UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF: Lower Fox River and Green Bay Site Respondents: Georgia-Pacific Consumer Products LP (formerly known as Fort James Operating Company) and NCR Corporation.	AMENDED ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT U.S. EPA Region 5 CERCLA Docket No. V-W-'04-C-781 Proceedings Under Sections 104, 106, 122(a), and 122(d)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended, 42 U.S.C. §§ 9604, 9606, 9622(a), and 9622(d)(3).

I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent ("Settlement Agreement") is entered into voluntarily by the United States Environmental Protection Agency ("EPA"), the State of Wisconsin ("State") through the Wisconsin Department of Natural Resources ("WDNR"), and Georgia-Pacific Consumer Products LP (formerly known as Fort James Operating Company), an affiliate of Fort James Corporation, and NCR Corporation ("Respondents"). The mutual objectives of EPA, WDNR, and Respondents in entering into this Settlement Agreement are: (i) to have Respondents perform certain design planning for Operable Units 2, 3, 4 and 5 ("OUs 2, 3, 4, and 5") of the Lower Fox River and Green Bay Site (also known as the Fox River NRDA PCB Releases Site) ("Site"), located in the State of Wisconsin, as set forth herein; (ii) to have Respondents perform certain pre-design sampling activities for OUs 2-5, as set forth herein; and (iii) to have the Respondents perform certain other remedial design activities needed for implementation of the Response Agencies' (EPA and WDNR) December 2002 selected remedy for OU 2 at the Site, the June 2003 selected remedy for OUs 3, 4 and 5 at the Site, and the July 2007 Record of Decision Amendment for OUs 2-5 at the Site, including any modification to such remedies approved by EPA and WDNR.

2. This Settlement Agreement is issued pursuant to the authority vested in the President of the United States by Sections 104, 106, 122(a), and 122(d)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606, 9622(a), and 9622(d)(3), as amended ("CERCLA"). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2926 (1987), and further delegated to EPA Regional Administrators as of January 16, 2002, by EPA Delegation Nos. 14-1 and 14-2, and to the Director, Superfund Division, EPA Region 5, by Regional Delegation Nos. 14-1 and 14-2.

3. The activities conducted pursuant to this Settlement Agreement are subject to approval by EPA and WDNR, as provided herein, and shall be consistent with CERCLA, the National Contingency Plan, 40 C.F.R. Part 300, and all other applicable laws.

4. EPA, WDNR, and Respondents recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Respondents in accordance with this Settlement Agreement do not constitute an admission of any liability. Nothing in this Settlement Agreement is intended by the Parties to be, nor shall it be construed as, an admission of fact or law, an estoppel, or a waiver of defenses or claims by Respondents for any purpose. The Parties agree that the provisions of this Settlement Agreement are not based on any views or assumptions regarding Respondents' appropriate share of liability or costs relating to the Site. Participation in this Settlement Agreement by Respondents is not intended by the Parties to be, and shall not be, an admission of any fact or opinion developed by EPA, the State, or any other person or entity.

5. Respondents agree to comply with and be bound by the terms of this Settlement Agreement. Respondents consent to and agree not to contest the authority or jurisdiction of the Regional Administrator of EPA Region 5 and the Secretary of the Wisconsin Department of Natural Resources or their delegatees to issue or enforce this Settlement Agreement, and also agree not to contest the basis or validity of this Settlement Agreement or its terms in any action to enforce its provisions. The Respondents do not, by signing this Settlement Agreement, waive any rights they may have to assert claims under CERCLA against any person, as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), except as precluded by Section XXI (Other Claims).

II. PARTIES BOUND

6. This Settlement Agreement applies to and is binding upon and inures to the benefit of EPA, WDNR, Respondents, and their successors and assigns. Respondents agree to instruct their officers, directors, employees and agents involved in the performance of the Work required by this Settlement Agreement to take all necessary steps to accomplish the performance of said Work in accordance with this Settlement Agreement. Any change in ownership or corporate status of a Respondent, including but not limited to any transfer of assets or real or personal property, shall not alter that Respondent's responsibilities under this Settlement Agreement. Respondents shall provide a copy of this Settlement Agreement to any subsequent owners or successors before ownership rights or stock or assets in a corporate acquisition are transferred. The signatories to this Settlement Agreement certify that they are authorized to execute and legally bind the Parties they represent to this Settlement Agreement.

7. Respondents shall provide a copy of this Settlement Agreement to all contractors, laboratories, and consultants which are retained to conduct any work performed under this Settlement Agreement within fourteen (14) days after the Effective Date of this Settlement Agreement or the date of retaining their services, whichever is later. Respondents shall condition any such contracts upon satisfactory compliance with this Settlement Agreement. Notwithstanding the terms of any contract, Respondents are responsible for compliance with this Settlement Agreement and for ensuring that their respective subsidiaries, employees, contractors, consultants, subcontractors, agents and attorneys comply with this Settlement Agreement.

III. DEFINITIONS

8. Unless otherwise specified, terms used in this Settlement Agreement 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 Settlement Agreement or in the attachments hereto, 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. "Day" shall mean 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 Settlement Agreement, 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.

c. "Effective Date" shall mean the effective date of this Settlement Agreement as provided by Section XXVI of this Settlement Agreement (Effective Date).

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

e. "EPA Past Cost Payment" shall mean the payment made to the Fox River Site Special Account within the EPA Hazardous Substance Superfund under Paragraph 53 (Initial Payment to the United States) of the original settlement agreement and consent order in this matter (and referenced in Paragraph 53 of this Settlement Agreement) to reimburse EPA for a portion of its past response costs related to the Site.

f. "Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States and the State incur after March 5, 2004 (i.e., the date of the Response Agencies' execution of the original settlement agreement and consent order in this matter) in reviewing or developing plans, reports and other items pursuant to the original settlement agreement and consent order or this amended Settlement Agreement, in verifying the Work, or in otherwise implementing, overseeing, or enforcing the original settlement agreement and consent order or this amended Settlement Agreement, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the access-related costs incurred pursuant to Section XII (including, but not limited to, the cost of attorney time and any monies paid to secure access including, but not limited to, the amount of just compensation) and any costs incurred pursuant to Paragraph 72 (Work Takeover).

g. "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.

h. "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.

i. "Operable Unit 2" or "OU2" shall mean the second reach of the Lower Fox River, as delineated by the Record of Decision signed by WDNR and EPA in December 2002. More specifically, OU2 is the portion of the Lower Fox River (and the underlying River sediment) starting at the Upper Appleton Dam downstream to the Little Rapids Dam. As so defined, OU2 is depicted in Figure 7-21 of the December 2002 Final Feasibility Study, a copy of which is attached hereto as Attachment B-1.

j. "Operable Unit 3" or "OU3" shall mean the third reach of the Lower Fox River, as delineated by the Record of Decision signed by WDNR and EPA in June 2003. More specifically, OU3 is the portion of the Lower Fox River (and the underlying River sediment) starting at the Little Rapids Dam downstream to the De Pere Dam. As so

defined, OU3 is depicted in Figure 7-26 of the December 2002 Final Feasibility Study, a copy of which is attached hereto as Attachment B-2.

k. "Operable Unit 4" or "OU4" shall mean the fourth reach of the Lower Fox River, as delineated by the Record of Decision signed by WDNR and EPA in June 2003. More specifically, OU4 is the portion of the Lower Fox River (and the underlying River sediment) starting at the De Pere Dam and ending at Green Bay. As so defined, OU4 is depicted in Figure 7-36 of the December 2002 Final Feasibility Study, a copy of which is attached hereto as Attachment B-3.

l. "Operable Unit 5" or "OU5" shall mean the bay of Green Bay, as delineated by the Record of Decision signed by WDNR and EPA in June 2003. More specifically, OU5 includes all of Green Bay from the city of Green Bay to the point where Green Bay enters Lake Michigan. As so defined, OU5 is depicted in Figure 7-49 of the December 2002 Final Feasibility Study, a copy of which is attached hereto as Attachment B-4.

m. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral.

n. "Parties" shall mean all signatories to this Settlement Agreement.

o. "Performance Standards" shall mean the selected remedy requirements, contingent remedy requirements, and cleanup standards for measuring the achievement of the goals of the Remedial Action, as set forth in Sections 13.1, 13.3.1, and 13.4 through 13.6 of the OU 3-5 ROD, as modified and supplemented by the ROD Amendment.

p. "Record of Decision for OU 1-2 " or "OU 1-2 ROD" for purposes of this Settlement Agreement shall mean the WDNR/EPA Record of Decision relating to the Remedial Action planned for Operable Units 1 and 2 of the Site, signed on December 18, 2002, by the WDNR and on December 20, 2002 by the Superfund Division Director, EPA Region 5, and all attachments.

q. "Record of Decision for OU 3-5" or "OU 3-5 ROD" for purposes of this Settlement Agreement shall mean the WDNR/EPA Record of Decision relating to the Remedial Action planned for Operable Units 3, 4 and 5 of the Site, signed on June 30, 2003, by the WDNR and the Superfund Division Director, EPA Region 5, and all attachments.

r. "Remedial Design" or "RD" shall mean design planning, pre-design sampling, investigations, and analyses, preparation of the basis for design report, preliminary and final plans and specifications, and bid documents for the Remedial Action for Operable Units 2, 3, 4, and 5 pursuant to the Record of Decision for OU 1-2, the Record of Decision for OU 3-5, the ROD Amendment, the Statement of Work, the RD Work Plan, and the Pre-Design Sampling Plan (the documents submitted by Respondents pursuant to Section IX of this Settlement Agreement (Work to be Performed)).

s. "Respondents" shall mean Georgia-Pacific Consumer Products LP (formerly known as Fort James Operating Company) and NCR Corporation.

t. "Response Agencies" shall mean the United States Environmental Protection Agency (EPA) and the Wisconsin Department of Natural Resources (WDNR).

u. "ROD Amendment" shall mean the June 2007 Record of Decision Amendment for OUs 2-5 at the Site.

v. "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.

w. "Settlement Agreement" shall mean this Amended Administrative Settlement Agreement and Order on Consent and all attachments hereto. In the event of conflict between this Settlement Agreement and any attachment, this Settlement Agreement shall control. Nothing in this Settlement Agreement shall require Respondents to perform again any Work or activity that was fully performed in accordance with the original settlement agreement and consent order in this matter before the Effective Date of this Amended Administrative Settlement Agreement and Order on Consent.

x. "Site" shall mean the Lower Fox River and Green Bay Site (also known as the Fox River NRDA PCB Releases Site), or any relevant portion thereof.

y. "State" shall mean the State of Wisconsin, including its departments, agencies, and instrumentalities.

z. "Statement of Work" or "SOW" shall mean the statement of work for implementation of Remedial Design as set forth in Attachment A to this Settlement Agreement and any modifications made in accordance with this Settlement Agreement.

