

COPY

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE

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U.S. DISTRICT COURT
EASTERN DIST. TENN.

BY _____ DEPT. CLERK

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

BOWATER INCORPORATED,)

Defendant.)

Civil Action No. [1:09 CW 223

CONSENT DECREE

Edgar/lee

Region 4
61 Forsyth Street
Atlanta, GA 30303

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WHEREAS Plaintiff United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), has filed a Complaint in this action concurrently with this Consent Decree against Bowater Incorporated ("Defendant") in the United States District Court for the Eastern District of Tennessee, seeking injunctive relief and a civil penalty for violations of the Clean Air Act ("Act");

WHEREAS Defendant owns and operates a pulp and paper mill in Calhoun, Tennessee;

WHEREAS the Complaint alleges violations of the Clean Air Act;

WHEREAS Defendant does not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint;

WHEREAS on April 16, 2009, the Defendant filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code ("Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), In re Bowater Inc., No. 09-11311(KJC), and as jointly administered with certain of the Defendant's affiliates, In re AbitibiBowater Inc., No. 09-11296-KJC ("Bankruptcy Cases");

WHEREAS the Defendant is currently operating as a debtor in possession pursuant to section 1107 of the Bankruptcy Code; no trustee or examiner has been appointed and no plan has been filed in the Bankruptcy Cases;

WHEREAS on April 28, 2009, the United States Trustee for the District of Delaware appointed a statutory committee of unsecured creditors in the Bankruptcy Cases;

WHEREAS the lodging of this Consent Decree is subject to a final, non-appealable order of the Bankruptcy Court approving the Defendant's entry into this Consent Decree;

WHEREAS the Bankruptcy Court approved the Defendant's entry into this Consent Decree on August 3, 2009, Bankruptcy Case Dkt. No. 793 (the "Bankruptcy Order") and the Bankruptcy Order became final and non-appealable on August 13, 2009; and

WHEREAS the Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action and over the Parties, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 113(b) of the Act, 42 U.S.C. § 7413(b). Venue lies in this District pursuant to § 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b) and (c) and 1395(a), because the violations alleged in the Complaint are alleged to have occurred in, and Defendant conducts business in, this judicial district. For purposes of this Decree, or any action to enforce this Decree, Defendant consents to the Court's jurisdiction over this Decree and any such action and over Defendant and consents to venue in this judicial district. A notice of commencement of this action has been given to the State of Tennessee in accordance with Section 113(b) of the Act, 42 U.S.C. § 7413(b).

2. For purposes of this Consent Decree, Defendant does not contest that the Complaint states claims upon which relief may be granted pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b).

II. APPLICABILITY

3. The obligations of this Consent Decree apply to and are binding upon the United States, and upon Defendant and any successors, assigns, or other entities or persons otherwise bound by law.

4. No transfer of ownership or operation of the Facility, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Defendant of its obligation to ensure that the terms of the Consent Decree are implemented. At least 30 Days prior to such transfer, Defendant shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed transfer agreement, to EPA Region 4, the United States Attorney for the Eastern District of Tennessee, and the United States Department of Justice, in accordance with Section XIV of this Consent Decree (Notices). Any attempt to transfer ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this Decree.

5. Defendant shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree. Defendant shall also provide a copy of this Consent Decree to any contractor retained to perform work required under this Consent Decree. Defendant shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

6. In any action to enforce this Consent Decree, Defendant shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. DEFINITIONS

7. Capitalized terms used in this Consent Decree that are defined in the Act or in

regulations promulgated pursuant to the Act shall have the meanings assigned to them in the Act or such regulations, unless otherwise provided in this Consent Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

a. "Boiler #1" shall mean power boiler F1 (54-0012-10) rated at 214 million British thermal units per hour ("mmBtu/hour");

b. "Boiler #2" shall mean power boiler F2 (54-0012-11) rated at 460 mmBtu/hour;

c. "Boiler #3" shall mean power boiler F3 (54-0012-12) rated at 460 mmBtu/hour;

d. "Complaint" shall mean the complaint filed by the United States in this action;

e. "Consent Decree" or "Decree" shall mean this Decree and all appendices attached hereto;

f. "Day" shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day;

g. "Defendant" shall mean Bowater Incorporated;

h. "EPA" shall mean the United States Environmental Protection Agency and any of its successor departments or agencies;

i. "Effective Date" shall have the definition provided in Section XV;

j. "Facility" shall mean Defendant's pulp and paper mill located in Calhoun, Tennessee;

k. "NO_x" shall mean Nitrogen Oxides;

l. "Operating Permit" shall mean Defendant's Air Pollution Control Permit No. 546374 issued by TDEC, dated December 22, 2005;

