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UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

CLERK, US DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS FLORIDA

DERETHA MILLER, LUETRICIA FREEMAN )  
BECKER, RALPH HENRY, and NOEMY )  
RODRIGUEZ, individually, and on behalf of a )  
class of persons similarly situated, )

Plaintiffs, )

v. )

Case No:

THE CITY OF FORT MYERS, a Municipality, )  
MAYOR RANDALL P. HENDERSON JR., in )  
his official capacity as City of Fort Myers Mayor, )  
and SAEED KAZEMI, in his official capacity )  
as City of Fort Myers Manager, )

Defendants. )

2:18-cv-195-FEM-38CM

**INDIVIDUAL AND CLASS ACTION COMPLAINT**  
**AND DEMAND FOR JURY TRIAL,**  
**INJUNCTIVE RELIEF SOUGHT**

Plaintiffs, as individuals, and on behalf of a class of other people similarly situated bring this action against the City of Fort Myers, Florida, ("City" or "Fort Myers") and its Mayor and City Manager in their official capacities, and allege as follows:

**STATEMENT OF THE CASE**

1. This is an individual action on behalf of the named plaintiffs under the citizen suit provision of the federal Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6972(a)(1)(A), to enforce the prohibition in RCRA against "open dumps." Plaintiffs seek an enforcement order from the Court to require the removal of arsenic contaminated sludge, soil, and groundwater from the property consisting of one (1) city

block located on the south side of South Street, between Midway Avenue and Henderson Avenue, in the Dunbar neighborhood of the City of Fort Myers, Lee County (the “Dunbar Site” or “Sludge Dump”) where the City continues to maintain an open dump in violation of RCRA.

2. This is an individual action on behalf of named plaintiffs under the citizen suit provision of the RCRA, 42 U.S.C. § 6972(a)(1)(B), which authorizes private persons to sue those responsible for disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment, to compel a comprehensive investigation and cleanup of the City’s Sludge Dump.

3. This is a class action on behalf of named plaintiffs and other persons similarly situated under Fed. R. Civ. P. 23 and Florida law for negligence, strict liability, private nuisance, failure to warn, and medical monitoring, as a result of the disposal of arsenic contaminated sludge by the City in the Dunbar neighborhood of the City of Fort Myers. Plaintiffs and those similarly situated seek damages for diminution of property values, loss of use and enjoyment of property, annoyance, discomfort, and inconvenience, and seek the establishment of a court-supervised fund paid for by the City for establishment of a medical monitoring program for the class of persons who have been exposed to arsenic as a result of the City’s disposal of sludge at the Dunbar Site.

#### **JURISDICTION AND VENUE**

4. This Court has subject matter jurisdiction over the RCRA claims set forth in this Complaint pursuant to Section 7002(a)(1)(A) of RCRA, 42 U.S.C. § 6972(a)(1)(A), and 28 U.S.C. § 1331. Venue is also appropriate in the Middle District of

Florida, pursuant to Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), because the violations complained of herein have occurred and continue to occur within this judicial district.

5. This Court has supplemental jurisdiction over Plaintiffs' claims of negligence, strict liability, private nuisance, failure to warn, and medical monitoring arising under Florida law, pursuant to 28 U.S.C. § 1367(a).

6. Plaintiffs have complied with the pre-suit notice provisions of RCRA. Pursuant to Section 7002(b)(1)(A) of RCRA, 42 U.S.C. § 6972(b)(1)(A), on November 30, 2017, Plaintiffs mailed a notice of intent to file suit under RCRA to address the violations at the arsenic Sludge Dump to Defendant City of Fort Myers, the Administrator of the U.S. Environmental Protection Agency ("EPA"), the Regional Administrator of the EPA, the Director of the Florida Department of Environmental Protection ("FDEP"), (attached hereto as Exhibit "A" and incorporated by reference herein). More than ninety (90) days have passed since the notice was served on the City and these agencies.

7. Neither EPA nor FDEP has commenced nor are they diligently prosecuting a civil or criminal action in a court of the United States to redress the violations of the RCRA by the City for the maintenance of an open dump on the Dunbar Site.

8. The EPA has not commenced, nor is it prosecuting, a civil action in a court of the United States under 42 U.S.C. § 6973 or under 42 U.S.C. § 9606 to address the imminent and substantial endangerment to health or the environment. EPA has not

engaged in a removal action nor incurred costs to initiate a Remedial Investigation and Feasibility Study under 42 U.S.C.A. § 9604. EPA has not obtained a court order (including a consent decree) or issued an administrative order under 42 U.S.C. § 9606 or 42 U.S.C. § 6973, pursuant to which the City is conducting a removal action, Remedial Investigation and Feasibility Study, or proceeding with a remedial action on the Dunbar Site.

9. The FDEP has not commenced, nor is it prosecuting, an action under 42 U.S.C. §6972(a)(1)(B) to address the imminent and substantial endangerment to health or the environment; nor is FDEP actually engaging in a removal action under 42 U.S.C. § 9604; nor has FDEP incurred costs to initiate a Remedial Investigation and Feasibility Study under 42 U.S.C. § 9604 on the Dunbar Site.

10. For the pendent state law negligence, strict liability, private nuisance, failure to warn, and medical monitoring claims, Plaintiffs and those similarly situated have given the City the required notice pursuant to Fla. Stat. § 768.28, by mailing two statutory notices of intention to file suit on or about July 25, 2017, and an amended notice on or about March 11, 2018 (attached hereto as Exhibit “B” and incorporated by reference herein).

11. Venue is appropriate in this District Court because the endangerment and the violations occurred and are occurring in this judicial district.

#### **PARTIES**

12. Plaintiff Deretha Miller is a citizen of Lee County, Florida, and resides and owns property at 3442 South St., Fort Myers, FL 33916. Plaintiff has lived on South

Street in the vicinity of the City's Sludge Dump since on or about 1998. Plaintiff has owned her property since on or about 2001. Plaintiff sues on behalf of herself and as a representative of the proposed Property Damages and Exposure to Arsenic Contaminated Sludge Classes.

13. Plaintiff Luetricia Freeman Becker is a citizen of Lee County, Florida, and owns property at 3425 South St., Fort Myers, FL 33916. Plaintiff has lived on South Street in the vicinity of the City's Sludge Dump since on or about 1970. As a child, Plaintiff played on the Dunbar Site from on or about 1970-1975. Plaintiff has owned the property since on or about 2015. Plaintiff sues on behalf of herself and as a representative of the proposed Property Damages and Exposure to Arsenic Contaminated Sludge Classes.

14. Plaintiff Ralph Henry is a citizen of Lee County, Florida, and resides at 11338 SW 167 St., Miami, FL 33157 in Miami Dade County Florida, and owns property located at 3320 South St., Fort Myers, FL 33916. Plaintiff owns property on which the City dumped arsenic sludge. The City sold this property without disclosing to the buyer that the property had previously been used as a Sludge Dump. Plaintiff purchased the property without knowledge of the Sludge Dump. Plaintiff sues on behalf of himself and as a representative of the proposed Property Damages Class.

15. Plaintiff Noemy Rodriquez is a citizen of Lee County, Florida, and resides at 2002 SW 15<sup>th</sup> Ave., Cape Coral, FL 33991. Plaintiff owns property located at 3313 Jeffcott St., Fort Myers, FL 33916. Plaintiff owns property on which the City dumped arsenic sludge. The City sold this property without disclosing to the buyer that the

property had previously been used as a Sludge Dump. Plaintiff purchased the property without knowledge of the Sludge Dump. Plaintiff sues on behalf of herself and as a representative of the proposed Property Damages Class.

16. Defendant City of Fort Myers, located in Lee County, Florida, is a municipality created under Florida law and is a “person” as defined in the RCRA, 42 U.S.C. § 6903(16). The City is subject to suit for violations of the RCRA, pursuant to the citizen suit provision, 42 U.S.C. 6972(a)(1)(A). The City is subject to suit for state law tort claims, pursuant to Fla. Stat. § 768.28.

17. The City owned the Dunbar Site at all material times to this action and dumped arsenic-laden sludge onto the Dunbar Site.

18. The City has actual knowledge of the occurrences that form the basis of this complaint and has completed an investigation related thereto.

19. The Defendant Randall P. Henderson, Jr. is the Mayor of the City of Fort Myers and is sued in his official capacity.

20. The Defendant Saeed Kazemi is the City Manager of Fort Myers and is sued in his official capacity. The City Manager is responsible for managing the day-to-day operations of the City and implementing the City policies put into effect by the City’s Mayor and the City Council.

#### **GENERAL ALLEGATIONS**

21. During the 1960s and 1970s, the City pumped water from wells in Lee County near the Dunbar neighborhood for use as drinking water and treated that water with lime to remove contaminants. During part of that time, the City pumped water from

the Caloosahatchee River and discharged it onto the surface of the ground at the wells in order to recharge the wellfield.

22. The lime treatment of water from the City's wells produced tons of lime sludge, which was and is contaminated with arsenic.

23. In 1962, the City purchased the approximately 4-acre property known as "Home-a-rama" on South Street in the Dunbar neighborhood for use as a dump for the "lime sludge" from lime treatment of drinking water. The Home-a-rama property, or the Dunbar Site or Sludge Dump, consists of one (1) city block located on the south side of South Street, between Midway Avenue and Henderson Avenue, in the Dunbar neighborhood of the City of Fort Myers, Lee County.

24. The Dunbar neighborhood which surrounds the Dunbar Site is a predominantly African-American community with almost one-third of the population living below the poverty level located east of downtown Fort Myers, Florida.

25. The City dumped at least 25,000 cubic yards of sludge on the Dunbar Site over the course of several years, in some places at least ten (10) feet deep.

26. Some of the lots located within the Dunbar site containing the sludge were purchased by private parties as lots intended for residential use, including the property owned by Plaintiffs Noemy Rodriguez and Ralph Henry. The City never disclosed to any buyers that the property had been used as a Sludge Dump.

27. The City's arsenic contaminated Sludge Dump has not and does not meet RCRA standards for a solid waste landfill. The Sludge Dump was neither lined to prevent migration of arsenic into groundwater nor covered to prevent the sludge from migrating to

the air and surface water. In addition, for more than fifty (50) years the sludge has remained on the Dunbar Site with unrestricted access for children and others.

28. Until the mid-1980s, people living in the area near the Sludge Dump relied upon wells for their drinking water, and, upon information and belief, there may be some people living near the Dunbar Site who still use wells in the area.

