

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

)	
In re:)	Chapter 11
)	
TRONOX INCORPORATED, <u>et al.</u> , ¹)	Case No. 09-10156 (ALG)
)	
Debtors.)	Jointly Administered
)	

SETTLEMENT AGREEMENT

This Settlement Agreement (the “**Agreement**”) is made as of May 1, 2010, by and among Tronox Incorporated and its debtor affiliates (collectively, the “**Debtors**”), and the United States of America (the “**United States**,” and together with the Debtors, the “**Parties**”).

RECITALS

WHEREAS, on January 12, 2009 (the “**Petition Date**”), the Debtors each filed voluntary petitions for relief with the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”) and commenced cases (the “**Bankruptcy Cases**”) under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”);

¹ The Debtors in these cases include: Tronox Luxembourg S.ar.l; Tronox Incorporated; Cimarron Corporation; Southwestern Refining Company, Inc.; Transworld Drilling Company; Triangle Refineries, Inc.; Triple S, Inc.; Triple S Environmental Management Corporation; Triple S Minerals Resources Corporation; Triple S Refining Corporation; Tronox LLC; Tronox Finance Corp.; Tronox Holdings, Inc.; Tronox Pigments (Savannah) Inc.; and Tronox Worldwide LLC.

WHEREAS, the Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code;

WHEREAS, the Debtors have been engaged in remediation efforts (a) at the Rare Earths Facility (the “**REF**”) pursuant to requirements imposed by a license issued by the Illinois Emergency Management Agency and (b) pursuant to a Consent Decree filed in *United States v. Kerr-McGee Chemical LLC*, Civil Action No. 05C2318 (N.D. Ill.) (“**Federal Consent Decree**”) and a Consent Decree filed in *County of DuPage v. Kerr-McGee Chemical LLC*, Civil Action No. 05C1872 (N.D. Ill.) (“**Local Communities Consent Decree**”), at four vicinity sites (referred to collectively as the “**West Chicago NPL Sites**”) that are or were listed on the National Priorities List: (i) residential areas in the City of West Chicago and DuPage County, Illinois (“**RAS**”); (ii) Reed-Keppler Park in West Chicago, Illinois; (iii) the sewage treatment plant in West Chicago and DuPage County, Illinois; and (iv) Kress Creek and the West Branch DuPage River in DuPage County, Illinois (“**Kress Creek**”);

WHEREAS, the United States Environmental Protection Agency (“US EPA”) established the Kress Creek/West Branch DuPage River Superfund Site Special Account (“**Special Account**”), within the EPA Hazardous Substance Superfund, for the West Chicago NPL Sites pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), to which Kerr-McGee Chemical LLC, pursuant to the terms of the Federal Consent Decree, deposited funds to be retained and used to

conduct or finance response actions at or in connection with the West Chicago NPL Sites;

WHEREAS, the performance of certain environmental remediation work at the West Chicago NPL Sites related to removal of radioactive contamination from “Reach 7” of Kress Creek and certain of the RAS properties, which properties are more specifically identified in Attachment A hereto, has been identified by the Parties as a priority for the Debtors’ remediation obligations (the “**Reach 7 and RAS Remediation Work**”);

WHEREAS, in light of the Debtors’ financial condition and status as Chapter 11 Debtors, Debtors have engaged in negotiations with the United States concerning a consensual agreement regarding the performance and funding of the Reach 7 and RAS Remediation Work;

WHEREAS, on December 23, 2009, the Court entered an Order Authorizing Tronox to Enter Into Plan Support Agreement and Equity Commitment Agreement, which contemplates, *inter alia*, that all of the environmental claims asserted by the United States and certain tribal, state and local governments against the Debtors with respect to certain sites will be settled through a Chapter 11 Plan of Reorganization (the “**Plan**”) and a Consent Decree and Settlement Agreement (“**Global Settlement**”);

WHEREAS, the Global Settlement contemplates the creation of a West Chicago Environmental Response and Work Trust (“**West Chicago Trust**”) to, among other things, perform, manage, and fund implementation of

environmental actions at the REF and certain of the West Chicago NPL Sites, specifically, the RAS and Kress Creek;

WHEREAS, the Global Settlement further contemplates the establishment, within the West Chicago Trust, of several segregated environmental cost accounts, including the following two segregated accounts (i) the West Chicago Trust Environmental Cost Account for Kress Creek (the “**Kress Creek Environmental Cost Account**”) and (ii) the West Chicago Trust Environmental Cost Account for those RAS properties that are not owned by Debtors (the “**Non-Owned RAS Properties Environmental Cost Account**”) to, among other things, perform, manage, and fund implementation of environmental actions at Kress Creek and the Non-Owned RAS Properties;

