

Uncontrolled Sites Section

Voluntary Evaluation Program

An uncontrolled site is a site, facility, plant, or location where hazardous or toxic wastes have been released into the environment and there is no federal environmental program which can handle the problem. The staff of the Mississippi Department of Environmental Quality (MDEQ) has records of more than 1500 sites that, at a minimum, need additional evaluation. New sites come to the staff's attention at a rate of 3 to 4 sites per month; and the Assessment/Remediation Branches, consisting of around 7 staff members, is working with about 200 sites currently. Work previously underway on a number of sites had been stopped due to limited resources. Because of these limitations, staff members have been forced to place some sites on the "back burner," resulting in an inability to review site information in a timely manner. Realizing that MDEQ was underfunded and understaffed, the Mississippi Legislature passed and the governor signed into law [Section 17-17-54 of Mississippi Code](#), which created the Uncontrolled Site Evaluation Trust Fund. This fund has established the Uncontrolled Site Voluntary Evaluation Program, which allows accepted parties the opportunity to participate in a program that will expedite the evaluation of site information.

The Program allows the staff of the USS to more effectively prioritize sites. Sites are prioritized according to:

- Actual or potential threat to the public health
- Actual or potential threat to the environment
- Whether the site is currently being considered for economic development
- Whether the site is currently participating in the Uncontrolled Site Voluntary Evaluation Program.

The actual weight values are determined internally by MDEQ personnel.

The company must submit an application to be accepted into the Program by MDEQ and pay all costs associated with MDEQ's administration and evaluation of the site. An agreement ([Agreed Administrative Order](#)) is entered into by the Mississippi Commission on Environmental Quality ("Commission"), MDEQ, and the company. The company must also complete an [Application](#) Form.

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March 1, 2009

Mr. Tony Russell, Chief
Assessment Remediation Branch
Mississippi Department of Environmental Quality
P.O. Box 2261
Jackson, MS 39225

[Click for Help](#)

RE: [XYZ CORPORATION Site]
[ANYWHERE], Mississippi
[SOMEWHERE] County

Dear Mr. Russell:

The purpose of this letter is to request that the [XYZ CORPORATION SITE], located in [ANYWHERE], Mississippi be included in the Uncontrolled Site Voluntary Evaluation Program (VEP), as per Section 17-17-54 of Mississippi Code, Annotated. Enclosed you will find a signed and completed application for your consideration. It is understood that if this site is approved by MDEQ for inclusion in the VEP, we will need to sign an agreed order with the Mississippi Department of Environmental Quality (MDEQ). In order to speed the processing of that agreed order, you should address this order to:

[Mr. JOHN DOE]
[XYZ CORPORATION]
[123 4th AVENUE] (street address)
[CITY, STATE ZIPXX-XXXX]
Phone Number [(XXX) XXX-XXXX]
Fax Number [(XXX) XXX-XXXX]

Should you have any questions or comments concerning this matter, please contact [MR. DOE] or myself at [(YYY) YYY-YYYY].

Sincerely,

[MS. JANE Q. CITIZEN]

Enclosure

Note: Anything in all uppercase and included between bracket [] is information specific to this request.

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§17-17-54. Uncontrolled Site Evaluation Trust Fund.

- (1)
 - (a) There is created in the State Treasury a fund to be designated as the Uncontrolled Site Evaluation Trust Fund, referred to in this section as “fund,” to be administered by the Executive Director of the Department of Environmental Quality.
 - (b) Monies in the fund shall be utilized to pay reasonable direct and indirect costs associated with the administration and evaluation of uncontrolled sites, including, but not limited to, the reasonable costs of the following activities:
 - (i) Reviewing plans, specifications, engineering reports and other documents related to site assessments, preliminary assessments, site investigations, remedial investigations, feasibility studies, remedy selection, remedial design, remedial actions, site specific risk assessments and operation and maintenance;
 - (ii) Establishing cleanup levels and objectives and risk targets and reviewing cleanup alternatives and technologies;
 - (iii) Administering the uncontrolled sites program, including, but not limited to, collecting and analyzing data, conducting site inspections and site monitoring activities, maintaining a computerized database, of site inventories and status, and providing any necessary further action or no further action letters;
 - (iv) Preparing generally applicable or relevant and appropriate requirements or guidance;
 - (v) Conducting other activities directly related to the administration and evaluation of uncontrolled sites.
 - (c) Expenditures may be made from the fund upon requisition by the executive director of the department.
 - (d) The fund shall be treated as a special trust fund. Interest earned on the principal therein shall be credited by the treasurer to the fund.
 - (e) The fund may receive monies from any available public or private source, including, but not limited to, collection of fees, interest, grants, taxes, public and private donations, judicial actions and appropriated funds.

