

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:	)	Docket No. _____
)	
Lower Fox River Sediment	)	ADMINISTRATIVE ORDER BY
Management Unit 56/57	)	CONSENT PURSUANT TO
Removal Action	)	SECTION 106 OF THE
	)	COMPREHENSIVE
	)	ENVIRONMENTAL RESPONSE,
Respondents:	)	COMPENSATION, AND
	)	LIABILITY ACT OF 1980,
Fort James Corporation, and	)	as amended, 42 U.S.C.
Fort James Operating Company	)	§9606(a)
_____)	

I. JURISDICTION AND GENERAL PROVISIONS

- A. This Order is entered voluntarily by the United States Environmental Protection Agency ("U.S. EPA"), the State of Wisconsin ("State") through the Wisconsin Department of Natural Resources ("WDNR"), the Wisconsin Department of Justice ("WDOJ"), Fort James Corporation, and the Fort James Operating Company (collectively "Fort James" or "Respondent"). The Order is issued pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§9606(a). This authority has been delegated to the Administrator of the U.S. EPA by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Regional Administrators by U.S. EPA Delegation Nos. 14-14-A and 14-14-C, and to the Director, Superfund Division, Region 5, by Regional Delegation Nos. 14-14-A and 14-14-C. This Agreement is also entered into pursuant to the authority of the Attorney General of the United States to compromise and settle claims of the United States, which authority, in the circumstances of this settlement, has been delegated to the Assistant Attorney General, Environmental and Natural Resources Division, U.S. Department of Justice ("DOJ").
- B. This Order provides for performance of removal actions in connection with a portion of the Lower Fox River, Wisconsin, known as Sediment Management Unit 56/57 (the "SMU 56/57

Site" or the "Site"). This Order requires Respondent to conduct removal actions as described herein to abate an actual or threatened release of hazardous substances at or from the Site that U.S. EPA and the State believe may present an imminent and substantial endangerment to the public health, welfare or the environment.

- C. Nothing in this Order, including the Statement of Work attached hereto, is intended by the parties to be, nor shall it be construed as, an admission of facts or law, an estoppel, or a waiver of defenses by Respondent for any purpose. Participation in this Order by Respondent is not intended by the parties to be, and shall not be, an admission of any fact or opinion developed by U.S. EPA, the State, or any other person or entity in the course of the work.

II. PARTIES BOUND

This Order is binding upon and inures to the benefit of U.S. EPA, the WDNR and WDOJ, Respondent, and Respondent's successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Order. Respondent shall ensure that its contractors, subcontractors, and representatives comply with this Order. Respondent shall be responsible for any noncompliance with this Order.

III. DEFINITIONS

- A. Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in the statute or its implementing regulations.
- B. Whenever terms listed below are used in this Order or in the documents attached to this Order or incorporated by reference into this Order, the following definitions shall apply:
1. "Agencies" shall mean the United States Environmental Protection Agency (U.S. EPA) and the Wisconsin Department of Natural Resources (WDNR).
 2. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.

3. "Day" shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the end of the next business day.
4. "National Contingency Plan" or "NCP" shall mean the National Contingency Plan, promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 CFR Part 300, and any amendments thereto.
5. "Paragraph" shall mean a portion of this Order identified by a capital letter and may include one or more subparagraphs.
6. "Parties" shall mean all signatories to this Order.
7. "Section" shall mean a portion of this Order identified by a Roman numeral.
8. "Site" shall mean the portion of Sediment Management Unit 56/57 ("SMU 56/57") delineated in Figure 1 of Attachment A to the Order, and all suitable areas in close proximity to the contamination necessary for implementation of the removal action, including but not limited to the portion of the Fort James property known as the former Shell property, as described in Figure 2 of Attachment A to this Order.
9. "Statement of Work" or "SOW" shall mean the statement of work for implementation of the removal action, as set forth in Attachment A to this Order. The Statement of Work is incorporated into this Order and is an enforceable part of this Order.
10. "WDOJ" shall mean the Wisconsin Department of Justice.
11. "WDNR" shall mean the Wisconsin Department of Natural Resources.
12. "Work" shall mean all activities Respondent is required to perform under this Order and all attachments hereto, and includes any Work required pursuant to modifications to this Order under Section XXVI.

