

issue comments and/or require revisions to the RAP, select corrective measures from the RAP, reject any alternative provided in the RAP, or propose a different response action and/or response objectives. Prior to taking any of these actions, the TCEQ shall consult EPA.

(c) The Respondent shall prepare and submit to the TCEQ and EPA a Response Action Completion Report within forty-five (45) days after completion of the corrective measures. The Response Action Completion Report shall contain the following minimum information: a description of the response actions completed; summaries of results and documentation of attainment of performance requirements; summaries of all the problems encountered; summaries of accomplishments and/or effectiveness of response actions; and a certification of completion signed by the Respondent and by an independent, registered professional engineer skilled in the appropriate technical discipline(s). The Response Action Completion Report will be reviewed by the TCEQ for adequacy. Prior to approving any Response Action Completion Report, the TCEQ shall consult EPA.

- 24) If during the implementation of the Response Action Plan, information comes to the attention of the Respondent that waste units or areas of concern pose an immediate or potential threat to human health and the environment, the Respondent shall immediately notify the TCEQ and EPA of the threat.

APPROVAL OF REQUIRED SUBMISSIONS

- 25) The TCEQ shall consult with EPA prior to issuing a decision on any work plan, report, or other item that is required to be submitted, or revised and resubmitted, for approval pursuant to this CAFO. Consultation shall allow EPA the opportunity to add, comment on or reject an item prior to approval. If EPA does not reject the work plan, report, or other required item, TCEQ shall issue a decision in writing: (a) approving the submission; (b) approving the submission upon specified conditions; (c) approving part of the submission and disapprove the remainder; or (d) disapproving the submission. Disapproval of any portion of the submission shall include a statement of the reasons for such disapproval. All work plans, reports and other items that are developed and submitted for approval pursuant to this CAFO shall be complete and technically adequate.
- 26) If the submission is approved pursuant to the preceding Paragraph, Respondent shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If the submission is conditionally approved or approved only in part, pursuant to the preceding Paragraph, Respondent shall take all actions required by the approved plan, report, or other item that EPA or TCEQ determines are technically severable from any disapproved portions, subject to Respondent's right to dispute only the specified conditions or the disapproval of portions of the submission under the Dispute Resolution section of this CAFO.
- 27) If the submission is disapproved in whole or in part pursuant to the preceding Paragraphs, Respondent shall, within sixty (60) days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission is

approved in whole or in part, Respondent shall proceed in accordance with the preceding Paragraph.

- 28) Any stipulated penalties applicable to the original submission, as provided in Section V of this CAFO, shall accrue during the sixty (60)-day period or other agreed period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of Respondent's obligations under this CAFO, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.
- 29) If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, TCEQ, following consultation with EPA, may again require Respondent to correct any deficiencies in accordance with the preceding Paragraphs, or may itself correct any deficiencies, subject to Respondent's right to invoke dispute resolution under this CAFO and the right of EPA to seek stipulated penalties as provided in the preceding Paragraphs. If the resubmission is approved or corrected in whole or in part, Respondent shall proceed in accordance with the preceding paragraphs.
- 30) For purposes of this Appendix 1, where the phrases "TCEQ and/or EPA" or "TCEQ or EPA" are used in connection with an action (e.g., issuing comments, making a determination), it is EPA's intent that TCEQ will consult with EPA and TCEQ will be the party primarily taking the action.

Screening Criteria- Action Levels for Assessment of Corrective Action

I. Definition

Action levels are conservative health-based concentrations of hazardous wastes and/or hazardous constituents determined to be indicators for the protection of human health and/or the environment. Action levels, termed Critical Protective Concentration Limits (Critical PCLs) in 30 TAC 350, shall be proposed by the Respondent and approved by the TCEQ in accordance with the requirements of 30 TAC 350 for all hazardous wastes and/or hazardous constituents identified through Attachment A which the TCEQ and/or EPA has reason to believe may have been released into the environment from a phosphogypsum stack subject to closure under this Order. Should the concentration of hazardous wastes and/or hazardous constituents in soils, sediments, or surface water, or in groundwater (at or beyond the zone of discharge) exceed the action levels established for any environmental medium, the TCEQ and/or EPA may require the Respondent to conduct appropriate Affected Property Assessment investigations and/or risk assessments and/or prepare Response Action Plans and implement appropriate response actions as warranted. If the TCEQ and/or EPA determines that concentrations of hazardous wastes and/or hazardous constituents released into the environment from a phosphogypsum stack subject to closure under this Order, below established action levels, potentially pose a threat to human health or the environment given site-specific exposure conditions, cumulative effects, ecological concerns or other factors, then the TCEQ and/or EPA may require additional Risk Assessment conducted in accordance with the requirements of 30 TAC 350.

Action levels for soil, sediment, groundwater and surface water shall be as specified in 30 TAC 350.

ATTACHMENT B: GROUNDWATER AND ZONE OF DISCHARGE REQUIREMENTS

I. Groundwater Requirements

- (1) Discharge to groundwater shall not impair the State of Texas-designated use of contiguous surface waters.
- (2) Groundwater must meet the TCEQ's groundwater quality criteria as specified in 30 TAC 350, other applicable TCEQ water quality regulations, and applicable Clean Water Act water quality standards.
- (3) These standards do not apply within a Plume Management Zone (PMZ) that meets the TCEQ's requirements for establishment of a PMZ in 30 TAC 350.
- (4) Groundwater remediation must comply either with: (i) 30 TAC 350.32 (Remedy Standard A), or (ii) 30 TAC 350.33 (Remedy Standard B); provided, however, that Respondent shall not use a technical impracticability demonstration for groundwater as set forth in 30 TAC 350.33(f)(3).

II. Zone of Discharge Requirements

Establishment, modifications, monitoring and remedy requirements for a zone of discharge shall be as specified for a PMZ in 30 TAC 350. Compliance with the closure performance standards in Attachment D, as applicable, shall be presumed to meet the closure standards of 30 TAC 350 for exclusion of groundwater directly underlying an existing phosphogypsum stack system from meeting the TCEQ's groundwater response objectives.

A. Establishment of the Zone of Discharge

- (1) Horizontal and vertical zones of discharge shall be established and maintained in accordance with the requirements for establishing a PMZ set forth in 30 TAC 350.
- (2) Where multiple sites occur within close proximity, a single zone of discharge for the sites may be established at the discretion of the TCEQ and/or EPA.
- (3) If the conditions set for establishment of a PMZ are not met in accordance with the requirements of 30 TAC 350 and the TCEQ and/or EPA determine that the non-conforming conditions may present a potential or actual hazard to human health and/or the environment, then the hazard shall be addressed through conduct of appropriate additional assessment and/or response actions in accordance with the requirements of 30 TAC 350.

B. Modifications to an Established Zone of Discharge

- (1) Modifications to a zone of discharge (PMZ) shall be made in accordance with the requirements of 30 TAC 350.

C. Zone of Discharge Monitoring Requirements

(1) Monitoring requirements for a PMZ shall be established in accordance with the requirements of 30 TAC 350. The groundwater monitoring plan shall be signed and sealed by the professional geologist or professional engineer who prepared or approved it. The plan shall, to the extent and the manner in which required by 30 TAC 350, show the locations of the proposed background and downgradient monitoring wells, construction details of the monitoring wells, and a water sampling and chemical analysis protocol. The plan shall indicate how to determine background or natural background (where available and appropriate) quality of the groundwater in the vicinity of the site and any deviations in the quality of the receiving groundwater in the downgradient monitoring wells. TCEQ will evaluate the adequacy of the plan upon submittal. Prior to approving any groundwater monitoring plan, the TCEQ shall consult with EPA.

D. Zone of Discharge-Corrective Action

(1) Corrective action for non-conformance with the conditions applicable to a PMZ will be conducted in accordance with the requirements of 30 TAC 350.

ATTACHMENT D: CLOSURE OF PHOSPHOGYPSUM STACKS/ STACK SYSTEMS

I. Permanent Closure Requirements for Phosphogypsum Stacks/ Stack Systems

(1) A TCEQ Response Action Plan shall address the following performance standards for phosphogypsum stack closure.

(a) Closure of phosphogypsum stack systems shall be designed to protect human health and the environment by:

1. Controlling, minimizing or eliminating the post closure escape of phosphogypsum, process wastewater, leachate, and contaminated runoff to ground and surface waters;
2. Minimizing leachate generation;
3. Detecting, collecting, and removing leachate and process wastewater from the phosphogypsum stack system, and promoting drainage of process wastewater from the phosphogypsum stack;
4. Being compatible with any required groundwater or surface water Response Action Plan;
5. Minimizing the need for further maintenance.

(b) Closure plans for phosphogypsum stacks shall include a final cover system designed to protect human health and the environment by:

1. Promoting drainage off the stack;
2. Minimizing ponding;
3. Minimizing erosion;
4. Minimizing infiltration into the phosphogypsum stack;
5. Functioning with little or no maintenance.

(c) Closure of ponds and drainage conveyances storing process wastewater shall be designed to protect human health and the environment by: Treating or removing from the ponds and drainage conveyances all process wastewater as soon as practical, either through return of the process wastewater to the manufacturing process, transfer of process wastewater to another pond permitted in accordance with this Attachment, in-situ treatment, or by treatment and disposal via a deep injection well or treatment and subsequent discharge of the process wastewater under an appropriate discharge permit;

(d) For purposes of closure, post-closure care and corrective action activities, Respondent is authorized:

(1) to transfer and deposit materials within and among the phosphogypsum stacks at the Agrifos Site, through the use of existing facilities (e.g., existing pipes, tanks and pumps) and means (e.g., truck transport), including, but not limited to, the following materials:

- (a) process wastewater, stormwater, other wastewaters and combinations thereof, and
- (b) phosphogypsum and other materials residing on or in the phosphogypsum stacks.

These materials and activities shall not be subject to RCRA requirements when managed in accordance with this paragraph and this CAFO. In the event that Respondent, after the Effective Date of this CAFO, shall require the installation of new facilities for the transfer and depositing of materials within and among the phosphogypsum stacks, Respondent shall confer with the TCEQ and/or EPA regarding the design and construction of these new facilities, which may be required to meet the design requirements of RCRA for management of hazardous wastes.

