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

UNITED STATES OF AMERICA and THE STATE OF WISCONSIN, Plaintiffs, v. NCR CORPORATION; *et al.*, Defendants.	Civil Action No. 10-C-910

CONSENT DECREE
WITH KIMBERLY-CLARK CORPORATION

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I. BACKGROUND

A. The Plaintiffs have filed an Amended 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 injunctive relief regarding the cleanup of the Lower Fox River and Green Bay Site (the "Fox River Site" or the "Site," as defined below) and recovery of certain response costs incurred in connection with releases and threatened releases of hazardous substances at and from the Site. The responsible natural resource trustees also contend that they have claims for recovery of natural resource damages (including for recovery of natural resource damage assessment costs) and the Plaintiffs' Amended Complaint seeks recovery of such damages. This Consent Decree sets forth the terms of a civil settlement among the Plaintiffs, the responsible natural resource trustees, and Kimberly-Clark Corporation ("Kimberly-Clark" or "Settling Defendant").

B. The United States of America ("United States") instituted this action and is entering into this Consent Decree on behalf of the Administrator of the United States Environmental Protection Agency ("EPA") and the Secretary of the United States Department of the Interior ("DOI"), acting in consultation with the United States Department of Commerce ("Commerce").

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

R. In 2008, API and NCR filed suit in *Appleton Papers Inc. v. George A. Whiting Paper Co.*, Case No. 08-C-16 (E.D. Wis.) against a number of parties, seeking contribution under Section 113(f) of CERCLA, 42 U.S.C. § 9613(f), and a declaratory judgment allocating equitable shares of the cleanup costs and natural resource damages associated with the Site.

S. NCR also filed a separate suit in *NCR Corp. v. Kimberly-Clark Corp.*, Case No. 08-C-895 (E.D. Wis.) against a number of additional parties, including Kimberly-Clark, seeking contribution under Section 113(f) of CERCLA, 42 U.S.C. § 9613(f), and a declaratory judgment allocating equitable shares of the cleanup costs and natural resource damages associated with the

Site. On January 7, 2009, the Court consolidated Case No. 08-C-895 with Case No. 08-C-16 (collectively, the "*Whiting* Case").

T. In June and July 2013, a number of parties appealed the final decision in the *Whiting* Case to the U.S. Court of Appeals for the Seventh Circuit, and the consolidated case is *NCR Corporation v. George A. Whiting Paper Company, et al*, Case No. 13-2447.

U. The Plaintiffs have determined the following:

1. Prompt settlement with the Settling Defendant is practicable and in the public interest within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1).

2. The payment to be made by the Settling Defendant under this Consent Decree involves only a minor portion of the response costs and damages at the Site within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1), based upon the Plaintiffs' estimate that the total Site costs and damages may approach $1.5 billion, including response costs incurred by the EPA Hazardous Substance Superfund and by other persons at or in connection with the Site; response costs anticipated to be incurred; a premium relating to response costs anticipated to be incurred; and natural resource damages.

3. The amount of hazardous substances contributed to the Site by the Settling Defendant and the toxic or other hazardous effects of the hazardous substances contributed to the Site by the Settling Defendant are minimal in comparison to other hazardous substances at the Site within the meaning of Section 122(g)(1)(A) of CERCLA, 42 U.S.C. § 9622(g)(1)(A). This is based on Plaintiffs' judgment that: (i) Kimberly-Clark contributed no more than 230 kilograms of PCBs to the Site; and (ii) the hazardous substances contributed by Kimberly-Clark to the Site were not significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site. Based on the volume and toxicity of the materials contributed by the

Settling Defendant, as well as relevant equitable considerations, the Plaintiffs have determined that Kimberly-Clark should bear no more than a 0.09% equitable share of the Site costs and damages.

V. The Settling Defendant does not admit any liability to the Plaintiffs, the Tribes, or any other party arising out of the transactions or occurrences alleged in the amended complaint in this case or the complaints in the above-referenced consolidated contribution cases.

