IN THE CIRCUIT COURT FOR THE TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 82-CH-195
	)	
MONSANTO COMPANY,	)	
a Delaware Corporation,	)	
	)	
Defendant.	)	

CONSENT ORDER

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	)	
Plaintiff,	)	
	)	
v.	)	**No. 82-CH-195**
	)	
MONSANTO COMPANY,	)	
a Delaware Corporation,	)	
	)	
Defendant.	)	

CONSENT ORDER

This action was prosecuted in the name of the People of the State of Illinois by Roland W. Burris, Attorney General of the State of Illinois, in order to abate a public nuisance and to enjoin violations of the Illinois Environmental Protection Act. The Attorney General of the State of Illinois and the Illinois Environmental Protection Agency (collectively the "plaintiff") and the defendant, Monsanto Company, believing that litigation of this matter would be neither in their best interests nor in the best interests of the public, have each agreed to the entry of this Consent Order.

NOW THEREFORE, it is hereby ordered and adjudged as follows:

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I. JURISDICTION

This court has jurisdiction of the subject matter herein and of the parties consenting hereto, pursuant to the Illinois Environmental Protection Act (Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1001 et seq.), and pursuant to the Court's equitable powers.

II. FACT STIPULATION

1. Defendant Monsanto Company (hereinafter "Monsanto"), is a Delaware Corporation licensed to do business in the State of Illinois.

2. At all times pertinent to this case, Monsanto has owned 36 acres of property, which is located in the eastern floodplain of the Mississippi River, in the Village of Sauget, St. Clair County, Illinois, 22 acres of which is commonly known as the "River's Edge Landfill" (hereinafter "Site R"). The western boundary of Site R varies from approximately 200 to 300 feet east of the Mississippi River. The floodplain is known as the "American Bottoms" and consists of approximately 140 feet of unconsolidated to poorly consolidated alluvium and glacial sediments overlying bedrock.

3. From approximately 1958 to 1977, Monsanto utilized Site R for the disposal of hazardous and non-hazardous liquid and solid chemical wastes generated by Monsanto.

4. In 1977, Monsanto ceased disposal of waste at Site R and began installation of a clay cover over Site R. Installation of the cover was completed in October of 1979. The plaintiff claims and Monsanto denies that while reducing the

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amount of surface water run-off and precipitation infiltrating Site R, the cover does not provide for the permanent containment of the chemical wastes and other contaminants within the landfill.

5. On June 15, 1982, the plaintiff filed a six-count complaint against Monsanto, charging that the company created a public nuisance and committed numerous violations of the Illinois Environmental Protection Act by causing or allowing contaminants to migrate from Site R into the groundwater and to also seep directly from the landfill into the Mississippi River. Monsanto has denied any violations of Illinois common or statutory law. Monsanto has also denied that any of its actions constitute a public nuisance.

6. Monsanto constructed a rock revetment along the eroding east bank of the Mississippi River at Site R in 1985. The plaintiff claims that while reducing the River's erosion of Site R's west boundary, the rock revetment does not provide for the permanent containment of the chemical wastes and other contaminants within the landfill.

7. A consultant hired by Monsanto found hazardous substances in the alluvium and glacial deposits and in the bedrock underlying Site R. The plaintiff claims and Monsanto denies that the presence of hazardous substances in Site R continues to present a substantial hazard to public health and the environment, and that migration of such hazardous substances from Site R into the groundwater and into the Mississippi River threatens to adversely impact both the aquifer and the river,

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thereby creating a public nuisance and violating various provisions of the Illinois Environmental Protection Act (sometimes hereinafter referred to as "the Act") (Ill. Rev. Stat. 1989, ch. 111½, par. 1001, et seq.)

8. The Illinois Environmental Protection Agency (the "Agency") hired the consulting firm of Ecology and Environment, Inc., in July of 1985 to conduct an area-wide assessment which would assist in defining the extent of the contamination in the vicinity of Site R. The plaintiff claims that this study revealed that, in pertinent part, in addition to Site R, there are several other sources of contamination to the groundwater and to the Mississippi River in the immediate vicinity of Site R, including) Site Q, located immediately adjacent to Site R which is an inactive waste disposal facility which was operated from 1966 until 1973 by "Sauget and Company" for the disposal of industrial chemical wastes and municipal refuse.

9. Attachment I depicts Site R and a portion of Site Q. The work to be performed by Monsanto under this Consent Order shall involve an area encompassing all of Site R and a portion of Site Q as depicted on Attachment I. This area shall hereinafter be referred to as the "site". No other areas are included within the site except any which may become necessary to add in order to meet the objective of Section III hereof, and Monsanto expressly disclaims any liability for any part of Site Q.

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III. OBJECTIVE

The objective of this Consent Order is for Monsanto to complete: (1) A remedial investigation (RI) to determine the nature and extent of the release or threatened release of hazardous substances, pollutants or contaminants from the site, as provided in Attachment II hereto, and

(2) a feasibility study (FS) to identify and evaluate remedial alternatives which will protect human health, welfare and the environment from the release or threatened release of hazardous substances, pollutants or contaminants from the site as provided in Attachment II. Monsanto's completion of the remedial investigation and feasibility study (RI/FS) shall provide the basis for the plaintiff's subsequent final screening and selection of remedial alternatives, which shall be done in accordance with Section VII hereof.

