

April 18, 2013

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Honorable Todd Strange, Mayor
City of Montgomery
103 North Perry Street
Montgomery, Alabama 36104

Re: **Notice of Intent to File Suit for Violations of NPDES Permit No. ALS000004 under the Clean Water Act**

Dear Mayor Strange:

The City of Montgomery operates a Municipal Separate Stormwater Sewer System (MS4) which discharges stormwater to waters of the United States. The City was issued NPDES Permit No. ALS000004 by the Alabama Department of Environmental Management on September 24, 2001 pursuant to the National Pollutant Discharge Elimination System Permit Program approved by the U.S. Environmental Protection Agency under Clean Water Act § 402, 33 U.S.C. § 1342. Permit No. ALS000004 authorizes stormwater discharges from the MS4 subject to certain conditions. 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 sixty (60) days following service of this notice, Wetlands and Waters Association, an unincorporated association, may file suit against the City of Montgomery for violations of several conditions of NPDES Permit No. ALS000004.

I. VIOLATION OF CONDITION REQUIRING CITY TO HAVE LEGAL AUTHORITY TO CONTROL DISCHARGES TO THE MS4 FROM CONSTRUCTION ACTIVITY AND TO PROHIBIT ILLICIT DISCHARGES TO THE MS4

Part II. E. of NPDES Permit No. ALS000004 requires:

Legal Authority. Each permittee shall insure legal authority exists to control discharges to and from those portions the MS4 over which it has jurisdiction. This legal authority may be a combination of statute, ordinance, permit, contract, order or inter-jurisdictional agreements with co-applicants with existing legal authority to:

1. Control the contribution of pollutants to the MS4 by *storm water discharges associated with industrial activity* and the quality of storm water discharged from sites of industrial activity;

2. Prohibit *illicit discharges* to the municipal separate storm sewer;
3. Control the discharge of spills and the dumping or disposal of materials other than storm water into the MS4;
4. Control through interagency agreements among permittees the contribution of pollutants from one portion of the MS4 to another;
5. Require compliance with conditions in ordinances, permits, contracts or orders; and
6. Carry out all inspection, surveillance and monitoring procedures necessary to determine compliance with permit conditions.

(Emphasis added). “Stormwater discharges associated with industrial activity” is defined by reference to 40 C.F.R. § 122.26(b)(14). Part VIII, NPDES Permit No. ALS000004. It includes “[c]onstruction activity including clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more; . . .” 40 C.F.R. § 122.26(b)(14)(x). “Illicit discharge” means “any discharge to a municipal separate storm sewer that is not composed entirely of storm water except discharges pursuant to a NPDES permit (other than the NPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from fire fighting activities.” Part VIII, NPDES Permit No. ALS000004.

The City of Montgomery is in violation of Part II. E. of NPDES Permit No. ALS000004 by failing to insure that legal authority (*i.e.*, a combination of statute, ordinance, permit, contract, order or inter-jurisdictional agreements with co-applicants with existing legal authority) exists to control “stormwater discharges associated with industrial activity” and to prohibit “illicit discharges” to the MS4. This violation commenced on October 1, 2001 and has continued each and every day thereafter.

II. VIOLATION OF CONDITION REQUIRING CITY TO IMPLEMENT A PROGRAM TO REDUCE THE DISCHARGE OF POLLUTANTS FROM CONSTRUCTION SITES

Part II. A. 9. of NPDES Permit No. ALS000004 requires:

Construction Site Runoff: A program to reduce the discharge of pollutants from construction sites shall be implemented. This program shall include:

- a. requirements for the use and maintenance of appropriate structural and nonstructural best management practices to reduce pollutants discharged to the Municipal Separate Storm Sewer System during the time construction is underway;
- b. inspection of construction sites and enforcement of control measures (in accordance with priorities and procedures established in the Storm Water Management Program);

* * *

The City of Montgomery is in violation of Part II. A. 9. of NPDES Permit No. ALS000004 by failing to implement a Storm Water Management Program that includes “requirements for the use and maintenance of appropriate structural and nonstructural best management practices to reduce pollutants discharged to the Municipal Separate Storm Sewer System during the time construction is underway” and “inspection of construction sites and enforcement of control measures (in accordance with priorities and procedures established in the Storm Water Management Program). This violation commenced on October 1, 2001 and has continued each and every day thereafter.

III. PREVIOUS ADEM ENFORCEMENT ACTIONS

After ten years of non-compliance by the City of Montgomery with the above-mentioned permit conditions, the Alabama Department of Environmental Management issued a notice of violation to the City of Montgomery on September 23, 2011. No further enforcement action has been taken by the Department.

IV. ABATEMENT OF VIOLATIONS AND SUIT AVOIDANCE

The Clean Water Act authorizes civil penalties up to \$37,500 per day per violation for violations occurring after January 12, 2009. Suit may be avoided if these violations have been permanently abated before the expiration of sixty (60) days following service of this notice. Please advise the undersigned of any measures that you may undertake which you contend have permanently abated these violations before suit is filed.

Sincerely,



David A. Ludder
Attorney for
Wetlands and Waters Association

Hon. Bob Perciasepe, Acting Administrator
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