

STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

03-C-550

STATE OF NEW HAMPSHIRE

v.

HESS CORPORATION, *et al.*

**JOINT PROPOSED ORDER DISMISSING ALL CLAIMS AGAINST
THE SHELL DEFENDANTS AND SUNOCO WITH PREJUDICE**

Plaintiff, State of New Hampshire, and Defendants Shell Oil Company, Motiva Enterprises, LLC, TMR Company and Sunoco, Inc. (R&M) hereby stipulate to a voluntary dismissal with prejudice of all claims against Defendants Shell Oil Company, Motiva Enterprises, LLC, TMR Company and Sunoco, Inc. (R&M). The parties agree to the dismissal, pursuant to a Settlement Agreement and Release entered into by the parties as of September 28, 2012. The Court approves the Settlement Agreement and Release and further Orders that such dismissal is with prejudice, with each party bearing its own attorneys' fees and costs.

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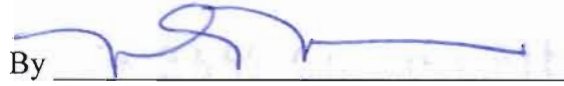
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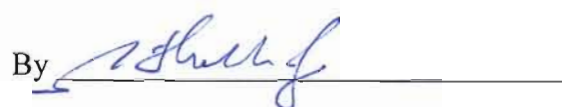
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Plaintiff reserves all other rights as against all other defendants.

STATE OF NEW HAMPSHIRE

**MOTIVA ENTERPRISES, LLC, SHELL
OIL COMPANY and TMR COMPANY**

By 

By 

Dated: 11/7/12

Dated: Oct. 31, 2012

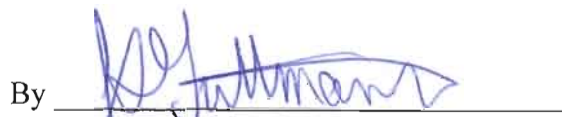
Mary E. Maloney (NHBA #1603)
Assistant Attorney General
Environmental Protection Bureau
33 Capitol Street
Concord, New Hampshire 03301-6397
(603) 271-3679

Richard E. Wallace, Jr. (*admitted pro hac*)
Sedgwick LLP
Harbourside 500
2900 K Street, NW
Washington, DC 20007
(202) 204-1000

*Attorneys for Plaintiff State of New
Hampshire*

*Attorneys for Motiva Enterprises, LLC, Shell
Oil Company and TMR Company*

SUNOCO, INC. (R&M)

By 

Dated: 10/31/12

John S. Guttman (*admitted pro hac*)
Beveridge & Diamond, PC
1350 I Street, N.W.
Suite 700
Washington, D.C. 20005

Attorneys for Sunoco, Inc. (R&M)

SO ORDERED:

Dated: _____

**SETTLEMENT AGREEMENT AND RELEASE AMONG THE
STATE OF NEW HAMPSHIRE, THE SHELL DEFENDANTS AND SUNOCO**

This SETTLEMENT AGREEMENT AND RELEASE, together with Exhibit A (the “Agreement”) is made as of this 28th day of September 2012, by and between the State of New Hampshire, acting by and through its Attorney General, the Honorable Michael A. Delaney (the “State”), on the one hand, and the Shell Defendants and Sunoco (defined below, collectively the “Settling Defendants”) on the other. The State and the Settling Defendants are together referred to in this Agreement as the “Parties” and individually referred to as a “Party.”

Section I: Recitals

1. The State in 2003 instituted a civil action in the Superior Court of Merrimack County, New Hampshire asserting claims against various parties relating to the design, manufacture, marketing, distribution and/or sale of methyl tertiary butyl ether (as defined below, “MTBE”) and/or gasoline containing MTBE (currently and as it hereafter may be amended before or after the dismissal of the Settling Defendants, the “Litigation”). The Litigation was removed to federal court and ultimately remanded to the Merrimack County Superior Court.

2. In 2004, while the Litigation was in federal court, the State filed a First Amended Complaint. After remand to the Merrimack County Superior Court, it filed a Second Amended Complaint.

