

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

<b>BLACK WARRIOR RIVERKEEPER,</b>	)	
<b>INC., and FRIENDS OF LOCUST</b>	)	
<b>FORK RIVER, INC.,</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	
<b>vs.</b>	)	<b>2:07-cv-01527-LSC</b>
	)	
<b>METRO RECYCLING, INC,</b>	)	
	)	
<b>Defendant.</b>	)	

**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 Plaintiffs against 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**

Plaintiffs, Black Warrior Riverkeeper, Inc. (BWRk) and Friends of Locust Fork River, Inc., allege that Defendant, Metro Recycling, Inc. (Metro) has discharged pollutants from Metro’s Blount County Landfill (subject 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 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. Defendant, Metro, has filed an Answer contesting Plaintiffs’ allegations and Plaintiffs’ rights to pursue the claims asserted.

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

In exchange for Defendant’s agreement to and compliance with the terms of this settlement, Plaintiffs hereby release and forever discharge Defendant and its 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 Defendant, of and from any and all claims specifically alleged by Plaintiffs in their Complaint in this action as well as any purported violations made known to Plaintiffs by 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 Defendant as a defense and complete bar to any action or claim that may be brought against or involving Defendant by anyone acting or purporting to act on behalf of Plaintiffs with respect to any of the matters within the scope of this Agreement excepting only the obligations of the parties under this Agreement. Plaintiffs specifically reserve their rights to, and do not release, any claim not specifically released herein that they may discover in the future arising out of the operation of Defendant’s subject landfill but which is not specifically alleged in the Complaint in this action. Plaintiffs specifically reserve their rights to, and do not release, any claim not specifically released herein that they may have in the future arising out of the operation of Defendant’s subject landfill after

the Effective Date or arising out of acts of 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”).

Defendant and the Alabama Department of Environmental Management (ADEM) have executed a Consent Order (ADEM Consent Order) that includes certain findings and imposes certain requirements upon Defendant, Metro Recycling, Inc., in order for it to continue to operate the landfill in Blount County that is the subject of this litigation. The parties do not intend that this Settlement Agreement and Consent Decree impose any terms or conditions of operation of the subject landfill that are contrary to or inconsistent with the ADEM Consent Order and it is intended that in the event any inconsistency arises, it be resolved in favor of the language of the ADEM Consent Order.

The ADEM Consent Order imposes a penalty in the amount of \$25,000.00. This Settlement Agreement and Consent Decree does not require payment of any additional penalties or fines. All funds identified herein as having to be paid by Metro are not penalties or fines. Metro is agreeing to pay said funds in an effort to avoid additional litigation and the expenses associated therewith.

The parties understand and acknowledge that Metro will have to undertake certain activities to comply with the ADEM Consent Order and further understand and acknowledge that ADEM can alter and modify what Metro may have to do in order to obtain an NPDES permit for the operation of the subject landfill. Notwithstanding the requirements of Section III, it is not the intention of the parties that Metro be subjected to additional claims by Plaintiffs as a

consequence or result of additional requirements that may be imposed upon Metro by ADEM as long as Metro complies with the requirements of its permits.

## **II. SUPPLEMENTAL ENVIRONMENTAL PROJECT**

In settlement of Plaintiffs' claims, Defendant, Metro, shall pay the sum of Seven Thousand Five Hundred Dollars (\$7,500.00) for the establishment of a Supplemental Environmental Project ("SEP"). Said sum shall be paid no later than thirty days from the effective date of this decree to the Clerk of the Court for remittance to the Freshwater Land Trust. The Clerk shall remit said funds to "Freshwater Land Trust" ("Trust") and tender the check to the Trust at the following address:

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

## **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) Metro will not resume operations of the subject landfill without a NPDES permit;
- (B) Metro will communicate openly and share all environmental compliance documents with Black Warrior Riverkeeper (BWRk) during the time that this Consent Decree is open;
- (C) Metro shall allow BWRk to enter the facility to take water samples and will allow walk-on site visits by BWRk between the hours of 9:00 a.m. and 5:00 p.m.,

provided BWRk shall contact Metro at least 48 hours prior to any such visits to allow for a mutually convenient time;

