

February 15, 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: **Amendment No. 1**
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 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 on December 7, 2009.

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 addition to the allegations presented in the December 7, 2009 Petition, the Petitioners¹ submit that 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 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.

Perry County Associates, LLC has been discharging pollutants contained in leachate generated at the Perry County Associates LLC Landfill, through the Demopolis Water Works and Sewer Board Wastewater Treatment Plant, into the Tombigbee River, 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 Della Dial should be stricken as a Petitioner.

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. Perry County Associates, LLC has been discharging pollutants contained in leachate generated at the Perry County Associates LLC Landfill, through the Demopolis Water Works and Sewer Board Wastewater Treatment Plant, into the Tombigbee River, 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.

Sincerely,



David A. Ludder
Attorney for Petitioners