3. The State asserted claims against, among other entities, the following companies, which together are defined herein as the “Settling Defendants”:

- A. Motiva Enterprises, LLC, Shell Oil Company and TMR Company
(collectively the “Shell Defendants”); and
- B. Sunoco, Inc. (R&M) (“Sunoco”).

4. The Second Amended Complaint alleges that the State brings the Litigation in its capacity as trustee of the waters of New Hampshire and also as the owner of significant property interests in the waters of New Hampshire. It further alleges that the State has a quasi-sovereign interest in protecting the quality of New Hampshire waters and that it is asserting claims for injury to the environment and to property held in public trust by the State, including water supplies used by private parties, for which the State seeks damages and costs in its capacity as *parens patriae*.

5. The Settling Defendants deny liability to the State and believe they have good and valid defenses to all of the State’s claims. Among other things, the Settling Defendants assert that gasoline containing MTBE is not a defective product and that the Settling Defendants’ use of MTBE in gasoline was lawful. Nevertheless, the Settling Defendants wish to resolve this lawsuit and claims to the extent possible to avoid the costs, expense, and uncertainty inherent in the Litigation.

6. The State and the Settling Defendants desire to resolve finally and fully all claims that could now or hereafter be asserted by the State, in any capacity and on behalf of all entities for which it has the power to sue, against the Settling Defendants with respect to the matters covered in the Litigation and/or this Agreement without the necessity of further expense of prolonged and complex litigation, and without admission, adjudication or determination of any issue of fact or law. This settlement is intended to buy peace for all Released Claims, as defined below.

7. The State has determined that settlement of its claims against the Settling Defendants in accordance with the terms set forth below is practicable and in its best interest.

Section II: Agreement

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and in consideration of the mutual promises, obligations and commitments set forth below, the State and the Settling Defendants covenant and agree as follows:

8. The State, on its own behalf and on behalf of all its agencies, departments, boards, and authorities and its officers, employees and agents in their official capacities, and any successors or assigns, and on behalf of all other persons or entities on whose behalf it has the power to sue, including without limitation its citizens and political subdivisions in its *parens patriae* capacity (collectively referred to in this Agreement as “Releasor”), hereby fully releases, acquits, and forever discharges, with prejudice, the Settling Defendants, along with their current, former, and future parents, ultimate parent companies, directly and indirectly affiliated, related, subsidiary, predecessor and successor companies (except as successor companies are hereinafter limited in paragraph 8.C), joint venture companies, and partnerships, together with all their current and former respective directors, officers, partners, members, shareholders, officials, employees, agents, attorneys, insurance carriers and reinsurers and all successors, assigns and persons/entities in privity with any one or more of such persons/entities, and any assets or entities owned currently or in the past by any such entities described in this Agreement to the extent that such asset or entity could be a source of alleged liability (the “Released Parties”) from all Released Claims, as defined below.

A. For purposes of this Agreement, “Released Claims” means any and all claims, demands, actions, causes of action, suits, obligations, assessments, damages, injunctive or other equitable relief, declaratory relief, liabilities, judgments, penalties, remedies of any kind, rights, matters, liens, losses, duties, investigation costs, response costs, restoration costs, and assertion of entitlement to any other cost, loss or expense, including without limitation attorneys’ fees, expert witness fees, consultant fees, interest, and any other litigation-related fees and costs of every kind, nature, description or character whatsoever, whether legal or equitable, past, present or future, ascertained or unascertained, known or unknown, suspected or unsuspected whether arising at common law, in equity, and/or under or by virtue of any statute or regulation, including all federal, state and/or local environmental laws, that Releasor has, had, or may have in the future against the Released Parties, or any one or more of them, or that may be created or recognized in the future by statute, regulation, judicial decision, administrative adjudication, or in any other matter, including but not limited to any direct claims, *parens patriae* claims (including claims the State asserts on behalf of political subdivisions and private parties in its *parens patriae* capacity to the full extent provided by law), and/or assigned claims, including without limitation any and all claims for negligence, strict product liability, strict liability, failure to warn, breach of express or implied warranty, breach of contract, trespass, fraud, unfair business practices, deceptive trade practices (including any and all claims based on consumer protection laws or similar statutes), private or public nuisance, plant, animal or natural resource damage, loss of use and impact to natural resources, restoration damage,

