

EXHIBIT A

Stipulation and Settlement Agreement

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

| | | |
|--|---|------------------------------|
| In re: |) | |
| |) | |
| MISSISSIPPI PHOSPHATES CORPORATION, et al., |) | CASE NO. 14-51667-KMS |
| |) | |
| |) | Chapter 11 |
| |) | Jointly Administered |
| Debtors. |) | |
| <hr style="width: 40%; margin-left: 0;"/> |) | |

STIPULATION AND SETTLEMENT AGREEMENT

Mississippi Phosphates Corporation (“*MPC*”), Ammonia Tank Subsidiary, Inc. (“*ATS*”) and Sulfuric Acid Tanks Subsidiary, Inc. (“*SATS*”), as debtors and debtors-in-possession (collectively, with any Successor (as hereinafter defined), the “*Debtors*”); Phosphate Holdings, Inc. (“*PHI*”); STUW LLC, as administrative agent (in such capacity, the “*Agent*”) for the Debtors’ pre-petition lenders and post-petition lenders identified in **Appendix 1** (collectively, the “*Lenders*,” and together with the Agent, the “*Lender Parties*”); the United States of America, on behalf of the Environmental Protection Agency (the “*EPA*”); and the Mississippi Department of Environmental Quality (the “*MDEQ*,” and together with the EPA, collectively, the “*Governments*”); and Project Navigator Ltd., solely in its capacity as the Trustee of the Environmental Trust (the “*Environmental Trustee*”) collectively with the Debtors, the Lender Parties and PHI, the “*Parties*”) agree to the following:

In consideration of the mutual promises and covenants contained herein, the Parties hereby stipulate and agree to the terms hereof, as follows, which terms shall be incorporated in an agreed order approving this Stipulation and Settlement Agreement (the “*Settlement Agreement*”) and the provisions set forth herein pursuant to Federal Rule of Bankruptcy

Procedure 9019, which order shall be submitted to the Bankruptcy Court pursuant to the filing by the Debtors of a motion to compromise controversy pursuant to Federal Rule of Bankruptcy Procedure 9019.

I. BACKGROUND¹

WHEREAS, the Debtors filed voluntary chapter 11 petitions for relief under Title 11 of the United States Code (the “*Bankruptcy Code*”) in the United States Bankruptcy Court for the Southern District of Mississippi Southern Division (the “*Bankruptcy Court*”) on October 27, 2014, which have been jointly administered as *In re: Mississippi Phosphates Corporation et al.*, Case No. 14-51667 (the “*Bankruptcy Cases*”).

WHEREAS, on April 24, 2015, the United States, on behalf of EPA, filed a proof of claim (the “*EPA Proof of Claim*”), contending that debtor MPC is liable for civil penalties under Sections 3008 of the Solid Waste Disposal Act, as amended by the Resources Conservation Recovery Act of 1976 and the Hazardous and Solid Waste Amendments of 1984 (collectively “*RCRA*”), 42 U.S.C. § 6928; civil penalties under Section 113(b) of the Clean Air Act (“*CAA*”), 42 U.S.C. § 7413(b); and civil penalties under Section 309(d) of the Clean Water Act (“*CWA*”), 33 U.S.C. § 1319(d), for violations at its mineral processing and fertilizer manufacturing facility located in Pascagoula, Mississippi.

WHEREAS, the EPA Proof of Claim asserts the civil penalty claim as a general unsecured claim.

WHEREAS, the United States, on behalf of EPA, contends and the EPA Proof of Claim also sets forth (as a protective measure) that MPC has compliance and injunctive relief obligations – including but not limited to closure and corrective action obligations under

¹ All otherwise undefined terms in this Section I have the meanings set forth below.

administrative orders, environmental statutes, regulations, licenses, and permits – which are not dischargeable pursuant to Section 1141 of the Bankruptcy Code.

WHEREAS, on April 24, 2015, the MDEQ filed proofs of claim (the “*MDEQ Proofs of Claim*”), contending that Debtor MPC owes Title V Air Permit Fees in an unsecured claim in the amount of \$86,470.04; and is liable for unsecured civil penalties under RCRA Section 3008, 42 U.S.C. § 6928 and Miss. Code Ann. § 17-17-29; CAA Section 113(b), 42 U.S.C. § 7413(b) and Miss. Code Ann. § 49-17-43; CWA Section 309(d), 33 U.S.C. § 1319(d) and Miss. Code Ann. § 49-17-43; and for natural resource damages to replenish wildlife related to release events that resulted in fish kills in 2012 and 2013 consistent with Miss. Code Ann. § 49-17-43 and CERCLA Section 107, 42 U.S.C. § 9607. MDEQ has since assessed and determined the 2012 natural resource damages totaled \$124,000.00 while the 2013 natural resource damages equal \$62,000.00.

WHEREAS, MDEQ contends and the MDEQ Proofs of Claim also set forth (as a protective measure) that MPC has compliance and injunctive relief obligations – including but not limited to closure and corrective action obligations under administrative orders, environmental statutes, regulations, licenses, and permits – which are not dischargeable pursuant to Section 1141 of the Bankruptcy Code.

WHEREAS, the Debtors disagree with the United States’ and MDEQ’s contentions and, but for this Settlement Agreement, would dispute and object, in whole or in part, both the EPA Proof of Claim and the MDEQ Proof of Claim.

WHEREAS, certain of the Lender Parties filed Proofs of Claim in the Bankruptcy Cases asserting secured claims against the Debtors for pre-petition loans (Nos. 242, 249, 250, 251, 253, 254, 255, 256, 258, 259, 260, 261, 262, 266, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 292, 296, 297, 298, 299, 300, 301, 302,

303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 319, 320, 321, 322, 323, 332, 333, 337, 338, 357, and 359) asserting that the respective Lender Parties hold valid and perfected liens and security interests in all of the Debtors' property (including the BP Claim and the Protective Claim but excluding the Gyp Stacks).

WHEREAS, the Agent, solely in its capacity as administrative agent for the Lenders, filed the Complaint for Declaratory Judgment as to Validity and Priority of Liens and Allowance of Claims (the "**Agent Complaint**") initiating the adversary proceeding styled and numbered *STUW LLC v. Mississippi Phosphates Corporation, Ammonia Tank Subsidiary, Inc. and Sulfuric Acid Tanks Subsidiary, Inc.*, Adversary Proceeding No. 15-06005-KMS.

WHEREAS, PHI wholly owns MPC (which wholly owns ATS and SATS), and pursuant to contractual agreements between PHI and the Debtors, provides services to MPC, files consolidated financial statements and tax returns with Debtors, and is also an insured under Debtors' insurance policies.

WHEREAS, PHI represents that its financial resources are insufficient to satisfy its potential environmental liabilities to the Governments for the Facility.

WHEREAS, the Lender Parties also assert a security interest in the assets of PHI which wholly owns MPC and is a guarantor of Debtors' obligations to the Lender Parties;

WHEREAS, the Governments assert that the Lender Parties may be directly liable to the Governments under alleged, but not filed, civil and administrative actions.

WHEREAS, the Lender Parties vigorously deny any and all liability to the Governments.

WHEREAS, the Debtors filed a Motion Pursuant to §§ 105 and 363 of the Bankruptcy Code and Bankruptcy Rule 9019 for an Order Approving Settlement Among the Debtors, the Committee, the Lender Parties, and PHI (the "**Committee 9019 Motion**") (Dkt. No. 501).

WHEREAS, by Notice dated May 8, 2015, the Deadline for the Investigation Termination Date, Objections, and Challenge Period Under Interim DIP Financing Order Only for the United States Environmental Protection Agency and the Mississippi Department of Environmental Quality is July 13, 2015. (Dkt. No. 742) and the deadline for objecting to the Committee Settlement is June 29, 2015.

WHEREAS, in the absence of this Settlement Agreement, the Governments would object to and challenge the validity and amount of the Lender Parties' claims set forth in the Agent Complaint and the Lender Parties' Proofs of Claim against Debtors and object to the Bankruptcy Court's approval of the Committee Settlement and approval of the Agreed Final DIP Order.

WHEREAS, EPA, MDEQ, Debtors, PHI, and the Lender Parties wish to resolve their differences with respect to the Lender Parties,' EPA's and MDEQ's Proofs of Claim, the Committee Settlement, the Agreed Final DIP Order and the Governments' alleged administrative and civil causes of action under specified federal and state environmental laws, as well as other herein specified, related claims, against the Debtors, the Lender Parties and PHI with respect to the real and personal property owned by the Debtors in Pascagoula, Mississippi.

WHEREAS, this Settlement Agreement is not conditioned on confirmation of any particular plan of reorganization.

WHEREAS, this Settlement Agreement is in the public interest and is an appropriate means of resolving these matters.

NOW, THEREFORE, without the admission of liability or the adjudication of any issue of fact or law, and upon the consent and agreement of the parties to this Settlement Agreement by their attorneys, authorized officials and signatories, it is hereby agreed as follows:

II. DEFINITIONS

Otherwise undefined terms used in this Settlement Agreement shall have the meanings set forth in this Section II.

“*120 Day Budget*” has the meaning set forth in Paragraph 59.

“*Adequate Protection Claim*” has the meaning set forth in the Committee Settlement.

“*Agent Secured Claim*” means the pre-petition secured claim of the Agent, for and on behalf of the pre-petition Lender Parties, allowed pursuant to the terms of the Committee Settlement.

“*Agreed Final DIP Order*” means the Order approving the post-petition financing from the Lender Parties attached to the Committee Settlement as Exhibit A.

“*Pre-Petition Credit Agreement*” shall mean the Amended and Restated Credit Agreement, dated as of September 4, 2013 (as amended, restated, supplemented or otherwise modified from time to time).

“*Approval Order*” means the Order entered by the Bankruptcy Court to approve this Settlement Agreement in form and substance satisfactory to the Parties, substantially in the form attached hereto as **Exhibit A**.

“*Assumed Liabilities*” means the liabilities assumed by the Liquidation Trust under the Liquidation Trust APA, consisting of the Secured Tax Claims and the DIP/Exit Obligations.

“*Bankruptcy Estates*” means the Debtors’ bankruptcy estates.

“*Beneficiaries*” means the Lender Parties and the Environmental Trust.

“*Bid Procedures Order*” means *Amended Order Granting Motion of Debtors, Pursuant to Bankruptcy Code Sections 105(a), 363, 365, 503, and 507, and Bankruptcy Rules 2002, 3007, 6004, 6006, 9007, and 9014 for Entry of: (I) Order (A) Approving Sales and Bidding Procedures*

in Connection with Sale of Assets of the Debtors, (B) Approving Form and Manner of Notice, (C) Scheduling Auction and Sale Hearing, (D) Authorizing Procedures Governing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (E) Granting Related Relief.

“**BP Proceeds**” shall mean any recoveries under the BP Claim (as defined in the Committee Settlement) or the Protective Claim.

“**BP Settlement Agreement**” means the Economic and Property Damages Settlement Agreement, dated as of April 18, 2012, among BP Exploration and Production Inc., BP America Production Company and the other parties thereto.

“**Claim**” shall have the meaning set forth in 11 U.S.C. § 101.

“**Closing Date**” shall mean the date of the closing of the Alternative Transaction which shall take place within 10 days after the Sale Deadline.

“**Committee**” means the official Committee of Unsecured Creditors appointed in the Debtors’ Bankruptcy Cases.

“**Committee Settlement**” means the Agreement on Definitive Settlement Terms, dated February 17, 2015, by and among the Debtors, Committee, Lender Parties and PHI, as the same may be amended or modified.

“**Debtor All-Asset Sale**” means a sale of substantially all of the Debtors’ real and tangible personal property, plant and equipment that expressly includes the Gyp Stacks and is subject to the requirements of Paragraph 2.

“**DIP Agent**” shall mean STUW LLC, in its capacity as the administrative agent under the DIP Credit Agreement.

“*DIP Credit Agreement*” means the Debtor-in-Possession Credit Agreement attached as Exhibit “A” to the Agreed Final DIP Order (as amended, restated, supplemented or otherwise modified from time to time).

“*DIP Lenders*” shall mean the lenders under the DIP Credit Agreement.

“*DIP Obligations*” shall mean the up to \$6,000,000 borrowed by the Debtors under the DIP Credit Agreement, and interest, fees, costs and other charges under the DIP Credit Agreement.

“*DIP/Exit Obligations*” means the DIP Obligations and any monetary obligations under the Exit Facility including interest, costs and expenses, including reasonable attorneys’ fees.

“*Effective Date*” means the date that all conditions listed in Paragraph 82 of this Settlement Agreement have been satisfied.

“*Environmental Action(s)*” means any and all environmental activities authorized or required under environmental law, or any and all environmental activities as directed by the Governments, that occur after the Effective Date and that are related to the Facility, including but not limited to response or remedial actions, removal actions, corrective action, closure or post-closure care (including but not limited to in accordance with RCRA Subtitle C), reclamation, investigations, studies, remediation, interim actions, final actions, emergency actions, water treatment, implementation of engineered structures and controls, monitoring, repair and replacement of engineered structures, monitoring equipment and controls, operation and maintenance, implementation, operation and maintenance of institutional controls, coordination and integration of reuse and remedial efforts and initiatives, and, if required, long-term stewardship and perpetual custodial care activities. “Environmental Action” also includes the above environmental activities relating to the migration of hazardous substances or contaminants

emanating from the Facility. “Environmental Action” shall not include natural resource damage assessment or restoration activities.

“*Environmental Assigned Assets*” has the meaning set forth in Section V(B) (Environmental Trust Assignment).

“*Environmental Trust*” has the meaning set forth in the Environmental Trust Agreement.

“*Environmental Trust Account*” has the meaning set forth in the Environmental Trust Agreement.

“*Environmental Trust Administrative Account*” has the meaning set forth in the Environmental Trust Agreement.

“*Environmental Trust Agreement*” means the Environmental Trust Agreement that is to be executed and submitted to the Court for approval by no later than July 10, 2015.

“*Environmental Trust Assets*” has the meaning set forth in the Environmental Trust Agreement.

“*Environmental Trust Environmental Cost Account*” has the meaning set forth in the Environmental Trust Agreement.

