

Fw: APCO Section 104 Response -- Capital City Plume, Montgomery

Stephen Smith to: Debbie Jourdan

08/17/2011 08:36 AM

Stephen P. Smith
U.S. Environmental Protection Agency, Region 4
Office of Environmental Accountability
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
Ph: (404) 562-9554
Fax: (404) 562-9486
smith.stephen@epa.gov

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From: "Noles, Jim" <JNOLES@balch.com>
To: Melissa Waters/R4/USEPA/US@EPA
Cc: "Mitchell, David" <dmitchell@balch.com>, Stephen Smith/R4/USEPA/US@EPA
Date: 05/25/2011 05:52 PM
Subject: APCO Section 104 Response -- Capital City Plume, Montgomery

Dear Melissa:

Enclosed please find a courtesy copy of my client's narrative response (minus attachments) in the above-referenced matter. A hard copy (with the referenced attachments) has been FEDEXed to your office this evening for delivery tomorrow.

If you have any questions, please do not hesitate to contact me or my colleague David Mitchell (copied on this email). I will, by the way, be out of the office next week.

Sincerely,

Jim Noles

James L. Noles, Jr.
Balch & Bingham LLP
1901 Sixth Avenue North
Suite 1500
Birmingham, Alabama 35203-4642
(205) 226-8767 - Phone
(205) 488-5684 - Fax



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BALCH & BINGHAM LLP

Alabama • Georgia • Mississippi • Washington, DC

James L. Noles, Jr.
(205) 226-8767

Attorneys and Counselors
1901 Sixth Avenue North, Suite 1500
P.O. Box 306 (35201-0306)
Birmingham, Alabama 35203-4642
(205) 251-8100
(205) 226-8799 Fax
www.balch.com

(205) 488-5684 (direct fax)
jnoles@balch.com

May 25, 2011

Via Federal Express and Email (waters.melissa@epa.gov)

Ms. Melissa Waters
SEIMB 11th Floor
U.S. Environmental Protection Agency
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Re: Response to Request for Information Concerning Property Located at 200 & 220 Dexter Avenue Pursuant to Section 104 of CERCLA for the Capital City Plume Superfund Site (Site) in Montgomery, Alabama (dated March 24, 2011) (104 Request)

Dear Ms. Waters:

My name is James L. Noles, Jr.; my firm represents Alabama Power Company (APC) in the above-referenced matter. Thank you for your agency's willingness to extend the initial response time for this information request to May 26, 2011; I trust that you will find this response, which I am making on APC's behalf, timely.

Among other items of information requested, the 104 Request asked APC to identify the personnel consulted in preparation of the response. Accordingly, please be advised that, in the course of preparing this response, the following personnel were consulted:

- Tommy Ryals, APC, Environmental Affairs Supervisor, 600 North 18th Street, Birmingham, Alabama 35203
- Mike Godfrey, APC, Environmental Affairs Manager, 600 North 18th Street, Birmingham, Alabama 35203
- Yolanda Barbour, APC, Team Leader, Land Research & Information Management, Corporate Real Estate, 600 North 18th Street, Birmingham, Alabama 35203
- Patrick Robinson, APC, GIS Project Specialist II, Land Research & Information Management, Corporate Real Estate, 600 North 18th Street, Birmingham, Alabama 35203

Ms. Melissa Waters
May 25, 2011
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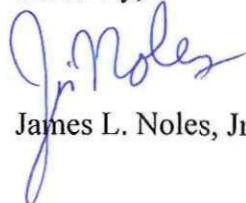
- Erica McKelvey, APC, Land Information Center, 600 North 18th Street, Birmingham, Alabama 35203
- Neil Mercer, APC, Manager, Local Accounting Department, 200 Dexter Avenue P.O. Box 160, Montgomery, Alabama 36104
- James Thrash, APC, Accounting Services Manager, 244 Dexter Avenue, Montgomery, Alabama 36104
- Cynthia Kidd, Southern Company, Corporate Secretary Department, 30 Ivan Allen, Jr. Blvd. NW, Atlanta, Georgia 30308
- Max Alexander (Retired), APC, Division Customer Service Manager, Montgomery, Alabama

APC is represented by counsel (i.e., Balch & Bingham LLP) in this matter. All of the foregoing persons can (and should) be contacted via me. My phone number is (205) 226-8767. You can also contact Matthew Bowden, Vice President of Environmental Affairs for APC, at (205) 257-4075. Also, please be aware that Elmer Harris, to whom EPA's 104 Request was addressed, retired several years ago and is no longer the president of APC.