29. The City's sludge is contaminated with arsenic, which poses a risk to human health for the residents in the area. Sludge samples taken on or about February 2007, at the direction of the City of Fort Myers, were all above FDEP soil contamination target levels for residential property use.

30. Both the City and FDEP were aware of these 2007 sample results, however, neither entity alerted the Plaintiffs or the Dunbar community.

31. Groundwater on and near the Sludge Dump is also contaminated with arsenic. At the direction of the City, groundwater monitoring wells were installed in 2008, which showed groundwater contamination with arsenic of twelve (12) micrograms per liter ("µg/l") to 18.0 µg/l, greater than the FDEP groundwater cleanup target level of 10 µg/l, which is also the drinking water standard for arsenic. Groundwater samples in November 2017 showed levels as high as 53 µg/l, five times the groundwater cleanup level.

32. In July 2008, FDEP expressed its "continuing concerns with the arsenic-impacted soils" to the City and required the City to submit a Remediation Action Plan ("RAP") or to seek approval for No Further Actions with Conditions. The City took no



action and waited nearly two years to respond, and then only responded when it was notified again by FDEP that it was required to submit a RAP.

33. On or about May 10, 2010, FDEP notified the City that it had not submitted its RAP “to address the arsenic concentrations detected at the [Dunbar Site].” This written request for a RAP related to the Sludge Dump was prompted by an FDEP internal alert that 700 days would elapse on July 25, 2010, “without written response to [FDEP’s] inquiry by the responsible party, and [that] no actions have been initiated by the [responsible party] during this time period.”

34. FDEP notes from a June 2010 meeting between FDEP and the City indicate that “[t]he [City] engineer proposed to [sic] additional monitoring for the next five (5) years without moving any material offsite. This is not acceptable and needs to show work in progress for developing a plan to remove the soil from the property.”

35. On or about July 9, 2010, the City submitted a proposed “Remedial Investigation Plan” for the Dunbar Site rather than the required RAP.

36. Rather than remediating the Dunbar Site, the plan proposed monitoring of the Sludge Dump over the next five (5) years. At the end of that period, the City proposed that it would send a remedial action plan for FDEP approval.

37. FDEP then suggested to the City that the Remedial Investigation Plan “be renamed as a Remedial Action Plan (RAP).” FDEP noted that when the now renamed RAP is received, the “inputs will satisfy [COMET or Compliance and Enforcement Tracking system] time sensitive alerts for the subject property.” This correspondence took

place on or about July 8, 2010, which was approximately seventeen (17) days before the 700-day internal alert period would have expired.

38. On or about July 13, 2010, the City's now renamed Remedial Action Plan was approved by FDEP.

39. On or about July 31, 2014, in a correspondence from FDEP to the City, FDEP noted that in order for environmental closure to take place, "the buried Arsenic impacted sludge is recommended to be excavated and removed, as the sludge has the capacity to leach Arsenic to the groundwater, with possible migration . . . off-site onto the residential properties that are adjacent" to the Sludge Dump.

40. On or about April 2, 2015, the City proposed possible mitigation strategies "for removing or cleaning up the underground pollutants" found at the Sludge Dump.

41. At no time between 2007 and 2017 did the City or FDEP notify the Plaintiffs or Dunbar residents of the existence of the arsenic contaminated soil or the possibility of groundwater contamination. Nor did the City secure or post warning signs on the Dunbar Site. Instead the City allowed Plaintiffs and community members, including children who were known to play on the Dunbar Site, full and free access to the contaminated Dunbar Site, until after June 2017, when the press released this story to the public.

42. In December 2017, the City installed off-site monitoring wells outside the Dunbar Site's property boundaries to the north and east of the Sludge Dump. Groundwater samples showed arsenic levels in three of the wells in excess of the groundwater cleanup standard for arsenic, with one sample nearly four times the standard.

43. The groundwater contaminated by the City's Sludge Dump, both on the property and in the surrounding area, is an underground source of drinking water as that term is defined in RCRA.

44. The City's arsenic Sludge Dump has contaminated an underground source of drinking water outside the solid waste boundary (the property boundary) for the City's Sludge Dump.

45. Arsenic is a well-known poison, a proven hazardous substance, and a dangerous environmental contaminant. Exposure to arsenic produces a variety of adverse health effects. Ingesting very high levels can result in sudden death. Chronic exposure to arsenic in drinking water can cause several types of cancer. According to the Agency for Toxic Substances and Disease Registry ("ATSDR"), part of the U.S. Centers for Disease Control and Prevention, epidemiological studies have reported that individuals exposed to inorganic arsenic are at an increased risk of developing cancer. Studies have shown that exposure to arsenic in drinking water results in an elevated risk of urinary tract cancers, such as bladder cancer. Those who had been drinking arsenic-contaminated well water since birth—that is, those with the longest-term exposure—exhibited a four- to-five-fold increased risk of urinary cancers. Exposure from birth may also increase the risk of urinary cancer much later in life. This finding of a long latency period (the time that elapses from exposure until the time of illness) suggests that people whose drinking water is contaminated by arsenic should be monitored long-term for, among others, urinary tract cancer, even if they have stopped drinking the contaminated water.

46. Exposure to inorganic arsenic can result in the development of several non-cancer adverse health effects in humans, such as respiratory symptoms, hepatomegally (swollen liver), chemically-induced hepatitis, portal hypertension of the liver, peripheral neuropathy or numbness in the toes, feet, and legs, skin rash, hyper- and hypopigmentation of the skin, hyperkeratosis of the skin, upset stomach, gastroenteritis, diarrhea, vomiting, and adverse reproduction outcomes (e.g., birth defects in infants).

47. There is also evidence that in childhood, long-term exposure to arsenic may result in lower IQ scores and exposure to arsenic in the womb and early childhood may increase mortality in young adults.

48. Many of arsenic's effects are dose- and time-dependent. Low levels of exposure over an extended period of time can produce effects similar to a one-time high level of exposure.

49. Recent studies have also linked arsenic ingestion to cardiovascular disease and diabetes mellitus.

50. In addition to arsenic-laden drinking water, arsenic can enter the body via other pathways, such as inhalation of arsenic-laden dust. Studies have shown that inhaling sawdust from construction with arsenic-treated lumber can greatly increase the danger of lung cancer, as it can be absorbed through the lungs. Inhaling arsenic from fugitive dust from dumpsites, such as the Dunbar Site, can likewise pose a danger to human health.

51. Arsenic can also be absorbed through the skin, which is why its use in wooden decks and play equipment was outlawed. Children who play on or near arsenic

contaminated soils or where there is fugitive dust are at risk of developing the adverse health effects of arsenic exposure.

52. Children are highly susceptible to the adverse health effects of arsenic exposure. This is due in part to their size: any exposure they suffer is more significant for their small bodies than it would be for an adult. In addition, children's organ systems, particularly the nervous system, are still undergoing development and are thus more susceptible to the effects of toxics exposure. This is particularly the case during gestation (in utero) and infancy, and it remains true throughout childhood. Children also breathe more rapidly than adults and their lungs are proportionately larger, thus increasing their susceptibility to airborne toxics. Finally, young children are prone to hand-to-mouth behaviors that expose them to higher levels of ambient contaminants, such as contaminated soils and dust.

53. Unless the arsenic-contaminated sludge in the Dunbar Community is immediately removed and the groundwater and soil contamination are remediated, the City's Sludge Dump will continue to present an imminent and substantial endangerment to health and the environment to the detriment of the individual Plaintiffs through migration of dust and contaminated groundwater, as well as posing an ongoing risk of direct exposure due to the uncontrolled access to portions of the site on which sludge was dumped. Although the City has fenced portions of the site, there are no signs warning of the danger of toxic chemical exposure, and portions of the site remain without fencing, including parcels purchased by private parties for residential use.

54. Plaintiffs Deretha Miller and Luetricia Freeman Becker and those persons in the Exposure to Arsenic Contaminated Sludge Class have had exposure to arsenic in greater than normal background levels. They have been exposed through drinking water from wells near the Sludge Dump. They have been exposed by breathing dust from the Sludge Dump. Some of them have been exposed through direct contact with the arsenic contaminated sludge, including children who played on the unrestricted property, who would have had skin contact and would likely have consumed contaminated sludge by hand-to-mouth contact.

55. This exposure was caused by the City's acts and omissions as described in this Complaint.

56. As a proximate result of the exposure, Plaintiffs in the Exposure to Arsenic Contaminated Sludge Class have a significantly increased risk of contracting serious latent diseases, including urinary cancers and lung cancer.

57. For the Plaintiffs in the Exposure to Arsenic Contaminated Sludge Class monitoring procedures exist that make the early detection of the serious latent diseases possible.

58. For Plaintiffs in the Exposure to Arsenic Contaminated Sludge Class the prescribed monitoring regime is different from that normally recommended in the absence of the exposure.

59. For Plaintiffs in the Exposure to Arsenic Contaminated Sludge Class the prescribed monitoring regime is reasonably necessary according to contemporary scientific principles.

60. As a direct result of the City's acts and omissions regarding the Sludge Dump, as described in this Complaint, Plaintiffs Deretha Miller, Luetricia Freeman Becker, Ralph Henry and Noemy Rodriguez and those persons in the Property Damages Class have suffered from and continue to suffer diminution of property values, loss of use and enjoyment of property, annoyance, discomfort, and inconvenience.

### **STATUTORY BACKGROUND**

61. The Resource Conservation and Recovery Act (RCRA) in 42 U.S.C. § 6903(14) defines the term "open dump" as:

... any facility or site where solid waste is disposed of which is not a sanitary landfill which meets the criteria promulgated under Section 6944 of this title and which is not a facility for disposal of hazardous waste.

62. Section 4005(a) of RCRA, 42 U.S.C. § 6945(a), prohibits the operation of an open dump for land disposal of solid waste.

63. The term "open dump" is defined by EPA in 40 C.F.R. Part 257 to include any facility which contaminates an underground drinking water source beyond the solid waste boundary of the property or fails to be in full and timely compliance with a corrective action program to adequately respond to contamination threatening human health or the environment. *See* 40 C.F.R. Part 257.

64. The citizen suit provision of RCRA is found in 42 U.S.C. § 6972, in which 42 U.S.C. § 6972 (a)(1)(A) provides:

**(a) In general**

Except as provided in subsection (b) or (c) of this section, any person may commence a civil action on his own behalf—

(1)(A) against any person (including (a) the United States, and (b) any other governmental instrumentality or agency, to the extent permitted by

the eleventh amendment to the Constitution) who is alleged to be in violation of any permit, standard, regulation, condition, requirement, prohibition, or order which has become effective pursuant to this chapter;  
...

