



U.S. Department of Justice

*DAVID J. FREED*  
*United States Attorney*  
*Middle District of Pennsylvania*

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*Please respond to: Scranton*

September 21, 2020

Mark A. Fiorilli, Esquire  
Spilman Thomas & Battle, PLLC  
One Oxford Centre, Suite 3440  
301 Grant Street  
Pittsburgh, PA 15219

Re: *Select Energy Services, Inc., successor in interest to*  
*Rockwater Energy Solutions, Inc.*

Dear Mr. Fiorilli:

The United States Attorney's Office for the Middle District of Pennsylvania ("USAO-MDPA") and Select Energy Services, Inc., successor in interest to Rockwater Energy Solutions, Inc. ("Select Energy" or the "Company"), by its undersigned representatives, pursuant to authority granted by the Company's governing agreement, enter into this Non-Prosecution Agreement (the "Agreement") and agree to the terms and conditions set forth below.

(1) USAO-MDPA enters into this Agreement based on the individual facts and circumstances presented by this case and the Company, including:

(a) The Company has received credit for its cooperation with USAO-MDPA's investigation, because the Company identified relevant facts that allowed USAO-MDPA to conduct the remaining investigation in an efficient manner. The Company's cooperation included providing records, facilitating interviews with witnesses, and disclosing information to USAO-MDPA about current and former employees and conduct occurring in other jurisdictions.

(b) The Company has engaged in remedial measures, including by identifying and repairing or salvaging commercial diesel vehicles bearing modified emissions systems. The Company also entered a Stipulation of Admission whereby it admitted that the emission systems on those commercial diesel vehicles were modified from their original factory condition. The Company further agreed to implement annual audits by an independent auditor, provide USAO-MDPA with access to and reports by that independent auditor, and certify compliance with the Clean Air Act and its implementing regulations, as set forth in the Compliance Program at Attachment B.

(c) The nature and seriousness of the conduct, including that certain employees of the Company and its subsidiaries modified and tampered with and caused to be modified and tampered with emissions systems in commercial diesel vehicles owned by the Company and its subsidiaries, in multiple jurisdictions.

(d) The Company has no prior criminal history.

(e) The potential collateral consequences of a conviction, including to employees and shareholders of the Company and its subsidiaries, who are not culpable for any misconduct.

(f) The Company's subsidiary, Rockwater Northeast LLC, has agreed to plead guilty to criminal violations of the Clean Air Act. Moreover, four current and former employees of Rockwater Northeast LLC, and two third party vendors of Rockwater

Northeast LLC have pleaded guilty to conspiring to violate the Clean Air Act and to impede the lawful functions of the Environmental Protection Agency and Department of Transportation.

(g) The Company has agreed to continue to cooperate with USAO-MDPA in any investigation of the conduct of employees and former employees of the Company and its subsidiaries, and others in the industry, for potential violations of the Clean Air Act.

(2) The Company admits, accepts, and acknowledges that the facts set forth in the Statement of Facts at Attachment A are true and accurate. While the Company does not acknowledge criminal liability for the conduct described therein, the Company recognizes and acknowledges that the facts described in the attached Statement of Facts reference the actions taken by current and former employees of the Company and its subsidiaries that constitute violations of federal law, specifically violations of the Clean Air Act, pursuant to Title 42, United States Code, Section 7413(c)(2)(C). The Company does not condone the conduct set forth in the Statement of Facts, and has taken steps to prevent such conduct from occurring in the future, including the implementation of the Compliance Program set forth in Attachment B.

(3) The Company expressly agrees that it shall not, through present or future attorneys, officers, directors, employees, agents, or any other person authorized to speak for the Company, make any public statement, in litigation or otherwise, contradicting the acceptance of responsibility set forth above or in the facts described in the attached Statement of Facts. The Company agrees that if it, or any of its subsidiaries, issues a press release or holds a press conference in connection with this Agreement, the Company shall first consult with the USAO-MDPA to determine (a) whether the text of the release or proposed statements at the press conference are true and accurate with respect to matters between the USAO-MDPA and the Company, and (b) whether the USAO-MDPA has any objection to the release. The parties agree to attempt to resolve any dispute in good faith, but absent resolution, any dispute shall be decided by the USAO-MDPA in its sole

reasonable discretion. If the United States determines that a public statement by any such person contradicts in whole or in part information contained in the Statement of Facts, the United States shall so notify the Company, and the Company may avoid a breach of this Agreement by publicly repudiating such statement within five business days after notification. The Company shall be permitted to raise defenses and to assert affirmative claims in other proceedings relating to the matters set forth in the Statement of Facts, provided that such defenses and claims do not contradict, in whole or in part, a statement contained in the Statement of Facts. This provision of the Agreement does not extend to any releases or disclosures required by the Company pursuant to its regulatory obligations, including but not limited to with the Securities and Exchange Commission.

(4) The Company's obligations under this Agreement shall have a term of three years from the date on which the Agreement is fully executed (the "Term"). The Company agrees, however, that in the event USAO-MDPA determines, in its sole reasonable discretion and subject to the notice and opportunity to respond provisions in Paragraph 12, that the Company has knowingly violated any provision of this Agreement or has failed to completely perform or fulfill each of the Company's obligations under this Agreement, an extension or extensions of the Term may be imposed by USAO-MDPA, in its sole reasonable discretion, for up to a total additional time period of one year, without prejudice to USAO-MDPA's right to proceed as provided in the breach provisions set forth in Paragraph 13. Any extension of the Agreement extends all terms of this Agreement. Conversely, in the event the USAO-MDPA finds, in its sole reasonable discretion, that the provisions of this Agreement have been satisfied, the Term may be concluded early.

(5) The Company agrees that an express condition of this Agreement is that the Company's predecessor's subsidiary, Rockwater Northeast LLC, plead guilty to a criminal Information charging it with violations of the Clean Air Act. The failure of Rockwater Northeast LLC to plead guilty to that Information will be grounds for breach of this Agreement.



