

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

UNITED STATES OF AMERICA and the
STATE OF WISCONSIN

Plaintiffs,

v.

NCR CORPORATION, *et al.*,

Defendants.

Civil Action No. 10-C-910

The Honorable William C. Griesbach

**CONSENT DECREE
WITH CASHOUT SETTling DEFENDANTS
AND THE STATE OF WISCONSIN**

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I. BACKGROUND

A. The Plaintiffs have filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9606 and 9607 (“CERCLA”), seeking declaratory and injunctive relief regarding the cleanup of the Lower Fox River and Green Bay Site (the “Fox River Site” or the “Site,” as defined below) and recovery of certain response costs incurred in connection with releases and threatened releases of hazardous substances at and from the Site. The responsible natural resource trustees also contend that they have claims for recovery of natural resource damages (including for recovery of natural resource damage assessment costs) and the Plaintiffs’ complaint seeks recovery of such damages. This Consent Decree sets forth the terms of a civil settlement among the Plaintiffs, the responsible natural resource trustees, and certain Settling Defendants (identified below in Subparagraph 4.v). This Consent Decree also resolves the potential liability of the State of Wisconsin (the “State”) for the Site, as provided herein.

B. The United States of America (“United States”) instituted this action on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”) and the Secretary of the United States Department of the Interior (“DOI”), acting in consultation with the United States Department of Commerce (“Commerce”).

C. Pursuant to Executive Order 12580 and the National Contingency Plan, 40 C.F.R. Part 300, the President has delegated authority to act as Federal Trustees for natural resources at and near the Site to DOI, as represented by the United States Fish and Wildlife Service, and Commerce, as represented by the National Oceanic and Atmospheric Administration.

D. The State instituted this action at the request of the Governor of Wisconsin on behalf of the Wisconsin Department of Natural Resources (“WDNR”), and is entering into this Consent Decree on behalf of WDNR.

E. WDNR is a response agency and a State Trustee for natural resources at or near the Site.

F. The Menominee Indian Tribe of Wisconsin and the Oneida Tribe of Indians of Wisconsin (the “Tribes,” as defined below) are Tribal Trustees for natural resources at or near the Site. The Tribes are Parties to this Consent Decree.

G. The Fox River Site is located in the northeastern portion of the State of Wisconsin. Hazardous substances have been released, and are threatened to be released, at and from the Site.

H. As a result of the release or threatened release of hazardous substances, EPA and the State have undertaken response actions at or in connection with the Site under Section 104 of CERCLA, 42 U.S.C. § 9604, and will undertake response actions in the future. In performing these response actions, EPA and the State have incurred and will continue to incur response costs at or in connection with the Site. These response actions include, *inter alia*: (a) the performance of a Remedial Investigation and Feasibility Study at the Site; (b) the selection of an overall remedy for the Site that will involve containment and removal of sediment contaminated with polychlorinated biphenyls (“PCBs”) through a combination of capping, dredging, dewatering, and upland landfill disposal, as set forth in two Records of Decision (as amended); (c) oversight of response actions implemented; and (d) various enforcement actions. The Trustees have been involved in various natural resource assessment activities relating to the Site. The Trustees have incurred and will continue to incur assessment costs associated with natural resource damage assessment activities relating to the Site.

I. The Site includes approximately 39 miles of the Lower Fox River (the “Fox River”) as well as the bay of Green Bay (the “Bay”). The Fox River portion of the Site extends from the outlet of Lake Winnebago and continues downstream to the mouth of the Fox River at the City of Green Bay. The Bay portion of the Site extends from the mouth of the Fox River at the City of Green Bay to the point where the Bay enters Lake Michigan. The Site has been divided into five geographically-defined Operable Units (“OUs”), as described in the Records of Decision and as depicted in Appendix A: OU 1 - Little Lake Butte des Morts; OU 2 - Appleton to Little Rapids; OU 3 - Little Rapids to DePere; OU 4 - DePere to Green Bay; and OU 5 - the Bay of Green Bay.

J. On July 28, 1998 (63 Fed. Reg. 40247), pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA proposed to place the Site (also called the “Fox River NRDA/PCB Releases Site”) on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B.

K. Pursuant to CERCLA and the National Contingency Plan, a Remedial Investigation and Feasibility Study (“RI/FS”) for the Site was prepared under WDNR’s technical lead, and draft RI/FS reports were released for public comment in March 1999. In October 2001, EPA and WDNR (collectively referred to herein as the “Response Agencies”) issued and sought public comment on a proposed remedial action plan for the Site. Final RI/FS reports for the Site were published in December 2002. The RI/FS estimated that sediment at the Site is contaminated with nearly 100,000 kilograms of PCBs, including nearly 70,000 kilograms of PCBs in the Bay.

L. In December 2002, the Response Agencies signed and issued a Record of Decision for OUs 1 and 2 at the Site.

M. In June 2003, the Response Agencies signed and issued a Record of Decision for OUs 3, 4, and 5 at the Site.

N. Phase 1 remediation in OU4 was performed in 2006 pursuant to a judicially-approved Consent Decree with NCR Corporation and Sonoco-U.S. Mills Corp. (n/k/a U.S. Paper Mills Corp.).

O. In June 2007, the Response Agencies signed and issued a Record of Decision Amendment for OU 2 (Deposit DD), OU 3, OU 4, and OU 5 (River Mouth) at the Site.

P. In June 2008, the Response Agencies signed and issued a Record of Decision Amendment for OU 1 at the Site.

Q. In February 2010, the Response Agencies signed and issued an Explanation of Significant Differences concerning the selected remedy for OU 2, OU 3, OU 4, and OU 5 (River Mouth) at the Site.

R. The remedial action for OU 1 has been performed pursuant to a judicially-approved Consent Decree with P.H. Glatfelter Co. (“Glatfelter”) and WTM I Company (“WTM”). Monitoring, maintenance, and post-remedy institutional controls activities are ongoing under that Consent Decree.

S. On November 13, 2007, EPA issued a Unilateral Administrative Order (“UAO”) pursuant to 42 U.S.C. § 9606(a) which directed Appleton Papers Inc. (“API”), NCR Corporation. (“NCR”); WTM; Glatfelter; Menasha Corporation; U.S. Paper Mills Corp.; Georgia-Pacific Consumer Products, LP, and CBC Coating, Inc. to implement the remedial action for OUs 2, 3, 4, and 5 of the Site, as set forth in the Records of Decision addressing those portions of the Site.

T. In 2008, NCR and API commenced two related lawsuits concerning the Site against the Settling Defendants and other parties that were consolidated under the caption *Appleton Papers Inc. and NCR Corp. v. George A. Whiting Paper Co., et al.*, No. 08-CV-16 (E.D. Wis.) (the “Whiting Litigation”).

U. Most of the defendants in this action have filed counter-claims against the State of Wisconsin. Various defendants have alleged that the State has liability for the Site due to past recycling of wastepaper that may have contained PCBs by certain State agencies, due to the State's ownership of certain lake bed areas, or both.

V. The Settling Defendants do not admit any liability to the Plaintiffs, the Tribes, or any other person or party arising out of the Site or out of the transactions or occurrences alleged in the complaint in this action or in the *Whiting* Litigation. The State does not admit any liability arising out of the transactions or occurrences alleged in counter-claims in this action.

W. WTM is a Chapter 11 debtor and debtor-in-possession in the United States Bankruptcy Court for the Eastern District of Virginia, Richmond Division (the "Bankruptcy Court"), where its Chapter 11 bankruptcy case is jointly administered as Case No. 08-36642, captioned *In re Canal Corporation, et al.* (the "WTM Bankruptcy Cases").

X. In accordance with the National Contingency Plan, the State was notified of negotiations with the Settling Defendants regarding this potential settlement. The State has been an active participant in such negotiations and is a party to this Consent Decree.

Y. Consistent with CERCLA Section 122(j)(1), 42 U.S.C. § 9622(j)(1), EPA has notified the Trustees, as represented by the Fox River / Green Bay Natural Resource Trustee Council, of negotiations with potentially responsible parties regarding this settlement as it relates to injuries to natural resources under Federal, State, and Tribal trusteeship at the Site. The Trustees have participated in the negotiation of this Consent Decree and support this Consent Decree.