“*Environmental Trust Funding Threshold*” means the amount when the Environmental Trustee determines, after consultation with and approval by the Governments, that the Environmental Trust has adequate funding to perform the Environmental Actions required by applicable law and to pay the reasonable administrative costs to accomplish the objectives of the Environmental Trust.

“*Environmental Trust Parties*” has the meaning set forth in the Environmental Trust Agreement.

“*Environmental Trustee*” has the meaning set forth in the Environmental Trust Agreement.

“Excess BP Proceeds” has the meaning set forth in the Committee Settlement.

“Excess Proceeds” has the meaning set forth in Paragraph 27(c).

“Facility” shall mean the real property and improvements at the MPC mineral processing and fertilizer manufacturing facility located at 601 Industrial Road, Pascagoula, Mississippi and such other contiguous or adjacent property owned and/or operated by MPC.

“Final Order” means an order or judgment of the Bankruptcy Court as to which the time to appeal, petition for certiorari, seek mandamus, or move for reargument, reconsideration, or rehearing has expired and as to which no appeal, petition for certiorari, or other proceedings for reargument, reconsideration, or rehearing is pending; or, if an appeal, writ of certiorari, or petition for mandamus, reargument, reconsideration, or rehearing has been filed or sought with respect to any order or judgments of the Bankruptcy Court, that order or judgment has been affirmed by the highest court to which it was appealed, or certiorari has been denied or mandamus, reargument, reconsideration, or rehearing has been denied or resulted in no modification thereof, and the time to take any further appeal, petition for certiorari, or move for mandamus, reargument, reconsideration, or rehearing shall have expired; provided, however, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure (or any analogous motion under the Bankruptcy Rules) may be filed with respect to an order or judgment shall not cause such order or judgment not to be a Final Order.

“Financial Information” means the financial information submitted by PHI to the Governments, including the “PHI Assets and Liabilities Statement as of April 30, 2014” dated June 10, 2015.

“Gyp Stacks” shall mean the phosphogypsum stack(s), the associated ditches and ponds for managing process waste water, the Gyp Stack Maintenance Equipment, and the Waste Water

Treatment Plant at the Facility, together with all associated monitoring wells, pumps, piping, ditches, drainage, conveyances, water control structures, collection pools, cooling ponds, surge ponds, auxiliary holding ponds and regional holding ponds. The term Gyp Stacks also includes the adjacent parcels identified as “Borrow Areas” on Attachment 11 to MPC’s Draft Closure Plan dated April 12, 2013, from which clean fill material may be excavated and used for closure.

“*Gyp Stack Maintenance Equipment*” shall mean all tangible personal property, machinery, equipment, fixtures, furniture, computers, tools, parts, supplies, business records, and other tangible personal property necessary that supports the operation and maintenance of the phosphogypsum stacks and that is included in the term Gyp Stacks, including but not limited to assets identified as an Exhibit to the Environmental Trust Agreement. On or before the Effective Date, the Lenders and the Governments shall agree to a complete list which encompasses all property described herein, which agreement shall not be unreasonably withheld.

“*Liquidation Trust*” has the meaning set forth in the Liquidation Trust Agreement.

“*Liquidation Trust Accounts*” has the meaning set forth in the Liquidation Trust Agreement.

“*Liquidation Trust Administrative Account*” has the meaning set forth in the Liquidation Trust Agreement.

“*Liquidation Trust Agreement*” means the Liquidation Trust Agreement that is to be executed and submitted to the Court for approval by no later than July 10, 2015.

“*Liquidation Trust Acquired Assets*” has the meaning set forth in Paragraph 4.

“*Liquidation Trust APA*” means the Liquidation Trust asset purchase agreement.

“*Liquidation Trustee*” has the meaning set forth in the Liquidation Trust Agreement.

“*Liquidation Trust Parties*” has the meaning set forth in the Liquidation Trust Agreement..

“Protective Claim” means the claims filed by MPC and PHI on June 3, 2015, under and in accordance with the Economic and Property Damages Settlement Agreement, dated as of April 18, 2012, among BP Exploration and Production Inc., BP America Production Company and other parties thereto (the “BP Settlement Agreement”) in connection with litigation relating to the “Deepwater Horizon Incident” (as defined in the BP Settlement Agreement), and any amendment, supplement, restatement or modification thereto.

“Reimbursement Cap” means the aggregate amount of \$6,000,000 in funding from all sources to be held in escrow until distributed from the Reimbursement Escrow Account.

“Reimbursement Escrow Account” has the meaning set forth in Paragraph 32.

“Sale Deadline” shall mean September 1, 2015, or 7 days after the entry of an Order approving this Settlement Agreement, whichever is later and as such date may be extended by the agreement of the Debtors, Lender Parties, and Governments pursuant to Paragraph 2.

“Secured Tax Claims” means any real or personal property tax Claim of a governmental unit against the Debtors secured by a lien on the Debtors’ property that is allowed by a Final Order of the Bankruptcy Court.

“State Trust Fund” means the State Financial Assurance Trust Fund created under the Trust Agreement, dated March 28, 2002, between MPC (Grantor) and Morgan Keegan Trust Company, FSB (Trustee) for the benefit of MDEQ and that is referenced in the Agreed Order No. 4716 04 dated March 1, 2004, between the Mississippi Commission on Environmental Quality and MPC.

“Successor” means a bankruptcy liquidation trust or other entity formed pursuant to a confirmed chapter 11 Plan to administer the residual interests and rights of the Debtors and the Bankruptcy Estates after the Sale Deadline or Closing Date, as applicable.

“*Trammo Terminal Operation Agreement*” means that certain letter agreement dated May 1, 2015, as may have been amended, modified or supplemented.

“*Trust All-Asset Sale*” means a sale of all or substantially all of the Liquidation Trust’s or Environmental Trust’s real and tangible personal property, plant and equipment that expressly includes the Gyp Stacks.

“*Waste Water Treatment Plant*” shall mean the chemical and physical unit processes and operations of the treatment system used to treat contaminated wastewater from the Gyp Stacks and remediated groundwater, consisting of the double liming clarifiers, an aeration lagoon, ammonia stripping towers, a pH adjustment system, conveyance pipes and pumps, machinery, equipment, fixtures, tanks, furniture, computers, tools, parts, supplies, caustic and other chemicals, caustic tanks, associated real property, and all other tangible personal property necessary to support the operation of the Waste Water Treatment Plant.

III. JURISDICTION

1. The Bankruptcy Court has jurisdiction over the subject matter hereof pursuant to 28 U.S.C. §§ 157, 1331, and 1334.

IV. MARKETING AND SALE OF THE ESTATES’ ASSETS

2. The Debtors shall continue to market their real and tangible personal property in accordance with the terms of the Bid Procedures Order and seek to obtain a bid from a purchaser that has entered into an asset purchase agreement with the Debtors for a Debtor All-Asset Sale, which must close prior to the Sale Deadline. Prior to the Sale Deadline, the Debtors shall market their assets solely for the purposes of a Debtor All-Asset Sale. Any asset purchase agreement for a Debtor All-Asset Sale must meet the following requirements:

(a) The agreement must provide for a minimum of \$15,000,000 cash consideration payable to the Lender Parties for their collateral in addition to any other consideration or liabilities assumed or paid by the proposed purchaser; the Lender Parties may waive or modify the minimum bid requirement.

(b) The agreement must provide for the assumption of environmental liabilities to the Governments related to the Debtors' assets, including without limitation, the Gyp Stacks, and satisfy financial assurance requirements of the Governments under non-bankruptcy law including, but not limited to, the financial assurance requirements in RCRA Subtitle C, all of which shall be subject to the approval of the Governments.

(c) The sale must close by no later than the Sale Deadline.

(d) The Prevailing Bidder's asset purchase agreement and the order approving such sale shall be subject to the approval of the Debtors, Lender Parties, and Governments, which shall not be unreasonably withheld.

(e) The Prevailing Bidder must demonstrate the financial means, technical competence, and commitment to operate the Debtors' Facility, including, without limitation, the Gyp Stacks, in compliance with federal and state environmental requirements, including without limitation financial assurance requirements.

(f) The Lender Parties will not credit bid against the bidder of a Debtor All-Asset Sale.

V. ALTERNATIVE TRANSACTION

3. If a Debtor All-Asset Sale does not close by the Sale Deadline, the Debtors shall close and consummate the Liquidation Trust APA and the Environmental Trust Assignment (each as defined below, and together, the "*Alternative Transaction*") by the Closing Date.

A. Liquidation Trust APA

4. The Agent shall submit an asset purchase agreement (the “*Liquidation Trust APA*”) that shall provide for the purchase and sale by the Agent’s designee (the Liquidation Trust) of all of the Debtors’ real and tangible personal property (except for the Gyp Stacks) and the assumption of the Trammo Terminal Operation Agreement (collectively, including all proceeds of the foregoing, the “*Liquidation Trust Acquired Assets*”).² The Liquidation Trust shall also be assigned, from the Debtors, all rights to insurance policies, coverage, refunds and rights under such policies held by the Debtors prior to the Closing Date, except for the insurance policies covering officers and directors as described in the Committee Settlement and rights to recover under insurance policies for environmental liabilities and/or any related proceeds from such insurance. Prior to the Closing Date, the Agent will designate the Liquidation Trust as the Agent’s designee thereunder and assign the Liquidation Trust \$15,000,000 of the Agent Secured Claim. The Agent shall release its remaining pre-petition liens and security interests on the Liquidation Trust Acquired Assets as of the closing in exchange for its rights to distributions from the Liquidation Trust as a beneficiary thereof as provided herein and in the Liquidation Trust Agreement.

5. As consideration for the purchase of the Liquidation Trust Acquired Assets, pursuant to Section 363(k) of the Bankruptcy Code, the Liquidation Trust, as the Agent’s

² The Liquidation Trust Acquired Assets include the Debtors’ former Diamonium Phosphate plant, the phosphoric acid plant, the sulfuric acid plants, and all real property and all tangible personal property equipment and operations associated with the foregoing, including, without limitation, the Debtors’ books and records, all of their fee ownership in, all appurtenances, rights, easements, rights-of-way, mining rights (including unpatented mining claims, mill site claims, and placer claims), mineral rights, mineral claims, appurtenant groundwater rights, associated surface water rights, claims, and filings, permits, licenses, third-party warranties and guaranties for equipment or services to the extent transferable under bankruptcy law, or other interests (including without limitation all fixtures, improvements, and equipment located thereon as of the Closing Date) related to the Debtors’ real and tangible personal property, machinery, equipment, fixtures, furniture, computers, tools, parts, supplies, and other tangible personal property necessary to support the operation of the assets. The Liquidation Trust Acquired Assets shall not include the Gyp Stacks, Gyp Stack Maintenance Equipment and the Waste Water Treatment Plant.

designee, shall submit a credit bid of \$15,000,000 of the Agent Secured Claim for the Liquidation Trust Acquired Assets that are the Agent's collateral and the Liquidation Trust shall agree to be co-liable with the Debtors for all Secured Tax Claims on the Liquidation Trust Acquired Assets and the DIP Obligations provided, however, that the agreement of the Liquidation Trust to be or become co-liable with the Debtors shall not in any way reduce such obligations except to the extent such liabilities against the Debtor are actually paid by the Liquidation Trust.³

B. Environmental Trust Assignment

6. By the Closing Date, the Debtors shall execute appropriate conveyance and assignment agreements (the "*Environmental Trust Assignment*") that shall provide for the transfer and conveyance, or assumption, of the following assets to the Environmental Trust: (a) the Gyp Stacks; (b) the Bankruptcy Estates' rights in and to the State Trust Fund, provided that the State Trust Fund shall remain subject to the terms of the Trust Agreement and the State Trust Fund shall only be accessed for closure and/or postclosure care of MPC's Phosphogypsum Stack No. 2 in accordance with Section 4 of the Trust Agreement; (c) the Debtors' (including predecessors') rights to recover under insurance policies for environmental liabilities and/or any proceeds from such insurance to the fullest extent permitted by law, and (d) subject to the Environmental Trustee's approval, Debtors' contract with Allen Engineering and Science, Inc. ((a) through (d), collectively, the "*Environmental Assigned Assets*"). Debtors will cure any contract defaults and comply with the terms of the Allen Engineering and Science, Inc. contract through the Closing Date.

³ The payment of such Assumed Liabilities by either the Debtors or the Liquidation Trust shall give no right of contribution against the other.

C. Alternative Transaction Closing

7. If a Debtor All-Asset Sale does not close by the Sale Deadline, the Parties shall close the Alternative Transaction, including the transfer of assets thereunder to the Liquidation Trust and the Environmental Trust (collectively, the “*Trusts*”) by the Closing Date.

8. The transfers of real property to the Trusts shall be accomplished by special warranty deeds and personal property bills of sale without warranty, with all such conveyance documents and assignments to be agreed to in form by the Debtors and the trustees of the Trusts.

9. The Debtors will reasonably cooperate with the Trusts to deliver the transfer documents to the title company First American Title Insurance Company as soon as reasonably practicable, but not to exceed 30 days after the Closing Date, and the title company will cause such documents to be recorded in the appropriate real property records. The Liquidation Trust shall pay the recording costs and transfer fees to the title company relating to the title transfers.

10. Debtors shall execute, or cause to be executed, and record, if necessary, all necessary releases of any liens or security interests held by any Debtor or other person or entity against the Liquidation Trust Acquired Assets and the Environmental Trust Assigned Assets.

D. Free and Clear Transfers

11. The Approval Order shall provide that, pursuant to Section 363 of the Bankruptcy Code, the Liquidation Trust Acquired Assets and the Environmental Trust Assigned Assets shall be transferred to the Liquidation Trust and the Environmental Trust (as applicable), free and clear of all claims, liens and interests against the Debtors, including, without limitations, liens for the payments of monetary claims, such as unsecured claims for property taxes, or other monetary claims asserted or that could have been asserted in the Bankruptcy Cases, but, shall remain subject to: (a) any existing in rem claims that do not secure payment of monetary claims (such as

easements or deed restrictions); and (b) the Assumed Liabilities. Provided, however, that nothing in this Settlement Agreement or any agreement or order authorizing a sale will be construed to release, nullify, preclude or enjoin the enforcement of any environmental liability to a governmental body that the Liquidation Trust or Environmental Trust would be subject to as the current owner or operator of property after the Closing Date.

