

# MEMORANDUM OF AGREEMENT

## BETWEEN

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 4

## AND

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

## FOR DEFERRAL OF THE

CAPITOL CITY PLUME SUPERFUND SITE, MONTGOMERY, ALABAMA

### I. PURPOSE

In accordance with the United States Environmental Protection Agency's "Guidance on Deferral of NPL Listing Determinations While States Oversee Response Actions" (OSWER Directive 9375.6-11) (May 1995) (Deferral Guidance), the EPA agrees to defer final listing of the Capitol City Plume Superfund Site (Site) on the National Priorities List (NPL) while the Alabama Department of Environmental Management (ADEM) oversees the remaining response actions at the Site. The EPA agrees that ADEM has met the deferral criteria outlined in the Deferral Guidance and that Site deferral is appropriate at this time. This Memorandum of Agreement (MOA) specifies the plans and expectations of each agency at the Site in order to ensure that the response actions undertaken at the Site are substantially similar to actions that would otherwise be taken under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the National Contingency Plan (NCP). Once the Site remedial action is successfully completed, it is expected that the EPA will have no further interest in considering the Site for final listing on the NPL and that the Site will be de-proposed from the NPL.

### II. BACKGROUND

The EPA proposed the Site, located in Montgomery, Alabama, to the NPL in May 2000. At the request of the City of Montgomery (City), the EPA has not finalized the listing of the Site on the NPL. The EPA proceeded with investigation of the Site under an informal, non-NPL approach similar to the EPA's Superfund Alternative approach. However, following a Remedial Investigation conducted by the EPA and Feasibility Study conducted by the City, additional monitoring and characterization efforts continued at the Site with minimal progress in addressing Site contamination.

In a letter, dated June 11, 2012 (Attachment A), the City requested that the EPA allow it to develop an action plan to address the environmental concerns at the Site pursuant to a formal agreement with ADEM. The EPA responded in a letter, dated November 14, 2012 (Attachment B), stating that it would suspend planned activities at the Site for a period of 90 days to allow the City time to present an action plan for the Site. Provided the City's plan was consistent with the EPA's objectives and concerns at the Site, the EPA would defer lead-agency authority of the Site cleanup to ADEM.

On February 12, 2013, in a meeting held at the EPA Region 4 office, the City presented its proposed action plan to the EPA and ADEM on behalf of the Downtown Environmental Alliance (Alliance), a group of stakeholders and potentially responsible parties representing the City, Montgomery County, the State of Alabama, the Montgomery Water Works and Sanitary Sewer Board, and the Advertiser

C. Documentation Submissions to the EPA

ADEM agrees to make available all Site data, reports, and other documentation to the EPA upon request.

D. ADEM Reporting to the EPA

ADEM agrees to provide management briefings to the EPA at least annually on whether the conditions in this MOA are being met and the progress in the investigation, assessment and response actions. In addition, ADEM agrees to report to the EPA at least semi-annually on any difficulties that it is having meeting the conditions of this MOA. Following the submission of a report required or requested, the EPA may request a briefing or meeting with ADEM to discuss the report(s).

E. Proposed Remedial Action

ADEM agrees to brief the EPA on the proposed remedial action before and after soliciting public comment.

V. COMMUNITY PARTICIPATION

ADEM will ensure public involvement that is substantially similar to the intent of the NCP. ADEM will ensure that a Community Involvement Plan is submitted for its approval and the activities within are carried out to provide participation and feedback from the community. ADEM will also maintain Site files at its Montgomery office located at 1400 Coliseum Boulevard, Montgomery, Alabama, 36110, as well as electronically on its website for public access.

VI. COMPLETION OF STATE RESPONSE ACTIONS

A. Certification and Confirmation

Once ADEM considers that all construction activities have been completed, has determined that the remedy is operational and functional, and has reviewed and approved the Site's Remedial Action Report, it agrees to certify to the EPA and the affected community that the remedy has been implemented successfully. As part of the certification, ADEM agrees to submit for EPA review a response action completion documentation substantially similar to that described in the EPA's Guidance, "Remedial Action Report; Documentation for Operable Unit Completion" (OSWER Directive 9355.0-39FS) (June 1992).

