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COGENERATION & ALTERNATIVE ENERGY  
ENERGY REGULATORY LAW

May 22, 1992

**ORIGINAL  
FILE COPY**

Mr. Steve Tribble  
Director, Division of Records  
and Reporting  
Florida Public Service Commission  
101 East Gaines Street  
Tallahassee, Florida 32399

RE: Docket No. 920095-WS - Request for exemption from Florida  
Public Service Commission regulation  
of a water and wastewater facility  
in Escambia County, Florida by  
Monsanto Company

- ACK
- AFA \_\_\_\_\_
- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMU \_\_\_\_\_
- CTR \_\_\_\_\_
- EAG \_\_\_\_\_
- LEG LW/107
- LIN 6
- OPC 1
- RCH \_\_\_\_\_
- SEC 1
- WAS 1
- OTH \_\_\_\_\_

Dear Mr. Tribble:

Enclosed please find the original and 15 copies of Monsanto  
Company's Application for Nonjurisdictional Finding to be filed in  
the above-styled docket.

Sincerely,

*Richard A. Zambo*  
Richard A. Zambo, Esq.

Enclosure

RLC/Tribble.Ltr/kj

RECEIVED & FILED

EPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

05314 MAY 22 1992

EPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL  
FILE COPY

In re: Request for exemption from )  
Florida Public Service Commission )  
regulation of a water and waste- )  
water facility in Escambia County, )  
Florida by Monsanto Company )  
)  
)  
)

Docket No. 920095-WS

Filed: May 22, 1992

APPLICATION OF MONSANTO COMPANY FOR  
NONJURISDICTIONAL FINDING

Pursuant to Rule 25-30.060, F.A.C., Monsanto Company (Monsanto) files its Application for Nonjurisdictional Finding and states as follows:

1. The name and address of the Applicant are:

Monsanto Company  
P. O. Box 12830  
Pensacola, Florida 32575-2830

2. All pleadings, motions, orders and other documents directed to Monsanto should be served on:

Richard A. Zambo, Esquire  
Richard A. Zambo, P.A.  
598 S.W. Hidden River Ave.  
Palm City, Florida 34990  
(407) 220-9163

Suzanne Brownless, Esquire  
Oertel, Hoffman, Fernandez & Cole  
2700 Blair Stone Road  
Suite C  
Tallahassee, Florida 32301  
(904) 877-0099

3. The primary contact persons regarding this application are: Richard A. Zambo, Esquire and Suzanne Brownless, Esquire.

BACKGROUND

4. On December 3, 1991 the Board of County Commissioners of Escambia County adopted a resolution pursuant to Section 367.171, Florida Statutes, declaring the water and wastewater utilities in that county to be subject to the provisions of the Water and Wastewater Regulatory Law, Chapter 367, Florida Statutes, as

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FPSC-RECORDS/REPORTING

administered by the Florida Public Service Commission (FPSC). By Order No. 25593, issued on January 13, 1992, the FPSC acknowledged Escambia County's resolution and formally accepted jurisdiction over the regulation of water and wastewater facilities in Escambia County.

5. Order No. 25593 also required all "utilities" providing water and/or wastewater services in Escambia County to register with the FPSC by February 13, 1992. Utilities were further required to apply for either a "grandfather" certificate under Section 367.171(2)(b), F.S., or an exemption under Section 367.031, F.S., by April 13, 1992.

6. Although unsure of the effect of Order No. 25593 with regard to its operations, Monsanto filed an application for a manufacturer's exemption under Section 367.022 (3), F.S., subsequent to a meeting with Florida Public Service Commission Staff on January 28, 1992.

#### FACTS

7. The applicant, Monsanto Company, is a Delaware corporation with its general offices located at 800 North Lindbergh Boulevard, St. Louis, Missouri. Monsanto owns and operates an integrated chemical complex located in Escambia County near Pensacola, Florida. This chemical complex is located on a 2,281 acre tract of land which runs along the west bank of the Escambia River.

8. As part of its chemical complex Monsanto operates a 400,000 gallon/day wastewater treatment plant and twelve wells which provide water to the facilities located within its complex. Monsanto disposes of its own industrial/process waste water by deep well injection.

9. The wastewater treatment plant is a primary treatment and sludge diges'ion system designed with the following equipment: a comminuter, a raked solids settler and skimmer, two anaerobic digesters, facultative treatment pond and drying beds. Monsanto has an interconnected Sanitary Sewer piping system which receives cafeteria waste, toilet waste, and drinking fountain waste streams from facilities located within Monsanto's complex. Effluent from the wastewater treatment plant is chlorinated and used for cooling tower make-up. Cooling tower blow-down is discharged into the Escambia River.

10. Water and wastewater service is provided only to facilities located within Monsanto's chemical complex. Located within Monsanto's chemical complex are the following facilities which are not wholly-owned by Monsanto: Niject Services Company (Niject); Union Carbide Industrial Gases, Inc. (Union Carbide); Fiberweb North America, Inc. (Fiberweb); Advanced Elastomer Systems, L.P. (AES LP); Puritan-Bennett Corporation (Puritan-Bennett); Monsanto Employees Credit Union (MECU). In addition to these facilities, Monsanto owns various manufacturing facilities

and a recreation area which includes a gymnasium, health club, and golf course the use of which is restricted to current and former employees of Monsanto and their dependents. The recreation area is operated by the Monsanto Employees Golf Association.

11. Due to the fact that the facilities of both Niject and Union Carbide are self-contained units producing compressed air and nitrogen gas, respectively, for Monsanto's use in its manufacturing operations, these companies are not provided with either water or wastewater services by Monsanto.

12. Monsanto does not provide wastewater service to the recreation area but does irrigate the golf course at no charge from its wells located on the golf course. Monsanto does not provide potable water to the recreation area; such water is provided by the City of Gonzales.

13. MECU is provided water and wastewater service pursuant to its premises lease with Monsanto. The premises lease requires an annual payment of \$10.00 and does not include a specific charge for water and wastewater service.

14. AES LP is provided with the following services by Monsanto pursuant to a Services Agreement entered into between AES LP and Monsanto on December 20, 1990: domestic water, steam, cooling water and wastewater service. Exhibits B, C, D and E of the Services Agreement (Attachment 1) state the terms and conditions for the provision of such services.

Pursuant to Section VII(C)(6) of Exhibit B, AES LP is billed by Monsanto for all domestic water delivered to it based on a fixed proration of the actual direct and indirect cost of generating and distributing this water. Likewise, Section VII(C)(7) of Exhibit B uses a fixed percentage per month of the above calculated domestic water usage to set wastewater service charges. Section 7 of the Services Agreement adds to these allocated costs a "return" on "net capital employed" (as defined in Exhibit D) which is adjusted on an annual basis on January 1.

15. Fiberweb receives waste services, steam, domestic water, well water, and cooling water from Monsanto pursuant to a Lease Agreement (Agreement) entered into between James-River Norwalk, Inc. (James River) and Monsanto Company on September 19, 1985 and assigned to and assumed by Fiberweb on April 4, 1990.

(Attachment 2)

Pursuant to Section 3 of Exhibit H of the Agreement, Fiberweb is billed by Monsanto for all water and steam delivered to it an amount equal to Monsanto's full cost for the first two years of the Agreement and thereafter at 105% of Monsanto's full cost. Full cost is defined as Monsanto's cost using its standard accounting practice for providing such service. Section 17 of Exhibit H provides that should the provision of water to Fiberweb require Monsanto to be regulated as a public utility, Monsanto retains the right to terminate the provision of water or renegotiate the terms

under which it is required to supply same to Fiberweb.

Pursuant to the Waste Services Agreement, Exhibit F to the Lease, entered into between James River Corporation on September 19, 1985 and assigned to and assumed by Fiberweb on April 4, 1990, Monsanto provides waste services to Fiberweb, which are defined by Section 1 o. Exhibit F as the receipt, processing and discharge of sanitary waste, storm water and effluent. Section 7 of Exhibit F requires payment when Monsanto's "full costs", as defined in Exhibit H, exceed \$20,000 in any calendar year. Section 18 of Exhibit F provides that should the provision of waste services to Fiberweb require Monsanto to be regulated as a public utility Monsanto retains the right to terminate the provision of such service or renegotiate the terms under which it is required to provide same to Fiberweb.

16. Puritan-Bennett is provided domestic water in accord with the terms of Section 10 of the Nitrous Oxide Sales Agreement (NOx Agreement), entered into between Puritan-Bennett and Monsanto Company on January 15, 1982 (Attachment 3). Pursuant to Section 10(b) of the NOx Agreement, Puritan-Bennett is billed by Monsanto for all water and steam delivered to it an amount equal to all costs and expenses (including plant overheads) associated with the delivery of water and steam to Puritan-Bennett as well as a "facilities use charge" for those facilities owned by Monsanto which are used to provide the steam and water. Section 10(d) of

the NOx Agreement allows Monsanto to cease providing water and steam to Puritan-Bennett should the provision of same require Monsanto to be regulated as a public utility. Puritan-Bennett does not receive wastewater treatment from Monsanto.

17. Industrial wastewater as defined in Section 367.021(8), F.S., is only received from Fiberweb. Puritan-Bennett and AES LP are responsible for discharging this type of wastewater and do so pursuant to their own permits. Fiberweb treats its industrial wastewater so that it can be processed through Monsanto's wastewater treatment system.

#### JURISDICTION

18. Section 367.021(12), F.S., states as follows:

(12) "Utility" means a water or wastewater utility and, except as provided in s. 367.022, includes every person, lessee, trustee, or receiver owning, operating, managing, or controlling a system, or proposing construction of a system, who is providing, or proposes to provide, water or wastewater service to the public for compensation. [Emphasis added.]

19. Section 367.021(13), F.S., states as follows:

(13) "Wastewater" means the combination of the liquid and water-carried pollutants from a residence, commercial building, industrial plant, or institution, together with any groundwater, surface runoff, or leachate that may be present.

20. Section 367.021(5), F.S., states as follows:

(5) "Domestic wastewater" means wastewater



principally from dwellings, business buildings, institutions, and sanitary wastewater or sewage treatment plants.

21. Section 367.021(8), F.S., states as follows:

(8) "Industrial wastewater" means wastewater not otherwise defined as domestic wastewater, including runoff and leachate from areas that receive pollutants associated with industrial and commercial storage, handling, or processing.

22. Section 367.021(11), F.S., states as follows:

(11) "System" means facilities and land used or useful in providing service and, upon a finding by the commission, may include a combination of functionally related facilities and land.

