

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
EASTERN DIVISION

UNITED STATES OF AMERICA,)	Civil Action No. _____
)	
and)	
)	
ALABAMA DEPARTMENT OF)	
ENVIRONMENTAL MANAGEMENT)	
)	
Plaintiffs,)	
v.)	
)	
KRONOSPAN, LLC,)	
)	
Defendant.)	
_____)	

COMPLAINT

Plaintiffs, the United States of America, by the authority of the Attorney General of the United States, and through the undersigned attorneys, acting at the request of the United States Environmental Protection Agency (“EPA”), and the Alabama Department of Environmental Management (“ADEM”), file this complaint and allege as follows:

NATURE OF THE CASE

1. This is a civil action by the United States and the Alabama Department of Environmental Management against Kronospan, LLC

(“Kronospan”) (also referred to as “Defendant”), for injunctive relief and civil penalties arising from the “discharge” of pollutants from the facility located at 1 Kronospan Way, Eastaboga, Calhoun County, Alabama (“Facility”), to the Oxford Water Works and Sewer Board’s (“OWSB”) publicly owned treatment works (“POTW”) in violation of the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq., as amended (“Clean Water Act” or “CWA”), and the Alabama Water Pollution Control Act, Ala. Code § 22-22-1 et seq. (“AWPCA”).

2. The complaint is filed pursuant to Sections 309(b) and (d) of the CWA, 33 U.S.C. § 1319(b) and (d), for injunctive relief and the assessment of civil penalties against Defendant for violations of the CWA and its implementing regulations.

JURISDICTION, VENUE, AUTHORITY AND NOTICE

3. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 (Federal question), 1345 (United States as plaintiff), 1355 (Fine, penalty or forfeiture), and 1367(a); Sections 309(b) and (d) of the CWA, 33 U.S.C. § 1319(b) and (d), (Civil actions and Civil penalties, respectively); and Sections § 22-22A-5(12) and (18) of the AWPCA.

4. Venue is proper in the Northern District of Alabama pursuant to 28 U.S.C. §§ 1391(b) (Venue generally) and 1395(a) (Fine, penalty or forfeiture), and

pursuant to the CWA, 33 U.S.C. § 1319(b) (Civil actions), because it is the judicial district where the Defendant is located, where a substantial part of the events or omissions giving rise to the claims occurred, and where the alleged violations occurred.

5. The United States has the authority to bring this action on behalf of the Administrator of the EPA (“Administrator”) under Section 506 of the CWA, 33 U.S.C. § 1366, and 28 U.S.C. §§ 516 and 519.

6. Pursuant to 33 U.S.C. § 1342(b), the State of Alabama has been delegated authority to administer its NPDES program since October 19, 1979, and ADEM is therefore authorized to bring this action on behalf of the State of Alabama.

7. The United States has provided notice of the commencement of this action to the State of Alabama pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and ADEM has joined as a co-Plaintiff.

PLAINTIFFS

8. Plaintiff the United States of America is acting at the request and on behalf of the Administrator of the EPA.

9. Plaintiff the ADEM is acting on behalf of the State of Alabama.

DEFENDANT

10. Defendant Kronospan is a limited liability company duly organized under the laws of the State of Delaware.

11. Defendant's principal place of business in the United States is Eastaboga, Calhoun County, Alabama.

12. At times relevant herein and through the date of this Complaint, Defendant owns and operates the Facility, which manufactures reconstituted wood products, and is an integrated pulp and fiberboard mill.

13. At all times relevant herein, Defendant is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

14. At all times relevant herein, the Facility is an "industrial user," as defined in 40 C.F.R. § 403.3(j) and Ala. Admin. Code r. 335-6-5-.02(v).

15. At all times relevant herein, the Facility is a "significant industrial user," as defined in 40 C.F.R. § 403.3(v)(1) and Ala. Admin. Code r. 335-6-5-.02(oo).

16. At all times relevant herein, the Facility is a “new source,” as defined in 40 C.F.R. § 403.3(m)(1) and Ala. Admin. Code r. 335-6-5-.02(bb).

STATUTORY AND REGULATORY FRAMEWORK

17. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into waters of the United States except as in compliance, inter alia, with Section 307 of the CWA, 33 U.S.C. § 1317.

18. Pursuant to Section 307 of the CWA, 33 U.S.C. § 1317, the EPA has established standards that govern discharges into POTWs that discharge to navigable waters.

19. Section 307(d) of the CWA, 33 U.S.C. § 1317(d), prohibits the operation of any source in violation of any effluent standard, prohibition, or pretreatment standard promulgated under Section 307 of the CWA, 33 U.S.C. § 1317.

20. The General Pretreatment Regulations, found at 40 C.F.R. Part 403, are designed to ensure that each POTW can comply with its NPDES permit. These Regulations are intended to prevent discharges to a POTW from non-domestic users that can either interfere with its operations or lead to the discharge of untreated or inadequately treated wastewater into waters of the United States.

21. In addition, EPA has promulgated pretreatment standards for specified categories of industrial users pursuant to Section 307(b) of the CWA. These categories of industrial users, or “categorical” industrial users, are subject to specific pretreatment requirements set forth at 40 C.F.R. Parts 405-471. See also Ala. Admin. Code r. 335-6-5-.06.

22. The pulp, paper, and paperboard manufacturing industry is one of the specified industries subject to categorical pretreatment standards. See 40 C.F.R. Part 430, Subpart G. These categorical pretreatment standards apply to process wastewater discharges resulting from, inter alia, integrated pulp mills and molded fiber product production. See 40 C.F.R. § 430.70.

23. The EPA published proposed Pretreatment Standards for the pulp, paper, and paperboard manufacturing industry for 40 C.F.R. Part 430, Subpart G on January 6, 1981. See 46 Fed. Reg. 1430.

24. Pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b), a state may establish its own pretreatment program by receiving approval of the program by the Administrator of the EPA.

25. The Alabama Department of Environmental Management (“ADEM”) is the state agency with the authority to administer the Pretreatment Program in Alabama pursuant to 33 U.S.C. § 1342(b), implementing regulations, and the

National Pollutant Discharge Elimination System Memorandum of Agreement between the State of Alabama and the United States Environmental Protection Agency Region 4 (Apr. 11, 2008) (“MOA”). As such, ADEM is the Approval Authority as defined by 40 C.F.R. § 403.3(c).

26. Pursuant to 40 C.F.R. § 403.10(e), ADEM has also assumed responsibility for implementing the Pretreatment Program in Alabama in lieu of requiring POTWs to develop independent pretreatment programs. As such, ADEM is also the Control Authority as defined by 40 C.F.R. § 403.3(f) and responsible for the requirements in 40 C.F.R. § 403.8(f) in lieu of OWSB.

27. Among other requirements, categorical industrial users, including those facilities engaged in the pulp, paper, and paperboard manufacturing industry, are required to obtain a permit from a “Control Authority” prior to “discharging” to a POTW. See 40 C.F.R. §§ 403.8(f)(1)(iii) (requiring significant industrial users to have individual permits for discharge to a POTW) and 403.10(e) (State program in lieu of POTW program).

28. Pursuant to Ala. Admin. Code r. 335-6-5-.04(2), no “significant industrial user” shall introduce “pollutants” into a “POTW” without having first obtained a valid State Indirect Discharge (“SID”) permit from ADEM.

Applications for new sources shall be submitted at least 180 days prior to the

applicant's desired date for commencement of the new discharge. Id. 335-6-5-.13(6).

29. In states authorized to implement their own pretreatment programs, the EPA retains authority concurrent with the authorized state pretreatment program to enforce state-issued permits, pursuant to 33 U.S.C. §§ 1319(a)(3) and 1342(i).

30. Section 309(b) of the CWA, 33 U.S.C. § 1319(b), provides that, whenever the EPA finds that any person is in violation of any condition or limitation which implements, inter alia, Section 307 of the CWA, 33 U.S.C. § 1317, the EPA is authorized to commence a civil action for appropriate relief for any violation for which the EPA is authorized to issue a compliance order under Section 309(a) of the CWA.

