.efc.sog.unc.edu/files/AL2014WaterSewerRatesTables_0.pdf) (last visited June 30, 2016) .

<sup>12</sup> ADEM, *Public Notice, City of Oxford Applies for Permit to Operate New Wastewater Treatment Plant*, June 1, 1989.

<sup>13</sup> Letter from Robert Bretzer (ADEM) to Glenn Dorsey (Oxford), *Incomplete DMR, NPDES Permit No. AL0058408*, Jan. 14, 1991.

<sup>14</sup> See Appendix 1.

<sup>15</sup> See Appendix 2.

<sup>16</sup> See ADEM Inspections 9/15/1992, 7/18/1994, 9/30/1996, 11/18/1998, 8/11/2009, 8/12/2014, 12/16/2014.

<sup>17</sup> See Appendix 3.

<sup>18</sup> ADEM, *Consent Order No. 12-093-CWP*, March 21, 2012, p. 6.

<sup>19</sup> Email from Meredith Holzer (Oxford WWTP) to David Phillips (EPA) Re. Solids, Jan. 8, 2013.

<sup>20</sup> ADEM, *Consent Order No. 12-093-CWP*, March 21, 2012, F.

Suspended Solids (“TSS”), Fecal Coliform, Percent Removal of TSS, Carbonaceous Biochemical Oxygen Demand (“CBOD”), and Percent Removal of CBOD by July 29, 2014.<sup>21</sup>

### III. DESCRIPTION OF THE VIOLATIONS

Section 301(a) of the Clean Water Act<sup>22</sup> prohibits the discharge of a pollutant to waters of the United States except, in relevant part, pursuant to a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to § 402. “Discharge of a pollutant” means “any addition of any pollutant to navigable waters from any point source,”<sup>23</sup> and “pollutant” includes “solid waste, . . . sewage, garbage, sewage sludge, . . . chemical wastes, biological materials, . . . heat, . . . rock, sand, . . . and industrial, municipal, and agricultural waste discharged into water.”<sup>24</sup>

Under authority of the Alabama Water Control Pollution Act of 1975 and the authority delegated to the State of Alabama from the EPA,<sup>25</sup> ADEM has issued NPDES permit number AL0058408 for the Oxford Tull C. Allen Treatment Plant. This permit limits discharges into Choccolocco Creek and sets specific requirements for monitoring and reporting these discharges.<sup>26</sup> The most recent version of this permit was effective as of August 28, 2013 and will expire August 31, 2018. The previous iteration of the permit was issued on November 28, 2007 and expired on November 30, 2012.<sup>27</sup>

The 2013 permit states, “Any permit noncompliance constitutes a violation of the AWPCA and the FWPCA and is grounds for enforcement action, for permit termination, revocation and reissuance, suspension, modification, or denial of a permit renewal application.” *See* Permit § II.D.1.a. (2013). The Oxford Waterworks and Sewer Board is required to record and submit Discharge Monitoring Reports (“DMRs”) to show that it is complying with the permit. *See* Permit § I.C.1.b. (2013). These reports must be signed and certified. *See* Permit § I.C.1.d. (2013).<sup>28</sup> The plant must report any permit non-compliance on the DMRs. *See* Permit § I.C.2.a.-b. (2013).

Based on the review of these reports and other records prepared or kept by ADEM, as well as the Riverkeeper’s own testing, the Oxford plant has violated the terms of NPDES Permit No. AL0058408. Violating the terms of a validly issued NPDES permit also constitutes a

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<sup>21</sup> ADEM, *Unilateral Order no. 13-118-WP*, July 29, 2013, E.

<sup>22</sup> 33 U.S.C. § 1311(a).

<sup>23</sup> 33 U.S.C. § 1362(12)(A).

<sup>24</sup> 33 U.S.C. § 1362(6).

<sup>25</sup> 33 U.S.C. § 1342(b). Pursuant to Ala. Code § 22-22A-4(n), the Department is the state agency responsible for the promulgation and enforcement of water pollution control regulations in accordance with the FWPCA, 33 U.S.C. §§ 1251 to 1387. In addition, the Department is authorized to administer and enforce the provisions of the AWPCA and Ala. Code §§ 22-22-1 through 22-22-14.

<sup>26</sup> These requirements are examples of the State of Alabama’s exercise of its delegated authority to impose permitting limitations in furtherance of the objectives of the Clean Water Act. As a result, the permit is enforceable through a citizen suit under the Clean Water Act. *See* 33 U.S.C. §§ 1370, 1311(b)(1)(B).

<sup>27</sup> ADEM, *NPDES Permit for the Water Works and Sewer Board of the City of Oxford*, AL0058408.

<sup>28</sup> *See also* 40 C.F.R. § 122.22(d) (requiring certification by authorized agent of permittee that information submitted with DMR is “true, accurate, and complete”).

violation of the CWA. 33 USC § 1365(a). First, the plant has failed to ensure that all discharges “shall be limited . . . by the Permittee as specified” in Part I.A.1. of the permit, which contains a table detailing effluent limitations by pollutant parameter. Second, the plant has submitted incomplete or inconsistent reports and has failed to report many of its noncompliance notifications as required by the permit. Third, the plant has discharged pollutants without a permit and at unpermitted locations. Fourth, Oxford has violated the required sampling methods. Fifth, it failed to fully comply with the toxicity requirements in the permit. And finally, it failed to properly maintain and operate the plant.

**A. Each day when the Oxford Treatment Plant has operated in violation of its permit and each unauthorized discharge of a pollutant constitute a separate violation.**

Each violation of the permit—and each discharge that is not expressly authorized by the permit—constitutes a separate violation of the Clean Water Act. *See, e.g.*, 33 U.S.C. § 1319(d) (“penalty . . . per day for each violation”); *Sierra Club, Hawaii Chapter v. City & Cnty. of Honolulu*, 486 F. Supp. 2d 1185, 1190 (D. Haw. 2007) (summarizing holdings).

Based on a review of the DMRs and other reports prepared by the plant and sent to ADEM, and the Riverkeeper’s own sampling, the Riverkeeper has identified over 300 numeric violations, 100 reporting violations (including incorrect reporting of bypasses and overflows), and 800 monitoring violations of the permit held by Oxford to discharge pollutants into Choccolocco Creek.<sup>29</sup> 40 C.F.R. § 135.3(a). None of these violations were part of ADEM’s prior enforcement actions.

**B. The Oxford Treatment Plant’s own reports reveal numeric violations.**

*i. The plant reported numeric violations*

The plant violated Section I.A.’s numeric effluent limitations. The first two columns of the chart show the “**Date of Violations**” and the “**Number of Violations**” that stem from the numeric violation. The next columns identify the “**Permit Parameter Violated**” (*i.e.*, which Permit § I.A. effluent limitation was violated); the “**Permit Limit**” (*i.e.*, the maximum or minimum effluent parameter value that the permit requires Oxford to achieve); the information “**Reported on DMR**” (*i.e.*, the numeric quantity for the parameter as reported on the DMR); and “**Additional Detail . . .**” reports the source of the information. All alleged violations of numeric limitations are based on the permittee’s DMR submissions and occur after the expiration of ADEM’s administrative orders.

