EXHIBIT 10

EXHIBIT D

Agencies/Oversight Team Comments to Phase 2B Work Plan for 2011 Remedial Action of OU 2-5 (2011 RAWP), dated February 2011, are presented below, followed by the corresponding response in bold italic print.

General Comments

1. The Response Agencies are disappointed with the late submittal of this work plan (due 1/31/11 received 2/18/11). Extensive discussions during the past year's Lessons Learned sessions indicated a shared desire for timely submittals of the design documents and work plans.

LLC Response: Comment noted.

2. The draft "Phase 2B Work Plan for 2011 Remedial Action of Operable Units 2-5 dated February 2011" (2011 RAWP) lacks the detail and summary information required by the Response Agencies to properly evaluate the remedial action work for the 2011 construction season.

LLC Response: Comment noted.

3. The proposed level of remedial action appears to not fully utilize the dewatering/water treatment facility which would result in inefficient and ineffective operation. Production apparently proposed for 2011 is a "step-backwards," with no rationale provided. This is especially true when compared to production demonstrated in 2009 and 2010. Revise the 2011 RAWP to reflect full production similar to or greater than 2010.

LLC Response: **Response: The LLC is proposing the volumes it is because its Members have sufficient cause for non-compliance with the 106 Order. First, the government's own deeply flawed volumetric analysis (Amendola 2001, produced pursuant to FOIA request in January 2011) assigns ACPC and Combined Locks a volumetric share of no greater than 30%, and the LLC has already removed more than 30% of the contaminated sediments; second, a comprehensive analysis of PRP discharges shows that ACPC and Combined Locks, together, could not have been responsible for more than 8 - 14% of the PCBs in the river; and third, the ongoing remedy is not cost effective, in violation of CERCLA, as the government's 2010 ESD makes clear. For these and other reasons, the LLC's Members have sufficient cause no longer to comply with the 106 Order or, in particular, the Agencies' desire for greater dredging volumes and increased pace.**

We would be pleased to discuss with the A/OT any additional questions they may have.

4. The resubmitted document must replace all unclear scope and schedule statements with clear and definitive statements similar to the detailed content and structure in the "Final Phase 2B Work Plan for 2010 Remedial Action of Operable Units 2-5 – Revision 2 dated January 2011." (2010 RAWP)

LLC Response: This comment is unclear as to the specific edits that the A/OT would like made. Nonetheless, the document has been revised to provide more specificity on

projected quantities and dates. We would be pleased to discuss with the A/OT any additional questions they may have.

5. The specific comments do not address the following components of the proposed 2011 RAWP:

~~a. Appendix A - Construction Quality Assurance Project Plan: This document was submitted to the A/OT on February 28, 2011. A/OT comments regarding Appendix A will be released by March 18, 2011.~~

~~b. Appendix B - Engineered Plan Drawings for OU4: This document contains comments for the OU3 Engineered Plan Drawings. A/OT comments for the OU4 Engineered Plan Drawings will be released by March 18, 2011.~~

c. Appendix D - Technical Memorandum – Evaluation of Available Draft Impact to Riparians and Riparian Notification – 2011 Dredging, Cap and Sand Cover Areas: This document has not yet been submitted to the A/OT. Comments regarding Appendix D will be released at a later date.

d. Appendix E - 2010/2011 OU4 In-Fill Sampling Plan: This document has not yet been submitted to the A/OT. Comments regarding Appendix E will be released at a later date.

e. Appendix F - Underwater Cultural Resources Approach: This document has not yet been submitted to the A/OT. Comments regarding Appendix F will be released at a later date.

LLC Response: Appendix D will be submitted to the A/OT in April. Appendices E and F have been submitted to the A/OT with this comment response. Appendix F, previously-approved, was updated to reflect the current status of archaeological assessments.

Specific Comments

6. Revise the 2011 RAWP to include, at a minimum, the following components:

a. Remediation of remaining areas in OU3 per agreed upon "Z2" option as presented in George Berken's email dated 10/29/2010 and agreed to in Jeff Lawson's email dated 2/2/2011. Copies of those emails are attached to these comments. This work will include the following estimated remedial action volume and areas:

i. Final dredge all RAL designated material in OU3 areas D100, D101, D102, D103A, D103B, D104, D105A, D105B, D105C, D105D, D106A, D106B, D106C, D107, D108, D109A, D109B, D110, D111 and D112 (D20B,). This is an estimated 70,000 in-situ cy (this volume depends upon residual dredging requirements after the first dredge event);

ii. Final Cap all RAL designated material in OU3 areas CA6, CA9A, CA9B, CA13A, CA13B, CA13C, CA13D, CA13E, CA69, CA15, CA16A, CA16B, CA17, CB2, CB3A, CB3B, and CB5. This is an estimated 25 acres;

iii. Final remedy sand cover all RAL designated material in OU3 areas SC12, SC13, SC14A, SC14B, SC18, SC19, SC20A, SC20B, SC20C, SC21A, SC21B, SC22A, SC22B, SC22C, SC63, SC24A, SC24B, SC24C, SC25A, SC25B, SC26A, SC26B, SC27, SC28A, SC28B, SC28C, SC31A, SC31B, and SC79. This is an estimated 25 acres;

iv. Final residual sand cover all RAL material in OU3 dredge areas. Residual sand cover areas will be dependent upon verification sampling for the dredge areas identified in 6.a.i. above. This is an estimated 30 acres; and

v. Design and remediate all utilities per Agencies' requirements. This could include dredging, sand covering and/or capping. The volumes and areas regarding utilities are not included in any of the above volumes and areas.

LLC Response: The 2011 RAWP has been revised to include specific quantities for the RA planned in OU3. The planned dredge volume for the revised OU3 dredge areas is approximately 64,973 cubic yards, including the estimated residual dredging volume of 7,834 cy. Approximately 25.7 acres of cap and 25.3 acres of primary sand cover will be placed in OU3, along with approximately 50.5 acres of residual sand cover in dredge areas. These quantities include remediation to be performed in utility areas as indicated on the Engineered Plans presented in Appendix B of the 2011 RAWP. This is expected to complete RA in OU3.

b. Remediation of OU4 (De Pere Dam to Transect 4027, near the State Highway 172 Bridge). This work will include the following estimated remedial action volumes and areas:

i. Final dredge all TSCA designated material in OU4 areas D23 and D26A. This is an estimated 30,000 in-situ cy;

LLC Response: The LLC is currently assisting Waste Management in seeking a risk-based approval to permit more cost-effective disposal of TSCA-regulated sediments. The LLC anticipates that this approval will be obtained during the 2011 construction season. TSCA dredging may take place following that approval, completion of additional infill sampling, and preparation of revised engineered drawings that reflect the additional infill sampling results for these areas.

ii. Final dredge all RAL designated material in OU4 areas Phase 1, D23, D24, D25, D25A, D25C, D26A, D26B, D26C, D27A, D27B, D27C, D27D, D27E, D27F, D28, D29, D30A, D61, and D91, This is an estimated 610,000 in-situ cy (this

volume depends upon residual dredging requirements after the first dredge event); and

> Note: This estimated volume (610,000 in-situ cy) depends upon the A/OT's review for the 2011 RAWP design drawings in OU4. The 100% Design Report estimated 1,036,775 in-situ cy to dredge in this reach of the river. The yardage removed to date is estimated to be 415,081 in-situ cy. Per the drawings submitted, the yardage estimated to be removed in 2011 is 455,130 in-situ cy. This leaves an estimated 167,564 in-situ cy yards in the most recent draft of the 100% Design Report that had been identified that will be either Capped or Remedy Sand Covered. This reduction of dredging in this reach of the river must be justified to and approved by the Response Agencies.

iii. Final cap, remedy sand cover and residual sand cover is not necessarily expected to be performed in 2011, however, these remedial actions must all be completed in 2012.

LLC Response: The 2011 RAWP has been revised to include specific quantities for the RA planned in OU4. Approximately 185,453 cy of sediment will be dredged from dredge areas D23 and D24/D25A in OU4. No capping or sand cover placement will be performed in OU4 in 2011.

c. Remediation of OU4 (North of Transect 4027). This work will include the following estimated remedial action volume and areas:

i. Production Dredge to maintain processing plant efficiencies in D31, D32 and or D35A. This is estimated to range from 50,000 to 100,000 in-situ cy.

LLC Response: The LLC does not plan to perform production dredging north of the State Highway 172 Bridge in 2011 and, therefore, no plans are included for production dredging in D31, D32 or D35a.

7. Revise 2011 RAWP Schedule to provide a start date no later than April 4, 2011 and continuation of work through November 12, 2011.

LLC Response: At this date, the LLC cannot guarantee that in-water operations can begin by April 4, instead of the currently-scheduled April 18. The LLC believes that an April 18 in-water start is an "on time" start, and Tetra Tech has been targeting that date for the start of in-water operations. The A/OT was previously informed that April 18, 2011 was the tentative start of the 2011 operations season (e.g., the Schedule for Weekly QC Meetings, submitted to the A/OT via e-mail on 11/18/10). Tetra Tech currently is mobilizing, and the LLC expects that in-water operations will be ready to begin on April 18. The 2011 RAWP Schedule, Figure 5-1, has been revised to show a start date of April 18, 2011 and the estimated time for completion of planned activities.

8. Section 1 **Introduction**, page 1, 1st paragraph: add to the last sentence, "...earlier than initially scheduled, however, the scheduled 2010 sand covering and capping was delayed and schedule improvement gained in 2009 was lost in 2010."

LLC Response: The LLC disagrees with the requested statement. While sand cover and capping in OU 3 were deferred in 2010 during discussions with the Agencies on the plan for OU 3, the overall remediation remains ahead of schedule.

9. Section 1 **Introduction**, page 1, 3rd paragraph: 100% Design Report, Volume 2 has not been completed or approved. Clearly state this in the 2011 RAWP.

LLC Response: The text has been revised.

10. Section 1 **Introduction**, page 3, 2nd paragraph, revise the last three sentences to include the following clarifications: "Post-dredge sampling following the 2007 Phase 1 project indicated the presence of residual sediments *>1 ppm but < 50 ppm*. The final remediation of these sediments is planned as part of the services performed by the contractor conducting the Phase 2B remedial actions. These remedial actions were partially completed in 2010 as part of the *2010* Phase 2B remedial actions, but additional measures are required in 2011 to complete the RA for the Phase 1 area."

LLC Response: The text has been revised.

11. Section 1 **Introduction**, page 3, 3rd paragraph: The statement regarding US Paper Mills appears to be an LLC opinion and is not to be included in this document. Remove this paragraph.

LLC Response: The first sentence of the paragraph is a statement of fact, not opinion. NCR has invoiced U.S. Paper for the work Tetra Tech performed during the 2010 construction season, pursuant to the Phase 1 Consent Decree and the participation agreement between the two companies. U.S. Paper has not paid these invoices or otherwise participated in the 2010 Phase 1 work. Having made this statement of fact in the original 2011 RAWP and now in these comments, the LLC has removed this sentence from the revised plan, as requested. The second sentence in the paragraph is intended to clarify that nothing in this work plan is intended to relieve U.S. Paper of its responsibilities under the Phase 1 Consent Decree. The LLC believes this sentence is important to avoid confusion.

12. Section 1.1 **Summary of Phase 2B Remedial Actions,** 1st paragraph, page 3: 100% Design Report, Volume 2 has not been completed and/or approved. Clearly state this in the 2011 RAWP.

LLC Response: The text has been revised as requested.

13. Section 1.1 **Summary of Phase 2B Remedial Actions,** 2nd paragraph, page 4: Add to last sentence, "...sheet pile bulkhead wall, which has subsequently been determined not to be needed for the project's RA and will not be installed."

LLC Response: The text has been revised as requested.

14. Section 1.1 **Summary of Phase 2B Remedial Actions,** 3rd paragraph, page 4: Change paragraph as follows, "~~Capping and sand cover placement was also initiated in 2009, beginning with capping in OU 2 and progressing downstream~~. In 2009, c~~C~~apping was initiated and completed in OU 2, ~~and~~ along with a small dolomite test cap in Cap Area (CA) CA3 in OU 3, ~~, and s~~Sand cover placement..."

LLC Response: The text has been revised as requested.

15. Section 1.1 **Summary of Phase 2B Remedial Actions,** last paragraph on page 4: Provide a chart or description of the planned production areas including volumes.

LLC Response: The text has been revised as requested

16. Section 1.2 **Objectives for 2011**, page 5: Remove all vague statements throughout this document and replace with definitive and clear statements describing the work that will be performed. Example: "~~It is expected that~~ The Phase 2B remedial action in 2011 will include..."

