

**UNITED STATES DEPARTMENT OF JUSTICE  
AND  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 4  
AND  
MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY**

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IN THE MATTER OF:

MISSISSIPPI PHOSPHATES CORP.  
SUPERFUND SITE,  
Pascagoula, Jackson County, Mississippi

Docket No. CERCLA-04-2023-2526

Seven Seas Terminals, LLC,  
Purchaser

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**ADMINISTRATIVE SETTLEMENT AGREEMENT  
FOR REMOVAL ACTION  
BY BONA FIDE PROSPECTIVE PURCHASER**

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## I. GENERAL PROVISIONS

1. This Administrative Settlement Agreement for Removal Action by Bona Fide Prospective Purchaser (“Settlement”) is entered into voluntarily by the United States of America (“United States”) on behalf of the United States Environmental Protection Agency (“EPA”), the Mississippi Department of Environmental Quality (“MDEQ”) on behalf of the Mississippi Commission on Environmental Quality (“Commission”), and the prospective purchaser, Seven Seas Terminals, LLC (“Purchaser”). This Settlement provides for the performance of a removal action by Purchaser and the payment for certain response costs incurred by the United States at or in connection with the property located at 601 Industrial Road in Pascagoula, Jackson County, Mississippi (the “Property”), which is part of the Mississippi Phosphates Corp. Superfund Site (“Site”).

2. This Settlement is entered into under the authority of the Attorney General to compromise and settle claims of the United States, consistent with the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”). EPA is proceeding under the CERCLA authority vested in the President of the United States and delegated to the Administrator of EPA and further delegated to the undersigned EPA Regional officials. The Commission is designated as the pollution control agency for the State of Mississippi pursuant to Miss. Code Ann. § 49-17-13(1) and has delegated settlement authority to the Executive Director of MDEQ pursuant to Miss. Code Ann. §§ 49-2-13(j) and 49-17-17(o) and 11 Miss. Admin. Code Pt. 1, R. 1.1.H.

3. EPA has notified the State of Mississippi (the “State”) of this action.

4. The Purchaser represents that it is a bona fide prospective purchaser (“BFPP”) meeting the criteria in sections 101(40) and 107(r)(1) of CERCLA, that it has and will continue to comply with sections 101(40) and 107(r)(1) during its ownership of the Property, and thus qualifies for the protection from liability under CERCLA set forth in section 107(r)(1) of CERCLA with respect to the Property. Purchaser agrees to undertake all actions required by this Settlement. In exchange for Purchaser’s performance of the Work and payment for certain response costs, this Settlement resolves Purchaser’s potential CERCLA liability in accordance with the covenants not to sue in Section XVI (Covenants by United States and MDEQ), subject to the reservations and limitations contained in Section XVI. This Settlement is fair, reasonable, in the public interest, and consistent with CERCLA.

5. The United States, MDEQ, and Purchaser (collectively, the “Parties”) recognize that this Settlement has been negotiated in good faith and that the actions undertaken by Purchaser in accordance with this Settlement do not constitute an admission of any liability. Purchaser does not admit and retains the right to controvert in any subsequent proceedings, other than proceedings to implement or enforce this Settlement, the validity of the statement of facts and determinations in Sections IV (Statement of Facts) and V (Determinations). Purchaser agrees not to contest the basis or validity of this Settlement or its terms, or the United States’ or MDEQ’s rights to enforce this Settlement.

## II. PARTIES BOUND

6. This Settlement is binding upon the United States, upon MDEQ, and upon Purchaser and its successors. Unless the United States and MDEQ otherwise consent, any change in ownership or corporate or other legal status of Purchaser does not alter Purchaser's responsibilities under this Settlement. Except as provided in ¶ 51, Transfer of the Property or any portion thereof does not alter any of Purchaser's obligations under this Settlement. Purchaser's responsibilities under this Settlement cannot be assigned except under a modification executed in accordance with ¶ 106.

7. Purchaser shall provide notice of this Settlement to officers, directors, employees, agents, contractors, subcontractors, or any person representing Purchaser with respect to the Property or the Work. Purchaser is responsible for ensuring that such persons act in accordance with the terms of this Settlement.

## III. DEFINITIONS

8. Terms not otherwise defined in this Settlement have the meanings assigned in CERCLA or in regulations promulgated under CERCLA. Whenever the terms set forth below are used in this Settlement, the following definitions apply:

“Action Memorandum” means the EPA Action Memorandum/Enforcement relating to the Property signed on \_\_\_\_\_, by the Director of the Superfund & Emergency Management Division, EPA Region 4, or their delegatee, and all attachments thereto. The “Action Memorandum” is attached as Appendix A.

“BFPP” means a bona fide prospective purchaser meeting the criteria in sections 101(40) and 107(r)(1) of CERCLA, 42 U.S.C. §§ 9601(40) and 9607(r)(1).

“CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

“Day” or “day” means a calendar day. In computing any period under this Settlement, the day of the event that triggers the period is not counted and, where the last day is not a working day, the period runs until the close of business of the next working day. “Working day” means any day other than a Saturday, Sunday, or federal or State holiday.

“DOJ” means the United States Department of Justice.

“Effective Date” means the effective date of this Settlement as provided in Section XXIX.

“EPA” means the United States Environmental Protection Agency.

“Existing Contamination” means:

a. any hazardous substances, pollutants or contaminants present or existing on or under the Property prior to or as of the Effective Date;

b. any hazardous substances, pollutants or contaminants that migrated from the Property prior to the Effective Date; and

c. any hazardous substances, pollutants or contaminants present or existing at the Site as of the Effective Date that migrate onto, under or from the Property after the Effective Date.

“Fund” means the Hazardous Substance Superfund established under section 9507 of the Internal Revenue Code, 26 U.S.C. § 9507.

“Future Response Costs” means all costs (including direct, indirect, payroll, contractor, travel, and laboratory costs) that the United States pays after the Effective Date in supporting, developing, implementing, overseeing, or enforcing this Settlement, including: (a) in developing, reviewing and approving deliverables generated under this Settlement; (b) in overseeing Purchaser’s performance of the Work; (c) in taking a response action described in ¶ 91 because of Purchaser’s failure to take emergency action under ¶ 37; (d) in implementing a Work Takeover under ¶ 43; (e) in securing, implementing, monitoring, maintaining, or enforcing the requirements of Section VIII (Property Requirements); (f) in taking action under ¶ 62 (Access to Financial Assurance); and (g) in enforcing this Settlement, including all costs paid under Section XIII (Dispute Resolution) and all litigation costs. Future Response Costs also includes all Interest accrued on EPA’s unreimbursed costs.

“Including” or “including” means “including but not limited to.”

“Interest” means interest at the rate specified for interest on investments of the Fund, as provided under section 107(a) of CERCLA, compounded annually on October 1 of each year. The applicable rate of interest is the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. As of the date EPA signs this Settlement, rates are available online at <https://www.epa.gov/superfund/superfund-interest-rates>.

“MDEQ” shall mean the Mississippi Department of Environmental Quality and any successor departments or agencies of the State.

“National Contingency Plan” or “NCP” means the National Oil and Hazardous Substances Pollution Contingency Plan promulgated under section 105 of CERCLA, codified at 40 C.F.R. part 300, and any amendments thereto.

“Operable Unit 1” or “OU1” means surface soil and subsurface soil contamination at the approximately 106-acre former manufacturing plant area of the Site. OU1 does not include groundwater contamination or the two gypsum stacks that are also part of the Site.

“Paragraph” or “¶” means a portion of this Settlement identified by an Arabic numeral or an upper- or lower-case letter.

“Parties” means the United States, MDEQ, and Purchaser.

“Post-Removal Site Control” means actions necessary to ensure the effectiveness and integrity of the Removal Action to be performed under this Settlement consistent with sections

300.415(l) and 300.5 of the NCP and “Policy on Management of Post-Removal Site Control” (OSWER 9360.2-02, Dec. 3, 1990).

“Property” means that portion of the Site, located at 601 Industrial Road in Pascagoula, Jackson County, Mississippi, known as OU1, encompassing approximately 106 acres, to be acquired by Purchaser, which is described more particularly in Appendix B. The defined term Property also includes the Tidelands.

“Purchaser” means Seven Seas Terminals, LLC, a limited liability company incorporated in the State of Florida, established as of October 5, 2022, as the prospective purchaser of the Property.

“RCRA” means the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992k (also known as the Resource Conservation and Recovery Act).

“Removal Action” means the removal action required under this Settlement.

“Section” means a portion of this Settlement identified by a Roman numeral.

“Settlement” means this Administrative Settlement Agreement for Removal Action by Bona Fide Prospective Purchaser, all appendixes attached hereto (listed in Section XXII). If there is a conflict between a provision in Sections I through XXIX and a provision in any appendix, the provision in Sections I through XXIX controls.

“Site” means the Mississippi Phosphates Corp. Superfund Site located at 601 Industrial Road in Pascagoula, Jackson County, Mississippi, which included an approximately 106-acre former manufacturing plant area, two large gypsum stacks, and associated ponds, ditches, and other stormwater management features, along with suitable areas in very close proximity to the contamination necessary for implementation of the response actions. The Site is depicted generally on the map attached as Appendix C.

“State” means the State of Mississippi.

“Scope of Work” or “SOW” means the document attached as Appendix D, which describes the activities Purchaser shall perform to implement and maintain the effectiveness of the Removal Action including a description of the Removal Work Plan and Health and Safety Plan.

