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**UNITED STATES DISTRICT COURT**

**CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

CITY OF LONG BEACH, a municipal corporation; COUNTY OF LOS ANGELES, a political subdivision; CITY OF CHULA VISTA, a municipal corporation; CITY OF SAN DIEGO, a municipal corporation; CITY OF SAN JOSE, a municipal corporation; CITY OF OAKLAND, a municipal corporation; CITY OF BERKELEY, a municipal corporation; CITY OF SPOKANE, a municipal corporation; CITY OF TACOMA, a municipal corporation; CITY OF PORTLAND, a municipal corporation; PORT OF PORTLAND, a port district of the State of Oregon; BALTIMORE COUNTY, a political subdivision; MAYOR AND CITY COUNCIL OF BALTIMORE; all individually and on behalf of all others similarly situated,

Plaintiffs,

v.

MONSANTO COMPANY; SOLUTIA INC., and PHARMACIA LLC, and DOES 1 through 100,

Defendants.

CASE NO.: 2:16-cv-03493-FMO-AS

**PLAINTIFFS' THIRD AMENDED COMPLAINT FOR CLASS ACTION**

File Date: May 19, 2016

Trial Date: May 11, 2021

1 CITY OF LONG BEACH, a municipal corporation; COUNTY OF LOS  
2 ANGELES, a California political subdivision; CITY OF CHULA VISTA, a municipal  
3 corporation; CITY OF SAN DIEGO, a municipal corporation; CITY OF SAN JOSE, a  
4 municipal corporation; CITY OF OAKLAND, a municipal corporation; CITY OF  
5 BERKELEY, a municipal corporation; CITY OF SPOKANE, a municipal corporation;  
6 BALTIMORE COUNTY, a political subdivision; MAYOR AND CITY COUNCIL OF  
7 BALTIMORE, a municipal corporation; CITY OF PORTLAND, a municipal  
8 corporation; PORT OF PORTLAND, a port district of the State of Oregon; CITY OF  
9 TACOMA; a municipal corporation, individually and on behalf of all others similarly  
10 situated, bring this CLASS ACTION COMPLAINT against Defendants MONSANTO  
11 COMPANY, SOLUTIA, INC., AND PHARMACIA LLC as follows:

12 **I. INTRODUCTION**

13 1. Polychlorinated biphenyls (or “PCBs”) are man-made chemical compounds  
14 that have become notorious as global environmental contaminants — found in bays,  
15 oceans, rivers, streams, aquifers, lagoons, reservoirs, public waterways, groundwater,  
16 soil, submerged lands, tidelands, sediment, natural resources, vapor, and air. As a  
17 result, PCBs have been detected in the tissues of all forms of marine life, various  
18 animals and birds, plants and trees, and humans.

19 2. PCBs cause a variety of adverse health effects. In humans, PCB exposure  
20 is associated with cancer as well as serious non-cancer health effects, including effects  
21 on the immune system, reproductive system, nervous system, endocrine system and  
22 other health effects. In addition, PCBs harm populations of fish, birds, and other marine  
23 mammal and animal life.

24 3. Monsanto Company has held itself out as the sole manufacturer of PCBs in  
25 the United States from 1935 to 1979, and trademarked the name “Aroclor” for certain  
26 PCB compounds. Although Monsanto knew or should have known for decades that  
27 PCBs were toxic and knew or should have known that they were widely contaminating  
28 all natural resources and living organisms, Monsanto concealed these facts and

1 continued producing PCBs until Congress enacted the Toxic Substances Control Act  
2 (“TSCA”), which banned the manufacture and most uses of PCBs as of January 1, 1979.

