

Environmental Considerations in Commercial Transactions

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Initial Considerations

- Purchase/Sale vs. Lease/Easement
- Stock vs. Asset
- Representing Buyer vs. Seller
 - Landlord vs. Tenant (lease)
 - Grantor vs. Grantee (easement)
- Sophistication of Parties
- Solvency of Parties

Regulatory Liability and Contractual Liability

- Regulatory: CERCLA, state equivalents
- CERCLA
 - Liability for remediation of environmental contamination imposed on various parties, incl. current owner/operator, past owner/operator, arranger, transporter
 - 1986: Superfund Amendments and Reauthorization Act (SARA) created a defense to liability
 - **Innocent landowner:** contamination was caused by an independent third party, landowner did not know or have reason to know of the contamination, landowner exercised due care
 - 2002: Small Business Liability Relief & Revitalization Act (the Brownfields Amendments) added two defenses to liability
 - **Bona fide prospective purchaser:** purchaser not associated with potentially liable parties, may have knowledge of the contamination
 - **Contiguous property owner:** owner/purchaser did not cause/contribute to contamination, did not know or did not have reason to know of contamination at the time of acquiring
 - To be eligible for these defenses, must conduct “all appropriate inquiries” into the ownership, use, and environmental condition of the property

All Appropriate Inquiries

- 2005: EPA's Standards and Practices for All Appropriate Inquiries (AAI)
 - Environmental professional must perform inquiry
 - Within one year of purchase
 - Interview of current/former owners/tenants of property and nearby properties
 - On-site visual inspection, incl. locations where hazardous substances were used, stored, handled
 - Incl. specialized knowledge and common knowledge
 - Review records
 - Historical sources
 - Environmental cleanup liens
 - Federal, state, local and tribal records, incl. engineering and institutional controls
 - Identify Recognized Environmental Condition (REC), Historical Recognized Environmental Conditions (HREC), de minimis conditions
 - Document data gaps
 - Generate report documenting results
- ASTM E1527-13, Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment (ESA) Process

Phase I ESA

EXECUTIVE SUMMARY

1.0	INTRODUCTION	1
1.1	Definitions	2
1.2	Reliance on the Report	3
1.3	User Shall Consider the Reason for Significantly Lower Purchase Price	3
1.4	Specific Exceptions and Limitations to the Assessment	3
2.0	SUBJECT SITE DESCRIPTION	5
2.1	Location And Current Use	5
2.2	Site And Area Features	5
2.3	Adjoining And Near-by Properties	5
2.4	Topography, Surface Water Bodies And Drainage	6
2.5	Utilities	6
3.0	HYDROGEOLOGIC CONDITIONS	7
3.1	Site Surficial Geology	7
3.2	Soil Conditions	8
3.3	Site Bedrock	8
3.4	Regional Groundwater Conditions	8
4.0	HISTORIC INFORMATION	10
4.1	Historic Information Sources	10
4.2	Review Of Aerial Photographs	10
4.3	Street Directories	11
4.4	Fire Insurance or Other Historic Maps	11
4.5	Site And Area Descriptive Chain-Of-Use	11
4.6	Provided Documents	11
4.7	Historic Summary	12
5.0	SITE RECONNAISSANCE	13
5.1	Description Of Site Processes	13
5.2	Hazardous Substances Usage/Storage	13
5.3	Petroleum Products Usage/Storage	13
5.4	Underground And Above Ground Storage Tanks	13
5.5	Drums and Containers	13
5.6	PCB Usage	13
5.7	Stains, Corrosion, Strained Vegetation	13
5.8	Fill/Solid Waste Disposal	14
5.9	Wastewater	14
5.10	Wells	14
5.11	Sewage Disposal Systems	14
5.12	Drains And Sumps	14
5.13	Pits, Ponds And Lagoons	14
5.14	Non-Scope Issues	15