65. Violations of the open dumping provisions can be addressed in a federal citizen suit under 42 U.S.C. § 6972(a)(1)(A), as provided in 42 U.S.C. § 6945(a).

66. Section 7002(a)(1)(B) of RCRA, 42 U.S.C. § 6972(a)(1)(B), allows affected citizens to bring suit against:

any person, ... including any past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage or disposal facility, who has contributed or who is contributing, to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment.

#### **COUNT 1: VIOLATIONS OF RCRA—PROHIBITION OF OPEN DUMPS**

67. Plaintiffs repeat, re-allege and incorporate by reference the common allegations of this Complaint as though fully set forth herein.

68. Plaintiffs are “persons” as defined in RCRA, 42 U.S.C. § 6903(16) and are entitled to bring a citizen suit pursuant to 42 U.S.C. § 6972(a)(1)(A).

69. Defendants City of Fort Myers, Mayor Randall P. Henderson, Jr., and City Manager Saeed Kazemi are persons who are in violation of a standard, regulation, condition, requirement or prohibition which has become effective under RCRA.

70. Defendants have violated and are violating Section 4005(a) of RCRA, 42 U.S.C. § 6945(a), by maintaining an “open dump,” as that term is defined in 42 U.S.C. § 6903(14), on the Dunbar Site in the Dunbar neighborhood of Fort Myers, Florida.



71. Defendants have contaminated an underground drinking water source beyond the solid waste boundary, *i.e.*, the boundary of the City's Dunbar Site.

72. The City has failed to either bring the open dump into compliance with RCRA requirements or remove the solid waste and address its contamination.

73. Defendants should be subject to an enforcement order ordering Defendants to either bring the open dump into compliance with RCRA requirements or to remove the solid waste and contaminated soil and groundwater. An enforcement order is necessary to redress the damages suffered by Plaintiffs, who own property impacted by the Sludge Dump.

74. Defendants should be subject to the assessment of civil penalties for these RCRA violations pursuant to Sections 3008(g) and 7002(a) of RCRA, and 42 U.S.C. §§ 6928(g) and 6972(a).

75. For the purpose of assessing the maximum penalty for which Defendants are liable, each day of Defendants' operation of an open dump constitutes a separate violation of Section 4005(a) of RCRA, pursuant to Section 3008(g), 42 U.S.C. § 6928(g), for each day on which it has occurred or will occur after the filing of this Complaint.

#### **COUNT 2: IMMINENT AND SUBSTANTIAL ENDANGERMENT**

76. Plaintiffs repeat, re-allege and incorporate by reference the common allegations of this Complaint as though fully set forth herein.

77. Plaintiffs are all "persons" as defined in RCRA, 42 U.S.C. § 6903(16) and are entitled to bring a citizen suit pursuant to 42 U.S.C. § 6972(a)(1)(B).

78. Defendants City of Fort Myers, Mayor Randall P. Henderson, Jr., and City Manager Saeed Kazemi are persons, including a past generator, past transporter, and past and present owner and operator of a disposal facility, who have contributed or who are contributing, to the past and present transportation and disposal of solid waste which may present an imminent and substantial endangerment to health or the environment.

79. As set out in the General Allegations, Defendants' disposal of arsenic sludge may present an imminent and substantial endangerment to health or the environment in the Dunbar neighborhood.

80. An enforcement order or injunction requiring Defendants to fully remediate the Sludge Dump and arsenic contaminated soil and groundwater is necessary to redress the damages suffered by Plaintiffs, who own property impacted by the Sludge Dump.

### **COUNT 3: NEGLIGENCE**

81. Plaintiffs repeat, re-allege and incorporate by reference the common allegations of this Complaint as though fully set forth herein.

82. Defendant City of Fort Myers owed a duty to Plaintiffs and Members of the Exposure to Arsenic Contaminated Sludge Class and Property Damages Class to exercise due and reasonable care in its disposal of arsenic sludge and to prevent or minimize any discharge or release of arsenic into the surrounding environment, including into the air, soils, surface water and groundwater.

83. Defendant knew or reasonably should have known that the discharge or release of arsenic sludge into the environment required adequate safety precautions to ensure that arsenic was not released into the surrounding environment.

84. Defendant knew or reasonably should have known that the discharge or release of arsenic sludge into the environment was potentially hazardous to human health and the environment.

85. Defendant breached the foregoing duties owed to Plaintiffs and Members of the Exposure to Arsenic Contaminated Sludge Class and Property Damages Class by failing to exercise due care in its disposal of arsenic sludge into the environment in a manner that resulted in the contamination of the air, soils, the local groundwater aquifer, and private properties.

86. As a direct, proximate and foreseeable result of Defendant's breach, Plaintiffs Deretha Miller, Luetricia Freeman Becker, Ralph Henry and Noemy Rodriguez and Members of the Property Damages Class have suffered damages in the form of real property damage, out of pocket expense, loss of use and enjoyment of property, diminution in property value, annoyance, discomfort, and inconvenience, for which Defendant are liable in damages.

87. As a direct, proximate and foreseeable result of the Defendant's breach, Plaintiffs Deretha Miller, Luetricia Freeman Becker, and Members of the Exposure to Arsenic Contaminated Sludge Class have suffered exposure to toxic arsenic such that they require long-term medical monitoring.

**COUNT 4: STRICT LIABILITY CLAIMS FOR DAMAGES PURSUANT TO  
FLA. STAT. § 376.313**

88. Plaintiffs repeat, re-allege and incorporate by reference the common allegations of this Complaint as though fully set forth herein.

89. During the City's ownership and use of the Dunbar Site, some form of emissions, leakages, seeping, blowing, releases, transfers, dumping, emptying, pouring or otherwise prohibited discharges of pollutants, contaminants, hazardous substances, and/or pollution have occurred and continue to occur.

90. The toxic and hazardous substances, contaminants, pollutants, and other materials that are being and were emitted, leaked, blown, transferred, seeped, released, dumped, emptied, poured or otherwise discharged from the Sludge Dump in Dunbar, are substances that are encompassed within the meanings and protections of Fla. Stat. § 376.313.

91. Defendants violated the statute by permitting, causing, or otherwise allowing the hazardous substances, contaminants, chemicals, pollutants, and other materials to be emitted, leaked, blown, transferred, seeped, released, dumped, emptied, poured or otherwise discharged onto private property from the Dunbar Site.

92. Defendants continue to violate the statute by permitting, causing, or otherwise allowing the hazardous substances, contaminants, chemicals, pollutants, and other matters to continue be emitted, leaked, blown, transferred, seeped, released, dumped, emptied, poured or otherwise discharged from the Dunbar Site onto private property.

93. The soil and groundwater contamination caused by the City has not been abated on the Plaintiffs' properties and, as such, the applicable statute of limitations does not bar this action.

94. The arsenic-laden sludge, arsenic in soils and arsenic in groundwater at the Dunbar Site continues to migrate and contaminate adjacent properties as arsenic continues to leach from the sludge into groundwater and soils and is causing or contributing to arsenic pollution both onsite and offsite of the Sludge Dump.

95. The wrongful invasion of the rights of Plaintiffs and Members of the Property Damages Class has not ceased.

96. Plaintiffs and Members of the Property Damages Class have suffered and will continue to suffer damages to their property as a result of the actions of the Defendants.

97. Fla. Stat. § 376.313 was enacted for the protection of persons such as Plaintiffs and Members of the Property Damages Class.

98. As a result of Defendants' actions, Plaintiffs and Members of the Property Damages Class have suffered damages in the form of real property damage, out of pocket expense, loss of use and enjoyment of property, diminution in property value, annoyance, discomfort, and inconvenience, for which Defendants are strictly liable in damages.

#### **COUNT 5: PRIVATE NUISANCE**

99. Plaintiffs repeat, re-allege and incorporate by reference the common allegations of this Complaint as though fully set forth herein.

100. Defendants, through their acts and omissions relating to their disposal of arsenic contaminated sludge on the Dunbar Site, have unreasonably and substantially interfered with the property rights and use and enjoyment of the property of Plaintiffs and Members of the Property Damages Class so as to constitute a private nuisance.

101. As a direct and proximate result of Defendants' creation and maintenance of a private nuisance, Plaintiffs and Members of the Property Damages Class have suffered damages in the form of real property damage, out of pocket expense, loss of use and enjoyment of property, diminution in property value, , annoyance, discomfort and inconvenience, for which Defendants are liable in damages.

#### **COUNT 6: NEGLIGENT FAILURE TO WARN**

102. Plaintiffs repeat, re-allege and incorporate by reference the common allegations of this Complaint as though fully set forth herein.

103. The City's activities at Dunbar Site were operational level governmental actions and decisions.

104. The City, with its knowledge and control over the Dunbar Site, failed to remediate contamination on the site, failed to remediate prior to allowing additional houses to be built near the site, and failed to clean up the site later when it received confirmation of sampling containing high levels of arsenic from its own consultant.

105. The lime sludge the City dumped at the Dunbar Site has contaminated an underground drinking water source beyond the solid waste boundary, *i.e.*, the boundary of the City's Dunbar Site.

106. The City knew that people in the area near the Sludge Dump were all drinking from well water until the 1980s and knew or should have known that there would be people near the Dunbar Site who may still use wells for water.

107. The City negligently failed to remediate the properties, allowed flooding of contaminated ground and surface water from the properties, negligently allowed truckloads of lime sludge to be carried through the Plaintiffs' communities, and is negligently failing to clean or otherwise remediate the soil and groundwater.

108. The City negligently allowed contaminated soil and debris to be discharged on the Plaintiffs' properties and persons, negligently failed to clean subsurface soil, negligently failed to clean groundwater, negligently failed to clean contaminated right of ways, and negligently failed to test all adjacent homes and properties.

109. The City's above-referenced conduct created hazardous conditions, and at all times it knew or should have known that the Plaintiffs were in the immediate zone of a foreseeable risk of harm, to be physically exposed to hazardous substances and contaminants.

110. The City, by creating these hazardous conditions, had a duty to warn the Plaintiffs of the conditions.

111. The City had a duty to warn Plaintiffs that the soil and groundwater at the Dunbar Site was and continues to be contaminated.

112. The City had a duty to remediate the surface and subsurface soil, groundwater and other contaminated matter at the Dunbar Site.

