



**REGION 4**

ATLANTA, GA 30303

**ELECTRONIC EMAIL**  
**CONFIRMATION OF EMAIL RECEIPT REQUESTED**

Ryan Browning  
Browning Contractors, Inc.  
P.O. Box 382003  
Germantown, Tennessee 38183  
ryan@browningcontractorsinc.com

Re: Notice of Violation and Opportunity to Show Cause Pursuant to Section 309(a) of the Clean Water Act (CWA), for 33 U.S.C. § 1319, and Information Request Pursuant to Section 308 of the CWA, for 33 U.S.C. §1318; Ashmont Planned Development developed by Browning Contractors, Inc., Germantown, Tennessee, Docket Number 309-2025-03

Dear Ryan Browning:

On July 9, 2024, the U.S. Environmental Protection Agency, Region 4, the Tennessee Department of Environment and Conservation (TDEC), and City of Lakeland conducted a Compliance Stormwater Evaluation Inspection (CSWEI) at the Ashmont Planned Development construction site in Lakeland, Tennessee. The construction site was being developed by Browning Contractors, Inc. (Respondent) and was located at 9640 East Davies Plantation Road, Lakeland, Tennessee 38002 (Site). On April 6, 2023, Respondent submitted a Notice of Intent (NOI) to commence construction activities at the Site pursuant to TDEC's National Pollutant Discharge Elimination System 2021 Stormwater Construction Permit (TNR100000) (Permit). The purpose of the CSWEI was to evaluate Respondent's compliance with the requirements of Sections 301 and 402(p) of the Clean Water Act (CWA), 33 U.S.C. §§ 1311 and 1342(p), the regulations promulgated thereunder at 40 C.F.R. § 122.26, and the Permit.

Based on the EPA's review of observations made during the CSWEI and subsequent investigative efforts, the EPA has reason to believe conditions at the construction site failed to comply with the requirements of Sections 301 and 402(p) of the CWA, 33 U.S.C. §§ 1311 and 1342(p), its implementing regulations at 40 C.F.R. § 122.26, and its Permit.

Specifically, the EPA hereby notifies Respondent, pursuant to Section 309(a) of the CWA, 33 U.S.C. § 1319(a), of the following findings of past and continuing violations associated with the Permit:

1. Pursuant to Part 5.4.1.c of the Permit, "The permittee must modify, update and recertify the Storm Water Pollution Prevention Plan (SWPPP) if any of the following conditions apply: c) Whenever inspections or investigations by site operators or local, state or federal officials indicate the SWPPP is proving ineffective in eliminating or significantly minimizing pollutants from sources identified under Section 5.5.2, or is otherwise not achieving the general objectives of controlling pollutants in stormwater discharges associated with construction activity. Where local, state or federal officials determine that the SWPPP is ineffective in eliminating or significantly minimizing pollutant sources, a copy of any correspondence to that effect must be retained in the SWPPP." The permittee is responsible for ensuring the SWPPP is modified, updated and recertified based on current conditions regarding construction activities and operations at the Site.

During the inspection, the EPA inspection team observed that the permittee failed to modify, update and recertify the SWPPP based on current conditions at the Site. The SWPPP observed during the inspection was not reflective of the Site conditions. Specifically, approximately five outfalls not labeled or numbered on the Site Erosion Prevention and Sediment Controls (EPSC) Plan were observed during the Site inspection.

Therefore, Respondent is in violation of Part 5.4.1.c of the Permit for failure to modify, update and recertify the SWPPP to reflect the current construction activities and operations at the Site.

2. Pursuant to Part 5.5.3.8 of the Permit, "Site assessment shall be conducted at each outfall draining 10 or more acres (Section 5.5.3.5) or 5 or more acres if draining to waters with unavailable parameters or Exceptional Tennessee Waters (Section 6.4.1)." The permittee is responsible for ensuring that a site assessment is conducted at each outfall draining 10 or more acres at the construction Site.

During the inspection, the EPA inspection team observed that the permittee failed to conduct the required Site assessment at the pre-developed outfall #20 (currently identified as outfall #18) as well as the post-developed outfalls #5 and #19, which drain 10 or more acres.

Therefore, Respondent is in violation of Part 5.5.3.8 of the Permit for failure to conduct site assessments at the previously mentioned outfalls that drain 10 or more acres.

