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January 22, 2002

## BY ELECTRONIC-MAIL AND FEDERAL EXPRESS

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Atlanta, GA 30303

Re: Anniston PCB Site

Dear Bill and Dustin:

Attached is the good faith offer of Pharmacia and Solutia in connection with the Anniston, Alabama PCB Site. As you will see, we have revised three of the four documents that you forwarded, namely the draft Consent Decree, the RI/FS Agreement and the Statement of Work. We are attaching clean copies of those revised documents as well as redlined versions, which highlight revisions made to EPA's original documents. As for the fourth document, the Proposed Past Cost Agreement, we believe that it is premature to discuss the language of that agreement in view of the issues raised in the enclosed letter from my colleague, Karen Ballotta, which continues our dialogue concerning past cost issues.

Please call me when you have had a chance to review these documents and discuss them internally so that we can consider what makes sense as the next appropriate step in the negotiation process. To best advance the process, we are prepared to meet in person, to engage in further discussions, or to exchange additional documents. I wish to emphasize that our entire Solutia team has spent a considerable amount of time trying to find a constructive and reasonable manner of dealing with what are complex and novel issues at a unique site. The companies view reaching a resolution with EPA and proceeding to conduct the RI/FS as a top priority.

Very truly yours,

Allan J. Topol

Enclosures

1-22-02 DRAFT

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA

UNITED STATES OF AMERICA  
And the STATE OF ALABAMA,

Plaintiffs,

v.

PHARMACIA CORPORATION  
(p/k/a Monsanto Company) and  
SOLUTIA INC.,

Defendants.

CIVIL ACTION NO. \_\_\_\_\_

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## PARTIAL CONSENT DECREE

### I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA") and the State of Alabama (the "State") on behalf of the Alabama Department of Environmental Management ("ADEM"), filed a complaint in this matter pursuant to Sections 106, 107, and 113(g)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606, 9607, § 9613(g)(2).

B. The United States and the State in their complaint seek, inter alia: (1) reimbursement of costs to be incurred for response actions at the Site in Anniston, Calhoun County, Alabama shown on Exhibit 1 ("Site"); (2) performance of studies and response work by the Defendants at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP"); and (3) a declaratory judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages pursuant to Section 113(g)(2), 42 U.S.C. §9613(g)(2).

C. This Partial Consent Decree ("Consent Decree"), which was filed along with the complaint, seeks to partially resolve the claims of the Plaintiffs against the Defendants by, inter alia, the payment of Future Response Costs and Administrative Order on Consent (AOC) Oversight Costs, the performance of certain work specified herein and continuation of a removal action pursuant to the attached Removal Order. The Parties acknowledge that this Consent Decree does not resolve portions of the United States' claims against Defendants under Sections 106, 107, and 113(g)(2) of CERCLA, 42 U.S.C. §§ 9606, 9607, 9613(g)(2) with respect to the Site. The Parties acknowledge that it will be necessary to enter into a separate Consent Decree in the future to address remedial issues not covered herein and to address all costs associated with the Site and incurred by EPA but not covered herein. As provided in Paragraph 48, Defendants shall not assert, and may not maintain that the claims raised by the United States in any subsequent proceeding (including, but not limited to, the filing of another Consent Decree with this Court) were or should have been brought in the instant case.

D. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the U.S. Department of Interior and the National Oceanic and Atmospheric Administration on November 19, 2001 of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship and encouraged the trustees to participate in the negotiation of this Consent Decree.

E. The Defendants that have entered into this Consent Decree ("Defendants") do not admit any liability to the Plaintiff arising out of the transactions or occurrences alleged in the complaint, nor do they acknowledge that the release or threatened release of hazardous substances at or from the Site constitutes an imminent or substantial endangerment to the public health or welfare or the environment.

F. Solely for the purposes of Section 113(j) of CERCLA, 42 U.S.C. § 9613(j) the RI/FS Work and Removal Order Work to be performed by the Defendants pursuant to this Consent Decree, shall constitute a response action taken or ordered by the President.

G. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of this Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

## **II. JURISDICTION AND VENUE**

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. §§ 9606, 9607, and 9613(b). Venue is proper in the United States District Court for the Northern District of Alabama pursuant to 28 U.S.C. § 1391 because the Defendants' Property is located in this District. This Court also has personal jurisdiction over the Defendants. Solely for the purposes of this Consent Decree and the underlying complaint, Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

## **III. PARTIES BOUND**

2. This Consent Decree applies to and is binding upon the United States, the State of Alabama and upon Defendants and their successors and assigns. Any change in ownership or corporate status of a Defendant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such Defendant's responsibilities under this Consent Decree.

3. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with the Defendants within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

## **IV. DEFINITIONS**

4. Unless otherwise expressly provided herein, terms used in this Consent Decree which 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 Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply (provided, however, if an appendix defines one of the terms listed below, then the definition in the appendix shall apply to that appendix):

"Anniston PCB Site Special Account" shall mean the special account established at the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. §9622(b)(3).

"ADEM" shall mean the Alabama Department of Environmental Management and any successor departments or agencies of the State.

"AOC Oversight Costs" shall have the meaning set forth in the attached Removal Order.

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.

"Consent Decree" shall mean this Decree and all appendices (including the RI/FS Agreement, the Removal Order, and the SOW) attached hereto and listed in Section XVI.

"Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Consent Decree, 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.

"Defendants" shall mean Pharmacia Corporation (p/k/a Monsanto Company) and Solutia Inc.

"Defendants' Property" shall mean the property owned by Defendants as of January 1, 2002, as marked on the attached map (Exhibit A).

"Effective Date" shall be the date of entry by the Court of this Consent Decree as provided in Paragraph 50.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"Future Response Costs" shall mean all costs, except ATSDR costs, including direct and indirect costs, that the United States incurs through the public participation period for the ROD in reviewing or developing plans, reports and other items pursuant to the RI/FS Agreement, verifying the RI/FS Work, or otherwise implementing, overseeing, or enforcing the RI/FS Agreement, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, and the costs incurred to obtain access for Defendants. Defendants shall reimburse EPA for removal AOC Oversight Costs as provided in the Removal Order. Future Response Costs do not include costs that the United States incurs at the Anniston Lead Site or any other costs incurred investigating constituents other than PCBs.

"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.

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

"October 27, 2000 AOC" shall mean the Administrative Order on Consent, docket no. 01-02-C, for a removal action regarding the Anniston PCB Site ("Site") which was effective on October 27, 2000. The October 27, 2000 AOC was rescinded and replaced by the Removal Order.

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

"Parties" shall mean the United States, the State of Alabama, and the Defendants.

"Plaintiff" shall mean the United States and the State of Alabama.

"RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 et seq. (also known as the Resource Conservation and Recovery Act).

"Remedial Investigation/Feasibility Study (RI/FS)" shall mean the response actions identified in 40 C.F.R. § 300.5 undertaken by Defendants pursuant to the RI/FS Agreement to determine the nature and extent of PCB contamination in Area 1 of the Site and develop and evaluate potential remedial alternatives.

"Removal Order" shall mean the Administrative Order on Consent, docket no. CER-04-2002-3752, for a removal action regarding the Anniston PCB Site (Site) which was effective on October 5, 2001. The Removal Order is set forth in Appendix C to this Consent Decree.

"Removal Order Work" shall mean all activities Defendants are required to perform pursuant to the attached Removal Order.

"RFP" shall mean the work being conducted pursuant to Defendants' RCRA Post Closure Permit, ALD 004019048, issued by ADEM on January 7, 1997 as modified on May 21, 2001 (hereinafter the "RCRA Permit").

"RI/FS Agreement" shall mean the Agreement for the RI/FS in Area 1 of the Site, as set forth in Appendix A to this Consent Decree.

"RI/FS Work" shall mean all activities Defendants are required to perform pursuant to the attached RI/FS Agreement. RI/FS Work does not include any activities or work EPA determines to be necessary at any other Site (including the Anniston Lead Site). RI/FS Work does not include any additional activities or work that EPA determines to be necessary after EPA approval of the certification of completion issued pursuant to Paragraph 84 of the RI/FS Agreement.

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

"Site" shall mean, for the purposes of this Consent Decree, the area shown on the map which is Exhibit A hereto, consisting of Area 1 and Area 2, located in and around Anniston, Calhoun County, Alabama that contain or may contain hazardous substances, including polychlorinated biphenyls (PCBs). Specifically, Area 1 consists of: (1) residential, commercial, and public properties located within zones depicted on the attached map in and around Anniston, Calhoun County, Alabama, that contain or may contain PCBs; (2) the drainage ditch known as the 11th Street Ditch; (3) the 100-year floodplain of Snow Creek, from the confluence of the 11th Street Ditch to the point where Snow Creek crosses Interstate 20. Area 2 consists of Snow Creek, from the confluence of the 11th Street Ditch to the point where Snow Creek crosses Interstate 20, and all land, and structures, other appurtenances, and improvements on the land, owned as of the date of this Consent Decree by Solutia Inc., exclusive of the operating facility, as shown on Exhibit A.

"State" shall mean the State of Alabama.

"Statement of Work" or "SOW" shall mean the Statement of Work for implementation of the RI/FS Agreement, as set forth in Appendix B to this Consent Decree and any modifications made in accordance with this Consent Decree.

"United States" shall mean the United States of America.

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); and (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

## **V. GENERAL PROVISIONS**

### **5. Objectives of the Parties.**

The objectives of the Parties in entering into this Decree are: (a) to determine the nature and extent of PCB contamination and any threat to the public health, welfare, or the environment caused by the release or threatened release of PCBs at or from the Site; (b) to determine and evaluate alternatives for remedial action (if any) to prevent, mitigate or otherwise respond to or remedy any release or threatened release of PCBs at or from the Site; (c) to recover Future Response Costs and AOC Oversight Costs incurred by EPA with respect to the Site, (d) to create



a foundation to benefit the citizens of west Anniston, (e) to provide funding for a Technical Assistance Plan (TAP) and a Community Advisory Group (CAG) for the affected community, (e) to incorporate the existing Removal Order into this Consent Decree and, (f) to partially resolve the claims of the Plaintiffs against the Defendants.

6. Commitments by Defendants.

a. With Respect to Area 1:

1. Defendants shall finance and perform investigatory work as required by the RI/FS Agreement and SOW, which are attached as Appendices A and B hereto in accordance with this Consent Decree, the provisions of Appendices A and B and all work plans and other plans, standards, specifications, and schedules set forth herein or developed by Defendants and approved by EPA pursuant to the Consent Decree.

2. Defendants shall finance and perform a feasibility study as required by the RI/FS Agreement and SOW, which are attached as Appendices A and B hereto in accordance with this Consent Decree, the provisions of Appendices A and B and all work plans and other plans, standards, specifications and schedules set forth herein as developed by Defendants and approved by EPA pursuant to this Consent Decree.

3. Defendants shall finance and perform the Removal Order work in accordance with the terms of the Removal Order and all work plans and other documents developed by Defendants and approved by EPA pursuant to the Removal Order and this Consent Decree.

b. With Respect to Area 2:

1. Defendants shall perform all work required by the RFI which is currently being conducted by Defendants in this area.

2. Defendants shall propose final corrective measures in accordance with the results of the RFI.

3. Once a decision has been made by ADEM after review and approval by EPA to select final corrective measures, then such corrective measures shall be subjected to public review and comment in accordance with 42 U.S.C. § 9617 and Ala. Code §§ 22-30-1 et seq. The Parties contemplate that a further Consent Decree shall be entered into governing the implementation of final corrective measures adopted for Area 2.

c. With Respect to Both Area 1 and Area 2:

1. The obligations of Defendants to finance and to perform the obligations and to pay money under this Consent Decree are joint and several. In the event of insolvency or

other failure of any one or more of the Defendants to implement the requirements of this Consent Decree, the remaining Defendants shall complete all such requirements.

2. Work previously completed under the oversight of one agency in an area where a different agency is designated as the "lead" under this Consent Decree may be used by Defendants in connection with the activities required to be performed under this Consent Decree.

#### 7. Lead Agency.

1. With respect to all work performed by Defendants in Area 1, EPA shall be the lead agency and shall have the responsibility for the oversight of such work and ADEM shall be provided with an opportunity for review and comment on all submissions by Defendants.

2. With respect to all work performed by Defendants in Area 2, ADEM shall be the lead agency and shall have the responsibility for the oversight of such work and EPA shall be provided with an opportunity for review and approval of all submissions by Defendants.

3. With respect to all other matters under this Consent Decree, EPA shall be the lead agency and shall seek the review and comment of ADEM, as EPA deems appropriate.

4. The parties contemplate that Defendants' RCRA Permit shall be modified in accordance with the terms of this Consent Decree. Except as provided in this Consent Decree, nothing herein shall modify Solutia's responsibilities for completing a RCRA Facility Investigation in those portions of AOC B (as that term is defined in the Post-Closure Permit, ALD004019048, issued by ADEM on January 7, 1997, as modified on May 21, 2001) not included within the definition of Site.

#### 8. Compliance With Applicable Law.

All activities undertaken by Defendants pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be considered to be consistent with the NCP.

9. EPA entered into a Removal Order for a removal action regarding the Anniston PCB Site which was effective on October 5, 2001. The Removal Order is hereby incorporated into this Consent Decree. Nothing in this Consent Decree shall modify Solutia Inc.'s obligations under the Removal Order. The Dispute Resolution provisions of the Removal Order shall control any dispute regarding the Removal Order, and Solutia Inc. shall pay AOC Oversight Costs pursuant to the Removal Order.

10. EPA and Solutia executed an RI/FS Agreement on [DATE]. The effective date of the RI/FS Agreement, shall be the date this Consent Decree is entered by the Court.

## **VI. CREATION OF A FOUNDATION FOR THE CITIZENS OF WEST ANNISTON**

11. Defendants shall create a foundation for the benefit of the residents of west Anniston within 180 days from the Effective Date of this Consent Decree, unless the parties agree that an existing entity can meet the requirements of this Section within 45 days from the Effective Date of this Consent Decree. The foundation shall be established under applicable law governing non-profit charitable organizations in order to qualify for tax exempt treatment within the meaning of Section 501(c)(3) of the Internal Revenue Code. The foundation shall be created for the following purposes: a) to provide supplemental educational services at the elementary school level for the residents of west Anniston; and b) to provide for economic development in the west Anniston area.<sup>1</sup>

12. Defendants shall wire transfer to the foundation, or to an escrow account designated by the United States for the foundation, a total of \$3,218,846 pursuant to the payment schedule noted below. The first payment shall be made within sixty (60) days from the establishment of the foundation described in paragraph 11 above. Defendants shall make any payments required for years two through twelve annually between January 1 and January 31, beginning in the first January after the Effective Date of this Consent Decree. The payments required each year shall be as follows:

Year 1:	\$150,000
Year 2:	\$102,000
Year 3:	\$84,000
Year 4:	\$0
Year 5:	\$0
Year 6:	\$364,996
Year 7:	\$379,596
Year 8:	\$394,780
Year 9:	\$410,571
Year 10:	\$426,994
Year 11:	\$444,073
<u>Year 12:</u>	<u>\$461,836</u>
Total	\$3,218,846

If Defendants fail to make the payments required pursuant to this Paragraph, Defendants shall pay Interest on the unpaid balance to the foundation, or to an escrow account designated by the United States for the foundation. Defendants shall provide EPA with documentation indicating that the payments have been made within (30) thirty days from the date of payment.

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<sup>1</sup> These were the two purposes set forth in Solutia's letter of February 9, 2001.

13. EPA shall seek input from the CAG created pursuant to Section V.5. of this Consent Decree, and any consultants retained by Defendants, as well as representatives of the community at large, including educators, the Superintendent of Schools, the School Board and other local officials, in order to determine the following:

- a) how these funds shall be expended;
- b) whether the funds shall go to an existing entity or entities, or whether a new entity or entities shall be created;
- c) how the foundation shall be structured; and
- d) what limitations shall be placed on the foundation regarding the use of the funds.

After receiving input from the community and Defendants' consultants, if any, EPA will inform Defendants of EPA's determinations regarding a-d above.

14. All proceeds in the foundation shall be expended in accordance with the provisions of paragraphs 12 and 13. above. Defendants shall provide EPA with an annual accounting every January for twelve years after the Effective Date of this Consent Decree documenting all expenditures by the foundation.

## **VII. STIPULATED PENALTIES**

15. Defendants shall be liable for stipulated penalties to the United States for failure to comply with the requirements of this Consent Decree specified below. The following stipulated penalties shall accrue per violation per day for failure to make the payments required pursuant to Section VI (Creation of a Foundation For The Citizens of West Anniston).

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1st through 14th day
\$1,000	15th through 30th day
\$5,000	31st day and beyond

16. Following EPA's determination that Defendants have failed to comply with a requirement of this Consent Decree, EPA may give Defendants written notification of the same and describe the noncompliance. EPA may send the Defendants a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified the Defendants of a violation.

17. All penalties accruing under this Section shall be due and payable to the United States within thirty (30) days of the Defendants' receipt from EPA of a demand for payment of the penalties. All payments to the United States under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to U.S. EPA Region 4, Superfund Accounting, Attn: Collection Officer in Superfund, P.O. Box 100142, Atlanta, GA 30384, shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID #04S9, the DOJ Case Number 90-11-2-07135/1, and the name and address of the party making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), or notification of electronic wire transfer of

funds, shall be sent to Dustin F. Minor, U.S. EPA Region 4, Environmental Accountability Division, 61 Forsyth Street, S.W., Atlanta, GA 30303-8960, and to Paula V. Batchelor, U.S. EPA Region 4, 4WD-PSB/11th floor, 61 Forsyth Street, S.W., Atlanta, GA, 30303-8960, or their successors.

