

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

BLACK WARRIOR)	
RIVERKEEPER, INC., and)	
FRIENDS OF THE LOCUST)	
FORK RIVER, INC.)	
)	
Plaintiffs,)	
)	
vs.)	Case No. 2:07-cv-01527
)	
METRO RECYCLING, INC.)	
)	
Defendant.)	

**SECOND SETTLEMENT AGREEMENT
AND CONSENT DECREE**

This matter is now before the Court at the request of the parties for the approval and entry of a Second Settlement Agreement and Consent Decree that modifies the Settlement Agreement and Consent Decree entered on October 18, 2008. The Court, having reviewed the terms set out herein, finds the terms of the decree appropriate, 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

1. Plaintiffs Black Warrior Riverkeeper, Inc. and Friends of the Locust Fork River, Inc., (hereinafter "Riverkeeper") filed a Complaint (Doc. 1) alleging that Defendant Metro Recycling, Inc. ("Metro") discharged pollutants from Metro's Blount County Tire Landfill 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. et seq. 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. Metro filed an Answer (Doc. 4) contesting the allegations and claims by Riverkeeper.

2. The Court has jurisdiction over this matter pursuant to 28 U.S. C. § 1331 and 33 U.S.C. § 1365(a).

3. On October 15, 2008, the Court entered the First Settlement Agreement and Consent Decree (Doc. 20) ("First Decree"). The First Decree was approved by the U.S. Department of Justice pursuant to 33 U.S.C. § 1365(c)(3). (Doc. 19).

4. The First Decree was premised upon Metro's operation of the landfill as a going concern, and the need for certain permits in order to do so. Metro subsequently decided to close the landfill.

5. In correspondence dated November 19, 2008, ADEM informed Metro that it would need to have a Professional Engineer prepare and submit a Closure Plan. (Doc. 27).

6. Raymond Shackleford, P.E. was hired by Metro and he submitted multiple proposed Closure Plans over the next two and a half years. None were approved by ADEM because they failed to meet the requirements of ADEM Admin. Code r. 335-13-4-20.

7. On April 21, 2011, Mr. Shackleford died.

8. On June 16, 2011, Riverkeeper filed a Motion to Enforce Decree. (Docs. 25 and 31) The Motion was opposed by Metro (Docs. 27, 28, 29 and 32).

9. The Court issued an Order to Show Cause (Doc. 26) and scheduled a hearing in the matter for August 31, 2011. (Doc. 30).

10. Metro retained engineering firm CDG Engineering to replace Mr. Shackleford. Notice of the change and the reasons therefore was given to ADEM by letter dated July 7, 2011.

11. CDG prepared a proposed Closure Plan that required Metro to acquire additional land along the landfill's southern and eastern boundaries in order for the closure to be carried out as designed and to remediate an area identified by Riverkeeper where tires had been dumped outside the perimeter of the landfill. The

property was acquired and CDG submitted the proposed Closure Plan to ADEM. CDG's Closure Plan was approved by ADEM on July 2, 2012.

12. At a status hearing conducted on July 21, 2012, Metro agreed it would undertake certain additional measures during the implementation of the Closure Plan to address Riverkeeper concerns about the continuing discharge of pollutants from the landfill site, including, but not limited to Volatile Organic Compounds (VOCs), sediment, tar, oil, and pieces of tire. Those measures included the addition of a Retention/Settlement Pond, post-closure water sampling and analysis, and periodic inspections to ensure the effectiveness of the Closure Plan.

13. Metro retained McGehee Engineering to revise the Closure Plan to include the Retention/Settlement pond contemplated by the parties.

14. Metro entered into an agreement with an adjacent landowner to acquire property necessary for the construction of the retention pond and a proposed Modified Closure Plan was submitted to ADEM by McGehee.

15. On March 11, 2013 Riverkeeper filed a Second Motion to Enforce Decree (Doc. 42 and 45), which was contested by Metro (Doc. 46 and 47).