W. The United States, the State, the Tribes, and the Settling Defendant agree that settlement without further litigation and without the admission or adjudication of any issue of fact or law is the most appropriate means of resolving this action with respect to the Settling Defendant. This Consent Decree requires the Settling Defendant to pay a total of $1.35 million (plus interest as provided herein).

X. In accordance with the NCP, the State was notified of negotiations with potentially responsible parties regarding this potential *de minimis* settlement with Kimberly-Clark. The State has been an active participant in such negotiations and is a party to this Consent Decree.

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

Z. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of this Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated

litigation, and that this Consent Decree is procedurally and substantively fair, reasonable, and in the public interest.

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

II. JURISDICTION

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

III. PARTIES BOUND

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

IV. STATEMENT OF PURPOSE

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

a. to reach a final settlement among the Parties with respect to the Site that allows the Settling Defendant to make a set of cash payments, including a premium, to resolve its alleged civil liability under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, for performance of cleanup activities at the Site, for response costs incurred and to be incurred at or in

connection with the Site, and for natural resource damages at the Site, thereby reducing litigation relating to the Site;

b. to simplify any remaining administrative and judicial enforcement activities concerning the Site by eliminating these potentially responsible parties from further involvement at the Site; and

c. to provide for full and complete contribution protection for the Settling Defendant with regard to the Site pursuant to Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(g)(5).

V. DEFINITIONS

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

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

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

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

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

e. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

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

g. "Effective Date" shall mean the effective date of this Consent Decree as provided by Section XVI (Effective Date).

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

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

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

k. "National Contingency Plan" or "NCP" shall mean 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.

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

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

n. "NRDAR Fund" shall mean DOI's Natural Resource Damage Assessment and Restoration Fund.

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

p. "Parties" shall mean the United States, the State of Wisconsin, the Tribes, and the Settling Defendant.

q. "Plaintiffs" shall mean the United States and the State of Wisconsin.

r. "Response Agencies" shall mean EPA and WDNR collectively.

s. "Response Costs" shall mean all costs of "response" as that term is defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

t. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

u. "Settling Defendant" shall mean the Kimberly-Clark Corporation.

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

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

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

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

z. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

aa. "WDNR" shall mean the Wisconsin Department of Natural Resources and any successor departments or agencies of the State of Wisconsin.

VI. PAYMENTS

5. Within 14 days of the date on which the Court enters an order in this case authorizing payment by the Settling Defendant into the Court Registry Account, the Settling Defendant shall pay $1,350,000 into the interest-bearing Court Registry Account of the United States District Court for the Eastern District of Wisconsin. Payment shall be made to the Clerk of the Court by an electronic funds transfer ("EFT") to the account designated by the Clerk of the Court, in accordance with payment instructions to be provided.

6. After entry of this Consent Decree, the funds deposited into the Court Registry Account under this Consent Decree (and all accrued interest) shall be disbursed pursuant to a separate Withdrawal Order of the Court as follows: (i) $950,000 (plus all accured interest on $950,000 of the funds deposited in the Court Registry Account) shall be disbursed to the State and deposited in a segregated fund under the direction of WDNR, in accordance with payment instructions provided by the State, to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred to the EPA Hazardous Substance Superfund; (ii) $175,000 (plus all accured interest on $175,000 of the funds deposited in the Court Registry Account) shall be deposited in the Lower Fox River and Green Bay Superfund Site Special Account within the EPA Hazardous Substance Superfund, to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund; and (iii) the remaining $225,000 (plus all accrued interest on $225,000 of the funds deposited in the Court Registry Account) shall be deposited in a Site-specific sub-account within the NRDAR Fund, to be managed by DOI for the joint benefit and use of the Trustees to pay for natural resource damage restoration projects jointly selected by the Trustees and/or to be applied toward natural resource damage assessment costs incurred by DOI and the State.

7. In the event the Plaintiffs withdraw or withhold consent to this Consent Decree before entry, or the Court declines to enter the Consent Decree, the funds deposited into the Court Registry Account (and all accrued interest) shall be returned to the Settling Defendant pursuant to a separate Withdrawal Order of the Court.

