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7

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11 UNITED STATES OF AMERICA) No. CR 06-0159 MMC
12)
13 v.) PLEA AGREEMENT
14 SOLVAY S.A.,)
15 Defendant.)

16
17 **PLEA AGREEMENT**

18 The United States of America and SOLVAY S.A. (“defendant”), a corporation organized
19 and existing under the laws of Belgium, hereby enter into the following Plea Agreement pursuant
20 to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure (“Fed. R. Crim. P.”):

21 **RIGHTS OF DEFENDANT**

- 22 1. The defendant understands its rights:
- 23 (a) to be represented by an attorney;
- 24 (b) to be charged by indictment;
- 25 (c) as a corporation organized and existing under the laws of Belgium, to
26 decline to accept service of the Summons in this case, and to contest the jurisdiction of
27 the United States to prosecute this case against it in the United States District Court for
28 the Northern District of California;

1 (d) to plead not guilty to any criminal charge brought against it;

2 (e) to have a trial by jury, at which it would be presumed not guilty of the
3 charge and the United States would have to prove every essential element of the charged
4 offense beyond a reasonable doubt for it to be found guilty;

5 (f) to confront and cross-examine witnesses against it and to subpoena
6 witnesses in its defense at trial;

7 (g) to appeal its conviction if it is found guilty; and

8 (h) to appeal the imposition of sentence against it.

9 **AGREEMENT TO PLEAD GUILTY**
10 **AND WAIVE CERTAIN RIGHTS**

11 2. The defendant knowingly and voluntarily waives the rights set out in Paragraph
12 1(b)-(g) above, including all jurisdictional defenses to the prosecution of this case, and agrees
13 voluntarily to consent to the jurisdiction of the United States to prosecute this case against it in
14 the United States District Court for the Northern District of California. The defendant agrees to
15 waive any venue objections it may have under 18 U.S.C. § 3237(a), or any other statute or rule
16 of law, to the charges set forth in the Information. The defendant also knowingly and voluntarily
17 waives the right to file any appeal, any collateral attack, or any other writ or motion, including
18 but not limited to an appeal under 18 U.S.C. § 3742, that challenges the sentence imposed by the
19 Court if that sentence is consistent with or below the recommended sentence in Paragraph 9 of
20 this Plea Agreement, regardless of how the sentence is determined by the Court. This agreement
21 does not affect the rights or obligations of the United States as set forth in 18 U.S.C. § 3742(b)-
22 (c). Pursuant to Fed. R. Crim. P. 7(b), the defendant will waive indictment and plead guilty at
23 arraignment to a two-count Information to be filed in the United States District Court for the
24 Northern District of California. The Information will charge the defendant with one count of
25 participating in a conspiracy to suppress and eliminate competition by fixing the price of
26 hydrogen peroxide sold in the United States and elsewhere, beginning on or about July 1, 1998
27 and continuing until on or about December 1, 2001, in violation of the Sherman Antitrust Act, 15
28 U.S.C. § 1. Additionally, the Information will charge the defendant with a second count of

1 participating in a conspiracy to suppress and eliminate competition by fixing the price of sodium
2 perborates sold to Procter & Gamble, beginning on or about June 1, 2000 and continuing until on
3 or about December 1, 2001, in violation of the Sherman Antitrust Act, 15 U.S.C. § 1.

4 3. The defendant, pursuant to the terms of this Plea Agreement, will plead guilty to
5 the criminal charges described in Paragraph 2 above and will make a factual admission of guilt
6 to the Court in accordance with Fed. R. Crim. P. 11, as set forth in Paragraphs 4 and 5 below.