3 4. U.S. EPA (2000b) has classified PCBs as ‘probable human carcinogens.’  
4 Studies have suggested that PCBs may play a role in inducing breast cancer. Studies  
5 have also linked PCBs to increased risk for several other cancers including liver, biliary  
6 tract, gall bladder, gastrointestinal tract, pancreas, melanoma, and non-Hodgkin’s  
7 lymphoma. PCBs may also cause non-carcinogenic effects, including reproductive  
8 effects and developmental effects (primarily to the nervous system). PCBs tend to  
9 accumulate in the human body in the liver, adipose tissue (fat), skin, and breast milk.  
10 PCBs have also been found in human plasma, follicular fluid, and sperm fluid. Fetuses  
11 may be exposed to PCBs in utero, and babies may be exposed to PCBs during  
12 breastfeeding. According to U.S. EPA (2000b), ‘[s]ome human studies have also  
13 suggested that PCB exposure may cause adverse effects in children and developing  
14 fetuses while other studies have not shown effects. Reported effects include lower IQ  
15 scores, low birth weight, and lower behavior assessment scores.’

16 5. PCBs were used in many industrial and commercial applications such as  
17 paint, caulking, transformers, capacitors, coolants, hydraulic fluids, plasticizers,  
18 sealants, inks, lubricants, and other uses. PCBs regularly leach, leak, off-gas, and  
19 escape their intended applications. After being released into the environment, PCBs  
20 wash into wastewater, stormwater and/or dry weather runoff systems owned by towns,  
21 cities, villages, boroughs, townships, counties and independent port districts.

22 6. Plaintiffs and Class Members operate, own, and/or manage stormwater  
23 and/or dry weather runoff systems, including municipal separate stormwater systems  
24 and/or combined sewer overflows, that are contaminated with PCBs, discharge PCB-  
25 contaminated water into a body of water that has been designated “impaired” pursuant  
26 to section 303(d) of the Clean Water Act due to PCB contamination, and have incurred  
27 costs or will incur costs to monitor, test, sample, investigate, model, control, manage,  
28 treat, remediate, reduce, and/or remove the levels of PCBs in those discharges. In some

1 instances, stormwater drainage systems must be retrofitted and improved to prevent or  
2 reduce PCBs in stormwater and dry weather runoff from entering water bodies.

3 7. Many watersheds, lakes, rivers, streams, creeks, bays, lagoons, aquifers,  
4 reservoirs, public waterways, ports, harbors, and other bodies of water are contaminated  
5 with PCBs, which have been detected in water, groundwater, stormwater, soil, sediment,  
6 submerged lands, tidelands, air, vapor, natural resources, fish, and wildlife. Water  
7 bodies contaminated with PCBs are listed pursuant to section 303(d) of the Clean Water  
8 Act.

9 8. The natural fate and transport of PCBs result in the gathering and collection  
10 in wastewater, stormwater, and wastewater and stormwater systems, including  
11 municipal separate stormwater systems and combined sewer overflows, through no fault  
12 of Plaintiffs and Class Members, who lawfully discharge water into many bodies of  
13 water, as permitted through the National Pollutant Discharge Elimination System  
14 (“NPDES”), pursuant to the Clean Water Act.

15 9. The NPDES Stormwater program is managed in two “Phases,” or permittee  
16 groups. Phase I generally includes larger stormwater systems, whereas Phase II  
17 generally includes smaller stormwater systems. Plaintiffs and Class Members are  
18 NPDES Phase I or Phase II cities, towns, villages, boroughs, townships, or independent  
19 port districts that have jurisdictional boundaries within a HUC 12 Watershed that  
20 contains and/or is immediately adjoining a 303(d) impaired water body and all NPDES  
21 Phase I and II counties with urbanized boundaries within a HUC 12 Watershed that  
22 contains and/or is immediately adjoining a 303(d) water body impaired by PCBs, as of  
23 June 24, 2020 only, but not later.

24 10. A Total Maximum Daily Load, or TMDL, is a calculation of the maximum  
25 amount of pollutant that a 303(d) impaired body of water can receive and still safely  
26  
27  
28

1 meet water quality standards.<sup>1</sup> TMDLs are Clean Water Act based and NPDES based  
2 regulatory standards intended to achieve or restore beneficial uses of impaired water  
3 bodies including commercial sport fishing, tribal commercial, ceremonial, and  
4 subsistence fishing areas, and the preservation of wildlife, rare and endangered species,  
5 and habitat.<sup>2</sup> Certain Plaintiffs and Class Members are responsible parties named to a  
6 TMDL for PCBs.