IV. STATEMENT OF PURPOSE

The mutual objectives of the U.S. EPA, WDNR, WDOJ, and Respondent in entering into this Order are to implement a removal action in accordance with the Statement of Work. The activities conducted pursuant to this Order are subject to approval by U.S. EPA and the State as provided herein, and shall be consistent with CERCLA, the NCP, and all other applicable laws.

V. FINDINGS OF FACT

Based on available information, including the Administrative Record in this matter, U.S. EPA hereby finds that:

1. At certain times in the past, primarily in the 1950's and 1960's, certain paper companies located along the Fox River engaged in the manufacture or recycling of carbonless copy paper. Polychlorinated biphenyls (PCBs), which are hazardous substances, were used in the production of carbonless copy paper and in wastepaper that entered the paper recycling operations.
2. As a result of the paper mills' production or recycling of carbonless copy paper an estimated 700,000 pounds of PCBs were likely released to the Fox River. An estimated 60,000 pounds of these PCBs remain in the lower 39 miles of the Fox River, distributed within approximately 10,400,000 cubic yards of sediment. The balance of PCBs likely released to the Fox River are located in the sediments of Green Bay and/or Lake Michigan or were volatilized into the atmosphere. Based upon the extreme longevity and durability of PCBs, degradation of PCBs in the environment is not considered likely. An estimated 400 to 600 pounds of PCBs have been released annually into Green Bay from the lower Fox River.
3. As a result of this contamination, fish consumption advisories have been in effect on the Fox River since 1976.
4. On July 3, 1997, the United States Environmental Protection Agency sent a notice letter under Section 122(e) of CERCLA to, among others, Respondent, identifying it as a potentially responsible party (PRP) with respect to the Fox River.
5. A Remedial Investigation and Feasibility Study (RI/FS) under the technical lead of WDNR is currently underway.

6. Sediment Management Unit (SMU) 56/57 is located within the Lower Fox River, approximately 3 miles southwest (upstream) from that point where the Lower Fox River discharges into Green Bay. This area is adjacent to the southern edge of the City of Green Bay.
7. Respondent is the owner of property located within the City of Green Bay, Brown County, Wisconsin. The Respondent's property is located north of, and immediately adjacent to SMU 56/57.
8. A dredging project at SMU 56/57 was undertaken in 1999 pursuant to an agreement between WDNR and certain companies, including Respondent. Certain areas within SMU 56/57 were partially dredged (i.e., only a single dredging "pass" was conducted). These partially dredged areas are defined as subunits 12, 13, 14, 15, 16, 17, 23, 24, 25, 26, 27, 28, and 38. Portions of subunits 25, 26, 27, and 28 were dredged with a second dredging "pass".
9. The 1999 dredging project at SMU 56/57 has resulted in the exposure of unacceptably high concentrations of polychlorinated biphenyls ("PCBs") in certain portions of SMU 56/57. The currently exposed PCB concentrations in the areas where partial dredging occurred (i.e., where one dredging "pass" was conducted) are as high as 310 ppm. An estimated 21,500 cubic yards of contaminated sediments and 1600 pounds of PCBs remain in that portion of SMU 56/57 where dredging was left uncompleted in 1999.
10. The increased exposures of PCBs in portions of SMU 56/57 now may present an imminent and substantial endangerment to human health and the environment due to:
 - increased uptake by biota exposed to PCBs; this likely increased uptake adds to the already elevated risk presented by the overall site contamination.
 - potential for further release and migration of PCBs, and more widespread distribution of high concentrations in the downstream river areas and Green Bay. This, in turn, could result in additional PCB uptake and exposures to PCBs, and further releases into Green Bay, and potentially Lake Michigan.

VI. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Fact set forth above, and the Administrative Record supporting this removal action, U.S. EPA has determined that:

1. The Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. §9601(9).
2. Polychlorinated Biphenyls ("PCBs") are "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. §9601(14).
3. Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. §9601(21).
4. Respondent Fort James Corporation is either the present "owner" and "operator" of a facility from which there was a release of a hazardous substance to the Lower Fox River that came to be located at the Site, or a person who arranged for disposal or transport for disposal of hazardous substances at the Site. Respondent therefore may be liable under Section 107(a) of CERCLA, 42 U.S.C. §9607(a).
5. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility into the "environment" as defined by Sections 101(8) and (22) of CERCLA, 42 U.S.C. §§9601(8) and (22).
6. The conditions present at the Site may present a threat to public health, welfare, or the environment based upon the factors set forth in Section 300.415(b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan, as amended ("NCP"), 40 CFR §300.415(b)(2).
7. The actual or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. §9606(a).
8. The removal actions and costs required by this Order, if performed or incurred in accordance with this Order, shall be deemed consistent with the NCP. The removal actions required by this Order are necessary to protect the public health, welfare, or the environment.

