UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
EASTERN DIVISION

UNITED STATES OF AMERICA Plaintiff, v. PHARMACIA CORPORATION, and SOLUTIA INC. Defendants.	:	Civil Action No. 02-CV-0749-PWG

CONSENT DECREE FOR REMEDIAL DESIGN/REMEDIAL ACTION (RD/RA) FOR OPERABLE UNIT NO. 3

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I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint against Solutia Inc. and Pharmacia Corporation (collectively, the "Defendants") on March 25, 2002 in this matter pursuant to Sections 106, 107 and 113(g)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606, 9607 and 9613(g)(2) (the "Complaint").

B. The United States in the Complaint sought, *inter alia*: (1) reimbursement of costs incurred by EPA and the Department of Justice ("DOJ") for response actions in and around Anniston, Calhoun County, Alabama, together with accrued interest; (2) performance of response actions by the defendants under CERCLA; and (3) a declaratory judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2).

C. On August 4, 2003 the United States District Court for the Northern District of Alabama entered a Revised Partial Consent Decree ("RPCD") agreed to by the Defendants and the United States. The RPCD resolved a portion of the United States' claims between and among the United States and the Defendants. The RPCD continues to govern the specified activities of the Defendants, except that the remedial investigation and feasibility study ("RI/FS") work required under the RPCD related to Operable Unit 3 (defined below and also referred to as "OU-3") has been completed.

D. In accordance with the terms of the RPCD and the requirements of CERCLA, the EPA issued an Interim Record of Decision ("IROD"), dated September 29, 2011, and attached as Appendix A, for remedial action to be performed at OU-3. In order to resolve some of the remaining claims brought by the United States in its complaint, the United States and the Defendants have entered into this Consent Decree ("Consent Decree"), which requires the Defendants to implement the Remedial Design/Remedial Action ("RD/RA") for OU-3 in accordance with the IROD and to fulfill the requirements of this Consent Decree.

E. This Consent Decree seeks to partially resolve the claims of the Plaintiff against Defendants by, *inter alia*, the payment of Future Response Costs incurred by EPA and the Department of Justice; and the performance of the RD/RA at OU-3, pursuant to the attached Scope of Work ("SOW"). The Parties acknowledge that this Consent Decree does not resolve portions of the United States' claims against Defendants under Sections 106, 107, and 113(g)(2) of CERCLA, 42 U.S.C. §§ 9606, 9607, and 9613(g)(2), as alleged in the Complaint. The Parties acknowledge that it will be necessary to enter into separate consent decree(s) in the future to address other remedies for other operable units identified and selected during the performance of the remaining RI/FS work under the RCPD and selected in future records of decisions ("RODs"). Currently, the RI/FS work under the RCPD has identified the following operable units ("OU"): OU-1 and OU-2 (residential and non-residential properties around the Anniston Plant and downstream along Snow Creek to Highway 78); OU-3 (defined herein); and OU-4 (Snow Creek and its floodplain downstream of Highway 78 to the confluence of Snow and Choccolocco Creeks and Choccolocco Creek and its floodplain from the backwater area upstream of Snow Creek to the embayment of Lake Logan Martin on the Coosa River). EPA reserves the right to identify other operable units in the future, should additional CERCLA response work be required in areas near OU-1 through OU-4.

F. Nothing in this Consent Decree shall be construed to grant Defendants or any other party the right to seek judicial review of any ROD or any other response action taken by EPA other than the IROD issued for and actions taken with respect to OU-3. As provided in Paragraph 97, Defendants shall not assert and may not maintain that the claims asserted by the United States in any subsequent proceeding (including, but not limited to, the filing of another consent decree with this Court) were or should have been brought in the instant case.

G. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of Alabama (the "State") on November 17, 2011, of negotiations with potentially responsible parties ("PRPs") regarding the implementation of the RD/RA for OU-3, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree. The State, through the Alabama Department of Environmental Management ("ADEM"), has not objected to this Consent Decree.

H. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the United States Department of the Interior and the National Oceanic and Atmospheric Administration on November 9, 2011, of negotiations with PRPs regarding the release of hazardous substances that may have resulted in injury to the natural resources under federal trusteeship and encouraged the trustee(s) to participate in the negotiation of this Consent Decree.

I. EPA notified the Alabama Department of Conservation and Natural Resources and the Geological Survey of Alabama on November 9, 2011 of negotiations with PRPs regarding the release of hazardous substances that may have resulted in injury to the natural resources under state trusteeship and encouraged the trustees to participate in the negotiation of this Consent Decree.

J. By entering into this Consent Decree, the Defendants do not admit any liability to the United States arising out of the transactions or occurrences alleged in the complaint, nor do they acknowledge that the release or threatened release of hazardous substance(s) at or from OU-3 constitutes an imminent and substantial endangerment to the public health or welfare or the environment.

K. In response to a release or a substantial threat of a release of a hazardous substance(s) at or from, in part, OU-3 and in accordance with the terms of the RPCD, the Defendants commenced on August 4, 2003, a RI/FS for OU-3 pursuant to 40 C.F.R. § 300.430.

L. Defendants, in accordance with the terms of the RPCD and under EPA's oversight, completed a Remedial Investigation ("RI") Report for OU- 3 on May 20, 2010, and Defendants, under EPA's oversight, completed a Feasibility Study ("FS") Report for OU-3 on June 21, 2010.

M. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan for remedial action at OU-3 on September 1, 2010 in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator, EPA Region 4, based the selection of the response action.

N. The decision by EPA on the interim remedial action to be implemented at OU-3 is embodied in the IROD on which the State had a reasonable opportunity to review and comment and on which the State has not objected. The IROD includes EPA's explanation for any significant differences between the IROD and the proposed plan as well as a responsiveness summary to the

public comments. Notice of the IROD was published in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b).

O. Based on the information presently available to EPA, EPA believes that the Work (as defined below) will be properly and promptly conducted by Defendants if conducted in accordance with the requirements of this Consent Decree and its appendices and the applicable requirements of the RPCD.

P. Solely for the purposes of Section 113(j) of CERCLA, 42 U.S.C. § 9613(j), the Remedial Action set forth in the IROD and the Work to be performed by Defendants shall constitute a response action taken or ordered by the President for which judicial review shall be limited to the administrative record.

Q. 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 OU-3 and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

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

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over Defendants. Solely for the purposes of this Consent Decree and the underlying complaint, Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

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

3. Defendants shall provide a copy of this Consent Decree to each contractor hired to perform the Work required by this Consent Decree and to each person representing any Defendant with respect to OU-3 or the Work, and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. Defendants or their contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. Defendants shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work in accordance with the terms of this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with Defendants within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

4. Unless otherwise expressly provided in this Consent Decree, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply solely for purposes of this Consent Decree:

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

"Anniston Community Advisory Group" or "Anniston CAG" shall mean the community advisory group created under the Revised Partial Consent Decree.

"Anniston PCB Site Special Account" shall mean the special account, within the EPA Hazardous Substances Superfund, established by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), and established pursuant to the Revised Partial Consent Decree entered into between the United States, Solutia Inc., and Pharmacia Corp., Civil Action No. 1:02-cv-0749, entered by the Court on August 4, 2003.

"Anniston Plant" shall mean the facility currently owned and operated by Solutia Inc. located at 702 Clydesdale Avenue, Anniston, Alabama, encompassing approximately 138 acres, and including the manufacturing facility, South Landfill, and West End Landfill.

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-6975.

"Consent Decree" or "Decree" shall mean this Consent Decree and all appendices attached hereto (listed in Section XXVIII). In the event of conflict between this Consent Decree and any appendix, this Consent Decree shall control.

The term "day" shall mean a calendar day unless expressly stated to be a working day. The term "working day" shall mean a day other than a Saturday, Sunday, or federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

"Defendants" shall mean those Parties identified in Appendix D.

"Effective Date" shall be the date upon which this Consent Decree is entered by the Court as recorded on the Court docket, or, if the Court instead issues an order approving the Consent Decree, the date such order is recorded on the Court docket.

"EPA" shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

"Future Response Costs" shall mean all costs, except ATSDR costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports, and other deliverables submitted pursuant to this Consent Decree, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Paragraph 9 (Notice to Successors-in-Title and Transfers of Real

Property), Sections VII (Remedy Review), IX (Access and Institutional Controls) (including, but not limited to, the cost of attorney time and any monies paid to secure access and/or to secure, implement, monitor, maintain, or enforce Institutional Controls including, but not limited to, the amount of just compensation), XV (Emergency Response), Paragraph 47 (Funding for Work Takeover), and Section XXIX (Community Relations). Future Response Costs shall also include all Interim Response Costs, and all Interest on those Interim Response Costs Defendants have agreed to pay under this Consent Decree that have accrued pursuant to 42 U.S.C. § 9607(a) during the period from February 3, 2012 to the Effective Date.

"Institutional Controls" or "ICs" shall mean Proprietary Controls and state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that: (a) limit land, water, and/or resource use to minimize the potential for human exposure to Waste Material at OU-3; (b) limit land, water, and/or resource use to implement, ensure non-interference with, or ensure the protectiveness of the Remedial Action; and/or (c) provide information intended to modify or guide human behavior at OU-3.

"Institutional Control Implementation and Assurance Plan" or "ICIAP" shall mean the plan for implementing, maintaining, monitoring, and reporting on the Institutional Controls set forth in the IROD, prepared in accordance with the SOW.

"Interim Record of Decision" or "IROD" shall mean the EPA Interim Record of Decision relating to Operable Unit No. 3 signed on September 29, 2011, by the Regional Administrator, EPA Region 4, and all attachments thereto. The IROD is attached as Appendix A.

"Interim Response Costs" shall mean all costs, including direct and indirect costs, (a) paid by the United States in connection with OU-3 between February 3, 2012 and the Effective Date, or (b) incurred by the United States in connection with OU-3 after February 3, 2012 and prior to the Effective Date but paid after that date.

"Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

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

"Operable Unit No. 3" or "OU-3" shall mean the real property on which the Anniston Plant, including the adjacent closed South Landfill and the closed West End Landfill, is located. OU-3 covers approximately 138 acres, with the area of current, active manufacturing operations covering approximately 68 acres of this real property. OU-3 is generally bounded to the north by the Northern Southern and Erie Railroads, to the east by Clydesdale Avenue, to the west by and including the West End Landfill and an Alabama Power Company substation, and to the south by and including the South Landfill and Highway 202, as depicted on the map attached as Appendix C.

"Owner Defendant" shall mean Solutia Inc. and its successors or assigns.

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

"Parties" shall mean the United States and Defendants.

"Performance Standards" shall mean the cleanup standards and other measures of achievement of the goals of the Remedial Action, set forth in Section 8.0 of the IROD and Section III.C. of the SOW and any modified standards established pursuant to this Consent Decree.

"Plaintiff" shall mean the United States.

"Pre-Achievement O&M" shall mean all operation and maintenance activities required for the Remedial Action to achieve Performance Standards, as provided under the Operation and Maintenance Plan approved or developed by EPA pursuant to Section VI (Performance of the Work by Defendants) and the SOW, and maintenance, monitoring, and enforcement of Institutional Controls as provided in the ICIAP, until Performance Standards are met.

"Post-Achievement O&M" shall mean all activities required to maintain the effectiveness of the Remedial Action after Performance Standards are met, as required under the Operation and Maintenance Plan approved or developed by EPA pursuant to Section VI (Performance of the Work by Defendants) and the SOW, and maintenance, monitoring, and enforcement of Institutional Controls after Performance Standards are met, as provided in the ICIAP.

