

**ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

**NOTICE OF PROPOSED RENEWAL OF THE POST CLOSURE AGREEMENT UNDER THE ALABAMA HAZARDOUS WASTES MANAGEMENT AND MINIMIZATION ACT (AHWMMA) AND REQUEST FOR COMMENTS**

**PUBLIC NOTICE – 421**

**TALLADEGA COUNTY**

**RESOLUTE FOREST PRODUCTS US INC.** of COOSA PINES, Alabama submitted to ADEM a Post Closure Plan for renewal to address post closure care for Solid Waste Management Units (SWMUs) which have been closed with wastes and/or contaminated soils remaining in-place at its facility (**EPA I.D. Number ALD0041000790**) located at 17589 Plant Road, Coosa Pines, Alabama. The Department has determined the facility's revised Post-Closure Plan to be complete and has prepared a draft Post-Closure Agreement, in lieu of a permit, in accordance with State regulations.

**RESOLUTE FOREST PRODUCTS US INC.** operates a bleached Kraft pulp mill. The facility mill occupies approximately 2,700-acres and is divided into two portions by the Coosa River. The mill property is currently utilized as an active market pulp manufacturing operation. Resolute has three regulated units that require ongoing groundwater monitoring and post closure care: SWMU No. 33- Former Buried Drum Site; SWMU No. 32 – Former Lime Waste/Bark Ash Landfill; and, SWMU No. 31 - Former Mill Landfill. The hazardous waste which was discovered around these units were volatile organic compounds (VOCs), such as tetrachloroethene (PCE) and trichloroethene (TCE). **RESOLUTE FOREST PRODUCTS US INC.** is the owner of the facility. This Post Closure Agreement renewal addresses post closure care activities and groundwater remedial activities to be conducted.

Copies of the draft Post-Closure Agreement are available for public inspection electronically via <http://adem.alabama.gov/newsEvents/publicNotices.cnt> and at the following location Monday – Friday (except legal holidays) during the hours of 8:00 a.m. to 5:00 p.m. A nominal fee for copying and/or mailing may be charged. Arrangements for copying should be made in advance.

**Russell A. Kelly, Chief  
Permits and Services Division  
ADEM  
1400 Coliseum Blvd.  
[Mailing address: PO Box 301463; Zip 36130-1463]  
Montgomery, Alabama 36110-2400  
(334) 271-7714**

Persons wishing to comment may do so, in writing, to the Department's named contact above within 45 days following the publication date of this notice. In order to affect final decisions, comments must offer technically substantial information that is applicable to the proposed plan.

A written request for a public hearing may also be filed within that 45-day period and must state the nature of the issues proposed to be raised in the hearing. The Director shall hold a public hearing upon receipt of a significant number of technical requests.

After consideration of all written comments, review of any public hearing record, and consideration of the requirements of the AHWMMA, the Federal Resource, Conservation and Recovery Act (RCRA) and applicable regulations, the Department will make a final determination. The Department will develop a response to comments, which will become part of the public record and will be available to persons upon request. Notice will be sent to any person requesting notice of the final action.

The Department maintains a list of interested individuals who are mailed legal notices regarding proposed Agreement. If you wish to receive such notices, contact the Permits & Services Division via telephone (334-271-7714), e-mail (permitsmail@adem.alabama.gov), or postal service (P.O. Box 301463, Montgomery, AL 36130-1463).

This notice is hereby given this **20<sup>th</sup> day of November, 2019** by authorization of the Alabama Department of Environmental Management.

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**Lance R. LeFleur  
Director**

Nondiscrimination Statement: The Department does not discriminate on the basis of race, color, national origin, sex, religion, age or disability in the administration of its programs.

**RESOLUTE FOREST PRODUCTS US INC.**

**COOSA PINES, Alabama**

**EPA I.D. Number ALD 004 000 790**

**FACT SHEET**

In accordance with the Post-Closure Agreement ALD 004 000 790, a revised Post Closure Agreement has been prepared for the Resolute FP US Inc. – Coosa Pines facility. This hazardous waste facility is located in Coosa Pines, Alabama. This fact sheet has been prepared to briefly advise the public of the principal remediation, legal and policy issues of the draft Post-Closure Agreement.