- k. "Paragraph" shall mean a portion of this Decree identified by an arabic numeral;
- l. "Parties" shall mean the United States and Defendant;
- m. "Section" shall mean a portion of this Decree identified by a roman numeral;
- n. "State" shall mean the State of Tennessee;
- o. "SO₂" shall mean Sulfur Dioxide;
- p. "TDEC" shall mean the Tennessee Department of Environment and Conservation;
- q. "United States" shall mean the United States of America, acting on behalf of
EPA;

IV. CIVIL PENALTY

8. In settlement and satisfaction of the claims alleged in the Complaint, the civil penalty assessed against Defendant shall be fixed in the amount of \$30,000 and, upon the Effective Date of this Consent Decree, shall be allowed as a pre-petition general unsecured claim against the Defendant in the Defendant's Bankruptcy Case in favor of the United States. This claim shall be treated in the same manner as other general unsecured claims and shall not be subject to discrimination or subordination.

9. All payments made pursuant to this Section shall be made in accordance with a plan or plans of reorganization in the Bankruptcy Cases approved by the United States Bankruptcy Court. Defendant shall not propose any plan of reorganization or take any other action in the Bankruptcy Cases inconsistent with the terms or provisions of this Consent Decree.

10. All cash payments to the United States pursuant to this Section shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with written instructions to be provided promptly to Defendant, following lodging of the Consent

Decree, by the Financial Litigation Unit of the U.S. Attorney's Office for the Eastern District of Tennessee, 800 Market Street Suite 211, Knoxville, Tennessee 37902, (865) 545-4167. At the time of payment, Defendant shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the payment is on account of the civil penalty owed pursuant to the Consent Decree in United States v. Bowater Incorporated, and shall reference the civil action number and DOJ case number 90-5-2-1-08852, to the United States in accordance with Section XIV of this Decree (Notices); by email to acctreceivable.CINWD@epa.gov; and by mail to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

Defendant shall not deduct any penalties paid under this Decree pursuant to this Section or Section VIII (Stipulated Penalties) in calculating its federal income tax.

V. COMPLIANCE REQUIREMENTS

11. Within thirty (30) days of the lodging of this Consent Decree, Defendant shall submit an application to TDEC to amend the NO_x and SO₂ emission limits for Power Boilers #1, #2 and #3 in the Operating Permit by removing the currently listed NO_x emission limit of 3,189 tons per year in condition E4-18, and the SO₂ emission limit of 18,803.3 tons per year in condition E4-3. Defendant shall simultaneously submit an application to TDEC to establish the new emission limits in the Operating Permit for PSD avoidance, which for Boilers #1, #2 and #3 are 2,214 tons per year for NO_x and 4,562 tons per year for SO₂, including the SO₂ emissions from Total Reduced Sulfide incineration gases, based on a twelve (12) month rolling total.
12. Within thirty (30) days of the lodging of this Consent Decree, Defendant shall

submit an application to TDEC to amend the Operating Permit to require that Defendant operate its low NO_x burners and Continuous Emissions Monitors (CEMs) at all times for Boilers #2 and #3 and shall calibrate and certify the NO_x CEMs as required by 40 C.F.R. Part 75.

13. Within thirty (30) days of the lodging of this Consent Decree, Defendant shall submit an application to TDEC to amend the Operating Permit to require that Defendant operate and maintain SO₂ CEMs at all times on Power Boiler #2 and Power Boiler #3 and shall calibrate and certify the SO₂ CEMs as required by 40 C.F.R. Part 75.

14. Within 180 days of the lodging of this Consent Decree, Defendant shall acquire, install, calibrate, certify and begin operation of the SO₂ CEMs on Power Boiler #2 and Power Boiler #3.

15. Within thirty (30) days after the SO₂ CEMs on Power Boiler #2 and Power Boiler #3 have been calibrated and certified in accordance to 40 C.F.R. Part 75, the Defendant shall submit to EPA a hardcopy of the results from the calibration and certification of the SO₂ CEMs.

