

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,)	Civil Action No. 10-C-910
)	
v.)	Hon. William C. Griesbach
)	
NCR CORPORATION, <i>et al.</i> ,)	
)	
)	
Defendants.)	

**UNITED STATES' EXPEDITED MOTION FOR A PRELIMINARY INJUNCTION TO
COMPEL PERFORMANCE OF FULL SCALE REMEDIATION WORK IN 2012**

The United States and the State of Wisconsin have tried mightily to reach an agreement for performance of remediation work at the Lower Fox River and Green Bay Superfund Site this year though mediated settlement discussions supervised by Magistrate Judge Goodstein. The talks with Appleton Papers Inc. and NCR Corporation broke down with a highly publicized meltdown by API last week.¹ The government remains willing to continue the settlement effort, but the time for talk alone has lapsed and the deadline for action is looming. To ensure completion of full scale dredging work this year, remediation should begin on April 2. Proposed terms of a preliminary injunction are attached to this motion and a slight variant of proposed findings of fact and conclusions of law that the United States submitted last year (Dkt. 150-1) will be provided within the next few days.

¹ See, e.g., Doug Schneider, *Appleton Papers says it's not liable for PCB cleanup costs – Paper firm wants to stop removing toxic chemicals from Fox River*, APPLETON POST CRESCENT, March 16, 2012, <http://www.postcrescent.com/article/20120316/APC0101/203160477/Appleton-Papers-says-s-not-liable-cleanup-costs>.

This is not complicated. Much like last year, the United States is moving for a preliminary injunction to compel full scale dredging this year by NCR and API, as required by a Unilateral Administrative Order for cleanup that EPA issued in 2007. The dispute again centers on the amount of PCB-contaminated sediment that NCR and API will need to dredge this year. EPA has ordered the removal of at least 660,000 cubic yards of sediment to keep the entire project on schedule. NCR proposed a plan to remove 500,000 cubic yards of sediment, but API would not back that plan. API has threatened either to suspend dredging altogether or to dredge no more than 250,000 cubic yards under strict conditions. Because they cannot even agree with each other, NCR and API have made no definite *commitment* to perform *any* amount of dredging this year, although their contractors have already placed the dredges in the water at the Site. The Court is quite familiar with the legal issues and the evidence. We have submitted a twelve page brief in support of this motion and a single declaration with five exhibits. That is it.

Counsel for the United States will contact the Court's Judicial Assistant to request a telephonic conference to set a briefing schedule for this motion. The undersigned counsel has informed counsel for NCR and API that the United States will request an accelerated briefing schedule in light of the circumstances unless NCR and API are willing to commit on the Court record that dredging work at the Site will commence and continue at full pace between at least April 2 and June 1. That would allow a less compressed briefing schedule and an additional in-person mediation session with Magistrate Judge Goodstein in early April. If NCR and API can make that commitment, then the United States will be content to have response briefs due on April 16 and a consolidated reply brief due by May 1. If not, then the United States respectfully requests entry of a scheduling order specifying that responses to this motion will be due on Monday, March 26 and that any reply will be due by Friday, March 30.

Respectfully submitted,

For the United States of America

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Dated: March 19, 2012

s/ *Randall M. Stone*
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on this day, the foregoing Motion was filed electronically with the Clerk of the Court using the Court's Electronic Court Filing System, which sent notification of such filing to the following counsel:

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