113. The City had a duty to remediate or otherwise clean or make safe the surrounding properties contaminated by the hazardous substances and pollutants and debris discharged from the Sludge Dump in Dunbar.

114. The City has a duty to exercise reasonable care in not releasing, discharging, depositing and/or transporting toxic chemicals, hazardous substances, contaminants or pollutants that it knew or should have known could result in property damages and personal injuries.

115. The City has breached these duties by its negligent acts and omissions regarding all aspects of the Dunbar Site and failed to warn the Plaintiffs in every regard.

116. The City breached its duty of care by failing to warn the Plaintiffs that their properties had harmful substances, contaminants and pollutants, and that they should seek medical care to determine the impact to their health.

117. The City breached its duty of care by failing to warn Plaintiffs that well water used and consumed by Plaintiffs was and is contaminated and will have a detrimental effect on their health.

118. The City breached its duty of care by failing to warn Plaintiffs, and others, not to come into contact with discharged groundwater or other surface water pumped from the Dunbar Site and surrounding properties or otherwise discharged in a manner similar to storm water runoff.

119. The City breached its duty of care by failing to assure that no Plaintiffs consumed or otherwise had physical contact with contaminated ground water and soil.



120. The City breached its duty of care by failing to lessen the risk of physical injuries and property damages of the Plaintiffs.

121. The City breached its duty of care by failing to take sufficient precautions to protect the Plaintiffs from the harm created and continuing to be created from the Dunbar Site.

122. The City breached its duty of care by failing to prevent or prohibit the discharge of hazardous substances, pollutants and contaminated materials at the Home-arama property on South Street.

123. The City breached its duty of care by failing to warn residents of the dangers when it was testing the Dunbar Site.

124. The City continues to breach its duty of care by resisting remediation of properties nearby the Dunbar Site.

125. As a direct and proximate result of the City's breaches, the Plaintiffs and Members of the Exposure to Contaminated Sludge Class are still suffering from exposure to continuous contamination from underground water flows and storm water runoff.

126. As a direct and proximate result of the City's breaches, Plaintiffs and Members of the Exposure to Contaminated Sludge Class have incurred substantial injuries and damages including but not limited to past, present, and continuing exposure to toxic and hazardous materials and substances.

127. As a direct and proximate result of the City's failure to lessen the risk or take sufficient precautions to protect the Plaintiffs and Members of the Property Damages Class have suffered property damages.

128. As a direct and proximate result of the City's continued wrongful acts and omissions, the Plaintiffs and Property Damages Class who are property owners in the area suffered injuries in the form of property damage in that their properties were contaminated, they lost use of their properties, and the fair market values were substantially depreciated or destroyed.

129. As a direct and proximate result of the City's continued wrongful acts and omissions, Plaintiffs and Members of the Exposure to Arsenic Contaminated Sludge Class, were exposed to excessive levels of extremely hazardous toxic chemicals and substances. Plaintiffs and Members of the Exposure to Arsenic Contaminated Sludge Class seek a Court Order establishing a Court-supervised medical monitoring program which provides for medical testing, surveillance, monitoring and study of the Plaintiffs for conditions caused by exposure to the toxic substances, including but not limited to arsenic.

130. As a direct and proximate result of these continued exposures to hazardous and toxic chemicals and substances, Plaintiffs and Members of the Property Damages Class seek to recover real property damage, out of pocket expense, loss of use and enjoyment of property, diminution in property value, annoyance, discomfort and inconvenience, for which Defendants are liable in damages.

#### **COUNT 7: MEDICAL MONITORING**

131. Plaintiffs repeat, re-allege and incorporate by reference the common allegations as though fully set forth herein.

132. Plaintiffs and Members of the Exposure to Contaminated Sludge Class

assert an equitable claim for medical monitoring pursuant to *Petito v. A.H. Robins Co.*, 750 So.2d 103 (Fla. 3d D.C.A. 1999). Such relief is available notwithstanding the absence of manifestations of a present physical injury or symptomatic disease.

133. Plaintiffs and Members of the Exposure to Contaminated Sludge Class have been exposed to greater than normal background levels of various toxic chemicals including, but not limited to, arsenic.

134. The referenced toxin, arsenic, is a proven hazardous substance which can cause a wide range of personal injuries and medical maladies, including various latent diseases for which the City's acts and/or omissions seriously increased the risk of Plaintiffs and Members of the Exposure to Arsenic Class of developing serious maladies and diseases.

135. Plaintiffs and Members of the Exposure to Contaminated Sludge Class have been and continue to be exposed to elevated and hazardous levels of toxic substances through continued contact with contaminated surface and subsurface soil, lime sludge, water fruits, vegetables or other flora grown in and around the contaminated soil, in addition to consumption of contaminated groundwater, fruits, and vegetables and/or other flora grown in the contaminated soil, ingestion or inhalation of toxic matter, and continued physical contact with contaminated soil, groundwater, vapors, and debris.

136. The City's negligent acts and omissions, as set out in this Complaint and incorporated herein by reference, include but are not limited to: negligently dumping lime sludge on the Dunbar Site, failure to remediate the Sludge Dump, and failure to warn residents of the results of soil sampling taken from 2007 onward, or the dangers to health

from exposure to the contaminants located on the Dunbar Site.

137. The City's continued negligent acts and omissions, as set out in this Complaint and incorporated herein by reference, are the proximate cause of higher than normal, in fact excessive exposure, to hazardous substances and contaminants, including arsenic.

138. Monitoring procedures that make the early detection of the diseases correlated to the exposure of referenced hazardous substances and contaminants currently exist.

139. The monitoring procedures or regimes are different from those procedures normally recommended that would be used in the absence of the exposure.

140. The prescribed medical surveillance is reasonably and medically necessary according to contemporary scientific principles for persons, such as Plaintiffs and Members of the Exposure to Contaminated Sludge Class, who have been exposed and continue to be exposed to excessive levels of the referenced hazardous chemicals and materials in order to effectively treat Plaintiffs and Members of the Exposure to Contaminated Sludge Class and to protect the public interest.

141. Plaintiffs and Members of the Exposure to Contaminated Sludge Class will suffer irreparable harm if the requested medical monitoring program is not implemented because they are in danger of suffering catastrophic latent diseases as a result of their prolonged exposure to toxic and hazardous substances resulting from the City's negligence.

142. Detection of these diseases and early treatment is medically reasonable

and necessary to prevent progression and further injuries.

143. It is also medically reasonable and necessary to collect data and coordinate study efforts for persons exposed to such substances in order to effectively treat Plaintiffs and Members of the Exposure to Contaminated Sludge Class. Without the requested medical monitoring programs, they will be subjected to further injuries and delayed treatment.

144. As a direct and proximate result of these continued exposures to hazardous and toxic chemicals and substances, Plaintiffs and Members of the Exposure to Contaminated Sludge Class require a Court-supervised medical monitoring program which provides for medical testing, surveillance, monitoring and study of the Plaintiffs and Members of the Exposure to Contaminated Sludge Class for conditions caused by exposure to the toxic substances, including but not limited to arsenic.

#### **CLASS ACTION ALLEGATIONS**

145. Plaintiffs bring this Class action on behalf of the proposed Classes as set forth below:

**Property Damages Class:**

All natural persons, including any person claiming by, through or under a Class Member, who, as of the time of filing this complaint, have interests in residential real property within a five (5) block radius of the City's arsenic Sludge Dump.

**Exposure to Arsenic Contaminated Sludge Class:** All persons, whether minor or adult, including any person claiming by, through, or under a Class Member, who, as of the time a class is certified in this case, have resided or currently reside within a five (5) block radius of the City's arsenic Sludge Dump at any time after the arsenic sludge was dumped and have been exposed to the sludge and its constituents through drinking water, physical contact, ingestion of contaminated soil, or breathing contaminated dust.

146. Excluded from the Classes are:

- a. The City, its Mayor and City Manager, and the City's legal representatives, and its officers and City Council members;
- b. The Judge to whom this case is assigned and any member of the Judge's immediate family and any other judicial officer assigned to this case;
- c. Any attorneys, or their immediate families, representing Plaintiffs or Members of the proposed Classes;
- d. All persons who otherwise would be included under one or more of the class descriptions but who have filed a lawsuit for manifest personal injury for illness related to exposure to the arsenic sludge;
- e. All persons who properly execute and timely file a request for exclusion from the Classes, if the opportunity is provided to opt out of the Classes.

147. Plaintiffs reserve the right to modify and/or amend the definition of the Classes, if, prior to the Court's determination on whether certification is appropriate, discovery and further investigation reveals that either Class should be modified or amended in any way.

**Fed. R. Civ. P. 23(a) and 23(b)(3)**

148. Plaintiffs bring this action pursuant to the provisions of Rule 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure as a Class action on their own behalf and on behalf of other persons similarly situated. This action satisfies the numerosity, commonality, typicality, predominance, and superiority requirements of Fed. R. Civ. P. 23(a) and 23(b)(3).

### **Numerosity**

149. Although the exact number of Class Members is uncertain at this time and can be ascertained only through appropriate discovery, the Members of the Classes are so numerous that separate joinder of each member is impracticable. Upon information and belief, the number of Class Members in each class is likely to be well over 100. The disposition of the claims of these Class Members in a single action will provide substantial benefits to all parties and the Court.

150. Putative Class Members are readily identifiable through publicly available property records.

### **Typicality**

151. Plaintiffs' claims are typical of the claims to be advanced by Members of the Classes, and their claims encompass those of the other Class Members in each class, in that the facts and circumstances giving rise to liability are the same, the claims are based on the same legal theories, and the damages suffered by the Plaintiffs are the same kinds of damages suffered by the Members of the Classes.

### **Adequate Representation**

152. Plaintiffs will fairly and adequately represent and protect the interests of the Classes, as their interests do not conflict, their interests are co-extensive with common rights of recovery based on the same essential facts and legal theories, they are members of the same communities, they are similarly damaged and are seeking the same remedies, and they intend to prosecute this action vigorously.

153. Plaintiffs have retained counsel competent and experienced in complex Class action and toxic tort litigation, including actions like this one, representing putative Class Members whose properties have been contaminated and/or devalued by the acts and omissions of a polluter. Plaintiffs' counsel intend to prosecute this action vigorously.

