

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA and
THE STATE OF WISCONSIN,

Plaintiffs,

v.

APPLETON PAPERS INC. and
NCR CORPORATION,

Defendants.

CIVIL ACTION NO.

CONSENT DECREE

TABLE OF CONTENTS

I.	BACKGROUND	1
II.	JURISDICTION	3
III.	PARTIES BOUND	3
IV.	DEFINITIONS	3
V.	STATEMENT OF PURPOSE	6
VI.	PAYMENTS BY DEFENDANTS	7
VII.	PROJECTS	14
VIII.	PROCESSES FOR CONSULTATION	17
IX.	SAMPLING AND MONITORING	21
X.	INDEMNIFICATION	22
XI.	COVENANTS NOT TO SUE BY THE PLAINTIFFS AND THE TRIBES	23
XII.	RESERVATION OF RIGHTS BY THE PLAINTIFFS AND THE TRIBES	25
XIII.	DEFENDANTS' COVENANTS NOT TO SUE	26
XIV.	EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION	28
XV.	SETTLEMENTS WITH OTHER PERSONS	31
XVI.	NOTICES AND SUBMISSIONS	33
XVII.	EFFECTIVE DATE AND TERMINATION	35
XVIII.	MODIFICATION	35
XIX.	LODGING AND OPPORTUNITY FOR PUBLIC COMMENT	35
XX.	SIGNATORIES/SERVICE	36
XXI.	DISMISSAL OF ACTION AND RETENTION OF JURISDICTION	37

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 specified relief from the Defendants relating to releases and threatened releases of polychlorinated biphenyls (“PCBs”) at and from the Fox River Site (the “Fox River Site” or the “Site,” as defined below), including injunctive relief and reimbursement of Site-related response costs. 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) against the Defendants.

B. United States of America (“United States”) instituted this action on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”).

C. The State of Wisconsin (the “State”) instituted this action on behalf of the Wisconsin Department of Natural Resources (“WDNR”).

D. 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 the Secretary of the United States Department of the Interior (“DOI”), as represented by the United States Fish and Wildlife Service, and the Secretary of the United States Department of Commerce (“Commerce”), as represented by the National Oceanic and Atmospheric Administration.

E. WDNR is a response agency and the 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. PCBs have been released, and are threatened to be released, at and from the Site. PCBs are hazardous substances under CERCLA.

H. In response to releases and threatened releases of PCBs at and from the Site, EPA and WDNR have undertaken response actions at or in connection with the Site under CERCLA Section 104, 42 U.S.C. § 9604. A remedial investigation/feasibility study (“RI/FS”) for the Site is being prepared by WDNR, with funding provided by EPA under cooperative agreement with the State. A Record of Decision (“ROD”) for the Site is expected to be issued after the RI/FS is completed. The United States and the State have incurred and will continue to incur response costs in connection with the Site.

I. The State Trustee, Federal Trustees, and the Tribal Trustees have been involved in various natural resource damage 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.

J. Appleton Papers Inc. and NCR Corporation (collectively the “Defendants”) are current and/or former owners and operators of two paper mill facilities at or near the Site. By entry into this Consent Decree, the Defendants do not admit any liability arising out of the transactions or occurrences alleged in the complaint.

K. The Parties to this Consent Decree 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 and restoration of the Site, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby 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. §§ 9606, 9607, and 9613(b). The Court also has personal jurisdiction over the Defendants. Solely for the purposes of this Consent Decree and the underlying complaint, Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree. Solely for the purposes of this Consent Decree, the Tribes submit to the jurisdiction of the Court, as Parties to the Consent Decree.

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States, the State, and the Tribes, and upon the Defendants and their successors and assigns. Any change in ownership or corporate status of a Defendant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such Defendant's responsibilities under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are

used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

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

"Commerce" means the United States Department of Commerce and any successor departments or agencies of the United States.

“Consent Decree” means this Consent Decree.

“Day” means a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or Federal holiday. 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.

“Defendants” means Appleton Papers Inc. and NCR Corporation.

“DOI” means the United States Department of the Interior and any successor departments or agencies of the United States.

“DOJ” means the United States Department of Justice and any successor departments or agencies of the United States.

“EPA” means the United States Environmental Protection Agency and any successor departments or agencies of the United States.

“Effective Date” means the effective date of this Consent Decree as provided by Section XVII of this Consent Decree (Effective Date and Termination).

“Effective Period” means the effective period of this Consent Decree as provided by Section XVII of this Consent Decree (Effective Date and Termination).

“Existing PCB Contamination” means any polychlorinated biphenyls present or existing in the environment at the Site as of the Effective Date of this Consent Decree.

“Interest” means interest at the rate specified for interest on investments of the Hazardous Substance Superfund established under Subchapter A of Chapter 98 of Title 26 of the U.S. Code, compounded on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

“National Contingency Plan” or “NCP” means the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

“NRDAR Fund” means DOI’s Natural Resource Damage Assessment and Restoration Fund.

“Paragraph” means a portion of this Consent Decree identified by an arabic numeral or an upper case letter.

“Parties” means the United States, the State, the Tribes, and the Defendants.

“Plaintiffs” means the United States and the State.

“RCRA” means the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 et seq. (also known as the Resource Conservation and Recovery Act).

“Section” means a portion of this Consent Decree identified by a roman numeral.

“Site” means the Lower Fox River and the Bay of Green Bay.

“State” means the State of Wisconsin.

“Subparagraph” means a portion of this Consent Decree identified by a lower case letter or an arabic numeral in parentheses.

“United States” means the United States of America, including all of its departments, agencies, and instrumentalities.

“Tribes” means the Menominee Indian Tribe of Wisconsin and the Oneida Tribe of Indians of Wisconsin.

“Trustees” means DOI, Commerce, WDNR, and the Tribes

“Waste Material” means: (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); and (iii) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

“WDOJ” means the Wisconsin Department of Justice and any successor departments or agencies of the State of Wisconsin.

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

V. STATEMENT OF PURPOSE

4. This Consent Decree is intended to advance the following purposes: providing interim funding for response action projects and natural resource damage restoration projects at the Site; acquiring knowledge from projects performed under this Consent Decree, so that knowledge gained can be utilized in selecting and implementing future response action projects and restoration projects; providing partial reimbursement of past natural resource damage assessment costs for the Site paid by DOI; and providing an opportunity for the parties to focus on negotiations concerning potential resolution of the Defendants’ alleged liability for the Site, as well as their potential counterclaims.

VI. PAYMENTS BY DEFENDANTS

5. Payments Toward Past Natural Resource Damage Assessment Costs

a. As partial reimbursement of past natural resource damage assessment costs for the Site paid by DOI, Defendants shall make the following payments to the NRDAR Fund:

(1) Defendants shall pay \$375,000 to the NRDAR Fund within 30 days of the Effective Date of this Consent Decree.

(2) Defendants shall pay an additional \$375,000 to the NRDAR Fund by no later than six months after the first anniversary of the Effective Date of this Consent Decree.

(3) Defendants shall pay an additional \$375,000 to the NRDAR Fund by no later than six months after the second anniversary of the Effective Date of this Consent Decree.

(4) Defendants shall pay an additional \$375,000 to the NRDAR Fund by no later than six months after the third anniversary of the Effective Date of this Consent Decree.

b. Interest on Late Payments. In the event that any payment by Defendants under this Paragraph is not received when due, Interest shall accrue on the unpaid balance through the date of payment, and shall be payable to the NRDAR Fund.

c. Stipulated Penalties for Late Payments. In addition to the Interest required to be paid under the preceding Subparagraph, if any amounts to be paid under this Paragraph are not paid by the required date, the Defendants shall pay to the NRDAR Fund a stipulated penalty of \$1000 per violation per day that such payment is late.

d. Payments to the NRDAR Fund under this Paragraph shall be by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice account in accordance with current EFT procedures, referencing the Civil Action Number assigned to this case and DOJ Case No. 90-11-2-1045Z. Payment shall be made in accordance with instructions provided to the Defendants by the Financial Litigation unit of the U.S. Attorney’s Office for the Eastern District of Wisconsin following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. Eastern Time shall be credited on the next business day. The Defendants shall send notice that payment has been made in accordance with Section XVI of this Consent Decree (Notices and Submissions) and to:

Department of Interior
Natural Resource Damage Assessment and Restoration Program
Attn: Restoration Fund Manager
1849 C Street, NW
Mailstop 4449
Washington, DC 20240

6. Payments for Response Action Projects and Natural Resource Damage Restoration Projects.

a. Establishment of Fox River Financial Assurance Escrow Account.