23. Crucial to the definition of "utility" under Section 367.021(12), F.S., is the fact that it be provided "for compensation." Pursuant to letters dated May 22, 1992, Monsanto has waived payment for the water and wastewater services provided to AES LP, Fiberweb and MECU<sup>1</sup> and for water provided to Puritan-Bennett, effective March 31, 1992. (Attachment 4) To the extent that any of the services provided to these entities constitutes wastewater or water service under Chapter 367, no compensation is

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<sup>1</sup> Monsanto recognizes that water and wastewater service provided to MECU would qualify for an exemption under Section 367.022(5), F.S. However, in order to bring all of its activities within the definition of "nonjurisdictional" under Section 367.021(12), F.S., Monsanto is waiving payment under the lease.

currently being received.<sup>2</sup>

CONCLUSION

24. To the extent that water and wastewater services as defined within Chapter 367 are being provided to Fiberweb, AES LP and MECU, Monsanto is nonjurisdictional under Section 367.021(12), F.S., and Rule 25-30.060(3)(j), F.A.C., because no compensation is being given to Monsanto in exchange for these services. Likewise, Monsanto is nonjurisdictional under Section 367.021(12), F.S., and Rule 25-30.060(3)(j), F.A.C., to the extent that water as defined within Chapter 367 is being provided to the recreation area and Puritan-Bennett because no compensation is being given to Monsanto in exchange for those services.

25. With regard to Niject and Union Carbide, Monsanto does not provide water and wastewater services. With regard to the recreation area, Monsanto does not provide potable water or wastewater service as defined in Chapter 367.

26. Pursuant to Rule 25-30.060(3)(j), F.A.C., Monsanto's statement of Nonjurisdictional Finding is attached. (Attachment 5)

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<sup>2</sup> Monsanto does not consider the provision of steam to be the provision of water within the meaning of Chapter 367, since the steam is returned to Monsanto in the form of condensate pursuant to the above-referenced Agreements. Cooling water is also not the provision of water within the meaning of Chapter 367 since cooling water is recycled from the cooling tower back through Monsanto's wastewater treatment system and ultimately "blown down" from the towers and discharged to the Escambia River. In neither of these instances is the steam or cooling water retained by anyone other than Monsanto.

WHEREFORE, Monsanto Company respectfully requests that its activities as set forth in the body of this application be found to be nonjurisdictional pursuant to Section 367.021(12), F.S., and Rule 25-30.060(3)(j), F.A.C.

Respectfully submitted this 22d day of May, 1992 by:

*Richard A. Zambo, Esq.*

---

RICHARD A. ZAMBO, ESQUIRE  
Richard A. Zambo, P.A.  
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Palm City, Florida 34990  
(407) 220-9163

*Suzanne Brownless*

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Tallahassee, Florida 32301  
(904) 877-0099

Attorneys for Monsanto Company

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Request for exemption from ) Docket No. 920095-WS  
Florida Public Service Commission )  
regulation of a water and )  
wastewater facility in Escambia )  
County by Monsanto Company )  

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Application of Monsanto Company for Nonjurisdictional Finding has been provided by U.S. Mail or Hand Delivery (\*) to the following:

\*Rex Golde, Esquire  
Staff Attorney  
Florida Public Service Commission  
101 East Gaines Street  
Tallahassee, Florida 32301

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Richard A. Zambo, P.A.  
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Palm City, Florida 34990

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Monsanto Company  
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St. Louis, Missouri 63167

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SUZANNE BROWNLESS, Esquire

PENSACOLA

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SERVICES AGREEMENT

PENSACOLA

THIS AGREEMENT, made and entered into as of this 20<sup>th</sup> day of December, 1990, to be effective as of January 1, 1991, by and between MONSANTO COMPANY, a Delaware Corporation with its general offices located at 800 North Lindbergh Boulevard, St. Louis, Missouri 63167 (hereinafter called "Monsanto") and ADVANCED ELASTOMER SYSTEMS, L.P., a Delaware Limited Partnership with its general offices at 540 Maryville Center Drive, St. Louis, Missouri 63141 (hereinafter called "AES LP"), acting by and through Advanced Elastomer Systems, Inc., a Delaware Corporation with its general offices at 540 Maryville Center Drive, St. Louis, Missouri 63141, its General Partner.

WHEREAS, Monsanto and Exxon Corporation ("Exxon") have entered into a Worldwide Joint Venture Formation Agreement dated as of September 20, 1990, (hereinafter referred to as the "Formation Agreement"), providing in part for the formation of AES LP and Monsanto and AES LP have entered into an Asset Transfer Agreement dated this date providing in part for the transfer by Monsanto to AES LP of certain property and assets of Monsanto located at Monsanto's plant near Pensacola, Florida; and

WHEREAS, Monsanto and AES LP have entered into a Lease (hereinafter defined) of even date herewith, providing for a lease to AES LP of certain Leased Premises (hereinafter defined) located at Monsanto's Pensacola plant to enable AES LP to operate AES LP's Facility (hereinafter defined); and

WHEREAS, the capitalized terms as defined in the Lease, to the extent used and not otherwise defined herein, are adopted and incorporated herein by reference; and

3. WASTE WATER AND EFFLUENT.

(a) Waste Water. AES LP will Deliver and Monsanto will accept Waste Water as follows:

(i) Delivery. AES LP will Deliver Sanitary Waste into the Plant Sanitary Sewer System for treatment in the Plant sanitary waste treatment facilities and for ultimate discharge by Monsanto. AES LP will Deliver Storm Water into the Plant Storm Water Sewer System for discharge by Monsanto into the Escambia River.

(ii) Prohibited Discharges. AES LP will not discharge any Waste Water into the environment so as to affect the Plant, or into or onto the Plant, or Leased Premises, or Deliver any of the foregoing into the Plant Sanitary or Storm Water Sewer Systems (or into any Plant process sewer system) which in the quantities and concentrations discharged is toxic, flammable, radioactive, corrosive, or otherwise hazardous to humans, animals, aquatic or wildlife, vegetation, air, land, water or the environment or to any of such systems, subject also, however, to (i) the other terms and conditions of this Agreement, (ii) the then prevailing terms and conditions of the Monsanto Permits referred to in Section 4 hereof, and any special agreements connected therewith, (iii) and AES LP's compliance with laws, ordinances, orders, rules, regulations or actions applicable from time to time to the operation of AES LP's Facility, the Plant, the Waste Water Facilities or the provision of Services hereunder (all collectively, "Laws").

(b) Effluent. Unless and until the parties agree upon a mutually acceptable way in which Monsanto will accept and dispose



of Effluent for AES LP, AES LP shall not Deliver any Effluent to Monsanto and Monsanto shall not be obligated to receive any Effluent, and AES LP shall collect and lawfully and properly dispose of such Effluent.

(c) Access. If during the term hereof AES LP generates Effluent and AES LP because of the Laws has no other reasonable means of disposal thereof or access for the discharge thereof from AES LP's Facility other than by means of a sewer line over a route which requires a crossing of land comprising the Plant, Monsanto agrees to grant an easement for such purpose to AES LP, provided that such easement shall not be granted until the parties mutually agree upon the route thereof, the compensation to be paid therefor and the terms, conditions, reservations and restrictions which shall govern the use thereof by AES LP.

(d) Notification. In addition to the provisions of Section 20, AES LP shall give appropriate Monsanto Plant environmental management personnel immediate notice as soon as AES LP has knowledge of any release from AES LP's Facility which may discharge to the Waste Water Facilities a reportable quantity of a toxic pollutant, hazardous substance or extremely hazardous substance as defined by the Comprehensive Environmental Response and Liability Act of 1980, as amended, the Emergency Planning and Community Right-of to-Know Law of 1986, the Federal Clean Water Act, as amended, pertinent regulations thereunder or any other relevant federal, state or local laws (including the Laws) which may be in effect from time to time. Without limiting the foregoing obligation, any unintentional delay on the part of AES LP in giving such notice shall not be an event of default under the Lease or this Agreement.

#### 4. PERMITS.

respective facilities of the other party at the site, as well as any other Monsanto DOEA at the Plant reasonably deemed necessary by AES LP to protect its confidential information, shall be required to execute such agreements consistent with the foregoing protecting the confidential information of the other party and undertaking to comply with the safety and other rules and regulations as such other party customarily requires at its operations at the site from time to time. The relevant forms of agreement initially applicable to the AES LP DOEA and the Monsanto DOEA described above shall be substantially as set forth, respectively, in Parts I and II of Exhibit G, attached hereto and made a part hereof.

7. PAYMENT FOR SERVICES.

(a) AES LP to Pay Monsanto's Costs. Subject to the provisions of Section 2 above with respect to any Utilities supplied as an incidence of the Lease, AES LP shall pay Monsanto all of Monsanto's actual direct and indirect costs (including any retroactive adjustments therein) incurred for or in connection with the performance or supply of Services, or in holding itself ready to perform or supply Services, including overheads, determined and allocated in accordance with Monsanto's then prevailing customary accounting procedures (which will be based on generally accepted accounting principles), including AES LP's Facility's proportionate share of the cost of all Services utilized or consumed by Monsanto at the Plant which support the performance or supply of Services to AES LP, plus a "Return" on the "Net Capital Employed" (such terms are defined in Exhibit D, attached hereto and made a part hereof) from time to time at the Plant which supports the performance or supply of all Services hereunder, such Return to be adjusted annually as of January 1 of each calendar year with notice thereof to be given AES LP, all as provided in Exhibit D, and all such costs to be adjusted for

future capital expenditures or retirements, all of the foregoing being subject to the following provisions of this Section 7 and the other terms and conditions of this Agreement. Exhibit B, attached hereto and made a part hereof, sets forth the "Accounting Policies (Including Practices and Procedures)" which shall be applied by Monsanto to determine and allocate costs to AES LP under this Agreement.

(b) Invoicing. Monsanto shall invoice AES LP monthly as close as may be practical to the 15th of each month for all amounts due from AES LP as provided for herein for the preceding month, and AES LP shall pay such amounts to Monsanto by such means, including wire transfer in immediately available funds, into such accounts in such banks, all as Monsanto may from time to time designate, within fifteen (15) days from the date of such invoice, unless the parties agree upon a different method of payment.

(c) Changed Conditions, Monsanto to Receive Costs. The parties recognize and agree that it is not practical to predict and provide for all future changes, circumstances or contingencies affecting this Agreement, or the supply or performance of Services, during the term hereof. Accordingly, anything in this Agreement to the contrary notwithstanding, it is understood and agreed by the parties that in providing Services or performing this Agreement, if costs as defined, used or applied within Monsanto's accounting system or under any of the Exhibits to this Agreement, or if application of generally accepted accounting principles to determine costs are, at any time or times, incomplete, inaccurate or insufficient to enable Monsanto to recover all of its costs hereunder howsoever incurred, Monsanto shall, nevertheless, be entitled to recover from AES LP all of such costs, notwithstanding such definition, use or application, so that Monsanto shall not be subjected to or

be required to suffer any economic loss or penalty at any time. In addition, if because of changes in or the adoption of new laws, regulations or accounting principles, or their application, Monsanto is not, or will not be, able to recover all of its costs under this Agreement, AES LP agrees to compensate Monsanto in some other reasonable but equivalent manner in order to make Monsanto whole for such unrecovered costs. Similarly, if Monsanto in any manner or for any reason over recovers its costs, it will promptly credit or refund any such over recovery to AES LP.