“Tidelands” means any interest in the real property and related assets located at Section 17, Township 8 South, Range 5 West, Jackson County, Mississippi, including approximately a 3,000 square foot parcel of submerged lands and/or public tidelands adjacent to the north side of Bayou Casotte ship turning basin, which supports an eighteen (18)-inch diameter pipeline with diffuser discharge nozzles in connection with the existing wastewater treatment facility located at the Property.

“Transfer” means to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

“Transferee” means the party to whom a Transfer is made.

“United States” means the United States of America and each department, agency, and instrumentality of the United States, including EPA and DOJ.

“Waste Material” means (a) any “hazardous substance” under section 101(14) of CERCLA; (b) any pollutant or contaminant under section 101(33) of CERCLA; and (c) any “solid waste” under section 1004(27) of RCRA.

“Work” means all obligations of Purchaser under Sections VI (Coordination and Supervision) through X (Indemnification and Insurance).

“Work Takeover” means EPA’s assumption of the performance of any of the Work in accordance with ¶ 43.

#### **IV. STATEMENT OF FACTS**

9. Mississippi Phosphates Corporation (“MPC”) manufactured diammonium phosphate (“DAP”) fertilizer at the Site from 1958 until December of 2014—a process supported by a sulfuric acid plant, a phosphoric acid plant, and a DAP plant—all of which were located on the Property.

10. MPC filed for relief under Chapter 11 of the U.S. Bankruptcy Code on October 27, 2014.

11. According to the terms of a Stipulation and Settlement Agreement approved by the U.S. Bankruptcy Court for the Southern District of Mississippi on July 23, 2015, and the attendant Environmental Trust Agreement filed with the Court on August, 4, 2015, the Site is held by the MPC Environmental Trust, which is administered by Trustee, Roberto Puga of PathForward Consulting, Inc.

12. In November of 2021, as part of its Remedial Investigation, EPA sampled surface and subsurface soils at the Property.

13. The November 2021 sampling at the Property revealed the widespread presence of arsenic and cadmium, both of which are hazardous substances, at levels exceeding EPA Regional Screening Level Maximum Contaminant Levels for Industrial Soil with a Target Hazard Quotient of 0.1, in both surface and subsurface sampling, which could pose a human health risk to industrial workers, including construction workers.

14. The November 2021 sampling at the Property also revealed two locations where radiation in the form of Ra226 was present in the soil at levels more than five times background.

15. Long-standing industrial structures at the Property are deteriorating, risking new releases of any residual acids contained in corroding tanks and piping and releases of friable asbestos from insulating materials.

16. The Property is adjacent to Bayou Casotte on the Gulf of Mexico, which is subject to frequent tropical storms and hurricanes that could cause surface contamination to migrate and could accelerate the deterioration of the existing industrial structures.

17. Purchaser plans to acquire the Property.

18. Purchaser represents, as of the Effective Date, that it is a BFPP as defined by Section 101(40) of CERCLA, 42 U.S.C. § 9601(40), and has complied and agrees to comply with Sections 101(40) and 107(r) during its ownership of the Property, and therefore qualifies for the protection from liability under CERCLA set forth in Section 107(r)(1) of CERCLA, 42 U.S.C. § 9607(r)(1), with respect to the Property.

19. Purchaser's planned uses of the Property include: (a) dry bulk terminaling and storage; and (b) a tank terminal operation.

20. Redevelopment and re-use of the Property will benefit the surrounding community by creating jobs and increasing the tax base for Jackson County, Mississippi.

## V. DETERMINATIONS

21. Based on the Statement of Facts set forth above, and on the administrative record supporting the selection of a removal action at the Property, EPA has determined that:

- a. The Property is a "facility" as defined by section 101(9) of CERCLA.
- b. The contamination found at the Property, as identified in the Statement of Facts above, includes "hazardous substances" as defined by section 101(14) of CERCLA.
- c. Purchaser is a "person" as defined by section 101(21) of CERCLA.
- d. The conditions described in ¶¶ 13 through 16 of the Statement of Facts above constitute an actual or threatened "release" of a hazardous substance from the Property as defined by section 101(22) of CERCLA.
- e. EPA determined in the Action Memorandum, that the conditions at the Property, described in ¶¶ 13 through 16 of the Statement of Facts above, may constitute an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from the facility within the meaning of section 106(a) of CERCLA.
- f. The Removal Action required by this Settlement is necessary to protect the public health or welfare or the environment.

## VI. COORDINATION AND SUPERVISION

22. **Purchaser's Project Coordinator**



a. Purchaser's Project Coordinator will be responsible for administration of the Work required by this Settlement. Purchaser's Project Coordinator must have sufficient technical expertise to coordinate the Work. To the greatest extent possible, the Project Coordinator shall be present at the Property or readily available during the Work.

b. Notice or communication relating to this Settlement from EPA or MDEQ to Purchaser's Project Coordinator constitutes notice or communication to Purchaser.

### 23. **Procedures for Notice and Disapproval**

a. Within 10 days after the Effective Date, Purchaser shall designate a Project Coordinator and shall notify EPA and MDEQ of the name, title, contact information, and qualifications of the proposed Project Coordinator, whose qualifications shall be subject to EPA's review for verification based on objective assessment criteria (*e.g.*, experience, capacity, technical expertise) and to ensure there is no conflict of interest with respect to the project. Purchaser shall notify EPA and MDEQ of the names, titles, contact information, and qualifications of any contractors or subcontractors retained to perform the Work at least 10 days prior to commencement of such Work.

b. EPA may issue notices of disapproval regarding any proposed Project Coordinator, contractor, or subcontractor, as applicable. If EPA issues a notice of disapproval, Purchaser shall, within 21 days, submit to EPA a list of supplemental proposed project coordinators, contractors, or subcontractors, as applicable, including a description of the qualifications of each.

c. EPA may disapprove the proposed Project Coordinator, contractor, or subcontractor, based on objective assessment criteria (*e.g.*, experience, capacity, technical expertise), if they have a conflict of interest regarding the project, or any combination of these factors.

d. Purchaser may change its Project Coordinator by following the procedures under ¶¶ 23.a and 23.b.

24. **EPA On-Scene Coordinator.** EPA designates Adam Acker of the Superfund & Emergency Management Division, EPA Region 4, as its On-Scene Coordinator ("OSC") and designates Craig Zeller of the Superfund & Emergency Management Division, EPA Region 4 as its alternate OSC. The OSC has the authorities described in the NCP, including oversight of Purchaser's implementation of the Work, authority to halt, conduct, or direct any Work, or to direct any other removal action undertaken at the Property. The OSC's absence from the Site is not a cause for stoppage of work unless specifically directed by the OSC. EPA may change its OSC and will notify Purchaser of any such change.

## **VII. REMOVAL ACTION TO BE PERFORMED**

25. Purchaser shall perform all actions necessary to implement, maintain, and monitor the effectiveness of the Removal Action all in accordance with this Settlement and all EPA-approved, conditionally approved, or modified deliverables as required by this Settlement. The

Removal Action generally includes the following elements, which are more particularly described in the SOW:

- a. Demolition of the sulfuric acid plants known as plants #2 and #3;
- b. Demolition and/or re-use of the phosphoric acid plant, DAP plant, and two bulk storage warehouses;
- c. Sampling of surface soils and subsurface soils under demolished structures and slabs;
- d. Installation of an impermeable cap installed as a containment control for that portion of the Property proposed for redevelopment as a tank terminal operation (serving as cap for contaminated soils within the footprint);
- e. Consideration of the effects of climate change, including storm surge, flooding and winds associated with hurricanes and tropical storms, in the design and construction of the cap;
- f. Removal, treatment, or containment of soils outside of the capped area at the Property that are contaminated with arsenic, cadmium or radiation at levels posing an unacceptable risk to human health or the environment given the future anticipated commercial or industrial use of the Property; and
- g. Identification of and compliance with applicable and relevant and appropriate requirements (known as ARARs).

26. The Removal Action shall not include:

- a. Investigation, removal, or remediation of the groundwater;
- b. Work in connection with the West Gypsum Stack or East Gypsum Stack, which are part of the Site but not part of the Property; or
- c. Operations of the on-site wastewater treatment facility, unless and except otherwise agreed in writing).

27. For any regulation or guidance referenced in the Settlement, the reference will be read to include any subsequent modification, amendment, or replacement of such regulation or guidance. Such modifications, amendments, or replacements apply to the Work only after Purchaser receives notification from EPA of the modification, amendment, or replacement.

28. **Removal Work Plan.** Within 60 days after the Effective Date, Purchaser shall submit a work plan for performing the Work (the "Removal Work Plan") as described in ¶ 25, to EPA for approval, in consultation with MDEQ, in accordance with ¶ 33 (Deliverables: Specifications and Approval).

a. The Removal Work Plan must describe all community impact mitigation activities to be performed to: (a) reduce impacts (e.g., air emissions, dust, odor, traffic, noise, negative economic effects) to residential areas, schools, playgrounds, healthcare facilities, or recreational public areas frequented by community members (“Community Areas”) during implementation of the Removal Action; (b) conduct monitoring in Community Areas of impacts from the implementation of the Removal Action; (c) communicate validated sampling data; and (d) make adjustments during the implementation of the Removal Action in order to further reduce negative impacts to affected Community Areas. The Removal Work Plan shall contain information about impacts to Community Areas that is sufficient to assist EPA’s On-Scene Coordinator and Community Involvement Coordinator in performing the evaluations described in the *Superfund Community Involvement Handbook*, OLEM 9230.0-51 (Mar. 2020). The Handbook is located at <https://www.epa.gov/superfund/superfund-community-involvement-tools-and-resources#handbook>.

b. The Removal Work Plan must provide a description of, and an expeditious schedule for, the actions required by this Settlement.

