

**INTERIM COOPERATIVE ASSESSMENT FUNDING AGREEMENT FOR THE  
LOWER PASSAIC RIVER PORTION OF THE DIAMOND ALKALI  
SUPERFUND SITE, NEW JERSEY**

**I. PARTIES**

This Interim Cooperative Assessment Funding Agreement (“Interim Funding Agreement”) is made and entered into by and between the United States Department of the Interior (“DOI”), acting by and through the Regional Director, the United States Fish and Wildlife Service (“FWS”) as Authorized Official, and the United States Department of Commerce acting through the National Oceanic and Atmospheric Administration (“NOAA”) (together, the “Federal Trustees”), and the “Cooperating Companies” (as listed in Exhibit A), collectively referred to as the “Parties.”

**II. BACKGROUND**

In August 2004, the Federal Trustees issued a Preassessment Screen Determination for the Diamond Alkali Superfund Site (“Site”), and on August 2, 2007, issued a Notice of Intent to Perform a Damage Assessment. On November 21, 2007, the Federal Trustees published in the Federal Register a Notice of Availability seeking public comment on a draft Natural Resource Damage Assessment Plan. The Federal Trustees have been and are continuing to collect and assess data and information related to releases of hazardous substances from the Site and their impact on natural resources and associated services. The Site includes the Lower Passaic River Study Area (“LPRSA”), which is the subject of this Interim Funding Agreement. The LPRSA consists of the lower seventeen miles of the Passaic River, from Dundee Dam to the mouth of the Passaic River at Newark Bay.

**III. AUTHORITY**

Pursuant to Section 107(f) of CERCLA, 42 U.S.C. Sec. 9607(f), Executive Order 12580, and Section 300.600 of the NCP, 40 C.F.R. 300.600, the Federal Trustees for the Site act on behalf of the public as trustees for natural resources potentially affected by the Site. The Federal Trustees are authorized to conduct natural resource damage assessment and restoration activities and to sue for injuries to and the restoration of such natural resources. The Natural Resource Damage Assessment Regulations at 43 C.F.R. 11.32(a)(2)(iii)(A), encourage the invitation of potentially responsible parties to participate in the assessment process.

#### **IV. PURPOSE**

The Federal Trustees for the Site are proceeding with a natural resource damage assessment (“NRDA”) of the Site, including the LPRSA. The purpose of this Interim Funding Agreement is to reimburse the Federal Trustees for a portion of their past costs and to provide funding for a portion of future costs incurred by the Federal Trustees in pursuing a cooperative NRDA of the LPRSA. The scope of the NRDA activities under this Interim Funding Agreement are detailed in the attached Interim Cooperative Assessment Agreement, which shall be signed by all Parties and incorporated by reference as Exhibit B into this Interim Funding Agreement. These activities, which are the subject of this Interim Funding Agreement, shall include all natural resources in the LPRSA under the sole or joint trusteeship of the Federal Trustees. This Interim Funding Agreement is intended to facilitate resolution of any natural resource damages (“NRD”) claims arising from or relating to the LPRSA, to minimize the transaction costs associated with such claim(s), to ensure that appropriate credit is given to the Cooperating Companies, and to work toward the goal of cooperatively developing and implementing a final restoration plan. The Cooperating Companies agree to work, to the extent practicable, with any other company(ies) who may be participating in an overall cooperative assessment with the Trustees so that the overall assessment may be conducted in an efficient and cost-effective manner.

This Interim Funding Agreement is entered into by the Federal Trustees solely to facilitate the start of cooperative assessment activities. This Interim Funding Agreement is not meant to, nor does it represent any actual or possible allocation of possible role, responsibility, or liability between or among any parties entering into any such agreements. The Parties to this Interim Funding Agreement enter this agreement with the express understanding and agreement that such agreement is not for the purpose of identifying or establishing actual or potential share allocation, and that such agreements cannot and should not be so construed or utilized. Nothing herein contained, used or relied upon in developing this Interim Funding Agreement is to be taken or construed as having any relevance, force, effect, or import whatsoever regarding possible issues of allocation or share as regards potential natural resource damages liability or responsibility.

The Parties therefore agree as follows:

#### **V. TERMS AND CONDITIONS**

A. The Cooperating Companies shall reimburse the Federal Trustees for a \$300,000 portion of their past assessment costs incurred in connection with the LPRSA within thirty (30) calendar days after the Federal Trustees have provided the Cooperating Companies with a summary of the costs being reimbursed and the full

execution of this Interim Funding Agreement. The cost summary shall provide documentation of those costs, following each agency's cost documentation practices. Payments shall be made in the amounts of \$150,000 to the DOI; and \$150,000 to NOAA. The Cooperating Companies shall be provided with detailed funds transfer instructions by DOI and NOAA.

B. Upon mutual agreement between the Cooperating Companies and the Federal Trustees, the Cooperating Companies and/or the Trustees shall perform discrete studies and restoration project(s) related to potential NRD in the LPRSA pursuant to the Interim Cooperative Assessment Agreement. Such project(s) and studies shall be approved by the Cooperating Companies and the Federal Trustees before they are performed.

C. The Cooperating Companies shall fund the Federal Trustees' reasonable administrative, oversight, and assessment costs in an amount not to exceed \$500,000 incurred as part of the Interim Cooperative Assessment Agreement and relating substantially to NRDA activities for the LPRSA under this Agreement, including but not limited to attendance at LPRSA-related meetings, ongoing GIS development, historical data review and consultant support, but excluding the costs of the development and implementation of NRDA study activities undertaken solely by the Federal Trustees or other entities, unless such costs are otherwise agreed to in writing by the Federal Trustees and the Cooperating Companies. For the purposes of funding of the Federal Trustees; reasonable assessment and administrative costs, other activities will also be funded if those activities are for the larger Site, but cannot be separated from activities solely related to the LPRSA.

D. The Cooperating Companies shall, within thirty (30) calendar days of full execution of this Interim Agreement, make an upfront payment of \$250,000 to the Federal Trustees towards the reasonable assessment and administrative costs referred to in C, above, which shall be credited against such costs. Payments shall be made in the amounts of \$125,000 to the DOI; and \$125,000 to NOAA. The Cooperating Companies shall be provided with detailed funds transfer instructions by DOI and NOAA.

E. The Federal Trustees may submit to the Cooperating Companies a replenishment request for the additional \$250,000 no earlier than six months after the initial payment made in Paragraph D, above. The request shall include documentation of the costs incurred that consumed the initial \$250,000 payment, following each agency's cost documentation practices, and a description of the costs expected to be incurred that will consume the second \$250,000 payment. Payment of the second \$250,000 shall be made by the Cooperating Companies within thirty (30) calendar days of receipt of the description of costs expected to be incurred. The Cooperating Companies shall have the right to object, under Section X – DISPUTE RESOLUTION, to any costs on the grounds they are unreasonable or not incurred under this Interim Agreement. However, the

Cooperating Companies shall pay the undisputed costs within thirty (30) calendar days of receipt of the description of costs expected to be incurred.

