

COPY

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA and THE
STATE OF WISCONSIN,

Plaintiffs,

v.

FORT JAMES OPERATING COMPANY,

Defendant.

CIVIL ACTION NO.

02-C-0602

CONSENT DECREE

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I. BACKGROUND

A. The Plaintiffs have filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9607 (“CERCLA”), seeking recovery from Fort James Operating Company (the “Settling Defendant”), a wholly owned subsidiary of Fort James Corporation, of certain response costs incurred in connection with releases and threatened releases of hazardous substances at and from the Fox River Site (the “Fox River Site” or the “Site,” as defined below). The responsible natural resource trustees also contend that they have claims for recovery of natural resource damages (including for recovery of natural resource damage assessment costs) against the Settling Defendant. This Consent Decree sets forth the terms of a civil settlement between the Plaintiffs, the responsible natural resource trustees, and the Settling Defendant. To the extent provided by this Consent Decree, certain specified benefits of the settlement also extend to Fort James Corporation.

B. The United States of America (“United States”) instituted this action on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), and is entering into this Consent Decree on behalf of EPA and the Secretaries of the United States Departments of the Interior (“DOI”) and Commerce (“Commerce”) (collectively the “Federal Trustees”).

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

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

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

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

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

H. In response to releases and threatened releases of hazardous substances at and from the Site, EPA and WDNR have undertaken response actions at or in connection with the Site under CERCLA Section 104, 42 U.S.C. § 9604. A remedial investigation/feasibility study (“RI/FS”) and a Proposed Remedial Action Plan (“PRAP”) for the Site have been prepared by WDNR, with funding provided by EPA under cooperative agreement with the State. A Record of Decision (“ROD”) for the Site is expected to be issued after public comments on the RI/FS and PRAP are considered. The United States and the State have incurred and will continue to incur response costs in connection with the Site.

I. The Settling Defendant, Fort James Corporation, and certain other potentially responsible parties (collectively known as the Fox River Group) entered into a January 31, 1997 Agreement Between the State of Wisconsin and Certain Companies Concerning the Fox River for performance of a sediment removal demonstration project in particular areas of the Lower

Fox River, including in the area known as Sediment Management Unit 56/57. Certain areas within Sediment Management Unit 56/57 were partially dredged under that Agreement between the Fox River Group and the State. Fort James Corporation funded additional sediment removal work at Sediment Management Unit 56/57 under a July 22, 1999 Agreement Between the State of Wisconsin and Fort James Corporation.

J. The Settling Defendant and Fort James Corporation voluntarily entered into a 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-C-596, providing for performance of additional removal activities at Sediment Management Unit 56/57, including removal of additional contaminated sediments. EPA oversaw the performance of those removal activities by the Settling Defendant and Fort James Corporation. The work required under that Administrative Order on Consent has been completed, and a Notice of Completion was issued on February 26, 2001.

K. The Settling Defendant represents that the Settling Defendant and Fort James Corporation contributed more than \$22 million toward removal activities at Sediment Management Unit 56/57 under the Agreement between the Fox River Group and the State, the Agreement between Fort James Corporation and the State, and the EPA Administrative Order on Consent, including more than \$12 million in direct funding and \$10 million in in-kind services. The Settling Defendant further represents that a total of approximately \$28 million was contributed by potentially responsible parties (including the Settling Defendant and Fort James Corporation) toward the response activities at Sediment Management Unit 56/57 that were performed under the Agreement between the Fox River Group and the State, the Agreement between Fort James Corporation and the State, and the EPA Administrative Order on Consent.

L. The State Trustee, the Federal Trustees, and the Tribal Trustees have been involved in various natural resource damage assessment activities relating to the Site. The Trustees have incurred and will continue to incur assessment costs associated with natural resource damage assessment activities relating to the Site.

M. The Settling Defendant is the current and/or former owner and operator of two paper mill facilities at or near the Site. By entry into this Consent Decree, the Settling Defendant does not admit any issue of fact or law or any liability to the Plaintiffs or the Tribes arising out of the transactions or occurrences alleged in the Complaint.

N. The Parties to this Consent Decree recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that this Consent Decree will avoid prolonged and complicated litigation among the Parties, will provide for appropriate reimbursement of Site-related costs incurred by the Plaintiffs, and will expedite the restoration and protection of natural resources at and near the Site, and that this Consent Decree is fair, reasonable, and in the public interest.

O. The Parties to this Consent Decree agree, and the Court by entering this Consent Decree finds, that the restoration actions and other compensatory activities and damages payments to be provided under this Consent Decree constitute appropriate actions necessary to protect and restore the natural resources allegedly injured by releases or threatened releases of hazardous substances by the Settling Defendant.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9607 and 9613(b). The Court also has personal

jurisdiction over the Settling Defendant. Solely for the purposes of this Consent Decree and the underlying complaint, the Settling Defendant waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. The Settling Defendant shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree. Solely for the purposes of this Consent Decree, the Tribes submit to the jurisdiction of the Court, as Parties to the Consent Decree.

III. PARTIES BOUND

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

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

“CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 *et seq.*

"Commerce" means the United States Department of Commerce and any successor departments or agencies of the United States.

“Consent Decree” means this Consent Decree and all appendices attached hereto (listed

in Section XIV (Appendices)). In the event of conflict between this Consent Decree and any appendix, this Consent Decree shall control.

“Covered Response Costs” means: (i) all costs incurred in performing or overseeing response actions at Sediment Management Unit 56/57 under the January 31, 1997 Agreement between the State and the Fox River Group; (ii) all costs incurred in performing or overseeing response actions at Sediment Management Unit 56/57 under the July 22, 1999 Agreement Between the State of Wisconsin and Fort James Corporation; (iii) all costs incurred in performing or overseeing response actions at Sediment Management Unit 56/57 under 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-C-596, including but not limited to the EPA oversight costs shown on the EPA Itemized Cost Summary Extract attached hereto as Appendix B; and (iv) all future costs of any response actions that may be performed at Subunits 12-19, 23-29, 34-41, and 46-51 of Sediment Management Unit 56/57, as delineated in Figure 1 attached as Appendix C to this Consent Decree.

“Day” means 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 Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

“DOI” means the United States Department of the Interior and any successor departments or agencies of the United States.

“DOJ” means the United States Department of Justice and any successor departments or agencies of the United States.

“EPA” means the United States Environmental Protection Agency and any successor departments or agencies of the United States.

“Effective Date” means the effective date of this Consent Decree as provided by Section XV of this Consent Decree (Effective Date and Retention of Jurisdiction).

“Interest” means interest at the rate specified for interest on investments of the Hazardous Substance Superfund established under Subchapter A of Chapter 98 of Title 26 of the U.S. Code, compounded on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

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

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

“NRDAR Fund” means DOI’s Natural Resource Damage Assessment and Restoration Fund.

“Paragraph” means a portion of this Consent Decree identified by an arabic numeral or an upper case letter.

“Parties” means the United States, the State, the Tribes, and the Settling Defendant.

“Plaintiffs” means the United States and the State.

“Section” means a portion of this Consent Decree identified by a roman numeral.

“Site” means the Lower Fox River and the Bay of Green Bay, Wisconsin, along with the riparian, wetland, and upland habitats closely associated with those water bodies and the tributaries to those water bodies, to the extent such riparian, wetland, and upland habitats or tributaries, or the natural resources utilizing such habitats or tributaries, are or were affected or impaired by releases of hazardous substances to the Lower Fox River or the Bay of Green Bay, Wisconsin.

“State” means the State of Wisconsin.

“Subparagraph” means a portion of this Consent Decree identified by a lower case letter or an arabic numeral in parentheses.

“United States” means the United States of America, including all of its departments, agencies, and instrumentalities.

“Tribes” means the Menominee Indian Tribe of Wisconsin and the Oneida Tribe of Indians of Wisconsin.

“Trustees” means DOI, Commerce, WDNR, and the Tribes.

“WDNR” means the Wisconsin Department of Natural Resources and any successor departments or agencies of the State of Wisconsin.

“WDOJ” means the Wisconsin Department of Justice and any successor departments or agencies of the State of Wisconsin.

V. STATEMENT OF PURPOSE

4. The mutual objectives of the Parties in entering into this Consent Decree are to provide reimbursement by the Settling Defendant of certain response costs; to provide for the reimbursement by the Settling Defendant of natural resource damage assessment costs incurred by DOI and the State; to contribute to the restoration, replacement, or acquisition of the equivalent of the natural resources and services provided by natural resources that allegedly were or will be injured, destroyed, or lost as a result of hazardous substance releases by the Settling Defendant; to resolve the Settling Defendant's liability for Natural Resource Damages as provided herein; and to avoid further transaction costs and protracted litigation.

