

IN THE MATTERS OF:)
)
 Velsicol/Hardeman County Landfill)
 Superfund Site, Toone, Hardeman)
 County, Tennessee)
)
 Mathis Brothers/South Marble Top)
 Road Landfill Superfund Site)
 Kensington, Walker County, Georgia)
)
 Shaver's Farm Superfund Site)
 Lafayette, Walker County, Georgia)
)
)
 Velsicol Chemical Corporation)
 SETTLING PARTY)
)
)
 _____)

**AGREEMENT AND SETTLEMENT FOR
 RECOVERY OF RESPONSE COSTS**

U.S. EPA Region 4

CERCLA Docket No. 00-51-C

**PROCEEDING UNDER SECTION
 122(h)(1) OF CERCLA
 42 U.S.C. § 9622(h)(1)**

10303330



I. Jurisdiction

1. EPA is authorized to enter into this Agreement pursuant to the authority vested in the Administrator of the EPA by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D and further delegated through the Director of the Waste Management Division by EPA Regional Delegation No. 14-14-D, to the Chief of the CERCLA Waste Programs Branch. Velsicol consents to, and will not contest, EPA's jurisdiction to enter into this Agreement or to implement or enforce its terms.

II. Definitions

2. a. "Agreement" shall mean this Agreement and the attached appendices, which include Appendix A, the "Stipulated Repayment Agreement", Appendix B, the "Oversight Bill Amounts Appendix", and Appendix C, the "Past Response Costs Appendix".

b. "Day" shall mean a calendar day. In computing any period of time under this Agreement, 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.

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

d. "Future Response Costs" for purposes of this Agreement shall mean all costs,

including, but not limited to, direct and indirect costs, that the United States (i) incurs or pays after September 30, 1999, overseeing "Operation and Maintenance" pursuant to the Hardeman UAOs; (ii) incurs or pays after April 30, 2000, overseeing "Operation and Maintenance" pursuant to the Mathis Brothers UAO; and (iii) incurs implementing, overseeing, or enforcing this Agreement.

e. "Hardeman Site" shall mean the Velsicol/Hardeman County Landfill Superfund Site, EPA ID Number TND007024664.

f. "Hardeman AOC" shall mean the Hardeman Site Administrative Order on Consent, CERCLA Docket No. 89-40-C, dated February 17, 1989, as amended in the First Amendment to the Administrative Order, dated November 4, 1991.

g. "Hardeman UAOs" shall mean the Hardeman Site, Unilateral Administrative Order, EPA Docket No. 92-02-C, dated October 17, 1991, and the Hardeman Site, Unilateral Administrative Order, EPA Docket No. 96-02-C, dated December 22, 1995.

h. "Interest" shall mean interest at the current rate specified for interest on investments of the 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).

i. "Mathis Brothers Site" shall mean the Mathis Brothers/South Marble Top Road Landfill Site Superfund Site, EPA ID Number GAD980838619.

j. "Mathis Brothers AOC" shall mean the Mathis Brothers/South Marble Top Road Landfill Superfund Site Administrative Order on Consent, CERCLA Docket No. 88-22-C, dated November 2, 1988.

k. "Mathis Brothers UAO" shall mean the Mathis Brothers/South Marble Top Road Landfill Superfund Site, Unilateral Administrative Order, EPA Docket No. 93-35-C, dated August 19, 1993.

l. "Oversight Bill Amounts" shall mean (i) with regard to the Mathis Brothers AOC, the amount of \$434,470.25 incurred pursuant to the Mathis Brothers AOC; and (ii) with regard to the Shaver's AOC, the amount of \$138,917.12 incurred pursuant to the Shaver's AOC.

m. "Paragraph" shall mean a portion of this Agreement identified by an arabic numeral or a lower case letter.

n. "Parties" shall mean EPA and Velsicol;

o. "Past Agreements" shall mean the Hardeman AOC, the Mathis Brothers AOC, the Shaver's CD, and the Shaver's AOC. To the extent feasible, this Agreement shall be interpreted in a manner not inconsistent with the Past Agreements. In the event of conflict

between this Agreement and the Past Agreements, the Past Agreements shall control.

p. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA or the U.S. Department of Justice on behalf of EPA has paid at or in connection with (i) the Hardeman Site through September 30, 1999; and (ii) the Mathis Brothers Site through April 30, 2000, except for Oversight Bill Amounts.

q. "Section" shall mean a portion of this Agreement identified by a roman numeral.

r. "Sites" shall mean the Hardeman County Superfund Site, the Mathis Brothers/South Marble Top Road Landfill Superfund Site, and the Shaver's Farm Superfund Site, unless specified otherwise herein.

s. "Shaver's Site" shall mean the Shaver's Farm Superfund Site, EPA ID Number GAD980840078.

