

February 9, 2010

Certified Mail

Return Receipt Requested

Hon. Charles C. Smith, Chairman

The Water Works and Sewer Board of the City of Demopolis

a/k/a Demopolis Water Works and Sewer Board

2101 Water Avenue

Demopolis, Alabama 36732

Re: **Notice of Intent to File Suit under the Clean Water Act
Demopolis Wastewater Treatment Plant and Collection System**

Dear Mr. Smith:

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, Conservation Alabama Foundation may file suit against the Demopolis Water Works and Sewer Board for violations of the Clean Water Act described herein.

A. History of Previous Violations and Enforcement Actions

On November 23, 1998, the Alabama Department of Environmental Management issued Consent Order 99-023-CWP to the Demopolis Water Works and Sewer Board. The Order cites the Board for violation of discharge limitations contained in NPDES Permit No. AL0043168 in February 1997, March 1997, May 1997, June 1997, September 1997, October 1997, and January through July 1998. The Order also cites the Board for eleven unpermitted sanitary sewer overflow discharges. The Order establishes interim discharge limitations on BOD, NH₃-N, and TSS in excess of the permitted limitations and requires full compliance with permit limitations by a date to be specified in a compliance plan required to be submitted by the Board and approved by the Department.

On August 2, 2001, the Alabama Department of Environmental Management issued Consent Order 01-193-CWP to the Demopolis Water Works and Sewer Board. The Order cites the Board for violation of the interim discharge limitations established in Consent Order 99-023-CWP in January through June 1999, August 1999, September 1999, April 2000, October 2000, January 2001, and February 2001. The Order rescinds Consent Order 99-023-CWP and establishes new interim discharge limitations in excess of the permitted discharge limitations and previous interim discharge limitations. The Order requires full compliance with permit limitations not later than 900 days (January 19, 2004).

On April 18, 2003, the State of Alabama filed suit against the Demopolis Water Works and Sewer Board alleging that the Board violated the terms of NPDES Permit No. AL0043168 and

discharged pollutants without a permit. *State of Alabama ex rel Bill Pryor v. Demopolis Water Works and Sewer Board*, No. CV 2003-000079 (Marengo County Cir. Ct.).

On January 16, 2004, the Alabama Department of Environmental Management issued Order 04-031-WP to the Demopolis Water Works and Sewer Board. This Order extended the compliance deadline established in Consent Order 01-193-CWP to April 19, 2004 due to heavy rains.

On May 10, 2005, the State of Alabama and Demopolis Water Works and Sewer Board entered into a Consent Decree. *State of Alabama ex rel Bill Pryor v. Demopolis Water Works and Sewer Board*, No. CV 2003-000079 (Marengo County Cir. Ct.). The Decree required the Board to submit a compliance report within 45 days (June 24, 2005). If the compliance report indicated continuing violations, the Decree required the Board to submit a compliance plan within 90 days (August 8, 2005), including a compliance schedule to be approved by the Alabama Department of Environmental Management.

On August 19, 2009, the Alabama Department of Environmental Management issued a Notice of Violation to the Mayor of the City of Demopolis. The Notice cites violations of permit discharge limitations for NH₃-N and Fecal Coliform in March and July 2008. The Notice also cites fifteen unpermitted sanitary sewer overflow discharges in February, May and August of 2008 and March 2009. The Notice cites failure to notify the County Health Department and public about the sanitary sewer overflows. The Notice also finds that the permittee failed to submit a timely and complete application for reissuance of NPDES Permit No. AL0046138.

On February 5, 2010, the Alabama Department of Environmental Management issued Order 10-067-WP to the Demopolis Water Works and Sewer Board. This Order cites the Board for discharging pollutants without a valid permit during November 2009, December 2009 and January 2010. The Order directs the Board to comply with all terms, conditions and limitations of expired NPDES Permit No. AL0046138 until a new permit is issued and becomes effective. The Order also establishes monitoring requirements for Total Recoverable Arsenic and record-keeping requirements for wastewater introduced into the treatment system from the Perry County Associates Landfill.

B. Discharges In Excess of Permit Limitations

NPDES Permit No. AL0046138 establishes limitations on the discharge of specified pollutants from the Demopolis Wastewater Treatment Plant into the Tombigbee River. The Board discharged pollutants in excess of the limitations as indicated below:

Pollutant Parameter	Discharge Limit	Discharge Violation	Violation Date(s)	Days in Violation
Nitrogen, Ammonia Total (as N)	≤ 10 mg/L Monthly Average	18.4 mg/L	Jul 2009	31
		12.7 mg/L	Mar 2008	31