F. The Federal Trustees shall submit to the Cooperating Parties documentation of the costs incurred that consumed the second \$250,000 payment within a reasonable amount of time after the exhaustion of those funds. This obligation to provide documentation of costs shall survive termination of this Interim Funding Agreement.

## **VI. RESERVATION OF RIGHTS**

A. Nothing in this Interim Funding Agreement is intended to be nor should it be construed as an admission of liability on the part of the Cooperating Companies or any of its members or as a limitation upon any of their rights or defenses.

B. Nothing in this Interim Funding Agreement is intended to be nor should it be construed to be a limitation on the Federal Trustees' (or the entities comprising them) authority to pursue any claims or causes of action against the Cooperating Companies for damages or otherwise, provided, however, that any payments of Federal Trustee costs pursuant to Paragraph V.C. and the Cooperating Companies' performance of NRD-related studies approved by the Federal Trustees shall be credited dollar-for-dollar or in a mutually agreed-upon manner against any future claims for assessment costs, restoration costs and/or damages. Any restoration work or payments made to the Federal Trustees for restoration work shall be credited, by mutually agreed upon metrics that measure restoration credits agreed to by the Parties, against future claims for restoration or damages.

## **VII. TERMINATION**

Either the Cooperating Companies, acting as a single entity, or the Federal Trustees may withdraw from this Interim Funding Agreement at will, at any time, for any reason. The withdrawal must be made in writing and communicated to the other Party. The Cooperating Companies will forward written notice of withdrawal to each Federal Trustee. The Federal Trustees must forward written notice of withdrawal to the Cooperating Companies. Withdrawal by either Party shall terminate this Interim Funding Agreement, in which event the Cooperating Companies shall remain obligated to complete all agreed-upon work and honor Federal Trustees' costs or expenses that are otherwise compensable under this Agreement incurred prior to the delivery of the notice of withdrawal. No further payments shall be made to the Federal Trustees following one of the Parties withdrawing from this Interim Funding Agreement except for payments for costs or expenses compensable under this Agreement incurred prior to the delivery of the notice of withdrawal. There is no advance notice required to terminate the Interim

Funding Agreement. The Interim Funding Agreement is terminated immediately upon forwarding written notice of withdrawal by either the Cooperating Companies or the Federal Trustees. Withdrawal from this Interim Funding Agreement by any Party will be effective upon the date of delivery of the notice of withdrawal. This Interim Funding Agreement will terminate automatically one year from the effective date, unless extended by the mutual written agreement of the Parties or unless terminated earlier by the withdrawal of a Party. Nothing in this Interim Funding Agreement shall obligate the Cooperating Companies to fund an amount greater than \$300,000 for past trustee costs under Section V.A. and \$500,000 for administrative, oversight, and assessment costs under Section V.C. of this Agreement.

#### **VIII. EXTENSION/MODIFICATION**

A. This Interim Agreement may be extended by mutual, written agreement of the Parties for at least one year. The agreement to extend shall be appended to this Interim Agreement.

B. This Interim Agreement and its exhibits may be modified only by mutual, written agreement of the Parties.

#### **IX. NOTICES**

Any general information or notices required to be given in writing under this Interim Funding Agreement shall be deemed to have been sufficiently given if delivered by a method that establishes date of delivery to the each of the addresses set forth below, or to such other address for either Party as may be designated by written notice.

For the Cooperating Companies:

Bernard Reilly  
DuPont Company, Legal, D-7082  
1007 Market Street  
Wilmington, DE 19898

John Doherty  
Public Service Electric Gas Company  
80 Park Plaza  
Newark, NJ 07102

David Schneider  
Bressler Amery & Ross  
325 Columbia Turnpike

Florham Park, NJ 07932

For the Federal Trustees:

Linda Burlington  
National Oceanic and Atmospheric Administration  
NOAA/GCNR  
Room 15104  
1315 East West Highway  
Silver Spring, MD 20910-3282  
Phone: 301-713-1332  
Fax: 301-713-1229  
Email: [Linda.B.Burlington@noaa.gov](mailto:Linda.B.Burlington@noaa.gov)

With copies to:

Mark Barash  
U.S. Department of the Interior Office  
of the Regional Solicitor  
One Gateway Center, Suite 612  
Newton Corner, MA 02458  
Phone: 617-527-2103 Fax: 617-527-6848  
Email: [r5mbarash@gmail.com](mailto:r5mbarash@gmail.com) and [MARK.BARASH@sol.doi.gov](mailto:MARK.BARASH@sol.doi.gov)

Brian Donohue  
U.S. Department of Justice  
Environment and Natural Resources Division  
1425 New York Ave. N. W., Room 13063  
P.O. Box 7611  
Washington DC 20044-7611  
Phone: 202-514-5413 Fax: 202-616-2427  
Email: [brian.donohue@usdoj.gov](mailto:brian.donohue@usdoj.gov)

## **X. DISPUTE RESOLUTION**

A. The Parties shall endeavor in good faith to make decisions by consensus. In the absence of consensus, the Parties shall attempt in good faith, for a period not to exceed ten (10) calendar days after receipt of written notice that briefly identifies the subject on which there is no consensus, to reach consensus through consultation among the Parties' representative, who are currently designated as:

The Cooperating Companies:

Bernard Reilly  
DuPont Company, Legal, D-7082  
1007 Market Street  
Wilmington, DE 19898

John Doherty  
Public Service Electric Gas Company  
80 Park Plaza  
Newark, NJ 07102

David Schneider  
Bressler Amery & Ross  
325 Columbia Turnpike  
Florham Park, NJ 07932

The Federal Trustees

U.S. Department of the Interior  
Timothy Kubiak  
U.S. Fish & Wildlife Service  
New Jersey Field Office  
927 North Main St.  
Pleasantville, New Jersey 08232  
Phone: 609-646-9310 x 26  
Fax: 609-383-3939  
E-mail: [tim\\_kubiak@fws.gov](mailto:tim_kubiak@fws.gov)

Mark Barash  
U.S. Department of the Interior  
Office of the Regional Solicitor  
One Gateway Center, Suite 612  
Newton Corner, MA 02458  
Phone: 617 527 2103  
Fax: 617 527 6848  
Email: [r5mbarash@gmail.com](mailto:r5mbarash@gmail.com) and [MARK.BARASH@sol.doi.gov](mailto:MARK.BARASH@sol.doi.gov)

United States Department of Commerce

Linda Burlington  
National Oceanic & Atmospheric Administration  
NOAA/GCNR  
Room 15104  
1315 East West Highway  
Silver Spring, MD 209 10-3282  
Phone 301-713-1332  
FAX: 301-713-1229  
Email [Linda.B.Burlington@noaa.gov](mailto:Linda.B.Burlington@noaa.gov)

Eli Reinharz  
National Oceanic and Atmospheric Administration  
Office of Response and Restoration  
Assessment and Restoration Division  
SSMC#4, N/ORR3  
1305 East-West Highway  
Silver Spring, Maryland 20910  
Phone: 301-713-4248, ext 193  
Fax: 301-713-4378  
Email [eli.reinharz@noaa.gov](mailto:eli.reinharz@noaa.gov)

B. In the event consensus is not reached by the representatives pursuant to Subparagraph X.B, the Parties shall attempt in good faith for a period not to exceed ten (10) calendar days to reach consensus through consultation among the following management representatives.