18. The payment of penalties shall not alter in any way Defendants' obligation to complete the performance of the RI/FS Work and Removal Order Work required under this Consent Decree.

19. If Defendants fail to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as interest.

20. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Defendants' violation of this Decree or of the statutes and regulations upon which it is based, including, but not limited to, EPA's right to conduct of all or part of the RI/FS itself or to seek penalties pursuant to Section 122(l) of CERCLA, 42 U.S.C. § 9622(l).

21. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree.

#### **VIII. DISPUTE RESOLUTION**

22. This Dispute Resolution Section is applicable to the requirements that are contained in this Consent Decree, as well as to disputes regarding the RI/FS Agreement, the Removal Order, the Agreement relating to Past Costs, and the SOW.

23. The dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree, the RI/FS Agreement, the Removal Order, the Agreement relating to Past Costs, and the SOW. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of the Defendants that have not been disputed in accordance with this Section.

24. Any dispute which arises shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed twenty (20) days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

#### **25. Statements of Position.**

a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within fourteen (14) days after the conclusion of the informal negotiation period,

Defendants invoke the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Defendants. The Statement of Position shall specify the Defendants' position as to whether formal dispute resolution should proceed under Paragraph 26 or Paragraph 27.

b. Within fourteen (14) days after receipt of Defendants' Statement of Position, EPA will serve on Defendants its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 26 or 27. Within fourteen (14) days after receipt of EPA's Statement of Position, Defendants may submit a Reply.

c. If there is disagreement between EPA and the Defendants as to whether dispute resolution should proceed under Paragraph 26 or 27, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if the Defendants ultimately appeal to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 26 and 27.

26. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by Defendants regarding the validity of the ROD's provisions.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

b. The Director of the Waste Management Division, EPA Region 4, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 26.a. This decision shall be binding upon the Defendants, subject only to the right to seek judicial review pursuant to Paragraph 26.c. and d.

c. Any administrative decision made by EPA pursuant to Paragraph 26.b. shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by the Defendants with the Court and served on all Parties within twenty (20) days of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the

parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Defendants' motion.

d. In proceedings on any dispute governed by this Paragraph, Defendants shall have the burden of demonstrating that the decision of the Waste Management Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 26.a.

27. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

a. Following receipt of Defendants' Statement of Position submitted pursuant to Paragraph 25, the Director of the Waste Management Division, EPA Region 4, will issue a final decision resolving the dispute. The Waste Management Division Director's decision shall be binding on the Defendants unless, within twenty (20) days of receipt of the decision, the Defendants file with the Court and serve on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Defendants' motion.

b. Notwithstanding Paragraph G of Section I (Background) of this Consent Decree, judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

28. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Defendants under this Consent Decree, not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VII (Stipulated Penalties).

## **IX. REIMBURSEMENT OF RESPONSE COSTS**

29. Payments for Future Response Costs. Defendants shall pay to EPA all Future Response Costs incurred in a manner not inconsistent with the National Contingency Plan. Payment of Future Response Costs shall only become due and payable after EPA has submitted to Defendants a Region 4 cost summary and a DOJ cost summary, as well as detailed back up information describing the activities performed, and after the parties have had sufficient time in which to resolve disputes relating to such costs.

30. For each twelve month period commencing with the Effective Date, Defendants shall not pay more than \$ \_\_\_\_\_ for Future Response Costs. To the extent that the United States incurs costs in excess of \$ \_\_\_\_\_ in any twelve month period or other Response Costs not reimbursable under this Consent Decree, the Defendants are not released from liability for such costs. EPA may seek recovery of such costs by separately filing suit under Section 107 of CERCLA.

31. Payments for AOC Oversight Costs. Defendants shall pay to EPA AOC Oversight Costs as provided in the Removal Order.

#### **X. COVENANTS NOT TO SUE BY PLAINTIFF UNITED STATES**

32. In consideration of the actions that will be performed and the payments that will be made by the Defendants under the terms of the Consent Decree, and except as specifically provided in Paragraph 33 of this Section, the United States covenants not to sue or to take administrative action against Defendants pursuant to Sections 106 and 107(a) of CERCLA for performance of the RI/FS Work and Removal Order Work and for recovery of Future Response Costs and AOC Oversight Costs, except as otherwise provided for herein. These covenants not to sue shall take effect upon EPA approval of the certification of completion submitted pursuant to Paragraph 84 of the RI/FS Agreement. These covenants not to sue are conditioned upon the satisfactory performance by Defendants of their obligations under this Consent Decree, the RI/FS Agreement, and the Removal Order. These covenants not to sue extend only to the Defendants and do not extend to any other person.

33. General reservations of rights. The United States reserves, and this Consent Decree is without prejudice to, all rights against Defendants with respect to all matters not expressly included within the United State's covenant not to sue. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Defendants with respect to:

1. claims based on a failure by Defendants to meet a requirement of this Consent Decree;
2. liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Site;
3. liability for future disposal of Waste Material at the Site, other than as provided in the ROD, the RI/FS Work, the Removal Order Work, or otherwise ordered by EPA;
4. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
5. criminal liability;



6. liability for violations of federal or state law which occur during or after implementation of the RI/FS Work and Removal Order Work;

7. liability for costs incurred or to be incurred by the United States that are not within the definition of Future Response Costs or AOC Oversight Costs;

8. liability for the Site that is not within the definition of RI/FS Work or Removal Order Work (including, but not limited to, injunctive relief or administrative order enforcement under Section 106 of CERCLA);

9. liability for costs incurred or to be incurred by ATSDR related to the Site;  
and

10. liability for the Anniston Lead Site.

34. Notwithstanding any other provision of this Consent Decree, the RI/FS Agreement, and/or the Removal Order, the United States retains all authority and reserves all rights to take any and all response actions authorized by law.

35. EPA reserves the right to assert that pursuant to 42 U.S.C. § 9613(h) that no court shall have jurisdiction to review any challenges to any removal or remedial action selected under 42 U.S.C. § 9604, including, but not limited to, the remedy selected in the ROD, or to review any order issued under 42 U.S.C. § 9606(a), based on this Consent Decree or the complaint filed with the Consent Decree.

36. EPA reserves the right to conduct all or a portion of the RI/FS Work and Removal Order Work itself at any point, to seek reimbursement from Defendants, and or to seek any other appropriate relief.

#### **XI. COVENANTS NOT TO SUE BY DEFENDANTS**

37. Covenant Not to Sue. Subject to the reservations in Paragraph 38, Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States with respect to the RI/FS Work and Removal Order Work and for recovery of Future Response Costs and AOC Oversight Costs as defined herein or this Consent Decree, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law;

b. any claims against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site; or

c. any claims arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Alabama 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.

d. any direct or indirect claim for disbursement from the Anniston PCB Site Special Account.

38. The Defendants reserve, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of the Defendants' plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

39. Nothing in this Consent Decree 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).

## **XII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION**

40. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this decree may have under applicable law. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

41. The Parties agree, and by entering this Consent Decree this Court finds, that the Defendants are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), for matters addressed in this Consent Decree. The "matters addressed" in this Consent Decree are Future Response Costs, AOC Oversight Costs, and RI/FS Work and Removal Order Work as defined herein.

42. The Defendants agree that with respect to any suit or claim for contribution brought by them for matters related to this Consent Decree they will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

43. The Defendants also agree that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree they will notify in writing the United States within 10 days of service of the complaint on them. In addition, Defendants shall notify the United States within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial.

### **XIII. DISCLAIMER**

44. Defendants signing of this Consent Decree and taking actions under it shall not be considered an admission of liability and is not admissible in evidence against the Defendants in any judicial or administrative proceeding other than a proceeding by the United States, including EPA, to enforce this Consent Decree or a judgment relating to it. Defendants retain their rights to assert claims against other potentially responsible parties at the Site. However, the Defendants agree not to contest the validity or terms of this Consent Decree, or the procedures underlying or relating to it in any action brought by the United States, including EPA, to enforce its terms.

### **XIV. OTHER CLAIMS**

45. Defendants agree not to assert, and may not maintain in this action or any subsequent administrative or judicial proceeding for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site that this Consent Decree, or the complaint filed with it, grants a court jurisdiction pursuant to 42 U.S.C. § 9613(h) to review any challenges to any removal or remedial action selected under 42 U.S.C. § 9604, including, but not limited to, the remedy selected in the ROD, or to review any order issued under 42 U.S.C. § 9606(a).

46. Nothing in this Consent Decree shall be construed to limit EPA's authority to take over all or a portion of the RI/FS, including, but not limited to, the Baseline Risk Assessment.

47. Nothing in this Consent Decree shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, subsidiary or corporation not a signatory to this Consent Decree for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, pollutants, or contaminants found at, taken to, or taken from the Site.

48. In any subsequent administrative or judicial proceeding (including, but not limited to, any subsequent consent decrees lodged with this Court) for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, 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 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.

49. Defendants shall bear their own costs and attorneys' fees.

## **XV. EFFECTIVE DATE, SUBSEQUENT MODIFICATION, AND RETENTION OF JURISDICTION**

50. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, except as otherwise provided herein.

51. Schedules specified in this Consent Decree for completion of the RI/FS Work and Removal Order Work may be modified by agreement of EPA and the Defendants. All such modifications shall be made in writing.

52. No material modifications shall be made to the SOW without written notification to and written approval of the United States, Defendants, and the Court, if such modifications fundamentally alter the basic features of the RI/FS Work. Modifications to the SOW that do not materially alter the basic features of the RI/FS Work may be made by written agreement between EPA and the Defendants.

53. No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, and any other writing submitted by the Defendants will be construed as relieving the Defendants of their obligation to obtain such formal approval as may be required by this Consent Decree. Any deliverables, plans, technical memoranda, reports (other than progress reports), specifications, schedules and attachments required by this Consent Decree are, upon approval by EPA, incorporated into this Consent Decree.

54. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Defendants to effectuate or enforce compliance with its terms. Provided, however, nothing in this Consent Decree, nor the complaint filed with it, shall provide this Court jurisdiction pursuant to 42 U.S.C. § 9613(h) to review any challenges to any removal or remedial action selected under 42 U.S.C. § 9604, including, but not limited to the remedy selected in the ROD, or to review any order issued under 42 U.S.C. § 9606(a).

## **XVI. APPENDICES**

55. The following appendices are attached to and incorporated into this Consent Decree:

“Appendix A” is the RI/FS Agreement.

“Appendix B” is the SOW.

“Appendix C” is the Removal Order.

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

56. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Defendants consent to the entry of this Consent Decree without further notice.

57. If for any reason the Court should decline to approve this Consent Decree 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. Provided, however, the Removal Order shall remain in affect as a stand alone agreement if the Court declines to approve this Consent Decree.

## **XVIII. SIGNATORIES/SERVICE**

58. Each undersigned representative of a Defendant to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

59. Defendants hereby agree not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified the Defendants in writing that it no longer supports entry of the Consent Decree.

60. Each Defendant shall identify, on the attached signature page, the name, address and telephone number 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 Decree. Each Defendant hereby agrees 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.

## **XIX. FINAL JUDGMENT**

61. This Consent Decree and its appendices constitute the final, complete, and exclusive agreement and understanding among the parties with respect to the settlement embodied in the Consent Decree. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree.

62. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment with respect to a portion of the claims between and among the

United States and the Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS \_\_ DAY OF \_\_\_\_\_, 20\_\_.

---

United States District Judge

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Pharmacia Corporation and Solutia Inc., relating to the Anniston PCB Superfund Site.

FOR THE UNITED STATES OF AMERICA

\_\_\_\_\_  
Date

\_\_\_\_\_  
John C. Cruden  
Acting Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C., 20044

\_\_\_\_\_  
Date

\_\_\_\_\_  
William Weinischke, Senior Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611

\_\_\_\_\_  
Date

\_\_\_\_\_  
[Name]  
Assistant United States Attorney  
Northern District of Alabama  
U.S. Department of Justice  
[Address]



THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Pharmacia Corporation and Solutia Inc., relating to the Anniston PCB Superfund Site.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Richard D. Green, Director  
Waste Management Division  
U.S. Environmental Protection Agency  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

\_\_\_\_\_  
Date

\_\_\_\_\_  
Dustin Minor  
Associate Regional Counsel  
U.S. Environmental Protection Agency  
Region 4  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, GA 30303-8960

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Pharmacia Corporation and Solutia Inc., relating to the Anniston PCB Superfund Site.

FOR Pharmacia Corporation

\_\_\_\_\_  
Date

Signature: \_\_\_\_\_

Name (print): \_\_\_\_\_

Title: \_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

Name (print): \_\_\_\_\_

Title: \_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

Ph. Number: \_\_\_\_\_

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Pharmacia Corporation and Solutia Inc., relating to the Anniston PCB Superfund Site.

FOR Solutia Inc.

\_\_\_\_\_  
Date

Signature: \_\_\_\_\_

Name (print): \_\_\_\_\_

Title: \_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

Name (print): \_\_\_\_\_

Title: \_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

Ph. Number: \_\_\_\_\_

DRAFT 1-22-02

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

**ANNISTON PCB SITE**

**AGREEMENT FOR REMEDIAL INVESTIGATION / FEASIBILITY STUDY(RI/FS)**

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## **I. INTRODUCTION**

1. This Agreement is entered into voluntarily by the United States Environmental Protection Agency (EPA) and Pharmacia Corporation (p/k/a Monsanto Company) and Solutia Inc. ("Defendants"). The Agreement concerns, inter alia, the preparation of, performance of, and reimbursement for costs incurred by EPA in connection with a remedial investigation and feasibility study (RI/FS) in Area 1 of the "Site," as defined in the partial Consent Decree dated \_\_\_\_\_.

## **II. JURISDICTION**

2. This Agreement is entered into under the authority vested in the President of the United States by Sections 104, 122(a) and 122(d)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. Sections 9604, 9622(a), 9622(d)(3) (CERCLA). This authority was delegated by the President to the Administrator of EPA by Exec. Order No. 12580, dated January 23, 1987, 52 Fed. Reg. 2923 (Jan. 29, 1987), and was further delegated to the Regional Administrator of Region IV EPA and redelegated to the Chief, South Site Management Branch, Waste Management Division.

3. The Defendants agree to undertake all actions required by the terms and conditions of this Agreement. In any action by EPA or the United States to enforce the terms of this Agreement, Defendants consent to and agree not to contest the authority or jurisdiction of EPA to issue or enforce this Agreement, and agree not to contest the validity of this Agreement or its terms.

## **III. PARTIES BOUND**

4. This Agreement shall apply to and be binding upon EPA and shall be binding upon the Defendants, their agents, successors, assigns, officers, directors and principals. Defendants are jointly and severally responsible for carrying out all actions required of it by this Agreement. The signatories to this Agreement certify that they are authorized to execute and legally bind the parties they represent to this Agreement. No change in the ownership or corporate status of the Defendants or of the facility or Site shall alter Defendants' responsibilities under this Agreement.

5. The Defendants shall provide a copy of this Agreement to any subsequent owners or successors before ownership rights or stock or assets in a corporate acquisition are transferred. Defendants shall provide a copy of this Agreement to all contractors, subcontractors, laboratories, and consultants which are retained to conduct any RI/FS Work performed under this Agreement, within fourteen (14) days after the Effective Date of this Agreement or the date of retaining their services, whichever is later. Defendants shall condition any such contracts upon satisfactory compliance with this Agreement. Notwithstanding the terms of any contract, Defendants are responsible for compliance with this Agreement and for ensuring that their subsidiaries, employees, contractors, consultants, subcontractors, agents and attorneys comply with this Agreement.

#### **IV. DEFINITIONS**

"Anniston PCB Site Special Account" shall mean the special account established at the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. §9622(b)(3).

"ADEM" shall mean the Alabama Department of Environmental Management and any successor departments or agencies of the State.

"AOC Oversight Costs" shall have the meaning set forth in the Removal Order.

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.

"Consent Decree" shall mean the Decree to which this Agreement is attached and all of its appendices (including this RI/FS Agreement, the Removal Order, and the SOW) attached thereto and listed in Section XVI of the Consent Decree.

"Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this RI/FS Agreement, 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.

"Defendants" shall mean Pharmacia Corporation (p/k/a Monsanto Company) and Solutia Inc.

"Defendants' Property" shall mean the property owned by Defendants as of January 1, 2002, as marked on the attached map (Exhibit A.)

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"Future Response Costs" shall mean all costs, except ATSDR costs, including direct and indirect costs, that the United States incurs through the public participation period for the ROD in reviewing or developing plans, reports and other items pursuant to the RI/FS Agreement, verifying the RI/FS Work, or otherwise implementing, overseeing, or enforcing the RI/FS Agreement, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, and the costs incurred to obtain access for Defendants. Defendants shall reimburse EPA for removal AOC Oversight Costs as provided in the Removal Order. Future Response Costs do not include costs that the United States incurs at the Anniston Lead Site or any other costs incurred investigating constituents other than PCBs.

"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.

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

"October 27, 2000 AOC" shall mean the Administrative Order on Consent, docket no. 01-02-C, for a removal action regarding the Anniston PCB Site ("Site") which was effective on October 27, 2000. The October 27, 2000 AOC was rescinded and replaced by the Removal Order.

"Paragraph" shall mean a portion of this RI/FS Agreement identified by an Arabic numeral or an upper case letter.

"Parties" shall mean the United States and the Defendants.

"Plaintiff" shall mean the United States.

"RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 et seq. (also known as the Resource Conservation and Recovery Act).

