

APPENDIX 5



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APPENDIX 5

SUPPLEMENTAL AGREEMENT BETWEEN THE U.S. DEPARTMENT OF THE INTERIOR AND SCHLUMBERGER INDUSTRIES, INC. REGARDING THE PCBs OPERABLE UNIT, CRAB ORCHARD NATIONAL WILDLIFE REFUGE

I. PURPOSE

This Supplemental Agreement is made and entered into by the U.S. Department of the Interior ("U.S. DOI") and Schlumberger Industries, Inc. ("SII") for the purpose of resolving matters not addressed within the body of the consent decree in United States v. Schlumberger Industries, Inc. (S.D. Ill.) ("Consent Decree"), which relates to the PCBs Operable Unit at the Crab Orchard National Wildlife Refuge ("Refuge"). This Supplemental Agreement is appended to and incorporated into the Consent Decree, and it shall be read together with the provisions of that Decree. Execution of the Consent Decree signifies consent to the terms of this Supplemental Agreement. All terms of this Supplemental Agreement have the meaning set forth in the Consent Decree except as otherwise specified here. This Supplemental Agreement is effective upon entry of the Consent Decree, except that Section III (Reimbursement) shall be effective as of the date of lodging of the Consent Decree (subject to suspension of Work due to lack of entry of the Decree). Nothing in this Supplemental Agreement is or shall be construed as an admission of fact or liability for any purpose by any party.

II. OBLIGATIONS FOR WORK

1. SII will perform the Work as provided in the Consent Decree, except for operation and maintenance of the remedial action following issuance of a Certification of Completion by the U.S. Environmental Protection Agency ("U.S. EPA"). After issuance of a Certificate of Completion by U.S. EPA, SII will perform any additional response work which may be required by U.S. EPA in accordance with the Consent Decree, except for operation and maintenance. U.S. DOI will not be liable under this Supplemental Agreement for any stipulated penalties assessed by U.S. EPA against SII for violations of SII obligations under the Consent Decree.

2. U.S. DOI will perform and finance all operation and maintenance activities regarding the PCBs Operable Unit following issuance of a Certificate of Completion by U.S. EPA. SII will not be liable under this Supplemental Agreement for any stipulated penalties U.S. EPA may seek to assess against U.S. DOI for violations of U.S. DOI obligations under the Consent Decree or the Interagency Agreement between U.S. DOI, U.S. EPA, and the Department of Defense regarding the Refuge.

III. REIMBURSEMENT

1. U.S. DOI and SII will divide all reimbursable costs incurred by SII in the implementation of the Consent Decree on the following percentage basis. SII will be responsible for 65% of the first \$20 million of reimbursable costs incurred by SII, 30% of the next \$5 million of reimbursable costs incurred by SII, and 50% of all reimbursable costs in excess of \$25 million. U.S. DOI will reimburse SII for the remaining percentages of reimbursable costs, according to the procedure set forth below.

2. For purposes of this Supplemental Agreement, reimbursable costs are those out-of-pocket costs incurred by SII to implement the requirements of the Consent Decree, including but not limited to the costs of treatability testing, other predesign work, remedial design, remedial action, and the capital costs of any additional response work required of SII pursuant to the Consent Decree (but not operation and maintenance costs, which shall continue to be the responsibility of U.S. DOI). Reimbursable costs also include any oversight costs assessed by the State of Illinois. Reimbursable costs do not include SII payroll or SII overhead costs, dispute resolution costs, stipulated penalties assessed by U.S. EPA against SII for violations of SII obligations under the Consent Decree, or U.S. EPA or U.S. DOJ oversight costs.

3. a. Within ten (10) days after lodging of the Consent Decree, U.S. DOI and SII shall each designate and notify the other of its Authorized Representative for Administration, who shall oversee the financial aspects of implementing the reimbursement provisions of this Supplemental Agreement.

b. SII shall submit periodic written requests for reimbursement to the U.S. DOI Authorized Representative for Administration. Such requests shall be made on a bimonthly basis, or less frequently, following the date of lodging of the Consent Decree.

c. U.S. DOI shall reimburse SII for the U.S. DOI percentage of reimbursable costs within sixty (60) days of receipt of a reimbursement request. Subject to Section V of this Supplemental Agreement, nothing in this Supplemental Agreement is intended or shall be construed to affect the rights of U.S. DOI and SII to seek recovery from any person not a party to the Consent Decree of any costs expended and not reimbursed pursuant to this Supplemental Agreement.

d. SII shall maintain accounting records of all reimbursable costs in accordance with generally accepted accounting principles and shall make such records, including any supporting cost documentation, to the extent it exists, available

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on request for review by U.S. DOI or its duly authorized representatives.

e. If U.S. DOI believes that SII has made an accounting error or that a cost item is included that represents costs which are inconsistent with or not incurred in implementing the Consent Decree or this Supplemental Agreement, U.S. DOI may withhold payment of the disputed amount and initiate dispute resolution in accordance with Section XIV of the Consent Decree on or before the date its reimbursement is due.