7 11. Municipal separate stormwater systems and combined sewer overflows  
8 provide multiple benefits, including erosion control, flood protection and management,  
9 and water conservation and management.

10 12. U.S. Environmental Protection Agency (“EPA”) regulates PCB stormwater  
11 contamination in sediment through its U.S. Superfund Sites and U.S. Sediment Sites  
12 programs and lists. Certain Plaintiffs and Class members are named responsible parties  
13 or noticed parties subject to a U.S. Superfund Site or U.S. Sediment Site for PCBs. The  
14 Clean Water Act allows for regulation of PCB contamination in sediment through  
15 Category 4b regulation of sediment sites. Certain Plaintiffs and Class members are  
16 named responsible parties to a Category 4b sediment site for PCBs.

17 Plaintiffs further allege, upon information and belief, as follows:

18 **II. PARTIES AND PLAINTIFFS AS CLASS REPRESENTATIVES**

19 13. CITY OF LONG BEACH (“Long Beach”) is a city and a Phase I National  
20 Pollutant Discharge Elimination System (“NPDES”) MS4 permittee. Long Beach owns,  
21 operates, and manages a stormwater system that discharges stormwater and/or dry  
22 weather runoff into a body of water impaired by PCBs. Long Beach is a named  
23 responsible party to a Total Maximum Daily Load (“TMDL”), promulgated or updated  
24 on or after January 1, 2010, pursuant to its NPDES permit because it discharges and/or  
25 releases stormwater and/or dry weather runoff into a body of water impaired by PCBs as

26 \_\_\_\_\_  
27 <sup>1</sup> United States Environmental Protection Agency,  
[www.water.epa.gov/lawsregs/lawsguidance/cwa/tmdl/](http://www.water.epa.gov/lawsregs/lawsguidance/cwa/tmdl/)

28 <sup>2</sup> *Id.*

1 listed on the Clean Water Act Section 303(d) list for impaired waters. Long Beach is a  
2 Phase I NPDES permittee that has jurisdictional boundaries within a HUC 12  
3 Watershed that contains a 303(d) body of water impaired by PCBs. Long Beach is a  
4 “TMDL Phase I City Plaintiff.”

5 14. COUNTY OF LOS ANGELES (“Los Angeles”) is a county and a Phase I  
6 National Pollutant Discharge Elimination System (“NPDES”) MS4 permittee. Los  
7 Angeles owns, operates, and manages a stormwater system that discharges stormwater  
8 and/or dry weather runoff into a body of water impaired by PCBs. Los Angeles is a  
9 named responsible party to a Total Maximum Daily Load (“TMDL”), promulgated or  
10 updated on or after January 1, 2010, pursuant to its NPDES permit because it discharges  
11 and/or releases stormwater and/or dry weather runoff into a body of water impaired by  
12 PCBs as listed on the Clean Water Act Section 303(d) list for impaired waters. Los  
13 Angeles is a Phase I NPDES permittee that has jurisdictional boundaries within a HUC  
14 12 Watershed that contains a 303(d) body of water impaired by PCBs. Los Angeles is a  
15 “TMDL Phase I County Plaintiff.”

16 15. CITY OF CHULA VISTA (“Chula Vista”) is a city and a Phase I National  
17 Pollutant Discharge Elimination System (“NPDES”) MS4 permittee. Chula Vista owns,  
18 operates, and manages a stormwater system that discharges stormwater and/or dry  
19 weather runoff into a body of water impaired by PCBs. City of Chula Vista is a Phase I  
20 NPDES permittee that has jurisdictional boundaries within a HUC 12 Watershed that  
21 contains a 303(d) body of water impaired by PCBs. Chula Vista is a “Monitoring  
22 Plaintiff.”

