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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

IN RE:

HERCULES CHEMICAL COMPANY, INC.,

Debtor.

Chapter 11

Case No.:
08-27822-MS

SETTLEMENT AGREEMENT

WHEREAS, on or about August 22, 2008, Hercules Chemical Company, Inc., (the "Debtor") originally filed a petition for reorganization under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. § 101, et seq., as amended (the "Bankruptcy Code"), in the Bankruptcy Court for the Western District of Pennsylvania;

WHEREAS, the case was transferred to this Court by order of September 17, 2008;

WHEREAS, the Bankruptcy Court entered an Order establishing March 17, 2009 as the date by which persons must file a proof of claim against the Debtor;

WHEREAS, on or about March 16, 2009, the United States, on behalf of the United States Environmental Protection Agency (the "EPA"), the United States Department of the

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Interior ("DOI"), and the National Oceanic and Atmospheric Administration of the United States Department of Commerce ("NOAA"), filed a Proof of Claim against the Debtor.;

WHEREAS, the Proof of Claim asserts a claim, pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq., for unreimbursed response costs incurred by the United States, and for damages for injuries to, destruction of, or loss of natural resources, with respect to the Diamond Alkali Superfund Site (the "United States' Claim");

WHEREAS, the Diamond Alkali Superfund Site ("Site") includes: a seventeen mile stretch of the Passaic River and its tributaries from the Dundee Dam to Newark Bay known as the Lower Passaic River Study Area ("LPRSA"); a former pesticides manufacturing facility at 80 Lister Avenue, Newark, New Jersey, and the surrounding property at 120 Lister Avenue; the Newark Bay Study Area, which includes Newark Bay and portions of the Hackensack River, the Arthur Kill, the Kill Van Kull; the areal extent of contamination; and any subsequent expansion of the Site;

WHEREAS, the United States' Claim was asserted as a general unsecured claim for the liability of the Debtor under CERCLA with respect to the Site, arising as a result of the Debtor's ownership and operation of a manufacturing facility in Passaic, New Jersey;

WHEREAS, on or about April 14, 2009, the Lower Passaic Study Area Site Cooperating Parties (the "CPG") filed a proof of claim asserting a claim against the Debtor, pursuant to CERCLA, the New Jersey Spill Compensation and Control Act, and two settlement agreements entered into between the CPG and EPA, for an undetermined amount (the "CPG Claim"); and,

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WHEREAS, the parties hereto, without admission of liability by any party, desire to settle, compromise and resolve the United States' Claim;

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration receipt of which is hereby acknowledged;

IT IS HEREBY STIPULATED and agreed to by and between the parties hereto, subject to approval by the Bankruptcy Court, as follows:

1. The United States' Claim on behalf of EPA, DOI, and NOAA shall be allowed as a General Unsecured Claim in the total amount of \$200,000 (as apportioned between EPA, DOI, and NOAA as set forth in Paragraphs 2 and 3 below), and paid as a General Unsecured Claim without discrimination in accordance with the terms of the Debtor's Plan of Reorganization, filed September 1, 2009, or as the same may be amended or revised (the "Plan of Reorganization"), and the United States will be deemed to have withdrawn the United States' Claim for any amount against the Debtor in excess of \$200,000.

2. The United States' Allowed Claim on behalf of EPA for costs of response to hazardous substances shall be in the amount of \$169,420 (the "Allowed EPA Claim"). Payment on the Allowed EPA Claim shall be made by Electronic Funds Transfer ("EFT") or wire transfer to the U.S. Department of Justice lockbox bank, referencing EPA Site ID No. 02-96 and DOJ Number 90-11-3-07683/5 , in accordance with instructions provided by the United States to the Debtor after execution of this Settlement Agreement. Any EFTs received at the U.S. D.O.J. lockbox bank after 11:00 A.M. (Eastern Time) will be credited on the next business day.