The EPA will review the certification and supporting information, and may choose to initiate a deferral completion inquiry to confirm the certification. The EPA agrees to work with ADEM to address any data deficiencies hindering the confirmation and agree to a time frame for completion of the inquiry. If the remedial action at the Site is confirmed as complete, the Site will not be further evaluated for NPL listing unless the EPA receives information of a release or potential release at the Site which poses a significant threat to human health or the environment. Upon completion of the remedial action and confirmation by the EPA, the Site will be de-proposed from the NPL pursuant to the EPA Policy Memorandum, "Guidelines for Withdrawing a Proposal to List a Site on the NPL (De-Proposal)," dated November 12, 2002, by David Evans.

B. MOA Termination and Modification

The EPA may terminate this MOA at any time after providing 30 days notice to ADEM. This MOA may be terminated if the response is not CERCLA-protective, is unreasonably delayed, is inconsistent with this MOA, does not adequately address the concerns of the affected community, or for other appropriate reasons, such as ADEM's inability to enforce compliance or the absence of appropriate funding to complete the response actions. ADEM may also choose at any time, after 30 days notice to the EPA, to terminate this MOA for any reason. During any 30-day notice period required by this paragraph, the EPA and ADEM agree to meet to discuss the decision to terminate this MOA.

Upon termination of this MOA, the EPA will consider taking any necessary response actions, including initiating the rulemaking process to finalize listing the Site on the NPL. The EPA and ADEM agree to coordinate efforts to notify the community of the termination of the deferral or this MOA. These actions will assure the public that the EPA will continue to respond at the Site. At the EPA's request, ADEM agrees to provide to the EPA all information in its possession regarding the Site to the extent permitted by state law.

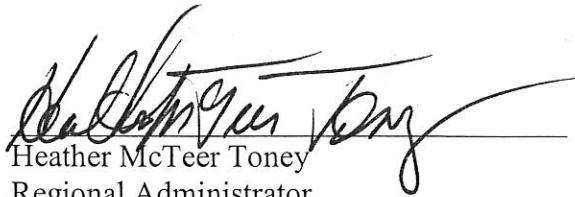
This MOA adheres to the EPA's Deferral Guidance. Furthermore, this MOA may be modified at any time upon written agreement of both parties. Notwithstanding any provision of this MOA, the EPA and ADEM retain their respective authorities and reserve all rights to take any and all response actions authorized by law.

VII. AGREEMENT APPROVALS



\_\_\_\_\_  
Lance R. LeFleur  
Director  
Alabama Department of Environmental  
Management

9/30/2015  
Date



\_\_\_\_\_  
Heather McTeer Toney  
Regional Administrator  
U.S. Environmental Protection Agency, Region 4

9/30/2015  
Date

ATTACHMENTS

- A. June 11, 2012, letter from the City requesting formal deferral to ADEM
- B. November 14, 2012, letter from the EPA suspending Site activities
- C. March 11, 2014, letter from the City presenting the revised action plan
- D. May 13, 2014, letter from the EPA approving the revised action plan
- E. September 1, 2015, letter from ADEM documenting community acceptance

# ATTACHMENT A



City of **Montgomery**, Alabama

OFFICE OF THE MAYOR  
*Todd Strange, Mayor*

Post Office Box 1111  
Montgomery, Alabama  
36101-1111

PH 334.625.2000  
FX 334.625.2600

June 11, 2012

Gwen Keyes Fleming  
Regional Administrator, Region 4  
U. S. Environmental Protection Agency  
Atlanta Federal Center  
61 Forsyth Street, SW  
Atlanta, GA 30303-3104

*Re: Capitol City Plume Site*

Dear Administrator Keyes-Fleming:

Let me take this opportunity to express the City of Montgomery's appreciation for the cooperation extended by EPA in searching for viable alternatives to keep the Capitol City Plume site from formal inclusion on EPA Superfund's National Priorities List. While the City is not a potentially responsible party (PRP) for this site, it does have a vital interest in the timely resolution of these environmental issues.