23 16. CITY OF SAN DIEGO (“San Diego”) is a city and a Phase I National  
24 Pollutant Discharge Elimination System (“NPDES”) MS4 permittee. San Diego owns,  
25 operates, and manages a stormwater system that discharges stormwater and/or dry  
26 weather runoff into a body of water impaired by PCBs. San Diego is a noticed party or  
27 named responsible party to a Category 4b clean up order because San Diego’s  
28 stormwater and/or dry weather runoff contributes PCBs to the Category 4b site. San

1 Diego is a Phase I NPDES permittee that has jurisdictional boundaries within a HUC 12  
2 Watershed that contains a 303(d) body of water impaired by PCBs. San Diego is a  
3 “Category 4b Sediment Plaintiff.”

4 17. CITY OF SAN JOSE (“San Jose”) is a city and Phase I National Pollutant  
5 Discharge Elimination System (“NPDES”) MS4 permittee. San Jose owns, operates,  
6 and manages a stormwater system that discharges stormwater and/or dry weather runoff  
7 into a body of water impaired by PCBs. San Jose is a named responsible party to a  
8 Total Maximum Daily Load (“TMDL”), promulgated or updated on or after January 1,  
9 2010, pursuant to its NPDES permit because it discharges and/or releases stormwater  
10 and/or dry weather runoff into a body of water impaired by PCBs as listed on the Clean  
11 Water Act Section 303(d) list for impaired waters. San Jose is a Phase I NPDES  
12 permittee that has jurisdictional boundaries within a HUC 12 Watershed that contains a  
13 303(d) body of water impaired by PCBs. San Jose is a “TMDL Phase I City Plaintiff.”

14 18. CITY OF OAKLAND (“Oakland”) is a city and Phase I National Pollutant  
15 Discharge Elimination System (“NPDES”) MS4 permittee. Oakland owns, operates, and  
16 manages a stormwater system that discharges stormwater and/or dry weather runoff into  
17 a body of water impaired by PCBs. Oakland is a named responsible party to a Total  
18 Maximum Daily Load (“TMDL”), promulgated or updated on or after January 1, 2010,  
19 pursuant to its NPDES permit because it discharges and/or releases stormwater and/or  
20 dry weather runoff into a body of water impaired by PCBs as listed on the Clean Water  
21 Act Section 303(d) list for impaired waters. Oakland is a Phase I NPDES permittee that  
22 has jurisdictional boundaries within a HUC 12 Watershed that contains a 303(d) body of  
23 water impaired by PCBs. Oakland is a “TMDL Phase I City Plaintiff.”

24 19. CITY OF BERKELEY (“Berkeley”) is a city and a Phase I National  
25 Pollutant Discharge Elimination System (“NPDES”) MS4 permittee. Berkeley owns,  
26 operates, and manages a stormwater system that discharges stormwater and/or dry  
27 weather runoff into a body of water impaired by PCBs. Oakland is a named responsible  
28 party to a Total Maximum Daily Load (“TMDL”), promulgated or updated on or after

1 January 1, 2010, pursuant to its NPDES permit because it discharges and/or releases  
2 stormwater and/or dry weather runoff into a body of water impaired by PCBs as listed  
3 on the Clean Water Act Section 303(d) list for impaired waters. Berkeley is a Phase I  
4 NPDES permittee that has jurisdictional boundaries within a HUC 12 Watershed that  
5 contains a 303(d) body of water impaired by PCBs. Berkeley is a “TMDL Phase I City  
6 Plaintiff.”

7 20. CITY OF SPOKANE (“Spokane”) is a city and a Phase II National  
8 Pollutant Discharge Elimination System (“NPDES”) MS4 permittee. Spokane owns,  
9 operates, and manages a stormwater system that discharges stormwater and/or dry  
10 weather runoff into a body of water impaired by PCBs. Spokane is a named responsible  
11 party to a Total Maximum Daily Load (“TMDL”) Alternative, promulgated or updated  
12 on or after January 1, 2010, pursuant to its NPDES permit because it discharges and/or  
13 releases stormwater and/or dry weather runoff into a body of water impaired by PCBs as  
14 listed on the Clean Water Act Section 303(d) list for impaired waters. Spokane is a  
15 Phase II NPDES permittee that has jurisdictional boundaries within a HUC 12  
16 Watershed that contains a 303(d) body of water impaired by PCBs. Spokane is a  
17 “TMDL Alternative Plaintiff” and a “Phase II Plaintiff.”

