

March 3, 2010

Certified Mail
Return Receipt Requested
& Electronic Mail

Hon. Lisa P. Jackson, Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Hon. A. Stanley Meiburg, Acting Regional Administrator
U.S. Environmental Protection Agency-Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, Georgia 30303-3104

Re: **Petition to Rescind Determination that the Perry County Associates, LLC Landfill is Acceptable for the Receipt of CERCLA Waste - Amendment No. 2**

Dear Ms. Jackson and Mr. Meiburg:

This letter amends the Petition to Rescind Determination that the Perry County Associates, LLC Landfill is Acceptable for the Receipt of CERCLA submitted to the U.S. Environmental Protection Agency (EPA) on December 7, 2009 and amended on February 15, 2010.

On December 22, 2008, approximately 5.4 million cubic yards of coal ash were released into the environment from the TVA Kingston Fossil Fuel Plant in Roane County, Tennessee. Such coal ash contains constituents such as arsenic, cadmium, chromium, copper, lead, mercury, nickel, selenium and zinc which are “hazardous substances” as defined by the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) § 101(14), 42 U.S.C. § 9601(14). Pursuant to an Administrative Order and Agreement on Consent issued by the EPA under CERCLA §§ 106(a) and 107, 42 U.S.C. §§ 9606(a) and 9607, on May 11, 2009 to implement removal and remedial actions under CERCLA § 104, 42 U.S.C. § 9604, approximately 3 million cubic yards of ash being removed from the Emory River in Tennessee will be disposed of in the Perry County Associates Landfill in Uniontown, Alabama .

CERCLA § 121(d)(3), 42 U.S.C. § 9621(d)(3), requires that “[i]n the case of any removal or remedial action involving the transfer of any hazardous substance or pollutant or contaminant

offsite, such hazardous substance or pollutant or contaminant shall only be transferred to a facility which is operating in compliance with . . . all applicable State requirements.” Pursuant to CERCLA § 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440, on January 16, 2008, EPA “made an affirmative determination of acceptability for the receipt of [CERCLA] wastes at the Perry County Associates Landfill (PCA Landfill) located along Cahaba Road at Route 2, Box 110A in Uniontown, Alabama.” This determination was based on representations by the Alabama Department of Environmental Management that the landfill “does not *currently* have any relevant violations . . .” (Emphasis added). EPA noted that this determination is subject to rescission.

In the December 7, 2009 Petition, it was alleged that Perry County Associates, LLC was in violation of applicable State requirements regarding the discharge of air contaminants (odors) and the unpermitted discharge of pollutants into Rice Creek, through the Marion Wastewater Treatment Plant. In the February 15, 2010 amendment to the Petition, it was alleged that Perry County Associates, LLC was in violation of applicable State requirements regarding the unpermitted discharge of pollutants into the Tombigbee River, through the Demopolis Waterworks and Sewer Board Wastewater Treatment Plant. In this amendment to the Petition, it is alleged that Perry County Associates, LLC is in violation of applicable State requirements regarding the introduction of pollutants into the Demopolis Waterworks and Sewer Board Wastewater Treatment Plant that have caused “pass through” or “interference.”

Perry County Associates, LLC violation of Ala. Admin. Code r. 335-6-5-.03(1)

Ala. Admin. Code r. 335-6-5-.03(1) provides:

An industrial user, whether or not the user is subject to other categorical pretreatment standards or any national, state, or local pretreatment requirements, shall not introduce into publicly or privately owned treatment works any pollutant(s) which, alone or in conjunction with a discharge or discharges from other sources, cause pass through or interference . . .

Ala. Admin. Code r. 335-6-5-.02(w) provides:

“Interference” means inhibition or disruption of the treatment processes or operations of a “publicly or privately owned treatment works” which contributes to a violation of any requirement of its “NPDES” permit or causes damage to any part of the collection, treatment, and disposal system; . . .

Ala. Admin. Code r. 335-6-5-.02(dd) provides:

“Pass Through” means that a pollutant(s) introduced into a “publicly or privately owned treatment works” by an “industrial discharger” exits into a “water of the state” in quantities or concentrations which, alone or in conjunction with one or more other discharges, is a cause of a violation of the “NPDES Permit” issued to the treatment

works or is a cause of a violation of a state water quality standard or is a cause of an increase in the duration or magnitude of a violation of the permit or water quality standard;

Perry County Associates, LLC has been introducing pollutants contained in leachate generated at the Perry County Associates Landfill, into the Demopolis Water Works and Sewer Board Wastewater Treatment Plant. These introductions were intermittent until approximately December 7, 2009, when Perry County Associates, LLC commenced introducing pollutants into the Wastewater Treatment Plant on a regular basis, and eventually on a near daily basis. Indeed, Perry County Associates, LLC is seeking a permit to introduce 50,000 gallons of leachate per day (average) into the Demopolis Water Works and Sewer Board Wastewater Treatment Plant.

In its February 19, 2010 revised application for an NPDES permit, the Demopolis Water Works and Sewer Board reported that the leachate introduced by Perry County Associates, LLC into the Wastewater Treatment Plant included “[h]igh ammonia levels [that] have increased power costs and intermitent [sic] permit excursions.” These permit excursions have included violations of monthly average and weekly average mass and concentration limitations on “Nitrogen, Ammonia, Total (as N)” as reflected in Discharge Monitoring Reports submitted to the Alabama Department of Environmental Management by the Demopolis Water Works and Sewer Board. Thus, Perry County Associates, LLC has introduced pollutants into the Demopolis Water Works and Sewer Board Wastewater Treatment Plant that have caused interference or pass through in violation of Ala. Admin. Code r. 335-6-5-.03(1).

Perry County Associates, LLC violation of Ala. Admin. Code r. 335-6-5-.05(1)

Ala. Admin. Code r. 335-6-5-.05(1) provides:

All industrial users shall comply with the requirements of this chapter and all prohibitions listed in 40 CFR Section 403.5.

40 C.F.R. § 403.5(a) provides:

General prohibitions. A User may not introduce into a POTW any pollutant(s) which cause Pass Through or Interference. These general prohibitions and the specific prohibitions in paragraph (b) of this section apply to each User introducing pollutants into a POTW whether or not the User is subject to other National Pretreatment Standards or any national, State, or local Pretreatment Requirements.

40 C.F.R. § 403.3(k) provides:

The term Interference means a Discharge which, alone or in conjunction with a discharge or discharges from other sources, both:

(1) Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and

(2) Therefore is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation) .

...

40 C.F.R. § 403.3(p) provides:

The term Pass Through means a Discharge which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation).

Perry County Associates, LLC has been introducing pollutants contained in leachate generated at the Perry County Associates Landfill, into the Demopolis Water Works and Sewer Board Wastewater Treatment Plant. These introductions were intermittent until approximately December 7, 2009, when Perry County Associates, LLC commenced introducing pollutants into the Wastewater Treatment Plant on a regular basis, and eventually on a near daily basis. Indeed, Perry County Associates, LLC is seeking a permit to introduce 50,000 gallons of leachate per day (average) into the Demopolis Water Works and Sewer Board Wastewater Treatment Plant.

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Perry County Associates LLC Landfill is not operating in compliance with Ala. Admin. Code R. 335-6-5-.03(1) and 335-6-5-.05(1). Accordingly, the January 16, 2008 determination of acceptability granted by EPA under CERCLA § 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440 should be rescinded.

Sincerely,



David A. Ludder
Attorney for Petitioners