



## REGION 4

ATLANTA, GA 30303

### **ELECTRONIC MAIL** **CONFIRMATION OF RECEIPT EMAIL REQUESTED**

Mark Hall  
Regional Environmental Manager  
Radius Recycling  
515 1<sup>st</sup> Avenue North  
Birmingham, Alabama 35204  
cmhall@rdus.com

Re: Notice of Violation and Opportunity to Show Cause Pursuant to Section 309(a) of the Clean Water Act (CWA), 33 U.S.C. section 1319, and Information Request Pursuant to Section 308 of the CWA, 33 U.S.C. section 1318, Schnitzer Southeast LLC *dba* Radius Recycling, Birmingham, Alabama Docket No. 308-2024-10 and 309-2024-09

Dear Mark Hall:

On November 28, 2023, the U.S. Environmental Protection Agency, Region 4 and the Alabama Department of Environmental Management (ADEM) conducted a Stormwater Compliance Evaluation Inspection (SW CEI) at the Radius Recycling – Birmingham (Facility) owned by Schnitzer Southeast LLC *dba* Radius Recycling (Respondent), located at 515 First Avenue N, Birmingham, Alabama 35204. The purpose of the SW CEI was to evaluate Respondent’s compliance with Sections 301 and 402 of the Clean Water Act (CWA), 33 U.S.C. sections 1311 and 1342(p); the regulations promulgated thereunder at 40 C.F.R. section 122.26; and the Alabama National Pollutant Discharge Elimination System (NPDES) General Permit for stormwater discharges associated with the salvage and recycling industry, Permit No. ALG180341 (Permit).

The November 2023 SW CEI and subsequent investigative efforts have revealed that the Facility failed to comply with the requirements of Sections 301 and 402(p) of the CWA, 33 U.S.C. sections 1311 and 1342(p), its implementing regulations at 40 C.F.R. section 122.26, and the Permit. Specifically, the EPA hereby notifies Respondent, pursuant to Section 309(a) of the CWA, 33 U.S.C. section 1319(a), of the following alleged violations associated with the Permit:

1. Pursuant to Part IV.A.2 of the Permit, the Permittee must “prepare and fully implement the

BMP [Plan] no later than the date coverage is granted.”

During the CEI, not all of the structural controls identified in the Facility’s Best Management Practices (BMP) Plan, dated March 2018, were currently installed, and being implemented. According to the BMP Plan, stormwater management is primarily achieved through housekeeping measures and storm drain inlet protection. Stockpiles in the metal storage yard were situated directly on top of storm drain inlets, some of which did not have any inlet protection measures installed.

Therefore, Respondent is in violation of Part IV.A.2 of the Permit for failure to fully implement their BMP Plan by not installing and maintaining all BMPs identified within the Plan.

2. Part IV.A.4.d of the Permit requires that “The permittee shall amend the BMP plan whenever there is a change in the facility or change in operation of the facility which materially increases the potential for the ancillary activities to result in a discharge of a significant amounts of pollutants.”

During the CEI, the BMP plan, dated March 2018, had not been updated to include the new drainage system that was installed as part of the scale house expansion project.

Therefore, Respondent is in violation of Part IV.A.4.d of the Permit for failure to amend the BMP plan to reflect the scale house expansion and its new drainage system.

3. Part I.A Note 1 of the Permit requires that samples be collected “At the nearest accessible location just prior to discharge and after final treatment.” Part I.B.1 of the Permit requires that samples be “representative of the volume and nature of the monitored discharge.”

During the CEI, Facility personnel indicated that the current representative sampling location for Outfall #1 is located at the downstream culvert where Valley Creek resurfaces from under the site. According to the site map and field observations, this is not an outfall and the site drainage system discharges into Valley Creek farther upstream. By collecting samples from the receiving water, Respondent did not sample the monitored discharge.

Therefore, Respondent is in violation of Parts I.A and I.B.1 of the Permit for in-stream sampling and failure to sample prior to discharge to waters of the State.

4. Part II.E.1.c of the Permit states that “[t]he discharge of a pollutant from a source not specifically identified in the NOI ... and not specifically included in the description of an outfall in this permit is not authorized and shall constitute noncompliance with this permit.”

During the CEI, a drop inlet was observed behind the warehouse and located approximately above the underground conduit of Valley Creek. The location of the outlet of this drainage system (including the new drainage system of the scale house expansion project) was unclear. An outfall for the drainage system was not identified in the 2022 NOI. Additionally, the location of Outfall 001-1 (also referred to as Outfall #1) changed between the 2017 BMP Plan site map compared to the 2022 NOI and updated site map.