Within 30 days of the Effective Date of this Consent Decree, Defendants shall establish an interest-bearing escrow account trust fund — to be known as the Fox River Financial Assurance Escrow Account (hereinafter the “Escrow Account”) — as financial assurance for the funding of response action projects and natural resource damage restoration projects to be performed under Section VII (Projects) of this Consent Decree. The Plaintiffs and the Tribes shall be the beneficiaries of the Escrow Account. The escrow agreement establishing the Escrow Account shall be substantially in the form attached hereto as Appendix A. The final escrow agreement

shall be provided to the Plaintiffs and the Tribes for approval primarily to ensure that the escrowed funds will be managed in accordance with this Consent Decree. The escrow agreement shall instruct and authorize the escrow agent to receive, hold, and disburse funds in the Escrow Account for funding response action projects and natural resource damage restoration projects to be funded and performed under Section VII (Projects) of this Consent Decree. The escrow agreement shall require that the escrow agent prepare and submit to the Plaintiffs and the Tribes and to the Defendants monthly statements detailing funds received and disbursed in the preceding month, and the balance in the Escrow Account on the date of the statement. Interest earned on all funds in the Escrow Account shall be paid into the Escrow Account and shall first be applied to defray any account fees. Any remaining net interest shall be retained and used for funding projects to be performed under Section VII (Projects) of this Consent Decree.

b. Defendants' Payments into Escrow Account. During the Effective Period, Defendants shall deposit funds in the Escrow Account as specified below:

(1) Defendants shall make an initial deposit of at least \$3,000,000 into the Escrow Account within 30 days after the Effective Date of this Consent Decree.

(2) Within 90 days after the effective date of this Consent Decree, Plaintiffs shall provide Defendants with Plaintiffs' good faith written estimate of the funds required for projects to be performed by the Plaintiffs and the Tribes over the next six months. Defendants shall deposit the full amount estimated by Plaintiffs into the Escrow Account within 21 days of the date on which Plaintiffs provide Defendants their written estimate.

(3) Whenever the balance of the Escrow Account is reduced to \$3,000,000 or less due to disbursements pursuant to Subparagraphs 6.c.(1) and/or 6.c.(2),

the Plaintiffs shall provide Defendants with a good faith written estimate of additional funds required for projects to be performed by the Plaintiffs and the Tribes over the next six months. Defendants shall deposit the full additional amount estimated by Plaintiffs into the Escrow Account within 21 days of the date on which Plaintiffs provide Defendants their written estimate. The process of replenishing the Escrow Account with estimated costs for the next six months whenever the Escrow Account balance is reduced to \$3,000,000 or less shall continue throughout the Effective Period, subject to the limitations in Subparagraph 6.b.(4).

(4) Defendants' funding obligations under this Paragraph shall be limited to: (i) \$10 million for the first year after the Effective Date of this Consent Decree (less Defendants' Allowable Year One Costs under Subparagraph 11.b); (ii) \$20 million in the aggregate for the first two years after the Effective Date of this Consent Decree (less Defendants' Allowable Year Two Costs under Subparagraph 11.b); (iii) \$30 million in the aggregate for the first three years after the Effective Date of this Consent Decree (less Defendants' Allowable Year Three Costs under Subparagraph 11.b); and (iv) \$40 million in the aggregate for the four-year period after the Effective Date of this Consent Decree (less Defendants' Allowable Year Four Costs under Subparagraph 11.b).

c. Disbursements from Escrow Account. Funds deposited in the Escrow Account (and all net interest on such amounts) shall be disbursed pursuant to any Escrow Disbursement Certificate submitted to the escrow agent by Plaintiffs pursuant to this Subparagraph 6.c. Any such Escrow Disbursement Certificate shall: (i) be substantially in the form attached hereto at Appendix A; (ii) specify the amounts to be disbursed; and (iii) include

appropriate disbursement instructions. The disbursement amounts specified in a given Escrow Disbursement Certificate shall be reasonably related to the estimated near-term costs of the projects to be performed by the Plaintiffs and the Tribes under Section VII (Projects) of this Consent Decree. Plaintiffs shall provide the Tribes and the Defendants a copy of each Escrow Disbursement Certificate at the same time and in the same manner as it is provided to the escrow agent. Funds shall be disbursed from the Escrow Account for response action projects and natural resource damage restoration projects as specified below:

(1) Disbursements to Plaintiffs for Funding Response Action Projects to be Performed by the Plaintiffs. EPA and WDNR shall jointly execute and submit any Escrow Disbursement Certificate directing that funds be disbursed from the Escrow Account for funding response action projects to be performed by the Plaintiffs under Section VII (Projects) of this Consent Decree. Any such Escrow Disbursement Certificate shall direct that such funds be disbursed: (i) to WDNR, or its designated contractor, for funding particular response action projects to be performed by WDNR; or (ii) to the EPA Fox River Superfund Special Account within the Hazardous Substance Superfund, to be retained and used to conduct or finance response action projects at or in connection with the Site. If any balance remains in the Fox River Superfund Special Account after all response actions have been completed, it may be transferred by EPA to the EPA Hazardous Substance Superfund.

(2) Disbursements to Plaintiffs for Funding Natural Resource Damage Restoration Projects to be Performed by the Plaintiffs and/or the Tribes. DOI and WDNR shall jointly execute and submit any Escrow Disbursement Certificate directing that funds be disbursed from the Escrow Account for funding natural resource damage restoration

projects to be performed by the Plaintiffs and/or the Tribes under Section VII (Projects) of this Consent Decree. Any such Escrow Disbursement Certificate shall direct that such funds be disbursed: (i) to WDNR, or its designated contractor, for funding particular natural resource damage restoration projects to be performed by WDNR; or (ii) to the Fox River Site Account within the NRDAR Fund, for funding particular natural resource damage restoration projects to be performed by DOI, Commerce, WDNR, or the Tribes.

(3) Disbursement to Defendants. If any balance remains in the Escrow Account after termination of the Effective Period and after reimbursement from the Escrow Account of the costs to complete the projects commenced by the Plaintiffs or the Tribes under this Consent Decree before termination of the Effective Period, Plaintiffs shall submit an Escrow Disbursement Certificate to the escrow agent directing that the balance remaining in the Escrow Account shall be disbursed to Defendants. Any such Escrow Disbursement Certificate shall be substantially in the form attached hereto as Appendix A. The Parties acknowledge that, upon termination of the Effective Period, the amount of reimbursement to the Plaintiffs and the Tribes under this Consent Decree for the costs to complete the projects already commenced by the Plaintiffs and/or the Tribes shall be limited to the funds in the Escrow Account at the time of termination.

d. Interest on Late Payments. In the event that any payment by Defendants under this Paragraph is not received when due, Interest shall accrue on the unpaid balance through the date of payment, and shall be payable to the Escrow Account.

e. Stipulated Penalties for Late Payments. In addition to the Interest required to be paid under the preceding Subparagraph, if any amounts to be paid under this Paragraph are

not paid by the required date, the Defendants shall pay into the Escrow Account a stipulated penalty of \$1000 per violation per day that such payment is late.

7. Addition of Funds to Accounts and Partial Funding from Accounts. Nothing in this Consent Decree shall be construed to preclude the use of the Fox River Superfund Special Account or the Fox River Site Account within the NRDAR Fund for receipt of additional funds from any source (beyond those funds to be paid into those accounts under Subparagraph 6.c of this Consent Decree). Nothing in this Consent Decree shall be construed as limiting the Plaintiffs' or the Tribes' discretion and authority to use funding sources other than the Escrow Account, the Fox River Superfund Special Account, or the Fox River Site Account within the NRDAR Fund for partial funding of projects to be performed under Section VII (Projects) of this Consent Decree. Plaintiffs shall maintain separate accountings of the funds received from the Defendants under this Consent Decree and any funds received from other sources.

8. Joint Payment Obligation. The obligation of Defendants to make payments due under this Consent Decree are joint and several. In the event of the failure of either of the Defendants to make a payment required under this Consent Decree, the other Defendant shall be responsible for such payment.

