

**DISTRIBUTION PROTOCOL**  
**IN THE MATTER OF THE HYDROGEN PEROXIDE**  
**CLASS ACTION LITIGATION**

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## GENERAL PRINCIPLES OF THE ADMINISTRATION

1. The procedures set forth herein are intended to govern the administration of the settlement agreement (the “*Settlement Agreement*”) entered into with FMC Corporation and FMC of Canada, Ltd. on September 27, 2018 (the “*Second Distribution*”).
2. A previous distribution (the “*First Distribution*”) occurred in relation to the monies obtained as a result of the following settlements:
  - (a) Solvay Chemicals Inc. and Solvay S.A. (“*Solvay*”), dated May 1, 2008;
  - (b) Evonik Degussa Corporation formerly Degussa Corporation, Evonik Degussa GmbH formerly Degussa A.G. and Evonik Degussa Canada Inc. formerly Degussa Canada Inc. (“*Degussa*”), dated June 12, 2008;
  - (c) Eka Chemicals, Inc., Eka Chemicals Canada Inc. and AkzoNobel Chemicals International B.V. (“*Eka*”), dated July 24, 2008; and
  - (d) Kemira OYJ and Kemira Chemicals Canada Inc. (“*Kemira*”), dated November 3, 2008.
3. The action was also settled with Atofina Chemicals Inc., Arkema Inc., Arkema Canada Inc., and, Arkema S.A. (“*Arkema*”) on May 31, 2011. The court approved the use of monies obtained as a result of that settlement for expense reimbursement.
4. The administration shall:
  - (a) implement and conform to the Settlement Agreement, orders of the Ontario Court, and this Distribution Protocol;
  - (b) include the establishment and maintenance of the Settlement Website;
  - (c) rely on sales information provided by the Defendants wherever possible; and
  - (d) be bilingual in all respects.
5. Class Members are entitled to rely on Hydrogen Peroxide Purchases recognized and/or approved by the Claims Administrator in the First Distribution as adjusted to account for the

revised Class Period. Class Members are further entitled to rely on the Hydrogen Peroxide Purchases data previously provided by FMC in the course of the litigation.

6. Class Members seeking compensation must disclose and give credit for any compensation received through other proceedings such as the U.S. Litigation or private out-of-class settlements in relation to their Hydrogen Peroxide Purchases, unless such compensation was previously disclosed to the Claims Administrator in the First Distribution.
7. Class Members will not be compensated in relation to Hydrogen Peroxide manufactured by a non-Defendant.
8. Excluded Persons are not entitled to the payment of settlement benefits under this Distribution Protocol.

## **DEFINITIONS**

9. The definitions set out in the Settlement Agreement apply to and are incorporated herein. Where a term is defined in both the Settlement Agreement and in this Distribution Protocol, the definition in this Distribution Protocol shall govern.
10. For the purpose of this Distribution Protocol, the following definitions apply:
  - (a) ***Claim*** means the paper or electronic claim form sent to a Class Member setting out their Previously Established Purchases and/or FMC Established Purchases, if applicable, or the electronic form available on the Settlement Website.
  - (b) ***Claimant*** means Previous Claimants and New Claimants.
  - (c) ***Claims Administrator*** means the firm appointed by the Ontario Court to administer the Settlement Amount in accordance with the provisions of the Settlement Agreement and the Distribution Protocol, and any employees of such firm.
  - (d) ***Claims Filing Deadline*** means the date by which Claims and any required supporting documentation must be postmarked in order for New Claimants to be eligible to receive compensation or for Previous Claimants to file a claim for supplemental

Hydrogen Peroxide Purchases, which date shall be 90 (ninety) days after the first publication of the notice advising Class Members of the claims process.