18 21. CITY OF TACOMA (“Tacoma”) is a city and a Phase I National Pollutant  
19 Discharge Elimination System (“NPDES”) MS4 permittee. Tacoma owns, operates, and  
20 manages a stormwater system that discharges stormwater and/or dry weather runoff into  
21 a body of water impaired by PCBs. Tacoma is a noticed party or named responsible  
22 party to a US EPA Superfund Site and US Sediment Site because Tacoma’s stormwater  
23 and/or dry weather runoff contributes PCBs to the US EPA Superfund/Sediment site.  
24 Tacoma is a Phase I NPDES permittee that has jurisdictional boundaries within a HUC  
25 12 Watershed that contains a 303(d) body of water impaired by PCBs. Tacoma is a  
26 “Superfund Sediment Site Plaintiff.”

27 22. CITY OF PORTLAND (“Portland”) is a city and a Phase I National  
28 Pollutant Discharge Elimination System (“NPDES”) MS4 permittee. Portland owns,



1 operates, and manages a stormwater system that discharges stormwater and/or dry  
2 weather runoff into a body of water impaired by PCBs. Portland is a noticed party or  
3 named responsible party to a US EPA Superfund Site and US Sediment Site because  
4 Portland’s stormwater and/or dry weather runoff contributes PCBs to the US EPA  
5 Superfund/Sediment site. Portland is a Phase I NPDES permittee that has jurisdictional  
6 boundaries within a HUC 12 Watershed that contains a 303(d) body of water impaired  
7 by PCBs. Portland is a “Superfund Sediment Site Plaintiff.”

8 23. PORT OF PORTLAND (“The Port”) is an independent port district and a  
9 Phase I National Pollutant Discharge Elimination System (“NPDES”) MS4 permittee.  
10 The Port owns, operates, and manages a stormwater system that discharges stormwater  
11 and/or dry weather runoff into a body of water impaired by PCBs. The Port is a noticed  
12 party or named responsible party to a US EPA Superfund Site and US Sediment Site  
13 because The Port’s stormwater and/or dry weather runoff contributes PCBs to the US  
14 EPA Superfund/Sediment site. The Port is a Phase I NPDES permittee that has  
15 jurisdictional boundaries within a HUC 12 Watershed that contains a 303(d) body of  
16 water impaired by PCBs. The Port is a “Sediment Site Port Plaintiff.”

17 24. BALTIMORE COUNTY (“Baltimore County”) is a county a Phase I  
18 National Pollutant Discharge Elimination System (“NPDES”) MS4 permittee. Baltimore  
19 County owns, operates, and manages a stormwater system that discharges stormwater  
20 and/or dry weather runoff into a body of water impaired by PCBs. Baltimore County is  
21 a named responsible party to a Total Maximum Daily Load (“TMDL”), promulgated or  
22 updated on or after January 1, 2010, pursuant to its NPDES permit because it discharges  
23 and/or releases stormwater and/or dry weather runoff into a body of water impaired by  
24 PCBs as listed on the Clean Water Act Section 303(d) list for impaired waters.  
25 Baltimore County is a Phase I NPDES permittee that has jurisdictional boundaries  
26 within a HUC 12 Watershed that contains a 303(d) body of water impaired by PCBs.  
27 Baltimore County is a “TMDL Phase I County Plaintiff.”

28

1           25.       MAYOR AND CITY COUNCIL OF BALTIMORE (“Baltimore City”) is  
2 a city a Phase I National Pollutant Discharge Elimination System (“NPDES”) MS4  
3 permittee. Baltimore City owns, operates, and manages a stormwater system that  
4 discharges stormwater and/or dry weather runoff into a body of water impaired by  
5 PCBs. Baltimore City is a named responsible party to a Total Maximum Daily Load  
6 (“TMDL”), promulgated or updated on or after January 1, 2010, pursuant to its NPDES  
7 permit because it discharges and/or releases stormwater and/or dry weather runoff into a  
8 body of water impaired by PCBs as listed on the Clean Water Act Section 303(d) list for  
9 impaired waters. Baltimore City is a Phase I NPDES permittee that has jurisdictional  
10 boundaries within a HUC 12 Watershed that contains a 303(d) body of water impaired  
11 by PCBs. Baltimore City is a “TMDL Phase I City Plaintiff.”