t. "Shaver's CD" shall mean the Shaver's Farm Superfund Site Consent Decree, Civil Action No. 04:94-CV-258-HLM, dated May 19, 1997.

u. "Shaver's AOC" shall mean the Shaver's Farm Superfund Site Administrative Order on Consent, CERCLA Docket No. 95-4-C, dated October 27, 1994.

v. "Stipulated Repayment Agreement" shall mean the Stipulated Repayment Agreement, dated September 15, 2000, entered into between the United States and Velsicol, attached as Appendix A, which provides Velsicol with a payment schedule for the amount of \$2,193,043.66 which was due under the Shaver's CD on January 5, 2000.

w. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

x. "Velsicol" shall mean the Velsicol Chemical Corporation.

III. Background

3. In response to the release or threatened release of hazardous substances at or from the Sites, EPA undertook and/or is currently undertaking response actions at the Sites pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604.

4. In performing these response actions, EPA incurred and/or will incur response costs at or in connection with the Sites.

5. EPA alleges that Velsicol is a responsible party pursuant to Section 107(a) of

CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for response costs incurred and/or to be incurred at or in connection with the Sites.

6. Velsicol and EPA have entered into several Past Agreements relating to response costs and response actions at the Sites.

7. EPA and Velsicol desire to resolve Velsicol's alleged civil liability for Past and Future Response Costs without litigation and without the admission or adjudication of any issue of fact or law. EPA deems that the Past Response Costs, Future Response Costs, and Oversight Bill Amounts addressed herein are/will be consistent with the National Contingency Plan (NCP), 40 C.F.R. Part 300, et seq.

8. Velsicol has disclosed to EPA that Fruit of the Loom ("FOL") and NWI Land Management ("NWI") have obligations to indemnify Velsicol for certain liabilities and the right to manage certain sites on behalf of Velsicol under and in accordance with a certain Assumption and Indemnity ("A&I") Agreement.

9. One of the obligations for which FOL/NWI indemnified Velsicol is the Shavers CD entered on October 3, 1997.

10. EPA is aware that FOL/NWI filed for Chapter 11 bankruptcy on December 29, 1999.

11. FOL/NWI's bankruptcy filing and subsequent failure to pay a certain January 5, 2000 payment under the Shavers CD as required by the A&I Agreement resulted in such payment to EPA not being made by Velsicol on a timely basis, thus resulting in the Stipulated Repayment Agreement and this Agreement whereby EPA will permit payments to be made over time.

12. This Agreement covers Velsicol's liability only, and Velsicol does not purport to have the authority to resolve obligations which FOL/NWI may have relating to the Sites.

13. This Agreement shall be binding upon EPA and upon Velsicol and its successors and assigns. Any change in ownership or corporate or other legal status of Velsicol, including but not limited to, any transfer of assets or real or personal property, shall in no way alter Velsicol's responsibilities under this Agreement. Each signatory to this Agreement certifies that he or she is authorized to enter into the terms and conditions of this Agreement and to bind legally the party represented by him or her.

14. This Agreement is made and entered into by and between EPA and Velsicol. The purposes of this Agreement are as follows:

a. Past Response Costs

(1) with regard to the Hardeman Site, to provide for the settlement of

EPA's Past Response Costs, in the amount of \$586,746.37;

(2) with regard to the Mathis Brothers UAO, to provide for the settlement of EPA's demand for payment, dated June 11, 1998, in the amount of \$317,220.84, for Past Response Costs incurred under the Mathis Brothers UAO, and additional Past Response Costs incurred under the Mathis Brothers UAO, in the amount of \$195,146.86; and

(3) with regard to the Mathis Brothers Site, to provide for the settlement of additional Past Response Costs incurred, in the amount of \$63,084.89, not within the scope of the Mathis Brothers UAO or Mathis Brother AOC.

b. Future Response Costs

(1) with regard to the Hardeman Site, to provide for the settlement of Future Response Costs under the Hardeman UAOs; and

(2) with regard to the Mathis Brothers Site, to provide for the settlement of Future Response Costs under the Mathis Brothers UAO.

c. Oversight Bill Amounts

(1) with regard to the Mathis Brothers AOC, to provide for the settlement of outstanding Oversight Bill Amounts incurred under the Mathis Brothers AOC, in the amount of \$434,470.25; and

(2) with regard to the Shaver's AOC, to provide for the settlement of Velsicol's dispute, under the AOC, of EPA's bill demanding payment of Oversight Bill Amounts incurred under the AOC, dated March 2, 1999, in the amount of \$138,917.12.

d. Stipulated Repayment Agreement

(1) with regard to the Shaver's CD, to acknowledge the Stipulated Repayment Agreement, dated September 15, 2000, entered into between the United States and Velsicol, attached as Appendix A, which provides for an alternate schedule for the payment of \$2,193,043.66, which was due January 5, 2000, per the terms of the Shaver's CD.

