

Robert B. Wiygul
Partner

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August 26, 2011

Via Certified Mail, Return Receipt Requested

TIN, Inc.
Corporation Service Company
320 Somerulos Street
Baton Rouge, LA 70802-6129

Re: Notice of Intent to File Citizen Suit for Failure to Comply with Water Pollution Control Permit, Clean Water Act and Louisiana State Law; Notice of Intent to Sue for Violation of the Endangered Species Act, Section 9.

Dear Sirs:

This letter constitutes notice pursuant to Clean Water Act § 505(b)(1)(a), 33 U.S.C. § 1365(b)(1)(a), and in accordance with 40 C.F.R. § 135, that the Louisiana Environmental Action Network (“LEAN”) intends to file a citizen suit pursuant to Clean Water Act § 505(a)(1), and the Endangered Species Act Section 1540, against TIN, Inc. as owner of the Temple-Inland Bogalusa Paperboard Mill.

LEAN is taking this action because of the Temple-Inland has failed to comply with permitted discharge limits, Louisiana regulations and Louisiana water quality standards. Temple Inland has also violated Section 9 of the Endangered Species Act by causing the “take” of the Gulf Sturgeon, the inflated heelsplitter mussel, and possibly other listed threatened or endangered species.

I. CLEAN WATER ACT

The Clean Water Act provides that “any citizen may commence a civil action on his own behalf – against . . . (ii) any other governmental instrumentality or agency . . . who is alleged to be in violation of an effluent standard or limitation under this chapter.” CWA § 505(a)(1)(A), 33 U.S.C. § 1365(a)(1)(A).

The Clean Water Act requires a sixty (60) day waiting period upon providing notice of intent to sue. 33 U.S.C. § 1365(b)(1)(A). This waiting period gives the parties a reasonable time to resolve the matter cooperatively, without litigation. We encourage you to contact LEAN through its attorneys during this period.

II. STATEMENT OF VIOLATIONS

A. Clean Water Act

Under § 301 of the Clean Water Act, 33 U.S.C. § 1311, it is unlawful for any person to discharge any pollutant from a point source into waters of the United States, except in compliance with a National Pollution Discharge Elimination System (“NPDES”) permit issued pursuant to § 402 of the Act. 33 U.S.C. § 1342. In Louisiana, issuance of such permits is delegated to the Louisiana Department of Environmental Quality.

Per the attached report, on or about August 13, 2011 there was a discharge of “black liquor” from the Temple Inland Bogalusa Paperboard Mill to the Pearl River. The Paperboard Mill is apparently operating under LPDES permit LA0007901. This permit does not permit the discharge of any substance such as “black liquor” into waters of the state. This discharge therefore constitutes an unpermitted discharge in violation of the relevant statutes. Further, based on the massive fish kill that accompanied this discharge it appears that it contained large amounts of oxygen demanding substances, which would violate the permit’s limitations on biochemical oxygen demand and chemical oxygen demand.

Each day on which any unpermitted discharge of pollutants is a violation of the Clean Water Act. LEAN is informed and believes that the discharge of black liquor may have started some days earlier than August 13 and continued after that date.

B. Endangered Species Act

Section 9 of the ESA prohibits any person from “taking” an endangered species. The term “take” is broadly defined and can include “significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns including breeding, feeding, or sheltering. 50 C.F.R. § 17.3. The unpermitted discharge of pollutants from the Bogalusa Paperboard Mill killed at least 25 Gulf Sturgeon, which is a species listed as threatened under the Endangered Species Act. The Pearl River is also designated as critical habitat for the Gulf Sturgeon. The discharge also is believed to have killed an unknown number of the Inflated Heelsplitter mussel, which is also listed as a threatened species under the ESA.

Because you have no incidental take permit or other legal exception to the take prohibition, you are in violation of Section 9 of the Endangered Species Act. Further, so long as the effects of your discharge result in “take” of the Gulf Sturgeon or the Inflated Heelsplitter, you remain in violation of Section 9 and subject to an action for injunctive relief to prevent further violations.

We believe this notice of intent to sue sufficiently states the grounds for the complaint. LEAN’s suit, when filed, may also address more recent violations and violations that are revealed during the discovery process.

During the sixty-day waiting period prescribed by the Clean Water Act and the Endangered Species Act, we strongly urge you to contact LEAN to discuss this matter further.

The name, address, and phone number of person giving notice is:

Louisiana Environmental Action Network
P.O. Box 66323
Baton Rouge, Louisiana 70896
(225) 928-1315.

Respectfully submitted by:

A handwritten signature in black ink, appearing to be 'RW', with a long, sweeping horizontal line extending to the right.