7 **FACTUAL BASIS FOR COUNT ONE (HYDROGEN PEROXIDE)**

8 4. Had this case gone to trial, the United States would have presented evidence
9 sufficient to prove the following facts in support of Count One of the Information:

10 (a) For purposes of Count One, the “relevant period” is that period beginning
11 on or about July 1, 1998 and continuing until on or about December 1, 2001. During the
12 relevant period, the defendant was a corporation organized and existing under the laws of
13 Belgium. The defendant has its principal place of business in Brussels, Belgium. During
14 the relevant period, the defendant was a producer of hydrogen peroxide, was engaged in
15 the sale of hydrogen peroxide in the United States and elsewhere, and employed 200 or
16 more individuals. Hydrogen peroxide is a chemical compound with strong oxidizing
17 properties that is widely used as a bleaching agent. Hydrogen peroxide has multiple
18 industrial uses, including applications in the electronics, energy production, mining,
19 cosmetics, food processing, textiles, and pulp and paper manufacturing industries.
20 During the relevant period, the defendant’s sales of hydrogen peroxide to U.S. customers
21 totaled approximately \$231,000,000.

22 (b) During the relevant period, the defendant, through certain of its former
23 officers, directors, and employees, participated in a conspiracy among major hydrogen
24 peroxide producers, the primary purpose of which was to suppress and eliminate
25 competition by fixing the price of hydrogen peroxide sold in the United States and
26 elsewhere. In furtherance of the conspiracy, the defendant, through certain of its former
27 officers, directors, and employees, engaged in discussions and attended meetings with
28 representatives of other major hydrogen peroxide producers. During these discussions

1 and meetings, agreements were reached to fix the price of hydrogen peroxide sold in the
2 United States and elsewhere.

3 (c) During the relevant period, hydrogen peroxide sold by one or more of the
4 conspirator firms, and equipment and supplies necessary to the production and
5 distribution of hydrogen peroxide, as well as payments for hydrogen peroxide, traveled in
6 interstate and foreign commerce. The business activities of the defendant and its
7 co-conspirators in connection with the production and sale of hydrogen peroxide affected
8 by this conspiracy were within the flow of, and substantially affected, interstate and
9 foreign trade and commerce.

10 (d) Hydrogen peroxide affected by this conspiracy was sold by one or more of
11 the conspirators to customers in this District.

12 **FACTUAL BASIS FOR COUNT TWO (SODIUM PERBORATES)**

13 5. Had this case gone to trial, the United States would have presented evidence
14 sufficient to prove the following facts in support of Count Two of the Information:

15 (a) For purposes of Count Two, the “relevant period” is that period beginning
16 on or about June 1, 2000 and continuing until on or about December 1, 2001. During the
17 relevant period, the defendant was a producer of sodium perborates, was engaged in the
18 sale of sodium perborates in the United States and elsewhere, and employed 200 or more
19 individuals. The chemical compound sodium perborate is a strong oxidizing agent used
20 to bleach, clean, and deodorize. The primary application of sodium perborates is in
21 detergents, but it is also found in toothpaste, hair care products, and topical antiseptics
22 and is used as a reactive agent in industrial processes. During the relevant period, the
23 defendant’s sales of sodium perborates to Procter & Gamble totaled approximately
24 \$31,000,000.

25 (b) During the relevant period, the defendant, through certain of its former
26 officers, directors, and employees, participated in a conspiracy with a major sodium
27 perborates producer, the primary purpose of which was to suppress and eliminate
28 competition by fixing the price of sodium perborates sold to Procter & Gamble. In

1 furtherance of the conspiracy, the defendant, through certain of its former officers,
2 directors, and employees, engaged in discussions and attended meetings with
3 representatives of a major sodium perborates producer. During these discussions and
4 meetings, agreements were reached to fix the price of sodium perborates sold to Procter
5 & Gamble.

6 (c) During the relevant period, sodium perborates sold by one or more of the
7 conspirator firms, and equipment and supplies necessary to the production and
8 distribution of sodium perborates, as well as payments for sodium perborates, traveled in
9 interstate and foreign commerce. The business activities of the defendant and its
10 coconspirator in connection with the production and sale of sodium perborates affected
11 by this conspiracy were within the flow of, and substantially affected, interstate and
12 foreign trade and commerce.

