Settlement Confidential – FRE Rule 408

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION II

IN THE MATTER OF:

Operable Unit Two of the Diamond Alkali Superfund Site

In and About Essex, New Jersey

Novelis Corporations (f/k/a Alcan Aluminum Corporation) et al.,

Settling Parties.

ADMINISTRATIVE SETTLEMENT AGREEMENT

U.S. EPA Region 2

CERCLA Docket No. 02-2017-2023

Proceeding Under Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. § 9622(h)(1).

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I. JURISDICTION

1. This Settlement Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders) and redelegated to the Director of the Emergency and Remedial Response Division by EPA Regional Delegation 14-14-D dated January 19, 2017. This Settlement Agreement is also entered into pursuant to the authority of the Attorney General of the United States to compromise and settle claims of the United States.

2. This Settlement Agreement is made and entered into by EPA and the parties listed in Appendix A ("Settling Parties"). Each Settling Party consents to and will not contest EPA's authority to enter into this Settlement Agreement or to implement or enforce its terms.

II. BACKGROUND

3. This Settlement Agreement concerns the lower 8.3 miles of the Lower Passaic River, which is Operable Unit Two ("OU2") of the Diamond Alkali Superfund Site as defined in Paragraph 23 herein (the "Site"). The Site includes the former Diamond Alkali property located at 80 and 120 Lister Avenue in Newark, New Jersey as well as the Lower Passaic River Study Area, Newark Bay, and the areal extent of contamination. EPA alleges that the Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4. In response to the release or threatened release of hazardous substances at or from the Site, EPA and others have undertaken and continue to undertake response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604.

5. Between March 1951 and August 1969, the Diamond Alkali Company operated a manufacturing facility located at 80 Lister Avenue in Newark, New Jersey, which produced, among other products, the defoliant chemical known as "Agent Orange." A byproduct of the manufacturing process was 2,3,7,8-TCDD (2,3,7,8-tetrachlorodibenzo-p-dioxin), which was released into the Passaic River. Production activities at the Diamond Alkali facility ceased in August 1969.

6. EPA, pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, placed the Diamond Alkali Superfund Site on the National Priorities List, which is set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 21, 1984, 49 Fed. Reg. 37070.

7. Sampling and assessment of sediments in the lower reaches of the Passaic River revealed the presence of hazardous substances including, but not limited to, cadmium, copper, lead, mercury, nickel, zinc, polycyclic aromatic hydrocarbons ("PAHs"), dieldrin, bis (2-

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ethylhexyl) phthalate, polychlorinated biphenyls ("PCBs"), dichlorodiphenyl-trichloroethane ("DDT"), polychlorinated dibenzo-p-dioxins ("PCDDs") including 2,3,7,8-TCDD, polychlorinated dibenzofurans ("PCDFs"), 2,4-dichlorophenoxy acetic acid ("2,4-D"), 2,4,5-trichlorophenoxy acetic acid (2,4,5-T), and 2,4,5-trichlorophenol (2,4,5-TCP).

8. On September 30, 1987, EPA issued a Record of Decision ("ROD") that set forth an interim remedy for the 80 and 120 Lister Avenue portion of the Diamond Alkali Superfund Site. Pursuant to a judicial Consent Decree with EPA and New Jersey Department of Environmental Protection, Occidental Chemical Corporation ("OCC") and Chemical Land Holdings, Inc. (now known as Tierra Solutions, Inc.), agreed to implement the 1987 ROD. Construction of the interim remedy was completed in 2004.

9. In 1994, OCC entered into an Administrative Order on Consent with EPA to investigate a six-mile stretch of the Passaic River. The primary objectives of the investigation were to determine: (1) the spatial distribution and concentration of hazardous substances, both horizontally and vertically in the sediments; (2) the primary human and ecological receptors of contaminated sediments; and (3) the transport of contaminated sediment. Tierra Solutions, Inc. ("Tierra") performed the work on OCC's behalf, under the oversight of EPA.

