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11 Attorneys for Plaintiff
 12 UNITED STATES OF AMERICA

13 UNITED STATES DISTRICT COURT

14 FOR THE DISTRICT OF HAWAII

15 UNITED STATES OF AMERICA,
 16 Plaintiff,
 17 v.
 18 MONSANTO COMPANY,
 19 Defendant.

Case No. 19-CR-00162-JMS
 Case No. 21-CR-_____ -JMS

PLEA AGREEMENT FOR DEFENDANT
MONSANTO COMPANY

21
 22 1. This constitutes the binding plea agreement between
 23 defendant MONSANTO COMPANY ("defendant" or "Monsanto") and the
 24 United States Attorney's Office for the Central District of
 25 California, acting as Special Attorney in the District of Hawaii
 26 ("the USAO"), in the two above-captioned cases. This agreement is
 27 limited to the USAO and cannot bind any other federal, state, local,
 28

1 or foreign prosecuting, enforcement, administrative, or regulatory
2 authorities.

3 RULE 11(c)(1)(C) AGREEMENT

4 2. Defendant understands that this agreement is entered into
5 pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C).
6 Accordingly, defendant understands that, if the Court determines
7 that it will not accept this agreement, absent a breach of this
8 agreement by defendant prior to that determination, this agreement
9 will, with the exception of paragraph 21 below, be rendered null and
10 void and both defendant and the USAO will be relieved of their
11 obligations under this agreement. Defendant agrees, however, that
12 if defendant breaches this agreement prior to the Court's
13 determination whether or not to accept this agreement, the breach
14 provisions of this agreement, paragraphs 23 and 24 below, will
15 control, with the result that defendant will not be able to withdraw
16 any guilty pleas entered pursuant to this agreement, the USAO will
17 be relieved of all of its obligations under this agreement, and the
18 Court's failure to follow any recommendation or request regarding
19 sentence set forth in this agreement will not provide a basis for
20 defendant to withdraw defendant's guilty pleas.

21 DEFENDANT'S OBLIGATIONS

22 3. Defendant agrees to:

23 a) At the earliest opportunity requested by the USAO and
24 provided by the Court, appear and plead guilty to counts one and two
25 of the information in United States v. Monsanto Company, No. 19-CR-
26 00162-JMS, which charges defendant with two felony counts of
27 unlawful storage of acute hazardous waste in violation of 42 U.S.C.
28 § 6928(d)(2)(A).

1 b) At the earliest opportunity requested by the USAO and
2 provided by the Court, appear and plead guilty to the 30-count
3 information filed independently in a separate case number, in the
4 form attached to this agreement as Exhibit A or a substantially
5 similar form, charging defendant with knowingly using a pesticide
6 inconsistent with its label in violation of 7 U.S.C.

7 §§ 136j(a)(2)(G), 136l(b)(1)(A).

8 c) Not contest facts agreed to in this agreement.

9 d) Abide by all agreements regarding sentencing
10 contained in this agreement, and affirmatively recommend to the
11 court that it impose sentence in accordance with paragraph 15 of
12 this agreement.

13 e) Appear for all court appearances, obey all conditions
14 of any bond, and obey any other ongoing court order in this matter.

15 f) Not commit any federal felony or misdemeanor offense
16 or state felony offense; however, offenses that would be excluded
17 for sentencing purposes under United States Sentencing Guidelines
18 ("U.S.S.G." or "Sentencing Guidelines") § 4A1.2(c) are not within
19 the scope of this agreement.

20 g) Be truthful at all times with Pretrial Services, the
21 United States Probation Office, and the Court.

22 h) Pay the applicable special assessment, community
23 service payments, and fine no more than 14 days from the sentencing
24 hearing date.

25 i) Because defendant committed the 30 misdemeanor
26 violations identified in paragraph 3(b) above (and explained in more
27 detail in Exhibit C to this agreement) in violation of the 2019
28 deferred prosecution agreement between the parties, defendant agrees

1 that the 2019 deferred prosecution agreement between the parties
2 does not require dismissal of the felony unlawful storage of acute
3 hazardous waste charges identified in paragraph 3(a) above.
4 Instead, as stated above, defendant agrees to plead guilty to those
5 charges.

6 THE USAO'S OBLIGATIONS

7 4. The USAO agrees to:

8 a) Not contest facts agreed to in this agreement.

9 b) Abide by all agreements regarding sentencing
10 contained in this agreement, and affirmatively recommend to the
11 court that it impose sentence in accordance with paragraph 15 of
12 this agreement.

13 CORPORATE AUTHORIZATION

14 5. Defendant represents that it is authorized to enter into
15 this agreement. On or before the change of plea hearing pursuant to
16 this agreement, defendant shall provide the USAO and file with the
17 Court a notarized legal document(s) certifying that defendant is
18 authorized to enter into and comply with all of the provisions of
19 this agreement. Such legal document(s) shall designate a company
20 representative who is authorized to take the actions specified in
21 this agreement, and shall also state that all legal formalities for
22 such authorizations have been observed.