"Proprietary Controls" shall mean easements or covenants running with the land that (a) limit land, water, or resource use and/or provide access rights and (b) are created pursuant to common law or statutory law by an instrument that is recorded by the owner in the appropriate land records office.

"RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

"Remedial Action" shall mean all activities Defendants are required to perform under this Consent Decree to implement the IROD, in accordance with the SOW, the EPA-approved Remedial Design and Remedial Action Work Plans, and other plans approved by EPA, including Pre-Achievement O&M and implementation of Institutional Controls, until the Performance Standards are met, and excluding performance of the Remedial Design, Post-Achievement O&M, and the activities required under Section XXV (Retention of Records).

"Remedial Action Work Plan" shall mean the document developed pursuant to Paragraph 12 (Remedial Action) and approved by EPA, and any modifications thereto.

"Remedial Design" shall mean those activities to be undertaken by Defendants to develop the final plans and specifications for the Remedial Action pursuant to the Remedial Design Work Plan.

"Remedial Design Work Plan" shall mean the document developed pursuant to Paragraph 11 (Remedial Design) and approved by EPA, and any modifications thereto.

"Revised Partial Consent Decree" or "RPCD" shall mean the Revised Partial Consent Decree between Pharmacia Corporation, Solutia Inc., and the United States entered by the United States District Court for the Northern District of Alabama on August 4, 2003 and the appendices thereto.

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

"State" shall mean the State of Alabama.

"Statement of Work" or "SOW" shall mean the statement of work for implementation of the Remedial Design, Remedial Action, and Pre- and Post-Achievement O&M at OU-3, as set forth in

Appendix B to this Consent Decree and any modifications made in accordance with this Consent Decree.

"Supervising Contractor" shall mean the principal contractor or designated person retained by Defendants to supervise and direct the implementation of the Work under this Consent Decree.

"Transfer" shall mean to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

"United States" shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA, and any federal natural resource trustee.

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

"Work" shall mean all activities and obligations Defendants are required to perform under this Consent Decree, except the activities required under Section XXV (Retention of Records).

V. GENERAL PROVISIONS

5. Objectives of the Parties. The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare or the environment by the design and implementation of response actions within OU-3 by Defendants, to pay Interim Response Costs and Future Response Costs of the Plaintiff, and to resolve the claims of Plaintiff against Defendants as provided in this Consent Decree.

6. Commitments by Defendants.

a. Defendants shall finance and perform the Work in accordance with this Consent Decree, the IROD, the SOW, and all work plans and other plans, standards, specifications, and schedules set forth in this Consent Decree or developed by Defendants and approved by EPA pursuant to this Consent Decree. Defendants shall pay the United States for Interim Response Costs and Future Response Costs as provided in this Consent Decree.

b. The obligations of Defendants to finance and perform the Work, including obligations to pay amounts due under this Consent Decree, are joint and several. In the event of the insolvency of any Defendant or the failure by any Defendant to implement any requirement of this Consent Decree, the remaining Defendants shall complete all such requirements.

7. Compliance With Applicable Law. All activities undertaken by Defendants pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Defendants must also comply with all applicable or relevant and appropriate requirements of all federal and state environmental laws as set forth in the IROD and the SOW. The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be deemed to be consistent with the NCP.

8. Permits.

a. As provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely within OU-3 (i.e., within the areal extent of contamination or in very close proximity to the

contamination and necessary for implementation of the Work). Where any portion of the Work that is not within OU-3 requires a federal or state permit or approval, Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. Defendants may seek relief under the provisions of Section XVIII (Force Majeure) for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval referenced in Paragraph 8.a and required for the Work, provided that they have submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals.

c. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

9. Notice to Successors-in-Title and Transfers of Real Property.

a. For any real property owned or controlled by Owner Defendant located within OU-3, Owner Defendant shall, within 15 days after the Effective Date, submit to EPA for review and approval a proposed notice to be filed with the appropriate land records office that provides a description of the real property within OU-3 and provides notice to all successors-in-title that the real property is part of OU-3, that EPA has selected an interim remedy for OU-3, and that potentially responsible parties have entered into a Consent Decree requiring implementation of the interim remedy within OU-3. The notice also shall describe the land use restrictions, if any, set forth in Paragraphs 26.b and 27.a(2) and shall identify the United States District Court in which the Consent Decree was filed, the name and civil action number of this case, and the date the Consent Decree was entered by the Court. Owner Defendant shall record the notice within ten days after EPA's approval of the notice. Owner Defendant shall provide EPA with a certified copy of the recorded notice within ten days after recording such notice.

b. Owner Defendant shall, at least 60 days prior to any Transfer of any real property located within OU-3, give written notice: (1) to the transferee regarding the RPCD, the Consent Decree and any Institutional Controls regarding the real property; and (2) to EPA and the State regarding the proposed Transfer, including the name and address of the transferee and the date on which the transferee was notified of the RPCD, the Consent Decree and any Institutional Controls.

c. Owner Defendant may Transfer any real property located within OU-3 only if: (1) any Proprietary Controls required by Paragraph 26.c have been recorded with respect to the real property; or (2) Owner Defendant has obtained an agreement from the transferee, enforceable by Defendants and the United States, to (i) allow access and restrict land/water use, pursuant to Paragraphs 27.a(1) and 27.a(2), (ii) record any Proprietary Controls on the real property, pursuant to Paragraph 27.a(3), and (iii) subordinate its rights to any such Proprietary Controls, pursuant to Paragraph 27.a(3), and EPA has approved the agreement in writing. If, after a Transfer of the real property, the transferee fails to comply with the agreement provided for in this Paragraph 9.c, Owner Defendant shall take all reasonable steps to obtain the transferee's compliance with such agreement. The United States may seek the transferee's compliance with the agreement and/or assist Owner Defendant in obtaining compliance with the agreement. Defendants shall reimburse the United States under Section XVI (Payments for Response Costs), for all costs incurred, direct or indirect, by the United States regarding obtaining compliance with such agreement, including, but not limited to, the cost of attorney time.

d. In the event of any Transfer of real property located within OU-3, unless the United States otherwise consents in writing, Defendants shall continue to comply with their obligations under the Consent Decree, including, but not limited to, their obligation to provide and/or secure access, to implement, maintain, monitor, and report on Institutional Controls, and to abide by such Institutional Controls.

e. The provisions of this Paragraph 9 do not apply in the event the transfer of real property within OU-3 is the result of an acquisition of all of the stock of the Owner Defendant; provided, however, that the Owner Defendant or any company into which the Owner Defendant is merged or consolidated shall remain obligated to fulfill all of the obligations of this Paragraph 9 and the Owner Defendant is required to prepare a Uniform Environmental Covenant under Alabama state law.

VI. PERFORMANCE OF THE WORK BY DEFENDANTS

10. Selection of Supervising Contractor.

a. All aspects of the Work to be performed by Defendants pursuant to Sections VI (Performance of the Work by Defendants), VII (Remedy Review), VIII (Quality Assurance, Sampling, and Data Analysis), IX (Access and Institutional Controls), and XV (Emergency Response) shall be under the direction and supervision of the Supervising Contractor, the selection of which shall be subject to disapproval by EPA. Within ten days after the lodging of this Consent Decree, Defendants shall notify EPA in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor. With respect to any contractor proposed to be Supervising Contractor, Defendants shall demonstrate that the proposed contractor has a quality assurance system that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan ("QMP"). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001, reissued May 2006) or equivalent documentation as determined by EPA. EPA will issue a notice of disapproval or an authorization to proceed regarding hiring of the proposed contractor. If at any time thereafter, Defendants propose to change a Supervising Contractor, Defendants shall give such notice to EPA and must obtain an authorization to proceed from EPA, before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree.

b. If EPA disapproves a proposed Supervising Contractor, EPA will notify Defendants in writing. Defendants shall submit to EPA a list of contractors, including the qualifications of each contractor, that would be acceptable to them within 30 days after receipt of EPA's disapproval of the contractor previously proposed. EPA will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. Defendants may select any contractor from that list that is not disapproved and shall notify EPA of the name of the contractor selected within 21 days after EPA's authorization to proceed.

c. If EPA fails to provide written notice of its authorization to proceed or disapproval as provided in this Paragraph and this failure prevents Defendants from meeting one or more deadlines in a plan approved by EPA pursuant to this Consent Decree, Defendants may seek relief under Section XVIII (Force Majeure).

11. Remedial Design.

a. Within 21days after EPA's issuance of an authorization to proceed pursuant to Paragraph 10 (Selection of Supervising Contractor) or within 21 days of the Effective Date, whichever is later, Defendants shall submit to EPA a work plan for the design of the Remedial Action at OU-3 ("Remedial Design Work Plan"). The Remedial Design Work Plan shall provide for design of the remedy set forth in the IROD, in accordance with the SOW and for achievement of the Performance Standards and other requirements set forth in the IROD, this Consent Decree, and/or the SOW. Upon its approval by EPA, the Remedial Design Work Plan shall be incorporated into and enforceable under this Consent Decree. Within 21days after EPA's issuance of an authorization to proceed under Paragraph 10 or within 21 days of the Effective Date, whichever is later, Defendants shall submit to EPA and the State a Health and Safety Plan for field design activities that conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

b. The Remedial Design Work Plan shall include plans and schedules for implementation of all remedial design and pre-design tasks identified in the SOW, including, but not limited to, plans and schedules for the completion of: (1) Design Sampling and Analysis Plan (including, but not limited to, a Field Sampling Analysis Plan ("FSAP"), a Remedial Design Quality Assurance Project Plan ("QAPP") in accordance with Section VIII (Quality Assurance, Sampling, and Data Analysis), and a plan for submitting all sampling data); (2) a Construction Quality Assurance Plan ("CQAP"); (3) an Institutional Control Implementation and Assurance Plan ("ICIAP"); (4) a preliminary design submission; (5) an intermediate design submission, (6) a prefinal design submission (including, but not limited to complete design analyses, final plans and specification, a final construction schedule, and a construction cost estimate); and (7) a final design submission. In addition, the Remedial Design Work Plan shall include a schedule for completion of the Remedial Action Work Plan.

c. Upon approval of the Remedial Design Work Plan by EPA, and submission of the Health and Safety Plan for all field activities to EPA, Defendants shall implement the Remedial Design Work Plan. Defendants shall submit to EPA all plans, reports, and other deliverables required under the approved Remedial Design Work Plan in accordance with the approved schedule for review and approval pursuant to Section XI (EPA Approval of Plans, Reports, and Other Deliverables). Unless otherwise directed by EPA, Defendants shall not commence further Remedial Design activities at OU-3 prior to approval of the Remedial Design Work Plan.

d. The preliminary design submission shall include, at a minimum, the following: (1) results of additional field sampling and pre-design work; (2) design criteria; (3) preliminary plans, drawings, and sketches; (4) required specifications in outline form; and (5) a plan for satisfying permitting requirements.

e. The intermediate design submission shall be a continuation and expansion of the preliminary design and shall include, at a minimum, the following: (1) draft design analyses; (2) draft plans, drawings, and sketches; (3) draft specifications; and (4) a draft construction schedule.

f. The prefinal design submission shall include, at a minimum, the following: (1) complete design analyses; (2) final plans and specifications; (3) final construction schedule; (4) construction cost estimate; (5) final ICIAP; and (6) Operation and Maintenance Plan; and (7) CQAP. The CQAP, which shall detail the approach to quality assurance during construction

activities at OU-3, shall specify a quality assurance official, independent of the Supervising Contractor, to conduct a quality assurance program during the construction phase of the project.