VI. OBLIGATIONS OF THE SETTLING DEFENDANT

5. Initial Payment.

a. Initial Payment by the Settling Defendant. Within 20 working days of the date on which this Consent Decree is lodged with the Court, the Settling Defendant shall pay \$6,200,000 into the interest-bearing Court Registry Account of the United States District Court for the Eastern District of Wisconsin. Payment shall be made to the Clerk of the Court by a check made payable to "Clerk, United States District Court," referencing the case number assigned to this action and Fort James Operating Company's name. The Settling Defendant shall send notice that payment has been made in accordance with Section XIII (Notices and Submissions).

b. Disbursements from the Court Registry Account. After entry of this Consent Decree, the funds deposited into the Court Registry Account under this Consent Decree (and all accrued interest) shall be disbursed pursuant to a separate Withdrawal Order of the Court, which shall provide for: (i) payment of \$50,000 to the EPA Hazardous Substance

Superfund, to be applied toward the Covered Response Costs incurred by EPA in overseeing the work performed under 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-C-596; (ii) payment of \$1,500,000 to the NRDAR Fund, to be applied toward natural resource damage assessment costs incurred by DOI; (iii) payment of \$50,000 to the State, to be applied toward natural resource damage assessment costs incurred by the State; and (iv) payment of \$4,600,000 (plus all accrued interest) to a Site-specific sub-account within the NRDAR Fund, to be managed by DOI for the joint benefit and use of the Trustees to pay for the natural resource damage restoration projects described in Subparagraph 8.c and Sections II and III of Appendix A of this Consent Decree, and any other natural resource damage restoration projects jointly selected by the Trustees. In the event the Plaintiffs withdraw or withhold consent to this Consent Decree before entry, or the Court declines to enter the Consent Decree, the funds deposited into the Court Registry Account (and all accrued interest) shall be returned to the Settling Defendant pursuant to a separate Withdrawal Order of the Court.

6. Subsequent Payment. In accordance with the schedule specified by Subparagraph 8.b.(4) of this Consent Decree, the Settling Defendant shall pay the Project Budget Balance into a Site-specific sub-account within the NRDAR Fund, to be managed by DOI for the joint benefit and use of the Trustees to pay for the completion of the natural resource damage restoration projects described in Subparagraph 8.b and Section IV of Appendix A of this Consent Decree, or any other natural resource damage restoration projects jointly selected by the Trustees. The payment to the NRDAR Fund under this Paragraph shall be by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice account in accordance with current EFT procedures, referencing the Civil Action Number assigned to this case and DOJ Case Number

90-11-2-1045. Payment shall be made in accordance with instructions provided to the Settling Defendant by the Financial Litigation unit of the U.S. Attorney's Office for the Eastern District of Wisconsin. Any payment received by the Department of Justice after 4:00 p.m. Eastern Time shall be credited on the next business day. The Settling Defendant shall send notice that payment has been made in accordance with Section XIII of this Consent Decree (Notices and Submissions) and to:

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

7. Late Payments.

a. Interest. In the event that any payment by the Settling Defendant under Paragraphs 5 or 6 is not received when due, Interest shall accrue on the unpaid balance through the date of payment.

b. Stipulated Penalties. In addition to the Interest required to be paid under the preceding Subparagraph, if any amounts to be paid under Paragraphs 5 or 6 are not paid by the required date, the Settling Defendant shall pay a stipulated penalty of \$1000 per violation per day that such payment is late.

8. Natural Resource Damage Restoration Projects.

a. Conveyance of Certain Wetland and Upland Properties. Within 60 days after entry of this Consent Decree, or such longer time as the Parties may agree in writing, the Settling Defendant shall convey, or cause to be conveyed, to the State (or to another public or non-profit entity jointly designated in writing by the Trustees) the real property described in

Section I of Appendix A to this Consent Decree, for the purposes described therein. The State agrees promptly to take title pursuant to Wis. Stat. § 23.09(2)(o) or other pertinent state law (or will assist any public or nonprofit entity jointly designated in writing by the Trustees to take title) to the real property described in Section I of Appendix A to this Consent Decree, for the purposes described therein.

b. Restoration Projects to be Implemented by the Settling Defendant.

(1) Project Implementation. The Settling Defendant shall implement the restoration projects described in Section IV of Appendix A to this Consent Decree (or substitute restoration projects jointly approved by the Trustees) subject to the funding requirements and limitations specified by Subparagraph 8.b.(4). All such projects shall be designed to restore, replace, or protect natural resources at the Site, or natural resources equivalent to the resources that have been injured at the Site. More specifically, the projects described in Section IV of Appendix A to this Consent Decree are designed to improve park facilities and also provide the additional benefit of supporting the restoration and protection of natural resources by promoting ecologically sensitive, low-impact human interaction with natural resources. To implement a restoration project under this Subparagraph 8.b, the Settling Defendant shall, at its option, either: (i) perform the project; (ii) contract for performance of the project; or (iii) make progress payments to the sponsoring local government to fund the sponsoring local government's performance of the project. For any project to be funded by the Settling Defendant, but performed by a sponsoring local government: (i) the Settling Defendant shall serve as the principal point of contact between the sponsoring local government and the Trustees and shall monitor the sponsoring local government's performance of the

project as necessary to comply with Settling Defendant's budgeting and reporting requirements under this Subparagraph 8.b; and (ii) the Settling Defendant shall not be responsible for the design, construction, operation, or maintenance of the project.

(2) Project Implementation Plan. Within ninety (90) days after the Effective Date of this Consent Decree, or such longer time as the Parties may agree in writing, the Settling Defendant shall submit to the Trustees a proposed Project Implementation Plan that shall contain a proposed plan and preliminary schedule for implementing specific restoration projects to be performed under this Subparagraph 8.b. The Project Implementation Plan shall also propose a schedule for submission of at least five Periodic Progress Reports and a Final Report and Reconciliation during the two years following the Effective Date of this Consent Decree. Upon approval of the Project Implementation Plan by the Trustees, the Settling Defendant shall commence project implementation in accordance with the approved Plan. Subject to Subparagraph 8.b.(4), and with the Trustees' written approval, the Project Implementation Plan may be modified, including being modified to substitute alternate natural resource damage restoration projects acceptable to the Trustees. The Trustees will engage in a public review process before implementing substitute restoration projects.

(3) Periodic Progress Reports. The Settling Defendant shall submit to the Trustees Periodic Progress Reports in accordance with the schedule established by the approved Project Implementation Plan. Each Periodic Progress Report shall: (i) describe the actions that have been taken during the previous period to implement projects under this Subparagraph 8.b; (ii) describe the proposed plan for project implementation activities during the next period; and (iii) include a proposed budget for

the next period detailing the expected project implementation expenditures (for projects to be performed by the Settling Defendant or under a contract with the Settling Defendant) and the expected progress payments to be made by the Settling Defendant (for projects to be performed by a sponsoring local government). The Settling Defendant shall continue project implementation in accordance with the proposed plan and proposed budget for the next period, unless the Trustees notify the Settling Defendant within ten working days after receipt that they disapprove the plan or budget contained in the Periodic Progress Report.

(4) Final Report and Reconciliation. The Settling Defendant shall use due diligence to promote completion of all projects to be performed under this Subparagraph 8.b within two years after the Effective Date of this Consent Decree. The estimated cost to complete those projects is \$3,900,000 (the “Fort James Project Budget”), and the Settling Defendant shall not be obliged to expend more than \$3,900,000 in implementing restoration projects under this Subparagraph 8.b. Within ninety (90) days after the second anniversary of the Effective Date of this Consent Decree, or at such other time as the Parties may specify by written agreement, the Settling Defendant shall submit to the Trustees a proposed Final Report and Reconciliation that shall summarize all actions taken to implement this Subparagraph 8.b, including: (i) describing all completed projects; (ii) describing the status of any uncompleted projects; (iii) detailing all authorized expenditures and payments by the Settling Defendant for completed and uncompleted projects; and (iv) reporting the total unexpended portion of the Fort James Project Budget (the “Project Budget Balance”) to the Trustees (calculated by subtracting all authorized expenditures and payments by the

Settling Defendant under this Subparagraph 8.b from the \$3,900,000 Fort James Project Budget). Within fifteen (15) working days after the Trustees' approval of the Final Report and Reconciliation, the Settling Defendant shall pay the Project Budget Balance into a Site-specific sub-account within the NRDAR Fund, in accordance with Paragraph 6 (Subsequent Payment).

c. Additional Restoration Projects. The \$4,600,000 to be paid into the NRDAR Fund in accordance with Subparagraph 5.b.(iv) of this Consent Decree (plus interest accrued in the Court Registry Account under Paragraph 5) shall be used jointly by the Trustees to fund additional restoration projects as described in Sections II and III of Appendix A to this Consent Decree. As described in Sections II and III of Appendix A, the Trustees intend to use such funds: (i) to establish a Trustee-managed property acquisition fund; and (ii) to pay for certain water quality and habitat improvement projects selected by the Trustees and to establish a Trustee-managed water quality improvement fund. All such funds shall be used by unanimous agreement of the Trustees to conduct or finance restoration projects designed to restore, replace, or protect natural resources at the Site, or natural resources equivalent to the resources that have been injured at the Site, and to defray administrative costs and expenses associated with the selection and performance of restoration projects. Any use by the Trustees of such funds for purposes not specified in this Consent Decree will not affect in any manner the rights and obligations of the Settling Defendant under this Consent Decree.

d. The State will assume responsibility for long-term operation, maintenance, and monitoring of any projects listed in Appendix A that require operation and maintenance. (The State may transfer such responsibility to another public or nonprofit entity by binding written agreement.)