23 ORGANIZATIONAL CHANGES AND APPLICABILITY

24 6. This agreement shall bind defendant, its successor
25 entities (if any), parent companies, and any other person or entity
26 that assumes the liabilities contained herein ("successors-in-
27 interest") including, but not limited to, Monsanto Company, Monsanto
28 Technology LLC, Bayer Production Supply LLC, Monsanto Production

1 Supply LLC, and each entities' wholly owned corporate subsidiaries.
2 Defendant, or its successors-in-interest, if applicable, shall
3 provide the USAO and the United States Probation Office for the
4 District of Hawaii with reasonably prompt notice of any name change,
5 business reorganization, sale or purchase of assets, divestiture of
6 assets, or similar action impacting their ability to pay the fine or
7 affecting this agreement. No change in name, change in corporate or
8 individual control, business reorganization, change in ownership,
9 merger, change of legal status, sale or purchase of assets, or
10 similar action shall alter defendant's responsibilities under this
11 agreement. Defendant shall not engage in any action to seek to
12 avoid the obligations and conditions set forth in this agreement.

13 NATURE OF THE OFFENSES

14 7. Charges Filed in 2019 (Pursuant to Deferred Prosecution
15 Agreement): Defendant understands that for defendant to be guilty
16 of the felony crimes charged in counts one and two of the three-
17 count information in United States v. Monsanto Company, 19-CR-00162-
18 JMS, that is, unlawful storage of an acute hazardous waste, in
19 violation of 42 U.S.C. § 6928(d)(2)(A), the following must be true:
20 (1) defendant knowingly stored more than one kilogram of an acute
21 hazardous waste; (2) defendant knew that the material had the
22 substantial potential to be harmful to others or to the environment;
23 and (3) defendant did not have a permit or interim status.

24 8. New Charges: Defendant understands for defendant to be
25 guilty of the 30-count misdemeanor information in the separately
26 charged case, that is knowingly using a pesticide inconsistent with
27 its labeling in violation of 7 U.S.C. §§ 136j(a)(2)(G),
28 136l(b)(1)(A), the following must be true: (1) defendant was a

1 registrant; and (2) defendant knowingly used a registered pesticide
2 inconsistent with its labeling.

3 PENALTIES

4 9. Defendant understands that the statutory maximum sentence
5 that the Court can impose for each violation of 42 U.S.C.

6 § 6928(d)(2)(A) is: five years' probation; a fine of \$500,000 or
7 twice the gross gain or gross loss resulting from the offense,
8 whichever is greatest; and a mandatory special assessment of \$400.

9 10. Defendant understands that the statutory maximum sentence
10 that the Court can impose for each violation of 7 U.S.C.

11 §§ 136j(a)(2)(G), 136l(b)(1)(A) is: five years' probation; a fine of
12 \$200,000 or twice the gross gain or gross loss resulting from the
13 offense, whichever is greatest; and a mandatory special assessment
14 of \$125.

15 11. Defendant understands that the statutory maximum sentence
16 that the Court can impose for violation of all 32 counts in the two
17 separate informations is: (1) ten years' probation; (2) a fine of
18 \$7,000,000 or twice the gross gain or gross loss resulting from the
19 offense, whichever is greatest; and (3) a mandatory special
20 assessment of \$4,550.

21 SUSPENSION, REVOCATION, AND DEBARMENT

22 12. Defendant understands that if defendant holds any
23 regulatory licenses or permits, the convictions in this case may
24 result in the suspension or revocation of those licenses and
25 permits. The USAO makes no representation or promise concerning
26 suspension or debarment of defendant from contracting with the
27 United States or with any office, agency, or department thereof.
28 Suspension and debarment of organizations convicted under various

1 federal environmental protection and criminal statutes is a
2 discretionary administrative action solely within the authority of
3 the federal contracting agencies. Defendant understands that
4 unanticipated collateral consequences such as this will not serve as
5 grounds to withdraw defendant's guilty pleas.

6 FACTUAL BASIS

7 13. Defendant admits that defendant is, in fact, guilty of the
8 offenses to which defendant is agreeing to plead guilty. Defendant
9 and the USAO agree to the statement of facts attached hereto as
10 Exhibits B and C, which are incorporated by reference herein, and
11 agree that the statement of facts are sufficient to support the
12 pleas of guilty to the charges in the two informations described in
13 this agreement as well as the sentence, conditions of probation,
14 compliance program, fine, and community service payments specified
15 in this agreement. The attached statement of facts is not meant to
16 be a complete recitation of all facts relevant to the underlying
17 criminal conduct or all facts known to either party that relate to
18 that conduct.

