Murrow, Patricia

From: Murrow, Patricia
Sent: Wednesday, December 19, 2018 2:16 PM
To: Salisbury, Demetra
Subject: FW: Wellman: Order Approving Environmental Settlement Agreement
Attachments: ENV_ENFORCEMENT-#2738467-v1-Wellman__Order_Approving_Environmental_Settlement_Agreement_(4_25_18).PDF

From: Gladstein, Richard (ENRD) <Richard.Gladstein@usdoj.gov>
Sent: Thursday, April 26, 2018 12:18 PM
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Cc: Alan.Tenenbaum@usdoj.gov; Thomas.Carroll@USDOJ.GOV
Subject: Wellman: Order Approving Environmental Settlement Agreement

Attached please find the Court's Order approving the Environmental Settlement Agreement and the Environmental Settlement Agreement signed by the Court. Thanks for everyone's work on this. Richard

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RCRA
586826

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF IOWA

In re:	)	Case No.: 16-01825-als11
	)	
WELLMAN DYNAMICS CORPORATION	)	Chapter 11
	)	
	)	Hon. Anita L. Shodeen
Debtor and Debtor in Possession.	)	
	)	**ORDER APPROVING COMPROMISE AND ENVIRONMENTAL SETTLEMENT AGREEMENT**
1739 Commerce Rd. Creston, IA	)	
	)	
EIN: 36-3198501	)	
	)	Date entered on Docket ***April 25, 2018***

This matter comes before the Court on Debtor's Motion for Order Approving Compromise and Environmental Settlement Agreement (Docket Item 557) (the "Motion") and the United States' Joinder of Debtor's Motion filed on behalf of the Environmental Protection Agency (the "EPA") (Docket Item 640).

It appearing that due and proper notice of the Motion having been given and a reasonable opportunity to object or to be heard regarding the relief requested by the Motion has been afforded to all interested parties and entities; and upon the proceedings held before this Court and in good and sufficient cause appearing therefore;

IT IS HEREBY FOUND:

1. On September 13, 2016 (the "Petition Date"), Fansteel, Inc. ("Fansteel"), Wellman Dynamics Corporation ("WDC"), and Wellman Dynamics Machining & Assembly, Inc. ("WDMA") (collectively referred to as the "Debtors"), commenced voluntary cases under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") in the United State Bankruptcy Court for the Southern District of Iowa (the

"Bankruptcy Court"). The Debtors are continuing to operate their businesses and manage their properties as Debtors in Possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. WDC manufactures precision engineered cast components for the global aerospace, defense and industrial markets. All manufacturing processes are contained in a building located at 1746 Commerce Road in Creston, Iowa (the "Wellman Facility").

3. On January 23, 2004, pursuant to Section 3008(h) of the Resource, Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984 ("RCRA"), 42 U.S.C. §6901 *et seq.*, the EPA issued an Administrative Order on Consent, Docket No. RCRA-07-2003-0167, ("AOC"), which requires WDC to perform a RCRA Facility Investigation ("RFI"), and a Corrective Measures Study ("CMS") in accordance with the EPA approved work plans. The purpose of the RFI is to determine the nature and extent of releases of hazardous waste or hazardous constituents from regulated units, Solid Waste Management Units ("SWMUs"), and other areas of concern at the Wellman Facility, and to gather necessary data to support the required CMS. Based on the results of the RFI, WDC is required by the AOC to conduct a CMS to develop, evaluate, and recommend the corrective action alternative(s) to be taken at the Wellman Facility.

4. On January 17, 2017, the United States filed a protective Proof of Claim at the request of the EPA.

5. The United States' Proof of Claim asserted that the Debtor is liable to the United States to comply with the RCRA and applicable regulations, and to perform the AOC, Docket No. RCRA-07-2003-0167, which requires WDC to conduct a RFI and a CMS related to the Wellman Facility.

6. Section 567 of the Iowa Administrative Code ("IAC") 115.27 (455B) (Operating requirements for all sanitary disposal projects), and WDC's Sanitary Disposal Project Permit No. 88-SDP-04-86P, ("Landfill Permit"), govern the management of the industrial waste landfill at the Wellman Facility, and is subject to the jurisdiction of the Iowa Department of Natural Resources ("IDNR").

7. Section 641 of the Iowa Administrative Code, Chapters 37-45, including 641 IAC 40.28-40.31 (final decommissioning), and WDC's Radioactive Materials License No. 0103-1-88SM-1 ("License"), govern the usage and management of radioactive materials at the Wellman Facility, and is subject to the jurisdiction of the Iowa Department of Public Health (" IDPH").

8. On July 14, 2017, WDC filed a Motion for Orders (I) Authorizing Sale of Assets Free and Clear of Liens, Claims, Interests and Encumbrances to Stalking Horse or Other Higher and Better Bidder, (II) Authorizing Assumption and Assignment or Rejection of Leases and Executory Contracts; (III) Approving Bid Procedures for Sale, and (IV) Scheduling Hearing on Approval of Sale ("WDC Motion for Sale") (Docket Items 238, 243, and 286).

9. On December 22, 2017, the Court approved the Amended Bid Procedures (Docket Item 437) and the Amended Asset Purchase Agreement ("Amended APA") (Docket Item 438) for the WDC Motion for Sale (Docket Item 446).

10. The Debtor, WDC Acquisition LLC[1], EPA, IDNR and IDPH ("Settling Parties') have reached a compromise and settlement, the particular terms and conditions of which are memorialized in the Environmental Settlement Agreement that has been executed by the Settling Parties.

11. The United States of America, on behalf of the EPA, filed a Notice of Lodging of Environmental Settlement Agreement with the Court on March 26, 2018 (Docket Item 552).

12. The United States of America, on behalf of the EPA, caused to be published in the Federal Register, a Notice of Lodging of the Environmental Settlement Agreement for public comment on March 30, 2018.

13. The purpose of the Environmental Settlement Agreement is to describe the terms and conditions upon which WDC Acquisition LLC, the United States on behalf of the EPA, and the State of Iowa on behalf of the IDNR and the IDPH agree to resolve certain environmental liabilities for existing contamination at WDC's real property known commonly as the Wellman Facility.

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[1] As set forth in Appendix F to the Environmental Settlement Agreement, prior to the closing, and consistent with Section 10.1 of the Amended APA, TCTM Financial FS LLC ("TCTM") intends to assign the Amended APA and any and all rights and obligations thereunder (including TCTM's rights to purchase the Acquired Assets and obligations to assume the Assumed Liabilities) to WDC Acquisition LLC, an Affiliate of TCTM. WDC Acquisition LLC intends to accept such assignment and assume any and all rights and obligations under the Amended APA (including TCTM's rights to purchase the Acquired Assets and obligations to assume the Assumed Liabilities). The United States, on behalf of the EPA, has agreed to this assignment provided that WDC Acquisition LLC is assigned all of the Acquired Assets and Assumed Liabilities under the Amended APA.

14. Pursuant to Federal Rule of Bankruptcy Procedure 9019(a), "[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement…"

15. The standard in determining whether to approve a settlement is "'whether the settlement is fair and equitable and in the best interests of the estate.'" In re Hildreth, No. 09-00293, 2012 WL 4520635, at *6 (Bankr. N.D. Iowa Oct. 1, 2012) (quoting In re Nutraquest, Inc., 434 F.3d 639, 644 (3d Cir. 2006); see also In re Tri-State Fin., LLC v. Lovald, 525 F.3d 649, 654 (8th Cir. 2008) (citing In re Martin, 212 B.R. 316, 319 (8th Cir. B.A.P. 1997). "A settlement is not required to constitute 'the best result possible.'" *Id.* "'Rather, the court need only canvass the issues to determine that the settlement does not fall below the lowest point in the range of reasonableness.'" Id.

16. Courts generally examine four factors in determining whether to approve a settlement or compromise: "(1) the probability of success in litigation; (2) the likely difficulties in collection; (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors." Id. ; see also In re Tri-State Financial, LLC, 525 F.3d at 654 (citing In re Martin, 212 B.R. 316, 319 (8th Cir. B.A.P. 1997); In re World Health Alternatives, Inc., 344 B.R. 291, 296 (Bankr. D. Del. 2006).

17. TCTM Financial FS LLC would not enter into the Amended APA without the Environmental Settlement Agreement. As such, to close on the sale of substantially all of WDC's assets to the Buyer, the Environmental Settlement Agreement attached to this Order must be approved by the Court.