29. **Health and Safety Plan.** Within 60 days after the Effective Date, Purchaser shall submit to EPA for review and comment a Health and Safety Plan (“HASP”) that meets the requirements of 29 C.F.R. § 910.120 for developing the HASP and that describes all activities to be performed to protect on site personnel and area residents from physical, chemical, biological, and all other hazards related to the performance of Work at the Property under this Settlement. Purchaser shall develop the HASP in accordance with *EPA’s Emergency Responder Health and Safety Manual*, OSWER 9285.3-12 (July 2005 and updates), available at [https://response.epa.gov/site/site\\_profile.aspx?site\\_id=2810](https://response.epa.gov/site/site_profile.aspx?site_id=2810). In addition, Purchaser shall ensure that the HASP complies with all currently applicable Occupational Safety and Health Administration (“OSHA”) regulations found at 29 C.F.R. part 1910. If EPA determines that it is appropriate, the HASP must also include contingency planning, including evacuation plans. Purchaser shall incorporate all changes to the HASP recommended by EPA and shall implement the HASP during the pendency of the Work. Purchaser shall update the HASP as necessary or appropriate during the course of the Work, and/or as requested by EPA.

### 30. **Quality Assurance, Sampling, and Data Analysis**

a. Purchaser shall use quality assurance, quality control, and other technical activities and chain of custody procedures for all samples consistent with EPA’s *Environmental Information Quality Policy*, CIO 2105.1 (Mar. 31, 2021), available at <https://www.epa.gov/irmpoli8/environmental-information-quality-policy>, the most recent version of *Quality Management Systems for Environmental Information and Technology Programs – Requirements with Guidance for Use*, ASQ/ANSI E4:2014 (Feb. 2014), and *EPA Requirements for Quality Assurance Project Plans*, EPA QA/G-5 (EPA/240/B-01/02) (Mar. 2001), available at <https://www.epa.gov/quality/epa-qar-5-epa-requirements-quality-assurance-project-plans>.

b. Purchaser shall ensure that EPA personnel and its authorized representatives are allowed reasonable access to laboratories used by Purchaser in implementing this Settlement. In addition, Purchaser shall ensure that such laboratories analyze all samples submitted by EPA under the Quality Assurance Project Plan (“QAPP”) for quality assurance

monitoring, and that sampling and field activities are conducted in accordance with the Agency's *EPA QA Field Activities Procedure*, CIO 2105-P-02.0 (Sept. 24, 2014) available at <http://www.epa.gov/irmpoli8/epa-qa-field-activities-procedures>. Purchaser shall ensure that the laboratories it uses for the analysis of samples taken under this Settlement meet the competency requirements set forth in the *Policy to Assure Competency of Laboratories, Field Sampling, and Other Organizations Generating Environmental Measurement Data under Agency-Funded Acquisitions*, Directive No. FEM-2011-01 (Nov. 14, 2016), available at <https://www.epa.gov/measurements/documents-about-measurement-competency-under-acquisition-agreements> and that the laboratories perform all analyses according to EPA-accepted methods. Accepted EPA methods are documented on the EPA's "Superfund Contract Laboratory Program" website at <https://www.epa.gov/clp>, the "Hazardous Waste Test Methods / SW 846" website (*Test Methods for Evaluating Solid Waste, Physical/Chemical Methods*) at <https://www.epa.gov/hw-sw846>, the "Standard Methods for the Examination of Water and Wastewater" website at <https://www.standardmethods.org/>, and the "Air Toxics - Monitoring Methods" (40 C.F.R. part 136) website at <https://www3.epa.gov/ttnamti1/airtox.html>.

c. Upon request, Purchaser shall provide split or duplicate samples to EPA and MDEQ or their authorized representatives. Purchaser shall notify EPA and MDEQ not less than seven days prior to any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA and MDEQ have the right to take any additional samples that they deem necessary. Upon request, EPA may provide to Purchaser split and/or duplicate samples of any samples in connection with EPA's oversight sampling.

d. Purchaser shall submit to EPA and MDEQ all sampling and tests results and other data obtained or generated by or on behalf of Purchaser or in connection with the implementation of this Settlement.

31. **Post-Removal Site Controls.** Purchaser shall submit to EPA and MDEQ, for EPA approval in consultation with MDEQ, a Post-Removal Site Control Plan to develop controls to ensure the effectiveness and integrity of the Removal Action after its completion and shall implement the Plan and provide verification of any controls put in place.

32. **Community Involvement.** EPA, in consultation with MDEQ, has the lead responsibility for implementing community involvement activities at the Site, including the preparation of a community involvement plan, in accordance with the NCP and EPA guidance. As requested by EPA, Purchaser shall participate in community involvement activities, including participation in (a) the preparation of information regarding the Work for dissemination to the public (including compliance schedules and progress reports), with consideration given to the specific needs of the community, including translated materials and mass media and/or Internet notification, and (b) public meetings that may be held or sponsored by EPA to explain activities at or relating to the Site.

33. **Deliverables: Specifications and Approval**

a. **General Requirements for Deliverables.** Purchaser shall submit all deliverables to EPA and MDEQ in electronic form, unless otherwise specified by the OSC.

b. **Technical Specifications for Deliverables.** Sampling and monitoring data should be submitted in accordance with the EPA Region 4 Superfund Environmental Data Submission Procedure (July 2019). The standard Region 4 Electronic Data Deliverable format is available at: <https://www.epa.gov/superfund/region-4-superfund-electronic-data-submission>. Other delivery methods may be allowed if electronic direct submission presents a significant burden or as technology changes.

34. **Approval of Deliverables.** After review of the Removal Work Plan and any other deliverable required to be submitted for EPA approval under this Settlement, EPA shall, in consultation with MDEQ: (a) approve, in whole or in part, the deliverable; (b) approve the submission upon specified conditions and/or require revisions to the deliverable; (c) disapprove, in whole or in part, the deliverable and require revisions to the deliverable; or (d) any combination of the foregoing. If EPA requires revisions, EPA will provide a deadline for the resubmission, and Purchaser shall submit the revised deliverable by the required deadline. Once approved or approved with conditions, Purchaser shall implement the Removal Work Plan or other deliverables in accordance with the EPA-approved schedule. Upon approval or subsequent modification by EPA of any deliverable, or any portion thereof: (1) such deliverable, or portion thereof, and any subsequent modifications, will be incorporated into and enforceable under this Settlement; and (2) Purchaser shall take any action required by such deliverable, or portion thereof. Purchaser shall not commence or perform any Work except in conformance with the terms of this Settlement.

### 35. **Off-Site Shipments**

a. Purchaser may ship hazardous substances, pollutants, and contaminants from the Site to an off-site facility only if it complies with section 121(d)(3) of CERCLA and 40 C.F.R. § 300.440. Purchaser will be deemed to be in compliance with CERCLA § 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if Purchaser obtains a prior determination from EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b).

b. Purchaser may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, it provides written notice to the appropriate state environmental official in the receiving facility's state and to the OSC. This written notice requirement will not apply to any off-site shipments when the total quantity of all such shipments does not exceed 10 cubic yards. The written notice must include the following information, if available: (1) name and location of the receiving facility; (2) type and quantity of Waste Material to be shipped; (3) schedule for the shipment; and (4) method of transportation. Purchaser also shall notify the state environmental official referenced above and the OSC of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Purchaser shall provide the written notice after the award of the contract for the Removal Action and before the Waste Material is shipped.

c. Purchaser may ship Investigation Derived Waste ("IDW") from the Site to an off-site facility only if it complies with section 121(d)(3) of CERCLA, 40 C.F.R. § 300.440, EPA's *Guide to Management of Investigation Derived Waste*, OSWER 9345.3-03FS (Jan. 1992) available at <https://semspub.epa.gov/work/03/136166.pdf>, and any IDW-specific requirements

contained in the Action Memorandum. Wastes shipped off-site to a laboratory for characterization, and RCRA hazardous wastes that meet the requirements for an exemption from RCRA under 40 C.F.R. § 261.4(e) shipped off-site for treatability studies, are not subject to 40 C.F.R. § 300.440.

### 36. **Permits**

a. As provided in CERCLA § 121(e), and section 300.400(e) of the NCP, no permit is required for any portion of the Work conducted entirely on-site (*i.e.*, within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-site requires a federal or state permit or approval, Purchaser shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals.

b. Purchaser may seek relief under the provisions of Section XII (Force Majeure) for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval referenced in ¶ 36.a required for the Work, provided that it has submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals.

c. Nothing in this Settlement constitutes a permit issued under any federal or state statute or regulation.

37. **Emergency Response.** If any event occurs during performance of the Work that causes or threatens to cause a release of Waste Material on, at, or from the Property that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, Purchaser shall: (a) immediately take all appropriate action to prevent, abate, or minimize such release or threat of release; (b) immediately notify the OSC or, in the event of their unavailability, the EPA Region 4 spill reporting hotline, available 24 hours per day, at (404) 562-8700, of the incident or Property conditions; and (c) take such actions in consultation with the OSC or authorized EPA officer and in accordance with all applicable provisions of this Settlement, including the Health and Safety Plan, and any other applicable deliverable approved by EPA.

