LAW OFFICE OF
DAVID A. LUDDER
A Professional Limited Liability Company

June 27, 2017

Delivered Via Certified Mail
Return Receipt Requested
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.

9150 McDougal Court ◆ Tallahassee ◆ Florida 32312-4208 ◆ Telephone 850-386-5671
Facsimile 267-873-5848 ◆ Email DavidALudder@enviro-lawyer.com ◆ Web www.enviro-lawyer.com

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 8/24/2017 11:31:51 AM

Notice Date: 8/24/2017 11:31:51 AM

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

ELECTRONICALLY FILED
8/24/2017 11:31 AM
60-CV-2017-900040.00
CIRCUIT COURT OF
SUMTER COUNTY, ALABAMA
DEVON A. JAMES, CLERK

State of Alabama
Unified Judicial System

Form ARCiv-93 Rev.5/99

COVER SHEET
CIRCUIT COURT - CIVIL CASE
(Not For Domestic Relations Cases)

Cas
60
Date of Filing: 08/24/2017
Judge Code:

GENERAL INFORMATION

IN THE CIRCUIT COURT OF SUMTER COUNTY, ALABAMA
ALABAMA ATTORNEY GENERAL'S OFFICE ET AL v. CITY OF LIVINGSTON

First Plaintiff: ☐ Business ☐ Individual ☑ Government ☐ Other

First Defendant: ☐ Business ☐ Individual ☑ Government ☐ Other

NATURE OF SUIT: Select primary cause of action, by checking box (check only one) that best characterizes your action:

TORTS: PERSONAL INJURY
- ☐ WDEA - Wrongful Death
- ☐ TONG - Negligence: General
- ☐ TOMV - Negligence: Motor Vehicle
- ☐ TOWA - Wantonness
- ☐ TOPL - Product Liability/AEMLD
- ☐ TOMM - Malpractice-Medical
- ☐ TOLM - Malpractice-Legal
- ☐ TOOM - Malpractice-Other
- ☐ TBFM - Fraud/Bad Faith/Misrepresentation
- ☐ TOXX - Other: _____

TORTS: PERSONAL INJURY
- ☐ TOPE - Personal Property
- ☐ TORE - Real Properly

OTHER CIVIL FILINGS
- ☐ ABAN - Abandoned Automobile
- ☐ ACCT - Account & Nonmortgage
- ☐ APAA - Administrative Agency Appeal
- ☐ ADPA - Administrative Procedure Act
- ☐ ANPS - Adults in Need of Protective Service

OTHER CIVIL FILINGS (cont'd)
- ☐ MSXX - Birth/Death Certificate Modification/Bond Forfeiture Appeal/ Enforcement of Agency Subpoena/Petition to Preserve
- ☐ CVRT - Civil Rights
- ☐ COND - Condemnation/Eminent Domain/Right-of-Way
- ☐ CTMP - Contempt of Court
- ☐ CONT - Contract/Ejectment/Writ of Seizure
- ☐ TOCN - Conversion
- ☐ EQND - Equity Non-Damages Actions/Declaratory Judgment/ Injunction Election Contest/Quiet Title/Sale For Division
- ☐ CVUD - Eviction Appeal/Unlawful Detainer
- ☐ FORJ - Foreign Judgment
- ☐ FORF - Fruits of Crime Forfeiture
- ☐ MSHC - Habeas Corpus/Extraordinary Writ/Mandamus/Prohibition
- ☐ PFAB - Protection From Abuse
- ☐ FELA - Railroad/Seaman (FELA)
- ☐ RPRO - Real Property
- ☐ WTEG - Will/Trust/Estate/Guardianship/Conservatorship
- ☐ COMP - Workers' Compensation
- ☑ CVXX - Miscellaneous Circuit Civil Case

ORIGIN: F ☑ **INITIAL FILING** | A ☐ **APPEAL FROM DISTRICT COURT** | O ☐ **OTHER** | R ☐ **REMANDED** | T ☐ **TRANSFERRED FROM OTHER CIRCUIT COURT**

HAS JURY TRIAL BEEN DEMANDED? ☐ **YES** ☑ **NO**

Note: Checking "Yes" does not constitute a demand for a jury trial. (See Rules 38 and 39, Ala.R.Civ.P, for procedure)

RELIEF REQUESTED: ☑ **MONETARY AWARD REQUESTED** ☐ **NO MONETARY AWARD REQUESTED**

ATTORNEY CODE:
TAM001

8/24/2017 11:31:12 AM
Date

/s/ ROBERT D. TAMBLING
Signature of Attorney/Party filing this form

MEDIATION REQUESTED: ☐ **YES** ☑ **NO** ☐ **UNDECIDED**

ELECTRONICALLY FILED
8/24/2017 11:31 AM
60-CV-2017-900040.00
CIRCUIT COURT OF
SUMTER COUNTY, ALABAMA
DEVON A. JAMES, CLERK

THE CIRCUIT COURT OF
SUMTER COUNTY, ALABAMA

STATE OF ALABAMA ex rel., STEVE MARSHALL, ATTORNEY GENERAL and the ALABAMA DEPARTMENT of ENVIRONMENTAL MANAGEMENT,	)	
Plaintiffs,	)	**Civil Action No. CV-2017-_____**
v.	)	
THE CITY OF LIVINGSTON,	)	
Defendant.	)	

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) (2006 Rplc. Vol.) 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 (2006 Rplc. Vol.). Specifically, Ala. Code § 22-22A-5(18)(b) (2006 Rplc. Vol.) 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) (2006 Rplc. Vol.) 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 (2006 Rplc. Vol.) 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-16 (2006 Rplc. Vol.). Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.), 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") operates a wastewater treatment facility. The wastewater treatment facility discharges pollutants from Livingston Lagoon 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) (2006 Rplc. Vol.).

