

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

|  |   |                          |
|--|---|--------------------------|
| TRONOX LLC, as successor to KERR-McGEE | ) |                          |
| CHEMICAL LLC and KERR-McGEE            | ) |                          |
| CHEMICAL CORPORATION,                  | ) |                          |
|  | ) |                          |
| Plaintiff,                             | ) | Case No. 1:00CV01285 EGS |
|  | ) |                          |
| v.                                     | ) |                          |
|  | ) |                          |
| THE UNITED STATES OF AMERICA,          | ) |                          |
|  | ) |                          |
| Defendant.                             | ) |                          |

**2006 HENDERSON CONSENT DECREE  
SUBSTITUTION AND CLARIFICATION AGREEMENT**

This Substitution of Parties and Agreement and Reservation of Rights Regarding the 2006 Henderson Consent Decree (this “**Agreement**”) is entered into as of February 14, 2011, by and among the United States of America (the “**United States**”); the Henderson Environmental Response Trust, also known as the Nevada Environmental Response Trust, as defined in the Bankruptcy Consent Decree and Settlement Agreement (as hereinafter defined) (“**Nevada Trust**”); Tronox LLC (“**Tronox LLC**”), solely with respect to section 2 and subsections 2(a) through 2(e) hereof; and the State of Nevada as a beneficiary of the Nevada Trust, acting by and through the Department of Conservation and Natural Resources, Division of Environmental Protection (“**NDEP**”) as the Lead Agency for the Henderson Site under the Tronox Bankruptcy Consent Decree and Settlement Agreement (each a “**Party**” and, collectively, the “**Parties**”).

RECITALS

WHEREAS, on January 13, 2006, the United States District Court for the District of Columbia entered a Consent Decree between Tronox LLC and the United States in the case of *Tronox LLC v. United States of America* (Case No. 1:00cv01285EGS) (the “**2006 Henderson Consent Decree**”), which sets forth the agreement between the United States and Tronox LLC concerning certain matters pertaining to the release or threatened release of pollutants, contaminants or hazardous substances to the environment, at, or migrating from, the Henderson Site (as defined in the 2006 Henderson Consent Decree), resulting from the production of perchlorate or chlorate at the Henderson Site.

WHEREAS, on January 12, 2009, Tronox Incorporated and its 14 affiliates, including Tronox LLC, (collectively “**Tronox Debtors**”) filed voluntary petitions for relief under Chapter 11 of Title 11, United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”), Case No. 09-10156 (jointly administered) (the “**Tronox Bankruptcy Proceeding**”).

WHEREAS, a Joint Plan of Reorganization of the Tronox Debtors (the “**Plan**”) has been or will be confirmed by the Bankruptcy Court in the Tronox Bankruptcy Proceeding.

WHEREAS, the Parties and others have executed a Consent Decree and Environmental Settlement Agreement resolving certain environmental claims and liabilities in the Tronox Bankruptcy Proceeding (the “**Bankruptcy Consent Decree**”), which by its terms is incorporated in the Plan.

WHEREAS, the Plan and the Bankruptcy Consent Decree provide that, as of the effective date of the Bankruptcy Consent Decree, the Henderson Site will be transferred to the Nevada Trust.

WHEREAS, the Bankruptcy Consent Decree requires the filing of papers with this Court to modify the 2006 Henderson Consent Decree to substitute the Nevada Trust for Tronox LLC as a party to the 2006 Henderson Consent Decree after the effective date of the Bankruptcy Consent Decree.

WHEREAS, in connection with this substitution, the Parties seek to clarify the meaning of and otherwise document certain stipulations and reservations of rights concerning certain provisions of the 2006 Henderson Consent Decree.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

**1. Definitions.** Unless otherwise expressly provided herein, terms used in this Agreement that are defined in CERCLA or its implementing regulations shall have the meaning assigned to them in CERCLA or its implementing regulations. Terms specifically defined in the 2006 Henderson Consent Decree shall have the meanings given to them in the 2006 Henderson Consent Decree.