With regard to this particular response, please be advised that, in making this response, APC does not waive any rights, defenses, claims or remedies and makes no admissions of fact, law, or liability. Furthermore, APC is not producing documents protected by the attorney-client communication privilege. With this submittal, it has responded to EPA's request for information as fully and completely as possible in the time allowed. My client understands its obligations in this matter and reserves the right to correct and/or supplement these responses if additional information or documents are discovered.

If you have any questions, please do not hesitate to contact me.

Sincerely,



James L. Noles, Jr.

**CAPITAL CITY PLUME SUPERFUND SITE
FIRST INFORMATION REQUEST
ALABAMA POWER COMPANY**

Questions and Responses

Ownership of 200 & 220 Dexter Avenue

- 1. Are you or your company the owner of any interest in the Property located at 200 & 220 Dexter Avenue? If so, please describe the interest you or your company holds and provide a legible copy of the documents of acquisition, including any deed, tax certificate, receipt, mortgage, or financing statement relating to the acquisition of the Property.**

Alabama Power Company (APC) holds an interest in the property located at 200 and 220 Dexter Avenue. For a description of APC's interest, see documents APC-CCP-1-001 to -012.¹ Please be aware that there are four deeds that pertain to 200 & 220 Dexter Avenue.

- 2. If you previously held any interest in Property located at 200 & 220 Dexter Avenue but have transferred that interest to another person, please describe the interest you held and the interest you transferred. Provide a legible copy of the documents of transfer to the other person, including any deed, tax certificate, receipt, mortgage, or financing statement relating to your transfer of the Site Property.**

N/A

- 3. Please identify every person to whom you or your company have transferred any interest in any parcel of the Property located at 200 & 220 Dexter Avenue.**

N/A.

You and Your Company

- 4. Identify your company by:**
 - A. Legal name, including any doing business as name;**
Alabama Power Company
 - B. Date and state of incorporation, if any;**
December 4, 1906; Alabama

¹ APC is labeling the documents produced pursuant to EPA's request as follows: "APC" identifies Alabama Power Company; "CCP" identifies Capital City Plume, the first number refers to the question number; and the second number paginates the individual documents produced on a question-by-question basis.

C. Complete mailing and physical address of the central office; and

600 North 18th Street
Birmingham, Alabama 35203

D. Name and mailing address of your registered agent.

Damon L. Story
600 North 18th Street
Birmingham, Alabama 35291

5. Identify the person(s) authorized to discuss this Site with EPA by:

A. Full name and title;

Matthew W. Bowden
Vice President
Environmental Affairs
Alabama Power Company

B. Mailing address and physical address; and

600 North 18th Street
Birmingham, Alabama 35203

C. Daytime telephone number.

(205) 257-4075

6. Describe, in general, what sort of business your company conducts, including a list of products you manufacture or broker, services you provide or market, transactions you arrange, and anything you buy or sell.

APC is a public utility company that generates and sells electric power, serving homes, businesses and industries in the southern two-thirds of Alabama. APC buys and sells a variety of goods and services related to the generation, transmission, and delivery of electric power throughout its service area.

7. Describe the business activities your company have conducted and/or currently conducts at the property located at 200 & 220 Dexter Avenue.

APC maintains a general business office in its District Building located at 200 & 220 Dexter Avenue. On the first floor of this office, customers can pay bills, set up orders, and receive support. The first floor of this building also houses bill collection activities for past due accounts. On the second and third floors of this building, APC conducts marketing operations.

8. Identify any parent corporation and all subsidiaries of your company.

APC is a wholly owned subsidiary of Southern Company. APC's current subsidiaries are as follows:

Southern Electric Generating Company

Alabama Property Company

Alabama Energy Providers, Inc.

Alabama Power Capital Trust IV (inactive)

Alabama Power Capital Trust V

Alabama Power Capital Trust VI (inactive)

Alabama Power Capital Trust VII (inactive)

Alabama Power Capital Trust VIII (inactive)

Relevant Affiliations

9. If you, your company, or any of your company's officers have conducted business with any of the following, please describe the nature of that business, the individuals or companies involved, and the time period during which the business was transacted:

A. The Montgomery Advertiser;

APC provides the Montgomery Advertiser with electric power service and believes that it began providing electric power to the Montgomery Advertiser as early as 1907. APC also holds a subscription to the Montgomery Advertiser and periodically purchases ad space from the Montgomery Advertiser. Upon information and belief, APC has not engaged in any other business relationship with the Montgomery Advertiser.

