

**UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND**

UNITED STATES OF AMERICA,

Plaintiff,

v.

NEWPORT BIODIESEL, INC.,

Defendant.

Civil No. 1:16-cv-242

CONSENT DECREE

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Plaintiff United States of America (“United States”), on behalf of the United States Environmental Protection Agency (“EPA”), has filed a complaint in this action concurrently with the lodging of this Consent Decree, alleging that Defendant, Newport Biodiesel, Inc. (“Defendant”), has violated regulations promulgated pursuant to Section 112 of the Clean Air Act (“CAA”), 42 U.S.C. § 7412; violated Sections 502(a) and 503(c) of the CAA, 42 U.S.C. §§ 7661a(a) and 7661b(c); violated Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1); violated Section 312 of the Emergency Planning and Community Right-to-Know Act (“EPCRA”), 42 U.S.C. § 11022, and regulations promulgated thereunder; and violated regulations promulgated pursuant to Section 311(j) of the Clean Water Act (“CWA”), 33 U.S.C. §1321.

In particular, the Complaint alleges that Defendant has violated the above-listed federal environmental statutes and regulations at Defendant’s biodiesel manufacturing facility located at 312 Connell Highway in Newport, Rhode Island (“Facility”). Defendant’s alleged violations arose primarily from the storage and use of large quantities of methanol at the Facility.

Apart from any admissions of fact and law made by Defendant in a CAA Administrative Order on Consent, which was issued on June 27, 2014, Defendant does not admit to any factual allegations made by EPA or to any assertions of any liability to the United States arising out of the transactions or occurrences alleged in the Complaint or under any of the aforementioned statutes and regulations.

The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as described above, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action and over the Parties to this Consent Decree pursuant to 28 U.S.C. §§ 1331, 1345 and 1355; Section 113(b) of the CAA, 42 U.S.C. § 7413(b); Section 325(c)(4) of EPCRA, 42 U.S.C. § 11045(c)(4); and Section 311(b)(7)(E) of the CWA, 33 U.S.C. § 1319(b)(7)(E).

2. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1395, Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Section 325(c)(4) of EPCRA, 42 U.S.C. § 11045(c)(4), and Section 311(b)(7) of the CWA, 33 U.S.C. § 1321(b)(7), because Defendant Newport Biodiesel, Inc., is a Rhode Island corporation with its sole manufacturing facility in Rhode Island. For purposes of this Decree, or any action to enforce this Decree, Defendant consents to the Court's jurisdiction over Defendant and over this Decree and any such action to enforce it, and consents to venue in this judicial district.

3. For purposes of this Consent Decree, Defendant agrees that the Complaint states claims upon which relief may be granted pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), and Section 311(b)(7)(c) of the CWA, 33 U.S.C. § 1321(b)(7)(C).

II. APPLICABILITY

4. The provisions of this Consent Decree apply to and are binding upon the United States, and upon Defendant and any successors, assigns, or other entities or persons otherwise bound by law.

5. No transfer of ownership or operation of the Facility that takes place prior to any termination of this Consent Decree as provided in Section XVII, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Defendant of its obligation to ensure that the terms of this Consent Decree are implemented. At least 30 Days prior to such transfer, Defendant shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA and the United States Department of Justice in accordance with Section XIII (Notices). Any attempt to transfer ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this Consent Decree.

6. Defendant shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Consent Decree, as well as to any contractor retained to perform work required under this Consent Decree. Defendant shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

7. In any action to enforce this Consent Decree, Defendant shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. DEFINITIONS

8. Terms used in this Consent Decree that are defined in the CAA, EPCRA or CWA, or in regulations promulgated pursuant to these statutes, shall have the meanings assigned to them in these statutes and such regulations, unless otherwise defined in this Consent Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

“Complaint” shall mean the complaint filed by the United States in this action;

“Consent Decree” or “Decree” shall mean this Decree and any appendices attached hereto;

“Day” shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day;

“Defendant” shall mean Newport Biodiesel, Inc.;

“EPA” shall mean the United States Environmental Protection Agency and any of its successor departments or agencies;

“Effective Date” shall have the definition provided in Section XIV.

