

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

UNITED STATES OF AMERICA

Plaintiff,

v.

**REYNOLDS METALS COMPANY,
WESTVACO CORPORATION, and
J.W. FERGUSON AND SONS, INC.,**

Defendants.

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Civil Action No. 3:97CV226

AMENDMENT NO. 3 TO CONSENT DECREE

I. BACKGROUND

A. By Order dated March 28, 1997, this Court entered a Consent Decree to resolve claims brought by the United States of America (“United States”), on behalf of the United States Environmental Protection Agency (“EPA”), under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. §§ 9606, 9607, against Settling Defendants Reynolds Metals Company and Westvaco Corporation (“Original Settling Parties”) in a case corresponding to Civil Action No. 3:97CV226.

B. The claims by the United States against the Original Settling Parties which were resolved by the Consent Decree, as amended, pertained to, inter alia: (1) reimbursement of costs incurred by EPA and the United States Department of Justice for response actions at the HH, Inc.

Superfund Site in Farrington, Hanover County, Virginia (“Site”), together with accrued interest; and (2) performance of studies and response work at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) (“NCP”).

C. Under the Consent Decree, the Original Settling Parties were required to, among other things, implement a remedial action selected by EPA for the Site in a Record of Decision dated June 30, 1995 (“1995 ROD”) (attached as Appendix A to the Consent Decree).

D. The remedial action selected by EPA in the 1995 ROD included, among other things, excavation and disposal of certain contaminated soils and sediments, and extraction and treatment of contaminated groundwater using ultraviolet oxidation.

E. By Order dated April 13, 1998, this Court entered *Amendment No. 1 to Consent Decree*, which added J.W. Fergusson and Sons, Inc. as a settling party. That entity filed for Chapter 7 bankruptcy in 2007 and no longer exists.

F. By Order dated June 7, 2000, this Court entered *Amendment No. 2 to Consent Decree*, which incorporated into the settlement EPA’s September 29, 1999 Explanation of Significant Differences modifying the groundwater portion of the selected remedy to replace ultraviolet oxidation of groundwater with a high vacuum extraction (“HVE”) system.

G. In 2011, after ten years of HVE operations at the Site, EPA approved a system shut down due to diminished contaminant recovery rates and requested that the Original Settling Parties evaluate other remedial alternatives which might achieve the required cleanup levels. The Original Settling Parties performed a pilot study to evaluate the effectiveness of enhanced bioremediation on remaining groundwater contamination at the Site.

H. On May 26, 2020, EPA issued a Record of Decision Amendment (“2020 ROD

Amendment”) in which EPA further modified the remedial action selected in the 1995 ROD to replace the HVE system with enhanced bioremediation. The 2020 ROD Amendment is attached hereto as Exhibit 1.

I. Section XXXI (Modification) of the Consent Decree provides, in pertinent part, that “[n]o modifications shall be made to the provisions of this Consent Decree without written notification to and written approval of the United States, Settling Defendants, and the Court.” That section additionally provides that, “[p]rior to providing its approval to any modification to the provisions of this Consent Decree, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification.”

J. Pursuant to Section XXXI (Modification) of the Consent Decree, the United States has provided the Commonwealth of Virginia with a reasonable opportunity to review and comment on this Amendment.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed as follows:

II. CONSENT DECREE MODIFICATIONS

A. The Consent Decree shall be modified as follows:

1. The definition of “Performance Standards” in Section IV (Definitions) shall read as follows:

“Performance Standards” shall mean the cleanup standards and other measures of achievement set forth on pages 78-84 of the ROD attached as Appendix A (including any amendments or modifications to such document) and those that are developed by Settling Defendants and approved by EPA during Remedial Design. This includes the Groundwater Performance Standards as they are amended and defined in Section II.13.2.2, p. 23 of the Record of Decision Amendment attached hereto as Appendix F.
2. The definition of “Record of Decision” or “ROD” in Section IV (Definitions) shall read as follows:

“Record of Decision” or “ROD” shall mean the EPA Record of Decision relating to the Site signed on June 30, 1995, by the Director of the EPA Region III Hazardous Waste Management Division, and all attachments thereto (attached hereto as “Appendix A”), as revised pursuant to: (a) the *Explanation of Significant Differences for the HH Burn Pit Superfund Site* signed by EPA on September 29, 1999 and attached hereto as Appendix E, and (b) the Record of Decision Amendment relating to the Site signed on May 26, 2020, by the Director of the EPA Region III Superfund & Emergency Management Division, and all attachments thereto (attached hereto as “Appendix F”).

