



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

20 2013

**URGENT LEGAL MATTER**  
**CERTIFIED MAIL — RETURN RECEIPT REQUESTED**

Walter Coke, Inc.  
Attention: Robert D. Mowrey  
Kazmarek Mowrey Cloud Laseter LLP  
1100 Peachtree Street  
Suite 650  
Atlanta, Georgia 30309

Re: Offer to Conduct Work for the 35<sup>th</sup> Avenue Superfund Site in  
Birmingham, Jefferson County, Alabama

Dear Mr. Mowrey:

On December 21, 2011, the U.S. Environmental Protection Agency sent your client a General Notice letter in an attempt to negotiate an Administrative Order on Consent (AOC) relating to the sampling of residential properties at the 35<sup>th</sup> Avenue Superfund Site (the Site). An agreement was not reached and as a result the EPA conducted the residential sampling using federal funds. The EPA recently completed its residential sampling investigation.

**Offer to Negotiate**

At this time, the EPA would like to offer your client the opportunity to perform certain removal activities at the Site. The EPA typically uses the Regional Removal Management Levels (RMLs) to assist the EPA and others in determining whether a removal action is appropriate at Superfund sites. RMLs correspond to cancer risk levels of approximately  $10^{-4}$  (one in 10,000) and/or a Hazard Quotient of 3. Based on sampling results, approximately 400 properties exceed the RMLs for lead, arsenic, and/or polycyclic aromatic hydrocarbons (PAHs), including approximately 50 properties that exceed  $10^{-3}$  risk levels (one in 1,000) for arsenic and/or PAHs and/or 1,200 mg/kg for lead.

At the 35th Avenue Site, the EPA plans to use a phased approach for residential cleanups because all properties exceeding RMLs cannot be cleaned up at the same time. In Phase I, the EPA will initially prioritize removal actions at the approximately 50 residences that exceed the higher risk levels. After Phase I work is completed, the EPA will address the remaining 350 properties that exceed the RMLs.

At this time, the EPA is offering your client and the group of Potentially Responsible Parties (PRPs) an opportunity to conduct Phase I of the removal action. The proposed removal activities include the following:

- a. Survey properties to verify current property use;
- b. Obtain access from owners of property and tenants as needed to conduct removal;
- c. Inventory existing plants, grasses, utilities, and outbuildings on each property;
- d. Remove impediments, as allowed, to provide for an appropriate excavation effort;
- e. Excavate the contaminated soil down to approximately 12 inches below ground surface where the soil exceeds an RML, or less than 12 inches if such excavation is sufficient to remove the contamination to levels below all RMLs from each property;
- f. Backfill with clean soil, shape to original contours, and lightly compact;
- g. Replace or repair any EPA-damaged concrete, piping, fencing, outbuildings, etc;
- h. Provide temporary on-site storage of contaminated soils generated during removal and decontamination activities, pending further waste characterization and profiling, treatment, reuse and/or recycling;
- i. Conduct in-situ/ex-situ screening and/or collect samples for laboratory analysis as necessary;
- j. Perform on-site treatment of characteristically hazardous waste, if appropriate;
- k. Arrange for off-site transportation and disposal/treatment of contaminated soil according to applicable regulations;
- l. Maintain site security and limit access during implementation of the removal action;
- m. Conduct all removal actions pursuant to an EPA approved Health and Safety Plan;
- n. Temporarily relocate residents if necessary during excavation activity; and
- o. Re-establish vegetation.

The EPA would like to receive your written response to this Offer for Work no later than fourteen (14) days from the date of this letter. In addition, the EPA would like to offer you the opportunity to meet and discuss this matter and to answer any other questions you may have regarding the Site. The EPA asks

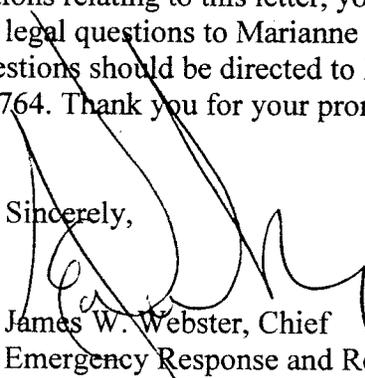
that you please contact Marianne Lodin, at (404) 562-9547, to schedule this meeting. If a response to participate in negotiations is not received by the EPA within 14 calendar days, the EPA will assume that your client has decided not to conduct the removal action. Please be aware however, your client will remain potentially liable for the EPA's costs incurred in undertaking activities pursuant to CERCLA and -the National Contingency Plan (NCP) at this Site. The EPA may then take appropriate action at the Site, which may include: (1) conducting the removal action and pursuing a cost recovery claim under Section 107 of CERCLA against the PRPs or (2) issuing a Unilateral Administrative Order (UAO) to the PRPs under Section 106(a) of CERCLA, 42 U.S.C. § 9606, requiring the PRPs to perform the work. Note that if the recipients of a UAO refuse to comply, the EPA may pursue civil litigation against the recipients to require compliance. Enclosed is a list of additional PRPs that are being offered an opportunity to conduct the cleanup at the Site.

### **Decision Not to Use Special Notice**

Under CERCLA Section 122(e), the EPA has the discretionary authority to invoke special notice procedures to formally negotiate the terms of an agreement between the EPA and PRPs to conduct or finance response activities. Use of these special notice procedures triggers a moratorium on certain EPA activities at the Site while formal negotiations between the EPA and the PRP or PRPs are conducted. In this case, the EPA has decided not to invoke the Section 122(e) special notice procedures. It is the EPA's policy not to use the special notice procedures for a removal action unless there is a six-month planning lead time after the decision to respond and prior to the initiation of the action. This is a time critical removal action, and special notice procedures accordingly will not be used. Nonetheless as noted above, the EPA is willing to discuss settlement opportunities without invoking a moratorium but will continue the response actions to completion if such discussions do not lead to settlement expeditiously.

Due to the legal ramifications of your client's failure to respond properly, the EPA strongly encourages your client to give this matter their immediate attention and to respond within the time specified above. If you or your client has any legal or technical questions relating to this letter, you may consult with the EPA prior to the time specified above. Please direct legal questions to Marianne Lodin, Associate Regional Counsel, at (404) 562-9547. Technical questions should be directed to Rick Jardine, On-Scene Coordinator, at the above address, or at (404) 562-8764. Thank you for your prompt attention to this matter.

Sincerely,



James W. Webster, Chief  
Emergency Response and Removal Branch  
Superfund Division

Enclosure

cc: Phillip Davis, ADEM  
Jeff Kitchens, ADEM  
Tom Johnston, ADEM

ENCLOSURE

September 2013 List of PRPs

- 1) Drummond Company, Inc.  
Curtis W. Jones – Corporate Counsel and Assistant Secretary  
1000 Urban Center Drive, Suite 300  
Birmingham, Alabama 35242-2532
- 2) U.S. Pipe & Foundry Company, LLC  
Mueller Water Products, Inc.  
% Les Oakes, Esquire  
King & Spaulding  
1180 Peachtree Street  
Atlanta, Georgia 30309-3521
- 3) Alabama Gas Corporation  
Stephen R. Chapman, Vice President – Support Services  
605 Richard Arrington Jr. Boulevard  
Birmingham, Alabama 35203
- 4) Process Knowledge Corporation d/b/a KMAC Services  
Michael McCollum  
2631 F.L. Shuttlesworth Drive  
Birmingham, Alabama 35234
- 5) Walter Coke, Inc.  
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