18. Approval of the Environmental Settlement Agreement is in the best interests of the bankruptcy estate and its creditors, and does not fall below the lowest point of reasonableness. Further, the proposed terms and conditions set out in the attached Environmental Settlement Agreement represent a fair and reasonable settlement, and are consistent with the purposes of RCRA and Sections 567 and 641 of the Iowa Administrative Code.

GOOD CAUSE APPEARING, IT IS SO ORDERED.

/s/ Anita L. Shodeen
Judge, U.S. Bankruptcy Court

APPROVED AS TO FORM AND CONTENT:

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF IOWA

In Re:	Bankruptcy Case No. 16-01825-als11
	Affiliated Case Nos: 16-01823 & 16-01827
WELLMAN DYNAMICS CORPORATION	Chapter 11 (Jointly Administered)
Debtor and Debtor in Possession.	Hon. Anita L. Shodeen
1746 Commerce Rd. Creston, IA 50801	**ENVIRONMENTAL SETTLEMENT AGREEMENT AMONG DEBTOR, BUYER, AND THE ENVIRONMENTAL AGENCIES**
EIN: 36-1058780	
	Courtroom: 1
	Date Entered on Docket: ***April 25, 2018***

THIS SETTLEMENT AGREEMENT is made as of February 26, 2018, by and between Wellman Dynamics Corporation ("**WDC**") (the "**Debtor**"), WDC Acquisition LLC (the "**Buyer**"), and the United States of America, on behalf of the Environmental Protection Agency ("**EPA**"), the State of Iowa on behalf of the Iowa Department of Natural Resources ("**IDNR**") and the Iowa Department of Public Health ("**IDPH**") (collectively referred to herein as the "**Settling Parties**") in the above referenced chapter 11 case (the "**Chapter 11 Case**").

WHEREAS, on September 13, 2016, Fansteel, Inc. ("**Fansteel**"), Wellman Dynamics Corp. ("**WDC**"), and Wellman Dynamics Machining & Assembly, Inc. (together with Fansteel and WDC, the "**Debtors**") commenced voluntary cases under chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**") in the United States Bankruptcy Court for the Southern District of Iowa (the "**Bankruptcy Court**"). The Debtors are continuing to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and

1108 of the Bankruptcy Code.

WHEREAS, WDC manufactures precision engineered cast components for the global aerospace, defense and industrial markets. All manufacturing processes are contained in a building located at 1746 Commerce Road in Creston, Iowa (the "**Wellman Facility**").

WHEREAS, on January 23, 2004, pursuant to Section 3008(h) of the Resource, Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984 ("RCRA"), 42 U.S.C. §6901 *et seq.*, the EPA entered into an Administrative Order on Consent, Docket No. RCRA-07-2003-0167, ("**AOC**"), which requires WDC to perform a RCRA Facility Investigation ("**RFI**") and to complete a Corrective Measures Study ("**CMS**") in accordance with the EPA approved work plans. The purpose of the RFI is to determine the nature and extent of releases of hazardous waste or hazardous constituents from regulated units, Solid Waste Management Units, and other areas of concern at the Wellman Facility and to gather necessary data to support the required CMS. Based on the results of the RFI, Buyer will conduct a CMS to develop, evaluate, and recommend the corrective action alternative(s) to be taken at the Wellman Facility.

WHEREAS, on January 17, 2017, the United States filed a protective Proof of Claim at the request of the EPA ("**EPA Proof of Claim**").

WHEREAS, the EPA Proof of Claim asserts that the Debtor is liable to the United States to comply with RCRA, applicable regulations, and to perform the AOC, Docket No. RCRA-07-2003-0167, which requires WDC to conduct an RFI and to complete a CMS related to the Wellman Facility.

WHEREAS, the Debtor and the EPA wish to resolve their differences with respect to the

protective EPA Proof of Claim.

WHEREAS, 567 Iowa Administrative Code ("**IAC**") 115.27 (455B) (Operating requirements for all sanitary disposal projects) and WDC's Sanitary Disposal Project Permit No. 88-SDP-04-86P, ("**Landfill Permit**"), govern the management of the industrial waste landfill at the Wellman Facility, and is subject to the jurisdiction of the IDNR.

WHEREAS, 641 IAC Chapters 37-45, including 641 IAC 40.28-40.31 (final decommissioning), and WDC's Radioactive Materials License No. 0103-1-88SM-1 ("**License**"), govern the usage and management of radioactive materials at the Wellman Facility, and is subject to the jurisdiction of the IDPH.

WHEREAS, on July 14, 2017, WDC filed a Motion for Orders (I)Authorizing Sale of Assets Free and Clear of Liens, Claims, Interests and Encumbrances to Stalking Horse or Other Higher and Better Bidder ("**Order Authorizing Sale of Assets**"), (II) Approving Bid Procedures for Sale, and (III) Scheduling Hearing on Approval of Sale ("**WDC Motion for Sale**"). (WDC Docs. #238, 243, 286).

WHEREAS, on December 12-13, 2017, the Bankruptcy Court held a hearing on the WDC Motion for Sale. (WDC Doc. 337).

WHEREAS, on December 22, 2017, the Bankruptcy Court approved the Amended Bid Procedures (Doc. 437) for the WDC Motion for Sale. (WDC Doc. 446).

WHEREAS, on January 26, 2018, the Bankruptcy Court set a final hearing on the WDC Motion for Sale for March 5, 2018. (WDC Doc. 486).

WHEREAS, on March 12, 2018, the Bankruptcy Court entered its Order After Hearing Approving (A) Asset Purchase Agreement, and (B) Authorizing the Sale of Acquired Assets of

the Debtor Outside the Ordinary Course of Business Free and Clear of Liens, Claims & Encumbrances (the "**Sale Order**") (WDC Doc. 536) approving the sale by the Debtors of certain assets of WDC to TCTM Financial FS LLC ("**TCTM**") pursuant to the terms of the final approved Asset Purchase Agreement ("**APA**").

WHEREAS, TCTM intends to assign all rights and obligations under the APA to Buyer pursuant to the terms of the APA, which intention is memorialized in a letter agreement by and among TCTM, Buyer and EPA, appended hereto as Exhibit F.

WHEREAS, the purpose of this Settlement Agreement is to describe the terms and conditions upon which Buyer, the United States on behalf of the EPA, and the State of Iowa on behalf of the IDNR and the IDPH agree to resolve certain environmental liabilities for existing contamination at the Wellman Facility.

WHEREAS, in consideration of, and in exchange for, the promises and covenants herein, including, without limitation, the covenants and reservations set forth in Paragraphs 14-23, intending to be legally bound hereby, the Settling Parties hereby agree to the terms and provisions of this Settlement Agreement;

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 and authorized officials, it is hereby agreed as follows:

I. DEFINITIONS

1. Unless otherwise expressly provided herein, terms used in this Settlement Agreement that are defined in RCRA, other environmental laws, or their regulations or in the Bankruptcy Code shall have the meaning assigned to them therein. In addition, terms defined in the Settlement Agreement shall have the meaning set forth herein. Capitalized terms that are used herein but not otherwise defined shall have the meanings ascribed to them in the APA.

II. JURISDICTION

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

III. PARTIES BOUND

3. This Settlement Agreement applies to, is binding upon, and shall inure to the benefit of the United States, the State of Iowa, the Buyer, the Buyer's legal successors and assigns, the Debtor, the Debtor's legal successors and assigns (including, but not limited to, the Debtor in any new or reorganized form as a result of the Bankruptcy Cases), and any trustee, examiner, or receiver appointed in the Bankruptcy Cases.

IV. THE WELLMAN FACILITY

4. Subject to the terms and conditions set forth in this Settlement Agreement, (A) the Buyer shall be responsible for fulfilling all obligations mandated by RCRA, applicable regulations, and for performing the AOC, which requires the performance of an RFI and a CMS at the Wellman Facility, and which is subject to the jurisdiction of the EPA, Region 7; and (B) the Buyer shall perform and complete the AOC, establish financial assurance, and implement interim and corrective measures at the Wellman Facility in accordance with Appendix A to this

Settlement Agreement. Financial assurance funding for completing the obligations set forth in this Paragraph 4, including those listed in Appendix A, shall be through a trust established by Buyer on terms and conditions agreed to by EPA (the "**Wellman Corrective Action Trust**").