The location of Outfall #1, which both the 2022 NOI and the updated site map identified as the point where Valley Creek resurfaces downstream of the Facility, does not meet the definition of outfall.

Therefore, Respondent is in violation of Part II.E.1.c of the Permit for failure to identify all outfalls in its NOI. Any discharges not identified in the NOI are unauthorized discharges to waters of the State.

Based on Respondent's noncompliance with the Permit and the CWA, Respondent may be subject to an enforcement action pursuant to Section 309 of the CWA, 33 U.S.C. section 1319. This section provides for the issuance of administrative penalty and/or compliance orders and the initiation of civil and/or criminal actions.

The EPA is continuing to investigate the Facility's compliance with the CWA. Therefore, pursuant to Section 308 of the CWA, 33 U.S.C. section 1318, the EPA hereby requests that Respondent provide the information set forth in "Enclosure A" (Information Request) within 14 calendar days of your receipt of this letter. Respondent should submit its response to Celina Russo via email at russo.celina@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. section 1319, and the False Statements Statute, 18 U.S.C. section 1001.

If Respondent believes that any of the requested information constitutes confidential business information, it 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. section 122.22(d):

"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."

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 Radius Recycling for the alleged violation(s), including the assessment of appropriate civil penalties, please contact the EPA within seven calendar days of receipt of this letter.

Please be aware that the EPA may use information provided during the meeting or telephone conference and in response to the Information Request in any enforcement proceeding related to this matter. Notwithstanding a complete response to the Information Request or 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. section 1319, for noncompliance with the CWA.

If you have any questions or would like to arrange a show cause meeting, please contact Celina Russo at (404) 562-9804, or via email at russo.celina@epa.gov. Please contact Paula Feldmeier, Associate Regional Counsel, at (404) 562-8276, or via email at feldmeier.paula@epa.gov with any legal inquiries.

Sincerely,

**KERIEMA NEWMAN**

Digitally signed by KERIEMA  
NEWMAN  
Date: 2024.07.31 12:32:17 -04'00'

Keriema S. Newman  
Director  
Enforcement and Compliance Assurance Division

cc: Daphne Lutz, ADEM  
DLutz@adem.alabama.gov

## **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 every 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, and a brief description of its business.
7. The term “Facility” and/or “Facilities” means the businesses operating or located at 515 First Avenue N, Birmingham, Alabama 3520.
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 and 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. Provide the mailing address and phone number for each owner and/or operator. For each corporate owner, specify the state of incorporation and principal place of business. If incorporated, provide the name and mailing address of the registered agent.
2. Provide the specific date(s) for the commencement of operations at this Facility for each owner and/or operator within the last five (5) years.
3. Provide a copy of the Notice of Intent (NOI) and any relevant attachments as submitted to ADEM for coverage under the 2022 Permit.
4. Provide the beginning and end dates of construction for the scale house expansion project.
5. Provide a site plan/map, which clearly communicates the site's drainage system as it currently exits, including the recent scale house expansion. Please ensure the map shows (1) the connectivity of the drainage system, including all storm drain inlet locations and underground piping; (2) the direction of stormwater flow; (3) the location of all permitted outfalls as identified in the Facility's 2022 NOI as well as each outfall's ID number; and (4) all sampling locations. One or more maps may be submitted so long as all of the requested information is included and clearly communicated. If there were any changes in outfall locations and/or sampling locations at any time during the 2017 and/or 2022 permit cycles, please also identify the historic locations of any previously identified outfalls/sampling locations, as well as the date(s) their usage was terminated, and why.
6. Provide a narrative description of the Facility's monitoring procedures and sampling locations used to satisfy Parts I.A and I.B of the Permit. If applicable, also provide any documentation and/or correspondence from ADEM regarding sampling location selection.
7. If not clearly identified in the BMP Plan, identify the current person(s) responsible for sampling. Is sampling conducted by facility personnel or a third-party contractor?
8. Provide copies of the following records, as described, and required by Alabama's Permit for Stormwater Discharges Associated with Industrial Activity, covering the past three (3) years (beginning January 01, 2021, through present):
  - a. The facility's most recent Best Management Practices (BMP) Plan (Permit Part IV.A). If a different version(s) of the BMP Plan was used during the last three years, please also provide a copy of the previous/superseded version(s).
  - b. Monitoring reports, as described by Part I.B.3 in the Permit, for all monitored outfalls.
  - c. Records of incidents with spills, leaks, and/or other releases of pollutants, as described by Part I.A of the Permit.

## **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.

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.