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May 19, 2023

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Atlanta Police Foundation, Inc.
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ATLANTA GA 30303-1740

Dave Wilkinson
Atlanta Police Foundation, Inc.
191 PEACHTREE ST NE STE 191
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Brent Scarbrough
Brent Scarbrough & Company, Inc.
45 E AVIATION WAY
NEWNAN GA 30263-7107

Mayor Andre Dickens
City of Atlanta
55 TRINITY AVE SW STE 5400
ATLANTA, GEORGIA 30303-3544

Re: Clean Water Act Notice of Intent to File Suit
Atlanta Training Center – DeKalb County, Georgia

To Alan Williams, Atlanta Police Foundation, Inc., Brent Scarbrough & Company, Inc., and the City of Atlanta:

South River Watershed Alliance, Inc. and Edward “Ted” Terry provide notice that Alan Williams, Atlanta Police Foundation, Inc., Brent Scarbrough & Company, Inc., and the City of Atlanta are in violation of Clean Water Act effluent standards and limitations.

The Clean Water Act prohibits the discharge of any pollutant – including stormwater runoff from construction sites with at least one acre of land disturbance – to waters of the United States except in compliance with a permit.¹ In Georgia, stormwater discharges from construction sites for stand-alone projects with at least one acre of land disturbance are regulated by a General Permit issued by the Georgia Environmental Protection Division (“General Permit”).²

A Notice of Intent for coverage under the General Permit for the training center construction site was submitted to the Georgia Environmental Protection Division (“EPD”) on October 18, 2022, for construction of the “Atlanta Training Facility” which is also called the Atlanta Public Safety Training Center. Coverage under the General Permit was authorized November 1, 2022 (Permittee NOI Number GAR189E51-V1). A revised Notice of Intent for coverage under the General Permit was submitted February 21, 2023, and approved March 7, 2023 (Permittee NOI Number GAR189E51-V2).

Alan Williams is identified as the site operator on the revised Notice of Intent. The City of Atlanta is identified as the site owner. The coverage authorized clearing 86.9 acres in unincorporated DeKalb County, Georgia. The Notice of Intent identified the site address as 1350 Constitution Road, Atlanta, Georgia 30316 in DeKalb County and identified the latitude as 33.6892 and the longitude as -84.3406. Stormwater discharges associated with construction activity at the training center construction site are polluting waters of the United States, including Intrenchment Creek and a perennial tributary that flows through the construction site and into Intrenchment Creek while still on the site.

¹ 33 U.S.C. §§ 1311(a), 1342(p) 1362(12), 40 C.F.R. §§ 122.1(b)(1), 122.2, 122.26(b)(14)(x); O.C.G.A. § 12-5-30(a); Ga. Comp. R. & Regs. 391-3-6-.16(2)(b).

² *Authorization to Discharge Under the National Pollutant Discharge Elimination System, Storm Water Discharges Associated with Construction Activity for Stand Alone Construction Projects, General Permit No. GAR 100001*, effective August 1, 2018.

Section 301(a) of the Clean Water Act prohibits discharging stormwater from a construction site without complying with a permit issued under section 402 of the Clean Water Act.³ The General Permit was issued under section 402 of the Act.⁴

The General Permit requires permittees to comply with best management practices for erosion control (“BMPs”) as specified in the Manual for Erosion and Sediment Control in Georgia (“Manual”).⁵ The General Permit also requires permittees to comply with an Erosion, Sedimentation and Pollution Control Plan (“Erosion Control Plan”).⁶

The General Permit, the Manual, and the site’s Erosion Control Plan require sediment basins to be installed before any other land disturbance except installing a silt fence around the construction site’s perimeter.

The General Permit and the Manual require sediment basins to provide at least 67 cubic yards of storage per acre drained from on-site disturbed areas until final stabilization of the site, or equivalent control measures.⁷

Additional BMPs are required for any site proposing to disturb over 50 acres at one time.⁸ Atlanta Police Foundation, Inc. selected increased sediment storage capacity as an additional BMP, requiring “temporary sediment basins and retrofitted storm water management basins to

³ 33 U.S.C. §§ 1311(a) and 1365(f)(7).

