

September 10, 2008

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Charles Ballas, Chairman  
Utilities Board of the City of Linden  
211 North Main Street  
Linden, Alabama 36748

**Re: Notice of Intent to File Suit under the Clean Water Act for Violations of NPDES  
Permit No. AL0045683**

Dear Mr. Ballas:

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, Inc. may file suit against the Utilities Board of the City of Linden for discharges of pollutants from the Board's HCR Lagoon into Sycamore Creek in violation of the limitations and conditions of NPDES Permit No. AL0045683 as reported in Discharge Monitoring Reports submitted by the Board to the Alabama Department of Environmental Management from September 2003 to September 2008, including but not limited to, the following:

<b>Pollutant Parameter</b>	<b>Discharge Limit</b>	<b>Discharge Violation</b>	<b>Violation Date(s)</b>	<b>Days in Violation</b>
Solids, Total Suspended	≤ 337 lbs/day Monthly Average	7435 lbs/day	Jan 2008	31
		667.61 lbs/day	May 2006	31
		1278.3 lbs/day	Mar 2006	31
		338.1 lbs/day	Sep 2005	30
		380.5 lbs/day	Mar 2005	31
		412.2 lbs/day	Feb 2005	28
	≤ 506 lbs/day Weekly Average	7435 lbs/day	Jan 2008	7
		1207.4 lbs/day	Nov 2006	7
		667.61 lbs/day	May 2006	7
		1278.3 lbs/day	Mar 2006	7
		2575.7 lbs/day	Feb 2006	7
		1443.3 lbs/day	Jan 2006	7

		815.7 lbs/day	Jul 2005	7
	≥85 Percent Removal Monthly Average	52.9 Percent	Nov 2007	30
		60.63 Percent	Sep 2007	30
		55 Percent	May 2006	31
		56.25 Percent	Jun 2005	30
<b>Pollutant Parameter</b>	<b>Discharge Limit</b>	<b>Discharge Violation</b>	<b>Violation Date(s)</b>	<b>Days in Violation</b>
Biochemical Oxygen Demand	≤ 30.0 mg/L Monthly Average	42.3 mg/L	Mar 2008	31
		30.6 mg/L	May 2006	31
	≤ 112 lbs/day Monthly Average	118.13 lbs/day	Mar 2008	31
		7006 lbs/day	Jan 2008	31
		137.7 lbs/day	Nov 2006	30
		4920.72 lbs/day	May 2006	31
		1491.3 lbs/day	Mar 2006	31
		269.5 lbs/day	Mar 2005	31
		539.1 lbs/day	Feb 2005	28
	≤ 168 lbs/day Weekly Average	7006 lbs/day	Jan 2008	7
		656.0 lbs/day	Nov 2006	7
		4920.72 lbs/day	May 2006	7
		1491.3 lbs/day	Mar 2006	7
		1601.8 lbs/day	Feb 2006	7
		1462.5 lbs/day	Jan 2006	7
		256.9 lbs/day	Dec 2005	7
		384.2 lbs/day	Jul 2005	7
		269.5 lbs/day	Mar 2005	7
		539.1 lbs/day	Feb 2005	7
	≥ 85 Percent Removal Monthly Average	80.68 Percent	Jan 2008	31
		68.0 Percent	Nov 2007	30
78.71 Percent		Sep. 2007	30	
74.6 Percent		May 2006	31	

