

DOT File #
90-11-2-30713

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA,

Plaintiff,

v

BEMIS COMPANY, INC. and
PERVEL INDUSTRIES, INC.

Defendants.

Civil Action No
3:96-CV-2420 (AVC)

CONSENT DECREE

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I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter on December 2, 1996 ("the 1996 Complaint") against the Bemis Company, Inc. ("Bemis") and Pervel Industries, Inc. ("Pervel") (collectively "Settling Defendants") asserting claims: (a) under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. § 960, for response costs incurred at the Yaworski Lagoon Superfund Site in Canterbury, Connecticut; (b) under a Consent Decree entered by this Court on February 26, 1990, between the United States and Pervel, among others, in United States v. Yaworski, Inc. et al., Civ. Act. No. N-89-615 (JAC) (the "1990 Consent Decree"); (c) under a corporate guarantee dated April 24, 1990, provided by Bemis to the United States, pursuant to 28 U.S.C. § 2201; (d) under the Federal Debt Collection Procedures Act, 28 U.S.C. §§ 3001 et seq., and the Federal Priority Statute, 31 U.S.C. § 3701 et seq.; and (e) under the Connecticut Law of fraudulent conveyance, Conn. Gen. Stat. § 52-552.

B. The Yaworski Lagoon Site ("Site") is located on a parcel of land comprising approximately 100 acres in Canterbury Township, Windham County, Connecticut. The Site is bordered by the Quinebaug River on the north, south and west, and Packer Road on the east. On the Site is a lagoon surrounded by an earthen dike. Industrial waste was disposed of in the lagoon from at least the 1950s to 1973. These materials included hazardous substances within the definition of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

C. As a result of the activities at the Yaworski Lagoon Site, hazardous substances have been released or are threatened to be released into the environment at or from the Site. On September 8, 1983,

pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register, 48 Fed. Reg. 40658.

D. In response to the release or threat of release of hazardous substances, EPA commenced a Remedial Investigation and Feasibility Study ("RI/FS") for the Site in December of 1984. EPA issued the initial Remedial Investigation ("RI") Report in April 1986, and the supplemental RI Report and the Feasibility Study ("FS") Report in July 1988.

E. On September 29, 1988, the Regional Administrator, EPA Region I, issued a Record of Decision ("1988 ROD") for the Site in which it selected a remedy to contain the waste disposed of in the Lagoon. The remedy includes building a cap and dike; establishing Alternate Concentration Limits ("ACLs") for groundwater at on-Site monitoring wells; restricting groundwater usage for the Site and neighboring land; monitoring groundwater, surface water, and sediment; and taking corrective action, such as pumping and treating of groundwater, as conditions render necessary.

F. On December 18, 1989, the United States, on behalf of EPA, filed a complaint against Pervel and other persons pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607. In its complaint, the United States sought, inter alia, reimbursement of response costs incurred by EPA for response actions in connection with the release or threatened release of hazardous substances at the Site and injunctive relief requiring the defendants to implement the Record of Decision for the Site.

G. The State of Connecticut ("State") also filed a complaint in December 1989 against Pervel and others pursuant to Conn. Gen. Stat. §§ 22a-6 and 22a-451. The State sought, inter alia, reimbursement of response costs incurred by the State for removal and remedial activities in connection

with the release or threatened release of the hazardous substances at the Site and performance and funding of all other remedial work at the Site and implementation of the Record of Decision for the Site.

H. On February 26, 1990, the Court entered a Consent Decree in those actions (the "1990 Consent Decree") purporting to resolve the claims in those complaints and requiring Pervel and other settling parties (collectively the "1990 private settling parties") to reimburse the Governments for specified response costs incurred in connection with the Site and to undertake the Record Design and Remedial Action selected in the 1988 ROD.

I. Paragraph 37 of the 1990 Consent Decree provides in part that the 1990 settling parties shall provide "financial assurance" in an amount "that may equal but not exceed \$4 million" through, among other methods, "a guarantee by a third party," worded "in accordance with the appropriate subsections of 40 C.F.R. § 264.151."

