



1746 Commerce Road Creston, Iowa 50801  
Telephone (641) 782-0283 Fax (641) 782-0386

March 27, 2026

Mary Klemesrud  
Iowa Department of Natural Resources  
Land Quality Bureau  
6200 Park Avenue, Ste 200  
Des Moines, IA 50321

RE: Financial Assurance [567-115.31(3) and (4)] – Industrial Monofill Landfill

Dear Ms. Klemesrud:

Enclosed please find a Trust Agreement per IAC 567 115.31(6)"a" dated May 1, 2018 for the Industrial Monofill Sanitary Landfill operated by WDC Acquisition LLC, updated third party estimates for closure/post closure costs, Owner's Affidavit, and IDNR Financial Assurance Report Form (542-8090).

If you have any questions regarding this submittal, please feel free to contact me. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Matt Thelen".

Matt Thelen  
Environmental Engineer  
WDC Acquisition LLC  
Phone: 641/782-0283  
Email: [matt.thelen@wellmandynamics.com](mailto:matt.thelen@wellmandynamics.com)

Cc: Becky Jolly, IDNR Land Quality Bureau



# Industrial Monofill Financial Assurance Report Form

## SECTION 1: FACILITY INFORMATION

(please print or type)

### Information Requested

Facility Name: WDC Acquisition LLC Permit Number: 88-SDP-04-86

Permitted Agency/Entity: WDC Acquisition Industrial Landfill

## SECTION 2: CLOSURE/POSTCLOSURE OR CORRECTIVE ACTION COST ESTIMATES

Information Requested	Cost Estimate	Date of Cost Estimate
Updated Closure Cost Estimate	\$ 0	March 2026
Updated Postclosure Cost Estimate	\$ 2,824,781	March 2026
Initial or Updated Corrective Action Cost Estimate	\$	

\*Attach closure/postclosure cost estimate(s) signed and certified by an Iowa-licensed professional engineer. Cost estimates shall include, at a minimum, each of the cost line items defined in 115.31(3)"c" for closure and 115.31(4)"c" for postclosure. Please provide closure and/or postclosure site area acreage information with the estimates.

Provide a cost estimate for corrective action only if corrective action is required and a corrective action plan has been approved by the Department. Attach the corrective action cost estimate signed and certified by an Iowa-licensed professional engineer. The cost estimate shall account for total costs of the activities described in the approved corrective action plan for the corrective action period.

## SECTION 3: FACILITY WASTE TONNAGE INFORMATION

Information Requested	Tons
Remaining permitted capacity as of the beginning of permit holder's current fiscal year	landfill closed
Amount of waste disposed of at the facility during the prior year	landfill closed

## SECTION 4: PROOF OF COMPLIANCE

### Publicly Owned Municipal Solid Waste Landfills (ATTACH AUDIT REPORT)

Owner's Most Recent Annual Audit Report

Prepared by: NA

For fiscal year ending: NA

### Privately Owned Municipal Solid Waste Landfills (ATTACH AFFIDAVIT)

Attach owner/operator's affidavit indicating that an annual review has been performed by a certified public accountant to determine whether the privately owned monofill is in compliance with IAC 567 Chapter 115. The affidavit shall state the name of the certified public accountant, the dates and conclusions of the review, and the steps taken to rectify any deficiencies identified by the accountant.

**SECTION 5: FINANCIAL ASSURANCE INSTRUMENT**

<b>Type and Value of Financial Assurance Instrument(s)</b>	<i>(ATTACH INSTRUMENT(S))</i>
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Assurance Instrument	Establishment Date	Mechanism Covers	Instrument Value*
Trust Fund 567 IAC 115.31(6)“a”	May 1, 2018	Closure <input checked="" type="checkbox"/> Postclosure <input checked="" type="checkbox"/> Corrective Action <input type="checkbox"/>	\$
Surety Bond 567 IAC 115.31(6)“b”		Closure <input type="checkbox"/> Postclosure <input type="checkbox"/> Corrective Action <input type="checkbox"/>	\$
Letter of Credit 567 IAC 115.31(6)“c”		Closure <input type="checkbox"/> Postclosure <input type="checkbox"/> Corrective Action <input type="checkbox"/>	\$
Insurance 567 IAC 115.31(6)“d”		Closure <input type="checkbox"/> Postclosure <input type="checkbox"/> Corrective Action <input type="checkbox"/>	\$
Corporate Financial Test 567 IAC 115.31(6)“e”		Closure <input type="checkbox"/> Postclosure <input type="checkbox"/> Corrective Action <input type="checkbox"/>	\$
Local Gov’t. Financial Test 567 IAC 115.31(6)“f”		Closure <input type="checkbox"/> Postclosure <input type="checkbox"/> Corrective Action <input type="checkbox"/>	\$
Corporate Guarantee 567 IAC 115.31(6)“g”		Closure <input type="checkbox"/> Postclosure <input type="checkbox"/> Corrective Action <input type="checkbox"/>	\$
Local Gov’t Guarantee 567 IAC 115.31(6)“h”		Closure <input type="checkbox"/> Postclosure <input type="checkbox"/> Corrective Action <input type="checkbox"/>	\$
Local Gov’t. Dedicated Fund 567 IAC 115.31(6)“i”		Closure <input type="checkbox"/> Postclosure <input type="checkbox"/> Corrective Action <input type="checkbox"/>	\$

**SECTION 6: FUND PAYMENTS**

(only if using dedicated or trust fund)

Completion of the following fund information complies with the annual financial statement requirements of IAC 567 115.31(3)“a” and 115.31(4)“a” by indicating the current balance(s) of the dedicated/trust fund and the projected amount(s) to be deposited in the fund(s).

Under “Beginning Balance”, please state the fund balance 30 days after the start of the previous fiscal year, for “Ending Balance”, indicate the fund balance 30 days after the close of the previous fiscal year, and for “Projected Deposit”, indicate the amount to be deposited within 30 days of the close of the permit holder’s fiscal year.

Information Requested	Beginning Balance	Ending Balance	Projected Deposit
Dedicated Fund Balance <i>(see formula below)</i>	\$	\$	\$
Trust Fund Balance <i>(see formula below)</i>	\$ 967,981	\$ 1,833,432	\$ 301,875

**Formula for Projected Deposits**

Dedicated/Trust Fund

$$\frac{CE - CB}{Y}$$

Where "CE" is the closure or postclosure cost estimate, "CB" is the balance 30 days after close of the previous fiscal year, and "Y" is number of years remaining in the pay-in period.

If needed, the space below can be used to show calculations for projected deposits

See attached calculations and explanation for projected deposits.

**SECTION 7: PERMIT HOLDER ENDORSEMENT**

Submission of this completed and endorsed form along with all required documentation establishes Notification and Proof of Permit Holder Compliance with IAC 567 Chapter 115.

Name of Official: Ralph Clendenin Title: Chief Operating Officer

Agency/Entity: WDC Acquisition LLC

Address: 1746 Commerce Road

City: Creston State: Iowa Zip: 50801

Telephone: 641-782-0310 Fax: \_\_\_\_\_

Email Address: ralph.clendenin@wellmandynamics.com

Signature of Official:  Date: 3/27/26

Questions? Contact Mary Klemesrud at (515) 802-8835 or [Mary.Klemesrud@dnr.iowa.gov](mailto:Mary.Klemesrud@dnr.iowa.gov)

## Calculations for Projected Deposits

The United States Bankruptcy Court for the Southern District of Iowa approved an Amended and Restated Environmental Settlement Agreement ("ESA") on June 9, 2020. The ESA was made, by and between, WDC Acquisition LLC ("WDC") and the United States of America, on behalf of the Environmental Protection Agency, the State of Iowa on behalf of the Iowa Department of Natural Resources ("IDNR") and the Iowa Department of Public Health to resolve certain environmental liabilities for existing contamination at the Wellman Facility, including; the Industrial Monofill Sanitary Landfill ("Landfill") closure and post-closure obligations.

The ESA sets the required funding plan for the remaining landfill closure and post-closure costs. Specifically, Appendix B of the ESA requires that; "WDC shall provide an amount and percentage of the initial and installment payments as set forth in Appendix E of the ESA sufficient to fully fund IDNR Trust for the Landfill in order to ensure adequate funds are available to complete closure and post-closure monitoring of the Landfill based upon the certified updated third party estimates for closure/post closure costs, and the completed IDNR Financial Assurance Report Form (542-8090)". Additionally, the ESA stipulates in paragraph 12.A. "The above payments shall continue on a monthly basis until such time as (1) the obligations set forth in Paragraphs 4-10 are satisfied, or (2) the combined balance of the Trusts is equal to or greater than \$7,203,935 in which case the payments as provided for in this Paragraph 12 shall be suspended until such time as the combined balance of Trusts is less than \$6,500,000, at which time the payments shall resume, or (3) other adequate financial assurance approved in writing by the Environmental Agencies is established for the remaining obligations set forth in Paragraphs 4-10; provided, however, that the Settling Parties agree that the maximum balance amount set forth in clause (2) of this sentence shall be reduced as the work required under Paragraphs 4-10 is performed to reflect the estimated cost of the remaining work, subject to the approval of the Environmental Agencies."

The total projected deposit for fiscal year 2026 is \$301,875 and was determined using the formula provided in paragraph 12.A. and Appendix E of the ESA and a 2026 TTM Net Sales forecast of \$84,000,000. The projected deposit assumes the combined balance of all the Trusts will be greater than the \$7,203,935 threshold after the March 2026 deposit and thus subsequent monthly deposits will be suspended. The projected monthly deposit also allocates 35% of the total monthly deposit instead of just 5%, since the IDPH Trust balance has been reached.

The projected monthly deposits were calculated using the rate of 3.64% and 5% for TTM Net Sales over \$55MM. (i.e.  $(\$55,000,000 \times 3.64\% = \$2,000,000) + (\$29,000,000 \times 5\% = \$1,450,000) = \$3,450,000$ ),  $(\$3,450,000/12 = \$287,500/\text{month})$ ,  $(\$287,500 \times 35\% = \$100,625/\text{month})$ ,  $(\$100,625 \times 3 \text{ months} = \$301,875)$ .

# INDUSTRIAL MONOFILL SOLID WASTE SANITARY LANDFILL OWNER'S AFFIDAVIT

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As the Owner and/or Operator of the WDC Acquisition Industrial Landfill (Permit #88-SDP-04-86), a privately owned industrial monofill solid waste sanitary landfill, I certify that a yearly review has been performed by a certified public accountant to determine whether the landfill is in compliance with Iowa Administrative Code Chapter 115. Conclusions of the review and the steps taken to rectify any deficiencies identified by the accountant are listed below.

**Date of Review:** 3/23/2026

**Certifying Accountant:** UHY LLP

**Company:** UHY LLP, Certified Public Accountants

**Conclusion(s) of the review:** UHY LLP ("CPA") performed agreed upon procedures to assist WDC Acquisition LLC ("WDC") in complying with the financial assurance requirements included in Iowa Administrative Code (IAC) 567-115.31 as of and for the year ended December 31, 2025. UHY verified the landfill closure and postclosure cost estimates were prepared by an Iowa-licensed engineer and that the cost estimates were updated from the previous financial assurance report using the inflation factor provided by IDNR.

UHY reviewed WDC's monthly trailing twelve-month net sales report and recalculated the monthly contributions using the percentages set forth by paragraph 12.A on page 9 of the Amended and Restated Environmental Settlement Agreement ("ESA") dated June 9, 2020. UHY verified WDC used the correct percentages in determining monthly contributions. Effective April 2025, WDC increased contributions to the IDNR (landfill) Trust to 35% as permitted in Appendix E of the ESA due to the IDPH Trust becoming fully funded in March 2025.

UHY verified the required monthly transfer amounts as determined by the ESA were deposited into the IDNR trust and all monthly deposits were made on or before the tenth business day of each month during the year ended December 31, 2025.