12. Remedial Action.

a. Within 30 days after the approval of the final design submission, Defendants shall submit to EPA a work plan for the performance of the Remedial Action at OU-3 ("Remedial Action Work Plan"). The Remedial Action Work Plan shall provide for construction and implementation of the remedy set forth in the IROD and achievement of the Performance Standards, in accordance with this Consent Decree, the IROD, the SOW, and the design plans and specifications developed in accordance with the Remedial Design Work Plan and approved by EPA. Upon its approval by EPA, the Remedial Action Work Plan shall be incorporated into and enforceable under this Consent Decree. At the same time as they submit the Remedial Action Work Plan, Defendants shall submit to EPA a Health and Safety Plan for field activities required by the Remedial Action Work Plan that conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

b. Remedial Action Work Plan shall include the following: (1) schedule for completion of the Remedial Action; (2) method for selection of the contractor; (3) schedule for developing and submitting other required Remedial Action plans; (4) groundwater monitoring plan; (5) methodology for implementing a Construction Health and Safety Plan/Contingency Plan; (6) tentative formulation of the Remedial Action team; (7) CQAP (by construction contractor); and (8) procedures and plans for the decontamination of equipment and the disposal of contaminated materials. The Remedial Action Work Plan also shall include the methodology for implementing the CQAP and a schedule for implementing all Remedial Action tasks identified in the final design submission and shall identify the initial formulation of Defendants' Remedial Action project team (including, but not limited to, the Supervising Contractor).

c. Upon approval of the Remedial Action Work Plan by EPA, and submission of the Construction Health and Safety Plan/Contingency Plan for all field activities to EPA, Defendants shall implement the activities required under the Remedial Action Work Plan. Defendants shall submit to EPA all reports and other deliverables required under the approved Remedial Action Work Plan in accordance with the approved schedule for review and approval pursuant to Section XI (EPA Approval of Plans, Reports, and Other Deliverables). Unless otherwise directed by EPA, Defendants shall not commence physical Remedial Action activities at OU-3 prior to approval of the Remedial Action Work Plan.

13. Defendants shall continue to implement the Remedial Action until the Performance Standards are achieved. Defendants shall implement Post-Achievement O&M for so long thereafter as is required by this Consent Decree.

14. Modification of SOW or Related Work Plans.

a. If EPA determines that it is necessary to modify the Work specified in the SOW and/or in work plans developed pursuant to the SOW to achieve and maintain the Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the IROD, and such modification is consistent with the scope of the remedy set forth in the IROD, then EPA may issue such modification in writing and shall notify Defendants of such modification. For the purposes of this Paragraph and Paragraph 49 (Completion of the Work) only, the "scope of the remedy set forth in the IROD" is the remedial components set forth in the IROD, including, but not

limited to, those outlined in Section 12.0 of the IROD (Selected Remedy). If Defendants object to the modification they may, within 30 days after EPA's notification, seek dispute resolution under Paragraph 66 (Record Review).

b. The SOW and/or related work plans shall be modified: (1) in accordance with the modification issued by EPA; or (2) if Defendants invoke dispute resolution, in accordance with the final resolution of the dispute. The modification shall be incorporated into and enforceable under this Consent Decree, and Defendants shall implement all work required by such modification. Defendants shall incorporate the modification into the Remedial Design or Remedial Action Work Plan under Paragraph 11 (Remedial Design) or Paragraph 12 (Remedial Action), as appropriate.

c. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this Consent Decree.

15. Nothing in this Consent Decree, the SOW, or the Remedial Design or Remedial Action Work Plans constitutes a warranty or representation of any kind by Plaintiff that compliance with the work requirements set forth in the SOW and the Work Plans will achieve the Performance Standards.

16. Shipment of Waste Material Outside of OU-3.

a. Defendants may ship Waste Material from OU-3 to a facility outside of OU-3 only if they verify, prior to any shipment, that the facility outside of OU-3 is operating in compliance with the requirements of Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440, by obtaining a determination from EPA that the proposed receiving facility is operating in compliance with 42 U.S.C. § 9621(d)(3) and 40 C.F.R. § 300.440.

b. Defendants may ship Waste Material from OU-3 to an out-of-state waste management facility only if, prior to any shipment, they provide written notice to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator. This notice requirement shall not apply to any shipments outside OU-3 when the total quantity of all such shipments will not exceed ten cubic yards. The written notice shall include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. Defendants also shall notify the state environmental official referenced above and the EPA Project Coordinator of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Defendants shall provide the written notice after the award of the contract for Remedial Action construction and before the Waste Material is shipped.

VII. REMEDY REVIEW

17. Periodic Review. Defendants shall conduct any studies and investigations that EPA requests in order to permit EPA to conduct reviews of whether the Remedial Action is protective of human health and the environment at least every five years as required by Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and any applicable regulations.

18. EPA Selection of Further Response Actions. If EPA determines, at any time, that the Remedial Action is not protective of human health and the environment, EPA may select further response actions for OU-3 in accordance with the requirements of CERCLA and the NCP.

19. Opportunity To Comment. Defendants and, if required by Sections 113(k)(2) or 117 of CERCLA, 42 U.S.C. § 9613(k)(2) or 9617, the public, will be provided with an opportunity to

comment on any further response actions proposed by EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record during the comment period.

20. Defendants' Obligation To Perform Further Response Actions. If EPA selects further response actions for OU-3, EPA may require Defendants to perform such further response actions. Defendants may invoke the procedures set forth in Section XIX (Dispute Resolution) to dispute: (a) EPA's determination that the Remedial Action is not protective of human health and the environment; or (b) EPA's selection of the further response actions. Disputes pertaining to whether the Remedial Action is protective or to EPA's selection of further response actions shall be resolved pursuant to Paragraph 66 (Record Review).

21. Submission of Plans. If Defendants are required to perform further response actions pursuant to Paragraph 20, they shall submit a plan for such response action to EPA for approval in accordance with the procedures of Section VI (Performance of the Work by Defendants). Defendants shall implement the approved plan in accordance with this Consent Decree.

VIII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

22. Quality Assurance.

a. Defendants shall use quality assurance, quality control, and chain of custody procedures for all treatability, design, compliance, and monitoring samples in accordance with "EPA Requirements for Quality Assurance Project Plans (QA/R5)" (EPA/240/B-01/003, March 2001, reissued May 2006), "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/240/R-02/009, December 2002), and subsequent amendments to such guidelines upon notification by EPA to Defendants of such amendment. Amended guidelines shall apply only to procedures conducted after such notification.

b. Prior to the commencement of any monitoring project under this Consent Decree, Defendants shall submit to EPA for approval, after a reasonable opportunity for review and comment by the State, a Quality Assurance Project Plan ("QAPP") that is consistent with the SOW, the NCP, and applicable guidance documents. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Consent Decree. Defendants shall ensure that EPA personnel and its authorized representatives are allowed access at reasonable times to all laboratories utilized by Defendants in implementing this Consent Decree. In addition, Defendants shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Defendants shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Consent Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods that are documented in the "USEPA Contract Laboratory Program Statement of Work for Inorganic Analysis, ILM05.4," and the "USEPA Contract Laboratory Program Statement of Work for Organic Analysis, SOM01.2," and any amendments made thereto during the course of the implementation of this Decree; however, upon approval by EPA, after opportunity for review and comment by the State, Defendants may use other analytical methods that are as stringent as or more stringent than the CLP-approved methods. Defendants shall ensure that all laboratories they use for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent quality assurance/quality control ("QA/QC") program. Defendants shall use only laboratories that have a documented quality system that complies with ANSI/ASQC E4-1994, "Specifications and

Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001, reissued May 2006) or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP") as meeting the quality system requirements. Defendants shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Consent Decree are conducted in accordance with the procedures set forth in the QAPP approved by EPA.

23. Upon request, Defendants shall allow split or duplicate samples to be taken by EPA or its authorized representatives. Defendants shall notify EPA not less than 21 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow Defendants to take split or duplicate samples of any samples they take as part of Plaintiff' s oversight of Defendants' implementation of the Work.

24. Defendants shall submit to EPA two copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Defendants with respect to OU-3 and/or the implementation of this Consent Decree unless EPA agrees otherwise.

25. Notwithstanding any provision of this Consent Decree, the United States retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

IX. ACCESS AND INSTITUTIONAL CONTROLS

26. If OU-3, or any other real property where access or land/water use restrictions are needed, is owned or controlled by any of Defendants:

a. such Defendants shall, commencing on the date of lodging of the Consent Decree, provide the United States and the other Defendants, and their representatives, contractors, and subcontractors, with access at all reasonable times to OU-3, or such other real property, to conduct any activity regarding the Consent Decree including, but not limited to, the following activities, provided, that to the extent possible, such activities do not interfere with on-going operations of the manufacturing facilities of the Anniston Plant.:

(1) Monitoring the Work;

(2) Verifying any data or information submitted to the United States;

(3) Conducting investigations regarding contamination at or near OU-3;

(4) Obtaining samples;

(5) Assessing the need for, planning, or implementing additional response actions at or near OU-3;

(6) Assessing implementation of quality assurance and quality control practices as defined in the approved CQAP;

(7) Implementing the Work pursuant to the conditions set forth in Paragraph 83 (Work Takeover);

(8) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Defendants or their agents, consistent with Section XXIV (Access to Information);

(9) Assessing Defendants' compliance with the Consent Decree;

(10) Determining whether OU-3 or other real property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Consent Decree; and

(11) Implementing, monitoring, maintaining, reporting on, and enforcing any Institutional Controls and the requirements of the ICIAP.

b. commencing on the date of lodging of the Consent Decree, such Defendants shall not use OU-3, or such other real property, in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material or interfere with or adversely affect the implementation, integrity, or protectiveness of the Remedial Action. The restrictions shall include, but not be limited to: (i) disturbing or interfering with the integrity of any caps or covers installed at OU-3; (ii) disturbing or interfering with the integrity of any groundwater extraction or monitoring wells and pump-and-treat system installed at OU-3; and (iii) disturbing or interfering with the integrity of any interim or final corrective measures implemented at OU-3 prior to the IROD; and

c. such Defendants shall:

(1) execute and record in the appropriate land records office Proprietary Controls that: (i) grant a right of access to conduct any activity regarding the Consent Decree including, but not limited to, those activities listed in Paragraph 26.a; and (ii) grant the right to enforce the land/water use restrictions set forth in Paragraph 26.b, including, but not limited to, the specific restrictions listed therein and any land/water use restrictions listed in the ICIAP, as further specified in this Paragraph 26.c. The Proprietary Controls shall be granted to one or more of the following persons, as determined by EPA: (i) the United States, on behalf of EPA, and its representatives; (ii) the State and its representatives; (iii) the other Defendants and their representatives; and/or (iv) other appropriate grantees. The Proprietary Controls, other than those granted to the United States, shall include a designation that EPA (and/or the State as appropriate) is a "third-party beneficiary," allowing EPA to maintain the right to enforce the Proprietary Controls without acquiring an interest in real property. If any Proprietary Controls are granted to any Defendants pursuant to this Paragraph 26.c(1), then such Defendants shall monitor, maintain, report on, and enforce such Proprietary Controls.

(2) In accordance with the schedule set forth in the ICIAP, submit to EPA for review and approval regarding such real property within OU-3: (i) draft Proprietary Controls that are enforceable under State law; and (ii) a current title insurance commitment or other evidence of title acceptable to EPA, which shows title to the land affected by the Proprietary Controls to be free and clear of all prior liens and encumbrances (except when EPA waives the release or subordination of such prior liens or encumbrances or when, despite best efforts, Defendants are unable to obtain release or subordination of such prior liens or encumbrances).