§17-17-54. Uncontrolled Site Evaluation Trust Fund (Continued).

- (f) Monies in the fund at the end of the fiscal year shall be retained in the fund for use in the next succeeding fiscal year.
- (2) (a) There is hereby created the Uncontrolled Site Voluntary Evaluation Program to provide for the administration and evaluation of uncontrolled sites. If any person has a legal or equitable interest in a site within the jurisdiction of the uncontrolled sites program at the department, and that site is not currently under expedited review or evaluation, that person may request that the department accelerate such review by considering the site under the voluntary evaluation program. The department shall determine the eligibility of an uncontrolled site for inclusion into the voluntary evaluation program. The site may be placed in the voluntary program if:
 - (i) The department accepts the site for the voluntary review and evaluation; and
 - (ii) The person pays to the department the fees as specified in a fee schedule adopted by the commission.
- (b) The owner of an uncontrolled site who participates in the voluntary program shall pay all costs of any actions associated with the administration and evaluation of the site.
- (c) The commission shall set by order a schedule of fees and costs for the Uncontrolled Site Voluntary Evaluation Program.
- (d) All monies collected under this section shall be deposited into the fund.
- (3) The commission may delegate to the department responsibility for the collection of uncontrolled site administration and evaluation fees.
- (4) All uncontrolled site administration and evaluation fees shall be due before a date specified by the department in an invoice which shall be no less than thirty (30) days following the invoice date. If any part of an uncontrolled site administration and evaluation fees imposed is not paid within thirty (30) days after the due date, a penalty of up to twenty-five percent (25%) of the amount due may be imposed and be added thereto. Any penalty collected under this section shall be deposited into the fund. If the department has to pursue legal action to collect fees incurred, reasonable attorneys' fees and costs may be assessed against the nonpaying party.

§17-17-54. Uncontrolled Site Evaluation Trust Fund (Continued).

- (5) Any person required to pay a fee under this section who disagrees with the calculation or applicability of the fee may petition the commission for a hearing in accordance with Section 49-17-35. Any hearing shall be in accordance with the provisions of Section 49-17-33.
- (6) Fees collected under this section shall not supplant or reduce in any way the General Fund appropriation to the Department of Environmental Quality.
- (7) The department may suspend any activities or actions related to the administration or evaluation of an uncontrolled site if the person fails to meet any condition or requirement or fails to pay any required fees or penalties imposed under the voluntary evaluation program.
- (8) Nothing in this section affects any existing program at the department or affects any authority of the commission or department to take any action authorized by law.

SOURCES: Laws, 1996, ch. 488, § 2 eff from and after July 1, 1996.

Editors Note -

Laws, 1996, ch. 488, § 3, eff from and after July 1, 1996, provides as follows:

“SECTION 3. The commission shall promulgate such rules and regulations as it deems necessary to implement this program in accordance with Section 49-2-9.”

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MISSISSIPPI UNCONTROLLED SITE VOLUNTARY EVALUATION PROGRAM (VEP) APPLICATION FORM

| | | | | |
|--|--|--------|--|-----|
| Applicant | | | | |
| Site Name: | | | | |
| Site Surface Owner (If Different From Applicant) | | | | |
| Address of Site (Street) | | | | |
| City of Site | | County | | Zip |
| Contact Person: | | | | |
| Mailing Address | | | | |
| City | | State | | Zip |
| Email | | Phone | | Fax |
| Brief Paragraph Describing Nature of Impacts (to Air, Soil, Groundwater, Surface Water), Chemicals of Concern, and Area Impacted | | | | |
| Party Assuming Responsibility for MDEQ Oversight Costs | | | | |
| Name | | | | |
| Address (Street and P.O. Box) | | | | |
| City | | State | | Zip |
| Contact Person | | | | |
| Email | | Phone | | Fax |
| Financial Contact (for Payment of MDEQ Invoice) | | | | |
| Firm | | | | |
| Address for Invoice | | | | |
| City | | State | | Zip |
| Contact Person | | | | |
| Email | | Phone | | Fax |
| Environmental Consulting Firm | | | | |
| Firm's Name | | | | |
| Address | | | | |
| City | | State | | Zip |
| Contact Attorney | | | | |
| Email | | Phone | | Fax |

