

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA,)
and the STATE OF GEORGIA,)

Plaintiffs,)

v.)

DEKALB COUNTY, GEORGIA)

Defendant.)
_____)

Civ. No. 1:10-cv- 04039-SDG

**PLAINTIFFS’ REQUEST
FOR STATUS CONFERENCE**

I. INTRODUCTION

Defendant DeKalb County (“County”) has informed Plaintiffs that it will violate the consent decree modification that this Court entered on September 22, 2021.¹ In particular, the County says it will miss the December 2027 deadline to construct wet-weather storage projects that are needed in the Snapfinger Basin to eliminate sewage overflows called Sanitary Sewer Overflows (“SSOs”) at 14 Priority Fix List (“PFL”) locations in South DeKalb County.²

¹ Consent Decree Modification [DN 83], entered September 22, 2021 (“Modified Consent Decree”).

² See Letter from Thurmond, DeKalb County, to Gettle, EPA, and Cown, GEPD, December 31, 2024 (“Thurmond Letter”) (Ex. 1 to Declaration of John Moore, January 10, 2025 (“Moore Dec.”), Attachment A) at 12 (“Based on currently available information, none of the solutions being contemplated for the Snapfinger Basin can be completed within the timeline contemplated by the [Modified Consent Decree].”).

Plaintiffs respectfully request a status conference to discuss this issue with the Court. The remainder of this filing gives background on the County's violations of the Clean Water Act and its imminent breach of the Modified Consent Decree.

Despite repeated requests from Plaintiffs over the last six months, the County has not adequately explained why it has not prepared itself to meet the December 2027 deadline that it negotiated, nor has it formally requested modification of that deadline, or demonstrated that any further extension would be appropriate. The County appears to believe the best course of action is to hope that the Court, the federal and state governments, and its own residents, will accept millions of gallons more sewage overflows in South DeKalb, for an unspecified length of time beyond that permitted by the Order of this Court.

The County's sewage overflows continue to threaten the health of its residents, including its most vulnerable populations.³ Residents exposed to sewage are at an increased risk of contracting sewage-related infections and illnesses.⁴

³ Declaration of Dr. Timothy Wade, December 19, 2024 (Attachment B), at ¶¶ 4-16.

⁴ *Id.* ¶ 16.

II. FACTS

A. The County's Failure to Meet Its 2020 Compliance Deadline

The County has been in near continuous violation of the Clean Water Act since at least 2006.⁵ Plaintiffs filed a Complaint on December 13, 2010, alleging that the County violated the Act by discharging pollutants to waters of the United States, and failed to comply with operation and maintenance conditions of its wastewater discharge permits. Plaintiffs simultaneously lodged a proposed consent decree resolving the claims in the Complaint. The settlement set forth the work needed to address the County's chronic history of SSOs, including basement backups and sewage spills that reached local waterways. On December 20, 2011, the Court entered the Consent Decree after a public comment period.⁶

The 2011 Consent Decree required the County to implement a program to “provide for the identification, delineation, assessment and rehabilitation of all Initial and Additional Priority Areas no later than eight and one-half (8 1/2) years from the Date of Entry,” or by June 20, 2020.⁷ By mid-2020, nine years had passed and the County was hardly closer to its stated goal of eliminating SSOs.⁸ Many of

⁵ Consent Decree [DN 39], entered December 20, 2011 (“2011 Consent Decree”), at 5, 7. *See generally* the County's Consent Decree compliance web page: <https://www.DeKalbcountyga.gov/watershed-management/consent-decree-cd>.

⁶ Order, Dec. 20, 2011 [DN 38]; 2011 Consent Decree [DN 39].

⁷ 2011 Consent Decree ¶ 5.

⁸ *Id.* ¶ 6.

the County's SSOs were directly attributable to its failure to comply with critical 2011 Consent Decree requirements, including the requirement to complete rehabilitation of Priority Areas by June 20, 2020.⁹

B. The County's 2021 Commitment to Comply by 2027

In 2021, after contentious negotiations, the parties agreed to modify the 2011 Consent Decree to give the County (a) more flexibility to continue authorizing new sewer connections under certain conditions so as not to stifle economic growth in South DeKalb, and (b) an additional seven years, until December 20, 2027, to complete projects to eliminate SSOs. In its response to public comments in support of its 2021 Motion to Enter the Modified Consent Decree, the County explained that it needed the additional seven years because it had underestimated its need to increase system capacity in its early work under the 2011 Consent Decree.¹⁰

⁹ Declaration of Jairo Castillo, EPA, Dec. 19, 2024 ("Castillo Dec.") (Attachment C), at ¶ 18.

