



***CERTIFIED MAIL
RETURN RECEIPT REQUESTED***

Daniel T. Burton, Jr., President
Blake Pittman, Registered Agent and Vice President
Taylor Burton Company, Inc.
3239 Lorna Road, Suite 108
Birmingham, AL 35216

RE: Notice of Intent to File Suit under the Clean Water Act for Violations of NPDES Permit No. ALR10B723

Dear Messrs. Burton and Pittman:

Pursuant to the Clean Water Act § 505, 33 U.S.C. § 1365, and 40 C.F.R. Part 135, Subpart A, you are hereby notified that after the expiration of 60 days following service of this notice, Cahaba Riverkeeper, Inc. intends to file suit against Taylor Burton Company, Inc. for violations of NPDES Permit No. ALR10B723 at the priority construction site known as South Bend Subdivision located at Wisteria Drive in Vestavia Hills, Alabama as described below. NPDES Permit No. ALR10B723 authorizes stormwater discharges associated with construction activities at the South Bend Subdivision construction site to an unnamed tributary of Little Shades Creek via Discharge Point # 2 and Little Shades Creek via Discharge Point # 1 subject to terms and conditions of the permit.

I. Continuing Violations

A. Failure to Design, Install, and Maintain Sediment Controls Appropriate for Site Conditions

Requirement:

General NPDES Permit No. ALR10B723, Part III. A. provides in part:
The Permittee shall design, install, and maintain effective erosion controls and sediment controls, appropriate for site conditions to, at a minimum:

* * *

5. Minimize sediment discharges from the site;

Violation:

Silt fencing or other appropriate sediment control measures to minimize sediment discharges from the site have not been implemented, installed or maintained since September 26, 2018 in violation of General NPDES Permit No. ALR10B723, Part III. A. 5.

B. Failure to Provide Temporary Stabilization

Requirement:

General NPDES Permit No. ALR10B723, Part III. A. provides in part:
The Permittee shall design, install, and maintain effective erosion controls and sediment controls, appropriate for site conditions to, at a minimum:

* * *

3. Minimize the amount of soil exposed during construction activity through the use of project phasing or other appropriate techniques;

General NPDES Permit No. ALR10B723, Part III. C. provides in part:
Temporary stabilization of disturbed areas must be initiated immediately whenever work toward project completion and final stabilization of any portion of the site has temporarily ceased on any portion of the site and will not resume for a period exceeding thirteen (13) calendar days.

Violation:

Work on various portions of the site has temporarily ceased for at least thirteen (13) days. Temporary stabilization of exposed soils, including multiple dirt piles, has not been implemented in violation of General NPDES Permit No.

ALR10B723, Part III. A. and Part III. C. This violation occurred on September 26, 2018 and continued each and every day thereafter through the date of this notice.

C. Prohibited Discharges

Requirement:

General NPDES Permit No. ALR10B723, Part I.C. 9. provides in part:
Discharges where the turbidity of such discharge will cause or contribute to a substantial visible contrast with the natural appearance of the receiving water are prohibited.

Violation:

The discharge from Discharge Point #1 caused substantial visible contrast with the natural appearance of the waters in the unnamed tributary of Little Shades Creek in violation of General NPDES Permit No. ALR10B723, Part I.C. 9. on February 12, 2019, February 19, 2019, February 20, 2019, and March 3, 2019.

Requirement:

General NPDES Permit No. ALR0B723, Part I.C. 10. provides in part:
Discharges where the turbidity of such discharge will cause or contribute to an increase in the turbidity of the receiving water by more than 50 NTUs above background are prohibited. For the purposes of determining compliance with this limitation, background will be interpreted as the natural condition of the receiving water without the influence of man-made or man-induced causes. Turbidity levels caused by natural runoff will be included in establishing background levels.

Violation:

Samples taken in Little Shades Creek on February 12, 2019, February 19, 2019, and February 20, 2019 measured an increase in the turbidity of the receiving water by more than 50 NTUs above background in violation of General NPDES Permit No. ALR10B723, Part I.C. 10.

