

DRAFT

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

UNITED STATES OF AMERICA

Plaintiff,

v.

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

Defendants.

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

Send  
to Solutia  
IN 3-13-2002  
THE MORNING

TABLE OF CONTENTS

I. BACKGROUND ..... 3  
II. JURISDICTION AND VENUE ..... 4  
III. PARTIES BOUND ..... 4  
IV. DEFINITIONS ..... 5  
V. GENERAL PROVISIONS ..... 8  
VI. CREATION OF A FOUNDATION FOR THE CITIZENS OF WEST ANNISTON ..... 9  
VII. STIPULATED PENALTIES ..... 10  
VIII. DISPUTE RESOLUTION ..... 11  
IX. REIMBURSEMENT OF RESPONSE COSTS ..... 14  
X. COVENANTS NOT TO SUE BY PLAINTIFF ..... 14  
XI. COVENANTS NOT TO SUE BY DEFENDANTS ..... 15  
XII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION ..... 17  
XIII. DISCLAIMER ..... 17  
XIV. OTHER CLAIMS ..... 17  
XV. EFFECTIVE DATE, SUBSEQUENT MODIFICATION, AND RETENTION OF  
JURISDICTION ..... 18  
XVI. APPENDICES ..... 19  
XVII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT ..... 19  
XVIII. SIGNATORIES/SERVICE ..... 19  
XIX. FINAL JUDGMENT ..... 20

## PARTIAL CONSENT DECREE

### I. BACKGROUND

1. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), 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).

2. The United States in its complaint seeks, inter alia: (1) reimbursement of costs to be incurred by EPA and the Department of Justice for response actions at the Anniston PCB Superfund Site in Anniston, Calhoun County, Alabama, ("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).

3. This Partial Consent Decree ("Consent Decree"), which was filed along with the United States complaint, seeks to partially resolve the claims of the Plaintiff against the Defendants by, inter alia, the payment of Future Response Costs and Administrative Order on Consent (AOC) Oversight Costs, the performance of a Remedial Investigation/Feasibility Study (RI/FS) pursuant to the attached RI/FS Agreement, 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 the remedy selected in the ROD and to address all costs associated with the Site incurred by EPA after the public participation period for the ROD. Nothing in this Consent Decree, the RI/FS Agreement, the Removal Order, or the complaint filed with this Consent Decree shall be construed to grant the Defendants or any other party the right to seek judicial review of the ROD, or any other response actions taken by EPA at the Site. As provided in Paragraph 46, 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.

4. 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.

5. EPA notified the Alabama Department of Environmental Management 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 State trusteeship and encouraged the trustee to participate in the negotiation of this Consent Decree.

6. The Site is not currently listed on the National Priorities List (NPL).

7. 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.

8. 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.

9. 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 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):

“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.

“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).

“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 (Figure 1.)

“Effective Date” shall be the date of entry by the Court of this Consent Decree as provided in Paragraph 48.

“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, that the United States incurs through the public participation period for the ROD with respect to the RI/FS Agreement and/or the Consent Decree. Future Response Costs may include, but are not limited to, costs incurred by the U.S. Government in overseeing Respondents' implementation of the requirements of the RI/FS Agreement, verifying the RI/FS Work, or otherwise implementing, overseeing, or enforcing the RI/FS Agreement and/or this Consent Decree and any activities performed by the government as part of the RI/FS, including community relations and any costs incurred while obtaining access. Costs shall include all direct and indirect costs, including, but not limited to, time and travel costs of EPA personnel and associated indirect costs, contractor costs, cooperative agreement costs, compliance monitoring, including the collection and analysis of split samples, inspection of RI/FS activities, site visits, discussions regarding disputes that may arise as a result of the RI/FS Agreement or Consent Decree, review and approval or disapproval of reports, and costs of redoing any of Respondents' tasks. Future Response Costs shall also include all Interim Response Costs. Provided, however, removal AOC Oversight Costs are not Future Response Costs pursuant to this Consent Decree. 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.

