



January 6, 2023

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No. 70163010000063091470

Hon. Clay King, Mayor

City of Samson

16 East Main St.

Samson, AL 36477

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

Dear Mayor King:

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 Samson (f/k/a Town of Samson) for violations of NPDES Permit No. AL0068896 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 AL0068896

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. AL0068896 authorizing the City of Samson, to discharge pollutants from the Samson Lagoon, located on Steele Road, Samson, Alabama, into the Pea River, subject to discharge limitations and other conditions.

A. Discharge Limitations

NPDES Permit No. AL0068896 includes specific discharge limitations in Part I, A., 1. of the permit. The City of Samson has discharged pollutants from Outfall 0011 into the Pea River in violation of the discharge limitations of NPDES Permit No. AL0068896 from December 2017 through December 2022 as identified in **Table A** attached hereto. Additional violations may have occurred subsequent to December 2022.

B. Facility Operation and Maintenance

NPDES Permit No. AL0068896 includes a condition in Part II, A., 1. 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 Samson 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. AL0068896. This failure occurred on each of the dates identified in **Table A** attached hereto and resulted from failure to address existing inflow and infiltration within the sanitary sewer collection system and lack of an adequate disinfection system.

II. History of ADEM Enforcement Actions

On February 29, 2000, the Alabama Department of Environmental Management sent a Notice of Violation to the Town of Samson for exceedences of discharge limitations in NPDES Permit No. AL0068896 for Biochemical Oxygen Demand (monthly average concentration) and Total Suspended Solids (monthly and weekly average concentration) during the period from November 1999 through December 1999.

On February 1, 2005, the Alabama Department of Environmental Management sent a Notice of Violation to the Town of Samson for exceedences of discharge limitations in NPDES Permit No. AL0068896 for Carbonaceous Biochemical Oxygen Demand, Carbonaceous Biochemical Oxygen Demand (monthly average percent removal), and Total Suspended Solids (monthly average percent removal) during the period of July 2004 through September 2004 and November 2004.

On April 20, 2005, the Alabama Department of Environmental Management sent a Warning Letter to the Town of Samson for exceedences of discharge limitations in NPDES Permit No. AL0068896 for Carbonaceous Biochemical Oxygen Demand (monthly average concentration) and Biochemical Oxygen Demand (monthly average percent removal) during February 2005.

On May 8, 2006, the Alabama Department of Environmental Management and Town of Samson entered into Consent Order 06-059-CWP for numerous exceedences of discharge limitations in NPDES Permit No. AL0068896 during the period of January 2004 through November 2005. The Order imposed a civil penalty of \$5,100 for past violations. The Order required that the Town of Samson comply with interim limitations on Total Suspended Solids (monthly average percent removal no less than 40%) and Carbonaceous Biochemical Oxygen Demand (monthly average percent removal no less than 40%). The Order required that the Town of Samson comply with the discharge limitations in NPDES Permit No. AL0068896 for Carbonaceous Biochemical Oxygen Demand, Total Suspended Solids, Carbonaceous Biochemical Oxygen Demand (percent removal), and Total Suspended Solids (percent removal) by May 7, 2008. The Order also requires that the Town of Samson comply with all other limitations in NPDES Permit No. AL0068896 effective May 8, 2006.

On October 22, 2010, the Alabama Department of Environmental Management sent a Notice of Violation to the Town of Samson for exceedences of discharge limitations in NPDES Permit No. AL0068896 for Carbonaceous Biochemical Oxygen Demand (monthly average, weekly average, and monthly average percent removal), Fecal Coliform (monthly geometric mean) and Total Suspended Solids (monthly average percent removal) during the periods of October 2008, December 2008 through February 2009, August 2009, October 2009 through November 2009, February 2010, and April 2010. The Notice of Violation also cited the Town of Samson for failure to submit timely discharge monitoring reports for December 2008, January 2009, March 2009, June 2009, September 2009, December 2009, January 2010, March 2010, and June 2010. Finally, the Notice of Violation advised the Town of Samson that its failure to submit a complete and sufficient application for reissuance of NPDES Permit No. AL0068896 by March 4, 2010 meant that the existing permit would expire on August 31, 2010 and that until a new permit is issued, any discharges occurring after that date would be unpermitted discharges.

