

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION**

FILED  
U.S. DISTRICT COURT  
INDIANAPOLIS DIVISION

MAY 31 PM 4:16

SOUTHERN DISTRICT  
OF INDIANA  
LAURA A. BRIGGS  
CLERK

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UNITED STATES OF AMERICA, et al.,  
  
Plaintiffs,  
  
v.  
  
CBS CORPORATION, f/k/a/ VIACOM, INC.,  
f/k/a CBS CORPORATION, f/k/a/  
WESTINGHOUSE ELECTRIC CORPORATION,  
  
Defendant.

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Civil Action  
Nos. IP 83-9-C  
and IP 81-448-C

JUDGE  
RICHARD L. YOUNG

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THE CITY OF BLOOMINGTON, INDIANA, et al.  
  
Plaintiffs,  
  
v.  
  
CBS CORPORATION, f/k/a/ VIACOM, INC.,  
f/k/a CBS CORPORATION, f/k/a/  
WESTINGHOUSE ELECTRIC CORPORATION,  
  
Defendant.

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MAGISTRATE JUDGE  
KENNARD P. FOSTER

**STATUS REPORT OF  
THE UNITED STATES AND THE STATE OF INDIANA  
REGARDING GLOBAL SETTLEMENT DISCUSSIONS  
WITH DEFENDANT CBS CORPORATION**

The United States and the State of Indiana submit this status report to inform the Court that settlement discussions with Defendant CBS Corporation (“CBS”) have been unsuccessful. For the past four years, the United States has engaged in discussions to resolve its claims against

CBS for injunctive relief, cost recovery, and natural resource damages arising from the parties' decision in 1994 to abandon implementation of the agreed-upon remedy in the 1985 Consent Decree.<sup>1</sup> None of the United States' claims have been resolved. Further, it is our belief that future settlement discussions are unlikely to be productive and will only further delay the selection and implementation of the final remedial measures, which are necessary to abate the on-going releases of polychlorinated biphenyls ("PCBs") from the sites. Accordingly, Environmental Protection Agency ("EPA") will proceed with the selection and identification of alternative remedial measures without further settlement talks. After EPA selects a final remedy for the first of the three remaining sites, the United States anticipates that it will file appropriate motions asking for the Court's assistance in securing CBS's performance of remedial measures and allowing the United States to pursue its other claims against CBS without constraint.

### **BACKGROUND**

This status report is the culmination of discussions that began twelve years ago when the parties decided to abandon implementation of the agreed-upon remedy in the 1985 Consent Decree and embark down the path of exploring new cleanup alternatives for the Bloomington sites. The parties informed the Court of this decision in a joint status report submitted on February 8, 1994, stating that the parties had met several times on a cooperative basis and had decided to explore whether alternative remedial measures should be used to replace the remedy in the 1985 Decree. Along with their status report, the parties submitted to the Court a set of guidelines, known as the Operating Principles, which were intended to assist the parties and the

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<sup>1</sup> The State of Indiana has participated in discussions relating to the remedial measures for the remaining sites. It has not participated in discussions regarding the United States' claim for response costs and natural resource damages.

public in shaping further discussions of remedial alternatives. Briefly stated, the Operating Principles provided that the 1985 Decree would remain in effect unless and until the parties negotiated and submitted to the Court proposed amendments with respect to certain remedial measures and other provisions set forth in the decree.

In accordance with the Operating Principles, the parties agreed upon alternative remedies with respect to three of the six sites covered by the 1985 Decree. They first replaced the original remedy for the Winston Thomas Facility by amending the Decree in 1997 and, again, in 1998. They also agreed upon an alternative method of disposal with respect to wastes that had been previously excavated from Anderson Road Landfill.<sup>2</sup> One year later, in February of 1999, they amended the Decree to adopt an alternative remedy for Neal's Dump.

