

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
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Hon. A. Stanley Meiberg, Acting Regional Administrator
U.S. Environmental Protection Agency-Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, Georgia 30303-3104

Hon. John P. Hagood, Director
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

Conservation Alabama Foundation
P.O. Box 130656
Birmingham, AL 35213-0656
Tel. (205) 533-6178



AlaFile E-Notice

48-CV-2010-900032.00

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

NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF MARENGO COUNTY, ALABAMA

STATE OF ALABAMA AND THE ET AL v. DEMOPOLIA WATER WORKS AND SEWER BOARD
48-CV-2010-900032.00

The following complaint was FILED on 4/8/2010 1:56:20 PM

Notice Date: 4/8/2010 1:56:20 PM

RUSTY NICHOLS
CIRCUIT COURT CLERK
MARENGO COUNTY, ALABAMA
101 EAST COATS AVENUE
LINDEN, AL 36748

334-295-2219
rusty.nicholas@alacourt.gov



State of Alabama
 Unified Judicial System

**SUMMONS
 -CIVIL-**

Form C-34 Rev 6/88

IN THE _____ CIRCUIT _____ COURT OF _____ MARENGO _____ COUNTY

Plaintiff STATE OF ALABAMA EX REL, AL. DEPT. ENVIROMENTAL MAN v. Defendant THE WATER WORKS AND SEWER BOARD DEMOPOLIS

NOTICE TO THOMAS R. HEAD III, 1901 6TH AVENUE NORTH STE. 1500 POST OFFICE BOX 306, BIRMINGHAM, AL 35203

THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS. YOU OR YOUR ATTORNEY ARE REQUIRED TO FILE THE ORIGINAL OF YOUR WRITTEN ANSWER, EITHER ADDMITTING OR DENYING EACH ALLEGATION IN THE COMPLAINT WITH THE CLERK OF THIS COURT. A COPY OF YOUR ANSWER MUST BE MAILED OR HAND DELIVERED BY YOU OR YOUR ATTORNEY TO THE PLAINTIFF OR PLAINTIFF'S ATTORNEY ROBERT D. TAMBLING WHOSE ADDRESS IS ASSISTANT ATTORNEY GENERAL, 500 DEXTER AVE. MONTGOMERY, ALABAMA 36130.

THIS ANSWER MUST BE MAILED OR DELIVERED WITHIN 30 DAYS AFTER THIS SUMMONS AND COMPLAINT WERE DELIVERED TO YOU OR A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE MONEY OR OTHER THINGS DEMANDED IN THE COMPLAINT.

TO ANY SHERIFF OR ANY PERSON AUTHORIZED by the Alabama Rules of Civil Procedure:

- You are hereby commanded to serve this summons and a copy of the complaint in this action upon the defendant.
- Service by certified mail of this summons is initiated upon the written request of _____ pursuant to the Alabama Rules of Civil Procedure.

Date _____ By: _____
 Clerk/Register

Certified Mail is hereby requested. _____
 Plaintiff's/Attorney's Signature

RETURN ON SERVICE:

- Return receipt of certified mail received in this office on _____ (Date)
- I certify that I personally delivered a copy of the Summons and Complaint to _____ in _____ County, Alabama on _____ (Date)

Date _____ Server's Signature _____
 Type of Process Server _____ Address of Server _____
 Phone Number of Server _____

IN THE CIRCUIT COURT OF MARENGO COUNTY, ALABAMA

**STATE OF ALABAMA, ex rel. TROY)
KING, ATTORNEY GENERAL, and the)
ALABAMA DEPARTMENT OF)
ENVIRONMENTAL MANAGEMENT,)**

Plaintiffs,

v.

**THE WATER WORKS and SEWER)
BOARD of the CITY OF DEMOPOLIS)**

Defendant.

CIVIL ACTION NO. CV-2010

AMENDED COMPLAINT

The Parties

The State of Alabama, on the relation of Attorney General Troy King, and the Alabama Department of Environmental Management file this complaint and allege the following:

NATURE OF ACTION

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 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 1387. In addition, the Department is authorized to administer and enforce the provisions of the AWPCA.

3. The Water Works and Sewer Board of the City of Demopolis (hereinafter “the Defendant”) operates a wastewater treatment plant (hereinafter “WWTP”) located at 2101 Water Avenue, Demopolis, Alabama, 36732 , Marengo County, Alabama.

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

Count 1

5. Plaintiffs repeat, replead and incorporate by reference paragraphs 1 through 4, above.

6. On November 1, 2004, the Department issued to the Defendant National Pollutant Discharge Elimination System (hereinafter “NPDES”) Permit AL0043168 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 Permit established limitations, terms, and conditions on the discharge of pollutants from a point source into the Tombigbee River, a water of the State. The Permit also required the Defendant to monitor its discharges and submit periodic Discharge Monitoring Reports to the Department

describing the results of the monitoring. Defendant's Permit expired on October 31, 2009.

7. Discharge Monitoring Reports submitted to the Department indicate that the Defendant has discharged pollutants from the WWTP into the Tombigbee River, a water of the State, in violation of the limitations established in the Permit. In addition, Defendant unlawfully discharged untreated wastewater into the Tombigbee River, a water of the State, in violation of its Permit and the AWPCA. The months these violations occurred along with the parameters and reporting requirements violated are listed in the Attachment to this Complaint, which is incorporated by reference as if fully set forth herein.