5. The Buyer agrees that RCRA, the applicable regulations, and the AOC impose certain environmental obligations at the Wellman Facility that are not claims under 11 U.S.C. §105(5) and that are not subject to discharge under the Bankruptcy Code and that the Buyer has assumed under this Agreement, APA, and the Order Authorizing the Sale of Assets to the Buyer. The Buyer shall enter into an Amended AOC assuming all of the obligations in the AOC, which obligations shall be fulfilled consistent with the terms of this Settlement Agreement.

6. Subject to the terms and conditions set forth in this Settlement Agreement, the Buyer shall be responsible for fulfilling all obligations mandated by 567 IAC 115.27 (455B) and by WDC's Landfill Permit, which governs the management of the industrial waste landfill at the Wellman Facility. The Buyer shall complete excavation of material from the landfill, close the Industrial Monofill Sanitary Landfill and perform post-closure monitoring at the Wellman Facility in accordance with 567 IAC 115.27(9)(d), 567 IAC 115.31(6), and Appendix B to this Settlement Agreement. Financial assurance funding for completing the obligations set forth in Appendix B and the closure and post-closure monitoring requirements, shall be through the Trust, dated March 6, 2008 (the "**IDNR Trust**"), on terms and conditions approved by IDNR and consistent with the terms of this Settlement Agreement.

7. Upon closure of the industrial waste landfill, the Buyer agrees to be responsible for execution of an Environmental Covenant pursuant to Iowa Code Chapter 455I entitled the

Uniform Environmental Covenants Act at the Wellman Facility. See Appendix C (model covenant).

8. The Buyer agrees that 567 IAC 115.27 and WDC's Landfill Permit impose certain environmental obligations at the Wellman Facility that are not claims under 11 U.S.C. §105(5) and that are not subject to discharge under the Bankruptcy Code and that the Buyer has assumed under this Agreement, APA, and the Order Authorizing the Sale of Assets to the Buyer. 9.

Subject to the terms and conditions set forth in this Settlement Agreement including Appendix D, the Buyer shall be responsible for complying with 641 IAC Chapters 37-45, including 641 IAC 40.28-40.31 overseen by IDPH, and WDC's License transferred or issued as new by IDPH. The Buyer shall comply with 641 IAC Chapters 37-45, including 641 IAC 40.28-40.31, and WDC's License. The IDPH agrees to not require the excavation or removal of thorium-contaminated material buried at the Wellman Facility so long as the Buyer continues to own and operate the Wellman Facility as a going concern. Financial assurance funding for completing the obligations set forth in Appendix D and the removal of the radioactive material stored above-ground and decommissioning of the burial site formerly approved under 10 CFR 20.304, shall be through the Trust dated November 5, 2008 (the "**IDPH Trust**" and together with the Wellman Corrective Action Trust and IDNR Trust, the "**Trusts**") on terms and condition approved by IDPH and consistent with the terms of this Settlement Agreement. Notwithstanding anything in this Settlement Agreement to the contrary but subject to Appendix D, the Buyer's financial assurance obligations with respect to the removal of any buried thorium or thorium-contaminated material at the Wellman Facility need not be funded pursuant to the Trusts so long as the Buyer continues to own and operate the Wellman Facility as a going concern. The Buyer's

obligations to contribute financial assurance funding to the Trusts pursuant to Paragraph 12 of this Settlement Agreement shall terminate upon completion of all other obligations set forth in Paragraphs 4-10, and Appendices A, B, D and E.

10. The Buyer agrees that 641 IAC Chapters 37-45 and WDC's License impose certain environmental obligations at the Wellman Facility that are not claims under 11 U.S.C. §105(5) and that are not subject to discharge under the Bankruptcy Code and that the Buyer has assumed under this Agreement, APA, and the Order Authorizing the Sale of Assets to the Buyer.

11. Pursuant to Section 3.3 of the APA, on or before the Closing Date of the APA, the Buyer shall transfer, or arrange for the transfer of, $1,000,000 toward financial assurance to the Trusts in the amounts and percentages set for in Appendix E. Such financial assurance funds shall be used solely for the purposes set forth in the applicable Paragraphs 4-10, paragraphs that correspond to the financial assurance, including the performance of environmental obligations set forth in such Paragraphs. The expenditure of such financial assurance funds shall be subject to the approval of the applicable lead agency.

12. On or before the tenth (10) business day of each month following ninety days after the Closing Date, and continuing monthly thereafter until such time as such payments are no longer required pursuant to this Paragraph 12, the Buyer shall transfer monies as financial assurance in addition to that required by Paragraph 11 into the Trusts in amounts and percentages as set forth in Appendix E.

A. The total monthly transfer amount shall be calculated based on total Net Sales (as defined below) in the trailing twelve-month period times the percentages set forth in the table below divided by 12:

Annual Net Sales	1/1/18 - 12/31/2020	1/1/21 & Beyond
Up to 54,999,999	0.20%	3.64% with a cap of
55,000,000-56,999,999	0.28%	$2,000,000, plus
57,000,000-59,999,999	0.61%	5% of Net Sales greater than
60,000,000-61,999,999	1.07%	$55,000,000
62,000,000-63,999,999	1.35%	
64,000,000-65,999,999	1.62%	
66,000,000-67,999,999	1.86%	
68,000,000-69,999,999	2.10%	
70,000,000-71,999,999	2.32%	
72,000,000 and greater	2.52%	

For purposes of this Settlement Agreement, the term "**Net Sales**" means gross sales of the Buyer minus defective material returned, sales allowances, and cash discounts. The above payments shall continue on a monthly basis until such time as (1) the obligations set forth in Paragraphs 4-10 are satisfied, or (2) the combined balance of the Trusts is equal to or greater than $7,203,935 in which case the payments as provided for in this Paragraph 12 shall be suspended until such time as the combined balance of Trusts is less than $6,500,000, at which time the payments shall resume; provided, however, that the Settling Parties agree that the maximum balance amount set forth in clause (2) of this sentence shall be reduced as the work required under Paragraphs 4-10 is performed to reflect the estimated cost of the remaining work, subject to the approval of the Environmental Agencies. Any funds in the Trusts shall be used solely for the purposes set forth in the applicable Paragraphs 4-10, including the funding of any financial assurance obligations. The Buyer shall be responsible for performing the work as required in Paragraphs 4-10 of this Settlement Agreement; provided, however, that the Buyer shall only be required to perform such work to the extent there are sufficient financial assurance funds available in the applicable Trusts. Provided further, however, in the event that the Buyer defaults in its financial assurance

obligations under this Paragraph 12, the Buyer shall be obligated to perform such work to the extent that there are sufficient funds available in the Trusts, plus work funded by the amounts that should have been paid to the applicable Trust. To the extent that the funding formula set forth in this Paragraph 12 would result in contributions to the Trusts that result in the balances of any Trust materially exceeding the estimated costs by the Environmental Agencies of the remaining applicable obligations set forth in Paragraphs 4-10, the Settling Parties agree to cooperate to revise the required funding amounts to adequately fund the remaining work. The Buyer and the Environmental Agencies shall meet once annually to discuss the status of the investigation and remediation at the Wellman Facility, to determine the work and the estimated costs of the remaining work to be performed with the available funds in the Trusts, and to adjust funding requirements as provided herein. Any funds remaining in the Trusts at the completion of the obligations set forth in Paragraphs 4-10 and Appendices A, B and D shall be returned to the Buyer.

B. If there is a substantial and material change in the financial circumstances of the Buyer that makes it impossible for the Buyer to make a required financial assurance payment provided for in Paragraph 12(A) without violating commercially reasonable consolidated fixed charge coverage ratio covenants in a credit agreement, the Buyer may petition the Environmental Agencies for approval of a change in the schedule of a required payment. Such a petition shall explain in detail and the United States may consider the following factors in determining whether to grant the petition: the substantial and material change in financial circumstances and the causes of such change; whether such change was caused in any way by actions of the Buyer or the lender, or was on account of factors beyond their control; evidence that the charge ratio is

commercially reasonable and that it would not be commercially reasonable to waive a violation of the charge ratio; a proposed revised schedule for the payment and evidence that the Buyer should be able to make the required financial assurance payment under the proposed revised schedule based on the then current financial circumstances; and, provide any relevant financial documentation. The United States, on behalf of the EPA, after consultation with IDNR and IDPH, shall review and, if appropriate, approve such petition, which approval shall not unreasonably be withheld.

