

**IN THE COMMON PLEAS COURT OF
HAMILTON COUNTY, OHIO
GENERAL DIVISION**

STATE OF OHIO, ex rel. DAVE YOST)	
OHIO ATTORNEY GENERAL,)	
)	
Plaintiff,)	Case No. A 1801237
)	
v.)	Judge Lisa C. Allen
)	
MONSANTO COMPANY, et al.,)	
)	
Defendants.)	
_____)	

CONSENT JUDGMENT

WHEREAS, Plaintiff, the State of Ohio, by its Attorney General, filed its Complaint on March 5, 2018, in which it asserted various claims against Defendant (as defined herein) for alleged environmental impairments related to PCBs, including alleged natural resource damages and impairments to waterbodies and other natural resources;

WHEREAS, the Parties have agreed to resolve their claims without the need for further litigation and agree to entry of this Consent Judgment without trial or adjudication of any issue of fact or law, and to waive any appeal if the Consent Judgment is entered by the Court as submitted by the Parties;

WHEREAS, Defendant, by entering into this Consent Judgment, does not admit any allegations in the Complaint or to any wrongdoing, fault, violation of law, or liability of any kind on the part of any Defendant;

AND WHEREAS, the intention of the State in effecting this settlement is to fully and finally resolve the State's claims against Defendant;

NOW, THEREFORE, without trial or adjudication of issues of fact or law, without this

Consent Judgment constituting evidence against Defendant, and upon consent of Defendant, the Court finds that there is good and sufficient cause to enter this Consent Judgment, and that it is therefore ORDERED, ADJUDGED, AND DECREED:

I. DEFINITIONS

1. As used in this Consent Judgment, the following terms shall have the defined meanings set forth below.

2. “Action” means the case captioned *State of Ohio v. Monsanto Co., et al.*, Case No. A 1801237, filed in the Common Pleas Court of Hamilton County, Ohio.

3. “CERCLA means the federal Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601 *et seq.*

4. “Court” means the Common Pleas Court of Hamilton County, Ohio.

5. “Defendant” means Monsanto Company, Solutia, Inc., and Pharmacia LLC (the former Monsanto Company), including each and all past, present, or future, direct or indirect, predecessors, successors (including but not limited to successors by merger or acquisition), parents (including intermediate parents and ultimate parents, including Bayer AG, Pfizer Inc., and Eastman Chemical Company), subsidiaries, affiliated or related companies, divisions, partnerships, and joint ventures; and any past, present, or future officer, director, member, shareholder, employee, partner, trustee, representative, agent, servant, insurer, attorney, predecessor, successor, or assignee of any of the above.

6. “Effective Date” means the date on which the Court enters this Consent Judgment and dismisses the Action with prejudice.

7. “Mandamus Actions” means the action captioned *Shonebarger v. Ohio Environmental Protection Agency*, Case No. 19-AP-000273, in the District Court of Appeals for

the Tenth District, Franklin County, Ohio and the action captioned *Shonebarger v. Ohio Department of Natural Resources*, Case No. 20-AP-000601, in the District Court of Appeals for the Tenth District, Franklin County, Ohio.

8. “Parties” means Plaintiff and Defendant.

9. “PCBs” means polychlorinated biphenyls.

10. “Person” means an individual, corporation, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, business, legal entity, government or any political subdivision or agency thereof.

11. “Plaintiff” means the State of Ohio.

12. “Public Records Requests” means any public records requests or subpoenas related in any way to the Action issued by Defendant or on Defendant’s behalf, including the public records requests that are the subject of the Mandamus Actions.

13. “Released Claims” means all claims, demands, rights, damages, obligations, suits, debts, liens, contracts, agreements, and causes of action of every nature and description whatsoever, ascertained or unascertained, suspected or unsuspected, existing now or arising in the future, whether known or unknown, both at law and in equity, which were or could have been alleged related to the Defendant’s manufacture, sale, testing, disposal, release, marketing or management of PCBs, including but not limited to any and all claims based upon or related in any way to the subject of the Action or this Consent Judgment and any and all claims related to the alleged presence of or damage caused by PCBs in the environment, groundwater, stormwater, stormwater and wastewater drainage systems, waterbodies, sediment, soil, air, vapor, natural resources, fish and/or wildlife within the State, and regardless of the legal theory or type or nature

of damages claimed. “Released Claims” also include any claim for attorneys’ fees, expenses, or costs under state or federal law.

