

EXHIBIT B

FACTUAL BASIS

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2
3 For many years defendant MONSANTO COMPANY (referred to as
4 "Monsanto" or "defendant") has been a large agrochemical and
5 biotechnology company. Monsanto's multinational business operations
6 include locations on the Hawaiian Islands of Maui, Molokai, and Oahu
7 that Monsanto has used to grow both conventional and genetically
8 modified seed crops. As part of Monsanto's operations, Monsanto's
9 employees have purchased and sprayed various "restricted use
10 pesticides" on the seed crops.

11 The Federal Insecticide, Fungicide, and Rodenticide Act
12 ("FIFRA") regulated the registration, sale, distribution, and use of
13 pesticides. Under FIFRA, pesticides were classified as general use
14 pesticides or "restricted use pesticides." A "restricted use
15 pesticide" could not be purchased or used by the general public and
16 could only be used by a certified applicator due to the possible
17 adverse effects to the environment and injury to applicators or
18 bystanders that could result.

19 For years Monsanto occasionally sprayed and stored Penncap-M, a
20 pesticide that contained methyl parathion as the sole active
21 ingredient, on its research and seed crop locations on Oahu, Maui,
22 and Molokai. Penncap-M had been classified as a restricted use
23 pesticide under FIFRA. In March 2010, however, two manufacturers of
24 Penncap-M voluntarily sought the cancellation of Penncap-M's FIFRA
25 registrations. Subsequently, on July 27, 2010, the Environmental
26 Protection Agency ("EPA") issued a cancellation order ("the
27 cancellation order") that canceled the FIFRA registrations for
28 Penncap-M, prohibited all sale and distribution of end-use Penncap-M

1 as of August 31, 2013, and further prohibited all use of existing
2 stocks of end-use Pennacap-M as of December 31, 2013.

3 In addition to publishing notices about the cancellation order
4 in the Federal Register, the EPA also sent an email notice of the
5 cancellation order to an email listserv. This email notice was
6 received by Monsanto's regulatory compliance department in April
7 2010. Due to the ban on Pennacap-M, knowingly spraying Pennacap-M on
8 any of Monsanto's seed crop fields on or after December 31, 2013,
9 would constitute a criminal violation of FIFRA.

10 Further, because of the Pennacap-M ban, as well as Monsanto's
11 receipt and knowledge of the cancellation order, any Pennacap-M in
12 excess of one kilogram (2.2 pounds) that Monsanto knowingly stored
13 after December 31, 2013, had to be managed as an acute hazardous
14 waste in compliance with the Resource Conservation and Recovery Act
15 ("RCRA").

16 In July of 2013 Monsanto had stopped spraying Pennacap-M at its
17 location on Molokai. From March 2013 through August 2014, Pennacap-M
18 appeared on lists of chemicals to be disposed of at the Molokai
19 location. Nevertheless, during that period Monsanto's Molokai
20 location knowingly stored 180 pounds of Pennacap-M hazardous waste,
21 which it ultimately disposed of with a licensed hazardous waste
22 disposal company on September 17, 2014.

23 By virtue of its stop-use date and Monsanto's prior
24 decision to stop using Pennacap-M, as of December 31, 2013, at the
25 latest, the Pennacap-M stored by Monsanto on Molokai was an acute
26 hazardous waste under RCRA. Moreover, because Monsanto had
27 generated and stored more than one kilogram (2.2 pounds) of Pennacap-
28 M at its Molokai location, Monsanto's Molokai site was deemed under

1 RCRA to be a Large Quantity Generator of a hazardous waste. As a
2 result, Monsanto knowingly stored an acute hazardous waste in
3 violation of RCRA's prohibition against knowingly storing a
4 hazardous waste without a permit.

5 During 2013, prior to the December 31, 2013, stop use date,
6 Monsanto sprayed and stored Pennacap-M on its research and seed crop
7 locations on Maui. On July 15, 2014, after Monsanto employees had
8 been notified of Pennacap-M's stop use date, Monsanto knowingly
9 sprayed Pennacap-M on two acres of corn seed research crops at its
10 Valley Farm location on Maui. At the time of that spraying,
11 defendant was aware that years earlier the re-entry interval for
12 Pennacap-M, which was the period of time that had to elapse before
13 workers could re-enter an area where Pennacap-M was sprayed, had been
14 increased from five to thirty-one days. Nevertheless, approximately
15 seven days after the July 15, 2014, spraying, Monsanto's employees
16 were told to and did re-enter the site where the Pennacap-M had been
17 sprayed.

18 Shortly after its July 2014 spraying of Pennacap-M, Monsanto
19 took steps to identify which of its sites had Pennacap-M and,
20 ultimately, to dispose of the Pennacap-M at the following Maui
21 locations -- Valley, Maalaea, and Piilani. Nevertheless, on or
22 about July 21, 2014, Monsanto knowingly stored approximately 111
23 gallons of Pennacap-M hazardous waste among its Valley, Maalaea, and
24 Piilani sites without having the required permit to store the
25 hazardous waste at any of those locations.

26 Because Monsanto generated and stored more than one kilogram
27 (2.2 pounds) of Pennacap-M waste at each of its Maui sites, each of
28 Monsanto's Maui sites was deemed a Large Quantity Generator of

1 hazardous waste under RCRA and was required, but failed, to obtain a
2 permit for hazardous waste storage and disposal. The Penncap-M
3 stored at Monsanto's Maui sites after December 31, 2013, was an
4 acute hazardous waste under RCRA.

5 To facilitate the disposal of its Penncap-M hazardous waste,
6 between July and September 2014 Monsanto consolidated its supplies
7 of Penncap-M at its Valley location. The Penncap-M hazardous waste
8 stored at each of Monsanto's Maui sites was also considered a
9 "hazardous material" under the Hazardous Materials Transportation
10 Act ("HMTA"). As a result, in order to transport Penncap-M on a
11 highway to its Valley site, Monsanto was required to use a shipping
12 manifest that identified the hazardous material being transported.
13 When it transported its Penncap-M hazardous waste to its Valley
14 site, however, Monsanto knowingly failed to use a shipping manifest
15 as required under the HMTA. Moreover, Monsanto's Valley site did
16 not have a permit under Title 42, United States Code, Chapter 82,
17 Subchapter III or pursuant to Title I of the Marine Protection,
18 Research, and Sanctuaries Act to treat hazardous waste.
19 Accordingly, Monsanto knowingly transported its Penncap-M hazardous
20 waste to its Valley site, a facility that defendant knew was not
21 licensed to accept such hazardous waste.

22 Ultimately, on October 21, 2014, Monsanto knowingly disposed of
23 approximately 2,250 pounds of waste which included Penncap-M,
24 Carbaryl, and Carbofuran hazardous waste, and several other wastes,
25 from its Valley site using a licensed hazardous waste disposal
26 company.