31. Noncompliance with any pretreatment standard, prohibition or effluent standard is a violation of the Clean Water Act. 33 U.S.C. § 1317(d).

32. Section 309(d) of the CWA, 33 U.S.C. § 1319(d), and 40 C.F.R. § 19.4 provide that any person who violates, inter alia, Section 307 of the CWA, 33 U.S.C. § 1317, shall be subject to a civil penalty not to exceed \$32,500 per day for each violation which takes place after March 15, 2004 through January 12, 2009; not to exceed \$37,500 per day for each violation occurring after January 12, 2009

through November 2, 2015; and not to exceed \$55,800 per day for each violation occurring after November 2, 2015, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note, Pub. L. 101-410), as amended through the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Pub. L. 114-74). See also 40 C.F.R. Part 19; 85 Fed. Reg. 1751 (Jan. 13, 2020); 83 Fed. Reg. 1193 (Jan. 10, 2018); 78 Fed. Reg. 66,643 (Dec. 6, 2013); 73 Fed. Reg. 75,346 (Dec. 11, 2008); 69 Fed. Reg. 7121 (Feb. 13, 2004).

GENERAL ALLEGATIONS

33. At times relevant herein, Defendant “discharged” from the Facility “pollutants” subject to “pretreatment standards” and “prohibitions” within the meaning of Sections 307(b), (c) and (d) and Section 502(6) of the CWA, 33 U.S.C. §§ 1317(b), (c) and (d), and 1362(6); 40 C.F.R. § 403.3(i), (l), and (t); and 40 C.F.R. § 403.5(a)(1).

34. Such pollutants are discharged from the Facility to the Tull C. Allen Wastewater Treatment Plant (“WWTP” or “treatment plant”) and its conveyances,

which comprise a “publicly owned treatment works” within the meaning of 40 C.F.R. § 403.3(q). See also 33 U.S.C. § 1292(2)(A).

35. OWSB’s POTW includes the Tull C. Allen wastewater treatment plant (“WWTP”), which is a “POTW Treatment Plant” within the meaning of 40 C.F.R. § 403.3(r).

36. OWSB’s POTW also includes intercepting sewers; outfall sewers; sewage collection systems; pumping, power, and other equipment; and their appurtenances; pursuant to 33 U.S.C. § 1292(2)(A).

37. OWSB operates its POTW pursuant to National Pollutant Discharge Elimination System (“NPDES”) Permit No. AL0058408, issued by ADEM to OWSB, effective September 1, 2013.

38. OWSB’s NPDES Permit requires, among other things, that OWSB “at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by [OWSB] to achieve compliance with the conditions of the [NPDES] permit. Proper operation and maintenance includes effective performance. . . .” Part II.A.1, Permit No. AL0058408.

39. Since 2008, OWSB has experienced chronic violations of its permitted effluent limitations, including total suspended solids (“TSS”), ammonia-

nitrogen, fecal coliform, carbonaceous biochemical oxygen demand (“CBOD”), and total residual chlorine, as documented in OWSB’s discharge monitoring reports (“DMRs”).

40. The POTW’s effluent limitation violations began several months after Defendant’s Facility began discharging.

41. The Facility’s discharge to the POTW routinely contained TSS, ammonia-nitrogen, and oxygen-demanding pollutants during the period concurrent with the POTW’s effluent limit violations for TSS, ammonia-nitrogen, and CBOD.

42. OWSB began collecting grab samples of pH and temperature at its Highway 202 pump station (referred to herein as the “Highway 202 lift station,” using OWSB’s naming convention) (latitude 33.60685, longitude -85.98864) on November 20, 2012.

43. The Highway 202 lift station collects process and sanitary wastewater from Defendant’s Facility, as well as sanitary wastewater from another business, and two small neighborhoods totaling approximately 60 residences.

44. OWSB began compositing daily samples of TSS collected from hourly grab samples at its Highway 202 lift station on November 1, 2013.

45. Defendant's Facility discharges into a manhole located approximately 600 feet before the Highway 202 lift station (latitude 33.60685, longitude - 85.98595).

46. OWSB began collecting samples at that manhole in or around July 2010 in order to analyze the isolated discharge from Defendant's Facility into the POTW.

47. At all times relevant herein, Defendant's Facility is the primary source of non-domestic wastewater into the OWSB POTW at the Highway 202 lift station.

48. Domestic wastewater TSS concentrations typically range from 100 milligrams per liter ("mg/L") (weak) to 350 mg/L (strong), with moderate concentrations typically 220 mg/L.

49. Domestic wastewater does not typically have high temperatures.

50. Domestic wastewater does not typically contribute to low pH levels.

51. The OWSB WWTP discharges effluent to Choccolocco Creek.

52. Choccolocco Creek is a perennial tributary to the Coosa River.

53. Choccolocco Creek and the Coosa River are "waters of the United States" within the meaning of the CWA. See 33 U.S.C. § 1362(7).

Defendant's Operational History Prior to Obtaining a SID Permit

54. On February 21, 2005, OWSB sent a letter to Kronospan indicating that the POTW had the capacity to accept the Facility's wastewater, at a cost of \$4,034.05 for 126,000 gallons per day.

55. Defendant began construction of the Facility on May 26, 2005.

56. Beginning in or around 2007, Defendant began commissioning trials of certain equipment, including the Facility's refiner, and discharged pollutants to the POTW.

57. On June 26, 2007, Defendant sent a letter to OWSB which included an estimate of the Facility's anticipated wastewater discharge volume and constituent concentrations. Defendant's estimate indicated that the Facility would discharge approximately 67,400 gallons of process wastewater per day to the POTW from three processes.

58. On August 7, 2007, OWSB sent Defendant a letter indicating that the expected discharges indicated in Defendant's June 26, 2007, letter would not violate OWSB's NPDES Permit limits.

59. In February 2008, Defendant began full production of medium-density fiberboard at the Facility, and began the discharge of associated process wastewater to OWSB's POTW.

60. On March 1, 2008, OWSB discovered that the Facility had increased both its discharged flow and the concentration of pollutants to the POTW beyond the estimates presented in Defendant's June 26, 2007 letter.

61. In April 2008, OWSB began to identify interference with proper operation of the WWTP due to the pollutants in the discharge from the Facility, which was observed and measured to have high temperatures (in excess of 130 °F), low pH values, very high levels of TSS, excessive wood chips, high levels of formaldehyde, and high biochemical oxygen demand ("BOD").

62. The Facility's pollutants also caused the biosolids produced by the WWTP to increase substantially beyond the POTW's designed capacity, compelling the POTW to quickly rent additional biosolids handling equipment (some of which broke from the unusual stress of being operated 24 hours a day to keep up with the demand), and to meet the unforeseen expenses of managing and disposing of the additional biosolids.

63. On May 9, 2008, a sample from the Facility's wastewater indicated that the pH at that time was 4.5 standard units, which is a prohibited discharge level as defined at 40 C.F.R. § 403.5(b)(2).

64. On November 4, 2008, OWSB met with ADEM to request assistance with the increasing interference with proper operation of the POTW's treatment plant that was being caused by the discharge of pollutants from the Facility.

65. In 2009, OWSB began emptying a treatment basin at the POTW with intentions to use the basin for equalization to control problematic peak flow rates entering the POTW. Due to the operational problems at the POTW either caused or contributed by the Facility's discharge, this basin was eventually used instead to segregate the Facility's discharge in an effort to manage its interference with operations.

66. On August 11, 2009, ADEM conducted a compliance sampling inspection of the OWSB POTW, and noted a dark brown influent attributable to Defendant's Facility's discharge. A manhole below the effluent cascade of the POTW's WWTP was also observed to be overflowing with foam.

67. In a period of two years, between November 2009 and November 2011, OWSB repaired pump and pump part failures at least nine times at its Highway 202 lift station.

68. In or around 2010, in contravention of 40 C.F.R. § 403.6(d), Defendant began diluting its discharge with potable water in an attempt to control the problems at the OWSB POTW that were known to be caused by the excessive

temperature of Defendant's process wastewater discharge. Defendant continued this practice through at least November 2012.

