

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ALABAMA  
WESTERN DIVISION

UNITED STATES OF AMERICA and	)	
THE STATE OF ALABAMA,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No.
	)	
ALABAMA & GULF COAST	)	
RAILWAY, LLC,	)	
	)	
Defendant.	)	
	)	

**JOINT STIPULATION OF SETTLEMENT**

WHEREAS, the United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), filed a complaint in the above matter concurrently with the filing of the Stipulation of Settlement (“Stipulation”);

WHEREAS, the State of Alabama, *ex rel.* the Alabama Attorney General and the Alabama Department of Environmental Management (“ADEM”), also joined in the filing of the complaint pursuant to 28 U.S.C. § 1367 for purposes of settlement;

WHEREAS, the United States alleges claims against Defendant Alabama & Gulf Coast Railway, LLC (“AGR”), for civil penalties based on alleged violations of the Clean Water Act (“CWA”), 33 U.S.C. §§ 1251 *et. seq.*, for the discharge of approximately 12,851 barrels of crude oil some of which entered a wetland near Aliceville, Pickens County, Alabama;

WHEREAS, the complaint alleges that the wetland is a headwater to a tributary of Lubbub Creek, and Lubbub Creek flows into the Tombigbee River before eventually discharging into Mobile Bay;

WHEREAS, the complaint alleges that AGR’s oil discharge resulted from a train derailment;

WHEREAS, the State of Alabama alleges claims against AGR for civil penalties based on alleged violations of Section 22-22A-5(18)(c) of the Alabama Water Pollution Control Act, Ala. Code § 22-22A-5(18)(c), for the discharge of approximately 12,851 barrels of crude oil some of which entered a wetland near Aliceville, Pickens County, Alabama;

WHEREAS, the United States and the State of Alabama (hereinafter the “Governments”) and AGR (hereinafter the “Parties”) agree that settlement of this action, without further expense and litigation, is in the public interest and that entry of this Stipulation is the most appropriate means of resolving the instant matter;

NOW, THEREFORE, without adjudication or admission of any issue of fact or law, or any determination of liability, and upon consent and agreement of the Parties to this Stipulation, it is hereby AGREED, STIPULATED and ORDERED:

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 (Federal question), 1345 (United States as plaintiff), and 1355 (Fine, penalty or forfeiture), and pursuant to Sections 311(b)(7)(E) and (n) of the CWA, 33 U.S.C. § 1321(b)(7)(E) and (n).

2. This Court has jurisdiction over the subject matter of the claims of the State of Alabama pursuant to 28 U.S.C. § 1367.

3. Venue is proper in the Northern District of Alabama pursuant to 28 U.S.C. §§ 1391(b) and 1395 and pursuant to Section 311(b)(7)(E) of the CWA, 33 U.S.C. § 1321(b)(7)(E), because it is the judicial district in which AGR conducted business and the judicial district in which the oil spill occurred.

4. For the purposes of this Stipulation, Defendant agrees that the complaint states claims upon which relief may be granted.

5. Defendant shall pay a civil penalty of two million seventy-five thousand dollars (\$2,075,000) together with any applicable interest at the rate specified in 28 U.S.C. § 1961 as of the date this Stipulation is filed with the Court. Interest shall begin to accrue 30 days after the Court enters this Stipulation.

6. One half the civil penalty, or one million thirty-seven thousand five hundred dollars (\$1,037,500), as set forth herein shall be paid to the United States within 30 days after the Court enters this Stipulation and the payment shall be by FedWire Electronic Funds Transfer in accordance with written instructions to be provided to Defendant by the Financial Litigation Unit of the U.S. Attorney’s Office for the Northern District of Alabama. Such monies are to be deposited in the Oil Spill Liability Trust Fund pursuant to 33 U.S.C. § 1321(s) and 26 U.S.C. § 9509(b)(8). The Financial Litigation Unit (“FLU”) will provide the payment instructions to: Gregory Tan, Greenberg Traurig, LLP, 1144 15th Street, Suite 3300 Denver, Colorado 80202,

on behalf of Defendant. 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 VI (Notification). At the time of payment, Defendant shall send evidence of the transfer, together with a transmittal letter referencing this Stipulation, the civil action number and DOJ case number 90-5-1-1-11368, as follows:

To EPA by email to [acctsreceivable.CINWD@epa.gov](mailto:acctsreceivable.CINWD@epa.gov) and by mail to:

EPA Cincinnati Finance Office  
26 Martin Luther King Drive  
Cincinnati, Ohio 45268

Chief, Enforcement and Compliance Assurance Division  
Water Enforcement Branch  
U.S. Environmental Protection Agency  
Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

To DOJ:

Chief, Environmental Enforcement Section  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044

To the Coast Guard:

National Pollution Funds Center  
US Coast Guard Stop 7605  
2703 Martin Luther King Jr. Ave SE  
Washington, DC 20593-7605

7. One half the civil penalty, or one million thirty-seven thousand five hundred dollars (\$1,037,500), as set forth herein shall be paid to the State of Alabama within 30 days after the Court enters this Stipulation in accordance with written instructions to be provided to Defendant by the Office of Attorney General, State of Alabama. At the time of payment, Defendant shall send evidence of the transfer, together with a transmittal letter referencing this Stipulation, and the civil action number to:



Office of Attorney General  
State of Alabama  
Administrative Services Division  
501 Washington Avenue  
Montgomery, Alabama 36130

8. If any portion of the civil penalty payable to the United States or the State of Alabama under this Stipulation is not paid when due, the United States or the State of Alabama may issue a written demand for payment of stipulated penalties under this Paragraph. Defendant shall, within 30 days of receipt of such written demand, pay a stipulated penalty to the United States of \$5,000 for each day that Defendant's civil penalty payment is delayed beyond the due date. Payment of any stipulated penalty to the United States shall be made in the manner set forth herein. The United States, in its sole and unreviewable discretion, may reduce or waive stipulated penalties otherwise payable under this Stipulation. In addition, interest shall continue to accrue on the unpaid balance through the date of payment.