**I. PERMITTING PROCESS**

The purpose of the permitting process is to allow the State and the public to evaluate Resolute's ability to comply with the hazardous waste management requirements of the Alabama Hazardous Wastes Management and Minimization Act (AHWMMA), as amended. Resolute must comply with hazardous waste management conditions set forth in the Post-Closure Agreement ALD 004 000 790 in lieu of a permit.

**II. PROCEDURES FOR REACHING A FINAL DECISION**

The Alabama Department of Environmental Management (ADEM or Department) is proposing to approve a revised Post-Closure Agreement in lieu of a permit, for post-closure care for Solid Waste Management Units (SWMUs) which have been closed with wastes and/or contaminated soils remaining in-place.

ADEM Admin. Code r. 335-14-8-.08(6)(b)1. requires that the public be given a 45-day comment period for each Post-Closure Agreement. The comment period will begin on November 20, 2019, which is the date of publication of the public notice in major local newspaper(s) of general circulation, and will end on January 7, 2020. The public notice will also be broadcast over local radio station(s).

Any person interested in commenting on the Post-Closure Agreement must do so within the 45-day comment period discussed above.

All persons wishing to comment on any of the part of the Post-Closure Agreement should submit their comments in writing to the Alabama Department of Environmental Management, Permits and Services Division, 1400 Coliseum Blvd. (ZIP 36110-2059), P.O. Box 301463 (ZIP 36130-1463) Montgomery, Alabama, ATTENTION: Mr. Russell A. Kelly.

ADEM will consider all written comments received during the comment period while making a Post-Closure Agreement decision for this facility. When the Department makes its final Post-Closure Agreement decision, notice will be given to the applicant and each person who has submitted written comments or requested notice of the final Post-Closure Agreement decision.

**III. FACILITY DESCRIPTION**

The Resolute FP US Inc. – Coosa Pines facility is located at 17589 Plant Road, just north of the City of Childersburg, within Talladega County, Alabama. Resolute is a facility that operates a bleached Kraft pulp mill. The mill occupies approximately 2,700-acres and is divided into two portions by the Coosa River. Land use supporting the manufacturing operations includes several closed and active landfills, ash ponds, a wastewater treatment plant, sludge basins, an aerated stabilization basin,

holding lagoons, and a leachate pond. Resolute has applied for a renewal of its Post-Closure Agreement under the requirements of AHWMMMA for post-closure care including corrective action for groundwater contamination. Several regulated units under the AHWMMMA Act and the RCRA Hazardous and Solid Waste Act are located on the mill property and have been the focus of assessment and corrective action (as needed) dating back to 1987. Resolute has three regulated units that require ongoing groundwater monitoring: the SWMU No. 33 - Former Buried Drum Site; SWMU No. 31 - Former Mill Landfill; and, SWMU No. 32 – Former Lime Waste/Bark Ash Landfill. The hazardous waste discovered around these units were volatile organic compounds (VOCs), such as tetrachloroethene (PCE) and trichloroethene (TCE). The proposed Post-Closure Agreement will contain provisions for post-closure care for the former SWMU No. 33 – Former Buried Drum Site; SWMU No. 31 - Former Mill Landfill; and, SWMU No. 32 – Former Lime Waste/Bark Ash Landfill.

#### **IV. TECHNICAL CONTACT**

Tamaria L. McAlpin  
Engineering Services Section  
Industrial Hazardous Waste Branch, Land Division  
Alabama Department of Environmental Management  
1400 Coliseum Blvd (ZIP 36110-2059)  
P.O. Box 301463 (ZIP 36130-1463)  
Montgomery, Alabama  
(334) 274-4188

STATE OF ALABAMA )  
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ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT )  
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POST-CLOSURE AGREEMENT # ALD004000790 )

**POST-CLOSURE AGREEMENT BETWEEN  
ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT AND  
RESOLUTE FOREST PRODUCTS US INC., TALLADEGA COUNTY, ALABAMA,  
US EPA IDENTIFICATION NUMBER ALD 004 000 790**