conspiracy, concert of action, market-share liability, contribution or indemnity, commingled-product liability, or any other form of collective liability or joint or several liability, violations of any statute or regulation, all whether known or unknown, past, present or future, accrued or which may accrue in the future, asserted or unasserted, latent or patent, that have been asserted, or could have been or in the future might be asserted by Releasors against Released Parties, or any one or more of them, for actual or consequential damages, compensatory damages, enhanced compensatory damages, special, exemplary and punitive damages, statutory damages, penalties, fines, property damages, natural resource damages, loss of use and impact to natural resources, remediation costs, restoration costs, treatment costs, damages to equipment, expert and investigation costs, other costs, prejudgment or post-judgment interest, attorneys' fees, injunctive or other equitable relief, declaratory relief, and/or any other losses or detriment of any kind, past, present or future, or on account of acts or omissions that occurred before or after the date of this agreement, arising out of or relating to any of the following, except as provided in Paragraph 8.E and 8.F:

- i. The actual, potential or threatened presence of MTBE, at any concentration level, in the waters of New Hampshire or elsewhere, whether surface or subsurface waters and whether or not accessed or accessible in the past, present or future by wells or other intakes;
- ii. The actual, potential or threatened presence of MTBE, at any concentration level, in gasoline, fuel oil, soil or any other medium located anywhere;

- iii. The design, testing, manufacture, refining, blending, marketing, handling, sale, exchange, import, distribution or other use of or transactions involving MTBE or gasoline containing MTBE, including all warnings or other communications relating to MTBE or gasoline containing MTBE, for any reason;
 - iv. The State's investigation of and/or response to any actual, potential or threatened contamination from MTBE, at any concentration level, of soil, surface waters or groundwater; and
 - v. All other MTBE-related matters that are or could have been asserted by the State in the Litigation.
- B. It is specifically understood and agreed that the Released Claims include all matters arising on account of acts, omissions, contamination, emissions, discharges, spills or other releases that occur before or after the date of this Agreement, at any time and for any reason, with respect to MTBE or gasoline containing MTBE that Released Parties designed, tested, manufactured, refined, blended, marketed, handled, sold, exchanged, imported, distributed or otherwise used or transacted at any time or place up to and including the date of this Agreement. The Released Claims do not include such matters arising on account of MTBE or gasoline containing MTBE, if any, that the Released Parties design, test, manufacture, refine, blend, market, handle, sell, exchange, import, distribute or otherwise use or transact after the date of this Agreement.
- C. This Agreement releases only the Released Parties, as set forth in this Agreement, and is not intended to and does not encompass any claim against any other person

or entity, including other defendants in the Litigation and including, but not limited to, any other person or entity who designed, manufactured, blended, marketed, distributed and/or sold MTBE or gasoline containing MTBE to the Released Parties. If any person or entity becomes in the future a parent, successor in interest, subsidiary, affiliate, past, present or future of the Settling Defendants, the release granted by the State in this Agreement applies only to the extent of the Releasor's Claims against the Released Parties as the Released Parties existed as of the date of this Agreement, and not to any other independent claims the Releasor may otherwise have against such other person or entity.

- D. In the event the State enters into a settlement with any other defendant(s) to the Litigation in the future and agrees to one or more releases which include any terms that are broader than the release contained in this Agreement, it is agreed that the scope of the release contained in this Agreement and the term "Released Claims" without further action of the parties will be expanded to include all additional matters contained in any such release with other defendant(s). Under no circumstances will the scope of the release contained in this Agreement or the definition of the term "Released Claims" be narrowed on account of future settlements that the State may reach with other defendants.
- E. Notwithstanding any provision to the contrary, "Released Claims" are not intended, and shall not be construed, to include or limit in any way the State's right to sue to compel, or take administrative action to compel, the Released Parties to respond to any spill, release, or discharge, or to bear the costs of such response, from a facility directly owned or operated by a Released Party at the time any spill,

release, or discharge occurred; provided, however, that except as provided in Paragraph 8.B, the State shall not assert claims based on the mere presence of MTBE in gasoline, including for products liability or failure to warn, nor shall the State seek enhanced damages based on the mere presence of MTBE in gasoline.