LLC Response: This comment is unclear as to the specific edits that the A/OT would like made. The revised RAWP states what the LLC anticipates will be accomplished during the upcoming season. In addition, the LLC has considered the A/OT's proposed editorial changes and has incorporated them, as appropriate, in the revised document. We would be pleased to discuss with the A/OT any additional questions they may have.

17. Section 1.2 **Objectives for 2011**, page 5: Include a table showing the estimated annual dredge volumes, updated quantities and areas similar in detail to Table 1-2 from the 2010 RAWP.

LLC Response: The text has been revised as requested.

18. Section 1.2 **Objectives for 2011**, page 5: Add three new bullets and change two bullets as follows:

Added Bullets

- Continue remedial action that fully utilizes the sediment desanding and dewatering plant.
- Resume installation of residual sand cover, starting in D9 and continuing northward.
- Complete all ROD required action in OU3 in the 2011 construction season.

Changed Bullets

- Complete the removal from the Plant Site of all and beneficially reuse sand generated during the 2009 and 2010 dredging seasons, as well as beneficially reuse sand expected to be generated during the 2011 dredge season.
- At a minimum, perform infill sampling north of the State Highway 172 Bridge to refine the design of future RA areas to be remediated in 2012.

LLC Response: The substantive comments in the bullets described as "added bullets" have been added; however, the text of the third bullet will read "all ROD required construction," rather than "all ROD required action," as the ROD-required action includes long-term monitoring that is not expected to be completed in 2011. The LLC will attempt to remove all beneficial reuse sand in 2011. Infill sampling will be performed north of the Highway 172 bridge in any areas for which remediation is planned in 2012. The LLC has considered the A/OT's proposed editorial changes and has incorporated them, as appropriate, in the revised document.

19. Section 1.3 Table 1-2 **Summary of Fox River ARARs,** page 7: Add text as follows: Fish and Wildlife Coordination Act: **Description:** "USEPA will consult with USFWS on habitat impacts from dredging, debris removal, and pipeline installation work."

LLC Response: The text has been revised as requested.

20. Section 1.3 Table 1-2 **Summary of Fox River ARARs,** page 9: Add text as follows: Solid Waste Management: **Citation:** Wis. Stats. 289.43. **Description:** "WDNR approval of the beneficial use of separated sand would be done under Wisconsin Statute 289.43 low hazard exemption. All beneficial reuse of sand would require case by case approval." **Applicable Standards:** Relatively Unrestricted use: PCB < 0.05 ppm 8. ~~No~~ capping or covering, generally not required: PCB < 0.25 ppm.

LLC Response: The text has been revised as requested.

21. Section 1.3 Table 1-2 **Summary of Fox River ARARs,** page 9: Add text as follows: Fish and Game: **Citation:** Check citation, there is no WI Stat or NR Code with this citation. Not sure what intended citation is, possibly Chapter 30? **Description:** "Requirements are ARARs for in-river installation of sediment transport pipelines, dredging, debris removal, and cap placement."

LLC Response: The text has been revised as requested.

22. Section 1.4 **Adaptive Management and Value Engineering**, pages 10 – 13: Modify the general text of the 2011 RAWP to include the principles described in the Adaptive Management Plan and Value Engineering Plan.

LLC Response: This comment is unclear as to the specific edits that the A/OT would like made. Nonetheless, the text has been revised. We would be pleased to discuss with the A/OT any additional questions they may have.

23. Section 1.4 **Adaptive Management and Value Engineering**, pages 10: Change the bullets to letters for better identification during the review and comment process.

LLC Response: The text has been revised as requested.

24. Section 1.4 **Adaptive Management and Value Engineering**, first bullet, page 10: This work plan does not reflect experience gained in Operable Unit 1 (OU1), as the first bullet of Section 1.4 indicates. The preliminary environmental monitoring results for OU1 indicate the remedial action performed in OU1 is achieving project objectives in a timely manner which substantiates the need for a continual remedial action effort similar to 2010.

LLC Response: The LLC is unsure of what substantive change the A/OT is requesting. The project has benefited from information it has received from individuals and entities who were also involved in the OU 1 project, and this is the only statement that this bullet makes about the OU 1 project.

25. Section 1.4 **Adaptive Management and Value Engineering**, Bullet 6, page 10: This bullet describes continuous improvement with the implementation of regulatory compliance. However, the 2011 RAWP reflects the opposite approach because it does not clearly present implementing full production in 2011.

LLC Response: The LLC is unsure of what substantive change the A/OT is requesting. The LLC disagrees with the commentary included in this comment. We would be pleased to discuss with the A/OT any additional questions they may have.

26. Section 1.4.1 **Adaptive Management and Value Engineering for 2010 and 2011 Remedial Action**, page 11: The collaborative work group process is described in Section 1.4. However, preparation of the 2011 RAWP does not demonstrate a collaborative approach, since the 2011 RAWP has significant unexplained departures from prior collaborative discussions and previous remedial action work plan scopes.

LLC Response: The LLC is unsure of what substantive change the A/OT is requesting. The LLC disagrees with the commentary included in this comment. We would be pleased to discuss with the A/OT any additional questions they may have.

27. Section 1.4.1 **Adaptive Management and Value Engineering for 2010 and 2011 Remedial Action**, 1st set of bullets on page 11: Change bullets as follows:

- Over-the-shoulder reviews of selected documents by the ~~Response Agencies~~ Agencies/Oversight Team;
- Adding a risk-based decision ~~allowing~~ that allows/permits placement of a 6-inch sand cover … equal to or less than 1 ppm. This necessitates that cores are analyzed down successive intervals until an interval's result is below 1 ppm.

LLC Response: The text has been revised as requested.

28. Section 1.4.1 **Adaptive Management and Value Engineering for 2010 and 2011 Remedial Action**, 2nd set of bullets at the bottom of page 12: Change bullets as follows:

- Modeling the 0.5 LOS surface based on uncorrected core depths, to minimize the removal of sediment that is less than ~~meets the~~ 1.0 ppm PCB RAL, and to maximize the removal of sediment that exceeds the 1.0 ppm PCB RAL with the first dredge event (this reduces the volume of contaminated material that will be required to be dredged in a second dredge event); (Note: Using uncorrected core depths is being allowed for this remedial season. However, a higher degree of verification sampling will be required until such time that it has been proven to and accepted by the Agencies as meeting all the ROD and ROD Amendment criteria. Refer to Appendix A, CQAP for 2011 regarding details of more rigorous sampling.) For example, double the number of samples per DMU. This will be further clarified in comments to Appendix A – CQAPP.

LLC Response: The document has been revised to read: "Modeling the 0.5 LOS surface based on uncorrected core depths, to minimize the removal of sediment that is less than 1.0 ppm PCB RAL, and to maximize the removal of sediment that exceeds the 1.0 ppm PCB RAL with the first dredge event." We assume that the remainder of the bullet point above is intended as commentary, rather than as part of the requested text revision.

29. Section 1.4.1 **Adaptive Management and Value Engineering for 2010 and 2011 Remedial Action**, page 13: Regarding the bullet, "Evaluation of cap design and the potential to reduce the thickness of cap layers. If pursued, a Technical Memorandum and/or plan for a pilot study (if applicable) will be submitted to the Response Agencies for the alternative design; and", the Agencies filed an Explanation of Significant Differenced (ESD) regarding minimum cap thickness requirements. Further cap reductions are not technically defensible unless new technologies were developed and proven successful.

LLC Response: Comment noted.

30. Section 1.4.1 **Adaptive Management and Value Engineering for 2010 and 2011 Remedial Action**, page 13, final paragraph of this section: change as follows:
"Additional VE initiatives may be pursued in 2011 as opportunities for potential ~~savings~~ project improvements are identified, presented to and approved by the LLC."

LLC Response: The LLC has accurately captured the contract terms that permit value engineering. In addition, the LLC has considered the A/OT's proposed editorial changes and has incorporated them, as appropriate, in the revised document.

31. Section 2.2 **Qualifications and Responsibilities of Key Personnel**, page 14-16: Include a position description for Jeff Lawson.

LLC Response: The text has been revised as requested.

32. Section 3 **Phase 2B Work**, page 19: This paragraph does not adequately describe the scope of work to be performed under the 2011 RAWP. At a minimum, revise it to incorporate all requirements described above in Comments 6 and 7.

LLC Response: Please see the responses to comments 6 and 7.

33. Section 3.1 **Remaining Site Work**, page 19: change text in paragraph as follows: "... the Response Agencies for approval at least 45 ~~20~~ business days prior to any construction or implementation of the plan in 2011 or early 2012 to allow for applicable city and or state submittals and approvals to be obtained. The plans may be submitted in the form of an addendum to the 2011 RAWP or as part of the 2012 RAWP. Section 3.1.1 **Plant Site Material Processing and Staging Facility**, page 19: Change text in paragraph as follows: "... approved O&M Plans for these facilities. Site H&S control zones were established prior to startup in 2009 and subsequently modified several times since the startup in 2009 as part of the health and safety protocol for the project."

LLC Response: The text has been revised as requested.

34. Section 3.1.1.1 **Sand Available for Beneficial Reuse**, page 19: State how all sand piles will be managed and controlled.

LLC Response: The text has been revised as requested.

35. Section 3.1.2 OU 3 **Secondary Staging Area**, page 20: Add as a second paragraph: Separate procedures have been developed for this site and will be reviewed and updated as needed for this season's remedial action.

LLC Response: The text has been revised as requested.

36. Section 3.2 **Sediment Dredging**, page 22-23: Remove all vague statements throughout section and replace with definitive and clear statements regarding the work that will be performed. Examples:

a. 1st sentence: "Remedial action in 2011 ~~is expected to~~ will include dredging within OUs 3 and 4."

b. Last sentence of 2nd paragraph: "Final dredging in the area between the De Pere Dam and the State Highway 172 Bridge in 2011 ~~may~~ will remove sediments to the planned dredge elevation plus overdredge based on the uncorrected neat line."
c. 3rd paragraph: "... production dredging in 2011 ~~is expected to~~ will be performed in dredge areas OU4-D23..."

LLC Response: The revised RAWP states what the LLC anticipates will be accomplished during the upcoming season. In addition, the LLC has considered the A/OT's proposed editorial changes and has incorporated them, as appropriate, in the revised document.

37. Section 3.2 **Sediment Dredging**, page 22-23, last paragraph of section: Include dredge areas D31, D32 and D35A in this listing in order to achieve full production.

LLC Response: Please see response to comment 6 and 7.

38. Section 3.2.1 **Dredging Equipment and Production Rates**, page 23: change as follows:

a. Change "may" and "is expected to" to "will" throughout this section

b. 1st paragraph, 1st sentence: "...transfer of sediment to the dewatering plant."

c. 1st paragraph, 2nd sentence: "...balance flow rates and maximize operating efficiencies for ~~to~~ the dewatering plant."

d. 2nd paragraph: "During the 2011 season, it is ~~expected~~ planned that the same three dredges used in 2010 ~~could~~ would be used again: two 8-inch dredges *Ashtabula* and *Palm Beach* ~~may~~ will initially perform work in OU 3, completing all required dredging in OU3, moving northward and into upper OU 4; one 12-inch diameter dredge (*Mark Anthony*) ~~may~~ will continue to perform production dredging work in OU 4."
e. 3rd paragraph: "In addition to the dredges, booster pump stations for the 8 inch and 12 inch dredges ~~may~~ will be required as for occurred in past dredging seasons."

f. 5th paragraph: "Non-TSCA sediment ~~is expected to~~ will be removed from the upper sediment intervals in dredge area OU 4-D23 to ~~just~~ approximately one foot above the surface of the TSCA sediment, which will also ~~is expected to~~ be dredged in 2011."

LLC Response: Please see responses to comments 6 and 7. The revised RAWP states what the LLC anticipates will be accomplished during the upcoming season. In addition, the LLC has considered the A/OT's proposed editorial changes and has incorporated them, as appropriate, in the revised document.

39. Section 3.2.2 **OU 3 Dredging**, page 23:

a. 1st and 2nd paragraphs: change "may" to "will".

b. 1st paragraph: regarding "...dredge areas OU3-D100 through OU3-D112." Explain the reason for new dredge area designations for 2011.

c. 1st paragraph: add to end of sentence, "... proceeding downstream, and completing all required dredging in OU3." Then add a reference to the Engineered Plan Drawings in Appendix B.

d. 2nd paragraph: add to end of 1st sentence, "...CQAPP (Appendix A) and a more rigorous verification/ acceptance criteria. Note that the more rigorous sampling criteria have been included in this appendix."