The parties, however, have not agreed upon all potential elements of an alternative remedy with respect to the three remaining sites – Neal's Landfill, Lemon Lane Landfill and Bennett's Dump ("unfinished sites"). On January 20, 1999, Special Master Kennard Foster issued a report noting that the parties had reached consensus regarding alternative excavation measures for each of the three unfinished sites, but the report also noted that there were unresolved issues among the parties concerning the treatment of water at Lemon Lane Landfill, additional water treatment at Neal's Landfill, removal of sediments from certain streambeds, and

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<sup>2</sup> Although the parties have never amended the 1985 Decree with respect to Anderson Road Landfill, the United States considers the remedy for this site to have been completed. In the late 1980s, CBS excavated and removed wastes from the site and stored the wastes at an Interim Storage Facility at Winston-Thomas Sewage Treatment Plant in accordance with the 1985 Decree. After the parties negotiated an alternative method of disposing of the wastes stored in the Interim Storage Facility, the Court ordered the parties on November 25, 1997 to proceed with the removal, stating that there was "no necessity for a further submission of this matter to the Court, and no necessity for public notice." In accordance with this order, CBS disposed of waste at a landfill without further action by the Court.

the governments' claims for natural resource damages and cost recovery. The Special Master's Report noted the respective legal positions of the parties about these issues: the Governmental Parties' position that these additional water treatment and sediment removal measures are integral to a final alternative remedy at these sites, and Viacom's position that the Governmental Parties' claims for additional work, cost recovery and natural resource damages are barred by the "Covenant Not to Sue" in the 1985 Decree.

Given the parties' willingness to continue to negotiate about the outstanding issues, the Special Master recommended that the Court order the parties to (1) proceed with the alternative excavation measures at the three unfinished sites and (2) engage in further settlement discussions with respect to remedial measures to address groundwater and surface water contamination, cost recovery claims, and claims for natural resource damages. The Court adopted these recommendations and ordered the parties to proceed accordingly in its February 1999 Order.

Six years later, on January 14, 2005, the parties filed a joint status report to inform the Court of the anticipated timetable for selecting remedial alternatives and resolving outstanding claims. The parties noted that CBS (then Viacom) had completed the alternative excavation remedies at the remaining sites, as ordered by the Court in 1999, and that the parties were working cooperatively to collect data and complete investigations for the purpose of selecting additional water treatment and sediment removal measures. The parties explained that EPA's regulations require it to publish for public comment a proposed record of decision ("ROD") amendment for each site, setting forth the proposed new alternative remedy for the site. To that end, the parties stated that EPA anticipated proposing ROD Amendments for public comments for the unfinished sites beginning on January 30, 2006. Further, the parties would attempt to

resolve their other outstanding claims, including EPA's claims for response cost and natural resource damages, by May 31, 2006, stating that they would report on that date as to whether they had reached an agreement in principle.

One year later, on January 27, 2006, the governmental plaintiffs issued a revised status report to inform the Court about certain changes to the anticipated timetable for issuing the proposed remedial plans for the unfinished sites. Specifically, the governmental plaintiffs informed the Court that the first proposed plan to be issued by EPA would pertain to Bennett's Dump, not Lemon Lane Landfill. Further, they stated that first proposed plan would be issued on February 3, 2006, which was four days later than the date set forth in the original status report. With the exception of these changes, the government plaintiffs remained otherwise committed to the anticipate timetable set forth in the original status report.

In accordance with the revised status report, EPA issued the proposed plan for Bennett's Dump on February 3, 2006. EPA, however, did not issue the proposed plan for Lemon Lane Landfill on February 28, 2006 as stated in the revised status report. On March 1, 2006, three of the Government plaintiffs (the City of Bloomington did not join in the status report) issued another status report stating that EPA anticipated issuing the proposed plan for public comment on March 17, 2006, but EPA did not issue the proposed plan on that date either. This delay was due, in part, to the technical complexity of the proposed remedy and the need for coordination between EPA and the State of Indiana with respect to the applicable (or relevant and appropriate) requirements ("ARARs"). But the primary reason for delay is the inability of the parties to reach consensus upon the remedial measures to address PCB contamination in groundwater, surface water and sediment at the site. The gap between the parties with respect to Neal's Landfill is

even more significant because, four years after completing the “hot spot” removal at the site, CBS has yet to complete its voluntary investigation of site conditions relating to groundwater, surface water and sediment.

