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November 10, 2009

Mr. A. Stanley Meiburg
Acting Regional Administrator
EPA Region 4
Sam Nunn Atlanta Federal Center.
61 Forsyth Street, SW
Atlanta, GA 30303

Dear Mr. Meiburg:

On July 13, 2009 I submitted a complaint to the United States Environmental Protection Agency (USEPA) requesting an investigation into the Olin Corporation (Olin) mining and manufacturing operations in McIntosh, Alabama. (A copy of the original Complaint dated July 13, 2009 is enclosed). On behalf of McIntosh property owners and landowners I have further requested that a criminal investigation and prosecution be brought against Olin for its criminal violation of environmental laws.

As concerns criminal liability, the Olin McIntosh Facility was designated as a Superfund site and placed on USEPA's National Priority List (NPL) in 1984. As a listed Superfund site Olin was required by law to abide by certain cleanup and operational procedures. The USEPA Region 4 Preliminary Remediation Goal (PRG) for the remediation of mercury-contaminated soil is 23 parts per million (ppm). Enclosed is a recent copy of Olin's soil sample analysis and test report conducted by Olin in 2005. The report contains the mercury test results of 13 soil samples taken by Olin. Of the 13 soil samples examined 10 of the samples exceeded 37 ppm total mercury and six of the samples exceeded 130 ppm total mercury. An excerpt from the Olin Test Report dated June 3, 2005 is enclosed herewith as Exhibit-A.

The 13 soil samples collected by Olin were obtained from on-site surface soils and production waste which contained soluble chlorides, sulfates, gypsum, sodium carbonates and calcium carbonates that ranged from 37 ppm total mercury to 310 ppm total mercury. (The normal total mercury content of K071 hazardous waste is less than 100 ppm total mercury and is normally characterized as metallic mercury or soluble mercuric chloride). The Olin reported mercury contamination levels are well above USEPA's 23 ppm remediation level and fall within the D009, K071 and K106 classifications of hazardous waste materials. (See the enclosed Expert Report of Dr. Edward W. Kleppinger at page 11, Section 4.3 and pages 19 thru 22). An excerpt from Dr. Edward W. Kleppinger's Environmental Report dated November 3, 2004 is enclosed herewith as Exhibit-B.

In violation of the Resource Conservation and Recovery Act (RCRA) these toxic waste materials were not classified as D009, K071 or K106 hazardous waste. Under RCRA Olin continues to be engaged in chlorine and hydrazine production and is categorized by USEPA as part of the chlor-alkali industry. Olin has operated a cell diaphragm plant since 1978 and operated a mercury cell plant from 1950 to 1982; the hazardous wastes that are generated by Olin's ineffectual remediation and from Olin's ongoing chlorine and hydrazine production are identified as D009, KO71 and K106 Mercury/ hazardous wastes. (See, Exhibit-A at pages 3, 4 and 5). Through fraudulent misrepresentation these hazardous waste materials were deliberately not classified as hazardous waste and used as fill dirt by Olin to pave local roadways, overpass construction, dumped in the community, given to local residents and dumped at a non hazardous landfill in Brewton, Alabama. (See enclosed Olin Complaint dated July 13, 2009 at Exhibits 3 and 4). A copy of the Mobile Register Mercury Test Report and news article are enclosed as Exhibit-C.

By deliberately misrepresenting known hazardous waste materials as common fill dirt Olin is liable for criminal negligence, fraud and misrepresentation in addition to violations of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). In keeping with CERCLA and Executive Order 12898 §1-103(a)(1), USEPA is required "to promote enforcement of health and environmental laws in areas with minority populations and low-income populations." However, based upon credible evidence, media sources and environmental reports (see, Exhibits A, B and C) "USEPA Region 4 has failed in the last ten years to enforce such federal environmental laws or provide equal protection under the law to minority property owners and taxpayers residing in McIntosh, Alabama."

As made evident from the prior 1991 RCRA Facility Assessment (RFA) and other more recent credible sources (see, Exhibits A, B, C and D) Olin remains a large generator of hazardous waste materials and has avoided that designation through deliberate misrepresentation and through fraudulent concealment of hazardous waste materials. The Olin Facility has provided false and misleading information to local state agencies and by fraudulent omission avoided recent USEPA site inspections. The last USEPA on-site assessment took place in 1991 where EPA contractors documented that Olin was generating diaphragm cell sludge, mercury wastes, K071 mercury, process wastewater, chromium wastes, trichloroethylene (TCE), toluene, hexachlorobenzene, PCBs, asbestos wastes, boiler ash, spent carbon along with various other hazardous and non-hazardous waste materials. Several of the unreported hazardous waste materials that were generated by Olin have been documented by experts (See Exhibits: B, C and D) and by Olin's Test Report dated June 3, 2005 (Exhibit-A). The various investigations and environmental tests were conducted between November 2004 and December 2006. See the following excerpt taken from the environmental investigation and Expert Report of Dr. Michelle A. McFaddin, J.D.:

"Not only does Olin appear to be under-reporting the amounts of hazardous waste that it is currently generating at the McIntosh plant from its manufacturing activities, Olin is also generating remediation wastes at the site. Under the federal and state hazardous waste regulations, a generator of industrial solid waste is required to perform a hazardous waste determination on every waste that it generates on site, including any contaminated soil or debris in order to ensure that the contaminated media are properly managed so they do not endanger human health, safety or the environment. Representative samples of the contaminated media should be collected and analyzed using the EPA's TCLP test

methodology to determine whether the material is characteristically hazardous *unless the facility determines that the material contains a listed hazardous waste, in which case it must be managed as a hazardous waste and disposed of at an authorized hazardous waste management facility regardless of the constituent concentration(s) present in the material.* The regulations that pertain to this requirement can be found in 40 CFR Part 261 (relating to the identification of hazardous waste) and 40 CFR §262.11 (hazardous waste determinations).

I question whether Olin is fully and completely complying with this hazardous waste requirement, not only because the list of identifiable hazardous waste that it claims to generate, as noted in the RFA, appears to be incomplete and the generation rate much too small for a facility this size, but also because contaminated media generated as part of its ongoing site remediation activities does not appear to be included. A review of the facility's toxic inventory release reports, discussed in more detail below, raises additional questions about the accuracy of Olin's ongoing reporting and recordkeeping practices. "One example of Olin's failure to properly characterize the waste materials being generated on-site is the excavation and removal of approximately 53,000 cubic yards of mercury-contaminated soil from an area located near a former building used to store mercury-contaminated anodes for transport and subsequent disposal at an off-site location as fill dirt." Other areas of the plant, mainly the cell building, were identified as AOC "B" in the RFA (the old mercury cell plant). Ongoing difficulties with cracks in the concrete floors that allowed for the migration of mercury through the concrete slabs to soils underlying the building were documented by OSHA and then by the EPA contractors that prepared the RFA.²⁹

"Despite the fact that Olin knew or certainly should have known that the soils in this area were contaminated with mercury based on its ongoing environmental investigation activities and the EPA's activities under the federal RCRA corrective action and Superfund programs, Olin does not appear to have performed a hazardous waste determination on these soils prior to or during excavation; nor did Olin report the off-site transfer of this material to the EPA or on its TRI reports." In my opinion, the management of this contaminated soil remained subject to federal and state waste management regulation because using mercury-contaminated media as fill is a use constituting disposal and does not constitute legitimate and beneficial recycling.²¹ Although many recycling and re-use practices are exempt from RCRA regulation, dumping contaminated materials onto the ground more resembles waste management than product usage and therefore triggers RCRA generator and transporter requirements as well as the land disposal restriction regulations set forth in 40 CFR Part 268 if the excavated material contained a listed hazardous waste such as K071 mercury-contaminated sludges.^{22"}

The foregoing citations were taken from the enclosed report of Dr. Michelle A. McFaddin. The report was used as evidence in a prior civil lawsuit pertaining to environmental investigations in 2004 - 2005. An excerpt from Michelle A. McFaddin's Supplemental Environmental Report dated January 31, 2005 is enclosed herewith as Exhibit-D.

With regard to a wholly separate matter, on February 3, 2008 the undersigned was presented with a copy of the enclosed test report (Exhibit-E) pertaining to the discovery of dangerous levels of mercury detected on several of my properties and the properties of nearby residents. [According to the National Oceanic and Atmospheric Administration (NOAA) and the United States Geologic Survey (USGS) the normal background level for mercury in soil in the State of Alabama ranges between .058 ppm and .080 ppm]. The migrated mercury contaminates that were detected on the undersigned's properties and several adjacent residential properties ranged from: 0.100 ppm; 0.260 ppm; 1.5 ppm to 6.6 ppm or 6.6 mg/kg. Under RCRA the Mercury concentrations for D009 hazardous waste

ranges from 0.20 mg/L TCLP (Toxicity Characteristic Leachate Procedure) to greater than 75 percent of the total waste composition. Common types of D009 and K071 hazardous wastes are generated from brine waste and miscellaneous waste from chlor-alkali production facilities such as Olin, especially cell room trench sludge and activated carbon for liquid or gas purification. As evidenced in the environmental reports of Dr. Edward W. Kleppinger and Michelle A. McFaddin these Olin generated hazardous waste materials are deposited in the groundwater and surface soils in McIntosh, Alabama and are highly susceptible to leaching and migration through weathering and rainfall. The proven migration pathways of D009 and K071 hazardous wastes have previously been demonstrated in scientific analysis to migrate from Olin in the direction of the neighboring residential properties. (See, Exhibits B and C). In the furtherance thereof the USEPA 1991 RFA; 1995 ROD and 1996 RCRA Section 7003 Administrative Order all reference the potential dangers and known health risks to the 500 McIntosh residents from the Olin contaminated groundwater. (Fourteen years after the USEPA 1995 ROD Olin still has not complied with the cleanup order to reduce its groundwater mercury concentration level to 2 ppb). A copy of the Residential Soil Test Report dated December 31, 2007 is enclosed herewith as Exhibit-E.