***I. PREFACE***

1. This Agreement is entered into pursuant to the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-17, the Alabama Hazardous Wastes Management and Minimization Act, Code of Alabama 1975, Ala. Code §§ 22-30-1 to 22-30-24.
2. The Alabama Department of Environmental Management (“ADEM” or “Department”) is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-17. Under Ala. Code § 22-22A-4(n), the Department is responsible for the promulgation and enforcement of solid and hazardous waste regulations in accordance with the Federal Solid Waste Disposal Act, 42 U.S.C. §§ 6901 et seq. (2011). In addition, the Department is authorized to administer and enforce the provisions of the Alabama Hazardous Wastes Management and Minimization Act, Ala. Code §§ 22-30-1 to 22-30-24, (the "Act") and regulations promulgated thereunder (the "Rules").
3. The Department has jurisdiction over the matters addressed in this Post-Closure Agreement.
4. Resolute Forest Products US Inc., ("Resolute") is the owner of the property located at 17589 Plant Road, in Coosa Pines (Talladega County), Alabama ("Property") on which the Resolute Forest Products US Inc. site (“Site”) is located.
5. This Post-Closure Agreement (“Agreement”) is entered into between the Department and Resolute voluntarily to provide a mechanism, subject to the terms hereof, for the

performance and oversight of post-closure hazardous waste management and corrective/remedial action, as necessary at the Site by Resolute. It is the intent of Resolute and the Department that this Post-Closure Agreement be considered an enforceable document in lieu of a post-closure permit as provided in ADEM Admin Code r. 335-14-6-.07(12). This Agreement provides for a Post-Closure Plan that complies with the requirements of ADEM Admin. Code r. 335-14-6-.07(12) and the payment of fees in accordance with ADEM Admin. Code. r. 335-1-6.

6. The Facility shall comply with all conditions of this Agreement, except to the extent and for the duration such noncompliance is authorized by an emergency permit. Any Agreement noncompliance, other than noncompliance authorized by an emergency permit, constitutes a violation of the Alabama Hazardous Wastes Management and Minimization Act, and is grounds for enforcement action, agreement termination, revocation and reissuance, modification, or denial of an agreement renewal application.
7. The Facility must fulfill the 30-year post-closure care period required by ADEM Admin. Code r. 335-14-5-.07(8)(a)1. The Department may shorten or extend the post-closure care period applicable to the hazardous waste facility in accordance with ADEM Admin. Code rs. 335-14-5-.07(8)(a)2. and 335-14-8-.03(1)(b).
8. The Department may properly bring an action to compel compliance with the terms and conditions contained in this Agreement in the Circuit Court for Montgomery County or other court of competent jurisdiction. Resolute also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, Resolute shall be limited to the defenses of *Force Majeure*, compliance with this Agreement, and physical impossibility.

## ***II. FACTUAL BACKGROUND***

1. Resolute currently operates a bleached Kraft pulp and recycled newsprint mill in Coosa Pines, Alabama. In 2007, Bowater Inc. (including its subsidiary Bowater Alabama LLC) merged with Abitibi-Consolidated to create AbitibiBowater. AbitibiBowater changed its operating name to Resolute Forest Products in late 2011 and requested a change of facility name thru the Department on August 27, 2012. On September 24, 2001, Bowater purchased the mill from Alliance Forest Products, U.S. Corporation. Prior to that, Alliance Forest Products, U.S. Corporation purchased the facility from Kimberly Clark Corporation on February 14, 1997. Kimberly Clark Corporation operated the mill property from 1948 until the sale of the mill property to Alliance Forest Products.
2. A buried drum site (Buried Drum Site) was identified during an internal environmental audit by Kimberly-Clark Corporation in February 1987. The buried drums were found in an undeveloped area of the property approximately one mile east of the mill buildings near the residual wood resource area and the mill waste landfill. Fiberglass resins and small quantities of regulated chemical wastes had been buried without authorization at the drum site in 5-gallon and 55-gallon containers. Volatile organic compounds (VOCs) were detected in the soils surrounding the buried containers at concentrations ranging from 33 mg/kg to 3,800 mg/kg.
3. Kimberly-Clark entered into a settlement agreement with ADEM on October 22, 1991. The agreement required the facility to fully delineate the horizontal and vertical extent of groundwater contamination, conduct Appendix IX sampling, and submit a complete Post-Closure Permit Application. The settlement agreement was set to terminate upon submittal of the Post-Closure Permit Application.
4. Kimberly-Clark submitted a Closure Plan dated June 25, 1987, prepared by Applied Engineering & Science, Inc., which was approved by the Department on March 3, 1994.