9. Termination by the Plaintiffs and the Tribes Due To Nonpayment. In the event that any payment by Defendant under this Consent Decree is not received when due, the Plaintiffs and the Tribes may jointly invoke the termination procedures specified by this Paragraph. At any time after any payment by Defendant is overdue and remains unpaid, the Plaintiffs and the Tribes may jointly issue the Defendants a written Notice of Intent to Terminate specifying the overdue amount which remains unpaid, and notifying the Defendants that the Plaintiffs and the Tribes may terminate this Consent Decree under this Paragraph if full payment

of the unpaid amount (including but not limited to any Interest and stipulated penalties payable under Subparagraphs 5.d, 5.e, 6.d, and 6.e) is not received within ten (10) working days of the date of receipt of the Notice of Intent to Terminate. If full payment of the unpaid amount is not received within ten (10) working days of the date of receipt of the Notice of Intent to Terminate, the Plaintiffs and the Tribes may jointly terminate this Consent Decree by issuing the Defendants a written Notice of Termination. Any Notice of Intent to Terminate or Notice of Termination issued under this Paragraph shall be addressed to the persons identified in Section XVI (Notices and Submissions) of this Consent Decree. Termination by the Plaintiffs and the Tribes under this Paragraph shall end the Effective Period of this Consent Decree as of the date of the Notice of Termination, and shall terminate the covenants not to sue during the Effective Period under Paragraph 23 and Paragraph 27 of this Consent Decree. Subparagraph 6.c of this Consent Decree shall govern the disbursement of funds from the Escrow Account after any termination under this Paragraph. Termination by the Plaintiffs and the Tribes under this Paragraph shall relieve the Plaintiffs and the Tribes and Defendants of all other ongoing obligations under this Consent Decree due to be performed after the date of the Notice of Termination, including but not limited to any obligations of Plaintiffs under Section VIII (Processes for Consultation); provided, however, that termination under this Paragraph shall not relieve the Defendants of their obligation to complete any project already commenced by Defendants under Subparagraph 11.b of this Consent Decree.

VII. PROJECTS

10. Selection and Funding of Projects. The funds paid by the Defendants under Subparagraph 6.b of this Consent Decree will be used by the Plaintiffs and the Tribes in their complete discretion; provided, however, that: (i) such funds shall be used to perform response

action projects and restoration projects at or relating to the Fox River Site; (ii) response action projects shall be consistent with the NCP and CERCLA; and (iii) restoration projects performed shall be consistent with applicable law, and shall be designed to restore, replace, or protect natural resources at the Site, or natural resources equivalent to the resources that have been injured at the Site. EPA and WDNR will jointly select all response action projects to be funded and performed under this Consent Decree, and the Trustees will jointly select all restoration projects to be funded and performed under this Consent Decree.

11. Performance of Projects.

a. Performance of Projects by the Plaintiffs and/or the Tribes. For each project to be performed by the Plaintiffs and/or the Tribes under this Consent Decree, EPA and WDNR (for response action projects) or the Trustees (for restoration projects) will jointly determine whether the project will be performed by one or more of the Plaintiffs, by one or more of the Tribes, or by a contractor or designee selected by the Plaintiffs and/or the Tribes. Except as provided by Paragraph 7 of this Consent Decree, all costs associated with projects performed by the Plaintiffs and/or the Tribes under this Consent Decree shall be paid with disbursements pursuant to Subparagraphs 6.c.(1) (for response action projects) and 6.c.(2) (for restoration projects).

b. Performance of Projects by Defendants. The Defendants may propose to the Plaintiffs and the Tribes or the Plaintiffs and the Tribes may propose to the Defendants that the Defendants perform certain projects under this Consent Decree. Any project that the Parties agree will be performed by the Defendants shall be performed in accordance with a written Statement of Work, jointly approved by EPA and WDNR (for response action projects) or the Trustees (for restoration projects), describing the work to be performed by the Defendants and

establishing a project budget and an approved cost ceiling for the project. By agreement, the Parties may revise the Statement of Work (including the project budget and the approved cost ceiling) during the course of the project. All of Defendants' reasonable costs under the pre-approved cost ceiling for a project will be deemed allowable costs of the project under this Paragraph. At each meeting held under Subparagraph 15.a of this Consent Decree, Defendants shall provide the Plaintiffs and the Tribes an accurate written summary of the reasonable and allowable costs paid by Defendants for each project performed by Defendants under this Paragraph, which shall include a separate accounting of the reasonable and allowable costs paid by the Defendants: (i) in the first year after the Effective Date of this Consent Decree ("Defendants' Allowable Year One Costs"); (ii) in the first two years after the Effective Date of this Consent Decree "Defendants Allowable Year Two Costs"); (iii) in the first three years after the Effective Date of this Consent Decree ("Defendants' Allowable Year Three Costs"); and (iv) in the four-year period after the Effective Date of this Consent Decree ("Defendants' Allowable Year Four Costs").

12. Use of Information. Information obtained as a result of projects performed pursuant to this Consent Decree will be considered in the selection and implementation of future projects. Such information will also be considered, as appropriate, in the remedial investigation/feasibility study process (if the information is available before the remedial investigation/feasibility study final report is finalized), and in the remedial design/remedial action and natural resource damage assessment processes.

13. Public Information and Public Comment. The Parties acknowledge that it may be appropriate for the Plaintiffs and/or the Tribes to publicize key information concerning projects

to be performed under this Consent Decree, or to afford opportunities for public comment, in connection with the selection, planning, and/or implementation of projects.

VIII. PROCESSES FOR CONSULTATION

14. Consultation Objectives. The goals of the consultation processes established under this Section VIII are to promote cooperation among the Parties on technical issues relating to the design, planning, and implementation of projects to be performed under this Consent Decree, and to facilitate discussions concerning a possible negotiated resolution of the Defendants' alleged CERCLA liability for the Site.

15. Technical Consultations Concerning Projects Funded Under This Consent Decree. The Plaintiffs and the Tribes will provide Defendants reasonable opportunities to consult with the Plaintiffs and the Tribes concerning projects performed under Section VII (Projects) of this Consent Decree.

a. Representatives of the Plaintiffs, the Tribes, and the Defendants shall meet at least every three months to discuss the projects performed under this Consent Decree. The meetings shall include project design and implementation discussions and post-project review discussions. Meetings will be scheduled and organized to promote efficiency and meaningful dialogue among the Parties. The Parties expect and intend that their meetings will involve an informal exchange of available technical information. Except as expressly provided by this Consent Decree, preparation of written reports, plans, or submissions will not be required for the meetings. The Parties intend that the meetings will include discussions of multiple projects, including both response action projects and restoration projects. The Parties may mutually agree to meet more or less often than every three months, if appropriate.

(1) A project design and implementation discussion shall include a discussion of the design and objectives of the project, the schedule for and progress of the project, and any major adjustments to the projected scope, duration, schedule, or cost of the project.

(2) A post-project review discussion shall include a discussion of the completed project, the estimated final cost of the project, the extent to which the objectives and evaluation criteria were achieved, and knowledge gained from the project. While views expressed and conclusions reached in a post-project review are in no way binding on the Plaintiffs or the Tribes, the Parties expect that such views and conclusions will be taken into account, as appropriate, in governmental planning and selection processes for remedial design/remedial action and restoration planning/implementation.

b. With advance notice to the other Parties, any Party (or the Parties jointly, by agreement) may involve technical consultants or independent technical experts in discussions under this Paragraph.

c. The Parties recognize that some information concerning projects to be performed under this Consent Decree may need to be maintained as confidential, and that failure to maintain such information as confidential may impair or impede a project's success. To the extent the Plaintiffs or the Tribes inform the Defendants that particular information discussed in meetings under this Paragraph is confidential, the Defendants and any technical consultants or independent technical experts involved in such meetings shall treat and maintain such information as confidential.

d. Nothing in this Paragraph shall be construed to require any project implementation discussions in connection with any time-critical removal project to be funded

and performed by EPA or WDNR under this Consent Decree if EPA or WDNR determines that immediate action is required to address an emergency situation or an incident or change in Site conditions which may present an immediate threat to public health or welfare or the environment. For any such time-critical removal project, EPA and WDNR will nonetheless use best efforts to schedule and arrange appropriate consultations with the Defendants, consistent with the project's demands and timing limitations.

e. Nothing in this Paragraph shall limit or otherwise affect the complete discretion of the Plaintiffs and the Tribes in directing the expenditure of funds paid under Subparagraph 6.b, or in selecting or implementing particular projects to be funded under this Consent Decree, as specified by Section VII (Projects).

16. Consultations Concerning a Negotiated Resolution of Defendants' Alleged CERCLA Liability for the Site. The Plaintiffs, the Tribes, and the Defendants mutually intend to consult and engage in good faith efforts to negotiate a resolution of Defendants' alleged CERCLA liability for the Site, including alleged liability for all necessary response actions and alleged liability for natural resource damages, as well as Defendants' alleged potential counterclaims.

a. The Parties anticipate that the negotiations will address, but will not be limited to: (i) proposals for implementing any part of or all of the remedy selected in the ROD, (ii) payment of any part of or all of the response costs incurred or to be incurred by the Plaintiffs, and (iii) payment of any part of or all of the natural resource damages (including assessment costs) and/or performance of natural resource damage restoration projects.

b. If the Parties have not succeeded in negotiating a resolution of Defendants' alleged CERCLA liability for the Site, and Defendants' alleged potential counterclaims, within three years after the effective date of this Consent Decree, at the request of either the Plaintiffs and the Tribes or the Defendants, the Parties will participate in a non-binding mediation addressing the issues that remain in dispute.

c. At a minimum, the negotiations under this Paragraph will involve the Plaintiffs, the Tribes, and the Defendants, but the Parties may seek to involve other governmental parties and/or potentially responsible parties, as appropriate.

d. Nothing in this Paragraph shall obligate the Plaintiffs, the Tribes, or the Defendants to continue negotiations or any non-binding mediation under this Paragraph after termination of the Effective Period of this Consent Decree.

e. If the Parties are successful in reaching a resolution of Defendants' alleged liability for the Site through discussions under this Paragraph or otherwise, the Parties acknowledge that a modification to this Consent Decree or a separate consent decree setting forth the terms of the resolution may supercede this Consent Decree.