13 **POSSIBLE MAXIMUM SENTENCE**

14 6. The defendant understands that the statutory maximum penalty which may be
15 imposed against it upon conviction for each violation of Section One of the Sherman Antitrust
16 Act is a fine in an amount equal to the greatest of:

17 (a) \$10 million (15 U.S.C. § 1);

18 (b) twice the gross pecuniary gain the conspirators derived from the crime (18
19 U.S.C. § 3571(c) and (d)); or

20 (c) twice the gross pecuniary loss caused to the victims of the crime by the
21 conspirators (18 U.S.C. § 3571(c) and (d)).

22 7. In addition, the defendant understands that:

23 (a) pursuant to 18 U.S.C. § 3561(c)(1), the Court may impose a term of
24 probation of at least one year, but not more than five years;

25 (b) pursuant to § 8B1.1 of the United States Sentencing Guidelines
26 (“U.S.S.G.,” “Sentencing Guidelines,” or “Guidelines”), 18 U.S.C. § 3563(b)(2) or
27 3663(a)(3), the Court may order it to pay restitution to the victims of the offense; and

28 (c) pursuant to 18 U.S.C. § 3013(a)(2)(B), the Court is required to order the

1 defendant to pay a \$400 special assessment for each count upon conviction for the
2 charged crimes.

3 SENTENCING GUIDELINES

4 8. The defendant understands that the Sentencing Guidelines are advisory, not
5 mandatory, but that the Court must consider the Guidelines in effect on the day of sentencing,
6 along with the other factors set forth in 18 U.S.C. § 3553(a), in determining and imposing
7 sentence, unless, the Court, as authorized by U.S.S.G. § 1B1.11, determines that use of the
8 Sentencing Guidelines in effect on the date that the defendant is sentenced would violate the ex
9 post facto clause of the United States Constitution. If the Court makes such a determination, the
10 court shall use the Sentencing Guidelines in effect as of December 1, 2001, the last date that the
11 offense of conviction was committed. The defendant understands that the Guidelines
12 determinations will be made by the Court by a preponderance of the evidence standard. The
13 defendant understands that although the Court is not ultimately bound to impose a sentence
14 within the applicable Guidelines range, its sentence must be reasonable based upon consideration
15 of all relevant sentencing factors set forth in 18 U.S.C. § 3553(a). Pursuant to U.S.S.G. §1B1.8,
16 the United States agrees that self-incriminating information that the defendant provides to the
17 United States pursuant to this Plea Agreement will not be used to increase the volume of affected
18 commerce attributable to the defendant or in determining the defendant's applicable Guidelines
19 range, except to the extent provided in U.S.S.G. §1B1.8(b).

20 SENTENCING AGREEMENT

21 9. Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the United States and the defendant
22 agree that the appropriate dispositions of Counts One and Two are, and agree to recommend
23 jointly that the Court impose, the following: A sentence requiring the defendant to pay to the
24 United States a criminal fine of \$40.87 million, pursuant to 18 U.S.C. § 3571(d), payable in full
25 before the fifteenth (15th) day after the date of judgment (“the recommended sentence”). The
26 parties agree that there exists no aggravating or mitigating circumstance of a kind, or to a degree,
27 not adequately taken into consideration by the U.S. Sentencing Commission in formulating the
28 Sentencing Guidelines justifying a departure pursuant to U.S.S.G. §5K2.0. The parties agree not

1 to seek or support any sentence other than the recommended sentence, nor any Guidelines
2 adjustment for any reason that is not set forth in this Plea Agreement. The parties further agree
3 that the recommended sentence set forth in this Plea Agreement is reasonable.

4 (a) The defendant understands that the Court will order it to pay an \$800
5 special assessment, pursuant to 18 U.S.C. § 3013(a)(2)(B), in addition to any fine
6 imposed.

7 (b) Both parties will recommend that no term of probation be
8 imposed, but the defendant understands that the Court's denial of this request will not
9 void this Plea Agreement.