**a. “Environmental Actions”** shall have the meaning given that term in the Bankruptcy Consent Decree.

**b. “Environmental Claim”** means each and any choate and/or inchoate claim, demand or cause of action by any person or entity (whether or not a party to the 2006 Henderson Consent Decree) based upon, related to, or arising on account of or in connection with any actual or alleged liability (including strict liability or liability in contribution) of the United States with respect to conditions, operations, practices or facility designs at the Henderson Site, including without limitation arising from the on-site or off-site past or current release or threatened release of pollutants, contaminants or hazardous substances to the environment, and whether such claim, demand or cause of action is based on or otherwise arises under law, equity, statute, regulation, contract or any other state or federal legal authority now in existence or hereafter enacted, promulgated, or otherwise effective.

**c. “Proof of Claim”** means the proof of claim submitted by the NDEP in the Tronox Bankruptcy Proceeding.

## 2. Substitution of Nevada Trust for Tronox LLC

a. **Substitution.** The Nevada Trust is hereby substituted for Tronox LLC for the purposes of the 2006 Henderson Consent Decree.

b. **No Waiver of Limitation on Liability.** No provision of this Agreement or the 2006 Henderson Consent Decree shall waive, abrogate, amend, prejudice, impair or otherwise modify any limitation or waiver of, or exemption from, liability conferred on any entity by any provision of the Bankruptcy Consent Decree, the Plan or by any judgment or order entered in the Tronox Bankruptcy Proceeding.

c. **No Liability for Certain Actions of Tronox LLC.** The substitution of the Nevada Trust as a party to the 2006 Henderson Consent Decree shall not render the Nevada Trust liable, or otherwise subject the Nevada Trust to the imposition of any detriment (including without limitation the withholding by the United States of any payment under Paragraph 6 of the 2006 Henderson Consent Decree) for any act or omission of Tronox LLC in complying with the terms and conditions of the 2006 Henderson Consent Decree prior to the date of such substitution. Notwithstanding the above, the Nevada Trust agrees to comply with all requirements and conditions imposed by the 2006 Henderson Consent Decree with respect to future Payment Demands except to the extent the Parties have expressly stipulated otherwise in this Agreement. The United States reserves the right to contest such Payment Demands, in good faith, on any applicable ground authorized by the 2006 Henderson Consent Decree unless it has expressly stipulated otherwise in this Agreement.

d. **Additional Limitations on Substitution.** Notwithstanding the substitution of the Nevada Trust for Tronox LLC as party to the 2006 Henderson Consent Decree, nothing in that substitution or this Agreement shall (i) impose any obligation on the Nevada Trust in excess of the assets in the Nevada Trust Environmental Cost Account, or (ii) relieve Tronox LLC or its successors of any releases or covenants not to sue provided by Tronox LLC in the 2006 Henderson Consent Decree.

e. **Not Corporate Successor to Tronox LLC.** The substitution of the Nevada Trust as a party to the 2006 Henderson Consent Decree shall not render the Nevada Trust a corporate successor, assign or affiliate of Tronox LLC (including its predecessors, affiliates, parent companies, subsidiaries, and all related entities including, but not limited to, Kerr-McGee Chemical Corporation and Kerr-McGee Chemical LLC).

## 3. Reservation of Rights

a. **General Reservation.** NDEP reserves all of its respective legal and equitable rights, powers, authorities, and remedies based upon, related to, or otherwise arising in connection with the Environmental Claims referenced in its Proof of Claim, including, without limitation, any right at any time (i) to commence any legal, equitable or other action or proceeding, and (ii) to take any other enforcement action or otherwise exercise any or all rights and remedies under applicable law. The United States reserves any and all defenses it may have in response to any such action or proceeding.

**b. Reservation of Rights.** The Parties agree that NDEP's entry into this Agreement shall not waive, limit or otherwise affect any argument NDEP or any other entity may have that the 2006 Henderson Consent Decree does not give rise to contribution protection (because of insufficient notice as to a particular entity, or otherwise). The United States otherwise reserves any and all responses it may have to any such argument, except as noted in Paragraph 74 of the Bankruptcy Consent Decree.