Robert B. Wiygul

cc: U.S. Attorney General
EPA Administrator
EPA Region VI, Regional Administrator
Administrator, Louisiana DEQ
Secretary, United States Department of the Interior

Temple-Inland

AI 38936

Mr. Jeff Dauzat
Department of Environmental Quality
Southeast Regional Office
201 Evans Road,
Bldg. 4, Suite 420
New Orleans, LA 70123-5230

S/1 - 2572
T 133020
Jeff Dauzat

Dear Mr. Dauzat:

Please find below the consolidated written notification as required by Title 33, Part I, Chapter 39, and LPDES Permit Number LA0007901, Part III, Sections D.5 and D.6c.

1. Temple-Inland, Bogalusa Mill.
401 Avenue U
Bogalusa, La. 70427
LPDES Permit Number LA0007901

2. Notification to State Officials:

- Saturday, August 13, 2011 at 5:23 p.m. call into LDEQ "Hotline" 225.342.1234 leaving detailed message.
- Shortly after called Southeast Regional Office, 504.736.7731, leaving detailed message.
- 6:09 p.m. call personal cell phone of Ross Turlington (LDEQ Southeast - Regional) with no answer.
- 6:43 p.m. Emergency Notification, 225.925.6595, spoke with Tramika and received incident number 11-04-885. Expected return call from LDEQ (not received).

Continued effort to contact agency. 8:25 p.m. Daryl Galloway of LA. Wildlife and Fisheries had been reached. Fish Kill on Pearl River notification was provided (already in assessment). Requested an LDEQ contact. Jeff Dauzat of Southeast Regional Office returned call. Reviewed all notifications with Mr. Dauzat.

Location:

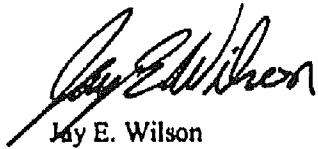
LPDES Permit Number LA0007901, Outfall 001
Temple-Inland, Bogalusa Mill.
401 Avenue U
Bogalusa, La. 70427

3. On Friday, August 12, 2011, a 24 hr composite sample representing Thursday, August 11, 2011 was set up for a 5-day BOD analysis as well as a one day "predicted" BOD analysis. The predicted analysis was completed on Saturday, August 13, 2011 at approximately 1:00 p.m., indicating a BOD discharge in excess of the allowable daily maximum limit. The predicted analysis for the Friday (read Sunday) and Saturday (read Monday) samples suggested similar results. The effluent discharge flow was discontinued at 12:50 p.m. on August 14, 2011 in association with the Mill shutdown.

4. See attached chronological list of events previously submitted to Peggy Hatch via e-mail from Mr. Jay Wilson dated August 14, 2011(Attachment 1). Please note correction of "1:00 p.m.1-Day predicted (5-day) Biochemical Oxygen Demand (BOD) indicates a potential 5-day daily max exceedence" earlier reported to be on August 12, 2011 was actual August 13, 2011.
 - a. Biochemical Oxygen Demand (BOD) daily maximum permit limit 35,610 lbs/day.
 - b. Outfall 001, LPDES Permit LA0007901, discharge into Pearl River.
 - c. Daily Maximum for 5-Day BOD
 5. Biochemical Oxygen Demand.
Amount exceeded demonstrated:
5-day sample concentration > 730 mg/L (sample final D.O. depleted)
Flow: 19.11 mgd
Mass calculations (lbs/day): $730 \text{ mg/l} \times 19.11 \text{ mgd} \times 8.345 \text{ lbs/gal} = >116,000 \text{ lbs/day}$.
 6. Discharge into Pearl River where subject to dilution and biodegradation. Off-site impacts included apparent fish kill.
 7. Mill was shutdown and the effluent discharged stopped. Remediation efforts, which include removal of dead fish from the Pearl River, have been initiated (see Attachment 2).
 8. See Attachment 3, proposed startup plan submitted to LaDEQ on August 17, 2011
 9. NA
 10. The permittee is the owner of the facility operating under LPDES LA0007901
 11. No knowledge of discharges onto the ground or into ground water.
 12. The following agencies were notified: LaDEQ; LSP (incident No. 11-04-885), MsDEQ; La Dept. of Wildlife and Fisheries; Ms Dept of Wildlife, Fisheries and Parks; U.S. Fish and Wildlife.
 13. No other responsible parties have been identified at this time.
 14. It appears at this time that the discharge was preventable.
 15. We know of no confirmed reports of human injuries.
 16. No released materials were recovered.
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In addition to the required information laid out above, during a phone conversation with Celena Cage, LDEQ on August 17, 2011, it was requested to provide the amount of material released. Due to the wastewater test methodologies, an exact number can not be determined as the tests did not meet the necessary validation requirements. Therefore, we are only able to estimate the amount as >116,000 lbs BOD/day.