38. **Release Reporting.** Upon the occurrence of any event during performance of the Work that Purchaser is required to report under CERCLA § 103 or section 304 of the Emergency Planning and Community Right-to-Know Act (“EPCRA”), 42 U.S.C. § 11004, Purchaser shall immediately orally notify the OSC or, in the event of their unavailability, the EPA Region 4 spill reporting hotline, available 24 hours per day, at (404) 562-8700, and the National Response Center at (800) 424-8802. Purchaser shall also submit a written report to EPA within seven days after the onset of such event that describes (a) the event and (b) all measures taken and to be taken: (1) to mitigate any release or threat of release; (2) to mitigate any endangerment caused or threatened by the release; and (3) to prevent the reoccurrence of any such a release or threat of release. The reporting requirements are in addition to the reporting required by CERCLA § 103 and EPCRA § 304.

39. **Progress Reports.** Commencing upon EPA’s approval of the Removal Work Plan and until issuance of a notice of completion of work under ¶41, Purchaser shall submit written progress reports to EPA and MDEQ on a monthly/weekly basis, or as otherwise directed in writing by the OSC. These reports must describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

40. **Final Report.** Within 60 days after completion of all Work required by this Settlement, other than continuing obligations listed in ¶ 41, Purchaser shall submit a final report regarding the Work for EPA, in consultation with MDEQ, review and approval.

a. The final report must:

- (1) summarize the actions taken to comply with this Settlement;
- (2) conform to the requirements of section 300.165 of the NCP (“OSC Reports”);
- (3) list the quantities and types of materials removed off-site or handled on-site;
- (4) describe the removal and disposal options considered for those materials;
- (5) identify the ultimate destination(s) of those materials;
- (6) include the analytical results of all sampling and analyses performed; and
- (7) include all relevant documentation generated during the Work (e.g., manifests, invoices, bills, contracts, and permits) and an estimate of the total costs incurred to complete the Work.

b. The final report must also include the following certification signed by a responsible corporate official of Purchaser or Purchaser’s Project Coordinator: “I certify under penalty of perjury 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 have no personal knowledge that the information submitted is other than 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.”

41. **Notice of Completion of Work**

a. If after reviewing the final report under ¶ 40, EPA, in consultation with MDEQ, determines that all Work, other than the continuing obligations, has been fully

performed in accordance with this Settlement, EPA will provide written notice to Purchaser. A notice of completion of work is not a protectiveness determination and does not affect the following continuing obligations:

- (1) obligations under the Post-Removal Site Controls Plan;
- (2) obligations under Section VIII (Property Requirements);
- (3) payment of Future Response Costs; and
- (4) obligations under Section XX (Records).

b. If EPA, in consultation with MDEQ, determines that any Work other than the continuing obligations has not been completed in accordance with this Settlement, EPA will notify Purchaser and provide a list of the deficiencies. Purchaser shall promptly correct all such deficiencies. Purchaser shall submit a modified final report upon completion of the deficiencies.

42. **Compliance with Applicable Law.** Nothing in this Settlement affects Purchaser's obligations to comply with all applicable state and federal laws and regulations, except as provided in section 121(e) of CERCLA and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-site actions required under this Settlement shall, to the extent practicable, as determined by EPA, in consultation with MDEQ, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental or state environmental or facility siting laws. Purchaser shall include ARARs selected by EPA, in consultation with MDEQ, in the Removal Work Plan. EPA deems the activities conducted in accordance with this Settlement, if approved by EPA, to be consistent with the NCP as provided under section 300.700(c)(3).

#### 43. **Work Takeover**

a. If EPA determines that Purchaser: (1) has ceased to implement any of the Work required under this Section, (2) is seriously or repeatedly deficient or late in its performance of the Work required under this Section, or (3) is performing the Work required under this Section in a manner that may cause an endangerment to public health or welfare or the environment, EPA may issue a notice of Work Takeover to Purchaser, including a description of the grounds for the notice and a period of time ("Remedy Period") within which Purchaser shall remedy the circumstances giving rise to the notice. The Remedy Period will be 20 days, unless EPA determines in its unreviewable discretion that there may be an endangerment, in which case the Remedy Period will be 10 days.

b. If, by the end of the Remedy Period, Purchaser does not remedy to EPA's satisfaction the circumstances giving rise to Work Takeover Notice, EPA may notify Purchaser and, as it deems necessary, commence a Work Takeover.

c. EPA may conduct the Work Takeover during the pendency of any dispute under Section XIII but shall terminate the Work Takeover if and when: (1) Purchaser remedies, to EPA's satisfaction, the circumstances giving rise to the notice of Work Takeover; or (2) upon



the issuance of a final determination under Section XIII that EPA is required to terminate the Work Takeover.

## VIII. PROPERTY REQUIREMENTS

44. **Notices.** Purchaser shall provide all legally required notices with respect to the discovery or release of any hazardous substance at the Property that occurs after the Effective Date.

45. **Non-Interference and Access.** Purchaser shall refrain from using the Property in any manner that EPA determines will pose an unacceptable risk to public health or welfare or the environment due to exposure to Waste Material, or interfere with or adversely affect the implementation, integrity, or protectiveness of the response action. Upon acquisition of the Property, Purchaser shall provide full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restoration at the Property (including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response actions or natural resource restoration at the Property). Commencing on the Effective Date, Purchaser shall provide EPA, MDEQ, and their representatives, including contractors, and subcontractors, access to the Property, and to any other property owned or controlled by Purchaser that is part of the Site, at all reasonable times to conduct any activity regarding the Settlement at the Property, including the following:

- a. implementing the Work and overseeing compliance with the Settlement;
- b. conducting investigations of contamination at or near the Property;
- c. assessing the need for planning, implementing, or monitoring additional response actions at or near the Property;
- d. implementing a response action by persons performing under EPA oversight;
- e. determining whether the Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under this Settlement or an EPA decision document for the Site or the Property; and
- f. implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions and any institutional controls.

46. **Continued Access to Specific Areas and Equipment.** To support the EPA's implementation of response actions at the Site, Purchaser shall provide EPA, MDEQ, and their representatives, including contractors and subcontractors, continued access to the water treatment plant, laboratory, shops, other buildings, and equipment as set forth in Appendix E.

47. **Appropriate Care.** Commencing on the Effective Date, Purchaser shall exercise appropriate care with respect to hazardous substances found at the Property by taking reasonable steps to stop any continuing release; prevent any threatened future release; and prevent or limit

human, environmental or natural resource exposure to any previously released hazardous substance.

48. **Land, Water, or Other Resource Use Restrictions.** Purchaser shall: (1) remain in compliance with any land use restrictions established in connection with any response action at the Property; (2) implement, maintain, monitor, and report on institutional controls; and (3) not impede the effectiveness or integrity of any institutional control employed at the Property in connection with a response action.

49. **Notice to Successors-in-Title**

a. Purchaser shall, within 30 days after the Effective Date, submit to EPA and MDEQ for approval a notice to be filed in the appropriate land records office regarding the Property. The notice must: (1) include a proper legal description of the Property; (2) provide notice to all successors-in-title that: (i) the Property is part of, or affected by, the Site, (ii) EPA has selected a removal action for the Property, and (iii) Purchaser has entered into an Administrative Settlement Agreement requiring implementation of this removal action and compliance with the property requirements in this Section; and (3) identify the name, CERCLA docket number, and Effective Date of this Settlement. Purchaser shall record the notice within 10 days after EPA's approval of the notice and submit to EPA and MDEQ, within 10 days thereafter, a certified copy of the recorded notice.

b. Purchaser shall, prior to entering into a contract to Transfer any of the Property, or 60 days prior to transferring any of the Property, whichever is earlier:

- (1) notify the proposed Transferee that EPA has selected a removal action regarding the Property, that Purchaser has entered into an Administrative Settlement Agreement requiring implementation of such removal action and compliance with the requirements at the Property in this Section (identifying the name, CERCLA docket number, and the Effective Date of this Settlement); and
- (2) notify EPA and MDEQ of the name and address of the proposed Transferee, provide EPA and MDEQ with a copy of the above notice that it provided to the proposed Transferee, and notify EPA and MDEQ if Purchaser seeks termination of its obligations in accordance with ¶ 51.

50. For so long as Purchaser is an owner or operator of any of the Property, Purchaser shall require that Transferees and other parties with rights to use any of the Property provide access and cooperation to EPA, MDEQ, and their authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight. Purchaser shall require that Transferees and other parties with rights to use any of the Property implement and comply with any land use restrictions and institutional controls on the Property in connection with any response action, and not contest EPA's or MDEQ's authority to enforce any land use restrictions and institutional controls on any of the Property.

51. Upon sale or other conveyance of any of the Property, Purchaser shall require that each Transferee or other holder of an interest in any of the Property agrees to comply with

Section XX (Records) and this Section and not contest EPA's or MDEQ's authority to enforce any land use restrictions and institutional controls on any of the Property. After EPA's issuance of a notice of completion of work under ¶ 41 and Purchaser's written demonstration to EPA and MDEQ that a Transferee or other holder of an interest in any of the Property agrees to comply with the requirements of this ¶ 51, EPA will notify Purchaser that its obligations under this Settlement, except obligations under Section XX, are terminated with respect to any of the Property.

52. Purchaser shall provide a copy of this Settlement to any current lessee, sublessee, and other party with rights to use any of the Property as of the Effective Date.

53. Notwithstanding any provision of this Settlement, EPA and MDEQ retain all of their access authorities and rights, as well as all of their rights to require land, water, or other resource use restrictions and institutional controls, including related enforcement authorities, under CERCLA, RCRA, and any other applicable statute or regulations.