For the Cooperating Companies:

John E. Vidumsky, P.E.  
DuPont Corporate Remediation Group  
Barley Mill Plaza 19 - 2164  
4417 Lancaster Pike  
Wilmington, DE 19805

J. Douglas Reid-Green  
BASF Corporation  
100 Campus Drive  
Florham Park, NJ 07932

Michael Hornsby  
Environmental Issues Manager  
PSEG Services Corporation  
80 Park Plaza, Newark, NJ 07102

Jeffrey R. Klieve  
Pharmacia Corporation (f/k/a Monsanto Company)  
c/o Monsanto Company - OC5D  
800 N. Lindbergh Blvd.  
St. Louis, MO 63167

For Federal Trustees;

Dave Westerholm, Director  
Office of Response and Restoration  
National Ocean Service  
National Oceanic and Atmospheric Administration

Marvin Moriarty  
Regional Director  
U.S. Fish & Wildlife Service

C. In the event consensus is not reached by the representatives pursuant to Subparagraph X.C, either Party may terminate the Interim Funding Agreement as provided in Section VII.

#### **XI. APPLICABLE LAW**

This Interim Funding Agreement shall be governed in all respects, including validity, interpretation, and effect, by the laws of the State of New Jersey, without giving effect to the principles of conflicts of laws of such state.

#### **XII. AUTHORITY**

The person executing this Interim Funding Agreement on behalf of each member of the Parties represents and warrants that he or she has full power and authority to do so on behalf of such member.

#### **XIII. EXECUTION**

This Interim Funding Agreement and any modifications or addenda hereto may be executed in several counterparts by the Parties and when so executed shall be considered

fully executed to the same extent as if the Parties had signed the original document.  
Facsimile execution is authorized.

#### **XIV. PERIOD AND EFFECTIVE DATE**

The effective date of this Interim Funding Agreement shall be the date of the last signature and the period of this Interim Funding Agreement shall be for one year from that date unless otherwise amended in writing.

#### **XV. GEOGRAPHIC SCOPE OF AGREEMENT**

The geographic scope of this Interim Funding Agreement and of data collection activities undertaken thereunder will be limited to the LPRSA unless otherwise expressly agreed to by all Parties.

IN WITNESS WHEREOF the Parties have executed this Interim Funding Agreement on the dates attested to below.

Interim Funding Agreement – Federal Trustees & Cooperating Companies  
November 2008

The United States Department of the Interior, by its Authorized Official

By:

Name:

Title:

Date:



Marvin Moriarty

**Acting** Regional Director, U.S. Fish and Wildlife Service

12/11/08

The United States Department of Commerce

By:

Name:

Title:



Craig R. O'Connor

Special Counsel for Natural Resources

Office of the General Counsel

National Oceanic and Atmospheric Administration

Date:

12/22/08

Interim Funding Agreement – Federal Trustees & Cooperating Companies  
November 2008

FOR ALCATEL-LUCENT USA INC.:

By:  \_\_\_\_\_

Name: Gary M. Fisher

Title: EH&S Remediation Manager

Date: NOVEMBER 16, 2008 \_\_\_\_\_

FOR BASF CORPORATION, ON ITS OWN BEHALF AND ON BEHALF OF BASF  
CATALYSTS LLC

By: Nan Bernardo

Name: **Nan Bernardo**  
Title: **Senior Environmental Counsel**  
**BASF Corporation**

Date: **November 9, 2008**

Interim Funding Agreement – Federal Trustees & Cooperating Companies  
November 2008

FOR BENJAMIN MOORE & CO.

By:



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Name:

James L. Megin

Title:

Vice President Finance, Chief Information Officer and Treasurer

Date:

November 5, 2008

Interim Funding Agreement – Federal Trustees & Cooperating Companies  
November 2008

FOR CELANESE LTD



By: Miguel Desdin

Name: MIGUEL DESDIN

Title: VP AND CONTROLLER

Date: 11/19/08

Interim Funding Agreement - Federal Trustees & Cooperating Companies  
November 2008

FOR CHEMTURA CORPORATION

By: Mark C Furse

Name: MARK C. FURSE

Title: IT'S ATTORNEY

Date: 12/10/08

Interim Funding Agreement – Federal Trustees & Cooperating Companies  
November 2008

FOR CHEVRON ENVIRONMENTAL MANAGEMENT COMPANY, FOR ITSELF  
AND ON BEHALF OF TEXACO INC.

By: Robert R. John

Name: Robert R. John

Title: Assistant Secretary

Date: 11/21/08

FOR CRODA INC.

By: *Norman W. Spindel*

Name: Norman W. Spindel

Title: Counsel for Croda Inc.

Date: November 12, 2008

FOR DUPONT COMPANY

By: Bernard J. Reilly

Name: Bernard J. Reilly

Title: Corporate Counsel

Date: November 25, 2008

FOR FRANKLIN-BURLINGTON PLASTICS, INC.

By: *Norman W. Spindel*

Name: Norman W. Spindel

Title: Counsel for Franklin-Burlington, Inc.

Date: November 12, 2008

Interim Funding Agreement – Federal Trustees & Cooperating Companies  
November 2008

FOR GENERAL MOTORS CORPORATION

By: James P. Walle

Name: James P. Walle

Title: Attorney, GM Legal Staff

Date: November 25, 2008

FOR ISP CHEMICALS LLC

By:

  
\_\_\_\_\_

Name:

Steven E. Post

Title:

Sr. Vice President

Date:

11-20-08  
\_\_\_\_\_

Interim Funding Agreement - Federal Trustees & Cooperating Companies  
November 2008

FOR ~~BOC GROUP~~ Hinde, Inc., formerly known as The BOC Group, Inc.