VII. WORK TO BE PERFORMED**A. Statement of Work**

Attachment A to this Order provides a Statement of Work ("SOW") for the removal action at the Site. Respondent shall perform the activities described in the SOW in accordance with the specifications and schedules contained in the SOW.

B. Designation of Project Coordinator, On-Scene Coordinator, and On-Scene Representative

1. Within 10 business days after the effective date of this Order, Respondent shall designate a Project Coordinator who shall be responsible for administration of all Respondent's actions required by the Order. Respondent shall submit the designated coordinator's name, address, telephone number, and qualifications to U.S. EPA. To the greatest extent possible, the Project Coordinator shall be present on-site or readily available during site work. U.S. EPA retains the right to disapprove of any Project Coordinator named by Respondent. If U.S. EPA disapproves a selected Project Coordinator, Respondent shall retain a different Project Coordinator within 5 business days following U.S. EPA's disapproval and shall notify U.S. EPA of that person's name and qualifications within 7 business days of U.S. EPA's disapproval.
2. The U.S. EPA has designated Sam Borries as its On-Scene Coordinator ("OSC"). Respondent shall direct all submissions required by this Order to the OSC at Sam Borries (SE-5J), Emergency Response Branch, U.S. Environmental Protection Agency, 77 West Jackson Blvd., Chicago, IL 60604-3590, by certified mail or overnight delivery. Respondent shall also send a copy of all submissions to Roger Grimes, Assistant Regional Counsel, 77 West Jackson Boulevard, C-14J, Chicago, Illinois, 60604-3590. Respondent is encouraged to make its submissions to U.S. EPA on recycled paper (which includes significant postconsumer waste paper content where possible) and using two-sided copies.
3. The State designates Gary Kincaid as its On-Scene Representative ("OSR"). Respondent shall direct all submissions required by this Order to the OSR at Wisconsin Department of Natural Resources, 1125 North Military Avenue, P.O. Box 10448, Green Bay, WI 54304, by certified mail or overnight delivery.

4. The Agencies and Respondent shall have the right to change their designated OSC, OSR, or Project Coordinator. The Agencies shall notify Respondent, and Respondent shall notify the Agencies, as early as possible before such a change is made, but in no case less than 24 hours before such a change. The initial notification may be made orally but it shall be promptly followed by a written notice.

C. Health and Safety Plan

Not later than 30 days after Respondent receives this AOC executed by the EPA and WDNR, Respondent shall submit for U.S. EPA and WDNR review and comment a plan that ensures the protection of the public health and safety during performance of on-site work under this Order. This plan shall comply with applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 CFR Part 1910. Respondent shall consider all changes to the plan recommended by U.S. EPA and WDNR, and shall implement the plan during the pendency of the removal action.

VIII. REVIEW OF SUBMISSIONS

- A. The Agencies shall review all documents required to be submitted for review and approval pursuant to this Order. The Agencies shall respond to each submission in writing with a single integrated response. As a result of their review of a submission, the Agencies may: (a) approve the submission; (b) approve the submission with minor modifications; (c) disapprove the submission and direct Respondent to re-submit the document after incorporating the Agencies' comments; or (d) if a re-submission, disapprove the re-submission and the Agencies may assume responsibility for performing all or any part of the response action.
- B. In the event of approval or approval with minor modifications by the Agencies, Respondent shall proceed to take any action required by the submittal, as approved or modified by the Agencies.
- C. Upon receipt of a notice of disapproval, Respondent shall, within thirty (30) days or such longer time as specified by the Agencies in their notice of disapproval, correct the deficiencies and resubmit the submittal for approval. Notwithstanding the notice of disapproval, Respondent shall

proceed, at the direction of the Agencies, to take any action required by any non-deficient portion of the submission.

- D. If any re-submission is not approved by the Agencies, they may determine that Respondent is in violation of this Order, unless Respondent invokes the procedures set forth in Section XVIII (Dispute Resolution) and the Agencies' determination is revised pursuant to that Section. Issues previously resolved pursuant to the procedures set forth in Section XVIII may not be re-disputed.