		84.8 Percent	Mar 2006	31
		72.6 Percent	Jul 2005	31
		77.9 Percent	Feb 2005	28
<b>Pollutant Parameter</b>	<b>Discharge Limit</b>	<b>Discharge Violation</b>	<b>Violation Date(s)</b>	<b>Days in Violation</b>
Nitrogen, Ammonia Total (as N)	≤ 5.0 mg/L Monthly Average	5.25 mg/L	Aug 2007	31
	≤ 37.5 lbs/day Monthly Average	49.35 lbs/day	Jan 2007	31
		1124.9 lbs/day	Mar 2006	31
		176.9 lbs/day	Mar 2005	31
		221.7 lbs/day	Feb 2005	28
	≤ 56.2 lbs/day Weekly Average	60.49 lbs/day	Nov 2007	7
		68.4 lbs/day	Nov 2006	7
		1124.9 lbs/day	Mar 2006	7
		486.9 lbs/day	Jan 2006	7
		76.35 lbs/day	Dec 2005	7
		176.9 lbs/day	Mar 2005	7
		221.7 lbs/day	Feb 2005	7
	≤ 28.1 lbs/day Weekly Average	31.3 lbs/day	Sep 2005	7
		31.3 lbs/day	Aug 2005	7
		42.1 lbs/day	Jul 2005	7
<b>Pollutant Parameter</b>	<b>Discharge Limit</b>	<b>Discharge Violation</b>	<b>Violation Date(s)</b>	<b>Days in Violation</b>
Fecal Coliform	≤ 2000 colonies/100ml Daily Maximum	2300 colonies/100ml	Mar 2008	1
		3900 colonies/100ml	May 2006	1
		2600 colonies/100ml	Jan 2006	1
	≤ 1000 colonies/100ml Monthly Geometric Mean	2300 colonies/100ml	Mar 2008	31
		3900 colonies/100ml	May 2006	31
		2600 colonies/100ml	Jan 2006	31

	≤ 200 colonies/100ml Monthly Geometric Mean	600 colonies/100ml	Sep 2007	30
		900 colonies/100ml	Sep 2005	30
		900 colonies/100ml	Aug 2005	31
		1135 colonies/100ml	Jul 2005	31
		245 colonies/100ml	Jun 2005	30
<b>TOTAL VIOLATIONS</b>				1379

Civil penalties of up to \$32,500 per violation per day may be assessed by the court. Suit 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, Inc.

cc: Stephen L. Johnson, Administrator  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

J.I. Palmer, Jr., Regional Administrator  
U.S. Environmental Protection Agency-Region 4  
Sam Nunn Atlanta Federal Center  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-3104

Onis "Trey" Glenn, Director  
Alabama Department of Environmental Management  
P.O. Box 301463  
Montgomery, Alabama 36130-1463



**FORM NUMBER:** ARCivP-93

**LAST REVISION DATE:** 5/99

**TITLE OF THIS FORM:** Cover Sheet Circuit Court – Civil Cases (Not for Domestic Relations Cases)

**USERS OF THIS FORM:** Plaintiff/Plaintiff’s Attorney /Clerk

**PURPOSE OF THIS FORM:** This form is to be filed with the complaint in a civil action or with the notice of appeal in an appeal of a civil case from district to circuit court to supply general information to the court regarding the nature of the suit and allows the court follow, for organizational purposes, the disposition or status of the case.

**APPLICABILITY:** Circuit and district Courts

**AUTHORITY:** Rule 3(b), Alabama Rules of Civil Procedure (ARCP), provides as follows:

“ Except in domestic relations cases, each original complaint at the time it is filed with the circuit court shall be accompanied by an informational ‘cover sheet.’ ... The plaintiff, or if the plaintiff is represented by counsel, then the plaintiff’s attorney, shall complete and sign the ‘ general information’ portion of the cover sheet before it is filed with the court. If the complaint is tendered to the clerk of the circuit court without a properly completed cover sheet, the clerk shall accept the complaint and inform the person filing it of the requirements of this rule, and the plaintiff, or, if the plaintiff is represented by counsel, then the plaintiff’s attorney, shall promptly file a properly completed cover sheet.”

For a party’s failure to comply with the requirements of Rule 3, ARCP, a court may stay the proceedings until the cover sheet is filed or make such other orders as are just, such as contempt of court, or, after proper notice, an order dismissing the action. Additionally, in cases appealed from the district court to the circuit court, the cover sheet shall accompany the notice of appeal.



