

June 27, 2017

Delivered Via Certified Mail

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No. 7008 1300 0001 2360 3763

Hon. Thomas M. Tartt, Mayor
City of Livingston
P. O. Box W
Livingston, AL 35470

Re: Notice of Violation and Intent to File Suit under the Clean Water Act

Dear Mayor Tartt:

Pursuant to the Clean Water Act § 505, 33 U.S.C. § 1365, and 40 C.F.R. Part 135, Subpart A, you are hereby notified that after the expiration of 60 days following service of this notice, the Environmental Defense Alliance may file suit against the City of Livingston for the discharge of pollutants in violation of NPDES Permit No. AL0023256 issued by the Alabama Department of Environmental Management pursuant to Alabama's NPDES permit program approved by the U.S. Environmental Protection Agency under Clean Water Act § 402(b), 33 U.S.C. § 1342(b).

I. Permit Discharge Limit Violations

Pursuant to § 402 of the Clean Water Act, 33 U.S.C. § 1342, the Alabama Department of Environmental Management issued NPDES Permit No. AL0023256 authorizing the City of Livingston to discharge pollutants from the Livingston Lagoon, located on Happy Hollow Road, Livingston, Alabama, into the Sucarnoochee River at approximately Latitude 32.5761° North and Longitude 88.1836° West, subject to specific discharge limitations. The City of Livingston has discharged pollutants from Outfall 0012 into the Sucarnoochee River in violation of the discharge limitations of NPDES Permit No. AL0023256 from January 2007 through May 2017 as identified in the table attached hereto. Additional violations may have occurred.

II. Previous Enforcement Actions

On July 18, 2011, the Alabama Department of Environmental Management issued a Warning Letter to the City of Livingston in which it cited effluent violations for the period January 2010 through March 2011.

On November 26, 2012, the Alabama Department of Environmental Management issued a Warning Letter to the City of Livingston in which it cited effluent violations for the period October 2010 through July 2012.

On June 4, 2014, the Alabama Department of Environmental Management issued a Warning Letter to the City of Livingston in which it cited effluent violations for the period July 2012 through February 2014.

On July 15, 2015, the Alabama Department of Environmental Management issued a Notice of Violation to the City of Livingston in which it cited effluent violations for the period August 2013 through March 2015.

The Alabama Department of Environmental Management has not issued an administrative order or filed a civil action to address the violations identified in the attached table.

III. Sanctions

The Clean Water Act authorizes injunctive relief and civil penalties up to \$37,500 per day per violation. In addition, the Act authorizes the award of costs of litigation (including reasonable attorney and expert witness fees) to any prevailing or substantially prevailing party, whenever the court determines that such an award is appropriate. Suit may be avoided if these violations have ceased before the expiration 60 days following service of this notice. Please advise the undersigned of any measures which you may undertake which you contend have permanently abated these violations before suit is filed.

Sincerely,



David A. Ludder
Attorney for
Environmental Defense Alliance

cc:

Hon. Lance R. LeFleur, Director
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

Hon. Scott Pruitt, Administrator
Mail Code 1101A
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Hon. V. Anne Heard, Acting Regional Administrator
U.S. Environmental Protection Agency - Region 4
61 Forsyth Street SW
Atlanta, Georgia 30303