69. In March 2010, OWSB identified a dark-colored and viscous substance entering the POTW treatment basin that was receiving flow from the Highway 202 lift station, and therefore flow principally from the Facility. This substance caused staining and other operational interference before subsiding.

70. During three days in September 2010, Defendant introduced pollutants to the OWSB POTW with pH levels less than 5.0 standard units, which is a prohibited discharge level as defined at 40 C.F.R. § 403.5(b)(2).

71. On September 1, 2010, ADEM conducted a compliance inspection of the OWSB's POTW. During this inspection, ADEM identified that OWSB had altered the design of its WWTP in order to divert influent from the Defendant's Facility and attempt sequestered treatment of it before reintroducing it back into the normal WWTP flow prior to discharge. ADEM also identified the WWTP effluent was brown and that this color remained in the receiving stream for several hundred feet after mixing.

72. At the time of the September 2010 inspection, concurrent ADEM sampling found the WWTP effluent had elevated CBOD and ammonia-nitrogen levels, and was exceeding NPDES permit limitations for fecal coliform, residual

chlorine, and required percent removals of CBOD and TSS; all of which indicated impaired operations. A manhole below the effluent cascade of the WWTP, just prior to discharge into Choccolocco Creek, was also observed to be overflowing with foam.

73. On October 14, 2010, ADEM conducted a site visit to the OWSB's POTW to observe the receiving stream for the WWTP discharge, which is Choccolocco Creek, and identified that the effluent from the WWTP had a sewage odor and a reddish-brown color. The discharge from the Defendant's Facility has this same distinctive color. ADEM again identified a distinct plume for at least several hundred feet downstream from the point that the WWTP effluent enters Choccolocco Creek. ADEM also identified a very thick layer of solids on the bottom of Choccolocco Creek beginning at the point where the WWTP effluent enters Choccolocco Creek. ADEM also identified several clumps of solids floating in Choccolocco Creek near to and immediately downstream of the WWTP discharge point. These solids appeared to be sourced from the WWTP discharge; these were not observed prior to the discharge point.

74. During the period from July 12 to 14, 2011, ADEM conducted a compliance inspection of OWSB's POTW. ADEM identified that the distinctive color of the discharge from the Facility was visible both within the WWTP and

within a plume observed at the point that the WWTP effluent enters Choccolocco Creek, which was visible for over a hundred feet downstream. At the time of the inspection, concurrent ADEM sampling found the WWTP effluent had elevated CBOD and ammonia-nitrogen levels; and was exceeding NPDES permit limitations for fecal coliform, minimum dissolved oxygen, color, and required percent removals of CBOD and TSS; all of which indicated impaired operations.

75. In 2011, Defendant installed screening equipment at the Facility capable of removing larger wood solids, and installed piping in its wastewater pit to improve the decantation of its wastewater prior to discharging into the POTW.

76. In January 2012, OWSB began purchasing and adding treatment chemicals beyond what was typically required for normal operation of the WWTP, and began making more physical alterations to the design of the WWTP. These alterations involved semi-permanent rigging of one entire half of the WWTP to effect the segregation of, and attempts to pretreat, the influent received from the Facility. These alterations also involved the fabrication and installation of additional aeration systems in the other half of the WWTP to aid in treatment of the recombined influent (both the acceptable influent and the Facility influent following the attempt by the WWTP to pretreat it). All of these efforts were purposed to curtail the ongoing interference with normal sewage treatment

operations and the ongoing non-compliance with its NPDES permit conditions, which were either caused or contributed by pollutants from the Facility's discharge.

77. On March 21, 2012, ADEM issued Consent Order No. 12-093-CWP to OWSB alleging a number of violations of the CWA the AWPCA, and its NPDES Permit, including, inter alia, discharge of certain pollutants to waters of the United States in violation of limitations established in the NPDES Permit issued to the POTW. In the ADEM Consent Order, OWSB contended that the exceedances of the ammonia nitrogen effluent limitations in the NPDES Permit were directly related to discharges from Defendant's Facility to the POTW.

78. In April 2012, OWSB began using additional sewage sludge handling and disposal equipment at the POTW treatment plant beyond what was typically required for normal operation of the WWTP in an effort to curtail the interference with normal sludge handling and treatment operations of the POTW either caused or contributed by Defendant's discharge.

Defendant's Permitting History

79. Defendant submitted its initial application for an SID permit to ADEM on January 15, 2008, after it had already begun discharging pollutants to the POTW related to its start-up trials. In its initial permit application, Defendant

indicated that the Facility conducts pulp, paper, and fiberboard manufacturing and, as such, is a categorical industrial user pursuant to 40 C.F.R. § 403.6.

80. On October 22, 2009, ADEM sent its first draft SID permit for the Facility to Defendant and OWSB, and requested comments.

81. On November 19, 2009, OWSB provided ADEM comments on the first draft SID permit, noting that the first draft included only pH limits and requesting limits set for temperature, dissolved oxygen (“DO”), BOD, TSS, chemical oxygen demand (“COD”), total phosphorous, ammonia, oil and grease, and formaldehyde. In the same letter, OWSB stated, “[h]igh levels of these compounds are putting a strain on our Wastewater Treatment Facility.”

82. On October 6, 2011, ADEM sent its second draft of the SID permit for the Facility to Defendant and OWSB, and requested comments.

83. On April 5, 2012, OWSB provided ADEM comments on the second draft SID permit, noting that: “[t]emperatures exceeding 105°F have broken [OWSB’s] pumps in the lift station receiving Kronospan’s discharge on multiple occasions,” but that Kronospan and OWSB had agreed to work out the temperature issues in a separate discharge agreement; “Kronospan typically runs approximately 200,000 gallons to 250,000 gallons per day when in full production,” and that “[t]he 100,000 gallons per day [proposed flow limit] will be exceeded regularly

and needs to be modified”; requesting that COD, oil and grease, and phosphorous be included for monthly reporting; and OWSB and Kronospan were working to determine a pretreatment alternative to reduce Kronospan’s TSS, color, and formaldehyde levels.

84. On May 2, 2012, ADEM sent its third draft SID permit for the Facility to Defendant and OWSB, and requested comments.

85. On June 29, 2012, ADEM issued SID Permit No. IU350801146 (hereinafter “SID Permit”) to Defendant allowing the discharge of pollutants from the Facility to the POTW subject to certain terms and conditions including, among other things, those related to quantity, temperature, and pH level. The SID Permit became effective on July 1, 2012 and expired on June 30, 2017.

a. Defendant’s SID Permit set a temperature limit of 110°F to be measured at the Facility’s monitoring point, which, by ADEM’s calculation, correlates to a temperature of 104 °F as measured at the POTW.

b. Defendant’s SID Permit set a daily maximum TSS limit of 600 mg/L.

c. Defendant’s SID Permit set a pH limit of no less than 5.0 standard units and no greater than 10.5 standard units.

d. Defendant's SID Permit set a daily maximum oil and grease limit of 150 mg/L.

e. Pursuant to Part I.E.1.b of Defendant's SID Permit, Defendant is required to submit DMRs monthly to ADEM no later than the 28th day of the following month (e.g., submit DMR for January no later than February 28th).

f. Pursuant to Part I.E.1.c of the SID Permit, Defendant was required to submit an application to ADEM for participation in the electronic reporting program known as "E2 DMR" within one-hundred eighty (180) days of the effective date of the SID Permit, or by December 28, 2012.

g. Pursuant to Part I.G.1 of the SID Permit, Defendant was required to submit an engineering report to ADEM within forty-five (45) days of the effective date of the SID Permit, or by August 15, 2012, describing the steps to be taken to reduce levels of formaldehyde in the effluent.

86. From the time the Facility began discharging without a SID Permit until the effective date of its SID Permit on July 1, 2012, Defendant had amassed over 8,400 CWA violations

87. ADEM is currently processing Defendant's application for renewal of the Facility's SID Permit. Until a new permit is issued, the requirements of the Defendant's SID Permit issued July 1, 2012, are applicable to its operations, pursuant to Ala. Admin. Code r. 335-6-5-.11.