5. Kimberly-Clark submitted a Certification of Closure for soils at the Buried Drum Site, which was approved by the Department on September 29, 1995.
6. RCRA Post-Closure Permit No. ALD004000790 was issued by the Department to Kimberly-Clark Corporation on September 29, 1995.
7. Bowater, requested withdrawal of the RCRA Part A and Part B Post-Closure Care/Groundwater Corrective Action permit renewal for the Site in a letter to ADEM dated August 8, 2007 and replacement of their permit with a Post-Closure Agreement.
8. Bowater submitted a post-closure plan for the Site to the Department on February 6, 2008, a revised post-closure plan on July 9, 2008, a second revision of the post-closure plan on October 9, 2008. The post-closure plan was incorporated into the agreed upon Post-Closure Agreement dated for February 2, 2009.
9. Resolute, submitted a revised post-closure plan for the Site to the Department on August 31, 2018, and a revised post-closure plan on July 2, 2019, to serve as the required 10-year post-closure plan update. The Department's final determination to renew the Alabama Hazardous Wastes Management and Minimization Act (AHWMMA) Revised Post- Closure Plan for Resolute Forest Products US Inc. - Coosa Pines Mill will be incorporated into this Agreement upon the said date of issuance of this Agreement.

### ***III. ACTIVITIES TO BE PERFORMED***

1. Resolute agrees to comply with the approved post-closure plan until such time the Department makes the determination that post-closure care is no longer necessary.
2. Resolute agrees to request a modification to the post-closure plan at least sixty (60) days prior to an expected event, or no later than sixty (60) days after an unexpected event has

occurred which affects the post-closure plan. All applicable fees in accordance with ADEM Admin. Code r. 335-1-6 shall be submitted along with the modification request.

3. If the proposed modification to the post-closure plan is a major modification according to the criteria of ADEM Admin. Code. rs. 335-14-8-.04(2) and 335-14-8-.04(3), the parties agree the modification to the plan will be processed according to the procedures in ADEM Admin. Code r. 335-14-6-.07(9)(f) after the payment of appropriate fees in accordance with ADEM Admin. Code r. 335-1-6.
4. 180 days before the ten (10) year anniversary date of the issuance of this Agreement, Resolute shall submit to the Department a revised post-closure plan and all applicable fees in accordance with Admin Code r. 335-1-6.
5. The Department agrees to review and process the post-closure plan in accord with the procedures described in ADEM Admin. Code. r. 335-14-6-.07(9)(f).
6. Resolute agrees to remedy any deficiencies in the post-closure plan cited by the Department within the timeframe requested by the Department.

#### ***IV. QUALITY ASSURANCE***

1. Resolute agrees to follow ADEM and EPA guidance for sampling and analysis. Reports submitted pursuant to this Agreement shall describe quality assurance/quality control ("QA/QC") and chain of custody procedures for all sampling, monitoring, and analytical activities. Any deviations from standard QA/QC and chain of custody procedures must be approved by ADEM prior to implementation.
2. Resolute agrees to require that high quality data be obtained pursuant to this Agreement. Resolute shall require that its laboratories perform such analysis according to the latest approved edition of "Test Methods for Evaluating Solid Waste,



Physical/Chemical Methods (SW-846)," or other methods deemed satisfactory to ADEM, which ADEM shall specify in writing. ADEM may reject any data that does not meet the requirements of standard EPA/ADEM analytical methods, or other methods approved by ADEM in writing, and may require re-sampling and additional analysis.

