

LANCE R. LEFLEUR
DIRECTOR



KAY IVEY
GOVERNOR

Alabama Department of Environmental Management
adem.alabama.gov

1400 Coliseum Blvd. 36110-2400 ■ Post Office Box 301463
Montgomery, Alabama 36130-1463
(334) 271-7700 ■ FAX (334) 271-7950

May 10, 2021

CERTIFIED MAIL #9489 0090 0027 6286 7980 33
RETURN RECEIPT REQUESTED

John McDonald, President
Integra Water Creola, LLC
3212 6th Avenue South, Suite 200
Birmingham, Alabama 35222

RE: Consent Order No. 21-052-CWP
NPDES Permit No. AL0077453
North Mobile County WPCF
Mobile County (097)

Dear Mr. McDonald:

Please find enclosed ADEM Consent Order No. 21-052-CWP which requires you to take certain actions at North Mobile County WPCF located at 12740 U.S. Highway 43 in Axis, Mobile County, Alabama in regard to alleged violations of the Alabama Water Pollution Control Act. This Consent Order has been issued with the consent of Integra Water Creola, LLC. Please note that the assessed civil penalty is due within 45 days.

Sincerely,

A handwritten signature in blue ink that reads "Jeffery W. Kitchens".

Jeffery W. Kitchens, Chief
Water Division

JWK/gag

Enclosure

Cc: Shawn Sibley/ADEM, Office of General Counsel
Carrie Blanton/ADEM, Office of General Counsel
Daphne Lutz/ADEM, Industrial/Municipal Section
Emily Anderson/ADEM, Industrial/Municipal Section
Stephanie Ammons/ADEM, Industrial/Municipal Section

Birmingham Branch
110 Vulcan Road
Birmingham, AL 35209-4702
(205) 942-6168
(205) 941-1603 (FAX)

Decatur Branch
2715 Sandlin Road, S.W.
Decatur, AL 35603-1333
(256) 353-1713
(256) 340-9359 (FAX)



Mobile Branch
2204 Perimeter Road
Mobile, AL 36615-1131
(251) 450-3400
(251) 479-2593 (FAX)

Mobile-Coastal
3664 Dauphin Street, Suite B
Mobile, AL 36608
(251) 304-1176
(251) 304-1189 (FAX)

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:)

Integra Water Creola, LLC)
North Mobile County WPCF)
Axis, Mobile County, Alabama)

NPDES PERMIT NO. AL0077453)

Consent Order No. 21-052-CWP

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (“the Department”) and the Integra Water Creola, LLC (“the Permittee” or “Integra”) pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-17, as amended, the Alabama Water Pollution Control Act (“AWPCA”), Ala. Code §§ 22-22-1 to 22-22-14, as amended, the Alabama Safe Drinking Water Act of 1977, Ala. Code §§ 22-23-30 to 22-23-53, as amended, and the regulations promulgated pursuant thereto.

STIPULATIONS

1. The Permittee operates a wastewater treatment plant known as the North Mobile County Water Pollution Control Facility (“WPCF”), located at 12740 U.S. Highway 43, in Axis, Mobile County, Alabama.

2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-17, as amended.

3. Pursuant to Ala. Code § 22-22A-4(n), as amended, the Department is the state agency responsible for the promulgation and enforcement of water pollution control regulations in accordance with the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 to 1388. In addition, the Department is authorized to administer and enforce the provisions of the AWPCA.

4. The Department reissued National Pollutant Discharge Elimination System (“NPDES”) Permit No. AL0077453 (“the Permit”) to Integra Water Creola, LLC on April 29, 2011, effective

May 1, 2011, establishing limitations on the discharge of pollutants from a point source, designated therein as Outfall Number 001, to the Mobile River, a water of the State. The Permit also establishes limitations, terms, and conditions on the discharge of storm water from a point source, described therein as Outfall 002 into the Mobile River, a water of the State. The Permit was modified on May 27, 2011, to correct an administrative error.