WHEREAS, Title X of the Energy Policy Act of 1992 (“Title X”), Pub. L. No. 102-486 (1992) (codified as amended at 42 U.S.C. § 2296a), provides for reimbursement by the United States Department of Energy (“**DOE**”) of remediation costs incurred at specific sites that were used at least in part to supply uranium and thorium to the United States;

WHEREAS, remediation work performed by the Debtors at the REF and the West Chicago NPL Sites qualifies for reimbursement under Title X and Debtors are therefore eligible to receive reimbursement from DOE for 55.2 percent of certain remediation costs expended at the REF and the West Chicago NPL Sites;

WHEREAS, reimbursements under Title X are funded by Congressional appropriations;

WHEREAS, under Title IV of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (Feb. 17, 2009), which was signed into law on February 17, 2009, Congress authorized an appropriation of \$70 million for Title X reimbursements at active uranium or thorium processing sites;

WHEREAS, Tronox presently is owed a total amount of approximately \$25 million in past due reimbursements (the “**Reimbursement**”) for (i) \$17.7 million for costs spent in connection with eligible remediation efforts at the REF and the West Chicago NPL Sites prior to February 2008, which Tronox had expected to receive in April 2009, and (ii) \$7.3 million for costs spent in connection with eligible remediation efforts at the REF and the West Chicago NPL Sites for work performed during calendar year 2008, which Tronox had expected to receive in or around January 2010;

WHEREAS, on August 12, 2009, the United States of America, on behalf of US EPA, the Nuclear Regulatory Commission, the United States Department of Agriculture, acting through the United States Forest Service, the United States Department of the Interior, acting through the Fish and Wildlife Service, and the United States Department of Commerce, acting through the National Oceanic and Atmospheric Administration, filed Proofs of Claim Nos. 2384, 2385, 2386, 2387, 2388, 2389, 2390, 3528, 3529, 3530, 3532, 3533, 3534, 3535, and 3626, setting forth, among other things, pre-petition claims against the Debtors for

past response costs and civil penalties with respect to certain sites that are owned and not owned by Debtors, including the West Chicago NPL Sites;

WHEREAS, the Debtors have ongoing injunctive obligations to perform response activities at the West Chicago NPL Sites under the Federal Consent Decree;

WHEREAS, the United States asserts that, under section 553 of the Bankruptcy Code, it has the right to offset the Reimbursement against its alleged prepetition claims against Tronox;

WHEREAS, the United States informed the Debtors that the Reimbursement had been placed on administrative hold by DOE pending discussions between the Parties regarding the United States' alleged right to offset the Reimbursement;

WHEREAS, the Debtors assert that the Reimbursement is not subject to setoff under section 553 of the Bankruptcy Code and that the Debtors are, therefore, entitled to immediate receipt of the Reimbursement;

WHEREAS, following extensive, arms-length negotiations and the exchange of information among the Parties, the Parties have resolved the dispute concerning the United States' alleged right to offset the Reimbursement,

NOW, THEREFORE, in consideration of the foregoing, the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties stipulate and agree and the Court orders that:

1. Within five days of entry of this Settlement Agreement, the United States shall release the Reimbursement to a segregated third-party, interest-bearing escrow account (the “**Escrow Account**”) to be established by the Debtors to fund performance of the Kress Creek and RAS Remediation Work until the Effective Date of the Plan (“**Plan Effective Date**”), and to be held in trust for the sole purpose of complying with the requirements of this Agreement.

2. Until the Plan Effective Date and in accordance with US EPA-approved work plans, the Debtors shall implement and direct the performance of the Reach 7 and RAS Remediation Work; provided, however, that if the Debtors are unable for any reason to perform the Reach 7 and RAS Remediation Work prior to the Effective Date, then the implementation of the Reach 7 and RAS Remediation Work may be directed by the United States or a third party as appointed and agreed upon by the Parties.

3. The Debtors shall retain ARCADIS U.S., Inc. (“**ARCADIS**”) to perform the US EPA-approved work plans under this Agreement pursuant to a written contract between ARCADIS and the Debtors (the “**ARCADIS Contract**”).

4. On or before the Plan Effective Date, the Debtors shall assign the ARCADIS Contract to the West Chicago Trust in order that all rights, obligations, interests and liabilities of the Debtors pursuant to the ARCADIS Contract, including indemnity obligations, shall be assigned to and assumed by the West Chicago Trust.