LLC Response: The revised RAWP states what the LLC anticipates will be accomplished during the upcoming season. In addition, the LLC has considered the A/OT's proposed editorial changes and has incorporated them, as appropriate, in the revised document. Also, new dredge area designations were used in OU 3 to avoid confusion with the previously-designed dredge areas.

40. Section 3.2.3 **OU 4 Dredging**, page 24, 1st paragraph: change "may" to "will" (two occurrences).

LLC Response: The revised RAWP states what the LLC anticipates will be accomplished during the upcoming season. In addition, the LLC has considered the A/OT's proposed editorial changes and has incorporated them, as appropriate, in the revised document.

41. Section 3.2.4 **Potential OU 4 Phase 1 Residual Dredging,** page 24:

a. 1st paragraph, last sentence: add text, "...for each 6-inch interval exceeding the RAL is 10 ppm or less, a minimum thickness of 6" sand cover will be applied.

b. 2nd paragraph, 1st sentence: "In the event that residual dredging is performed, additional surface grab compositing sampling." Modify this sentence. There must be cores collected with at least the top two intervals being analyzed.

LLC Response: The text has been revised as requested.

42. Section 3.2.5 **OU 4 Production Dredging**, page 25:

a. Change "may" to "will" (four occurrences, 1st, 2nd & 4th sentences).
b. 2nd sentence: Include dredge areas D31, D32 and D35A in this listing in order to achieve full production.

c. Change 4th sentence: ~~Should~~ When production dredging commences,

LLC Response: Please see responses to comments 6 and 7. The revised RAWP states what the LLC anticipates will be accomplished during the upcoming season. In addition, the LLC has considered the A/OT's proposed editorial changes and has incorporated them, as appropriate, in the revised document.

43. Section 3.2.6 **Extents of 2011 Dredging and Potential Field Refinement**, page 25-30:

a. 1st paragraph, 2nd sentence: Include a table listing the areas and highlighted drawings where engineering judgment was utilized to override the neat line dredge surface

created using the FIK model. Also include a brief summary regarding the reason for each override.

LLC Response: The text has been revised as requested.

44. Section 3.2.7 **Shallow Water Dredging**, page 26: Add new sentence to the end: Shallow areas that cannot be dredged with the 8" dredge will be reviewed with the Response Agencies for alternate remedial action.

LLC Response: The text has been revised as requested.

45. Section 3.2.8 **Sequence of Dredging Operations**, page 26-27:

a. Change "may" and "are expected to" to will (11 times in section).

b. 1st paragraph, 3rd sentence: change "typical" to "standard."

c. 1st paragraph, last sentence: add to end, (Saturdays, Sundays and holidays).

d. 1st bullet: "Two 8-inch hydraulic dredges ~~are expected to~~ will begin ~~the~~ dredging in 2011..."

e. 2nd bullet, 3rd sentence: "Once the non-TSCA sediment ~~is~~ has been removed,..."

f. 2nd bullet, 4th sentence: "Following removal of the TSCA sediment, the 8-inch dredges ~~may~~ will return to OU3 to finish ~~the~~ all remaining dredging.

g. 6th bullet: Include dredge areas D31, D32, and D35A in this listing in order to achieve full production.

LLC Response: Please see responses to comments 6 and 7. The revised RAWP states what the LLC anticipates will be accomplished during the upcoming season. In addition, the LLC has considered the A/OT's proposed editorial changes and has incorporated them, as appropriate, in the revised document.

46. Section 3.2.9 **Best Management Practices**, page 27-28, 2nd sentence: Change text as follows: "The elimination of ~~Not using~~ silt curtains ..."

LLC Response: The text has been revised as requested.

47. Section 3.3.1 **Cap Placement**, page 28, 1st sentence: Change "is expected to" to "will".

LLC Response: The revised RAWP states what the LLC anticipates will be accomplished during the upcoming season. In addition, the LLC has considered the A/OT's proposed editorial changes and has incorporated them, as appropriate, in the revised document.

48. Section 3.3.2 **Sand Cover and Cap Placement,** page 29:

a. 1st paragraph change text as follows: "Primary remedy sand cover placement ~~is expected to~~ will begin in 2011 in OU3-SC12 and, based on production rate assumptions will complete OU3. ~~, is assumed to continue downstream through completion of SC79~~."

b. 2nd paragraph change text as follows: "Sand placed as the chemical isolation … production rate assumptions, will complete OU3. ~~is assumed to continue through completion of cap CB5. It is anticipated that the~~ All cap layers placed for the 2011 season will include ~~all~~ the cap areas remaining in OU3…".

LLC Response: The revised RAWP states what the LLC anticipates will be accomplished during the upcoming season. In addition, the LLC has considered the A/OT's proposed editorial changes and has incorporated them, as appropriate, in the revised document.

49. Section 3.3.3 **Transport and Disposal of Dewatered Sediment and Debris,** page 29-30: This does not belong in Section 3.3, the Cap and Sand Cover Placement section. Create a new section for this topic.

LLC Response: The text has been revised as requested.

50. Section 3.4 **Construction Quality Control/Quality Assurance,** page 30: Update the CQAPP to include the more rigorous verification/acceptance criteria since uncorrected DOCs were used in the FIK Model. The CQAPP (Appendix A) was submitted to the A/OT on February 28, 2011. Comments regarding this CQAPP will be released by March 18, 2011 and will contain the more rigorous verification/acceptance criteria for uncorrected DOCs.

LLC Response: Comment noted.

51. Section 3.5 **Operation, Maintenance, and Monitoring**, page 31:

a. 1st sentence change text as follows: "Four separate O&M Plans have been prepared and will be implemented in 2009…"

b. Last sentence change text as follows: "These Plans were submitted ~~to the Agencies~~ and approved by the Agencies in 2009."

LLC Response: The revised RAWP states what the LLC anticipates will be accomplished during the upcoming season. In addition, the LLC has considered the A/OT's proposed editorial changes and has incorporated them, as appropriate, in the revised document.

52. Section 3.5.1 **O&M Plan Updates**, page 31: Include the updated O&M Plans with the next submittal of the modified 2011 RAWP.

LLC Response: These plans have been updated as requested. However, no revisions were needed for the O&M Plan on Dredging, Capping, and Sand Covering.

53. Section 4 **Reporting and Documentation**, page 33: Specify that laboratory data will be sent simultaneously to the Respondents' Team and the A/OT. Other data collected that does not come from a laboratory is to be made available to the Response Agencies within five business days.

LLC Response: The text has been revised as requested.

54. Section 4.1 **Phase 2B Health and Safety Plan**, page 33: The updated Health and Safety Plan is to be updated with the next submittal of the modified 2011 RAWP.

LLC Response: The text has been revised as requested.

55. Section 5 **2011 Phase 2B Remedial Action Project Schedule**, page 34:

a. Clarify how many additional days are factored into the schedule for residual dredging.

b. Submit schedule with dates.

LLC Response: The text has been revised as requested.

Appendix B Engineered Plan Drawings

56. Provide a summary table documenting what changed in drawings and core chemistry since the most recent version of the 100% Design Report submitted November 2009.

LLC Response: An updated summary table documenting changes in remedy at each core location will be provided. This is the same table included as part of the Design Anthology.

57. Drawing E-7: Extend the "A" cap remedial action over the underground water line designated Line 004 Station 441.5+00 near transect 3050. This utility cap would fill the area between OU3-SC26A and OU3-SC26B. Also extend the sand cover over the utility line from OU3-SC25A and OU3-SC25B and OU3-D106A.

LLC Response: The LLC will extend the remedial action toward or over the underground utility to the extent consistent with safety, as determined during the construction season based on availability of accurate data on the exact location of the utility, discussions with the A/OT and, as appropriate, the utility owner, and J.F. Brennan & Co.'s professional opinion. The LLC does not believe it is prudent or appropriate to amend the engineered drawings to reflect remedial action directly on top of the utility until this determination is made.

58. Drawing E-9: Dredge utility area at transect 3061 between OU3-D19A and OU3-D19B. This dredging will be over the following utilities:

a. Water line 005 at station 394.81+00

b. Fiber optic line 054 at station 394.81+00

LLC Response: : The LLC will extend the remedial action toward or over the underground utility to the extent consistent with safety, as determined during the construction season based on availability of accurate data on the exact location of the utility, discussions with the A/OT and, as appropriate, the utility owner, and J.F. Brennan & Co.'s professional opinion. The LLC does not believe it is prudent or appropriate to amend the engineered drawings to reflect remedial action directly on top of the utility until this determination is made.

59. Drawing E-9: OU3-D20A was dredged in 2010; new modeling shows additional dredging required at western edge of this area which is not shown in the current dredge plan, add dredging to the modified 2011 Work Plan, (near core 3064.5-11)

LLC Response: The LLC believes the existing dredge plan appropriately captures the target sediment in the area, and that the DOC shown near core 3064.5-11 is an artifact of the model. The LLC requests an opportunity to review the remedy in this area with the A/OT.

60. Drawing E-9: North of CA17. Area designated as High subgrade: Please supply high subgrade verification documentation for this area.

Response: This has been provided.

61. Drawing E-9: Utilities at transect 3066 and 3067: This area has high concentrations requiring remedial action. Place a B cap from North end of completed dredge area OU3-D21 past OU3- D60 up to the South end of OU3-D22. Extend the cap from the West shore of the river to the eastern edge of the modeled dredge area over these three utilities in the utility corridor. The affected utilities include:

- Fiber optic line 006 at station 376.14+00 (near cores 3066.5-02 and 3066-01.5)
- Water line 007 at station 373.08+00
- Fiber optic line 008 at station 373.18+00

LLC Response: The LLC will extend the remedial action toward or over the underground utility to the extent consistent with safety, as determined during the construction season based on availability of accurate data on the exact location of the utility, discussions with the A/OT and, as appropriate, the utility owner, and J.F. Brennan & Co.'s professional opinion. The LLC does not believe it is prudent or appropriate to amend the engineered drawings to reflect remedial action directly on top of the utility until this determination is made.

62. Drawing E-9: Please explain the core / location designations at the shorelines including the following: D21-A1, D21-B2, D21-B1, etc., SHC3D-D1, SHC3D-C1, etc.

LLC Response: The labels in question refer to poling locations. The core symbols will be revised for future submittals to differentiate from coring locations.

63. General comment regarding OU4 Design Drawings:

a. Provide a summary table documenting the OU4 design drawings changes made since the latest set of drawings submitted with the 100% Design Report (e.g., updated design anthology spreadsheet listing remedy progression over design period for each core; also include infill cores).

LLC Response: A summary table documenting changes in remedy at each core location will be provided as part of the 100 Percent Design Submittal. This is the same table included as part of the Remedial Design Anthology.

b. Confirm the FIK model used the deepest contamination greater than 1.0 ppm and not a shallower depth of contamination. This concern manifested itself during review of some cores that had several intermediate intervals not analyzed, and it appeared the modeled DOC did not consider results below the un-analyzed intervals.

LLC Response: The basic FIK model works with a vector of indicators at each core location, with 1's at depths known to be contaminated and 0's at greater depths known to be uncontaminated. They are averaged horizontally with weights given by the kriging parameters. Through this averaging, 1's contribute positively to the probability of contamination, and 0s negatively, in the neighborhood of the core

For cores, where the depth of contamination was identified (i.e. samples less than 1 ppm were collected below the identified interval), the deepest measured concentration exceeding the RAL was used in the FIK model. To deal with the case of cores that were contaminated to their deepest analyzed layer, LTI modified the model code in 2010 so it now can work with just a vector of 1s. Below that layer, the model doesn't assume anything about that core and works with data from neighboring locations to estimate DOC.

In a few unique locations, sampling data was available indicating contamination above the RAL to a certain depth, then there was no information over an intermediate depth interval, and then there were known to be uncontaminated intervals below. In these few cases, LTI set it up to have a vector of ones, then no indicator values at all for the intermediate depths, and finally zeroes for the deepest intervals where sediments were know to be below the RAL. So in these cases the model gets its information for those intermediate depths from other cores in the neighborhood, if there are any at those depths.

The only exception to the overall modeling framework summarized above was in the D23 TSCA/CC1 cap area, where the DOC was set higher in the dredge-and-cap area to avoid over-estimation of the neat line depth outside of that area. This had no impact on the remedy in the cap CC1 area, but it did make the neat line appear artificially shallow.

c. Supply the core-by-core DOC table(s) used by the FIK modeler(s).

LLC Response: The DOC tables were previously provided to the A/OT, and are also available on Tetra Tech's Share Point site.

d. At the boundaries of the navigational channel there are many locations where the modeled depth of contamination abruptly changes with no core(s) in close proximity to validate the FIK Model. For example, refer to Drawing D-10E and its related cross sections. Arrange a work group meeting to review these boundaries with the A/OT in order to modify the planned remedial design/action.