IV. COVENANTS NOT TO SUE

U.S. DOI and SII each hereby covenant not to sue or to take administrative action against the other as provided in the Consent Decree; provided, however, that such covenants do not include any claims based on a failure by U.S. DOI or SII to meet the requirements of the Consent Decree or this Supplemental Agreement, which shall first be enforced through the dispute resolution provisions of the Consent Decree. Also excluded from these covenants, and from the assignment of claims in Section V below, are claims (to the extent they are available under law) arising from a claim or action relating to the PCBs Operable Unit, or any portion thereof, brought by any person not a signatory to the Consent Decree against U.S. DOI or SII under federal or state law. Also excluded from these covenants is SII's right to bring an action against U.S. DOI for recovery of response costs in the event that, due to lack of funding, U.S. DOI is not able to meet the requirements of this Consent Decree, including this Supplemental Agreement. In any such action, U.S. DOI and SII agree not to assert against each other an apportionment of costs and responsibilities that differs from the apportionment set forth in the Consent Decree and in this Supplemental Agreement.

V. ASSIGNMENT OF CLAIMS

Except as otherwise specifically provided in the Consent Decree (including this Appendix), SII hereby assigns to U.S. DOI all of its claims under CERCLA against all potentially responsible parties ("PRPs") with respect to the PCBs Operable Unit, except for its claims against Olin Corporation and any related entity. SII and U.S. DOI each fully retain all rights and claims that each may have with respect to Olin Corporation and any related entity. SII agrees to provide U.S. DOI with all pertinent nonprivileged information in its possession regarding the potential liability of other PRPs at the PCBs Operable Unit. SII further agrees that, except with respect to Olin Corporation or any related entity, the United States will completely retain any monetary recovery it obtains from other PRPs.

VI. TERMINATION OF PRIOR AGREEMENT

The Cooperative Agreement between the Department of the Interior U.S. Fish and Wildlife Service and Sangamo Weston, Inc. executed on March 3, 1986, regarding performance of a remedial investigation and feasibility study for the Refuge, is hereby terminated.

VII. RESERVATION OF RIGHTS

Unless otherwise specifically stated in this Supplemental Agreement, U.S. DOI and SII each retains all rights, claims, obligations, liabilities, and responsibilities that it would have in the absence of this Supplemental Agreement. Nothing in this Supplemental Agreement nor any performance hereunder shall create any rights on behalf of any third party.

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DESCRIPTIONS OF SITES COMPRISING PCB AREAS OPERABLE UNIT
CRAB ORCHARD NATIONAL WILDLIFE REFUGE
SOUTHERN ILLINOIS

Sites 32 and 33, also known as the Area 9 or Sangamo Dump and the Area 9 Building Complex, is located in Williamson County approximately five (5) miles southwesterly of the City of Marion, Illinois, at Crab Orchard National Wildlife Refuge and is situated with the following lands described according to the public land surveys.

Township Nine (9) South, Range Two (2) East, Third Principal Meridian: In Section Thirty-two (32), the West Half Northeast Quarter ($W\frac{1}{2}NE\frac{1}{4}$), the West Half ($W\frac{1}{2}$), the West Half Southeast Quarter ($W\frac{1}{2}SE\frac{1}{4}$); and in

Township Ten (10) South, Range Two (2) East, Third Principal Meridian: In Section Five (5), the Northwest Quarter Northeast Quarter ($NW\frac{1}{4}NE\frac{1}{4}$), the North Half Northwest Quarter ($N\frac{1}{2}NW\frac{1}{4}$).

The above sites are delineated on Figure 5-7 in Draft Pre-Design Work Plan for the PCB Areas Operable Unit at the Crab Orchard National Wildlife Refuge, dated December 1991, by International Technology Corporation.

Site 17, also known as the Job Corps Landfill and surrounding area, is located in Williamson County, approximately 7 miles west of the City of Marion, Illinois, at Crab Orchard National Wildlife Refuge, and is situated within the following lands described according to the public land surveys:

Township Nine (9) South, Range One (1) East, Third Principal Meridian: In Section Twenty-three (23), the North Half Northeast Quarter ($N\frac{1}{2}NE\frac{1}{4}$).

The above site is delineated on Figure 5-2 in Draft Pre-Design Work Plan for the PCB Areas Operable Unit at the Crab Orchard National Wildlife Refuge, dated December 1991, by International Technology Corporation.

Site 28, also known as the Water Tower Landfill and surrounding area, is located in Williamson County, approximately five (5) miles southwesterly of the City of Marion, Illinois, at Crab Orchard National Wildlife Refuge and is situated with the following lands described according to the public land surveys.

Township Ten (10) South, Range Two (2) East, Third Principal Meridian: In Section Four (4), the South Half Northwest Quarter ($S\frac{1}{2}NW\frac{1}{4}$).

The above site is delineated on Figure 5-5 in Draft Pre-Design Work Plan for the PCB Areas Operable Unit at the Crab Orchard National Wildlife Refuge, dated December 1991, by International Technology Corporation.

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