



REGION 4

ATLANTA, GA 30303

ELECTRONIC EMAIL

CONFIRMATION OF EMAIL RECEIPT REQUESTED

Trace Browning
Browning Land & Cattle Company, LLC
P.O. Box 587
Red Boiling Springs, Tennessee 37150
sbrowning@nctc.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. § 1319(a), and Information Request Pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, for Browning Land & Cattle Company, LLC, near Red Boiling Springs, Clay County, Tennessee; Docket Nos. 309-2024-07 and 308-2024-09

Dear Trace Browning:

This letter is to inform you that the U.S. Environmental Protection Agency, Region 4 has identified violations of Section 301(a) of the Clean Water Act (CWA), 33 U.S.C. § 1311(a), on property located at 3479 Leonard Road, latitude 36.5403° N and longitude -85.7956° W, near the City of Red Boiling Springs, Clay County, Tennessee (Site). The Site is indicated on the enclosed Exhibit A.

Based on the EPA's review of observations made by the Tennessee Department of Environment and Conservation during a January 27, 2023, Site review, as well as the EPA's review of online data sources, the EPA has reason to believe that commencing around January 2023 to the present, Browning Land & Cattle Company, LLC, discharged dredged and/or fill material into waters of the United States without authorization under Section 404 of the CWA, 33 U.S.C. § 1344. The dredged and/or fill material is associated with the creation of pastureland and other earthwork for a Concentrated Animal Feeding Operation (CAFO). Specifically, the discharge of dredged and/or fill material appears to have occurred along portions of two unnamed tributaries to Trace Creek: Unnamed Tributary 1 (UT1) and Unnamed Tributary 2 (UT2). The portions of UT1 and UT2 impacted by dredged and/or fill material are collectively referred to as the "Discharge Area". The Discharge Area is indicated on the enclosed Exhibit B.¹

¹ Unnamed Tributary 3 (UT3) is also indicated on Exhibit B since the EPA considers its reach to be waters of the United States.

The EPA believes that Browning Land & Cattle Company, LLC, 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, including tributaries and their adjacent wetlands, except in compliance with a permit issued under, *inter alia*, Section 404 of the CWA, 33 U.S.C. § 1344.
2. Commencing around January 2023 to the present, Browning Land & Cattle Company, LLC, and/or those acting on its behalf, discharged dredged and/or fill material into waters of the United States at the Site using earth-moving machinery during unauthorized activities associated with the creation of pastureland and other earthwork related to a CAFO. During the course of the work:
 - a) UT1 was impacted via the deposition of debris and other fill material, land-clearing of the riparian buffer adjacent to its channel, and the construction of a dam within its channel; and
 - b) UT2 was impacted via the deposition of debris and other fill material and land-clearing of the riparian buffer adjacent to its channel.

To date, the unauthorized dredge and/or fill material remains in waters of the United States.

3. These unauthorized activities impacted approximately 2,837 linear feet of relatively permanent waters (approximately 2,089 linear feet of UT1 and approximately 748 linear feet of UT2). These waters connect to Trace Creek, which flows into Line Creek, which flows into the Barren River. The Barren River is a traditional navigable water.
4. At no time during the discharge of dredged and/or fill material into waters of the United States did Browning Land & Cattle Company, LLC, possess a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, authorizing the discharge of dredged and/or fill material. Each discharge of pollutants into waters of the United States 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, Browning Land & Cattle Company, LLC, 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 Browning Land & Cattle Company, LLC, 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. If you would like to arrange

a telephone or video conference to show cause why the EPA should not take formal civil enforcement action against Browning Land & Cattle Company, LLC, for the violations, including the assessment of appropriate civil penalties and injunctive relief, please contact Rachel Earwood of my staff at (404) 562-9774 or earwood.rachel@epa.gov, or have your legal counsel contact Matthew Hicks at (404) 562-9670 or hicks.matthew@epa.gov, within 14 calendar days of your receipt of this letter.

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 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.

Information Request

In addition to the Notice of Violation and Opportunity to Show Cause provided above, the EPA requests, pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, that you provide all information set forth in the enclosed Information Request within 30 calendar days of receipt of this letter. The EPA requests that the information be sent electronically to Rachel Earwood at earwood.rachel@epa.gov. If you are unable to provide the response in electronic format, please contact Rachel Earwood to make other arrangements.