16. Monitoring. Within thirty (30) days of the lodging of this Consent Decree, Defendant shall submit an application to TDEC to amend the Operating Permit to require calculating SO₂ emissions for Boilers #1, #2 and #3 pursuant to the methodology described in Appendix A, attached to this Consent Decree. Within thirty (30) days of the lodging of this Consent Decree, Defendant shall submit an application to TDEC to amend the Operating Permit to require calculating NO_x emissions for Boilers #1, #2 #3 pursuant to the methodology described in Appendix B, attached to this Consent Decree. This amendment shall require that, after completion of the two performance tests required by Paragraph 17 below, Defendant shall use the average of the two emission factors in pounds (lbs) of NO_x per million Btu taken from those two

performance tests to calculate the monthly NO_x emissions from Boiler #1.

17. Within twelve (12) months of the lodging of this Consent Decree, Defendant shall have completed two performance tests conducted in accordance with EPA Reference Test Method 7E on Boiler #1 while operating at not less than 90 percent of the rated steaming capacity of the Boiler, to establish the NO_x emission factor for Boiler #1. These tests shall be approximately six months apart and shall be conducted under similar operating conditions. Defendant shall submit to EPA Region 4 and TDEC for approval a proposed test plan at least thirty (30) Days prior to the scheduled date for the first test. The plan will include a description of how the Boiler will be operated to ensure that the most NO_x emissions are generated. If EPA rejects this test plan, (i) EPA shall note the deficiencies that are the basis for the disapproval, and (ii) Defendant shall correct the test plan and resubmit it for approval in accordance with Paragraphs 22-23. A test conducted without prior EPA approval of the test plan is invalid.

18. Within sixty (60) days after the completion of each NO_x test conducted on Power Boiler #1 pursuant to Paragraph 16, the Defendant shall submit a hardcopy of the test results to EPA.

19. Within nine (9) months of the lodging of this Consent Decree, Defendant shall conduct a performance test in accordance with EPA Reference Test Method 3A and 6C on Power Boiler #1 while operating at a steaming capacity representative of normal operations for the Boiler, to establish the SO₂ emission factor for Power Boiler #1. The Defendant shall:

- a. To demonstrate the SO₂ emission factor's accuracy, conduct a relative accuracy test audit (RATA) pursuant to 40 C.F.R. Part 75 Appendix A, between the SO₂ CEM on Power Boiler #2 or #3, and Power Boiler #1 using the EPA reference method testing.

b. The RATA calculation shall be based on a lbs / million BTU emission rate from the Power Boiler #2 or #3 SO₂ CEMs and the EPA reference method testing on Power Boiler #1.

c. Defendant shall submit a hardcopy of the RATA results to EPA within thirty (30) days after the completion of the RATA.

d. Upon completion of a valid RATA, as determined by EPA, between the SO₂ CEM on Power Boiler #2 or #3 and the EPA reference test method on Power Boiler #1, then:

1. If the relative accuracy is less than 10.0 percent, then the Defendant shall use the data from the SO₂ CEM on Power Boiler #2 or #3 as an SO₂ emission factor for Power Boiler #1, and calculate the SO₂ emissions from Power Boiler #1 using the methodology in Appendix A;

2. If the relative accuracy meets or exceeds 10.0 percent, then, unless EPA consents in writing to an alternative requirement or schedule, the Defendant must:

i. submit, within 30 days after submittal of the RATA report, an application to TDEC to amend the Operating Permit to require that Defendant operate and maintain an SO₂ CEM at all times on Power Boiler #1 and calibrate and certify the SO₂ CEM as required by 40 C.F.R. Part 75;

ii. acquire, install, calibrate, certify and begin operation of an SO₂ CEM on Power Boiler #1, within 180 days after the submittal of the RATA report;

iii. submit to EPA a hardcopy of the results from the calibration and certification of the SO₂ CEM within 30 days after the SO₂ CEM on Power Boiler #1 has been calibrated and certified in accordance to 40 C.F.R. Part 75.