General Allegations

5. Pursuant to the National Pollutant Discharge Elimination System (hereinafter "NPDES") administered by ADEM and approved by the Administrator of the U.S. Environmental Protection Agency pursuant to § 402 of the Federal Water Pollution Control Act, 33 U.S.C. § 1342, the Department issued NPDES Permit Number AL0023256 (hereinafter "the Permit") to the Permittee. Said Permit was originally issued May 31, 2011, effective June 1, 2011. The Permit establishes limitations, terms, and conditions on the discharge of pollutants from Livingston Lagoon located on Happy Hollow Raod, Livingston, Sumpter County, Alabama, into the Sucarnoochee River, a water of the State. The Permit requires that the Permittee monitor its discharges and submit periodic Discharge Monitoring Reports 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. Discharge Monitoring Reports submitted to the Department by the Permittee indicate that the Permittee has discharged pollutants from the aforementioned point source, Outfall number 0012, to the Sucarnoochee River in violation of the limitations established in the Permit. 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. Permit Condition I.C.2.b requires that a noncompliance notification report be submitted to the Department should a discharge not comply with any limitation of the permit. Noncompliance notification reports are to be submitted to the Department with the next discharge monitoring report after becoming aware of the noncompliance. Defendant failed to file noncompliance notification reports as described in Attachment 1.

8. Permit Condition I.C.1.b requires that discharge monitoring reports be submitted so that they are received by the Department no later than the 28th day of the month following the reporting period. The discharge monitoring reports for the monitoring periods as described on Attachment 1 were not received by the Department.

9. Permit condition I.C.1 requires that monthly monitoring be submitted on a monthly basis. The discharge monitoring report for the monitoring period listed on Attachment 1 indicates that the flow monthly average and daily maximum were not submitted.

Count I

10. Plaintiffs repeat, replead, and incorporate by reference paragraphs 1 through 6, 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 8, above.

13. Pursuant to Ala. Code § 22-22A-5(18) (2006 Rplc. Vol.), 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. Order the Permittee to take action to ensure that similar violations of the AWPCA will not recur in the future.

E. Assess a civil penalty against the Permittee and in favor of Plaintiffs pursuant to Ala. Code §§ 22-22A-5(18)(b) and (c) (2006 Rplc. Vol.) for each and every violation of the Permit alleged in this Complaint.

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

G. 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:
Office of the Attorney General
501 Washington Avenue
Montgomery, AL 36130
Telephone: (334) 242-7445
Email: rtambling@ago.state.al.us

s/ Schuyler Espy
Schuyler Espy (KEA009)
Assistant Attorney General

ADDRESS OF COUNSEL:
Alabama Department of Environmental Management
Office of General Counsel
P.O. Box 301463
Montgomery, AL 36130-1463
Telephone: (334) 271-7855
Fax: (334) 394-4332
Email: sespy@adem.state.al.us

ELECTRONICALLY FILED
8/24/2017 11:31 AM
60-CV-2017-900040.00
CIRCUIT COURT OF
SUMTER COUNTY, ALABAMA
DEVON A. JAMES, CLERK

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

ELECTRONICALLY FILED
8/24/2017 11:31 AM
60-CV-2017-900040.00
CIRCUIT COURT OF
SUMTER COUNTY, ALABAMA
DEVON A. JAMES, CLERK

THE CIRCUIT COURT OF
SUMTER COUNTY

STATE OF ALABAMA ex rel.,	)	
STEVE MARSHALL,	)	
ATTORNEY GENERAL	)	
and the ALABAMA DEPARTMENT of	)	
ENVIRONMENTAL MANAGEMENT,	)	
	)	
Plaintiff's,	)	**Civil Action No.**
v.	)	**CV 2017-**
	)	
THE CITY OF LIVINGSTON,	)	
	)	
	)	
Defendant.	)	

PLAINTIFFS' FIRST SET OF INTERROGATORIES
TO THE DEFENDANT

The State of Alabama, upon relation of Attorney General Steve Marshall hereby propounds the following Interrogatories on the Defendant. The answers to these interrogatories are to be delivered within forty-five days to the undersigned attorney at the address listed hereon.

Instructions

Where any interrogatory asks you to state the name or names of any person or persons, the term "name" or "names" includes the person's name, his or her business and residential address, and his or her business affiliation and position.

Please restate each interrogatory in full prior to providing your response thereto.

This discovery is to be considered continuing in character. Answers should be modified or supplemented as you obtain further or different information prior to the trial in this matter.

To the extent that information sought by any interrogatory may be furnished by reference to answers to another interrogatory, such practice will be acceptable. Separate answers should, however, be accorded in all cases.

Where exact information cannot be furnished, estimated information is to be supplied.

Where estimated information is used, the discovery answers should indicate this fact, and an explanation should be given of the basis on which the estimate was made and the reason that exact information could not be furnished.