V. SUBSEQUENT SALE

13. Any subsequent sale of the Wellman Facility shall be conditioned upon any subsequent buyer assuming the obligations set forth in Paragraphs 4-10 and Paragraph 12 to the extent that such obligations have not been satisfied and complying with all other provisions in this Settlement Agreement. Any subsequent sale shall be subject to the approval of the United States, on behalf of the EPA, after consultation with IDNR and IDPH, which approval shall not unreasonably be withheld. Any subsequent buyer shall be required to submit a report to the Environmental Agencies, including sufficient financial information, recommending whether the installment payments required by Paragraph 12 that are being applied to financial assurance obligations should continue or whether the subsequent buyer instead should be required to provide financial assurances acceptable to the Environmental Agencies in accordance with 40 C.F.R. §§ 265.140-150 and other applicable law. The Environmental Agencies will review the report and determine whether it is appropriate for the subsequent buyer to continue to make the installment payments required by Paragraph 12 for purposes of funding financial assurance obligations or to provide the financial assurances acceptable to the Environmental Agencies in

accordance with 40 C.F.R. §§ 265.140-150 and other applicable law; provided, however, that if the Trusts contain sufficient funds to perform all of the obligations set forth in Paragraphs 4-10 and Appendices A,B,D and E, and the transaction is approved by the United States, on behalf of EPA after consultation with IDNR and IDPH, then the subsequent buyer shall be permitted to assume the rights and obligations set forth in this Settlement Agreement. For purposes of this Settlement Agreement, references in such regulations to the terms "closure" and "post-closure" will include the work to be performed under this Settlement Agreement. Upon approval of a subsequent sale, the Environmental Agencies agree that the covenant to not to sue afforded to the Buyer shall also apply to such subsequent buyer. In the event that the Settling Parties determine that new financial assurance will be provided under 40 C.F.R. §§ 265.140-150, then, subject to the approval of the Environmental Agencies, any funding in the Trusts that has been designated for financial assurance purposes shall either (1) be made available in the Trusts for purposes of performing the environmental obligations set forth in Paragraphs 4-10 and Appendices A, B, D and E or (2) if adequate funding already exists in the Trusts to complete the environmental obligations set forth in Paragraphs 4-10 and Appendices A, B, D and E, be returned to the subsequent buyer. The Settling Parties agree that a transfer of the Business and substantially all of the Acquired Assets to any Affiliate (as such capitalized terms are defined in the APA) of TCTM or the Buyer shall not constitute a subsequent sale for purposes of this Paragraph 13, provided that such transfer or assignment shall be subject to the written approval of the United States, on behalf of the EPA, after consultation with IDNR and IDPH, which approval shall not unreasonably be withheld.

VI. INSURANCE AND OTHER PROCEEDS

14. The Buyer shall diligently pursue, in a commercially reasonable manner, insurance carriers for recovery on any environmental claims related to contamination at the Wellman Facility. Except as provided below, all funds recovered from any third party contribution actions under the Comprehensive Environmental Response, Compensation and Liability Act ("**CERCLA**"), 42 U.S.C. § 9601 *et* seq., or other applicable federal, state or local environmental statutes and from insurance carriers (other than attorney fees and costs) shall be transferred to and deposited into the applicable Trusts in amounts and percentages as set forth in Appendix E to be used solely for the purposes set forth in Paragraphs 4-10. To the extent that any recoveries from insurance carriers or third parties materially exceed the difference between the combined balance of the Trusts and the reasonably estimated cost by the Environmental Agencies to perform any remaining remediation at the Wellman Facility at the time of such recovery, the Buyer shall be entitled to retain any excess as reimbursement for funds previously transferred to the Trusts.

VII. COVENANTS AND RESERVATIONS

15. Subject to the reservation of rights below, the United States, on behalf of the EPA, covenants not to sue or take any other civil or administrative action against the Buyer pursuant to Sections 3008 or 3013 of RCRA, 42 U.S.C. §§ 6928 or 9634 or Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607, with respect to Existing Contamination at the Wellman Facility. For purposes of this Settlement Agreement, "**Existing Contamination**" means a) any hazardous substances, pollutants or contaminants present or existing on or under the Wellman Facility as of the Effective Date; b) any hazardous substances, pollutants or contaminants that

migrated from the Wellman Facility prior to the Effective Date; and/or c) any hazardous substances, pollutants, or contaminants presently at the Wellman Facility that migrate from the Wellman Facility after the Effective Date. This covenant not to sue shall not apply in the event that the Buyer or a future buyer ceases regular business operations or proposes a liquidation at the Wellman Facility.

16. Subject to the reservation of rights below, the State of Iowa, on behalf of the IDNR and IDPH, covenants not to sue or take any other civil or administrative action against the Buyer pursuant to 567 IAC 115.27 (455B) and 641 IAC Chapters 37-45 with respect to Existing Contamination at the Wellman Facility. IDPH covenants not to require the excavation or removal of thorium-contaminated material buried at the Wellman Facility until such time as the Wellman Facility is expected to be no longer owned and operated as a going concern business or is decommissioned pursuant to IDPH regulations and WDC's Radioactive Materials License No. 0103-1-88SM-1. This covenant not to sue shall not apply in the event that the Buyer or a future buyer ceases regular business operations or proposes a liquidation at the Wellman Facility.

17. The covenant not to sue set forth above does not pertain to any matters other than those expressly specified. The Environmental Agencies reserve, and this Settlement Agreement is without prejudice to, all rights against the Buyer with respect to all matters not expressly included within the Environmental Agencies' covenant not to sue. Notwithstanding any other provision of the Settlement Agreement, the Environmental Agencies reserve all rights against the Buyer with respect to:

a. enforcement of the Environmental Agencies' rights pursuant to this Settlement Agreement, including but not limited to Paragraphs 4-10 and Appendices A, B, D and

E. Except as set forth in the following sentence, the Buyer shall not be required to perform work at the Wellman Facility with respect to Existing Contamination beyond the funds provided to the Trusts in the amounts and percentages as set forth in Appendix E. Provided further that in the event that the Buyer fails to make a financial assurance payment required by Paragraph 12, the Buyer shall be obligated to perform work to the extent of funds available in the Trusts, plus all amounts that should have been paid to the Trusts;

b. any liability resulting from past or future releases of any hazardous substances, pollutants or contaminants, at or from the Wellman Facility caused or contributed to by the Buyer, its successors, assignees, lessees, or sublessees;

c. any liability resulting from exacerbation of Existing Contamination by the Buyer, its successors, assignees, lessees or sublessees;

d. any liability resulting from the release or threat of release of hazardous substances, pollutants, or contaminants, or generation of hazardous waste at the Site after the Closing Date, not within the definition of Existing Contamination; and

e. criminal liability.

18. Nothing in this Settlement Agreement is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the Environmental Agencies may have against any person, firm, corporation or other entity not a party to this Settlement Agreement, or such party's officers, directors, employees or legal successors to the extent they are not covered by Paragraph 22.

19. Nothing in this Settlement Agreement is intended to limit the right of the Environmental Agencies to seek to compel parties other than Buyer and its officers, directors,

employees or legal successors, to perform or pay for response actions at the Wellman Facility. Except as otherwise set forth in the Environmental Agencies' covenant not to sue, the Settling Parties acknowledge that the Environmental Agencies have the authority to determine the nature and scope of the response and corrective actions to be performed at the Wellman Facility consistent with applicable laws. The Buyer acknowledges that it is purchasing the Wellman Facility where such corrective or response actions may be required.

20. Notwithstanding Paragraph 17(a), in the event the Buyer becomes aware of any action or occurrence that causes or threatens a release of hazardous substances, pollutants or contaminants at or from the Wellman Facility that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment after the Closing Date, the Buyer shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release. The Environmental Agencies acknowledge that environmental conditions at the Wellman Facility, as they presently are known to exist, do not constitute an emergency situation presenting an immediate threat to public health, welfare or the environment.

21. In consideration of the Environmental Agencies' covenant not to sue in this Settlement Agreement, the Buyer hereby covenants not to sue and not to assert any claims or causes of action against the United States and the State of Iowa, their authorized officers, employees, or representatives with respect to the Wellman Facility or this Settlement Agreement, including but not limited to, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), any direct or indirect claims for reimbursement from the EPA Hazardous Substance Superfund, through CERCLA Sections 106(b)(2), 111, 112, 113, any claim under Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, or any other provision of law related to the Wellman Facility, or

any claims arising out of response activities at the Facility, including claims based on oversight of such activities or approval of plans for such activities. Nothing herein 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).

