

ORIGINAL

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

NOV 21 2019
at 1 o'clock and 15 P.M.
SUE BEITIA, CLERK

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CLERK, U. S. DISTRICT COURT

NOV 21 2019
J. W. W. M. J.
DISTRICT OF HAWAII

10 Attorneys for Plaintiff
UNITED STATES OF AMERICA

11 UNITED STATES DISTRICT COURT
12 FOR THE DISTRICT OF HAWAII

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

Case No. CR19 00162 JMS
PLEA AGREEMENT FOR DEFENDANT
MONSANTO COMPANY

21 1. This constitutes the binding plea agreement between
22 defendant MONSANTO COMPANY ("defendant" or "Monsanto") and the
23 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 RULE 11(c)(1)(C) AGREEMENT

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

23 DEFENDANT'S OBLIGATIONS

24 3. Defendant agrees to:
25 a). Give up the right to indictment by a grand jury, and
26 at the earliest opportunity requested by the USAO and provided by
27 the Court appear and plead guilty to count three of the three-count
28 Information, in the form attached to this agreement as Exhibit A or

1 a substantially similar form, charging defendant with unlawful
2 spraying of a banned pesticide in violation of 7 U.S.C.
3 §§ 136j(a)(2)(K) and 136l(b)(1)(B).¹

4 b) Not contest facts agreed to in this agreement and the
5 accompanying Deferred Prosecution Agreement.²

6 c) Abide by all agreements regarding sentencing
7 contained in this agreement and the accompanying Deferred
8 Prosecution Agreement, and affirmatively recommend to the court that
9 it impose sentence in accordance with paragraph 12 of this
10 agreement.

11 d) Appear for all court appearances, obey all conditions
12 of any bond, and obey any other ongoing court order in this matter.

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

18 f) Be truthful at all times with Pretrial Services, the
19 United States Probation Office, and the Court.

20 g) Pay the applicable special assessment at or before
21 the time of sentencing unless defendant lacks the ability to pay and
22 prior to sentencing submits a completed financial statement on a
23 form to be provided by the USAO.

24
25 ¹ Defendant has not agreed to plead guilty to counts one and two
26 of the Information, which are subject to the accompanying Deferred
Prosecution Agreement.

27 ² All of the provisions set forth in the Deferred Prosecution
28 Agreement between defendant and the USAO, filed concurrently with
this agreement, are incorporated herein by this reference.

1 name, change in corporate or individual control, business
2 reorganization, change in ownership, merger, change of legal status,
3 sale or purchase of assets, or similar action shall alter
4 defendant's responsibilities under this agreement. Defendant shall
5 not engage in any action to seek to avoid the obligations and
6 conditions set forth in this agreement.

7 NATURE OF THE OFFENSE

8 7. Defendant understands that for defendant to be guilty of
9 the crime charged in count three of the three-count Information,
10 that is, unlawful spraying of a banned pesticide, in violation of 7
11 U.S.C. §§ 136j(a)(2)(K) and 1361(b)(1)(B), the following must be
12 true: defendant, a commercial applicator of a restricted use
13 pesticide, knowingly sprayed, a restricted use pesticide that had
14 been banned by the Environmental Protection Agency pursuant to a
15 cancellation order.

16 PENALTIES

17 8. Defendant understands that the statutory maximum sentence
18 that the Court can impose for a violation of 7 U.S.C.
19 §§ 136j(a)(2)(K) and 1361(b)(1)(B), is: a five-year period of
20 probation; a fine of \$200,000 or twice the gross gain or gross loss
21 resulting from the offense, whichever is greatest; and a mandatory
22 special assessment of \$125.

23 SUSPENSION, REVOCATION, AND DEBARMENT

24 9. Defendant understands that if defendant holds any
25 regulatory licenses or permits, the conviction in this case may
26 result in the suspension or revocation of those licenses and
27 permits. The USAO makes no representation or promise concerning
28 suspension or debarment of defendant from contracting with the

1 United States or with any office, agency, or department thereof.
2 Suspension and debarment of organizations convicted under various
3 federal environmental protection and criminal statutes is a
4 discretionary administrative action solely within the authority of
5 the federal contracting agencies. Defendant understands that
6 unanticipated collateral consequences such as this will not serve as
7 grounds to withdraw defendant's guilty plea.

