

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

CAMBRIANS FOR THOUGHTFUL
DEVELOPMENT, U.A., JOHN MUELLER
and LEONORE NEUMANN,

Plaintiffs,

v.

Case No. 3:09-cv-00139-bbc

DIDION MILLING, INC. and
DIDION ETHANOL, LLC,

Defendants.

JOINT STIPULATION FOR DISMISSAL AND TO VACATE STATUS CONFERENCE

STIPULATION

WHEREAS, on March 26, 2010, the Court approved (Dkt. 65) a joint stipulation in this matter (Dkt. 64) (“Stipulation”) to suspend all case deadlines for 30 days pending the Columbia County Circuit Court’s resolution of a State Enforcement Action against Defendants Didion Milling, Inc. and Didion Ethanol, LLC (collectively, “Didion”), Columbia County Case No. 10-CX-002; and

WHEREAS, the Columbia County Circuit Court, through a special judicial assignment to the Hon. Gregory J. Potter (Wood County), approved the stipulated settlement between Didion and the State of Wisconsin on April 23, 2010, and entered judgment on April 26, 2010; and

WHEREAS, pursuant to the Stipulation agreed to by Didion and Plaintiffs Cambrians for Thoughtful Development et al. (the “Parties”), Judge Potter’s approval of the stipulated settlement agreement in the State Enforcement Action resolves the substantive issues in this case and triggers the Parties’ obligation to jointly petition this Court for dismissal of this action,

subject to a determination of Plaintiffs' reasonable costs of litigation in this action, including reasonable attorney fees pursuant to 42 U.S.C. § 7604(d); and

WHEREAS, the Parties have initiated but not completed discussions on a negotiated resolution of the fee issue; and

WHEREAS, if the Parties cannot successfully negotiate resolution of the fee issues, the Court has jurisdiction to resolve this issue after the case is dismissed, *see Sierra Club v. EPA*, 322 F.3d 718, 720-21 (D.C. Cir. 2003) (considering fee award after case was settled and dismissed); *Friends of Animals v. Salazar*, 2009 U.S. ist. LEXIS 108868, *13-14 (D.D.C. Nov. 20, 2009) (holding court still has jurisdiction to hear a fee petition when the complaint has been dismissed as moot);

NOW THEREFORE, the Parties, by their counsel, stipulate to the foregoing recitals and jointly request that this Court enter the following Order in this matter:

1. That this action shall be dismissed with prejudice, subject to a determination of Plaintiffs' reasonable costs of litigation in this action, including reasonable attorneys fees pursuant to 42 U.S.C. § 7604(d);
2. The Parties shall notify the Court by May 14, 2010, whether they have reached a negotiated resolution of the fee issue; and
3. If the Parties have not resolved the fee issue by May 14, 2010, Plaintiffs shall within 5 days file a motion with the Court for a determination of the amount of their reasonable attorneys' fees and costs. The Court may establish a briefing schedule on the Plaintiffs' motion for fees and costs.
4. That the Telephone Status Conference currently set for May 20, 2010, is vacated.

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Didion Ethanol, LLC

Attorneys For Plaintiffs

Dated: 4/29/2010

Dated: 4/29/2010

ORDER

Pursuant to the foregoing Stipulation,

IT IS SO ORDERED.

BY THE COURT:

Barbara B. Crabb

The Honorable Stephen L. Crocker
Magistrate Judge
District