I was recently able to share directly with Mr. Franklin Hill of your office, Ms. Lisa Feldt of EPA OSWER, and other regional and headquarters officials attending the Association of State and Territorial Solid Waste Officials mid-year meeting held in downtown Montgomery, that the City is in the midst of a major revitalization of historic downtown Montgomery and is also participating in the development of the Selma-to-Montgomery Civil Rights Trail. These efforts, as well as the City's obvious interest in protecting the general health and welfare of our citizens and workers in the downtown area, make it imperative that the environmental issues associated with the Capitol City Plume site be addressed effectively.

At the meeting held on March 15, 2012, at your offices in Atlanta, GA, EPA representatives indicated that they believed that the Feasibility Study conducted by the City was comprehensive and wouldn't need substantial modifications based on the new data generated for the site. It is our current understanding; however, that EPA would like to collect additional data.

The City of Montgomery proposes that you allow us to develop an action plan to address the Capitol City Plume pursuant to a formal agreement under the oversight of the Alabama Department of Environmental Management ("ADEM"). This agreement will likely involve several other parties, but we need additional time to establish a working

# ATTACHMENT B



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

NOV 14 2012

The Honorable Todd Strange  
Office of the Mayor  
City of Montgomery  
P.O. Box 1111  
Montgomery, Alabama 36101

Dear Mayor Strange:

Thank you for your June 11, 2012, letter proposing that the U.S. Environmental Protection Agency permit the City of Montgomery (City) to develop an action plan to address the Capitol City Plume Superfund Site (Site), located in downtown Montgomery, Alabama, pursuant to a formal agreement with the Alabama Department of Environmental Management. We greatly appreciate the City's efforts in investigating the environmental issues associated with the Site, as well as its continued willingness to assume an active role in their resolution.

As you are aware, the EPA proposed the Site for inclusion on the National Priorities List in 2000 at ADEM's request. The sampling data collected at that time indicated that two of the City's public drinking water wells, located near the northern portion of the groundwater plume, contained the solvent tetrachloroethylene (PCE) at concentrations above the maximum contaminant level (MCL) for this contaminant of concern under the National Primary Drinking Water Regulations. As a result, the wells were closed and a new well field was constructed outside the Site. A moratorium was also enacted to prohibit well drilling within the Site.

Since 2000, the EPA has taken numerous steps to investigate the Site, including working collaboratively with the City and ADEM on actions to protect human health and the environment. These steps include the City's decision in 2002 to enter into an Administrative Order on Consent with the EPA to conduct a Feasibility Study (FS) of possible remedial alternatives to address contamination at the Site. The FS conducted by the City in 2003 acknowledged that source areas had not been completely identified, but nevertheless identified multiple remedial alternatives that could be employed at the Site to decrease PCE and trichloroethylene (TCE) concentrations in groundwater to levels below the MCLs and remove potential and actual human exposure to Site contamination. Despite eventual phytoremediation efforts taken by the City over the next several years and the hope that groundwater concentrations would naturally decrease over time, data collected at the Site in 2007 and 2011 indicated that PCE and TCE contamination in groundwater remained at levels similar to those measured in the early 1990s.