Z. By entry into this Consent Decree, each Party is agreeing to compromise and settle based on acknowledged uncertainties concerning the future outcome of pending appeals that have been consolidated under the captions *United States v. P.H. Glatfelter Co.*, No. 13-2436 (7th Cir.) and *NCR Corporation v. George A. Whiting Paper Company, et al.*, No. 13-2447 (7th Cir.). By settling in this manner each Party is agreeing to avoid potential litigation advantages or disadvantages vis-à-vis the other Parties that might otherwise result from the resolution of any of those appeals. See *Ackermann v. United States*, 340 U.S. 193 (1950); *United States v. City of New Orleans*, 731 F.3d 434 (5th Cir. 2013). The Parties intend to give the Court of Appeals notice of this Consent Decree when it is lodged with this Court. This Court's entry of this Consent Decree would be sought after an appropriate remand, if necessary, by the Court of Appeals. See Fed. R. Civ. P. 62.1; Fed. R. App. P. 12.1; Seventh Circuit R. 57; *Boyko v. Anderson*, 185 F.3d 672 (7th Cir. 1999).

AA. 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, that implementation of this Consent Decree will expedite the cleanup of the Site and will avoid or minimize prolonged and complicated litigation, and that this Consent Decree is procedurally and substantively fair, reasonable, and in the public interest.

THEREFORE, based on the foregoing and with the consent of the Parties to this Consent Decree, it is ORDERED, ADJUDGED, and DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. § 9613(b), and also has personal jurisdiction over each Settling Defendant. Each Settling Defendant consents to and shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States, the State, and the Tribes, and upon each Settling Defendant and its successors and assigns, but only with respect to the terms applicable to each of those Parties. Any change in ownership or corporate or other legal status of a Settling Defendant, including but not limited to, any transfer of assets or real or personal property shall in no way alter the Settling Defendant's covenants and responsibilities under this Consent Decree.

IV. STATEMENT OF PURPOSE

3. By entering into this Consent Decree, the mutual objectives of the Parties are:

a. to reach a final settlement among the Parties with respect to the Site pursuant to CERCLA that allows the Settling Defendants and the State to make a set of cash payments, including a premium, to resolve their alleged civil liability under Sections 106, 107, and 113 of CERCLA, 42 U.S.C. §§ 9606, 9607, and 9613, for performance of investigation, cleanup, and monitoring activities at the Site, for response costs incurred and to be incurred at or in connection with the Site, for compliance with the UAO, and for natural resource damages at the Site, thereby reducing litigation relating to the Site;

b. to simplify any remaining administrative and judicial enforcement activities concerning the Site by eliminating the Settling Defendants from further involvement at the Site;

c. to provide for full and complete contribution protection for the Settling Defendants and Settling Defendants' Related Parties with regard to the Site pursuant to Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and Section XII (Effect of Settlement / Contribution); and

d. to provide for full and complete contribution protection for the State with regard to the Site pursuant to Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and Section XII (Effect of Settlement / Contribution).

V. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in the statute or regulations. Whenever the terms listed below are used in this Consent Decree, the following definitions shall apply:

a. “CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

b. “Commerce” shall mean the United States Department of Commerce and any successor departments, agencies or instrumentalities of the United States.

c. “Consent Decree” or “Decree” shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, the Consent Decree shall control.

d. “Date of Lodging” shall mean the day on which this proposed Consent Decree is lodged with the Court, before commencement of the public comment period described in Section XX.

e. “Day” shall mean a calendar 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 working day.

f. “DOI” shall mean the United States Department of the Interior and any successor departments, agencies or instrumentalities of the United States.

g. “Effective Date” shall mean the effective date of this Consent Decree as provided by Section XXI (Effective Date).

h. “EPA” shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

i. “EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

j. “Fox River Group” shall mean the parties, or their predecessors, that entered into the Funding and Interim Implementation Agreement, effective as of January 31, 1997, and/or the Agreement on Interim Allocation, effective as of July 27, 1999.

k. “Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

l. “Natural Resource” or “Natural Resources” means land, resident and anadromous fish, resident and migratory wildlife, biota, air, water, ground water, sediments, wetlands, drinking water supplies, and other such resources, belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States, the State, or the Tribes.

m. “Natural Resource Damages” means any damages recoverable by the United States or the State on behalf of the public, or by the Tribes, for injury to, destruction of, or loss or impairment of Natural Resources at the Site as a result of a release of hazardous substances, including but not limited to: (i) the costs of assessing such injury, destruction, or loss or impairment arising from or relating to such a release; (ii) the costs of restoration, rehabilitation, or replacement of injured or lost natural resources or of acquisition of equivalent resources; (iii) the costs of planning such restoration activities; (iv) compensation for injury, destruction, loss, impairment, diminution in value, or loss of use of natural resources; and (v) each of the categories of recoverable damages described in 43 C.F.R. § 11.15 and applicable state and tribal law.

n. “NRDAR Fund” shall mean DOI’s Natural Resource Damage Assessment and Restoration Fund.

o. “Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

p. “Parties” shall mean the United States, the State, the Tribes, and the Settling Defendants.

q. “Plaintiffs” shall mean the United States and the State.

r. “PCBs” shall mean polychlorinated biphenyls in any form and any break down products of them.

s. “Records of Decision” shall mean, collectively: (i) the December 2002 Record of Decision for OUs 1 and 2; (ii) the June 2003 Record of Decision for OUs 3-5; (iii) the June 2007 Record of Decision Amendment for OU 2 (Deposit DD), OU 3, OU 4, and OU 5 (River Mouth); (iv) the June 2008 Record of Decision Amendment for OU 1; and (v) the February 2010 Explanation of Significant Differences for OU 2, OU 3, OU 4, and OU 5 (River Mouth).

t. “Response Agencies” shall mean EPA and WDNR collectively.

u. “Section” shall mean a portion of this Consent Decree identified by an upper case Roman numeral.

v. “Settling Defendants” shall mean the City of Appleton; CBC Coating, Inc.; Menasha Corporation; the Neenah-Menasha Sewerage Commission; U.S. Paper Mills Corp.; and WTM I Company (also referred to herein as “WTM”).

w. “Settling Defendants’ Related Parties” or “Related Parties” shall mean: (i) Sonoco Products Company, in its capacity as the parent corporation of Settling Defendant U.S. Paper Mills Corp.; (ii) Philip Morris USA Inc. (formerly known as Philip Morris Incorporated), in its capacity as the former parent corporation of Settling Defendant WTM I Company; (iii) the Settling Defendants’ successors and assigns, but only to the extent that the alleged liability of such person is based on the alleged liability of a Settling Defendant; (iv) the Settling Defendants’ and Related Parties’ former or current officers, directors, employees, elected or appointed officials, or shareholders, but only to the extent that the alleged liability of such person is based on acts and/or omissions which occurred in the scope of the person’s employment or capacity as an officer, director, employee, elected or appointed official, or shareholder of a Settling Defendant or Related Party; (v) the Settling Defendants’ liability insurers, but only to the extent

that any such insurer may be alleged derivatively liable in a direct action under Wis. Stat. § 632.24 based on the conduct of a Settling Defendant; and (vi) as to the Neenah-Menasha Sewerage Commission shall be deemed to include the former, current or future agents, or commission members of the Neenah-Menasha Sewerage Commission and the cities of Neenah and Menasha, the Town of Neenah Sanitary District #2, the Town of Menasha Sanitary District #4, and the Town of Harrison, Waverly Sanitary District, but only to the extent that the alleged liability of such person is based on the person's association with the Neenah-Menasha Sewerage Commission.

x. "Site" shall mean the Lower Fox River and Green Bay Superfund Site, which encompasses: (i) approximately 39 miles of the Lower Fox River from the outlet of Lake Winnebago downstream to the mouth of the Fox River at the City of Green Bay; and (ii) the bay of Green Bay from the mouth of the Fox River at the City of Green Bay to the point where the bay enters Lake Michigan.

y. "Specified Defendants" shall mean Appvion, Inc. (formerly known as Appleton Papers Inc.); NCR Corporation; Georgia-Pacific Consumer Products LP (as well as Fort James Corporation and Georgia-Pacific LLC); and P.H. Glatfelter Company, and their parents, successors and assigns and any person claiming through or on behalf of them.

z. "State" shall mean the State of Wisconsin.

aa. "Tribes" shall mean the Menominee Indian Tribe of Wisconsin and the Oneida Tribe of Indians of Wisconsin.

bb. "Trustees" means DOI, Commerce, WDNR, and the Tribes.

cc. “United States” shall mean the United States of America, including all of its departments, agencies, and instrumentalities, which includes without limitation EPA, DOI, and Commerce.

dd. “Waste Materials” shall mean: (i) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (ii) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); (iii) any “solid waste” under Section 1004(27) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6903(27); and (iv) any “hazardous substance” under Wis. Stat. § 292.01.

ee. “WDNR” shall mean the Wisconsin Department of Natural Resources and any successor departments or agencies of the State of Wisconsin.

ff. “*Whiting* Litigation” shall mean the above-referenced lawsuit captioned *Appleton Papers Inc. and NCR Corp. v. George A. Whiting Paper Co., et al.*, Case No. 08-CV-16 (E.D. Wis.).