17. Special Notice Procedures. Nothing in this Consent Decree shall limit EPA's authority under CERCLA Section 122(e), 42 U.S.C. § 9622(e), to issue the Defendants and other persons special notice and to conduct negotiations with the Defendants and other persons for undertaking or financing a response action at the Site under CERCLA Section 106, 42 U.S.C. § 9606. For any such negotiations with the Defendants commenced by issuance of special notice during the Effective Period of this Consent Decree, the moratorium period defined by CERCLA Section 122(e)(2)(A), 42 U.S.C. § 9622(e)(2)(A), shall be deemed to run during the Effective

Period; provided, however, that the termination of that moratorium period, or the moratorium period itself, shall not terminate, effect, or impair the Covenant Not to Sue During the Effective Period in Paragraph 23 of this Consent Decree.

IX. SAMPLING AND MONITORING

18. Whenever any sampling is to be conducted in connection with a response action project performed by the Plaintiffs under this Consent Decree, upon request, the Plaintiffs shall allow split or duplicate samples to be taken by the Defendants or their authorized representatives. The Plaintiffs shall notify the Defendants not less than 28 days in advance of any sample collection activity unless shorter notice is agreed to by the Defendants or unless EPA or WDNR determines that the sampling is performed in connection with a time-critical response action addressing an emergency situation or an incident or change in Site conditions which may present an immediate threat to public health or welfare or the environment. Whenever any sampling is to be conducted in connection with a response action project performed by the Defendants under this Consent Decree, upon request, the Defendants shall allow split or duplicate samples to be taken by EPA and WDNR or their authorized representatives. The Defendants shall notify EPA and WDNR not less than 28 days in advance of any sample collection activity unless shorter notice is agreed to by EPA and WDNR.

19. The Plaintiffs and the Tribes and the Defendants shall provide to each other copies of the results of all sampling and/or test data obtained or generated in connection with any projects performed under this Consent Decree, including without limitation the sampling data referenced in the preceding Paragraph.

20. The Parties shall use quality assurance, quality control, and chain of custody procedures for all samples in accordance with “EPA Requirements for Quality Assurance Project

Plans for Environmental Data Operation,” (EPA QA/R5; “Preparing Perfect Project Plans,” (EPA /600/9-88/087), and subsequent amendments to such guidelines upon notification by EPA to Defendants of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Defendants shall ensure that EPA and WDNR personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Defendants in implementing this Consent Decree. Defendants shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Consent Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the “Contract Lab Program Statement of Work for Inorganic Analysis” and the “Contract Lab Program Statement of Work for Organic Analysis,” dated February 1988, and any amendments made thereto during the course of the implementation of this Consent Decree. Defendants shall ensure that all laboratories they use for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program.

21. The Plaintiffs shall allow the Defendants a reasonable opportunity to observe and monitor the performance of projects performed by the Plaintiffs under this Consent Decree, and shall provide the Defendants reasonable notice prior to conducting such activities. The Defendants shall allow the Plaintiffs a reasonable opportunity to observe and monitor the performance of projects performed by the Defendants under this Consent Decree, and shall provide the Plaintiffs reasonable notice prior to conducting such activities.

X. INDEMNIFICATION

22. The Plaintiffs and the Tribes do not assume any liability by entering into this agreement. The Defendants shall indemnify, save and hold harmless the Plaintiffs and the Tribes

and their officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. Further, the Defendants agree to pay the Plaintiffs and the Tribes all costs incurred including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the Plaintiffs or the Tribes based on negligent or other wrongful acts or omissions of Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. Neither the Defendants nor any of their contractors shall be considered as agents of the Plaintiffs or the Tribes.

XI. COVENANTS NOT TO SUE BY THE PLAINTIFFS AND THE TRIBES

23. The Plaintiffs' and the Tribes' Covenants Not to Sue During the Effective Period.

a. Covenants by the United States. During the Effective Period of this Consent Decree, except as specifically provided by Section XII (Reservation of Rights by Plaintiffs), the United States covenants not to sue or to take administrative action against the Defendants with respect to Existing PCB Contamination pursuant to: (i) CERCLA Sections 106, 107(a), and 107(f), 42 U.S.C. §§ 9606, 9607(a), and 9607(f); (ii) Section 311(f) of the Clean Water Act, 33 U.S.C. § 1321(f); and (iii) Section 10 of the Rivers and Harbors Act of 1899, 33 U.S.C. § 403. This temporary covenant not to sue shall take effect upon receipt of the Defendants' payments required by Subparagraphs 5.a.(1) and 6.b.(1) of this Consent Decree. This covenant not to sue terminates at the end of this Consent Decree's Effective Period. This

temporary covenant not to sue is conditioned upon the satisfactory performance by Defendants of their obligations under this Consent Decree to make the payments required by Subparagraphs 5.a and 6.b (and Subparagraphs 5.b, 5.c, 6.d, and 6.e, if applicable), and to complete the performance of projects to be performed by Defendants, if any, under Subparagraph 11.b. This covenant not to sue extends only to the Defendants and does not extend to any other person.

b. Covenants by the State and the Tribes. During the Effective Period of this Consent Decree, except as specifically provided by Section XII (Reservation of Rights by Plaintiffs), the State and the Tribes covenant not to sue or to take administrative action against the Defendants with respect to Existing PCB Contamination pursuant to: (i) CERCLA Sections 107(a), 107(f), and 310, 42 U.S.C. §§ 9607(a), 9607(f), and 9659; (ii) Sections 311(f) and 505 of the Clean Water Act, 33 U.S.C. §§ 1321(f) and 1365; (iii) Section 7002 of RCRA, 42 U.S.C. § 6972; and (iv) Wisconsin statutory and common law. This temporary covenant not to sue shall take effect upon receipt of the Defendants' payments required by Subparagraphs 5.a.(1) and 6.b.(1) of this Consent Decree. This covenant not to sue terminates at the end of this Consent Decree's Effective Period. This temporary covenant not to sue is conditioned upon the satisfactory performance by Defendants of their obligations under this Consent Decree to make the payments required by Subparagraphs 5.a and 6.b (and Subparagraphs 5.b, 5.c, 6.d, and 6.e, if applicable), and to complete the performance of projects to be performed by Defendants, if any, under Subparagraph 11.b. This covenant not to sue extends only to the Defendants and does not extend to any other person.

c. The Parties agree that the Effective Period will not be included in computing the running of any statute of limitations applicable to any action brought by the

Plaintiffs or the Tribes after the Effective Period asserting any claims or causes of action covered by this Paragraph.

d. During the Effective Period, if any of the Plaintiffs or any of the Tribes becomes a party to litigation relating to the Site, and such Plaintiff or Tribe is required by rule or court order to assert or file Site-related claims against Defendants by a certain date (such as, by way of example, court scheduling orders requiring that cross-claims and/or counterclaims be made by a certain date), then such Plaintiff or Tribe may assert or file such claim against the Defendants notwithstanding the covenants contained in this Paragraph 23.

24. Covenants Not to Sue for Specific Projects. If the Plaintiffs or the Defendants perform a project funded entirely by Defendants under this Consent Decree that is designed to be a final response action for a particular area (such as, by way of example, the remediation of sediments at a discrete location of the river), the Plaintiffs shall consider granting Defendants a covenant not to sue with respect to such geographical area after the completion of the project.

XII. RESERVATION OF RIGHTS BY PLAINTIFFS

25. General Reservations. The covenants not to sue set forth in Section XI do not pertain to any matters other than those expressly specified in Section XI. The Plaintiffs and the Tribes reserve, and this Consent Decree is without prejudice to, all rights against Defendants with respect to all matters not expressly included within the Covenants Not to Sue by the Plaintiffs and the Tribes in Section XI. Notwithstanding any other provision of this Consent Decree, the Plaintiffs and Tribes reserve all rights against Defendants with respect to:

a. claims based on a failure by Defendants to meet a requirement of this Consent Decree;

b. liability arising from the past, present or future disposal, release, or threatened release of Waste Material outside of the Site;

c. liability arising from the past, present or future disposal, release, or threatened release of any Waste Material other than Existing PCB Contamination;

d. liability for future disposal of Waste Material at the Site;

e. criminal liability; and

f. liability for violations of federal or state law which occur after the Effective Date of this Consent Decree.

