



LAW OFFICE OF
DAVID A. LUDDER
A Professional Limited Liability Company



November 4, 2021

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No. 7016 3010 0000 6309 1692

Hon. Isabell Boyd, Mayor

City of Brundidge

P.O. Box 576

Brundidge, AL 36010

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No. 7016 3010 0000 6309 1692

Mr. Willie Wright, City Manager

City of Brundidge

P. O. Box 638

Brundidge, AL 36010-0638

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No. 7020 0090 0000 7624 8333

Mr. Kenneth Marler, Superintendent

City of Brundidge Wastewater Treatment Plant

P. O. Box 638

Brundidge, AL 36010-0638

Re: **Notice of Violation and Intent to File Suit under the Clean Water Act**

Dear Mayor Boyd, and Messrs. Wright and Marler:

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, the Environmental Defense Alliance and Choctawatchee Riverkeeper, Inc., may file suit against the City of Brundidge, for violations of NPDES Permit No. AL0044105 issued by the Alabama Department of Environmental Management pursuant to Alabama's NPDES permit program approved by the U.S.

Environmental Protection Agency under Clean Water Act § 402(b), 33 U.S.C. § 1342(b), and violations of the Clean Water Act § 301(a), 33 U.S.C. § 1311(a).

I. Violations of NPDES Permit AL0044105

Pursuant to § 402(b) of the Clean Water Act, 33 U.S.C. § 1342(b), the Alabama Department of Environmental Management issued NPDES Permit No. AL0044105 authorizing the City of Brundidge, to discharge pollutants from its Wastewater Treatment Plant, located at 500 Clean Water Drive, Brundidge, Alabama, into Whitewater Creek, a tributary of the Pea River, subject to discharge limitations and other conditions.

A. Discharge Limitations

NPDES Permit No. AL00444105 includes specific discharge limitations in Part I, A., 1. and 2. of the permit. The City of Brundidge has discharged pollutants from Outfall 0011 into Whitewater Creek in violation of the discharge limitations of NPDES Permit No. AL0044105 from July 2017 through August 31, 2021 as identified in **Table A** attached hereto. Additional violations may have occurred subsequent to August 2021.

B. Facility Operation and Maintenance

NPDES Permit No. AL00444105 includes a condition in Part II, A. which provides:

Facilities Operation and Maintenance

The Permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Permittee to achieve compliance with the conditions of the permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities only when necessary to achieve compliance with the conditions of the permit.

The City of Brundidge violated the above condition by failing to operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed by the City to achieve compliance with the conditions of NPDES Permit No. AL00444105. This failure

occurred on each of the dates identified in **Table B** attached hereto and resulted in unpermitted and unlawful discharges of pollutants from point sources into waters of the United States as shown in **Table B** attached hereto.

II. Discharges without permit

Clean Water Act § 301(a), 33 U.S.C. § 1311(a), makes it unlawful to discharge pollutants from a point source into waters of the United States without an NPDES issued pursuant to Clean Water Act § 402, 33 U.S.C. § 1342.

The City of Brundidge experienced Sanitary Sewer Overflows that resulted in the discharge of sanitary sewage from point sources into waters of the United States without an NPDES permit in violation of Clean Water Act § 301(a), 33 U.S.C. § 1311(a). These unlawful discharges are described in **Table B** attached hereto.

III. History of ADEM Enforcement Actions

On May 7, 2021, the Alabama Department of Environmental Management issued a Notice of Violation to the City of Brundidge, in which it cited discharge limit violations for the period from September 2019 and April 2021.

On February 15, 2019, the Alabama Department of Environmental Management issued a Notice of Violation to the City of Brundidge, in which it cited discharge limit violations for the period from January 2017 through January 2019.

No further enforcement actions have been taken by the Alabama Department of Environmental Management despite continuing violations.