VI. PAYMENTS

5. Payments to Court Registry Account. Within 30 Days of the date on which the Court enters an order in this action authorizing payment by the Settling Defendants into the Court Registry Account, the Settling Defendants shall pay a total of \$54,000,000 into the interest-bearing Court Registry Account of the United States District Court for the Eastern District of Wisconsin, each Settling Defendant to pay its share of the total as stated on Appendix B attached hereto. In addition, within 30 Days of the date on which the Court enters an order in this action authorizing payment by the State into the Court Registry Account, the State shall pay a total of \$100,000 into the interest-bearing Court Registry Account of the United States District Court for the Eastern District of Wisconsin. Payment shall be made to the Clerk of the Court by an

electronic funds transfer (“EFT”) to the account designated by the Clerk of the Court, in accordance with payment instructions to be provided.

6. Disbursements from Court Registry Account. After entry of this Consent Decree by the District Court and either affirmation on appellate review of such entry or the expiration of time to appeal such entry, the funds deposited into the Court Registry Account under this Consent Decree (and all accrued interest) shall be disbursed as specified by this Paragraph pursuant to a separate Withdrawal Order of the Court. The funds shall be disbursed and applied as follows:

- (i) \$1,375,000 (plus all accrued interest earned on \$1,375,000 of the funds deposited in the Court Registry Account) – or 2% of the funds in the Court Registry Account – shall be disbursed to the United States and deposited in the Lower Fox River and Green Bay Superfund Site Special Account within the EPA Hazardous Substance Superfund;
- (ii) \$7,050,000 (plus all accrued interest earned on \$7,050,000 of the funds deposited in the Court Registry Account) – or 13% of the funds in the Court Registry Account – shall be disbursed to the State and deposited in a segregated fund under the direction of WDNR;
- (iii) \$4,650,000 (plus all accrued interest earned on \$4,650,000 of the funds deposited in the Court Registry Account) – or 9% of the funds in the Court Registry Account – shall be disbursed to the United States and deposited in the NRDAR Fund to defray natural resource damage assessment costs incurred by DOI; and
- (iv) \$41,025,000 (plus all accrued interest earned on \$41,025,000 of the funds deposited in the Court Registry Account) – or 76% of the funds in the Court

Registry Account – shall be disbursed to the United States and deposited in a Site-specific sub-account within the NRDAR Fund.

The payments of each Settling Defendant as stated on Appendix B shall be deemed to be distributed to each of categories i, ii, iii, and iv. The payment by the State shall be deemed to be distributed to each of categories i, iii, and iv. In the event the Plaintiffs withdraw or withhold consent to this Consent Decree before entry, or the Court declines to enter the Consent Decree, or entry of the Consent Decree is reversed on appellate review, the funds deposited into the Court Registry Account (and all accrued interest) shall be returned to the Settling Defendants and the State pursuant to a separate Withdrawal Order of the Court.

7. Amounts Included. The payments by the Settling Defendants and the State include amounts for: (i) past response costs incurred at or in connection with the Site; (ii) projected future response costs to be incurred at or in connection with the Site; (iii) a premium to cover the risks and uncertainties associated with this settlement, including but not limited to, the risk that total response costs incurred or to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund, or by any other person, will exceed current estimates; and (iv) Natural Resource Damages, including assessment costs.

8. Use of Payments.

a. Payments under this Section into the Lower Fox River and Green Bay Superfund Site Special Account within the EPA Hazardous Substance Superfund shall be retained and used to conduct or finance response actions at or in connection with the Site, or transferred by EPA to the EPA Hazardous Substance Superfund.

b. Payments under this Section to a segregated fund under the direction of WDNR shall be retained and used to conduct or finance response actions at or in connection with

the Site. If any such funds remain after completion of the response action at the Site, WDNR shall transfer all remaining funds to the EPA Hazardous Substance Superfund.

c. Payments under this Section to a Site-specific sub-account within the NRDAR Fund shall be managed by DOI for the joint benefit and use of the Trustees to pay for natural resource restoration projects jointly selected by the Trustees and/or to be applied toward natural resource damage assessment costs incurred by DOI and the State.

9. At the time payment is made under Paragraph 5, the Settling Defendants shall send notice, including a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter which shall reference the case name and DOJ case number 90-11-2-1045/3 to the persons listed in Section XVI (Notices and Submissions).

VII. FAILURE TO MAKE PAYMENTS

10. If any Settling Defendant fails to make full payment within the time required by Paragraph 5, such Settling Defendant shall pay Interest on the unpaid balance. In addition, if any Settling Defendant fails to make full payment as required by Paragraph 5, the United States may, in addition to any other available remedies or sanctions, bring an action against such Settling Defendant seeking injunctive relief to compel payment and/or seeking civil penalties under Section 122(l) of CERCLA, 42 U.S.C. § 9622(l), for failure to make timely payment. If the State fails to make full payment within the time required by Paragraph 5, the State shall pay Interest on the unpaid balance, which shall accrue from the Date of Lodging until the date of payment. In addition, if the State fails to make full payment as required by Paragraph 5, the United States may, in addition to any other available remedies or sanctions, bring an action against the State seeking injunctive relief to compel payment and/or seeking civil penalties under Section 122(l) of CERCLA, 42 U.S.C. § 9622(l), for failure to make timely payment.

VIII. CERTIFICATION OF SETTLING DEFENDANTS

11. By signing this Consent Decree, each Settling Defendant certifies that, to the best of its knowledge and belief, it:

a. has conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to the Plaintiffs, either through discovery in this action or otherwise, all information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to the ownership, possession, generation, treatment, transportation, storage or disposal of PCBs at or in connection with the Site;

b. has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents, or other information relating to its potential liability regarding the Site after notification of potential liability or the filing of a suit against it regarding the Site; and

c. has and will comply fully with any and all requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).

IX. COVENANTS BY THE PLAINTIFFS AND THE TRIBES

12. Covenants by the United States.

a. In consideration of the payment that will be made by the Settling Defendants under the terms of this Consent Decree, and except as specifically provided by Section X (Reservations of Rights by Plaintiffs and the Tribes), the United States covenants not to sue or take administrative action against the Settling Defendants or the Settling Defendants' Related Parties pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607, or Section 311(f) of the Clean Water Act, 33 U.S.C. § 1321(f), relating to the Site. Except with

respect to future liability, this covenant not to sue shall take effect upon the Effective Date of this Consent Decree. With respect to future liability, this covenant shall take effect upon certification of completion of the remedial action by EPA pursuant to 42 U.S.C. § 9622(f)(3). *See* 52 Fed. Reg. 28038, 28040 (July 27, 1987). As to each Settling Defendant, this covenant is conditioned upon the satisfactory performance by the Settling Defendant of its obligations under this Consent Decree. This covenant extends only to the Settling Defendants and the Settling Defendants' Related Parties and does not extend to any other person.

b. In consideration of the payment that will be made by the State under the terms of this Consent Decree, and except as specifically provided by Section X (Reservations of Rights by the Plaintiffs and the Tribes), the United States covenants not to sue or take administrative action against the State pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607, or Section 311(f) of the Clean Water Act, 33 U.S.C. § 1321(f), relating to the Site. Except with respect to future liability, this covenant not to sue shall take effect upon the Effective Date of this Consent Decree. With respect to future liability, this covenant shall take effect upon certification of completion of the remedial action by EPA pursuant to 42 U.S.C. § 9622(f)(3). This covenant is conditioned upon the satisfactory performance by the State of its obligations under this Consent Decree. This covenant extends only to the State and does not extend to any other person.