**Steps taken to rectify any deficiencies identified:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Signature:**  3/27/26  
Ralph Clendenin, Chief Operating Officer

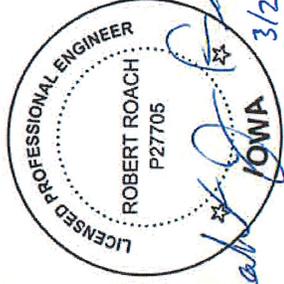
**Owner Name:** WDC Acquisition LLC                      **Date:** 3/27/2026

**POSTCLOSURE**  
 Third Party Postclosure Cost Estimate  
 Wellman Dynamics Corporation  
 Solid Waste Landfill Permit No. 88-SP-04-88P  
 Completed By Penn Environmental & Remediation, Inc.  
 Revision 1: March 2018; Rev. 2: February 2019; Rev. 3: March 2014; Rev. 4: March 2016; Rev. 5: March 2019; Rev. 6: March 2014; Rev. 7: March 2015; Rev. 8: March 2016; Rev. 9: March 2017  
 Revision 10: March 2018; Rev. 11: March 2019; Rev. 12: March 2020; Rev. 13: March 2021; Rev. 14: February 2022; Rev. 15: February 2023; Rev. 16: March 2024; Rev. 17: March 2025; Rev. 18: March 2025; Rev. 19: March 2026

Factor No.	Description	Amount	Units	Cost/Unit	Cost	Notes/assumptions	Reference
1	General site facilities, access, road and fencing maintenance	29	Years	\$250	\$7,250	400 LF road and 2,000 LF fence, 3 gates.	Penn EAR est. 03/2008
2	Care and vegetable cover maintenance	29	Years	\$2,500	\$72,500	Mowing, weeding and misc. repairs.	Penn EAR est. 03/2008
3	Drainage and erosion control systems maintenance	29	Years	\$500	\$14,500	2,750 LF channels.	Penn EAR est. 03/2008
4	Ground water to vents separation systems maintenance	29	Years	\$0	\$0	Not applicable.	Not applicable.
5	Site control systems maintenance	29	Years	\$0	\$0	Not applicable.	Not applicable.
6	Gas control systems monitoring and reports	29	Years	\$0	\$0	Not applicable.	Not applicable.
7	Ground water and surface water monitoring systems maintenance	29	Years	\$500	\$14,500	Base and well head repairs.	Penn EAR est. 03/2008
8	Ground water and surface water quality monitoring and reports	29	Years	\$75,500	\$2,218,500	Includes sampling, analyses and reporting.	WDC 03/2009
9	Ground water monitoring systems performance evaluations and reports	29	Years	\$0	\$0	Included in Item 8.	Not applicable.
10	Leachate control systems maintenance	29	Years	\$3,000	\$87,000	Clean out catch every three years, pump service.	WDC 03/2009
11	Leachate management, transportation and disposal	29	Years	\$4,000	\$116,000	Discharge fees to POTW (1 MGY @ \$30.00/gal)	Cleaton ordinance 66.04, WDC 03/2009
12	Leachate control systems performance evaluations and reports	29	Years	\$3,000	\$87,000	LCSPE Report	Penn EAR est. 03/2005
13	Facility inspections and reports	29	Years	\$2,500	\$72,500	Inspections required in post closure.	Penn EAR est. 03/2008
14	Engineering and technical services	29	Years	\$500	\$14,500	Minimal services required.	Penn EAR est. 03/2008
15	Legal, financial and administrative services	29	Years	\$500	\$14,500	Minimal services required.	Penn EAR est. 03/2008
16	Financial assistance, accounting, audit, and reports	29	Years	\$2,750	\$79,750	Annual cost estimate updates.	Penn EAR est. 03/2005
17	Inflation Adjustments	1	LS	\$26,281	\$26,281	Inflation adjustments per line items with 2008 costs	Annual Inflation Adjustment
	<b>Original Postclosure Cost Estimate Total</b>				<b>\$1,077,000</b>		
	<b>2009 Inflation Adjustment (Inflation Factor = 1.0181)</b>				<b>\$19,306</b>		
	<b>2010 Postclosure Cost Estimate Total</b>				<b>\$1,096,306</b>		
	<b>2010 Inflation Adjustment (Inflation Factor = 1.0077)</b>				<b>\$7,675</b>		
	<b>2011 Postclosure Cost Estimate Total</b>				<b>\$1,104,051</b>		
	<b>2011 Inflation Adjustment (Inflation Factor = 1.0151)</b>				<b>\$14,353</b>		
	<b>2012 Postclosure Cost Estimate Total</b>				<b>\$1,118,404</b>		
	<b>2012 Inflation Adjustment (Inflation Factor = 1.021)</b>				<b>\$23,617</b>		
	<b>2013 Postclosure Cost Estimate Total</b>				<b>\$1,142,021</b>		
	<b>2013 Inflation Adjustment (Inflation Factor = 1.0175)</b>				<b>\$18,993</b>		
	<b>2014 Postclosure Cost Estimate Total</b>				<b>\$1,161,014</b>		
	<b>2014 Inflation Adjustment (Inflation Factor = 1.01378)</b>				<b>\$16,948</b>		
	<b>2015 Postclosure Cost Estimate Total</b>				<b>\$1,177,962</b>		
	<b>2015 Inflation Adjustment (Inflation Factor = 1.0119)</b>				<b>\$14,017</b>		
	<b>2016 Postclosure Cost Estimate Total</b>				<b>\$1,191,979</b>		
	<b>2016 Inflation Adjustment (Inflation Factor = 1.0103)</b>				<b>\$12,044</b>		
	<b>2017 Postclosure Cost Estimate Total</b>				<b>\$1,204,023</b>		
	<b>2017 Inflation Adjustment (Inflation Factor = 1.01555)</b>				<b>\$18,856</b>		
	<b>2018 Postclosure Cost Estimate Total</b>				<b>\$1,222,879</b>		
	<b>2018 Inflation Adjustment (Inflation Factor = 1.0181)</b>				<b>\$22,761</b>		
	<b>2019 Postclosure Cost Estimate Total</b>				<b>\$1,245,640</b>		
	<b>2019 Inflation Adjustment (Inflation Factor = 1.02197)</b>				<b>\$27,286</b>		
	<b>2020 Postclosure Cost Estimate Total</b>				<b>\$1,272,926</b>		
	<b>2020 Inflation Adjustment (Inflation Factor = 1.0184)</b>				<b>\$24,883</b>		
	<b>2021 Postclosure Cost Estimate Total</b>				<b>\$1,297,809</b>		
	<b>2021 Inflation Adjustment (Inflation Factor = 1.0175)</b>				<b>\$22,886</b>		
	<b>2022 Postclosure Cost Estimate Total</b>				<b>\$1,320,695</b>		
	<b>2022 Inflation Adjustment (Inflation Factor = 1.0155)</b>				<b>\$20,493</b>		
	<b>2023 Postclosure Cost Estimate Total</b>				<b>\$1,341,188</b>		
	<b>2023 Inflation Adjustment (Inflation Factor = 1.0138)</b>				<b>\$17,999</b>		
	<b>2024 Postclosure Cost Estimate Total</b>				<b>\$1,359,187</b>		
	<b>2024 Inflation Adjustment (Inflation Factor = 1.020)</b>				<b>\$24,709</b>		
	<b>2025 Postclosure Cost Estimate Total</b>				<b>\$1,383,896</b>		
	<b>2025 Inflation Adjustment (Inflation Factor = 1.024)</b>				<b>\$24,709</b>		
	<b>2026 Postclosure Cost Estimate Total</b>				<b>\$1,408,605</b>		
	<b>2026 Inflation Adjustment (Inflation Factor = 1.029)</b>				<b>\$24,709</b>		
	<b>2027 Postclosure Cost Estimate Total</b>				<b>\$1,433,314</b>		
	<b>2027 Inflation Adjustment (Inflation Factor = 1.0337)</b>				<b>\$24,709</b>		
	<b>2028 Postclosure Cost Estimate Total</b>				<b>\$1,458,023</b>		
	<b>2028 Inflation Adjustment (Inflation Factor = 1.0384)</b>				<b>\$24,709</b>		
	<b>2029 Postclosure Cost Estimate Total</b>				<b>\$1,482,732</b>		
	<b>2029 Inflation Adjustment (Inflation Factor = 1.0431)</b>				<b>\$24,709</b>		
	<b>2030 Postclosure Cost Estimate Total</b>				<b>\$1,507,441</b>		
	<b>2030 Inflation Adjustment (Inflation Factor = 1.0478)</b>				<b>\$24,709</b>		
	<b>2031 Postclosure Cost Estimate Total</b>				<b>\$1,532,150</b>		
	<b>2031 Inflation Adjustment (Inflation Factor = 1.0525)</b>				<b>\$24,709</b>		
	<b>2032 Postclosure Cost Estimate Total</b>				<b>\$1,556,859</b>		
	<b>2032 Inflation Adjustment (Inflation Factor = 1.0572)</b>				<b>\$24,709</b>		
	<b>2033 Postclosure Cost Estimate Total</b>				<b>\$1,581,568</b>		
	<b>2033 Inflation Adjustment (Inflation Factor = 1.0619)</b>				<b>\$24,709</b>		
	<b>2034 Postclosure Cost Estimate Total</b>				<b>\$1,606,277</b>		
	<b>2034 Inflation Adjustment (Inflation Factor = 1.0666)</b>				<b>\$24,709</b>		
	<b>2035 Postclosure Cost Estimate Total</b>				<b>\$1,630,986</b>		
	<b>2035 Inflation Adjustment (Inflation Factor = 1.0713)</b>				<b>\$24,709</b>		
	<b>2036 Postclosure Cost Estimate Total</b>				<b>\$1,655,695</b>		
	<b>2036 Inflation Adjustment (Inflation Factor = 1.076)</b>				<b>\$24,709</b>		
	<b>2037 Postclosure Cost Estimate Total</b>				<b>\$1,680,404</b>		
	<b>2037 Inflation Adjustment (Inflation Factor = 1.0807)</b>				<b>\$24,709</b>		
	<b>2038 Postclosure Cost Estimate Total</b>				<b>\$1,705,113</b>		
	<b>2038 Inflation Adjustment (Inflation Factor = 1.0854)</b>				<b>\$24,709</b>		
	<b>2039 Postclosure Cost Estimate Total</b>				<b>\$1,729,822</b>		
	<b>2039 Inflation Adjustment (Inflation Factor = 1.0901)</b>				<b>\$24,709</b>		
	<b>2040 Postclosure Cost Estimate Total</b>				<b>\$1,754,531</b>		
	<b>2040 Inflation Adjustment (Inflation Factor = 1.0948)</b>				<b>\$24,709</b>		
	<b>2041 Postclosure Cost Estimate Total</b>				<b>\$1,779,240</b>		
	<b>2041 Inflation Adjustment (Inflation Factor = 1.0995)</b>				<b>\$24,709</b>		
	<b>2042 Postclosure Cost Estimate Total</b>				<b>\$1,803,949</b>		
	<b>2042 Inflation Adjustment (Inflation Factor = 1.1042)</b>				<b>\$24,709</b>		
	<b>2043 Postclosure Cost Estimate Total</b>				<b>\$1,828,658</b>		
	<b>2043 Inflation Adjustment (Inflation Factor = 1.1089)</b>				<b>\$24,709</b>		
	<b>2044 Postclosure Cost Estimate Total</b>				<b>\$1,853,367</b>		
	<b>2044 Inflation Adjustment (Inflation Factor = 1.1136)</b>				<b>\$24,709</b>		
	<b>2045 Postclosure Cost Estimate Total</b>				<b>\$1,878,076</b>		
	<b>2045 Inflation Adjustment (Inflation Factor = 1.1183)</b>				<b>\$24,709</b>		
	<b>2046 Postclosure Cost Estimate Total</b>				<b>\$1,902,785</b>		
	<b>2046 Inflation Adjustment (Inflation Factor = 1.123)</b>				<b>\$24,709</b>		
	<b>2047 Postclosure Cost Estimate Total</b>				<b>\$1,927,494</b>		
	<b>2047 Inflation Adjustment (Inflation Factor = 1.1277)</b>				<b>\$24,709</b>		
	<b>2048 Postclosure Cost Estimate Total</b>				<b>\$1,952,203</b>		
	<b>2048 Inflation Adjustment (Inflation Factor = 1.1324)</b>				<b>\$24,709</b>		
	<b>2049 Postclosure Cost Estimate Total</b>				<b>\$1,976,912</b>		
	<b>2049 Inflation Adjustment (Inflation Factor = 1.1371)</b>				<b>\$24,709</b>		
	<b>2050 Postclosure Cost Estimate Total</b>				<b>\$2,001,621</b>		
	<b>2050 Inflation Adjustment (Inflation Factor = 1.1418)</b>				<b>\$24,709</b>		
	<b>2051 Postclosure Cost Estimate Total</b>				<b>\$2,026,330</b>		
	<b>2051 Inflation Adjustment (Inflation Factor = 1.1465)</b>				<b>\$24,709</b>		
	<b>2052 Postclosure Cost Estimate Total</b>				<b>\$2,051,039</b>		
	<b>2052 Inflation Adjustment (Inflation Factor = 1.1512)</b>				<b>\$24,709</b>		
	<b>2053 Postclosure Cost Estimate Total</b>				<b>\$2,075,748</b>		
	<b>2053 Inflation Adjustment (Inflation Factor = 1.1559)</b>				<b>\$24,709</b>		
	<b>2054 Postclosure Cost Estimate Total</b>				<b>\$2,100,457</b>		
	<b>2054 Inflation Adjustment (Inflation Factor = 1.1606)</b>				<b>\$24,709</b>		
	<b>2055 Postclosure Cost Estimate Total</b>				<b>\$2,125,166</b>		
	<b>2055 Inflation Adjustment (Inflation Factor = 1.1653)</b>				<b>\$24,709</b>		
	<b>2056 Postclosure Cost Estimate Total</b>				<b>\$2,149,875</b>		
	<b>2056 Inflation Adjustment (Inflation Factor = 1.17)</b>				<b>\$24,709</b>		
	<b>2057 Postclosure Cost Estimate Total</b>				<b>\$2,174,584</b>		
	<b>2057 Inflation Adjustment (Inflation Factor = 1.1747)</b>				<b>\$24,709</b>		
	<b>2058 Postclosure Cost Estimate Total</b>				<b>\$2,199,293</b>		
	<b>2058 Inflation Adjustment (Inflation Factor = 1.1794)</b>				<b>\$24,709</b>		
	<b>2059 Postclosure Cost Estimate Total</b>				<b>\$2,224,002</b>		
	<b>2059 Inflation Adjustment (Inflation Factor = 1.1841)</b>				<b>\$24,709</b>		
	<b>2060 Postclosure Cost Estimate Total</b>				<b>\$2,248,711</b>		
	<b>2060 Inflation Adjustment (Inflation Factor = 1.1888)</b>				<b>\$24,709</b>		
	<b>2061 Postclosure Cost Estimate Total</b>				<b>\$2,273,420</b>		
	<b>2061 Inflation Adjustment (Inflation Factor = 1.1935)</b>				<b>\$24,709</b>		
	<b>2062 Postclosure Cost Estimate Total</b>				<b>\$2,298,129</b>		
	<b>2062 Inflation Adjustment (Inflation Factor = 1.1982)</b>				<b>\$24,709</b>		
	<b>2063 Postclosure Cost Estimate Total</b>				<b>\$2,322,838</b>		
	<b>2063 Inflation Adjustment (Inflation Factor = 1.2029)</b>				<b>\$24,709</b>		
	<b>2064 Postclosure Cost Estimate Total</b>				<b>\$2,347,547</b>		
	<b>2064 Inflation Adjustment (Inflation Factor = 1.2076)</b>				<b>\$24,709</b>		
	<b>2065 Postclosure Cost Estimate Total</b>				<b>\$2,372,256</b>		
	<b>2065 Inflation Adjustment (Inflation Factor = 1.2123)</b>				<b>\$24,709</b>		
	<b>2066 Postclosure Cost Estimate Total</b>				<b>\$2,396,965</b>		
	<b>2066 Inflation Adjustment (Inflation Factor = 1.217)</b>				<b>\$24,709</b>		
	<b>2067 Postclosure Cost Estimate Total</b>				<b>\$2,421,674</b>		
	<b>2067 Inflation Adjustment (Inflation Factor = 1.2217)</b>				<b>\$24,709</b>		
	<b>2068 Postclosure Cost Estimate Total</b>				<b>\$2,446,383</b>		
	<b>2068 Inflation Adjustment (Inflation Factor = 1.2264)</b>				<b>\$24,709</b>		
	<b>2069 Postclosure Cost Estimate Total</b>				<b>\$2,471,092</b>		
	<b>2069 Inflation Adjustment (Inflation Factor = 1.2311)</b>				<b>\$24,709</b>		
	<b>2070 Postclosure Cost Estimate Total</b>				<b>\$2,495,801</b>		
	<b>2070 Inflation Adjustment (Inflation Factor = 1.2358)</b>				<b>\$24,709</b>		
	<b>2071 Postclosure Cost Estimate Total</b>				<b>\$2,520,510</b>		
	<b>2071 Inflation Adjustment (Inflation Factor = 1.2405)</b>				<b>\$24,709</b>		
	<b>2072 Postclosure Cost Estimate Total</b>				<b>\$2,545,219</b>		
	<b>2072 Inflation Adjustment (Inflation Factor = 1.2452)</b>				<b>\$24,709</b>		
	<b>2073 Postclosure Cost Estimate Total</b>				<b>\$2,569,928</b>		
	<b>2073 Inflation Adjustment (Inflation Factor = 1.2499)</b>				<b>\$24,709</b>		
	<b>2074 Postclosure Cost Estimate Total</b>				<b>\$2,594,637</b>		
	<b>2074 Inflation Adjustment (Inflation Factor = 1.2546)</b>				<b>\$24,709</b>		
	<b>2075 Postclosure Cost Estimate Total</b>						