8. TERM.

(a) Basic Term. The term of this Agreement shall be for a period of twenty (20) years from the date hereof and continuing thereafter unless and until terminated as herein provided. AES LP may terminate this Agreement with respect to any or all Services on the last day of any calendar year during the term hereof provided AES LP shall have given Monsanto written notice specifying the Services to be terminated on or before July 1 of such calendar year (or on or before such different date in such calendar year as may have been established pursuant to Section 2 for AES LP to notify Monsanto of its requested level of Services). In the event AES LP in any such notice does not terminate this Agreement with respect to all Services, it shall remain in effect (and continue to be subject to the provisions of this Section 8) with respect to all Services not previously terminated. Monsanto may terminate this Agreement with respect to all Services on or at any time after the last day of such twenty (20) year period provided Monsanto shall have given at least thirty-six (36) months' prior written notice to such effect to AES LP. Monsanto may also terminate this Agreement with respect to any of the Services during such twenty (20) year period at the end of any calendar year by written notice given

IN WITNESS WHEREOF, Monsanto and AES LP have caused this Agreement to be duly executed in duplicate originals by their duly authorized representatives as of the day and year first above written.

MONSANTO COMPANY

By

*John J. Kelly*

Title

*Vice President and General Manager -  
Plastics Division/Elastomers*

*Monsanto Chemical Company, a unit of Monsanto Company*  
ADVANCED ELASTOMER SYSTEMS, L.P.

BY:

ADVANCED ELASTOMER SYSTEMS, INC.  
GENERAL PARTNER

By

*John P. Wilson*

Title

*President*

SERVICES AGREEMENTPensacolaEXHIBIT BACCOUNTING POLICIES  
(including Practices and Procedures)OutlinePREMISES:

For the period between the date of the Services Agreement and December 31, 1990, the determination of the costs for Services for which Monsanto is to be reimbursed by AES LP, and of any other amounts to be paid by AES LP to Monsanto under this Services Agreement, shall be based as nearly as may be upon the accounting policies, practices and procedures employed by Monsanto at the plant for determining the costs chargeable to Monsanto's elastomers manufacturing unit at the Plant at the time of Monsanto's Use. Commencing January 1, 1991 and thereafter during the term of the Services Agreement all such costs and amounts due to Monsanto from AES LP under the Services Agreement shall be determined based on Monsanto's accounting policies, practices and procedures and the following provisions of this Exhibit B.

I. EXPLANATION OF MONSANTO'S COSTING PROCEDURES AT THE PLANT

The plant employs a standard process cost accounting system. All products produced have cost standards that are developed annually. The Plant cost system is used to distribute several different costs including but not limited to utility costs, factory overheads, and ancillary services.

The system is designed to ultimately assign all costs to manufacturing and/or product departments. This is accomplished through manufacturing and/or product, utility and service cost centers, with expenditures coded to expense classifications within these cost centers. The accumulated costs in each of the utility and service cost

Charges to AES LP for above services will be negotiated on a request-by-request basis.

D.

INDIRECT FIE COST DISTRIBUTION

AES LP will receive all of the services detailed in Section VI.A to the extent that AES LP uses utilities, maintenance and measured services. FIE is distributed in the Plant accounting system based upon a combination of headcount and replacement investment. Each manufacturing unit has a portion of the utility, maintenance and measured services headcount and replacement investment allocated to it based upon the unit's use of utilities, maintenance and measured services. The allocated headcount and replacement investment is added to the unit's prime headcount and replacement investment to determine the basis for distributing FIE. After the date of the Services Agreement, only the allocated portion of the headcount and replacement investment will be included in the basis of distribution for FIE to AES LP. The allocated headcount and replacement investment to AES LP as a percentage of the Plant total headcount and replacement investment applied to the total actual costs incurred by the FIE cost centers detailed in VI.A will determine the monthly charge to AES LP for indirect FIE.

VII. UTILITIES: ELECTRIC POWER (in this Exhibit B referred to as "electricity"), STEAM, COOLING WATER, REFRIGERATION, COMPRESSED AIR, DOMESTIC WATER, AND UTILITIES GENERAL

A. DESCRIPTION OF SERVICE

The above utilities are to be provided or available to AES LP at the Plant.

B. MAJOR COST ELEMENTS

Energy, wages, salaries, payroll overhead, supplies, depreciation, insurance, taxes, maintenance, etc.

C. COST DISTRIBUTION

The actual costs of purchased and Plant-produced Utilities are charged to production cost centers based on actual metered usage or an engineering study that set the distribution basis. Where engineering study set the basis one of the following methods is used:

**FIXED** Standard usage per day, per month, or percentage.

**VARIABLE** Standard usage per unit of production

The total distributed cost of each Utility includes both the fixed and variable cost of producing, purchasing and distributions of that Utility.

1. **ELECTRICITY** (Costs may be recovered as part of rent under Lease)

The cost of electricity charged to production cost centers includes the cost of purchased electricity from Gulf Power Company, plus the cost of generating electricity with Pensacola's generators and the cost of receiving and distributing that electricity.

Distribution basis is determined by meter readings. Electricity readings by Pensacola's power plant personnel of Gulf Power's meter and the plant generator's meter are compared to the receiving cost centers usage meters. After review by supervision any normal differences are charged (as usage) to the user based on their metered usage.

2. **STEAM**

The actual cost of generating and distributing steam is charged to the users. Steam production is determined by the metering of steam leaving the Plant's power plant. These readings are compared to the purchased utilities (raw material usage) for reasonableness.

Distribution basis is determined by meter readings. The steam production meters are also compared to the receiving cost centers usage meters for reasonableness. After review by supervision any normal differences (line loss) are charged (as usage) to the user based on their metered usage.

3. **COOLING WATER**

The actual cost of generating and distributing cooling water is charged to the various user units (including AES LP's Facility). Cooling water production is determined by the metering of the water leaving the towers.



Distribution basis is determined by engineering study. AES LP's usage will be fixed based on standard usage per day. There is a meter in place but the software to send the data to the utility distribution system is not installed as of the date of the Services Agreement. If and when such software is completed, distribution of costs will be based on the meter reading.

4. **REFRIGERATION** (Chilled Water)

The actual cost of generating and distributing Refrigeration is charged to the various user units (including AES LP's Facility). The production of Refrigeration is developed by metering the BTUs leaving the power house.

Distribution basis is determined by engineering study. AES LP's usage will be FIXED based on standard usage per day. There is a meter in place but the software to send the data to the utility distribution system is not installed as of the date of the Services Agreement. If and when such software is completed distribution of costs will be based on the meter reading.

5. **COMPRESSED AIR**

Compressed air is used for instruments and other general uses and does not relate to the cost centers level of production. The production of Compressed Air is measured in cubic feet at the Plant's power house. The actual cost of generating and distributing Compressed Air is charged to the various user units (including AES LP's Facility).

Distribution basis is determined by engineering study. AES LP's usage is FIXED based on a fixed percentage (%) per month. There is a meter in place, but as of the date of the Services Agreement it is not used to distribute costs. If and when the meter is upgraded to proper range and connected to the Plant utility distribution system, distribution of costs will be based on the meter reading.

6. **DOMESTIC WATER** (Costs may be recovered as part of rent under Lease.)

The actual cost of generating and distributing Domestic Water is charged to the various user units (including AES LP's Facility). The plant production of Domestic Water is metered as it leaves the Plant's power house.

AES LP's usage is FIXED based on a standard usage per day. If and when a meter is installed and connected to the utility distribution system, distribution of costs will be based on the meter reading.

7. UTILITIES GENERAL

This is the title given to a group of Plant-wide commonly used utilities that cannot be directly charged to production cost centers. Included are "GROUNDS/FENCES", "ROAD/WALKS", "MISC. FACILITIES", "SANITARY SEWER", "RAILROADS", AND "RAILCAR SWITCHING".

Distribution basis is determined by engineering study. AES LP's usage is FIXED based on a fixed percentage (%) per month. The distribution basis will be reviewed annually for appropriate adjustment at the time of the Plant budget preparation and approval process.

VIII. MAINTENANCE

Maintenance provided by the Plant to AES LP will be charged out at the labor rate for each worker provided plus a markup to cover the actual overhead costs incurred in the shops during the relevant month.

Non-dedicated stores items will be charged as issued to AES LP at the average actual inventory value plus a markup to cover the actual overhead costs incurred in the storeroom during the relevant month. Dedicated spares purchased on behalf of AES LP will be charged to AES LP in the month purchased, rather than the month issued. The overhead charge on dedicated spares will be calculated based on and charged when such spares are issued. Variances arising from taking physical inventory from time to time of AES LP's dedicated stores items will be charged to AES LP.

Shops and Stores overhead distribution methods are under ongoing evaluation and may change from time to time. Changes made in overhead distribution methodology in the future will be applied to AES LP when made, and AES LP will be notified of any such change.

SERVICES AGREEMENTPENSACOLAEXHIBIT D\*Net Capital Employed\* and \*Return\*

\*Net Capital Employed\* shall have the same meaning as that employed in Monsanto's internal accounting system from time to time, and, in general, consists of the sum of (a) inventories, stores and supplies used to support utilities and miscellaneous services at the Plant, and (b) net fixed assets (defined as gross investment less accrued straight line depreciation), for

1. Land
2. Buildings
3. Machinery & Equipment
4. Capitalized Interest
5. Capitalized Spare Parts
6. New Fixed Capital (construction in progress)

all as related to Services being supplied or performed from time to time under the Services Agreement.

\*Net Capital Employed\* over a relevant time period is measured on an average basis by Monsanto. The average is the arithmetical mean between the actual Net Capital Employed as of two different dates, usually the beginning and the end of each calendar year. Allocation of assets to AES LP (i.e., AES LP's proportionate part of aggregate Net Capital Employed for purposes of the Services Agreement for relevant time periods) will be made on the basis of the proportionate usage of Services between AES LP's Facility under the Services Agreement and Plant over the relevant time periods.

\*Return\* on Net Capital Employed (as defined above) for the relevant calendar year shall be the payment to be made by AES LP to Monsanto as an after tax return of twelve (12%) percent. The \*Return\* to be earned by Monsanto shall be contained in the invoices submitted to AES LP during the relevant calendar year, after having been adjusted to a before tax return based on the statutory tax rates applicable from time to time to income earned at the relevant site providing the Services.

SERVICES AGREEMENTPensacolaEXHIBIT 3WASTE WATER SERVICESServiceMaximum Usage

Receipt of Delivery of Sanitary Waste for treatment in the plant sanitary waste treatment facilities for ultimate discharge by Monsanto. <sup>(1)</sup>

As generated, not to exceed level at the time of Monsanto's Use, and may by notice from Monsanto be supplied as an incidence of the tenancy of the Lease, but otherwise deemed for all purposes Services provided under this Services Agreement.

Stormwater collection and disposal to the Escambia River

As naturally occurring and so long as allowed under the Monsanto Permits.

<sup>(1)</sup> Subject to Footnote (3) of Exhibit C.

Exhibit C

As used in this Agreement "Full Cost" shall mean the total actual cost incurred in generating and/or providing the specific utility or service to James River in accordance with Monsanto's then customary internal accounting procedures utilized at its Pensacola plant taking into account historical allocations to the Nonwoven Operations. Based on Monsanto's accounting procedures, actual cost is to include standard cost plus all variances from standard. In addition, such actual cost will include the appropriate share of startup and retirement expenses incurred on cost reduction, safety or environmental projects associated with utilities or services provided to James River.