State of Alabama  
Unified Judicial System

# SUMMONS -CIVIL-

Case Number

Form C-34 Rev 6/88

IN THE \_\_\_\_\_ CIRCUIT \_\_\_\_\_ COURT OF \_\_\_\_\_ MARENGO \_\_\_\_\_ COUNTY

Plaintiff STATE OF ALABAMA EX REL, TROY KING, ATTORNEY GENERAL v. Defendant UTILITIES BOARD OF THE CITY OF LINDEN

NOTICE TO HON. WOODFORD W. DINNING, LLC, LLOYD % DINNING, 201 EAST COATS AVENUE, POST OFFICE BOX 480545, LINDEN, AL 36748

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 ADMITTING 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 DEXTUR AVENUE, MONTGOMERY, ALABAMA

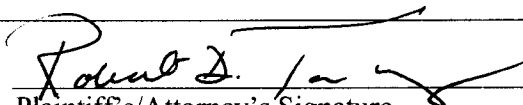
THIS ANSWER MUST BE MAILED OR DELIVERED WITHIN 30 DAYS AFTER THIS SUMMONS AND COMPLAINT WERE DELIVERED TO YOU OR A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE MONEY OR OTHER THINGS DEMANDED IN THE COMPLAINT.

**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 \_\_\_\_\_ Clerk/Register By: \_\_\_\_\_

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 \_\_\_\_\_ County, Alabama on \_\_\_\_\_ (Date)

Date \_\_\_\_\_ Server's Signature \_\_\_\_\_

Type of Process Server \_\_\_\_\_ Address of Server \_\_\_\_\_

Phone Number of Server \_\_\_\_\_





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 Utilities Board of the City of Linden (hereinafter “the Permittee”) operates a wastewater treatment facility located at the Linden HCR Lagoon on Caroline Street, Linden, Alabama in Marengo County, Alabama. The wastewater treatment facility discharges pollutants from a point source at Outfall 001 into Sycamore Creek, 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. The Defendant’s Permit was originally issued by ADEM on January 1, 2000 and expired on December 31, 2004; the permit was re-issued on February 1, 2005 with an expiration date of January 31, 2010. The Permit establishes limitations, terms, and conditions on the discharge of pollutants from a point source into Sycamore Creek. The Permit requires that the Permittee monitor its discharges and submit periodic Discharge Monitoring Reports (hereinafter DMR’s) 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. The DMR’s reports submitted to the Department by the Permittee indicate that the

Permittee has discharged pollutants from such point source at Ourfall 001 into the aforementioned Sycamore Creek 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.

**Count I**

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

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

**Count II**

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

10. 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 unpermitted discharges of pollutants from its wastewater treatment facility into a water of the State.
- 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  
11 South Union Street  
Montgomery, AL 36130  
(334) 242-7445/Office  
[rtambling@ago.state.al.us](mailto:rtambling@ago.state.al.us)

s/ Schuyler K. Espy  
Schuyler K. Espy (KEA009)  
Associate General Counsel  
Alabama Department of  
Environmental Management

**ADDRESS OF COUNSEL:**  
P.O. Box 301463  
Montgomery, AL 36130-1463  
(334) 271-7855 (Office)  
(334) 394-4332 (Telefax)  
[sespy@adem.state.al.us](mailto:sespy@adem.state.al.us)

# Attachment 1

## LINDEN HCR LAGOON NPDES PERMIT No. AL0045683

### BIOCHEMICAL OXYGEN DEMAND5 DAY SUMMER

Date of Violation	Discharge Violation	Discharge Limit	Days In Violation
September, 2003	160	30 mg/l	Monthly Average
	160	45 mg/l	Weekly Average
	357	113 lbs/day	Monthly Average
	817.1	170 lbs/day	Weekly Average
June, 2004	229.5	170 lbs/day	Weekly Average

### BIOCHEMICAL OXYGEN DEMAND5 DAY WINTER

Date of Violation	Discharge Violation	Discharge Limit	Days In Violation
December, 2003	155.6	113 lbs/day	Monthly Average
January, 2004	2555.2	113 lbs/day	Monthly Average
	2555.2	170 lbs/day	Weekly Average
March, 2004	1424.2	113 lbs/day	Monthly Average