## IX. FINANCIAL ASSURANCE

54. To ensure completion of the Work required under Section VII (Removal Action to be Performed), Purchaser shall secure financial assurance, initially in the amount of \$5,000,000.00 ("Estimated Cost of the Work").

55. The financial assurance must: (a) be one or more of the mechanisms listed in ¶ 56, in a form substantially identical to the relevant sample documents available from EPA; and (b) be satisfactory to EPA. As of the date EPA signs this Settlement, the sample documents can be found under the "Financial Assurance - Orders" category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>. Purchaser may use multiple mechanisms if they are limited to surety bonds guaranteeing payment, letters of credit, trust funds, or some combination thereof.

56. The following are acceptable mechanisms:

a. a surety bond guaranteeing payment, performance of the Work, or both, in accordance with ¶ 62 (Access to Financial Assurance), that is issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;

b. an irrevocable letter of credit guaranteeing payment in accordance with ¶ 62 (Access to Financial Assurance), that is issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency;

c. a trust fund: (i) established to ensure that funds will be available as and when needed for performance of the Work; (ii) administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency; and (iii) governed by an agreement that requires the trustee to make payments from the fund only when the Director of the Superfund & Emergency Management Division, EPA Region 4, advises the trustee in writing that: (A) payments are necessary to fulfill the Purchaser's

obligations under this Settlement; or (B) funds held in trust are in excess of the funds that are necessary to complete the performance of Work in accordance with this Settlement;

d. a demonstration by Purchaser that it meets the relevant test criteria of ¶ 58;  
or

e. a guarantee to fund or perform the Work executed by a company: (i) that is a direct or indirect parent company of Purchaser or has a “substantial business relationship” (as defined in 40 C.F.R. § 264.141(h)) with Purchaser; and (ii) demonstrates to EPA’s satisfaction that it meets the financial test criteria of ¶ 58.

57. **Standby Trust.** If Purchaser seeks to establish financial assurance by using a surety bond, a letter of credit, or a corporate guarantee, Purchaser shall at the same time establish and thereafter maintain a standby trust fund, which must meet the requirements specified in ¶ 56.c, and into which payments from the other financial assurance mechanism can be deposited if EPA so requires in accordance with the terms and conditions of the financial assurance mechanism and ¶ 62 (Access to Financial Assurance). An originally signed duplicate of the standby trust agreement must be submitted, with the other financial mechanism, to EPA in accordance with ¶ 60. Until the standby trust fund is funded pursuant to ¶ 62, neither payments into the standby trust fund nor annual valuations are required.

58. A Purchaser seeking to provide financial assurance by means of a demonstration or guarantee under ¶ 56.d or 56.e shall, within 30 days of the Effective Date:

a. demonstrate that:

(1) Purchaser or guarantor has:

- i. two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and
- ii. net working capital and tangible net worth each at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and
- iii. tangible net worth of at least \$10 million; and
- iv. assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; or

- (2) Purchaser or guarantor has:
- i. a current rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and
  - ii. tangible net worth at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and
  - iii. tangible net worth of at least \$10 million; and
  - iv. assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

b. submit to EPA for Purchaser or guarantor: (1) a copy of an independent certified public accountant's report of the entity's financial statements for the latest completed fiscal year, which must not express an adverse opinion or disclaimer of opinion; and (2) a letter from its chief financial officer and a report from an independent certified public accountant substantially identical to the sample letter and reports available from EPA. As of the date of signature of this Settlement, a sample letter and report are available under the "Financial Assurance - Orders" subject list category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>.

59. A Purchaser providing financial assurance by means of a demonstration or guarantee under ¶ 56.d or 56.e shall also:

a. annually resubmit to EPA the documents described in ¶ 58 within 90 days after the close of Purchaser's or guarantor's fiscal year;

b. notify EPA within 30 days after Purchaser or guarantor determines that it no longer satisfies the relevant financial test criteria and requirements set forth in this Section; and

c. provide to EPA, within 30 days of EPA's request, reports of the financial condition of Purchaser or guarantor in addition to those specified in ¶ 58; EPA may make such a request at any time based on a belief that Purchaser or guarantor may no longer meet the financial test requirements of this Section.

60. Purchaser shall, within 60 days after the Effective Date, seek EPA's approval of the form of Purchaser's financial assurance. Within 30 days after such approval, Purchaser shall secure all executed or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance and shall submit such mechanisms and documents to EPA, the EPA Regional Financial Management Officer, and DOJ.

61. Purchaser shall diligently monitor the adequacy of the financial assurance. If Purchaser becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, Purchaser shall notify EPA of such information within seven days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, EPA will notify Purchaser of such determination. Purchaser shall, within 30 days after notifying EPA or receiving notice from EPA under this Paragraph, secure and submit to EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. EPA may extend this deadline for such time as is reasonably necessary for Purchaser, in the exercise of due diligence, to secure and submit to EPA a proposal for a revised or alternative financial assurance mechanism, not to exceed 60 days. Purchaser shall follow the procedures of ¶ 63 in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Purchaser's inability to secure financial assurance in accordance with this Section does not excuse performance of any other requirement of this Settlement.

**62. Access to Financial Assurance**

a. If EPA issues a notice of a Work Takeover under ¶ 43, then, in accordance with any applicable financial assurance mechanism, EPA may require: (1) the performance of the Work; and/or (2) that any funds guaranteed be deposited into the standby trust fund.

b. If EPA is notified that the issuer of a financial assurance mechanism intends to cancel the mechanism, and Purchaser fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, EPA may, prior to cancellation, direct the financial assurance provider to deposit any funds guaranteed under such mechanism into the standby trust fund for use consistent with this Section.

**63. Modification of Amount, Form, or Terms of Financial Assurance.** On any anniversary of the Effective Date, or at any other time agreed to by the Parties, Purchaser may submit a request to change the form, terms, or amount of the financial assurance mechanism. Purchaser shall submit any such request to EPA in accordance with ¶60, and shall include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, and a description of the proposed changes, if any, to the form or terms of the financial assurance. EPA will notify Purchaser of its decision regarding the request. Purchaser may modify the form, terms, or amount of the financial assurance mechanism only: (a) in accordance with EPA's approval; or (b) in accordance with any resolution of a dispute under Section XIII. Purchaser may initiate dispute resolution under Section XIII regarding EPA's decision about a request to change the amount of financial assurance. Any decision made by EPA on a request to change the form or terms of a financial assurance mechanism shall not be subject to challenge by Purchaser pursuant to the dispute resolution provisions under Section XIII. Purchaser shall submit to EPA, within 30 days after receipt of EPA's approval or consistent with the terms of the resolution of the dispute, documentation of the change to the form, terms, or amount of the financial assurance instrument.

64. **Release, Cancellation, or Discontinuation of Financial Assurance.** Purchaser may release, cancel, or discontinue any financial assurance provided under this Section only: (a) if EPA issues a notice of completion of work under ¶ 41; (b) in accordance with EPA's approval of such release, cancellation, or discontinuation; or (c) if there is a dispute regarding the release, cancellation, or discontinuance of any financial assurance, in accordance with the agreement or final administrative decision resolving such dispute under Section XIII.

## X. INDEMNIFICATION AND INSURANCE

### 65. Indemnification

a. Neither the United States nor MDEQ assumes any liability by entering into this Settlement or by virtue of any designation of Purchaser as EPA's or MDEQ's authorized representatives under section 104(e)(1) of CERCLA. Purchaser shall indemnify and save and hold harmless the United States, MDEQ, and their officials, agents, employees, contractors, subcontractors, and representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Purchaser, its officers, directors, employees, agents, contractors, or subcontractors, and any persons acting on Purchaser's behalf or under its control, in carrying out activities under this Settlement, including any claims arising from any designation of Purchaser as EPA's authorized representatives under section 104(e)(1) of CERCLA. Further, Purchaser agrees to pay the United States and MDEQ all costs they incur, including attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States or MDEQ based on negligent or other wrongful acts or omissions of Purchaser, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities under this Settlement. Neither the United States nor MDEQ shall be held out as a party to any contract entered into by or on behalf of Purchaser in carrying out activities under this Settlement. Purchaser and any such contractor may not be considered an agent of the United States or MDEQ.

b. The United States or MDEQ shall give Purchaser notice of any claim for which the United States or MDEQ plans to seek indemnification under this ¶ 65, and shall consult with Purchaser prior to settling such claim.

66. Purchaser covenants not to sue and shall not assert any claim against the United States or MDEQ for damages or reimbursement or for set-off of any payments made or to be made to the United States or MDEQ, arising from or on account of any contract, agreement, or arrangement between Purchaser and any person for performance of Work or other activities on or relating to the Property, including claims on account of construction delays. In addition, Purchaser shall indemnify and save and hold the United States and MDEQ harmless with respect to any claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Purchaser and any person for performance of work on or relating to the Property, including claims on account of construction delays.

67. **Insurance.** Purchaser shall secure, by no later than 14 days before commencing any on-site Work, the following insurance: (a) commercial general liability insurance with limits of liability of \$1 million per occurrence; (b) automobile liability insurance with limits of liability

of \$1 million per accident; and (c) umbrella liability insurance with limits of liability of \$5 million in excess of the required commercial general liability and automobile liability limits. The insurance policy must name EPA as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Purchaser under this Settlement. Purchaser shall maintain this insurance until the first anniversary after issuance of EPA's notice of completion of work under ¶ 41. In addition, for the duration of this Settlement, Purchaser shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Purchaser in furtherance of this Settlement. Prior to commencement of the Work, Purchaser shall provide to EPA certificates of such insurance and a copy of each insurance policy. Purchaser shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If Purchaser demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering all of the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Purchaser need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Purchaser shall ensure that all submittals to EPA under this Paragraph identify the Mississippi Phosphates Corp. Superfund Site in Pascagoula, Mississippi, and the CERCLA docket number for this action.

