

October 26, 2010

Certified Mail

Return Receipt Requested

Mr. William Anderson, Chairman
Utilities Board of the City of Tuskegee
P.O. Box 831050
Tuskegee, Alabama 36083

Certified Mail

Return Receipt Requested

Mr. Mark S. Ennis, General Manager
Utilities Board of the City of Tuskegee
P.O. Box 831050
Tuskegee, Alabama 36083

**Re: Notice of Intent to File Suit under the Clean Water Act
Tuskegee South Water Pollution Control Plant
NPDES Permit No. AL0025984
Consent Order No. 07-137-CWP**

Dear Messrs. Anderson and Ennis:

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 Utilities Board of the City of Tuskegee for discharges from the Tuskegee South Water Pollution Control Plant located at Macon County Road No. 67 off U.S. Highway 80 West in Tuskegee, Alabama into Calebee Creek in violation of the Clean Water Act as described herein.

A. History of Previous Violations and Enforcement Actions

After the Utilities Board of the City of Tuskegee reported discharges in violation of the limitations in NPDES Permit No. AL0025984 in November and December 1997 and January, February, and May 1998, the Alabama Department of Environmental Management and the Utilities Board of the City of Tuskegee entered into Consent Order No. 99-019-CWP on November 10, 1998. The Consent Order required that the Board submit a compliance plan and schedule within 90 days.

After the Utilities Board of the City of Tuskegee failed to submit a timely application for reissuance of NPDES Permit No. AL0025984, the Alabama Department of Environmental Management and the Utilities Board of the City of Tuskegee entered into Consent Order No. 02-135-

CWP on March 29, 2002. The Consent Order further required compliance with all discharge limitations of the expired permit and assessed a \$2,000 penalty for past violations.

After the Utilities Board of the City of Tuskegee reported discharges in violation of the limitations in NPDES Permit No. AL0025984 in January, April, July, and September 2004, and April, May, June, July 2005, the Alabama Department of Environmental Management issued a Notice of Violation to the Utilities Board of the City of Tuskegee on September 7, 2005.

After the Utilities Board of the City of Tuskegee reported discharges in violation of the limitations in NPDES Permit No. AL0025984 in September, and October 2005, the Alabama Department of Environmental Management issued a Notice of Violation to the Utilities Board of the City of Tuskegee on November 30, 2005.

After the Utilities Board of the City of Tuskegee reported discharges in violation of the limitations in NPDES Permit No. AL0025984 in January, April, July, and September 2004, and April, May, June, July, August, September, October and November 2005, the Alabama Department of Environmental Management and the Utilities Board of the City of Tuskegee entered into Consent Order No. 07-137-CWP on January 17, 2007. The Consent Order required that the Board submit a compliance plan and schedule within 90 days. The Consent Order required compliance with all discharge limitations in NPDES Permit No. AL0025984 no later than the date for final compliance in the approved compliance plan. The Order further required that the Board submit progress reports in January and July of each year and assessed a \$7,800 penalty for past violations cited in the Order.

On April 11, 2007, the Utilities Board of the City of Tuskegee submitted a compliance plan and schedule to the Alabama Department of Environmental Management providing for completion of construction of treatment plant improvements by June 25, 2010. The Department approved the plan on October 14, 2008.

B. Violations of NPDES Permit No. AL0025984 (January 18, 2007 to March 31, 2010)

Clean Water Act § 505, 33 U.S.C. § 1365, authorizes any citizen to commence a civil action against any person alleged to be in violation of a permit or permit condition under Clean Water Act § 402, 33 U.S.C. § 1342. NPDES Permit No. AL0025984 was issued to the Utilities Board of the City of Tuskegee on April 1, 2005 and continued in effect until March 31, 2010. Subsequent to issuance of Consent Order No. 07-137-CWP, the Utilities Board of the City of Tuskegee committed the following violations:

Pollutant Parameter	Discharge Limit	Discharge Violation	Violation Date(s)	Days in Violation
Carbonaceous Biochemical Oxygen Demand	≥ 85 Percent Removal	82 Percent Removal	Dec 2009	31
		83 Percent Removal	May 2009	31
		84 Percent Removal	Apr 2009	30
		82 Percent Removal	Mar 2009	31
		84 Percent Removal	Feb 2008	28
	≤ 3 mg/L Monthly Average	5.2 mg/L	Nov 2009	30
		7.96 mg/L	Oct 2009	31
		7.66 mg/L	Sep 2009	30
		6.15 mg/L	Aug 2009	31
		5 mg/L	Jul 2009	31
		5.97 mg/L	Jun 2009	30
		9.1 mg/L	May 2009	31
		6.48 mg/L	Nov 2008	30
		4.57 mg/L	Oct 2008	31
		7.57 mg/L	Sep 2008	30
		6.77 mg/L	Aug 2008	31
		5.88 mg/L	Jul 2008	31
		6.38 mg/L	Jun 2008	30
		4.8 mg/L	May 2008	31
		6.61 mg/L	Nov 2007	30
		4.2 mg/L	Oct 2007	31
		5.51 mg/L	Aug 2007	31
		6 mg/L	Jul 2007	31
		4.83 mg/L	Jun 2007	30
		4.83 mg/L	May 2007	31
	≤ 10 mg/L Monthly Average	10.6 mg/L	Dec 2007	31
	≤ 4.5 mg/L Weekly Average	5.4 mg/L	Nov 2009	7
9.31 mg/L		Oct 2009	7	

		8.96 mg/L	Sep 2009	7
		7.6 mg/L	Aug 2009	7
		7.05 mg/L	Jul 2009	7
		7.07 mg/L	Jun 2009	7
		17.47 mg/L	May 2009	7
		8.05 mg/L	Nov 2008	7
		6.09 mg/L	Oct 2008	7
		9.09 mg/L	Sep 2008	7
		8.81 mg/L	Aug 2008	7
		12.3 mg/L	Jul 2008	7
		10.59 mg/L	Jun 2008	7
		5.6 mg/L	May 2008	7
		17.32 mg/L	Dec 2007	7
		8.58 mg/L	Nov 2007	7
		5.51 mg/L	Oct 2007	7
		9.14 mg/L	Aug 2007	7
		8.68 mg/L	Jul 2007	7
		6.58 mg/L	Jun 2007	7
		8.403 mg/L	May 2007	7
	≤ 31.3 lbs/day Monthly Average	36.9 lbs/day	Nov 2009	30
		58.8 lbs/day	Oct 2009	31
		54.47 lbs/day	Sep 2009	30
		41.7 lbs/day	Aug 2009	31
		41.2 lbs/day	Jul 2009	31
		73.3 lbs/day	Jun 2009	30
		115.1 lbs/day	May 2009	31
		132.1 lbs/day	Mar 2009	31
		40.63 lbs/day	Nov 2008	30
		54.2 lbs/day	Sep 2008	30
		50.45 lbs/day	Aug 2008	31