⁴ 33 U.S.C. § 1342(p); 40 C.F.R. § 122.26(b)(14)(x).

⁵ *General Permit*, Part I.B.1 (p. 4), Part III.D.1 (p. 17), Part III.D.3 (p. 18), Part IV.D (p. 26).

⁶ *General Permit*, Part II.B.1.g (p. 13); Part IV (p. 19); Part IV (iv) (p. 24).

⁷ *General Permit*, Part IV.D.3.a.(3) (pp. 28-29), Manual, p. 6-10.

⁸ *General Permit*, Part IV.D.3. (p. 27).

provide sediment storage of at least 3600 cubic feet (134 cubic yards) per acre drained.”⁹

The General Permit states: “Except as required to install the initial sediment storage requirements and perimeter control BMPs ..., the initial sediment storage requirements and perimeter control BMPs must be installed and implemented prior to conducting any other construction activities (e.g., clearing, grubbing and grading) within the construction site ...”¹⁰

The Manual states that sediment storage “must be installed on the site PRIOR to any land-disturbing activities.”¹¹

The Erosion Control Plan states, “No grading shall take place until ... sediment ponds are constructed.”¹²

Sediment storage hasn’t been installed on the training center construction site but land-disturbing activities, including clearing, grubbing, and grading, are taking place throughout all parts of the site to be disturbed. This violates the General Permit, the Manual, the Erosion Control Plan, and section 301(a) of the Clean Water Act for each day since March 31, 2023.¹³

⁹ Erosion Control Plan Checklist, Sheet EC-103.

¹⁰ *General Permit*, Part III.D.2 (pp. 17-18).

¹¹ Manual at p. 6-1 (capitalization in original); See also Manual at pp. 4-5 and 6-10.

¹² Initial Soil Erosion & Sedimentation Control Notes, Sheet EC-101, Note 14.

¹³ *General Permit*, Part I.B.1 (p. 4), Part II.B.1.g (p. 13), Part III.D.1 (p. 17), Part III.D.2 (pp. 17-18), Part III.D.3 (p. 18), Part IV (p. 19), Part IV (iv) (p. 24), Part IV.D (p. 26), Part IV.D.3. (p. 27), Part IV.D.3.a.(3) (pp. 28-29); Manual, pp. 6-1, 6-10; Erosion Control Plan, Sheet EC-101, Note 14 and Sheet EC-103; 33 U.S.C. § 1311(a).

“Failure to properly design, install, or maintain best management practices shall constitute a violation of the General Permit for each day on which such failure occurs.”¹⁴ A discharge of stormwater runoff from disturbed areas where BMPs have not been properly designed, installed, and maintained shall constitute a separate violation for each day on which such discharge results in the turbidity of receiving water being increased by over 25 nephelometric turbidity units (“ntu”).¹⁵ Stormwater discharges from the training center construction site caused the turbidity in Intrenchment Creek to increase by over 25 ntu when BMPs were not properly installed, violating the General Permit, on March 31, 2023, April 1, 2023, April 3, 2023, April 5, 2023, April 8, 2023, April 14, 2023, April 22, 2023, April 27, 2023, April 29, 2023, April 30, 2023, May 5, 2023, May 12, 2023, May 15, 2023, and May 16, 2023.

The General Permit doesn’t authorize stormwater discharges which violate Georgia’s in-stream water quality standards.¹⁶ Stormwater discharges from a construction site that aren’t authorized under the General Permit violate Section 301(a) of the Clean Water Act.¹⁷

Georgia’s water quality standards include narrative criteria “deemed to be necessary and applicable to all waters of the State.”¹⁸ The narrative criteria for turbidity states: “All waters shall be free from material related to municipal, industrial or other discharges which produce turbidity ... or other objectionable conditions which interfere with the designated use of

¹⁴ *General Permit*, Part III.D.3 (p. 18).

