

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:

SOLUTIA, INC.

U.S. EPA No. ALD 004 019 048

QUINTARD MALL, LTD.

and

MRS. LYDIA H. DEMPSEY

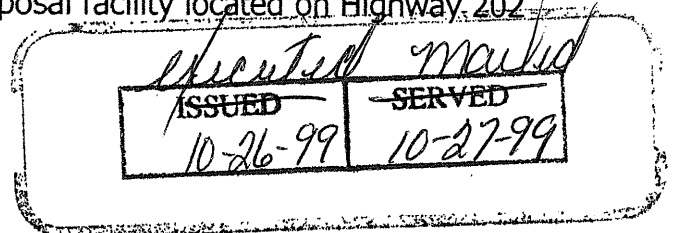
CONSENT ORDER NO. 00-013-CHW

FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, Code of Alabama (1975), §§ 22-22A-1 through 22-22A-16, as amended, and the Alabama Hazardous Wastes Management and Minimization Act of 1978, Code of Alabama (1975), §§ 22-30-1 through 22-30-24, as amended, the Alabama Department of Environmental Management (hereinafter "the Department"), with the consent of Solutia Inc., Quintard Mall, Ltd. and Mrs. Lydia H. Dempsey, makes the following **FINDINGS**:

1. Solutia Inc. (hereinafter "Solutia"), is a Delaware corporation formed in 1997 as a separate corporate entity from Monsanto Company (hereinafter "Monsanto"). While there remains no corporate relation, Solutia consists of the former chemical businesses of Monsanto.

2. Until September 1997, Monsanto Company was the owner and/or operator of a hazardous waste treatment, storage and disposal facility located on Highway 202



West, in Anniston, Alabama (hereinafter "the Solutia facility"), operating under authority of ADEM Hazardous Waste Facility Permit No. ALD 004-019-048, issued September 9, 1986. Said permit was renewed in January 1997, as a Post-Closure Care Permit. In November 1997, the permit was modified to reflect the transfer of the facility from Monsanto to Solutia. The permit includes corrective action requirements to investigate and properly address an Area of Concern ("AOC B") that includes the portion of Snow Creek adjacent to Quintard Mall. One of the Constituents of Potential Concern under investigation in AOC B is polychlorinated biphenyls ("PCBs"), a product manufactured at the Solutia facility prior to 1971.

3. Quintard Mall, Ltd. (hereinafter "QML") is an Alabama limited partnership. QML is the owner of the Quintard Mall located in Oxford, Alabama. Construction has commenced on an expansion of said mall under the direction, administration, and ownership of QML.

4. Mrs. Lydia H. Dempsey (hereinafter "the Lessor") has entered into a Partial Assignment of Lease and Lease (the "Lease") with QML and Solutia for the lease of certain real property in Talladega County, Alabama. The Lease is incorporated by reference into this Consent Order and is attached hereto as Exhibit A. A legal description of the property subject to the Lease is set forth in the Lease.

5. The Alabama Department of Environmental Management is a duly constituted agency of the State of Alabama pursuant to Code of Alabama (1975), §§ 22-22A-1 through 22-22A-16, as amended.

6. Pursuant to Code of Alabama (1975), § 22-22A-4(n), as amended, the Department is the state hazardous waste control agency for the purposes of the Solid

Waste Disposal Act, 42 U.S.C. 6910, et seq., as amended. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Hazardous Wastes Management and Minimization Act, Code of Alabama (1975), §§ 22-30-1 through 22-30-24, as amended.

7. PCBs are listed as a hazardous constituent pursuant to ADEM Admin. Code 335-14-2-Appendix VIII and 335-14-5-Appendix IX.

8. During the construction of Quintard Mall, sediment from Snow Creek and soils adjacent to the creek near the mall were excavated. Laboratory analysis of such soils revealed the presence of varying concentrations of PCBs. Said soils are considered by the Department to contain hazardous constituents that, in whole or in part, may have resulted from Solutia's, as well as other possible sources' historical activities located within the Snow Creek watershed.