14. “Released Persons” means Defendant and any Affiliate of Defendant, including but not limited to Bayer AG, Pfizer, Inc., and Eastman Chemical. “Affiliate” means each and all past, present, or future, direct or indirect, predecessors, successors (including but not limited to successors by merger or acquisition), parents (including intermediate parents and ultimate parents), subsidiaries, affiliated or related companies, divisions, partnerships, and joint ventures; and any past, present, or future officer, director, shareholder, employee, partner, trustee, representative, agent, servant, insurer, attorney, predecessor, successor, or assignee of any of the above.

15. “Releasing Persons” means the State.

16. “Settlement Funds” means the amount to be paid by Monsanto Company, on behalf of the entities described in Paragraphs 5 and 14, to the State pursuant to Section III, below.

17. “State,” for purposes of this Consent Judgment, means the State of Ohio and each of its officers acting in their official capacities, agencies, departments, boards, and commissions and any predecessor, successor, or assignee of any of the above.

18. Nothing in this Consent Judgment constitutes an admission or waives any arguments with respect to the extent or scope of the powers and authorities of, respectively, the Attorney General’s Office, the Governor’s Office, or the State proceeding in its capacity as *parens patriae* made by the Parties or the state agencies in this Action or other proceedings.

II. JURISDICTION AND VENUE

19. This Court has jurisdiction over the subject matter of this Action pursuant to R.C. § 2305.01. Defendant stipulates to the personal jurisdiction, subject matter jurisdiction, and venue of this Court for the purposes of the entry, modification and enforcement of this Consent Judgment.

III. PAYMENT OF SETTLEMENT FUNDS

20. Within sixty (60) days of the Effective Date, Monsanto Company, on behalf of the entities described in Paragraphs 5 and 14, shall pay the State, as full and final settlement of the Action, the sum of eighty million dollars (\$80,000,000.00).

21. Payment of the Settlement Funds shall be made by electronic funds transfer pursuant to signed wiring instructions from the Ohio Attorney General's Office.

22. The Settlement Funds, after fees, expenses, and costs, shall be allocated by the State to the Natural Resource Damages Fund in accordance with R.C. 3734.282 and to the Environmental Protection Remediation Fund in accordance with R.C. 3734.281. Nothing prohibits the transfer of monies between these two funds with authorization. The Settlement Funds shall be used for the purpose of the planning, design, and construction of environmental projects, including but not limited to source controls, remedial measures, and other actions that address environmental harm or benefit public health. Priority shall be given to environmental projects that address impacts to waterways and drinking water sources from PCBs. Environmental projects shall include project strategies that are long-term, sustainable, science-based, and cost-effective, may include grants for innovation, research, and education related to source controls, remedial measures, and associated actions, and may also include reimbursement of past remedial project expenditures but only if they were consistent with these project strategies.

IV. RELEASES AND COVENANT NOT TO SUE

23. In exchange for the payment of the Settlement Funds, the Releasing Persons hereby fully and finally release and discharge the Released Persons, and each of them, from the Released Claims.

24. Additionally, the Releasing Persons hereby covenant not to sue or take any other civil or administrative action against any Released Person for any Released Claim.

25. The Released Persons are entitled to protection from contribution and/or indemnity actions or claims asserted against them by any Person or Persons who are not parties to this Consent Judgment to the fullest extent provided or allowable under any provision of applicable federal, state, or local law, including but not limited to CERCLA § 113(f)(2), 42 U.S.C. § 9613(f)(2), and R.C. § 2307.28, for the matters addressed in this Consent Judgment and for all Released Claims. Nothing in this Consent Judgment shall prevent the State from taking action against any third party who is not a party to, or a Released Person under, this Consent Judgment.

26. The Parties agree and acknowledge that this Consent Judgment was entered into in good faith and the amount of the Settlement Funds is reasonable as of the Effective Date.

27. Defendant releases any claim(s) arising from PCB contamination, regardless of legal theory or type or nature of damages claimed, that it has alleged or could allege against the State.

28. Within ten (10) days of the Effective Date, Defendant agrees to dismiss with prejudice the Mandamus Actions and withdraw the pending Public Records Requests and further agrees to release any claim(s) arising from the Public Records Requests, including, but not limited to, any claim for costs or attorneys' fees, that it has alleged or could allege against the State, including its officers acting in their official capacities, agencies, departments, boards, and commissions or assignee of any of the above.

