

JMS

ORIGINAL

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

NOV 21 2019

at 1:00 clock and 15 min. M
SUE BEITIA, CLERK

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CLERK, U. S. DISTRICT COURT

NOV 21 2019

DISTRICT OF HAWAII

10 Attorneys for Plaintiff
11 UNITED STATES OF AMERICA

12 UNITED STATES DISTRICT COURT

13 FOR THE DISTRICT OF HAWAII

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

Case No. **CR19 00162 JMS**
DEFERRED PROSECUTION AGREEMENT
FOR DEFENDANT MONSANTO COMPANY

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

1 DEFENDANT'S OBLIGATIONS

2 2. Defendant agrees to:

3 a) Give up the right to indictment by a grand jury, and
4 at the earliest opportunity requested by the USAO and provided by
5 the Court, appear for arraignment on counts one and two of a three-
6 count Information, in the form attached to this agreement as Exhibit
7 A or a substantially similar form, that charges defendant with two
8 counts of unlawful storage of an acute hazardous waste in violation
9 of 42 U.S.C. § 6928(d)(2)(A).

10 b) No later than 14 days after defendant's sentencing
11 hearing on count three of the attached Information: (1) pay a total
12 criminal fine of \$6,000,000; and (2) pay a total of \$4,000,000 in
13 community service payments to the Hawaiian government entities as
14 described in the conditions of probation set forth in Exhibit C to
15 the parties' Plea Agreement.

16 c) Enter into, sign, and file a Stipulation Regarding
17 Request for (1) Continuance of Trial Date and (2) Findings of
18 Excludable Time Periods Pursuant to Speedy Trial Act, in the form
19 attached to this agreement as Exhibit C or a substantially similar
20 form.

21 d) Comply with all terms in the parties' Plea Agreement.¹

22 e) Not contest facts agreed to in this agreement and the
23 parties' Plea Agreement.

24 f) Appear for all court appearances and obey any other
25 ongoing court order in this matter.

26
27 ¹ All of the provisions set forth in the Plea Agreement between
28 defendant and the USAO, filed concurrently with this agreement, are
incorporated herein by this reference.

1 g) Not commit any federal felony or misdemeanor offense
2 or state felony offense.

3 h) Be truthful at all times with Pretrial Services, the
4 United States Probation Office, and the Court.

5 THE USAO'S OBLIGATIONS

6 3. The USAO agrees to:

7 a) Not contest facts agreed to in this agreement and the
8 accompanying Plea Agreement.

9 b) Sign, file, and enter a Stipulation Regarding Request
10 for (1) Continuance of Trial Date and (2) Findings of Excludable
11 Time Periods Pursuant to Speedy Trial Act, in the form attached to
12 this agreement as Exhibit C or a substantially similar form.

13 c) If defendant is in full compliance with all of its
14 obligations under this agreement and the Plea Agreement at the
15 conclusion of the two-year deferred prosecution term, within 15
16 calendar days of the conclusion of the term of this agreement, move
17 to dismiss counts one and two of the Information with prejudice.

18 d) Except for criminal tax violations (including
19 conspiracy to commit such violations chargeable under 18 U.S.C.
20 § 371), not further prosecute defendant for criminal and/or civil
21 violations arising out of defendant's conduct described in the
22 attached statement of facts and/or defendant's storage or spray of
23 Penncap-M. Defendant understands that the USAO is free to
24 criminally prosecute defendant for any other unlawful past conduct
25 or any unlawful conduct that occurs after the date of this
26 agreement. Defendant agrees that at the time of sentencing the
27 Court may consider any uncharged conduct in determining the
28

1 applicable Sentencing Guidelines range, the propriety and extent of
2 any departure from that range, and the sentence to be imposed after
3 consideration of the Sentencing Guidelines and all other relevant
4 factors under 18 U.S.C. § 3553(a).

5 TERM OF AGREEMENT

6 4. This agreement is effective upon signature and execution
7 by defendant, defendant's counsel, and government counsel, and will
8 remain in effect for a period of two years from the date the Court
9 signs the order pursuant to the parties' Stipulation Regarding
10 Request for (1) Continuance of Trial Date and (2) Findings of
11 Excludable Time Periods Pursuant to Speedy Trial Act.

12 5. If, after defendant and defendant's counsel sign this
13 agreement, the Court does not accept defendant's guilty plea and
14 sentence defendant as provided in the Plea Agreement, then defendant
15 and the USAO agree that this agreement is null and void.

16 CORPORATE AUTHORIZATION

17 6. Defendant represents that it is authorized to enter into
18 this agreement. On or before the first court appearance pursuant to
19 this agreement or the Plea Agreement, defendant shall provide the
20 USAO and file with the Court a notarized legal document(s)
21 certifying that defendant is authorized to enter into and comply
22 with all of the provisions of this agreement. Such legal
23 document(s) shall designate a company representative who is
24 authorized to take the actions specified in this agreement, and
25 shall also state that all legal formalities for such authorizations
26 have been observed.

