

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,	:	
	:	Civil Action No. 91-1501
Plaintiff,	:	
	:	(Judge Caputo)
v.	:	
	:	
CHROMATEX, INC., et al.	:	
	:	
Defendants	:	

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ALAN SHULMAN, et al.,	:	
	:	Civil Action No. 08-229
Plaintiffs,	:	
	:	(Judge Caputo)
v.	:	
	:	
CHROMATEX, INC., et al.,	:	
	:	
Defendants	:	

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**CONSENT JUDGMENT**

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## **I. BACKGROUND**

A. On October 30, 1991, the United States of America (“United States”), on behalf of the Environmental Protection Agency (“EPA”), filed a Complaint against Defendant Chromatex, Inc. (“Chromatex”) and Defendants The Valmont Group and its individual partners Alan Cherenson, Stanley Siegel, Alan Shulman, James Cochran and Joseph Byrnes (the “Valmont Group”) pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. § 9607(a), *as amended*, seeking response costs incurred by the United States in responding to a release and threatened release of hazardous substances from a manufacturing facility that was later designated the “Valmont TCE Superfund Site,” located in Hazle Township, Luzerne County, Pennsylvania. The Complaint also sought a declaratory judgment under Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), on Defendants’ liability for future response costs.

B. By Order dated October 27, 1993, the Court granted the United States’ motion for summary judgment, finding Chromatex and the Valmont Group jointly and severally liable for EPA’s response costs under CERCLA Section 107(a). The Court entered a money judgment against Chromatex and the Valmont Group for response costs incurred and a declaratory judgment on liability for Future Response Costs pursuant to CERCLA Section 113(g)(2).

C. On February 9, 1994, the Court granted Final Judgment (“1994 Judgment”) against Chromatex and the Valmont Group in the amount of \$682,002.16 and established a procedure for payment of Future Response Costs to be incurred at the Site.

D. In January 1998, the United States accepted a sum of \$823,216.65, satisfying the 1994 Judgment for Past Response Costs.

E. The United States alleges that EPA, in response to the release or threatened release of hazardous substances at or from the Site, undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and continued incurring response costs at the Site after October 27, 1993.

F. EPA’s claims for response actions taken at the Site include the following: listing of the Site on the National Priorities List (“NPL”); a Remedial Investigation which included sampling of surface water, groundwater, soil, sediment, soil gas,

and residential indoor air quality; installation of residential air filtration units and residential basement sump covers; off-site removal of contaminated soil; installation of a soil vapor extraction system; installation of residential sub-slab depressurization systems; and injections of chemical oxidants into groundwater wells to remove contamination.

G. Throughout the period of response actions at the Site, EPA has notified all natural resource trustees of the ongoing response actions.

H. In connection with the response actions taken at the Site, EPA claims it has incurred and paid Future Response Costs totaling \$14,266,308.87 through March 31, 2012.

I. On September 24, 2012, EPA approved the Remedial Action Completion Report for the Site documenting that EPA's remedial action completion guidelines for the Site had been met, including completed construction of the selected remedy and demonstration that the remedy was functioning as intended.

J. On February 5, 2008, Alan Shulman, Stanley Siegel, Ruth Cherenon as personal representative of the estate of Alan Cherenon, and Adrienne Rolla and the late M. F. Rolla as executors for the estate of Joseph Byrnes (collectively, the "Valmont Partners") filed a complaint in a separate civil action, No. 08-229 (the "Contribution Action"), against Chromatex, Rossville Industries, Inc. ("Rossville Industries"), Rossville Companies, Inc. ("Rossville Companies"), Rossville Investments, Inc. (f/k/a A&E Leasing Company) ("Rossville Investments") and Culp, Inc. ("Culp") seeking contribution pursuant to Section 113(f) of CERCLA, 42 U.S.C. § 9613(f); a declaratory judgment for contribution for Future Response Costs; to enforce an agreement to defend and indemnify the Valmont Partners for such costs; and damages for the breach of that indemnification agreement.

K. On December 17, 2009, the Valmont Partners filed an amended complaint in the Contribution Action against Chromatex, Rossville Industries, Rossville Companies, Rossville Investments, Culp, Ronald W. Satterfield, Feldspar Investments, LLC, Feldspar Properties, LLC, and Virginia C. Love and Sun Trust Bank as Executors for the Estate of W. Frank Hutcheson (the "Hutcheson Estate") (collectively, the "Contribution Action Defendants"), to add, among other claims, tortious interference with the indemnification agreement, fraudulent transfer of assets and conspiracy to defraud the Valmont Partners arising from the alleged diversion of corporate assets.

