

IN THE UNITED STATES DISTRICT COURT
FOR WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA and)
THE STATE OF MICHIGAN)
)
Plaintiffs,)
)
v.)
)
NCR CORPORATION,)
)
Defendant.)
_____)

Civil Action No. 1:19-cv-01041-RJJ-RSK

**AGREED MODIFICATION OF CONSENT DECREE WITH
NCR CORPORATION**

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**AGREED MODIFICATION OF CONSENT DECREE WITH
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WHEREAS, prior to December 2019, the United States of America (“United States”) and the State of Michigan (“the State”) engaged in negotiations with NCR Corporation (“NCR”) to resolve NCR’s alleged liability under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”) and Michigan statutory or common law relating to the Allied Paper/Portage Creek/Kalamazoo River Superfund Site, EPA ID# MID006007306 (the “Site”) regarding NCR, in a cooperative manner, without the transaction costs associated with protracted litigation;

WHEREAS, as a result of these negotiations, an agreement was reached and embodied in a consent decree (CD) which resolved alleged claims by the United States and the State against NCR under CERCLA and State statutory or common laws relating to the Site;

WHEREAS, the CD required that NCR conduct certain response actions at the Site and pay specific dollar amounts to the United States and the State;

WHEREAS, this Court entered the CD on December 2, 2020, (docket #37) and, under Section XXIII of the CD, has retained jurisdiction over implementation and enforcement of the CD;

WHEREAS, Paragraph 13 of the CD provides that, after issuance by the U.S. Environmental Protection Agency (“EPA”) of a Record of Decision (“ROD”) for Area 3 of Operable Unit 5 of the Site (“Area 3 ROD), NCR may agree to perform the RD/RA for Area 3 or opt-out of performance of the work and pay EPA \$52.5 million;

WHEREAS, after the issuance of the Area 3 ROD, EPA, after consultation with the State, provided NCR with a Proposed CD and SOW Modification, describing the activities SD must perform to implement the Area 3 RD and Area 3 RA, including land or other resource use restrictions.

WHEREAS, the United States, the State, and NCR (collectively the “Parties”) agreed on a SOW modification for the Area 3 ROD and have attached the updated SOW to this modification to the CD (“CD Modification”);

WHEREAS, the Parties have agreed to this CD Modification to add the Area 3 ROD and the Area 3 SOW modifications to the CD;

WHEREAS, Paragraphs 13 and 110 of the CD allows for amendments to add a CD and SOW modification to implement the Area 3 ROD, by agreement of the Parties, effective upon approval by the Court after notice and opportunity for public comment;

WHEREAS, the Parties agree, and the Court by entering this CD Modification finds that the amendment set forth herein is fair, reasonable, and in the public interest;

NOW THEREFORE, it is hereby ORDERED, ADJUDGED, and DECREED that the CD in this matter is modified as follows:

1. This CD Modification shall apply to, and be binding upon, the Parties as an amendment to the CD.
2. This CD Modification shall not be construed to alter, affect or amend the CD in any way other than provided herein.
3. It is the purpose of the Parties in entering into this CD Modification to further the objectives of the Parties as provided in the CD.
4. Unless otherwise defined herein, terms used in this CD Modification shall have the meaning given to those terms in the CD, CERCLA, and the regulations promulgated thereunder.
5. The attached SOW modification is hereby incorporated into the CD.
6. The attached Area 3 Record of Decision is hereby incorporated as CD Appendix E.
7. Further, the CD is modified to delete the references to “Response Cost Payments” and “Payments pursuant to ¶ 23” in Paragraph 46.a. The CD is modified to add Paragraph 46.b as follows:

46.b. **Response Cost Payments.** The Financial Litigation Unit (“FLU”) of the United States Attorney’s Office for the Western District of Michigan shall provide to SD instructions for making all Response Cost Payments, including a Consolidated Debt Collection System (“CDCS”) reference number. SD shall make such payment at <https://www.pay.gov> in accordance with the FLU’s instructions, including references to the CDCS Number. SD shall send notice of each payment to DOJ and EPA.

8. The CD is modified to add the following sentence to the end of Paragraph 12: “EPA shall time its issuance of Notices of Authorization to Proceed with RD and RA to be consistent with this objective.”

9. This CD Modification shall be lodged with the Court for at least 30 days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States and the State reserve the right to withdraw or withhold its consent to this CD Modification if the comments regarding the CD Modification disclose facts or considerations that indicate that the CD Modification is inappropriate, improper, or inadequate. NCR consents to the entry of this CD Modification without further notice. If for any reason the Court declines to approve this CD Modification in the form presented, this CD modification is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

Dated and entered this ____ day of _____, _____.

UNITED STATES DISTRICT JUDGE

The Undersigned Parties Enter into this Modification to Consent Decree in the case of *United States of America and the State of Michigan v. NCR Corporation*, Civil Action No. 1:19-cv-01041-RJJ-RSK

FOR THE UNITED STATES OF AMERICA
DEPARTMENT OF JUSTICE

TODD S. KIM
Assistant Attorney General
Environment and Natural Resources Division



KRISTIN M. FURRIE
Senior Counsel
Environment and Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Washington, DC 20044-7611
Phone: (202) 616-6515
Email: kristin.furrie@usdoj.gov

FOR THE ENVIRONMENTAL PROTECTION
AGENCY:

DOUGLAS
BALLOTTI

Digitally signed by
DOUGLAS BALLOTTI
Date: 2023.08.11
10:10:14 -05'00'

Douglas Ballotti
Director
Superfund & Emergency Management Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604-3507

Nicole Wood-Chi

dated 7/31/2023


Nicole Wood-Chi
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604-3507

FOR THE STATE OF MICHIGAN:

DANA NESSEL
Attorney General of Michigan

June 22, 2023


Dated



Megen Miller (P78901)
Assistant Attorney General
Environment, Natural Resources, and Agriculture Division
Michigan Department of Attorney General
P.O. Box 30755
Lansing, MI 48909
(517) 335-7664

6/21/2023

Dated



Aaron Keatley, Acting Director
Michigan Department of Environment, Great Lakes, and
Energy
P.O. Box 30473
Lansing, MI 48909-7973
(517) 284-6700

Dated

Shannon Lott, Acting Director
Michigan Department of Natural Resources
Constitution Hall, 525 West Allegan Street
P.O. Box 30028
Lansing, MI 48909-7528
(517) 284-6367

FOR THE STATE OF MICHIGAN:

DANA NESSEL
Attorney General of Michigan

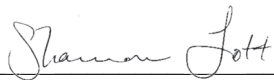
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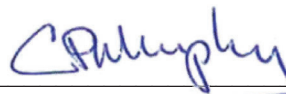
Shannon Lott, Acting Director
Michigan Department of Natural Resources
Constitution Hall, 525 West Allegan Street
P.O. Box 30028
Lansing, MI 48909-7528
(517) 284-6367

Signature Page for CD regarding the Allied Paper Kalamazoo River Superfund Site

FOR NCR Corporation:

July 13, 2023

Dated



Christopher Murphy
Law Vice President, Chief
Litigation Counsel
NCR Corporation
864 Spring Street NW
Atlanta, GA 30308

Agent Authorized to Accept Service
on Behalf of Above-signed Party:

John M. Heyde
Sidley Austin LLP
One South Dearborn
Chicago, IL 60603
jheyde@sidley.com