“Facility” shall mean Defendant’s biodiesel manufacturing facility located at 312 Connell Highway in Newport, Rhode Island.

“Paragraph” shall mean a portion of this Decree identified by an arabic numeral;

“Parties” shall mean the United States and Defendant;

“Section” shall mean a portion of this Decree identified by a roman numeral;

“State” shall mean the State of Rhode Island; and

“United States” shall mean the United States of America, acting on behalf of EPA.

IV. CIVIL PENALTY

9. Within 30 Days after the Effective Date, Defendant shall pay a sum of \$396,000 as a civil penalty. In the event that Defendant does not pay the entire civil penalty amount by the due date referenced in the previous sentence, interest shall accrue from the due date on any unpaid balance at the rate specified in 28 U.S.C. § 1961 as of the due date.

10. Defendant shall pay the civil penalty due by FedWire Electronic Funds Transfer ("EFT") in accordance with instructions provided to Defendant by the United States Department of Justice or the United States Attorney's Office for the District of Rhode Island. The payment instructions will include a Consolidated Debt Collection System ("CDCS") number, which Defendant shall use to identify all payments required to be made in accordance with this Consent Decree. The payment instructions will be provided to Defendant's counsel at the following address: Jennifer R. Cervenka, Esq., Partridge Snow & Hahn LLP, 40 Westminster Street, Suite 1100, Providence, Rhode Island 02903, jrc@psh.com. Defendant may change the individual to receive payment instructions on its behalf by providing written notice of such change to the United States and EPA in accordance with Section XIII (Notices).

11. At the time of payment, Defendant shall send notice that payment has been made: (i) to the EPA Finance Office via email at cinwd_acctsreceivable@epa.gov or via regular mail at EPA Cincinnati Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268; (ii) to EPA counsel via email or regular mail in accordance with Section XIV; and (iii) to the United States via email or regular mail in accordance with Section XIII. Such notice shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in United States v. Newport Biodiesel, Inc., and shall reference the case civil action number, CDCS Number and DOJ case number 90-5-2-1-11301.

12. Defendant shall not deduct any penalties paid under this Decree pursuant to this Section or Section VII (Stipulated Penalties) in calculating its federal income tax.

V. COMPLIANCE REQUIREMENTS

13. Defendant shall comply with the CAA's National Emissions Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing ("MON") set out at

40 C.F.R. Part 63, Subpart FFFF, and associated general regulations contained in 40 C.F.R. Part 63, Subpart A (“Subpart A”); the CWA’s Oil Pollution Prevention Regulations set out at 40 C.F.R. Part 112; Section 312(b) of EPCRA, 42 U.S.C. § 11022(b), and EPCRA regulations set out at 40 C.F.R. Part 370; and CAA Section 112(r)(1), 42 U.S.C. § 7412(r)(1).

A. CAA MON COMPLIANCE REQUIREMENTS

14. Defendant shall comply with all applicable requirements of the MON and Subpart A, and with all applicable regulatory requirements referenced therein, including but not limited those cited below in this Section.

1. MON Vapor Balancing and Leak Detection and Repair

15. For all storage tanks that Defendant has elected to demonstrate compliance with the MON using vapor balancing, Defendant shall comply with the requirements of 40 C.F.R. § 63.2470(e).

16. Defendant shall meet all applicable leak detection and repair requirements of 40 C.F.R. § 63.2480.

2. HAP Control System Monitoring and Recordkeeping Requirements

17. Pursuant to the CAA Administrative Order on Consent issued to Defendant on June 27, 2014, Defendant has installed and commenced operation of an air pollution control system to reduce emissions of hazardous air pollutants (“HAP Control System”) from the biodiesel manufacturing processes at the Facility. Defendant’s HAP Control System reduces emissions using a catalytic incinerator.

18. Defendant either shall install temperature monitoring devices in the gas stream immediately before and immediately after the catalytic incinerator’s catalyst bed that are capable of providing continuous records of measured temperatures in accordance with 40 C.F.R. §

63.988(c), or shall comply with the requirements of 40 C.F.R. § 63.2450(k)(4), which includes the monitoring and recording of inlet temperatures as specified in 40 C.F.R. Part 63, Subpart SS.