J. On April 24, 1990, pursuant to Paragraph 37 of the 1990 Consent Decree, Pervel provided a corporate guarantee from its parent corporation, Bemis, to the United States "up to a total expenditure by Pervel of \$4 million."

K. Pursuant to the 1990 Consent Decree, Pervel undertook to perform certain remedial activities at the Site. Bemis funded a portion of Pervel's obligations under the 1990 Consent Decree. On October 25, 1993, Bemis advised EPA that it had fulfilled its obligations under the corporate guarantee. On October 27, 1993, Pervel notified EPA that it was financially unable to perform any remaining work at the Site.

L. Thereafter, EPA and the State sought to enforce the 1990 Consent Decree against the other settling parties. To resolve that enforcement effort, the Governments and certain of the 1990 settling

parties (the de minimis parties) entered into a Consent Agreement (the "1995 Consent Agreement") under which the de minimis parties paid \$310,903 (their volumetric shares of estimated future Site costs and a premium) in return for a de minimis covenant not to sue by the Governments that released them from further liability for the Site. Following a hearing, this Court approved and entered the Consent Agreement on July 18, 1996.

M. Also as part of the enforcement effort under the 1990 Consent Decree, EPA executed a separate Stipulation and Order with certain of the 1990 settling parties (the "Yaworskis") under which the Yaworskis agreed to perform certain limited remedial activities at the Site. The Stipulation and Order was entered by the Court on October 20, 1995.

N. In December 1996, EPA assumed responsibility to perform further response actions at the Site, with the exception of operation and maintenance activities which are to be performed by the State.

O. The United States has incurred and continues to incur response costs in responding to the release or threatened release of hazardous substances at the Site.

P. A disagreement arose between the United States and Bemis and Pervel with respect to Pervel's compliance with its obligations under the 1990 Consent Decree and its ability to perform further work. A disagreement also arose between the United States and Bemis with respect to Bemis' compliance with the corporate guarantee provided by Bemis to the United States pursuant to Paragraph 37 of the 1990 Consent Decree. The United States commenced this action against Bemis and Pervel on December 2, 1996.

Q. Settling Defendants do not admit to any facts or allegations set forth in the 1996 complaint, or to any liability arising out of the Site.

R. The United States has determined, based on the representations of Settling Defendants and discovery in this matter, that Pervel is presently unable to fund further Work at the Site beyond the payments to be made under this Decree.

S. The Parties intend, consistent with the terms of this Decree, that the funds to be paid by Settling Defendants to the United States pursuant to Paragraph 6 (a) be used first to fund future EPA response actions at or in connection with the Site.

T. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that implementation of this Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

U. Except as otherwise provided herein, or as modified by the 1995 Consent Agreement or the October 20, 1995 Stipulation and Order, the 1990 Consent Decree remains in full force and effect.

THEREFORE, with the consent of the parties to this Agreement, it is ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, 2201 and 3001 et seq., 42 U.S.C. §§ 9606, 9607 and 9613(b), and the 1990 Consent Decree, Section XXVIII(Paragraph 78). Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) and (c), and pursuant to Sections 107 and 113(b) of CERCLA, 42 U.S.C. §§ 9607 and 9613(b), because the releases or threatened releases of hazardous substances that gave rise to this claim occurred

in this district and because the Site is located in this district. This Court also has personal jurisdiction over the Settling Defendants. Solely for the purposes of this Consent Agreement and the underlying complaints, the Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court, or to venue in this District, and shall not challenge the entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

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

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree 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 Decree, the following definitions shall apply:

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

"Consent Decree" shall mean this Decree.

"1990 Consent Decree" shall mean the Consent Decree entered by the Court on February 26, 1990, in Civil Action Nos. H-89-615(JAC) and H-89-870(JAC).

"Day" shall mean a calendar day unless expressly stated to be a working day.

