

Atchafalaya Basinkeeper  
P.O. Box 410  
Plaquemine, LA 70765



Office: (225) 685-9439  
Fax: (225) 685-2499  
www.basinkeeper.org

September 29, 2017

Enterprise Products Operating, LLC  
Through its agent for service of process:  
C T CORPORATION SYSTEM  
3867 PLAZA TOWER DR.  
BATON ROUGE, LA 70816  
*Via certified mail*

*Re: Notice of Intent to File Clean Water Act Suit against Enterprise Products Operating, LLC*

To whom it may concern,

Please be advised, the undersigned represents the interests of Atchafalaya Basinkeeper and Gulf Restoration Network (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 Enterprise Products Operating, LLC, for ongoing violations of the Clean Water Act, 33 U.S.C. §1365(a)(1), and for obstructing navigable waterways/drains without a valid permit under Louisiana Civil Code Article 458. Pursuant to Section 505(b), my clients intend to file suit before the Federal Western District of Louisiana after sixty (60) days have passed from your receipt of this correspondence unless the violations of effluent standards and limitations are remedied within that time.

This correspondence is in regards to the "65-Mile Enterprise Products 10-Inch RGP Pipeline Project- Ascension, Iberville, and St. Martin Parishes, Louisiana", a pipeline presently under construction, or which may have recently been completed. Enterprise is constructing the pipeline under U.S. Army Corps of Engineers Permit No. MVN-2015-01668-WII. It has come to our attention that over the past several months, in connection with the construction of the referenced pipeline, Enterprise has continuously or intermittently discharged fill material into seven waterways in the Atchafalaya Basin without a proper permit or in violation of its permit. These unpermitted discharges violate the Clean Water Act and Louisiana law.

### *Documents Submitted for Review*

Attached for your review are the following:

- (1) Photographs of the areas in question;
- (2) Aerial photography of the pipeline with markers indicating where the photographs were taken and a chart of GPS coordinates corresponding to the locations where the photographs were taken;
- (3) Copy of the “Proposed Jurisdictional Determination of Waters of the United States” prepared by Atkins North America, Inc. on behalf of Enterprise in connection with the permit application process; and
- (4) Copy of USACE Permit No. MVN-2015-01668-WII.

### *Effluent Standards*

The Corps issued an individual permit to Enterprise on May 1, 2017, authorizing Enterprise “to perform work in accordance with the terms and conditions” specified in the permit; specifically to “[c]lear, excavate and place earthen material to conduct trenching operations, horizontal directional drills and construct temporary workspaces, all to install and maintain approximately 65 miles of 10-inch refinery-grade propylene (RGP) pipeline.” See Permit No. MVN-2015-01668-WII at 1.

The permit includes the following special conditions:

9. The permitted activity must not interfere with the public’s right of free navigation on all navigable waters of the United States;
12. The authorized activities must not cause more than minimal changes to the existing hydrologic conditions and flow characteristics in wetland areas or cause more than minimal degradation of water quality of any stream. Work in wetlands must not excessively impede or increase natural drainage resulting in unnatural ponding or adjoining properties. **All drainage areas must remain open during and after construction of the pipeline.** (emphasis added);
15. Any damage to streams, streambanks, ditches, berms, ridges, levees, spoil banks, etc. must be repaired and restored to pre-project conditions. This includes hauling in appropriate material and stabilizing damaged areas if necessary. If any hydrologic connections are created from equipment moving across shorelines or banklines, these areas must be immediately stabilized and restored to pre-project conditions by hauling in appropriate fill material if necessary.