10. Sampling results from the investigation of the six-mile stretch and other environmental studies demonstrated that evaluation of a larger area was necessary because sediments contaminated with hazardous substances and other potential sources of hazardous substances are present along the entire Lower Passaic River. Further, the tidal nature of the Lower Passaic River has resulted in greater dispersion of hazardous substances.

11. In 2002, EPA commenced a remedial investigation and feasibility study ("RI/FS") encompassing the 17-mile Lower Passaic River Study Area ("LPRSA"). In 2004, EPA and a group of potentially responsible parties ("PRPs") known as the Lower Passaic River Study Area Cooperating Parties Group ("CPG") entered into a Settlement Agreement pursuant to Section 122(h) of CERCLA to provide funds for EPA's performance of the 17-mile RI/FS. The Settlement Agreement was amended in 2005 and 2007, adding more parties. In May 2007, the CPG members entered into an Administrative Settlement Agreement and Order on Consent ("AOC") with EPA pursuant to which the settling parties agreed to complete the RI/FS for the 17-mile LPRSA under the oversight of EPA. The 17-mile RI/FS is ongoing.

12. In 2004, EPA and OCC entered into an Administrative Order on Consent pursuant to which OCC agreed to perform an RI/FS for Newark Bay under the oversight of EPA. The RI/FS for Newark Bay is ongoing.

13. Data collected in the Lower Passaic River, and EPA's analyses show that contaminated sediment in the lower 8.3 miles of the LPRSA are a major source of contamination to the rest of the river and Newark Bay and pose an unacceptable risk to human health and the environment due to the presence of a variety of contaminants that stay in the environment for a long time and can build up in fish and shellfish. These contaminants include PCDDs/PCDFs,

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PCBs, PAHs, DDT, dieldrin, mercury, lead and copper.

14. Having identified that the majority of the contaminated sediment is found in the lower 8.3 miles of the LPRSA, EPA completed a remedial investigation/focused feasibility study ("RI/FFS") to evaluate taking action to address these sediments while the RI/FS for the 17-mile LPRSA was underway.

15. On April 11, 2014, in accordance with Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published, in a major local newspaper of general circulation, a notice of a proposed plan to address contaminated sediments in the lower 8.3 miles of the LPRSA.

16. On March 3, 2016, EPA issued the OU2 ROD selecting a remedy for the lower 8.3 miles of the LPRSA. The remedy selected in the OU2 ROD includes, but is not limited to the following: 1) construction of an engineered cap over the river bottom of the lower 8.3 miles of the LPRSA bank to bank; 2) dredging of the river bank to bank (approximately 3.5 million cubic yards of sediments) so the cap can be placed without increasing the potential for flooding and to allow for the continued use of the federally-authorized navigation channel in the 1.7 miles of the river closest to Newark Bay; 3) reconstructing dredged mudflat areas and restoring mudflat habitat; 4) offsite disposal of dredged material; 5) institutional controls to protect the cap and enhanced outreach to increase awareness of NJDEP's prohibition on fish and crab consumption; and 6) long term monitoring and maintenance.

17. On September 30, 2016, EPA and OCC entered into a Settlement Agreement and Administrative Order on Consent, Docket No. 02-2016-2021, pursuant to which OCC agreed to perform the remedial design for OU2 for the Site.

18. In performing response actions at the Site, EPA has incurred response costs and will incur response costs in the future with respect to OU2 for the Site.

19. EPA alleges that Settling Parties are responsible parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and are jointly and severally liable for response costs incurred or to be incurred at or in connection with OU2 for the Site.

20. EPA and Settling Parties recognize that this Settlement Agreement has been negotiated in good faith and that this Settlement Agreement is entered into without the admission or adjudication of any issue of fact or law. The actions undertaken by Settling Parties in accordance with this Settlement Agreement do not constitute an admission of any liability by any Settling Party. Settling Parties do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the facts or allegations contained in this Section.

III. PARTIES BOUND

21. This Settlement Agreement shall be binding upon EPA and upon Settling Parties and their heirs, successors, and assigns. Any change in ownership or corporate or other legal

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status of a Settling Party, including but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling Party's responsibilities under this Settlement Agreement. Each signatory to this Settlement Agreement certifies that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to bind legally the party represented by him or her.

