IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. WESTERN DUBUQUE BIODIESEL, LLC Defendant.	Case No: 16-cv-1038 Judge:

CONSENT DECREE
FOR SETTLEMENT OF CLAIMS INVOLVING
WESTERN DUBUQUE BIODIESEL, LLC

TABLE OF CONTENTS

I. JURISDICTION AND VENUE 3
II. APPLICABILITY 4
III. DEFINITIONS 5
IV. CIVIL PENALTY 7
V. STIPULATED PENALTIES 9
VI. FORCE MAJEURE 12
VII. DISPUTE RESOLUTION 14
VIII. INFORMATION COLLECTION AND RETENTION 16
IX. CERTIFICATION 18
X. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS 19
XI. COSTS 20
XII. NOTICES 21
XIII. EFFECTIVE DATE 22
XIV. RETENTION OF JURISDICTION 23
XV. MODIFICATION 23
XVI. TERMINATION 23
XVII. PUBLIC PARTICIPATION 24
XVIII. SIGNATORIES/SERVICE 25
XIX. INTEGRATION 25
XX. FINAL JUDGMENT 26

WHEREAS, Plaintiff United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), filed a Complaint in this action concurrently with this Consent Decree, alleging that Defendant, Western Dubuque Biodiesel, LLC ("Defendant") violated Section 211(*o*) of the Clean Air Act ("CAA" or the "Act"), 42 U.S.C. § 7545(*o*), and the regulations issued thereunder at 40 C.F.R. Part 80, Subpart M;

WHEREAS, the Complaint alleges that NGL Crude Logistics, LLC (f/k/a Gavilon, LLC) entered into a series of transactions with Defendant that resulted in the generation of about 36 million allegedly invalid 2011 D4 Renewable Identification Numbers (RINs);

WHEREAS, Gavilon, LLC initiated discussions and negotiations with Defendant in late 2010 and early 2011 regarding the commercial transactions that resulted in generation of the allegedly invalid RINs set forth in the Complaint;

WHEREAS, Defendant received assurances from Gavilon, LLC that Gavilon, LLC had secured legal review of the proposed commercial transactions, including review of the validity of any RINs to result therefrom;

WHEREAS, Defendant consulted an individual that Defendant understood to be associated with the National Biodiesel Board and that Defendant understood to have expertise regarding the validity of RINs that would result from the proposed commercial transactions;

WHEREAS, EPA developed information related to alleged violations by inspecting Defendant's plant and through Defendant's subsequent responses to EPA's formal information

requests pursuant to Section 114 of the Clean Air Act and responses to various informal requests for additional information;

WHEREAS, Defendant provided extensive responses to EPA's Section 114 requests and informal requests for information, and otherwise cooperated with EPA's investigation;

WHEREAS, under the commercial arrangements, Gavilon, LLC supplied to Defendant a product that Gavilon, LLC described as a methyl ester feedstock which Defendant processed at its Facility to meet Gavilon, LLC's specifications and Defendant then supplied the processed product back to Gavilon, LLC;

WHEREAS, Defendant represents it has not entered into further similar transactions with Gavilon, LLC since 2011;

WHEREAS, Defendant represents it has not since 2011 used the same feedstock as that used in 2011 and challenged in the Complaint;

WHEREAS, Defendant is currently operating under a RIN Quality Assurance Program;

WHEREAS, the United States asserts that Defendant is liable for civil penalties and other relief for all alleged violations in its Complaint;

WHEREAS, Defendant does not admit to any violations and/or any liability to the United States arising out of the transactions or occurrences alleged in the Complaint;

WHEREAS, the United States has reviewed Financial Information regarding Defendant and has determined that Defendant has a limited ability to pay a civil penalty in this matter;

WHEREAS, 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;

WHEREAS, without a trial regarding any issue of fact or law, the Parties agree to entry of this Decree; and

WHEREAS, this Consent Decree does not resolve NGL Crude Logistics, LLC's liability for civil penalties and other relief for all alleged violations in the Complaint against NGL Crude Logistics, LLC;

