

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE**

**HARPETH RIVER WATERSHED
ASSOCIATION,
Plaintiff,**

v.

**THE CITY OF FRANKLIN,
TENNESSEE,
Defendant.**

Case No. 3:14-1743

Judge Kevin Sharp

Magistrate Judge John Bryant

**JOINT MOTION TO APPROVE SETTLEMENT AGREEMENT AND DISMISS WITH
PREJUDICE, RETAINING JURISDICTION TO ENFORCE THE AGREEMENT**

Plaintiff Harpeth River Watershed Association and Defendant City of Franklin (the “Parties”) jointly and respectfully move the Court to approve their Settlement Agreement and dismiss the case with prejudice, retaining jurisdiction, as described below. The Parties so move under the following conditions.

1. Attached hereto as Exhibit A is the Settlement Agreement entered into between the Parties.
2. Pursuant to case law and because this case was filed under the Clean Water Act, 33 U.S.C. § 1365(c)(3), this Court retains jurisdiction to review the Settlement Agreement. In *Bragg v. Robertson*, 54 F. Supp. 2d 653, 661-63 (S.D.W. Va. 1999), the court

addressed the issue of settlement agreements as opposed to consent decrees in a Clean Water Act suit and found that it retained jurisdiction to review a settlement agreement due to the public interest at stake, including both environmental harms and resulting harms to residents and economic harms to the defendant and defendant's employees. The court made further distinction relative to the plaintiff stating that plaintiffs in Clean Water Act suits differ from a typical private party in ordinary litigation because they bring litigation as a citizen suit. For these reasons, the Parties ask the Court to review and approve their Settlement Agreement, retaining jurisdiction to enforce the Agreement.

3. Pursuant to 33 U.S.C. § 1365(c)(3)¹ and 40 C.F.R. § 135.5,² the Parties notify the Court of the 45-day review period afforded to the United States Attorney General and the Administrator of the U.S. Environmental Protection Agency.
4. In accordance with their Agreement that, within twenty-four (24) hours of approval by the City's Board of Mayor and Aldermen, the Parties will provide a copy of this Agreement to the Department of Justice for its review, the Parties are providing the Agreement to the United States along with this motion, as indicated in the Certificate of Service.
5. The Parties have further agreed that, to the extent that the United States' review is required for citizen suits where there has been no admission or finding of liability, the Parties will in good faith consult with the United States and work to ensure that the

¹ "No consent judgment shall be entered in an action in which the United States is not a party prior to 45 days following the receipt of a copy of the proposed consent judgment by the Attorney General and the Administrator." 33 U.S.C. § 1365(c)(3).

² "When the parties in an action in which the United States is not a party file or lodge a proposed consent judgment with the court, the plaintiff shall notify the court of the statutory requirement that the consent judgment shall not be entered prior to 45 days following receipt by both the Administrator and the Attorney General of a copy of the consent judgment." 40 C.F.R. § 135.5(b).

Department will not object to the substance of the terms of this Agreement upon review or approval by the Court.

6. Although the Parties' Agreement is not memorialized in a consent decree, the Parties respectfully request that the Court withhold consideration of their Agreement during the 45-day review period, unless the Attorney General and the Administrator submit comments prior to the conclusion of the 45-day period or notify the Court of their intention not to submit comments, or the Court determines that the United States' review does not apply to this Agreement because the City has not admitted liability and it is not being memorialized in a consent decree. *Cf. Sierra Club, Inc. v. Elec. Controls Design, Inc.*, 909 F.2d 1350, 1354-56 (9th Cir. 1990). As required by the Clean Water Act, 33 U.S.C. § 1365(c)(3), and pursuant to the U.S. Department of Justice Policy, the parties shall remit a copy of the Settlement Agreement to the Department of Justice who shall have up to forty-five (45) days to provide comment to the Court.

WHEREFORE, the Parties respectfully request that, after any appropriate and necessary review by the United States and this Court, this Court enter an Order granting this Motion:

(1) finding that that this Agreement has been negotiated by the Parties in good faith and will avoid litigation between the Parties, and, further, that this Agreement is an adequate and equitable resolution of the claims in Plaintiff's Complaint; and

(2) dismissing the case with prejudice, but retaining jurisdiction to enforce the Agreement.

Respectfully submitted this the 10th day of May, 2016.

/s Delta Anne Davis

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that this filing has been served via the Court's electronic filing system on May 10, 2016 to:

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This filing is also being served via certified mail on May 11, 2016:

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