IV. STATEMENT OF PURPOSE

22. By entering into this Settlement Agreement, the mutual objective of the Parties is to avoid difficult and prolonged litigation by allowing Settling Parties to make a cash payment, which includes a premium, to resolve their alleged civil liability associated with releases or disposal from the facilities identified in Appendix A under Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), with regard to OU2 of the Site as provided in the Covenants by EPA in Section VIII, subject to the Reservations of Rights by EPA in Section IX.

V. DEFINITIONS

23. Unless otherwise expressly provided in this Settlement Agreement, terms used in this Settlement Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or its appendices, the following definitions shall apply:

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

"Day" or "day" shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next working day.

"DOJ" shall mean the United States Department of Justice and its successor departments, agencies, or instrumentalities.

"Effective Date" shall mean the effective date of this Settlement Agreement as provided by Section XVIII.

"EPA" shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

"EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

"Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded

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annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at https://www.epa.gov/superfund/superfund-interest-rates.

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

"Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral or an upper or lower case letter.

"Parties" shall mean EPA and the Settling Parties.

"RCRA" shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

"Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.

"Settlement Agreement" shall mean this Settlement Agreement.

"Settling Parties" shall mean those parties identified in Appendix A and their heirs, successors and assigns.

"Site" shall mean the Diamond Alkali Superfund Site, including the former Diamond Alkali property located at 80 and 120 Lister Avenue, Newark, New Jersey, the Lower Passaic River Study Area, Newark Bay, and the areal extent of contamination.

"Diamond Alkali Superfund Site Special Account" shall mean the special account, within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

"State" shall mean the State of New Jersey.

"United States" shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

VI. PAYMENT OF RESPONSE COSTS

24. Payment by Settling Parties for Response Costs. Within 60 days after the Effective Date, each Settling Party shall pay to EPA $280,600, plus an additional sum for Interest on that amount calculated from the date that payment is due to EPA pursuant to this Paragraph through the date of payment.

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Each Settling Party shall make payment to EPA by Fedwire Electronic Funds Transfer (EFT) to:

Federal Reserve Bank of New York
Bank Routing Number: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
Address: Federal Reserve Bank of New York, 33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D68010727
Environmental Protection Agency"

Each payment by a Settling Party shall reference Site/Spill ID Number 02-96 and CERCLA docket number 02-2017-2023

Settling Party E.M. Sergeant Pulp and Chemical Co. shall make payment by either EFT or official bank check made payable to "EPA Hazardous Substance Superfund." The check, or letter accompanying the check, shall identify the name and address of the party making payment, the Site name, Site/Spill ID Number 02-96, and the CERCLA docket number 02-2017-2023, and shall be sent to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

25. Deposit of Payment. The total amount to be paid by each Settling Party pursuant to Paragraph 24 shall be deposited by EPA in Diamond Alkali Superfund Site Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

26. Notice of Payment. At the time of payment, each Settling Party shall send notice that payment has been made to EPA in accordance with Section XIV (Notices and Submissions), and to the EPA Cincinnati Finance Center (CFC) by email at:

EPA CFC by email: cinwd_acctsreceivable@epa.gov and henderson.jessica@epa.gov

Each Notice of Payment shall reference Site/Spill ID Number 02-96 and CERCLA docket number 02-2017-2023

VII. FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT

27. Interest on Late Payments. If any Settling Party fails to make any payment required by Paragraph 24 (Payment by Settling Parties for Response Costs) by the required due

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date, Interest shall continue to accrue on the unpaid balance owed by that Settling Party through the date of payment.

28. Stipulated Penalty.

28. If any amounts due to EPA under Paragraph 24 (Payment by Settling Parties for Response Costs) are not paid by the required date, each Settling Party that has failed to make its required payment shall be in violation of this Settlement Agreement and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 27 (Interest on Late Payments), $250.00 per violation per day that such payment is late.