VII. PROJECT COORDINATORS

9. Within 30 days after the entry of this Consent Decree, the Settling Defendant and the Trustees will notify each other, in writing, of the name, address, and telephone number of their respective designated project coordinator(s). If a project coordinator initially designated is changed, the identity of the successor will be provided at least 5 working days before the change occurs, unless impracticable. In no event shall notification be given later than the actual day the change is made unless impracticable. The Trustees' and the Settling Defendant's project coordinator(s) shall have sufficient expertise to adequately oversee all aspects of the work that they are to coordinate.

VIII. INDEMNIFICATION

10. The Plaintiffs and the Tribes do not assume any liability by entering into this agreement. The Settling Defendant shall indemnify, save and hold harmless the Plaintiffs and the Tribes and their officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of the Settling Defendant, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Consent Decree. Further, the Settling Defendant agrees to pay the Plaintiffs and the Tribes all costs incurred including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the Plaintiffs or the Tribes based on negligent or other wrongful acts or omissions of the Settling Defendant, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Consent Decree. Neither the Settling Defendant nor any of its contractors shall be considered as

agents of the Plaintiffs or the Tribes. This indemnification obligation does not include any claim, cause of action, or cost arising from, or on account of, a negligent or wrongful act or omission of the Plaintiffs or the Tribes or any of their officials, agents, employees, contractors, subcontractors, or representatives.

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

11. Covenants by the United States. Except as specifically provided by Paragraph 16 (General Reservations by the United States and the Tribes) and Paragraph 17 (Special Reservations by the United States and the Tribes Regarding Natural Resource Damages), the United States covenants not to sue the Settling Defendant for Covered Response Costs or Natural Resource Damages pursuant to CERCLA Section 107, 42 U.S.C. § 9607, or Section 311(f) of the Clean Water Act, 33 U.S.C. § 1321(f). This covenant not to sue shall take effect upon receipt of the Settling Defendant's payments pursuant to Subparagraph 5.b of this Consent Decree. This covenant not to sue is conditioned upon the satisfactory performance by the Settling Defendant of its obligations under this Consent Decree.

12. Covenants by the State. Except as specifically provided by Paragraph 18 (Reservations by the State), the State covenants not to sue or to take administrative action against the Settling Defendant for Covered Response Costs or Natural Resource Damages pursuant to CERCLA Section 107, 42 U.S.C. § 9607, Section 311(f) of the Clean Water Act, 33 U.S.C. § 1321(f), or Wisconsin statutory or common law. This covenant not to sue shall take effect upon receipt of the Settling Defendant's payments pursuant to Subparagraph 5.b of this Consent Decree. This covenant not to sue is conditioned upon the satisfactory performance by the Settling Defendant of its obligations under this Consent Decree.

13. Covenants by the Tribes. Except as specifically provided by Paragraph 16 (General Reservation of Rights by the United States and the Tribes) and Paragraph 17 (Special Reservation of Rights by the United States and the Tribes Regarding Natural Resource Damages), the Tribes covenant not to sue or to take administrative action against the Settling Defendant for Natural Resource Damages pursuant to CERCLA Section 107, 42 U.S.C. § 9607, Section 311(f) of the Clean Water Act, 33 U.S.C. § 1321(f), Wisconsin statutory and common law, or tribal law. This covenant not to sue shall take effect upon receipt of the Settling Defendant's payments pursuant to Subparagraph 5.b of this Consent Decree.

14. Other Covered Persons. The covenants not to sue in Paragraph 11 (Covenants by the United States), Paragraph 12 (Covenants by the State) and Paragraph 13 (Covenants by the Tribes) extend only to the Settling Defendant and do not extend to any other person; provided, however, that those covenants not to sue (and the reservations thereto) shall also apply to: (i) Fort James Corporation; (ii) the successors and assigns of the Settling Defendant 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 Settling Defendant or Fort James Corporation; and (iii) the officers, directors, and employees of the Settling Defendant 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 Settling Defendant or Fort James Corporation, or as a result of conduct within the scope of such person's employment or authority.

15. Nothing in this Consent Decree shall affect any covenants not to sue provided to Settling Defendant or Fort James Corporation by the July 22, 1999 Agreement Between the State of Wisconsin and Fort James Corporation or 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-C-596.

X. RESERVATION OF RIGHTS BY PLAINTIFFS AND THE TRIBES

16. General Reservations by the United States and the Tribes. The United States and the Tribes reserve, and this Consent Decree is without prejudice to, all rights against the Settling Defendant and Fort James Corporation with respect to all matters not expressly included within Paragraph 11 (Covenants by the United States) and Paragraph 13 (Covenants by the Tribes). Notwithstanding any other provisions of this Consent Decree, the United States and the Tribes reserve all rights against the Settling Defendant and Fort James Corporation with respect to:

- a. claims based on a failure by the Settling Defendant to meet a requirement of this Consent Decree;
- b. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;
- c. liability for costs incurred or to be incurred by the United States or the Tribes that are not within the definition of Covered Response Costs or Natural Resource Damages;
- d. liability for damages for injury to, destruction of, or loss of natural resources resulting from releases or threatened releases of hazardous substances outside of the Site;
- e. liability arising from any disposal of hazardous substances at the Site by the Settling Defendant or Fort James Corporation after the lodging of this Consent Decree; and
- f. criminal liability.

17. Special Reservations by the United States and the Tribes Regarding Natural Resource Damages. Notwithstanding any other provision of this Consent Decree, the United

States and the Tribes reserve the right to institute proceedings against the Settling Defendant or Fort James Corporation in this action or in a new action seeking recovery of Natural Resource Damages, based on: (i) conditions with respect to the Site, unknown to the United States and the Tribes as of the date of lodging of this Consent Decree, that result in releases of hazardous substances that contribute to injury to, destruction of, or loss of Natural Resources (“Unknown Conditions”), or (ii) information received by the United States and the Tribes after the date of lodging of this Consent Decree which indicates that there is injury to, destruction of, or loss of Natural Resources of a type that was unknown to the United States and the Tribes as of the date of lodging of this Consent Decree (“New Information”). The following shall not be considered Unknown Conditions or New Information for the purpose of this Paragraph: (i) an increase solely in the United States’ or the Tribes’ assessment of the magnitude of a known injury to, destruction of, or loss of Natural Resources at the Site; or (ii) injury to, destruction of, or loss of Natural Resources at the Site arising from the re-exposure, resuspension, or migration of hazardous substances known to be present in the sediments of the Site. For the purpose of this Paragraph, the information and conditions known to the United States and the Tribes shall include any information or conditions listed or identified in records relating to the Site that were in the possession or under the control of DOI, Commerce, or the Tribes as of the date of lodging this Consent Decree.

18. Reservations by the State. Notwithstanding any other provision of this Consent Decree, the State reserves, and this Consent Decree is without prejudice to, all rights against the Settling Defendant and Fort James Corporation with respect to the following:

a. claims relating to matters other than those specified in Paragraph 12 (Covenants by the State);

- b. liability arising from a violation by the Settling Defendant of a requirement of this Consent Decree;
- c. liability for costs incurred or to be incurred by the State that are not within the definition of Covered Response Costs or Natural Resource Damages.
- d. liability for Natural Resource Damages arising from a release of a hazardous substance from a Fort James facility to the Lower Fox River before or after the entry of this Consent Decree, if the following conditions are met:
 - i. the released substance had not been listed or identified in any records relating to the Lower Fox River or a Fort James facility that were in the possession of the State before entry of this Consent Decree;
 - ii. the liability is solely to the extent that the previously unknown release itself has caused injury to, destruction of, or loss of natural resources and resulted in damages; and
 - iii. for any release before the entry of the Consent Decree, the injury to, destruction of, or loss of natural resources resulting from the release was of a type unknown to the State as of the date of entry of this Consent Decree;
- e. liability for criminal acts.

