

March 3, 2011

**Certified Mail**  
**Return Receipt Requested**

Hon. Roy Chapman, Mayor  
Town of Millry  
P. O. Box 563  
Millry, Alabama 36558

**Re: Supplemental Notice of Intent to File Suit under the Clean Water Act for Violations of Clean Water Act, NPDES Permit No. AL0051144 and Administrative Order No. 06-064-CWP**

Dear Mayor Chapman:

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 Town of Millry for the violations alleged herein. This notice supplements another notice provided to the Town of Millry on June 18, 2009.

**A. History of Previous Violations and Enforcement Actions**

The Town of Millry has experienced violations of NPDES Permit No. AL0051144 going back as far as 2004. On September 30, 2005, the Alabama Department of Environmental Management issued a Notice of Violation to the Town of Millry. On June 13, 2006, the Alabama Department of Environmental Management issued Consent Order No. 06-064-CWP to the Town of Millry. The Order assessed a penalty of \$4,600 and imposed a schedule requiring compliance by June 12, 2008.

On June 18, 2009, the Conservation Alabama Foundation, Inc. served a Notice of Intent to Sue the Town of Millry for permit and Order violations. On August 17, 2009, the State of Alabama and Alabama Department of Environmental Management filed suit against the Town of Millry. *State v. Town of Millry*, No. CV-2009-900047 (Washington County Cir. Ct., Aug. 17, 2009). That lawsuit remains pending.

**B. Continuing Violations of NPDES Permit No. AL0051144**

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 Town of Millry for discharges of pollutants from the Town of Millry's Lagoon into Mill Creek in violation of the limitations and

conditions of NPDES Permit No. AL0051144 as reported in Discharge Monitoring Reports submitted by the Town of Millry to the Alabama Department of Environmental Management, 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>
Dissolved Oxygen	≥ 4.0 mg/L Daily Minimum	1.7 mg/L	Dec 2009	1
<b>Pollutant Parameter</b>	<b>Discharge Limit</b>	<b>Discharge Violation</b>	<b>Violation Date(s)</b>	<b>Days in Violation</b>
Chlorine, Total Residual	Daily Maximum ≤ 0.07 mg/L	0.27 mg/L	Dec 2010	1
		0.2 mg/L	Oct 2010	1
		2.2 mg/L	Aug 2010	1
		0.11 mg/L	Jul 2010	1
		2.2 mg/L	Jun 2010	1
		0.08 mg/L	May 2010	1
		0.69 mg/L	Jan 2010	1
		0.09 mg/L	Dec 2009	1
		0.08 mg/L	Jun 2009	1
		0.17 mg/L	Feb 2009	1
<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	6.9 mg/L	Jun 2010	30
		8.6 mg/L	May 2010	31
		7.5 mg/L	Nov 2009	30
		13 mg/L	Oct 2009	31
		9.1 mg/L	Sep 2009	30
	≤ 7.5 mg/L Weekly Average	9.2 mg/L	Jun 2010	7
		9.9 mg/L	May 2010	7
		7.7 mg/L	Nov 2009	7
		14 mg/L	Oct 2009	7
		10 mg/L	Sep 2009	7
	≤ 3.5 lbs/day Monthly Average	3.8 lbs/day	Oct 2009	31

