

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

<b>BLACK WARRIOR RIVERKEEPER,</b>	)	
<b>INC.,</b>	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	<b>CASE NO.:</b>
	)	
<b>ALABAMA BIODIESEL CORPORATION,</b>	)	
	)	
<b>Defendant.</b>	)	

**COMPLAINT**

\_\_\_\_\_ COMES NOW the Plaintiff to make and file this Complaint as follows:

**Jurisdiction and Venue**

1. This Court has subject matter jurisdiction over the claims set forth in this Complaint by virtue of Section 505 of the Federal Water Pollution Control Act (FWPCA), 33 U.S.C. §1365 (a), and by virtue of 28 U.S.C. § 1331 (actions arising under the Constitution or laws of the United States). The relief requested is authorized pursuant to 28 U.S.C. § 2201-02 (power to issue declaratory relief in case of actual controversy and further necessary relief based on such a declaration); 33 U.S.C. § 1319(b), 1365(a) (injunctive relief); and 33 U.S.C. § 1319(d), 1365(a) (civil penalties).
2. Venue is appropriate in the Northern District of Alabama pursuant to 33 U.S.C. § 1365 (c)(1) because the acts, omissions, and/or violations complained of herein occurred within the Northern District of Alabama.

**Notice**

3. Pursuant to 33 U.S.C. § 1365(b)(1)(A) and 40 C.F.R. § 135.3, on June 18, 2007, Plaintiff gave Defendant, Alabama Biodiesel Corporation, notice of the violations alleged herein and their intent to sue more than Sixty (60) days prior to the filing of this Complaint. At the same time a copy of the notice was mailed to the Administrator of the Environmental Protection Agency (EPA), the Regional Administrator of Region IV of the EPA, and the Director of the Alabama Department of Environmental Management (ADEM). Service of notice on Defendant was by certified mail. Additionally, notice was mailed to the registered agent for such corporate defendant.
4. Since the Plaintiff gave notice, the violations complained of herein have not ceased. No permit has been issued to Defendant for their facility. The EPA or the State of Alabama has not commenced and diligently prosecuted a civil or criminal enforcement action in a court of the United States or a State for the violations set out herein. The EPA or the State has not commenced and diligently prosecuted an action under 33 U.S.C. §1319(g) or under a state law comparable to 33 U.S.C. §1319(g) for the violations set out herein. The EPA or the State has not issued a final order not subject to further judicial review and the Defendant(s) has/have not paid a penalty assessed under 33 U.S.C. §1319(g) or under a state law comparable to 33 U.S.C. §1319(g) for the violations set out herein. Furthermore, the EPA or the State did not commence an action under 33 U.S.C. §1319(g) prior to Plaintiff giving notice under 33 U.S.C. § 1365(b)(1)(A) and 40 C.F.R. § 135.3 and this action is being filed before the 120<sup>th</sup> day after such notice was given.

**PARTIES**

5. Plaintiff, Black Warrior Riverkeeper, Inc. is a non-profit membership corporation, with over one thousand members, that is dedicated to the preservation, protection, and defense of the Black Warrior River and that actively supports effective enforcement and implementation of environmental laws, including the FWPCA and the Alabama Water Pollution Control Act (AWPCA), on behalf and for the benefit of its members.
6. Defendant, Alabama Biodiesel Corporation is believed to be incorporated in the State of Alabama and is engaged in the manufacture of diesel fuel within the Northern District of Alabama.

**NATURE OF THE CASE**

7. This is an action for declaratory judgment, injunctive relief, penalties, and attorney fees to enforce provisions of the AWPCA and the FWPCA, regulations adopted pursuant to said Acts, and/or permits adopted and/or issued pursuant to said Acts.
8. Alabama Biodiesel Corporation owns and operates a diesel fuel manufacturing facility, which discharges pollutants into waters of the United States, namely, Black Warrior River, a water of the State and the United States, in Tuscaloosa County, Alabama.
9. Alabama Biodiesel Corporation is in violation of sections 301 and 402 of the CWA (33 U.S.C. §1311 and 1342) and sections 122.1 et sec of Title 40 of the Code of Federal Regulations. Alabama Biodiesel Corporation is also in violation of similar provisions of Alabama law. See Code of Alabama 1975, section 22-22-9 and ADEM Administrative Code Rule 335-6-6-.03. These laws require that no facility shall discharge pollutants to waters of the United States or waters of the state except as authorized by a permit issued pursuant to the National Pollutant Discharge Elimination System (“NPDES”). Any

discharge of pollutants without an NPDES permit is a violation of the AWPCA and the FWPCA, and is grounds for enforcement by civil action.