Count 2

8. Plaintiffs repeat, replead and incorporate by reference paragraphs 1 through 7, above.

9. Part I.C.2.a. of Defendant's Permit and ADEM Admin. Reg. 335-6-6-.12(l)(6) provide that, in the event of an unpermitted discharge of a pollutant into a water of the State, the permittee shall orally report the occurrence and circumstances of such discharge (a "Sewer System Overflow" or "SSO") to ADEM within 24 hours after the permittee becomes aware of the discharge. In addition, these provisions require the permittee to submit to ADEM a written report no later than 5 days after becoming aware of the occurrence of the SSO.

10. ADEM Admin. Reg. 335-6-6-.12(l)(6)(v) provides that "[t]he permittee shall report 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 sanitary sewer overflow."

11. Defendant failed to properly notify ADEM orally or in writing following each of the unpermitted SSOs identified in the Attachment to this Complaint, in violation of Part I.C.2.a. of its Permit, and in violation of ADEM Admin. Reg. 335-6-6-.12(l)(6) and the AWPCA. In addition, Defendant failed to report these unpermitted SSOs to the public and to the county

health department, in violation of ADEM Admin. Reg. 335-6-6-.12(1)(6)(v) and the AWPCA.

Count 3

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

13. ADEM Admin. Regs. 335-6-6-.08(1)(k)8 and 335-6-6-.12(b) both require that applications for permit reissuance be submitted at least 180 days prior to expiration of the current permit.

14. Part II.E.1.a. of Defendant's Permit provides that, if a permittee intends to continue to discharge beyond the expiration date of the permit, the permittee must submit a complete permit application for reissuance at least 180 days prior to its expiration. Part II.E.1.b. of Defendant's Permit provides that failure of the permittee to apply for reissuance within at least 180 days prior to permit expiration will void automatic continuation of the permit beyond the date of expiration and that, unless the permit is renewed, any discharge after expiration of the permit will be an unpermitted discharge.

15. Defendant failed to submit a timely and complete application for permit renewal on or before May 4, 2009, or within 180 days prior October 31, 2009, the expiration date of Defendant's Permit.

16. Ala. Code § 22-22-9(i)(3) (2006 Rplc. Vol.) states that "[e]very person, prior to discharging new or increased pollution into any waters of this state, shall apply...for a permit and must obtain such permit before discharging such pollution."

17. On the following dates, Defendant discharged pollutants from the WWTP into the Tombigbee River, a water of the State, without a NPDES permit in violation of Section 22-22-9(i)(3) of the AWPCA:

November 1 through November 30, 2009
December 1 through December 31, 2009
January 1 through January 31, 2010

February 1 through February 28, 2010
March 1 through March 31, 2010
April 1 through April 9, 2010

18. As of the filing of this Complaint, Defendant continues to discharge pollutants from the WWTP into the Tombigbee River, a water of the State without a NPDES permit in continuing violation of Section 22-22-9(i)(3) of the AWPCA.

Count 4

19. Plaintiffs repeat, replead and incorporate by reference paragraphs 1 through 18, above.

20. ADEM Admin. Code Reg. 335-6-6-.13(b)(1) states that “[p]ublicly owned treatment works shall not allow the introduction of wastewater other than domestic wastewater from a new indirect discharger prior to the approval and permitting, if applicable, of the discharge by the Department.” Part II.G.1. of Defendant’s permit specifically provides that “[t]he 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.”

21. ADEM Admin. Code Reg. 335-6-6-.13(b)(2) states that “[p]ublicly owned treatment works...shall not allow an existing indirect discharger to increase the quantity or change the character of its non-domestic wastewater discharge prior to the approval and permitting, if applicable, of the discharge by the Department... .” Part II.G.2. of Defendant’s permit specifically provides that “[t]he permittee shall not allow an existing indirect discharger to increase the quantity or change the character of its wastewater, other than domestic wastewater, prior to approval and permitting, if applicable, of the increased discharge by the Department.”

22. On numerous occasions prior to and after the expiration of its Permit, Defendant has allowed and continues to allow the introduction of leachate wastes from the Perry County Associates Landfill into its wastewater treatment plant without having first obtained proper approval and permitting of the discharge by the Department, in violation of Part II.G.1.and 2. of its Permit, and in violation of ADEM Admin. Code Regs. 335-6-6-.13(b)(1) and (2) and the AWPCA.

Count 5

23. Plaintiffs repeat, replead and incorporate by reference paragraphs 1 through 22, above.

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

Count 6

25. Plaintiffs repeat, replead and incorporate by reference paragraphs 1 through 24, above.

26. 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 Defendant violated the limitations, terms, and conditions of the Permit, and that Defendant violated applicable ADEM regulations and the AWPCA.
- C. Adjudge and declare that the Defendant caused or allowed unpermitted discharges of pollutants from its wastewater treatment facility into a water of the State.
- D. Order the Defendant to take action to ensure that similar violations of the

AWPCA will not recur in the future.

E. Assess a civil penalty against the Defendant 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

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s/ Antoinette Jones (JON008)
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