(6) The Company shall cooperate fully with USAO-MDPA in any and all matters relating to the conduct described in this Agreement and the attached Statement of Facts and other related conduct under investigation by USAO-MDPA or any other component of the Department of Justice involving investigations of violations of the Clean Air Act, at any time during the Term until the later of the date upon which all investigations and prosecutions arising out of such conduct are concluded, or the Term. At the request of USAO-MDPA, the Company shall also cooperate fully with other domestic or foreign law enforcement and regulatory authorities and agencies in any investigation of the Company, its subsidiaries, directors, officers, employees, shareholders, agents, consultants, contractors, or any other party, in any and all matters relating to the conduct described in this Agreement and the attached Statement of Facts. The Company agrees that its cooperation shall include, but not be limited to, the following:

(a) The Company shall truthfully disclose all factual information not protected by a valid claim of attorney-client privilege or attorney work product doctrine with respect to its and its subsidiaries' activities, and those of their present and former directors, officers, employees, shareholders, agents, consultants, and contractors including any evidence or allegations and internal or external investigations, about which the Company has any knowledge or about which USAO-MDPA may inquire, which are related to this Agreement and the attached Statement of Facts. This obligation of truthful disclosure includes, but is not limited to, the obligation of the Company to provide to USAO-MDPA, upon request, any document, record or other tangible evidence about which USAO-MDPA may inquire of the Company, and which is related to this Agreement and the attached Statement of Facts.

(b) Upon request of USAO-MDPA, the Company shall designate knowledgeable employees, agents, or attorneys to provide to USAO-MDPA the information and materials described above on behalf of the Company. It is further understood that the Company must at all times provide complete, truthful, and accurate information.

(c) The Company shall use its best efforts to make available for interviews or testimony, as requested by USAO-MDPA, present or former officers, directors, employees, agents, and consultants of the Company, for matters related to this Agreement and the attached Statement of Facts. This obligation includes, but is not limited to, sworn testimony before a federal grand jury or in federal trials, as well as interviews with domestic or foreign law enforcement and regulatory authorities. Cooperation shall include identification of witnesses who, to the knowledge of the Company, may have material information regarding the matters under investigation.

(d) With respect to any information, testimony, documents, records or other tangible evidence provided to USAO-MDPA pursuant to this Agreement, the Company consents to any and all disclosures, subject to applicable laws and regulations, to other governmental authorities of such materials as USAO-MDPA, in its sole reasonable discretion, shall deem appropriate, if such materials have been requested by those authorities.

(e) During the Term, should the Company learn of any credible evidence or allegation of criminal violations of United States federal law by the Company or by its subsidiaries, directors, officers, employees, shareholders, agents, consultants, or contractors, it shall promptly report such evidence or allegation to USAO-MDPA. Within 30 days after the expiration of the Term, the Company, by a corporate officer, and after conducting a reasonable inquiry within the Company, in good faith reliance on information provided to the corporate officer by third parties within the Company and based on their best information and belief, will certify to USAO-MDPA that the Company has met its disclosure obligations pursuant to this paragraph. The certification will be deemed a material statement and representation by the Company to the executive branch of the United States, for purposes of 18 U.S.C. § 1001, and will be deemed to have been made in the Middle District of Pennsylvania.

(f) If the Company cannot fulfill the cooperation obligations set forth in this Agreement due to any applicable law, regulations, or a valid claim of privilege or protection, the Company will provide a log listing a general description of the information withheld, the applicable law, regulation, privilege, or protection that prevents disclosure of the information requested, and a detailed statement explaining why the applicable law, regulation, privilege, or protection prevents disclosure.

(7) As a result of the conduct set forth in the attached Statement of Facts, the Company agrees to pay a monetary penalty in the amount of \$2,300,000 ("Monetary Penalty") to the United States Treasury. The Monetary Penalty includes disgorgement of \$250,000, the total approximate economic benefit that Rockwater Energy Solutions, Inc., prior to its acquisition by the Company, derived from violations of the Clean Air Act described in the attached Statement of Facts. The Company shall pay the Monetary Penalty, plus any associated transfer fees, in four equal quarterly installments commencing within 10 days of the date on which this Agreement is signed by all parties, and thereafter within 10 days of the commencement of each of the subsequent three quarters pursuant to payment instructions provided by USAO-MDPA. The Company acknowledges that no tax deduction or insurance claim may be sought in connection with this Monetary Penalty. The total amount paid is a final payment and shall not be refunded should USAO-MDPA later determine that the Company has breached this Agreement and commence a prosecution against the Company. Further, nothing in this Agreement shall be deemed an agreement by USAO-MDPA that this amount is the maximum criminal fine or forfeiture that may be imposed in any such prosecution stemming from the Company's breach of this Agreement and USAO-MDPA shall not be precluded in such a prosecution from arguing that the Court should impose a higher fine or forfeiture. USAO-MDPA agrees, however, that in the event of a subsequent breach and prosecution, it will recommend to the Court that the amount paid pursuant to this Agreement be offset against whatever fine or forfeiture the Court shall impose as part of its judgment. The Company understands that such a recommendation would not be binding on the Court.

(8) The Company agrees to implement the Compliance Program set forth in Attachment B.

(9) The Company agrees to cause Rockwater Northeast LLC to publish, in an oil and gas industry trade journal or a trucking journal addressing heavy duty diesel trucks, a statement addressing the nature of the activities committed by employees of the Company and its subsidiaries, the nature of the punishment imposed, both in the prosecution of Rockwater Northeast LLC and the terms of this Agreement, and the steps that the Company will undertake to prevent the recurrence of similar activities. The statement shall be consistent with the attached Statement of Facts, and the Company will affirm its commitment to compliance with the Clean Air Act.