10. Members of Black Warrior Riverkeeper have recreated in, on or near, or otherwise used and enjoyed, or attempted to use and enjoy, Black Warrior River downstream from this facility in the past, and they intend to do so in the future. They have a direct and beneficial interest in the continued protection, preservation, and enhancement of the environmental, aesthetic, and recreational values in Black Warrior River downstream from this facility. The quality of these waters directly affects the recreational, aesthetic and environmental interests of certain members of Black Warrior Riverkeeper. The recreational, aesthetic, and environmental interests of certain of Black Warrior Riverkeeper's members have been, are being, and will be adversely affected by the Defendant's continued violation of the AWPCA and the FWPCA as alleged in this complaint.
11. Members of Black Warrior Riverkeeper now recreate less on Black Warrior River because of the defendant's illegal discharges. The violations alleged herein have had a detrimental impact on those members' interests because the violations have adversely affected and/or diminished aquatic life in Black Warrior River and have made Black Warrior River less suitable for fishing, boating, wading, walking, observing nature, or relaxing. Said members would recreate more in and around Black Warrior River but for Defendant's illegal discharges of pollution. Said members will recreate more often in or near Black Warrior River once the Defendant's illegal discharges cease.

**COUNT ONE**

12. The Plaintiff hereby repeats, realleges, adopts, and incorporates by reference paragraphs 1 through 11 herein above as if fully set out in this Count.
13. The State of Alabama, acting through ADEM, has implemented a federally authorized system for regulating the discharge of pollutants to waters of the State that operates in lieu of, or in conjunction with, the federal water pollution control program (see U.S.C. § 1342 (b)).
14. The State of Alabama has not issued Alabama Biodiesel Corporation, an NPDES permit.
15. Alabama Biodiesel Corporation is in violation of the provisions referenced above by operating its facility in a manner which discharges pollutants to the waters of the United States and waters of the state without a permit. These activities include, but are not limited to, the specific incidents and problems described below.
16. The Defendant has violated the AWPCA and the FWPCA by discharging pollutants from a point source on or about the following occasions:  
  
June 12 to 16, 2006; July 12, 2006; August 6, 2006; September 12, 2006; September 17, 2006; September 24, 2006; September 29, 2006; October 5, 2006; October 8, 2006; October 18, 2006; March 15, 2007; March 23, 2007; May 5, 2007; May 14, 2007; May 29, 2007; and August 19, 2007.
17. The violations set out in this Count are continuing and ongoing and there is a reasonable likelihood that Defendant will continue these or similar violations in the future.
18. These violations have an adverse impact on Black Warrior River and on the recreational, aesthetic, and environmental interests of the Plaintiff's members in those waterways as set out in paragraphs 10 and 11 herein above.

**COUNT TWO**

19. The Plaintiff hereby repeats, realleges, adopts, and incorporates by reference paragraphs 1 through 18 herein above as if fully set out in this Count.
20. The violations set out herein will continue unless this Court enjoins Defendant.
21. These violations have caused certain of Plaintiff's members irreparable injury. Plaintiff has no adequate remedy at law for the injuries caused to its members by Defendant's ongoing violations in that Plaintiff would be forced to bring repeated and burdensome actions for each new injury to its interests if Defendant's ongoing violations are not enjoined.
22. An injunction will be in the public's interest in this case. Because Defendant is in continuing violation of the law, the equities for an injunction weigh in Plaintiff's favor.
23. This claim for injunctive relief should not be mooted by the subsequent issuance of a permit to Defendant by ADEM since the volume of pollutants discharged by Defendant on the above stated occasions far exceeds any discharge limit which ADEM may reasonable include in a permit for this facility.
24. Therefore, Plaintiff brings this cause of action to enjoin Defendant from engaging in any other affirmative act or conduct which would contribute to further violations of discharging without a permit or of violations of any permit subsequently granted.

**PRAYER FOR RELIEF**

- A. Plaintiff requests the Court render a judgment finding and declaring that Defendant has violated the AWPCA and/or the FWPCA in the manner and on the dates alleged in Count One herein and that such violations are illegal and that Defendant is liable for all such violations.

- B. Plaintiff requests and petitions this Court to enjoin the violations and any and all illegal conduct by Defendant set out and alleged in Count One herein.
- C. Plaintiff requests and petitions this Court to assess a \$32,500.00 (thirty-two thousand, five hundred dollars) civil penalty (*see*, 40 CFR 19) against Defendant for each violation and each day of continuing violation for which Defendant is found liable.
- D. Plaintiff further requests a judgment for all costs and for attorney fees as are reasonable under the circumstances.
- E. Plaintiff prays for such other, further or more general relief as this Court may deem appropriate.

Respectfully submitted,

**s/ Mark E. Martin**

Mark E. Martin

Bar Number: ASB-9361-A41M

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