F. Nothing in this settlement is intended to affect in any way the Released Parties' obligations, if any, with respect to performance of any investigation, testing, monitoring, treatment, remediation, and/or other restoration otherwise required of Released Parties by the New Hampshire Department of Environmental Services, such as initial site characterization, site investigation, initial response action, interim response action, periodic sampling, remedial investigation, identification of constituents of concern, feasibility study, remedy selection, remedial action, implementation of an activity and use restriction, and/or implementation of corrective action, with respect to regulated contaminants or hazardous waste, regardless of the presence or absence of MTBE, to the extent the Released Parties in the past, currently, or in the future:

- i. directly owned or operated the facility or transportation device from which a discharge occurred at the time when the discharge occurred; or
- ii. directly discharged, spilled or disposed of contaminants or hazardous waste; or
- iii. directly arranged for the disposal of contaminants or hazardous waste.

For purposes of this Agreement, the mere presence of a Released Party's branding and/or gasoline at a third party's facility shall not constitute direct ownership or operation within the meaning of subdivision (i) above; and the mere presence of

MTBE in gasoline refined or supplied by Released Parties shall not constitute arranging for the disposal of contaminants or hazardous waste within the meaning of subdivision (iii) above.

9. To the extent that the Settling Defendants, or any of them, possessed any claims against the State arising from and directly related to the Released Claims that were existing and could have been brought in the Litigation, those claims against the State are released by the Released Parties, including any claims for attorneys fees, payments, and other costs arising from said claims or the resolution of such claims. This Agreement does not affect the rights and/or obligations of any Party under the Oil Discharge & Disposal Cleanup Fund (NHRSA 146-D) and the Gasoline Remediation & Elimination of Ethers Fund (NHRSA 146-G).

10. For purposes of this Agreement, "MTBE" means methyl tertiary butyl ether, tert-butyl alcohol and any associated breakdown products of these compounds or trace chemicals contained in these products.

11. As consideration for the release, the Parties shall do the following:

- A. Each Party shall deliver promptly to counsel for the other Party properly executed copies of this Agreement.
- B. Within seven (7) business days after all Parties have executed this Agreement, the Parties shall execute and file with the court the Joint Proposed Order Dismissing All Claims Against the Shell Defendants and Sunoco With Prejudice, a copy of which is attached as Exhibit A to this Agreement (the "Dismissal Order").
- C. Settling Defendants shall pay the State the total sum of thirty-five million dollars (\$35,000,000), which shall be termed the "Shell-Sunoco Settlement

Payment,” in accordance with the following terms, subject to a possible reduction as set forth in paragraph 13 below:

- i. Within ten (10) business days after all Parties have executed this Agreement, the Settling Defendants shall pay the State twenty-eight million dollars (\$28,000,000) (hereinafter the “First Installment”).
- ii. Within ten (10) business days following the “Final Payment Date” as defined below, the Settling Defendants shall pay the State seven million dollars (\$7,000,000) (hereinafter the “Second Installment”).
- iii. The Final Payment Date shall be ten (10) business days after the earlier of the date that the State notifies the Settling Defendants that (a) the parties in the Litigation have begun delivering opening statements at trial to a jury, or (b) the State has executed formal settlement agreements with each and every defendant in the Litigation that has a Wholesale Market Share, as defined below, greater than 5.35%.

12. The Shell-Sunoco Settlement Payment shall be made by wire transfer, pursuant to instructions to be provided separately, payable to “Sher Leff LLP in trust for the State of New Hampshire.” If any portion of the Shell-Sunoco Settlement Payment is made before the Merrimack County Superior Court approves and enters the Dismissal Order, then that portion of the Settlement Payment shall be deposited in an interest bearing account of Sher Leff LLP and held in that account in escrow until the Merrimack County Superior Court approves and enters the Dismissal Order.