(2) Closure design plan component of a TCEQ Response Action Plan. A closure design plan shall be prepared to address phosphogypsum stack closure as a component of a TCEQ Response Action Plan and to meet the performance standards specified in section I., above. The closure design plan shall consist of engineering plans and a report on closing procedures that shall apply to the closing of the phosphogypsum stack system and the monitoring and maintenance during the long-term care period. The closure design plan shall include the following information:

- (a) A plan sheet showing phases of site closing.
- (b) Drawings showing existing topography and proposed final elevations and grades.
- (c) Final cover installation plans showing the sequence of applying final cover, including thickness and type of material that will be used. All phosphogypsum stacks shall have a final cover designed to meet the performance standards. Final cover shall be placed over the entire surface of the phosphogypsum stack. The final cover shall be vegetated with drought-resistant species to control erosion, whose root systems will not penetrate any low-permeability barrier layer (or alternative approved in accordance with Section I of this Attachment). Final cover may consist of synthetic membranes, soils, or chemically or physically amended soils or phosphogypsum.
 - 1. Side slopes and all other grades shall be designed to minimize erosion of the final cover material. Such designs shall consider the erosion susceptibility of the material proposed for final cover relative to historical rainfall patterns for the area, the ability to establish and maintain vegetation and special maintenance procedures proposed to insure that infiltration and erosion are minimized. If the side slopes of any stack are steeper than a two (2)-foot horizontal run to one foot vertical rise, the closure design plan shall include a stability analysis demonstrating the longterm stability of the area.
 - 2. Top gradients of phosphogypsum stacks (uppermost surfaces excluding side slopes and roads) shall be designed to prevent ponding or low spots and minimize erosion (Municipal landfills in Texas are required 2 to 6% slope (30 TAC 330.453 (c)) using one of the following methods:

- a. The final cover on the top gradient shall consist of a barrier soil layer at least eighteen (18) inches thick, emplaced in six (6)-inch thick lifts. A final, eighteen (18)-inch thick layer of soil or amended phosphogypsum that will sustain vegetation to control erosion shall be placed on top of the barrier layer. For unlined stacks, the barrier layer shall have a maximum permeability of 1×10^{-7} cm/sec; for lined stacks, the barrier layer shall have a maximum permeability of 1×10^{-5} cm/sec. If less permeable soils are used, the thickness of the barrier layer may be decreased to twelve (12) inches provided that infiltration is minimized to an equivalent degree;
 - b. A geomembrane may be used as an alternative to the low-permeability soil barrier for a final cover, constructed to preclude rainfall infiltration into the stack. A geomembrane used in final cover shall be a semi-crystalline thermoplastic at least forty (40) mils thick, or a non-crystalline thermoplastic at least thirty (30) mils thick, with a maximum water vapor transmission rating of 2.4 grams per square meter per day, have chemical and physical resistance to materials it may come in contact with, and withstand exposure to the natural environmental stresses and forces throughout the installation, seaming process, and settlement of the phosphogypsum during the closure and long-term care period (as defined later in Section III (1) of this Attachment). A protective soil or amended phosphogypsum layer at least twenty-four (24) inches thick shall be put on top of the geomembrane placed as top gradient cover (excluding Auxiliary Holding Ponds and water conveyance channels). Material specifications, installation methods, and compaction specifications shall be adequate to protect the barrier layer from root penetration, resist erosion, and remain stable on the final design slopes. This layer shall include soils or amended phosphogypsum that will sustain vegetative growth; or
 - c. An alternative top cover design: The request for an alternate top cover design must be submitted for approval to the TCEQ. Prior to approving any alternate top cover design, the TCEQ shall consult EPA.
3. The closure design plan shall describe provisions for cover material for long-term care erosion control, filling other depressions, maintaining berms, and general maintenance of the phosphogypsum stack, and shall specify the anticipated source and amount of material necessary for proper closure of the stack.

(3) Phosphogypsum Stack Auxiliary Holding Pond Liner Standards

(a) Auxiliary Holding Pond liners shall be:

1. Constructed of materials that have appropriate physical, chemical, and mechanical properties to prevent failure due to physical contact with the phosphogypsum, process wastewater or leachate to which they are exposed, climatic conditions, the stress of installation, and other applied stresses and hydraulic pressures that are anticipated during the operational and closure period of the system. The supplier of materials for the liner components shall provide test information accepted by the engineer of record, that supports the capabilities of the materials to meet these needs;
2. Installed upon a base and in a geologic setting capable of providing structural support to prevent oversteering of the liner due to settlements and applied stresses.

(b) Liner design standards. Liners shall consist of a 60-mil or thicker geomembrane liner with a maximum water vapor transmission rating of 0.24 grams per square meter per day as determined by the American Society for Testing and Materials (ASTM) Method E96-80, procedure BW, "Test Methods for Water Vapor Transmission of Materials," Sections 04.06, 08.03, and 15.09, which document is incorporated herein by reference.

(c) The following liner design standards must be met:

1. Standards for geosynthetic components.

a. Geomembranes shall have factory and field seams whose shear strengths during testing are at least ninety percent (90%) of the specified minimum yield strength for that lining material, and the failure shall occur in the lining material outside the seam area. All field seams must also be visually inspected and pressure or vacuum tested for seam continuity using suitable nondestructive techniques.

b. No large or rigid objects may be placed in the phosphogypsum stack system in a manner that may damage the liner or leachate collection system and in no case shall such objects be placed within ten (10) vertical feet of the liner or leachate collection system.

c. High density polyethylene (HDPE) geomembranes shall meet the specification contained in method GRI GM13.

d. Polyvinyl chloride (PVC) geomembranes shall meet the specification contained in method PGI 1197.

e. Interface shear strength of the actual components that will be used in the liner system shall be tested with method ASTM D5321 or an equivalent test method.

f. The transmissivity of geonets shall be tested with method ASTM D4716, or an equivalent test method, to demonstrate that the design transmissivity will be maintained for the design period of the facility. For geonets used in final covers, only one test shall be conducted for a minimum period of one hour using the expected maximum design normal load from the cover soils and the actual boundary materials intended for the geonet.

g. In addition, the synthetic liner material shall be subjected to continuous spark testing at the production facility prior to delivery to the site for installation. If the continuous spark testing detects any defect, the tested material must be rejected and not delivered to the site;

(d) Liner systems construction quality assurance.

1. Liner systems shall have a construction quality assurance plan to provide personnel with adequate information to achieve continuous compliance with the liner construction requirements. The plan shall include or refer to specifications and construction methods that use established engineering practices to construct a liner system and provide for quality control testing procedures and sampling frequencies. Sampling and testing shall be conducted in the field by trained personnel during construction and after construction completion. Such personnel will be under the direction of the construction quality assurance professional engineer, to assure the liner system will comply

with the standards. The construction quality assurance professional engineer or his designee shall be on-site at all times during construction to monitor construction activities. Construction activities include the time during which the protective layer is installed over the geomembrane, to ensure that the placement techniques do not cause damage to the liner system materials.

2. Liner systems shall be installed in accordance with the construction quality assurance plan. Plans that comply with EPA Document EPA/600/R-93/182 or updates thereof shall be presumed to be in compliance with this section. The following minimum specific elements shall be included in the plan:
 - a. Responsibility and authority of all organizations and key personnel involved in permitting, designing, constructing, and providing construction quality assurance of the phosphogypsum stack system shall be described fully;
 - b. Minimum qualifications of the construction assurance quality professional engineer and supporting personnel shall be in the plan to demonstrate that they possess the training and experience necessary to fulfill their identified responsibilities;
 - c. Procedures and tests that will be used to monitor the installation of the liner system components shall be described in detail;
 - d. The sampling activities, sample size, sample locations, frequency of testing, acceptance and rejection criteria, and plans for implementing corrective measures that may be necessary shall be described; and
 - e. Reporting requirements for construction quality assurance activities shall be described, including daily summary reports, observation data sheets, problem identification and corrective measures, and final documentation. All such documents shall be included in a final report.
 1. A laboratory experienced in the testing of geosynthetics, independent of the liner manufacturer and installer, shall perform the required testing that must include, at a minimum, conformance testing for all geosynthetics and geocomposites, and testing of seam shear and peel strength for geomembranes.
 2. The professional engineer in charge of construction quality assurance shall provide a signed, sealed final report and record drawings stating that the liner system has been installed in substantial conformance with the plans and specifications for the liner system and identifying any significant deviations.
- (4) Closure construction quality assurance plan. A detailed construction quality assurance plan shall be developed for construction activities associated with the closure of the phosphogypsum stack system, including each component of the final cover system. The plan shall specify quality assurance test procedures and sampling frequencies. Records shall be kept to document construction quality and demonstrate compliance with plans and specifications. Upon completion of closure activities a final construction quality assurance report shall be submitted to the TCEQ and EPA, prepared by an engineer. The final report shall include at least the following information:

- (a) Listing of personnel involved in closure construction and quality assurance activities;
- (b) Scope of work;
- (c) Outline of construction activities;
- (d) Quality assurance methods and procedures;
- (e) Test results (destructive and non-destructive, including laboratory results); and
- (f) Record drawings.

II. Closure Procedures for Phosphogypsum Stacks/ Stack Systems

Closure Completion Report. This report shall include the following:

(1) Final survey and record drawings. A final survey shall be performed, after permanent closure is complete, by an engineer or a registered third-party land surveyor to verify that final contours, final elevations, percent vegetation coverage, and, if applicable, final cover soil thickness as verified by a grid of test borings of the phosphogypsum stack system are in accordance with the plan as approved by the TCEQ. Aerial mapping techniques that provide equivalent survey accuracy may be substituted for the survey.

(a) The survey or aerial mapping information shall be included in a report along with information reflecting the record drawings of the phosphogypsum stack system. Contours should be shown at no greater than five (5)-foot intervals.

(b) Respondent shall submit this report to TCEQ and EPA in accordance with the approved Response Action Plan.

(2) Certification of closure construction completion. A certification of closure construction completion, signed, dated and sealed by a third-party engineer, shall be provided to the TCEQ and EPA upon completion of closure.

(3) A description of any post-closure maintenance activities that will be necessary in order to maintain the integrity of the closure work ("Post-Closure Maintenance Plan");

(4) Official date of closing. Upon receipt of the documents required in (1) and (2) of this section, the TCEQ shall acknowledge by letter to the owner/operator and Respondent that notice of termination of operations and closing of the phosphogypsum stack system has been received. The date of this letter shall be the official date of closing for purposes of determining the beginning of the long-term care period.

III. Long-Term Care for Phosphogypsum Stacks/ Stack Systems

(1) Long-term care period. Respondent shall be responsible for monitoring and maintenance of the phosphogypsum stack in accordance with a Post-Closure Maintenance Plan as described in Section II(3) above for fifty (50) years from the date of closing unless a reduced long-term care period is approved by TCEQ, following consultation with EPA, in accordance with Section III(2), below. Before the expiration of the long-term care monitoring and maintenance period the TCEQ, following consultation with EPA, may extend the time period if it is determined that:

(a) The closure design or closure operation plan under the Post-Closure Maintenance Plan was ineffective in meeting the standards of this Attachment, or

(b) The extension of the long-term care period is necessary to protect human health and the environment.

(2) Reduced long-term care period. Respondent may request, in writing, a reduced long-term care schedule. With the concurrence of EPA, the TCEQ may approve the request if the information provided by Respondent substantiates its claim that the reduced period is sufficient to protect human health and the environment. The request must, at a minimum, demonstrate that the phosphogypsum stack system meets the criteria of (2)(a)-(c), below, and provide any other information relevant to establishing that the reduced period is sufficient to protect human health and/or the environment:

(a) The phosphogypsum stack system has been closed with appropriate final cover, and that the vegetative cover (or alternative approved in accordance with Section I of this Attachment) has been established; and

(b) The Facility has a twenty (20)-year history after the date of closure of no violations of water quality standards or criteria detected in the monitoring system, and no increases over background water for any monitoring parameters that may be expected to result in violations of water quality standards or criteria; and

(c) The phosphogypsum stack system has had no detrimental erosion of the cover system.

(3) Replacement of monitoring devices. If a monitoring well or other device required by the monitoring plan is destroyed or fails to operate for any reason, Respondent shall, immediately upon discovery, notify the TCEQ in writing. All inoperative monitoring devices shall be replaced with functioning devices within sixty (60) days of the discovery of the malfunctioning unit unless Respondent is notified otherwise in writing by the TCEQ.

(4) Certification of Long-Term Care Completion. A certification of long-term care completion signed, dated and sealed by a third-party engineer, shall be provided by Respondent to TCEQ upon completion of long-term care.

ATTACHMENT F: DEFINITIONS FOR PURPOSE OF THE ORDER

"100-year floodplain" means any land area susceptible to being inundated by water from a flood having a one percent chance of being equaled or exceeded in any given year.

