

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

UNITED STATES OF AMERICA and
THE STATE OF WISCONSIN,

Plaintiffs,

v.

Case No. 09-C-692

GEORGE A. WHITING PAPER COMPANY, et al.,

Defendants.

ORDER

Plaintiffs United States of America and State of Wisconsin have brought this action against several Defendants pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9606 and 9607, as amended. Currently pending before the Court is Plaintiffs' motion to enter a consent decree with Defendant the City of De Pere.

The other defendants in this action have already settled and their settlement was approved on December 16, 2009. As I noted in my order approving the settlement, a court's review of such matters is deferential and must consider the public policy strongly favoring settlements. Intervenors Appleton Paper, Inc. and NCR Corp. have raised the same objection to the settlement with the City of De Pere that they raised in their objection to the earlier settlements. Specifically, they contest the government's failure to distinguish among different types of Aroclors. I concluded in my previous ruling that a consent decree proceeding with *de minimis* parties was not the appropriate place to sort out the different kinds of PCBs in the Fox River or estimate the various levels of toxicity associated with the different Aroclors. In essence, the governments are afforded a certain

level of prosecutorial discretion in how they best approach settlement, particularly with *de minimis* polluters like these defendants. The exactitude sought by the intervenors is likely impossible, but more importantly any attempt at its achievement would require expense, time and effort far out of proportion to these defendants' almost negligible culpability. After all, we are talking about the release of a couple hundred pounds of PCBs out of the roughly half-million pounds released overall. The settlement proposed is fair and reasonable.

Accordingly, Plaintiffs' motion to enter the Consent Decree is **GRANTED**, and the Consent Decree is hereby **APPROVED** and **ENTERED**. The Clerk of the Court shall immediately disburse \$210,000.00 (and all accrued interest on that deposit) to the Plaintiffs as provided by Consent Decree Paragraph No. 6. More specifically, pursuant to Consent Decree Paragraph No. 6 and this Order for withdrawal: (i) \$174,300 (plus corresponding interest on that amount) shall be paid to the United States to be deposited in the Lower Fox River and Green Bay Superfund Site Special Account within the United States Environmental Protection Agency's Hazardous Substance Superfund, to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA's Hazardous Substance Superfund; and (ii) \$35,700.00 (plus corresponding interest on that amount) shall be paid to the United States to be deposited in a Site-specific sub-account within the United States Department of the Interior's Natural Resource Case Damage Assessment and Restoration Fund, to be managed by DOI for the joint benefit and use of the Fox River/Green Bay Natural Resource Trustees to pay for the natural resource damage restoration projects jointly selected by the Trustees and/or to be applied toward natural resource damage assessment costs incurred by DOI and the State.

The disbursements to the United States shall be made in accordance with payment instructions to be provided to the Clerk of the Court by the Financial Litigation Unit of the Office

of the United States Attorney for the Eastern District of Wisconsin. Pursuant to 28 U.S.C. § 1914(b) and the Judicial Conference Schedule of Fees, no fees shall be charged for services rendered on behalf of the United States in conjunction with this deposit of funds into the Court Registry Account.

The Clerk is directed to enter final judgment indicating that the settlements are approved as set forth in this and previously entered orders and the intervenors' objections are overruled.

SO ORDERED this 20th day of April, 2010.

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