9. During the construction effort, Solutia and QML conducted sampling to determine the horizontal and vertical extent of PCB contamination within Snow Creek and in other areas in a region identified as being impacted by mall construction. Areas containing PCBs in excess of 50 mg/kg were identified and subsequently removed, generating approximately 800 cubic yards of excavated soil. In accordance with the provisions of the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq. and implementing regulations, this material was transported to and disposed in a commercial hazardous waste landfill.

10. Approximately 50,000 cubic yards of soil and dried sediment (hereafter referred to as "Stockpiled Soil") are staged at the Quintard Mall site in Oxford, Alabama. The pile is 450 ft long by 200 ft wide and is up to 20 ft high.

11. Statistically based random sampling was conducted by Solutia and QML to determine PCB levels of the Stockpiled Soil. The average PCB concentration in the Stockpiled Soil pile is reported to be 4.2 mg/kg, with a reported maximum of approximately 8 mg/kg.

12. At least some of the Stockpiled Soil must be removed from the QML property for the expansion of the mall construction to continue.

13. Lessor has agreed to allow temporary storage of the Stockpiled Soil for a period of time, not to exceed two years, on the property subject to the Lease. During this time, it is anticipated that mall construction can be completed and a final remedy can be developed and approved for the Stockpiled Soil.

14. Failure to allow at least a portion of the Stockpiled Soil to be removed from the QML property on a temporary basis could result in a significant delay in construction of the mall and substantial revenue loss for the QML and the City of Oxford.

15. Solutia neither admits nor denies the Findings contained in this Consent Order. However, in an effort to cooperate with the Department and to address the findings cited above, Solutia consents to the terms of this Order.

16. QML neither admits nor denies the Findings contained in this Consent Order. However, in an effort to cooperate with the Department and to address the findings cited above, QML consents to the terms of this Order.

17. Lessor neither admits nor denies the Findings contained in this Consent Order. However, in an effort to cooperate with the Department and to address the findings cited above, Lessor consents to the terms of this Order.

18. The Department agrees to this Consent order upon a determination that the terms are in the best interests of the citizens of Alabama in addressing the findings cited hereinabove.

ORDER

Based upon the foregoing **FINDINGS** and pursuant to Code of Alabama (1975), §§ 22-22A-5(10), 22-22A-5(12), 22-22A-5(18), and 22-30-19, as amended, and with the consent of Solutia, QML, and Lessor, it is hereby **ORDERED**:

A. That not later than thirty (30) days after execution of this Consent Order, Solutia shall submit to the Department analytical data characterizing the soil constituents that may represent potential contaminants and/or background levels at the Lessor's site prior to placement of any PCB-containing soils on Lessor's property.

B. That not later than 30 days after execution of this Consent Order, QML shall provide to the Department a report setting forth the amount of soil from the Stockpiled Soil proposed to be removed and placed on the property pursuant to the terms of the Lease. In so doing, QML shall make every effort to retain as much Stockpiled Soil as possible on-site.

C. That not later than 45 days after execution of this Consent Order, Solutia shall provide to the Department a detailed design of all containment and control measures to be installed and implemented before, during, and after the temporary placement of the Excavated Soil on Lessor's property (including but not limited to transportation, bottom liner, containment structures, grading and cover systems, dust control, Operation and Maintenance Plans, Inspection Plans, Post-Removal Grading and Restoration Plan for lessor's property, Post-Removal Sampling and Analysis Plan for Lessor's property).

D. That not later than 30 days after receipt of all submissions cited in Paragraphs A, B, and C above, the Department shall review and respond to those submissions and shall make a final decision as to the suitability of the removal of the Stockpiled Soil to the designated site and of the proposed containment and control, operation and maintenance, and inspection requirements, and convey that decision to Solutia and QML.

E. That upon receipt of written acceptance by the Department of the proposal to remove the soil to the subject property, Solutia and QML shall be authorized to proceed with the removal of an amount of the Stockpiled Soil, not to exceed the amount of such soil approved by the Department, and shall transport the Stockpiled Soil to the property subject to the lease upon providing written notice to the Department that the measures approved by the Department for the preparation of the designated site have been completed.