17. The permittee shall limit mechanized clearing, grading, dredging and filling to those areas shown within specified construction rights-of-way(s) and identified temporary work spaces. Timber and other woody vegetation associated with ROW construction shall either be cut and hauled to a non-wetland location, or if not achievable, cut, chipped and broadcast to the greatest extent within the pipeline ROW at a height not to exceed approximately 4 inches in jurisdictional wetlands and/or to an elevation which would not degrade or impact existing wetlands. There shall be no stacking of chips, stockpiling, windrowing, and/or burning of any woody vegetation within jurisdictional wetlands inside or outside of the permitted ROW.
18. As to avoid temporary disruption and impediment to natural watercourses or hydrologic exchange within the area during construction, the permittee shall maintain an approximate 50 foot gap for every 500 feet of temporary side cast material resulting from pipeline trench excavation activities. Gap locations and intervals can be modified, added, or substituted, as to account for low-lying areas and natural water exchange conduits and/or provided that the altered locations or dimensions still suitably maintain normal hydrologic flows within the area, during the specific time of construction.

*See Permit* at pp. 4-5; *see also* special conditions 19, 21 and 22 (discussing siltation and debris control in the project as well as Enterprise's duties upon completion of permanent and temporary work).

### **Description of Discharges**

We write in regards to seven specific locations where pre-existing perennial, intermittent and ephemeral waterways have been "plugged" by fill or spoil material from Enterprise's pipeline construction. At this point in time, it is unclear whether these waterways were plugged with permanent or temporary fill/spoil, but as noted herein, under the terms of Enterprise's permit, either circumstance is impermissible. Under any circumstance, the offending fill/spoil remains as of the date of this letter.

There are seven individual locations where plugs occur. For your reference, we have numbered them 1 through 7. Each plug occurs at a pre-existing perennial, intermittent and/or ephemeral waterway which was recorded by Atkins while surveying the pipeline right-of-way prior to construction. Thus, Enterprise knew the waterways existed prior to construction. The following is a break-down of information on each Plug:

- Plug 1- Photo taken at Lat 30.186153/ Long -91.669278. This plug occurs at Atkins map identification waterway No. S-171- See Atkins Jurisdictional Determination Report at 4-12; Atkins Report Appendix "A", Figure 2, Sheet

61 of 70; and Drawings attached to Permit No. MVN-2015-01668-WII at Sheet 63 of 88

- Plug 2- Photos taken at Lat 30.183972/ Long -91.664886. This plug occurs at Atkins map identification waterway No. S-166- See Atkins Jurisdictional Determination Report at 4-12; Atkins Report Appendix “A”, Figure 2, Sheet 61 of 70; and Drawings attached to Permit No. MVN-2015-01668-WII at Sheet 63 of 88
- Plug 3- Photo taken at Lat 30.182992/ Long -91.663519. This plug occurs at Atkins map identification waterway No. S-165- See Atkins Jurisdictional Determination Report at 4-11; Atkins Report Appendix “A”, Figure 2, Sheet 61 of 70; and Drawings attached to Permit No. MVN-2015-01668-WII at Sheet 63 of 88
- Plug 4- Photo taken at Lat 30.185297/ Long -91.667825. This plug occurs at Atkins map identification waterway No. S-169- See Atkins Jurisdictional Determination Report at 4-12; Atkins Report Appendix “A”, Figure 2, Sheet 61 of 70; and Drawings attached to Permit No. MVN-2015-01668-WII at Sheet 63 of 88
- Plug 5- Photo taken at Lat 30.185897/ Long -91.667825. This plug occurs at Atkins map identification waterway No. S-170- See Atkins Jurisdictional Determination Report at 4-12; Atkins Report Appendix “A”, Figure 2, Sheet 61 of 70; and Drawings attached to Permit No. MVN-2015-01668-WII at Sheet 63 of 88
- Plug 6- Photo taken at Lat 30.187128/ Long -91.669597. This plug occurs at Atkins map identification waterway No. S-173- See Atkins Jurisdictional Determination Report at 4-12; Atkins Report Appendix “A”, Figure 2, Sheet 61 of 70; and Drawings attached to Permit No. MVN-2015-01668-WII at Sheet 63 of 88
- Plug 7- Photo taken at Lat 30.190831/ Long -91.675361. This plug occurs at Atkins map identification waterway No. S-176- See Atkins Jurisdictional Determination Report at 4-12; Atkins Report Appendix “A”, Figure 2, Sheet 62 of 70; and Drawings attached to Permit No. MVN-2015-01668-WII at Sheet 64 of 88

In addition to the seven waterways impacted by Plugs 1-7, the Atkins Report indicates that between the Atchafalaya Main Channel and the Western Guide Levee, the surveyors located twenty-eight (28) individual water courses crossing the proposed right-of-way. To the extent that any of these

watercourses have suffered the same fate as those courses blocked by Plugs 1-7, demand is made herein for restoration of the same to pre-project conditions.

