

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re:	:	Chapter 11
	:	
EASTMAN KODAK COMPANY, <i>et al.</i> ,	:	Case No. 12-10202 (ALG)
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Debtors.	:	(Jointly Administered)
	:	
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**SETTLEMENT AGREEMENT BETWEEN THE DEBTORS, THE REORGANIZED  
DEBTORS, AND THE UNITED STATES OF AMERICA, ON BEHALF OF THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

**THIS SETTLEMENT AGREEMENT** (the “Superfund Sites Settlement Agreement”) is entered into by and between **Eastman Kodak Company** (“Kodak”) and certain of its affiliates (together with Kodak, the “Debtors” or the “Reorganized Debtors,” as applicable)<sup>1</sup>, and the **United States of America**, on behalf of the **United States Environmental Protection Agency** (“EPA”) (collectively, the “Parties”).

**RECITALS**

WHEREAS on January 19, 2012, each of the Debtors filed with the United States Bankruptcy Court for the Southern District of New York (the “Court”) voluntary petitions for relief under Title 11 of the United States Code (the “Bankruptcy Code”), which have been

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<sup>1</sup> The Debtors are Eastman Kodak Company; Creo Manufacturing America LLC; Eastman Kodak International Capital Company, Inc.; Far East Development Ltd.; FPC Inc.; Kodak (Near East), Inc.; Kodak Americas, Ltd.; Kodak Aviation Leasing LLC; Kodak Imaging Network, Inc.; Kodak Philippines, Ltd.; Kodak Portuguesa Limited; Kodak Realty, Inc.; Laser-Pacific Media Corporation; NPEC Inc.; Pakon, Inc.; and Qualex Inc. The Reorganized Debtors are Eastman Kodak Company; Eastman Kodak International Capital Company, Inc.; Far East Development Ltd.; FPC Inc.; Kodak (Near East), Inc.; Kodak Americas, Ltd.; Kodak Aviation Leasing LLC; Kodak Imaging Network, Inc.; Kodak Philippines, Ltd.; Kodak Portuguesa Limited; Kodak Realty, Inc.; Laser-Pacific Media Corporation; NPEC Inc.; and Qualex Inc.

consolidated for procedural purposes and are being jointly administered as *In re Eastman Kodak Company, et al.*, 12-10202 (ALG) (the “Bankruptcy Cases”);

WHEREAS the United States, on behalf of EPA, has filed a proof of claim (Claim No. 5609) (the “US Proof of Claim”), which, among other things, contends that Kodak is liable under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. §§ 9601-9675, for costs incurred and to be incurred by the United States in response to releases and threats of releases of hazardous substances at or in connection with the Mercury Refining Superfund Site (“Mercury Refining Site Claim”) in Colonie and Guilderland, New York, and the Fair Lawn Well Field Superfund Site (“Fair Lawn Site Claim” and, collectively with the Mercury Refining Site Claim, the “Superfund Claims”) in Fair Lawn, New Jersey;

WHEREAS the US Proof of Claim asserts the aforementioned response cost liability as general unsecured claims except to the extent secured by right of set off;

WHEREAS the US Proof of Claim also includes a claim by the United States, on behalf of the United States Department of the Interior (“DOI”), under CERCLA for natural resource damages and costs of assessment (“NRD”) at or in connection with the Eastman Business Park in Monroe County, New York (the “US NRD Claim”), which has been resolved by separate agreement;

WHEREAS the US Proof of Claim also asserts, in protective fashion only, Kodak’s liability for equitable remedies and work obligations under the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6901 *et seq.*, at Eastman Business Park that are not within the Bankruptcy Code’s definition of “claim,” which liability has been addressed as provided by separate agreement;

WHEREAS the US Proof of Claim also sets forth the United States' contention that the Debtors' and Reorganized Debtors' obligation to comply with work obligations, including but not limited to cleanup obligations, under court orders, administrative orders, environmental statutes, regulations, licenses, and permits is not dischargeable pursuant to Section 1141 of the Bankruptcy Code;