On August 12, 2011, the Alabama Department of Environmental Management notified the Town of Samson that it had not submitted Non-compliance Notification Forms for discharge violations occurring from October 2008 through April 2010. In addition, the notice identified exceedences of discharge limitations in NPDES Permit No. AL0068896 during the periods of

October 2008, December 2008 through February 2009, June 2009 through August 2009, October 2009, November 2009, February 2010, April 2010, and March 2011.

On April 14, 2014, the Alabama Department of Environmental Management sent a Notice of Violation to the Town of Samson for exceedences of discharge limitations in NPDES Permit No. AL0068896 for Carbonaceous Biochemical Oxygen Demand (monthly average, weekly average, and percent removal), Total Suspended Solids (monthly average and percent removal), and E. Coli during the months of March 2012, June 2012, August through September 2012, March 2013, June through August 2013, and October through November 2013.

On August 5, 2014, Choctawhatchee Riverkeeper, Inc. served a Notice of Intent to File Suit under the Clean Water Act on the Town of Samson for violations of discharge limitations in NPDES Permit No. AL0068896 and violations of the May 7, 2008 compliance deadline in Consent Order 06-059-CWP.

On August 24, 2017, the State of Alabama and Alabama Department of Environmental Management filed suit in Circuit Court against the Town of Samson for various violations of NPDES Permit No. AL0068896.

On September 6, 2017, the State of Alabama, Alabama Department of Environmental Management, and Town of Samson entered into a Settlement Agreement. The following day, the Circuit Court approved an Order on Settlement Agreement calling for full compliance with permit discharge limitations by September 7, 2019 (two years).

Violations of permit discharge limitations continued after September 6, 2019. See Table A.

On August 24, 2020, the State of Alabama, Alabama Department of Environmental Management, and Town of Samson filed a motion to modify the Order on Settlement Agreement entered on September 7, 2017. On the same day, the Circuit Court granted the motion. The approved modification extended the deadline for compliance with permit discharge limitations to December 30, 2021.

Violations of permit discharge limitations continued after December 31, 2021. See Table A.

No further enforcement action has been taken by the State of Alabama or Alabama Department of Environmental Management despite continuing violations.

III. Sanctions

The Clean Water Act authorizes the federal court to enforce a NPDES permit or condition thereof. Clean Water Act § 505(a), 33 U.S.C. § 1365(a). The court may assess civil penalties up to \$59,973 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 attorney for the Environmental Defense Alliance and Choctawhatchee Riverkeeper, Inc.

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. Daniel Blackman, 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. AL0068896: SAMSON LAGOON, SAMSON, AL 36477
Date Range: 3/01/2018 to 11/31/2022