Enterprise's permit does not authorize the discharge of fill/spoil material into the watercourses adversely impacted by Plugs 1-7 referenced herein. In fact, it expressly precludes this. Based on the foregoing, Enterprise has violated and continues to violate the Clean Water Act and La. C.C. Art. 458 by discharging and maintaining fill/spoil material from pipeline construction into the above referenced waterways and wetlands of the Atchafalaya Basin. These violations continue as Enterprise has not corrected or remediated these violations and continues to obstruct water flow, drainage and navigability, without a proper permit or in violation of its existing permit, as described herein.

Among the blocked waterways are many canals, bayous and lakes both upstream and downstream of the pipeline right-of-way that will be affected if the violations continue. The following bayous, canals and lakes are among those potentially affected by these ongoing violations: Bay Tony, Ha Ha Bay, Bay Barrone, Bayou Leon, Oak Ridge, Bayou Cocodrie, Bayou Larose and Bayou de Plomb,

In addition to the foregoing, the Enterprise pipeline right-of-way is littered with branches and debris left behind by right-of-way clearing performed by Enterprise or on its behalf. This debris has naturally caused damming throughout the watercourses which traverse the right-of-way, blocking the flow of water, drainage and navigability through and around the pipeline corridor, all in violation of Enterprise's permit. Complainants further demand that Enterprise take all appropriate action to remedy the problems caused by branches and debris scattered throughout the pipeline corridor in violation of its permit.

The violations set forth in this Notice of Intent to File Suit adversely impact Atchafalaya Basinkeeper and Gulf Restoration Network members' use and enjoyment of the effected waterways as well as the waterbodies adversely impacted outside of the pipeline corridor. Members of Atchafalaya Basinkeeper recreate and commercially fish in these areas. Their use and enjoyment of the Basin and specified waterways are specifically impaired by Enterprise Products Operating, LLC's violations of the Clean Water Act and Louisiana Civil Code.

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

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

Gulf Restoration Network  
P.O. Box 2245  
New Orleans, LA 70176  
(504) 525-1528

The Complainants are represented in this matter by Atchafalaya Basinkeeper staff attorney Misha Mitchell, 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, Misha Mitchell, 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,



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Misha Mitchell, SBN: 37506  
Atchafalaya Basinkeeper, *Staff Attorney*  
P.O. Box 410  
Plaquemine, LA 70765  
Phone: (225) 692-1133  
Email: [Basinkeeperlegal@gmail.com](mailto:Basinkeeperlegal@gmail.com)  
*Counsel for Atchafalaya Basinkeeper and  
Gulf Restoration Network*

Cc:

*Via Regular Mail*

Samuel Coleman, P.E.  
Regional Administrator  
EPA Region 6  
Fountain Place 12<sup>th</sup> Floor, Suite 1200  
1445 Ross Ave, Suite 1200  
Dallas, TX 75202-2733

*Via Regular Mail*

Scott Pruitt, Administrator  
U.S. EPA Headquarters  
Ariel Rios Building  
1200 Pennsylvania Ave, N.W.  
Mail Code 1101A  
Washington, D.C. 20460

*Via Regular Mail*

Chuck Carr Brown, Ph. D., Secretary

Louisiana Department of Environmental Quality  
P.O. Box 4301  
Baton Rouge, LA 70821-4303

*Via Regular Mail*

Colonel Michael N. Clancy, New Orleans District Commander  
United States Army Corps of Engineers – New Orleans Division  
7400 Leake Avenue  
New Orleans, LA 70118

*Via Regular Mail*

J. Grant Barber, Atkins North America, Inc. (Agent)  
909 ESE Loop 323, Suite 520  
Tyler, TX 75701