(10) USAO-MDPA agrees, except as provided herein, that it will not bring any criminal case (except for criminal tax violations, as to which USAO-MDPA does not make any agreement) against the Company, excluding the criminal case against the Company's subsidiary, Rockwater Northeast LLC, for any of the conduct described in this Agreement or the attached Statement of Facts. To the extent there is conduct disclosed by the Company that is not described in the preceding sentence, such conduct will not be exempt from prosecution and is not within the scope of or relevant to this Agreement. USAO-MDPA, however, may use any information related to the conduct described in the attached Statement of Facts against the Company: (a) in a prosecution for perjury or obstruction of justice; (b) in a prosecution for making a false statement; or (c) in a prosecution or other proceeding relating to a violation of any provision of Title 26 of the United States Code. This Agreement does not provide any protection against prosecution for any future conduct by the Company or any of its present or former subsidiaries, directors, officers, employees, shareholders, agents, consultants, or contractors.

(11) If, during the Term of this Agreement (a) the Company commits any felony under U.S. federal law; (b) the Company provides in connection with this Agreement deliberately false, incomplete, or misleading information, including in connection with their disclosure of



information about individual culpability; (c) the Company fails to cooperate as set forth in this Agreement; or (d) the Company otherwise fails to completely perform or fulfill its obligations under the Agreement, including the auditing and compliance measures set forth in Attachment B, regardless of whether USAO-MDPA becomes aware of such a breach after the Term is complete, the Company shall thereafter be subject to prosecution for any federal criminal violation of which USAO-MDPA has knowledge, including, but not limited to, the conduct described in the attached Statement of Facts, which may be pursued by USAO-MDPA in any appropriate venue. Determination of whether the Company has breached the Agreement and whether to pursue prosecution of the Company shall be in USAO-MDPA's sole reasonable discretion, subject to the notice and opportunity to respond provisions in Paragraph 12. The Company understands and agrees that the exercise of discretion by USAO-MDPA under this Agreement is not reviewable by any court. Any such prosecution may be premised on information provided by the Company, its subsidiaries, directors, officers, employees, shareholders, agents, consultants, or contractors. Any such prosecution relating to the conduct described in the attached Statement of Facts or relating to conduct known to USAO-MDPA prior to the date on which this Agreement was signed that is not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against the Company, notwithstanding the expiration of the statute of limitations, between the signing of this Agreement and the expiration of the Term plus one year. Thus, by signing this Agreement, the Company agrees that the statute of limitations with respect to any such prosecution that is not time-barred on the date of the signing of this Agreement shall be tolled for the Term plus one year. In addition, the Company agrees that the statute of limitations as to any violation of U.S. federal law that occurs during the Term will be tolled from the date upon which the violation occurs until the earlier of the date upon which USAO-MDPA is made aware of the violation or the duration of the Term plus five years, and that this period shall be excluded from any calculation of time for purposes of the application of the statute of limitations.

(12) In the event USAO-MDPA determines that the Company has breached the material terms of this Agreement, USAO-MDPA agrees to

provide the Company with written notice of such breach prior to instituting any prosecution resulting from such breach. The Company shall have 30 days upon receipt of notice of a breach to respond to USAO-MDPA in writing to explain the nature and circumstances of such breach, to demonstrate that no deliberate breach has occurred, or to the extent applicable, that the breach has been or will be cured within a reasonable time frame, or that USAO-MDPA should, in any event, neither revoke the Agreement nor prosecute the Company, any of which explanation USAO-MDPA shall consider in determining whether to institute a prosecution.

(13) In the event that USAO-MDPA determines that the Company has breached this Agreement: (a) all statements made by or on behalf of the Company to USAO-MDPA (except statements by counsel to the Company or counsel to any current or former director, officer, or employee), including the attached Statement of Facts, and any testimony given by the Company before a grand jury, a court, or any tribunal, or at any legislative hearings, whether prior or subsequent to this Agreement, and any leads derived from such statements or testimony, shall be admissible in evidence in any and all criminal proceedings brought by USAO-MDPA against the Company; and (b) the Company shall not assert any claim under the United States Constitution, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule that any such statements or testimony made by or on behalf of the Company prior or subsequent to this Agreement, or any leads derived therefrom, should be suppressed or are otherwise inadmissible. The decision whether conduct or statements of any current or former director, officer or employee, or any person acting on behalf of, or at the direction of, the Company, will be imputed to the Company for the purpose of determining whether the Company has violated any provision of this Agreement shall be in the sole reasonable discretion of USAO-MDPA.

(14) Except as may otherwise be agreed by the parties in connection with a particular transaction, the Company agrees that in the event it undertakes any change in corporate form during the Term, including if it sells, merges, or transfers business operations that are material to the Company's consolidated operations, or to the operations of any

subsidiary involved in the conduct described in the attached Statement of Facts, as they exist as of the date of this Agreement, whether such change is structured as a sale, asset sale, merger, transfer, or other change in corporate form that has the intent or effect of circumventing or frustrating the enforcement purposes of this agreement, it shall include in any contract for sale, merger, transfer, or other change in corporate form a provision binding the purchaser, or any successor in interest thereto, to the obligations described in this Agreement. The purchaser or successor in interest must also agree in writing that USAO-MDPA's ability to determine whether there has been a breach under this Agreement is applicable in full force to that entity. The Company agrees that the failure to include this Agreement's breach provisions in the transaction will make any such transaction null and void. The Company shall provide notice to USAO-MDPA at least 30 days prior to undertaking any such sale, merger, transfer, or other change in corporate form. If USAO-MDPA notifies the Company prior to such transaction (or series of transactions) that it has determined that the transaction has the effect of circumventing or frustrating the enforcement purposes of this Agreement, as determined in the sole reasonable discretion of USAO-MDPA, the Company and the USAO-MDPA will meet in an attempt to resolve any objections that the USAO-MDPA has to any such transaction (or series of transactions). If the Company and the USAO-MDPA cannot reach a resolution of the objections by the USAO-MDPA then the Company agrees that such transaction will not be consummated. In addition, if at any time during the Term USAO-MDPA determines in its sole reasonable discretion that the Company has engaged in a transaction that has the effect of circumventing or frustrating the enforcement purposes of this Agreement, it may deem it a breach of this Agreement pursuant to the breach provisions of this Agreement. Nothing herein shall restrict the Company from indemnifying (or otherwise holding harmless) the purchaser or successor in interest for penalties or other costs arising from any conduct that may have occurred prior to the date of the transaction, so long as such indemnification does not have the effect of circumventing or frustrating the enforcement purposes of this Agreement, as determined by USAO-MDPA.