19 SENTENCING AGREEMENT

20 14. Defendant and the USAO agree and stipulate that, pursuant
21 to United States Sentencing Guidelines ("U.S.S.G.") §§ 8C2.1 and
22 8C2.10, the sentencing guidelines are not applicable in determining
23 the fine for an organization violating statutes relating to the
24 environment, but that all other sections of Chapter 8 of the
25 U.S.S.G. are applicable in this case, including the provisions
26 regarding probation and restitution. Defendant understands that in
27 determining defendant's sentence, the Court is required to consider
28 the factors set forth in 18 U.S.C. § 3553(a), including the kinds of

1 sentence and sentencing range established under the Sentencing
2 Guidelines. Defendant agrees that at the time of sentencing the
3 Court may consider any uncharged conduct in determining the
4 applicable Sentencing Guidelines range, the propriety and extent of
5 any departure from that range, and the sentence to be imposed after
6 consideration of the Sentencing Guidelines and all other relevant
7 factors under 18 U.S.C. § 3553(a).

8 15. Pursuant to U.S.S.G. §§ 8D1.1 and 8D1.2 and the factors
9 set forth in Title 18, United States Code, Section 3553(a),
10 including the nature and circumstances of the offense and the
11 history and characteristics of the defendant, the need for the
12 sentence imposed to reflect the seriousness of the offense, to
13 promote respect for the law, to provide just punishment for the
14 offense, to afford adequate deterrence to criminal conduct, and to
15 protect the public from further crimes of the defendant, the parties
16 agree that defendant shall be sentenced as follows:

17 a) Probation: Defendant shall be sentenced to a three-
18 year term of probation with conditions to be fixed by the Court,
19 including, but not limited to, the conditions of probation set forth
20 in Exhibit D to this agreement.

21 b) Criminal Fine: Defendant shall pay a criminal fine of
22 \$6,000,000. The criminal fine shall be paid by certified check or
23 wire transfer to the Clerk of the United States District Court for
24 the District of Hawaii, and confirmation of the completed wire
25 transfer or certified check shall be provided by defendant to the
26 USAO, within 14 days of the date the sentence is imposed.

27 c) Community Service Payments: Defendant shall pay a
28 total of \$6,000,000 in the form of community service payments to the

1 Hawaii government entities as described in the conditions of
2 probation set forth in Exhibit D to this agreement, within 14 days
3 of the date the sentence is imposed.

4 d) Special Assessment: Defendant shall pay a total
5 special assessment of \$4,550 within 14 days of the date the sentence
6 is imposed.

7 WAIVER OF CONSTITUTIONAL RIGHTS

8 16. Defendant understands that by pleading guilty, defendant
9 gives up the following rights:

10 a) The right to persist in a plea of not guilty.

11 b) The right to a speedy and public trial by jury.

12 c) The right to be represented by counsel at trial.

13 Defendant understands, however, that, defendant retains the right to
14 be represented by counsel at every other stage of the proceeding.

15 d) The right to be presumed innocent and to have the
16 burden of proof placed on the government to prove defendant guilty
17 beyond a reasonable doubt.

18 e) The right to confront and cross-examine witnesses
19 against defendant.

20 f) The right to testify and to present evidence in
21 opposition to the charges, including the right to compel the
22 attendance of witnesses to testify.

23 g) Any and all rights to pursue any affirmative
24 defenses, Fourth Amendment or Fifth Amendment claims, and other
25 pretrial motions that have been filed or could be filed.

26 WAIVER OF STATUTE OF LIMITATIONS

27 17. Having been fully advised by defendant's attorney
28 regarding application of the statute of limitations to the offenses

1 to which defendant is pleading guilty, defendant hereby knowingly,
2 voluntarily, and intelligently waives, relinquishes, and gives up:
3 (a) any right that defendant might have not to be prosecuted for the
4 offenses to which defendant is pleading guilty because of the
5 expiration of the statute of limitations for the offense prior to
6 the filing of the informations alleging the offenses; and (b) any
7 defense, claim, or argument defendant could raise or assert that
8 prosecution of the offense to which defendant is pleading guilty is
9 barred by the expiration of the applicable statute of limitations,
10 pre-indictment delay, or any speedy trial violation.

11 WAIVER OF APPEAL OF CONVICTIONS

12 18. Defendant understands that, with the exception of an
13 appeal based on a claim that defendant's guilty pleas were
14 involuntary, by pleading guilty defendant is waiving and giving up
15 any right to appeal defendant's convictions on the offenses to which
16 defendant is pleading guilty.

17 LIMITED MUTUAL WAIVER OF APPEAL OF SENTENCE

18 19. Defendant agrees that, provided the Court imposes the
19 sentence specified in paragraph 15, defendant gives up the right to
20 appeal any portion of the sentence.

21 20. The USAO agrees that, provided the Court imposes the
22 sentence specified in paragraph 15, the USAO gives up its right to
23 appeal any portion of the sentence.