1 § 6928(d)(2)(A) is: five years' probation; a fine of the greater of
2 (1) \$500,000 or twice the gross gain or gross loss resulting from
3 the offense, whichever is greatest, or (2) \$50,000 for each day of
4 violation; and a mandatory special assessment of \$400.

5 10. Defendant understands, therefore, that, the total maximum
6 sentence for the offenses in counts one and two of the Information
7 is: five years' probation; a fine of the greater of (1) \$1,000,000,
8 or twice the gross gain or gross loss resulting from the offense,
9 whichever is greatest, or (2) \$100,000 for each day of violation;
10 and a mandatory special assessment of \$800.

11 SUSPENSION, REVOCATION, AND DEBARMENT

12 11. Defendant understands that if defendant holds any
13 regulatory licenses or permits, this agreement may result in the
14 suspension or revocation of those licenses and/or permits. The USAO
15 makes no representation or promise concerning suspension or
16 debarment of defendant from contracting with the United States or
17 with any office, agency, or department thereof. Suspension and
18 debarment of organizations is a discretionary administrative action
19 solely within the authority of the federal contracting agencies.
20 Defendant understands that unanticipated collateral consequences
21 such as this will not serve as grounds to withdraw from this
22 agreement.

23 FACTUAL BASIS

24 12. Defendant and the USAO agree to the statement of facts
25 attached hereto as Exhibit B and incorporated herein by this
26 reference. The attached statement of facts is not meant to be a
27 complete recitation of all facts relevant to the underlying criminal
28 conduct or all facts known to either party that relate to that

1 conduct. Should the USAO pursue the prosecution that is deferred by
2 this agreement, defendant agrees that it will neither contest the
3 admissibility of, nor contradict, the attached statement of facts in
4 any such proceeding.

5 WAIVER OF STATUTE OF LIMITATIONS

6 13. Having been fully advised by defendant's attorney
7 regarding application of the statute of limitations to the offenses
8 to which this agreement applies, defendant hereby knowingly,
9 voluntarily, and intelligently waives, relinquishes, and gives up:
10 (a) any right that defendant might have not to be prosecuted by the
11 USAO for the offenses because of the expiration of the statute of
12 limitations for the offenses prior to the filing of the Information
13 alleging the offenses; and (b) any defense, claim, or argument
14 defendant could raise or assert that prosecution of the offenses to
15 which this agreement applies by the USAO is barred by the expiration
16 of the applicable statute of limitations, pre-indictment delay, or
17 any speedy trial violation.

18 BREACH OF AGREEMENT

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

1 such a breach to have occurred, then the USAO will be relieved of
2 all its obligations under this agreement.

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

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

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

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

26 COURT AND PROBATION OFFICE NOT PARTIES

27 16. Defendant understands that the Court and the United States
28 Probation Office are not parties to this agreement.

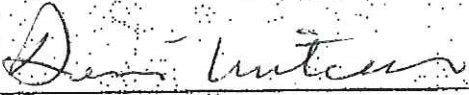
NO ADDITIONAL AGREEMENTS

17. Defendant understands that, except as set forth herein, and in the parties' tolling agreements, Plea Agreement, and attached exhibits, there are no promises, understandings, or agreements between the USAO and defendant or defendant's attorney, and that no additional promise, understanding, or agreement may be entered into unless in writing signed by all parties or on the record in court.

AGREED AND ACCEPTED

WILLIAM P. BARR
Attorney General of the United States

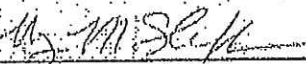
NICOLA T. HANNA
United States Attorney



11-21-19

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

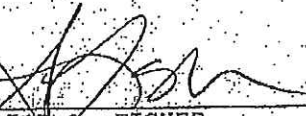
Date



11/18/2019

MARY M. SHAFFER
Head of HSE & Real Estate Law for Crop Science
Authorized Representative of Defendant
MONSANTO COMPANY

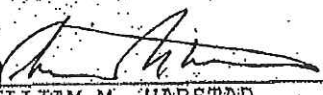
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11/18/19

ALICE S. FISHER
Attorney for Defendant
MONSANTO COMPANY

Date



11/18/19

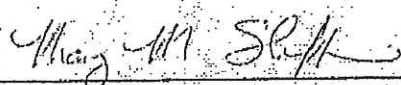
WILLIAM M. HARSTAD
Attorney for Defendant
MONSANTO COMPANY

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.

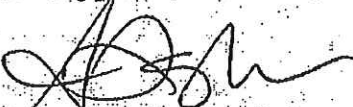


MARY M. SHAFFER
Head of HSE & Real Estate Law for Crop Science
Authorized Representative of
Defendant
MONSANTO COMPANY

11/18/2019

Date


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

16 

17 _____
18 ALICE S. FISHER
19 Attorney for Defendant
20 MONSANTO COMPANY

11 / 18 / 19
Date

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

16
17 
18 WILLIAM M. HARSTAD
19 Attorney for Defendant
20 MONSANTO COMPANY

11/18/2019
Date