

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA,

Plaintiff,

v.

WESTVACO CORP.,

Defendant.

Civ. No. MJG 00-CV-2602

NOTICE OF LODGING OF PROPOSED CONSENT DECREE

The United States (“Plaintiff”) hereby notifies the Court that it has lodged with the Clerk of Court a proposed Consent Decree, attached as an exhibit hereto, that would resolve all litigation in this action. Plaintiff is *not* requesting any action by the Court at this time on the proposed Consent Decree. The United States is required by regulation to invite the public to comment on the proposed Consent Decree for a period of 30 days before seeking judicial approval. The public comment period will begin upon publication of a notice in the Federal Register, which we anticipate will occur shortly. At the end of the public comment period, Plaintiff will file a motion with the Court to advise the Court of any comments received and of the United States’ position as to whether the proposed decree should be approved and entered by the Court.

Pursuant to 28 C.F.R. § 50.7, the United States may not seek the Court’s approval of the proposed Consent Decree until the opportunity for public comment is satisfied. This regulatory requirement has been acknowledged by the parties to the proposed decree as a condition of the settlement as reflected in Paragraph 26 of the proposed decree. The United States therefore

requests that the Court wait, before considering whether to approve and enter the proposed Consent Decree as an order of this Court, for a subsequent submission by the Plaintiff regarding any comments received during the public comment period and the United States' position regarding entry of the proposed decree.

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CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing Notice of Lodging of Proposed Consent Decree to be served by electronic and first class mail on March 11, 2016 on:

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CONSENT DECREE

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I. INTRODUCTION

WHEREAS, the United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), has filed a Complaint against Westvaco Corporation (“Westvaco”) seeking injunctive relief and civil penalties. The Complaint alleged, among other things, that Westvaco made a “major modification” to the Luke Mill, without first obtaining a PSD permit or installing modern pollution controls known as BACT, in violation of the Clean Air Act (the “Act”), 42 U.S.C. § 7475;

WHEREAS, Westvaco denied the allegations asserted in the Complaint;

WHEREAS, the Court has found that the United States’ claims for civil penalties are time barred;

WHEREAS, the United States asserts that the violations alleged in the Complaint resulted in excess emissions;

WHEREAS, the specific amount of excess emissions is in dispute;

WHEREAS, Westvaco no longer owns or operates the Luke Mill;

WHEREAS, the Court elected not to “exercise its discretion to issue an injunction that would require Westvaco to install controls” at the Luke Mill;

WHEREAS, the United States and Westvaco (the “Parties”) recognize, and the Court by entering this Decree finds, that this Decree has been negotiated by the Parties in good faith, will avoid further litigation between the Parties, and that this Decree is fair, reasonable, and in the public interest.

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

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action and the Parties pursuant to 28 U.S.C. §§ 1331 and 1345 and Section 113(b) of the Act, 42 U.S.C. § 7413(b).

2. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and Section 113(b) of the Act, 42 U.S.C. § 7413(b), because the events giving rise to the claims alleged in the Complaint occurred in this District.

III. PARTIES BOUND

3. The obligations of this Decree apply to and are binding upon the United States and upon the Defendant and any of its successors or assigns.

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

IV. DEFINITIONS

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

- a. “Complaint” shall mean the Complaint filed by the United States in this action;
- b. “Consent Decree” or “Decree” shall mean this Consent Decree;
- c. “Day” shall mean a calendar day. In computing any period of time under this 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 working day;

- d. “Defendant” shall mean Westvaco Corporation and any of its successors and assigns;
- e. “DOJ” shall mean the U.S. Department of Justice and any of its successor departments or agencies;
- f. “Effective Date” shall mean the date upon which this Decree is entered by the Court or a motion to enter the Decree is granted, whichever is first, as recorded by the Court’s docket;
- g. “EPA” shall mean the United States Environmental Protection Agency and any of its successor departments or agencies;
- h. “Interest” shall mean interest at the rate specified in 28 U.S.C. § 1961;
- i. “Luke Mill” shall mean the Kraft pulp and paper mill located in Luke, Maryland.
- j. “Paragraph” shall mean a portion of this Decree identified by an Arabic numeral (“subparagraph” by letter);
- k. “Parties” shall mean the United States and Westvaco;
- l. “Plaintiff” shall mean the United States;
- m. “Section” shall mean a portion of this Consent Decree identified by a Roman numeral; and
- n. “United States” shall mean the United States of America, acting on behalf of the EPA.

V. ENVIRONMENTAL MITIGATION

6. Within 30 Days of the Effective Date, Westvaco shall pay a total of \$1,600,000 in accordance with the requirements of this Section.

7. Within 30 Days of the Effective Date, Westvaco shall pay \$800,000 to the National Park Service to be used in accordance with 54 U.S.C. § 100724 for the restoration of land, watersheds, vegetation, and forests in Shenandoah National Park using techniques designed to improve ecosystem health and mitigate harmful effects from air pollution.

8. Payment of the amount specified in the preceding Paragraph shall be made to the National Resource Damage and Assessment Fund managed by the United States Department of the Interior pursuant to payment instructions provided to Westvaco by the United States. Notwithstanding the deadline in Paragraphs 6 and 7, payment of funds is not due until 10 days after receipt of payment instructions. Upon payment of the required funds into the National Resource Damage and Assessment Fund, Westvaco shall have no further responsibilities regarding the implementation of any project selected by the National Park Service in connection with this provision.