## **XI. PAYMENT FOR RESPONSE COSTS**

### **68. Payments for Future Response Costs**

a. **Periodic Bills.** On a periodic basis, EPA will send Purchaser a bill for Future Response Costs, including an "E-Recovery Cost Recovery Package" or other standard cost summary listing direct costs paid by EPA and DOJ and related indirect costs. Purchaser may initiate a dispute under Section XIII regarding a Future Response Cost billing, but only if the dispute relates to one or more of the following issues: (1) whether EPA has made an arithmetical error; (2) whether EPA has included a cost item that is not within the definition of Future Response Costs; or (3) whether EPA has paid excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. Purchaser shall specify in the Notice of Dispute the contested costs and the basis for the objection.

b. **Payment of Bill.** Purchaser shall pay the bill, or if it initiates dispute resolution under Section XIII, the uncontested portion of the bill, if any, within 30 days after receipt of the bill. Purchaser shall pay the contested portion of the bill determined to be owed, if any, within 30 days after the determination regarding the dispute. Each payment for: (1) the uncontested bill or portion of bill, if late, and; (2) the contested portion of the bill determined to be owed, if any, must include an additional amount for Interest accrued from the date of receipt of the bill through the date of payment.

69. **Payment Instructions.** Purchaser shall make all payments at <https://www.pay.gov> using the "EPA Miscellaneous Payments Cincinnati Finance Center" link and include references to the CERCLA docket number and Site/Spill ID number listed in ¶ 104 and the purpose of the payment. Purchaser shall send notices of this payment to EPA and include these references. EPA will deposit the amounts paid under ¶ 68 in the Fund.



## XII. FORCE MAJEURE

70. “Force Majeure,” for purposes of this Settlement, means any event arising from causes beyond the control of Purchaser, of any entity controlled by Purchaser, or of Purchaser’s contractors that delays or prevents the performance of any obligation under this Settlement despite Purchaser’s best efforts to fulfill the obligation. Given the need to protect public health and welfare and the environment, the requirement that Purchaser exercise “best efforts to fulfill the obligation” includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. “Force majeure” does not include financial inability to complete the Work, increased cost of performance, or a failure to achieve performance standards set forth in the Action Memorandum.

71. If any event occurs for which Purchaser will or may claim a force majeure, Purchaser shall notify EPA’s OSC by email. The deadline for the initial notice is three days after the date Purchaser first knew or should have known that the event would likely delay performance. Purchaser shall be deemed to know of any circumstance of which any contractor of, subcontractor of, or entity controlled by Purchaser knew or should have known. Within seven days thereafter, Purchaser shall send a further notice to EPA that includes: (a) a description of the event and its effect on Purchaser’s completion of the requirements of the Settlement; (b) a description of all actions taken or to be taken to prevent or minimize the delay; (c) the proposed extension of time for Purchaser to complete the requirements of the Settlement; (d) a statement as to whether, in the opinion of Purchaser, such event may cause or contribute to an endangerment to public health or welfare or the environment; and (e) all available proof supporting its claim of force majeure. Failure to comply with the notice requirements herein regarding an event precludes Purchaser from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under ¶ 70 and whether Purchaser has exercised best efforts under ¶ 70, EPA may, in its unreviewable discretion, excuse in writing Purchaser’s failure to submit timely or complete notices under this Paragraph.

72. EPA will notify Purchaser of its determination whether Purchaser is entitled to relief under ¶ 70, and, if so, the duration of the extension of time for performance of the obligations affected by the force majeure. An extension of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of any other obligation. Purchaser may initiate dispute resolution under Section XIII regarding EPA’s determination within 15 days after receipt of the determination. In any such proceeding, Purchaser has the burden of proving that it is entitled to relief under ¶ 70 and that its proposed extension was or will be warranted under the circumstances.

73. The failure by EPA or MDEQ to timely complete any activity under this Settlement is not a violation of the Settlement, provided, however, that if such failure prevents Purchaser from meeting one or more deadlines under this Settlement, Purchaser may seek relief under this Section.

### XIII. DISPUTE RESOLUTION

74. Unless otherwise provided in this Settlement, Purchaser shall use the dispute resolution procedures of this Section to resolve any dispute arising under this Settlement. Purchaser shall not initiate a dispute challenging the Action Memorandum.

75. A dispute will be considered to have arisen when Purchaser sends EPA a timely written notice of dispute (“Notice of Dispute”). A notice is timely if sent within 30 days after receipt of the EPA notice or determination giving rise to the dispute or within 15 days in the case of a force majeure determination. Disputes arising under this Settlement must in the first instance be the subject of informal negotiations between EPA, MDEQ, and Purchaser. The period for informal negotiations may not exceed 60 days after the dispute arises unless EPA otherwise agrees. If the parties cannot resolve the dispute by informal negotiations, the position advanced by EPA is binding unless Purchaser initiates formal dispute resolution under ¶ 76.

#### 76. Formal Dispute Resolution

a. **Statement of Position.** Purchaser may initiate formal dispute resolution by submitting to EPA, within seven days after the conclusion of informal dispute resolution under ¶ 75, an initial Statement of Position regarding the matter in dispute. EPA’s responsive Statement of Position is due within 20 days after receipt of the initial Statement of Position. All statements of position must include supporting factual data, analysis, opinion, and other documentation. A reply, if any, is due within 10 days after receipt of the response. If appropriate, EPA may extend the deadlines for filing statements of position for up to 15 days and may allow the submission of supplemental statements of position.

b. **Formal Decision.** The Director of the Superfund & Emergency Management Division, EPA Region 4, will issue a formal decision resolving the dispute (“Formal Decision”) based on the statements of position and any replies and supplemental statements of position. The Formal Decision is binding on Purchaser and shall be incorporated into and become an enforceable part of this Settlement.

77. **Escrow Account.** For disputes regarding a Future Response Costs billing, Purchaser shall: (a) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation (“FDIC”); (b) remit to that escrow account funds equal to the amount of the contested Future Response Costs; and (c) send to EPA copies of the correspondence and of the payment documentation (e.g., the check) that established and funded the escrow account, including the name of the bank, the bank account number, and a bank statement showing the initial balance in the account. EPA may, in its unreviewable discretion, waive the requirement to establish the escrow account. Purchaser shall cause the escrow agent to pay the amounts due to EPA under ¶ 68, if any, by the deadline for such payment in ¶ 68. Purchaser is responsible for any balance due under ¶ 68 after the payment by the escrow agent.

78. The initiation of dispute resolution procedures under this Section does not extend, postpone, or affect in any way any requirement of this Settlement, except as EPA, in consultation

with MDEQ, agrees. Stipulated penalties with respect to the disputed matter will continue to accrue, but payment is stayed pending resolution of the dispute, as provided in ¶ 81.

#### XIV. STIPULATED PENALTIES

79. Unless the noncompliance is excused under Section XII (Force Majeure), Purchaser is liable to the United States for the following stipulated penalties:

a. for any failure: (1) to pay any amount due under Section XI (Payment for Response Costs); (2) to establish and maintain financial assurance in accordance with Section IX; (3) to submit timely or adequate deliverables under this Settlement, specifically the Removal Work Plan described in ¶28 and the Final Report described in ¶ 40:

Period of Noncompliance	Penalty Per Noncompliance Per Day
1 <sup>st</sup> through 14 <sup>th</sup> day	\$500
15 <sup>th</sup> through 30 <sup>th</sup> day	\$1000
31 <sup>st</sup> day and beyond	\$3000

b. for any failure to submit timely or adequate deliverables required by this Settlement other than those specified in ¶ 79.a:

Period of Noncompliance	Penalty Per Noncompliance Per Day
1 <sup>st</sup> through 14 <sup>th</sup> day	\$250
15 <sup>th</sup> through 30 <sup>th</sup> day	\$500
31 <sup>st</sup> day and beyond	\$1500

80. **Work Takeover Penalty.** If EPA commences a Work Takeover, Purchaser is liable for a stipulated penalty in the amount of \$50,000. This stipulated penalty is in addition to the remedy available to EPA under ¶ 62 (Access to Financial Assurance).

#### 81. **Accrual of Penalties**

a. Stipulated penalties accrue from the date performance is due, or the day a noncompliance occurs, whichever is applicable, until the date the requirement is completed or the final day of the correction of the noncompliance. Nothing in this Settlement prevents the simultaneous accrual of separate penalties for separate noncompliances with this Settlement. Stipulated penalties accrue regardless of whether Purchaser has been notified of its noncompliance, and regardless of whether Purchaser has initiated dispute resolution under Section XIII, provided, however, that no penalties will accrue as follows:

- (1) with respect to a submission that EPA determines requires revision under ¶ 34, during the period, if any, beginning on the 31<sup>st</sup> day after EPA’s receipt of such submission until the date that EPA notifies Purchaser of any need for revision; or

- (2) with respect to a matter that is the subject of dispute resolution under Section XIII, during the period, if any, beginning on the 21<sup>st</sup> day after the later of the date that EPA's Statement of Position is received or the date that Purchaser's reply thereto (if any) is received until the date of the Formal Decision under ¶ 76.

b. If EPA requires revision under ¶ 34, stipulated penalties for revisions to an original deliverable submission accrue during the specified period allowed for resubmission, but are not payable unless the resubmission is disapproved in whole or in part; provided that, if the original deliverable submission was so deficient as to constitute a bad faith lack of effort by Purchaser, the stipulated penalties applicable to the original deliverable submission are due and payable notwithstanding any subsequent resubmission.