### **ANTICIPATED LITIGATION**

The United States and the State of Indiana perceive no value in continuing global settlement discussions given the significant gap separating the parties with respect to appropriate remedial measures at the unfinished sites. While EPA has not yet selected final remedies, it anticipates that the remedy for each site will involve a water treatment plant that will operate for a significant number of years in order to capture and treat PCB-contaminated groundwater before it is released into nearby streams. EPA believes that CBS – and not the public – should bear the cost of operating the plants, and that CBS should do so as long as necessary to abate the risks posed to human health and the environment by the on-going releases of PCBs. Further, EPA believes that CBS – and not the public – should bear the risk in the event that the remedy proves inadequate to protect human health and the environment. CBS does not share EPA’s views and believes instead that responsibility for the cleanups should ultimately be shifted from itself to the citizens of Bloomington and the public at large.

The parties also have widely disparate views with respect to the United States’ claims for response costs and natural resource damages. The United States maintains that it should be entitled to recover response costs and natural resource damages incurred since February of 1994 – the month that the parties abandoned efforts to implement the original remedy and returned to the negotiating table to discuss a new alternative cleanup. CBS maintains that it is protected from such claims by virtue of the “covenant not to sue” in the 1985 decree, notwithstanding the

fact that the covenant was specifically conditioned upon CBS's performance of remedial measures that the parties have now abandoned.

In light of the failure of global settlement discussions, EPA plans to proceed with the selection of alternative remedies for the unfinished sites without engaging in further settlement talks with CBS. EPA anticipates that it will issue the proposed plan for Lemon Lane Landfill by the middle of June. EPA is presently preparing its response to public comments submitted in connection with the proposed plan for Bennett's Dump. After EPA selects the final remedy for one of the three sites, the United States will inform the Court as to what motions it intends to file asking for the Court's assistance in securing CBS's performance of remedial measures and allowing the United States to pursue its other claims against CBS without constraint.

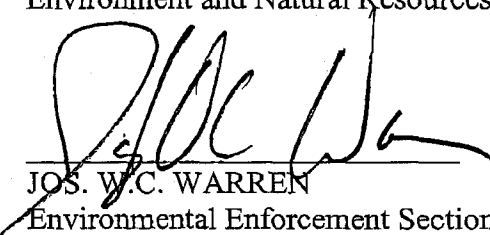
THE UNDERSIGNED PARTY joins in this joint status report regarding global settlement discussions with Defendant CBS Corporation in the matter of United States et al. v. CBS Corp., Case No. IP 83-9-C (S.D. Ind.).

FOR THE UNITED STATES OF AMERICA

SUE ELLEN WOOLDRIDGE  
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Date

5/30/06

  
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THE UNDERSIGNED PARTY joins in this joint status report regarding global settlement discussions with Defendant CBS Corporation in the matter of United States et al. v. CBS Corp., Case No. IP 83-9-C (S.D. Ind.).

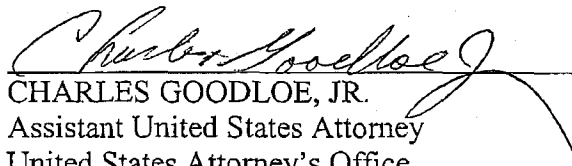
FOR THE STATE OF INDIANA

Date: May 31, 06

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per authorization of  
Valerie Tachtiris*

CERTIFICATE OF SERVICE

I hereby certify that on the 31<sup>st</sup> of May 2006, I caused a true and correct copy of the Status Report of the United States and the State of Indiana regarding settlement discussions with defendant CBS Corporation to be served on the following persons as described on the attached Service List.



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