

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 ENTRY OF REVISED PROPOSED TERMS OF AN INJUNCTION**

In a Decision and Order issued last week, the Court denied a prior motion for a preliminary injunction requiring NCR Corporation (“NCR”) and Appleton Papers Inc. (“API”) to continue full-scale dredging work at the Lower Fox River and Green Bay Superfund Site this year. But the Court also indicated that its findings “support injunctive relief of some kind against NCR” such as “appropriate relief to compel NCR to undertake or continue the clean-up.” *United States v. NCR Corp.*, No. 10-910, 2011 WL 2634262, at *13 n.3 (E.D. Wis. July 5, 2011). This Motion for Entry of Revised Proposed Terms of an Injunction therefore seeks appropriate relief against NCR, including a preliminary injunction ordering NCR alone to comply with the substantive requirements of the United States’ previously proposed Terms of Injunction. To afford timely and meaningful relief in light of the existing agreements and arrangements between NCR and API, the Motion also seeks minor and ancillary injunctive relief directed at API, in the form of a mandate that API grant NCR a proxy to adjust the voting rights in the limited liability company that has the agreements with the environmental contractors at the Site. As demonstrated by the short brief filed in support of this Motion, the Court can and should grant

such relief consistent with established Supreme Court precedent even if API is assumed to have no direct liability to the United States under CERCLA. *See Int'l Bhd. of Teamsters v. United States*, 431 U.S. 324, 342-43, 356 (1977); *Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385 (1982); *Gen. Bldg. Contractors Ass'n v. Pennsylvania*, 458 U.S. 375, 399 (1982).

Revised proposed Terms of Injunction are attached to this Motion. Consistent with EPA's Modified Work Plan for 2011, the proposed injunction would require NCR to remove at least 605,000 cubic yards of contaminated sediment this year. Although the dredges at the Site are now idle, that cubic yardage total can still be achieved if full-scale dredging resumes by the first week of August, as confirmed by the accompanying Third Declaration of George A. Berken. The Court has clear authority to grant the requested relief and the United States respectfully requests that the Court do so without delay.

Respectfully submitted,

For the United States of America

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Assistant Attorney General
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Dated: July 13, 2011

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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