**CLOSURE - COMPLETED IN 2024**  
 Third Party Closure Cost Estimate  
 Wellman Dynamics Corporation  
 Solid Waste Landfill Permit No. 88-SDP-04-88P  
 Completed by Penn Environmental & Remediation, Inc.  
 March 24, 2009 Rev. 1: March 2009; Rev. 2: February 2010; Rev. 3: March 2011; Rev. 4: March 2012; Rev. 5: March 2013; Rev. 6: March 2014; Rev. 7: March 2015; Rev. 8: March 2016; Rev. 9: March 2017  
 Rev. 10: March 2018; Rev. 11: March 2019; Rev. 12: March 2020; Rev. 13: March 2021; Rev. 14: February 2022; Rev. 15: February 2022; Rev. 16: March 2024; Rev. 17: March 2025; Rev. 18: March 2026

Factor No.	Description	Amount	Units	Cost/Unit	Cost	Notes/Assumptions	Reference
1	Landfill Closure (completed in 2024)	1	LS	\$0	\$0	Landfill closed in 2024. Closure Permit issued by IDNR in December 2024.	



## ***Wellman Landfill Closure & Post-Closure Trust Agreement***

Wellman Landfill Closure & Post-Closure Trust Agreement, the “Agreement,” entered into as of MAY 1, 2018 by and between WDC Acquisition, LLC a Delaware limited liability company, the “Grantor,” and Iowa State Savings Bank, incorporated in the State of Iowa, the “Trustee.”

**WHEREAS**, on September 13, 2016, Wellman Dynamics Corporation commenced a voluntary case under Chapter 11 of Title 11 of the United States Code in the United States United States Bankruptcy Court from the Southern District of Iowa (“Bankruptcy Court”),

**WHEREAS**, on March 12, 2018, the Bankruptcy Court approved the sale of certain assets of Wellman Dynamics Corporation to TCTM Financial FS LLC (“TCTM”) pursuant to the terms of an approved Asset Purchase Agreement (“APA”),

**WHEREAS**, TCTM assigned all its rights and obligations under the APA to WDC Acquisition LLC,

**WHEREAS**, WDC Acquisition LLC and the Iowa Department of Natural Resources (“IDNR”) entered into an Environmental Settlement Agreement attached hereto as Exhibit A which requires that WDC Acquisition LLC provide financial assurance to fund certain obligations as set forth in Appendix B to the Environmental Settlement Agreement,

**WHEREAS**, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this Agreement, and the Trustee is willing to act as trustee,

**NOW, THEREFORE**, the Grantor and the Trustee agree as follows:

***Section 1. Definitions.*** As used in this Agreement:

(a) The term “Grantor” means WDC Acquisition, LLC, who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term “Trustee” means the Trustee who enters into this Agreement and any successor Trustee.

***Section 2. Identification of Facilities and Cost Estimates.***

This Agreement pertains to the facility located at 1746 Commerce Road, Creston, Iowa and certain of the obligations and financial assurance requirements identified in the Environmental Settlement Agreement.

***Section 3. Establishment of Fund.***

The Grantor and the Trustee had previously established a closure & post-closure trust dated March 6, 2008 (2008 Trust). It is the intent of the Grantor to terminate the 2008 Trust and establish a new trust fund, the "Fund," for the benefit of IDNR as further described herein. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Exhibit B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor under the Environmental Settlement Agreement.

#### ***Section 4. Payments for Grantor's Obligations under Appendix B to the Environmental Settlement Agreement***

Upon Grantor's receipt of an invoice for work to be paid for from the Trust, Grantor shall provide an electronic copy of the invoice to IDNR for review. Unless, IDNR objects in writing to the payment of the invoice within 14 days of receipt by IDNR, the invoice shall be deemed approved and Grantor shall prepare a letter of direction to the Trustee for payment of the invoice. Trustee shall make payments from the Fund to Grantor or as Grantor directs, in writing, upon presentation to the Trustee of a letter of direction signed by Grantor certifying that such payment is for work required under Appendix B to the Environmental Settlement Agreement. No payment shall be made from the Trust for any invoice submitted by Grantor if IDNR submits a written objection to the Trustee and Grantor within 14 days of receipt of the invoice by IDNR until such time that the Trustee received a written direction signed by both the Grantor and IDNR that such payment is approved.

#### ***Section 5. Payments Comprising the Fund.***

Payments made to the Trustee for the Fund shall be in accordance with the requirements set forth in the Environmental Settlement Agreement as attached hereto as Exhibit A.

#### ***Section 6. Trustee Management.***

The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; *except that:*

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

### ***Section 7. Commingling and Investment.***

The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

### ***Section 8. Express Powers of Trustee.***

Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or

any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

### ***Section 9.***

***Taxes and Expenses.*** All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

### ***Section 10. Annual Valuation.***

The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to IDNR a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the IDNR shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

### ***Section 11. Advice of Counsel.***

The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

### ***Section 12. Trustee Compensation.***

The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

### ***Section 13. Successor Trustee.***

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties

as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the IDNR, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

***Section 14. Instructions to the Trustee.***

All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit C or such other designees as the Grantor may designate by amendment to Exhibit C. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the IDNR to the Trustee shall be in writing, signed by the IDNR, or its designee, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or IDNR hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or IDNR, except as provided for herein.

***Section 15. Notice of Nonpayment.***

Pursuant to the Environmental Settlement Agreement, Grantor will make monthly contributions to the Fund starting on the tenth(10) business day of the month following ninety (90) days after the closing date of the APA, except as provided for in the Environmental Settlement Agreement. The Trustee shall notify the Grantor and the IDNR, by certified mail within five (5) days following the tenth (10) business day of each month, if no payment is received from the Grantor during that period.

***Section 16. Amendment of Agreement.***

This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the IDNR.

***Section 17. Irrevocability and Termination.***

Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the IDNR. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

***Section 18. Immunity and Indemnification.***

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the IDNR issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

**Section 19. Choice of Law.**

This Agreement shall be administered, construed, and enforced according to the laws of the State of Iowa.

**Section 20. Interpretation.**

As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and attested as of the date first above written.

WDC Acquisition, LLC

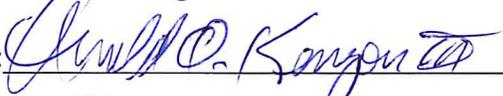
By:  \_\_\_\_\_

Title: President

Attest: 

Title: Vice President

Iowa State Savings Bank

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

Title: SENIOR TRUST OFFICER

Attest: 

Title: CEO, CFO, & Trust Officer

**Exhibit A**  
**Environmental Settlement Agreement (See Attached)**

**Exhibit B**  
Initial Deposit: \$50,000, plus the amount transferred from the 2008 Trust

**Exhibit C (updated 3/27/2023)**  
Grantor's Designated Persons under Section 14 of Trust:

Mr. Ralph Clendenin  
WDC Acquisition, LLC  
1746 Commerce Road  
Creston, Iowa 50801

Mr. Matt Thelen  
WDC Acquisition, LLC  
1746 Commerce Road  
Creston, Iowa 50801

## **Matt Thelen**

---

**From:** Matt Thelen  
**Sent:** Thursday, April 3, 2025 9:33 AM  
**To:** Riesberg, Patty [HHS]; Mick Leat (mick.lead@dnr.iowa.gov); Pat Murrow (murrow.patricia@epa.gov); Richard Gladstein  
**Cc:** Linda Eberly; Tony Maurath; Ralph Clendenin; robertsyvester@trmequity.com  
**Subject:** WDC Acquisition LLC - ESA Financial Assurance Update  
**Attachments:** Final Amended and Restated ESA 06.09.20.pdf

Hello All,

I hope everyone is well. I wanted to provide a brief update on the Environmental Settlement Agreement (ESA) financial assurance funding progress. WDC Acquisition LLC (WDC) has been funding the three Environmental Trusts (Wellman Corrective Action Trust, IDNR Trust, and IDPH Trust) as required by Paragraph 12 and Appendix E of the ESA (attached for reference). Specifically, monthly installment payments have been made at the following allocations:

Wellman Correction Action Trust (RCRA) – 65%  
IDPH Trust (Radioactive Materials) – 30%  
IDNR Trust (Landfill) – 5%

Recently, the IDPH Trust funds have reached the target balance of \$1,000,000 to satisfy the ESA requirements. As such, the ESA stipulates reallocating the percentages of the monthly installment payments and WDC intends to adjust the allocations, beginning with the April 2025 payment, to the following:

Wellman Correction Action Trust (RCRA) – 65%  
IDPH Trust (Radioactive Materials) – 0%  
IDNR Trust (Landfill) – 35%

These adjusted allocation percentages and monthly installment payments will continue until the remaining ESA work and funding requirements are satisfied. If, for any reason, the IDPH Trust balance drops below the target or additional funding is required based on the conditions specified in Appendix D, then WDC, at that time will reevaluate and adjust accordingly the allocation percentages.

