

APPENDIX E

Draft Declaration of Environmental Land Use Restriction and
Grant of Easement

United States of America and
State of Connecticut

v.

American Hoechst Corporation, et al.

DECLARATION OF ENVIRONMENTAL LAND USE RESTRICTION
AND GRANT OF EASEMENT

This Declaration of Environmental Land Use Restriction and Grant of Easement is made this _____ day of _____, _____, between _____ (the "Grantor") and the Commissioner of Environmental Protection of the State of Connecticut (the "Grantee").

WITNESSETH:

WHEREAS, Grantor is the owner in fee simple of certain real property (the "Property") known as [Grantor's Street Address], located in the Town of Southington, designated as Map ____, Block ____, Lot ____ on the tax map of the Town of Southington, more particularly described on Exhibit A, which is attached hereto and made a part hereof; and

WHEREAS, the Property is part of the Solvents Recovery Service of New England Superfund Site ("SRSNE Site"), which the United States Environmental Protection Agency ("EPA"), pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9605, placed on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 8, 1983, 48 Fed. Reg. 40658; and

WHEREAS, the Grantor and the Grantee agree that EPA, as the lead agency administering the remedial action at the SRSNE Site under CERCLA, shall be a third-party beneficiary of this declaration of environmental land use restriction and grant of easement and agree to give EPA the right as third-party beneficiary to enforce the performance of the obligations set forth in this declaration of environmental land use restriction and grant of easement, as described further herein; and

WHEREAS, the Grantee has determined that the environmental land use restriction and grant of easement set forth below is consistent with regulations adopted pursuant to Section 22a-133k of the Connecticut General Statutes; and

WHEREAS, the Grantee and EPA have determined that this environmental land use restriction and grant of easement will effectively protect public health and the environment from the hazards of pollution; and

WHEREAS, the Grantee's written approval of this environmental land use restriction and grant of easement is contained in the document attached hereto as Exhibit B (the "Decision Document") which is made a part hereof; and

WHEREAS, the Property or portion(s) thereof identified in the class A-2 survey (the "Subject Area(s)"), which survey is attached hereto as Exhibit C and is made a part hereof, contains pollutants; and

WHEREAS, EPA signed a Record of Decision (the "ROD") on September 30, 2005 which selected a remedial action for the SRSNE Site, including, but not limited to, the Property. The remedial action selected provides for the recording of land use restrictions on the land records of the town of Southington, and is necessary to protect the public health or welfare or the environment from actual or threatened releases of hazardous substances into the environment. The ROD, and the Administrative Record upon which the ROD was based, are available for review at the Southington Public Library, 255 Main Street, Southington, CT, at EPA's Superfund

Records Center, One Congress Street, Boston, MA and on the internet at www.epa.gov/ne/superfund/sites (enter the search term "Solvents Recovery Service"); and

WHEREAS, a group of potentially responsible parties (the "Performing PRPs") has agreed to perform the remedial action selected for the SRSNE Site, including, but not limited to, the Property, pursuant to a Consent Decree issued in United States of America and State of Connecticut v. _____, Civil Action Nos. _____ and _____, (the "Consent Decree"); and

WHEREAS, to prevent exposure to or migration of such pollutants and to abate hazards to human health and the environment and in accordance with the Decision Document, the ROD, and the Consent Decree, the Grantor desires to impose certain restrictions upon the use, occupancy, and activities of and at the Subject Area, and to grant this environmental land use restriction and grant of easement to the Grantee on the terms and conditions set forth below; and

WHEREAS, Grantor intends that such restrictions and easement shall run with the land and be binding upon and enforceable against Grantor and Grantor's successors and assigns, as provided herein;

NOW, THEREFORE, Grantor agrees as follows:

1. Purpose. In accordance with the Decision Document, the ROD and the Consent Decree, the purpose of this environmental land use restriction is to assure:

A. that Subject Area A is not used for any residential purpose and is used solely for industrial and/or commercial activities [*this purpose should be included only at properties that meet the criteria in the note to Paragraph 2(a), below (i.e., properties where there is an exceedance of residential volatilization criteria, but not industrial/commercial volatilization criteria)*];