Compliance with this request is mandatory. Failure to provide a full and truthful 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. This Information Request is not subject to the approval requirements of the Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35.

If you believe that any of the requested information is confidential business information, you may assert a business confidentiality claim covering part or all of the information, in the manner described by 40 C.F.R. § 2.203(b). Information covered by such a claim will be disclosed by the EPA only to the extent, and by means of the procedures, set forth in 40 C.F.R. Part 2, Subpart B, and 41 Fed. Reg. 36902 (Sept. 1, 1976), as amended at 43 Fed. Reg. 40000 (Sept. 8, 1978); 50 Fed. Reg. 51661 (Dec. 18, 1985). If no such claim accompanies the information when it is received by the EPA, the EPA may make the

information available to the public without further notice. Also, sending documents covered by a business confidentiality claim electronically to the EPA is done at the risk of the claimant, as the EPA does not have the capability to encrypt electronic information. If you do not wish to send the response by email, please contact Rachel Earwood to make other arrangements.

The EPA appreciates your prompt attention to this matter. If you have any questions regarding this letter, please contact Rachel Earwood at (404) 562-9473 or earwood.rachel@epa.gov. For legal questions, please contact Matthew Hicks, Associate Regional Counsel, at (404) 562-9670 or hicks.matthew@epa.gov. Thank you for your cooperation.

Sincerely,

KERIEMA
NEWMAN

Digitally signed by
KERIEMA NEWMAN
Date: 2024.06.17
15:25:03 -04'00'

Keriema S. Newman
Director
Enforcement and Compliance Assurance Division

Enclosures:

1. Exhibit A – Site
2. Exhibit B – Discharge Area
3. CWA Section 308 Information Request
4. Notice of SEC Duty to Disclose
5. EPA Small Business Resources Information Sheet

cc: David M. Moore, Esq.,
E&W Law
david.moore@earthandwatergroup.com

David L. Harbin, Esq.,
E&W Law
david.harbin@earthandwatergroup.com

Brad Ulmer
Tennessee Department of Environment and Conservation, Cookeville
Environmental Field Office, brad.ulmer@tn.gov

Casey Ehorn
U.S. Army Corps of Engineers, Regulatory Division, Nashville District,
casey.h.ehorn@usace.army.mil

ENCLOSURE

CLEAN WATER ACT SECTION 308 INFORMATION REQUEST

I. INSTRUCTIONS

1. Identify the person(s) answering these questions, including the person's full name, business mailing address, business telephone number, and relationship to Respondent.
2. Please provide a separate narrative response for each occurrence of a discharge and to each Question and subpart of a Question set forth in this Information Request.
3. Precede each answer with the number of the Question to which it corresponds.
4. If information or documents 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. Moreover, 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 of this fact as soon as possible and provide the EPA with a corrected response.
5. 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.

II. DEFINITIONS

The following definitions shall apply to the following words as they appear in this Information Request:

1. The term "CWA" refers to the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251-1387, also known as the Clean Water Act.
2. 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 to be outside its scope.
3. The term "Discharge Area" means the portions of two unnamed tributaries to Trace Creek, Unnamed Tributary 1 (UT1) and Unnamed Tributary 2 (UT2), that have been impacted by dredged and/or fill material during the creation of pastureland and other earthwork related to a Concentrated Animal Feeding Operation (CAFO). More specifically, the Discharge Area includes the areas indicated on the attached Exhibit B, on your property located at 3479 Leonard Road, Red Boiling Springs, Clay County, Tennessee, at latitude 36.5403° N and longitude -85.7956° W.
4. The term "Site" means the parcel or parcels of land on which the Discharge Area is located. The Site is indicated on Exhibit A.