WHEREAS the Debtors, Reorganized Debtors and United States wish to resolve the portions of the US Proof of Claim concerning the Superfund Claims as provided herein;

WHEREAS this Superfund Sites Settlement Agreement is in the public interest and is an appropriate means of resolving this matter;

NOW THEREFORE, upon the consent and agreement of the Parties by their attorneys and authorized officials, it is hereby agreed as follows:

#### **I. DEFINITIONS**

1.1 Unless otherwise expressly provided herein, terms used in this Superfund Sites Settlement Agreement that are defined in CERCLA or its implementing regulations, or in the Bankruptcy Code, shall have the meaning assigned to them therein. In addition, terms defined in the preamble or the recitals, above, shall have the meaning set forth therein. Whenever terms listed below are used in this Superfund Sites Settlement Agreement, the following definitions shall apply:

- a. "Allowed" has the meaning set forth in the Plan.
- b. "Claim" has the meaning provided in Section 101(5) of the Bankruptcy Code.
- c. "IRS Refund Amount" means \$7,204,040.58, plus interest on such amount accruing at the rate applicable to tax overpayments from August 15, 2013 through the Settlement

Effective Date, as that term is defined in the Eastman Business Park Settlement Agreement Between the Debtors, the Reorganized Debtors, and the United States of America, on behalf of the United States Environmental Protection Agency and the United States Department of the Interior (the “US EBP Settlement Agreement”).

d. “Plan” means the First Amended Joint Chapter 11 Plan of Reorganization of Eastman Kodak Company and its Debtor Affiliates (Docket No. 4966), confirmed by the Court on August 23, 2013.

e. “Superfund Sites Settlement Effective Date” means the date that is the later of (a) the date that the Court approves this Superfund Sites Settlement Agreement pursuant to paragraphs 7.1 and 7.2, below, (b) the date the Court approves the US EBP Settlement Agreement, (c) the date that EPA and the New York State Department of Environmental Conservation (“DEC”) execute the Memorandum of Agreement referred to in the US EBP Settlement Agreement, and (d) the date that the United States and DEC execute the Funding Agreement between the United States, on behalf of EPA, and the DEC (the “Funding Agreement”).

f. “United States” means the United States of America and each department, agency, and instrumentality of the United States, including EPA and each successor department, agency, or instrumentality of EPA.

## **II. JURISDICTION**

2.1 The Court has jurisdiction over the subject matter hereof pursuant to 28 U.S.C. §§ 157, 1331, and 1334. To the extent that such consent may be necessary, each party consents to the Court’s entry of a final order regarding this Superfund Sites Settlement Agreement.

### **III. PARTIES BOUND; SUCCESSION AND ASSIGNMENT**

3.1 This Superfund Sites Settlement Agreement applies to, is binding upon, and shall inure to the benefit of the United States, the Debtors, the Reorganized Debtors, the Debtors' and the Reorganized Debtors' legal successors and assigns, and any trustee, examiner, or receiver appointed in the Bankruptcy Cases.

### **IV. ALLOWED CLAIMS**

4.1 With respect to the Mercury Refining Superfund Site, the United States on behalf of EPA shall have an allowed claim of \$1,644,445 (the "Mercury Refining Allowed Claim") and, with respect to the Fair Lawn Well Field Superfund Site, the United States on behalf of EPA shall have an allowed claim of \$2,116,682 (the "Fair Lawn Allowed Claim," and, together with the Mercury Refining Allowed Claim, the "EPA Allowed Claims"). Except to the extent of setoff described below, the EPA Allowed Claims shall be paid as Class 4 General Unsecured Claims under the Plan.