L. Chromatex and the Valmont Partners (collectively, "Settling Defendants"), and the United States acknowledge that the Contribution Action Defendants have participated in the negotiation of this Consent Judgment and the Settling Defendants certify that the Contribution Action Defendants have contributed substantially, pursuant to a separate settlement and release agreement in the Contribution Action, to the Joint Settlement Fund that will be used to pay Future Response Costs to the EPA under this Consent Judgment.

M. The Valmont Partners, without any admission as to the appropriateness and recoverability of the Future Response Costs sought by the United States or the consistency of those costs with the National Contingency Plan, desire to resolve all of their disputes regarding the Future Response Costs incurred at the Site by the United States pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

N. Chromatex, without any admission as to the appropriateness and recoverability of the Future Response Costs sought by the United States or the consistency of those costs with the National Contingency Plan, desires to resolve all of its disputes regarding the Future Response Costs incurred at the Site by the United States pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and contribution claims pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2).

O. The Contribution Action Defendants, without any admission of liability, desire to resolve all of their disputes regarding the Future Response Costs incurred at the Site by the United States pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and contribution claims pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2).

P. The Settling Defendants, the Contribution Action Defendants and the United States (together, the "Parties") agree and this Court, by entering this Consent Judgment, finds that this Consent Judgment has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between and among the Parties, and that this Consent Judgment is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is ORDERED, ADJUDGED, AND DECREED:

## **II. JURISDICTION**

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over Settling Defendants and Contribution Action Defendants. Solely for the purposes of this Consent Judgment and the underlying complaints, Settling Defendants and Contribution Action Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants and Contribution Action Defendants shall not challenge entry or the terms of this Consent Judgment or this Court's jurisdiction to enter and enforce this Consent Judgment.

### **III. PARTIES BOUND**

2. This Consent Judgment is binding upon the United States, and upon Settling Defendants, Contribution Action Defendants, and their heirs, successors and assigns. Any change in ownership or corporate or other legal status, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendants and Contribution Action Defendants under this Consent Judgment.

### **IV. DEFINITIONS**

3. Unless otherwise expressly provided in this Consent Judgment, terms used in this Consent Judgment that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Judgment or in any appendix attached hereto, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

b. "Chromatex" shall mean Chromatex, Inc.

c. "Consent Judgment" shall mean this Consent Judgment and all appendices attached hereto. In the event of conflict between this Consent Judgment and any appendix, this Consent Judgment shall control.

d. "Contribution Action Defendants" shall include Chromatex, Inc., Rossville Industries, Inc., Rossville Companies, Inc., Rossville Investments, Inc.

f/k/a A&E Leasing Company, Ronald W. Satterfield, Feldspar Investments, LLC, Feldspar Properties, LLC, Virginia C. Love and SunTrust Bank as executors of the estate of W. Frank Hutcheson (the "Hutcheson Estate"), and Culp, Inc.

e. "Day" or "day" shall mean a calendar day. In computing any period of time under this Consent Judgment, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

f. "DOJ" shall mean the United States Department of Justice and its successor departments, agencies, or instrumentalities.

g. "Effective Date" shall mean the date upon which this Consent Judgment is entered on the Court docket after the Court signs the Consent Judgment.

h. "EPA" shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

i. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

j. "Future Response Costs" shall mean any response costs incurred related to the Site on or after October 27, 1993.

k. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

l. "Joint Settlement Fund" shall mean the account into which payments made pursuant to the settlement and release agreement in the Contribution Action have been deposited by Settling Defendants and all Contribution Action Defendants for the purpose of paying Future Response Costs to EPA under this Consent Judgment, and from which payment shall be made pursuant to Paragraph 5 (Payment for Response Costs) of this Consent Judgment.

m. "Paragraph" shall mean a portion of this Consent Judgment identified by an Arabic numeral or an upper or lower case letter.

n. "Parties" shall mean the United States, the Settling Defendants, and the Contribution Action Defendants.

o. "Past Response Costs" shall mean response costs related to the Site incurred by the United States before October 27, 1993.

p. "Plaintiff" shall mean the United States.

q. "RCRA" shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992, also known as the Resource Conservation and Recovery Act.

r. "Related Party" shall mean past owners, officers, and directors of Chromatex, and their heirs, successors, and assigns.