26. Emergency Response. The Plaintiffs reserve, and this Consent Decree is without prejudice to, any and all rights against Defendants with respect to any incident or any change in Site conditions that creates an emergency situation presenting an immediate threat to public health or welfare or the environment that comes into existence after the Effective Date, and that is not caused by negligent actions by Plaintiffs.

XIII. DEFENDANTS' COVENANTS NOT TO SUE

27. Defendants' Covenant Not To Sue During the Effective Period. Except as specifically provided by this Paragraph 27, during the Effective Period of this Consent Decree, the Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the Plaintiffs or the Tribes with respect to Existing PCB Contamination, this Consent Decree, any payments made under this Consent Decree, or any projects performed under this Consent Decree, including but not limited to:

a. any claim against the Plaintiffs or the Tribes pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613 relating to Existing PCB Contamination, this

Consent Decree, any payments made under this Consent Decree, or any projects performed under this Consent Decree;

b. any claim against the Plaintiffs or the Tribes pursuant to Section 311 of the Clean Water Act, 33 U.S.C. § 1321, relating to Existing PCB Contamination, this Consent Decree, any payments made under this Consent Decree, or any projects performed under this Consent Decree; or

c. any claims arising out of response or restoration projects undertaken pursuant to this Consent Decree, including claims based on any Plaintiff's or any Tribe's selection or implementation of response or restoration projects, oversight of response or restoration projects, or approval of plans for such projects.

This temporary covenant not to sue terminates at the end of this Consent Decree's Effective Period. The Parties agree that the Effective Period will not be included in computing the running of any statute of limitations applicable to any action brought by the Defendants after the Effective Period asserting any claims or causes of action covered by this Paragraph. During the Effective Period, if either of the Defendants becomes a party to litigation relating to the Site, and such Defendant is required by rule or court order to assert or file Site-related claims against the Plaintiffs or the Tribes by a certain date (such as, by way of example, court scheduling orders requiring that cross-claims and/or counterclaims be made by a certain date), then such Defendant may assert or file such claim against the Plaintiffs or the Tribes notwithstanding the covenants contained in this Paragraph 27. In the event Plaintiffs take any action against Defendants under Paragraph 26 (Emergency Response), the Parties agree that this Paragraph 27 will not prevent Defendants from asserting claims or causes of action against Plaintiffs to challenge such action,

but only to same extent and for the same matters, transactions, or occurrences as are raised in the action by the Plaintiffs against the Defendants.

28. Covenant Not To Sue for Cost Reimbursement. The Defendants agree not to assert any direct or indirect claim for reimbursement from the 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 with respect to any payments or expenditures by Defendants under this Consent Decree (including but not limited to any payments by Defendants under Section VI (Payments by Defendants), and any expenditures by Defendants under Paragraph 11.b. The covenant not to sue under this Paragraph shall survive any termination of this Consent Decree under Paragraph 9 (Termination by the Plaintiffs and the Tribes Due to Nonpayment) or Paragraph 39 (Termination By Defendants) and shall not be limited in duration to the Effective Period of this Consent Decree. Nothing in this Paragraph 28 is intended to limit any contribution claims that Defendants may have against any of the Plaintiffs, other than any claim for reimbursement from the Hazardous Substance Superfund styled as a claim for contribution.

29. 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).

XIV. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

30. The Parties agree and acknowledge that the Plaintiffs and the Tribes shall recognize that Defendants are entitled to full credit, applied against their liabilities for response costs and natural resource damages at the Site, for: (i) payments made by Defendants under Subparagraphs 5.a and 6.b of this Consent Decree (after subtracting the amount of any

disbursements to Defendants under Subparagraph 6.c.(3) and after taking into account the amount of any recoveries by Defendants of any portion of such payments from other liable persons, such as through a recovery under Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613); and (ii) Defendants' reasonable and allowable expenditures under Paragraph 11.b. With respect to natural resource damages, the recognized credit may take into account, as appropriate, the value of restoration projects funded by the payments and expenditures under (i) and (ii) of this Paragraph. To the extent Defendants' payments and expenditures under this Consent Decree (and, as appropriate, the value of the restoration projects funded by the payments and expenditures under (i) and (ii)) exceed Defendants' ultimate liabilities, Defendants shall not seek any refund or reimbursement from the Plaintiffs or the Tribes.

31. 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. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Consent Decree may have under applicable law. Each of the Parties expressly reserves 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.

32. The Parties agree, and by entering this Consent Decree this Court finds, that the Defendants are entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for "matters addressed" in this Consent Decree. For the purpose of this Paragraph, the "matters addressed" in this Consent Decree are: (i) all payments actually made by Defendants under Subparagraphs 5.a and 6.b of this Consent Decree; (ii) all reasonable and

allowable expenditures actually made by Defendants under Paragraph 11.b; and (iii) response actions and restoration activities funded or performed under this Consent Decree, to the extent such projects were actually funded or performed by the Defendants under Section VI (Payments by Defendants) or Paragraph 11.b.

33. Each Defendant agrees that, with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree, it will provide notice to the persons identified in Section XVI (Notices and Submissions) at the same time it files or asserts the claim in litigation. Each Defendant also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will provide notice to the persons identified in Section XVI (Notices and Submissions) within 10 days of service of the complaint or claim upon it. In addition, each Defendant shall provide notice to the persons identified in Section XVI (Notices and Submissions) within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

34. In any subsequent administrative or judicial proceeding initiated by any of the Plaintiffs or any of the Tribes for injunctive relief, recovery of response costs, recovery of natural resource damages or natural resource damage assessment costs, or other relief relating to the Site, Defendants 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 by any Plaintiff or any Tribe in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants Not to Sue by the Plaintiffs and the Tribes set forth in Section XI.

35. The Parties agree that nothing in this Consent Decree shall be construed as a waiver of any claim, defense, argument or position that the Defendants may have against the Plaintiffs, the Tribes, or others, including without limitation: (i) the right to contest the asserted natural resource damage trusteeship authority of any party that asserts such authority (including without limitation any of the Plaintiffs or any of the Tribes); (ii) the right to contest liability for response costs and response actions at the Site; (iii) the right to assert that any response decisions or actions are inconsistent with the NCP and CERCLA or are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (iv) the right to defend in court any claim for natural resource damages; and (v) the right to assert that any claims relating to the Site are barred by applicable statutes of limitation. Nothing in this Paragraph is intended to affect or limit Defendants' covenants not to sue in Paragraphs 27 and 28.

36. The Parties agree that this Consent Decree and the payment of funds hereunder are not based on any views or assumptions of what the Defendants' share of costs, damages or liability should be. The Defendants reserve their rights to contest, litigate, and/or argue what their allocable and appropriate share should be and to bring contribution and other actions against persons who are not Parties to this Consent Decree to recover those amounts paid hereunder that are in excess of Defendants' fair and allocable share as determined by appropriate law. This Consent Decree is without prejudice to any arguments, positions, claims and defenses of Defendants with respect to allocation matters.

XV. SETTLEMENTS WITH OTHER PERSONS

37. Reservations of Rights Regarding Settlements with Other Persons. Each of the Plaintiffs and each of the Tribes expressly reserves and retains the right to enter into a settlement with any other person on appropriate terms, subject to applicable requirements of public

comment and judicial review. Defendants expressly reserve and retain the right to comment on or oppose any such settlement, including on the grounds that it unfairly jeopardizes or limits Defendants' contribution rights. The Plaintiffs and the Tribes will not oppose any motion by Defendants to intervene in an action for the purpose of opposing or objecting to any such settlement.

38. Form of Settlements with Other Persons. During the Effective Period, any settlement between the Plaintiffs and/or the Tribes and any other person which resolves all or substantially all of such person's liability for response costs and/or natural resource damages for the Site shall be entered into in the form of a judicial consent decree (as opposed to an administrative order on consent) lodged in federal district court.