Where knowledge or information is requested of Defendant, such request includes knowledge and information in the possession of Defendant's agents, representatives, attorneys, or experts.

If you fail to answer any interrogatory in accordance with these instructions, state specifically the reasons why.

If you interpose any objection to any interrogatory, fully state the ground(s) for the objection and the legal authority upon which you will rely in response to a motion to compel.

INTERROGATORIES

1. Please describe in detail each compliance measure or interim measure Defendant has taken, or has considered taking but has not taken, or plans to take in the future, to comply with its permit and, for each compliance measure or interim measure identified:

(a) State the dates on which its construction, installation, adoption and/or implementation was begun and completed, would have begun and been completed

if the measure had been implemented, or is planned to begin and be completed in the future;

(b) State the period of time during which it has operated or is expected to operate in the future;

(c) Provide an itemized statement of actual or, if unavailable, estimated capital investment costs or expenditures associated with its design, purchase, construction, installation, adoption or implementation;

(d) Provide an itemized statement of actual or, if unavailable, estimated one-time non-depreciable costs, such as consulting and labor costs, associated with its design, purchase, construction, installation, adoption or implementation;

(e) State its useful life; and

(f) Provide an itemized statement of actual or, if unavailable, estimated recurring annual operation and maintenance costs associated with each capital investment or expenditure.

2. Please identify any person, other than Defendant, including, but not limited to, any consultant(s) who has been employed by Defendant or a predecessor in interest to evaluate or implement improvements in the wastewater treatment facility.

3. Please identify the compliance date in which the Defendant has achieved compliance with the NPDES permit or will be in compliance with its NPDES Permit.

4. Please provide the size of the service population of the Defendant's wastewater treatment facility.

RESPECTFULLY SUBMITTED,

STEVE MARSHALL
ATTORNEY GENERAL

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

CERTIFICATE OF SERVICE

I hereby certify that I have on this 24th day of August, served a copy of the forgoing upon the following via US Mail and email:

City of Livingston
P.O. Box W
Livingston, AL 35470

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

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

ELECTRONICALLY FILED
8/25/2017 12:44 PM
60-CV-2017-900040.00
CIRCUIT COURT OF
SUMTER COUNTY, ALABAMA
DEVON A. JAMES, CLERK

THE CIRCUIT COURT OF
SUMTER COUNTY, ALABAMA

STATE OF ALABAMA ex rel., STEVE MARSHALL, ATTORNEY GENERAL and the ALABAMA DEPARTMENT of ENVIRONMENTAL MANAGEMENT,	)	
Plaintiffs,	)	**Civil Action No. CV-2017-_____**
v.	)	
THE CITY OF LIVINGSTON,	)	
Defendant.	)	

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:
Office of the Attorney General
501 Washington Avenue
Montgomery, AL 36130
Telephone: (334) 242-7445
Email: rtambling@ago.state.al.us

s/ Carrie Blanton
Carrie Blanton (TOM024)
Assistant Attorney General

ADDRESS OF COUNSEL:
Alabama Department of Environmental Management
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 report
[2] Property owner listed as person(s) notified within report
[3] Utility Board was also notified
[4] County Officials listed as person(s) notified within report

AlaFile E-Notice

60-CV-2017-900040.00

Judge: HON. EDDIE HARDAWAY

To: BLANTON CARRIE AMANDA TOM
carrie.blanton@adem.alabama.gov

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 matter was FILED on 8/2/2018 1:23:41 PM

Notice Date: 8/2/2018 1:23:41 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

ELECTRONICALLY FILED
8/2/2018 1:23 PM
60-CV-2017-900040.00
CIRCUIT COURT OF
SUMTER COUNTY, ALABAMA
DEVON A. JAMES, CLERK

THE CIRCUIT COURT OF
SUMTER COUNTY, ALABAMA

STATE OF ALABAMA ex rel., STEVE MARSHALL, ATTORNEY GENERAL and the ALABAMA DEPARTMENT of ENVIRONMENTAL MANAGEMENT,	)	
Plaintiffs,	)	**Civil Action No. 60-CV-2017-900040**
v.	)	
CITY OF LIVINGSTON,	)	
Defendant.	)	

ORDER ON SETTLEMENT AGREEMENT

I.
INTRODUCTION

A. The State of Alabama, by the authority of Attorney General Steve Marshall and the Alabama Department of Environmental Management (hereinafter the "Plaintiffs") by and through its undersigned counsel, filed a complaint in this action on August 24, 2017, and filed an amended complaint in this action on August 25, 2017 (hereinafter the "Complaint"), alleging that the City of Livingston (hereinafter the "Defendant") is in violation of the Alabama Water Pollution Control Act, § 22-22-1, *et seq*., Code of Alabama, 1975 (hereinafter "AWPCA"). The Plaintiffs are seeking injunctive relief and the assessment of civil penalties, pursuant to § 22-22A-5(18)b, of the Code of Alabama, 1975. The Complaint alleges that the Defendant operates a wastewater treatment facility, known as the Livingston Lagoon (hereinafter "Facility"), located on Happy Hollow Road, Livingston, Sumter County, Alabama and is operated by the Defendant under the authority of NPDES Permit No. AL0023256. The Permit establishes limitations, terms, and conditions on the discharge of pollutants from the Facility, into the Sucarnoochee River, a water of the State.

