

December 7, 2009

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**

Dear Ms. Jackson and Mr. Meiburg:

This is a Petition to rescind the determination of acceptability for the receipt and disposal of hazardous substances granted by the U.S. Environmental Protection Agency (EPA) to the Perry County Associates, LLC Landfill in Uniontown, Alabama on January 16, 2008. This Petition is submitted on behalf of Maurice Johnson, who resides at Route 2, Box 125, Uniontown, Alabama; Bennie Carter, who resides at Route 2, Box 113A, Uniontown, Alabama; Della Dial, who resides at Route 2, Box 111, Uniontown, Alabama; Jerry Lee and Cynthia Thomas Holmes, who reside at Route 2, Box 113B, Uniontown, Alabama; Ruby Lee Holmes, who resides at Route 2, Box 114A, Uniontown, Alabama; Rev. James R. and Ella White Murdock, who reside at Route 2, Box 122C, Uniontown, Alabama; Dorothy Tucker, who resides at Route 2, Box 114AA, Uniontown, Alabama; Irene Young, who resides at 705 Moore Street, Marion, Alabama; Ernie and Cynthia Bagley, who reside at 706 Moore Street, Marion, Alabama; and Jackie and Katherine Fike, who reside at 707 Moore Street, Marion, Alabama.

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 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, LLC Landfill. Approximately 560,000 tons of coal ash had been disposed of at the Perry County Associates, LLC Landfill by mid-September, 2009. 9,000 cubic yards of coal ash are expected to be disposed of daily for the next 15 months.

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.

The Perry County Associates, LLC Landfill is not operating in compliance with the Alabama Code and Alabama Administrative Code as described below.

Perry County Associates, LLC violation of Alabama Admin. Code Chap. 335-3-1

Ala. Admin. Code R. 335-3-1-.08 provides:

No person shall permit or cause air pollution, as defined in Rule 335-3-1-.02(1)(e) of this Chapter by the discharge of any air contaminant for which no ambient air quality standards have been set under Rule 335-3-1-.03(1).

"Air Pollution" means “the presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as are, or tend to be, injurious to human health or welfare, animal or plant life, or property, or would interfere with the enjoyment of life or property . . .” Ala. Admin. Code R. 335-3-1-.02(1)(e). "Air Contaminant" means “any solid, liquid, or gaseous matter, any odor, or any combination thereof, from whatever source.” Ala. Admin. Code R. 335-3-1-.02(1)(d). "Odor" means “smells or aromas which are unpleasant to persons or which tend to lessen human food and water intake, interfere with sleep, upset appetite, produce irritation of the upper respiratory tract, or cause symptoms or nausea, or which by their inherent chemical or physical nature or method or processing are, or may be, detrimental or dangerous to health. Odor and smell are used interchangeably herein.” Ala. Admin. Code R. 335-3-1-.02(1)(ss). Ala. Admin. Code R. 335-3-1-.08 is also included in the EPA-approved State Implementation Plan for Alabama with which the Perry County Associates LLC Landfill is required to comply. *See* 40 C.F.R. § 258.24(a).

Since July 2009, Perry County Associates, LLC has been operating the Perry County Associates, LLC Landfill in such manner as to permit or cause the presence of one or more contaminants, including odors, in the outdoor atmosphere which are injurious to human health and

welfare, interfere with the enjoyment of life and property, are unpleasant to persons, tend to upset appetite, lessen food intake, interfere with sleep, produce irritation of the upper respiratory tract, and cause dizziness, headache, nausea and vomiting. Thus, Perry County Associates, LLC is permitting or causing air pollution in violation of Ala. Admin. Code R. 335-3-1-.08. Accordingly, the Perry County Associates LLC Landfill is not operating in compliance with Ala. Admin. Code R. 335-3-1-.08 and 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.

Perry County Associates, LLC violation of the Alabama Water Pollution Control Act

Ala. Code § 22-22-9(g) provides:

It shall be the duty of the commission to receive and examine applications, plans, specifications and other data and to issue permits for the discharge of pollutants, industrial wastes entering directly or through a municipal or private treatment facility and other wastes into the waters of the state, stipulating in each permit the conditions under which such discharge may be permitted.

Ala. Code § 22-22-9(i)(3) provides:

Every person, prior to discharging any new or increased pollution into any waters of this state, shall apply to the commission in writing for a permit and must obtain such permit before discharging such pollution.

Since July 14, 2008, Perry County Associates, LLC has been discharging pollutants contained in leachate generated at the Perry County Associates LLC Landfill, through the Marion Wastewater Treatment Plant, into Rice Creek, a water of the State. Perry County Associates, LLC has not obtained a permit from the Alabama Department of Environmental Management as required by the above-referenced statutory provisions to discharge pollutants directly or through a municipal or private treatment facility into waters of the State. Thus, the Perry County Associates LLC Landfill is not operating in compliance with Ala. Code §§ 22-22-9(g) and 22-22-9(i)(3). 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.

Perry County Associates, LLC violation of Alabama Admin. Code Chap. 335-6-5

Ala. Admin. Code R. 335-6-5-.04(2) provides:

No significant industrial user shall introduce pollutants into publicly owned treatment works without having first obtained a valid State Indirect Discharge (SID) Permit from the Department.

A “significant industrial user” is defined as

1. All "industrial users" subject to Categorical Pretreatment Standards under 40 CFR 403.6 (1994) and 40 CFR Chapter I, Subchapter N (1994);
2. All "industrial users" that "discharge" an average of 25,000 gallons per day or more of process wastewater (excluding sanitary wastewater, noncontact cooling water, and boiler blowdown) to a "publicly owned treatment works";
3. All "industrial users" that "discharge" an average quantity of process wastewater (excluding sanitary wastewater, noncontact cooling water, and boiler blowdown) that makes up five percent or more of the average dry weather organic or hydraulic capacity of the "publicly owned treatment works";
4. All "industrial users" that "discharge" an average organic loading that makes up five percent or more of the design capacity of the "publicly owned treatment works";
5. All "industrial users" that "discharge" to a "privately owned treatment works"; or
6. Any "industrial user" that is determined by the "Director" to have a reasonable potential to adversely affect the operation of the "publicly owned treatment works" or for violating any pretreatment standard or requirement (in accordance with 40 CFR 403.8(f)(6)(1994);

We are of the opinion that Perry County Associates, LLC qualifies as a "significant industrial user" under one or more of the provisions identified above. Since July 14, 2008, Perry County Associates, LLC has been discharging pollutants contained in leachate generated at the Perry County Associates LLC Landfill, through the Marion Wastewater Treatment Plant, into Rice Creek, a water of the State. Perry County Associates, LLC has not obtained a State Indirect Discharge (SID) Permit therefor from the Alabama Department of Environmental Management as required by the above-referenced rules. Thus, the Perry County Associates LLC Landfill is not operating in compliance with Ala. Admin. Code R. 335-6-5-.04(2). 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.

As discussed above, the Perry County Associates LLC Landfill is not operating in compliance with State law. CERCLA § 121(d)(3), 42 U.S.C. § 9621(d)(3), prohibits the transfer of any hazardous substance or pollutant or contaminant to a facility which is not operating in compliance with all applicable State requirements. Accordingly, the Petitioners request that you rescind the January 16, 2008 determination of acceptability for the receipt and disposal of hazardous substances granted by the EPA to the Perry County Associates, LLC Landfill in Uniontown, Alabama.

Sincerely,



David A. Ludder
Attorney for Petitioners