24 RESULT OF WITHDRAWAL OF GUILTY PLEAS

25 21. Defendant agrees that if, after entering the guilty pleas
26 pursuant to this agreement, defendant seeks to withdraw and succeeds
27 in withdrawing one or more of defendant's guilty pleas on any basis
28 other than a claim and finding that entry into this agreement was

1 involuntary, then: (a) the USAO will be relieved of all of its
2 obligations under this agreement; and (b) should the USAO choose to
3 pursue any charge or any civil, administrative, or regulatory action
4 that was either dismissed or not filed as a result of this
5 agreement, then (i) any applicable statute of limitations will be
6 tolled between the date of defendant's signing of this agreement and
7 the filing commencing any such action; and (ii) defendant waives and
8 gives up all defenses based on the statute of limitations, any claim
9 of pre-indictment delay, or any speedy trial claim with respect to
10 any such action(s), except to the extent that such defenses existed
11 as of the date of defendant's signing this agreement.

12 EFFECTIVE DATE OF AGREEMENT

13 22. This agreement is effective upon signature and execution
14 of all required certifications by defendant, defendant's counsel,
15 and government counsel.

16 BREACH OF AGREEMENT

17 23. Defendant agrees that if defendant, at any time after the
18 signature of this agreement and execution of all required
19 certifications by defendant, defendant's counsel, and government
20 counsel, knowingly violates or fails to perform any of defendant's
21 obligations under this agreement ("a breach"), the USAO may declare
22 this agreement breached. All of defendant's obligations are
23 material, a single breach of this agreement is sufficient for the
24 USAO to declare a breach, and defendant shall not be deemed to have
25 cured a breach without the express agreement of the USAO in writing.
26 If the USAO declares this agreement breached, and the Court finds
27 such a breach to have occurred, then: (a) if defendant has
28 previously entered guilty pleas pursuant to this agreement,

1 defendant will not be able to withdraw the guilty pleas, (b) the
2 USAO will be relieved of all its obligations under this agreement,
3 and (c) the Court's failure to follow any recommendation or request
4 regarding sentence set forth in this agreement will not provide a
5 basis for defendant to withdraw defendant's guilty pleas.

6 24. Following the Court's finding of a knowing breach of this
7 agreement by defendant, should the USAO choose to pursue any charge
8 or any civil, administrative, or regulatory action that was either
9 dismissed or not filed as a result of this agreement, then:

10 a) Defendant agrees that any applicable statute of
11 limitations is tolled between the date of defendant's signing of
12 this agreement and the filing commencing any such action.

13 b) Defendant waives and gives up all defenses based on
14 the statute of limitations, any claim of pre-indictment delay, or
15 any speedy trial claim with respect to any such action, except to
16 the extent that such defenses existed as of the date of defendant's
17 signing this agreement.

18 c) Defendant agrees that: (i) any statements made by
19 defendant, under oath, at the guilty plea hearing (if such a hearing
20 occurred prior to the breach); (ii) the agreed to factual basis
21 statement attached to this agreement; and (iii) any evidence derived
22 from such statements, shall be admissible against defendant in any
23 such action against defendant, and defendant waives and gives up any
24 claim under the United States Constitution, any statute, Rule 410 of
25 the Federal Rules of Evidence, Rule 11(f) of the Federal Rules of
26 Criminal Procedure, or any other federal rule, that the statements
27 or any evidence derived from the statements should be suppressed or
28 are inadmissible.

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COURT AND PROBATION OFFICE NOT PARTIES

25. Defendant understands that the Court and the United States Probation Office are not parties to this agreement and need not accept any of the USAO's sentencing recommendations or the parties' agreements to facts, sentencing factors, or the sentence. Defendant understands that the Court will determine the facts, sentencing factors, and other considerations relevant to sentencing and will decide for itself whether to accept and agree to be bound by this agreement.

26. Defendant understands that both defendant and the USAO are free to: (a) supplement the facts by supplying relevant information to the United States Probation Office and the Court, (b) correct any and all factual misstatements relating to the Court's Sentencing Guidelines calculations and determination of sentence, and (c) argue on appeal and collateral review that the Court's Sentencing Guidelines calculations and the sentence it chooses to impose are not error, although each party agrees to maintain its view that the calculations and sentence referenced in paragraph 15 are consistent with the facts of this case. While this paragraph permits both the USAO and defendant to submit full and complete factual information to the United States Probation Office and the Court, even if that factual information may be viewed as inconsistent with the facts agreed to in this agreement, this paragraph does not affect defendant's and the USAO's obligations not to contest the facts agreed to in this agreement.

NO ADDITIONAL AGREEMENTS

27. Defendant understands that, except as set forth herein, and in the parties' tolling agreements, there are no promises,

1 understandings, or agreements between the USAO and defendant or
2 defendant's attorney, and that no additional promise, understanding,
3 or agreement may be entered into unless in writing signed by all
4 parties or on the record in court.

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PLEA AGREEMENT PART OF THE GUILTY PLEA HEARING

28. The parties agree that this agreement will be considered part of the record of defendant's guilty plea hearing as if the entire agreement had been read into the record of the proceeding.