20. a. Within thirty (30) days of the lodging of this Consent Decree, Defendant shall submit an application to TDEC to amend its Operating Permit to require compliance with

40 C.F.R. §§ 63.454 and 63.10 by only including kraft pulping process condensates that are actually collected in Defendant's daily records to demonstrate the appropriate amount of methanol and other Hazardous Air Pollutants have been collected, pursuant to the methodology described in Appendix C, attached to this Consent Decree.

b. Within twelve (12) months of the lodging of this Consent Decree, Defendant shall have completed a characterization study to quantify the methanol content of the evaporator condensate and kraft mill dirty condensate tank streams. The characterization study will monitor the volumetric flow rate and the methanol concentration in each condensate stream. The characterization study will quantify methanol in the condensate streams (using the flow rate and concentration data) for each affected process unit to develop an emission factor in pounds of HAP per ODTP.

c. Within sixty (60) days after the completion of the characterization study on the kraft mill dirty condensate tank stream and the evaporator condensate stream pursuant to Paragraph 20-b, the Defendant shall submit a hardcopy of the study results to EPA. Prior to this submittal, the Defendant may use the emission factor from its most recent characterization study to demonstrate the appropriate amount of methanol and other Hazardous Air Pollutants have been collected, as described in Paragraph 20-a.

21. With respect to each of the applications to amend Defendant's Operating Permit required by Paragraphs 11, 12, 15, 18, 19 and 20, Defendant shall, within thirty (30) days of the lodging of this Consent Decree, comply with the requirements applied for until the Operating Permit is amended.

22. Approval of Deliverables. All documents required to be submitted to EPA for

approval under this Consent Decree shall be submitted to EPA pursuant to Section XIV (Notices). After review of any submittal, EPA shall in writing: (a) approve the submission; (b) approve the submission with conditions; (c) approve part of the submission and disapprove the remainder, noting the deficiencies that are the basis for the partial disapproval; or (d) disapprove the submission, noting the deficiencies that are the basis for the disapproval.

23. If the submission which is required for approval is disapproved in whole or in part, Defendant shall within fifteen (15) days correct all deficiencies identified and resubmit the deliverable for approval. If this re-submission by the Defendant is disapproved by EPA in whole or in part, EPA may require Defendant to correct any deficiencies, or may itself correct any deficiencies, subject to Defendant's right to invoke dispute resolution and the right of EPA to seek stipulated penalties as provided in this Consent Decree.

24. Any stipulated penalties applicable to the original submission, as provided in Section VII (Stipulated Penalties), shall accrue during the fifteen (15) day period but shall not be owed unless the re-submission is untimely or is disapproved in whole or in part; provided that if the original submission was so deficient as to constitute a material breach of Defendant's obligations under this Consent Decree, the stipulated penalties shall be accruing and payable upon demand notwithstanding any subsequent re-submission.

VI. REPORTING REQUIREMENTS

25. When Defendant submits the permit application(s) to TDEC to amend its Operating Permit in accordance with Paragraphs 11, 12, 15, 18, 19 and 20, Defendant shall simultaneously send the permit application(s) to EPA Region 4. Defendant shall include a cover letter or similar document identifying the sections of the permit(s) that are requested to be

amended in compliance with each of these Paragraphs of this Consent Decree.

26. Whenever any activity under this Consent Decree may pose an immediate threat to the public health or welfare or the environment, Defendant shall notify EPA orally or by electronic or facsimile transmission as soon as possible, but no later than 24 hours after Defendant first knew of the violation or event.

27. All submissions under Paragraph 25 shall be submitted to the persons designated in Section XIV of this Consent Decree (Notices).

28. Each submission submitted by Defendant under Paragraph 25 shall be signed by an official of the submitting party and include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

29. The reporting requirements of this Consent Decree do not relieve Defendant of any reporting obligations required by the Act or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

30. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

VII. STIPULATED PENALTIES

31. For any failure of Defendant to comply with any part of this Consent Decree and subject to the provisions of Sections VIII (Force Majeure) and IX (Dispute Resolution), Defendant shall pay within thirty (30) days after receipt of a written demand a stipulated penalty of \$1,000 per Day for each Day until the Defendant corrects the violation.

32. A violation subject to stipulated penalties includes Defendant's failure to perform any obligation required by the terms of this Decree, including any permitting, submission, monitoring or reporting requirements under Sections V (Compliance Requirements) and VI (Reporting Requirements) of this Decree, within the specified time schedules established by or approved under this Consent Decree.

33. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

34. Defendant shall pay any stipulated penalty within 30 Days of receiving the United States' written demand.

35. Stipulated penalties shall continue to accrue as provided in Paragraph 51 during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, Defendant shall pay accrued penalties determined to be owing, together with interest from the date of demand, to the United States within 30 Days of the effective date of the agreement or the receipt of EPA's decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Defendant shall pay all accrued penalties determined by the Court to be owing, together with interest from the date of demand, within 60 Days of receiving the Court's decision or order, except as provided in subparagraph c, below.

c. If any Party appeals the District Court's decision, Defendant shall pay all accrued penalties determined to be owing, together with interest from the date of demand, within 15 Days of the appellate court decision becoming final.

36. Defendant shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 9, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

37. If Defendant fails to pay stipulated penalties according to the terms of this Consent Decree, Defendant shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States from seeking any remedy otherwise provided by law for Defendant's failure to pay any stipulated penalties.

38. Subject to the provisions of Section XII of this Consent Decree (Effect of Settlement/Reservation of Rights), the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States for Defendant's violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of relevant statutory or regulatory requirements, Defendant

shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation.

VIII. FORCE MAJEURE

39. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendant, of any entity controlled by Defendant, or of Defendant's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Defendant's best efforts to fulfill the obligation. The requirement that Defendant exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include Defendant's financial inability to perform any obligation under this Consent Decree.

40. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Defendant shall provide notice orally or by electronic or facsimile transmission to EPA Region 4 Air Enforcement, within 72 hours of when Defendant first knew that an event has occurred that might cause a delay. Within seven days thereafter, Defendant shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendant's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Defendant, such event may cause or contribute to

an endangerment to public health, welfare or the environment. Defendant shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Defendant from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Defendant shall be deemed to know of any circumstance of which Defendant, any entity controlled by Defendant, or Defendant's contractors knew or should have known.

41. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

42. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Defendant in writing of its decision.

43. If Defendant elects to invoke the dispute resolution procedures set forth in Section IX (Dispute Resolution), it shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and

that Defendant complied with the requirements of Paragraphs 39 and 40 above. If Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

IX. DISPUTE RESOLUTION

44. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Defendant's failure to seek resolution of a dispute under this Section shall preclude Defendant from raising any such issue as a defense to an action by the United States to enforce any obligation of Defendant arising under this Decree.

45. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendant sends the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 20 Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within 20 Days after the conclusion of the informal negotiation period, Defendant invokes formal dispute resolution procedures as set forth below.

46. Formal Dispute Resolution. Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position

shall include, but need not be limited to, any factual data, analysis, or opinion supporting Defendant's position and any supporting documentation relied upon by Defendant.

47. The United States shall serve its Statement of Position within 45 Days of receipt of Defendant's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Defendant, unless Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph.

48. Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XIV of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within ten (10) Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Defendant's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

49. The United States shall respond to Defendant's motion within the time period allowed by the Local Rules of this Court. Defendant may file a reply memorandum, to the extent permitted by the Local Rules.

50. Standard of Review

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 46 pertaining to the

adequacy or appropriateness of the calculations, test plans, permit applications or any other items requiring approval by EPA under this Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, Defendant shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 46, Defendant shall bear the burden of demonstrating that its position complies with this Consent Decree and furthers the objectives of the Consent Decree.

51. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendant under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute. If Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VII (Stipulated Penalties).

X. PERMITS

52. Where any compliance obligation in this Consent Decree requires Defendant to obtain a federal, state, or local permit or approval, Defendant shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

XI. INFORMATION COLLECTION AND RETENTION

53. Until five years after the termination of this Consent Decree, Defendant shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all

documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to Defendant's performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States, Defendant shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

54. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendant shall notify the United States at least 90 Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States, Defendant shall deliver any such documents, records, or other information to EPA. Defendant may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendant asserts such a privilege, it shall provide the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of each author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Defendant. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

55. Defendant may also assert that information required to be provided under this Section is protected as Confidential Business Information ("CBI") under 40 C.F.R. Part 2. As to any information that Defendant seeks to protect as CBI, Defendant shall follow the procedures set forth in 40 C.F.R. Part 2.

56. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendant to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

57. This Consent Decree resolves all civil claims of the United States for the violations alleged in the Complaint filed in this action through the date of lodging. This Consent Decree also resolves all civil claims of the United States for violations alleged in the Notice of Violation dated April 26, 2006 and the matters described in the letter from EPA to Defendant dated December 4, 2008.

58. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal laws, regulations, or permit conditions, except as expressly specified in Paragraph 57.

59. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Defendant is responsible for achieving and maintaining complete compliance with all applicable federal, state, and local laws, regulations, and permits; and Defendant's compliance with this Consent Decree shall be no defense to any

action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's compliance with any aspect of this Consent Decree will result in compliance with provisions of the Act, 42 U.S.C. § 7401 *et seq.*, or with any other provisions of federal, state, or local laws, regulations, or permits.

60. This Consent Decree does not limit or affect the rights of Defendant or of the United States against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Defendant, except as otherwise provided by law.

61. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

XIII. COSTS

62. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Defendant.

XIV. NOTICES

63. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

To the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No.90-5-2-1-08852

To EPA:

Denis Kler, North Air Enforcement Section
U.S. Environmental Protection Agency
Region 4
61 Forsyth Street, SW
Atlanta, GA 30303

To Defendant:

Kevin Davenport
Environmental Manager
Bowater Newsprint
Calhoun Operations
5020 Highway 11 South
Calhoun TN 37309-5249

With copy to:

J. Andrew Goddard
Bass, Berry & Sims PLC
315 Deaderick Street, Suite 2700
Nashville, TN 37238-3001

and

AbitibiBowater Inc.
Attention: Vice President, Legal Affairs
1155, rue Metcalfe
Bureau 800
Montréal, Québec H3B 5H2

Notices to EPA that under the terms of this Consent Decree are to be made orally or by electronic transmission may be made to:

Telephone: (404) 562-9199
Email: kler.denis@epa.gov or dubose.dick@epa.gov

64. Any Party may, by written notice to the other Party, change any of its designated notice recipients or notice addresses provided above.

65. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XV. EFFECTIVE DATE

66. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

XVI. RETENTION OF JURISDICTION

67. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, or effectuating or enforcing compliance with the terms of this Decree.

XVII. MODIFICATION

68. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

69. Any disputes concerning modification of this Decree shall be resolved pursuant to Section IX of this Decree (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 50, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XVIII. TERMINATION

70. This Consent Decree shall terminate only after a Request for Termination has been served on the United States by Defendant. No such request shall be considered until all the following conditions have been met:

A. A permit which incorporates all of the requirements in Section V (Compliance Requirements) has been issued by the Tennessee Department of Environment and Conservation;

B. Defendant has otherwise been in compliance with the terms of the Consent Decree for six (6) months preceding the date of the request for Termination; and

C. There are no pending disputes under this Consent Decree.

The Request to Terminate shall certify that Defendant has satisfied these requirements.

71. Following receipt by the United States of Defendant's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Defendant has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

72. If the United States does not agree that the Decree may be terminated, Defendant may invoke Dispute Resolution under Section IX of this Decree. However, Defendant shall not seek Dispute Resolution of any dispute regarding termination, under Paragraph 46 of Section IX, until 30 Days after service of its Request for Termination.

XIX. PUBLIC PARTICIPATION

73. This Consent Decree shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendant consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree; unless the United States has notified Defendant in writing that it no longer supports entry of the Decree.

XX. SIGNATORIES/SERVICE

74. Each undersigned representative of Defendant and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

75. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendant agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XXI. INTEGRATION

76. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the

settlement embodied herein. No other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XXII. HEADINGS

77. Headings to the sections and subsections of this Consent Decree are provided for convenience and do not affect the meaning or interpretation of the provisions of this Consent Decree.

XXIII. FINAL JUDGMENT

78. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Defendant.

Dated and entered this _____ day of _____, 200__.

UNITED STATES DISTRICT JUDGE
Eastern District of Tennessee

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States et al. v. Bowater Incorporated (E.D. Tenn.):

FOR PLAINTIFF UNITED STATES OF AMERICA:

ELLEN M. MAHAN
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice

LORI JONAS, Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, DC 20044-7611

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States et al. v. Bowater Incorporated (E.D. Tenn.):

FOR PLAINTIFF UNITED STATES OF AMERICA:

MARY J. WILKES
Regional Counsel and Director
Office of Environmental Accountability
United States Environmental Protection Agency
Region 4

ELIZABETH O'SULLIVAN
Associate Regional Counsel
Office of Environmental Accountability
U.S. Environmental Protection Agency
Region 4

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States et al. v. Bowater Incorporated (E.D. Tenn.):

FOR DEFENDANT BOWATER INCORPORATED:

J. ~~ANDRÉ~~W GODDARD
Bass, Berry & Sims PLC
315 Deaderick Street, Suite 2700
Nashville, TN 37238-3001

APPENDIX A

Monitoring SO₂ Emissions

The application to amend the Operating Permit shall include the following method to regularly monitor SO₂ emissions, when the CEMs are installed, certified and operational, to ensure the SO₂ limit is met:

1. Use the SO₂ CEMs for Boilers # 2 and # 3 to calculate the monthly SO₂ emissions from both boilers in tons, and calibrate and certify the SO₂ CEMs in accordance with 40 C.F.R. Part 75.
2. To calculate the monthly SO₂ emissions from Boiler #1 in tons, use the SO₂ emission factor established from the relative accuracy test audit (RATA) pursuant to 40 C.F.R. Part 75 Appendix A, from the SO₂ CEM on Boiler #2 or #3 (using the EPA reference method testing).
3. Total the calculated monthly total SO₂ emissions for Boiler #1, and Boilers #2 and #3.
4. Calculate the 12-month rolling total SO₂ emissions (tons per rolling 12-months) by adding together the monthly SO₂ emissions from the previous 12 months.
5. Maintain the records of all the data and information used to calculate the monthly and 12-month rolling total SO₂ emissions calculations in accordance with 40 C.F.R. Part 70 and Section XI of this Consent Decree.

APPENDIX B

Calculating NO_x Emissions

The application to amend the Operating Permit will include the following method to regularly monitor NO_x emissions to ensure the NO_x limit is met:

1. Use the low NO_x burners and the NO_x CEMs for Boilers #2 and #3 year round, and calibrate and certify the NO_x CEMs in accordance with 40 C.F.R. Part 75.
2. Emissions of NO_x will be calculated at the end of each month (tons per month) as follows:
 - (i) for Boiler #1, calculate the monthly NO_x emissions by using the NO_x emission factor obtained pursuant to Paragraph 17 of this Consent Decree, the heating value for coal obtained from the coal analysis, and the actual quantity of coal fired during the month;
 - (ii) for Boilers #2 and #3, calculate the monthly NO_x emissions using the data from the NO_x CEMs; and
 - (iii) total the calculated monthly total NO_x emissions for Boilers #1, #2 and #3.
3. Calculate the 12-month rolling total NO_x emissions (tons per rolling 12-months) by adding together the monthly NO_x emissions from the previous 12 months.
4. Maintain the records of all the data and information used to calculate the monthly and 12-month rolling total NO_x emissions calculations in accordance with 40 C.F.R. Part 70 and Section XI of this Consent Decree.

APPENDIX C

Calculating Methanol Collection

The application to amend the Operating Permit required by Paragraph 20 of the Consent Decree will include the following methodology to regularly monitor HAP emissions to ensure the HAP limit is met.

The combined flow from the kraft mill dirty condensate tank and the evaporators will be recorded daily. This flow will be measured at the valve to the sewer and prior to the stripper inlet feed. If both the evaporators and kraft mill are running, this flow multiplied by its average methanol concentration (as demonstrated in the most recent characterization study described in Paragraph 20) will be used to calculate the mass of methanol collected and sent to treatment. If either the evaporators' or the kraft mill's dirty condensate is not being collected, then the methanol normally associated with that stream will not be included in the daily collection calculation unless the reason for the non collection is a startup, shutdown or malfunction ("SSM") event. The daily methanol collected will be divided by that day's production of oven dried unbleached pulp tons (ODTP) to calculate the pounds of methanol per ODTP collected.

An operating day will be from 7:00 a.m. to 7:00 a.m. If the kraft mill stops producing pulp and the stripper continues to operate, any methanol collected will be included with the daily calculation for the day the kraft mill ceases operation. Likewise, if the stripper begins treating condensates prior to the startup of the kraft mill, the methanol sent for treatment will be included with the calculation for the day production starts.

The mill will continue using a 21-day rolling average of the daily pounds of methanol per ODTP to demonstrate compliance with the 11.1 pounds of methanol per oven dried top of pulp

standard.

The above shall be complied with except for periods when the standard does not apply..

Within five (5) years of conducting the characterization study required by Paragraph 20, the kraft mill will conduct another characterization study in accordance with Paragraph 20 and thereafter will conduct the test every five (5) years. The mill shall alternate these characterization studies between summer (June, July and August) and winter (December, January and February), with each test being done the opposite season of the previous test.