39. Termination by Defendants. If, during the Effective Period of this Consent Decree, Defendants object to a settlement between the Plaintiffs and/or the Tribes and any other person which resolves all or substantially all of such person's liability for response costs or natural resource damages for the Site on the grounds that the settlement jeopardizes or impairs Defendants' contribution rights, and the settlement nonetheless takes effect over Defendants' objections, then Defendants may terminate this Consent Decree by providing written Notice of Termination under this Paragraph to the persons identified in Section XVI (Notices and Submissions). Subparagraph 6.c of this Consent Decree shall govern the disbursement of funds from the Escrow Account after termination under this Paragraph. Termination under this Paragraph by the Defendants shall end the Effective Period of this Consent Decree as of the date of the Notice of Termination, and shall terminate the covenants not to sue during the Effective Period under Paragraph 23 and Paragraph 27 of this Consent Decree. Termination by Defendants under this Paragraph shall relieve the Plaintiffs, the Tribes, and Defendants of all other ongoing

obligations under this Consent Decree due to be performed after the date of the Notice of Termination, including but not limited to any obligation of Defendants to make payments not yet due to be paid under Subparagraphs 5.a and 6.b.; provided, however, that termination under this Paragraph shall not relieve the Defendants of their obligation to complete any project or portion of a project already commenced by Defendants under Subparagraph 11.b of this Consent Decree.

XVI. NOTICES AND SUBMISSIONS

40. Whenever, under the terms of this Consent Decree, 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. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the Plaintiffs, the Tribes, and the 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 # 90-11-2-1045Z)

P.O. Box 7611 1425 New York Avenue, NW – 13th Floor
Washington, D.C. 20044-7611 Washington, DC 20005

As to EPA:

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

As to DOI:

Office of the Solicitor
Division of Parks and Wildlife
U.S. Department of the Interior
1849 C Street, N.W.
Washington, DC 20240

As to the State:

As to WDOJ:

Jerry L. Hancock
Assistant Attorney General
Wisconsin Department of Justice

P.O. Box 7857
Madison, WI 53707-7857

123 W. Washington Avenue
Madison, WI 53702

As to WDNR:

Greg Hill
State Project Coordinator
Wisconsin Department of Natural Resources

P.O. Box 7921
Madison, WI 53707-7921

101 S. Webster St.
Madison, WI 53703

As to the Tribes:

As to the Oneida Tribe of Indians of Wisconsin:

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

As to the Menominee Indian Tribe of Wisconsin:

Chairman
Menominee Tribal Offices
P.O. Box 910
Keshena, WI 54135

As to the Defendants:

Paul Karch
Vice President, Law & Public Affairs
Appleton Papers Inc.

825 E. Wisconsin Avenue
Appleton, WI 54911

P.O. Box 359
Appleton, WI 54912-0359

Jonathan Hoak
Senior Vice-President and General Counsel
NCR Corporation
1700 S. Patterson Blvd.
Dayton OH 45479

With a copy to:

____ J. Andrew Schlickman
Sidley Austin Brown & Wood
Bank One Plaza
10 S. Dearborn St.
Chicago IL 60603

XVII. EFFECTIVE DATE AND TERMINATION

41. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court. The Effective Period of this Consent Decree shall start on the Effective Date and shall terminate four (4) years after the Effective Date, unless the Effective Period is terminated before then pursuant to Paragraph 9 (Termination by the Plaintiffs and the Tribes Due to Nonpayment) or Paragraph 39 (Termination by Defendants).

XVIII. MODIFICATION

42. Nothing in this Consent Decree may be modified without approval of the Plaintiffs, the Tribes, the Defendants, and this Court. Nothing in this Consent Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Decree.

XIX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

43. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The Plaintiffs and the Tribes reserve the right to withdraw or withhold their consent if comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Defendants consent to the entry of this Consent Decree without further notice.

44. Entry of this Consent Decree shall constitute the Court's approval of the terms hereof, including the Escrow Account and other accounts referred to herein. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XX. SIGNATORIES/SERVICE

45. Each undersigned representative of a Party to this Consent Decree certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

46. Each Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the Plaintiffs and the Tribes have notified Defendants in writing that they no longer support entry of the Consent Decree.

47. Each Defendant shall identify, on the 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. Defendants hereby agree to accept service 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, including but not limited to, service of a summons.

XXI. DISMISSAL OF ACTION AND RETENTION OF JURISDICTION

48. Pursuant to Fed. R. Civ. P. 41(a)(2), as of the Effective Date of this Consent Decree, the above-captioned action is hereby dismissed without prejudice, upon the terms and conditions set forth in this Consent Decree.

49. This Court shall retain jurisdiction over this matter, including the Escrow Account and other accounts hereunder, for the purpose of interpreting, supervising, and enforcing the terms of this Consent Decree.

SO ORDERED THIS _____ DAY OF _____, _____.

United States District Judge

THE UNDERSIGNED PARTY enters into this Consent Decree in the above-captioned action:

FOR THE UNITED STATES OF AMERICA

Date: _____

JOHN C. CRUDEN
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, DC 20530

Date: _____

DANIEL C. BECKHARD, Senior Counsel
RANDALL M. STONE, Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611

JAMES L. SANTELLE
United States Attorney

MATTHEW RICHMOND
Assistant United States Attorney
Eastern District of Wisconsin
U.S. Courthouse and Federal Building - Room 530
517 E. Wisconsin Avenue
Milwaukee, WI 53202

THE UNDERSIGNED PARTY enters into this Consent Decree in the above-captioned action:

Date: _____

DAVID A. ULLRICH
Acting Regional Administrator
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, IL 60604

Date: _____

ROGER S. GRIMES
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 in the above-captioned action:

Date: _____

SYLVIA LOWRANCE
Acting Assistant Administrator
for Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20004

THE UNDERSIGNED PARTY enters into this Consent Decree in the above-captioned action:

FOR THE STATE OF WISCONSIN

Date: _____

DARRELL BAZZELL
Secretary
Wisconsin Department of Natural Resources
101 South Webster Street
Madison, WI 53703

Date: _____

JERRY L. HANCOCK
Assistant Attorney General
Wisconsin Department of Justice
123 W. Washington Avenue
Madison, WI 53702

THE UNDERSIGNED PARTY enters into this Consent Decree in the above-captioned action:

FOR THE
MENOMINEE INDIAN TRIBE OF WISCONSIN

Date: _____

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

THE UNDERSIGNED PARTY enters into this Consent Decree in the above-captioned action:

FOR THE
ONEIDA TRIBE OF INDIANS OF WISCONSIN

Date: _____

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

THE UNDERSIGNED PARTY enters into this Consent Decree in the above-captioned action:

FOR APPLETON PAPERS INC.

Date: _____

Signature

Typed Name: _____

Title: _____

Address: _____

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

Typed Name: _____

Title: _____

Address: _____

THE UNDERSIGNED PARTY enters into this Consent Decree in the above-captioned action:

FOR NCR CORPORATION

Date: _____

Signature

Typed Name: _____

Title: _____

Address: _____

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

Typed Name: _____

Title: _____

Address: _____

APPENDIX A TO CONSENT DECREE:

Form of Escrow Agreement for Fox River Financial Assurance Escrow Account

ESCROW AGREEMENT
for the Fox River Financial Assurance Escrow Account

THIS ESCROW AGREEMENT for the Fox River Financial Assurance Escrow Account (the “Escrow Account”) is effective as of _____, _____, by and among Appleton Papers Inc. (“API”) and NCR Corporation (“NCR”) and _____ (the “Escrow Agent”). The following parties are the beneficiaries of this Escrow Agreement and the Escrow Account established and managed hereunder (collectively the “Beneficiaries”): (i) the United States of America (the “United States”) (on behalf of the U.S. Environmental Protection Agency (“EPA”), the U.S. Department of the Interior (“DOI”), and the U.S. Department of Commerce (“Commerce”)); (ii) the State of Wisconsin (the “State”) (on behalf of the Wisconsin Department of Natural Resources (“WDNR”)); and (iii) the Menominee Indian Tribe of Wisconsin and the Oneida Tribe of Indians of Wisconsin (collectively the “Tribes”).

WHEREAS, the United States and the State have filed an action, captioned United States and the State of Wisconsin v. Appleton Papers Inc. and NCR Corporation (E.D. Wisc.) (the “Litigation”), asserting certain claims under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9606, 9607 (“CERCLA”), seeking specified relief from API and NCR relating to releases and threatened releases of polychlorinated biphenyls (“PCBs”) at and from the Fox River Site (the “Site”), including injunctive relief and reimbursement of Site-related response costs;

WHEREAS, the responsible natural resources contend that they have claims for recovery of natural resource damages (including for recovery of natural resource damages assessment costs) relating to the Site against API and NCR;

WHEREAS, the United States, the State, the Tribes, API, and NCR have negotiated a Consent Decree in the Litigation memorializing an interim settlement of claims against API and NCR;

WHEREAS, the Consent Decree requires that API and NCR establish an interest-bearing escrow account trust fund – to be known as the Fox River Financial assurance Escrow Account – and make specified payments into the Escrow Account as financial assurance for the funding of response action projects and natural resource damage restoration projects to be performed under the Consent Decree;

WHEREAS, the United States, the State, and the Tribes will benefit from the funding and performance of response action projects and natural resource damage restoration projects to be funded and performed under the Consent Decree;

NOW, THEREFORE, in consideration of the promises and of other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

Section 1. Establishment and Funding of Escrow Account.