By: Mark D. Weller

Name: Mark D. Weller

Title: Vice President & General Counsel

Date: 12-4-08

Interim Funding Agreement – Federal Trustees & Cooperating Companies  
November 2008

FOR MILLENNIUM CHEMICALS, INC. AFFILIATED ENTITIES MHC, INC. (ON BEHALF OF ITSELF AND WALTER KIDDE & COMPANY, INC.) MILLENNIUM PETROCHEMICALS, INC. (F/K/A QUANTUM CHEMICAL CORPORATION) AND EQUISTAR CHEMICALS LP

By: Deborah W Kryak

Name: DEBORAH W. KRYAK

Title: DIRECTOR, RETAINED LIABILITIES

Date: 11/21/08

FOR NEWS PUBLISHING AUSTRALIA LTD

By: Peter Simshauser

Name: Peter Simshauser

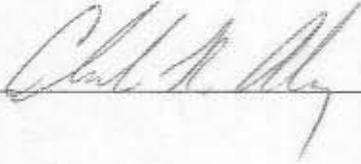
Title: Attorney

Date: 11/20/08

Interim Funding Agreement - Federal Trustees & Cooperating Companies  
November 2008

FOR NOVELIS CORPORATION (F/K/A ALCAN ALUMINUM CORPORATION)

By:



A handwritten signature in cursive script, appearing to read "Charles R. Aley", is written over a solid horizontal line.

Name: Charles R. Aley  
Title: Vice-President, General Counsel & Secretary  
Date: November 26, 2008

FOR NPEC, Inc.

By: Joseph G. Gabriel 

Name: Joseph G. Gabriel

Title: President NPEC Inc.

Date: 11-17-08

Interim Funding Agreement – Federal Trustees & Cooperating Companies  
November 2008

FOR PHARMACIA CORPORATION (F/K/A MONSANTO COMPANY)

By:



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Name:

JEFFREY R. KLIVE

Title:

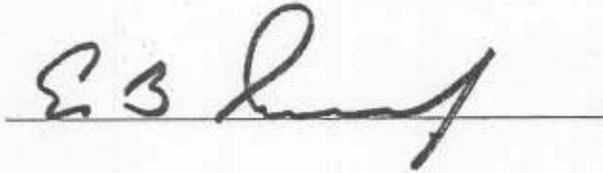
DIRECTOR, ENVIRONMENTAL AFFAIRS FOR MONSANTO  
COMPANY, ATTORNEY-IN-FACT FOR PHARMACIA CORPORATION

Date:

NOVEMBER 17, 2008

FOR PUBLIC SERVICE ELECTRIC AND GAS COMPANY

By:

A handwritten signature in black ink, appearing to read "E B Svenson", is written over a horizontal line.

Name: Eric B. Svenson, Jr., P.E.

Title: Vice President, Environment, Health and Safety

Date: 11-20-2008

FOR PURDUE PHARMA TECHNOLOGIES Inc.

By: Edward B. Mahony

Name: Edward B. Mahony

Title: EVP, CFO & Treasurer

Date: 11/20/08

Interim Funding Agreement – Federal Trustees & Cooperating Companies  
November 2008

FOR SAFETY-KLEEN ENVIROSYSTEMS COMPANY BY MCKESSON, AND  
MCKESSON CORPORATION FOR ITSELF

By:  \_\_\_\_\_

Name: Nicholas A. Loiacono

Title: Treasurer

Date: November 20, 2008

Interim Funding Agreement - Federal Trustees & Cooperating Companies  
November 2008

FOR. TEVAL CORP.

By:

A handwritten signature in black ink, appearing to read "Lee Henig-Elona", is written over a horizontal line. The signature is stylized and somewhat cursive.

Name:

Lee Henig-Elona, Esq  
Attorney

Title:

Date:

Dec. 1, 2008

FOR VERTELLUS SPECIALTIES INC.

By:



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Name:

Anne M. Frye

Title:

Vice President

Date:

1.8.09

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**EXHIBIT B**

**LIST OF COOPERATING COMPANIES**

1. Alcatel-Lucent USA Inc.
2. BASF Corporation, on its own behalf and on behalf of BASF Catalysts LLC
3. Benjamin Moore & Co.
4. Celanese LTD
5. Chemtura Corporation
6. Chevron Environmental Management Company, for itself and on behalf of Texaco Inc.
7. Croda Inc.
8. DuPont Company
9. Franklin-Burlington Plastics, Inc.
10. General Motors Corporation
11. ISP Chemicals LLC
12. Linde, Inc., (f/k/a The BOC Group, Inc.)
13. Millennium Chemicals, Inc. Affiliated Entities MHC, Inc. (on behalf of Itself and Walter Kidde & Company, Inc.) Millennium Petrochemicals, Inc. (f/k/a Quantum Chemical Corporation) and Equistar Chemicals LP
14. News Publishing Australia Ltd.
15. Novelis Corporation (f/k/a Alcan Aluminum Corporation)
16. NPEC, Inc.
17. Pharmacia Corporation (f/k/a Monsanto Company)
18. Public Service Electric Gas Company
19. Purdue Pharma Technologies
20. Safety-Kleen Envirosystems Company by McKesson, and McKesson Corporation for itself
21. Teval Corporation
22. Vertellus

**INTERIM COOPERATIVE ASSESSMENT AGREEMENT FOR THE LOWER  
PASSAIC RIVER PORTION OF THE DIAMOND ALKALI SUPERFUND SITE,  
NEW JERSEY**

**I. PARTIES**

This Interim Cooperative Agreement (“Interim Agreement”) is made and entered into by and between the United States Department of the Interior (“DOI”), acting by and through the Regional Director, the United States Fish and Wildlife Service (“FWS”) as Authorized Official, and the United States Department of Commerce acting through the National Oceanic and Atmospheric Administration (“NOAA”) (together, the “Federal Trustees”), and the “Cooperating Companies” (as listed in Exhibit A of any fully signed Interim Cooperative Assessment Funding Agreement), collectively referred to as the “Parties.”

**II. BACKGROUND**

In August 2004, the Federal Trustees issued a Preassessment Screen Determination for the Diamond Alkali Superfund Site (“Site”), and on August 2, 2007, issued a Notice of Intent to Perform a Damage Assessment. On November 21, 2007, the Federal Trustees published in the Federal Register a Notice of Availability seeking public comment on a draft Natural Resource Damage Assessment Plan. The Federal Trustees have been and are continuing to collect and assess data and information related to releases of hazardous substances from the Site and their impact on natural resources and associated services. The Site includes the Lower Passaic River Study Area (“LPRSA”), which is the subject of this Interim Agreement. The LPRSA consists of the lower seventeen miles of the Passaic River, from Dundee Dam to the mouth of the Passaic River at Newark Bay.