B. Defendant, City of Livingston, is a "person" within the meaning of § 22-22-1(b)(7) of the Act.

C. The Plaintiffs, and Defendant (hereinafter "Parties") have consented to the entry of this Order on Settlement Agreement (hereinafter "Settlement Agreement") without further adjudication of any of the factual or legal issues raised by the Complaint herein.

D. NOW THEREFORE, without admission by the Defendant of the non-jurisdictional allegations in the Complaint, without further adjudication of any issue of fact or law pertaining to this action, and upon the consent and agreement of the Parties to this Settlement Agreement, it is hereby ORDERED, ADJUDGED and DECREED as follows:

II.
JURISDICTION

This Court has jurisdiction over the subject matter herein and the Parties to this action pursuant to Section 22-22A-5, of the Code of Alabama, 1975, as the Complaint states claims for injunctive relief and civil penalties upon which relief may be granted against the Defendant. Authority to bring this suit is vested in the Attorney General pursuant to Section 22-22A-5, of the Code of Alabama, 1975.

III.
VENUE

Venue is proper in the Circuit Court of Sumter County, Alabama because it is the judicial district in which the Defendant's Facility is located, and in which the alleged violations occurred.

IV.
PARTIES

A. The Plaintiff, State of Alabama, is acting at the request and on behalf of the Attorney General of the State of Alabama.

B. The Plaintiff, the Alabama Department of Environmental Management (hereinafter "ADEM" or "the Department") is the State environmental agency responsible for administering the Act.

C. The Defendant is a municipal corporation in the State of Alabama, formed under the laws of the State of Alabama, and is a "person" within the meaning of Section 22-22-1(b)(7) of the AWPCA.

V.
BINDING EFFECT

The provisions of this Settlement Agreement shall apply to, and be binding upon, the Defendant, and its officers, directors, employees, agents, servants, successors, and assigns, and upon all persons, firms and corporations in active concert or participation with the Defendant and assigns, and upon the State of Alabama and its representative, and ADEM and its representatives.

VI.
OBJECTIVES

It is the express purpose of the Parties entering into this Settlement Agreement to further the objectives set forth in Section 22-22-2 of the Act, and to resolve certain issues alleged by the State in the Complaint. In light of these objectives, the Defendant agrees, inter alia, to cause the expeditious implementation of the remedial measures as herein set forth and, in accordance with schedules agreed to by the Parties and approved by the Court, to take all appropriate steps necessary to correct permit limit violations, and to prevent bypasses and unpermitted discharges of untreated or partially treated wastewater. In addition, Defendant agrees to comply with the terms and conditions of its NPDES Permit and to submit to ADEM all NPDES reports in a timely manner and do all lawful acts necessary to effectuate the provisions of this Settlement Agreement.

VII.
REMEDIAL ACTIONS

A. The Defendant shall prepare and submit to the Department an Engineering Report that addresses the need for changes in maintenance and operating procedures, the potential for infiltration and inflow, the need for modification of existing treatment and collection system works, and the need for new or additional treatment and collection system works as necessary to achieve compliance with applicable rules and regulations and Permit conditions. The Engineering Report shall include a Compliance Plan with a schedule for implementation of necessary corrective actions and cost of such necessary corrective actions, if known. The Engineering Report shall include a plan for continued maintenance and assessment of the collection system to minimize future inflow and infiltration. 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 entry of this Settlement Agreement. If the Department determines through its review of the submitted Engineering Report that the submittal is not sufficient, then the Defendant shall modify the Engineering Report. The Defendant shall submit modifications to the Engineering Report, if required, so that they are received by the Department no later than thirty days after Defendant's receipt of the Department's comments. The Defendant shall complete implementation of the recommendations provided in the Engineering Report not later than December 31, 2022.

B. The Defendant shall prepare and submit detailed semi-annual Progress Reports to the Department describing the Defendant's progress towards achieving compliance with the items presented in the Compliance Plan, including the cost of necessary corrective actions. The Defendant shall submit the Progress Reports so that they are received by the Department no later than one hundred eighty days after entry of this Settlement Agreement and continuing every one

hundred eighty days thereafter that the Defendant's performance obligations under this Settlement Agreement remain incomplete. In addition, no later than fourteen days following each due date herein, the Defendant shall submit to the Department a written notice of noncompliance, if applicable. Notices of noncompliance shall state the cause(s) of noncompliance, the corrective action taken, and shall describe the Defendant's ability to comply with any remaining requirements of this Settlement Agreement.

C. Within 120 days of the entry of this Settlement Agreement, the Defendant shall develop a Sanitary Sewer Overflow (hereinafter "SSO") Response Plan to establish timely and effective methods for responding to notifiable sanitary sewer overflows. The SSO Response Plan shall address each of the following:

1. General Information:

   (a) Approximate population

   (b) Approximate number of customers served

   (c) Identification of any sub-basins designated by the Defendant, if applicable

   (d) Identification of estimated linear feet of sanitary sewers

   (e) Number of Pump/Lift Stations in the collection system

2. Responsibility Information:

   (a) The title(s) and contact information of key position(s) who will coordinate the SSO response, including information for a backup coordinator in the event that the primary SSO coordinator is unavailable. The SSO coordinator is the person responsible for assessing the SSO and initiating a series of response actions based on the type, severity, and destination of the SSO, except for routine SSOs for which the coordinator may pre-approve written procedures. Routine SSOs are those for which the corrective action procedures are generally consistent.