19. In the event that flow to the catalytic incinerator is intermittent, Defendant shall install, calibrate and operate a flow indicator at the inlet or outlet to the incinerator to identify periods of “no flow,” in accordance with 40 C.F.R. § 63.2460(c)(7).

20. Defendant shall install, operate and maintain all continuous parameter monitoring systems (“CPMS”), including the temperature and flow monitoring devices described above, according to manufacturer's specifications or other written procedures that provide adequate assurance that the equipment would reasonably be expected to monitor accurately, in accordance with 40 C.F.R. § 63.996(c).

21. Defendant shall meet the applicable monitoring and recordkeeping requirements of 40 C.F.R. §§ 63.998, 63.2460(c)(4), 63.2450(k) and 63.2525.

3. HAP Control System Performance Testing Requirements

22. Prior to or concurrently with the performance testing required below, Defendant must verify the operational status of all CPMS, in accordance with 40 C.F.R. § 63.996(c)(3).

23. Defendant shall conduct performance testing on its HAP Control System as required by this Consent Decree and in accordance with the applicable requirements of 40 C.F.R. §§ 63.7(e), 63.997, 63.2450(g) and 63.2460(c). In accordance with 40 C.F.R. § 63.2460(c)(2)(ii), Defendant shall establish emission profiles and conduct the performance test under worst-case conditions according to 40 C.F.R. § 63.1257(b)(8), instead of under normal operating conditions as specified in 40 C.F.R. §63.7(e)(1).

24. During the performance test, Defendant shall record applicable upstream and downstream temperatures and the temperature difference across the catalyst bed, averaged over

the full period of the performance test, for the purposes of establishing operating limits. See 40 C.F.R. §§ 63.998(a)(2)(ii)(B)(2) and 63.2460(c)(3).

4. HAP Control System Performance Testing Schedule

25. Defendant's HAP Control System performance testing shall be conducted in accordance with a written site-specific test plan approved by EPA on the schedule set out below.

26. By June 13, 2016, Defendant shall prepare and provide to EPA a draft written site-specific test plan that meets the requirements of the quality assurance program requirements described in 40 C.F.R. § 63.7(c)(2).

27. Within 60 days after the receipt of the draft site-specific test plan, EPA shall approve or comment on it. During this 60-day period, Defendant and EPA may hold a conference call or face-to-face meeting to discuss the draft plan. If EPA comments on the draft plan, or on any revised plan, Defendant shall incorporate EPA's comments and re-submit a revised plan to EPA within 30 days of receiving the comments. EPA shall approve or comment on the revised protocol within 30 days after receiving it. If EPA does not provide comments within any of the time periods specified above, then the draft protocol or revised protocol shall be deemed approved by EPA.

28. Within 75 days after EPA's approval of the site-specific test plan, Defendant shall schedule and conduct the HAP Control System performance test in accordance with the approved plan. At least 60 days prior to the scheduled test, Defendant shall provide a notification of the performance test to EPA. EPA may choose, in its discretion, to observe any or all aspects of the test.

29. Within 60 days after completing the HAP Control System performance test, Defendant shall submit a test report to EPA that meets the requirements of 40 C.F.R. §

63.7(g)(1). If Defendant's HAP Control System does not meet the applicable emission limits set out in Table 2 of the MON, Defendant shall provide EPA with a detailed description of the actions Defendant has taken, or will take, to comply with the emission limits.

5. MON Reporting Requirements

30. Within 60 days after completing the HAP Control System performance test, Defendant shall submit a notification of compliance status ("NOCS") report to EPA as required by 40 C.F.R. §§ 63.2520(a) and (d). The NOCS report shall contain all of the information required by 40 C.F.R. §§ 63.2520(d)(2)(i) - (ix), including the equipment leak compliance information listed in 40 C.F.R. § 63.1039(a) required to be included by 40 C.F.R. § 63.2520(d)(2)(vii).