#### **Predominance of Common Questions**

154. With respect to issues and claims raised herein, questions of law and fact common to Class Members predominate over any questions affecting only individual members of the Classes. The only individual question affecting individual Members of the Classes is the precise amount of damages to which each Class Member is entitled, and such damages may be reasonably and fully determined and calculated through the mechanism of a class action. On the other hand, there are numerous questions of law or fact common to the Classes, including, but not limited to:

- a. The history of Defendants' dumping of arsenic sludge on the property in the Dunbar neighborhood;
- b. Whether Defendants owed a duty to Plaintiffs and Members of the Classes to prevent and/or minimize any discharge or release of arsenic sludge into the surrounding environment;
- c. Whether Defendants knew or reasonably should have known that the failure to have policies or procedures regarding the proper handling, cleanup, or disposal of arsenic sludge would result in contamination to groundwater and soils and cause damages to Plaintiffs and Members of the Classes;



- d. Whether it was reasonably foreseeable to Defendants that the discharge or release of arsenic sludge into the environment would result in contamination of groundwater and soils and cause damages to Plaintiffs and Members of the Classes;
- e. Whether the use, handling, discharge and/or disposal of arsenic sludge by Defendants has created and continues to create a nuisance as to Plaintiffs and Members of the Classes by interfering with their use and enjoyment of their property;
- f. Whether the Defendants owed a duty to warn the Plaintiffs and Members of Classes that the Dunbar Site soil and groundwater contained elevated levels of arsenic contamination and that they were likely to be exposed;  
and
- g. Whether Defendants' contamination of the groundwater with toxic arsenic gives rise to a suit for damages, pursuant to Fla. Stat. § 376.313, resulting from a discharge or other condition of pollution covered by Fla. Stat. §§ 376.30-376.319.

#### **Superiority**

155. A Class action is superior to other available methods for the fair and efficient adjudication of this controversy.

156. Absent a Class action, most Class Members would likely find the cost of litigating their claims to be prohibitively high and, therefore, would not have an effective

remedy at law. Further, there is no interest by Class Members in individually controlling the prosecution of separate actions.

157. Class treatment of common questions of law and fact will conserve the resources of the courts and litigants, and will promote consistency and efficiency of adjudication. Whatever difficulties may exist in the management of a Class action will be greatly outweighed by its benefits.

**Fed. R. Civ. P. 23(a) and 23(b)(2) Injunctive or Declaratory Relief**

158. In addition to the above, Plaintiffs bring this Class action under Fed. R. Civ. P. 23(a) and 23(b)(2), because Defendant has acted or refused to act on grounds that apply generally to the Classes, such that final injunctive relief or declaratory relief is appropriate with respect to each Class as a whole. Such injunctive relief includes, but is not limited to: (1) an injunction to require remediation of the arsenic sludge disposal site and contaminated soils; (2) an injunction to require remediation of the groundwater aquifer in the area near the arsenic dump; and (3) an Order requiring Defendant to fund a medical monitoring program sufficient to monitor the deleterious effects and potentially-deleterious effects of arsenic on the human body and to detect these effects to the extent possible.

**Fed. R. Civ. P. 23(a) and 23(c)(4) Certification of Particular Issues**

159. In the alternative to certification under Fed. R. Civ. P. 23(b)(2) or 23(b)(3), Plaintiffs and Members of the Classes seek to maintain a Class action with respect to particular issues under Fed. R. Civ. P. 23(a) and 23(c)(4).

160. The liability of Defendant for the damages caused to Plaintiffs and Class Members in the Zone of Contamination, including liability for negligence, strict liability, private nuisance, failure to warn, and medical monitoring is suitable for issue certification under Fed. R. Civ. P. 23(c)(4).

**RELIEF DEMANDED**

WHEREFORE, Plaintiffs and Members of the above proposed Classes respectfully request this Court to grant the following relief:

- (a) That this case be certified as a Class action as proposed, pursuant to Rule 23 of the Federal Rules of Civil Procedure;
- (b) Enter a declaratory judgment that the City's arsenic Sludge Dump is an "open dump" and that Defendant has violated and is in violation of RCRA, 42 U.S.C. § 6945(a), for the operation of an open dump;
- (c) Enter a declaratory judgment that the City's arsenic Sludge Dump may present an imminent and substantial endangerment to health or the environment, pursuant to RCRA, 42 U.S.C. § 6972(a)(1)(B);
- (d) Enter an enforcement order under RCRA or an injunction ordering Defendant to remove the arsenic sludge and remediate the soil and groundwater contamination in the Dunbar neighborhood;
- (e) Order Defendant to pay civil penalties of up to thirty-seven thousand five hundred dollars (\$37,500) per day for each day of each violation of RCRA set out in this Complaint, pursuant to Sections 3008(g) and 7002(a) of RCRA; 42 U.S.C. §§ 6928(a) and 6972(a);

- (f) Award Plaintiffs and Members of the Property Damages Class damages sufficient to compensate them for real property damage, loss of use and enjoyment of property, diminution in property value, and for annoyance, discomfort, and inconvenience;
- (g) Issue an injunction requiring Defendant to fund a medical monitoring program which provides for medical testing, surveillance and study of the Plaintiff and Members of the Exposure to Arsenic Contaminated Sludge Class to be created and supervised by the Court, including a Court-appointed plan administrator and that the court reserve jurisdiction to enforce the terms and conditions of the plan;
- (h) Award Plaintiff their costs, including reasonable attorney and expert witness fees, as authorized by Section 7002(e) of RCRA, 42 U.S.C. § 6972(e); and
- (i) Award such other and further relief as this Court may deem just, proper, and equitable.

**A JURY IS DEMANDED TO HEAR THIS CASE.**

*/s/ Ralf Brookes*

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# EXHIBIT A

# RALF BROOKES, ATTORNEY

*Board Certified in City, County and Local Government Law*

November 30, 2017

VIA CERTIFIED MAIL, RETURN RECEIPT

Mayor Randall P. Henderson, Jr.  
The City of Fort Myers, Florida  
City Hall  
2200 Second St.  
Fort Myers, FL 33901

**Re: Notice of Intent to File Citizen Suit Pursuant to the Resource Conservation and Recovery Act.**

Dear Mayor Henderson:

Pursuant to Sections 7002(a)(1)(A) and 7002(a)(1)(B) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6972(a)(1)(A), (B), the undersigned, on behalf of the property owners, current residents, and former residents listed below, put The City of Fort Myers, Florida ("Fort Myers" or "City"), as well as the U.S. Environmental Protection Agency ("EPA") and the Florida Department of Environmental Protection ("DEP"), on notice of our intent to sue Fort Myers for abatement of an imminent and substantial endangerment to health and the environment and for violations of RCRA by open dumping in connection with the dumping of solid or hazardous waste containing arsenic and other toxic chemicals on the Home-a-rama property on South Street in the Dunbar neighborhood of Fort Myers.

## 1. AFFECTED CITIZENS GIVING NOTICE

The affected property owners and residents giving notice and their addresses are as follows:

Alfreda Bassett, 3208 Dora St., Fort Myers, FL 33916  
David L. Brown, 3530 South St., Fort Myers, FL 33916  
Bernice B. Brown-Taylor, 3530 South St., Fort Myers, FL 33916  
Sandra L. Brown, 3726 Minnesota Dr., Fort Myers, FL 33916  
Ben Cannady, 3345 South St., Fort Myers, FL 33916  
Angela Carter, 3407 Dora St., Fort Myers, FL 33916  
Johnny Carter, 3407 Dora St., Fort Myers, FL 33916  
Marva Carter, 3407 Dora St., Fort Myers, FL 33916



Ralf Brookes Attorney  
1217 E Cape Coral Parkway #107 Cape Coral, Fl 33904  
Phone (239) 910-5464; fax (866) 341-6086  
[Ralf@RalfBrookesAttorney.com](mailto:Ralf@RalfBrookesAttorney.com) [RalfBrookes@gmail.com](mailto:RalfBrookes@gmail.com)

Patricia Clark, 3348 Stella St., Fort Myers, FL 33916  
Nicole Dillon, 3422 South St., Fort Myers, FL 33916  
Annie Freeman, 3425 South St., Fort Myers, FL 33916  
Edward Freeman, 3425 South St., Fort Myers, FL 33916  
John Freeman, 3122 Willard St., Fort Myers, FL 33916  
Voncille Fuller, 3221 Jeffcott St., Fort Myers, FL 33916  
Dora Green, 3337 Willard St., Fort Myers, FL 33916  
Tavaisha Hamilton, 3345 South St., Fort Myers, FL 33916  
Therea Hamilton, 3345 South St., Fort Myers, FL 33916  
Tyler Hamilton, 3345 South St., Fort Myers, FL 33916  
Tyrone Hamilton, 3345 South St., Fort Myers, FL 33916  
Ralph Henry, 11338 SW 167 St., Miami, FL 33157 (owns property located at 3320 South St., Fort Myers, FL 33916)  
Eugene Hunter Jr., 3216 Franklin St., Fort Myers, FL 33916  
Samuel Jackson, 3441 South St., Fort Myers, FL 33916  
Komeka L. Jackson, 3416 South St., Fort Myers, FL 33916  
Milton Johnson, 3412 South St., Fort Myers, FL 33916  
Sharon A. Jackson, 3245 Willard St, Fort Myers, FL 33916  
Annette Miller, 2539 Jean Marie Ct., Fort Myers, FL 33916  
Devetha Miller, 3442 South St., Fort Myers, FL 33916  
Regina Miller, 3434 South St., Fort Myers FL 33916  
James Moore, 3245 Willard St, Fort Myers, FL 33916  
Shanisty Paulk, 3407 Dora St., Fort Myers, FL 33916  
Aurelio and Noemy Rodriquez, 2002 SW 15<sup>th</sup> Ave., Cape Coral, FL 33991 (own property located at 3313 Jeffcott St., Fort Myers, FL 33916)  
Georgia B. Smith, 3446 South St., Fort Myers, FL 33916  
Douglas Spencer, 3337 Willard St., Fort Myers, FL 33916  
Lisa White, 3314 Dora St., Fort Myers, FL 33916

## **2. IMMINENT AND SUBSTANTIAL ENDANGERMENT**

Section 7002(a)(1)(B) of RCRA, 42 U.S.C. § 6972(a)(1)(B), allows affected citizens to bring suit against:

any person, ... including any past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage or disposal facility, who has contributed or who is contributing, to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment.

Fort Myers' dumping of sludge contaminated with arsenic and possibly other harmful chemicals on the Home-a-rama property may present an imminent and substantial endangerment to health or the environment in the community in which the above-listed persons own property and/or reside.