		31.4 lbs/day	Jun 2008	30
		41 lbs/day	Nov 2007	30
		37 lbs/day	July 2007	31
	104 lbs/day Monthly Average	115.5 lbs/day	Jan 2008	31
		46.9 lbs/day Weekly Average	75.99 lbs/day	Oct 2009
	76.3 lbs/day		Sep 2009	7
	52 lbs/day		Aug 2009	7
	132.8 lbs/day		Jul 2009	7
	99.6 lbs/day		Jun 2009	7
	290 lbs/day		May 2009	7
	52.3 lbs/day		Nov 2008	7
	66.6 lbs/day		Sep 2008	7
	102.6 lbs/day		Aug 2008	7
	58.09 lbs/day		Jul 2008	7
	48.3 lbs/day		Jun 2008	7
	56 lbs/day		Nov 2007	7
	53 lbs/day		Jul 2007	7
	47 lbs/day		May 2007	7
	≤ 156 lbs/day Weekly Average		181.3 lbs/day	Mar 2009
		173.9 lbs/day	Dec 2008	7
178 lbs/day		Jan 2008	7	
Pollutant Parameter	Discharge Limit	Discharge Violation	Violation Date(s)	Days in Violation
Chlorine Residual	≤ 0.01 mg/L Daily Maximum	0.04 mg/L	Dec 2007	1
		0.14 mg/L	Aug 2007	1
Pollutant Parameter	Discharge Limit	Discharge Violation	Violation Date(s)	Days in Violation
Fecal Coliform	≤ 200 colonies/100 mL Monthly Average	354 colonies/100 mL	Sep 2009	30
		262 colonies/100 mL	Sep 2008	30
	≤ 1000 colonies/100mL Monthly Average	1807.7 colonies/100 mL	Dec 2007	31

	≤ 2000 colonies/100mL Daily Maximum	3077 colonies/100 mL	Mar 2010	1
		2500 colonies/100 mL	Jan 2010	1
		5503 colonies/100 mL	Dec 2009	1
		23403 colonies/100 mL	Oct 2009	1
		2780 colonies/100 mL	Sep 2009	1
		4717 colonies/100 mL	Aug 2009	1
		4210 colonies/100 mL	Apr 2009	1
		2387 colonies/100 mL	Jan 2009	1
		2217 colonies/100 mL	Sep 2008	1
		15450 colonies/100 mL	Aug 2008	1
		2541 colonies/100 mL	Feb 2008	1
		3967 colonies/100 mL	Jan 2008	1
		108000 colonies/100 mL	Dec 2007	1
		2115 colonies/100 mL	Nov 2007	1
		4772 colonies/100 mL	Aug 2007	1
Pollutant Parameter	Discharge Limit	Discharge Violation	Violation Date(s)	Days in Violation
Total Nitrogen Ammonia (as N)	≤ 0.25 mg/L Monthly Average	0.362 mg/L	Nov 2009	30
		0.484 mg/L	Oct 2009	31
		1 mg/L	Sep 2009	30
		2.98 mg/L	Aug 2009	31
		0.765 mg/L	Jul 2009	31
		0.578 mg/L	Jun 2009	30
		0.642 mg/L	May 2009	31
		0.28 mg/L	Oct 2008	31
		1.7 mg/L	Sep 2008	30
		0.373 mg/L	Aug 2008	31
		3.77 mg/L	Jul 2008	31
		2.78 mg/L	Jun 2008	30
		0.653 mg/L	Nov 2007	30
		1.71 mg/L	Aug 2007	31

		0.624 mg/L	Jul 2007	31
		2.9 mg/L	Jun 2007	30
		0.453 mg/L	May 2007	31
	≤ 2 mg/L Monthly Average	2.85 mg/L	Dec 2007	31
	≤ 0.38 mg/L Weekly Average	0.42 mg/L	Nov 2009	7
		0.747 mg/L	Oct 2009	7
		1.73 mg/L	Sep 2009	7
		4.4 mg/L	Aug 2009	7
		1.52 mg/L	Jul 2009	7
		0.653 mg/L	Jun 2009	7
		1.17 mg/L	May 2009	7
		0.7 mg/L	Oct 2008	7
		2.5 mg/L	Sep 2008	7
		0.91 mg/L	Aug 2008	7
		9.38 mg/L	Jul 2008	7
		6.58 mg/L	Jun 2008	7
		0.82 mg/L	Nov 2007	7
		0.47 mg/L	Oct 2007	7
		3.69 mg/L	Aug 2007	7
		1.52 mg/L	Jul 2007	7
0.526 mg/L		Jun 2007	7	
1.31 mg/L	May 2007	7		
≤ 3mg/L Weekly Average	5.01 mg/L	Dec 2007	7	