12           26.       Defendant Monsanto Company (“Monsanto”) is a Delaware corporation  
13 with its principal place of business in St. Louis, Missouri.

14           27.       Defendant Solutia Inc. (“Solutia”) is a Delaware corporation with its  
15 headquarters and principal place of business in St. Louis, Missouri.

16           28.       Defendant Pharmacia LLC (formerly known as “Pharmacia Corporation”  
17 and successor to the original Monsanto Company) is a Delaware LLC with its principal  
18 place of business in Peapack, New Jersey. Pharmacia is now a wholly-owned  
19 subsidiary of Pfizer, Inc.

20           29.       The original Monsanto Company (“Old Monsanto”) operated an  
21 agricultural products business, a pharmaceutical and nutrition business, and a chemical  
22 products business. Old Monsanto began manufacturing PCBs in the 1930s and  
23 continued to manufacture commercial PCBs until the late 1970s.

24           30.       Through a series of transactions beginning in approximately 1997, Old  
25 Monsanto’s businesses were spun off to form three separate corporations. The  
26 corporation now known as Monsanto operates Old Monsanto’s agricultural products  
27 business. Old Monsanto’s chemical products business is now operated by Solutia. Old  
28 Monsanto’s pharmaceuticals business is now operated by Pharmacia.

1 31. Solutia was organized by Old Monsanto to own and operate its chemical  
2 manufacturing business. Solutia assumed the operations, assets, and liabilities of Old  
3 Monsanto’s chemicals business.<sup>3</sup>

4 32. Although Solutia assumed and agreed to indemnify Pharmacia (then known  
5 as Monsanto Company) for certain liabilities related to the chemicals business,  
6 Defendants have entered into agreements to share or apportion liabilities, and/or to  
7 indemnify one or more entity, for claims arising from Old Monsanto’s chemical  
8 business --- including the manufacture and sale of PCBs.<sup>4</sup>

9 33. In 2003, Solutia filed a voluntary petition for reorganization under Chapter  
10 11 of the U.S. Bankruptcy Code. Solutia’s reorganization was completed in 2008. In  
11 connection with Solutia’s Plan of Reorganization, Solutia, Pharmacia and New  
12 Monsanto entered into several agreements under which Monsanto continues to manage  
13 and assume financial responsibility for certain tort litigation and environmental  
14 remediation related to the Chemicals Business.<sup>5</sup>

15 34. Monsanto, Solutia, and Pharmacia are collectively referred to in this  
16 Complaint as “Defendants.”

17 **III. JURISDICTION AND VENUE**

18 35. This Court has jurisdiction over the subject matter of this action under 28  
19 U.S.C. § 1332(d) because there is minimal diversity of citizenship among the parties,  
20 there are more than one hundred members of the proposed class/subclasses, and the  
21

22  
23 <sup>3</sup> See MONSANTO COMPANY’S ANSWER TO THE COMPLAINT AND JURY DEMAND, *Town of*  
24 *Lexington v. Pharmacia Corp., Solutia, Inc., and Monsanto Company*, C.A. No. 12-CV-  
25 11645, D. Mass. (October 8, 2013); see also Relationships Among Monsanto Company,  
26 Pharmacia Corporation, Pfizer Inc., and Solutia Inc.,

<http://www.monsanto.com/howeare/pages/monsanto-relationships-pfizer-solutia.aspx>  
(last accessed February 20, 2014).

<sup>4</sup> *See id.*

27 <sup>5</sup> *See* Monsanto’s Form 8-K (March 24, 2008), and Form 10-Q (June 27, 2008),  
28 available at <http://www.monsanto.com/investors/pages/sec-filings.aspx> (last accessed  
February 20, 2014).

1 amount in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and  
2 costs.

