

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

Plaintiffs,

-against-

**CONSENT DECREE
and SETTLEMENT with
BOEHRINGER ENTITIES
and PHARMA-INVESTMENT**

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

Defendants.

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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 ("OU 1"), which encompasses the entire Site except for the groundwater, and the other referred to as Operable Unit 2 ("OU 2"), which encompasses the groundwater;

WHEREAS, DEC adopted a Record of Decision for OU 1 (the "OU 1 ROD") (attached hereto as Appendix A) 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 issued a Proposed Remedial Action Plan for OU 2 in February, 2002, in which DEC proposed one of two alternatives as the groundwater remedy for the Site: groundwater treatment performed either by bedrock fracturing on site and the subsequent injection of Fenton's Reagent (in-situ treatment) or bedrock fracturing on site followed by dual-phase vacuum extraction and ex-situ treatment, and DEC adopted a Record of Decision for OU 2 (the "OU 2 ROD") in July 2002;

WHEREAS, the claims brought by the State seek recovery of all its response costs 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 §§ 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"), in relation to the Site, 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. (collectively, the “Settlors”) operated the Site at a time of disposal of hazardous substances at the Site within the meaning of § 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2);

WHEREAS, other named defendants and potentially responsible parties are not parties to this Consent Decree and Settlement and the State reserves all rights to pursue litigation against such defendants;

WHEREAS, after the State filed its Amended Complaint, the Settlors reviewed records and documents and provided the State with evidence that numerous additional parties arranged for the disposal of hazardous waste and hazardous substances at the Site by contracting with Hexagon Laboratories, Inc., to formulate chemical products utilizing chemical stocks which contained hazardous substances and thereby generated wastes containing hazardous substances which were disposed at the Site (hereinafter, collectively, the “Class II Potentially Responsible Parties”);

WHEREAS, the State, with the assistance of the Settlors, and in cooperation with the Settlors, determined that the amounts of hazardous substances allegedly contributed by each Class II Potentially Responsible Party were relatively small in light of the total amount of hazardous substances disposed at the Site;

WHEREAS, the State alleges that it 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 may incur additional Response Costs in the future in the event

that it is necessary to respond to the release and threat of a release of hazardous substances at the Site;

WHEREAS, the parties to this Consent Decree and Settlement desire to fully resolve all claims set forth in the Amended Complaint and liability pursuant to CERCLA, and any other federal or state laws, for damages, response and abatement costs incurred or to be incurred by the State, 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 Settlers which have consented to this Consent Decree and Settlement with regard to the Site pursuant to Section 113(f)(2) of CERCLA;

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

PURPOSE OF CONSENT DECREE AND SETTLEMENT

1. The purpose of this Consent Decree and Settlement is to fully resolve all claims set forth in the Amended Complaint and liability pursuant to CERCLA and any other federal or state laws, which could be made by the State against the Settlers which have entered into this Consent Decree and Settlement, for damages, response and abatement costs incurred or to be incurred by the State, to effectuate the implementation of a remedial action at the Site, to provide for the payment by the Settlers of an amount which represents a fair, reasonable and equitable contribution for damages and response and abatement costs incurred or to be incurred by the State at the Site, and to provide full and complete contribution protection to the Settlers with regard to the Site pursuant to Section 113(f)(2) of CERCLA.

DISCLAIMER OF ADMISSIONS

2. Nothing in this Consent Decree and Settlement 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). Each of the Settlers hereby waives all objections and defenses it 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 and Settlement shall apply to and be binding upon the State and all of its officials and instrumentalities and upon each of the Settlers and their affiliated entities. For purposes of this Consent Decree and Settlement, “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 Settlement and to bind the party represented by him or her. Any change in ownership or corporate status of a Settler, including any transfer of assets or real or personal property, shall in no way alter its responsibilities under this Consent Decree and Settlement, and nothing herein shall be construed to reduce the obligations of Settlers which enter into a merger or other corporate reorganization.