B. that buildings are not constructed over groundwater at Subject Area B [*this purpose should be included only at properties that meet the criteria in the note to Paragraph 2(B), below (i.e., properties where there is an exceedance of residential and commercial/industrial volatilization criteria)*];

C. that groundwater at Subject Area C is not used for any purpose other than hydraulic containment, extraction, treatment and monitoring of groundwater in accordance with the remedial action approved in the ROD [*this purpose should be included only at properties that meet the criteria in the note to Paragraph 2(C), below*];

D. that humans are not exposed to polluted or potentially polluted soils at Subject Area D [*this purpose should be included only at properties that meet the criteria in the note to Paragraph 2(D), below*]; and

E. that the engineered control (a multi-layer cap) at Subject Area E, described in Exhibit D attached hereto, is not disturbed and is properly maintained to prevent disturbances and exposures to polluted or potentially polluted soils at Subject Area E and to prevent water from infiltrating polluted or potentially polluted soils at Subject Area E [*this purpose should be included only at properties that meet the criteria in the note to Paragraph 2(E), below*].

2. Restrictions Applicable to the Subject Areas. In furtherance of the purposes of this environmental land use restriction, Grantor shall assure that use, occupancy, and activity of and at the Subject Areas are restricted as follows:

- A. Construction. Subject Area A shall not be used for any residential purpose and shall be used solely for industrial and/or commercial activities. *[Note: EPA and DEP expect that this restriction shall apply to areas where there is an exceedance of residential volatilization criteria, but not an exceedance of commercial/industrial volatilization criteria. The areas subject to this restriction are to be identified in the Pre-Design Study and incorporated in the Institutional Control Plan.]*
- B. Construction. Construction of buildings within Subject Area B shall not be permitted. *[Note: EPA and DEP expect that this restriction shall apply to areas where there is an exceedance of residential and commercial/industrial volatilization criteria. The areas subject to this restriction are to be identified in the Pre-Design Study and incorporated in the Institutional Control Plan.]*
- C. Groundwater. Groundwater at Subject Area C shall not be used for any purpose other than hydraulic containment, extraction, treatment and monitoring of groundwater in accordance with the remedial action approved in the ROD. *[Note: EPA and DEP expect that this restriction will apply to (a) all areas where groundwater contamination levels exceed federal drinking water standards, risk-based levels (as determined in an approved risk assessment), or CT groundwater protection criteria, and (b) all areas within a buffer zone around the areas in (a), adequate to insure that withdrawals of water in the vicinity, or seasonal variations in groundwater levels, will not induce movement of the contaminants into uncontaminated areas or interfere with any remedial action at the SRSNE Site. These areas are to be delineated in the Institutional Control Plan.]*
- D. Disturbances of Uncapped Soil. Polluted or potentially polluted soil, as shown in Subject Area D, and located greater than four feet below grade shall not be exposed as a result of excavation, demolition or other activities. *[Note: EPA and DEP expect that this restriction will apply to soil located more than four feet below grade at all non-capped areas where disturbances might result in exposures to polluted soil that exceeds the Cleanup Levels in Section IV.A.2 of the SOW, and all areas where there may be untreated NAPL and NAPL-contaminated materials in the overburden and bedrock aquifers. These areas are to be delineated in the Institutional Control Plan.]*
- E. Disturbances of Engineered Control. The engineered control (a multi-layer cap) at Subject Area E, described in the document attached hereto as Exhibit D, and the soil underlying such engineered control, shall not be disturbed in any manner as a result of excavation, demolition, plant root growth, or other activities. *[Note: EPA and DEP expect that this restriction will apply to all capped areas. These*

areas are to be delineated in the Institutional Control Plan, and include the Operations Area and the Railroad Right of Way.]

3. Except as provided in Paragraph 4 below, no action shall be taken, allowed, suffered, or omitted by the Grantor if such action or omission is reasonably likely to:

- i. Create a risk of migration of pollutants or a potential hazard to human health or the environment; or
- ii. Result in a disturbance of the structural integrity of any component of the engineering controls that is designed or utilized at the Property to contain pollutants or limit human exposure to pollutants; or
- iii. Interfere with remedial activities on the Property.