“Interim Response Costs” shall mean all costs, except ATSDR costs, including direct and indirect costs, (a) paid by the United States in connection with the Site between January 4, 2001 and the Effective Date, or (b) incurred prior to the Effective Date but paid after that date. Provided, however, removal AOC Oversight Costs are not Interim Response Costs pursuant to this Consent Decree. Defendants shall reimburse EPA for removal AOC Oversight Costs as provided in the Removal Order. Interim Response Costs do not include costs paid by the United States in connection with the Anniston Lead Site.

“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 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).

“RCRA Permit” shall mean the RCRA Post Closure Permit, ALD 004019048, issued by ADEM on January 7, 1997 as modified on May 21, 2001, and any subsequent modifications thereto.

“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 contamination at the Anniston PCB 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.

“RFI” shall mean the work being conducted pursuant to Defendants’ RCRA Permit.

“RI/FS Agreement” shall mean the Agreement for the RI/FS at 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 88** 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 Anniston PCB Site, which consists of the area where hazardous substances, including PCBs (associated with the historical and ongoing operations of the Anniston plant by Solutia Inc., Monsanto Company, and their predecessors) have come to be located. The Site includes, but is not limited to, the area covered by the RCRA Permit.

“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 contamination and any threat to the public health, welfare, or the environment caused by the release or threatened release of hazardous substances, pollutants or contaminants at or from the Site, by conducting a Remedial Investigation; (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 hazardous substances, pollutants, or contaminants at or from the Site, by conducting a Feasibility Study; (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 Plaintiff against the Defendants.

### 6. Commitments by Defendants.

a. Defendants shall finance and perform the RI/FS Work and Removal Order Work in accordance with this Consent Decree, the RI/FS Agreement, the SOW, and the Removal Order and all work plans and other plans, standards, specifications, and schedules set forth herein or developed by Defendants and approved by EPA pursuant to this Consent Decree. Defendants shall also reimburse the United States for Future Response Costs as provided in this Consent Decree and the RI/FS Agreement, and AOC Oversight Costs as provided in the Removal Order. Defendants shall also provide funding for a trust to benefit the citizens of west Anniston, a Technical Assistance Plan (TAP), and a Community Advisory Group (CAG).

b. The obligations of Defendants to finance and perform the RI/FS Work and Removal Order Work and to pay amounts under this Consent Decree are joint and several. In the event of the 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.

7. 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.

8. 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.

9. EPA and Defendants executed an RI/FS Agreement which is attached hereto. 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**

10. 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. 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 purpose: to provide supplemental educational services to the residents of west Anniston.

11. Defendants shall wire transfer to the foundation or to an existing entity or entities selected by the foundation, or to an escrow account (designated 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 Effective Date of this Consent Decree. Defendants shall make the 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 existing entity or entities selected for the foundation or to an escrow account (designated for the foundation). Defendants shall provide EPA with documentation indicating that the payments have been made within thirty (30) days from the date of payment.

12. The foundation shall seek input from the CAG created pursuant to this Consent Decree, 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 new entity or entities should be structured if the funds do not go to an existing entity or entities; and
- d) what limitations shall be placed on the recipient regarding the use of the funds.

After receiving such input, the foundation shall make written determinations regarding a-d above.

13. All proceeds shall be spent in accordance with the requirements of this Consent Decree. Defendants shall provide EPA with an annual accounting every January for at least twelve years after the Effective Date of this Consent Decree documenting all expenditures pursuant to this Section. If all funds are not expended within twelve years from the Effective Date, Defendants shall continue to provide the annual accounting until all funds are expended. The accounting shall certify whether all expenditures were made in accordance with this Consent Decree. Defendants will purchase insurance or a bond to assure that the foundation and entity or entities selected by the foundation perform in accordance with this Consent Decree.

**VII. STIPULATED PENALTIES**

14. 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).

Penalty Per Violation Per Day	Period of Noncompliance
\$750	1st through 14th day
\$2,000	15th through 30th day
\$5,000	31st day and beyond

15. 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.