10 (c) The United States and the defendant jointly submit that this Plea
11 Agreement, together with the record that will be created by the United States and the
12 defendant at the plea and sentencing hearings, and the further disclosure described in
13 Paragraph 10, will provide sufficient information concerning the defendant, the offenses
14 charged in this case, and the defendant's role in the offenses to enable the meaningful
15 exercise of sentencing authority by the Court under 18 U.S.C. § 3553. The United States
16 and defendant agree to request jointly that the Court accept the defendant's guilty plea
17 and impose sentence on an expedited schedule as early as the date of arraignment, based
18 upon the record provided by the defendant and the United States, under the provisions of
19 Fed. R. Crim. P. 32(c)(1)(A)(ii), U.S.S.G. §6A1.1, and Rule 32-1(b) of the Criminal
20 Local Rules. The Court's denial of the request to impose sentence on an expedited
21 schedule will not void this Plea Agreement.

22 (d) The United States contends that had this case gone to trial, the United
23 States would have presented evidence to prove that the gain derived from or the loss
24 resulting from the charged offenses is sufficient to justify the recommended sentence set
25 forth in this paragraph, pursuant to 18 U.S.C. § 3571(d). For purposes of this plea and
26 sentencing only, the defendant waives its rights to contest this calculation.

27 10. The United States and the defendant agree that the applicable Guidelines fine
28 range exceeds the fine contained in the recommended sentence set out in Paragraph 9 above.

1 Subject to the full and continuing cooperation of the defendant, as described in Paragraph 14 of
2 this Plea Agreement, and prior to sentencing in this case, the United States agrees that it will
3 make a motion, pursuant to U.S.S.G. §8C4.1, for a downward departure from the Guidelines fine
4 range and will request that the Court impose the recommended sentence set out in Paragraph 9 of
5 this Plea Agreement because of the defendant's substantial assistance in the government's
6 investigation and prosecution of violations of federal criminal law in the hydrogen peroxide
7 industry.

8 11. Subject to the ongoing, full, and truthful cooperation of the defendant described in
9 Paragraph 14 of this Plea Agreement, and before sentencing in the case, the United States will
10 fully advise the Court and the Probation Office as to: (i) the fact, manner, and extent of the
11 defendant's cooperation and its commitment to prospective cooperation with the United States'
12 investigation and prosecutions; (ii) all material facts relating to the defendant's involvement in
13 the charged offenses; and (iii) all other relevant conduct.

14 12. The United States and the defendant understand that the Court retains complete
15 discretion to accept or reject the recommended sentence provided for in Paragraph 9 of this Plea
16 Agreement.

17 (a) If the Court does not accept the recommended sentence, the United States
18 and the defendant agree that this Plea Agreement, except for Paragraph 12(b) below,
19 shall be rendered void.

20 (b) If the Court does not accept the recommended sentence,
21 the defendant will be free to withdraw its guilty plea (Fed. R. Crim. P. 11(c)(5) and (d)).
22 If the defendant withdraws its plea of guilty, this Plea Agreement, the guilty plea, and
23 any statement made in the course of any proceedings under Fed. R. Crim. P. 11 regarding
24 the guilty plea or this Plea Agreement or made in the course of plea discussions with an
25 attorney for the government shall not be admissible against the defendant in any criminal
26 or civil proceeding, except as otherwise provided in Fed. R. Evid. 410. In addition, the
27 defendant agrees that, if it withdraws its guilty plea pursuant to this subparagraph of the
28 Plea Agreement, the statute of limitations period for any offense referred to in Paragraph

1 16 of this Plea Agreement will be tolled for the period between the date of the signing of
2 the Plea Agreement and the date the defendant withdrew its guilty plea or for a period of
3 sixty (60) days after the date of the signing of the Plea Agreement, whichever period is
4 greater.

5 13. In light of the civil class action cases filed against the defendant, which potentially
6 provide for a recovery of a multiple of actual damages, the United States agrees that it will not
7 seek a restitution order for the offenses charged in the Information.

