

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

CLARENCE B. BLAIR, et al.,)

Plaintiffs,)

v.)

VESTAVIA HILLS BOARD OF)
EDUCATION, et al.,)

Defendants.)

Case No.: 2:07-CV-837-VEH

VESTAVIA HILLS BOARD OF)
EDUCATION,)

Third-Party Plaintiff,)

v.)

C.A. MURREN AND SONS, INC.;)
ARGO BUILDING COMPANY,)
INC.,)

Third-Party Defendants.)

CONSENT DECREE

WHEREAS, Defendant Vestavia Hills Board of Education ("Board of Education") is a school board created under Alabama law; and

WHEREAS, Defendants, McCrory Building Company, Inc., Argo Building

Company, Inc., C. A. Murren and Sons, Inc., and MSE Building Company, Inc. are contractors and subcontractors who participated in the construction of the Liberty Park Middle School at various times during the period June 2005 to present; and

WHEREAS, on May 4, 2007, Plaintiffs, Clarence B. Blair, Alex W. Jones, Jr., William C. Wood, Jones Investment Company and Wood Family Partnership, filed a complaint with the U.S. District Court for the Northern District of Alabama, alleging violations by Defendants of §§ 1311, 1342, and 1365 of the federal Clean Water Act, as amended, 33 U.S.C. §§ 1251-1387 (hereafter referred to as the "Clean Water Act" or "CWA"), seeking injunctive relief and civil penalties to abate the continuing discharge of pollutants into waters of the United States in violation of Defendant Board of Education's National Pollutant Discharge Elimination System ("NPDES") permit and seeking to compel the enforcement against Defendants of the provisions of the Clean Water Act; and

WHEREAS, in their suit Plaintiffs also alleged that Defendant Board of Education had committed inverse condemnation of their property and that the other Defendants had committed nuisance and trespass, thereby damaging Plaintiffs' property and necessitating repairs and remedial measures due to sediment deposited on their property; and

WHEREAS, as a condition of this settlement, certain Defendants have

performed additional erosion and sedimentation control practices at the Liberty Park Middle School construction site with the expenditure of approximately Forty-Five Thousand Dollars (\$45,000); and

WHEREAS, Defendant Board of Education entered into a consent order with the Alabama Department of Environmental Management ("ADEM") for alleged violations and paid civil penalties for these violations to ADEM in the amount of Twenty Thousand Dollars (\$20,000); and

WHEREAS, the construction of the Liberty Park Middle School is nearing completion and final landscaping will likely prevent future erosion and sedimentation control problems; and

WHEREAS, the NPDES permit for the construction of the Liberty Park Middle School expires in April 2009; and

WHEREAS, the parties believe that it is in their mutual best interests that the issues raised in this cause be resolved and that they settle their differences by entering into this Consent Decree for purposes of formalizing the terms of the settlement and disposing of this matter; and

WHEREAS, the parties, in consultation with counsel, have decided to settle their dispute in accordance with this Consent Decree; and

WHEREAS, a copy of the proposed Consent Decree was received by the

Attorney General of the United States and the Administrator of the United States Environmental Protection Agency more than forty-five (45) days before entry of this Consent Decree pursuant to 33 U.S.C. § 1365(c)(3); and

WHEREAS, by letter dated January 16, 2009 (Doc. 86), the United States, through its Department of Justice, Environment and Natural Resources Division, has indicated that it has no objection to the entry of this Consent Decree as amended and proposed by the parties on January 16, 2009.

NOW, THEREFORE, the parties' Motion for Entry of Consent Decree (Doc. 85) filed on January 16, 2009, is **GRANTED**. Further it is hereby ordered, adjudged and decreed as follows:

I. JURISDICTION

1. Based on allegations in the pleadings to date, this Court has ruled that it has jurisdiction over the parties and subject matter of this action pursuant to Section 505(a) of the Clean Water Act, 33 U.S.C. § 1365(a), and 28 U.S.C. § 1331.

II. APPLICABILITY

2. The provisions of this Consent Decree shall apply to and be binding upon the parties hereto, their officers, directors, agents, servants, employees, successors, assigns, members and attorneys, and upon all those persons, firms and corporations acting under, through or for them, and upon those persons, firms and

corporations in active concert or participation with them.