Month Ending	Outfall	Parameter Description	Limit Type	Discharge Limit	Discharge Measurement	Violation-Days
3/31/2018	0011	BOD, carb-5 day, 20 deg C, percent removal	MO AV MN	>= 85 %	43.3 %	31
3/31/2018	0011	Solids, suspended percent removal	MO AV MN	>= 65 %	20.8 %	31
4/30/2018	0011	BOD, carb-5 day, 20 deg C, percent removal	MO AV MN	>= 85 %	50.2 %	30
6/30/2018	0011	BOD, carbonaceous, 05 day, 20 C	MO AVG	<= 25 mg/L	42.1 mg/L	30
6/30/2018	0011	BOD, carbonaceous, 05 day, 20 C	WKLY AVG	<= 37.5 mg/L	42.1 mg/L	7
6/30/2018	0011	BOD, carbonaceous, 05 day, 20 C	MO AVG	<= 104 lbs/day	131.3 lbs/day	30
6/30/2018	0011	BOD, carb-5 day, 20 deg C, percent removal	MO AV MN	>= 85 %	77.1 %	30
8/31/2018	0011	BOD, carb-5 day, 20 deg C, percent removal	MO AV MN	>= 85 %	73.9 %	31
9/30/2018	0011	BOD, carb-5 day, 20 deg C, percent removal	MO AV MN	>= 85 %	63.8 %	30
10/31/2018	0011	BOD, carb-5 day, 20 deg C, percent removal	MO AV MN	>= 85 %	83.2 %	31
1/31/2019	0011	BOD, carb-5 day, 20 deg C, percent removal	MO AV MN	>= 85 %	78.8 %	31
3/31/2019	0011	BOD, carb-5 day, 20 deg C, percent removal	MO AV MN	>= 85 %	75.8 %	31
4/30/2019	0011	BOD, carb-5 day, 20 deg C, percent removal	MO AV MN	>= 85 %	68.7 %	30
4/30/2019	0011	Solids, suspended percent removal	MO AV MN	>= 65 %	61 %	30
5/31/2019	0011	Solids, suspended percent removal	MO AV MN	>= 65 %	30.9 %	31
6/30/2019	0011	BOD, carbonaceous, 05 day, 20 C	MO AVG	<= 25 mg/L	31.2 mg/L	30
7/31/2019	0011	BOD, carb-5 day, 20 deg C, percent removal	MO AV MN	>= 85 %	81.2 %	31
8/31/2019	0011	BOD, carbonaceous, 05 day, 20 C	MO AVG	<= 25 mg/L	114.6 mg/L	31
8/31/2019	0011	BOD, carbonaceous, 05 day, 20 C	MO AVG	<= 104 lbs/day	122.3 lbs/day	31
8/31/2019	0011	BOD, carbonaceous, 05 day, 20 C	WKLY AVG	<= 37.5 mg/L	114.6 mg/L	7
8/31/2019	0011	BOD, carb-5 day, 20 deg C, percent removal	MO AV MN	>= 85 %	66.5 %	31
9/30/2019	0011	BOD, carb-5 day, 20 deg C, percent removal	MO AV MN	>= 85 %	83 %	30
1/31/2020	0011	BOD, carb-5 day, 20 deg C, percent removal	MO AV MN	>= 85 %	80 %	31
2/29/2020	0011	BOD, carb-5 day, 20 deg C, percent removal	MO AV MN	>= 85 %	68.6 %	28
3/31/2020	0011	BOD, carbonaceous, 05 day, 20 C	MO AVG	<= 104 lbs/day	116.8 lbs/day	31
3/31/2020	0011	BOD, carbonaceous, 05 day, 20 C	MO AVG	<= 25 mg/L	33.1 mg/L	31
3/31/2020	0011	BOD, carb-5 day, 20 deg C, percent removal	MO AV MN	>= 85 %	48 %	31
3/31/2020	0011	Solids, suspended percent removal	MO AV MN	>= 65 %	54.8 %	31
6/30/2020	0011	E. coli	MO AVG	<= 126 #/100mL	890 #/100mL	30
6/30/2020	0011	E. coli	DAILY MX	<= 487 #/100mL	890 #/100mL	1
7/31/2020	0011	E. coli	MO AVG	<= 126 #/100mL	350 #/100mL	31
8/31/2020	0011	E. coli	MO AVG	<= 126 #/100mL	550 #/100mL	31
8/31/2020	0011	E. coli	DAILY MX	<= 487 #/100mL	550 #/100mL	1
9/30/2020	0011	BOD, carb-5 day, 20 deg C, percent removal	MO AV MN	>= 85 %	83.3 %	30