V. OTHER TERMS

29. If the Court does not enter this Consent Judgment, it shall become null and void and of no further force and effect. In such instance, this Consent Judgment and any negotiations,

statements, communications, proceedings, and pleadings relating thereto, and the fact that the Parties agreed to the Consent Judgment, shall be without prejudice to the rights of Plaintiff or Defendant, shall not be used for any purpose whatsoever in any subsequent proceeding in this Action or in any other action in any court or tribunal, and shall not be construed as an admission or concession by any Party of any fact, matter, or allegation. In the event that this Consent Judgment does not become effective, Plaintiff and Defendant shall be restored without prejudice to their respective positions as if this Consent Judgment had not been agreed upon.

30. Each Party to this litigation shall bear its own attorneys' and expert fees and costs.

31. For purposes of the identification requirement of Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), payment of the Settlement Funds pursuant to Section III of this Consent Judgment is restitution or for remediation of property or both. The State agrees to file any returns required by the Internal Revenue Service or other tax authorities reporting on payment of the Settlement Funds consistent with this Paragraph 31.

32. This Consent Judgment represents the complete agreement as to each and every term agreed to by and among the Plaintiff and Defendant. The settlement contemplated by this Consent Judgment is not subject to any condition not expressly provided for herein, and there exist no collateral or oral agreements relating to the subject matter of this Consent Judgment. In entering into this Consent Judgment, no Party has made or relied on any warranty, promise, inducement or representation not specifically set forth herein.

33. The provisions of this Consent Judgment shall be construed in accordance with the laws of the State of Ohio, without regard to conflict of law principles.

34. This Consent Judgment shall be binding according to its terms upon, and inure to the benefit of, Plaintiff and Defendant.

35. The failure of Plaintiff or Defendant to exercise any rights under this Consent Judgment shall not be deemed a waiver of any right or any future rights.

36. The headings in this Consent Judgment are for the convenience of the reader only and shall not affect the meaning or interpretation of this Consent Judgment.

37. None of the Parties shall be considered to be the primary drafter of this Consent Judgment or any provision hereof for the purpose of any rule of interpretation or construction that might cause any provision to be construed against the drafter.

38. This Court retains jurisdiction of this Consent Judgment to enforce its terms. The Parties may jointly seek to modify the terms of this Consent Judgment, subject to the approval of the Court. This Consent Judgment may be modified only by order of this Court.

39. Under Rule 58 of the Ohio Rules of Civil Procedure, upon signing of this Consent Judgment by the Court, the Clerk is directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the Clerk is directed to serve upon all Parties notice of the judgment and its date of entry upon the journal in the manner prescribed by Civ. R. 5(B) and note the service in the appearance docket. The failure of the Clerk to serve notice does not affect the validity of this Consent Judgment.

SO ORDERED this ___ day of _____, 2022.

HONORABLE LISA C. ALLEN

APPROVED AND AGREED TO BY:

DAVE YOST
OHIO ATTORNEY GENERAL

s/ Cigo Sim-Tap

EMILY SIMMONS TAPOCSI (0082519)

MARK J. NAVARRE (0013674)

GREGG H. BACHMANN (0039531)

Assistant Attorneys General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
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(614) 466-2766

On behalf of the State

Date: 3/21/2022

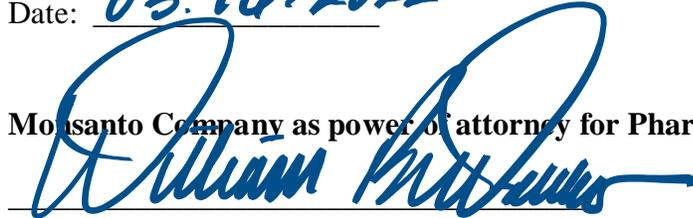
Monsanto Company



William B. Dodero
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Date: 03.16.2022

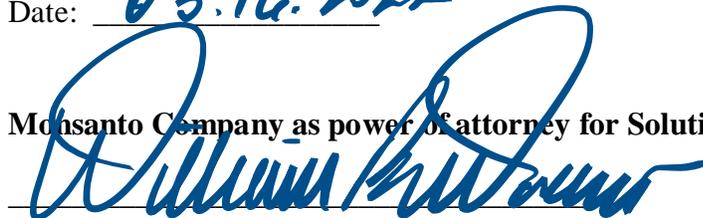
Monsanto Company as power of attorney for Pharmacia LLC



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Monsanto Company as power of attorney for Solutia, Inc.



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