

NJDEPE under ISRA necessary for the consummation of the Closing shall have been obtained.

Section 10.3 No Injunction. At the Closing Date, there shall be no law, rule and regulation, injunction, restraining order, judgment or decree of any nature of any court or Government Authority of competent jurisdiction that is in effect, no litigation or proceeding brought by a Government Authority shall be pending, and no litigation or proceeding shall be threatened by a Government Authority, which in any case: (i) restrains or prohibits, or seeks to restrain or prohibit the consummation of the Asset Purchase or (ii) conditions or seeks to condition the consummation of the Asset Purchase on the matters referred to in clauses (i) or (ii) of the last paragraph of Section 5.2(a).

ARTICLE XI

Survival: Indemnification

Section 11.1 In General. (a) This Article XI shall not apply to any Covered Liabilities arising under Environmental Laws (including Assumed Liabilities and Retained Liabilities referred to in Article VIII, Whitman Indemnifiable Retained Environmental Liabilities and Retained Off-Site Environmental Liabilities) or the representations, warranties, covenants and agreements in Article VIII, it being understood that the provisions of Article VIII shall be the sole and exclusive provisions of this Agreement applicable to such matters, except as otherwise expressly provided in this Agreement.

(b) Any payment made pursuant to this Article XI shall be treated by Seller and Buyer as an adjustment to the Purchase Price and Seller and Buyer agree, and Buyer agrees to cause the Canadian Subsidiary, not to take any position inconsistent therewith for any purpose.

(c) After the Closing, the indemnifications expressly provided in this Agreement shall be the exclusive remedy for any breach of any representation, warranty, covenant or agreement in this Agreement, the Other Seller Agreements and the Other Buyer Agreements by either party.

(d) Each indemnitee under this Article XI shall use its reasonable efforts to mitigate losses for which it seeks indemnification hereunder.

Section 11.2 Survival: Limits on Indemnification

(a) Subject to Sections 7.7, 8.3 and 11.1(a), all representations and warranties of the parties contained in this Agreement or in any Schedule hereto, or any certificate, document or