

November 24, 2021

Miller Hunting Club, LLC
Attn: Benjamin Miller, Registered Agent
Mathias Miller, Registered Officer/Member
1451 W Gum Ave
Eunice, LA 70535
(337) 580-8377
Via certified mail

Re: Notice of Intent to File Clean Water Act Suit Against Miller Hunting Club, LLC

To whom it may concern,

Please be advised, the undersigned represent the interests of Atchafalaya Basinkeeper (Basinkeeper) and the Louisiana Crawfish Producers Association-West (LCPA-West) (hereinafter, “Complainants”) in connection with the above referenced matter. Pursuant to Section 505(b) of the Clean Water Act (33 U.S.C. §1365(b)), please allow this correspondence to serve as notice of intent to file suit against Miller Hunting Club, LLC, for ongoing violations of the Clean Water Act, 33 U.S.C. §§ 1311(a), 1344(f)(2), 1365(a)(1), and for obstructing navigable waterways without a valid permit under Louisiana Civil Code Article 458. Pursuant to Section 505(b), our clients intend to file suit before the Middle District of Louisiana after sixty (60) days have passed from your receipt of this correspondence unless the violations of effluent standards are remedied within that time.

This correspondence is in regard to a location in Pat’s Throat Bayou within Iberville Parish in the Atchafalaya Basin, a pre-existing and formerly navigable waterway, where it has come to our attention that the waterway has been obstructed by fill or spoil material (hereinafter, “obstruction” or “dam”). To the best of our knowledge, the New Orleans District of the U.S. Army Corps of Engineers (the Corps) has not issued a permit authorizing the discharge of fill material obstructing Pat’s Throat Bayou. That omission is the subject of this correspondence.

The Violation

On or about September 29, 2021, Complainants identified an obstruction located at the following approximate coordinates: **30°17’20.7”N, 91°34’30.6”W**, in Pat’s Throat Bayou, east of the Atchafalaya River, south of Straight Bayou, west of Billy Littles Lake, and north of Cow Bayou. The Complainants believe the dam has been present at least since September 29, 2021, and the offending fill remains as of the date of this letter.

Clean Water Act

The Clean Water Act at § 1311(a) prohibits the discharge of any pollutant into jurisdictional waterways and wetlands (such as Pat’s Throat Bayou and their surrounding wetlands) except in compliance with one of the permitting schemes set forth in the Act, including

the discharge program in 33 U.S.C. § 1344. The term “pollutant” includes “dredged spoil,” “rock” and “sand.” *Id.* at § 1362(6). Implementing regulations further define “discharge of fill material” as “the addition of fill material into waters of the United States . . . includ[ing the] . . . [p]lacement of fill that is necessary for the construction of any structure in a water of the United States; the building of any structure or impoundment requiring rock, sand, dirt, or other material for its construction . . .” 33 C.F.R. § 323.2(f).

La. C.C. Art. 458

Louisiana Civil Code Article 458 provides that works built without a lawful permit on public things such as the “bottom of navigable waters . . . that obstruct the public use must be removed at the expense of the persons who build or own them at the insistence of public authorities, or of any person residing in the state.”

To Complainants’ knowledge, Miller Hunting Club, LLC has not received a permit authorizing the placement of fill to construct the impoundment at Pat’s Throat Bayou. Based on the foregoing, Miller Hunting Club, LLC is therefore in violation of § 1311(a) of the Clean Water Act for continuously discharging fill material into jurisdictional waters, and La. C.C. Art. 458 for obstructing public use of navigable waters without a lawful permit. This violation is ongoing as Miller Hunting Club, LLC has neither corrected nor remediated the illegal discharge of fill material and the unpermitted impoundment continues to obstruct water flow, drainage and navigability.

The Clean Water Act authorizes any citizen to commence a civil action against any person alleged to be in violation of an effluent standard or limitation (i.e., any unlawful act under § 1311(a)) under the Act. 33 U.S.C. § 1365(a). The Act authorizes a federal district court to issue injunctions to enforce § 1311(a) and to apply appropriate civil penalties. *Id.* Between September 29, 2021, when Complainants first observed that Miller Hunting Club, LLC was discharging fill material damming Pat’s Throat Bayou, a jurisdictional and navigable water of the United States, and the present, Miller Hunting Club, LLC is liable for up to \$56,460 for each day of violation. 33 U.S.C. § 1319(d).¹

The violation set forth in this Notice of Intent to File Suit adversely impacts Basinkeeper and LCPA-West members’ use and enjoyment of the effected waterways, which include Pat’s Throat Bayou and adjacent waters in the Billy Little Lakes area in the Basin as far north as I-10. Pat’s Throat is a very important access route from the Atchafalaya River into the Billy Little Lakes area of the Atchafalaya Basin east of the Atchafalaya River; it has been used for navigation and access to adjacent waterways by Cajun fishermen for at least a century. However, navigation is now completely impounded. Members of Atchafalaya Basinkeeper and LCPA-West recreate and commercially fish in these areas. Their use and enjoyment of the Basin and specified waterways are specifically impaired by Miller Hunting Club, LLC’s violations of the Clean Water Act and Louisiana Civil Code.

¹ The statutory civil monetary penalty levels enumerated in the Act apply to all violations which occur or occurred after November 2, 2015, where the penalties are assessed on or after December 23, 2020.

Furthermore, additional adverse impacts are foreseeable if the violation is not remedied. A significant amount of river water flows through Pat's Throat into the Billy Little Lakes area. The impoundment increases flooding of the area which adversely impacts tree growth in the surrounding forests. The impoundment at Pat's Throat will also increase sedimentation distribution in the area, reduce water flow and adversely modify the hydrology of the area if the impoundment is not removed before the high-water season.

The names, addresses and phone numbers of the Complainants giving notice are:

Atchafalaya Basinkeeper
P.O. Box 410
Plaquemine, LA 70765
(225) 685-9439

Louisiana Crawfish Producers Association-West
P.O. Box 694
Henderson, LA 70517
(337)-257-3331

The Complainants are represented in this matter by David Brown, Esq. and Misha Mitchell, Esq., whose contact information appears below.

If you have any questions concerning this Notice or the aforementioned violations, or if you believe any portion to be in error, please contact the undersigned counsel, David Brown, at the address and phone number listed below. During the notice period, the Complainants are available to discuss this matter to reach a cooperative resolution of the violations listed in this Notice. However, if you seek to institute negotiations in lieu of civil action, please contact the undersigned as soon as possible as we do not intend to delay instituting civil action upon expiration of the notice period.

Best Regards,

s/ Misha L. Mitchell

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*Attorneys for Atchafalaya Basinkeeper and
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CC

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