¹⁵ *General Permit*, Part III.D.4 (p. 18).

¹⁶ *General Permit*, Part I.C.4 (p. 10).

¹⁷ 33 U.S.C. § 1311(a).

¹⁸ *Ga. Comp. R. & Regs.* 391-3-6-.03(5).

the water body.”¹⁹ Industrial waste includes storm water discharged from construction sites with at least five acres of land disturbance.²⁰

The designated use for Intrenchment Creek is fishing.²¹ Surface waters with a designated use of fishing must support aquatic life, including breeding for aquatic species.²² Stormwater from the training center construction site interferes with the designated use of Intrenchment Creek by causing turbidity and sediment that harms fish and macroinvertebrates already stressed by existing sediment loads which are significantly higher than the regulatory limits set by EPD in the 2007 and 2017 *Total Maximum Daily Load Evaluations for Stream Segments in the Ocmulgee River Basin for Sediment*.²³

Stormwater discharges from the training center construction site have violated Georgia’s narrative criteria and section 301(a) of the Clean Water Act by causing turbidity that harms fish and macroinvertebrates on: February 17, 2023, February 21, 2023, March 2, 2023, March 3, 2023, March 10, 2023, March 12, 2023, March 17, 2023, March 25, 2023, March 26, 2023, March 31, 2023, April 1, 2023, April 3, 2023, April 5, 2023, April 8, 2023, April 14, 2023, April 22, 2023, April 27, 2023, April 29, 2023, April 30, 2023, May 5, 2023, May 12, 2023, May 15, 2023, and May 16, 2023.

No other land disturbance discharges sediment into the perennial tributary that flows through the training center site. Photographs on the following pages show the tributary carrying sediment from the training center construction site into Intrenchment Creek.

¹⁹ *Ga. Comp. R. & Regs.* 391-3-6-.03(5)(c); O.C.G.A. § 12-5-23(a)(2).

²⁰ O.C.G.A. § 12-5-22; DNR Rule 391-3-6-.16(2)(b); 40 C.F.R. § 122.26(b)(14)(x).

²¹ *Ga. Comp. R. & Regs.* 391-3-6-.03(14).

²² *Ga. Comp. R. & Regs.* 391-3-6-.03(6)(c).

²³ 40 C.F.R. §§ 130.2 and 130.7

Downstream of training center construction site, where perennial tributary flows into Intrenchment Creek, March 3, 2023:



March 12, 2023:



March 25, 2023:



March 26, 2023:



April 1, 2023:



The Clean Water Act authorizes a citizen suit against any person alleged to be in violation of an “effluent standard or limitation,”²⁴ which includes “a permit or condition of a permit” issued under section 402 of the Clean Water Act.²⁵

Alan Williams, Atlanta Police Foundation, Inc., and Brent Scarbrough & Company, Inc., each exercise control over land disturbing activities at the training center that are causing pollutants, including sediment, turbidity, and stormwater runoff to be discharged into Intrenchment Creek and the perennial tributary in violation of section 301(a) of the Clean Water Act.

As the site operator and primary permittee, Alan Williams is liable under section 301(a) of the Clean Water Act for each violation of the General Permit until responsibility for the site is properly terminated,²⁶ including clearing, grubbing, and grading the construction site before the required sediment storage is installed, and increasing the turbidity in Intrenchment Creek by over 25 ntu when BMPs are not properly installed. Alan Williams is also liable under section 301(a) of the Clean Water Act for discharging sediment and turbidity that harm fish and macroinvertebrates in violation of Georgia’s in-stream water quality standards. As the site operator and primary permittee under the General Permit, Alan Williams must document all known permit violations and submit a summary of violations to Georgia Environmental Protection Division within 14 days.²⁷ Mr. Williams’ failure to notify EPD of the permit violations in this notice letter violates section 301(a) of the Clean Water Act.

²⁴ 33 U.S.C. § 1365(a)(1).

²⁵ 33 U.S.C. § 1365(f)(7).

²⁶ *General Permit*, Part 1.E (p. 10), Part. V.A (p. 38).