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

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

"Interest," shall mean 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 Damages" shall mean all "damages" as defined in Section 101(6) of CERCLA, 42 U.S.C. § 9601(6), for injury to, destruction of, or loss of any "natural resources," as defined in Sections 107(a)(4)(C) and 101(16) of CERCLA, 42 U.S.C. §§ 9607(a)(4)(C) and 9601(16), including the reasonable cost of assessing such injury, destruction or loss, as a result of releases or threats of releases from the Site.

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

"Parties" shall mean the United States, Bemis Company, Inc. and Pervel Industries, Inc.

"Plaintiff" shall mean the United States.

"RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 et seq. (also known as the Resource Conservation and Recovery Act).

"Record of Decision" or "1988 ROD" shall mean the EPA Record of Decision relating to the Site signed on September 29, 1988, by the Regional Administrator, EPA Region I, and all appendices thereto:

"Response Costs" shall mean all unreimbursed costs, including, but not limited to, direct and indirect costs, that the United States paid or will pay in connection with the Site, plus Interest on all such costs which has accrued pursuant to 42 U.S.C. § 9607(a).

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

"Settling Defendants" shall mean Pervel Industries, Inc., and the Bemis Company.

"Site" and "Yaworski Lagoon Site" shall mean the facility located on Packer Road within the limits of the Town of Canterbury, Windham County, Connecticut. The Site is situated within the meander loop of the Quinebaug River and is comprised of a dewatered and backfilled lagoon, which is approximately 700 feet long and 300 hundred feet wide, surrounded by an earthen dike;

"United States" shall mean the United States of America, on behalf of EPA, except for the purposes of paragraph 16(c) where the term shall be on behalf of any federal department, agency, or administration.

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); [(3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any "hazardous material" under state law.

V. GENERAL PROVISIONS

4. Objectives of the Parties. The objectives of the Parties in entering into this Consent Decree are to have Settling Defendants fund the response actions implemented at the Site by the United States, to satisfy the obligations of Settling Defendants for Natural Resource Damages, to resolve the claims of Plaintiff against Settling Defendants set forth in the United States' Complaint filed on December 2, 1996, including Settling Defendants' obligations to the United States under the 1990 Consent Decree and the 1990 Corporate Guarantee.

5. Settling Defendants shall reimburse the United States for a portion of its Response Costs incurred and to be incurred in connection with the Site as provided in this Consent Decree. Settling Defendants shall pay to the United States Department of Interior ("DOI"), in its capacity as trustee, a sum certain for damages to natural resources under the trusteeship of DOI. Settling Defendants' obligations under this Decree are joint and several.

VI. REIMBURSEMENT OF RESPONSE COSTS AND PAYMENT FOR NATURAL RESOURCE DAMAGES.

6. Within 30 days of entry of this Consent Decree, Settling Defendants shall pay to:

(a) the EPA Hazardous Substance Superfund the single sum of \$3,000,000, plus an additional amount for Interest on the principal sum calculated from December 10, 1999, through the date of payment. The obligations of Settling Defendants to pay amounts owed to the United States under this Consent Decree, including Stipulated Penalties, are joint and several. In the event of the failure of any one Settling Defendant to make the payments required under this Consent Decree, the remaining Settling Defendant shall be responsible for such payments. Payment shall be made to EPA by FedWire Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice account in

accordance with current electronic funds transfer procedures, referencing U.S.A.O. file number 1996v01998, the EPA Region and Site/Spill ID # 0147, DOJ case number 90-11-2-307B, and the names and addresses of the Parties making the payment. Payment shall be made in accordance with instructions provided to the Settling Defendants by the Financial Litigation Unit of the United States Attorney's Office for the District of Connecticut following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day. At the time of payment, each Settling Defendant shall send notice that such payment has been made to:

Financial Management Officer
USEPA, Region 1 (MFC)
One Congress Street
Suite 1100
Boston, MA 02114.