	≤ 2.61 lbs/day Monthly Average	3.53 lbs/day	Oct 2009	31
		6.88 lbs/day	Sep 2009	30
		19.2 lbs/day	Aug 2009	31
		7.67 lbs/day	Jul 2009	31
		5.66 lbs/day	Jun 2009	30
		8.7 lbs/day	May 2009	31
		13.3 lbs/day	Sep 2008	30
		17.9 lbs/day	Jul 2008	31
		12.4 lbs/day	Jun 2008	30
		4.12 lbs/day	Nov 2007	30
		9.21 lbs/day	Aug 2007	31
		3.53 lbs/day	Jul 2007	31
		3.11 lbs/day	May 2007	31
	≤ 20.8 lbs/day Monthly Average	25.6 lbs/day	Dec 2007	31
	≤ 3.91 lbs/day Weekly Average	6.34 lbs/day	Oct 2009	7
		10.3 lbs/day	Sep 2009	7
		23.7 lbs/day	Aug 2009	7
		29.4 lbs/day	July 2009	7
		8.98 lbs/day	Jun 2009	7
		21.4 lbs/day	May 2009	7
21.7 lbs/day		Sep 2008	7	
4.33 lbs/day		Aug 2008	7	
43.73 lbs/day		Jul 2008	7	
27.86 lbs/day		Jun 2008	7	
20 lbs/day		Aug 2007	7	
7.9 lbs/day		Jul 2007	7	
9.68 lbs/day	May 2007	7		

	≤31.2 lbs/day Weekly Average	43.1 lbs/day	Jan 2008	7	
		57.96 lbs/day	Dec 2007	7	
Pollutant Parameter	Discharge Limit	Discharge Violation	Violation Date(s)	Days in Violation	
Total Kjeldahl Nitrogen (as N)	0.35 mg/L Monthly Average	1.09 mg/L	Nov 2009	30	
		1.8 mg/L	Oct 2009	31	
		3.45 mg/L	Sep 2009	30	
		4.8 mg/L	Aug 2009	31	
		2.87 mg/L	Jul 2009	31	
		1.77 mg/L	Jun 2009	30	
		2.25 mg/L	May 2009	31	
		1.37 mg/L	Nov 2008	30	
		1.96 mg/L	Oct 2008	31	
		4.42 mg/L	Sep 2008	30	
		2.1 mg/L	Aug 2008	31	
		5.88 mg/L	Jul 2008	31	
		4.49 mg/L	Jun 2008	30	
		0.968 mg/L	May 2008	31	
		2.95 mg/L	Nov 2007	30	
		1.204 mg/L	Oct 2007	31	
		0.84 mg/L	Sep 2007	30	
		2.96 mg/L	Aug 2007	31	
		1.41 mg/L	Jul 2007	31	
		1.67 mg/L	Jun 2007	30	
	1.82 mg/L	May 2007	31		
		≤ 3.8 mg/L Monthly Average	4.42 mg/L	Dec 2007	31
		≤0.52 mg/L Weekly Average	1.3 mg/L	Nov 2009	7
	2.8 mg/L		Oct 2009	7	
	4.39 mg/L		Sep 2009	7	
	7.3 mg/L		Aug 2009	7	