(15) This Agreement is binding on the Company and USAO-MDPA, but specifically does not bind any other component of the Department of Justice, other federal agencies, or any state, local or foreign law enforcement or regulatory agency, or any other authorities, although USAO-MDPA will bring the cooperation of the Company and its compliance with its other obligations under this Agreement to the attention of such agencies and authorities, if requested to do so by the Company. By agreeing to provide this information to other authorities, USAO-MDPA is not agreeing to advocate on behalf of the Company, but rather is agreeing to provide facts to be evaluated independently by such authorities.

(16) It is further understood that the Company and USAO-MDPA may disclose this Agreement to the public.

(17) Any notice to USAO-MDPA under this Agreement shall be given by personal delivery, overnight delivery by a recognized delivery service, or registered or certified mail, addressed to the United States Attorney, United States Attorney's Office, Middle District of Pennsylvania, William J. Nealon Federal Building and Courthouse, 235 N. Washington Street, Suite 311, Scranton, Pennsylvania 18503. Any notice to the Company under this Agreement shall be given by personal delivery, overnight delivery by a recognized delivery service, or registered or certified mail, addressed to Mark A. Fiorilli, Esq., Spilman Thomas & Battle, PLLC, One Oxford Centre, Suite 3440, 301 Grant Street, Pittsburgh, PA 15219. Notice shall be effective upon actual receipt by USAO-MDPA or the Company.

(18) This Agreement, including its attachments, sets forth all of the terms of the agreement between the Company and USAO-MDPA. No amendments, modifications or additions to this Agreement shall be valid unless they are in writing and signed by USAO-MDPA, the attorney for the Company, and a duly authorized representative of each.



Very truly yours,

DAVID J. FREED  
United States Attorney  
Middle District of Pennsylvania

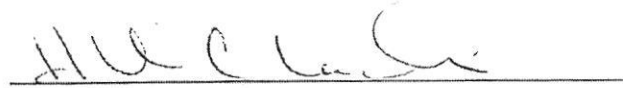


Phillip J. Caraballo  
Assistant United States Attorney

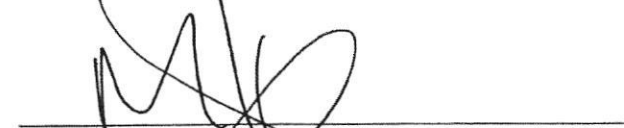
AGREED AND CONSENTED TO:

Select Energy Services, Inc., successor in interest to Rockwater Energy Solutions, Inc.

Date: 9-9-20 By:

  
Holli C. Ladhani  
President and Chief Executive Officer  
Select Energy Services, Inc.

Date: 9/11/20 By:

  
Mark A. Fiorilli, Esq.  
Spilman Thomas & Battle, PLLC  
*Counsel for Select Energy Services, Inc.*

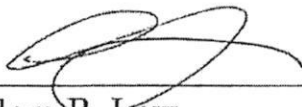
## COMPANY OFFICER'S CERTIFICATE

I have read this Agreement and carefully reviewed every part of it with outside counsel for Select Energy Services, Inc., successor in interest to Rockwater Energy Solutions, Inc. (the "Company"). I understand the terms of this Agreement and voluntarily agree, on behalf of the Company and its subsidiaries, to each of its terms. Before signing this Agreement, I consulted outside counsel for the Company. Counsel fully advised me of the rights of the Company, of possible defenses, and of the consequences of entering this Agreement.

I have carefully reviewed the terms of this Agreement with the directors of the Company. I have advised and caused outside counsel for the Company to advise the directors fully of the rights of the Company, of possible defenses, and of the consequences of entering into the Agreement.

No promises or inducements have been made other than those contained in this Agreement. Furthermore, no one has threatened or forced me, or to my knowledge any person authorizing this Agreement on behalf of the Company, in any way to enter this Agreement. I am satisfied with outside counsel's representation in this matter. I certify that I am the Sr. Vice President, General Counsel and Corporate Secretary for the Company and that I have been duly authorized by the Company to execute this Agreement on behalf of the Company and its subsidiaries.

Date: 9/9/2020 By:

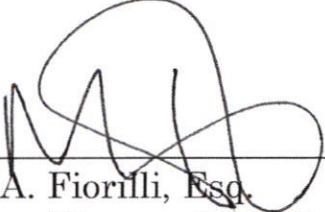
  
\_\_\_\_\_  
Adam R. Law  
SVP, General Counsel and Corporate Secretary  
Select Energy Services, Inc.

## CERTIFICATE OF COUNSEL

I am counsel for Select Energy Services, Inc., successor in interest to Rockwater Energy Solutions, Inc. (the "Company") in the matter covered by this Agreement. In connection with such representation, I have examined relevant Company documents and have discussed the terms of this Agreement with the Company's directors. Based on our review of the foregoing materials and discussions, I am of the opinion that the representative of the Company has been duly authorized to enter into this Agreement on behalf of the Company and that this Agreement has been duly and validly authorized, executed, and delivered on behalf of the Company and is a valid and binding obligation of the Company.