IV. Sanctions

The Clean Water Act authorizes the federal court to enforce a NPDES permit or condition thereof and the prohibition against unpermitted discharges. Clean Water Act § 505(a), 33 U.S.C. § 1365(a). The court may assess civil penalties up to \$56,460 per day per violation. Clean Water Act §§ 505(a) and 309(d), 33 U.S.C. §§ 1365(a) and 1319(d); Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101-410, Oct. 5, 1990, 104 Stat. 890, as amended by Pub. L. 104-134, title III, § 31001(s)(1), Apr. 26, 1996, 110 Stat. 1321-373; Federal Reports Elimination

Act of 1998, Pub. L. 105–362, title XIII, § 1301(a), Nov. 10, 1998, 112 Stat. 3293; Bipartisan Budget Act of 2015, Pub. L. 114–74, title VII, § 701(b), Nov. 2, 2015, 129 Stat. 599; 40 C.F.R. § 19.4. Each day a violation continues is a separate violation. Violations of monthly average discharge limitations and weekly average discharge limitations are counted as violations for each day of the month and each day of the week, respectively. *See Atlantic States Legal Found. Inc. v. Tyson Foods, Inc.*, 897 F.2d 1128 (11th Cir. 1990). In addition, the Clean Water Act authorizes the award of costs of litigation (including reasonable attorney and expert witness fees) to any prevailing or substantially prevailing party, whenever the court determines that such an award is appropriate. Clean Water Act § 505(d), 33 U.S.C. § 1365(d).

Suit may be avoided if these violations have ceased before the expiration of 60 days following service of this notice. “Service” is defined as the postmark date of this notice. 40 C.F.R. § 135.2(c). Please advise the undersigned of any measures which you may undertake which you contend have permanently abated these violations before suit is filed. Please direct all communications to the undersigned attorneys for the Environmental Defense Alliance and Choctawhatchee Riverkeeper, Inc.

V. Demographics and Environmental Justice

The Environmental Defense Alliance and Choctawhatchee Riverkeeper, Inc. are committed to advancing environmental justice. Communities of color are often exposed to greater amounts of pollution than others. These higher exposures increase the risk of developing cancer, other health ailments, or simply intolerable living conditions, not to mention damage to property and reduced property values.

According to the 2020 Decennial Census, the City of Brundidge has a population of 2,073 persons, of which 74% are people of color. Based on the 2010 U.S. Census and 2014 - 2018 American Community Survey (ACS) 5-year Summary, the U.S. Environmental Protection Agency estimates that 151 persons live within 1.0 mile of the City of Brundidge Wastewater Treatment Plant, of which 36% are people of color.

Sincerely,



David A. Ludder

Attorney for

Environmental Defense Alliance

and Choctawhatchee Riverkeeper Inc.

cc:

Hon. Lance R. LeFleur, Director
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

Hon. Michael S. Regan, Administrator
Mail Code 1101A
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Hon. John Blevins, Acting Regional Administrator
U.S. Environmental Protection Agency - Region 4
61 Forsyth Street SW
Atlanta, Georgia 30303

Environmental Defense Alliance
1116 20th Street South #526
Birmingham, AL 35205-2612
(205) 718-7336

Choctawhatchee Riverkeeper, Inc.
P.O. Box 6734
Banks, AL 36005
(334) 807-1365

TABLE A
DISCHARGE LIMITATION VIOLATIONS
NPDES PERMIT No AL0044105 - City of Brundidge
Location: Brundidge, Pike County, AL 36310
Date Range: 11/1-30/16 to 9/1-30/21