Fort Myers purchased the approximately 4-acre Home-a-rama property in 1965 for use as a dump for “lime sludge” from treatment of drinking water at one of its drinking water treatment plants. The Home-a-rama property consists of one (1) city block located on the south side of South Street, between Midway Avenue and Henderson Avenue, in Fort Myers, Lee County, Florida. The City dumped at least 25,000 cubic yards of sludge on the property over the course of several years, in some places at least 10 feet deep. The dump was neither lined nor covered. Later, some of the property containing the sludge was sold by the City to private parties for residential use. For more than 50 years the sludge has remained on the properties with unrestricted access for children and others. Until the mid-1980s, people in the area near the dump relied upon wells for their drinking water, and there may be some people who still use wells in the area.

The City’s sludge is contaminated at the least with arsenic, which poses a risk to human health for the residents in the area. Sludge samples taken in 2007 were all above soil contamination target levels for residential property use. Groundwater monitoring wells were installed in 2008, which showed groundwater contamination with arsenic of 12 µg/l to 18.0 µg/l, greater than the DEP groundwater cleanup target level of 10 µg/l, which is also the drinking water standard for arsenic. Recent groundwater samples in November 2017 showed levels as high as 53 µg/l, five times the groundwater cleanup level, with another sample at 21 µg/l, two times the standard.

Arsenic is a well-known poison and a dangerous environmental contaminant. Arsenic produces a variety of adverse health effects. Ingesting very high levels can result in sudden death. Chronic exposure to arsenic in drinking water can cause several types of cancer. According to the Agency for Toxic Substances and Disease Registry (“ATSDR”), (see ATSDR 2007, Toxicological Profile for Arsenic), epidemiological studies have reported that individuals exposed to inorganic arsenic are at an increased risk of developing cancer. Studies have shown that exposure to arsenic in drinking water results in an elevated risk of urinary tract cancers, such as bladder cancer. Those who had been drinking arsenic-contaminated well water since birth—that is, those with the longest-term exposure—exhibited a four- to-five-fold increased risk of urinary cancers. Exposure from birth may increase urinary cancer risk much later in life. This finding of a long latency period (the time that elapses from exposure until the time of illness) suggests that people whose drinking water is contaminated by arsenic should be monitored long-term for urinary tract cancer, even if they stop drinking the contaminated water. (Saint-Jacques *et al.* Arsenic in drinking water and urinary tract cancers: a systematic review of 30 years of epidemiological evidence. *Environmental Health* 2014, 13:44).

Exposure to inorganic arsenic can result in the development of several non-cancer adverse health effects in humans, such as respiratory symptoms, hepatomegally (swollen liver), chemically-induced hepatitis, portal hypertension of the liver, peripheral neuropathy or numbness in the toes, feet, and legs, skin rash, hyper- and hypopigmentation of the skin, hyperkeratosis of the skin, upset stomach, gastroenteritis, diarrhea, vomiting, and adverse reproduction outcomes (e.g., birth defects in infants). (ATSDR 2007). There is also some evidence that in childhood, long-term exposure to arsenic may result in lower IQ scores and exposure to arsenic in the womb and early childhood may increase mortality in young adults. Many of arsenic’s effects are dose- and time-dependent. Low levels of exposure over an extended period of time can produce effects similar to a one-time high level of exposure. Recent studies have also linked arsenic ingestion to

cardiovascular disease and diabetes mellitus. (Elizabeth A. Maull, *et al.* Evaluation of the Association between Arsenic and Diabetes: A National Toxicology Program Workshop Review. Environmental Health Perspectives December 2012, 120:12).

In addition to drinking water, arsenic can enter the body via other pathways, such as inhalation of dust. Studies have shown that inhaling sawdust from construction with arsenic-treated lumber can greatly increase the danger of lung cancer, as it can be absorbed through the lungs. Inhaling arsenic from fugitive dust from dumpsites can likewise pose a danger to human health. Arsenic can also be absorbed through the skin, which is why its use in wooden decks and play equipment was outlawed. Children who play on or near arsenic contaminated soils or where there is fugitive dust may be at risk toxic effects of arsenic exposure. (ATSDR 2007).

Children are a susceptible population for the health effects of arsenic exposure. This is due in part to their size: any exposure they suffer is more significant for their small bodies than it would be for an adult. In addition, children's organ systems, particularly the nervous system, are still undergoing development and are thus more susceptible to the effects of toxics exposure. This is particularly the case during gestation (in utero) and infancy, and it remains true throughout childhood. Children also breathe more rapidly than adults and their lungs are proportionately larger, thus increasing their susceptibility to airborne toxics. Finally, young children are prone to hand-to-mouth behaviors that expose them to higher levels of ambient contaminants, such as contaminated soils and dust. (ATSDR 2007).

Unless the arsenic-contaminated sludge in the Dunbar Community is immediately removed and the groundwater and soil contamination are addressed, the City's dump will continue to present an imminent and substantial endangerment to health or the environment through migration of dust and contaminated groundwater, as well as posing an ongoing risk of direct exposure due to the uncontrolled access to portions of the site on which sludge was dumped. Although the City has fenced portions of the site, there are no signs warning of the danger of toxic chemical exposure, and portions of the site remain without fencing, including parcels the City sold to private parties for residential use.

### **3. OPEN DUMP**

Section 7002(a)(1)(A) of RCRA, 42 U.S.C. 6972(a)(1)(A), allows affected citizens to bring suit against:

any person ... who is alleged to be in violation of any permit, standard, regulation, condition, requirement, prohibition, or order which has become effective pursuant to this chapter;

Under 42 U.S.C. 6945(a), the prohibition of open dumping "shall be enforceable under section 6972 of this title against persons engaged in the act of open dumping."

The City's sludge dump on the Home-a-rama property, as described above, constitutes an open dump, as that term is defined in 42 U.S.C. § 6903(14) and in 40 C.F.R. Part 257. Under 42 U.S.C. § 6945(a) and 40 C.F.R. § 257.1(a)(1) and (2), open dumping is prohibited. The sludge

dump is an open dump pursuant to 40 C.F.R. § 257.3-4, because the sludge has contaminated an underground drinking water source with arsenic. Although the active dumping has currently ceased, constituents of the solid waste continue to migrate and contaminate groundwater, and the City has failed to either bring the open dump into compliance with RCRA requirements or remove the solid waste.

#### 4. INTENT TO SUE

We intend to file suit in sixty (60) days in the U.S. District Court for the Middle District of Florida to address the violations of RCRA by the unlawful open dumping and in ninety (90) days to address the imminent and substantial endangerment caused by the City's sludge dump. We will seek an order requiring the removal of the toxic sludge from the City's property and private properties, and the cleanup of contaminated soils and groundwater. We will also seek civil penalties and an award of attorney fees.

If you would like to discuss this matter, please contact us as soon as possible, as we intend to file suit as soon as the statutory notice period expires.

Sincerely,



Ralf Brookes Attorney  
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Cape Coral, Fl 33904  
Phone (239) 910-5464;  
Fax 866-341-6086  
[Ralf@RalfBrookesAttorney.com](mailto:Ralf@RalfBrookesAttorney.com)  
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**cc: Mr. Scott Pruitt (via Certified Mail, Return Receipt)**  
**Administrator**  
**U.S. Environmental Protection Agency**  
**Ariel Rios Building**  
**1200 Pennsylvania Avenue, N.W.**  
**Washington, DC 20460**

**Mr. Trey Glenn (via Certified Mail, Return Receipt)**  
**Regional Administrator**  
**U.S. EPA, Region 4**  
**Sam Nunn Atlanta Federal Center**  
**61 Forsyth Street, SW**  
**Atlanta, GA 30303-8960**

**Mr. Joseph Ullo (via Certified Mail, Return Receipt)**  
**Director**  
**Florida Department of Environmental Protection**  
**Division of Waste Management**  
**MS #4500**  
**2600 Blair Stone Road**  
**Tallahassee, FL 32399-2400**

**Ms. Natalie N. Barefoot**  
**Supervising Attorney**  
**Environmental Justice Clinic**  
**University of Miami School of Law**  
**1311 Miller Drive, Room G287**  
**Coral Gables, FL 33146-8087**

# EXHIBIT B

## RALF BROOKES, ATTORNEY

Tuesday July 25, 2017

**City of Fort Myers**  
2200 Second Street,  
Fort Myers, FL 33901

City Attorney Grant Alley  
2200 Second Street,  
Fort Myers, FL 33901

### Notice Of Claim Under § 768.28(6)(A), Fla. Stat.

Dear City of Fort Myers

Pursuant to § 768.28(6)(a), Fla. Stat., you are notified of *claimants'* intent to file a tort claim(s) action for money damages against *CITY OF FORT MYERS*, under the Florida Tort Claims Act. Claimants' name and address are listed below:

- *Nicole Dillon 3422 South St Fort Myers Florida 33916 (private well)*
- *Venicille Fuller 3221 Jeffcott St, Fort Myers Florida 33916*
- *Lisa White 3314 Dora St Fort Myers Florida 33916*
- *Milton Johnson 3412 South St Fort Myers Florida 33916*
- *Georgia Smith 3446 South St Fort Myers Florida 33916*
- *Devetha Miller 3442 South St Fort Myers Florida 33916*
- *Annie Freeman, Edward Freeman 3425 South St Fort Myers Florida 33916*
- *Samuel Jackson 3441 South St Fort Myers Florida 33916*

All communications and notices should be directed to claimant at Ralf Brookes Attorney 1217 E Cape Coral Parkway #107 Cape Coral, Fl 33904

This claim arises from the following occurrence: *open dumping of waste and sludge on real properties located between, in and around Jeffcott St, Henderson Ave, South St, and Midway Avenue which has been referred to as the "Home-A-Rama" site*. As a result of the occurrence, claimant incurred injuries and damages for which this claim is now made. Claimant's injuries were proximately caused by wrongful acts or omissions of employees of *City of Fort Myers* while acting within the course and scope of their employment.

**Please also take all measures to prevent the loss, destruction of spoliation<sup>1</sup> of any potentially relevant evidence** and to ensure that no documentary or physical evidence is destroyed that may be potentially relevant to these claims.

