

## **SETTLEMENT AGREEMENT**

This Settlement Agreement is made and entered into by and between Metallurgical Products Company, with its facility located at 810 Lincoln Avenue, West Chester, Pennsylvania 19380 (the "Company"), on the one hand, and the Department of Justice on behalf of the United States of America and the Drug Enforcement Administration ("DEA") (collectively, the "United States"), on the other hand, to settle civil claims asserted by the United States under 21 U.S.C. § 801 *et seq.* ("the statute").

### **RECITALS**

WHEREAS, the United States has conducted an investigation into allegations that during the period October 2002 through October 2008 the Company committed certain violations of 21 U.S.C. § 971(a) and 21 U.S.C. § 957(a), and 21 C.F.R. §§ 1313.12(a) and (b); and

WHEREAS, the United States alleges that between October 2002 and October 2008, the Company imported 57 orders of yellow phosphorous,<sup>1</sup> a List 1 Chemical under the Controlled Substances Act, into the country without having in effect a registration as an importer of a listed chemical under 21 U.S.C. § 957(a) and without properly notifying the Drug Enforcement Administration ("DEA") through a DEA Form 486 or the Attorney General fifteen days prior to importation of a listed chemical in accordance with 21 U.S.C. § 971(a) and 21 C.F.R. §§ 1313.12(a) and (b) (hereinafter the "covered conduct"); and

WHEREAS, the United States and the Company desire to reach a compromise and settlement of the claims by the United States under 21 U.S.C. § 961 arising from the covered conduct. Accordingly, in consideration of the mutual promises, covenants and obligations set forth in this Settlement Agreement, and for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged under the terms of this Settlement Agreement, the parties agree as follows:

### **TERMS OF AGREEMENT**

#### **A. Monetary Consideration.**

1. **Payments:** The Company will pay a total of \$171,000.00 to resolve all civil monetary claims arising from the covered conduct described in the Recitals section above. On or before March 2, 2009, the Company will make an initial payment of \$50,000. No later than 12 months from the date of signing of this Settlement Agreement, the Company may submit to an ability to pay assessment to be conducted at the sole discretion of the

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<sup>1</sup> Attached as Exhibit A to this Settlement Agreement is a list of each instance known to the United States and represented by the Company to be the times at which the Company imported phosphorous since 2002. The "covered conduct" defined in and released by this Settlement Agreement includes the instances of importation identified on Exhibit A.

United States. Depending on the outcome of the ability to pay assessment, the Company will then pay the balance of the \$121,000 plus interest (fixed at the U.S. Government Securities, Treasury, Constant Maturities, One-year Rate as of the date of the Settlement Agreement) or the Company will be put on a payment plan to pay off the \$121,000 plus interest (fixed at the U.S. Government Securities, Treasury, Constant Maturities, One-year Rate as of the date of the payment plan).

2. **Form of Payment:** Payments will be made by electronic funds transfer pursuant to instructions provided to the Company by the U.S. Attorney's Office, 615 Chestnut Street, Suite 1250, Philadelphia, PA 19106.

B. **Releases.**

1. **United States' Release:** Subject to the terms of this Settlement Agreement, and conditioned upon the parties negotiating in good faith and executing a Memorandum of Understanding by March 2, 2009 and the Company completing in full the payments as described in Section A above, the United States (on behalf of itself, its officers, agents, agencies and departments) releases the Company and its officers, directors, shareholders, employees, servants and agents from any and all civil administrative monetary claims and causes of action the United States has asserted, could have asserted, or may assert in the future (except as limited by Section B, Paragraph 2) under the statutes for the covered conduct as described in the Recitals section above. The United States further agrees to release the shipment of phosphorous that is held by the United States in Newark, New Jersey.
2. **Revocation:** The United States agrees, in reliance upon the commitments in this Settlement Agreement, not to initiate administrative proceedings pursuant to 21 U.S.C. §§ 823 and 824, to revoke or suspend the DEA Certificate of Registration issued to the Company, or to deny any pending application for registration based on the current investigation or the covered conduct. However, the parties acknowledge and agree that in any future administrative proceedings regarding the Company's Certificate of Registration, the parties shall not be precluded from relying on this Settlement Agreement (and/or the Memorandum of Understanding) and upon the underlying facts which led to this Settlement Agreement, and such evidence can be used at any future proceeding in accordance with applicable rules. The Company in no way waives any defenses based on the conduct released herein that might be raised at such a proceeding.
3. **Company's Release:** The Company fully and finally releases the United

States, its agencies, employees, servants, and agents (including but not limited to the DEA) from any claims (including attorney's fees, costs, expenses of every kind and however denominated) which the Company has asserted, could have asserted, or may assert in the future against the United States, its agencies, employees, servants, and agents, related to the events and occurrences described in the Recitals section above, and the United States' investigation and prosecution thereof.

4. **Memorandum of Understanding:** The Company agrees to negotiate in good faith and execute a Memorandum of Understanding with DEA by March 2, 2009.

**C. Contingencies.**

This Settlement Agreement is contingent upon the Company's full and timely compliance with the Monetary Consideration terms of agreement as indicated in Paragraph A above and the execution of a Memorandum of Understanding with DEA by March 2, 2009.

**D. Exclusions.**

Notwithstanding any term of this Settlement Agreement, specifically reserved and excluded from the scope and terms of this Settlement Agreement as to any entity or person are the following:

1. Any civil, criminal, or administrative liability arising under Title 26 of the United States Code (Internal Revenue Code);
2. Any criminal liability;
3. Except as explicitly stated in this Settlement Agreement, any administrative liability;
4. Any liability to the United States (or its agencies) for any conduct other than the conduct described in the Recitals section above;
5. Any liability based upon such obligations as are created by this Settlement Agreement;

**E. Complete Agreement.**

1. This Settlement Agreement represents and expresses the entire agreement between the parties with respect to the subject matter of this Settlement

Agreement, and there are no other agreements, understandings, representations, warranties, inducements, or consideration, except as expressly stated in this Settlement Agreement.

