



November 18, 2009

**Certified Mail**  
**Return Receipt Requested**

Mr. John Delvac, Director of Operations  
Perry County Associates, LLC  
Arrowhead Landfill  
Route 2, Box 110A  
Uniontown, Alabama 36786

Mr. John Porter, Executive Vice President  
Perry County Associates, LLC  
3280 Peachtree Road NW  
Suite 1400  
Atlanta, Georgia 30305

Re: **Notice of Violation**

Dear Messrs. Delvac and Porter:

I represent Jackie Fike, who resides at 707 Moore Street in Marion, Alabama. Mr. Fike lives in close proximity to the Marion Wastewater Treatment Plant which receives leachate from the Arrowhead Landfill operated by Perry County Associates, LLC. On behalf of Mr. Fike, you are hereby notified that Perry County Associates, LLC is in violation of Alabama Law and Rule as described below.

**Perry County Associates, LLC Violation of Alabama Law**

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.

It has come to our attention that, since July 14, 2008, Perry County Associates, LLC has been discharging pollutants contained in leachate generated at the Arrowhead Landfill, through the Marion Wastewater Treatment Plant, into Rice Creek, a water of the State. It has also come to our attention that Perry County Associates, LLC has not obtained a permit therefor from the Alabama Department of Environmental Management as required by the above-referenced statutory provisions. Accordingly, such discharge is unlawful.

### **Perry County Associates, LLC Violation of Alabama Rule**

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 Arrowhead 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. Accordingly, such discharge is unlawful.

### **Perry County Associates, LLC Duty to Comply With Pretreatment Standards**

The introduction of wastewater pollutants generated from the landfill units at the Arrowhead Landfill into a publicly owned treatment works (POTW), such as the Marion Wastewater Treatment Plant, by Perry County Associates, LLC (“User”) must comply with 40 C.F.R. Part 403. *See* 40 C.F.R. § 445.3. National Pretreatment Standards include the following prohibitions:

(a)(1) *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.

(b) *Specific prohibitions.* In addition, the following pollutants shall not be introduced into a POTW:

(1) Pollutants which create a fire or explosion hazard in the POTW, including, but not limited to, wastestreams with a closed cup flashpoint of less than 140 degrees Fahrenheit or 60 degrees Centigrade using the test methods specified in 40 CFR 261.21;

(2) Pollutants which will cause corrosive structural damage to the POTW, but in no case Discharges with pH lower than 5.0, unless the works is specifically designed to accommodate such Discharges;

(3) Solid or viscous pollutants in amounts which will cause obstruction to the flow in the POTW resulting in Interference;

(4) Any pollutant, including oxygen demanding pollutants (BOD, etc.) released in a Discharge at a flow rate and/or pollutant concentration which will cause Interference with the POTW.

(5) Heat in amounts which will inhibit biological activity in the POTW resulting in Interference, but in no case heat in such quantities that the temperature at the POTW Treatment Plant exceeds 40 °C (104 °F) unless the Approval Authority, upon request of the POTW, approves alternate temperature limits.

(6) Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through;

(7) Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems;

(8) Any trucked or hauled pollutants, except at discharge points designated by the POTW.

40 C.F.R. § 403.5. *See also* Ala. Admin. Code R. 335-6-5-.03. 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). 40 C.F.R. § 403.3(p). *See also* Ala. Admin. Code R. 335-6-5-.02(dd). 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) or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent State or local regulations): Section 405 of the Clean Water Act, the Solid Waste Disposal Act (SWDA) (including title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA), and including State regulations contained in any State sludge management plan prepared pursuant to subtitle D of the SWDA), the Clean Air Act, the Toxic Substances Control Act, and the Marine Protection, Research and Sanctuaries Act.

40 C.F.R. § 403.3(k). *See also* Ala. Admin. Code R. 335-6-5-.02(p).

You should be aware that the Marion Wastewater Treatment Plant is and has been in violation of NPDES Permit No. AL0023809 since August 2003. The City of Marion was notified of these violations in a notice of intent to sue letter dated February 13, 2008. The City of Marion was subsequently sued by the State for such violations on April 9, 2008. *State of Alabama ex rel Troy King v. City of Marion*, Case No. 53-CV-2008-900016. That lawsuit remains pending.