22. This Settlement Agreement shall apply to and be binding upon the Environmental Agencies and shall apply to and be binding upon the Buyer, its officers, directors, employees and legal successors. The Environmental Agencies' covenant not to sue in Paragraphs 15 and 16 shall apply to the Buyer's officers, directors, employees and legal successors to the extent that the alleged liability of the officer, director, employee or legal successor is based on its status and in its capacity as an officer, director, employee or legal successor of the Buyer, and not to the extent that the alleged liability arose independently of the alleged liability of the Buyer. Each signatory of a Party to this Settlement Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and to legally bind such Party.

23. Except as otherwise stated in Paragraph 13 of this Settlement Agreement, all of the rights, benefits and obligations conferred upon the Buyer under this Settlement Agreement may be assigned or transferred to any person with the prior written consent of the Environmental Agencies.

24. Except as otherwise stated in Paragraph 13 of this Settlement Agreement, prior to or simultaneous with any assignment or transfer of the Wellman Facility, the assignee or transferee must consent in writing to be bound by the terms of this Settlement Agreement including but not limited to Paragraphs 4-10, 12, and Appendices A, B, D, and E in order for the covenant not to sue to be available to that party. The covenant not to sue shall not be effective

with respect to any assignees or transferees who fail to provide such written consent to the Environmental Agencies.

25. Upon the Closing of the APA, the United States shall withdraw as moot the EPA Proof of Claim.

VIII. NOTICES

26. Notices. Any notices required to be given hereunder must be in writing and shall be served in person or by overnight mail upon the respective parties as follows (or to such other addressees as may hereafter be designated):

if to WDC:

James Mahoney, President and CEO
Wellman Dynamics Corp.
1746 Commerce Road
Creston, Iowa 50801

with a copy to:

Mark Steger
Clark Hill
130 East Randolph, Suite 3900
Chicago, Illinois 60601Attorney for WDC

if to the DOJ (any notice to DOJ also shall be sent to EPA):

Richard M. Gladstein, Senior Counsel
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044

if to the EPA (any notice to EPA also shall be sent to DOJ):

Director, Air and Waste Management Division and
Demetra O. Salisbury
U.S. Environmental Protection Agency – Region 7
11201 Renner Blvd.

Lenexa, KS 66219

if to the IDNR:

Iowa Department of Natural Resources
Contaminated Sites Section Supervisor
Wallace State Office Building
502 E 9th Street
Des Moines, IA 50319

if to the IDPH:

Bureau Chief, Bureau of Radiological Health
Iowa Department of Public Health
321 E. 12th Street
Des Moines, IA 50319

if to the Buyer:

President
WDC Acquisition LLC
2021 McKinney Avenue
Suite 1200
Dallas, TX 75201

with a copy to:

Thomas Goslin
Weil, Gotshal & Manges LLP
2001 M Street, NW
Suite 600
Washington, D.C. 20036

IX. JUDICIAL APPROVAL AND PUBLIC COMMENT

27. This Settlement Agreement shall be subject to approval of the Bankruptcy Court. The Debtor shall promptly seek approval of this Settlement Agreement under Bankruptcy Rule 9019 or applicable provisions of the Bankruptcy Code.

28. 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 the Settlement Agreement in the *Federal Register*. The public comment period provided for in this Paragraph 28 may run concurrently with any notice period required pursuant to Bankruptcy Rule 2002 or applicable local rule in connection with judicial approval of the Settlement Agreement pursuant to the preceding Paragraph 27.

29. 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 the Settlement Agreement. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Settlement Agreement disclose facts or considerations which indicate that the Settlement Agreement is not in the public interest.

30. If for any reason (a) the Settlement Agreement is withdrawn by the United States as provided in Paragraph 29, or (b) the 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 the 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.

X. INTEGRATION, AMENDMENTS, AND COUNTERPARTS

31. The terms and conditions of this Settlement Agreement shall be incorporated into the Amended Asset Purchase Agreement and Order Authorizing Sale.

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

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

34. 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.

XI. RETENTION OF JURISDICTION

35. 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.

GOOD CAUSE APPEARING, IT IS SO ORDERED:

/s/ Anita L. Shodeen
Judge, U.S. Bankruptcy Court

APPROVED AS TO FORM AND CONTENT:

/s/
Jeffrey D. Goetz, Esq.
Bradshaw, Fowler, Proctor & Fairgrave, P.C.
801 Grand Avenue, Suite 3700
Des Moines, IA 50309
Telephone: 515-246-5817

Attorney for Debtors and Debtors in Possession

/s/
Julie Johnson McLean, Esq.
Mark D. Walz, Esq.
Davis, Brown, Koehn, Shors & Roberts, P.C.
215 10th Street, Suite 1300
Des Moines, IA 50309
Telephone: 515-288-2500

Ray C. Schrock, P.C.
Jared R. Friedmann
Thomas D. Goslin
David N. Griffiths
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153
Telephone: 212-310-8000

Attorneys for WDC Acquisition LLC

/s/
Richard M. Gladstein DC362404
Senior Counsel
Anna E. Grace MA686070
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
601 D Street, Room 2121
Washington, D.C.
Telephone: (202) 514-1711
Facsimile: (202) 616-6584
Email: Richard.Gladstein@usdoj.gov

Attorneys for the United States on behalf of the EPA

/s/
David Cozad
Regional Counsel
U.S. Environmental Protection Agency
Region 7
11201 Renner Blvd.
Lenexa, KS 66219
Telephone: 913-551-7587

For the U.S. Environmental Protection Agency

/s/
David L. Dorff
Assistant Attorney General
Office of the Attorney General of Iowa
1305 E. Walnut Street
Des Moines, IA 50319
Telephone: (515) 281-5351
Email: David.Dorff@Iowa.gov

Attorney for the Iowa Department of Natural Resources

/s/
Heather L. Adams
Assistant Attorney General
Office of the Attorney General of Iowa
1305 E. Walnut Street
Des Moines, IA 50319
Telephone: (515) 281-3441
Heather.Adams@iowa.gov

Attorney for the Iowa Department of Public Health

Parties receiving this Order from the Clerk of Court:
Electronic Filers in this Chapter Case

Corrective Action, Closure of Hazardous Waste Management Units and Financial Assurance - EPA
(Appendix A)

1. Creation of Environmental Trust - The Buyer shall establish the Wellman Corrective Action Trust for funding all of the corrective action work and the closure of the hazardous waste management units on terms and conditions agreed to by EPA. Funds to perform the work set forth in this Appendix A shall come from the Wellman Corrective Action Trust.

2. Corrective Action-
   i. RCRA Facility Investigation (RFI) – The Buyer shall complete the RFI in accordance with Attachment 2 to the Administrative Order on Consent, Docket No. RCRA-07-2003-0167 ("AOC") that includes completion of all investigative work as determined by EPA, submission of quarterly progress reports and preparation of the final RFI Report, including a Risk Assessment, for submittal to EPA for review and approval.
   ii. Corrective Measure Study (CMS)- The Buyer shall complete the CMS in accordance with Attachment 3 to the AOC that includes preparation and submission of a CMS work plan for review and approval by EPA, evaluation of corrective measure alternatives and recommendations of the appropriate corrective measures for review and approval by EPA and submission of quarterly progress reports.
   iii. Corrective Measure Implementation (CMI) – The Buyer shall enter into a new Administrative Order on Consent with EPA to implement the Corrective Measures on terms and condition acceptable to EPA and the Buyer.

3. Closure of Hazardous Waste Management Units- The Buyer shall close any remaining hazardous waste management units onsite on terms and conditions required by EPA.

4. The Buyer shall execute an Environmental Covenant established according to Iowa Code Chapter 455I.

Industrial Waste Landfill Closure and Post/Closure Monitoring - IDNR
(Appendix B)

1. The Buyer shall provide an amount and percentage of the initial and installment payments as set forth in Appendix E of the Settlement Agreement sufficient to fully fund IDNR Trust for the Industrial Monofill Sanitary Landfill ("Landfill") in order to ensure adequate funds are available to complete closure and post-closure monitoring of the Landfill based upon the certified updated third party estimates for closure/post closure costs, and the completed IDNR Financial Assurance Report Form (542-8090). At present, the IDNR Trust fund balance is $1,151,897. An additional $517,871 remains to be deposited to fully fund the IDNR Trust. Funds to perform the work set forth in this Appendix B shall come from the IDNR Trust.

