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**CONFIDENTIAL--SETTLEMENT COMMUNICATIONS
SUBJECT TO RULE 408**

LARRY W. PROPES, CLERK
CHARLESTON, SC

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA, CHARLESTON DIVISION

SCANNED

The South Carolina Department)
of Health and Environmental Control,)

Plaintiff,)

v.)

Atlantic Steel Industries, Inc.; AmeriSteel)
Corporation (fka Florida Steel Corporation),)
Georgetown Steel Corporation; I Schumann &)
& Company; Meherrin Agricultural & Chemical)
Company; Mueller Brass Co.; National Metals,)
Inc; Nucor Corporation; Nucor-Yamato Steel)
Company; SMI Steel-South Carolina; Roanoke)
Electric Steel Corporation; The Federal)
Metals Company; The Stackpole Corp.;)
and Waterbury Rolling Mills, Inc.,)

Defendants.)

and)

Kerr-McGee Chemical Corporation,)
Lucent Technologies Inc., Macalloy)
Corporation, Gaston Copper Recycling)
Corporation, Southwire Company, and)
Clariant Corporation,)

Intervenor-Defendants.)

CIVIL ACTION NO. 2 97 726 12

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JUN 13 2002

LARRY W. PROPES, CLERK
CHARLESTON, SC

SETTLEMENT AGREEMENT

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DIVISION OF SITE
ASSESSMENT & REMEDIATION

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Settlement Agreement
Stoller Jericho Chemical Site
Page 2

The South Carolina Department of Health
and Environmental Control,)

Plaintiff,)

v.)

Parkans International, Plant Roberts
Chemicals, W.J. Bullock, Inc., Macalloy
Corporation, and Roessing Bronze,)

Defendants.)

The South Carolina Department of Health
and Environmental Control,)

Plaintiff,)

v.)

Carbone of America Corp., Madison
Industries and Old Bridge Chemicals,)

Defendants.)

The South Carolina Department
of Health and Environmental Control,)

Plaintiff,)

v.)

Beta Control Systems, Inc., Cerro Metal
Products Company, Gulf Reduction Corporation,
Michigan Standard Alloys, and E & H
Recycling Co.,)

Defendants.)

CIVIL ACTION NO. 2 98 0345 12

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CIVIL ACTION NO. 2 98 1571 12

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CIVIL ACTION NO. 2 98 3635 12

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Final.

Settlement Agreement
Stoller Jericho Chemical Site
Page 3

South Carolina Department of Health and
Environmental Control,)

Plaintiff,)

vs.)

Kerr-McGee Chemical Corporation; Lucent
Technologies, Inc.; Gaston Cooper Recycling
Corp.; Southwire Company; CP Chemicals, Inc.)
Koch Sulfur Company; Clariant Corporation;)
Blackman Uhler Chemical Company;)
Midcontinent Commodity Exchange, Inc.;)
Amlon Metals, Inc.; Kearney Smelting &
Refining Corp.; Franklin Smelting & Refining)
Corp.; Sterling Plumbing Group, Inc.; St. Mary's
Carbon Company, Inc.; and Imperial Products,)
Inc.,)

Defendants.)

CIVIL ACTION NO. 2 99 1610 12

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Nucor Corporation, Nucor-Yamato Steel
Company (Limited Partnership); AmeriSteel
Corporation; Roanoke Electric Steel
Corporation; Mueller Brass Co.; SMI-Owens
Steel Company, Inc.; The Federal Metal
Company; and I. Schumann & Company,)

Plaintiffs,)

vs.)

Kerr McGee Chemical Corporation; Lucent
Technologies, Inc.; Gaston Copper Recycling
Corporation; Southwire Company; C.P.
Chemicals, Inc.; Koch Sulfur Company; Clariant
Corporation; Blackman Uhler Chemical
Company; Amlon Metals, Inc.; Kearny Smelting
& Refining Company; Franklin Smelting &
Refining Corporation; Sterling Faucet; St.
Mary's Carbon Company, Inc.; and Imperial
Products, Inc.,)

Defendants.)