The terms “Fox River Financial Assurance Escrow Account” and “Escrow Account” shall mean escrow account established by this Escrow Agreement to receive, hold, and disburse funds to be used for funding Site-related response action projects and natural resource damage restoration projects to be performed under Section VII (Projects) of the Consent Decree. The Escrow Fund shall be comprised of payments made by API and NCR under Subsections 6.b, 6.d, and 6.e of the Consent Decree. Subject only to the provisions of Section 4(e) of this Escrow Agreement and Subparagraph 6.c.(3) of the Consent Decree, API and NCR hereby absolutely and irrevocably assign, convey, and transfer to the Escrow Account and its successors and assigns, for the benefit of the Beneficiaries, the following: (i) \$3,000,000 pursuant to Subparagraph 6.b.(1) of the Consent Decree; and (ii) additional funds payable under Subparagraphs 6.b, 6.d, and 6.e of the Consent Decree.

Section 2. Purpose.

The purpose of the Escrow Account is to receive and hold funds in an interest bearing account, and to disburse those funds for funding Site-related response action projects and natural resource damage restoration projects to be performed under Section VII (Projects) of the Consent Decree. The Escrow Agent shall hold, invest, and reinvest all funds deposited in the Escrow Account under this Escrow Agreement and shall disburse funds as provided in this Escrow Agreement. All contributions to the Escrow Account shall be commingled, held, and managed as a single account.

Section 3. Beneficial Interest.

All funds deposited into the Escrow Account by API and NCR shall be held in trust for the benefit of the Beneficiaries, subject to disbursement as provided in Section 4 of this Escrow Agreement.

Section 4. Disbursements from the Escrow Account.

Individual disbursements from the Escrow Account shall only be made:

- (a) To WDNR or its designated contractors in accordance with Consent Decree Subparagraph 6.c.(1), for funding particular response action projects to be performed by WDNR, upon the Escrow Agent’s receipt of an Escrow Disbursement Certificate executed by duly authorized officials of EPA and WDNR, in substantially the form attached hereto as Exhibit A;
- (b) To the EPA Fox River Site Superfund Special Account within the Hazardous Substance Superfund in accordance with Consent Decree Subparagraph 6.c.(1), to be retained and used to conduct or finance response action projects at or in connection with the Site, upon the Escrow Agent’s receipt of an Escrow

Disbursement Certificate executed by duly authorized officials of EPA and WDNR, in substantially the form attached hereto as Exhibit B;

- (c) To WDNR or its designated contractors in accordance with Consent Decree Subparagraph 6.c.(2), for funding particular natural resource damage restoration projects to be performed by WDNR, upon the Escrow Agent's receipt of an Escrow Disbursement Certificate executed by duly authorized officials of WDNR and DOI, in substantially the form attached hereto as Exhibit C;
- (d) To the Fox River Site Account within DOI's Natural Resource Damages Assessment and Restoration Fund in accordance with Consent Decree Subparagraph 6.c.(2), for funding particular natural resource damage restoration projects to be performed by DOI, Commerce, WDNR, or the Tribes, upon the Escrow Agent's receipt of an Escrow Disbursement Certificate executed by duly authorized officials of WDNR and DOI, in substantially the form attached hereto as Exhibit D; and/or
- (e) To API and/or NCR in accordance with Consent Decree Subparagraph 6.c.(3), upon the Escrow Agent's receipt of an Escrow Disbursement Certificate executed by duly authorized officials of EPA, DOI, and WDNR, in substantially the form attached hereto as Exhibit E.

Section 5. Escrow Agent.

Section 5.1. Duties. The Escrow Agent's obligations and duties in connection herewith are limited to those specifically enumerated in this Escrow Agreement. The Escrow Agent shall at all times hold and invest the assets of the Escrow Account in a manner designed to preserve the principal of the Escrow Account. The Escrow Agent shall invest and reinvest the principal and income of the Escrow Account in securities of the United States Government or an agency thereof, obligations secured by the United States Government, or mutual funds investing exclusively in such securities or obligations, in a manner designed to achieve the maximum investment return possible, consistent with the capital-preservation objective described in the prior sentence. The Escrow Agent shall not invest Escrow Account funds in obligations or instruments having a maturity exceeding 31 days. The Escrow Agent shall render a written statement every month identifying each financial instrument in which the Escrow Agent has invested any portion of the Escrow Account, the amount of each such investment, any change in the amount in the Escrow Account since the date of the previous statement, and all transactions entered by the Escrow Agent since the last statement (including investments, reinvestments, or disbursements) involving funds of the Escrow Account. Monthly statements shall be delivered to the persons identified in Section 6.6 below.

Section 5.2. Receipt. The Escrow Agent shall acknowledge its receipt of amounts deposited into the Escrow Account by sending written notice, within 5 business days of such receipt, to the persons identified in Section 6.6 below.

Section 5.3. Fees. The Escrow Agent's fees, if any, and any taxes shall be paid solely out of the Escrow Account. Interest earned on all funds in the Escrow Account shall first be applied to defray any account fees and taxes. The fees agreed to be paid are intended as full compensation for the Escrow Agent's services as contemplated by this Escrow Agreement; provided, however, that if the conditions of this Escrow Agreement are not fulfilled or the Escrow Agent renders any material service not contemplated in this Escrow Agreement, or there is any assignment of interest in the subject matter of this Escrow Agreement, or any material modification hereof, or if any material controversy arises hereunder, or the Escrow Agent is made a party to or justifiably intervenes in any litigation pertaining to this Escrow Agreement, to the subject matter hereto, the Escrow Agent shall be reasonably compensated out of the Escrow Account for such extraordinary services and reimbursed for all costs and expenses, including reasonable attorneys' fees, occasioned by any delay, controversy, litigation, or event. The Escrow Agent shall notify the persons identified in Section 6.6 below, in writing, of Escrow Agent's fees or expenses at least 45 days prior to the reimbursement of such extraordinary fees or expenses from the Escrow Account; in the event API, NCR, or the Beneficiaries dispute the amount of the Escrow Agent's fees or expenses within 30 days of receipt of notice, the disputed fees or expenses shall not be paid unless all parties agree in writing.

Section 5.4. Successor Escrow Agent. The Escrow Agent shall have the right to resign as escrow agent hereunder by delivering 30 days' prior notice in writing to the parties identified in Section 6.6. API, NCR, and the Beneficiaries shall have the right to remove the Escrow Agent at any time by joint written notice delivered to the Escrow Agent. If the Escrow Agent resigns or is removed, a successor escrow agent shall be appointed by mutual agreement of API, NCR, and the Beneficiaries, and such resignation or removal shall take effect upon such appointment. Any successor escrow agent at any time serving hereunder shall be entitled to all rights, powers, and indemnities granted to the Escrow Agent hereunder as if originally named herein.

Section 5.5. Liability of Escrow Agent. So long as it acts in good faith and in the exercise of its best judgment, the Escrow Agent shall not be in any manner liable or responsible for the sufficiency, correctness, genuineness, or validity of any instruments deposited with it or with reference to the form of execution thereof, or the identity, authority, or rights of any person executing or depositing same, and the Escrow Agent shall not be liable for any loss that may occur by reason of forgery, false representation, or the exercise of its discretion in any particular manner or for any other reason, except for its own negligence, gross negligence, willful misconduct, bad faith, or breach of this Escrow Agreement. Except in instances of the Escrow Agent's own negligence, gross negligence or willful misconduct, API and NCR shall indemnify, defend, and hold the Escrow Agent harmless from any demands, suits or causes of action arising out of this Escrow Agreement.

Section 6. Miscellaneous.

Section 6.1. Binding Effect. This Escrow Agreement shall be binding upon API, NCR, and the Escrow Agent and their respective successors and assigns.

Section 6.7. No Limitation. The parties hereto agree that the rights and remedies of the parties hereunder shall not operate to limit any other rights and remedies otherwise available to the parties.

Section 6.8. Counterparts. This Escrow Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.

Section 6.9. Modification. This Escrow Agreement may be modified only by a written instrument signed by each of the parties hereto, and approved in writing by the Beneficiaries.

Section 6.10. Termination. If not sooner terminated pursuant to the terms hereof, this Escrow Agreement shall terminate upon disbursement of all of the funds held in the Escrow Account, and may be terminated prior to that date by written mutual consent signed by API, NCR, and the Beneficiaries.

IN WITNESS WHEREOF, the parties hereto have executed their Escrow Agreement as of the date first written above.

Appleton Papers Inc.

