

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

*(A167,5)*

**STATE OF NEW YORK and ERIN M. CROTTY,  
as Commissioner of the New York State  
Department of Environmental Conservation  
and Trustee of Natural Resources,**

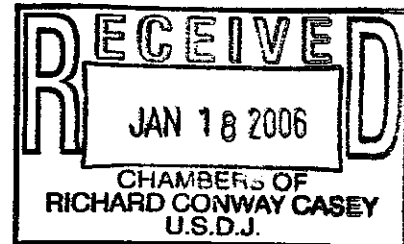
**01 CIV 0668 (RCC)**

**Plaintiffs,**

**-against-**

**BOEHRINGER INGELHEIM CORPORATION,  
BOEHRINGER INGELHEIM GmbH,  
C.H. BOEHRINGER SOHN, BOEHRINGER  
INGELHEIM INTERNATIONAL GmbH,  
PHARMA-INVESTMENT, LTD., PHARMACIA  
CORPORATION and SOLUTIA INC.,**

**CONSENT DECREE with  
SOLUTIA INC. and  
PHARMACIA  
CORPORATION**



**Defendants.**

WHEREAS, on January 26, 2001, the State of New York and Erin M. Crotty, as Commissioner of the New York State Department of Environmental Conservation ("DEC" or the "Department") and Trustee of Natural Resources (collectively, the "State"), commenced this action in the United States District Court for the Southern District of New York and on January 29, 2001, filed a First Amended Complaint;

WHEREAS, the State asserted claims under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq., New York's common law of public nuisance, the New York Real Property Actions and Proceedings Law, and New York's common law of restitution arising at an approximately one-acre inactive chemical manufacturing facility site known as the Hexagon Laboratories

Site located between Boston Post Road and Pear Tree Avenue in the Bronx, New York (the "Site");

WHEREAS, DEC determined that a significant threat to the environment exists at the Site and that releases of hazardous substances have occurred at the Site;

WHEREAS, DEC administratively divided the work required at the Site into two operable units: one referred to as Operable Unit 1 ("OU1"), which encompasses the entire Site except for the groundwater, and the other referred to as Operable Unit 2 ("OU2"), which encompasses the groundwater;

WHEREAS, DEC adopted a Record of Decision for OU1 (the "OU1 ROD") on February 29, 2000, in which DEC selected a remedy which included: (1) removal of the overburden on the Site to bedrock or six feet below ground surface, whichever is shallower in the western yard on the Site; (2) removal of the overburden in the east yard to six feet below ground surface or to the watertable, whichever is shallower; and (3) replacement of the overburden with clean fill;

WHEREAS, DEC adopted a Record of Decision for OU2 (the "OU2 ROD") in July 2002, in which DEC adopted one of two alternatives as the groundwater remedy for the Site: groundwater treatment performed either by injection of Fenton's Reagent, or a similar oxidant (in-situ treatment), or by dual-phase vacuum extraction and ex-situ treatment, along with a pilot test to verify whether bedrock fracturing is necessary;

WHEREAS, the State in its complaint seeks recovery of its response costs incurred or to be incurred at the Site, including but not limited to, costs of investigation, removal, remedial activity, enforcement and oversight as those terms are defined or used in Sections 101(23), 101(24), 101(25), 104(d), 107(a) and 113 of CERCLA, 42 U.S.C.

§§ 9601(23), 9601(24), 9601(25), 9604(d), 9607, and 9613 ("Response Costs"), performance of studies and response work, and damages for injury to, destruction, or loss of the natural resources of the State;

WHEREAS, the State alleged, inter alia, that Defendants Boehringer Ingelheim Corporation, Boehringer Ingelheim GmbH, C.H. Boehringer Sohn, Boehringer Ingelheim International GmbH, and Pharma-Investment, Ltd. operated the Site at a time of disposal of hazardous substances at the Site within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2);

WHEREAS, the State in its complaint also alleged, inter alia, that Defendants Solutia Inc. ("Solutia") and Pharmacia Corporation ("Pharmacia") (formerly known as Monsanto Company), collectively referred to as the "Settling Parties," by and through their relationships with the former Monsanto Company, were responsible for the former Monsanto Company's alleged arrangement for disposal at the Site of hazardous substances within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3);

WHEREAS, Solutia has agreed to act as Attorney-in-Fact for Pharmacia with respect to the Site;

WHEREAS, the Settling Parties do not admit any liability to the State for or arising out of the transactions or occurrences alleged in the complaint, nor do they admit any of the allegations in the complaint, including those pertaining to their having arranged for disposal or transportation of hazardous substances to the Site, otherwise having responsibility for shipments to the Site or in any other manner causing the past or current presence of CERCLA hazardous substances at the Site, and the Settling Parties do not admit that the alleged 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, and do not admit any other issue of law or fact, except as specifically provided herein;