3. Pursuant to Part 3.2.2 of the Permit, "The entire proposed construction area must be clearly outlined on the map, with all acreage to be disturbed clearly identified. All outfalls discharging runoff from the property, streams receiving the discharge, and storm sewer systems conveying the discharge from outfalls shall be clearly identified and marked on the map." The permittee is responsible for ensuring the construction Site map in the SWPPP is accurate to reflect current conditions, activities, and operations at the construction Site.

During the inspection, the EPA inspection team observed that the permittee failed to identify on the construction Site map approximately five additional outfalls located at the construction Site that discharged to tributaries of Oliver Creek.

Therefore, Respondent is in violation of Part 3.2.2 of the Permit for failure to identify the five additional outfalls on the construction Site map.

4. Pursuant to Part 4.1.1 of the Permit, the permittee must “design, install and maintain effective erosion and sediment controls to minimize the discharge of pollutants.” The permittee is responsible for ensuring the design, installation, and maintenance of effective erosion and sediment controls to minimize the discharge of pollutants at the construction Site.

During the inspection, the EPA inspection team observed that the permittee failed to design, install, and/or maintain the following effective erosion and sediment controls to minimize the discharge of pollutants at the construction Site:

- a. Perimeter silt fencing throughout the Site showed evidence of improper installation, undercutting, overtopping, and significant sediment build up [Refer to Appendix B of the Inspection Report, Photograph Log (Photographs 12-14, 19, 20, 24, 25, 28, 30, 35, 40, 48, 52, 62, and 66-68)].
- b. Turbid water was observed discharging from Outfall #5 towards an adjacent wetland area, an unnamed tributary to Oliver Creek, and Oliver Creek [Refer to Appendix B of the Inspection Report, Photograph Log (Photograph 16)].
- c. The Site’s rock track-out pad installed at the ingress/egress from Canada Road was not installed to the specification and detail in the Site’s ESC plan [Refer to Appendix B of the Inspection Report, Photograph Log (Photographs 1 through 3)].

Therefore, Respondent is in violation of Part 4.1.1 of the Permit for failure to design, install and maintain effective erosion and sediment controls to minimize the discharge of pollutants at the construction Site.

5. Pursuant to Part 8.13 of the Permit, “the permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related equipment) which are installed or used by the permittee to achieve compliance with the conditions of this permit and with the requirements of SWPPPs”.

During the inspection, the EPA inspection team observed that the permittee failed to design, install, implement, and maintain effective pollution prevention measures to minimize the discharge of sediment and other pollutants due to the following:

- a. In the unnamed tributary to Oliver Creek, which runs through the center of the Site, the water was observed to be turbid and sediment laden. Sediment discharges from Outfalls #13 through #17 and unnamed outfalls were observed adjacent to the receiving water [Refer to Appendix B of the Inspection Report, Photograph Log (Photographs 40, 43, 44, 49, 50, 59, and 62)].

- b. The EPA Inspection Team observed sediment deposition offsite in areas south of Outfall #5, west of Outfall #7, and at Outfalls #14 and #16 [Refer to Appendix B, Photograph Log (Photographs 11-14, 19, 24, 25, 40, 48, 50, 52, 62, 66-68)].

Therefore, Respondent is in violation of Part 4.1.4 of the Permit for failure to design, install, implement, and maintain effective pollution prevention measures to minimize the discharge of sediment and other pollutants at the construction Site.

6. Pursuant to Part 5.5.3.1.c of the Permit, “if sediment escapes the permitted area, off-Site accumulations that have not reached a stream must be removed at a frequency sufficient to minimize off-site impacts”. The permittee is responsible for removing the sediment that has been discharged and accumulated in the wooded area prior to entering the two unnamed tributaries of Oliver Creek.

During the inspection, the EPA inspection team observed evidence of sediment discharge off-site at Outfalls #16, #14, and several unidentified outfalls that have not been assigned identification numbers in the EPSC plan [Refer to Appendix B, Photograph Log of the Inspection Report (Photographs 11-14, 19, 24, 25, 40, 48, 50, 52, 62, 66-68), and Appendix C, Exhibit Log (Exhibit 5)].