B. Gannett Company, Inc.;

It is APC's understanding the Gannett Company, Inc. owns the Montgomery Advertiser. For a description of APC's business relationship with Gannett Company, Inc., see the response provided for Question 9.A. Upon information and belief, APC has not engaged in any other business relationship with Gannett Company, Inc.

C. Alabama State Department of Education

APC provides the Alabama State Department of Education with electric power service and believes that it began such service when the Alabama State Department of Education was formed. Upon information and belief, APC has not engaged in any other business relationship with the Alabama State Department of Education.

Acquisition of 200 & 220 Dexter Avenue

10. Provide any agreements related to the purchase of the Property located at 200 & 220 Dexter Avenue.

See documents enclosed pursuant to question 1.

11. Describe what you knew about the Property prior to your acquisition of the Property, and list your sources of information.

With the exception of the property located at 244 Dexter Avenue² (see below), APC acquired the property located at 200 and 220 Dexter Avenue, 261 Washington Avenue, 19 Lawrence Street, and 204 E Jefferson Street prior to the discovery of the Capital City Plume. Accordingly, APC had no knowledge of the Capital City Plume prior to those particular acquisitions (200 and 220 Dexter Avenue, 261 Washington Avenue, 19 Lawrence Street, and 204 E Jefferson Street) and, in fact, has no information evidencing any knowledge of any contamination on those particular parcels. Specifically:

- Prior to the acquisition of the property located at 200 & 220 Dexter Avenue in 1974–76, APC was not aware of any contamination on these parcels. *See* documents enclosed pursuant to question 1.
- Prior to the acquisition of the property located at 261 Washington Avenue in 1977, APC was not aware of any contamination on this parcel. *See* APC-CCP-11-207 to -210.
- Prior to the acquisition of the property located at 204 E Jefferson Street in 1917, APC was not aware of any contamination on this parcel. *See* APC-CCP-11-213 to -216.
- Prior to the acquisition of 19 Lawrence Street in 1980, APC was not aware of any contamination on this parcels. *See* APC-CCP-11-211 to -212.
- At various times prior to 1975, APC first acquired the property located at 244 Dexter Avenue. Prior to that time, APC was not aware of any contamination on this parcel. In 1975, APC sold the property located at 244 Dexter Avenue to American Property Investors IV. *See* APC-CCP-11-203 to -206. Upon this transfer, APC immediately took a leasehold interest in the property located at 244 Dexter Avenue and held this leasehold interest until 2004. *See* APC-CCP-11-126

² Because EPA omits the specific reference to 200 and 220 Dexter Avenue in questions 11 through 17 and instead uses the broader term “Property” (as defined by EPA in its information request), APC has included information pertaining to 244 Dexter Avenue, 261 Washington Avenue, 19 Lawrence Street, and 204 E Jefferson Street in responding to EPA’s questions 11 through 17. Based on APC’s understanding of the location of the Capital City Plume (i.e., the area of downtown Montgomery that is bordered by Alabama Street (south), Pollard Street (north), Court Street (west), and Union Street (east)), 244 Dexter Avenue, 261 Washington Avenue, 19 Lawrence Street, and 204 E Jefferson Street are located within the Property as that term (“Property”) is defined by EPA in its information request.

to -202. In 2004, APC repurchased the property located at 244 Dexter Avenue, continuing to occupy this property since the time prior to its sale in 1975. See APC-CCP-11-126 to -131. Prior to the repurchase in 2004, APC was aware of the Capital City Plume Superfund Site located in downtown Montgomery. Specifically, in August of 2000, APC received confirmation from EPA that the monitoring well EPA placed in the parking lot was found to be free of any contaminants of concern both in the groundwater and the soil. For documents related to APC's knowledge of the property located at 244 Dexter Avenue prior to repurchasing the property in 2004 (that are located in APC's file regarding this acquisition), see documents APC-CCP-11-001 to -221.