16. 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 1) certified or cashier's check made payable to the "EPA Hazardous Substance 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, or 2) if the amount is greater than \$10,000 payment may be made by FedWire Electronic Funds Transfer ("EFT")<sup>1</sup>. 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.

17. 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.

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

19. 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

---

<sup>1</sup> If EFT is used payment shall be made to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number \_\_\_\_\_, EPA Site/Spill ID Number 04S9, and DOJ Case Number 90-11-2-07135/1. Payment shall be made in accordance with instructions provided to the Settling Defendants by the Financial Litigation Unit of the United States Attorney's Office for the Northern District of Alabama. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day.

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).

20. 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**

21. The Dispute Resolution provisions of the RI/FS Agreement shall be the exclusive mechanism to resolve disputes arising under or with respect to the RI/FS Agreement. The Dispute Resolution provisions of the Removal Order shall be the exclusive mechanism to resolve disputes arising under or with respect to the Removal Order. This Dispute Resolution Section is only applicable to requirements that are contained in the Consent Decree itself, and is not applicable to disputes regarding the RI/FS Agreement or the Removal Order.

22. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. 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. As provided in Paragraph 21, this Dispute Resolution Section does not apply to any disputes regarding the RI/FS Agreement or the Removal Order.

23. Any dispute which arises under or with respect to this Consent Decree 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.

#### **24. 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 twenty-eight (28) 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 25 or Paragraph 26.

b. Within twenty-eight (28) days after receipt of Defendants' Statement of Position, EPA will serve on Defendants its Statement of Position, including, but not limited to,

b7c

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 25 or 26. 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 25 or 26, 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 25 and 26.

25. 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 25.a. This decision shall be binding upon the Defendants, subject only to the right to seek judicial review pursuant to Paragraph 25.c. and d.

c. Any administrative decision made by EPA pursuant to Paragraph 25.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 25.a.

26. 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 24, 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 H 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.

27. 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**

28. Payments for Future Response Costs. Defendants shall pay to EPA all Future Response Costs as provided in the RI/FS Agreement.

29. 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**

30. 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 31 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 as defined herein. These covenants not to sue shall take effect

upon EPA approval of the certification of completion submitted pursuant to **Paragraph 88** 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.

31. 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 Plaintiff'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.

32. 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.

33. 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.

34. 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**

35. Covenant Not to Sue. Subject to the reservations in Paragraph 36, 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.

36. 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.

37. 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**

38. 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.

39. 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.

40. 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.

41. 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**

42. 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**

43. 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).

44. 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.

45. 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.

46. 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.

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

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

48. 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.

49. Schedules specified in the attached RI/FS Agreement 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.

50. 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.

51. 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 the attached RI/FS Agreement. Any deliverables, plans, technical memoranda, reports (other than progress reports), specifications, schedules and attachments required by this the attached RI/FS Agreement are, upon approval by EPA, incorporated into the RI/FS Agreement.

52. 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**

53. 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.

“Appendix D” is Figure 1.

“Appendix E” is the CAG Information.

“Appendix F” is Table 1 of the RI/FS Agreement.

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

54. 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.

55. 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**

56. 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.

57. 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.

58. 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**

59. 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.

60. 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

\_\_\_\_\_  
(Print:)  
Assistant United States Attorney  
Northern District of Alabama  
U.S. Department of Justice  
200 Fed. Bldg., 1800 Fifth Avenue North  
RM. 200  
Birmingham, AL 35203

D:\m...

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

Forsyth Street, S.W.