Effluent Limit Exceedances Report

Facility: LIVINGSTON MAIN LAGOON, LIVINGSTON, AL, 35470

Date Range: 07/01/2012 to 5/31/2017

Exceedance Details

Month Ending	Outfall	Pollutant Parameter	Limit Type	Discharge Measurement	Discharge Limitation	Violation-Days
5/31/2014	0012	00400 - pH	DAILY MX	9.2 SU	9.0 SU	1
6/30/2014	0012	00400 - pH	DAILY MX	9.8 SU	9.0 SU	1
7/31/2014	0012	00400 - pH	DAILY MX	9.8 SU	9.0 SU	1
4/30/2016	0012	00400 - pH	DAILY MX	9.4 SU	9.0 SU	1
5/31/2016	0012	00400 - pH	DAILY MX	9.4 SU	9.0 SU	1
8/31/2016	0012	00400 - pH	DAILY MX	10.2 SU	9.0 SU	1
9/30/2016	0012	00400 - pH	DAILY MX	9.6 SU	9.0 SU	1
10/31/2016	0012	00400 - pH	DAILY MX	10.1 SU	9.0 SU	1
5/31/2017	0012	00400 - pH	DAILY MX	9.7 SU	9.0 SU	1
11/30/2013	0012	00530 - Solids, total suspended	WKLY AVG	1254.419 LBS/D	900.0 LBS/D	7
12/31/2013	0012	00530 - Solids, total suspended	WKLY AVG	1132.155 LBS/D	900.0 LBS/D	7
1/31/2015	0012	00530 - Solids, total suspended	MO AVG	622.651 LBS/D	600.0 LBS/D	31
1/31/2015	0012	00530 - Solids, total suspended	WKLY AVG	1731.217 LBS/D	900.0 LBS/D	7
11/30/2015	0012	00530 - Solids, total suspended	MO AVG	667.376 LBS/D	600.0 LBS/D	30
11/30/2015	0012	00530 - Solids, total suspended	WKLY AVG	984.787 LBS/D	900.0 LBS/D	7
4/30/2014	0012	80082 - BOD, carbonaceous, 05 day, 20 C	MO AVG	172.279 LBS/D	166.0 LBS/D	30
1/31/2015	0012	80082 - BOD, carbonaceous, 05 day, 20 C	WKLY AVG	279.907 LBS/D	250.0 LBS/D	7
3/31/2015	0012	80082 - BOD, carbonaceous, 05 day, 20 C	MO AVG	210.881 LBS/D	166.0 LBS/D	31
3/31/2016	0012	80082 - BOD, carbonaceous, 05 day, 20 C	MO AVG	219.582 LBS/D	166.0 LBS/D	31
3/31/2016	0012	80082 - BOD, carbonaceous, 05 day, 20 C	WKLY AVG	289.982 LBS/D	250.0 LBS/D	7
4/30/2016	0012	80082 - BOD, carbonaceous, 05 day, 20 C	MO AVG	183.322 LBS/D	166.0 LBS/D	30
2/28/2017	0012	80082 - BOD, carbonaceous, 05 day, 20 C	MO AVG	185.249 LBS/D	166.0 LBS/D	28
2/28/2017	0012	80082 - BOD, carbonaceous, 05 day, 20 C	WKLY AVG	302.375 LBS/D	250.0 LBS/D	7
7/31/2012	0012	80091 - BOD, carb-5 day, 20 deg C, percent removal	MO AV MN	79.3%	85.0%	31
3/31/2013	0012	80091 - BOD, carb-5 day, 20 deg C, percent removal	MO AV MN	76.9%	85.0%	31
8/31/2013	0012	80091 - BOD, carb-5 day, 20 deg C, percent removal	MO AV MN	81.0%	85.0%	31
2/28/2014	0012	80091 - BOD, carb-5 day, 20 deg C, percent removal	MO AV MN	68.3%	85.0%	28
4/30/2014	0012	80091 - BOD, carb-5 day, 20 deg C, percent removal	MO AV MN	81.6%	85.0%	30

Month Ending	Outfall	Pollutant Parameter	Limit Type	Discharge Measurement	Discharge Limitation	Violation-Days
12/31/2014	0012	80091 - BOD, carb-5 day, 20 deg C, percent removal	MO AV MN	82.6%	85.0%	31
1/31/2015	0012	80091 - BOD, carb-5 day, 20 deg C, percent removal	MO AV MN	79.2%	85.0%	31
2/28/2015	0012	80091 - BOD, carb-5 day, 20 deg C, percent removal	MO AV MN	78.9%	85.0%	28
3/31/2015	0012	80091 - BOD, carb-5 day, 20 deg C, percent removal	MO AV MN	80.8%	85.0%	31
2/29/2016	0012	80091 - BOD, carb-5 day, 20 deg C, percent removal	MO AV MN	76.7%	85.0%	29
3/31/2016	0012	80091 - BOD, carb-5 day, 20 deg C, percent removal	MO AV MN	73.7%	85.0%	31
3/31/2017	0012	80091 - BOD, carb-5 day, 20 deg C, percent removal	MO AV MN	74.3%	85.0%	31
7/31/2012	0012	81011 - Solids, suspended percent removal	MO AV MN	60%	65.0%	31
2/28/2014	0012	81011 - Solids, suspended percent removal	MO AV MN	45.20%	65.0%	28
8/31/2014	0012	81011 - Solids, suspended percent removal	MO AV MN	57.90%	65.0%	31
12/31/2014	0012	81011 - Solids, suspended percent removal	MO AV MN	48.10%	65.0%	31
TOTAL						753