#### ***V. REPORTING AND DOCUMENT CERTIFICATION***

1. Resolute agrees to provide ADEM with reports as are outlined in the approved post-closure plan. ADEM may reasonably adjust the frequency of reports to be consistent with site-specific activities.
2. One hard copy and one electronic (an optical character recognition or text-searchable) copy of all documents submitted pursuant to this Agreement shall be sent to the following address:

Chief, Land Division  
Alabama Department of Environmental Management  
P.O. Box 301463 (Zip 36130-1463)  
1400 Coliseum Boulevard (Zip 36110-2059)  
Montgomery, Alabama

3. Any report or other document submitted by Resolute pursuant to this Agreement which makes any representation concerning Resolute's compliance or noncompliance with any requirement of this Agreement shall be certified by a responsible corporate officer of Resolute who meets the criteria described in 335-14-8-.02(2).
4. The certification required by paragraph three (3) above, shall be in accordance with ADEM Admin. Code r. 335-14-8-.02(2)3.(d).
5. Certain information required by this Agreement involves the practice of engineering and/or land surveying , as those terms are defined in Code of Alabama 1975, as amended, §§ 34-11-1 to 34-11-37; and/or the practice of geology, as that term is defined

in Code of Alabama 1975, as amended, §§ 34-41-1 to 34-41-24. It is the responsibility of any person preparing or submitting such information to ensure compliance with these laws and any regulations promulgated thereunder, as may be required by the State Board of Registration for Professional Engineers and Land Surveyors and/or the State Board of Registration for Professional Geologists. All submissions, or parts thereof, which are required by State law to be prepared by a licensed engineer, land surveyor, or geologist, must include the engineer's, land surveyor's, and/or geologist's signature and/or seal, as required by the applicable licensure laws.

## ***VI. DISPUTE RESOLUTION***

1. The parties shall use their best efforts to informally and in good faith resolve all disputes or differences of opinion. The parties agree that the procedures contained in this section are the sole procedures for resolving disputes arising under this Agreement. If the Facility fails to follow any of the requirements contained in this section then it shall have waived its right to further consideration of the disputed issue.
2. If Resolute disagrees, in whole or in part, with any written decision by ADEM pursuant to this Agreement, Resolute shall notify ADEM of the dispute. The parties shall attempt to resolve the dispute informally. In the event of an irresolvable dispute or disagreement between the parties, either party may, upon written notice provided to the other, terminate this Agreement subject to the provisions of Paragraph 7 below.
3. If the parties cannot resolve the dispute informally, Resolute may pursue the matter formally by placing its objections in writing. The Facility's written objections must be directed to the ADEM Industrial Hazardous Waste Branch. This written notice must be sent (via hand delivery, via certified mail posted by the fifteenth business day, or by overnight express mail) to the ADEM Industrial Hazardous Waste Branch within fifteen

(15) business days of the Facility's receipt of the disputed written decision by ADEM. Resolute's written objection must set forth the specific issues of the dispute, the basis for the Resolute's position, and any matters which it considers necessary for ADEM's determination.

4. ADEM and Resolute shall have fifteen (15) business days from ADEM's receipt of the Facility's written objections to attempt to resolve the dispute through formal negotiations. This time period may be extended by ADEM for good cause. During such time period ("Negotiation Period"), Resolute may request a conference to discuss the dispute and objections. ADEM shall agree to confer in person or by telephone in order to seek resolution of any such disagreement as long as Resolute's request for a conference will not extend the Negotiation Period without good cause. Within ten (10) business days after the end of the Negotiation Period, ADEM will provide to the Facility its written decision on the dispute (via hand delivery, via certified mail posted by the tenth business day, or by overnight express mail), which will include a response to Resolute's position and the reasons for ADEM's decision. If ADEM's written decision differs from Resolute's position, ADEM will issue an administrative action, either in the form of a Notice of Violation ("NOV") or administrative order.
5. Resolute may request a hearing before the Environmental Management Commission to contest an NOV or administrative order issued by the Department pursuant to Section 22-22A-7, Code of Alabama (1975), as amended. Accordingly, any request for a hearing to contest an administrative action must be filed with the Commission within thirty (30) days after the issuance of the administrative action.
6. An order of the Environmental Management Commission may be appealed pursuant to the terms defined in Section 22-22A-7(c)(6), Code of Alabama (1975), as amended.