5. The term “Work” means any land clearing activities, ditching, dredging, side casting, road construction, stream crossing construction, dam construction, berm construction, mechanical land clearing, piping of streams, or filling activities that have occurred in wetlands or other waters of the United States (to include streams) at the Site since you owned, controlled, or did any Work on the Site.
6. The terms “document” and “documents” shall mean any object that records, stores, or presents information, and includes writings of any kind, formal or informal, whether or not wholly or partially in handwriting, including by way of illustration and not by way of limitation, any invoice, manifest, bill of lading, receipt, endorsement, check, bank draft, cancelled check, deposit slip, withdrawal slip, order, correspondence, record book, minutes, memorandum of telephone, and other conversations including meetings, diary, calendar, desk pad, scrapbook, notebook, bulletin, circular, form, pamphlet, statement, journal, postcard, letter, telegram, telex, report, notice, message, analysis, comparison, graph, chart, interoffice or intra office communications, photostatic or other copy of any documents, microfilm or other film record, any photograph (in color), sound recording on any type of device; any punch card, disc or disc pack; any tape or other type of memory generally associated with computers and data processing (together with the programming instructions and other written material necessary to use such punch card, disc or disc pack, tape, or other type of memory and together with printouts of such punch card, disc or disc pack, tape, or other type of memory); and (a) every copy of each document which is not an exact duplicate of a document which is produced, (b) every copy which has any writing, figure or notation, annotation, or the like on it, (c) drafts, (d) attachments to or enclosures with any document, and (e) every document referred to in any other document. You may be asked to produce some documents in hard copy and electronically.
7. 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.
8. 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 legal name, address, legal form (e.g., corporation, partnership, etc.), organization, if any, and a brief description of its business.
9. 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 the substance or the subject matter.
10. The term “person” shall have the same definition as that contained in Section 502 of the CWA: an individual, firm, corporation, association, partnership, State, municipality, commission, or political subdivision of a State, or any interstate body.

11. The term “you” and/or “Respondent” shall mean Browning Land & Cattle Company, LLC, Trace Browning, or any other company or officer involved in the project or anyone acting on their behalf.
12. Where applicable, diagrams of the discharge location and copies of maps of the area may be used to explain the answers to the questions.
13. 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.
14. All terms not defined herein shall have their ordinary meaning, unless such terms are defined in the CWA or its implementing regulations, in which case the statutory or regulatory definitions shall control.

III. QUESTIONS

Please provide the EPA with the following information or documents pertaining to the Discharge Area identified in Exhibit B or the Site identified in Exhibit A:

1. Copies of any deeds, leases, easements, or other documents revealing the ownership interest or interests in the Site.
2. The name and address of any company, contractor, subcontractor, consultant, agent, or individual who directed or participated in the Work at the Site. Please provide any invoices for work conducted on the Discharge Area.
3. The types of equipment used to carry out the Work and the names and addresses of the person(s) and/or companies that own(ed) and/or operate(d) the equipment. If the equipment is owned by you, then indicate the date the equipment was purchased.
4. Describe in detail, including location, the source of the dredged and/or fill material used in the Discharge Area.
5. Provide the date upon which Work was commenced and the date upon which the Work was completed or will be completed.
6. A description of all Work at the Site performed by the Respondent, or on behalf of the Respondent by its contractor(s), subcontractor(s), consultant(s), or agent(s).
7. A description of any Work performed at the Site by any entity other than the Respondent, its contractor(s), subcontractor(s), consultant(s), or agent(s).
8. A description of the condition of the Discharge Area before Work commenced, including any maps, surveys, aerials, diagrams, narratives, or photographs.

9. Copies of any on-site environmental assessments that were done on soils, vegetation, or hydrology at the Site.
10. Copies of any Federal, State, or local permits that may have been received for the Work on the Site.
11. Your reasons for not obtaining a Federal permit under Section 404 of the Clean Water Act prior to commencing the Work at the Site.
12. Plans for any additional land disturbing activities at the Site including activities in waters of the United States.
13. Copies of any written or verbal communication with Federal, State, or local agencies regarding the Work (including handwritten notes).
14. Copies of any contracts covering Work at the Site.
15. A description of all best management practices that were used to prevent dirt, debris, and sediment from entering the waters of the United States located on the Site.
16. Please identify the individual or individuals who prepared the responses to this Information Request.