s. "Section" shall mean a portion of this Consent Judgment identified by a Roman numeral.

t. "Settling Defendants" shall mean Chromatex and the Valmont Partners.

u. "Site" shall mean the Valmont TCE Superfund Site, EPA ID Number PAD982363970, located in Hazle Township and the borough of West Hazleton, Luzerne County, Pennsylvania. The Site comprises a mixed industrial and residential area generally bounded to the north by Deer Run Road, to the south by an adjacent facility in the Valmont Industrial Park, to the west by Jaycee Drive, and to the east by a wooded property and Fawn Drive, and includes the residential area along Bent Pine Road. The Site consists of a former upholstery manufacturing plant (the "Facility") at 423 Jaycee Drive within the Valmont Industrial Park, and includes any area where a hazardous substance released at or from the Facility has come to be located.

v. "Valmont Partners" shall include The Valmont Group and former general partners of The Valmont Group or the representatives of the former general partners of The Valmont Group, specifically, Alan Shulman, Stanley Siegel, Ruth Chersonson as personal representative of the estate of Alan Chersonson, and Adrienne Rolla as executor for the estate of Joseph Byrnes.

w. "Valmont TCE Superfund Site Special Account" shall mean the special account, within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

x. "United States" shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

#### **V. STATEMENT OF PURPOSE**

4. By entering into this Consent Judgment, the mutual objective of the Parties is for Settling Defendants to make a cash payment to the United States to resolve their civil liability under Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, for Future Response Costs incurred in connection with the Site, as provided in the covenants by Plaintiff in Section VIII, subject to the Reservations of Rights by United States in Paragraph 16.

#### **VI. PAYMENTS BY SETTLING DEFENDANTS**

5. Payment for Response Costs. Within 30 days after the Effective Date, Settling Defendants shall pay to EPA \$2,225,000.00 from the Joint Settlement Fund. Settling Defendants certify that the Contribution Action Defendants contributed money to the Joint Settlement Fund to pay EPA under this Paragraph. (See Appendix A).

6. Payment to the United States under this Section by Settling Defendants shall be made at <https://www.pay.gov> to the U.S. Department of Justice account, in accordance with instructions provided to Settling Defendants by the Financial Litigation Unit ("FLU") of the United States Attorney's Office for the Middle District of Pennsylvania. The payment instructions provided by the FLU shall include a Consolidated Debt Collection System ("CDCS") number, which shall be used to identify all payments required to be made in accordance with this Consent Judgment. The FLU shall provide the payment instructions to:

Marsha A. Sajer  
K&L Gates LLP  
17 North Second Street, 18<sup>th</sup> Floor  
Harrisburg, PA 17101-1507  
Tel. 717.231.5849

marsha.sajer@klgates.com

on behalf of Settling Defendants. Settling Defendants may change the individual to receive payment instructions on their behalf by providing written notice of such change to DOJ and EPA in accordance with Section XI (Notices and Submissions).

7. At the time of payment, a representative of the Settling Defendants shall send notice that payment has been made to DOJ and EPA in accordance with Section XI (Notices and Submissions), and to the EPA Cincinnati Finance Office by email at [acctsreceivable.cinwd@epa.gov](mailto:acctsreceivable.cinwd@epa.gov), or by mail to:

EPA Cincinnati Finance Office  
26 Martin Luther King Drive  
Cincinnati, Ohio 45268

Such notice shall reference the CDCS Number, Site/Spill ID Number 031M and DOJ case number 90-11-3-863.

8. The total amount to be paid to EPA pursuant to this Consent Judgment shall be deposited by EPA, at EPA's sole discretion, in the Valmont TCE Superfund Site Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or be transferred by EPA to the EPA Hazardous Substance Superfund.

## **VII. FAILURE TO COMPLY WITH CONSENT JUDGMENT**

9. Interest on Late Payments. In the event that the amount due under Paragraph 5 is not paid by the required due date, Interest shall accrue on the unpaid balance from the Effective Date through the date of payment, and Settling Defendants shall pay interest on the unpaid balance. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiff by virtue of Settling Defendants' failure to make timely payment under Paragraph 5. Settling Defendants shall make all payments required by this Paragraph in the manner described in Paragraph 6.