### BIOCHEMICAL OXYGEN DEMAND5 DAY 20 DEG C

Date of Violation	Discharge Violation	Discharge Limit	Days In Violation
August, 2004	31.1	30 mg/l	Monthly Average
October, 2004	3522.8	112 lbs/day	Monthly Average
	1418.9	168 lbs/day	Weekly Average
November, 2004	75.2	30 mg/l	Monthly Average

	75.2 451.8 1219.3	45 mg/l 112 lbs/day 168 lbs/day	Weekly Average Monthly Average Weekly Average
February, 2005	539.1 539.1	112 lbs/day 168 lbs/day	Monthly Average Weekly Average
March, 2005	269.5 269.5	112 lbs/day 168 lbs/day	Monthly Average Weekly Average
July, 2005	384.2	168 lbs/day	Weekly Average
December, 2005	256.9	168 lbs/day	Weekly Average
January, 2006	1462.5	168 lbs/day	Weekly Average
February, 2006	1601.8	168 lbs/day	Weekly Average
March, 2006	1491.3 1491.3	112 lbs/day 168 lbs/day	Monthly Average Weekly Average
May, 2006	30.6 4920.72 4920.72	30 mg/l 112 lbs/day 168 lbs/day	Monthly Average Monthly Average Weekly Average
November, 2006	137.7 656.0	112 lbs/day 168 lbs/day	Monthly Average Weekly Average
January, 2008	7006 7006	112 lbs/day 168 lbs/day	Monthly Average Weekly Average
March, 2008	42.3 118.13	30 mg/l 112 lbs/day	Monthly Average Monthly Average
April, 2008	38.5 285.44 285.44	30 mg/l 112 lbs/day 168 lbs/day	Monthly Average Monthly Average Weekly Average

### NITROGEN AMMONIA TOTAL N

<b>Date of Violation</b>	<b>Discharge Violation</b>	<b>Discharge Limit</b>	<b>Days In Violation</b>
December, 2003	38.5	37.6 lbs/day	Monthly Average

January, 2004	600.2 600.2	37.6 lbs/day 56.2 lbs/day	Monthly Average Weekly Average
March, 2004	916.5 1058.5	37.6 lbs/day 56.2 lbs/day	Monthly Average Weekly Average
June, 2004	32.7	28 lbs/day	Weekly Average
October, 2004	552.5 201.4	37.5 lbs/day 56.2 lbs/day	Monthly Average Weekly Average
November, 2004	281.4 424.6	37.5 lbs/day 56.2 lbs/day	Monthly Average Weekly Average
February, 2005	221.7 221.7	37.5 lbs/day 56.2 lbs/day	Monthly Average Weekly Average
March, 2005	176.9 716.9	37.5 lbs/day 56.2 lbs/day	Monthly Average Weekly Average
July, 2005	42.1	28.1 lbs/day	Weekly Average
September, 2005	31.3 31.3	18.7 lbs/day 28.1 lbs/day	Monthly Average Weekly Average
December, 2005	76.35	56.2 lbs/day	Weekly Average
January, 2006	486.9	56.2 lbs/day	Weekly Average
March, 2006	1124.9 1124.9	37.5 lbs/day 56.2 lbs/day	Monthly Average Weekly Average
November, 2006	68.4	53.2 lbs/day	Weekly Average
January, 2007	49.35	37.5 lbs/day	Monthly Average
August, 2007	5.25	5 mg/l	Monthly Average
November, 2007	60.49	56.2 lbs/day	Weekly Average