16. After certain changes required by ADEM were made, a Modified Closure Plan was approved by ADEM on July 2, 2013. The Modified Closure Plan prescribes how Metro will close the landfill that is the subject of this litigation.

17. The parties do not intend that this Second Decree impose any terms or conditions with respect to the subject landfill that are contrary to or inconsistent with the Modified Closure Plan.

18. It is intended that in the event any inconsistency arises, it be resolved in favor of the language of the Modified Closure Plan.

19. Metro has agreed to undertake certain additional measures upon closure of the landfill that are not contrary to or inconsistent with the Modified Closure Plan, but which constitute additional responsibilities agreed to by Metro to settle this action.

20. The parties understand and acknowledge that Metro will have to undertake certain activities to comply with the Modified Closure Plan and further understand and acknowledge that ADEM can alter and modify what Metro may have to do in order to complete closure.

II. INJUNCTIVE RELIEF

In further settlement of all disputes arising out of this litigation, the following injunctive relief is agreed to by the parties and ordered by the Court.

- A. Metro will not resume operations of the subject landfill.
- B. Metro will close the landfill in accordance with the Modified Closure Plan approved by ADEM on July 2, 2013.
- C. Closure will include, but not be limited to, the following obligations:

- (1) Metro will stabilize the slope of the landfill cover and perimeter berm in accordance with the Modified ADEM Closure Plan;
 - (2) Metro will mark the perimeter of their landfill as required by ADEM Admin. Code r. 335-13-4-.2 1 (l)(e) which states that the facility shall be identified with a sufficient number of permanent markers which are visible from one marker to the next.
- (D) Metro will communicate openly and share all environmental compliance documents with Riverkeeper during the time that this Second Decree is open and in force.
- (E) During the time that this Second Decree is open and in force, Metro shall allow representatives of Riverkeeper to enter the facility to take water samples and will allow walk-on site visits by Riverkeeper between the hours of 9:00 a.m. and 5:00 p.m., provided that Riverkeeper contacts Metro at least 48 hours prior to any such visits to allow for a mutually convenient time.
- (F) Metro shall comply fully with all plans, permits or orders issued to it by ADEM.
- (G) As soon as possible, Metro shall implement the approved engineering plan in compliance with the ADEM Closure Plan. This plan shall

comply with all applicable regulatory requirements, including, but not limited to ADEM Admin. Code r. 335-13-4-.20.

- (H) The Metro landfill must have a run-off control system from the closed landfill to collect and control at least the water volume resulting from a 24-hour, 25 year storm event.
- (I) There shall be no discharge of pollutants from the site, including, but not limited to Volatile Organic Compounds (VOCs), sediment, tar, oil, and pieces of tire that do not conform with the limits acceptable to ADEM. (See II, Paragraph L of this Consent Decree)
- (J) Metro will submit documentation, such as copies of communications with ADEM, to Riverkeeper showing the adequate completion of the Modified Closure Plan.
- (K) Metro agrees to construct and maintain a Retention Basin in accordance with the Modified Closure Plan to capture any runoff and/or seeps from the landfill, which Retention Basin is also designed to allow some of the VOCs present in the landfill's seeps and surface runoff to evaporate. The Retention Basin shall be constructed according to industry standards, using Best Management Practices, and in a manner that avoids contributing additional sediment and/or other pollutants to the unnamed tributary of White's Creek.

(L) Metro agrees to conduct quarterly water monitoring for VOCs, pH and Total Suspended Solids ("TSS") at an established, identified and consistent sampling point at the top of the Retention Basin spillway for a period of two years, such effluent sampling to be conducted when there is flow. The VOC limits for the Retention Basin are to be in accordance with ADEM's preliminary screening values for VOCs present in groundwater (see Alabama Risk-Based Corrective Action Guidance Manual at pp. 101-08). The TSS limit for the Retention Basin is set at 35 mg/L; pH shall not be lower than 6.0 s.u. nor exceed 8.5 s.u. Riverkeeper shall be provided with copies of sample results as soon as they are available.

