

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

IN THE MATTER OF:	)	ADMINISTRATIVE ORDER ON
	)	CONSENT
	)	
Lower Fox River and Green	)	U.S. EPA Region 5
Bay Site	)	CERCLA Docket No.
	)	
Respondent:	)	Proceedings Under Sections 104, 106,
	)	122(a), and 122(d)(3) of the
	)	Comprehensive Environmental Response,
WTM I Company	)	Compensation, and Liability Act, as
	)	Amended, 42 U.S.C. §§ 9604, 9606,
(f/k/a Wisconsin Tissue Mills Inc.)	)	9622(a), and 9622(d)(3).
_____	)	

**I. JURISDICTION AND GENERAL PROVISIONS**

1. This Administrative Order on Consent (“Consent Order”) 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 WTM I Company (“Respondent”). The mutual objectives of EPA, WDNR, and Respondent in entering into this Consent Order are: (i) to have Respondent perform the Pre-design Sampling for Operable Unit 1 (“OU1”) 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; and (ii) to have the Respondent perform all other Remedial Design activities needed for implementation of the Response Agencies’ (EPA and WDNR) December 2002 selected remedy (and/or contingent remedy, as necessary) for OU1 at the Site.

2. This Consent Order 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 Consent Order 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 Respondent recognize that this Consent Order has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this

Consent Order do not constitute an admission of any liability. Nothing in this Consent Order 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 Respondent for any purpose. The Parties agree that the provisions of this Consent Order are not based on any views or assumptions regarding Respondent's appropriate share of liability or costs relating to the Site. Participation in this Consent Order by Respondent 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. Respondent agrees to comply with and be bound by the terms of this Consent Order. Respondent consents to and agrees 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 delegates to issue or enforce this Consent Order, and also agrees not to contest the basis or validity of this Consent Order or its terms in any action to enforce its provisions. The Respondent does not, by signing this Consent Order, waive any rights it 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 Consent Order applies to and is binding upon and inures to the benefit of EPA, WDNR, Respondent, and their successors and assigns. Respondent agrees to instruct its officers, directors, employees and agents involved in the performance of the Work required by this Consent Order to take all necessary steps to accomplish the performance of said Work in accordance with this Consent Order. Any change in ownership or corporate status of Respondent, including but not limited to any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this Consent Order. Respondent shall provide a copy of this Consent Order to any subsequent owners or successors before ownership rights or stock or assets in a corporate acquisition are transferred. The signatories to this Consent Order certify that they are authorized to execute and legally bind the Parties they represent to this Consent Order.

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

## **III. DEFINITIONS**

8. Unless otherwise specified, terms used in this Consent Order 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 Consent Order 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. “Consent Order” shall mean this Administrative Order on Consent and all attachments hereto. In the event of conflict between this Consent Order and any attachment, this Consent Order shall control.
- c. “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 Consent Order, 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.
- d. “Effective Date” shall mean the effective date of this Consent Order as provided by Section XXVI of this Consent Order (Effective Date).
- e. “EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.
- 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 the Effective Date in reviewing or developing plans, reports and other items pursuant to this Consent Order, in verifying the Work, or in otherwise implementing, overseeing, or enforcing this Consent Order, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Section XIV (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 Paragraph 71 of Section XIX.
- 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 1” or “OU1” shall mean the Little Lake Butte des Morts reach of the Lower Fox River, as delineated by the Record of Decision signed by WDNR and EPA in December 2002. More specifically, OU1 is the portion of the Lower Fox River (and the underlying River sediment) starting at the outlet of Lake Winnebago at the Neenah Dam and the Menasha Dam downstream to the Upper Appleton Dam, including sediment deposits A through H and POG. As so defined, OU1 is depicted in Figure 7-9 of the December 2002 Final Feasibility Study, a copy of which is attached hereto as Attachment B.