Exhibit F  
Fiberweb

WASTE SERVICES AGREEMENT

THIS AGREEMENT, made and entered into as of this 19th day of ~~September~~ 1985, by and between MONSANTO COMPANY, a Delaware corporation with its general offices located at 800 North Lindbergh Boulevard, St. Louis, Missouri (hereinafter called "Monsanto"), and JAMES RIVER-NORWALK, INC., a Delaware corporation with its general offices at Norwalk, Connecticut (hereinafter called "James River").

WHEREAS, Monsanto, James River and James River Corporation of Virginia have entered into an Asset Purchase Agreement dated August 28, 1985 (hereinafter referred to as the "Asset Purchase Agreement"), providing for the sale to James River of Monsanto's Nonwovens Operations located at Monsanto's Pensacola Plant; and

WHEREAS, Monsanto and James River have entered into a Lease of even dated herewith (hereinafter referred to as the "Lease"), providing for a lease to James River of certain Leased Premises located at the Pensacola Plant to enable James River to operate James River's Facility and have also entered into a Utilities and Ancillary Services for providing services to James River's Facility (hereinafter referred to as "Utilities and Ancillary Services Agreement"); and

WHEREAS, the terms as defined and used in the Asset Purchase Agreement and the Lease and the Utilities and Ancillary Services Agreement are adopted herein by reference; and

WHEREAS, James River has requested that Monsanto provide certain "Waste Services" as described herein to James River's Facility, and Monsanto is willing to provide such Waste

WASTE SERVICES

Services in accordance with the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties and agreements contained herein, the parties agree as follows:

1. DEFINITIONS. As used in this Agreement each of the following terms shall have the following meaning.

(a) "James River's Facility" shall mean James River's plant, including all assets owned or leased, located on the Leased Premises.

(b) "Delivery" shall mean and shall occur when James River shall have discharged Effluent, Storm Water or Sanitary Waste into Monsanto's pipelines or ditch at the boundary line of the Leased Premises.

(c) "Effluent" shall mean the point source process discharge aqueous industrial waste, discharged from James River's Facility.

(d) "Sanitary Sewer" shall mean Monsanto's sanitary sewer system to which James River's Facility is currently connected.

(e) "Sanitary Waste" shall mean typical domestic (human) waste or other waste as discharged into the Sanitary Sewer by Monsanto over the last three years of the Nonwoven Operations.

(f) "Storm Water" shall mean storm water runoff.

WASTE SERVICES

(g) "Storm Sewer" shall mean Monsanto's storm water sewer system to which James River's Facility is currently connected.

(h) "Ditch" shall mean the westward extension of Monsanto's ditch commonly known as the south outfall Ditch, adjacent to the Leased Premises, which flows into the Escambia River.

(i) "Waste" shall mean Sanitary Waste, Storm Water and Effluent from James River's Facility.

(j) "Waste Facilities" shall mean those facilities or physical assets of Monsanto located at its Pensacola plant used in the performance of Waste Services by Monsanto, including but not limited to the Sanitary Sewer, Storm Sewer and Ditch.

(k) "Waste Services" shall mean the receipt, processing, and discharge of Waste by Monsanto under this Agreement.

2. DELIVERY AND ACCEPTANCE OF WASTE. Subject to the terms and conditions herein stated, James River will deliver and Monsanto will accept the Waste as described below.

(a) James River will Deliver Sanitary Waste into the Sanitary Sewer for processing and discharge by Monsanto.

(b) James River will Deliver Storm Water into the Storm Sewer for discharge by Monsanto.

(c) James River will Deliver Effluent into the Ditch for Monsanto's discharge into the Escambia River.

WASTE SERVICES



3. MEASUREMENT OF EFFLUENT. Should the parties mutually agree to install metering devices or should it become necessary or desirable for environmental, regulatory or other reasons, the cost of such metering will be borne equally by the parties. Should a meter be installed, it shall thereafter determine the amount of Effluent delivered.

4. JAMES RIVER'S OBLIGATIONS AND REPRESENTATIONS.  
James River warrants, represents and agrees that

(a) James River will assure that the Effluent Delivered to Monsanto in the future will not exceed the quality of effluent discharged from the Nonwoven Operations by Monsanto over the last two years. The parties agree that following closing an effluent characterization program will be conducted using appropriate sampling and testing procedures. On the basis of this work an Effluent description acceptable to both parties will be prepared. If, after the Effluent description is agreed to, James River adds to the composition without the written consent of Monsanto, James River shall be liable for all penalties and all costs and damages caused thereby.

(b) Ten days before the beginning of each quarter James River shall provide Monsanto with a good faith estimate of the forecasted quantities and quality of Effluent to be Delivered in such quarter.

(c) James River will not Discharge any Waste onto Monsanto's plant or into the Sanitary Sewer, Storm Sewer or Ditch which is a) toxic, flammable, radioactive, or otherwise hazardous to humans, animals or the environment in the quantities and concentrations Discharged or b) other than as authorized by regulatory permits covering Monsanto's

Pensacola plant. Provided, however, notwithstanding the above, James River shall be permitted to discharge Waste substantially as discharged by Monsanto in the Nonwoven Operations over the two-year period preceding Closing so long as such discharge is permitted by law and consistent with applicable regulatory permits.

(d) As to Deliveries of any Waste not consistent with the terms of this Agreement, without affecting the parties' other obligations and rights under this Agreement, James River shall give Monsanto immediate notice of any such Delivery.

(e) Unless and until the definition of Effluent hereunder is amended, James River will keep Monsanto advised of James River's use of any chemicals in James River's Facility, other than used by Monsanto or in the Plant in the two years prior to this Agreement, which could reasonably (though inadvertently) be delivered as Waste.

5. MONSANTO'S OBLIGATIONS AND REPRESENTATIONS. Monsanto warrants, represents and agrees that:

(a) The Sanitary Sewer, Storm Sewer and Ditch are currently owned and operated by Monsanto. The receipt, handling, processing and discharge of Waste under this Agreement, at the time of execution hereof, is authorized under Federal NPDES Permit No. FL0002488 and State of Florida Permit No. 1017-38097. To the best of Monsanto's knowledge it is in compliance with the terms of and conditions of such permits.

(b) Monsanto will handle, process and discharge the Waste hereunder, provided and so long as Monsanto shall have governmental authorization required to permit Monsanto to do and continue to do any of the foregoing. Monsanto will

WASTE SERVICES

continue to apply for and will make good faith efforts to maintain such authorizations as may be necessary to perform its obligations hereunder. Monsanto's only liability with respect to its failure to perform its obligations hereunder shall be to pay all penalties and costs and damages caused thereby pursuant to Section 12.

(c) Monsanto shall have the right to suspend the receipt, processing and discharge of the Waste and the operation of the Waste Facilities in whole or in part, at any time for reasons of safety or in connection with the maintenance, repair, renewal or replacement of any of the Waste Facilities. Monsanto shall give James River reasonable prior notice of planned shutdowns, including the estimated duration of outage and shall try to schedule planned shutdowns at a time mutually convenient to both parties.

6. MUTUAL OBLIGATIONS AND REPRESENTATIONS. Each party warrants, represents and agrees with the other that:

(a) Each party will notify the other as soon as it has knowledge of a release which crosses or may cross the other's boundary of a reportable quantity of a toxic pollutant or hazardous substance as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, pertinent regulations thereunder or other relevant state or local laws.

(b) Each party will cooperate with the other in collecting and supplying data and in taking other actions reasonably necessary to obtain and maintain all necessary permits to perform hereunder.

(c) Monsanto shall have the right to suspend the receipt, process, discharge of the Waste or any portion thereof, if the receiving, processing or discharging of the

Waste or a portion thereof or the operation of the Waste Facilities will, or is likely to, result in a total elimination or severe reduction in biological system activity or cause the violation of any governmental permit, law or regulation governing the operation of or discharge from its facilities or cause the levying of fines or other penalties upon Monsanto. Monsanto shall consult with James River prior to taking any action permitted by this paragraph to explore other possible alternate courses of action to resolve any problems which exist.

7. FEES. Unless and until Monsanto's "Full Costs" (as defined and computed in the Utilities and Ancillary Services Agreement associated with performance of its obligations hereunder (excluding any costs incurred by Monsanto pursuant to paragraph 12) exceed twenty thousand dollars (\$20,000) in any calendar year James River shall pay no fee to Monsanto. However, to the extent such Costs exceed twenty thousand dollars (\$20,000) James River shall reimburse Monsanto. Monsanto shall yearly provide a bill to James River for any such costs, along with reasonable supporting verification and documentation, and James River shall pay Monsanto within 30 days of receipt of such bill.

8. TERM. This Agreement shall continue as long as the Lease is in effect, unless sooner terminated as provided in Section 9, below.

9. TERMINATION.

(a) Monsanto may terminate the supply of any or all of the Waste Services should Monsanto close its Pensacola plant or should Monsanto generally discontinue the performance or availability of such Waste Service(s) at the Pensacola Plant. Should Monsanto terminate part or all of such Waste Services it will provide James River with as much advance

written notice as practicable (but not less than one hundred twenty (120) days prior notice).

(b) James River may terminate the use of any or all of the Waste Services upon sixty (60) days written notice to Monsanto.

(c) In the event of Termination by either party, Monsanto shall provide an easement across Monsanto's plant (in such a location as specified by Monsanto) to James River to permit James River to construct a pipeline to remove any liquid wastes from James River's Facility. Such pipeline shall be constructed so as not to interfere with or jeopardize Monsanto's business at the Pensacola Plant.

#### 10. NEUTRALIZATION/PIT

(a) In operating the Nonwovens Operations in the two year period preceding the date of this Agreement, before discharging process water into the Ditch such water had to be neutralized in order to qualify the water as Effluent and to otherwise meet the conditions of the NPDES permit. Monsanto accomplished this by use of two clay-lined, limestone neutralization pits ("the Pits") located on the Leased Premises. James River, at its option, may continue to use the Pits. However, it shall be James River's sole responsibility and cost to operate and maintain such Pits, subject to the obligations of Monsanto with respect to the permitting and retrofitting thereof as specified in the Asset Purchase Agreement.

(b) There are, and will be additional, monitoring wells located near the Pits on the Leased Premises, including up-gradient wells. Monsanto shall be permitted to continue to examine and test using such wells. In the event such wells indicate an adverse change in groundwater quality

(measured against the quality of the groundwater at the time of this Agreement) or if required by law, James River shall promptly take such action as is necessary to stop such adverse changes (such as relining the Pits, use of a different use of form of neutralization, use of a collection tank, etc.), subject to the obligations of Monsanto with respect to the permitting and retrofitting of the Pits as specified in the Asset Purchase Agreement.