IV. Reimbursement of Response Costs

15. Upon the effective date of this Agreement, Velsicol shall make payments to the United States in reimbursement of Past Response Costs and Oversight Bill Amounts in the time, manner, and amount as provided in the attached appendices. In addition, Velsicol shall make payments pursuant to the Stipulated Repayment Agreement, attached as Appendix A. Notwithstanding the foregoing, Velsicol may remit all payments, or any portion thereof, in

advance of the schedule contained in the attached appendices, and the payment of any corresponding accrued Interest shall be adjusted as appropriate.

16. On a periodic basis, EPA will submit to Velsicol a bill for Future Response Costs that includes an itemized Superfund Cost Recovery Package Imaging and On-line System (SCORPIOS) Report. Velsicol shall within thirty (30) days of receipt of the bill, remit a cashier's or certified check for the amount of the bill made payable to the "Hazardous Substance Superfund," to the following address:

U. S. Environmental Protection Agency
Region IV
Superfund Accounting
P. O. Box 100142
Atlanta, Georgia 30384
ATTENTION: Collection Officer for Superfund

Velsicol shall simultaneously transmit a copy of the check to Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region 4, CERCLA Program Services Branch, Waste Management Division, Atlanta, Georgia 30303. Payments shall be designated as "Future Response Costs) -(Site Name) Site" and shall reference the payor's name and address, the EPA 4-digit Site ID/Spill Number, and the docket number of this Agreement.

17. Velsicol may dispute, pursuant to Section V, all or part of a bill for Future Response Costs submitted under this Agreement, if Velsicol alleges that EPA has made an accounting error, or if Velsicol alleges that a cost item is inconsistent with the NCP.

18. If any dispute, pursuant to Section V, over a bill for Future Response Costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Velsicol shall pay the full amount of the uncontested costs into the Hazardous Substance Fund as specified above on or before the due date. Within the same time period, Velsicol shall pay the full amount of the contested costs into an interest-bearing escrow account. Velsicol shall ensure that the prevailing Party in the dispute receives the amount upon which it prevailed from the escrow funds plus Interest within ten (10) days after the dispute is resolved.

V. Dispute Resolution

19. The Parties shall attempt to resolve, expeditiously and informally, any disputes concerning bills for Future Response Costs issued pursuant to this Agreement within twenty (20) days of Velsicol's receipt of the bill. Unless the dispute has been informally resolved pursuant to the preceding sentence, Velsicol shall, in the manner identified in the bill, notify EPA in writing within twenty (20) days of Velsicol's receipt of said bill in order to initiate dispute resolution under this section.

20. As provided in the appendices, Velsicol may allege that EPA has made an accounting error with respect to *Past Response Costs* after review of *backup cost documentation* to be provided by EPA. If EPA and Velsicol are unable to agree that an accounting error has been made within the time frame provided in the appendices, then the dispute shall be resolved in accordance with this section. Velsicol shall initiate such a dispute under this section by notifying EPA in writing within five (5) days of the close of the informal resolution process contained in the appendices.

21. EPA and Velsicol shall within ten (10) days from EPA's receipt of Velsicol's written objections attempt to resolve the dispute through formal negotiations (Negotiation Period). The Negotiation Period may be extended at the sole discretion of EPA. EPA's decision regarding an extension of the Negotiation Period shall not constitute an EPA action subject to dispute resolution or a final agency action giving rise to judicial review.

22. Any agreement reached by the Parties pursuant to this Section shall be in writing, signed by both Parties, and shall upon the signature by both Parties be incorporated into and become an enforceable element of this Agreement. If the Parties are unable to reach an agreement within the Negotiation Period, an EPA management official at the Division Director level or higher will issue a written decision on the dispute to Velsicol. The decision of EPA shall be incorporated into and become an enforceable element of this Agreement upon Velsicol's receipt of the EPA decision regarding the dispute. Velsicol's obligations under this Agreement shall not be tolled by submission of any objection for dispute resolution under this Section.

23. Following resolution of the dispute, as provided by this Section, Velsicol shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs. No EPA decision made pursuant to this Section shall constitute a final agency action giving rise to judicial review prior to a judicial action brought by the United States to enforce the decision.

VI. Failure to Comply with Agreement

24. In the event that any payment (i) required under this Agreement for reimbursement of Oversight Bill Amounts or (ii) made pursuant to the Stipulated Repayment Agreement, is not made when due, interest shall continue to accrue as provided in the Past Agreements. If any payment required under this Agreement for reimbursement of Past Response Costs is not made when due, Interest shall continue to accrue as provided in the appendices. In the event that any payment required under this Agreement for reimbursement of Future Response Costs is not made when due, Interest shall accrue from the date of Velsicol's receipt of the bill through the date of payment.