XI. COVENANTS BY THE SETTLING DEFENDANT AND FORT JAMES CORPORATION

19. Covenants by the Settling Defendant and Fort James Corporation. The Settling Defendant and Fort James Corporation covenant not to sue and agree not to assert any claims or causes of action against the United States, the State, or the Tribes, or their contractors or

employees, with respect to Covered Response Costs, Natural Resource Damages, or this Consent Decree, including but not limited to:

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

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

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

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

21. Waiver of Certain Claims Against Other Persons. The Settling Defendant and Fort James Corporation agree not to assert any claims and to waive all claims or causes of action that they may have against all other persons for all matters relating to Natural Resource Damages, including for contribution; provided, however, that the Settling Defendant and Fort James Corporation reserve the right to assert and pursue all claims, causes of action, and defenses relating to Natural Resource Damages against any person in the event such person first asserts, and for so long as such person pursues, any claim or cause of action against the Settling Defendant relating to Natural Resource Damages. Nothing in this Paragraph shall operate to

waive or release any claim or action by the Settling Defendant or Fort James Corporation under any contract of insurance. Nothing in this Paragraph shall operate to waive or release any claim or action by the Settling Defendant or Fort James Corporation for costs it incurred or will incur that are not within the definition of Natural Resource Damages.

XII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

22. Except as provided in Paragraph 14 (Other Covered Persons) and Paragraph 21 (Waiver of Certain Claims Against Other Persons), nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as provided in Paragraph 14 (Other Covered Persons) and Paragraph 21 (Waiver of Certain Claims Against Other Persons), each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

23. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Defendant is entitled, as of the effective date of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), or other applicable law, for “matters addressed” in this Consent Decree. The “matters addressed” in this Consent Decree are Covered Response Costs and Natural Resource Damages. The following persons are similarly entitled, as of the effective date of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), or other applicable law, for “matters addressed” in this Consent Decree: (i) Fort James Corporation; (ii) the successors and assigns of the Settling Defendant 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 Settling Defendant or Fort James Corporation; and (iii) the officers, directors, and employees of the Settling Defendant 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 Settling Defendant or Fort James Corporation, or as a result of conduct within the scope of such person's employment or authority.

24. The Settling Defendant also agrees that, with respect to any suit or claim for contribution brought against the Settling Defendant or Fort James Corporation for matters related to this Consent Decree, the Settling Defendant will notify the persons identified in Section XIII (Notices and Submissions) in writing within 10 days of service of the complaint or claim upon it. In addition, the Settling Defendant shall notify the persons identified in Section XIII (Notices and Submissions) within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

25. In any subsequent administrative or judicial proceeding initiated by the United States, the State, or the Tribes for injunctive relief, recovery of response costs or Natural Resource Damages, or other relief relating to the Site, the Settling Defendant and Fort James Corporation shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States, the State, or the Tribes in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants Not To Sue by the United States, the State, or the Tribes set forth in Section IX.

XIII. NOTICES AND SUBMISSIONS

26. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the Plaintiffs, the Tribes, and the Settling Defendant, respectively.

As to the United States:

As to DOJ:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice (DJ # 90-11-2-1045Z)

P.O. Box 7611 1425 New York Avenue, NW – 13th Floor
Washington, D.C. 20044-7611 Washington, DC 20005

As to EPA:

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

As to DOI:

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

As to the State:

As to WDOJ:

Jerry L. Hancock
Assistant Attorney General
Wisconsin Department of Justice

P.O. Box 7857
Madison, WI 53707-7857

123 W. Washington Avenue
Madison, WI 53702

As to WDNR:

Greg Hill
State Project Coordinator
Wisconsin Department of Natural Resources

P.O. Box 7921
Madison, WI 53707-7921

101 S. Webster St.
Madison, WI 53703

As to the Tribes:

As to the Oneida Tribe of Indians of Wisconsin:

Chairman
Oneida Tribe of Indians of Wisconsin
P.O. Box 365
Oneida, WI 54155

As to the Menominee Indian Tribe of Wisconsin:

Chairman
Menominee Tribal Offices
P.O. Box 910
Keshena, WI 54135

As to the Settling Defendant and Fort James Corporation:

J. Michael Davis
Principal Counsel - Environmental
Georgia-Pacific Corporation
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

27. Certification of Plans, Reports, and Submissions. The Project Implementation Plan, Periodic Progress Reports, and Final Report and Reconciliation submitted by the Settling Defendant under Subparagraph 8.b of this Consent Decree shall be certified by a responsible corporate official of the Settling Defendant or Fort James Corporation and accompanied by the following certification:

I certify that the information contained in or accompanying this submission is true, accurate and complete. This certification is based on my personal preparation, review, or analysis of the submission, and/or supervision of persons who, acting on my direct instructions, made the verification that the submitted information is true, accurate and complete.

28. Review of Submissions. Following receipt of any Project Implementation Plan, Periodic Progress Report, or Final Report and Reconciliation submitted by the Settling Defendant under Subparagraph 8.b of this Consent Decree, the Trustees may do one of the following, in writing: (i) accept all of or any portion of the submission; (ii) disapprove all of or any portion of the submission, notifying the Settling Defendant of deficiencies in the submission and granting the Settling Defendant additional time within which to correct the deficiencies; or (iii) reject all of or any portion of the submission.

29. Stipulated Penalties. The Settling Defendant shall be liable for a stipulated penalty of \$500 per violation per day for any delayed compliance or noncompliance with a requirement to submit a Project Implementation Plan, Periodic Progress Report, or Final Report and Reconciliation under Subparagraph 8.b of this Consent Decree. Any stipulated penalty

payable under this Paragraph shall be paid to the United States and to the State, in accordance with payment instructions to be provided to the Settling Defendant by the United States and the State. One-half of any stipulated penalty shall be payable to the United States and one-half shall be payable to the State.

XIV. APPENDICES

30. The following appendices are attached to and incorporated into this Consent Decree:

“Appendix A” is the description of natural resource restoration projects to be performed under this Consent Decree.

“Appendix B” is the EPA Itemized Cost Summary Extract.

“Appendix C” is the map delineating Subunits 12-19, 23-29, 34-41, and 46-51 of Sediment Management Unit 56/57.

XV. EFFECTIVE DATE AND RETENTION OF JURISDICTION

31. This Consent Decree shall take effect upon entry by the Court; provided, however, that the Settling Defendant shall be bound upon the lodging of this Consent Decree to comply with obligations of the Settling Defendant specified in this Consent Decree as accruing upon lodging. The Parties recognize that certain obligations under this Consent Decree may be performed before the Consent Decree is entered by the Court.

32. The Court shall retain jurisdiction to modify and enforce the terms and conditions of this Consent Decree and to resolve disputes arising hereunder as may be necessary or appropriate for the construction or execution of this Consent Decree.

XVI. CONSENT DECREE MODIFICATIONS

33. Any material modification of this Consent Decree shall be made by agreement of the Parties to this Consent Decree and in writing, and shall not take effect unless approved by the Court. Any non-material modification of this Consent Decree shall be made by agreement of the Parties to this Consent Decree and in writing, and shall not take effect until filed with the Court. Nothing in this Consent Decree shall be deemed to alter the Court's power to enforce, supervise, or approve modifications to this Consent Decree.

34. The provisions of this Consent Decree are not severable. The Parties' consent hereto is conditioned upon the entry of the Consent Decree in its entirety without modification, addition, or deletion except as agreed to by the Parties.

35. Unanticipated or increased costs or expenses associated with the implementation of actions called for by this Consent Decree and economic hardship or changed financial circumstances shall not serve as a basis for modifications of this Consent Decree.

XVII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

36. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The Plaintiffs and the Tribes reserve the right to withdraw or withhold their consent if comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. The Settling Defendant consents to the entry of this Consent Decree without further notice. If for any reason the Court should decline to approve this Consent Decree in the form presented, or if approval and entry is subsequently vacated on appeal of such approval and entry, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XVIII. SIGNATORIES/SERVICE

37. The undersigned representatives of the Settling Defendant, the United States, the State, and the Tribes each certify that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document. This Consent Decree may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument.