"Remedial Investigation/Feasibility Study (RI/FS)" shall mean the response actions identified in 40 C.F.R. § 300.5 undertaken by Defendants pursuant to this RI/FS Agreement to determine the nature and extent of PCB contamination in Area 1 of the Site and develop and evaluate potential remedial alternatives.

"Removal Order" shall mean the Administrative Order on Consent, docket no. CER-04-2002-3752, for a removal action regarding the Site which was effective on October 5, 2001. The Removal Order is set forth in Appendix C to the Consent Decree.

"Removal Order Work" shall mean all activities Defendants are required to perform pursuant to the Removal Order.

"RI/FS Agreement" shall mean this Agreement for the RI/FS in Area 1 of the Site, which is Appendix A to the Consent Decree.

"RI/FS Work" shall mean all activities Defendants are required to perform pursuant to this RI/FS Agreement. RI/FS Work does not include any activities or work EPA determines to be necessary at any other Site (including the Anniston Lead Site). RI/FS Work does not include any additional activities or work that EPA determines to be necessary after EPA approval of the certification of completion issued pursuant to Paragraph 84 of the RI/FS Agreement.



"Section" shall mean a portion of this RI/FS Agreement identified by a Roman numeral.

"Site" shall mean, for the purposes of this RI/FS Agreement, the area shown on the map which is Exhibit A hereto, consisting of Area 1 and Area 2, located in and around Anniston, Calhoun County, Alabama that contain or may contain hazardous substances, including polychlorinated biphenyls (PCBs). Specifically, Area 1 consists of: (1) residential, commercial, and public properties located within zones depicted on the attached map in and around Anniston, Calhoun County, Alabama, that contain or may contain PCBs; (2) the drainage ditch known as the 11th Street Ditch; (3) the 100-year floodplain of Snow Creek, from the confluence of the 11th Street Ditch to the point where Snow Creek crosses Interstate 20. Area 2 consists of Snow Creek, from the confluence of the 11th Street Ditch to the point where Snow Creek crosses Interstate 20, and land, and structures, other appurtenances, and improvements on the land, owned as of the date of this Consent Decree by Solutia Inc., exclusive of the operating facility, as shown on Exhibit A.

"State" shall mean the State of Alabama.

"Statement of Work" or "SOW" shall mean the Statement of Work for implementation of this RI/FS Agreement, which is set forth in Appendix B to the Consent Decree and any modifications made in accordance with the Consent Decree.

"United States" shall mean the United States of America.

## **V. STATEMENT OF PURPOSE**

6. In entering into this Agreement, the objectives of EPA and the Defendants are: (a) to determine the extent of PCB contamination and any threat to the public health, welfare, or the environment caused by the release or threatened release of PCBs at or from the Site by conducting a Remedial Investigation in Area 1 of the Site; (b) to determine and evaluate alternatives for remedial action (if any) to prevent, mitigate or otherwise respond to or remedy any release or threatened release of PCBs at or from Area 1 of the Site, by conducting a Feasibility Study for Area 1 of the Site; and (c) to provide funding for a Technical Assistance Plan (TAP) and a Community Advisory Group (CAG) for the affected community.

7. The activities conducted under this Agreement are subject to approval by EPA and shall provide all appropriate necessary information for the RI/FS, the Baseline Risk Assessment, and for a record of decision (ROD) that is consistent with CERCLA and the National Contingency Plan (NCP), 40 C.F.R. Part 300. The activities conducted under this Agreement shall be conducted in compliance with all applicable EPA guidances, policies, and procedures.

## **VI. FINDINGS OF FACT**

8. Solutia Inc.'s Anniston plant encompasses approximately 70 acres of land and is located about 1 mile west of downtown Anniston, Alabama. The plant is bounded to the north

by the Norfolk Southern and Erie railroads, to the east by Clydesdale Avenue, to the west by First Avenue, and to the south by U.S. Highway 202. In 1917, the Southern Manganese Corporation (SMC) opened the plant, which began producing ferro-manganese, ferro-silicon, ferro-phosphorous compounds, and phosphoric acid. In the late 1920s, the plant also started producing biphenyls. SMC became Swann Chemical Company (SCC) in 1930, and in 1935, SCC was purchased by Monsanto Company. From 1935 to 1997, Monsanto Company operated the plant. Polychlorinated biphenyls (PCBs) were produced at the plant from 1929 until 1971. In 1997, Monsanto Company formed Solutia Inc. and transferred ownership over certain of its chemical divisions. Solutia Inc. currently produces para-nitrophenol and polyphenyl compounds at the Anniston plant.

9. During its operational history, the plant disposed of hazardous and nonhazardous waste at the west end landfill and the south landfill, which are located adjacent to the plant. The west end landfill encompasses six acres of land, located on the southwestern side of the plant. The west end landfill was used for disposal of the plant's wastes from the mid-1930s until approximately 1960. In 1960, Monsanto Company began disposing of wastes at the south landfill. Disposal of wastes at the south landfill ceased in approximately 1988. During the time that the west end landfill and the south landfill were used to dispose of wastes, there was a potential for hazardous substances, including PCBs, to be released from the landfills via soils and sediments being transported in surface water leaving the Defendants' Property. In addition, during the time that PCBs were manufactured by Monsanto Company at its Anniston plant, an aqueous stream flowing to a discharge point (currently identified as DSN0001) on Monsanto Company's Anniston plant Site contained PCBs, and discharge from that discharge point flowed to a ditch, the waters of which flowed toward Snow Creek. Sampling by EPA, Solutia Inc., ADEM, and other parties has indicated that sediments in drainage ditches leading away from the plant, Snow Creek, and Choccolocco Creek, as well as sedimentary material in the floodplains of these waterways, contain varying levels of PCBs.

10. Solutia Inc. has a RCRA permit for Defendants' Property, which was issued by ADEM. Pursuant to its RCRA permit, Solutia Inc. performed extensive "Interim Measures" on the west end landfill, the south landfill, and areas east and north of the plant during the mid to late 1990s to eliminate the potential for release of hazardous substances, including PCBs, associated with soils and sediments. Solutia Inc. is also engaged in an extensive program under the RCRA permit to investigate and address PCBs in sediments and floodplain soils in the waterways leading away from the plant. Pursuant to its RCRA Permit, Solutia has also conducted extensive sampling and remediation of Defendants' property and areas within the Site. Results of this investigations have demonstrated that PCBs are the only constituent of potential concern that may have migrated from Defendants' property to the Site. EPA has provided oversight of the RCRA permit.

11. PCBs are listed at 40 C.F.R. § 302.4, as hazardous substances, as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

12. EPA has been performing an investigation in Anniston under CERCLA to evaluate the threat to public health, welfare, or the environment posed by hazardous substances, including PCBs. EPA has sampled the soil at hundreds of properties through multiple sampling phases in Anniston for PCBs since June of 1999. Some of the properties tested contain PCBs. For example, EPA sampled residences and businesses near the plant from June 28-30, 1999, for PCBs. The results from these samples indicated that some soils at residences and businesses in the vicinity of the plant contain PCBs. The level of PCBs detected during the June sampling event ranged from non-detect to 15.24 mg/kg. EPA also sampled residences, businesses, and creeks near the plant during February of 2000. The level of PCBs detected during the February 2000 sampling event ranged from non-detect to 317 mg/kg. No other constituents related to Defendants' past or current manufacturing operations were detected during EPA's investigation.

13. In June 2000, EPA, with the assistance of ATSDR, established a five point composite sample value of 10 mg/kg of total PCBs as the removal trigger level for PCBs in residential properties in Anniston. For any property where a sample meets or exceeds the trigger level, EPA determined that action should be taken to disassociate the residents from the soil containing PCBs.

14. On August 31, 2000, EPA notified Solutia Inc. and Pharmacia Corporation of their potential liability under CERCLA, demanded that they reimburse EPA for EPA's past and future costs at the Site, and requested that they perform a removal action at the Site.

15. The Site is not currently listed on the national priorities list (NPL).

16. Solutia Inc. is the "owner" and/or "operator" of a portion of the Site, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1). Solutia Inc. was the "owner" and/or "operator" of a portion of the Site at the time of disposal of hazardous substances at the Site, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2). Solutia Inc. was an arranger for disposal of hazardous substances at the Site within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

17. Pharmacia Corporation (p/k/a Monsanto Company) was the "owner" and/or "operator" of a portion of the Site at the time of disposal of hazardous substances at the Site, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2). Pharmacia Corporation (p/k/a Monsanto Company) was an arranger for disposal of hazardous substances at the Site within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

18. EPA entered into an Administrative Order on Consent, docket no. 01-02-C, for a removal action regarding the Anniston PCB Site ("Site") which was effective on October 27, 2000. On October 5, 2001, Order no. 01-02-C was withdrawn and replaced by Order no. CER-04-2002-3752.

## **VII. CONCLUSIONS OF LAW AND DETERMINATIONS**

19. The Site is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. Section 9601(9).

20. Wastes and constituents thereof at the Site, sent to the Site, disposed of at the Site, and/or transported to the Site included in Paragraph 11 are "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. Section 9601(14), or constitute "any pollutant or contaminant" that may present an imminent and substantial danger to public health or welfare under Section 104(a)(1) of CERCLA.

21. The presence of PCBs at the Site or the past, present or potential migration of PCBs currently located at or emanating from the Site, constitute actual and/or threatened "releases" as defined in Section 101(22) of CERCLA, 42 U.S.C. Section 9601(22).

22. Defendants are a "person" as defined in Section 101(21) of CERCLA, 42 U.S.C. Section 9601(21).

23. Defendants are a responsible party under Sections 104, 107 and 122 of CERCLA, 42 U.S.C. Sections 9604, 9607 and 9622.

24. The actions required by this Agreement are necessary to protect the public health or welfare or the environment, are in the public interest, 42 U.S.C. Section 9622(a), are consistent with CERCLA and the NCP, 42 U.S.C. Sections 9604(a)(1), 9622(a), and will expedite effective remedial action and minimize litigation, 42 U.S.C. Section 9622(a).

## **VIII. NOTICE**

25. By providing a copy of this Agreement to the State, EPA is notifying the State of Alabama that this Agreement is being issued and that EPA is the lead agency for coordinating, overseeing, and enforcing the response actions required by the Agreement.

## **IX. RI/FS WORK TO BE PERFORMED**

26. All RI/FS Work performed under this Agreement shall be under the direction and supervision of qualified personnel. Within thirty (30) days from the date that Defendants sign this Agreement, and before the RI/FS Work outlined below begins, the Defendants shall notify EPA in writing of the names, titles, and qualifications of the personnel, including contractors, subcontractors, consultants and laboratories to be used in carrying out the RI/FS, and the Baseline Risk Assessment, (including the Human Health Risk Assessment and the Ecological Risk Assessment) to be performed pursuant to this Agreement.

The qualifications of the persons undertaking the RI/FS Work for Defendants shall be subject to EPA's review, for verification that such persons meet minimum technical background and experience requirements. This Agreement is contingent on Defendants' demonstration to EPA's satisfaction that Defendants' are qualified to perform properly and promptly the actions set forth in this Agreement.

If EPA disapproves in writing any person(s)' technical qualifications, Defendants' shall notify EPA of the identity and qualifications of the replacement(s) within thirty (30) days of the written notice. If EPA subsequently disapproves of the replacement(s), EPA reserves the right to conduct a complete RI/FS, and to seek reimbursement for costs and penalties from Defendants. During the course of the RI/FS, Defendants shall notify EPA in writing of any changes or additions in the personnel used to carry out such RI/FS Work, providing their names, titles, and qualifications. EPA shall have the same right to approve changes and additions to personnel as it has hereunder regarding the initial notification.

27. Defendants shall conduct activities and submit deliverables as provided by the attached RI/FS Statement of Work, which is incorporated herein by reference, for the development of the RI/FS. All such RI/FS Work shall be conducted in accordance with CERCLA, the NCP, and EPA guidance including, but not limited to, the "Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" (OSWER Directive # 9355.3-01), "Guidance for Data Useability in Risk Assessment" (OSWER Directive #9285.7-05) and guidances referenced therein, and guidances referenced in the Statement of Work, as may be amended or modified by EPA. The general activities that Defendants are required to perform are identified below, followed by a list of deliverables. The tasks that Defendants must perform are described more fully in the Statement of Work and guidances. The activities and the deliverables identified below shall be developed as provisions in the RI/FS Work Plan and Sampling and Analysis Plan, and shall be submitted to EPA as provided. All RI/FS Work performed under the Agreement shall be in accordance with the schedules herein, and in full accordance with the standards, specifications, and other requirements of the RI/FS Work Plan and Sampling and Analysis Plan, as initially approved or modified by EPA, and as may be amended or modified by EPA from time to time.

A. Task I: Scoping. Within thirty (30) days of the Effective Date of this Agreement, Defendants shall submit a Technical Memorandum defining the Site-specific objectives of the RI/FS and the general management approach for the Site, as stated in the attached Statement of Work. Defendants shall conduct the scoping activities as described in the attached Statement of Work and referenced guidances. Upon EPA approval of the Site-specific objectives and general management approach, Defendants shall provide EPA with the following deliverables:

1. Technical Memorandum on Preliminary Remedial Action Objectives and Alternatives. Within thirty (30) days of the EPA's approval of the Site-specific objectives and general management approach, Defendants shall submit to EPA a complete Technical Memorandum on Preliminary Remedial Action Objectives and Alternatives. If EPA disapproves

of or requires revisions to the Technical Memorandum on Preliminary Remedial Action Objectives and Alternatives, in whole or in part, Defendants shall amend and submit to EPA a revised Technical Memorandum on Preliminary Remedial Action Objectives and Alternatives which is responsive to all EPA comments, within thirty (30) days of receiving EPA's comments.

2. Phase I Conceptual Site Model Report. Within ninety (90) days of EPA's approval of the Technical Memorandum on Preliminary Remedial Action objectives and EPA's approval of the Technical Memorandum on Preliminary Remedial Action Objectives and Alternatives, Defendants shall submit to EPA a complete Phase I Conceptual Site Model Report using data collected pursuant to Defendants' RCRA Facility Investigation and the Site Removal Order. If EPA disapproves of or requires revisions to the Phase I site Conceptual Model report, in whole or in part, Defendants shall amend and submit to EPA a revised Report which is responsive to all EPA comments, within thirty (30) days of receiving EPA's comments.

3. RI/FS Work Plan. Within ninety (90) days of EPA's approval of the Phase I site Conceptual Model Report, Defendants shall submit to EPA a complete RI/FS Work Plan. If EPA disapproves of or requires revisions to the RI/FS Work Plan, in whole or in part, Defendants shall amend and submit to EPA a revised Work Plan which is responsive to all EPA comments, within sixty (60) days of receiving EPA's comments.

4. Sampling and Analysis Plan. Within ninety (90) days of EPA's approval of the Phase I site Conceptual Model report, Defendants shall submit to EPA the Sampling and Analysis Plan. This plan shall consist of a field sampling plan (FSP) and a quality assurance project plan (QAPP), as described in the Statement of Work and guidances, including, without limitation, "EPA Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/600/R-98/018, February 1998), and "EPA Requirements for Quality Assurance Project Plans (QA/R-5)" (EPA 240/B-01/003, March 2001). If EPA disapproves of or requires revisions to the Sampling and Analysis Plan, in whole or in part, Defendants shall amend and submit to EPA a revised Sampling and Analysis Plan which is responsive to all EPA comments, within sixty (60) days of receiving EPA's comments.

5. Site Health and Safety Plan. Within ninety (90) days of EPA's approval of the Phase I site Conceptual Model Report, Defendants shall submit to EPA the Site Health and Safety Plan. If EPA requires revisions to the Site Health and Safety Plan, in whole or in part, Defendants shall amend and submit to EPA a revised Site Health and Safety Plan which is responsive to all EPA comments, within sixty (60) days of receiving EPA's comments.

B. Task II: Community Relations Plan. EPA will prepare a community relations plan, in accordance with EPA guidance and the NCP. Defendants shall provide information supporting EPA's community relations programs through the public participation period for the ROD.

1. Defendants shall prepare a plan (hereinafter referred to as the Technical Assistance Plan (TAP)) for providing and administering up to \$150,000.00 of Defendants' funds

to be used by selected representatives of the community, as defined in the SOW, for the purpose of providing technical assistance at the Site through the public participation period for the ROD. If EPA disapproves of or requires revisions to the TAP, in whole or in part, Defendants shall amend and submit to EPA a revised TAP which is responsive to all EPA comments, within thirty (30) days of receiving EPA's comments.

2. Defendants shall prepare a plan (hereinafter referred to as the Community Advisory Group Plan (CAGP) for providing and administering funding necessary for the development of a Community Advisory Group (CAG), and for providing meeting space for the CAG for periodic meetings during the response activities conducted pursuant to this Agreement through the public participation period for the ROD. If EPA disapproves of or requires revisions to the CAGP, in whole or in part, Defendants shall amend and submit to EPA a revised CAGP which is responsive to all EPA comments, within thirty (30) days of receiving EPA's comments.

C. Task III: Site Characterization. Following EPA approval or modification of the Work Plan and Sampling and Analysis Plan, Defendants shall implement the provisions of these plans to characterize the Site. Defendants shall complete Site characterization in accordance with the schedule submitted by Defendants as part of the Work Plan and approved by EPA. Defendants shall provide EPA with analytical data within forty-five (45) days of receipt of validated laboratory results in an electronic format (i.e., computer disk) showing the location, medium and results. Within seven (7) days of completion of field activities, Defendants shall notify EPA in writing. During Site characterization, Defendants shall provide EPA with the following deliverables, as described in the Statement of Work and Work Plan:

1. Technical Memorandum on Modeling of Site Characteristics. Where Defendants propose that modeling is appropriate, Defendants shall submit a Technical Memorandum on Modeling of Site Characteristics, as described in the SOW. If EPA disapproves of or requires revisions to the Technical Memorandum on Modeling of Site Characteristics, in whole or in part, Defendants shall amend and submit to EPA a revised Technical Memorandum on Modeling of Site Characteristics which is responsive to all EPA comments, within thirty (30) days of receiving EPA's comments.