12. For the avoidance of doubt, from and after the Closing Date, neither the Debtors nor the Liquidation Trust shall be liable for water treatment obligations related to the Gyp Stacks or for closure of the Gyp Stacks.

13. On and after the Closing Date, Debtors shall have no ownership or other residual interest in the Liquidation Trust, Environmental Trust, or the Liquidation Trust Acquired Assets or the Environmental Trust Assigned Assets other than the Bankruptcy Estates' residual interest in the Excess Proceeds.

VI. DIP AND EXIT FACILITY

14. In accordance with the terms of the Committee Settlement, the DIP Lenders shall make advances pursuant to the terms of the DIP Credit Agreement and the Approved Budget, in the aggregate amount of \$6,000,000 (excluding accrued interest, the DIP Agents' fees and costs but including all prior advances then outstanding) to finance the Debtors' operations, including provision for the Debtors' operation of the Waste Water Treatment Plant and necessary chemicals and administrative funding for the Debtors through the Sale Deadline or Closing Date, as applicable.

15. In the event that the Alternative Transaction closes, on the Closing Date, the Lender Parties, Debtors, and PHI shall amend the DIP Credit Agreement (as amended, the, "*Exit Facility*") as follows:

(a) The Liquidation Trust shall become a borrower and be liable for DIP Obligations;

(b) Any unfunded amounts available under the Exit Facility shall be available to the Liquidation Trust for the operation of the Liquidation Trust pursuant to a budget approved by the Lender Parties and the Governments, including initial funding for the first two months for trustee fees and administrative costs in an amount of \$50,0000 (the “*Trust Budget*”);

(c) The Liquidation Trust shall have authority to borrow funds from the Exit Facility and lend the funds to the Environmental Trust, from time to time, for the sole purposes of funding the Environmental Trust administrative expenses pursuant to the Environmental Trust’s approved budget in amounts approved by the Lender Parties, including, upon request of the Environmental Trustee, initial funding for the first two months for trustee fees and administrative costs in an amount of up to \$50,000 (the “*Environmental Trust Initial Funding*”);

(d) To the extent that funding under the Exit Facility is available during the Liquidation Period in excess of the amounts required to fund the Trust Budget and the Environmental Trust Initial Funding, the Liquidation Trust shall provide the excess amounts to the Environmental Trust for the operation of the Waste Water Treatment Plant and necessary chemicals;

(e) The DIP/Exit Obligations shall be secured by all of the assets of the Liquidation Trust;

(f) Repayments shall be made as provided in Paragraphs 16(b), 17(b), 25(a), and 26(a); and

(g) Maturity shall be extended to the conclusion of the Liquidation Period or any Extension Period.

VII. BP CLAIM PROCEEDS

A. Distribution of BP Proceeds after a Debtor or Trust All-Asset Sale Closing

16. To the extent that a Debtor All-Asset Sale or a Trust All-Asset Sale is closed prior to the Agent's receipt of BP Proceeds, then any proceeds of the BP Claim or Protective Claim shall be distributed as follows:

- (a) first, to Motley Rice LLC ("*Motley Rice*") in the amount of its fees and expenses with respect to the prosecution of the BP Claim and any Protective Claim;
- (b) second, to the Agent in the full amount of the DIP/Exit Obligations;
- (c) third, to the Reimbursement Escrow Account up to the Reimbursement Cap until distributed pursuant to Paragraph 34;
- (d) fourth, to the Environmental Wind-Down Reserve Account if then existing as necessary to pay expenses and wind down the Environmental Trust up to the maximum amount of \$50,000;
- (e) fifth, all remaining proceeds to the Agent until the Agent has received full payment of the Agent Secured Claim;⁴ and
- (f) sixth, all remaining proceeds to the Bankruptcy Estates or any successor entity to be distributed as Excess Proceeds.

B. Distribution of BP Proceeds Prior to a Debtor or Trust All-Asset Sale Closing

17. To the extent a Debtor All-Asset Sale or a Trust All-Asset Sale does not close prior to the Agent's receipt of any BP Proceeds, any proceeds realized from the BP Claim or the

⁴ The Agent's commitments under the Committee Settlement shall be exclusively satisfied from the Agent's payment of BP Proceeds hereunder.

Protective Claim, including, without limitation, settlement payments, shall be paid to the Agent and shall be distributed as follows:

- (a) first, to Motley Rice in the amount of its fees and expenses with respect to the prosecution of the BP Claim and any Protective Claim;
- (b) second, to the Agent in the full amount of the DIP/Exit Obligations,;
- (c) third, to the Reimbursement Escrow Account up to the Reimbursement Cap until distributed pursuant to Paragraph 34;
- (d) fourth, (i) 50% of the remaining proceeds to the Environmental Trust and (ii) the balance of the remaining proceeds to the Agent until the Agent has received \$45,000,000 with respect to the Agent Secured Claim;⁵
- (e) fifth, 85% of the remaining proceeds to the Environmental Trust until such time as the Environmental Trust Funding Threshold is satisfied, and the balance of the remaining proceeds to the Agent until the Agent Secured Claim has been paid in full; and
- (f) sixth, all remaining proceeds to the Bankruptcy Estates or any successor entity to be distributed as Excess Proceeds.

VIII. LIQUIDATION TRUST

A. Formation and Purpose of the Liquidation Trust

18. The Liquidation Trustee shall be designated by the Lender Parties and the appointment of such Trustee will be incorporated into this Settlement Agreement, and approved by the Court, to manage the Liquidation Trust from and after the Closing Date of an Alternative Transaction. By no later than July 10, 2015, upon approval by the Lender Parties and the Government (which shall not be unreasonably withheld), the parties to the Liquidation Trust shall enter into the

⁵ The Agent's commitments under the Committee Settlement shall be satisfied from the Agent's payment hereunder.

Liquidation Trust Agreement and submit an executed copy to the Court for approval; its terms shall be deemed incorporated herein as if stated in full.

19. The Liquidation Trustee shall be responsible for the operation of the Liquidation Trust, including the marketing and sale of the Liquidation Trust Acquired Assets. To the extent the Alternative Transaction closes, the Liquidation Trust Agreement shall be executed simultaneously with the Closing Date.

20. The primary purpose of the Liquidation Trust shall be to liquidate the Liquidation Trust Acquired Assets; provided that the Liquidation Trust shall also: (a) own the Liquidation Trust Acquired Assets; (b) carry out administrative and property management functions related to the Liquidation Trust Acquired Assets; (c) use reasonable efforts to maximize value of the Liquidation Trust Acquired Assets, including the operation thereof (in compliance with non-bankruptcy law, including environmental law) so as to make available to the Lender Parties and the Environmental Trust (together, the “*Beneficiaries*”) the maximum possible distributions; (d) sell, transfer, or otherwise dispose or facilitate the reuse of all or part of the Liquidation Trust Acquired Assets, through a Trust All-Asset Sale if possible, all as provided herein, during the Liquidation Period or any Extension Period (each, as defined below), and (e) operate as necessary to comply with Treas. Reg. § 301.7701-4(d).

21. The Liquidation Trustee shall provide the Governments and their representatives and contractors access to all portions of the Facility that the Liquidation Trust owns at all reasonable times for the purposes of conducting Environmental Action at or near the Facility.

B. Marketing of the Liquidation Trust Acquired Assets

22. The Liquidation Trust shall market the Liquidation Trust Acquired Assets for sale for a period of 48 months (the “*Liquidation Period*”) after the Closing Date. The Liquidation

Period may be extended for a period of up to an additional 12 months (“*Extension Period*”) at the option of the Lender Parties, but only if sufficient funding for the Extension Period exists for the Liquidation Trust, as determined by the Liquidation Trustee. Any proposed sale of the Liquidation Trust Acquired Assets valued above \$500,000 is subject to prior approval in writing by the Lender Parties and the Governments, which approval shall not be unreasonably withheld. In the event the Lender Parties and the Governments are unable to reach an agreement on a proposed sale, the Liquidation Trust may seek an order from the Bankruptcy Court to authorize the sale.

23. In connection with these duties, the Liquidation Trust shall: (a) provide a report on the 15th day of each month to the Beneficiaries and the Governments regarding the marketing and sale efforts and (b) conduct a meeting with the Beneficiaries and Governments regarding the finances of the Liquidation Trust within 10 business days of the conclusion of each fiscal quarter after the Closing Date.

24. If a Buyer desires to consummate a Trust All-Asset Sale with the Liquidation Trust and the Environmental Trust, and the Buyer has demonstrated to the satisfaction of the Governments the financial means, technical competence, and commitment to operate the Facility, including the Gyp Stacks, in compliance with federal and state environmental requirements, including but not limited to financial assurance requirements, the Liquidation Trust shall cooperate with the Environmental Response Trust in consummating such a sale. The agreement must also provide for the assumption of environmental liabilities to the Governments related to the Gyp Stacks and satisfy financial assurance requirements of the Governments under non-bankruptcy law including but not limited to the financial assurance requirements in RCRA Subtitle C, all of which shall be subject to the approval of the Governments.

C. Distribution of Proceeds of Liquidation Trust Assets Prior to the Closure of Trust All-Asset Sale

25. Upon the sale of any Liquidation Trust Acquired Assets or the receipt of any net income before a Trust All-Asset Sale closes, the Liquidation Trust shall first pay all costs associated with such sale including any broker and legal fees and related closing costs and fully fund the Liquidation Wind-Down Reserve Account (as defined below) and any necessary reserves for administrative costs, as provided in the Liquidation Trust Agreement, and fully fund the Environmental Wind-Down Reserve Account (as defined below). After all of the forgoing has been paid, all remaining proceeds from the sale of property (the “*Net Proceeds*”) shall be distributed as follows:

(a) first, to the Agent in the full amount of the outstanding DIP/Exit Obligations;

(b) second, to the Reimbursement Escrow Account up to the Reimbursement Cap until distributed pursuant to Paragraph 34;

(c) third, with respect to proceeds attributable to the sale of personal property identified by the Lenders on *attachment A* to the Liquidation Trust Agreement and sold apart from the real property, the first \$2,500,000 of such Net Proceeds to the Lender Parties;⁶

(d) fourth, (i) 40% of the remaining proceeds to the Environmental Trust and, (ii) the balance of the remaining proceeds to the Agent until the Agent has received \$45,000,000 with respect to the Agent Secured Claim;

⁶ Notwithstanding Attachment A, Waste Water Treatment Plant and Gyp Stack Maintenance Equipment shall only be sold in connection with a sale of the Gyp Stacks.

(e) fifth, 85% of the remaining proceeds to the Environmental Trust until such time as the Environmental Trust Funding Threshold is satisfied, and the balance to the Agent until the Agent Secured Claim has been paid in full; and

(f) sixth, all remaining proceeds to the Bankruptcy Estates or any successor entity to be distributed as Excess Proceeds.

D. Distribution of Proceeds of Liquidation Trust Assets Upon the Closure of a Trust

All-Asset Sale

26. In the event the Liquidation Trust and Environmental Trust consummate a Trust All-Asset Sale, the Net Proceeds of such sale, or any subsequent sale, shall be distributed as follows:

(a) first, to the Agent in the full amount of the DIP/Exit Obligations;

(b) second, to the Reimbursement Escrow Account up to the Reimbursement Cap pursuant to Paragraph 34;

(c) third, to the Environmental Wind-Down Reserve Account if then existing as necessary to pay expenses and wind down the Environmental Trust up to the maximum amount of \$50,000;

(d) fourth, all remaining proceeds to the Agent until the Agent has received full payment of the Agent Secured Claim; and

(e) fifth, all remaining proceeds to the Bankruptcy Estates or any successor entity to be distributed as Excess Proceeds.

E. Modifications of Distributions

27. Notwithstanding anything to the contrary herein, the above distributions shall be deemed amended as follows upon the occurrence of any of the following events:

(a) Upon the Agent's receipt of the full amount of the Agent Secured Claim (in addition to receipt of the full amount of the DIP/Exit Obligations), all remaining proceeds shall be paid to the Environmental Trust up to the Environmental Trust Funding Threshold.

(b) Upon the Environmental Trust's receipt of the full amount of the Environmental Trust Funding Threshold, all remaining proceeds shall be paid to the Agent up to the full amount of the Agent Secured Claim (in addition to receipt of the full amount of the DIP/Exit Obligations).

(c) Upon both the Agent's receipt of the full amount of the Agent Secured Claim (in addition to receipt of the full amount of the DIP/Exit Obligations) and the Environmental Trust's receipt of the full amount of the Environmental Trust Funding Threshold, pursuant to Paragraphs 27(a) and (b) above, all remaining proceeds (the "*Excess Proceeds*") shall be distributed to the Bankruptcy Estates or any successor entity and be considered Excess BP Proceeds subject to the procedures for such proceeds set forth in the Committee Settlement.

F. Protections for Buyers from the Liquidation and Environmental Trusts

28. Any Liquidation Trust Acquired Assets that are subsequently sold by the Liquidation Trust or the Environmental Trust to a purchaser (each, a "*Buyer*") shall be sold free and clear of all environmental liens, claims, and encumbrances; provided, however, that nothing in this Settlement Agreement or any agreement or order authorizing a sale will be construed to release, nullify, preclude or enjoin the enforcement of any environmental liability to a governmental body that any entity would be subject to as the current owner or operator of property after the date of closing of the sale and purchase of the Liquidation Trust Acquired Assets. Notwithstanding the foregoing sentence, nothing in this Settlement Agreement, or any agreement order authorizing a sale shall (a) be interpreted to deem the Buyer as the successor to

the Debtors under any successor liability doctrine with respect to any liabilities under environmental statutes or regulations for penalties for days of violation prior to the Closing Date of any sale or for liabilities relating to off-site disposal of wastes by the Debtors prior to the Closing Date; or (b) create for any governmental unit any substantive right that does not already exist under law. For the avoidance of doubt, all real and personal property other than the Gyp Stacks shall be sold free and clear of liability to manage or close the Gyp Stacks. Buyers of property subject to EPA's administrative order on consent issued pursuant to Section 7003 of RCRA, EPA Docket Number: RCRA-04-2012-4250, may be required to comply with the provisions of the order that are applicable to the property acquired on an ongoing basis.