F. That upon removal of the Stockpiled Soil to the designated site or such other site as may be approved by the Department, Solutia and QML shall each be jointly and severally liable for maintaining the approved containment and control measures, O&M procedures, and inspection requirements. Solutia and QML may bring any of the Stockpiled Soil back to the QML property and incorporate such portion of the Stockpiled Soil into the construction of the mall expansion project. Solutia and QML shall provide 30 days' advance written notification to the Department of the quantity of Stockpiled Soil anticipated to be returned to the QML property and a description of the manner in which such Stockpiled Soil will be used in the construction of the mall expansion project.

G. That Solutia and the Department agree that the QML property, including any Stockpiled Soil that is incorporated into the construction of the mall expansion project, shall be reviewed during the on-going RCRA Facility Investigation ("RFI") and subsequent activities under Solutia's AHWMMMA permit and that the Department shall make a determination regarding final corrective measures for the QML property as part of the RFI process. Solutia and QML reserve any and all rights to challenge any determination by the Department regarding the QML property in accordance with applicable law.

H. That not later than the date the lease expires or 730 days after execution of this Consent Order, whichever is earlier, Solutia and QML shall remove any remaining Stockpiled Soil from the Lessor's property and manage the material in accordance with plans approved by the Department or dispose of any remaining Stockpiled Soils in a municipal solid waste (i.e., Subtitle D) landfill or a hazardous waste disposal facility permitted and approved to accept PCB-containing soils. Within thirty days following the removal of the Stockpiled Soils from the Lessor's property, Solutia and QML shall provide sampling and analytical data verifying that all Stockpiled Soils and any residual PCBs have been removed from Lessor's property. The verification data shall be accompanied by signed certifications by Solutia, QML, the Lessor, and an independent registered professional engineer indicating that the Stockpiled Soils have been removed from Lessor's property in accordance with the specifications stated in the approved plan. The Department may request additional documentation supporting such certifications prior to releasing Solutia, and QML, and the Lessor from the requirements of this order.

I. That under no circumstances shall the lack of an approved Final Measures Plan pursuant to Solutia's AHWMMMA permit constitute grounds for allowing soil or residual contamination to remain on Lessor's property beyond the end of the lease date or 730 days after execution of this Consent Order, whichever is earlier.

J. That Solutia and QML agree to pay stipulated penalties in the total amount of \$5,000 per day for each and every day for the first 30 days that the Stockpiled Soil remains on Lessor's property beyond the date specified in paragraph H above. Furthermore, Solutia and QML agree to pay stipulated penalties in the total amount of \$20,000 per day each and every day after the first 30 days that the Stockpiled Soil remains on Lessor's property beyond the date specified in paragraphs H above. All stipulated penalties shall be due at the Department's headquarters office in Montgomery not later than 10 days after the obligation to pay the penalty arises. The obligation to pay stipulated penalties under this paragraph shall not apply in the event Solutia and QML are delayed in removing the Stockpiled Soil by abnormal adverse weather conditions not reasonably anticipated, by delays in obtaining necessary approvals from the Department to remove the Stockpiled Soil or by any order of a court or administrative agency precluding the removal of the Stockpiled Soil. All penalties shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463


K. That this Consent Order shall apply to and be binding upon all parties, their directors, officers, and all persons or entities acting under or for them. Each signatory


to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

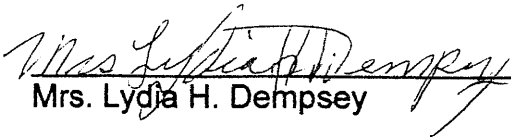
L. That for purposes of this Order only, Solutia, QML, and Lessor agree that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in a court of competent jurisdiction, including, but not limited to, Montgomery County Circuit Court. Solutia, QML, and Lessor also agree that in any action brought by the Department to compel compliance with the terms of this Agreement, Solutia, QML, and Lessor shall be limited to the defenses of Force Majeure and physical impossibility.