13. The Shell-Sunoco Settlement Payment is subject to being reduced by a Reduction Factor in accordance with the formula set forth in this paragraph (hereinafter the “Reduction

Formula”). The Reduction Formula shall be applied if, but only if, the State enters into a settlement (hereinafter a “Subsequent Settlement”) with one or more defendants in the Litigation whose “Wholesale Market Share” as defined herein is greater than 5.35% (hereinafter a “Covered Defendant”) whereby the State settles or resolves all or substantially all claims which the State asserts against that defendant in the Litigation in exchange for a monetary payment (hereinafter the “Subsequent Settlement Amount”). Within five (5) business days of entering into a Subsequent Settlement with a Covered Defendant, the State shall notify Settling Defendants of the Subsequent Settlement Amount. The Reduction Formula shall be applied if, but only if, the Subsequent Settlement is executed in the period between September 1, 2012 and the date when the parties to the Litigation begin giving opening statements to a jury at trial (hereinafter the “Pretrial Period”). For purposes of this Agreement, “Wholesale Market Share” means the “Overall Share 1996-2005” assigned to each defendant in “Revised Table 4” in the “Updates to the Expert Report of Justine S. Hastings” served in the Litigation on August 23, 2012. Also for purposes of the Reduction Formula, “Alleged Damages” means the State’s assessment of the total amount of all damages the State alleges it has sustained or will sustain in the future based on all the claims in the Litigation as set forth in the Litigation as of the time of the Subsequent Settlement; the amount of the Alleged Damages as of the time of this Agreement is \$771,802,454; the Alleged Damages may be decreased for purposes of this Reduction Formula if but only if, and only to the extent that, (A) the Court enters an order that expressly excludes certain elements of damages or that expressly decreases the amount of damages the State can allege or recover, or (B) experts for the State serve revised reports on defendants in the Litigation that decrease the total amount of damages the State alleges. The Reduction Formula shall be applied if, but only if, the Subsequent Settlement Amount is less than the product of 42% of the

Wholesale Market Share of the Covered Defendant times the Alleged Damages as of the date of the Subsequent Settlement. In that event, the Reduction Factor shall be calculated as follows, where the Wholesale Market Share of a Covered Defendant stated as a percentage is WMS , the amount of the Alleged Damages is AD , and the Subsequent Settlement Amount is SSA :

$$\frac{(.42 \times WMS \times AD) - SSA}{(.42 \times WMS \times AD)} = \text{Reduction Factor}$$

If this Reduction Formula applies, then the Shell-Sunoco Settlement Payment shall be reduced by the Reduction Factor and the amount of the resultant reduction shall be deducted from the Second Installment; if the amount of the reduction exceeds the amount of the Second Installment, the State shall promptly refund the difference to the Settling Defendants. As an illustration, if a Covered Defendant has a Wholesale Market Share of 8.69% meaning .0869, and the Alleged Damages remain \$771,802,454, and the State settles with the Covered Defendant for \$27,000,000, then the Reduction Factor is .0415 and the Shell-Sunoco Settlement Payment shall be reduced by \$1,452,500 (.0415 x \$35,000,000), as calculated below:

$$\frac{(.42 \times .0869 \times \$771,802,454) - \$27,000,000}{(.42 \times .0869 \times \$771,802,454)} = 0.0415$$

14. Once the Dismissal Order is entered, the State agrees that it will not seek to join any of the Released Parties into the Litigation. In the event the Dismissal Order is not properly filed or ordered, as the case may be, within ninety (90) days after payment of the First Installment, Sher Leff LLP shall return the Settlement Payment, with accrued interest, to the Settling Defendants. Should the conditions precedent set forth in paragraphs 4.B and 4.C not occur, this Agreement shall be deemed null and void; *provided, however*, that each Party shall have a reasonable opportunity to cure any defects caused by such Party in satisfying these

conditions precedent. In the event that this Agreement is deemed null and void, any obligations or deadlines related to the Litigation including without limitation any discovery or expert deadlines shall be tolled until the date upon which the Parties agree in writing that the Agreement has been rendered null and void.

