

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

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.; CP Chemicals, Inc., Macalloy Corporation; Gaston Copper Recycling Corporation; Southwire Company; and Clariant Corporation,)

Intervenor-Defendants.)

CIVIL ACTION NOS. 2 97 726 12
And Consolidated Cases

**SETTLEMENT AGREEMENT
AMONG AND BETWEEN
THE SOUTH CAROLINA
DEPARTMENT OF HEALTH AND
ENVIRONMENTAL CONTROL, AND
THE RAVENEL SITE GROUP**

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

- (i) Tronox LLC, f/k/a 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), and CP Chemicals, Inc. (constituting the active members of and collectively herein referred to herein as the “Ravenel Site Group” or “RSG”); and

- (ii) The South Carolina Department of Health and Environmental Control (“DHEC”).

I. RECITALS

A. The South Carolina Department of Health and Environmental Control (“DHEC”) filed Complaints against the RSG and other companies in this consolidated matter pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601, *et seq.*, as amended (“CERCLA”), and pursuant to Section 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 (hereinafter referred to as the “Site”).¹ The DHEC complaints and related third party claims were consolidated in *The South Carolina Department of Health and Environmental Control v. Atlantic Steel Industries, et al.*, U.S. District Court, District of South Carolina, Charleston Division, Civil Action No. 1 97 726 12.

B. The foregoing claims were resolved in the Settlement Agreement with DHEC dated March 8, 2002, and approved by the District Court on April 1, 2002, (“the 2002 Agreement”).

¹ The “Stoller 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.

C. Pursuant to Section V.A. of the 2002 Agreement, the RSG agreed to fund up to \$7 million of Planned Future Response Activities (PFRA), including an interim groundwater treatment system (“IGWTS”) at the Site, and pursuant to Section V. B. provided additional contingency funding up to a total of \$14 million, all subject to RSG’s rights to review and challenge DHEC’s costs as provided in the 2002 Agreement. Costs for certain PFRA activities have been expended by DHEC and reimbursed by RSG, and groundwater response actions are continuing.

D. Both prior to and following execution and approval of the 2002 Agreement, the RSG disputed the efficacy of the IGWTS and objected to DHEC’s continuing to expend funds for groundwater pumping and treating. The RSG has also questioned certain cash calls made by DHEC under the 2002 Agreement.

E. The RSG advocated an *in situ* neutralization remedy to address groundwater contamination at the Site. DHEC in Section V.A.1.a of the 2002 Agreement agreed to consider the RSG’s *in situ* approach. However, the RSG eventually put on hold its efforts to persuade DHEC to approve its *in situ* approach after RSG concluded that DHEC was going forward with another technology.

F. In 2003 DHEC began evaluating a sulfate reducing bioreactor (“SRBR”) groundwater treatment technology developed by Golder Associates. DHEC advised the RSG in 2005 that something other than the IGWTS should be considered at the Site and that field tests of the SRBR approach appeared to meet the goals and objectives for groundwater remediation.

G. The Parties agreed that a new funding agreement would be appropriate if DHEC decided to implement the SRBR technology. The SRBR technology would constitute Additional Work under Section V.B.1. of the Agreement. Section V.B.4 of the Agreement grants the RSG 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.”

H. In August 2007 DHEC published a Proposed Plan for and Amendment to the Record of Decision for the Site. The proposed plan amendment discusses several remedial alternatives and concludes that DHEC’s preferred alternative is the SRBR remedy at an estimated cost of \$3,325,912.

I. The Parties agreed to negotiate a settlement of the issues relating to future groundwater remedy funding and past DHEC cost invoices with the mediation assistance of Mr. Daniel Dozier. The negotiations took place in August 2007 and this Settlement Agreement is the result of the negotiations.

II. OBLIGATIONS OF THE RSG

A. The RSG will pay to DHEC the total amount of \$5.4 million. Payment of this amount shall be made as follows:

(i) RSG has deposited \$637,589 in an escrow account established by RSG counsel. By September 30, 2007, or within two (2) days of execution of this Settlement Agreement by the Parties, whichever is later, the RSG shall pay \$637,589;

(ii) By December 31, 2007, RSG shall confirm the deposit of \$4,762,411 in an interest bearing escrow account to be established by RSG counsel. Interest shall begin to accrue as of the date each amount is deposited into the account, and on the full amount due hereunder not later than January 1, 2008. Within two (2) days of approval of this Settlement Agreement by the Court, the escrow account balance, including interest, shall be paid to DHEC. Should the Settlement Agreement not be approved by the Court, the escrow balance, including interest, shall be returned to RSG.

B. The RSG's payment of the foregoing amounts includes a liquidation of the obligations of the RSG to reimburse DHEC for costs under the 2002 Agreement including the RSG's liability for all response costs up to and in excess of \$14 million as described in Section V.F of the 2002 Agreement. The RSG's payment of the foregoing amounts specifically includes a "premium" in excess of actual and projected costs for the discharge of RSG's existing and potential liabilities under the 2002 Agreement.