82. **Demand and Payment of Stipulated Penalties.** EPA may send Purchaser a demand for stipulated penalties. The demand will include a description of the noncompliance and will specify the amount of the stipulated penalties owed. Purchaser may initiate dispute resolution under Section XIII regarding the demand. Purchaser shall pay the amount demanded or, if Purchaser initiates dispute resolution, the uncontested portion of the amount demanded, within 30 days after receipt of the demand. Purchaser shall pay the contested portion of the penalties determined to be owed, if any, within 30 days after the resolution of the dispute. Each payment for: (a) the uncontested penalty demand or uncontested portion, if late, and; (b) the contested portion of the penalty demand determined to be owed, if any, must include an additional amount for Interest accrued from the date of receipt of the demand through the date of payment. Purchaser shall make payment at <https://www.pay.gov> using the link for "EPA Miscellaneous Payments Cincinnati Finance Center," including a reference to the CERCLA docket number and Site/Spill ID number listed in ¶ 104, and the purpose of the payment. Purchaser shall send a notice of this payment to DOJ and EPA. The payment of stipulated penalties and Interest, if any, does not alter any obligation by Purchaser under this Settlement.

83. Nothing in this Settlement limits the authority of the United States: (a) to seek any remedy otherwise provided by law for Purchaser's failure to pay stipulated penalties or interest; or (b) to seek any other remedies or sanctions available by virtue of Purchaser's noncompliance with this Settlement or of the statutes and regulations upon which it is based including penalties under section 106(b) of CERCLA provided, however, that the United States may not seek civil penalties under section 106(b) for any noncompliance for which a stipulated penalty is provided herein, except in the case of a willful noncompliance with this Settlement or in the event that EPA assumes performance of a portion or all of the Work pursuant to ¶ 43 (Work Takeover).

84. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued under this Settlement.

## XV. CERTIFICATION

85. Purchaser certifies to the best of its knowledge and belief that after thorough inquiry and as of the date of Purchaser's signature (a) it is a BFPP; (b) it has fully and accurately disclosed to EPA and MDEQ all information known to Purchaser and all information in the

possession or control of its officers, directors, employees, contractors, and agents which relates in any way to any Existing Contamination or any past or potential future release of hazardous substances, pollutants or contaminants at or from the Site; and (c) it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any documents and electronically stored information relating to the Site.

## **XVI. COVENANTS BY UNITED STATES AND MDEQ**

86. **Covenants for Purchaser.** Subject to ¶ 89, the United States and MDEQ covenant not to sue or to take administrative action against Purchaser under sections 106 or 107(a) of CERCLA, Miss. Code Ann. §§ 49-2-13(j) or 49-17-17(o), or 11 Miss. Admin. Code Pt. 1, R.1.1.H, for Existing Contamination, the Work, and payments under Section XI (Payment for Response Costs).

87. The covenants under ¶ 86: (a) take effect upon the Effective Date; (b) are conditioned on (1) the satisfactory performance by Purchaser of the requirements of this Settlement; and (2) the veracity of the information provided to EPA or MDEQ by Purchaser relating to Purchaser's involvement with the Site and the certification made by Purchaser in ¶ 85; (c) extend to the successors of Purchaser but only to the extent that the successor of Purchaser is assuming all obligations under this Settlement and the alleged liability of the successor of Purchaser is based solely on its status as a successor of Purchaser; and (d) do not extend to any other person.

88. Nothing in this Settlement constitutes a covenant not to sue or not to take action or otherwise limits the ability of the United States or EPA or MDEQ to seek or obtain further relief from Purchaser if the information provided to EPA or MDEQ by Purchaser relating to Purchaser's involvement with the Site or the certification made by Purchaser in ¶ 85 is false or in any material respect inaccurate.

89. **General Reservations.** Notwithstanding any other provision of this Settlement, the United States and MDEQ reserve, and this Settlement is without prejudice to, all rights against Purchaser regarding the following:

- a. liability for failure by Purchaser to meet a requirement of this Settlement;
- b. liability resulting from an act or omission that causes exacerbation of Existing Contamination by Purchaser, its successors, assigns, lessees, or sublessees;
- c. liability resulting from the disposal, release, or threat of release of hazardous substances, pollutants or contaminants at or in connection with the Site after the Effective Date, not within the definition of Existing Contamination;
- d. liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Site, except as provided in clause c of the definition of Existing Contamination;
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments; and

f. criminal liability.

90. With respect to any claim or cause of action asserted by the United States or MDEQ, Purchaser shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination and that Purchaser has complied with all the requirements of CERCLA §§ 101(40) and 107(r).

91. Subject to ¶ 86, nothing in this Settlement limits any authority of the United States or EPA or MDEQ to take, direct, or order all appropriate action to protect public health and welfare and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, or to request a Court to order such action. Further, except as specifically provided in this Settlement, nothing in this Settlement shall prevent the United States or MDEQ from seeking legal or equitable relief to enforce the terms of this Settlement or from taking other legal or equitable action as it deems appropriate and necessary.

## **XVII. COVENANTS BY PURCHASER**

### **92. Covenants by Purchaser**

a. Subject to ¶ 93, Purchaser covenants not to sue and shall not assert any claim or cause of action against the United States or MDEQ under CERCLA, RCRA § 7002(a), the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, the State Constitution, State law, or at common law regarding Existing Contamination, the Work, payments under Section XI (Payment for Response Costs), and this Settlement.

b. Subject to ¶ 93, Purchaser covenants not to seek reimbursement from the Fund through CERCLA or any other law for the costs regarding the Existing Contamination, the costs of the Work, payments under Section XI (Payment for Response Costs), or any claim arising out of response actions at or in connection with the Site.

93. **Purchaser's Reservation.** The covenants in ¶ 92 do not apply to any claim or cause of action brought, or order issued, after the Effective Date by the United States or MDEQ to the extent such claim, cause of action, or order is within the scope of a reservation under ¶¶ 89.a through 89.e.

## **XVIII.EFFECT OF SETTLEMENT; CONTRIBUTION**

94. Except as provided in Section XVII (Covenants by Purchaser), each of the Parties expressly reserves any and all rights (including under section 113 of CERCLA), defenses, claims, demands, and causes of action that each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

95. The Parties agree that: (a) this Settlement constitutes an administrative settlement under which Purchaser has, as of the Effective Date, resolved liability to the United States and MDEQ within the meaning of sections 113(f)(2) and 113(f)(3)(B) of CERCLA; and (b) Purchaser is entitled, as of the Effective Date, to protection from contribution actions or

claims as provided by section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for the “matters addressed” in this Settlement. The “matters addressed” in this Settlement are the Work, payments under Section XI and all response actions taken or to be taken and all response costs incurred or to be incurred in connection with Existing Contamination by the United States, MDEQ, or any other person, except the State. However, if the United States or MDEQ exercises rights under the reservations in ¶¶ 89.a through 89.e, the “matters addressed” in this Settlement will no longer include those response costs or response actions or natural resource damages that are within the scope of the exercised reservation.

96. Purchaser shall, with respect to any suit or claim brought by it for matters related to this Settlement, notify DOJ and EPA and MDEQ in writing no later than 60 days prior to the initiation of such suit or claim. Purchaser shall, with respect to any suit or claim brought against it for matters related to this Settlement, notify DOJ and EPA and MDEQ in writing within 10 days after service of the complaint or claim upon Purchaser. In addition, Purchaser shall notify DOJ and EPA and MDEQ within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Settlement.

97. Nothing in this Settlement diminishes the right of the United States or MDEQ, under sections 113(f)(2) and (3) of CERCLA, to pursue any person not a Party to this Settlement to obtain additional response costs or response actions and to enter into settlements that give rise to contribution protection pursuant to section 113(f)(2).

## **XIX. RELEASE AND WAIVER OF LIEN**

98. Subject to the reservation of rights in Section XVI (Covenants by United States and MDEQ), upon payment of the amount specified in Section XI (Payment for Response Costs) and issuance of a notice of completion of work in ¶ 41, EPA and MDEQ agree to release and waive any lien they may have on the Property now and in the future under section 107(r)(2) of CERCLA for costs incurred or to be incurred by EPA or MDEQ in responding to the release or threat of release of Existing Contamination.

## **XX. RECORDS**

### **99. Retention of Records and Information**

a. Purchaser shall retain, and instruct their contractors and agents to retain, the following documents and electronically stored data (“Records”) until 10 years after a notice of completion of the work under ¶ 41 (“Record Retention Period”):

- (1) All records regarding Existing Contamination or any release or threat of release of hazardous substances, pollutants or contaminants at or from the Site.
- (2) All records regarding Purchaser’s liability and the liability of any other person under CERCLA regarding the Site;

- (3) All reports, plans, permits, and documents submitted to EPA or MDEQ in accordance with this Settlement, including all underlying research and data; and
- (4) All data developed by, or on behalf of, Purchaser in the course of performing the Work.

b. At the end of the Record Retention Period, Purchaser shall notify EPA and MDEQ that they have 90 days to request Purchaser's Records subject to this Section. Purchaser shall retain and preserve its Records subject to this Section until 90 days after EPA's and MDEQ's receipt of the notice. These record retention requirements apply regardless of any corporate record retention policy.