III. ENVIRONMENTAL IMPROVEMENT PROJECT

3. Thirty Thousand Dollars (\$30,000.00) shall be paid jointly by Defendants to the Cahaba Riverkeeper, a non-profit, tax-exempt organization, for the purpose of removing sediment from the Little Cahaba River in order to improve the quality of the water and habitat for fish and aquatic life. The check shall be payable to Cahaba Riverkeeper, c/o Myra A. Crawford, PhD, 4650 Old Looney Mill Rd, Birmingham, Alabama 35243. Plaintiffs will cooperate with the Cahaba Riverkeeper in employing an appropriate contractor for the cleanup, who will obtain all necessary permits for the cleanup. The cleanup shall start in the Little Cahaba River segment at Plaintiffs' property and continue upstream as far as funds permit. Plaintiffs agree to match the funds spent by the Cahaba Riverkeeper for the cleanup from their own funds, up to a total of Thirty Thousand Dollars (\$30,000.00). The Cahaba Riverkeeper may utilize Five Thousand Dollars (\$5,000.00) of the funds received as compensation for its efforts in assisting in this cleanup.

IV. REIMBURSEMENT OF PLAINTIFFS' LITIGATION COSTS

4. Pursuant to 33 U.S.C. § 1365(d), Defendants agree to reimburse Plaintiffs' litigation costs in the amount of \$36,000.00. Payment shall be by check payable to their attorney, Peter Bolvig, Esq.

V. PROPERTY DAMAGES

5. Defendants jointly agree to compensate Plaintiffs for property damages in the amount of One Hundred Eighty Four Thousand Dollars (\$184,000.00).

VI. DISCHARGE OF LIABILITY

6. Payment by Defendants of the sums in Paragraphs 3, 4 and 5 shall completely discharge Defendants, their Boards, elected officials, officers, directors, shareholders, agents, servants, employees, subcontractors, insurers, sureties, successors and/or assigns, from any and all claims which were, or could have been raised in the complaint, third-party complaint and amended complaints filed in this action as well as any and all claims for subrogation and/or indemnification and claims for benefits as an additional insured related thereto.

VII. GENERAL PROVISIONS

7. The undersigned representative(s) for each party certifies that he is fully authorized by the party whom he represents to enter into the terms and conditions of this Consent Decree and to bind that party legally to it.

8. The parties hereby expressly stipulate to the adequacy and sufficiency of consideration in and for all mutual covenants contained herein.

9. The terms of this Consent Decree shall not be changed, revised or modified except by a written instrument signed by all parties to this Consent Decree

or their privies, representatives, agents, successors, or assigns or by further orders of the Court, and regardless shall not take effect until formally approved by the Court and entered into the record by written order. Further, as a pre-condition to any request by the parties to subsequently change this Consent Decree, they must notify the United States, through its Department of Justice, Environment and Natural Resources Division, of their intent, by providing it with a copy of the proposed amendments, at least forty-five days before filing any motion to modify with the Court. Relatedly, any motion to modify filed by the parties must include evidence of their efforts to make this prior timely disclosure to the United States as well as a record of any response to the proposed alterations that the United States may have.

10. Defendants neither admit nor deny the violations alleged by Plaintiffs and detailed herein. As such, this Consent Decree shall not be deemed or construed at any time for any purpose by anyone (including, but not limited to, other parties who bring claims in any legal, administrative, or other proceeding) as an admission by Defendants of liability. Notwithstanding the foregoing, Defendants agree to abide by the terms of this Consent Decree and to pay the amounts more fully described herein.

DONE and ORDERED this the 30th day of January, 2009.



VIRGINIA EMERSON HOPKINS
United States District Judge

APPROVED FOR ENTRY:

/s/ Gary A. Davis

GARY A. DAVIS
Attorney for Plaintiffs

/s/ C. Peter Bolvig, III

C. PETER BOLVIG, III
Attorney for Plaintiffs

/s/ Philip F. Hutcheson

PHILIP F. HUTCHESON
Attorney for Vestavia Hills Board of Education

/s/ J. David Pugh

J. DAVID PUGH
Attorney for McCrory Building Company, Inc.

/s/ Stephen J. Bumgarner

STEPHEN J. BUMGARNER
Attorney for Argo Building Company, Inc.

/s/ G. Thomas Yearout

G. THOMAS YEAROUT
Attorney for C.A. Murren and Sons Company, Inc.

/s/ Thomas M. Little

THOMAS M. LITTLE
Attorney for MSE Building Company, Inc.