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Distributions received by the United States on behalf of EPA will be deposited in a site-specific special account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substances Superfund. Only the amount of cash received by EPA from the Debtor under this Settlement Agreement for the Allowed EPA Claim, and not the total amount of the Allowed EPA Claim, shall be credited by EPA to its account for the Site, which credit shall reduce the liability for the Site of potentially responsible parties ("PRPs") other than the Debtor to EPA as follows:

- a. ___ percent of the funds paid under this Paragraph 2 will be applied to reduce the liability of the PRPs for unreimbursed costs of response incurred by EPA with respect to the Site;
- b. ___ percent of the funds paid under this Paragraph 2 will be applied by EPA as a credit against the cost of overseeing the remedial investigation and feasibility study ("RI/FS") currently being performed by the CPG at the Site pursuant to the Administrative Settlement Agreement and Order on Consent, Docket No. 02-2007-2009 ("RI/FS AOC"), reducing by the corresponding amount the next Bill for Collection that EPA issues to the CPG after EPA's receipt of the funds required by this Settlement Agreement; and
- c. if EPA enters into a consent decree with some or all of the PRPs other than the Debtor to perform remedial design and or/or remedial action

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(“RD/RA”) activities for the LPRSA, after EPA has selected a remedy for the LPRSA or some part thereof, ___ percent of the funds paid under this Paragraph 2 will be applied by EPA as a credit against the cost of overseeing work performed by the settling parties under that consent decree; but if EPA does not enter a consent decree with some or all of the PRPs other than the Debtor to perform RD/RA activities for the LPRSA, EPA will apply this ___ percent toward its unreimbursed costs of response incurred by EPA with respect to the Site.

3. Distributions received by the United States on behalf of EPA will be deposited in the Diamond Alkali Superfund Special Account within the hazardous Substance Superfund to be retained to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the Hazardous Substance Superfund.

4. The portion of United States' Allowed Claims on behalf of DOI and NOAA for costs of natural resource damage assessment shall be in the total amount of \$30,580 (\$16,907 on behalf of DOI and \$13,673 on behalf of NOAA) (collectively, the “Allowed Trustees' Claims”). Payment on the DOI and NOAA Claims shall be made by in accordance with instructions provided by the United States to the Debtor after execution of this Settlement Agreement. Only the amount of cash received by DOI and NOAA from the Debtor under this Settlement Agreement for each's portion of the Allowed Trustees' Claims, and not the total amount of the Allowed Trustees' Claims, shall be credited by DOI and NOAA, respectively, to their accounts for the Site, which credit shall reduce the liability of non-settling potentially responsible parties

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to DOI and NOAA for the Site by the amount of the credit.

5. In consideration of the payments or distributions that will be made by the Debtor under the terms of this Settlement Agreement, and except as provided in paragraph 5, the United States covenants not to bring a civil action or take administrative action against the Debtor pursuant to Sections 106 and 107 of CERCLA relating to the Site. This covenant not to sue is conditioned upon the approval of this Settlement Agreement and complete and satisfactory performance by the Debtor of its obligations under this Settlement Agreement. This covenant not to sue extends only to the Debtor and does not extend to any other person.

6. The covenant not to sue for the Site set forth in the previous paragraph does not pertain to any matters other than those expressly specified in the previous paragraph. The United States reserves, and this Settlement Agreement is without prejudice to, all rights against the Debtor with respect to all other matters, and specifically with respect to, claims based on a failure by the Debtor to meet a requirement of this Settlement Agreement. With respect to the Site, this Settlement Agreement does not address the Debtor's post-Confirmation Date conduct which would give rise to liability under 42 U.S.C. §§9606 and 9607(a)(1)-(4) and the United States reserves all rights it may have with respect to such post-Confirmation Date conduct; except, however, that this reservation shall not apply to any damage which arises from or is related to pre-Confirmation Date acts, omissions, or conduct of the Debtor.