25. In the event that any payment required under this Agreement is not made when due, Velsicol shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 24 and in addition to any penalties provided for in the Past Agreements, \$100.00 per

violation per day that such payment is late.

26. Stipulated penalties are due and payable within 30 days of the date of demand for payment of the penalties. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made in accordance with Paragraph 15 of this Agreement.

27. Stipulated penalties shall accrue as provided above regardless of whether EPA has notified Velsicol of the violation or made a demand for payment, but need only be paid upon demand. All stipulated penalties shall begin to accrue on the day after performance is due, or the day a violation occurs, and shall continue to accrue through the final day of correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Agreement.

28. In addition to the Interest and stipulated penalty payments required by this Section and any other remedies or sanctions available to EPA by virtue of Velsicol's failure to comply with the requirements of this Agreement, if Velsicol fails or refuses to comply with any term or condition of this Agreement, Velsicol shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States, on behalf of EPA, brings an action to enforce this Agreement, Velsicol shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

29. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Agreement.

VII. Covenants Not to Sue by EPA

30. Except as specifically provided in Paragraph 31 (Reservations of Rights by EPA), EPA covenants not to sue Velsicol pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past and Future Response Costs. The covenant for Past Response Costs attributable to the Hardeman Site shall take effect upon receipt by EPA of all amounts required by Paragraph 15 (Reimbursement of Response Costs) and Paragraphs 24 and 25 which correspond to such costs. The covenant for Past Response Costs attributable to the Mathis Brothers Site shall take effect upon receipt by EPA of all amounts required by Paragraph 15 and Paragraphs 24 and 25 which correspond to such costs. The covenant for Future Response Costs attributable to the Hardeman Site shall take effect upon receipt by EPA of all amounts required by Paragraph 16 and Paragraphs 24 and 25 which correspond to such costs. The covenant for Future Response Costs attributable to the Mathis Brothers Site shall take effect upon receipt by EPA of all amounts required by Paragraph 16 and Paragraphs 24 and 25 which correspond to such costs. These covenants not to sue are conditioned upon the satisfactory performance by Velsicol of its obligations under this Agreement. These covenants not to sue extend only to Velsicol and do not extend to any other person, as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

VIII. Reservations of Rights by EPA

31. The covenants not to sue by EPA set forth in Paragraph 30 do not pertain to any matters other than those expressly identified therein. EPA reserves, and this Agreement is without prejudice to, all rights against Velsicol with respect to all other matters, including but not limited to:

- a. liability for failure of Velsicol to meet a requirement of this Agreement;
- b. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs or Future Response Costs as provided in this Agreement;
- c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;
- d. criminal liability; and
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

32. Nothing in this Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a signatory to this Agreement.

IX. Covenant Not to Sue by Velsicol

33. Velsicol agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to this Agreement or as provided in the Past Agreements, including but not limited to:

- a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law, for the costs covered under this Agreement;
- b. any claims arising out of the response actions at the Sites for which the Past Response Costs and Future Response Costs were incurred; and
- c. any claim or defense against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Past Response Costs or Future Response Costs.

34. Nothing in this Agreement shall be deemed to constitute approval or 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).

X. Effect of Settlement/Contribution Protection

35. Nothing in this Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Agreement or the Past Agreements. EPA and Velsicol each reserve any and all rights (including, but not limited to, any right to contribution or subrogation), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Sites against any person not a Party hereto.

36. EPA and Velsicol agree that Velsicol is entitled, as of the effective date of this Agreement, to protection from contribution actions or claims to the extent provided by CERCLA Section 113(f)(2) and 122(h)(4), 42 U.S.C. § 9613(f)(2) and 9622(h)(4) for "matters addressed" in this Agreement. The "matters addressed" in this Agreement are Past Response Costs and Future Response Costs.

37. EPA and Velsicol agree that the actions undertaken by Velsicol in accordance with this Agreement do not constitute an admission of any liability by Velsicol. Velsicol does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Agreement, the validity of the facts or allegations contained in Section III (Background), Paragraphs 3, 4, and 5 of this Agreement.

38. Except with respect to actions against or relating to FOL and/or NWI, Velsicol agrees that with respect to any suit or claim for contribution brought by it for matters related to this Agreement, it will notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Except with respect to actions against or relating to FOL and/or NWI, Velsicol also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Agreement, it will notify EPA in writing within 10 days of service of the complaint or claim upon it. In addition, except with respect to actions against or relating to FOL and/or NWI, Velsicol shall notify EPA within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Agreement.

39. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Velsicol 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 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 covenant not to sue by EPA set

forth in Paragraph 30.

XI. Notices and Submissions

40. Whenever, under the terms of this Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals as specified in this Agreement.

XII. Public Comment

41. Except with respect to the Stipulated Repayment Agreement, this Agreement shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate.

XIII. Effective Date

42. The effective date of this Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 41 has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Agreement.

IT IS SO AGREED:

U.S. Environmental Protection Agency

By: Franklin Hill
Franklin Hill, Chief
CERCLA Program Services Branch
Waste Management Division

9/20/00
Date

THE UNDERSIGNED SETTLING PARTY enters into this Agreement in the matters of the Shaver's Farm Site, the Mathis Brothers Site, and the Hardeman Site:

Velsicol Chemical Corporation

By: Charles R. Hanson

Charles R. Hanson (type name)

Title: Vice President, EHS (type title)

Date: 9/19/00

Appendix A

“Stipulated Repayment Agreement”

United States in response to the release or threat of release of hazardous substances at or from a facility known as the Shaver's Farm Superfund Site in Walker County, Georgia ("Shaver's Farm").

3. On or about October 7, 1997, a Consent Decree was entered and filed of record in this proceeding whereby Veliscol agreed, among other things, to pay to the United States a total of \$6,280,560 in Past Response Costs in three annual installments plus accrued interest ("Consent Decree").

4. The final installment payment pursuant to this agreement was due January 5, 2000.

5. Velsicol defaulted on payment of this final installment, and the default has not been uncured as of the date of this agreement.

II. AGREEMENT

6. In consideration for curing the default on the payments due under the Consent Decree, and as further consideration for the agreements set forth in the Agreement and Settlement for Recovery of Response Costs, CERCLA Docket No. 00-51-C, dated September 20, 2000, ("the EPA Settlement"), the terms of which are made a part hereof and incorporated herein by this reference, the parties hereby stipulate and agree to the following:

7. Velsicol hereby agrees to make payments on the amount remaining due under the Consent Decree according to the Revised Payment Schedule and Interest Assessment set forth in the document attached to this stipulation marked Appendix A, which terms are incorporated into this agreement by this reference.

8. The United States agrees that so long as Velsicol complies with the payment schedule set forth in Appendix A, no enforcement action will be taken regarding the unpaid balance due under the Consent Decree.

9. In the event any payment required under this agreement is not made when due, the United States shall be entitled to take any and all remedies available under applicable federal law to enforce the Consent Decree, without further notice to Velsicol.

10. If any payment required under this agreement is not made when due, interest shall continue to accrue as provided in Appendix. Further, in the event any payment required under this agreement is not made when due, Velsicol shall pay to the United States \$100 per violation per day that such payment is late, as a stipulated penalty, in addition to the interest required by Appendix A.

11. Stipulated penalties are due and payable within 30 days of the date of demand for payment of the penalties. Any demand under this paragraph shall be made by the United States in writing and mailed by First Class Mail, Return Receipt Requested, or by overnight delivery to:

Velsicol Chemical Corporation
Erin B. Isaacson, General Counsel
10400 W. Higgins Rd. Suite 600
Rosemont, Illinois 60018-3713

12. Stipulated penalties shall accrue as provided above regardless of whether the United States has notified Velsicol of the violation or made demand for payment, but Velsicol need only pay the penalties upon demand made by the United States. All stipulated penalties shall begin to accrue on the day after a

payment is due under this agreement and shall continue to accrue through the final day that the payment is made. Nothing herein shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this agreement.

13. Any violation of this agreement may be construed by either party as a violation of the EPA Settlement.

This agreement is entered into by,

RICHARD H. DEANE, JR.
UNITED STATES ATTORNEY

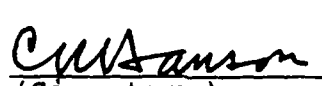
BY, 

KRISTIN I. TOLVSTAD
ASSISTANT U.S. ATTORNEY

1800 U.S. Courthouse
75 Spring Street, SW
Atlanta, Georgia 30303
(404) 581-6350
Ga. Bar No. 714327

VELSICOL CHEMICAL CORP.

By,

 9/19/00
(Signature)

Charles R. Hanson

(Type Name)

Vice President, EHS

(Title)

2603 Corporate Avenue

Suite 150

Memphis, Tennessee 38132
Address

(901) 345-1788

(Telephone)

Appendix A
of
“Stipulated Repayment Agreement”

Shaver's Judgment Amount Appendix

Revised Payment Schedule and Interest Assessment

Pursuant to the Shaver's CD, Velsicol was required to remit payment in the amount of \$2,193,043.66 by January 5, 2000. In light of the fact that payment was not received, EPA hereby opts to exercise its rights under the CD to compound interest on the overdue balance on a daily basis. The Parties hereby agree to the assessment of such interest and to a schedule of payments for the principal amount and interest at the current Superfund rate of 5.3% as follows:

- a. Payment of \$257,500 to the Department of Justice via FEDWIRE electronic funds transfer on March 24, 2000. The Parties acknowledge that this payment was timely made.
- b. Payment of \$262,500 to the Department of Justice via FEDWIRE electronic funds transfer on August 7, 2000. The Parties acknowledge that this payment was timely made.
- c. Payment of \$200,000 to the Department of Justice via FEDWIRE electronic funds transfer on or before September 15, 2000.
- d. Payment of \$100,000 to the Department of Justice via FEDWIRE electronic funds transfer on or before October 15, 2000.
- e. Payment of \$100,000 to the Department of Justice via FEDWIRE electronic funds transfer on or before November 15, 2000.
- f. Payment of \$100,000 to the Department of Justice via FEDWIRE electronic funds transfer on or before December 15, 2000.
- g. Payment of \$100,000 to the Department of Justice via FEDWIRE electronic funds transfer on or before January 15, 2001.
- h. Payment of \$100,000 to the Department of Justice via FEDWIRE electronic funds transfer on or before February 15, 2001.
- i. Payment of \$100,000 to the Department of Justice via FEDWIRE electronic funds transfer on or before March 15, 2001.
- j. Payment of \$100,000 to the Department of Justice via FEDWIRE electronic funds transfer on or before April 15, 2001.
- k. Payment of \$100,000 to the Department of Justice via FEDWIRE electronic funds transfer on or before May 15, 2001.

l. Payment of \$100,000 to the Department of Justice via FEDWIRE electronic funds transfer on or before June 15, 2001.

m. Payment of \$100,000 to the Department of Justice via FEDWIRE electronic funds transfer on or before July 15, 2001.

n. Payment of \$100,000 to the Department of Justice via FEDWIRE electronic funds transfer on or before August 15, 2001.

o. Payment of \$100,000 to the Department of Justice via FEDWIRE electronic funds transfer on or before September 15, 2001.

p. Payment of \$100,000 to the Department of Justice via FEDWIRE electronic funds transfer on or before October 15, 2001.

q. Payment of \$100,000 to the Department of Justice via FEDWIRE electronic funds transfer on or before November 15, 2001.

r. Payment of \$100,000 to the Department of Justice via FEDWIRE electronic funds transfer on or before December 15, 2001. Of this amount, \$73,043.66 represents the remaining principal, and \$26,956.34 represents a portion of the \$133,250.92 total accrued interest for the period beginning January 6, 2000, and ending January 15, 2002.

s. Payment of \$106,294.58 to the Department of Justice via FEDWIRE electronic funds transfer on or before January 15, 2002. This amount represents the total remaining accrued interest for the period beginning January 6, 2000, and ending January 15, 2002.

Appendix B
"Oversight Bill Amounts"

Oversight Bill Amounts Appendix

Shaver's Farm AOC Sub-Appendix

Settlement and Payment Schedule for
EPA Oversight Bill dated, March 2, 1999.

Pursuant to the Shaver's AOC, EPA submitted a bill demanding payment of oversight costs incurred under the AOC, dated March 2, 1999, in the amount of \$138,917.12. Pursuant to Section VIII (Dispute Resolution) of the AOC, Velsicol timely disputed the costs demanded in the bill. In accordance with Section VIII of the AOC, the Parties hereby agree to the following schedule of terms and payments in settlement of that dispute:

- a. Payment of \$100,000 on or before February 15, 2002.
- b. Payment of \$38,917.12 on or before March 15, 2002, plus all accrued Interest from March 2, 1999.

Velsicol shall, based on the schedule listed above, remit a cashier's or certified check for the amount of the payment made payable to the "Hazardous Substance Superfund," to the following address:

U.S. Environmental Protection Agency, Region 4
Superfund Accounting
P.O.Box 100142
Atlanta, GA 30384
Attn: Collection Officer for Superfund

Velsicol shall simultaneously transmit a copy of the check to Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region 4, CERCLA Program Services Branch, Waste Management Division, Atlanta Federal Center, 61 Forsyth Street, Atlanta, GA 30303. Payments shall be designated as "AOC Oversight Costs - Shaver's Farm Site" and shall reference the payor's name and address, the EPA 4-digit Site ID/Spill #, and the docket number of this Agreement.

Oversight Bill Amounts Appendix

Mathis Brothers AOC Sub-Appendix

Revised Payment Schedule and Interest Assessment

The Mathis Brothers AOC Oversight Bill Amounts incurred from November 2, 1988 through March 24, 1993 total \$636,532.84. Velsicol has previously paid \$202,062.59 of this amount, leaving an unpaid balance of \$434,470.25. The Parties hereby agree to the following schedule of payments for the outstanding costs:

- A. Payment of \$100,000.00 on April 15, 2002;
- B. Payment of \$100,000.00 on May 15, 2002;
- C. Payment of \$100,000.00 on June 15, 2002;
- D. Payment of \$100,000.00 on July 15, 2002;
- E. Payment of \$34,470.25, plus all Interest that has accrued on any outstanding amounts from the effective date of this Agreement, on August 15, 2002.