It should be noted that even though APC repurchased the property located at 244 Dexter Avenue in 2004, APC has continuously occupied this parcel since at least 1975 when it sold the property located at 244 Dexter Avenue to American Property Investors IV. See APC-CCP-11-203 to -206.

12. Describe, in detail, any and all investigations relating to the Site Property that you undertook prior to acquiring the Property, including investigations:

In providing the following narrative responses to questions 12.A through 12.F, APC reasserts the dates on which the parcels in question were acquired:

200 & 220 Dexter Avenue: Acquired in 1974-76.

244 Dexter Avenue: Repurchased in 2004; APC originally sold its interest in this parcel in 1975 and immediately took back a leasehold interest; APC has continuously occupied this parcel from the time before the sale in 1975 to the present day.

261 Washington Avenue: Acquired in 1977.

19 Lawrence Street: Acquired in 1980.

204 E Jefferson Street: Acquired in 1917.

A. About the previous owner(s) of the Property;

APC is not aware of any investigations relating to the previous owners of the property located at 200, 220, and 244 Dexter Avenue, 261 Washington Avenue, 19 Lawrence Street, and 204 E Jefferson Street that were undertaken prior to acquiring these parcels.

B. Into the historical uses of the Property;

APC is not aware of any investigations relating to the historical uses of the property located at 200, 220, and 244 Dexter Avenue, 261 Washington Avenue,

19 Lawrence Street, and 204 E Jefferson Street that were undertaken prior to acquiring these parcels.

C. By an environmental professional;

APC is not aware of any investigations by an environmental professional of the property located at 200, 220, and 244 Dexter Avenue, 261 Washington Avenue, 19 Lawrence Street, and 204 E Jefferson Street that were undertaken prior to acquiring these parcels.

D. Into the potential for contamination at the Property;

APC is not aware of any investigations into the potential for contamination of the property located at 200 and 220 Dexter Avenue, 261 Washington Avenue, 19 Lawrence Street, and 204 E Jefferson Street that were undertaken prior to acquiring these parcels.

For information regarding APC's investigations into the potential for contamination at the property located at 244 Dexter Avenue, prior to the repurchase in 2004, see documents APC-ID-11-001 to -125.

E. Involving any review of state, federal, or local government records concerning contamination at the Property; or

APC is not aware of any investigations involving a review of state, federal, or local government records concerning alleged contamination of the property located at 200 and 220 Dexter Avenue, 261 Washington Avenue, 19 Lawrence Street, and 204 E Jefferson Street that were undertaken prior to acquiring these parcels.

For information regarding APC's investigations involving a review of state, federal, or local government records concerning alleged contamination of the property located at 244 Dexter Avenue, prior to the repurchase in 2004, see documents APC-ID-11-002 to -026, -035, -042 to -105.

F. Involving visual inspection of the Property.

APC is not aware of any environmental investigations involving visual inspection of the property located at 200, 220, and 244 Dexter Avenue, 261 Washington Avenue, 19 Lawrence Street, and 204 E Jefferson Street that were undertaken prior to acquiring these parcels.

13. Describe any limitations on your opportunity or ability to investigate conditions at the Property prior to and after your acquisition of an interest in the Property.

Following APC's acquisition of the property located at 200, 220, and 244 Dexter Avenue, 261 Washington Avenue, 19 Lawrence Street, and 204 E Jefferson Street, APC has not

become aware of any limitations on its opportunity or ability to investigate conditions at these parcels.

14. **Do you or your company have any specialized knowledge or experience relating to evaluating or remediating environmental contamination on properties such as the Property? If so, please describe that knowledge or experience, in detail.**

APC has knowledge and experience related to evaluating and remediating environmental property contamination. Under current practices, APC will, as circumstances warrant, conduct property assessments under both the ASTM E 1527-00 Standard Practice for Environmental Site Assessments and the Environmental Protection Agency's (EPA) "All Appropriate Inquiries" standard under 30 CFR Part 137. If remediation of contaminated property is required, APC will clean up such property in accordance with all applicable federal, state, and local laws and regulations.

15. **Please describe, in detail, any and all efforts you have made since you or your company acquired the Property to:**

In providing the following narrative response to questions 15.A through 15.C, APC reasserts the dates on which the parcels in question were acquired:

200 & 220 Dexter Avenue: Acquired in 1974-76.