38. The Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States, the State, and the Tribes have notified the Settling Defendant in writing that they no longer support entry of the Consent Decree.

39. The Settling Defendant shall identify, on the attached signature pages, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of the Settling Defendant with respect to all matters arising under or relating to this Consent Decree. The Settling Defendant hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to service of a summons.

XIX. FINAL JUDGMENT

40. This Consent Decree and its appendices constitute the final, complete, and exclusive understanding among the Parties with respect to the settlement embodied in the Consent Decree. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree.

41. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the Plaintiffs and the Settling Defendant. The Court finds that there is no reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.


SO ORDERED THIS _____ DAY OF _____, _____.

United States District Judge


THE UNDERSIGNED PARTY enters into this Consent Decree in United States and the State of Wisconsin v. Fort James Operating Company:

FOR THE UNITED STATES OF AMERICA

Date: 5 21. 02

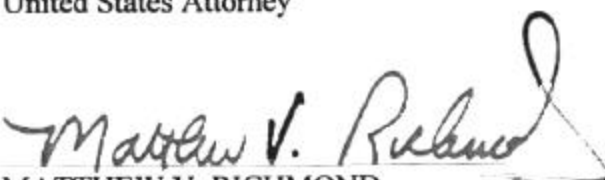

THOMAS L. SANSONETTI
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, DC 20530

Date: 5/21/2002


DANIEL C. BECKHARD, Senior Counsel
RANDALL M. STONE, Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611

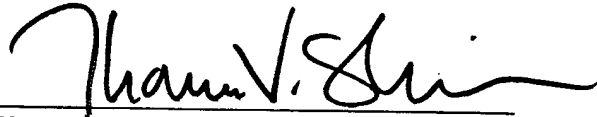
STEVEN M. BISKUPIC
United States Attorney

Date: 6/12/02


MATTHEW V. RICHMOND
Assistant United States Attorney
Eastern District of Wisconsin
U.S. Courthouse and Federal Building - Room 530
517 E. Wisconsin Avenue
Milwaukee, WI 53202

THE UNDERSIGNED PARTY enters into this Consent Decree in United States and the State of Wisconsin v. Fort James Operating Company:

Date: 5.30.02



THOMAS V. SKINNER
Regional Administrator
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, IL 60604


Date: April 30, 2002



ROGERS S. GRIMES
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, IL 60604

THE UNDERSIGNED PARTY enters into this Consent Decree in United States and the State of Wisconsin v. Fort James Operating Company:

Date: 6-7-02



John Carlucci
Attorney, U.S. Department of the Interior
Division of Parks & Wildlife
1849 C Street, N.W.
Washington, DC 20240

Date: 5-29-02



WILLIAM F. HARTWIG
Authorized Official, U.S. Department of the Interior
Regional Director, FWS Region 3
1 Federal Drive
Twin Cities, MN 55111

THE UNDERSIGNED PARTY enters into this Consent Decree in United States and the State of Wisconsin v. Fort James Operating Company:

FOR THE STATE OF WISCONSIN

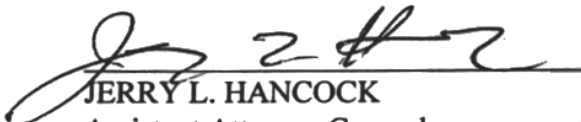
Date: 6/4/02



DARRELL BAZZELL

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

Date: 6/12/02



JERRY L. HANCOCK

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

THE UNDERSIGNED PARTY enters into this Consent Decree in United States and the State of Wisconsin v. Fort James Operating Company:

FOR THE
MENOMINEE INDIAN TRIBE OF WISCONSIN

Date: 4/29/02



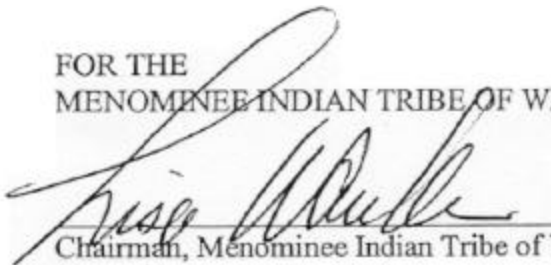
GERALD L. DANFORTH
Chairman, Oneida Tribe of Indians of Wisconsin
P.O. Box 365
Oneida, WI 54155

THE UNDERSIGNED PARTY enters into this Consent Decree in United States and the State of Wisconsin v. Fort James Operating Company:

Date:

5-16-02

FOR THE
MENOMINEE INDIAN TRIBE OF WISCONSIN



Chairman, Menominee Indian Tribe of Wisconsin

Menominee Tribal Offices

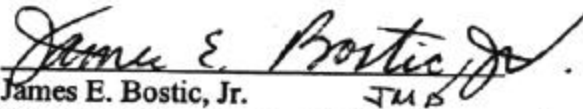
P.O. Box 910

Keshena, WI 54135

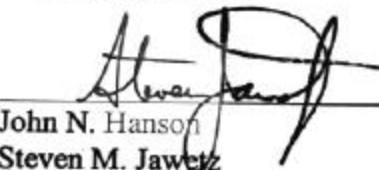
THE UNDERSIGNED PARTY enters into this Consent Decree in United States and the State of Wisconsin v. Fort James Operating Company:

FOR FORT JAMES OPERATING COMPANY

Date: 4/15/02


James E. Bostic, Jr. J.E.B.
Executive Vice President of Environmental,
Government Affairs, and Communications
Georgia-Pacific Corporation
133 Peachtree Street, N.E.
Atlanta, GA 30303

Date: 4/14/02


John N. Hanson
Steven M. Jawetz
Beveridge & Diamond, P.C.
1350 I Street, N.W., Suite 700
Washington, DC 20005
(202) 789-6000

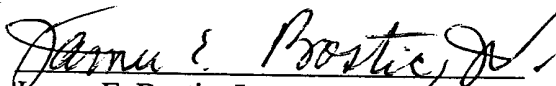
Agent Authorized to Accept Service on Behalf of Above-Signed Party:

CT Corporation
1201 Peachtree Street, N.E.
Atlanta, GA 30361

THE UNDERSIGNED PERSON hereby assents to the covenants set forth in Section XI (Covenants by the Settling Defendant and Fort James Corporation) of this Consent Decree in United States and the State of Wisconsin v. Fort James Operating Company:

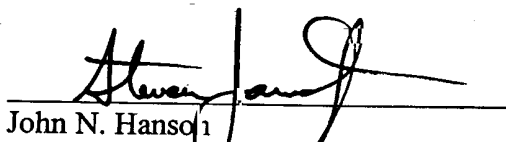
FOR FORT JAMES CORPORATION

Date: 4/15/02


James E. Bostic, Jr. JMO

Executive Vice President of Environmental,
Government Affairs, and Communications
Georgia-Pacific Corporation
133 Peachtree Street, N.E.
Atlanta, GA 30303

Date: 4/14/02


John N. Hanso
Steven M. Jawetz

Beveridge & Diamond, P.C.
1350 I Street, N.W., Suite 700
Washington, DC 20005
(202) 789-6000

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

CT Corporation
1201 Peachtree Street, N.E.
Atlanta, GA 30361

APPENDIX A TO CONSENT DECREE:

Natural Resource Restoration Projects to be Performed under the Consent Decree

I. LAND TO BE ACQUIRED FOR NATURAL RESOURCE PRESERVATION AND RESTORATION

Consistent with Subparagraph 8.a of the Consent Decree, Settling Defendant will convey, or cause to be conveyed, to the State or other appropriate party in accordance with applicable law, the following property:

A. Approximately 900 acres along about 7 miles of the Peshtigo River just north of the Peshtigo Harbor Wildlife Area. This land is generally located on the southwestern shore of the Peshtigo River and extends inland from the river. The property to be conveyed will be used and managed in perpetuity for the purposes of protecting wetland and associated upland habitat for fish and wildlife, consistent with the purposes of CERCLA and applicable state law. This property provides substantial fish and wildlife habitat, and its acquisition and preservation will also protect against encroachment along the ecologically critical riparian shoreline and enhance the protection of natural resources associated with the nearby State-managed wildlife area. Thus, acquisition and preservation of this strategically located property will ensure protection of more than nine miles of frontage along the Peshtigo River -- the last natural river emptying into the western shore of Green Bay -- by a single public resource manager.