5. On or before April 30, 2010, the Debtors shall submit to DOE a

Title X claim for any remedial costs that were incurred prior to March 31, 2010, but had not been previously claimed by the Debtors for calendar years 2009 and 2010, for eligible REF and West Chicago NPL Site remediation work.

6. US EPA, at its discretion, is willing to make available Special Account funds to the West Chicago Trust to conduct or finance response actions at or in connection with the West Chicago NPL Sites in accordance with this Agreement. Accordingly, as soon as practicable, the Debtors shall, in addition to the Title X claims set forth in Paragraph 5 above, submit to US EPA a Cost Summary and Certification for the first \$3 million of work performed by the Debtors under this Agreement to demonstrate that the Debtors have incurred costs in accordance with this Agreement. The Cost Summary and Certification shall comport with the requirements set forth in the instructions annexed hereto as Attachment B. Subject to the conditions set forth in Attachment B, and after the Debtors have demonstrated costs have been incurred in accordance with this Agreement and the instructions annexed hereto as Attachment B, on a date after the Plan Effective Date to be determined by US EPA, US EPA may transfer funds from the Special Account by electronic wire transfer to either or both the Kress Creek Environmental Cost Account and the Non-Owned RAS Properties Environmental Cost Account, based on funding needs for remaining environmental actions to be performed.

7. On or before the Plan Effective Date, the Debtors shall provide to the trustee for the West Chicago Trust, as identified in the Global Settlement, all

information and documentation necessary for the trustee to submit a Title X claim to DOE for any remedial costs incurred by the Debtors for work performed under this Agreement that were not previously claimed by the Debtors in Paragraph 5 above.

8. On the Plan Effective Date, the Debtors shall transfer to the West Chicago Trust all of their rights, title, and interest in all Title X reimbursements from DOE to which the Debtors would have been entitled based on remediation work performed by the Debtors under this Agreement.

9. On the Plan Effective Date, the Debtors shall also transfer any unused funds remaining in the Escrow Account to the West Chicago Trust, pursuant to the terms and conditions set forth in the Global Settlement.

10. Nothing in this Agreement modifies any provisions of the Federal Consent Decree and the Local Communities Consent Decree, and all parties reserve all rights thereunder.

11. Notwithstanding anything to the contrary in this Agreement, the Debtors acknowledge that it may become necessary under applicable law for the Debtors to perform additional actions beyond those set forth in the approved work plan for the Reach 7 and RAS Remediation Work, provided, however, that all parties reserve all rights, claims, and defenses with respect to such actions. In addition, it is understood that the Debtors, with the approval of US EPA, may alter individual tasks identified in the approved work plans, if necessary, due to unanticipated circumstances.

12. Nothing herein shall be deemed to limit any authority of the United States to (a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release on, at, or from any site or facility; or (b) direct or order such action, or seek an order from the Bankruptcy Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release on, at, or from any site or facility, provided, however, that nothing in this Paragraph shall be construed to negate any obligation provided for in this Agreement.

13. As soon as reasonably practicable following the execution of this Agreement, the Debtors will file a motion with the Bankruptcy Court requesting entry of an order by the Bankruptcy Court approving the terms of this Settlement Agreement.

14. If approval of this Settlement Agreement is denied by the Bankruptcy Court, (a) this Settlement Agreement shall be null and void and the Parties shall not be bound hereunder or under any documents executed in connection herewith; (b) the Parties shall have no liability to one another arising out of or in connection with this Settlement Agreement or under any documents executed in connection herewith; and (c) this Settlement Agreement and any documents prepared in connection herewith shall have no residual or probative effect or value, and it shall be as if they had never been executed.

15. If this Settlement Agreement is approved, but the Bankruptcy Cases are subsequently dismissed or converted to cases under Chapter 7 of the

Bankruptcy Code, Debtors shall continue to implement and direct the performance of the “Reach 7” and RAS Remediation Work using the funds in the Escrow Account. If the “Reach 7” and RAS Remediation Work is completed pursuant to this Paragraph, and there are leftover funds in the Escrow Account, Debtors shall transfer the remaining funds to the Special Account.

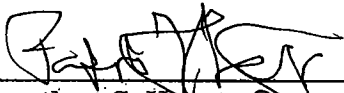
16. The Bankruptcy Court shall retain jurisdiction over both the subject matter of this Agreement and the Parties hereto, for the duration of the performance of the terms and provisions of this Agreement for the purpose of enabling any of the Parties to apply to the Bankruptcy Court at any time for such further order, direction and relief as may be necessary or appropriate for the construction or interpretation of this Agreement, or to effectuate or enforce compliance with its terms; provided, however, that nothing herein shall impair the jurisdiction of the United States District Court for the Northern District of Illinois under the Federal Consent Decree and the Local Communities Consent Decree.