244 Dexter Avenue: Repurchased in 2004; APC originally sold its interest in this parcel in 1975 and immediately took back a leasehold interest; APC has continuously occupied this parcel from the time before the sale in 1975 to the present day.

261 Washington Avenue: Acquired in 1977.

19 Lawrence Street: Acquired in 1980.

204 E Jefferson Street: Acquired in 1917.

- A. **Stop any continuing release of hazardous substances on, about, or beneath the Property;**

Since acquiring the property located at 200, 220, and 244 Dexter Avenue, 261 Washington Avenue, 19 Lawrence Street, and 204 E Jefferson Street, APC is not aware of, and has never known of, any continuing release of hazardous substances on, about, or beneath these parcels.

B. Prevent any threatened future release of hazardous substances on or from the Property; and

Since acquiring the property located at 200 and 220 Dexter Avenue, 261 Washington Avenue, 19 Lawrence Street, and 204 E Jefferson Street, APC is not aware of, and has never known of, any threatened future release of hazardous substances on or from these parcels.

In regard to 244 Dexter Avenue, APC closed an underground storage tank (UST) in the late 1990s that was holding unleaded gasoline. The closure of the underground storage tank was conducted in accordance with the Alabama Department of Environmental Management's UST regulations. Specifically, holes were drilled in the soil around and under the UST to determine that it was proper to permanently close the UST by leaving it in place. Investigation and review of APC's files has failed to locate any records related to this closure, however, and so no such documents are appended to this response.

C. Prevent or limit any human, environmental, or natural resource exposure to previously released hazardous substances on, about, or beneath the Property.

Since acquiring the property located at 200, 220, and 244 Dexter Avenue, 261 Washington Street, 19 Lawrence Street, and 204 E Jefferson Street, APC is not aware of, and has never known of, any previously released hazardous substances on, about, or beneath these parcels.

16. Describe any complaints related to air quality inside the building including odor, illness, etc.

At 244 Dexter Avenue, APC received several complaints in 1999 about air quality from employees working on the fourth floor. An employee from APC's Safety and Health Department performed a walk-through survey to identify any potential indoor air quality problems and offered recommendations for any problems detected. For resolution of this complaint, see the response below to question 17.

At 244 Dexter Avenue, APC received verbal complaints in 2003 for a tar-related odor during repairs to the roof of the Southern Division building. The building's fresh air intake was sucking fumes from a tar kettle. For resolution of this complaint, see the response below to question 17.

At 261 Washington Avenue, APC received verbal complaints in 2010 for a paint-related odor when portions of the interior of the building were repainted with an oil-based paint. For resolution of this complaint, see the response below to question 17.

- 17. Describe measures taken to address the complaints mentioned in Question 16, and provide copies of the documents associated with the complaints and measures to address such complaints.**

At 244 Dexter Avenue, the air quality issues on the fourth floor were resolved by increasing the amount of fresh air to the HVAC system. See document APC-CCP-17-001-004.

At 244 Dexter Avenue, the tar-related odor issue was resolved by turning off the fresh air intake located near the tar kettle that was supplying hot tar to the roof repair operation. See document APC-CCP-17-005-007.

At 261 Washington Avenue, the paint-related odor issue was resolved once the paint had dried within a few days of its application. APC is not in possession of any documents pertaining to this incident.

Other Sources of Information

- 18. Are there any persons, other than those you have already identified, who are or were associated with your company, who may be better able to answer any of these questions? If so, please provide those persons' names, current mailing addresses, and current telephone numbers.**

Upon information and belief, there are no additional persons who may be better able to answer any of these questions.

- 19. If any of the documents solicited in this information request are no longer available, please indicate the reason why they are no longer available. If the records were destroyed, provide the following:**

Upon information and belief, the relevant documents solicited in this information request are available and have been attached hereto.

- A. Your company's document retention policy;**

N/A

- B. A description of how the records were destroyed (burned, trashed, etc.) and the approximate date of destruction;**

N/A

- C. A description of the type of information that would have been contained in the documents;**

N/A

- D. The name, job title and most current address known by you of the person(s) who would have produced these documents, the person(s) who would have been responsible for the retention of these documents; the person(s) who would have been responsible for the destruction of these documents; and the person(s) who had and/or still may have the originals or copies of these documents; and**

N/A

- E. The names and most current address of any person(s) who may possess documents relevant to this inquiry.**

N/A