- (e) **Direct Purchaser** means a person or entity in Canada, other than a Distributor, who purchased Hydrogen Peroxide directly from a Defendant.
- (f) **Distributor** means a person or entity in Canada who purchased Hydrogen Peroxide from a Defendant and resold the Hydrogen Peroxide without further processing or including it in any other product.
- (g) **Decision Notice** shall have the meaning attributed to it in paragraph 31.
- (h) **Defendants** means FMC, Solvay, Degussa, Eka, Arkema, and Kemira.
- (i) **Fabricator** means a person or entity in Canada, who purchased Hydrogen Peroxide directly from a Distributor, and manufactured products that contain Hydrogen Peroxide and/or products the production of which involved the use of Hydrogen Peroxide.
- (j) **First Distribution** has the meaning attributed to it in paragraph 2.
- (k) **FMC** means FMC Corporation and FMC of Canada, Ltd.
- (l) **FMC Established Purchases** means a Class Member's FMC Hydrogen Peroxide Purchases made during the Class Period as determined by the Claims Administrator from the data produced by FMC pursuant to its discovery obligations after the First Distribution.
- (m) **Hydrogen Peroxide Purchases** means eligible purchases of Hydrogen Peroxide made by a particular Class Member during the Class Period.
- (n) **New Claimants** means Class Members who were not issued payments under the First Distribution, but are eligible for payments under the Second Distribution.
- (o) **Net Settlement Amount** means the Settlement Amount recovered pursuant to the Settlement Agreement plus accrued interest, less:

- (i) approved Class Counsel Fees, including any costs award and disbursements;
  - (ii) administrative expenses;
  - (iii) taxes accruable with respect to the income earned on the settlement funds prior to distribution (including interest and penalties); and
  - (iv) any other deductions approved by the Ontario Court.
- (p) ***Notional Entitlement*** means the total value assigned to Class Member's Hydrogen Peroxide Purchase by the Claims Administrator, in accordance with this Distribution Protocol.
- (q) ***Previous Claimants*** means Class Members who were issued payments under the First Distribution.
- (r) ***Previously Established Purchases*** means a Class Members' Hydrogen Peroxide Purchases from Solvay, Degussa, Eka and Kemira processed by the Claims Administrator for the First Distribution from the data provided by those Defendants and/or claims made by Class Members in the First Distribution that were approved by the Claims Administrator, both as adjusted to account for the revised Class Period.
- (s) ***Second Distribution*** has the meaning attributed to it in paragraph 1.
- (t) ***Settlement Website*** means the website maintained by or on behalf of the Claims Administrator for the purposes of providing Class Members with information on the status of the litigation, Settlement Agreements, the Distribution Protocol, and the claims process: <http://www.hydrogenperoxideclassaction.ca/>.
- (u) ***U.S. Litigation*** means the class action proceeding in the United States District Court for the Eastern District of Pennsylvania, under the caption *In re Hydrogen Peroxide Antitrust Litigation*, 05-MDI-1682.

## **AVAILABLE SETTLEMENT BENEFITS**

11. The Net Settlement Amount will be available to provide settlement benefits to eligible Class Members pursuant to this Distribution Protocol.
12. In consultation with Class Counsel, the Claims Administrator can seek directions from the Ontario Court with respect to the distribution of Net Settlement Amount to ensure a fair and cost effective distribution of the Net Settlement Amount.

## **Notional Entitlement**

13. Class Members' Notional Entitlement will be calculated based on the following values for Hydrogen Peroxide Purchases:
  - (a) Direct Purchaser purchases will be valued at 100% of eligible Hydrogen Peroxide Purchases;
  - (b) Fabricator purchases will be valued at 90% of eligible Hydrogen Peroxide Purchases; and
  - (c) Distributor purchases will be valued at 10% of eligible Hydrogen Peroxide Purchases.

## **Distribution of the Net Settlement Amount to Class Members**

14. The Net Settlement Amount will be distributed to qualifying Class Members *pro rata* (proportionally) based on the value of the qualifying Class Member's Notional Entitlement as against the value of all qualifying Class Members' Notional Entitlement.

## **THE CLAIMS PROCESS**

### **The claims process for Previous Claimants**

15. For each Previous Claimant, the Claims Administrator shall take reasonable steps to verify and/or obtain: (i) their contact information and (ii) a positive affirmation that they will accept payment, via cheque or otherwise, of their share of the Net Settlement Funds in accordance with this Distribution Protocol. If the Claims Administrator is able to verify and/or obtain the information, then the procedure for Previous Claimants at paragraphs 16 to 17 applies. If, after reasonable efforts, the Claims Administrator is unable to verify and/or obtain this

information, then the Previous Claimant will be required to file a claim in accordance with the procedure for New Claimants and supplemental claims at paragraphs 18 to 20.