10. Stipulated Penalty.

a. If any amounts due under Paragraph 5 are not paid in full by the required due date, Settling Defendants shall be in violation of this Consent Judgment and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 9, \$5,000 per day that such payment is late.

b. Stipulated penalties are due and payable within 30 days after the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by Fedwire Electronic Funds Transfer to:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York NY 10045  
Field Tag 4200 of the Fedwire message should read "D 68010727  
Environmental Protection Agency"

and shall reference the CDCS Number, Site/Spill ID Number 031M, and DOJ Case Number 90-11-3-863.

c. At the time of payment, a representative of Settling Defendants shall send notice that payment has been made to EPA and DOJ in accordance with Section XI (Notices and Submissions), and in the manner described in Paragraph 7.

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Defendants of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment or performance is due or the day a violation occurs, and shall continue to accrue through the date of payment or the final day of correction of the noncompliance or completion of the activity. Nothing in this Consent Judgment shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Judgment.

11. If the United States brings an action to enforce this Consent Judgment, Settling Defendants shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

12. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Defendants' failure to comply with the requirements of this Consent Judgment.

13. The obligations of Settling Defendants to pay amounts owed the United States under this Consent Judgment are joint and several and shall not be conditioned on the receipt by the Settling Defendants of any payment from the Contribution Action Defendants. In the event of the insolvency of any Settling Defendant or other failure by any Settling Defendant to make the payments required under this Consent Judgment, the remaining Settling Defendants shall be responsible for such payments.

14. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Judgment. Payment of stipulated penalties shall not excuse Settling Defendants from payment as required by Section VI or from performance of any other requirements of this Consent Judgment.

#### **VIII. COVENANT NOT TO SUE BY PLAINTIFF**

15. In consideration of the payment that will be made by the Settling Defendants from the Joint Settlement Fund under the terms of this Consent Judgment, which includes funds contributed in substantial part by the Contribution Action Defendants, and except as specifically provided in Paragraph 16 of this Section, the United States covenants not to sue Settling Defendants or Contribution Action Defendants pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for the recovery of Future Response Costs. This covenant shall take effect upon receipt by EPA of all payments required by Section VI (Payments By Settling Defendants) and any Interest or stipulated penalties due thereon under Section VII (Failure to Comply with Consent Judgment). This covenant is conditioned upon the satisfactory performance by Settling Defendants and Contribution Action Defendants of their obligations under this Consent Judgment. This covenant extends only to Settling Defendants and Contribution Action Defendants and does not extend to any other person.

16. Reservation of Rights by United States. The United States reserves, and this Consent Judgment is without prejudice to, all rights against Settling Defendants and Contribution Action Defendants with respect to all matters not expressly included within the Covenant Not to Sue by Plaintiff in Paragraph 15. Notwithstanding any other provision of this Consent Judgment, the United States reserves all rights against Settling Defendants and Contribution Action Defendants with respect to:

a. liability for failure of Settling Defendants or Contribution Action Defendants to meet a requirement of this Consent Judgment;

b. criminal liability;

c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

d. liability based on the ownership or operation of the Site by any Settling Defendant or Contribution Action Defendant when such ownership or operation commences after signature of this Consent Judgment by the respective Settling Defendants or Contribution Action Defendants;

e. liability based on Settling Defendants' or Contribution Action Defendants' transportation, treatment, storage, or disposal, or arrangement for transportation, treatment, storage, or disposal of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Consent Judgment by the respective Settling Defendants and Contribution Action Defendants; and

f. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site.

#### **IX. COVENANTS BY SETTLING DEFENDANTS AND CONTRIBUTION ACTION DEFENDANTS**

17. Settling Defendants and Contribution Action Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site and this Consent Judgment, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law relating to the Site.

18. Except as provided in Paragraph 20 (Claims against other PRPs) and Paragraph 22 (res judicata and other defenses), the covenants in this Section shall not apply in the event the United States brings a cause of action or issues an order pursuant to any of the reservations in Paragraph 16 (Reservation of Rights by United States), other than in Paragraph 16.a (liability for failure to meet a requirement of the Consent Judgment) or 16.b (criminal liability), but only to the extent that Settling Defendants' claims arise from the same response action or response costs that the United States is seeking pursuant to the applicable reservation.

19. Nothing in this Consent Judgment shall be deemed to constitute approval or 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).

20. Claims against other PRPs. Settling Defendants and Contribution Action Defendants agree not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that they may have for Future Response Costs related to the Site against each other or any other person who is a potentially responsible party under CERCLA at the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that Settling Defendants or Contribution Action Defendants may have against any person if a claim or cause of action relating to the Site is asserted against Settling Defendants or Contribution Action Defendants.

