

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA,

Plaintiff

v.

**TEXTRON INC. and
WHITTAKER CORPORATION,**

Defendants

Civil Action No. 19-12097-RGS

NOTICE OF NON-MATERIAL CONSENT DECREE MODIFICATION

Notification is provided to the court that the parties to the Consent Decree, entered on December 6, 2019, executed the attached non-material modification to the Consent Decree. The non-material modification is signed by the parties to the Consent Decree and is effective as of April 30, 2024. The non-material modification streamlines the process for requesting and providing additional funding to complete the work at the site as set forth in the non-material modification. The notice is filed for purposes of public transparency and the court's information. No action is requested or required of the court.

Respectfully,

FOR THE UNITED STATES OF AMERICA

SUSAN M. AKERS
Deputy Chief
Environmental Enforcement Section
U.S. Department of Justice
Washington, D.C. 20530

/s/ C. A. Fiske
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U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
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CERTIFICATE OF SERVICE

I hereby certify that on today's date, May 2, 2024, I electronically filed the foregoing Notice of Non-Material Consent Decree Modification, using the CM/ECF system, which upon information and belief, sent notification of such filing to all counsel of record.

/s/ C. A. Fiske

Catherine Adams Fiske

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA,

Plaintiff

v.

**TEXTRON INC. and
WHITTAKER CORPORATION,**

Defendants

Civil Action No. 19-12097-RGS

AGREED TO NON-MATERIAL CONSENT DECREE MODIFICATION

Background¹

- A. On December 6, 2019, the United States District Court for the District of Massachusetts approved and entered a Consent Decree between Plaintiff the United States and Textron Inc., and Whittaker Corporation (“Settling Defendants” or “SDs”), in this case (“Consent Decree”). Capitalized terms herein shall have the same meaning defined in the Consent Decree unless otherwise specified.
- B. The purpose of the Consent Decree is, among other things, for (1) reimbursement of costs incurred by the United States Environmental Protection Agency (“EPA”) and the United States Department of Justice (“DOJ”) for response actions at the Nuclear Metals, Inc. Superfund Site in Concord, Massachusetts (“Site”); and (2) performance of response actions by the SDs at the Site, which shall be funded from a trust fund with payments from the U.S. Department of the Army and the U. S. Department of Energy as the Settling Federal Agencies (“SFAs”) and the SDs.
- C. Paragraphs 37 and 38 of the Consent Decree require the establishment of the remedial design and remedial action trust fund (“RD/RA Trust Fund”) whereby the SFAs and SDs will make payments to the trust fund to be used solely to pay for the Work performed by

¹ Nothing in this background section is intended to, nor does it, change any terms of the Consent Decree.

the SDs pursuant to the Consent Decree and to pay Future Response Costs incurred by the United States.

- D. Paragraph 40 of the Consent Decree requires the trustee of the RD/RA Trust Fund to issue quarterly reports (the “Trustee’s Report”) detailing the cash flow projection for the Work and the funds remaining in the RD/RA Trust Fund.
- E. Paragraph 41 of the Consent Decree states that if the amount of money in the RD/RA Trust Fund is less than the sum of the amount projected in the Trustee’s Report to be needed to perform the Work, including reimbursement of Future Response Costs, for the next 36 months, the trustee shall prepare an Additional Funding Request for additional contributions to the RD/RA Trust Fund.
- F. It is anticipated that the June 2024 Trustee’s Report may project that by December 2024, or sooner, the amount of money in the RD/RA Trust Fund will be less than the amount needed to perform the Work for the next 36 months.
- G. Pursuant to Paragraph 115 of the Consent Decree, the Parties make a non-material modification to the Consent Decree to clarify the process for the trustee to make an Additional Funding Request.
- H. The changes are shown below in underline/strikeout to Paragraph 41:

41. If the amount of money in the RD/RA Trust Fund, including all income earned on Permitted Investments, as that term is defined in the approved RD/RA Trust Agreement, is less than the sum of the amount projected in the Trustee's Report to be needed to perform the Work, including reimbursement of Future Response Costs for the next 36 months (“Projected Deficit”), the trustee shall notify the SDs, SFAs, and EPA of such event in the Trustee’s Report (“Additional Funding Notification”). The Additional Funding Notification shall identify the approximate date when the Projected Deficit will occur (“the Projected Deficit Date”). Within 6 months after the Additional Funding Notification, the trustee shall prepare a proposed request for additional contributions to the RD/RA Trust Fund (“Additional Funding Request”). The trustee shall submit the proposed Additional Funding Request to SDs, SFAs, and EPA for review as set forth in Paragraph 43. The proposed Additional Funding Request shall indicate the specific amounts to be requested from SFAs and SDs, and shall include: (1) a summary of expenditures made from the RD/RA Trust Fund to date that is sufficiently detailed to demonstrate whether or not the expenditures have been made in accordance with the requirements of Paragraph 38 herein; (2) a summary of the contributions made by SDs and SFAs and the income earned on Permitted Investments; and (3) the estimated amount of money needed for SDs’ performance of the Work under this CD, including reimbursement of Future Response Costs, ~~for the next 36 months~~ from the Projected Deficit Date, or such longer period if agreed in writing by the SFAs and SDs with prior approval by EPA, provided that such period is not greater than five years (“Additional

Funding Period”). The proposed Additional Funding Request presented to the SFAs shall be in the amount of 98% of the difference between the amount of money then present in the RD/RA Trust Fund and the amount of money needed for SDs performance of the Work, including reimbursement of Future Response Costs, for the ~~next 36 months~~ Additional Funding Period. The proposed Additional Funding Request presented to SDs shall be in the amount of 2% of the difference between the amount of money then present in the RD/RA Trust Fund and the amount of money needed for SDs performance of the Work, including reimbursement of Future Response Costs, for the ~~next 36 months~~ Additional Funding Period. In addition, in calculating the proposed Additional Funding Request, the trustee shall provide SDs and SFAs with an appropriate credit for: (1) all income on Permitted Investments as of the date of the proposed Additional Funding Request; and (2) the estimated future income on Permitted Investments as of the date of the proposed Additional Funding Request until the conclusion of the ~~next 36 months~~ Additional Funding Period (based on the then-current rate of return on U.S. Government securities selected pursuant to the Trust Agreement).