16. For Previous Claimants, the Claims Administrator shall, by mail, email or fax, send each a Claim that sets out their Previously Established Purchases and/or FMC Established Purchases. Previous Claimants will be deemed to accept their Previously Established Purchases. Previous Claimants may supplement their FMC Established Purchases by providing proof of additional FMC Hydrogen Peroxide Purchases in accordance with the procedure outlined in paragraph 20. If no application for supplemental FMC Hydrogen Peroxide Purchases is received from a Previous Claimant by the Claims Filing Deadline, then the Previous Claimant shall be deemed to have accepted their FMC Established Purchases set out in the Claim.
17. Pursuant to paragraphs 21 to 24, Previous Claimants shall be required to provide a declaration to the Claims Administrator informing them of any settlement benefit obtained in the U.S. Litigation and/or any private settlement with a Defendant(s) unless previously disclosed in the First Distribution. The Claim sent to Previous Claimants shall notify them of this obligation.

**The claims process for New Claimants and supplemental claims**

18. For New Claimants identified from data previously provided by the Defendants, the Claims Administrator shall send them by mail, email or fax a Claim setting out their Previously Established Purchases and/or FMC Established Purchases. New Claimants will be entitled to rely on the Previously Established Purchases and/or FMC Established Purchases in the Claim sent to them as *prima facie* proof of their purchases. New Claimants may supplement their Previously Established Purchases and/or FMC Established Purchases by providing proof of additional Hydrogen Peroxide Purchases in accordance with the procedure outlined in paragraph 20.
19. In order for a New Claimant to apply for a settlement benefit, before the Claims Filing Deadline they must:

- (a) submit a completed claim form to the Claims Administrator, including any information required by paragraph 20 to make a supplement claim in addition to their Previously Established Purchases and/or FMC Established Purchases; and
  - (b) in accordance with paragraphs 21 to 24, disclose whether they have received compensation for any Hydrogen Peroxide Purchases included in the U.S. Litigation or have received compensation or released any claim they had against a Defendant(s) pursuant to a private settlement.
20. For a New Claimant not identified from data provided by the Defendants to make a claim, for New Claimants to supplement their Previously Established Purchases and/or FMC Established Purchases, or for Previous Claimants to supplement their FMC Established Purchases, before the Claims Filing Deadline they must submit to the Claims Administrator:
- (a) a declaration of the dollar value of the Hydrogen Peroxide purchases corresponding to each Defendant, as applicable, during the Class Period;
  - (b) proof of the Claimant's Hydrogen Peroxide purchases:
    - (i) objective proof of purchase confirming the Hydrogen Peroxide Purchases, including invoices, receipts, delivery or packing slips, purchase records, historical accounting records, credit card statements, bank statements, cancelled cheques, wire transfer confirmations, or comparable verification; or
    - (ii) if objective proof cannot be provided in accordance with 20(b)(i), other proof, such as the extrapolation from other purchases, may be provided as may be acceptable to the Claims Administrator. Such proof must be accompanied by a sworn affidavit stating steps taken to obtain proof of purchase.
  - (c) in accordance with paragraphs 21 to 24, identify whether they have received compensation for any Hydrogen Peroxide Purchases included in the U.S. Litigation or have received compensation or released any claim they had against a Defendant(s) pursuant to a private settlement.

**Deductions for claims made in the U.S. Litigation and Private Settlements**

21. Class Members who filed a claim in the U.S. Litigation must provide the Claims Administrator with the following information: the amount of their Hydrogen Peroxide Purchases claimed in the U.S. Litigation, compensation they received via the U.S. Litigation, and any correspondence they had with the administrator of settlement in the U.S. Litigation. Such Class Members shall be required to provide their authorization for the Claims Administrator to contact the administrator of the settlement in the U.S. Litigation to confirm the information provided.
22. Class Members who entered into a private settlement with a Defendant(s) relating to the allegations in the litigation must provide the following information: the amount of their Hydrogen Peroxide Purchases that they settled as part of the private settlement, the amount of compensation received, and any release given. Such Class Members must provide written authorization to the Claims Administrator to contact the Defendant(s) to confirm the information provided.
23. The Claims Administrator shall make any appropriate deduction to a Class Members' entitlement for any benefit received from the U.S. Litigation and/or any benefit received or release given pursuant to a private settlement with a Defendant(s).
24. The Claims Administrator shall take reasonable steps to confer with the administrator of the distributions in the U.S. Litigation to determine whether Claims, other than Previously Determined Purchases, were previously compensated in the U.S. Litigation.