28. Stipulated penalties are due and payable within 30 days after the date of demand for payment of the penalties by EPA. Each Settling Party that is required to pay to EPA a stipulated payment pursuant to 28.a, above, shall identify all payments to EPA under this Paragraph as "stipulated penalties," shall reference Site/Spill ID Number 02-96 and the EPA docket number for this action, and shall make payment by EFT to:

Federal Reserve Bank of New York
Bank Routing Number: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
Address: Federal Reserve Bank of New York, 33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D68010727
Environmental Protection Agency"

28. At the time of payment, each Settling Party making such payment shall send notice that payment has been made as provided in Paragraph 26 (Notice of Payment).

28. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified a noncomplying Settling Party of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing in this Settlement Agreement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

29. In addition to the Interest and stipulated penalty payments required by this Section and any other remedies or sanctions available to EPA by virtue of a Settling Party's failure to comply with the requirements of this Settlement Agreement, a Settling Party who fails or refuses to comply with the requirements of this Settlement Agreement shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States, on behalf of EPA, brings an action to enforce this Settlement Agreement, any Settling Party against whom the action is brought shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

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30. The obligations of a Settling Party to pay amounts owed to EPA under this Settlement Agreement are individual.

31. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Settlement Agreement. Payment of stipulated penalties shall not excuse a Settling Party from payment as required by Section VI (Payment of Response Costs) or from performance of any other requirements of this Settlement Agreement.

VIII. COVENANTS BY EPA

32. Covenants for Settling Parties by EPA. Except as specifically provided in Section IX (Reservations of Rights by EPA), EPA covenants not to sue or take administrative action against each Settling Party pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), with regard to the lower 8.3 miles of the Lower Passaic River, which is OU2 of the Site. These covenants shall take effect upon the Effective Date. These covenants as to each Settling Party are conditioned upon the satisfactory performance by each Settling Party of its obligations under this Settlement Agreement. These covenants extend only to those Settling Parties who have satisfactorily performed their obligations under this Settlement Agreement and do not extend to any other person.

IX. RESERVATIONS OF RIGHTS BY EPA

33. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against each Settling Party with respect to all matters not expressly included within Paragraph 32 (Covenants by EPA). Notwithstanding any other provision of this Settlement Agreement, EPA reserves, and this Settlement Agreement is without prejudice to, all rights against each Settling Party with respect to:

33. liability for failure of a Settling Party to meet a requirement of this Settlement Agreement;

33. criminal liability;

33. liability based on the ownership or operation of the Site by a Settling Party when such ownership or operation commences after signature of this Settlement Agreement by that Settling Party;

33. liability based on Settling Party's transportation, treatment, storage, or disposal, or arrangement for transportation, treatment, storage, or disposal of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Settlement Agreement by that Settling Party;

33. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site or releases from facilities other than those identified in Appendix A; and

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33. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

34. Nothing in this Settlement Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, that the United States may have against any person, firm, corporation or other entity not a signatory to this Settlement Agreement.

X. COVENANTS BY SETTLING PARTIES

35. Covenants by Settling Parties. Each Settling Party covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the lower 8.3 miles of the Lower Passaic River, which is OU2 for the Site, and this Settlement Agreement, including but not limited to:

35. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

35. any claims arising out of the response actions at in connection with OU2 for the Site, including any claim under the United States Constitution, the Constitution of the State of New Jersey, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; and

35. any claim pursuant to Section 107 or 113 of CERCLA, 42 U.S.C. § 9607 or 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law relating to OU2 for the Site.

36. Nothing in this Settlement Agreement shall be deemed to constitute approval or 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).

37. Except for the claims asserted in the United States Bankruptcy Court for the District of Delaware, In re: Maxus Energy Corporation, et al., Case No. 16-11501, each Settling Party agrees not to assert any claims, and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that it may have, for response costs relating to the lower 8.3 miles of the Lower Passaic River, which is OU2 for the Site, against each other or any other person who is a potentially responsible party under CERCLA with respect to OU2 for the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that a Settling Party may have against any person if such person asserts a claim or cause of action relating to OU2 for the Site against such Settling Party. This waiver also shall not apply to the DPC Settling Party's contractual indemnification claims against Palin Enterprises and its affiliates and related entities and individuals.