IX. QUALITY ASSURANCE AND SAMPLING

- A. All sampling and analyses performed pursuant to this Order shall conform to U.S. EPA (and if an in State laboratory is used, WDNR) direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. Respondent shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with U.S. EPA (and if an in State laboratory is used, WDNR) guidance.
- B. Upon request by the Agencies, Respondent shall have such a laboratory analyze samples submitted by the Agencies for quality assurance monitoring. Respondent shall provide to the Agencies the quality assurance/quality control procedures followed by all sampling teams and laboratories performing data collection and/or analysis. Respondent shall also ensure provision of analytical tracking information consistent with OSWER Directive No. 9240.0-2B, "Extending the Tracking of Analytical Services to PRP-Lead Superfund Sites."
- C. Upon request by the Agencies, Respondent shall allow the Agencies or their authorized representatives to take split and/or duplicate samples of any samples collected by Respondent or its contractors or agents while performing work under this Order. Respondent shall notify the Agencies not less than 3 business days in advance of any sample collection activity. The Agencies shall have the right to take any additional samples that they deem necessary.
- D. At the request of Respondent, the Agencies shall provide split or duplicate samples of any samples collected by the Agencies or their contractors pursuant to this Order, except sample results generated pursuant to a criminal investigation. The Agencies shall notify Respondent not

less than 3 business days in advance of any sample collection activity.

- E. Pursuant to applicable Federal laws and regulations, (Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and 40 CFR Part 2), Respondent may assert a confidentiality claim with respect to any or all of the information requested or submitted pursuant to the terms of this Order. Such an assertion must be adequately substantiated when the assertion is made. Analytical data and other information described in Section 104(e)(7)(F) of CERCLA shall not be claimed as confidential by Respondent. Information determined to be confidential by the U.S. EPA in accordance with applicable federal laws and regulations or information determined to be confidential by the State pursuant to applicable Wisconsin laws and regulations will be afforded the full protection provided by such laws and regulations. If no confidentiality claim accompanies information when it is submitted to the U.S. EPA, or if information claimed as confidential is determined by the State not to be confidential, and an appeal of such determination is not made or is unsuccessful, the information may be made available to the public.

X. REPORTING

Respondent shall submit a monthly written progress report to the Agencies concerning actions undertaken pursuant to this Order, beginning 30 calendar days after the effective date of the Order and continuing until termination of the Order, unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the work performed and any problems encountered, analytical data received during the reported period, and developments anticipated during the next reporting period, including a schedule of work to be performed, anticipated problems, and planned resolution of past or anticipated problems.

XI. FINAL REPORT

- A. Within 60 calendar days after completion of all removal actions required under this Order, Respondent shall submit for review by the Agencies a final report summarizing the actions taken to comply with this Order. The final report shall conform to the requirements set forth in Section 300.165 of the NCP, 40 CFR §300.165. The final report shall also include a good faith estimate of total costs incurred in complying with the Order, a listing of quantities and types of materials removed off-site or handled on-site, a

summary of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action.

- B. The final report shall include the following certification signed by a person who supervised or directed the preparation of that report: "Under penalty of law, I certify that, to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this report, the information submitted is true, accurate, and complete."

XII. ACCESS TO PROPERTY AND INFORMATION

- A. Respondent shall provide or obtain access to the Site and off-site areas to which access is necessary to implement this Order, and shall provide access to all records and documentation related to the actions conducted pursuant to this Order. Such access shall be provided to the Agencies and their authorized representatives at all reasonable times. These individuals shall be permitted to move freely at the Site and appropriate off-site areas for the purpose of conducting actions which the Agencies reasonably determine are necessary for oversight of this Order. Respondent shall submit to the Agencies, upon request, the results of all sampling or tests and all other data generated by Respondent or its contractor(s) under this Order.
- B. Where work under this Order is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use its best efforts to obtain all necessary access agreements within 30 calendar days after the effective date of this Order, or as otherwise specified in writing by the OSC. Respondent shall immediately notify the Agencies if, after using its best efforts, it is unable to obtain such agreements. Respondent shall describe in writing its efforts to obtain access. The Agencies may then assist Respondent in gaining access, to the extent necessary to effectuate the removal actions described herein, using such means as the Agencies deem appropriate.