Further, I have carefully reviewed the terms of this Agreement with the directors of the Company. I have fully advised them of the rights of the Company, of possible defenses, and of the consequences of entering this Agreement. To my knowledge, the decision of the Company to enter this Agreement, based on the authorization of its directors, is an informed and voluntary one.

Date: 9/22/2020 By: \_\_\_\_\_

  
Mark A. Fiorilli, Esq.  
Spilman Thomas & Battle, PLLC  
*Counsel for Select Energy Services, Inc.*

## ATTACHMENT A

### **STATEMENT OF FACTS**

The following Statement of Facts is incorporated by reference as part of the Non-Prosecution Agreement (the "Agreement") between the United States Attorney's Office for the Middle District of Pennsylvania, ("USAO-MDPA") and Select Energy Services, Inc., successor in interest to Rockwater Energy Solutions, Inc. ("Select Energy" or the "Company"). Certain of the facts herein are based on information obtained from third parties by USAO-MDPA and the Environmental Protection Agency ("EPA"), through their investigation. Select Energy hereby agrees and stipulates that the following facts are true and accurate. Select Energy admits, accepts, and acknowledges that current and former employees of the Company's predecessor, Rockwater Energy Solutions, Inc. and its subsidiaries, are responsible for the acts set forth below.

1. Select Energy is a company headquartered in Houston, Texas that provides, among other things, water, wastewater services and chemical sales to customers in the oil and gas industry. Select Energy provides services through various subsidiary entities located throughout the United States, including in Pennsylvania, Texas, Colorado, and North Dakota.
2. With exact dates being unknown but beginning in approximately February 2013 and continuing through approximately December 2016, employees of Select Energy's predecessors tampered with, modified, and disabled the emissions systems on heavy-duty diesel trucks maintained for business purposes, in violation of the Clean Air Act.

#### **Emissions Systems and Tampering Devices**

3. Based on information provided by the USAO-MDPA, the purpose of the Clean Air Act is to protect and enhance the quality of the nation's air resources, thus promoting public health and welfare by, among other things, reducing the emission of pollutants, such as nitrogen oxides, particulate matter, hydrocarbons, and carbon monoxide, from motor vehicles. The Clean Air Act and its



implementing regulations establishes standards limiting the emission of pollutants from various classes of motor vehicle engines, including heavy-duty diesel engines.

4. Based on information provided by the USAO-MDPA, to meet emissions standards, manufacturers of vehicles bearing heavy-duty diesel engines install a variety of hardware emissions control devices, including exhaust gas recirculation systems, selective catalytic reduction systems, and diesel particulate filters. After verifying that the emissions control devices conform to emissions standards, the EPA issues Certificates of Conformity to vehicle manufacturers specific to each annual vehicle class.
5. Based on information provided by the USAO-MDPA, to enforce compliance with emissions standards, the EPA, pursuant to its regulatory authority, develops regulations requiring manufacturers to install on-board diagnostic systems (“OBDs”) on vehicles. OBDs monitor emissions-related sensors and the hardware emissions control devices of heavy-duty diesel engine systems and components. OBDs alert vehicle operators, through a malfunction indicator light, when a component of the emissions-monitoring system deteriorates or malfunctions. When the malfunction is left unaddressed and the vehicle’s emissions exceed certain emissions level thresholds, the OBD forces the vehicle’s engine to shut down, or limits the vehicle to a maximum speed of as low as five miles per hour; an effect commonly referred to as “limp mode” or “power reduced mode.” Repairs for malfunctioning or deteriorating emissions systems on diesel vehicles in “limp mode” ordinarily cost between approximately \$1,000 and \$10,000. Repairs ordinarily take several days or weeks to complete, during which time the vehicles are inoperable.
6. Based on information provided by the USAO-MDPA, the Clean Air Act prohibits any person or entity from knowingly tampering with or rendering inaccurate vehicle emissions monitoring devices and methods, including OBDs and hardware emissions control devices. *See* 42 U.S.C. § 7413(c)(2)(C). Hardware emissions control devices and OBDs can be disabled on commercial vehicles bearing heavy-duty diesel engines, using a variety of aftermarket devices.

Disabling the emissions control systems defeats their ability to limit pollutant gases and particulate matter emitted into the atmosphere.

7. Based on information provided by the USAO-MDPA, one method used to disable hardware emissions control devices is to remove the portion of the vehicle's exhaust system that contains the emission control devices and replace it with a section of exhaust tubing or a "straight pipe" that does not limit emissions. Another, generally less expensive method used to disable hardware emissions control devices is to remove certain components, such as the selective catalytic reduction system and diesel particulate filter, by hollowing out their casing in the vehicle's exhaust pipe, and then re-welding the entry point to create the false appearance that the hardware emissions control devices remained installed.
8. Based on information provided by the USAO-MDPA, OBDs detect disabling modifications to the hardware emissions control devices on vehicles. Thus, any modifications to the hardware emissions control devices necessarily must include a contemporaneous disabling of the OBD, to avoid the vehicle going into "limp mode." The devices used to disable OBDs are commonly referred to as "defeat devices," "DPF defeats," "delete devices," "tuners," "performance tuners," "conversion kits," and "programmers," (collectively referred to as "defeat devices"). Several manufacturers offer a variety of defeat devices. In addition to disabling the OBD, defeat devices also improve heavy-duty diesel engines' horsepower, torque, and fuel efficiency.
9. Based on information provided by the USAO-MDPA, one type of defeat device is an apparatus that plugs into a vehicle's data link connector to "tune" the OBD. Those defeat devices, when plugged in, allow the vehicle operator to activate at will the software modifications that manipulate the OBD. Another type of defeat device is a software program that reprograms, or "flashes," the vehicle's diesel engine computer module, through use of a computer or electronic device that modifies the OBD after being connected to the vehicle on a single occasion. Those defeat devices permanently adjust the diesel engine timing and other parameters

to bypass the OBD.