WHEREAS, the State has alleged that it has incurred costs in the amount of \$ 2.78 million responding to the release and threat of a release of hazardous substances at the Site and in developing and implementing an inactive hazardous waste disposal site remedial program for the Site and expects to incur additional Response Costs in the future to respond to the release and threat of a release of hazardous substances at the Site;

WHEREAS, the parties to this Consent Decree (the "Parties") desire to fully resolve all claims and liability pursuant to CERCLA, including alleged damages to natural resources, and any other federal or state laws, for response and abatement costs incurred or to be incurred by the State, including but not limited to Response Costs, which could be asserted by the State relating to or in connection with the Site, without the necessity of prolonged and complicated litigation and to provide full and complete contribution protection to the Settling Parties with regard to the Site pursuant to Section 113(f)(2) of CERCLA;

WHEREAS, 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 litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

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

### PURPOSE OF CONSENT DECREE

1. The purpose of this Consent Decree is to fully and completely resolve all alleged claims and liability pursuant to CERCLA, including alleged damages to natural resources, and any other federal or state laws, which could be made by the State against the Settling Parties for response and abatement costs incurred or to be incurred by the State, including but not limited to Response Costs, to effectuate the implementation and/or analysis of the remedies for OU1 & OU2, to provide for the payment of an amount which represents a fair, reasonable and equitable contribution to the response and abatement costs incurred or to be incurred by the State at the Site, to provide a covenant not to sue, and to provide full and complete contribution protection to the Settling Parties with regard to the Site pursuant to Section 113(f)(2) of CERCLA.

### DISCLAIMER OF ADMISSIONS

2. Nothing in this Consent Decree shall constitute, or be construed as, any admission or adjudication of liability or any issue of law or fact.

### JURISDICTION

3. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 and 42 U.S.C. § 9613(b). The Settling Parties hereby waive all objections and defenses they may have to the jurisdiction of the Court or to venue in this District. The Court shall have continuing jurisdiction to enforce the terms of this Consent Decree and Settlement and to resolve any disputes that may arise hereunder.

### PARTIES BOUND

4. This Consent Decree shall apply to and be binding upon the State and all of its officials and instrumentalities and upon Solutia and its affiliated entities, and

upon Pharmacia (solely with respect to the liabilities of the former Monsanto Company) and its affiliated entities, other than G.D. Searle & Co. and Pfizer Inc. For purposes of this Consent Decree, "affiliated entity" shall mean any parent, subsidiary, predecessor, successor, operating division, franchise, or other entity related through common ownership or management, or otherwise. Each signatory to this Decree represents that he or she is fully and legally authorized to enter into the terms and conditions of this Consent Decree and to bind the party represented by him or her. Any change in ownership or corporate status of Solutia and/or Pharmacia, including any transfer of assets or real or personal property, shall in no way alter its payment responsibilities under this Consent Decree.

#### PILOT STUDIES WORK

5. Solutia shall conduct two pilot studies for the implementation of the remedy selected in the OU2 ROD, including the pilot test required by the OU2 ROD to verify whether or not fracturing of bedrock on Site to allow greater access to contamination in the bedrock is required (the "Fracturing Pilot Study"), and a second pilot test to determine the suitability of specific oxidants, or combinations of oxidants, to break down contaminants in the groundwater (the "Oxidant Pilot Study"), collectively referred to as the "Pilot Studies Work," unless Solutia elects within sixty (60) days of the Effective Date of this Decree, to pay the State \$400,000 in lieu of conducting the Pilot Studies Work. In the event that Solutia elects the payment option, it shall transfer \$250,000 to the State pursuant to Paragraph 6 below within thirty (30) days after notifying the State of its election and shall transfer \$150,000 to the State pursuant to Paragraph 6 below on or before January 5, 2004, and the State shall conduct the Pilot Studies Work.

a. The State shall provide written notice to Solutia of the schedule for the OU1 remedy, as well as the completion of the OU1 remedy. The State shall also provide copies of any correspondence or reports documenting the progress or completion of the OU1 remedy. If Solutia opts to perform the Pilot Studies Work itself, within thirty (30) days after Solutia receives written notice from the State that the excavation work required as part of the OU1 remedy has been completed, Solutia shall inform the State of its election and within sixty (60) days after Solutia receives such notice, Solutia shall submit to the Department work plans to implement the Pilot Studies Work (the "Work Plans").

b. The Work Plans shall include the following elements, as the Department determines to be appropriate:

- i. Project Description
- ii. Site Background
- iii. Description of the Technology(ies) to Be Tested
- iv. Statement of Performance Goals or Test Objectives
- v. Data Quality Objectives
- vi. Experimental Design and Procedures
- vii. Bench Scale Testing
- viii. Pilot Scale Testing
- ix. Equipment and Materials
- x. Sampling and Analysis Plan
- xi. QA/QC Plan
- xii. Data Management
- xiii. Data Analysis and Interpretation
- xiv. Health and Safety Plan
- xv. Residuals Management
- xvi. Reports (final report to include an assessment of how well the performance goals/test objectives were met)
- xvii. Schedule and
- xviii. Management and Staffing

c. The Department shall review each submittal made pursuant to this Consent Decree to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with this Consent

Decree and generally accepted technical and scientific principles. The Department shall notify Solutia in writing of its approval or disapproval of the submittal, except for the Health and Safety Plan. All Department-approved submittals shall be incorporated into and become an enforceable part of this Consent Decree.

d. If the Department disapproves a submittal, it shall so notify Solutia in writing and shall specify the reasons for its disapproval. Within thirty (30) days after receiving written notice that Solutia's submittal has been disapproved, Solutia shall make a revised submittal to the Department that addresses and resolves all of the Department's stated reasons for disapproving the first submittal.

e. After receipt of the revised submittal, the Department shall notify Solutia in writing of its approval or disapproval and if disapproved, the stated reasons therefor. If the Department disapproves the revised submittal, Solutia and the Department shall meet within thirty (30) days to make a good faith effort to reach a reasonable resolution of the remaining issues. If the parties are unable to reach such a resolution, Solutia shall be in violation of this Consent Decree and the Department may take any action or pursue whatever rights it has pursuant to any provision of statutory or common law unless Solutia invokes the Dispute Resolution procedures set forth in Paragraph 11 of this Consent Decree. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Consent Decree. Solutia shall modify and/or amplify and expand a submittal upon the Department's direction to do so if the Department determines, as a result of reviewing data generated by an activity required under this Consent Decree or as a result of reviewing any other data or facts, that further work is necessary. In such event, the Department will notify Solutia in writing of its



specific reasons for the need for such additional work. In no event shall the Pilot Studies Work and/or any additional work requested by the Department exceed a total cost of \$400,000. If Solutia elects to perform the Pilot Studies Work and the scope of work for the Pilot Studies Work exceeds a total cost of \$400,000, costs for such additional work shall be credited towards Solutia's total maximum obligation of \$899,000 under this Consent Decree.

PAYMENTS FOR RESPONSE COSTS AND NATURAL RESOURCE DAMAGES

6. Should the total cost of the Pilot Study Work, including the costs for additional work requested by the Department (if any) or costs incurred by the Department pursuant to Paragraph 6.c below, be less than \$400,000, then such balance shall be remitted to the State.

a. If Solutia elects to perform the Pilot Studies Work itself, Solutia shall, within twenty (20) days of payment of costs it incurs to perform the Pilot Studies Work, send copies of such paid invoices or other cost information provided by its contractors, as well as documentation of Solutia's internal costs, including, but not limited to, time and travel costs of personnel, to

Bureau of Program Management  
Division of Environmental Remediation  
New York State Department of Environmental Conservation  
625 Broadway  
Albany, NY 12233-7010.

Listed costs shall be summarized by category of expense (e.g., supplies, materials, travel, contractual), shall be documented by invoices and expenditure reports and shall be accompanied by a certification by Solutia that the expenses were incurred for the Pilot Studies Work. Solutia's internal time and travel costs shall be documented by reports

identifying the employee name, title, billing rate and time spent (in hours) on the project. Such costs shall apply to and be credited towards the \$400,000 allocated for the Pilot Studies Work.

b. The State may contest Solutia's invoiced costs, in writing, by invoking the Dispute Resolution procedures set forth in Paragraph 11 of this Consent Decree, on the grounds that (i) the cost documentation contains clerical, mathematical, or accounting errors; (ii) the costs are not related to the Pilot Studies Work; (iii) there is insufficient supporting documentation to determine whether the costs were incurred in the course of implementing the Pilot Studies Work; or (iv) unnecessary lodging or travel costs were incurred. If the State objects to any cost, it shall, within thirty (30) days after its receipt of the cost documentation, identify in writing all costs objected to and identify the basis of the objection.

c. To the extent the Department incurs oversight costs in reviewing the Work Plans or other data submitted by Solutia under this Consent Decree, including costs of compliance monitoring and the collection and analysis of split samples, payment of such costs by Solutia shall apply to and be credited towards the \$400,000 limit.

d. Upon receipt of all applicable payment information as required by this Paragraph, as well as payment by Solutia of any applicable oversight costs, the Department will calculate the amount of costs required to be paid by this Paragraph and send Solutia a request to remit such payment to the attention of:

Gerald M. Rinaldi  
Solutia Inc.  
575 Maryville Centre Dr. -- 1S  
St. Louis, MO 63141

with copies to:

Joseph G. Nassif, Esq.  
Husch & Eppenger, LLC  
190 Carondelet Plaza, Ste. 600  
St. Louis, MO 63105

e. Within sixty (60) days of receipt of the State's request for payment pursuant to the preceding subparagraph, Solutia shall remit to the State such amount or invoke the Dispute Resolution procedures set forth in Paragraph 11 of this Consent Decree.

f. Solutia's payment pursuant to this Paragraph and any payment pursuant to Paragraph 5 shall be made by Electronic Funds Transfer to the Department at M & T Bank (One M & T Plaza, Buffalo, NY 14203). Solutia shall provide the following information to its bank:

Title of account to receive the payment: NYS DEC  
Revenue Account  
Account number: 6050090742  
ABA Routing Number: 022000046  
Site identifier: Hexagon Laboratories, Inc. Site,  
No. 2-03-003  
Amount of payment  
Name of Payor  
Contact at M & T Bank: Richard Thiesen 518-464-6111  
Contact at DEC: Frank Pacowski 518-402-9373

To ensure that Solutia's payment is properly recorded, Solutia shall send a letter, which references the date of the payment and the payment amount, within one week of the payment to the following address:

Eugene J. Leff, Esq.  
Assistant Attorney General  
New York State Department of Law  
120 Broadway  
New York, New York 10271

7. Solutia shall also partially reimburse the State for Response Costs that may be incurred by the State or any contractor of the State to implement the OU2 ROD (other than the Fracturing Pilot Study). Such reimbursement shall be at the rate of 14.26% of costs incurred by the State (the "Reimbursement Rate"), provided, however, in no event shall Solutia's payment obligations under this Paragraph exceed the aggregate sum of \$499,000, subject to Solutia's payments under Paragraph 5 that exceed \$400,000. Solutia shall not be obligated to pay any costs under this Paragraph, if for any reason the State does not pursue an OU2 remedy.

a. Invoices for OU2 Response Costs shall be sent to a representative of Solutia at the following address:

Gerald M. Rinaldi  
Solutia Inc.  
575 Maryville Centre Dr. -- 1S  
St. Louis, MO 63141

b. Such Response Costs will include documented direct and indirect costs, including but not limited to, any time and travel costs of personnel and contractor costs.

c. Personal service costs of the Department shall be documented by reports of Direct Personal Service, which shall identify the employee name, title, biweekly salary, and time spent (in hours) on the project during the billing period, as identified by an assigned time and activity code. Approved agency fringe benefit and indirect cost rates shall be applied. Non-personal service costs shall be summarized by category of expense (e.g., supplies, materials, travel, contractual) and shall be documented by expenditure reports, including back-up contracts, timesheets, work authorizations, and any other

documents authorizing or approving the work. The Department's records shall be available consistent with, and in accordance with, Article 6 of the Public Officers Law.

d. Within sixty (60) days after receipt of a complete itemized invoice issued by the Department or any contractor of the Department, Solutia shall pay to the Department a sum of money which shall be equal to the product of the invoice amount and the Reimbursement Rate.

e. Each such payment shall reference the Site name (Hexagon Laboratories Site) and shall be made payable to the Department of Environmental Conservation and shall be sent to

Bureau of Program Management  
Division of Environmental Remediation  
New York State Department of Environmental Conservation  
625 Broadway  
Albany, NY 12233-7010

f. The Parties shall provide written notification to each other within ninety (90) days of any change in the foregoing addresses.

g. Solutia may contest the State's invoiced costs, in writing, by invoking the Dispute Resolution procedures set forth in Paragraph 11 of this Consent Decree, on the grounds that (i) the cost documentation contains clerical, mathematical, or accounting errors; (ii) the costs are not related to the State's activities with respect to the OU2 remedial program for the Site; (iii) the Department is not otherwise legally entitled to such costs; or (iv) there is insufficient supporting documentation to determine whether the costs were incurred in the course of implementing the OU2 ROD, provided however, that staff time and travel attributed to appropriate Time and Activity codes of the Department shall be deemed to be adequately documented. If Solutia objects to an invoiced cost, Solutia shall

pay all costs not objected to within sixty (60) days after receipt of an itemized invoice from the Department or a contractor of the Department, and shall, within thirty (30) days after its receipt of an invoice, identify in writing all costs objected to and identify the basis of the objection.

h. Solutia shall pay the amount determined by the Division of Environmental Remediation's Assistant Division Director ("ADD") to be due pursuant to Paragraph 11 within thirty (30) days after Solutia receives a copy of the ADD's determination, subject to appeal of such decision by Solutia to this Court.

