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Mississippi Phosphates Corporation Superfund Site/Pascagoula, Mississippi: U.S. Environmental Protection Agency Notice of Proposed Settlement/Bona Fide Prospective Purchaser Agreement

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The United States Environmental Protection Agency (“EPA”) published an August 21st Federal Register Notice of a proposed settlement agreement involving the Mississippi Phosphates Corp. Superfund site (“Phosphates Corp. Site”) in Pascagoula, Mississippi. See 88 Fed. Reg. 56821.

EPA is proposing to enter into an Administrative Settlement Agreement for Removal Action by Bona Fide Prospective Purchaser with Seven Seas Terminals, LLC (“Seven Seas”).

The Settlement Agreement addresses a removal action to be performed at the site by Seven Seas.

The Phosphates Corp. Site is included on the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”) National Priority List. It is referenced as one of the sites that had been targeted for additional attention.

EPA described the Phosphates Corp. Site as previously manufacturing Diammonium Phosphate fertilizer from the late 1950s through December 2014 when it declared bankruptcy.

Pursuant to a July 2015 bankruptcy settlement it is stated that two trusts were created:

- An Environmental Trust
- A Liquidation Trust

When the trusts were exhausted EPA Region 4’s Superfund Division assumed financial responsibility of daily water treatment activities and site stability operation. In 2018 the EPA Administrator signed an action memo approving a three-phase, \$72 million closure plan that was stated to be designed to improve the quality and reduce the quantity of contact water and leachate that requires treatment.

CERCLA contains a provision that allows Bona Fide Prospective Purchasers to purchase property with knowledge of contamination and not acquire liability under such statute as long as they meet certain statutory criteria. Persons that acquire property knowing, or having reason to know, of contamination on the property do not acquire CERCLA liability if they:

- Acquire property after July 11, 2002

- Do not impede the performance of a response action or natural resource restoration
- Can meet the threshold criteria and ongoing obligations outlined in CERCLA that include the performance of “all appropriate inquiries” before acquiring the property
- Exercise appropriate care with respect to hazardous substances found at the property by taking “reasonable steps” to stop any continuing release and to prevent any threatened future release

A copy of the Federal Register Notice can be found [here](#). The Administrative Settlement Agreement for Removal Action by Bona Fide Prospective Purchaser entered into between EPA and Seven Seas can be downloaded [here](#).