CIVIL ACTION NO. 2 99 2292 12

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INTRODUCTION

This SETTLEMENT AGREEMENT is executed by and between the following parties, which collectively will be referred to herein as the Settling Parties:

- (i) South Carolina Department of Health and Environmental Control ("DHEC");
- (ii) Atlantic Steel Industries, Inc.; AmeriSteel Corporation (f/k/a Florida Steel Corporation); Georgetown Steel Corporation; I. Schumann & Company; Meherrin Agricultural & Chemical Company; Mueller Brass Co.; National Metals, Inc.; Nucor Corporation; Nucor-Yamato Steel Company; SMI Steel-South Carolina; Roanoke Electric Steel Corporation; The Federal Metal Company; The Stackpole Corp.; and Waterbury Rolling Mills, Inc. (collectively referred to as the Stoller Jericho Working Group ("SJWG" and "Settling Defendants")).
- (iii) Kerr-McGee Chemical Corporation; Lucent Technologies Inc. (as successor in interest to and on behalf of AT&T Corporation, AT&T Nassau Metals Corporation, and Nassau Recycling Corporation, each of which shall be deemed a corporate predecessor of Lucent for purposes of this Settlement Agreement); Phibrotech, Inc. f/k/a CP Chemicals, Inc.; Gaston Copper Recycling Corporation; Southwire Company; Clariant Corporation; Koch Sulfur Products Company, LLC; Blackman-Uhler Chemical Company; Sterling Faucet, Inc. (collectively referred to as the Ravenel Site Group ("RSG" and "Settling Defendants")).

I. RECITALS.

A. DHEC filed Complaints against the Settling Defendants in this matter pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.* as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Pub. L. No. 99-499

#4
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Settlement Agreement
Stoller Jericho Chemical Site
Page 5

("CERCLA"), and pursuant to § 44-56-10 *et seq.* of the South Carolina Hazardous Waste Management Act, S. C. CODE ANN., 44-56-10 *et seq.* ("SCHWMA"), seeking reimbursement of costs incurred and to be incurred in response to alleged releases and alleged threatened releases of hazardous substances from a fertilizer and micronutrient manufacturing facility located in Jericho, South Carolina. The facility is part of the Site defined herein at Paragraph IV.C.

B. DHEC alleges that releases of CERCLA hazardous substances have occurred at the Site; that the Site is a "facility" within the meaning of CERCLA Section 101 (9), 42 U.S.C. § 9601 (9); and that the Settling Defendants are among those parties liable for performance and/or reimbursement of costs of response actions pursuant to CERCLA Section 107(a), 42 U.S.C. § 9607(a) and pursuant to § 44-56-200 of SCHWMA.

C. The fertilizer manufacturing facility at the Site was operated by Kerr-McGee Chemical Co. ("Kerr-McGee") and Kerr-McGee's predecessor-in-interest, approximately from 1962 until 1978. For a two-month period from May 13, 1978, to July 13, 1978, Kerr-McGee as owner, leased the fertilizer manufacturing facility to Stoller Chemical Company ("Stoller"), which operated the facility primarily for the manufacture of micronutrients. Approximately from 1978 until 1992, Stoller owned and operated the micronutrient manufacturing facility.

D. Stoller filed for protection under Chapter 7 of the United States Bankruptcy Code in March, 1992, in the United States Bankruptcy Court for the Southern District of Texas, and ceased to operate. Stoller was purportedly without sufficient financial resources to conduct the cleanup activities required by Stoller's RCRA Permit. Stoller's Trustee in Bankruptcy now holds the former micronutrient manufacturing facility.

E. SJWG implemented clean-up activities required by a Unilateral Administrative Order issued

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**Settlement Agreement
Stoller Jericho Chemical Site
Page 6**

by EPA on January 21, 1994, in conjunction with and after consultation with DHEC. SJWG has fully and timely cooperated in implementation of and funding the Unilateral Administrative Order and in funding certain additional clean-up actions required at the Site.

F. On February 20, 1997, DHEC and SJWG entered into both an Administrative Consent Order ("ACO") and a Settlement Agreement subject to judicial approval ("Prior Settlement Agreement"). Thereafter, the Prior Settlement Agreement was challenged by several of the named parties herein. On August 5, 1999, this Court issued an order declining to approve the Prior Settlement Agreement between SJWG and DHEC.

G. Thereafter, SJWG continued to provide funding for the required work set forth in the ACO and has funded DHEC's response activities to date in an amount exceeding \$8,100,000. SJWG also expended a total of more than \$1,850,000 in prior response cost activities conducted from October 1993 to February 1997.

H. DHEC acknowledges SJWG's full and timely cooperation in funding response activities at the Site totaling in excess of \$9,950,000, with an additional time-value of the funds expended to date in excess of \$2,100,000.

I. On October 26, 1999, this Court stayed the pending litigation in the consolidated action herein. Thereafter, global settlement negotiations took place from November 1999 through September 2001. By DHEC's letter dated October 15, 1999, all parties to the litigation were extended an opportunity to participate in these negotiations. Numerous parties did so, including each of the Settling Parties. The global settlement negotiations were, by the agreement of the Settling Parties, conducted with the assistance of Mr. David Batson, a mediator who is employed by the United States Environmental Protection Agency.