Month Ending	Outfall	Parameter Description	Limit Type	Discharge limit	Discharge Measument	Violation Days
09/30/2021	0011	BOD, carbonaceous [5 day, 20 C]	WKLY AVG	≤ 30 mg/L	46.1 mg/L	7
09/30/2021	0011	BOD, carbonaceous [5 day, 20 C]	MO AVG	≤ 20 mg/L	30.6 mg/L	30
09/30/2021	0011	BOD, carbonaceous [5 day, 20 C]	WKLY AVG	≤ 150 lbs/day	161 lbs/day	7
08/31/2021	0011	BOD, carbonaceous [5 day, 20 C]	WKLY AVG	≤ 30 mg/L	47.1 mg/L	7
08/31/2021	0011	BOD, carbonaceous [5 day, 20 C]	MO AVG	≤ 20 mg/L	32.7 mg/L	31
08/31/2021	0011	BOD, carbonaceous [5 day, 20 C]	WKLY AVG	≤ 150 lbs/day	153 lb/d	7
07/31/2021	0011	BOD, carbonaceous [5 day, 20 C]	WKLY AVG	≤ 30 mg/L	38.3 mg/L	7
07/31/2021	0011	BOD, carbonaceous [5 day, 20 C]	WKLY AVG	≤ 150 lbs/day	165 lb/d	7
07/31/2021	0011	BOD, carbonaceous [5 day, 20 C]	MO AVG	≤ 20 mg/L	23.6 mg/L	31
06/30/2021	0011	BOD, carbonaceous [5 day, 20 C]	WKLY AVG	≤ 150 lbs/day	166 lb/d	7
06/30/2021	0011	BOD, carbonaceous [5 day, 20 C]	WKLY AVG	≤ 30 mg/L	39.9 mg/L	7
06/30/2021	0011	BOD, carbonaceous [5 day, 20 C]	MO AVG	≤ 20 mg/L	24.6 mg/L	30
03/31/2021	0011	BOD, carbonaceous [5 day, 20 C]	WKLY AVG	≤ 150 lbs/day	802 lb/d	7
03/31/2021	0011	BOD, carbonaceous [5 day, 20 C]	MO AVG	≤ 100 lbs/day	412 lb/d	31
03/31/2021	0011	BOD, carbonaceous [5 day, 20 C]	WKLY AVG	≤ 30 mg/L	171 mg/L	7
03/31/2021	0011	BOD, carbonaceous [5 day, 20 C]	MO AVG	≤ 20 mg/L	87.8 mg/L	31
02/28/2021	0011	BOD, carbonaceous [5 day, 20 C]	WKLY AVG	≤ 30 mg/L	78.3 mg/L	7
02/28/2021	0011	BOD, carbonaceous [5 day, 20 C]	MO AVG	≤ 100 lbs/day	295 lb/d	28
02/28/2021	0011	BOD, carbonaceous [5 day, 20 C]	MO AVG	≤ 20 mg/L	56.5 mg/L	28
02/28/2021	0011	BOD, carbonaceous [5 day, 20 C]	WKLY AVG	≤ 150 lbs/day	496 lb/d	7
01/31/2021	0011	BOD, carbonaceous [5 day, 20 C]	WKLY AVG	≤ 30 mg/L	94.3 mg/L	7
01/31/2021	0011	BOD, carbonaceous [5 day, 20 C]	MO AVG	≤ 100 lbs/day	339 lb/d	31
01/31/2021	0011	BOD, carbonaceous [5 day, 20 C]	MO AVG	≤ 20 mg/L	66.5 mg/L	31
01/31/2021	0011	BOD, carbonaceous [5 day, 20 C]	WKLY AVG	≤ 150 lbs/day	497 lb/d	7
07/31/2020	0011	BOD, carbonaceous [5 day, 20 C]	WKLY AVG	≤ 150 lbs/day	186 lb/d	7
07/31/2020	0011	BOD, carbonaceous [5 day, 20 C]	WKLY AVG	≤ 30 mg/L	64.2 mg/L	7
07/31/2020	0011	BOD, carbonaceous [5 day, 20 C]	MO AVG	≤ 20 mg/L	22.3 mg/L	31

Table A (Con't)