**III. AUTHORITY**

Pursuant to Section 107(f) of CERCLA, 42 U.S.C. Sec. 9607(f), Executive Order 12580, and Section 300.600 of the NCP, 40 C.F.R. 300.600, the Federal Trustees for the Site act on behalf of the public as trustees for natural resources potentially affected by the Site. The Federal Trustees are authorized to conduct natural resource damage assessment and restoration activities and to sue for injuries to and the restoration of such natural resources. The Natural Resource Damage Assessment Regulations at 43 C.F.R. 11.32(a)(2)(iii)(A), encourage the invitation of potentially responsible parties to participate in the assessment process.

**IV. PURPOSE**

The Federal Trustees for the Site are proceeding with a natural resource damage Assessment (“NRDA”) of the Site, including the LPRSA. The purpose of this Interim Agreement

is to provide a first step toward, and interim framework for, a cooperative NRDA of the LPRSA. The scope of the NRDA activities under this Interim Agreement shall include all natural resources in the LPRSA under the sole or joint trusteeship of the Federal Trustees. This Interim Agreement is intended to facilitate resolution of any natural resource damages (“NRD”) claims arising from or relating to the LPRSA, to minimize the transaction costs associated with such claim(s), to ensure that appropriate credit is given to the Cooperating Companies and to work toward the goal of cooperatively developing and implementing a final restoration plan. The Cooperating Companies agree to work, to the extent practicable, with any other company(ies) who may be participating in an overall cooperative assessment with the Trustees so that the overall assessment may be conducted in an efficient and cost-effective manner.

The Parties agree that it is desirable to undertake a cooperative assessment of the LPRSA to:

- A. Determine the nature and extent of injuries to natural resources and/or the services provided by such resources (injury determination and quantification) in the LPRSA; and
- B. Conduct restoration planning and implementation (restoration) related to the LPRSA. Based on experience gained working under this Interim Agreement, the Parties shall determine the manner and extent of future cooperation, and implement such cooperation through subsequent agreement(s).

The Parties therefore agree as follows:

## **V. TERMS AND CONDITIONS**

A. The Federal Trustees and the Cooperating Companies shall meet and establish one or more technical work groups (“TWG”) that will identify NRDA studies and data collection needs to be integrated to the extent practicable with the U.S. Environmental Protection Agency (EPA) Remedial Investigation/Feasibility Study (RI/FS) data collection for the LPRSA, including the identification of data needed for NRDA purposes that are not otherwise planned to be collected for the RI/FS. As such studies and projects are agreed upon by the Parties, they will be added as Exhibits hereto and incorporated by reference to this Interim Agreement.

B. The TWG shall develop and submit to the Federal Trustees and the Cooperating Companies, for their approval, specific restoration projects that could be undertaken in the near term, such as the purchase, or option to purchase, land for restoration, or enhancement of public access to the LPRSA. The TWG also may recommend data collection activities to be undertaken. All such activities will be defined and budgeted by the TWG before being presented to the Federal Trustees and the Cooperating Companies for approval. Data collection efforts shall be coordinated to the extent practicable with EPA-mandated activities to achieve economies of time and effort and all data collected shall be shared in a manner that allows all Parties to readily access and use it. Where appropriate, QA/QC procedures consistent with EPA requirements shall

be used. Data shall be collected in a mutually agreed upon manner by or with the oversight of the Federal Trustees or their consultants.

C. The Parties agree that a representative from each Party may be present during all data collection and laboratory work for any cooperative study, but only to the extent that the Trustees reasonably determine such participation will not interfere with study activities. The Party responsible for implementing any cooperative study shall provide at least 10 days' notice to the other Party prior to any data collection or laboratory work. Notwithstanding the above, in the case of data collection from human respondents (e.g. the use of surveys, interviews, etc.), the presence of all Parties and the sharing of complete data may impede the collection of accurate, complete and candid responses. In such cases, and to the extent necessary to promote the accuracy, volume, and candor of responses, the Parties shall agree on procedures for the collection and sharing of such data, which procedures may include, for example, the use of neutral interviewers, the aggregation of data prior to dissemination to protect the confidentiality of individual responses, or require the absence of any Party during data collection activities, etc.

D. All Parties agree to be guided by the principles set forth in the proposed Cooperative Assessment Approach and Framework, attached hereto and incorporated herein as Exhibit A.

E. All Parties understand and agree that the Federal Trustees retain final responsibility for, and authority over, the development and implementation of the NRDA, including but not limited to the assessment plan, data collection, and other studies undertaken to implement the NRDA plan.

F. During the period of this Interim Agreement the Federal Trustees or the Cooperating Companies may propose additional restoration projects or joint studies related to NRDA for the Site. Any agreement by the Cooperative Companies to fund such studies or restoration projects must be in writing and shall be incorporated as an attachment to this Interim Agreement.

## **VI. RESERVATION OF RIGHTS**

A. Nothing in this Interim Agreement is intended to be nor should it be construed as an admission of liability on the part of the Cooperating Companies or as a limitation upon any of their rights or defenses.

B. Nothing in this Interim Agreement is intended to be nor should it be construed to be a limitation on the Federal Trustees' (or the entities comprising them) authority to pursue any claims or causes of action against the Cooperating Companies for damages or otherwise, provided, however, that any payments of Federal Trustee costs and the funding of any Federal Trustee activities by the Cooperating Companies shall be credited dollar-for-dollar or in a mutually agreed upon manner by the Parties, against any future claims for assessment costs, restoration costs and/or damages. Any restoration work performed or payments made to the

Federal Trustees for restoration work shall be credited, by mutually agreed upon metrics that measure restoration credits agreed by the Parties, against future claims for restoration or damages.

## **VI. TERMINATION**

A. Either the Cooperating Companies or the Federal Trustees may withdraw from this Interim Agreement at will at any point for any reason. The withdrawal must be made in writing and communicated to the other Party. The Cooperating Companies will forward written notice of withdrawal to each Federal Trustee. The withdrawing Federal Trustees must forward written notice to the Cooperating Companies. Withdrawal by the Cooperating Companies shall terminate this Interim Agreement. There is no advance notice required to withdraw from this Interim Agreement.

B. Withdrawal from this Interim Agreement by any Party will be effective upon the date of receipt by registered mail of withdrawal.

C. This Interim Agreement will terminate automatically one year from its effective date or upon completion of all active filed work efforts then underway at the time of termination of this Interim Agreement, whichever is later, unless extended by the mutual written agreement of the Parties and attached to this Interim Agreement.

## **VII. EXTENSION/MODIFICATION**

A. This Interim Agreement may be extended by mutual, written agreement of the Parties for at least one year. The agreement to extend shall be appended to this Interim Agreement.

B. This Interim Agreement and its exhibits may be modified only by mutual, written agreement of the Parties.

## **IX. NOTICES**

A. Any general information or notices required to be given in writing under this Interim Agreement shall be deemed to have been sufficiently given if delivered by a method that establishes date of delivery to each of the addresses set forth below, or to such other address for either Party as may be designated by written notice.