From 2008 to 2012, under an Interagency Agreement with the EPA, the U.S. Geological Survey conducted additional sampling at the Site, including the collection of tree cores and groundwater samples. Findings from these sampling efforts identified a potential source of PCE and TCE contamination in the subsurface near the Montgomery County's (County's) building, located at 101 South Lawrence Street. Additionally, an anonymous complaint received by the EPA from a county employee at the same building raised concerns of employee sickness resulting from indoor air quality problems. Two rounds of indoor air quality sampling conducted by a county environmental contractor with EPA oversight, and three rounds of indoor air sampling by EPA and USGS featuring two separate

# ATTACHMENT C





City of **Montgomery**, Alabama

OFFICE OF THE MAYOR  
*Todd Strange, Mayor*

Post Office Box 1111  
Montgomery, Alabama  
36101-1111

PH 334.625.2000  
FX 334.625.2600

March 11, 2014

Mr. Scott Miller  
Remedial Project Manager  
United States Environmental Protection Agency  
Region IV  
Atlanta Federal Center  
61 Forsyth Street  
Atlanta, Georgia 30303-8960

**Subject: Capitol City Plume Superfund Site, Environmental Action Plan**

Dear Mr. Miller:

We appreciated you and Carol meeting with our consultants, CH2M HILL, on February 28 at ADEM's offices to discuss our Environmental Action Plan and the process which EPA and ADEM will be for deferral of the Capitol City Plume site to regulation under and ADEM led arrangement. CH2M HILL reported that the conversations were very productive and that substantial agreement occurred between the three parties present regarding changes to be made in the Action Plan which will make our plan acceptable to EPA.

To that end, I am attaching the revised Action Plan. This revision includes the addition of goals related to groundwater remediation and remediation of source areas (see the introduction to Section 2, page 2-1) which were discussed during the meeting. We are confident that these modifications will address EPA's concerns, based on the meeting.

In addition, regarding the process for moving forward, our understanding is that upon EPA approval of the Environmental Action Plan, and notice to us of that approval, that EPA will prepare a 30 day public notice of the proposed deferral to ADEM. Concurrent with these events, EPA and ADEM will be working to establish a Memorandum of Agreement, formally confirming the deferral. Also concurrent with these events, the Alliance will work to finalize its Agreement, followed by establishing an agreement between ADEM and the Alliance. A reference to these agreements has also been added to the end of Section 4 in this revised Action Plan, as requested in our meeting. As we discussed in our meeting, the Alliance has made substantial progress on its Agreement, and we are confident that this can be finalized once the approval is given by EPA Action Plan, and hence the path forward for our group, is confirmed. If our understanding of the process is not correct, please let us know.

We appreciate EPA's consideration of the attached Environmental Action Plan, and look forward to hearing back from EPA in the very near future on the Plan. In the interim, if you have questions, please feel free to contact me at 334.241.2000, or contact our consultant, JP Martin of CH2M HILL at 334.215.9036.

Sincerely,

Todd Strange  
Mayor

Enclosures: Environmental Action Plan (3)

c: Carol Monell/US EPA Region IV  
Lance LaFleur/ADEM w/ enc (2)  
JP Martin/CH2M HILL



10947254

# ATTACHMENT D



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

MAY 13 2014

Mayor Todd Strange  
Office of the Mayor  
City of Montgomery, Alabama  
Post Office Box 1111  
Montgomery, Alabama 36101

Dear Mayor Strange:

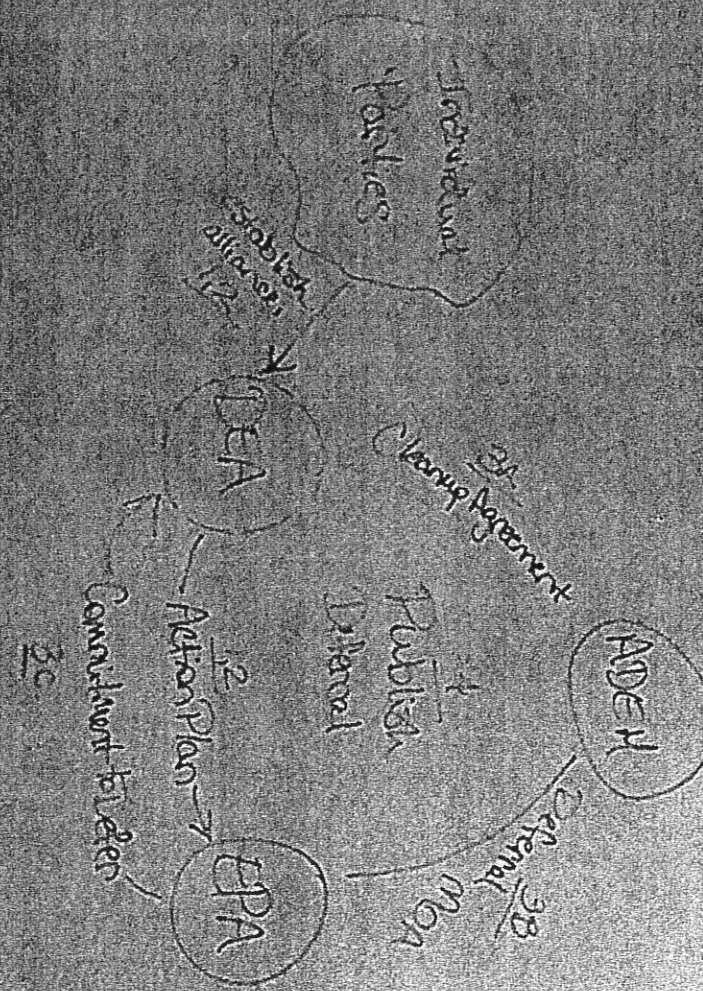
The United States Environmental Protection Agency has received the City of Montgomery's (City's) revised Downtown Environmental Assessment Action Plan (Action Plan), dated March 11, 2014, and appreciates the City's cooperation in revising the plan to address technical comments provided by our technical staff. Following review of the revised Action Plan, including ongoing communications with the Alabama Department of Environmental Management (ADEM), the EPA has determined that the Action Plan represents an acceptable path forward for evaluating and responding to the environmental issues at the Capitol City Plume Superfund Site (Site).

In accordance with the deferral requirements provided in our September 19, 2013, letter to the City and ADEM, as well as the next steps outlined in our February 28, 2014, meeting (Enclosure A), the EPA requests that ADEM and the Downtown Environmental Alliance (DEA) begin negotiations for an enforceable work agreement to conduct the remaining response actions at the Site, including any future operation and maintenance, reflecting the revised Action Plan (Step 3A in Enclosure A). Concurrently, the EPA expects to begin negotiations with DEA for an Administrative Order on Consent and Settlement Agreement (AOC) to recover the EPA's approximately \$3.5 million in outstanding Site costs (Step 3C in Enclosure A) and have enclosed a draft AOC for DEA's review (Enclosure B). The EPA requests that DEA respond in writing indicating its willingness and financial ability to enter into these two agreements within one (1) month of receipt of this letter. Once DEA indicates its willingness to negotiate, a timeframe for negotiations will be agreed upon by all parties to complete both agreements within six (6) months of receipt of this letter.

When both agreements are signed, the EPA and ADEM will enter into a Deferral Memorandum of Agreement (Deferral MOA) as previously provided in our September 19, 2013, letter (Step 3B in Enclosure A). The Deferral MOA will formalize the deferral of the Site to ADEM and allow for DEA's response efforts at the Site to begin. When the response action at the Site is confirmed complete and acceptable by the EPA and there is no further information of a release or potential release at the Site which might pose a significant threat to human health or the environment, the Site will no longer be evaluated for final listing on the National Priorities List (NPL), and will be formally de-proposed from the NPL. Please be aware that if there is no written indication of interest by DEA during the one (1) month period or if negotiations are not completed within the six (6) month negotiation period, the EPA will consider termination of the deferral process and consider taking any necessary response actions at the Site including initiating the rulemaking process to finalize the Site on the NPL.

