

"Pre-Closing Environmental Liabilities and Costs" shall mean all Covered Liabilities (including Whitman Indemnified Liabilities) arising under Environmental Laws as in effect on the Closing Date, whether direct or indirect, known or unknown, joint or several, current or potential, past, present or future, whenever arising (including after Closing) (including (x) all Covered Liabilities related to Remedial Actions and (y) all fees, costs of procuring financial assurance (but not any bond, insurance policy, guarantee or other instrument of financial assurance itself, subject to Buyer's rights to indemnification for payments under such instruments pursuant to this Article VIII; provided, however, that Seller may, to the extent permitted by law, provide its own guarantee or assurance in lieu of that required from Buyer), penalties, capital costs, operating and maintenance costs, disbursements and expenses of counsel, experts, contractors and consultants) based on, arising out of or otherwise in respect of the Assets, the Business, or property owned, operated, used or leased by the Division (including off-site locations) at any time prior to the Closing to the extent arising out of: (i) conditions or Hazardous Substances existing on or originating from any such property or the Assets at any time prior to the Closing or the operation of the Business at any time prior to the Closing and as to which Remedial Actions would have been required as of the Closing Date by Environmental Laws as in effect on or prior to the Closing Date; or (ii) noncompliance on or prior to the Closing Date with any requirements of Environmental Laws as in effect on or prior to the Closing Date (including liabilities under common law to third parties to the extent arising out of conditions or Hazardous Substances existing on or originating from any such property or the Assets at any time prior to the Closing or the operation of the Business at any time prior to the Closing); provided, however, that Pre-Closing Environmental Liabilities and Costs shall exclude (i) all product liability matters (which shall not include liability for waste disposal of products by Seller), (ii) all Covered Liabilities relating to death, personal injury or property damage due to the presence of asbestos in products (other than waste disposal of products by Seller) and (iii) all Covered Liabilities relating to or arising from the removal or remediation of asbestos in buildings and building interiors.

"Release" shall have the meaning as defined in CERCLA or the Resource Conservation and Recovery Act.

"Remedial Action" shall mean such actions as are required by Environmental Laws, by Government Authority pursuant to Environmental Laws, or otherwise taken as necessary to comply with Environmental Laws, to (i) clean up, remove, contain, treat or in any other way address or remediate any Hazardous Substances in the Environment; (ii) prevent the dispersal of Hazardous Substances in the Environment so that they do not