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July 26, 2022

David C. Frank, Esq.
Attorney At Law
126 Gilbert Road
Bordentown, NJ 08505

Re: R&M Development, Notice of Hearing

Subject: Clean Water Act

Dear Mr. Frank:

I am a resident of the Creekview development and a member of the Homeowner's Association. This letter supplements my letter of July 25, 2022 and is intended to bring to your attention the Clean Water Act.

After drafting my letter of July 25, 2022, I thought about a case in which I, along with Mr. Novak, are presently involved wherein Shark River Cleanup Coalition is suing the Township of Wall and the property owner under the CWA. In your Notice of Hearing, you stated that the new design calls for the installation of a pipe and outfall structure conveying stormwater from the previously approved basin ultimately to the Rancocas Creek. Under the Clean Water Act, your client is required to have permits and meet certain design criteria. Should your client fail to obtain the proper permits and meet the design criteria, your client, along with the Township of Hainesport can be sued under the Clean Water Act. Any private citizen may sue. Anyone pursuing such litigation is entitled to recover attorneys' fees.

FYI: Congress enacted the CWA [Clean Water Act] to 'restore and maintain the chemical physical and biological integrity of the Nation's waters.' 33 U.S.C. § 1251(a). Towards that end, the CDWA prohibits the discharge of any pollutant, including dredged or fill material, by any person into navigable waters unless authorized by an appropriate permit. Altamaha Riverkeeper, Inc. v. U.S. Army Corps of Engineers, 309 F. App'x 355, 356 (11th Cir. 2009) (citing 33 U.S.C. § 1311(a)). Pursuant to section 402 of the CWA (TWA § 402'), parties that discharge pollutants to navigable waters must obtain a permit under the National Pollutant Discharge Elimination System (NPDES) program, which imposes effluent limitations and other water quality standards, from either the Environmental Protection Agency (EPA) or an EPA-approved state permit program. 33 U.S.C. § 1342. Black Warrior River-Keeper, Inc. v.

Drummond Co., 387 F.Supp. 3d 1271, 1278 (N.D. Ala. 2019). The CWA authorizes citizen enforcement actions against any person "alleged to be in violation" of an effluent limitation or standard under the CWA or an administrative order by the EPA or a state. 33 U.S.C. § 1365(a)(1). The Act requires plaintiffs to give notice of the alleged violations at least sixty (60) days prior to commencing a citizen suit. Id. § 1366(b)(1). Courts may award civil penalties and grant equitable relief. Id. §§ 1365(a), 1319(d). To establish a CWA violation, plaintiffs must show that there was a discharge of a pollutant into waters of the United States from a point source **without a NPDES permit**. State of Ga. V. City of East Ridge, 949 F.Supp. 1571 (N.D. Ga. 1996); Parker v. Scrap Metal Processors, Inc., 386 F.3d 993, 1014 (11th Cir. 2004).

If your client does not have the proper permits and design criteria, your client is exposing itself and the Township of Hainesport to a lawsuit. Thank you.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Deborah A. Plaia".

Deborah A. Plaia, Esq.

cc: John Gillespie, Esq.
Hainesport Joint Land Use Board