5. Ala. Code § 22-23-47 provides that “[n]o person shall deposit any dead animal or fowl or any noxious, nauseous or poisonous substance or any human waste in any portion of a public water supply or in any private well, spring, reservoir, tank, vessel or receptacle appurtenant to a public water supply.

DEPARTMENT’S CONTENTIONS

6. Integra notified the Department on August 6, 2020 of a cross connection of the Integra sewer line to the Lemoyne Water System, Inc. (“LeMoyne”) potable water line. Integra submitted a letter dated August 21, 2020 disclosing the following to the Department: In the summer of 2012, American Remediation requested a tap onto Integra’s sanitary sewer line and paid the fee to be connected. Integra contracted with Cardinal Contracting to install a tap onto the wastewater force main at 9651 Old Highway 43 in Creola, Alabama. Cardinal Contracting installed the tap and covered the work before it could be inspected. In 2013, American Remediation withdrew their connection request, and Integra refunded their payment. On or about July 17, 2020, American Remediation requested their facility be allowed to connect to the Integra sanitary sewer system and hired a contractor to tie their facility to the old tap that was made in July 2012. The capacity fee was paid, and American Remediation’s plumber tied a low-pressure force main from the facility to the existing July 2012 tap. Integra was not aware that the tap had mistakenly tied the sanitary sewer line into the Lemoyne potable water line and opened the valve on July 22, 2020.

7. On August 6, 2020, the Department received notification from Lemoyne that, beginning on July 30, 2020, they had received complaints from customers located on Old Highway 43 regarding foul odor in their drinking water. On August 6, 2020, Lemoyne identified the cross

connection of Integra's sewer line into the potable water line. Lemoyne stated that, upon discovery, they disconnected the cross connection, began flushing the line, and began notifying customers in the area. On January 28, 2021, the Department received clarification that Lemoyne closed the valve connecting the sewer line to the LeMoyne potable water line. Integra then physically disconnected the Integra sewer line from the Lemoyne potable water line.

8. Integra also disclosed the following to the Department in the August 21, 2020 letter: Approximately 2 weeks later at 11:59 am August 6, 2020 LeMoyne notified Integra that a cross connection was discovered. The cross-connection valve was immediately shut off, and the system was physically separated within 2 hours, by 2:00 PM on August 6, 2020.

9. The Permittee consents to abide by the terms of this Consent Order and to pay any civil penalty assessed herein.

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

11. The Department neither admits nor denies the Permittee's Contentions.

12. Pursuant to Ala. Code § 22-22A-5(18)c., as amended, in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent, and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day that such violation continues shall constitute a separate violation. In arriving at this civil penalty (summarized in Attachment A), the Department has considered the following:

A. **SERIOUSNESS OF THE VIOLATIONS AND BASE PENALTY:** Based on the information available to the Department, violations of the AWPCA and the Alabama Safe Drinking Water Act were noted. The Department considered the general nature of each violation, the magnitude and duration of the violations, the characteristics of the pollutants of concern, their effects, if any, on the public water supply, and any available evidence of irreparable harm to the environment or threat to the public.

B. **THE STANDARD OF CARE:** The Permittee failed to implement adequate measures to inspect and prevent the 2012 cross connection. The Permittee indicated that a formal policy of physically inspecting each tap was implemented in 2013. However, the Permittee failed to inspect the existing 2012 tap before authorizing the July 22, 2020 connection. In consideration of the standard of care manifested by the Permittee, the Department enhanced the penalty.

C. **ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:** The Department is unaware of any economic benefit associated with the violations cited above.

D. **EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATIONS UPON THE ENVIRONMENT:** The Department is unaware of any efforts by the Permittee to minimize or mitigate the effects of the violations upon the environment.

E. **HISTORY OF PREVIOUS VIOLATIONS:** The Permittee has no previous history of violations.

F. **THE ABILITY TO PAY:** The Permittee has not alleged an inability to pay the civil penalty.

G. This Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty the Department believes is warranted in this matter in the spirit of cooperation and desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

H. The civil penalty is summarized in Attachment A.

PERMITTEE'S CONTENTIONS

13. Integra disclosed to the Department on August 21, 2020 the circumstances surrounding the event. The incident was first disclosed to the Department by the Permittee on

August 6, 2020, immediately after being notified by the LeMoyne Water Department. The Department was notified by the Permittee through phone call and written notifications. The written report filed with the Department was not received by the Department until August 21, 2020.