\_\_\_\_\_  
Richard D. Green, Director  
Waste Management Division  
U.S. Environmental Protection Agency 61

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

10/20/01

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

to be resolved

access

cost documentation per Anodyne

paragraph and section numbers

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

ANNISTON PCB SITE

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

DRAFT

DRAFT

**DRAFT**

I. INTRODUCTION..... 3

II. JURISDICTION..... 3

III. PARTIES BOUND ..... 3

IV. DEFINITIONS..... 4

V. STATEMENT OF PURPOSE ..... 6

VI. FINDINGS OF FACT ..... 7

VII. CONCLUSIONS OF LAW AND DETERMINATIONS ..... 9

VIII. NOTICE..... 10

IX. RI/FS WORK TO BE PERFORMED ..... 10

X. MODIFICATION OF THE WORK PLAN..... 18

XI. QUALITY ASSURANCE..... 19

XII. FINAL RI/FS, PROPOSED PLAN, PUBLIC COMMENT, RECORD OF DECISION,  
ADMINISTRATIVE RECORD ..... 19

XIII. PROGRESS REPORTS AND MEETINGS..... 19

XIV. SAMPLING, ACCESS, AND DATA..... 20

XV. DESIGNATED PROJECT COORDINATORS ..... 21

XVI. OTHER APPLICABLE LAWS ..... 22

XVII. RECORD PRESERVATION ..... 23

XVIII. DISPUTE RESOLUTION..... 23

XIX. DELAY IN PERFORMANCE/STIPULATED PENALTIES..... 24

XX. FORCE MAJEURE..... 26

XXI. REIMBURSEMENT OF FUTURE RESPONSE COSTS..... 27

XXII. FINANCIAL ASSURANCE, INSURANCE, AND INDEMNIFICATION..... 28

XXIII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION..... 30

XXIV. TERMINATION AND SATISFACTION..... 30

## **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) for the Anniston PCB Site located in Anniston, Calhoun County, Alabama ("Site").

## **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

“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.

“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).

“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 (Figure 1.)

“Effective Date” shall be the date of entry by the Court of this Consent Decree as provided in Paragraph 48.

“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, that the United States incurs through the public participation period for the ROD with respect to the RI/FS Agreement and/or the Consent Decree. Future Response Costs may include, but are not limited to, costs incurred by the U.S. Government in overseeing Respondents’ implementation of the requirements of the RI/FS Agreement, verifying the RI/FS Work, or otherwise implementing, overseeing, or enforcing the RI/FS Agreement and/or this Consent Decree and any activities performed by the government as part of the RI/FS, including community relations and any costs incurred while

obtaining access. Costs shall include all direct and indirect costs, including, but not limited to, time and travel costs of EPA personnel and associated indirect costs, contractor costs, cooperative agreement costs, compliance monitoring, including the collection and analysis of split samples, inspection of RI/FS activities, site visits, discussions regarding disputes that may arise as a result of the RI/FS Agreement or Consent Decree, review and approval or disapproval of reports, and costs of redoing any of Respondents' tasks. Future Response Costs shall also include all Interim Response Costs. Provided, however, removal AOC Oversight Costs are not Future Response Costs pursuant to this Consent Decree. 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.

"Interim Response Costs" shall mean all costs, except ATSDR costs, including direct and indirect costs, (a) paid by the United States in connection with the Site between January 4, 2001 and the Effective Date, or (b) incurred prior to the Effective Date but paid after that date. Provided, however, removal AOC Oversight Costs are not Interim Response Costs pursuant to this Consent Decree. Defendants shall reimburse EPA for removal AOC Oversight Costs as provided in the Removal Order. Interim Response Costs do not include costs paid by the United States in connection with the Anniston Lead Site.

"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 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).

"RCRA Permit" shall mean the RCRA Post Closure Permit, ALD 004019048, issued by ADEM on January 7, 1997 as modified on May 21, 2001, and any subsequent modifications thereto.

"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 contamination at the Anniston PCB 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.

"RFI" shall mean the work being conducted pursuant to Defendants' RCRA Permit.

"RI/FS Agreement" shall mean the Agreement for the RI/FS at 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 88** 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 Anniston PCB Site, which consists of the area where hazardous substances, including PCBs (associated with the historical and ongoing operations of the Anniston plant by Solutia Inc., Monsanto Company, and their predecessors) have come to be located. The Site includes, but is not limited to, the area covered by the RCRA Permit.