(3) Within 21 days of EPA's approval and acceptance of the Proprietary Controls and the title evidence, update the title search and, if it is determined that nothing has occurred since the effective date of the commitment, or other title evidence, to affect the title adversely, record the Proprietary Controls with the appropriate land records office. Within 45 days after recording the Proprietary Controls, such Defendants shall provide EPA with a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded Proprietary Controls showing the clerk's recording stamps. If the Proprietary Controls are to be conveyed to the United States, the Proprietary Controls and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title shall be obtained as required by 40 U.S.C. § 3111.

27. If OU-3, or any other real property where access and/or land/water use restrictions are needed, is owned or controlled by persons other than any Defendant:

a. Defendants shall use best efforts to secure from such persons:

(1) an agreement to provide access thereto for the United States and Defendants, and their representatives, contractors, and subcontractors, to conduct any activity regarding the Consent Decree including, but not limited to, the activities listed in Paragraph 26.a;

(2) an agreement, enforceable by Defendants and the United States, to refrain from using OU-3, or such other real property, in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material or interfere with or adversely affect the implementation, integrity, or protectiveness of the Remedial Action. The agreement shall include, but not be limited to, the land/water use restrictions listed in Paragraph 26.b; and

(3) the execution and recordation in the appropriate land records office of Proprietary Controls, that (i) grant a right of access to conduct any activity regarding the Consent Decree including, but not limited to, those activities listed in Paragraph 26.a, and (ii) grant the right to enforce the land/water use restrictions set forth in Paragraph 26.b, including, but not limited to, the specific restrictions listed therein and any land/water use restrictions listed in the ICIAP. The Proprietary Controls shall be granted to one or more of the following persons, as determined by EPA: (i) the United States, on behalf of EPA, and its representatives, (ii) the State and its representatives, (iii) Defendants and their representatives, and/or (iv) other appropriate grantees. The Proprietary Controls, other than those granted to the United States, shall include a designation that EPA (and/or the State as appropriate) is a third party beneficiary, allowing EPA to maintain the right to enforce the Proprietary Controls without acquiring an interest in real property. If any Proprietary Controls are granted to any Defendants pursuant to this Paragraph 27.a(3), then such Defendants shall monitor, maintain, report on, and enforce such Proprietary Controls.

b. In accordance with the schedule set forth in the ICIAP, Defendants shall submit to EPA for review and approval regarding such property: (i) draft Proprietary Controls that are enforceable under State law; and (ii) a current title insurance commitment, or other evidence of title acceptable to EPA, which shows title to the land affected by the Proprietary Controls to be free and clear of all prior liens and encumbrances (except when EPA waives the release or subordination

of such prior liens or encumbrances or when, despite best efforts, Defendants are unable to obtain release or subordination of such prior liens or encumbrances).

c. Within 21 days of EPA's approval and acceptance of the Proprietary Controls and the title evidence, Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment, or other title evidence, to affect the title adversely, the Proprietary Controls shall be recorded with the appropriate land records office. Within 45 days after the recording of the Proprietary Controls, Defendants shall provide EPA with a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded Proprietary Controls showing the clerk's recording stamps. If the Proprietary Controls is to be conveyed to the United States, the Proprietary Controls and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title must be obtained as required by 40 U.S.C. § 3111.

28. For purposes of Paragraphs 26 and 27, "best efforts" includes the payment of reasonable sums of money (not to exceed the value of the property as determined by the County Tax Office) to obtain access, an agreement to restrict land/water use, a Proprietary Controls, and/or an agreement to release or subordinate a prior lien or encumbrance. If, within 60 days after EPA's approval of the ICIAP, Defendants have not: (a) obtained agreements to provide access, restrict land/water use, or record Proprietary Controls, as required by Paragraph 27.a(1), 27.a(2), or 27.a(3); or (b) obtained, pursuant to Paragraph 26.c(2) or 27.b, agreements from the holders of prior liens or encumbrances to release or subordinate such liens or encumbrances to the Proprietary Controls, Defendants shall promptly notify the United States in writing, and shall include in that notification a summary of the steps that Defendants have taken to attempt to comply with Paragraph 26 or 27. The United States may, as it deems appropriate, assist Defendants in obtaining access, agreements to restrict land/water use, Proprietary Controls, or the release or subordination of a prior lien or encumbrance. Defendants shall reimburse the United States under Section XVI (Payments for Response Costs) for all costs incurred, direct or indirect, by the United States in obtaining such access, agreements to restrict land/water use, Proprietary Controls, and/or the release/subordination of prior liens or encumbrances including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation.

29. If EPA determines that Institutional Controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls are needed, Defendants shall cooperate with EPA's efforts to secure and ensure compliance with such governmental controls.

30. Notwithstanding any provision of the Consent Decree, the United States retains all of its access authorities and rights, as well as all of its rights to require Institutional Controls, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

X. REPORTING REQUIREMENTS

31. In addition to any other requirement of this Consent Decree, Defendants shall submit to EPA and the State five hard copies and five electronic copies of written monthly progress reports that: (a) describe the actions that have been taken toward achieving compliance with this Consent Decree during the previous month; (b) include a summary of all results of sampling and tests and all other data received or generated by Defendants or their contractors or agents in the previous month;

(c) identify all plans, reports, and other deliverables required by this Consent Decree completed and submitted during the previous month; (d) describe all actions, including, but not limited to, data collection and implementation of work plans, that are scheduled for the next six weeks and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts and Pert charts; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that Defendants have proposed to EPA or that have been approved by EPA under this Consent Decree; and (g) describe all activities undertaken in support of the Community Relations Plan during the previous month and those to be undertaken in the next six weeks. Defendants shall submit these progress reports to EPA by the tenth day of every month following the lodging of this Consent Decree until EPA notifies Defendants pursuant to Paragraph 49.b of Section XIV (Certification of Completion). If requested by EPA, Defendants shall also provide briefings for EPA to discuss the progress of the Work.

32. Defendants shall notify EPA of any change in the schedule described in the monthly progress report for the performance of any activity, including, but not limited to, data collection and implementation of work plans, no later than seven days prior to the performance of the activity.

33. Upon the occurrence of any event during performance of the Work that Defendants are required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-know Act ("EPCRA"), 42 U.S.C. § 11004, Defendants shall within 24 hours of the onset of such event orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator nor Alternate EPA Project Coordinator is available, the Emergency Response Section, Region 4, United States Environmental Protection Agency. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

34. Within 20 days after the onset of such an event, Defendants shall furnish to EPA a written report, signed by Defendants' Project Coordinator, setting forth the events that occurred and the measures taken, and to be taken, in response thereto. Within 30 days after the conclusion of such an event, Defendants shall submit a report setting forth all actions taken in response thereto.

35. Defendants shall submit copies of all plans, reports, data, and other deliverables required by the SOW, the Remedial Design Work Plan, the Remedial Action Work Plan, or any other approved plans to EPA in accordance with the schedules set forth in such plans in the number provided in Exhibit 1 to the SOW. Defendants shall simultaneously submit a copy of all such plans, reports, data, and other deliverables to the State. Upon request by EPA, Defendants shall submit in electronic form all or any portion of any deliverables Defendants are required to submit pursuant to the provisions of this Consent Decree.

36. All deliverables submitted by Defendants to EPA that purport to document Defendants' compliance with the terms of this Consent Decree shall be signed by an authorized representative of Defendants.

XI. EPA APPROVAL OF PLANS, REPORTS, AND OTHER DELIVERABLES

37. Initial Submissions.

a. After review of any plan, report, or other deliverable that is required to be submitted for approval pursuant to this Consent Decree, EPA, after reasonable opportunity for review and comment by the State, shall: (1) approve, in whole or in part, the submission; (2) approve the submission upon specified conditions; (3) disapprove, in whole or in part, the submission; or (4) any combination of the foregoing.

b. EPA also may modify the initial submission to cure deficiencies in the submission if: (1) EPA determines that disapproving the submission and awaiting a resubmission would cause substantial disruption to the Work; or (2) previous submission(s) have been disapproved due to material defects and the deficiencies in the initial submission under consideration indicate a bad faith lack of effort to submit an acceptable plan, report, or deliverable.

38. Resubmissions. Upon receipt of a notice of disapproval under Paragraph 37.a(3) or (4), or if required by a notice of approval upon specified conditions under Paragraph 37.a(2), Defendants shall, within 30 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other deliverable for approval. After review of the resubmitted plan, report, or other deliverable, EPA may: (a) approve, in whole or in part, the resubmission; (b) approve the resubmission upon specified conditions; (c) modify the resubmission; (d) disapprove, in whole or in part, the resubmission, requiring Defendants to correct the deficiencies; or (e) any combination of the foregoing.

39. Material Defects. If an initially submitted or resubmitted plan, report, or other deliverable contains a material defect, and the plan, report, or other deliverable is disapproved or modified by EPA under Paragraph 37.b(2) or 38 due to such material defect, then the material defect shall constitute a lack of compliance for purposes of Paragraph 69. The provisions of Section XIX (Dispute Resolution) and Section XX (Stipulated Penalties) shall govern the accrual and payment of any stipulated penalties regarding Defendants' submissions under this Section.

40. Implementation. Upon approval, approval upon conditions, or modification by EPA under Paragraph 37 (Initiation Submissions) or Paragraph 38 (Resubmissions), of any plan, report, or other deliverable, or any portion thereof: (a) such plan, report, or other deliverable, or portion thereof, shall be incorporated into and enforceable under this Consent Decree; and (b) Defendants shall take any action required by such plan, report, or other deliverable, or portion thereof, subject only to their right to invoke the Dispute Resolution procedures set forth in Section XIX (Dispute Resolution) with respect to the modifications or conditions made by EPA. The implementation of any non-deficient portion of a plan, report, or other deliverable submitted or resubmitted under Paragraph 37 or 38 shall not relieve Defendants of any liability for stipulated penalties under Section XX (Stipulated Penalties).

XII. PROJECT COORDINATORS

41. Within 20 days after lodging this Consent Decree, Defendants and EPA will notify each other, in writing, of the name, address, and telephone number of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other Parties at least five working days before the change occurs, unless impracticable, but in no event later than the actual day the change is made. Defendants' Project Coordinator shall be subject

to disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. Defendants' Project Coordinator shall not be an attorney for any Defendant in this matter. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

42. Plaintiff may designate other representatives, including, but not limited to, EPA employees, and federal contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager ("RPM") and an On-Scene Coordinator ("OSC") by the NCP, 40 C.F.R. Part 300. EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the NCP, to halt any Work required by this Consent Decree and to take any necessary response action when he or she determines that conditions at OU-3 constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material.

43. EPA's Project Coordinator and Defendants' Project Coordinator will meet, at a minimum, on a monthly basis, and such meetings may be held by telephone.