		5.6 mg/L	Jul 2009	7
		4.2 mg/L	Jun 2009	7
		4.53 mg/L	May 2009	7
		1.87 mg/L	Nov 2008	7
		4.25 mg/L	Oct 2008	7
		5.1 mg/L	Sep 2008	7
		3.64 mg/L	Aug 2008	7
		11.76 mg/L	Jul 2008	7
		7.51 mg/L	Jun 2008	7
		1.59 mg/L	May 2008	7
		3.41 mg/L	Nov 2007	7
		1.77 mg/L	Oct 2007	7
		1.26 mg/L	Sep 2007	7
		6.25 mg/L	Aug 2007	7
		4.01 mg/L	Jul 2007	7
		2.1 mg/L	Jun 2007	7
		3.08 mg/L	May 2007	7
	≤ 5.6 mg/L Weekly Average	6.16 mg/L	Dec 2007	7
	≤ 3.6 lbs/day Monthly Average	7.7 lbs/day	Nov 2009	30
		13.4 lbs/day	Oct 2009	31
		23.8 lbs/day	Sep 2009	30
		31.2 lbs/day	Aug 2009	31
		29.7 lbs/day	Jul 2009	31
		21.32 lbs/day	Jun 2009	30
		29.04 lbs/day	May 2009	31
		8.74 lbs/day	Nov 2008	30
		10.89 lbs/day	Oct 2008	31
		31.5 lbs/day	Sep 2008	30
		17.59 lbs/day	Aug 2008	31

		28.14 lbs/day	Jul 2008	31
		20.73 lbs/day	Jun 2008	30
		4.96 lbs/day	May 2008	31
		18 lbs/day	Nov 2007	30
		5.72 lbs/day	Oct 2007	31
		4.15 lbs/day	Sep 2007	30
		15 lbs/day	Aug 2007	31
		7.91 lbs/day	Jul 2007	31
		6.704 lbs/day	Jun 2007	30
		12 lbs/day	May 2007	31
	≤ 5.48 lbs/day Weekly Average	10 lbs/day	Nov 2009	7
		22.3 lbs/day	Oct 2009	7
		27 lbs/day	Sep 2009	7
		39.98 lbs/day	Aug 2009	7
		109.7 lbs/day	Jul 2009	7
		54.9 lbs/day	Jun 2009	7
		75.5 lbs/day	May 2009	7
		12.2 lbs/day	Nov 2008	7
		23.43 lbs/day	Oct 2008	7
		37.1 lbs/day	Sep 2008	7
		41.29 lbs/day	Aug 2008	7
		54.88 lbs/day	Jul 2008	7
		31.83 lbs/day	Jun 2008	7
		7.69 lbs/day	May 2008	7
		27.3 lbs/day	Nov 2007	7
		7.4 lbs/day	Oct 2007	7
		6.25 lbs/day	Sep 2007	7
		35 lbs/day	Aug 2007	7
		22 lbs/day	Jul 2007	7
		8.13 lbs/day	Jun 2007	7

		20 lbs/day	May 2007	7
	≤ 58.6 lbs/day Weekly Average	3329 lbs/day	Mar 2009	7
		65.2 lbs/day	Jan 2008	7
		71 lbs/day	Dec 2007	7
Pollutant Parameter	Discharge Limit	Discharge Violation	Violation Date(s)	Days in Violation
Dissolved Oxygen	≥ 7 mg/L Daily Minimum	6.89 mg/L	Oct 2009	1
		5.61 mg/L	Aug 2009	1
		5.82 mg/L	Jul 2009	1
		5.74 mg/L	Jun 2009	1
		6.11 mg/L	Oct 2008	1
		5.5 mg/L	Aug 2008	1
		6.11 mg/L	Jul 2008	1
		6.45 mg/L	Jun 2008	1
		5.59 mg/L	May 2008	1
		6.83 mg/L	Oct 2007	1
		6.78 mg/L	Sep 2007	1
		5.09 mg/L	Aug 2007	1
		5.3 mg/L	Jul 2007	1
		6.34 mg/L	Jun 2007	1
Pollutant Parameter	Discharge Limit	Discharge Violation	Violation Date(s)	Days in Violation
pH	6.0 s.u. Daily Minimum	5.92 s.u.	Aug 2009	1
	8.5 s.u. Daily Maximum	8.84 s.u.	Mar 2010	1
		8.64 s.u.	Feb 2010	1
		8.62 s.u.	Oct 2008	1
		9.56 s.u.	Aug 2008	1
		9.45 s.u.	Jul 2008	1
		8.55 s.u.	Apr 2008	1
8.78 s.u.	Jan 2008	1		