If you have any questions or concerns regarding this update and WDC's funding plan, please contact me so we can discuss for resolution.

Sincerely,

**Matt Thelen** | Environmental Engineer  
WDC Acquisition LLC  
1746 Commerce Road, Creston, IA 50801  
Phone: 641-782-0283  
Email: [matt.thelen@wellmandynamics.com](mailto:matt.thelen@wellmandynamics.com)



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**UNITED STATES BANKRUPTCY COURT**  
**SOUTHERN DISTRICT OF IOWA**

In re:	)	Case No.: 16-01825-als11
	)	
<b>FANSTEEL FOUNDRY CORPORATION,</b>	)	
<b>aka WELLMAN DYNAMICS</b>	)	Chapter 11
<b>CORPORATION,</b>	)	
	)	Hon. Anita L. Shodeen
Debtor and Debtor in Possession.	)	
	)	<b>PROPOSED CONSENT ORDER</b>
	)	<b>GRANTING JOINT</b>
	)	<b>MOTION FOR ENTRY OF</b>
	)	<b>ORDER APPROVING</b>
	)	<b>AMENDED AND RESTATED</b>
EIN: 36-3198501	)	<b>ENVIRONMENTAL</b>
	)	<b>SETTLEMENT AGREEMENT</b>
	)	<i>Date entered on docket: June 9, 2020</i>

This matter comes before the Court on the Joint Motion for Order Approving Amended and Restated Environmental Settlement Agreement (Docket No. 1199) (“Joint Motion”), filed by WDC Acquisition LLC (“Buyer”), U.S. Environmental Protection Agency (“EPA”), Iowa Department of Natural Resources (“IDNR”) and Iowa Department of Public Health (“IDPH”) (collectively, the “Moving Parties”), and the Response to Joint Motion (Docket No. 1210) (“Response”) filed by Daniel Dooley, as the Liquidating Trustee of the WDC Liquidating Trust (“Trust”) and successor in interest of Fansteel Foundry Corporation, formerly known as Wellman Dynamics Corporation (“WDC” or “Debtor”) pursuant to the confirmed Joint Plan of Liquidation (the “Trustee”).

Upon receipt of the Trustee’s Response, the Moving Parties and the Trustee reviewed the previously-approved compromise and settlement set forth in the Environmental Settlement Agreement dated as of February 26, 2018, among Debtor, Buyer, EPA, IDNR, and IDPH (“ESA”) approved by this Court on April 25, 2018 (Docket No. 677), and agreed to clarify the terms and

conditions of the ESA and the Amended and Restated Environmental Settlement Agreement dated as of April 28, 2020, among Buyer, EPA, IDNR and IDPH (“Amended ESA”) attached to the Joint Motion, as set forth in the Revised Amended and Restated Environmental Settlement Agreement dated as of May 21, 2020, among Buyer, EPA, IDNR and IDPH (“Revised Amended ESA”) attached to this Order as Exhibit A. Attached to this Order as Exhibit B is a red-lined version of the Revised Amended ESA showing the agreed changes from the Amended ESA attached to the Joint Motion.

The Court finds that the Revised Amended ESA does not impose any new obligations on the Trustee, the Debtor, or the Debtor’s estate and clarifies that the ESA and the Revised Amended ESA continue to inure to the benefit of the Liquidating Trustee of the WDC Liquidating Trust and, accordingly, the protections afforded to the Trustee, the Debtor, and the Debtor’s estate under the ESA remain in effect and are renewed, reinforced and continue onward by the Revised Amended ESA.

The Court further finds that due and proper notice of the Joint Motion has been given, and a reasonable opportunity to object or to be heard regarding the relief requested by the Joint Motion has been afforded to all interested parties and entities.

Based upon the proceedings before the Court in this matter, the Court further finds that good and sufficient cause appears for granting the Amended Joint Motion and approving the Revised Amended ESA.

IT IS ORDERED, pursuant to Federal Rules of Bankruptcy Procedure 9019, that the Revised Amended and Restated Environmental Settlement Agreement attached to this Order as Exhibit A is hereby approved and entered as reasonable, fair and equitable, and consistent with the purposes of the relevant environmental laws.

IT IS FURTHER ORDERED that no new obligations shall be imposed by the Revised Amended and Restated Environmental Settlement Agreement on the Liquidating Trustee, the WDC Liquidating Trust, the Debtor, or the Debtor's estate and the protections of the previously-approved Environmental Settlement Agreement, including the requirement of the withdrawal of the EPA Claim, in favor of the Debtor, the Debtor's estate, and its legal successors and assigns, including the WDC Liquidating Trust and Daniel Dooley as the Liquidating Trustee, shall remain in full effect, are renewed, and shall continue onward by the Revised Amended and Restated Environmental Settlement Agreement approved by the Court and pursuant to this Order.

/s/ Anita L. Shodeen

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

APPROVED AS TO FORM AND CONTENT

/s/Charles M. Denton

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/s/Julie Johnson McLean

Julie Johnson McLean (AT#0005185)  
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*Attorneys for WDC Acquisition LLC*

/s/ Richard M. Gladstein

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Environment and Natural Resources Division  
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*Attorney for the United States on behalf of the EPA*

/s/ Jacob J. Larson

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*Attorney for the Iowa Department of Natural Resources*

/s/ Heather L. Adams

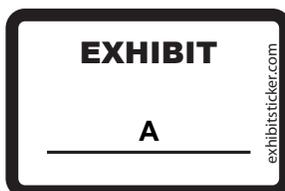
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*Attorney for the Iowa Department of Public Health*

/s/ Kristina M. Stanger

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Email: [kmstanger@nyemaster.com](mailto:kmstanger@nyemaster.com)  
*Attorney for Liquidating Trustee Daniel Dooley  
of the WDC Liquidating Trust*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF IOWA**

In Re: ) Bankruptcy Case No. 16-01825-als11  
)  
**WELLMAN DYNAMICS** )  
**CORPORATION** ) Chapter 11  
)  
Debtor and Debtor in Possession. ) Hon. Anita L. Shodeen  
)  
1746 Commerce Rd. ) **AMENDED AND RESTATED**  
Creston, IA 50801 ) **ENVIRONMENTAL SETTLEMENT**  
) **AGREEMENT AMONG BUYER**  
EIN: 36-1058780 ) **AND THE ENVIRONMENTAL**  
) **AGENCIES**  
)  
) Courtroom: 1  
)  
) Date Entered on Docket: \_\_\_\_\_



THIS SETTLEMENT AGREEMENT, originally made as of February 26, 2018, is hereby amended and restated effective May 21, 2020, by and between WDC Acquisition LLC (the “**Buyer**”), and the United States of America, on behalf of the Environmental Protection Agency (“**EPA**”), the State of Iowa on behalf of the Iowa Department of Natural Resources (“**IDNR**”) and the Iowa Department of Public Health (“**IDPH**”) (collectively referred to herein as the “**Settling Parties**”) in the above referenced chapter 11 case (the “**Chapter 11 Case**”).

WHEREAS, on September 13, 2016, Fansteel, Inc. (“**Fansteel**”), Wellman Dynamics Corp. (“**WDC**” or “**Debtor**”), and Wellman Dynamics Machining & Assembly, Inc. (together with Fansteel and WDC, the “**Debtors**”) commenced voluntary cases under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the Southern District of Iowa (the “**Bankruptcy Court**”).

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

WHEREAS, on January 23, 2004, pursuant to Section 3008(h) of the Resource, Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984 (“**RCRA**”), 42 U.S.C. §6901 *et seq.*, the EPA entered into an Administrative Order on Consent, Docket No. RCRA-07-2003-0167, (“**AOC**”), which requires WDC to perform a RCRA Facility Investigation (“**RFI**”) and to complete a Corrective Measures Study (“**CMS**”) in accordance with the EPA approved work plans. The purpose of the RFI is to determine the nature and extent of releases of hazardous waste or hazardous constituents from regulated

units, Solid Waste Management Units, and other areas of concern at the Wellman Facility and to gather necessary data to support the required CMS. Based on the results of the RFI, Buyer will conduct a CMS to develop, evaluate, and recommend the corrective action alternative(s) to be taken at the Wellman Facility.

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

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

WHEREAS, the Debtor and the EPA resolved their differences with respect to the protective EPA Proof of Claim.

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

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

WHEREAS, on July 14, 2017, WDC filed a Motion for Orders (I) Authorizing Sale of Assets Free and Clear of Liens, Claims, Interests and Encumbrances to Stalking Horse or Other Higher and Better Bidder (“**Order Authorizing Sale of Assets**”), (II) Approving Bid Procedures

for Sale, and (III) Scheduling Hearing on Approval of Sale (“**WDC Motion for Sale**”). (WDC Docs. #238, 243, 286).

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

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

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

WHEREAS, on March 12, 2018, the Bankruptcy Court entered its Order After Hearing Approving (A) Asset Purchase Agreement, and (B) Authorizing the Sale of Acquired Assets of the Debtor Outside the Ordinary Course of Business Free and Clear of Liens, Claims & Encumbrances (the “**Sale Order**”) (WDC Doc. 536) approving the sale by the Debtors of certain assets of WDC to TCTM Financial FS LLC (“**TCTM**”) pursuant to the terms of the final approved Asset Purchase Agreement (“**APA**”); thereafter the Debtor ceased business operations at the Wellman Facility and is not a signatory to this Amended Agreement.

WHEREAS, TCTM assigned all rights and obligations under the APA to WDC Acquisition LLC (“**Buyer**”) pursuant to that certain Assignment and Assumption Agreement dated May 7, 2018 by and between TCTM and Buyer, and consistent with the letter agreement by and among TCTM, Buyer and EPA, appended hereto as Exhibit F. The Buyer Closed on the acquisition pursuant to the Asset Purchase Agreement (APA) effective May 7, 2018.

WHEREAS, WDC Acquisition was awarded U.S. Army Contract # W15QKN-20-9-C001, effective October 31, 2019, and as amended effective February 27, 2020, pursuant to the National

Defense Authorization Act, which contains among other provisions significant cost-share obligations for WDC Acquisition.

WHEREAS, Pursuant to Section 3.3 of the APA, on or about May 7, 2018, the Buyer transferred the sum of \$1,000,000 toward financial assurance to the Trusts in the amounts and percentages set for in Appendix E, and the total amount in such Trusts, as of March 31, 2020, based on additional contributions by Buyer, is approximately \$2,275,000.

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

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

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

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

## **I. DEFINITIONS**

1. Unless otherwise expressly provided herein, terms used in this Settlement Agreement that are defined in RCRA, other environmental laws, or their regulations or in the Bankruptcy

Code shall have the meaning assigned to them therein. In addition, terms defined in the Settlement Agreement shall have the meaning set forth herein. Capitalized terms that are used herein but not otherwise defined shall have the meanings ascribed to them in the APA.

## **II. JURISDICTION**

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

## **III. PARTIES BOUND**

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

## **IV. THE WELLMAN FACILITY**

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

4, including those listed in Appendix A, shall be through a trust established by Buyer on or about May 1, 2018, on terms and conditions agreed to by EPA (the “**Wellman Corrective Action Trust**”).