XIII. PERFORMANCE GUARANTEE

44. In order to ensure the full and final completion of the Work, Defendants shall establish and maintain a performance guarantee, initially in the amount of $8,487,000, for the benefit of EPA (hereinafter "Estimated Cost of the Work"). The Owner Defendant currently has financial assurance established with ADEM to address a portion of the work included under this Paragraph 44. Once Defendants have executed all instruments in accordance with Paragraph 45, the Owner Defendant and EPA will notify ADEM that the Defendants have executed such instruments. Thereafter, the Owner Defendant may request that ADEM exercise its discretion to consider the performance guarantee under this Section as a complete or partial substitute for the financial assurance required under the RCRA Permit under ADEM Code R. 335-14-5-.08(1)(e) and further may request that ADEM remove or waive all or portions of the financial assurance requirements under the RCRA Permit pending completion of the Work. In the event ADEM refuses the Owner Defendant's request, the Defendants may invoke the procedures set forth in paragraph 48.a. and request that EPA reduce the amount of the performance guarantee; provided, however, that such request must be made within 30 days of Owner Defendant's receipt of ADEM's decision rejecting, in whole or in part, the request to reduce the financial assurance required under the RCRA permit. The performance guarantee, which must be satisfactory in form and substance to EPA, shall be in the form of one or more of the following mechanisms (provided that, if Defendants intend to use multiple mechanisms, such multiple mechanisms shall be limited to surety bonds guaranteeing payment, letters of credit, trust funds, and insurance policies):

a. A surety bond unconditionally guaranteeing payment and/or performance of the Work that is issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;

b. One or more irrevocable letters of credit, payable to or at the direction of EPA, that is issued by one or more financial institution(s) (1) that has the authority to issue letters of credit and (2) whose letter-of-credit operations are regulated and examined by a federal or state agency;

c. A trust fund established for the benefit of EPA that is administered by a trustee (1) that has the authority to act as a trustee and (2) whose trust operations are regulated and examined by a federal or state agency; or

d. A policy of insurance that (1) provides EPA with acceptable rights as a beneficiary thereof; and (2) is issued by an insurance carrier (i) that has the authority to issue insurance policies in the applicable jurisdiction(s) and (ii) whose insurance operations are regulated and examined by a federal or state agency.

45. Defendants have selected, and EPA has found satisfactory, as an initial performance guarantee [**insert type(s)**] pursuant to Paragraph 44 in the form attached hereto as Appendix F. Within ten days after the Effective Date, Defendants shall execute or otherwise finalize all instruments or other documents required in order to make the selected performance guarantee(s) legally binding in a form substantially identical to the documents attached hereto as Appendix F, and such performance guarantee(s) shall thereupon be fully effective. Within 30 days after the Effective Date, Defendants shall submit copies of all executed and/or otherwise finalized instruments or other documents required in order to make the selected performance guarantee(s) legally binding to the EPA Regional Financial Management Officer in accordance with Section XXVI (Notices and Submissions), with a copy to the United States and EPA ,as specified in Section XXVI.

46. In the event that EPA determines at any time that a performance guarantee provided by any Defendant pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, or in the event that any Defendant becomes aware of information indicating that a performance guarantee provided pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, Defendants, within 30 days after receipt of notice of EPA's determination or, as the case may be, within 30 days after any Defendant becoming aware of such information, shall obtain and present to EPA for approval a proposal for a revised or alternative form of performance guarantee listed in Paragraph 44 that satisfies all requirements set forth in this Section XIII; provided, however, that if any Defendant cannot obtain such revised or alternative form of performance guarantee within such 30-day period, and provided further that the Defendant shall have commenced to obtain such revised or alternative form of performance guarantee within such 30-day period, and thereafter diligently proceeds to obtain the same, EPA shall extend such period for such time as is reasonably necessary for the Defendant in the exercise of due diligence to obtain such revised or alternative form of performance guarantee, such additional period not to exceed 30 days. In seeking approval for a revised or alternative form of performance guarantee, Defendants shall follow the procedures set forth in Paragraph 48.b(2). Defendants' inability to post a performance guarantee for completion of the Work shall in no way excuse performance of any other requirements of this Consent Decree, including, without limitation, the obligation of Defendants to complete the Work in strict accordance with the terms of this Consent Decree.

47. Funding for Work Takeover. The commencement of any Work Takeover pursuant to Paragraph 83 shall trigger EPA's right to receive the benefit of any performance guarantee(s) provided pursuant to Paragraphs 44.a, 44.b, 44.c, or 44.d, and at such time EPA shall have immediate access to resources guaranteed under any such performance guarantee(s), whether in cash or in kind, as needed to continue and complete the Work assumed by EPA under the Work Takeover. Upon the commencement of any Work Takeover, if for any reason EPA is unable to promptly secure

the resources guaranteed under any such performance guarantee(s), whether in cash or in kind, necessary to continue and complete the Work assumed by EPA under the Work Takeover, Defendants shall immediately upon written demand from EPA deposit into the Anniston PCB Site Special Account, in immediately available funds and without setoff, counterclaim, or condition of any kind, a cash amount up to but not exceeding the estimated cost of completing the Work as of such date, as determined by EPA; provided that EPA will release the Defendants from any performance guarantee obligation once the cash amount is deposited into the Anniston PCB Site Special Account. In addition, if at any time EPA is notified by the issuer of a performance guarantee that such issuer intends to cancel the performance guarantee mechanism it has issued, then, unless Defendants provide a substitute performance guarantee mechanism in accordance with this Section XIII no later than 30 days prior to the impending cancellation date, EPA shall be entitled (as of and after the date that is 30 days prior to the impending cancellation) to draw fully on the funds guaranteed under the then-existing performance guarantee. All EPA Work Takeover costs not reimbursed under this Paragraph shall be reimbursed under Section XVI (Payments for Response Costs).

48. Modification of Amount and/or Form of Performance Guarantee.

a. Reduction of Amount of Performance Guarantee. If Defendants believe that the estimated cost of completing the Work has diminished below the amount set forth in Paragraph 44, Defendants may, on any anniversary of the Effective Date, or at any other time agreed to by the Parties, petition EPA in writing to request a reduction in the amount of the performance guarantee provided pursuant to this Section so that the amount of the performance guarantee is equal to the estimated cost of completing the Work. Defendants shall submit a written proposal for such reduction to EPA that shall specify, at a minimum, the estimated cost of completing the Work and the basis upon which such cost was calculated. In seeking approval for a reduction in the amount of the performance guarantee, Defendants shall follow the procedures set forth in Paragraph 48.b(2) for requesting a revised or alternative form of performance guarantee, except as specifically provided in this Paragraph 48.a. If EPA decides to accept Defendants' proposal for a reduction in the amount of the performance guarantee, either to the amount set forth in Defendants' written proposal or to some other amount as selected by EPA, EPA will notify the petitioning Defendants of such decision in writing. Upon EPA's acceptance of a reduction in the amount of the performance guarantee, the Estimated Cost of the Work shall be deemed to be the estimated cost of completing the Work set forth in EPA's written decision. After receiving EPA's written decision, Defendants may reduce the amount of the performance guarantee in accordance with and to the extent permitted by such written acceptance and shall submit copies of all executed and/or otherwise finalized instruments or other documents required in order to make the selected performance guarantee(s) legally binding in accordance with Paragraph 48.b(2). In the event of a dispute, Defendants may reduce the amount of the performance guarantee required hereunder only in accordance with a final administrative or judicial decision resolving such dispute pursuant to Section XIX (Dispute Resolution). No change to the form or terms of any performance guarantee provided under this Section, other than a reduction in amount, is authorized except as provided in Paragraphs 46 or 48.b.

b. Change of Form of Performance Guarantee.

(1) If, after the Effective Date, Defendants desire to change the form or terms of any performance guarantee(s) provided pursuant to this Section, Defendants may, on any anniversary of the Effective Date, or at any other time agreed to by the Parties, petition EPA in writing to request a change in the form or terms of the performance

guarantee provided hereunder. The submission of such proposed revised or alternative performance guarantee shall be as provided in Paragraph 48.b(2). Any decision made by EPA on a petition submitted under this Paragraph shall be made in EPA's sole and unreviewable discretion, and such decision shall not be subject to challenge by Defendants pursuant to the dispute resolution provisions of this Consent Decree or in any other forum.

(2) Defendants shall submit a written proposal for a revised or alternative performance guarantee to EPA that shall specify, at a minimum, the estimated cost of completing the Work, the basis upon which such cost was calculated, and the proposed revised performance guarantee, including all proposed instruments or other documents required in order to make the proposed performance guarantee legally binding. The proposed revised or alternative performance guarantee must satisfy all requirements set forth or incorporated by reference in this Section. Defendants shall submit such proposed revised or alternative performance guarantee to the EPA Regional Financial Management Officer in accordance with Section XXVI (Notices and Submissions). EPA will notify Defendants in writing of its decision to accept or reject a revised or alternative performance guarantee submitted pursuant to this Paragraph. Within ten days after receiving a written decision approving the proposed revised or alternative performance guarantee, Defendants shall execute and/or otherwise finalize all instruments or other documents required in order to make the selected performance guarantee(s) legally binding in a form substantially identical to the documents submitted to EPA as part of the proposal, and such performance guarantee(s) shall thereupon be fully effective. Defendants shall submit copies of all executed and/or otherwise finalized instruments or other documents required in order to make the selected performance guarantee(s) legally binding to the EPA Regional Financial Management Officer within 30 days after receiving a written decision approving the proposed revised or alternative performance guarantee in accordance with Section XXVI (Notices and Submissions) with a copy to EPA Region 4's Regional Financial Management Officer, and to the United States and EPA , as specified in Section XXVI.

c. Release of Performance Guarantee. Defendants shall not release, cancel, or discontinue any performance guarantee provided pursuant to this Section except as provided in this Paragraph. If Defendants receive written notice from EPA in accordance with Paragraph 49 that the Work has been fully and finally completed in accordance with the terms of this Consent Decree, or if EPA otherwise so notifies Defendants in writing, Defendants may thereafter release, cancel, or discontinue the performance guarantee(s) provided pursuant to this Section. In the event of a dispute, Defendants may release, cancel, or discontinue the performance guarantee(s) required hereunder only in accordance with a final administrative or judicial decision resolving such dispute pursuant to Section XIX (Dispute Resolution).

XIV. CERTIFICATION OF COMPLETION

49. Completion of the Work.

a. Within 90 days after Defendants conclude that all phases of the Work, other than any remaining activities required under Section VII (Remedy Review), have been fully performed, Defendants shall schedule and conduct a pre-certification inspection to be attended by Defendants and EPA, with an invitation to the State to participate. If, after the pre-certification inspection, Defendants still believe that the Work has been fully performed, Defendants shall submit a written report by a registered professional engineer stating that the Work has been completed in

full satisfaction of the requirements of this Consent Decree. The report shall contain the following statement, signed by a responsible corporate official of a Defendant or Defendants' Project Coordinator:

> I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

If, after review of the written report, EPA, after reasonable opportunity for review and comment by the State, determines that any portion of the Work has not been completed in accordance with this Consent Decree, EPA will notify Defendants in writing of the activities that must be undertaken by Defendants pursuant to this Consent Decree to complete the Work, provided, however, that EPA may only require Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy set forth in the IROD," as that term is defined in Paragraph 14.a. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require Defendants to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans, Reports, and Other Deliverables). Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to their right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent request for Certification of Completion of the Work by Defendants and after a reasonable opportunity for review and comment by the State, that the Work has been performed in accordance with this Consent Decree, EPA will so notify Defendants and the State in writing.

XV. EMERGENCY RESPONSE

50. If any action or occurrence during the performance of the Work that causes or threatens a release of Waste Material from OU-3 that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Defendants shall, subject to Paragraph 51, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, Defendants shall notify the EPA Emergency Response and Removal Branch, Region 4. Defendants shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the SOW. In the event that Defendants fail to take appropriate response action as required by this Section, and EPA takes such action instead, Defendants shall reimburse EPA all costs of the response action under Section XVI (Payments for Response Costs).

51. Subject to Section XXI (Covenants by Plaintiff), nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States (a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or

minimize an actual or threatened release of Waste Material on, at, or from OU-3, or (b) to direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from OU-3.