13. Covenants by the State. In consideration of the payments that will be made by the Settling Defendants under the terms of this Consent Decree, and except as specifically provided by Section X (Reservations of Rights by the Plaintiffs and the Tribes), the State covenants not to sue or to take administrative action against the Settling Defendants and the Settling Defendants' Related Parties pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, Section 311(f) of the

Clean Water Act, 33 U.S.C. § 1321(f), or Wisconsin statutory or common law, relating to the Site. Except with respect to future liability, this covenant not to sue shall take effect upon the Effective Date of this Consent Decree. With respect to future liability, this covenant shall take effect upon certification of completion of the remedial action by EPA pursuant to 42 U.S.C. § 9622(f)(3). As to each Settling Defendant, this covenant is conditioned upon the satisfactory performance by the Settling Defendant of its obligations under this Consent Decree. This covenant extends only to the Settling Defendants and Settling Defendants' Related Parties and does not extend to any other person.

14. Covenants by the Tribes.

a. In consideration of the payments that will be made by the Settling Defendants under the terms of this Consent Decree, and except as specifically provided by Section X (Reservations of Rights by the Plaintiffs and the Tribes), the Tribes covenant not to sue the Settling Defendants or the Settling Defendants' Related Parties for Natural Resource Damages pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, Wisconsin statutory or common law, or tribal law, relating to the Site. With respect to present and future liability, this covenant not to sue shall take effect upon the Effective Date of this Consent Decree. As to each Settling Defendant, this covenant is conditioned upon the satisfactory performance by the Settling Defendant of its obligations under this Consent Decree. This covenant extends only to the Settling Defendants and Settling Defendants' Related Parties and does not extend to any other person.

b. In consideration of the payments that will be made by the State under the terms of this Consent Decree, and except as specifically provided by Section X (Reservations of Rights by the Plaintiffs and the Tribes), the Tribes covenant not to sue the State for Natural Resource Damages pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, Wisconsin statutory

or common law, or tribal law, relating to the Site. With respect to present and future liability, this covenant not to sue shall take effect upon the Effective Date of this Consent Decree. This covenant is conditioned upon the satisfactory performance by the State of its obligations under this Consent Decree. This covenant extends only to the State and does not extend to any other person.

X. RESERVATIONS OF RIGHTS BY THE PLAINTIFFS AND THE TRIBES

15. The covenants set forth above do not pertain to any matters other than those expressly specified in Paragraphs 12, 13, and 14. The United States, the State, and the Tribes reserve, and this Consent Decree is without prejudice to, all rights against each Settling Defendant (and each Settling Defendant's Related Parties) and all rights against the State with respect to all other matters, including but not limited to, the following:

- a. claims based on a failure by a Settling Defendant or the State to meet a requirement of this Consent Decree;
- b. criminal liability;
- c. liability based upon a Settling Defendant's or the State's future transportation, treatment, storage, discharge or disposal, or the arrangement for the transportation, treatment, storage, discharge, or disposal, of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Consent Decree;
- d. liability based upon a Settling Defendant's or the State's transportation, treatment, storage, discharge or disposal, or the arrangement for the transportation, treatment, storage, discharge, or disposal, of a hazardous substance or a solid waste outside of the Site; and

e. liability for damages for injury to, destruction of, or loss of natural resources resulting from releases or threatened releases of hazardous substances outside of the Site.

16. Reservations for New Information and Unknown Conditions.

a. Notwithstanding any other provision of this Consent Decree, the United States and the State reserve, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel the Settling Defendants (or Settling Defendants' Related Parties) or the State, (1) to perform further response actions relating to the Site or (2) to reimburse the United States and the State for additional costs of response if, prior to certification of completion of the remedial action at the Site:

- (i) conditions at the Site, previously unknown to EPA, are discovered,
or
- (ii) information, previously unknown to EPA, is received in whole or in part,

and these previously unknown conditions or information together with other relevant information indicate that the remedial action is not protective of human health or the environment.

b. Notwithstanding any other provision of this Consent Decree, the United States and the State reserve, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel the Settling Defendants (or Settling Defendants' Related Parties) or the State, (1) to perform further response actions relating to the Site or (2) to reimburse the United States and the

State for additional costs of response if, subsequent to certification of completion of the remedial action at the Site:

- (i) conditions at the Site, previously unknown to EPA, are discovered,
or
- (ii) information, previously unknown to EPA, is received in whole or in part,

and these previously unknown conditions or information together with other relevant information indicate that the remedial action is not protective of human health or the environment.

c. For purposes of Subparagraph 16.a, the information and the conditions known to EPA shall include only that information contained in EPA's administrative record for the Site as of the Date of Lodging of this Consent Decree. For purposes of Subparagraph 16.b, the information and the conditions known to EPA shall include only that information contained in EPA's administrative record for the Site as of the date of EPA's certification of completion of the remedial action at the Site.

d. Notwithstanding any other provision of this Consent Decree, the Trustees reserve the right to institute proceedings against the Settling Defendants (or Settling Defendants' Related Parties) or the State in this action or in a new action seeking recovery of Natural Resource Damages, based on: (1) conditions with respect to the Site, unknown to the Trustees as of the date of lodging of this Consent Decree, that result in releases of hazardous substances that contribute to injury to, destruction of, or loss of Natural Resources ("Unknown NRD Conditions"), or (2) information received by the Trustees after the date of lodging of this Consent Decree which indicates that the releases of hazardous substances at the Site have resulted in injury to, destruction of, or loss of Natural Resources of a type or future persistence that was

unknown to the Trustees as of the date of lodging of this Consent Decree (“New NRD Information”). The following shall not be considered Unknown NRD Conditions or New NRD Information for the purpose of this Paragraph: (1) an increase solely in any Trustee’s assessment of the magnitude of a known injury to, destruction of, or loss of Natural Resources at the Site; or (2) injury to, destruction of, or loss of Natural Resources at the Site arising from the re-exposure, resuspension, or migration of hazardous substances known to be present in the sediments of the Site. For the purpose of this Paragraph, the information and conditions known to the Trustees shall include any information or conditions listed or identified in records relating to the Site that were in the possession or under the control of DOI, Commerce, WDNR, or the Tribes as of the Date of Lodging of this Consent Decree.

17. Additional Reservation for Hazardous Substances Other than PCBs.

Notwithstanding any other provision in this Consent Decree, the United States, the State, and the Tribes reserve, and this Consent Decree is without prejudice to, the right to institute proceedings against a Settling Defendant (or Settling Defendants’ Related Parties) or the State in this action or in a new action or to issue an administrative order to a Settling Defendant (or a Settling Defendant’s Related Party) or the State seeking to compel it to perform future response actions relating to the Site, pay future costs of response incurred by EPA or WDNR, and/or pay additional sums for Natural Resource Damages to the extent such response actions, response costs, or Natural Resource Damages relate to a hazardous substance (or hazardous substances) other than PCBs. The reservation in this Paragraph shall not be construed to require the Settling Defendants (or Settling Defendants’ Related Parties) or the State to perform or reimburse costs of the remedial action prescribed by the existing Records of Decision for the Site.

XI. COVENANTS BY THE SETTling DEFENDANTS AND THE STATE

18. Covenants By the Settling Defendants and the State.

a. Covenants by the Settling Defendants. The Settling Defendants and the Settling Defendants' Related Parties covenant not to sue and agree not to assert any claims or causes of action against the United States, the State, or the Tribes, or their contractors or employees, with respect to the Site or this Consent Decree, including, but not limited to:

(1) any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

(2) any claims arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Constitution of the State of Wisconsin, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; and

(3) any claim against the United States, the State, or the Tribes pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

b. Covenants by the State. The State covenants not to sue and agree not to assert any claims or causes of action against the United States or the Tribes, or their contractors or employees, with respect to the Site or this Consent Decree, including, but not limited to:

(1) any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of

CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

(2) any claims arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Constitution of the State of Wisconsin, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; and

(3) any claim against the United States or the Tribes pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

19. No Preauthorization. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

20. Non-Applicability of Covenants. The covenants in this Section (including the claim waivers in Paragraph 21 (Waiver of Claims By the Settling Defendants)), shall not apply if the United States, the State, or either of the Tribes brings a claim or cause of action or issues an order pursuant to the reservations set forth in Paragraphs 15.c-15.e, 16, or Paragraph 17, but only to the extent that the claims or causes of action by the Settling Defendant or the State arises from the same claim or cause of action brought or order issued by the United States, the State, or either of the Tribes pursuant to the applicable reservation.