4.2 The Debtors and Reorganized Debtors acknowledge that, pursuant to the terms of the US EBP Settlement Agreement, the United States shall apply 38.17% of the IRS Refund Amount (the "Superfund Claims Setoff Amount") as a setoff to satisfy a portion of the EPA Allowed Claims. The United States shall allocate \$2,000,000 of the Superfund Claims Setoff Amount to the Fair Lawn Allowed Claim and the remainder of the Superfund Claims Setoff Amount to the Mercury Refining Allowed Claim. Promptly after application of all or part of the IRS Refund Amount as a setoff, the United States shall notify the Reorganized Debtors in writing of the amount of the IRS Refund Amount applied to the EPA Allowed Claims, and the unsatisfied amounts of these claims will be reduced accordingly. Upon such notification, the

portions of the EPA Allowed Claims set off by the Superfund Claims Setoff Amount shall be deemed fully and finally satisfied.

4.3 The EPA Allowed Claims, less the Superfund Claims Setoff Amount applied to each such claim (the “Remaining EPA Allowed Amounts”), shall be paid as Class 4 General Unsecured Claims and shall receive the same treatment under the Plan, without discrimination, as all other allowed Class 4 General Unsecured Claims, with all attendant rights provided by the Bankruptcy Code and other applicable law. In no event shall such Remaining EPA Allowed Amounts be senior or subordinated to any other allowed Class 4 General Unsecured Claim pursuant to any provision of the Bankruptcy Code or other applicable law that authorizes or provides for subordination of allowed claims, including, without limitation, Sections 105, 510, and 726(a)(4) of the Bankruptcy Code. Kodak shall make applicable distributions under Section 4.2.4 of the Plan to the United States in full and final satisfaction of such Remaining EPA Allowed Amounts. Upon the delivery of payment as described in this section 4.3, the Superfund Claims shall be deemed fully and finally satisfied.

4.4 EPA may, in its sole discretion, deposit any portion of any cash distributions or non-cash distributions it receives for a respective Site pursuant to section 4.3 and any portion of the Superfund Claims Setoff Amount that EPA has designated for a respective Site into an EPA special account established for the Mercury Refining Superfund Site or the Fair Lawn Well Field Superfund Site, respectively, within the Hazardous Substance Superfund, to be retained and used to conduct or finance response actions at or in connection with the Mercury Refining Superfund Site or the Fair Lawn Well Field Superfund Site, respectively, or to be transferred to the Hazardous Substance Superfund.

4.5 Only the amount of cash received by EPA (and net cash received upon sale of any non-cash distributions) pursuant to this Superfund Sites Settlement Agreement or the US EBP Settlement Agreement for the EPA Allowed Claims for a respective Site, and not the total amount of the EPA Allowed Claims for a Site, shall be credited by EPA to the Site, which credit shall reduce the liability of non-settling potentially responsible parties for those Sites by the amount of the credit.

4.6 Cash distributions to the United States pursuant to this Superfund Sites Settlement Agreement shall be made at <https://www.pay.gov> or by FedWire Electronic Funds Transfer in accordance with instructions, including a Consolidated Debt Collection System (“CDCS”) number, to be provided to the Reorganized Debtors by the Financial Litigation Unit of the United States Attorney’s Office for the Southern District of New York.

Non-cash distributions to the United States shall be made to:

U.S. EPA  
Cincinnati Finance Center  
4411 Montgomery Road  
Suite 310  
Cincinnati, OH 45212

At the time of any cash or non-cash distribution pursuant to this Superfund Sites Settlement Agreement, the Reorganized Debtors shall transmit written confirmation of such distribution to the United States at the addresses specified below, with a reference to Bankruptcy Case Number 12-10202, the CDCS number, and Site/Spill ID Numbers 0258 (for the Fair Lawn Well Field Site) and 0276 (for the Mercury Refining Site):

Christine S. Poscablo, AUSA  
United States Attorney’s Office – SDNY  
86 Chambers Street, 3<sup>rd</sup> Floor  
New York, NY 10007

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, DC 20044  
Ref. DOJ File No. 90-11-3-10545

Damaris C. Urdaz  
Office of Regional Counsel  
EPA Region 2  
290 Broadway  
New York, NY 10007-1866

Sharon Kivowitz  
Office of Regional Counsel  
EPA Region 2  
290 Broadway  
New York, NY 10007-1866

## V. COVENANTS AND RESERVATIONS

5.1 In consideration of the distributions that will be made under the terms of this Superfund Sites Settlement Agreement, as specifically provided in Article IV, EPA covenants not to file a civil action or take administrative action against Kodak pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607, with respect to the Mercury Refining Superfund Site and the Fair Lawn Well Field Superfund Site.