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

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

cc. "Work" shall mean all activities Respondents are required to perform under this Settlement Agreement, except those required by Section XXIV (Record Preservation).

IV. STATEMENT OF PURPOSE

9. The mutual objective of EPA, WDNR and Respondents in entering into this Settlement Agreement is to protect human health, welfare and the environment at Operable Units 2, 3, 4, and 5 by producing a Remedial Design for remedial action in accordance with this Settlement Agreement.

10. The activities conducted pursuant to this Settlement Agreement are subject to approval by the Response Agencies. Respondents shall employ sound scientific, engineering, and construction practices and all activities undertaken shall be consistent with CERCLA, the NCP, and other applicable laws. The obligations of the Respondents to finance and perform the Work and to pay amounts owed to EPA and WDNR under this Settlement Agreement are joint and several. In the event of the insolvency or other failure of any one or more Respondents to implement the requirements of this Settlement Agreement, the remaining Respondents shall complete all such requirements.

V. FINDINGS OF FACT

11. Based on available information, including the Administrative Record in this matter, EPA and WDNR hereby find that:

a. At certain times in the past, primarily in the 1950's and 1960's, certain paper companies located along the Fox River engaged in the manufacture or recycling of carbonless copy paper. Polychlorinated biphenyls (PCBs), which are hazardous substances, were used in the production of carbonless copy paper and were contained in wastepaper that entered the paper recycling operations.

b. As a result of the paper mills' production or recycling of carbonless copy paper an estimated 690,000 pounds of PCBs were likely released to the Fox River. An estimated 66,000 pounds of these PCBs remain in the lower 39 miles of the Fox River.

c. As a result of this contamination, fish consumption advisories have been in effect on the Fox River and Green Bay since 1976.

d. A Remedial Investigation and Feasibility Study (RI/FS) under the technical lead of WDNR, and a proposed remedial action plan, was issued for public comment on October 5, 2001.

e. On January 7, 2003, the Response Agencies made public a Record of Decision for Operable Units 1 and 2 of the Site.

f. On June 30, 2003, the Response Agencies made public a Record of Decision for Operable Units 3, 4 and 5 of the Site.

g. On June 28, 2007, the Response Agencies issued a Record of Decision Amendment for Operable Units 2, 3, 4 and 5 of the Site.

VI. CONCLUSIONS OF LAW AND DETERMINATIONS

12. Based on the Findings of Fact set forth above and the Administrative Record, EPA and WDNR have determined that:

a. The Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The contamination found at the Site, as identified in the Findings of Fact above, includes "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. Each Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. Each Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), as: (i) the past or present "owner" or "operator" of a facility from which there was a release of a hazardous substance to the Lower Fox River; and/or (ii) as a person who arranged for disposal or transport for disposal of a hazardous substance at a facility from which there was a release of a hazardous substance.

e. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility into the "environment" as defined by Sections 101(8) and (22) of CERCLA, 42 U.S.C. §§ 9601(8) and (22).

f. The conditions present at the Site may present a threat to public health, welfare, or the environment based upon the factors set forth in Section 300.415(b)(2) of the National Contingency Plan, as amended, 40 C.F.R. § 300.415(b)(2).

g. The actual or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

h. The response actions required by this Settlement Agreement are necessary to protect the public health, welfare, or the environment and if carried out in compliance with the terms of this Settlement Agreement, shall be deemed consistent with the NCP.

VII. ORDER

13. Based upon the foregoing Findings of Fact, Conclusions of Law and Determinations, and the Administrative Record for this Site, it is hereby Ordered and Agreed that Respondents shall comply with all provisions of this Settlement Agreement. Respondents shall promptly and properly take appropriate response action at Operable Units 2, 3, 4, and 5 of the Site by conducting the Remedial Design.

VIII. DESIGNATION OF CONTRACTORS AND PROJECT COORDINATORS

14. Selection of Contractors, Personnel. All Work performed by Respondents pursuant to this Settlement Agreement shall be under the direction and supervision of qualified personnel. Within forty-five (45) days of the Effective Date of this Settlement Agreement, and before the Work outlined below begins, Respondents shall notify the Response Agencies in writing of the names, titles, and qualifications of the key personnel, including contractors, subcontractors, consultants and laboratories to be used in carrying out such Work. With respect to any proposed contractor, the Respondents shall demonstrate that the proposed contractor has a quality system which complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. The qualifications of the key personnel undertaking the work for Respondents shall be subject to the Response Agencies' review, for verification that such persons meet minimum technical background and experience requirements.

15. If EPA or WDNR disapproves in writing of any contractor proposed by Respondents (such writing to contain the basis for such disapproval), Respondents shall notify the Response Agencies of the identity and qualifications of the replacement within thirty (30) days of the written notice. If EPA or WDNR subsequently disapproves of the replacement, EPA reserves the right to terminate this Settlement Agreement and to conduct a complete Remedial Design, and to seek reimbursement for costs and penalties from Respondents. During the course of the Remedial Design, Respondents shall notify the Response Agencies in writing of any changes or additions in the key personnel used to carry out such work, providing their names, titles, and qualifications. The Response Agencies shall have the same right to approve changes and additions to key personnel as they have hereunder regarding the initial notification.

Replacement of any of Respondents' personnel shall not delay performance of the work under this Settlement Agreement.

16. On or before the Effective Date of this Settlement Agreement, Respondents shall designate a Project Coordinator who shall be responsible for administration of all Respondents' response actions required by the Settlement Agreement. Respondents shall submit to the Response Agencies the designated Project Coordinator's name, address, telephone number, and qualifications. EPA and WDNR retain the right to disapprove of any Project Coordinator named by Respondents. If either Response Agency disapproves a selected Project Coordinator, Respondents shall retain a different Project Coordinator and shall notify the Response Agencies of that person's name and qualifications within seven (7) business days of the Response Agency's disapproval.

17. Receipt by Respondents' Project Coordinator of any notice or communication from the Response Agencies relating to this Settlement Agreement shall constitute receipt by each Respondent. To the maximum extent possible, communications between the Respondents and the Response Agencies shall be directed to the Project Coordinators by mail or other written method of communication agreed to by the Project Coordinators, with copies to such other persons as EPA, the State, and Respondents may respectively designate. Communications include, but are not limited to, all documents, reports, approvals, and other correspondence submitted under this Settlement Agreement.

18. Respondents' Project Coordinator, or his/her designee, shall be on-site during all hours of work when field work is ongoing in Operable Unit 2, 3, 4 or 5 and shall be available at all reasonable times throughout the pendency of this Settlement Agreement. If Respondents or their agents become aware of any conditions at Operable Unit 2, 3, 4 or 5 which may present an imminent and substantial endangerment to human health or welfare or the environment, they shall immediately notify the EPA and WDNR Project Coordinators. The absence of the EPA Project Coordinator and/or the WDNR Project Coordinator from the area under study pursuant to this Settlement Agreement shall not be cause for the stoppage or delay of work, unless specifically directed by the EPA Project Coordinator in consultation with the WDNR Project Coordinator.

19. The EPA Project Coordinator shall be responsible for overseeing the implementation of this Settlement Agreement, in consultation with the WDNR Project Coordinator. EPA has designated James Hahnenberg (SR-6J) as the EPA Project Coordinator. The EPA Project Coordinator shall have the same authority as that vested in an On-Scene Coordinator and Remedial Project Manager by the NCP, including the authority to halt, conduct, or direct any response action required by this Settlement Agreement, or to direct any other response action undertaken by EPA or Respondents at the Site. Except as otherwise provided in this Settlement Agreement, Respondents shall direct all submissions required by this Settlement Agreement to the EPA Project Coordinator in accordance with Section XXV (Notices and Submissions).

20. The State designates Gregory Hill as the WDNR Project Coordinator. Except as otherwise provided in this Settlement Agreement, Respondents shall direct all submissions required by this Settlement Agreement to the WDNR Project Coordinator in accordance with Section XXV (Notices and Submissions).

21. The Response Agencies and Respondents shall have the right to change their respective designated Project Coordinator. The Response Agencies shall notify Respondents, and Respondents shall notify the Response Agencies, as early as possible before such a change is

made, but in no case less than twenty-four (24) hours before such a change. The initial notification may be made orally, but it shall be promptly followed by a written notice.