31. By no later than January 31, 2017, Defendant shall submit its first compliance report to EPA, as required by 40 C.F.R. §§ 63.2520(a), (b) and (e), except that the period covered by the report shall be October 1, 2016 through December 31, 2016. Defendant's subsequent compliance reports shall cover six-month periods in accordance with 40 C.F.R. § 63.2520(b)(3) and shall be submitted to EPA in accordance with the reporting deadlines set out in 40 C.F.R. § 63.2520(b)(4). Defendant's compliance reports shall contain all of the information required by 40 C.F.R. §§ 63.2520(e)(1) - (10). The first report shall be submitted to EPA at the address provided in Section XIV (Notices.) Defendant's subsequent reports shall be submitted to EPA at the following address:

Attn: Air Compliance Clerk
U.S. Environmental Protection Agency, Region 1
Mail code OES04-2
5 Post Office Square, Suite 100
Boston, Massachusetts 02109-3912

B. CAA TITLE V OPERATING PERMIT REQUIREMENTS

32. Pursuant to Section 503 of the CAA, 42 U.S.C. § 7661b, and the approved Rhode Island Title V permit program set out in Rhode Island Air Pollution Control (“APC”) Regulation 29, Defendant shall apply for and obtain a CAA Title V operating permit for the Facility from the Rhode Island DEM. Defendant shall submit its Title V operating permit application to the Rhode Island DEM within 180 days after the Effective Date of this Decree. Defendant’s permit application shall include all MON requirements applicable to the Facility, and shall comply with all applicable requirements set out in APC Regulation 29. If Rhode Island DEM should request or require additional information related to the application, Defendant shall supply the information within any deadlines set by DEM.

VI. REPORTING REQUIREMENTS

33. Whenever any violation of this Consent Decree or of the environmental statutes, regulations and permits referenced herein, or any other event affecting Defendant’s performance under this Decree or the air pollution controls installed pursuant to the June 27, 2014 CAA Administrative Order on Consent, may pose an immediate threat to the public health or welfare or the environment, Defendant shall notify EPA orally or by electronic or facsimile transmission as soon as possible, but no later than 24 hours after Defendant first knew of the violation or event.

34. Unless otherwise specified in this Decree, all reports shall be submitted to the persons designated in Section XIII (Notices).

35. Each report submitted by Defendant under this Section shall be signed by an officer or authorized agent of the submitting party and include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed

to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

36. This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

37. The reporting requirements of this Consent Decree do not relieve Defendant of any other reporting obligations required by the CAA, EPCRA or CWA, or their implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

38. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

VII. STIPULATED PENALTIES

39. Defendant shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section VIII (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

40. Late Payment of Civil Penalty. If Defendant fails to pay the civil penalty required to be paid under Section IV (Civil Penalty) when due, Defendant shall be liable for stipulated penalties of \$500 per Day for each Day that the payment is late.

41. Failure to Comply with MON Vapor Balancing and Leak Detection/Repair, Monitoring/Recordkeeping, and Performance Testing Requirements. If Defendant fails to fully comply with any of the requirements set out in Sections V.A.1 - V.A.3 above, Defendant shall be liable for stipulated penalties for each violation of each such requirement, as follows:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1 to 15 days
\$1,000	15 to 30 days
\$2,500	31 days and beyond

42. Failure to Comply with Performance Test Schedule Requirements. If Defendant fails to fully comply with any of the performance testing schedule requirements set out in Section V.A.4 above, Defendant shall be liable for stipulated penalties for each violation of each such requirement, as follows:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$250	1 to 15 days
\$500	15 to 30 days
\$1,000	31 days and beyond

43. Failure to Comply with MON Emission Limits. If Defendant fails to comply with its applicable emission limits set out in Table 2 of the MON, Defendant shall be liable for stipulated penalties for each violation of each such limit, as follows:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1 to 15 days
\$2,500	15 to 30 days
\$5,000	31 days and beyond

44. Failure to Comply with Reporting Requirements. If Defendant fails to comply with any of the NOCS or compliance reporting requirements set out in Section V.A.5 (MON Reporting Requirements) or with any other reporting requirements set out in Section VI (Reporting Requirements), Defendant shall be liable for stipulated penalties for each violation or each such requirement, as follows:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$250	1 to 15 days
\$500	15 to 30 days
\$1,000	31 days and beyond

45. Stipulated penalties under this Section shall begin to accrue on the Day a violation of this Consent Decree first occurs and shall continue to accrue for each Day until the Day upon which the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree. Stipulated penalties shall accrue regardless of whether the United States has notified Defendant that a violation of this Consent Decree has occurred.