XIII. RECORD RETENTION

Respondent shall preserve all documents and information in its possession or the possession of its contractors, subcontractors or representatives relating to work performed under this Order for six years following completion of the removal action required

by this Order. At the end of this six year period and at least 60 days before any document or information is destroyed, Respondent shall notify the Agencies that such documents and information are available to the Agencies for inspection, and upon request, shall provide the originals or copies of such documents and information to whichever one of the Agencies they select. In addition, Respondent shall provide documents and information retained under this Section at any time before expiration of the six year period at the written request of the Agencies, subject to Section XII (Access to Property and Information). Any information that Respondent is required to provide or maintain pursuant to this Order is not subject to the Paperwork Reduction Act of 1995, 44 U.S.C. §3501 et seq.

XIV. OFF-SITE SHIPMENTS

All hazardous substances, pollutants or contaminants removed off-site pursuant to this Order for treatment, storage or disposal shall be treated, stored, or disposed of at a facility in compliance, as determined by U.S. EPA, with the U.S. EPA Off-Site Rule, 40 CFR §300.440, 58 Fed. Reg. 49215 (Sept. 22, 1993).

XV. COMPLIANCE WITH OTHER LAWS

- A. Respondent shall perform all actions required pursuant to this Order in accordance with all applicable local, state, and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. §9621(e), and 40 CFR §300.415(j). In accordance with 40 CFR §300.415(j), all on-Site actions required pursuant to this Order shall, to the extent practicable, as determined by U.S. EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements under federal environmental or state environmental or facility siting laws.
- B. As provided in Section 121(e) of CERCLA and Section 300.400(e) of the NCP, no federal, state or local permits shall be required for any portion of the Work conducted entirely on Site. Where any portion of the Work that is not on Site requires a federal or state permit or approval, Respondent shall submit timely applications and take all other actions necessary to obtain all such permits or approvals.
- C. Respondent may seek relief under the provisions of Section XIX (Force Majeure) of this Order for any delay in the performance of the Work resulting from a failure to obtain,

or a delay in obtaining, any permit required for the Work, provided Respondent has made proper, timely and complete permit application(s) and submitted all required information in a timely manner.

XVI. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

- A. If any incident, or change in Site conditions, during the activities conducted pursuant to this Order causes or threatens to cause an unanticipated additional release of hazardous substances from the Site or an endangerment to the public health, welfare, or the environment, Respondent shall immediately take all appropriate action to prevent, abate or minimize such unanticipated release or the endangerment caused or threatened by the release. Respondent shall also immediately notify the OSC and OSR or, in the event of their unavailability, shall notify the Regional Duty Officer, Emergency Response Branch, Region 5 at (312) 353-2318, and the appropriate WDNR representative at 1-800-943-0003, of the incident or Site conditions. If Respondent fails to respond, the Agencies may respond to the release or endangerment and reserve the right to recover costs associated with that response.
- B. Respondent shall submit a written report to the Agencies within 7 business days after each such release, setting forth the events that occurred and the measures taken or to be taken to mitigate the release or the endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. Respondent shall also comply with any other notification requirements, including those in Section 103 of CERCLA, 42 U.S.C. §9603, Section 304 of the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. §11004, and Wis. Stats. Sec. 292.11.

XVII. AUTHORITY OF THE U.S. EPA ON-SCENE COORDINATOR

The OSC shall be responsible for overseeing the implementation of this Order, in consultation with the OSR. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any work required by this Order, or to direct any other response action undertaken by U.S. EPA or Respondent at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC in consultation with the OSR.