	≤ 15 mg/L Weekly Average	47 mg/L	Jul 2009	7	
		23.9 mg/L	Jul 2008	7	
		24 mg/L	Mar 2008	7	
	≤ 221 lbs/day Monthly Average	371.7 lbs/day	Mar 2008	31	
		≤ 331 lbs/day Weekly Average	549.5 lbs/day	Jul 2009	7
			617.5 lbs/day	Jul 2008	7
	895.5 lbs/day		Mar 2008	7	
	Pollutant Parameter	Discharge Limit	Discharge Violation	Violation Date(s)	Days in Violation
	Fecal Coliform	≤ 1250 colonies/100 ml Monthly Geometric Mean	1303.7 colonies/ 100 ml	Apr 2006	30
1401.7 colonies/100 ml			Nov 2005	31	
1923.5 colonies/100 ml			Dec 2004	31	
≤ 4000 colonies/100 ml Daily Maximum		5900 colonies/100 ml	Jul 2009	1	
		13200 colonies/100 ml	Jul 2008	1	
		4200 colonies/100 ml	Jan 2007	1	
		7300 colonies/100 ml	Nov 2006	1	
		6300 colonies/100 ml	Sep 2006	1	
		5200 colonies/100 ml	Apr 2006	1	
		20000 colonies/100 ml	Jan 2006	1	
		5900 colonies/100 ml	Dec 2005	1	
		14600 colonies/100 ml	Nov 2005	1	
		8700 colonies/100 ml	Sep 2005	1	
		7600 colonies/100 ml	Aug 2005	1	
		9000 colonies/100 ml	Jan 2005	1	
8700 colonies/100 ml	Dec 2004	1			
TOTAL VIOLATIONS				240	

C. Discharges Without A Permit (Treatment Plant)

The Demopolis Water Works and Sewer Board discharged pollutants from the Demopolis Wastewater Treatment Plant into the Tombigbee River without a without a National Pollutant

Discharge Elimination System permit in violation of 33 U.S.C. § 1311(a). These discharges occurred as follows:

Discharge Dates	Days in Violation
November 1 through November 30, 2009	30
December 1 through December 31, 2009	31
January 1 through January 31, 2010	31
February 1 through February 9, 2010	9
TOTAL VIOLATIONS	101

D. Discharges Without A Permit (Sanitary Sewer Overflows)

The Demopolis Water Works and Sewer Board discharged pollutants from sanitary sewer overflows into the Tombigbee River without a National Pollutant Discharge Elimination System permit in violation of 33 U.S.C. § 1311(a). These discharges occurred as follows:

Location	Quantity (gallons)	Date
Spencer Street	1,900	Mar 2, 2009
705 West Pettus Street	3,000	Aug 25, 2008
805 West Herbert Street	3,000	Aug 25, 2008
Washington Street Pump Station	4,500	Aug 25, 2008
Washington Street Pump Station	5,000	Aug 24, 2008
705 West Pettus Street	3,000	Aug 24, 2008
Hwy 43 and Childers Street	>10,000	May 17, 2008
Black Drive and Arcola Street	5,000	Feb 22, 2008
Ash Street and Fulton Street	5,000	Feb 22, 2008
Second Avenue and Arcola Street	5,000	Feb 22, 2008
Strawberry and Capitol Street	5,000	Feb 22, 2008
Pettus Street and Earl Street	5,000	Feb 22, 2008
Main Street and Decatur Street	5,000	Feb 22, 2008
Washington Street Pump Station	36,000	Feb 22, 2008
TOTAL VIOLATIONS		14

E. Introduction of Industrial Wastewater

NPDES Permit No. AL0046138 provides:

The Permittee shall not allow the introduction of wastewater, other than domestic wastewater, from a new direct [sic: indirect] discharger prior to approval and permitting, if applicable, of the discharge by the Department.

NPDES Permit No. AL0046138, Part II, G. The Demopolis Water Works and Sewer Board allowed the introduction of leachate generated from the Perry County Associates Landfill into the Demopolis Wastewater Treatment Plant prior to approval and permitting of the discharge by the Alabama Department of Environmental Management as required by Ala. Code § 22-22-9 and Ala. Admin. Code R. 335-6-5-.04. These violations were intermittent prior to the expiration of NPDES Permit No. AL0046138. On or about December 7, 2009, the Board commenced allowing the introduction of leachate into the Wastewater Treatment Plant on a regular basis, and eventually on a near daily basis, without prior approval and permitting of the discharge by the Alabama Department of Environmental Management. The introduction of leachate into the Wastewater Treatment Plant became a violation once again when the Alabama Department of Environmental Management issued Order 10-067-WP on February 5, 2010 requiring compliance with the terms of NPDES Permit No. AL0046138. The precise dates that leachate was delivered to the Demopolis Wastewater Treatment Plant are known to the Board, but presently unknown to Conservation Alabama Foundation.

F. Failure to Submit Timely and Complete Application for Permit Reissuance

NPDES Permit No. AL0046138 requires that an application for permit reissuance or a notice of intent to discontinue discharging beyond the permit expiration date must be submitted to the Alabama Department of Environmental Management at least 180 days prior to permit expiration. NPDES Permit No. AL0046138, Part II, E.1.a. The Board violated this permit condition commencing on May 4, 2009 and the violation continued until the permit expired on October 31, 2009 (**180 days**). This violation resumed on February 5, 2010 when the Alabama Department of Environmental Management issued Order 10-067-WP requiring compliance with the terms of NPDES Permit No. AL0046138.

Civil penalties of *not less than \$100 per violation per day* nor more than \$25,000 per violation per day may be sought by the State or Alabama Department of Environmental Management in State court. Civil penalties of up to \$37,500 per violation per day may be sought by Conservation Alabama Foundation in federal court after the expiration of 60 days. Suit by Conservation Alabama Foundation may be avoided if these violations have been permanently abated before the expiration of 60 days following service of this notice. Please advise the undersigned of any measures that you may undertake or may have undertaken which you contend have permanently abated these violations before suit is filed.

Sincerely,

David A. Ludder
Attorney for Conservation Alabama Foundation

cc:

Hon. Lisa P. Jackson, Administrator
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Hon. A. Stanley Meiberg, Acting Regional Administrator
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