FINANCIAL RESPONSIBILITIES

The Applicant agrees to pay to the Mississippi Department of Environmental Quality (MDEQ) all costs of the MDEQ associated with the administration and evaluation of the site under the Uncontrolled Site Voluntary Evaluation Program (VEP) at the rate of \$100.00 per hour. The hourly rate may be adjusted on an annual basis and the Applicant will be notified of any rate change prior to implementation of the change.

The Applicant understands that it will be invoiced for all costs incurred by the MDEQ in the administration and evaluation of the Site on a thirty (30) day schedule. If any part of the costs is not paid within thirty (30) days after the due date, a penalty of up to twenty-five percent (25%) of the amount due may be imposed and be added to the amount due. In the event the MDEQ pursues legal action to collect costs incurred, the Applicant agrees to pay the reasonable attorney's fees and costs of the MDEQ associated with such an action. The Applicant further understands that the MDEQ will immediately cease the administration and evaluation of the Site, if the Applicant fails to pay any required costs or penalties imposed.

The information contained in this application is true and correct to the best of my knowledge and belief.

Printed Name: _____

Signature: _____

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BEFORE THE MISSISSIPPI COMMISSION ON ENVIRONMENTAL QUALITY

In re: **Matter of**
XYZ CORPORATION
ADDRESS

Order No. _____

The Mississippi Commission on Environmental Quality ("Commission"), the Mississippi Department of Environmental Quality ("MDEQ") and XYZ CORPORATION, ("XYZ CORPORATION") now enter the following agreement pursuant to the Uncontrolled Site Voluntary Evaluation Program ("Program") created in Miss. Code Ann. §17-17-54(2) (Supp. 1996), as follows:

1. XYZ CORPORATION is the operator of a SITE DESCRIPTION ("site") located near SMALLTOWN, Mississippi. MDEQ has reason to believe that conditions exist at the site which warrants oversight by MDEQ. XYZ CORPORATION has transmitted information regarding these conditions in the form of SITE ASSESSMENT DOCUMENT(S)], dated JANUARY 1, XXXX.
2. The site is an uncontrolled site within the purview of Miss. Code Ann. §17-17-54. XYZ CORPORATION desires to submit this site for participation in the Program. By this agreement, MDEQ accepts the site for participation in the Program.
3. XYZ CORPORATION agrees to the following terms and conditions of participation in the Program:
 - (a) XYZ CORPORATION will pay all costs of MDEQ's actions associated with MDEQ's administration and evaluation of the site. For the first twelve months in which this Agreed Order is effective, these costs will be calculated at the rate of \$100.00 per hour for each hour of MDEQ staff or subcontractor time spent reviewing, assessing, investigating, reporting on, taking administrative action in regard to, analyzing or studying the site or the information and plans regarding the site submitted by XYZ CORPORATION, plus MDEQ's actual costs (above and beyond staff/subcontractor time) for obtaining and analyzing split samples and additional samples deemed necessary by MDEQ. Analytical costs will be charged as shown on the relevant schedule of analytical costs, found in Section 9 of this order. MDEQ reserves the right to increase or decrease the per hour and analytical cost schedule at any time after the first twelve months in which this Agreed Order is effective. In case of such an increase or decrease, MDEQ will notify XYZ CORPORATION in writing of the new cost schedule, and the new cost schedule will become effective forty-five days after the date of the written notice to XYZ CORPORATION. If XYZ CORPORATION determines to discontinue its participation in the

Program for the site after a change by MDEQ in the per hour and analytical cost schedule, XYZ CORPORATION may terminate its participation in the program as is stated in paragraph 8, below.

- (b) MDEQ will send an invoice to XYZ CORPORATION on a monthly basis stating the program costs assigned to the site that have not been paid prior to the date of invoice by XYZ CORPORATION, and XYZ CORPORATION will pay that amount to MDEQ, for deposit into the Uncontrolled Site Evaluation Trust Fund ("Fund"), within 30 days following the invoice date.
- (c) XYZ CORPORATION will be liable for the payment of all invoiced amounts described in subparagraph 3(b), above.