- j. “Paragraph” shall mean a portion of this Consent Order identified by an Arabic numeral.
- k. “Parties” shall mean all signatories to this Consent Order.
- l. “Record of Decision” or “ROD” for purposes of this Consent Order 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.
- m. “Remedial Design” or “RD” shall mean those activities, including 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 Unit 1 pursuant to the Record of Decision, the Statement of Work, the Pre-design Sampling Plan, and the Remedial Design Work Plan (the documents submitted by Respondent pursuant to Section IX of this Consent Order (Work to be Performed)).
- n. “Respondent” shall mean WTM I Company.
- o. “Response Agencies” shall mean the United States Environmental Protection Agency (EPA) and the Wisconsin Department of Natural Resources (WDNR).
- p. “Section” shall mean a portion of this Consent Order identified by a Roman numeral.
- q. “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.
- r. “State” shall mean the State of Wisconsin, including its departments, agencies, and instrumentalities.
- s. “Statement of Work” or “SOW” shall mean the statement of work for implementation of Remedial Design as set forth in Attachment A to this Consent Order and any modifications made in accordance with this Consent Order.
- t. “United States” shall mean the United States of America, including its departments, agencies, and instrumentalities.
- u. “WDNR” shall mean the Wisconsin Department of Natural Resources and any successor departments or agencies of the State of Wisconsin.
- v. “Work” shall mean all activities Respondent is required to perform under this Consent Order, except those required by Section XXIV (Record Preservation).

#### **IV. STATEMENT OF PURPOSE**

9. The mutual objective of EPA, WDNR and Respondent in entering into this Consent Order is to protect human health, welfare and the environment at Operable Unit 1 by producing a Remedial Design for remedial action in accordance with this Consent Order.

10. The activities conducted pursuant to this Consent Order are subject to approval by the Response Agencies. Respondent shall employ sound scientific, engineering, and construction practices and all activities undertaken shall be consistent with CERCLA, the NCP, and other applicable laws.

#### **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.

#### **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). Respondent's former Menasha paper mill is also 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. Respondent is a “person” as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. Respondent WTM I Company is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), as: (i) the “owner” or “operator” of a facility at the time of disposal of a hazardous substance there; 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 Consent Order are necessary to protect the public health, welfare, or the environment and if carried out in compliance with the terms of this Consent Order, shall be deemed necessary and 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 Respondent shall comply with all provisions of this Consent Order. Respondent shall promptly and properly take appropriate response action at Operable Unit 1 of the Site by conducting a Remedial Design.

## **VIII. DESIGNATION OF CONTRACTORS AND PROJECT COORDINATORS**

14. Selection of Contractors, Personnel. All Work performed by Respondent pursuant to this Consent Order shall be under the direction and supervision of qualified personnel. Within forty-five (45) days of the Effective Date of this Consent Order, and before the Work outlined below begins, Respondent 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 Respondent 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 Respondent shall be subject to the Response Agencies' review, for verification that such persons meet minimum technical background and experience requirements. This Consent Order is contingent on Respondent's demonstration to the Response Agencies' satisfaction that Respondent's personnel are qualified to perform properly and promptly the actions set forth in this Consent Order.

15. If EPA or WDNR disapprove in writing of any contractor proposed by Respondent, Respondent 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 disapprove of the replacement, EPA reserves the right to terminate this Consent Order and to conduct a complete Remedial Design, and to seek reimbursement for costs and penalties from Respondent. During the course of the Remedial Design, Respondent 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 Respondent's personnel shall not delay performance of the work under this Consent Order.

16. On or before the Effective Date of this Consent Order, Respondent shall designate a Project Coordinator who shall be responsible for administration of all Respondent's response actions required by the Consent Order. Respondent 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 Respondent. If either Response Agency disapproves a selected Project Coordinator, Respondent 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 Respondent's Project Coordinator of any notice or communication from the Response Agencies relating to this Consent Order shall constitute receipt by Respondent. To the maximum extent possible, communications between the Respondent and the Response Agencies shall be directed to the Project Coordinators by mail, with copies to such other persons as EPA, the State, and Respondent may respectively designate. Communications include, but are not limited to, all documents, reports, approvals, and other correspondence submitted under this Consent Order.

18. Respondent's Project Coordinator, or his/her designee, shall be on-site during all hours of work when field work is ongoing in Operable Unit 1, and shall be available at all reasonable times throughout the pendency of this Consent Order. If Respondent or its agents become aware of any conditions at Operable Unit 1 which may present an imminent and substantial endangerment to human health or welfare or the environment, it 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 Consent Order 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 Consent Order, 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 Consent Order, or to direct any other response action undertaken by EPA or Respondent at the Site. Except as otherwise provided in this Consent Order, Respondent shall direct all submissions required by this Consent Order 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 Consent Order, Respondent shall direct all submissions required by this Consent Order to the WDNR Project Coordinator in accordance with Section XXV (Notices and Submissions).

21. The Response Agencies and Respondent shall have the right to change their respective designated Project Coordinator. The Response Agencies shall notify Respondent, and Respondent 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. Respondent shall conduct activities and submit deliverables as provided by the 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 may be amended or modified by the Response Agencies. The tasks that Respondent must perform are described in the SOW and guidance. All work performed under this Consent Order shall be in accordance with the schedules herein, and in full accordance with the standards, specifications, and other requirements of the work plan and sampling and analysis 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.

23. Respondent's compliance with the Work requirements shall not foreclose the Response Agencies from seeking compliance with all terms and conditions of this Consent Order.

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

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

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

27. Additional work determined to be necessary by Respondent and approved by the Response Agencies, or determined to be necessary by EPA or WDNR and requested of Respondent, shall be completed by Respondent in accordance with the standards and specifications determined or approved by the Response Agencies. Respondent 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 Consent Order, and conform with the requirements of this Section.

28. Supplemental Investigations. The Parties acknowledge that Respondent may implement a voluntary, supplemental, investigation of conditions in and upstream of Operable Unit 1. These investigations shall be conducted using methods consistent with those identified in the Pre-design Sampling Plan. The Response Agencies agree to review and comment promptly on work generated by Respondent during such supplemental investigation activities.

29. Out-of-State Shipments. In the event of out-of-state shipments of hazardous substances, Respondent 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.

Respondent 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. Respondent shall submit the Pre-design Sampling Plan for OU1, Remedial Design Work Plan ("RD Work Plan") and all documents required by the SOW, the RD Work Plan, or this Consent Order to the Response Agencies according to the schedule contained in the SOW and RD Work Plan, and when feasible shall submit both a hard copy and an electronic copy of such documents.

31. The Response Agencies shall review all documents specified as requiring approval in the SOW, RD Work Plan, or this Consent Order. 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 Respondent to re-submit the document after incorporating the Response Agencies' comments; or (d) if a re-submission, disapprove the re-submission and 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, Respondent 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, Respondent shall, within thirty (30) 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, Respondent 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 Respondent is in violation of this Consent Order, unless Respondent invokes 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 Respondent's 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 Consent Order and perform additional studies or conduct a complete or partial Remedial Design.

36. For any document required to be submitted by the Respondent to the Response Agencies, within forty-five (45) days of receipt of the document, the Response Agencies shall provide written notification to Respondent 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 Respondent 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. Respondent shall provide written monthly progress reports to the Response Agencies. These monthly progress reports shall include the following information:

- a. A description of the actions which have been taken to comply with this Consent Order 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 Respondent 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 schedule deviation or anticipated deviation from the RD Work Plan schedule, 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. Respondent shall submit the monthly progress reports, as both electronic files and hard copy files, to the Response Agencies by the tenth (10<sup>th</sup>) day of every month following the Effective Date of this Consent Order.

## **XI. QUALITY ASSURANCE AND DATA AVAILABILITY**

40. Quality Assurance. Respondent shall consult with the Response Agencies' Project Coordinators in planning all sampling and analysis detailed in the Pre-design Sampling Plan and RD Work Plan. Respondent 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. Respondent shall prepare preliminary and final QAPPs for submittal to EPA according to the schedule in the SOW. Respondent shall participate in a pre-QAPP meeting with EPA prior to submission of the preliminary QAPP to discuss its contents.