8. The payment by the Settling Defendant includes amounts for: (i) past response costs incurred at or in connection with the Site; (ii) projected future response costs to be incurred at

or in connection with the Site; (iii) a premium to cover the risks and uncertainties associated with this settlement, including but not limited to, the risk that total response costs incurred or to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund, or by any other person, will exceed current estimates; and (iv) Natural Resource Damages, including assessment costs.

9. Use of Payments.

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

b. Payments under this Section to a segregated fund under the direction of WDNR shall be retained and used to conduct or finance response actions at or in connection with the Site. If any such funds remain after completion of the response action at the Site, WDNR shall transfer all remaining funds to the EPA Hazardous Substance Superfund.

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

10. At the time of payment, the Settling Defendant shall send notice, including a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter which shall reference the case name and DOJ case number 90-11-2-1045/3 to the persons listed below:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
DJ No. 90-11-2-1045/3
P.O. Box 7611
Washington, DC 20044-7611

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

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

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

Cynthia Hirsch
Assistant Attorney General
Wisconsin Department of Justice
17 West Main Street, P.O. Box 7857
Madison, WI 53707-7857

VII. SETTLING DEFENDANT'S FAILURE TO MAKE PAYMENT

11. If the Settling Defendant fails to make full payment within the time required by Paragraph 5, the Settling Defendant shall pay Interest on the unpaid balance, which shall accrue from the Date of Lodging until the date of payment. In addition, if the Settling Defendant fails to make full payment as required by Paragraph 5, the United States may, in addition to any other available remedies or sanctions, bring an action against the Settling Defendant, as appropriate,

seeking injunctive relief to compel payment and/or seeking civil penalties under Section 122(*l*) of CERCLA, 42 U.S.C. § 9622(*l*), for failure to make timely payment.

VIII. CERTIFICATION OF THE SETTLING DEFENDANT

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

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

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

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

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

13. Covenants by the United States. In consideration of the payment that will be made by the Settling Defendant under the terms of this Consent Decree, and except as specifically provided by Section X (Reservations of Rights by Plaintiffs and the Tribes), the United States covenants not to sue or take administrative action against the Settling Defendant pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607, or Section 311(f) of the Clean Water

Act, 33 U.S.C. § 1321(f), relating to the Site. With respect to present and future liability, this covenant not to sue shall take effect upon the Effective Date of this Consent Decree as set forth in Section XVI (Effective Date). This covenant not to sue is conditioned upon: a) the satisfactory performance by the Settling Defendant of its obligations under this Consent Decree; and b) the veracity of the information provided to the Plaintiffs by the Settling Defendant relating to its involvement with the Site. This covenant extends only to the Settling Defendant and does not extend to any other person.

14. Covenants by the State. In consideration of the payment that will be made by the Settling Defendant under the terms of this Consent Decree, and except as specifically provided by Section X (Reservations of Rights by Plaintiffs and the Tribes), the State covenants not to sue or to take administrative action against the Settling Defendant pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, or Wisconsin statutory or common law, relating to the Site. With respect to present and future liability, this covenant not to sue shall take effect upon the Effective Date of this Consent Decree as set forth in Section XVI (Effective Date). This covenant not to sue is conditioned upon: a) the satisfactory performance by the Settling Defendant of all its obligations under this Consent Decree; and b) the veracity of the information provided to the Plaintiffs by the Settling Defendant relating to the Settling Defendant's involvement with the Site. This covenant extends only to the Settling Defendant and does not extend to any other person.

15. Covenants by the Tribes. In consideration of the payment that will be made by the Settling Defendant under the terms of this Consent Decree, and except as specifically provided by Section X (Reservations of Rights by Plaintiffs and the Tribes), the Tribes covenant not to sue the Settling Defendant for Natural Resource Damages pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, Wisconsin statutory or common law, or tribal law, relating to the Site. With respect to

present and future liability, this covenant not to sue shall take effect upon the Effective Date of this Consent Decree as set forth in Section XVI (Effective Date). This covenant not to sue is conditioned upon: a) the satisfactory performance by the Settling Defendant of its obligations under this Consent Decree; and b) the veracity of the information provided to the Plaintiffs by the Settling Defendant relating to its involvement with the Site. This covenant extends only to the Settling Defendant and does not extend to any other person.