¹⁰ Defendant's Response to Comments on Consent Decree Modification ("County Response to Comments"), Ex. B to Defendant's Motion to Enter [DN 76-2], filed Aug. 17, 2021, at 12 ("Thus, the County now faces a variety of complex construction projects needed to increase the capacity within certain portions of its system. Given the complexity of design, procurement timeframes, land acquisition concerns, and construction timelines, the County needs significantly more time than provided in the Consent Decree to rehabilitate its system.")

In its response to comments in support of its 2021 Motion to Enter, the County further assured the Court and the public that it had verified its system rehabilitation needs, including by using its new dynamic hydraulic model:

Finally, the County has developed a peer-reviewed dynamic model *and has used that model* to help validate the effectiveness of the small diameter sewer capacity projects (many of which are completed or underway) and to validate and confirm the scope of projects needed to address the large-diameter sewers or trunk sewers. Thus, in addition to the many tools listed above, the County has verified its conclusions with respect to system rehabilitation.¹¹

The County now maintains, however, *that it did not in fact use its dynamic model* to verify its system rehabilitation needs: “As the MCD was being negotiated, the dynamic hydraulic model (dynamic model) was not yet completed. ... As a result, the County relied upon the best available information” Thurmond Letter (Ex. 1 to Moore Dec., Attachment A) at 9. Today, the County further maintains that, had it used its dynamic model to assess its rehabilitation needs before it agreed to the 2027 deadline in the Modified Consent Decree -- as it represented to the Court and the public that it had -- it would have realized that “the true extent of Complex Rehab associated with the trunk sewers had expanded from 100,000 linear feet to an estimated 147,200 linear feet—a 47% increase.” *Id.*

¹¹ *Id.* at 30 (emphasis added).

In its response to public comments in support of its 2021 Motion to Enter, the County acknowledged that completing the work needed to eliminate sewage overflows in South DeKalb by the 2027 deadline is an environmental justice priority:

*The fact of the matter is that low-income and minority populations have suffered the worst from DeKalb's historical SSOs, and moving forward over the next several years, many of these same communities will bear the brunt of the burden to fix the system. Much of the major trunk sewer work is in these neighborhoods. These populations will have traffic interrupted and be forced to tolerate construction noise and other disruptions. This work must happen – with or without a modification to the Consent Decree. But with the Modification, the County can encourage growth and development in these communities both in the near- and long-term.*¹²

The County expressed no doubt at all in its 2021 Motion to Enter the Modified Consent Decree about its ability to meet the 2027 deadline.

Based on the County's promise of swift implementation of the projects needed to address sewage overflows, South DeKalb residents largely supported the Modified Consent Decree, agreeing to tolerate more sewage overflows and construction disruptions until 2027. The County informed the Court and the public that,

the NAACP and Commissioner Larry Johnson, who represents much of South DeKalb, expressed their views that the Modification will help the County to better address the needs of its sanitary-sewer system and encourage economic development in underserved and impoverished areas. According to Commissioner Johnson, ... "The more nuanced approach in

¹² *Id.* at 19-20 (emphasis added).

the proposed Modification avoids ‘revictimizing’ [his] constituents and brings much needed equity.” In his view, “the Modification ensures [1] that parts of the County still in need of economic development can receive individualized attention without adversely impacting the environment” and “[2] *that the important – and frankly long overdue – sewer infrastructure upgrades within [his] District occur in a timely fashion.*”¹³

After a public comment period and a hearing, the Court entered the Modified Consent Decree on September 22, 2021.¹⁴

C. The Work the County Must Still Do to Comply with the Modified Consent Decree

The 2011 Consent Decree required the County to “provide for the identification, delineation, assessment and rehabilitation of all Initial and Additional Priority Areas no later than [June 20, 2020].” The Priority Area Sewer Assessment and Rehabilitation Program (“PASARP”) targets wet-weather capacity and structural issues throughout sub-sewersheds identified by the County, based upon factors such as history of SSOs, condition, sewer age and material, and system hydraulics. The County did not meet the June 20, 2020, Consent Decree deadline to complete the PASARP.¹⁵

The Modified Consent Decree extended the June 20, 2020, PASARP deadline to December 20, 2027. It also obligated the County to fix 103 PFL

¹³ *Id.* at 66-67 (internal citations omitted) (emphasis added).

