

# **Exhibit 3**

---

**SETTLEMENT AGREEMENT**

---

THIS SETTLEMENT AGREEMENT (the "Agreement") is made and entered into this 13th day of January 2021, by and between the Jefferson County Board of Health (the "Board") and Gasp.

**WITNESSETH**

WHEREAS, Gasp is a non-profit corporation, organized and existing under the laws of the State of Alabama; and

WHEREAS, the "Board," pursuant to §22-3-1 of the Code of Alabama, is constituted as the county board of health of Jefferson County, Alabama; and

WHEREAS, the Jefferson County Department of Health (the "Health Department") is the administrative arm of the Board, and the Health Department consists of the county health officer and his assistants hired through the Personnel Board of Jefferson County; and

WHEREAS, the Board operates an Air Pollution Control Program in Jefferson County pursuant to §§22-3-1 through 12 and §§22-28-1 through 23 of the Code of Alabama; and

WHEREAS, on February 8, 2019, the United States and the Board filed a Complaint against Drummond Company, Inc., d/b/a ABC Coke ("Drummond"), Case No. 2:19-cv-00240-AKK, in the United States District Court for the Northern District of Alabama; and

WHEREAS, the Complaint asserts violations of the federal Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*, and its implementing regulations, and the Board's companion regulations, related to Drummond's coke by-product recovery plant; and

WHEREAS, the United States and the Board and Drummond (collectively, "Original Settling Parties") agreed to settle all of Plaintiffs' claims against Drummond by way of a Consent Decree; and

WHEREAS, the Original Settling Parties have filed a motion with the Court requesting the entry of the Consent Decree; and

WHEREAS, Intervenor-Plaintiff Gasp raised objections to the entry of the Consent Decree and intervened in this matter to contest the entry of the Consent Decree; and

WHEREAS, Gasp has determined that its objections to the Consent Decree could be resolved by agreement, rather than further litigation; and

WHEREAS, the Board and Gasp agree that the actions to be taken herein are for the purposes of protecting the health of the citizens of Jefferson County and avoiding the time, costs, and expenses of protracted litigation; and

WHEREAS, the Board and Gasp have agreed that settlement of this matter is in the public interest and is the most appropriate way of resolving all matters of dispute regarding the Consent Decree; and

WHEREAS, the Board and Gasp have reached agreement in settlement of all issues regarding the Consent Decree and are desirous of this Agreement being performed in accordance with the terms and conditions set out herein.

NOW, THEREFORE, in consideration of premises and mutual promises and covenants contained herein and other good and valuable consideration, the Board and Gasp agree as follows:

**ARTICLE ONE**

**Resolution of Gasp's Objections  
to the Consent Decree**

In exchange for the Board's commitments that are contained in this Agreement, and for other good and valuable consideration, Gasp agrees to dismiss the Complaint it filed in Case No. 2:19-cv-00240-AKK with prejudice. Gasp agrees to withdraw its opposition to the Original Settling Parties' motion to enter the Consent Decree, and to join the Original Settling Parties' motion to enter the Consent Decree. Gasp agrees to take all reasonable steps to accomplish the terms of this Article.

**ARTICLE TWO**

**The Health Department's Public  
Database of Permitted Industrial Sources**

The Health Department will upload all facility files regarding permitted industrial sources to its website where such records will be accessible and searchable. This website, when complete, will allow the public to search the Air Program's existing public records related to a permitted industrial source. This website will not contain any confidential business information or any other privileged information, nor a link to every citizen complaint or every correspondence. The Health Department will have this website available to the public within nine months of the entry of the Consent Decree.

This website, when complete, will contain the formal reports required by the Consent Decree. Once this website is up and running, such reports will be uploaded and available to the public within 30 days of the Health Department's receipt of such reports.

**ARTICLE THREE**

**The Health Department's Portion of the  
Civil Penalty and the Advisory Committee**

Upon entry of the Consent Decree, and within 60 days of receipt of its portion of the civil penalty, the Health Department agrees to transfer its portion of the civil penalty (\$387,500) to the Community Foundation of Greater Birmingham ("CFGB") to be used for the purpose of benefiting the public health of the residents near the ABC Coke plant. Such funds are referred to herein as the "ABC Coke fund." With regard to the eventual disbursement of the ABC Coke fund by CFGB, the Health Department and CFGB will follow their existing contract with the Community Foundation, No. HO-59 (with the Grant Addendum and Memorandum of Agreement attached), executed on December 18, 2018, which calls for the Health Officer to serve as the sole Advisor. If Contract No. HO-59 is terminated, and a new contract between CFGB and the Health Department is not executed before all of the ABC Coke Fund is awarded, the Board will notify Gasp, and the parties will make reasonable best efforts to reach an agreement regarding the distribution of the remaining funds that is consistent with the purposes of this Agreement. If the parties are unable to reach an agreement in such circumstances, the Health Department will, in its discretion, use the funds remaining in the ABC Coke fund for the purpose of benefiting the public health of the residents near the ABC Coke plant.