4. Emergencies. In the event of an emergency which presents a significant risk to human health or the environment, the application of Paragraphs 2 and 3 above may be suspended, provided such risk cannot be abated without suspending such Paragraphs and the Grantor:

- i. Immediately notifies the Grantee and EPA of the emergency;
- ii. Limits both the extent and duration of the suspension to the minimum reasonably necessary to adequately respond to the emergency;
- iii. Implements all measures necessary to limit actual and potential present and future risk to human health and the environment resulting from such suspension; and
- iv. Implements a plan approved in writing by the Grantee and EPA, on a schedule approved by the Grantee and EPA, to ensure that the Subject Area is remediated in accordance with the ROD, the NCP, the CD and the Regulations of Connecticut State Agencies (R.C.S.A.) sections 22a-133k-1 through 22a-133k-3, inclusive, or is restored to its condition prior to such emergency.

5. Release of Restriction; Alterations of Subject Area(s); Burden of Proof.

A. Grantor shall not make, or allow or suffer to be made, any alteration of any kind in, to, or about any portion of any of the Property inconsistent with this environmental land use restriction unless the Grantor has first recorded the Grantee's and EPA Region 1 (Boston)'s written approval of such alteration upon the land records of the Town of Southington, Connecticut. The Grantee and EPA shall not approve any such alteration and shall not release the Property from the provisions of this environmental land use restriction unless the Grantor demonstrates to the Grantee's and EPA's satisfaction that the action or alteration will not create a risk to human health or the environment, and will not impair the integrity of the remedial action.

B. Burden of Proof. With respect to any claim or cause of action asserted by the Grantee or EPA against the Grantor under this environmental land use restriction, the Grantor shall bear the burden of proving that any activities do not or will not create a risk to human health or the environment or have the potential of adversely affecting the integrity of the remedial action.

6. Grant of Easement to the Grantee. Grantor hereby grants and conveys to the Grantee, the Grantee's agents, contractors, employees and designees a non-exclusive easement (the "Easement") over the Subject Areas and over such other parts of the Property as are necessary for

access to the Subject Areas or for carrying out any actions to abate a threat to human health or the environment associated with the Subject Areas. Pursuant to this Easement, the Grantee, the Grantee's agents, contractors, employees and designees (including but not limited to EPA and EPA's agents, contractors, and employees, any person performing pollution remediation activities under the direction of the Grantee or EPA, and the Performing PRPs), may enter upon and inspect the Property and perform such investigations and actions as the Grantee and/or EPA deems necessary, including but not limited to investigations and actions for any one or more of the following purposes:

- i. Ensuring that use, occupancy, and activities of and at the Property are consistent with this environmental land use restriction;
- ii. Ensuring that any remediation implemented complies with the Consent Decree, the ROD, CERCLA, the National Contingency Plan, and R.C.S.A. sections 22a-133k-1 through 22a-133k-3, inclusive;
- iii. Performing any additional investigations or remediation necessary to protect human health and the environment;
- iv. Ensuring the structural integrity of any engineering controls described in this declaration of environmental land use restriction and grant of easement and their continuing effectiveness in containing pollutants and limiting human exposure to pollutants;
- v. Performing and monitoring the activities required by the Consent Decree (including but not limited to the installation, operation, and maintenance of a groundwater extraction and treatment system, including existing and future groundwater wells);
- vi. Verifying any data or information submitted to the Grantee or EPA pursuant to the Consent Decree;
- vii. Conducting investigations relating to contamination at or near the SRSNE Site;
- viii. Obtaining samples;
- ix. Assessing the need for, planning, or implementing additional response actions at or near the SRSNE Site;
- x. Ensuring the structural integrity of any component of the remedial action and its continuing effectiveness in containing pollutants and limiting human exposure to pollutants;
- xi. Assessing implementation of quality assurance and quality control practices for the remedial action;
- xii. Implementing the activities required by the Consent Decree pursuant to the conditions set forth in Paragraph ____ of the Consent Decree;
- xiii. Inspecting and copying records, operating logs, contracts or other documents maintained or generated by the Performing PRPs or their agents, consistent with Section XXIV (Access to Information) of the Consent Decree;
- xiv. Assessing compliance with the Consent Decree by the Performing PRPs; and
- xv. Determining whether the SRSNE Site or other property is being used in a manner that is prohibited or restricted, or that needs to be prohibited or restricted, by or pursuant to the Consent Decree.