XVI. PAYMENTS FOR RESPONSE COSTS

52. Payments by Defendants for Future Response Costs. Defendants shall pay to EPA all Future Response Costs not inconsistent with the NCP.

a. On a periodic basis, EPA will send Defendants a bill requiring payment that includes a Superfund Cost Recovery Package Imaging and On-Line System ("SCORPIOS") and a DOJ case cost summary. Defendants shall make all payments within 30 days after Defendants' receipt of each bill requiring payment, except as otherwise provided in Paragraph 54, in accordance with Paragraphs 53.a (Instructions for Future Response Cost Payments).

b. The total amount to be paid by Defendants pursuant to Paragraph 52 shall be deposited by EPA in the Anniston PCB Special Account to be retained and used to conduct or finance response actions at or in connection with OU-3 or any other operable unit, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

53. Payment Instructions for Defendants.

a. Instructions for Future Response Costs Payments and Stipulated Penalties. All payments required, elsewhere in this Consent Decree, to be made in accordance with this Paragraph 53.a shall be made by Fedwire EFT to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

When making payments under this Paragraph 53.a, Defendants shall also comply with Paragraph 53.b.

b. Instructions for All Payments. All payments made under 53.a (Instructions for Future Response Cost Payments and Stipulated Penalties) shall reference the CDCS Number, Site/Spill ID Number 04S9, and DOJ Case Number 90-11-2-07135/1. At the time of any payment required to be made in accordance with Paragraph 53.a, Defendants shall send notice that payment has been made to the United States, and to EPA, in accordance with Section XXVI (Notices and Submissions), and to the EPA Cincinnati Finance Office by email at acctsreceivable.cinwd@epa.gov, or by mail at 26 Martin Luther King Drive, Cincinnati, Ohio 45268. Such notice shall also reference the CDCS Number, Site/Spill ID Number, and DOJ Case Number.

54. Defendants may contest any Future Response Costs billed under Paragraph 52 (Payments by Defendants for Future Response Costs) if they determine that EPA has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if they believe EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. Such objection shall be made in writing within 30 days after receipt of the bill and must be sent to the United States pursuant to Section XXVI (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, Defendants shall pay all uncontested Future Response Costs to the United States within 30 days after Defendants' receipt of the bill requiring payment. Simultaneously, Defendants shall establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation ("FDIC"), and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Defendants shall send to the United States, as provided in Section XXVI (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Defendants shall initiate the Dispute Resolution procedures in Section XIX (Dispute Resolution). If the United States prevails in the dispute, Defendants shall pay the sums due (with accrued interest) to the United States within five days after the resolution of the dispute. If Defendants prevail concerning any aspect of the contested costs, Defendants shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to the United States within five days after the resolution of the dispute. Defendants shall be disbursed any balance of the escrow account. All payments to the United States under this Paragraph shall be made in accordance with Paragraphs 53.a (Instructions for Future Response Cost Payments). The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Defendants' obligation to reimburse the United States for its Future Response Costs.

55. Interest. In the event that any payment for Future Response Costs required under this Section is not made by the date required, Defendants shall pay Interest on the unpaid balance. The Interest on Future Response Costs shall begin to accrue on the date of Defendants' receipt of the bill. The Interest shall accrue through the date of Defendants' payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of Defendants' failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to Paragraph 70.

XVII. INDEMNIFICATION AND INSURANCE

56. Defendants' Indemnification of the United States.

a. The United States does not assume any liability by entering into this Consent Decree or by virtue of any designation of Defendants as EPA's authorized representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e). Defendants shall indemnify, save and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in

carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Further, Defendants agree to pay the United States all costs it incurs including, but not limited to, attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. The United States shall not be held out as a party to any contract entered into by or on behalf of Defendants in carrying out activities pursuant to this Consent Decree. Neither Defendants nor any such contractor shall be considered an agent of the United States.

b. The United States shall give Defendants notice of any claim for which the United States plans to seek indemnification pursuant to this Paragraph 56, and shall consult with Defendants prior to settling such claim.

57. Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of Defendants and any person for performance of Work on or relating to OU-3, including, but not limited to, claims on account of construction delays. In addition, Defendants shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Defendants and any person for performance of Work on or relating to OU-3, including, but not limited to, claims on account of construction delays.

58. No later than 15 days before commencing any OU-3 field Work, Defendants or their contractors shall secure, and shall maintain until the first anniversary after the Remedial Action has been performed in accordance with this Consent Decree and the Performance Standards have been achieved (or if by a Contractor, such Contractor shall secure, and shall maintain until the first anniversary after the portion of the Remedial Action has been performed by such Contractor in accordance with this Consent Decree and the Performance Standards have been achieved), commercial general liability insurance with limits of $1,000,000, for any one occurrence, and automobile liability insurance with limits of $1,000,000, combined single limit, naming the United States as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Defendants pursuant to this Consent Decree. In addition, for the duration of this Consent Decree, Defendants shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Defendants in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Defendants shall provide to EPA certificates of such insurance and a copy of each insurance policy. Defendants shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If Defendants demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Defendants need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor.

XVIII. FORCE MAJEURE

59. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendants, of any entity controlled by Defendants, or of Defendants' contractors that delays or prevents the performance of any obligation under this Consent Decree despite Defendants' best efforts to fulfill the obligation. The requirement that Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. "Force majeure" does not include financial inability to complete the Work or a failure to achieve the Performance Standards.

60. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree for which Defendants intend or may intend to assert a claim of force majeure, Defendants shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Superfund Division, EPA Region 4, within 48 hours of when Defendants first knew that the event might cause a delay. Within ten (10) business days thereafter, Defendants shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendants' rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Defendants, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Defendants shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Defendants shall be deemed to know of any circumstance of which Defendants, any entity controlled by Defendants, or Defendants' contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Defendants from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late notice, is able to assess to its satisfaction whether the event is a force majeure under Paragraph 59 and whether Defendants have exercised their best efforts under Paragraph 59, EPA may, in its unreviewable discretion, excuse in writing Defendants' failure to submit timely notices under this Paragraph.

61. If EPA agrees that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this Consent Decree that are affected by the force majeure will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure, EPA will notify Defendants in writing of its decision. If EPA agrees that the delay is attributable to a force majeure, EPA will notify Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.

62. If Defendants elect to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that

best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendants complied with the requirements of Paragraphs 59 and 60. If Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

XIX. DISPUTE RESOLUTION

63. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes regarding this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of Defendants that have not been disputed in accordance with this Section.

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

65. Statements of Position.

a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within 28 days after the conclusion of the informal negotiation period, Defendants invoke the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by Defendants. The Statement of Position shall specify Defendants' position as to whether formal dispute resolution should proceed under Paragraph 66 (Record Review) or Paragraph 67.

b. Within 28 days after receipt of Defendants' Statement of Position, EPA will serve on Defendants its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 66 (Record Review) or Paragraph 67. Within 14 days after receipt of EPA's Statement of Position, Defendants may submit a Reply.

c. If there is disagreement between EPA and Defendants as to whether dispute resolution should proceed under Paragraph 66 (Record Review) or Paragraph 67, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if Defendants ultimately appeal to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraph 66 and 67.

66. Record Review. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation, the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree, and the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in

this Consent Decree shall be construed to allow any dispute by Defendants regarding the validity of the IROD's provisions.

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

b. The Director of the Superfund Division, EPA Region 4, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 66.a. This decision shall be binding upon Defendants, subject only to the right to seek judicial review pursuant to Paragraphs 66.c and 66.d.

c. Any administrative decision made by EPA pursuant to Paragraph 66.b shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by Defendants with the Court and served on all Parties within ten days after receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Defendants' motion.

d. In proceedings on any dispute governed by this Paragraph, Defendants shall have the burden of demonstrating that the decision of the Superfund Division Director, EPA Region 4, is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 66.a.

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

a. Following receipt of Defendants' Statement of Position submitted pursuant to Paragraph 65, the Director of the Superfund Division, EPA Region 4, will issue a final decision resolving the dispute. The Superfund Division Director's decision shall be binding on Defendants unless, within ten days after receipt of the decision, Defendants file with the Court and serve on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Defendants' motion.

b. Notwithstanding Paragraph P (CERCLA Section 113(j) Record Review of IROD and Work) of Section I (Background), judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

68. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of Defendants under this Consent Decree, not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 76. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XX (Stipulated Penalties).

XX. STIPULATED PENALTIES

69. Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraphs 70 and 71 to the United States for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XVIII (Force Majeure). "Compliance" by Defendants shall include completion of all payments and activities required under this Consent Decree, or any plan, report, or other deliverable approved under this Consent Decree, in accordance with all applicable requirements of law, this Consent Decree, the SOW, and any plans, reports, or other deliverables approved under this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

70. Stipulated Penalty Amounts - Work (Including Payments and Excluding Plans, Reports, and Other Deliverables).

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 70.b:

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

b. Compliance Milestones.

(1) Failure to timely or adequately submit a draft, modified, or final:

a) RD Work Plan

b) Prefinal/Final Design

c) RA Work Plan

d) Final Construction Report

e) Performance Standards Verification Plan

f) Proof of Insurance (unless provided by a contractor as provided under Paragraph 58)

g) Performance Guarantee

(2) Failure to pay all monies required to be paid pursuant to Section XVI.

71. Stipulated Penalty Amounts - Plans, Reports, and other Deliverables. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other plans or deliverables pursuant to the Consent Decree:

Penalty Per Violation Per Day	Period of Noncompliance
$1,000	1st through 14th day
$2,000	15th through 30th day
$4,000	31st day and beyond

72. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 83 (Work Takeover), Defendants shall be liable for a stipulated penalty in the amount of $10,000. Stipulated penalties under this Paragraph are in addition to the remedies available under Paragraphs 47 (Funding for Work Takeover) and 83 (Work Takeover).

73. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Section XI (EPA Approval of Plans, Reports, and Other Deliverables), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Defendants of any deficiency; (b) with respect to a decision by the Director of the Superfund Division, EPA Region 4, under Paragraph 66.b or 67.a of Section XIX (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Defendants' reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (c) with respect to judicial review by this Court of any dispute under Section XIX (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing in this Consent Decree shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

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

75. All penalties accruing under this Section shall be due and payable to the United States within 30 days after Defendants' receipt from EPA of a demand for payment of the penalties, unless Defendants invoke the Dispute Resolution procedures under Section XIX (Dispute Resolution) within the 30-day period. All payments to the United States under this Section shall indicate that the payment is for stipulated penalties, and shall be made in accordance with Paragraphs 53.a (Instructions for Future Response Cost Payments).

76. Penalties shall continue to accrue as provided in Paragraph 73 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement of the Parties or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owed shall be paid to EPA within 15 days after the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Defendants shall pay all accrued penalties determined by the Court to be owed to EPA within 60 days after receipt of the Court's decision or order, except as provided in Paragraph 76.c;

c. If the District Court's decision is appealed by any Party, Defendants shall pay all accrued penalties determined by the District Court to be owed to the United States into an interest-bearing escrow account, established at a duly chartered bank or trust company that is insured by the FDIC, within 60 days after receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days after receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to Defendants to the extent that they prevail.

77. If Defendants fail to pay stipulated penalties when due, Defendants shall pay Interest on the unpaid stipulated penalties as follows: (a) if Defendants have timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to Paragraph 76 until the date of payment; and (b) if Defendants fail to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 75 until the date of payment. If Defendants fail to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

78. The payment of penalties and Interest, if any, shall not alter in any way Defendants' obligation to complete the performance of the Work required under this Consent Decree.

79. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Defendants' violation of this Consent Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(*l*) of CERCLA, 42 U.S.C. § 9622(*l*), provided, however, that the United States shall not seek civil penalties pursuant to Section 122(*l*) of CERCLA for any violation for which a stipulated penalty is provided in this Consent Decree, except in the case of a willful violation of this Consent Decree.