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<sup>29</sup> These charts are compilations of information from public records, and each is intended to provide notice of the pattern of violations described in this letter. These charts are not intended to be a definitive legal representation of all material facts.

Numeric Violations					
Date of Violation(s)	Number of Violations	Permit Parameter Violated	Permit Limit	Reported on DMR	Additional Detail from DMR or Noncompliance Notification Form
July 31, 2014	31	CBOD mg/L monthly average	8.0	11	DMR
August 31, 2014	31	CBOD lbs/day monthly average	300	326	Reported on Noncompliance Notification Form not DMR.
August 31, 2014	31	CBOD mg/L monthly average	8.0	16	Reported on Noncompliance Notification Form not DMR.
August 31, 2014	7	CBOD mg/L max. weekly average	12.0	16	Reported on Noncompliance Notification Form not DMR.
September 30, 2014	30	CBOD lbs/day monthly average	300	331	DMR
September 30, 2014	30	CBOD mg/L monthly average	8.0	17	DMR
September 30, 2014	7	CBOD mg/L max. weekly average	12.0	20	DMR
October 31, 2014	31	CBOD mg/L monthly average	8.0	10	DMR
October 31, 2014	7	CBOD mg/L max. weekly average	12.0	20	DMR
June 30, 2015	30	Ammonia lbs/day monthly average	37.5	116	DMR
June 30, 2015	7	Ammonia lbs/day max. weekly average	56.2	136	DMR
June 30, 2015	30	Ammonia mg/L monthly average	1.0	4.23	DMR
June 30, 2015	7	Ammonia mg/L max. weekly average	1.5	5.15	DMR

**C. Based on the Riverkeeper’s own testing, the plant violated multiple effluent limitations and reporting requirements of the permit.**

The Riverkeeper took samples of the plant’s effluent at Outfall 0011 at the plant on the following dates and received the following results (see chart below).

<b>Daily Maximum Effluent Violations as Found by Riverkeeper</b>			
<b>Date</b>	<b>Parameter</b>	<b>Effluent Permit Limitation</b>	<b>Sample</b>
February 23, 2016	<i>E. coli</i>	2507 col/100mL	308,000 col/100mL
February 23, 2016	Total Residue Chlorine	0.14 mg/L	0.21 mg/L
March 22, 2016	Total Residue Chlorine	0.14 mg/L	0.20 mg/L
April 12, 2016	<i>E. coli</i>	2507 col/100mL	24,117 col/100mL
April 12, 2016	Total Residue Chlorine	0.14 mg/L	0.27 mg/L
May 4, 2016	<i>E. coli</i>	2507 col/100mL	4,000 col/100mL
June 7, 2016	<i>E. coli</i>	487 col/100mL	120,000 col/100mL
July 5, 2016	<i>E. coli</i>	487 col/100mL	6400 col/100 mL

The plant exceeded its permit’s effluent limitations and it failed to notify the Department of these noncompliances per Section I.C.2. of the permit. In addition, it violated Section I.B. and/or I.C. of the permit which requires accurate monitoring and accurate reporting. The DMRs for these months (February, March, April, May, June, and July 2016) should have reported exceedances of the permit for *E. coli* and total residual chlorine, but they did not. The Permittee violated its monitoring and/or reporting requirements.

**D. The Oxford Treatment Plant’s own reports reveal that the plant violated the reporting provisions of the permit.**

The Oxford plant violated reporting requirements contained in its permit. The column in the following chart labeled “*Month of Reporting Violation*” indicates the monthly reporting period during which the violation occurred; the “*Number of Violations*” column identifies how many violations stem from the reporting failure; the “*Permit Requirement Violated*” column identifies whether the violation involves the duty to report noncompliance and/or the failure to submit a discharge monitoring report; and the “*Explanation of Reporting Violation*” column provides additional information on the alleged violation. Failure to report is accounted for from May 2011 to the present. None of these were brought by ADEM under the past two orders.

Reporting Violations			
Month of Reporting Violation	Number of Violations	Permit Requirement Violated	Explanation of Reporting Violation
July 2011	8	Failed to Report on DMR and Duty to Report Noncompliance  (2007 NPDES Permit Section I.C.1.a.-b. and Section I.C.2.b.-c. of the 2007 Permit.)	During an NPDES inspection conducted on July 12, 2011 the permit limits were exceeded for D.O., fecal coliform, color, and percent removal of CBOD. This was not indicated on the DMR or in a Noncompliance Notification Form.
July 2013	5	Duty to Report Noncompliance  (Section I.C.2.b-c)	According to the July 2013 DMR, ammonia lbs/day monthly average and weekly average, and ammonia mg/L monthly average and weekly average, and CBOD mg/L average exceeded the monthly average, yet no Noncompliance Notification Form was submitted.
July 2014	1		“No. Ex” on DMR for CBOD is “1” when it should be 31. <sup>30</sup>
August 2014	19	DMR not submitted  (Section I.C.1.b.1)	The DMR for this month was not submitted. 19 effluent limitations went unreported.

<sup>30</sup> “The vast majority of courts which have addressed the issue have held that a violation of a daily average constitutes a violation for every day of that month.” *United States v. Aluminum Co. of Am.*, 824 F. Supp. 640, 650 (E.D. Tex. 1993) (citing U.S. *E.P.A. v. City of Green Forest, Ark.*, 921 F.2d 1394, 1407 (8th Cir.1990); *Atlantic States Legal Foundation, Inc. v. Tysons Foods, Inc.*, 897 F.2d 1128, 1140 (11th Cir.1990); *Atlantic States Legal Foundation, Inc. v. Universal Tool*, 786 F.Supp. 743, 746–47 (N.D.Ind.1992); *Public Interest Research Group of New Jersey v. Star Enterprise*, 771 F.Supp. 655, 668 (D.N.J.1991); *Chesapeake Bay Foundation v. Gwaltney of Smithfield*, 611 F.Supp. 1542, 1552–53 (E.D.Va.1985), *aff’d*, 791 F.2d 304 (4th Cir.1986), *rev’d and remanded on other grounds*, 484 U.S. 49, 108 S.Ct. 376, 98 L.Ed.2d 306 (1987), *remanded*, 844 F.2d 170 (4th Cir.), *judgment reinstated*, 688 F.Supp. 1078 (E.D.Va.1988), *aff’d in part, rev’d in part and remanded*, 890 F.2d 690 (4th Cir.1989); *United States v. Amoco Oil Co.*, 580 F.Supp. 1042, 1045 (W.D.Mo.1984)). *See also Atl. States Legal Found., Inc. v. Tyson Foods, Inc.*, 897 F.2d 1128, 1138-40 (11th Cir. 1990); *United States v. Smithfield Foods, Inc.*, 191 F.3d 516, 527-28 (4th Cir. 1999).

September 2014	3		"No. Ex" on DMR for CBOD is "2" when it should be 67.
October 2014	2		"No. Ex" on DMR for CBOD is "2" when it should be 38.
June 2015	4		"No. Ex" on DMR for Ammonia is "4" when it should be 74.