The property itself is part of the foraging range of bald eagles from at least three known eagle nesting sites along the Peshtigo River. The forested shoreline and river provides good habitat for numerous species that may have been impacted by the PCBs in the assessment area, including bald eagle, osprey, red-shouldered hawk, mink, beaver, northern pike, suckers, and possibly sturgeon. Portions of the property can be further enhanced to encourage growth of

forested buffer areas and to restore natural hydrological conditions, which will help create and improve wetland habitat for fish and wildlife. Preservation of this riparian corridor will also benefit downstream areas such as Green Bay and its aquatic ecosystem (including the mouth of the Peshtigo River), through erosion control, nutrient recycling, and control of nonpoint source runoff. The mouth of the Peshtigo River provides significant foraging habitat for numerous species of concern, including bald eagles, ospreys, and common, Forster's and Caspian terns.

B. Approximately 75 acres along the shore of Green Bay, about 4 miles west of the mouth of the Peshtigo River. This property borders on the Peshtigo Harbor Wildlife Area. Most of this property is ecologically critical coastal wetland, influenced by the water levels of Green Bay. At current water levels, the meadow areas of the property provide habitat for a number of bird species, including mallard, blue-winged teal, Canada goose, and the endangered yellow rail. The property also contains borrow ditches used for spawning by fish such as northern pike. At high water levels, a portion of the acreage floods, and also becomes available for northern pike spawning. Acquisition and preservation of this property will protect wetlands and spawning and breeding habitat for fish and wildlife along the shore of Green Bay, and will extend public ownership along the Green Bay shoreline in the vicinity of the mouth of the Peshtigo River, a relatively populated area where coastal real estate is subject to significant development pressure.

C. Approximately 50 acres about 0.6 mile inland from Green Bay in the vicinity of Little Tail Point. The southern portion of this property is forested with hardwood species such as oak, ash, and aspen. The property provides nesting cover for species such as mallard ducks and blue-winged teal and foraging habitat for species such as the northern harrier, and its acquisition and preservation will protect the quality forest habitat that it contains. Additionally, a tributary bordering the property to the north and west provides spawning habitat for fish species such as

northern pike and sucker. Wetland restoration of a portion of the upland farm fields on the property will also provide a northern pike spawning marsh. Finally, several small ponds currently present on the property will be improved to provide a complex of quality emergent wetland habitats. The area where this property is located is under heavy development pressure.

D. Approximately 38 acres about 0.6 mile west of Green Bay just south of the Suamico River. This property provides habitat for grass-nesting waterfowl, as well as habitat for sedge wren and black-crowned night heron. Acquisition and preservation of this land, in combination with an adjacent wetland parcel that is already owned and managed by WDNR, will protect ecologically valuable habitat and secure a buffer against encroachment and development. Some upland habitat is present on the property. The property is in an area subject to significant development pressure.

II. ESTABLISHMENT OF PROPERTY ACQUISITION FUND

Consistent with Subparagraph 8.c of the Consent Decree, Settling Defendant will provide \$1,300,000 to the Trustees to be placed in a fund for the acquisition of real property or conservation easements by the Trustees in the Green Bay watershed. The properties or conservation easements to be acquired using these funds are anticipated to provide valuable fish and wildlife habitat preservation and restoration opportunities similar to the property acquisitions by Settling Defendant described above.

III. HABITAT IMPROVEMENT PROJECTS AND ESTABLISHMENT OF HABITAT AND WATER QUALITY ENHANCEMENT FUND

Consistent with Paragraph 8.c. of the Consent Decree, Settling Defendant will provide the following:

A. Cat Island Chain – Island 3 Restoration. Settling Defendant will provide \$800,000 for use in the design and/or construction of the westernmost island (Island 3) of the three islands proposed to be constructed by the U.S. Army Corps of Engineers in the location of the former Cat Island Chain in the Bay of Green Bay. The Cat Island Chain and the associated shallow water habitat protected by the chain were destroyed by erosion and storms during a period of record high lake levels in the mid-1970s and 1980s. The protected shallow waters and extensive beds of submergent and emergent vegetation in the wave shadow provided a major stopover for migrating North American waterfowl and habitat for diverse populations of native fishes, waterbirds, furbearers, and invertebrates. As proposed by the U.S. Army Corps of Engineers, Island 3 would be about 30 acres in size and would provide significant benefits. A portion of the 30-acre island could be managed as high quality breeding habitat for Forster's terns, common terns, and other colonial waterbirds. The island will create a 610-acre wave shadow near Peats Lake that will allow for the reestablishment of aquatic vegetation; will re-establish a high quality shallow water littoral foraging habitat for waterbirds and migratory and resident waterfowl; and will create high quality spawning/nursery/rearing habitat for fish. The project will include a 2.5-acre protected lagoon on the back side of the island and 9 additional acres of shallow water littoral habitat around the perimeter of the island. Thus, construction of the 30-acre island will also restore more than 620 additional acres of high quality foraging habitat for birds and spawning/nursery/rearing habitat for fish.

B. Spotted Muskellunge Population Enhancement Program. Settling Defendant will provide \$300,000 for use by the State to expand its existing program for the reintroduction and establishment of a native Spotted Muskellunge population, including for: (1) expanding the existing Wild Rose Fish Hatchery to increase its annual production of fall fingerling and fall yearling spotted muskellunge from a level of approximately 4,000 fish to a level of approximately 10,000 fish; and (2) covering the increased feed costs at the hatchery associated with this expansion for a period of 15 years. This program expansion is anticipated to provide substantial benefits to the Green Bay aquatic ecosystem by significantly augmenting the current stock of top predators.

C. Northern Pike Habitat Preservation and Restoration. Settling Defendant will provide \$200,000 for use by the Trustees in tributaries to the Bay of Green Bay (e.g., Suamico, Little Suamico, and Pensaukee Rivers) for the purpose of preserving and restoring northern pike spawning and rearing habitat along the western shore of the Bay of Green Bay. Projects will be consistent with a Restoration Plan to be developed by the Trustees and may include stream bank corridor easements and other land use practice improvements to reduce nonpoint source runoff, wetland restoration, and in-stream improvements. The projects are expected to preserve and enhance northern pike production in existing habitats, and to improve water quality and clarity in the affected streams and the Bay.

D. Yellow Perch Restoration Investigation. Settling Defendant will provide \$200,000 for use by the Trustees to assist the State of Wisconsin in investigating the presently unknown causes of the yellow perch decline in the Bay of Green Bay. Recent emergency catch limits have been imposed on this popular commercial and recreational fishery. Research into the

causes of the yellow perch decline will help provide needed information for effective fishery management.

E. Oneida Tribe Lake Construction Investigation. Settling Defendant will provide \$300,000 to the Trustees for use by the Oneida Tribe in Phase I of a lake and wetland construction project on Oneida Tribal land. The project would involve creation of a 35-40 acre lake with associated wetlands, and would be designed to support a sustainable population of forage fish, pan fish, and game fish. Constructed wetlands at the lake's inlet, outlet, and shallows will support native benthic communities and native plants, which may include wild rice beds. The shoreland and upland habitat surrounding the lake will be enhanced and preserved as undeveloped area for tribal cultural activities. Once completed, the project as a whole will create significant additional fish and wildlife habitat and restore some of the nature-based recreational and cultural opportunities that have been impaired as a result of PCB contamination. Phase I of the project will include site selection, assessment, and design work for the project. The Trustees intend that any money remaining from this initial amount will be used for Phase II of the project, or for other projects which the Trustees determine will provide comparable natural resource benefits.

F. Habitat and Water Quality Enhancement Fund. Settling Defendant will provide \$1,500,000 to the Trustees to establish a habitat and water quality enhancement fund, to be used to preserve and restore fish spawning and rearing habitat and to improve water quality and clarity in tributaries to the Bay of Green Bay and in the Bay itself. Projects may include stream bank corridor easements and improvements, wetland restoration, in-stream improvements, assistance with improving agricultural practices to reduce nonpoint source runoff, and any similar actions or activities designed to improve habitat or water quality.

IV. NATURAL RESOURCE-RELATED HUMAN USE ENHANCEMENT PROJECTS

Pursuant to Subparagraph 8.b of the Consent Decree, and subject to the funding requirements and limitations specified by Subparagraph 8.b.(4), Settling Defendant shall implement the following natural resource-related human use enhancement projects (or substitute restoration projects jointly approved by the Trustees):

A. Allouez Park (Village of Allouez)

This project will involve acquiring a designated 30-acre parcel for a park in the southeastern portion of the Village of Allouez immediately west of the East River and north of East Lebrun Road and providing site preparation, landscaping, a picnic area, about 870 feet of trail, an access road and parking lot, a boat launch or canoe landing, and a fishing pier. Once developed, this park will provide a recreational gathering place for several communities along the East River (including Allouez, Bellevue, DePere, and Ledgeview). The property has the potential for wetland protection, access for erosion control, reforestation, prairie restoration, hiking, biking, walking trails, picnicking, fishing access, and canoe or boat launching, all in one multi-community based area. The Trustee-approved budget for this project is \$659,000.