**Enclosure "A"**

Agreement  
 1990  
 1991



1995- alliance  
 1995- action plan  
 1995- EPA commitment

Final action plan  
 EPA commitment  
 EPA commitment

3- commitment  
 A. Cleanup agreement  
 B. Alternative  
 EPA commitment  
 45 days after  
 public notice

his agreement affords  
 for signature and upon  
 finalization of agreement

Public notice 302

**Enclosure "B"**



## I. JURISDICTION

1. This Settlement Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D and redelegated from the Regional Administrator through the Director of the Superfund Division (formerly the Waste Management Division), to the Chief of the Superfund Enforcement and Information Management Branch, by EPA Regional Delegation R-14-14-D.

2. This Settlement Agreement is made and entered into by EPA and the parties listed in Appendix A ("Settling Parties"). Each Settling Party consents to and will not contest EPA's authority to enter into this Settlement Agreement or to implement or enforce its terms.

## II. BACKGROUND

3. This Settlement Agreement concerns the Capitol City Plume Superfund Site ("Site") located in Montgomery, Montgomery County, Alabama. EPA alleges that the Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604.

5. In performing response action, EPA has incurred response costs at or in connection with the Site.

6. EPA alleges that Settling Parties are responsible parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and are jointly and severally liable for response costs incurred or to be incurred at or in connection with the Site.

7. EPA and Settling Parties recognize that this Settlement Agreement has been negotiated in good faith and that this Settlement Agreement is entered into without the admission or adjudication of any issue of fact or law.

## III. PARTIES BOUND

8. This Settlement Agreement shall be binding upon EPA and upon Settling Parties and their successors and assigns. Any change in ownership or corporate or other legal status of a Settling Party, including but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling Party's responsibilities under this Settlement Agreement. Each signatory to this Settlement Agreement certifies that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to bind legally the party represented by him or her.



“Settling Parties” shall mean those parties identified in Appendix A.

“Site” shall mean the Capitol City Plume Superfund Site, encompassing approximately fifty (50) city blocks, located in downtown Montgomery, Montgomery County, Alabama, depicted generally on the map attached as Appendix B, and the areal extent of contamination that has emanated from the Site.

“United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

## V. PAYMENT OF RESPONSE COSTS

10. Payment by Settling Parties for Past Response Costs. Within 30 days after the Effective Date, Settling Parties shall pay to EPA \$X,XXX,XXX.XX (to be updated with final cost package) plus an additional sum for Interest on that amount calculated from Month X, XXXX (to be updated) through the date of payment.

11. The total amount to be paid by Settling Parties pursuant to Paragraph 10 shall be deposited by EPA in the EPA Hazardous Substance Superfund.

12. Payment by Settling Parties shall be made to EPA by Fedwire Electronic Funds Transfer (“EFT”) to:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Field Tag 4200 of the Fedwire message should read “D 68010727 Environmental Protection Agency”

and shall reference Site/Spill ID Number A4H7 and the EPA docket number for this action.

13. At the time of payment, Settling Parties shall send notice that payment has been made to EPA in accordance with Section XIII to:

Paula V. Painter  
Environmental Protection Specialist  
SD-SEIMB, 11th Floor  
U.S. EPA Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303

and to the EPA Cincinnati Finance Office by email at [acctsreceivable.cinwd@epa.gov](mailto:acctsreceivable.cinwd@epa.gov), or by mail to:

122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States, on behalf of EPA, brings an action to enforce this Settlement Agreement, Settling Parties shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

17. The obligations of Settling Parties to pay amounts owed to EPA under this Settlement Agreement are joint and several. In the event of the failure of any one or more Settling Parties to make the payments required under this Settlement Agreement, the remaining Settling Parties shall be responsible for such payments.

18. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Settlement Agreement. Payment of stipulated penalties shall not excuse Settling Parties from payment as required by Section V (Payment of Response Costs) or from performance of any other requirements of this Settlement Agreement.