2. Upon completion of the excavation of material from the Landfill and reaching the final projected contours, the Buyer shall initiate closure of the Landfill in accordance with 567 IAC 115.27(9) and 567 IAC 115.31(6) and the sanitary landfill permit. To the extent that final closure of the Landfill would require the excavation of buried thorium-contaminated material, Buyer shall be permitted to cap that section of the Landfill where buried thorium-contaminated material is present until such time as such material is excavated. Installation of such a cap to the satisfaction of IDNR shall satisfy Buyer's closure requirements with respect to that section of the Landfill.

3. Upon completion of closure activities, the Buyer shall initiate post-closure monitoring in accordance with 567 IAC 115.26(14) and the sanitary landfill permit.

4. Upon closure of the Landfill, the Buyer agrees to be responsible for execution of an Environmental Covenant pursuant to Iowa Code Chapter 455I entitled the Uniform Environmental Covenants Act at the Wellman Facility and to comply with 567 IAC 115.27(9)(d). See Appendix C (model covenant).

MODEL ENVIRONMENTAL COVENANT
(Appendix C)

This Environmental Covenant (Covenant) is established pursuant to Iowa Code Chapter 455I entitled the Uniform Environmental Covenants Act (Act) and entered into by and between _____ as "Grantor," _____ as "Holder," and the United States Environmental Protection Agency (EPA) and the Iowa Department of Natural Resources (IDNR) as "Agencies." Grantor and Holder enter into this Covenant for the purpose of subjecting the property described below to certain activity and use limitations in accordance with the terms and conditions specified herein.

1. **Affected Property**. Grantor is the fee title owner of the property located at 1746 Commerce Road, Creston, Iowa 50801. The property is legally described as:

[Insert legal description]

Hereinafter, the affected property will be referred to as "the Property."

2. **Background**

The Property is the subject to an Administrative Order on Consent under Section 3008(h) of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §6928(h). Documents related to the environmental activities at the site may be viewed at the EPA Region 7 Record Center, 11201 Renner Blvd., Lenexa, KS 66219.

3. **Reopening.** The signatories acknowledge that the failure of the activity and use limitations imposed on the Property hereby to serve their intended purpose, including the prevention of exposure to contamination, could result in the Agencies reopening their review and regulation of the contaminant condition on the Property.

4. **Identity of Grantor(s) and Holder(s).**

GRANTOR: *[INSERT name of each fee title holder]*

HOLDER: *[INSERT each person signing the covenant as a holder and describe their relationship to the property. A grantor can be a holder as well. Other persons may include contract buyers, lessees, mortgage holders, municipalities, owners of the source site, and other interested parties.*

AGENCY: United States Environmental Protection Agency

Iowa Department of Natural Resources

5. **Representations and Warranties.** Grantor warrants to the other signatories to this Covenant that Grantor:

a. is the sole fee title owner of the Property;

b. holds sufficient fee title to the Property to grant the rights and interests described in this Covenant free of any conflicting legal and equitable claims; and

c. has identified all other persons holding legal or equitable interests, including, but not limited to, contract buyers, mortgage holders, other consensual lienholders and lessees, and secured their consent either by signatures on this Covenant or by a separate subordination and consent agreement attached as Exhibit [*INSERT Exhibit*]].

6. **Running with the Land.** This Covenant is perpetual and runs with the Property, as provided in section 455I.9 of the Act, until modified or terminated. The terms of this Covenant are binding on the Grantors and all successors in interest, assigns and all transferees acquiring or owning any right, title, lien or interest in the Property and their heirs, successors, assigns, grantees, executors, administrators and devisees. The term "transferee," as used in this Covenant, shall mean any future owner of any interest in the Property or any portion thereof, including, but not limited to, owners of an interest in fee simple, contract buyers, mortgagees, easement holders and/or lessees.

7. **Activity and Use Limitations and Terms.** The Property is subject to the following activity and use limitations:

a. The Property shall not be used for residential purposes, which for purposes of this Covenant include but are not limited to: single family homes, duplexes, multi-plexes, apartments, condominiums, schools, dormitories, retirement or senior/child-care centers, or any land use where persons can be expected to reside.

b. Except for the purposes of investigation or remediation approved by the Agencies, extraction and use of the groundwater underlying the Property is prohibited.

c. Installation of any new groundwater wells on the Property is prohibited, except for wells used for investigative, monitoring and/or remediation purposes installed in accordance with a work plan approved by the appropriate Agency.

d. Existing monitoring wells located on the Property shall not be abandoned or closed without the approval of the Agencies.

e. If necessary to prevent or minimize exposures to soil gas vapors, any building or structure planned for human occupancy and that will be constructed in the future on the Property shall be constructed to include an appropriate vapor barrier or vapor mitigation system. Upon request, a copy of construction plans for the as-built barrier or mitigation system should be provided to the Agency. Vapor barrier or mitigation systems in buildings constructed in the future shall be maintained so that the system continues to meet the intended function to protect human health from soil gas vapors.

f. Soils in the buried thorium area and other areas of concern shall not be disturbed without prior approval from the Agencies.

8. **Compliance Reporting.** One year from the effective date of this Covenant, and on an annual basis thereafter until such time as this Covenant is terminated, the then-current fee simple owner of the Property shall submit to the Agency written documentation verifying that the activity and use limitations remain in place and are being complied with. Any signatory to this Environmental Covenant shall notify the Agencies as soon as possible of conditions which would constitute a breach of the activity and use limitations in paragraph seven (7) if they have actual knowledge of these conditions or would reasonably be deemed to have knowledge within the normal course of administration of their property interest.

9. **Notice to Lessees.** Grantor, any Holder with a property interest sufficient to grant a lease of the Property, and any transferee shall incorporate the activity and use limitations of this Covenant either in full or by reference, in any lease, license, or other instrument granting a right to possession of the Property.

10. **Access to Property.** Access to the Property is granted to the Agencies and their authorized representatives for the purpose of implementing, monitoring, and/or enforcing this Covenant. The Agencies agree to provide the then-current owner of the Property reasonable notice prior to access. Right of access includes, but is not limited to, the following:

a. repair and maintenance of response action equipment, soil caps, groundwater monitoring wells and associated aboveground or subsurface structures;
b. fencing and other technological controls;
c. groundwater sampling and monitoring;
d. additional drilling;
e. construction of soil boring and/or groundwater monitoring wells; and
f. other activities authorized or otherwise directed by Agencies.

11. **Groundwater Hazard Statement Notice.** Iowa Code section 558.69 requires the submission of a groundwater hazard statement and disclosure if "hazardous waste" exists on the Property as defined in Iowa Code subsections 455B.411(3), 455B.412(2) or section 455B.464 or

if Agency determines that solid waste exists on the Property that is potentially hazardous. If hazardous waste is present, the groundwater hazard statement must state that the condition is being managed in accordance with IDNR rules. The signatories and all subsequent transferees required to submit a groundwater hazard statement under Iowa Code section 558.69 shall make reference to this environmental covenant in substantially the following form:

> THE INTEREST CONVEYED IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED *[date month, day, year]* RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE _____ COUNTY RECORDER ON *[date month, day, year]* IN *[document, book and page, or parcel number].*
>
> THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS: *[language that describes the activity and use limitations exactly as it appears in the environmental covenant.]*

NOTE: do not insert the activity and use limitations here; it is only necessary to do so when you submit the groundwater hazard statement notice, which this section is simply a model of. DELETE THIS INFORMATIONAL "NOTE" BEFORE SUBMITTING THE ENVIRONMENT COVENANT FOR REVIEW.

12. **Modification and Termination.** Modification or termination of this Covenant shall comply with Iowa Code chapter 455I and applicable IDNR administrative rules. This Covenant may be modified or terminated by written consent of Agency, the then current fee simple title owner, and all original signatories (unless exempted under the provisions of Iowa Code section 455I.10(1)(c) in accordance with and subject to the provisions of Iowa Code section 455I.10). The termination or modification is not effective until the document evidencing consent of all necessary persons is properly recorded. If not by consent, any modification or termination of this Covenant shall be in accordance with Iowa Code section 455I.9 and such additional terms as specified in this covenant.

13. **Enforcement.** This Covenant may be enforced by the Agencies in a civil action for injunctive or other equitable relief by the signatories and those persons authorized by and in accordance with Iowa Code section 455I.11.