REMEDIAL ACTION IMPLEMENTATION

5. The Settlers shall implement the remedial action set forth in the OU 1 Record of Decision. The remedial action details are set forth in the Approved OU 1 Work Plan, attached hereto as Appendix B, which has been approved by the State. The Approved Work Plan includes, *inter alia*, a health and safety plan for the protection of persons at and in the vicinity of the Site during construction and after completion of construction. During implementation of all construction and field activities identified in the Approved Work Plan, the Settlers shall have on-Site a representative who is qualified to supervise the remediation work. A Contingency Plan, which describes procedures to be conducted during OU 1 implementation in the event of an emergency, such as a fire, spill, severe weather or vandalism, and which may be required to protect and/or maintain the operation of the remedial action, is set forth in the Approved Work Plan. The Settlers will use NYS ELAP-approved laboratories. The Settlers have advised the Department that they intend to utilize Environmental Testing Laboratories, Inc. of Farmingdale, New York (NY Lab I.D. # 10969), and the Department has approved the use of the laboratory. The Settlers will commence implementation of the Approved Work Plan, attached hereto as Appendix B, within 60 days of the approval of this Consent Decree and Settlement by the Court and after access to the Site is provided pursuant to Paragraph 15 herein. The Settlers will implement the Approved Work Plan in accordance with the requirements of the Work Plan and the requirements of the OU 1 ROD.

6. The State alleges that it incurred costs in the amount of \$2.78 million responding to the alleged release and threat of release of hazardous substances at the Site and in developing and implementing an inactive hazardous waste disposal site remedial program for the Site. These response activities included, but were not limited to, an investigation

of the areal and vertical extent of soil contamination on the Site. The State represents that it has disclosed any and all information it has with regard to the presence of underground storage vessels and tanks that may be on the Site. The State has disclosed no information indicating that underground storage vessels and tanks remain on the Site. During implementation of the Approved Work Plan, the Settlers herein agree to implement the remedial actions set forth in the OU 1 ROD and, in addition, to remove any buried drums, storage tanks or buried debris (hereinafter "vessels") if such vessels are situated wholly or in part within the limits of soil excavation, both vertically and horizontally, described in the OU 1 ROD and Approved Work Plan. The additional obligation to remove vessels will not extend to vessels about which the State had knowledge prior to the entry of this Consent Decree and Settlement but failed to disclose to the Settlers.

7. Within 90 days after completion of field work for the OU 1 Remedial Action, the Settlers shall have their consultant/representative certify that the remedial action design and construction was implemented in accordance with the Approved OU 1 Work Plan and the OU 1 ROD. This certification shall include a statement that the Remedial Action was implemented and that all construction activities were completed in accordance with the Department-approved Remedial Action Work Plan and were personally witnessed by the certifying party or by a person under his or her direct supervision. The final construction certification report, and certification, must be prepared, signed, and sealed by a professional engineer.

REMEDIAL ACTION APPROVAL

8. After receipt of the final construction certification report, and certification, the Department shall notify the Settlers in writing whether the Department is satisfied that all construction activities have been completed in compliance with the Department-approved OU 1 Work Plan.

9. If the Department concludes that any element of the Department-approved Work Plan was not properly implemented, the Department shall provide the Settlers with a written description of the basis for its conclusion. The Settlers may take whatever action the Department determines necessary to ensure that the remedial program was implemented in accordance with the approved Work Plan. The Settlers may object to the Department's request pursuant to the dispute resolution procedures set forth herein or may bring the matter directly to the Court or the Magistrate appointed by the Court.

PROGRESS REPORTS

10. The Settlers shall submit a progress report every month, beginning with the sixth week of the project, as described in the Approved Work Plan, to the parties identified in Paragraph 23 in the numbers specified therein, which provides the following information:

A. describe the actions which have been taken toward achieving compliance with this Consent Decree and Settlement;

B. include all other data received or generated, whether conducted pursuant to this Consent Decree and Settlement or conducted independently by the Settlers;

C. describe all actions that are scheduled and provide other information relating to progress at the Site;

D. include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the

Settlors' obligations under the Consent Decree and Settlement, and efforts made to mitigate those delays or anticipated delays;

E. include any modifications to any work plans that the Settlers have proposed to the Department or that the Department has approved;

The Settlers shall allow the Department to attend, and shall provide the Department at least seven days advance notice of, any of the following: job progress meetings, substantial completion meeting and inspection, and final inspection and meeting.