C. The RSG agrees to pay the fees of Daniel Dozier for services as a mediator in this matter.

D. The RSG agrees not to comment on or object to the August 2007 DHEC proposed amendment to the Record of Decision for groundwater at the Site. However, notwithstanding the foregoing, and notwithstanding Section III.C of this Settlement Agreement, in the unlikely event that that this Settlement Agreement is not approved by the Court or a court should require the RSG to perform or pay any costs for PFRA or Additional Work at the Site, including response actions relating to an amended Record of Decision, the RSG may submit comments and object to the Amended Record of Decision at the Site and the RSG reserves the right to defend against any claims and to contest both such costs and the selection and implementation of the remedy at the Site, pursuant to the provisions of the 2002 Settlement Agreement.

E. The Parties agree that all obligations of the RSG to provide financial assurance or to fund past or future response actions at the Site under the 2002 Agreement, including without limitation PFRA and Additional Work, are satisfied, discharged and terminated upon execution of this Agreement and payment of the amounts in Section II. A. above.

III. OBLIGATIONS OF DHEC

A. Conditional upon payments of the amounts in Section II.A., DHEC discharges the liability of and covenants not to sue the RSG, their predecessors, parents, subsidiaries, affiliates, or

stockholders, their officers, directors, employees, or agents, or their successors or assigns, for any and all claims, causes of actions, or liability (including attorneys fees and expenses and other court or enforcement costs) at the Site, for reimbursement of any and all past, present, or future response costs, or for injunctive relief for response actions, under common or statutory law or any other legal basis including without limitation Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), Section 44-56-200 of SCHWMA, and Section 7003 of RCRA, 42 U.S.C. § 6973, with regard to the Site. The RSG's payments under this Settlement Agreement constitute a liquidation of the RSG's obligations to pay all DHEC cash calls under the 2002 Agreement. This Settlement Agreement is intended to benefit not only the undersigned active members of the RSG but also the non-signatory RSG members including Gaston Copper Recycling Corporation, Southwire Company, Clariant Corporation, Koch Sulfur Products Company, LLC, Blackman-Uhler Chemical Company, and Sterling Faucet, Inc., who are third party beneficiaries of this Settlement Agreement.

B. DHEC herein confirms its Settlement Agreements providing discharge of liability and covenants not to sue to the other companies, not members of the RSG or the Stoller Jericho Working Group (SJWG), who settled with the RSG and DHEC in supplementary Settlement Agreements ("Other Settling Parties"), their predecessors, parents, subsidiaries, affiliates, or stockholders, their officers, directors, employees, or agents, or their successors or assigns, for any and all claims, causes of actions, or liability (including attorneys fees and expenses and other court or enforcement costs) at the Site, for reimbursement of any and all past, present, or future response costs, or for injunctive relief for response actions, under common or statutory law or any other legal basis including without limitation Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), Section 44-56-200 of SCHWMA, and Section 7003 of RCRA, 42 U.S.C. § 6973, with regard to the Site. The Other Settling Parties are Beta Control Systems, Inc., W.J. Bullock, Inc.,

Cerro Metal Products Company, E & H Recycling Company, Gulf Reduction Corporation, Kearney Smelting and Refining Company, Michigan Standard Alloys, Plant Roberts Chemicals, Parkans International, Roessing Bronze and St. Mary's Carbon Company, Inc. This Settlement Agreement is intended to benefit the Other Settling Parties who are third party beneficiaries of this Settlement Agreement.

C. In order to assure fair treatment of members of the Stoller Jericho Working Group (SJWG) who have contingent exposure to claims by DHEC at the Site under the 2002 Agreement, DHEC agrees to offer to enter into a complete discharge of those liabilities in return for payment of a premium analogous to that paid by the RSG under this Settlement Agreement. The members of the SJWG are 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. In the event that such an agreement is not reached with the SJWG, DHEC reserves the right to seek reimbursement of response costs from members of the SJWG not to exceed the SJWG members' equitable share of response costs in excess of \$14 million as described in Section V.F of the 2002 Agreement. The intent of the Parties is (i) that the liability or exposure of members of the SJWG for their share of any DHEC claims for response costs in excess of \$14 million as described above will be no greater as a result of DHEC's discharge of liability and covenant not to sue the RSG and the Other Settling Parties, and (ii) therefore that the SJWG will have no claims for contribution against the RSG or the Other Settling Parties. Notwithstanding the foregoing, in the unlikely event that a court were to issue a judgment that the RSG or Other Settling Parties are liable to SJWG for contribution for costs

claimed by DHEC in excess of \$14 million, DHEC agrees to offset or reduce any judgment it has against the SJWG by the amount of any contribution judgment that the SJWG obtains against the RSG or Other Settling Parties so that such offset or reduction results in RSG not being required to make any payments to the SJWG or the Other Settling Parties.