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

XXI. COVENANTS BY PLAINTIFF

81. Covenants for Defendants by United States. In consideration of the actions that will be performed and the payments that will be made by Defendants under this Consent Decree, and except as specifically provided in Paragraph 82 (General Reservations of Rights) of this Section, the United States covenants not to sue or to take administrative action against Defendants pursuant to Sections 106 and 107(a) of CERCLA for the Work and Future Response Costs. These covenants shall take effect upon the receipt by EPA of the payments required by Paragraph 53.a (Payments for Future Response Costs and Stipulated Penalties) and any Interest or stipulated penalties due thereon under Paragraph 55 (Interest) or Section XX (Stipulated Penalties). These covenants are conditioned upon the satisfactory performance by Defendants of their obligations under this Consent Decree. These covenants extend only to Defendants and do not extend to any other person.

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

a. claims based on a failure by Defendants to meet a requirement of this Consent Decree;

b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of OU-3;

c. liability based on the ownership or operation of OU-3 by Defendants when such ownership or operation commences after signature of this Consent Decree by Defendants;

d. liability based on Defendants' transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of Waste Material at or in connection with OU-3, other than as provided in the IROD, the Work, or otherwise ordered by EPA, after signature of this Consent Decree by Defendants;

e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

f. criminal liability;

g. liability for violations of federal or state law that occur during or after implementation of the Work; and

h. liability, prior to achievement of Performance Standards in accordance with Paragraph 13 for additional response actions that EPA determines are necessary to achieve and maintain Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the IROD, but that cannot be required pursuant to Paragraph 14 (Modification of SOW or Related Work Plans);

i. liability for additional operable units in addition to OU-3 or the final response action;

j. liability for costs that the United States will incur regarding OU-3 but that are not within the definition of Future Response Costs;

k. previously incurred costs of response above the amounts paid pursuant to Paragraph 53.a (Payment of Future Response Costs); and

l. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry regarding OU-3.

83. Work Takeover.

a. In the event EPA determines that Defendants have (1) ceased implementation of any portion of the Work; (2) are seriously or repeatedly deficient or late in their performance of the Work, or (3) are implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice ("Work Takeover Notice") to Defendants. Any Work Takeover Notice issued by EPA will specify the grounds upon which such notice was issued and will provide Defendants a period of twenty-one (21) days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

b. If, after expiration of the twenty-one (21) day notice period specified in Paragraph 83.a, Defendants have not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary ("Work Takeover"). EPA

will notify Defendants in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph 83.b. Funding of Work Takeover costs is addressed under Paragraph 47.

c. Defendants may invoke the procedures set forth in Paragraph 66 (Record Review), to dispute EPA's implementation of a Work Takeover under Paragraph 83.b. However, notwithstanding Defendants' invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under Paragraph 83.b until the earlier of (1) the date that Defendants remedy, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, or (2) the date that a final decision is rendered in accordance with Paragraph 66 (Record Review) requiring EPA to terminate such Work Takeover.

84. Notwithstanding any other provision of this Consent Decree, the United States retains all authority and reserves all rights to take any and all response actions authorized by law.

XXII. COVENANTS BY DEFENDANTS

85. Covenants Not to Sue by Defendants. Subject to the reservations in Paragraph 87, Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States with respect to the Work, past response actions regarding OU-3, Future Response Costs, and this Consent Decree, including, but not limited to:

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

b. any claims against the United States, including any department, agency, or instrumentality of the United States, under CERCLA Sections 107 or 113, RCRA Section 7002(a), 42 U.S.C. § 6972(a), or state law regarding the Work, past response actions regarding OU-3, and Future Response Costs, Defendants' Future Response Costs, and this Consent Decree; or

c. any claims arising out of response actions at or in connection with OU-3, including any claim under the United States Constitution, the Alabama Constitution, the Tucker Act, 28 U.S.C. §1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law.

86. Except as provided in Paragraph 89 (Claims Against De Micromis Parties), Paragraph 91 (Claims Against *De Minimis* Parties), and Paragraph 97 (Res Judicata and Other Defenses), the covenants in this Section shall not apply if the United States brings a cause of action or issues an order pursuant to any of the reservations in Section XXI (Covenants by Plaintiff), other than in Paragraphs 82.a (claims for failure to meet a requirement of the Decree), 82.f (criminal liability), and 82.g (violations of federal/state law during or after implementation of the Work), but only to the extent that Defendants' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

87. Defendants reserve, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the

scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of Defendants' plans, reports, other deliverables, or activities.

88. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

89. Claims Against De Micromis Parties. Defendants agree not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that they may have for all matters relating to OU-3 against any person where the person's liability to Defendants with respect to OU-3 is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at OU-3, or having accepted for transport for disposal or treatment of hazardous substances at OU-3, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to OU-3 was less than 110 gallons of liquid materials or 200 pounds of solid materials.

90. The waiver in Paragraph 89 (Claims Against De Micromis Parties) shall not apply with respect to any defense, claim, or cause of action that a Defendant may have against any person meeting the criteria in Paragraph 89 if such person asserts a claim or cause of action relating to OU-3 against such Defendant. This waiver also shall not apply to any claim or cause of action against any person meeting the criteria in Paragraph 89 if EPA determines:

a. that such person has failed to comply with any EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. § 9604(e) or 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to OU-3, or has been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise; or

b. that the materials containing hazardous substances contributed to OU-3 by such person have contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of response action or natural resource restoration at OU-3.

91. Claims Against *De Minimis* Parties. Defendants agree not to assert any claims or causes of action and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA, 42 U.S.C. §§ 9607(a) and 9613) that they may have for response costs relating to OU-3 against any person that has entered or in the future enters into a final CERCLA Section 122(g) *de minimis* settlement with EPA with respect to OU-3. This waiver shall not apply with respect to any defense, claim, or cause of action that a Defendant may have against any person if such person asserts a claim or cause of action relating to OU-3 against such Defendant.

92. Defendants agree not to seek judicial review of the final rule listing OU-3 on the NPL based on a claim that changed site conditions that resulted from the performance of the Work in any way affected the basis for listing OU-3.

XXIII. EFFECT OF SETTLEMENT; CONTRIBUTION

93. Except as provided in Paragraph 89 (Claims Against De Micromis Parties), and Paragraph 91 (Claims Against *De Minimis*) , 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. Except as provided in Paragraph 89 (Claims Against De Micromis Parties), and Paragraph 91 (Claims Against *De Minimis*), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that each Party may have with respect to any matter, transaction, or occurrence relating in any way to OU-3 against any person not a Party hereto. Nothing in this Consent Decree diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

94. The Parties agree, and by entering this Consent Decree this Court finds, that this Consent Decree constitutes a judicially approved settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that each Defendant is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are the Work and Future Response Costs.

95. Each Defendant shall, with respect to any suit or claim brought by it for matters related to this Consent Decree, notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

96. Each Defendant shall, with respect to any suit or claim brought against it for matters related to this Consent Decree, notify in writing the United States within ten days after service of the complaint on such Defendant. In addition, each Defendant shall notify the United States within ten days after service or receipt of any Motion for Summary Judgment and within ten days after receipt of any order from a court setting a case for trial.

97. Res Judicata and Other Defenses. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to OU-3, Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XXI (Covenants by Plaintiff).

XXIV. ACCESS TO INFORMATION

98. Defendants shall provide to EPA, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within their possession or control or that of their contractors or agents relating to activities at OU-3 or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Work. Defendants shall also make available to EPA, for purposes of

investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

99. Business Confidential and Privileged Documents.

a. Defendants may assert business confidentiality claims covering part or all of the Records submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Records determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified Defendants that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Defendants.

b. Defendants may assert that certain Records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendants assert such a privilege in lieu of providing Records, they shall provide Plaintiff with the following: (1) the title of the Record; (2) the date of the Record; (3) the name, title, affiliation (e.g., company or firm), and address of the author of the Record; (4) the name and title of each addressee and recipient; (5) a description of the contents of the Record; and (6) the privilege asserted by Defendants. If a claim of privilege applies only to a portion of a Record, the Record shall be provided to the United States in redacted form to mask the privileged portion only. Defendants shall retain all Records that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Defendants' favor.

c. No Records created or generated pursuant to the requirements of this Consent Decree shall be withheld from the United States on the grounds that they are privileged or confidential.

100. No claim of confidentiality or privilege shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around OU-3.

XXV. RETENTION OF RECORDS

101. Until ten years after Defendants' receipt of EPA's notification pursuant to Paragraph 49.b (Completion of the Work), each Defendant shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to its liability under CERCLA with respect to OU-3, provided, however, that Defendants who are potentially liable as owners or operators of OU-3 must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to OU-3. Each Defendant must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to the performance of the Work, provided, however, that each Defendant (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

102. At the conclusion of this record retention period, Defendants shall notify the United States at least 90 days prior to the destruction of any such Records, and, upon request by the United States, Defendants shall deliver any such Records to EPA. Defendants may assert that certain Records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendants assert such a privilege, they shall provide Plaintiffs with the following: (a) the title of the Record; (b) the date of the Record; (c) the name, title, affiliation (e.g., company or firm), and address of the author of the Record; (d) the name and title of each addressee and recipient; (e) a description of the subject of the Record; and (f) the privilege asserted by Defendants. If a claim of privilege applies only to a portion of a Record, the Record shall be provided to the United States in redacted form to mask the privileged portion only. Defendants shall retain all Records that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Defendants' favor. However, no Records created or generated pursuant to the requirements of this Consent Decree shall be withheld on the grounds that they are privileged or confidential.

103. Each Defendant certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding OU-3 since the earlier of notification of potential liability by the United States or the State or the filing of suit against it regarding OU-3 and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XXVI. NOTICES AND SUBMISSIONS

104. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified in this Section shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, and Defendants, respectively. Notices required to be sent to EPA, and not

to the United States, under the terms of this Consent Decree should not be sent to the U.S. Department of Justice.

As to the United States:	Chief, Environmental Enforcement Section Environment and Natural Resources Division U.S. Department of Justice P.O. Box 7611 Washington, D.C. 20044-7611 Re: DJ # 90-11-2-07135/1
As to EPA:	Franklin E. Hill Director, Superfund Division United States Environmental Protection Agency Region 4 61 Forsyth Street, S.W. Atlanta, Georgia 30303
and:	Pamela J. Langston Scully EPA Project Coordinator United States Environmental Protection Agency Region 4 61 Forsyth Street, S.W. Atlanta, Georgia 30303
As to the Regional Financial Management Officer:	Paula V. Painter United States Environmental Protection Agency 61 Forsyth Street, S.W. Atlanta, Georgia 30303
As to Defendants:	E. Gayle Macolly Defendants' Project Coordinator 702 Clydesdale Avenue Anniston, Alabama 36201 William S. Cox, III Lightfoot, Franklin & White LLC 400 Twentieth Street North Birmingham, Alabama 35203

XXVII. RETENTION OF JURISDICTION

105. This Court retains jurisdiction over both the subject matter of this Consent Decree and Defendants for the duration of the performance of the terms and provisions of this Consent Decree

for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XIX (Dispute Resolution).

XXVIII. APPENDICES

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

"Appendix A" is the IROD.

"Appendix B" is the SOW.

"Appendix C" contains maps of OU-3 and other currently established Operable Units.

"Appendix D" is the complete list of Defendants.

"Appendix E" is the performance guarantee.

XXIX. COMMUNITY RELATIONS

107. Defendants shall participate in community relations activities pursuant to the existing community relations plan developed by EPA. EPA will determine the appropriate role for Defendants under the Plan. Defendants shall also cooperate with EPA in providing information regarding the Work to the public. As requested by EPA, Defendants shall participate in the preparation of such information for dissemination to the public and in public meetings that may be held or sponsored by EPA to explain activities at or relating to OU-3.