The work conducted by Monsanto pursuant to this Consent Order at the site is described in Attachment II and is subject to the plaintiff's approval as provided herein, and shall be conducted in accordance with sound scientific, engineering and construction practices, and it shall be consistent with the National Contingency Plan ("NCP"), 40 CFR Section 300.68(a) through (j), with the Illinois Hazardous Substance Pollution Contingency Plan ("IHSPCP"), 35 Ill. Adm. Code Part 750, with the RI/FS Guidance (EPA/540/G-89/004, October 1988) issued by U.S. EPA or as reissued to the extent that any such reissued guidance is to be applied prospectively ("the RI/FS Guidance"), and with the Comprehensive Environmental Response, Compensation and

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Liability Act ("CERCLA"), 42 U.S.C. § 9601, et seq. The work shall be completed in accordance with the standards, specifications and schedule of completion set forth in Attachment II. In the event of conflict between the provisions of the NCP and the IHSPCP with regard to matters covered by this Consent Order, the terms of the NCP shall govern.

IV. APPLICABILITY

A. This Consent Order shall apply to and be binding upon the plaintiff and Monsanto, as well as the successors and assigns of each. Monsanto shall give notice of this Consent Order to each of its successors in interest prior to the transfer of interest and shall contemporaneously verify to the plaintiff that such notice has been given. No change in ownership, corporate, or partnership status shall in any way alter the status or responsibility of Monsanto under this Consent Order. Monsanto shall remain responsible for carrying out all actions required by the terms and conditions of this Consent Order.

B. Monsanto shall also be responsible for ensuring that all contractors, consultants, firms and other persons or entities acting under or for it with respect to matters included herein comply with the terms of this Consent Order. Monsanto shall not raise as a defense to any action to enforce this Consent Order the failure of any of its agents, officers, servants or employees to take such action as shall be required to comply with the provisions of this Consent Order.

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V. WORK TO BE PERFORMED

A. Monsanto shall undertake and assure, at its own expense, the completion of all work called for by this Consent Order and implementation of the objective of this Consent Order. In addition, Monsanto shall assume any and all liability arising from or relating to its acts or omissions in the performance of the work or its failure to perform fully or complete the work required by this Consent Order.

B. Monsanto shall be responsible for remediating, to the extent required by the Illinois Environmental Protection Act, the NCP and the IHSPCP, any release or threatened release of hazardous substances at or from the site occurring as a result of its performance of the work required under this consent order; provided, however, that Monsanto shall retain all statutory and other defenses to liability, including those under Section 22.2(j) of the Illinois Environmental Protection Act (Ill. Rev. Stat. 1989, ch. 111½, par. 1022.2(j)). The Illinois Environmental Protection Agency reserves its right to undertake removal or remedial actions to address any release or threatened release of hazardous substances from the site during the performance of the work required under this consent order and to pursue recovery of its costs therefor.

C. All work to be performed by Monsanto pursuant to Attachment II shall be under the direction and supervision of an independent qualified professional engineer or certified geologist ("Project Coordinator") provided by Monsanto. Monsanto shall also appoint a representative (the "Monsanto

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Representative") to act in its behalf in communications with plaintiff and to monitor the implementation of the Work Plan by the Project Coordinator. Prior to the initiation of work at the Facility, Monsanto shall notify the plaintiff, in writing, of the name, title, and qualifications of the proposed Project Coordinator, the Monsanto Representative and the names of principal contractors and/or subcontractors which Monsanto proposes to use to complete the work required by this Consent Order. Monsanto shall retain the right to change the Project Coordinator or Monsanto Representative in accord with Section XVII.B. Monsanto's selection of any such Project Coordinator, Monsanto Representative, engineer, geologist or contractor and/or subcontractor shall be subject to approval by the plaintiff and such approval shall not be unreasonably withheld. Monsanto may utilize its own employees to perform subordinate tasks only upon receipt of plaintiff's approval and such approval shall not be unreasonably withheld.

D. Monsanto agrees to undertake and complete a remedial investigation and feasibility study ("RI/FS") of the site as provided in Attachment II. Attachment II to this Consent Order provides an RI/FS Work Plan which is attached to and incorporated into and made an enforceable part of this Consent Order. The RI/FS Work Plan provided in Attachment II to this Consent Order is composed of a field sampling plan, a data management plan, a community relations plan, a quality assurance project plan, and a health and safety plan, together with various

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other appendices as well as a treatability study work plan, a risk assessment work plan and a work plan addendum.

E. Monsanto shall commence the work detailed in the RI/FS Work Plan within sixty (60) days after the entry of this Consent Order. Monsanto shall conduct all work in accordance with the NCP, the IHSPCP, the CERCLA, the RI/FS Guidance and the requirements of this Consent Order, including the standards, specifications and schedule contained in Attachment II hereto.

VI. PLANS AND REPORTS

A. Monsanto shall submit to the plaintiff preliminary and final Remedial Investigation Reports and Feasibility Study Reports and any other plans or reports required by the RI/FS Work Plan.

B. Plaintiff shall review and shall retain the right, within forty-five (45) days of receipt of such plans or reports, to approve or disapprove the preliminary and final Remedial Investigation Report, the preliminary and final Feasibility Study Report, and any other preliminary or final plan or reports specified in the RI/FS Work Plan as requiring the plaintiff's approval. Plaintiff may extend the time for review to a subsequent date certain, but no more than forty-five (45) additional days, by notifying Monsanto of such extension within fifteen (15) days of receipt of the plan or report.

C. Plaintiff's written disapproval or conditional approval of a plan or report shall specify any deficiencies and required modifications. Monsanto shall submit a revised plan or

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report to the plaintiff within forty-five (45) days of its receipt of plaintiff's written disapproval or conditional approval or such longer period as the plaintiff may establish. Monsanto's revised plan or report shall incorporate requested modifications or additions, or present a reasonable alternative to all of plaintiff's modifications or additions.