8. The payments required by this Consent Decree shall be in addition to any payments by G.D. Searle & Co. or Pharmacia for any liabilities other than those associated with the former Monsanto Company and pursuant to any other settlement agreement or consent decree that may have been or may be reached in this case.

#### STIPULATED PENALTIES

9. If Solutia fails to provide payment in accordance with this Consent Decree, it shall be liable for payment to the State of the additional sums set forth below as stipulated penalties for each day or part thereof that Solutia is in violation of the terms of this Consent Decree. Such sums shall be due and payable within thirty (30) days after receipt of notification from the State assessing the penalties. If such payment is not received within thirty (30) days after Solutia receives such notification from the State, interest shall be payable at the annual rate of nine per centum (9%) on the overdue amount from the day on which it was due through and including the date of payment. Penalties shall be paid by Electronic Funds Transfer pursuant to Paragraph 6 above. Payment of such penalties shall not in any way alter Solutia's obligation to complete

performance under the terms of this Consent Decree. Stipulated penalties shall be due and payable pursuant to the following schedule:

| Period of Non-Compliance | Penalty per Day |
|--------------------------|-----------------|
| First through 15th day   | \$ 1000         |
| 16th through 30th day    | \$ 5000         |
| 31st day and thereafter  | \$ 10,000       |

In no event shall Solutia be responsible for, or subject to stipulated penalties for, any delays in the performance of the obligations under this Consent Decree caused by the invocation of the Dispute Resolution procedures in Paragraph 11. The State, in its sole unfettered discretion, may elect not to pursue the collection of stipulated penalties.

#### ENTRY UPON THE SITE

10. Solutia shall make all reasonable efforts to gain entry to the Site, or areas in the vicinity of the Site (if necessary), to perform the Pilot Studies Work and to have any duly designated employee, consultant, contractor, or agent of the Department or any State agency perform any inspection, sampling, and testing associated with the Pilot Studies Work, and ensure Solutia's compliance with this Consent Decree. Reasonable efforts to gain access shall not include monetary payments to the property owners solely to obtain access. The Department recognizes that at the time this Consent Decree is entered into, Solutia neither owns nor operates the Site or any property adjacent to the Site. The Department further recognizes that Solutia does not own, operate or control other premises at which additional work to be performed by others is contemplated under this or other Consent Decrees. The Department acknowledges and agrees that Solutia is not required to obtain Site access for any work other than the Pilot Studies Work and that Solutia's access obligations with respect to such work are contingent on its election pursuant to

Paragraph 5. Should Solutia fail to obtain access to the Site or its vicinity (if necessary), after engaging in reasonable efforts to do so, the Department agrees to assist Solutia in obtaining access to the Site and its vicinity. Solutia agrees that it will not prevent the Department from entering, for the purposes described in this Paragraph, those areas of the Site or the adjacent properties to which Solutia has been granted access. Solutia shall permit the Department full access to all records relating to matters addressed by this Consent Decree, provided, however that Solutia shall not be required under this Consent Decree to submit any portions or records and/or information that would disclose privileged mental impressions, conclusions, opinions or legal theories. Solutia acknowledges that raw data is not privileged.

#### DISPUTE RESOLUTION

11. This Paragraph sets forth the procedures for disputes arising under provisions of this Consent Decree which expressly authorize dispute resolution. Nothing in this Consent Decree shall be construed to allow the consideration or resolution of any dispute regarding the RODs or any of their provisions. However, nothing in this Consent Decree shall prohibit the State from issuing an explanation of significant differences, or from amending the requirements of the ROD in any way.

a. Solutia shall be in violation of this Consent Decree if the Department determines that Solutia has failed to comply with the above-referenced requirements of this Consent Decree and unless within ten (10) business days of receipt of the Department's notice of disapproval, Solutia serves on the Department a request for dispute resolution by the ADD, and a written statement of the issues in dispute, the relevant facts upon which the dispute is based, factual data, analysis or opinion supporting its position, and all



supporting documentation on which Solutia relies (hereinafter called the "Statement of Position"). The Department shall provide its Statement of Position, including supporting documentation, no later than ten (10) business days after receipt of Solutia's Statement of Position. Solutia shall have ten (10) business days after receipt of the Department's Statement of Position within which to provide the Department a reply to the Department's Statement of Position, and in the event Solutia provides such a reply, the Department shall have ten (10) business days after receipt of Solutia's reply to the Department's Statement of Position within which to provide Solutia the Department's reply to Solutia's reply to the Department's Statement of Position. The time periods may be shortened in the event that the periods for exchange of Statements of Position and replies may cause a delay in the work being performed under this Consent Decree, or lengthened upon and in accordance with notice by the Department. In no event shall Solutia be responsible for, or subject to stipulated penalties for, any delays in the performance of the obligations under this Consent Decree caused by invocation of the Dispute Resolution procedures set forth in this Paragraph.