Respectfully submitted,  
Ralf Brookes Attorney  
1217 E Cape Coral Parkway #107  
Cape Coral, Fl 33904  
Phone (239) 910-5464;  
Fax 866-341-6086  
[RalfBrookes@gmail.com](mailto:RalfBrookes@gmail.com)

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<sup>1</sup> "the failure of a party to preserve potentially relevant evidence for another's use in pending or reasonably foreseeable litigation"



# RALF BROOKES, ATTORNEY

Tuesday July 25, 2017

**City of Fort Myers**  
2200 Second Street,  
Fort Myers, FL 33901

City Attorney Grant Alley  
2200 Second Street,  
Fort Myers, FL 33901

## Notice Of Claim Under § 768.28(6)(A), Fla. Stat.

Dear City of Fort Myers

Pursuant to § 768.28(6)(a), Fla. Stat., you are notified of *claimant's* intent to file a tort claim(s) action for money damages against *CITY OF FORT MYERS*, under the Florida Tort Claims Act. Claimant's name and affected real property address is:

**Noemy Rodriguez and Aurelio Rodriguez,  
3313 Jeffcott St, Fort Myers Florida 33916.**

All communications and notices should be directed to claimant at Ralf Brookes Attorney 1217 E Cape Coral Parkway #107 Cape Coral, Fl 33904

This claim arises from the following occurrence: *open dumping of waste and sludge on real properties located between, in and around Jeffcott St, Henderson Ave, South St, and Midway Avenue which has been referred to as the "Home-A-Rama" site* . As a result of the occurrence, claimant incurred injuries and damages for which this claim is now made. Claimant's injuries were proximately caused by wrongful acts or omissions of employees of *City of Fort Myers* while acting within the course and scope of their employment.

**Please also take all measures to prevent the loss, destruction of spoliation<sup>1</sup> of any potentially relevant evidence** and to ensure that no documentary or physical evidence is destroyed that may be potentially relevant to these claims.

Respectfully submitted,  
Ralf Brookes Attorney  
1217 E Cape Coral Parkway #107  
Cape Coral, Fl 33904  
Phone (239) 910-5464;  
Fax 866-341-6086  
[Ralf@RalfBrookesAttorney.com](mailto:Ralf@RalfBrookesAttorney.com)  
[RalfBrookes@gmail.com](mailto:RalfBrookes@gmail.com)

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<sup>1</sup> "the failure of a party to preserve potentially relevant evidence for another's use in pending or reasonably foreseeable litigation"

7/25/2017

3313 Jeffcott St - Google Maps

Google Maps 3313 Jeffcott St



Imagery ©2017 Google, Map data ©2017 Google United States 100 ft



3313 Jeffcott St  
Fort Myers, FL 33916





**R A L F B R O O K E S, A T T O R N E Y**

March 11, 2018

**Sent via Certified Mail**

City of Fort Myers  
City of Fort Myers Mayor Randall P. Henderson Jr.  
City of Fort Myers City Manager Saeed Kazemi, P.E.  
City of Fort Myers City Attorney Grant Alley  
City Clerk, City of Fort Myers  
City of Fort Myers  
2200 Second Street,  
Fort Myers, FL 33901

Jimmy Patronis  
Florida Department of Financial Services  
200 East Gaines Street  
Tallahassee, Florida 32399

**RE: Notice of Intent to File Suit Pursuant to Fla. Stat. § 768.28(6)  
Clients: See Attached List**

Dear CITY OF FORT MYERS and Mayor Henderson:

Pursuant to § 768.28(6)(a), Fla. Stat., this letter serves as your statutory notice of claims of our clients per the attached Client List. The claims arise from the City of Fort Myers' act of open dumping solid or hazardous waste containing arsenic and other toxic chemicals on the "Home-a-rama" property on South Street in the Dunbar neighborhood of Fort Myers. The dumping results in neighboring property damage and ground water contamination. The claims at issue are based on, but not limited to the City's violation of the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6972(a)(1)(A), (B), and the theories of negligence, strict liability, medical monitoring, inverse condemnation, and diminution of property. The polluting property in question is the current City of Fort Myers property known as the "Home-a-rama" site, consisting of at least one (1) city block located on the south side of South Street, between Midway Avenue and Henderon Avenue, in

Fort Myers, Lee County. The City purchased the Home-a-rama site for use as a lime-sludge dump in 1962. The City dumped at least 25,000 cubic yards of sludge at the site, during which the site was neither lined nor covered. Until the mid 1980s, the surrounding community relied on wells exposed to this contamination for their potable water supply.

Fort Myers purchased the approximately 4-acre Home-a-rama property in 1965 for use as a dump for “lime sludge” from treatment of drinking water at one of its drinking water treatment plants. The Home-a-rama property consists of one (1) city block located on the south side of South Street, between Midway Avenue and Henderson Avenue, in Fort Myers, Lee County, Florida. The City dumped at least 25,000 cubic yards of sludge on the property over the course of several years, in some places at least 10 feet deep. The dump was neither lined nor covered. Later, some of the property containing the sludge was sold by the City to private parties for residential use. For more than 50 years the sludge has remained on the properties with unrestricted access for children and others. Until the mid-1980s, people in the area near the dump relied upon wells for their drinking water, and there may be some people who still use wells in the area.

The City’s sludge is contaminated at the least with arsenic, which poses a risk to human health for the residents in the area. Sludge samples taken in 2007 were all above soil contamination target levels for residential property use. Groundwater monitoring wells were installed in 2008, which showed groundwater contamination with arsenic of 12 µg/l to 18.0 µg/l, greater than the DEP groundwater cleanup target level of 10 µg/l, which is also the drinking water standard for arsenic. Recent groundwater samples in November 2017 showed levels as high as 53 µg/l, five times the groundwater cleanup level, with another sample at 21 µg/l, two times the standard.

Arsenic is a well-known poison and a dangerous environmental contaminant. Arsenic produces a variety of adverse health effects. Ingesting very high levels can result in sudden death. Chronic exposure to arsenic in drinking water can cause several types of cancer. According to the Agency for Toxic Substances and Disease Registry (“ATSDR”), (see ATSDR 2007, Toxicological Profile for Arsenic), epidemiological studies have reported that individuals exposed to inorganic arsenic are at an increased risk of developing cancer. Studies have shown that exposure to arsenic in drinking water results in an elevated risk of urinary tract cancers, such as bladder cancer. Those who had been drinking arsenic-contaminated well water since birth—that is, those with the longest-term exposure—exhibited a four- to-five-fold increased risk of urinary cancers. Exposure from

birth may increase urinary cancer risk much later in life. This finding of a long latency period (the time that elapses from exposure until the time of illness) suggests that people whose drinking water is contaminated by arsenic should be monitored long-term for urinary tract cancer, even if they stop drinking the contaminated water. (Saint-Jacques *et al.* Arsenic in drinking water and urinary tract cancers: a systematic review of 30 years of epidemiological evidence. *Environmental Health* 2014, 13:44).

Exposure to inorganic arsenic can result in the development of several non-cancer adverse health effects in humans, such as respiratory symptoms, hepatomegally (swollen liver), chemically-induced hepatitis, portal hypertension of the liver, peripheral neuropathy or numbness in the toes, feet, and legs, skin rash, hyper- and hypopigmentation of the skin, hyperkeratosis of the skin, upset stomach, gastroenteritis, diarrhea, vomiting, and adverse reproduction outcomes (e.g., birth defects in infants). (ATSDR 2007). There is also some evidence that in childhood, long-term exposure to arsenic may result in lower IQ scores and exposure to arsenic in the womb and early childhood may increase mortality in young adults. Many of arsenic's effects are dose- and time-dependent. Low levels of exposure over an extended period of time can produce effects similar to a one-time high level of exposure. Recent studies have also linked arsenic ingestion to cardiovascular disease and diabetes mellitus. (Elizabeth A. Maull, *et al.* Evaluation of the Association between Arsenic and Diabetes: A National Toxicology Program Workshop Review. *Environmental Health Perspectives* December 2012, 120:12).

In addition to drinking water, arsenic can enter the body via other pathways, such as inhalation of dust. Studies have shown that inhaling sawdust from construction with arsenic-treated lumber can greatly increase the danger of lung cancer, as it can be absorbed through the lungs. Inhaling arsenic from fugitive dust from dumpsites can likewise pose a danger to human health. Arsenic can also be absorbed through the skin, which is why its use in wooden decks and play equipment was outlawed. Children who play on or near arsenic contaminated soils or where there is fugitive dust may be at risk toxic effects of arsenic exposure. (ATSDR 2007).

Children are a susceptible population for the health effects of arsenic exposure. This is due in part to their size: any exposure they suffer is more significant for their small bodies than it would be for an adult. In addition, children's organ systems, particularly the nervous system, are still undergoing development and are thus more susceptible to the effects of toxics exposure. This is particularly the case during gestation (in utero) and infancy, and it remains true throughout childhood. Children also breathe more rapidly than adults and their lungs are proportionately

larger, thus increasing their susceptibility to airborne toxics. Finally, young children are prone to hand-to-mouth behaviors that expose them to higher levels of ambient contaminants, such as contaminated soils and dust. (ATSDR 2007).

Unless the arsenic-contaminated sludge in the Dunbar Community is immediately removed and the groundwater and soil contamination are addressed, the City's dump will continue to present an imminent and substantial endangerment to health or the environment through migration of dust and contaminated groundwater, as well as posing an ongoing risk of direct exposure due to the uncontrolled access to portions of the site on which sludge was dumped. Although the City has fenced portions of the site, there are no signs warning of the danger of toxic chemical exposure, and portions of the site remain without fencing, including parcels the City sold to private parties for residential use.

Due to the City of Fort Myers action of illegally dumping arsenic and toxic chemicals in the Dunbar neighborhood, the enclosed named individuals as well as other residents of the Dunbar neighborhood, their families, guests and neighbors have had to endure continued exposure to excessive levels of toxins emitted and discharged from the property and dumped in the neighborhood. As a result of continuous exposure to the toxins and hazardous substances, the named claimants as well as other residents of the Dunbar neighborhood, their families, guests, and neighbors have been exposed to various medical problems and expenses.

In addition, due to the City's actions, these individuals have suffered impaired and decreased property values as a result of contamination on their properties.

The City was aware of the existence of arsenic and toxins in the soil on the site. The City took no steps to correct the problem or notify the individuals exposed to the contamination. As a result of the occurrence, claimant incurred injuries and damages for which this claim is now made. Claimant's injuries were proximately caused by wrongful acts or omissions of employees of City of Fort Myers while acting within the course and scope of their employment.