¹⁴ Modified Consent Decree [DN 83].

¹⁵ *Id.* at 5-6; *see generally* Declaration of Johanna Smith, GEPD, Jan. 8, 2025 (“Smith Dec.”) (Attachment D).

locations of recurrent SSOs on an expedited schedule and to add locations to the list of PFL locations that experience recurrent SSOs. The original 103 PFL locations included 48 locations within the PASARP and 55 locations outside of the PASARP. The Modified Consent Decree required that half of the original 103 PFL locations be fixed within two years of entry of the Modified Consent Decree; the remaining half must be fixed within four years of entry. The County may seek deadline extensions for up to 21 of the original 103 PFL locations, but not beyond December 20, 2027.¹⁶

Under the 2011 Consent Decree, areas outside of the PASARP were addressed under another program called the Ongoing Sewer Assessment and Rehabilitation Program (“OSARP”), which requires assessment and rehabilitation of those portions of the sewer system on an ongoing basis but does not have any specific deadline for completion of specific portions of those areas.¹⁷ Thus, the PFL provisions of the Modified Consent Decree establish deadlines for remediation of recurrent SSOs whether inside or outside of PASARP Priority Areas.¹⁸ It is the Modified Consent Decree’s ultimate deadline of December 20,

¹⁶*Id.* at 24-25. On February 1, 2021, the County submitted an extension request but later notified the agencies that it was no longer pursuing the remedial plans underlying its request for the 14 PFL locations in the Snapfinger Sewer Basin. *See* Castillo Dec. (Attachment C) at ¶¶ 30-35; Smith Dec. (Attachment D) at ¶¶ 11-16.

¹⁷ 2011 Consent Decree at 54-56; *see* Smith Dec. (Attachment D) at ¶ 8.

¹⁸ *See* Smith Dec. (Attachment D) at ¶¶ 17–20.

2027, for addressing 14 PFL locations in the Snapfinger Sewer Basin that the County has indicated it will fail to meet.

D. Wet-Weather Storage of Sewage in the Snapfinger Sewer Basin

As described below, since at least 2021, the County has been planning to construct in-basin storage in the Snapfinger Sewer Basin to eliminate 14 of its most intractable PFL locations in South DeKalb. Despite years of effort, however, County officials have been unwilling to advance in-basin storage as their preferred compliance solution for these 14 PFL locations and unable to design alternate projects that would meet the December 2027 compliance deadline.

According to its response to comments in support of its Motion to Enter the Modified Consent Decree, the County realized in about 2020 that it had more capacity-limited trunk sewers than previously thought after it optimized its dynamic hydraulic model.¹⁹ The County had adopted in-basin storage in February 2021 as part of the County's 2021 Capital Improvement Plan Master Plan.²⁰ Thereafter, County staff initiated siting studies to identify and rank candidate

¹⁹ See, e.g., County Response to Comments [DN 76-2] at 12 (“[I]t became increasingly apparent that wet weather capacity limitations were a significant issue that would require much more extensive rehabilitation than originally planned. Thus, the County now faces a variety of complex construction projects needed to increase the capacity within certain portions of its system.”).

²⁰ DeKalb County Capital Improvement Plan, Feb. 23, 2021 (Ex. 2 to Moore Dec., Attachment A) at 5.

locations for the storage basins. Using simulation tools, the County identified the most hydraulically-efficient and cost-effective locations for in-community storage. The County anticipated that it could complete construction of these in-basin storage facilities by December 2027, in compliance with the Modified Consent Decree.²¹

In spring of 2022, County staff hired a contractor to develop a comprehensive public outreach and communications strategy to educate affected residents and seek their input on the in-basin storage the County was planning. However, the County never implemented its outreach plan, or any other community engagement strategy.²²

By December 2022, the County had identified 30 candidate locations for in-basin storage in the Snapfinger Sewer Basin based on constructability, operation and maintenance requirements, adaptability and resiliency, permitting, property acquisition requirements, and its own assessment of environmental and community

²¹ County Presentation to PWI Committee (Ex. 5 to Moore Dec., Attachment A), at .pdf page 32; *see also* Figure 3, *infra*.