Month Ending	Outfall	Parameter Description	Limit Type	Discharge limit	Discharge Measurement	Violation Days
06/30/2020	0011	BOD, carbonaceous [5 day, 20 C]	WKLY AVG	≤ 150 lbs/day	777 lb/d	7
06/30/2020	0011	BOD, carbonaceous [5 day, 20 C]	MO AVG	≤ 100 lbs/day	249 lb/d	30
06/30/2020	0011	BOD, carbonaceous [5 day, 20 C]	MO AVG	≤ 20 mg/L	51 mg/L	30
06/30/2020	0011	BOD, carbonaceous [5 day, 20 C]	WKLY AVG	≤ 30 mg/L	112 mg/L	7
05/31/2020	0011	BOD, carbonaceous [5 day, 20 C]	WKLY AVG	≤ 150 lbs/day	282 lb/d	7
05/31/2020	0011	BOD, carbonaceous [5 day, 20 C]	WKLY AVG	≤ 30 mg/L	43.9 mg/L	7
04/30/2020	0011	BOD, carbonaceous [5 day, 20 C]	MO AVG	≤ 20 mg/L	39.3 mg/L	30
04/30/2020	0011	BOD, carbonaceous [5 day, 20 C]	MO AVG	≤ 100 lbs/day	234 lb/d	30
04/30/2020	0011	BOD, carbonaceous [5 day, 20 C]	WKLY AVG	≤ 150 lbs/day	1132 lb/d	7
04/30/2020	0011	BOD, carbonaceous [5 day, 20 C]	WKLY AVG	≤ 30 mg/L	179 mg/L	7
03/31/2020	0011	BOD, carbonaceous [5 day, 20 C]	WKLY AVG	≤ 150 lbs/day	308 lb/d	7
03/31/2020	0011	BOD, carbonaceous [5 day, 20 C]	MO AVG	≤ 20 mg/L	34.5 mg/L	31
03/31/2020	0011	BOD, carbonaceous [5 day, 20 C]	MO AVG	≤ 100 lbs/day	196 lb/d	31
03/31/2020	0011	BOD, carbonaceous [5 day, 20 C]	WKLY AVG	≤ 30 mg/L	40.2 mg/L	7
02/29/2020	0011	BOD, carbonaceous [5 day, 20 C]	WKLY AVG	≤ 150 lbs/day	351 lb/d	7
02/29/2020	0011	BOD, carbonaceous [5 day, 20 C]	WKLY AVG	≤ 30 mg/L	59.3 mg/L	7
02/29/2020	0011	BOD, carbonaceous [5 day, 20 C]	MO AVG	≤ 20 mg/L	40.3 mg/L	29
02/29/2020	0011	BOD, carbonaceous [5 day, 20 C]	MO AVG	≤ 100 lbs/day	243 lb/d	29
01/31/2020	0011	BOD, carbonaceous [5 day, 20 C]	WKLY AVG	≤ 150 lbs/day	173 lb/d	7
01/31/2020	0011	BOD, carbonaceous [5 day, 20 C]	WKLY AVG	≤ 30 mg/L	39.9 mg/L	7
01/31/2020	0011	BOD, carbonaceous [5 day, 20 C]	MO AVG	≤ 20 mg/L	24.4 mg/L	31
01/31/2020	0011	BOD, carbonaceous [5 day, 20 C]	MO AVG	≤ 100 lbs/day	116 lb/d	31
06/30/2019	0011	BOD, carbonaceous [5 day, 20 C]	MO AVG	≤ 20 mg/L	33.4 mg/L	31
06/30/2019	0011	BOD, carbonaceous [5 day, 20 C]	WKLY AVG	≤ 30 mg/L	77.4 mg/L	7
06/30/2019	0011	BOD, carbonaceous [5 day, 20 C]	WKLY AVG	≤ 150 lbs/day	167 lb/d	7
05/31/2019	0011	BOD, carbonaceous [5 day, 20 C]	WKLY AVG	≤ 150 lbs/day	392 lb/d	7
05/31/2019	0011	BOD, carbonaceous [5 day, 20 C]	WKLY AVG	≤ 30 mg/L	77.3 mg/L	7
05/31/2019	0011	BOD, carbonaceous [5 day, 20 C]	MO AVG	≤ 100 lbs/day	228 lb/d	31
05/31/2019	0011	BOD, carbonaceous [5 day, 20 C]	MO AVG	≤ 20 mg/L	65.1 mg/L	31
04/30/2019	0011	BOD, carbonaceous [5 day, 20 C]	WKLY AVG	≤ 30 mg/L	316 mg/L	7
04/30/2019	0011	BOD, carbonaceous [5 day, 20 C]	MO AVG	≤ 20 mg/L	136 mg/L	30
04/30/2019	0011	BOD, carbonaceous [5 day, 20 C]	MO AVG	≤ 100 lbs/day	427 lb/d	30
04/30/2019	0011	BOD, carbonaceous [5 day, 20 C]	WKLY AVG	≤ 150 lbs/day	1040 lb/d	7