The Health Department will form a community advisory committee that will offer input and advice to the Health Officer regarding CFGB's grants from the ABC Coke fund. The community advisory committee's role will be limited to the grants representing the civil penalty funds from Case No. 2:19-cv-00240-AKK. It will meet as necessary, in the Health Officer's discretion, in order to advise the Health Officer on the grants to be awarded from the ABC Coke fund. Within 14 days of being notified by CFGB that a grant has been made from the ABC Coke

fund, the Health Department will inform the advisory committee and Gasp of the name of the grantee, the date of the grant, the purpose of the grant, and the amount of the grant. The advisory committee will have no control or decision-making authority. The advisory committee will be dissolved once the funds representing the civil penalty have been disbursed.

The members of this advisory committee will consist of residents of communities near the ABC Coke facility. More specifically, the advisory committee will consist of three members: one resident of Tarrant, one resident of North Birmingham, and one resident of Inglenook. Gasp may recommend potential members to the Health Officer. The Health Officer retains final decision-making authority regarding any issues or questions concerning the members or membership of the advisory committee.

As an alternative to a separate committee, the Health Officer may add community residents (from Tarrant, Inglenook, and North Birmingham) to an existing advisory committee. If the Health Officer chooses this alternative, such community residents will serve in the same advisory capacity as described above and will only serve with regard to the ABC Coke fund.

#### **ARTICLE FOUR**

##### **The Health Department's Hosting of Consent Decree Documents on its Website**

The Health Department will post, on its website, the semiannual reports and emergency notifications required by paragraphs 39 and 40 of the Consent Decree. Such documents will be posted within 30 days of the Health Department's receipt.

**ARTICLE FIVE**

**Severability**

In the event that any article or portion of this Agreement is found to be invalid or otherwise unenforceable, such finding will not affect any other article or portion of this Agreement.

**ARTICLE SIX**

**Effective Date**

This Agreement shall be effective upon the date of full execution by the parties.

**ARTICLE SEVEN**

**Entire Agreement**

This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof. All prior agreements, discussions, representations, warranties, and covenants are merged herein. There are no warranties, representations, covenants or agreements, expressed or implied, between the parties except those expressly set forth in this Agreement. In order to be effective, any amendments or modifications of this Agreement must be in writing and executed by the parties.

**ARTICLE EIGHT**

**Dispute Resolution**

Gasp and the Board agree that this Agreement is neither a modification nor an addition to the Consent Decree. The parties do not intend or wish for this Agreement to be incorporated into any Order to be issued by the Court in Case No. 2:19-cv-00240-AKK. Gasp acknowledges that the Board is a local agency of the State of Alabama and, as such, Gasp's sole remedy for the settlement of any claim for money damages arising under the terms of this Agreement shall be

limited to the filing of a claim with the Board of Adjustment for the State of Alabama. Any other type of legal action by either party regarding this Agreement, including any action to enforce this Agreement, shall be brought in the Birmingham Division of the Circuit Court of Jefferson County, Alabama. This Agreement and the rights of the parties hereunder shall be governed by and construed in accordance with the laws of the State of Alabama. Notwithstanding anything to the contrary that may be contained herein, the Board's execution of this Agreement should not, and does not, constitute a waiver of any defense it currently has available or may have available in the future.

#### **ARTICLE NINE**

##### **Counterparts**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

#### **ARTICLE TEN**

##### **Authority**

Each party to this Agreement represents and warrants that the execution, delivery, and performance of this Agreement and the consummation of the transactions and actions provided in this Agreement have been duly authorized by all necessary action of the respective entity and that the person executing this Agreement on its behalf has the full capacity to bind that entity. Each party further represents and warrants that it has been represented by independent counsel of its choice in connection with the negotiation and execution of this Agreement, and that counsel has reviewed this Agreement.



IN WITNESS WHEREOF, the parties hereto have executed this Agreement as set forth below.

**THE JEFFERSON COUNTY BOARD OF HEALTH**

By: MEW MD

Mark E. Wilson, M.D.

Its: Health Officer

Date: 1-13-2021

**GASP**

By: MHansen

Michael Hansen

Its: Executive Director

Date: 1/13/2021