"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. STATEMENT OF PURPOSE

6. In entering into this Agreement, the objectives of EPA and the Defendants are: (a) to determine the nature and extent of contamination and any threat to the public health, welfare, or the environment caused by the release or threatened release of hazardous substances, pollutants or contaminants at or from the Site, by conducting a Remedial Investigation; (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 hazardous substances, pollutants, or contaminants at or from the Site, by conducting a Feasibility Study; and (c) to provide funding for a Technical Assistance Plan (TAP) and a Community Advisory Group (CAG) for the affected community.

7. Defendants and EPA agree that for purposes of this RI/FS Agreement, potential constituents of concern (COCs) initially include those constituents listed in Table 1 (Appendix F) potentially associated with Defendants current or prior manufacturing operations. EPA reserves the right to require that a subset of samples collected by Defendants be analyzed for constituents not identified in Table 1. EPA may add additional constituents to Table 1 based on results of future sampling and association with past or current operations of the Site by Defendants or their predecessors. Additionally, should EPA determine that constituents listed in Table 1 found in a subsection of the Site are not associated with Defendants current or prior manufacturing operations, Defendants shall not be required to conduct further sampling for such COCs to the extent they are not associated with Defendants current or prior manufacturing operations.

8. 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

9. 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.

10. During its operational history, the plant disposed of hazardous and nonhazardous waste at various areas, including 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 and other contaminants.

11. 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 attempt 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. EPA has provided oversight of the RCRA permit.

12. 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).

13. The Agency for Toxic Substances and Disease Registry (ATSDR) Health Consultation related to PCBs in Anniston was released for public comment on February 14, 2000. The ATSDR Health Consultation addresses, among other things, whether PCBs in soil are a threat to the public health in Anniston. The ATSDR Health Consultation was careful to note that the exposure estimates may overestimate or underestimate health risks in Anniston because there is an inadequate description of sampling and analytical methods for some of the data. Subject to the reservations noted above, the ATSDR Health Consultation concluded that PCBs in soil in parts of Anniston present a public health hazard of cancerous and non-cancerous health effects for persons with prolonged exposure, and PCBs in residential soil may present a public health hazard

for thyroid and neurodevelopmental effects. The ATSDR Health Consultation also concluded that further sampling and evaluation are needed to fully assess the scope of contamination and exposure and that further investigation should be done to allow ATSDR to make more specific recommendations for protecting public health. Solutia Inc. commented extensively on the Health Consultation. To date, ATSDR has not responded to public comment and has not issued a final version of the document. EPA has (and will continue) to share its sampling results with ATSDR to assist ATSDR with any future health studies which ATSDR may conduct in Anniston. On October 22, 2001, ATSDR issued an Exposure Investigation that concluded that, in the 18 families studied, PCB blood levels in children were not elevated and 5 of 43 adults had elevated (>20 ppb) blood levels. ATSDR also concluded that blood PCB levels were not correlated with soil or house dust PCB levels. Finally, in the Responses to Comments, ATSDR acknowledged that some of the information on which the draft conclusions in the February 14, 2000, draft Health Consultation were based was incorrect and that the final health consultation will be revised in accordance with the new information.

14. 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 in Anniston. EPA has sampled the soil at hundreds of properties through multiple sampling phases in Anniston for PCBs since June of 1999. Many of the properties tested contain PCBs. For example, EPA sampled residents 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.

15. In June of 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.

16. 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.

17. In May of 2001, EPA's Environmental Response Team (ERT) released its "Final Summary Report of Technical Review and Evaluation of Potential PCB Releases" (ERT Report) for the Anniston PCB Site in Anniston, Alabama. The ERT Report was conducted to evaluate the potential for on-going releases of PCBs from Defendants' Property property through the following environmental pathways: 1) soil, 2) groundwater, 3) surface water, 4) sediment, and 5) air. The ERT Report states that additional information is necessary to determine if there are ongoing PCB releases from these environmental pathways. Defendants and ADEM have

submitted comments in response to the ERT Report and EPA is currently reviewing those comments.