#### 11. FORCE MAJEURE

(a) Monsanto may suspend or reduce, in whole or in part, the performance or supply of any or all of the Waste Services or any of its obligations hereunder, in the event of: Act of God, war, riot, fire, explosion, accident, flood, sabotage, lack of adequate fuel, power, raw materials, labor, containers or transportation facilities; compliance with governmental requests, laws, regulations, orders or actions; breakage or failure of machinery or apparatus; national defense requirements, labor trouble, strike, lockout or injunction (provided that Monsanto shall not be required to settle a labor dispute against its own best judgment); or any other event, whether or not of the class or kind enumerated herein, beyond the reasonable control of Monsanto; which event hinders, limits or makes impracticable the providing of any such Waste Services to James River or the performance by Monsanto of any of its obligations hereunder. Any Waste Services not provided by reason of this Section 11 shall be resumed upon the elimination of the Force Majeure event.

(b) If all, or substantially all, of the Waste Facilities used by Monsanto to provide the Waste Services, or one or more of such Waste Services, are totally or substantially damaged or destroyed by any of the above described casualties then either party may terminate the Waste Service(s)

WASTE SERVICES

involved upon written notice given to the other party not more than ninety (90) days after the Casualty.

12. FINES, PENALTIES AND DAMAGES

(a) In the event that penalties or fines are assessed against either party or persons for any reason such fines or penalties shall be paid as required by law. The responsible party shall reimburse the other party for that portion of the penalty or fine for which it is responsible.

(b) If James River contributes to damage of the Waste Facilities or its operation by delivering wastes or Effluent in excess of or differing from the requirements of this Agreement it shall pay, to the proportional extent it was responsible, all costs of restoring the Waste Facility to its original operable condition.

(c) Neither party shall be liable to the other party for incidental or consequential damages however arising and regardless of the legal theory on which based, including, without limitation, strict liability, negligence or breach of contract, warranty or representation.

13. ASSIGNMENT. This Agreement or any rights or obligations hereunder shall not be assigned by James River without Monsanto's prior consent, which consent shall not be unreasonably withheld or delayed. Should Monsanto consent to an assignment James River recognizes that Monsanto may do so on the condition that the assignee agrees to fully assume and perform any continuing obligation of James River hereunder and on the condition that additional, reasonable assurances of performance be provided to Monsanto, such as guarantees, bonds or insurance. James River also recognizes that Monsanto reserves the right to renegotiate any fees or other terms under this Agreement before consenting to any assignment.

WASTE SERVICES

14. WAIVERS, MODIFICATIONS, ETC. No waiver, modification or amendment of any provision, exception, term, reservation or condition of this Agreement shall be valid, or of any force or effect, unless made in writing, properly executed by the parties hereto, and specifying with particularity the nature and extent of such waiver, modification or amendment. Any such waiver, modification or amendment in any instance or instances shall, in no event, be construed to be a general waiver, abandonment, modification or amendment of any of the provisions, exceptions, terms, reservations or conditions of this Agreement, but the same shall be strictly limited and restricted to the extent and occasion specified in such signed writing or writings.

15. EMINENT DOMAIN. If any of the Waste Facilities shall be taken for any public use, under any statute or by right of eminent domain, then James River shall have no claim against Monsanto for the value of the unexpired term of this Agreement and shall not be entitled to any part of the condemnation award with respect to such Waste Facilities.

16. CONTROLLING LAW. The validity, interpretation and performance of this Lease and any dispute connected herewith shall be governed and construed in accordance with the laws of the State of Florida.

17. NOTICES. Any notice required or permitted to be given under this Lease shall be in writing and shall be deemed to have been sufficiently given when hand delivered to an officer of either party or when deposited in the U. S. mails, postage prepaid, for mailing by certified or registered mail, return receipt requested, addressed as follows:



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If to James River, addressed to:

James River Corporation - Nonwovens Division  
Simpsonville, SC. 29681  
Attention: Dexter Hagy

with copies to:

Clifford A. Cutchins, IV  
McGuire, Woods & Battle  
One James Center  
Richmond, VA 23219

and

James River Corporation  
Tredegar Street  
Richmond, VA 23217  
Attention: David J. McKittrick,  
Chief Financial Officer

If to Monsanto, addressed to:

Monsanto Company  
800 North Lindbergh Boulevard  
St. Louis, Missouri 63167

Attention: Vice President,  
Monsanto Fibers and Intermediates Company

or to such other address or addresses as may be specified from time to time in a written notice given by such party. The parties shall acknowledge in writing the receipt of any such notice delivered in person.

19. UTILITY LAW. The Waste Services, the related charges, and all other matters set forth in this Agreement are not subject to regulation as a "Public Utility" under Chapters 366 and 367 of the Florida statutes by the Florida Public Service Commission. However, in the event such Commission or some other legal authority may hereafter attempt to assert jurisdiction then James River and Monsanto will join in a formal petition requesting that the affected Waste Services be declared not subject to such statutes and Commission or Authority. Should any portion of the Waste Services be found by a court or agency of competent

WASTE SERVICES

jurisdiction to be subject to such regulation then Monsanto retains the right to terminate as to such Waste Service(s) or renegotiate the terms under which it is obligated to supply the same to James River.

19. SECTION HEADINGS. Headings of particular sections herein are inserted only for convenience, and are in no way to be construed as part of this Lease or as a limitation of the scope of the particular sections to which they refer.

IN WITNESS WHEREOF, Monsanto and James River have caused this Agreement to be duly executed in duplicate originals by their duly authorized representatives, as of the day and year first above written.

MONSANTO COMPANY

By Evelyn B. Bradford RAK  
Vice-President

JAMES RIVER-NORWALK, INC.

By Sandy K. Ketchum  
President

Exhibit H

## UTILITIES AND ANCILLARY SERVICES AGREEMENT

THIS AGREEMENT, made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 1985, by and between MONSANTO COMPANY, a Delaware corporation with its general offices located at 800 North Lindbergh Boulevard, St. Louis, Missouri (hereinafter called "Monsanto"), and JAMES RIVER-NORWALK, INC. a Delaware corporation with its general offices at Norwalk, Connecticut (hereinafter called "James River").

WHEREAS, Monsanto, James River and James River Corporation of Virginia have entered into an Asset Purchase Agreement dated \_\_\_\_\_ (hereinafter referred to as the "Asset Purchase Agreement"), providing for the sale to James River of Monsanto's Nonwovens Operations located at the Pensacola Plant; and

WHEREAS, Monsanto and James River have entered into a Lease of even dated herewith (hereinafter referred to as the "Lease"), providing for a lease to James River of certain Leased Premises located at the Pensacola Plant to enable James River to operate James River's Facility; and

WHEREAS, the terms as defined and used in the Asset Purchase Agreement and the Lease are adopted herein by reference; and

WHEREAS, James River has requested that Monsanto provide certain utilities and services as described herein to James River's Facility, and Monsanto is willing to provide such utilities and services in accordance with the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties and agreements contained herein, the parties agree as follows:

1. DEFINITIONS. As used in this Agreement each of the following terms shall have the following meaning.

(a) "James River's Facility" shall mean James River's plant, including all assets owned or leased, located on the Leased Premises.

(b) "Utilities" shall mean Steam, Nitrogen, Domestic Water, Well Water and Cooling Water, as necessary to process up to 25,000,000 pounds on nylon 6,6 standard flake and as described in Exhibit A attached hereto, and ongoing Solid Waste Disposal Service handling the type of solid waste as generated by Monsanto in its Nonwoven Operations over the two year period preceding Closing (taking into account Buyer processing up to 25,000,000 pounds of nylon 6,6 standard flake).

(c) "Ancillary Services" shall mean emergency fire service, pack make-up, pack and pump cleanout, chemical lab services, extruder and transfer line burnout and spinnerette supply, pickup and delivery of packs, pumps and spinnerettes, all as described in Exhibit B.

(d) "Building Use" shall mean access to and use of Building 719 located on the Pensacola plant site of Monsanto, to be used for roll storage, as had been so utilized by Monsanto's Nonwoven Operations.

2. DELIVERY AND ACCEPTANCE OF UTILITIES AND ANCILLARY SERVICES.

(a) Monsanto shall, pursuant to the terms of this Agreement, and as an incident to the tenancy established by the Lease, provide to James River for use at James River's Facilities on the Leased Premises Utilities, Ancillary Services and Building Use. The parties will mutually and reasonably cooperate with respect to Monsanto's performance of its undertaking pursuant to this Agreement.

(b) Title to the Utilities shall pass to James River upon delivery to the Leased Premises. James River shall return condensate from the steam delivered hereunder, provided such condensate contains no contaminants which will interfere with the efficient operation of Monsanto's boilers. Cooling Water will continue to be provided in the enclosed cooling water system now servicing the Leased Premises. All cooling water provided to the Leased Premises will be recirculated to Monsanto.

3. PAYMENT FOR UTILITIES AND ANCILLARY SERVICES.

(a) James River shall pay Monsanto fees, based on volume of consumption or use by James River, for the provision of Utilities, Ancillary Services and Building Use as stated in Exhibits A through C. Monsanto shall bill James River monthly and James River shall pay Monsanto within thirty (30) days of receipt of such bill.

(b) The fees for providing the Utilities and Ancillary Services hereunder shall be at Monsanto's "Full Cost", as more fully defined in Exhibit H, for providing such Utility, Ancillary Service or Building Use for the first two years of this Agreement and thereafter at 105% of Monsanto's "Full Cost". Full Cost shall be Monsanto's cost using its.

standard accounting practice utilized for its Pensacola plant for providing such Utility or Ancillary Services. Upon James River's request, Monsanto shall provide reasonable verification to James River of "Full Cost". James River shall keep confidential and not disclose to any third party Monsanto's "Full Cost" or any component thereof.

4. TERM. The Utilities and Building Use shall be provided as long as the Lease is in effect, unless sooner terminated as provided in Section 5, below. The Ancillary Services shall be for a period of either (i) three (3) years from the date hereof or (ii) as long as the Lease is in effect, whichever is shorter.

5. TERMINATION.

(a) Monsanto may terminate the supply of any or all of the Utilities and the emergency fire service portion of the Ancillary Services should Monsanto close its Pensacola plant or should Monsanto generally discontinue the performance or availability of such Utility(ies) or such service at its Pensacola plant. Should Monsanto terminate part or all of such Utilities and such emergency fire service it will provide James River with as much advance written notice as practicable, but not less than one hundred eighty (180) days prior notice.

(b) James River may terminate the purchase of any or all of the Utilities and Ancillary Services upon sixty (60) days written notice to Monsanto.

6. MAINTENANCE. Monsanto shall bear the responsibility and cost of maintaining all pipes used to provide utilities to James River up to the outside perimeter of the Leased Premises. James River shall bear the responsibility and cost of maintaining all pipes located on the Leased Premises used

to transport, distribute or otherwise utilize the Utilities. All meters used to measure the amount of Utilities located on the Leased Premises shall be maintained by James River at its cost.

7. QUANTITY/AVAILABILITY.

(a) Monsanto shall provide the Utilities and Ancillary Services to James River's Facility as requested by James River, subject to the minimum and maximum for each listed in Exhibit A. Quantities above such maximums shall be subject to reasonable availability and only as mutually agreed by Monsanto and James River.

(b) Monsanto's obligation to supply Utilities and Ancillary Services is subject to interruption or diminishment due to scheduled repair downtime (advance notice to be provided to James River as is practicable) and also to interruption or diminishment or discontinuance due to force majeure events, described in Section 10, below.