		8.71 s.u.	Nov 2007	1
		8.97 s.u.	Aug 2007	1
		8.81 s.u.	Jun 2007	1
		8.53 s.u.	May 2007	1
		8.63 s.u.	Mar 2007	1
Pollutant Parameter	Discharge Limit	Discharge Violation	Violation Date(s)	Days in Violation
Total Suspended Solids	≥ 85 Percent Removal	79 Percent Removal	Sep 2008	30
	≤ 30 mg/L Monthly Average	30.2 mg/L	Sep 2008	30
	≤ 45 mg/L Weekly Average	46.8 mg/L	Mar 2010	7
		53.3 mg/L	Oct 2008	7
		74 mg/L	Sep 2008	7
	≤ 469 lbs/day Weekly Average	549.9 lbs/day	May 2009	7
TOTAL VIOLATIONS				4596

C. Discharges Without Permit (April 1, 2010 to Present)

Clean Water Act § 505, 33 U.S.C. § 1365, authorizes any citizen to commence a civil action against any person alleged to be in violation of Clean Water Act § 301(a), 33 U.S.C. § 1311(a). NPDES Permit No. AL0025984 was issued April 1, 2005 and bore an expiration date of March 31, 2010. Ala. Admin. Code R. 335-6-6-.06, 335-6-6-.08(1)(k)4., and 335-6-6-.08(1)(k)8. allow expiring permits to continue in effect if the permittee submits a complete application for reissuance at least 180 days before expiration of the existing permit. The Alabama Department of Environmental Management sent a reminder of this requirement to the Utilities Board of the City of Tuskegee on May 21, 2009. The Alabama Department of Environmental Management received an application for reissuance of NPDES Permit No. AL0025984 from the Utilities Board of the City of Tuskegee on December 24, 2009 – 97 days before expiration of the permit. A new permit has yet to be issued. Accordingly, NPDES Permit No. AL0025984 and the authorization to discharge pollutants expired on March 31, 2010. All discharges after March 31, 2010 are unlawful under Clean Water Act § 301(a), 33 U.S.C. § 1311(a).

Discharge monitoring reports submitted to the Alabama Department of Environmental Management by the Utilities Board of the City of Tuskegee show the following unlawful discharges:

Discharge Dates	Pollutants	Days in Violation
Apr 1, 2010 - Apr 30, 2010	Sewage and Municipal Waste	30
May 1, 2010 - May 31, 2010	Sewage and Municipal Waste	31
Jun 1, 2010 - Jun 30, 2010	Sewage and Municipal Waste	30
Jul 1, 2010 - Jul 31, 2010	Sewage and Municipal Waste	31
Aug 1, 2010 - Aug 31, 2010	Sewage and Municipal Waste	31
TOTAL VIOLATIONS		153

Additional unlawful discharges are likely to have occurred in September and October 2010.

D. Failure to Submit Reports Required by Consent Order Consent Order No. 07-137-CWP.

Clean Water Act § 505, 33 U.S.C. § 1365, authorizes citizens to commence a civil action against any person alleged to be in violation of an order issued by a State with respect to an effluent standard or limitation. Consent Order No. 07-137-CWP required that the Utilities Board of the City of Tuskegee submit progress reports in January and July of each year describing in detail progress towards achieving compliance with the actions presented in the compliance plan. The Alabama Department of Environmental Management's e-File system shows only one progress filed on October 10, 2008.

The maximum penalty authorized by the Clean Water Act is \$37,500 for each violation occurring after January 12, 2009 and \$32,500 for each violation occurring before January 13, 2009. 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. Gwendolyn Keyes Fleming, Regional Administrator
U.S. Environmental Protection Agency-Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, Georgia 30303-3104

Hon. Lance LeFleur, 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