AGREED AND ACCEPTED

MERRICK B. GARLAND
Attorney General of the United States

TRACY L. WILKISON
United States Attorney

GA W

12/9/21

MARK A. WILLIAMS
DENNIS MITCHELL
ERIK M. SILBER
Special Attorneys Appointed Under
28 U.S.C. § 515

Date

NAME:

Date

TITLE:

Authorized Representative of
Defendant
MONSANTO COMPANY

ALICE S. FISHER
Attorney for Defendant
MONSANTO COMPANY

Date

WILLIAM M. HARSTAD
Attorney for Defendant
MONSANTO COMPANY

Date

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PLEA AGREEMENT PART OF THE GUILTY PLEA HEARING

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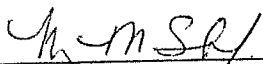
AGREED AND ACCEPTED

MERRICK B. GARLAND
Attorney General of the United States

TRACY L. WILKISON
United States Attorney

MARK A. WILLIAMS
DENNIS MITCHELL
ERIK M. SILBER
Special Attorneys Appointed Under
28 U.S.C. § 515

Date


NAME: Mary M. Shaffer

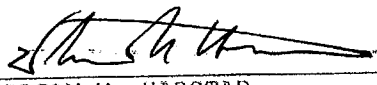
12/6/21
Date

TITLE: Senior Assistant General Counsel
Authorized Representative of
Defendant
MONSANTO COMPANY



ALICE S. FISHER
Attorney for Defendant
MONSANTO COMPANY

12/06/2021
Date



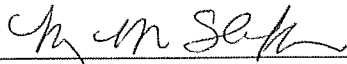
WILLIAM M. HARSTAD
Attorney for Defendant
MONSANTO COMPANY

12/6/2021
Date

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CERTIFICATION OF DEFENDANT

I have been authorized by defendant MONSANTO COMPANY ("defendant") to enter into this agreement on behalf of defendant. I have read this agreement in its entirety. I have had enough time to review and consider this agreement, and I have carefully and thoroughly discussed every part of it with defendant's attorney. I understand the terms of this agreement, and I voluntarily agree to those terms on behalf of defendant. I have discussed the evidence with defendant's attorney, and defendant's attorney has advised me of defendant's rights, of possible pretrial motions that might be filed, of possible defenses that might be asserted either prior to or at trial, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of relevant Sentencing Guidelines provisions, and of the consequences of entering into this agreement. No promises, inducements, or representations of any kind have been made to me or to defendant other than those contained in this agreement. No one has threatened or forced me or defendant in any way to enter into this agreement. I am satisfied with the representation of defendant's attorney in this matter, and I am pleading guilty on behalf of defendant because defendant is guilty of the charges and wishes to take advantage of the promises set forth in this agreement, and not for any other reason.


NAME: Mary M. Shaffer Date 12/16/21
TITLE: Senior Assistant General Counsel
Authorized Representative of
Defendant
MONSANTO COMPANY

CERTIFICATION OF DEFENDANT'S ATTORNEY

1
2 I am defendant MONSANTO COMPANY's attorney. I have carefully
3 and thoroughly discussed every part of this agreement with the
4 authorized representative of my client. Further, I have fully
5 advised my client and its authorized representative of its rights,
6 of possible motions that might be filed, of possible defenses that
7 might be asserted either prior to or at trial, of the sentencing
8 factors set forth in 18 U.S.C. § 3553(a), of relevant Sentencing
9 Guidelines provisions, and of the consequences of entering into this
10 agreement. To my knowledge: no promises, inducements, or
11 representations of any kind have been made to my client other than
12 those contained in this agreement; no one has threatened or forced
13 my client in any way to enter into this agreement; my client's
14 decision to enter into this agreement is an informed and voluntary
15 one; and the factual basis set forth in this agreement is sufficient
16 to support my client's entry of guilty pleas pursuant to this
17 agreement.

18 

19 _____
20 ALICE S. FISHER
21 Attorney for Defendant
22 MONSANTO COMPANY


12/06/2021

Date

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CERTIFICATION OF DEFENDANT'S ATTORNEY

I am defendant MONSANTO COMPANY's attorney. I have carefully and thoroughly discussed every part of this agreement with the authorized representative of my client. Further, I have fully advised my client and its authorized representative of its rights, of possible motions that might be filed, of possible defenses that might be asserted either prior to or at trial, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of relevant Sentencing Guidelines provisions, and of the consequences of entering into this agreement. To my knowledge: no promises, inducements, or representations of any kind have been made to my client other than those contained in this agreement; no one has threatened or forced my client in any way to enter into this agreement; my client's decision to enter into this agreement is an informed and voluntary one; and the factual basis set forth in this agreement is sufficient to support my client's entry of guilty pleas pursuant to this agreement.