Therefore, Respondent is in violation of Part 5.5.3.1.c of the Permit for failure to remove the off-site accumulations of sediment that have not reached the two unnamed tributaries of Oliver Creek at a frequency sufficient to minimize off-site impacts.

7. Pursuant to Part 5.5.3.4 of the Permit, “Steep slopes shall be stabilized within one week after construction activity on the slope has temporarily or permanently ceased.”

During the inspection, the EPA inspection team observed disturbed slopes without temporary or permanent stabilization and rill or gully erosion [Refer to Appendix B of the Inspection Report, Photograph Log (Photographs 12, 13, 14, 19, 40, and 48)].

Therefore, Respondent is in violation of Part 5.5.3.4 of the Permit for failure to stabilize steep slopes where construction activity had temporarily or permanently ceased at the construction Site.

The EPA may take enforcement action in response to the above violations, which may include the issuance of an administrative order, assessment of administrative penalties, and/or initiation of a civil or criminal judicial action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319. The EPA is continuing to investigate Respondent’s compliance with the CWA. Therefore, pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, the EPA hereby requests that Respondent provide its response to the information request set forth in “Enclosure A” within 30 calendar days of your receipt of this letter. Respondent’s response should be submitted via email to Jeremy Judd at [judd.jeremy@epa.gov](mailto:judd.jeremy@epa.gov).

Failure to provide a full and complete response to this information request or to adequately justify a failure to respond within the time frame specified above may result in an EPA enforcement action

pursuant to federal law, including, but not limited to Section 309 of the CWA, 33 U.S.C. § 1319, and 18 U.S.C. § 1001.

If Respondent believes that any of the requested information constitutes confidential business information, Respondent may assert a confidentiality claim with respect to such information, except for effluent data. Further details, including how to make a business confidentiality claim, are found in “Enclosure B.”

All information submitted in response to this information request must be accompanied by the following certification, signed by a duly authorized official in accordance with 40 C.F.R. § 122.22:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.”

By this letter, the EPA is extending to you an opportunity to advise the Agency, via virtual meeting or conference call, or in writing, of any further information the EPA should consider with respect to these alleged violations. If you would like to arrange a virtual meeting or telephone conference to show cause why the EPA should not take formal civil enforcement action against Browning Contractors, Inc., for the alleged violation(s), including the assessment of appropriate civil penalties, please contact the EPA within seven calendar days of your receipt of this letter.

Please be aware that the EPA may use information provided during the meeting or telephone conference in any enforcement proceeding related to this matter. Notwithstanding the scheduling of a show cause meeting, the EPA retains the right to bring further enforcement action under Section 309 of the CWA, 33 U.S.C. § 1319, for noncompliance with the CWA.

If you have any questions, or to arrange a show cause meeting, please contact Jeremy Judd at (404) 562-9505, or via email at [judd.jeremy@epa.gov](mailto:judd.jeremy@epa.gov). Please contact Lisa Ellis, Associate Regional Counsel, at (404) 562-9541, or via email at [ellis.lisa@epa.gov](mailto:ellis.lisa@epa.gov) with any legal inquiries.

Sincerely,

**KERIEMA NEWMAN**

Digitally signed by KERIEMA  
NEWMAN  
Date: 2024.12.11 12:10:37 -05'00'

Keriema S. Newman  
Director  
Enforcement and Compliance Assurance Division

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## ENCLOSURE A

### INFORMATION REQUEST PURSUANT TO SECTION 308 OF THE CLEAN WATER ACT

#### Instructions

1. Identify the person(s) responding to this Information Request and certify each person's authority to respond to this Information Request on behalf of the company they represent.
2. Please provide a separate narrative response to each Question and subpart of a Question set forth in this Information Request.
3. Precede each answer with the text and the number of the Question and its subpart to which the answer corresponds.
4. All documents submitted must contain a notation indicating the Question and subpart of the Question to which they are responsive.
5. In answering each Information Request Question and subpart thereto, identify all documents and persons consulted, examined, or referred to in the preparation of each response, and provide true and accurate copies of all such documents.
6. If information not known or not available to you as of the date of submission of a response to this Information Request should later become known or available to you, you must supplement your response to the EPA. Should you find at any time after the submission of your response that any portion of the submitted information is false or misrepresents the truth, you must notify the EPA as soon as possible.
7. For each document produced in response to this Information Request, indicate on the document, or in some other reasonable manner, the number of the Question to which it responds.
8. Where specific information has not been memorialized in a document, but is nonetheless responsive to a Question, you must respond to the Question with a written response.
9. If information responsive to this Information Request is not in your possession, custody, or control, then identify the person from whom such information may be obtained.
10. If you have reason to believe that there may be persons able to provide a more detailed or complete response to any Question or who may be able to provide additional responsive documents, identify such persons and the additional information or documents that they may have.
11. The EPA requests that all documents provided in an electronic format be compatible with pdf.