G. Terminal Operations

29. In furtherance of the purposes of the Liquidation Trust, the Liquidation Trustee shall determine whether the creation of a limited liability company or similar entity in which the Liquidation Trust is at least an 80% owner ("*Liquidation Trust-Owned Entity*") is necessary to hold, manage and safeguard some or all of the Liquidation Trust Accounts and the Liquidation Trust Acquired Assets. If created, the Liquidation Trust-Owned Entity shall [own and/or] operate, as appropriate, the terminal operations and other such operations for the benefit of the Liquidation Trust, including all operations under the agreement with Trammo, Inc. (the "*Terminal Operations*"). The Approval Order shall provide that any liabilities of the Liquidation Trust-Owned Entity shall be satisfied only by assets of the Liquidation Trust-Owned Entity, and creditors of the Liquidation Trust-Owned Entity shall look only to the assets of the Liquidation Trust-Owned Entity for satisfaction of any liabilities thereof. For avoidance of doubt, under no circumstances may any creditor of the Liquidation Trust-Owned Entity access the Liquidation Trust Accounts for satisfaction of any liabilities of the Liquidation Trust-Owned Entity.

30. The Liquidation Trustee shall transfer the positive cash flow of the Liquidation Trust-Owned Entity, net of the costs of such entity's operations, and net of cash necessarily retained for future operations, to the Liquidation Trust Accounts to fund the Liquidation Trust Accounts pursuant to the Trust Budget and to the Environmental Trust to fund the Environmental Trust Administrative Account pursuant to the Environmental Trust approved budget in accordance with Paragraph 56.

31. Subject to approval of the Governments and the Lender Parties, the Liquidation Trustee may enter into an operating agreement ("*Operating Agreement*") with a qualified third party to provide all services necessary for any Terminal Operations.

H. Liquidation Trust Accounts

32. Within 10 business days of the Closing Date, the Liquidation Trustee shall create segregated accounts, as provided in the Trust Agreement, to fund: (a) the payment of real and personal property taxes, including income taxes (to the extent applicable), and payroll, withholding taxes, and insurance; (b) funds received from the Trammo Terminal Operation ("*Trammo Funds Account*"); (c) distributions to the Beneficiaries (the "*Distribution Fund*"); and (d) the wind-down costs of the Liquidation Trust, up to a total of \$50,000 (the "*Liquidation Wind-Down Reserve Account*"); and (e) to reimburse the State Trust Fund in accordance with Paragraph 34 (the "*Reimbursement Escrow Account*"). Except with respect to the Excess Proceeds, Debtors, and PHI shall have no rights or interest to the Liquidation Trust Acquired Assets, or to any funds remaining in any of the Liquidation Trust Accounts upon the completion of any and all final actions and disbursement of any and all final costs with respect to the Liquidation Trust Acquired Assets.

33. All interest, dividends and other revenue earned in a Liquidation Trust Account shall be retained in the respective Liquidation Trust Account and used only for the same purposes as the principal in that account as provided in this Settlement Agreement and the Liquidation Trust Agreement.

34. Reimbursement Escrow Account. Upon expenditure(s) by the State Trust Fund related to waste water treatment, the State Trust Fund may periodically bill the Liquidation Trust for reimbursement of the expenditure(s) from available funds in the Reimbursement Escrow Account, and the Liquidation Trustee shall pay from the Reimbursement Escrow Account to the State Trust Fund the reimbursement amount subject to available funds and the Reimbursement Cap. The bill will remain due and owing until paid in accordance with the Settlement Agreement. Notice of the billing request and payment shall be sent to the Environmental Trustee, the Governments and the Lender Parties.

I. Liability and Exculpation

35. None of the Liquidation Trust Parties shall be personally liable unless the Bankruptcy Court, by a Final Order, finds that such party committed fraud or willful misconduct after the Closing Date in relation to the Liquidation Trustee's duties. There shall be an irrebuttable presumption that any action taken or not taken with the approval of the Bankruptcy Court does not constitute an act of fraud or willful misconduct. Any judgment against a Liquidation Trust Party and any costs of defense relating to any Liquidation Trust Party shall be paid from the Liquidation Trust Administrative Account without the Liquidation Trust Party having to first pay from its own funds for any personal liability or costs of defense unless, by a Final Order, the Bankruptcy Court determines that such party committed fraud or willful misconduct in relation to the Liquidation Trust Party's duties. In the event that the Bankruptcy

Court makes such a determination, that Liquidation Trust Party shall reimburse the Liquidation Trust Administrative Account for all expended funds.

36. The Liquidation Trust Parties are exculpated by all persons, including without limitation, holders of claims and other parties in interest, of and from any and all claims, causes of action and other assertions of liability arising out of the ownership of Liquidation Trust Acquired Assets and the discharge of the powers and duties conferred upon the Liquidation Trust and/or Trustee by this Settlement Agreement or any order of court entered pursuant to or in furtherance of this Settlement Agreement, or applicable law or otherwise. No person, including without limitation, holders of claims and other parties in interest, will be allowed to pursue any claims or cause of action against any Liquidation Trust Party for any claim against Debtors or PHI, for making payments in accordance with this Settlement Agreement or any order of court, or for implementing the provisions of this Settlement Agreement or any order of court. Nothing in this Paragraph or this Settlement Agreement shall preclude any of the Liquidation Trust Parties from enforcing the terms of this Settlement Agreement against any others of the Liquidation Trust Parties.

37. Except as may otherwise be provided herein: (a) the Liquidation Trust Parties may rely conclusively on, and shall be protected in acting upon, any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document believed by them to be genuine and to have been signed or presented by the proper party or parties; (b) the Liquidation Trust Parties may, on behalf of the Liquidation Trust or on their own behalf in their capacity as Liquidation Trust Parties, consult with legal counsel, financial or accounting advisors and other professionals and shall not be personally liable for any action taken or not taken in accordance with the advice thereof; and (c) persons and entities dealing

with the Liquidation Trust Parties shall look only to the Liquidation Trust Acquired Assets that may be available to them consistent with this Settlement Agreement to satisfy any liability incurred by the Liquidation Trust Parties to such person in carrying out the terms of this Settlement Agreement or any order of the Court, and the Liquidation Trust Parties shall have no personal obligations to satisfy any such liability other than as provided in Paragraph 35. Neither the Governments, the Lender Parties, PHI, nor any of Debtors shall be deemed to be an owner, operator, trustee, partner, agent, shareholder, officer, or director of the Liquidation Trust or the Liquidation Trust Parties, or to be an owner or operator of the Liquidation Trust Acquired Assets on account of this Settlement Agreement or actions contemplated thereby.

J. Liens

38. In the event of a Debtor All-Asset Sale or a Trust All-Asset Sale, the Agent shall receive any proceeds attributable to the Gyp Stacks until it has received full payment of the Adequate Protection Claim, the amount of which is subject to adjudication by the Bankruptcy Court. Subject only to the payment of the Adequate Protection Claim to the Agent, the Environmental Trust and Agent shall have a lien consistent with their allocations under the Settlement Agreement on all assets of the Environmental Trust and Liquidation Trust. Subject only to the payment of the Adequate Protection Claim to the Agent in the event of a sale of the Gyp Stacks, the Governments shall have a lien on all distributions or allocations of funds to the Environmental Trust for any amounts expended by the Governments to conduct Environmental Actions on any parcel or property owned by the Liquidation Trust or the Environmental Trust. Notwithstanding any other provisions herein to the contrary, if the Governments expend funds during the Liquidation Period or any Extension Period (other than water treatment related to the Gyp Stacks) to conduct Environmental Actions on any parcel or property owned by the

Liquidation Trust or the Environmental Trust and such parcel or property is thereafter sold, the Governments' costs of Environmental Actions shall be reimbursed from the sale proceeds from such property (if any) as a priority cost of sale before any distributions are made by the Liquidation Trustee or the Environmental Trustee, including payment of the Adequate Protection Claim.

K. Transfer to Environmental Trust

39. Upon the conclusion of the Liquidation Period or any Extension Period, the Environmental Trust shall take ownership of any remaining Liquidation Trust Acquired Assets or any part thereof by special warranty deeds and bills of sale, in form and substance reasonably satisfactory to the Liquidation Trustee and Environmental Trustee and the Liquidation Trust shall wind-down and dissolve.

IX. ENVIRONMENTAL TRUST

A. Formation and Purpose of the Environmental Trust

40. Prior to or upon the closing of the Alternative Transaction, the Environmental Trust shall be created for the purpose of owning the Gyp Stacks, and performing Environmental Action with respect to the property owned by the Environmental Trust and fulfilling other obligations as set forth in this Settlement Agreement, and ultimately selling, transferring, or otherwise disposing or facilitating the reuse of all or part of the Environmental Trust Assets, if possible, all as provided herein. The Environmental Trustee may engage in trade or business, upon receipt of prior approval of the Governments, if such trade or business will be specifically for the purposes of generating more assets to fund the Environmental Trust.

41. By no later than July 10, 2015, upon approval by the Lender Parties, the Governments and the Debtors (which shall not be unreasonably withheld), the parties to the Environmental Trust

shall enter into the Environmental Trust Agreement and submit an executed copy to the Court for approval; its terms shall be deemed incorporated herein as if stated in full.

42. Project Navigator Ltd., not individually but solely in its representative capacity as Environmental Trustee, is appointed to serve as the Environmental Trustee to administer the Environmental Trust and Environmental Trust Accounts in accordance with this Settlement Agreement and the Environmental Trust Agreement, subject to approval of the Bankruptcy Court, to manage the Environmental Trust from and after the Closing Date. The Environmental Trust shall use its funds to perform or fund Environmental Action in accordance with budgets, all as approved by the Lead Agency (as defined below).

43. Environmental Action implemented or funded by the Environmental Trustee shall be overseen by a “*Lead Agency*,” which shall have the authority to approve or disapprove the proposed budget for the Environmental Trust Account (but only after consultation with the Non-Lead Agency). The initial Lead Agency shall be MDEQ for approval of trust budgets related to RCRA closure and post-closure actions and shall be EPA for approval of trust budgets related to all other matters.]. The Lead Agency may change by agreement of the Governments, and the Governments will notify the Environmental Trustee of such change in writing. The Governments may notify the Environmental Trustee that the Governments have divided up Lead Agency responsibility for different portions of Environmental Action or budgets.

44. The Governments shall not be deemed to be an owner, operator, trustee, partner, agent, shareholder, officer, or director of the Environmental Trust, or to be an owner or operator of any of the Gyp Stacks or other trust assets on account of this Settlement Agreement or actions contemplated thereby.

45. Debtors shall provide to the Environmental Trustee all environmental information and real property information concerning the Gyp Stacks in possession of Debtors or their contractors in the state and condition in which such records are found in accordance with the Environmental Trust Agreement.

46. Notwithstanding any other provision of this Settlement Agreement, the Debtors shall continue, at their own expense, the operation of any ongoing environmental activities at the Gyp Stacks until the Gyp Stacks are transferred to the Environmental Trust in accordance with this Settlement Agreement and the Environmental Trust Agreement. Upon such transfer, the Debtor shall have no right of reimbursement from the Environmental Trust for any operations or environmental activities prior to transfer of the assets to the Environmental Trust.

B. Environmental Trust Property

47. The Environmental Trust shall receive the following Environmental Trust Assets: Environmental Assigned Assets; the right to distributions of funds from the Liquidation Trust; the right to distribution of funds from the BP Proceeds; and the right to the conveyance of any assets owned by the Liquidation Trust (excluding the Liquidation Wind-Down Reserve Account) upon the earlier of: (a) conclusion of the Liquidation Period or any Extension Period, or (b) such time as the Liquidation Trustee determines that the Liquidation Trust lacks sufficient funding for the continued operation of the Liquidation Trust.

C. Marketing of Assets and Distribution of Net Proceeds

48. The Environmental Trust shall continue to market the Liquidation Trust Acquired Assets acquired by the Environmental Trust and provide reports to the Lender Parties and Governments as provided in Paragraph 23 (the reporting schedule may be altered by

agreement of the Trustee, Governments and Lender Parties). Any Net Proceeds realized from the sale of the Liquidation Trust Property shall be distributed in the same manner as set forth in Paragraph 25 (Liquidation of Property) above.

49. Any proposed sale of the Liquidation Trust Acquired Assets valued above \$500,000 is subject to prior approval in writing by the Lender Parties and the Governments, which approval shall not be unreasonably withheld. In the event the Lenders and the Governments are unable to reach an agreement on a proposed sale, the Environmental Trust may seek an order from the Bankruptcy Court to authorize the sale.

50. Any sale or lease or other disposition of assets that would involve use of the Gyp Stacks must be approved by the Governments in their sole discretion, and would require that the Buyer or lessee demonstrate to the satisfaction of the Governments the financial means, technical competence, and commitment to operate the Gyp Stacks, in compliance with federal and state environmental requirements, including but not limited to financial assurance requirements. Such transaction must also provide for the assumption of environmental liabilities to the Governments related to the Gyp Stacks and satisfy financial assurance required by the Governments under non-bankruptcy law including the financial assurance requirements in RCRA subtitle C, all of which shall be subject to the approval of the Governments.

D. Distributions Upon Winding-Up of the Environmental Trust

51. Any funds remaining in the Environmental Trust after the completion of all Environmental Actions required by the Governments and expenses for the winding down of the Trust shall be distributed by the Environmental Trustee to the Agent until the Agent Secured Claim is paid in full, then to the Bankruptcy Estates as Excess Proceeds. The Lender Parties shall have no rights with respect to the Environmental Trust other than the right to receive proceeds in

accordance with Paragraph [] and such residual funds. The Debtors (with the exception of the Excess Proceeds) and the Liquidation Trustee shall have no rights with respect to the Environmental Trust.

E. Funding from the State Trust Fund

52. Upon the Closing Date, the State Trust Fund may be accessed to pay the costs associated with the operation and maintenance of the waste water treatment system incident to closure of the Phosphogypsum Stack No. 2 and associated ditches/ponds, in accordance with the terms of the Trust Agreement and as approved by the MDEQ. All costs not funded by the State Trust Fund shall be paid first from any available remaining proceeds of the DIP/Exit Facility to the extent available under Paragraph 15 and thereafter from remaining assets of the Environmental Trust.