#### VII. COVENANTS BY EPA

19. Covenants for Settling Parties by EPA. Except as specifically provided in Section VIII (Reservations of Rights by EPA), EPA covenants not to sue or take administrative action against Settling Parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs. These covenants shall take effect upon receipt by EPA of the payment required by Paragraph 10 (Payment by Settling Parties for Past Response Costs) and any Interest or stipulated penalties due thereon under Paragraph 14 (Interest on Late Payments) or 15 (Stipulated Penalty). These covenants are conditioned upon the satisfactory performance by Settling Parties of their obligations under this Settlement Agreement. These covenants extend only to Settling Parties and do not extend to any other person.

#### VIII. RESERVATIONS OF RIGHTS BY EPA

20. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Settling Parties with respect to all matters not expressly included within the Covenants for Settling Parties by EPA in Paragraph 19. Notwithstanding any other provision of this Settlement Agreement, EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Settling Parties with respect to:

- a. liability for failure of Settling Parties to meet a requirement of this Settlement Agreement;
- b. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs;
- c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;
- d. criminal liability; and

or 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6972, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site, or has been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise; or

b. that the materials containing hazardous substances contributed to the Site by such person have contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of response action or natural resource restoration at the Site.

26. Claims Against De Minimis and Ability to Pay Parties. Settling Parties agree not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that they may have for response costs relating to the Site against any person that has entered or in the future enters into a final Section 122(g) *de minimis* settlement, or a final settlement based on limited ability to pay, with EPA with respect to the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that a Settling Party may have against any person if such person asserts a claim or cause of action relating to the Site against such Settling Party.

#### X. EFFECT OF SETTLEMENT/CONTRIBUTION

27. Except as provided in Paragraphs 24 (Claims Against De Micromis Parties) or 26 (Claims Against *De Minimis* and Ability to Pay Parties), nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. Except as provided in Section IX (Covenants by Settling Parties), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613 (f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

28. The Parties agree that the actions undertaken by Settling Parties in accordance with this Settlement Agreement do not constitute an admission of any liability by any Settling Party. Settling Parties do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the facts or allegations contained in Section II (Background) of this Settlement Agreement.

29. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and that each Settling Party is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), or as may be otherwise provided by law, for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are Past Response Costs. The Parties further agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which each

specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified Settling Parties that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2 Subpart B, the public may be given access to such Records without further notice to Settling Parties.

b. In lieu of providing a Record, Settling Parties may assert that all or part of the record is privileged or protected as provided under federal law, provided they comply with Paragraph 34.c, and except as provided in Paragraph 34.d.

c. If Settling Parties assert such a privilege or protection, they shall provide EPA with the following: (1) the title of the Record; (2) the date of the Record; (3) the name, title, affiliation (e.g., company or firm), and address of the author of the Record; (4) the name and title of each addressee and recipient; (5) a description of the subject of the Record; and (6) the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, the Record shall be provided to EPA in redacted form to mask the privileged or protected information only. Settling Parties shall retain all Records that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Settling Parties' favor.

d. Settling Parties may make no claim of privilege or protection regarding:

- (1) any data regarding the Site, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the Site, or
- (2) the portion of any Record that Settling Parties are required to create or generate pursuant to this Consent Decree.

35. Notwithstanding any provision of this Consent Decree, the United States retains all of its information gathering and inspection authorities and rights, including enforcement actions relating thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

## XII. RETENTION OF RECORDS AND CERTIFICATION

36. Until ten years after the Effective Date, each Settling Party shall preserve and retain all non-identical copies of Records (including records in electronic form) now in its possession or control, or that come into its possession or control, that relate in any manner to liability under CERCLA with respect to the Site, provided, however, that Settling Parties who are potentially responsible as owners or operators of the Site must retain, in addition, all Records that relate to the liability of any person under CERCLA with respect to the Site. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

37. After the conclusion of the ten-year record retention period, Settling Parties shall notify EPA at least 90 days prior to the destruction of any such Records and, upon request by EPA, and except as provided in Paragraph 34, Settling Parties shall deliver any such Records to EPA. Each Settling Party certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not

XVI. EFFECTIVE DATE

41. The effective date of this Settlement Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 40 has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Settlement Agreement.