J. DHEC, SJWG and RSG have agreed to terms set forth in this Settlement Agreement, which

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Settlement Agreement
Stoller Jericho Chemical Site
Page 7

resolves the liability of the Settling Defendants to DHEC, as well as disputed matters by and between all Settling Defendants.

K. It is agreed that, only upon final entry of this Settlement Agreement, and exhaustion of any appeals therefrom, DHEC and SJWG shall no longer be bound by the provisions of the ACO and this Settlement Agreement shall void and supersede the provisions of the ACO and the Prior Settlement Agreement.

L. Upon judicial approval and entry of this Settlement Agreement, the Settling Defendants shall be entitled to contribution protection as provided herein.

M. The Settling Defendants do not admit any liability to DHEC, each other, or any other person or entity arising out of the transactions or occurrences alleged in the pleadings in the captioned actions or in this Settlement Agreement. DHEC and the Settling Defendants agree that entry of this Settlement Agreement, and compliance therewith, shall not be construed as an admission of liability, or of any other allegation of fact or law, in any judicial or administrative proceeding other than in proceedings related to the validity, implementation or enforcement of this Settlement Agreement.

N. DHEC and the Settling Defendants agree that settlement of this matter and entry of this Settlement Agreement are made in good faith in an effort to avoid further expenses and the risk of protracted litigation. This Settlement Agreement is the result of good faith, arms-length negotiations between and among representatives of the Settling Defendants and DHEC.

O. Various factors were taken into account by DHEC in negotiating this Settlement Agreement, including: the Settling Defendants' share of responsibility for the contamination at the Site; the funds paid by the Settling Defendants for DHEC's response costs; funding of prior response costs at the Site and the time value of such funds; the risks and costs of protracted litigation; and equitable factors.

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P. DHEC and the Settling Defendants recognize, and the Court by entering this Settlement Agreement finds, that this Settlement Agreement has been negotiated by the parties hereto in good faith; that implementation of this Settlement Agreement will expedite the cleanup of the Site, avoid prolonged and complicated litigation between the Settling Parties and resolve the existing claims among the Settling Parties; and that this Settlement Agreement is fair, reasonable, and in the public interest, and is expected to address the objective of protecting public health, welfare and the environment at the Site.

II. JURISDICTION

The Court has jurisdiction over the subject matter of this action and over the signatories of this Settlement Agreement pursuant to CERCLA 107 and 113 (b), 42 U.S.C. §§9607 and 9613(b), and pursuant to 28 U.S.C. §§ 1331 and 1345. DHEC and the Settling Defendants shall not challenge the Court's jurisdiction to enter, construe and enforce this Settlement Agreement.

III. PARTIES

This Settlement Agreement shall apply to and be binding upon DHEC and the Settling Defendants, their successors, agents, and assigns. Any change in ownership or corporate status of a Settling Party including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling Party's responsibilities under the Settlement Agreement. Notice of this Settlement Agreement and the obligations contained herein shall be provided to any successors, agents and assigns. The terms of this Settlement Agreement are mutually enforceable by all signatories to this Settlement Agreement.

IV. DEFINITIONS

Unless otherwise expressly provided herein, terms used in this Settlement Agreement which are defined in CERCLA or in the National Contingency Plan ("NCP"), 40 C.F.R. Part 300, shall have the meaning assigned to them under such statute or regulation as of the date this Settlement Agreement is entered

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Settlement Agreement
Stoller Jericho Chemical Site
Page 9

by the Court. The following terms used in this Settlement Agreement are defined as follows:

A. The "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40C.F.R. Part 300, and any amendments thereto.

B. "Settlement Agreement" shall refer to this document and shall include all exhibits incorporated herein, as well as any properly executed amendments or modifications to this document. All such exhibits incorporated herein, and any properly executed amendments and modifications hereto, shall be incorporated into and become an enforceable part of this Settlement Agreement.

C. The "Site" shall mean the former fertilizer and micronutrient manufacturing facility located near the community of Ravenel, South Carolina, at 7747 Highway 17 South, Jericho, South Carolina, and surrounding areas impacted by migration of hazardous substances from the fertilizer and micronutrient manufacturing facility, including three disposal areas located nearby along TNT Road ("Satellite Areas"); the transportation corridor between the property located at 7747 Highway 17 South and the Satellite Areas; and the Caw Caw Swamp (all as shown on the Site map attached hereto as Exhibit 1).