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

6. Subject to the terms and conditions set forth in this Settlement Agreement, the Buyer shall be responsible for fulfilling all obligations mandated by 567 IAC 115.27 (455B) and by WDC’s Landfill Permit, which governs the management of the industrial waste landfill at the Wellman Facility. The Buyer shall complete excavation of material from the landfill, close the Industrial Monofill Sanitary Landfill and perform post-closure monitoring at the Wellman Facility in accordance with 567 IAC 115.27(9)(d), 567 IAC 115.31(6), and Appendix B to this Settlement Agreement. Financial assurance funding for completing the obligations set forth in Appendix B and the closure and post-closure monitoring requirements, shall be through the Trust, dated May 1, 2018 (the “**IDNR Trust**”), on terms and conditions approved by IDNR and consistent with the terms of this Settlement Agreement.

7. Upon closure of the industrial waste landfill, the Buyer, or any subsequent buyer, transferee or assignee, agrees to be responsible for execution of an Environmental Covenant pursuant to Iowa Code Chapter 455I entitled the Uniform Environmental Covenants Act at the Wellman Facility. See Appendix C (model covenant).

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

9. Subject to the terms and conditions set forth in this Settlement Agreement including Appendix D, the Buyer, or any subsequent buyer, transferee or assignee, shall be responsible for complying with 641 IAC Chapters 37-45, including 641 IAC 40.28-40.31 overseen by IDPH, and WDC's License #0103-1-88-SM1 transferred or renewed by IDPH and all amendments thereof, currently effective through July 1, 2024. The IDPH agrees to not require the excavation or removal of thorium-contaminated material buried at the Wellman Facility so long as the Buyer or any subsequent buyer, transferee or assignee continues to own and operate the Wellman Facility as a going concern. Financial assurance funding for completing the obligations set forth in Appendix D and the removal of the radioactive material stored above-ground and decommissioning of the burial site formerly approved under 10 CFR 20.304, shall be through the Trust dated May 1, 2018 (the "**IDPH Trust**" and together with the Wellman Corrective Action Trust and IDNR Trust, the "**Trusts**") on terms and condition approved by IDPH and consistent with the terms of this Settlement Agreement. Notwithstanding anything in this Settlement Agreement to the contrary but subject to Appendix D, the Buyer's financial assurance obligations with respect to the removal of any buried thorium or thorium- contaminated material at the Wellman Facility need not be funded pursuant to the Trusts so long as the Buyer or any subsequent buyer, transferee or assignee continues to own and operate the Wellman Facility as a going concern.

10. The Buyer agrees that 641 IAC Chapters 37-45 and WDC's License impose certain environmental obligations at the Wellman Facility that are not claims under 11 U.S.C. §105(5) and

that are not subject to discharge under the Bankruptcy Code and that the Buyer has assumed under this Agreement, APA, and the Order Authorizing the Sale of Assets to the Buyer.

11. The financial assurance funds established by Buyer (and any subsequent buyer, transferee or assignee) pursuant to Appendix E shall be used solely for the purposes set forth in the applicable Paragraphs 4-10, paragraphs that correspond to the financial assurance, including the performance of environmental obligations set forth in such Paragraphs. The expenditure of such financial assurance funds shall be subject to the approval of the applicable lead agency.

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

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

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

For purposes of this Settlement Agreement, the term “**Net Sales**” means gross sales of the Buyer minus defective material returned, sales allowances, and cash discounts. The above payments shall continue on a monthly basis until such time as (1) the obligations set forth in Paragraphs 4-10 are satisfied, or (2) the combined balance of the Trusts is equal to or greater than \$7,203,935 in which case the payments as provided for in this Paragraph 12 shall be suspended until such time as the combined balance of Trusts is less than \$6,500,000, at which time the payments shall resume, or (3) other adequate financial assurance approved in writing by the Environmental Agencies is established for the remaining obligations set forth in Paragraphs 4-10; provided, however, that the Settling Parties agree that the maximum balance amount set forth in clause (2) of this sentence shall be reduced as the work required under Paragraphs 4-10 is performed to reflect the estimated cost of the remaining work, subject to the approval of the Environmental Agencies. Any funds in the Trusts shall be used solely for the purposes set forth in the applicable Paragraphs 4-10, including the funding of any financial assurance obligations, and, to the extent the disbursement is approved in advance in writing by the Environmental Agencies, legal fees and costs for such activities as well as for Section VI claims. The Buyer shall be responsible for performing the work as required in Paragraphs 4-10 of this Settlement Agreement; provided, however, that the Buyer shall only be required to perform such work to the extent there are sufficient financial assurance funds available in the applicable Trusts. Provided further, however, in the event that the Buyer defaults in its financial assurance obligations under this Paragraph 12, the Buyer shall be obligated to perform such work to the extent that there are sufficient funds available in the Trusts, plus work funded by the amounts that should have been paid to the applicable Trust pursuant to this Paragraph 12. To the extent that the funding formula set forth in this Paragraph 12 would result in contributions to the Trusts that result in the balances of any

Trust materially exceeding the estimated costs by the Environmental Agencies of the remaining applicable obligations set forth in Paragraphs 4-10, the Settling Parties agree to cooperate to reduce the required funding amounts to adequately fund the remaining work and refund any such excess funds to the Buyer or subsequent buyer, transferee or assignee after the work that is the subject of the estimate is completed. The Buyer and the Environmental Agencies shall meet once annually to discuss the status of the investigation and remediation at the Wellman Facility, to determine the work and the estimated costs of the remaining work to be performed with the available funds in the Trusts, and to adjust funding requirements as provided herein. Any funds remaining in the Trusts at the completion of the obligations set forth in Paragraphs 4-10 and Appendices A, B and D shall be returned to the Buyer or subsequent buyer, transferee or assignee.

B. If there is a substantial and material change in the financial circumstances of the Buyer that makes it impossible for the Buyer to make a required financial assurance payment provided for in Paragraph 12(A) without violating commercially reasonable consolidated fixed charge coverage ratio covenants in a credit agreement, the Buyer may petition the Environmental Agencies for approval of a change in the schedule or amount of a required payment. Such a petition shall explain in detail and the United States may consider the following factors in determining whether to grant the petition: the substantial and material change in financial circumstances and the causes of such change; whether such change was caused in any way by actions of the Buyer or the lender, or was on account of factors beyond their control; evidence that the charge ratio is commercially reasonable and that it would not be commercially reasonable to waive a violation of the charge ratio; a proposed revised schedule for the payment and evidence that the Buyer should be able to make the required financial assurance payment under the proposed revised schedule based on the then current financial circumstances; and, provide

any relevant financial documentation. The United States, on behalf of the EPA, after consultation with IDNR and IDPH, shall review and, if appropriate, approve such petition, which approval shall not unreasonably be withheld.

#### **V. SUBSEQUENT SALE**

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

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

## **VI. INSURANCE AND OTHER PROCEEDS**

14. The Buyer shall diligently pursue, in a commercially reasonable manner, insurance carriers for recovery on any environmental claims related to contamination at the Wellman Facility. Except as provided below, all funds recovered from any third party

contribution actions under the Comprehensive Environmental Response, Compensation and Liability Act (“**CERCLA**”), 42 U.S.C. § 9601 *et seq.*, or other applicable federal, state or local environmental statutes and from insurance carriers (other than attorney fees and costs) shall be transferred to and deposited into the applicable Trusts in amounts and percentages as set forth in Appendix E to be used solely for the purposes set forth in Paragraphs 4-10. To the extent that any recoveries from insurance carriers or third parties materially exceed the difference between the combined balance of the Trusts and the reasonably estimated cost by the Environmental Agencies to perform any remaining remediation at the Wellman Facility at the time of such recovery, subject to the limitations of Paragraph 12, the Buyer shall be entitled to retain any excess as reimbursement for funds previously transferred to the Trusts.

## **VII. COVENANTS AND RESERVATIONS**

15. Subject to the reservation of rights below, the United States, on behalf of the EPA, covenants not to sue or take any other civil or administrative action against the Buyer pursuant to Sections 3008 or 3013 of RCRA, 42 U.S.C. §§ 6928 or 9634 or Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607, with respect to Existing Contamination at the Wellman Facility. For purposes of this Settlement Agreement, “**Existing Contamination**” means a) any hazardous substances, pollutants or contaminants present or existing on or under the Wellman Facility as of the Effective Date; b) any hazardous substances, pollutants or contaminants that migrated from the Wellman Facility prior to the Effective Date; and/or c) any hazardous substances, pollutants, or contaminants presently at the Wellman Facility that migrate from the Wellman Facility after the Effective Date. This covenant not to sue shall not apply to a future buyer in the event that such future buyer ceases regular business operations or proposes a liquidation at the Wellman Facility.

16. Subject to the reservation of rights below, the State of Iowa, on behalf of the IDNR and IDPH, covenants not to sue or take any other civil or administrative action against the Buyer pursuant to 567 IAC 115.27 (455B) and 641 IAC Chapters 37-45 with respect to Existing Contamination at the Wellman Facility. IDPH covenants not to require the excavation or removal of thorium-contaminated material buried at the Wellman Facility until such time as the Wellman Facility is no longer owned and operated as a going concern business or is decommissioned pursuant to IDPH regulations and WDC's Radioactive Materials License No. 0103-1-88SM-1 as amended and renewed (currently through July 1, 2024). This covenant not to sue shall not apply to a future buyer in the event that such future buyer ceases regular business operations or proposes a liquidation at the Wellman Facility.

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

a. enforcement of the Environmental Agencies' rights pursuant to this Settlement Agreement, including but not limited to Paragraphs 4-10 and Appendices A, B, D and E. Except as set forth in the following sentence, the Buyer shall not be required to perform or pay for work at the Wellman Facility with respect to Existing Contamination beyond the funds provided to the Trusts in the amounts and percentages as set forth in Appendix E. Provided further that in the event that the Buyer fails to make a financial assurance payment

required by Paragraph 12, the Buyer shall be obligated to perform work to the extent of funds available in the Trusts, plus all amounts that should have been paid to the Trusts;

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

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

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

e. criminal liability.

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

19. Nothing in this Settlement Agreement is intended to limit the right of the Environmental Agencies to seek to compel persons, other than Buyer and its officers, directors, equity holders (WDC Acquisition Holding Company LLC and TCTM Financial FS LLC), employees and their legal successors and assigns, to perform or pay for response actions at the Wellman Facility. Except as otherwise set forth in the Environmental Agencies' covenants not to sue, the Settling Parties acknowledge that the Environmental Agencies have the authority to

determine the nature and scope of the response and corrective actions to be performed at the Wellman Facility consistent with applicable laws. The Buyer acknowledges that it is purchasing the Wellman Facility where such corrective or response actions may be required.

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

21. In consideration of the Environmental Agencies' covenants not to sue in this Settlement Agreement, the Buyer hereby covenants not to sue and not to assert any claims or causes of action against the United States and the State of Iowa, their authorized officers, employees, or representatives with respect to Existing Contamination at the Wellman Facility or under this Settlement Agreement, including but not limited to, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), any direct or indirect claims for reimbursement from the EPA Hazardous Substance Superfund, through CERCLA Sections 106(b)(2), 111, 112, 113, any claim under Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, or any other provision of law related to the Wellman Facility, or any claims arising out of response activities at the Facility, including claims based on oversight of such activities or approval of plans for such activities. Nothing herein shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

22. This Settlement Agreement shall apply to and be binding upon the Environmental Agencies and shall apply to and be binding upon the Buyer and its successors and assigns. The Environmental Agencies' covenants not to sue in Paragraphs 15 and 16 shall apply to the Buyer's officers, directors, equity holders (WDC Acquisition Holding Company LLC and TCTM Financial FS LLC), employees and their legal successors and assigns to the extent that the alleged liability of the officer, director, equity holder, employee or their legal successor or assign is based on its status and in its capacity as an officer, director, equity holder, employee of the Buyer or their legal successor or assign, and not to the extent that the alleged liability arose independently of the alleged liability of the Buyer. Each signatory of a Party to this Settlement Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and to legally bind such Party.

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

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

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

### **VIII. NOTICES**

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

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

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

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

Director, Land, Chemical and Redevelopment Division and  
Demetra O. Salisbury  
U.S. Environmental Protection Agency – Region 7  
11201 Renner Blvd.  
Lenexa, KS 66219

if to the IDNR:

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

if to the IDPH:

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

if to the Buyer:

Jim Pinto,  
President  
WDC Acquisition LLC  
1746 Commerce Road  
Creston, Iowa 50801

with a copy to:

Charles M. Denton  
Barnes & Thornburg LLP  
171 Monroe Ave NW, Suite 1000  
Grand Rapids, MI 49503

### **IX. JUDICIAL APPROVAL**

27. This Settlement Agreement shall be subject to approval of the Bankruptcy Court.

The Settling Parties shall promptly seek approval of this Settlement Agreement under Bankruptcy Rule 9019 or applicable provisions of the Bankruptcy Code.