*iii. The Oxford plant failed to properly report SSOs*

The Oxford plant failed to properly report its Sanitary Sewer Overflows (SSOs) both in its Municipal Water Pollution Prevention Reports (MWPPRs) and to report these overflows to the Department after they occurred. The "***Date of the Overflow or Bypass***" in the chart below provides the date of the overflow, the "***Number of Overflows or Bypasses***" describes the number of events that occurred. The "***Number of Violations***" describe how many permit terms were violated multiplied times the number of overflows. The "***Source***" column provides the citation where this information occurs. The "***Violation of the Permit***" describes which permit terms the City violated.

<b>Reporting SSOs Violations</b>				
<b>Date of Overflow or Bypass</b>	<b>Number of Overflows or Bypasses</b>	<b>Number of Violations</b>	<b>Source</b>	<b>Violation of Permit</b>
2011	4	20	2011 Municipal Water Pollution Prevention Report ("MWPPR"): "How many bypasses or overflow events of untreated wastewater occurred in the last year prior to the headworks of the WWTP due to heavy rain?" Answer: "4"	2007 NPDES Permit Section I.C.2.e.1-5  Failure to report cause, date/duration/volume, description of the source, location of the discharge, and the ultimate destination of discharge in the MWPPR.
2011	3	3	Reported Overflows in MWPPR, but did not file a Form 415 or otherwise report to the Department	2007 NPDES Permit Section I.C.2.a.,d.,f or II.C.
2012	6	30	2012 MWPPR: "How many bypasses or overflow events of untreated wastewater occurred in the last year prior to the headworks of the WWTP due to heavy rain?" Answer: "6"	2007 NPDES Permit Section I.C.2.e.1-5  Failure to report cause, date/duration/volume, description of the source, location of the discharge and the ultimate destination of discharge in the MWPPR
2012	6	6	Reported Overflows in MWPPR, but did not file a Form 415 or otherwise report to the Department	2007 NPDES Permit Section I.C.2.a.,d.,f or II.C.
2014	At least 2	At least 2	ADEM wrote to Oxford <sup>31</sup> : "comments received indicated that sanitary sewer overflows (SSOs) discharging into Choccolocco Creek have occurred." And Oxford did not	ADEM: " Permit Condition I.C.2.d states that "The permittee shall provide notification to the Director, the public, the county health department and any other affected entity such as public water systems, as soon as possible upon becoming aware of any notifiable SSO." Section I.C.2.a.,d.,f or II.C.

<sup>31</sup> Letter from Emily Anderson, ADEM, to Wayne Livingston, Oxford WWTP, Re: Sanitary Sewer Overflows, NPDES Permit No. AL0058408, Oxford Tull C. Allen WWTP, Talladega County, Alabama, Feb. 25, 2014.

			report these to the Department.	
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**E. The plant did not report the adverse impacts caused by industrial dischargers nor did it prohibit these adverse impacts.**

Permit Condition II.G.3. requires that the Permittee report to the Department within seven days any adverse impact caused or believed to be caused by an indirect discharger on the treatment process, quality of discharged water, or quality of sludge. The Permittee repeatedly failed to do this. On July 12, 2011 and in April 26, 2012, ADEM completed compliance inspection reports and facility personnel explained then that Kronospan, one of the permitted industrial dischargers, was discharging a large amount of formaldehyde which was affecting water treatment. Yet, Oxford did not notify the Department of these adverse impacts after they occurred. The July 2013 Unilateral Order also stated that the “Permittee failed to report the adverse impact caused or believed to be caused from an indirect discharger.”<sup>32</sup> However, even after this Order, the plant did not correct the problem. In the August 2014 and October 2015 inspections, facility personnel admitted that “they are still having problems with Kronospan’s formaldehyde concentration”.<sup>33</sup> In addition, in the August inspection, the facility indicated that the red tint coming from the plant could be coming from TapeCraft.<sup>34</sup> However, in neither case did the plant notify the Department of these adverse impacts when they occurred, as required. When specifically asked, the operators admitted to the EPA that Kronospan affected the plant on November 30, 2015. Oxford, at that time, hadn’t sent the information to ADEM then and it indicated that it had not sent this information at any time in the past.<sup>35</sup> David Phillips from the EPA specifically warned Oxford that the permit requires notification:

The NPDES permit puts certain oversight responsibilities on the POTW regarding all existing industrial users, regardless of whether those users are SID permittees or not (page 19, Part II.G.2 and 3, and Part II.H). For example, reporting the observations and collected data to ADEM on the impacts at the lift station associated with Kronospan, and the steps OWWSB has taken, falls in line with meeting the requirement in Part II.H.3. “Treatment works” is defined in federal pretreatment regulations as including all of the assets of the system including the lift stations (40 CFR 403.3(q)).

Only with the EPA watching and asking pointed questions did Oxford finally comply with this duty to report the adverse impacts from Kronospan for the first time in December 2015. Each time the plant allowed a prohibited interference of the plant or did not notify the Department of any adverse effect of an industrial discharger is a separate violation of the permit.

<sup>32</sup> ADEM, *Unilateral Order 3-118-WP 1*, July 28, 2013, #9.

<sup>33</sup> ADEM, *NPDES Compliance Inspection Reports*, August 12, 2014, October 27, 2015.

<sup>34</sup> ADEM, *NPDES Compliance Inspection Report*, August 12, 2014.

<sup>35</sup> Email from Meredith Holzer, Oxford WWTP, to David Phillips, EPA, Re: Oxford POTW operations, Dec. 8, 2015.

Additionally, Permit Condition II.H. prohibits: “1. Pollutants which create a fire or explosion hazard in the treatment works” and “3. Solid or viscous pollutants in amounts which will cause obstruction of flow in sewers, or the interference with the treatment works.” Oxford does not prohibit Kronospan’s discharge of formaldehyde which is a fire hazard nor does it limit the amount of solids that Kronospan continues to discharge.

**F. Oxford’s information reveals multiple monitoring violations.**

Oxford’s reports from the past three years<sup>36</sup> show that it violated the permit’s requirement that all discharges “shall be . . . monitored . . . as specified” in Permit Conditions I.A.1.-2. These sections of the permit include tables that specify how frequently and where to monitor each parameter. The first column of the chart shows the “*Date*” of the violations, the second shows the “*Parameter Violated*”; the third shows the “*Permit Requirement*” (*i.e.*, the minimum number of measurements per monitoring period); the fourth shows the “*Monitoring Actually Reported*” (*i.e.*, the actual number of measurements performed by the permittee during the monitoring period, as listed in the permittee’s eDMR data)<sup>37</sup> and the final column describes the number of violations committed.