2. Preliminary Site Characteristics Summary. Within ninety (90) days of completion of the field sampling and analysis, as specified in the Work Plan, Defendants shall submit a Site characterization summary to EPA. If EPA disapproves of or requires revisions to the Site characterization summary, in whole or in part, Defendants shall amend and submit to EPA a revised Site characterization summary which is responsive to all EPA comments, within sixty (60) days of receiving EPA's comments.

E. Task V: Baseline Risk Assessment Defendants shall perform a Baseline Risk Assessment (including a Human Health Risk Assessment and an Ecological Risk Assessment). The major components of the Baseline Risk Assessment include exposure assessment, toxicity

assessment, and human health and ecological risk characterization. The major tasks necessary for Defendants to conduct an Ecological Risk Assessment are outlined in "Ecological Risk Assessment Guidance for Superfund Process for Designing and Conducting Ecological Risk Assessments," Review Draft dated September 26, 1994

The Human Health Risk Assessment and the Ecological Risk Assessment will provide sufficient information concerning the risks such that Defendants can begin drafting the Feasibility Study ("FS") Report.

Defendants shall prepare a Baseline Risk Assessment Report (including a Human Health Risk Assessment Report and an Ecological Risk Assessment Report) based on the data collected during the Site characterization in accordance with the schedule submitted by Defendants in the RI Work Plan and approved by EPA. If EPA disapproves of or requires revisions to the Baseline Risk Assessment Report, in whole or in part, Defendants shall amend and submit to EPA a revised Baseline Risk Assessment Report which is responsive to the directions in all EPA comments, within sixty (60) days of receiving EPA's comments. EPA will release these Reports to the public following release of the final RI Report and they will be put into the administrative record for the Site.

EPA will respond in the Responsiveness Summary of the ROD to all significant comments on the Baseline Risk Assessment that are submitted during the Proposed Plan's formal comment period.

F. Draft Remedial Investigation Report Defendants shall submit a draft Remedial Investigation Report consistent with the Statement of Work, Work Plan, and Sampling and Analysis Plan. If EPA disapproves of or requires revisions to the Remedial Investigation Report, in whole or in part, Defendants shall amend and submit to EPA a revised Remedial Investigation Report which is responsive to all EPA comments, within sixty (60) days of receiving EPA's comments.

G. Task VI: Development and Screening of Alternatives. Defendants shall develop an appropriate range of waste management options that will be evaluated through the development and screening of alternatives, as provided in the Statement of Work and Work Plan. During the development and screening of alternatives, Defendants shall provide EPA with the following deliverables:

1. Memorandum on Remedial Action Objectives. Within thirty (30) days of completion of the Baseline Risk Assessment, Defendants shall submit a Memorandum on Remedial Action Objectives. If EPA disapproves of or requires revisions to the Memorandum on Remedial Action Objectives, in whole or in part, Defendants shall amend and submit to EPA a revised Memorandum on Remedial Action Objectives which is responsive to all EPA comments, within thirty (30) days of receiving EPA's comments.



2. Memorandum on Development and Preliminary Screening of Alternatives, Assembled Alternatives Screening Results and Final Screening. Within thirty (30) days of submittal of the Memorandum on Remedial Action Objectives, Defendants shall submit a memorandum summarizing the development and screening of remedial alternatives, including an alternatives array document as described in the Statement of Work.

H. Task VII: Detailed Analysis of Alternatives. Defendants shall conduct a detailed analysis of remedial alternatives, as described in the Statement of Work and Work Plan. During the detailed analysis of alternatives, Defendants shall provide EPA with the following deliverables and presentation:

1. Report on Comparative Analysis and Presentation to EPA. Within thirty (30) days of submission of a memorandum on the development and screening of remedial alternatives, Defendants shall submit a report on comparative analysis to EPA summarizing the results of the comparative analysis performed between the remedial alternatives. If EPA disapproves of or requires revisions to the report on comparative analysis, Defendants shall amend and submit to EPA a revised report on comparative analysis which is responsive to all EPA comments, within thirty (30) days of receiving EPA's comments. Within thirty (30) days of submitting the original report on comparative analysis, Defendants shall make a presentation to EPA during which Defendants shall summarize the findings of the remedial investigation and remedial action objectives, and present the results of the nine criteria evaluation and comparative analysis, as described in the Statement of Work.

2. Draft Feasibility Study Report. Within sixty (60) days of the presentation to EPA, Defendants shall submit a draft Feasibility Study Report which reflects the findings in the Baseline Risk Assessment. Defendants shall refer to Table 6-5 of the RI/FS Guidance for report content and format. If EPA disapproves of or requires revisions to the draft Feasibility Study Report in whole or in part, Defendants shall amend and submit to EPA a revised Feasibility Study Report which is responsive to all EPA comments, within thirty (30) days of receiving EPA's comments. The report as amended, and the administrative record, shall provide the basis for the proposed plan under CERCLA Sections 113(k) and 117(a) by EPA, and shall document the development and analysis of remedial alternatives.

28. EPA reserves the right to comment on, modify and direct changes for all deliverables. At EPA's discretion, Defendants must fully correct all deficiencies and incorporate and integrate all information and comments supplied by EPA either in subsequent or resubmitted deliverables.

29. Defendants shall not proceed further with any subsequent activities or tasks until receiving EPA approval for the following deliverables: Phase I Conceptual Site Model, RI/FS Work Plan and Sampling and Analysis Plan, draft Remedial Investigation Report (including the Baseline Risk Assessment Report), and draft Feasibility Study Report. While awaiting EPA approval on these deliverables, Defendants shall proceed with all other tasks and activities which

may be conducted independently of these deliverables, in accordance with the schedule set forth in this Agreement.

30. Upon receipt of the draft FS report, EPA will evaluate, as necessary, the estimates of the risk to the public and environment that are expected to remain after a particular remedial alternative has been completed.

31. For all remaining deliverables not enumerated above in Paragraph 31, Defendants shall proceed with all subsequent tasks, activities and deliverables without awaiting EPA approval on the submitted deliverable. EPA reserves the right to stop Defendants from proceeding further, either temporarily or permanently, on any task, activity or deliverable associated solely with the Consent Decree at any point during the RI/FS.

32. In the event that Defendants amend or revise a report, plan or other submittal upon receipt of EPA comments, if EPA subsequently disapproves of the revised submittal, or if subsequent submittals do not fully reflect EPA's directions for changes, EPA retains the right to seek stipulated and statutory penalties; perform its own studies, complete the RI/FS (or any portion of the RI/FS, including, but not limited to the Baseline Risk Assessment) under CERCLA and the NCP, and seek reimbursement from the Defendants for its costs; and/or seek any other appropriate relief.

33. In the event that EPA takes over some of the tasks, but not the preparation of the RI/FS, Defendants shall incorporate and integrate information supplied by EPA into the final RI/FS report.

34. Neither failure of EPA to expressly approve or disapprove of Defendants' submissions within a specified time period(s), nor the absence of comments, shall be construed as approval by EPA. Whether or not EPA gives express approval for Defendants' deliverables, Defendants' are responsible for preparing deliverables acceptable to EPA.

35. Defendants shall, prior to any off-Site shipment of hazardous substances from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving state and to EPA's Designated Project Coordinator of such shipment of hazardous substances. However, the notification of shipments shall not apply to any such off-Site shipments when the total volume of such shipments will not exceed 10 cubic yards.

(a) The notification shall be in writing, and shall include the following information, where available: (1) the name and location of the facility to which the hazardous substances are to be shipped; (2) the type and quantity of the hazardous substances to be shipped; (3) the expected schedule for the shipment of the hazardous substances; and (4) the method of transportation. Defendants shall notify the receiving state of major changes in the shipment plan, such as decision to ship the hazardous substances to another facility within the same state, or to a facility in another state.

(b) The identity of the receiving facility and state will be determined by Defendants following the award of the contract for the RI/FS. Defendants shall provide all relevant information, including information under the categories noted above, on the off-Site shipments, as soon as practical after the award of the contract and before the hazardous substances are actually shipped.

## **X. MODIFICATION OF THE WORK PLAN**

36. If at any time during the RI/FS process, Defendants identify a need for additional data, a memorandum documenting the need for additional data shall be submitted to the EPA Project Coordinator within thirty (30) days of identification. EPA in its discretion will determine whether the additional data will be incorporated into reports and deliverables.

37. In the event of conditions posing an immediate threat to human health or welfare or the environment, Defendants shall notify EPA and the State immediately. In the event of unanticipated or changed circumstances at the Site, Defendants shall notify the EPA Project Coordinator by telephone within 24 hours of discovery of the unanticipated or changed circumstances. In addition to the authorities in the NCP, in the event that EPA determines that the immediate threat or the unanticipated or changed circumstances warrant changes in the Work Plan, Defendants shall modify or amend the Work Plan in writing accordingly. Such modifications or Amendments will be subject to EPA approval. Defendants shall perform the Work Plan as modified or amended.

38. EPA may determine that in addition to tasks defined in the initially approved Work Plan, other additional RI/FS Work may be necessary to accomplish the objectives of this RI/FS Agreement as set forth in paragraph 6 above. EPA may require that the Defendants perform these response actions in addition to those required by the initially approved Work Plan, including any approved modifications, if it determines that such actions are necessary for a complete RI/FS. Defendants shall confirm their willingness to perform the additional RI/FS Work in writing to the EPA within thirty (30) days of receipt of the EPA request or Defendants shall invoke dispute resolution. Subject to resolution of any dispute, Defendants shall implement the additional tasks which EPA determines are necessary. The additional RI/FS Work shall be completed according to the standards, specifications, and schedule set forth or approved by EPA in a written modification to the Work Plan or written Work Plan supplement. EPA reserves the right to conduct the RI/FS Work itself at any point, to seek reimbursement from Defendants, and or to seek any other appropriate relief.

39. Schedules specified in this Agreement for submittal of deliverables may be modified by agreement of EPA and the Defendants. All such modifications shall be made in writing.

## **XI. QUALITY ASSURANCE**

40. Defendants shall assure that the RI/FS Work performed, samples taken and analyses conducted conform to the requirements of the Statement of Work, the QAPP and guidances identified therein. Defendants will assure that field personnel used by Defendants are properly trained in the use of field equipment and in chain of custody procedures. Defendants shall only use laboratories which have a documented quality system that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995) and "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP) to meet the quality system requirements.

## **XII. FINAL RI/FS, PROPOSED PLAN, PUBLIC COMMENT, RECORD OF DECISION, ADMINISTRATIVE RECORD**

41. EPA retains the responsibility for the release to the public of the RI/FS report. EPA retains responsibility for the preparation and the release to the public of the proposed plan and ROD in accordance with CERCLA and the NCP.

42. EPA shall provide Defendants with the final RI/FS report, proposed plan and ROD.

43. EPA will determine the contents of the administrative record file for selection of the remedial action. Defendants must submit to EPA documents developed during the course of the RI/FS upon which selection of the response action may be based. Defendants shall provide to EPA copies of plans, task memoranda including documentation of field modifications, recommendations for further action, quality assurance memoranda and audits, raw data, field notes, laboratory analytical reports and other reports. Defendants must additionally submit to EPA any previous studies conducted under state, local or federal authorities relating to selection of the response action, and all communications between Defendants and state, local or other federal authorities concerning selection of the response action. At EPA's discretion, Defendants may establish a community information repository at or near the Site, to house one copy of the administrative record.

## **XIII. PROGRESS REPORTS AND MEETINGS**

44. Defendants shall make presentations at, and participate in, meetings at the request of EPA during the initiation, conduct, and completion of the RI/FS. In addition to discussion of the technical aspects of the RI/FS, topics will include anticipated problems or new issues. Meetings will be scheduled at EPA's discretion. EPA shall provide Defendants at least fourteen (14) days notice prior to such meetings.

45. In addition to the deliverables set forth in this Agreement, Defendants shall provide to EPA monthly progress reports by the 10th day of the following month. At a minimum, with respect to the preceding month, these progress reports shall (1) describe the actions which have been taken to comply with this Agreement during that month, (2) include all results of sampling and tests and all other data received by the Defendants, (3) describe RI/FS Work planned for the next two months with schedules relating such RI/FS Work to the overall project schedule for RI/FS completion, and (4) describe all problems encountered and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays.

#### **XIV. SAMPLING, ACCESS, AND DATA AVAILABILITY/ADMISSIBILITY**

46. All results of sampling, tests, modeling or other data (including raw data) generated by Defendants, or on Defendants' behalf, during implementation of this Agreement, shall be submitted to EPA in the subsequent monthly progress report as described in Section XIII of this Agreement. EPA will make available to the Defendants validated data generated by EPA unless it is exempt from disclosure by any federal or state law or regulation.

47. Defendants will verbally notify EPA at least seven (7) days prior to conducting significant field events as described in the Statement of Work, Work Plan or Sampling and Analysis Plan. At EPA's verbal or written request, or the request of EPA's oversight assistant, Defendants shall allow split or duplicate samples to be taken by EPA (and its authorized representatives) of any samples collected by the Defendants in implementing this Agreement. All split samples of Defendants shall be analyzed by the methods identified in the QAPP.

48. At all reasonable times, EPA and its authorized representatives shall have the authority to enter and freely move about all property at the Site and off-Site areas where RI/FS Work, if any, is being performed, for the purposes of inspecting conditions, activities, the results of activities, records, operating logs, and contracts related to the Site or Defendants and their contractors pursuant to this Agreement; reviewing the progress of the Defendants in carrying out the terms of this Agreement; conducting tests as EPA or its authorized representatives deem necessary; using a camera, sound recording device or other documentary type equipment after notifying Defendants of the use of such equipment; and verifying the data submitted to EPA by the Defendants. The Defendants shall allow these persons to inspect and copy all records, files, photographs, documents, sampling and monitoring data, and other writings related to RI/FS Work undertaken in carrying out this Agreement. Nothing herein shall be interpreted as limiting or affecting EPA's right of entry or inspection authority under federal law. All parties with access to the Site under this Paragraph shall comply with all approved health and safety plans.

49. The Defendants may assert a claim of business confidentiality covering part or all of the information submitted to EPA pursuant to the terms of this Agreement under 40 C.F.R. Section 2.203, provided such claim is allowed by Section 104(E)(7) of CERCLA, 42 U.S.C. Section 9604(e)(7). This claim shall be asserted in the manner described by 40 C.F.R. Section 2.203(b) and substantiated at the time the claim is made. Information determined to be

confidential by EPA will be given the protection specified in 40 C.F.R. Part 2. If no such claim accompanies the information when it is submitted to EPA, it may be made available to the public by EPA or the State without further notice to the Defendants. Defendants agree not to assert confidentiality claims with respect to any data related to Site conditions, sampling, or monitoring.

50. In entering into this Agreement, Defendants waive any objections to any data gathered, generated, or evaluated by EPA, the State or Defendants in the performance or oversight of the RI/FS Work that has been verified according to the quality assurance/quality control (QA/QC) procedures required by the Agreement or any EPA-approved work plans or Sampling and Analysis Plans. If Defendants object to any other data relating to the RI/FS, Defendants shall submit to EPA a report that identifies and explains their objections, describes the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The report must be submitted to EPA within thirty (30) days of the monthly progress report containing the data.

51. For all properties where access is required to conduct the field investigation in areas owned by or in possession of someone other than Defendants, Defendants shall send within the timeframes specified in the Work Plans, approved pursuant to the SOW, correspondence (as provided in Exhibit C) to all resident(s), owner(s), and/or non-resident owner(s) from whom access is needed to conduct the field investigation.

Defendants shall send all of the correspondence requesting access via certified mail, return receipt requested. If Defendants do not receive the necessary access agreements within ninety (90) days from the date that the resident(s), owner(s), and/or non-resident owner(s) received it, or within one hundred and twenty (120) days from the date correspondence was sent to the resident(s), owners(s), and/or non-resident owners(s), Defendants shall notify EPA in writing, within fourteen (14) days from the date that the applicable access agreement was due, that Defendants have not obtained access from any such party. Defendants shall continue their attempts to obtain access from such parties following this notification. However, EPA, at its sole discretion after notifying Defendants in writing of its intentions, may assume responsibility for obtaining access from such parties should Defendants not be able to obtain access within the timeframes specified above.

For any party from whom Defendants were unable to obtain access, Defendants shall, upon EPA's request, provide EPA a copy of all correspondences, county records, and any other evidence or information Defendants have regarding the resident(s), owners(s), and/or non-resident owner(s) from whom Defendant was unable to obtain access. EPA may then assist Defendants in gaining access, to the extent necessary to effectuate the actions described herein, using such means as EPA deems appropriate. Defendants shall reimburse EPA for all costs and attorneys' fees incurred by the United States in obtaining such access. EPA acknowledges that if Defendants have attempted to obtain access to properties in the manner described above, and are unable to do so, then Defendants will not be liable for stipulated penalties for failure to meet any schedules identified in the Consent Decree, the SOW, or the Work Plans approved pursuant to

this SOW with respect to properties for which access was denied. To the extent that any resident(s), owners(s), and/or non-resident owner(s) is adverse to Defendants in a legal proceeding and is represented by counsel, Defendants may send the appropriate correspondence and agreement discussed in Paragraph 51 to any such person's counsel only.