Anni Loughlin
EPA Remedial Project Manager
USEPA, Region 1 (HBT)
One Congress Street
Suite 1100
Boston, MA 02114

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
Re: DJ # 90-11-2-307B

(b) to the United States Department of the Interior ("DOI"), in its capacity as natural resource trustee, Forty Thousand dollars (\$40,000), plus an additional amount for Interest on the principal sum calculated from December 10, 1999 until payment, in satisfaction of DOI's claims for Natural Resource Damages. Payment shall be made using the U.S. Treasury's Remittance Express program, or, in the event said program is not available to Settling Defendants, then via FedWire Electronic Funds Transfer to the U.S Department of Justice account in accordance with current electronic funds transfer procedures and instructions provided by the DOI. Payment shall reference account number 14X5198 (NRDAR), DOJ # 90-11-2-307B, U.S.A.O. file number 1996v01998, and shall state that the payment is for Natural Resource Damages with respect to the Yaworski Lagoon Superfund Site, situated in Canterbury Township, Connecticut. Any payments received after 4:00 p.m. Eastern Time shall be credited on the next business day. Settling Defendants' shall send notice that such payment has been made to:

Bruce Nesslage
DOI Restoration Fund
NBC/Division of Financial Management Services
Branch of Accounting Operations
Mail Stop 1313
1849 C. Street N.W.
Washington, D.C. 20240

and shall reference account number 14X5198 (NRDAR), DOJ # 90-11-2-307B, U.S.A.O. file number 1996v01998, shall state that the payment is for Natural resource Damages with respect to the Yaworski Lagoon Superfund Site, situated in Canterbury Township, Connecticut, and is being paid by Settling Defendants, and shall reference that the payment is for natural resource damages under the trusteeship of the Department of the Interior. An additional copy of the notice letter and check shall be sent by Settling Defendants to the United States as follows:

Michael Bartlett, Supervisor
New England Field Office
U.S. Fish and Wildlife Service
22 Bridge Street, Unit 1
Concord, NH 03301

Mark Barash
U.S. Department of the Interior
Office of the Northeast Regional Solicitor
One Gateway Center, Suite 612
Newton Corner, MA 02158

and

Andrew L. Raddant
Regional Environmental Officer
Office of Environmental Policy and Compliance
U.S. Department of the Interior
408 Atlantic Avenue, Room 142
Boston, MA 02110

7. The total amount to be paid pursuant to Paragraph 6(a) shall be deposited in the Yaworski Lagoon Superfund Site Special Account within the EPA Hazardous Substance Superfund to be retained and used first to conduct or finance future EPA response actions at or in connection with the Site. Any balance remaining in the Yaworski Lagoon Superfund Site Special Account after the completion of response actions at the Site shall be transferred by EPA to the EPA Hazardous Substance Superfund.

VII. FAILURE TO MAKE TIMELY PAYMENT OR PERFORMANCE

8. If Settling Defendants fail to make full payment within the time required by Paragraph 6, Settling Defendants shall pay Interest on the unpaid balance from the day after payment is due until payment is made in full. Additionally, Settling Defendants shall pay a stipulated penalty of \$2,000 per day for each day that the payment is late under Paragraph 6 and a separate stipulated penalty of \$2,000 for each day that Settling Defendants are late in returning documents to the United States as required under Paragraph 11. All Stipulated Penalties shall begin to accrue on the day after the payment or performance is due and shall continue to accrue through the final day of the correction of the noncompliance. EPA or DOI may send the Settling Defendants a written demand for the payment of the penalties. However, penalties shall accrue as provided in this Paragraph regardless of whether EPA or DOI has notified the Settling Defendants of a violation. All penalties accruing under this Section shall be due and payable to the United States within 30 days of the Settling Defendants' receipt from EPA or DOI of a demand for payment of the penalties.