Date	Parameter Violated	Permit Requirement	Amount Monitored	Number of Violations
March 3-9, 2013	E.coli	3 times per week	1 time per week	7
March 24-30, 2013	E.coli	3 times per week	2 times per week	7
March 31- April 6, 2013	Nitrogen, Ammonia	3 times per week	2 times per week	7
April 7-13, 2013	Color	3 times per week	2 times per week	7
April 14-20, 2013	Color	3 times per week	2 times per week	7
May 5-11, 2013	Effluent BOD	3 times per week	2 times per week	7
May 5-11, 2013	Color	3 times per week	2 times per week	7
May 19-25, 2013	Color	3 times per week	1 time per week	7
June 2-8, 2013	Effluent BOD	3 times per week	2 times per week	7
June 16-22, 2013	Effluent BOD	3 times per week	2 times per week	7
June 30-July 6, 2013	Effluent TSS	3 times per week	2 times per week	7
June 30-July 6, 2013	Effluent BOD	3 times per week	1 time per week	7
June 30- July 6, 2013	<i>E. coli</i>	3 times per week	1 time per week	7
July 7-13, 2013	Effluent BOD	3 times per week	1 time per week	7
July 7-13, 2013	Color	3 times per week	2 times per week	7
July 21-27, 2013	Effluent BOD	3 times per week	1 time per week	7
July 21-27, 2013	Color	3 times per week	1 time per week	7
July 28-August 3, 2013	Color	3 times per week	2 times per week	7
August 4-10, 2013	Effluent BOD	3 times per week	2 times per week	7
August 11-17, 2013	Effluent BOD	3 times per week	2 times per week	7
August 18-24, 2013	Effluent BOD	3 times per week	1 time per week	7
August 18-24, 2013	Color	3 times per week	2 times per week	7

<sup>36</sup> Oxford is only required to keep its records from the past three years and the plant only provided data up to April 2016.

<sup>37</sup> Email Attachment from Boise Turner, Oxford’s attorney, to Sarah Stokes, SELC, May 31, 2016.

September 8-14, 2013	Color	3 times per week	2 times per week	7
December 8-14, 2013	Color	3 times per week	1 time per week	7
January 5-11, 2014	Effluent BOD	3 times per week	No testing recorded/incubator malfunction	7
January 12-18, 2014	Color	3 times per week	1 time per week	7
January 19-25, 2014	Effluent BOD	3 times per week	2 times per week	7
January 26-February 1, 2014	Color	3 times per week	2 times per week	7
February 2- 8 2014	Color	3 times per week	2 times per week	7
February 9-15, 2014	E.coli	3 times per week	2 times per week	7
February 23-March 1, 2014	Effluent BOD	3 times per week	2 times per week	7
February 23-March 1, 2014	Color	3 times per week	2 times per week	7
March 2-8, 2014	Effluent BOD	3 times per week	2 times per week	7
March 16-22, 2014	Effluent BOD	3 times per week	2 times per week	7
March 16-22, 2014	Color	3 times per week	2 times per week	7
March 23-29, 2014	Color	3 times per week	2 times per week	7
March 30-April 5, 2014	Effluent BOD	3 times per week	2 times per week	7
April 6-12, 2014	Effluent BOD	3 times per week	1 time per week	7
April 6-12, 2014	Color	3 times per week	No testing recorded	7
April 6-12, 2014	E.coli	3 times per week	2 times per week	7
April 13-19, 2014	Effluent BOD	3 times per week	2 times per week	7
April 13-19, 2014	Color	3 times per week	2 times per week	7
April 13-19, 2014	E.coli	3 times per week	2 times per week	7
April 20-26, 2014	Effluent BOD	3 times per week	2 times per week	7
April 27- May 3, 2014	Color	3 times per week	2 times per week	7
May 25-31, 2014	Color	3 times per week	No testing recorded	7
May 25-31, 2014	E.coli	3 times per week	1 time per week	7
May 25-31, 2014	pH	3 times per week	2 times per week	7
June 29- July 5, 2014	Color	3 times per week	2 times per week	7
June 29-July 5, 2014	E. coli	3 times per week	2 times per week	7
July 13- 19, 2014	E. coli	3 times per week	2 times per week	7
July 13-19, 2014	Color	3 times per week	2 times per week	7
September 7-13, 2014	E.coli	3 times per week	2 times per week	7
October 5-11, 2014	E.coli	3 times per week	2 times per week	7
October 19-25, 2014	Color	3 times per week	2 times per week	7
October 19-25, 2014	E.coli	3 times per week	No testing recorded	7
November 16-22, 2014	Color	3 times per week	2 times per week	7
November 30-December 6, 2014	Color	3 times per week	1 time per week	7
November 30-December 6, 2014	E.coli	3 times per week	1 time per week	7

December 14-20, 2014	Color	3 times per week	2 times per week	7
December 14-20, 2014	E.coli	3 times per week	2 times per week	7
December 21-27, 2014	E.coli	3 times per week	2 times per week	7
December 28, 2014 – January 3, 2015	Color	3 times per week	2 times per week	7
December 28, 2014 – January 3, 2015	E.coli	3 times per week	1 time per week	7
January 4-10, 2015	Color	3 times per week	1 time per week	7
January 11-17, 2015	E.coli	3 times per week	2 times per week	7
January 25-31, 2015	E.coli	3 times per week	2 times per week	7
February 8-14, 2015	Color	3 times per week	2 times per week	7
February 8-14, 2015	E.coli	3 times per week	2 times per week	7
March 29-April 4, 2015	Color	3 times per week	2 times per week	7
April 5-11, 2015	Color	3 times per week	2 times per week	7
April 19-25, 2015	Effluent BOD	3 times per week	2 times per week	7
April 26-May 2, 2015	E.coli	3 times per week	1 time per week	7
May 17-23, 2015	E.coli	3 times per week	2 times per week	7
May 24-30, 2015	Effluent BOD	3 times per week	2 times per week	7
May 31-June 6, 2015	E.coli	3 times per week	No testing recorded	7
June 14-20, 2015	E.coli	3 times per week	1 time per week	7
June 28-July 4, 2015	Effluent BOD	3 times per week	2 times per week	7
July 5-11, 2015	Effluent BOD	3 times per week	2 times per week	7
July 12-18, 2015	Effluent BOD	3 times per week	1 time per week	7
July 26-August 1, 2015	Effluent BOD	3 times per week	2 times per week	7
August 9-15, 2015	E.coli	3 times per week	2 times per week	7
August 23-29, 2015	Effluent BOD	3 times per week	2 times per week	7
September 6-12, 2015	Effluent BOD	3 times per week	2 times per week	7
September 6-12, 2015	E.coli	3 times per week	2 times per week	7
September 20-26, 2015	E.coli	3 times per week	2 times per week	7
October 18-24, 2015	Effluent BOD	3 times per week	2 times per week	7
October 18-24, 2015	E.coli	3 times per week	2 times per week	7
October 25-31, 2015	Color	3 times per week	2 times per week	7
October 25-31, 2015	E.coli	3 times per week	2 times per week	7
November 1-7, 2015	Color	3 times per week	2 times per week	7
November 8-14, 2015	Color	3 times per week	2 times per week	7
November 15-21, 2015	Effluent BOD	3 times per week	2 times per week	7
November 15-21, 2015	Color	3 times per week	2 times per week	7
November 15-21, 2015	E.coli	3 times per week	2 times per week	7
November 22-28, 2015	Color	3 times per week	2 times per week	7
November 29-	Color	3 times per week	2 times per week	7