## **XV. DESIGNATED PROJECT COORDINATORS**

52. Documents including reports, approvals, disapprovals, and other correspondence which must be submitted under this Agreement, shall be sent by certified mail, return receipt requested, to the following addressees or to any other addressees which the Defendants and EPA designate in writing:

- (a) Two copies of all documents to be submitted to EPA should be sent to:

Annie Godfrey  
EPA Project Coordinator  
United States Environmental Protection Agency, Region 4  
61 Forsyth Street S.W.  
Atlanta, GA 30303-8960

- (b) Documents to be submitted to the Defendants should be sent to:

Craig Branchfield  
Manager, Remedial Projects  
Solutia Inc.  
702 Clydesdale Avenue  
Anniston, Alabama 36201

53. On or before the Effective Date of this Agreement, EPA and the Defendants shall each designate their own Project Coordinator. Each Project Coordinator shall be responsible for overseeing the implementation of this Agreement. To the maximum extent possible, communications between the Defendants and EPA shall be directed to the Project Coordinator by mail, with copies to such other persons as EPA, the State, and Defendants may respectively designate. Communications include, but are not limited to, all documents, reports, approvals, and other correspondence submitted under this Agreement.

54. EPA and the Defendants each have the right to change their respective Project Coordinator. The other party must be notified in writing at least 10 days prior to the change.

55. EPA's Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and On-Scene Coordinator (OSC) by the NCP. In addition, EPA's Project Coordinator shall have the authority consistent with the National Contingency Plan, to halt any RI/FS Work required by this Agreement, and to take any necessary response action when s/he determines that conditions at the Site may present an immediate endangerment to public health or welfare or the environment. The absence of the EPA Project Coordinator from

the area under study pursuant to this Agreement shall not be cause for the stoppage or delay of RI/FS Work.

56. EPA shall arrange for a qualified person to assist in its oversight and review of the conduct of the RI/FS, as required by Section 104(a) of CERCLA, 42 U.S.C. Section 9604(a). The oversight assistant may observe RI/FS Work and make inquiries in the absence of EPA, but is not authorized to modify the Work Plan.

## **XVI. OTHER APPLICABLE LAWS**

57. Defendants shall comply with all laws that are applicable when performing the RI/FS. No local, state, or federal permit shall be required for any portion of any action conducted entirely on-Site, including studies, where such action is selected and carried out in compliance with Section 121 of CERCLA.

## **XVII. RECORD PRESERVATION**

58. All records and documents in EPA's and Defendants' possession that relate in any way to the Site shall be preserved during the conduct of this Agreement and for a minimum of 10 years after commencement of construction of any remedial action. The Defendants shall acquire and retain copies of all documents that relate to the Site and are in the possession of their employees, agents, accountants, contractors, or attorneys. After this 10 year period, the Defendants shall notify EPA at least (90) days before the documents are scheduled to be destroyed. If EPA requests that the documents be saved, the Defendants shall, at no cost to EPA, give EPA the documents or copies of the documents.

## **XVIII. DISPUTE RESOLUTION**

59. Any disputes concerning activities or deliverables required under this Agreement shall be resolved in accordance with Section VIII of the Consent Decree.

60. Defendants are not relieved of their obligations to perform and conduct activities and submit deliverables on the schedule set forth in the Work Plan, while a matter is pending in dispute resolution. The invocation of dispute resolution shall stay stipulated penalties under this Agreement, unless the court determines that the dispute was not raised in good faith by Defendants.

## **XIX. DELAY IN PERFORMANCE/STIPULATED PENALTIES**

61. For each day that the Defendants fail to complete a deliverable in a timely manner or fail to produce a deliverable of acceptable quality, or otherwise fail to perform in accordance with the requirements of this Agreement, Defendants shall be liable for stipulated penalties. Penalties begin to accrue on the day that performance is due or a violation occurs, and extend



through the period of correction. Where a revised submission by Defendants is required, stipulated penalties shall continue to accrue until a satisfactory deliverable is produced. EPA will provide written notice for violations that are not based on timeliness; nevertheless, penalties shall accrue from the day a violation commences. Payment shall be due within 30 days of receipt of a demand letter from EPA.

62. Defendants shall pay interest on the unpaid balance, which shall begin to accrue at the end of the 30-day period, at the rate established by the Department of Treasury pursuant to 30 U.S.C. Section 3717. Defendants shall further pay a handling charge of 1 percent, to be assessed at the end of each 31 day period, and a 6 percent per annum penalty charge, to be assessed if the penalty is not paid in full within ninety (90) days after it is due.

63. Defendants shall make all payments by forwarding to check to:

United States Environmental Protection Agency  
Region IV  
Superfund Accounting  
P.O. Box 100142  
Atlanta, Georgia 30384  
Attn: Collection Officer in Superfund

Defendants shall simultaneously transmit a copy of the check to Ms. Paula V. Batchelor at:

U.S. Environmental Protection Agency  
CERCLA Program Services Branch  
Waste Management Division  
61 Forsyth Street S.W.  
Atlanta, GA 30303

Checks should reference the Anniston PCB Site, the EPA Region and Site/Spill ID #04S9, and the title of this Agreement. A copy of the check and/or transmittal letter shall be forwarded to the EPA Project Coordinator.

64. For the following major deliverables, stipulated penalties shall accrue in the amount of \$500 per day, per violation, for the first seven days of noncompliance; \$1,000 per day, per violation, for the 8th through 14th day of noncompliance; \$1,500 per day, per violation, for the 15th day through the 30th day; and \$2,000 per day per violation for all violations lasting beyond 30 days.

a. Major Deliverables

- 1) An original and any revised Work Plan.
- 2) An original and any revised Sampling and Analysis Plan.
- 3) An original and any revised Remedial Investigation Report.
- 4) An original and any revised Phase I Conceptual Site Model Report.

- 5) An original and any revised Feasibility Study Report.

65. For the following interim deliverables, stipulated penalties shall accrue in the amount of \$250 per day, per violation, for the first week of noncompliance; \$500 per day, per violation, for the 8th through 14th day of noncompliance; \$750 per day, per violation, for the 15th day through the 30th day of noncompliance; and \$1,000 per day per violation for all violations lasting beyond 30 days.

a. Interim Deliverables

- and Alternatives
- 1) Technical Memorandum on Preliminary Remedial Action Objectives
  - 2) Technical Memorandum on Modeling of Site Characteristics.
  - 3) Preliminary Site characterization summary.
  - 4) Summary of RI data (electronically formatted),
  - 5) Memorandum on Remedial Action Objectives.
  - 6) Memorandum on Development and Preliminary Screening of Alternatives, Assembled Alternatives Screening Results and Final Screening.
  - 7) Monthly progress reports.

66. The following stipulated penalties shall accrue per violation per day for failure to complete any activities required by this Agreement (including, but not limited to, the payment of Future Response Costs) within the specified time schedules established by and approved under this Agreement, the SOW, and any plans or other documents approved by EPA pursuant to this Agreement:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 14th day
\$1,500	15th through 30th day
\$2,500	31st day and beyond

67. Defendants may dispute whether they violated this Agreement (but Defendants may not dispute the amount of the stipulated penalties per violation) by invoking the dispute resolution procedures under Section XVIII herein. Penalties shall accrue but need not be paid during the dispute resolution period up to a maximum period of thirty (30) days after the dispute resolution procedures are invoked. Stipulated penalties shall be stayed following the thirty (30) day period. If Defendants do not prevail upon resolution, all penalties shall be due to EPA within thirty (30) days of resolution of the dispute. If Defendants prevail upon resolution, no penalties shall be paid.

68. In the event that EPA provides for corrections to be reflected in the next deliverable and does not require resubmission of that deliverable, stipulated penalties for that interim deliverable shall cease to accrue on the date of such decision by EPA.

69. The stipulated penalties provisions do not preclude EPA from pursuing any other remedies or sanctions which are available to EPA because of the Defendants' failure to comply with this Agreement, including but not limited to conduct all or part of the RI/FS (including, but not limited to the Baseline Risk Assessment) by EPA. Payment of stipulated penalties does not alter Defendants' obligation to complete performance under this Agreement.

## **XX. FORCE MAJEURE**

70. "Force majeure," for purposes of this Agreement, is defined as any event arising from causes beyond the control of the Defendants and of any entity controlled by Defendants, including their contractors and subcontractors, that delays the timely performance of any obligation under this Agreement notwithstanding Defendants' best efforts to avoid the delay. Increased costs or expenses of any RI/FS Work to be performed under this Agreement or the financial difficulty of Defendants to perform such RI/FS Work shall not be considered a force majeure event. However, failure to obtain access in accordance with the provisions of paragraph 51 shall be considered a force majeure event.

71. If any event occurs or has occurred that may delay the performance of any obligation under this Agreement, whether or not caused by a force majeure event, Defendants shall notify by telephone the Remedial Project Manager or, in his or her absence, the Director of the Hazardous Waste Management Division, EPA Region 4, within 48 hours of when the Defendants knew or should have known that the event might cause a delay. Within five (5) business days thereafter, Defendants shall provide in writing the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to mitigate the effect of the delay; and a statement as to whether, in the opinion of Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. Defendants shall exercise best efforts to avoid or minimize any delay and any effects of a delay. Failure to comply with the above requirements shall preclude Defendants from asserting any claim of force majeure.

72. If EPA agrees that the delay or anticipated delay is attributable to force majeure, the time for performance of the obligations under this Agreement that are directly affected by the force majeure event shall be extended by agreement of the parties for a period of time not to exceed the actual duration of the delay caused by the force majeure event. An extension of the time for performance of the obligation directly affected by the force majeure event shall not, of itself, extend the time for performance of any subsequent obligation.

73. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, or does not agree with Defendants on the length of the extension, the issue shall be subject to the dispute resolution procedures set forth in Section VIII of the Consent Decree. In any such proceeding, to qualify for a force majeure defense, Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay was or

will be warranted under the circumstances, that Defendants did exercise or are exercising due diligence by using their best efforts to avoid and mitigate the effects of the delay, and that Defendants complied with the requirements of Paragraph 70 and 71.

74. Should Defendants carry the burden set forth in Paragraph 73, the delay at issue shall be deemed not to be a violation of the affected obligation of this Agreement.

## **XXI. REIMBURSEMENT OF FUTURE RESPONSE COSTS**

### **75. Payments for Future Response Costs.**

a. Defendants shall pay to EPA all Future Response Costs in accordance with the provisions of Section IX of the Consent Decree. Defendants shall make all payments within ninety (90) days of Defendants' receipt of each bill requiring payment, and the backup required by Section IX of the Consent Decree or within thirty (30) days after the resolution of any dispute pertaining to such costs, whichever is later. Defendants shall make all payments required by this Paragraph by electronic fund transfer or by a certified or cashier's check or checks made payable to the Anniston PCB Site Special Account, referencing the name and address of the party making the payment, EPA Site/Spill ID Number 04S9, and DOJ Case Number 90-11-2-07135/1. Defendants shall send the check(s) to:

U.S. EPA Region 4  
Superfund Accounting  
Attn: Collection Officer in Superfund  
P.O. Box 100142  
Atlanta, GA 30384

b. At the time of payment, Defendants shall send notice that payment has been made to the United States, to EPA, and to:

Paula V. Batchelor  
U.S. EPA Region 4  
4WD-PSB/11th floor  
61 Forsyth Street, S.W.  
Atlanta, GA 30303-8960

and

Dustin F. Minor, Esq.  
U.S. EPA Region 4  
Environmental Accountability Division  
61 Forsyth Street, S.W.  
Atlanta, GA 30303-8960

or their successors.

c. The total amount to be paid by Defendants pursuant to this Paragraph shall be deposited in the Anniston PCB Site Special Account within the EPA Hazardous Substance Superfund to be retained and used at EPA's unreviewable discretion to conduct or finance response actions at or in connection with the Anniston PCB Site, or transferred by EPA to the EPA Hazardous Substance Superfund. If EPA spends any funds from the Anniston PCB Site Special Account for future response actions at or in connection with the Site, such costs shall be potentially recoverable from Defendants, or any other potentially responsible party, because such

funds were placed into the Anniston PCB Site Special Account as payments for Future Response Costs.

76. Defendants agree to limit any disputes concerning costs to accounting errors, failure of EPA to document properly the conduct of any work, and the inclusion of costs outside the scope of this Agreement. Defendants shall identify any contested costs and the basis of their objection. All undisputed costs shall be remitted by Defendants in accordance with the schedule set forth above. Disputes shall be resolved in accordance with the provisions of section VIII of the partial Consent Decree. Defendants bear the burden of establishing an EPA accounting error or the inclusion of costs outside the scope of this Agreement.

77. In the event that the payments required by Paragraph 75.a. are not made within the times required by this Agreement, Defendants shall pay Interest on the unpaid balance and be subject to Stipulated Penalties. The Interest on Future Response Costs shall begin to accrue on the date payment is due. The Interest shall accrue through the date of the Defendants' payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of Defendants' failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to Paragraph 66. The Defendants shall make all payments required by this Paragraph in the manner described in Paragraph 75.

78. A copy of the check or notice of the electronic fund transfer should be sent simultaneously to the EPA Project Coordinator.

## **XXII. FINANCIAL ASSURANCE, INSURANCE, AND INDEMNIFICATION**

79. (a) Prior to commencement of any RI/FS Work under this Agreement, Defendants shall secure, and shall maintain in force for the duration of this Agreement, and for two years after the completion of all activities required by this Agreement, Comprehensive General Liability 9"CGL") and automobile insurance, with limits of \$ 5 million dollars, combined single limit, naming as insured the United States. The CGL insurance shall include Contractual Liability Insurance in the amount of \$ 1 million per occurrence, and Umbrella Liability Insurance in the amount of \$2 million per occurrence.

(b) Defendants shall also secure, and maintain in force for the duration of this Agreement and for two years after the completion of all activities required by this Agreement the following:

- i. Professional Errors and Omissions Insurance in the amount of \$1,000,000.00 per occurrence.
- ii. Pollution Liability Insurance in the amount of \$1,000,000.00 per occurrence, covering as appropriate both general liability and professional liability arising from pollution conditions.

(c) For the duration of this Agreement, Defendants shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of employer's liability insurance and workmen's compensation insurance for all persons performing RI/FS Work on behalf of the Defendants, in furtherance of this Agreement.

(d) If Defendants demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then with respect to that contractor or subcontractor Defendants need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

(e) Prior to commencement of any RI/FS Work under this Agreement, and annually thereafter on the anniversary of the Effective Date of this Agreement, Defendants shall provide to EPA certificates of such insurance and a copy of each insurance policy.

(f) Defendants retain the right to self insure any and all portion thereof of the above listed coverages.

80. At least 7 days prior to commencing any RI/FS Work under this Agreement, Defendants shall certify to EPA that the required insurance has been obtained by that contractor.

81. The Defendants agree to indemnify and hold the United States Government, its agencies, departments, agents, and employees harmless from any and all claims or causes of action arising from or on account of acts or omissions of Defendants, their employees, agents, servants, receivers, successors, or assignees, or any persons including, but not limited to, firms, corporations, subsidiaries and contractors, in carrying out activities under this Agreement. The United States Government or any agency or authorized representative thereof shall not be held as a party to any contract entered into by Defendants in carrying out activities under this Agreement.

### **XXIII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION**

82. The Effective Date of this RI/FS Agreement, shall be the date the Consent Decree is entered by the Court.

83. No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, and any other writing submitted by the Defendants will be construed as relieving the Defendants of their obligation to obtain such formal approval as may be required by this Agreement. Any deliverables, plans, technical memoranda, reports (other than progress reports), specifications, schedules and attachments required by this Agreement are, upon approval by EPA, incorporated into this Agreement.

### **XXIV. TERMINATION AND SATISFACTION**

84. This Agreement shall terminate when the Defendants demonstrate in writing and certifies to the satisfaction of EPA that all activities required under this Agreement, including any additional RI/FS Work has been performed and that payments of Future Response Costs, and any stipulated penalties demanded by EPA, have been made and EPA has approved the certification. This notice shall not, however, terminate Defendants' obligation to comply with Sections XVII and XXI of this Agreement.

85. The certification shall be signed by a responsible official representing each Defendant. Each representative shall make the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate, and complete." For purposes of this Agreement, a responsible official is a corporate official who is in charge of a principal business function.

The undersigned representative of Defendant certifies that they are fully authorized to enter into the terms and conditions of this Agreement and to bind the party they represent to this document.

Agreed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Solutia Inc.

By: \_\_\_\_\_ (Typed Name)

Its:



The undersigned representative of Defendant certifies that they are fully authorized to enter into the terms and conditions of this Agreement and to bind the party they represent to this document.

Agreed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Pharmacia Corporation

By: \_\_\_\_\_ (Typed Name)

Its:

It is so ORDERED and Agreed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

Name: \_\_\_\_\_  
Chief, South Site Management Branch  
Waste Management Division  
Region 4  
U.S. Environmental Protection Agency

**Statement of Work  
REMEDIAL INVESTIGATION AND FEASIBILITY STUDY  
ANNISTON PCB SITE  
ANNISTON, ALABAMA**

**INTRODUCTION**

In accordance with the RI/FS Agreement, the objectives of EPA and the Defendants in conducting the Statement of Work are: (a) to determine the extent of PCB contamination and any threat to the public health, welfare, or the environment caused by the release or threatened release of PCBs at or from Area 1 of the Site, by conducting a Remedial Investigation in Area 1 of the Site; (b) to determine and evaluate alternatives for remedial action (if any) to prevent, mitigate or otherwise respond to or remedy any release or threatened release PCBs at or from Area 1 of the Site by conducting a Feasibility Study for Area 1 of the Site; and (c) to provide funding for a Technical Assistance Plan (TAP) and a Community Advisory Group (CAG) for the affected community.