REVIEW OF SUBMITTALS

11. Settlers shall submit to the Department a Final Construction Certification Report confirming that the OU 1 Work Plan has been properly implemented. The Department shall review said report and the progress reports described in Paragraph 10 to determine whether they were prepared in accordance with this Consent Decree and Settlement and generally accepted technical and scientific principles, and whether the work done to generate data and other information in the submittal was done in accordance therewith. The Department shall notify the Settlers in writing of its approval or disapproval of any submittal.

12. If the Department disapproves a submittal, it shall so notify the Settlers in writing and shall specify the reasons for its disapproval. Within 20 days after receiving written notice that the Settlers' submittal has been disapproved, the Settlers shall specify to the Department the reasons that the submittal is consistent with the Approved Work Plan or make a revised submittal to the Department that addresses and resolves all of the Department's stated reasons for disapproving the first submittal.

13. After receipt of the Settlers' response or revised submittal, the Department shall notify the Settlers in writing of its approval or disapproval and if disapproved, the stated reasons therefor. If the Department disapproves the revised submittal, the Settlers and the Department shall meet within ten 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, the Dispute Resolution procedures set forth in Paragraph 14 of this Consent Decree and Settlement shall apply, unless the parties, individually or mutually, decide to bring the matter to the attention of the Court.

DISPUTE RESOLUTION

14. This Paragraph sets forth the administrative procedures for disputes arising under this Consent Decree and Settlement. It is the intention of the parties to first attempt to resolve any disputes, other than failure to make payments required under this Consent Decree and Settlement, within the framework of this administrative dispute resolution process.

A. If the Department determines that the Settlers have failed to comply with the requirements of this Consent Decree and Settlement or the Approved Work Plan, and unless the parties can resolve the matter within ten (10) business days of receipt of the Department's notice of disapproval, the Settlers, if they choose to proceed with administrative dispute resolution, shall serve on the Department a request for Dispute Resolution by the Division of Environmental Remediation's Assistant Division Director ("ADD"), and a written statement of the issues in dispute, the relevant facts upon which the dispute is based, and factual data, analysis or opinion supporting their position, and all

supporting documentation on which the Settlers rely (hereinafter called the "Statement of Position"). The Department shall provide its Statement of Position, including supporting documentation no later than ten business (10) days after receipt of the Settlers' Statement of Position. The Settlers 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 the Settlers provide such a reply, the Department shall have ten (10) business days after receipt of the Settlers' reply to the Department's Statement of Position within which to provide the Settlers the Department's reply to the Settlers' reply to the Department's Statement of Position. 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 and Settlement, the time periods may be shortened upon and in accordance with notice by the Department as agreed to by the Settlers.

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 served pursuant to the preceding subparagraph, and any relevant information. The record shall be available for review by all parties and the public.

C. In review by the ADD of any dispute pursued under this Paragraph, the Settlers shall have the burden of establishing that the Department's position is inconsistent with the requirements of this Consent Decree and Settlement or the Approved Work Plan, except that with regard to disputes with respect to the implementation of the remedial action, the Settlers shall have the burden to prove that their position is consistent with the Decree and

the Work Plan. The ADD shall issue a final decision resolving the dispute. The Settlers may 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 may 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, or another time frame specified by the ADD.

D. After receipt of a revised submittal, the Department shall notify the Settlers 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, the parties, in the event they cannot reach resolution, shall bring the dispute to the Court's attention and shall request a hearing before the Court.

E. Nothing in this Paragraph 14 requires the parties to pursue the administrative dispute resolution process. The Settlers reserve their rights to, and may also, bring the matter to the attention of the Court or to the Magistrate assigned to the case.

F. The invocation of the procedures stated in this Paragraph shall not extend, postpone or modify the Settlers' obligations under this Consent Decree and Settlement or the Approved Work Plan except as to these matters in dispute, 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 30 days after the ADD's decision.