5.2 The covenant set forth in section 5.1 (and the limitations and reservations in sections 5.3 through 5.6) shall also apply to successors, officers, directors, employees, and trustees of Kodak, but only to the extent that the alleged liability of the successor, officer, director, employee, or trustee of Kodak is based solely on its status as and in its capacity as a successor, officer, director, employee, or trustee of Kodak.

5.3 The covenant set forth in section 5.1 extends only to Kodak and the persons described in section 5.2 and does not extend to any other person. Nothing in this Superfund Sites Settlement Agreement is intended as a covenant not to sue or a release from liability for any



person or entity other than Kodak, the United States, and the persons described in section 5.2 above. The United States and Kodak expressly reserve all claims, demands, and causes of action, either judicial or administrative, past, present, or future, in law or equity, which they may have against all other persons, firms, corporations, or entities for any matter arising at or relating in any manner to the Mercury Refining Superfund Site and the Fair Lawn Well Field Superfund Site. Further, nothing in this Superfund Sites Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to enter into any settlement that gives rise to contribution protection for any person not a party to this Superfund Sites Settlement Agreement.

5.4 The covenant not to sue set forth in section 5.1 does not pertain to any matters other than those expressly specified therein.

5.5 The United States expressly reserves, and this Superfund Sites Settlement Agreement is without prejudice to, all rights against Kodak and the persons described in section 5.2 with respect to all matters other than those set forth in section 5.1. The United States also specifically reserves, and this Superfund Sites Settlement Agreement is without prejudice to, any action based on a failure to meet a requirement of this Superfund Sites Settlement Agreement. In addition, the United States reserves, and this Superfund Sites Settlement Agreement is without prejudice to, all rights against Kodak and the persons described in section 5.2 with respect to the Mercury Refining Superfund Site and the Fair Lawn Well Field Superfund Site for liability under federal or state law for acts by Kodak or the persons described in section 5.2, or their successors or assigns, that occur after the date of the lodging of this Superfund Sites Settlement Agreement.

5.6 Nothing in this Superfund Sites Settlement Agreement shall be deemed to limit the authority of the United States to take any response action under Section 104 of CERCLA,

42 U.S.C. § 9604, or any other applicable statute or regulation, or to alter the applicable legal principles governing judicial review of any action taken by the United States pursuant to such authority, provided, however, that nothing in this sentence affects the covenant set forth in section 5.1. Nothing in this Superfund Sites Settlement Agreement shall be deemed to limit the information-gathering authority of the United States under Sections 104 and 122 of CERCLA, 42 U.S.C. §§ 9604 and 9622, or any other applicable statute or regulation, or to excuse the Debtors or Reorganized Debtors from any disclosure or notification requirements imposed by CERCLA or any other applicable statute or regulation.

5.7 The Debtors and Reorganized Debtors covenant not to sue and agree not to assert or pursue any claims or causes of action against the United States, including any department, agency, or instrumentality of the United States, with respect to the Mercury Refining Superfund Site and the Fair Lawn Well Field Superfund Site, including, but not limited to: (i) any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established pursuant to 26 U.S.C. § 9507; (ii) any claim under Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, or Section 7002(a) of RCRA, 42 U.S.C. § 6972(a); or (iii) any claims arising out of response activities at the Mercury Refining Superfund Site and the Fair Lawn Well Field Superfund Site. Nothing in this Superfund Sites Settlement Agreement shall be deemed 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).