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XI. EFFECT OF SETTLEMENT/CONTRIBUTION

38. Except as provided in Paragraph 37 (waiver of claims against other PRPs), nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. Except as provided in Section X (Covenants by Settling Parties), each of the Parties expressly reserves any and all rights (including, but not limited to, rights pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. 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) and (3), to pursue any such person not a Party hereto to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

39. The Parties agree that this Settlement Agreement constitutes an administrative settlement pursuant to which each Settling Party has, as of the Effective Date, resolved its liability to the United States within the meaning of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) 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 lower 8.3 miles of the Lower Passaic River, which is OU2 for the Site, by the United States or by any other person, except for the State; provided however, that if EPA exercises rights under the reservations in Section IX (Reservations of Rights by EPA), other than those under Paragraphs 33.a (liability for failure of a Settling Party to meet a requirement of this Settlement Agreement) or 33.b (criminal liability), the "matters addressed" in this Settlement Agreement will no longer include those response costs or response actions that are within the scope of the exercised reservation.

40. The Parties further agree that this Settlement Agreement constitutes an administrative settlement pursuant to which each Settling Party has, as of the Effective Date, resolved its liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

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

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42. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to OU2 for the Site, Settling Parties shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants by EPA set forth in Section VIII.

43. Effective upon signature of this Settlement Agreement by a Settling Party, such Settling Party agrees that the time period commencing on the date of its signature and ending on the date EPA receives from such Settling Party the payment(s) required by Section VI (Payment of Response Costs) and, if any, Section VII (Failure to Comply with Settlement Agreement) shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States related to the "matters addressed" as defined in Paragraph 39, and that, in any action brought by the United States related to the "matters addressed," such Settling Party will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If EPA gives notice to Settling Parties that it will not make this Settlement Agreement effective, the statute of limitations shall begin to run again commencing 90 days after the date such notice is sent by EPA.

XII. ACCESS TO INFORMATION

44. Any Settling Party shall provide to EPA, upon request, copies of all non-privileged records, reports, documents, and other non-privileged information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within its possession or control or that of its contractors or agents relating to activities at OU2 for the Site, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other non-privileged documents or information regarding OU2 for the Site.

45. Privileged and Protected Claims.

45. A Settling Party may assert that all or part of a Record is privileged or protected as provided under federal law, provided they comply with Paragraph 45.b, and except as provided in Paragraph 45.c.

45. If a Settling Party asserts a claim of privilege or protection, that Settling Party shall provide EPA with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, each addressee, and of each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, the Settling Party asserting the claim shall provide the Record to EPA in redacted form to mask the privileged or

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protected information only. Each Settling Party shall retain all Records that it claims to be privileged or protected until the United States has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in the Settling Party's favor.

45. Settling Parties may make no claim of privilege or protection regarding:

45. any data regarding the Site, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the Site; or

45. the portion of any Record that Settling Parties are required to create or generate pursuant to this Settlement Agreement.

46. Business Confidential Claims. A Settling Party may assert that all or part of a Record submitted to EPA under this Section or Section XIII (Retention of Records) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Such Settling Party shall segregate and clearly identify all Records or parts thereof submitted under this Settlement Agreement for which such Settling Party asserts a business confidentiality claim. Records submitted to EPA determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified Settling Parties that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2 Subpart B, the public may be given access to such Records without further notice to Settling Parties.

47. Notwithstanding any provision of this Settlement Agreement, the United States retains all of its information gathering and inspection authorities and rights, including enforcement actions relating thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XIII. RETENTION OF RECORDS

48. During the pendency of this Settlement Agreement and for a minimum of 6 years after commencement of construction of the final remedial action for the lower 8.3 miles of the Lower Passaic River, each Settling Party shall preserve and retain at least one copy of all non-identical copies of documents, records, and other information (including documents, records, or other information in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the liability of any person under CERCLA with respect to the lower 8.3 miles of the Lower Passaic River, regardless of any corporate retention policy to the contrary. Until 6 years after commencement or construction of the final remedial action for the lower 8.3 miles of the Lower Passaic River, Settling Parties shall also instruct their contractors and agents to preserve at least one copy of all such non-identical copies, documents, records, and other information of whatever kind, nature or description relating to the

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liability of any person under CERCLA with respect to the lower 8.3 miles of the Lower Passaic River.