8 **DEFENDANT'S COOPERATION**

9 14. The defendant and its subsidiaries that are engaged in the sale or production of
10 hydrogen peroxide and sodium perborates (collectively, "related entities") will cooperate fully
11 and truthfully with the United States in the prosecution of this case, the conduct of the current
12 federal investigations of violations of federal antitrust and related criminal laws involving the
13 manufacture or sale of hydrogen peroxide and sodium perborates, any other federal investigation
14 resulting therefrom, and any litigation or other proceedings arising or resulting from any such
15 investigation to which the United States is a party ("federal proceeding"). The ongoing, full, and
16 truthful cooperation of the defendant shall include, but not be limited to:

17 (a) producing to the United States all non-privileged documents, information,
18 and other materials, wherever located, in the possession, custody, or control of the
19 defendant or any of its related entities, requested by the United States in connection with
20 any federal proceeding; and

21 (b) using its best efforts to secure the ongoing, full, and truthful cooperation,
22 as defined in Paragraph 15 of this Plea Agreement, of the current and former directors,
23 officers, and employees of the defendant or any of its related entities as may be requested
24 by the United States, but excluding Gareth L. Hall, Robert M. Monsen, and Jean-Marie
25 Demoulin, including making such persons available in the United States and at other
26 mutually agreed-upon locations, at the defendant's expense, for interviews and the
27 provision of testimony in grand jury, trial, and other judicial proceedings in connection
28 with any federal proceeding.

1 15. The ongoing, full, and truthful cooperation of each person described in Paragraph
2 14(b) above will be subject to the procedures and protections of this paragraph, and shall
3 include, but not be limited to:

4 (a) producing in the United States and at other mutually agreed-upon
5 locations all non-privileged documents, including claimed personal documents, and other
6 materials, wherever located, requested by attorneys and agents of the United States;

7 (b) making himself or herself available for interviews in the United States and
8 at other mutually agreed-upon locations, not at the expense of the United States, upon the
9 request of attorneys and agents of the United States;

10 (c) responding fully and truthfully to all inquiries of the United States in
11 connection with any federal proceeding, without falsely implicating any person or
12 intentionally withholding any information, subject to the penalties of making false
13 statements (18 U.S.C. § 1001) and obstruction of justice (18 U.S.C. § 1503);

14 (d) otherwise voluntarily providing the United States with any non-privileged
15 material or information not requested in (a) - (c) of this paragraph that he or she may
16 have that is related to any federal proceeding;

17 (e) when called upon to do so by the United States in connection with any
18 federal proceeding, testifying in grand jury, trial, and other judicial proceedings fully,
19 truthfully, and under oath, subject to the penalties of perjury (18 U.S.C. § 1621), making
20 false statements or declarations in grand jury or court proceedings (18 U.S.C. § 1623),
21 contempt (18 U.S.C. §§ 401-402), and obstruction of justice (18 U.S.C. § 1503); and

22 (f) agreeing that, if the agreement not to prosecute him or
23 her in this Plea Agreement is rendered void under Paragraph 17(c), the statute of
24 limitations period for any relevant offense as defined in Paragraph 17(a) will be tolled as
25 to him or her for the period between the date of the signing of this Plea Agreement and
26 six (6) months after the date that the United States gave notice of its intent to void its
27 obligations to that person under the Plea Agreement.

28 ///

GOVERNMENT’S AGREEMENT

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2 16. Upon acceptance of the guilty plea called for by this Plea Agreement and the
3 imposition of the recommended sentence, and subject to the cooperation requirements of
4 Paragraph 14 of this Plea Agreement, the United States agrees that it will not bring further
5 criminal charges against the defendant or any of its related entities for any act or offense
6 committed before the date of this Plea Agreement that was undertaken in furtherance of an
7 antitrust conspiracy involving the manufacture or sale of hydrogen peroxide or sodium
8 perborates. The nonprosecution terms of this paragraph do not apply to civil matters of any kind,
9 to any violation of the federal tax or securities laws, or to any crime of violence.