AlaFile E-Notice

60-CV-2017-900040.00

To: ROBERT D. TAMBLING
rtambling@ago.state.al.us

NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF SUMTER COUNTY, ALABAMA

ALABAMA ATTORNEY GENERAL'S OFFICE ET AL V. CITY OF LIVINGSTON
60-CV-2017-900040.00

The following complaint was FILED on 8/25/2017 12:45:36 PM

Notice Date: 8/25/2017 12:45:36 PM

DEVON A. JAMES
CIRCUIT COURT CLERK
SUMTER COUNTY, ALABAMA
126 FRANKLIN STREET
(P.O. BOX 936)
LIVINGSTON, AL, 35470

205-652-2291
devon.james@alacourt.gov



**THE CIRCUIT COURT OF
SUMTER COUNTY, ALABAMA**

STATE OF ALABAMA ex rel.,)
STEVE MARSHALL,)
ATTORNEY GENERAL)
and the ALABAMA DEPARTMENT of)
ENVIRONMENTAL MANAGEMENT,)

Plaintiffs,)

v.)

THE CITY OF LIVINGSTON,)

Defendant.)

Civil Action No.
CV-2017-_____

AMENDED COMPLAINT

The Parties

1. The Attorney General is authorized by Ala. Code § 22-22A-5(1), § 22-22-9(m), § 22-22A-5(12), and § 22-22A-5(18), as amended, to enforce the provisions of the Alabama Water Pollution Control Act (hereinafter “AWPCA”), which is found at Ala. Code §§ 22-22-1 through 22-22-14, as amended. Specifically, Ala. Code § 22-22A-5(18)b. authorizes the Attorney General to bring a civil action for violation of permits issued under the AWPCA and for unpermitted discharges of pollutants in violation of said Act. In addition, Ala. Code § 22-22A-5(18)c. authorizes the Attorney General to recover civil penalties for such permit violations and unpermitted discharges of pollutants, providing for a maximum of \$25,000.00 per violation. The Attorney General is authorized by Ala. Code § 36-15-12, as amended, to institute and prosecute, in the name of the State, all civil actions and other proceedings necessary to protect the rights and interests of the State.

2. The Alabama Department of Environmental Management (hereinafter “the

Department” or “ADEM”) is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 through 22-22A-17, as amended. Pursuant to Ala. Code § 22-22A-4(n), the Department is the state agency responsible for the promulgation and enforcement of water pollution control regulations in accordance with the 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.

3. The City of Livingston (hereinafter “the Permittee” or “the Defendant”) operates a wastewater treatment facility known as the Livingston Lagoon (hereinafter “the Facility”). The Permittee discharges pollutants from the Facility located on Happy Hollow Road, Livingston, Alabama, into the Sucarnoochee River, a water of the State.

Jurisdiction and Venue

4. The Court has jurisdiction and venue over this Complaint pursuant to Ala. Code § 22-22A-5(18)b. and § 22-22A-5(19), as amended.

General Allegations

5. Pursuant to the National Pollutant Discharge Elimination System (hereinafter “NPDES”) program administered by ADEM, the Department issued NPDES Permit Number AL0023256 (hereinafter “the Permit”) to the Permittee. The Permit was reissued June 20, 2012, effective October 1, 2012. The Permit establishes limitations, terms, and conditions on the discharge of pollutants from a point source, described therein as Outfall 0012, into the Sucarnoochee River, a water of the State. The Permit requires that the Permittee monitor its discharges and submit periodic Discharge Monitoring Reports (hereinafter “DMRs”) to the Department describing the results of the monitoring. The Permit also requires that the Permittee

maintain in good working order all systems used by the Permittee to achieve compliance with the terms and conditions of the Permit.

6. Permit condition I.A requires that discharges be limited and monitored as specified in the Permit. DMRs submitted to the Department by the Permittee indicate that the Permittee has discharged pollutants from the aforementioned point source, Outfall 0012, to the Sucarnoochee River, in violation of the limitations established in the Permit for Total Suspended Solids (hereinafter “TSS”), TSS % Removal, Five Day Carbonaceous Biochemical Oxygen Demand (hereinafter “CBOD”), CBOD % Removal, pH, and E.coli. The months the violations occurred along with the parameters violated are listed in Attachment 1, which is incorporated by reference as if fully set forth herein.