D. In the event of subsequent disapproval of any revised plan or report, the plaintiff retains the right to perform additional studies, to conduct a complete or partial RI/FS, and/or to enforce the terms of this Consent Order.

E. Within forty-five (45) days of receipt of any revised plan or report, the plaintiff shall notify Monsanto, in writing, of approval or disapproval of such revised plan or report. In the event of disapproval or conditional approval of any such revised plan or report, the plaintiff's written notice shall specify the reasons for disapproval or the conditions to be fulfilled to gain approval. If Monsanto does not address each deficiency noted in or condition added by the plaintiff to a revised plan or report, recourse shall be to the dispute resolution provisions of Section XVIII.

F. Monsanto shall provide monthly written progress reports to the plaintiff according to the schedule contained in the RI/FS Work Plan. At a minimum, these monthly written progress reports shall include the following:

1. A description of the action which has been taken toward achieving compliance with this Consent Order;

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2. A summary of the sampling and tests conducted during the month and relating to the site;

3. All plans and procedures completed during the past month, as well as such actions, data, and plans which are scheduled for the next month; and

4. Target and actual completion dates for each element of activity, including the project completion, and an explanation of any deviation from the schedules in the RI/FS Work Plan schedule.

G. The monthly written progress reports shall be submitted to the plaintiff by the tenth business day of each month following the date of commencement of the work required by the RI/FS work plan.

H. All results of validated sampling and tests pertaining to the RI/FS Work Plan will be reported to the plaintiff as they become available to Monsanto. Other sampling and test results pertaining to the RI/FS and work plan will be made available to plaintiff upon written request.

VII. REMEDY SELECTION

A. Upon completion of the RI/FS, the plaintiff shall review the recommended remedial action and the alternative remedial actions identified in the final Feasibility Study Report and will select the remedial actions to be implemented. The plaintiff's choice of a remedy shall be based upon screening procedures and factors consistent with the NCP and IHSPCP. It is

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anticipated by this Consent Order and the parties that a subsequent remedial design/remedial action consent order ("RD/RA Consent Order") may be entered to govern Monsanto's implementation of the remedial action selected by the plaintiff or performance of those aspects of the remedial action which are not at issue, where it is feasible to do so, the terms of which shall be mutually agreed to by the parties.

B. If Monsanto disagrees with the remedial action(s) selected by the plaintiff, the parties shall attempt to resolve their disagreement for a period of thirty (30) days. This period may be extended by mutual written agreement of the parties. During such negotiation period, the parties shall determine which portions, if any, of the remedial action selected by the plaintiff are acceptable to Monsanto and are not at issue. If the parties cannot resolve their disagreement within such negotiation period, then Monsanto may implement, at its option and to the extent feasible, those aspects of the remedial action which are not at issue, and the plaintiff may implement all the remaining aspects of its chosen remedial alternative and initiate an action against Monsanto for cost recovery pursuant to Section 22.2 of the Act or pursue injunctive relief pursuant to CERCLA or other authority. Provided, however, that if any penalties or punitive damages are sought by plaintiff under the Illinois Environmental Protection Act (Ill. Rev. Stat. 1989, ch. 111½, par. 1001, et seq.) in such a cost recovery action, they shall be obtainable only if such failure by Monsanto to perform the selected remedial action was without sufficient cause. Further,

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a legitimate disagreement by Monsanto over whether the chosen remedial alternative is inconsistent with the NCP or IHSPCP, would preclude imposition of such penalties or punitive damages. The dispute resolution provisions of Section XVIII and the jurisdictional provisions of Section XXV shall not apply to this subsection. The plaintiff shall notify Monsanto within ninety (90) days of the end of the negotiation period of whether it intends to proceed with implementing the remedy or portions thereof.

C. In the event the plaintiff chooses not to implement the remedy or portion thereof, Monsanto may then seek judicial review of the plaintiff's chosen remedy within one hundred and twenty (120) business days of the conclusion of the negotiation period, pursuant to the dispute resolution provisions of paragraph XVIII below.

D. If Monsanto does not object to the remedial action selected by the plaintiff, or if the court resolves a disputed remedial issue raised under Subsection VII.C. above, and resolved pursuant to Section XVIII below and either fashions an alternative remedy or affirms the plaintiff's chosen remedy, then Monsanto shall implement that remedy as directed by the court or pursuant to the requirements of a subsequent RD/RA Consent Order, the terms of which shall be mutually agreed to by the parties.

VIII. RETENTION AND AVAILABILITY OF INFORMATION

A. Prior to entry of the Consent Order (or as soon thereafter as they are available), the plaintiff and Monsanto shall exchange copies of all technical information about the site, including but not limited to, laboratory reports, test results, analytical data, and analyses of samples previously taken at the site.

B. The plaintiff and Monsanto shall preserve all records, documents and information relating to the performance of the work at the site and the removal of waste materials from the site, including sampling analyses, chain of custody records, manifests, contracts, trucking logs, bills of lading, receipts, records pertaining to traffic routing, destination of waste materials, and volume and chemical nature of such materials, correspondence, and other documents produced during the work for a period of 6 years following completion of the work. The plaintiff shall have access to such records during that six year period upon seven business days' written notice to Monsanto. Monsanto shall have access to such records during that six year period consistent with the Illinois Freedom of Information Act, Ill. Rev. Stat. 1989, ch. 116, par. 201-211. Both parties agree to make available any employees and/or contractors with knowledge of relevant facts concerning the performance of the work for purposes of investigation, information gathering, or testimony related to the work for a period of six years following completion of the work.