14. Integra Water hired Cardinal Contracting to perform the work of making the tap and depended on Cardinal Contracting's expertise to perform the work.

15. As a part of that work, Cardinal Contracting is required to submit an 811 utility location request before performing any excavation work. The utility location request is relied upon by Integra Water to notify Integra Water to physically assist in locating the utility and the opportunity to be present during tap. To date, Integra Water has not been provided the certificates issued from an 811 call for utility location prior to Cardinal Contracting performing the work.

16. As a point of clarification, on August 6, 2020, the Lemoyne System, Inc. closed the valve and notified Integra Water of the cross-connection. The cross-connection was disconnected within 2 hours by Integra Water personnel who mobilized on August 6, 2020, immediately after being notified by Lemoyne Water System, Inc. of the identified cross-connection and the occurrence of complaints from water customers regarding foul odor in their drinking water.

17. Integra Water was not notified by LeMoyne Water System of the complaints or investigation being performed as a result of the complaints between LeMoyne first becoming aware of the odor complaints on July 30th, 2020 and LeMoyne actually locating the cross-connection on August 6, 2020. By LeMoyne Water System not alerting Integra Water about the complaints, or the area of the system where the complaints were originating for a period of 8 days from July 30, 2020 to August 6, 2020, Integra Water was effectively excluded from participating in investigating the cause of the complaints. Earlier communication by the LeMoyne Water system with Integra Water as a part of LeMoyne's Cross-Connection Policy would have revealed to Integra the issue of complaints. The Lemoyne Water System and Integra Water system are unique in that they are both located on opposite sides of the road in all locations, with the exception of the roadway at the 9651 Old Highway 43 address, the site of the cross-

connection. Timely notification by Lemoyne Water System would have allowed Integra Water to identify the recent sewer connection as a possible cause of the complaints - and definite location to investigate. The cross-connection was unknown to all parties for a period of 8 days from July 22, 2020 when the cross-connection was opened, to July 30, 2020 when the first complaints were fielded.

18. LeMoyne Water System, Inc. took the action of shutting off the cross-connected valve, and Integra Water immediately responded on site to physically remove the cross-connection.

19. The Permittee neither admits nor denies the Department's contentions.

ORDER

THEREFORE, the Permittee, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to it and has considered the penalty factors enumerated in Ala. Code § 22-22A-5(18)c., as amended, as well as the need for timely and effective enforcement, and the Department believes that the penalty assessed below and the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Permittee (collectively "Parties") agree to enter into this CONSENT ORDER with the following terms and conditions:

A. The Permittee shall pay to the Department a civil penalty in the amount of \$100,000.00 in settlement of the violations alleged herein within forty-five days from issuance of this Consent Order. A portion of the penalty may be mitigated in accordance with Paragraph B. Failure to pay the civil penalty within forty-five days from issuance may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. The Permittee has elected to submit a plan to the Department to implement a Supplemental Environmental Project ("SEP"). The Permittee seeks to implement the SEP by connecting residential homes with failing or noncompliant septic systems to the North Mobile County WPCF sewer line at no cost to the home owner. Further, the Permittee agrees to submit, so that it is received by the Department no later than thirty days after the effective date of this Consent Order, unless extended in writing by the Department, a report outlining the scope of

work for the above-referenced SEP, as well as an implementation plan and schedule to the Department for review and acceptance. The Permittee shall prepare and submit detailed semi-annual Progress Reports to the Department describing the Permittee's progress with the SEP, if approved. The Permittee shall submit the Progress Reports so that they are received by the Department no later than 60 days after receipt of the Department's acceptance of the SEP and continuing every 180 days thereafter until completion of the SEP. This SEP may, at the sole discretion of the Department, offset a portion of the penalty at a ratio of \$1 of penalty for every \$3 spent on the SEP, but in no event shall the penalty be offset below \$50,000. Documentation of all SEP expenses shall be submitted to the Department for review and concurrence in determining the amount of the penalty offset no later than thirty days after the accepted completion date of the SEP or the completion of the SEP, whichever is earlier. Any total SEP value exceeding \$150,000.00 shall be at the discretion of the Permittee. If the SEP is not acceptable to the Department, then the total amount of the penalty referenced in Paragraph A above shall be due within forty-five days of the Permittee's receipt of the Department's notification that the SEP is not acceptable.

