

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

BLACK WARRIOR RIVERKEEPER,)	
INC.,)	
Plaintiff,)	
)	
vs.)	2:07-cv-01518-JEO
)	
ALABAMA BIODIESEL CORPORATION,)	
)	
Defendant.)	

SETTLEMENT AGREEMENT AND CONSENT DECREE

This matter is now before the Court at the request of all parties for the approval and entry of a settlement consent decree representing settlement of all claims presented by the plaintiff against the defendant. The Court, having reviewed the terms set out herein, finds the settlement terms appropriate and reasonable and in the public's best interest and hereby approves the same.

NOW, **THEREFORE**, with the consent of the Parties, **IT IS HEREBY ADJUDGED, ORDERED, and DECREED** as follows:

I. INTRODUCTION

The plaintiff has presented claims that the Defendant has discharged pollutants from a point source on several stated occasions without first obtaining an NPDES permit as required by the Federal Water Pollution Control Act ("FWPCA"), 33 U.S.C. §1311 and 1342, sections 122.1 *et sec.* of Title 40 of the Code of Federal Regulations, and the Alabama Water Pollution Control Act ("AWPCA"), Code of Alabama 1975, section 22-22-9 and ADEM Administrative Code Rule 335-6-6-.03.

The Court has jurisdiction over this matter and of plaintiff's claims pursuant to 28 U.S.C. § 1331 and 33 U.S.C. § 1365 (a).

In exchange for the defendant's agreement to and compliance with the terms of this settlement, plaintiff hereby releases and forever discharges the defendant and each of their officers, directors, shareholders, partners, attorneys, predecessors, successors, representatives, insurers, assignees, agents, employees, executors, administrators, heirs, and all persons acting by, through, or in any way on behalf of the defendant, of and from any and all claims specifically alleged by the plaintiff in their Complaint in this action as well as any violations made known to the plaintiff by the defendant in writing prior to the effective date of this Decree. The Parties further covenant and agree that this Agreement may be pleaded or asserted by or on behalf of the defendant as a defense and complete bar to any action or claim that may be brought against or involving the defendant by anyone acting or purporting to act on behalf of the plaintiff with respect to any of the matters within the scope of this Agreement excepting only the obligations of the parties under this Agreement. The plaintiff specifically reserves its right to, and does not release, any claim not specifically released herein that it may discover in the future arising out of the operation of the defendant's facility but which is not specifically alleged in the Complaint in this action. The plaintiff specifically reserves its right to, and does not release, any claim not specifically released herein that it may have in the future arising out of the operation of the defendant's facility after the Effective Date or arising out of acts of the defendant after the Effective Date.

This Consent Decree shall become effective upon the latter of its entry or its entry and any required time period for notification and consideration by the United States ("Effective Date").

II. SUPPLEMENTAL ENVIRONMENTAL PROJECT

In settlement of the plaintiff's claims the defendant, Alabama Biodiesel Corporation ("ABC"), shall pay the sum of \$27,500 for the establishment of a Supplemental Environmental Project ("SEP"). Said sum shall be paid no later than December 31, 2008 to the Clerk of the Court for remittance to the Freshwater Land Trust. However, that in lieu of said payment, ABC may perform a Mitigation Project, to be approved by the plaintiff, Black Warrior Riverkeeper, ("BWRk"). Said Mitigation Project must be valued at or greater than \$27,500. Any such Mitigation Project must be completed within one year of the date of the decree, or on such other more lengthy schedule as BWRk may agree to in writing.

III. INJUNCTIVE RELIEF

In further settlement of plaintiff's claims the following injunctive relief is agreed upon by the parties and ordered by the Court.

- (A) Alabama Biodiesel Corporation ("ABC") will keep an open and honest line of communication with BWRk, the Alabama Department of Environmental Management (ADEM), and any and all other regulatory agencies. Toward that end, ABC will transmit a true copy of all DMRs, or other reports, filed with ADEM immediately upon the filing with ADEM, to BWRk until the consent decree is terminated;

- (B) ABC shall comply with requirements of the FWPCA, AWPCA, and the requirements of any applicable NPDES permit;
- (C) ABC will provide BWRk with the Engineering Report, Best Management Practices Plan, and the SPCC Plan prepared by Longleaf Engineering. ABC will complete the implementation of the recommendations in these reports within 180 days of the effective date of this Consent Decree. If the plaintiff demonstrates to the defendant or the court any legitimate concerns over the findings and recommendations of the report, then ABC and BWRk will agree on an independent, qualified engineering firm to address the specific alleged insufficiencies, with the defendant paying the first \$5,000.00 of the costs of the plaintiff's expert if allowed by the court; and,
- (D) ABC will continue its efforts, in coordination with ADEM, to obtain its NPDES permit in as timely a manner as possible. ABC will continue its best efforts to not discharge any pollutants until a permit allowing such discharge is obtained.

