

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA

v.

ROBERTS CHEMICAL CO., INC.

CR 14-94M
CR. No.

PLEA AGREEMENT

Pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure, the United States and Defendant, ROBERTS CHEMICAL CO., INC., have reached the following agreement:

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DISTRICT COURT
DISTRICT OF RHODE ISLAND

1. Defendant's Obligations.

a. Defendant will waive presentation of this matter to a grand jury and consent to the filing of a one-count Information which charges Failing to Develop and Implement a Risk Management Plan, as required by section 112r of the Clean Air Act, in violation of 42 U.S.C. § 7413 (c)(1). Defendant will plead guilty to the Information. Defendant further agrees that the time between the filing of this plea agreement and the scheduled date for the change of plea is excludable under the Speedy Trial Act, 18 U.S.C. §3161.

b. Defendant agrees that, by prior agreement(s) with the United States, it agreed to toll, and to exclude from any calculation of time, the running of the criminal statute of limitations and waive its rights in that respect. Defendant agrees not to assert the statute of limitations in any manner in this case.

2. Government's Obligations. In exchange for Defendant's

plea of guilty:

- a. At sentencing, the government agrees to recommend the joint sentencing recommendation outlined in ¶ 4.
- b. For purposes of determining the offense level, the government agrees to recommend a two-level reduction in the offense level for acceptance of responsibility under § 3E1.1(a) of the guidelines if Defendant continues to demonstrate acceptance of responsibility through sentencing.
- c. Defendant has timely notified authorities of an intention to enter a plea of guilty. Therefore, if the offense level determined by the Court under the sentencing guideline is a level 16 or greater, the government will move the sentencing Court for an additional decrease of one level pursuant to U.S.S.G. § 3E1.1(b).
- d. The government is free to recommend any combination of probation conditions which it deems appropriate.

3. Defendant understands that the guidelines are not binding on the Court, and that, although the Court must consult the guidelines in fashioning any sentence in this case, the guidelines are only advisory, and the Court may impose any reasonable sentence in this matter up to the statutory maximum penalties after taking into account the factors enumerated in 18 U.S.C. § 3553(a) and 3572.

4. Joint Sentencing Recommendation. The United States and Defendant jointly agree to make the following sentencing recommendation to the Court:

- a. Based upon the Defendant's limited ability to pay a fine without substantially jeopardizing the continued viability of the organization, the parties

recommend a fine of \$200,000.00, to be satisfied in four annual payments of \$50,000.00.

The first payment shall be due thirty (30) days after sentencing, and annually on that date for the following three years. The defendant agrees to notify the court of any material change in the Defendant's economic circumstances that might affect the Defendant's ability to pay the fine.

b. A term of probation of 5 years, with the following special condition of probation:

i. Within 30 days of sentencing, the Defendant agrees to publish at its own expense an apology pursuant to the provisions set forth in Attachment A.

5. Except as expressly provided in the preceding paragraph, there is no agreement as to which Offense Level and Criminal History Category applies in this case. The parties agree, however, that because the offense charged in the Information is an environmental offense that is covered by Chapter Two, Part Q of the Sentencing Guidelines, the fine guidelines of U.S.S.G. §§ 8C2.2 through 8C2.9 do not apply. U.S.S.G § 8C2.1. Both the United States and Defendant reserve their rights to argue and present evidence on all matters affecting the application of the guidelines.

6. The maximum statutory penalties for the offense to which defendant is pleading are: 5 years probation; a fine of \$500,000 or twice the amount of the pecuniary gain or loss from the offense, whichever is greater; and a mandatory special assessment of \$100.

7. Defendant agrees that, after Defendant and Defendant's counsel sign this agreement, counsel will return it to the United States Attorney's Office along with a money order or certified check, payable to the Clerk, United States District Court, in payment of the special assessments. Failure to do so, unless the Court has made a previous finding of indigence, will relieve the government of its obligation to recommend a reduction in the offense level under the guidelines for acceptance of responsibility.

8. Defendant is advised and understands that:

a. The government has the right, in a prosecution for perjury or making a false statement, to use against Defendant any statement that Defendant gives under oath;

b. Defendant has the right to plead not guilty, or having already so pleaded, to persist in that plea;

c. Defendant has the right to a jury trial;

d. Defendant has the right to be represented by counsel – and if necessary have the Court appoint counsel – at trial and every other stage of the proceeding;

e. Defendant has the right at trial to confront and cross-examine adverse witnesses, to be protected from self-incrimination, to testify and present evidence, and to compel the attendance of witnesses; and

f. Defendant waives these trial rights if the Court accepts a plea of guilty.

9. The government reserves its full right of allocution, including the right to present any information to the Court for its consideration in fashioning an appropriate

sentence, the right to correct misstatements, misrepresentations, or omissions by Defendant, and to answer any questions asked by the Court.

10. Except for paragraphs 2, 4 and 5 above, the parties have made no agreement concerning the application of the guidelines in this case.