If sampling indicates that the Retention Basin is not working as engineered or intended, and the landfill site continues to discharge pollutants after the implementation of the Modified Closure Plan, Metro will take corrective action. Any corrective action required as a result of the monitoring plan will be evaluated and undertaken according to the *Alabama Risk-Based Corrective Action Guidance Manual*. In the event corrective action is required, Metro shall provide Riverkeeper with copies of any and all correspondence or other documents which relate to the need for, the development and the implementation of that action.

Riverkeeper shall be permitted to object to any corrective action plan that does not comply with the terms of the Second Decree.

- (M) Metro's engineer will inspect the Metro site post-closure at intervals of six, twelve and eighteen months, with representatives of Riverkeeper allowed to accompany the representative(s) of McGehee and observe the inspection. Metro and/or its engineer shall notify Riverkeeper at least seven (7) business days in advance of any inspection.
- (N) Metro agrees to put funding in escrow to ensure that adequate resources will be available to fund the continued participation and oversight by McGehee Engineering post closure. Within thirty (30) days of the entry of the Second Decree, Metro shall furnish evidence of the escrow account to Riverkeeper, including the amount deposited in the escrow account and any cost estimates provided for the post closure inspections, sampling and care.

III. COSTS

After the entry of the Second Settlement Agreement and Consent Decree, Riverkeeper may file an application with the Court for an award of attorneys' fees, expert witness fees and costs of enforcing the settlement pursuant to 33 U.S.C. § 1365(d), 28 U.S.C. § 1920 and ALND Uniform Initial Order Part II. Metro retains

the right to oppose any such motion.

***IV. RETENTION OF JURISDICTION, TERMINATION OF
SECOND DECREE***

(A) Under the First Decree, this Court retained jurisdiction of the case “until twelve months after the defendant’s officers and counsel certify that they have been informed by the respective engineers that the onsite changes and improvements . . . required herein are completed.” (Doc. 20 at 6). No such certification has yet occurred and this Court retains jurisdiction over the matter.

(B) The Court shall retain jurisdiction over this case for the purposes of resolving disputes arising under the Second Decree, entering orders modifying the Second Decree, or effectuating or enforcing compliance with the terms of the Second Decree.

(C) Except for good cause shown, the Court’s jurisdiction over this case will terminate within twelve months after Metro’s officers, engineers and counsel certify that the requirements of the Modified ADEM Closure Plan and Section II of the Second Consent Decree have been completed. “Good cause” shall include, but not be limited to the failure of Metro to conduct post closure care as defined by Ala. Admin. Code r. 335-13-4-.20.

V. LODGING AND APPROVAL OF DECREE

Pursuant to 33 U.S.C. §1365, the Second 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, the Second Decree may be entered by the Court. If the Second Decree is not entered by the Court, the parties shall retain all rights they had in this litigation before lodging of this decree. The parties agree to cooperate in good faith in order to expeditiously obtain U.S. Department of Justice review of the lodged Second Decree, and Court approval. In the event the Department of Justice proposes modifications to the Second 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.

VI. SIGNATORIES

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

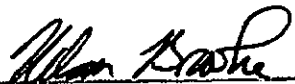
ENTERED and DONE this ____ day of December, 2013.

L. SCOTT COOGLER


UNITED STATES DISTRICT JUDGE

FOR PLAINTIFF

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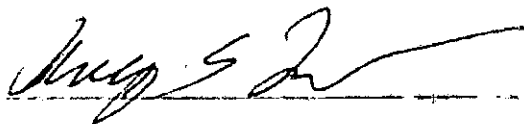
FOR PLAINTIFF

FRIENDS OF THE LOCUST FORK, INC.



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**FOR DEFENDANT
METRO RECYCLING, INC.**



Phillip Scott Tidwell, President

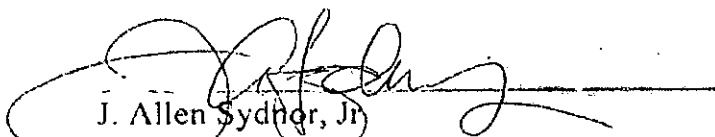
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