4. MDEQ will expedite review and evaluation of the investigative assessments, work plans, remedial investigation plans, scopes of work, and remediation design plans submitted by XYZ CORPORATION regarding the site.

5. This agreement is not entered in lieu of any penalty or enforcement action that MDEQ or the Commission may otherwise take in regard to the site or against XYZ CORPORATION. MDEQ and the Commission reserve the right to take any and all administrative and/or legal actions they deem necessary in regard to the site and/or against XYZ CORPORATION. This agreement does not represent the settlement or release of any liability of XYZ CORPORATION for any action, inaction or property condition. XYZ CORPORATION neither admits nor denies liability regarding the environmental condition of the site. MDEQ accepts no responsibility by entering this agreement for activity taken at the site or for the past, present or future condition of or contamination present at the site.

6. If any part of any amount invoiced to XYZ CORPORATION by MDEQ under this agreement is not paid within thirty days after the due date (sixty days after the date of the invoice), a penalty of up to twenty-five percent of the amount due may be imposed by further order of the Commission and added thereto pursuant to Miss. Code Ann. §17-17-54(4). If MDEQ is required to pursue legal action to collect fees incurred, reasonable attorneys' fees and costs may be assessed against the nonpaying party.

7. MDEQ may suspend immediately any activities or actions related to the administration or evaluation of the uncontrolled site or sites that are the subject of this agreement if XYZ CORPORATION fails to meet any condition or requirement of or violates any of the following: (1) This agreed order or any other order of the Commission pertaining to the site to be evaluated pursuant to this Agreed Order; (2) Miss. Code Ann. §17-17-54 (Supp. 1996); (3) any rule or regulation promulgated by the Commission, or (4) any permit issued by the Mississippi Environmental Quality Permit Board.

8. Either XYZ CORPORATION or MDEQ may terminate this agreement upon thirty days prior written notice to the other party. The effective date of the termination will be the thirtieth day after receipt by either party of a written notification of termination. Within thirty days of the effective date of termination, MDEQ will deliver to XYZ CORPORATION an invoice for all work accomplished prior to the effective date of termination for which XYZ CORPORATION previously has not remitted payment. XYZ CORPORATION will pay the invoice amount to MDEQ, for deposit into the Uncontrolled Site Evaluation Trust Fund ("Fund"), within 30 days following the invoice date. As of the effective date of termination, MDEQ will cease the expedited review of the site, and MDEQ thereafter will determine whether and when to resume review of site information within the normal time frame of the MDEQ uncontrolled sites program.

9. Schedule of Analytical Costs

| Analytical Parameters | Price per Sample |
|---------------------------------|------------------|
| Heavy Metals – Full Scan | \$ 350 |
| Heavy Metals – Individual | \$ 40 |
| Volatile Organic Compounds | \$ 225 |
| BTEX | \$ 60 |
| Semi-Volatile Organic Compounds | \$ 450 |
| PAHs | \$ 150 |
| Pesticides | \$ 275 |
| Herbicides | \$ 275 |
| Dioxins | \$ 1000 |
| PCBs | \$ 125 |
| TCLP Metals | \$ 260 |
| TCLP VOCs | \$ 175 |
| TCLP SVOCs | \$ 340 |
| TCLP Pesticides | \$ 140 |
| TCLP Herbicides | \$ 150 |
| TPH-GRO | \$ 90 |
| TPH-DRO | \$ 125 |
| COMPOUNDS - NOT LISTED | ** |

** For those compounds that are not listed, the price will be negotiated on a site-specific basis.

XYZ CORPORATION Agreed Order
Page No. 4

SO AGREED AND ORDERED, this the ____ day of _____,
20____.

Trudy Fisher
Executive Director
Mississippi Commission on
Environmental Quality

AGREED, this the _____ day of _____, 20____.

BY: _____

TITLE: _____
XYZ CORPORATION

STATE OF _____

COUNTY OF _____

PERSONALLY appeared before me, the undersigned authority in and for the jurisdiction aforesaid, the within named _____ who first being duly sworn, did state upon his/her oath and acknowledge to me that he/she is the _____ of XYZ CORPORATION and is authorized by that Corporation to sign this Agreement and to enter this Agreement on behalf of XYZ CORPORATION.

SWORN TO AND SUBSCRIBED BEFORE ME, this the ____ day of _____, 20____.

NOTARY PUBLIC

MY COMMISSION EXPIRES:
