

TO: Jay Christopher

FAX # 293-5660

TGG: JCL: FGJ: AC: RF

FROM: T. G. Grumbles

DATE: September 6, 1991

XF: Desk

VISTA

Interoffice
Communication

SUBJ: RCRA/HSWA CORRECTIVE ACTION AGREEMENT FOR LCCC

Attached is a draft agreement. Changes have been made in the last draft based on discussions at our meeting on August 14. Significant changes have been made in Section E regarding the roles of the companies, Section G regarding the interim cost split percentage, and Sections I and J are new sections regarding disputed costs and indemnities.

Please provide a copy to Adele.



T. G. Grumbles

dlj

Attachment

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TGG

RCRA/HSWA CORRECTIVE ACTION AGREEMENT

WITNESSETH THIS AGREEMENT between Conoco Inc. ("Conoco") and Vista Chemical Company ("Vista") is entered into on this ___ day of August, 1991, for the purposes of achieving an accord and satisfaction of past disputes and minimizing future disputes concerning the parties' respective responsibilities for the payment of certain expenses associated with corrective action requirements contained in the final hazardous waste permit for the Vista Lake Charles Chemical Complex ("LCCC") in Westlake, Louisiana.

PURSUANT TO THE Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984 ("RCRA/HSWA"), Section VI of the hazardous waste permit mandates corrective action for Releases of Hazardous Waste and Hazardous Constituents from Solid Waste Management Units ("SWMU") at the LCCC. As described in Section VI of the permit, the RCRA/HSWA corrective action process for the LCCC will be performed in two major phases: RCRA Facility Investigation ("RFI") Work Plan preparation/approval/implementation; and Corrective Measures Study ("CMS") Plan preparation/approval/implementation.

IN CONSIDERATION OF the mutual undertakings set forth herein and intending to be legally bound hereby, it is hereby agreed as follows:

A. FOR PURPOSES OF this Agreement, the terms "Solid Waste Management Unit," "Hazardous Waste," "Hazardous Constituent", and "Release" shall be defined in accordance with regulations proposed by the United States Environmental Protection Agency ("USEPA") at 55 Fed. Reg. 30874 (27 July 1990). Any modifications to these definitions adopted by USEPA in finalizing or interpreting these regulations or LDEQ in adopting implementing regulations shall automatically be substituted in this Agreement for the proposed definitions.

B. FOR PURPOSES OF this Agreement, Section VI of the LCCC's hazardous waste permit specifies the substantive and procedural requirements of a "Description of Current Conditions," "RCRA Facility Investigation Work Plan," "RCRA Facility Investigation Report and Summary," "Interim Measures," "Determination of No Further Action," "Corrective Measures Study Plan," "Corrective Measures Study Implementation," and "Corrective Measures Study Final Report." These requirements may be modified as a result of subsequent regulatory negotiations or rulemakings, in which case the modified requirements shall automatically be substituted in this Agreement for the requirements specified in the permit.

C. FOR PURPOSES OF this Agreement, the term "Expense Items" shall mean outside contractor expenses, services, and equipment and materials costs necessary and appropriate to complete corrective action pursuant to this Agreement. Expense items shall only include costs actually incurred for the following:

VVV 000007602

1. Non-Conoco and non-Vista personnel time, such as outside contractors and outside consultants; and
2. Costs for equipment, services, and materials purchased from other than Conoco or Vista.

If it is more cost-effective for one of the parties to perform tasks associated with these Expense Items or to provide equipment and materials, Conoco and Vista agree that those actions, if agreed to in writing beforehand, are subject to the cost reimbursement provisions of this Agreement.

D. THE TERM OF this Agreement shall be five (5) years commencing from the date of signing this Agreement. The Agreement shall be renewed or extended as necessary to complete RCRA/HSWA corrective action requirements at the LCCC. As described in Section F below, cost reimbursement formulae shall be prospectively developed, formalized, and applied in a phased manner under the terms of addenda to this basic Agreement. Cost reimbursement for Expense Items incurred after such five (5) year term shall be governed by the formulae developed during the term of this Agreement.

E. IN RECOGNITION THAT RCRA/HSWA corrective action at the LCCC is required under the terms and conditions of an operating permit containing a compliance schedule, Vista shall take the lead in performing required remedial activities with input and oversight from Conoco concerning major decisions and developments. The parties shall make all reasonable efforts to reach a consensus concerning matters arising out of or in connection with RCRA/HSWA corrective action at the LCCC.

Consistent with these general roles, Vista shall perform the functions listed below.

1. Award all third-party contracts for work required to be performed and manage selected contractors.
2. Approve contractor proposals, scopes of work, contracts, and work orders, allowing Conoco the same amount of time for review and comment that Vista has. Vista shall instruct contractors to mail or deliver copies of such documents to Conoco at the same time they are mailed or delivered to Vista.
3. Approve contractor change orders not to exceed 10 percent of the original estimated cost of a work order previously approved by both parties. If, as a result of change orders, contractor costs will exceed 10 percent of the original estimated cost of an approved work

order, Vista shall notify Conoco and obtain Conoco approval of all change order(s) which exceed the 10 percent contingency.

4. Provide periodic progress reports to Conoco on work required to be performed.

5. Advise Conoco in a timely manner of major developments.

6. Take the lead in negotiations with governmental authorities concerning RCRA/HSWA corrective action and make all final settlement and litigation decisions.

7. Review and approve draft and final deliverables prepared by contractors, allowing Conoco the same period of time for review and comment that Vista has. Vista shall instruct contractors to mail or deliver copies of deliverables to Conoco at the same time the deliverables are mailed or delivered to Vista.

Consistent with these general roles, Conoco shall:

1. Participate in contractor selection and recommend preferred contractors;

2. Review contractor proposals, scopes of work, contracts, and work orders and make recommendations;

3. If, as a result of change orders, contractor costs will exceed 10 percent of the original estimated cost of an approved work order, approve reasonable contractor change orders which exceed the 10 percent contingency;

4. Participate in negotiations with governmental authorities concerning RCRA/HSWA corrective action; and

5. Review and comment upon ~~draft~~ and final deliverables prepared by contractors.

F. BASED ON THE "Asset Purchase Agreement among E. I. Du Pont de Nemours and Company, Conoco Inc. and Vista Chemical Company," dated 20 July 1984 ("APA"), cost reimbursement formulae shall be developed for each of the two major phases of corrective action at the LCCC:

1. RFI Work Plan preparation/approval/implementation, including Description of Current Conditions (Phase 1); and

2. CMS Plan preparation/approval/implementation (Phase 2).

These cost reimbursement formulae shall be developed in the future as the scope of corrective action requirements and associated Expense Items are clarified. These cost reimbursement formulae shall be formalized as addenda to this basic Agreement. The cost reimbursement formula for all Phase 1 activities shall be developed and applied within 30 days after USEPA and/or LDEQ has approved the RFI Work Plan and a contract to implement the Work Plan has been awarded. A cost reimbursement formula shall be developed and applied for Phase 2 activities, including any required interim measures, within 30 days after the RCRA Facility Investigation Report and Summary have been submitted to USEPA and/or LDEQ.

G. PENDING THE DEVELOPMENT of the Phase 1 cost reimbursement formula described in Section F above, Conoco shall pay seventy-five percent (75%) and Vista shall pay twenty-five (25%) of all Expense Items. Vista shall pay invoices for Expense Items in due course of business and shall invoice Conoco for seventy-five percent (75%) of such invoices. Conoco shall mail Vista a check for its seventy-five percent (75%) share within thirty (30) days after the receipt of an invoice from Vista.

H. AFTER A COST reimbursement formula is developed for each phase of the corrective action process, the formula shall be applied to all Expense Items incurred during that phase. With respect to Expense Items incurred pending the development of a cost reimbursement formula for Phase 1, Vista and Conoco shall reallocate the previously incurred costs consistent with the agreed formula and shall settle the account as appropriate with one lump-sum payment.

I. IF A DISPUTE arises with respect to payment of an Expense Item which is being invoiced pursuant to a work order or change order approved by both parties, Conoco shall pay the disputed Item pending the outcome of dispute resolution or arbitration. If a dispute arises with respect to an Expense Item which is being invoiced pursuant to a work order or change order which has not been approved by both parties, Conoco may withhold payment of the disputed Item pending the outcome of dispute resolution or arbitration.

J. WITH RESPECT TO work orders for contractor services requiring on-site investigation and remediation, Vista shall obtain third-party contractual indemnifications from contractors which shall be for the benefit of Conoco and shall be approved by Conoco.

K. ALL DATA GATHERED or generated as a result of work performed under this Agreement shall be provided or made available to both Vista and Conoco.

L. IN THE EVENT of any dispute or difference which may arise between the parties hereto, out of or in connection with this Agreement, both parties shall promptly endeavor to resolve such dispute or difference by mutual discussions. Should such dispute or

difference continue to remain unresolved, such dispute or difference shall be submitted for arbitration for final settlement.

1. Either party may demand such arbitration in writing within 30 days after the controversy arises, which demand shall include a statement of the matter in controversy. Failure to request arbitration within 30 days after the controversy arises does not waive a party's right to request arbitration on the controversy after that initial 30-day period.

2. Within ten (10) working days after such demand, the party demanding arbitration shall solicit a list of five (5) candidate arbitrators with appropriate credentials from the American Arbitration Association and shall provide the list to the other party. Within ten (10) working days of receiving the list, the parties shall meet to select an arbitrator. This selection shall be made by each party's alternately striking a name from the list until only one name remains, who shall be the arbitrator. The party demanding arbitration shall make the first strike. If an arbitrator is not selected within ten (10) working days of receiving the list, the party demanding arbitration may request that the Arbitration Committee of the American Arbitration Association select an arbitrator.

3. The arbitration costs and expenses of each party shall be borne by that party. The costs of the arbitrator shall be shared equally by both parties.

4. The arbitration hearing shall be held within 30 days of the date of arbitrator selection at a time and place to be specified by the arbitrator. The arbitrator shall give both parties at least ten (10) working days' written notice prior to hearing.

5. The arbitration rules and procedures of the American Arbitration Association shall be utilized in the arbitration hearing and the law of evidence of the State of Texas shall govern the presentation of evidence at such hearing.

6. The arbitration hearing shall be concluded within three days unless otherwise ordered by the arbitrator, and the finding or award on the hearing shall be made within ten (10) working days after the close of the submission of evidence or submission of post-hearing briefs.

7. An award rendered by the arbitrator shall be final and binding on all parties to the proceeding during the period of this agreement, and judgment on such award may be entered by either party in the highest court, state or federal, having jurisdiction.

8. The parties stipulate that the provisions of this Agreement pertaining to arbitration shall be a complete defense to any suit, action, or proceeding instituted in any federal, state, or local court or before any administrative tribunal with respect to any controversy or dispute arising during the period of this agreement and which is arbitrable as set forth in this Agreement.

9. The arbitration provisions of this Agreement shall, with respect to such controversy or dispute, survive the termination or expiration of this Agreement.

M. THIS AGREEMENT SHALL not be introduced in any court for the purpose of construing or interpreting any provision of the APA. This Agreement shall not supersede any prior agreement between the parties.

N. THIS AGREEMENT AND any addenda adopted pursuant hereto contain the entire agreement pertaining to RCRA/HSWA corrective action at the LCCC between the parties and shall not be altered unless in writing signed by both parties.

O. THIS AGREEMENT SHALL be governed by and construed in accordance with the laws of the State of Texas.

THE UNDERSIGNED REPRESENTATIVES of Vista and Conoco certify that they are authorized to enter into the terms and conditions of this Agreement and to execute and legally bind each respective company to this document.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be duly executed as of the latest date below written.

VISTA CHEMICAL COMPANY

CONOCO INC.

John D. Burns

Title: President and
Chief Executive Officer

Date: _____

Title: _____

Date: _____