108. Within 30 days after a request by EPA, Defendants shall amend and submit to EPA revisions to the existing Community Advisory Group Plan ("CAGP"), required under the Revised Partial Consent Decree, to arrange for up to $10,000 per year to fund a technical advisor to the CAG for purposes of providing input regarding the implementation of the Work conducted pursuant to this Consent Decree. Upon its approval by EPA, the amended CAGP shall be incorporated into and enforceable under this Consent Decree.

109. Costs incurred by the United States under this Section shall be considered Future Response Costs that Defendants shall pay pursuant to Section XVI (Payments for Response Costs).

XXX. MODIFICATION

110. Except as provided in Paragraph 14 (Modification of SOW or Related Work Plans), material modifications to this Consent Decree, including the SOW, shall be in writing, signed by the United States and Defendants, and shall be effective upon approval by the Court. Except as provided in Paragraph 14, non-material modifications, including modifications of schedules for the completion of the IROD-related Work, to this Consent Decree, including the SOW, shall be in writing and shall be effective when signed by duly authorized representatives of the United States and Defendants. A modification to the SOW shall be considered material if it fundamentally alters the basic features of the selected remedy within the meaning of 40 C.F.R. § 300.435(c)(2)(ii). Before providing its approval to any modification to the SOW, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification.

111. Nothing in this Consent Decree shall be deemed to alter the Court's power to enforce, supervise, or approve modifications to this Consent Decree.

XXXI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

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

113. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXXII. SIGNATORIES/SERVICE

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

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

116. Each Defendant shall identify, on the attached signature page, the name, address, and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Defendants agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons. Defendants need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XXXIII. FINAL JUDGMENT

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

118. Upon entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States and Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS ____ DAY OF _____, 2012.

_____

United States District Judge

Signature Page for Consent Decree for Remedial Design/Remedial Action (RD/RA) for Operable Unit No. 3

FOR THE UNITED STATES OF AMERICA:

_____ _____

Date

Ignacia S. Moreno
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

_____ _____

Date

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

_____ _____

Date

Joyce White Vance
United States Attorney
Northern District of Alabama
1801 Fourth Avenue
Birmingham, Alabama 35203

_____ _____

Date

Edward Q. Ragland
Assistant United States Attorney
Northern District of Alabama
1801 Fourth Avenue
Birmingham, Alabama 35203

Signature Page for Consent Decree for Remedial Design/Remedial Action (RD/RA) for Operable Unit No. 3

_____ _____

Date

Gwendolyn Keyes Fleming
Regional Administrator, Region 4
U.S. Environmental Protection Agency
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

_____ _____

Date

Rudolph C. Tanasijevich
Associate Regional Counsel
U.S. Environmental Protection Agency
Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Signature Page for Consent Decree for Remedial Design/Remedial Action (RD/RA) for Operable Unit No. 3

FOR PHARMACIA CORPORATION
By: Solutia Inc., Its Attorney-In-Fact

_____	_____
Date	Name (print): Title: Address:
Agent Authorized to Accept Service on Behalf of Above-signed Party:	Name (print): Title: Address: Phone: email:

Signature Page for Partial Consent Decree for Remedial Design/Remedial Action (RD/RA) For Operable Unit No. 3

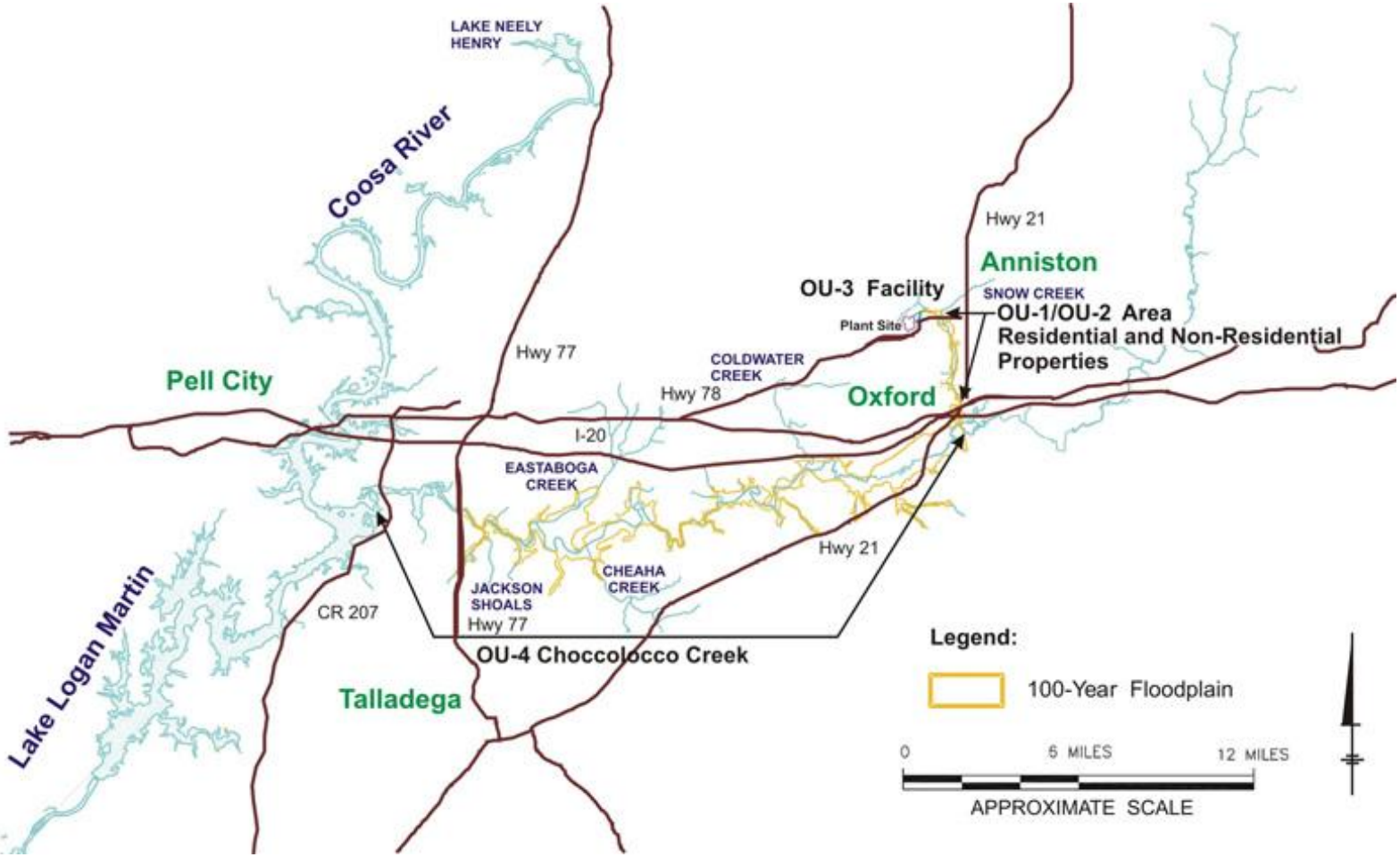
FOR SOLUTIA INC.

_____	_____
Date	Name (print): Title: Address:
Agent Authorized to Accept Service on Behalf of Above-signed Party:	Name (print): Title: Address: Phone: email:

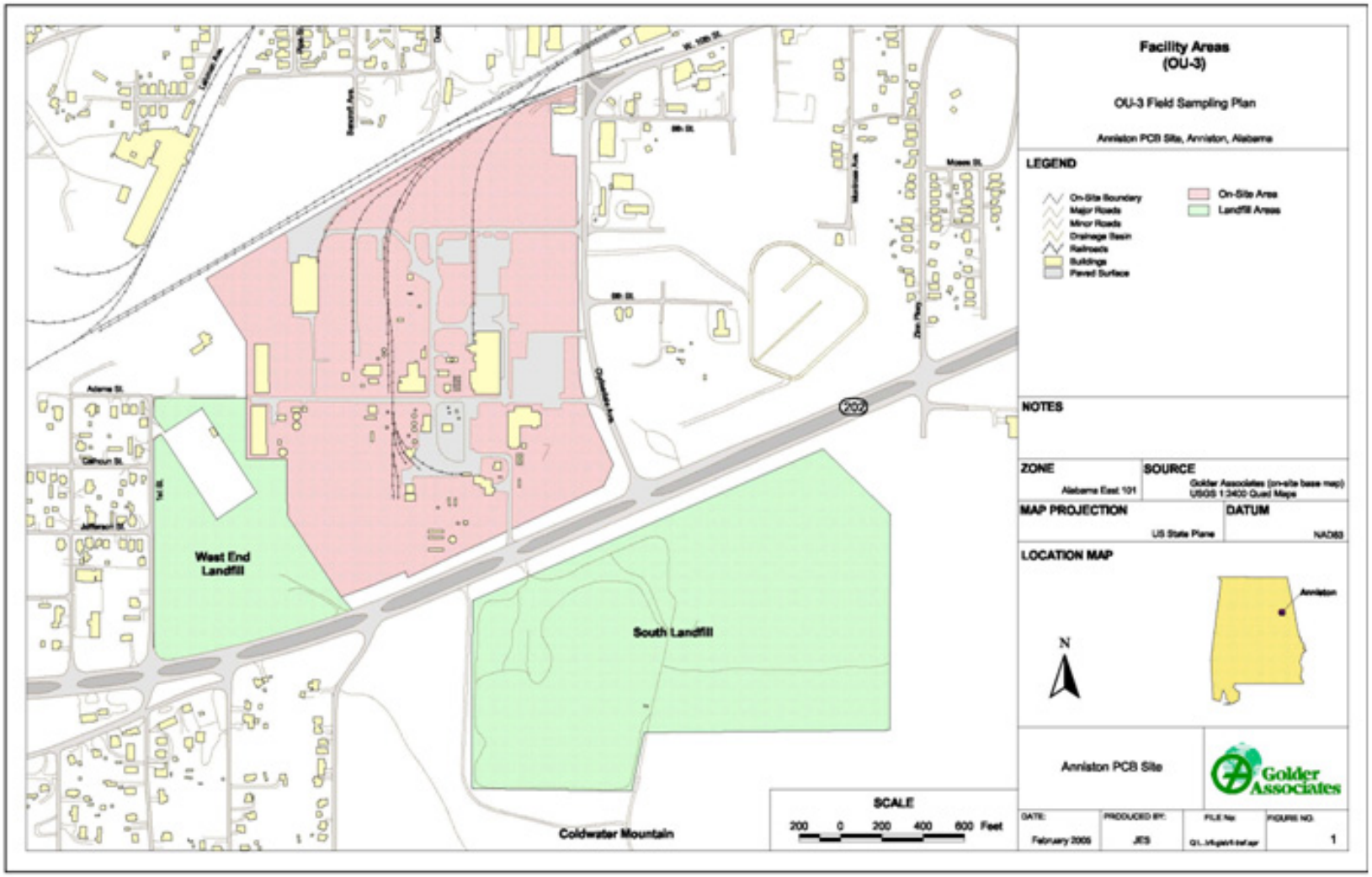
APPENDIX A
INTERIM RECORD OF DECISION, DATED SEPTEMBER 29, 2011

APPENDIX B
STATEMENT OF WORK

APPENDIX C
MAPS OF THE ANNISTON PCB SITE AND OPERABLE UNIT NO. 3



Map of the Anniston PCB Site



Map of Operable Unit No. 3

APPENDIX D
LIST OF DEFENDANTS

Pharmacia Corporation
Solutia Inc.

APPENDIX E
PERFORMANCE GUARANTEE

To Be Determined