Velsicol shall, based on the schedule listed above, remit a cashier's or certified check for the amount of the payment made payable to the "Hazardous Substance Superfund," to the following address:

U.S. Environmental Protection Agency, Region 4
Superfund Accounting
P.O. Box 100142
Atlanta, GA 30384
Attn: Collection Officer for Superfund

Velsicol shall simultaneously transmit a copy of the check to Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region 4, CERCLA Program Services Branch, Waste Management Division, Atlanta Federal Center, 61 Forsyth Street, Atlanta, GA 30303. Payments shall be designated as "AOC Oversight Costs - Mathis Brothers Site" and shall reference the payor's name and address, the EPA 4-digit Site ID/Spill #042Q, and the docket number of this Agreement.

Appendix C
"Past Response Costs"

Past Response Costs Appendix

Hardeman Past Response Costs Sub-Appendix to Agreement

Settlement and Payment Schedule for Past Response Costs

The parties hereby agree to the following in settlement of Past Response Costs:

- A. Subject to the remainder of this Sub-Appendix, Velsicol shall pay EPA \$586,746.37 in settlement of Hardeman Past Response Costs.
- B. EPA shall provide a Certified Cost Documentation Package ("documentation package") to Velsicol regarding the Hardeman Past Response Costs, which shall include time sheets, travel vouchers, and contractor invoices. Upon receipt of the documentation package, Velsicol shall have thirty (30) days to review the documentation package for accounting errors. If Velsicol alleges that EPA has made an accounting error and EPA agrees, the amount due will be adjusted as necessary. If EPA and Velsicol are unable to agree that an accounting error has been made within ten (10) days after the review period has ended, then any further dispute shall be resolved in accordance with Section V (Dispute Resolution) of this Agreement.
- C. EPA agrees to pursue recovery of Hardeman Past Response Costs and Hardeman Future Response Costs from NWI Land Management Corporation (NWI) by requesting that the United States Department of Justice (DOJ) file a Proof of Claim in bankruptcy against NWI on EPA's behalf. In their sole discretion, EPA and DOJ (on behalf of EPA) shall determine the length of time and level of effort to be utilized in the pursuit of Hardeman Past Response Costs and Hardeman Future Response Costs from NWI. This determination will not be subject to Section V of the Agreement entitled "Dispute Resolution," nor will it be subject to judicial review.
- D. Upon written notification from EPA that efforts to collect Hardeman Past Response Costs and Future Response Costs from NWI have been completed and/or terminated, Velsicol agrees to pay the difference between (i) \$586, 746.37 (as adjusted by the procedures described in Paragraph B above) and (ii) the amount recovered (if any) from NWI pursuant to the procedures described in Paragraph C (above). This amount shall be paid in accordance with the payment terms specified in Paragraphs E and F (below). In the event that the amount to be paid under Paragraph E is adjusted in accordance with this paragraph, any decreases in the amount due will be credited against the payment schedule in Paragraph E, in reverse chronological order, and any increases in the amount due will be added to the final payment in Paragraph E. In no event shall any increase or decrease in the amount due affect the payment schedule contained in any other

appendix.

- E. Velsicol shall pay the Hardeman Past Response Costs according to the following schedule:
- I. Velsicol shall pay \$100,000.00 on the later of: (i) March 15, 2003, or (ii) within 30 days of the earlier of the following: (a) receiving notice of the termination of EPA's efforts in its bankruptcy claim against NWI, and/or (b) the decision of the bankruptcy court in the NWI bankruptcy proceeding.
 - II. Velsicol shall pay \$100,000.00 on the later of April 15, 2003, or one month from the first payment.
 - III. Velsicol shall pay \$100,000.00 on the later of May 15, 2003, or two months from the first payment.
 - IV. Velsicol shall pay \$100,000.00 on the later of June 15, 2003, or three months from the first payment.
 - V. Velsicol shall pay \$100,000.00 on the later of July 15, 2003, or four months from the first payment.
 - VI. Velsicol shall pay \$ 86, 746.37 on the later of August 15, 2003, or five months from the first payment.
 - VII. Velsicol shall pay all accrued Interest on Hardeman Past Response Costs on the later of September 15, 2003, or six months from the first payment. Accrued Interest shall be calculated beginning April 5, 2000, the date of EPA's demand for reimbursement of the costs. The accrued Interest shall be adjusted as appropriate if the amount due is reduced by Paragraph B.
- F. Velsicol shall, according to the schedule listed in Paragraph E (above), remit a certified or cashiers check for the listed amount on the specified dates made payable to the Hazardous Substance Superfund. Checks should specifically reference the identify of the Site and should be sent to the following address:

U.S. Environmental Protection Agency
Region 4
Superfund Accounting
P.O. Box 100142
Atlanta, Georgia 30384
ATTENTION: Collection Officer for Superfund

Velsicol shall simultaneously transmit a copy of the check to Ms. Paula V. Bachelor, U.S. Environmental Protection Agency, Region 4, CERCLA Program Services Branch, Waste Management Division, Atlanta Federal Center, 61 Forsyth Street, Atlanta, GA 30303. Payments shall be designated as "Past Response Costs-Velsicol/Hardeman County Landfill Superfund Site" and shall reference the payor's name and address, the EPA 4-digit Site ID, and the docket number of this Agreement.

Past Response Costs Appendix

Mathis Brothers Past Response Costs Sub-Appendix to Agreement

Settlement and Payment Schedule for Past Response Costs

The Mathis Brothers Past Response Costs incurred from March 25, 1993 through April 30, 2000, under the Mathis Brothers UAO, total \$512,367.70. EPA submitted a demand to Velsicol for a portion of these costs in the amount of \$317,220.84 on June 11, 1998. Velsicol denied their liability for that amount and there has been no resolution prior to this Agreement. Additionally, EPA has incurred \$63,084.89 in additional Past Response Costs for the Mathis Brothers Site that are outside the scope of the Mathis Brothers UAO and the Mathis Brothers AOC. These costs were incurred prior to the time that the Parties entered into the Mathis Brothers AOC on November 2, 1988. The outstanding UAO Past Response Costs and Additional Past Response Costs incurred outside the scope of the Mathis Brothers AOC and the Mathis Brothers UAO total \$575,452.59. In settlement of these outstanding Past Response Costs, the Parties hereby agree to the following terms and schedule of payments:

A. EPA will provide Velsicol with a Certified Cost Documentation Package (“documentation”), which shall include time sheets, travel vouchers, and contractor invoices, relating solely to Past Response Costs incurred at the Mathis Brothers Site. Upon receipt of the documentation, Velsicol shall have thirty (30) days to review the documentation for accounting errors. If Velsicol alleges that EPA has made an accounting error and EPA agrees, the amount due will be adjusted as necessary. If EPA and Velsicol are unable to agree that an accounting error has been made within ten (10) days after the review period has ended, then any further dispute shall be resolved in accordance with Section V (Dispute Resolution) of this Agreement.

B. Velsicol shall pay all costs that are determined to be accurate under Paragraph A above, plus all accrued Interest, in accordance with the payment schedule in Paragraph C below. In the event that the amount to be paid under Paragraph C is adjusted in accordance with Paragraph A, any decreases in the amount due will be credited against the payment schedule in Paragraph C, in reverse chronological order, and any increases in the amount due will be added to the final payment in Paragraph C. In no event shall any increase or decrease in the amount due affect the payment schedule contained in any other appendix. If a final determination of the amount due has not been made by the first scheduled payment date, Velsicol shall pay the full amount of the costs into an interest-bearing escrow account in accordance with the payment schedule. Upon a final determination of the amount due, Velsicol shall ensure that EPA receives the amount due from the escrow funds plus Interest within fifteen (15) days.

C. Payment Schedule:

1. Payment of \$100,000.00 on September 15, 2002;

2. Payment of \$100,000.00 on October 15, 2002;
3. Payment of \$100,000.00 on November 15, 2002;
4. Payment of \$100,000.00 on December 15, 2002;
5. Payment of \$100,000.00 on January 15, 2003;
6. Payment of \$75,452.59, plus all Interest that has accrued on the portion of these costs that was previously demanded (\$317,220.84), as adjusted by Paragraph A, since the original due date (June 11, 1998), and all Interest on the other portion of these costs (\$258,231.75), as adjusted by Paragraph A, from the effective date of this Agreement, on February 15, 2003.

Velsicol shall, based on the schedule listed above, remit a cashier's or certified check for the amount of the payment made payable to the "Hazardous Substance Superfund," to the following address:

U.S. Environmental Protection Agency, Region 4
Superfund Accounting
P.O.Box 100142
Atlanta, GA 30384
Attn: Collection Officer for Superfund

Velsicol shall simultaneously transmit a copy of the check to Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region 4, CERCLA Program Services Branch, Waste Management Division, Atlanta Federal Center, 61 Forsyth Street, Atlanta, GA 30303. Payments shall be designated as "AOC Oversight Costs - Mathis Brothers Site" and shall reference the payor's name and address, the EPA 4-digit Site ID/Spill #042Q, and the docket number of this Agreement.