ENTRY UPON THE SITE

15. The Department recognizes that at the time this Consent Decree and Settlement is entered into, the Settlers do not own, control, manage, operate, influence, or oversee, the Site or any property adjacent to the Site. The State shall exercise its statutory and common law authority to obtain access to the Site so that the Approved Work Plan can be implemented by the Settlers. The Settlers agree that, once access is obtained by the State, they will not prevent the Department from entering those areas of the Site or the adjacent properties to which the Settlers have been granted access. In the event that the State cannot obtain access for the Settlers to the Site, the schedule for implementation of the Approved Work Plan will be postponed until access to the Site is obtained. The State shall make any appropriate legal application to obtain necessary access for the Settlers to implement the Approved Work Plan. The Settlers, where appropriate, will support the State's legal application. The Settlers shall permit the Department full access to all records relating to matters addressed by this Consent Decree and Settlement job meetings, provided, however, that the Settlers shall not be required under this Consent Decree and Settlement to submit any portions or records and/or information that would disclose privileged mental impressions, conclusions, opinions or legal theories. The Settlers and the State acknowledge that data is not privileged. Nothing in this Paragraph shall be deemed to establish an obligation on the part of the Settlers to take an action that would violate the right of the fee title holder to the property.

COMPLIANCE

16. The Settlers' failure to comply with any term of this Consent Decree and Settlement may constitute a violation of this Consent Decree and Settlement.

17. The Settlers shall not suffer any penalty under this Consent Decree and Settlement or be subject to any proceeding or action if they cannot comply with any requirement hereof because of an act of God, war, riot, or unusual or unforeseeable weather conditions, labor strikes, denial of access to the Site or adjacent properties, or other circumstances beyond the Settlers' reasonable control. The Settlers shall, within ten business days of obtaining knowledge of any such condition, notify the Department in writing. The Settlers shall include in such notice the measures taken and to be taken by the Settlers to prevent or minimize any delays and shall request an appropriate extension or modification of this Consent Decree and Settlement. The Settlers shall have the burden of proving that an event is a defense to compliance with this Consent Decree and Settlement pursuant to this subparagraph. As set forth in Paragraph 15, the State shall exercise its statutory and/or common law authority, whichever is appropriate, to obtain access to the Site so that the Approved Work Plan can be implemented. The Settlers may submit any issue for administrative Dispute Resolution under Paragraph 14 if the Department rejects the Settlers' assertion that an event is a force majeure event, or may bring the matter to the attention of the Court or Magistrate.

INDEMNIFICATION

18. (a) The Settlers shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all third-party legal suits, claims, actions, damages, and costs of every name and description, arising from, or on account of, the negligent fulfillment or attempted fulfillment of this Consent Decree and Settlement

by the Settlers and/or any of the Settlers' directors, officers, employees, servants, agents, successors, and assigns.

(b) This indemnification provision will not apply to Settlers' acts or omissions occurring after the completion of fieldwork under the Work Plan.

PUBLIC NOTICE

19. Within 30 days after the effective date of this Consent Decree and Settlement, the Settlers shall, unless it violates the rights of the landowner, file a copy of this Consent Decree and Settlement and the Approved Work Plan with the Clerk of Bronx County to give all parties who may acquire any interest in the Site notice of this Consent Decree and Settlement.

20. The Settlers shall send copies of the OU 1 and OU 2 Records of Decision to the Clerk of Bronx County and make a good faith attempt to have them filed with the Clerk to give all parties who may acquire any interest in the Site notice of the State's remedial action decisions. The Settlers shall provide the Department with documentation of its compliance with this provision.

21. The Department will draft one newsletter to be distributed by the Settlers to the public before commencement of the activities set forth in the Work Plan and one newsletter to be distributed by the Settlers to the public after completing those activities, in accordance with a distribution list to be provided by the Department, advising the public of the implementation of the Approved Work Plan including a description of the work. In addition, the newsletter will provide the names, addresses and telephone numbers of the Department staff to whom questions about the Site can be directed. Prior to the distribution of the newsletters, the Department shall provide drafts of the newsletters to the Settlers. In the event that the Department and the Settlers cannot agree on the draft of the

newsletter, the matter will be subject to dispute resolution before any such newsletter is transmitted. The sole ground for such dispute shall be that the newsletter increases the risk of liability to the Settlers.