 _____
WILLIAM M. HARSTAD
Attorney for Defendant
MONSANTO COMPANY

12/6/2021
_____ Date

Exhibit A

1 MERRICK B. GARLAND
Attorney General of the United States

2 TRACY L. WILKISON
3 United States Attorney
4 Central District of California

5 SCOTT M. GARRINGER
Chief, Criminal Division
6 Central District of California

7 MARK A. WILLIAMS
8 DENNIS MITCHELL
9 ERIK M. SILBER
Special Attorneys Appointed Under 28 U.S.C. § 515
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12 Los Angeles, California 90012
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E-mail: mark.a.williams@usdoj.gov
dennis.mitchell@usdoj.gov
erik.silber@usdoj.gov

13 Attorneys for Plaintiff
UNITED STATES OF AMERICA

14 UNITED STATES DISTRICT COURT
15 FOR THE DISTRICT OF HAWAII

16 UNITED STATES OF AMERICA,
17 Plaintiff,
18 v.
19 MONSANTO COMPANY,
20 Defendant.

CR NO.
I N F O R M A T I O N
[7 U.S.C. §§ 136j(a)(2)(G),
136l(b)(1)(A): Using a Pesticide
in a Manner Inconsistent with its
Labeling]
[CLASS A MISDEMEANORS]

23
24 The United States Attorney charges:

25 COUNTS ONE THROUGH THIRTY

26 [7 U.S.C. §§ 136j(a)(2)(G), 136l(b)(1)(A)]

27 On or about the dates identified below, in Honolulu County,
28 within the District of Hawaii, defendant MONSANTO COMPANY, a

1 registrant, knowingly used the registered pesticide LPI Glufosinate
 2 280, with the alternate brand name of Forfeit 280 ("Forfeit 280"), in
 3 a manner inconsistent with its labeling, specifically, on the dates
 4 identified in the table below, MONSANTO COMPANY sprayed Forfeit 280
 5 on its field corn fields and thereafter MONSANTO COMPANY workers
 6 entered the fields less than six days later to engage in field corn
 7 scouting contrary to the restricted-entry interval (or "REI") on the
 8 label:

<u>Count</u>	<u>Date Sprayed Forfeit 280</u>	<u>Field Sprayed</u>	<u>Date Corn Scouting Occurred</u>
ONE	June 4, 2020	Haleiwa Field 20K01A04G	June 8, 2020
TWO	June 4, 2020	Haleiwa Field 20K04A01G	June 8, 2020
THREE	June 4, 2020	Haleiwa Field 20K08C04G	June 8, 2020
FOUR	June 4, 2020	Haleiwa Field 20K06B03G	June 8, 2020
FIVE	June 4, 2020	Haleiwa Field 20K04A38L	June 8, 2020
SIX	June 5, 2020	Haleiwa Field 20K03A25G	June 8, 2020
SEVEN	June 5, 2020	Haleiwa Field 20K05B09L	June 8, 2020
EIGHT	June 5, 2020	Haleiwa Field 20K07B02G	June 8, 2020
NINE	June 5, 2020	Haleiwa Field 20K07C19L	June 8, 2020
TEN	June 5, 2020	Haleiwa Field 20K07C01G	June 8, 2020
ELEVEN	June 5, 2020	Haleiwa Field 20K07D01G	June 8, 2020
TWELVE	June 6, 2020	Haleiwa Field 20K03A32G	June 8, 2020
THIRTEEN	June 9, 2020	Haleiwa Field 20006A03G	June 15, 2020
FOURTEEN	June 9, 2020	Haleiwa Field 20K13B01L	June 15, 2020
FIFTEEN	June 17, 2020	Lower Kunia Field 5F01-12-R-L-20_PF	June 19, 2020

1	SIXTEEN	June 17, 2020	Lower Kunia Field	June 22, 2020
2			5F01-12-R-L-20_PF	
3	SEVENTEEN	June 17, 2020	Lower Kunia Field	June 19, 2020
4			5F02-13-R-L-20_PF	
5	EIGHTEEN	June 17, 2020	Lower Kunia Field	June 22, 2020
6			5F02-13-R-L-20_PF	
7	NINETEEN	June 17, 2020	Lower Kunia Field	June 19, 2020
8			5F03-14-R-L-20_PF	
9	TWENTY	June 17, 2020	Lower Kunia Field	June 22, 2020
10			5F03-14-R-L-20_PF	
11	TWENTY	June 17, 2020	Lower Kunia Field	June 19, 2020
12	ONE		5F04-15-RHS-L-20_PF	
13	TWENTY	June 17, 2020	Lower Kunia Field	June 22, 2020
14	TWO		5F04-15-RHS-L-20_PF	
15	TWENTY	June 17, 2020	Lower Kunia Field	June 19, 2020
16	THREE		5H01-24-RHS-L-20_PF	
17	TWENTY	June 17, 2020	Lower Kunia Field	June 22, 2020
18	FOUR		5H01-24-RHS-L-20_PF	
19	TWENTY	June 23, 2020	Lower Kunia Field	June 24, 2020
20	FIVE		7A01-25-R-L-20_PF	
21	TWENTY	June 23, 2020	Lower Kunia Field	June 26, 2020
22	SIX		7A01-25-R-L-20_PF	
23	TWENTY	June 23, 2020	Lower Kunia Field	June 24, 2020
24	SEVEN		7A02-26-RHS-L-D-20_PF	
25	TWENTY	June 23, 2020	Lower Kunia Field	June 26, 2020
26	EIGHT		7A02-26-RHS-L-D-20_PF	
27	TWENTY	June 23, 2020	Lower Kunia Field	June 24, 2020
28				

1	NINE		7B01-27-RHS-L-D-20_PF	
2	THIRTY	June 23, 2020	Lower Kunia Field	June 26, 2020
3			7B01-27-RHS-L-D-20_PF	

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17 Special Attorneys Appointed Under 28
18 U.S.C. § 515

19 United States v. Monsanto Company
20 "Information"

EXHIBIT B

FACTUAL BASIS

1
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"). Monsanto knew that Pennacap-M had the substantial
16 potential to be harmful to others and to the environment.