V. OBLIGATIONS OF DHEC AND THE SETTLING DEFENDANTS

A. RSG shall pay up to \$7 million to DHEC, pursuant to an internal RSG allocation, to fund DHEC's Planned Future Response Activities ("PFRA") at the Site. DHEC shall deposit such funds into an identified interest-bearing account and shall use and account for such funds to implement the response activities at the Site.

1. Planned Future Response Activities shall include and be subject to the following:
 - a. Construction, operation and maintenance of the interim groundwater pump-and-treat system that has been implemented at the Site and related

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groundwater monitoring, as more fully described in Exhibit 2. (Those activities described herein which have already been performed are included as PFRA and costs for such are included in the \$7 million of funding described in this Paragraph V.A.).

- b. Removal and disposal of soils at Caw-Caw Swamp and related monitoring, in accordance with the Remedial Action Record of Decision ("ROD"), Summary of Remedial Alternative Selection, Caw-Caw Swamp, Operable Unit II, dated November 2000 (Caw-Caw Swamp ROD); specifically Section 9.0 and the Declaration for the Remedial Action ROD dated December 6, 2000. Section 9.0 of the Caw-Caw Swamp ROD and the Declaration of December 6, 2000, are attached hereto as Exhibit 3.
- c. Implementation of *in situ* groundwater pilot studies more fully described in Exhibit 4; and further implementation of *in situ* treatment, including operation, maintenance and related monitoring, if shown to be an effective remedy for groundwater contamination at the Site when evaluated according to the criteria set forth in Exhibit 5. (Those activities described herein which have already been performed are included as PFRA and costs for such are included in funding). If implementation of *in situ* treatment is shown to be effective when evaluated as described herein, DHEC will take appropriate action to amend or modify the Remedial Action ROD to provide for use of the *in situ* remedy accordingly.
- d. Continued operation and maintenance of the land vault and cap as set forth

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in the Operations and Maintenance Manual dated February 1999 (Project No. 200939.10960), consistent with the projected costs for such activity as described in Exhibit 6.

- e. The remediation goals of the PFRA shall be those set forth in Section 8.1 of the Remedial Action ROD (OU-1), Summary of Remedial Alternative Selection (Groundwater ROD), dated April 1999 (copy attached as Exhibit 7), or such revised goals as may become appropriate based upon future developments or reclassifications of the groundwater at the Site, if any. Achievement and maintenance of remediation goals will be determined using the existing site monitoring system as designated points of compliance and based on statistically verified monitoring results in accordance with applicable EPA guidance documents as more fully described in Exhibit 8 attached hereto. It is understood that substitution of monitoring wells may be required to accommodate construction activities at the Site and/or to maintain the objectives of the present monitoring system. Any substitution of monitoring wells will be in accordance with the provisions of Paragraph V.A.1.g. PFRA shall include appropriate monitoring and review of the PFRA remediation as described in Section 121(c) of CERCLA, related regulations and the NCP.
- f. Costs for PFRA shall include direct and indirect costs, including costs of oversight and administration.
- g. To facilitate the continued disclosure of relevant information to the Settling

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Defendants, DHEC, or its contractors and consultants, shall:

- i. forward copies of Work plans, proposals, draft Work plans which relate to or describe PRFA and Additional Work, and all progress reports, interim data reports and underlying data describing or evaluating the performance and results of the remedial actions to the designated RSG member promptly after receipt or development thereof by DHEC;
- ii. allow the Settling Defendants to submit comments to DHEC in connection with such work plans or reports, provided that, under normal circumstances, the Settling Defendants should expect that DHEC will take any action required on its part in response to such submitted work plans or reports within twenty-one (21) days of the date such documents were transmitted by the contractors or consultants and, therefore, the Settling Defendants should expect to submit to DHEC any comments they wish to have considered prior to the expiration of such twenty-one (21) day period;
- iii. DHEC, and its contractors and consultants, agree to meet or confer by teleconference with the Settling Defendants to discuss the status, results, future plans and projections for the PFRA and Additional Work upon the request of the Settling Defendants, and provided the Settling Defendants make suitable arrangements for such meeting or teleconference;