"100-year Rainfall Event" means a rainfall event which is characterized by a mean return period of one hundred years, i.e., a rainfall event which has a 99% probability for not being exceeded during any given year.

"Active" means a phosphogypsum stack/system that currently receives phosphogypsum and/or process wastewater.

"Affected Property" means the entire area (i.e., on-site and off-site; including all environmental media) which contains releases of chemicals of concern at concentrations equal to or greater than the assessment level applicable for residential land use and groundwater classification, associated with a phosphogypsum stack subject to closure under this Order.

"Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells, springs or surface water.

"Auxiliary holding pond (AHP)" means a lined storage pond, designated by the operator and approved by the Implementing State Agency and/or EPA, typically used to hold untreated process water. AHPs are intended to increase system storage above that otherwise provided by cooling/surge ponds and are typically located within the footprint of a phosphogypsum stack system.

"Background" means the condition of waters in the absence of the activity or discharge under consideration, based on the best scientific information available to the Implementing State Agency and/or EPA.

"Berm" means a shelf that breaks the continuity of the slope of an embankment in order to arrest the velocity of storm water flowing down the face and/or to enhance the stability of the embankment.

"Cooling/surge pond" means impounded areas within the phosphogypsum stack system, excluding settling compartments atop the phosphogypsum stack, that provide cooling capacity, surge capacity, or any combination thereof, for the phosphoric acid process water recirculation system including phosphogypsum stack transport, runoff, and leachate water from the process watershed.

"Corrective action" means actions and activities taken to address a release of hazardous waste and/or hazardous constituents that could affect human health and/or the environment, including those activities required pursuant to Appendix 1, Attachments A and B.

"Critical protective concentration level" means the lowest protective concentration level for a chemical of concern within a source medium determined from all of the applicable human health exposure pathways as described in 30 TAC §350.71 (relating to General Requirements), and when necessary, protective concentration levels for applicable ecological exposure pathways as required in 30 TAC 350.77 (relating to Ecological Risk Assessment and Development of Ecological Protective Concentration Levels).

"Dike" means a barrier to the flow of phosphogypsum and process water which is constructed of naturally occurring soil (earthen dike) or of phosphogypsum and which is a component of a phosphogypsum stack system.

"Drain" means a material more pervious than the surrounding fill which allows seepage water to drain freely while preventing piping or internal erosion of the fill material.

"Earthen dike" means a barrier to the flow of phosphogypsum and process water which is constructed of naturally occurring soil and which is a component of a phosphogypsum stack system.

"Engineer" includes the terms "professional engineer" and "licensed engineer" and means a person

who holds a State-issued license to engage in the practice of engineering.

"Erosion control" means physical devices constructed, and management practices utilized, to control sedimentation and soil erosion such as silt fences, sediment basins, check dams, channels, swales, energy dissipation pads, seeding, mulching and other similar items.

"Final cover" means the materials used to cover the top and sides of a phosphogypsum stack upon closure.

"Freeboard" means the height of the lowest point on the dam or dike crest, excluding the emergency spillway, above the highest adjacent liquid surface within the impoundment [Freeboard shall be determined by generally accepted good engineering practices and shall include, at a minimum, evaluation of wind surge, wave height, and wave run-up analyses, erosion protection measures, and protection of dike integrity and inner rim-ditch geometry].

"Geomembrane" means a low-permeability synthetic membrane used as an integral part of a system designed to limit the movement of liquid or gas in the system.

"Groundwater" means water beneath the surface of the ground within a zone of saturation, whether or not flowing through known and definite channels.

"Groundwater Table" means the upper surface of a zone of saturation, where the body of groundwater is not confined by an overlying impermeable zone.

"Gypsum dike" means the outermost dike constructed within the perimeter formed by a starter dike for the purpose of raising a phosphogypsum stack and impounding phosphogypsum and/or process water. This term specifically excludes any dike inboard of a rim ditch, any partitions separating stack compartments, or any temporary windrows placed on the gypsum dike.

"Inactive" means a phosphogypsum stack system for which a temporary deactivation has not been requested and approved; the phosphogypsum stack system is no longer receiving phosphogypsum and/or process wastewater, and the owner/operator does not intend to, and in fact does not, deposit any significant quantity of phosphogypsum there within one year.

"Inside (upstream) slope" means the face of the dam or dike which will be in contact with the impounded liquids.

"Installation" means any structure, equipment, facility, or appurtenances thereto, operation or activity which may be a source of pollution.

"Lateral expansion" means the expansion, horizontally, of phosphogypsum or process wastewater storage capacity beyond the permitted capacity (where applicable) and design dimensions of the phosphogypsum stack, or cooling ponds, surge ponds, and perimeter drainage conveyances at an existing facility. Any phosphogypsum stack, cooling pond, surge pond, or perimeter drainage conveyance which is constructed within 2000 feet of an existing phosphogypsum stack system, measured from the edge of the expansion nearest to the edge of the footprint of the existing phosphogypsum stack system, is considered a lateral expansion.

"Leachate" means liquid that has passed through or emerged from phosphogypsum.

"Liner" means a continuous layer of low permeability natural or synthetic materials which controls the downward and lateral escape of waste constituents or leachate from a phosphogypsum stack system.

"Lithified earth material" means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. This term does not include man-made materials, such as fill, concrete, and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth's surface.

"Log" means a written record maintained by the owner/operator of an earthen dam or a phosphogypsum stack system that contains a schedule of inspections of system components,

the findings of such inspections, and any remedial measures taken in response to such findings.

"Maximum Design Level" means the maximum process water elevation when the water level is at the operating design freeboard for an impoundment as determined using generally accepted good engineering practices, or the minimum freeboard allowed, for perimeter earthen dikes. For the purposes of this Order, generally accepted good engineering practices for determining the permitted operating design freeboard includes, at a minimum, evaluation of wind surge, wave height, and wave run-up analyses, erosion protection measures, and protection of dike integrity and inner rim-ditch geometry.

"Natural Background" means the condition of waters in the absence of man-induced alterations based on the best scientific information available. The establishment of natural background may be based on historical pre-alteration data.

"New perimeter earthen dike" means a perimeter earthen dike that is completed after the effective date of the Order. *"Operation plan"* means the operation plan required by this Order.

"Outside (downstream) slope" means the face of the dam or dike which will not be in contact with the impounded liquids.

"Permanent Deactivation" means Stack Closure.

"Perimeter dike" means the outermost earthen dike surrounding a phosphogypsum stack system that has not been closed or any other earthen dike the failure of which could cause a release of process water outside the phosphogypsum stack system.

"Permanent Stack Closure Plan" means the plan for Stack Closure as prepared in accordance with the requirements of Appendix I, Attachment D, Section II.

"Piping" means progressive erosion of soil or solid material within the dam or dike, starting downstream and working upstream, creating a tunnel into the dam or dike. Piping occurs when the velocity of the flow of seepage water is sufficient for the water to transport material from the embankment.

"Plume management zone" means the area of the groundwater protective concentration level exceedence zone at the time of response action plan submittal, plus any additional area allowed in accordance with 30 TAC 350.32 (relating to Remedy Standard A) or 30 TAC 350.33(f)(4) (relating to Remedy Standard B).

"Pollution" means the presence in the outdoor atmosphere or waters of the state of any substances, contaminants, noise, or man-made or man-induced alteration of the chemical, physical, biological or radiological integrity of air or water in quantities or levels which are or may be potentially harmful or injurious to human health or welfare, animal or plant life, or property, including outdoor recreation.

"Process Watershed" means the aggregate of all areas that contribute to or generate additional process water from direct precipitation, rainfall runoff, or leachate to a phosphogypsum stack, process water cooling/surge ponds, or any other storage, collection, or conveyance system associated with the transport of phosphogypsum or process water for a particular phosphogypsum stack system.

"Qualified Company Employee" means an employee trained specifically in the area of their job duties.

"Related company" or "related" means affiliates of the enterprise; entities for which investments are accounted by the equity method by the enterprise; trusts for the benefit of employees, such as pension and profit-sharing trusts that are managed by or under the trusteeship of management; principal owners of the enterprise; its management; members of the immediate families of principal owners of the enterprise and its management; and other parties with which the enterprise may deal if one party controls or can significantly influence the management or operating policies of the other to an extent that one of the transacting parties might be prevented from fully pursuing its own separate interests. Another party also is a related party if it can significantly influence the management or operating

policies of the transacting parties or if it has an ownership interest in one of the transacting parties and can significantly influence the other to an extent that one or more of the transacting parties might be prevented from fully pursuing its own separate interests.

"Response action" means any activity taken in accordance with the terms of this Order to remove, decontaminate and/or control (i.e., physical controls and institutional controls) chemicals of concern in excess of critical PCLs in environmental media, including actions taken in response to releases to environmental media from a waste management unit before, during, or after closure.

"Run-Off" means any rainwater, leachate, or other liquid that drains over land from any part of a facility.

"Run-On" means any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

"Seismic impact zone" means an area with a ten percent or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a fraction of the earth's gravitational pull (g), will exceed 0.10g in 250 years.

"Solid waste" means any garbage, or refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations.

"Stack Closing" means the time at which a phosphogypsum stack system ceases to accept wastes, and includes those actions taken by the owner/operator of the facility to prepare the system for any necessary monitoring and maintenance after closing.

"Stack Closure" means the cessation of operation of a phosphogypsum stack system and the act of securing such a system, including the installation of a liner, so that it will pose no significant threat to human health or the environment. This includes stack closing, long-term care (i.e., monitoring and maintenance) and water management activities associated with stack closing and long-term care activities.

"Stack Closure Plan" means the plan for Stack Closure as prepared in accordance with the requirements of Appendix I, Attachment D, Section I.

"Stack system configuration" means the maximum physical dimensions of the phosphogypsum stack system as provided by the Respondent in a general plan and schedule for closure or a closure plan submitted to the Implementing State Agency and/or EPA.

"Starter Dike" means the initial dike constructed at the base of a phosphogypsum stack to begin the process of storing phosphogypsum.

"Statistically Significant" means that a result is not likely to be due to chance alone. For purposes of this Attachment, a significance level of 0.05 or 0.01 should be used in determining statistical significance.

"Surface Water" means water upon the surface of the earth, whether contained in bounds created naturally or artificially or diffused. Water from natural springs shall be classified as surface water when it exits from the spring onto the earth's surface.

"Temporary Deactivation" means a phosphogypsum stack system that will cease or has ceased to accept deposits of phosphogypsum and/or process wastewater on a temporary basis and for which a demonstration has been made in writing to, and approved by, the EPA and/or the Implementing State Agency, that the phosphogypsum stack system is reasonably expected to become active within an estimated time period.

"Texas Risk Reduction Program" means the State of Texas regulation set forth in Title 30, Chapter 350 of the Texas Administrative Code abbreviated herein as 30 TAC 350, as such regulations may be amended from time to time, or their successor State regulations, as such regulations are in effect at

the time the work is being performed.

"Third-party engineer" means an engineer who is not an employee of any entity that owns or operates a phosphate mine or phosphate fertilizer manufacturing facility.

"Third-party liability" means a demonstration of financial responsibility to address bodily injury and property damage caused by sudden and non-sudden accidental occurrences.

"Toe" means the toe of the dam or dike is the junction between the face of the dam or dike and the adjacent terrain.

"Toe drain" is a wedge-shaped drain supporting the downstream toe of the dam.

"Top Gradients of Phosphogypsum Stacks" are the uppermost surfaces excluding side slopes and roads.