IX. WORK TO BE PERFORMED

22. Activities. Respondents shall conduct activities and submit deliverables as provided by the Statement of Work ("SOW") (Attachment A) for performance of the RD, which is incorporated by reference. All such work shall be conducted in accordance with CERCLA, the NCP, and EPA guidance referenced in the SOW, as such guidance may be amended or modified by EPA. The tasks that Respondents must perform are described in the SOW and guidance. All work performed under this Settlement Agreement shall be in accordance with the schedules herein and in schedules approved in the future by the Response Agencies, and in full accordance with the standards, specifications, and other requirements of the RD Work Plan and Pre-Design Sampling Plan, as initially approved or modified by the Response Agencies, and as may be amended or modified by the Response Agencies from time to time pursuant to this Settlement Agreement.

23. Respondents' compliance with the Work requirements shall not foreclose the Response Agencies from seeking compliance with all other terms and conditions of this Settlement Agreement.

24. To the extent that EPA informs Respondents that particular information is confidential, Respondents and their representatives and consultants shall treat and maintain such information as confidential.

25. Additional Work. In the event EPA, WDNR or the Respondents determine that additional Remedial Design work, not otherwise included in the SOW, including remedial investigatory work and engineering evaluation, is necessary to accomplish the objectives of this Settlement Agreement, notification of additional work shall be provided to all Parties.

26. Additional work determined to be necessary by Respondents shall be subject to the written approval of the Response Agencies.

27. Additional work determined to be necessary by Respondents and approved by the Response Agencies, or determined to be necessary by EPA or WDNR and requested of Respondents, shall be completed by Respondents in accordance with the standards and specifications determined or approved by the Response Agencies. Respondents shall propose a schedule for additional work for approval by the Response Agencies. The Response Agencies may jointly modify or determine the schedule for additional work. Additional work shall be performed in a manner consistent with the purposes and objectives of this Settlement Agreement, and conform with the requirements of this Section.

28. Supplemental Investigations. The parties acknowledge that Respondents may implement voluntary, supplemental work relating to OUs 2, 3, 4, and/or 5 or issues relating to remedial design not specifically covered herein. Such supplemental work shall be structured so as to not interfere with or delay completion of Respondents' primary obligations and deadlines as specified in this Order and the SOW. EPA and WDNR agree to review and comment promptly on such work generated by Respondents and to consider any recommendations made by Respondents. Review by EPA and WDNR of plans or other submissions otherwise required by this Order, however, shall take priority over review of supplemental work generated pursuant to this Paragraph.

29. Out-of-State Shipments. In the event of out-of-state shipments of hazardous substances, Respondents shall provide written notification to the Response Agencies and the appropriate environmental official of the state receiving hazardous substances prior to shipment of hazardous substances in quantities greater than ten (10) cubic yards from the Site to an out-of-state location. The notification shall include:

a. The name and location of the facility receiving the hazardous substances;

b. The type and quantity of the hazardous substances, including the Department of Transportation shipping code, if any;

c. The schedule for shipment of the hazardous substances;

d. The method of transportation; and

e. Any special procedures necessary to respond to an accidental release of the substances during transportation.

Respondents shall promptly notify the Response Agencies and the appropriate environmental official for the receiving state of any changes to the shipment plan.

X. PLANS AND SUBMISSIONS

30. Respondents shall submit the RD Work Plan, the Pre-Design Sampling Plan, and all other documents required by the SOW and by those Plans in both a hard copy and an electronic format.

31. All submissions under this Settlement Agreement and under any plan required by this Settlement Agreement shall be subject to review and approval by the Response Agencies. The Response Agencies shall respond to each submission in writing with a single integrated response. As a result of their review of a submission, the Response Agencies may: (a) approve the submission; (b) approve the submission with minor modifications; (c) disapprove the submission and direct Respondents to re-submit the document after incorporating the Response Agencies' comments; or (d) if a re-submission, disapprove the re-submission with the explanation for the disapproval, after which the Response Agencies may assume responsibility for performing all or any part of the response action.

32. In the event of approval or approval with minor modifications by the Response Agencies, Respondents shall proceed to take any action required by the submittal, as approved or modified by the Response Agencies.

33. Upon receipt of a notice of disapproval, Respondents shall, within forty-five (45) days or such longer time as specified by the Response Agencies in their notice of disapproval, correct the deficiencies and resubmit the submittal for approval. Notwithstanding the notice of disapproval, Respondents shall proceed, if so directed by the Response Agencies, to take any action required by any non-deficient portion of the submission that remains unaffected by the notice of disapproval and can be reasonably implemented in the interim.

34. If any re-submission is not approved by the Response Agencies, they may determine that Respondents are in violation of this Settlement Agreement, unless Respondents invoke the procedures set forth in Section XV (Dispute Resolution) and the Response Agencies' determination is revised pursuant to that Section. Issues previously resolved pursuant to the procedures set forth in Section XV may not be re-disputed.

35. Neither failure of the Response Agencies to expressly approve or disapprove of Respondents' document within the specified time period nor the absence of comments shall be construed as approval of the document. In the event of subsequent disapproval of a revised document, the Response Agencies retain the right to terminate this Settlement Agreement and perform additional studies or conduct a complete or partial Remedial Design.

36. For any document required to be submitted by the Respondents to the Response Agencies, within forty-five (45) days of receipt of the document, the Response Agencies shall provide written notification to Respondents of their approval, approval with minor modifications or disapproval, of the submission or any part thereof. If the Response Agencies require a longer review period, the Response Agencies shall so notify Respondents within thirty (30) days of receipt of the submitted document.

37. The Project Coordinators shall hold progress report meetings / telephone conferences twice a month unless such a meeting is deemed unnecessary by the Response Agencies. By mutual agreement, the Project Coordinators may hold meetings or telephone conferences at more frequent intervals.

38. Respondents shall provide written progress reports to the Response Agencies every month (or on any other schedule agreed to in writing by the Project Coordinators). These monthly progress reports shall include the following information:

a. A description of the actions which have been taken to comply with this Settlement Agreement during the past month and work planned for the coming month;

b. All results of sampling and tests, including raw data and validated data, and all other investigation results received by the Respondents during the month, in the format prescribed by the Response Agencies;

c. Target and actual completion dates of each element of the RD, including project completion, with schedules relating such work to the overall project schedule for RD completion, and an explanation of any deviation or anticipated deviation from the schedule approved by the Response Agencies, and proposed method of mitigating such deviation;

d. A description of all problems encountered and any anticipated problems during the reporting period, any actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays; and,

e. Changes in key personnel.

39. Respondents shall submit the monthly progress reports, as both electronic files and hard copy files, to the Response Agencies by the tenth (10^{th}) day of every month following the Effective Date of this Settlement Agreement.

XI. QUALITY ASSURANCE AND DATA AVAILABILITY

40. Quality Assurance. Respondents shall consult with the Response Agencies' Project Coordinators in planning any and all sampling and analysis required by the RD Work Plan and the Pre-Design Sampling Plan. Respondents shall assure that work performed, samples

taken and analyses conducted conform to the requirements of the SOW, the Quality Assurance Project Plan ("QAPP") and guidance identified therein.

41. Respondents shall prepare preliminary and final QAPPs for submittal to the Response Agencies according to the schedule in the SOW. Respondents shall participate in a pre-QAPP meeting with the Response Agencies prior to submission of the preliminary QAPP to discuss its contents.

42. The QAPPs shall be subject to review, modification, and approval by the Response Agencies in accordance with Section X (Plans and Submissions).

43. Data Availability. All results of sampling, tests, modeling or other data (including raw data) generated by Respondents, or on Respondents' behalf, pursuant to this Settlement Agreement, shall be submitted in the format prescribed by the Response Agencies and made available to and submitted to the Response Agencies in the progress reports described in Section X of this Settlement Agreement.

44. Respondents will verbally notify the Response Agencies at least fifteen (15) days prior to conducting significant field events (including any sampling, tests and other data generation) as described in the SOW, the RD Work Plan, and the Pre-Design Sampling Plan or conducted under any other provision in this Settlement Agreement. Respondents shall allow split or duplicate samples to be taken by the Response Agencies (and their authorized representatives) of any samples collected by the Respondents in implementing this Settlement Agreement. All split samples of Respondents' shall be analyzed by the methods identified in the EPA-approved QAPP.

45. Respondents may assert a claim of business confidentiality covering part or all of the information submitted to the Response Agencies pursuant to the terms of this Settlement Agreement under 40 C.F.R. § 2.203, provided such claim is allowed by Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). This claim shall be asserted in the manner described by 40 C.F.R. § 2.203(b) and substantiated at the time the claim is made. Information determined to be confidential by EPA will be given the protection specified in 40 C.F.R. Part 2. If no such claim accompanies the information when it is submitted to the Response Agencies, it may be made available to the public by EPA or the State without further notice to the Respondents. Respondents agree not to assert confidentiality claims with respect to any data related to Operable Units 2, 3, 4 or 5 conditions, sampling, or monitoring.

46. In entering into this Settlement Agreement, Respondents waive any objections to the quality of any data gathered, generated, or evaluated by EPA, the State or Respondents in the performance or oversight of the work that has been verified according to the quality assurance/quality control (QA/QC) procedures required by the Settlement Agreement or any Work Plan, Sampling Plan, or Implementation Plan approved by the Response Agencies. If Respondents object to any data relating to the RD, Respondents shall submit to the Response Agencies a report that identifies and explains its objections, describes the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The report must be submitted to the Response Agencies within thirty (30) days of the monthly progress report or such other report as may contain the data.

47. Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or the work product doctrine. If a Respondent asserts such a privilege in lieu of providing documents, it shall inform the Response Agencies that it is claiming certain documents as privileged and shall, upon request, provide the Response Agencies with the following:

a. The title of the document;

b. The date of the document, record, or information;

c. The name and title of the author of the document, record, or information;

d. The name and title of each addressee and recipient;

e. A description of the contents of the document, record, or information; and

f. The privilege asserted by the Respondent.

