

**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

**STIPULATION AND AGREED ORDER CONCERNING THE PARTIES’
WITHDRAWAL OF THE APPVION RELATED CLAIMS IN THIS CASE**

If approved by the Court, this Stipulation and Agreed Order would simplify the ongoing litigation over PCB contamination at the Lower Fox River and Green Bay Superfund Site (the “Site”) by the stipulating parties’ agreed withdrawal and waiver of certain claims under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), as specified herein. The parties to this Stipulation – the United States, the State of Wisconsin, Appvion, Inc., and NCR Corporation – respectfully request that the Court enter it as an Agreed Order without delay in order to avoid an unnecessary devotion of resources to litigation of claims that would be dismissed by this agreement.

After this case was remanded by the Seventh Circuit, additional claims were added or repelled, including: (1) a CERCLA § 107 counterclaim by Appvion, Inc. against the United States, alleging liability based on activities of the Army Corps of Engineers (*see* Dkt. 971); (2) related, purely derivative counterclaims-in-reply by the United States against NCR Corporation, Georgia-Pacific Consumer Products LP, and P.H. Glatfelter Company for

contribution toward Appvion's costs under CERCLA § 113 (*see* Dkt. 1056); and (3) related, purely derivative and defensive demands for recoupment and declaratory relief by Glatfelter, which sought to limit the United States' potential judgment against Glatfelter on its counterclaims-in-reply for contribution toward Appvion's costs without seeking any affirmative recovery from the government (*see* Dkt. 1060).

As the parties suggested in their Rule 26(f) Joint Report after remand, a common schedule was established for the litigation and trial of these "Appvion Related Claims" in this case with Appvion's § 107 claims against other parties and the parties' other claims in *Appvion Inc. and NCR Corp. v. George A. Whiting Paper Co., et al.*, No. 08-cv-16 (E.D. Wis.) ("*Whiting*"). The common schedule was included in a set of Scheduling Orders in this case and in *Whiting* that included a "Joint Trial of Appvion Related Claims with *Whiting*" on March 27, 2017. *See* Dkt. 1058.

Among other things, this Stipulation and Agreed Order would eliminate the last of the Appvion Related Claims from this case, thereby eliminating any need for a "Joint Trial of Appvion Related Claims with *Whiting*." All affirmative claims concerning alleged Army Corps liability under CERCLA would be withdrawn and the United States and other parties would not need to litigate with each other over Army Corps responsibility or associated equitable allocation issues, either in this case or in *Whiting*. This would avoid a significant devotion of government resources to litigation, and avoid the need for testimony from fact witnesses and experts on Army Corps involvement at the Site, including at least two experts for the United States who are currently scheduled for deposition by the close of discovery on November 22, 2016. The United States is not a party in *Whiting* and the *Whiting* case could be tried on its own (as currently

scheduled for March 27, 2017). This agreement is not intended to have any effect on the claims in *Whiting*.

Entry of this Stipulation and Agreed Order would leave the governments' cost recovery claims against NCR and Glatfelter as the only claims left to be tried in this case. Those claims would still be litigated at a second trial shortly after the *Whiting* trial, as envisioned by the current Scheduling Order.

NOW, THEREFORE, in light of the forgoing, and good cause appearing, **IT IS HEREBY STIPULATED, AGREED, AND ORDERED:**

1. The claims of the United States and the State asserted against Appvion in this action – as set forth in the Plaintiffs' Complaint (Dkt. 1) and First Amended Complaint (Dkt. 30) under CERCLA §§ 106 and 107 – are dismissed with prejudice upon entry of this Order, including any right of the United States or the State to appeal the original dismissal of their claims against Appvion (Dkt. 349).

2. The claims of Appvion asserted against the United States and the State in this action – as set forth in Appvion's Answer and Counterclaims (Dkt. 65) and Amended Counterclaim under CERCLA § 107 (Dkt. 971) – are dismissed with prejudice upon entry of this Order. Appvion hereby waives and agrees not to assert any other claims or causes of action against the United States or the State with respect to the Site, including but not limited to 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.

3. The contribution claims of the United States asserted against NCR Corporation, P.H. Glatfelter Company, and Georgia-Pacific Consumer Products LP in this action – as set forth

in the United States’ Supplemental Complaint Asserting Counterclaims-In-Reply (Dkt. 1056) – are dismissed with prejudice upon entry of this Order.

4. Upon entry of this Order, the current Scheduling Order in this case (Dkt. 1058) shall be modified as follows to eliminate the reference to a joint trial of “Appvion Related Claims” in this case with the claims in *Whiting*, and to clarify that the claims in *Whiting* will now be tried separately without the involvement of the United States or the State:

Remove from Scheduling Order:

~~March 27, 2017 — Joint Trial of Appvion Related Claims with *Whiting* (“Trial 1”)~~

~~The trial of government cost claims will commence three days after the close of Trial 1.~~

Replace with:

March 27, 2017 *Whiting* trial (“Trial 1”)

The trial of government cost claims will commence three days after the close of Trial 1.

5. This Order shall not have any effect on the claims in *Whiting*.

IT IS SO STIPULATED

**Stipulation and Agreed Order Concerning the Parties Withdrawal of the Appvion Related Claims
in *United States and the State of Wisconsin v. NCR Corp., et al.*, No. 10-cv-910 (E.D. Wis.)**

IT IS SO STIPULATED

For the United States of America

JOHN C. CRUDEN
Assistant Attorney General
Environment and Natural Resources Division

Dated: October 7, 2016

s/ Randall M. Stone
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IT IS SO STIPULATED

For the State of Wisconsin

Dated: October 7, 2016

s/ F. Mark Bromley

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IT IS SO STIPULATED

For Appvion, Inc.

Dated: October 7, 2016

By: s/ Ronald R. Ragatz
One of Its Attorneys

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IT IS SO STIPULATED

For NCR Corp.

Dated: October 7, 2016

By: s/ Omid H. Nasab
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**Stipulation and Agreed Order Concerning the Parties Withdrawal of the Appvion Related Claims
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SO ORDERED

Dated this 11th day of October, 2016

/s William C. Griesbach
William C. Griesbach, Chief Judge
United States District Court