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- iv. Any comments submitted by the Settling Defendants pursuant to paragraph V.A.1.g.ii. above shall be submitted expeditiously and in a manner to avoid any undue delay in implementation of DHEC's necessary actions. Such comments submitted by the Settling Defendants shall be reviewed and considered by DHEC and made part of the Administrative File/Record for this matter; and any dispute shall be preserved between the Settling Parties.
2. The first \$3.5 million of the \$7 million referenced in Paragraph V.A. herein shall be paid within 30 days of entry of the Settlement Agreement by the United States District Court. If entry of this Settlement Agreement is ultimately reversed as a result of an appeal, the amounts paid hereunder by the Settling Defendants shall be refunded and this obligation for DHEC to refund such amounts shall survive and continue despite any other provision herein. The liability for this \$3.5 million is joint and several as to each member of RSG.
3. The remaining \$3.5 million shall be paid by Kerr-McGee, Lucent and CP Chemicals beginning 12 months after the date of the initial payment and continuing thereafter on a quarterly basis through cash calls based on reasonably estimated response costs and related expenses to be incurred during the next quarter in connection with the Planned Future Response Activity. The liability for payment of the remaining \$3.5 million described herein is joint and several as to Kerr-McGee, Lucent and CP Chemicals.
4. DHEC shall send Kerr-McGee, Lucent and CP Chemicals a notice requiring

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payment of reasonably estimated response costs and related expenses 45 days prior to the beginning of each quarter for which a payment is due. Payment shall be due within 15 days after the beginning of the quarter. If payment is not received on the thirtieth day after the beginning of the quarter, DHEC shall provide Kerr-McGee, Lucent and CP Chemicals with written notice that the required payment has not been received and interest shall accrue on the unpaid amount at the rate prescribed under CERCLA. If payment is not received on the 60th day after the beginning of the quarter, the remaining amount of the \$3.5 million shall become immediately due and payable upon further notice from DHEC to Kerr-McGee, Lucent and CP Chemicals.

5. The estimated response costs and related expense projections, and the actual response costs and related expenses incurred shall be subject to requirements for reasonable documentation to be made available by DHEC upon request by any of the Settling Defendants and to be subject to review and challenge by these parties for reasonableness and recoverability under applicable law and the NCP. Such review and challenge shall not delay the making of the quarterly payments but the rights to such review and challenge shall be preserved.

B. In the manner set forth hereinafter, Kerr-McGee, Lucent and CP Chemicals shall provide financial assurance, up to an additional \$7 million of contingency funding for any reasonable Additional Costs for Planned Future Response Activities and any "Additional Work."

1. "Additional Work" shall mean response actions or activities other than the Planned Future Response Activity undertaken by DHEC at the Site to carry out the remedy

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and achieve and maintain the remedial goals of the Groundwater ROD (as may be modified based upon future developments or reclassifications of the groundwater at the Site, if any), in accordance with applicable law, regulations and the NCP. DHEC shall not pursue Additional Work if: (a) the Planned Future Response Activities have achieved remedial goals at the designated points of compliance as set forth in Paragraph V.A.1.e; or (b) the attainment of the remedial goals is technically impracticable. Additional Work shall include appropriate monitoring and review of Additional Work remediation as required by Section 121(c) of CERCLA, related regulations and the NCP.

2. "Additional Costs for PFRA" shall mean response costs, beyond \$7 million, incurred in reasonably and properly implementing the PFRA.
3. Kerr-McGee, Lucent and CP Chemicals agree not to dispute or contest their liability for Additional Costs for Planned Future Response Activities. However, they each reserve the right to review and challenge such additional costs as set forth in Paragraph V.A.5.
4. Kerr-McGee, Lucent and CP Chemicals each reserve the right to dispute, contest, and litigate the appropriateness and cost-effectiveness of any Additional Work, and the reasonableness and recoverability of all costs in accordance with applicable law, regulations, and the NCP. Costs shall include direct and indirect costs, including costs of oversight and administration.
5. While Kerr-McGee reserves its right to dispute, contest and litigate the issue of its liability for such Additional Work, Lucent and CP Chemicals agree not to dispute

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or contest their liability as responsible parties for Additional Work, but reserve their other rights as described in paragraphs V.B.3. and 4. above.

6. All Financial Assurance obligations shall terminate upon the Planned Future Response Activity having achieved remedial goals at designated points of compliance as set forth in Paragraph V.A.1.e.

C. The Financial Assurance for the \$7 million in contingency funding shall be provided as follows:

1. Kerr-McGee shall provide a corporate guarantee in the amount of \$3.5 million, based upon satisfaction of a financial test, as defined under the RCRA regulations.
2. Lucent shall provide either an irrevocable letter of credit, surety bond or other equivalent instrument acceptable to DHEC, in the amount of \$2 million, from an issuer that is reasonably acceptable to DHEC and Kerr-McGee and in a form and substance that is satisfactory to DHEC and Kerr-McGee. Such letter of credit, surety bond, or other equivalent instrument acceptable to DHEC shall be obtained within 60 days of the approval and entry of this Consent Decree. DHEC shall be the primary beneficiary of the letter of credit, surety bond, or other equivalent instrument acceptable to DHEC. Kerr-McGee shall be a secondary beneficiary of the letter of credit, surety bond, or other equivalent instrument acceptable to DHEC.
3. CP Chemicals shall provide either an irrevocable letter of credit, a surety bond, or other equivalent instrument acceptable to DHEC in the amount of \$1 million, from an issuer that is reasonably acceptable to DHEC and Kerr-McGee and in a form and substance that is satisfactory to DHEC and Kerr-McGee. Such letter of credit,