48. Failure to challenge a Respondent's assertion of privilege by EPA or WDNR during the implementation of the RD does not waive the Response Agencies' right to challenge the assertion during the implementation of the Remedial Action.

XII. ACCESS

49. To the extent that Operable Units 2, 3, 4 or 5 or other on-site and off-site areas where work is to be performed are presently owned by parties other than Respondents, Respondents shall obtain, or use their best efforts to obtain, access agreements from the present owners within sixty (60) days of approval of the RD Work Plan. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. Access agreements shall provide access for the Response Agencies and all authorized representatives of the Response Agencies. Respondents shall immediately notify the Response Agencies if, after using their best efforts, they are unable to obtain such agreements. Respondents shall describe in writing their efforts to obtain access. The Response Agencies may then assist Respondents in gaining access, to the extent necessary to effectuate the activities required by this Settlement Agreement, using such means as the Response Agencies deem appropriate. All costs incurred, direct or indirect, by the United States or the State in obtaining such access including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation shall be considered Future Response Costs. In accordance with Paragraph 54 (Payment of Future Response Costs), Respondents may be required to reimburse the United States and the State for all such Future Response Costs.

50. At all reasonable times the Response Agencies and their authorized representatives shall have the authority to enter and freely move about all property owned by Respondents at Operable Units 2, 3, 4 and 5 and at any other on-site and off-site areas where work under this Settlement Agreement, if any, is being performed, for the purposes of inspecting conditions, activities, the results of activities, records, operating logs, and contracts related to Operable Unit 2, 3, 4 or 5 pursuant to this Settlement Agreement; reviewing Respondents' progress in carrying out the terms of this Settlement Agreement; conducting tests as the Response Agencies or their authorized representatives deem necessary consistent with this Settlement Agreement; using a camera, sound recording device or other documentary type equipment for purposes of documenting the Work; and verifying the data submitted to the Response Agencies by Respondents. Respondents shall allow these persons to inspect and copy all records, files, photographs, documents, sampling and monitoring data, and other writings related to work undertaken in carrying out this Settlement Agreement, subject to Paragraph Nos. 43-48. Nothing herein shall be interpreted as limiting or affecting the Response Agencies' right of entry or inspection authority under federal law or state law. All individuals with access to Operable Units 2, 3, 4 and 5 under this Paragraph shall comply with all approved health and safety plans.

XIII. COMPLIANCE WITH APPLICABLE LAWS

51. Respondents shall perform all Work under this Settlement Agreement in compliance with applicable federal, state and local laws, ordinances, or regulations. In the event a conflict arises between these laws, ordinances, or regulations, Respondents shall comply with the more stringent law, ordinance, or regulation, unless otherwise approved by EPA.

52. As provided in Section 121(e) of CERCLA and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-site requires a federal or state permit or approval, Respondents shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. The standards and provisions of Section XVI (Force Majeure) shall govern delays in obtaining such permits. The Response Agencies shall cooperate with Respondents and endeavor to expedite the issuance of permits for off-site work within their respective jurisdictions.

XIV. PAYMENT OF RESPONSE COSTS

53. Initial Payment to the United States. Pursuant to the original settlement agreement and consent order in this matter, the Respondents paid a total of $600,000 to the Fox River Site Special Account within the EPA Hazardous Substance Superfund, as the EPA Past Cost Payment. The EPA Past Cost Payment shall be retained and used to conduct or finance response actions at or in connection with the Site, or transferred by EPA to the EPA Hazardous Substance Superfund.

54. Payment of Future Response Costs.

a. Future Cost Payments to EPA. On a periodic basis, the United States will send Respondents a bill requiring payment that includes an EPA cost summary, which includes direct and indirect costs incurred by EPA and its contractors, and a U.S. Department of Justice cost summary, which reflects costs incurred by the U.S. Department of Justice and its contractors, if any. Respondents shall make all payments within forty-five (45) days of Respondents' receipt of each bill requiring payment, except as otherwise provided by Paragraph 55. Payments to EPA under this Subparagraph shall be deposited in the Fox River 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 transferred by EPA to the EPA Hazardous Substance Superfund.

b. Future Cost Payments to the State. On a periodic basis, the State will send Respondents a bill requiring payment that includes a WDNR cost summary, which includes direct and indirect costs incurred by WDNR and its contractors, and a Wisconsin Department of Justice cost summary, which reflects costs incurred by the Wisconsin Department of Justice and its contractors, if any. Respondents shall make all payments within forty-five (45) days of Respondents' receipt of each bill requiring payment, except as otherwise provided by Paragraph 55.

55. Disputes Regarding Future Response Costs. Respondents may contest payment of any Future Response Costs under Paragraph 54 if they determine that the United States or the State has made an accounting error or if they allege that a cost item that is included represents costs that are inconsistent with the NCP. Notice of any such objection shall be made in writing within forty-five (45) days of receipt of the bill and must be sent to the United States (if the United States' accounting is being disputed) or to the State (if the State's accounting is being

disputed) pursuant to Section XXV (Notices and Submissions). Any such notice of objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, all uncontested Future Response Costs shall immediately be paid to the United States or the State in the manner described in Paragraph 56. Upon submitting a notice of objection, Respondents shall initiate the Dispute Resolution procedures in Section XV (Dispute Resolution). If the United States or the State prevails in the dispute, within ten (10) days of the resolution of the dispute, all sums due (with accrued Interest) shall be paid to EPA (if the United States' cost are disputed) or to the State (if the State's costs are disputed) in the manner described in Paragraph 56. If Respondents prevail concerning any aspect of the contested costs, the portion of the costs (plus associated accrued Interest) for which they did not prevail shall be disbursed to EPA or the State, as appropriate, in the manner described in Paragraph 56; and the amount that was successfully contested need not be paid to EPA or to the State. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding reimbursement of the United States and the State for their Future Response Costs.

56. Payment Instructions.

a. Payments to EPA. All payments to EPA under this Section shall be made by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund, Fox River Site Special Account." All payments to EPA under Section XVII (Stipulated Penalties) shall be made by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund." Each check shall also: (1) reference the Lower Fox River and Green Bay Site, EPA Site/Spill ID Number A565, and DOJ Case Number 90-11-2-1045/3; (2) indicate that the payment is being made pursuant to this Settlement Agreement; and (3) be sent to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

At the time of payment, Respondents shall ensure that notice that payment has been made is sent to DOJ and EPA in accordance with Section XXV (Notices and Submissions) and to:

Financial Management Officer
U.S. Environmental Protection Agency, Region 5
Mail Code MF-10J
77 W. Jackson Blvd.
Chicago, IL 60604

The payments deposited in the Fox River Site Special Account under this Settlement Agreement shall be retained and used to conduct or finance response actions at or in connection with the Site, or transferred by EPA to the EPA Hazardous Substance Superfund.

b. Payments to the State. All payments to the State under this Section or under Section XVII (Stipulated Penalties) shall: (1) be made by a certified or cashier's check or checks made payable to "Wisconsin Department of Natural Resources;" (2) reference the Lower Fox River and Green Bay Site; (3) indicate that the payment is being made pursuant to this Settlement Agreement; and (4) be sent to:

Gregory Hill
WDNR Project Coordinator
Wisconsin Department of Natural Resources

P.O. Box 7921
Madison, WI 53707-7921
(Regular Mail)

101 S. Webster St.
Madison, WI 53703
(Over-Night Mail)

At the time of payment, Respondents shall ensure that notice that payment has been made is sent to the State in accordance with Section XXV (Notices and Submissions).

XV. DISPUTE RESOLUTION

57. The parties to this Settlement Agreement shall attempt to resolve, expeditiously, informally, and in good faith, any disagreements concerning this Settlement Agreement.

58. Any disputes concerning activities or deliverables required under this Settlement Agreement shall be resolved as follows: Respondents shall notify the Response Agencies in writing of their objection(s) within fourteen (14) calendar days of receiving notice of the Response Agencies' action giving rise to the dispute. The Parties may agree in writing to extend this time period to provide additional time for informal discussion of the dispute. Respondents' written notice shall include a statement of the issues in dispute, the relevant facts upon which the dispute is based, all factual data, analysis or opinion supporting Respondents' position, and all supporting documentation on which Respondents rely. The Response Agencies shall submit their Statement of Position, including supporting documentation, no later than fourteen (14) calendar days after receipt of Respondents' written notice of dispute. Respondents may submit a response to the Response Agencies' Statement of Position within five (5) business days after receipt of the Statement. During the five (5) business days following the deadline for the Respondents' response to the Response Agencies' Statement of Position, the parties shall attempt to negotiate, in good faith, a resolution of their differences. The time periods for exchange of written documents may be extended by agreement of all Parties.

59. An administrative record of any dispute under this Section shall be maintained by EPA and shall contain the notice of objections and accompanying materials, the Statement of Position, all materials exchanged during the dispute resolution process (including any independent expert review information pertinent to the dispute), any other correspondence between the Response Agencies and Respondents regarding the dispute, and all supporting documentation. The administrative record shall be available for inspection by all parties. If the Response Agencies do not concur with the position of Respondents, the Division Director for the Office of Superfund, EPA Region V, in consultation with an appropriate WDNR representative, shall resolve the dispute based upon the administrative record and consistent with the terms and objectives of this Settlement Agreement, and shall provide written notification of such resolution to Respondents. If Respondents engage an independent expert to review a technical issue relating to the dispute, Respondents will be afforded an opportunity to meet and present their position to the Division Director of the Office of Superfund, EPA Region V, and an appropriate WDNR representative, prior to a decision being made to resolve the dispute.