14. **Severability.** If any provision of this Covenant is found to be unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

15. **Governing Law**. This Covenant shall be governed by and interpreted in accordance with the laws of the State of Iowa.

16. **Recordation.** Within thirty (30) days after the date of the final required signature upon this Covenant or any amendment or termination thereof, owner or transferee shall record this Covenant in the same manner as a deed to the Property with the Union County Recorder's Office. Owner or transferee shall be responsible for any costs associated with recording this Covenant.

17. **Effective Date**. The effective date of this Covenant shall be the date upon which the fully executed Covenant has been recorded with the Union Recorder's Office.

18. **Notice**. Any notice, document, or other item required by this Covenant to be given to another party hereto shall be sent to:

If to Grantor/Transferee:
[*title*]
[*address*]

If to Holder:
[*title*]
[*address*]

If to EPA:

Director, Air and Waste Management Division
U.S. Environmental Protection Agency – Region 7
11201 Renner Blvd.
Lenexa, KS 66219

If to IDNR:

Iowa Department of Natural Resources
Contaminated Sites Section Supervisor
Wallace State Office Building
502 E 9th Street
Des Moines, IA 50319

19. **Subordination and Consent**. By signing this Covenant, the signatories knowingly and intelligently acknowledge their consent to the terms of this agreement and agree to subordinate their interest in the Property. The following persons have expressly consented and subordinated interests:

[INSERT: Identify persons and entities that are consenting and subordinating their interests such as mortgagees and other consensual lienholders, lessees, etc. Identify the nature of the subordinated interest.]

20. [DISCRETIONARY PARAGRAPH]: ***Notice of Change in Ownership***. Grantor and any holder of any interest in the Property and any subsequent transferee shall reference and incorporate the terms of this Covenant into any subsequent instrument which conveys a possessory interest in the Property.

ACKNOWLEDGMENTS

INSERT property acknowledgments in accordance with Iowa Code section 558.20 and Iowa Code chapter 9E, and specific to individuals, partnerships, corporate entities, municipalities, State agencies and political subdivisions, etc.

GRANTOR(S)

[INSERT signature blocks and appropriate acknowledgements for all grantors]

_____
Notary Public, State of Iowa:

HOLDER:

[INSERT signature blocks and appropriate acknowledgements for all holders]

_____
Notary Public, State of Iowa:

AGENCIES:

_____ _____
Date [Printed name of Division Director with delegated authority]
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

STATE OF KANSAS)
COUNTY JOHNSON) ss.

On this _____ day of _____, 201__, before me personally appeared _____, known to me to be the Director of the _____ Division of the United States Environmental Protection Agency, Region 7, and acknowledged that he/she executed the same as his/her voluntary act and deed.

_____
Notary Public, State of Iowa

_____ _____
Date Iowa Department of Natural Resources

STATE OF IOWA) ss.

On this _____ day of _____, 201__, before me personally appeared _____, known to me to be the Director of the Iowa Department of Natural resources and acknowledged that he/she executed the same as his/her voluntary act and deed.

_____
Notary Public, State of Iowa

–

SUBORDINATED INTERESTS:

[INSERT signature blocks and appropriate acknowledgements for all subordinated interests]

Thoriated Material - IDPH
(Appendix D)

1. a. WDC's Radioactive Material License No. 0103-1-88-SM-1 ("**License**") transferred or issued as new is required for the use and storage of radioactive materials onsite at the Wellman Facility. The License is administrated by IDPH and will require Buyer, as the future "Licensee" to adhere to all applicable rules in 641 IAC Chapters 37 – 45 and all conditions of the License, including any statements, representations, and procedures contained in the application documents. The License shall be maintained as long as there is radioactive material located onsite. Buyer must reaffirm all conditions of the License and agree to transfer of the License.

b. For the 2019 and 2024 license renewal applications, IDPH will not require the submission of a decommissioning plan. If Licensee is adhering to the monthly installment payments requirements set forth in Paragraph 12 of this Settlement Agreement and Appendix E, then the Licensee will not be required to provide any additional funding to the IDPH Trust.

2. The required conditions for the storage burial site (including known and unknown drums), as formerly approved in 10 CFR 20.304, are as follows:

a. Current License Condition #12 – The burial site formerly approved in 10 CFR 20.304, will undergo final decommissioning in accordance with 641 IAC 40.28– 40.31 and details in the plan outlined in the July 1, 2004 and May 28, 2009 letters between WDC and IDPH ("**Letters**") and any letter between IDPH and any Buyer. The controls to limit dose to the general public, outlined in the July 1, 2004 letter must remain in effect until the final decommissioning. For the avoidance of doubt, final decommissioning will not be required so long as the Buyer, or any subsequent buyer, continues to own and operate the Wellman Facility as a going concern.

b. Current License Condition #13 – The Licensee will conduct a final status survey of the burial site formerly approved in 10 CFR 20.304 and the active landfill prior to final decommissioning.

c. Licensee commitment to remove the radioactive material from the burial site at an appropriate time in the future pursuant to decommissioning requirements in 641 IAC 40.28 – 40.31 as outlined in the letters.

d. As part of the 2029 License renewal application and every license renewal application thereafter, Licensee shall prepare a report that includes:

i. a summary of current onsite environmental conditions;

ii. a current cost estimate of the disposal and decommissioning costs for removal of the buried thorium consistent with the form set forth in the September 5, 2017 Penn E & R Preliminary Cost Estimate Report;

iii. Licensee's current audited financial statements;

iv. A signed statement by the Licensee's Chief Executive Officer (A) re-affirming Licensee's commitment to remove the buried thorium when the Wellman facility is no longer operated as a going concern; and, (B) confirming that the Licensee's current business plan is to operate at the Creston, Iowa location for at least ten years; and,

v. A signed statement from Licensee's independent certified public accountant that:

A. Licensee's tangible net worth is 2 times the current decommissioning costs; or,

B. Licensee's parent company has a tangible net worth of 5 times the current decommissioning costs if such Licensee's parent company has provided to IDPH a corporate guarantee of the decommissioning costs.

e. Details of the plan, as referenced in License Condition #12, including the Letters, that must be included in a letter from any Buyer as part of the license transfer or new license application shall include:

i. Request that certain administrative, operational, and monitoring controls in the near term be incorporated into the license to ensure the continued protection of public health and safety until such time as the Wellman Facility is no longer owned and operated as a going concern business or is decommissioned pursuant to IDPH regulations and the License.

ii. Agreement to implement the following site controls applicable for the former burial site:

1. Groundwater monitoring for radiological constituents of concern (thorium and uranium isotopes) will continue to be performed annually in order to track historical trends and evaluate groundwater condition over time. At a minimum, MW-19 and MW-20 will be

sampled along with MW-8, MW-11, and MW13. The sampling and analysis protocol will be the same as that described in the Site Characterization Survey ("**SCS**") Work Plan (April 2001).

2. Groundwater monitoring analytical data will be compared against calculated concentrations of concern to determine whether further evaluation of the former burial site is warranted in the future. The calculated concentrations will be generated by a procedure similar to the evaluation described in Section 5/6/4 of the September 2003 SCS Report.

3. The former burial site will continue to be managed to ensure the buried material is not disturbed. Operational controls will continue to include maintenance of site fencing, continued security presence, area inspections, restricted access, and prohibitions preventing further disposal and intrusion in the area.

4. Any deviations from the above must be immediately reported to the IDPH, especially in the event that groundwater monitoring results showed the need for further evaluation of the former burial site.

3. Required conditions relative to the radioactive material waste stored above ground. As part of the 2019 License renewal application, the licensee must provide the following:

a. A commitment to remove the radioactive material from the above ground storage locations no later than July 2024.

b. A proposed timeline for planning for the disposal activities to remove the material from above ground storage locations, with rationale for proposed timeline. Funding for such disposal activities will come from the IDPH Trust funded pursuant to Paragraphs 11 and 12, and Appendix E of this Settlement Agreement.

4. Required conditions relative to the active use of the radioactive material for manufacturing. When radioactive material is actively used during manufacturing, all appropriate regulations related to the use of the radioactive material must be met, most specifically the requirements to monitor for exposures pursuant to 641 IAC 40.36.