21. Waiver of Claims By the Settling Defendants.

a. Waiver of Claims for Settlement Payments and Expenditures.

(1) Each Settling Defendant and its Related Parties waives and agrees not to assert any claims or causes of action (including but not limited to claims for contribution under CERCLA) that it may have for all payments and expenditures under:

(i) this Consent Decree; (ii) the Consent Decree, all Agreed Supplements to the Consent Decree, the Amended Consent Decree, and the 2003 Administrative Order on Consent appended to the Consent Decree and Amended Consent Decree in *United States and State of Wisconsin v. P.H. Glatfelter Co. and WTM I Co.*, Case No. 03-C-949 (E.D. Wis.); and (iii) the Consent Decree in *United States and State of Wisconsin v. NCR Corporation and Sonoco-U.S. Mills Corp.*, Case No. 06-C-484 (E.D. Wis.). This waiver of claims shall include, but shall not be limited to, any asserted or unasserted claims or causes of action by a Settling Defendant, whether in this action, the *Whiting* Litigation, or any future action related to the Site, for recovery of such payments and expenditures.

(2) The waiver in Paragraph 21.a.(1) shall not apply to any claims that a Settling Defendant may have (i) against Appvion, Inc. if either Appvion, Inc. or NCR or both pursue(s) a claim relating to this Site against that Settling Defendant; and (ii) against NCR if either Appvion, Inc. or NCR or both pursue(s) a claim relating to this Site against that Settling Defendant. The reservation in this Paragraph 21.a.(2) shall apply only if the claim by Appvion, Inc. or NCR is not precluded by the contribution protection provisions of this Consent Decree or any other consent decree relating to this Site.

b. Waiver of Other Potential Claims Relating to the Site.

(1) Except as specified by Paragraphs 20 and 21.a, and subject to the conditional reservations in Paragraphs 21.a.(2) and 21.b.(2), each Settling Defendant and its Related Parties waives and agrees not to assert any claims or causes of action (including but not limited to claims for contribution under CERCLA) that it may have for all matters relating to the release of PCBs to the Site against any other person who is a potentially responsible party under CERCLA at the Site. This waiver includes, but is not

limited to, any asserted or unasserted claims or causes of action by a Settling Defendant, whether in this action, the *Whiting* Litigation, or any future action related to the Site, for recovery of its Fox River Group costs based on contract law or any other theory of recovery.

(2) The waiver in Paragraph 21.b.(1) shall not apply to any claim that a Settling Defendant may have against the Specified Defendants, including but not limited to any claim for Fox River Group costs, if any Specified Defendant pursues a claim relating to this Site against that Settling Defendant. The reservation in this Paragraph 21.b.(2) shall apply only if the Specified Defendant's claim is not precluded by the contribution protection provisions of this Consent Decree or any other consent decree relating to this Site.

c. The claim waivers in this Paragraph 21 shall take effect upon the Effective Date, but are conditioned on the Consent Decree's continued effectiveness. Nothing in this Paragraph 21 is intended to diminish the contribution protection provided to the Settling Defendants and Settling Defendants' Related Parties by this Consent Decree or any other consent decree relating to this Site. Notwithstanding any provision in this Consent Decree, the claim waivers in this Paragraph 21 shall not apply to any claims brought by a Settling Defendant against its own insurance carriers.

XII. EFFECT OF SETTLEMENT / CONTRIBUTION

22. **Rights Reserved.** Except as provided in Paragraph 21 (Waiver of Claims By the Settling Defendants) and in the provisions concerning the Settling Defendants' Related Parties, nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as provided in Paragraph 21 and

in the provisions concerning the Settling Defendants' Related Parties, the Plaintiffs, the Tribes, and the Settling Defendants each reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

23. Waiver of Claim-Splitting Defenses. In any subsequent administrative or judicial proceeding initiated by the United States, the State, or the Tribes for injunctive relief, recovery of response costs or Natural Resource Damages, or other relief relating to the Site, the Settling Defendants and the State shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant action; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants by the Plaintiffs and the Tribes set forth in Section IX.

24. Contribution Protection. The Parties agree, and by entering this Consent Decree this Court finds, that this Consent Decree constitutes a judicially-approved settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that the Settling Defendants, the Settling Defendants' Related Parties, and the State are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are Natural Resource Damages and all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States, the State, or any other person; provided, however,

that if the United States, the State, or either of the Tribes exercises rights against a Settling Defendant or the State under the reservations in Subparagraph 15.c, Paragraph 16, or Paragraph 17, the “matters addressed” in this Consent Decree will no longer include those response costs or response actions or natural resource damages that are within the scope of the exercised reservation.

25. Prior Stipulations. Upon its Effective Date, this Consent Decree shall supersede and replace: (i) the Phase I Pre-Trial Stipulations Between the Plaintiffs and Defendant U.S. Paper Mills Corp. filed in this action on November 15, 2012; and (ii) and the Phase I Pre-Trial Stipulations Between the Plaintiffs and Defendant CBC Coating, Inc. filed in this action on November 29, 2012.

26. Effect on Certain Obligations Under Prior Consent Decrees.

a. The OU1 Amended Consent Decree.

(1) In light of this comprehensive settlement with WTM for the Site as a whole, and as an exercise of their enforcement discretion, the United States and the State hereby covenant that they will not seek to enforce or otherwise require WTM’s compliance with the OU1 Amended Consent Decree and the 2003 Administrative Order on Consent appended to that Consent Decree, commencing 120 days after the Effective Date of this Consent Decree and for so long as this Consent Decree remains effective. WTM waives any and all existing and future claims to funds in the Fox River OU1 Escrow Account as of 120 days after the Effective Date of this Consent Decree and for so long as this Consent Decree remains effective.

(2) Until 120 days after the Effective Date, WTM shall cooperate with the other affected parties in seeking any agreed modifications of the OU1 Amended

Consent Decree and the Escrow Agreement for the Fox River OU1 Escrow Account (as amended) that may be desirable to clarify the affected parties' rights and obligations in light of this Consent Decree.

(3) Pursuant to the Escrow Agreement for the Fox River OU1 Escrow Account and Appendix C of the OU1 Consent Decree, a representative of WTM shall continue executing Escrow Disbursement Certificates for allowable disbursements from the Fox River OU1 Escrow Account until either: (i) the Escrow Agreement is modified to delete the requirement that a WTM representative sign such Escrow Disbursement Certificates; or (ii) 120 days after the Effective Date, at which time WTM shall issue a general consent to the parties to the Escrow Agreement authorizing all future allowable disbursements to be made after execution of an Escrow Disbursement Certificate by a P. H. Glatfelter Company representative only.

b. The Phase 1 Consent Decree.

(1) In light of this comprehensive settlement with U.S. Paper Mills Corp. (f/k/a Sonoco-U.S. Mills Corp.) ("U.S. Paper") for the Site as a whole, and as an the exercise of their enforcement discretion, the United States and the State hereby covenant that they will not seek to enforce or otherwise require U.S. Paper's compliance with the Consent Decree for Performance of Phase 1 of the Remedial Action in Operable Units 2-5 of the Lower Fox River and Green Bay Site – entered in *United States and State of Wisconsin v. NCR Corporation and Sonoco-U.S. Mills Corp.*, Case No. 06-C-484 (E.D. Wis.) – commencing 120 days after the Effective Date of this Consent Decree and for so long as this Consent Decree remains effective.

(2) Until 120 days after the Effective Date, U.S. Paper shall cooperate with the other affected parties in seeking any agreed modifications of the Phase 1 Consent Decree to facilitate performance of any outstanding Phase 1 Work consistent with Subparagraph 26(b)(1) and the other terms of this Consent Decree.