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C. Pursuant to applicable Federal laws and regulations (e.g., Subsection 104(e) of CERCLA, 42 U.S.C. § 9604(e), and 40 CFR Part 2) or applicable State laws or regulations (e.g., 2 Ill. Adm. Code Parts 1826 and 1827), Monsanto may assert a confidentiality claim with respect to any or all of the information requested or submitted pursuant to the terms of this Consent Order. Such an assertion must be adequately substantiated when the assertion is made. Analytical data and other information described in Subsection 104(e)(7)(F) of CERCLA, 42 U.S.C. § 9604(e)(7)(F), shall not be claimed as confidential by Monsanto. Information determined to be confidential by the plaintiff pursuant to applicable Federal or State laws and regulations will be afforded the full protection provided by such laws and regulations for as long as those materials are retained by the plaintiff. If no confidentiality claim accompanies information when it is submitted to the plaintiff, or if information claimed as confidential is determined by the plaintiff not to be confidential, the information may be made available to the public by the plaintiff.

D. Documentary materials, other than those required to be furnished under Section 104(e) of CERCLA, which are asserted to be attorney work product or subject to privilege under law, shall not be subject to inspection and copying prior to resolution of the issue by the Court (provided Monsanto has sought such review pursuant to 2 Ill. Adm. Code Section 1827.304) or by agreement of the parties, provided the party claiming the privilege gives an identification of the title, subject matter,

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author and addressee of each document for which a privilege is asserted, and an explanation as to why the privilege is applicable to the document or documents.

IX. SAMPLING AND QUALITY ASSURANCE

A. Monsanto shall take such samples as required in Attachment II. The plaintiff's Project Manager or authorized representative may require split sampling where appropriate. Monsanto agrees to cooperate with the plaintiff's authorized representatives and to permit such representatives to take samples, including split samples, at all locations at the site. The plaintiff agrees to give Monsanto reasonable advance notice of the sampling procedures that will be used and what constituents the samples will be analyzed for so that Monsanto may take split samples. Each party shall provide copies of the results of any such samples to the other parties. Before disposal of any sample by the defendant, the plaintiff shall be given 15 days notice and an opportunity to take possession of such samples. Such samples and any tests thereof shall be deemed validated, material, or accurate except to the extent that age or the manner in which those samples were handled is demonstrated to render the results of any testing of those samples inconsistent with the procedures contained in Attachment II hereto.

B. Monsanto shall consult with the plaintiff in planning for, and prior to, all sampling and analysis as detailed in the RI/FS Work Plan. In order to provide quality assurance and

maintain quality control with respect to all samples collected pursuant to this Consent Order, Monsanto shall:

1. Ensure that the plaintiff's authorized representatives are allowed access to any laboratories and personnel utilized by Monsanto for analyses;
2. Ensure that all sampling and analyses are performed according to the RI/FS Work Plan; and
3. Ensure that any laboratories utilized by Monsanto for analyses participate in a quality assurance/quality control program equivalent to that which is followed by the U.S. EPA, and which is consistent with U.S. EPA document QAMS-005-80. As part of such a program, and upon request by the plaintiff, such laboratories shall perform analyses of samples provided by the plaintiff to demonstrate the quality of analytical data for each such laboratory.

X. CERTIFICATION AND TERMINATION

A. Upon completion of the work as provided in the Consent Order and Attachment II, Monsanto shall submit a certification to the plaintiff which states that such work has been completed in satisfaction of the requirements and objectives of this Consent Order. The plaintiff shall review the work within ninety (90) days of receipt of the certification and indicate, in writing, plaintiff's agreement or disagreement as to its satisfactory completion. Plaintiff may extend the time for

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review to a subsequent date certain, but no more than ninety (90) additional days, by notifying Monsanto of such extension within fifteen (15) days of receipt of the certification. If the plaintiff determines that the work has not been completed in accordance with the standards and specifications set out in Attachment II, the plaintiff shall notify Monsanto in writing as to what should be done to complete the work, referencing the specific portion(s) of Attachment II and proposing a schedule for completion. If Monsanto disagrees with any such determination by the plaintiff, the dispute resolution provisions of Section XVIII shall apply.

B. With the exception of those sections relating to contribution protection (XXIV), record preservation (VIII) stipulation of use (XXII), and reservation of rights (XVI), the provisions of this Consent Order shall be deemed satisfied upon receipt by Monsanto of written notice from the plaintiff that Monsanto has demonstrated that all of the terms of this Consent Order have been satisfactorily completed, which written notice shall not be unreasonably withheld in accordance with the terms of this order. Upon said satisfaction of this Consent Order, or upon the agreement of the parties, this Consent Order shall terminate, with the exception of those sections VIII, XVI, XXII and XXIV referred to herein above. If the plaintiff determines that the work has not been completed in accordance with the standards and specifications set out in Attachment II, the plaintiff shall notify Monsanto, in writing, within ninety (90) days of receipt of the certification referred to in Section X.A.

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above as to what should be done to complete the work, referencing the specific portion(s) of Attachment II and proposing a schedule for completion. If Monsanto disagrees with any such determination by the plaintiff, the dispute resolution provisions of Section XVIII shall apply.