9. All payments to the United States, on behalf of EPA, under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to "EPA Region 1 Superfund Accounting, P.O. Box 360197M, Pittsburgh, PA 15251," shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID # 0147, the DOJ Case Number 90-11-2-307B, and the name and address of the party making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States as provided in Paragraph 6 above. All payments to the United States, on behalf of DOI, under this Section shall be paid in accordance with the instructions set forth in paragraph 6(b) of this Decree.

10. If any Settling Defendant fails to make full payment as required by Paragraph 9, the United States may, in addition to any other available remedies or sanctions, bring an action against that Settling Defendant seeking injunctive relief to compel payment and/or seeking civil penalties under Section 122(I) of CERCLA, 42 U.S.C. 9622(I), for failure to make timely payment.

XVIII. RETENTION OF RECORDS

11. Within 30 days of entry of this Decree, Settling Defendants shall return to the United States Department of Justice all copies in their possession, custody, or control of those documents identified by the United States as privileged in a letter to Delmar Ehrich dated July 1, 1998, from Kenneth G. Long. Settling Defendants shall not disclose or reference the contents of those documents.

12. Within thirty (30) days of the entry of this Consent Decree, Povel shall deliver to EPA all documents, records, data and information relating to Povel's performance of the Work at the Site under the 1990 Consent Decree and shall certify to the United States that it has complied with Paragraph 75 of the 1990 Consent Decree.

IX. COVENANT NOT TO SUE BY UNITED STATES

13. In consideration of the payments that will be made by Settling Defendants under the terms of this Consent Decree, and except as specifically provided in Section X (Reservations of Rights by United States), the United States reaffirms the covenants not to sue set forth in Paragraph 62 of the 1990 Consent Decree as to Povel, and further covenants not to sue or take administrative action against the Settling Defendants for those claims in the 1996 complaint, including claims pursuant to: (a) the direct liability of Povel and direct or derivative liability of Bemis, as the alter ego of or successor in interest to Povel, under Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607 relating to the Site; (b)

the 1990 Consent Decree, including derivative liability of Bemis under the 1990 Consent Decree as the alter ego of or successor in interest to Pervel; (c) the April 24, 1990 Corporate Guarantee; (d) the Federal Debt Collection Procedures Act, 28 U.S.C. § 3001 et seq.; (e) the Federal Priority Statute, 31 U.S.C. § 3701 et seq.; and (f) the Connecticut Law of fraudulent conveyance, Conn. Gen. Stat. § 52-552.

Additionally, the United States, on behalf of the National Oceanic and Atmospheric Administration ("NOAA") and DOI, covenants not to sue or to take any other civil or administrative action against the Settling Defendants pursuant to Section 107 for damages to natural resources under the trusteeship of NOAA or DOI, including the costs of related natural resource damage assessments, at the Site. With respect to Settling Defendants' present and future liability under CERCLA for this Site, this covenant not to sue shall take effect for the Settling Defendants upon receipt of the payment as required by Section VI of this Consent Decree. With respect to each Settling Defendant, this covenant not to sue is conditioned upon the satisfactory performance by the Settling Defendant of all obligations under this Consent Decree. This covenant not to sue extends only to Settling Defendants and does not extend to any other person.

X. RESERVATIONS OF RIGHTS BY UNITED STATES

14. The covenant not to sue by the United States set forth in Paragraph 13 does not pertain to any matters other than those expressly specified in Paragraph 13. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all other matters including, but not limited to, the following:

- a. liability for failure to meet a requirement of this Consent Decree;
- b. criminal liability;

c. liability arising from the future arrangement for disposal or treatment by Settling Defendants or related entities for whom Settling Defendants are legally responsible of a hazardous substance, pollutant or contaminant at the Site after the date of lodging of this Consent Decree; and

d. liability arising from the past, present, or future disposal, release, or threat of release by Settling Defendants or related entities for whom Settling Defendants are legally responsible of Waste Materials outside of the Site.

15. The United States' reservations of rights set forth in paragraphs 64, 65 and 66 of the 1990 Consent Decree shall not apply to Pervel, except to the extent reasserted in ¶ 14 of this Decree.