7. Ala. Code § 22-22-9(i)(3), as amended, requires that a permit be obtained prior to discharging any new or increased pollution into any water of the state. The Permittee reported sanitary sewer overflows (hereinafter “SSOs”) to the Department as listed in Attachment 2, which is incorporated by reference as if fully set forth herein, indicating that wastewater, in form of SSOs, was discharged without a permit.

8. Permit Condition I.C.2.d states that “[t]he Permittee shall provide notification to the Director, the public, the county health department and any other affected entity such as public water systems, as soon as possible upon becoming aware of any notifiable [SSO].” Permit Condition III.H.30 defines a notifiable SSO as “an overflow, spill, release or diversion of wastewater from a sanitary sewer system that: a. Reaches a surface water of the State; or b. May imminently and substantially endanger human health based on potential for public exposure including by not limited to close proximity to public or private water supply wells or in areas where human contact would be likely to occur.” The Permittee failed to notify the public and/or the

county health department of certain SSOs as indicated in Attachment 3, in violation of Permit Condition I.C.2.d.

9. Permit Condition I.B.7 requires that, at a minimum, flow measurement devices shall be calibrated at least once every twelve months. During an inspection conducted on April 22, 2015, the Department observed that the flow meter at the Facility had not been calibrated within the twelve-month period prior to the inspection.

Count I

10. Plaintiffs repeat, replead and incorporate by reference paragraphs 1 through 9, above.

11. The above violations are due to be abated by injunction.

Count II

12. Plaintiffs repeat, replead and incorporate by reference paragraphs 1 through 11, above.

13. Pursuant to Ala. Code § 22-22A-5(18), as amended, a civil penalty is due to be assessed for the referenced violations.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

- A. Take jurisdiction over this matter.
- B. Adjudge and declare that the Permittee violated the limitations, terms, and conditions of the Permit.
- C. Adjudge and declare that the Permittee caused or allowed discharges of pollutants from its wastewater treatment facility into a water of the State in violation of the limitations set forth in the Permit.

D. Adjudge and declare that Defendant caused or allowed unpermitted discharges of pollutants from its wastewater treatment facility.

E. Order the Permittee to take action to ensure that similar violations of the AWPCA will not recur in the future.

F. Assess a civil penalty against the Permittee and in favor of Plaintiffs pursuant to Ala. Code §§ 22-22A-5(18)b. and c., as amended, for each and every violation of the Permit alleged in this Complaint.

G. Tax the costs of this action against the Defendant.

H. Order such other relief that the Court deems proper.

Respectfully submitted,

s/ Robert D. Tambling
Robert D. Tambling (TAM001)
Assistant Attorney General

ADDRESS OF COUNSEL:
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s/ Carrie Blanton
Carrie Blanton (TOM024)
Assistant Attorney General

ADDRESS OF COUNSEL:
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Office of General Counsel
P.O. Box 301463
Montgomery, AL 36130-1463
Telephone: (334) 271-7855
Fax: (334) 394-4332
Email: carrie.blanton@adem.alabama.gov