XIII. ACCESS TO PROPERTY

27. If any real property where access is needed to implement response activities at the Site is owned or controlled by a Settling Defendant, the Settling Defendant shall:

a. commencing on the Date of Lodging of this Consent Decree, provide the United States, the State, and their representatives and designates, including EPA and WDNR and their contractors, with access at all reasonable times to such property, for the purpose of conducting any response activity related to the Site, including, but not limited to, the following activities:

- (1) Monitoring, investigation, removal, remedial, or other activities at the Site;
- (2) Verifying any data or information submitted to the United States or the State;
- (3) Conducting investigations regarding contamination at or near the Site;
- (4) Obtaining samples;
- (5) Assessing the need for, planning, or implementing response actions at or near the Site;
- (6) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by the Settling Defendant or its agents, consistent with Section XIV (Access to Information);

(7) Assessing the Settling Defendant's compliance with the Consent Decree;
and

(8) Determining whether the Site or other real property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Consent Decree;

b. commencing on the Date of Lodging, the Settling Defendant shall not use any such real property in any manner that EPA or WDNR determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Materials or interfere with or adversely affect the implementation, integrity, or protectiveness of the remedial measures to be performed at the Site.

28. Notwithstanding any provision of this Consent Decree, the United States and the State retain all of their access authorities and rights, as well as all of their rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA and any other applicable statute or regulations.

XIV. ACCESS TO INFORMATION

29. Provision of Information. The Settling Defendants shall provide to Plaintiffs, upon request, copies of all documents and information within its possession or control or that of its contractors or agents relating to activities at the Site, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to response activities at the Site. The Settling Defendants shall also make available to Plaintiffs, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of response activities at the Site.

30. Business Confidential and Privileged Documents.

a. The Settling Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiffs under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA and the State, or if EPA has notified the pertinent Settling Defendant that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, the public may be given access to such documents or information without further notice to the Settling Defendant.

b. The Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If a Settling Defendant asserts such a privilege in lieu of providing documents, the Settling Defendant shall provide the Plaintiffs with the following: (i) the title of the document, record, or information; (ii) the date of the document, record, or information; (iii) the name and title of the author of the document, record, or information; (iv) the name and title of each addressee and recipient; (v) a description of the contents of the document, record, or information; and (vi) the privilege asserted by the Settling Defendant.

31. Limitation of Confidentiality/Privilege Claim. No claim of confidentiality or privilege shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XV. RETENTION OF RECORDS

32. Until six years after the Effective Date, the Settling Defendants shall preserve and retain all records and documents now in its possession or control or which come into its possession or control that relate in any manner to the performance of response activities at the Site or the liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary.

33. At the conclusion of this document retention period, the Settling Defendants shall notify the United States and the State at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States or the State, the Settling Defendants shall deliver any such records or documents to EPA or WDNR. The Settling Defendant may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If a Settling Defendant asserts such a privilege, the Settling Defendant shall provide the Plaintiffs with the following: (i) the title of the document, record, or information; (ii) the date of the document, record, or information; (iii) the name and title of the author of the document, record, or information; (iv) the name and title of each addressee and recipient; (v) a description of the subject of the document, record, or information; and (vi) the privilege asserted by the Settling Defendant. However, no documents, reports, or other information created or generated pursuant to the requirements of this Consent Decree or any other settlement with the Plaintiffs shall be withheld on the grounds that they are privileged.

34. Each Settling Defendant hereby certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability

regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 §§ U.S.C. 9604(e) and 9622(e).

XVI. NOTICES AND SUBMISSIONS

35. Whenever, under the terms of this Consent Decree, written notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, the State, and the Settling Defendants, respectively.

As to the United States:

As to DOJ:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice (DJ # 90-11-2-1045/3)

P.O. Box 7611	601 D Street, N.W. – Room 2121
Washington, D.C. 20044-7611	Washington, DC 20004

As to EPA:

Director, Superfund Division
U.S. Environmental Protection Agency
Region 5
77 West Jackson Blvd.
Chicago, IL 60604

As to the State:

As to WDOJ:

Cynthia R. Hirsch
Assistant Attorney General
Wisconsin Department of Justice

P.O. Box 7857	17 West Main Street
Madison, WI 53707-7857	Madison, WI 53702

As to WDNR:

Kenneth Johnson
Administrator, Division of Water
Wisconsin Department of Natural Resources

P.O. Box 7921	101 S. Webster St.
Madison, WI 53707-7921	Madison, WI 53703

As to the Settling Defendants:

As to the City of Appleton:

Appleton City Attorney
100 N. Appleton Street
Appleton, WI 54912-2428

As to CBC Coating, Inc.:

Michael P. Carlton
von Briesen & Roper, S.C.
411 East Wisconsin Ave., Suite 1000
Milwaukee, WI 53202

As to Menasha Corporation:

Philip C. Hunsucker
Hunsucker Goodstein P.C.
3717 Mt. Diablo Blvd., Suite 200
Lafayette, CA 94549

As to the Neenah-Menasha Sewerage Commission:

William J. Mulligan
Davis & Kuelthau
111 East Kilbourn Ave., Suite 1400
Milwaukee, WI 53202

As to U.S. Paper Mills Corp.:

Scott W. Hansen
Reinhart Boerner Van Deuren S.C.
1000 North Water St., Suite 1700
Milwaukee, WI 53202

As to WTM I Company:

Nancy K. Peterson
Quarles & Brady LLP
411 East Wisconsin Ave., Suite 2350
Milwaukee, WI 53202

XVII. RETENTION OF JURISDICTION

36. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XVIII. INTEGRATION / APPENDICES

37. This Consent Decree and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached and incorporated into this Consent Decree:

“Appendix A” is the map of the Site.

“Appendix B” is a tabulation of the amount that each Settling Defendant agrees to pay into the Court Registry Account pursuant to this Consent Decree.

XIX. MODIFICATION

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

XX. PUBLIC COMMENT

39. The Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States shall file with the Court any written comments received and the United States’ response thereto. The United States reserves the right to withdraw or withhold its consent if comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper or inadequate. The Settling Defendants consent to entry of this Consent Decree without further notice, and the United States reserves the right to oppose an attempt by any person to intervene in this civil action.

XXI. EFFECTIVE DATE

40. The effective date of this Consent Decree shall be the date upon which it is entered by the Court, provided, however, that the Settling Defendants and the State hereby agree that they shall be bound upon the Date of Lodging to comply with obligations of the Settling Defendants and the State specified in this Consent Decree that arise before the date upon which this Consent Decree is entered by the Court. In the event the United States withdraws or withholds consent to the Consent Decree before entry, or the Court declines to enter the Consent Decree, then the

preceding requirement to comply with requirements of the Consent Decree upon the Date of Lodging shall terminate.

XXII. PROVISIONS RELATING TO WTM'S BANKRUPTCY STATUS

41. Notwithstanding any other provision herein, WTM's participation in this settlement is subject to and contingent upon approval of the Bankruptcy Court of WTM's entry into this Consent Decree. WTM also intends to seek Bankruptcy Court approval of a related settlement with its insurance carriers. WTM shall exercise its best efforts to obtain Bankruptcy Court approval to enter into this Consent Decree and, when this Consent Decree is lodged, shall promptly seek such approval pursuant to Bankruptcy Rule 9019. WTM's payment specified in Appendix B shall be made to the Court Registry Account within 30 Days of either the Bankruptcy Court's order issuing such approval or the Court's order in this action authorizing payment by the Settling Defendants into the Court Registry Account, whichever occurs later. In the event the orders of the Bankruptcy Court approving WTM's entry into this Consent Decree and a related insurance settlement are reversed on appellate review, WTM's funds deposited into the Court Registry Account (and all accrued interest) shall be returned to WTM pursuant to a separate Withdrawal Order of the Court.

42. The United States and the State will be deemed to have withdrawn their claims filed in the WTM Bankruptcy Cases, with the United States' claim having been assigned Claim No. 1148 and the State's claim having been assigned Claim No. 1172. The withdrawal shall take effect as of the Effective Date, but shall be conditioned on the Consent Decree's continued effectiveness and on WTM's payment and the Plaintiffs' receipt and retention of the full cash amount specified in Appendix B for WTM.