46. Stipulated penalties shall become due, and shall be paid by Defendant, not later than 30 Days after the United States issues Defendant a written demand for them.

47. The United States may in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

48. Stipulated penalties shall continue to accrue as provided in Paragraph 45, during any dispute resolution regarding stipulated penalties pursuant to Section IX, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, Defendant shall pay accrued penalties determined to be owing, together with interest, to the United States within 30 Days of the effective date of the agreement or the receipt of EPA's decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Defendant shall pay all accrued penalties determined by the Court to be owing, together with interest, within 60 Days of receiving the Court's decision or order, except as provided in subparagraph c, below.

c. If any Party appeals the Court's decision, Defendant shall pay all accrued penalties determined to be owing, together with interest, within 15 Days of receiving the final appellate court decision.

49. Obligations Prior to the Effective Date. Upon the Effective Date, the stipulated penalty provisions of this Decree shall be retroactively enforceable with regard to any and all violations of specific compliance and submission deadlines set forth in Section V.A that have

occurred prior to the Effective Date, provided that stipulated penalties that may have accrued prior to the Effective Date may not be collected unless and until this Consent Decree is entered by the Court.

50. Defendant shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 11, except that the notices shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

51. If Defendant fails to pay stipulated penalties according to the terms of this Consent Decree, Defendant shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States from seeking any remedy otherwise provided by law for Defendant's failure to pay any stipulated penalties.

52. The payment of penalties and interest, if any, under this Section shall not alter in any way Defendant's obligation to complete the performance of the requirements of this Consent Decree.

53. Non-Exclusivity of Remedy. The stipulated penalty provisions of this Section shall be in addition to all other rights reserved by the United States pursuant to Section XI (Effect of Settlement/Reservation of Rights) below. Nothing in this Section shall be construed as prohibiting, altering or in any way limiting the ability of the United States to seek any other relief it deems appropriate for Defendant's violation of this Decree or of the statutes, regulations or permits referenced within it, including but not limited to an action against Defendant for statutory penalties, additional injunctive relief, mitigation or offset measures, and/or contempt. However, the amount of any statutory penalty assessed for a violation of this Consent Decree

shall be reduced by an amount equal to the amount of any stipulated penalty assessed and paid pursuant to this Consent Decree.

VIII. FORCE MAJEURE

54. “Force majeure,” for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendant, of any entity controlled by Defendant, or of Defendant’s contractors, which delays or prevents the full performance of any obligation under this Consent Decree despite Defendant’s best efforts to fulfill the obligation. The requirement that Defendant exercise “best efforts to fulfill the obligation” includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (a) as it is occurring and (b) following the potential force majeure, such that the delay or nonperformance, and their adverse effects, are minimized to the greatest extent possible. “Force Majeure” does not include Defendant’s financial inability to perform any obligation under this Consent Decree.

55. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Defendant shall provide notice orally or by electronic or facsimile transmission to EPA as soon as possible, but no later than within 5 Days of when Defendant first knew that the event might cause a delay. Within 5 Days thereafter, Defendant shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendant’s rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Defendant, such event may cause or contribute to an

endangerment to public health, welfare or the environment. Defendant shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Defendant from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Defendant shall be deemed to know of any circumstance of which Defendant, any entity controlled by Defendant, or Defendant's contractors knew or should have known.

56. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

57. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Defendant in writing of its decision.