Notice of dangerous levels of toxic waste materials which have migrated from the Olin superfund site were disclosed to representatives of Olin at a formal meeting on March 13, 2008. Certain agreements were thereby made by Olin to make compensation to those property owners whose property had demonstrated elevated background levels of mercury contamination and to meet again to discuss remediation of the affected residential soils. In addition to the foregoing we have other concerns with the elevated levels of carbon disulfide, chlorobenzene, mercury compounds and other waterborne toxic chemicals that were discovered in the groundwater and local residential well water. These waterborne toxic contaminants were proven to emanate from the Olin McIntosh Facility. (See the enclosed Olin Complaint dated July 13, 2009 at Exhibit 2). Copies of the above referenced contaminated soil test report (Exhibit-E) was submitted to Olin on March 13, 2008 and April 24, 2008.

On December 30, 2008 the undersigned personally contacted Olin Corporate Vice President Stuart Roth and contacted Olin's legal counsel the Turner, Onderdonk, Kimbrough, Howell, Huggins & Bradley Law Firm toward the performance of prior agreement and remediation of residential properties. On January 13, 2009 Olin formally reneged upon its prior agreement and declined inter-alia to take any measures to remediate chemical waste materials that had emanated from its superfund site. In addition to having previously mislead residents concerning its remediation practices Olin also misrepresented safe levels of mercury, carbon disulfide, chlorobenzene, toluene, chromium and other toxic chemicals that it was responsible for placing in residential soil, well water and groundwater.

Based upon the credible evidence and records that have been provided, we respectfully request that USEPA Region 4 take the appropriate following actions to implement federal policies and environmental laws:

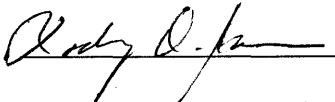
- a. Within the next 120 days implement USEPA onsite Assessment (RFA) of the Olin Facility under direct supervision of USEPA; and conduct an environmental

assessment of residential properties and groundwater for detection of Olin related contamination in the surrounding community of McIntosh, Alabama.

- b. Rescind or permanently suspend the Alabama Department of Environmental Management (ADEM) regulatory supervision and monitoring of "Olin federally designated superfund site."
- c. Reinstate USEPA Region 4 as the primary environmental oversight agency with exclusive regulatory authority to monitor and supervise the Olin superfund site remediation.
 - a. Issue a Formal Review of USEPA-CID Region 4 criminal investigation of Olin for the alleged following criminal offenses: criminal negligence, reckless endangerment, misrepresentation and fraud. (See, Exhibits A, C and D).
 - b. Issue a Formal Review of USEPA Region 4 civil investigation of Olin for violations of: CERCLA, RCRA and SDWA. (See, Exhibits A, B and E).
 - c. Pursuant to federal authority and CERCLA provide environmental impact statement and institute appropriate environmental assessment on the spread of former Ciba Geigy Corporation (Ciba¹) brownfield contaminates Dichloro-diphenyltrichloroethane ("DDT") and Benzenehexachloride ("BHC") hazardous wastes left in the McIntosh, Alabama community and waterways.

Thank you for your anticipated attention to the foregoing matters and we will look forward to your reply.

Respectfully,



Rodney D. James, Edward C. Thomas, Dr. Edward Willis and Helen Willis on behalf of the Washington County Project and McIntosh Property Owners.

Enclosures: (11)

¹ Abrams v. Ciba Specialty Chemicals Corp., --- F.Supp.2d ----, 2009 WL 3261307, S.D.Ala., October 02, 2009 (NO. CIV.A. 08-0068-WS-B); Gaston v. Ciba Specialty Chemicals Corp. S.D.Ala., February 21, 2008 (NO. CIV.A. 07-00863-BH-C); Fisher v. Ciba Specialty Chemicals Corp. Not Reported in F.Supp.2d, 2008 WL 2163914, S.D.Ala., May 16, 2008 (NO. CIV.A. 03-00566-WS-B) and Ciba Specialty Chemicals Corp. v. Tensaw Land & Timber Co., Inc. 233 F.R.D. 622, 63 Fed.R.Serv.3d 1088, S.D.Ala., December 30, 2005 (NO. CIV.A.05-0569-WS-C)