53. The Environmental Trustee shall at all times seek to have the Environmental Trust treated as a “qualified settlement fund” as that term is defined in Treasury Regulation Section 1.468B-1. For purposes of complying with Section 468B(g)(2) of the Internal Revenue Code, this Settlement Agreement shall constitute a consent decree between the Parties. Approval of the Bankruptcy Court, as a unit of the District Court, shall be sought, and the Bankruptcy Court shall retain continuing jurisdiction over the Environmental Trust sufficient to satisfy the requirements of Treasury Regulation Section 1.468B-1. The Environmental Trustee shall not elect to have the Environmental Trust treated as a grantor trust. The Environmental Trust shall be treated as a separate taxable entity. The Environmental Trustee shall cause any taxes imposed on the earnings of the Environmental Trust to be paid out of such earnings and shall comply with all tax reporting and withholding requirements imposed on the Environmental Trust under applicable tax laws. The Environmental Trustee shall be

the “administrator” of the Environmental Trust pursuant to Treasury Regulation Section 1.468B-2(k)(3).

54. The performance by the Environmental Trustee of its duties under this Settlement Agreement, including but not limited to the sale, lease or other disposition of some or all of the Environmental Trust, shall not be considered to constitute the Environmental Trustee’s engaging in a trade or business.

F. Environmental Trust Accounts

55. The Environmental Trustee shall create the following Environmental Trust Accounts, an Environmental Trust Environmental Cost Account and an Environmental Trust Administrative Account within the Environmental Trust. The purpose of an Environmental Trust Environmental Cost Account shall be to provide funding for future Environmental Actions within an approved budget as set forth in Paragraphs 59 and 60. The purpose of the Environmental Trust Administrative Account is to fund the payment of real estate taxes, income taxes (to the extent applicable), insurance, and other administrative costs associated with property in the Environmental Trust, within an approved budget as set forth in Paragraphs 59 and 60. The Environmental Trustee shall create within the Environmental Trust Administrative Account a segregated Environmental Trust wind-down reserve account, in an amount of not more than \$50,000, to fund the wind-down costs of the Environmental Trust (the “*Environmental Wind-Down Trust Account*”).

56. The Environmental Trust Administrative Account shall be funded with proceeds from the net income of the Trammo Terminal Operations, in accordance with approved budgets and Lender Parties’ approval (which shall not be unreasonably withheld), and, as available, with 15% of receivables by the Environmental Trust under Paragraphs 17.d and e and 25.d and e. In

the event of a shortfall in either the Administrative Account or the Environmental Trust Account, the Governments may approve in writing a transfer from one account to the other. In the event of a shortfall in the Environmental Trust Administrative Account, the Environmental Trustee may apply to the Liquidation Trustee for additional funding from the net income of the Trammo Terminal Operations which request is subject to the approval of the Liquidation Trustee, the Lender Parties and the Governments which will not be unreasonably withheld.

57. Environmental Trust Assets shall be held in trust solely for the purposes provided in this Settlement Agreement. The Governments shall be the sole beneficiaries of the Environmental Trust Accounts except that the Lender Parties and the Debtors shall be beneficiaries solely of the distributions by the Environmental Trust to the Lender Parties under Paragraphs 25 and 27 of this Settlement Agreement. Any funds remaining in the Environmental Trust Accounts after the completion of all Environmental Actions required by the Governments and the winding down of the Environmental Trust by the Environmental Trustee shall be paid to the Agent until the Agent Secured Claim has been paid in full, and then to the Bankruptcy Estates as Excess Proceeds. The Lender Parties and the Debtors shall have no rights with respect to the Environmental Trust Accounts other than as expressly set forth in this Paragraph.

58. All interest, dividends and other revenue earned in an Environmental Trust Account shall be retained in the respective Environmental Trust Account and used only for the same purposes as the principal in that account as provided in this Settlement Agreement, subject to any reallocation approved by the Governments in accordance with the terms of this Settlement Agreement.

G. Budgets and Reports

59. Prior to the Effective Date, the Environmental Trustee shall submit to the Governments for approval a budget for the first 120 days following the Effective Date (a “*120 Day Budget*”) for the Environmental Trust Environmental Cost Account and for the Environmental Trust Administrative Account. The Lead Agency shall have the authority to approve or disapprove the proposed 120 Day Budget after consultation with the Non-Lead Agency. No expenses may be incurred or paid from the Environmental Trust Environmental Cost Account or the Environmental Trust Administrative Account by the Environmental Trustee that are inconsistent with an approved 120 Day Budget except in the event of an emergency as provided in the Environmental Trust Agreement. The Lender Parties shall be served with a copy of the 120 Day Budget, simultaneously with the Governments.

60. Within 90 days following the Effective Date in the first year and thereafter at least 60 days before January 1 of each year following the Effective Date, the Environmental Trustee shall provide to the Governments and the Lender Parties a statement showing the balance of the accounts and proposed budget for the coming year. The Lead Agency shall have the authority to approve or disapprove the proposed budget for the Environmental Trust Environmental Cost Account or Environmental Trust Administrative Account, but only after consultation with the Non-Lead Agency. No expense may be incurred or paid from the Environmental Trust Environmental Cost Account or the Environmental Trust Administrative Account by the Environmental Trustee that are inconsistent with the approved budget, except in the event of emergency as provided in the Environmental Trust Agreement.

H. Expenditures by Environmental Trust

61. The Environmental Trustee shall pay funds from the Environmental Trust Environmental Cost Account to the Lead Agency making a written request for funds for

reimbursement within 30 days following such request. Such written request shall: (a) be in accordance with the approved budget, and (b) shall specify what the funds were used for and shall certify that they were used only for Environmental Actions performed and/or oversight costs incurred after the Effective Date by the Lead Agency with respect to that site.

62. The Environmental Trustee shall also pay funds from an Environmental Trust Environmental Cost Account to the Non-Lead Agency making a written request for funds within 30 days following such request where the Lead Agency has requested the assistance of the Non-Lead Agency with respect to that site. Such written request shall: (a) be in accordance with the approved budget, and (b) shall specify what the funds were used for and shall certify that they were used only for Environmental Actions performed and/or oversight costs incurred after the Effective Date by the Non-Lead Agency with respect to that site.

63. In the case of requests by the Lead Agency to the Environmental Trustee to use the funds from a particular Environmental Trust Environmental Cost Account to perform Environmental Actions in accordance with the approved budget, the Environmental Trustee shall utilize the funds and interest earned thereon from that Environmental Trust Environmental Cost Account to undertake such work promptly and in accordance with any schedule approved by the Lead Agency. The Environmental Trustee shall require liability insurance as set forth in the Environmental Trust Agreement from each contractor hired to perform work.

I. Environmental Trust Miscellaneous Provisions

64. Except as otherwise provided in Paragraph 69, in no event shall any of the Environmental Trust Parties be held liable to any third parties for any liability, action, or inaction of any other party, including Debtors, Lender Parties or any other Environmental Trust Party.

65. The Environmental Trust is intended to be governed by the terms of this Settlement Agreement and the Environmental Trust Agreement and shall not be subject to any provision of the Uniform Custodial Trust Act as adopted by any state, now or in the future.

66. The Environmental Trustee shall provide the Governments and their representatives and contractors access to all portions of the Facility that the Environmental Trust owns at all reasonable times for the purposes of conducting or monitoring Environmental Action at or near the Facility.

67. On written notice to the Lender Parties, and an opportunity to object, the United States or Mississippi, or an agency that is a designee thereof, may at any time propose in writing to take ownership of any or all assets of the Environmental Trust. Any such proposed transfer and the terms thereof are subject to approval in writing by EPA and MDEQ (after consultation with the Environmental Trustee). However, neither the United States nor Mississippi shall be required to accept an ownership interest in remaining properties upon termination of the Environmental Trust.

68. Subject to the approval of the Governments, the Environmental Trustee may propose a sale, lease, or disposition of property that includes funding from, or the retention of some portion of liability by, the respective Environmental Trust Environmental Cost Account and/or the Environmental Trust Administrative Account, provided that the net effect of any proposed sale, lease or disposition is to lessen the total financial obligations and liabilities as would otherwise be incurred in the absence of any such sale, lease, or disposition.

69. None of the Environmental Trust Parties shall be personally liable unless the Bankruptcy Court, by a Final Order, determines that it committed fraud or willful misconduct after the Effective Date in relation to the Environmental Trustee's duties. There shall be an

irrebuttable presumption that any action taken or not taken with the approval of the Bankruptcy Court does not constitute an act of fraud or willful misconduct, provided that there has been no misrepresentation to the Court. Any judgment against an Environmental Trust Party and any costs of defense relating to any Environmental Trust Party shall be paid from and limited to funds from the Environmental Trust Environmental Cost Account only if it relates to the Environmental Action at the Facility, or the Environmental Trust Administrative Account, without the Environmental Trust Party having to first pay from its own funds for any personal liability or costs of defense unless a final order of the Bankruptcy Court, that is not reversed on appeal, determines that it committed fraud or willful misconduct in relation to the Environmental Trust Party's duties; in the event the Bankruptcy Court makes such a determination, that Environmental Trust Party shall reimburse the relevant Environmental Trust Account for all expended funds.

70. The Environmental Trust Parties are exculpated by all persons, including without limitation, holders of claims and other parties in interest, of and from any and all claims, causes of action and other assertions of liability arising out of the ownership of Environmental Trust assets and the discharge of the powers and duties conferred upon the Environmental Trust and/or Environmental Trustee by this Settlement Agreement or any order of Court entered pursuant to or in furtherance of this Settlement Agreement, or applicable law or otherwise. No person, including without limitation, holders of claims and other parties in interest, will be allowed to pursue any claims or cause of action against any Environmental Trust Party for any claim against Debtors, for making payments in accordance with this Settlement Agreement or any order of Court, or for implementing the provisions of this Settlement Agreement or any order of Court.

Nothing in this Paragraph or the Settlement Agreement shall preclude any of the Parties from enforcing the terms of this Settlement Agreement against the Environmental Trust Parties.

71. Except as may otherwise be provided herein: (a) the Environmental Trust Parties may rely conclusively on, and shall be protected in acting upon, any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document believed by them to be genuine and to have been signed or presented by the proper party or parties; (b) the Environmental Trust Parties may, on behalf of the Environmental Trust or on their own behalf in their capacity as Environmental Trust Parties, consult with legal counsel, financial or accounting advisors and other professionals and shall not be personally liable for any action taken or not taken in accordance with the advice thereof; and (c) persons or entities dealing with the Environmental Trust Parties shall look only to the Environmental Trust Assets that may be available to them consistent with this Settlement Agreement to satisfy any liability incurred by the Environmental Trust Parties to such person in carrying out the terms of this Settlement Agreement or any order of the Bankruptcy Court, and the Environmental Trust Parties shall have no personal obligations to satisfy any such liability other than as provided in Paragraph 69.

IX. COVENANTS, RESERVATIONS AND OTHER TERMS

A. Governments' Covenants Not to Sue

72. In consideration of the distributions that will be made under the terms of this Settlement Agreement, and except as specifically provided in Paragraphs 74-77 of this Settlement Agreement, the United States, on behalf of EPA, and MDEQ covenant not to sue or assert any civil claims or causes of action or to take administrative action against the Debtors, PHI, the Lender Parties, the Liquidation Trust, or the Environmental Trust Parties pursuant to the

RCRA , 42 U.S.C. §§ 6901 *et seq.*, the CAA, 42 U.S.C. §§ 7401 *et seq.*, the CWA, 33 U.S.C. §§ 1251 *et seq.*, and Sections 103, 106, or 107 of the Comprehensive Environmental Response Compensation and Liability Act (“*CERCLA*”), 42 U.S.C. §§ 9603, 9606 or 9607, or related state law provisions, or pursuant to any liability or obligation asserted in EPA’s or MDEQ’s proofs of claim, for violations, corrective actions, response actions or response costs related to the Facility. The Governments also covenant not to bring an adversary proceeding or other civil or administrative action against the Debtors or the Lender Parties (including Lender Parties’ representatives serving on, or as observers to, the PHI board of directors) with respect to the (a) BP Claim or the Facility based on theories of fraud, fraudulent inducement, equitable subordination, debt recharacterization, or fraudulent conveyance under the Bankruptcy Code or applicable state law, or (b) for past conduct of the Debtors and the Lender Parties (including Debtors’ and the Lender Parties’ representatives serving on or as observers to the PHI board of directors) with respect to the Pre-Petition Credit Agreement or any negotiations with respect to the Debtors’ environmental obligations. The applicable covenants shall extend to each of the Debtors’, the Lender Parties’ and PHI’s respective officers, directors (including Lender Parties’ representatives serving as PHI board observers), employees, successors and assigns, but only to the extent that the alleged liability of such person or entity is based on his, her, or its acts, omissions or status as such and in his, her, or its capacity as such. With respect to Debtors, the covenants not to sue under environmental statutes shall extend only to those officers, directors, and employees who served in such capacity only after July 1, 2013.

B. Contribution Protection

73. The Parties agree, and by entering into this Settlement Agreement, the Bankruptcy Court shall find, that this Settlement Agreement constitutes a judicially approved

settlement pursuant to which the Debtors, Lender Parties, PHI, the Liquidation Trust and the Environmental Trust Parties have resolved liability to the United States and State of Mississippi within the meaning of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613, and are 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 Agreement. The matters addressed in this Settlement Agreement are all response actions taken or to be taken, and all response costs incurred or to be incurred, at or in connection with the Facility by the United States, Mississippi or any potentially responsible parties. The contribution protection shall extend to each of the Debtors,' the Lender Parties' and PHI's respective officers, directors (including PHI's board observers), employees, successors and assigns, but only to the extent that the alleged liability of such person or entity is based on his, her, or its acts, omissions or status as such and in his, her, or its capacity as such. With respect to Debtors, the contribution protection for environmental claims shall extend only to those officers, directors, and employees who served in such capacity only after July 1, 2013.