60. Respondents' obligations under this Settlement Agreement, other than the obligations affected by the dispute, shall not be tolled by submission of any objection for dispute resolution under this Section. Elements of Work and/or obligations not affected by the dispute shall be completed in accordance with the schedule contained in the Statement of Work. Following resolution of the dispute, as provided by this Section, Respondents shall fulfill the

requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

XVI. FORCE MAJEURE

61. Respondents agree to perform all requirements under this Settlement Agreement within the time limits established under this Settlement Agreement, unless the performance is delayed by a *force majeure*. For purposes of this Settlement Agreement, a *force majeure* is defined as any event arising from causes beyond the control of Respondents or of any entity controlled by Respondents, including but not limited to its contractors and subcontractors, that delays or prevents performance of any obligation under this Settlement Agreement despite Respondents' best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the response actions or increased cost of performance.

62. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a *force majeure* event, Respondents shall notify the Response Agencies orally within seven (7) business days of when Respondents first knew that the event might cause a delay. Within fourteen (14) calendar days thereafter, Respondents shall provide to the Response Agencies in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondents' rationale for attributing such delay to a *force majeure* event if it intends to assert such a claim; and a statement as to whether, in Respondents' opinion, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Respondents from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

63. If EPA, following consultation with the State, agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Settlement Agreement that are affected by the *force majeure* event will be extended by the Response Agencies for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If EPA, following consultation with the State, does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, EPA will notify Respondents in writing of its decision. If EPA, following consultation with the State, agrees that the delay is attributable to a *force majeure* event, EPA will notify Respondents in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

XVII. STIPULATED PENALTIES

64. Respondents shall be liable for payment into the Hazardous Substances Superfund administered by EPA of the sums set forth below as stipulated penalties for each week or part thereof that Respondents fail to comply with a work schedule or payment schedule in accordance with the requirements contained in this Settlement Agreement, unless the EPA, following consultation with the State, determines that such a failure or delay is attributable to *force majeure* as defined in Section XVI or is otherwise approved by EPA. Such sums shall be due and payable within thirty (30) days of receipt of written notification from EPA specifically identifying the noncompliance and assessing penalties, unless Respondents invoke the procedures of Section XV (Dispute Resolution). For failure to submit the RD Work Plan or the Pre-Design Sampling Plan as required by this Settlement Agreement, stipulated penalties shall

accrue in the amount of $1,000 per day for the first seven (7) days and $2,500 per day for each day thereafter. Stipulated penalties for all other violations of this Settlement Agreement shall accrue in the amount of $1,000 for the first week or part thereof, and $1,500 for each week or part thereof thereafter. Stipulated penalties shall begin to accrue on the day that performance is due or a violation occurs and extends through the period of correction. Stipulated penalties for late payment or non-payment of Future Response Costs owed to the State shall be paid to the State under Subparagraph 56.b. All other stipulated penalties shall be paid to EPA under Subparagraph 56.a.

65. The stipulated penalties set forth herein shall not preclude the Agencies from electing to pursue any other remedy or sanction because of Respondents' failure to comply with any of the terms of this Settlement Agreement, including a suit to enforce the terms of this Settlement Agreement. Said stipulated penalties shall not preclude EPA from seeking statutory penalties up to the amount authorized by law if Respondents fail to comply with any requirements of this Settlement Agreement. Provided, however, that the United States shall not seek civil penalties pursuant to Section 122(1) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of this Settlement Agreement.

66. Upon receipt of written demand from EPA, Respondents shall make payment to EPA within thirty (30) days and Interest shall accrue on late payments. Payments shall be made in accordance with instructions provided by EPA in the written demand. If Respondents fail to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest.

67. Even if violations are simultaneous, separate penalties shall accrue for separate violations of this Settlement Agreement. Penalties shall accrue regardless of whether EPA has notified Respondents of a violation or act of noncompliance. The payment of penalties shall not alter in any way Respondents' obligation to complete the performance of any work required under this Settlement Agreement. Stipulated penalties shall accrue during any dispute resolution period concerning the particular penalties at issue, but need not be paid until fifteen (15) days after the dispute is resolved by agreement or by receipt of EPA's decision. If Respondents prevail upon resolution, Respondents shall pay only such penalties as the resolution requires. In its unreviewable discretion, EPA may waive its rights to demand all or a portion of the stipulated penalties due under this Section.

XVIII. COVENANTS NOT TO SUE BY EPA AND WDNR

68. a. In consideration of the actions that will be performed under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, EPA covenants not to sue or to take administrative action against Respondents pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for performance of the Work under this Settlement Agreement and under the original settlement agreement and consent order in this matter (including but not limited to reimbursement of all Future Response Costs paid under this Settlement Agreement and/or under the original settlement agreement and consent order in this matter).

b. In consideration of the actions that will be performed under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, WDNR covenants not to sue or to take administrative action against Respondents pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), or Wisconsin statutory or common law, for performance of the Work under this Settlement Agreement and under the original settlement agreement and consent order in this matter (including but not limited to

reimbursement of all Future Response Costs paid under this Settlement Agreement and/or under the original settlement agreement and consent order in this matter).

c. These covenants not to sue shall take effect upon the Effective Date and are conditioned upon the complete and satisfactory performance by Respondents of all obligations under this Settlement Agreement.

d. These covenants not to sue extend only to Respondents and do not extend to any other person; provided, however, that these covenants not to sue (and the reservations thereto) shall also apply to: (i) Fort James Corporation; (ii) the successors and assigns of the Respondents and Fort James Corporation, but only to the extent that the alleged liability of the successor or assign is based on the alleged liability of the Respondents or Fort James Corporation; and (iii) the officers, directors, and employees of the Respondents and Fort James Corporation, but only to the extent that the alleged liability of the director, officer or employee is based on said person's status as an officer or employee of the Respondents or Fort James Corporation, or as a result of conduct within the scope of such person's employment or authority.

XIX. RESERVATIONS OF RIGHTS BY EPA AND WDNR

69. Except as specifically provided in this Settlement Agreement, and subject to the provisions of Paragraph 71, nothing herein shall limit the power and authority of EPA, the United States, or the State to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, subject to the provisions of Paragraph 71, nothing herein shall prevent EPA or WDNR from seeking legal or equitable relief to enforce the terms of this Settlement Agreement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

70. The covenant not to sue set forth in Section XVIII above does not pertain to any matters other than those expressly identified therein. Subject to the provisions of Paragraph 71, EPA and WDNR reserve, and this Settlement Agreement is without prejudice to, all rights against Respondents and Fort James Corporation with respect to all other matters, including, but not limited to:

a. claims based on a failure by Respondents to meet a requirement of this Settlement Agreement;

b. liability for past or future response costs incurred or paid by the United States or the State for the Site (except for any Future Response Costs paid pursuant to this Settlement Agreement);

c. liability for performance of response action other than the Work;

d. criminal liability;

e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

f. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and

g. liability for costs incurred or to be incurred by EPA for costs of the Agency for Toxic Substances and Disease Registry related to the Site.

71. a. On December 10, 2001, the U.S. District Court for the Eastern District of Wisconsin entered a Consent Decree in the civil action entitled *United States and the State of Wisconsin v. Appleton Papers Inc. and NCR Corporation*, Case No. 01-C-0816 (E.D. Wis.) ("API/NCR Interim Decree"). The API/NCR Interim Decree included, *inter alia*, a temporary covenant not to sue under Paragraph 22 thereof. The Parties acknowledge that the API/NCR Interim Decree does not limit or otherwise affect: (i) the Response Agencies' rights to enforce the provisions of this Settlement Agreement; or (ii) NCR's obligations as set forth in this Settlement Agreement. Likewise, this Settlement Agreement does not limit or otherwise affect the rights or obligations of the parties under the API/NCR Interim Decree, except as provided by this Paragraph.

b. Nothing in this Settlement Agreement shall affect any covenants not to sue provided to Fort James Operating Company or Fort James Corporation by the July 22, 1999 Agreement Between the State of Wisconsin and Fort James Corporation, the May 26, 2000 EPA Administrative Order on Consent captioned In re Lower Fox River Sediment Management Unit 56/57 Removal Action, EPA Docket No. V-W-00-596, or the Consent Decree lodged on June 20, 2002 in the civil action entitled United States of America and State of Wisconsin v. Fort James Operating Company, Civ. Act. No. 02-C-0602 (E.D. Wis.).

c. Pursuant to the original settlement agreement and consent order, EPA, the State, Fort James Operating Company, and Fort James Corporation terminated the January 29, 2003 Administrative Order on Consent captioned In re Lower Fox River and Green Bay Site Contaminant Delineation, CERCLA Docket No. V-W-03-C-731.

72. Work Takeover. In the event EPA, in consultation with WDNR, determines that Respondents have ceased implementation of any portion of the Work, are seriously or repeatedly deficient or late in their performance of the Work, or are implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA or WDNR may assume the performance of all or any portion of the Work as the Response Agencies determine necessary. Costs incurred by the United States or the State in performing the Work pursuant to this Paragraph shall be considered Future Response Costs. In accordance with Paragraph 54 (Payment of Future Response Costs), Respondents may be required to reimburse the United States and the State for all such Future Response Costs. Respondents may invoke the procedures set forth in Section XV (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Notwithstanding any other provision of this Settlement Agreement, EPA and WDNR retain all authority and reserve all rights to take any and all response actions authorized by law.