58. If Defendant elects to invoke the dispute resolution procedures set forth in Section IX (Dispute Resolution), it shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendant complied with the requirements of Paragraphs 54 and 55. If Defendant carries

this burden, the delay at issue shall be deemed not to be a violation by Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

IX. DISPUTE RESOLUTION

59. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree.

60. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendant sends the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 20 Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within 15 Days after the conclusion of the informal negotiation period, Defendant invokes formal dispute resolution procedures as set forth below.

61. Formal Dispute Resolution. Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Defendant's position and any supporting documentation relied upon by Defendant.

62. The United States shall serve its Statement of Position within 45 Days of receipt of Defendant's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any

supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Defendant, unless Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph.

63. Defendant may seek judicial review of the dispute by filing with this Court and serving on the United States, in accordance with Section XIII (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 20 Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Defendant's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree. Defendant's motion to the Court shall not raise new issues or submit new facts that were not previously presented to the United States during formal dispute resolution.

64. The United States shall respond to Defendant's motion within the time period allowed by the Local Rules of this Court. Defendant may file a reply memorandum.

65. Standard of Review. In any judicial proceeding pursuant to this Section's formal dispute resolution procedures, Defendant shall bear the burden of demonstrating that its position complies with, and furthers the objectives of, this Consent Decree and that Defendant is entitled to relief under applicable law. The United States reserves the right to argue that its position is reviewable only on the administrative record and must be upheld unless arbitrary and capricious or otherwise not in accordance with law.

66. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendant under this Consent

Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of nonperformance, but payment shall be stayed pending resolution of the dispute as provided in this Section. If Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VII (Stipulated Penalties).

X. INFORMATION COLLECTION AND RETENTION

67. The United States and its representatives, including attorneys, contractors, and consultants, shall have the right of entry into any facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials, to:

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;
- c. obtain samples and, upon request, splits of any samples taken by Defendant or its representatives, contractors, or consultants;
- d. obtain documentary evidence, including photographs and similar data; and
- e. assess Defendant's compliance with this Consent Decree.

68. Upon request, Defendant shall provide EPA or its authorized representative's splits of any samples taken by Defendant. Upon request, EPA shall provide Defendant splits of any samples taken by EPA.

69. Until five years after the termination of this Consent Decree, Defendant shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to Defendant's performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or

procedures. At any time during this information-retention period, upon request by the United States, Defendant shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

70. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendant shall notify the United States at least 90 Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States, Defendant shall deliver any such documents, records, or other information to EPA. Defendant may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendant asserts such a privilege, it shall provide the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of each author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by Defendant. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

71. Defendant may also assert that information required to be provided under this Section is protected as Confidential Business Information (“CBI”) under 40 C.F.R. Part 2. As to any information that Defendant seeks to protect as CBI, Defendant shall follow the procedures set forth in 40 C.F.R. Part 2.

72. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendant to maintain

documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

73. This Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint filed in this action through the date of lodging of this Consent Decree. This Consent Decree does not limit any rights or remedies available to the United States for any criminal violations.

74. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Defendant's Facility, whether related to the violations addressed in this Consent Decree or otherwise.

75. Except as expressly provided in this Section, this Consent Decree shall not be construed to prevent or limit the rights of the United States to obtain penalties or injunctive relief under the CAA, EPCRA and the CWA, any regulations or permits issued pursuant to these statutes, or any other federal or state laws, regulations or permits.

76. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Defendant is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Defendant's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's compliance with any aspect of this Consent Decree will result in

compliance with provisions of the CAA, EPCRA or the CWA, or with any regulations or permits issued pursuant to these statutes, or with any other provisions of federal, State, or local laws, regulations, or permits.

77. This Consent Decree does not limit or affect the rights of Defendant or of the United States against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Defendant, except as otherwise provided by law.

78. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

XII. COSTS

79. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Defendant.