B. East River Trail Extension (Village of Allouez)

This project will involve construction of a 1,000 foot long, 12 foot wide paved scenic trail following the floodway boundary along the west side of the East River, as the Allouez portion of the East River Trail Development Project. Uses for the trail system include hiking, biking, jogging, and cross-country skiing. This portion of the trail system is important to the connection of the surrounding communities. The Trustee-approved budget for this project is \$20,000.

C. Fox River Riverwalk (Village of Ashwaubenon)

On land to be acquired by the Village of Ashwaubenon along the west side of the Lower Fox River, this project will involve construction of a 1-mile long, 12 foot wide scenic trail (using concrete, asphalt, and crushed granite) connecting the National Railroad Museum and Ashwaubomay Park, along with benches and picnic tables appropriately located along the Riverwalk to provide views of the river. Expected uses for the Riverwalk include hiking, biking, jogging, and picnicking, and the Village may create additional facilities along the Riverwalk over time, such as a boat dock, fishing pier, and canoe launch. Given the lack of trails on the west side of the Lower Fox River and the popularity of the National Railroad Museum and Ashwaubomay Park, the proposed trail will provide an important service to the local communities. The Trustee-approved budget for this project is \$500,000.

D. Trail Head Facility (Town of Bellevue)

This project will involve improvement of a existing trail head facility at the northern end of the East River Parkway Trail at Westminster Drive in the Town of Bellevue, consisting of some street improvements and a parking lot, a small open shelter, and picnic tables. (Because the existing trail head facility is inadequate, the trail itself is underutilized now.) The improved trail head, which is near the border between Bellevue and Green Bay, will serve both communities. The Trustee-approved budget for this project is \$50,000.

E. East River Trail (Town of Bellevue)

This project will involve acquisition of river frontage strips or easements along the East River, and construction of a 12 foot wide, 3000 foot long paved (asphalt) pedestrian/bike trail on the acquired property between Manderly Way and Hoffman Road. The project would protect scenic river frontage and would provide enhanced opportunities for outdoor recreation and nature

viewing for a growing population in the southwest portion of Bellevue that does not currently have convenient access to the Bellevue trail system. The Trustee-approved budget for this project is \$220,000.

F. L.H. Barkhausen Waterfowl Preserve Facilities (Brown County)

This project will involve constructing a new marsh overlook observation platform and a new 2,156 square foot multipurpose building and hardening 5 miles of trail in the 460-acre L.H. Barkhausen Waterfowl Preserve, located in the Village of Howard on the shores of Green Bay. The public observation platform will overlook the wetlands and the Bay, and will provide unique opportunities for nature watching. The new multipurpose building will have an activity room suitable for nature-related educational exhibits and programs, a small greenhouse, and other areas needed for park management and upkeep. The trail hardening (with crushed stone) to a width of 10 feet will accommodate past requests for bicycle riding on the trails and increased access for visitors with mobility impairments. This project will increase public awareness of resource management, and will allow community organizations and public and educational institutions to participate in hands-on resource and conservation projects benefitting the entire region. The Trustee-approved budget for this project is \$375,000.

G. Fairgrounds Boat Launch Improvements (City of DePere)

This project will involve renovation of the currently unusable boat launch facility located on City-owned property at the Brown County Fairgrounds, and construction of a floating dock, an improved access road, parking, and a 3/4 mile trail. This renovation project will provide safer facilities and new and expanded opportunities for boat fishing, recreational boating, picnic/leisure activities, and general public access to the Lower Fox River. The Trustee-approved budget for this project is \$676,000.

H. East River Trail Extension (City of DePere)

This project will involve construction of a 4,400 foot long, 12 foot wide paved scenic trail following the floodway boundary along the west side of the East River, as the DePere portion of the East River Trail Development Project. Uses for the trail system include hiking, biking, jogging, and cross-country skiing, along with various access points to the East River. The trail will connect several communities along the East River. The goal is eventually to connect the trail to the Fox River Trail System on the east side of the Fox River. The Trustee-approved budget for this project is \$90,000.

I. Leicht Park Facilities (City of Green Bay)

This project will involve construction of a 500 foot long, 8 foot wide paved scenic trail, a boat dock/canoe-kayak launch and/or fishing pier, and some parking at the park facility being planned for the 2.6-acre site on the west bank of the Lower Fox River just north of Main Street in the City of Green Bay. The City plans multiple additional facilities and attractions at this location, with the goal of creating a waterfront location for downtown lunchtime picnicking, community special events, passive recreation, and watercraft-oriented activities. The Trustee-approved budget for this project is \$600,000.

J. Porlier Fishing Pier (City of Green Bay)

This project will involve construction of a barrier-free fishing structure on the shore of the Lower Fox River in the vicinity of Porlier Street. The new facility will provide increased shoreline fishing access to the game fish passing through the waters of the Lower Fox River. The Trustee-approved budget for this project is \$200,000.

K. Bayshore Drive Park (Village of Howard)

This project will involve acquiring two designated parcels on Bayshore Drive, and developing those parcels as a 27-acre park with building removal/relocation, landscaping, improved boat launch access and parking, a picnic shelter, a 500 foot long, 8 foot wide trail, and various other amenities. The project will restore and preserve natural Bay frontage and enhance environmental quality along the Bay. Natural areas will be maintained and wetland areas will be preserved. The park will provide additional opportunities for nature-based, water-oriented activities such as fishing, duck hunting, boating, and picnicking. The Trustee-approved budget for this project is \$510,000.

APPENDIX B TO CONSENT DECREE:

EPA Itemized Cost Summary Extract

**EPA ITEMIZED COST SUMMARY EXTRACT
for the Fox River/Green Bay Site - SMU 56/57 Removal Project**

DIRECT COSTS

Payroll

<u>Name</u>	<u>Fiscal Year</u>	<u>Pay Period</u>	<u>Hours</u>	<u>Amount</u>
Douglas E. Ballotti	2000	15	1.00	57.25
		16	0.50	28.63
		18	1.50	85.87
		27	1.00	55.51
				227.25
Bradley P. Benning	2000	27	0.50	23.15
Briana C. Bill	2000	21	9.90	367.07
		22	18.90	700.77
		23	31.95	1,167.60
				2,235.43
Samuel F. Borries	2000	14	3.00	130.47
		15	36.00	1,565.69
		16	56.00	2,435.52
		17	33.00	1,435.30
		18	18.00	782.85
		19	54.00	2,348.53
		20	42.00	1,826.63
		21	51.00	2,218.07
		22	30.00	1,304.75
		23	57.00	2,479.02
		24	31.00	1,348.24
		25	62.00	2,988.65
		26	52.00	2,261.54
		27	40.00	1,739.66

Samuel F. Borries	2001	1	20.00	869.81
		2	80.00	3,475.81
		3	69.00	2,997.88
		4	17.00	738.61
		5	29.00	1,259.97
		6	21.00	912.41
		7	8.00	347.58
		8	4.00	178.67
		9	3.00	139.51
		10	3.00	139.51
		11	6.00	279.03
		12	14.00	651.06
		14	1.00	50.10
		15	6.00	300.60
20	18.00	837.08		
			38,042.55	
John M. Clark	2000	11	21.50	1,024.53
		12	22.00	1,048.36
		13	20.50	976.88
		14	24.75	1,179.41
		15	22.50	1,072.19
		16	15.00	714.80
		17	29.25	1,393.85
		18	20.25	964.97
			8,374.97	
Peter M. Felitti	2000	11	4.25	201.64
		23	6.25	305.56
		24	3.75	183.33
		25	3.50	171.11
			861.64	
Margaret C. Gray	2000	17	0.25	5.11
		26	0.13	2.56
				7.67
Roger M. Grimes	2000	11	1.10	56.43
		12	3.25	166.71
		13	4.05	207.75
		14	30.00	1,538.91
		15	26.63	1,365.79
		17	33.00	1,692.80
		18	35.25	1,808.23
			6,836.62	