42. The QAPPs shall be subject to review, modification, and approval by EPA in accordance with Section X (Plans and Reports).

43. Data Availability. All results of sampling, tests, modeling or other data (including raw data) generated by Respondent, or on Respondent's behalf, pursuant to this Consent Order, shall be submitted in the format prescribed by the Response Agencies and made available to and submitted to the Response Agencies in the monthly progress reports described in Section X of this Consent Order. The Response Agencies will make available to Respondent validated data generated by the Response Agencies relating to Lake Winnebago and OU1 unless it is exempt from disclosure by any federal or state law or regulation.

44. Respondent 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, Pre-design Sampling Plan, or RD Work Plan or conducted under any other provision in this Consent Order. Respondent shall allow split or duplicate

samples to be taken by the Response Agencies (and their authorized representatives) of any samples collected by the Respondent in implementing this Consent Order. All split samples of Respondent's shall be analyzed by the methods identified in the EPA-approved QAPP.

45. Respondent 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 Consent Order 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 Respondent. Respondent agrees not to assert confidentiality claims with respect to any data related to Operable Unit 1 conditions, sampling, or monitoring.

46. In entering into this Consent Order, Respondent waives any objections to the quality of any data gathered, generated, or evaluated by EPA, the State or Respondent 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 Consent Order or any Work Plan approved by the Response Agencies. If Respondent objects to any data relating to the RD, Respondent 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. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or the work product doctrine. If 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 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 Unit 1 or other on-site and off-site areas where work is to be performed is presently owned by parties other than Respondent, Respondent shall obtain, or use its 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. Respondent shall immediately notify the Response Agencies if, after using its best efforts, it is unable to obtain such agreements. Respondent shall describe in writing its efforts to obtain access. The Response Agencies may then assist Respondent in gaining access, to the extent necessary to effectuate the activities required by this Consent Order, 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 53 (Liability for Future Response Costs), Respondent 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 Respondent at Operable Unit 1 and at any other on-site and off-site areas where work, 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 1 pursuant to this Consent Order; reviewing Respondent’s progress in carrying out the terms of this Consent Order; conducting tests as the Response Agencies or their authorized representatives deem necessary; 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 Respondent. Respondent 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 Consent Order, 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 Unit 1 under this paragraph shall comply with all approved health and safety plans.

## **XIII. COMPLIANCE WITH APPLICABLE LAWS**

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

52. Respondent shall be responsible for obtaining state and local permits necessary for the performance of any off-site work, and for complying with the substantive provisions of state and local permit regulations for any on-site work. The standards and provisions of Section XVI (Force Majeure) shall govern delays in obtaining such permits. The Response

Agencies shall cooperate with Respondent and endeavor to expedite the issuance of permits for off-site work within their respective jurisdictions.

#### **XIV. FUTURE RESPONSE COSTS**

53. Liability for Future Response Costs. If a Consent Decree addressing Remedial Action in OU1 is not entered by the U.S. District Court for the Eastern District of Wisconsin (the “Court”) within one year of the Effective Date or such additional time as agreed by the Parties in writing, Respondent shall be liable for Future Response Costs (as defined in this Consent Order) and Respondent shall make direct payments to EPA and the State for any Future Response Costs incurred by the United States or the State, to the extent such costs are not inconsistent with the National Contingency Plan. If, however, the Court does enter such a Consent Decree within one year of the Effective Date (or such additional time as agreed by the Parties in writing), this Section shall be deemed null and void.

54. Payment of Future Response Costs.

a. Payments to EPA. On a periodic basis, the United States will send Respondent a bill requiring payment that includes an EPA cost summary, which includes direct and indirect costs incurred by EPA and its contractors, and a DOJ cost summary, which reflects costs incurred by DOJ and its contractors, if any. Respondent shall make all payments within forty-five (45) days of Respondent’s receipt of each bill requiring payment, except as otherwise provided by Paragraph 55.