15. After deduction for attorneys' fees and costs, 10% of the settlement proceeds shall be allocated to the State of New Hampshire to reimburse the State for costs, including personnel expenses, related to this lawsuit. The remainder shall be used for projects related to the remediation of MTBE in groundwater and drinking water. The distribution of the funds shall be within the sole discretion of the New Hampshire Attorney General.

16. Each Party shall bear its own attorneys' fees, expenses and any and all other costs related to this Litigation.

17. To the extent that any other actions are required to be taken by the Parties to effectuate this Agreement, each Party agrees to take such actions as may be reasonably required to carry out the terms of this Agreement.

18. The release contained in this Agreement is given in good faith by the State to the Released Parties and discharges the Released Parties from all liability for contribution in the Litigation to the fullest extent provided in NHRSA 507:7-h (1997) and all related caselaw.

19. This Agreement is a compromise of disputed claims that fully and finally settles all claims in the Litigation by the State against Released Parties, as set forth above. Neither the provision of any consideration hereunder nor anything contained in this Agreement shall be interpreted or construed to be an admission of liability, or any fact or point of law on the part of, or to the prejudice of, the Parties to this Agreement. The Released Parties expressly deny any and all liability associated with or related to the Released Claims.

20. The State acknowledges and agrees that the Released Claims include claims that the State does not know or suspect to exist in Releasor's favor at the time of this Agreement and which may be discovered in the future and which, if known by the State, might have affected the State's decision to settle and release the Released Claims. The State further acknowledges and assumes all risks, chances or hazards of any and all losses or damages of any kind which presently exist or which may arise in the future and which it does not know of or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise and which, if known, would materially affect the State's decision to execute this Agreement. In assuming these risks, the State acknowledges and assumes the risk that this Agreement may have been executed subject to a mutual or unilateral mistake of fact or law as to the nature and extent of any claims, damages, or remedies, whether past or future, and it hereby waives any right that it might otherwise have had to void this Agreement on the basis of any such mutual or unilateral mistake of fact or law. Releasor waives any and all rights and benefits that Releasor had, has, or in the future may have under any statute, regulation, administrative adjudication, or common law principle that would limit the effect of this Agreement to the claims actually known or suspected to exist at the time of this Agreement.

21. The Parties individually represent that they have not sold, assigned, conveyed, disposed of, granted a security interest in or lien on, or otherwise transferred any claim purported to be released by this Agreement.

22. Releasor acknowledges and agrees that neither this Agreement, nor any document delivered hereunder, is intended to be or shall be construed as or deemed to be evidence of any alleged liability or wrongdoing by any of the Released Parties. Releasor and the Released Parties acknowledge and agree that this Agreement, along with all related drafts, motions, court papers,

conversations, negotiations and correspondence, the payment by Released Parties, and all statements made in connection with negotiation of this Agreement, constitute an offer to compromise and a compromise within the meaning of New Hampshire Rule of Evidence 408, Federal Rule of Evidence 408, and any equivalent code or common law rule of evidence of any state. Releasor and the Released Parties agree that they will not offer this Agreement, any document or instrument delivered hereunder, nor any statement, transaction or proceeding in connection with the negotiation, execution or implementation of this Agreement, as evidence in this or any other proceeding for any purpose, except in (i) a proceeding the sole purpose of which is to enforce the terms of the Agreement, (ii) any proceeding to establish an insurance or reinsurance claim by one or more of the Released Parties, (iii) a proceeding to establish an appropriate set-off or credit to a judgment entered or to be entered in favor of Releasor against an entity other than a Released Party, or (iv) other proceeding where such admission is necessary to effectuate the terms of this Agreement.

23. Releasor and the Released Parties intend and agree that this Agreement shall be complete and shall not be subject to the claim of mistake of fact or law by either or any of them and that it expresses a full and complete settlement of liability claimed by Releasor in the Litigation and denied by each and all of the Released Parties. Regardless of the adequacy or inadequacies of the consideration, this Agreement is intended to buy peace and avoid litigation and to be final and complete.