²² The County has expressed concern that “property owners or communities would most likely file lawsuits to stop the construction of storage tanks near their homes and businesses,” Thurmond Letter (Ex. 1 to Moore Dec., Attachment A), at 12. This is speculation without any engagement with affected communities or property owners. The County’s claim that South DeKalb residents would support storage at the Snapfinger treatment plant, *id.*, is equally speculative and contrary to its own early assessment of that potential project, which identified significant disruption to community members during construction.

impacts.²³ All 30 locations were in Districts 3 and 5, which are home to historically overburdened communities.²⁴ The County designed below-grade storage basins to minimize their visibility and offered site enhancements, including community parks. Figures 1 and 2 below show the County’s conceptual design for one of two in-basin storage facilities:



Figure 1: Aerial View of Below-Grade In-Basin Storage Facility²⁵

²³ DeKalb County, Technical Memorandum titled “Update on Fifteen (15) Priority Fix List Locations Associated with the Snapfinger Basin,” June 16, 2023 (Ex. 4 to Moore Dec., Attachment A)

²⁴ *Id.*

²⁵ County Presentation to PWI Committee (Ex. 5 to Moore Dec., Attachment A), at .pdf page 34.



Figure 2: Side View of Below-Grade In-Basin Storage Facility²⁶

County staff presented its conceptual designs to the Public Works and Infrastructure Committee of the Board (“PWI Committee”) in April 2023, along with two alternate storage proposals for addressing wet weather flow: (a) enlarging trunk sewers and installing lift stations to carry excess wastewater to existing and 18 million gallons of new storage at the Snapfinger WWTP (“Trunk Upsizing/Lift Station Construction”);²⁷ and (b) constructing a seven-mile-long underground

²⁶ County Presentation to PWI Committee (Ex. 5 to Moore Dec., Attachment A), at .pdf page 35.

²⁷ Partial Transcript of Meeting of the Public Works and Infrastructure (“PWI”) Committee Meeting of the DeKalb County Board of Commissioners, April 23, 2024 (“4/23 PWI Committee Meeting Tr.”) (Ex. 3 to Moore Dec., Attachment A) at 12:11 to 13:18.

tunnel for storage of excess wastewater during wet-weather events (“Tunnel Construction”).²⁸ But neither alternate project would meet the December 2027 deadline imposed by the Modified Consent Decree. Staff estimated that the Trunk Expansion/Lift Station Construction could not be completed until at least 2033; Tunnel Construction would take until at least 2031:

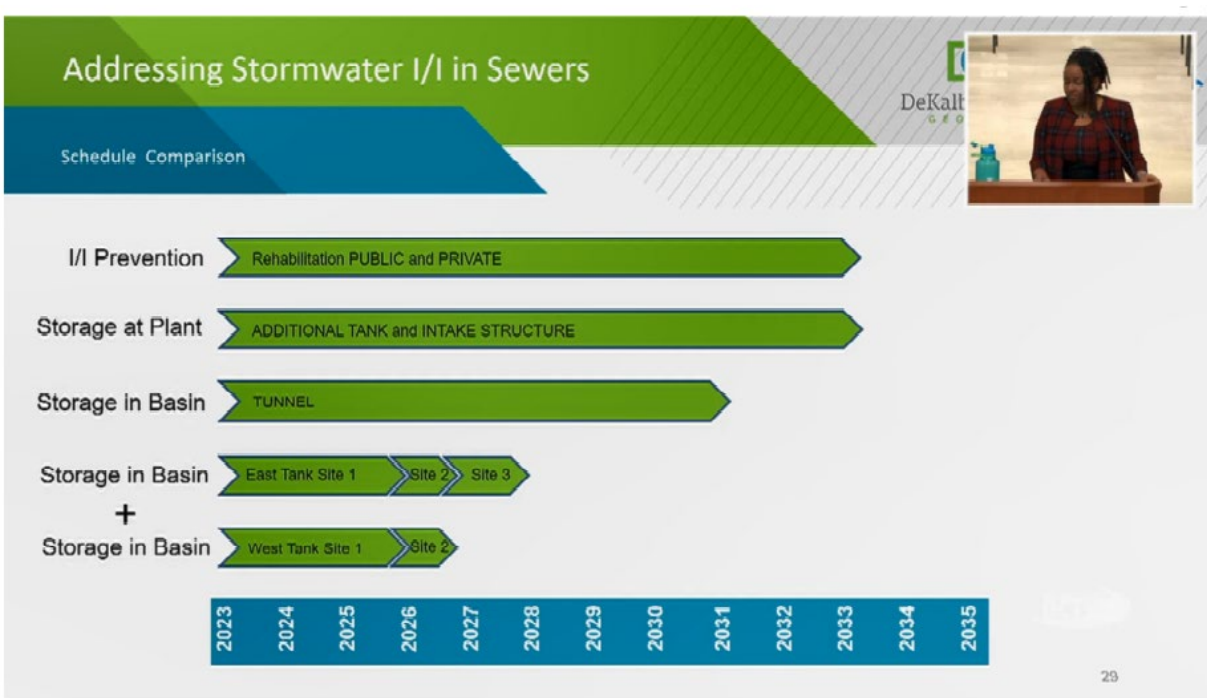


Figure 3: County Comparison of Schedules for Alternate Compliance Projects²⁹

²⁸ *Id.* at 13:19 to 15:1.

²⁹ County Presentation to PWI Committee (Ex. 5 to Moore Dec., Attachment A), at .pdf page 32.

After an animated discussion of the County's April 2023 presentation, the PWI Committee tabled further discussion of the need for wet-weather storage in Snapfinger Sewer Basin without taking any action.³⁰

To date, the County has not shared with Plaintiffs any formal technical proposal for a wet-weather storage project to address the 14 PFL locations in the Snapfinger Sewer Basin.³¹ The County's extension requests for the 14 PFL locations are subject to EPA and EPD review and approval and were required under the Modified Consent Decree to be submitted by February 1, 2021, accompanied by project descriptions, a technical justification, and a proposed timeline not to extend beyond December 20, 2027.³²

E. Plaintiffs' Efforts to Ensure Compliance with the 2027 Deadline Before Seeking Court Involvement

Shortly after the PWI Committee tabled discussion of wet-weather storage for the Snapfinger Sewer Basin, in June 2023, the County expressed concern about in-basin storage in a technical memorandum ("July 2023 Technical Memorandum")³³ and in its First 2023 Semi-Annual Report, filed with the Court

³⁰ 4/23 PWI Committee Meeting Tr. (Ex. 3 to Moore Dec., Attachment A) at 53:3 to 54:20.

³¹ Smith Dec. (Attachment D) ¶ 28.

³² Modified Consent Decree ¶ 8.

³³ DeKalb County, Technical Memorandum titled "Update on Fifteen (15) Priority Fix List Locations Associated with the Snapfinger Basin," June 16, 2023 (Ex. 4 to Moore Dec., Attachment A).

on July 31, 2023 [DN 105]. However, neither document suggested that the County had abandoned in-basin storage as its preferred compliance option, or that the County was no longer prepared to meet the 2027 deadline imposed by the Modified Consent Decree.³⁴ In fact, in its cover letter conveying the July 2023 Technical Memorandum, the County said it was evaluating its options while still “mindful” of the Court’s December 2027 deadline.³⁵

By December 2023, however, the County had not finished evaluating the alternate Trunk Upsizing/Lift Station Construction and Tunnel Construction projects and said it would not be finished with its evaluation until October 2024. So, EPA and EPD wrote the County in February 2024 to document that the County had thus far failed to provide a basis for the agencies to consider any of the three wet-weather storage projects the County was evaluating. EPA and EPD also requested certain information no later than mid-March 2024, including: (1) a description of the technical evaluation necessary to select a wet-weather storage option for the Snapfinger Basin and (2) a timeline for that evaluation and a

³⁴ A Gantt chart appended to the County’s 23rd Semi-Annual Report listed as ID Nos. 1771 and 1773 the Trunk Sewer Program generally, and the SF 2,3/Shoal Creek Trunk Sewers specifically, as having a completion date of “2/8/28”. *See* DeKalb County’s 23rd Semi-Annual Report, July 31, 2023 [DN 105-1] at 22. But there was no acknowledgement that these line items meant the County no longer intended to meet its Modified Consent Decree deadline. *Id.*