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

19. 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).

20. 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).

21. 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

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

23. 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.

24. The presence of hazardous substances at the Site or the past, present or potential migration of hazardous substances 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).

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

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

27. 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**

28. 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**

29. 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. With respect to any proposed contractor, the Defendants shall demonstrate that the proposed contractor has a quality system which 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), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA.

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 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.

30. 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" (EPA/540/G-90/008) 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 fifteen (15) 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. If EPA disapproves or requires revisions to the Technical Memorandum, in whole or in part, Defendants shall amend and submit to EPA a revised Technical Memorandum which is responsive to all EPA comments, within fifteen (15) days of receiving EPA's comments. Defendants shall conduct the scoping activities as described in the attached Statement of Work and referenced guidances. Defendants shall provide EPA with the following deliverables:

1. Technical Memorandum on Preliminary Remedial Action Objectives and Alternatives. Within fifteen (15) days of the Effective Date of this Agreement, Defendants shall submit to EPA a complete Technical Memorandum on Preliminary Remedial Action Objectives and Alternatives. If EPA disapproves 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 fifteen (15) days of receiving EPA's comments.

2. Phase I Conceptual Site Model Report. Within thirty (30) days of EPA's

11/1/97

approval of the Technical Memorandum on Site-Specific Objectives and the General Management Approach 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 thirty (30) 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 twenty (20) days of receiving EPA's comments.

4. Sampling and Analysis Plan. Within thirty (30) 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 twenty (20) days of receiving EPA's comments.

5. Site Health and Safety Plan. Within thirty (30) 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 thirty (30) 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 EPA approved Work Plan. Defendants shall provide EPA with analytical data in an electronic format (i.e., computer disk) showing the location, medium and results within thirty (30) days of receipt of validated laboratory 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, in accordance with the schedule submitted by Defendants as part of the EPA approved Work Plan. 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. In accordance with the schedule submitted by Defendants as part of the EPA approved 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 the directions in all EPA comments, within thirty (30) days of receiving EPA's comments.

D. Task IV: Treatability Studies. Defendants shall conduct treatability studies, except where Defendants can demonstrate to EPA's satisfaction that they are not needed. Major components of the treatability studies include determination of the need for and scope of studies, the design of the studies, and the completion of the studies, as described in the Statement of Work. During treatability studies, Defendants shall provide EPA with the following deliverables:

1. Identification of Candidate Technologies Memorandum. This memorandum shall be submitted in accordance with the schedule submitted by Defendants as part

of the EPA approved Work Plan. If EPA disapproves of or requires revisions to the technical memorandum identifying candidate technologies, in whole or in part, Defendants shall amend and submit to EPA a revised technical memorandum identifying candidate technologies which is responsive to the directions in all EPA comments, within thirty (30) days of receiving EPA's comments.

2. Technical Memorandum on Steps and Data. If EPA determines that treatability testing is required, Defendants shall submit a Technical Memorandum on Steps and Data in accordance with the schedule submitted by Defendants as part of the EPA approved Work Plan. If EPA disapproves of or requires revisions to the Technical Memorandum on Steps and Data, in whole or in part, Defendants shall amend and submit to EPA a revised Technical Memorandum on Steps and Data which is responsive to the directions in all EPA comments, within thirty (30) days of receiving EPA's comments.

3. Treatability Testing Work Plan. In accordance with the schedule submitted by Defendants as part of the EPA approved Work Plan, Defendants shall submit a Treatability Testing Work Plan. If EPA disapproves of or requires revisions to the Treatability Testing Work Plan, in whole or in part, Defendants shall amend and submit to EPA a revised Treatability Testing Work Plan which is responsive to the directions in all EPA comments, within thirty (30) days of receiving EPA's comments.