Table A (Con't)

Month Ending	Outfall	Parameter Description	Limit Type	Discharge limit	Discharge Measurement	Violation Days
03/31/2019	0011	BOD, carbonaceous [5 day, 20 C]	MO AVG	≤ 20 mg/L	84 mg/L	31
03/31/2019	0011	BOD, carbonaceous [5 day, 20 C]	WKLY AVG	≤ 30 mg/L	148 mg/L	7
03/31/2019	0011	BOD, carbonaceous [5 day, 20 C]	WKLY AVG	≤ 150 lbs/day	355 lb/d	7
03/31/2019	0011	BOD, carbonaceous [5 day, 20 C]	MO AVG	≤ 100 lbs/day	283 lb/d	31
02/28/2019	0011	BOD, carbonaceous [5 day, 20 C]	WKLY AVG	≤ 150 lbs/day	333 lb/d	7
02/28/2019	0011	BOD, carbonaceous [5 day, 20 C]	MO AVG	≤ 100 lbs/day	231 lb/d	28
02/28/2019	0011	BOD, carbonaceous [5 day, 20 C]	MO AVG	≤ 20 mg/L	84 mg/L	28
02/28/2019	0011	BOD, carbonaceous [5 day, 20 C]	WKLY AVG	≤ 30 mg/L	105 mg/L	7
10/31/2018	0011	BOD, carbonaceous [5 day, 20 C]	WKLY AVG	≤ 30 mg/L	110 mg/L	7
10/31/2018	0011	BOD, carbonaceous [5 day, 20 C]	WKLY AVG	≤ 150 lbs/day	297 lb/d	7
10/31/2018	0011	BOD, carbonaceous [5 day, 20 C]	MO AVG	≤ 20 mg/L	43.5 mg/L	31
10/31/2018	0011	BOD, carbonaceous [5 day, 20 C]	MO AVG	≤ 100 lbs/day	136 lb/d	31
09/30/2018	0011	BOD, carbonaceous [5 day, 20 C]	WKLY AVG	≤ 150 lbs/day	1230 lb/d	7
09/30/2018	0011	BOD, carbonaceous [5 day, 20 C]	WKLY AVG	≤ 30 mg/L	245 mg/L	7
09/30/2018	0011	BOD, carbonaceous [5 day, 20 C]	MO AVG	≤ 100 lbs/day	359 lb/d	30
09/30/2018	0011	BOD, carbonaceous [5 day, 20 C]	MO AVG	≤ 20 mg/L	70.7 mg/L	30
08/31/2018	0011	BOD, carbonaceous [5 day, 20 C]	MO AVG	≤ 20 mg/L	111 mg/L	31
08/31/2018	0011	BOD, carbonaceous [5 day, 20 C]	MO AVG	≤ 100 lbs/day	552 lb/d	31
08/31/2018	0011	BOD, carbonaceous [5 day, 20 C]	WKLY AVG	≤ 150 lbs/day	1520 lb/d	7
08/31/2018	0011	BOD, carbonaceous [5 day, 20 C]	WKLY AVG	≤ 30 mg/L	356 mg/L	7
07/31/2018	0011	BOD, carbonaceous [5 day, 20 C]	WKLY AVG	≤ 150 lbs/day	507 lb/d	7
07/31/2018	0011	BOD, carbonaceous [5 day, 20 C]	MO AVG	≤ 100 lbs/day	412 lb/d	31
07/31/2018	0011	BOD, carbonaceous [5 day, 20 C]	MO AVG	≤ 20 mg/L	114 mg/L	31
07/31/2018	0011	BOD, carbonaceous [5 day, 20 C]	WKLY AVG	≤ 30 mg/L	155 mg/L	7
					Total	1430

