

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

The South Carolina Department of Health and Environmental Control,)	CIVIL ACTION NOS. 2 97 726 12
)	And Consolidated Cases
)	
Plaintiff,)	
)	
v.)	
)	
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 Metals Company; The Stackpole Corp.; and Waterbury Rolling Mills, Inc.,)	SETTLEMENT AGREEMENT AMONG AND BETWEEN THE SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL AND THE STOLLER JERICHO WORKING GROUP
)	
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.)	
)	

This SETTLEMENT AGREEMENT, dated December 30, 2008 ("2008
Settlement Agreement"), is entered into by and between the following parties:

- (i) The South Carolina Department of Health and Environmental Control
("DHEC" or "Department"); and

(ii) Gerdau Ameristeel US Inc. (f/k/a AmeriSteel Corporation, f/k/a Florida Steel Corporation); I. Schumann & Company; Mueller Brass Co.; Nucor Corporation; Nucor-Yamato Steel Company; Owen Electric Steel Company of South Carolina, d/b/a CMC Steel South Carolina (f/k/a SMI Steel-South Carolina); Roanoke Electric Steel Corporation; and The Federal Metals Company (constituting the active members of, and collectively referred to herein as, the Stoller Jericho Working Group or "SJWG").

I. RECITALS

A. DHEC filed Complaints against SJWG 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 "Stoller 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.

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.

- B. The foregoing claims were resolved in a Settlement Agreement between DHEC, SJWG, and the Ravenel Site Group ("RSG") dated March 8, 2002, and approved by the District Court on April 1, 2002 ("2002 Agreement").
- C. In August 2007, DHEC published a Proposed Plan for and Amendment to the Record of Decision for the Stoller Site. The proposed plan amendment discussed several remedial alternatives and concluded that DHEC's preferred alternative is the SRBR (sulfate reducing bioreactor) remedy at an estimated cost of \$3,325,912. A Final Amendment to the Record of Decision was issued on July 9, 2008.
- D. DHEC and RSG agreed to negotiate a settlement of ongoing disputes between DHEC and RSG relating to past and future response costs under the 2002 Settlement Agreement. An agreement was reached, and DHEC and RSG entered a Settlement Agreement dated October 17, 2007 ("2007 Settlement Agreement"). The 2007 Settlement Agreement explicitly contemplated an agreement between DHEC and SJWG.
- E. The 2007 Settlement Agreement provides for recovery of disputed response costs from RSG in the amount of \$5.4 million, releases RSG from further liability for response costs, and all obligations of RSG to DHEC for past or future response costs at the Stoller Site or to fund financial assurance are satisfied, discharged, and terminated.
- F. Under the 2007 Settlement Agreement, the amount of \$637,589 has been paid over to DHEC by RSG, and \$4,762,411 has been paid by RSG into an interest-bearing escrow account pending court approval of the 2007 Settlement Agreement.
- G. The 2007 Settlement Agreement specifically provided at III.C. as follows:

"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 (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 Metals Company; The Stackpole Corp.; and Waterbury Rolling Mills, Inc."

II. AGREEMENT

- A. Consistent with the provisions of the 2007 Settlement Agreement and in response to comments, DHEC and the SJWG enter this 2008 Settlement Agreement. SJWG agrees to make a payment to DHEC in the amount of \$350,000 in consideration for DHEC's agreement not to assert any further claims for response costs at the Stoller Site against SJWG, including the SJWG's potential liability for response costs in excess of \$14 million as described in Section V.F. of the 2002 Settlement Agreement. Payment shall be made within twenty (20) days of Court approval of the 2007 and 2008 Settlement Agreements.
- B. DHEC shall deposit funds paid by the SJWG as set forth above and funds paid over from the RSG escrow account into the dedicated interest-bearing account already established pursuant to the 2002 Settlement Agreement. Such funds shall be used solely for post-2007 Settlement Agreement response costs for the groundwater remedy in accordance with the Final Amendment to the Record of Decision, as well

as post-2007 Settlement Agreement monitoring, maintenance, and oversight costs at the Stoller Site.

C. Conditioned on payment by the SJWG of the \$350,000, DHEC hereby discharges the liability of and covenants not to sue or assert against the SJWG, 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) for response actions at the Stoller 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 Stoller Site.

D. Except as provided in this paragraph, SJWG, and each of its members individually, shall have contribution protection as to any and all claims for response costs at the Stoller Site as provided by CERCLA Section 113(f)(2) (42 U.S.C. § 9613(f)(2)) and SCHWMA, Section 44-56-10, *et seq.* Consistent with paragraph V.K. of the 2002 Agreement, it is understood and agreed that the SJWG and the RSG reserve their contribution rights against each other in connection with any future response costs claimed by the United States.

E. The SJWG agrees that it will not object to the 2007 Settlement Agreement between DHEC and RSG and will consent to Court approval of the 2007 and 2008

Settlement Agreements, and agrees not to object to the Amended Record of Decision for the Stoller Site, dated July 9, 2008.

F. DHEC and the SJWG agree to seek approval of the 2007 and 2008 Settlement Agreements from the United States District Court for the District of South Carolina and entry of an order from the Court approving the Agreements.

G. It is acknowledged that by letter dated December 30, RSG has agreed to support Court approval of this 2008 Settlement Agreement.

H. This Settlement Agreement is intended to benefit not only the undersigned active members of the SJWG but also the non-signatory SJWG members including Atlantic Steel Industries, Inc.; Georgetown Steel Corporation; National Metals, Inc.; Meherrin Agricultural & Chemical Company; The Stackpole Corp.; and Waterbury Rolling Mills, Inc., who are third-party beneficiaries of this Settlement Agreement.

III. 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(ies) 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 SJWG 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:

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

**THE SOUTH CAROLINA DEPARTMENT OF HEALTH
AND ENVIRONMENTAL CONTROL**

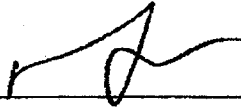
BY: C. Earl Hunter

ITS: Commissioner

DATE: Dec. 22, 2008

THE STOLLER JERICHO WORKING GROUP:

GERDAU AMERISTEEL US INC.



BY: Robert E. Lewis

ITS: Vice President, General Counsel

DATE: 12/18/08

I. SCHUMANN & COMPANY

BY: MA Schumann

ITS: Chrm & CEO.

DATE: 12/19/08

MUELLER BRASS CO.

BY: [Signature]

ITS: V-P/69

DATE: 12/23/08

[Handwritten mark]

NUCOR CORPORATION



BY: DOUGLAS R. BENSON

ITS: General Counsel

DATE: 15 JAN 2009

NUCOR-YAMATO STEEL COMPANY



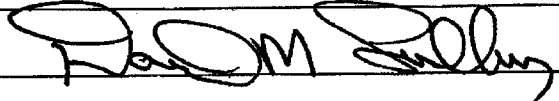
BY: DOUGLAS R. GANSON

ITS: GENERAL COUNSEL

DATE: 15 JAN 2009

OWEN ELECTRIC STEEL COMPANY
OF SOUTH CAROLINA

2/b/a CMC STEEL SOUTH CAROLINA
Cf/k/a SMI STEEL - SOUTH CAROLINA

BY: 

ITS: SECRETARY

DATE: 12-26-2008

ROANOKE ELECTRIC STEEL CORPORATION

David O. Ledbetter

BY: David O. Ledbetter

ITS: Attorney

DATE: December 18, 2008

THE FEDERAL METALS COMPANY

BY: *Det R. M. [Signature]*
ITS: PRESIDENT
DATE: 19 DECEMBER 2008

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