22. Within 45 days of the approval of the Final Construction Certification Report, the Settlers shall submit one electronic copy of the Approved Work Plan, the Progress Report and the Final Construction Certification Report in .pdf format to the Department.

COMMUNICATIONS

23. All written communications relating to remedial and related activities required by this Consent Decree and Settlement shall be transmitted by United States Postal Service, by private courier service, or hand delivered as follows:

A. Communication from the Settlers shall be sent to:

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

with copies to:

Rosalie K. Rusinko
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 the Settlers shall be sent to:

Dean S. Sommer
Young, Sommer...LLC
Executive Woods, 5 Palisades Drive
Albany, New York 12205

with copies to:

Arthur Slesinger
Boehringer Ingelheim Pharmaceuticals, Inc.
900 Ridgebury Road
P O Box 368
Ridgefield, CT 06877

Allyn Carnam
Boehringer-Ingelheim Corporation
2820 North Normandy Drive
Petersburg, VA 23805

Ira Gottlieb
McCarter & English, LLP
4 Gateway Center
100 Mulberry Street
Newark, New Jersey 07102

C. Copies of any submittals shall be submitted as follows:

Four copies (one unbound) to:

Sally Dewes, P.E.

One copy to:

Rosalie K. Rusinko

D. Within 30 days of the Department's approval of any report submitted pursuant to this Consent Decree and Settlement, the Settlers shall submit to the Director, Division of Environmental Remediation, a computer readable magnetic media copy of the approved report in American Standard Code for Information Interchange (ASCII) format.

E. The Department and the Settlers reserve the right to designate additional or different addressees for communication or written notice to the other.

MISCELLANEOUS

24. The Settlers have retained professional consultants, contractors, and laboratories, acceptable to the Department, to perform the technical, engineering, and analytical obligations required by this Consent Decree and Settlement. The experience, capabilities, and qualifications of the firms or individuals selected by the Settlers have been

submitted and approved by the Department. The responsibility for the performance of the professionals retained by the Settlers shall rest solely with the Settlers.

A. The Department shall have the right to obtain samples and scientific measurements, and the Department and the Settlers 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 the Settlers with the results of samples it takes. The Settlers shall make available to the Department the results of all sampling and/or tests or other data generated by the Settlers through the implementation of this Consent Decree and Settlement and shall submit these results in any progress reports required by this Consent Decree and Settlement.

B. The Settlers shall notify the Department at least 10 working days in advance of any field activities to be conducted pursuant to this Consent Decree and Settlement, except for routine maintenance and surveillance activities.

C. Except as otherwise described herein, the Settlers shall use their reasonable efforts to obtain, all permits, approvals, or authorizations necessary to perform the Settlers' obligations under this Consent Decree and Settlement, except that the Department may exempt Settlers from the requirement to obtain any permit issued by the Department for any activity that is conducted on the Site and that the Department determines satisfies all substantive technical requirements applicable to like activity conducted pursuant to a permit. If any off-Site access required to perform the Settlers' responsibilities under this Consent Decree and Settlement is not obtained within 30 days of the effective date of this Consent Decree and Settlement, or within 20 days of the date the Department notifies the Settlers in writing that additional access beyond that previously secured is necessary and

the Settlers agree that such additional access is necessary to implement the OU 1 remedial action, the Settlers shall promptly notify the Department, and shall include in that notification a summary of the steps, if any, that Settlers have taken to obtain access.

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

E. All references to "professional engineer" in this Consent Decree and Settlement are to an individual registered as a professional engineer in accordance with Article 145 of the New York State Education Law. If such individual is a member of a firm, that firm must be authorized to offer professional engineering services in the State of New York in accordance with Article 145 of the New York State Education Law.

F. The project manager retained by Settlers shall certify that sampling done for disposal of excavated soils was done in accordance with the requirements of the disposal facility.

G. All references to "days" in this Consent Decree and Settlement are to calendar days unless otherwise specified.

H. The paragraph headings set forth in this Consent Decree and Settlement 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 and Settlement.

I. No term, condition, understanding, schedule, or agreement purporting to modify or vary any term of this Consent Decree and Settlement 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 the Settlers of the Settlers' obligation to obtain such formal approvals as may be required by this Consent Decree and Settlement.