C. Reservations of Rights

74. The covenants set forth above do not pertain to any matters other than those expressly specified therein and do not extend to any persons other than those specified therein. Notwithstanding the above, the covenants not to sue do not apply for purposes of seeking insurance coverage for environmental liabilities. The Governments expressly reserve, and this Settlement Agreement is without prejudice to, all rights against the Debtors, Lender Parties, PHI, the Liquidation Trust, and the Environmental Trust Parties, with respect to all matters other than those set forth in the Covenants. Except as otherwise provided herein and resolved, the Parties expressly reserve all other claims, demands, and causes of action, either judicial or

administrative, past, present, or future, in law or equity, which they may have against all other persons, firms, corporations, entities, or predecessors of the Debtors, PHI, or the Lender Parties for any matter arising at or relating in any manner to the Facility. Further, nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to enter into any settlement that gives rise to contribution protection for any person not a party to this Settlement Agreement.

75. The United States and MDEQ also specifically reserve, and this Settlement Agreement is without prejudice to: (a) criminal liability and (b) any action based on a failure to meet a requirement of this Settlement Agreement. With respect to PHI, the covenants not to sue are conditioned on the accuracy of the Financial Information provided by PHI, and the United States and MDEQ reserve, and this Settlement Agreement is without prejudice to, the right to commence a new action, if the Financial Information is subsequently determined by the Governments to be misleading, false, or materially inaccurate or if the certifications made by PHI in Paragraph 89 are determined to be misleading, false or materially inaccurate. In addition, the United States and MDEQ reserve, and this Settlement Agreement is without prejudice to, all rights against the Debtors, Lender Parties, PHI, and the Liquidation Trust, and their respective successors, assigns, officer, directors, and employees, as to liability under federal or state law for their respective acts that occur after the date of lodging of this Settlement Agreement, including, when applicable, liability as a current owner or operator of Debtors' assets or assets in the Liquidation Trust. Debtors' potential liability for future acts with respect to the Facility, or as a current owner or operator of the Facility, extends through the date of transfer of Debtors' assets to the Liquidation Trust or Environmental Trust, or other applicable transferee.

76. The United States and MDEQ reserve all rights against the Environmental Response Trust Parties with respect to any action to enforce their rights under this Settlement

Agreement, including but not limited to the right to file suit against the Environmental Trust or Environmental Trust Parties at any time for fraud or willful misconduct (with all funds recovered in any such action to be restored to the Environmental Trust account from which they were taken).

77. Nothing in this Settlement Agreement shall be deemed to limit the authority of the United States or MDEQ to take any response action under Section 104 of CERCLA, 42 U.S.C. § 9604, or any other applicable statute or regulation, or to alter the applicable legal principles, with respect to Section 113 of CERCLA, 42 U.S.C. § 9613, governing judicial review of any action taken by the United States or MDEQ pursuant to such authority, provided, however, that nothing in this sentence affects the covenants set forth in Paragraph 72. Nothing in this Settlement Agreement shall be deemed to limit the information-gathering authority of the United States or MDEQ under Sections 104 and 122 of CERCLA, 42 U.S.C. §§ 9604 and 9622, under RCRA, CAA, CWA or any other applicable federal or state statute or regulation, or to excuse the Debtors, Lender Parties, PHI, the Liquidation Trust, or the Environmental Trust from any disclosure or notification requirements imposed by CERCLA, RCRA, CAA or CWA, similar state laws, or any other applicable statute or regulation.

D. Covenants Not to Sue By Debtors, Lender Parties, PHI, Liquidation Trust and Environmental Trust

78. The Debtors, Lender Parties, PHI, Liquidation Trust and the Environmental Trust covenant not to sue and agree not to assert or pursue any claims or causes of action against the United States, including any department, agency, or instrumentality of the United States, or Mississippi, with respect to the property of the Debtors, including, but not limited to: (i) any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established pursuant to 26 U.S.C. § 9507; (ii) any claim under Sections 107 or 113 of CERCLA, 42 U.S.C.

§§ 9607 or 9613, or Section 7002(a) of RCRA, 42 U.S.C. § 6972(a); or (iii) any claims arising out of response activities at the Debtors' property. Nothing in this Settlement Agreement shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

79. Notwithstanding any other provision of this Settlement Agreement, the Debtors, Lender Parties, PHI, Liquidation Trust and Environmental Trust reserve, and this Settlement Agreement is without prejudice to, claims against the United States and Mississippi in the event any claim is asserted by the United States or Mississippi against the Debtors, Lender Parties, PHI, Liquidation Trust or Environmental Trust pursuant to any of the reservations set forth in Paragraph C, other than for failure to meet a requirement of this Settlement Agreement, but only to the extent that the Debtors,' Lender Parties,' PHI's, Liquidation Trust's or Environmental Trust's claim arises from the same claim or cause of action that the United States or Mississippi is seeking pursuant to the applicable reservation.

X. TREATMENT OF GOVERNMENTS' CLAIMS

80. EPA's claims for civil penalties for violations of RCRA, CAA, and CWA shall be allowed general unsecured claims in the amounts of \$2,300,000 for RCRA violations, \$600,000 for CAA violations, and \$1,400,000 for CWA violations, but shall be subordinated to the allowed claims of other general unsecured creditors. MDEQ's claim for civil penalties for violations of RCRA, CAA, and CWA shall be allowed general unsecured claims in the amounts of \$2,300,000 for RCRA violations, \$600,000 for CAA violations, and \$1,400,000 for CWA violations, but shall be subordinated to the allowed claims of other general unsecured creditors. MDEQ's claims for damages to natural resources shall be an allowed general unsecured claim

of \$186,000.00 which shall be paid without discrimination in the same manner as allowed claims of other general unsecured creditors are paid, or from any available insurance proceeds.

XI. CONDITIONS TO EFFECTIVENESS

81. The effectiveness of this Settlement Agreement is conditioned on the occurrence of each of the following conditions by each of the Parties:

(a) The Bankruptcy Court shall have entered the Approval Order, in form and substance reasonably acceptable to the Parties.

(b) This Settlement Agreement shall be lodged with the Bankruptcy Court and shall thereafter be subject to a period of public comment following publication of notice of this Settlement Agreement in the *Federal Register*. After the conclusion of the public comment period, the United States will file with the Bankruptcy Court any comments received, as well as the United States' responses to the comments, and at that time, if appropriate, the United States will request approval of this Settlement Agreement. The United States reserves the right to withdraw or withhold its consent if the comments regarding this Settlement Agreement disclose facts or considerations which indicate that this Settlement Agreement is not in the public interest.

(c) The Bankruptcy Court shall have entered an Order granting the Committee 9019 Motion and approving the Committee Settlement.

(d) The Bankruptcy Court shall have entered of the Agreed Final DIP Order.

82. Upon satisfaction of the foregoing, this Settlement Agreement and related documents, applies to, is binding upon, and shall inure to the benefit of the signatories hereto, their legal successors and assigns, and any trustee, examiner or receiver appointed in the Bankruptcy Cases.

XII. MISCELLANEOUS PROVISIONS

83. Motion to Approve Settlement Agreement. The Debtors shall promptly seek approval of this Settlement Agreement under Federal Rules of Bankruptcy Procedure 9019 or applicable provisions of the Bankruptcy Code.

84. Cooperation of Trustees. The trustees of the Liquidation Trust and the Environmental Trust shall cooperate to achieve the objectives of the trusts..

85. Rights in Insurance Policies. All rights to insurance coverage for environmental liabilities for amounts spent by the Governments, the Environmental Trust, Debtors, and Debtors' predecessors are preserved, and are assigned to the Environmental Trust to the fullest extent permitted by law.

86. Easement. The Liquidation Trust and the Environmental Trust shall each grant to the other an easement over part or all of the parcels of land transferred to each Trust, respectively, as may be necessary to provide egress, ingress and access to public roads, pipelines, rights of way, hereditaments and utilities, for any parcels of land left without such access following the transfers contemplated herein. On or before the Closing Date, the easements referred to in this Paragraph 87 shall be agreed to by the Lenders and the Governments, which agreement shall not be unreasonably withheld. The easements referred to in this Paragraph 86 shall be recorded in the land records of Jackson County, Mississippi. Access to the Gyp Stacks will be subject to reasonable restrictions consistent with security and ongoing Environmental Action.

87. Cooperation on Information Gathering. PHI, the Liquidation Trust and the Environmental Trust agree to cooperate with the Governments' requests for historic information concerning the operations of the Debtors' business and to preserve and make available to the

Governments upon request, to the same extent as if formally requested under the Governments' information gathering authorities, Debtors' and PHI's documents regarding their respective operations that are within the possession, custody or control of PHI, the Liquidation Trust, or the Environmental Trust. The Debtors shall preserve, and shall not discard, destroy or conceal, documents and information of the Debtors in their possession, custody or control. Upon the Sale Date or Closing Date, as applicable, Debtors shall cooperate in the transfer of their documents and information to the Environmental Trust and Liquidation Trust, or other transferee, as applicable, in accordance with this Settlement Agreement. The Governments reserve their rights under information gathering authorities to require such information.

88. In furtherance of the administrative duties of the Successor, the Successor may reasonably request any information or records of the Debtors, in the possession, custody or control of the Liquidation Trust or the Environmental Trust. The Liquidation Trust and the Environmental Trust shall provide reasonable access to the Successor, or a representative, to find, identify, inspect and copy the information or records requested.

89. PHI Certification. PHI hereby Certifies that it has submitted to the United States and MDEQ Financial Information that fairly, accurately, and materially sets forth its financial circumstances, including not only PHI's present income and assets, but also any income or assets that PHI reasonably anticipates acquiring in the foreseeable future, and that those circumstances have not materially changed between the time the Financial Information was submitted to the United States and the time PHI signs this Settlement Agreement.

90. Taxes. In connection with the Closing Date and after the Closing Date, each of the Parties (other than the Governments) will support the efforts of the Debtors, the Trusts to

obtain tax relief from the applicable taxing authorities for property taxes including abatement of property tax payments by the Debtors and the Trusts.

91. Withdrawal. If for any reason (a) this Settlement Agreement is withdrawn by the United States as provided in Paragraph 81.b, or (b) this Settlement Agreement is not approved by the Bankruptcy Court: (i) this Settlement Agreement shall be null and void, and the parties hereto shall not be bound under this Settlement Agreement or under any documents executed in connection herewith; (ii) the Parties shall have no liability to one another arising out of or in connection with this Settlement Agreement or under any documents executed in connection herewith; and (iii) this Settlement Agreement and any documents prepared in connection herewith shall have no residual or probative effect or value. If this Settlement Agreement is not approved by the Court, the Governments shall have 10 days from the date of an Order rejecting or disapproving this Settlement Agreement to object and challenge the proposed Final DIP Order and to object to the Committee Settlement.

92. Merger. This Settlement Agreement and any other documents to be executed in connection herewith and referred to herein constitute the sole and complete agreement of the Parties hereto with respect to the matters addressed herein.

93. Inconsistent Terms. In the event of an inconsistency between the terms of this Settlement Agreement and the Committee Settlement, the terms of this Settlement Agreement shall control.

94. Amendment. This Settlement Agreement may not be amended except by a writing signed by all the Parties and approved by the Bankruptcy Court.

95. Counterparts. This Settlement Agreement may be executed in counterparts, each of which shall constitute an original, and all of which shall constitute one and the same agreement.

96. Jurisdiction. The Bankruptcy Court shall retain jurisdiction over the subject matter of this Settlement Agreement and the Parties hereto for the duration of the performance of the terms and provisions of this Settlement Agreement for the purpose of enabling any of the Parties to apply at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or interpretation of this Settlement Agreement or to effectuate or enforce compliance with its terms.

97. Waiver of Rule 6004(h) Stay. Notwithstanding Bankruptcy Rule 6004(h) or any other applicable provision of the Bankruptcy Code, the Federal Rules of Civil Procedure, or Federal Rules of Bankruptcy Procedure to the contrary, the Approval Order shall provide that it is immediately effective upon entry.

The undersigned party hereby enters into this Settlement Agreement in the chapter 11 cases of *In re Mississippi Phosphates, Inc., et. al.*, jointly administered under Case No. 14-51667-KMS.