	≤ 5.3 lbs/day Weekly Average	14 lbs/day	Dec 2010	7
		16 lbs/day	Nov 2010	7
		9.2 lbs/day	Jun 2010	7
		7.7 lbs/day	Nov 2009	7
		14 lbs/day	Oct 2009	7
		10 lbs/day	Sep 2009	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	≤200 colonies/100 mL Monthly Geom. Mean Jun-Sep	905 colonies/100 mL	Jun 2010	30
		2800 colonies/100 mL	Sep 2009	30
		7000 colonies/100 mL	Aug 2009	31
		560 colonies/100 mL	Jul 2009	31
		240 colonies/100 mL	Jun 2009	30
	≤1000 colonies/100 mL Monthly Geom. Mean Oct-May	1200 colonies/100 mL	May 2010	31
		27640 colonies/100 mL	Oct 2009	31
	≤ 2000 colonies/100 mL Daily Maximum	2300 colonies/100 mL	May 2010	1
		55000 colonies/100 mL	Oct 2009	1
		4400 colonies/100 mL	Sep 2009	1
		7000 colonies/100 mL	Aug 2009	1
		2100 colonies/100 mL	Jul 2009	1
		2700 colonies/100 mL	May 2009	1
<b>Pollutant Parameter</b>	<b>Discharge Limit</b>	<b>Discharge Violation</b>	<b>Violation Date(s)</b>	<b>Days in Violation</b>
Suspended Solids, Total	≤ 90 mg/L Monthly Average	220 mg/L	Apr 2010	30
	≤ 135 mg/L Weekly Average	220 mg/L	Apr 2010	7
	≤ 37.5 lbs/day Monthly Average	94 lbs/day	Apr 2010	30
	≤ 56.2 lbs/day Weekly Average	69 lbs/day	Sep 2010	7
		220 lbs/day	Apr 2010	7

	≥ 65 Percent Removal Monthly Average	57 Percent Removal	Sep 2010	30
		55 Percent Removal	Aug 2010	31
		39 Percent Removal	May 2009	31
<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, Carbonaceous	≤ 20.0 mg/L Monthly Average	42 mg/L	Sep 2010	30
		34 mg/L	Jul 2010	31
	≤ 18.0 mg/L Monthly Average	23 mg/L	Jul 2008	31
	≤ 30.0 mg/L Weekly Average	77 mg/L	Sep 2010	7
		54 mg/L	Jul 2010	7
	≤ 21.3 lbs/day Weekly Average	77 lbs/day	Sep 2010	7
		54 lbs/day	Jul 2010	7
	≥ 85 Percent Removal Monthly Average	36 Percent	Sep 2010	30
		59 Percent	Jul 2010	31
		81 Percent	Apr 2010	30
<b>TOTAL VIOLATIONS</b>				875

### C. Continuing Violations of Administrative Order No. 06-064-CWP

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 Town of Millry for violations of requirements in Administrative Order No. 06-064-CWP, including but not limited to, the following:

Order Paragraph	Requirement	Violation	Days in Violation
E	Town shall comply with permit effluent limitations for fecal coliform; carbonaceous biochemical oxygen demand; carbonaceous biochemical oxygen demand percent removal; total suspended solids; total suspended solids percent removal, not later than June 12, 2008	Failure to comply with permit effluent limitations for fecal coliform, carbonaceous biochemical oxygen demand, carbonaceous biochemical oxygen demand percent removal, total suspended solids, and total suspended solids percent removal from January 1, 2009 to December 31, 2010	604

E	Town shall comply with all other permit effluent limitations (dissolved oxygen; nitrogen, ammonia total (as N); chlorine residual) not later than June 13, 2006	Failure to comply with permit effluent limitations for all other effluent limitations (dissolved oxygen; nitrogen, ammonia total (as N); chlorine residual) from January 1, 2009 to December 2010	271
<b>TOTAL VIOLATIONS</b>			875

**D. Continuing Unpermitted Discharges**

To administratively continue NPDES Permit No. AL0051144 beyond the expiration date of December 31, 2010, the Town of Millry was required to submit a complete and sufficient application for renewal not later than July 4, 2010. No such application was submitted. Accordingly, NPDES Permit No. AL0051144 expired on December 31, 2010 and discharges subsequent to that date were unpermitted and unlawful.

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 Town of Millry for discharges of pollutants from the Town of Millry Lagoon into Mill Creek without an NPDES permit therefor in violation of Clean Water Act § 301, 33 U.S.C. § 1311, including but not limited to, the following:

<b>Pollutant</b>	<b>Violation Dates</b>	<b>Days in Violation</b>
municipal waste/sewage	Jan 2011	31
municipal waste/sewage	Feb 2011	28
<b>TOTAL VIOLATIONS</b>		59

Civil penalties of up to \$37,500 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:

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