The Defendants will conduct this RI/FS and will produce a draft RI and FS report for Area 1 of the Site that are in accordance with this Statement of Work, the "Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA" (U.S. EPA, Office of Emergency and Remedial Response, October 1988), and any other guidance that EPA uses in conducting a RI/FS (a list of the primary guidance is attached), as well as any additional requirements in the Consent Decree. The RI/FS Guidance describes the report format and the required report content. The Defendants will furnish all necessary personnel, materials, and services needed, or incidental to, performing the RI/FS in Area 1 of the Site, except as otherwise specified in the Consent Decree.

At the completion of the RI/FS for Area 1 of the Site, EPA will be responsible for the selection of a remedy for Area 1 of the Site and will document this selection in a Record of Decision (ROD). The remedial action alternative selected by EPA will meet the cleanup standards specified in CERCLA Section 121. That is, the selected remedial action will be protective of human health and the environment, will be in compliance with, or include a waiver of, applicable or relevant and appropriate requirements of other laws, will be cost-effective, and will utilize permanent solutions to the maximum extent practicable. The final RI/FS report for Area 1 of the Site, as adopted by EPA, with the Administrative Record, will form the basis for the selection of the remedy for Area 1 of the Site and will provide the information necessary to support the development of the ROD.

The RI/FS investigation will take into account the extensive amount of data that has been collected pursuant to the Administrative Order on Consent between the Defendants and EPA, effective date October 5, 2001 (hereinafter Site Removal Order), and the RCRA Facility Investigation being completed pursuant to Defendants' RCRA Post Closure Permit.

For the purposes of this SOW, use of the term "site" shall refer solely to Area 1 of the Site as

defined in the Consent Decree.

As specified in CERCLA Section 104(a)(1), as amended by SARA, EPA will provide oversight of the Defendants' activities throughout the RI/FS. The Defendants will support EPA's initiation and conduct of activities related to the implementation of oversight activities.

### **TASK 1 - SCOPING (RI/FS Guidance, Chapter 2)**

Scoping is the initial planning process of the RI/FS. During this time, the site-specific objectives of the RI/FS, including the preliminary remediation goals (PRGs), are determined by Defendants and approved by EPA. Scoping is continued, repeated as necessary, and refined throughout the RI/FS process.

In addition to developing the site specific objectives of the RI/FS, EPA and Defendants will determine a general management approach for the site.

Consistent with the general management approach, the specific project scope will be planned by Defendants and EPA. Defendants will document the specific project scope in a work plan. Because the work required to perform a RI/FS is not fully known at the onset, and is phased in accordance with a site's complexity and the amount of available information, it may be necessary to modify the Work Plan during the RI/FS to satisfy the objectives of the study.

The site objectives for the Anniston PCB Site located in Calhoun County in the State of Alabama have been determined preliminarily, based on available information, to be the following:

1. Review of existing information pertaining to the site. This includes a review of Work Plans and the associated data generated during the Site Removal Action, work plans and associated data generated during the Defendants RCRA Facility Investigation being conducted under its RCRA Post Closure permit, EPA Preremedial Reports, EPA's Environmental Photographic Interpretation Center photos, the Preliminary Natural Resources Survey, other reports from local, State and Federal agencies, court records, information from local businesses such as local well drillers and waste haulers and generators, facility records, and information from facility owners and employees and nearby citizens.
2. Review of relevant guidance (see attached references) to understand the remedial process. This information shall be used in performing the RI/FS and preparing all deliverables under this SOW.
3. Identification of all Federal and State applicable or relevant and appropriate requirements (ARARs).
4. Determination of the lateral and vertical extent of PCB contamination ( concentrations

and distributions) for all affected media including soil, surface water, sediment, and biota, etc.

5. Assembly of technologies into a minimum of four Remedial Action Alternatives (i.e., no action, removal and disposal at a licensed disposal cell, removal and containment in an on-site disposal cell, and containment) and screening of the alternatives.
6. Detailed analysis of Remedial Action Alternatives.
7. Sample collection/data analysis of the information necessary to conduct an Ecological Risk Assessment. These tasks are outlined in Supplemental Guidance to RAGS: Region 4 Bulletins-Ecological Risk Assessment (November 1995) and the "Ecological Risk Assessment Guidance for Superfund: Process for Designing and Conducting Ecological Risk Assessments (June 1997)."
8. Possible performance of a cultural resources survey to determine if the site has any archaeological or historic value. The need for conducting a cultural resources survey must be evaluated during the project planning stage of the RI/FS, and if EPA determines that a cultural resources survey is necessary, strategy for developing the cultural resources survey must be included in the Remedial Investigation Work Plan.

The Site Management Strategy for the site includes the following:

1. A complete investigation of PCBs in Area 1 of the Site as defined by Exhibit A.
2. Use of the RI to identify any other Potentially Responsible Parties that may be involved.
3. An initial Work Plan that must incorporate the existing data gained from the Site Removal Action and Defendants' RCRA Facility Investigation, and initial evaluation of the site as a whole.
4. Interim remedial measures which may be required.
5. EPA oversight of the Defendants' conduct of the work to ensure compliance with applicable laws, regulations, and guidance and to ensure that the work proceeds in a timely fashion.
6. Defendants' preparation of the Baseline Risk Assessment which shall consist of a Human Health Risk Assessment and an Ecological Risk Assessment.
7. EPA management of the remedy selection and Record of Decision phase with input from the State Agencies, Natural Resource Trustees, and the public.

When scoping the specific aspects of a project, Defendants must meet with EPA to discuss all project planning decisions and special concerns associated with the site. The Defendants shall perform the following activities as a function of the project planning process.

A. Site Background (2.2)

Defendants will gather and analyze the existing site background information to assist in planning the scope of the RI/FS.

1. Collect and analyze existing data and document the need for additional data (2.2.2; 2.2.6; 2.2.7)

Before planning RI/FS activities, all existing site data will be thoroughly compiled and reviewed by the Defendants. Specifically, this will include presently available data relating to PCBs at the site, and past disposal practices. This will also include results from any previous sampling events that may have been conducted. The Defendants will refer to Table 2-1 of the RI/FS Guidance for a comprehensive list of data collection information sources. This information will be utilized in determining additional data needed to characterize the site, better define potential applicable or relevant and appropriate requirements (ARARs), and develop a range of preliminarily identified remedial alternatives. Data Quality Objectives (DQOs) will be established subject to EPA approval, which specify the usefulness of existing data. Decisions on the necessary data and DQOs will be made by EPA.

B. Project Planning (2.2)

Once the Defendants have collected and analyzed existing data, the specific project scope will be planned. Project planning activities include those tasks described below as well as identifying data needs, preparing a Phase I Conceptual Site Model, developing a work plan, designing a data collection program, and identifying health and safety protocols. The Defendants will meet with EPA regarding the following activities and before the drafting of the scoping deliverables below. These tasks are described in Section C. of this task since they result in the development of specific required deliverables.

1. Refine and document preliminary remedial action objectives and alternatives (2.2.3)

Once existing site information has been analyzed and an understanding of the potential site risks has been determined by Defendants and approved by EPA, Defendants will review and, if necessary, refine the remedial action objectives that have been approved by EPA for each actually or potentially contaminated medium. The revised remedial action objectives will be documented in a technical memorandum and subject to EPA approval. Defendants will then identify a preliminary range of broadly defined potential remedial action alternatives and associated technologies. The range of potential alternatives should encompass removal, containment, and no-action.

2. Begin preliminary identification of potential ARARs (2.2.5)

Defendants will conduct a preliminary identification of potential state and federal ARARs (chemical-specific, location-specific and action-specific) to assist in the refinement of remedial action objectives, and the initial identification of remedial alternatives and ARARs associated with particular actions. ARAR identification will continue as site conditions, contaminants, and remedial action alternatives are better defined.

C. Scoping Deliverables (2.3)

At the conclusion of the project planning phase, the Defendants will submit a Phase I Conceptual Site Model Report. Following EPA approval of this report an RI/FS work plan, a sampling and analysis plan (SAP), and a site health and safety plan will be prepared and submitted by the Defendants. The RI/FS Work Plan and SAP must be reviewed and approved by EPA prior to the initiation of field activities.

1. Phase I Conceptual Site Model Report

Defendants shall use existing data at the Site including, but not limited to, data collected pursuant to the Site Removal Action and RCRA Facility Investigation to develop a Phase I Conceptual Site Model (CSM) of the site. The purpose of this activity will be to ensure existing data is used to the maximum extent practicable in the development of the RI Work Plan.

Exposure assumptions developed in the Phase I CSM must be supported with data and must be consistent with Agency policy. For each exposure pathway, the release source, the transport media (e.g., surface water, air, etc.) and the exposure route (oral, inhalation, dermal) must be clearly delineated. Both present and reasonably anticipated future uses at the site must be developed and presented in the CSM. The Human Health Evaluation Manual, Part A and the supplemental guidance entitled Standard Default Exposure Factors (OSWER Directive 9285.6-03) should be consulted in development of exposure assumptions. EPA referenced default exposure assumptions or default assumptions from other approved sources should be used when site-specific data are not available.

The Defendants shall include the exposure scenarios with a description of the assumptions made, data used, and a figure showing the CSM. If it is appropriate to use fate and transport models to estimate the exposure concentration at points spatially separate from monitoring points or media not sampled, these models shall be presented and discussed. Representative data must be utilized and the limitations and uncertainties associated with the models must be documented. The Exposure Assessment Section shall contain exposure concentrations typically based on the ninety-five (95) percent upper confidence limit on the arithmetic average or other appropriate statistical methods for deriving the exposure concentration.

The Phase I CSM Report shall also identify data gaps, if any exist, in the CSM that may require further evaluation during the RI process.

## 2. RI/FS Work Plan (2.3.1)

A Work Plan documenting the decisions and evaluations completed during the scoping process and in the Phase I CSM Report will be submitted to EPA for review and approval. The Work Plan should be developed in conjunction with the SAP and the site health and safety plan, although each plan may be delivered under separate cover. The Work Plan will include a comprehensive description of the work to be performed, including the methodologies to be utilized, as well as a corresponding schedule for completion. In addition, the Work Plan must include the rationale for performing the required activities.

Specifically, the Work Plan will present a statement of the problem(s) and potential problem(s) posed by the site and the objectives of the RI/FS. Furthermore, the plan will include a site background summary setting forth the site description including the geographic location of the site, and to the extent possible, a description of the site's physiography, hydrology, demographics, ecological, cultural and natural resource features; a synopsis of the site history and a description of previous responses that have been conducted at the site by Defendants, local, state, federal, or private parties; a summary of the existing PCB data, and the PCB distribution among the environmental media at the site.

In addition, the plan will include a description of the site management strategy approved by EPA during scoping, a preliminary identification of remedial alternatives, and data needs for evaluation of remedial alternatives. It will include a process for and manner of identifying Federal and state ARARs (chemical-specific, location-specific and action-specific).

Finally, the Work Plan will include a detailed description of the tasks to be performed, information needed for each task, information to be produced during and at the conclusion of each task, and a description of the work products that will be submitted to EPA. This includes the deliverables set forth in the remainder of this SOW; a schedule for each of the required activities which is consistent with the RI/FS guidance; and a project management plan, including a data management plan (e.g., requirements for project management systems and software, minimum data requirements, data format and backup data management), monthly reports to EPA, and meetings with presentations to EPA at the conclusion of each major phase of the RI/FS. The Defendants will refer to Appendix B of the RI/FS Guidance for a comprehensive description of the contents of the required Work Plan.

Because of the iterative nature of the RI/FS, additional data requirements and analyses may be identified throughout the process. The Defendants will submit a technical memorandum documenting the need for additional data, and identifying the DQOs whenever such requirements are identified. In any event, the Defendants are responsible for fulfilling additional data and analysis needs identified by EPA consistent with the general scope and objectives of this RI/FS.



## 2. Sampling and Analysis Plan (2.3.2)

Defendants will prepare a sampling and analysis plan (SAP) to ensure that sample collection and analytical activities are conducted in accordance with technically acceptable protocols and that the data meet DQOs. The SAP provides a mechanism for planning field activities and consists of a field sampling plan (FSP) and a quality assurance project plan (QAPP). The FSP will define in detail the sampling and data-gathering methods that will be used on the project. It will include sampling objectives, sample location and frequency, sampling equipment and procedures, and sample handling and analysis. The QAPP will describe the project objectives and organization, functional activities, and quality assurance and quality control (QA/QC) protocols that will be used to achieve the desired DQOs. The DQOs will at a minimum reflect use of analytic methods to identify PCBs at levels consistent with remedial action objectives identified in the proposed National Contingency Plan, pages 51425-26 and 51433 (December 21, 1988). In addition, the QAPP will address sampling procedures, sample custody, analytical procedures, and data reduction, validation, reporting, and personnel qualifications. Field personnel should be available for EPA QA/QC training and orientation where applicable. Defendants will demonstrate in advance, to EPA's satisfaction, that each laboratory it may use is qualified to conduct the proposed work. This includes use of methods and analytical protocols for PCBs in the media of interest within detection and quantification limits consistent with both QA/QC procedures and DQOs approved in the QAPP for the site by EPA. Each laboratory must have and follow an approved QA program. If a laboratory not in the Contract Laboratory Program (CLP) is selected, methods consistent with CLP methods that would be used at this site for the purposes proposed and QA/QC procedures approved by EPA will be used. If the laboratory is not in the CLP program, a laboratory QA program must be submitted for EPA review and approval. EPA may require that Defendants submit detailed information to demonstrate that the laboratory is qualified to conduct the work, including information on personnel qualifications, equipment and material specifications. Defendants will provide assurances that EPA has access to laboratory personnel, equipment and records for sample collection, transportation and analysis.

## 3. Site Health and Safety Plan (2.3.3)

A health and safety plan will be prepared in conformance with Defendants' health and safety program, and in compliance with OSHA regulations and protocols. The health and safety plan will include the 11 elements described in the RI/FS Guidance, such as a health and safety risk analysis, a description of monitoring and personal protective equipment, medical monitoring, and site control. It should be noted that EPA does not "approve" Defendants' health and safety plan, but rather EPA reviews it to ensure that all necessary elements are included and that the plan provides for the protection of human health and the environment.

## TASK 2 - COMMUNITY RELATIONS

Although implementation of the community relations plan is EPA's responsibility, Defendants shall assist EPA by providing information regarding the site's history, participating in public meetings, or by preparing fact sheets for distribution to the general public. EPA will make these materials

available to all interested parties for comment and place them in the Administrative Record. (EPA is not required, however, to formally respond to significant comments except during the formal public comment period on the proposed plan.) At EPA's discretion, Defendants shall establish a community information repository at or near the Site, to house one copy of the Administrative Record. The extent of PRP involvement in community relations activities is left to the discretion of EPA.

In addition, Defendants shall prepare a plan (hereinafter referred to as the Technical Assistance Plan (TAP)), subject to EPA's approval, for providing and administering up to \$150,000.00 of Defendants' money to fund qualified citizen groups to hire technical advisors, independent from Defendants, to help interpret and comment on site-related documents developed under this SOW and through the public participation period for the ROD. Within sixty (60) days after the Effective Date of the Consent Decree, Defendants shall submit the TAP to EPA. The TAP shall provide for an initial payment of up to \$50,000. The TAP may be renewed twice, in \$50,000 increments, if EPA, in its sole discretion, determines that renewal is necessary to help interpret and comment on site-related documents developed under this SOW and through the public participation period for the ROD.

As part of the TAP, Defendants must propose a method, including an application process and eligibility criteria, for awarding and administering the funds referenced above. Any eligible citizen group must be: 1) a representative group of individuals potentially affected by the Site; 2) incorporated as a nonprofit organization for the purposes of the site or otherwise established as a charitable organization that operates within the geographical range of the site and is already incorporated as a nonprofit organization; and 3) able to demonstrate its capability to adequately and responsibly manage any funds awarded.

Any group is ineligible if it is: 1) potentially responsible for contamination problems at the Site; 2) an academic institution; 3) a political subdivision; 4) a group whose ability to represent the interest of affected individuals might be limited as a result of receiving paid services from a Potentially Responsible Party ("PRP"); 5) a group established or sustained by government entities, a Potentially Responsible Party, or any ineligible entity; 6) a group whose membership is associated with, or a plaintiff involved in, current or past legal proceedings adverse to Defendants; or 7) a group whose ability to provide objective opinions regarding the Site might be limited due to their previously stated positions on issues associated with the Site, including PCBs.

Funds may be awarded to only one qualified group at a time for purposes of the Consent Decree and SOW. In addition, at a minimum, the technical advisor must possess the following credentials: 1) demonstrated knowledge of hazardous or toxic wastes issues by proven work experience in such fields in excess of five (5) years; 2) a bachelor of science in a relevant discipline (e.g., biochemistry, toxicology, environmental sciences, engineering); 3) ability to translate technical information into terms understandable to lay persons; 4) experience in making technical presentations in a public meeting or hearing setting; and 5) demonstrated writing skills. The technical advisor may not be a party to or be associated with an organization that is a party to or a witness in any current or past legal proceeding adverse to Defendants, and shall not have taken

any previous positions on issues associated with the Site, including PCBs. Any unobligated funds shall revert to Defendants upon the end of the public participation period for the ROD.