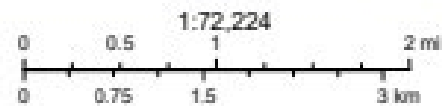
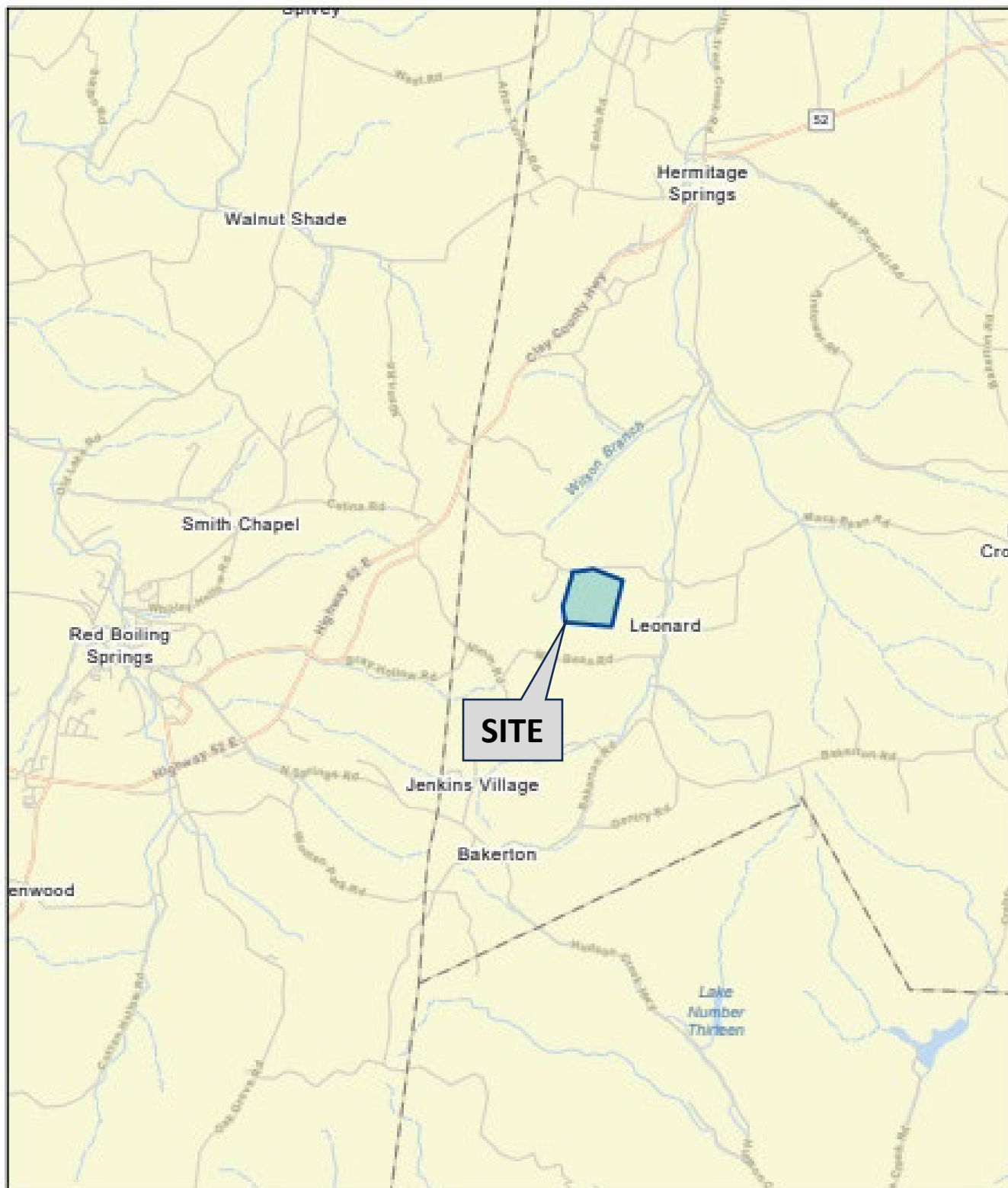
At the end of your response to this information request, please include the following certification:

"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."

Name

Title

EXHIBIT A: Site Red Boiling Springs, Clay County, Tennessee



Site consists of Parcel Numbers: 050 017.00, 050. 023.01, 050 024.00.

EXHIBIT B: Discharge Area Red Boiling Springs, Clay County, Tennessee