December 5, 2015				
November 29-December 5, 2015	E.coli	3 times per week	1 time per week	7
December 13-19, 2015	Effluent BOD	3 times per week	2 times per week	7
December 20-26, 2015	Color	3 times per week	2 times per week	7
December 20-26, 2015	E.coli	3 times per week	2 times per week	7
December 27, 2015 – January 2, 2016	Color	3 times per week	No testing recorded	7
December 27, 2015 – January 2, 2016	E.coli	3 times per week	2 times per week	7
December 27, 2015 – January 2, 2016	Effluent BOD	3 times per week	1 time per week	7
January 3-9, 2016	Color	3 times per week	2 times per week	7
January 17-23, 2016	Color	3 times per week	2 times per week	7
January 24-30, 2016	Color	3 times per week	2 times per week	7
January 24-30, 2016	Effluent BOD	3 times per week	2 times per week	7
January 24-30, 2016	E.coli	3 times per week	2 times per week	7
January 31-February 6, 2016	Color	3 times per week	1 time per week	7
February 14-20, 2016	Color	3 times per week	2 times per week	7
February 21-27, 2016	Color	3 times per week	1 time per week	7
February 21-27, 2016	E.coli	3 times per week	2 times per week	7
February 28-March 5, 2016	Color	3 times per week	No testing recorded	7
February 28-March 5, 2016	Effluent BOD	3 times per week	2 times per week	7
March 20-26, 2016	E.coli	3 times per week	2 times per week	7
March 27-April 2, 2016	Effluent BOD	3 times per week	2 times per week	7
			Total	819

## **G. The plant discharged pollutants without a permit.**

### *i. Sanitary Sewer Overflows and Upsets*

The plant is only authorized to release discharges that are in compliance with an NPDES permit that contain technology-based effluent limitations based upon secondary treatment and any needed water-quality-based effluent limitations. “As SSOs by nature occur in the collection system before secondary treatment, they can never comply with the secondary treatment standard and are thus viewed as prohibited by the CWA.”<sup>38</sup> These SSOs and upsets are not in compliance with Oxford’s permit and therefore are prohibited by the Clean Water Act. These violations were not mentioned in ADEM’s past two orders.

<sup>38</sup> Ryan, Mark, *The Clean Water Act Handbook*, 3<sup>rd</sup> ed., 2011, p. 94. 33 U.S.C. S 1311(a)-(b)(1)(B).

SSO Violations				
Date of Sanitary Sewer Overflow	Number of Overflows	Amount Discharged	Location of Discharge	Source of the Overflow
June 28, 2011	1	8,000 gal	Headworks of Tull C. Allen WWTP	SSO Event Reporting Form: The known or suspected cause of the overflow was that the “operator replaces teeth on the screen at headworks. The power was not turned back on, which caused the screen to backup and overflow.”
2011	4	Unknown	Trinity Pumping Station; Corner of Meadow Ave and US Hwy 21, South of Friendship Lift Station; Snow Street	2011 Municipal Pollution Prevention Report “How many bypass or overflow events of untreated wastewater occurred in the last year prior to the headworks of the WWTP due to heavy rain?” Answer: “4”
2012	6	Unknown	Hwy 21 to Airport Rd; Friendship Lift Station to Hwy 21 Lift Station; 4 <sup>th</sup> Street	2012 MPPR Language “How many bypass or overflow events of untreated wastewater occurred in the last year prior to the headworks of the WWTP due to heavy rain?” Answer: “6”
December 25, 2014	1	250 gal	59 Bailey St, Oxford, AL 36203	SSO Reporting Form: The suspected or known cause of the overflow was a clog in the sewer line.
November 10, 2015	1	Over 10,000 gal	801 Boozer Drive, Oxford, AL 36203	SSO Reporting Form: The overflow was caused by excessive rain.
December 24, 2015	1	Over 10,000 gal	Hickory Drive and Airport Road	SSO Reporting Form: Rains caused manholes to be submerged.
December 26, 2015	1	Over 100,000 gal	Friendship Lift Station	SSO Reporting Form: Overflow lasted 6 days, and was caused by excessive rain.

ii. *Based on the information from TTL, the Permittee is knowingly discharging sewer stormwater at unpermitted locations.*

In the Stormwater Management Plan, Tuscaloosa Testing Laboratory (“TTL”) was hired as a consultant to compose a Stormwater Management Plan for the plant as required by the permit (Section IV.F.2.). The company warned the plant that it was discharging at an “unpermitted location”. TTL notes that based on information provided during the site visit, stormwater from sewage sludge storage areas, the dewatering area, and active portions of the facility flow out an

“unpermitted outfall location”.<sup>39</sup> TTL recommended that either the NPDES permit be altered or it recommended that the plant direct stormwater that contacts sewage sludge, screenings, raw or partially treated wastewater, and disposal containers to a *permitted* outfall, that has a filter or pumped into the wastewater system to be treated.<sup>40</sup> TTL makes the case that the Permittee is discharging at an unpermitted location.

*iii. The plant is discharging formaldehyde without a permit.*

The plant is discharging formaldehyde. Oxford’s permit does not allow for any discharge of formaldehyde. Formaldehyde was not mentioned as a potential pollutant in the NPDES application. In October 2015, ADEM inspected the plant, and Oxford facility personnel indicated that they were still having problems with Kronospan’s formaldehyde concentration and that their limits were too high. TTL has done some testing of Oxford’s effluent and found that the plant discharged formaldehyde, many times at levels that potentially violate Choccolocco Creek’s water quality standard. See Chart below.

<b>Formaldehyde Violations</b>			
<b>Date</b>	<b>Discharge amount in mg/L</b>	<b>TLL lab order number</b>	<b>Violation</b>
3/2/12	1.30	120301002-001 <sup>41</sup>	Discharging without a permit
3/21/12	0.97	120322002-002	Discharging without a permit
6/13/12	0.59	120615012-002	Discharging without a permit
6/14/12	0.60	120615055-002	Discharging without a permit
6/15/12	0.53	120619003-002	Discharging without a permit
6/18/12	0.48	120620003-002	Discharging without a permit
6/19/12	0.46	120620064-001	Discharging without a permit
6/20/12	0.48	120622030-002	Discharging without a permit
6/21/12	0.30	120625008-002	Discharging without a permit
6/22/12	0.85	120626001-002	Discharging without a permit
6/25/12	0.84	120628001-002	Discharging without a permit
6/26/12	0.82	120628003-002	Discharging without a permit
7/9/12	0.96	120711001-001	Discharging without a permit
7/10/12	0.39	120712029-002	Discharging without a permit
7/11/12	0.65	120712016-002	Discharging without a permit
7/12/12	0.60	120713088-002	Discharging without a permit
7/13/12	0.44	120718004-002	Discharging without a permit
7/16/12	0.39	120718005-002	Discharging without a permit
7/17/12	0.39	120719002-002	Discharging without a permit
7/18/12	0.46	120720056-002	Discharging without a permit
7/19/12	0.98	120720057-002	Discharging without a permit

<sup>39</sup> Letter from Stacey Tarrant and Sheryle Reeves, TTL, to Meredith Holzer, Oxford WWTP, Aug. 28, 2014.

<sup>40</sup> *Id.*

<sup>41</sup> Letter from Wayne Livingston, Oxford, to David Phillips, Re: Information Request - Section 308 of the Clean Water Act, August 14, 2012. (Attachment from TTL regarding formaldehyde testing.)