17. The signatories for the parties each certify that he or she is authorized to enter into the terms and conditions of this Settlement Agreement, and to execute and bind legally such party to this document.

AGREED TO BY:

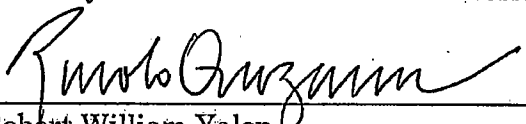
Dated: 5/1/10
New York, New York

KIRKLAND & ELLIS
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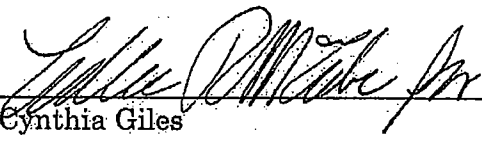
Dated: 5/1/10
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Dated: 5/1/10
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Washington, D.C.

**FOR THE UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY**


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ATTACHMENT A

Residential Areas Site Properties List

EPA Property ID Number

- | | |
|-----|------|
| 1. | #015 |
| 2. | #020 |
| 3. | #024 |
| 4. | #035 |
| 5. | #055 |
| 6. | #075 |
| 7. | #076 |
| 8. | #077 |
| 9. | #100 |
| 10. | #111 |

ATTACHMENT B TO SETTLEMENT AGREEMENT

PRE-DISBURSEMENT COST SUMMARIES AND CERTIFICATIONS TO FACILITATE DISBURSEMENTS OF SPECIAL ACCOUNT FUNDS

1. Pre-Disbursement Cost Summaries/Certifications in Advance of Requests for Disbursement of Special Account Funds.

a. Debtors shall submit to US EPA a Cost Summary and Certification, as defined in Subparagraph 1b, for the first \$3 million of response work performed by the Debtors under the Settlement Agreement, along with the request for disbursement from the Special Account to the West Chicago Trust Environmental Cost Accounts.

b. The Cost Summary and Certification shall include complete and accurate written invoices and certification of the necessary costs incurred and paid, or to be incurred pursuant to a written contract, by Debtors for the Work covered by the particular submission, excluding costs not eligible for disbursement under Paragraph 2. The Cost Summary and Certification shall contain the following statement signed by the Debtors' Comptroller (or functional equivalent who directs or manages Debtors' financial affairs) or by an independent Certified Public Accountant:

“To the best of my knowledge, after thorough investigation and review of Debtors' documentation of costs incurred and paid for Work performed pursuant to this Consent Decree, I certify that the information contained in or accompanying this submittal is true, accurate, and complete. I am aware that there are significant penalties for knowingly submitting false information, including the possibility of fine and imprisonment.”

The Debtors' Comptroller (or functional equivalent who directs or manages Debtors' financial affairs) or an independent Certified Public Accountant shall also provide US EPA a list of the invoices that he or she reviewed in support of the Cost Summary and Certification. Upon request by US EPA, Debtors shall submit to US EPA any additional information that US EPA deems necessary for its review and approval of the Cost Summary and Certification.

c. If US EPA finds that the Cost Summary and Certification includes a mathematical accounting error, costs or cost estimates excluded under Paragraph 2, costs or cost estimates that are inadequately documented, or costs or cost estimates submitted in a prior Cost Summary and Certification, US EPA will notify Debtors

and provide an opportunity to cure the deficiency by submitting a revised Cost Summary and Certification. If Debtors fail to cure the deficiency within thirty (30) days after being notified of, and given the opportunity to cure, the deficiency, US EPA will recalculate Debtors' costs eligible for disbursement for that submission.

2. Costs Excluded from Disbursement

The following costs should not be submitted as part of the Cost Summary and Certification as they are excluded from disbursement from the Special Account: (a) response costs paid by Kerr-McGee Chemical LLC pursuant to the Federal Consent Decree; (b) attorneys' fees and costs, except to the extent that such costs qualify as response costs under CERCLA; (c) costs of any response activities Debtors perform that are not required under, or approved by US EPA pursuant to the Kress Creek Final Design Work Plans or RAS Work Plans; (d) costs related to the Debtors' litigation, settlement, development of potential contribution claims, or identification of defendants; or (e) internal costs of the Debtors including, but not limited to, salaries, travel, or in-kind services, except for those costs that represent the work of employees of the Debtors directly performing the US EPA-approved Kress Creek Final Design Work Plans or RAS Work Plans.