LLC Response: A work group meeting will be arranged to discuss the FIK model results in the navigation channel.

64. Drawing E10W: Clarify why Shoreline Cap SHC6 was eliminated.

LLC Response: Shoreline cap SHC6 was eliminated based on the results of poling performed as part of the 2010 infill sampling. Along the riverbank in the western portion of the former SHC6, the depth of contamination (DOC) was identified to be suitable for dredging (e.g. less than 2 feet). Along the riverbank in the eastern portion of the former SHC6, the DOC was identified to be negligible and therefore additional RA, beyond that performed as part of Phase 1 is not warranted.

65. D- and E- series drawings: In these series of drawings, show all cores with at least one interval having TSCA level material (greater than 50 ppm) in 'red' font. There are a number of locations not properly identified as having TSCA.

LLC Response: These drawings have been revised as requested. Note, however, that all locations with 2.5-foot TSCA intervals have been properly identified. The cores containing sediments designated as requiring TSCA handling (i.e., average concentration in excess of 50 ppm for 2.5-foot interval) have been given a unique symbol for future submittals. The core symbol will be red, and the font italicized to differentiate from cores with one or more intervals $\geq$ 50 ppm (black symbol with red font).

66. Drawing E-10E: Core location 4003-08 in the FIK model was not modified as previously discussed in 100% Design comments. Adjust this dredge area to reflect the previous 100% Design Comment(s).

LLC Response: LTI has reviewed core location 4003-08 where two cores have previously been collected – one in 2004 and one in 2008. The 2004 core was advanced to a depth of

6 feet (uncorrected) and the DOC was not fully defined (e.g., last sample was above the RAL). LTI represented the 2004 core by a short vector of 1's (see response to comment 63b). The 2008 was advanced to a much deeper depth (to 15 feet uncorrected) and penetrated to uncontaminated material for a defined DOC. Therefore, the 2008 core was modeled to include a vector with the ordinary configuration of 1's and 0's, as described in response to comment 63b. Thus, the two cores provided the same information in duplicate at the shallower depths, and the deeper core was the sole source of information on contamination at that location at greater depths. Based on this discussion, it is the LLC's and Design Team's opinion that the cores at 4003-08 have been appropriately included in the FIK model, consistent with earlier work group discussions, and therefore no refinements to the dredge plans are required at this time.

67. Drawings D-10E, E-10E, DC-13, & DC-14: This comment pertains to the approximate triangular area contained within core locations 4001-97 to 4203-05 to 4001-23 at the south side of the De Pere turning basin:

Dredge to the FIK modeled LOS 0.5 elevation, unless the FIK modeled DOC is greater than 10 feet, then dredge to 10 feet. After this first dredge event, conduct re-characterization sampling (not verification sampling). Collaboratively with the A/OT, utilize Adaptive Management to determine the final remedial action(s) for this area.

LLC Response: The LLC and the Design Team request that the A/OT provide the rationale for the recommended changes to the design. The current design is consistent with the general ground rules developed for delineating remedial action areas. Specifically, the current design includes dredging of all TSCA-designated sediments as well as all sediments in excess of 50 ppm in the top 1.5 feet.

68. Drawings D-10E, E-10E, DC-14, & DC-16: This comment pertains to the areas currently shown as CB6, CB6b and CA18 on the east side of the De Pere turning basin:

Dredge to the FIK modeled LOS 0.5 elevation, unless the FIK modeled DOC is greater than 10 feet, then dredge to 10 feet. After this first dredge event, conduct re-characterization sampling (not verification sampling). Collaboratively with the A/OT, utilize Adaptive Management to determine the final remedial action(s) for this area.

LLC Response: The LLC and Design Team request that the A/OT provide the rationale for the recommended changes to the design. The current design is consistent with the general ground rules developed for delineating remedial action areas, with one exception that will be corrected in the next submittal – Cap CB6 will be converted to Cap C due to the presence of a deeply-buried (4 to 4.5 feet below the mudline) 6-inch interval with 67 ppm (2007 core 4004-51).

69. Drawing D-11, E-11 & DC-18: Dredge what is currently CA61, CA61B, and CB30 to LOS 0.5. Based on 100% Design Volume 2 drawings, this was a designated dredge-only area, and only production dredging has taken place to date, so final dredging must be completed first.

LLC Response: The referenced areas were delineated as Dredge-and-Cap C in the Nov. 2009 100 Percent Design submittal. However, 2010 infill sampling indicated that concentrations outside of the navigation channel are all less than 50 ppm. Therefore, the previously delineated Cap C was converted to Cap A or B, depending on anticipated surface concentrations following dredging. The LLC and Design Team do not agree with converting these areas to dredge areas unless the A/OT provides additional justification for dredging.

70. Drawing D-11, E-11 & DC-18: Dredge what is currently CA62 to LOS 0.5. Based on 100% Design Volume 2 drawings, this was a designated dredge-only area, and only production dredging has taken place to date, so final dredging must be completed first.

LLC Response: The LLC and Design Team agree that the area currently identified as CA62 was previously (in the November 2009 100 Percent Design) delineated as dredge only. However, subsequent infill sampling indicates that the DOC is greater than the "break-even depth" for a Cap A and was therefore refined accordingly. The LLC and Design Team do not agree with converting these areas to dredge areas unless the A/OT provides additional justification for dredging.

71. Drawing D-11: The A/OT disagrees with the design of no action for utilities and other issues in the area near the De Pere wastewater treatment plant between transect 4012 and 4014. Arrange a work group meeting for a collaborative review of these areas. Please forward all details on the utilities, per the recent email request by Jay Grosskopf, at least one week prior to the work group meeting.

LLC Response: There are four active and one proposed utility crossing in the area between 4012 and 4014. The first utility, line 012 is described by Gorrondona and Associates (Gorrondona) as an abandoned waste water line of unknown size, material, and placement method. The next utility offset includes three active lines, two wastewater lines (24-inch and 36-inch-diameter) both placed by plow method (lines 013 and 014). Gorrondona has indicated a high confidence in the horizontal location of lines 013 and 014, however the lines have a minimum of only 5 feet of sediment cover below channel grade. The third line is a fiber optic line placed by directional bore (line 015). Line 015 has no plan or profile (depth) data available. The fourth line depicted on the drawings (line 016) is proposed, and no offset distance is currently proposed based on its alignment.

Additional information (summary reports and drawings) on the utility survey work performed for Tetra Tech by Gorrondona was provided to Mr. Grosskopf recently. Additional details available for the utilities will be forwarded to the A/OT as they are received and a work group meeting will be held to discuss these areas.

72. Drawing D-11, DC-19: Dredge instead of capping areas CB9B and CC2C alongside of CB9B.

LLC Response: The LLC and Design Team request that the A/OT provide the rationale for the recommended changes to the design. The current design is consistent with the

general ground rules developed for delineating remedial action areas. Specifically, the current design includes dredging of all sediments in excess of 50 ppm in the top 1.5 feet and any caps to be placed in the navigation channel are designated as Cap C.

73. Drawing D-11, D-12, E-11, E-12, DC-19, DC-20, DC-21, & DC-22: For cap CC2C it appears there are areas that would be less expensive to dredge than to cap. Confirm the dredge versus cap break-even analysis for these areas. Arrange a work group meeting for a collaborative review of these areas in order to discuss the basis for these changes from the 100% Design Report.

LLC Response: The cap CC2C area will be reviewed for areas where the sediment thickness being capped is less than the break-even depth. A work group meeting will be scheduled, if needed, to review our findings before the dredge plans are finalized.

74. The A/OT disagrees with the design of "no action" at the gas line area between transect 4022 and 4023. Arrange a work group meeting to collaboratively review the design for this area. Please forward all details on the utilities, per the recent email request by Jay Grosskopf, at least one week prior to the work group meeting.

LLC Response: This utility is a 16-inch-diameter gas main placed by plow method. Gorrondona indicates that the line is approximately 5 feet below the channel grade. Plan and profile data is available for this line. The details available for the gas line utilities will be forwarded to the A/OT and a work group meeting will be held to discuss these areas. Additional information (summary reports and drawings) on the utility survey work performed for Tetra Tech by Gorrondona was provided to Mr. Grosskopf recently. Additional details available for the gas line utilities will be forwarded to the A/OT if we obtain them and a work group meeting will be held to discuss these areas.

75. Drawing D-12: Neat line dredge the channel (Ashwaubenon Creek) from the mouth upstream to core location 4020-01. Refer to attached files Design Anthology-Remedy Change Table-01-08-10.pdf and Difficult or Inefficient to Dredge Area Summary Table (5-28-08).pdf for history of this area.

LLC Response: The LLC and Design Team request that the A/OT provide the rationale for the recommended changes to the design. The LLC's and Design Team's interpretation of the A/OT's June 4, 2008 comments pertaining to the "Difficult or Inefficient to Dredge Area Summary Table (5-28-08)" was that no action was conditionally approved for Ashwaubenon Creek, subject to an analysis of the sediment stability in these tributaries. The LLC and Design Team acknowledge that this sediment stability evaluation has not been provided to the Agencies and will expedite this for A/OT review.

Appendix A – CQAPP

76. Figure 3-1 Quality Assurance Organization Chart: Change the first asterisk to read: "A/OT, on behalf of the Agencies, will provide…"

LLC Response: The Organization Chart has been revised.

77. Section 9.5.3.1, Dredge-only Area Sampling: Add new subsection:

Section 9.5.3.1.1 Dredge-only Area Sampling with FIK using Corrected Cores

Include current text from what was originally Section 9.5.3.1; then change the third paragraph as follows:

"The composited or individual surface (0- to 6-inch) samples, representative of generated residuals within a given DMU, ~~may~~ will be analyzed for moisture content/percent solids, specific gravity (optional to support possible future engineering evaluations considering sediment density) and total PCBs in accordance with the QAPP. If the surface composite or mathematically averaged sample from a given DMU exceeds the 1.0 ppm RAL, the next deeper (6- to 12-inch) sample representative of undisturbed residuals within that DMU will be analyzed. Deeper core section analyses will continue until the extent of undisturbed residuals is defined. If undisturbed residual concentrations in the subsurface (deeper than 6 inches) composite or mathematically averaged samples are determined to be ~~statistically~~ greater ~~(P < 0.05)~~ than the 1.0 ppm RAL ~~(e.g., based on tallies of verification sampling data collected from multiple DMUs),~~ then the Tetra Tech Team, LLC's Representative, and A/OT will collaboratively determine appropriate adaptive management response actions (see Section 14.1). Note: Collected samples must characterize the post-dredge depth of contamination so if cores are not collected to refusal and the last interval has greater than 1 ppm total PCBs, additional longer cores may be required."

LLC Response: The text has been revised.

78. Section 9.5.3.1, Dredge-only Area Sampling, page 39: Add new subsection:

Section 9.5.3.1.2 Dredge-only Area Sampling with FIK using Uncorrected Cores:

For DMUs ranging in size from 1 to 2 acres, two sets of five sediment cores per set (potentially supplemented with surface grab samples) will be collected from each DMU, including a minimum of one core from one set (maximum of two cores) advanced at RD sampling locations, when possible, and an additional four cores advanced at stratified random locations, which together provide a representative sample of the DMU. Each set will consist of randomly distributed core samples from the DMU. For DMUs of less than 1 acre, the two sets of samples will be collected at a prorated density of five cores per acre. For DMUs of more than 2 acres, the two sets of samples will be collected at a prorated density of five cores per 2 acres, with two of the samples advanced at RD sampling locations. Follow-on adaptive management may result in changes over time (i.e., in 2010 and beyond) of the DMU sampling program, as discussed in Section 14.1.1.

For each set of samples, sediment core samples collected at each sampling location will be sectioned into 6-inch intervals, and corresponding depth intervals (e.g., 0- to 6-inch and 6- to 12-inch segments) will either be analyzed individually or composited within each DMU. Surface

grab samples (0 to 6 inches) may also be collected for use in evaluating generated residual PCB concentrations. The decision on whether or not to analyze individual sub-samples would be made by the Tetra Tech Team, if necessary to refine assessments of post-dredge spatial variability. For each set, composite samples will be formed by mixing together 0an equal aliquot from each of the individual samples, and the remaining material from the individual samples will be separately archived for possible future analysis.