**Defendant's Compliance History with the EPA and ADEM,
and Post-Permit Operations**

88. On July 18, 2012, the EPA sent Defendant an information request pursuant to Section 308(a) of the CWA, 33 U.S.C. § 1318(a), to investigate a report made to the EPA of interference and pass-through of the POTW, as those terms are defined by 40 C.F.R. § 403.3(k) and (p), respectively.

89. On August 25, 2012, Defendant provided its response to the information request from the EPA.

90. On November 14 and 15, 2012, the EPA and ADEM conducted inspections at the POTW and the Facility, respectively, to supplement the Section 308(a) investigation.

91. During its November 14, 2012, inspection of the POTW, EPA inspectors noted that the POTW was experiencing dry weather operational problems due to uncontrolled pollutant loads from significant industrial users, including Defendant's Facility. The EPA inspectors noted, "Industrial interference with the WWTP continues to occur and has recently worsened. Dissolved oxygen

levels remain difficult to maintain in the treatment train, and normal biosolids management continues to be disrupted. Removal efficiencies for BOD and TSS have continued their decline, and recently fallen below the permit limits.”

92. During its November 15, 2012 inspection of the Facility, EPA inspectors noted a large number of deficiencies with the Pretreatment Regulations, including that the Facility discharged “the same type [of] solids observed to be contributing to interference at the [POTW]” and that the Facility’s discharge lacked necessary pretreatment prior to discharge.

93. On December 13, 2012, ADEM sent a Notice of Violation (“NOV”) letter to Defendant regarding some of the violations noted during the EPA and ADEM compliance inspections.

94. Defendant responded to ADEM’s NOV on February 8, 2013.

95. The EPA issued Defendant an Administrative Order (“AO”) Docket No. CWA-04-2013-4756, effective April 29, 2013, which required Defendant to, inter alia:

a. On or before June 1, 2013, complete installation of pretreatment equipment to control the discharge from the Facility to the POTW, and achieve normal operation of the equipment to meet the maximum standard of 600 mg/L TSS at the monitoring point identified in the SID Permit;

b. On or before December 1, 2013, complete installation of pretreatment equipment to control the discharge from the Facility to the POTW, and achieve normal operation of the equipment to meet the temperature and pH limitations identified in the SID Permit, as well as the general pretreatment standards and prohibitions identified in the SID Permit and in 40 C.F.R. Part 403;

c. On or before June 1, 2013, complete installation and calibration of equipment to monitor and report the flow of the discharge from the Facility to the POTW under the terms of the SID Permit, and commence using that equipment to report flow to ADEM;

d. On the Effective Date of the AO, maintain full compliance with the monitoring and reporting requirements of the SID Permit, including submission of all required results, supporting data, and notifications, as well as biannually monitor compliance with standards in 40 C.F.R. § 430.77, or if appropriate, supply the requisite certifications, and report to ADEM pursuant to the requirements in the SID Permit; and

e. Beginning on June 1, 2013, and every June 1 and December 1 thereafter for the term of the AO, submit a report to the EPA on Defendant's

compliance with the terms of the AO and pretreatment standards since the previous report.

96. On February 11, 2013, Defendant submitted to ADEM the engineering report required pursuant to Part I.G.1 of the SID Permit. This report was submitted to ADEM 180 days past the due date.

97. On April 29, 2013, Defendant submitted its application to ADEM for participation in the E2 DMR program. This application was submitted to ADEM 122 days past the due date.

98. In its June 2013 Status Report submitted to the EPA and ADEM, Defendant reported the following violations of the effluent limitations in its SID Permit for the period from November 2012 through April 2013: (a) six (6) violations of its temperature limit; (b) two (2) violations of its pH limit; (c) six (6) violations of its TSS limit; and (d) six (6) violations of its oil and grease limit.

99. In June 2013, Defendant completed installation of pollution control equipment to manage TSS in its discharge, as required by the EPA AO. The TSS control system also controls pH through the injection of sodium aluminate.

100. In June 2013, Defendant also completed installation of a flow monitoring system, as required under the EPA AO.

101. On June 5, 2013, Defendant submitted a permit modification request to ADEM to, among other things, modify the TSS limit in its SID Permit.

102. Beginning in or around July 2013, at OWSB's request, Defendant began sending text messages to OWSB personnel when the Facility's pretreatment system was inoperable. Between July 2013 and March 2014, OWSB received at least eighteen (18) such text messages from Defendant. On several of these occasions, OWSB diverted flow from Defendant's Facility to the WWTP's equalization basin in order to maintain the POTW's normal operations.

103. On July 29, 2013, ADEM issued a Unilateral Order, No. 13-118-WP, to OWSB to address, among other things, the interference and pass-through issues caused by Defendant. The Unilateral Order required OWSB to, inter alia: (a) submit an engineering report to address the need for changes in maintenance and operating procedures, including a general plan to address interference and/or pass-through from non-domestic sources; and (b) prepare and submit to ADEM a POTW pretreatment plan which ADEM may utilize to develop local limits for OWSB.

104. On September 16, 2013, Defendant entered into a Consent Order, No. 13-145-CWP, with ADEM, which required Defendant to, inter alia:

a. Beginning ninety (90) days after the date of the Consent Order, prepare and submit detailed quarterly reports to ADEM describing Defendant's progress towards achieving compliance with the Consent Order;

b. Provide written notice to ADEM of noncompliance with any applicable requirement of the Consent Order no less than fourteen (14) days following any applicable due date(s);

c. Within sixty (60) days of ADEM's establishment of local limits for OWSB's POTW, submit to ADEM an engineering report including a schedule of compliance as to when Defendant will comply with the applicable local limit for TSS; and

d. No later than December 1, 2013, fully comply with the SID Permit limitation for temperature without the use of non-process water for dilution and/or without the use of increased process water for dilution.

105. On December 1, 2013, Defendant completed the installation of a heat exchanger at the Facility, in accordance with the EPA AO and ADEM Consent Order.

106. On December 13, 2013, discharge attributable to Defendant caused the maximum TSS load in OWSB's hourly composite sampler at the Highway 202

lift station to be 54,630 mg/L. This high level of TSS caused operational problems at OWSB's POTW, including increased solids handling costs by OWSB.

107. In its December 2013 Status Report submitted to the EPA and ADEM, Defendant reported the following violations of the effluent limitations in its SID Permit for the period from June 2013 through December 2013: (a) four (4) violations of its temperature limit; and (b) four (4) violations of its TSS limit. The December 2013 Status Report was due to the EPA and ADEM no later than December 1, 2013. Defendant submitted the December 2013 Status Report to ADEM via mail on January 6, 2014, and to the EPA via email on January 17, 2014. Defendant's December 2013 Status Report also lacked a certification statement as required pursuant to the EPA AO and 40 C.F.R. § 403.12(l)

108. In or around March 2014, OWSB again replaced a pump at its Highway 202 pump station. OWSB sent an invoice in the amount of \$23,563 to Defendant for this replacement pump on May 15, 2014. On July 15, 2014, Defendant indicated that it would provide the replacement pump for the Highway 202 lift station.

109. In its March 2014 Status Report submitted to ADEM pursuant to the ADEM Consent Order, Defendant reported the following violations of the effluent limitations in its SID Permit for the period from January 2014 through March

2014: (a) three (3) violations of its temperature limit; and (b) one (1) violation of its TSS limit.

110. In a letter to ADEM dated April 25, 2014, OWSB alleged that, “[OWSB] is continuing to receive large slugs of solids, BOD, COD and high temperature effluent from Kronospan. The [equalization] basin is currently being drained again through the sludge removal process due to pass through occurrences from Kronospan.”

111. Defendant did not submit the June 2014 Status Report to EPA as required by the AO. Defendant’s June 2014 Status Report also lacked a certification statement as required pursuant to the EPA AO and 40 C.F.R. § 403.12(l).