X. RESERVATIONS OF RIGHTS BY THE PLAINTIFFS AND THE TRIBES

16. The United States, the State, and the Tribes reserve, and this Consent Decree is without prejudice to, all rights against the Settling Defendant with respect to all matters not expressly included within Paragraph 13 (Covenants by the United States), Paragraph 14 (Covenants by the State), and Paragraph 15 (Covenants by the Tribes). Notwithstanding any other provision of this Consent Decree, the United States, the State, and the Tribes reserve all rights against the Settling Defendant with respect to:

a. Claims based on a failure by the Settling Defendant to meet a requirement of this Consent Decree;

b. criminal liability;

c. liability based upon the Settling Defendant's transportation, treatment, storage, discharge or disposal, or the arrangement for the transportation, treatment, storage, discharge, or disposal, of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Consent Decree;

d. liability based upon the transportation, treatment, storage, discharge or disposal, or the arrangement for the transportation, treatment, storage, discharge, or disposal, of a hazardous substance or a solid waste outside of the Site; or

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

17. Additional Reservations.

a. Additional Reservations for PCBs. Notwithstanding any other provision in this Consent Decree, the United States, the State, and the Tribes reserve, and this Consent Decree is without prejudice to, the right to institute proceedings against the Settling Defendant in this action or in a new action or to issue an administrative order to the Settling Defendant seeking to compel the Settling Defendant to perform response actions relating to the Site, reimburse the Plaintiffs for additional costs of response, and/or pay additional sums for Natural Resource Damages if information is discovered which indicates that the Settling Defendant, before its signature of this Consent Decree, was responsible for releasing, discharging, or disposing of more than 230 kilograms of PCBs at the Site.

b. Additional Reservations for Other Hazardous Substances. Notwithstanding any other provision in this Consent Decree, the United States, the State, and the Tribes reserve, and this Consent Decree is without prejudice to, the right to institute proceedings against the Settling Defendant in this action or in a new action or to issue an administrative order to the Settling Defendant seeking to compel the Settling Defendant to perform future response actions relating to the Site, pay future costs of response incurred by Plaintiffs, and/or pay additional sums for Natural Resource Damages to the extent such response actions, response costs, or Natural Resource Damages relate to a hazardous substance (or hazardous substances) other than PCBs and their breakdown products. This reservation shall not be construed to require the Settling Defendant to

perform or reimburse costs of the remedial action prescribed by the existing Records of Decision for the Site.

XI. COVENANTS BY THE SETTLING DEFENDANT

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

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

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

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

Except as provided in Paragraph 20 (Waiver of Claims) and Paragraph 22 (Waiver of Claim-Splitting Defenses), the covenant in Paragraph 18 shall not apply in the event the United States, the State, or either of the Tribes brings a cause of action or issues an order pursuant to the reservations set forth in Subparagraphs 16.c - 16.e or Paragraph 17, but only to the extent that the Settling Defendant's claims arise from the same response action, response costs, or damages that the United States, the State, or the Tribe seeks pursuant to the applicable reservation.

19. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

20. Waiver of Claims. The Settling Defendant agrees not to assert any claims or causes of action (including claims for contribution under CERCLA) that it may have for response costs and natural resource damages relating to PCBs and their breakdown products at the Site against any other person who is a potentially responsible party under CERCLA at the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that the Settling Defendant may have against any person if such person asserts or has asserted a claim or cause of action relating to the Site against the Settling Defendant.

XII. EFFECT OF SETTLEMENT / CONTRIBUTION

21. Except as provided in Paragraph 20 (Waiver of Claims), nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as provided in Paragraph 20 (Waiver of Claims), the Plaintiffs, the Tribes, and the Settling Defendant each reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

22. Waiver of Claim Splitting Defenses. In any subsequent administrative or judicial proceeding against the Settling Defendant that is initiated by the United States, the State, or the Tribes for injunctive relief, recovery of response costs or Natural Resource Damages, or other relief relating to the Site, the Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue

preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant action; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants Not to Sue set forth in Section IX.