XVIII. DISPUTE RESOLUTION

- A. The parties to this Order shall attempt to resolve, expeditiously, informally, and in good faith, any disagreements concerning this Order.
- B. If Respondent objects to any U.S. EPA or State action taken pursuant to this Order, Respondent shall notify the Agencies in writing of its objection(s) within 14 calendar days of such action, unless the objection(s) has (have) been informally resolved. This written notice shall include a statement of the issues in dispute, the relevant facts upon which the dispute is based, all factual data, analysis or opinion supporting Respondent's position, and all supporting documentation on which Respondent relies. The Agencies shall submit their Statement of Position, including supporting documentation, no later than 14 calendar days after receipt of Respondent's written notice of dispute. Respondent may submit a response to the Agencies' Statement of Position within 5 business days after receipt of the Statement. During the 5 business days following receipt of the Agencies' Statement of Position, the parties shall attempt to negotiate, in good faith, a resolution of their differences. The time periods for exchange of written documents may be extended by agreement of all parties.
- C. An administrative record of any dispute under this Section shall be maintained by U.S. EPA and shall contain the notice of objections and accompanying materials, the Statement of Position, any other correspondence between the Agencies and Respondent regarding the dispute, and all supporting documentation. The administrative record shall be available for inspection by all parties. If the Agencies do not concur with the position of Respondent, the Division Director for the Office of Superfund, U.S. EPA Region V, in consultation with the Secretary of the WDNR, shall resolve the dispute based upon the administrative record and consistent with the terms and objectives of this Order, and shall provide written notification of such resolution to Respondent.
- D. Respondent's obligations under this Order, other than the obligations affected by the dispute, shall not be tolled by submission of any objection for dispute resolution under this Section. Elements of Work and/or obligations not affected by the dispute shall be completed in accordance with the schedule contained in the Statement of Work. Following resolution of the dispute, as provided by this Section, Respondent shall fulfill the requirement that was

the subject of the dispute in accordance with the agreement reached or with U.S. EPA's decision, whichever occurs.

XIX. FORCE MAJEURE

- A. Respondent agrees to perform all requirements under this Order within the time limits established under this Order, unless the performance is delayed by a force majeure. For purposes of this Order, a force majeure is defined as any event arising from causes beyond the control of Respondent or of any entity controlled by Respondent, including but not limited to its contractors and subcontractors, that delays or prevents performance of any obligation under this Order despite Respondent's best efforts to fulfill the obligation. Force majeure does not include financial inability to complete the work or increased cost of performance.
- B. Respondent shall notify the Agencies orally within 2 business days after Respondent becomes aware of any event that Respondent contends constitutes a force majeure, and in writing within 7 calendar days after the event. Such notice shall: identify the event causing the delay or anticipated delay; estimate the anticipated length of delay, including any necessary demobilization and re-mobilization; state the measures taken or to be taken to minimize the delay; and estimate the timetable for implementation of the measures. Respondent shall take all reasonable measures to avoid and minimize the delay. Failure to comply with the notice provision of this Section shall be grounds for the Agencies to deny Respondent an extension of time for performance. Respondent shall have the burden of demonstrating by a preponderance of the evidence that the event is a force majeure, that the delay is warranted under the circumstances, and that best efforts were exercised to avoid and mitigate the effects of the delay.
- C. If the Agencies determine a delay in performance of a requirement under this Order is or was attributable to a force majeure, the time period for performance of that requirement shall be extended for such time as is necessary to complete such requirement. Such an extension shall not alter Respondent's obligation to perform or complete other tasks required by the Order which are not directly affected by the force majeure.
- D. If either the U.S. EPA or the State, but not the other, concludes that a delay or anticipated delay has not been or will not be caused by a force majeure event, the U.S. EPA

and the State will notify Respondent in writing of such disagreement, the provisions of Section XVIII (Dispute Resolution) shall be deemed to be invoked, and Respondent's time for invoking the provisions of Section XVIII will be stayed until the U.S. EPA and the State have completed the process specified in Section XVIII.

XX. STIPULATED AND STATUTORY PENALTIES

- A. Respondent shall be liable for payment into the Hazardous Substances Superfund administered by the U.S. EPA of the sums set forth below as stipulated penalties for each week or part thereof that Respondent fails to comply with a schedule in accordance with the requirements contained in this Order, including its Attachments or modifications, unless the Agencies determine that such a failure or delay is attributable to force majeure as defined in Section XIX or is otherwise approved by U.S. EPA. Such sums shall be due and payable within thirty (30) days of receipt of written notification from U.S. EPA specifically identifying the noncompliance and assessing penalties, unless Respondent invokes the procedures of Section XVIII (Dispute Resolution). These stipulated penalties shall accrue in the amount of \$1500.00 for the first week or part thereof, and \$2000.00 for each week or part thereof thereafter. Stipulated penalties shall begin to accrue on the day that performance is due or a violation occurs and extends through the period of correction.
- B. The stipulated penalties set forth herein shall not preclude the Agencies from electing to pursue any other remedy or sanction because of Respondent's failure to comply with any of the terms of this Order, including a suit to enforce the terms of this Order. Said stipulated penalties shall not preclude the U.S. EPA from seeking statutory penalties up to the amount authorized by law if Respondent fails to comply with any requirements of this Order. Provided, however, that the United States shall not seek civil penalties pursuant to Section 122(1) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of this Order.
- C. Upon receipt of written demand from U.S. EPA, Respondent shall make payment to U.S. EPA within 30 days and interest shall accrue on late payments. If Respondent fails to pay stipulated penalties when due, U.S. EPA may institute proceedings to collect the penalties, as well as interest.