8 FACTUAL BASIS

9 10. Defendant admits that defendant is, in fact, guilty of the
10 offense to which defendant is agreeing to plead guilty. Defendant
11 and the USAO agree to the statement of facts attached hereto as
12 Exhibit B and incorporated by reference herein, and agree that the
13 statement of facts is sufficient to support the plea of guilty to
14 the charge in count three of the Information described in this
15 agreement as well as the sentence, conditions of probation,
16 compliance program, fine, and community service payments specified
17 in this agreement. The attached statement of facts is not meant to
18 be a complete recitation of all facts relevant to the underlying
19 criminal conduct or all facts known to either party that relate to
20 that conduct.

21 SENTENCING AGREEMENT

22 11. Defendant and the USAO agree and stipulate that, pursuant
23 to United States Sentencing Guidelines ("U.S.S.G.") §§ 8C2.1 and
24 8C2.10, the sentencing guidelines are not applicable in determining
25 the fine for an organization violating statutes relating to the
26 environment, but that all other sections of Chapter 8 of the
27 U.S.S.G. are applicable in this case, including the provisions
28 regarding probation and restitution. Defendant understands that in

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

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

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

23 b) Criminal Fine: Defendant shall pay the statutory
24 maximum criminal fine of \$200,000. The criminal fine shall be paid
25 by certified check or wire transfer to the Clerk of the United
26 States District Court for the District of Hawaii, and confirmation
27 of the completed wire transfer or certified check shall be provided
28

1 by defendant to the USAO, within two weeks of the date the sentence
2 is imposed.

3 c) Community Service Payments: Defendant shall pay a
4 total of \$4,000,000 in the form of community service payments to the
5 Hawaii government entities as described in the conditions of
6 probation set forth in Exhibit C to this agreement.

7 d) Special Assessment: Defendant shall pay a total
8 special assessment of \$125.

9 e) Deferred Prosecution Agreement: Defendant shall
10 comply with the terms of the felony Deferred Prosecution Agreement
11 filed concurrently with this agreement.

12 WAIVER OF CONSTITUTIONAL RIGHTS

13 13. Defendant understands that by pleading guilty, defendant
14 gives up the following rights:

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

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

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

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

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

23 e) The right to confront and cross-examine witnesses
24 against defendant.

25 f) The right to testify and to present evidence in
26 opposition to the charge, including the right to compel the
27 attendance of witnesses to testify.

28

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

4 WAIVER OF STATUTE OF LIMITATIONS

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

17 WAIVER OF APPEAL OF CONVICTION

18 15. Defendant understands that, with the exception of an
19 appeal based on a claim that defendant's guilty plea was
20 involuntary, by pleading guilty defendant is waiving and giving up
21 any right to appeal defendant's conviction on the offense to which
22 defendant is pleading guilty.

23 LIMITED MUTUAL WAIVER OF APPEAL OF SENTENCE

24 16. Defendant agrees that, provided the Court imposes the
25 sentence specified in paragraph 12, defendant gives up the right to
26 appeal any portion of the sentence.

1 17. The USAO agrees that, provided the Court imposes the
2 sentence specified in paragraph 12, the USAO gives up its right to
3 appeal any portion of the sentence.

4 RESULT OF WITHDRAWAL OF GUILTY PLEA

5 18. Defendant agrees that if, after entering the guilty plea
6 pursuant to this agreement, defendant seeks to withdraw and succeeds
7 in withdrawing defendant's guilty plea on any basis other than a
8 claim and finding that entry into this agreement was involuntary,
9 then: (a) the USAO will be relieved of all of its obligations under
10 this agreement; and (b) should the USAO choose to pursue any charge
11 or any civil, administrative, or regulatory action that was either
12 dismissed or not filed as a result of this agreement, then (i) any
13 applicable statute of limitations will be tolled between the date of
14 defendant's signing of this agreement and the filing commencing any
15 such action; and (ii) defendant waives and gives up all defenses
16 based on the statute of limitations, any claim of pre-indictment
17 delay, or any speedy trial claim with respect to any such action(s),
18 except to the extent that such defenses existed as of the date of
19 defendant's signing this agreement.

20 EFFECTIVE DATE OF AGREEMENT

21 19. This agreement is effective upon signature and execution
22 of all required certifications by defendant, defendant's counsel,
23 and government counsel.

24 BREACH OF AGREEMENT

25 20. Defendant agrees that if defendant, at any time after the
26 signature of this agreement and execution of all required
27 certifications by defendant, defendant's counsel, and government
28 counsel, knowingly violates or fails to perform any of defendant's

1 obligations under this agreement ("a breach"), the USAO may declare
2 this agreement breached. All of defendant's obligations are
3 material, a single breach of this agreement is sufficient for the
4 USAO to declare a breach, and defendant shall not be deemed to have
5 cured a breach without the express agreement of the USAO in writing.
6 If the USAO declares this agreement breached, and the Court finds
7 such a breach to have occurred, then: (a) if defendant has
8 previously entered a guilty plea pursuant to this agreement,
9 defendant will not be able to withdraw the guilty plea, (b) the USAO
10 will be relieved of all its obligations under this agreement, and
11 (c) the Court's failure to follow any recommendation or request
12 regarding sentence set forth in this agreement will not provide a
13 basis for defendant to withdraw defendant's guilty plea.