(c) Monsanto represents that the maximum quantities of the Utilities and Ancillary Services set forth in Exhibits A and B, provided to the best of Monsanto's knowledge, exceed the amounts of such utilities and services needed to operate James River's Facilities at the maximum manufacturing capacity established over the last three years before the date of this Agreement. However, James River acknowledges that other utilities and services, such as electricity and natural gas, which are not provided hereunder are also needed to operate James River's Facilities.

8. QUALITY.

(a) As to Utilities and subject to Section 8(c), Monsanto shall provide each of the Utilities in a quality and

composition as is generally produced and used by Monsanto within its Pensacola plant. In the event such quality or composition varies or will vary materially from that existing at Closing, Monsanto will provide James River with such prior notice as is practicable.

(b) As to Ancillary Services and subject to Section 8(c), Monsanto shall provide such services at a level, type and quality as is generally utilized by Monsanto in its Pensacola plant. In the event such quality or composition varies or will vary materially from that existing at Closing, Monsanto will provide James River with such prior notice as is practicable.

(c) Monsanto intends to endeavor to maintain the quality, nature and composition of the Utilities and Ancillary Services at essentially those levels existing at the time of execution of this Agreement and as used by Monsanto in operating the Nonwovens Operation over the one (1) year period before the sale to James River. However, Monsanto shall have no liability to James River if it fails to do so as a result of changes generally made in such type Utilities and Ancillary Services for Monsanto's Pensacola plant and provided Monsanto provides as much prior notice thereof as is practical.

(d) Monsanto shall not be obligated to provide any offsites or facilities for providing Utilities or Ancillary Services in addition to, or different than, those existing at the date of this Agreement.

(e) Monsanto makes no warranty, express or implied, including but not limited to, any warranty of merchantability or fitness for a particular purpose with respect to any of the Utilities or Ancillary Services provided hereunder.



9. METERING. James River shall give Monsanto reasonable access to any meters used to measure Utilities located or which may be located on the Leased Premises.

10. FORCE MAJEURE.

(a) Monsanto may suspend or reduce, in whole or in part, the performance or supply of any or all of the Utilities and Ancillary Services or any of its obligations hereunder, in the event of: Act of God, war, riot, fire, explosion, accident, flood, sabotage, lack of adequate fuel, power, raw materials, labor, containers or transportation facilities; compliance with governmental requests, laws, regulations, orders or actions; breakage or failure of machinery or apparatus, national defense requirements, labor trouble, strike, lockout or injunction (provided that Monsanto shall not be required to settle a labor dispute against its own best judgment); or any other event, whether or not of the class or kind enumerated herein, beyond the reasonable control of Monsanto; which event hinders, limits or makes impracticable the providing of any such Utilities and Ancillary Services to James River or the performance by Monsanto of any of its obligations hereunder. Any Utilities and Ancillary Services not provided by reason of this Section 10 shall be cancelled without liability but this Agreement shall otherwise remain unaffected.

(b) If all, or substantially all, of the facilities or assets used by Monsanto to provide the Utilities and Ancillary Services, or one or more of such Utilities and Ancillary Services, are totally or substantially damaged or destroyed by any of the above described casualties, then either party may terminate the Utility(ies) or Ancillary Service(s) involved upon written notice given to the other party not more than ninety (90) days after the casualty.

## 11. INDEMNIFICATION.

(a) Subject to the provisions of subsection (c) below, neither Monsanto, nor its employees or agents shall be liable to James River for, and James River releases and discharges Monsanto, its employees and agents from any and all claims, liabilities, actions, suits, judgments, losses, injuries, damages (including, without limitation, incidental or consequential damages), costs and expenses (all of the foregoing herein collectively called "Liabilities, Actions and Damages") arising out of or connected with any act or omission, negligent or otherwise of Monsanto, its employees or agents, with respect to any emergency fire service, or any failure to provide the same to James River other than a refusal by Monsanto in breach of this Agreement.

(b) James River assumes sole responsibility for, and shall indemnify and hold harmless Monsanto, its present, past and future employees and agents from and against, any all claims, liabilities, suits, proceedings, judgments, orders, fines, penalties, damages, losses, costs and expenses (including, without limitation, costs of defense, settlement and reasonable attorneys' fees and expenses), (all of the foregoing herein collectively called "Liabilities, Proceedings and Damages"), arising out of or connected with (a) any act or omission, neglect or otherwise, of Monsanto, its employees or agents, with respect to any emergency fire service provided to James River hereunder; (b) any failure to provide the same to James River (other than a refusal by Monsanto in breach of this Agreement); (c) any act or omission of James River, its agents, representatives or employees; or (d) any failure of James River or any of its employees or agents to observe or comply with any of James River's duties or obligations under this Agreement. The foregoing obligations of James River shall include, but not be limited to, any and all Liabilities, Proceedings and

Damages for or relating to (i) injury to or death of any person (including, without limitation, employees or agents of James River or Monsanto), (ii) damage to or loss or destruction of any property, or loss of use thereof (including, without limitation, property of James River or Monsanto, or their employees or agents), and (iii) any contamination of, injury or damage to or adverse effect on persons, animals, aquatic and wildlife, vegetation, waters or the environment.

The foregoing indemnification shall apply regardless of the basis of liability or legal principle involved (including, without limitation, contract, warranty, negligence, strict liability, other tort, violation of law or otherwise), but shall not apply to Liabilities, Proceedings and Damages for which Monsanto is liable under the Asset Purchase Agreement.

(c) The provisions of subsections (a) and (b), above, shall not apply to any Liabilities, Actions and Damages caused solely by the willful misconduct or fraud of Monsanto.

(d) The provisions of subsection (b), above, shall not apply to any Liabilities, Actions or Damages applicable solely to Monsanto facilities or assets other than those used for providing Utilities or Ancillary Services to James River.

12. ASSIGNMENT James River shall not assign this Agreement or any rights or obligations hereunder without Monsanto's prior consent, which shall not unreasonably be withheld or delayed. Should Monsanto consent to an assignment, James River recognizes that Monsanto may do so on the condition that the assignee agrees to fully assume and perform any continuing obligation of James River hereunder and on the condition that additional, reasonable assurances of performance be provided to Monsanto, such as guarantees, bonds or insurance. James River also recognizes that

Monsanto reserves the right to renegotiate any fees or other terms under this Agreement before consenting to any assignment.

→ 13. WAIVERS, MODIFICATIONS, ETC. No waiver, modification or amendment of any provision, exception, term, reservation or condition of this Agreement shall be valid, or of any force or effect, unless made in writing, properly executed by the parties hereto, and specifying with particularity the nature and extent of such waiver, modification or amendment. Any such waiver, modification or amendment in any instance or instances shall, in no event, be construed to be a general waiver, abandonment, modification or amendment of any of the provisions, exceptions, terms, reservations or conditions of this Lease, but the same shall be strictly limited and restricted to the extent and occasion specified in such signed writing or writings.

14. EMINENT DOMAIN. If any of the facilities or assets used by Monsanto to provide the Utilities and Ancillary Services, or any part thereof, shall be taken for any public use, under any statute or by right of eminent domain, then James River shall have no claim against Monsanto for the value of the unexpired term of this Agreement and shall not be entitled to any part of the condemnation award with respect to such facilities or assets.

15. CONTROLLING LAW. The validity, interpretation and performance of this Lease and any dispute connected herewith shall be governed and construed in accordance with the laws of the State of Florida.

16. NOTICES. Any notice required or permitted to be given under this Lease shall be in writing and shall be deemed to have been sufficiently given when hand delivered to an officer of either party or when deposited in the U. S.

mails, postage prepaid, for mailing by certified or registered mail, return receipt requested, addressed as follows:

If to James River, addressed to:

James River Corporation - Nonwovens Division  
Simpsonville, SC 29681  
Attention: Dexter Hagy

with copies to:

Clifford A. Cutchins, IV  
McGuire, Woods & Battle  
One James Center  
Richmond, VA 23219

and

James River Corporation  
Tredegar Street  
Richmond, VA 23217  
Attention: David J. McKittrick,  
Chief Financial Officer

If to Monsanto, addressed to:

Monsanto Company  
800 North Lindbergh Boulevard  
St. Louis, Missouri 63167

Attention: Earl N. Brasfield, Vice President,  
Monsanto Fibers and Intermediates Company

or to such other address or addresses as may be specified from time to time in a written notice given by such party. The parties shall acknowledge in writing the receipt of any such notice delivered in person.

→ 17. UTILITY LAW. The Utilities and Ancillary Services, the related charges, and all other matters set forth in this Agreement are not subject to regulation as a "Public Utility" under Chapters 366 and 367 of the Florida statutes by the Florida Public Service Commission. However, in the event such Commission or some other legal authority may hereafter attempt to assert jurisdiction then James River

and Monsanto will join in a formal petition requesting that the affected Utilities and Ancillary Services be declared not subject to such statutes and Commission or Authority. Should any portion of the Utilities and Ancillary Services be found by a court or agency of competent jurisdiction to be subject to such regulation then Monsanto retains the right to terminate as to such Utility(ies) or Ancillary Service(s) or renegotiate the terms under which it is obligated to supply the same to James River.

18. SECTION HEADINGS. Headings of particular sections herein are inserted only for convenience, and are in no way to be construed as part of this Lease or as a limitation of the scope of the particular sections to which they refer.

IN WITNESS WHEREOF, Monsanto and James River have caused this Agreement to be duly executed in duplicate originals by their duly authorized representatives, as of the day and year first above written.

MONSANTO COMPANY

By \_\_\_\_\_

JAMES RIVER-NORWALK, INC.

By \_\_\_\_\_

PURITAN-BENNETT CORPORATION

AND

MONSANTO COMPANY

NITROUS OXIDE SALES AGREEMENT

NITROUS OXIDE SALES AGREEMENT

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Exhibit A - General Description of Stream



NITROUS OXIDE SALES AGREEMENT

THIS AGREEMENT, made and entered into as of this 31st day of December, 1981, by and between MONSANTO COMPANY, a Delaware corporation with its general offices at 800 North Lindbergh Boulevard, St. Louis, Missouri (hereinafter called "Monsanto") and PURITAN-BENNETT CORPORATION, a Delaware corporation with its general offices at Oak at Thirteenth Street, Kansas City, Missouri 64106 (hereinafter called "Puritan-Bennett").

## WITNESSETH:

WHEREAS, Monsanto owns certain land near Pensacola, Florida on which it operates its Pensacola plant (hereinafter, together with all additions and changes thereto, referred to as the "Pensacola Plant"); and

WHEREAS, a nitrous oxide stream (hereinafter referred to as the "Stream") is generated as a by-product of Monsanto's current adipic acid operations at the Pensacola Plant; and

WHEREAS, Monsanto and Puritan-Bennett have entered into a Land Lease Agreement of even date herewith (hereinafter referred to as the "Land Lease"), providing for the lease to Puritan-Bennett of a portion of Monsanto's land at the Pensacola Plant for the purpose of constructing, operating and maintaining thereon a gas extraction, purification and loading facility (hereinafter referred to as the "Facility") for processing the Stream; and

Bennett will reimburse Monsanto for any and all costs and expenses (including plant overheads) incurred by Monsanto in relocating a pipe rack adjacent to the Facility in order to facilitate the truck loading of nitrous oxide by Puritan-Bennett. All such costs and expenses shall be determined by Monsanto and shall be paid to Monsanto within thirty (30) days after the date of Monsanto's invoice to Puritan-Bennett for such costs and expenses. All such construction, operation, start-up, maintenance and relocation shall be performed by Monsanto in a manner consistent with its normal engineering, construction and operational standards and practices.