- D. Even if violations are simultaneous, separate penalties shall accrue for separate violations of this Order. Penalties shall accrue regardless of whether U.S. EPA has notified Respondent of a violation or act of noncompliance. The payment of penalties shall not alter in any way Respondent's obligation to complete the performance of the work required under this Order. Stipulated penalties shall accrue, but need not be paid, during any dispute resolution period concerning the particular penalties at issue. If Respondent prevails upon resolution, Respondent shall pay only such penalties as the resolution requires. In its unreviewable discretion, U.S. EPA may waive its rights to demand all or a portion of the stipulated penalties due under this Section.

XXI. RESERVATION OF RIGHTS

- A. Except as specifically provided in this Order, nothing herein shall limit the power and authority of the Agencies to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent the Agencies from seeking legal or equitable relief to enforce the terms of this Order. Except as specifically provided in this Order, U.S. EPA also reserves the right to take any other legal or equitable action as it deems appropriate and necessary, or to require Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law. The United States reserves, and this Order is without prejudice to, all rights against Respondent with respect to all other matters including, but not limited to:
1. Liability for failure to meet a requirement of this Consent Order;
 2. Criminal liability;
 3. Liability arising from any future releases of hazardous substances or oil from a facility owned and/or operated by Respondent to the Site, and any future arrangement for disposal or treatment of a hazardous substance, pollutant or contaminant at the Site after the effective date of this Order;

4. Liability for federal government response costs including the cost of overseeing performance of the work covered under this agreement.
 5. Claims for damages to natural resources, as defined in Section 101(6) of CERCLA, 42 U.S.C. § 9601(6);
- B. Respondent specifically reserves all rights and defenses that it may have, including but not limited to the right to contest any determinations, findings of fact, or conclusions of law set forth in the Order in any proceeding other than an action brought by U.S. EPA or the State to enforce this Order.

XXII. OTHER CLAIMS

- A. By issuance of this Order, the United States, the State of Wisconsin, and the Agencies assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States, the State of Wisconsin, and the Agencies shall not be a party or be held out as a party to any contract entered into by Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out activities pursuant to this Order.
- B. Except as expressly provided in Section XXIII (Covenant Not To Sue), nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106(a) or 107(a) of CERCLA, 42 U.S.C. §§9606(a), 9607(a).
- C. This Order does not constitute a preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. §9611(a)(2). The Respondent waives any claim to payment under Sections 106(b), 111, and 112 of CERCLA, 42 U.S.C. §§9606(b), 9611, and 9612, against the United States or the Hazardous Substance Superfund arising out of any action performed under this Order. No action or decision by U.S. EPA pursuant to this Order shall give rise to any right to judicial review except as set forth in Section 113(h) of CERCLA, 42 U.S.C. §9613(h).

XXIII. COVENANT NOT TO SUE

- A. 1. In consideration of the actions that will be performed by Respondent under the terms of this Order and except as specifically provided in Section XXI, the United States covenants not to sue or to take administrative action against Respondent pursuant to Section 106 of CERCLA, Section 311 of the Federal Water Pollution Control Act, and Section 10 of the Rivers and Harbors Act with respect to the Site.
2. In consideration of the actions that will be performed by Respondent under the terms of this Order, and except as specifically provided in Section XXI, the State covenants not to sue or take administrative action against Respondent pursuant to Sections 107(a) and 310 of CERCLA, Section 505 of the Federal Water Pollution Control Act, and state statutory and common law with respect to the Site.
3. Except with respect to future liability, the covenants not to sue or take administrative action shall take effect upon issuance of this Order. With respect to future liability, these covenants not to sue or take administrative action shall take effect upon the issuance of the Notice of Completion. These covenants not to sue or take administrative action are conditioned upon the satisfactory performance by Respondent of its obligations under this Order. These covenants not to sue or take administrative action extend only to Respondent and do not extend to any other person.
- B. These covenants not to sue or take administrative action shall not apply to a U.S. EPA claim for response action after issuance of the Notice of Completion with respect to any subunit of the Site, as delineated in the SOW, that did not achieve the Cleanup Objectives as defined in the SOW.
- C. Nothing in this Order shall affect any covenant not to sue provided to Respondent in any other agreement.