"Waters" include, but are not limited to, rivers, lakes, streams, springs, impoundments, and all other waters or bodies of water, including fresh, brackish, saline, tidal, surface or underground waters. Waters owned entirely by one person other than the state are included only in regard to possible discharge on other property or water. Underground waters include, but are not limited to, all underground waters passing through pores of rock or soils or flowing through in channels, whether manmade or natural.

"Wave run-up" means the difference in vertical height between the maximum elevation attained by wave run up or uprush on a slope and the still water elevation at the inboard toe of the slope.

"Wetlands" means those areas that are defined in 40 CFR 232.2. Wetlands include, but are not limited to, swamps, marshes, bogs, and similar areas.

"Wind surge or setup" means the vertical rise in base water-surface elevation, exclusive of the wave height, above the still water elevation, caused by wind-induced stresses and mounding of the water surface in the leeward direction.

"Zone of Discharge" means a volume underlying or surrounding the site and extending to the base of a specifically designated aquifer or aquifers, within which an opportunity for the treatment, mixture or dispersion of wastes into receiving groundwater is afforded.

APPENDIX 2
FINANCIAL ASSURANCE

APPENDIX 2: FINANCIAL ASSURANCE

This Appendix sets forth the obligations of Respondent to secure and maintain Financial Assurance as required under Paragraph 32(d) of the CAFO, including schedules and notice requirements. The parties agree that Appendix 2 of this CAFO replaces in its entirety Respondent's obligations under Paragraph 75 of Section VIII and the Cost Estimate and Financial Assurance provisions of Section XXI of the March 2008 RCRA 7003 Administrative Order on Consent among Respondent, Agrifos and EPA.

I. Definitions

Except as otherwise provided in this Appendix, definitions for the terms presented herein shall be incorporated from 30 TAC § 37.11 [40 C.F.R. § 264.141]. Whenever the terms set forth below are used in this Appendix, the definitions set forth below shall apply. However, the Parties are not bound by these definitions in connection with any matter not relating to Financial Assurance under this Order.

"*Affiliate*" shall have the same meaning as set forth in the Statement of Financial Accounting Standards No. 57, Appendix B (Glossary) (Financial Accounting Standards Board - Original Pronouncements, as amended): "A party that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the enterprise."

"*Anniversary Date*" shall mean the annual anniversary of the date that Financial Assurance is provided unless otherwise stated in this Appendix. The Anniversary Date for a Self-Assurance Mechanism shall be ninety (90) days after the end of the Respondent's fiscal year.

"*Assets*" shall mean all existing and all probable future economic benefits obtained or controlled by a particular entity, as represented on the company's Independently Audited balance sheet.

"*Assets located within the United States*" shall mean the sum of all assets located in the United States.

"*Certified Public Accountant*" or "*CPA*" shall mean an accountant who has demonstrated the requisite certification requirements of the American Institute of Certified Public Accountants ("AICPA") and met all statutory and licensing requirements of the State in which in which (s)he works.

"*Closure Plan*" shall mean the plan prepared for Phosphogypsum Stack System Closure, Long Term Care, and associated Water Management activities, in accordance with the requirements of Appendix I (including, as applicable, Stack Closure Plan and Permanent Stack Closure Plan).

"*Corrective Action*" shall mean actions and activities taken to address a release of hazardous waste and/or hazardous constituents that could affect human health and the environment including those activities required pursuant to Appendix I.

"*Cost Estimates*" shall mean the EPA-approved cost estimates for Phosphogypsum Stack System Closure and Long Term Care, or for work performed pursuant to a Risk Assessment Plan or Corrective Action Plan, as applicable, under the various Sections of this Appendix.

"*Current Assets*" or "*CA*" shall mean cash or other assets or resources reasonably expected to be realized within one (1) year during the normal operating cycle of the business, as represented on the company's Independently Audited balance sheet.

"*Current Dollars*" shall mean U.S. dollars in the year actually received or paid, unadjusted for price changes or inflation.

"*Current Liabilities*" or "*CL*" shall mean obligations that are reasonably expected to be repaid within one year using existing resources classified as Current Assets, as represented on the company's Independently Audited balance sheet.

"*Current Ratio*" shall mean Current Assets divided by Current Liabilities ("CA/CL").

"*Debt-to-Equity Ratio*" shall mean the total Liabilities divided by Net Worth ("TL/NW").

"*Environmental Obligations*" shall mean obligations both in programs that EPA directly operates, and in programs where EPA has delegated authority to the State or approved a State's program that are assured through the use of a corporate financial test. These obligations include, but are not limited to: liability, closure, post-closure and corrective action cost estimates for hazardous waste treatment, storage, and disposal facilities pursuant to 40 C.F.R. §§ 264.101, 264.142, 264.144, 264.147, 265.142, 265.144 and 265.147; cost estimates for municipal solid waste management facilities pursuant to 40 C.F.R. §§ 258.71, 258.72 and 258.73; current plugging and abandonment cost estimates for underground injection control facilities pursuant to 40 C.F.R. § 144.62; cost estimates for petroleum underground storage tanks pursuant to 40 C.F.R. § 280.93; cost estimates for PCB facilities pursuant to 40 C.F.R. § 761.65; any financial assurance required under, or as part of an action under, the Comprehensive Environmental Response, Compensation, and Liability Act; and any other environmental obligation assured through a financial test.

"*Financial Assurance*" shall mean a written demonstration of financial capability, in compliance with the terms of this Appendix, to implement Phosphogypsum Stack System Closure and Long Term Care in an amount at least equal to the approved Cost Estimates, and to provide for Third-party Liability and Corrective Action as required under this Appendix.

"*Financial Mechanism*" shall mean those mechanisms or instruments specified in this Appendix used to secure funding for an obligation under the Order.

"*GAAP*" shall mean U.S. Generally Accepted Accounting Principles.

"*Guarantee*" shall mean agreements where a second entity assumes responsibility for the payment of a debt or performance of an obligation if the entity primarily liable fails to perform. The entity providing the Guarantee is the Guarantor.

"*Independent Attorney*" shall mean an attorney hired by Respondent to provide the opinion required by Paragraph 4.f(1) of this Appendix. The Independent Attorney must be licensed and in good standing, have expertise in the areas of law for which the opinion is being rendered, free of control by Respondent (or Respondent's Guarantor or Related Party), and able to exercise his or her judgment as to the required opinion. Respondent shall waive any claim of attorney-client privilege or work-product doctrine in connection with the Independent Attorney's provision of the opinion required by Paragraph 4.f(1), and shall provide EPA with any requested support for the Independent Attorney's opinion.

"*Independently Audited*" shall mean an independent assessment (audit) of the fairness by which a company's financial statements are presented by its management in conformance with GAAP. The audit must be performed by an independent Certified Public Accountant and conform to U.S. Generally Accepted Auditing Standards (GAAS).

"*Intangible Assets*" or "*IA*" shall mean identifiable non-monetary assets lacking physical substance, as defined under GAAP and as accounted for in the company's Independently Audited financial statements, including but not limited to patents, copyrights, franchises, goodwill, trademarks, and trade names.

"*Liabilities*" shall mean all probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events, as represented on the company's Independently Audited balance sheet.

"*Long Term Care*" shall mean those activities required pursuant to Appendix I, including associated Water Management activities, and shall be substituted for "post-closure" in 40 C.F.R. Part 264, Subpart H.

"*Net Worth*" shall mean total Assets minus total Liabilities and is equivalent to shareholder's (or owner's) equity, as represented on the company's Independently Audited balance sheet.

"*Non-U.S. Corporation*" shall mean a legal entity, chartered by a State or government outside the continental United States, Alaska, Hawaii, or U.S. territories.

"*Related Party*" or "*Related Parties*" shall have the same meaning as set forth in the Statement of Financial Accounting Standards No. 57, Appendix B (Glossary) (Financial Accounting Standards Board - Original Pronouncements, as amended): "Affiliates of the enterprise; entities for which investments in their equity securities would, absent the election of the fair value option under FASB Statement No. 159, *The Fair Value Option for Financial Assets for Financial Assets and Financial Liabilities*, be required to be accounted for by the equity method by the enterprise; trusts for the benefit of employees, such as pension and profit-sharing trusts that are managed by or under the trusteeship of management; principal owners of the enterprise; its management; members of the immediate families of principal owners of the enterprise and its management; and other parties with which the enterprise may deal if one party controls or can significantly influence the management or operating policies of the other to an extent that one of the transacting parties might be prevented from fully pursuing its own separate interests. Another party also is a related party if it can significantly influence the management or operating policies of the transacting parties or if it has an ownership interest in one of the transacting parties and can significantly influence the other to an extent that one or more of the transacting parties might be prevented from fully pursuing its own separate interests."

"*Respondent*" shall mean ExxonMobil Oil Corporation, and as applicable, any Guarantor.

"*Phosphogypsum Stack System Closure*" shall mean the closure of the Phosphogypsum Stack System and associated Water Management activities required pursuant to Appendix I, which term shall be substituted for "closure" as referenced in 40 C.F.R. Part 264, Subpart H.

"*Plan Work*" shall mean, as applicable in the context of this Appendix, the work required to implement any Risk Assessment Plan or Corrective Action Plan pursuant to Appendix I, or any corrective action assessment for the Zone of Discharge, pursuant to Appendix I.

"*Tangible Assets*" shall mean total Assets minus Intangible Assets.

"*Tangible Assets located within the United States*" shall mean the sum of all Tangible Assets located in the United States.

"*Tangible Net Worth*" or "*TNW*" shall mean total Assets minus Intangible Assets and minus total Liabilities ("TA-IA)- TL").

"*Third Party*" shall mean a party that is not a Related Party nor a party with a Substantial Business Relationship.

"*Third-Party Mechanism*" shall mean a trust fund, surety bond, letter of credit, or insurance.

"*Self-Assurance Mechanism*" shall mean a corporate financial test or a corporate guarantee.

"*Water Management*" shall mean the water management and groundwater monitoring activities described in Appendix I.

II. Cost Estimates

1. Respondent shall submit annually to EPA updated written Cost Estimates, together with supporting documentation, reflecting inflationary adjustments, significant cost adjustments and/or changes to the Phosphogypsum Stack System. Respondent shall generate

the updated Cost Estimates in conformance with 30 TAC §§ 37.131 and 37.141 [40 C.F.R. §§ 264.142(a)-(h).] Respondent shall submit the annual updates sixty (60) days prior to the Anniversary Date of the establishment of the Financial Mechanism. If more than one Financial Mechanism is being used to provide Respondent's Financial Assurance, the updated Cost Estimates shall be submitted sixty (60) days prior to the earliest Anniversary Date, for a given calendar year, of a Financial Mechanism.

III. Financial Assurance for Phosphogypsum Stack System Closure and Long Term Care

2. By March 31, 2011 Respondent shall provide to the benefit of EPA Financial Assurance for the Agrifos Facility. Respondent shall use the current Cost Estimates generated pursuant Section II, above, to establish Financial Assurance.

3. Financial Assurance for Phosphogypsum Stack System Closure and Long Term Care under this Appendix must comply with the requirements of 30 TAC §§ 37.201, 37.211, 37.221, 37.261, 37.231, 37.241, 37.251, 37.41, 37.51, 37.61, 37.71 [40 C.F.R. §§ 264.143(a)-(i), 264.145(a)-(i), and 264.148], except as clarified and modified in this Section.