**Emissions Systems Tampering of Rockwater Diesel Vehicles**

10. Between approximately February 2013 and December 2016, Rockwater Energy Solutions, Inc. and Rockwater Northeast LLC, owned, possessed, and maintained at various facilities, including in Pennsylvania, Texas, Colorado, and North Dakota, commercial vehicles bearing heavy-duty diesel engines, for business purposes and use by employees, contractors, and agents. In the course of regularly conducted business, the vehicles traveled between Rockwater facilities across the nation.
11. Employees of Rockwater Energy Solutions, Inc. and Rockwater Northeast LLC removed, replaced, and caused to be removed and replaced hardware emissions control devices on commercial motor vehicles containing heavy-duty diesel engines owned by Rockwater Energy Solutions, Inc. and Rockwater Northeast LLC.
12. Rockwater Energy Solutions, Inc. and Rockwater Northeast LLC purchased defeat devices from third-party vendors, and employees used and caused to be used those defeat devices to disable the OBDs on commercial motor vehicles containing heavy-duty diesel engines owned by Rockwater Energy Solutions, Inc. and Rockwater Northeast LLC, and whose hardware emissions control devices had been removed.
13. Between approximately February 2013 and December 2016 employees of Rockwater Energy Solutions, Inc. and Rockwater Northeast LLC knowingly tampered with or rendered inaccurate vehicle emissions systems on the 29 vehicles listed below:<sup>1</sup>

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<sup>1</sup> As set forth above, the Company's predecessor's subsidiary, Rockwater Northeast LLC, has agreed to plead guilty to criminal violations of the Clean Air Act for knowingly tampering with or rendering inaccurate vehicle emissions systems on 31 additional vehicles located in Pennsylvania.

<b>Unit Number</b>	<b>Make &amp; Model</b>	<b>Year</b>	<b>VIN Number</b>
11068	Dodge Ram 2500	2012	3C6UD5JL3CG138036
11037	Dodge Ram 3500	2011	3D73Y3CL8BG506323
10951	Dodge Ram 3500	2010	3D73Y3CL3AG195513
13460	Dodge Ram 2500	2012	3C6UD5HL9CG132862
10965	Dodge Ram 2500	2011	3D6WZ4CLXBG574417
10971	Dodge Ram 3500	2011	3D73Y3CL4BG580712
11618	Dodge Ram 3500	2011	3D6WA7EL2BG501631
11150	Dodge Ram 3500	2011	3D73Y3CL6BG532239
10595	Dodge Ram 3500	2010	3D73Y3CL8AG110858
11123	Dodge Ram 3500	2011	3D73Y3CL9BG624736
10952	Dodge Ram 3500	2011	3D73Y3CL7BG526756
11972	Dodge Ram 2500	2012	3C6UD5FL6CG304462
11128	Dodge Ram 3500	2011	3D73Y3CL0BG567021
13047	Chevy 2500	2011	1GC1KVC87BF216361
13057	Chevy 2500	2012	1GC1KVC89CF146525
13029	Chevy 2500	2012	1GC1KVC83CF120616
13203	GMC 3500	2011	1GT422C81BF228100
13117	Chevy 2500	2012	1GC1KVC8XCF120161
13124	Chevy 2500	2012	1GC1KVC8XCF188976
13158	Dodge 3500	2011	3D6WU7CL1BG557800
13202	Chevy 3500	2011	1GT422C86BF227136
13125	GMC 2500	2011	1GT12ZC80BF225524



13121	Chevy 2500	2012	1GC1KVC85CF186178
13120	Chevy 2500	2012	1GC1KVC82CF189197
13119	Dodge 2500	2012	1GC1KVC80CF188923
13072	Dodge 2500	2012	3C6UD5HL5CG298716
13011	Chevy 2500	2012	1GC1KVC84CF188794
13017	Chevy 2500	2012	1GC1KVC86CF239289
13073	Dodge 2500	2012	3C6UDSHL5CG298702

14. As a result of the emissions systems tampering, Rockwater Energy Solutions, Inc. and Rockwater Northeast LLC obtained economic benefits, including fuel savings from improved fuel economy on modified vehicles; reduced expenditures on diesel exhaust fluids required to operate emissions systems components; reduced repair and maintenance costs for malfunctioning or deteriorating emissions systems; and the avoidance of lost business and revenue from vehicles rendered out of service while undergoing emissions systems repairs.
15. As a result of the emissions systems tampering, modified vehicles of Rockwater Energy Solutions, Inc. and Rockwater Northeast LLC emitted tons of excess emissions, including nitrogen oxides and particulate matter, into the atmosphere.
16. The Company became aware of the USAO-MDPA's and EPA's investigation of these activities in or about November 2017, when it acquired Rockwater Energy Solutions, Inc. and Rockwater Northeast LLC. Since that time, the Company has cooperated and continues to cooperate with law enforcement. Through organizational and program changes, the Company has shown a commitment to compliance improvements and a dedication to effectively complying with its environmental responsibilities, including through the implementation of the Compliance Program set forth in Attachment B.

ATTACHMENT B

**COMPLIANCE PROGRAM**

**I. Certification of Conformity**

The Company represents that it has made best efforts to identify all commercial vehicles bearing heavy-duty diesel engines owned, possessed, and maintained by the Company and its subsidiaries, and bearing modified and disabled emissions systems. The Company also represents that it has salvaged or repaired any such vehicles. The Company further represents that it is committed to implementing procedures, training, and controls designed to prevent future violations of the Clean Air Act by directors, officers, and employees of the Company and its subsidiaries.