## H. The plant violated its toxicity requirements.

The plant violated the toxicity testing requirements specified in the permit. The permit requires a short-term chronic toxicity test every year on the wastewater at Outfall 0011 (IV.B.). The samples must be diluted with 14% effluent and 86% water per IV.B.1.b. However, in 2011, 2012, and 2013, the plant used 13% effluent and 87% water, potentially skewing the toxicity test. In addition, in the 2013 toxicity test, the plant's consultants did not take the samples on the correct days.

Toxicity Testing Violations			
Date	Violation	Source	Permit Section Violated
August 23, 2011	Effluent Concentration 13%	August 2011 Toxicity Test Report Summary	Part IV.B.1.a
August 14, 2012	Effluent Concentration 13%	August 2012, Toxicity Test Report Summary	Part IV.B.1.a
October 8, 2013	Effluent Concentration 13%	October 2013, Toxicity Test Report Summary	Part IV.B.1.b

## I. ADEM has found violations that indicate problems with Oxford's sampling procedures.

While Oxford's DMRs show hundreds of violations based on its data, that very data is questionable. Since the early 1990s, the plant has been cited for its questionable sampling methods. In 1992, three years after the plant opened, it received a "D" in the performance audit inspection. ADEM found that the "major procedural problems make the data highly questionable".<sup>42</sup> These problems continue today in contra to Permit I.B.7 and II.A.1, 40 CFR Part 136, Standard Methods, and EPA's Methods.<sup>43</sup> In July 2011, ADEM found that the sample tubing was placed so that only half of the plant's wastewater could be tested instead of testing where the two streams are mixed.<sup>44</sup> In August 2014, the effluent sampling refrigerator was kept at too high a temperature.<sup>45</sup> In December of 2014, a multitude of sampling deficiencies were found. (1. The facility did not have chains of custody for samples analyzed in-house that noted the date and time that samples were collected and by whom they were collected. 2. The sample tube on the influent sampler between the sampler and the sample container was contaminated by solids attached to the pump tubing wall. 3. There were no certified weights on site. 4. The thermometers need to be checked and recorded along with the balance. 5. There should not be drinks and food stored with the samples. 6. CBOD, TSS, *E coli*, Ammonia, and color testing methods were found to be "inadequate". 7. Laboratory personnel were not able to provide all

<sup>42</sup> 1992 Performance Audit Inspection.

<sup>43</sup> American Public Health Association, et. al, *Standard Methods for examination of water and wastewater*, 22nd ed. Washington, 2012.

<sup>44</sup> ADEM, *NPDES Compliance Inspection Report*, July 12, 2011.

<sup>45</sup> ADEM, *NPDES Compliance Inspection Report*, August 12, 2014.

necessary Standing Operating Procedures. 8. The *E. coli* media plates had expired.) Several other deficiencies were discovered as well. We are incorporating all the deficiencies in that inspection and those regulations and methods that regulate those practices by reference.<sup>46</sup> To this day, it is not known whether all data is currently reliable and all violations have been addressed.

In fact, when ADEM last tried to inspect the plant on October 27, 2015, facility personnel told ADEM inspectors that the Creek had flooded and conditions to travel to the outfall were unsafe.<sup>47</sup> However, the Choccolocco Creek gauges indicated that the river was at its average flow and stage that day and had been for the last two days.

#### **J. Oxford's Stormwater Management Plan and DMRS are not signed by the proper authority.**

The permit (Part IV.F.2.a.8.) specifies that the stormwater plan "bear the signature of an individual meeting signatory requirements as defined in ADEM Administrative Code, Rule 335-6-6-.09." Although the name of the General Manager of the plant, Wayne Livingston, is on the plan, he has not signed it.<sup>48</sup>

Further, Oxford's DMRs, like all reports and forms required to be submitted under the NPDES Permit, must be electronically signed by a "responsible official" of Oxford or a "duly authorized representative" of such official.<sup>49</sup> The terms "responsible official" and "duly authorized representative" are defined in ADEM Administrative Code Rule 335-6-6-.09. A "responsible official" of a public entity is defined as "either a principal executive officer, or ranking elected official."<sup>50</sup> A person is a "duly authorized representative" only if (1) the responsible individual makes the authorization in writing, (2) the authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, and (3) the authorization is submitted to ADEM.<sup>51</sup>

Oxford's DMR indicates that Meredith Holzer was the "principal executive officer or authorized agent" who signed the DMR. Ms. Holzer is Oxford's engineer.<sup>52</sup> Oxford's e-file on the ADEM website does not include any documentation of Oxford General Manager Wayne Livingston authorizing Meredith Holzer in writing to submit DMRs to ADEM on behalf of Oxford. It does not appear that Ms. Holzer is a duly authorized representative.

#### **K. ADEM found the plant has not properly been operated and maintained.**

Permit Section II.A. states that "the Permittee shall at all times properly operate and maintain all facilities and systems of treatment and control...which are installed or used by the Permittee to achieve compliance with the conditions of the permit. Proper operation and

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<sup>46</sup> ADEM, *NPDES Compliance Inspection Report*, December 16, 2014.

<sup>47</sup> ADEM, *NPDES Compliance Inspection Report*, October 15, 2015.

<sup>48</sup> Email Attachment from Boise Turner, attorney representing Oxford, to Sarah Stokes, SELC, May 3, 2016.

<sup>49</sup> NPDES Permit Part I.C.1.d, at page 11.

<sup>50</sup> ADEM Administrative Code Rule 335-6-6-.09(1)(d).

<sup>51</sup> ADEM Administrative Code Rule 335-6-6-.09(2)(a) to (c).

<sup>52</sup> Oxford Water Works, Organization, <http://www.oxfordwater.com/Default.asp?ID=27&pg=Organization> (last visited June 30, 2016).

maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures.” In several cases, ADEM found that the facilities were not being maintained and operated properly. In December of 2014, ADEM found that the equalization basin had a large amount of solids on the walls and that the laboratory personnel were not able to provide all necessary Standing Operating Procedures. And in October of 2015, the lift stations were “unsatisfactory”.<sup>53</sup>

#### **IV. THE VIOLATIONS ARE LIKELY TO CONTINUE**

There is a reasonable likelihood that the violations identified in this letter will continue. *See Gwaltney of Smithfield v. Chesapeake Bay Found.*, 484 U.S. 49 (1987). ADEM is aware of some of these violations, since ADEM has recorded many of them in its inspections. However, ADEM has failed to sufficiently address them; ADEM’s four administrative actions have yet to solve the problem. The extent of the violations as laid out above, and the fact that they have been occurring consistently since the 1990s, indicate that they are ongoing and continuing violations. In addition, Riverkeeper has found new violations that have been ongoing for the last six months.