4. Respondent shall choose from the Financial Mechanisms specified in 30 TAC §§ 37.201, 37.211, 37.221, 37.261, 37.231, 37.241, 37.251 [40 C.F.R. §§ 264.143(a)-(f) and 264.145(a)-(f)] to establish Financial Assurance, provided that, if Respondent is using the following Third-Party Mechanisms (a trust fund, letter of credit, or surety bond), the Trustee of any trust fund, or the provider of any letter of credit or surety bond shall not be a Related Party to Respondent. Respondent shall word the Financial Mechanism as specified in 40 C.F.R. § 264.151 unless EPA provides an alternate form, e.g., to address more than one beneficiary of the Financial Mechanism (i.e., EPA and the State).

a. For a trust fund, Respondent shall comply with 30 TAC § 37.201(a)-(k)[40 C.F.R. §§ 264.143(a) and 264.145(a)], except that, in lieu of complying with 30 TAC § 37.201(e)-(f)(3) [40 C.F.R. §§ 264.143(a)(3)-(4) and 264.145(a)(3)-(4)], Respondent shall fully fund the trust fund.

(1) If Respondent is unable to fully fund the trust fund, as specified above, Respondent within ten (10) days of EPA's approval of the Cost Estimates shall submit to EPA for approval an originally signed certification by Respondent, together with supporting documentation, explaining in detail Respondent's inability to immediately fund the trust fund, and including a proposal for a pay-in period of no longer than three (3) years, with at least fifty percent (50%) of the Phosphogypsum Stack System Closure and Long Term Care Cost Estimates to be funded in the first year. Any subsequent request for an extension to an approved pay-in period shall be made at least 180 days before the close of an approved pay-in period, and shall include an originally signed certification by Respondent's CFO explaining in detail why a longer pay-in period is needed, together with supporting documentation.

(2) Respondent shall pay all expenses incurred by the Trustee in connection with the administration of the trust fund, including fees for legal services rendered to the Trustee and compensation of the Trustee.

b. For a surety bond guaranteeing payment or performance, Respondent shall comply with 30 TAC §§ 37.211(a)-(g), 37.221(a)-(h) [40 C.F.R. §§ 264.143(b)&(c) and 264.145(b)&(c)], except that in addition to the requirements of 30 TAC § 37.211(a)-(b), 37.221(a)-(b) [40 C.F.R. §§ 264.143(b)(1)&(c)(1) and 264.145(b)(1)&(c)(1)], Respondent shall provide an originally signed certification, by an officer of A.M. Best or a Nationally Recognized Statistical Ratings Organization ("NRSRO"), documenting that the surety has at least a "secured" financial strength rating of "A" by A.M. Best or an equivalent rating by the NRSRO.

c. For a letter of credit, Respondent shall comply with 30 TAC § 37.231(a)-(i) [40 C.F.R. §§ 264.143(d) and 264.145(d)], except that in addition to the requirements of 30 TAC § 37.231(a)-(b) [40 C.F.R. §§ 264.143(d)(1) and 264.145(d)(1)], Respondent shall provide an originally signed certification that the provider of the letter of credit is a federally insured financial institution.

d. For insurance, Respondent shall comply with 30 TAC § 37.241(a)-(j) [40 C.F.R. §§ 264.143(e) and 264.145(e)], and shall provide an originally signed certification, by an officer of A.M. Best or an NRSRO, documenting that the insurer has at least a "secured" financial strength rating of "A" by A.M. Best or an equivalent rating by the NRSRO. Respondent also shall:

(1) Submit annually a Certificate of Insurance and a complete copy of the insurance policy, including amendments and endorsements.

(2) Notify EPA if it has cause to believe that it will not be able to make a premium payment.

(3) Ensure the assignment requirements of 30 TAC § 37.241(j) [40 C.F.R. §§ 264.143(e)(7) and 264.145(e)(7)] are incorporated into the insurance policy exactly as written, with no additional qualifying conditions.

(4) Ensure that the policy does not allow or offer coverage for liabilities other than those contemplated by the Consent Agreement and Final Order.

e. For the corporate financial test and corporate guarantee, Respondent (including Respondent's Guarantor), shall comply with 30 TAC § 37.251(a)-(g) [40 C.F.R. §§ 264.143(f) and 264.145(f)], except that:

(1) In lieu of complying with 30 TAC § 37.251(b)(2)(A) [40 C.F.R. §§ 264.143(f)(1)(ii)(A) and 264.145(f)(1)(ii)(A)], Respondent shall use the current rating of either Standard & Poor's ("S&P") long-term issuer credit rating or Moody's long-term corporate family rating, which assesses a company's capacity to meet its long-term (greater

than one (1) year) financial commitments, as they come due. The rating must be BBB or greater as issued by S&P, or Baa or greater as issued by Moody's. If Respondent has more than one rating, the lower of the two will be used to meet the criteria in 30 TAC 37.251(a)-(g) [40 C.F.R. §§ 264.143(f) and 264.145(f)]. If Respondent with multiple ratings discontinues a rating that is below BBB (S&P) or Baa (Moody's), or a rating agency discontinues a rating that is below BBB (S&P) or Baa (Moody's), such that the remaining rating(s) subsequently would enable the Respondent to satisfy the corporate financial test criteria, Respondent shall provide alternate Financial Assurance and shall be disqualified from using the corporate financial test for two (2) years.

(2) The phrase "all Environmental Obligations" is substituted for "current closure and post-closure cost estimates and current plugging and abandonment cost estimates" found in 30 TAC § 37.251(a)-(b) [40 C.F.R. §§ 264.143(f)(1) and 264.145(f)(1)].

(3) The term "assets" specified in 40 C.F.R. §§ 264.143(f)(1)(i)(D)&(ii)(D) and 264.145(f)(1)(i)(D)&(ii)(D) shall be replaced by the term "tangible assets."

(4) In lieu of complying with 30 TAC § 37.251(c)(1)-(3) [40 C.F.R. §§ 264.143(f)(3) and 264.145(f)(3)], Respondent shall document its satisfaction of the corporate financial test by submitting to EPA within ninety (90) days after the close of Respondent's fiscal year, for each year Respondent is providing a Self-Assurance Mechanism:

(a) A letter signed by Respondent's CFO worded as specified by the Form A-1, in Attachment A, of this Appendix.

(b) A copy of the independent CPA report on examination of Respondent's audited financial statements for the latest completed fiscal year that Respondent is using for the basis of the financial test.

(c) A copy of the audited financial statements for the last completed year.

(d) A report of procedures and findings from Respondent's independent CPA, resulting from an agreed-upon procedures engagement performed in accordance with the AICPA Statement on Standards for Attestation Engagements and Related Attestation Interpretations, AT Section 201 - Agreed Upon Procedures Engagements, as updated, that describes the procedures performed and related findings, including whether or not differences or discrepancies were found in the comparison of financial information set out in the letter (including attachments and exhibits) from Respondent's CFO and Respondent's Independently Audited, year-end financial statements for the last fiscal year, including all attachments. Where differences or discrepancies exist between Respondent's CFO letter and Respondent's Independently Audited year-end financial statements, the report of procedures and findings will reconcile any differences or discrepancies between the values or information represented in Respondent's CFO letter and Respondent's Independently Audited financial statements. Procedures to be performed by the independent CPA shall be in accordance with AT Section 201.

(5) In addition to complying with 30 TAC § 37.251(e) [40 C.F.R. §§ 264.143(f)(6) and 264.145(f)(6)], if Respondent determines at any time during the fiscal year that it no longer meets or will not meet the requirements of Paragraph 4.e(1), Respondent shall provide alternate Financial Assurance pursuant to the requirements of this Appendix.

(6) Within thirty (30) days of notice by EPA that EPA, pursuant to 30 TAC § 37.251(f) [40 C.F.R. §§ 264.143(f)(7) and 264.145(f)(7)], no longer believes that Respondent meets the requirements of the corporate financial test criteria of Paragraph 4.e, or that EPA disallows the use of the corporate financial test based on qualifications in the opinion expressed by the independent CPA as set out in 30 TAC § 37.251(g) [40 C.F.R. §§ 264.143(f)(8) and 264.145(f)(8)], Respondent shall provide alternate Financial Assurance as required by 30 TAC § 37.251(f)-(g) [40 C.F.R. §§ 264.143(f)(7)&(8) and 264.145(f)(7)&(8)] pursuant to this Subsection.

(7) In addition to complying with 30 TAC § 37.251(a)-(g) [40 C.F.R. §§ 264.143(f) and 264.145(f)], Respondent shall:

(a) If more than sixty percent (60%) of Respondent's tangible assets are in the form of one or more note receivables from one or more Related Parties, submit to EPA, when providing the information required by 30 TAC §§ 37.251(c)(1)-(3), 37.251(d) [40 C.F.R. §§ 264.143(f)(3)&(5) and 264.145(f)(3)&(5)], an originally signed certification by Respondent's CFO together with a list of each note receivable, the name of the Related Party and a description (along with any necessary documentation) of the Related Party's financial strength, to demonstrate that each Related Party maintains the financial strength to meet its obligation to the Respondent.

(b) On a quarterly basis, using the sum of the most recent four (4) quarters' financial statements (including balance sheets, income statements, and cash flow statements), reviewed by an independent CPA, confirm Respondent's ability to meet the criteria of the corporate financial test.

f. For the corporate guarantee, Respondent shall comply with 30 TAC § 37.261 [40 C.F.R. §§ 264.143(d)(10) and 264.145(d)(11)], and shall meet the requirements specified below, if applicable:

(1) Respondent may use a Non-U.S. Corporation as Guarantor only if the following conditions are met: (a) the Non-U.S. Corporation has identified a registered agent for service of process in Texas and in the State in which it has its principal place of business; (b) Respondent submits to EPA a written legal opinion from an Independent Attorney, prior to the execution of the guarantee, confirming that a guarantee executed as required under this Section by the Non-U.S. Guarantor is a legally valid, collectable, and enforceable obligation in the State(s); (c) the Non-U.S. Corporation provides Independently Audited financial statements in conformance with GAAP; (d) the total amount of the Non-U.S. Corporation's present and proposed guarantee's (including self-guarantees) to cover all Environmental Obligations in the United States shall not exceed twenty-five percent (25%) of the Non-U.S. Corporation's tangible net worth in the United States; and (e) the written guarantee reflects the Non-U.S. Corporation's (Guarantor's) agreement to comply with the reporting requirements

required under the Consent Agreement/Final Order, and that within thirty (30) days of executing the guarantee the Guarantor will establish a stand-by trust with a financial institution within the continental United States, Alaska, or Hawaii.

(2) Respondent shall use the exact wording specified in Attachment C, Form C-2, of this Appendix for the corporate guarantee. The certified copy of the corporate guarantee must accompany the items specified in Paragraph 4.e(4) of this Appendix, which are being sent to EPA.

5. If Respondent seeks to provide:

a. More than one Third-Party Mechanism to demonstrate Financial Assurance for Phosphogypsum Stack System Closure and Long Term Care, pursuant to 30 TAC § 37.41 [40 C.F.R. §§ 264.143(g) and 264.145(g)], the Respondent shall submit to EPA an originally signed certification verifying that the Third-Party Mechanisms do not incorporate terms subrogating one Financial Mechanism to another, *i.e.*, designating a prioritization for the release of the funds or the payment of a claim. EPA, if the need arises, will determine the priority for the release of funds or payment of a claim.

b. A Financial Mechanism ensuring Financial Assurance at more than one facility pursuant to 30 TAC § 37.51 [40 C.F.R. §§ 264.143(h) and 264.145(h)], the Respondent:

(1) Shall not provide a single trust fund or insurance policy to cover the multiple facilities in different States, but shall provide each affected State with its own distinct trust fund or insurance policy;

(2) May use the same letter of credit or surety bond for multiple facilities provided that the following conditions are met: (i) the facilities' EPA Identification Numbers, names, addresses, and the Phosphogypsum Stack System Closure and Long Term Care amounts associated with each particular facility are clearly specified in the Financial Mechanism; and (ii) the Financial Mechanism clearly states that there can be a release of funds for a specified facility without requiring the entire obligation covered by the Financial Mechanism to be placed in the associated stand-by trusts; and

(3) Shall not release funds designated for one or more facilities in another State except upon written agreement of EPA, Respondent, and the affected State(s).