9. Within 30 Days of the Effective Date, Westvaco shall pay \$800,000 to the United States Forest Service to be used in accordance with 16 U.S.C. § 579c for the improvement, protection, and rehabilitation of lands in the Monongahela National Forest under the administration of the United States Forest Service.

10. Payment of the amount specified in the preceding Paragraph shall be made to the U.S. Forest Service pursuant to payment instructions provided to Westvaco by the United States. Notwithstanding the deadline in Paragraphs 6 and 9, payment of funds is not due until 10 days after receipt of payment instructions. Upon payment of the required funds, Westvaco shall have

no further responsibilities regarding the implementation of any project selected by the U.S. Forest Service in connection with this provision.

11. At the time of each payment required under this Section, Westvaco shall send notice that the payment has been made to: (a) the United States via email or regular mail in accordance with Section VI (Notices) and (b) EPA in accordance with Section VI (Notices). Each notice shall include the amount of the payment and the name of the recipient. In addition, each notice shall state that the payment is for an environmental mitigation project required by the Consent Decree in United States v. Westvaco Corporation and reference civil action number 00-cv-2602 MJG and DOJ case number 90-5-2-1-06444.

12. If all or any part of the payments specified in this Section is not paid when due, Defendant shall pay Interest on the unpaid balance.

VI. NOTICES

13. Whenever notifications, submissions, or communications are required by this Decree, they shall be made electronically, unless otherwise requested, and addressed as follows:

As to the United States by email: eesdcopy.enrd@usdoj.gov
Reference Case No. 90-5-2-1-06444

As to the United States by mail: EES Case Management Unit
Environment and Natural Resources Division
U.S. Department of Justice
Post Office Box 7611 - Ben Franklin Station
Washington, D.C. 20044-7611
Reference Case No. 90-5-2-1-06444

As to EPA: Director, Air Enforcement Division
Office of Civil Enforcement
U.S. EPA Headquarters, MC 2242A
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Director, Air Protection Division
U.S. Environmental Protection Agency, Region 3
1650 Arch Street (3AP00)
Philadelphia, PA 19103

As to Westvaco:

Robert McIntosh
Executive Vice President, General Counsel and
Secretary
WestRock Company
P.O. Box 4098
Norcross, GA 30091
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14. Any Party may, by written notice to the other Party in accordance with this Section, change its designated notice recipient or notice address provided above.

VII. EFFECT OF SETTLEMENT AND RESERVATION OF RIGHTS

15. This Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint.

16. This Consent Decree does not constitute an admission of any facts or liability by Westvaco.

17. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree. This Consent Decree does not limit the rights of the United States to obtain penalties or injunctive relief under the Act or implementing regulations, or under any other federal or state laws, regulations, or permit conditions, except as to the civil claims of the United States for the violations alleged in the Complaint.

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

19. This Decree does not create rights in, or grant any cause of action to, any third party that is not party to this Decree.

VIII. COSTS

20. Each Party shall bear its own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) of an action brought to enforce this Consent Decree.

IX. TERMINATION

21. Defendant may serve upon the United States a Request for Termination, stating that Defendant has made the payments required by Section V and any accrued interest imposed by this Decree and has satisfactorily complied with all other requirements of this Decree. Following receipt by the United States of Defendant's Request for Termination, the United States and Defendant shall confer informally concerning the Request. If the United States agrees that Defendant has satisfactorily complied with the requirements of this Decree, the Parties shall submit a joint stipulation terminating the Decree for the Court's approval.

X. MISCELLANEOUS PROVISIONS

22. Integration. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree.

23. Headings. 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.

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

25. Retention of Jurisdiction. The Court shall retain jurisdiction to resolve any disputes that arise under this Consent Decree or to enter orders necessary to modify, effectuate, or enforce compliance with this Consent Decree.

26. Public Participation. This Consent Decree will 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 this Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper or inadequate. Defendant 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. Defendant consents to entry of this Consent Decree without further notice.

XI. SIGNATORIES

27. 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.

28. This Consent Decree may be signed in counterparts, and its validity may not be challenged on that basis.

XII. FINAL JUDGMENT


29. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court.

Dated and entered this ____ day of _____, 2016.

Marvin J. Garbis
United States District Judge

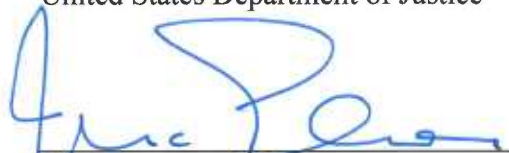
The undersigned party enters into this Consent Decree in the matter of United States v. Westvaco Corporation, subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

FOR PLAINTIFF UNITED STATES OF AMERICA



JOHN C. CRUDEN

Assistant Attorney General
Environment and Natural Resources Division
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**FOR THE ENVIRONMENTAL PROTECTION
AGENCY**



SUSAN SHINKMAN

Director

Office of Civil Enforcement

Office of Enforcement and Compliance Assurance


U.S. Environmental Protection Agency

The undersigned party enters into this Consent Decree in the matter of United States v. Westvaco Corporation, subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

**FOR THE ENVIRONMENTAL PROTECTION
AGENCY, REGION 3**


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FOR DEFENDANT WESTVACO CORPORATION



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