²⁷ *General Permit*, Part V.A.2 (p. 38).

Atlanta Police Foundation, Inc. is the lessor of the training center construction site and exercises control over construction activity, including the decision to clear, grub, and grade the construction site before the required sediment storage is installed. Atlanta Police Foundation, Inc. is liable under section 301(a) of the Clean Water Act for clearing, grubbing, and grading undertaken before the required sediment storage is installed, and for increasing the turbidity in Intrenchment Creek by over 25 ntu when BMPs are not properly installed. Atlanta Police Foundation, Inc. is also liable under section 301(a) of the Clean Water Act for sediment and turbidity discharges that violate Georgia's water quality standards.

Brent Scarbrough & Company, Inc. is the contractor undertaking clearing, grubbing and grading on the training center construction site. Brent Scarbrough & Company, Inc. is liable under section 301(a) of the Clean Water Act for clearing, grubbing, and grading undertaken before the required sediment storage is installed, and for increasing the turbidity in Intrenchment Creek by over 25 ntu when BMPs are not properly installed. Brent Scarbrough & Company, Inc. is also liable under section 301(a) of the Clean Water Act for the sediment and turbidity discharges that violate Georgia's water quality standards.

The City of Atlanta is the site owner and has city employees on the construction site each day. The City of Atlanta has the capacity to prevent and abate the discharge of pollutants into Intrenchment Creek and the perennial tributary in violation of the Clean Water Act. The City of Atlanta is liable under section 301(a) of the Clean Water Act for the clearing, grubbing, and grading being undertaken before the required sediment storage is installed, and for the increase in turbidity in Intrenchment Creek when BMPs are not properly installed. The City of Atlanta is also liable under section 301(a) of the Clean Water Act for the sediment and turbidity discharges that violate Georgia's water quality standards.

The name, address, and telephone numbers of the parties providing this notice are: South River Watershed Alliance, Inc., 1935 Woodland Hills

Ave NW, Atlanta GA 30318 (404) 285-3756 and Edward “Ted” Terry, 1300 Commerce Drive, Decatur GA 30030 (404) 371-4909. The name, address, and telephone number of their counsel is Jon Schwartz, Law Office of Jon Schwartz, 1100 Peachtree St. NE, Suite 250, Atlanta, Georgia 30309 (404) 667-3047.

If Alan Williams, Atlanta Police Foundation, Inc., Brent Scarbrough & Company, Inc., or the City of Atlanta continue to violate the Clean Water Act after 60 days, South River Watershed Alliance, Inc. and Edward “Ted” Terry will sue under the Act’s citizen suit provision unless EPA or EPD has filed an action in court to require compliance with these effluent standards and limitations.

Sincerely,



Jon Schwartz

cc: Daniel Blackman, Regional Administrator EPA Region 4
Richard E. Dunn, Director, Georgia EPD
Michael S. Regan, Administrator, EPA
Brent Scarbrough & Company, Inc. c/o Canopy Services, Inc.
Lisa Gordon, City of Atlanta Chief Operating Officer
Remy Saintil, Department of Enterprise Assets Management
Doug Shipman, Atlanta City Council President
Michael Julian Bond, Atlanta City Council, Post 1 at Large
Matt Westmoreland, Atlanta City Council, Post 2 at Large
Keisha Sean Waites, Atlanta City Council, Post 3 at Large
Jason Winston, Atlanta City Council, District 1
Amir R. Farokhi, Atlanta City Council, District 2
Byron Amos, Atlanta City Council, District 3
Jason S. Dozier, Atlanta City Council, District 4
Liliana Bakhtiari, Atlanta City Council, District 5
Alex Wan, Atlanta City Council, District 6
Howard Shook, Atlanta City Council, District 7
Mary Norwood, Atlanta City Council, District 8
Dustin Hillis, Atlanta City Council, District 9
Andrea L. Boone, Atlanta City Council, District 10
Marci Collier Overstreet, Atlanta City Council, District 11
Antonio Lewis, Atlanta City Council, District 12