Phase I ESA

	Page
6.0 REGULATORY INFORMATION	16
6.1 Background	16
6.2 Federal NPL and Delisted NPL Sites	17
6.3 Federal CERCLIS and NFRAP Sites	17
6.4 Federal RCRIS TSD and CORRACTS Facilities	17
6.5 Federal RCRIS Generators	17
6.6 Federal, State, & Tribal Institutional Control/Engineering Control	17
6.7 Federal ERNS List	18
6.8 State and Tribal Hazardous Waste Sites	18
6.9 State and Tribal Landfill/Solid Waste Disposal Sites	18
6.10 State and Tribal Leaking Underground Storage Tank Sites	18
6.11 State and Tribal Underground Storage Tank Sites	18
6.12 State and Tribal Voluntary Clean-up Sites and Brownfield Sites	18
6.13 Additional Record Sources - Petroleum/Hazardous Materials Spill Sites	18
7.0 INTERVIEWS	20
7.1 User	20
7.2 Owners/Operators	20
7.3 Federal and State Agencies	21
7.4 Local Officials	21
8.0 CONCLUSIONS, RECOMMENDATIONS AND FINDINGS	23
8.1 Recognized Environmental Conditions	23
8.2 Recommendations	23
8.3 Findings	23
8.4 Environmental Professional Statement	24
APPENDICES	
A. Drawings and Maps	
B. Limitations	
C. Site Photographs	
D. Regulatory Databases	
E. Support Documentation	
F. Preparer Credentials	

Phase I ESA

1. **Historical Use of the Site as a Lumber Mill** – Based on available documentation and interviews, the Site was historically used as a lumber mill from at least the early 1970s through 1980s. Operations at the lumber mill included treating wood with an anti-stain agent that contained PCP. Oil and lubricants were reportedly stored in an oil shed. Sacks and containers of boiler chemicals were reportedly stored inside the boiler building in the northern half of the Site and empty condensate tanks were noted at the north and east side of the boiler building. ASTs at the Site included a waste oil tank to the north of the maintenance shop, two condensate tanks near the boiler building, one water storage tank, and one tank of unidentified nature in an area indicated as a possible fueling area. Soil staining has historically been reported at the Site during previous investigations and records indicated that ash and waste oil was sprayed on the roadways for dust suppression. Based on previous investigations and Geosyntec's 2017 investigation, soil at the Site was impacted by TPH and arsenic. Groundwater concentrations exceeded tap water RSLs, but were less than groundwater MCLs for several PAHs at one location near the maintenance shop and 2,3,7,8-TCDD TEQ throughout the Site. TPH-d was reported in 2014 in one sample at a concentration slightly above the ESL by E&E, but step-out sampling by Geosyntec in 2017 did not reveal additional impacts. As such, Geosyntec considers impacted soil associated with historical activities to represent a REC. Furthermore, constituent concentrations have been reported in groundwater above established screening levels, therefore Geosyntec considers impacted groundwater at the Site to also represent a REC.

Phase I ESA vs. Phase II ESA

- Phase I ESA
 - Records review
 - Interviews
 - Site inspection
- If Phase I identifies existing/potential contamination...
- Phase II ESA
 - Sampling
 - Sampling of soil, water, sumps, drains, tanks
 - Soil borings
 - Groundwater monitoring
 - Lab analysis
- Purpose of ESAs:
 - Satisfy AAI and establish foundation for defenses to regulatory liability
 - Identify scope of contractual liability
 - Establish baseline for environmental conditions, particularly where both parties are undertaking similar operations (creating potential for similar contamination)

Managing Results of ESAs

- Confidentiality
- Disclosure requirements
 - New Jersey Industrial Site Recovery Act (ISRA)
 - Owners/operators of an industrial establishment must notify the NJDEP before closing down operations or transferring ownership of site
 - Owner/operator must retain a New Jersey Licensed Site Remediation Professional (LSRP) to manage remediation
 - Only applies to:
 - Operations with certain North American Industry Classification System (NAICS) codes
 - Operations involving hazardous substances/waste (generation, manufacture, refining, transportation, treatment, storage, handling, or disposal)
 - New Jersey Site Remediation Reform Act (SSRA)
 - Imposes affirmative remediation obligation on owners/operators subject to ISRA
 - LSRPs have affirmative obligation to report certain information to NJDEP

Due Diligence

- Diligence Process
 - Review documents in data room and public documents
 - 10-K reports
 - Provide/answer diligence/information requests, incl. interaction with legal and technical SMEs
 - Physically inspect assets/property to confirm findings and identify additional informational needs
- Issue Spotting
 - Permits
 - Existing permits vs. required permits for current operations
 - Same/different permit needs for future operations
 - Permit transfers/changes/terminations
 - Ongoing and historical contamination/remediation
 - Pending/threatened litigation (incl. citizen suits) and administrative proceedings