D. In the unlikely event that a court were to find that the releases and other provisions in Section III of this Settlement Agreement are void or unenforceable the Parties will be restored as nearly as possible to the positions they occupied immediately prior to the execution of this Settlement Agreement including without limitation the following: (1) the RSG will have the right to dispute, contest and litigate past or future DHEC cash calls pursuant to the 2002 Agreement to the extent permitted under the terms of the 2002 Agreement including without limitation RSG's payment of \$637,589 pursuant to Section II.A.i of this Settlement Agreement, (2) the RSG will have the right to seek immediate repayment of any amounts paid under Section II.A.ii of this Settlement Agreement which were not otherwise due under Section V.A of the 2002 Agreement or, failing repayment, to obtain offsets or credits from DHEC for said amounts with interest, (3) RSG will have the right to obtain offsets or credits from DHEC for the remaining amounts paid under Section II.A.ii of this Settlement Agreement, and (4) DHEC will have the right to seek payment for DHEC's response costs at the Site to the extent permitted under the terms of the 2002 Agreement and the reinstatement of financial assurance.

IV. General Provisions

A. This Settlement Agreement is entered voluntarily by and among each of the Parties, and each Party agrees to undertake all actions required by the terms and conditions of this Settlement Agreement. Each signatory to this Settlement Agreement represents that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to bind legally the party(s) he or she represents.

B. The Parties recognize 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 Stoller Site, avoid prolonged and complicated litigation between the Parties, and resolve the existing claims among the 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 Stoller Site.

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

D. The Parties agree that the United States District Court for the District of South Carolina has jurisdiction over the subject matter of this action and over the Parties pursuant to CERCLA Sections 107 and 113 (b), 42 U.S.C. §§ 9607 and 9613(b), and pursuant to 28 U.S.C. §§ 1331 and 1345. The Parties agree to submit this Agreement to the Court for approval and entry as an order of the Court. The Parties shall not challenge the Court's jurisdiction to enter, construe, and enforce this Settlement Agreement.

E. This Settlement Agreement constitutes the entire agreement between the Parties with respect to the matters covered herein. All prior discussions, drafts, and writings are specifically superseded by this Settlement Agreement and may not be used to vary or contest the terms of this Agreement. Moreover, except as incorporated expressly herein, to the extent inconsistent with the express terms herein or the objectives of this Settlement, the obligations of the RSG under the

remaining 2002 Agreement are cancelled and discharged. This Settlement Agreement may be amended only by a writing signed by all the Parties hereto.

F. This Settlement Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one instrument

G. Unless otherwise expressly provided herein, the terms used in this Settlement Agreement which are defined in the 2002 Agreement or in CERCLA or the National Contingency Plan, 40 C.F.R. Part 300, shall have the meaning assigned to them under such Agreement or statute or regulations.

H. All notices required or permitted under this Settlement Agreement shall be in writing mailed to the Party to whom notice is to be given at the address of such Party set forth below (or to such other address as that party shall specify to the other Party in the manner set forth herein), and having been so sent, shall be deemed given when sent:

If to DHEC:

Jacquelyn S. Dickman,
Deputy General Counsel
SC Dept of Health & Environmental Control
2600 Bull Street
Columbia, SC 29201

Claron A. Robertson, III
Robertson & Hollingsworth
117 Meeting Street, Suite 300
Charleston, SC 29401

If to the Ravenel Site Group:

Theodore L. Garrett
Covington & Burling LLC
1201 Penn. Ave., N.W.
Washington, D.C. 20004

Carl Helmstetter
Spencer, Fane Britt & Browne
1000 Walnut Street
Kansas City, MO 64106

Timothy Bouch
Leath, Bouch & Crawford, L.L.P.
134 Meeting Street
Charleston, SC 29402

James Werner
Parker Poe
1201 Main Street, Suite 1450
Columbia, SC 29002

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement.

THE SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

BY: C. Earl Hunter

ITS: Commissioner

DATE: 10-17-07

DHEC-RSG Agreement

TRONOX LLC (AS SUCCESSOR TO KERR MCGEE CHEMICAL CORPORATION)

BY: *[Signature]*
TTS: V.P. JEA
DATE: 10/3/07

DHEC-RSG Agreement

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)

Lucent Technologies Inc.

BY: Bary J. Kunkel

TITLE: Director BHS

DATE: 10/2/07

DHEC-RSG Agreement

CP CHEMICALS, INC.



BY: David C. Starbeck

TTS: Vice President

DATE: October 2, 2007

FINAL JUDGMENT

Pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Court finds that there is no just reason for delay and directs that the attached Settlement Agreement be entered forthwith as a final judgment with respect to all claims and causes of action that DHEC has or may have against the Ravenel Site Group, namely Tronox LLC, Lucent Technologies Inc. CP Chemicals, Inc., Gaston Copper Recycling Corporation, Southwire Company, Clariant Corporation, Koch Sulfur Products Company, LLC, Blackman-Uhler Chemical Company, and Sterling Faucet, Inc.

So Ordered this ____ day of _____, 2007.

The Honorable C. Weston Houck
United States District Judge