## TOTAL SUSPENDED SOLIDS

<b>Date of Violation</b>	<b>Discharge Violation</b>	<b>Discharge Limit</b>	<b>Days In Violation</b>
January, 2004	3023.9 3023.9	338 lbs/day 507 lbs/day	Monthly Average Weekly Average
March, 2004	1424.20 1644.70	338 lbs/day 507 lbs/day	Monthly Average Weekly Average
October, 2004	8708. 3507.4	337 lbs/day 506 lbs/day	Monthly Average Weekly Average
November, 2004	713.4	506 lbs/day	Weekly Average
February, 2005	412.2	337 lbs/day	Monthly Average
March, 2005	380.5	337 lbs/day	Monthly Average
July, 2005	815.7	506 lbs/day	Weekly Average
September, 2005	338.1	337 lbs/day	Monthly Average
January, 2006	1443.3	506 lbs/day	Weekly Average
February, 2006	2575.7	506 lbs/day	Weekly Average
March, 2006	1278.3 1278.3	337 lbs/day 506 lbs/day	Monthly Average Weekly Average
May, 2006	667.61 667.61	337 lbs/day 506 lbs/day	Monthly Average Weekly Average
November, 2006	1207.4	506 lbs/day	Weekly Average
January, 2008	7435. 7435.	337 lbs/day 506 lbs/day	Monthly Average Weekly Average

## SOLIDS SUSP PERCENT REMOVAL

<b>Date of Violation</b>	<b>Discharge Violation</b>	<b>Discharge Limit</b>	<b>Days In Violation</b>
April, 2004	11.7	65 percent	Monthly Average
July, 2004	52.1	65 percent	Monthly Average

August, 2004	11.7	65 percent	Monthly Average
November, 2004	38.6	65 percent	Monthly Average
June, 2005	56.25	65 percent	Monthly Average
May, 2006	55.0	65 percent	Monthly Average
September, 2007	60.63	65 percent	Monthly Average
November, 2007	52.9	65 percent	Monthly Average
July, 2008	46	65 percent	Monthly Average

### **BOD 5-DAY PERCENT REMOVAL**

<b>Date of Violation</b>	<b>Discharge Violation</b>	<b>Discharge Limit</b>	<b>Days In Violation</b>
August, 2004	80.7	85 percent	Monthly Average
November, 2004	77.3	85 percent	Monthly Average
February, 2005	77.9	85 percent	Monthly Average
July, 2005	72.6	85 percent	Monthly Average
March, 2006	84.8	85 percent	Monthly Average
May, 2006	74.6	85 percent	Monthly Average
September, 2007	78.1	85 percent	Monthly Average
November, 2007	68.0	85 percent	Monthly Average
January, 2008	80.68	85 percent	Monthly Average
April, 2008	65.0	85 percent	Monthly Average
July, 2008	70.0	85 percent	Monthly Average

### **DISSOLVED OXYGEN**

<b>Date of Violation</b>	<b>Discharge Violation</b>	<b>Discharge Limit</b>	<b>Day of Violation</b>
August, 2004	1.80	2 mg/l	Daily Minimum



## FECAL COLIFORM SUMMER

<b>Date of Violation</b>	<b>Discharge Violation</b>	<b>Discharge Limit</b>	<b>Days In Violation</b>
June, 2005	245	200 #100ml	Monthly Geo Mean
July, 2005	1135	200 #100ml	Monthly Geo Mean
September, 2005	900	200 #100ml	Monthly Geo Mean
September, 2007	600	200 #100ml	Monthly Geo Mean

## FECAL COLIFORM WINTER

<b>Date of Violation</b>	<b>Discharge Violation</b>	<b>Discharge Limit</b>	<b>Days In Violation</b>
January, 2006	2600 2600	1000 #100ml 2000 #100ml	Monthly Geo Mean Daily Maximum
May, 2006	3900 3900	1000 #100ml 2000 #100ml	Monthly Geo Mean Daily Maximum
March, 2008	2300 2300	1000 #100ml 2000 #100ml	Monthly Geo Mean Daily Maximum

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<b>Date of Violation</b>	<b>Discharge Violation</b>	<b>Discharge Limit</b>	<b>Days In Violation</b>
October, 2004	4.20	6 SU	Daily Minimum