

**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-

CLASS II CONSENT DECREE

**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") 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 Peartree Avenue in the Bronx, New York (the "Site");

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

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. 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), and alleged, inter alia, that Defendant Solutia Inc. is a successor to the Monsanto Company, which the State alleged had arranged for disposal at the Site of hazardous substances owned by Monsanto within the meaning of § 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3);

WHEREAS, the State is actively negotiating settlement with the aforesaid Defendants (hereinafter, the “Class I Potentially Responsible Parties” or “Class I PRPs”) with the goal of resolving all claims asserted in the State’s Amended Complaint for past and future Response Costs and abatement costs incurred or to be incurred in connection with the Site;

WHEREAS, after filing its Amended Complaint, the State learned of numerous additional parties that allegedly arranged for the disposal of hazardous waste and hazardous substances at the Site by contracting with Hexagon Laboratories, Inc., which owned and operated the Site, to formulate products utilizing chemical stocks which contained hazardous substances and by thereby generating wastes containing hazardous substances which were disposed of at the Site (hereinafter, the "Class II Potentially Responsible Parties" or "Class II PRPs");

WHEREAS, the State has 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 of at the Site;

WHEREAS, the State 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 that additional response costs in the approximate amount of \$ 6.2 million will be incurred in the future to respond to the release and threat of a release of hazardous substances at the Site, including the design, implementation, and oversight of remediation of soil and groundwater contamination at the Site;

WHEREAS, the parties to this Consent Decree desire to fully resolve all claims and liability pursuant to CERCLA, and any other federal or state laws, including but not limited to 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, for Response Costs and abatement costs incurred or to be incurred by the State or any other person (other than the

United States), which could be asserted by the State or any other person (other than the United States) 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 Class II PRPs that have consented to this Consent Decree (the "Consenting Class II PRPs") 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

1. The purpose of this Consent Decree is to fully resolve all claims and liability pursuant to CERCLA and any other federal or state laws, that could be made by the State or any other person (other than the United States) against the Consenting Class II PRPs for response and abatement costs incurred or to be incurred by the State or any other person (other than the United States), to provide full and complete contribution protection to the Consenting Class II PRPs with regard to the Site pursuant to Section 113(f)(2) of CERCLA, and to provide for payment by the Consenting Class II PRPs of an amount that represents a fair, reasonable and equitable contribution to the response and abatement costs incurred or to be incurred by the State or any other person (other than the United States) at the Site.

DISCLAIMER OF ADMISSIONS

2. Nothing in this Consent Decree shall constitute, or be construed as, any admission or adjudication of liability on any issue of law or fact and shall not be used as evidence of liability in any future proceeding.

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 Consenting Class II PRPs hereby waives all objections and defenses it may have to the jurisdiction of the Court or to venue in this District.

PARTIES BOUND

4. This Consent Decree shall apply to and be binding upon the State and all of its officials and instrumentalities and upon each of the Consenting Class II PRPs and their affiliated entities. 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 or to the attached Consent 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 a Consenting Class II PRP, including any transfer of assets or real or personal property, shall in no way alter such Class II PRP’s payment responsibilities under this Consent Decree, and nothing herein shall be construed to reduce the obligations of two or more Class II PRPs that enter into a merger or other corporate reorganization.

PAYMENTS BY THE CONSENTING CLASS II PRPs

5. Within sixty (60) days of receipt of notification that this Consent Decree has been approved and entered by the Court, each Consenting Class II PRP shall remit to the State the amount of \$50,000 by certified or cashier’s check made payable to the State of

New York. Each check shall reference the Site name (Hexagon Laboratories Site) and the name and address of the Consenting Class II PRP, and shall be sent to the following address:

Eugene Martin-Leff
New York State Department of Law
120 Broadway
New York, New York 10271 Att'n: Hexagon Settlement

COVENANT BY THE STATE OF NEW YORK

6. In consideration of the payment that will be made by a Consenting Class II PRP pursuant to this Consent Decree, and subject to the Reopener provision set forth in paragraph 7 herein, the State covenants not to sue or to take any other action against such Consenting Class II PRP or its affiliated entities, officers, employees, agents or representatives pursuant to CERCLA or any other federal or state laws, including but not limited to 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, for past or future Response Costs or abatement costs incurred or to be incurred by the State or any other person (other than the United States) at or related to the Site. This covenant shall take effect with respect to a particular Consenting Class II PRP upon receipt of its required payment under this Consent Decree or upon the effective date specified below, whichever is later. The effectiveness of this covenant shall not depend upon the success of negotiations between the State and the Class I PRPs.

REOPENER

7. 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 Operable Unit no. 1 Record of Decision for the Site issued by DEC in February, 2000, or by the Operable Unit no. 2 Record of Decision for the Site issued by DEC in July 2002, are not protective of human health or the environment.

COVENANTS BY THE CONSENTING CLASS II PRPs

8. In consideration of the covenant not to sue provided by the State, and subject to the Reopener provision herein, the Consenting Class II PRPs 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, and covenant not to sue and agree not to assert any claims or causes of action against each other for matters addressed in this Consent Decree.

CONTRIBUTION PROTECTION

9. The parties hereto agree that each Consenting Class II PRP is entitled, upon receipt of its required payment under this Consent Decree or upon the effective date specified below, whichever is later, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA for matters addressed in this Consent Decree, subject to the Reopener provision herein. The matters addressed in this Consent Decree are Response Costs and abatement costs incurred or to be incurred by the State or any other person (other than the United States) at or related to the Site. Claims with respect to natural resources damages as a result of the release or threatened release of hazardous substances or constituents at or from the Site or areas in the vicinity of the Site are not addressed in this Consent Decree. The effectiveness of this protection from contribution actions or claims shall not depend upon the success of negotiations between the State and the Class I PRPs.

EFFECT ON LIABILITY OF OTHER PARTIES

10. 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, that 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.

EFFECTIVE DATE

11. This Consent Decree shall become effective as to a particular Consenting Class II PRP when this Consent Decree is approved and entered by the Court, or when the attached Consent is signed by such Class II PRP, whichever occurs later.

Dated: New York, New York
March 14, 2003

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

By: _____
EUGENE MARTIN-LEFF
Assistant Attorney General
New York State Department of Law

ORDERED, ADJUDGED AND DECREED this ____ day of _____, 2002.

U.S.D.J.

CONSENT BY CLASS II PRP

The undersigned Class II PRP consents to the issuance of the foregoing Consent Decree and agrees to be bound by the provisions, terms and conditions contained herein.

Corporate Name: _____

Address:

By: _____

Position:

STATE OF)
) ss.:
COUNTY OF)

On this _____ day of _____, 2002, before me personally came _____, to me known, who being by me duly sworn did depose and say that he resides at _____, _____, that he is the _____ of Class II PRP _____ and that he signed his name for and on behalf of said corporation, with full authority so to do.

Notary Public