XX. COVENANT NOT TO SUE BY RESPONDENTS AND FORT JAMES CORPORATION

73. Subject to the reservations in Paragraphs 75 and 76, Respondents and Fort James Corporation covenant not to sue and agree not to assert any claims or causes of action against the United States or the State, or their contractors or employees, with respect to the EPA Past Cost Payment, the Work (including all Future Response Costs paid under this Settlement Agreement), or this Settlement Agreement, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, 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 claim arising out of the EPA Past Cost Payment or the Work, 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; or

c. any claim against the United States or the State pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the EPA Past Cost Payment or the Work.

74. These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Subparagraphs 70(b), (c), and (e) – (g), but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

75. Respondents reserve, and this Settlement Agreement is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on the Response Agencies' selection of response actions, or the oversight or approval of Respondents' plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

76. Respondents reserve, and this Settlement Agreement is without prejudice to, claims against the State, subject to the provisions of Wis. Stats. § 893.82, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the State while acting within the scope of his office or employment under circumstances where the State, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a State employee as that term is defined under Wisconsin law; nor shall any such claim include a claim based on the Response Agencies' selection of response actions, or the oversight or approval of Respondents' plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

77. Nothing in this Settlement Agreement 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).

XXI. OTHER CLAIMS

78. Nothing in this Settlement Agreement shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, subsidiary or corporation not a signatory to this Settlement Agreement for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, pollutants, or contaminants found at, taken to, or taken from Operable Units 2, 3, 4, and/or 5.

79. Respondents specifically reserve all rights and defenses that they may have, including but not limited to any rights to contest any Findings of Fact or Conclusions of Law and Determinations set forth in Sections V and VI of this Settlement Agreement in any proceeding other than an action brought by EPA or the State to enforce this Settlement Agreement. Under this Settlement Agreement, Respondents specifically reserve any right they may have to seek review of the remedial action selected in the ROD as authorized by CERCLA Section 113(h), 42 U.S.C. § 9613(h), other than in an action brought by EPA or the State to enforce this Settlement Agreement.

80. Each party to this Settlement Agreement shall bear its own costs and attorneys fees.

XXII. CONTRIBUTION AND EFFECT OF SETTLEMENT

81. Contribution

a. The Parties agree that this Settlement Agreement and the original administrative agreement and consent order in this matter (executed by the Response Agencies on March 5, 2004) together constitute an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Respondents and Fort James Corporation are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are the Work performed under this Settlement Agreement and under the original settlement agreement and consent order in this matter (including but not limited to all Future Response Costs paid under this Settlement Agreement and/or under the original settlement agreement and consent order in this matter).

b. Notwithstanding the foregoing, the Parties specifically recognize that the Work under this Settlement Agreement and under the original settlement agreement and consent order in this matter has been and will be performed (and that all Future Response Costs have been and will be paid) by the Respondents pursuant to an interim allocation of funding between them, and nothing in this Settlement Agreement shall prohibit either Respondent from seeking to re-allocate the costs of such Work (including any payments for Future Response Costs) between them by means of any claim allowed under federal or state law, including but not limited to CERCLA Section 113, 42 U.S.C. § 9613.

c. The Parties agree that this Settlement Agreement and the original administrative agreement and consent order in this matter (executed by the Response Agencies on March 5, 2004) together constitute an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Respondents and Fort James Corporation have, as of the Effective Date, resolved their liability to the United States for the Work performed under this Settlement Agreement and under the original settlement agreement and consent order in this matter (including but not limited to all Future Response

Costs paid under this Settlement Agreement and/or under the original settlement agreement and consent order in this matter).

d. Nothing in this Settlement Agreement precludes the United States, the State, or Respondents from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any persons not parties to this Settlement Agreement. Nothing herein diminishes the right of the United States, pursuant to Sections 113(f)(2) and (f)(3) of CERCLA, 42 U.S.C. § 9613(f)(2) and (f)(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

82. The Parties agree and acknowledge that the Response Agencies shall recognize that Respondents are entitled to full credit for the EPA Past Cost Payment and all response costs incurred in performance of the Work (including all Future Response Costs paid under this Settlement Agreement), with such credit to be applied against Respondents' liabilities for response costs at the Site; provided, however, that the credit ultimately recognized shall take into account the amount of any recoveries by Respondents 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. §§ 96707 and 9613.

XXIII. INDEMNIFICATION

83. Respondents shall indemnify, save and hold harmless the United States, the State, and their officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition, Respondents agree to pay the United States and/or the State all costs incurred by the United States and/or the State, including but not limited to attorneys fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States and/or the State based on negligent or other wrongful acts or omissions of Respondents, 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 Settlement Agreement. Neither the United States nor the State shall be held out as a party to any contract entered into by or on behalf of Respondents in carrying out activities pursuant to this Settlement Agreement. Neither Respondents nor any such contractor shall be considered an agent of the United States or the State.

84. The United States and/or the State shall give Respondents notice of any claim for which the United States and/or the State plan to seek indemnification pursuant to this Section and shall consult with Respondents prior to settling such claim.

85. Respondents waive all claims against the United States and the State for damages or reimbursement or for set-off of any payments made or to be made to the United States and/or the State, arising from or on account of any contract, agreement, or arrangement between Respondents and any person for performance of response actions on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondents shall indemnify and hold harmless the United States and the State with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondents and any person for performance of response actions on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXIV. RECORD PRESERVATION

86. Respondents shall preserve all records and documents which relate to implementation of the RD at Operable Units 2, 3, 4, and/or 5 for a minimum of ten (10) years following completion of Remedial Action construction. Respondents shall acquire and retain copies of all documents that relate to Remedial Design for Operable Units 2, 3, 4, and/or 5 and are in the possession of its employees, agents, accountants, contractors, or attorneys. After this 10-year period, Respondents shall notify the Response Agencies at least ninety (90) days before the documents are scheduled to be destroyed. If EPA or WDNR request that the documents be saved, Respondents shall, at no cost to the Response Agencies, give the Response Agencies the documents or copies of the documents.

XXV. NOTICES AND SUBMISSIONS

87. Documents, including but not limited to reports, approvals, disapprovals, and other correspondence which must be submitted under this Settlement Agreement, shall be sent by overnight delivery or certified mail, return receipt requested, to the following addressees or to any other addressees which the Respondents, EPA, and WDNR designate in writing:

As to the United States:

James Hahnenberg
EPA Project Coordinator
United States Environmental Protection Agency
77 West Jackson Blvd., mail code: SR-6J
Chicago, IL 60604-3590
Phone: (312) 353-4213
FAX: (312) 886-4071
E-mail: Hahnenberg.James@epa.gov

with a copy to:

Richard Murawski (C-14J)
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 5
77 West Jackson Blvd.
Chicago, IL 60604
Phone: (312) 886-6721
FAX: (312) 886-0747
E-mail: murawski.richard@epa.gov

As to the State:

Gregory Hill
WDNR Project Coordinator
Wisconsin Department of Natural Resources

P.O. Box 7921
Madison, WI 53707-7921
(Regular Mail)
Phone: (608) 267-9352
FAX: (608) 267-2800
E-mail: hillg@dnr.state.wi.us

101 S. Webster St.
Madison, WI 53703
(Over-Night Mail)

As to Georgia-Pacific Consumer Products, LP and Fort James Corporation:

J. Michael Davis
Principal Counsel - Environmental
Georgia-Pacific LLC
133 Peachtree Street, N.E.
Atlanta, GA 30303

with a copy to

John Hanson
Beveridge & Diamond, P.C.
1350 I Street, N.W. - Suite 700
Washington, DC 20005

As to NCR:

Peter Lieb
NCR Corporation
1700 South Patterson Blvd., WHQ-5
Dayton, OH 45479

with a copy to

J. Andrew Schlickman
Sidley Austin Brown & Wood LLP
10 South Dearborn Street
Chicago, IL 60603

XXVI. EFFECTIVE DATE OF SETTLEMENT AGREEMENT

88. This Settlement Agreement shall become effective upon receipt by Respondents of the Settlement Agreement signed by the Director of the Superfund Division, EPA, Region 5 and the Secretary of the WDNR.

XXVII. COMMUNITY RELATIONS

89. Respondents shall cooperate with the Response Agencies in providing RD information to the public. If requested by the Response Agencies, Respondents shall participate in the preparation of all RD information disseminated to the public pertaining to Operable Units 2, 3, 4, and/or 5.

XXVIII. MODIFICATION OF SETTLEMENT AGREEMENT

90. In addition to the procedures set forth in Section VIII (Project Coordinators), Section IX (Work to be Performed), Section XV (Dispute Resolution) and Section XVI (Force Majeure), this Settlement Agreement may be amended by mutual agreement of the Parties. Amendments shall be in writing and shall become effective on the date of execution by the Response Agencies. Project Coordinators do not have the authority to sign amendments to the Settlement Agreement.

91. No informal advice, guidance, suggestions, or comments by the Response Agencies regarding reports, plans, specifications, schedules, and any other writing submitted by the Respondents will be construed as relieving Respondents of their obligation to obtain such formal approval as may be required by this Settlement Agreement. Any deliverables, plans, technical memoranda, reports (other than progress reports), specifications, schedules and attachments required by this Settlement Agreement are, upon approval by the Response Agencies, incorporated into this Settlement Agreement; provided, however, any time frames under this Settlement Agreement can be extended by the Response Agencies' Project Coordinators in writing.