By: _____

Its: _____

NCR Corporation

By: _____

Its: _____

By: _____

Its: _____

EXHIBIT A TO ESCROW AGREEMENT:

ESCROW DISBURSEMENT CERTIFICATE
UNDER ESCROW AGREEMENT SECTION 4(a)

Reference is made to that certain Escrow Agreement for the Fox River Financial Assurance Escrow Account (the "Escrow Account"), dated _____, by and among Appleton Papers Inc. ("API"), NCR Corporation ("NCR") and _____ (the "Escrow Agent"), with the following beneficiaries (collectively the "Beneficiaries"): (i) the United States of America (the "United States") (on behalf of the U.S. Environmental Protection Agency ("EPA"), the U.S. Department of the Interior ("DOI"), and the U.S. Department of Commerce ("Commerce")); (ii) the State of Wisconsin (the "State") (on behalf of the Wisconsin Department of Natural Resources ("WDNR")); and (iii) the Menominee Indian Tribe of Wisconsin and the Oneida Tribe of Indians of Wisconsin (collectively the "Tribes").

EPA and WDNR hereby certify as follows:

This Escrow Disbursement Certificate is submitted pursuant to Section 4(a) of the Escrow Agreement and Subparagraph 6.c.(1) of the Consent Decree in the case captioned United States, et al. v. Appleton Papers Inc. and NCR Corporation (E.D. Wisc.). This disbursement is sought for funding response action projects to be performed by WDNR at the Fox River Site under Section VII (Projects) of the Consent Decree.

You are hereby instructed to disburse \$ _____

_____ **to WDNR, or**

_____ **to the following WDNR contractor - _____.**

The disbursement should be made in accordance with the payment instructions attached hereto.

DATE: _____

Director, Superfund Division, Region 5
U.S. Environmental Protection Agency

DATE: _____

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Wisconsin Department of Natural Resources

EXHIBIT B TO ESCROW AGREEMENT:

ESCROW DISBURSEMENT CERTIFICATE
UNDER ESCROW AGREEMENT SECTION 4(b)

Reference is made to that certain Escrow Agreement for the Fox River Financial Assurance Escrow Account (the "Escrow Account"), dated _____, by and among Appleton Papers Inc. ("API"), NCR Corporation ("NCR") and _____ (the "Escrow Agent"), with the following beneficiaries (collectively the "Beneficiaries"): (i) the United States of America (the "United States") (on behalf of the U.S. Environmental Protection Agency ("EPA"), the U.S. Department of the Interior ("DOI"), and the U.S. Department of Commerce ("Commerce")); (ii) the State of Wisconsin (the "State") (on behalf of the Wisconsin Department of Natural Resources ("WDNR")); and (iii) the Menominee Indian Tribe of Wisconsin and the Oneida Tribe of Indians of Wisconsin (collectively the "Tribes").

EPA and WDNR hereby certify as follows:

This Escrow Disbursement Certificate is submitted pursuant to Section 4(b) of the Escrow Agreement and Subparagraph 6.c.(1) of the Consent Decree in the case captioned United States, et al. v. Appleton Papers Inc. and NCR Corporation (E.D. Wisc.). This disbursement is sought for funding response action projects to be performed by EPA or WDNR at the Fox River Site under Section VII (Projects) of the Consent Decree.

You are hereby instructed to disburse \$ _____ to the Fox River Site Superfund Special Account. The disbursement should be made in accordance with the payment instructions attached hereto.

DATE: _____

Director, Superfund Division, Region 5
U.S. Environmental Protection Agency

DATE: _____

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Wisconsin Department of Natural Resources

EXHIBIT C TO ESCROW AGREEMENT:

ESCROW DISBURSEMENT CERTIFICATE
UNDER ESCROW AGREEMENT SECTION 4(c)

Reference is made to that certain Escrow Agreement for the Fox River Financial Assurance Escrow Account (the "Escrow Account"), dated _____, by and among Appleton Papers Inc. ("API"), NCR Corporation ("NCR") and _____ (the "Escrow Agent"), with the following beneficiaries (collectively the "Beneficiaries"): (i) the United States of America (the "United States") (on behalf of the U.S. Environmental Protection Agency ("EPA"), the U.S. Department of the Interior ("DOI"), and the U.S. Department of Commerce ("Commerce")); (ii) the State of Wisconsin (the "State") (on behalf of the Wisconsin Department of Natural Resources ("WDNR")); and (iii) the Menominee Indian Tribe of Wisconsin and the Oneida Tribe of Indians of Wisconsin (collectively the "Tribes").

DOI and WDNR hereby certify as follows:

This Escrow Disbursement Certificate is submitted pursuant to Section 4(c) of the Escrow Agreement and Subparagraph 6.c.(2) of the Consent Decree in the case captioned United States, et al. v. Appleton Papers Inc. and NCR Corporation (E.D. Wisc.). This disbursement is sought for funding natural resource damage restoration projects to be performed by WDNR at the Fox River Site under Section VII (Projects) of the Consent Decree.

You are hereby instructed to disburse \$ _____

_____ to WDNR, or

_____ to the following WDNR contractor - _____.

The disbursement should be made in accordance with the payment instructions attached hereto.

DATE: _____

Regional Director
U.S. Fish and Wildlife Service, Region 3

DATE: _____

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Wisconsin Department of Natural Resources

EXHIBIT D TO ESCROW AGREEMENT:

ESCROW DISBURSEMENT CERTIFICATE
UNDER ESCROW AGREEMENT SECTION 4(d)

Reference is made to that certain Escrow Agreement for the Fox River Financial Assurance Escrow Account (the "Escrow Account"), dated _____, by and among Appleton Papers Inc. ("API"), NCR Corporation ("NCR") and _____ (the "Escrow Agent"), with the following beneficiaries (collectively the "Beneficiaries"): (i) the United States of America (the "United States") (on behalf of the U.S. Environmental Protection Agency ("EPA"), the U.S. Department of the Interior ("DOI"), and the U.S. Department of Commerce ("Commerce")); (ii) the State of Wisconsin (the "State") (on behalf of the Wisconsin Department of Natural Resources ("WDNR")); and (iii) the Menominee Indian Tribe of Wisconsin and the Oneida Tribe of Indians of Wisconsin (collectively the "Tribes").

DOI and WDNR hereby certify as follows:

This Escrow Disbursement Certificate is submitted pursuant to Section 4(d) of the Escrow Agreement and Subparagraph 6.c.(2) of the Consent Decree in the case captioned United States, et al. v. Appleton Papers Inc. and NCR Corporation (E.D. Wisc.). This disbursement is sought for funding natural resource damage restoration projects to be performed by DOI, Commerce, WDNR, or the Tribes at the Fox River Site under Section VII (Projects) of the Consent Decree.

You are hereby instructed to disburse \$ _____ to the Fox River Site Account within DOI's Natural Resource Damage Assessment and Restoration Fund. The disbursement should be made in accordance with the payment instructions attached hereto.

DATE: _____

Regional Director
U.S. Fish and Wildlife Service, Region 3

DATE: _____

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Wisconsin Department of Natural Resources

EXHIBIT E TO ESCROW AGREEMENT:

ESCROW DISBURSEMENT CERTIFICATE
UNDER ESCROW AGREEMENT SECTION 4(e)

Reference is made to that certain Escrow Agreement for the Fox River Escrow Account (the "Escrow Account"), dated _____, by and among Appleton Papers Inc. ("API"), NCR Corporation ("NCR") and _____ (the "Escrow Agent"), with the following beneficiaries (collectively the "Beneficiaries"): (i) the United States of America (the "United States") (on behalf of the U.S. Environmental Protection Agency ("EPA"), the U.S. Department of the Interior ("DOI"), and the U.S. Department of Commerce ("Commerce")); (ii) the State of Wisconsin (the "State") (on behalf of the Wisconsin Department of Natural Resources ("WDNR")); and (iii) the Menominee Indian Tribe of Indians of Wisconsin and the Oneida Tribe of Indians of Wisconsin.

EPA, DOI, and WDNR hereby certify as follows:

This Escrow Disbursement Certificate is submitted pursuant to Section 4(e) of the Escrow Agreement and Subparagraph 6.c.(3) of the Consent Decree in the case captioned United States, et al. v. Appleton Papers Inc. and NCR Corporation (E.D. Wisc.). This Escrow Disbursement Certificate is submitted because the Effective Period under the Consent Decree has ended and the costs to complete the projects under the Consent Decree that were commenced by the Beneficiaries before termination of the Effective Period have been paid.

You are hereby instructed to disburse all remaining funds in the Escrow Account to Appleton Papers Inc. and NCR Corporation in accordance with the payment instructions attached hereto.

DATE: _____

Director, Superfund Division, Region 5
U.S. Environmental Protection Agency

DATE: _____

Regional Director
U.S. Fish and Wildlife Service, Region 3

DATE: _____

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Wisconsin Department of Natural Resources