**Assistance in Filing a Claim**

25. Class Members can contact the Claims Administrator or Class Counsel, at no charge, with questions about how to complete a Claim.
26. Class Members may utilize third-party claims services, a lawyer of their own choosing, or similar services to file Claims. If a Class Member chooses to use a third-party claims service, a lawyer of their own choosing, or similar services, the Class Members will be responsible for any and all expenses incurred in doing so.

### **Deficiencies**

27. If, during claims processing, the Claims Administrator finds that deficiencies exist in a Class Member's claim or other required information, the Claims Administrator shall notify the Class Member, by email or regular mail, of the deficiencies. The Claims Administrator shall allow the Class Member thirty (30) days from the date of such notice to correct the deficiencies. If the deficiencies are not corrected within the thirty (30) day period, the Claims Administrator may reject the Class Member's claim.
28. A deficiency shall not include missing the Claims Filing Deadline. Subject to the direction of the Ontario Court, the Claims Administrator shall not accept claims post-marked or electronically submitted after the Claims Filing Deadline.

### **Adjustments to Claims Process and Extension of the Claims Filing Deadline**

29. By agreement between the Claims Administrator and Class Counsel, the Claims Filing Deadline may be extended and the Claims Administrator may adjust the claims process. Class Counsel and the Claims Administrator shall agree to extend the Claims Filing Deadline and/or adjust the claims process if, in their opinions, doing so will not adversely affect the fair and efficient administration of the Net Settlement Amount and it is in the best interests of the Class Members to do so.

### **Claims Administrator's Decision**

30. The Claims Administrator shall:
  - (a) decide whether the Class Member is eligible to receive settlement benefits payable out of the Net Settlement Amount in accordance with the Settlement Agreement, orders of the Ontario Court and this Distribution Protocol; and
  - (b) make a determination of the value of the Class Member's Notional Entitlement in respect of which the Class Member is entitled to settlement benefits in accordance with the Settlement Agreement, orders of the Ontario Court and this Distribution Protocol.

31. At its sole discretion, the Claims Administrator, in consultation with Class Counsel, can elect to audit any Class Member's claim and can reject a claim, in whole or in part, where, in the Claims Administrator's view, the Class Member has submitted insufficient or false information or has otherwise engaged in fraudulent conduct.
32. The Claims Administrator shall send to the Class Member, by email or regular mail, a decision made pursuant to paragraphs 30 to 31 if any part of the claim is rejected or re-categorized (the "Decision Notice"). The Claims Administrator shall include in the Decision Notice its grounds for rejecting or re-categorizing all or part of a Class Member's claim.
33. The Claims Administrator's decision will be binding upon the Class Member, subject to the Class Member's right to appeal.

#### **Appeal of the Claims Administrator's Decision**

34. The right to appeal is limited to circumstances where the dispute as to the value of the Notional Entitlement is greater than \$25,000.
35. Appeals must be submitted within thirty (30) days from the date of the Decision Notice.
36. The following grounds shall not be grounds for appeal:
  - (a) the refusal of the Claims Administrator to accept a Class Member's claim postmarked or electronically submitted after the Claims Filing Deadline; or
  - (b) the refusal of the Claims Administrator to accept a Class Member's claim where the Class Member did not declare that the information submitted in the Class Members' claim is true and correct.
37. Appeals will be determined by the Ontario Court or a third party designated by the Ontario Court.
38. Appeals will be on the basis of written submissions, supported by the documentation provided by the Class Member as part of the claims process. Class Members are not permitted to provide any new documentation as part of the appeal. Any new documentation

provided as part of the appeal will not be provided to the Ontario Court or its designee for consideration.

39. The Claims Administrator must provide to the Ontario Court a copy of the documentation provided by the Class Member as a part of the claims process, the Decision Notice, and any other information that might be reasonably useful in the determination of the appeal, and make written submissions to the Ontario Court or its designee as is reasonably necessary.
40. Notwithstanding the foregoing, the Ontario Court or its designee, acting in its sole discretion, can request oral submissions (to be provided via teleconference or videoconference, as requested by the Ontario Court or its designee) from the Class Member and/or Claims Administrator.
41. The decision on the appeal is final and binding and shall not be subject to any further appeal or review whatsoever.