C. All penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

D. The Permittee shall prepare and submit to the Department an Engineering Report that includes corrective actions taken to prevent the reoccurrence of sanitary sewer lines being connected to public water supply systems and the process by which the Permittee will coordinate with local water supplies prior to the installation, replacement, and/or connection of any sanitary sewer service. The Engineering Report shall be prepared by a professional engineer licensed to practice in the State of Alabama. The Engineering Report shall be submitted so that it is received by the Department no later than ninety days after issuance of this Consent Order. If the Department determines through its review of the submitted Engineering Report that the

submittal is not sufficient, then the Permittee shall modify the Engineering Report. The Permittee shall submit modifications to the Engineering Report, if required, so that they are received by the Department no later than thirty days after Permittee's receipt of the Department's comments.

E. The Permittee shall prepare and implement a standard operating procedure ("SOP") manual that includes at a minimum a training program for the Integra personnel responsible for the installation, replacement, and/or connection of sanitary sewer service; the location of all known Integra sanitary sewer pipes, and a description of each pipe known as of the issuance date of this Order (color, size, etc.); the process by which all Integra sanitary sewer pipes will be distinguished from all other pipes that could be encountered when installing, replacing, and/or connecting sanitary sewer service; an approval checklist/form for Integra personnel responsible for verifying the proper installation, replacement, and/or connection of sanitary sewer service following the procedures of the SOP. The SOP must also include a procedure by which at least two parties verify proper connection when installing, replacing, and/or connecting sanitary sewer service. The verification procedure must also include a timeframe for verification. The SOP must be updated as necessary, to include any new or existing pipes that are installed, replaced, connected, and/or identified, and must be made available to the Department upon request. Certification that the SOP has been developed and implemented in accordance with this Paragraph shall be submitted to the Department no later than ninety days after the date of issuance of this Order.

F. Until the method of dual verification of proper connection of sanitary sewer pipes is in place as required in the SOP manual, an Integra supervisor must approve, by signature, that proper connection has been made within one business day of the installation, replacement, and/or connection of Integra sanitary sewer pipe(s).

G. Integra shall retain records of all coordination with local water supplies prior to the installation, replacement, and/or connection of any sanitary sewer service; all Integra personnel training on the installation, replacement, and/or connection of sanitary sewer service; updated locations of all Integra sanitary sewer pipes and descriptions of each pipe; and records of all dual verifications of proper connections of sanitary sewer pipes when installing, replacing, and/or

connecting sanitary sewer service. The records required by this Paragraph shall be retained and available for inspection by the Department in accordance with the records retention requirements of the Permit.

H. Effective immediately, the Permittee shall not connect sanitary sewer pipes to public water supply pipes.

I. The Permittee shall submit a certification to the Department, signed by a professional engineer licensed to practice in the State of Alabama, indicating whether the Permittee is in compliance with all requirements of this Consent Order, with the exception of paragraph B. The Permittee shall submit such certification so that it is received by the Department no later than 120 days after issuance of this Consent Order.

J. After issuance of this Consent Order, the Permittee shall pay stipulated penalties for each day it fails to meet any of the milestone dates or satisfy any of the requirements set forth in or established by Paragraphs D, E, and I contained herein. The stipulated civil penalties for failure to meet each milestone or any requirement date, except for *Force Majeure* acts as hereinafter defined, shall be as follows:

<u>Period of Noncompliance</u>	<u>Penalty per Day per Violation</u>
1st to 30th day	\$ 100.00
31st to 60th day	\$ 200.00
After 60 days	\$ 300.00

If the Permittee fails to meet any milestone or any assigned date ninety days after the required dates found in Paragraphs D, E, and I, the Department reserves the right to file a new action against the Permittee.