5. Required conditions relative to financial assurance for all activities related to radioactive material.

a. As part of the 2019 license renewal application, submission of a signed statement by the Licensee's Chief Executive Officer to fund the IDPH Trust consistent with Paragraphs 11 and 12, and Appendix E of this Settlement Agreement to cover the estimated cost of $760,000 to dispose of the above ground stored radioactive material by July 2024.

b. As part of the license transfer or new license application, submission of a signed statement by the Buyer's Chief Executive Officer to fund the IDPH Trust consistent with Paragraphs 11 and 12, and Appendix E of this Settlement Agreement to cover the costs associated with decommissioning of the burial site previously approved by 10 CFR 20.304 so that by the 2029 license renewal date the balance of the IDPH Trust is $1,000,000.

c. As part of the 2029 License renewal application: (i) if Licensee provides each of the deliverables in paragraphs 2(d)(i)-(v) of this Appendix D and the current decommissioning cost estimate is less than $30 million, then IDPH will not require Licensee to submit a decommissioning plan nor require Licensee to provide any additional funding into the Decommissioning Trust. However, if the current decommissioning cost estimate is $30 million or more and the Licensee provides each of the deliverables in paragraphs 2(d)(i)-(v) of this Appendix D, then Licensee shall have the option to (1) deposit of 60% of the payment calculated under Paragraph 12 (for years beyond 2021) of this Settlement Agreement per year in the IDPH Trust or, (2) provide additional financial assurance for the decommissioning costs up to an amount of 40% of the total current cost estimate using any of the financial assurance mechanisms set forth in 641 IAC 39.4(26). This interim financial assurance requirement will be required until the next license renewal application is filed and is in addition to the $1 million financial assurance required under paragraph 5(b) in Appendix D.

(ii) If Licensee provides the deliverables in paragraphs 2(d)(i)-(iv) of this Appendix D, but cannot provide the statement from its independent certified public accountant as required in paragraph 2(d)(v), and the decommissioning cost estimate is less than $30 million, then the Licensee shall have the option to (1) provide a commitment to deposit 30% of the payment calculated under Paragraph 12 (for years beyond 2021) per year into the IDPH Trust, or (2) provide additional financial assurance for the decommissioning costs up to an amount of 40% of the total current cost estimate using any of the financial assurance mechanisms set forth in 641 IAC 39.4(26) to the extent they are

available to Licensee. However, if the Licensee cannot provide the statement from its independent certified public accountant as required in paragraph 2(d)(v) of this Appendix D, and the decommissioning cost estimate is more than $30 million, then the Licensee shall have the option to (1) provide a commitment to deposit 100% of the payment calculated under Paragraph 12 (for years beyond 2021) per year into the IDPH Trust, or (2) provide additional financial assurance for the decommissioning costs up to an amount of 100% of the total current cost estimate using any of the financial assurance mechanisms set forth in 641 IAC 39.4(26) to the extent they are available to Licensee. This interim financial assurance requirement will be required until the next license renewal application is filed and is in addition to the $1 million financial assurance required under paragraph 5(b).

(iii) If there is a substantial and material change in the financial circumstances of the Licensee that makes it impossible for the Licensee to make a required financial assurance payment provided for in Paragraphs 5(c)(i) or (ii) above, then Licensee may petition the IDPH for approval of a change in the schedule of a required financial assurance payment, provided however that Licensee shall be obligated to perform any work required under the License. Such a petition shall explain in detail and IDPH may consider the following factors in determining whether to grant the petition: the substantial and material change in financial circumstances and the causes of such change; whether such change was caused in any way by actions of the Licensee or its lenders, or was on account of factors beyond their control; a proposed revised schedule for the payment and evidence that the Licensee should be able to make the required financial assurance payment under the proposed revised schedule based on the then current financial circumstances; and, provide any relevant financial documentation. The IDPH, after consultation with IDNR and the United States, on behalf of the EPA, shall review and, if appropriate, approve such petition, which approval shall not unreasonably be withheld.

(iv) Upon completion of the decommissioning of the Wellman Facility consistent with the terms of the License and applicable IDPH regulations, any funds remaining in the IDPH Trust shall be returned to the Licensee.

Financial Assurance Trusts Funding Plan
Appendix E

1. Wellman Corrective Action Trust established to implement Appendix A:

   A. Allocation percentage and amount of initial deposit under paragraph 11: 30% ($300,000).

   B. Allocation percentages for monthly installment payments under paragraph 12:

   65% until the amount in the Wellman Corrective Action Trust is sufficient to fund the remaining work required by Appendix A.

2. IDNR Trust established to implement Appendix B:

   A. Allocation percentage and amount of initial deposit under paragraph 11: 5% ($50,000).

   B. Allocation percentages for monthly installment payments under paragraph 12:

   i. Initially 5% until either (a) the amount in the IDNR Trust is sufficient to fund the remaining work required by Appendix B or (b) the amount in the Wellman Corrective Action Trust is sufficient to fund the remaining work required by Appendix A.

   ii. After the amount in the Wellman Corrective Action Trust is fully funded, then 50% until either (a) the amount in the IDNR Trust is sufficient to fund the remaining work required by Appendix B or (b) the amount in the IDPH Trust is sufficient to fund the remaining work required by Appendix D.

   iii. After the amount in the IDPH Trust is fully funded, then 100% until the amount in the IDNR Trust is sufficient to fund the remaining work required by Appendix B.

3. IDPH Trust established to implement Appendix D:

   A. Allocation percentage and amount of initial deposit under paragraph 11: 65% ($650,000).

   B. Allocation percentage for monthly installment payments under paragraph 12:

   i. Initially 30% until either (a) the amount in IDPH Trust is sufficient to fund the

removal of the above-ground thorium material and the monitoring of the buried thorium material required by Appendix D or (b) the amount in the Wellman Corrective Action Trust is sufficient to fund the remaining work required by Appendix A.

ii. After the amount in the Wellman Corrective Action Trust is fully funded, then 50% until either (a) the amount in IDPH Trust is sufficient to fund the removal of the above-ground thorium material and the monitoring of the buried thorium material required by Appendix D or (b) the amount in the IDNR Trust is sufficient to fund the remaining work required by Appendix B.

iii. After the amount in the IDNR Trust is fully funded, then 100% until the amount in IDPH Trust is sufficient to fund the removal of the above-ground thorium material and the monitoring of the buried thorium required by Appendix D.

APA Assignment Letter Agreement
Appendix F

TCTM Financial FS LLC
2021 McKinney Avenue, Suite
1200
Dallas, Texas 75201

March 22, 2018

Richard M. Gladstein
Senior Counsel
Environmental Enforcement Division
Environment and Natural Resources Division
United States Department of Justice
6010 Street, Room 2121
Washington, D.C. 20579

Re: Asset Purchase Agreement **("APA")** by and between Wellman Dynamics Corporation **("Seller")** and TCTM Financial FS LLC **("TCTM")**, as approved by the United States Bankruptcy Court for the Southern District oflowa on March 12, 2018 (WOC Doc. 536)

Dear Mr. Gladstein:

Reference is hereby made to the APA, pursuant to which TCTM agreed to purchase certain of Seller's assets as set forth therein. Prior to the Closing, and consistent with Section 10.1 of the APA, TCTM intends to assign the APA and any and all rights and obligations thereunder (including TCTM' s rights to purchase the Acquired Assets and obligations to assume the Assumed Liabilities) to WOC Acquisition LLC, an Affiliate of TCTM. WDC Acquisition LLC intends to accept such assignment and assume any and all rights and obligations under rhe APA (including TCTM's rights to purchase the Acquired Assets and obligations to assume the Assumed Liabilities). The United States, on behalf of the EPA, agrees to this assignment provided that WOC Acquisition LLC is assigned all of the Acquired Assets and Assumed Liabilities under the APA and is a signatory to the Environmental Settlement Agreement.

Capitalized terms that are used herein but not otherwise defined shall have the meaning ascribed to them in the APA. This letter agreement may be executed in multiple counterparts, each of which shall be fully effective as an original and all of which together shall constitute one and the same instrument. The delivery of counterpart signatures by facsimile or pdf transmission shall have the same force and effect as the delivery of a signed hard copy. Nothing herein shall constitute a waiver or modification of any ofTCTM's rights or remedies under the APA.

[Signature Page Follows]

Very truly yours,

TCTM FINANCIAL FS LLC

By: _____
Name: Conner Searcy
Title: President

WDC ACQUISITION LLC

By: _____
Name: Conner Searcy
Title: President

ACCEPTED AND AGREED TO AS OF
THE DATE FIRST WRITTEN ABOVE:

Richard Gladstein

Richard Gladstein
United States Department of Justice
on behalf of the Environmental Protection Agency