5.8 Notwithstanding any other provision of this Superfund Sites Settlement Agreement, the Debtors and Reorganized Debtors reserve, and this Superfund Sites Settlement Agreement is without prejudice to, claims against the United States in the event any claim is asserted by the United States against Kodak pursuant to any of the reservations set forth in

section 5.5, other than for failure to meet a requirement of this Superfund Sites Settlement Agreement, but only to the extent that the Debtors' and Reorganized Debtors' claims arise from the same response action or response costs that the United States is seeking pursuant to the applicable reservation.

## **VI. CONTRIBUTION PROTECTION**

6.1 The parties hereto agree, and by entering this Superfund Sites Settlement Agreement the Court finds, that this Superfund Sites Settlement Agreement constitutes a judicially-approved settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that as of the Superfund Sites Settlement Effective Date, Kodak is entitled to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), or as may be otherwise provided by law, for "matters addressed" in this Superfund Sites Settlement Agreement. The "matters addressed" in this Superfund Sites Settlement Agreement are all response actions taken or to be taken, and all response costs incurred or to be incurred, at or in connection with the Mercury Refining Superfund Site and the Fair Lawn Well Field Superfund Site by the United States or any potentially responsible parties; provided, however, that, if EPA exercises rights under the reservations in section 5.5, other than for failure to meet a requirement of this Superfund Sites Settlement Agreement, the "matters addressed" in this Superfund Sites Settlement Agreement shall no longer include those response costs or response actions that are within the scope of the exercised reservation.

6.2 Kodak agrees that, with respect to any suit for contribution brought against it after the Superfund Sites Settlement Effective Date for matters related to this Superfund Sites Settlement Agreement, it will notify the United States within fifteen (15) business days of service of the complaint upon it. In addition, in connection with such suit, Kodak shall notify the

United States within fifteen (15) business days of service or receipt of any Motion for Summary Judgment and within fifteen (15) business days of receipt of any order from a court settling a case for trial; provided, however, that the failure to notify the United States pursuant to this paragraph shall not in any way affect the protections afforded by Articles V and VI of this Superfund Sites Settlement Agreement.

**VII. JUDICIAL APPROVAL AND PUBLIC COMMENT**

7.1 This Superfund Sites Settlement Agreement shall be subject to approval of the Court. The Debtors shall promptly seek approval of this Superfund Sites Settlement Agreement under Bankruptcy Rule 9019 or applicable provisions of the Bankruptcy Code.

7.2 This Superfund Sites Settlement Agreement shall be lodged with the Court and shall thereafter be subject to a period of public comment following publication of notice of the Superfund Sites Settlement Agreement in the *Federal Register*. The public comment period provided for in this Section 7.2 may run concurrently with any notice period required pursuant to Bankruptcy Rule 2002 or applicable local rule in connection with judicial approval of the Settlement Agreement pursuant to the preceding section 7.1. After the conclusion of the public comment period, the United States will file with the Court any comments received, as well as the United States' responses to the comments, and at that time, if appropriate, the United States will request approval of the Superfund Sites Settlement Agreement under applicable environmental law. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Superfund Sites Settlement Agreement disclose facts or considerations which indicate that the Superfund Sites Settlement Agreement is not in the public interest.

7.3 If for any reason (a) the Superfund Sites Settlement Agreement is withdrawn by the United States as provided in section 7.2, or (b) the Superfund Sites Settlement Agreement is

not approved by the Court as provided in sections 7.1 and 7.2: (i) this Superfund Sites Settlement Agreement shall be null and void, and the parties hereto shall not be bound under the Superfund Sites Settlement Agreement or under any documents executed in connection herewith; (ii) the parties shall have no liability to one another arising out of or in connection with this Superfund Sites Settlement Agreement or under any documents executed in connection herewith; and (iii) this Superfund Sites Settlement Agreement and any documents prepared in connection herewith shall have no residual or probative effect or value.