The sample results showing the alleged violations on February 12, 2019, February 19, 2019 and February 20, 2019 are included in the table below:

Date	Sample ID	Location	Reading
2/12/2019	TB-001-01	Upstream of the confluence of Discharge #1 and Little Shades Creek	80.1 NTU
2/12/2019	TB-002-01	Downstream of the confluence of Discharge #1 and Little Shades Creek	>999 NTU
2/19/2019	TB-001-02	Upstream of the confluence of Discharge #1 and Little Shades Creek	35.0 NTU
2/19/2019	TB-002-02	Below the confluence of Discharge #1 and Little Shades Creek	>999 NTU
2/20/2019	TB-001-03	Upstream of the confluence of Discharge #1 and Little Shades Creek	102 NTU
2/20/2019	TB-002-03	Below the confluence of Discharge #1 and Little Shades Creek	>999 NTU

D. Failure to implement effective pollution prevention measures

Requirement:

General NPDES Permit No. ALR10B723, Part III.D provides:

The Permittee must design, install, implement, and maintain effective pollution prevention measures to minimize the discharge of pollutants. At a minimum, such measures must be designed, installed, implemented, and maintained to:

1. Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, concrete washout, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge;

* * *

- b. Washout and cleanout activities should be located as far away as possible from surface waters, natural buffer areas, stormwater inlets, and conveyances.

Violation:

The CBMPP indicates that the Concrete Wash/Wheel Wash area would be located along Wisteria Drive and away from Little Shades Creek. The Permittee has located the Concrete Wash/Wheel Wash area at the back of the site, in close proximity to Little Shades Creek. This violation occurred on January 1, 2019 and continued each and every day thereafter through the date of this notice.

E. Failure to maintain an updated Construction Best Management Practice Plan

Requirement:

General NPDES Permit No. ALR10B723, Part III.E. Construction Best Management Practice Plan (CBMPP) provides in part:

5. Maintain an updated CBMPP

- c. If existing sediment control measures, or other site management practices prove ineffective in protecting water quality or need to be modified; or if additional sediment control measures, erosion control measures, or other site management practices are necessary to meet the requirements of Part III.A.B.C.D and E., implementation shall be completed before the next storm event whenever practicable. If implementation before the next storm event is impracticable, then new land disturbance activities must cease until the modified or additional controls can be implemented.

Violation:

Sediment control measures have been ineffective in protecting water quality and the CBMPP needs to be modified and additional sediment control measures need to be implemented. This violation occurred on September 27, 2018, February 12, 2019, February 19, 2019, February 20, 2019, March 3, 2019, March 8, 2019, and March 29, 2019.

F. Failure to properly maintain systems of treatment and control installed to achieve compliance

Requirement:

General NPDES Permit No. ALR10B723, Part IV E. Proper Operation and Maintenance provides:

The Permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities only when necessary to achieve compliance with the conditions of this permit.

Violation:

Systems of treatment and control have not been maintained to achieve compliance with the permit, including but not limited to, proper maintenance of BMPs. Specifically, inlet protection has not been maintained in a manner consistent with the requirements of the permit. This violation of Part IV.E. occurred on September 27, 2018, February 12, 2019, February 19, 2019, February 20, 2019, March 3, 2019, March 8, 2019 and March 29, 2019.

G. Prohibited Bypasses

Requirement:

General NPDES Permit No. ALR10B723, Part IV N. Bypass provides: Any bypass of erosion controls, sediment controls, or any other stormwater management/treatment controls specified in the CBMPP is prohibited except as provided by ADEM Admin. Code r. 335-6-6-.12(m).

Violation:

The Permittee bypassed inlet protection on September 27, 2018, February 12, 2019, February 19, 2019, February 20, 2019, March 3, 2019, March 8, 2019 and March 29, 2019 by pulling the hay wattles away from inlets to allow stormwater to flow into those inlets unobstructed.

II. History of Previous Violations

- A. Sediment and other pollutants in stormwater runoff from the Facility have the potential to discharge and/or have discharged to Little Shades Creek and an Unnamed Tributary to Little Shades Creek, a water of the State.
- B. On September 27, 2016, the Alabama Department of Environmental Management conducted an inspection of the South Bend Subdivision construction site and sent a letter noting Minor Deficiencies. The inspector made the following observation:

Topsoil stockpile not stabilized
- C. On October 10, 2017, the Alabama Department of Environmental Management conducted an inspection of the South Bend Subdivision construction site. The inspector made the following observations:

At the time of the inspection, BMPs were not adequate to prevent off-site sedimentation. Silt fencing was not properly installed or adequately maintained. Erosion rills and gullies were present on-site. Excessive on-site sediment accumulation was noted at the silt fencing.
- D. On October 23, 2017, the Alabama Department of Environmental Management sent a Warning Letter to Taylor Burton Company, Inc. alleging possible

violations of Ala. Admin. Code Ch. 335-6-12 at the South Bend Subdivision construction site as follows:

Appropriate, effective Best Management Practices (BMPs) for the control of pollutants in stormwater run-off have not been fully implemented and regularly maintained to the maximum extent practicable resulting in the potential for uncontrolled discharges of sediment and other pollutants to a water of the State of Alabama. (See Permit Part III. A.)