   (b) The title(s), and contact information of key position(s) who will respond to SSOs, including information for backup responder(s) in the event the

primary responder(s) are unavailable (i.e., position(s) who provide notification to the Department, the public, the county health department, and other affected entities such as public water systems; position(s) responsible for organizing crews for response; position(s) responsible for addressing public inquiries).

3. SSO and Surface Water Assessment

   (a) Identification of locations within the collection system at which an SSO is likely to occur (e.g., based upon historical SSOs, lift stations where electricity may be lost, etc.)

   (b) A map of the general collection system area, including identification of surface waterbodies and the location(s) of public drinking water source(s). Mapping of all collection system piping, pump stations, etc. is not required; however, if this information is already available, it should be included.

   (c) Identification of surface waterbodies within the collection system area which are classified as Swimming according to ADEM Admin. Code chap. 335-6-11. References available to assist in this requirement include: http://www.adem.state.al.us/alEnviroRegLaws/files/Division6Vol1.pdf and http://gis.adem.alabama.gov/ADEM_Dash/use_class/index.html

   (d) Identification of surface waterbodies within the collection system area which are not classified as Swimming as indicated in paragraph (c) above, but are known locally as areas where swimming occurs or as areas that are heavily recreated.

4. Public Reporting of SSOs

   (a) Contact information for the public to report an SSO to the Defendant, during both normal and outside of normal business hours (e.g., telephone number, website, email address, etc.)

   (b) Information requested from the person reporting an SSO to assist the Defendant in identifying the SSO (e.g., date, time, location, contact information).

   (c) Procedures for communication of the SSO report to the appropriate positions for follow-up investigation and response, if necessary.

5. Procedures to immediately notify the Department, the county health department, and other affected entities (such as public water systems) upon becoming aware of notifiable SSOs.

6. Public Notification Methods for SSOs

(a) A listing of methods that are feasible, as determined by the Defendant, for public notifications (e.g., flyers distributed to nearby residents; signs posted at the location of the SSO, where the SSO enters a water of the state, and/or at a central public location; signs posted at fishing piers, boat launches, parks, swimming waterbodies, etc.; website and/or social media notifications; local print or radio and broadcast media notifications; "opt in" email, text message, or automated phone message notifications).

i. If signage is a feasible method for public notification, procedures for use and removal of signage (e.g., availability and maintenance of signs, appropriate duration of postings).

(b) Minimum information to be included in public notifications (e.g., identification that an SSO has occurred, date, duration if known, estimated volume if known, location of the SSO by street address or other appropriate method, initial destination of the SSO).

(c) Procedures developed by the Defendant for determining the appropriate public notification method(s) based upon the potential for public exposure to health risks associated with the SSO.

7. Standard Procedures shall be developed by the Defendant and shall include, at a minimum:

(a) General SSO Response Procedures (e.g., procedures for dispatching staff to assess/correct an SSO; procedures for routine SSO corrective actions such as those for sewer blockages, overflowing manholes, line breakages, pump station power failure, etc.; procedures for disinfection of affected area, if applicable);

(b) Procedures for collection and proper disposal of the SSO, if feasible.

(c) General procedures for coordinating instream water quality monitoring, including, but not limited to, procedures for mobilizing staff, collecting samples, and typical test methods should the Department or the Defendant determine monitoring is appropriate following an SSO. Identification of a contractor who will collect and analyze the sample(s) may be listed in lieu of the procedures.

(d) References to other documents (such as Standard Operating Procedures for SSO Responses) may be acceptable for this section; however, the referenced document shall be identified and shall be reviewed at a frequency of at least that required by the Administrative Procedures Section.

8. Date of the SSO Response Plan, dates of all modifications and/or reviews, the title and signature of the reviewer(s) for each date and the signature of the responsible official or the appropriate designee.

D. The Defendant shall fully comply with the Permit limitations for Carbonaceous Biochemical Oxygen Demand (hereinafter "CBOD"), Total Suspended Solids (hereinafter "TSS"), pH, and E. Coli not later than January 31, 2020.

E. The Defendant shall fully comply with the Permit limitations for CBOD Percent Removal and TSS Percent Removal not later than December 31, 2022.

F. The Defendant shall comply with all other terms, conditions, and limitations of the Permit immediately upon entry of this Settlement Agreement, including notification to the public and county health department of notifiable SSOs and, at a minimum, calibration of flow measurement devices at least once every 12 months.

G. The Defendant shall submit certifications to the Department, signed by a professional engineer licensed to practice in the State of Alabama, indicating whether the Defendant is in compliance with all requirements of this Settlement Agreement. The Defendant shall submit such certifications so they are received by the Department no later than March 1, 2020 and January 31, 2023.

VIII.
EFFLUENT LIMITATIONS

Nothing in this Settlement Agreement shall relieve the Defendant of its obligation to comply at all times with all effluent limitations in its NPDES Permit(s), including any modifications, extensions or reissuances.

IX.
CIVIL PENALTY

A. Defendant is assessed and agrees to pay a civil penalty in the amount of Eighty-Four Thousand Dollars ($84,000.00) to be disbursed as follows:

1. Twenty-Eight Thousand Dollars ($28,000.00) to the State Treasury to the credit of the General Fund.

2. Twenty-Eight Thousand Dollars ($28,000.00) to the Attorney General's Office for reasonable costs incurred to recover such civil penalty.