³⁵Letter from Williams, DeKalb County, to Chief, EPA Clean Water Branch, June 16, 2023 (Ex. 6 to Moore Dec., Attachment A).

timeline for completion of each of the three alternate wet-weather storage projects.³⁶ To date, the County has not provided either. EPA and EPD also made clear that the County should not presume that Plaintiffs would support any further modification of the Modified Consent Decree.³⁷

On May 1, 2024, counsel for the United States contacted counsel for the County because there appeared to be a disconnect between County staff and their counsel regarding compliance with the Modified Consent Decree. Counsel for the United States, the State, and the County met a week later, on May 8, 2024. At that meeting, the County requested six weeks to evaluate its compliance options. After some delay, the County concluded on August 23, 2024, that it could not construct wet-weather storage by the Court's 2027 deadline. It further concluded that there were no interim compliance measures it could take while pursuing a permanent compliance project.³⁸

³⁶ Letter from Castillo, EPA, and Smith, GEPD, to Hayes, DeKalb County, Feb. 26, 2024 (Ex. 7 to Moore Dec., Attachment A).

³⁷ *Id.*

³⁸ In June the County also asked EPA and EPD to recognize certain sewer pipe rehabilitation as satisfying its minimum linear footage requirements under the PASARP. Plaintiffs believe that this is another sign that the County is falling behind on its work under the Modified Consent Decree. *See* Williams, DeKalb County, to Smith, GEPD, and Castillo, EPA, June 24, 2024 (Ex. 8 to Moore Dec., Attachment A); Smith Dec. (Attachment D) at ¶ 22.

IV. CONCLUSION

The County's long history of institutional inertia is a compelling reason for the Court to schedule a status conference now, before any more time passes, to address the County's anticipated violation of the 2027 deadline. The County has not provided an adequate explanation for why it is not prepared to comply with the Modified Consent Decree. The County's recent contradiction of representations it made to this Court in 2021 that it had verified its system rehabilitation needs by, among other things, using its dynamic model, *see infra* at 5, suggests ongoing communication and management challenges, at best. Importantly, any bureaucratic obstacles that may continue to hinder the County's performance are, by the explicit terms of the Modified Consent Decree, no defense for underperformance.³⁹ Moreover, based on the County's history of noncompliance, Plaintiffs are not confident that the stipulated penalty provisions available in the Modified Consent Decree would have any deterrent effect.⁴⁰

³⁹ Modified Consent Decree ¶ 5 ("In any action to enforce this Consent Decree, the County shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to comply with the provisions of this Consent Decree.").

⁴⁰ Plaintiffs assessed a total of \$1.663 million in stipulated penalties under the 2011 Consent Decree for the County's chronic violations. The County paid \$1.047 million in civil penalties upon entry of the Modified Consent Decree and has so far paid over \$1.42 million in stipulated penalties for violations through the end of 2023. *See* EPA stipulated penalty demands dated March 7, 2013, March 27, 2014, March 17, 2015, June 20, 2017, Oct. 22, 2018, April 15, 2019, June 25, 2020, July

Respectfully submitted,

ATTORNEYS FOR UNITED STATES OF AMERICA:

/s/ Patricia L. Hurst

Patricia L. Hurst
Senior Counsel
DC Bar # 438882
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
patricia.hurst@usdoj.gov
(202) 532-3301 fax (202) 514-0097

Ryan K. Buchanan
United States Attorney

/s/ Anthony C. DeCinque

Anthony C. DeCinque
Assistant U.S. Attorney
GA Bar # 130906
anthony.decinque@usdoj.gov

75 Ted Turner Drive SW, Suite 600
Atlanta, GA 30303
(404) 581-6000 fax (404) 581-6181

13, 2022, Oct. 6, 2023, Oct. 8, 2024 (Exs. 9 through 18 to Moore Dec., Attachment A).

Of Counsel:

Paul Schwartz
Assistant Regional Counsel
U.S. EPA Region 4
Sam Nunn Federal Building
Atlanta GA

ATTORNEYS FOR STATE OF GEORGIA:

Christopher M. Carr
Georgia Attorney General
Ga. Bar No. 112505

Robin J. Leigh
Deputy Attorney General
Ga. Bar No. 445845

/s/ Christopher R. Held

Christopher R. Held
Senior Assistant Attorney General
Ga. Bar No. 987847