7. Notice and Time of Entry onto Property. Entry onto the Property by any person pursuant to this Easement shall be upon reasonable notice and at reasonable times, provided that entry shall not be subject to these limitations if the Grantee or EPA determines that immediate entry is necessary to protect human health or the environment.

8. Notice to Lessees and Other Holders of Interests in the Property. Grantor, or any future holder of any interest in the property, shall cause any lease, grant, or other transfer of any interest in the Property to include a provision expressly requiring the lessee, grantee, or transferee to comply with this declaration of environmental land use restriction and grant of easement. The failure to include such provision shall not affect the validity or applicability to the Property of this declaration of environmental land use restriction and grant of easement.

9. Persons Entitled to Enforce. The restrictions in this declaration of environmental land use restriction and grant of easement on use, occupancy, and activity of and at the Property shall be enforceable by the Grantee in accordance with section 22a-133p of the General Statutes. The restrictions in this declaration of environmental land use restriction and grant of easement on use, occupancy, and activity of and at the Property shall also be enforceable by EPA as third-party beneficiary in accordance with applicable law.

10. Severability and Termination. If any court of competent jurisdiction determines that any provision of this declaration of environmental land use restriction and grant of easement is invalid or unenforceable, such provision shall be deemed to have been modified automatically to conform to the requirements for validity and enforceability as determined by such court. In the event that the provision invalidated is of such nature that it cannot be so modified, the provision shall be deemed deleted from this instrument as though it had never been included herein. In either case, the remaining provisions of this instrument shall remain in full force and effect. Further, in either case, the Grantor shall submit a copy of this restriction and of the judgment of the Court to the Grantee and EPA in accordance with R.C.S.A. section 22a-133q-1(l). This environmental land use restriction and grant of easement shall be terminated if the Grantee and EPA provide notification pursuant to R.C.S.A. section 22a-133q-1(l).

11. Binding Effect. All of the terms, covenants and conditions of this declaration of environmental land use restriction and grant of easement shall run with the land and shall be binding on the Grantor, the Grantor's successors and assigns, and each owner and any other party entitled to possession or use of the Property during such period of ownership or possession.

12. Terms Used Herein. The definitions of terms used herein shall be the same as the definitions contained in sections 22a-133k-1 and 22a-133q-1 of the Regulations of Connecticut State Agencies as such sections existed on the date of execution of this environmental land use restriction.

13. Covenants. The Grantor hereby covenants to and with the Grantee and the Grantee's assigns, that the Grantor is lawfully seized in fee simple of the Property, that the Grantor has a good and lawful right and power to sell and convey it, that the Property is free and clear of encumbrances, except those noted on Attachment ___ attached hereto, and that the Grantor will forever warrant and defend the title thereto and the quiet possession thereof.

GRANTOR:

Date

[Grantor's Name]

Witnesses:

Signature

Printed/Typed Name

Signature

Printed/Typed Name

STATE OF

)

) ss. < _____ >

< _____ >

COUNTY OF

)

Personally appeared _____, _____ of _____,
signer and sealer of the foregoing instrument, and acknowledged the same to be his/her free act and
deed, [and the free act and deed of said corporation,] before me.

Notary Public/Commissioner of the Superior Court

GRANTEE: Grantee, the Commissioner of Environmental Protection, by her duly designated agent, Betsey Wingfield, Bureau Chief, Bureau of Water Protection and Land Reuse.

Date

Betsey Wingfield, Bureau Chief
Bureau of Water Protection & Land Reuse
Department of Environmental Protection