#### **V. PERSONS RESPONSIBLE FOR VIOLATIONS**

A citizen may commence a civil action against any person who is alleged to be in violation of the Clean Water Act. 33 U.S.C. § 1365(a)(1). Under the Act, “person” includes municipalities and boards. 33 U.S.C. § 1362(5). *See also* 33 U.S.C. § 1362(4). The Oxford WWTP is owned and operated by the Oxford Water Works and Sewer Board and the City of Oxford.<sup>54</sup>

#### **VI. PERSONS GIVING NOTICE**

Coosa Riverkeeper, Inc. is a non-profit corporation with its principal office at 102-B Croft Street, Birmingham, Alabama 35205. The Riverkeeper’s mission is to protect, restore, and promote the Coosa River and its tributaries in Alabama. The Coosa Riverkeeper is a membership organization with members who live along the Coosa River and Choccolocco Creek near the Oxford sewage treatment plant and its outfall or who recreate on the Creek near the plant. The violations identified above have negatively impacted Choccolocco Creek, its watershed, and Coosa Riverkeeper’s members. The name, address, and telephone number of the persons giving notice is:

Coosa Riverkeeper, Inc.  
102-B Croft Street  
Birmingham, AL 35242

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<sup>53</sup> ADEM, *NPDES Compliance Inspection Report*, October 15, 2015.

<sup>54</sup> City of Oxford Ordinance, Chap. 44. Article 1, Section 44-1; *See also* Environmental Protection Agency, *FRS Facility Detail Report*, 2000 [https://iaspub.epa.gov/enviro/fii\\_query\\_detail.disp\\_program\\_facility?p\\_registry\\_id=110000523363](https://iaspub.epa.gov/enviro/fii_query_detail.disp_program_facility?p_registry_id=110000523363) (last visited June 30, 2016).

205-981-6565

Mrs. Justinn Overton  
Executive Director, Coosa Riverkeeper, Inc.  
102-B Croft Street  
Birmingham, AL 35242  
205-981-6565

Cecil Bostany  
President, Board of Directors, Coosa Riverkeeper, Inc.  
102-B Croft Street  
Birmingham, AL 35242  
205-981-6565

## VII. CONCLUSION

If you have any questions concerning this letter or the described violations, or if you believe it is incorrect in any respect, please contact the undersigned counsel at the Southern Environmental Law Center. During the notice period, we are available to discuss this matter with you. For many years, Coosa Riverkeeper has worked with sewage treatment plants, local municipalities, and state and federal agencies on projects to study, maintain, restore, and protect the Coosa River and its tributaries. This letter is not meant to disrupt these productive relationships. Although sent pursuant to 33 U.S.C. § 1365, Riverkeeper believes a negotiated settlement of the identified violations, codified through a court-approved agreement, would be more productive than protracted litigation. Injunctive relief, appropriate monetary penalties, fees and costs of litigation are potentially available remedies, *see* 33 U.S.C. §§ 1365, 1319, 1365, but Riverkeeper would prefer to work with the Board, the City, and the other relevant parties to further study, develop and implement a plan that ensures that Choccolocco Creek meets all requisite permit requirements.

Thank you for your prompt attention to this matter.

Sincerely,



Sarah Stokes  
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tel: (205) 745-3060  
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[www.southernenvironment.org](http://www.southernenvironment.org)

cc: (via email and U.S. Mail)

Ms. Regina A. McCarthy  
Administrator  
U.S. Environmental Protection Agency  
William Jefferson Clinton Building  
1200 Pennsylvania Avenue  
Mail Code: 1101A  
Washington, D.C. 20460

Ms. Heather McTeer Toney  
Regional Administrator  
U.S. EPA, Region 4  
Sam Nunn Atlanta Federal Center  
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Anniston, AL 36207

Ms. Glenda Dean, ADEM  
Mr. Scott Hughes, ADEM  
Ms. Schuyler Espy, ADEM  
Carla Seiwert, EPA  
Suzanne Armor, EPA  
David Phillips, EPA

### **Appendix 1- Notices of Violation**

Date	Reason for Notice
4/10/1992	Failed to report monitoring results for TSS
8/19/1992	Ammonia concentration exceeded limits
10/19/1992	Ammonia concentration exceeded limits
12/06/1993	Failed Toxicity Test
7/13/1994	Failed to meet minimum pH
9/09/1994	Failed to report monitoring results for TKN
10/25/1994	Failed to report monitoring results for TKN
3/21/1995	Total residual Chlorine, TSS quantity and concentration exceeded limits. Failed to meet minimum TRC End Chlorine Contact
4/10/1995	Total residual Chlorine exceeded limits. Failed to meet minimum TRC End Chlorine Contact
5/17/1995	Total residual Chlorine exceeded limits. Failed to meet minimum TRC End Chlorine Contact
7/20/1995	Total residual Chlorine, TSS quantity and concentration exceeded limits.
8/23/1995	Total residual Chlorine, and TSS concentration exceeded limits.
8/14/1996	TSS quantity and concentration exceeded limits
6/05/2008	Discharge of wastewater that did not meet permit limits and failure to report monthly geometric mean for the Fecal Coliform parameter.
8/07/2008	Missing Discharge Monitoring Reports. Miscalculation of Fecal Coliform bacteria in January 2008.

## Appendix 2 - Inspection Deficiencies

Date	Deficiencies
9/15/1992	Received "D" on Performance Audit Inspection; "Due to lack of any QA/QC program...data for this facility should be considered as marginal."
6/22/1993	Received "Conditional Acceptance" on Operation and Maintenance Inspection
10/18/1993	"Several deficiencies were noted" and "several areas received an evaluation rating of marginal or unsatisfactory". "Deficiencies were noted in the areas of records/reports, sampling, and laboratory. The deficiencies noted could impact the integrity of the data submitted in the DMRs." "A QA plan had not been developed."
3/29/1994	Received "Unacceptable" on Operation and Maintenance Inspection.
7/18/1994	Significant differences in results obtained by ADEM lab and the reported sample for several parameters.
11/21/94	Received "less than acceptable performance evaluation" on EPA's Discharge Monitoring Report/ Quality Assurance results
9/30/1996	Sampling and pH calibration were not implemented. "Facility is not collecting composite samples as discussed last inspection (3/12/96) as required by permit."
11/18/1998	Failed toxicity test partly because chain of custody was invalid.
7/17/2000	Evidence of head works to plant overflowing, heavy algae growth in clarifier, one clarifier out of service due to low flow conditions, weeds and plants growing from walls of chlorine contact chamber, sludge stockpiled in floodplain below plant, and sludge dumped into woods in sink holes.
1/31/2001	Received "Unacceptable" on Operation and Maintenance Inspection
5/29/2002	Received "Conditional Acceptance" on Operation and Maintenance Report.
4/16/2004	Received "Conditional Acceptance" on Operation and Maintenance Report.
8/11/2009	"Samples run in house had no chains of custody", facility was only using 1 of 2 aeration basins and 1 of 2 secondary clarifiers, facility's effluent was dark brown in color, receiving stream was turbid and the facility's effluent cascade was overflowing with foam.
9/01/2010	Facility had two influents, exceeded the permitted daily maximum for Fecal coliform and total residue chlorine, the facility's effluent was dark brown, and the facility's CBOD and ammonia were higher than the permitted weekly and monthly averages.
7/12/2011	Facility's effluent surpassed its permitted limit for Fecal Coliform and was brown in color, the facility's effluent had a visible effect on the receiving stream, the composite sampler was placed where only half of the plant's wastewater would be sampled and the facility's effluent did not meet permit requirements for dissolved oxygen, fecal coliform, color, CBOD, and percent removal of CBOD and TSS.
4/24/2012	Facility's effluent was brown in color and created a plume of color visible for over 100 feet downstream, influent sampler location was not representative of waste contributed by Kronospan, and the facility had overflows at two manholes.
7/15/2013	Facility was operating under an expired permit, facility operators had problems with Kronospan, one of the clarifiers was out of operation, second clarifier was overloaded, plastic bottles were found in the drying beds, and discharge was darker than creek.
8/12/2014	"Treatment plant was still having issues with wastewater coming from Kronospan." One of the plants two secondary clarifiers was drained. The effluent had a red tint in color and sampling refrigerator was too hot.
12/16/2014	Equalization Basin had a large amount of solids on the walls, there were no chain of custody logs for samples analyzed in-house, and the pH buffers weren't in their original containers and were not labeled with expiration dates. The thermometers were not certified and sample tubes were contaminated with solids. Light gray effluent was flowing into Choccolocco Creek. Laboratory personnel were not able to provide all