NOW, THEREFORE, before the taking of any testimony and with 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, pursuant to 28 U.S.C. §§ 1331, 1345, 1355 and CAA Sections 205(b) and 211(d)(2), 42 U.S.C. §§ 7524(b) and 7545(d)(2). The Parties agree that this Court has personal jurisdiction over them. Venue in this District is proper pursuant to 28 U.S.C. §§ 1391(b) and (c), 1395(a), and Section 205(b) of the Act, 42 U.S.C. § 7524(b), because the violations alleged in the Complaint are alleged to have occurred in, and Defendant conducts business in, this judicial district.

2. Solely for purposes of this Consent Decree, Defendant waives any defenses it might have as to jurisdiction and venue, and, without admitting or denying the factual allegations contained in the Complaint, consents to the terms of this Decree. In any action to enforce this

Decree, Defendant accepts the Court's jurisdiction over this Decree and consents to venue in this District.

3. To facilitate a resolution, Defendant waives service of the Complaint and summons in this matter pursuant to Fed. R. Civ. P. 4(d).

4. Solely for purposes of this Consent Decree, Defendant agrees that the Complaint states claims upon which relief may be granted pursuant to CAA Section 211(o), 42 U.S.C. § 7545(o), and the regulations published at 40 C.F.R. Part 80, Subpart M.

II. APPLICABILITY

5. The obligations 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.

6. No transfer of ownership or operation of the Facility, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Defendant of its obligation to ensure that the terms of the 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, the United States Attorney for the Northern District of Iowa, and the United States Department of Justice, in accordance with Section XII (Notices). Any attempt to transfer ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this Decree.

7. 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 Decree, as well as to any contractor retained to perform work required under this Consent Decree.

8. 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

9. Terms used in this Consent decree that are defined in the Act or in regulations at 40 C.F.R. Part 80 shall have the meanings assigned to them in the Act or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

"Act" or "CAA" means the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq.;

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

"Consent Decree" or "Decree" shall mean this Consent Decree;

"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 Western Dubuque Biodiesel, LLC;

"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 XIII;

"Facility" shall mean Defendant's biodiesel plant located at 904 Jamesmeier Road, Farley, Iowa 52046.

"Financial Information" shall mean Defendant's recent audited annual financial statements, federal corporate income tax returns, monthly balance sheets through November 2015 and income statements, and pro forma financial forecasts from 2015 to 2020, among other information;

"Interest" shall mean interest at the rate specified in 28 U.S.C. § 1961 as of the date of lodging of this Consent Decree;

"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;

"Transfer" shall mean to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise;

"United States" shall mean the United States of America, acting on behalf of EPA;

IV. CIVIL PENALTY

10. Defendant shall pay to EPA the principal amount of $6,000,000. Payment of the principal amount shall be made in three installments.

a. The first installment payment of $3,000,000 is due within 30 Days after the Effective Date and, if timely paid, shall include no Interest.

b. The second installment payment of $2,000,000 is due within 12 months of the Effective Date of this Consent Decree. The installment payment shall also include an additional sum for Interest accrued on the unpaid portion of the principal amount calculated from the date of the prior payment until the date of the payment.

c. The third installment payment of $1,000,000 is due within 24 months of the Effective Date of this Consent Decree. The installment payment shall also include an additional sum for Interest accrued on the unpaid portion of the principal amount calculated from the date of the prior payment until the date of the payment.

d. The Financial Litigation Unit ("FLU") of the United States Attorney's Office for the Northern District of Iowa shall send a calculation of the Interest due for each payment to Defendant. Defendant may pay any installment payment prior to the due date, but must contact the FLU in advance for a determination regarding the amount of Interest to be included with the payment. In the event any installment

payment includes an overpayment, the amount of the overpayment shall be applied to the remaining principal.