K. Cumulative stipulated penalties described in Paragraph I above shall under no circumstances exceed \$18,000.00. Once stipulated penalties of \$18,000.00 are due to the Department, or should violations continue to occur after the final compliance date specified in the accepted Compliance Plan, the Department reserves the right to issue additional orders or

file suit against the Permittee in the Circuit Court of Montgomery County or other court of competent jurisdiction to enforce compliance with this Consent Order.

L. Payment of stipulated penalties are due for violations of milestone dates under this Consent Order not later than the 28th day of the month following the month a milestone date was not achieved. Notification to the Permittee by the Department of the assessment of any stipulated penalty is not required.

M. This Consent Order shall apply to and be binding upon both Parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the Party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the Party represented, and to legally bind such Party.

N. Subject to the terms of these presents and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the violations which are cited in this Consent Order.

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

P. For purposes of this Consent Order only, the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. In any action brought by the Department to compel compliance with the terms of this Agreement, the Permittee shall be limited to the defenses of *Force Majeure*, compliance with this Agreement and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of the Permittee, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of the Permittee) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute *Force*

Majeure. Any request for a modification of a deadline shall be accompanied by the reasons (including documentation) for each extension and the proposed extension time. The Permittee shall submit this information so that it is received by the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control and without the fault of the Permittee, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

Q. The sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future concerning the North Mobile County WPCF which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in other orders as may be issued by the Director, by litigation initiated by the Department, or by such other enforcement action as may be appropriate. The Permittee shall not object to such future orders, litigation, or enforcement action based on the issuance of this Consent Order if such future orders, litigation, or other enforcement action addresses new matters not raised in this Consent Order.

R. This Consent Order shall be considered final and effective immediately upon signature of all Parties. This Consent Order shall not be appealable, and the Permittee does hereby waive any hearing on the terms and conditions of same.

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

T. Final approval and entry into this Consent Order are subject to the requirements that the Department provide notice of proposed orders to the public, and that the public have at least thirty days within which to comment on the proposed Consent Order.

U. Should any provision of this Consent Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or

State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

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

W. Except as otherwise set forth herein, this Consent Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State, or local law, and shall not be construed to waive or relieve the Permittee of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

INTEGRA WATER CREOLA, LLC

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Integra Water, LLC
By: *[Signature]*
Its: *Sole member*
Date: *3/19/21*

EXECUTED AND ISSUED:
By: *Marilyn Elliott*
Its: *Deputy Director*
Date: *May 10, 2021*

Attachment A

**Integra Water Creola LLC
 North Mobile County WPCF
 Axis, Mobile County, Alabama
 NPDES Permit No. AL0077453**

Violation*	Number of Violations*	(A)	(B)	(C)
		Seriousness of Violation*	Standard of Care*	History of Previous Violations*
Connection of Sanitary Sewer to Drinking Water Line	16	\$ 120,000.00	\$ 40,000.00	

\$120,000.00	\$40,000.00	\$0.00
Total (A)	Total (B)	Total (C)

Additional Adjustments due to negotiations, receipt of additional information, or public comment

Mitigating Factors (-)	
Economic Benefit (+)	
Ability to Pay (-)	
Other Factors (+/-)	-\$60,000.00
Total Adjustments (+/-)	-\$60,000.00

Base Penalty Total [Total (A) + Total (B) + Total (C)]	\$160,000.00
Mitigating Factors (-)	
Economic Benefit (+)	
Ability to Pay (-)	
Other Factors (+/-)	
INITIAL PENALTY	\$160,000.00

Total Adjustments (+/-)	-\$60,000.00
FINAL PENALTY	\$100,000.00

Footnotes

*See the "Stipulations" portion of the Order for a detailed description of each violation and the penalty factors

JOHN MCDONALD
PRESIDENT
INTEGRA WATER CREOLA, LLC
3212 6TH AVENUE SOUTH, SUITE 200
BIRMINGHAM, AL 35222