	necessary Standard Operating Procedures. Chain of custody were not available for onsite samples. Therefore proper preservation and collection in accordance with EPA guidelines could not be confirmed.” There were no certified weights on site, thermometers need to be checked and recorded and the ways CBOD, TSS E-coli and color were tested were inadequate.
10/27/2015	ADEM unable to collect samples during inspection because of creek flooding, and the lift stations were not operated by Oxford.

**Oxford Historical Violations – Appendix 3**

TT = Failed Toxicity Test

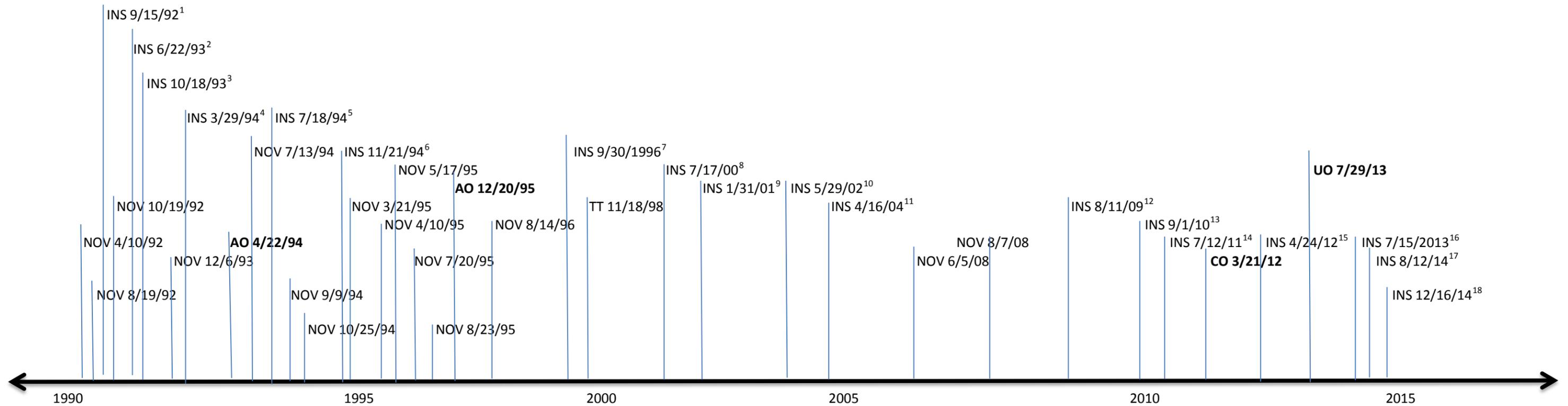
INS = Inspection (received failing, unacceptable, marginal, or conditional acceptance grade)

NOV = Notice of Violation

UO = Unilateral Order

CO = Consent Order

AO = Administrative Order



<sup>1</sup> Received “D” on Performance Audit Inspection (“Major procedural problems make the data highly questionable. It should not be used to determine permit compliance, plant loading or future design loadings.”)

<sup>2</sup> Received “Conditional Acceptance” on Operation and Maintenance Inspection (“Chlorine analyzer was not operating properly during the inspection.” “facility operator to resubmit deficient DMR’s for the months of April, May, and June 1993.”)

<sup>3</sup> “Several deficiencies were noted...and several areas received an evaluation rating of marginal or unsatisfactory” (“Deficiencies were noted in the areas of records/reports, sampling, and laboratory. The deficiencies noted could impact the integrity of the data submitted in the DMRs.”)

<sup>4</sup> Received “Unacceptable” on Operation and Maintenance Inspection (“Facility operator could not produce copies of the DMR’s for this facility for inspection and review when requested by ADEM. Facility operational records such as DMR’s are required to be maintained at the facility site at all times for review by ADEM.”)

<sup>5</sup> “Several deficiencies were noted during the inspection” (“Split sample analyses dated July 19, 1994, indicate a significant difference in results obtained by our laboratory when compared with results reported by you.” “Split sample analyses dated July 20, 1994, indicate a significant difference in results obtained by our laboratory when compared with results reported by you.”)

<sup>6</sup> Received “less than acceptable performance evaluation” on EPA’s Discharge Monitoring Report/ Quality Assurance results

<sup>7</sup> “Please note that further enforcement action is being considered.” (“Facility is not collecting composite samples as discussed last inspection, as required by permit.”)

<sup>8</sup> “Several deficiencies were noted during the inspection”

<sup>9</sup> Received “Unacceptable” on Operation and Maintenance Inspection

<sup>10</sup> Received “Conditional Acceptance” on Operation and Maintenance Report

<sup>11</sup> Received “Conditional Acceptance” on Operation and Maintenance Report

<sup>12</sup> Deficiencies noted during inspection (“Samples analyzed by TLL had chains of custody, samples run in house had no chains of custody.”)

<sup>13</sup> Deficiencies noted during inspection

<sup>14</sup> Deficiencies noted during inspection (“The sample tubing of the facility’s composite sampler was placed where only half of the plants wastewater would be sampled instead of where the two waste streams mixed.”)

<sup>15</sup> Deficiencies noted during inspection (At the time of inspection, the facility’s influent sampler location was not representative of waste contributed by Kronospan.”)

<sup>16</sup> Facility was operating under an expired permit, facility operators had problems with Kronospan, one of the clarifiers was out of operation, second clarifier was overloaded, plastic bottles were found in the drying beds, and discharge was darker than creek.

<sup>17</sup> Deficiencies noted during inspection (“The effluent sampling refrigerator had a temperature of 7° C, which is above the maximum allowable temperature of 6° C.”)

<sup>18</sup> Deficiencies noted during inspection (“The facility did not have chains of custody for samples analyzed in-house.” “The sample tube on the influent sampler between the sampler and the sample container was contaminated by solids attached to the pump tubing wall.” “There were no certified weights on site. The thermometers need to be checked and recorded along with the balance. There should not be drinks and food stored with the samples.” “CBOD, TSS, e-coli, Ammonia, and color testing methods found to be inadequate.”)