Agreement

1. The Parties hereby agree to make a non-material modification to the Consent Decree by striking Paragraph 41 in its entirety and replacing it with the following:

If the amount of money in the RD/RA Trust Fund, including all income earned on Permitted Investments, as that term is defined in the approved RD/RA Trust Agreement, is less than the sum of the amount projected in the Trustee’s Report to be needed to perform the Work, including reimbursement of Future Response Costs, for the next 36 months (“Projected Deficit”), the trustee shall notify the SDs, SFAs, and EPA of such event in the Trustee’s Report (“Additional Funding Notification”). The Additional Funding Notification shall identify the approximate date when the Projected Deficit will occur (“the Projected Deficit Date”). Within 6 months after the Additional Funding Notification, the trustee shall prepare and submit a proposed request for additional contributions to the RD/RA Trust Fund (“Additional Funding Request”). The trustee shall submit the proposed Additional Funding Request to SDs, SFAs, and EPA for review as set forth in Paragraph 43. The proposed Additional Funding Request shall indicate the specific amounts to be requested from SFAs and SDs, and shall include: (1) a summary of expenditures made from the RD/RA Trust Fund to date that is sufficiently detailed to demonstrate whether or not the expenditures have been made in accordance with the requirements of Paragraph 38 herein; (2) a summary of the contributions made by SDs and SFAs and the income earned on Permitted Investments; and (3) the estimated amount of money needed for SDs’ performance of the Work under this CD, including reimbursement of Future Response Costs, for 36 months from the Projected Deficit Date, or such longer period if agreed in writing by the SFAs and SDs with prior approval by EPA, provided that such period is not greater than five years (“Additional Funding

Period”). The proposed Additional Funding Request presented to the SFAs shall be in the amount of 98% of the difference between the amount of money then present in the RD/RA Trust Fund and the amount of money needed for SDs performance of the Work, including reimbursement of Future Response Costs, for the Additional Funding Period. The proposed Additional Funding Request presented to SDs shall be in the amount of 2% of the difference between the amount of money then present in the RD/RA Trust Fund and the amount of money needed for SDs performance of the Work, including reimbursement of Future Response Costs, for the Additional Funding Period. In addition, in calculating the proposed Additional Funding Request, the trustee shall provide SDs and SFAs with an appropriate credit for: (1) all income on Permitted Investments as of the date of the proposed Additional Funding Request; and (2) the estimated future income on Permitted Investments as of the date of the proposed Additional Funding Request until the conclusion of the Additional Funding Period (based on the then-current rate of return on U.S. Government securities selected pursuant to the Trust Agreement).

2. Except as specified herein, no other provisions of the Consent Decree are modified, suspended, or altered by this Agreement.
3. The Parties agree that this is a non-material modification of the Consent Decree consistent with Paragraph 115 of the Consent Decree.
4. The undersigned certify that they are authorized to consent to the terms and conditions of this Non-Material Modification on behalf of their respective Party.
5. This Non-Material Modification may be executed in counterparts.


IT IS SO AGREED.

Signature Page for Non-Material Modification to CD for the NMI Superfund Site

FOR THE UNITED STATES OF AMERICA

SUSAN M. AKERS
Deputy Chief
Environmental Enforcement Section
U.S. Department of Justice
Washington, D.C. 20530

Dated

 CATHERINE FISKE Digitally signed by CATHERINE FISKE
Date: 2024.04.30 16:13:11 -04'00'
CATHERINE ADAMS FISKE
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Signature Page for Non-Material Modification to CD for the NMI Superfund Site

**BRYAN
OLSON**

Digitally signed by BRYAN
OLSON
Date: 2024.04.30 08:50:51
-04'00'

Dated

BRYAN OLSON
Director, Superfund and Emergency Management Division
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Boston, MA 02109

SARAH MEEKS

Digitally signed by SARAH MEEKS
Date: 2024.04.25 09:05:19 -04'00'

Dated

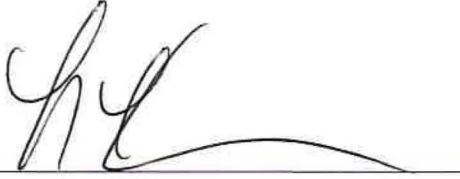
SARAH MEEKS
Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Boston, MA 02109

Signature Page for Non-Material Modification to CD for the NMI Superfund Site

FOR TEXTRON, INC.:

4/15/24

Dated



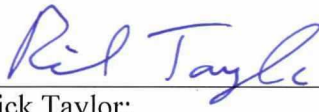
Lawrence La Sala
Vice President and Deputy General Counsel-Litigation
Textron Inc.
40 Westminster St.
Providence, RI 02903

OK
MMA
4/15/24

Signature Page for Non-Material Modification to CD for the NMI Superfund Site

FOR WHITTAKER CORPORATION:

16 April 2024
Dated


Rick Taylor:
Officer of Whittaker Corporation
Corporate VP EHS and Sustainability
c/o Parker Hannifin Corporation
6035 Parkland Blvd
Cleveland, OH 44124