Due Diligence

- Facility Detail
 - Location
 - Standard Industrial Classification (SIC) Code or NAICS Code for facility operations
 - Current and historical usage
 - Substances: raw materials used on site, waste, priority pollutants or hazardous substances discharged, PCBs and PCB containing materials, asbestos and asbestos-containing materials, radioactive substances, lead-based paint, radon, mold, solid/hazardous waste generated/disposed
 - Current and former owners and tenants
 - Property improvements/renovations
 - Adjacent properties: current and formers uses, owners, tenants
 - Internal/external audits and inspections
- Diligence Memo
 - Material environmental/health/safety issues

Information Request

- Wastewater
 - Permits, variances, excursions, upsets, bypasses
 - Monitoring reports
 - Treatment system
 - SPCC Plans
- Air
 - Permits, registration, exemptions
 - Monitoring results
- Solid Waste
 - Permits, registration, notifications
 - Waste handling policies, contingency plans
 - Hazardous waste manifests
 - Offsite disposal contractors
- Groundwater
 - Monitoring data
- Onsite wells
 - Injection wells, potable water wells
- Substances
- Storage tanks
- Environmentally related capital projects
- Audits, inspections
- Onsite utilities
- Local ordinance or deed restrictions
- Notices of violations, administrative orders, compliance schedules (progress reports), adjudicatory hearings, consent agreements, variances
- All permits
 - Permit, application, variances, modifications
 - Registrations, exemptions
 - Correspondence with agency
 - Compliance history
 - Monitoring reports maintained internally or submitted to agency

Agreement Terms

- Definitions, definitions, definitions
- Access to information/property
- Permits
- Reps/warranties on compliance
 - Materiality (dollar value, individual/aggregate)
 - Knowledge (which individuals, actual/constructive)
 - Reasonableness
- Delineating environmental liability, risk allocation
 - Your watch/my watch
 - As is/where is
 - Indemnities
 - Timing, process and limitations
 - Remediation

Definitions

“Health, Safety and Environmental Laws” means all federal, state, local and foreign statutes, regulations, ordinances and other governmental enactments, all judicial and administrative orders and determinations, all contractual obligations and all common law now or hereafter in effect concerning public health and safety, worker health and safety, pollution or protection of the environment, the release, discharge, treatment, storage, disposal or emission of Materials of Environmental Concern, preservation or protection of cultural, historic, and environmental resources (including wetlands, and dunes), the protection of endangered species and habitats, zoning and siting, environmental reporting, risk management planning, process safety management, mechanical, structural and pipeline integrity testing, public awareness and facility response planning, including without limitation all those relating to the presence, use, production, generation, handling, transportation, treatment, storage, disposal, distribution, labeling, testing, processing, discharge, release, threatened release, control or cleanup of any Materials of Environmental Concern.

Definitions

"Materials of Environmental Concern" means: (i) those substances included within the statutory and/or regulatory definitions or listings of "hazardous substance," "medical waste," "special waste," "hazardous waste," "extremely hazardous substance," "regulated substance," "hazardous materials," or "toxic substances," under any Environmental Law; (ii) any material, waste or substance which is or contains: (A) petroleum, oil or a fraction thereof, (B) explosives, (C) radioactive materials (including naturally occurring radioactive materials), or (D) solid wastes that pose imminent and substantial endangerment to health or the environment; and (iii) such other substances, materials, or wastes that are or become classified or regulated as hazardous or toxic under any applicable federal, state or local law or regulation. To the extent that the laws or regulations of any applicable state or local jurisdiction establish a meaning for any term defined herein through reference to federal Environmental Laws which is broader than the meaning under such federal Environmental Laws, such broader meaning shall apply.

"Remediation" means any action necessary to: (i) comply with and ensure compliance with the Requirements of Environmental Laws and (ii) the taking of all reasonably necessary precautions to protect against and/or respond to, remove or remediate or monitor the release or threatened release of Materials of Environmental Concern at, on, in, about, under, within or near the air, soil, surface water, groundwater or soil vapor at any Business Facility of [Target Corporation] or any of its subsidiaries or of any public domain affected by the business of [Target Corporation] or any of its subsidiaries.

Definitions

“Environmental Laws” means any and all statutes, laws, regulations and rules, in each case as in effect on the date of this Agreement, that have as their principal purpose the protection of the environment.