- E. On November 17, 2017, the Alabama Department of Environmental Management conducted an inspection of the South Bend Subdivision construction site. The inspector made the following observations:

At the time of inspection, BMPs are not adequate to prevent off-site sedimentation. Topsoil stockpile was not adequately protected. Silt fencing was not properly installed. Stormwater inlet protection was not installed properly and/or properly maintained. Graveled construction exit pads were not properly installed and/or maintained. Erosion rills and gullies were present on-site.

- F. On March 29, 2018, Taylor Burton Company, Inc. and the Alabama Department of Environmental Management entered into Consent Order 18-053-CLD which alleges the following :

During an inspection of the South Bend Subdivision construction site on October 10, 2017, and November 17, 2017, the Alabama Department of Environmental Management observed and documented that Taylor Burton Company, Inc. had not properly implemented and maintained effective BMPs at the South Bend Subdivision construction site, although NPDES construction activity had commenced and was continuing, in violation of Part III. A. and D. of NPDES Permit No. ALR10B723.

On October 23 2017, a Warning Letter was sent to Taylor Burton Company, Inc. by the Alabama Department of Environmental Management as a result of the October 10, 2017 inspection. The Warning Letter notified Taylor Burton Company, Inc. of deficiencies documented at the South Bend Subdivision construction site, and required Taylor Burton Company, Inc. to submit to the Department a report prepared by a Qualified Credentialed Professional showing steps that were taken at the South Bend Subdivision construction site to correct the noted violations within ten days of receipt of the Warning Letter. An initial response was received by the Department on November 15, 2017, and a final response was received on November 28, 2017.

On November 21, 2017, a Non-Compliance letter was sent to Taylor Burton Company, Inc. by the Alabama Department of Environmental Management as a result of the November 17, 2017 inspection. The Non-Compliance letter notified the Operator of continuing non-compliance with the October 23, 2017 Warning Letter.

III. Sanctions

The Clean Water Act authorizes the court to enforce a NPDES permit or condition thereof and a state order with respect to a NPDES permit or condition thereof. Clean Water Act § 505(a), 33 U.S.C. § 1365(a). The court may assess civil penalties up to \$53,484 per day per violation for violations that occurred after November 2, 2015. Clean Water Act §§ 505(a) and 309(d), 33 U.S.C. §§ 1365(a) and 1319(d); Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101-410, Oct. 5, 1990, 104 Stat. 890, as amended by Pub. L. 104-134, title III, § 31001(s)(1), Apr. 26, 1996, 110 Stat. 1321-373; Federal Civil Penalties Inflation Adjustment Improvements Act of 2015, Pub. L. 105-362, title XIII, § 1301(a), Nov. 10, 1998, 112 Stat. 3293; Pub. L. 114-74, title VII, § 701(b), Nov. 2, 2015, 129 Stat. 599; 40 C.F.R. § 19.4. Each day a violation continues is a separate violation. In addition, the Clean Water Act authorizes the award of costs of litigation (including reasonable attorney and expert witness fees) to any prevailing or substantially prevailing party, whenever the court determines that such an award is appropriate. Clean Water Act § 505(d), 33 U.S.C. § 1365(d). *Type text here*

Suit may be avoided if these violations have been permanently abated before the expiration of sixty (60) days following the date of this notice. "Service" is defined as the postmark date of this notice. 40 C.F.R. § 135.2(c). Please advise David A. Ludder of any measures which you may undertake which you contend have permanently abated these violations before suit is filed and please direct all communications to him.

Sincerely,



David Butler
Staff Attorney
Cahaba Riverkeeper, Inc.



David A. Ludder
Attorney for Cahaba Riverkeeper, Inc.
Law Office of David A. Ludder, PLLC
9150 McDougal Ct.
Tallahassee, FL 32312
(850) 386-5671

cc: Hon. Lance R. LeFleur, Director
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, AL 36130-1463

Hon. Mary S. Walker, Acting Regional Administrator
U.S. EPA Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, GA 30303-8960

Hon. Andrew Wheeler, Administrator
Environmental Protection Agency
Mail Code 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460