3 36. Venue is appropriate in this judicial district pursuant to 28 U.S.C. section  
4 1391(a) because a substantial part of the property that is the subject of the action is  
5 situated in this judicial district.

6 **IV. FACTUAL ALLEGATIONS COMMON TO ALL PLAINTIFFS**

7 **A. PCBs are Toxic Chemicals that Cause Environmental**  
8 **Contamination.**

9 37. Polychlorinated biphenyl, or “PCB,” is a molecule comprised of chlorine  
10 atoms attached to a double carbon-hydrogen ring (a “biphenyl” ring). A “PCB  
11 congener” is any single, unique chemical compound in the PCB category. Over two  
12 hundred congeners have been identified.<sup>6</sup>

13 38. PCBs were generally manufactured as mixtures of congeners. From  
14 approximately 1935 to 1979, Monsanto Company was the only manufacturer in the  
15 United States that intentionally produced PCBs for commercial use.<sup>7</sup> The most common  
16 trade name for PCBs in the United States was “Aroclor,” which was trademarked by  
17 Old Monsanto.

18 39. Monsanto’s commercially-produced PCBs were used in a wide range of  
19 industrial applications in the United States including electrical equipment such as  
20 transformers, motor start capacitors, and lighting ballasts. In addition, PCBs were  
21 incorporated into a variety of products such as caulks, paints, and sealants.

22  
23 \_\_\_\_\_  
24 <sup>6</sup> Table of PCB Congeners, available at  
25 <http://www.epa.gov/epawaste/hazard/tsd/pcbs/pubs/congeners.htm> (last accessed  
February 20, 2014).

26 <sup>7</sup> See 116 Cong. Record 11695, 91<sup>st</sup> Congress, (April 14, 1970) (“Insofar as the  
27 Monsanto Co., the sole manufacturer of PCB’s is concerned . . . .”); 121 Cong. Record  
28 33879, 94<sup>th</sup> Congress, (October 23, 1975) (“The sole U.S. producer, Monsanto Co. . . .  
.”). See also MONS 058730-058752 at 058733 (identifying other producers as “all ex-  
USA.”).

1 40. As used in this Complaint, the terms “PCB,” “PCBs,” “PCB-containing  
2 products,” and “PCB products” refer to PCBs and/or products containing  
3 polychlorinated biphenyl congener(s) manufactured for placement into trade or  
4 commerce, including any product that forms a component part of or that is subsequently  
5 incorporated into another product.

6 41. PCBs easily migrate out of their original source material or enclosure and  
7 contaminate nearby surfaces, air, water, soil, and other materials. For example, PCB  
8 compounds volatilize out of building materials (such as caulk) into surrounding  
9 materials such as masonry, wood, drywall, and soil, thereby causing damage to those  
10 surrounding materials. PCBs can also escape from totally-enclosed materials (such as  
11 light ballasts) and similarly contaminate and damage surrounding materials.

12 42. PCBs present serious risks to the health of humans, wildlife, and the  
13 environment.

14 43. The EPA has determined that Monsanto’s PCBs are probable human  
15 carcinogens. In 1996, EPA reassessed PCB carcinogenicity, based on data related to  
16 Aroclors 1016, 1242, 1254, and 1260.<sup>8</sup> The EPA’s cancer reassessment was peer  
17 reviewed by 15 experts on PCBs, including scientists from government, academia and  
18 industry, all of whom agreed that PCBs are probable human carcinogens.

19 44. In addition, the EPA concluded that PCBs are associated with serious non-  
20 cancer health effects. From extensive studies of animals and primates using  
21 environmentally relevant doses, EPA has found evidence that PCBs exert significant  
22 toxic effects, including effects on the immune system, the reproductive system, the  
23 nervous system, and the endocrine system.

24  
25 \_\_\_\_\_  
26 <sup>8</sup> EPA, PCBs: Cancer Dose-Response Assessment and Application to Environmental  
27 Mixtures, EPA/600/P-96/001F (September 1996), available at  
28 <http://www.epa.gov/epawaste/hazard/tsd/pcbs/pubs/pcb.pdf> (last accessed May 5,  
2014).