XIII. NOTICES

80. Unless otherwise specified in this Decree, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

As to the United States by email: eescdcopy.enrd@usdoj.gov
Re: DJ # 90-5-2-1-11301

As to the United States by mail: EES Case Management Unit
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-5-2-1-11301

As to EPA by mail and email: Steven J. Viggiani
Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
Mail code OES04-3
5 Post Office Square, Suite 100
Boston, Massachusetts 02109-3912
viggiani.steven@epa.gov

As to Defendant by email and mail: Newport Biodiesel, Inc.
312 Connell Highway
Newport, RI 02840
Attn.: Blake A. Banky, President
blake@newportbiodiesel.com

With a copy via email and mail to:
Jennifer Cervenka
Partridge Snow & Hahn LLP
40 Westminster Street, Suite 1100
Providence, RI 02903
jrc@psh.com

81. Any Party may, by written notice to the other Party, change its designated notice recipient or notice address provided above.

82. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XIV. EFFECTIVE DATE

83. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket; provided, however, that Defendant hereby agrees that it shall be bound to perform duties scheduled by specific date to occur prior to the Effective Date. In the event the United States withdraws or withholds consent to this Consent Decree before entry, or the Court declines to enter the Consent Decree, then the

preceding requirement to perform duties scheduled to occur before the Effective Date shall terminate.

XV. RETENTION OF JURISDICTION

84. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections IX (Dispute Resolution) and XVI (Modification), or effectuating or enforcing compliance with the terms of this Decree.

XVI. MODIFICATION

85. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

86. Any disputes concerning modification of this Decree shall be resolved pursuant to Section IX (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 65, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XVII. TERMINATION

87. After Defendant has completed the requirements of Section V (Compliance Requirements), maintained compliance with its MON emission limits at the Facility for a period of 3 years, complied with all other requirements of this Consent Decree, and has paid the civil penalty and any outstanding stipulated penalties as required by this Consent Decree, Defendant

may serve upon the United States a Request for Termination, stating that Defendant has satisfied those requirements, together with all necessary supporting documentation.

88. Following receipt by the United States of Defendant's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Defendant has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

89. If the United States does not agree that the Decree may be terminated, Defendant may invoke dispute resolution under Section IX. However, Defendant shall not seek dispute resolution of any dispute regarding termination until 60 Days after service of its Request for Termination.

XVIII. PUBLIC PARTICIPATION

90. This Consent Decree shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendant consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Defendant in writing that it no longer supports entry of the Decree.

XIX. SIGNATORIES/SERVICE

91. Each Party certifies that at least one of their undersigned representatives is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

92. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendant agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XX. INTEGRATION

93. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than deliverables that are subsequently submitted and approved pursuant to this Decree, the Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree.

XXI. FINAL JUDGMENT

94. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Defendant.

Dated and entered this ___ day of _____, 2016

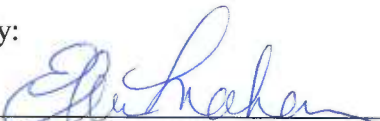
UNITED STATES DISTRICT JUDGE

UNITED STATES V. NEWPORT BIODIESEL, INC., CONSENT DECREE

For Plaintiff, UNITED STATES OF AMERICA:

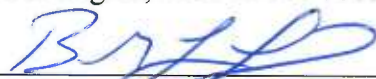
JOHN C. CRUDEN
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

By:



ELLEN MAHAN
Deputy Chief
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

05/31/16
Date




BRADLEY L. LEVINE
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

05/31/16
Date


UNITED STATES V. NEWPORT BIODIESEL, INC., CONSENT DECREE

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:



SUSAN STUHLIEN
Director
Office of Environmental Stewardship
U.S. Environmental Protection Agency,
Region I
Mail Code OES04-5
5 Post Office Square, Suite 100
Boston, Massachusetts 02109-3912

05/13/2016
Date




STEVEN J. VIGGIANI
Senior Enforcement Counsel
Office of Environmental Stewardship
U.S. Environmental Protection Agency,
Region I
Mail Code OES04-3
5 Post Office Square, Suite 100
Boston, Massachusetts 02109-3912

5/12/16
Date

UNITED STATES V. NEWPORT BIODIESEL, INC., CONSENT DECREE

FOR Defendant, NEWPORT BIODIESEL, INC.



BLAKE A. BANKY
President
Newport Biodiesel, Inc.

5-4-16
Date