3. The sum of the payments in paragraphs 1 and 2 shall be deposited to the credit of the operating funds of the Office of the Attorney General. The Defendant shall submit payments #1-#8 as provided by the schedule in Paragraph B., below, by certified check to the following address:

ADMINISTRATIVE SERVICES DIVISION
OFFICE OF ATTORNEY GENERAL
501 WASHINGTON AVENUE
MONTGOMERY, AL 36130-0152

4. Twenty-Eight Thousand Dollars ($28,000.00) to the Alabama Department of Environmental Management for reasonable expenses incurred in this enforcement action. This sum shall be deposited to the credit of the operating funds of the Alabama Department of Environmental Management. The Defendant shall submit payments #9 -#12 as provided by the schedule in Paragraph B., below, by certified check to the following address:

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
MONTGOMERY OFFICE
ATTN: OFFICE OF GENERAL COUNSEL
1400 COLISEUM BOULEVARD
MONTGOMERY, AL 36110-2400

B. The Defendant shall pay said civil penalty assessed by this Settlement Agreement of Eighty-Four Thousand Dollars ($84,000.00) in twelve (12) monthly payments of Seven Thousand Dollars ($7,000.00) by certified check as follows:

Payment Number	Amount	Due Date
#1	$ 7,000.00	10/01/18
#2	$ 7,000.00	11/01/18
#3	$ 7,000.00	12/01/18
#4	$ 7,000.00	01/01/19
#5	$ 7,000.00	02/01/19
#6	$ 7,000.00	03/01/19
#7	$ 7,000.00	04/01/19
#8	$ 7,000.00	05/01/19
#9	$ 7,000.00	06/01/19
#10	$ 7,000.00	07/01/19
#11	$ 7,000.00	08/01/19
#12	$ 7,000.00	09/01/19

X.
STIPULATED PENALTIES

A. Milestones

1. The Defendant shall pay to the State of Alabama stipulated civil penalties for each day it fails to meet any of the milestone dates established by Section VII. of this Settlement Agreement. The stipulated civil penalties for failure to meet each milestone date, except for Force Majeure Acts as hereinafter defined or acts which occur beyond the Defendant's control, shall be

as follows:

Period of Noncompliance	Penalty per Day per Violation
1st to 30th day	$300
31st to 60th day	$600
After 60 days	$1,200

B. Stipulated civil penalties shall automatically begin to accrue on the first day the Defendant fails to meet any of the schedules of performance required by Section VII. of this Settlement Agreement. Payment of stipulated civil penalties as set forth above shall not abate any other rights or remedies which may be available to the State of Alabama or its agencies by reason of the Defendant's failure to comply with requirements of this Settlement Agreement, and all applicable federal, state or local laws, regulations, NPDES permit(s) and all other applicable permits. Notification to the Defendant by ADEM of the assessment of any stipulated penalty is not required.

C. Stipulated civil penalties shall be paid by submitting a cashier's or certified check payable to the State of Alabama and tendered to the Attorney General, 501 Washington Avenue, Montgomery, Alabama 36130-0152. Copies of the registered or certified check and the transmittal letter shall be sent simultaneously to the General Counsel, Alabama Department of Environmental Management, 1400 Coliseum Boulevard, P.O. Box 301463, Montgomery, Alabama 36110-2059.

D. In the event a stipulated civil penalty is not paid when due, the stipulated civil penalty shall be payable with interest from the original due date to the date of payment, at the statutory judgment rate set forth at 28 U.S.C. § 1961 (a).

XI.
FORCE MAJEURE

A. "Force Majeure" for the purposes of this Settlement Agreement is defined as an event arising from causes beyond the control of the Defendant or of any entity employed by the Defendant, including its consultants and contractors, which delays or prevents the performance of any obligation under this Settlement Agreement.

B. When circumstances are occurring or have occurred which may delay the completion of any requirement of this Settlement Agreement, whether or not due to a Force Majeure event, the Defendant shall so notify Plaintiffs in writing within fifteen (15) days after the Defendant knew, or should have known, of the delay or anticipated delay. The notice shall describe in detail the basis for the Defendant's contention that it experienced or anticipates that it will experience a Force Majeure delay, the anticipated length of the delay, the precise cause or causes of the delay, the measures taken or to be taken to prevent or minimize the delay, and the timetable by which those measures will be implemented. Failure to so notify the Plaintiffs shall constitute a waiver of any claim of Force Majeure as to the event in question.

C. If the Plaintiffs find that a delay in performance is, or was, caused by a Force Majeure event, it shall extend the time for performance, in writing, for a period to compensate for the delay resulting from such event and stipulated penalties shall not be due for such period. In proceedings on any dispute regarding a delay in performance, the dispute resolution provisions of Section Number XII. shall apply, and the Defendant shall have the burden of proving that the delay is, or was, caused by a Force Majeure event, and that the amount of additional time requested is necessary to compensate for that event.

D. Compliance with a requirement of this Settlement Agreement shall not by itself constitute compliance with any other requirement. An extension of one compliance date based on

a particular event shall not automatically extend another compliance date or dates. The Defendant shall make an individual showing of proof regarding the cause of each delayed incremental step or other requirement for which an extension is sought. The Defendant may petition for the extension of more than one compliance date in a single request.