IV. Financial Assurance for Third-Party Liability

6. Respondent shall provide Financial Assurance to compensate third-parties for bodily injury or property damage that might result from sudden accidental or non-sudden accidental occurrences associated with the Phosphogypsum Stack System Closure, Long Term Care, or Corrective Action at the Facility ("Financial Assurance for Third-party Liability"). The Financial Assurance for Third-party Liability shall comply 30 TAC § 37 Subchapters E and F [40 C.F.R. § 264.147], except as provided in Paragraph 7, below, and in lieu of complying with 30 TAC §

335.152(a)(6) [40 C.F.R. § 264.147(e)] Respondent shall maintain such Financial Assurance for Third-party Liability for the duration of Phosphogypsum Stack System Closure and Long Term Care. If Respondent wishes to propose an adjustment to the amount of Financial Assurance pursuant to 30 TAC § 37.411 [40 C.F.R. § 264.147(c)], Respondent shall submit to EPA for approval an originally signed certification by Respondent's CFO and, as set forth in 30 TAC § 37.411 [40 C.F.R. § 264.147(c)], explaining the basis for the proposed adjustment, together with supporting documentation. Until such time as EPA approves the adjusted Financial Assurance in writing, Respondent shall provide Financial Assurance for Third-party Liability as required herein. Nothing in this Paragraph shall be construed to waive or limit EPA's right, pursuant to 40 C.F.R. § 264.147(d), to adjust the level of Financial Assurance required in [40 C.F.R. § 264.147(a)&(b)].

7. Respondent's Financial Assurance for Third-party Liability shall comply with 30 TAC §§ 37.404, 37.541, 37.551, 37.531, 37.521, 37.511, 37.501, [40 C.F.R. §§ 264.147(a)-(b)&(f)-(j), and 264.151(g), (h)(2) & (1)-(n)], except as modified by this Paragraph. If Respondent is using a trust fund, letter of credit, or surety bond, the Trustee of any trust fund, or the provider of any letter of credit, or surety bond shall not be a Related Party to Respondent. Respondent shall word the Financial Mechanism as specified in 30 TAC §§ 37.601, 37.611, 37.621, 37.631, 37.641, 37.651, 37.661 [40 C.F.R. § 264.151], except the term "facility" shall substitute for the phrase "hazardous waste facility," and unless EPA provides an alternate form, e.g., to address more than one beneficiary of the Financial Mechanism (i.e., EPA and the State).

a. For a surety bond or for insurance, Respondent shall demonstrate that the Surety and the Insurer have at least a "secured" financial strength rating of "A" by A.M. Best or an equivalent rating by an NRSRO. Such demonstration shall be in the form of an originally signed certification by Respondent's CFO or an officer of A.M. Best or the NRSRO.

b. For a letter of credit, Respondent shall ensure that the provider of the letter of credit is a federally insured financial institution.

c. For the corporate financial test and/or guarantee, Respondent shall:

(1) In lieu of 30 TAC § 37.541(b)(2)(A) [40 C.F.R. § 264.147(f)(1)(ii)(A)], use the current rating for either the S&P long-term issuer credit rating or Moody's long-term corporate family rating which assesses a company's capacity to meet its long-term (greater than one (1) year) financial commitments, as they come due.

(2) In lieu of the provision at 30 TAC § 37.541(d)(1)-(3) [40 C.F.R. § 264.147(f)(3)], demonstrate that it meets the corporate financial test by submitting the following to EPA within ninety (90) days after the close of Respondent's fiscal year:

(a) A letter signed by Respondent's CFO and as worded in: (i) 30 TAC § 37.651 [40 C.F.R. § 264.151(g)], or (ii) the Appendix of this CAFO. Respondent may use a single CFO letter to cover Phosphogypsum Stack System Closure and Long Term Care and Third-Party Liability (Form A-1, in Attachment A, of this Appendix).

(b) A copy of the independent CPA's report on examination of Respondent's audited financial statements for the latest completed fiscal year.

(c) A copy of the Independently Audited financial statements for the last completed year.

(d) A report of procedures and findings from Respondent's independent CPA, resulting from an agreed-upon procedures engagement performed in accordance with the AICPA Statement on Standards for Attestation Engagements and Related Attestation Interpretations, AT Section 201 - Agreed Upon Procedures Engagements, as updated, that describes the procedures performed and related findings, including whether or not differences or discrepancies were found in the comparison of financial information included in the letter (including attachments and exhibits) from Respondent's CFO and Respondent's Independently Audited, year-end financial statements for the last fiscal year, including all attachments. Where differences or discrepancies exist between Respondent's CFO letter and Respondent's Independently Audited year-end financial statements, the report of procedures and findings will reconcile any differences or discrepancies between the values or information represented in Respondent's CFO letter and Respondent's Independently Audited financial statements. Procedures to be performed by the independent CPA shall be in accordance with AT Section 201.

(e) If a guarantee is to be used for Liability Coverage, a corporate guarantee as worded in the Appendix "Guarantee for Liability Coverage."

V. Financial Assurance for Corrective Action

8. Within thirty (30) days of receiving approval by EPA of any Risk Assessment Plan required pursuant to Appendix 1, Respondent shall provide a detailed written Cost Estimate for the work required under the applicable Plan ("Plan Work"). Respondent shall, within twenty (20) days of EPA's approval of the Cost Estimate for the Plan Work, demonstrate and provide to EPA Financial Assurance for the Plan Work in accordance with the requirements of this Appendix. If Respondent wishes to seek a waiver of all or part of the Financial Assurance, or wishes to propose an alternative form or reduced amount of Financial Assurance, Respondent shall submit a request to EPA explaining the basis for the proposed waiver, or alternative or reduced Financial Assurance, together with supporting documentation. Until such time as EPA approves the proposed waiver, or alternate or reduced Financial Assurance in writing, Respondent shall provide Financial Assurance in the amount of the approved Cost Estimate for the Plan Work in accordance of this Appendix.

9. Within thirty (30) days of receiving written approval by EPA of any Corrective Action Plan required pursuant to Appendix 1, or any corrective action assessment by EPA for the Zone of Discharge required pursuant to Appendix 1, Respondent shall submit to EPA for approval a proposed Financial Assurance Plan to implement the applicable Plan Work. The proposed Financial Assurance Plan shall include, as appropriate:

a. Estimated costs for each stage of the Plan Work.

b. A proposed Financial Mechanism, or set of Mechanisms, to provide Financial Assurance for the Plan Work, selected from the options set forth in Subsection III this

Appendix (e.g., trust fund, surety bond, insurance, letter of credit, corporate financial test, or corporate guarantee). If Respondent wishes to propose an alternate form or reduced amount of Financial Assurance, wishes to provide Financial Assurance in phases corresponding to the estimated costs for each stage of Plan Work or wishes to seek a waiver of all or part of the Financial Assurance required under this Subsection, Respondent shall submit a request to EPA explaining the basis for the proposed alternate, reduced or phased Financial Assurance, or the waiver of all or part of the Financial Assurance, together with supporting documentation.

c. A proposed schedule (annually, consistent with Section II.1) to update the Cost Estimates required pursuant to subparagraph b, above, to reflect inflationary adjustments and/or changes to the Plan Work.

10. Annually, and consistent with the schedule in Section II.1, Respondent shall provide Financial Assurance for the Plan Work in an amount no less than the approved Cost Estimates, and in accordance with the Financial Assurance Plan approved by EPA.

VI. Reporting and Information Gathering

11. Respondent shall provide to EPA, upon reasonable request, information or reports regarding the financial status of Respondent, the Financial Mechanism(s) provided by Respondent to meet its obligations for Financial Assurance, and the financial institution(s) or Guarantor(s) providing the Financial Mechanism(s) to secure Respondent's obligations under this Appendix to the Consent Agreement/Final Order. Such information shall be provided within twenty (20) days of the request unless otherwise stipulated by EPA. Respondent may assert Confidential Business Information ("CBI") under 40 C.F.R. Part 2, except for information provided pursuant to Paragraphs 4.e, Respondent shall follow the procedures set forth in 40 C.F.R. Part 2, Subpart B, to assert any claim of CBI. If Respondent claims information in a Self-Assurance Mechanism is CBI under 40 C.F.R. Part 2, Respondent shall submit two (2) Financial Assurance submissions to EPA, one submission with the CBI redacted, and so identified in the submission, which will be publically available, and the second submission that will contain the CBI.

Attachment A-1

**** CORPORATE FINANCIAL TEST FORMAT ****

**CORPORATE FINANCIAL TEST
Letter from Chief Financial Officer**

Instructions: The letter from the Chief Financial officer, as specified in Section II of Appendix 2 of the Consent Agreement and Final Order, must be worded as follows, except that instructions in the brackets are to be replaced with the relevant information and the brackets deleted.

[Address to Regional Administrator of every Region in which facilities for which financial responsibility is to be demonstrated through the corporate financial test for costs associated with a Phosphogypsum Stack System Closure and/or Long Term Care are located].

I am the Chief Financial Officer ("CFO") of *[insert name and address of firm]* (hereinafter, "the firm"). This letter is in support of this firm's use of the corporate financial test to demonstrate Financial Assurance for costs associated with Phosphogypsum Stack System Closure and/or Long Term Care *[and/or liability coverage to compensate third-parties for bodily injury or property damage that might result from sudden accidental or non-sudden accidental occurrences associated with the Phosphogypsum Stack System Closure or Long Term Care].*

[Fill out paragraphs 1-16, below, and provide supporting documentation, when required. If your firm has no facilities that belong in a particular paragraph, write "None" in the space indicated.]

1. This firm is the Respondent in an action brought by the United States Environmental Protection Agency relating to the Agrifos Site, for which Financial Assurance for Phosphogypsum Stack System Closure and/or Long Term Care is demonstrated through the corporate financial test specified in Section III of Appendix 2 of the Consent Agreement and Final Order ("CAFO") *[case name/docket information for the CAFO]*. The current Phosphogypsum Stack System Closure and/or Long Term Care Cost Estimates covered by the corporate financial test are provided for the facility in Schedule A, attached to this letter. *[Attach Schedule A. For informational purposes, see Schedule A, Example 1.]*

[List facilities and include the EPA Identification Number, name, address, and total current Cost Estimate for Phosphogypsum Stack System Closure and/or Long Term Care for each facility.]

2. This firm guarantees, through the guarantee specified in Section III of Appendix 2 of the Consent Agreement and Final Order ("CAFO") *[case name/docket information for the CAFO]*, the Phosphogypsum Stack System Closure and/or Long Term Care at the facility, listed below, on behalf of Respondent, which is the guaranteed party. The current Cost Estimates for the Phosphogypsum Stack System Closure and/or Long Term Care so guaranteed are provided for the facility listed below in Schedule A, attached to this letter. *[Attach Schedule A. For informational purposes, see Schedule A, Example 2.]*

[List facilities and include the EPA Identification Number, name, address, and total current Cost Estimate for Phosphogypsum Stack System Closure and/or Long Term Care for each facility.]