100. Purchaser shall provide to EPA and/or MDEQ, upon request, copies of all Records and information required to be retained under this Section. Purchaser shall also comply, as required by law, with any authorized request for information or administrative subpoena issued by EPA or MDEQ.

#### **101. Privileged and Protected Claims**

a. Purchaser may assert that all or part of a record requested by EPA or MDEQ is privileged or protected as provided under federal law, in lieu of providing the record, provided that Purchaser complies with ¶ 101.b, and except as provided in ¶ 101.c.

b. If Purchaser asserts a claim of privilege or protection, it shall provide EPA and MDEQ with the following information regarding such record: title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, of each addressee, and of each recipient; a description of the record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a record, Purchaser shall provide the record to EPA and MDEQ in redacted form to mask the privileged or protected portion only. Purchaser shall retain all records that it claims to be privileged or protected until EPA and MDEQ have had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Purchaser's favor.

c. Purchaser shall not make any claim of privilege or protection regarding: (1) any data regarding the Site, including all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological or engineering data, or the portion of any other record that evidences conditions at or around the Site; or (2) the portion of any record that Purchaser is required to create or generate in accordance with this Settlement.

102. **Confidential Business Information Claims.** Purchaser is entitled to claim that all or part of a record submitted to EPA under this Section is Confidential Business Information ("CBI") that is covered by section 104(e)(7) of CERCLA and 40 C.F.R. § 2.203(b). Purchaser shall segregate all records or parts thereof submitted under this Settlement which it claims are CBI and label them as "claimed as confidential business information" or "claimed as CBI." Records that Purchaser properly labels in accordance with the preceding sentence will be afforded the protections specified in 40 C.F.R. part 2, subpart B. If the records are not properly labeled when they are submitted to EPA, or if EPA notifies Purchaser that the records are not



entitled to confidential treatment under the standards of section 104(e)(7) of CERCLA or 40 C.F.R. part 2, subpart B, the public may be given access to such records without further notice to Purchaser.

103. Notwithstanding any provision of this Settlement, EPA and MDEQ retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

## XXI. NOTICES AND SUBMISSIONS

104. All agreements, approvals, consents, deliverables, modifications, notices, notifications, objections, proposals, reports, waivers, and requests specified in this Settlement must be in writing unless otherwise specified. Whenever a notice is required to be given or a report or other document is required to be sent by one Party to another under this Settlement, it must be sent as specified below. All notices under this Section are effective upon receipt, unless otherwise specified. In the case of emailed notices, there is a rebuttable presumption that such notices are received on the same day that they are sent. Any Party may change the method, person, or address applicable to it by providing notice of such change to all Parties.

As to DOJ: *via email to:*  
eesdcopy@usdoj.gov

Re: DJ# 90-7-1-08388/21

As to EPA: *via email to:*  
Adam Acker, OSC and Remedial Project Manager  
acker.adam@epa.gov  
or  
Craig Zeller, OSC and Remedial Project Manager  
zeller.craig@epa.gov

Re: Site/Spill ID #B45U

As to the EPA Regional  
Financial Management  
Officer: *via email to:*  
Paula Painter, Program Analyst  
painter.paula@epa.gov

Re: Site/Spill ID #B45U

As to MDEQ: *via email to:*  
Thomas Wallace, Chief  
Groundwater Assessment and Remediation Division  
TWallace@mdeq.ms.gov

As to Purchaser: *via email to:*  
Erik Addington, Managing Member  
eaddington@gmail.com  
and  
Scott Cleveland, Project Coordinator  
scottc@mtt-usa.com

## **XXII. APPENDIXES**

105. The following appendixes are attached to and incorporated into this Settlement.

“Appendix A” is the Action Memorandum.

“Appendix B” is the legal description of the Property.

“Appendix C” is the map of the Site.

“Appendix D” is the SOW.

“Appendix E” is the description of areas and equipment at the Property to which EPA will have continued access.

## **XXIII. MODIFICATIONS**

106. If the OSC determines a modification to any approved deliverable submitted to EPA after the Effective Date is appropriate, the OSC may, in consultation with MDEQ, make such modification in writing or by oral direction. EPA will promptly memorialize in writing any oral modification, but the modification has as its effective date the date of the OSC’s oral direction, unless otherwise indicated. Any other requirements of this Settlement may be modified by mutual agreement of the Parties, and any such modification has as its effective date the date of signature by all Parties.

107. If Purchaser seeks permission to deviate from any approved deliverable or the SOW, Purchaser’s Project Coordinator shall submit a written request to the OSC outlining the proposed modification and its basis. Purchaser may not proceed with a requested modification under this Paragraph until receiving approval under ¶ 106.

108. If Purchaser believes that any or all of the obligations constituting Work are no longer necessary to ensure compliance with the requirements of the Settlement, Purchaser may request in writing that EPA agree to modify the provision(s) establishing such obligations as provided in this Section XXIII. Purchaser may not proceed with a requested modification under this Paragraph until receiving approval under ¶ 106.

109. No informal advice, guidance, suggestion, or comment by the OSC or other EPA representatives regarding any deliverable submitted by Purchaser shall relieve Purchaser of its obligation to obtain any formal approval required by this Settlement, or to comply with all requirements of this Settlement, unless it is formally modified.

## **XXIV. SIGNATORIES**

110. Each undersigned representative of the United States, each undersigned representative of MDEQ, and each undersigned representative of Purchaser certifies that the signatory is authorized to enter into the terms and conditions of this Settlement and to execute and legally bind Purchaser to this Settlement.

## **XXV. DISCLAIMER**

111. This Settlement is in no way a finding by EPA or MDEQ as to the risks to public health and welfare and the environment that may be posed by contamination at the Property or the Site or a representation by EPA or MDEQ that the Property or the Site is fit for any particular purpose.

## **XXVI. ENFORCEMENT**

112. The Parties agree that the United States District Court for the Southern District of Mississippi (“Court”) will have jurisdiction, including under section 113(b) of CERCLA for any judicial enforcement action brought with respect to this Settlement.

113. Notwithstanding ¶ 86 of this Settlement, if Purchaser fails to comply with the terms of this Settlement, the United States and/or MDEQ may file a lawsuit for breach of this Settlement, or any provision thereof, in the Court. In any such action, Purchaser consents to and agrees not to contest the exercise of personal jurisdiction over it by the Court. Purchaser further acknowledges that venue in the Court is appropriate and agrees not to raise any challenge on this basis.

114. If the United States and/or MDEQ files a civil action as contemplated by ¶ 113 to remedy breach of this Settlement, the United States and/or MDEQ may seek, and the Court may grant as relief, the following: (a) an order mandating specific performance of any term or provision in this Settlement, without regard to whether monetary relief would be adequate; and (b) any additional relief that may be authorized by law or equity.

## **XXVII. INTEGRATION**

115. This Settlement constitutes the entire agreement among the Parties regarding the subject matter of the Settlement and supersedes all prior representations, agreements, and understandings, whether oral or written, regarding the subject matter of the Settlement.

## **XXVIII. PUBLIC COMMENT**

116. This Settlement is subject to a 30-day public comment period, after which either the United States or MDEQ may withdraw its consent or seek to modify this Settlement if comments received disclose facts or considerations that indicate that this Settlement is inappropriate, improper, or inadequate.

## **XXIX. EFFECTIVE DATE**

117. The effective date of this Settlement is the date upon which both of the following have occurred: (a) EPA issues written notice to Purchaser that the United States and MDEQ, after review of and response to any public comments received, will not withdraw consent or seek to modify this Settlement, and (b) Purchaser acquires the Property. Purchaser shall notify EPA and MDEQ in writing within three days of acquiring the Property.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES.]

Signature Page for Administrative Settlement Agreement  
regarding the Mississippi Phosphates Corp. Superfund Site  
(Docket No. CERCLA-04-2023-2526)

**IT IS SO AGREED:**

SEVEN SEAS TERMINALS, LLC

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Erik Addington  
Managing Member  
Seven Seas Terminals, LLC  
6106 Kipps Colony Drive, West  
Gulfport, FL 33707

Signature Page for Administrative Settlement Agreement  
regarding the Mississippi Phosphates Corp. Superfund Site  
(Docket No. CERCLA-04-2023-2526)

**IT IS SO AGREED:**

MISSISSIPPI DEPARTMENT OF  
ENVIRONMENTAL QUALITY

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Chris Wells  
Executive Director  
Post Office Box 2261  
Jackson, MS 39225

Signature Page for Administrative Settlement Agreement  
regarding the Mississippi Phosphates Corp. Superfund Site  
(Docket No. CERCLA-04-2023-2526)

**IT IS SO AGREED:**

U.S. ENVIRONMENTAL PROTECTION AGENCY

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Maurice L. Horsey, IV  
Manager  
Enforcement Branch  
Superfund & Emergency Management Division  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, SW  
Atlanta, GA 30303

\_\_\_\_\_  
Dated

\_\_\_\_\_  
James W. Webster, Ph.D.  
Manager  
Emergency Response & Removal Branch  
Superfund & Emergency Management Division  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, SW  
Atlanta, GA 30303

Signature Page for Administrative Settlement Agreement  
regarding the Mississippi Phosphates Corp. Superfund Site  
(Docket No. CERCLA-04-2023-2526)

**IT IS SO AGREED:**

U.S. DEPARTMENT OF JUSTICE

ELLEN M. MAHAN  
Deputy Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
Washington, D.C. 20530

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Kenneth G. Long  
Senior Attorney  
D.C. Bar No. 414791  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
Post Office Box 7611  
Washington D.C. 20044-7611  
(202) 514-2840  
Kenneth.Long@usdoj.gov