Each set of the composited or individual surface (0- to 6-inch) samples, representative of generated residuals within a given DMU, will be analyzed for moisture content/percent solids, specific gravity (optional to support possible future engineering evaluations considering sediment density), and total PCBs in accordance with the QAPP. If the surface composite or mathematically averaged sample from a given DMU set exceeds the 1.0 ppm RAL, the next deeper (6- to 12-inch) sample representative of undisturbed residuals within that DMU will be analyzed. Deeper core section analyses will continue until the extent of undisturbed residuals is defined. For either set, if undisturbed residual concentrations in the subsurface (deeper than 6 inches) composite or mathematically averaged samples are determined to be greater than the 1.0 ppm RAL, then the Tetra Tech Team, LLC's Representative, and A/OT will collaboratively determine appropriate adaptive management response actions (see Section 14.1). Note: Collected samples must characterize the post-dredge depth of contamination so if cores are not collected to refusal and the last interval has greater than 1 ppm total PCBs, additional longer cores may be required."

In addition, exceptions to this general criterion may be identified in the field and discussed with the A/OT at that time. The A/OT may also analyze the data as it deems appropriate, and although it will work collaboratively with the Tetra Tech Team and LLC to reach an agreed upon resolution, the final decision lies with the Response Agencies.

LLC Response: The LLC appreciates the A/OT's concern that appropriate details need to be developed for post dredge confirmation sampling and evaluation of DMUs that have been designed and dredged to a neat line based on uncorrected sample core DOCs. We would like to point out, however, that in OU4, where this design basis has been incorporated into dredge plans, the average recovery for infill samples collected in OU4 in 2010 was about 90% (not including discrete samples). The LLC will provide a recalculated average recovery that includes the discrete samples to the A/OT prior to further discussion on this issue. This improvement from historic sampling efforts is attributable to lessons learned and adaptive management, in collaboration with the A/OT, including the use of the sampling decision tree, selecting appropriate sampling devices for different situations, etc. In view of the higher 2010 recoveries during OU4 infill sampling, and the incorporation of the 2010 data into the geostatistical model, differences between the uncorrected and corrected core based neat line surfaces have been reduced.
The LLC would like to discuss this issue further with the A/OT to reach agreement on whether collecting two sets of five post dredge samples per DMU is warranted instead of maintaining the five sample per DMU frequency used for DMUs dredged to corrected core based neat lines. As part of this determination the LLC would like to evaluate whether the degree of residual dredging required actually increases significantly as result of the use of uncorrected core data. The LLC is also interested in understanding if

there is a statistical basis for the A/OT's proposed use of two sets of five post dredge confirmation samples as described in the A/OT's comment.

79. Section 9.5.4.1 Dredge Only Areas, 1st paragraph: Modify per the following "Consistent with the ROD Amendment and for each set of data collected for each DMU, the post-dredge sampling data collected in dredge-only areas will be evaluated initially against the following criteria:"

LLC Response: The text has been revised.

EXHIBIT 11

Appleton Papers Inc. Proposes New Approach To Fast-Track Litigation Involving Lower Fox River Cleanup

BusinessWire

Press Release: Appleton Papers Inc. (API) – Wed, Mar 14, 2012 6:11 PM EDT

APPLETON, Wis.--(BUSINESS WIRE)--

Citing numerous instances in which Federal officials have ignored environmental laws, regulations and rules of procedure; improperly driven up the cost of the Lower Fox River cleanup; and generally prevented the company from having its day in court, Appleton Papers Inc. (API) today sought a new approach for resolving enforcement litigation involving the Lower Fox River remediation effort.

In a letter to the U.S. Department of Justice, lawyers for the company said that a year-and-a-half into the Environmental Protection Agency's enforcement action to clean up the river "the Government has taken no steps to establish the most basic element of its case against API – that API is liable under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)."

David R. Erickson, a lawyer for the company, wrote "the litigation history demonstrates that by design, or in effect, the Government in doing everything it can to avoid justice, increase the costs of this litigation and delay any resolution on the merits."

The letter was written in response to the Government's demand that API agree to dredge 680,000 cubic yards of the Lower Fox River during the 2012 dredging season at an estimated cost of $75 million. The demand, Mr. Erickson said, is premised on a "new and unjustifiable interpretation" of a 2007 EPA Record of Decision that does not comport with proper Federal procedures.

The demand, API contends, is just the latest in a series of actions that has violated standard procedures and placed the company in "a due process-defective vise of the Government's making." For example, the letter stated:

- The Government has refused to ask the Federal Court to schedule a trial so the government can prove its case, instead selectively enforcing a Unilateral Administrative Order against only two of the companies (NCR and API) named as Potentially Responsible Parties (PRPs) for polluting the river;
- Using potential economic penalties for failing to comply with the UAO as a threat, in 2007 the EPA insisted that dredging begin prior to completion of the remedial action's design, an inefficient approach that created huge and unnecessary expenses for NCR and API and was therefore an abuse of the agency's authority;
- When it learned two years ago that it had underestimated the cost of the cleanup by $265 million, or 62%, the EPA decided not to amend its Record of Decision – which would have triggered a formal review by a special EPA board – and instead side-stepped the scrutiny by issuing an "Explanation of Significant Difference."

"API has accommodated the Government the past 3+ years expecting it would have a meaningful chance to be heard," said Mr. Erickson in his letter. "That cooperation has been rewarded by unreasonable and what API believes are unlawful remedial demands."

The company has an obligation to its employees, the communities in which it operates and its shareholders "to operate its business, including its handling of litigation, in a sustainable manner," the letter said. "The status quo is not sustainable."

In place of the current inconclusive and patently unfair process, API proposed that the parties to the dispute agree to resolve the litigation on an accelerated schedule. This proposal would be accompanied either by a temporary suspension of remediation efforts during the 2012 dredging season or a "measured but significant amount" of remediation work while the matter is resolved in court.

If the Government's allegations are proven at trial, questions about which company is liable will end. But if the Government's allegations cannot win on the merits, the Government will avoid being directly responsible for a potential miscarriage of justice that jeopardizes the jobs of 885 Wisconsin residents – and about 1,000 others – who work for a company that was not even in existence when PCBs were released into the Lower Fox River.

The proposal, Mr. Erickson said, "will ensure fairness both to EPA to test its conduct in this matter...and to API to test API's claim of nonliability or, if needed, API's defenses."

As it has repeatedly noted in the past, API reminded the Government that it could also direct the remediation order it has issued, but never enforced, against the other named PRPs.

The letter to the Department of Justice can be read here:
http://www.scribd.com/doc/85392652/Appleton-Papers-Inc-Proposal-for-the-Lower-Fox-River-Site.

EXHIBIT 12

MINUTES

LOWER FOX RIVER REMEDIATION LLC
MEETING TO DISCUSS NCR'S "NOTICE OF MEETING" DATED 13 MARCH 2012

Meeting called to order at 3:32 p.m. EDT, Wednesday, 14 March 2012
Meeting was conducted telephonically

Present:
Jennifer Daniels
Ed Gallagher
John Hartje
Jeff Lawson (Resident LLC Manager)
Susan O'Connell (LLC Controller)
Joe Salamone (LLC Secretary)
Brian Tauscher
Katherine Querard

Discussion:

1. Ms. Daniels introduced the *Notice of Motion to Take Action by the LLC Regarding 2012 Work* and *Notice of Motion to take Action by the LLC Regarding 2012 Monitoring Activities*.

2. With regard to the *Notice of Motion to Take Action by the LLC Regarding 2012 Work:*

    a. Ms. Daniels said that due to a complex set of considerations, it is NCR's position that:
        i. There is a high likelihood of being faced with a preliminary injunction if we do not do some level of work;
        ii. The right amount of work is documented in the 2012 Remedial Action Work Plan ("2012 RAWP").
    b. Mr. Gallagher said timing is important given the fact that the February trial is still being decided by Judge Griesbach.
    c. Mr. Tauscher said API/AWAB has spoken previously with NCR about API/AWAB not agreeing to do 500,000 cubic yards of dredging in 2012. Mr. Tauscher cited the lack of progress in the Enforcement Action and said API/AWAB has vastly overpaid its share and is not prepared to substantially deplete its available resources to do this volume of work.

d. Vote: NCR 40 votes in favor; API 45 votes against; AWAB 15 votes against. Motion defeated 60 to 40.

3. With regard to the *Notice of Motion to Take Action by the LLC Regarding 2012 Monitoring Activities:*

   a. Ms. Daniels said she did not have anything further to add regarding NCR's position on this Motion.
   b. Mr. Tauscher said he has corresponded with Ms. Querard, Ms. O'Connell, Mr. Lawson, and Mr. Salamone regarding API/AWAB's position on this subject. Mr. Tauscher asked if it would be sufficient to add this correspondence to the Minutes or if NCR would prefer that he recite API/AWAB's position. Ms. Daniels asked Mr. Tauscher to recite API/AWAB's position.
   c. Mr. Tauscher said NCR's position is that Long Term Monitoring should be done this year for various technical reasons including the possibility that others might do this work and fault the LLC's work. Mr. Tauscher said API/AWAB's position is that:
      i. The LLC has no obligation to do this work;
      ii. Others have skirted work in the past because of the LLC's contract;
      iii. If the LLC undertakes this work it will give others another reason to do no work.
   d. Ms. Daniels said she had no response to Mr. Tauscher's comments.
   e. Vote: NCR 40 votes in favor; API 45 votes against; AWAB 15 votes against. Motion defeated 60 to 40.
   f. Agreed: Mr. Tauscher will add the above-mentioned correspondence about API/AWAB's position to the Minutes subject to the LLC's review and approval of the draft Minutes before they are finalized.

4. Mr. Tauscher asked Ms. Daniels if NCR would be interested in API and AWAB transferring their LLC shares to NCR in accordance with Section 9.8 of the LLC's *Operating Agreement*. Ms. Daniels responded that at this time NCR is not inclined to do this. Ms. Daniels said this is a new motion and the NCR team would like to have an opportunity to discuss it. Mr. Gallagher concurred with Ms. Daniels. Mr. Hartje asked Mr. Tauscher to submit a motion for NCR's review.

5. Mr. Tauscher said API/AWAB and NCR's interests are not 100% aligned. API/AWAB is not interested in getting NCR into trouble with regulators. Mr. Tauscher said transferring API and AWAB's LLC shares to NCR is a possible solution that has its pros and cons. Mr. Tauscher said the record needs to reflect

that API/AWAB is willing to get out of NCR's way. Mr. Tauscher said he will circulate a motion to be voted on at a future meeting. Ms. Daniels said NCR would be happy to consider this motion expeditiously. Mr. Tauscher said Section 9.8(b) of the LLC's *Operating Agreement* requires a super-majority (i.e., unanimous consent) of all LLC members to pass a motion to transfer shares. Ms. Daniels asked if this meant that if NCR voted "no," this motion would not pass. Mr. Tauscher confirmed that Ms. Daniels was correct.

6. Mr. Hartje asked that the Minutes of today's meeting be drafted quickly. Mr. Salamone agreed to draft the Minutes after the meeting.

The meeting adjourned at 3:48 p.m. EDT.

EXHIBIT 13

Shook, Hardy & Bacon L.L.P.
www.shb.com

David R. Erickson

2555 Grand Blvd.
Kansas City
Missouri 64108-2613
816.474.6550
816.421.5547 Fax

March 14, 2012

BY CERTIFIED MAIL

Randall Stone
Senior Attorney
U.S. Department of Justice
Environment and Natural Resources Division
P.O. Box 7611
Washington, DC 20044-7611

Re: Appleton Papers Inc. Proposal for the Lower Fox River Site

Dear Mr. Stone:

We have been engaged as co-counsel to Appleton Papers Inc. (API) and are sending this letter on API's behalf. API acknowledges receipt of your letter of March 8, 2012 and proposed stipulated consent order.

API cannot agree to the Government's proposal and, frankly, is dismayed by what API regards as the Government's abuse of power. We are 1½ years into the EPA enforcement litigation but the Government has taken no steps to establish the most basic element of its case against API – that API is liable under CERCLA. Instead, the Government has resisted efforts by API to assure that it is afforded fundamental due process before it is once again asked to expend tens of millions of dollars on a remediation for which its liability has never been proven and its defenses have never been heard.

The Government's proposal asks that API stipulate to dredging 680,000 cubic yards in the 2012 construction season at a cost of approximately $75 million. The proposal is premised in part on a new and unjustifiable interpretation of the 2007 Record of Decision (ROD) Amendment that not only dramatically increases the cost of the ROD remedy, but also does so without following the National Contingency Plan or EPA guidance on the need for a ROD amendment. These demands have been made to API under threat of draconian penalties while the Government resists discovery and a trial on the merits. To quote Justice Alito in the recent oral argument in *Sackett v. EPA*, the Government's continued effort to deny API of its due process rights is "even more outrageous."

API seeks only fair play. It is time to move this matter on a track to a decision on the merits and to stop the continued use of the Unilateral Administrative Order (UAO) and threatened injunctions as tools to complete remedial action before the Court ever schedules a hearing on the merits.