3. The firm identified above is : *[insert one or more:* (1) The direct or higher-tier parent corporation of the Respondent; (2) owned by the same parent corporation as the parent corporation of the Respondent, and receiving the following value in consideration of this guarantee ____ *[insert description of value received]*; or (3) engaged in the following substantial business relationship with the Respondent ____ *[insert brief characterization of relationship]*, and receiving the following value in consideration of this guarantee ____ *[insert value received]*. *[Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter]*.

4. The firm, Respondent or guarantor, is using a corporate financial test to secure the obligations of the facilities listed in Schedule B for which financial assurance is required under programs that EPA directly operates and obligations where EPA has delegated authority to the State or approved a State's program. These obligations include, but are not limited to: third party liability coverage for sudden and non-sudden accidental occurrences, closure, post-closure and corrective action cost estimates for hazardous waste treatment, storage and disposal facilities under 40 C.F.R. §§ 264.101, 264.142, 264.144, 264.147, 265.142, 265.144 and 265.147; cost estimates for municipal solid waste management facilities under 40 C.F.R. §§ 258.71, 258.72 and 258.73; current plugging and abandonment cost estimates for underground injection control facilities under 40 C.F.R. § 144.62; cost estimates for underground storage tanks under 40 C.F.R. § 280.93; cost estimates for facilities handling polychlorinated biphenyls under 40 C.F.R. § 761.65; any financial assurance required under, or as part of an action under, the Comprehensive Environmental Response, Compensation, and Liability Act; and any other environmental obligation assured through a financial test, excluding those costs represented in paragraphs 1 and 2 listed above. The cost estimates by obligation are provided for each facility in Schedule B, attached to this letter. *[Attach Schedule B. For informational purposes, see Schedule B, Example 1.]*

A. The firm represents the total of all such environmental obligations in current dollars for the listed facilities in Schedule B of \$ _____ *[insert amount]*, as of _____ *[insert date]*.

5. Are there guarantees disclosed in accordance with FASB Interpretation No. 45 for which the firm is liable, but which are not explicitly accounted for on the balance sheet of the firm's latest completed independently audited financial statements? (Yes/No) _____

A. *[If yes:]* The firm has identified the following contingent liabilities, primarily relating to guarantees for notes, loans and performance under contracts, as of the firm's latest completed fiscal year ended *[insert date]*: [Dollar amount]

6. Are there asset retirement obligations, under FASB Statement No. 143 or FASB Interpretation No. 47, which are not explicitly accounted for on the balance sheet of the firm's latest completed independently audited financial statements? (Yes/No) _____

A. *[If yes:]* The firm disclosed the following information with respect to its asset retirement obligations as of the firm's latest completed fiscal year ended *[insert date]*

7. Are there significant estimates and material concentrations known to management that are required to be disclosed in accordance with AICPA's SOP 94-6, Disclosure of Certain Significant Risks and Uncertainties, related to the firm's world-wide environmental obligations? (Yes/No) _____
[Significant estimates are estimates as of the last completed fiscal year-end that could change materially during the up-coming fiscal year..]

A. [If yes:] The firm discloses the following significant estimates and material concentrations, as of the firm's latest completed fiscal year ended [insert date]:

8. Does the company provide post-retirement benefits other than pensions? (Yes/No): _____

A. Has the company explicitly accounted for its accrued pension and post-retirement benefits on the balance sheet of the firm's latest completed independently audited financial statements? (Yes/No) _____

B. If not, the firm discloses the following estimate, as of the firm's latest completed fiscal year ended [insert date]: \$ _____ [insert value]

9. Does the firm file a Form 10K with the Securities and Exchange Commission ("SEC") for the latest fiscal year? (Yes/No) _____

10. Does the firm comply with Sarbanes-Oxley Section 404? (Yes/No) _____

A. Did the firm's independent auditors' report on of the firm's internal controls identify any material weaknesses? (Yes/No) _____ [Attach a copy of the independent auditors' report on of the company's internal controls].

11. The fiscal year of the firm ends on [month, day]; [Attach a copy of the firm's independently audited financial statements for the latest completed fiscal year.]

A. The firm's financial statements are independently audited by an independent certified public accountant? (Yes/No) _____

B. Is the firm relying on audited consolidated financial statements. (Yes/No) _____ [If the response is yes, please attach to this letter a list of the companies (with addresses) which are covered by the audited consolidated financial statements.]

C. The firm has received a qualified or adverse accountant's opinion for the latest completed fiscal year ended [insert date]. (Yes/ No) _____ [If response is yes, attach a copy of the accountant's opinion.]

* * *

12. The firm represents that the figures marked with an asterisk below are:

- A. Exactly as represented in the firm's independently audited, year-end financial statements (as attached). (Yes/No) _____
- B. In accordance with U.S. Generally Accepted Accounting Principles (GAAP). (Yes/No) _____
- C. As of the latest completed fiscal year ended [insert date]. (Yes/No) _____

[If one or more of the responses to paragraph 12 is no, attach a line-by-line reconciliation of each discrepancy that crosswalks the value represented in this letter to the company's independently audited year-end financial statements.]

13. The firm represents that as of the latest completed fiscal year-end [insert date], the Assets located in the United States in the amount of \$ _____ is at least 90% of the firm's total assets. (Yes/No)

14. The firm represents that no more than sixty percent (60%) of the firm's tangible assets are in the form of one or more note receivables from one or more Related Parties. (Yes/No) _____

[If the response to paragraph 14 is no, attach an originally signed certification by the firm's CFO as specified in Paragraph 4.e(6)(a) of Appendix 2 of the CAFO [case name/docket information for the CAFO], together with a list of each note receivable, the name of the Related Party and a description (along with any necessary documentation) of the Related Party's financial strength and capability to meet its obligations to the firm. Attach a line-by-line reconciliation that crosswalks the value(s) represented in this letter to the company's independently audited year-end financial statements.]

15. This firm is the [Respondent] in an action brought by the United States Environmental Protection Agency relating to the Agrifos Site, for which liability coverage for both sudden and nonsudden accidental occurrences in connection with Phosphogypsum Stack System Closure and/or Long Term Care is being demonstrated through the corporate financial test specified in Section IV of Appendix 2 of the CAFO. [See Attachment A for amount of liability coverage].

16. This firm guarantees, through the guarantee specified in Section IV of Appendix 2 of the CAFO, liability coverage for both sudden and nonsudden accidental occurrences in connection with Phosphogypsum Stack System Closure and/or Long Term Care at the Agrifos Site. [See Attachment A for amount of liability coverage].

[Fill in Alternative I if the criteria of Paragraph 4.e of Appendix 2 (incorporating 40 C.F.R. §§ 264.143(f)(1)(A)(i) and 264.145(f)(1)(A)(i)) are being used. Fill in Alternative II if the criteria of Paragraph 4.e(1) of Appendix 2 (referencing 40 C.F.R. §§ 264.143(f)(1)(A)(ii) and 264.145(f)(1)(A)(ii)) are being used.] See 30 TAC 37.251(b)(2).

Alternative I

1. Sum of current Cost Estimates (total of all cost estimates shown in paragraphs 1 or 2, 4, and 15 or 16 above) \$ _____
- *2. Total liabilities \$ _____
- *3. Total assets \$ _____
4. Net worth [line 3 minus line 2] \$ _____
- *5. Intangible assets \$ _____
6. Tangible Net worth [line 4 minus line 5] \$ _____
- *7. Current assets \$ _____
- *8. Current liabilities \$ _____
9. Net working capital [line 7 minus line 8] \$ _____
- *10. Net Income \$ _____
- *11. Depreciation, Depletion and Amortization \$ _____
12. Net income plus depreciation, depletion, and amortization (line 10 plus line 11) \$ _____
- *13. Total tangible assets in United States³ (required only if less than 90% of firm's assets are located in the U.S.) \$ _____
14. Is line 6 at least \$10 million? (Yes/No) _____
15. Is line 6 at least 6 times line 1? (Yes/No) _____
16. Is line 9 at least 6 times line 1? (Yes/No) _____
17. Are at least 90% of firm's tangible assets located in the U.S.? If not, complete line 18 (Yes/No) _____
18. Is line 13 at least 6 times line 1? (Yes/No) _____

³ EPA agrees that for purposes of Respondent furnishing financial assurance pursuant to this CAFO using Alternative I or Alternative II, EPA will accept in Respondent's financial assurance submissions, in lieu of a response and figure for Total Tangible Assets in the U.S., a response and figure representing "Total U.S. assets - Total World-Wide Intangible Assets," which Respondent indicates is derivable from audited financials. Respondent shall designate that change in a footnote in its CFO Letter submission, if applicable.

19. Is line 2 divided by line 4 less than 2.0? (Yes/No) _____

20. Is line 12 divided by line 2 greater than 0.1? (Yes/No) _____

21. Is line 7 divided by line 8 greater than 1.5? (Yes/No) _____

Alternative II

1. Sum of current Cost Estimates (total of all cost estimates shown in paragraphs 1 or 2, 4, and 15 or 16 above) \$ _____

2. The firm represents:

A. A Long-Term Issuer Credit Rating with Standard and Poor's of: _____ [insert rating]
as of _____ [insert date]. [Attach documentation evidencing the rating.]

B. A Long-Term Corporate Family Rating with Moody's Investor Services of: _____
[insert rating] as of _____ [insert date]. [Attach documentation evidencing the rating.]

*3. Total liabilities \$ _____

*4. Total assets \$ _____

5. Net worth [line 4 minus line 3] \$ _____

*6. Intangible assets \$ _____

7. Tangible Net worth [line 5 minus line 6] \$ _____

*8. Total tangible assets in U.S. (required only if less than 90% of firm's tangible assets are located in the U.S.) \$ _____

9. Is line 7 at least \$10 million? (Yes/No) _____

10. Is line 7 at least 6 times line 1? (Yes/No) _____

11. Are at least 90% of firm's tangible assets located in the U.S.? If not, complete line 12 (Yes/No)

12. Is line 8 at least 6 times line 1? (Yes/No) _____

I hereby certify in my capacity as the Chief Financial Officer of the firm, based on my knowledge after reasonable due diligence, that the information included in this letter, including all attachments and exhibits, is true and accurate. I further certify in my capacity as the Chief Financial Officer of the firm, that the language of this letter is identical to the wording specified in Appendix 2, Attachment A-1, of the Consent Agreement and Final Order [insert case name/docket information of the CAFO].

Attached is a special report of procedures and findings from the firm's independent certified public accountant resulting from an agreed-upon procedures performed in accordance with the AICPA Statement on Standards for Attestation Engagements and Related Attestation Interpretations, AT Section 201 – Agreed Upon Procedures Engagements, that describes the procedures performed and related findings. The CPA's report discloses whether or not differences and/or discrepancies were found in the comparison of financial information disclosed in this letter (including all attachments and exhibits) with the independently audited financial statements (including attachments), as of the firm's latest completed fiscal year end [*insert date*]. Where differences or discrepancies exist between the financial information disclosed in this letter (including all attachments and exhibits) with the firm's independently audited financial statements (including attachments), the CPA's report of procedures and findings identifies and reconciles any difference or discrepancy between the values or information represented in this letter and the firm's independently audited year-end financial statements.