16. Notwithstanding any other provisions of this Decree, the United States, on behalf of DOI and NOAA, reserves the right to institute proceedings against Defendants seeking recovery of Natural Resource Damages, based on:

a. Conditions with respect to the Site, unknown to DOI or NOAA at 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 said natural resources at the Site, or

b. Information received by DOI or NOAA after the date of lodging of this Decree which indicates that there is injury to, destruction of, or loss of natural resources of a type that was unknown, or of a magnitude substantially greater than was known, to DOI or NOAA at the date of lodging of this Decree.

XI. COVENANTS NOT TO SUE BY SETTLING DEFENDANTS

17. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States or its contractors or employees with respect to the Site or this Consent Decree including, but not limited to:

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

b. any claim arising out of response activities at the Site; and

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

d. any claim for costs, fees, or expenses incurred in this action, including claims under the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended.

18. 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).

XII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

19. 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. The United States and Settling Defendants each reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims,

demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

20. The Parties agree, and by entering this Consent Decree this Court finds, that each Settling Defendant is entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. 9613(f)(2) and 9622(g)(5), for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are all Response Costs incurred and to be incurred by the United States, at or in connection with the Site, and Natural Resource Damages. "Matters addressed" in this Consent Decree do not include claims or rights of parties to the 1990 Consent Decree, other than the United States, against Pervel that are reserved by or to those parties pursuant to the terms of the 1990 Consent Decree.

21. In any subsequent administrative or judicial proceeding initiated by the United States relating to the Site consistent with the covenants not to sue and reservations of rights of the United States set forth in this Decree, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant action; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue included in Paragraph 13.

22. The Settling Defendants agree that with respect to any suit or claim for contribution brought by them for matters related to this Consent Decree they will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

23. The Settling Defendants also agree that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree they will notify in writing the United States within 10 days of service of the complaint on them. In addition, Settling Defendants shall notify the United States 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.

XIII. RETENTION OF JURISDICTION

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

XIV. INTEGRATION

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

XV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

26. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States shall file with the Court any written comments received and the United States' response thereto. The United States reserves the right to withdraw or withhold its consent if comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper or inadequate. Settling Defendants consent to entry of this

Consent Decree without further notice, and the United States reserves the right to oppose an attempt by any person to intervene in this civil action.

27. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XVI. MODIFICATIONS

28. No material modifications shall be made to this Decree without written notification to and written approval of the United States, Settling Defendants, and the Court. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Decree.

XVII. EFFECTIVE DATE

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

XVIII. SIGNATORIES/SERVICE

30. Each undersigned representative of a Settling Defendant to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice, or her delegatee, certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such party to this document.

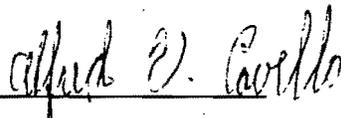
31. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendants in writing that it no longer supports entry of the Consent Decree.

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

XIX. FINAL JUDGMENT

33. Entry of this Consent Decree by the Court constitutes a final judgment in this action.

SO ORDERED THIS 11th DAY OF AUGUST, 2000.



Alfred V. Covello
Chief United States District Judge

Aug 11 5 00 PM '00

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Bemis Company, Inc. and Pervel Industries Inc., Civ. No. 396-CV-02420 (AVC), relating to the Yaworski Lagoon Superfund Site:

FOR THE UNITED STATES OF AMERICA

Date: 5/5/00

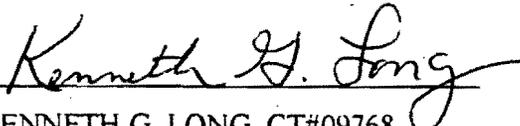


LOIS J. SCHIFFER *RETRD. COMPANION*

AK-19

Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

Date: 5/11/2000



KENNETH G. LONG, CT#09768

Environmental Enforcement Section
Environment and Natural Resources
Division
P.O. Box 7611
Ben Franklin Station
U.S. Department of Justice
Washington, D.C. 20044
202-514-2840