For the Cooperating Companies:

Bernard Reilly  
DuPont Company, Legal, D-7082  
1007 Market Street  
Wilmington, DE 19898

John Doherty  
Public Service Electric Gas Company  
80 Park Plaza  
Newark, NJ 07102

David Schneider  
Bressler Amery & Ross  
325 Columbia Turnpike  
Florham Park, NJ 07932

For the Federal Trustees:

Linda Burlington  
National Oceanic and Atmospheric Administration  
NOAA/GCNR  
Room 15104  
1315 East West Highway  
Silver Spring, MD 209 10-3282  
Phone: 301-713-1332  
Fax: 301-713-1229  
Email: [Linda.B.Burlington@noaa.gov](mailto:Linda.B.Burlington@noaa.gov)

With copies to:

Mark Barash  
U.S. Department of the Interior Office  
of the Regional Solicitor One Gateway  
Center, Suite 612 Newton Corner, MA  
02458  
Phone: 617-527-2103  
Fax: 617-527-6848  
Email: [r5mbarash@gmail.com](mailto:r5mbarash@gmail.com) and  
[MARK.BARASH@sol.doi.gov](mailto:MARK.BARASH@sol.doi.gov)

Brian Donohue  
U.S. Department of Justice  
Environment and Natural Resources Division 1425  
New York Ave. N. W., Room 13063 P.O. Box 7611  
Washington DC 20044-7611

Phone: 202-514-5413  
Fax: 202-616-2427  
Email: [brian.donohue@usdoj.gov](mailto:brian.donohue@usdoj.gov)

## X. DISPUTE RESOLUTION

A. The Parties shall endeavor in good faith to make decisions by consensus.

B. In the absence of consensus, the Parties shall attempt in good faith, for a period not to exceed ten (10) calendar days after receipt of written notice that briefly identifies the subject on which there is no consensus, to reach consensus through consultation among the Parties' representative, who are currently designated as:

1. For the Cooperating Companies:

Bernard Reilly  
DuPont Company, Legal, D-7082  
1007 Market Street  
Wilmington, DE 19898

John Doherty  
Public Service Electric Gas Company  
80 Park Plaza  
Newark, NJ 07102

David Schneider  
Bressler Amery & Ross  
325 Columbia Turnpike  
Florham Park, NJ 07932

2. For Federal Trustees United States

Department of the Interior

Timothy Kubiak  
U.S. Fish & Wildlife Service  
New Jersey Field Office 927  
North Main St. Pleasantville, New  
Jersey 08232  
Phone: 609-646-9310 x 26  
Fax: 609-383-3939  
E-mail: [tim\\_kubiak@fws.gov](mailto:tim_kubiak@fws.gov)

Mark Barash  
U.S. Department of the Interior  
Office of the Regional Solicitor  
One Gateway Center, Suite 612  
Newton Corner, MA 02458  
Phone: 617 527 2103  
Fax: 617 527 6848  
Email: [r5mbarash@gmail.com](mailto:r5mbarash@gmail.com) and [MARK.BARASH@sol.doi.gov](mailto:MARK.BARASH@sol.doi.gov)

United States Department of Commerce

Linda Burlington  
National Oceanic & Atmospheric Administration  
NOAA/GCNR  
Room 15104  
1315 East West Highway  
Silver Spring, MD 209 10-3282  
Phone 301-713-1332  
FAX: 301-713-1229  
Email [Linda.B.Burlington@noaa.gov](mailto:Linda.B.Burlington@noaa.gov)

Eli Reinharz  
National Oceanic and Atmospheric Administration  
Office of Response and Restoration  
Assessment and Restoration Division  
SSMC#4, N/ORR3  
1305 East-West Hgwy  
Silver Spring, Maryland 20910  
Phone: 301-713-4248, ext 193  
Fax: 301-713-4378  
Email [eli.reinharz@noaa.gov](mailto:eli.reinharz@noaa.gov)

C. In the event consensus is not reached by the representatives pursuant to Subparagraph X.B, the Parties shall attempt in good faith for a period not to exceed ten (10) calendar days to reach consensus through consultation among the following management representatives.

1. For the Cooperating Companies:

John E. Vidumsky, P.E.  
DuPont Corporate Remediation Group  
Barley Mill Plaza 19 - 2164  
4417 Lancaster Pike  
Wilmington, DE 19805

J. Douglas Reid-Green  
BASF Corporation  
100 Campus Drive  
Florham Park, NJ 07932

Michael Hornsby  
Environmental Issues Manager  
PSEG Services Corporation  
80 Park Plaza, Newark, NJ 07102

Jeffrey R. Klieve  
Pharmacia Corporation (f/k/a Monsanto Company)  
c/o Monsanto Company - OC5D  
800 N. Lindbergh Blvd.  
St. Louis, MO 63167

2. For Federal Trustees

Dave Westerholm, Director  
Office of Response and Restoration  
National Ocean Service  
National Oceanic and Atmospheric Administration

Marvin Moriarty  
Regional Director  
U.S. Fish & Wildlife Service

D. In the event consensus is not reached by the representatives pursuant to Subparagraph X.C, either Party may terminate the Interim Agreement as provided in Section VII.

## XI. PUBLIC INVOLVEMENT AND CONFIDENTIALITY

A. **Public Participation:** The Parties recognize and agree that public participation during the injury assessment and restoration planning process is both desirable and necessary. The Parties further recognize that the Trustees are required by law to give public notice and to solicit public review and comment during certain phases of the injury assessment and restoration planning process. The Trustees will undertake public outreach and will provide public notice and solicit public review of and comment on the documents the Trustees deem appropriate. Reasonable costs associated with public outreach constitute reasonable assessment costs.

B. **Confidentiality:** The Parties agree that oral communications between the Trustees and the Cooperating Companies leading up to and pursuant to this Interim Agreement shall be treated by the Parties as confidential and shall be deemed in furtherance of settlement negotiations pursuant to Federal Rule of Evidence 408. Notwithstanding, nothing herein shall

limit the ability of the Trustees to share information, data, and communication with the state trustees or otherwise coordinate activities with the state trustees, subject to the Joint Prosecution and Confidentiality Agreement of 2003 among New Jersey, DOI/FWS, and NOAA. Furthermore, any written communication which is marked "Settlement Confidential" shall be treated by the Parties as confidential and shall be deemed in furtherance of settlement negotiations pursuant to Federal Rule of Evidence 408. The Parties agree that any Final Study Plan, as well as any data collected pursuant to this Agreement, shall not be a "settlement confidential" communication. Internal Communications: Notwithstanding Paragraph B above, the Parties recognize that each Party may, from time to time, need to share confidential information with other members of their respective organization or other state governmental agencies (including contractors), insurance carriers, indemnitors, and public utility commissions, provided however that all such communications must be done in a manner reasonably calculated to maintain the confidential nature of the information. Except as provided herein, in no event shall confidential information be disclosed to individuals other than those listed above without the prior written consent of the other Party. In the event the communication by the Trustees to state trustees or other state governmental agencies not a party to this Agreement involves information or data gathered or funded by the Cooperating Companies, notice of such communication will be provided to the Cooperating Companies.