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surety bond, or other equivalent instrument acceptable to DHEC shall be obtained within 60 days of the approval and entry of this Consent Decree. DHEC shall be the primary beneficiary of the letter of credit, surety bond, or other equivalent instrument acceptable to DHEC. Kerr-McGee shall be a secondary beneficiary of the letter of credit, surety bond, or other equivalent instrument acceptable to DHEC.

4. The letter of credit, surety bond, or other equivalent instrument acceptable to DHEC from Lucent and CP Chemicals shall provide that the issuer will provide 90 days advance written notice of the non-renewal or termination of the letter of credit, surety bond, or other equivalent instrument acceptable ~~to DHEC and Kerr-McGee~~ to DHEC and Kerr-McGee. Lucent and/or CP Chemicals will obtain a replacement letter of credit, surety bond, or other equivalent instrument acceptable to DHEC from an issuer reasonably satisfactory to DHEC and Kerr-McGee and in form and substance satisfactory to DHEC and Kerr-McGee within 60 days from the date such notice is issued. If satisfactory evidence of such replacement letter of credit, surety bond, or other equivalent instrument acceptable to DHEC is not provided to DHEC and Kerr-McGee within said 60 days, DHEC may present the letter of credit, surety bond, or other equivalent instrument acceptable to DHEC to the issuer for payment prior to termination.
5. If payment for additional costs for PFRA or Additional Work is not made for amounts claimed by DHEC or, if DHEC's claim is contested pursuant to paragraphs V.B.3.4. and 5. above, for amounts required to be paid by order of this Court, DHEC may present the letter of credit, surety bond, or other equivalent instrument

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acceptable to DHEC for immediate payment, and so notify Kerr-McGee, Lucent and CP Chemicals.

6. All monies received by DHEC from the issuers of the letter of credit, surety bond, or other equivalent instrument acceptable to DHEC, whether as a result of non-renewal, termination or failure to make payment, shall be credited against the obligations of Kerr-McGee, Lucent and CP Chemicals under the Settlement Agreement for additional costs for PFRA and/or Additional Work.
7. If Lucent and/or CP Chemicals fail to make any payment for additional costs for PFRA or Additional Work required by the separate agreement among Lucent, CP Chemicals, Kerr-McGee and other parties concerning allocation and funding of this Settlement Agreement and if Kerr-McGee has made full payment for the work in question, Kerr-McGee may present the letter of credit, surety bond, or other equivalent instrument acceptable to DHEC for immediate payment, and so notify DHEC, Lucent and CP Chemicals. Such amounts received by Kerr-McGee shall be credited as provided in the separate agreement among the parties.
8. If DHEC fails to take all reasonable steps to enforce against Lucent and CP Chemicals the financial assurance requirements of Paragraph V.C.2. and 3., or if DHEC fails to timely and properly present the letter of credit, surety bond, or other equivalent instrument acceptable to DHEC for payment as provided above, whether as a result of non-renewal, termination or failure to make payment, the aggregate limit on Kerr-McGee's liability for additional costs for PFRA or Additional Work shall be \$3.5 million. Any amounts actually received by Kerr-McGee by accessing

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the letter of credit, surety bond or other equivalent instrument acceptable to DHEC as provided in Paragraph V.C.7. above, shall not be counted toward the \$3.5 million aggregate limit on Kerr-McGee's liability for additional costs for PFRA or Additional Work.

9. Kerr-McGee, Lucent and CP Chemicals agree that up to the first \$500,000 of the RSG share of net recoveries from Stoller insurance claims shall remain in the escrow account for the same duration as the other financial assurance vehicles referred to in Paragraphs V.B.5. & 6 above shall remain effective; provided, however, that Kerr-McGee, Lucent and CP Chemicals may, at their option, obtain an earlier release of these insurance proceeds from the escrow account if any one of them, or combination of them, provides a substitute collateral in the form of a \$500,000 letter of credit, surety bond, or other equivalent instrument acceptable to DHEC.

10. On an annual basis, Lucent and/or CP Chemicals may each separately adjust the dollar amount of their respective financial assurance by subtracting the amounts they have each paid for response costs in excess of the \$7 million for PFRA as described herein, such amounts paid by each to be certified to and agreed upon by DHEC in writing.