[Signature] _____

[Name] _____

[Title] Chief Financial Officer

[Date] _____

Schedule A: Corporate Financial Test or Corporate Guarantee Cost Estimate Information

Example A.1: Corporate Financial Test

Facility Name (EPA ID)	Activity (CL, WM-CL, LTC, WM-LTC)	Cost Estimate Current \$
EPA123456789	CL	\$1,000,000
EPA123456789	WM-CL	\$10,000,000
EPA123456789	LTC	\$100,000,000
Total		\$111,000,000

Example A.2: Corporate Guarantee

Facility Name (EPA ID)	Activity (CL, WM-CL, LTC, WM-LTC)	Cost Estimate Current \$
EPA123456789	CL	\$1,000,000
EPA123456789	WM-CL	\$10,000,000
EPA123456789	LTC	\$100,000,000
Total		\$111,000,000

Schedule B: Other Environmental Obligations Cost Estimate Information

Example B.1

Facility Name (EPA ID, Permit Number, or Site ID)	Statutory Obligation	Cost Estimate (Current \$)
EPA123456789	CERCLA	\$1,000,000
EPA123456789	SDWA (UIC)	\$10,000,000
Total		\$11,000,000

**** CORPORATE GUARANTEE FORMAT ****

CORPORATE GUARANTEE

Instructions: The corporate guarantee, as specified in Appendix 2 of the Consent Agreement and Final Order, must be worded as follows, except the instructions in the brackets are to be replaced with the relevant information, if applicable, and the brackets deleted.

Corporate Guarantee for Phosphogypsum Stack System Closure and Long Term Care
[or/and Corrective Action]

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of the State of [insert name of State], herein referred to as guarantor. This guarantee is made on behalf of the [Respondent] of [business address], which is [one of the following: "our subsidiary"; "a subsidiary of (insert name and address of common parent corporation), of which guarantor is a subsidiary"; or "an entity with which guarantor has a 'Substantial Business Relationship,'" as defined [insert state citation to financial assurance regulations] to the United States Environmental Protection Agency ("EPA").

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in Appendix 2 of the Consent Agreement and Final Order [insert citation/docket information of Consent Agreement and Final Order] ("CAFO" or "Order"), as applicable.
2. [Respondent] is the Respondent in the CAFO that includes a requirement for financial responsibility that is covered by this guarantee: [List for each facility: EPA Identification Number, name, and address. Indicate for each whether guarantee is for Phosphogypsum Stack Closure System, Long Term Care, or both Phosphogypsum Stack Closure System and Long Term Care [and/or Corrective Action].]
3. "Stack Closure Plan" and "Permanent Stack Closure Plan" [and/or "Risk Assessment Plan," and/or "Corrective Action Plan"], as applicable, as used below refer to the plans maintained as required by the CAFO for the Phosphogypsum Stack System Closure and Long Term Care [and/or Corrective Action] of the facility identified above.
4. For value received from [Respondent], guarantor guarantees to EPA that in the event that [Respondent] fails to perform [insert "Phosphogypsum Stack System Closure," "Long Term Care," or both "Phosphogypsum Stack System Closure and Long Term Care" [and/or "Corrective Action"]] in accordance with the Stack Closure Plan or Permanent Stack Closure Plan [and/or Risk Assessment Plan and/or Corrective Action Plan], as applicable, the guarantor shall do so or establish a trust fund as specified in Appendix 2 of the Consent Agreement and Final Order, as applicable, in the name of [Respondent] in the amount of the current Phosphogypsum Stack System Closure and Long Term Care [and/or Corrective Action] Cost Estimates as specified in the Consent Agreement and Final Order, Appendix 2.

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the EPA Regional Administrator, and to [Respondent], that the guarantor intends to provide alternate Financial Assurance as specified in Appendix 2 of the Consent Agreement and Final Order, as applicable, in the name of [Respondent]. Within 120 days after the end of such fiscal year, the guarantor shall establish such Financial Assurance unless [Respondent] has done so. Guarantor also agrees that if it determines that it no longer meets the financial test criteria, it shall notify the EPA Regional Administrator, and [Respondent], that it intends to provide alternate Financial Assurance as specified in Appendix 2 of the CAFO, as applicable, in the name of [Respondent]. Within 30 days after the guarantor provides notice, the guarantor shall establish such Financial Assurance unless [Respondent] has done so.

6. The guarantor agrees to notify the EPA Regional Administrator by certified mail, of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

7. Guarantor agrees that within 30 days after being notified by the EPA Regional Administrator of a determination that guarantor no longer meets the financial test criteria or that it is disallowed from continuing as a guarantor of Phosphogypsum Stack System Closure and/or Long Term Care [and/or Corrective Action], it shall establish alternate Financial Assurance as specified in Appendix 2 of the Consent Agreement and Final Order, as applicable, in the name of [Respondent] unless [Respondent] has done so.

8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the Stack Closure Plan or Permanent Stack Closure Plan [and/or Risk Assessment Plan and/or Corrective Action Plan], as applicable, amendment or modification of the CAFO, the extension or reduction of the time of performance of Phosphogypsum Stack System Closure or Long Term Care [or Corrective Action], or any other modification or alteration of an obligation of the owner or operator pursuant to the CAFO.

9. Guarantor agrees to remain bound under this guarantee for as long as [Respondent] must comply with the applicable Financial Assurance requirements of the CAFO, including Appendix 2 of the CAFO, for the above-listed facility, except as provided in paragraph 10 of this agreement.

10. (Insert the following language if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator):

Guarantor may terminate this guarantee by sending notice to EPA Regional Administrator, and to [Respondent], by certified mail, provided that this guarantee may not be terminated unless and until [Respondent] obtains, and the EPA approves, alternate Financial Assurance for Phosphogypsum Stack System Closure and/or Long Term Care [and/or Corrective Action] in compliance with the CAFO, including Appendix 2.

[Insert the following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with Respondent]

Guarantor may terminate this guarantee 120 days following the receipt of notification, through certified mail, by the EPA and by [Respondent].

11. Guarantor agrees that if [Respondent] fails to provide alternate Financial Assurance as specified in the CAFO, Appendix 2, as applicable, and obtain written approval of such Financial Assurance from the EPA within 90 days after a notice of cancellation by the guarantor is received by the notificants in paragraph 10, above, from guarantor, guarantor shall provide such alternate Financial Assurance in the name of [Respondent].

12. Guarantor expressly waives notice of acceptance of this guarantee by the EPA or by [Respondent]. Guarantor also expressly waives notice of amendments or modifications of the Stack Closure Plan or Permanent Stack Closure Plan [and/or Risk Assessment Plan and/or Corrective Action Plan], as applicable and of amendments or modifications of the CAFO.

I hereby certify that the wording of this guarantee is identical to the wording required under the CAFO.

Effective date: _____

Name of guarantor _____

Authorized signature for guarantor _____

Name of person signing _____

Title of person signing _____

Signature of witness or notary: _____

GUARANTEE FOR LIABILITY COVERAGE

Instructions: The Guarantee for Liability Coverage, as specified in Appendix 2 of the Consent Agreement and Final Order, must be worded as follows, except the instructions in the brackets are to be replaced with the relevant information, if applicable, and the brackets deleted.

[Date]

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of the State of [insert name of State], herein referred to as guarantor. This guarantee is made on behalf of the [Respondent] of [business address], which is [one of the following: "our subsidiary"; "a subsidiary of (insert name and address of common parent corporation), of which guarantor is a subsidiary"; or "an entity with which guarantor has a 'Substantial Business Relationship,' as defined [insert state citation to financial assurance regulations] to the United States Environmental Protection Agency ("EPA").

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in Appendix 2 of the Consent Agreement and Final Order [insert citation/docket information of Consent Agreement and Final Order] ("CAFO" or "Order"), as applicable.
2. [Respondent] is the Respondent in the CAFO that includes a requirement for financial responsibility covered by this guarantee: [List for each facility: EPA Identification Number, name, and address of Phosphogypsum Stack Closure System, and/or Long Term Care facility covered by guarantee.] This corporate guarantee satisfies the CAFO's third-party liability requirements for both sudden and nonsudden accidental occurrences arising from Phosphogypsum Stack Closure System and/or Long Term Care for coverage in the amount of [insert dollar amount] for each occurrence and [insert dollar amount] annual aggregate.
3. For value received from [Respondent], guarantor guarantees to any and all third parties who have sustained or may sustain bodily injury or property damage caused by sudden and/or nonsudden accidental occurrences arising from Phosphogypsum Stack Closure System and/or Long Term Care covered by this guarantee that in the event that [Respondent] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by sudden and/or nonsudden accidental occurrences, arising from the above-named facility(ies), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor will satisfy such judgment(s), award(s) or settlement agreement(s) up to the limits of coverage identified above.
4. Such obligation does not apply to any of the following:

- (a) Bodily injury or property damage for which [Respondent] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [Respondent] would be obligated to pay in the absence of the contract or agreement.
 - (b) Any obligation of [Respondent] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.
 - (c) Bodily injury to:
 - (1) An employee of [Respondent] arising from, and in the course of, employment by [Respondent], or
 - (2) The spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by [Respondent]. This exclusion applies:
 - (A) Whether [Respondent] may be liable as an employer or in any other capacity; and
 - (B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).
 - (d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.
 - (e) Property damage to:
 - (1) Any property owned, rented, or occupied by [Respondent];
 - (2) Premises that are sold, given away or abandoned by [Respondent] if the property damage arises out of any part of those premises;
 - (3) Property loaned to [Respondent];
 - (4) Personal property in the care, custody or control of [Respondent]
 - (5) That particular part of real property on which [Respondent] or any contractors or subcontractors working directly or indirectly on behalf of [Respondent] are performing operations, if the property damage arises out of these operations.
5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the EPA and to [Respondent] that he intends to provide alternate liability coverage as specified in the CAFO, as applicable, in the name of [Respondent]. Within 120 days after the end of such fiscal year, the guarantor shall establish such liability coverage unless [Respondent] has done so.

6. The guarantor agrees to notify the EPA by certified-mail of a voluntary or involuntary proceeding under title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.
7. Guarantor agrees that within 30 days after being notified by the EPA of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor, he shall establish alternate liability coverage as specified in the CAFO in the name of [Respondent], unless [Respondent] has done so.
8. Guarantor reserves the right to modify this agreement to take into account amendment or modification of the liability requirements set by 40 CFR 264.147 and 265.147 or the CAFO, provided that such modification shall become effective only if EPA does not disapprove the modification within 30 days of receipt of notification of the modification.
9. Guarantor agrees to remain bound under this guarantee for so long as [Respondent] must comply with the applicable requirements of the CAFO, except as provided in paragraph 10 of this agreement.
10. Guarantor may terminate this guarantee by sending notice by certified mail to the EPA and to [Respondent], provided that this guarantee may not be terminated unless and until [Respondent] obtains, and the EPA approves, alternate liability coverage satisfying the terms of the CAFO.
11. Guarantor hereby expressly waives notice of acceptance of this guarantee by any party.
12. Guarantor agrees that this guarantee is in addition to and does not affect any other responsibility or liability of the guarantor with respect to the CAFO.
13. The Guarantor shall satisfy a third-party liability claim only on receipt of one of the following documents:
 - (a) Certification from the Principal and the third-party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert Principal] and [insert name and address of third-party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [Principal's] hazardous waste treatment, storage, or disposal facility should be paid in the amount of \$[].

[Signatures]

Principal _____
[Notary] _____ [Date] _____

[Signatures]

Claimant(s) _____
[Notary] _____ [Date] _____

(b) A valid final court order establishing a judgment against the Principal for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Principal's facility or group of facilities.

14. In the event of combination of this guarantee with another mechanism to meet liability requirements, this guarantee will be considered primary coverage.

I hereby certify that the wording of the guarantee is identical to the wording specified in the CAFO.

Effective Date:

[Name of Guarantor]

[Authorized Signature of Guarantor]
[Name of Person Signing]
[Title of Person Signing]

Signature of Witness or Notary