#### **Payment of Claims**

42. As soon as practicable after the claims evaluations and any appeals are completed, the Claims Administrator shall:
  - (a) report to Class Counsel the particulars of the proposed distribution to each eligible Class Member; and
  - (b) make arrangements to pay approved Class Members' claims by cheque.
43. To the extent that the full Net Settlement Amount is not paid out due to uncashed cheques, residual interest or otherwise, such monies shall be paid to Pro Bono Canada if the amount is equal or less than \$20,000. If the amount is above \$20,000, the amount shall be distributed to Class Members, other than those that did not cash their cheques in the first round of payments, on a *pro rata* basis.

## **THE CLAIMS ADMINISTRATOR'S DUTIES AND RESPONSIBILITIES**

### **Supervisory Powers of the Ontario Court**

44. The Claims Administrator shall administer the Settlement Agreements and this Distribution Protocol under the ongoing authority and supervision of the Ontario Court.

### **Investment of Settlement Amounts**

45. The Settlement Amounts shall be held in guaranteed investment vehicle, liquid money market account or equivalent security with a rating equivalent to or better than that of a Canadian Schedule I bank (a bank listed in Schedule I of the *Bank Act*, SC 1991, c 46) held at a Canadian financial institution.

### **Communication, Languages and Translation**

46. Where a Claim is filed by a third-party claims agent or lawyer on behalf of a Class Member, unless the Class Member requests otherwise, all communications shall be made to the third-party claims agent or lawyer.
47. The Claims Administrator shall establish a toll-free number for calls from Canada.
48. The Claims Administrator shall dedicate sufficient personnel to respond to Class Members' inquiries in English or French, as the Class Member elects.
49. All written communications from the Claims Administrator to a Class Member shall be transmitted via email if an email address has been provided, or if an email address has not been provided, by regular mail.

### **Undeliverable Mail**

50. The Claims Administrator shall not be obligated but has the discretion to locate Class Members for any mailing returned to the Claims Administrator as undeliverable.
51. The Claims Administrator shall have the discretion, but is not required, to reissue payments to Class Members returned as undeliverable under such policies and procedures as the Claims Administrator deems appropriate. Any costs associated with locating current address

information for a Class Member shall be deducted from that Class Member's settlement benefits.

52. Where a Class Member who is entitled to payment of greater than \$20 requests a cheque be reissued, \$15 shall be deducted from that Class Member's settlement benefits representing the costs of reissuing payment. Subject to the sole discretion of the Claims Administrator, payments for \$20 or less will not be reissued.

### **Fraudulent Claims**

53. The Claims Administrator shall develop and implement processes to detect possible fraudulent conduct, including monitoring claims for unusual activity and multiple claims being filed from the same address.

### **Taxes**

54. The Claims Administrator shall take all reasonable steps to minimize the imposition of taxes upon the Net Settlement Amount and shall pay any taxes imposed on such monies out of the Net Settlement Amount.

### **Reporting**

55. The Claims Administrator shall provide regular reports to Class Counsel regarding the administration.
56. The Claims Administrator shall provide any reports requested by the Ontario Court.

### **Preservation and Disposition of Claim Submissions**

57. The Claims Administrator shall preserve, in hard copy or electronic form, as the Claims Administrator deems appropriate, the submissions of a Class Member to the Claims Administrator, until two (2) years after all settlement monies or court awards have been paid out to Class Members, and at such time shall destroy the submissions by shredding, deleting, or such other means as will render the materials permanently illegible.

### **Assistance to Claims Administrator**

58. The Claims Administrator shall have the discretion to enter into such contracts and obtain financial, accounting, and other expert assistance as are reasonably necessary in the implementation of the Settlement Agreement and this Distribution Protocol, provided that related expenses are paid out of the Claims Administrator's fees or approved by the Ontario Court in advance.

### **Confidentiality**

59. All information received from the Defendants or the Class Members is collected, used, and retained by the Claims Administrator pursuant to the *Personal Information Protection and Electronic Documents Act*, SC 2000 c 5 for the purposes of administering the Settlement Agreements, including evaluating the Class Members' eligibility status under the Settlement Agreements. The information provided by the Class Members is strictly private and confidential and will not be disclosed without the express written consent of the Class Members, except in accordance with the Settlement Agreements, orders of the Ontario Court and/or this Distribution Protocol.