3. The definition of “Settling Defendants” in Section IV (Definitions) shall read as follows:

“Settling Defendants” shall mean Arconic Corporation (successor to Reynolds Metal Company) and Westrock MWV, LLC (successor to Westvaco Corporation).

4. The definition of “Work” in Section IV (Definitions) shall read as follows:

“Work” shall mean all activities Settling Defendants are required to perform under this Consent Decree, except those required by Section XXV (Retention of Records). This includes the modified remedial action described in Section II.13, pp. 22-24, of the Record of Decision Amendment attached hereto as Appendix F.

5. The amount of the financial assurance to complete the work required under this Consent Decree in Section XIII (Assurance of Ability to Complete Work) shall be amended from \$5,946,282 to \$790,000.
6. Paragraph 101 in Section XXVI (Notices and Submissions) shall be amended to read as follows:

As to the Settling Defendants:

Kirk J. Gribben
Director, Corporate Remediation
Arconic Corp.
201 Isabella St.
Pittsburgh, PA 15212

Steve Hamilton
Director, Environmental Services
Westrock
1000 Abernathy Road NE, Suite 125
Atlanta, GA 30328

7. The following is added to Paragraph 104 in Section XXIX (Appendices) of the Consent Decree:

“Appendix F” is the Record of Decision Amendment *for the H&H Burn Pit Superfund Site* signed by EPA on May 26, 2020.

III. SIGNATURE

Each undersigned representative of a Settling Defendant and the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Amendment and to execute and legally bind such Party to this document.

IV. EFFECTIVE DATE

The effective date of this Amendment shall be the date on which it is signed by the Court.

SO ORDERED THIS ____ DAY OF _____, 20__.

United States District Judge

THE UNDERSIGNED PARTIES enter into this Amendment No. 3 in the matter of United States v. Reynolds Metals Company, Westvaco Corporation, and J.W. Fergusson and Sons, Inc. (Civil Action No. 3:97CV226) relating to the H&H Burn Pit Superfund Site.

FOR THE UNITED STATES OF AMERICA:

Nathaniel Douglas

NATHANIEL DOUGLAS

Deputy Chief

Environmental Enforcement Section

Environment and Natural Resources Division

U.S. Department of Justice

Washington, D.C. 20530

/s/Bradley L. Levine

BRADLEY L. LEVINE

Senior Attorney

Environmental Enforcement Section

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U.S. Department of Justice

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RAJ PAREKH

ACTING UNITED STATES ATTORNEY

By: /s/ Jonathan H. Hambrick

Jonathan H. Hambrick

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**DIANA
ESHER** Digitally signed by
DIANA ESHER
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DIANA ESHER
Acting Regional Administrator
U.S. Environmental Protection
Agency, Region III
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Philadelphia, PA 19103

**CECIL
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CECIL RODRIGUES
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**ANDREW
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ANDREW S. GOLDMAN
Sr. Assistant Regional Counsel
U.S. Environmental Protection
Agency, Region III
1650 Arch Street
Philadelphia, PA 19103

**FOR ARCONIC CORPORATION (SUCCESSOR TO REYNOLDS METALS
COMPANY):**



10/21/2020
Date

[Please type the following]

Name: Kirk J. Gribben

Title: Director, Corporate Remediation

Address: Arconic Corp., 201 Isabella St. Pittsburgh, PA 15212

FOR WESTROCK MWV, LLC (SUCCESSOR TO WESTVACO CORPORATION):



11.2.20
Date

[Please type the following]

Name: Nina E. Butler

Title: Chief Env. Officer

Address: 1000 Abernethy Rd, NE
Atlanta, GA 30328