10. MONSANTO SERVICES AND UTILITIES.

(a) Monsanto will make available to Puritan-Bennett, for use at the Facility, steam and water (both potable and cooling tower water) which is not required by Monsanto's other operations at its Pensacola Plant. Title to, and risk of loss of, such steam and water shall pass to Puritan-Bennett when such steam and water passes the boundary of the Leased Premises. All such steam and water shall be delivered to Puritan-Bennett on an "AS IS" BASIS, "WITH ALL FAULTS" AND WITHOUT ANY EXPRESS OR IMPLIED WARRANTY. Monsanto's determinations of the quantity of such steam and water delivered to Puritan-Bennett shall govern unless proved to be in error.

(b) Puritan-Bennett shall pay Monsanto, for all such steam and water delivered to it by Monsanto, an amount equal to all costs and expenses (including plant overheads) incurred by Monsanto in generating, collecting and providing such steam and

water to Puritan-Bennett, as well as a facilities use charge with respect to the facilities owned by Monsanto which are used to provide steam or water to Puritan-Bennett. Such facilities use charge will be calculated so as to provide Monsanto with a ten percent (10%) after tax internal rate of return on the portion of the use of such facilities allocated to Puritan-Bennett by Monsanto. Such costs, expenses, facilities use charge and internal rate of return shall be determined by Monsanto in accordance with Monsanto's accounting procedures in effect from time to time and shall be paid to Monsanto within thirty (30) days after the date of Monsanto's invoices to Puritan-Bennett for such items.

(c) The Monsanto facilities used in providing such steam and water are now and will continue to be also used and employed by Monsanto in and for various other Monsanto facilities and operations at the Pensacola Plant, whether now existing or hereafter to be constructed or conducted. Puritan-Bennett recognizes that such use by Monsanto is of primary importance. Monsanto shall not be required to do anything hereunder which would interfere with such other uses and which would obligate Monsanto to deviate from its ordinary and customary manner of operation at the Pensacola Plant. Monsanto shall endeavor to advise Puritan-Bennett of any planned actions at the Pensacola Plant which are expected to materially adversely interfere with the supply of such steam and water to the Facility.

(d) If any governmental law, order, regulation or decree shall prevent or limit Monsanto in arranging for such steam and water or providing facilities for such purposes or in

the event Monsanto may be deemed to be or be required to be licensed as a public utility, or as a carrier or be subject to or regulated by any public utility, carrier or similar law or authority because of any such steam or water or facilities used for such purposes provided or arranged for under this Agreement, then, in any such event Monsanto shall not be required to arrange for the provision of or to provide the steam or water so limited, restricted or regulated.

11. STEAM CONDENSATE. Puritan-Bennett will deliver to Monsanto, at no charge to Monsanto, all steam condensate from the Facility. Title to, and risk of loss of, such steam condensate shall pass to Monsanto when it passes the boundary of the Leased Premises. Such steam condensate shall not contain any components or contaminants which will have an adverse impact on Monsanto's boiler system at the Pensacola Plant. The scheduling of deliveries of such materials to Monsanto shall be coordinated by the parties.

12. EXCUSE OF PERFORMANCE. The performance or observance by either party of any obligations of such party under this Agreement (other than the obligations set forth in Sections 6, 7 and 8 hereof) may be suspended by it, in whole or in part, without liability in the event of any of the following which prevents such performance or observance: Act of God, war, riot, fire, explosion, accident, flood, sabotage, strike, lockout, injunction, inability to obtain fuel, power, raw materials, labor, containers or transportation facilities, breakage or failure of machinery or apparatus, national defense requirements, compliance with governmental laws, regulations, orders or action, or any

other cause (whether similar or dissimilar) beyond the reasonable control of such party; provided, however, that neither party shall be required to settle a labor dispute against its own best judgment. Deliveries suspended or not made by reason of this section shall be cancelled without liability, but this Agreement shall otherwise remain unaffected.

13. ASSIGNMENT. Puritan-Bennett may not, whether by operation of law or otherwise, assign, subcontract or otherwise transfer any of its rights nor delegate the performance of any of its obligations hereunder without Monsanto's prior written consent, and any attempted assignment, subcontracting, transfer or delegation without such consent shall be void and of no effect. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

14. NOTICES. Any notice required or permitted to be given under this Agreement shall be in writing, and shall be deemed to have been sufficiently given when hand delivered to an officer of the party to whom such notice is given or when deposited in the U.S. mails, postage prepaid, for mailing by certified or registered mail, addressed as follows:

If to Monsanto, addressed to:

Monsanto Company  
800 North Lindbergh Boulevard  
St. Louis, Missouri 63167

Attention: Business Development Director  
Monsanto Chemical Intermediates Company

If to Puritan-Bennett, addressed to:

Puritan-Bennett Corporation  
Oak at Thirteenth Street  
Kansas City, Missouri 64106

Attention: Manager Gas Products

or to such other address or addresses as may be specified from time to time in a written notice given by such party. The parties shall acknowledge in writing the receipt of any such notice delivered in person.

15. MISCELLANEOUS.

(a) This Agreement and the Confidentiality Agreement between the parties dated September 5, 1980, constitute the full understanding of the parties, a complete allocation of risks between them and a complete and exclusive statement of the terms and conditions of their agreement. All prior agreements, negotiations, dealings and understandings, whether written or oral, regarding the subject matter hereof, except for such Confidentiality Agreement, are hereby superseded and merged into this Agreement. No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain or supplement the terms or conditions of this Agreement shall be binding unless hereafter made in writing and signed by the party to be bound, and no modification shall be effected by the acknowledgment or acceptance of purchase order or shipping instruction forms containing terms or conditions at variance with or in addition to those set forth in this Agreement. No waiver by either party with respect to any breach or default or of any right or remedy and no course of dealing or performance shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing signed by the party to be bound.

(b) As used in this Agreement, employees or agents of a party hereto shall be deemed to include, without limitation, such party's past, present and future officers and directors.

(c) Section headings as to the contents of particular sections are for convenience only and are in no way to be construed as part of this Agreement or as a limitation of the scope of the particular sections to which they refer.

(d) The validity, interpretation and performance of this Agreement and any dispute connected herewith shall be governed and construed in accordance with the laws of the State of Missouri.

(e) If any term or provision of this Agreement or any application thereof shall be invalid or unenforceable, the remainder of this Agreement or any other application of such term or provision shall not be affected thereby.

IN WITNESS WHEREOF, Monsanto and Puritan-Bennett have each caused this Nitrous Oxide Sales Agreement to be executed in duplicate originals by its duly authorized representatives as of the day and year first set forth above.

PURITAN-BENNETT CORPORATION

MONSANTO COMPANY

By Arthur C. Kelle, Jr. 11/5/82  
Title President

By [Signature]  
Title Vice President - MCI C.V.F.  
jmm

LAND LEASE

THIS LAND LEASE AGREEMENT, made and entered into as of this 3/4 day of December, 1981, by and between MONSANTO COMPANY, a Delaware corporation with its general offices at 800 North Lindbergh Boulevard, St. Louis, Missouri (hereinafter called "Monsanto"), and PURITAN-BENNETT CORPORATION, a Delaware corporation with its general offices at 13th & Oak Street, Kansas City, Missouri (hereinafter called "Puritan-Bennett").

WHEREAS, Monsanto owns certain land near Pensacola, Florida, on which it operates its Pensacola plant (hereinafter, together with all additions and changes thereto, referred to as the "Pensacola Plant"); and

WHEREAS, the parties hereto have entered into a Nitrous Oxide Sales Agreement of even date herewith (hereinafter referred to as the "Nitrous Oxide Agreement"), providing for the sale to Puritan-Bennett of a nitrous oxide gas stream generated at Monsanto's Pensacola Plant; and

WHEREAS, Puritan-Bennett desires to lease from Monsanto a portion of Monsanto's land at the Pensacola Plant for the purpose of constructing, operating and maintaining thereon a gas extraction, purification and loading facility for processing such nitrous oxide gas stream (hereinafter and in said Nitrous Oxide Agreement referred to as the "Facility");



by their duly authorized representatives, as of the day and year first above written.

ATTEST:

J. R. Blum, Jr.

MONSANTO COMPANY

By: Robert E. Burke RMR  
Gmm  
1/17/82

ATTEST:

Tara P. Shott  
Account Secretary

PURITAN-BENNETT CORPORATION

By: Arthur C. Cole, Jr. 1/15/82

STATE OF MISSOURI )  
COUNTY OF ST. LOUIS )

BEFORE ME, the undersigned authority, on this day personally appeared Robert E. Burke, known to me to be the person whose name is subscribed to the foregoing instrument as Group Vice President of MONSANTO COMPANY, a corporation, and acknowledged to me that he executed said instrument for the purposes and consideration therein expressed, and as the act of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 5<sup>th</sup> day of January, 1982.

Patricia A. Facea  
Notary Public in and for  
St. Louis County, Missouri

My commission expires:

2-12-85

PATRICIA A. FACEA  
NOTARY PUBLIC STATE OF MISSOURI  
ST. LOUIS CO  
MY COMMISSION EXPIRES FEB 12 1985



STATE OF Missouri )  
COUNTY OF Jackson )

BEFORE ME, the undersigned authority, on this day personally appeared Burt A. Dabbs, Jr., known to me to be the person whose name is subscribed to the foregoing instrument as President of PURITAN-BENNETT CORPORATION, a corporation, and acknowledged to me that he executed said instrument for the purposes and consideration therein expressed, and as the act of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 15<sup>th</sup> day of January, 1982.

E. Kay Sutterly  
Notary Public in and for  
Jackson County, Missouri

My commission expires:

MAY 15 '92 13:14 2 17 85

NOTARY PUBLIC STATE OF MISSOURI  
JACKSON CO.  
MY COMMISSION EXPIRES MAY 15 1992



# Monsanto

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MONSANTO CHEMICAL COMPANY  
P. O. Box 12830  
Pensacola, Florida 32575-2830  
Phone: (904) 968-7000

May 22, 1992

Mr. Robert E. Caison  
Plant Manager  
Advanced Elastomer Systems  
604 Chemstrand Road  
Cantonment FL 32533

Dear Mr. Caison:

RE: Provision of water and wastewater service to  
Advanced Elastomer Systems, L.P. (AES LP)

On December 3, 1991 the Board of County Commissioners of Escambia County, Florida adopted a resolution pursuant to Section 367.171, Florida Statutes, declaring the water and wastewater utilities in that county subject to the provisions of the Water and Wastewater Regulatory Law, Chapter 367, Florida Statutes, as administered by the Florida Public Service Commission (FPSC). By Order No. 25593, issued on January 13, 1992, the FPSC acknowledged Escambia County's resolution and formally accepted jurisdiction over the regulation of water and wastewater facilities in Escambia County.