43. For WTM and WTM's Related Parties, the application of the provisions of Section IX of this Consent Decree (Covenants By the Plaintiffs and the Tribes) and Section XII of this Consent Decree (Contribution / Effect of Settlement) is conditioned on WTM's payment and the Plaintiffs' receipt and retention of the full cash amount specified in Appendix B for WTM (as opposed to a reduced cash amount to be paid as a distribution for allowed claims in the WTM Bankruptcy Cases). WTM shall not propose or seek confirmation of any plan of reorganization or plan of liquidation that is inconsistent with the terms and provisions of this Consent Decree, or take any other action in the WTM Bankruptcy Cases that is inconsistent with the terms and provisions of this Consent Decree; provided, however, that notwithstanding the foregoing or any other provision herein, nothing in this Consent Decree requires WTM to remain in existence or otherwise prohibits WTM from winding-up its affairs and ceasing to exist, including without limitation through a chapter 11 plan, conversion to chapter 7 of the Bankruptcy Code, or an order dismissing its bankruptcy case after WTM has paid the amount identified in Paragraph 5 and performed its obligations under Paragraph 26.a, and after entry of this Consent Decree by the District Court and either affirmation on appellate review of such entry or the expiration of time to appeal such entry.

44. The provisions of Section X and Section XV of this Consent Decree will not apply to WTM. With respect to WTM, the United States, the State, and the Tribes expressly reserve, and this Consent Decree is without prejudice to, all rights against WTM with respect to all matters other than those expressly specified in Paragraphs 12, 13, and 14. With respect to WTM, the United States, the State and the Tribes also specifically reserve, and this Consent Decree is without prejudice to, any action based on WTM's failure to meet a requirement of this Consent Decree. In addition, the United States, the State and the Tribes reserve, and this Consent Decree

is without prejudice to, all rights against WTM with respect to the Site for liability under federal or state law for acts by WTM or its successors or assigns that occur after the Date of Lodging of this Consent Decree.

XXIII. SIGNATORIES / SERVICE

45. Each undersigned representative of a Settling Defendant, the United States, the State, and the Tribes 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 such Party to this document; provided, however, that WTM's entry into this Consent Decree is subject to and contingent upon Bankruptcy Court approval. This Consent Decree may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument.

46. The Settling Defendants hereby agree not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified the Settling Defendants in writing that it no longer supports entry of the Consent Decree.

47. Each Settling Defendant shall identify, on an attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. The Settling Defendants hereby agree to accept service including, but not limited to, service of a summons, in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court.

XXIV. FINAL JUDGMENT

48. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States, the State, the Tribes, and the Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED

*THE COURT'S APPROVAL AND ENTRY OF THIS
CONSENT DECREE SHALL BE SIGNIFIED BY
ENTRY OF A SEPARATE ORDER IN
ACCORDANCE WITH THE COURT'S
ELECTRONIC CASE FILING POLICIES AND
PROCEDURES MANUAL*

WILLIAM C. GRIESBACH, Chief Judge
United States District Court - WIED

THE UNDERSIGNED PARTY enters into this Consent Decree with the Cashout Settling Defendants and the State of Wisconsin in the matter of *United States and the State of Wisconsin v. NCR Corporation, et al.*, relating to the Lower Fox River and Green Bay Site:

FOR THE UNITED STATES OF AMERICA

Date: 3/18/14



ROBERT G. DREHER
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

Date: 3/26/2014



RANDALL M. STONE, Senior Attorney
JEFFREY A. SPECTOR, Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
Telephone: 202-514-1308
Facsimile: 202-616-6584
E-Mail: randall.stone@usdoj.gov

JAMES L. SANTELLE
United States Attorney

SUSAN M. KNEPEL
Assistant United States Attorney
Office of the United States Attorney
517 E. Wisconsin Avenue, Room 530
Milwaukee, WI 53202

THE UNDERSIGNED PARTY enters into this Consent Decree with the Cashout Settling Defendants and the State of Wisconsin in the matter of *United States and the State of Wisconsin v. NCR Corporation, et al.*, relating to the Lower Fox River and Green Bay Site:

Date:

3/19/2014


RICHARD C. KARL

Superfund Division Director
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, IL 60604

Date:

March 12, 2014


RICHARD MURAWSKI

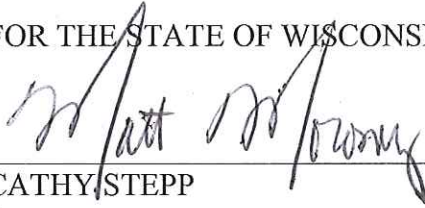
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, IL 60604

THE UNDERSIGNED PARTY enters into this Consent Decree with the Cashout Settling Defendants and the State of Wisconsin in the matter of *United States and the State of Wisconsin v. NCR Corporation, et al.*, relating to the Lower Fox River and Green Bay Site:

Date:

3/14/14

FOR THE STATE OF WISCONSIN



CATHY STEPP

Secretary

Wisconsin Department of Natural Resources

101 South Webster Street

Madison, WI 53703

Date:

3/19/14



CYNTHIA R. HIRSCH

Assistant Attorney General

Wisconsin Department of Justice


123 W. Washington Avenue

Madison, WI 53702

THE UNDERSIGNED PARTY enters into this Consent Decree with the Cashout Settling Defendants and the State of Wisconsin in the matter of *United States and the State of Wisconsin v. NCR Corporation, et al.*, relating to the Lower Fox River and Green Bay Site:

FOR THE
MENOMINEE INDIAN TRIBE OF WISCONSIN

Date: 3/13/14




Chairman, Menominee Indian Tribe of Wisconsin
Menominee Tribal Offices
P.O. Box 910
Keshena, WI 54135

THE UNDERSIGNED PARTY enters into this Consent Decree with the Cashout Settling Defendants and the State of Wisconsin in the matter of *United States and the State of Wisconsin v. NCR Corporation, et al.*, relating to the Lower Fox River and Green Bay Site:

FOR THE
ONEIDA TRIBE OF INDIANS OF WISCONSIN

Date: 3-13-14


Chairman, Oneida Tribe of Indians of Wisconsin
P.O. Box 365
Oneida, WI 54155

THE UNDERSIGNED PARTY enters into this Consent Decree with the Cashout Settling Defendants and the State of Wisconsin in the matter of *United States and the State of Wisconsin v. NCR Corporation, et al.*, relating to the Lower Fox River and Green Bay Site:

FOR THE CITY OF APPLETON

Date: 3-19-14


Signature

Typed Name: James P. Walsh

Title: City Attorney

Address: Appleton City Attorney's Office
100 N. Appleton Street
P.O. Box 2428

Appleton, WI 54912-2428

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

Typed Name: James P. Walsh

Title: City Attorney

Address: Appleton City Attorney's Office
100 N. Appleton Street
P.O. Box 2428

Appleton, WI 54912-2428

THE UNDERSIGNED PARTY enters into this Consent Decree with the Cashout Settling Defendants and the State of Wisconsin in the matter of *United States and the State of Wisconsin v. NCR Corporation, et al.*, relating to the Lower Fox River and Green Bay Site:

FOR CBC COATING, INC.

Date:

February 18, 2014

Signature



Typed Name: Thomas D. Metivier

Title: President and CEO, CBC Coating, Inc.

Address: 820 South Olde Oneida Street

Appleton, WI 54915

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

Typed Name: James K. Catlin

Title: Secretary, CBC Coating, Inc.