### **X. INTEGRATION, AMENDMENTS, AND COUNTERPARTS**

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

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

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

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

**XI. RETENTION OF JURISDICTION**

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

GOOD CAUSE APPEARING, IT IS SO ORDERED:

\_\_\_\_\_  
Judge, U.S. Bankruptcy Court

APPROVED AS TO FORM AND CONTENT:

/s/ Charles M. Denton  
Charles M. Denton  
Barnes & Thornburg LLP  
171 Monroe Ave NW, Suite 1000  
Grand Rapids, MI 49503  
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Environment and Natural Resources Division  
United States Department of Justice  
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*Attorneys for the United States on behalf of the EPA*

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66219  
Telephone: 913-551-7227

*For the U.S. Environmental Protection Agency*

/s/ Jacob J. Larson

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*Attorney for the Iowa Department of Public Health*

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

1. Creation of Environmental Trust – On or about May 1, 2018, the Buyer established the Wellman Corrective Action Trust for funding all of the corrective action work and the closure of the hazardous waste management units on terms and conditions agreed to by EPA. Funds to perform the work set forth in this Appendix A shall come from the Wellman Corrective Action Trust.
2. Corrective Action-
  - i. RCRA Facility Investigation (RFI) – The Buyer shall complete the RFI in accordance with Attachment 2 to the Administrative Order on Consent, Docket No. RCRA-07-2003-0167 (“AOC”) that includes completion of all investigative work as determined by EPA, submission of quarterly progress reports and preparation of the final RFI Report, including a Risk Assessment, for submittal to EPA for review and approval.
  - ii. Corrective Measure Study (CMS)- The Buyer shall complete the CMS in accordance with Attachment 3 to the AOC, as may be amended by the parties, that includes preparation and submission of a CMS work plan for review and approval by EPA, evaluation of corrective measure alternatives and recommendations of the appropriate corrective measures for review and approval by EPA and submission of quarterly progress reports.
  - iii. Corrective Measure Implementation (CMI) – The Buyer shall enter into a new Administrative Order on Consent with EPA to implement the Corrective Measures on terms and condition acceptable to EPA and the Buyer.
3. Closure of Hazardous Waste Management Units- The Buyer shall close any remaining hazardous waste management units on-site on terms and conditions required by EPA.
4. The Buyer shall execute an Environmental Covenant established according to Iowa Code Chapter 455I, consistent with Appendix C hereto.

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

1. The Buyer shall provide an amount and percentage of the initial and installment payments as set forth in Appendix E of the Settlement Agreement sufficient to fully fund IDNR Trust for the Industrial Monofill Sanitary Landfill (“Landfill”) in order to ensure adequate funds are available to complete closure and post-closure monitoring of the Landfill based upon the certified updated third party estimates for closure/post closure costs, and the completed IDNR Financial Assurance Report Form (542-8090). At present, the IDNR Trust fund balance is \$1,229,136 (as of January 13, 2020). Funds to perform the work set forth in this Appendix B shall come from the IDNR Trust.

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

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

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

**MODEL ENVIRONMENTAL COVENANT**  
**(Appendix C)**

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

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

[Insert legal description]

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

2. **Background**

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

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

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

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

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

**AGENCY:** United States Environmental Protection Agency

Iowa Department of Natural Resources

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

- a. is the sole fee title owner of the Property;
- b. holds sufficient fee title to the Property to grant the rights and interests described in this Covenant free of any conflicting legal and equitable claims; and
- c. has identified all other persons holding legal or equitable interests, including, but not limited to, contract buyers, mortgage holders, other consensual lienholders and lessees, and secured their consent either by signatures on this Covenant or by a separate subordination and consent agreement attached as Exhibit [*INSERT Exhibit*]].

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

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

- a. The Property shall not be used for residential purposes, which for purposes of this Covenant include but are not limited to: single family homes, duplexes, multi-plexes, apartments, condominiums, schools, dormitories, retirement or senior/child-care centers, or any land use where persons can be expected to reside.
- b. Except for the purposes of investigation or remediation approved by the Agencies, extraction and use of the groundwater underlying the Property is prohibited.
- c. Installation of any new groundwater wells on the Property is prohibited, except for wells used for investigative, monitoring and/or remediation purposes installed in accordance with a work plan approved by the appropriate Agency.
- d. Existing monitoring wells located on the Property shall not be abandoned or closed without the approval of the Agencies.
- e. If necessary to prevent or minimize exposures to soil gas vapors, any building or structure planned for human occupancy and that will be constructed in the future on the Property shall be constructed to include an appropriate vapor barrier or vapor mitigation system. Upon request, a copy of construction plans for the as-built barrier or mitigation system should be provided to the Agency. Vapor barrier or mitigation systems in buildings

constructed in the future shall be maintained so that the system continues to meet the intended function to protect human health from soil gas vapors.

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

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

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

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

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

11. **Groundwater Hazard Statement Notice.** Iowa Code section 558.69 requires the submission of a groundwater hazard statement and disclosure if “hazardous waste” exists on the Property as defined in Iowa Code subsections 455B.411(3), 455B.412(2) or section 455B.464 or if Agency determines that solid waste exists on the Property that is potentially hazardous. If hazardous waste is present, the groundwater hazard statement must state that the condition is being managed in accordance with IDNR rules. The signatories and all subsequent transferees required to submit a groundwater hazard statement under Iowa Code section 558.69 shall make reference to this environmental covenant in substantially the following form:

THE INTEREST CONVEYED IS SUBJECT TO AN  
ENVIRONMENTAL COVENANT, DATED *[date month, day, year]*  
RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE \_\_\_\_\_

COUNTY RECORDER ON [ *date month, day, year*] IN [ *document, book and page, or parcel number*].

THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS: [ *language that describes the activity and use limitations exactly as it appears in the environmental covenant.*]

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

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

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

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

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

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

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

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

If to Grantor/Transferee:

[*title*]

[*address*]

If to Holder:

[*title*]

[*address*]

If to EPA:

Director, Land, Chemical and Redevelopment Division  
U.S. Environmental Protection Agency – Region 7  
11201 Renner Blvd.  
Lenexa, KS 66219

If to IDNR:

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

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

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

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

**ACKNOWLEDGMENTS**

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

**GRANTOR(S)**

*[INSERT signature blocks and appropriate acknowledgements for all grantors]*

Notary Public, State of Iowa:

**HOLDER:**

*[INSERT signature blocks and appropriate acknowledgements for all holders]*

Notary Public, State of Iowa:

**AGENCIES:**

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

STATE OF KANSAS )  
COUNTY JOHNSON ) ss.

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

Notary Public, State of Iowa

Date Iowa Department of Natural Resources

STATE OF IOWA ) ss.

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

Notary Public, State of Iowa

—

**SUBORDINATED INTERESTS:**

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

**Thoriated Material - IDPH**  
**(Appendix D)**

1. a. WDC's Radioactive Material License No. 0103-1-88-SM-1, as amended and renewed through July 1, 2024, ("**License**") is required for the use and storage of radioactive materials onsite at the Wellman Facility. The License is administrated by IDPH and requires Buyer, as the "Licensee" to adhere to all applicable rules in 641 IAC Chapters 37 – 45 and all conditions of the License, including any statements, representations, and procedures contained in the application documents. The License shall be maintained as long as there is radioactive material located onsite. Buyer must reaffirm all conditions of the License and agree to transfer of the License.

b. Until the 2034 license renewal application, IDPH will not require the submission of a decommissioning plan. If Licensee is adhering to the monthly installment payments requirements set forth in Paragraph 12 of this Settlement Agreement and Appendix E, then the Licensee will not be required to provide any additional funding to the IDPH Trust.

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

- a. Current License Condition #12 – The burial site formerly approved in 10 CFR 20.304, will undergo final decommissioning in accordance with 641 IAC 40.28– 40.31 and details in the plan outlined in the July 1, 2004 and May 28, 2009 letters between WDC and IDPH ("**Letters**") and any letter between IDPH and any Buyer. The controls to limit dose to the general public, outlined in the July 1, 2004 letter must remain in effect until the final decommissioning. For the avoidance of doubt, final decommissioning will not be required so long as the Buyer, or any subsequent buyer, continues to own and operate the Wellman Facility as a going concern.
- b. Current License Condition #13 – The Licensee will conduct a final status survey of the burial site formerly approved in 10 CFR 20.304 and the active landfill prior to final decommissioning.
- c. Licensee commitment to remove the radioactive material from the burial site at an appropriate time in the future pursuant to decommissioning requirements in 641 IAC 40.28 – 40.31 as outlined in the letters.
- d. As part of the 2034 License renewal application and every license renewal application thereafter, Licensee shall prepare a report that includes:
  - i. a summary of current onsite environmental conditions;

- ii. a current cost estimate of the disposal and decommissioning costs for removal of the buried thorium consistent with the form set forth in the September 5, 2017 Penn E & R Preliminary Cost Estimate Report;
- iii. Licensee's current audited financial statements;
- iv. A signed statement by the Licensee's Chief Executive Officer (A) re-affirming Licensee's commitment to remove the buried thorium when the Wellman facility is no longer operated as a going concern; and, (B) confirming that the Licensee's current business plan is to operate at the Creston, Iowa location for at least ten years; and,
- v. A signed statement from Licensee's independent certified public accountant that:
  - A. Licensee's tangible net worth is 2 times the current decommissioning costs; or,
  - B. Licensee's parent company has a tangible net worth of 5 times the current decommissioning costs if such Licensee's parent company has provided to IDPH a corporate guarantee of the decommissioning costs.
- e. Details of the plan, as referenced in License Condition #12, including the Letters, that must be included in a letter from any Buyer as part of the license transfer or new license application shall include:
  - i. Request that certain administrative, operational, and monitoring controls in the near term be incorporated into the license to ensure the continued protection of public health and safety until such time as the Wellman Facility is no longer owned and operated as a going concern business or is decommissioned pursuant to IDPH regulations and the License.
  - ii. Agreement to implement the following site controls applicable for the former burial site:
    - 1. Groundwater monitoring for radiological constituents of concern (thorium and uranium isotopes) will continue to be performed annually in order to track historical trends and evaluate groundwater condition over time. At a minimum, MW-19 and MW-20 will be sampled along with MW-8, MW-11, and MW13. The sampling and analysis protocol will be the same as that

described in the Site Characterization Survey (“SCS”) Work Plan (April 2001).

2. Groundwater monitoring analytical data will be compared against calculated concentrations of concern to determine whether further evaluation of the former burial site is warranted in the future. The calculated concentrations will be generated by a procedure similar to the evaluation described in Section 5/6/4 of the September 2003 SCS Report.
  3. The former burial site will continue to be managed to ensure the buried material is not disturbed. Operational controls will continue to include maintenance of site fencing, continued security presence, area inspections, restricted access, and prohibitions preventing further disposal and intrusion in the area.
  4. Any deviations from the above must be immediately reported to the IDPH, especially in the event that groundwater monitoring results showed the need for further evaluation of the former burial site.
3. Required conditions relative to the radioactive material waste stored above ground. As part of the 2019 License renewal application, the licensee provided the following:
- a. A commitment to remove the radioactive material from the above ground storage locations no later than July 2024.
  - b. A proposed timeline for planning for the disposal activities to remove the material from above ground storage locations, with rationale for proposed timeline. Funding for such disposal activities will come from the IDPH Trust funded pursuant to Paragraphs 11 and 12, and Appendix E of this Settlement Agreement.
4. Required conditions relative to the active use of the radioactive material for manufacturing. When radioactive material is actively used during manufacturing, all appropriate regulations related to the use of the radioactive material must be met, most specifically the requirements to monitor for exposures pursuant to 641 IAC 40.36. There is no active use of radioactive material in manufacturing at the Creston Facility as of April 2014.
5. Required conditions relative to financial assurance for all activities related to radioactive material.