Order No. 25593 also required all "utilities" providing water and/or wastewater services in Escambia County to register with the commission by February 13, 1992. Utilities were further required to apply for either a "grandfather" certificate under Section 367.171(2)(b), F.S., or an exemption under Section 367.031, F.S., by April 13, 1992.

As you are aware, Monsanto provides domestic water, steam, cooling water and wastewater service to you in accord with the terms of Exhibits B, C, D and E of the Services Agreement entered into between AES LP and Monsanto Company on December 20, 1990. Pursuant to Section VII(c)(6) of Exhibit B to the Services Agreement, AES LP is billed by Monsanto for all domestic water delivered to it based on a fixed proration of the actual direct and indirect cost of generating and distributing this water. Likewise, Section VII(c')(7) of Exhibit B uses a fixed percentage per month of the above calculated domestic water usage to set wastewater service

Advanced Elastomer Systems, L.P.  
May 22, 1992  
Page 2

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charges. Section 7 of the Services Agreement adds to these allocated costs a "return" on "net capital employed" (as defined in Exhibit D) which is adjusted annually on each January 1. Based upon conversations with FPSC Staff, the billing arrangements found in Exhibits B, C, D and E and Section 7 of the Services Agreement may bring Monsanto within the definition of public utility under Section 367.021(12), F.S., and, therefore, may cause Monsanto to be regulated by the FPSC.

In order to definitively preclude the possibility of regulation by the FPSC, Monsanto will continue to provide domestic water and wastewater services to you as stated in Exhibits B, C, D and E of the Services Agreement, but waives payment under those exhibits for all domestic water and wastewater service provided after March 31, 1992 until further notice. All other provisions of the Services Agreement shall remain in full force and effect.

Should you have any questions about the above, please contact Albert Gaudet, Site Planning, at 968-7101.

Sincerely yours,



A. J. Gaudet  
Site Planning

# Monsanto

MONSANTO CHEMICAL COMPANY  
P. O. Box 12830  
Pensacola, Florida 32575-2830  
Phone: (904) 968-7000

May 22, 1992

Mr. James T. Walker  
Plant Manager  
Fiberweb North America, Inc.  
610 Chemstrand Road  
Cantonment, Florida 32533

Dear Mr. Walker:

RE: Provision of Domestic and Well Water and Waste Services to Fiberweb North America, Inc. (Fiberweb)

On December 3, 1991 the Board of the County Commissioners of Escambia County adopted a resolution pursuant to Section 367.171, Florida Statutes, declaring the water and wastewater utilities in that county subject to the provisions of the Water and Wastewater Regulatory Law, Chapter 367, Florida Statutes as administered by the Florida Public Service Commission (FPSC). By Order No. 25593, issued on January 13, 1992, the FPSC acknowledged Escambia County's resolution and formally accepted jurisdiction over the regulation of water and wastewater facilities in Escambia County.

Order No. 25593 also required all "utilities" providing water and/or wastewater services in Escambia County to register with the Commission by February 13, 1992. Utilities were further required to apply for either a "grandfather" certificate under Section 367.171(2) (b), F.S., or an exemption under Section 367.031, F.S., by April 13, 1992.

As you are aware, Monsanto provides steam, domestic water, well water, and cooling water to you in accord with the terms of Section 16 and Utilities Exhibits B, C and H (Utilities and Ancillary Services Agreement), of the Lease Agreement entered into between James River-Norwalk, Inc. (James River) and Monsanto Company on September 19, 1985 and assigned to and assumed by Fiberweb on April 4, 1990.

Pursuant to Section 3 of Exhibit H, Fiberweb is billed by Monsanto for all water and steam delivered to it an amount equal to Monsanto's full cost for the first two years of the agreement and thereafter at 105% of Monsanto's full cost. Full cost is defined as Monsanto's cost using its standard accounting practice for providing such service. Section 17 of Exhibit H provides that should the provision of water to Fiberweb require Monsanto to be regulated as a public utility, Monsanto retains the right to terminate the provision of water or renegotiate the terms under which it is required to supply same to Fiberweb.

Pursuant to the Waste Services Agreement, Exhibit F to the Lease, entered into between James River Corporation on September 19, 1985, and assigned to and

Mr. James T. Walker

2

May 22, 1992

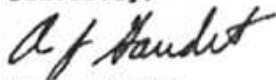
assumed by Fiberweb on April 4, 1990, Monsanto also provides waste services to Fiberweb, which are defined by Section 1 of Exhibit F as the receipt, processing and discharge of sanitary waste, storm water, and effluent. Section 7 of Exhibit F requires payment when Monsanto's "full costs," as defined in Exhibit H, exceed \$20,000 in any calendar year. Section 18 of Exhibit F provides that should the provision of waste services to Fiberweb require Monsanto to be regulated as a public utility, Monsanto retains the right to terminate the provision of such service or renegotiate the terms under which it is required to provide same to Fiberweb.

Based upon our conversations with FPSC Staff, the billing arrangement found in Section 3 may bring Monsanto within the definition of public utility as found in Section 367.021(12), P.S., and, therefore, may subject Monsanto to regulation by the FPSC.

In order to definitively preclude the possibility of regulation by the FPSC, Monsanto will continue to provide domestic and well water waste services as stated in Exhibit H and Exhibit F respectively, but waives payment under those exhibits for all domestic and well water, as well as waste services, provided after March 31, 1992, until further notice. All other sections of the agreement shall remain in full force and effect.

Should you have any questions about the above, please contact Albert Gaudet, Site Planning, at 968-7101.

Sincerely,



A. J. Gaudet  
Site Planning

# Monsanto

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MONSANTO CHEMICAL COMPANY

P. O. Box 12830

Pensacola, Florida 32575-2830

Phone: (904) 968-7000

May 22, 1992

Mr. Walter Ruland  
Plant Manager  
Puritan-Bennett Corporation  
650 Chemstrand Road  
Cantonment FL 32533

Dear Mr. Ruland:

RE: Provision of water to Puritan-Bennett Corporation  
(Puritan-Bennett)

On December 3, 1991 the Board of County Commissioners of Escambia County, Florida adopted a resolution pursuant to Section 367.171, Florida Statutes, declaring the water and wastewater utilities in that county subject to the provisions of the Water and Wastewater Regulatory Law, Chapter 367, Florida Statutes, as administered by the Florida Public Service Commission (FPSC). By Order No. 25593, issued on January 13, 1992, the FPSC acknowledged Escambia County's resolution and formally accepted jurisdiction over the regulation of water and wastewater facilities in Escambia County.

Order No. 25593 also required all "utilities" providing water and/or wastewater services in Escambia County to register with the commission by February 13, 1992. Utilities were further required to apply for either a "grandfather" certificate under Section 367.171(2)(b), F.S., or an exemption under Section 367.031, F.S., by April 13, 1992.

As you are aware, Monsanto provides water to you in accord with the terms of Section 10 of the Nitrous Oxide Sales Agreement entered into between the Puritan-Bennett Corporation and Monsanto Company on January 15, 1982 (the Agreement). Pursuant to Section 10(b) of the Agreement, Puritan-Bennett is billed by Monsanto for all water and steam delivered to it an amount equal to all costs and expenses (including plant overheads) associated with the delivery of water and steam to Puritan-Bennett as well as a "facilities use charge" for those facilities owned by Monsanto which are used to provide the steam and water. Section 10(d) of the Agreement allows

Puritan-Bennett Corporation  
May 22, 1992  
Page 2

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Monsanto to cease providing water and steam to Puritan-Bennett should the provision of same require Monsanto to be regulated as a public utility. Based upon conversations with FPSC Staff, the billing arrangement found in Section 10 of the Agreement may bring Monsanto within the definition of "public utility" under Section 367.021(12), F.S., and, therefore, may cause Monsanto to be regulated by the FPSC.

In order to definitively preclude the possibility of regulation by the FPSC, Monsanto will continue to provide water service as stated in Sections 10(a) and (c) but waives payment under Section 10(b) for all potable water provided after March 31, 1992 until further notice. All other provisions of the Agreement shall remain in full force and effect.

Should you have any questions about the above, please contact Albert Gaudet, Site Planning, at 968-7101.

Sincerely yours,



A. J. Gaudet  
Site Planning

# Monsanto

MONSANTO CHEMICAL COMPANY

P. O. Box 12830

Pensacola, Florida 32575-2830

Phone (904) 968-7000

May 22, 1992

Mr. Gerald McArthur, President  
Monsanto Employees Credit Union  
220 East 9 Mile Road  
Pensacola FL 32514

Dear Mr. McArthur:

RE: Provision of water and wastewater service to  
Monsanto Employees Credit Union (MECU)

On December 3, 1991 the Board of County Commissioners of Escambia County, Florida adopted a resolution pursuant to Section 367.171, Florida Statutes, declaring the water and wastewater utilities in that county subject to the provisions of the Water and Wastewater Regulatory Law, Chapter 367, Florida Statutes, as administered by the Florida Public Service Commission (FPSC). By Order No. 25593, issued on January 13, 1992, the FPSC acknowledged Escambia County's resolution and formally accepted jurisdiction over the regulation of water and wastewater facilities in Escambia County.

Order No. 25593 also required all "utilities" providing water and/or wastewater services in Escambia County to register with the commission by February 13, 1992. Utilities were further required to apply for either a "grandfather" certificate under Section 367.171(2)(b), F.S., or an exemption under Section 367.031, F.S., by April 13, 1992.

As you are aware, Monsanto provides water and wastewater service to you in accord with the terms of your premises lease. Based upon conversations with FPSC Staff, the provision of water and wastewater service may bring Monsanto within the definition of "public utility" under Section 367.021(12), F.S., and, therefore, may cause Monsanto to be regulated by the FPSC.

In order to definitively preclude the possibility of regulation by the FPSC, Monsanto will continue to provide water and wastewater service to you, but waives your \$10.00 annual lease payment effective March 31, 1992 until further notice. All other provisions of the premises lease shall remain in full force and effect.

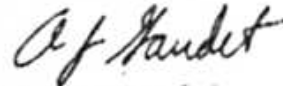


Monsanto Employees Credit Union  
May 22, 1992  
Page 2

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Should you have any questions about the above, please contact  
Albert Gaudet, Site Planning, at 968-7101.

Sincerely yours,



A. J. Gaudet  
Site Planning

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## ATTACHMENT 5

APPLICATION OF MONSANTO COMPANY FOR  
NONJURISDICTIONAL FINDING  
DOCKET NO. 920095-WS

ATTACHMENT 5

I believe this system to be nonjurisdictional under Section 367.021(12), F.S., and Rule 25-30.060(3)(j), F.A.C., for the reasons stated in the Application of Monsanto Company for Nonjurisdictional Finding filed on May 22, 1992 in the above-cited docket number.

Monsanto Company

Applicant

May 22, 1992

Date

L. F. Hebert / B.E.H.  
Signature

Plant Manager  
Title

c:0551