FOR THE UNITED STATES OF AMERICA:

JOHN C. CRUDEN
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

Date: 6/22/15

By: 

KENNETH G. LONG
Senior Attorney
D.C. Bar no. 414791
KARL FINGERHOOD
Senior Counsel
LISA CHERUP
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044

Date: 6/22/15

By: 

ALAN TENENBAUM
National Bankruptcy Coordinator
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

Date: 6/18/15



SUSAN SHINKMAN

Director
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
Washington, D.C. 20460

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

Date: 6/18/15



MARY W. WILKES
Regional Counsel
United States Environmental Protection Agency, Region 4
SNAFC, 13th Floor
61 Forsyth Street, S.W.
Atlanta, GA 30303-8960

Date: 6/19/15



JOAN REDLEAF DURBIN
Senior Attorney
United States Environmental Protection Agency, Region 4
SNAFC, 13th Floor
61 Forsyth Street, S.W.
Atlanta, GA 30303-8960

FOR MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY

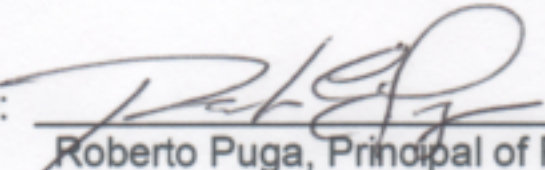
Date: 6/22/15



ROY FURRH
Mississippi Department of Environmental Quality
General Counsel
MS Bar No.: 4321
P.O. Box 2261
Jackson, MS 39225
Telephone: 601-961-5260
Email: Roy_Furrh@deq.state.ms.us


FOR THE ENVIRONMENTAL TRUSTEE:

Date: 6/22/15

By: 
Roberto Puga, Principal of Project Navigator Ltd.
Solely in its Capacity as Trustee of the
Environmental Trust
One Pointe Dr., Suite 320
Brea, CA 92821

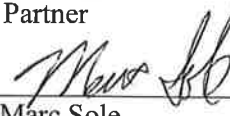
FOR LENDER PARTIES

STUW LLC,
as Administrative Agent to Pre-Petition and Post-Petition
Lenders

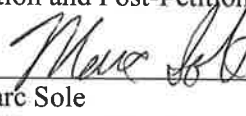
By: 
Marc Sole
Authorized Signatory

HUDSON BAY FUND LP,
as Pre-Petition and Post-Petition Lender

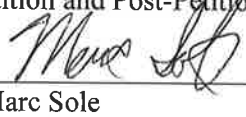
By: Hudson Bay Capital Associates LLC,
Its: General Partner

By: 
Marc Sole
Authorized Signatory

HUDSON BAY INTERMEDIATE FUND LTD.,
as Pre-Petition and Post-Petition Lender

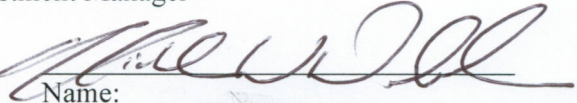
By: 
Marc Sole
Authorized Signatory

HUDSON BAY MASTER FUND LTD.,
as Pre-Petition and Post-Petition Lender

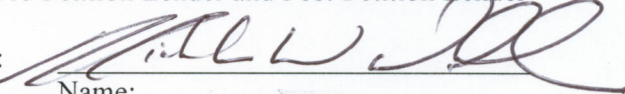
By: 
Marc Sole
Authorized Signatory

WILFRID GLOBAL OPPORTUNITY FUND LP,
as Pre-Petition Lender

By: Wilfrid Aubrey LLC,
Its: Investment Manager


By: 
Name:
Title: **Nicholas W. Walsh**
MANAGING MEMBER

IFC ACQUISITION GROUP LLC,
as Pre-Petition Lender and Post-Petition Lender

By: 
Name:
Title: **Nicholas W. Walsh**
MANAGING MEMBER


BROADBILL PARTNERS, LP,
as Pre-Petition and Post-Petition Lender

By: Broadbill Partners GP LLC,
Its: General Partner

By: 
Name: NEIL SUBIN
Title: MANAGING MEMBER

BROADBILL PARTNERS II, LP,
as Pre-Petition and Post-Petition Lender

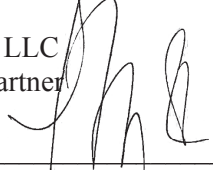
By: Broadbill Partners GP LLC,
Its: General Partner

By: 
Name: NEIL SUBIN
Title: MANAGING MEMBER

MILFAM I L.P.

as Pre-Petition and Post-Petition Lender

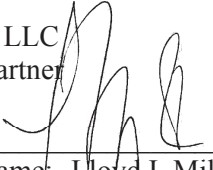
By: MILFAM LLC
Its: General Partner

By: 
Name: Lloyd I. Miller III
Title: Manager

MILFAM II L.P.

as Pre-Petition and Post-Petition Lender

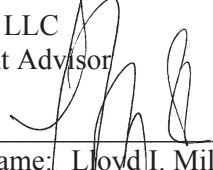
By: MILFAM LLC
Its: General Partner

By: 
Name: Lloyd I. Miller III
Title: Manager

Lloyd I. Miller Trust A-1

as Pre-Petition and Post-Petition Lender

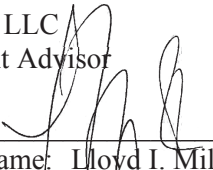
By: MILFAM LLC
Its: Investment Advisor

By: 
Name: Lloyd I. Miller III
Title: Manager

Lloyd I. Miller Trust A-2

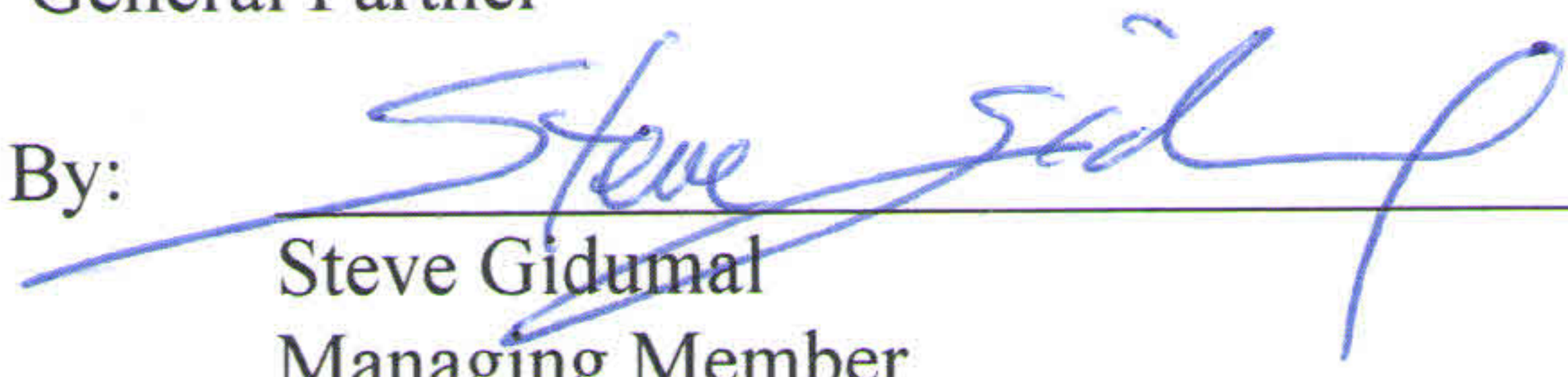
as Pre-Petition and Post-Petition Lender

By: MILFAM LLC
Its: Investment Advisor

By: 
Name: Lloyd I. Miller III
Title: Manager

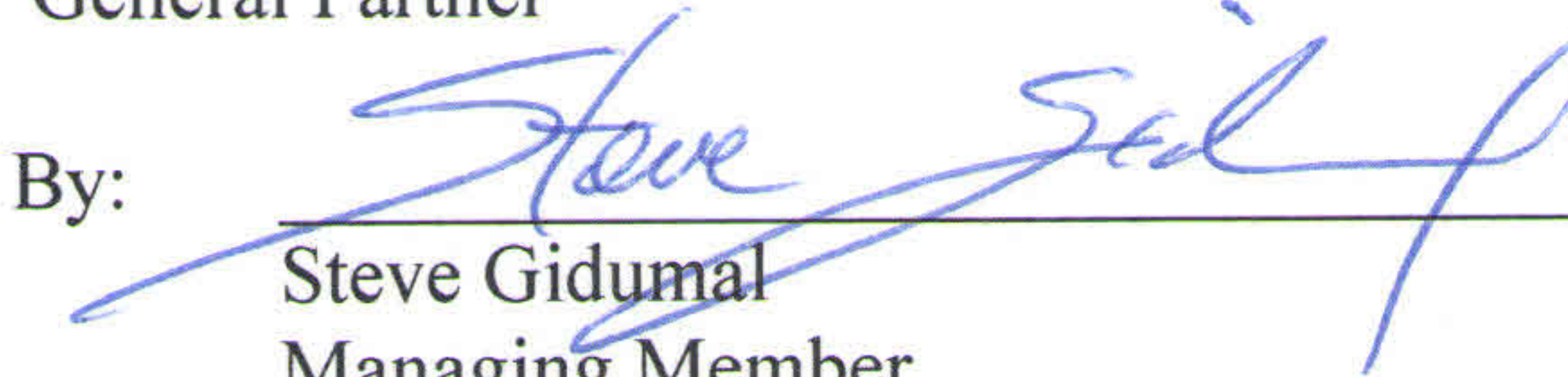
VIRTUS CAPITAL LP
as Pre-Petition and Post-Petition Lender

By: Virtus Capital Advisors LLC,
Its: General Partner

By: 
Steve Gidumal
Managing Member

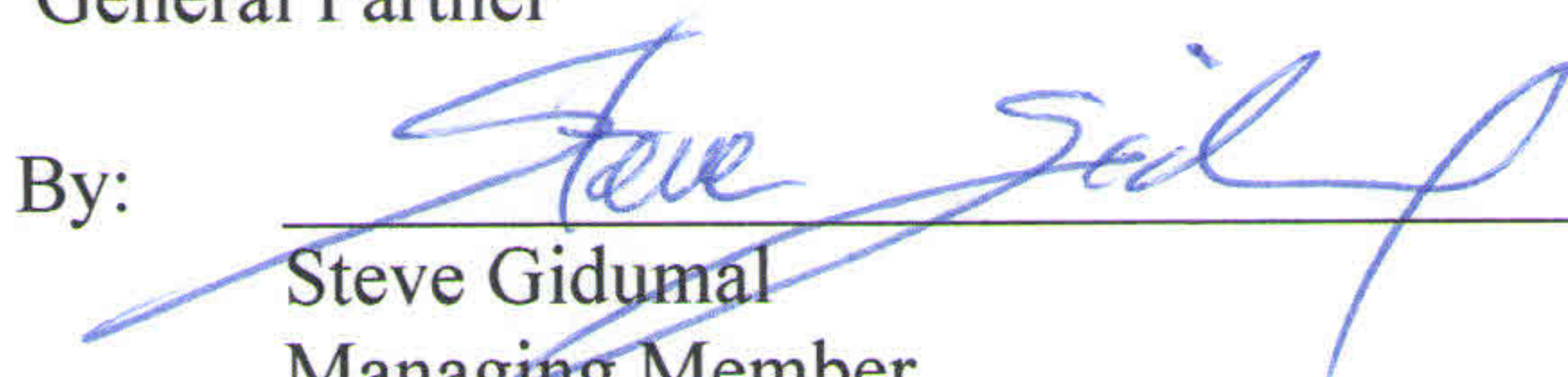
VIRTUS DB RECOVERY LP
as Pre-Petition Lender

By: Virtus Capital Advisors LLC,
Its: General Partner

By: 
Steve Gidumal
Managing Member

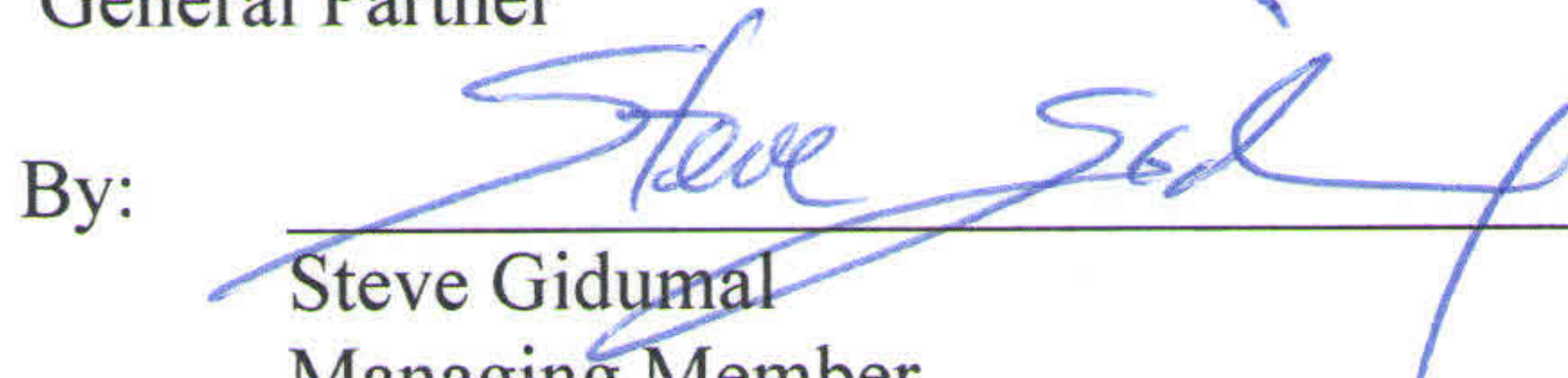
VIRTUS KG FUND LP,
as Pre-Petition Lender