b. The Department shall maintain an administrative record of any dispute under this Paragraph. The record shall include the Statement of Position of each party and replies served pursuant to the preceding subparagraph, and any other relevant information. The record shall be available for review by the parties and the public.

c. In review by the ADD of any dispute pursued under this Paragraph, Solutia shall have the burden of proving that the Department's decision is not in accordance with the requirements of this Consent Decree, or is inconsistent with the NCP. The ADD shall issue a final decision resolving the dispute, which may be appealed to this Court. Solutia

shall revise any submittal to which such decision relates in accordance with the Department's specific comments, as may be modified by the ADD and except for those which have been withdrawn by the ADD, and shall submit a revised submittal. The period of time within which the submittal must be revised shall be fourteen (14) days after receipt of the ADD's final decision resolving the dispute or as specified by the Department in its notice of disapproval, whichever is later.

d. After receipt of the revised submittal, the Department shall notify Solutia in writing of its approval or disapproval of the revised submittal. If the revised submittal fails to address the Department's specific comments, as may be modified by the ADD, and the Department disapproves the revised submittal for this reason, Solutia shall be in violation of this Consent Decree, subject to appeal by Solutia of such decision to this Court.

e. The invocation of the procedures stated in this Paragraph shall not extend or modify Solutia's obligations under this Consent Decree with respect to any disputed items or items directly dependent on the disputed items, unless and until the Department agrees or this Court determines otherwise. Review of the ADD's decision may be had before this Court through an application filed no later than thirty (30) days after the ADD's decision. The filing of such an application shall not extend or modify any obligation of Solutia under this Consent Decree, other than those obligations directly subject to judicial review or those obligations whose implementation is directly dependent upon the resolution of the issue in dispute.

#### COMPLIANCE

12. The Settling Parties' failure to comply with any term of this Consent Decree constitutes a violation of this Consent Decree, unless such failure is due to a force majeure

event, or is caused by a delay by the Department, or by an inability to obtain access, despite reasonable efforts to obtain same. Nothing herein, however, shall preclude the Settling Parties from invoking the Dispute Resolution procedures of Paragraph 11.

#### FORCE MAJEURE

13. Solutia shall not suffer any penalty under this Consent Decree or be subject to any proceeding or action if it cannot comply with any requirement hereof because of an act of God, war, terrorist act, riot, or unusual or unforeseeable weather conditions, labor strikes, denial of access to the Site or adjacent properties despite Solutia's best efforts to obtain the same, or other circumstances wholly beyond Solutia's reasonable control. Solutia shall, within ten (10) business days of obtaining knowledge of any such condition, notify the Department in writing. Solutia shall include in such notice the measures taken and to be taken by Solutia to prevent or minimize any delays and shall request an appropriate extension or modification of this Consent Decree. Failure to give such notice within such ten business-day period constitutes a waiver of any claim that a delay is not subject to penalties. Solutia shall have the burden of proving that an event is a defense to compliance with this Consent Decree pursuant to this Paragraph. Solutia may submit the issue for Dispute Resolution under Paragraph 11 if the Department rejects Solutia's assertion that an event is a force majeure event.

#### INDEMNIFICATION

14. Solutia shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages, and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of the Pilot Studies Work and associated obligations under this

Consent Decree by Solutia and/or any of Solutia's directors, officers, employees, servants, agents, successors, and assigns. The State shall give Solutia notice pursuant to Paragraph 15 of any claim for which the State plans to seek indemnification, and shall discuss a response to such a claim with Solutia prior to settling such claim. However, Solutia shall not be required to indemnify the Department, the State of New York, and/or their representatives and employees with respect to any liability arising from any willful, wanton or malicious acts or omissions, and acts or omissions constituting gross negligence or criminal behavior by the Department, the State of New York, and/or their representatives and employees during the course of any activities conducted pursuant to this Consent Decree.

#### COMMUNICATIONS

15. All written communications relating to the Pilot Studies Work required by this Consent Decree shall be transmitted by United States Postal Service, by private courier or overnight mail service, or hand delivered as follows:

a. Communication from Solutia shall be sent to:

Sally Dewes, P.E.  
New York State Department of Environmental  
Conservation  
625 Broadway, 11<sup>th</sup> Floor  
Albany, New York 12233-7015

with copies to:

Rosalie K. Rusinko, Esq.  
New York State Department of  
Environmental Conservation  
Eastern Field Unit  
200 White Plains Road, 5th Floor  
Tarrytown, N.Y. 10591-5805

- b. Communication to be made from the Department to Solutia shall be sent to:

Gerald M. Rinaldi  
Solutia Inc.  
575 Maryville Centre Dr. -- 1S  
St. Louis, MO 63141

with copies to:

Joseph G. Nassif, Esq.  
Husch & Eppenberger, LLC  
190 Carondelet Plaza, Ste. 600  
St. Louis, MO 63105

- c. Copies of Work Plans and reports shall be submitted as follows:

Four hard copies (one unbound) to:

Sally Dewes, P.E.  
New York State Department of Environmental  
Conservation  
625 Broadway, 11<sup>th</sup> Floor  
Albany, New York 12233-7015

One copy to:

Rosalie K. Rusinko, Esq.  
New York State Department of  
Environmental Conservation  
Eastern Field Unit  
200 White Plains Road, 5th Floor  
Tarrytown, N.Y. 10591-5805

- d. Within thirty (30) days of the Department's approval of any report submitted pursuant to this Consent Decree, Solutia shall submit to the Director, Division of Environmental Remediation, a copy of the approved report in .pdf format.

- e. The Department and Solutia reserve the right to designate additional or different addressees for communication or written notice to the other.

#### MISCELLANEOUS FIELD ACTIVITY PROVISIONS

16. Solutia shall retain professional consultants, contractors, laboratories, quality assurance/quality control personnel, and third-party data validators acceptable to the Department to perform the technical, engineering, and analytical obligations associated with the Pilot Studies Work required by this Consent Decree. Solutia shall use laboratories that have obtained National Environmental Laboratory Accreditation Program ("NELAP") and New York State Environmental Laboratory Approval Program ("SELAP") certification for all analytical methods that are used pursuant to this Consent Order for which such certifications are available. For each laboratory that has obtained NELAP and SELAP certification for an analytical method to be used for analyses performed under this Consent Order, Solutia shall provide documentation to DEC which demonstrates that the laboratory has such certifications for the specific methods/matrices and analyses to be performed. The experience, capabilities, and qualifications of the firms or individuals selected by Solutia shall be submitted to the Department with the Work Plans required by Paragraph 5.a. The Department's approval of these firms or individuals shall be obtained before the start of any activities for which Solutia and such firms or individuals will be responsible, and such approval shall not be unreasonably withheld. The responsibility for the performance of the professionals retained by Solutia shall rest solely with Solutia. Solutia shall not be responsible for, or subject to stipulated penalties for, any delays in the performance of the obligations under this Consent Decree caused by a delay or disapproval on the part of the Department.

17. The Department shall have the right to obtain samples and scientific measurements, and the Department and Solutia shall have the right to obtain split

samples, duplicate samples, or both, of all substances and materials sampled by the other. The Department shall have the right to take its own samples. The Department shall provide Solutia with the results of samples it takes. Solutia shall promptly make available to the Department preliminary data and, when available, the validated results of all sampling and/or tests or other data generated by Solutia through the implementation of this Consent Decree.

18. Solutia shall notify the Department at least ten (10) working days in advance of any field activities to be conducted pursuant to this Consent Decree, except for routine maintenance and surveillance activities.

19. Solutia shall use reasonable efforts to obtain, and the Department shall assist Solutia in obtaining, all permits, easements, rights-of-way, access, rights-of-entry, approvals, or authorizations necessary to perform Solutia's obligations under this Consent Decree. If any access required to perform Solutia's responsibilities under this Consent Decree is not obtained, despite Solutia's reasonable efforts to obtain access, within sixty (60) days of the date the Department notifies Solutia in writing that the OU1 soil excavation is complete, or within thirty (30) days of the date the Department notifies Solutia in writing that additional access beyond that previously secured is necessary, Solutia shall promptly notify the Department, and shall include in that notification a summary of the steps Solutia has taken to attempt to obtain access. As long as Solutia has used reasonable efforts to attempt to obtain Site access, Solutia shall not be responsible for any delays in the performance of the work caused by any delay or failure to obtain access. Solutia shall reimburse the Department, in accordance with the procedures in Paragraph 7, for all costs

incurred by the Department after such notification in obtaining access for Solutia's activities under this Consent Decree, including, but not limited to, attorneys' fees.

20. Solutia shall provide a copy of this Consent Decree to each contractor hired to perform the Pilot Studies Work required by this Consent Decree and to each person representing Solutia with respect to the Site, and shall condition all contracts entered into in order to carry out the obligations identified in this Consent Decree upon performance in conformity with the terms of this Consent Decree. Solutia or Solutia's contractors shall provide written notice of this Consent Decree to all subcontractors hired to perform any portion of the Pilot Studies Work required by this Consent Decree. Solutia shall nonetheless be responsible for ensuring that Solutia's contractors and subcontractors perform the work in satisfaction of the requirements of this Consent Decree.