- a. As part of the 2019 license renewal application, Buyer submitted a signed statement by the Licensee's Chief Executive Officer to fund the IDPH Trust consistent with Paragraphs 11 and 12, and Appendix E of this Settlement Agreement to cover the estimated cost of \$760,000 to dispose of the above ground stored radioactive material by July 2024.
- b. As part of the license transfer or new license application, submission of a signed statement by the Buyer's Chief Executive Officer to fund the IDPH Trust consistent with Paragraphs 11 and 12, and Appendix E of this Settlement Agreement to cover the costs associated with monitoring of the burial site previously approved by 10 CFR 20.304 so that by the 2034 license renewal date the balance of the IDPH Trust is \$1,000,000.
- c. As part of the 2034 License renewal application: (i) if Licensee provides each of the deliverables in paragraphs 2(d)(i)-(v) of this Appendix D and the current decommissioning cost estimate is less than \$30 million, then IDPH will not require Licensee to submit a decommissioning plan nor require Licensee to provide any additional funding into the Decommissioning Trust. However, if the current decommissioning cost estimate is \$30 million or more and the Licensee provides each of the deliverables in paragraphs 2(d)(i)-(v) of this Appendix D, then Licensee shall have the option to (1) deposit of 60% of the payment calculated under Paragraph 12 (for years beyond 2021) of this Settlement Agreement per year in the IDPH Trust or, (2) provide additional financial assurance for the decommissioning costs up to an amount of 40% of the total current cost estimate using any of the financial assurance mechanisms set forth in 641 IAC 39.4(26). This interim financial assurance requirement will be required until the next license renewal application is filed and is in addition to the \$1 million financial assurance required under paragraph 5(b) in Appendix D.  
  
(ii) If Licensee provides the deliverables in paragraphs 2(d)(i)-(iv) of this Appendix D, but cannot provide the statement from its independent certified public accountant as required in paragraph 2(d)(v), and the decommissioning cost estimate is less than \$30 million, then the Licensee shall have the option to (1) provide a commitment to deposit 30% of the payment calculated under Paragraph 12 (for years beyond 2021) per year into the IDPH Trust, or (2) provide additional financial assurance for the decommissioning costs up to an amount of 40% of the total current cost estimate using any of the financial assurance mechanisms set forth in 641 IAC 39.4(26) to the extent they are available to Licensee. However, if the Licensee cannot provide the statement from its independent certified public accountant as required in paragraph 2(d)(v) of this Appendix D, and the decommissioning cost estimate is more than \$30 million, then the Licensee shall have the option to (1) provide a commitment to deposit 100% of the payment calculated under Paragraph 12 (for years beyond 2021) per year into the IDPH Trust, or (2) provide

additional financial assurance for the decommissioning costs up to an amount of 100% of the total current cost estimate using any of the financial assurance mechanisms set forth in 641 IAC 39.4(26) to the extent they are available to Licensee.

This interim financial assurance requirement will be required until the next license renewal application is filed and is in addition to the \$1 million financial assurance required under paragraph 5(b).

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

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

**Financial Assurance Trusts Funding Plan**  
**Appendix E**

1. Wellman Corrective Action Trust established to implement Appendix A:
  - A. Allocation percentage and amount of initial deposit under paragraph 11: 30% (\$300,000).
  - B. Allocation percentages for monthly installment payments under paragraph 12:

65% until the amount in the Wellman Corrective Action Trust is sufficient to fund the remaining work required by Appendix A.
  - C. The current balance in the Corrective Action Trust, as of January 13, 2020, is \$238,194.
  
2. IDNR Trust established to implement Appendix B:
  - A. Allocation percentage and amount of initial deposit under paragraph 11: 5% (\$50,000).
  - B. Allocation percentages for monthly installment payments under paragraph 12:
    - i. Initially 5% until either (a) the amount in the IDNR Trust is sufficient to fund the remaining work required by Appendix B or (b) the amount in the Wellman Corrective Action Trust is sufficient to fund the remaining work required by Appendix A.
    - ii. After the amount in the Wellman Corrective Action Trust is fully funded, then 50% until either (a) the amount in the IDNR Trust is sufficient to fund the remaining work required by Appendix B or (b) the amount in the IDPH Trust is sufficient to fund the remaining work required by Appendix D.
    - iii. After the amount in the IDPH Trust is fully funded, then 100% until the amount in the IDNR Trust is sufficient to fund the remaining work required by Appendix B.
  - C. The current balance in the IDNR (Landfill) Trust, as of January 13, 2020, is approximately \$1,229,136.
  
3. IDPH Trust established to implement Appendix D:
  - A. Allocation percentage and amount of initial deposit under paragraph 11: 65% (\$650,000).

- B. Allocation percentage for monthly installment payments under paragraph 12:
- i. Initially 30% until either (a) the amount in IDPH Trust is sufficient to fund the removal of the above-ground thorium material and the monitoring of the buried thorium material required by Appendix D or (b) the amount in the Wellman Corrective Action Trust is sufficient to fund the remaining work required by Appendix A.
  - ii. After the amount in the Wellman Corrective Action Trust is fully funded, then 50% until either (a) the amount in IDPH Trust is sufficient to fund the removal of the above-ground thorium material and the monitoring of the buried thorium material required by Appendix D or (b) the amount in the IDNR Trust is sufficient to fund the remaining work required by Appendix B.
  - iii. After the amount in the IDNR Trust is fully funded, then 100% until the amount in IDPH Trust is sufficient to fund the removal of the above-ground thorium material and the monitoring of the buried thorium required by Appendix D.
- C. The current balance in the IDPH Trust, as of January 13, 2020, is \$827,538.

**APA Assignment Letter Agreement**

**Appendix F**

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

March 22, 2018

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

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

Dear Mr. Gladstein:

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

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

[Signature Page  
Follows]

Very truly yours,

**TCTM FINANCIAL FS LLC**

By:   
Name: Conner Searcy  
Title: President

**WDC ACQUISITION LLC**

By:   
Name: Conner Searcy  
Title: President

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

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

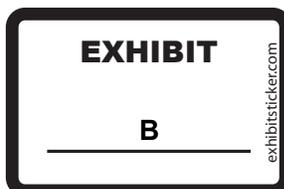
Signature Page to WDC Letter Agreement

EXHIBIT B

REVISED: May 21, 2020

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF IOWA**

In Re:	)	Bankruptcy Case No. 16-01825-als11
	)	
<b>WELLMAN DYNAMICS</b>	)	
<b>CORPORATION</b>	)	Chapter 11
	)	
Debtor and Debtor in Possession.	)	Hon. Anita L. Shodeen
	)	
1746 Commerce Rd.	)	<b>AMENDED AND RESTATED</b>
Creston, IA 50801	)	<b>ENVIRONMENTAL SETTLEMENT</b>
	)	<b>AGREEMENT AMONG BUYER</b>
EIN: 36-1058780	)	<b>AND THE ENVIRONMENTAL</b>
	)	<b>AGENCIES</b>
	)	
	)	Courtroom: 1
	)	
	)	Date Entered on Docket: _____



THIS SETTLEMENT AGREEMENT, originally made as of February 26, 2018, is hereby amended and restated effective ~~May 21~~~~April 28~~, 2020, by and between WDC Acquisition LLC (the “**Buyer**”), and the United States of America, on behalf of the Environmental Protection Agency (“**EPA**”), the State of Iowa on behalf of the Iowa Department of Natural Resources (“**IDNR**”) and the Iowa Department of Public Health (“**IDPH**”) (collectively referred to herein as the “**Settling Parties**”) in the above referenced chapter 11 case (the “**Chapter 11 Case**”).

WHEREAS, on September 13, 2016, Fansteel, Inc. (“**Fansteel**”), Wellman Dynamics Corp. (“**WDC**” or “**Debtor**”), and Wellman Dynamics Machining & Assembly, Inc. (together with Fansteel and WDC, the “**Debtors**”) commenced voluntary cases under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the Southern District of Iowa (the “**Bankruptcy Court**”).

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

WHEREAS, on January 23, 2004, pursuant to Section 3008(h) of the Resource, Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984 (“**RCRA**”), 42 U.S.C. §6901 *et seq.*, the EPA entered into an Administrative Order on Consent, Docket No. RCRA-07-2003-0167, (“**AOC**”), which requires WDC to perform a RCRA Facility Investigation (“**RFI**”) and to complete a Corrective Measures Study (“**CMS**”) in accordance with the EPA approved work plans. The purpose of the RFI is to determine the nature and extent of releases of hazardous waste or hazardous constituents from regulated

units, Solid Waste Management Units, and other areas of concern at the Wellman Facility and to gather necessary data to support the required CMS. Based on the results of the RFI, Buyer will conduct a CMS to develop, evaluate, and recommend the corrective action alternative(s) to be taken at the Wellman Facility.

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

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

WHEREAS, the Debtor and the EPA resolved their differences with respect to the protective EPA Proof of Claim.

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

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

WHEREAS, on July 14, 2017, WDC filed a Motion for Orders (I) Authorizing Sale of Assets Free and Clear of Liens, Claims, Interests and Encumbrances to Stalking Horse or Other Higher and Better Bidder (“**Order Authorizing Sale of Assets**”), (II) Approving Bid Procedures

for Sale, and (III) Scheduling Hearing on Approval of Sale (“**WDC Motion for Sale**”). (WDC Docs. #238, 243, 286).

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

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

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

WHEREAS, on March 12, 2018, the Bankruptcy Court entered its Order After Hearing Approving (A) Asset Purchase Agreement, and (B) Authorizing the Sale of Acquired Assets of the Debtor Outside the Ordinary Course of Business Free and Clear of Liens, Claims & Encumbrances (the “**Sale Order**”) (WDC Doc. 536) approving the sale by the Debtors of certain assets of WDC to TCTM Financial FS LLC (“**TCTM**”) pursuant to the terms of the final approved Asset Purchase Agreement (“**APA**”); thereafter the Debtor ceased business operations at the Wellman Facility and is not a signatory to this Amended Agreement.

WHEREAS, TCTM assigned all rights and obligations under the APA to WDC Acquisition LLC (“**Buyer**”) pursuant to that certain Assignment and Assumption Agreement dated May 7, 2018 by and between TCTM and Buyer, and consistent with the letter agreement by and among TCTM, Buyer and EPA, appended hereto as Exhibit F. The Buyer Closed on the acquisition pursuant to the Asset Purchase Agreement (APA) effective May 7, 2018.

WHEREAS, WDC Acquisition was awarded U.S. Army Contract # W15QKN-20-9-C001, effective October 31, 2019, and as amended effective February 27, 2020, pursuant to the National

Defense Authorization Act, which contains among other provisions significant cost-share obligations for WDC Acquisition.

WHEREAS, Pursuant to Section 3.3 of the APA, on or about May 7, 2018, the Buyer transferred the sum of \$1,000,000 toward financial assurance to the Trusts in the amounts and percentages set for in Appendix E, and the total amount in such Trusts, as of March 31, 2020, based on additional contributions by Buyer, is approximately \$2,275,000.

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

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

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

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

## **I. DEFINITIONS**

1. Unless otherwise expressly provided herein, terms used in this Settlement Agreement that are defined in RCRA, other environmental laws, or their regulations or in the Bankruptcy

Code shall have the meaning assigned to them therein. In addition, terms defined in the Settlement Agreement shall have the meaning set forth herein. Capitalized terms that are used herein but not otherwise defined shall have the meanings ascribed to them in the APA.

## **II. JURISDICTION**

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

## **III. PARTIES BOUND**

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

## **IV. THE WELLMAN FACILITY**

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

4, including those listed in Appendix A, shall be through a trust established by Buyer on or about May 1, 2018, on terms and conditions agreed to by EPA (the “**Wellman Corrective Action Trust**”).

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

6. Subject to the terms and conditions set forth in this Settlement Agreement, the Buyer shall be responsible for fulfilling all obligations mandated by 567 IAC 115.27 (455B) and by WDC’s Landfill Permit, which governs the management of the industrial waste landfill at the Wellman Facility. The Buyer shall complete excavation of material from the landfill, close the Industrial Monofill Sanitary Landfill and perform post-closure monitoring at the Wellman Facility in accordance with 567 IAC 115.27(9)(d), 567 IAC 115.31(6), and Appendix B to this Settlement Agreement. Financial assurance funding for completing the obligations set forth in Appendix B and the closure and post-closure monitoring requirements, shall be through the Trust, dated May 1, 2018 (the “**IDNR Trust**”), on terms and conditions approved by IDNR and consistent with the terms of this Settlement Agreement.

7. Upon closure of the industrial waste landfill, the Buyer, or any subsequent buyer, transferee or assignee, agrees to be responsible for execution of an Environmental Covenant pursuant to Iowa Code Chapter 455I entitled the Uniform Environmental Covenants Act at the Wellman Facility. See Appendix C (model covenant).