C. Upon plaintiff's approval of Monsanto's certification of completion of this Consent Order pursuant to Section X.A., including the work pursuant to Attachment II, the plaintiff shall (1) release Monsanto from any claims seeking performance of the work covered by the certification available to the plaintiff based upon (a) Section 22.2(f)-(k) of the Illinois Environmental Protection Act (Ill. Rev. Stat. 1989, ch. 111½, par. 1022.2(f)-(k)), (b) CERCLA, or (c) the complaint herein, and (2) dismiss without prejudice the pending action (Case No. 82-CH-195). Said release shall not relieve Monsanto of liability for the conditions identified or addressed in the RI/FS including liability for performance of the remedial action selected pursuant to this Consent Order or reimbursement of the plaintiff's necessary costs of response incurred in performing the selected remedial action consistent with the NCP and IHSPCP. The plaintiff agrees to not initiate any civil or administrative actions concerning such matters against Monsanto so long as Monsanto is in compliance with the terms of this Consent Order. In consideration of and upon payment by Monsanto of plaintiff's response costs incurred prior to March 31, 1991, pursuant to Section XV.C., plaintiff releases and covenants not to sue

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Monsanto for any response costs incurred through March 31, 1991, with regard to the site.

XI. ADDITIONAL WORK

A. In the event that the plaintiff or Monsanto determines that additional work, including remedial investigatory work and/or engineering evaluation, is necessary to accomplish the objectives of the RI/FS, or to comply with subsequent amendments to the NCP, the IHSPCP, the CERCLA, and the RI/FS Guidance, notification of such additional work shall be provided to each of the other parties.

B. Any additional work determined to be necessary by Monsanto shall be subject to approval by the plaintiff.

C. Any additional work determined to be necessary by Monsanto and approved by the plaintiff, or determined to be necessary by the plaintiff, shall be completed by Monsanto in accordance with the standards, specifications, and schedule determined or approved by the plaintiff.

XII. COMPLIANCE WITH APPLICABLE LAWS

All work undertaken by Monsanto pursuant to this Consent Order shall be performed in compliance with all applicable Federal and State laws and regulations, including all Occupational Health and Safety Administration and Department of Transportation regulations. Monsanto shall be responsible for obtaining all applicable State or local permits. The plaintiff

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agrees to support and use its best efforts in assisting Monsanto in obtaining any applicable permits.

XIII. ACCESS

A. To the extent that the site (as described in Attachment I) or other areas where work is to be performed hereunder are presently owned by parties other than those bound by this Consent Order, Monsanto shall obtain, or shall use its best efforts to obtain, access agreements from the present owners within thirty (30) days of approval of the RI/FS Work Plan (or, if work performed under the work plan identifies a need to perform additional work on other areas, within 30 days of approval of the amendment to the work plan authorizing that work). Such agreements shall provide access for the plaintiff and authorized representatives of the plaintiff, as specified below. In the event that such access agreements are not obtained within the time referenced above, Monsanto shall so notify the plaintiff. If such access is not obtained as specified above, the plaintiff thereafter may assist Monsanto in obtaining access to the extent necessary to effectuate the work hereunder, using such means as plaintiff deems appropriate. Any of plaintiff's costs reasonably incurred in this effort, including any reasonable attorneys' fees and other expenses, shall be considered costs of response and shall be reimbursed by Monsanto in accordance with Section XV of this Consent Order. The plaintiff reserves the right to terminate this Consent Order should Monsanto's inability to gain

access to the Site or other areas materially affect Monsanto's ability to perform the work required herein.

B. Authorized representatives of the plaintiff shall be allowed access to the site and other areas (where work is to be performed hereunder) by Monsanto, and as part of any agreement obtained under paragraph A above, for purposes including, but not limited to: inspecting records, operating logs and contracts related to the Site; reviewing the progress of Monsanto in carrying out the terms of this Consent Order; conducting such tests, inspections, and sampling as the plaintiff may deem necessary; using a camera (including a video camera), or other documentary type equipment; and verifying the data submitted to the plaintiff by Monsanto hereunder. This provision shall not be construed to authorize the sound recording of any meeting of the parties without their consent, nor to the sound recording of any person without his or her consent. Monsanto shall permit such authorized representatives to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data, which pertains to this Consent Order. All persons with access to the site pursuant to the Consent Order shall comply with approved health and safety plans.

C. Nothing herein shall be construed as restricting the inspection or access authority of the plaintiff under any law or regulation.

XIV. FORCE MAJEURE

A. Any failure by Monsanto to comply with any requirements of this Consent Order or plans incorporated thereunder shall not be a violation of this Consent Order if such failure is the result of actions by persons or events beyond the reasonable control of Monsanto. Force majeure events shall include, but not be limited to, extraordinary weather conditions or events, natural disasters, national, state or local emergencies, delays in obtaining access to property not owned by Monsanto (where Monsanto has used its best efforts to obtain such access pursuant to Section XIII hereof), delays in issuance of any required approval or permits (where complete and timely applications or requests for any such permits or approvals have been made), and delays caused by response or removal activities undertaken by U.S. EPA and/or IEPA. Examples of events that are not force majeure events include, but shall not be limited to, normal inclement weather; normal, seasonal changes in weather conditions; increased costs or expenses for any foreseeable item of work to be performed under this Consent Order; foreseeable changes in economic circumstances of Monsanto or its contractor(s); any financial difficulty of Monsanto which may arise as the result of performing required work; or negligent acts or omissions attributable to Monsanto, its contractors or representatives.