**4. Application and Construction of the 2006 Henderson Consent Decree.** Without waiving or limiting any reservation of rights set forth in Section 3 of this Agreement, on and after the substitution of the Nevada Trust as a party to the 2006 Henderson Consent Decree as provided in the Bankruptcy Consent Decree, the Parties agree that the 2006 Henderson Consent Decree is and shall be construed and applied consistent with and subject to the following clarifications and stipulations:

**a. Certain Provisions Relating to Reimbursement Obligation (Clauses (iv) and (v) of Subparagraph 6.c and Paragraph 9 of the 2006 Henderson Consent Decree).** In the interest of ensuring that the Nevada Trust is sufficiently well-funded to effectively perform required Environmental Actions to address, among other things, pollutants, contaminants, or hazardous substances at the Henderson Site resulting from production of perchlorate or chlorate, the United States agrees:

**i.** That any funds or assets received by the Nevada Trust pursuant to the Bankruptcy Consent Decree shall not be subject to any of the restrictions or limitations imposed by clauses (iv) and (v) of Subparagraph 6.c and the last two sentences in Subparagraph 9.a of the 2006 Henderson Consent Decree;

**ii.** That the Nevada Trust's receipt of such funds or assets pursuant to the Bankruptcy Consent Decree shall not have the effect of diminishing the amount of reimbursement that the Nevada Trust may obtain from the United States pursuant to Paragraph 6 of the 2006 Henderson Consent Decree, notwithstanding any language to the contrary in clauses (iv) or (v) of Subparagraph 6.c of the 2006 Henderson Consent Decree; and

**iii.** That the United States shall not invoke clauses (iv) or (v) of Subparagraph 6.c or the last two sentences of Subparagraph 9.a of the 2006 Henderson Consent Decree based on the Nevada Trust's efforts to secure funds or its receipt of funds from any state or local government appropriation, or a grant, loan or donation by any person or entity other than the United States, where such funds are given to the Nevada Trust for the purpose of performing Environmental Actions.

The United States further clarifies and agrees that, consistent with Subparagraph 9.b of the 2006 Henderson Consent Decree, nothing in this Agreement shall constitute or be construed as a limitation on the constitutional right of NDEP or any other person or entity, including without limitation the Nevada Trust, to petition Congress for relief.

**b. Indemnification (Paragraph 10 of the 2006 Henderson Consent Decree).** On and after the date of substitution of the Nevada Trust as a party to the 2006 Henderson Consent Decree, the indemnification provisions of Paragraph 10 of the 2006 Henderson Consent

Decree shall apply only prospectively and solely to the acts or omissions described in Paragraph 10 that are carried out by the Nevada Trust. For the avoidance of any doubt, the United States agrees that it is not entitled to, and that it shall not seek, indemnification from, or to be held harmless by, the Nevada Trust pursuant to Paragraph 10 of the 2006 Henderson Consent Decree arising out of or in connection with the operation of the Henderson groundwater treatment system and/or the performance or omission of any other Environmental Actions or any other acts or omissions to the extent such acts or omissions occurred prior to the Effective Date of this Agreement. Notwithstanding the above, to the extent that any insurance policy of Debtors provided or may provide coverage to the United States for indemnification obligations under Paragraph 10 of the 2006 Henderson Consent Decree for occurrences prior to the Effective Date, the indemnification provisions of Debtors under Paragraph 10 shall continue unmodified by this agreement as to such occurrences, solely to the extent necessary to allow payments under any such insurance and at no cost to the Nevada Trust.