11. Defendant shall pay the civil penalty due via FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account, in accordance with instructions provided to Defendant by the FLU of the United States Attorney's Office for the Northern District of Iowa after the Effective Date. The payment instructions provided by the FLU 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 FLU will provide the payment instructions to:

General Manager
Attn: Tom Brooks
Western Dubuque Biodiesel, LLC
P.O. Box 82
904 Jamesmeier Road
Farley, IA 52046
563-744-3554
tom.brooks@wdbiodiesel.net

CC via e-mail:

William Schueller
Chairman
Western Dubuque Biodiesel, LLC
563-590-6237
bill.schconst@yahoo.com

Bruce Klosterman
Vice Chairman
Western Dubuque Biodiesel, LLC
563-875-2446
klosbruce@yousq.net

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 XII (Notices).

At the time of payment, Defendant shall send notice that payment has been made: (i) to EPA 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 the United States via email or regular mail in accordance with Section XII; and (iii) to EPA in accordance with Section XII. Such notice shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in *United States v. Western Dubuque Biodiesel, LLC* and shall reference the civil action number, CDCS Number and DOJ case number 90-5-2-1-11163.

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

V. STIPULATED PENALTIES

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

14. Late Payment of Civil Penalty. If any amounts due to EPA under Paragraph 10 (Civil Penalty) are not paid by the required date, Defendant shall be in violation of this Consent

Decree and shall pay, as a stipulated penalty $5,000 per Day for each Day that the payment is late during the first 15 Days and $10,000 for each Day thereafter.

15. Stipulated penalties under this Section shall begin to accrue on the Day after a violation occurs and shall continue until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

16. Defendant shall pay any stipulated penalty within 30 Days of receiving the United States' written demand.

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

18. Stipulated penalties shall continue to accrue as provided in Paragraph 15, during any Dispute Resolution, 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 stipulated 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 stipulated 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 District 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.

19. Defendant shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 10, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

20. 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.

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

22. Non-Exclusivity of Remedy. Subject to the provisions of Section X (Effect of Settlement/Reservation of Rights), the United States expressly reserves the right to seek any other relief it deems appropriate for Defendant's violation of applicable law, including but not limited to an action against Defendant for statutory penalties, additional injunctive relief, mitigation or offset measures, and/or contempt. As to any action that constitutes both a violation of this Consent Decree and a statutory violation, the amount of any statutory penalty

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

VI. FORCE MAJEURE

23. "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 that delays or prevents the 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 and any adverse effects of the delay are minimized. Force Majeure does not include Defendant's financial inability to perform any obligation under this Consent Decree.

24. 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 the United States within 72 hours of when Defendant first knew that the event might cause a delay. Within 7 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.

25. 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.

26. 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.

27. If Defendant elects to invoke the dispute resolution procedures set forth in Section VII (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 23 and 24. 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.

VII. DISPUTE RESOLUTION

28. 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. Defendant's failure to seek resolution of a dispute under this Section shall preclude Defendant from raising any such issue as a defense to an action by the United States to enforce any obligation of Defendant arising under this Decree.

29. 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 45 Days after the conclusion of the informal negotiation period, Defendant invokes formal dispute resolution procedures as set forth below.

30. 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.

31. 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.

32. Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XII (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 10 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.

33. Except as otherwise provided in this Decree, in any dispute brought under Paragraph 30 of this Decree (Formal Dispute Resolution), Defendant shall bear the burden of

demonstrating that its position complies with this Decree and the CAA and that it is entitled to relief under applicable principles of 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, and Defendant reserves the right to argue to the contrary.

34. 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 noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 32. If Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section V (Stipulated Penalties).

VIII. INFORMATION COLLECTION AND RETENTION

35. 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 documentary evidence, including photographs and similar data; and

d. assess Defendant's compliance with this Consent Decree.

36. Until 5 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 business 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.

37. 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.

38. 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.

39. 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.

IX. CERTIFICATION

40. Defendant hereby certifies, to the best of its knowledge and belief, after thorough inquiry, (a) that it has submitted to the United States financial information that fairly, accurately, and materially sets forth its financial circumstances; (b) that those circumstances have not materially changed between November 2015 and the date that Defendant signed this Consent Decree; and (c) that it does not have any insurance policies that may cover any payment of a civil penalty relating to this matter.

X. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

41. This Consent Decree resolves the civil claims of the United States against Defendant for the alleged violations in the Complaint filed in this action through the date of lodging.

42. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal laws, regulations, or permit conditions. 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.

43. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, other appropriate relief relating to Defendant's violations, 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 in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 41.

44. 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 regulations at 40 C.F.R. Part 80, Subpart M, or with any other provisions of federal, state, or local laws, regulations, or permits.

45. 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.

46. 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.

XI. COSTS

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

XII. NOTICES

48. 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:

To the United States Department of Justice by email:

Eescdcopy.enrd@usdoj.gov
Re: DJ# 90-5-2-1-11163

To the United States Department of Justice 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# 90-5-2-1-11163

To the EPA:

Director, Air Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W. Mail Code 2422A
Washington, D.C. 20460

Jeff Kodish
Attorney-Advisor
Air Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1595 Wynkoop Street (8MSU)
Denver, Colorado 80202
Telephone: (303) 312-7153
Email: kodish.jeff @epa.gov

To Defendant by mail and e-mail:

General Manager
Attn: Tom Brooks
Western Dubuque Biodiesel, LLC
P.O. Box 82
904 Jamesmeier Road
Farley, IA 52046
563-744-3554
tom.brooks@wdbiodiesel.net

CC:
William Schueller
Chairman
Western Dubuque Biodiesel
563-590-6237
bill.schconst@yahoo.com

Bruce Klosterman
Vice Chairman
Western Dubuque Biodiesel
563-875-2446
klosbruce@yousq.net

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

50. 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.

XIII. EFFECTIVE DATE

51. 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.

XIV. RETENTION OF JURISDICTION

52. 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 VII and XV, or effectuating or enforcing compliance with the terms of this Decree.

XV. MODIFICATION

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

54. Any disputes concerning modification of this Decree shall be resolved pursuant to Section VII (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 33, 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).

XVI. TERMINATION

55. After Defendant has paid the civil penalty in full and any accrued 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.

56. 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.

57. If the United States does not agree that the Decree may be terminated, Defendant may invoke Dispute Resolution under Section VII. However, Defendant shall not seek Dispute Resolution of any dispute regarding termination until 30 Days after service of its Request for Termination.

XVII. PUBLIC PARTICIPATION

58. 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.

XVIII. SIGNATORIES/SERVICE

59. Each undersigned representative of Defendant and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she 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.

60. 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.

XIX. INTEGRATION

61. 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. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree.

XX. FINAL JUDGMENT

62. 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

Signature Page for *United States of America v. Western Dubuque Biodiesel, LLC* Consent Decree

FOR THE UNITED STATES DEPARTMENT OF JUSTICE:

Respectfully submitted,

_____
Date

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

9/28/16
Date

JAMES FREEMAN
Senior Attorney
ALEXANDRA B. SHERERTZ
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division

10/4/16
Date

KEVIN W. TECHAU
United States Attorney
Northern District of Iowa

10/3/16
Date

MATTHEW J. COLE
Assistant United States Attorney
Northern District of Iowa

Signature Page for *United States of America v. Western Dubuque Biodiesel, LLC* Consent Decree

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

Respectfully submitted,

9/30/16
Date

CYNTHIA GILES
Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

9/28/16
Date

SUSAN SHINKMAN
Director
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

9/27/2016
Date

PHILLIP A. BROOKS
Director
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Mail Code 2422A
Washington, D.C. 20406

Signature Page for *United States of America v. Western Dubuque Biodiesel, LLC* Consent Decree

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

9/21/16

Date

JEFF KODISH
Fuels Team Leader, Attorney Advisor
MATTHEW KRYMAN
Attorney Advisor
Air Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1595 Wynkoop Street (8MSU)
Denver, CO 80202

Signature Page for *United States of America v. Western Dubuque Biodiesel, LLC* Consent Decree

FOR WESTERN DUBUQUE BIODIESEL, LLC:

Respectfully submitted,

9/16/16
Date

William Schueller
Chair