12. The EPA requests that all spreadsheet information be in an electronic format and compatible with MS Excel.
13. If any Question relates to activities undertaken by entities other than the recipient of this Information Request, and to the extent that you have information pertaining to such activities, provide such information for each entity.

### **Definitions**

1. All terms not defined herein shall have their ordinary meanings, unless such terms are defined in the Clean Water Act or its implementing regulations, in which case the statutory or regulatory definitions shall control.
2. Words in the masculine may be construed in the feminine if appropriate, and vice versa, and words in the singular may be construed in the plural if appropriate, and vice versa, in the context of a particular question or questions.
3. The terms “And” and “Or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of this Information Request any information which might otherwise be construed outside its scope.
4. The term “Identify” means, with respect to a natural person, to set forth the person’s name, present or last known business address and business telephone number, present or last known home address and home telephone number, and present or last known job title, position or business.
5. The term “Identify” means, with respect to a document, to provide its customary business description,; its date, its number, if any (invoice or purchase order number), the identity of the author, addressee and/or recipient, and substance of the subject matter.
6. The term “Identify” means, with respect to a corporation, partnership, business trust or other association or business entity (including a sole proprietorship), to set forth its full name, address, legal form (e.g., corporation, partnership, etc.), organization, if any, contact information, and a brief description of its business.
7. The term “Site” and/or “Sites” means the business(es) performing construction operations or other related activities at the Ashmont Planned Development developed by Browning Contractors, Inc. located at 9640 East Davies Plantation Road, Lakeland, Tennessee 38002.
8. The term “You” and “Your” shall mean the person identified in response to the Instructions Section, Question #1, who has the appropriate authority to respond to this Information Request.

## Questions and Requests for Information

1. Identify the names, email addresses, telephone numbers and mailing addresses of the current owner(s) and/or operator(s) of the Site. Specify the legal name with the exact spelling of each owner and/or operator. For each corporate owner, specify the state of incorporation and principal place of business. If incorporated, provide the name, email addresses, and mailing address of the registered agent.
2. Provide a list of all current construction sites and/or projects being conducted by or on behalf of Browning Contractors, Inc., located within the eight EPA Region 4 states (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Tennessee, and South Carolina). Include in this list the following information for each site:
  - a. Provide the total disturbed acreage of each site.
  - b. Provide the specific date(s) for the commencement of operations at each Site for each owner and operator.
  - c. Specify the date construction activities began and ended on Phase I. Specify the date construction began on Phase II, as well as the current projected end date.
  - d. Describe the current stage of construction activity at the Site (e.g., clearing/grubbing, grading, infrastructure, building construction, final stabilization, etc.).
3. Provide a copy of the Notice of Intent (NOI), along with any attachments, as submitted electronically to TDEC for the Site's coverage under the 2018 Construction Activity for Common Development Construction Projects. Provide both the original NOI, and copies of any requests for modifications that were submitted thereafter.
4. Provide copies of the following records, as described, and required by Tennessee's Permit for Stormwater Discharges Associated with Construction Activity for Common Development Construction Projects for the Site:
  - a. The facility's most recent Erosion, Sedimentation and Pollution Control Plan;
  - b. Provide copies of the maintenance and weekly inspection reports performed in accordance with the Permit Part 5.5.3.9 for all inspections conducted from July 2023 until the date of this Information Request. If BMP maintenance and/or corrective actions are tracked independent of the inspection reports, also include those records. Specifically, include documentation of any maintenance or repairs made to control measures and any removal activities of sediment discharged off site in response to EPA's July 2024 CSWEI.
5. Provide copies of any and all environmental assessments, including assessments of soils, vegetation, or hydrology, that were conducted for the Site. Provide copies of any assessments performed for this property that was used to either delineate waters of the United States or to identify the Site's outfalls and receiving waters.