For purposes of resolving any disputes that may arise between Defendants, the technical advisor, and/or the selected citizen group concerning the administration and/or use of the funds under the TAP, Defendants shall, as part of their TAP, propose a method for resolution, which will include the use of binding arbitration. As part of the dispute resolution proposal, Defendants must provide the method for selecting a third-party arbitrator that allows for the selection of an arbitrator acceptable to all parties involved in the dispute. Additionally, the dispute resolution provision must require that before the services of an arbitrator are invoked, the parties must comply with the following procedures: 1) the party that raises a complaint must submit that complaint in writing to the party who is the subject of the complaint; 2) the recipient of the complaint must provide the first party with a written response within fifteen (15) calendar days of receipt of the complaint; 3) the parties then have fifteen (15) calendar days to resolve the dispute; and 4) if the disagreement cannot be resolved at this level, then the services of a third-party arbitrator will be sought. The written decision of the arbitrator will be the final decision.

Subject to EPA's approval Defendants may hire a third party (hereinafter referred to as the Tap Coordinator) to coordinate and administer the TAP. Defendants must demonstrate that the TAP Coordinator is qualified to perform this task. If Defendants opt to hire a TAP Coordinator, they must submit in writing that person's name, title, and qualifications to EPA within thirty (30) days of EPA's approval of the TAP. Additionally, Defendants must designate within thirty (30) days of EPA's approval of the TAP an outreach coordinator who will be responsive to the public's inquiries and questions about the site, including information about the application process and administration of the TAP.

To the extent practicable, Defendants shall select the TAP recipient and administer the appropriate funds to such group by the date on which the Draft RI/FS Workplan is due to EPA.

In addition, Defendants shall prepare a plan (hereinafter referred to as the Community Advisory Group Plan (CAGP)) for providing and administering funding necessary for the development and ongoing operations of a Community Advisory Group (CAG), and for providing meeting space and facilitators for the CAG for periodic meetings during the response activities conducted pursuant to the Consent Decree through the public participation period for the ROD. The CAG shall be established in a manner consistent with the attached CAG information from EPA's website.

In addition to devising and administering the TAP and the CAG, other community relations responsibilities EPA may assign to Defendants shall be specified in the community relations plan. Defendants must provide EPA quarterly progress reports regarding the implementation of the TAP and the CAG. The progress reports may be completed as part of the monthly progress reports.

### **TASK 3 - SITE CHARACTERIZATION (RI/FS Guidance, Chapter 3)**

As part of the RI, Defendants will perform the activities described in this task, including the preparation of a Site characterization summary and RI report. The overall objective of site characterization is to describe areas of the site that may pose a threat to human health or the environment. This is accomplished by first determining the site's physiography and hydrology. Pathways of PCB migration will be defined. Defendants will identify the sources of PCB contamination and define the extent of PCB contamination, including their physical and chemical characteristics as well as their concentrations at incremental locations in the affected media as necessary to complete the BRA and FS. Defendants will also investigate the extent of migration of PCBs at the site. Using this information, contaminant fate and transport is then determined and projected.

During this phase of the RI/FS, the Work Plan, SAP, and health and safety plan are implemented. Field data will be collected and analyzed to provide the information required to accomplish the objectives of the study. Defendants will notify EPA at least two weeks in advance of the field work. Field work may include ecological field surveys, field lay out of sampling locations, excavation, sampling, installation and calibration of equipment, and initiation of analysis. Defendants will demonstrate that the laboratory and type of laboratory analyses that will be utilized during site characterization meet the specific QA/QC requirements and the DQOs of the site investigation as specified in the SAP. Field activities are often iterative, and to satisfy the objectives of the RI/FS it may be necessary for the Defendants to supplement the work specified in the initial Work Plan.

In addition to the deliverables below, Defendants will provide a monthly progress report and participate in meetings during the RI/FS.

A. Field Investigation (3.2)

The field investigation includes the gathering of data to define site physical and biological characteristics, sources of PCB contamination, and the extent of PCB contamination at the site. These activities will be performed by the Defendants in accordance with the Work Plan and the SAP. At a minimum, these activities shall address the following:

I. Access

For all properties where access is required to conduct the field investigation in areas owned by or in possession of someone other than Defendant, Defendant shall send within the timeframes specified in the Work Plans approved pursuant to this SOW correspondence (as provided in Exhibit C) to all resident(s), owner(s), and/or non-resident owner(s) from whom access is needed to conduct the field investigation.

Defendants shall send all of the correspondence requesting access via certified mail, return receipt requested. If Defendants do not receive the necessary access agreements within ninety (90) days from the date that the resident(s), owner(s), and/or non-resident owner(s) received it, or within one hundred and twenty (120) days from the date correspondence was sent to the resident(s), owner(s), and/or non-resident owner(s), Defendants shall notify EPA in writing, within fourteen (14) days from the date that the applicable access agreement was due, that Defendant has not obtained access from any such party. Defendants shall continue its attempts to obtain access from such parties following this notification. However, EPA, at its sole discretion after notifying Defendant in writing of its intentions, may assume responsibility for obtaining access from such parties should Defendants not be able to obtain access within the timeframes specified above.

For any party from whom Respondent was unable to obtain access, Defendant shall, upon EPA's request, provide EPA a copy of all correspondences, county records, and any other evidence or information Defendant has regarding the resident(s), owner(s), and/or non-resident owner(s) from whom Defendant was unable to obtain access. EPA may then assist Defendant in gaining access, to the extent necessary to effectuate the actions described herein, using such means as EPA deems appropriate. Defendant shall reimburse EPA for all costs and attorneys' fees incurred by the United States in obtaining such access. EPA acknowledges that if Defendant has attempted to

obtain access to properties in the manner described above, and is unable to do so, then Defendant will not be liable for stipulated penalties for failure to meet any schedules identified in the Consent Decree, the SOW, or the Work Plans approved pursuant to this SOW with respect to properties for which access is denied. To the extent that any resident(s), owner(s), and/or non-resident owner(s) is adverse to Defendant in a legal proceeding and is represented by counsel, Defendant may send the appropriate correspondence and agreement discussed in Section VI(3) to any such person's counsel only.

2. Investigate and define site characteristics (3.2.2)

Defendants will collect data on the characteristics of the site in accordance with the Work Plan. This information will be ascertained through a combination of physical measurements, observations, and sampling efforts and will be utilized to refine the CSM. In defining the site's physical characteristics Defendants will also obtain sufficient engineering data for the projection of contaminant fate and transport, and development and screening of remedial action alternatives.

3. Define sources of contamination (3.2.3)

Defendants will locate each source of contamination. For each location, the areal extent and depth of contamination will be determined by sampling in accordance with the Work Plan. Defendants shall conduct sufficient sampling to define the boundaries of the PCB sources to the level established in the QA/QC plan and DQOs.

Defining the source of contamination will include analyzing the potential for PCB release (e.g., long term leaching from soil, transfer to air), PCB mobility and persistence, and characteristics important for evaluating remedial actions.

4. Describe the extent of contamination (3.2.4)

Defendants will gather information to describe the extent of PCB contamination as a final step during the field investigation. To describe the extent of PCB contamination, Defendants will utilize information concerning site physical and biological characteristics and sources of PCBs to provide a preliminary estimate of where PCBs may have migrated. Defendants will then implement any study program or modeling techniques identified in the Work Plan or SAP to quantify the concentration of PCBs through the various media at the site. In addition, Defendants will gather data for calculations of PCB fate and transport. This process will be continued until the area and depth of PCB contamination are known to the level established in the

QA/QC plan and DQOs. Defendants will use this information to perform the Baseline Risk Assessment and to help determine aspects of the appropriate remedial action alternatives to be evaluated.

#### B. Data Analysis (3.4)

##### Evaluate Site characteristics (3.4.1)

Defendants will analyze and evaluate the data to describe the: 1) site physical and biological characteristics, 2) PCB source characteristics, 3) extent of PCB contamination, and 4) PCB fate and transport. Analysis of the site physical characteristics, source characteristics, and extent of PCB analyses will be used in the analysis of PCB fate and transport. The fate and transport evaluation will include an analysis of the actual and potential magnitude of releases from the sources, the horizontal and vertical spread of PCBs and the mobility and persistence of PCBs. Where modeling is appropriate, such models shall be identified to EPA in a technical memorandum prior to their use. All data and programming, including any proprietary programs, shall be made available to EPA together with a sensitivity analysis.

Defendants shall identify and address, in a manner approved by EPA, any data gaps that are needed to complete the baseline risk assessment. (See "Guidance for Data Usability in Risk Assessment - OSWER Directive # 9285.7-05 - October 1990.) Defendants will provide a detailed description of the statistical approach that will be used to estimate the relevant exposure point concentration (EPC) for the purposes of evaluating site-related risks. The current EPA default procedure requires the calculation of the 95% upper confidence limit (UCL) of the arithmetic mean using the Land H-statistic (EPA, 1989). However, alternative approaches are available, including surface area weighting, jackknife estimations, and spatial bootstrapping (EPA, 1997), which may provide a more accurate estimate of exposure concentrations.

The data analysis process shall also consider information necessary to address the need for remedial action in the baseline risk assessment, and for the development and evaluation of remedial alternatives. Analysis of data collected during Site characterization will meet the DQOs developed in the QA/QC plan stated in the SAP (or revised during the RI).

#### C. Data Management Procedures (3.5)

Defendants will consistently document the quality and validity of field and laboratory data compiled during the RI.

1. Document field activities (3.5.1)

Information gathered during site characterization will be consistently documented and adequately recorded by Defendants in well-maintained field logs and laboratory reports. The documentation method(s) shall be specified in the Work Plan and/or the SAP. Field logs shall be used to document observations, measurements, and significant events that have occurred during field activities. Laboratory reports shall document sample custody, analytical responsibility, analytical results, adherence to prescribed protocols, nonconformity events, corrective measures, and/or data deficiencies.

2. Maintain sample management and tracking (3.5.2; 3.5.3.)

Defendants will maintain field reports, sample shipment records analytical results, and QA/QC reports to ensure that only validated analytical data are reported and used in the evaluation of remedial alternatives. Analytical results developed under the Work Plan will not be included in any site characterization reports unless accompanied by or cross-referenced to a corresponding QA/QC report. In addition, Defendants will establish a data security system to safeguard chain-of-custody forms and other project records to prevent loss, damage, or alteration of project documentation.

D. Site Characterization Deliverables (3.7)

Defendants will prepare the preliminary site characterization summary and the remedial investigation report.

1. Preliminary Site Characterization Summary (3.7.2)

After completing field sampling and analysis, Defendants will prepare a concise characterization summary. This summary will review the investigative activities that have taken place, and describe and display site data documenting the location and characteristics of PCB contamination at the site including the affected medium, location, physical state, and concentration. In addition, the location, dimensions, physical condition and varying concentrations of PCBs throughout each source and the extent of PCB migration through each of the affected media will be documented. The site characterization summary will provide EPA with a preliminary reference for evaluating the risk assessment, the development and screening of remedial alternatives, and the refinement and identification of ARARs.



## 2. Remedial Investigation (RI) (3.7.3)

Defendants will prepare and submit a draft RI report to EPA for review and approval. This report shall summarize results of field activities to characterize the site, sources of PCBs, and the fate and transport of PCBs. Defendants will refer to the RI/FS Guidance for an outline of the report format and contents. Following comment by EPA, Defendants will prepare a final RI report which satisfactorily addresses EPA's comments.

### **TASK 4 - BASELINE RISK ASSESSMENT**

Defendants will provide a Baseline Risk Assessment (BRA) to EPA for the site, consisting of a Human Health Risk Assessment and an Ecological Risk Assessment.

Data have been collected pursuant to the Site Removal Order and the RCRA Facility Investigation being conducted pursuant to the Defendants RCRA Post Closure Permit. Additionally, an evaluation of risk has been conducted pursuant to the RCRA Facility Investigation. In order to coordinate the specific standards and administrative requirements for closure of RCRA regulated units with other proposed cleanup activities (EPA, 1996), including CERCLA, Defendants will provide a Baseline Risk Assessment (BRA) to EPA for the site that is consistent with these previously submitted work products. The BRA will consist of a Human Health Risk Assessment and an Ecological Risk Assessment.

Defendants shall prepare a BRA that identifies and characterizes the toxicity and effects of PCBs, describes PCB fate and transport, evaluates the potential for human exposure, and assesses the risk of potential impact or threats on human health. In addition, as a component of the BRA, Defendants shall prepare an Ecological Risk Assessment that establishes exposure point concentrations in the ecosystems of the site that do not pose a threat to the ecology (including both flora and fauna). The BRA will provide EPA a basis for determining whether or not remedial action is necessary, a justification for performing any remedial action that may be required, and site specific preliminary remedial goals that can function as a foundation for clean up goals.

Defendants shall develop the human health portion of the BRA in accordance with the EPA's guidance documents on conducting human health and ecological risk assessment. These documents describe and illustrate the process of gathering and assessing human health risk information in addition to developing remediation goals. Resources that Defendants should use

when performing the BRA include: Exposure Factors Handbook (EPA/600/P-95/002Fa, August 1997), Land Use in the CERCLA Remedy Selection Process, OSWER Directive NO. 9355.7-04, May 25, 1995, Soil Screening Guidance, Technical Background Document, 9355.4-17A, EPA/1501 R-95/128, May 1996, Soil Screening Guidance, User's Guide, 9355.4-3, April 1996; The Integrated Risk Information System (IRIS); the Health Effects Assessment Summary Tables (HEAST); the Supplemental Guidance to RAGS Region 4 Bulletins-Human Risk Assessment (November 1995). Other resources include the RCRA Cleanup Reforms of 1999 (EPA/530/F-99-018, July 1999) and guidance provided in Coordination Between RCRA Corrective Action and Closure and CERCLA Site Activities (EPA, September, 1996).

For preparing the ecological risk assessment, Defendants shall also utilize the Supplemental Guidance to RAGS, Region 4 Bulletins-Ecological Risk Assessment (November, 1995) and the Ecological Risk Assessment Guidance for Superfund Process for Design and Conducting the Ecological Risk Assessment (June 1997). EPA shall identify other guidance for human health and ecological assessment as necessary.

Defendants shall provide a detailed description of risk evaluation methods contained in previously submitted and EPA-approved work plans used in the assessments of potential risks to human health and the environment including activities conducted under the Site Removal Order and the RCRA Facility Investigation that is being conducted pursuant to Defendants RCRA Post Closure Permit. EPA's memorandum of September 1996, encourages the coordination of the specific standards and administrative requirements for closure of RCRA regulated units with other cleanup activities, including those proposed under CERCLA. Therefore, EPA will consider the EPA-approved procedures developed during these previous site-related investigations applicable to the site.

A Draft Baseline Risk Assessment Report (for both Human Health and for Ecological Health) shall be submitted at the completion of site characterization and included in the Draft RI Report (see Task 3). Following comment by EPA, Defendants shall prepare a Final Baseline Risk Assessment Report that will be included in the Final RI Report.

#### A. Human Health Risk Assessment

The Human Health Risk Assessment process consists of the four components listed below. During the scoping of the work assignment, Defendants shall discuss with EPA the format of the BRA Report as well as any additional references to be used during the Human Health Risk Assessment.

1. Data Collection and Evaluation:

Defendants shall review the information that is available concerning PCBs present at the Site.

2. Exposure Assessment and Documentation:

Defendants shall use data collected during site characterization to refine actual and potential exposure points and pathways initially identified in the Phase I Conceptual Site Model Report. Exposure assumptions must be supported with data and must be consistent with EPA policy. For each exposure pathway, the release source, the transport media (e.g., ground water, surface water, air, etc.) and the exposure route (oral, inhalation, dermal) shall be clearly delineated in the CSM (RI/FS Guidance Figure 2-2). Both present and reasonably anticipated future uses at the site must be developed and presented in the CSM. The Human Health Evaluation Manual, Part A and the supplemental guidance entitled Standard Default Exposure Factors (OSWER Directive 9285.6-03) should be consulted in development of exposure assumptions. EPA referenced default exposure assumptions or default assumptions from other approved sources should be used when site-specific data are not available. Defendants will include, within the BRA, the exposure scenarios with a description of the assumptions made, data used, and a figure showing the CSM. If it is appropriate to use fate and transport models to estimate the exposure concentration at points spatially separate from monitoring points or media not sampled, these models shall be presented and discussed. Representative data will be used and the limitations and uncertainties associated with the models will be documented. The Exposure Assessment Section in the BRA shall contain exposure concentrations typically based on the 95 percent upper confidence limit on the arithmetic average, or other appropriate statistical methods for deriving the exposure concentration.

3. Toxicity Assessment and Documentation:

Defendants shall use the information in IRIS, HEAST, and if needed, other similar data bases and other information sources as discussed in the Region 4 guidance, to provide a toxicity assessment of PCBs. This assessment shall include the types of adverse health effects associated with chemical exposures (including potential carcinogenicity or the toxic effect observed in deriving the Reference Dose (RfD)), the relationships between magnitude of exposures and adverse effects, and the related uncertainties of contaminant

toxicity (e.g., the weight of evidence for a chemical's carcinogenicity or the degree of confidence in the RfD).

#### 4. Risk Characterization:

Consistent with previous assessments of the Site, Defendants will integrate the information developed during the exposure and toxicity assessments to derive risk-based, site-specific, preliminary remedial goals (PRGs). The PRG values will be developed by combining all relevant exposure pathways for a particular receptor and rearranging the standard equations provided by EPA (1992, 1995), solving for the concentration term. The risk characterization must identify the uncertainties associated with contaminants, toxicities, and exposure assumptions and other guidance provided in the February 1995 Guidance for Risk Characterization from EPA's Science Policy Council. Statistical approximations of exposure concentrations will be compared to the site-specific PRGs.