**c. Contribution Protection (Subparagraph 11.b of the 2006 Henderson Consent Decree).** Without waiving or limiting any reservation of rights set forth in Section 3 of this Agreement, the United States hereby clarifies that Subparagraph 11.b of the 2006 Henderson Consent Decree only applies to claims to recover or obtain contribution for Future Response Costs (as defined in the 2006 Henderson Consent Decree) originally incurred by Tronox LLC (or the Nevada Trust, after the Effective Date of this Agreement). The United States further clarifies that, to the extent Subparagraph 11.b of the 2006 Henderson Consent Decree is found by a court to apply to any person or entity not a party to the 2006 Henderson Consent Decree, the United States would invoke the provisions of Subparagraph 11.b solely to preclude a third party that reimburses Tronox LLC (or the Nevada Trust, after the Effective Date of this Agreement), or a third party that is or may be found liable by a court, for some or all of the costs incurred by Tronox LLC (or the Nevada Trust, after the Effective Date of this Agreement), from seeking to recover or obtain contribution for such costs from the United States. The United States agrees to seek an order from the United States District Court for the District of Columbia adopting and approving all clarifications of and stipulations concerning the 2006 Henderson Consent Decree that are set forth in this Agreement.

**5. Effective Date of this Agreement.** This Agreement shall become effective on the date that: (a) the Bankruptcy Consent Decree has become effective; and (b) the District Court for the District of Columbia has approved this Agreement. This Agreement shall have no effect in the event that the Bankruptcy Consent Decree never goes into effect.

**6. Reopener.** In the event that any settlement or judgment is entered in the Anadarko Litigation which provides relief other than monetary proceeds, and any term of the 2006 Henderson Consent Decree would apply to limit or deny the availability of such relief to the Nevada Trust, then the Parties agree to negotiate under Paragraph 14 of the 2006 Henderson Consent Decree to obtain a reasonable modification of the 2006 Henderson Consent Decree to make any such term of the 2006 Henderson Consent Decree inapplicable.

**7. Admissibility.** This Agreement shall be admissible, as evidence of the meaning and application of the 2006 Henderson Consent Decree, to the extent provided for in Paragraph 20 of the 2006 Henderson Consent Decree.

8. **Modification.** This Agreement may not be modified or amended except with the written consent of all Parties.

9. **Headings.** Any section headings in this Agreement are provided solely as a matter of convenience to the reader and shall not be construed to alter the meaning of any paragraph or provision of this Agreement.

10. **Governing Law.** This Agreement shall be governed and interpreted in accordance with the federal laws of the United States of America.

11. **Original Counterparts.** This Agreement may be executed in any number of original counterparts, each of which shall be deemed to constitute one agreement. The execution of one counterpart by any Party shall have the same force and effect as if that Party had signed all other counterparts. Copies of counterparts, whether transmitted by facsimile or email (in portable document format or similar electronic file format), shall have the same force and effect as original counterparts.

12. **Notices.** All notices pertaining to this Agreement shall be sent to the Parties at the addresses listed on the signature pages of this Agreement.

13. **Authority.** Each Party represents and warrants that its execution of this Agreement has been duly authorized, approved and ratified by such Party, and any and all actions necessary to bind such Party to the terms of this Agreement, corporate or otherwise, have been taken. Each Party represents and warrants that the individual executing this Agreement on its behalf is authorized to do so, and each individual executing this Agreement represents and warrants that he or she has been authorized to sign this Agreement on behalf of such Party.

14. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the Parties and their successors and assigns.

15. **Complete Agreement.** This Agreement contains the complete agreement between the Parties regarding the subject matter addressed herein and fully supersedes all prior contracts, agreements, understandings, negotiations or discussions, oral or written, relating to the subject matter hereof. There are no warranties, representations, agreements or understandings, oral or written, relating to the subject matter hereof that are not fully expressed or provided for herein. Nothing in this Paragraph shall alter or diminish the continuing effectiveness of the 2006 Henderson Consent Decree.

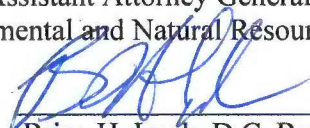
**(Signature Pages Follow)**

IN WITNESS WHEREOF, the undersigned execute this Agreement as of the Effective Date.

For the UNITED STATES OF AMERICA

ROBERT G. DREHER  
Acting Assistant Attorney General  
Environmental and Natural Resources Division

By:

 2/14/11  
Brian H. Lynk, D.C. Bar No. 459525  
Trial Attorney

Address: United States Department of Justice  
Environmental Defense Section  
P.O. Box 23986  
Washington, D.C. 20026-3986

TRONOX LLC (solely for the purpose of section 2 and subsections 2(a) through 2(e) hereof).

By: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NEVADA ENVIRONMENTAL RESPONSE TRUST, by and through Le Petomane XXVII, Inc., not individually but solely in the representative capacity as Trustee of the Nevada Environmental Response Trust

By:

\_\_\_\_\_  
Jay A. Steinberg, not individually but solely in the representative capacity as President of the Trustee of the Nevada Environmental Response Trust

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES, DIVISION OF ENVIRONMENTAL PROTECTION

By: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Approved as to form:

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF NEVADA

By: \_\_\_\_\_

Carolyn E. Tanner  
Deputy Attorney General  
Office of the Attorney General  
5420 Kietzke Lane, Suite 202  
Reno, Nevada 89511

*Attorneys for the Nevada Department of Conservation and Natural Resources, Division of Environmental Protection*

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Jay A. Steinberg, not individually but solely in the representative capacity as President of the Trustee of the Nevada Environmental Response Trust

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

TRONOX LLC (solely for the purpose of section 2 and subsections 2(a) through 2(e) hereof).

By: \_\_\_\_\_  
Address: MICHAEL J. FOSTER  
V.P. & SECRETARY  
3301 NW 150th Street  
Oklahoma City, OK  
73134

NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES, DIVISION OF ENVIRONMENTAL PROTECTION

By: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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By: \_\_\_\_\_  
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*Attorneys for the Nevada Department of Conservation and Natural Resources, Division of Environmental Protection*



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Environmental and Natural Resources Division

By: \_\_\_\_\_  
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By: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NEVADA ENVIRONMENTAL RESPONSE TRUST, by and through Le Petomane XXVII, Inc., not individually but solely in the representative capacity as Trustee of the Nevada Environmental Response Trust

By: *Jay A. Steinberg and not individually*  
Jay A. Steinberg, not individually but solely in the representative capacity as President of the Trustee of the Nevada Environmental Response Trust

Address: *35 E Wacker Drive*  
*Suite 1550*  
*Chicago, IL 60601*

NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES, DIVISION OF ENVIRONMENTAL PROTECTION

By: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Approved as to form:

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF NEVADA

By: \_\_\_\_\_

Carolyn E. Tanner  
Deputy Attorney General  
Office of the Attorney General  
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*Attorneys for the Nevada Department of Conservation and Natural Resources, Division of Environmental Protection*

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For the UNITED STATES OF AMERICA  
ROBERT G. DREHER  
Acting Assistant Attorney General  
Environmental and Natural Resources Division

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By: \_\_\_\_\_  
Brian H. Lynk, D.C. Bar No. 459525  
Trial Attorney


By: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Address: United States Department of Justice  
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P.O. Box 23986  
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NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES, DIVISION OF ENVIRONMENTAL PROTECTION

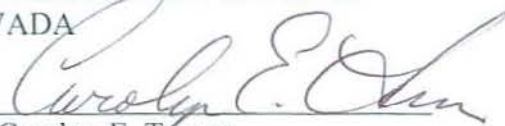
By: \_\_\_\_\_  
Jay A. Steinberg, not individually but solely in the representative capacity as President of the Trustee of the Nevada Environmental Response Trust

By:   
Address: Coleen Crisp, Ph.D.  
ADMINISTRATOR  
901 S. STEWART ST. STE 4001  
CARSON CITY, NV 89701

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Approved as to form:

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF NEVADA

By:   
Carolyn E. Tanner  
Deputy Attorney General  
Office of the Attorney General  
5420 Kietzke Lane, Suite 202  
Reno, Nevada 89511

*Attorneys for the Nevada Department of Conservation and Natural Resources, Division of Environmental Protection*

IT IS SO ORDERED

\_\_\_\_\_  
United States District Judge

DATED: \_\_\_\_\_