Address: 820 South Olde Oneida Street

Appleton, WI 54915

THE UNDERSIGNED PARTY enters into this Consent Decree with the Cashout Settling Defendants and the State of Wisconsin in the matter of *United States and the State of Wisconsin v. NCR Corporation, et al.*, relating to the Lower Fox River and Green Bay Site:

FOR MENASHA CORPORATION

Date: February 26, 2014



Signature

Typed Name: Mark P. Fogarty

Title: Vice President

Address: Menasha Corporation

1645 Bergstrom Road

Neenah, WI 54956

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

Typed Name: Philip C. Hunsucker

Title: Attorney

Address: Hunsucker Goodstein PC

3717 Mt. Diablo Blvd., Suite 200

Lafayette, CA 94549

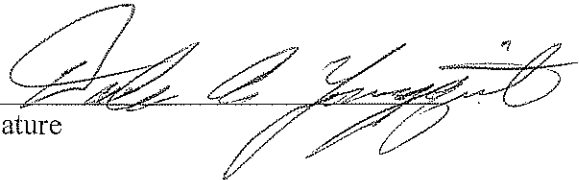
THE UNDERSIGNED PARTY enters into this Consent Decree with the Cashout Settling Defendants and the State of Wisconsin in the matter of *United States and the State of Wisconsin v. NCR Corporation, et al.*, relating to the Lower Fox River and Green Bay Site:

FOR THE NEENAH-MENASHA
SEWERAGE COMMISSION

Date:

3/20/14

Signature



Typed Name: Dale Youngquist

Title: President

Address: Neenah-Menasha Sewerage Commission

101 Garfield Avenue

Menasha, WI 54952

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

Typed Name: John E. Thiel

Title: Attorney

Address: John E. Thiel Law Office LLC

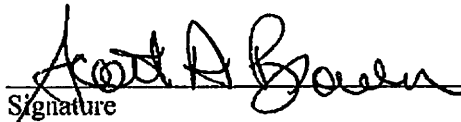
P.O. Box 7560

Appleton, WI 54912-7075

THE UNDERSIGNED PARTY enters into this Consent Decree with the Cashout Settling Defendants and the State of Wisconsin in the matter of *United States and the State of Wisconsin v. NCR Corporation, et al.*, relating to the Lower Fox River and Green Bay Site:

FOR U.S. PAPER MILLS CORP.

Date: 2/20/14


Signature

Typed Name: Scott A. Brown

Title: President, US Paper Mills

Address: 824 Fort Howard Ave

DePere, WI 54115

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

Typed Name: Thomas R. Gottshall

Title: Attorney

Address: Haynsworth Sinker Boyd, P.A.

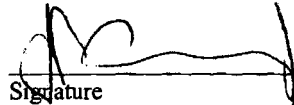
1201 Main Street, Suite 2200

Columbia, SC 29201

THE UNDERSIGNED PARTY enters into this Consent Decree with the Cashout Settling Defendants and the State of Wisconsin in the matter of *United States and the State of Wisconsin v. NCR Corporation, et al.*, relating to the Lower Fox River and Green Bay Site:

FOR WTM I COMPANY

Date: Feb. 19, 2014


Signature

Typed Name: J.P. Causey Jr.

Title: Vice President

Address: Box 7

West Point, VA 23181

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

Typed Name: _____


Title: _____

Address: _____

THE UNDERSIGNED assents to the terms of Section XI (Covenants by the Settling Defendants and the State) of this Consent Decree with Cashout Settling Defendants and the State of Wisconsin in matter of United States and the State of Wisconsin v. NCR Corp., et al. (E.D. Wis.) relating to the Lower Fox River and Green Bay Site.

FOR SONOCO PRODUCTS COMPANY

2-21-2014
Date

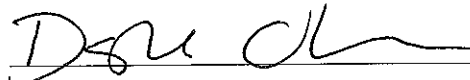
Signature: 
Name (print): M. Jack Sanders
Title: President and CEO
Address: 1 North Second Street
Hartsville, SC 29550

THE UNDERSIGNED assents to the terms of Section XI (Covenants by the Settling Defendants and the State) of this Consent Decree with Cashout Settling Defendants and the State of Wisconsin in matter of United States and the State of Wisconsin v. NCR Corp., et al. (E.D. Wis.) relating to the Lower Fox River and Green Bay Site.

FOR PHILIP MORRIS USA INC.
(formerly known as Philip Morris Incorporated)

2/21/14
Date

Signature:



Name (print):

Daphne O'Connor

Title:

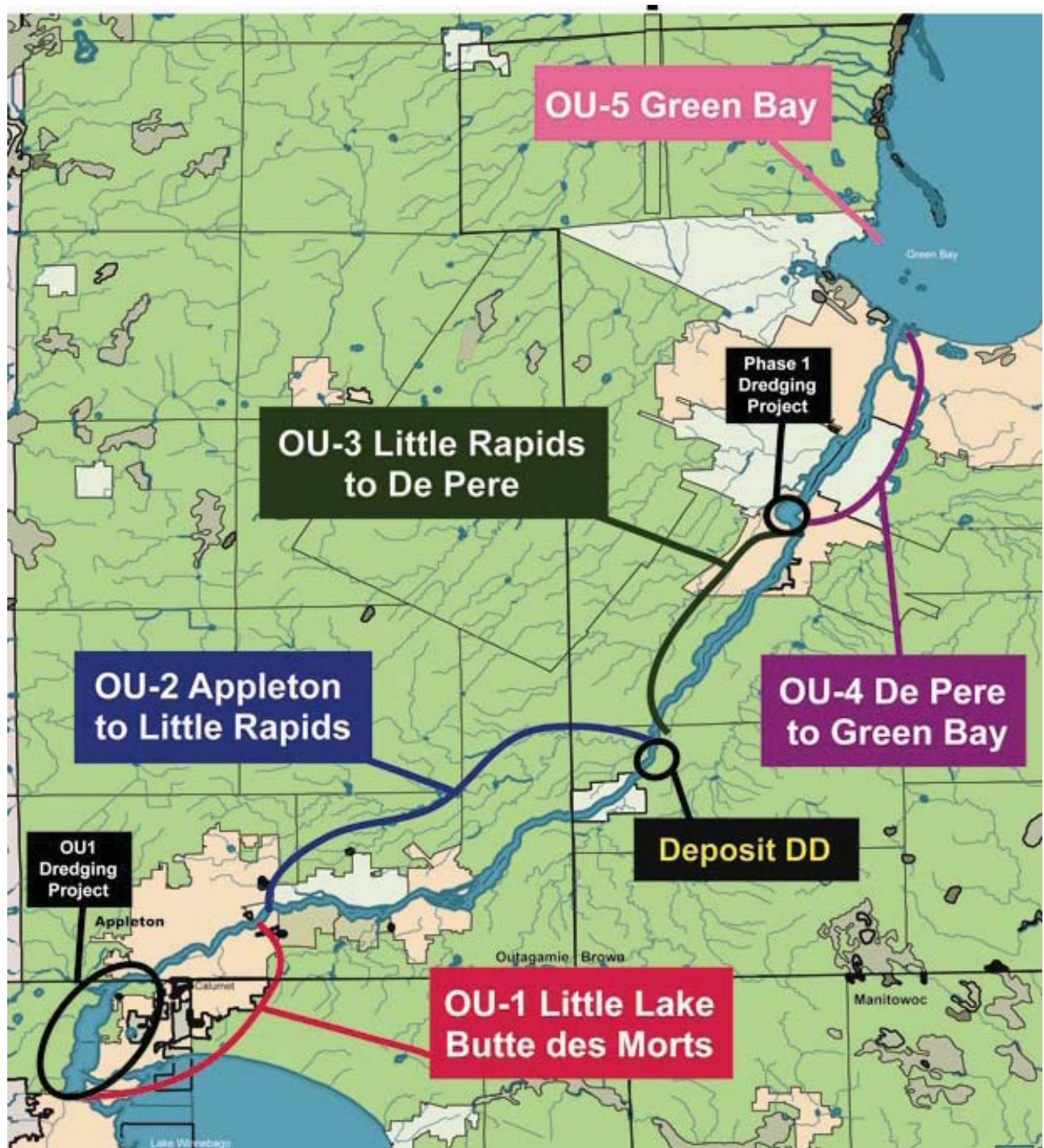
VP & Assoc General Counsel

Address:

Altria Client Services on behalf of
Philip Morris USA, Inc.

101 Constitution Avenue, N.W., Suite 400W
Washington, DC 20001

Appendix A: Map of the Site



Appendix B: Settling Defendants' Settlement Payment Amounts

<u>Settling Defendant</u>	<u>Payment Amount</u>
1. City of Appleton	\$5,200,000
2. CBC Coating, Inc.	\$3,000,000
3. Menasha Corporation	\$13,700,000
4. Neenah-Menasha Sewerage Commission	\$5,200,000
5. U.S. Paper Mills Corp.	\$14,700,000
6. WTM I Company	\$12,200,000
 TOTAL FOR ALL SETTLING DEFENDANTS	 \$54,000,000