## **X. EFFECT OF SETTLEMENT/CONTRIBUTION**

21. Except as provided in Paragraph 20 (Claims against other PRPs), nothing in this Consent Judgment shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Judgment. Except as provided in Section IX (Covenants by Settling Defendants and Contribution Action Defendants), each of the Parties expressly reserves any and all rights (including, but not limited to, under Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action which it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Consent Judgment 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 pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

22. The Parties agree, and by entering this Consent Judgment this Court finds, that this Consent Judgment constitutes a judicially approved settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that each Settling Defendant, each Contribution Action Defendant, and to the extent their liability arises solely from the liability of the Settling Defendants, each Related Party, is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for "matters addressed" in this Consent Judgment. The "matters addressed" in this Consent Judgment are all response actions taken or to be taken related to the Site and all Future Response Costs incurred or to be incurred by the United States or any other person, except for the Commonwealth of Pennsylvania; provided, however, that if the United States exercises rights under the reservations in Paragraph 16 (Reservations of Rights by United States), other than in Paragraph 16.a (liability for failure to meet a requirement of the Consent Judgment) or 16.b (criminal liability), the "matters addressed" in this Consent Judgment will no longer include those response costs or response actions that are within the scope of the exercised reservation.

23. Each Settling Defendant and Contribution Action Defendant shall, with respect to any suit or claim brought by it for matters related to this Consent Judgment, notify EPA and DOJ in writing no later than 60 days prior to the initiation of such suit or claim. Each Settling Defendant and Contribution Action Defendant also shall, with respect to any suit or claim brought against it for matters

related to this Consent Judgment, notify EPA and DOJ in writing within 10 days after service of the complaint or claim upon it. In addition, each Settling Defendant and Contribution Action Defendant shall notify EPA and DOJ within 10 days after service or receipt of any Motion for Summary Judgment, and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Consent Judgment.

24. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendants and Contribution Action Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses, where such defense or claim is based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants by Plaintiff set forth in Section VIII.

#### **XI. NOTICES AND SUBMISSIONS**

25. Whenever, under the terms of this Consent Judgment, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified in this Section shall constitute complete satisfaction of any written notice requirement of the Consent Judgment with respect to EPA, DOJ, Settling Defendants, and Contribution Action Defendants respectively.

**As to DOJ:**

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
Re: DJ # 90-11-3-863

**As to EPA:**

Joan A. Johnson (3RC41)  
Senior Assistant Regional Counsel  
United States Environmental Protection Agency  
Region III

1650 Arch Street  
Philadelphia, PA 19103-2029

and

Carlyn Winter Prisk (3HS62)  
Civil Investigator  
Office of Enforcement- Cost Recovery Branch  
United States Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

**As to Settling Defendants:**

Chromatex, Inc.:

Michael E. Richardson, Esq.  
The Richardson Law Firm  
707 Georgia Avenue, Suite 401  
Chattanooga, TN 37402

The Valmont Partners:

Marsha A. Sajer, Esq.  
K&L Gates LLP  
17 North Second Street  
18<sup>th</sup> Floor  
Harrisburg, PA 17101-1507

**As to Contribution Action Defendants:**

Chromatex, Inc.,  
Rossville Industries, Inc.,  
Rossville Companies, Inc.,  
Rossville Investments, Inc.  
f/k/a A&E Leasing Company,  
Ronald W. Satterfield,  
Feldspar Investments, LLC,  
and Feldspar Properties, LLC:

Michael E. Richardson, Esq.  
The Richardson Law Firm  
707 Georgia Avenue, Suite 401  
Chattanooga, TN 37402

Culp, Inc.:

R. Steven DeGeorge, Esq.  
Robinson, Bradshaw & Hinson, P.A.  
101 North Tryon Street, Suite 1900  
Charlotte, NC 28246-1900

Estate of W. Frank Hutcheson:

Sheri A. Fox, Esq.  
Baker, Donelson, Bearman, Caldwell &  
Berkowitz, PC  
1800 Republic Centre  
633 Chestnut Street  
Chattanooga, Tennessee 37450

## **XII. RETENTION OF JURISDICTION**

26. This Court shall retain jurisdiction over both the subject matter of this Consent Judgment and the Parties for the purpose of interpreting and enforcing the terms of this Consent Judgment.