10 17. The United States agrees to the following:

11 (a) Upon the Court’s acceptance of the guilty plea called for by this Plea
12 Agreement and the imposition of the recommended sentence and subject to the
13 exceptions noted in Paragraph 17(c), the United States will not bring criminal charges
14 against any current or former director, officer, or employee of the defendant or its related
15 entities for any act or offense committed before the date of this Plea Agreement and
16 while that person was acting as a director, officer, or employee of the defendant or its
17 related entities that was undertaken in furtherance of an antitrust conspiracy involving the
18 manufacture or sale of hydrogen peroxide or sodium perborates (“relevant offense”),
19 except that the protections granted in this paragraph shall not apply to Gareth L. Hall,
20 Robert M. Monsen, or Jean-Marie Demoulin;

21 (b) Should the United States determine that any current or former director,
22 officer, or employee of the defendant or its related entities may have information relevant
23 to any federal proceeding, the United States may request that person’s cooperation under
24 the terms of this Plea Agreement by written request delivered to counsel for the
25 individual (with a copy to the undersigned counsel for the defendant) or, if the individual
26 is not known by the United States to be represented, to the undersigned counsel for the
27 defendant;

28 (c) If any person requested to provide cooperation under Paragraph 17(b) fails

1 to comply with his or her obligations under Paragraph 15, then the terms of this Plea
2 Agreement as they pertain to that person, and the agreement not to prosecute that person
3 granted in this Plea Agreement, shall be rendered void;

4 (d) Except as provided in Paragraph 17(e), information provided by a person
5 described in Paragraph 17(b) to the United States under the terms of this Plea Agreement
6 pertaining to any relevant offense, or any information directly or indirectly derived from
7 that information, may not be used against that person in a criminal case, except in a
8 prosecution for perjury (18 U.S.C. § 1621), making a false statement or declaration
9 (18 U.S.C. §§ 1001, 1623), or obstruction of justice (18 U.S.C. § 1503);

10 (e) If any person who provides information to the United States under this
11 Plea Agreement fails to comply fully with his or her obligations under Paragraph 15 of
12 this Plea Agreement, the agreement in Paragraph 17(d) not to use that information or any
13 information directly or indirectly derived from it against that person in a criminal case
14 shall be rendered void;

15 (f) The nonprosecution terms of this paragraph do not apply to civil matters
16 of any kind, to any violation of the federal tax or securities laws, or to any crime of
17 violence; and

18 (g) Documents provided under Paragraphs 14(a) and 15(a) shall be deemed
19 responsive to outstanding grand jury subpoenas issued to the defendant or any of its
20 related entities.

21 18. The United States agrees that when any person travels to the United States for
22 interviews, grand jury appearances, or court appearances pursuant to this Plea Agreement, or for
23 meetings with counsel in preparation therefor, the United States will take no action, based upon
24 any relevant offense, to subject such person to arrest, detention, or service of process, or to
25 prevent such person from departing the United States. This paragraph does not apply to an
26 individual's commission of perjury (18 U.S.C. § 1621), making false statements (18 U.S.C. §
27 1001), making false statements or declarations in grand jury or court proceedings (18 U.S.C. §
28 1623), obstruction of justice (18 U.S.C. § 1503), or contempt (18 U.S.C. §§ 401-402) in

1 connection with any testimony or information provided or requested in any federal proceeding.

2 19. The defendant understands that it may be subject to administrative action by
3 federal or state agencies other than the United States Department of Justice, Antitrust Division,
4 based upon the conviction resulting from this Plea Agreement, and that this Plea Agreement in
5 no way controls whatever action, if any, other agencies may take. However, the United States
6 agrees that, if requested, it will advise the appropriate officials of any governmental agency
7 considering such administrative action of the fact, manner, and extent of the cooperation of the
8 defendant and its related entities, including the fact that the United States, pursuant to U.S.S.G.
9 §8C4.1, moved for a downward departure from the applicable Sentencing Guidelines range,
10 based on the defendant's substantial assistance to the United States, as a matter for that agency to
11 consider before determining what administrative action, if any, to take.