**VIII. EFFECTIVE DATE**

8.1 This Superfund Sites Settlement Agreement shall go into effect on the Superfund Sites Settlement Effective Date.

**IX. PLAN OF REORGANIZATION**

9.1 The Reorganized Debtors shall not amend the Plan in a manner inconsistent with the terms and provisions of this Superfund Sites Settlement Agreement, or take any other action in the Bankruptcy Cases that is inconsistent with the terms and provisions of this Superfund Sites Settlement Agreement. The Reorganized Debtors shall timely serve the United States with any motion to amend the Plan.

**X. INTEGRATION, AMENDMENTS, AND COUNTERPARTS**

10.1 This Superfund Sites Settlement Agreement constitutes the sole and complete agreement of the parties hereto with respect to the matters addressed herein, except insofar as the US EBP Settlement Agreement is incorporated by reference herein.

10.2 This Superfund Sites Settlement Agreement may be modified, amended or supplemented through a written document signed by the Parties without further order of the Court, provided that no such modification, amendment or supplement may be made without

further order of the Court if it materially alters the terms of this Superfund Sites Settlement Agreement.

10.3 This Superfund Sites Settlement Agreement may be executed in counterparts, each of which shall constitute an original, and all of which shall constitute one and the same agreement.

**XI. RETENTION OF JURISDICTION**

11.1 The Court (or, upon withdrawal of the Court's reference, the United States District Court for the Southern District of New York) shall retain jurisdiction over the subject matter of this Superfund Sites Settlement Agreement and the parties hereto for the duration of the performance of the terms and provisions of this Superfund Sites Settlement Agreement for the purpose of enabling any of the parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or interpretation of this Superfund Sites Settlement Agreement or to effectuate or enforce compliance with its terms. All parties consent to the exercise of such jurisdiction.


THE UNDERSIGNED PARTIES ENTER INTO THIS SETTLEMENT AGREEMENT:

FOR THE UNITED STATES OF AMERICA:

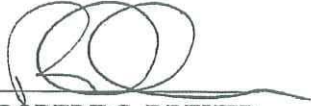
Date: 3/10/14

PREET BHARARA  
United States Attorney  
for the Southern District of New York


By:

  
CHRISTINE S. POSCABLO  
ROBERT WILLIAM YALEN  
Assistant United States Attorneys  
86 Chambers Street, Third Floor  
New York, NY 10007

Date: 3/7/14

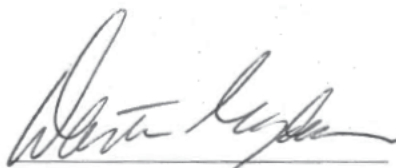
  
ROBERT G. DREHER  
Acting Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice

Date: 3/10/14

  
DONALD G. FRANKEL  
Senior Counsel  
ALAN S. TENENBAUM  
National Bankruptcy Coordinator  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, DC 20044

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

Date: 3/5/2014



WALTER MUGDAN

Director

Emergency and Remedial Response Division

EPA Region 2

Date: 3/5/14



ERIC SCHAAF

Regional Counsel


EPA Region 2




FOR EASTMAN KODAK COMPANY AND THE OTHER DEBTORS AND REORGANIZED DEBTORS:

Date: 3/4/2014


Eastman Kodak Company

By:   
Patrick M. Sheller  
Senior Vice President, General  
Counsel, and Secretary

Eastman Kodak International Capital  
Company, Inc.  
Far East Development Ltd  
FPC Inc.  
Kodak (Near East), Inc.  
Kodak Americas, Ltd.  
Kodak Imaging Network, Inc.  
Kodak Philippines, Ltd  
Kodak Portuguesa Limited  
Kodak Realty, Inc.  
Laser-Pacific Media Corporation  
NPEC Inc.  
Qualex Inc.

By:   
Patrick M. Sheller  
Secretary

Kodak Aviation Leasing LLC

By:   
Patrick M. Sheller  
Managing Director