4. Treatability Study Sampling and Analysis Plan. Within thirty (30) days of identification of the need for a separate or revised QAPP or FSP, Defendants shall submit a Treatability Study Sampling and Analysis Plan. If EPA disapproves of or requires revisions to the Treatability Study Sampling and Analysis Plan, in whole or in part, Defendants shall amend and submit to EPA a revised Treatability Study Sampling and Analysis Plan which is responsive to the directions in all EPA comments, within thirty (30) days of receiving EPA's comments.

5. Treatability Study Site Health and Safety Plan. Within thirty (30) days of the identification of the need for a revised Health and Safety Plan, Defendants shall submit a Treatability Study Site Health and Safety Plan. If EPA requires revisions to the Treatability Study Site Health and Safety Plan, in whole or in part, Defendants shall amend and submit to EPA a revised Treatability Study Site Health and Safety Plan which is responsive to the directions in all EPA comments, within thirty (30) days of receiving EPA's comments.

6. Treatability Study Evaluation Report. In accordance with the schedule submitted by Defendants as part of the EPA approved Work Plan, Defendants shall submit a Treatability Study Evaluation Report as provided in the Statement of Work and Work Plan. If EPA disapproves of or requires revisions to the Treatability Study Evaluation Report, in whole or in part, Defendants shall amend and submit to EPA a revised Treatability Study Evaluation Report which is responsive to the directions in all EPA comments, within thirty (30) 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 contaminant identification, 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. If determined necessary by EPA, Defendants shall use a "food web model" to aid EPA in determining cleanup goals based on the Ecological Risk Assessment.

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.

In accordance with the schedule submitted by Defendants as part of the EPA approved Work Plan, 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. 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 thirty (30) 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 thirty (30) 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. If EPA disapproves of or requires revisions to the Memorandum on Development and Preliminary Screening of Alternatives, Assembled Alternatives Screening Results and Final Screening, in whole or in part, Defendants shall amend and submit to EPA a revised Memorandum on Development and Preliminary Screening of Alternatives, Assembled Alternatives Screening Results and Final Screening which is responsive to all EPA comments, within thirty (30) days of receiving EPA's comments.

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 twenty (20) 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.

31. 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.

32. Defendants shall not proceed further with any subsequent activities or tasks until receiving EPA approval for the following deliverables: Phase I Conceptual Site Model Report, RI/FS Work Plan and Sampling and Analysis Plan, draft Remedial Investigation Report (including the Baseline Risk Assessment Report), Treatability Testing Work Plan and Sampling and Analysis Plan (if required), 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.

33. 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.

34. 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 with this RI/FS Agreement at any point during the RI/FS.

35. 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.

36. 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.

37. 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.

38. 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**

39. 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 collected by Defendants and whether it will be incorporated into reports and deliverables.

40. 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, EPA shall modify or amend, or require Defendants to modify or amend, the Work Plan in writing accordingly. Any modifications or amendments done by Defendants shall be subject to EPA approval. Defendants shall perform the Work Plan as modified or amended.

41. 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 in the Statement of Work for this RI/FS. 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 fourteen (14) days of receipt of the EPA request or Defendants shall invoke dispute resolution. Subject to EPA 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.

42. 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**

43. 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**

44. 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.

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

46. 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**

47. 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 will provide Defendants at least fourteen (14) days notice prior to such meetings, unless EPA determines it is necessary to meet on shorter notice due to the exigencies of the situation.

48. 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**

49. 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.

50. Defendants will verbally notify EPA at least 15 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.

51. 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 any such hidden 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.

52. 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.

53. 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 30 days of the monthly progress report containing the data.

54. If the Site, or the off-Site area that is to be used for access for the RI/FS, is owned in whole or in part by parties other than those bound by this Agreement, Defendants shall make best efforts to obtain access from such parties. Best efforts include sending within the timeframes specified in the approved Work Plan correspondence (including an access agreement approved by EPA) to all resident(s), owner(s), and/or non-resident owner(s) from whom access is needed to conduct the RI/FS. 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 thirty (30) days from the date that the resident(s), owner(s), and/or non-resident owner(s) received it, or within forty-five (45) days from the date correspondence was sent, Defendants shall notify EPA in writing so that EPA may assist Defendants in obtain access. Defendants shall continue to use best efforts to attempt to obtain access from such parties for one hundred and twenty (120) days from the date the correspondence was sent.