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

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

1 M at its Molokai location, Monsanto's Molokai site was deemed under
2 RCRA to be a Large Quantity Generator of a hazardous waste. As a
3 result, Monsanto knowingly stored an acute hazardous waste in
4 violation of RCRA's prohibition against knowingly storing a
5 hazardous waste without a permit.

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

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

27 Because Monsanto generated and stored more than one kilogram
28 (2.2 pounds) of Penncap-M waste at each of its Maui sites, each of

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

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

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

EXHIBIT C

FACTUAL BASIS

1
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. Monsanto maintained multiple fields on Oahu,
9 including those called Lower Kunia and Haleiwa, which grew field
10 corn for seed propagation.

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. Monsanto itself was a
15 registrant of some pesticides.

16 LPI Glufosinate 280, with the alternate brand name of Forfeit
17 280 ("Forfeit 280"), was a general use pesticide typically used to
18 control weeds or a burndown treatment prior to planting or emergence
19 of corn. The product's active ingredient was glufosinate ammonium,
20 CAS No. 77182-82-2, listed on the label as 24.5% of the product's
21 weight. For field corn seed propagation, Forfeit 280 was generally
22 applied shortly after planting which, as relevant here, in Hawaii,
23 happened in May through June in 2020. Forfeit 280 was registered
24 with the EPA and required workers to not enter a field within 12
25 hours after spraying (called "restricted-entry interval" or "REI"),
26 subject to exceptions for sweet-corn irrigation that do not apply
27 here. As required with registration, that REI was printed on the
28 label of Forfeit 280.

1 In the middle of 2019, Monsanto started switching from using a
2 product called Liberty 280SL to Forfeit 280, which was not itself
3 unlawful, because Liberty 280SL had just had an increase in REI to
4 six days and Forfeit 280 did not (at that time). Forfeit 280 and
5 Liberty 280SL are among a group of products with similar
6 ingredients, specifically glufosinate ammonium. Monsanto's purpose
7 in making the switch to Forfeit 280 was to avoid the change in REI
8 for Liberty 280SL. Monsanto believed that avoiding the longer REI
9 was beneficial to the company.

10 Forfeit 280's REI for field-corn scouting, however, changed
11 after a December 2016 United States Environmental Protection Agency
12 ("EPA") interim registration review decision for glufosinate
13 ammonium, which provided for an increased REI for field-corn
14 scouting. On September 25, 2017, Loveland Products, which produces
15 Forfeit 280, submitted an application to re-register the product
16 with the EPA in light of that interim decision and, on July 19,
17 2019, the EPA approved the registration (registration number of
18 34704-1080). According to the registration, products shipped within
19 12 months of that date had to bear a revised label that included a
20 new six day REI period for field-corn scouting (corn scouting
21 consists of checking the corn for things like weeds, insects,
22 disease, etc.). The registration information that would appear on
23 the new label also stated that "[I]t is a violation of Federal law
24 to use LPI Glufosinate 280 in a manner inconsistent with its
25 labeling." The REI change for Forfeit 280 was part of an industry-
26 wide change for products containing glufosinate ammonium.

27 Pursuant to the registration requirements, Loveland Products
28 created a Forfeit 280 label that stated "do not enter or allow

1 worker entry into treated areas during the restricted entry-interval
2 (REI) of 12 hours, with the following exceptions . . . Field corn
3 and soybean scouting - REI of 6 days." The label also specifically
4 stated that "[i]t is a violation of Federal law to use Forfeit 280
5 in a manner inconsistent with its label."

6 Monsanto's Lower Kunia facility first order of Forfeit 280 in
7 calendar year 2020 was in April 2020, which it received with the new
8 label in May 2020, when Monsanto was almost out of existing product
9 (that existing product had the old label and the 12-hour REI).

10 Monsanto's Haleiwa facility first order of Forfeit 280 in calendar
11 year 2020 was in May 2020, when it ran out of Forfeit 280 with the
12 old label, and it received new product on June 4, 2020, which had
13 the new label and the six-day REI.

14 As of at least April and May 2020, Monsanto had notice about
15 changes to the REI on labels as to glufosinate ammonium products
16 generally and across brands using that ingredient. Thereafter, in
17 June 2020, on at least eight corn fields in Lower Kunia on Oahu and
18 14 corn fields at the Haleiwa site on Oahu, Monsanto applied Forfeit
19 280 with the new label. Monsanto employees then entered the fields
20 less than six days after spraying for the purpose of field-corn
21 scouting. In total, due to a lack of oversight and supervision by
22 Monsanto, workers violated the new REI period by entering the fields
23 30 times to perform field-corn scouting within six days of spraying
24 in violation of FIFRA's requirement that Monsanto comply with
25 Forfeit 280's labeling.