TABLE B**SANITARY SEWER OVERFLOWS FROM THE WASTE WATER TREATMENT SYSTEM OF THE CITY OF BRUNDIDGE**

Estimated Start Date	Estimated Start Time	Estimated End Date	Estimated End Time	Location	Receiving Water	Estimated Volume (Gallons)
8/4/2021	1:00 PM	8/4/2021	2:30 PM	Air relief valve on force main in woods just off US Hghway 231	Mims Creek	100,000≤250,000
12/9/2020	11:30 AM	12/9/2020	11:45 AM	U.S.231 South Lift Station	Mims Creek	75,000
8/7/2020	8:00 AM	8/7/2020	8:05 AM	Magnolia Blcd Lift Station	Sandy Run Creek	1,500
5/15/2020	6:55 AM	5/15/2020	7:00 AM	U.S.231	Mims Creek	2,000
3/25/2020	8:30 AM	3/25/2020	8:40 AM	Southern Classic Lift Station-Magnolia Blvd	Sandy Run Creek	1,500
7/18/2019	7:50 AM	7/18/2019	8:00 AM	Graham Lift Station U.S. 231 South	Mims Creek	2,000
7/3/2019	8:15 AM	7/3/2019	11:00 AM	Southern Classic Lift Station-Magnolia Blvd	Sandy Run Creek	1,000
3/19/2019	7:10 AM	3/19/2019	7:20 AM	U.S.231 South Lift Station	Mims Creek	2,500
8/23/2018	8:00 AM	8/23/2018	8:15 AM	U.S.231 South Lift Station	Mims Creek	1,000<10,000
2/26/2018	6:50 AM	2/26/2018	7:00 AM	Graham Lift Station U.S. 231 South	Mims Creek	5,000
2/15/2018	7:30 AM	2/15/2018	7:40 AM	Graham Lift Station U.S. 231 South	Mims Creek	10,000
12/21/2017	10:00 AM	12/21/2017	11:00 AM	In woods behind First Avenue	Mims Creek	5,000
12/21/2017	8:00 AM	12/22/2017	10:00 AM	In woods behind First Avenue	Mims Creek	3,000
12/13/2017	1:30 AM	12/13/2017	1:40 AM	U.S.231 South Lift Station	Beaver Pond	2,000
10/4/2017	10:30 AM	10/4/2017	10:35 AM	U.S.231 South Lift Station	Beaver Pond	1,500
6/22/2017	8:20 AM	6/22/2017	8:25 AM	Graham Lift Station U.S. 231 South	Beaver Pond	2,500
6/8/2017	9:10 AM	6/8/2017	9:15 AM	Graham Lift Station U.S. 231 South	Beaver Pond	1,500
3/14/2017	7:45 AM	3/14/2017	7:55 AM	Graham Lift Station U.S. 231 South	Mims Creek	2,000
1/2/2017	8:30 AM	1/3/2017	10:00 AM	Lawson Stree Station	Sandy Run Creek	10,000
11/12/2016	8:30 AM	11/12/2016	8:45 AM	Graham Lift Station U.S. 231 South	Beaver Pond	2,000