D. It is agreed that the first \$3.5 million of any costs over the \$7 million for PFRA as described herein (whether for Additional Costs for Planned Future Response Activities or for Additional Work) shall apply against the amounts of financial assurance being provided in Paragraph V.C.2., 3., & 4. It is further agreed that the aggregate limit on Lucent's liability for Additional Costs for PFRA or Additional Work

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Settlement Agreement
Stoller Jericho Chemical Site
Page 20

herein shall be \$2.25 million, except as provided in Paragraph V.F., and the aggregate limit on CP Chemical's liability for Additional Costs for PFRA or Additional Work herein shall be \$1.25 million, except as provided in Paragraph V.F.; provided, however, each of these aggregate limits on liability is contingent upon, and shall only take effect following, the provision by Lucent and CP Chemicals, respectively, of either an irrevocable letter of credit, surety bond, or other equivalent instrument acceptable to DHEC in the amounts set forth in Paragraph V.C.2. & 3.

E. To the extent the individual financial assurance mechanisms required above from Lucent and CP Chemicals remain in place after DHEC has collected up to the \$3.5 million referred to in the preceding paragraph, said financial assurance mechanisms shall inure to the benefit of Kerr-McGee (as provided in the internal agreements between Kerr-McGee, Lucent and CP Chemicals).

F. Except as provided above, members of SJWG and RSG shall not be subject to any claim or demand by DHEC for the funding of the \$7 million described in Paragraph V.A. above, or any part of the additional \$7 million described in Paragraph V.B. above. However, if the Planned Future Response Activities and any Additional Work result in costs which exceed a total of \$14 million (not counting amounts previously expended in connection with soils cleanup, groundwater study, vault construction, etc.), then all members of RSG and SJWG shall be subject to the possibility of further claims for any response costs above the \$14 million for which funding or financial assurance is provided herein, while reserving their defenses to such claims.

G. In the event any other settlement which DHEC previously entered into with another PRP (not among these Settling Defendants), for which the funds are in a trust account maintained by DHEC counsel, is approved in the future by the Court, then DHEC shall authorize and direct that counsel pay over such approved settlement funds: 50% to the designated SJWG account and 50% to the designated RSG account.

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Settlement Agreement
Stoller Jericho Chemical Site
Page 21

Such payment to SJWG and RSG shall be made not later than 30 days after DHEC has received the payment of the \$3.5 million described in Paragraph V.A.2. or 30 days after confirmation or approval of the settlement with the other PRP whose settlement funds are in the trust account, whichever date is later. Provided, however, if the entry of this Settlement Agreement is ultimately reversed as a result of an appeal, the amounts paid hereunder by DHEC shall be refunded and this obligation for the Settling Defendants to refund such amounts shall survive and continue despite any other provision herein.

H. It is agreed that DHEC shall not dismiss its pending cost recovery actions against parties other than the Settling Defendants until there is an approved settlement with respect to such other parties, and DHEC shall cooperate with SJWG and RSG to pursue recovery from any other Potentially Responsible Parties not participating in this settlement. DHEC agrees to assign to SJWG and RSG any recoveries and rights to proceeds in connection with claims against these other, non-settling PRPs. The participating members of SJWG shall be obligated to fund 50% of the costs associated with pursuing recoveries from these other Potentially Responsible Parties and shall be entitled to 50% of any recoveries (either by settlement or judgment and collection) from these other Potentially Responsible Parties, and the participating members of the RSG shall be obligated to fund the other 50% of such costs and shall be entitled to receive the other 50% of such recoveries. However, any amounts due to the participating members of the RSG pursuant to DHEC's assignment hereunder shall be paid into an escrow account and shall be used to fund the remaining obligations of the RSG members hereunder for payment of PFRA or Additional Work subject to the conditions and limitations otherwise set forth herein. Moreover, in the event that any participating member of the RSG files a petition under Title 11 of the United States Code, the parties agree that all funds paid into the escrow account, from whatever source derived, or any interest they may have in connection with the funds, shall not constitute property of the estate as defined in 11 U.S.C. § 541. If the entry of this

#21
CASH

Settlement Agreement
Stoller Jericho Chemical Site
Page 22

Settlement Agreement is ultimately reversed as a result of an appeal, the assignment by DHEC hereunder shall be deemed null and void and any amounts received by the Settling Defendants pursuant thereto shall be refunded to DHEC, and this obligation for the Settling Defendants to refund such amounts shall survive and continue despite any other provision herein.

