

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re: : Chapter 11
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EASTMAN KODAK COMPANY, *et al.*,¹ : Case No. 12-10202 (ALG)
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Debtors. : (Jointly Administered)
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**UNITED STATES OF AMERICA’S STATEMENT IN
RESPONSE TO DEBTORS’ MOTION FOR AN ORDER
APPROVING AND AUTHORIZING THE DEBTORS’ ENTRY INTO
THE EASTMAN BUSINESS PARK SETTLEMENT AGREEMENT
(Docket Entry 4100)**

1. The United States of America (the “United States”) files this Statement with respect to Debtors’ Motion for an Order Pursuant to Bankruptcy Rule 9019 and Section 363 of the Bankruptcy Code Approving and Authorizing the Debtors’ Entry into the Eastman Business Park Settlement Agreement, docket entry 4100 (the “Motion”). The Motion seeks the Court’s approval pursuant to Bankruptcy Rule 9019 and Section 363 of the Bankruptcy Code of a settlement dated as of June 17, 2013, between the Debtors, the New York State Department of Environmental Conservation (“DEC”), and the New York State Urban Development Corporation d/b/a Empire State Development Corporation (the “EBP Settlement Agreement”).

2. Pursuant to paragraph 3.2(e) of the EBP Settlement Agreement, it is a condition precedent to the implementation of the EBP Settlement Agreement that “unless otherwise waived

¹The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Eastman Kodak Company (7150); Creo Manufacturing America LLC (4412); Eastman Kodak International Capital Company, Inc. (2341); Far East Development Ltd. (2300); FPC Inc. (9183); Kodak (Near East), Inc. (7936); Kodak Americas, Ltd. (6256); Kodak Aviation Leasing LLC (5224); Kodak Imaging Network, Inc. (4107); Kodak Philippines, Ltd. (7862); Kodak Portuguesa Limited (9171); Kodak Realty, Inc. (2045); Laser-Pacific Media Corporation (4617); NPEC Inc. (5677); Pakon, Inc. (3462); and Qualex Inc. (6019).



by Kodak, the United States shall have delivered a covenant not to sue and contribution protection pursuant to applicable federal environmental law, including without limitation [the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.* (“RCRA”)] and Section 113(f)(2) of [the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.* (“CERCLA”)] concerning liabilities or potential liabilities to the United States associated with the Park or historical discharges from the Park to the Genesee River (such condition to implementation the ‘US Covenant Condition’).”

3. The United States does not intend to provide the covenant not to sue or the contribution protection contemplated in paragraph 3.2(e) of the EBP Settlement Agreement because: (i) there has not been sufficient characterization of the nature and extent of contamination to provide a basis for confidence that the \$49 million allocated to EBP Environmental Response Actions through the EBP Settlement Agreement will be sufficient. It has been EPA’s experience that sites of this size and complexity, especially ones that include river sediment contamination, can be very costly; and (ii) the United States has significant concerns about the consequences of forgoing its authorities to ensure compliance with RCRA’s closure, post-closure, corrective action, and financial assurance requirements, as well as other remedies under the environmental laws, in the event that the cleanup of all existing contamination is incomplete at the Eastman Business Park and in or near the Genesee River.

4. Further, the United States has concerns that the EBP Settlement Agreement contemplates the issuance by DEC of one or more permits that would not include corrective action requirements for the existing contamination, notwithstanding Section 3004(u) of RCRA, 42 U.S.C. § 6924(u), which provides that a State permit shall require “corrective action for all releases of hazardous waste or constituents from any solid waste management unit at a treatment, storage, or disposal facility seeking a permit under this subchapter, regardless of the time at

which waste was placed in such unit,” and Section 3004(v) of RCRA, 42 U.S.C. § 6924(v), which requires corrective action beyond the facility boundary. These corrective action permit requirements are a central part of the RCRA program. The United States is in the process of conferring with DEC regarding the specific permits DEC is considering issuing for public comment. The United States hereby advises interested parties that under applicable law, including but not limited to 40 CFR § 271.19, the United States has the authority to comment on any draft permits issued by DEC, terminate a State-issued permit, and/or take other actions authorized by law, including enforcement actions, with regard to the Eastman Business Park, the Genesee River and any other nearby contamination.²

Dated: July 16, 2013
New York, New York

PREET BHARARA
*United States Attorney for the
Southern District of New York*

By: /s/ Christine S. Poscablo
ROBERT WILLIAM YALEN
CHRISTINE S. POSCABLO
Assistant U.S. Attorneys
86 Chambers Street, 3rd Floor
New York, New York 10007
Telephone: (212) 637-2722/2674
Facsimile: (212) 637-2702/2750

² Additionally, the United States notes that it has negotiated with Kodak, DEC, and the Empire State Development Corporation additional language to be included in the proposed approval order reserving rights of the United States and clarifying the treatment under the EBP Settlement Agreement of the overlapping federal and state natural resource damages claims. The United States reserves the right to supplement this Statement in the event that such language is not submitted.