112. Defendant submitted the December 2014 Status Report to the EPA and ADEM via email on December 29, 2014 – 28 days late. Defendant’s December 2014 Status Report also lacked a certification statement as required pursuant to the EPA AO and 40 C.F.R. § 403.12(l).

113. Upon information and belief, OWSB continues to intermittently sequester Defendant’s process wastewater from the normal treatment train at the WWTP.

114. In one year, between October 2013 and September 2014, OWSB expended \$266,615 in hauling costs to accommodate the increased solids loading to the POTW from Defendant's discharge. This represents a nearly 470% increase from OWSB's average annual hauling costs from 2005 through 2008 (prior to the Facility commencing discharge) of \$46,792.

115. In its June 2015 Status Report to the EPA and ADEM, Defendant reported that its discharge had blocked the POTW's sewer lines, resulting in an approximately-one-mile backup and the need for OWSB to dispatch a sewer jet truck to free the blockage and restore flow. A vacuum truck also vacuumed the sewer lines and the Highway 202 lift station.

116. On March 28 and 29, 2017, the EPA's Science and Ecosystems Services Division ("SESD") conducted a sampling evaluation and performance audit inspection ("SE/PAI") of OWSB's POTW. The purposes of the SE/PAI were to validate the quality of data from OWSB's laboratory and to identify the quantity of TSS being discharged from Defendant's Facility into the POTW. During the SE/PAI, SESD found copious amounts of solid material originating from Defendant's industrial processes in Defendant's discharge. Such material blocked sampling equipment, and also caused foaming when agitated.

117. In five years, between the effective date of the SID Permit (July 1, 2012) and July 2017, Defendant amassed over 5,000 additional CWA violations, including at least 1,800 effluent limitation and reporting and monitoring violations alone:

a. Between July 1, 2012 and June 30, 2017, Defendant violated its SID Permit effluent limits at least six-hundred and forty-five (645) times, including: (a) 350 violations of its temperature limit; (b) 232 violations of its TSS limit; (c) six (6) violations of its oil and grease limit; and (d) 150 violations of its pH limit.

b. Upon information and belief, between July 1, 2012 and October 30, 2012, Defendant failed to monitor and report any of its wastewater discharge.

c. Upon information and belief, between November 2012 and April 2013, Defendant failed to fully monitor and report all parameters as required in its SID Permit.

d. In a 29-month period between July 2012 and December 2014, Defendant submitted its DMRs late twenty-two (22) times.

FIRST CLAIM FOR RELIEF
(Significant Industrial User Discharging Without a Permit)

118. The allegations in Paragraphs 1 through 117 above are re-alleged and incorporated herein by reference.

119. Pursuant to 40 C.F.R. § 403.8(f)(1)(iii) and Ala. Admin. Code r. 335-6-5-.04(2), no “significant industrial user” shall introduce “pollutants” into a “POTW” without having first obtained a valid SID permit from ADEM. Applications for new sources shall be submitted at least 180 days prior to the applicant’s desired date for commencement of the new discharge. Id. 335-6-5-.13(6).

120. Defendant began discharging pollutants from the Facility to the OWSB POTW without a valid SID Permit in or around 2007, and continued such unpermitted discharge until June 30, 2012.

121. Each day of each unpermitted discharge by Defendant is a separate violation of Section 307(d) of the CWA, 33 U.S.C. § 1317(d).

122. Pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), as amended, Defendant is subject to a civil penalty, adjusted for inflation, not to exceed \$32,500 per day for each violation which takes place after March 15, 2004

through January 12, 2009; and not to exceed \$37,500 per day for each violation occurring after January 12, 2009 through November 2, 2015.

SECOND CLAIM FOR RELIEF

(Discharge Causing and/or Contributing to Interference at a POTW)

123. The allegations in Paragraphs 1 through 117 above are re-alleged and incorporated herein by reference.

124. The General Pretreatment Regulations prohibit an “industrial user” from causing “interference” with the operation of a POTW. See 40 C.F.R. §§ 403.5(a)(1), (b)(4); Ala. Admin. Code r. 335-6-5-.03(1), -.03(2).

125. An “industrial user” is a nondomestic source that discharges pollutants to a POTW. 40 C.F.R. §§ 403.3(i) and (j); Ala. Admin. Code r. 335-6-5-.02(u) and (v).

126. “Interference” means a discharge which alone or in conjunction with a discharge or discharges from other sources, both: (1) inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and (2) therefore is a cause of a violation of any requirement of the POTW’s NPDES permit (including an increase in the magnitude or duration of a violation). 40 C.F.R. § 403.3(k); Ala. Admin. Code r. 335-6-5-.02(w).

127. Pursuant to 40 C.F.R. § 403.5(b)(3) and Ala. Admin. Code r. 335-6-5-.03(2)(c), an “industrial user” shall not introduce a “pollutant” to a “POTW” in amounts which will cause obstruction to the flow in the POTW resulting in “interference.”

128. Pursuant to 40 C.F.R. § 403.5(b)(4) and Ala. Admin. Code r. 335-6-5-.03(2)(d), an “industrial user” shall not introduce a “pollutant” to a “POTW” at a flow rate and/or concentration which will cause “interference” with the “POTW.”

129. Beginning in or around April 2008 and continuing through the date of this Complaint, Defendant’s discharge has caused or contributed to interference with the operation of OWSB’s POTW.

130. Upon information and belief, Defendant’s discharge to OWSB’s POTW has caused or contributed to violations of the POTW’s NPDES permit, including, but not limited to: violations of the POTW’s effluent limitations for BOD, TSS, and ammonia-nitrogen; violations of proper operation and maintenance requirements; and violations of allowable loading requirements.

131. Upon information and belief, Defendant discharged TSS, CBOD, formaldehyde and heat at concentrations that caused or contributed to interference with OWSB’s POTW.

132. Upon information and belief, on various occasions between April 2008 and October 2011, Defendant intermittently discharged wood solids from the Facility in amounts which prohibitively obstructed the POTW.

133. Upon information and belief, as recently as March 2017, Defendant's discharge from the Facility contained large amounts of objectionable solid material.

134. This solid material risks obstructing flow within the POTW's transmission lines, likely contributes to elevated TSS loadings in the Facility's discharge, and requires OWSB to clean the Highway 202 lift station at a much greater frequency than would normally be required to control build-up.

135. If uncontrolled, excessive build-up of the objectionable solid material can interfere with proper operation of float switches that automate the lift station's pumps.

136. Transmitting heavy solids, such as the objectionable solid material found in Defendant's discharge, can create electrical and mechanical stresses that may shorten the expected life of a pumping system.

137. The EPA's SEDS found that the objectionable solid material caused foaming and broke up when agitated.

138. Upon information and belief, Defendant's discharge has caused or contributed to a substantial decline in the effective treatment performance of OWSB's POTW.

139. Upon information and belief, Defendant's discharge has caused or contributed to the need for OWSB to routinely repair and/or replace pumps and pump parts integral to the proper operation of its POTW.

140. Upon information and belief, Defendant's discharge has caused or contributed to OWSB's expenditure of significantly more funds for solids handling than it would expend under normal operating conditions.

141. Upon information and belief, Defendant's discharge has caused or contributed to OWSB's need to segregate flow from the Defendant and interfered with the proper operation and maintenance requirements of the OWSB's permit.

142. Upon information and belief, Defendant's discharge has caused or contributed to significant foaming at the influent to the WWTP as recently as December 2015, resulting in decreased performance which caused OWSB to alter its POTW operations.

143. Each instance of discharge by Defendant causing and/or contributing to interference is a separate violation of Section 307(d) of the CWA, 33 U.S.C. § 1317(d).

144. Pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), as amended, Defendant is subject to a civil penalty, adjusted for inflation, not to exceed \$32,500 per day for each violation which takes place after March 15, 2004 through January 12, 2009; not to exceed \$37,500 per day for each violation occurring after January 12, 2009 through November 2, 2015; and not to exceed \$55,800 per day for each violation occurring after November 2, 2015.