I. DHEC assigns to SJWG and RSG any recovery and rights to proceeds in connection with the Stoller insurance claims, as asserted in Case No. 2:00-1582-12, pending in the United States District Court for the District of South Carolina, bearing the caption *South Carolina Department of Health and Environmental Control, et al v. Commerce and Industry Ins. Co., et al.* Two-thirds of the net recovery or rights to such proceeds shall belong to SJWG and one-third shall belong to RSG; however, the assignment to RSG described herein is subject to RSG's obligation to escrow up to the first \$500,000 of its share of any such net recovery or right to proceeds as part of the financial assurance mechanisms described herein. The assignments are further subject to the qualification that any such net recovery or right to proceeds decided by the court to be uniquely based upon DHEC's claim rights shall also be placed into said escrow account subject to the requirements and durations pertaining to the financial assurance mechanisms set forth above. The monies paid into the escrow account based upon DHEC's assignment to the RSG hereunder (to the extent such monies exceed \$500,000) may be used by the RSG members for payment of PFRA and Additional Work subject to the conditions and limitations otherwise set forth herein. Moreover, in the event that any party to this Settlement Agreement files a petition under Title 11 of the United States Code, the parties agree that all funds paid into the escrow account, from whatever source derived, or any interest they may have in connection with the funds, shall not constitute property of the estate as defined in 11 U.S.C. § 541. If the entry of this Settlement Agreement is ultimately reversed as a result of an appeal, the assignment by DHEC hereunder shall be deemed null and void and any amounts received by the Settling Defendants

#22
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Settlement Agreement
Stoller Jericho Chemical Site
Page 23

pursuant thereto shall be refunded to DHEC, and this obligation for the Settling Defendants to refund such amounts shall survive and continue despite any other provision herein. It is agreed that SJWG and RSG shall continue to pursue and prosecute the claims against the Stoller insurers pursuant to the separate agreements between them, with the participating members of the SJWG obligated to fund two-thirds of the costs associated with pursuing recoveries from the Stoller insurers and the participating members of the RSG obligated to fund the other one-third of the costs associated with pursuing recoveries from the Stoller insurers.

J. SJWG and DHEC agree to waive, and covenant not to sue one another on, any right or claim arising out of the ACO and Prior Settlement Agreement, which are herein declared void and superseded upon final entry of this Settlement Agreement and exhaustion of any appeals therefrom. The members of SJWG agree that they shall not seek reimbursement from DHEC of any amounts provided by SJWG to DHEC as provisional funding of DHEC's response costs or any other response cost expenditures by SJWG. SJWG shall not be obligated to pay any additional costs under this settlement except as set forth in Paragraph V.F., and in connection with its obligations under its separate agreements with RSG to prosecute further actions against non-settling PRPs and the Stoller insurers.

K. The Settling Parties agree, and by entering this Settlement Agreement as its Order this Court finds, that the Settling Defendants and their past, present and future shareholders, owners, officers, directors, employees, assigns, insurers, partners, joint venturers, subsidiaries, parent corporations, affiliates, divisions, agents, attorneys, divested business units, acquired business units, successors and predecessors shall not be liable to each other or any other person or entity for contribution claims of whatever kind or nature relating to the Site, and are entitled, as of the effective date of this Consent Decree, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), by HWMA Section 44-

#23
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56-10, *et seq.*, S.C. CODE ANN. § 44-56-10, *et seq.*, and by any other applicable federal, state or common law, for all past and future response activities and all past and future costs, including, but not limited to costs of response related to the Site incurred prior to the date of this Settlement Agreement and for the costs, up to \$14 million described herein in connection with PFRA and Additional Work. However, notwithstanding the foregoing, it is understood and agreed that the Settling Defendants reserve contribution rights against each other in connection with any future response costs claimed by the United States and with respect to any amounts in excess of the \$14 million described and provided for herein in connection with the PFRA and Additional Work.

L. DHEC and the Settling Defendants agree to take appropriate action to execute releases, orders of dismissal, or other necessary documents to effect the Settlement Agreement.

VI. COVENANT NOT TO SUE AND RELEASE BY DHEC

A. Except as specifically provided in Section V. or below, DHEC covenants not to sue and hereby releases the Settling Defendants and their past, present, and future shareholders, owners, officers, directors, employees, assigns, insurers, partners, joint venturers, subsidiaries, parent corporations, affiliates, divisions, agents, attorneys, divested business units, acquired business units, successors and predecessors from the following:

1. Each and every claim, cause of action, matter, fact, or issue, of whatever kind or nature, whether known or unknown, whether based on statutory law, common law, or any other legal basis, relating to response actions at the Site, which DHEC now has or may hereafter have.
2. Any and all liability, costs, losses, or damages which have been or hereafter may be sustained or incurred by DHEC relating to response actions at the Site.

#24
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