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v Bemis Company, Inc. and Pervel Industries Inc., Civ. No. 396-CV-02420 (AVC), relating to the Yaworski Lagoon Superfund Site:

STEPHEN C. ROBINSON

United States Attorney for the
District of Connecticut



CAROLYN A. IKARI, CT#13437

Assistant United States Attorney

United States Attorney's Office

450 Main Street

Hartford, Conn. 06103

(860) 947-1101

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Bemis Company, Inc. and Pervel Industries Inc., Civ. No. 396-CV-02420 (AVC), relating to the Yaworski Lagoon Superfund Site:

Date:

3/10/20

May 21 2023

Regional Administrator, Region I (RAA)
U.S. Environmental Protection Agency
One Congress Street
Suite 1100
Boston, Massachusetts 02114-2023

Date:

3/14/20

Steven Schlang

STEVEN SCHLANG, Esq.
Office of Environmental Stewardship
U.S. Environmental Protection Agency
Region I (SES)
One Congress Street
Suite 1100
Boston, Massachusetts 02114-2023

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Bemis Company, Inc. and Pervel Industries Inc., Civ. No. 396-CV-02420 (AVC), relating to the Yaworski Lagoon Superfund Site:

FOR SETTLING DEFENDANT BEMIS COMPANY, INC.

Date: 1/25/00

[Name -- Please Type]

[Title -- Please Type]

[Address -- Please Type]

Stanley A. Jaffy
Stanley A. Jaffy
Vice President-Tax
Assistant Controller
Bemis Company, Inc.
Suite 2300
222 South Ninth Street
Minneapolis, MN 55402

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

Name: Bemis Company, Inc.

Title:

Suite 2300, 222 South Ninth Street
Address: Minneapolis, MN 55402

Tel. Number: 612-376-3000

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Bemis Company, Inc. and Pervel Industries Inc., Civ. No. 396-CV-02420 (AVC), relating to the Yaworski Lagoon Superfund Site:

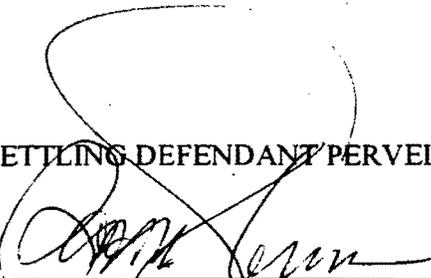
FOR SETTLING DEFENDANT PERVEL INDUSTRIES, INC.

Date: 11/25/00

[Name -- Please Type]

[Title -- Please Type]

[Address -- Please Type]



Scott W. Johnson
Secretary and Sole Director
Suite 2300
222 South Ninth Street
Minneapolis, MN 55402

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

Name: CT Corporation System

Title: _____
Address: One Commercial Plaza
Hartford, CT 06103

Tel. Number: 860-724-9044

CERTIFICATION OF SERVICE

I hereby certify that a copy of the within and foregoing Consent Decree has been mailed, postage prepaid, this 2nd day of June, 2000, to:

Stanley A. Jaffy
Vice President-Tax
Assistant Controller
BEMIS COMPANY, INC.
222 South Ninth Street, Suite 2300
Minneapolis, MN 55402

Scott W. Johnson
Secretary and Sole Director
Pervel Industries, Inc.
222 South Ninth Street, Suite 2300
Minneapolis, MN 55402

Steven Schlang, Esq.
Office of Environmental Stewardship
U.S. Environmental Protection Agency
Region I (SES)
One Congress Street, Suite 1100
Boston, MA 02114-2023

Kenneth G. Long, Esq.
Environment and Natural Resources Division
U.S. DEPARTMENT OF JUSTICE
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044



CAROLYN A. IKARI
ASSISTANT UNITED STATES ATTORNEY