- (D) Metro shall comply fully with all permits issued to it by the Alabama Department of Environmental Management (ADEM);
- (E) Metro shall comply with all terms of the ADEM Consent Order.
- (F) Metro shall complete and implement an approved engineering plan in compliance with the ADEM Consent Order. This plan shall comply with all regulatory requirements including ADEM Admin. Code r. 335-13-4-.17(2) which states that the facility must have a run-off control system from the active and/or closed portion of the landfill to collect and control at least the water volume resulting from a 24-hour, 25-year storm event;
- (G) Metro will stabilize the slope of the landfill cover and perimeter berm in accordance with their engineering plan and the ADEM Consent Order;
- (H) Metro will mark the perimeter of their landfill as required by ADEM Admin. Code r. 335-13-4-.21(1)(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;
- (I) There shall be no discharge of pollutants other than as specifically allowed under a NPDES permit including, but not limited to Volatile Organic Compounds (VOCs), sediment, tar, oil, and pieces of tire; and
- (J) Metro will submit documentation such as copies of communications with ADEM to Black Warrior Riverkeeper showing the adequate completion of the

implementation of stormwater and discharge controls required by ADEM and the ADEM Consent Order;

**IV. COSTS**

Metro will pay Seventeen Thousand Five Hundred Dollars (\$17,500.00) to Black Warrior Riverkeeper as costs of this litigation and reasonable attorney's fee within thirty days of the effective date of this Decree. No additional costs or fees will be paid to Friends of Locust Fork River, Inc.

**V. RETENTION OF JURISDICTION, TERMINATION OF CONSENT DECREE**

The Court shall retain jurisdiction over this 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 by the ADEM Consent Order or required herein are completed or by consent of all parties.

**VI. 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.

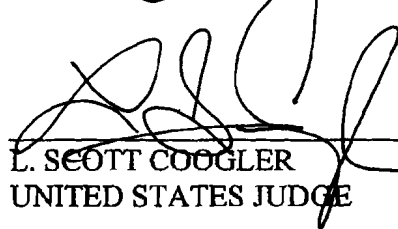
The Parties agree to cooperate in good faith in order to expeditiously obtain U.S. Department of Justice review of the lodged Consent Decree, and Court approval. In the event the Department of Justice proposes modifications to this Consent Decree, the Parties agree to confer

and undertake good faith efforts to resolve any disputes that may arise out of the review by the Department of Justice.


**VII. SIGNATORIES**

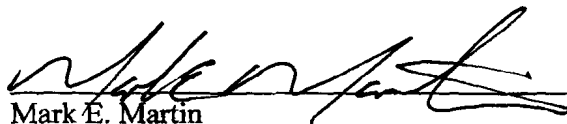
The undersigned representatives of the Parties certify that they are fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such party to this document.

ENTERED and DONE this 14<sup>th</sup> day of October, 2008.

  
\_\_\_\_\_  
L. SCOTT COOGLER  
UNITED STATES JUDGE

**FOR PLAINTIFF, BLACK WARRIOR RIVERKEEPER, INC.**

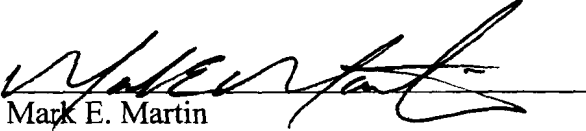
  
\_\_\_\_\_  
Nelson Brooke  
Executive Director  
Black Warrior Riverkeeper, Inc.  
712 37<sup>th</sup> Street South  
Birmingham, AL 35222

  
\_\_\_\_\_  
Mark E. Martin  
Mark E. Martin, Attorney at Law, LLC  
712 37<sup>th</sup> Street South  
Birmingham, AL 35222

**FOR PLAINTIFF, FRIENDS OF LOCUST FORK, INC.**



Sam Howell, President

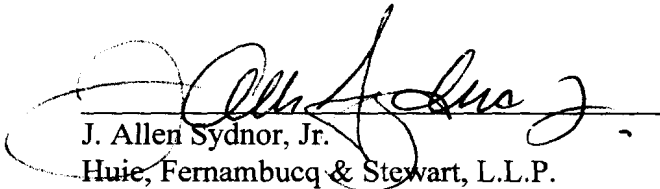


Mark E. Martin  
Mark E. Martin, Attorney at Law, LLC  
712 37<sup>th</sup> Street South  
Birmingham, AL 35222

**FOR DEFENDANT, METRO RECYCLING, INC.**



Phillip Tidwell  
President of Metro Recycling, Inc.



J. Allen Sydnor, Jr.  
Huie, Fernambucq & Stewart, L.L.P.  
Three Protective Center  
2801 Highway 280 South, Suite 200  
Birmingham, AL 35223-2484