145. Defendant continues to violate the CWA by discharging pollutants which cause or contribute to interference at OWSB's POTW. Unless restrained by an order of the Court, Defendant will continue to discharge pollutants which cause or contribute to interference in violation of the CWA.

THIRD CLAIM FOR RELIEF
(Discharge Causing and/or Contributing to Pass-Through at a POTW)

146. The allegations in Paragraphs 1 through 117 above are re-alleged and incorporated herein by reference.

147. The General Pretreatment Regulations prohibit an "industrial user" from "pass-through" of pollutants at a POTW. 40 C.F.R. §§ 403.5(a)(1), (b)(4); Ala. Admin. Code r. 335-6-5-.03(1), -.03(2).

148. "Pass-through" means a discharge from an industrial user which exits the POTW into waters of the United States in quantities or concentrations which,

alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation). 40 C.F.R. § 403.3(p); Ala. Admin. Code r. 335-6-5-.02(dd).

149. Upon information and belief, on various occasions beginning in or around September 2010 and continuing through the date of this Complaint, Defendant's discharge has caused or contributed to the pass-through of pollutants at OWSB's POTW.

150. Upon information and belief, Defendant's discharge to OWSB's POTW has caused or contributed to violations of the POTW's NPDES permit, including, but not limited to: violations of the POTW's effluent limitations for CBOD, TSS, and ammonia-nitrogen; violations of proper operation and maintenance requirements; and violations of allowable loading requirements.

151. Each occurrence of discharge by Defendant causing or contributing to pass-through is a separate violation of Section 307(d) of the CWA, 33 U.S.C. § 1317(d).

152. Pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), as amended, Defendant is subject to a civil penalty, adjusted for inflation, not to exceed \$37,500 per day for each violation occurring after January 12, 2009

through November 2, 2015; and not to exceed \$55,800 per day for each violation occurring after November 2, 2015.

153. Defendant continues to violate the CWA by discharging pollutants which cause or contribute to pass-through at OWSB's POTW. Unless restrained by an order of the Court, Defendant will continue to discharge pollutants which cause or contribute to pass-through in violation of the CWA.

FOURTH CLAIM FOR RELIEF
(Discharge at a Prohibited pH Level)

154. The allegations in Paragraphs 1 through 117 above are re-alleged and incorporated herein by reference.

155. Pursuant to 40 C.F.R. § 403.5(b)(2) and Ala. Admin. Code r. 335-6-5-.03(2)(b), an "industrial user" shall not introduce a "pollutant" to a "POTW" with a pH lower than 5.0 standard units unless the POTW is specifically designed to accommodate such discharges.

156. OWSB's POTW is not designed to accommodate discharges with pH levels lower than 5.0.

157. From the time it began discharging to the POTW in or around 2007 until the time its SID Permit became effective on July 1, 2012, the Facility was prohibited from discharging process wastewater at pH levels lower than 5.0.

158. Upon information and belief, Defendant discharged wastewater to the POTW at pH levels less than 5.0 on at least four (4) occasions between 2007 and June 30, 2012.

159. Each day of discharge by Defendant at prohibited pH levels is a separate violation of Section 307(d) of the CWA, 33 U.S.C. § 1317(d).

160. Pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), as amended, Defendant is subject to a civil penalty, adjusted for inflation, not to exceed \$32,500 per day for each violation which takes place after March 15, 2004 through January 12, 2009; and not to exceed \$37,500 per day for each violation occurring after January 12, 2009 through November 2, 2015.

FIFTH CLAIM FOR RELIEF
(Discharge at a Prohibited Temperature)

161. The allegations in Paragraphs 1 through 117 above are re-alleged and incorporated herein by reference.

162. Pursuant to 40 C.F.R. § 403.5(b)(5) and Ala. Admin. Code r. 335-6-5-.03(2)(e), an “industrial user” shall not introduce a “pollutant” to a “POTW” with heat in such quantities that the temperature at the “POTW treatment plant” exceeds 104° F, unless the “Approval Authority,” upon request of the “POTW”, approves alternate temperature limits.

163. From the time it began discharging to the POTW in or around 2007 until the time its SID Permit became effective on July 1, 2012, the Facility was prohibited from discharging process wastewater at temperatures exceeding 104 °F.

164. Between July 7, 2010 and June 30, 2012, at least fifty-seven (57) temperature sampling events taken by OWSB at the manhole located near its Highway 202 lift station of Defendant's discharge to the POTW indicated temperatures of Defendant's discharge in excess of 104 °F.

165. Each day of discharge of pollutants at prohibited temperatures by Defendant is a separate violation of Section 307(d) of the CWA, 33 U.S.C. § 1317(d).

166. Pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), as amended, Defendant is subject to a civil penalty, adjusted for inflation, not to exceed \$37,500 per day for each violation occurring after January 12, 2009 through November 2, 2015.

SIXTH CLAIM FOR RELIEF

**(New Source Failure to Install and Operate Pretreatment Equipment
Prior to Discharge)**

167. The allegations in Paragraphs 1 through 117 above are re-alleged and incorporated herein by reference.

168. Pursuant to 40 C.F.R. § 403.6(b), “new sources,” as defined at 40 C.F.R. § 403.3(m), shall install and have in operating condition all pollution control equipment required to meet applicable Pretreatment Standards prior to beginning discharge to a POTW.

169. The Facility is subject to the federal categorical pretreatment standards for new sources in 40 C.F.R. § 430.77 because the Facility’s construction was initiated after publication of the proposed 40 C.F.R. Part 430, Subpart G pretreatment standards for new sources on January 6, 1981.

170. Pursuant to 40 C.F.R. § 403.6(b) and Ala. Admin. Code r. 335-6-5-.05(2), Defendant was thus required to install and have in operating condition all pollution control equipment necessary to meet applicable pretreatment standards, including those in 40 C.F.R. § 430.77, prior to beginning a discharge to the POTW.

171. Defendant did not install any necessary pollution control equipment prior to beginning discharge from the Facility to the POTW in 2007.

172. Defendant completed installation of equipment to control TSS and pH in June 2013.

173. Defendant completed installation of equipment to control temperature on December 1, 2013.

174. Each day of discharge without the necessary pollution control equipment installed and operating is a separate violation of Sections 301(a) and 307(d) of the CWA, 33 U.S.C. §§ 1311(a) and 1317(d).

175. Pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), as amended, Defendant is subject to a civil penalty, adjusted for inflation, not to exceed \$32,500 per day for each violation which takes place after March 15, 2004 through January 12, 2009; and not to exceed \$37,500 per day for each violation occurring after January 12, 2009 through November 2, 2015.

SEVENTH CLAIM FOR RELIEF
(Failure to Submit Periodic Reports on Continued Compliance
with Categorical Standards)

176. The allegations in Paragraphs 1 through 117 above are re-alleged and incorporated herein by reference.

177. Pursuant to 40 C.F.R. §§ 403.12(e), 403.12(g), 403.12(l), 403.12(o), and Ala. Admin. Code r. 335-6-5-.05(2), any industrial user subject to categorical pretreatment standards must submit to ADEM, and maintain records of, additional

periodic reports of its compliance with categorical standards and other information at least twice a year (i.e., June and December).

178. Pursuant to 40 C.F.R. § 403.12(l), such periodic reports required pursuant to 40 C.F.R. § 403.12(e) shall include a certification statement as set forth in 40 C.F.R. § 403.6(a)(2)(ii).

179. Upon information and belief, Defendant did not submit to ADEM or maintain records of its compliance with categorical standards from June 1, 2008 through December 1, 2012.

180. Upon information and belief, Defendant failed to timely submit its December 2013 compliance report to ADEM.

181. Defendant's December 2013 compliance report lacked the required certification statement.

182. Defendant's June 2014 compliance report lacked the required certification statement.

183. Upon information and belief, Defendant failed to timely submit its December 2014 compliance report to ADEM.

184. Defendant's December 2014 compliance report lacked the required certification statement.

185. Each June and December during which complete biannual reports are not timely submitted constitute separate violations of Sections 307(d) of the CWA, 33 U.S.C. § 1317(d).

186. Pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), as amended, Defendant is subject to a civil penalty, adjusted for inflation, not to exceed \$32,500 per day for each violation which takes place after March 15, 2004 through January 12, 2009; and not to exceed \$37,500 per day for each violation occurring after January 12, 2009 through November 2, 2015.

EIGHTH CLAIM FOR RELIEF
(Failures to Comply with SID Permit Conditions – Effluent Limits)

187. The allegations in Paragraphs 1 through 117 above are re-alleged and incorporated herein by reference.

188. Pursuant to Ala. Admin. Code r. 335-6-5-.05(4), and 40 C.F.R. § 403.10, an industrial user holding a SID permit must comply with conditions of that permit.

189. SID permit limits are “Pretreatment Standards” pursuant to 40 C.F.R. §§ 403.8(f)(1)(iii), 403.10(e) and 403.10(f)(1)(iii).

190. Effective July 1, 2012, Defendant held a SID Permit, No. IU350801146, which required immediate compliance (Part I.G.1).

191. Defendant self-reported at least four-hundred and forty-two (442) effluent limit infractions in its DMRs and status reports submitted pursuant to the EPA AO between November 1, 2012 and October 31, 2016 in violation of its SID Permit, as outlined below:

Effluent Characteristic	Month Violation(s) Occurred	No. of Days of Violation Per Month
TSS (Daily max.)	November 2012	1
	December 2012	1
	January 2013	5
	February 2013	4
	March 2013	4
	April 2013	4
	May 2013	3
	September 2013	1
	October 2013	1
	November 2013	1
	February 2014	1
	January 2015	1
	July 2015	1
	July 2016	1
Oil and grease (Daily max.)	November 2012	1
	December 2012	1
	January 2013	1
	February 2013	1
	March 2013	1
	April 2013	1
pH (minimum)	November 2012	1
	May 2016	2
	June 2016	14

Effluent Characteristic	Month Violation(s) Occurred	No. of Days of Violation Per Month
	July 2016	7
	September 2016	27
	October 2016	7
Temperature (Daily max.)	January 2013	31
	February 2013	28
	March 2013	31
	April 2013	30
	May 2013	31
	June 2013	30
	July 2013	31
	October 2013	30
	November 2013	28
	December 2013	31
	January 2014	14
	February 2014	12
	March 2014	22
	August 2015	1

192. In addition to the effluent limitation violations self-reported by Defendant in its DMRs, upon information and belief, Defendant also violated its effluent limitation for TSS on at least two-hundred and two (202) additional occasions, as evidenced by OWSB's monitoring data for the Highway 202 lift station.

193. Each day of each violation of an effluent limitation of a SID Permit is a separate violation of Sections 301(a) and 307(d) of the CWA, 33 U.S.C. §§ 1311(a) and 1317(d).

194. Pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), as amended, Defendant is subject to a civil penalty, adjusted for inflation, not to exceed \$37,500 per day for each violation occurring after January 12, 2009 through November 2, 2015; and not to exceed \$55,800 per day for each violation occurring after November 2, 2015.

195. Defendant continues to violate the CWA by discharging pollutants at concentrations exceeding its SID Permit effluent limitations. Unless restrained by an order of the Court, Defendant will continue to discharge pollutants at prohibited concentrations.

NINTH CLAIM FOR RELIEF
(Failures to Comply with SID Permit Conditions – Reporting)

196. The allegations in Paragraphs 1 through 117 above are re-alleged and incorporated herein by reference.

197. Pursuant to Ala. Admin. Code r. 335-6-5-.05(4), and 40 C.F.R. § 403.10, an industrial user holding a SID permit must comply with conditions of that permit.

198. Effective July 1, 2012, Defendant held a SID Permit, No. IU350801146, which required immediate compliance (Part I.G.1).

199. Pursuant to Part I.E.1.b of Defendant's SID Permit, Defendant is required to submit DMRs monthly to ADEM no later than the 28th day of the following month (e.g., submit DMR for January no later than February 28th).

200. Part I.E.1.d of the SID Permit requires that the DMR forms must be submitted with a certification.

201. Upon information and belief, Defendant failed to monitor and report any of its wastewater discharge from July 1, 2012 through October 31, 2012.

202. Upon information and belief, between November 1, 2012 and April 30, 2016, Defendant failed to fully monitor and report all parameters as required in by Parts I.A and I.D.5.b of its SID Permit:

Reporting Period (Month/Year)	# Discharge Parameters Unreported
November 2012	3
December 2012	4
January 2013	2
February 2013	2
March 2013	2
April 2013	2
June 2013	2
July 2013	2
April 2016	1

203. Defendant failed to timely submit its DMRs for the following reporting periods:

Reporting Period (Month/Year)	Date Submitted	Due By Date	Number of Days Late
July 2012	February 11, 2013	August 28, 2012	167
August 2012	February 11, 2013	September 28, 2012	136
September 2012	February 11, 2013	October 28, 2012	106
October 2012	February 11, 2013	November 28, 2012	75
November 2012	February 11, 2013	December 28, 2012	45
December 2012	February 11, 2013	January 28, 2013	14
January 2013	March 18, 2013	February 28, 2013	18
February 2013	May 6, 2013	March 28, 2013	39
March 2013	May 6, 2013	April 28, 2013	8
June 2013	July 29, 2013	July 28, 2013	1
August 2013	October 1, 2013	September 28, 2013	3
September 2013	December 6, 2013	November 28, 2013	8
November 2013	December 30, 2013	December 28, 2013	2
January 2014	March 3, 2014	February 28, 2014	3
February 2014	March 31, 2014	March 28, 2014	3
April 2014	May 30, 2014	May 28, 2014	2
July 2014	September 4, 2014	August 28, 2014	2
August 2014	November 3, 2014	September 28, 2014	36
September 2014	November 3, 2014	October 28, 2014	6
October 2014	December 4, 2014	November 28, 2014	6

204. Part I.E.1.c requires an application for electronic DMR reporting within 180 days of the effective permit date, making it due by December 28, 2012.

205. Defendant submitted its electronic DMR application on April 29, 2013, 122 days late.

206. Part I.G.1 of the SID Permit requires an engineering report of steps planned to reduce effluent formaldehyde within 45 days of the effective permit date, making it due by August 15, 2012.

207. Defendant submitted its formaldehyde engineering report on February 11, 2013, 180 days late.

208. Parts I.A, I.D.1, I.E.1, III.F.1., III.F.6, and III.F.7 of the SID Permit require Defendant to accurately monitor and report certain discharge characteristics, including flow and pH.

209. Upon information and belief, Defendant inaccurately reported its flow data on various occasions from July 2013 to April 2016:

Month	Daily Maximum Flow (mgd)			Monthly Average Flow (mgd)		
	Actual	DMR	Difference	Actual	DMR	Difference
Jul 2013	0.3403			0.2392		
Aug 2013	0.2974	0.3247	9%	0.2515		
Sep 2013	0.2843	0.3247	14%	0.1979	0.1979	
Oct 2013	0.2316	0.9025	290%	0.1842	0.2266	23%
Nov 2013	0.4647	0.9025	94%	0.2266	0.2266	
Dec 2013	0.4514	1.7034	277%	0.2587	0.2587	