XII.
RETENTION OF JURISDICTION/DISPUTE RESOLUTION

A. This Court shall retain jurisdiction of this matter for the purposes of implementing and enforcing the terms and conditions of this Settlement Agreement and for the purpose of adjudicating all disputes among the parties that may arise under the provisions of this Settlement Agreement.

B. Submission of any matter to the Court for resolution shall not extend any of the deadlines set forth in this Settlement Agreement, unless the parties agree to such extension in writing or the Court allows the extension upon motion.

XIII.
RIGHT OF ENTRY

Without limiting the authority otherwise available to it, the State, ADEM, and its authorized representatives and contractors shall have authority at all times, upon the presentation of credentials, to enter the premises of the Defendant to:

1. Monitor the program of activities required by this Settlement Agreement;

2. Verify any data or information submitted to the State or ADEM;

3. Obtain samples from the municipal treatment and collection system;

4. Inspect and evaluate any portions of the Defendant's treatment and collection system; and

5. Inspect and review any records required to be kept under the terms and conditions of this Settlement Agreement or any NPDES Permit and the AWPCA. This provision of this Settlement Agreement is in addition to and in no way limits or otherwise affects the State or ADEM's statutory authorities to conduct inspections, to require monitoring and to obtain information from the Defendant as authorized by law.

6. The State and ADEM agree to provide the Defendant an opportunity to obtain split samples of wastewater samples taken by ADEM from the Defendant's treatment or collection system. The State and ADEM further agree to provide the Defendant with the quality assured/quality controlled laboratory analytical results of samples obtained from the Defendant's treatment or collection system, and any non-privileged (including non-attorney work product) reports prepared concerning such results. ADEM will use its best efforts to coordinate field inspections of the Defendant's treatment or collection system with the Defendant by notifying the Defendant, if practicable, of such inspections upon arrival at the field inspection location.

XIV.
NOT A PERMIT/COMPLIANCE WITH OTHER STATUTES/REGULATIONS

A. This Settlement Agreement is not and shall not be construed as a permit, nor a modification of any existing permit, issued pursuant to the Alabama Water Pollution Control Act, nor shall it in any way relieve the Defendant of its obligations to obtain a permit for its wastewater treatment and collection system or facilities and to comply with the requirements of any NPDES permit or with any other applicable federal or state law or regulation. Any new permit, or modification of existing permits, must be complied with in accordance with applicable federal and state laws and regulations.

B. Nothing herein shall be construed as relieving the Defendant of the duty to comply with the AWPCA, the regulations promulgated thereunder and all applicable permits issued

thereunder, or as relieving the Defendant of its duty to comply with State law and the regulations promulgated thereunder. The State of Alabama reserves the right to seek additional relief should Defendant fail to achieve substantial compliance with the terms and conditions of its permit(s).

XV.
NON-WAIVER PROVISIONS

A. The Settlement Agreement in no way affects or relieves the Defendant of any responsibility to comply with any federal, state, or local law or regulation.

B. Nothing contained in this Settlement Agreement shall be construed to prevent or limit the State's rights to obtain penalties or further or additional injunctive relief under the AWPCA or other State statutes or regulations, including, but not limited to, criminal punishment under § 22-22-14 of the Act, for other violations not expressly specified in the Complaint.

C. The Parties agree that the Defendant is responsible for achieving and maintaining complete compliance with all applicable federal and state laws, regulations, and permits, and that compliance with this Settlement Agreement shall be no defense to any actions commenced pursuant to said laws, regulations, or permits, except as set forth herein.

D. This Settlement Agreement does not limit or affect the rights of the Defendant or ADEM or the State against any third parties which are not parties to this Settlement Agreement. The Parties recognize that this Settlement Agreement resolves only matters between the Plaintiffs and the Defendant and that its execution does not preclude the Defendant from asserting any legal or factual position in any action brought against the Defendant by any person or entity not a party to this Settlement Agreement.

E. The Parties reserve any and all legal and equitable remedies available to enforce the provisions of this Settlement Agreement.

F. This Settlement Agreement shall not limit any authority of ADEM under any applicable statute, including the authority to seek information from the Defendant or to seek access to the property of the Defendant nor shall anything in this Settlement Agreement be construed to limit the authority of the State to undertake any action against any person in response to conditions that may present an imminent and substantial endangerment to the environment or to the public health or welfare.

G. Application for construction grants, State Revolving Loan Funds, or any other grants or loans, or delays caused by inadequate facility planning or plans and specifications, on the part of the Defendant shall not be cause for extension of any required compliance date in this Settlement Agreement.

H. Obligations of the Defendant under the provisions of this Settlement Agreement to perform duties scheduled to occur after the date of entry of this Settlement Agreement, shall be legally enforceable from that date. Liability for stipulated penalties, if applicable, shall accrue for violation of such obligations and payment of such stipulated penalties may be demanded by Plaintiffs as provided in this Settlement Agreement.

I. It is the intent of the Parties hereto that the clauses hereof are severable, and should any clause(s) be declared by a court of competent jurisdiction to be invalid and unenforceable, the remaining clauses shall remain in full force and effect.