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

9. Subject to the terms and conditions set forth in this Settlement Agreement including Appendix D, the Buyer, or any subsequent buyer, transferee or assignee, shall be responsible for complying with 641 IAC Chapters 37-45, including 641 IAC 40.28-40.31 overseen by IDPH, and WDC's License #0103-1-88-SM1 transferred or renewed by IDPH and all amendments thereof, currently effective through July 1, 2024. The IDPH agrees to not require the excavation or removal of thorium-contaminated material buried at the Wellman Facility so long as the Buyer or any subsequent buyer, transferee or assignee continues to own and operate the Wellman Facility as a going concern. Financial assurance funding for completing the obligations set forth in Appendix D and the removal of the radioactive material stored above-ground and decommissioning of the burial site formerly approved under 10 CFR 20.304, shall be through the Trust dated May 1, 2018 (the "**IDPH Trust**" and together with the Wellman Corrective Action Trust and IDNR Trust, the "**Trusts**") on terms and condition approved by IDPH and consistent with the terms of this Settlement Agreement. Notwithstanding anything in this Settlement Agreement to the contrary but subject to Appendix D, the Buyer's financial assurance obligations with respect to the removal of any buried thorium or thorium- contaminated material at the Wellman Facility need not be funded pursuant to the Trusts so long as the Buyer or any subsequent buyer, transferee or assignee continues to own and operate the Wellman Facility as a going concern.

10. The Buyer agrees that 641 IAC Chapters 37-45 and WDC's License impose certain environmental obligations at the Wellman Facility that are not claims under 11 U.S.C. §105(5) and

that are not subject to discharge under the Bankruptcy Code and that the Buyer has assumed under this Agreement, APA, and the Order Authorizing the Sale of Assets to the Buyer.

11. The financial assurance funds established by Buyer (and any subsequent buyer, transferee or assignee) pursuant to Appendix E shall be used solely for the purposes set forth in the applicable Paragraphs 4-10, paragraphs that correspond to the financial assurance, including the performance of environmental obligations set forth in such Paragraphs. The expenditure of such financial assurance funds shall be subject to the approval of the applicable lead agency.

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

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

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

For purposes of this Settlement Agreement, the term “**Net Sales**” means gross sales of the Buyer minus defective material returned, sales allowances, and cash discounts. The above payments shall continue on a monthly basis until such time as (1) the obligations set forth in Paragraphs 4-10 are satisfied, or (2) the combined balance of the Trusts is equal to or greater than \$7,203,935 in which case the payments as provided for in this Paragraph 12 shall be suspended until such time as the combined balance of Trusts is less than \$6,500,000, at which time the payments shall resume, or (3) other adequate financial assurance approved in writing by the Environmental Agencies is established for the remaining obligations set forth in Paragraphs 4-10; provided, however, that the Settling Parties agree that the maximum balance amount set forth in clause (2) of this sentence shall be reduced as the work required under Paragraphs 4-10 is performed to reflect the estimated cost of the remaining work, subject to the approval of the Environmental Agencies. Any funds in the Trusts shall be used solely for the purposes set forth in the applicable Paragraphs 4-10, including the funding of any financial assurance obligations, and, to the extent the disbursement is approved in advance in writing by the Environmental Agencies, legal fees and costs for such activities as well as for Section VI claims. The Buyer shall be responsible for performing the work as required in Paragraphs 4-10 of this Settlement Agreement; provided, however, that the Buyer shall only be required to perform such work to the extent there are sufficient financial assurance funds available in the applicable Trusts. Provided further, however, in the event that the Buyer defaults in its financial assurance obligations under this Paragraph 12, the Buyer shall be obligated to perform such work to the extent that there are sufficient funds available in the Trusts, plus work funded by the amounts that should have been paid to the applicable Trust pursuant to this Paragraph 12. To the extent that the funding formula set forth in this Paragraph 12 would result in contributions to the Trusts that result in the balances of any

Trust materially exceeding the estimated costs by the Environmental Agencies of the remaining applicable obligations set forth in Paragraphs 4-10, the Settling Parties agree to cooperate to reduce the required funding amounts to adequately fund the remaining work and refund any such excess funds to the Buyer or subsequent buyer, transferee or assignee after the work that is the subject of the estimate is completed. The Buyer and the Environmental Agencies shall meet once annually to discuss the status of the investigation and remediation at the Wellman Facility, to determine the work and the estimated costs of the remaining work to be performed with the available funds in the Trusts, and to adjust funding requirements as provided herein. Any funds remaining in the Trusts at the completion of the obligations set forth in Paragraphs 4-10 and Appendices A, B and D shall be returned to the Buyer or subsequent buyer, transferee or assignee.

B. If there is a substantial and material change in the financial circumstances of the Buyer that makes it impossible for the Buyer to make a required financial assurance payment provided for in Paragraph 12(A) without violating commercially reasonable consolidated fixed charge coverage ratio covenants in a credit agreement, the Buyer may petition the Environmental Agencies for approval of a change in the schedule or amount of a required payment. Such a petition shall explain in detail and the United States may consider the following factors in determining whether to grant the petition: the substantial and material change in financial circumstances and the causes of such change; whether such change was caused in any way by actions of the Buyer or the lender, or was on account of factors beyond their control; evidence that the charge ratio is commercially reasonable and that it would not be commercially reasonable to waive a violation of the charge ratio; a proposed revised schedule for the payment and evidence that the Buyer should be able to make the required financial assurance payment under the proposed revised schedule based on the then current financial circumstances; and, provide

any relevant financial documentation. The United States, on behalf of the EPA, after consultation with IDNR and IDPH, shall review and, if appropriate, approve such petition, which approval shall not unreasonably be withheld.

#### **V. SUBSEQUENT SALE**

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

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

## **VI. INSURANCE AND OTHER PROCEEDS**

14. The Buyer shall diligently pursue, in a commercially reasonable manner, insurance carriers for recovery on any environmental claims related to contamination at the Wellman Facility. Except as provided below, all funds recovered from any third party

contribution actions under the Comprehensive Environmental Response, Compensation and Liability Act (“**CERCLA**”), 42 U.S.C. § 9601 *et seq.*, or other applicable federal, state or local environmental statutes and from insurance carriers (other than attorney fees and costs) shall be transferred to and deposited into the applicable Trusts in amounts and percentages as set forth in Appendix E to be used solely for the purposes set forth in Paragraphs 4-10. To the extent that any recoveries from insurance carriers or third parties materially exceed the difference between the combined balance of the Trusts and the reasonably estimated cost by the Environmental Agencies to perform any remaining remediation at the Wellman Facility at the time of such recovery, subject to the limitations of Paragraph 12, the Buyer shall be entitled to retain any excess as reimbursement for funds previously transferred to the Trusts.

## **VII. COVENANTS AND RESERVATIONS**

15. Subject to the reservation of rights below, the United States, on behalf of the EPA, covenants not to sue or take any other civil or administrative action against the Buyer pursuant to Sections 3008 or 3013 of RCRA, 42 U.S.C. §§ 6928 or 9634 or Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607, with respect to Existing Contamination at the Wellman Facility. For purposes of this Settlement Agreement, “**Existing Contamination**” means a) any hazardous substances, pollutants or contaminants present or existing on or under the Wellman Facility as of the Effective Date; b) any hazardous substances, pollutants or contaminants that migrated from the Wellman Facility prior to the Effective Date; and/or c) any hazardous substances, pollutants, or contaminants presently at the Wellman Facility that migrate from the Wellman Facility after the Effective Date. This covenant not to sue shall not apply to a future buyer in the event that such future buyer ceases regular business operations or proposes a liquidation at the Wellman Facility.

16. Subject to the reservation of rights below, the State of Iowa, on behalf of the IDNR and IDPH, covenants not to sue or take any other civil or administrative action against the Buyer pursuant to 567 IAC 115.27 (455B) and 641 IAC Chapters 37-45 with respect to Existing Contamination at the Wellman Facility. IDPH covenants not to require the excavation or removal of thorium-contaminated material buried at the Wellman Facility until such time as the Wellman Facility is no longer owned and operated as a going concern business or is decommissioned pursuant to IDPH regulations and WDC's Radioactive Materials License No. 0103-1-88SM-1 as amended and renewed (currently through July 1, 2024). This covenant not to sue shall not apply to a future buyer in the event that such future buyer ceases regular business operations or proposes a liquidation at the Wellman Facility.

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

a. enforcement of the Environmental Agencies' rights pursuant to this Settlement Agreement, including but not limited to Paragraphs 4-10 and Appendices A, B, D and E. Except as set forth in the following sentence, the Buyer shall not be required to perform or pay for work at the Wellman Facility with respect to Existing Contamination beyond the funds provided to the Trusts in the amounts and percentages as set forth in Appendix E. Provided further that in the event that the Buyer fails to make a financial assurance payment

required by Paragraph 12, the Buyer shall be obligated to perform work to the extent of funds available in the Trusts, plus all amounts that should have been paid to the Trusts;

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

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

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

e. criminal liability.

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

19. Nothing in this Settlement Agreement is intended to limit the right of the Environmental Agencies to seek to compel persons, other than Buyer and its officers, directors, equity holders (WDC Acquisition Holding Company LLC and TCTM Financial FS LLC), employees and their legal successors and assigns, to perform or pay for response actions at the Wellman Facility. Except as otherwise set forth in the Environmental Agencies' covenants not to sue, the Settling Parties acknowledge that the Environmental Agencies have the authority to

determine the nature and scope of the response and corrective actions to be performed at the Wellman Facility consistent with applicable laws. The Buyer acknowledges that it is purchasing the Wellman Facility where such corrective or response actions may be required.

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

21. In consideration of the Environmental Agencies' covenants not to sue in this Settlement Agreement, the Buyer hereby covenants not to sue and not to assert any claims or causes of action against the United States and the State of Iowa, their authorized officers, employees, or representatives with respect to Existing Contamination at the Wellman Facility or under this Settlement Agreement, including but not limited to, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), any direct or indirect claims for reimbursement from the EPA Hazardous Substance Superfund, through CERCLA Sections 106(b)(2), 111, 112, 113, any claim under Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, or any other provision of law related to the Wellman Facility, or any claims arising out of response activities at the Facility, including claims based on oversight of such activities or approval of plans for such activities. Nothing herein shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

22. This Settlement Agreement shall apply to and be binding upon the Environmental Agencies and shall apply to and be binding upon the Buyer and its successors and assigns. The Environmental Agencies' covenants not to sue in Paragraphs 15 and 16 shall apply to the Buyer's officers, directors, equity holders (WDC Acquisition Holding Company LLC and TCTM Financial FS LLC), employees and their legal successors and assigns to the extent that the alleged liability of the officer, director, equity holder, employee or their legal successor or assign is based on its status and in its capacity as an officer, director, equity holder, employee of the Buyer or their legal successor or assign, and not to the extent that the alleged liability arose independently of the alleged liability of the Buyer. Each signatory of a Party to this Settlement Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and to legally bind such Party.

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

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

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

### **VIII. NOTICES**

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

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

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

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

Director, Land, Chemical and Redevelopment Division and  
Demetra O. Salisbury  
U.S. Environmental Protection Agency – Region 7  
11201 Renner Blvd.  
Lenexa, KS 66219

if to the IDNR:

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

if to the IDPH:

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

if to the Buyer:

Jim Pinto,  
President  
WDC Acquisition LLC  
1746 Commerce Road  
Creston, Iowa 50801

with a copy to:

Charles M. Denton  
Barnes & Thornburg LLP  
171 Monroe Ave NW, Suite 1000  
Grand Rapids, MI 49503

### **IX. JUDICIAL APPROVAL**

27. This Settlement Agreement shall be subject to approval of the Bankruptcy Court.

The Settling Parties shall promptly seek approval of this Settlement Agreement under Bankruptcy Rule 9019 or applicable provisions of the Bankruptcy Code.

### **X. INTEGRATION, AMENDMENTS, AND COUNTERPARTS**

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

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

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

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

**XI. RETENTION OF JURISDICTION**

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

GOOD CAUSE APPEARING, IT IS SO ORDERED:

\_\_\_\_\_  
Judge, U.S. Bankruptcy Court

APPROVED AS TO FORM AND CONTENT:

/s/ Charles M. Denton  
Charles M. Denton  
Barnes & Thornburg LLP  
171 Monroe Ave NW, Suite 1000  
Grand Rapids, MI 49503  
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*Attorneys for WDC Acquisition LLC*

/s/ Richard M. Gladstein

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