

**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

**PLAINTIFFS' JOINT MOTION TO ENTER
REVISED PROPOSED CONSENT DECREE WITH
NCR CORPORATION AND APPVION, INC.**

The United States and the State of Wisconsin (“the governments”) hereby move the Court to approve and enter the revised proposed Consent Decree that is attached as Exhibit 1 to this Motion. Under the proposed Consent Decree, NCR would take on sole responsibility for completing all remaining dredging work at the Lower Fox River and Green Bay Superfund Site, at an estimated cost of over \$200 million over the next two to three years. As specified by the Consent Decree, the Remedial Action work to be performed by NCR is outlined in an “RA Work Plan” approved by EPA and the Wisconsin Department of Natural Resources. The main body of the approved RA Work Plan is attached as Exhibit 2 to this Motion.

The Consent Decree includes a waiver of claims by NCR and Appvion – and a corresponding release of potential claims of their indemnitors – that will constrain their ability to seek reallocation of their own costs to Georgia-Pacific and Glatfelter, provided Georgia-Pacific and Glatfelter do not try to strike back against NCR or Appvion. In addition to these commitments,

NCR and Appvion are agreeing to waive their rights to appeal prior orders in this case and in the related *Whiting* case.

A proposed Consent Decree was lodged with the Court on January 17, 2017. Dkt. 1169. After lodging, notice of the proposed settlement with a solicitation of public comments was published in the Federal Register. 82 Fed. Reg. 7862 (Jan. 23, 2017). Before expiration of the comment period, Georgia-Pacific and Glatfelter requested an in-person meeting with the governments to articulate concerns about the Consent Decree; that meeting was held in mid-February. Two sets of written comments were received during the public comment period, from Georgia-Pacific and Glatfelter. Both oppose the settlement, arguing that it is unfair, unreasonable, and inconsistent with CERCLA.

Copies of the comments submitted by Georgia-Pacific and Glatfelter are attached as Exhibits 4, 5, and 6 to this Motion. Glatfelter's comments contain some insurance recovery information identified as covered by the Stipulated Protective Orders entered in this case and in the *Whiting* case. For that reason, the version of Glatfelter's comments submitted as Exhibit 5 to Plaintiffs' Motion is a redacted "public-record version" and the version submitted as Exhibit 6 is an unredacted version filed under seal in accordance with General L.R. 79(d) and Section 4 of the Stipulated Protective Order in the *Whiting* case. *Whiting*, E.D. Wis. No. 08-C-16, Dkt. 1707 at 6.

To assuage some of the concerns raised by Georgia-Pacific and Glatfelter, the governments negotiated a number of language clarifications that are incorporated in the revised proposed Consent Decree that has been re-signed by the parties and attached as Exhibit 1 to this Motion. These clarifications are described in the accompanying Brief filed in support of this Motion to Enter. Exhibit 3 to this Motion is a redline/strikeout version of the proposed Consent Decree that highlights all clarifying changes made in the revised Consent Decree, and some typographical corrections, as compared to the version of the Consent Decree originally lodged with the Court on

January 17. By this Motion, the Plaintiffs request approval and entry of the revised proposed Consent Decree attached hereto as Exhibit 1, which incorporates these clarifications and corrections. NCR and Appvion support this request.

The Plaintiffs' Brief in support of this Motion provides pertinent background information, reviews the legal standards governing court approval of the proposed settlement, explains the factors that were considered in devising the proposed settlement, and responds to particular issues raised in the written comments on the settlement by the objectors. As demonstrated in the accompanying Brief, the Court should approve and enter the revised Consent Decree notwithstanding the commenters' objections.

Conclusion

The Court should approve and enter the revised proposed Consent Decree that is attached as Exhibit 1 to this Motion.

Respectfully submitted,

For the United States of America

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Dated: March 29, 2017

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Dated: March 29, 2017

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on this day, the foregoing Motion (together with the accompanying Exhibits) was filed electronically with the Clerk of the Court using the Court's Electronic Case Filing System, which sent notification of such filing to all counsel of record through the ECF notification system.

Dated: March 29, 2017

s/ *Randall M. Stone*