9. All of the foregoing obligations shall apply to and are binding upon Defendant and its successors, and shall not be altered by any change in ownership or corporate status.

10. Each person signing this Stipulation warrants and represents that he or she possesses full authority to bind the party on whose behalf he or she is signing to all the terms of this Stipulation.

11. Entry of this Stipulation and payment of the penalty stated herein, and any stipulated penalties and interest due, resolves all civil claims of the United States and the State of Alabama for the matters alleged in the complaint filed in this action for the Oil Discharge, including all Tolled Claims against the parties to the Tolling Agreement for Federal and State claims relating to the November 7, 2013 Aliceville, Alabama oil spill and resolves all of AGR's obligations under U.S. EPA's November 18, 2013 order issued under Section 311(c) of the Clean Water Act.

12. The Governments reserve all legal and equitable remedies available to enforce the provisions of this Stipulation, except as expressly stated in Paragraph 11 above. This Stipulation shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the Clean Water Act, or any regulations promulgated thereunder, or under other federal, state or local laws, or permit conditions, except as stated in Paragraph 11 above.

13. Defendant neither admits nor denies the allegations of the complaint and this Stipulation.

14. In any subsequent administrative or judicial proceeding initiated by the United States or the State of Alabama for injunctive relief, civil penalties, or other appropriate relief relating to Defendant, Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim splitting or other defenses based upon any contention that the claims raised by the United States or the State of Alabama in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been resolved pursuant to Paragraph 11.

15. This Stipulation constitutes a final judgment under Federal Rules of Civil Procedure 54 and 58, and it shall constitute an enforceable judgment in accordance with Rule 69 of the Federal Rules of Civil Procedure, and Federal Debt Collection Procedure Act, 28 U.S.C. §§ 3001-3308, and other applicable authority. The Governments shall be deemed a judgment creditor for purposes of collection of any unpaid amounts of the civil and stipulated penalties. Further, Defendant shall be liable for attorneys' fees and costs reasonably incurred by the United States to collect any amounts due under this Stipulation.

16. With regard to matters relating to this Stipulation and its enforcement and the filing of the complaint, Defendant shall identify on the attached signature pages the names, addresses, and telephone numbers of agents who are authorized to accept service of process by mail on behalf of Defendant with respect to all matters arising under or relating to this Stipulation and the filing of the complaint. Defendant hereby agrees to accept service of process by mail and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and in any applicable local rules of this Court, including, but not limited to, service of a summons.

17. Except as provided herein, each party shall bear its own costs and attorneys' fees related to this action.

18. Defendant shall not deduct any civil or stipulated penalties paid under this Stipulation in calculating its federal or state income tax.

AS AGREED AND STIPULATED TO BY THE PARTIES:

IT IS SO ORDERED ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2020.

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

THE UNDERSIGNED PARTIES enter into this Joint Stipulation of Settlement in the matter of United States v. Alabama & Gulf Coast Railway, LLC.

FOR PLAINTIFF THE UNITED STATES OF AMERICA:

Respectfully Submitted,

FOR THE UNITED STATES

ELLEN M. MAHAN  
Deputy Section Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice

*s/ James R. MacAyeal*  
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**LEIF PALMER**

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Dated: \_\_\_\_\_

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Office of Regional Counsel  
U.S. Environmental Protection  
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OF COUNSEL:

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Regional Counsel  
U.S. Environmental Protection Agency,  
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Atlanta, Georgia 30303



Dated: 9/1/20



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Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
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Washington, D.C. 20460

FOR PLAINTIFF THE STATE OF ALABAMA

STEVE MARSHALL  
ATTORNEY GENERAL

/s/ Robert D. Tambling  
Robert D. Tambling (TAM001)  
*Assistant Attorney General*

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STEVE MARSHALL  
ATTORNEY GENERAL  
/s/ Anthony Todd Carter  
Anthony Todd Carter  
*Assistant Attorney General and  
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ADDRESS OF COUNSEL:  
Alabama Department of Environmental  
Management  
Office of General Counsel  
Post Office Box 301463  
Montgomery, Alabama 36130-1463  
(334) 271-7855  
[atcarter@adem.alabama.gov](mailto:atcarter@adem.alabama.gov)

FOR DEFENDANT ALABAMA & GULF COAST RAILWAY, LLC:

Dated: 7/8/20



Catherine A. Pushchak  
Alabama & Gulf Coast Railway  
20 West Avenue Darien, CT 06820

Agent Authorized to Accept Service on Behalf of the Above-Signed Party:

Catherine Pushchak

Print Name

a. secretary

Print Title

Alabama & Gulf Coast Railway, LLC

Company

c/o 20 West Ave.

Street Address

Darien, CT 06820

City, State, ZIP Code

203-202-8915

Telephone Number