B. When, in the opinion of Monsanto, circumstances have occurred which cause or may cause a violation of any provision of this Consent Order, Monsanto shall orally notify the

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plaintiff's Project Manager as soon as practicable but not later than seven (7) days after the claimed occurrence. Failure to so notify the plaintiff's Project Coordinators shall constitute a waiver of any defense under this section arising from said circumstances. Within twenty (20) days of the claimed occurrence Monsanto shall, in writing, describe in detail the precise cause or causes of the claimed occurrence which caused the violation, the measures taken or to be taken to prevent or minimize the violation, and the timetable by which those measures will be implemented. Monsanto will adopt all reasonable measures to avoid or minimize any such violation.

C. If the plaintiff and Monsanto agree that the violation has been or will be caused by circumstances beyond the control of Monsanto, the parties may request that the court extend the time for performance hereunder for a period equal to the delay resulting from such circumstances, or enter such order as is appropriate. The plaintiff shall be precluded from invoking any of the remedies otherwise available to them under the provisions of this Consent Order to the extent such noncompliance or delay in achieving compliance is caused by said event. If Monsanto and the plaintiff cannot agree whether the reasons for the delay or noncompliance were beyond the reasonable control of Monsanto, such dispute or disputes shall be resolved by the court pursuant to Section XVIII. Monsanto shall have the burden of going forward and proving that the circumstances alleged to be causing the delay or noncompliance were beyond its reasonable control.

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D. Increased costs associated with implementing the measures required by this Consent Order shall not, by itself, excuse the defendant from a failure to comply under the provisions of this section.

XV. STIPULATED PENALTIES AND COST REIMBURSEMENT

A. In the event Monsanto fails to comply with any requirements set forth in this Consent Order or Attachment II or any plans submitted thereunder, Monsanto shall, upon receipt of a notice of violation from the plaintiff identifying such noncompliance, have twenty (20) days to correct the noncompliance. No such time will be allowed for Monsanto's failure to timely submit the remedial investigation report, the feasibility study report or other document submittals provided for in Attachment II. In the event that Monsanto corrects a deficiency so that the total RI/FS schedule is not delayed, then stipulated penalties for the corrected deficiency may be forgiven at the plaintiff's discretion. A single act or omission shall not be the basis for more than one type of stipulated penalty. However, a single act or omission may result in more than one (1) day of stipulated penalties. If the noncompliance is not corrected after twenty (20) days, Monsanto shall pay to the Illinois Hazardous Waste Fund, as a stipulated penalty, Five Hundred Dollars ($500.00) per day of noncompliance until such time as the requirements are complied with. These stipulated penalties shall be enforceable by the plaintiff, and shall be in addition to and shall not

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preclude the use of any other remedies or sanctions arising apart from the failure to comply with the Consent Order.

B. Any stipulated penalties for which Monsanto shall become liable for under this Consent Order shall be paid by certified check made payable to "Treasurer of the State of Illinois" and noting for deposit in the Illinois Hazardous Waste Fund and delivered to the Manager, Fiscal Services Division, Accounts Receivable Unit, Illinois Environmental Protection Agency, 2200 Churchill Road, P.O. Box 19276, Springfield, Illinois 62794-9276. The Illinois Site ID number, LPC 1631210003, shall appear on the check.

C. Monsanto shall pay the Agency and the Attorney General in the amounts of $143,000 and $7,000, respectively, in respect of response costs incurred through March 31, 1991 by certified checks to be paid within forty (40) days of entry of this Consent Order. Each check shall be made payable to the "Treasurer of the State of Illinois" and the Agency's payment shall be noted for deposit into the Illinois Hazardous Waste Fund and the Attorney General's payment shall be noted for deposit into the Illinois Environmental Protection Trust Fund and both delivered to the Manager, Fiscal Services Division, Accounts Receivable Unit, Illinois Environmental Protection Agency, 2200 Churchill Road, P.O. Box 19276, Springfield, Illinois 62794-9276. This payment resolves Monsanto's liability for response and oversight costs incurred by plaintiff with regard to the site through March 31, 1991. The Illinois Site ID number, LPC 1631210003, shall appear on the checks.

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D. At the end of each fiscal year, the plaintiff shall submit to Monsanto an accounting of all response costs, which are not inconsistent with the NCP and IHSPCP, incurred by the plaintiff with respect to this Consent Order. The plaintiff's accounting shall include details as to tasks performed, invoices, personnel hours, personnel rates per hour, unit prices, contractor's time and materials and the like. Monsanto shall, within forty (40) days of receipt of such accounting, remit certified checks for the respective amounts of the Agency and the Attorney General response costs incurred which are not inconsistent with the NCP and IHSPCP, made payable to "Treasurer of the State of Illinois" and noting for deposit the Illinois Hazardous Waste Fund and Illinois Environmental Protection Trust Fund, respectively, and deliver them to the aforementioned address.

XVI. RESERVATION OF RIGHTS

A. The plaintiff reserves all rights and defenses that plaintiff may have pursuant to any available legal authority.

B. Nothing herein shall waive the right of the plaintiff to enforce this Consent Order, or to take any other action provided by law. The plaintiff reserves the right to take any other action provided by law. The plaintiff reserves the right to take any enforcement action pursuant to CERCLA and/or any available legal authority, including the right to seek injunctive relief, monetary penalties, and punitive damages. In

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addition, the plaintiff reserves the right to undertake any remedial investigation/feasibility study work, and/or any removal, remedial and/or response actions relating to the site, and to seek recovery (in a proceeding separate from this Consent Order) from Monsanto for any costs incurred in undertaking such actions.