## **XIII. APPENDIX**

27. The following appendix is attached to and incorporated into this Consent Judgment: "Appendix A" is the certification by Settling Defendants that Contribution Action Defendants have contributed money to the Joint Settlement Fund pursuant to the settlement and release agreement in the Contribution Action and that such money shall be used as part of the payment to be made pursuant to Paragraph 5 (Payment for Response Costs) of this Consent Judgment.

## **XIV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

28. This Consent Judgment shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Judgment disclose facts or considerations that indicate that this Consent Judgment is inappropriate, improper, or inadequate. Settling Defendants and Contribution Action Defendants consent to the entry of this Consent Judgment without further notice.

29. If for any reason this Court should decline to approve this Consent Judgment in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

#### **XV. SIGNATORIES/SERVICE**

30. Each undersigned representative of a Settling Defendant or a Contribution Action Defendant and the Acting Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, certifies that he or she is authorized to enter into the terms and conditions of this Consent Judgment and to execute and bind legally such Party to this document.

31. Each Settling Defendant and Contribution Action Defendant agrees not to oppose entry of this Consent Judgment by this Court or to challenge any provision of this Consent Judgment, unless the United States has notified Settling Defendants in writing that it no longer supports entry of the Consent Judgment.

32. Each Settling Defendant and Contribution Action Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Judgment. Settling Defendants and Contribution Action Defendants agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

#### **XVI. FINAL JUDGMENT**

33. Upon entry of this Consent Judgment by the Court, this Consent Judgment shall constitute the final judgment between the United States and Settling Defendants. The Court enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

34. Civil Action No. 08-229 is hereby dismissed without prejudice.

SO ORDERED THIS 4<sup>th</sup> DAY OF June, 2014.

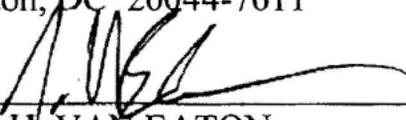
  
A. RICHARD CAPUTO  
United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Judgment in the matter of *United States v. Chromatex, Inc. et al.*, Civil Action No. 91-1501 (M.D.Pa.), and *Alan Shulman, et al., v. Chromatex, Inc. et al.*, Civil Action No. 08-229 (M.D.Pa.), relating to the Valmont TCE Superfund Site.

**FOR THE UNITED STATES OF AMERICA:**

Date: 4/8/14

  
\_\_\_\_\_  
ROBERT G. DREHER  
Acting Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice  
Washington, DC 20044-7611

  
\_\_\_\_\_  
JOSHUA H. VAN EATON  
Trial Attorney  
Environmental Enforcement Section  
Environment & Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611, Ben Franklin Station  
Washington, DC 20044-7611  
(202) 514-5474  
Email [josh.van.eaton@usdoj.gov](mailto:josh.van.eaton@usdoj.gov)

PETER J. SMITH  
United States Attorney  
Middle District of Pennsylvania

MARK E. MORRISON  
Chief, Civil Division  
United States Attorney's Office  
Middle District of Pennsylvania  
228 Walnut Street, Suite 220  
P.O. Box 11754  
Harrisburg, PA 17108-1754  
(717) 221-4482

**FOR THE EPA:**

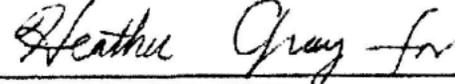
Date: 4/10/14



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SHAWN M. GARVIN  
Regional Administrator, Region III  
U.S. Environmental Protection Agency  
1650 Arch Street  
Philadelphia, PA 19103-2029

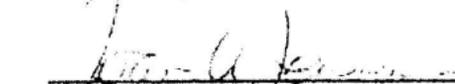
Date: 4-15-14



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MARCIA E. MULKEY  
Regional Counsel, Region III  
U.S. Environmental Protection Agency  
1650 Arch Street  
Philadelphia, PA 19103-2029

Date: 5/15/14

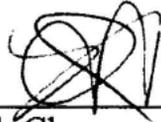


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JOAN A. JOHNSON  
Senior Assistant Regional Counsel  
United States Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

**FOR RUTH CHERENSON, AS PERSONAL REPRESENTATIVE OF THE  
ESTATE OF FORMER VALMONT PARTNER ALAN CHERENSON:**

Date: March 24, 2014

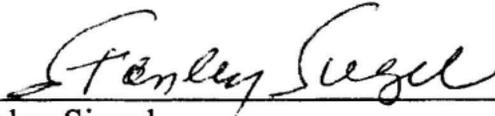


\_\_\_\_\_  
Ruth Cherson Magin, as personal representative  
of the estate of Alan Cherson  
11907 Falkirk Dr.  
Potomac, MD 20854