Geneva
Houston
Kansas City
London
Miami
Orange County
San Francisco
Tampa
Washington, D.C.

The Litigation History

Rule 1 of the Federal Rules of Civil Procedure states that the rules must be "administered to secure the just, speedy, and inexpensive determination of every action." The litigation history demonstrates that by design, or in effect, the Government is doing everything it can to avoid justice, increase the costs of this litigation, and delay any resolution on the merits.

- The Government filed the enforcement action in October 2010 against NCR, API and 12 other Defendants.
- In February 2011, the Government proposed that the litigation be phased. On February 28, 2011, API sent a letter to the Government that stated "[i]f the case were to be phased by initially addressing Count V [to enforce the § 106 Order], as you suggested, then it is imperative that all defenses to that Claim be included. In API's case, that includes, among other issues, a determination of whether API has any liability under CERCLA at all and, if so, whether it has already paid more than its divisible share of liability for compliance with the § 106 Order."
- For the 2011 construction season, to balance API's need to preserve its dwindling financial resources until there was a meaningful opportunity to be heard on those issues against the Government's desire for remediation to continue, API proposed dredging 250,000 cubic yards and completing remediation in OU3.
- The Government's response last spring was to file a preliminary injunction motion against only API and NCR seeking an accelerated scope of work. The Government asked the Court to give API and NCR only 6 days to reply to its motion, and asked that the injunction be entered without discovery and without a hearing.
- On July 5, 2011, the Court denied the Government's motion.
- Eight days later, the Government filed essentially the same motion.
- The motion was again denied on July 28.
- Since that time, the Government has made no effort to advance adjudication of its claims that API is liable under CERCLA or to push the Court to a final hearing on the merits where API, if liable, could present its defenses to the Government's claims.

- At the Rule 26(f) conference in Washington D.C. in September 2011, the Government opposed the proposal of NCR and API to litigate liability and defenses in any initial phase of the litigation.

- All of this resistance has diverted the Court from scheduling a Rule 16 pretrial conference, or entering a Rule 16(b)(1) Order that, by rule, should have been entered more than one year ago.

- Taking advantage of that fact, the Government is rattling the preliminary injunction sword again, in effect seeking final relief before API obtains discovery or is given a chance to be heard.

- Instead of asking the Court to schedule a trial so that the Government can prove its case, the Government seeks to enforce the UAO only against NCR and API via a series of injunctions and under threat of draconian penalties if they do not do whatever the Government wants. This is directly contrary to controlling case law and fundamental due process.

The Remedial History

API has accommodated the Government the past 3+ years expecting it would have a meaningful chance to be heard. That cooperation has been rewarded by unreasonable and what API believes are unlawful remedial demands.

Using the UAO as a sword, in 2007 EPA insisted that dredging begin prior to completion of the remedial action's design. This state of remedial affairs remains true today. This inefficient approach has resulted in thousands of cubic yards of clean material being removed from the river, processed, transported and disposed of all at huge extra and unnecessary expense to API and NCR. When EPA enforces inefficiency under threat of penalties for refusing to comply, it abuses its authority.

At the conclusion of the 2009 dredge season, EPA informed the Lower Fox River Remediation LLC (the "LLC"), that it had concluded that dredging, as opposed to capping, would be "cheaper" in the remaining remediation areas in Operable Unit (OU) 3. Why? Because the Government reviewed the LLC's contract with the remediation contractor and, by *ipse dixit*, concluded that the LLC had negotiated a poor deal, and had it not done so, dredging would be cheaper than capping. The Government ignored the fact that the LLC had bid the project and *no contractor has ever offered to dredge the river for the dollar amount the Government deemed appropriate for dredging*. Instead, the Government invented dollar costs for dredging, proclaimed them to be lower than the actual costs for capping, and then insisted that the LLC dredge rather than cap in OU3.

EPA should have required a ROD amendment two years ago when it learned that it had underestimated the remedy cost in the ROD by more than 62%, raising the expected total cost for remediation from the Amended ROD's $435 million to over $700 million. Instead of a ROD amendment, the Government issued an "Explanation of Significant Differences" (ESD) in 2010. This procedural maneuver allowed EPA to skip the cost-efficiency and risk evaluation analysis the Government is required to perform before amending a ROD, and also to skip presenting that analysis to the National Remedy Review Board, a body created by Superfund administrative reforms of more than a decade ago to prevent the very kind of abuse of authority that is occurring here.

Compounding the exercise of unbridled discretion, in 2012, EPA decided to "interpret" PCB-impacted sediment depth and PCB concentrations used to define areas qualifying for capping instead of dredging under the Amended ROD in a manner inconsistent with the standards the Government and the parties have been following heretofore. EPA is now interpreting "deeply buried" to mean 6 feet instead of 18 inches, a quadrupling of the depth; and "relatively clean" to mean 10 parts per million (ppm) instead of 50 ppm, a quintupling of the standard. The Government is directing API to meet these requirements, and is insisting API agree to these requirements in the proposed consent decree.

NCR and API disagree with this new 6-foot / 10-ppm rule, for several reasons. Contrary to the Government's statements, the Government's new "rule" is not part of the remedy for OU 2-5 that EPA selected in the 2007 ROD Amendment and reaffirmed in the 2010 ESD. For four years, the parties have used 18 inches and 10 ppm as the depth and concentration standards for dredging. The new "rule" is a significant departure from that remedy, the parties' established practices, and EPA's past interpretation of the Amended ROD. The new "rule" also lacks any scientific or engineering basis, as it serves none of the remedial action objectives in the Amended ROD.

From an administrative compliance standpoint, the Government's new "rule" would cause a massive shift in the scope of the remedy by increasing the dredge volume by 33% in the area from the De Pere Dam to the Highway 172 Bridge. The increased costs associated with applying this new, contested standard to the remaining sections of the river approximate $51 million – and this builds on top of the $270 million in costs added by the 2010 ESD. If followed, the new "rule" would increase ROD costs by 72% and transform the Amended ROD into a mass-removal dictate – the very thing the Amended ROD rejects.

Whether based on performance, scope, cost, or consistency with prior practice, these changes require a ROD amendment. For the Government to make any demands without a ROD amendment is a violation of EPA's own guidelines.

Summary of the Effect of the Government's Approach in This Case

The Government's litigation and regulatory tactics might merely be characterized as "hardball." Without the UAO issued by the EPA in 2007, the Government is entitled to engage in hardball tactics.

With the UAO in place, hardball tactics are inconsistent with Constitutional principles of fair play. The Government has been moving the ROD goal posts arbitrarily without a basis in the ROD, course of dealing, or science, under the umbrella of a UAO. If API does not meet these capricious, unreasonable and expensive demands, the Government claims API is not complying with the UAO. The Government then threatens draconian financial penalties for noncompliance, and threatens to foreclose API from any ability to seek reimbursement from the Superfund "after completion" of the required action. 42 U.S.C. § 9606(b)(2)(A).[1]

This is an unfair system inconsistent with even the most rudimentary elements of due process and it is not acceptable. The Government is not entitled to put a party into a due process-defective vise of the Government's making. API is being asked to comply with a UAO under pain of tens of thousands of dollars in daily penalties. Simultaneously, it is a defendant in an enforcement action in which API does not believe it has any liability, but even if it does, it has been unable to obtain a hearing on the merits of its divisibility defense. Facially, Section 106 of CERCLA may be constitutional. As applied here, it is unconstitutional.

A Counter Proposal

API has an obligation to its 1849 employees, including its 885 employees in Wisconsin, the communities where it does business, and its shareholders to operate its business, including its handling of litigation, in a sustainable manner. The status quo is not sustainable.

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[1] The Government wrote at pages 24-25 of a reply brief to the motion for preliminary injunction: "EPA's Modified Work Plan directed NCR and API to start this year's dredging work by April 4. Dkt. 125 at 22; Dkt. 125-15 at 3. Unfortunately, NCR and API have still not started that work. While there may be room for debate over whether the relatively brief period of delay that has elapsed since that deadline precludes NCR and API from ultimately achieving 'compliance' with the UAO, clearly the longer they delay commencement of full-scale dredging the greater the risk that they have lost any right to petition for Superfund reimbursement."

Thus, API is of two minds on this matter to ensure fairness both to EPA to test its conduct in this matter under CERCLA's requirements and to API to test API's claim of nonliability or, if needed, API's defenses. In lieu of the Government's current demand, API proposes that the parties enter into an agreement to suspend work while merits issues are resolved on an accelerated discovery schedule with a trial on the merits before year end or as soon thereafter as the Court is first able to hear the case after discovery is completed.

However, if the Government is interested in a reasonable compromise, API proposes that a measured but significant amount of work as set forth on Attachment A be undertaken in 2012, on the condition that merits issues are promptly resolved again under a Court order that provides for an accelerated discovery schedule with a trial on the merits before year end or as soon thereafter as the Court is able to hear the case after discovery is completed.

If the Government's allegations stand up as proven in a trial on the merits, there will be no further questions about liability as to API, NCR, or any of the other defendants for work consistent with CERCLA's requirements. There will be no need for serial preliminary injunction motions under ridiculously compressed timetables. The Court will not have to hear due process challenges to the use of preliminary injunction procedures to seek to force completion of remedial action before a hearing on the merits ever occurs.

If the Government's allegations do not stand up in a trial on the merits, the Government will avoid being directly responsible for a tragic miscarriage of justice that jeopardizes the jobs of 885 Wisconsin residents who work for a company that was not even in existence when the PCBs were released to the River and which the Court has already said is not a successor under the Government's equitable theory of successor liability.

The alternative is, presumably, another motion for preliminary injunction. If one is filed, the Court will be asked to judge "likelihood of success," balancing of the harms, and public interest. API's liability position has not changed. The Court will be asked to confront the issue when it has already decided that there is no "likelihood" of success on this issue.

OU2 and OU3's remedial work is now completed; a change from a year ago. API has spent more than $30 million since last year's remediation season began. Additional OU4 work remains. API has continued to develop the facts on divisibility of harm. API is prepared to meet the Court's questions from last summer's opinion regarding divisibility of harm. Additional expert analysis will show that the harm is divisible and that API, if it is liable at all, has paid vastly more than its divisible share.

In this context, the only irreparable harm that would occur would be to API. It is the victim of selective enforcement of the UAO since the Government has chosen not to

pursue enforcement of the UAO against any other UAO recipient other than NCR, despite its arguments to the court that other PRPs can and should be doing such work. See Enforcement Docket No. 294 at p. 11 ("[The United States] know[s] of nothing that would prevent Glatfelter from entering into contracts or arrangements to accelerate the cleanup work under the UAO, either on its own or with others."). In all of the years that *Appleton Papers Inc. v. George A. Whiting Paper Co., et al.,* No. 08-CV-16 (E.D. Wis.) (filed January 2008) and the enforcement action have been pending, several dispositive orders have been entered without discovery or a hearing. Because of the final judgment rule and the Court's decision to delay API's appeal believing that it could resolve the entire *Whiting* action in a reasonable time period (which none of the *Whiting* defendants want to happen), API has been unable to obtain review of these orders. In the meantime, the Government is taking advantage of API's procedural plight, and adding its own resistance in this action to a resolution on the merits, making the Government's continuing use of the UAO a naked denial of due process.

Instead of engaging in extensive and time-consuming litigation and appellate proceedings which will further deplete API's financial resources, our proposal is to jointly approach the Court and request it to fast-track the litigation and to set a trial date before the end of 2012. With cooperation, we can commit to completing discovery in the next 150 days. Under option 1 above, we should suspend dredging operations during the 2012 remediation season and seek a ruling on API's liability before next season. If the Court concludes that API is liable or that issues of fact require a trial on this issue, we will have an Order in place to obtain a decision before next season on API's defenses, including its divisibility defense, which, when proven would lead to apportionment among the PRPs. Under option 2 above, remedial action as described on Attachment A during the 2012 remediation season can be undertaken while, simultaneously and finally, the parties will obtain the same relief from the Court.

There is a third option to consider. API can take administrative steps within the LLC to free the remediation contractor to perform work in 2012 for any defendant in the enforcement action, on exactly the same terms and at exactly the same rates set forth in the LLC's contracts. Doing so will allow the government to direct the same enforcement tools advanced against NCR/API to other, named PRPs in order to fund the 2012 season.

If you think it would be fruitful to advance discussions, we would be pleased to have a conference with Mediator/Magistrate Judge Goodstein, to discuss these proposals and are prepared to rearrange schedules on our end to make that happen as soon as practicable.

We look forward to your response and a productive discussion on ways to advance what we hope are mutual interests in ensuring due process and obtaining certainty on all legal and factual issues in a timely manner before API is further deprived of its property.