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

55. Disputes Regarding Future Response Costs. Respondent may contest payment of any Future Response Costs under Paragraph 54 if it determines that the United States or the State has made an accounting error or if it alleges 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, Respondent 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 Respondent prevails 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 or under Section XVII (Stipulated Penalties) shall: (1) be made by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund;" (2) reference the Lower Fox River and Green Bay Site, EPA Site/Spill ID Number A565, and DOJ Case Number 90-11-2-1045/2; (3) indicate that the payment is being made pursuant to this Consent Order with WTM I Company; and (4) be sent to:

U.S. Environmental Protection Agency, Region 5  
Program Accounting and Analysis Branch  
P.O. Box 70753  
Chicago, IL 60673

At the time of payment, Respondent 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

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 Consent Order with WTM I Company; 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, Respondent 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 Consent Order shall attempt to resolve, expeditiously, informally, and in good faith, any disagreements concerning this Consent Order.

58. Any disputes concerning activities or deliverables required under this Consent Order for which Dispute Resolution has been expressly provided for, shall be resolved as follows: Respondent shall notify the Response Agencies in writing of its objection(s) within fourteen (14) calendar days of such action, unless the objection(s) has (have) been informally resolved. This 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 Respondent's position, and all supporting documentation on which Respondent relies. The Response Agencies shall submit their Statement of Position, including supporting documentation, no later than fourteen (14) calendar days after receipt of Respondent's written notice of dispute. Respondent 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 receipt of 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, any other correspondence between the Response Agencies and Respondent 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 Respondent, the Division Director for the Office of Superfund, EPA Region V, in consultation with the Secretary of the WDNR, shall resolve the dispute based upon the administrative record and consistent with the terms and objectives of this Consent Order, and shall provide written notification of such resolution to Respondent.

60. Respondent's obligations under this Consent Order, 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, Respondent 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. Respondent agrees to perform all requirements under this Consent Order within the time limits established under this Consent Order, unless the performance is delayed by a *force majeure*. For purposes of this Consent Order, a *force majeure* is defined as any event arising from causes beyond the control of Respondent or of any entity controlled by Respondent, including but not limited to its contractors and subcontractors, that delays or prevents performance of any obligation under this Consent Order despite Respondent's 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 Consent Order, whether or not caused by a *force majeure* event, Respondent shall notify the Response Agencies orally within seven (7) business days of when Respondent first knew that the event might cause a delay. Within fourteen (14) calendar days thereafter, Respondent 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; Respondent's 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 Respondent's 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 Respondent 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 Consent Order 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 Respondent 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 Respondent 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. Respondent 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 Respondent fails to comply with a work schedule or payment schedule in accordance with the requirements contained in this Consent Order, unless the Response Agencies determine 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 Respondent invokes the procedures of Section XV (Dispute Resolution). For failure to submit the final RD Work Plan on schedule, stipulated penalties shall accrue in the amount of \$1,000 per day for the first 7 days and \$2,500 per day for each day thereafter. Stipulated penalties for all other matters shall accrue in the amount of \$1,000.00 for the first week or part thereof, and \$1,500.00 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.

65. The stipulated penalties set forth herein shall not preclude the Agencies from electing to pursue any other remedy or sanction because of Respondent's failure to comply with any of the terms of this Consent Order, including a suit to enforce the terms of this Consent Order. Said stipulated penalties shall not preclude the EPA from seeking statutory penalties up to the amount authorized by law if Respondent fails to comply with any requirements of this Consent Order. 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 Consent Order.