7. Notwithstanding anything herein to the contrary, Resolute and the Department each reserve the right to unilaterally terminate this Agreement. Termination may be accomplished by giving a thirty (30) calendar day written notice (via hand delivery, via certified mail posted by the thirtieth day, or by overnight express mail) of the election to terminate this Agreement to the other party.
8. The Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court for Montgomery County. Resolute also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, the Facility shall be limited to the defenses of Force Majeure, compliance with this Agreement, and physical impossibility.

#### ***VII. FORCE MAJEURE AND EXCUSABLE DELAY***

1. *Force majeure*, for purposes of this Agreement, is defined as any event arising from unforeseen causes and beyond the control of Resolute or any person or entity controlled by Resolute, including but not limited to Resolute's primary contractors, that delays or prevents the timely performance of any obligation under this Agreement despite Resolute's best efforts to fulfill such obligation. The requirement that Resolute exercise "best efforts to fulfill such obligation" shall include, but not be limited to, best efforts to anticipate potential *force majeure* events that reasonably would be anticipated and address those before, during, and after its occurrence, such that any delay or prevention of performance is minimized to the extent reasonably possible. *Force majeure* does not include increased costs of the work to be performed under this Agreement, financial inability to complete the work, work stoppages or other labor disputes.
2. If any event occurs or has occurred that may delay the performance of any obligation under this Agreement, whether or not caused by a *force majeure* event, Resolute shall contact by telephone and communicate orally with ADEM within forty-eight (48) hours

of when Resolute first knows that the event will cause a delay. If Resolute wishes to claim a *force majeure* event, then within fourteen (14) days after the occurrence of the claimed *force majeure* event, Resolute shall provide to ADEM in writing the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; all other obligations affected by the event, and what measures, if any, have been or will be taken to minimize the effect of the event on those obligations; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Resolute'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 Resolute, the delay may cause or contribute to an endangerment to public health or the environment. Resolute shall include with any notice all available documentation supporting its claim, if any, that the delay was attributable to a *force majeure*. Failure to comply with the above requirements shall preclude Resolute from asserting any claim of *force majeure* for that event.

3. If ADEM determines that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of such obligation under this Agreement that is affected by the *force majeure* event will be extended by ADEM for such time as ADEM determines is necessary to complete such obligation. An extension of the time for performance of such obligation affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation, unless Resolute can demonstrate that more than one obligation was affected by the *force majeure* event. If ADEM determines that the delay or anticipated delay has been or will be caused by a *force majeure* event, ADEM will notify Resolute in writing of the length of the extension, if any, for performance of such obligations affected by the *force majeure* event.

4. If ADEM disagrees with Resolute's assertion of a *force majeure* event, ADEM will notify Resolute in writing and Resolute may elect to invoke the dispute resolution provision and shall follow the time frames set forth in the Dispute Resolution Section. In any such proceeding, Resolute 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 Resolute complied with the requirements of this Section. If Resolute satisfies this burden, the time for performance of such obligation will be extended by ADEM for a time equal to the *force majeure* delay.

AGREED this \_\_\_\_ day of \_\_\_\_\_ 2019.

\_\_\_\_\_  
Stephen A. Cobb, Chief  
Land Division  
Alabama Department of Environmental Management  
1400 Coliseum Boulevard  
Montgomery, AL 36110-2059  
(334) 271-7700

\_\_\_\_\_  
Date

SIGNED ON BEHALF OF RESOLUTE FOREST PRODUCTS US INC. BY

\_\_\_\_\_  
Pat Hogg  
General Manager  
Resolute Alabama LLC  
17589 Plant Road  
Coosa Pines, Alabama 35004-0555

\_\_\_\_\_  
Date