49. At the conclusion of this document retention period, Settling Parties shall notify EPA at least 90 days prior to the destruction of any such documents, records or other information, and, upon request by EPA, Settling Parties shall deliver any such documents, records, or other information to EPA. Settling Parties may assert that certain documents, records, and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Parties assert such a privilege, they shall provide EPA with the following: 1) the title of the document, record, or other information; 2) the date of the document, record, or other information; 3) the name and title of the author of the document, record, or other information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or other information; and 6) the privilege asserted by Settling Parties. However, no documents, records, or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

50. Each Settling Party certifies individually that, to the best of its knowledge and belief, after thorough inquiry, and except for the documents listed on Appendix B to this Settlement Agreement, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the lower 8.3 miles of the Lower Passaic River since notification of potential liability by EPA and that it has fully complied with any and all EPA and State requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

XIV. NOTICES AND SUBMISSIONS

51. Whenever, under the terms of this Settlement Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Except as otherwise provided, notice by email (if that option is provided below) or by regular mail in accordance with this Section satisfies any notice requirement of this Settlement Agreement regarding such Party.

As to EPA:

Alice Yeh
Project Coordinator
Emergency and Remedial Response Division
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, NY 10007

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Re: Diamond Alkali Superfund Site, Lower 8.3 Miles of the Lower Passaic River

And to:

Juan M. Fajardo
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 17th Floor
New York, NY 10007

Re: Diamond Alkali Superfund Site, Lower 8.3 Miles of the Lower Passaic River

As to Settling Parties:

As listed in Appendix A

XV. INTEGRATION

52. This Settlement Agreement and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendices are attached to and incorporated into this Settlement Agreement: "Appendix A" is a complete list of the Settling Parties. "Appendix B" is the list of documents not subject to the Settling Parties' certification pursuant to Paragraph 50.

XVI. PUBLIC COMMENT

53. This Settlement Agreement shall be subject to a public comment period of at least 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, EPA may modify or withdraw its consent to this Settlement Agreement if comments received disclose facts or considerations that indicate that this Settlement Agreement is inappropriate, improper, or inadequate.

XVII. ATTORNEY GENERAL APPROVAL

54. The Attorney General or his or her designee has approved the settlement embodied in this Settlement Agreement in accordance with Section 122(h)(1) of CERCLA, 42 U.S.C. § 9622(h)(1).

XVIII. EFFECTIVE DATE

55. The effective date of this Settlement Agreement shall be the date upon which

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EPA issues written notice that the public comment period pursuant to Paragraph 53 has closed and that comments received, if any, do not require modification of or withdrawal by EPA from this Settlement Agreement.

IT IS SO AGREED:

U.S. ENVIRONMENTAL PROTECTION AGENCY:

_____ _____

Dated

John Prince
Acting Director, Emergency and Remedial Response Division Region 2

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Signature Page for Settlement Agreement Regarding Diamond Alkali Superfund Site

FOR _____:
[Print name of Settling Party]

_____
Dated

_____
[Name]
[Title]
[Company]
[Address]

APPENDIX A

Settling Parties

Lower 8.3 Miles of the Lower Passaic River
Diamond Alkali Superfund Site

Settling Parties	Contact Information	Facilities covered by Settlement
Alcan Corporation Two Alliance Center 3560 Lenox Rd Atlanta, GA 30326 Now Novelis Corp.	John Tillman, Esq. North American Regional Counsel Novelis Corporation Two Alliance Center 3560 Lenox Rd Atlanta, GA 30326 404-760-4049 (T) John.tillman@novelis.com	Jacobus Ave. Kearny, NJ
Belleville Industrial Center 681 Main Street Building 43 Belleville, NJ 07109	Carol Shapiro, President Belleville Industrial Center 681 Main Street, Building 43 Belleville, NJ 07109 973-751-0400 (T) shappyfam@aol.com Ryder T. Ulon, Esq, Gary F. Werner, Esq. Schenck, Price, Smith & King, LLP 220 Park Avenue Post Office Box 991 Florham Park, NJ 07932 973-540-7321 (T) rtu@spsk.com gfw@spsk.com	Belleville Industrial Center 681 Main Street, Belleville, NJ