C. Internal Communications: Notwithstanding Paragraph B above, the Parties recognize that any other Party may, from time to time, need to share confidential information with other members of their respective organization or other state governmental agencies, including external contractors, provided however that all such communications must be made in a manner reasonably calculated to prevent disclosure of such information beyond the organization and its contractors. Except as provided herein, in no event shall confidential information be disclosed to individuals who are not members (or contractors) of the Party's organization without the prior written consent of all other Parties.

D. Public Statements: Except as set forth in Paragraph A and this paragraph the Parties agree that they will not make public representations about the legal or factual positions of another Party to this Agreement unless agreed to in writing by such Party, nor shall any Party publicly disclose or discuss any statements by another Party that are subject to Paragraph B above, unless agreed to in writing by all other Parties. Subject to the provisions of Paragraph B and the preceding sentence, the Parties agree that a Party may publicly describe the general terms of this Agreement. The Parties further agree that this Agreement itself, once executed, shall not be confidential.

E. Information Requests: Any Party who receives a request for documents pursuant to federal or state freedom of information requests, or who is served with a subpoena or discovery request for any document or statement that the Parties have agreed should be treated as confidential, shall provide timely notice to the other Party so as to allow them, if they choose, to assert a privilege or statutory exception seeking to prevent the release of such document or statement.

## **XII. APPLICABLE LAW**

This Interim Agreement shall be governed in all respects, including validity, interpretation, and effect, by the laws of the State of New Jersey, without giving effect to the principles of conflicts of laws of such state.

## **XIII. AUTHORITY**

The person executing this Interim Agreement on behalf of each member of the Parties represents and warrants that he or she has full power and authority to do so on behalf of such member.

## **XIV. EXECUTION**

This Interim Agreement and any modifications or addenda hereto may be executed in several counterparts by the Parties and when so executed shall be considered fully executed to the same extent as if the Parties had signed the original document. Facsimile execution is authorized.

## **XV. PERIOD AND EFFECTIVE DATE**

The effective date of this Interim Agreement shall be the date of the last signature and the period of this Interim Agreement shall be for one year from that date unless otherwise amended in writing.

## **XVI. GEOGRAPHIC SCOPE OF AGREEMENT**

The geographic scope of this Interim Agreement and of data collection activities undertaken thereunder will be limited to the LPRSA unless otherwise expressly agreed to by all Parties.

IN WITNESS WHEREOF the Parties have executed this Interim Agreement on the dates attested to below.

The United States Department of the Interior, by its Authorized Official

By:

Name:

Title:

Date:



Marvin Moriarty

*Acting* Regional Director, U.S. Fish and Wildlife Service

12-11-08

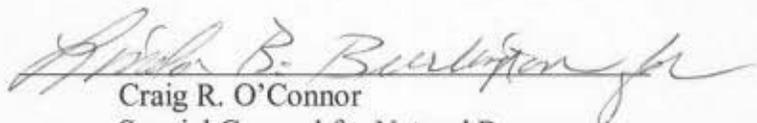
Interim Cooperative Assessment Agreement – Federal Trustees & Cooperative Companies  
November 2008

The United States Department of Commerce

By:

Name:

Title:



Craig R. O'Connor

Special Counsel for Natural Resources

Office of the General Counsel

National Oceanic and Atmospheric Administration

Regional Director, U.S. Fish and Wildlife Service

Date:

12/22/2008

Interim Cooperative Assessment Agreement – Federal Trustees & Cooperative Companies  
November 2008

FOR ALCATEL-LUCENT USA INC.:

By:

  
\_\_\_\_\_

Name: Gary M. Fisher

Title: EH&S Remediation Manager

Date:

NOVEMBER 18, 2008

FOR BASF CORPORATION, ON ITS OWN BEHALF AND ON BEHALF OF BASF  
CATALYSTS LLC

By: Nan Bernardo

Name: **Nan Bernardo**  
Senior Environmental Counsel  
BASF Corporation

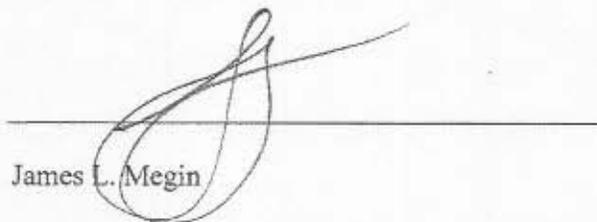
Title:

Date: **November 9, 2008**

Interim Cooperative Assessment Agreement – Federal Trustees & Cooperative Companies  
November 2008

FOR BENJAMIN MOORE & CO.

By:



Name:

James L. Megin

Title:

Vice President Finance, Chief Information Officer and Treasurer

Date:

November 5, 2008

Interim Cooperative Assessment Agreement – Federal Trustees & Cooperative Companies  
November 2008

FOR CELANESE LTD

By: Miguel Desdin



Name: MIGUEL DESDIN

Title: VP + CONTROLLER

Date: 11/19/08

Interim Cooperative Assessment Agreement – Federal Trustees & Cooperative Companies  
November 2008

FOR CHEMTURA CORPORATION

By: Mark C Furse

Name: MARK C. FURSE

Title: IT'S ATTORNEY

Date: 12/10/08

Interim Cooperative Assessment Agreement – Federal Trustees & Cooperative Companies  
November 2008

FOR CHEVRON ENVIRONMENTAL MANAGEMENT COMPANY, FOR ITSELF AND ON  
BEHALF OF TEXACO INC.

By: Robert R. John

Name: Robert R. John

Title: Assistant Secretary

Date: 11/21/08

FOR CRODA INC.

By:

A handwritten signature in cursive script, reading "Norman W. Spindel", is written over a horizontal line.

Name: Norman W. Spindel

Title: Counsel for Croda, Inc.

Date: November 12, 2008

FOR DUPONT COMPANY

By: Bernard J. Reilly

Name: Bernard Reilly  
Title: Corporate Counsel

Date: November 21, 2008

FOR FRANKLIN-BURLINGTON PLASTICS, INC.

By:

A handwritten signature in black ink, appearing to read "N. W. Spindel", is written over a horizontal line.

Name: Norman W. Spindel

Title: Counsel for Franklin-Burlington, Inc.