James J. Hahnenberg	2000	11	27.00	1,253.37		
		12	27.00	1,253.37		
		13	19.00	882.00		
		14	56.25	2,611.19		
		15	54.00	2,506.74		
		16	57.75	2,680.82		
		17	58.50	2,715.64		
		18	20.25	940.04		
		19	52.50	2,437.11		
		20	45.75	2,123.78		
		21	37.50	1,740.79		
		22	40.50	1,880.06		
		23	48.75	2,263.02		
		24	42.75	1,984.51		
		25	39.75	1,845.24		
		26	3.60	167.12		
		2001	1	3.90	181.04	
			2	6.50	301.20	
			3	7.60	352.18	
					30,119.20	
		Michael E. Hans	2000	21	1.58	59.61
				22	1.35	51.09
				23	5.63	212.87
					323.57	
		Penny E. Hubbard-Greene	2000	14	0.50	14.22
		Mark D. Johnson	2000	13	1.00	45.20
14	0.50			22.60		
				67.80		
Brenda R. Jones	2000	11	19.50	790.53		
		12	9.50	385.13		
		13	5.50	222.98		
		14	3.00	121.62		
		15	6.50	263.52		
		16	30.50	1,236.47		
		17	2.50	101.35		
		18	17.00	689.18		
		19	1.00	40.54		
		20	1.50	60.81		
		21	0.50	20.27		
		24	13.50	547.29		
		25	19.50	790.53		

Brenda R. Jones		26	30.50	1,236.47
		27	7.50	304.05
				6,810.71
Enesta P. Jones	2000	22	0.13	4.02
		24	0.25	8.04
				12.06
Partap C. Lall	2000	26	17.75	834.85
		27	0.50	23.46
				858.31
La'Tonia T. Lesser	2000	26	0.13	5.64
Thomas C. Marks	2000	14	0.25	11.56
		26	0.50	23.76
				35.31
William E. Muno	2000	11	1.75	123.91
		12	0.50	35.39
		13	1.50	106.21
		14	1.25	88.51
		15	1.50	106.21
		19	0.25	17.70
		20	2.25	159.31
		25	2.00	141.61
				778.84
Susan J. Pastor	2000	21	19.80	870.71
		22	25.20	1,108.16
		23	16.20	810.59
				2,789.46
Debbie F. Regel	2000	16	2.25	78.81
		17	0.50	17.51
		25	0.25	8.76
				105.08
PAYROLL TOTAL				98,529.44

Travel (Includes all trips dated between 03/07/2000 and 11/14/2000)

<u>Traveler Name</u>	<u>Total Amount</u>
Briana C. Bill	1,469.77
Samuel F. Borries	4,517.66
John M. Clark	465.30
Roger M. Grimes	1,178.76
James J. Hahnenberg	3,228.53
Susan J. Pastor	<u>452.90</u>
TRAVEL TOTAL	11,312.92

Contracts

Tetra Tech EM Inc. START Contract	4,526.18
Ecology & Environment START Contract	<u>109,266.47</u>
CONTRACTS TOTAL	113,792.65

DIRECT COST TOTAL **223,635.01**

INDIRECT COSTS

	<u>Fiscal Year</u>	<u>Amount</u>	<u>Rate</u>	<u>Total IDC</u>
Direct Payroll Costs	2000	84,517.39	39.21%	33,139.27
	2001	<u>14,012.05</u>	39.21%	<u>5,494.12</u>
Total Payroll Indirect Costs		98,529.44		38,633.39
Direct Travel Costs	2000	6,046.95	39.21%	2,371.01
	2001	<u>5,265.97</u>	39.21%	<u>2,064.79</u>
Total Travel Indirect Costs		11,312.92		4,435.80
Direct Contract Costs				
Tetra Tech EM Inc.	2001	4,526.18	39.21%	1,774.72
Ecology & Environment	2000	0.64	39.21%	0.25
	2001	<u>109,265.83</u>	39.21%	<u>42,843.13</u>
Total Contract Indirect Costs		113,792.65		44,618.10
INDIRECT COST TOTAL				87,687.29

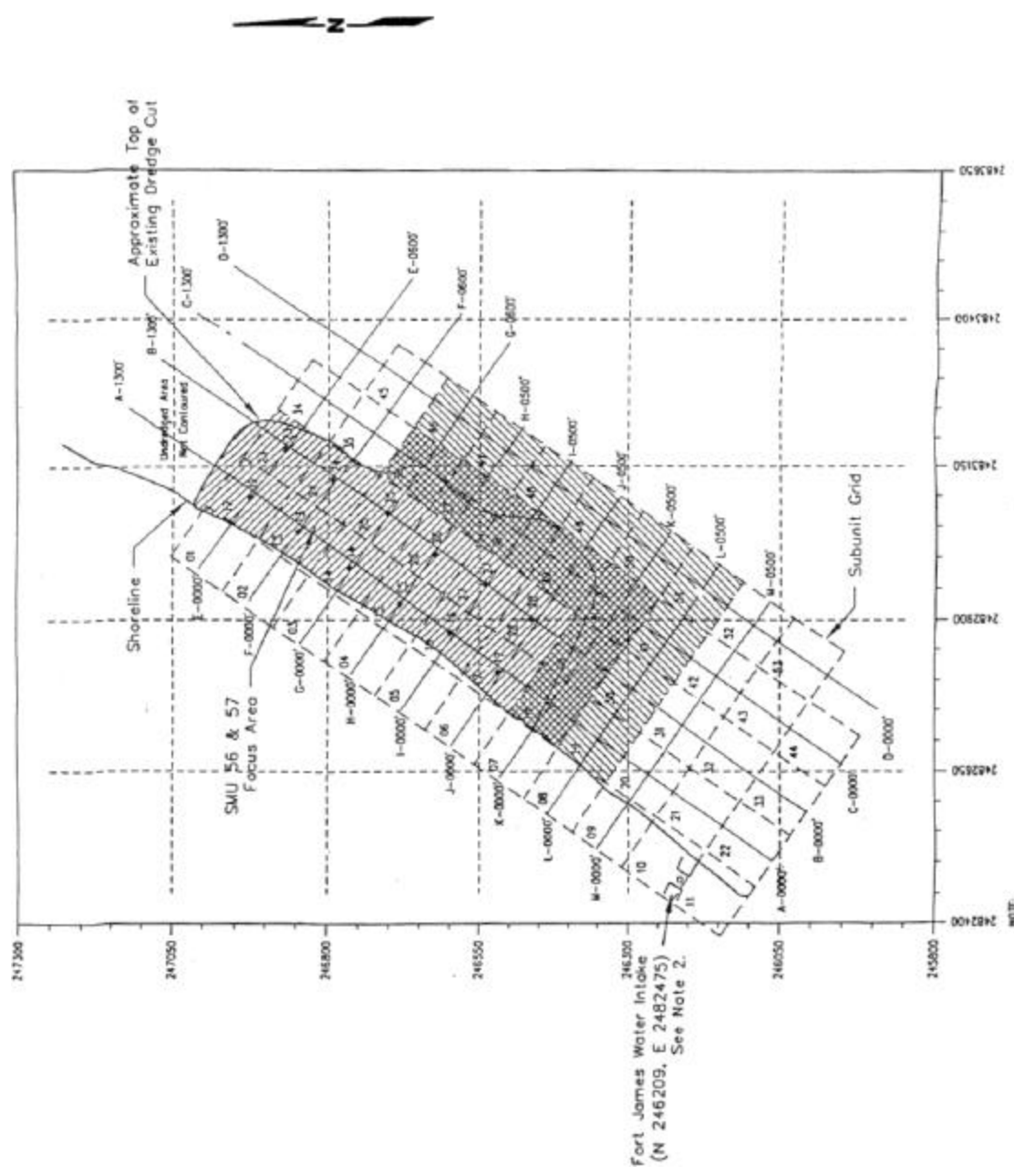
TOTAL COSTS**311,322.30**

for the Fox River/Green Bay Site - SMU 56/57 Removal Project

APPENDIX C TO CONSENT DECREE:

**Map delineating Subunits 12-19, 23-29, 34-41, and 46-51 of Sediment Management Unit
56/57**

SU	Target Elevation in Feet (NGVD 29)
12	565
13	565
14	562
15	562
16	562
17	563
18	563
19	562
21	565
22	565
24	565
25	56
26	56.~
27	56.4
28	56.3
29	56.2
30	56.3
36	565
37	565
38	565
39	56.3
40	560
41	556
46	565
47	565
48	565
49	565
50	556
51	556



NOTE:
1. Horizontal datum based on Wisconsin state plane coordinate system, Central Zone, MK033
Vertical datum based on Mean Sea Level, NGVD 29.
2. Water table coordinates were originally obtained based on the NAD 27 datum
(N 246210.16, E 251407.33) and were converted to NAD 83 as shown on the drawing.