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

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

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

26 c) Defendant agrees that: (i) any statements made by
27 defendant, under oath, at the guilty plea hearing (if such a hearing
28 occurred prior to the breach); (ii) the agreed to factual basis

1 statement attached to this agreement; and (iii) any evidence derived
2 from such statements, shall be admissible against defendant in any
3 such action against defendant, and defendant waives and gives up any
4 claim under the United States Constitution, any statute, Rule 410 of
5 the Federal Rules of Evidence, Rule 11(f) of the Federal Rules of
6 Criminal Procedure, or any other federal rule, that the statements
7 or any evidence derived from the statements should be suppressed or
8 are inadmissible.

9 COURT AND PROBATION OFFICE NOT PARTIES

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

18 23. Defendant understands that both defendant and the USAO are
19 free to: (a) supplement the facts by supplying relevant information
20 to the United States Probation Office and the Court, (b) correct any
21 and all factual misstatements relating to the Court's Sentencing
22 Guidelines calculations and determination of sentence, and (c) argue
23 on appeal and collateral review that the Court's Sentencing
24 Guidelines calculations and the sentence it chooses to impose are
25 not error, although each party agrees to maintain its view that the
26 calculations and sentence referenced in paragraph 12 are consistent
27 with the facts of this case. While this paragraph permits both the
28 USAO and defendant to submit full and complete factual information

1 to the United States Probation Office and the Court, even if that
2 factual information may be viewed as inconsistent with the facts
3 agreed to in this agreement, this paragraph does not affect
4 defendant's and the USAO's obligations not to contest the facts
5 agreed to in this agreement.

6 NO ADDITIONAL AGREEMENTS

7 24. Defendant understands that, except as set forth herein,
8 and in the parties' tolling agreements and Deferred Prosecution
9 Agreement, there are no promises, understandings, or agreements
10 between the USAO and defendant or defendant's attorney, and that no
11 additional promise, understanding, or agreement may be entered into
12 unless in writing signed by all parties or on the record in court.

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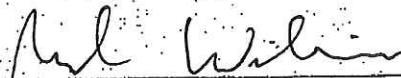
PLEA AGREEMENT PART OF THE GUILTY PLEA HEARING

25. 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

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

Date



11/18/19

ALICE S. FISHER
Attorney for Defendant
MONSANTO COMPANY

Date



11/18/19

WILLIAM M. HARSTAD
Attorney for Defendant
MONSANTO COMPANY

Date

CERTIFICATION OF DEFENDANT

1
2 I have been authorized by defendant MONSANTO COMPANY
3 ("defendant") to enter into this agreement on behalf of defendant.
4 I have read this agreement in its entirety. I have had enough time
5 to review and consider this agreement, and I have carefully and
6 thoroughly discussed every part of it with defendant's attorney. I
7 understand the terms of this agreement, and I voluntarily agree to
8 those terms on behalf of defendant. I have discussed the evidence
9 with defendant's attorney, and defendant's attorney has advised me
10 of defendant's rights, of possible pretrial motions that might be
11 filed, of possible defenses that might be asserted either prior to
12 or at trial, of the sentencing factors set forth in 18 U.S.C.
13 § 3553(a), of relevant Sentencing Guidelines provisions, and of the
14 consequences of entering into this agreement. No promises,
15 inducements, or representations of any kind have been made to me or
16 to defendant other than those contained in this agreement. No one
17 has threatened or forced me or defendant in any way to enter into
18 this agreement. I am satisfied with the representation of
19 defendant's attorney in this matter, and I am pleading guilty on
20 behalf of defendant because defendant is guilty of the charge and
21 wishes to take advantage of the promises set forth in this
22 agreement, and not for any other reason.

23
24 
25 _____
26 MARY M. SHAFER


11/18/2019
Date

25 Head of HSE & Real Estate Law for Crop Science
26 Authorized Representative of
27 Defendant
28 MONSANTO COMPANY

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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 a guilty plea pursuant to this agreement.



ALICE S. FISHER
Attorney for Defendant
MONSANTO COMPANY

11/18/19

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 a guilty plea pursuant to this agreement.



WILLIAM M. HARSTAD
Attorney for Defendant
MONSANTO COMPANY

11/18/2019

Date