#### COVENANT BY THE STATE OF NEW YORK

21. In consideration of the payments that will be made pursuant to this Consent Decree and the performance of the Pilot Studies Work, and subject to the Reopener provision herein, the State covenants not to sue or to take any other action, including administrative action, against the Settling Parties or, subject to Paragraph 4 above, their affiliated entities, officers, employees, agents or representatives pursuant to CERCLA or any other federal or state laws for matters addressed in this Consent Decree, for implementation of the remedial program for the Site (including OU1 and OU2) and past or future Response Costs and abatement costs incurred or to be incurred by the State or, to the extent permitted by law, any other person (other than the United States) at or related to the Site, including all necessary costs of response and natural resource damages ("Matters Addressed"). This covenant shall take effect upon completion of the Pilot Studies



Work and receipt of the required payment (if any), including any applicable penalties, under Paragraph 6 of this Consent Decree.

#### REOPENER

22. The covenants not to sue provided in this Consent Decree shall not apply to claims relating to any additional Response Costs necessitated by the discovery of any release or threatened release of hazardous substances at or from the Site or any other environmental or engineering condition related to the Site that was not known by the State on or before the Effective Date of this Consent Decree, and that indicates that the remedial actions required by the OU1 or the OU2 RODs are not protective of human health or the environment.

#### COVENANTS BY SETTLING PARTIES

23. In consideration of the covenants not to sue provided by the State, and subject to the Reopener provision herein, the Settling Parties covenant not to sue and agree not to assert any claims or causes of action whatever against the State or any of its officials or instrumentalities, relating to the Site, except for matters relating to the State's gross negligence or willful, wanton, or malicious acts or omissions with respect to activities conducted pursuant to this Consent Decree, or except in the event the State brings a cause of action or issues an order pursuant to the Reopener set forth in Paragraph 22, but only to the extent that the Settling Parties' claims arise from the same response action, Response Costs, or damages that the State is seeking pursuant to the Reopener.

### CONTRIBUTION PROTECTION

24. The Parties hereto agree that the Settling Parties are entitled, as of the Effective Date of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA for Matters Addressed, subject to the Reopener provision herein.

### EFFECT ON LIABILITY OF OTHER PARTIES

25. Nothing in this Consent Decree is intended as a release of, or covenant not to sue with respect to, any entity not a signatory hereto, and the State expressly reserves its rights to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State may have against any person, firm, corporation, or other entity not a signatory to this Consent Decree. 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.

### MISCELLANEOUS

26. All references to "days" in this Consent Decree are to calendar days unless otherwise specified.

27. The paragraph headings set forth in this Consent Decree are included for convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Consent Decree.

28. No term, condition, understanding, or agreement purporting to modify or vary any term of this Consent Decree shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department regarding any report, proposal, plan, specification, schedule, or any other

submittal shall be construed as relieving Solutia of Solutia's obligation to obtain such formal approvals as may be required by this Consent Decree.

29. If the Settling Parties desire that any provision of this Consent Decree be modified, the Settling Parties shall make timely written application, signed by the Settling Parties, to this Court setting forth reasonable grounds for the relief sought. Copies of such written application shall be delivered or mailed to Rosalie K. Rusinko, Sally Dewes, and Eugene J. Leff.

#### EFFECTIVE DATE AND TERMINATION

30. This Consent Decree shall become effective when this Consent Decree is approved and entered by the Court (the "Effective Date"). When the Settling Parties believe that their obligations under this Consent Decree have been completed, including all payments required to be made to the State pursuant to Paragraph 7, they may petition the State for an agreement to terminate this Consent Decree. If the State accepts the petition, the State and the Settling Parties shall jointly petition the Court for termination of this Consent Decree. If the State rejects the petition, the State shall explain its reasons in writing, and the Dispute Resolution procedures of Paragraph 11 shall apply.

Termination shall not affect the provisions of Paragraphs 21 (Covenant by the State of New York), 23 (Covenants by Settling Parties), and 24 (Contribution Protection).

STATE OF NEW YORK and ERIN M. CROTTY  
as Commissioner of the New York State  
Department of Environmental Conservation and  
Trustee of Natural Resources

Eliot Spitzer  
Attorney General of the State  
of New York

Dated: 6/19/03

By: Eugene J. Leff  
Eugene J. Leff  
Assistant Attorney General  
New York State Department of Law  
120 Broadway  
New York, New York 10271

PHARMACIA CORPORATION  
(formerly known as Monsanto Company)

By: Solutia Inc., its Attorney-in-Fact

Dated: 6/12/03

[Signature]

SOLUTIA INC.

Dated: 6/17/03

Luc De Temmerman

ORDERED, ADJUDGED AND DECREED this 6<sup>th</sup> day of February, 2006  
The Clerk of Court is directed  
to close this case. Any pending  
motions are moot.

[Signature]  
U.S.D.J.