IV. COSTS

ABC will pay all costs of this litigation, including \$17,500 as a reasonable attorney's fee within 60 days.

V. STIPULATED PAYMENTS

(A) ABC shall pay stipulated payments to the Freshwater Land Trust for each failure by ABC to comply with the terms of this Consent Decree as follows:

For each failure to meet a time deadline, or other obligation of this decree:

- (1) 1st through 30th day after deadline - \$200
- (2) 31st through 60th day after deadline - \$300
- (3) Beyond 60th day - \$500

Payments under this subsection shall be calculated on a "per day, per violation basis."

For each failure to prevent spills or unauthorized discharges into the River:

- (1) first violation - \$200
- (2) second through fifth violation - \$300
- (3) each violation beyond the fifth violation - \$1,500

Payments under this subsection shall be calculated on a "per day, per violation basis."

(B) A stipulated payment obligation shall automatically begin to accrue on the first day that ABC fails to meet any requirement of this Consent Decree and shall continue to accrue each day until ABC achieves compliance with such requirement.

(C) Stipulated payments shall be made within thirty (30) days of the date of receipt of a written demand from plaintiff for payment for any non-compliance with any requirement set forth in this Consent Decree. In the event that a stipulated payment is not made in accordance with the requirements of this Section, the stipulated payment shall be payable with interest from the original due date to the date of payment at the statutory judgment rate set forth in 28 U.S.C. § 1961(a).

(D) If plaintiff seeks relief for ABC's alleged non-compliance with the requirements of this Consent Decree, they shall elect to seek either stipulated payments or civil contempt sanctions. Stipulated payments under this Section or motions for civil contempt shall be plaintiff's sole and exclusive remedies for defendant's noncompliance with the requirements of this Consent Decree.

(E) Stipulated payments shall be made by submitting a certified check payable to the "Freshwater Land Trust" ("Trust") and tendering the check to the Trust at the following address:

Freshwater Land Trust
Box 549071
Birmingham-Southern College
900 Arkadelphia Road
Birmingham, AL 35254

(F) Any such check shall denote that it is a stipulated payment made pursuant to this Consent Decree and that use of the funds shall be earmarked for and restricted to projects on the Black Warrior River Watershed. Copies of the certified check and the transmittal letter shall be sent simultaneously to BWRk.

VI. RETENTION OF JURISDICTION, TERMINATION OF CONSENT DECREE

The Court shall retain jurisdiction over this case until nine months after the defendant's officers and counsel certify that they have been informed by the respective engineers that the onsite changes and improvements recommended by the process elaborated herein in paragraph III.(C) are completed or by consent of all parties.

VII. LODGING AND APPROVAL OF DECREE

Pursuant to 33 U.S.C. § 1365, this Consent Decree will be lodged with the Court and simultaneously presented to the U.S. Department of Justice for its review and comment for a

period of up to forty-five (45) days. After the review period, this Consent Decree may be entered by the Court. If this Consent Decree is not entered by the Court, the Parties shall retain all rights they had in this litigation before lodging of this Consent Decree.

The Parties agree to cooperate in good faith in order to expeditiously obtain U.S. Department of Justice review of the lodged Consent Decree, and Court approval. In the event the Department of Justice proposes modifications to this Consent Decree, the Parties agree to confer and undertake good faith efforts to resolve any disputes that may arise out of the review by the Department of Justice.

VIII. SIGNATORIES

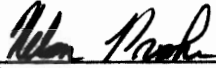
The undersigned representatives of the Parties certify that they are fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such party to this document.

ENTERED and DONE this 28th day of May, 2008.

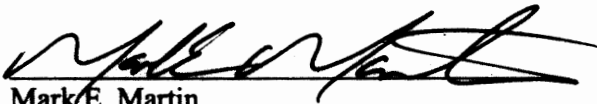


JOHN E. OTT
UNITED STATES MAGISTRATE

FOR PLAINTIFF, BLACK WARRIOR RIVERKEEPER

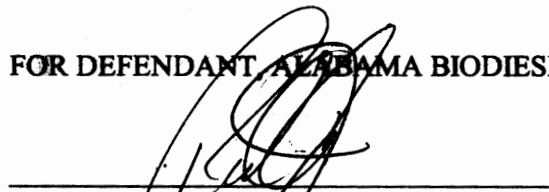


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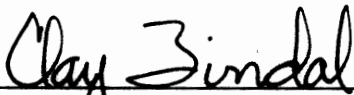


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