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Marsha A. Sajer, Esq.  
K&L Gates LLP  
17 North Second Street, 18th Floor  
Harrisburg, PA 17101-1507  
*Counsel for the Valmont Partners*

**FOR FORMER VALMONT PARTNER STANLEY SIEGEL:**

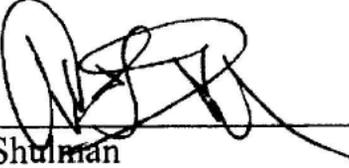
Date: March 24, 2014   
Stanley Siegel  
23 Wanamaker Avenue, No. 2X  
Waldwick, NJ 07463

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Marsha A. Sajer, Esq.  
K&L Gates LLP  
17 North Second Street, 18th Floor  
Harrisburg, PA 17101-1507  
*Counsel for the Valmont Partners*

**FOR FORMER VALMONT PARTNER ALAN SHULMAN:**

Date: March 24, 2014

  
\_\_\_\_\_  
Alan Shulman  
377 Lake Way  
Palm Beach, FL 33789

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Marsha A. Sajer, Esq.  
K&L Gates LLP  
17 North Second Street, 18th Floor  
Harrisburg, PA 17101-1507  
*Counsel for the Valmont Partners*

**FOR ADRIENNE ROLLA AS EXECUTOR OF THE ESTATE OF  
FORMER VALMONT PARTNER JOSEPH BYRNES:**

Date: 2/25/14



---

Adrienne Rolla, as executor of the estate  
of Joseph Byrnes  
Ronayne, Hackeling & Rolla  
P.O. Box 500  
Yonkers, NY 10703

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Marsha A. Sajer, Esq.  
K&L Gates LLP  
17 North Second Street, 18th Floor  
Harrisburg, PA 17101-1507  
*Counsel for the Valmont Partners*

**FOR CHROMATEX, INC.,  
ROSSVILLE INDUSTRIES, INC.,  
ROSSVILLE COMPANIES, INC.,  
ROSSVILLE INVESTMENTS, INC.  
F/K/A A&E LEASING COMPANY,  
RONALD W. SATTERFIELD,  
FELDSPAR INVESTMENTS, LLC,  
AND FELDSPAR PROPERTIES, LLC:**

Date: 3/13/14



Ronald W. Satterfield, for himself;  
as ~~President~~ of Chromatex, Inc., Rossville Industries,  
Inc., Rossville Companies, Inc., and Rossville  
Investments, Inc.; and as ~~Managing Member~~ of Feldspar  
Investments, LLC and Feldspar Properties, LLC

P.O. Box ~~488~~ 388W  
Lookout Mountain, TN 37350

*\* FORMER U.P. CHROMATEX, ROSSVILLE INDUSTRIES  
AND ROSSVILLE COMPANIES AND FORMER PRESIDENT  
ROSSVILLE INVESTMENTS*

Agent Authorized to Accept Service on Behalf of Above-signed Party:

*\*\*  
FORMER  
MANAGING  
PARTNER OF  
FELDSPAR  
INVESTMENTS, LLC*

Michael E. Richardson, Esq.  
The Richardson Law Firm  
707 Georgia Avenue, Suite 401  
Chattanooga, TN 37402  
*Counsel for Ronald W. Satterfield,  
Chromatex, Inc., Rossville Industries, Inc.,  
Rossville Companies, Inc., Rossville Investments, Inc.  
Feldspar Investments, LLC and Feldspar Properties, LLC*

**FOR CULP, INC.:**

Date: 2/29/14



Kenneth R. Bowling  
Chief Financial Officer and Treasurer  
Culp, Inc.  
1823 Eastchester Drive  
High Point, NC 27265

Agent Authorized to Accept Service on Behalf of Above-signed Party:

R. Steven DeGeorge, Esq.  
Robinson Bradshaw & Hinson  
101 North Tryon Street, Suite 1900  
Charlotte, NC 28246  
*Counsel for Culp, Inc.*

**FOR VIRGINIA C. LOVE AND SUN TRUST BANK AS EXECUTORS FOR  
THE ESTATE OF W. FRANK HUTCHESON:**

Date: March 4, 2014 Rhea Ann Weaver  
Rhea Ann Weaver, J.D.  
First Vice President & Regional Trust Advisor  
Wealth and Investment Management  
SunTrust Bank, as co-executor of the  
Estate of W. Frank Hutcheson  
P.O. Box 1638, MC 0312  
736 Market Street, 1st Floor  
Chattanooga, TN 37401

