

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA and THE STATE OF WISCONSIN,)	
)	
Plaintiffs,)	
)	Civil Action No. 10-C-910
v.)	
)	The Honorable William C. Griesbach
NCR CORPORATION, <i>et al.</i>)	
)	
Defendants.)	
)	

**UNITED STATES’ NOTICE OF LODGING OF
THREE PROPOSED CONSENT DECREES**

The United States of America (the “United States”) hereby lodges with the Court the three proposed Consent Decrees that are being filed herewith. The United States and the State of Wisconsin (the “State”) are co-plaintiffs in this action addressing polychlorinated biphenyl (“PCB”) contamination at the Lower Fox River and Green Bay Superfund Site (the “Fox River Site” or the “Site”) under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”). The United States and the State also are parties to a set of intergovernmental Memoranda of Agreement with two Native American tribes – the Oneida Tribe of Indians of Wisconsin and the Menominee Indian Tribe of Wisconsin – that are tribal trustees for natural resources at and near that Site that have been injured by the PCB contamination (the “Tribes”). The United States, the State, and the Tribes are co-signatories to the proposed Consent Decrees.

The first proposed Consent Decree is with the City of Appleton, CBC Coating Inc., Menasha Corporation, the Neenah-Menasha Sewerage Commission, U.S. Paper Mills

Corporation, and WTM I Company. Those six Settling Defendants would pay a total of \$54 million toward the response costs and natural resource damages associated with the Site. The State would pay an additional \$100,000 to resolve its own potential CERCLA liability, as alleged in certain counterclaims asserted by some of the defendants in this case. This settlement resulted from more than two years of intensive mediation efforts conducted by the Honorable Aaron E. Goodstein.

The second proposed Consent Decree is with Settling Defendant Kimberly-Clark Corporation. Kimberly-Clark would pay the United States and the State a total of \$1,350,000 under this *de minimis* settlement pursuant to CERCLA Section 122(g), 42 U.S.C. § 9622(g).

The third proposed Consent Decree is with Settling Defendant NewPage Wisconsin System Inc. (“NewPage”). NewPage filed a petition for relief under Chapter 11 of the Bankruptcy Code in 2011. As referenced in the proposed Consent Decree with NewPage, certain governmental claims against NewPage for the Fox River Site are potentially eligible for payment from a specially-established Fox River Reserve that is being administered by Liquidation Trust formed and governed in accordance with NewPage’s court-approved Reorganization Plan in its bankruptcy case, captioned *In re NewPage Corporation, et al.*, Case No. 11-12804 (Bankr. D. Del.). The proposed Consent Decree with NewPage would grant the United States and the State allowed general unsecured claims for a total of \$1,157,254 that would be paid as allowed claims by the Litigation Trust. Because such claims are paid on a deeply-discounted basis under NewPage’s Reorganization Plan, the actual distributions that the United States and the State will receive on those allowed claims may be as little as \$50,000.

Four of the settlers under the first proposed Consent Decree – namely CBC Coating, Menasha, U.S. Paper, and WTM – are Defendants subject to the Order Entering Declaratory

Judgment and Terms of Injunction entered in this case on May 1, 2013. (Dkt. 795). That order is now on appeal before the U.S. Court of Appeals for the Seventh Circuit in a set of appeals consolidated under the caption *United States, et al. v. P.H. Glatfelter Co., et al.*, No. 13-2436 (7th Cir.). Oral argument in those appeals was heard on February 28, 2014. As counseled by Seventh Circuit case law, the United States intends to inform the Court of Appeals that a proposed settlement has been reached with two appellants (Menasha and WTM) and two other defendants subject to the declaratory judgment and injunction order (CBC Coating and U.S. Paper). *See Gould v. Bowyer*, 11 F.3d 82, 84 (7th Cir. 1993).

Pursuant to Department of Justice policy, the United States will publish notice of the lodging of these proposed Consent Decrees in the Federal Register to commence a 30-day public comment period. The Court should not sign or enter the proposed Consent Decrees until the public has had an opportunity to comment and the United States has addressed those comments, if any.

The United States may withhold its consent to any of the proposed Consent Decrees if the comments disclose facts or considerations which indicate that the proposed Consent Decree is improper, inappropriate, inadequate, or not in the public interest. At the conclusion of the public comment period, the United States will: (1) file with the Court any written comments received pertaining to each proposed Consent Decree; and (2) either notify the Court of its withdrawal of the proposed Consent Decree, or respond to comments received and seek approval and entry of the Consent Decree.

If the United States decides to seek entry of the proposed Consent Decree that includes Menasha, WTM, CBC Coating, and U.S. Paper before the Seventh Circuit has decided the appeals of the declaratory judgment and injunction order applicable to those parties, then the

United States would seek an indicative ruling on that request from this Court, *see* Fed R. Civ. P. 62.1, and an appropriate remand by the Court of Appeals to ensure that this Court possesses clear authority to approve and enter the Consent Decree. *See* Fed. R. App. P. 12.1; Seventh Circuit R. 57; *Boyko v. Anderson*, 185 F.3d 672, 675-76 (7th Cir. 1999); *Craig v. Ontario Corp.*, 543 F.3d 872, 875 (7th Cir. 2008).

Like several prior settlements relating to the Site, these proposed Consent Decrees require most of the settlers to make their payments into an interest-bearing Court Registry Account before the Decrees are approved and entered – *i.e.*, within 14 days (for Kimberly-Clark) or 30 days (for seven other settlers) after the Court enters an Order authorizing those payments into a Court Registry Account. The United States has therefore filed a separate Motion for entry of such an Order, captioned “Civil L. R. 7(h) Expedited Non-Dispositive Motion by the United States to Authorize Certain Court Registry Account Deposits.”

Signature Page for United States' Notice of Lodging of Three Proposed Consent Decrees in
United States and the State of Wisconsin v. NCR Corp., et al. (E.D. Wis.)

Respectfully submitted,

For the United States of America

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Dated: March 26, 2014

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CERTIFICATE OF SERVICE

I hereby certify that on this date copies of the foregoing Notice of Lodging and the accompanying proposed Consent Decrees were served on the following counsel of record in this case by the Court's Electronic Case Filing system:

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