Date: November 12, 2008

FOR GENERAL MOTORS CORPORATION

By: James P. Walle

Name: JAMES P. WALLE  
Title: Attorney, GM Legal Staff - P31198  
Date: November 25, 2008



Interim Cooperative Assessment Agreement - Federal Trustees & Cooperative Companies  
November 2008

FOR ~~THE GROUP~~ Kindle, Inc., formally known as The BOC Group, Inc.

By:

Mark D. Weller

Name:

Mark D. Weller

Title:

Vice President & General Counsel

Date:

12-4-08

Interim Cooperative Assessment Agreement – Federal Trustees & Cooperative Companies  
November 2008

FOR MILLENNIUM CHEMICALS, INC. AFFILIATED ENTITIES MHC, INC. (ON BEHALF OF ITSELF AND WALTER KIDDE & COMPANY, INC.) MILLENNIUM PETROCHEMICALS, INC. (F/K/A QUANTUM CHEMICAL CORPORATION) AND EQUISTAR CHEMICALS LP

By: Deborah W Kryak

Name: DEBORAH W. KRYAK

Title: DIRECTOR, RETAINED LIABILITIES

Date: 11/21/08

FOR NEWS PUBLISHING AUSTRALIA LTD

By: Peter Simshauser

Name: Peter Simshauser

Title: Attorney

Date: 11/20/08

Interim Cooperative Assessment Agreement – Federal Trustees & Cooperative Companies  
November 2008

FOR NOVELIS CORPORATION (F/K/A ALCAN ALUMINUM CORPORATION)

By:

A handwritten signature in cursive script, appearing to read "Charles R. Aley", is written over a horizontal line.

Name: Charles R. Aley

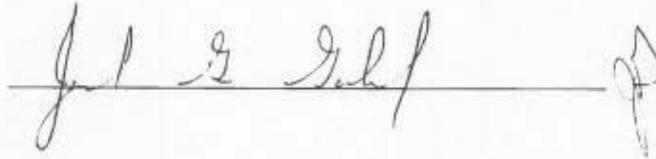
Title: Vice-President, General Counsel & Secretary

Date: November 26, 2008

Interim Cooperative Assessment Agreement – Federal Trustees & Cooperative Companies  
November 2008

FOR NPEC, Inc.

By:

A handwritten signature in cursive script, appearing to read "Joseph G. Gabriel", is written over a horizontal line. To the right of the signature, there is a small, stylized mark or flourish.

Name:

Joseph G. Gabriel

Title:

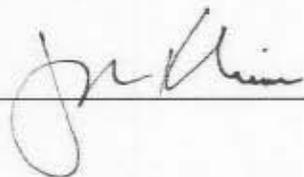
President NPEC Inc

Date:

11-17-08

FOR PHARMACIA CORPORATION (F/K/A MONSANTO COMPANY)

By:



---

Name:

JEFFREY R. KUFVE

Title:

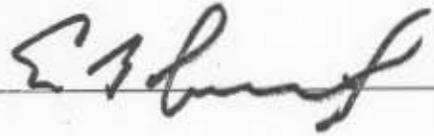
DIRECTOR, ENVIRONMENTAL AFFAIRS FOR MONSANTO  
COMPANY, ATTORNEY-IN-FACT FOR PHARMACIA CORPORATION

Date:

NOVEMBER 17, 2008

FOR PUBLIC SERVICE ELECTRIC AND GAS COMPANY

By:



---

Name: Eric B. Svenson, Jr., P.E.

Title: Vice President, Environment, Health and Safety

Date: 11-20-2008

FOR PURDUE PHARMA TECHNOLOGIES INC.

By: Edward B. Mahony

Name: Edward B. Mahony

Title: EVP, CFO & Treasurer

Date: 11/20/08

Interim Cooperative Assessment Agreement – Federal Trustees & Cooperative Companies  
November 2008

FOR SAFETY-KLEEN ENVIROSYSTEMS COMPANY BY MCKESSON, AND  
MCKESSON CORPORATION FOR ITSELF

By:



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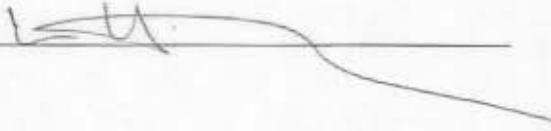
Name: Nicholas A. Loiacono

Title: Treasurer

Date: November 20, 2008

FOR TEVAL CORP.

By:

A handwritten signature in black ink, appearing to be 'Lee Henig-Elona', written over a horizontal line. The signature is stylized and extends to the right of the line.

Name:

Lee Henig-Elona, Esq.

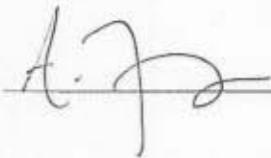
Title:

Attorney

Date:

12.1.08

FOR VERTELLUS SPECIALTIES INC

By:  \_\_\_\_\_

Name: Anne M. Frye

Title: Vice President

Date: 1.08.09

**Exhibit A**

**PROPOSED COOPERATIVE ASSESSMENT APPROACH AND FRAMEWORK  
LOWER PASSAIC RIVER STUDY AREA**

**I. Points of General Understanding**

- A. Federal Trustees shall meaningfully involve the Cooperating Companies in the NRDA process
- B. Federal Trustees and the Cooperating Companies shall interact in good faith. Federal Trustees and the Cooperating Companies share a desire to establish a cooperative process addressing restoration
- C. Federal Trustees and the Cooperating Companies understand that development of a successful cooperative process requires significant time and effort, and is best achieved by iterative confidence- and trust-building steps
- D. Federal Trustees and the Cooperating Companies enter this cooperative process with a shared restoration focus with the goals of resolving NRD claims and achieving appropriate natural resource restoration
- E. Federal Trustees and the Cooperating Companies will strive to achieve consensus decision-making

**II. Specific Obligations, Understandings, and Mechanisms**

- A. Federal Trustees, while working with the Cooperating Companies, shall manage and control the assessment process under this Interim Agreement:
  - a. Federal Trustees will meet regularly with the Cooperating Companies to discuss the goals and direction of the assessment process;
  - b. Federal Trustees will consider the Cooperating Companies' suggestions;
  - c. Federal Trustees will decide what restoration projects and studies will be performed and by whom;
  - d. The Cooperating Companies will fund Federal Trustee studies that the Cooperating Companies agree to fund; and
  - e. All Parties will share all relevant data collected pursuant to this Interim Agreement with each other.
- B. Prior to commencing any independent NRD-related projects or studies, the Parties shall notify each other of their intention, provide copies of all workplans, and share all data, unless the Parties agree otherwise. The Cooperating Companies shall reimburse Federal Trustees for all reasonable ongoing assessment costs, direct and indirect, pursuant to separate funding agreements.
- C. All Parties reserve rights and defenses.
- D. Federal Trustees and the Cooperating Companies shall endeavor to identify and implement restoration projects including, where appropriate, early restoration projects.