C. Nothing herein is intended to release, discharge, or in any way affect any claims, causes of action or demands in law or equity which the parties may have against any person, firm, partnership or corporation not a party to this Consent Order for any liability it may have arising out of, or relating in any way to, the generation, storage, treatment, handling, transportation, release or disposal of any materials, hazardous substances, hazardous wastes, contaminants, or pollutants at, to, or from the site. The parties to this Consent Order expressly reserve all rights, claims, demands, and causes of action they have against any and all other persons and entities who are not parties to this Consent Order, and as to each other for matters not covered hereby.

D. Monsanto reserves the right to seek contribution, indemnity and/or any other remedy, including without limitation those under CERCLA Section 113(f)(3)(B), 42 U.S.C. § 9613(f)(3)(B), and under Section 22.2 of the Act, Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1022.2, against any person for any amounts which have been or will be expended by Monsanto in connection with the site.

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E. Nothing herein shall be construed to release Monsanto from its duty to perform the RI/FS in accordance with the RI/FS Work Plan attached hereto and incorporated herein. The parties further expressly recognize that this Consent Order and the successful completion and approval of the RI/FS do not represent satisfaction, waiver, release, or covenant not to sue, of any claim of the United States or the State of Illinois against Monsanto relating to the site, (including claims to require Monsanto to undertake further response actions and claims to seek reimbursement of response costs pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607) or Section 22.2 of the Illinois Environmental Protection Act (Ill. Rev. Stat. 1989, ch. 111½, par. 1022.2) except as provided in Section X of this Consent Order.

F. Nothing herein is intended to be a release or settlement of any claim for personal injury or property damage by or against any person not a party to this Consent Order.

G. Any failure by Monsanto to initiate dispute resolution in the event the plaintiff choses not to implement the remedy or portion thereof as provided for in Subsection VII.C. above shall not constitute a waiver of any other rights, defenses, claims or causes of action it may have in this or any other action brought against Monsanto.

H. Nothing herein shall be construed as a waiver of any of Monsanto's rights, defenses, claims or causes of action relative to any emergency action (and costs associated therewith)

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taken by the Agency pursuant to Sections 4(d)(2) and 22.2 of the Act.

XVII. RESPONSIBILITIES AND AUTHORITY OF PROJECT MANAGER AND AUTHORIZED REPRESENTATIVE

A. The plaintiff shall appoint, at Monsanto's expense to the extent provided in Section XV.D. hereof, an employee or independent contractor who shall serve as an authorized representative of the plaintiff to oversee implementation of the work and to monitor the performance of Monsanto's contractor or consultant.

B. In addition to the person described in Section XVII.A., the plaintiff shall also appoint a "Project Manager", who shall be responsible for the management and implementation of the plaintiff's oversight efforts. The plaintiff's Project Manager shall have the authority vested in an on-scene coordinator and a remedial project manager by the NCP and the IHSPCP. If the Project Manager requires suspension of the work, the Project Manager shall then have the authority to require Monsanto to perform the work in a manner consistent with this Consent Order and Attachment II but also in a manner that will reasonably address, avoid or mitigate the conditions causing the suspension of work. Whenever feasible, the Project Manager shall consult with the Monsanto Representative before ordering such suspension of work. In the event that the Project Manager suspends the work, the parties shall, with the approval of the court, modify this Consent Order to the extent necessary so as to enlarge the

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schedule for the suspended phase or any succeeding phase by a period of time not to exceed the actual length of the suspension, plus the additional time needed to complete any additional work necessitated by this suspension. To the maximum extent possible, written communications between Monsanto and the plaintiff, and all documents, reports, approvals and other correspondence concerning the activities performed pursuant to the terms and conditions of this Consent Order, shall be directed through the Project Manager and the Monsanto Representative, with a copy to the Project Coordinator. During the implementation of the RI/FS Work Plan, the Project Manager, the Project Coordinators and the Monsanto Representative shall, whenever possible, operate by consensus and shall attempt in good faith to resolve disputes informally through discussion of the issues. The plaintiff and Monsanto shall each have the right to change its respective Project Manager, Project Coordinators, authorized representative, and the Monsanto Representative. Such a change shall be accomplished by notifying the other party in writing at least ten (10) days prior to the change.

C. The Monsanto Representative or Project Coordinator shall notify the Project Manager immediately upon the occurrence of any event which, in the Monsanto Representative's or Project Coordinator's judgment, may threaten human health or the environment. The notice shall be followed by written notification to the plaintiff as provided in Section XIX from the Monsanto Representative within ten days which explains the event,

any action taken to eliminate the threat, and the precautions taken to avoid recurrence of a similar threat.

D. The absence of the plaintiff's authorized representative from the facility shall not be cause for stoppage of work.

XVIII. DISPUTE RESOLUTION

A. Any dispute which arises with respect to the meaning, application, interpretation, amendment or modification of the terms of this Consent Order and Attachment II, any plan or report required thereunder, or with respect to any party's compliance herewith or any delay hereunder (including but not limited to disputes concerning the selection of a remedy pursuant to Subsection VII.C., the adequacy of reports or plans for implementing Attachment II, the necessity of additional work under Section XI, the claim of confidentiality under Subsection VIII.D., and the propriety of any stipulated penalty, response costs assessed under Section XV, or costs of emergency action taken by the Agency pursuant to Sections 4(d)(2) and/or 22.2 of the Act if the Agency seeks to recover these costs as response costs pursuant to Section XV of this Consent Order, but not including any emergency action taken by the Agency pursuant to Sections 4(d)(2) and 22.2 of the Act) shall, in the first instance, be the subject of informal negotiations. If the plaintiff and Monsanto cannot resolve the dispute within thirty (30) days, however, the dispute may be presented to the court for appropriate resolution upon written notice by either party. The

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presentation to the court of the dispute for appropriate resolution shall not be cause for cessation of any ongoing work or activities which are not contingent upon the resolution of the disputed issue.

