

April 18, 2013

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Honorable Mike Schmitz, Mayor
City of Dothan
P.O. Box 2128
Dothan, Alabama 36302

Re: **Notice of Intent to File Suit for Violations of NPDES Permit No. ALR040007 under the Clean Water Act**

Dear Mayor Schmitz:

The City of Dothan operates a Municipal Separate Stormwater Sewer System (MS4) which discharges stormwater to waters of the United States. The City was issued NPDES Permit No. ALR040007 by the Alabama Department of Environmental Management on January 31, 2011 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. The permit was modified on February 24, 2012. Permit No. ALR040007 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, Choctawhatchee Riverkeeper may file suit against the City of Dothan for violations of several conditions of NPDES Permit No. ALR040007.

I. VIOLATION OF CONDITION REQUIRING CITY TO ADOPT, IMPLEMENT AND ENFORCE EROSION AND SEDIMENT CONTROL ORDINANCE OR OTHER REGULATORY MECHANISM FOR CONSTRUCTION SITES

Part III. B. 4. of NPDES Permit No. ALR040007 requires:

Construction Site Storm Water Runoff Control

- (a) Within 730 days after the effective date of coverage under this permit, all Permittees must develop, implement, and enforce a program to reduce, to the maximum extent practicable, pollutants in any storm water runoff to the regulated MS4 from qualifying construction sites.
- (b) The SWMP must include the following components for construction site storm water runoff control:

- (i) To the extent allowable under State law, an ordinance or other regulatory mechanism to require erosion and sediment controls, sanctions to ensure compliance, and to provide all other authorities needed to implement the requirements of Part III.B.4. of this permit.

“[T]he effective date of coverage under this permit” is February 1, 2011. 730 days after February 1, 2011 is January 1, 2013. “Qualifying construction site” means “any construction activity that results in a total land disturbance of one or more acres and activities that disturb less than one acre but are part of a larger common plan of development or sale that would disturb one or more acres.” Part VI. T. 16.

The City of Dothan is in violation of Part III. B. 4. of NPDES Permit No. ALR040007 by failing to adopt, implement, and enforce an ordinance or other regulatory mechanism to require erosion and sediment controls, sanctions to ensure compliance, and to provide all other authorities needed to implement the requirements of Part III.B.4. of NPDES Permit No. ALR040007. This violation commenced on January 2, 2013 and has continued each and every day thereafter.

II. VIOLATION OF CONDITION REQUIRING CITY TO DEVELOP AND INSTITUTE ORDINANCE OR OTHER REGULATORY MECHANISM TO ADDRESS POST-CONSTRUCTION RUNOFF FROM NEW DEVELOPMENT AND REDEVELOPMENT SITES

Part III. B. 5. of NPDES Permit No. ALR040007 requires:

Post Construction Storm water management in new Development and Redevelopment

Post-Construction Stormwater Management refers to the activities that take place after construction occurs, and includes structural and non-structural controls to obtain permanent stormwater management over the life of the property’s use. All Permittees must implement the requirements of Part III.B.5. within 730 days from the effective date of coverage.

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- (c) To the extent allowable under State law, the Permittee must develop and institute the use of an ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects.

“[T]he effective date of coverage” is February 1, 2011. 730 days after February 1, 2011 is January 1, 2013. “Qualifying New Development and Redevelopment means any site after 730 days from the effective date of permit coverage that results from the disturbance of one acre or more of land or the disturbance of less than one acre of land if part of a larger common plan of development or sale that is greater than one acre.”

The City of Dothan is in violation of Part III. B. 5. of NPDES Permit No. ALR040007 by failing to adopt, implement, and enforce an ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects. This violation commenced on January 2, 2013 and has continued each and every day thereafter.

III. PREVIOUS ADEM ENFORCEMENT ACTIONS

The Alabama Department of Environmental Management has taken no enforcement action against the City of Dothan to require compliance with the above-mentioned permit conditions.

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
Choctawhatchee Riverkeeper

cc:

Hon. Bob Perciasepe, Acting Administrator
U.S. Environmental Protection Agency
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Washington, D.C. 20460

Hon. Gwendolyn Keyes-Fleming, Regional Administrator
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Hon. Lance LeFleur, Director
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