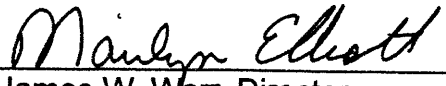
M. That this Order does not preclude the Department from taking other enforcement actions based on any Findings, should they constitute violations of other regulatory programs. Should additional facts and circumstances be discovered in the future concerning Solutia, which would constitute possible violations not addressed in this Order, then such possible future violations shall be addressed in Orders as may be issued by the Department, litigation initiated by the Department, or such other enforcement actions based on the issuance of this Consent Order.

N. That by agreement of the parties, this Order shall be considered final and effective immediately upon signature of all parties. This consent Order shall not be appealable, and Solutia, QML and Lessor do hereby waive any hearing on the terms and conditions of same.


Solutia, Inc.
By Its Manager of Remediation
Date 9/19/99


Quintard Mall, Ltd.
By Its General Partner
Date 10-15-99


Mrs. Lydia H. Dempsey
Date 9.21.99


for James W. Warr, Director
Alabama Department of Environmental
Management
Date 10-26-99

STATE OF ALABAMA)
)
TALLADEGA COUNTY)

PARTIAL ASSIGNMENT OF LEASE
AND LEASE

Mrs. Lydia H. Dempsey ("Dempsey"), Charles L. Curry, David L. Curry and Carl D. Curry d/b/a Double C Farms ("Double C"), Quintard Mall, Ltd. ("Quintard"), and Solutia Inc. ("Solutia") agree as follows:

1. Double C is the Lessee under the terms and conditions of a real estate lease, hereinafter referred to as the Lease, in which the named Lessor is Mrs. Lydia H. Dempsey, which Lease is dated May 27, 1997, having a primary term of two (2) years with the option to renew for three (additional) years, and having a rental payment of Two thousand dollars per year for two years and having a rental payment of Two thousand three hundred dollars per year during the renewal period.

2. Double C agrees to transfer, assign and sublease to Quintard and Solutia all of Double C's rights, privileges, and obligations under the terms and conditions of the Lease with respect to a portion of the property subject to the Lease (the "Soil Stockpile Property"). The Soil Stockpile Property is more particularly described as follows:

SEE EXHIBIT "A"

Solely with respect to the Soil Stockpile Property, the Lease shall be transferred, assigned, and subleased to Solutia along with all of Double C's rights, privileges and obligations thereunder. Quintard and Solutia shall assume all said rights, privileges and obligations thereunder from the date of this Agreement solely with respect to the Soil Stockpile Property. Double C shall maintain all of its rights, obligations and privileges under the Lease with respect to any of the leased property other than the Soil Stockpile Property.

3. Dempsey agrees to lease to Quintard and Solutia the Soil Stockpile Property for a period not to exceed two years beginning as of the date of the execution of this agreement. Quintard and Solutia will pay to Dempsey the total sum of \$100.00 per acre per month and will pay Double C the total sum of \$50.00 per acre per month for each month in which the lease of the Soil Stockpile Property is in effect.

4. As of the date of the execution of this agreement, Dempsey agrees to release Double C from any and all remaining obligations under the Lease with respect to the Soil Stockpile Property hereby leased to Quintard and Solutia. Dempsey further agrees to rely solely upon Quintard and Solutia to perform all of the terms and obligations of the lessee under the Lease and this agreement with respect to the Soil Stockpile Property.