J. The State of Alabama reserves the right to elect to file a civil action for statutory penalties or injunctive relief against the Defendant for any violations of the Alabama Water Pollution Control Act by the Defendant discovered after the Date of Entry of this Settlement Agreement concerning different violations than these set forth herein.

K. This Settlement Agreement was negotiated, mutually drafted, and executed by the Parties in good faith to avoid further litigation and is a settlement of claims which were contested, denied and disputed. The execution of this Settlement Agreement is not an admission of any fact, liability or wrongdoing of any kind regarding any of the matters addressed in the Settlement Agreement.

XVI.
REVIEW OF SUBMISSIONS

The State agrees to use its best efforts to expeditiously review all documents, plans and other deliverables that the Defendant is required to submit to ADEM pursuant to the terms and conditions of this Settlement Agreement. The State of Alabama agrees to use its best efforts to coordinate with the Defendant to expedite evaluation of permit applications submitted by the Defendant consistent with Alabama law.

XVII.
FORM OF NOTICE

A. Unless otherwise specified or agreed to in writing by all parties, all reports, notices, or any other written communications required to be submitted under this Settlement Agreement shall be sent to the respective parties at the following addresses:

Alabama Department of Environmental Management
Chief of Water Division
1400 Coliseum Blvd.
Post Office Box 301463
Montgomery, Alabama 36110-2059

Office of Attorney General
Kayla A. Currie
Robert D. Tambling
501 Washington Avenue
Montgomery, Alabama 36130-0152.

B. Notifications to or communications with ADEM or the Alabama Attorney General's office shall be deemed submitted on the date they are received. Notifications to or communications with Defendant shall be deemed received ten (10) days after the date they are postmarked.

XVIII.
MODIFICATION

This Settlement Agreement contains the entire agreement of the Parties and shall not be modified by any prior oral or written agreement, representation or understanding. Prior drafts of this Settlement Agreement shall not be used in any action involving the interpretation or enforcement of this Settlement Agreement. This Settlement Agreement may not be amended or modified except by written order of this Court. Any modification of this Settlement Agreement by the Parties shall be in writing and approved by the Court before it will be deemed effective. However, minor changes which do not significantly alter the remedial action to be conducted by the Defendant may be made by the Parties, provided such changes are agreed upon in writing.

XIX.
TERMINATION

A. This Settlement Agreement shall terminate upon the granting of a motion to the Court after each of the following has occurred:

1. The Defendant has achieved compliance with all provisions contained in this Settlement Agreement;

2. The Defendant has paid all penalties and other monetary obligations due hereunder and no penalties or other monetary obligations due hereunder are outstanding or owed to the State;

3. The Defendant has certified compliance pursuant to Paragraphs 1 and 2 above to the Court and all Parties; and

4. Upon receipt of such certification from the Defendant, ADEM shall review to determine if compliance has been achieved and shall then respond in writing. If the State or ADEM disputes the Defendant's full compliance, this Settlement Agreement shall remain in effect pending resolution of the dispute by the Parties or the Court.

B. The Defendant may petition the State and ADEM for termination of the obligations of any paragraph of this Settlement Agreement, provided that the Defendant has satisfied each and every term and condition of that paragraph, and certified to the State that it has satisfied each and every term and condition of that paragraph.

XX.
SIGNATORIES

The Assistant Attorney General on behalf of the State of Alabama, the Associate General Counsel of the Alabama Department of Environmental Management, and the signatories for the Defendant certify that they are fully authorized to enter into the terms and conditions of this Settlement Agreement and to execute and legally bind such parties to this document.

WE HEREBY CONSENT to the entry of this Settlement Agreement in the *State of Alabama v. City of Livingston,* Civil Action No. CV-2017-900040.00.

FOR THE PLAINTIFF
THE STATE OF ALABAMA:

Date: 7/31/18

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

Date: 7/31/18

/s/ Kayla A. Currie
Kayla A. Currie (CUR040)
Assistant Attorney General

ADDRESS OF COUNSEL:
Office of the Attorney General
501 Washington Street
Montgomery, AL 36130
(334) 242-7300
Email: rtambling@ago.state.al.us
Email: kcurrie@ago.state.al.us

FOR THE PLAINTIFF
ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT:

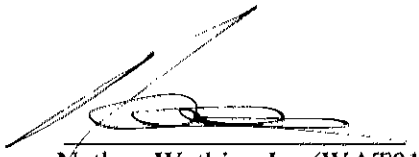
Date: 7/31/18

/s/ Carrie Blanton
Carrie Blanton (TOM024)
Assistant Attorney General

ADDRESS OF COUNSEL:
Alabama Department of Environmental Management
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

FOR THE DEFENDANT
CITY OF LIVINGSTON:

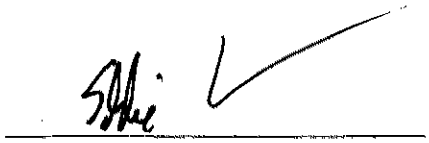
Date: 08/02/2018



Nathan Watkins Jr. (WAT013)

ADDRESS OF COUNSEL:
Watkins Cross, LLC
226 S. Washington Street
Post Office Box 1528
Livingston, AL 35470
Telephone: (205) 652-1291
Facsimile: (205) 652-1292
Email: nwatkins@watkinscross.com

Dated and entered this 2nd day of August 2018.



CIRCUIT COURT JUDGE OF
SUMTER COUNTY