XXIX. NOTICE OF COMPLETION

92. At the request of Respondents, the Response Agencies shall promptly determine whether all actions have been performed in accordance with this Settlement Agreement, except for certain continuing obligations required by this Settlement Agreement (e.g., record retention). Any request shall demonstrate in writing that such actions have been performed in accordance with this Settlement Agreement and shall be accompanied by the following attestation by a responsible official for the Respondents (or Fort James Corporation): "I certify that the information contained in or accompanying this certification is true, accurate, and complete." Upon such determination by the Response Agencies, the Response Agencies will promptly provide written notice to Respondents. Such notice will not be unreasonably withheld. If the Response Agencies determine that any required response activities have not been completed in accordance with this Settlement Agreement, they will notify Respondents, provide a list of the deficiencies, and require that Respondents correct such deficiencies.

IN THE MATTER OF:
Administrative Order by Consent
Lower Fox River and Green Bay Site

AGREED AS STATED ABOVE:

FOR NCR CORPORATION

Date: 10/30/07

Peter Lieb
Signature

Typed Name: Peter Lieb

Title: SVP, General Counsel & Secretary

Address: 1700 S. Patterson Blvd.

Dayton, OH 45479

IN THE MATTER OF:
Administrative Order by Consent
Lower Fox River and Green Bay Site

AGREED AS STATED ABOVE:

FOR GEORGIA-PACIFIC
CONSUMER PRODUCTS LP
(formerly known as
Fort James Operating Company)

Date: 10/25/07

Signature

Typed Name: Tyler Woolson

Title: Sr. Vice President and Chief Financial Officer

Address: 133 Peachtree Street, N.E.

Atlanta, GA 30303

THE UNDERSIGNED PERSON hereby assents to the covenants set forth in Section XX (Covenant Not to Sue by Respondents and Fort James Corporation) of this Settlement Agreement:

FOR FORT JAMES CORPORATION

Date: 10/25/07

Signature

Typed Name: Tyler Woolson

Title: Chief Financial Officer

Address: 133 Peachtree Street, N.E.

Atlanta, GA 30303

IN THE MATTER OF:
Administrative Order by Consent
Lower Fox River and Green Bay Site

IT IS SO ORDERED AND AGREED:

U.S. ENVIRONMENTAL PROTECTION AGENCY

BY: Richard C Karl DATE: 11-13-07

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

IN THE MATTER OF:
Administrative Order by Consent
Lower Fox River and Green Bay Site

IT IS SO ORDERED AND AGREED:
WISCONSIN DEPARTMENT OF NATURAL RESOURCES

BY: _____ DATE: 10/30/07
Matthew Frank, Secretary

ATTACHMENT A

AMENDED STATEMENT OF WORK
FOR COMPLETION OF THE REMEDIAL DESIGN FOR
OPERABLE UNITS 2, 3, 4 AND 5 AT THE
LOWER FOX RIVER AND GREEN BAY SITE
BROWN, OUTAGAMIE, AND WINNEBAGO COUNTIES, WISCONSIN

I. PURPOSE

This amended Statement of Work ("SOW") modifies the previous SOW that accompanied the original settlement agreement and consent order for Remedial Design ("RD") in this matter, and it sets forth revised and updated requirements for the Remedial Design for Operable Units ("OUs") 2, 3, 4 and 5 for all components of the remedial action contained in the Records of Decision and the Record of Decision Amendment for OUs 2- 5 for the Fox River and Green Bay Site (the "Site"). The Record of Decision for OUs 1 and 2 at the Site was signed in December 2002 (the "2002 ROD"), and the original Record of Decision for OUs 3-5 at the Site was signed on June 30, 2003 (the "2003 ROD"). A Record of Decision Amendment, signed June 26, 2007 (the "2007 ROD Amendment"), modified certain aspects of the selected remedy for OUs 2-5. This modified SOW is designed to be consistent with the 2002 ROD, the 2003 ROD, and the 2007 ROD Amendment (collectively referred to herein as the "RODs").

This SOW addresses only the Remedial Design for OUs 2-5. The remedial design and remedial action for OU 1 is being addressed under another Statement of Work and Consent Decree. Phase 1 of the remedial action in OUs 2-5 is being performed under a separate Statement of Work and Consent Decree. As noted in that Consent Decree, all

remaining elements of the remedy in OUs 2-5 will be performed as Phase 2 of the remedial action for OUs 2-5. The tasks and schedules in this SOW are intended to ensure completion of the Remedial Design as necessary to permit commencement of full-scale sediment remediation for Phase 2 of the OU 2-5 Remedial Action at the start of the 2009 construction season, such that sediment remediation occurs throughout the 2009 construction season.

Respondents, working collaboratively with WDNR and EPA (the "Response Agencies") in an effort to expedite the overall remedial design schedule, as set forth herein, will complete the RD for OUs 2-5 consistent with the RODs, as discussed below, the Amended Settlement Agreement and Administrative Order on Consent ("Settlement Agreement") to which this SOW is attached, and EPA Superfund Remedial Design and Remedial Action Guidance (OSWER Directive 9355.0-4A) for designing remedial actions. That Settlement Agreement and this SOW require the Respondents to design all remaining elements of the remedy for OUs 2-5 (but they do not require the Respondents to perform any aspects of the remedial action).

II. THE REMEDIAL DESIGN AND THE REMEDIAL ACTION

The Respondents shall design the remedy for OUs 2-5 as necessary to meet the Performance Standards and specifications set forth in the RODs, as discussed below. This modified SOW fully incorporates all elements of the 2007 Amended ROD into the Remedial Design process. The Remedial Design shall address the timing and

sequencing of events necessary to implement this complex, multi-year remedy for OUs 2-5 at the Site.

THE REMEDY IN OU2 (EXCLUDING DEPOSIT DD). This portion of the remedy was unchanged by the 2007 ROD Amendment. The selected remedy is Monitored Natural Recovery ("MNR"). An institutional control plan and a long-term monitoring plan for PCB levels and possibly mercury levels in water, sediment, and biota will be developed during RD.

THE REMEDY IN OU2 (DEPOSIT DD), OU3, OU4, AND OU5 (RIVER MOUTH). In these areas, the 2007 ROD Amendment and this Amended SOW adopt sediment dredging as the primary remedial approach for sediments exceeding the 1.0 ppm PCB Remedial Action Level ("RAL"), but permit the use of other alternative remedial approaches (i.e., a combination of dredging and capping, capping alone, and/or placement of a sand cover) if certain performance standards specified by the 2007 ROD Amendment are met. The short-term and long-term objectives of the Amended Remedy include: removing and containing PCB-contaminated sediment in each OU to meet the RAL performance standard and/or the SWAC goal upon construction completion, as set forth in the 2007 ROD Amendment; achieving further reductions in PCB surface water and sediment concentrations through natural recovery processes; achieving corresponding reductions in PCB levels in the water column and in fish tissue; and ensuring improvement in PCB levels in surface water at the Site through long-term operation and maintenance and institutional controls.

THE REMEDY IN OU5 (EXCLUDING THE RIVER MOUTH). This portion of the remedy was unchanged by the 2007 ROD Amendment. The selected remedy is MNR. An institutional control plan and a long-term monitoring plan for PCB levels and possibly mercury levels in water, sediment, and biota will be developed during RD.

III. SCOPE OF REMEDIAL DESIGN

Tasks completed under the previous SOW include the Remedial Design Work Plan, Review and Analysis of Existing Data, Pre-Design Sampling, and the Basis of Design Report. Additional tasks necessary to complete the Remedial Design follow below:

Following completion and approval of the Basis of Design Report, Respondents shall complete the Remedial Design and prepare construction plans and specifications to implement the Remedial Action at OUs 2-5, as described in the RODs and this SOW, and consistent with the approved Basis of Design Report. Such plans and specifications shall be submitted in accordance with the schedule set forth in Section V, below. All design plans and specifications shall be developed consistent with EPA's Superfund Remedial Design and Remedial Action Guidance (OSWER Directive No. 9355.0-4A), except as otherwise specified in this SOW, and shall demonstrate that the Remedial Action based on the final Remedial Design will meet the objectives of the Settlement Agreement and the RODs, including all Performance Standards.

Respondents will submit complete bound sets of all documents and 5 electronic copies in the form of a CD.

A. Preliminary Design (30%) for OUs 2-5

Respondents shall submit the Preliminary Design to the Response Agencies for review and approval when the OU 2-5 Remedial Design effort is approximately 30% complete. The Preliminary Design submittal shall include or discuss, at a minimum, the following:

- Preliminary plans, drawings, and sketches, including design calculations;
- Determination of specific technologies for sediment capping, covering, dredging, dewatering, transportation and disposal of dredged sediments and associated wastewaters. These determinations will build upon previous engineering analyses;
- Results of completed studies and additional field sampling and analysis, if any, conducted after the Pre-Design sampling;
- Design assumptions and parameters, including design restrictions, process performance criteria, appropriate unit processes for the treatment train, and expected removal or treatment efficiencies for both the process and waste (concentration and volume), as applicable;
- An overview of the Construction Quality Assurance Project Plan (see Paragraph G below) including the proposed cleanup verification methods (i.e., probing methods) and

compliance with Applicable or Relevant and Appropriate Requirements (ARARs);

- An outline of required technical specifications;
- Potential siting/locations of processes/construction activity;
- Potential disposal locations based upon effectiveness, implementability and cost;
- An overview of expected operation, maintenance and monitoring requirements for the remedy; long-term monitoring requirements for surface water and biota; and institutional control requirements;
- An overview of real estate, easement, and permit requirements;
- A preliminary construction schedule, including contracting strategy;
- Incorporation of significant new information, to the extent available, from other projects at the Site (e.g., the OU 1 remedial action and Phase 1 of the remedial action in OUs 2-5).

The Preliminary Design should provide for any additional sampling, analysis, and/or pilot studies necessary to fill in any remaining site-specific data gaps, potentially including further delineation of the area and volume of sediments requiring remediation, further characterization of prospective disposal site(s) (including physical, chemical, and biological characteristics), or any other data necessary to complete design activities.