DPC Settling Parties DiLorenzo Properties Company, a limited partnership, including current and former partners; the Estates of Sol Goldman, Irving Goldman, Alex DiLorenzo, Jr. and Alex DiLorenzo III; and Goldlex Holding Company and GHC in Liquidation, as well as the partnerships between the Estate of Sol Goldman, Irving Goldman and DiLorenzo Properties Company c/o 401 East 74th Street New York, NY 10021-3919	David Kohane, Esq. Cole Schotz, PC PO Box 800 25 Main Street Hackensack, NJ 07601-7015 DKohane@coleschotz.com For estate of Alex DiLorenzo Gary P. Gengel, Esq. Latham & Watkins, LLP 885 Third Avenue New York, NY 10022-4834 Gary.Gengel@lw.com	Property located at Passaic Avenue and Belgrove Drive, Kearny, Hudson County, New Jersey as more specifically identified as Block 1, Lots 9, 10 and 11 and Block 14, Lots 3 and 4 on the tax map of Kearny, New Jersey, formerly known as the American Modern Metals Site and a/k/a 44 and 65 Passaic Avenue and 25 Belgrove Drive, Kearny, New Jersey
EM Sergeant Pulp & Chemical Co. 6 Chelsea Road Clifton, NJ 07012	Messrs. Scott and Alan Reisch EM Sergeant Pulp & Chemical Co. 6 Chelsea Road Clifton, NJ 07012 Mark L. Freed, Esq. Curtin & Heefner LLP 2005 S. Easton Road Suite 100 Doylestown, PA 18901 mlf@curtinheefner.com	120 Lister Avenue Newark, NJ
Fiske Brothers Refining Co. 129 Lockwood Street Newark, NJ	Damon Sedita, Esq. Sedita, Campisano & Campisano, LLC Wayne Plaza 1 145 Route 46 West Suite 102 Wayne, NJ 07470 dsedita@scclegal.com 973-787-0299	129 Lockwood Street Newark, NJ
Harrison Supply Company 800 Passaic Avenue East Newark, NJ 07029	Timothy J. Corriston, Esq. Connell Foley LLP 85 Livingston Avenue Roseland, NJ 07068 973-535-0500 (T) tcorriston@connellfoley.com	800 Passaic Avenue East Newark, NJ

Mallinckrodt LLC (formerly known as Mallinckrodt Inc.) 675 McDonnell Blvd. Hazelwood, Missouri 63042	William Hatfield, Esq. Gibbons P.C. One Gateway Center Newark, NJ 07102 973-596-4511 (T) whatfield@gibbonslaw.com Eric Berry, Esq. Vice President – Environmental Law Mallinckrodt Pharmaceuticals 975 McDonnell Blvd Hazelwood, MO 63042	165-167 Main St. Lodi, NJ
Pfizer Inc. 235 E. 42nd St. New York, NY 10017	Seth Kerschner, Esq. White & Case LLP 1221 Avenue of the Americas New York, NY 1002-1095 212-819-8630(T) 212-354-8113(F) Seth.kerschner@whitecase.com	230 Brighton Road Clifton, NJ
Roman Asphalt Corporation 14 Ogden Street Newark, NJ 07104	Michael V. Calabro Law Offices of Michael V. Calabro 475 Bloomfield Avenue Newark, NJ 07107 Mcalabro475@gmail.com0710 4 973-482-1113(T) Roman@romanasphalt.com	14 Ogden Street Newark, NJ
RTC Properties, Inc. 79 Fifth Avenue New York, NY 10003	Michael L. Rodburg, Esq. Lowenstein Sandler, PC 65 Livingston Avenue Roseland, NJ 07068 973-597-2466(T) mrodburg@lowenstein.com	AT&T/Western Electric 100 Central Ave. Kearny, NJ
S&A Realty Corp. 55 Passaic Avenue Kearny, NJ 07032	Jeffrey Pollock, Esq. Fox Rothschild P.O. Box 5231 Princeton, NJ 08543 609-896-7660(T) jmpollock@foxrothschild.com	American Modern Metals 44 Passaic Avenue (a/k/a 25 Belgrove Drive) Kearny, NJ