9/30/2020	0011	Solids, suspended percent removal	MO AV MN	>= 65 %	54.7 %	30
1/31/2021	0011	E. coli	MO AVG	<= 548 #/100mL	11500 #/100mL	31
1/31/2021	0011	E. coli	DAILY MX	<= 2507 #/100mL	11500 #/100mL	1
2/28/2021	0011	Solids, suspended percent removal	MO AV MN	>= 65 %	54.7 %	28
3/31/2021	0011	E. coli	MO AVG	<= 548 #/100mL	39000 #/100mL	31
3/31/2021	0011	E. coli	DAILY MX	<= 2507 #/100mL	39000 #/100mL	1
3/31/2021	0011	BOD, carb-5 day, 20 deg C, percent removal	MO AV MN	>= 85 %	63.9 %	31
3/31/2021	0011	Solids, suspended percent removal	MO AV MN	>= 65 %	47.7 %	31
4/30/2021	0011	E. coli	MO AVG	<= 548 #/100mL	1250 #/100mL	30
4/30/2021	0011	BOD, carb-5 day, 20 deg C, percent removal	MO AV MN	>= 85 %	74.4 %	30
5/31/2021	0011	BOD, carb-5 day, 20 deg C, percent removal	MO AV MN	>= 85 %	54.8 %	31
5/31/2021	0011	Solids, suspended percent removal	MO AV MN	>= 65 %	45.2 %	31
6/30/2021	0011	E. coli	MO AVG	<= 126 #/100mL	970 #/100mL	30
6/30/2021	0011	E. coli	DAILY MX	<= 487 #/100mL	970 #/100mL	1
6/30/2021	0011	BOD, carb-5 day, 20 deg C, percent removal	MO AV MN	>= 85 %	62.4 %	30
7/31/2021	0011	E. coli	DAILY MX	<= 487 #/100mL	630 #/100mL	1
7/31/2021	0011	E. coli	MO AVG	<= 126 #/100mL	630 #/100mL	31
7/31/2021	0011	BOD, carb-5 day, 20 deg C, percent removal	MO AV MN	>= 85 %	60 %	31
7/31/2021	0011	Solids, suspended percent removal	MO AV MN	>= 65 %	48.2 %	31
8/31/2021	0011	E. coli	DAILY MX	<= 487 #/100mL	630 #/100mL	1
8/31/2021	0011	E. coli	MO AVG	<= 126 #/100mL	630 #/100mL	31
9/30/2021	0011	E. coli	DAILY MX	<= 487 #/100mL	1700 #/100mL	1
9/30/2021	0011	E. coli	MO AVG	<= 126 #/100mL	1700 #/100mL	30
9/30/2021	0011	Solids, suspended percent removal	MO AV MN	>= 65 %	63.1 %	30
10/31/2021	0011	E. coli	MO AVG	<= 548 #/100mL	4800 #/100mL	31
10/31/2021	0011	E. coli	DAILY MX	<= 2507 #/100mL	4800 #/100mL	1
10/31/2021	0011	BOD, carb-5 day, 20 deg C, percent removal	MO AV MN	>= 85 %	58.3 %	31
11/30/2021	0011	E. coli	DAILY MX	<= 2507 #/100mL	5200 #/100mL	1
11/30/2021	0011	E. coli	MO AVG	<= 548 #/100mL	5200 #/100mL	30
11/30/2021	0011	BOD, carb-5 day, 20 deg C, percent removal	MO AV MN	>= 85 %	77.5 %	30
12/31/2021	0011	E. coli	MO AVG	<= 548 #/100mL	1300 #/100mL	31
1/31/2022	0011	E. coli	MO AVG	<= 548 #/100mL	1200 #/100mL	31
2/28/2022	0011	E. coli	MO AVG	<= 548 #/100mL	1900 #/100mL	28
2/28/2022	0011	BOD, carb-5 day, 20 deg C, percent removal	MO AV MN	>= 85 %	80.6 %	28
3/31/2022	0011	E. coli	MO AVG	<= 548 #/100mL	1200 #/100mL	31
4/30/2022	0011	E. coli	MO AVG	<= 548 #/100mL	1200 #/100mL	30
4/30/2022	0011	BOD, carb-5 day, 20 deg C, percent removal	MO AV MN	>= 85 %	70.5 %	30
4/30/2022	0011	Solids, suspended percent removal	MO AV MN	>= 65 %	34.9 %	30
6/30/2022	0011	BOD, carb-5 day, 20 deg C, percent removal	MO AV MN	>= 85 %	81.3 %	30
7/31/2022	0011	E. coli	MO AVG	<= 126 #/100mL	1160 #/100mL	31

7/31/2022	0011	E. coli	DAILY MX	<=	487 #/100mL	1160 #/100mL	1
8/31/2022	0011	E. coli	DAILY MX	<=	487 #/100mL	5800 #/100mL	1
8/31/2022	0011	E. coli	MO AVG	<=	126 #/100mL	5800 #/100mL	31
9/30/2022	0011	E. coli	MO AVG	<=	126 #/100mL	160 #/100mL	30
TOTAL VIOLATION-DAYS							1973