On behalf of Mr. Fike, I demand that Perry County Associates, LLC immediately cease all unpermitted discharges of leachate through the Marion Wastewater Treatment Plant into Rice Creek. If Perry County Associates, LLC subsequently obtains a permit for such discharges, I demand full and sustained compliance with the pretreatment standards in 40 C.F.R. § 403.5 and Ala. Admin. Code R. 335-6-5-.03.

Sincerely,



David A. Ludder

**CERTIFIED MAIL**

**RETURN RECEIPT REQUESTED**

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

**CERTIFIED MAIL**

**RETURN RECEIPT REQUESTED**

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

**CERTIFIED MAIL**

**RETURN RECEIPT REQUESTED**

Hon. Onis “Trey” Glenn, Director  
Alabama Department of Environmental Management  
P.O. Box 301463  
Montgomery, Alabama 36130-1463

**CERTIFIED MAIL**

**RETURN RECEIPT REQUESTED**

The Corporation Company  
Registered Agent for Perry County Associates, LLC  
2000 Interstate Park Drive, Suite 204  
Montgomery, Alabama 36109

## David A. Ludder

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**From:** Jones, Azure [AJones@adem.state.al.us]  
**Sent:** Tuesday, November 17, 2009 9:13 AM  
**To:** 'DavidALudder@enviro-lawyer.com'  
**Subject:** FW: Public Record Request - Perry County Associates, LLC

Good morning,

I did check again to see if there was a permit and at this time Perry County does not have an SID Permit. Let me know if you have any questions.

Thanks,

Azure D. Jones  
ADEM--Permits & Services  
334-271-7712

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**From:** Jones, Azure  
**Sent:** Wednesday, October 28, 2009 10:55 AM  
**To:** 'DavidALudder@enviro-lawyer.com'  
**Subject:** RE: Public Record Request - Perry County Associates, LLC

I will double check to make sure, but I did not find any SID permits. I will let you know shortly.

Thanks,

Azure D. Jones

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**From:** David A. Ludder [mailto:davidaludder@enviro-lawyer.com]  
**Sent:** Wednesday, October 28, 2009 10:52 AM  
**To:** Jones, Azure  
**Subject:** RE: Public Record Request - Perry County Associates, LLC

Azure:

I am only looking for one document which is not on FileNet, i.e., any SID permit or other authorization/approval for Perry County Associates to discharge leachate into a POTW. No such document may exist. If no such document exists, there is no point sending me any files -- I am not requesting any other documents.




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9150 McDougal Court Tallahassee Florida 32312-4208  
Telephone 850-386-5671 Facsimile 206-888-5671 [v-Card](#)  
e-Mail [DavidALudder@enviro-lawyer.com](mailto:DavidALudder@enviro-lawyer.com)  
Web [www.enviro-lawyer.com](http://www.enviro-lawyer.com)

Read [Alabama Environmental News](#) or [Florida Environmental News](#),

a free daily digest of state and local environmental news.

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**From:** Jones, Azure [mailto:[AJones@adem.state.al.us](mailto:AJones@adem.state.al.us)]  
**Sent:** Wednesday, October 28, 2009 11:41 AM  
**To:** 'DavidALudder@enviro-lawyer.com'  
**Subject:** RE: Public Record Request - Perry County Associates, LLC

Good morning,

Would you like to get Land and Water division files for Perry County Associates? Most of the documents can be accessed by using eFile (on the website). I can provide the permit numbers if you would like to check the website first...just let me know. If not, I can get the files ordered and give you an estimate before any copies are made.

Thanks,

Azure D. Jones

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**From:** David A. Ludder [mailto:[davidaludder@enviro-lawyer.com](mailto:davidaludder@enviro-lawyer.com)]  
**Sent:** Wednesday, October 21, 2009 4:16 PM  
**To:** Jones, Azure  
**Subject:** Public Record Request - Perry County Associates, LLC

Please forward to me any State Indirect Discharge permit or other approval issued to Perry County Associates, LLC authorizing the discharge of leachate into any POTW.



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9150 McDougal Court Tallahassee Florida 32312-4208  
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