EPA will assume responsibility for obtaining access from such parties should Defendants not be able to obtain access after using best efforts to obtain access for one hundred and twenty (120) days from the date the correspondence was sent. 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 Defendants were unable to obtain access. EPA may assist Defendants in gaining access, to the extent necessary to effectuate the actions described herein, using such means as EPA deems appropriate. 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 this RI/FS Agreement, the SOW, or the Work Plans approved pursuant to the 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 to any such person's counsel only.

Such access agreements shall provide access for EPA, its contractors and oversight officials, the State and its contractors, and the Defendants or their authorized representatives, and such agreements shall specify that Defendants are not EPA's representative with respect to liability associated with Site activities. Copies of such agreements shall be provided to EPA prior to Defendants' initiation of field activities. If access agreements are not obtained within the time referenced above, EPA may obtain access for the Defendants, or perform those tasks or activities with EPA contractors. In the event that EPA performs those tasks or activities with EPA contractors, Defendants shall perform all other activities not requiring access to that portion of the Site. Defendants additionally shall integrate the results of any such tasks undertaken by EPA into their reports and deliverables. Furthermore, the Defendants agree to indemnify the U.S. Government as specified in Section XXII of this Agreement. Defendants also shall reimburse EPA for all costs and attorney fees incurred by the United States to obtain access for the Defendants.

## **XV. DESIGNATED PROJECT COORDINATORS**

55. Documents including reports, approvals, disapprovals, and other correspondence which must be submitted under this Agreement, shall be sent by certified mail, return receipt requested, or overnight delivery requiring signature, 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

56. 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.

57. 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.

58. 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.

59. 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**

60. 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**

61. 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**

62. Any disputes concerning activities or deliverables required under this Agreement for which dispute resolution has been expressly provided for, shall be resolved as follows: If the Defendants object to any EPA notice of disapproval or requirement made pursuant to this Agreement, Defendants shall notify EPA's Project Coordinator in writing of their objections within 14 days of receipt of the disapproval notice or requirement. Defendants' written objections shall define the dispute, state the basis of Defendants' objections, and be sent certified mail, return receipt requested. EPA and the Defendants then have an additional 14 days to reach agreement. If an agreement is not reached within 14 days, Defendants may request a determination by EPA's Waste Management Division Director. The Waste Management Division Director's determination is EPA's final decision. Defendants shall proceed in accordance with EPA's final decision regarding the matter in dispute, regardless of whether Defendants agree with the decision. If the Defendants do not agree to perform or do not actually perform the RI/FS Work in accordance with EPA's final decision, EPA reserves the right in its sole discretion to conduct the RI/FS Work itself, to seek reimbursement from the Defendants, to seek enforcement of the decision, to seek stipulated penalties, and/or to seek any other appropriate relief.

63. 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 does not stay stipulated penalties under this Agreement, except during the period in which the decision is pending before the Waste Management Division Director.

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

64. For each day that the Defendants fail to complete a deliverable in a timely manner or fail to produce a deliverable or 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 are 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.

65. 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.

66. a. All payments to the United States under this Section shall be paid by 1) certified or cashier's check made payable to the "EPA Hazardous Substance 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, or 2) if the amount is greater than \$10,000 payment may be made by FedWire Electronic Funds Transfer ("EFT")<sup>1</sup>. 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.

b. 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, and

---

<sup>1</sup> If EFT is used payment shall be made to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number \_\_\_\_\_, EPA Site/Spill ID Number 04S9, and DOJ Case Number 90-11-2-07135/1. Payment shall be made in accordance with instructions provided to the Settling Defendants by the Financial Litigation Unit of the United States Attorney's Office for the Northern District of Alabama. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day.