Very truly yours,

David R. Erickson

cc: Pamela Barker, API
Jennifer Daniels, NCR
Darin McAtee, Cravath, Swaine & Moore
Ronald Ragatz, Dewitt Ross & Stevens
Richard Murawski, USEPA Region 5
Douglas Dixon, USEPA OSRE
Cynthia Hirsch, Wisconsin DOJ
Jeffrey Spector and Kristin Furrie, USDOJ

Attachment A

The following work represents compliance with the Unilateral Administrative Order for the Lower Fox River Superfund Site for the 2012 Construction season:

1. All-in cost of approximately $42M for all remedial work in 2012;

2. Approximately 24,069 cy TSCA dredging in areas D23, D26A and D27A, with on-site storage of sediment until in-state disposal is approved, such approval now anticipated in July 2012;

3. The planning for and completion of remaining in-fill sampling work in 2012, per paragraph 1.d of the proposed consent decree; and

4. Approximately 225,931 cy of production, final and residual dredging in the area of OU4 between the De Pere dam and the Highway 172 bridge, generally moving upstream to downstream and generally following the sequence of dredge areas shown in the report "Phase 2B Work Plan for 2012 Remedial Action of Operable Units 2-5" submitted by NCR Corporation on March 7, 2012, including such dredging in the Phase I remediation area as may be indicated by testing.

EXHIBIT 14

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA and
STATE OF WISCONSIN,

Plaintiffs,

v. Case No. 10-C-910

NCR CORP. et al.,

Defendants.

ORDER DENYING MOTION FOR STAY PENDING APPEAL

This matter came before the Court for a hearing on a motion for stay pending appeal. The Court addressed the motion over the course of a telephone hearing held on May 3, 2012. For the reasons set forth at that time, the motion for a stay is denied with the following qualification: NCR is to continue to make arrangements to begin the dredging ordered by the Court, but need not begin actual dredging until May 17, 2012.

SO ORDERED this 4th day of May, 2012.

s/ William C. Griesbach
William C. Griesbach
United States District Judge

EXHIBIT 15

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

UNITED STATES OF AMERICA and
THE STATE OF WISCONSIN,

Plaintiffs,

v.

NCR CORPORATION, *et al.*,

Defendants.

No. 10-CV-910-WCG

MEMORANDUM OF DEFENDANT APPLETON PAPERS INC. IN OPPOSITION TO MOTIONS TO DISMISS CROSS CLAIMS

Defendant Appleton Papers Inc. ("API"), by its undersigned counsel, respectfully submits this Memorandum in opposition to motions to dismiss its cross claims filed by P.H. Glatfelter Company and other Certain Defendants. Dkts. 411 & 418.

INTRODUCTION

API was named in a Unilateral Administrative Order ("106 Order") and incurred over $165 million in response costs complying with that Order before this Court ruled on April 10, 2012 that it is not liable under CERCLA. Dkt. 349 ("No Liability Decision"). The issue presented by the motions to dismiss filed by P.H. Glatfelter and Certain Defendants is what claim (or claims) API may properly plead to seek relief from parties who are liable under CERCLA.

The issue before the Court is one of first impression. API is not aware of any other case where a party was issued a 106 Order and sued by the Government, but those claims were subsequently dismissed on the merits and the non-liable party sought relief from parties liable under CERCLA for the response costs the non-liable party spent

before the claims were dismissed. This situation does not fall cleanly within existing precedent.

In *United States v. Atlantic Research Corp.*, 551 U.S. 128 (2007), the United States Supreme Court acknowledged that there is overlap between CERCLA §§ 107 and 113, but generally held that a party that has been sued by the Government has a claim in contribution under § 113, while a party that has not been sued has a claim for cost recovery under § 107. The Supreme Court did not consider the appropriate claim where, like here, a party has been sued by the Government but the Court found that there was no basis for that suit and the Government's claims were dismissed. Consequently, we are in uncharted waters. Since one cannot know with certainty how the United States Court of Appeals for the Seventh Circuit (or the Supreme Court) would rule on this issue, the proper course at this pleading stage is to allow API to pursue claims both under CERCLA § 107 and, in the alternative, under § 113.

API is mindful that this Court has previously dismissed § 107 claims asserted by API in this action against Georgia-Pacific ("GP") and against the United States and the State of Wisconsin ("Government"). API is respectful of the time the Court spent in making those rulings. However, Glatfelter and Certain Defendants have now brought this issue to the forefront again, when the case is in a different posture as a result of the No Liability Decision. It is thus appropriate for the Court to consider the pending motions to dismiss in light of the current circumstances, which are not definitively addressed by existing precedent.

STATEMENT OF FACTS

API incorporates by reference the detailed Statement of Facts set forth in its brief in opposition to the motion to dismiss addressed in the July Decision. Dkt. 96 at 4-11. The following facts are most germane to the pending motions:

In November 2007, the United States issued a 106 Order to API and seven other parties. Dkt. 1 at ¶ 1. In January 2008, API and NCR commenced a contribution action (the *Whiting* action), asserting claims under both §§ 107 and 113, to recover the sums that they were expending due to the 106 Order. *Whiting*, Dkt. 1. In October 2010, the Government commenced this action in which they have asserted claims under CERCLA §§ 106 and 107. Dkt. 1. Pursuant to a stipulation agreed to by all defendants except GP, the Court entered an order deferring the deadline for filing of cross claims. Dkts. 70 & 72.

In its initial responsive pleading, API asserted counterclaims against the United States and the State of Wisconsin, alleging that each was liable to API under CERCLA § 107(a), or, in the alternative, § 113, for response costs API had incurred. Dkt. 65 at 40-52. API asserted similar alternative cross claims against GP. *Id.* at 53-58. In its responsive pleadings, NCR asserted § 107 claims against the United States and GP. Dkt. 82.

GP moved to dismiss NCR and API's § 107(a) cross claims. Dkts. 83 & 84. NCR and API filed separate briefs in opposition. NCR asserted that if the Court ultimately determined that the liability was divisible (as NCR alleged), its remedy under CERCLA would be cost recovery under § 107(a), and not contribution under § 113(f). Dkt. 97 at 8-11 of 22. In its opposition brief, API asserted the same argument (Dkt. 96 at

21-22), but also asserted that it would be entitled to sue under § 107(a) if the Court ultimately ruled that API was not liable under CERCLA, as it had alleged:

> API has alleged in its crossclaim against GP (as well as in its answer and affirmative defenses against the Government's claims) that API has no liability under CERCLA for PCB contamination in the LFR. For purposes of GP's motion to dismiss, the Court must accept these allegations as true. *Versatile Plastics, Inc.*, 247 F. Supp. 2d at 1103. If the Government is unable to prove at trial that API is liable under CERCLA, API will not share common liability with parties such as GP who are liable under CERCLA. Without common liability, API cannot assert an action under § 113(f). *Atlantic Research*, 551 U.S. at 139 ("[A] PRP's right to contribution under § 113(f)(1) is contingent upon an inequitable distribution of common liability **among liable parties**.") (emphasis added).
>
> In such a scenario, this Court has ruled that a party in API's situation "must" be allowed recovery under § 107(a):
>
> > . . . [P]arties who do not have access to § 113(a) [sic] . . . because they are completely innocent and do not share common liability with any PRPs . . . must be allowed to recover under § 107(a) if injustice is to be avoided.
>
> *Appleton Papers Inc.*, 572 F. Supp. 2d at 1043.

Dkt. 96 at 19 (footnote omitted).

In its decision rendered on July 5, 2011 ("July Decision"), the Court granted GP's motion to dismiss, ruling that "§ 107 does not provide recourse" here because "§ 113 has already been employed by AP and NCR in their contribution action." Dkt. 171 at 2-3. The Court further stated:

> AP goes so far as to suggest that it is a "completely innocent" party that does not share liability with any other PRPs. (Dkt. # 96 at 2.) I have addressed and rejected this argument at length elsewhere, concluding that a judgment of joint and several liability is not a precursor to a § 113 claim.

Id. at 3.

On May 12, 2011, API filed cross claims against all of the remaining defendants. Dkt. 163. These cross claims are identical to the cross claims that API earlier asserted against GP (*i.e.*, they assert claims under § 107(a) or, in the alternative, § 113(f)). *Id.* at 10-13. The parties stipulated that the responses to API's cross-claims would not be due

until 30 days after the Court ruled on API's pending motions relating to its liability under CERCLA. Dkt. 166 & 296.

On April 10, 2012, this Court held that API was not liable under CERCLA. Dkt. 349.

On May 8, 2012, Glatfelter and Certain Defendants filed separate motions to dismiss API's cross-claims. Dkt. 411 & 417.

ARGUMENT

I. API'S CROSS CLAIMS UNDER SECTION 107 SHOULD NOT BE DISMISSED.

A. The No Liability Decision May Have Undermined API's Ability To Obtain CERCLA Relief Under § 113(f).

The Government wrongfully named API as a respondent in the 106 Order and then later wrongfully sued API to enforce the 106 Order. API incurred more than $165 million to comply with that Order before it was found to have no CERCLA liability. API now seeks to recover the response costs it incurred from parties who are liable under CERCLA to the extent permitted by CERCLA.

The issue before this Court is one of first impression. API is aware of no other case where a party was named in a UAO and sued by the Government, was subsequently found to have no liability, and sought to recover the costs expended from liable parties. Unfortunately, the guidance from the Supreme Court does not answer the precise question. The interplay between §§ 107 and 113 can be difficult to navigate, as other courts have aptly recognized:

> Despite this clarification [from Atlantic Research], navigating the interplay between sec. 107(a) and 113(f) remains a deeply difficult task. *See New York v. Solvent Chem. Co., Inc.*, No. 83-CV-1401-JTC, 685 F.Supp.2d 357, 425, 2010 WL 376328, at *67 (W.D.N.Y. Jan. 26, 2010) ("[R]ecent rulings have done little to provide the lower courts with useful guidance in determining which subsection of CERCLA provides a cause of action for parties seeking reimbursement of response costs in differing situations."); *see also id.* at 422, 2010 WL 376328 at *64 ("Perhaps most perplexing is the interplay between the two cost recovery provisions which this court must apply in resolving the difficult factual and legal issues."). The sometimes blurry relationship between sec. 107(a) cost recovery claims and sec. 113(f) contribution claims is a there to which we will return repeatedly in this opinion.

Agere Systems, Inc. v. Advanced Envtl. Tech. Corp., 602 F.3d 204, 218 (3rd Cir. 2010), *cert. denied*, 131 S. Ct. 646 (U.S. Nov. 29, 2010). Doing so here, where the facts are so unique, adds an additional layer of complexity.

In its July Decision, issued before the No Liability Decision, the Court appears to have concluded that API had no right of action under § 107 because it had "already . . . employed" § 113 in the *Whiting* action. Dkt. 171 at 2. Similarly, in an earlier ruling in *Whiting*, the Court reasoned:

> Plaintiffs were subject to a § 106 administrative order. That order triggered their right under § 113 to bring a contribution action and seek payment from other PRPs for any costs they incurred that they allege were more than their fair share.

Dkt. 751 (*Whiting*) at 6. The Court further stated: "The relevant 'procedural circumstances' are whether the party's incurred costs resulted from a government action under § 106 or 107. If they did, the party must use § 113." *Id.* at 8. In another earlier decision, the Court ruled that § 113 was the appropriate avenue for API to pursue:

> Whatever payments [it] made in excess of [its] proportionate share. This would include not only payments made pursuant to the consent decree filed in the civil action instituted against [API and NCR] on August 21, 2001, but also any other payments they made to discharge their common liability under §107(a) before or after time. Thus, they have no need to resort to § 107(a). Whatever amounts they are entitled to recover must be recovered under § 113(f).

Dkt. 227 (*Whiting*) at 14.

API respects the Court's rulings and it will continue to pursue relief under its § 113(f) claim in *Whiting* if the Court decides that is the appropriate avenue. In view of the No Liability Decision, however, the logic underlying the Court's prior § 107 rulings is now strained. In the July Decision, the Court held that API has "incurred costs [that] resulted from a government action under §§ 106 or 107," (Dkt. 171 at 2) because it apparently concluded that issuance of a § 106 Order is a "civil action" under § 113(f)(1). However, the Court has now ruled that API was never liable under CERCLA. Therefore, API never shared common liability under CERCLA with other parties named in the 106 Order or in this enforcement action and should never have been issued the 106 Order.