Teva Pharmaceuticals USA, Inc. 1090 Horsham Road North Wales, PA 19454	Gail S. Port, Esq. Proskauer Rose LLP 11 Times Square New York, NY 10036-8299 212-969-3243(T) gport@proskauer.com	Biocraft Laboratories Inc. 12 Industrial Park and 140 Hopper Avenue Waldwick, NJ
The Andrew Jergens Co. 2535 Spring Grove Ave. Cincinnati, OH 45214 now KAO U.S.A Inc.	Richard T. La Jeunesse, Esq. Graydon Head & Ritchey LLP 312 Walnut Street, Suite 1800 Cincinnati, OH 45202 513-629-2702(T) rlajeunesse@graydon.law	Approximately 23.3739 acres of land located on what was formerly known as Block 685, Lot 1 and Block 695, Lot 23 of the Town of Belleville's Tax Map, and now known as 11 Franklin Avenue Belleville, NJ
The BOC Group, Inc. 575 Mountain Avenue Murray Hill, NJ 07974 now Linde LLC on behalf of The BOC Group, Inc.	James (Jay) Stewart, Esq. Lowenstein Sandler PC 65 Livingston Avenue Roseland, NJ 07068 973-597-2522(T) jstewart@lowenstein.com G. Gregory Schuetz Linde North America, Inc. 200 Somerset Corporate Blvd. Suite 7000 Bridgewater, NJ 08807	681 Main Street Belleville, NJ
Three County Volkswagen 701 Riverside Ave. Lyndhurst, NJ 07071	Lee D. Henig-Elona, Esq. Gordon & Rees 18 Columbia Turnpike, Suite 220 Florham Park, NJ 07932 973-549-2520(T direct) 973-549-2500(T office) lhenig-elona@gordonrees.com	701 Riverside Ave. Lyndhurst, NJ

Wyeth (now known as Wyeth LLC) on behalf of itself and (1) its subsidiary American Cyanamid Company (now known as Wyeth Holdings LLC), and (2) Shulton Inc., 5 Giralda Farms, Madison, NJ 07940	Ronald J. Schott, Esq. Corporate Counsel Pfizer 5 Giralda Farms Madison, NJ 07940 973-660-6641(T) 973-660-7176(F) ronald.schott@pfizer.com Seth Kerschner, Esq. White & Case LLP 1221 Avenue of the Americas New York, NY 1002-1095 212-819-8630(T) 212-354-8113(F) Seth.kerschner@whitecase.com	Shulton Inc. and American Cyanamid Co. 697 Route 46 Clifton, NJ Address also shown as 699 Route 46 Clifton, NJ or: Route 46 East Colfax Avenue Clifton, NJ or: 360 Colfax Avenue Clifton, NJ

APPENDIX B

List of Documents

1. Documents, e-mails, records, reports or information altered, mutilated, discarded, destroyed or otherwise disposed of prior to the time the Settling Parties received its first notice of liability with respect to the Lower Passaic River Study Area;

2. Prior drafts of documents for which a last draft (document never made final) or final copy still exists;

3. Duplicates of documents maintained in other files;

4. Original documents, copies of which are now maintained only on microfilm, microfiche, CD-ROM disc, or by other similar information archiving methods, or

5. Original documents previously stored on archiving methods identified in paragraph 4 above, for which the microfilm, microfiche, etc., no longer exists, but from which hard copies printed from the microfilm, microfiche, etc. do exist.