



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

ELECTRONIC MAIL
CONFIRMATION OF EMAIL RECEIPT REQUESTED

Denson Henry
Henry Brick Company
3409 Water Avenue
Selma, Alabama 36703
densonhenry@henrybrick.com

Re: Notice of Clean Water Act (CWA) Violations and Opportunity to Show Cause for Henry Brick Company in Selma, Alabama Pursuant to Section 309(a) of the CWA, 33 U.S.C. § 1319(a); Docket Number 309-2023-01

Dear Denson Henry:

The purpose of this letter is to inform you that the U.S. Environmental Protection Agency, Region 4 has identified potential violations of Section 301(a) of the Clean Water Act (CWA), 33 U.S.C. § 1311(a), at the property located at or near the intersection of Alabama State Route 14 and Race Street (latitude 32.427541, longitude -86.990530), located in Selma, Dallas County, Alabama (Site). Two enclosures have been included in this letter to describe the location of the Site, also known as the "Claude Jack Mine" (Exhibit A: Site Location, Exhibit B: Discharge Area).

In a Joint Public Notice between the U.S. Army Corps of Engineers, Mobile District (Corps) and the Alabama Department of Environmental Management dated November 29, 2022, Henry Brick Company (Henry Brick) requested an "after-the-fact authorization for mechanized land clearing forested wetlands and to retain the unauthorized discharge of fill material in an unnamed tributary to Beech Creek ... into wetlands associated with clay and sand mining ..." The Public Notice states that the unauthorized work includes the mechanized land clearing of approximately 55.09 acres of forested wetlands, the subsequent excavation of approximately 11 acres of those wetlands for surface mining, and the discharge of fill material into approximately 320.05 linear feet of intermittent stream for access road improvement and surface mining. Beech Creek is a large perennial tributary of the Alabama River, a traditional navigable water of the United States and is thus a jurisdictional water under the CWA.

In a letter that was electronically transmitted on February 3, 2023, the EPA requested to be the lead enforcement agency in the matter, which the Corps assigned the reference number SAM-2020-01147-JSC. In accordance with the Memorandum of Agreement between the agencies, the EPA has reviewed the Corps' case file as part of its assessment of the associated unpermitted discharge of dredged and/or fill material into wetlands and waters of the United States at the Site.

Based on information above, the EPA has reason to believe that Henry Brick discharged dredged and/or fill material into jurisdictional waters of the United States while conducting clay and sand mining operations and other activities without authorization under Section 404 of the CWA, 33 U.S.C. § 1344.

The EPA believes that Henry Brick is in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a) for the following reasons:

1. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into waters of the United States except in compliance with a permit or exemption issued under, *inter alia*, Section 404 of the CWA, 33 U.S.C. § 1344.
2. After a site visit made by staff of the Corps on August 18, 2021, conversations held between Henry Brick and the Corps, and desktop investigations conducted by both the Corps and the EPA, the agencies concur that commencing in 2019, Henry Brick and/or those acting on their behalf discharged dredged and/or fill material into waters of the United States using earth-moving machinery without Corps authorization by means of a Department of the Army permit pursuant to Section 404 of the CWA, 33 U.S.C. § 1344. The unauthorized activities are associated with clay and sand mining, specifically hydric soil referred to as Minter loam. To date, the unauthorized dredge and/or fill material remains in waters of the United States.
3. These unauthorized activities impacted approximately 320.05 linear feet of a relatively permanent unnamed tributary and approximately 55.09 acres of adjacent wetlands with a continuous surface connection to the unnamed tributary. The unnamed tributary connects with a channelized tributary of Beech Creek which flows into the Alabama River, which is a traditional navigable water of the United States.
4. At no time during the discharge of dredged and/or fill material into waters of the United States did Henry Brick possess a permit under Section 404 of the CWA, 33 U.S.C. § 1344, authorizing the discharge of dredged and/or fill material. Each discharge of pollutants into navigable waters without the required permit issued under Section 404 of the CWA, 33 U.S.C. § 1344, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).
5. Each day the discharged material remains in waters of the United States without the required permit under Section 404 of the CWA, 33 U.S.C. § 1344, constitutes a day of violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).
6. Therefore, Henry Brick has violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a), by discharging pollutants into waters of the United States without a permit.

Such violations are subject to enforcement actions pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, including the issuance of compliance orders, the assessment of administrative penalties, and/or the initiation of civil or criminal actions. Any continued work by Henry Brick that involves discharge of dredged and/or fill material into waters of the United States without authorization is being done at risk of adding to the scope of the violations.

Within 14 calendar days of receiving of this letter, you must contact Rachel Earwood of my staff at (404) 562-9774, or earwood.rachel@epa.gov, to arrange a meeting to show cause why the EPA should not take formal civil enforcement action against you for the violations, including the assessment of appropriate civil penalties and injunctive relief. In lieu of appearing in the EPA's offices for this meeting, a video or telephone conference may be scheduled.

You should be prepared to provide all relevant information with supporting documentation pertaining to the violations, including but not limited to any financial information which may reflect an inability to pay a penalty. You have the right to be represented by legal counsel. All information submitted in response to or during the show cause meeting should be accompanied by the following certification that is signed by a duly authorized official:

“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 fine and imprisonment for knowing violations.”

Please be aware that the EPA may use information provided during the telephone or video conference in any potential 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 the violations cited herein or for any other violation of the CWA.

The EPA appreciates your prompt attention to this matter. If you have questions regarding this letter, please contact Rachel Earwood at (404) 562-9774, or at earwood.rachel@epa.gov. Legal inquiries should be directed to Bianca Jaikaran, Associate Regional Counsel, at 404-562-9680 or via email at jaikaran.bianca@epa.gov.

Sincerely,

**TODD
RUSSO**

Digitally signed by
TODD RUSSO
Date: 2023.09.07
14:40:52 -04'00'

for

Keriema S. Newman

Acting Director

Enforcement and Compliance Assurance Division

Enclosure

cc: Lesley Turney, leslie.e.turney@usace.army.mil
U.S. Army Corps of Engineers, Mobile District

Courtney Shea, courtney.m.shea@usace.army.mil
U.S. Army Corps of Engineers, Mobile District

William McClimans, wdm@adem.alabama.gov
Alabama Department of Environmental Management

Scott Hughes, ash@adem.alabama.gov
Alabama Department of Environmental Management