Attachment 1: Permit Limitation Violations

Livingston Lagoon
 NPDES Permit No. AL0023256

Monitoring Period	Outfall	Parameter	Limit	Reported	Unit	Limit Type
July 2012	0012	CBOD % Removal	85.0	79.3	%	Monthly Average Minimum
July 2012	0012	TSS % Removal	65.0	60.0	%	Monthly Average Minimum
March 2013	0012	CBOD % Removal	85.0	76.9	%	Monthly Average Minimum
August 2013	0012	CBOD % Removal	85.0	81.0	%	Monthly Average Minimum
November 2013	0012	TSS	900.0	1254.419	lbs/day	Weekly Average
December 2013	0012	TSS	900.0	1132.155	lbs/day	Weekly Average
February 2014	0012	CBOD % Removal	85.0	68.3	%	Monthly Average Minimum
February 2014	0012	TSS % Removal	65.0	45.2	%	Monthly Average Minimum
April 2014	0012	CBOD	166.0	172.279	lbs/day	Monthly Average
April 2014	0012	CBOD % Removal	85.0	81.6	%	Monthly Average Minimum
May 2014	0012	pH	9.0	9.2	S.U.	Maximum Daily
June 2014	0012	pH	9.0	9.8	S.U.	Maximum Daily
July 2014	0012	pH	9.0	9.8	S.U.	Maximum Daily
August 2014	0012	TSS % Removal	65.0	57.9	%	Monthly Average Minimum
December 2014	0012	CBOD % Removal	85.0	82.6	%	Monthly Average Minimum
December 2014	0012	TSS % Removal	65.0	48.1	%	Monthly Average Minimum
January 2015	0012	TSS	600.0	622.651	lbs/day	Monthly Average
January 2015	0012	TSS	900.0	1731.217	lbs/day	Weekly Average
January 2015	0012	CBOD	250.0	279.907	lbs/day	Weekly Average
January 2015	0012	CBOD % Removal	85.0	79.2	%	Monthly Average Minimum
February 2015	0012	CBOD % Removal	85.0	78.9	%	Monthly Average Minimum
March 2015	0012	CBOD	166.0	210.881	lbs/day	Monthly Average
March 2015	0012	CBOD % Removal	85.0	80.8	%	Monthly Average Minimum
November 2015	0012	TSS	600.0	667.367	lbs/day	Monthly Average
November 2015	0012	TSS	900.0	984.787	lbs/day	Weekly Average
February 2016	0012	CBOD % Removal	85.0	76.7	%	Monthly Average Minimum
March 2016	0012	CBOD	166.0	219.582	lbs/day	Monthly Average
March 2016	0012	CBOD	250.0	289.982	lbs/day	Weekly Average
March 2016	0012	CBOD % Removal	85.0	73.7	%	Monthly Average Minimum
April 2016	0012	pH	9.0	9.4	S.U.	Maximum Daily
April 2016	0012	CBOD	166.0	183.322	lbs/day	Monthly Average
May 2016	0012	pH	9.0	9.4	S.U.	Maximum Daily
August 2016	0012	pH	9.0	10.2	S.U.	Maximum Daily
September 2016	0012	pH	9.0	9.6	S.U.	Maximum Daily
October 2016	0012	pH	9.0	10.1	S.U.	Maximum Daily
February 2017	0012	CBOD	166.0	185.249	lbs/day	Monthly Average
February 2017	0012	CBOD	250.0	302.375	lbs/day	Weekly Average
March 2017	0012	CBOD % Removal	85.0	74.3	%	Monthly Average Minimum
May 2017	0012	pH	9.0	9.7	S.U.	Maximum Daily
June 2017	0012	E.coli	126.0	440.0	col/100 mL	Monthly Average
June 2017	0012	E.coli	487.0	700.0	col/100 mL	Maximum Daily
June 2017	0012	CBOD % Removal	85.0	83.1	%	Monthly Average Minimum

Attachment 2: Sanitary Sewer Overflows

Livingston Lagoon

NPDES Permit No. AL0023256

Date	Location	Volume	Duration	24 Hour Notification	Public Notification	Health Department Notification
11/20/2013	Hopkins Street	>1000	1 hr 5 mins	Yes	No ¹	No ²
01/15/2014	Hudson Street	<1000	1 hr	Yes	Yes ²	Yes
03/10/2014	Riverbend Dr.	>1000	15 hrs	Yes	Yes ²	Yes ³
03/28/2014	Tin Cup Alley	>1000	6 hrs	Yes	No ¹	Yes
04/19/2014	Pickens Street in pasture	>1000	7 hrs	Yes	Yes ²	Yes ³
06/25/2014	Hopkins Street	>1000	24 hrs	Yes	Yes ²	Yes
09/15/2014	County Road 13	5,000	Unknown	Yes	No ⁴	No
01/29/2015	Highway 28 West	>1000	1 hr	Yes	No	Yes ³
01/29/2015	Pickens Street	>1000	2 hrs	Yes	No	Yes ³
08/12/2015	McKee St	750.00	1 hr	Yes	No ¹	Yes
03/21/2016	Hopkins Street	>1000	4 hrs 10 mins	Yes	Yes ²	Yes
04/20/2016	Riverbend Subdivision	750.00	1 hr	Yes	Yes ²	Yes
05/17/2016	901 NORTH STREET	>1000	2 hrs	Yes	Yes ^{2,3}	Yes
11/22/2016	Happy Hollow Road, near Livingston Lagoon	>1000	2 hrs	Yes	No	Yes
08/07/2017	US Hwy 11/Green Street Intersection	500	30 mins	Yes	No	Yes

¹ Utility Board listed as person(s) notified within report² Property owner listed as person(s) notified within report³ Utility Board was also notified⁴ County Officials listed as person(s) notified within report