6. Provide a copy of any Site reports, notices of violations, administrative orders, cease and desist orders, and any correspondence from local or State agencies related to Phase I or Phase II construction activities at the Site.
7. Identify the individual or individuals who prepared the responses to this Information Request.

## **ENCLOSURE B**

### **RIGHT TO ASSERT BUSINESS CONFIDENTIALITY CLAIMS (40 C.F.R. Part 2)**

Except for effluent data, you may, if you desire, assert a business confidentiality claim as to any or all of the information that the EPA is requesting from you. The EPA regulation relating to business confidentiality claims is found at 40 C.F.R. Part 2.

If you assert such a claim for the requested information, the EPA will only disclose the information to the extent and under the procedures set out in the cited regulations. If no business confidentiality claim accompanies the information, the EPA may make the information available to the public without any further notice to you.

According to 40 C.F.R. § 2.203(b). Method and time of asserting business confidentiality claim, a business which is submitting information to the EPA may assert a business confidentiality claim covering the information by placing on (or attaching to) the information, at the time it is submitted to the EPA, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as "trade secret," "proprietary," or "company confidential." Allegedly confidential portions of otherwise non confidential documents should be clearly identified by the business and may be submitted separately to facilitate identification and handling by the EPA. If the business desires confidential treatment only until a certain date or until the occurrence of a certain event, the notice should so state.

## ENCLOSURE C

### NOTICE OF SECURITIES AND EXCHANGE COMMISSION REGISTRANTS' DUTY TO DISCLOSE ENVIRONMENTAL LEGAL PROCEEDINGS

Securities and Exchange Commission regulations require companies registered with the SEC (e.g., publicly traded companies) to disclose, on at least a quarterly basis, the existence of certain administrative or judicial proceedings taken against them arising under Federal, State or local provisions that have the primary purpose of protecting the environment. Instruction 5 to Item 103 of the SEC's Regulation S-K (17 CFR 229.103) requires disclosure of these environmental legal proceedings. For those SEC registrants that use the SEC's "small business issuer" reporting system, Instructions 1-4 to Item 103 of the SEC's Regulation S-B (17 CFR 228.103) requires disclosure of these environmental legal proceedings.

If you are an SEC registrant, you have a duty to disclose the existence of pending or known to be contemplated environmental legal proceedings that meet any of the following criteria (17 CFR 229.103(5)(A)-(C)):

- A. Such proceeding is material to the business or financial condition of the registrant;
- B. Such proceeding involves primarily a claim for damages, or involves potential monetary sanctions, capital expenditures, deferred charges or charges to income and the amount involved, exclusive of interest and costs, exceeds 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis; or
- C. A governmental authority is a party to such proceeding and such proceeding involves potential monetary sanctions, unless the registrant reasonably believes that such proceeding will result in no monetary sanctions, or in monetary sanctions, exclusive of interest and costs, of less than \$100,000; provided, however, that such proceedings which are similar in nature may be grouped and described generically.

Specific information regarding the environmental legal proceedings that must be disclosed is set forth in Item 103 of Regulation S-K or, for registrants using the "small business issuer" reporting system, Item 103(a)-(b) of Regulation S-B. If disclosure is required, it must briefly describe the proceeding, "including the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceedings and the relief sought."

You have been identified as a party to an environmental legal proceeding to which the United States government is, or was, a party. If you are an SEC registrant, this environmental legal proceeding may trigger, or may already have triggered, the disclosure obligation under the SEC regulations described above.

This notice is being provided to inform you of SEC registrants' duty to disclose any relevant environmental legal proceedings to the SEC. This notice does not create, modify or interpret any existing legal obligations, it is not intended to be an exhaustive description of the legally applicable

requirements and it is not a substitute for regulations published in the Code of Federal Regulations. This notice has been issued to you for information purposes only.

No determination of the applicability of this reporting requirement to your company has been made by any governmental entity. You should seek competent counsel in determining the applicability of these and other SEC requirements to the environmental legal proceeding at issue, as well as any other proceedings known to be contemplated by governmental authorities.

If you have any questions about the SEC's environmental disclosure requirements, please contact the Office of Chief Counsel in the SEC's Division of Corporation Finance. The phone number is (202) 942-2900.