EXHIBIT D

CONDITIONS OF PROBATION

In addition to other routine conditions of probation that the Court may order at the sentencing hearing, the parties hereby agree to affirmatively recommend and request that the Court impose the following conditions of probation:

1. As set forth in the Plea Agreement, and to satisfy all community service payments required pursuant to that agreement, Monsanto shall make a total of \$6,000,000 in community service payments to the following entities:

a. \$1,500,000 to the State of Hawaii, Department of Agriculture, Pesticide Use Revolving Fund - Pesticide Disposal Program/Pesticide Safety Training for use in its training and education programs and/or compliance monitoring (scientific supplies, laboratory equipment, and other materials).

b. \$1,500,000 to the State of Hawaii, Department of the Attorney General, Criminal Justice/Investigations Division for use in support of criminal investigations of environmental crimes, including pesticide-related investigations, as well as training and education programs.

c. \$1,500,000 State of Hawaii, Department of Health, Environmental Management Division, in support of environmental-health programs, specifically for water pollution programs and non-point source/point source enforcement, training, and education, including for pesticide run-off issues.

1 d. \$1,500,000 to the State of Hawaii, Department of Land
2 and Natural Resources, Division of Aquatic Resources,
3 Big Island for use in its training and education
4 programs; research and surveys of Hawaiian streams,
5 estuaries, and coral reefs; water quality monitoring,
6 and water quality improvement.

7 2. Monsanto shall continue to develop, maintain, and
8 implement a comprehensive environmental compliance program for
9 compliance with the Resource Conservation and Recovery Act ("RCRA")
10 and the Federal Insecticide, Fungicide, and Rodenticide Act
11 ("FIFRA") at all of its Hawaii sites. The compliance program, which
12 shall be implemented within 90 calendar days from the date Monsanto
13 is sentenced, shall include Monsanto's retention of a qualified and
14 experienced third-party environmental compliance auditor (the
15 "Environmental Auditor"), that is not affiliated with defendant, to
16 conduct audits every six months of all of defendant's locations in
17 Hawaii in order to determine whether or not defendant is in full
18 compliance with RCRA and FIFRA. The audits shall not take longer
19 than approximately one week per site; however, the auditor may take
20 additional time as reasonably necessary. Defendant will fully
21 cooperate in these audits, including promptly providing access to
22 its facilities, employees, and documentation. The Environmental
23 Auditor shall promptly provide a comprehensive written report of
24 each audit to defendant, the USAO, and the United States Probation
25 Officer ("Probation Officer"), and the Environmental Auditor shall
26 cooperate fully in responding to questions from defendant, the
27 Probation Officer, or the USAO regarding its audits and/or written
28 reports. To the extent that the Environmental Auditor identifies

1 any violations that do not constitute criminal violations, or the
2 need for compliance enhancements, Monsanto shall have 30 days to
3 cure such violations and/or apply such compliance enhancements
4 before any breach of the Plea Agreement is declared. To the extent
5 that a compliance monitor is appointed arising out the any
6 Administrative Agreement with the United States Environmental
7 Protection Agency, that monitor can also serve as the Environmental
8 Auditor for purposes of probation.

9 3. Defendant shall not commit a federal felony or misdemeanor
10 offense or state felony offense, including but not limited to
11 violations of RCRA and FIFRA, and shall immediately notify the USAO
12 and the Probation Officer if such a crime is committed.

13 4. Within 30 days of the date of the sentencing hearing,
14 defendant shall designate an official of the organization to act as
15 the organization's representative and to be the primary contact with
16 the Probation Officer.

17 5. Defendant shall notify the Court, through the Probation
18 Officer, and the USAO promptly upon learning of: (1) any material
19 adverse change in its business or financial condition or prospects;
20 (2) the commencement of any bankruptcy proceeding or criminal
21 prosecution against defendant; or (3) the commencement of any major
22 civil litigation, administrative proceeding, or any investigation or
23 formal inquiry by government authorities regarding defendant that
24 impacts defendant's ability to perform any conditions of probation.
25 Defendant shall answer truthfully all inquiries by the Probation
26 Officer and follow the instructions of the Probation Officer.

27 6. Defendant shall notify the USAO and the Probation Officer
28 of any change in its principal business or mailing address, ten days

1 prior to such change or within 72 hours if advance notice is not
2 possible.

3 7. Defendant shall permit a Probation Officer to visit any of
4 defendant's locations.

5 8. Defendant shall provide reasonably prompt notice to the
6 Probation Officer and USAO of any sale of defendant, change in
7 defendant's name, merger of defendant with another business entity,
8 or otherwise any changes to defendant's organizational structure
9 that impacts defendant's ability to perform any conditions of
10 probation.

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