“Hazardous Substances” means any material, waste, or substance defined as a “hazardous substance,” “hazardous waste,” “toxic substance,” or “petroleum substance” by any Environmental Law.

Access to Information

The Company and the Subsidiaries shall afford to Buyer's officers, employees, accountants, counsel and other representatives access at all times, from the date hereof until the Closing Date, to all its properties, books, contracts, commitments, files and records, as well as to its officers and employees and, during such period, the Company and the Subsidiaries shall provide Buyer access to (i) each material report, schedule, registration statement and other document filed or received by it during such period and (ii) all other information concerning its business, properties and personnel as such other party may reasonably request. Furthermore, the Company shall give Buyer, or Buyer's authorized representatives, at all reasonable times before the Closing Date and upon adequate notice to the Company, physical access to the properties and facilities of the Company for the purpose of inspecting same. Buyer agrees to comply fully with the rules, regulations and instructions issued by the Company regarding the actions of Buyer and its representatives while upon, entering or leaving the properties and facilities. Buyer's environmental investigation of such properties and facilities shall be limited to conducting a Phase I ESA... and the collection and analysis of soil, water, or other media samples as necessary to address recognized environmental conditions identified by such Phase I Environmental Site Assessment (collectively, "Site Assessment"), and at the Company's discretion, shall be accompanied by a representative of the Company. Upon the written request of Seller or the Company, Buyer shall furnish, free of costs, to the Company or Seller with a copy of any written report prepared by or for Buyer related to any Site Assessment of the properties and facilities as soon as reasonably possible after it is prepared. Until the Closing, all environmental reports prepared by or for Buyer shall be maintained in strict confidence and for use solely in connection with the evaluation of the Company. Except for the obligations to provide reports to the Company or Seller as set forth in the preceding sentence, or as required by law, if the Closing does not occur, such reports, shall not be disclosed to any other party.

Access to Property

Seller grants to Purchaser, and its counsel, accountants, consultants and other representatives, such access to the Acquired Assets (including without limitation any Acquired Business Facility) and Seller's personnel and records (including without limitation for purposes of conducting site inspections, asbestos surveys, or sampling and analyses of soil, groundwater or other media) as Purchaser may reasonably request, including for the purpose of conducting an investigation of the (a) compliance of the Business and any of the Business Facilities with Environmental Laws, and (b) the exposure to, presence, release, or any aspect of management, handling, or use of Materials of Environmental Concern at any Business Facility ("Environmental Due Diligence"). If the Closing under this Agreement does not occur, Seller shall cause, at its sole expense, (x) any investigation-derived waste generated or created in connection with performance of Purchaser's Environmental Due Diligence (including without limitation, drill cuttings, purged or developed water, or sample remnants) to be disposed in compliance with applicable Environmental laws, and (y) any wells or borings installed during the Environmental Due Diligence to be plugged and abandoned in compliance with applicable Environmental Laws. Seller shall be responsible for executing on its own behalf any and all manifests, shipping documents, plugging and abandoning reports and similar documents in connection with its obligations hereunder, and Seller agrees to indemnify and hold Purchaser harmless from and against any and all claims, liabilities, damages and causes of action arising out of any failure to fulfill such obligations under this paragraph.

Managing Results of ESAs

From and after the Closing, Seller shall, and shall direct its Affiliates to, keep confidential and not disclose all information relating to the Company or its Subsidiaries or any of their respective businesses or assets (the “Restricted Information”), and shall not directly or indirectly use such Restricted Information for any purpose, except as and to the extent permitted by the terms of this Agreement or the Ancillary Agreements. The obligation shall continue indefinitely from the Closing Date and shall not apply to any information that (i) is in the public domain, (ii) is published or otherwise becomes part of the public domain through no fault of Seller or any of its Affiliates or (iii) becomes available to Seller or any of its Affiliates on a non-confidential basis from a source that did not acquire such information (directly or indirectly) from Seller or Buyer or any of their respective Affiliates on a confidential basis. Notwithstanding the foregoing, Seller may make disclosures required by Law and in connection with disputes hereunder; *provided, however*, that Seller, to the extent practicable, shall provide Buyer with prompt notice thereof so that Buyer, at its sole cost and expense, may seek a protective order or other appropriate remedy or waive compliance with the provisions of this Section 7.4(c). In the event that such protective order or other remedy is not obtained or Buyer waives compliance with the provisions of this Section 7.4(c), Seller shall or shall cause the Person required to disclose such Restricted Information to furnish only that portion of the information that such Person is legally required, and, to the extent practicable, Seller shall exercise commercially reasonable efforts to obtain reliable assurance that confidential treatment is accorded the Restricted Information so furnished.