11. Defendant understands that the Court alone makes all sentencing decisions, including the application of the guidelines and the sentence to be imposed. The Court is not bound by the parties' stipulations of fact, offense level adjustments, or the government's recommendations. The Court is free to impose any sentence it deems appropriate up to and including the statutory maximum. Defendant also understands that even if the Court's guideline determinations and sentence are different than Defendant expects, Defendant will not be allowed to withdraw Defendant's plea of guilty.

12. Defendant hereby waives Defendant's right to appeal the conviction and sentence imposed by the Court, if the sentence imposed by the Court is within or below the sentencing guideline range determined by the Court. This agreement does not affect the rights or obligations of the United States as set forth in 18 U.S.C. § 3742(b), and the government retains its right to appeal any of the Court's sentencing determinations.

13. This agreement is binding on the government only if Defendant pleads guilty, fulfills all Defendant's obligations under the agreement, does not engage in any conduct constituting obstruction of justice under § 3C1.1 of the guidelines, and does not commit any new offenses. Defendant understands that if Defendant violates this agreement in any way, the government shall be released from its obligations under the

agreement and will be free to make any recommendations that it deems appropriate. If that occurs, Defendant shall not have the right to withdraw Defendant's guilty plea.

14. This agreement is limited to the District of Rhode Island and does not bind any other federal, state, or local prosecutive authorities.

15. This agreement constitutes the entire agreement between the parties. No other promises or inducements have been made concerning the plea in this case. Defendant acknowledges that no person has, directly or indirectly, threatened or coerced Defendant to enter this agreement. Any additions, deletions, or modifications to this agreement must be made in writing and signed by all the parties in order to be effective.

16. Counsel for Defendant states that Counsel has read this agreement, been given a copy of it for Counsel's file, explained it to Defendant, and states that to the best of Counsel's knowledge and belief, Defendant understands the agreement.

17. Defendant states that Defendant has read the agreement or has had it read to Defendant, has discussed it with Defendant's Counsel, understands it, and agrees to its provisions.

ROBERTS CHEMICAL CO., INC.

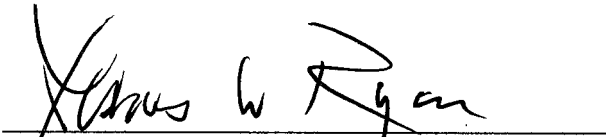
Defendant

BY:



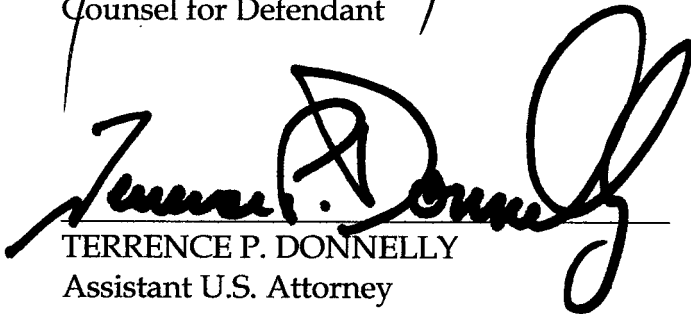
Robert R. McIntyre Jr. President
(Print name & corporate office held)

Date 7/18/14



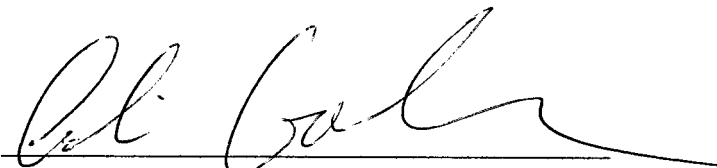
JAMES W. RYAN, ESQ.
Counsel for Defendant

Date 7/21/14



TERRENCE P. DONNELLY
Assistant U.S. Attorney

Date 7/21/14



ADI GOLDSTEIN
Assistant U.S. Attorney
Deputy Chief, Criminal Division

Date 7/21/14

ATTACHMENT A

At its own expense, the Defendant will publish a public apology in the Providence Journal consisting of the following statement:

Roberts Chemical Company recently pleaded guilty to violating provisions of the federal Clean Air Act designed to prevent the accidental release of hazardous air pollutants. Those provisions required Roberts Chemical Company to prepare a Risk Management Plan for certain chemicals stored above federal thresholds. Prior to 2009, Roberts Chemical failed to comply with this provision of the Clean Air Act at its former location in Pawtucket, Rhode Island. During that time, Roberts thereby put its workers, neighbors, and firefighters or emergency responders at a greater risk if they were to respond to a release or fire at Roberts' facility. The Company regrets and apologizes for these actions, and has instituted new policies and procedures at our new location to demonstrate our commitment to protecting the environment.

The apology shall occupy one-eighth of a page in the Providence Journal and shall appear in the first section of the newspaper. The format of the apology is otherwise subject to the Government's approval, and cannot contain any language, other than what appears above.

The defendant shall pay the cost of running the apology on or before thirty days after the date of sentencing.