24. Each Party warrants and represents that it has read and understands this Agreement and has been represented by legal counsel in connection with this Agreement, that before executing and delivering this Agreement Releasor has completely read the terms of this Agreement, that the terms of the Agreement are fully understood and voluntarily accepted by it,

and that it has authorized its undersigned representative to sign, execute and deliver this Agreement on its behalf as a voluntary act and deed on the date and year in this Agreement after-mentioned, with all necessary approvals, and without any fraud or under any duress. Each Party has relied solely and completely on its own judgment and the advice of its own legal counsel in making this settlement and executing this Agreement.

25. This Agreement constitutes the entire understanding between the Parties. The Parties have not relied on any oral statements, promises or inducements that are not included in this Agreement. Any modifications to this Agreement must be in writing and signed by authorized representatives of the Parties.

26. The terms of this Agreement are contractual, and not recitals only. No part of this Agreement may be altered, amended, or modified in any respect, except by a writing duly executed by the State and the Settling Defendants; however, the scope of the Release in this Agreement shall be automatically modified and expanded according to the provisions of Paragraph 8.D if the conditions therein are satisfied.

27. New Hampshire law shall govern any dispute arising hereunder. The State of New Hampshire Merrimack County Superior Court shall have jurisdiction to hear and resolve any claims made hereunder, including all claims by either Party to enforce or interpret the Agreement.

28. The Parties represent that this Agreement is freely and voluntarily entered into without any degree whatsoever of duress or compulsion.

29. The State represents and warrants that the Attorney General of New Hampshire, who has executed this Agreement on its behalf, is duly authorized to do so, on behalf of the State and the public trust and that its execution of the Agreement is valid and binding as to the State.

The Attorney General represents and warrants that he has all requisite power to execute, bind, deliver, and perform this Agreement on behalf of the State and that this Agreement has been duly and validly executed and delivered by him as the State's authorized agent. The State further warrants that it will not challenge or contest the validity of this Agreement and that it forever waives any defense to its validity, including any defense based on any claim the Agreement is *ultra vires*, violative of sovereign immunity, or otherwise void.

30. Each Settling Defendant represents and warrants that the undersigned, who has executed this Agreement on its behalf, is duly authorized to do so, and that his or her execution of the Agreement is valid and binding as to that Settling Defendant. Each Settling Defendant represents and warrants that it has all requisite power to execute, bind, deliver, and perform this Agreement on behalf of that Settling Defendant and that this Agreement has been duly and validly executed and delivered by the Settling Defendant's corporate representative. Each Settling Defendant further warrants that it will not challenge or contest the validity of this Agreement and that it forever waives any defense to its validity, including any defense based on any claim the Agreement is *ultra vires*, or otherwise void.

31. If any term, provision, right or duty of this Agreement is nevertheless deemed void, voidable, unlawful or unenforceable, the remaining portions of this Agreement shall not be invalidated and shall remain in full force and effect. To this end, the provisions of this Agreement are declared to be severable. Furthermore, because the purpose of this settlement is to buy peace and to end the Litigation forever, the Parties agree, covenant and warrant that, should it develop that there are any defects or omissions, whether legal or factual and whether mutual or unilateral, which cause this document to be defective or which cause the release of the Released Parties to be defective or less than full and complete, they will execute any and all

instruments and do any and all things necessary to effectuate a full, final and complete release of the Released Parties for the Released Claims in exchange for full payment by the Released Parties of the consideration specified herein.

32. To the extent any documents are required to be executed by any of the Parties to this Agreement to effectuate this Agreement, each Party agrees to execute and deliver such other and further documents as may be required to carry out the terms of this Agreement.

33. As used in this Agreement, the singular shall include the plural, and the masculine shall include the feminine and neuter genders.

34. Time is of the essence for each and every provision of this Agreement.

35. The Parties shall use their respective good faith efforts to comply with their obligations under this Agreement.

36. No failure on the part of any Party to this Agreement to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies in this Agreement provided are cumulative and not exclusive of any remedies provided by law.

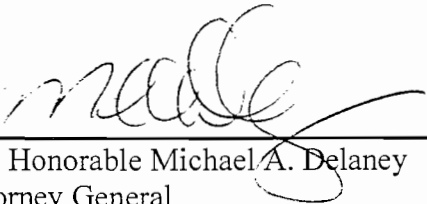
37. The Parties to this Agreement agree that it was negotiated fairly between them at arms' length and that the final terms of this Agreement shall be deemed to have been jointly and equally drafted by them, and that the provisions of this Agreement therefore should not be construed against a Party to it on the grounds that the Party drafted or was more responsible for drafting the provision(s).