Month	Daily Maximum Flow (mgd)			Monthly Average Flow (mgd)		
	Actual	DMR	Difference	Actual	DMR	Difference
Jan 2014	0.7375	1.7710	140%	0.2918	0.2918	
Feb 2014	0.8604	1.84	114%	0.4504	0.450	
Mar 2014	1.643	1.8211	11%	0.6449		
Apr 2014	0.7184	1.8260	154%	0.1838		
May 2014	0.2929	1.0443	257%	0.0815		
Jun 2014	0.3941	0.4675	19%	0.3042	0.3042	
Jul 2014	0.5254	1.7234	228%	0.3398		
Aug 2014	0.4677	0.5991	28%	0.3287	0.3287	
Sep 2014	0.3978	0.5145	29%	0.3396	0.3396	
Oct 2014	0.5511	0.7329	33%	0.4114	0.4114	
Nov 2014	0.5517	1.7255	213%	0.3641	0.3641	
Dec 2014	0.603	0.855	42%	0.1671	0.167	
Jan 2015	0.6247	0.7689	23%	0.3907		
Feb 2015	0.5155	0.6507	26%	0.3132		
Mar 2015	0.6403	0.7372	15%	0.3103		
Apr 2015	0.4583	0.5553	21%	0.3386	0.3386	
May 2015	0.4663	0.7278	56%	0.2830	0.2830	
Jun 2015	0.2888			0.2030		
Jul 2015	0.2440	0.3233	33%	0.1821	0.1821	
Aug 2015	0.2341	0.2881	23%	0.2017	0.2017	
Sep 2015	0.2494	0.3638	46%	0.2253	0.2253	
Oct 2015	0.4331	1.4205	228%	0.2623	0.2623	
Nov 2015	1.4169	1.4568	3%	0.2679		
Dec 2015	0.1387	0.2881	108%	0.0963	0.1246	29%
Jan 2016	0.1937	0.7738	299%	0.1275	0.1275	
Feb 2016	0.3873	0.3873		0.2294	0.2294	
Mar 2016	0.3937	0.3937		0.2682	0.2682	
Apr 2016	0.2910	0.6237	114%	0.2495	0.2496	0%

210. Parts I.D.1, D.2, and D.6 of the SID Permit require Defendant to conduct monitoring in a manner producing an accurate or representative result.

211. Upon information and belief, Defendant became aware in April 2016 that there was a problem with the in-line probe being used to collect the required daily pH measurements. The probe had been fouling and was supplying inconsistent measurements. Nevertheless, Defendant continued using the system and did not replace the in-line probe until the end of June 2016. During this three-month timeframe, there were periods when no daily measurements were collected as required, as well as the collection of unqualified measurements. In July 2016, even though the new in-line probe immediately began to foul and produce inconsistent readings, Defendant opted to continue using the system's measurements for permit self-monitoring and simply increased its probe-cleaning frequency. In its self-reporting, Defendant continued to qualify that it believed the numerous ongoing pH limit violations that it was reporting were errant.

212. Part I.E.4 of the SID Permit requires Defendant to report any "slug discharges" to OWSB immediately after becoming aware of the event, and to notify ADEM by the next normal business day. A "slug discharge" means "any Discharge' of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch Discharge, which has a reasonable potential to cause Interference or Pass Through, or in any other way violate the POTW's regulations, local limits or Permit conditions." 40 C.F.R. 403.8(f)(2)(vi).

213. At 5:15 AM on Monday, October 3, 2016, Defendant discovered that an operator's mishandling of pretreatment chemicals subsequently led to the failure of the pretreatment system dosing pump. This event resulted in a discharge to the receiving POTW which exceeded the TSS limitation in Defendant's SID Permit.

214. Defendant notified OWSB of the pretreatment system failure by voice message at 8:01 AM on October 3, 2016.

215. Upon information and belief, the slug of high solids arrived at OWSB's WWTP at 8:30 AM, less than a half-hour after Defendant's notification. Defendant's failure to immediately notify the POTW when it first became aware of the slug discharge event, as required by the SID Permit, left the POTW operator with sparingly little time to prepare and respond to the incoming slug discharge. When eventually making the notification, Defendant also did not convey pertinent details such as the actual time that the pretreatment system failed.

216. Defendant reported this slug discharge to ADEM on Thursday, October 6, 2016, three business days following the event, in contravention of the requirement of Part I.E.4 of the SID Permit to report such discharges to ADEM the following business day.

217. Each day of each violation of reporting requirement of a SID Permit is a separate violation of Section 307(d) of the CWA, 33 U.S.C. § 1317(d).

218. Pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), as amended, Defendant is subject to a civil penalty, adjusted for inflation, not to exceed \$32,500 per day for each violation which takes place after March 15, 2004 through January 12, 2009; not to exceed \$37,500 per day for each violation occurring after January 12, 2009 through November 2, 2015; and not to exceed \$55,800 per day for each violation occurring after November 2, 2015.

TENTH CLAIM FOR RELIEF
(Failure to Comply with EPA-Issued Administrative Order)

219. Paragraphs 1 through 117 are realleged and incorporated herein by reference.

220. The April 29, 2013 Administrative Order issued by the EPA against Defendant relating to pretreatment violations, effluent limit violations, and reporting and monitoring violations of its SID Permit, required Defendant to come into compliance with the CWA, all applicable federal and state regulations, and to meet the goals and objectives of the CWA by addressing Defendant's violations and coming into compliance with the CWA and the SID Permit.

221. Defendant has failed and continues to fail to abide by its obligations under the AO issued by the EPA to Defendant on April 29, 2013.

222. Paragraph 68.C of the AO requires the installation and calibration of flow monitoring equipment, and the commencement of its use to report flow, on or before June 1, 2013.

223. Upon information and belief, Defendant failed to use the equipment to report flow until July 19, 2013.

224. Paragraph 68.E of the AO requires Defendant to submit to the EPA a report on its compliance with the terms of the AO and pretreatment standards every June 1 and December 1 until compliance with the AO is achieved.

225. Paragraph 70 of the AO requires Defendant to include a certification statement with each of its submittals, including its biannual compliance reports.

226. Defendant failed to timely submit and/or certify a number of its required Status Reports, as summarized below:

Document Type	Due By Date	Response Date	Date Certified	Days Late
Status Report	6/1/2013	6/12/2013	6/12/2013	11
Status Report	12/1/2013	1/6/2014	6/4/2015	550
Status Report	6/1/2014	7/7/2014	6/4/2015	368
Status Report	12/1/2014	12/29/2014	6/4/2015	185
Status Report	6/1/2015	6/10/2015	6/4/2015	9
Status Report	12/1/2015	Not Received	N/A	Not Recieved
Status Report	12/1/2016	12/13/2016	12/13/2016	12

227. Each day of each violation of the AO is a separate violation of Section 309(a)(2)(A) of the CWA, 33 U.S.C. § 1319(a)(2)(A).

228. Pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), as amended, Defendant is subject to a civil penalty, adjusted for inflation, not to exceed \$37,500 per day for each violation occurring after January 12, 2009 through November 2, 2015; and not to exceed \$55,800 per day for each violation occurring after November 2, 2015.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, the United States of America and the Alabama Department of Environmental Management, respectfully request that this Court enter judgment on behalf of the United States and the Alabama Department of Environmental Management against Defendant, granting the following relief:

a. A permanent injunction directing Defendant to take all steps necessary to come into compliance with the CWA and the AWPCA, including, but not limited to, the prohibitions on discharges causing or contributing to interference and/or pass-through, and the discharge of obstructive solids, contained in 40 C.F.R. § 403.5(a) and 403.5(b)(4), respectively;

b. A permanent injunction directing Defendant to take all steps necessary to comply with all the terms and conditions of its SID Permit, including but not limited to its effluent limitations for TSS and temperature, and its monitoring and reporting requirements;

c. Pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), as amended, assess civil penalties against Defendant for the violations of the CWA alleged in the claim for relief in this complaint in an amount not to exceed \$32,500 per day for each violation which takes place after March 15, 2004 through January 12, 2009; not to exceed \$37,500 per day for each violation occurring after January 12, 2009 through November 2, 2015; and not to exceed \$55,800 per day for each violation occurring after November 2, 2015, and pursuant to Ala. Code § 22-22A-5(18), assess civil penalties against Defendant for the violations of the AWPCA alleged in the claim for relief in this complaint in an amount not to exceed \$25,000 per day for each violation; and

d. Grant the United States and the Alabama Department of Environmental Management such other further relief as this Court may deem just and proper.

Dated: Nov. 2, 2020

Respectfully submitted,

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STEVE MARSHALL
ALABAMA ATTORNEY GENERAL

Dated: Nov. 2, 2020

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