Date: March 4, 2014 Virginia C. Love  
Virginia C. Love, Esq., as co-executor of the  
Estate of W. Frank Hutcheson  
633 Chestnut Street, Suite 1800  
Chattanooga, TN 37450

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Sheri A. Fox, Esq.  
Baker, Donelson, Bearman,  
Caldwell & Berkowitz, P.C.  
633 Chestnut Street, Suite 1800  
Chattanooga, TN 37450  
*Counsel for the Executors of the Hutcheson Estate*

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	Civil Action No. 91-1501
	:	
v.	:	(Judge Caputo)
	:	
CHROMATEX, INC., et al.	:	
	:	
Defendants	:	

---

ALAN SHULMAN, et al.,	:	
	:	
Plaintiffs,	:	Civil Action No. 08-229
	:	
v.	:	(Judge Caputo)
	:	
CHROMATEX, INC., et al.,	:	
	:	
Defendants	:	

**DECLARATION OF MARSHA A. SAJER, ESQ.**

I, Marsha A. Sajer, state as follows:

1. I am a partner with the law firm K&L Gates LLP, and counsel for Plaintiffs Alan Shulman, Stanley Siegel, Ruth Chersonson as personal representative of the estate of Alan Chersonson, and Adrienne Rolla and M.F. Rolla as executors of the estate of Joseph Byrnes (collectively, the "Valmont Partners") in the action captioned *Shulman et al. v. Chromatex, Inc. et al.*, Civil Action No. 08-229 (M.D. Pa.).

2. Civil Action No. 08-229, filed against Defendants Chromatex, Inc., Rossville Industries, Inc., Rossville Companies, Inc., Rossville Investments, Inc. f/k/a A&E Leasing Company, Ronald W. Satterfield, Feldspar Investments, LLC, Feldspar Properties, LLC, Virginia C. Love and SunTrust Bank as executors of the estate of W. Frank Hutcheson, and Culp, Inc. (collectively, the "Contribution Action Defendants"), sought contribution under Section 113 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9613, among other claims.

3. The Valmont Partners entered into a Settlement Agreement with the Contribution Action Defendants resolving the claims alleged in Civil Action No. 08-229.

4. Pursuant to the Settlement Agreement, K&L Gates, LLP received payments of \$1,218,750.00 from the Contribution Action Defendants (the "Settlement Amount") collectively.

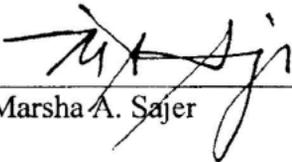
5. The Settlement Amount from the Contribution Action Defendants in combination with payment made on behalf of the Valmont Partners constitutes the Joint Settlement Fund, described in the Consent Judgment, Section IV, Paragraph 3.1., in the amount of \$2,225,000.00.

6. Pursuant to the terms of the Settlement Agreement and Section VI, Paragraph 5 of the Consent Judgment, not more than thirty (30) days after the Effective Date of the Consent Judgment agreed to by the parties to Civil Action No. 91-1501 and Civil Action No. 08-229, K&L Gates, LLP shall cause the Joint Settlement Fund of \$2,225,000.00 to be paid to the United States Environmental Protection Agency.

I declare under penalty of perjury under the laws of the United States of America (28 U.S.C. § 1746) that the foregoing is true and correct.

I declare under penalty of perjury under the laws of the United States of America (28 U.S.C. § 1746) that the foregoing is true and correct.

Date: 24 MARCH 2014

  
\_\_\_\_\_  
Marsha A. Sajer

I, Michael E. Richardson, Esq., on behalf of Chromatex, Inc., concur in the facts set forth above and declare under penalty of perjury under the laws of the United States of America (28 U.S.C. § 1746) that the foregoing is true and correct.

Date: \_\_\_\_\_

\_\_\_\_\_  
Michael E. Richardson

January \_\_, 2014

Marsha A. Sajer

I, Michael E. Richardson, Esq., on behalf of Chromatex, Inc., concur in the facts set forth above and declare under penalty of perjury under the laws of the United States of America (28 U.S.C. § 1746) that the foregoing is true and correct.

MARCH 25,  
~~January~~ 2014

  
Michael E. Richardson