12 **REPRESENTATION BY COUNSEL**

13 20. The defendant has been represented by counsel and is fully satisfied that its
14 attorneys have provided competent legal representation. The defendant has thoroughly reviewed
15 this Plea Agreement and acknowledges that counsel has advised it of the nature of the charge,
16 any possible defenses to the charge, and the nature and range of possible sentences.

17 **VOLUNTARY PLEA**

18 21. The defendant's decision to enter into this Plea Agreement and to tender a plea of
19 guilty is freely and voluntarily made and is not the result of force, threats, assurances, promises,
20 or representations other than the representations contained in this Plea Agreement. The United
21 States has made no promises or representations to the defendant as to whether the Court will
22 accept or reject the recommendations contained within this Plea Agreement.

23 **VIOLATION OF PLEA AGREEMENT**

24 22. The defendant agrees that, should the United States determine in good faith,
25 during the period that any federal proceeding is pending, that the defendant or any of its related
26 entities have failed to provide full and truthful cooperation, as described in Paragraph 14 of this
27 Plea Agreement, or has otherwise violated any provision of this Plea Agreement, the United
28 States will notify counsel for the defendant in writing by personal or overnight delivery or

1 facsimile transmission and may also notify counsel by telephone of its intention to void any of its
2 obligations under this Plea Agreement (except its obligations under this paragraph), and the
3 defendant and its related entities shall be subject to prosecution for any federal crime of which
4 the United States has knowledge including, but not limited to, the substantive offenses relating to
5 the investigation resulting in this Plea Agreement. The defendant may seek Court review of any
6 determination made by the United States under this Paragraph to void any of its obligations
7 under the Plea Agreement. The defendant and its related entities agree that, in the event that the
8 United States is released from its obligations under this Plea Agreement and brings criminal
9 charges against the defendant or its related entities for any offense referred to in Paragraph 16 of
10 this Plea Agreement, the statute of limitations period for such offense will be tolled for the
11 period between the date of the signing of this Plea Agreement and six (6) months after the date
12 the United States gave notice of its intent to void its obligations under this Plea Agreement.

13 23. The defendant understands and agrees that in any further prosecution
14 of it or its related entities resulting from the release of the United States from its obligations
15 under this Plea Agreement, because of the defendant's or its related entities' violation of the Plea
16 Agreement, any documents, statements, information, testimony, or evidence provided by it, its
17 related entities, or current or former directors, officers, or employees of it or its related entities to
18 attorneys or agents of the United States, federal grand juries, or courts, and any leads derived
19 therefrom, may be used against it or its related entities in any such further prosecution. In
20 addition, the defendant unconditionally waives its right to challenge the use of such evidence in
21 any such further prosecution, notwithstanding the protections of Fed. R. Evid. 410.

22 **ENTIRETY OF AGREEMENT**

23 24. This Plea Agreement constitutes the entire agreement between the
24 United States and the defendant concerning the disposition of the criminal charges in this case.
25 This Plea Agreement cannot be modified except in writing, signed by the United States and the
26 defendant.

27 25. The undersigned is authorized to enter this Plea Agreement on behalf of the
28 defendant as evidenced by the Grant of Power of Attorney authorized by the Board of Directors

1 of the defendant attached to, and incorporated by reference in, this Plea Agreement.

2 26. The undersigned attorneys for the United States have been authorized
3 by the Attorney General of the United States to enter this Plea Agreement on behalf of the
4 United States.

5 27. A facsimile signature shall be deemed an original signature for the purpose of
6 executing this Plea Agreement. Multiple signature pages are authorized for the purpose of
7 executing this Plea Agreement.

8 DATED: March 9, 2006

9 Respectfully submitted,

10
11
12 BY: /s/
13 Edwin J. Buckingham III, Esq.
14 General Counsel
Solvay America, Inc.

15 COUNSEL FOR DEFENDANT

16 BY: /s/
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18 Steven R. Peikin, Esq.
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