Permit Reps

Seller possesses all Authorizations required by Health, Safety and Environmental Laws for the ownership, operation, use and maintenance of the Assets; all such Authorizations are correctly identified on Section 3.13 of the Disclosure Schedule; all such Authorizations are in full force and effect and Seller is in full compliance with them; any applications for renewal of such Authorizations have been timely filed; and Seller possesses all environmental and pollution control equipment called for by such Authorizations.

As to any Authorization for which renewal, amendment, or modification is sought or pending, no material expenditures, capital improvements, or changes in operation will be necessary as a condition or as a result of such renewal, amendment, or modification.

Permit Transfer

- Permit Transfer
- Permit Assignment
- New Permit Application, Existing Permit Termination
- Bonds
- For ex: per 40 CFR 122.61(b), may transfer NPDES permit if
 - Current permittee notifies the Regional Director at least 30 days in advance of the proposed transfer date;
 - The notice includes a written agreement between the existing and new permittees containing a specific date of transfer of permit responsibility, coverage and liability between them; and
 - The Regional Director does not notify the existing permittee and the proposed new permittee of EPA's intent to modify or revoke and reissue the Permit.

Permit Transfer

Buyer and Seller shall, as promptly as practicable after the Effective Date, cooperate in filing the required applications and notices with the appropriate governmental authorities seeking the Regulatory Approvals to confirm Seller's continued right to use the Assets, or Permits with respect thereto, or to transfer or assign such Assets or Permits to Buyer, as necessary. Each Party agrees to use its reasonable efforts to obtain the Regulatory Approvals and the Parties agree to cooperate fully with each other and with all Governmental Authorities to obtain the Regulatory Approvals at the earliest practicable date.

Compliance Reps

The Assets have been owned, operated, used, and maintained in compliance with, and are currently in compliance in all material respects with, applicable Health, Safety and Environmental Laws.

Seller has not received from any administrative agency or other Governmental Authority any written or oral notice, report or other information regarding any actual or alleged violation of Health, Safety and Environmental Laws, or any Liabilities or potential Liabilities, including any investigatory, remedial or corrective obligations, relating to any of the Assets arising under or other obligations to achieve compliance with Health, Safety and Environmental Laws.

The ownership, operation, use and maintenance of the Assets will not, based upon facts and circumstances currently existing, subject any party to any: (a) Liability (including, without limitation, STRICT LIABILITY) in connection with any release or threatened release of any Materials of Environmental Concern into the environment whether on or off any Business Facility; or (b) consent order, compliance order or administrative order relating to or issued under any Health, Safety and Environmental Laws.

Compliance Reps

Except as set forth on Schedule 4.10:

- there has been no exposure of any Person or property to any Hazardous Materials in connection with the operations of the Company and its Subsidiaries that is reasonably expected to result in a claim for damages or compensation;
- no Hazardous Materials have been released or are present on any of the Company's or any Subsidiary's facilities or properties in quantities or concentration that exceed any applicable standard established by Environmental Laws and for which the Company or any Subsidiary could bear liability for investigation, remediation or monitoring of such Hazardous Materials pursuant to Environmental Laws, or the payment of costs for such activities;
- none of the Company's or any Subsidiary's facilities or properties (or equipment thereon) contains in any form (i) asbestos containing materials, (ii) polychlorinated biphenyls, or (iii) any wetland areas, wildlife habitat or refuges, cultural or historical resources subject to restrictions on development under Environmental Laws;

Compliance Reps

Except as set forth on Schedule 4.5:

- the Company and each Subsidiary has conducted its business and operated its assets, and is conducting its business and operating its assets in all material respects in compliance with applicable Environmental Laws;
- none of the Seller, the Company nor any Subsidiary has received written notice within the previous five (5) years from any Governmental Authority or other Person that any of the operations or assets of the Company or any Subsidiary is the subject of any investigation with respect to a release or threatened release of any Hazardous Material and to the Company's and the Seller's knowledge, no such notice is threatened, and any such disclosed investigation or inquiry has been resolved as of the date hereof;
- none of the Seller, the Company nor any Subsidiary has received any written claim, complaint, notice, inquiry or request for information within the previous five (5) years with respect to any alleged violation of or liability pursuant to Environmental Laws relating to operations or assets of the Company or any Subsidiary, and to the Company's and the Seller's knowledge, none is threatened, and any such disclosed matter has been resolved as of the date hereof;

Indemnities

Subject to the limitations set forth in this Article V, the Seller Parties, jointly and severally, hereby unconditionally, absolutely and irrevocably agree to and shall defend, indemnify and hold harmless the Buyer and each of the Buyer's subsidiaries, Affiliates and parents, and each of their, partners, members, managers, officers, directors, employees, counsel, agents, contractors, successors, assigns, heirs and legal and personal representatives (collectively, the "Buyer's Indemnified Persons") from and against, and shall reimburse the Buyer's Indemnified Persons for, any and all Losses to the extent such Losses are based upon, arise out of, or are related to:

ANY ENVIRONMENTAL CLAIM ASSERTED AGAINST THE BUYER'S INDEMNIFIED PERSONS OR FOR WHICH THE BUYER'S INDEMNIFIED PERSONS OTHERWISE BECOMES LIABLE, OR ANY ACTUAL OR THREATENED VIOLATION OF OR NON-COMPLIANCE WITH, OR ANY ENVIRONMENTAL RESPONSE OBLIGATION ARISING UNDER, ANY ENVIRONMENTAL LAWS, IN EACH CASE WHICH HAS ITS BASIS IN OR WHICH ARISES FROM ANY EVENT, CONDITION, CIRCUMSTANCE, ACTIVITY, PRACTICE, INCIDENT, ACTION OR PLAN EXISTING, COMMENCING, OR OCCURRING PRIOR TO THE CLOSING AND WHICH RELATES IN ANY WAY TO (I) THE SELLER, ANY OF THE PURCHASED ASSETS OR BUSINESS FACILITIES, OR THE CONDUCT OF THE BUSINESS PRIOR TO THE CLOSING; (II) THE PRESENCE OF ANY HAZARDOUS SUBSTANCES EXCEEDING NATURALLY-OCCURRING CONCENTRATIONS ON, IN, UNDER OR AFFECTING ALL OR ANY PORTION OF ANY BUSINESS FACILITY, AND ANY RELEASE OR THREATENED RELEASE WITH RESPECT TO SUCH HAZARDOUS SUBSTANCES; AND/OR (III) THE STORAGE, DISPOSAL OR TREATMENT, OR TRANSPORTATION FOR STORAGE, DISPOSAL OR TREATMENT, OF HAZARDOUS SUBSTANCES BY OR ON BEHALF OF SELLER OR IN CONNECTION WITH THE SELLER, ANY PURCHASED ASSET, BUSINESS FACILITY, OR THE BUSINESS.

Indemnities

Shareholders, jointly and severally, agree to indemnify, defend and hold harmless Purchaser and Purchaser's officers, directors, and employees (herein collectively referred to as "Purchaser Indemnitees" from and against any and all Losses directly or indirectly resulting from, relating to or arising out of any Environmental Claim asserted against Purchaser or for which Purchaser otherwise becomes liable, or any actual or threatened violation of or non-compliance with, or Remediation obligation arising under, any Environmental Laws or from any event, condition, circumstance, activity, practice, incident, action or plan existing, commencing, or occurring in whole or in part prior to the Closing relating in any way to [Target Corporation], or any of its subsidiaries or any of their respective Business Facilities (including without limitation the ownership, operation or use of any of their Business Facilities, and the conduct of the business of [Target Corporation] prior to the Closing); the presence of any Materials of Environmental Concern exceeding naturally-occurring concentrations on, in, under or affecting all or any portion of any of the Business Facilities of [Target Corporation] or any of its subsidiaries, and any release or threatened release with respect to such Materials of Environmental Concern; and the storage, disposal or treatment, or transportation for storage, disposal or treatment, of Materials of Environmental Concern; but excluding any violation of or non-compliance with, or remedial obligation arising under, any Environmental Laws that is solely attributable to a change by the Purchaser in the structure, use or condition of any of the assets of [Target Corporation], or any of its subsidiaries after the Closing.