XXIV. CONTRIBUTION PROTECTION

With regard to claims for contribution against Respondent for matters addressed in this Order, the Parties hereto agree that Respondent is entitled to protection from contribution actions or claims to the extent provided by Section 113(f)(2) of CERCLA, 42 U.S.C. §§9613(f)(2), and applicable state law. The "matters addressed" in this Order are all response actions to be taken by any person other than the United States with respect to the Site. Nothing in this Order precludes Parties from asserting any claims, causes of action or demands against any persons not parties to this Order for indemnification, contribution, or cost recovery.

XXV. INDEMNIFICATION

Respondent agrees to indemnify, save and hold harmless the United States, the State, and their officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action: (A) arising from, or on account of, acts or omissions of Respondent and Respondent's officers, directors, employees, agents, contractors, subcontractors, receivers, trustees, successors or assigns, in carrying out actions pursuant to this Order; and (B) for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between (any one or more of) Respondent, and any persons for performance of work on or relating to the Site, including claims on account of construction delays. Nothing in this Order, however, requires indemnification by Respondent for any claim or cause of action against the United States or the State based on acts or omissions that occur at the direction of the United States or the State (not including oversight or approval of plans or activities of Respondent).

XXVI. MODIFICATIONS

Any requirements of this Order may be modified in writing by mutual agreement of the parties. If Respondent seeks permission to deviate from any approved plan or schedule, Respondent's Project Coordinator shall submit a written request to the Agencies for approval outlining the proposed modification and its basis.

No informal advice, guidance, suggestion, or comment by the Agencies regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of its obligations to obtain such formal approval as may be required by this Order, and to comply with all requirements of this Order unless it is formally modified.

XXVII. NOTICE OF COMPLETION

The Agencies shall promptly review the Final Report submitted by Respondent and determine whether all work has been performed in accordance with this Order, except for certain continuing obligations required by this Order (e.g., record retention). Upon such determination, the Agencies will promptly provide written notice to Respondent. Such notice will not be unreasonably withheld. If the Agencies determine that any removal activities have not been completed in accordance with this Order, they will notify Respondent, provide a list of the deficiencies, and require that Respondent modify the Work Plan if appropriate to correct such deficiencies. Respondent shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the Agencies' notice. Failure to implement the approved modified Work Plan shall be a violation of this Order.

XXIII. SEVERABILITY

If a court issues an order that invalidates any provision of this Order or finds that Respondent has sufficient cause not to comply with one or more provisions of this Order, Respondent shall remain bound to comply with all provisions of this Order not invalidated by the court's order.

XXIX. EFFECTIVE DATE

This Order shall become effective five (5) days following facsimile transmission to Respondent's representative, as designated in Section VII, of the signature pages herein for the Director for the Office of Superfund, U.S. EPA, Region V, and the Secretary of the WDNR.

IN THE MATTER OF:
Administrative Order by Consent
SMU 56/57 Site
Fox River, Wisconsin

SIGNATORIES

Each undersigned representative of a signatory to this Administrative Order on Consent certifies that he or she is fully authorized to enter into the terms and conditions of this Order and to bind such signatory to this document.

AGREED AS STATED ABOVE:

FORT JAMES CORPORATION and
FORT JAMES OPERATING COMPANY

BY: _____
Name:
Title:

DATE: _____

IT IS SO ORDERED AND AGREED:

BY: _____
William E. Muno, Director
Superfund Division
U.S. Environmental Protection Agency, Region 5

DATE: _____

BY: _____
George Meyer, Secretary
Wisconsin Department of Natural Resources

DATE: _____

IN THE MATTER OF:

Administrative Order by Consent
SMU 56/57 Site
Fox River, Wisconsin

BY: _____

DATE: _____

Name:

Title:

Wisconsin Department of Justice

BY: _____

DATE: _____

Lois J. Schiffer

Assistant Attorney General

Environment & Natural Resources Division

U.S. Department of Justice