B. In cases where the plaintiff is seeking an amendment, modification, or enforcement of this Consent Order, it shall be the plaintiff's responsibility to file the documents necessary to notify the court of the dispute, and the plaintiff shall bear the burden of proof.

C. In cases where Monsanto is seeking an amendment, modification or enforcement of this Consent Order, it shall be Monsanto's responsibility to file the documents necessary to notify the court of this dispute, and Monsanto shall bear the burden of proof.

D. In cases where Monsanto challenges the selected remedy pursuant to Section VII.C., Monsanto shall bear the burden of proving that the plaintiff's remedy choice was not in accordance with the NCP or the IHSPCP.

E. In cases where Monsanto disputes the plaintiff's oversight and response cost claims, Monsanto shall bear the burden of proving that the plaintiff's costs were inconsistent with the NCP or IHSPCP. In cases where Monsanto asserts a claim of force majeure, Monsanto shall bear the burden of proof. In cases where Monsanto challenges the plaintiff's conditional approval or disapproval of any report or plan required by this Consent Order or of any Monsanto representative, consultant, contractor or other agent hired by Monsanto to perform the work

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required by this Consent Order, Monsanto shall bear the burden of proof.

F. Monsanto shall file any petition with the court within sixty (60) days after the informal negotiation period (or any agreed upon extension) has expired, and, where the State has the responsibility of filing, the State shall petition the court within ninety (90) days after the expiration of the informal negotiation period (or any agreed upon extension).

G. In those cases where Monsanto invokes the dispute resolution process to challenge stipulated penalties assessed under Section XV of this Consent Order, those penalties shall continue to accrue for a maximum of 60 days during the pendency of the dispute resolution process. In any event, penalties but need not be paid during the dispute resolution process.

XIX. NOTICES

Whenever, under the terms of this Consent Order, notice is required to be given or a report or other document is required to be forwarded 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 in writing to the other parties of another individual designated to receive such communications. Notice to the individuals listed below shall constitute complete satisfaction of any notice requirement of the order with respect to the plaintiff and Monsanto, respectively.

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As to the defendant:

Steven D. Smith
Sauget Site Monsanto
Representative
Monsanto Chemical Company
800 N. Lindbergh Blvd.
St. Louis, Mo 63167

Thomas O. Kuhns, Esq.
Kirkland & Ellis
200 East Randolph Drive
Chicago, IL 60601

As to the State:

Illinois Attorney General's
Office, c/o James L. Morgan
Environmental Control Division
500 South Second Street
Springfield, IL 62706

and

Paul E. Takacs
Sauget Sites Project Manager
Illinois Environmental
Protection Agency
Land Pollution Control Division
2200 Churchill Road
P.O. Box 19276
Springfield, IL 62794-9276

XX. RETENTION OF JURISDICTION

The court shall retain jurisdiction of this matter for the purposes of interpreting, implementing and enforcing the terms and conditions of this Consent Order and for the purpose of adjudicating all matters of dispute among the parties.

XXI. SEVERABILITY

It is the intent of the parties hereto that the provisions of this Consent Order shall be severable, and should any provisions be declared by a court of competent jurisdiction to be inconsistent with state or federal law, and therefore unenforceable, the remaining clauses shall remain in full force and effect. In the event that any provisions of this Consent Order and plans implemented hereunder and attachments hereto are found to be inconsistent with the provisions of the Act or CERCLA by the court entering this Consent Order or if any provisions of

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the Consent Order, attachments or plans implemented thereunder shall be found to be inconsistent with any subsequently enacted provision of the Act, the provisions of the Act shall be controlling.

XXII. STIPULATION OF USE

This Consent Order is entered into for the purposes of settlement only and neither the fact that a party has entered into this Consent Order nor the Statement of Facts appearing herein shall be used for any purpose in this or any other proceeding except to enforce the terms hereof by the parties to this agreement. As to others who are not parties to this Consent Order, nothing in this Consent Order and Attachments shall constitute an admission by Monsanto of any provision contained herein, and entry into this Consent Order shall not constitute an admission by Monsanto of liability for conditions at or near the site nor a waiver of any right, cause of action, or defense otherwise available to Monsanto. Subject to the foregoing provision for enforcement of this Consent Order, the plaintiff and Monsanto reserve all rights, causes of action and defenses available to each.

XXIII. VENUE

The venue of any action commenced in circuit court for the purposes of interpretation, implementation, and enforcement of the terms and conditions of this Consent Order shall be in St. Clair County.

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XXIV. CONTRIBUTION PROTECTION

Monsanto and plaintiff acknowledge and agree that the performance of work pursuant to this Consent Order represents a good faith settlement and compromise of a disputed claim. This Consent Order provides Monsanto with such contribution protection as is available under law.

IT IS SO AGREED BY THE PARTIES AND HEREBY ORDERED BY THIS COURT:

ENTERED THIS _____ DAY OF _____, 1991.

_____
JUDGE

PEOPLE OF THE STATE OF ILLINOIS

ROLAND W. BURRIS
ATTORNEY GENERAL

By: _____
Shawn W. Denny
First Assistant Attorney General

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

By: _____
Joseph E. Svoboda
General Counsel
Division of Legal Counsel

MONSANTO COMPANY
FEIN #_____

By: _____ 10/26/91
Dir. of Env. Programs
Monsanto Chemical Co.

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