**II. Environmental Compliance and Ethics Program**

The Company agrees to implement an enhanced compliance and ethics program designed to prevent and detect violations of the Clean Air Act. The program shall include a prohibition against any director, officer, or employee of the Company and its subsidiaries from violating the Clean Air Act. As part of the enhanced compliance program, the Company will require all such individuals to undergo Clean Air Act compliance training on at least an annual basis. The specific requirements, set forth below, are applicable to all directors, officers, and employees of the Company and its subsidiaries and, unless otherwise noted, are to be implemented within 30 days of the retention of the independent auditor referenced in this Agreement:

1. The Company will implement a policy that prohibits any employee from violating the Clean Air Act, including by using any product known as an after-market "defeat device" alone, or in combination with other products, to bypass, defeat, or render inoperative any device or element of design of the emission control system, including, but not limited to the exhaust gas recirculation systems, selective catalytic reduction systems, and diesel particulate filters, diesel oxidation catalyst, NOx adsorber catalyst, and on-board diagnostic system, on any vehicle provided

for use within the scope of employment. The policy also will set forth a strict zero-tolerance prohibition of retaliation against personnel who report potential environmental misconduct.

2. The Company will require all existing and incoming personnel to sign a code of conduct consistent with the policy referenced above. The Company may utilize an electronic acknowledgement form for its employees to acknowledge receipt of the Company's policy that prohibits any employee from violating any provisions of the Clean Air Act.
3. The Company will designate a compliance officer whose responsibilities include accountability for compliance with the Clean Air Act and its implementing regulations, and implementation of this compliance program. The officer must possess the authority to ensure full implementation of this compliance program, and be thoroughly familiar with the requirements of this compliance program. The officer also will maintain an anonymous reporting system for any employee seeking to report potential violations of environmental laws and regulations. The officer further will be responsible for coordinating with the auditor referenced in section III below.
4. The Company will add explicit environmental compliance requirements to job descriptions, where applicable, for staff personnel whose jobs can affect environmental compliance.
5. Within 90 days of the execution of this agreement, and annually thereafter, the Company will train all personnel whose jobs potentially affect the requirements of and compliance with the Clean Air Act and its implementing regulations, including as follows:
  - a. For all non-administrative personnel, including but not limited to managerial, business development, sales and training personnel, training on: (i) the prohibition against defeat devices and tampering with emissions systems under the Clean Air Act; (ii) civil and criminal liability for violations of the Clean Air Act; (iii) the Company's policies,

procedures, and corporate consequences for violating those policies; and (iv) information on how to report potential violations of environmental laws and regulations to the designated compliance officer, and the Company's zero-tolerance prohibition of retaliation against personnel who make any such report.

- b. For all technical support and compliance personnel, training on: (i) all items referenced in the preceding paragraph; (ii) vehicle emission control device operations; and (iii) elements of design that can affect emissions
  - c. For all personnel hired after the execution of this agreement, the training shall be conducted within 90 days of the commencement of employment and may be done as part of the on-boarding process for new employees.
  - d. The Company will develop a system to track training completed by applicable personnel and develop post-training verification that tests their knowledge of the information included in the training. Those records shall be made available to USAO-MDPA upon request, as well as to the auditor referenced in section III below.
6. The Company will submit an outline and schedule of its plan to develop and implement the compliance program, including a projected timeline and milestones with applicable dates, to USAO-MDPA for review and approval.
7. The Company understands that the compliance program referenced herein is separate and distinct from any other compliance program it enters with any regulatory agency, including but not limited to the EPA's Suspension and Debarment program. However, the Company may utilize similar or related personnel or entities in developing and implementing the compliance program referenced herein, subject to approval by USAO-MDPA.

### III. Annual Audits

1. The Company agrees that within 90 calendar days of the execution of this Agreement, the Company will retain an independent auditor (the "Auditor") for the Term, at the Company's expense. Within 60 calendar days after the execution of this Agreement, the Company will propose to the USAO-MDPA at least one candidate to serve as the Auditor. If the United States, in its sole reasonable discretion, is not satisfied with the candidate(s) proposed, the United States reserves the right to seek additional nominations from the Company. The Auditor candidate(s) shall have, at a minimum, the following qualifications:

- a. expertise with environmental laws and regulations, including the Clean Air Act;
- b. familiarity with commercial diesel vehicles, emissions systems, and "defeat devices," and the ability to determine whether a commercial diesel vehicle bears a modified emissions system;
- c. the ability to access and deploy resources as necessary to discharge the Auditor's duties as described in this Agreement; and
- d. sufficient independence from the Company to ensure effective and impartial performance of the Auditor's duties as described in this Agreement.

2. If the Auditor resigns or is otherwise unable to fulfill its obligations as set out herein, the Company shall within 60 calendar days recommend to USAO-MDPA at least one replacement candidate in accordance with the procedures and qualifications set forth above.

3. The Auditor will, during the Term and any extension thereof, evaluate and audit, the effectiveness of the Company's compliance with the requirements of this Agreement, namely, the maintenance of a vehicle fleet bearing non-modified emissions systems in conformity with the Clean Air Act, and the implementation of the compliance program described in section II above. Specifically, the Auditor shall conduct an initial audit and prepare an initial report,



followed by two follow-up audits and reports. The initial audit shall occur within 90 days of the engagement of the Auditor, the second audit shall occur approximately one year after the initial audit, and the final audit shall occur approximately 90 days prior to the conclusion of the Term. With respect to each audit, after meeting and consultation with the Company and USAO-MDPA, the Auditor shall prepare a written work plan, which shall be submitted prior to commencing each audit to the Company and USAO-MDPA for comment, which comment shall be provided within 14 calendar days after receipt of the written work plan. The Auditor's work plan for the initial audit shall include such steps as are reasonably necessary to conduct an effective initial audit to evaluate the effectiveness of the Company's compliance with the requirements of this Agreement, including by developing an understanding, to the extent the Auditor deems appropriate, of the facts and circumstances surrounding any violations of the Clean Air Act that occurred before the execution of this Agreement, but in developing such understanding the Auditor is to rely to the greatest extent possible on available information and documents provided by the Company and by USAO-MDPA, and it is not intended that the Auditor will conduct its own inquiry into those historical events. In developing each work plan and in carrying out the audits pursuant to such plans, the Auditor is encouraged to coordinate with Company personnel, including the environmental compliance officer. The Auditor is not expected to conduct a comprehensive review of all business lines, locations, or activities, but rather those business records concerning and locations and housing commercial diesel vehicles owned, possessed, or maintained by the Company and its subsidiaries. Any dispute between the Company and the Auditor with respect to the work plan shall be decided by USAO-MDPA in its sole reasonable discretion.