7. The Debtor shall include in the Confirmation Order the following statement regarding the "Discharge and Release" section of its Plan of Reorganization, Section 12.2 of the Plan: "With the exception of that which is set forth in the Settlement Agreement of the United

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States and Debtor of _____, 2009, nothing in the Plan of Reorganization discharges, releases, or precludes any claim of the United States that arises on or after the Confirmation Date. With the exception of that which is set forth in the Settlement Agreement of the United States and Debtor of _____, 2009, nothing in the Plan of Reorganization releases any entity from its post-Confirmation Date obligations to comply with environmental laws as the owner or operator of property that such entity owns or operates after the Confirmation Date.” %40τη1νγ 1ν τηε στατεμεντ αβοΜε ωαιΜεσ ανψ ριγητ βψ τηε Δεβτορ ορ τηε “ νιτεδ Στατεσ το ασσερτ ανψ αργυμεντ ρεγαρδινγ ωηνεν α χλαιμ αρισεσ ανδ τηερεφορε ωηετηερα χλαιμ ισ βαρρεδ.

8. The United States' Allowed Claim as set forth in this Settlement Agreement will not be a Disputed Claim as that term is used in the Debtor's Plan of Reorganization.

9. With regard to claims for contribution against the Debtor for matters addressed in this Settlement Agreement, the Debtor is entitled to such protection from contribution actions or claims as is provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2).

10. The Debtor covenants not to sue and agrees not to assert any claims or causes of action against the United States with respect to the Site, including but not limited to: any direct or indirect claim for reimbursement from the Hazardous Substance Superfund; any claims for contribution against the United States, its departments, agencies or instrumentalities; and, any claims arising out of response activities at the Site. Nothing in this Settlement Agreement shall be construed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611 or 40 C.F.R. § 300.700(d).

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11. Nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Settlement Agreement.

12. The Debtor's entry into this Settlement Agreement will be subject to Bankruptcy Court approval pursuant to Bankruptcy Rule 9019. The Debtor agrees to exercise its best efforts to obtain the approval of the Bankruptcy Court. This Settlement Agreement will be lodged with the Bankruptcy Court and submitted for public comment following notice of the Settlement Agreement in the Federal Register. The Debtor may seek conditional Bankruptcy Court approval under Bankruptcy Rule 9019 as soon as this Settlement Agreement is executed and during the public comment period, in which case such conditional Bankruptcy Court approval shall be subject to the United States' right to withdraw as set forth below. The United States reserves the right to withdraw or withhold its consent if the public comments regarding the Settlement Agreement disclose facts or considerations which indicate that the Settlement Agreement is inappropriate, or improper, or inadequate.

13. If this Settlement Agreement is not authorized and approved by the Bankruptcy Court or the United States exercises its right to withdraw, this Settlement Agreement shall be of no force and effect, whereupon nothing herein shall be deemed an admission of any fact or waiver of any right of either party with respect to the matters contained herein.

14. This Settlement Agreement represents the complete agreement of the parties hereto on the matters referred to herein and supersedes all prior agreements, understandings, promises and representations made by the parties hereto concerning the subject matter hereof. This Settlement Agreement may not be amended, modified or supplemented, in whole or in part,

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without the prior written consent of the parties hereto and the approval of the Bankruptcy Court.

15. The effective date of this Settlement Agreement shall be the date upon which it is approved by the Bankruptcy Court following the public comment period and following the United States request for entry of the Agreement.

16. The signatory for each of the parties 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.

**SETTLEMENT AGREEMENT OF UNITED STATES AND HERCULES CHEMICAL
COMPANY, INC.**

FOR THE UNITED STATES OF AMERICA

JOHN C. CRUDEN
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

Date

ELLEN MAHAN

Deputy Section Chief
Environmental Enforcement Section
U.S. Department of Justice

Date

BRIAN G. DONOHUE
Senior Attorney
Environmental Enforcement Section
U.S. Department of Justice

**SETTLEMENT AGREEMENT OF UNITED STATES AND HERCULES CHEMICAL
COMPANY, INC.**

FOR THE ENVIRONMENTAL PROTECTION AGENCY

DATE

WALTER MUGDAN
Director
Emergency and Remedial Response Division
U.S. EPA, Region 2

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FOR THE DEBTOR, HERCULES CHEMICAL COMPANY, INC.

10/8/09
Date


Signature of Officer

LEONARD A. RUJOLA
Name of Officer (please type or print)

VICE PRESIDENT & CEO
Title

111 SOUTH STREET, PASSAIC NJ 07055
Address

973-778-5000
Telephone Number