J. If the Settlers desire that any provision of this Consent Decree and Settlement be modified, the Settlers shall make timely written application, signed by the Settlers, 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 to:

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

PAYMENTS BY THE SETTLORS

25. Within thirty (30) days of receipt of notification that this Consent Decree and Settlement has been approved and entered by the Court, the Settlers shall remit to the State the amount of \$1,000,000 (one million dollars) by certified or cashier's check made payable to the State of New York. The check(s) shall reference the Site name (Hexagon Laboratories Site) and shall be sent to Eugene J. Leff at the address indicated above.

26. Within 90 days of receipt of notification that this Consent Decree and Settlement has been approved and entered by the Court, the Settlers shall remit to a land trust, not-for-profit, or Bronx County agency, associated with or related to Pelham Bay Park and/or any of its components and approved by the Department, including but not limited to recreation, wildlife, or natural resource centers, the amount of \$50,000 (fifty thousand dollars). In the event that the Department does not approve of the recipient of the payment, the Department shall provide written notification to Settlers of the reasons for its disapproval. Once the payment is made to a land trust, not-for-profit or Bronx County agency, notification, in writing, shall be made to the State within 30 days of such payment.

RELEASE AND COVENANT BY THE STATE OF NEW YORK

27. In consideration of the work and the payments that will be made by the Settlers pursuant to this Consent Decree and Settlement and subject to the Reopener provision herein, the State releases and covenants not to sue or to take any other action against such Settlers or their affiliated entities, officers, employees, agents or representatives pursuant to CERCLA, common law, or any other federal or state laws for damages or past or future Response Costs or abatement costs incurred or to be incurred by the State at or related to the Site. This release and covenant shall take effect upon receipt of the required payments under this Consent Decree and Settlement.

REOPENER

28. The covenant not to sue provided in this Consent Decree and Settlement shall not apply to claims with respect to injunctive response actions or abatement necessitated by the discovery of any release or threatened release of hazardous substances at or from the Site or other environmental conditions that were not known by the State on or before the effective date of this Consent Decree and Settlement, and that establish that the

remedial action required by the OU 1 ROD for the Site issued by DEC in February, 2002, is not protective of human health or the environment in relation to the soils on the Site. Nothing in this Reopener shall be construed to apply to the groundwater related to the Site. The burden of proof in such a circumstance is on the plaintiff.

COVENANTS BY THE SETTLORS

29. In consideration of the release and covenant not to sue provided by the State, and subject to the Reopener provision herein, the Settlers 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. This covenant shall not apply in the event that the State exercises the Reopener provision of paragraph 28.

CONTRIBUTION PROTECTION

30. The parties hereto agree that each Settlor is entitled, upon receipt by the State of the required payments under this Consent Decree and Settlement, to protection from contribution actions and claims as provided by Section 113(f)(2) of CERCLA for matters addressed in this Consent Decree and Settlement. The matters addressed in this Consent Decree and Settlement are the implementation of the remedial program for the Site and payments arising from site conditions, including all claims set forth in the Amended Complaint.

EFFECT ON LIABILITY OF OTHER PARTIES

31. Nothing in this Consent Decree and Settlement 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 and

Settlement. Nothing in this Consent Decree and Settlement shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Consent Decree and Settlement.

EFFECTIVE DATE

32. This Consent Decree and Settlement shall become effective when this Consent Decree and Settlement is approved and entered by the Court.

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: _____, 2003

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

Boehringer Ingelheim Corporation (USA)

Dated: _____, 2003

By: _____
Dean S. Sommer, Esq.,
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5 Palisades Drive
Albany, New York 12205

Boehringer Ingelheim GmbH, Boehringer
Ingelheim International GmbH and C.H.
Boehringer Sohn

Dated: _____, 2003

By: _____

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Ira Gottlieb, Esq.
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100 Mulberry Street
Newark, NJ 07102

Pharma-Investment Limited

Dated: _____, 2003

By: _____

Ross Katz, Esq.
Robinson & Cole LLP
780 Third Avenue
New York, NY 10017

ORDERED, ADJUDGED AND DECREED this ____ day of _____, 2003.

U.S.D.J.