2. The parties also agree that this Settlement Agreement may not be altered, amended or modified or otherwise changed except by a writing duly executed by the parties.

**F. Release of Others.**

The Terms of this Settlement Agreement are not intended to release or inure to the benefit, or in any way, to create a benefit in favor of any individual, corporation or business not an entity to this Settlement Agreement, unless specifically stated in this Settlement Agreement.

**G. Requisite Authority/No Duress.**

1. The signatories to this Settlement Agreement warrant that they have authority to bind the parties they represent.
2. Each party to this Settlement Agreement represents that they have entered into this Settlement Agreement knowingly and voluntarily, and of their own free will, and without any threats, duress or coercion of any kind.

**H. Disclosure.**

All parties to this Settlement Agreement understand and agree that the United States may disclose to the public the fact that this Settlement Agreement resolves disputed claims, and the contents of the Settlement Agreement.

**I. No Admission.**

This Settlement Agreement shall not constitute an admission of liability or fault on the part of any party and is entered into by all parties for the purpose of compromising disputed claims and avoiding the expenses and risks of litigation.

**J. Binding on Successors.**

This Settlement Agreement is binding on each of the Company's successors, transferees, and assigns.

**K. Effective Date of Settlement Agreement.**

**This Settlement Agreement shall become effective upon the later date of its execution by the parties listed below.**

**IN WITNESS WHEREOF, the parties hereto have affixed their signatures to this Settlement Agreement intending to be legally bound.**

**Date:**

**LAURIE MAGID  
Acting United States Attorney**

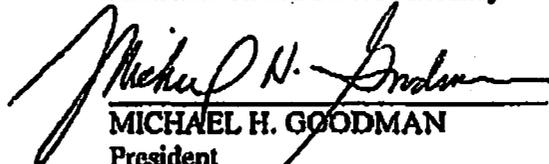
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**VIRGINIA A. GIBSON  
Assistant United States Attorney  
Chief, Civil Division**

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**JACQUELINE C. ROMERO  
Assistant United States Attorney**

**Date:**



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**MICHAEL H. GOODMAN  
President  
Metallurgical Products Company**

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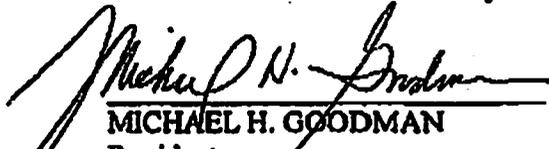
**Date:**

**LAURIE MAGID  
Acting United States Attorney**

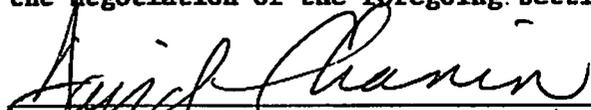
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**VIRGINIA A. GIBSON  
Assistant United States Attorney  
Chief, Civil Division**

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**JACQUELINE C. ROMERO  
Assistant United States Attorney**

**Date:**

  
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**MICHAEL H. GOODMAN  
President  
Metallurgical Products Company**

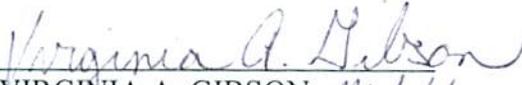
**Metallurgical Products Company was represented by the undersigned attorneys, Kleinbard Bell & Brecker LLP, in the negotiation of the foregoing Settlement Agreement.**

  
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**E. David Chanin  
Kleinbard Bell & Brecker LLP**

IN WITNESS WHEREOF, the parties hereto have affixed their signatures to this Settlement Agreement intending to be legally bound.

Date: 1/30/09

LAURIE MAGID  
Acting United States Attorney

  
VIRGINIA A. GIBSON *MAG*  
Assistant United States Attorney  
Chief, Civil Division

  
JACQUELINE C. ROMERO  
Assistant United States Attorney

Date:

\_\_\_\_\_  
MICHAEL H. GOODMAN  
President  
Metallurgical Products Company

# EXHIBIT A

**METALLURGICAL PRODUCTS COMPANY**

**SCHEDULE OF PHOSPHORUS IMPORTS**

<b>Estimated Arrival Date</b>	<b>Containers</b>
10/24/2002	1
2/21/2003	3
4/28/2003	3
6/9/2003	3
7/9/2003	3
7/23/2003	3
8/6/2003	5 1
9/10/2003	3
9/25/2003	3
10/29/2003	3
6/2/2004	3
7/4/2004	3
8/9/2004	3
8/23/2004	3
9/15/2004	3
9/28/2004	3
1/17/2005	6
1/31/2005	6
2/28/2005	6
5/22/2005	6
7/5/2005	6 6 6

7/12/2005	3
8/9/2005	3
8/23/2005	6
9/6/2005	6
9/13/2005	6
5/2/2006	6
5/16/2006	6
7/3/2006	3 3
7/12/2006	1
7/18/2006	3
8/8/2006	3 3
9/10/2006	3
9/19/2006	3 3
9/27/2006	6
9/28/2006	3 3
10/10/2006	6
10/25/2006	6
11/28/2006	3 3
12/5/2006	3 3
8/8/2007	12
9/17/2007	3
10/2/2007	3
10/4/2007	12

11/2/2007	6
10/25/2007	6
1/22/2008	12
10/1/2008	6