By: Virtus Capital Advisors LLC,
Its: General Partner

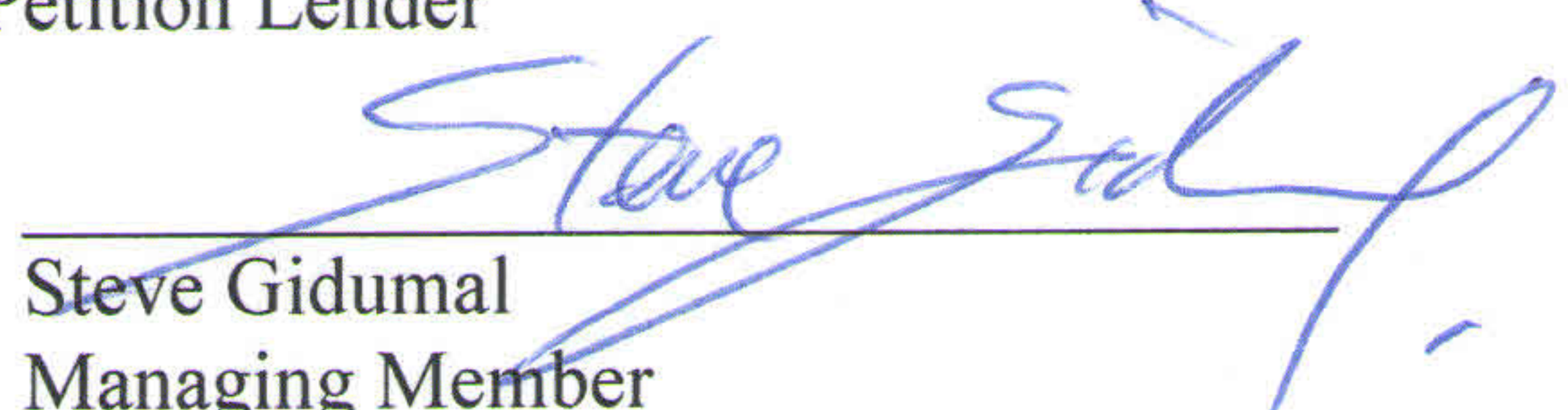
By: 
Steve Gidumal
Managing Member

VIRTUS ANGELS FUND, LP,
as Pre-Petition Lender

By: Virtus Capital Advisors LLC,
Its: General Partner

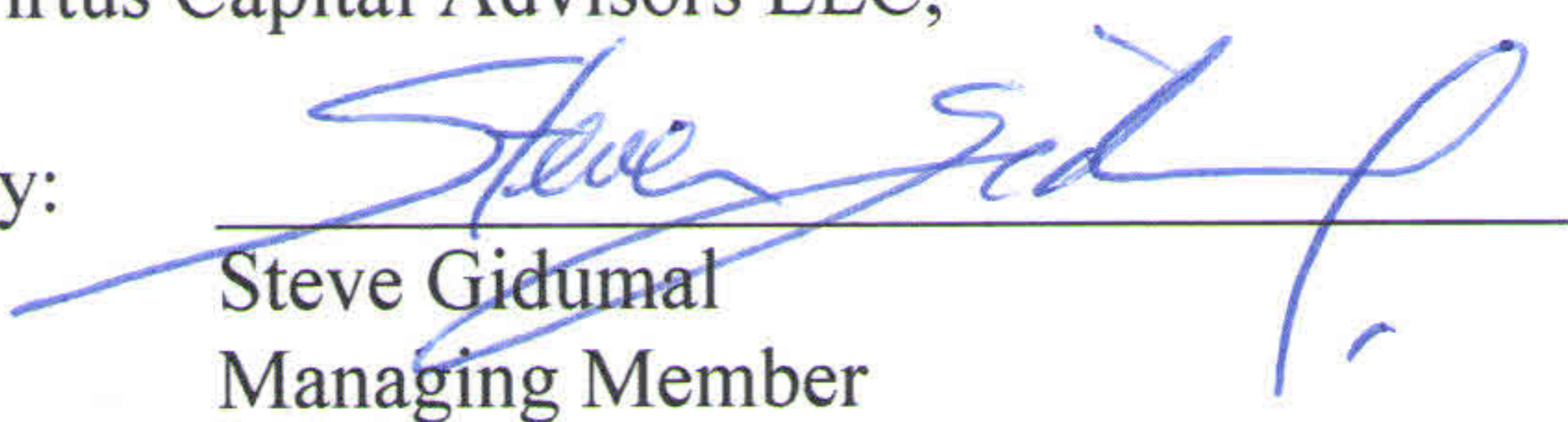
By: 
Steve Gidumal
Managing Member

VIRTUS TK LLC,
as Pre-Petition Lender

By: 
Steve Gidumal
Managing Member

FALLEN ANGELS FUND, LP,
as Post-Petition Lender

By: Virtus Capital Advisors LLC,

By: 

Steve Gidumal
Managing Member

PINE RIVER MASTER FUND LTD.

as Pre-Petition and Post-Petition Lender

PINE RIVER CREDIT RELATIVE VALUE MASTER FUND LTD.

as Pre-Petition and Post-Petition Lender

PINE RIVER FIXED INCOME MASTER FUND LTD.

as Pre-Petition and Post-Petition Lender

PINE RIVER DEERWOOD FUND LTD.

as Pre-Petition and Post-Petition Lender

LMA SPC FOR AND ON BEHALF OF THE MAP 89 SEGREGATED PORTFOLIO,

as Pre-Petition and Post-Petition Lender

By: PINE RIVER CAPITAL MANAGEMENT L.P.,

Its: Investment Manager

By:

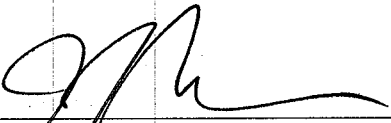


Jeff Stolt

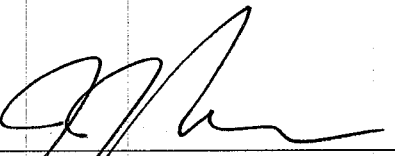
Chief Financial Officer

FOR DEBTORS


MISSISSIPPI PHOSPHATES CORPORATION

By: 
Jon Nash
Chief Restructuring Officer

AMMONIA TANK SUBSIDIARY, INC.

By: 
Jon Nash
Chief Restructuring Officer

SULFURIC ACID TANKS SUBSIDIARY, INC.

By: 
Jon Nash
Chief Restructuring Officer

Date: June __, 2015

PHOSPHATE HOLDINGS, INC.

By: _____

Name:

Title:

SCHEDULE I

Lenders

Lenders under Pre-Petition Credit Agreement

Hudson Bay Fund LP
Hudson Bay Intermediate Fund Ltd.
Hudson Bay Master Fund Ltd.
Wilfrid Global Opportunity Fund LP
IFC Acquisition Group LLC
Broadbill Partners, LP
Broadbill Partners II, LP
MILFAM I L.P.
MILFAM II L.P.
Lloyd I. Miller Trust A-1
Lloyd I. Miller Trust A-2
Virtus Capital LP
Virtus DB Recovery LP
Virtus KG Fund LP
Virtus Angels Fund, LP
Virtus TK LLC
Pine River Master Fund Ltd.
Pine River Credit Relative Value Master Fund Ltd.
Pine River Fixed Income Master Fund Ltd.
Pine River Deerwood Fund Ltd.
LMA SPC for and on behalf of the MAP 89 Segregated Portfolio

Lenders under DIP Credit Agreement

Hudson Bay Fund LP
Hudson Bay Intermediate Fund Ltd.
Hudson Bay Master Fund Ltd.
Broadbill Partners, LP
Broadbill Partners II, LP
MILFAM I L.P.
MILFAM II L.P.
Lloyd I. Miller Trust A-1
Lloyd I. Miller Trust A-2
IFC Acquisition Group LLC
Pine River Master Fund Ltd.
Pine River Credit Relative Value Master Fund Ltd.
Pine River Fixed Income Master Fund Ltd.
Pine River Deerwood Fund Ltd.
LMA SPC for and on behalf of the MAP 89 Segregated Portfolio
Virtus Capital LP
Fallen Angels Fund LP

Exhibit A to the Settlement Agreement

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

| | | |
|---|---|------------------------------|
| In re: |) | |
| |) | |
| MISSISSIPPI PHOSPHATES |) | |
| CORPORATION, <i>et al.</i>¹ |) | CASE NO. 14-51667-KMS |
| |) | Chapter 11 |
| |) | |
| Debtors |) | Jointly Administered |
| _____ |) | |

**ORDER APPROVING MOTION OF THE DEBTORS PURSUANT TO §§ 105 AND 363
OF THE BANKRUPTCY CODE AND FEDERAL RULE OF BANKRUPTCY
PROCEDURE 9019 FOR AN ORDER APPROVING
SETTLEMENT AMONG THE DEBTORS, PHOSPHATE HOLDINGS, INC.,
THE LENDER PARTIES AND THE ENVIRONMENTAL AGENCIES**

[Dkt. #___]

¹ The chapter 11 cases of the following affiliated Debtors have been administratively consolidated for joint administration pursuant to that certain *Order Granting Motion of the Debtor for Order Directing Joint Administration of Affiliated Cases Pursuant to Bankruptcy Rule 1015(b)*, dated October 29, 2014 [Dkt. # 62]: Mississippi Phosphates Corporation (“**MPC**”), Case No. 14-51667, Ammonia Tank Subsidiary, Inc. (“**ATS**”), Case No. 14-51668 and Sulfuric Acid Tanks Subsidiary, Inc. (“**SATS**”, and, collectively with MPC and ATS, the “**Debtors**”), Case No. 14-51671. These chapter 11 cases are sometimes referred to herein as the “**Bankruptcy Cases.**”

This matter came before the Court on the *Motion of the Debtors Pursuant to §§ 105 and 363 of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 9019 for an Order Approving Settlement among the Debtors, Phosphate Holdings, Inc., the Lender Parties, and the Environmental Agencies* [Dkt. #___] (the “*Motion*”)² filed herein by Mississippi Phosphates Corporation, *et al.*, the Debtors and debtors-in-possession (collectively, the “*Debtors*”) in these Bankruptcy Cases.

In the Motion, pursuant to Sections 105(a) and 363(b) of the Bankruptcy Code and Bankruptcy Rule 9019(a), the Debtors respectfully requested this Court to enter the proposed 9019 Order to (i) authorize the Debtors to enter into the Settlement Agreement,³ and (ii) authorize the Debtors to effectuate the terms, conditions, and provisions of the Settlement Agreement embodied therein.

The Court considered the Motion and finds that the Motion is well-taken and should be granted.

The Court finds as follows:

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
2. This is a core proceeding pursuant to 28 U.S. C. § 157(b)(2).
3. The statutory bases for relief requested herein are Sections 105(a) and 363(b) of the Bankruptcy Code and Bankruptcy Rule 9019(a).
4. [On July __, 2015, after notice of the proposed Settlement Agreement was published in the Federal Register, beginning a 15 day public comment period, and after

² Capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Motion.

³ The Settlement Agreement is attached hereto as Exhibit A.

consideration of the comments received, if any, the United States Environmental Protection Agency submitted a Joinder in the Motion.]

5. The Motion should be granted in all respects.

IT IS, THEREFORE, ORDERED that the Motion is granted in all respects.

IT IS FURTHER ORDERED that the Settlement Agreement is fair, reasonable and consistent with environmental laws, and approved in its entirety.

IT IS FURTHER ORDERED that the approval of any specific provision of the Settlement Agreement in this Order is not intended to and does not limit or detract from the general approval of the Settlement Agreement or any provisions contained therein.

IT IS FURTHER ORDERED that the Debtors are authorized to enter into the Settlement Agreement.

IT IS FURTHER ORDERED that the Liquidation Trust Agreement is hereby approved.

IT IS FURTHER ORDERED that [] is approved and appointed to serve as the Liquidation Trust Trustee.

IT IS FURTHER ORDERED that the Environmental Trust Agreement is hereby approved.

IT IS FURTHER ORDERED that Project Navigator, Ltd. is approved and appointed to serve as the Environmental Trust Trustee.

IT IS FURTHER ORDERED that pursuant to Section 363 of the Bankruptcy Code, the Liquidation Trust Acquired Assets and the Environmental Trust Assigned Assets shall be transferred to the Liquidation Trust and the Environmental Trust (as applicable), free and clear of all claims, liens and interests against the Debtors, including, without limitations, liens for the payments of monetary claims, such as unsecured claims for property taxes, or other monetary

claims asserted or that could have been asserted in the Bankruptcy Cases, but, shall remain subject to: (a) any existing in rem claims that do not secure payment of monetary claims (such as easements or deed restrictions); and (b) the Assumed Liabilities.

IT IS FURTHER ORDERED that after the Closing Date, neither the Debtors nor the Liquidation Trust shall be liable for water treatment obligations related to the Gyp Stacks or for closure of the Gyp Stacks.

IT IS FURTHER ORDERED that any unfunded amounts available under the Exit Facility shall be available to the Liquidation Trust for the operation of the Liquidation Trust pursuant to the Trust Budget approved by the Lender Parties and the Governments.

IT IS FURTHER ORDERED that the Liquidation Trust shall have authority to borrow funds from the Exit Facility and lend the funds to the Environmental Trust, from time to time, for the sole purposes of funding the Environmental Trust administrative expenses pursuant to the Environmental Trust's approved budget in amounts approved by the Lender Parties, including, the Environmental Trust Initial Funding.

IT IS FURTHER ORDERED that the treatment of the BP Proceeds as provided in Paragraphs 16 and 17 of the Settlement Agreement is specifically approved.

IT IS FURTHER ORDERED that distribution of proceeds under Paragraphs 25 and 26 of the Settlement Agreement is specifically approved.

IT IS FURTHER ORDERED any Liquidation Trust Acquired Assets that are subsequently sold by the Liquidation Trust or the Environmental Trust to a purchaser (each, a "Buyer") shall be sold free and clear of all environmental liens, claims, and encumbrances; provided, however, that nothing in this Order, the Settlement Agreement or any agreement or order authorizing a sale will be construed to release, nullify, preclude or enjoin the enforcement

of any environmental liability to a governmental body that any entity would be subject to as the current owner or operator of property after the date of closing of the sale and purchase of the Liquidation Trust Acquired Assets. Notwithstanding the foregoing sentence, nothing in this Order, the Settlement Agreement, or any order authorizing a sale shall (a) be interpreted to deem the Buyer as the successor to the Debtors under any successor liability doctrine with respect to any liabilities under environmental statutes or regulations for penalties for days of violation prior to the Closing Date of any sale or for liabilities relating to off-site disposal of wastes by the Debtors prior to the Closing Date; or (b) create for any governmental unit any substantive right that does not already exist under law. For the avoidance of doubt, all real and personal property other than the Gyp Stacks shall be sold free and clear of liability to manage or close the Gyp Stacks. Buyers of property subject to EPA's administrative order on consent issued pursuant to Section 7003 of RCRA, EPA Docket Number: RCRA-04-2012-4250, may be required to comply with the provisions of the order that are applicable to the property acquired on an ongoing basis.

IT IS FURTHER ORDERED that the Governments' covenants not to sue in Paragraph 72 and Reservation of Rights in Paragraphs 74-77 are specifically approved.

IT IS FURTHER ORDERED that the Debtors', Lender Parties', PHI's, Liquidation Trust's, and Environmental Trust's covenants not to sue and reservations in Paragraphs 78 and 79 are specifically approved.

IT IS FURTHER ORDERED that the Debtors are authorized to effectuate the terms, conditions, and provisions of the Settlement Agreement embodied therein.

IT IS FURTHER ORDERED that this Order and the Settlement Agreement are binding on the Debtors, PHI, the Lender Parties, the Environmental Agencies, the Bankruptcy Estates and creditors, and each of their predecessors, successors or representatives.

IT IS FURTHER ORDERED that this Court shall retain jurisdiction with respect to any matters related to or arising from the implementation of this Order.

###END OF ORDER###

ORDER PREPARED AND SUBMITTED BY:

By: /s/ Stephen W. Rosenblatt
Stephen W. Rosenblatt (Miss. Bar No. 5676)
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ONE OF THE ATTORNEYS FOR THE DEBTORS

CONSENTED TO AND APPROVED FOR ENTRY:

STUW LLC, AS ADMINISTRATIVE AGENT

BYRD & WISER

By: /s/ Robert Alan Byrd
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– and –

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**ATTORNEYS FOR STUW LLC
AS ADMINISTRATIVE AGENT**

Exhibit A

Stipulation and Settlement Agreement