5. During the term of this agreement, Dempsey agrees that Quintard and/or Solutia may cause to be placed upon the Soil Stockpile Property up to 50,000 cubic yards of soil excavated solely from the area of the Quintard Mall, Oxford, Alabama. Dempsey understands that such soil may contain levels of less than 25 parts per million of polychlorinated biphenyls. Dempsey agrees that such soils may be transported to and stored upon the Soil Stockpile Property. Such soils shall be placed on the Soil Stockpile Property in such a manner so as to control surface water runoff and runoff. Dempsey and Quintard and/or Solutia agree that the placement of soil from the Quintard Mall area and the inspection and maintenance of such soil will be in accordance with plans reviewed and approved by the Alabama Department of Environmental Management. On or before two years from the date hereof, Quintard and/or Solutia shall take all steps necessary to remove the soil excavated from the Quintard Mall area and placed on the Soil Stockpile Property and to take such samples as necessary to confirm that the placement of soil from the Quintard Mall area has not resulted in the presence of polychlorinated biphenyls on the Soil Stockpile Property. Quintard and/or Solutia shall indemnify and hold harmless Dempsey from any and all claims relating to the placement of soil from the Quintard Mall area on the Soil Stockpile Property. Once the soil is removed from the Soil Stockpile Property, the site will be restored to the grades requested by Dempsey and the Soil Stockpile Property will be hydroseeded and Quintard's and/or Solutia's obligations hereunder shall terminate and Quintard and /or Solutia shall have no further obligation hereunder to Dempsey or Double C.

Executed this 22nd day of October, 1999

SOLUTIA, INC.

QUINTARD MALL, LTD

By: Alan S. Dant
Its: Manager of Remediation

By: Samuel P. Grimmer
Its: General Partner

Mrs. Lydia H. Dempsey
Mrs. Lydia H. Dempsey

DOUBLE C FARMS

David Curry
David Curry

Charles Curry

Charles L. Curry
Carl D. Curry

Carl D. Curry

STATE OF ALABAMA)
:
TALLADEGA COUNTY)

LYDIA HELEN M. DEMPSEY

SOLUTIA INC.

A temporary easement lying and being in the Southeast Quarter of the Northwest Quarter and the Northeast Quarter of the Southwest Quarter of Section 7, Township 17 South, Range 8 East, Talladega County, Alabama and being part of that property in Deed Book 602, Page 411, as recorded in the Probate Office of Talladega County, Alabama, containing 5.00 acres, more or less, and being more particularly described as follows:

Commence at the northwest corner of the Southeast Quarter of the Northwest Quarter of Section 7, Township 17 South, Range 8 East, Talladega County, Alabama; thence south 04 degrees 06 minutes 28 seconds east along the westerly boundary of the Southeast Quarter of the Northwest Quarter, a distance of 1,305.99 feet to a point; thence north 85 degrees 53 minutes 32 seconds east, a distance of 31.79 feet to the point of beginning of said temporary easement; thence north 88 degrees 20 minutes 08 seconds east a distance of 52.99 feet; thence north 86 degrees 44 minutes 22 seconds east, a distance of 38.15 feet; thence north 86 degrees 08 minutes 20 seconds east a distance of 24.56 feet; thence north 87 degrees 35 minutes 42 seconds east, a distance of 47.25 feet; thence north 89 degrees 03 minutes 54 seconds east, a distance of 30.47 feet; thence north 88 degrees 31 minutes 28 seconds east, a distance of 23.31 feet; thence south 89 degrees 02 minutes 04 seconds east, a distance of 50.18 feet; thence south 88 degrees 48 minutes 48 seconds east, a distance of 54.37 feet; thence north 63 degrees 38 minutes 07 seconds east, a distance of 48.18 feet; thence north 84 degrees 19 minutes 11 seconds east, a distance of 54.54 feet; thence north 53 degrees 59 minutes 16 seconds east, a distance of 35.23 feet; thence north 87 degrees 29 minutes 21 seconds east, a distance of 114.16 feet; thence south 85 degrees 15 minutes 05 seconds east, a distance of 21.52 feet; thence south 03 degrees 22 minutes 27 seconds east, a distance of 389.74 feet; thence south 86 degrees 37 minutes 34 seconds west, a distance of 585.14 feet; thence north 03 degrees 22 minutes 27 seconds west, a distance of 366.92 feet to the point of beginning.

Said temporary easement to extend from the date of execution of this conveyance until completion of the project, at which time all rights temporarily conveyed herein shall revert to the Grantor or his(her) assigns.