38. This Agreement may be executed in one or more counterparts. All counterparts will constitute one instrument binding on the signatories upon execution of one or more

counterparts by all Parties. Counsel for any Party shall be authorized to assemble a composite counterpart which shall consist of one copy of each page, except the signature pages, together with multiple counterpart signature pages executed on behalf of each Party to this Agreement. The composite counterpart may then be used by any Party for all purposes as the complete signed and executed Agreement between the Parties. A facsimile signature (including a signature transmitted as a .tif or .pdf image) shall be sufficient to bind the signing Party.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement and
Release as of the date stated above.

STATE OF NEW HAMPSHIRE

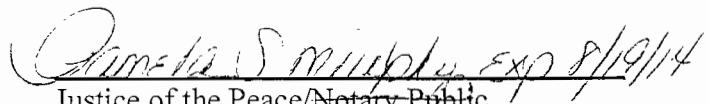
By: 

The Honorable Michael A. Delaney
Attorney General

STATE OF NEW HAMPSHIRE

COUNTY OF Merrimack

On this 24th day of October 2012, before me personally appeared Michael
A. Delaney, to me known to be the person described herein, and who executed the foregoing
instrument, and he acknowledged that he voluntarily executed the same in his capacity as
Attorney General of the State of New Hampshire.



Justice of the Peace/Notary Public

MOTIVA ENTERPRISES, LLC

By: Robert W. Pease
Robert W. Pease
President and Chief Executive Officer
Motiva Enterprises, LLC

STATE OF Texas


COUNTY OF Harris

On this 11 day of October 2012, before me personally appeared
Robert W. Pease, to me known to be the person described
herein, and who executed the foregoing instrument, and he acknowledged that he voluntarily
executed the same in his capacity as corporate representative.



Linda C. Durant
Notary Public

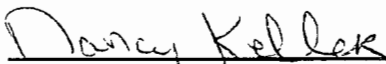
SHELL OIL COMPANY

By: 
Lisa A. Davis
Agent and Attorney-in-Fact
Shell Oil Company

STATE OF Texas


COUNTY OF HARRIS

On this 15 day of October 2012, before me personally appeared
Lisa A. Davis, to me known to be the person described
herein, and who executed the foregoing instrument, and he acknowledged that he voluntarily
executed the same in his capacity as corporate representative.


Notary Public



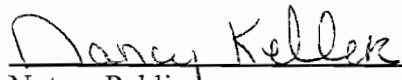
TMR COMPANY

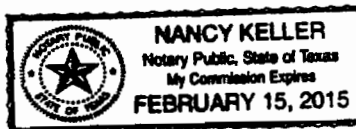
By: 
Lisa A. Davis
President
TMR Company

STATE OF Texas

COUNTY OF HARRIS

On this 15 day of October 2012, before me personally appeared
Lisa A. Davis, to me known to be the person described
herein, and who executed the foregoing instrument, and he acknowledged that he voluntarily
executed the same in his capacity as corporate representative.


Notary Public



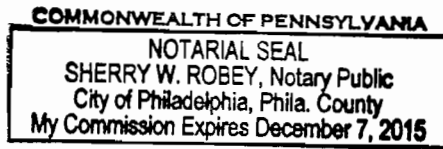
SUNOCO, INC. (R&M)

By: Stacy L. Fox

STATE OF Pennsylvania
COUNTY OF PHILADELPHIA

On this 27 day of September 2012, before me personally appeared
Stacy L. Fox, to me known to be the person described
herein, and who executed the foregoing instrument, and he acknowledged that he voluntarily
executed the same in his capacity as corporate representative.

Sherry W. Robey
Notary Public



Settlement Agreement and Release Among the
State of New Hampshire, the Shell Defendants and Sunoco
dated as of September 28, 2012

EXHIBIT A [Dismissal Papers]