Remediation Cost

- Accounted for in purchase price
- Escrow account

If the Environmental Due Diligence prepared by Purchaser's environmental consultant ("Purchaser's Environmental Consultant") discloses that Environmental Response with respect to the [Acquired Assets, the Business, or any Business Facility] is required, Purchaser may deliver to Seller a written notice describing all such proposed Environmental Response, together with the calculation with particularity of the Net Remedial Cost with respect thereto, and a request for a reduction in the [Purchase Price] equal to the Net Remedial Cost (the "Environmental Adjustment Request")

If Seller agrees with the Environmental Adjustment Request, it shall so notify Purchaser, and the [Purchase Price] shall be reduced by the Net Remedial Cost.

If Seller disagrees with the Environmental Adjustment Request, Seller may (at its expense) engage an environmental consultant reasonably acceptable to Purchaser ("Seller's Environmental Consultant"), who shall be given copies of the reports and work product of Purchaser's Environmental Consultant identifying and describing the proposed Environmental Response, and who shall be free to conduct such additional testing and analysis as it thinks necessary.

Tenant/Easement Holder

Grantee may bring materials, wastes or substances subject to Environmental Laws onto the Land, provided the same are used, stored, transported, discharged, emitted, handled, produced and installed in material compliance with applicable Environmental Laws.

Tenant/Easement Holder

GRANTEE agrees (1) to remove from the Right of Way and Temporary Workspace Easement if, as, and when required by law, any Hazardous Materials placed or released thereon by GRANTEE, (2) to perform Remedial Work that is required by a governmental authority and caused solely by GRANTEE's operations or activities on the Right of Way and Temporary Workspace Easement ("Grantee's Required Remedial Work"), and (3) to comply in all material respects with all federal, state and local governmental laws and regulations governing operations by GRANTEE and Grantee's Required Remedial Work on or associated with the Right of Way and Temporary Workspace Easement.

Tenant/Easement Holder

Grantee's Required Remedial Work shall be performed by one or more contractors selected by GRANTEE, and under the supervision of a consulting engineer selected by GRANTEE. All costs and expenses of Grantee's Required Remedial Work shall be paid by GRANTEE, including, without limitation, the charges of such contractors and/or the consulting engineer. If GRANTEE shall fail to timely commence or cause to be commenced, or fail to diligently prosecute to completion, Grantee's Required Remedial Work, GRANTOR may, but shall not be required to, cause Grantee's Required Remedial Work to be performed at GRANTEE's reasonable expense whereupon GRANTOR shall be entitled to recover from GRANTEE all reasonable expenses incurred with regards to Grantee's Required Remedial Work, together with a reasonable attorney's fee. GRANTEE promises to notify GRANTOR of any material claim or other action by any governmental agency or other third party alleging the actual or alleged unpermitted release of Hazardous Materials on the Right of Way and Temporary Workspace Easement, and to provide GRANTOR with copies of (1) any notice of any unpermitted release of Hazardous Materials given to GRANTEE by a governmental authority pursuant to any law or regulation, and (2) any report regarding response to any such incident that is conveyed to a governmental authority.

Landlord/Owner

GRANTOR'S RESPONSIBILITIES. GRANTOR AGREES TO INDEMNIFY, PROTECT, DEFEND AND SAVE GRANTEE HARMLESS FROM ALL CLAIMS, LIABILITIES, FEES AND EXPENSES OF ANY KIND THAT ARISE FROM (1) THE ACTUAL OR ALLEGED PRESENCE OR RELEASE OF ANY HAZARDOUS MATERIALS AT, IN, ON, UNDER, OR MIGRATING FROM THE LAND THAT EITHER (A) OCCURS PRIOR TO THE EFFECTIVE DATE (AS DEFINED BELOW) OR (B) IS CAUSED BY ANY PERSON OTHER THAN GRANTEE; (2) NON-COMPLIANCE OF ANY PERSON OTHER THAN GRANTEE UNDER APPLICABLE ENVIRONMENTAL LAWS IN CONNECTION WITH THE LAND; AND/OR (3) CONDITIONS, FACTS, OR CIRCUMSTANCES IN EXISTENCE OR OCCURRING PRIOR TO THE EFFECTIVE DATE (AS DEFINED BELOW).

Questions