Common liability under CERCLA is a prerequisite to relief under § 113(f). *Atlantic Research Corp.*, 551 U.S. at 139 ("[The] right to contribution under § 113(f)(1) is contingent upon ... common liability among liable parties."). Typically when a party has been sued, it can pursue a contribution claim under § 113 even though its liability has not been determined. This is analogous to the procedure in a multi-defendant tort case. The mere allegation of liability is sufficient to allow a cross claim for contribution even before liability has been determined. However, once a defendant has been determined to have no liability, he/she then has a claim for indemnity against the co-defendant for any costs paid to the injured plaintiff. Similarly, in this case, once API was determined to have no liability, it should be able to pursue cost recovery under § 107.

B. API Must Be Allowed To Sue Under § 107(a) If It Cannot Obtain Relief Under § 113(f).

If API cannot obtain relief under § 113(f), then it must be able to sue under § 107(a).[1] This Court has so ruled. *Appleton Papers Inc. v. George A. Whiting Paper Co.*, 572 F. Supp. 2d 1034, 1043 (E.D. Wis. 2008) ("[P]arties who do not have access to § 113(a) [sic] . . . because they are completely innocent and do not share common liability with any PRPs . . . must be allowed to recover under § 107(a) if injustice is to be avoided.").

The Third Circuit likewise has held that parties who incur response costs, but who cannot sue under § 113(f), must be permitted to assert a claim under § 107(a). *Agere Systems*, 602 F.3d 204. In *Agere Systems*, there were two consent decrees. The first consent decree was signed by three parties (Cytec, Ford, SPS) and the second was signed by the same three parties plus TI. The signatories to the first consent decree (Cytec, Ford, SPS) later entered into a cost sharing agreement with TI and Agere. *Id.* at 212. The signatories to the second decree (Cytec, Ford, SPS and TI) also entered into a separate cost sharing agreement with Agere. *Id.* at 212-13.

All five of these parties (Cytec, Ford, SPS, TI and Agere) then sued numerous other parties. *Id.* at 213-14. Agere and TI sued under § 107(a) for the costs they incurred under the cost-sharing agreements, while the consent decree signatories (including TI on the second decree), sued under § 113(f). The question presented was whether TI (for the first decree, which it did not sign) and Agere (for both decrees) could sue under § 107(a) where they were signatories to a private cost sharing agreement with respect to the first

[1] Certain Defendants suggest that API's proper claim is one in subrogation. Dkt. 412 at 9. Accordingly, it may also be appropriate for API to assert an equitable subrogation claim in *Whiting*.

decree in the case of TI, and both decrees in the case of *Agere*. *Id.* at 224. The Third Circuit held that they could.

The court of appeals first rejected the argument that permitting the § 107(a) claim was contrary to the holding in *Atlantic Research*, stating:

> [W]hile the Court [in *Atlantic Research*] indicated that parties seeking reimbursement for settlement payments do not have a § 107(a) claim, a basic premise of that holding was that those parties do have a § 113(f) contribution claim for their settlement amounts. We do not believe the Court intended its holding to reach a circumstance like this, where Agere and TI do not have § 113(f) contribution claims for the settlement sums because those parties were never themselves sued for those amounts by the EPA or by other PRPs.

Id. at 225.

The court further held that allowing a § 107(a) claim where § 113(f) was unavailable is consistent with CERCLA's goal of encouraging cleanups:

> If we were to hold that Agere and TI cannot pursue § 107(a) claims for their settlement payments, they would be completely barred from recovering those payments under CERCLA. To accept that outcome, one must imagine that Congress intended to penalize cooperative cleanup efforts by excluding from CERCLA's broad recovery provisions all PRPs who, like Agere and TI, agree to come forward and assist in a cleanup even though they have not been subjected to a cost recovery suit. Such an intent is extremely unlikely, since the goal of CERCLA is "to encourage private parties to assume the financial responsibility of cleanup by allowing them to seek recovery from others." *Key Tronic Corp. v. United States*, 511 U.S. 809, 819 n.13 (1994). . . .
>
> . . . To encourage participation in environmental cleanup, the statute should be read in a way that assures PRPs like Agere and TI that they can later bring a § 107(a) cost recovery claim for the amounts they pay to help with the cleanup, even if those costs are related to a settlement obligation.

Id. at 225-26.

Agere Systems is instructive for two reasons. *First*, it affirms the principle this Court enunciated in its 2008 decision (Dkt. 227) that a party who has incurred response costs, but cannot sue under § 113(f), must be permitted to sue under § 107(a). Other courts also have recognized this principle. *See Solutia, Inc. v. McWane, Inc.*, 726 F. Supp. 2d 1316, 1341 (N.D. Ala. 2010) ("[C]osts may be recovered under § 107(a)

notwithstanding that they may have been 'compelled' under an administrative order or settlement with the government where that order or settlement does not give rise to contribution rights under § 113(f)(3)(B)"), *aff'd*, 672 F.3d 1230 (11th Cir. 2012); *Morrison Enterprises, LLC v. Dravo Corp.*, No. 08-CV-3142, 2009 WL 4330224 (D. Neb. Nov. 24, 2009) ("[A] PRP can bring a claim under § 107(a) if it is foreclosed from bringing a claim under § 113(f)."), *aff'd*, 638 F.3d 594 (8th Cir. 2011), *cert. denied*, 132 S. Ct. 244 (U.S. Oct. 3, 2011); *W.R. Grace & Co. – Conn. v. Zotos Int'l, Inc.*, 559 F.3d 85, 92-93 (2nd Cir. 2009); *Ford Motor Co. v. Mich. Consol. Gas Co.*, No. 08-CV-13503, 2009 WL 3190418, *6-9 (E.D. Mich. Sept. 29, 2009).[2]

Second, *Agere Systems* holds that a party that directly incurs response costs pursuant to private contractual obligations can still sue other PRPs under § 107(a). *Agere Systems* squarely rejects the argument advanced by Certain Defendants — for which they cite no authority — that API cannot recover response costs that fall within the scope of its cost sharing agreement with NCR. Dkt. 412 at 6 ("API has no incremental CERCLA payments to recover because it paid only what its indemnity obligation required it to pay.") The court in *Agere Systems* allowed Agere (with respect to both consent decrees) and TI (with respect to the first consent decree) "to recoup [under § 107(a)] costs that each paid pursuant to private settlement agreements." 602 F.3d at 225. The court of appeals reasoned that allowing such a recovery is consistent with CERCLA's goals because it "assures PRPs like Agere and TI that they can later bring a § 107(a) cost

[2] In *Solutia, Inc.* and *Morrison Enterprises, LLC*, the courts ultimately concluded that the claimants had a remedy under § 113(f) because they had been parties to CERCLA enforcement actions in which their liability was unquestioned. In *W.R. Grace & Co.* and *Ford Motor Co.*, the parties asserting CERCLA § 107(a) claims had incurred costs in response to state administrative cleanup orders, but the courts found that the orders did not give rise to contribution claims under § 113(f). In both cases, the courts held that the response costs were recoverable under § 107(a).

recovery claim for the amounts they pay to help with the cleanup, even if those costs are related to a settlement obligation." 602 F.3d at 226.

Accordingly, because API may no longer be able to obtain relief under its § 113(f) claim in *Whiting* even if the Court's decision of December 16, 2009 is reversed on appeal, API should be permitted to pursue the § 107(a) cross claims asserted in this action. API is not seeking a double-recovery. It simply wants legal recourse under § 107(a) in the event of a future decision holding that the No Liability Decision left API without a remedy under § 113(f).

II. CERTAIN DEFENDANTS' OTHER GROUNDS FOR SEEKING DISMISSAL SHOULD BE REJECTED.

Certain Defendants' other grounds for seeking dismissal of API's § 107(a) claims warrant only brief comment.

The assertion that "contractual indemnitors like API lack standing to recover their payments under sections 107 or 113(f) of CERCLA" (Dkt. 412 at 8) is without merit. API is seeking to recover costs that it directly incurred to satisfy obligations arising under a 106 Order in which it had been erroneously named as a respondent. *Agere Systems* demonstrates that a party has standing to sue under § 107(a) for costs it paid under a contractual cost sharing arrangement where such amounts directly funded a cleanup:

> Agere and TI put their money in the pot right along with the money from the signers of the consent decrees. The costs they paid for were incurred at the same time as the costs incurred by the signers of the consent decrees and for the same work. Those costs were incurred in the ordinary sense that a bill one obligates oneself to pay comes due as a job gets done.

602 F.3d at 225. API did precisely the same thing.

The decisions cited by Certain Defendants are distinguishable. In both cases, insurers were suing under CERCLA to recover amounts they paid to their insureds to reimburse response costs previously incurred. Unlike API, the insurers had not been issued a 106 Order. Further, unlike API and the parties in *Agere Systems*, the insurers themselves had not incurred any response costs. *Cal. Dep't of Toxic Substances Control v. City of Chico,* 297 F. Supp. 2d 1227, 1232 (E.D. Cal. 2004) ("Century has not incurred any response costs; rather, it has indemnified Noret for Noret's response costs. Its involvement with the Central Plume Site is exclusively in its capacity as Noret's insurer."); *Chubb Custom Ins. Co. v. Space Sys./Loral, Inc.,* 788 F. Supp. 2d 1017, 1020 (N.D. Cal. 2011) ("In July 2008, after the remediation was completed, Taube-Koret made a claim [against its insurer, Chubb] for the reimbursement of all of its response costs.").

For similar reasons, there is no merit to the contention that API, as NCR's indemnitor, stands in NCR's shoes and since the Court has ruled that NCR cannot recover under § 107(a) or § 113(f), neither can API. Dkt. 412 at 9. With respect to response costs API incurred to satisfy the 106 Order prior to the No Liability Decision, API is not standing in NCR's shoes. Because it paid those costs directly, it has standing to sue under § 107(a) on its own behalf, as *Agere Systems* holds.

Finally, there is no merit to the contention that "API has failed to allege that it made any payments for which it was not reimbursed by its own indemnitors and insurers." Dkt. 412 at 6. If, as Certain Defendants appear to contend, a party seeking recovery under CERCLA must expressly allege in its pleading that its costs exceed its insurance and other recoveries, then the Court should summarily dismiss Certain Defendants' pending CERCLA counterclaims in *Whiting* because none of their pleadings

contain the allegations that Certain Defendants now claim are essential to survive a motion to dismiss. Of course, there is no such pleading requirement. Certain Defendants tacitly base their argument on the application of *Friedland v. TIC-The Indus. Co.*, 566 F.3d 1203 (10th Cir. 2009), *cert. denied*, 130 S. Ct. 1080 (U.S. Jan. 11, 2010). The application of *Friedland*, if any, to API's § 107(a) claim is an issue to be decided before a final judgment is entered — not at the pleadings stage.

III. API'S CROSS CLAIMS SHOULD NOT BE DISMISSED ON THE BASIS OF THE "PRIOR PENDING ACTION" DOCTRINE.

Glatfelter's contention that API's cross claims should be dismissed because identical claims are pending in *Whiting* should be rejected. Dkt. 418 at 4-5. The "prior pending action" doctrine comes into play only when identical claims are pending in another action and will be decided there. *See* 5C Wright & Miller, *Federal Practice & Procedure* § 1360 at 89 (3rd ed. 2004) ("[S]ome federal courts also have allowed motions to dismiss because of the pendency of a prior action, provided that an identity of issues exists and the controlling issues in the dismissed action will be determined in the other lawsuit.") (footnotes omitted).

Here, API has asserted § 107(a) cross-claims against the moving Defendants which are viable in light of the No Liability Decision. There are no § 107 claims pending in the *Whiting* action. The § 107 claims that were asserted in *Whiting* were dismissed long before the No Liability Decision. Accordingly, the controlling issue with respect to API's § 107 claims was not decided and will not be decided in *Whiting*. Under these circumstances, the "prior pending action" doctrine has no application.

CONCLUSION

For the foregoing reasons, Defendant Appleton Papers Inc. respectfully requests that the Court deny the motions to dismiss its cross claims filed by P.H. Glatfelter Company and other Certain Defendants.

Dated this 1st day of June, 2012.

Respectfully submitted,

APPLETON PAPERS INC.

By: /s/ Ronald R. Ragatz
One of Its Attorneys

Counsel for Appleton Papers Inc.:

Michael L. Hermes (#1019623)
Heidi D. Melzer (#1076125)
Hermes Law, Ltd.
333 Main Street, Suite 601
Green Bay, WI 54301
(920) 436-9870
Fax: (920)436-9871

Ronald R. Ragatz (#1017501)
Dennis P. Birke (#1018345)
Megan A. Senatori (#1037314)
DeWitt Ross & Stevens S.C.
Two East Mifflin Street
Madison, WI 53703
(608) 255-8891
Fax: (608) 252-9243

Gregory A. Krauss
Gregory A. Krauss PLLC
1629 K St. NW
Suite 300
Washington, DC 20006
(202) 355-6430