If you have any questions or need additional information, please feel free to contact Alban Bush at (985) 732-8506 or (985) 516-0375.



Jay E. Wilson
Vice-President Environmental, Health and Safety

Cc: Luther Bennett – Mill Manager
Alban Bush – Environmental Manager

ATTACHMENT 1

To: Peggy Hatch, Secretary of LDEQ
Subject: Pearl River Incident
Date: 8/14/11

Please see below the chronological list of events:

8/9/11

- Approximately 3 a.m. Tuesday, multiple effect evaporator was in upset condition effecting black liquor to process waste water and on to waste water treatment.
- 7:30 a.m. initiated defoamer to mitigate potential foam development.
- 4:30 p.m. initiated pH control/neutralization in Mill
- 6 p.m. initiated microbial ("bug") farm, increased nutrient feed to aerated stabilization basin (ASB).

8/10/11

- Continued bug and nutrient addition, daily microscopic review, dissolved oxygen uptake rate (DOUR), pH, and other traditional monitoring parameters.
- Mobile "bug farm" set up mid-way of aerated stabilization basin.
- Securing Sulfuric Acid for pH control at Waste Water Treatment System.

8/11/11

- Continued bug and nutrient addition, daily microscopic review, dissolved oxygen uptake rate (DOUR), pH, and other traditional monitoring parameters.
- pH neutralization program established through ASB

8/12/11

- Continued bug and nutrient addition, daily microscopic review, dissolved oxygen uptake rate (DOUR), pH, and other traditional monitoring parameters.
- pH neutralization program established through ASB
- Late p.m. retrieved phone message stating few dead fish (shad) seen at Pool's Bluff landing (not an unusual event in the summer).
- Assessed area next morning with daylight.

8/13/11

- Continued bug and nutrient addition, daily microscopic review, dissolved oxygen uptake rate (DOUR), pH, and other traditional monitoring parameters.
- 9:30 a.m. inspection of Pearl River at Richardson's Landing (est 1 mile downstream), and upstream toward Bogalusa Creek. No dead fish seen. Foam was present along an eddy near the bank.
- 10:30 a.m. Pool's Bluff visited; foam present with dead fish.
- Securing boat for river assessment; canceled upon receiving rumors of dead fish further downstream; plan changed for fly over.
- 1:00 p.m. 1-day predicted (5-day) Biochemical Oxygen Demand (BOD) indicates a potential 5-day daily max exceedence.
- 2:20 p.m. flight takes place, fish kill confirmed to Walkeii Bluff along with dark water color. Weather condition deteriorated and returned at approximately 4:30 p.m.
- 5: 23 p.m. call into LDEQ "Hotline" 225.342.1234 leaving detailed message.
- Shortly after called Southeast Regional Office, 504.736.7731, leaving detailed message.
- 6:09 p.m. call personal cell phone of Ross Turlington (LDEQ Southeast Regional) with no answer.

- 6:43 p.m. Emergency Notification, 225.925.6595, spoke with Tramika and received incident number 11-04-885.
- Approximately 6:30 p.m. remainder of paper mill began shutdown.
- Continued effort to contact agency. 8:25 p.m. Daryl Galloway of LA. Wildlife and Fisheries had been reached. Fish Kill on Pearl River notification was provided (already in assessment). Requested an LDEQ contact. Jeff Dauzat of Southeast Regional Office returned call. Reviewed all notifications with Jeff.
- Offered to him as well as Mr. Galloway, any assistance that we can provide.
- Ongoing activities include securing additional aeration delivery, (3-diesel pumps), third party river assessment and monitoring, and working to reach zero discharge of the waste water treatment system.
- 1-day predicted (5-day) Biochemical Oxygen Demand (BOD) indicates another potential 5-day daily max exceedance.

8/14/11

- Continued bug, nutrient addition, daily microscopic review, dissolved oxygen uptake rate (DOUR), pH, and other traditional monitoring parameters.
- 7:17 a.m. call into LDEQ for variance for the 3 diesel pumps. No contact.
- 8:40 a.m. received call from Ms. Peggy Hatch, Secretary LDEQ to whom the above information is being presented. Requesting variance for the 3 diesel pumps through this submission.
- DO measurements this morning indicate approximately 6.5 mg/L upstream and at the point of mill discharge. Downstream of the mill above the dam, we recorded an approximate 1 mg/L drop to approximately 5.5 mg/L.

Over the course of this event, we were able to reduce our effluent flow as follows:

Normal	19 MGD
8/13/11 7:37 p.m.	15 MGD
8/14/11 12:50 p.m.	0 MGD
Currently	0 MGD

At this time, the mill remains down. We are currently taking all measures to bring our effluent treatment system back into normal operating conditions as well as monitor dissolved oxygen concentration in the river, upstream and downstream, of our discharge point.