IT IS SO AGREED:

U.S. Environmental Protection Agency

By:

\_\_\_\_\_  
Anita L. Davis, Chief  
Superfund Enforcement and  
Information Management Branch  
Superfund Division  
Region 4

\_\_\_\_\_  
Date

Appendix A (Settling Parties)

To be updated

# ATTACHMENT E

LANCE R. LEFLEUR  
DIRECTOR



ROBERT J. BENTLEY  
GOVERNOR

Alabama Department of Environmental Management  
adem.alabama.gov

1400 Coliseum Blvd. 36110-2400 ■ Post Office Box 301463  
Montgomery, Alabama 36130-1463  
(334) 271-7700 ■ FAX (334) 271-7950

September 1, 2015

CERTIFIED MAIL # 91 7108 2133 3936 7154 4380

Ms. Heather McTeer Toney  
Regional Administrator  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, SW  
Atlanta, GA 30303

Re: **Certification of Community Acceptance for Deferral of the Capitol City Plume Site**  
Montgomery, AL  
USEPA I.D. Number AL0 001 058 056

Dear Ms. McTeer Toney:

The Alabama Department of Environmental Management (ADEM or the Department) held a public comment period regarding the proposed deferral of remedial action for the Capitol City Plume Site from July 6, 2015 to August 19, 2015. The draft *Memorandum of Agreement between USEPA, Region 4 and ADEM for Deferral of the Capitol City Plume Superfund Site* and the draft *Settlement Agreement for Site Response* between ADEM and the Downtown Environmental Alliance were made available for public review electronically via <http://www.adem.state.al.us/newEvents/PublicNotice.cnt> and at the Department's main office in Montgomery during the comment period. The purpose of the public notice was to solicit comments from the affected community regarding the potential deferral of remedial action for the Capitol City Plume site from USEPA oversight to ADEM oversight.

The Department received only one correspondence with comments supporting the proposed deferral during the public comment period; no comments opposing the proposed deferral were received. All comments were carefully considered and appropriate responses have been prepared. A copy of the comments received and the Department's responses to those comments are attached.

If questions or comments should arise concerning this matter, please contact Ms. Julie Ange of the Remediation Engineering Section at (334) 270-5646.

Sincerely,

Phillip D. Davis, Chief  
Land Division

Attachments

cc/via email: ADEM: Stephen A. Cobb, Ashley T. Mastin  
US EPA Region 4: Stephen Smith, Melissa Waters, Scott Miller

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110 Vulcan Road  
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LANCE R. LEFLEUR  
DIRECTOR



ROBERT J. BENTLEY  
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August 24, 2015

Messrs. J.P. Martin, P.E. and Glen Davis, P.E.  
Project Managers  
CH2M  
4121 Carmichael Road  
Suite 400  
Montgomery, Alabama 36106

RE: **Public Notice Comment Letter** regarding the proposed deferral of the Capital City  
Plume Site, Montgomery, AL, dated July 21, 2015

Dear Messrs. Martin and Davis:

The Alabama Department of Environmental Management (ADEM or the Department) has reviewed your comment letter dated July 21, 2015 regarding the proposed deferral of the Capitol City Plume (CCP) site. According to your letter, the CH2M company is in favor of deferral of remedial oversight for the CCP site from the Environmental Protection Agency to ADEM and believes that the deferral would be in the best interests of the community.

ADEM appreciates your comment letter and will include it as part of the administrative record for the CCP site.

If you have any questions concerning this matter, please contact Mrs. Ashley T. Mastin of the Remediation Engineering Section at 334-271-7797 or via email at [atmastin@adem.state.al.us](mailto:atmastin@adem.state.al.us).

Sincerely,

A handwritten signature in black ink, appearing to read "S. Cobb", written over a horizontal line.

Stephen A. Cobb, Chief  
Governmental Hazardous Waste Branch  
Land Division

SAC/ATM/akr

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