4. Following each audit, the Auditor shall issue a written report within 60 calendar days of initiating each audit, setting forth the Auditor's findings and assessment of the Company's compliance with the Clean Air Act. The Auditor is encouraged to consult with the Company concerning the Auditor's findings on an ongoing basis, and to consider and reflect the Company's comments and input to the extent the Auditor deems appropriate. The Auditor need not in its audit reports recite or describe comprehensively the Company's history or

compliance policies, procedures, and practices, but rather may focus on those areas which the Auditor concludes merit particular attention. The Auditor shall provide the reports to the Company and contemporaneously transmit copies to USAO-MDPA. After consultation with the Company, the Auditor may extend the time period for issuance of a report for up to 15 calendar days, with prior approval of USAO-MDPA.

5. In undertaking its findings and assessments, the Auditor shall formulate conclusions based on, among other things: (a) an inspection of relevant documents and records of the Company, including but not limited to personnel environmental compliance training records; (b) inspection of commercial diesel vehicles owned, possessed or maintained by the Company and its subsidiaries, with the Auditor having reasonable discretion to inspect a random sampling, if appropriate; and (c) meetings with, and interviews of, relevant personnel of the Company and its subsidiaries at mutually convenient times and places.

6. The Auditor's reports may include proprietary, financial, confidential, and competitive business information. Moreover, public disclosure of the reports could discourage cooperation, impede pending or potential government investigations and thus undermine the objectives of the Auditor. For those reasons, among others, the reports and the contents thereof are intended to remain and shall remain non-public, except as otherwise agreed to by the parties in writing, or to the extent that USAO-MDPA determines in its sole reasonable discretion that disclosure would be in furtherance of USAO-MDPA's discharge of its duties and responsibilities under this Agreement, or otherwise required by law or regulation. Moreover, the Auditor is prohibited from using any information obtained in connection with its retention by the Company for any purpose other than the performance of its duties as set forth in this Agreement.

7. The Company shall cooperate fully with the Auditor and the Auditor shall have the authority to take such reasonable steps as, in the Auditor's view, may be necessary to be fully informed about the Company's environmental compliance efforts, in accordance with this Agreement. To that end, the Company shall: (a) facilitate and provide

the Auditor's access to the Company's personnel, facilities, documents, and records, and those of the Company's subsidiaries, as reasonably requested by the Auditor, that fall within the scope of this Agreement; (b) not limit such access, except as provided in this paragraph; and (c) provide guidance on applicable local law and regulations. Any disclosure by the Company to the Auditor concerning novel potential or actual violations of the Clean Air Act shall not relieve the Company of any otherwise applicable obligation to truthfully disclose such matters to USAO-MDPA .

8. The parties agree that no attorney-client or other privileged relationship shall be formed between the Company and the Auditor.

9. In the event the Company seeks to withhold from the Auditor access to information, personnel, facilities, documents, or records of the Company which may be subject to a claim of attorney-client privilege or to the attorney work-product doctrine, or where the Company reasonably believes production would otherwise be inconsistent with applicable law, the Company shall work cooperatively with the Auditor to resolve the matter to the satisfaction of the Auditor. If the matter cannot be resolved, at the request of the Auditor, the Company shall promptly provide written notice to the Auditor and USAO-MDPA. Such notice shall include a general description of the nature of the information, personnel, facilities, documents, or records that are being withheld, and a basis for the claim. USAO-MDPA may then consider whether to make a further request for access to such information, personnel, facilities, documents, or records.

10. Should the Auditor, during the course of its engagement, discover actual or potential violations of the Clean Air Act or its implementing regulations, the Auditor shall promptly report such findings to the Company and to USAO-MDPA. The Auditor may disclose such actual or potential violations in its discretion to USAO-MDPA, and not to the Company, only if the Auditor believes that disclosure to the Company would be inappropriate under the circumstances, and in such an event should disclose the actual or potential violations to the Company as promptly and completely as the Auditor deems appropriate under the circumstances. Further, in the event that the Company, or any entity or person working directly or

indirectly within the Company, refuses to provide information necessary for the performance of the Auditor's responsibilities, if the Auditor believes that such refusal is without just cause, the Auditor shall disclose that fact to USAO-MDPA and the Company. The Company shall not take any action to retaliate against the Auditor for any such disclosure or for any other reason. The Auditor may report any actual or potential criminal or regulatory violations by the Company or its subsidiaries discovered during the course of performing the Auditor's duties, in the same manner as described above.

11. Within 10 days of receiving each annual audit report prepared by the Auditor, the Company shall provide to USAO-MDPA a copy of the Auditor's report accompanied by a certification, signed by a corporate officer, that: (a) confirms or denies any deficiencies identified by the Auditor during the audit; and either (b) confirms that personnel of the Company and its subsidiaries have not modified or tampered with emissions systems on commercial diesel vehicles; or (c) sets forth any steps taken or proposed to be taken to remedy any identified deficiencies.

12. The Company and USAO-MDPA may meet and confer together, as is appropriate, to discuss the Auditor and any suggestions, comments, or improvements the Company may wish to discuss with or propose to USAO-MDPA.