B. RD Work Plan Addendum

Respondents shall prepare and submit an RD Work Plan Addendum that conforms to the requirements of this SOW. Upon approval by the Response Agencies, the

Respondents shall implement the approved RD Work Plan, as revised by the approved RD Work Plan Addendum.

C. Intermediate Design (60%) for OUs 2-5

Respondents shall submit an Intermediate Design when the design effort is 60% complete. The Intermediate Design shall fully address all Response Agency comments on the Preliminary Design. Intermediate Design documents will build on those elements listed for the Preliminary Design (30%) documents, and will also include the following:

- Modifications to Plans in the Preliminary Design (30%) in response to the Response Agencies' comments;
- Development of required technical specifications;
- Capital and Operation and Maintenance Cost Estimates;
- A Project Schedule for the construction and implementation of the remedial action;
- Draft versions of the following supporting plans (see Paragraph G below):
    - a Community Health and Safety Plan
    - a Contingency Plan
    - a Construction Quality Assurance Project Plan
    - an Institutional Control Implementation and Assurance Plan
    - an Operation, Maintenance, and Monitoring Plan;
- A more detailed overview of a plan for long-term monitoring (see Paragraph G below), incorporating refinements since the Preliminary Design; and

- A draft Mitigation Plan, if it is necessary to restore habitats that will be physically impacted (not including the soft sediment deposits themselves).

D. Pre-Final Design (90%) for OUs 2-5

The Respondents shall submit the Pre-Final Design (90%) when the design effort is 90% complete. The Pre-Final Design shall fully address all Response Agency comments on the Intermediate Design (60%). The Pre-Final Design submittals shall include those elements listed for the Preliminary Design and Intermediate, as well as the following:

- A final Institutional Control Implementation and Assurance Plan;
- A final Community Health and Safety Plan;
- A final Contingency Plan;
- A final Construction Quality Assurance Project Plan including a Sediment Removal Verification / Capping and Covering Plan;
- A final Operation, Maintenance, and Monitoring Plan;
- A final Mitigation Plan (as described above);
- A draft Long-Term Monitoring Plan;
- A revised Capital and Operation and Maintenance Cost Estimate (which shall refine the cost estimates to reflect the detail presented in the Pre-Final Design); and
- A revised Project Schedule for the construction and implementation of the Remedial Action, which identifies timing for initiation and completion of all critical path tasks.

E. Final Design (100%) for OUs 2-5

The Respondents shall submit the Final Design when the design is 100% complete. Key portions of the Final Design that may need to be completed prior to the remainder of the Final Design – such as design plans for long-lead time elements of the remedial action – should be submitted as they are completed, subject to Response Agency approval of any necessary alternative sequencing of submissions and any related schedule adjustments necessary to achieve this goal. The Final Design shall fully address all Response Agency comments on the Pre-Final Design (90%) and shall include reproducible drawings and specifications suitable for bid advertisement. The Final Design submittals shall include final versions of the design components listed for the Pre-Final Design (although the proposed final version of the Long-Term Monitoring Plan may be submitted after all other portions of the Final Design, under the schedule specified by Section V of this SOW). The final Project Schedule included in the Final Design shall include specific dates for completion of the project and major milestones. Specific dates will assume and depend upon a defined start date and defined dates for receipt of agency approvals.

F. Remedial Design for Long Lead Time Elements of the Remedial Action

Most elements of the remedial action for OUs 2-5 shall be designed in the manner described above (i.e., through sequential development of a Preliminary Design, Intermediate Design, Pre-Final Design, and Final Design) in accordance with the general schedule set forth in Section V of this SOW (Deliverables Schedule). Certain other elements of the OU 2-5 remedial action that require long lead time planning shall be designed on an expedited basis, as necessary to permit commencement of full-scale

sediment remediation for Phase 2 of the OU 2-5 Remedial Action at the start of the 2009 construction season. For those design elements, the Respondents will need to accelerate pertinent portions of the design process to the greatest extent practicable consistent with the goals of the Remedial Design process and good engineering practices. Accelerated design requirements for long lead time elements of the remedial action are expected to include, but are not necessarily limited to: (i) design requirements for procurement of certain equipment (such as dewatering and water treatment equipment), including preparation of performance specifications and contracting bid packages; (ii) design requirements for staging site preparation work and associated infrastructure construction, including preparation of performance specifications and contracting bid packages; (iii) design requirements for disposal of dredged sediment, including all preparations for contracting; and (iv) design planning for any substantive requirements of permitting programs applicable to the project and site surveys (such as historical site investigations), including preparation of information to allow the Response Agencies to determine compliance with substantive requirements of permitting programs and all preparations for contracting. The RD Work Plan Addendum shall include a specific plan and schedule for designing all elements of Remedial Action that require long lead time planning. That plan and schedule shall be designed to permit commencement of full-scale sediment remediation for Phase 2 of the OU 2-5 Remedial Action at the start of the 2009 construction season.

G. Content of Supporting Plans

1. Community Health and Safety Plan (HSP)

Respondents shall develop and submit to the Response Agencies for review and approval a site-specific HSP designed to protect area residents from physical, chemical, and other hazards posed by any work at the Site during the RA.

2. Contingency Plan

Respondents shall develop and submit to the Response Agencies for review and approval a Contingency Plan that describes the procedures that will be followed in the event of an accident or emergency at the Site. The Contingency Plan will be incorporated into the Community HSP and CQAPP, as appropriate. The Contingency Plan shall include, at a minimum, the following:

a. Name of the person or entity responsible for responding in the event of an emergency incident;

b. Plan and date to meet with the local community, including local, State and Federal agencies involved in the Remedial Action, as well as local emergency squads and hospitals; and

c. First aid medical information

3. Construction Quality Assurance Project Plan (CQAPP)

Respondents shall develop and submit to the Response Agencies for review and approval a CQAPP which describes the site-specific components of the quality assurance program that the Respondents shall use to ensure that the completed project meets or exceeds all design criteria, plans, and specifications. The CQAPP shall contain, at a minimum, the following elements:

a. Responsibilities and authorities of all organizations and key personnel roles involved in the construction of the Remedial Action.

b. Qualifications that will be required of the Quality Assurance Official to demonstrate that he/she possesses the training and experience necessary to fulfill his/her identified responsibilities.

c. Protocols for the sampling and testing that shall be used to monitor the remedial action.

d. Identification of proposed quality assurance sampling activities including the sample size, locations, frequency of testing, acceptance and rejection data sheets, problem identification and corrective measures reports, evaluation reports, acceptance reports, and final documentation.

e. Reporting requirements for CQAPP activities shall be described in detail in the CQAPP, including such items as daily summary reports, inspection data sheets, problem identification and corrective measures reports, design acceptance reports, and final documentation.

4. Sediment Removal Verification/Capping and Covering Plan

Respondents shall develop and submit a Sediment Removal Verification/Capping and Covering Plan as part of the CQAPP to the Response Agencies for review and approval. The purpose of the Sediment Removal Verification/Capping and Covering Plan is to provide a mechanism to ensure that performance standards for the Remedial Action are met. The Sediment Removal Verification/Capping and Covering Plan shall include, at a minimum:

a. Quality Assurance Project Plan; and

b. Field Sampling Plan.

5. Institutional Control Implementation and Assurance Plan

As part of the Remedial Design, and consistent with the 2007 ROD Amendment for OUs 2-5, Respondents must develop an Institutional Control Implementation and Assurance Plan (ICIAP). The ICIAP may include access restrictions, land use or water use restrictions, dredging moratoriums, fish consumption advisories, and/or domestic water supply restrictions. Land and water use restrictions and access restrictions may require local and/or state legislative action to prevent inappropriate use or development of contaminated areas.

6. Operation, Maintenance and Monitoring Plan (OMMP)

The Respondents shall prepare an Operation, Maintenance, and Long-Term Monitoring Plan that includes plans for operating, maintaining, and monitoring the integrity of the remedy once in has been constructed. Among other things, the OMMP shall include plans for long-term cap monitoring, cap enhancement and/or removal in response to cap degradation, and cap enhancement in response to changed water levels, consistent with the 2007 ROD Amendment.

7. Long-Term Monitoring Plan

The Respondents shall develop a Long-Term Monitoring Plan that specifies requirements for monitoring of surface water and biota to assess progress in achieving the Remedial Action Objectives.

V SUMMARY OF MAJOR DELIVERABLES / SCHEDULE

A summary of the project schedule and reporting requirements for each major element of the OU 2 - 5 Remedial Design is presented below. The Respondents shall adhere to the following schedule unless it is modified in writing by the Response Agencies' Project Coordinators.

Deliverables Schedule

Deliverable	Due Dates
Monthly Progress Reports	As described in the Settlement Agreement
Preliminary Design (30%)	Due Date: November 30, 2007 Target Date for Agency Approval: January 14, 2008
RD Work Plan Addendum	Due Date: December 31, 2007
Intermediate Design (60%)	Target Date: May 13, 2008 Due Date: No later than one hundred twenty (120) days after approval of the Preliminary Design. Target Date for Agency Approval: June 23, 2008
Pre-Final Design (90%)	Target Date: October 1, 2008 Due Date: No later than one hundred (100) days after approval of the Intermediate Design. Target Date for Agency Approval: October 31, 2008
Final Design (100%) (other than the Final Long-Term Monitoring Plan)	Target Date: December 30, 2008 Due Date: Sixty (60) days after approval of the Pre-Final Design.
Final Long-Term Monitoring Plan	Target Date: January 29, 2009 Due Date: Ninety (90) days after approval of the Pre-Final Design