66. Upon receipt of written demand from EPA, Respondent 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 Respondent fails 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 Consent Order. Penalties shall accrue regardless of whether EPA has notified Respondent of a violation or act of noncompliance. The payment of penalties shall not alter in any way Respondent's obligation to complete the performance of any work required under this Consent Order. 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 Respondent prevails upon resolution, Respondent 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. COVENANT NOT TO SUE BY EPA**

68. In consideration of the actions that will be performed under the terms of this Consent Order, and except as otherwise specifically provided in this Consent Order, EPA covenants not to sue or to take administrative action against Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for performance of the Work. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Respondent of all obligations under this Consent Order. This covenant not to sue extends only to Respondent and does not extend to any other person.

#### **XIX. RESERVATIONS OF RIGHTS BY EPA AND WDNR**

69. Except as specifically provided in this Consent Order, nothing herein shall limit the power and authority of EPA or the United States 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, nothing herein shall prevent EPA or WDNR from seeking legal or equitable relief to enforce the terms of this Consent Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondent 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. EPA and WDNR reserve, and this Consent Order is without prejudice to, all rights against Respondent with respect to all other matters, including, but not limited to:

- a. claims based on a failure by Respondent to meet a requirement of this Consent Order;
- b. liability for past or future response costs incurred or paid by the United States or the State for OU1 or for the Site (except for any Future Response Costs paid pursuant to this Consent Order);
- 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. Work Takeover. In the event EPA, in consultation with WDNR, determines that Respondent has ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in its performance of the Work, or is 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 53 (Liability for Future Response Costs), Respondent may be required to reimburse the United States and the State for all such Future Response Costs. Respondent 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 Consent Order, 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 RESPONDENT**

72. Respondent covenants not to sue and agrees 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 Work or this Consent Order, 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 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 Work.

73. 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 Paragraphs 70(b), (c), and (e) – (g), but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

74. Nothing in this 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**

75. Respondent waives all claims or demands for compensation under Sections 106, 111 and 112 of CERCLA, 42 U.S.C. §§ 9606, 9611 and 9612 against the United States or the Hazardous Substances Superfund established by Section 9507 of Title 26 of the United States Code arising from activity performed pursuant to this Consent Order. This Consent Order does not constitute any decision on preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2). Respondent further waives all other statutory and common law claims against the Response Agencies, including, but not limited to, contribution and counterclaims, relating to or arising out of conduct of the Work.

76. Nothing in this Consent Order 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 Consent Order 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 Unit 1.

77. Respondent specifically reserves all rights and defenses that it may have, including but not limited to any rights to contest any Findings of Fact and Conclusions of Law and Determinations set forth in Sections V and VI of this Consent Order in any proceeding other than an action brought by EPA or the State to enforce this Consent Order. Under this Consent Order, Respondent specifically reserves any right it 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 Consent Order.

78. Each party to this Consent Order shall bear its own costs and attorneys fees.

## **XXII. CONTRIBUTION PROTECTION AND EFFECT OF SETTLEMENT**

79. The Parties agree that Respondent is 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 Consent Order. The “matters addressed” in this Consent Order are the Work. Nothing in this Consent Order precludes the United States, the State, or Respondent from asserting any claims, causes of action, or demands against any person not parties to this Consent Order for indemnification, contribution, or cost recovery.

80. The Parties agree and acknowledge that the Plaintiffs shall recognize that Respondent is entitled to full credit for all response costs incurred in performance of the Remedial Design and all future response costs paid under this Consent Order, with such credit to be applied against Respondent’s liabilities for response costs at the Site; provided, however, that the credit ultimately recognized shall take into account the amount of any recoveries by Respondent 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**

81. Respondent 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 Respondent, its officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Consent Order. In addition, Respondent agrees 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 Respondent, its officers, directors, employees, agents, contractors, subcontractors and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Order. Neither the United States nor the State shall be held out as a party to any contract entered into by or on behalf of Respondent in carrying out activities pursuant to this Consent Order. Neither Respondent nor any such contractor shall be considered an agent of the United States or the State .

82. The United States and/or the State shall give Respondent 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 Respondent prior to settling such claim.