#### **ANTISPOILATION NOTICE**

**Please also take all measures to prevent the loss, destruction of spoliation (i.e., "the failure of a party to preserve potentially relevant evidence for another's use in pending or reasonably foreseeable litigation") of any potentially relevant evidence and to ensure that no documentary or physical evidence is destroyed that may be potentially relevant to these claims.**

To best of knowledge there exist no prior adjudicated claims, as envisioned by § 768.28(6)(C), against our clients on the attached Client List in excess of \$200.00.

**The following claimants are represented by legal counsel. Any and all communications and notices should be directed to claimants through represented counsel at Ralf Brookes Attorney 1217 E Cape Coral Parkway #107 Cape Coral, FL 33904 (239) 910-5464; [Ralf@RalfBrookesAttorney.com](mailto:Ralf@RalfBrookesAttorney.com).**

Alfreda Bassett, 3208 Dora St., Fort Myers, FL 33916  
David L. Brown, 3530 South St., Fort Myers, FL 33916  
Bernice B. Brown-Taylor, 3530 South St., Fort Myers, FL 33916  
Sandra L. Brown, 3726 Minnesota Dr., Fort Myers, FL 33916  
Ben Cannady, 3345 South St., Fort Myers, FL 33916  
Angela Carter, 3407 Dora St., Fort Myers, FL 33916  
Johnny Carter, 3407 Dora St., Fort Myers, FL 33916  
Marva Carter, 3407 Dora St., Fort Myers, FL 33916  
Patricia Clark, 3348 Stella St., Fort Myers, FL 33916  
Nicole Dillon, 3422 South St., Fort Myers, FL 33916  
Annie Freeman, 3425 South St., Fort Myers, FL 33916  
Edward Freeman, 3425 South St., Fort Myers, FL 33916  
John Freeman, 3122 Willard St., Fort Myers, FL 33916  
Voncille Fuller, 3221 Jeffcott St., Fort Myers, FL 33916  
Dora Green, 3337 Willard St., Fort Myers, FL 33916  
Tavaisha Hamilton, 3345 South St., Fort Myers, FL 33916  
Therea Hamilton, 3345 South St., Fort Myers, FL 33916  
Tyler Hamilton, 3345 South St., Fort Myers, FL 33916  
Tyrone Hamilton, 3345 South St., Fort Myers, FL 33916  
Ralph Henry, 11338 SW 167 St., Miami, FL 33157 (owns property located at 3320 South St., Fort Myers, FL 33916)  
Eugene Hunter Jr., 3216 Franklin St., Fort Myers, FL 33916  
Samuel Jackson, 3441 South St., Fort Myers, FL 33916  
Komeka L. Jackson, 3416 South St., Fort Myers, FL 33916  
Milton Johnson, 3412 South St., Fort Myers, FL 33916  
Sharon A. Jackson, 3245 Willard St, Fort Myers, FL 33916  
Annette Miller, 2539 Jean Marie Ct., Fort Myers, FL 33916  
Devetha Miller, 3442 South St., Fort Myers, FL 33916  
Regina Miller, 3434 South St., Fort Myers FL 33916  
James Moore, 3245 Willard St, Fort Myers, FL 33916  
Shanisty Paulk, 3407 Dora St., Fort Myers, FL 33916

Aurelio and Noemy Rodriquez, 2002 SW 15<sup>th</sup> Ave., Cape Coral, FL 33991  
(own property located at 3313 Jeffcott St., Fort Myers, FL 33916)  
Georgia B. Smith, 3446 South St., Fort Myers, FL 33916  
Douglas Spencer, 3337 Willard St., Fort Myers, FL 33916  
Lisa White, 3314 Dora St., Fort Myers, FL 33916  
Harriet D. Owens Scott  
Wallace D. Scott Sr.  
Gabina Sierra  
Jessie Reddick  
Betty Simmons  
Walter Simmons  
Carolyn Bronson  
Serena Reddick  
Travis Reddick  
Eric Reddick  
Shirie Reddick Miller  
Zoe Reddick  
Saundra Reddick- Brown  
Jimmie Earl Presley  
Gertha Lee Owens Chatman  
Ricardo Perez  
Luetricia Freeman Beckon  
Komeka L. Jackson; Jumar Hillard  
Richard Dean Swanson  
Tommy Colon  
Joseph Colon  
Hector Pena  
George Torres  
Marcus Davis  
Nicole McCant  
Earthene McCant  
Sharon A. Jackson  
James Moore  
Beverly McCoy  
Gloria Edwards  
Jessie Lee Freeman  
Angela Carter  
Johnny Carter  
Marva Carter  
Shanisty Paulk

**Genevieve Ross  
Fred Allison  
Tommie L. Allison, Jr.  
Marilyn Allison  
Solomon Cole  
George Lee Cole  
Elmira Cole  
John Cole, Sr.  
Emily Cole  
Elford W. Owens  
Jeremiah Wade  
Marla Wade  
Mary Caldwell  
Netta Davis  
Patricia Clark  
Katherine Allison  
John Freeman  
Eileen M. Davis  
Dora Green  
Douglas Spencer  
Vivian L Newson  
William L. Wilcox Jr.  
Annette Miller  
Howard Nance  
Tyrone Hamilton  
Tyler Hamilton  
Tavaisha Hamilton  
Ben Cannady  
Theresa Hamilton  
Regina Miller  
Nicole Dillon  
Voncille Fuller  
Lisa White  
Milton Johnson  
Georgia B. Smith  
Devetha Miller  
Annie Freeman  
Edward Freeman  
Samuel Jackson  
Anthony B. Miller**

David L. Brown  
Sandra L. Brown  
Bernice B. Brown-Taylor  
Jeffery Reddick  
Equilla B. Davis  
Ralph Henry  
Aurelio Rodriguez  
Noemy Rodriguez  
Patricia Clark  
Robert Johnson  
Eugene Hunter Jr.  
Alfreda Bassett  
Elle Mae Pryor  
Earl Thompson  
Debra Thompson  
Eva S. Major  
Ray Anthony Blake Jr.  
Theresa Ashley  
Tiffany Mitchell  
Shenetta Jackson  
Jasmine Palmer  
Wendall Lee Strong  
Katherine Byrant  
Carol Smith Johnson  
Patricia Williams  
Yolanda Reeves  
Kevin Lamont Wells  
Edith Ashley  
Dwight Leon Strong  
Devonte Young  
Erolyn Wayne Barnes  
Rickey Rogers  
Deborah Ann Newson  
Anjijan Agend  
Aja Dean  
Arianna C. Lane  
Tracy Glover  
Charles Ramsey  
Windy Gavin  
Almeda D. Jones



Shirley Chapman  
Charles Robinson  
Glen Bryant  
Willie Chatters  
Mollie Chatters  
Cory Thompson  
Shirley Mathis  
James Muwakkil  
Chrissandra Smith  
Cassandra Floyd  
Thomas Young  
Loretta Thompson  
Roderick Kears

Respectfully submitted,

/s/ Ralf Brookes Attorney  
1217 E Cape Coral Parkway #107  
Cape Coral, Fl 33904  
Phone (239) 910-5464;  
Fax 866-341-6086  
[Ralf@RalfBrookesAttorney.com](mailto:Ralf@RalfBrookesAttorney.com)  
[RalfBrookes@gmail.com](mailto:RalfBrookes@gmail.com)

Gary A. Davis  
Davis & Whitlock, PC  
21 Battery Park Avenue, Suite 206  
Asheville, NC 28801  
828-622-0044  
[gadavis@enviroattorney.com](mailto:gadavis@enviroattorney.com)

JS 44 (Rev 09/10)

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA**

CIVIL COVER SHEET

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law.

**Plaintiff(s):**

**First Listed Plaintiff:**

Deretha Miller ;

**County of Residence:** Outside This District

**Additional Plaintiff(s):**

Luetricia Freeman Becker ;

Ralph Henry ;

Noemy Rodriguez ;

**Defendant(s):**

**First Listed Defendant:**

The City of Fort Myers ;

**County of Residence:** Outside This District

**Additional Defendants(s):**

City of Fort Myers Mayor Randall P. Henderson Jr.;

City of Fort Myers Manager Saeed Kazemi ;

2:18-cv-195-FM-38 CM  
FMd2201

**County Where Claim For Relief Arose:** Lee County

**Plaintiff's Attorney(s):**

Ralph Brookes (Deretha Miller)

Ralph Brookes Attorney

1217 E. Cape Coral Parkway, #107

Cape Coral, Florida 33904

**Phone:** (239) 910-5464

**Fax:** (866) 341-6086

**Email:** Ralf@RalfBrookesAttorney.com

Gary Davis

Davis & Whitlock

21 Battery Park Ave, Suite 206

Asheville, North Carolina 28801

**Phone:** 8286220044

**Fax:** 8283980435

**Email:** gadavis@enviroattorney.com

**Defendant's Attorney(s):**

2018 MAR 23 AM 11:10  
CLERK, US DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS FLORIDA

RECEIVED

**Basis of Jurisdiction:** 3. Federal Question (U.S. not a party)

**Citizenship of Principal Parties (Diversity Cases Only)**

**Plaintiff:** N/A

**Defendant:** N/A

**Origin:** 1. Original Proceeding

**Nature of Suit:** 893 Environmental Matters

**Cause of Action:** US Civil Statute: Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6972(a) (1)(A) Brief Description of cause: This is an action under the citizen suit provision of the federal Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6972(a)(1)(A) & (B), to enforce the prohibition in

3/21/2018

Florida Middle Civil Cover Sheet

RCRA against "open dumps," to compel a comprehensive investigation and cleanup of the City's Sludge Dump which may present an imminent and substantial endangerment to health or the environment, and to compel a comprehensive investigation and cleanup of the City's Sludge Dump. This is a class action on behalf of named plaintiffs and other persons similarly situated for negligence, strict liability, private nuisance, failure to warn, and medical monitoring, as a result of the disposal of arsenic contaminated sludge by the City in the Dunbar neighborhood of the City of Fort Myers.

**Requested in Complaint**

**Class Action:** Class Action Under FRCP23

**Monetary Demand (in Thousands):**

**Jury Demand:** Yes

**Related Cases:** Is NOT a refiling of a previously dismissed action

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**Signature:** /s/ Ralph Brookes

**Date:** 03/21/2018

If any of this information is incorrect, please close this window and go back to the Civil Cover Sheet Input form to make the correction and generate the updated JS44. Once corrected, print this form, sign and date it, and submit it with your new civil action.

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Against Fort Myers, FL Seeks Court Order to Remove Contaminated 'Sludge Dump' in Dunbar Neighborhood](#)

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