### B. Ecological Risk Assessment

In addition to the human health component of the BRA, the BRA will also address the risk to ecological receptors from exposure to PCBs. The ecological risk assessment is comprised of the following steps (Ecological Risk Assessment Guidance for Superfund: Process for Designing and Conducting Ecological Risk Assessments (EPA 540-R-97-006):

#### 1. Screening Evaluation and Preliminary Problem Formulation and Ecological Effects Evaluation

If EPA determines that the site will proceed into the Ecological Risk Assessment process, the Preliminary Problem Formulation is developed and the potential Ecological Effects of PCBs are determined. Typically, data are still limited at this stage of the investigation. However, EPA recognizes that extensive investigation of some areas of the Site has already been completed in conjunction with the Site Removal Order and as part of the RCRA Facility Investigation conducted pursuant to Defendants RCRA Post Closure Permit. These data will be used to refine the various steps included in the Problem Formulation. Information which can be used in developing the Preliminary Problem Formulation and the preliminary Ecological Effects Evaluation includes the environmental setting (including definition of habitat types found on or near the Site and expected and observed receptor species including state and federal threatened or endangered species or

species receiving legislative protection, historic and existing drainage pathways, etc.), PCB fate and transport, ecotoxicological characteristics of PCBs, potential exposure pathways, and selection of the endpoints to screen for ecological risk.

## 2. Screening Exposure Estimate and Risk Calculation

Conservative assumptions regarding the exposure of contaminants to ecological endpoints to PCBs will be used in this evaluation because it represents the initial development of the site model to determine if further efforts will be necessary to determine risks to ecological receptors. The estimated EPC will be compared to Region 4 ecological screening values, or other appropriate generic risk-based concentrations to compute a Hazard Quotient (HQ)(or Hazard Index (HI) if appropriate). If the HQ (or HI) is below unity (1), the exposure pathway poses negligible risk and no further evaluation is required. If a pathway, or pathways, exceeds unity, further investigation will be required and Defendants shall proceed to subsequent steps of the Ecological Risk Assessment process.

## 3. Problem Formulation

The further refinement of the conceptual model and problem formulation will be necessary if EPA determines that additional information is required to reach a decision on the level of risk to ecological receptors associated with PCBs. Specific topics to be addressed include further characterizing ecological effects of PCBs, reviewing and refining PCB fate or transport, complete exposure pathways, and ecosystems potentially at risk, selecting assessment endpoints (including the logic behind their selection), and developing a conceptual model with working hypotheses or questions that the site investigation will address.

## 4. Study Design And Data Quality Objectives

The measurement endpoints will be determined and the site investigation shall be designed to provide the "missing" data elements required to reach a decision concerning the need for remedial action, and if required, to determine protective PCB levels. The problem formulation stage identifies the critical or necessary data required to reach this decision. The BRA Work Plan and SAP (including data analysis methods and data quality objectives) shall be submitted as part of the RI/FS Work Plan (Section 2.3.1). Field activities will commence within sixty (60) days after the approval of the RI/FS Work Plan.

## 5. Site Investigation and Analysis Phase

Information collected during site investigations is used to characterize exposure pathways for ecosystems potentially at risk. Exposure characterization will rely primarily on data previously collected under the Site Removal Order and as part of the RCRA Facility Investigation conducted pursuant to Defendants RCRA Post Closure Permit.

## 6. Risk Characterization

Potential exposure pathway and effects data will be integrated into a statement concerning risk to ecological receptors as reflected in the assessment endpoints. During the risk characterization phase, toxicity threshold values (TRVs) or ecological protection values (EPVs) determined to be protective of selected assessment endpoints will be developed. These values will rely on a weight-of-evidence approach to interpret the implications of different studies or tests for the assessment endpoints. The risk characterization section of the Ecological Risk Assessment will compare exposures (media concentrations or doses) based on exposure pathways established during the site investigation and analysis phase to the assessment endpoint-specific TRV. This quantitative comparison will be used to compute a Hazard Quotient (HQ) (or Hazard Index (HI) if appropriate).

A qualitative and quantitative analysis of the associated uncertainties with the risk characterization process will also be performed. C. Remedial Goal Options

The BRA shall include a section that outlines the Remedial Goal Options (RGOs) that are protective of human health and the ecology. This section should include both ARARs and health-based cleanup goals. Since the baseline human health and ecological risk assessments establish risk-based concentrations specific to the various environmental media, those values will be adopted as site-specific preliminary remedial goal options (PRGOs). This section should contain a table with media-specific cleanup levels developed for each chemical and for each pathway based on a cancer risk of  $1 \times 10^{-4}$ ,  $1 \times 10^{-5}$ , and  $1 \times 10^{-6}$  or a HI of 1 for human receptors, and a HI of 1 for relevant ecological measurement endpoints. The resulting table should present one set of PRGOs for each medium and each land use (e.g., residential (child and adult) and industrial). These values will be compared to relevant exposure point concentrations (EPCs) at the site. No further evaluation is required if the EPC for the various exposure pathways are below the

appropriate site-specific PRGO.

The purpose of developing RGOs is to provide the RPM with the maximum risk-related media level options on which to develop remediation aspects of the Feasibility Study and Proposed Plan. RAGS Part B is not appropriate for the development of RGOs since site specific exposure information is available at this stage in the risk assessment process. These site-specific PRGOs replace the generic PRGs in providing the final risk-based guidance for remedial action. The results of the ecological risk assessment should be the identification of remediation goals for the ecological COCs that would be protective for the receptors. These remediation goal options should be presented for the relevant environmental media.

#### D. Report Preparation

The BRA report shall be submitted in accordance with the schedule in Attachment C.

The BRA Report shall include a comprehensive description of the four components of the Human Health Risk Assessment, and shall follow the principles established in the risk-assessment guidance documents. A discussion of sources of uncertainty, data gaps, incomplete toxicity information, and modeling characteristics must be included. Defendants shall refer to page 9-4 of the Human Health Evaluation manual for an outline of the report format. The Baseline Risk Assessment Report shall include an environmental assessment that evaluates the EPCs in reference to the PRGOs as an indication of the environmental risk posed by PCBs. The report shall be revised, as necessary, based on EPA's comments and shall be submitted to EPA for approval.

### **TASK 5 - DEVELOPMENT AND SCREENING OF REMEDIAL ALTERNATIVES (RI/FS Guidance, Chapter 4)**

The development and screening of remedial alternatives shall be performed in order to develop an appropriate range of waste management options that will be evaluated. This range of alternatives should include as appropriate, options involving containment; options involving both removal and containment; and a no-action alternative. The following activities will be performed as a function of the development and screening of remedial alternatives.

#### A. Development and Screening of Remedial Alternatives (4.2)

Defendants will begin to develop and evaluate a range of appropriate waste management options that, at a minimum, ensure protection of human health and the environment, concurrent with the RI site characterization task.

1. Refine and document remedial action objectives (4.2.1)

Based on the Baseline Risk Assessment, Defendants will review and, if necessary, modify the site-specific remedial action objectives, especially the PRGs that were approved by EPA during negotiations between EPA and Defendants. The revised PRGs will be documented in a technical memorandum that will be approved by EPA. These modified PRGs will specify the media of interest, exposure pathways and receptors, and an acceptable PCB level or range of levels (at particular locations for each exposure route).

2. Develop general response action (4.2.2)

Defendants will develop general actions for each medium of interest defining containment, excavation, or other actions, singly or in combination, to satisfy the remedial action objectives.

3. Identify areas or volumes of media (4.2.3)

Defendants will identify areas or volumes of media to which general response actions may apply, taking into account requirements for protectiveness as identified in the remedial action objectives. The physical characterization of the site will also be taken into account.

4. Assemble and document alternatives (4.2.6)

Defendants will assemble selected representative technologies into alternatives for each affected medium or operable unit. Together, all of the alternatives will address either the site or the operable unit as a whole.

5. Conduct and document screening evaluation of each alternative (4.3)

Defendants may perform a final screening process based on short and long term aspects of effectiveness, implementability, and relative cost. Generally, this screening process is only necessary when there are many feasible alternatives available for detailed analysis. If necessary, the screening of alternatives will be conducted to assure that only the



alternatives with the most favorable composite evaluation of all factors are retained for further analysis. As appropriate, the screening will preserve the range of containment alternatives that was initially developed. The range of remaining alternatives will include options that use permanent solutions to the maximum extent practicable.

#### B. Alternatives Development and Screening Deliverables (4.5)

Defendants will prepare a technical memorandum summarizing the work performed in and the results of each task above, including an alternatives array summary. These will be modified by Defendants if required by EPA's comments to assure identification of a complete and appropriate range of viable alternatives to be considered in the detailed analysis. This deliverable will document the methods, rationale, and results of the alternatives screening process.

### **TASK 6 - DETAILED ANALYSIS OF REMEDIAL ALTERNATIVES (RI/FS Guidance, Chapter 6)**

Defendants will conduct a detailed analysis of remedial alternatives to provide EPA with the information needed to allow for the selection of a site remedy. This analysis is the final task to be performed by Defendants during the FS.

#### A. Detailed Analysis of Alternatives (6.2)

Defendants will conduct a detailed analysis of alternatives that will consist of an analysis of each option against a set of nine evaluation criteria and a comparative analysis of all options using the same evaluation criteria as a basis for comparison.

##### 1. Apply nine criteria and document analysis (6.2.1 - 6.2.4)

Defendants will apply nine evaluation criteria to the assembled remedial alternatives to ensure that the selected remedial alternative will be protective of human health and the environment; will be in compliance with, or include a waiver of, ARARS; will be cost-effective; and will utilize permanent solutions to the maximum extent practicable. The evaluation criteria include: 1) overall protection of human health and the environment; 2) compliance with ARARS; 3) long-term effectiveness and permanence; 4) reduction of toxicity, mobility, or volume; 5) short-term effectiveness; 6) implementability; 7) cost; 8) state (or support agency) acceptance; and 9) community acceptance. (Note: criteria 8 and 9 are considered after the RI/FS report has been released to the general

public.) For each alternative Defendants should provide: 1) a description of the alternative that outlines the waste management strategy involved and identifies the key ARARs associated with each alternative, and 2) a discussion of the individual criterion assessment. If Defendants do not have direct input on criteria 8 (state (or support agency) acceptance) and 9 (community acceptance), these will be addressed by EPA.

2. Compare alternatives against each other and document the comparison of alternatives (6.2.5; 6.2.6)

Defendants will perform a comparative analysis between the remedial alternatives. That is, each alternative will be compared against the others using the evaluation criteria as a basis of comparison. EPA will select the preferred alternative.

#### B. Feasibility Study Report (6.5)

Defendants will prepare a draft FS report for EPA review and comment. This report, as ultimately adopted or amended by EPA, will provide a basis for EPA's remedy selection and will document the development and analysis of remedial alternatives. Defendants will refer to the RI/FS Guidance for an outline of the report format and the required report content. Defendants will prepare a final FS report that satisfactorily addresses EPA's comments concerning the draft FS report.

### SUMMARY OF MAJOR DELIVERABLES<sup>1</sup>

#### TASK/DELIVERABLE

#### MANAGEMENT CATEGORY

#### TASK 1 SCOPING

- |   |                    |
|---|--------------------|
| - Technical Memorandum on Preliminary Remedial Action Objectives and Alternatives | Review and Approve |
| - Phase I Conceptual Site Model Report  | Review and Approve |
| - RI/FS Work Plan   | Review and Approve |
| - Sampling and Analysis Plan (SAP)  | Review and Approve |

<sup>1</sup> See Consent Decree for additional reporting requirements and further instructions on submittal of deliverables.

- Site Health and Safety Plan                      Review and Comment

## **TASK 2 - COMMUNITY RELATIONS**

- Technical Assistance Plan                      Review and Approve
- Community Advisory Group Plan              Review and Approve

## **TASK 3 SITE CHARACTERIZATION**

- Technical Memorandum on Modeling      Review and Approve  
of Site Characteristics (where  
appropriate)
- Preliminary Site                              Review and Comment  
Characterization Summary
- Draft Remedial                              Review and Approve  
Investigation (RI) Report

## **TASK 4 BASELINE RISK ASSESSMENT**

- Preliminary Problem Formulation and      Review and Approve  
Ecological Effects Evaluation
- Preliminary Ecological Exposure              Review and Approve  
Estimate and Risk Calculation
- Baseline Ecological Risk Assessment      Review and Approve  
Problem Formulation
- Ecological Study Design and Data              Review and Approve  
Quality Objectives
- Draft Baseline Risk Assessment Report      Review and Approve
- Final Baseline Risk Assessment Report      Review and Approve

## **TASK 5 DEVELOPMENT AND SCREENING OF REMEDIAL ALTERNATIVES**

- Technical Memorandum                      Review and Approve  
Documenting Revised Remedial  
Action Objectives
- Technical Memorandum                      Review and Approve

on Remedial Technologies,  
Alternatives and Screening

## **TASK 6      DETAILED ANALYSIS OF REMEDIAL ALTERNATIVES**

- Draft Feasibility Study (FS) Report      Review and Approve

### **REFERENCES FOR CITATION**

The following list, although not comprehensive, comprises many of the regulations and guidance documents that apply to the RI/FS process:

1. The ( revised) National Contingency Plan
2. "Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA, " U.S. EPA, Office of Emergency and Remedial Response, October 1988, OSWER Directive No. 9355.3-01
3. "Interim Guidance on Potentially Responsible Party Participation in Remedial Investigation and Feasibility Studies," U.S. EPA, Office of Waste Programs Enforcement, Appendix A to OSWER Directive No. 9355.3-01.
4. "Guidance on Oversight of Potentially Responsible Party Remedial Investigations and Feasibility Studies," U.S. EPA, Office of Waste Programs Enforcement, OSWER Directive No. 9835.3

5. "A Compendium of Superfund Field Operations Methods," Two Volumes, U.S. EPA, Office of Emergency and Remedial Response, EPA/540/P-87/001a, August 1987, OSWER Directive No. 9355.0-14.
6. "EPA NEIC Policies and Procedures Manual," May 1978, revised November 1984, EPA-330/9-78-001-R.
7. "Data Quality Objectives for Remedial Response Activities," U.S. EPA, Office of Emergency and Remedial Response and Office of Waste Programs Enforcement, EPA/540/G-87/003, March 1987, OSWER Directive No. 9335.0-7B.
8. "Guidelines and Specifications for Preparing Quality Assurance Project Plans," U.S. EPA, Office of Research and Development, Cincinnati, OH, QAMS-004/80, December 29, 1980.
9. "Interim Guidelines and Specifications for Quality Assurance Project Plans," U.S. EPA, Office of Emergency and Remedial Response, QAMS-005/80, December 1980.
10. "Users Guide to the EPA Contract Laboratory," U.S. EPA, Sample Management Office, August 1982.
11. "Interim Guidance with Applicable or Relevant and Appropriate Requirements," U.S. EPA, OFFICE of Emergency and Remedial Response, July 9, 1987, OSWER Directive No. 9234.0-05.
12. "CERCLA Compliance with Other Laws Manual," Two Volumes, U.S. EPA, Office of Emergency and Remedial Response, August 1988 (draft), OSWER Directive No. 9234.1-01 and -02.
13. "Guidance on Remedial Actions for Contaminated Ground Water at Superfund Sites," U.S. EPA, Office of Emergency and Remedial Response, (draft), OSWER Directive No. 9283.1-2.
14. "Draft Guidance on Superfund Decision Documents," U.S. EPA, Office of Emergency and Remedial Response, March 1988, OSWER Directive No. 9355.- 02
15. "Risk Assessment Guidance for Superfund - Volume I Human Health Evaluation Manual (Part A), EPA/540/1-89/002
16. "Risk Assessment Guidance for Superfund - Volume II Environmental Evaluation Manual," March 1989, EPA/540/1-89/ 001
17. "Guidance for Data Usability in Risk Assessment," October, 1990, EPA/540/G-90/008
18. "Performance of Risk Assessments in Remedial Investigation/Feasibility Studies (RI/FSS) Conducted by Potentially Responsible Parties (PRPs)," August 28, 1990, OSWER Directive No.9835.15.
19. "Role of the Baseline Risk Assessment in Superfund Remedy Selection Decisions," April 22, 1991, OSWER Directive No. 9355.0-30.
20. "Health and Safety Requirements of Employed in Field Activities," U.S. EPA, Office of Emergency and Remedial Response, July 12, 1981, EPA Order No. 1440.2.

21. OSHA Regulations in 29 CFR 1910.120 (Federal Register 45654, December 19, 1986).
22. "Interim Guidance on Administrative Records for Selection of CERCLA Response Actions," U.S. EPA, Office of Waste Programs Enforcement, March 1, 1989, OSWER Directive No. 9833.3A.
23. "Community Relations in Superfund: A Handbook," U.S. EPA, Office of Emergency and Remedial Response, June 1988, OSWER Directive No. 9230.0#3B.
24. "Community Relations During Enforcement Activities And Development of the Administrative Record," U.S. EPA, Office of Programs Enforcement, November 1988, OSWER Directive No. 9836.0-1a.
25. Coordination Between RCRA Corrective Action and Closure and CERCLA Site Activities (EPA, September, 1996)
26. Exposure Factors Handbook (EPA/600/P-95/002Fa, August 1997)
27. Land Use in the CERCLA Remedy Selection Process, OSWER Directive NO. 9355.7-04, May 25, 1995
28. Soil Screening Guidance; Technical Background Document, 9355.4-17A, EPA/1501 R-95/128, May 1996
29. Soil Screening Guidance; User's Guide, 9355.4-3, April 1996
30. Supplemental Guidance to RAGS Region 4 Bulletins-Human Risk Assessment (November 1995)
31. RCRA Cleanup Reforms of 1999 (EPA/530/F-99-018, July 1999)