83. Respondent waives 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 Respondent 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, Respondent 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 Respondent 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**

84. Respondent shall preserve all records and documents which relate to implementation of the RD at Operable Unit 1 for a minimum of ten (10) years following completion of Remedial Action construction. Respondent shall acquire and retain copies of all documents that relate to Remedial Design for Operable Unit 1 and are in the possession of its employees, agents, accountants, contractors, or attorneys. After this 10-year period, Respondent 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, Respondent shall, at no cost to the Response Agencies, give the Response Agencies the documents or copies of the documents.

#### **XXV. NOTICES AND SUBMISSIONS**

85. Documents, including but not limited to reports, approvals, disapprovals, and other correspondence which must be submitted under this Consent Order, shall be sent by overnight delivery or certified mail, return receipt requested, to the following addressees or to any other addressees which the Respondent, 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, Illinois 60604-3590  
Phone: (312) 353-4213  
FAX: (312) 886-4071  
E-mail: [Hahnenberg.James@epa.gov](mailto:Hahnenberg.James@epa.gov)

with a copy to:

Roger Grimes (C-14J)  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604  
Phone: (312) 886-6595  
FAX: (312) 886-0747  
E-mail: [grimes.roger@epa.gov](mailto:grimes.roger@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](mailto:hillg@dnr.state.wi.us)

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

As to the Respondent:

J.P. Causey Jr.  
Vice President & Secretary / WTM I Company  
c/o Chesapeake Corporation  
1021 E. Cary Street  
Box 2350  
Richmond, VA 23218-2350  
Phone: (804) 697-1166  
FAX: (804) 697-1192  
E-mail: [jp.causey@cskcorp.com](mailto:jp.causey@cskcorp.com)

with a copy to:

Nancy K. Peterson  
Quarles & Brady LLP  
411 E. Wisconsin Ave.  
Milwaukee, WI 53202-4497  
Phone: (414) 277-5515  
Fax: (414) 203-0190  
E-mail: [nkp@quarles.com](mailto:nkp@quarles.com)

## **XXVI. EFFECTIVE DATE OF CONSENT ORDER**

86. This Consent Order shall become effective upon receipt by Respondent of the Consent Order signed by the Director of the Superfund Division, EPA, Region 5 and the Secretary of the WDNR.

## **XXVII. COMMUNITY RELATIONS**

87. Respondent shall cooperate with the Response Agencies in providing RD information to the public. If requested by the Response Agencies, Respondent shall participate in the preparation of all RD information disseminated to the public pertaining to Operable Unit 1.

## **XXVIII. MODIFICATION OF CONSENT ORDER**

88. 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 Consent Order 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 Consent Order.

89. No informal advice, guidance, suggestions, or comments by the Response Agencies regarding reports, plans, specifications, schedules, and any other writing submitted by the Respondent will be construed as relieving Respondent of its obligation to obtain such formal approval as may be required by this Consent Order. Any deliverables, plans, technical memoranda, reports (other than progress reports), specifications, schedules and attachments required by this Consent Order are, upon approval by the Response Agencies, incorporated into this Consent Order.

## **XXIX. NOTICE OF COMPLETION**

90. At the request of Respondent, the Response Agencies shall promptly determine whether all actions have been performed in accordance with this Consent Order, except for certain continuing obligations required by this Consent Order (e.g., record retention). Any request shall demonstrate in writing that such actions have been performed in accordance with this Consent Order and shall be accompanied by the following attestation by a responsible official for the Respondent: "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 Respondent. 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 Consent Order, they will notify Respondent, provide a list of the deficiencies, and require that Respondent correct such deficiencies.

IN THE MATTER OF:  
Administrative Order by Consent

Lower Fox River and Green Bay Site

AGREED AS STATED ABOVE:

WTM I Company  
(f/k/a Wisconsin Tissue Mills Inc.)

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
Name:  
Title:

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: \_\_\_\_\_ DATE: \_\_\_\_\_  
William E. Muno, Director  
Superfund Division  
U.S. Environmental Protection Agency  
Region 5

WISCONSIN DEPARTMENT OF NATURAL RESOURCES

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
Scott Hassett, Secretary