23. -Contribution Protection. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Defendant is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 122(g)(5) of CERCLA, 42 U.S.C. § 9622(g)(5), for "matters addressed" in this Consent Decree. The Parties also agree, and by entering this Consent Decree this Court finds, that this Consent Decree constitutes a judicially-approved settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that the Settling Defendant is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are Natural Resource Damages and all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States, the State, or any other person.

XIII. RETENTION OF JURISDICTION

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

XIV. INTEGRATION / APPENDIX

25. This Consent Decree and its appendix constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this

Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendix is attached and incorporated into this Consent Decree:

"Appendix A" is the map of the Site.

XV. PUBLIC COMMENT

26. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States shall file with the Court any written comments received and the United States' response thereto. The 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. The Settling Defendant consents to entry of this Consent Decree without further notice, and the United States reserves the right to oppose an attempt by any person to intervene in this civil action.

27. 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.

XVI. EFFECTIVE DATE

28. The effective date of this Consent Decree shall be the date of entry by this Court, following public comment pursuant to Paragraph 26.

XVII. SIGNATORIES / SERVICE

29. The undersigned representatives of the Settling Defendant, the United States, the State, and the Tribes each certify that he or she is fully authorized to enter into the terms and

conditions of this Consent Decree and to execute and legally bind such Party to this document. This Consent Decree may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument.

30. The Settling 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 United States has notified the Settling Defendant in writing that it no longer supports entry of the Consent Decree.

31. The Settling 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 its behalf with respect to all matters arising under or relating to this Consent Decree. The Settling Defendant hereby agrees to accept service including, but not limited to, service of a summons, in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court.

XVIII. FINAL JUDGMENT

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

SO ORDERED.

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

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

THE UNDERSIGNED PARTIES enter into this Consent Decree with Kimberly-Clark Corporation in in the matter of *United States v. NCR Corp., et al.*, relating to the Lower Fox River and Green Bay Site:

FOR THE UNITED STATES OF AMERICA

Date: _____

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

Date: _____

_____
JEFFREY A. SPECTOR, Senior Attorney
RANDALL M. STONE, Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
Telephone: 202-514-4432
Facsimile: 202-616-6584
E-Mail: jeffrey.spector@usdoj.gov

Date: _____

_____
JAMES L. SANTELLE
United States Attorney

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

THE UNDERSIGNED PARTIES enter into this Consent Decree with Kimberly-Clark Corporation in in the matter of *United States v. NCR Corp., et al.*, relating to the Lower Fox River and Green Bay Site:

Date: _____

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

Date: _____

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

THE UNDERSIGNED PARTIES enter into this Consent Decree with Kimberly-Clark Corporation in in the matter of *United States v. NCR Corp., et al.*, relating to the Lower Fox River and Green Bay Site:

FOR THE STATE OF WISCONSIN

Date: _____

_____
CATHY STEPP
Secretary
Wisconsin Department of Natural Resources
101 South Webster Street
Madison, WI 53703

Date: _____

_____
CYNTHIA R. HIRSCH
Assistant Attorney General
Wisconsin Department of Justice
123 W. Washington Avenue
Madison, WI 53702

THE UNDERSIGNED PARTIES enter into this Consent Decree with Kimberly-Clark Corporation in in the matter of *United States v. NCR Corp., et al.*, relating to the Lower Fox River and Green Bay Site:

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 PARTIES enter into this Consent Decree with Kimberly-Clark Corporation in in the matter of *United States v. NCR Corp., et al.*, relating to the Lower Fox River and Green Bay Site:

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 PARTIES enter into this Consent Decree with Kimberly-Clark Corporation in in the matter of *United States v. NCR Corp., et al.*, relating to the Lower Fox River and Green Bay Site:

FOR KIMBERLY-CLARK CORPORATION

Date: February 21, 2014

Signature

Typed Name: Lisa Morden

Title: Sr. Director of Sustainability

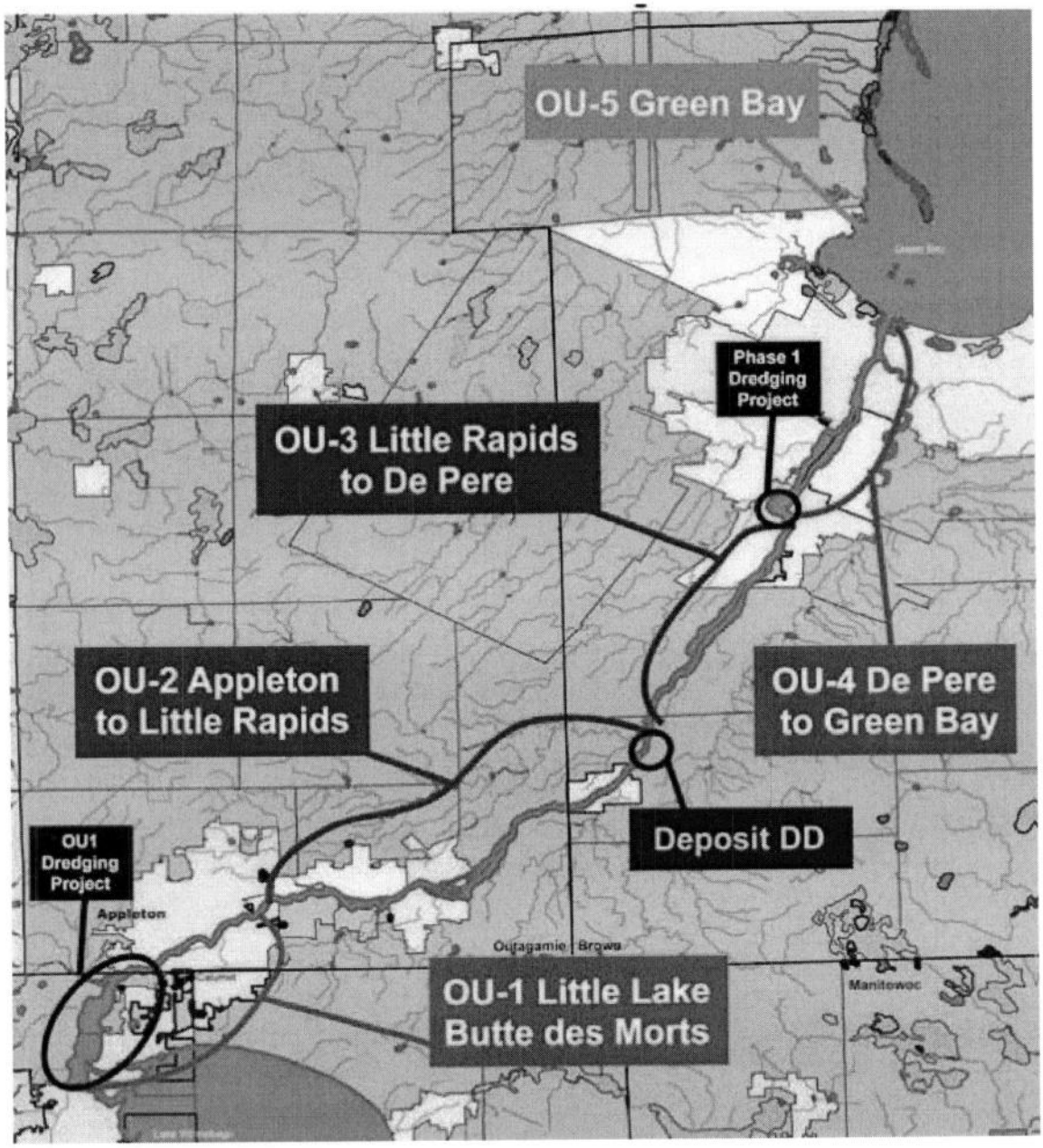
Address: Kimberly-Clark Corporation
1400 Holcomb Bridge Rd.
Roswell, GA 30076

REVIEWED HJ 2/21/14

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

Typed Name: General Counsel

Title: Legal Department

Address: Kimberly-Clark Corporation
1400 Holcomb Bridge Rd.
Roswell, GA 30076

Appendix A: Map of the Site