1 45. PCBs affect the immune system by causing a significant decrease in the  
2 size of the thymus gland, lowered immune response, and decreased resistance to viruses  
3 and other infections. The animal studies were not able to identify a level of PCB  
4 exposure that did not affect the immune system. Human studies confirmed immune  
5 system suppression.

6 46. Studies of reproductive effects in human populations exposed to PCBs  
7 show decreased birth weight and a significant decrease in gestational age with  
8 increasing exposures to PCBs. Animal studies have shown that PCB exposures reduce  
9 birth weight, conception rates, live birth rates, and reduced sperm counts.

10 47. Human and animal studies confirm that PCB exposure causes persistent  
11 and significant deficits in neurological development, affecting visual recognition, short-  
12 term memory, and learning. Some of these studies were conducted using the types of  
13 PCBs most commonly found in human breast milk.

14 48. PCBs may also disrupt the normal function of the endocrine system. PCBs  
15 have been shown to affect thyroid hormone levels in both animals and humans. In  
16 animals, decreased thyroid hormone levels have resulted in developmental deficits,  
17 including deficits in hearing. PCB exposures have also been associated with changes in  
18 thyroid hormone levels in infants in studies conducted in the Netherlands and Japan.

19 49. PCBs have been associated with other health effects including elevated  
20 blood pressure, serum triglyceride, and serum cholesterol in humans; necrosis and  
21 fibrosis; dermal and ocular effects in monkeys and humans; and liver toxicity in rodents.

22 50. Children may be affected to a greater extent than adults. The Agency for  
23 Toxic Substances and Disease Registry explained: “Younger children may be  
24 particularly vulnerable to PCBs because, compared to adults, they are growing more  
25  
26  
27  
28

1 rapidly and generally have lower and distinct profiles of biotransformation enzymes, as  
2 well as much smaller fat deposits for sequestering the lipophilic PCBs.”<sup>9</sup>

3 51. PCBs are known to be toxic to a number of aquatic species and wildlife  
4 including fish, marine mammals, reptiles, amphibians, and birds. Exposure is  
5 associated with death, compromised immune system function, adverse effects on  
6 reproduction, development, and endocrine function. PCB exposure affects liver  
7 function, the digestive system, and nervous systems and can promote cancer in a  
8 number of animal species. The presence of PCBs can cause changes in community and  
9 ecosystem structure and function.<sup>10</sup>

10 **B. Monsanto Has Long Known of PCBs’ Toxicity.**

11 52. Monsanto was well aware of scientific literature published in the 1930s that  
12 established that inhalation in industrial settings resulted in toxic systemic effects.<sup>11</sup>

13 53. An October 11, 1937, Monsanto memorandum advises that “Experimental  
14 work in animals shows that prolonged exposure to Aroclor vapors evolved at high  
15 temperatures or by repeated oral ingestion will lead to systemic toxic effects. Repeated  
16 bodily contact with the liquid Aroclors may lead to an acne-form skin eruption.”<sup>12</sup>

17 54. A September 20, 1955, memo from Emmet Kelly set out Monsanto’s  
18 position with respect to PCB toxicity: “We know Aroclors are toxic but the actual limit  
19 has not been precisely defined. It does not make too much difference, it seems to me,  
20 because our main worry is what will happen if an individual develops [*sic*] any type of  
21  
22

23 \_\_\_\_\_  
24 <sup>9</sup> Agency for Toxic Substances and Disease Registry, Toxicological Profile for  
25 Polychlorinated Biphenyls (PCBs), (November 2000), at 405, available at  
[www.atsdr.cdc.gov](http://www.atsdr.cdc.gov) (last accessed May 1, 2014).

26 <sup>10</sup> See EPA, Understanding PCB Risks, available at  
<http://www.epa.gov/housatonic/understandingpcbriks.html#WildlifeEcologicalRiskAssessment>  
27 [essment](#) (last accessed March 5, 2015).

28 <sup>11</sup> See MONS 061332, MONS 095196-7, JDGFOX00000037-63.

<sup>12</sup> MONS 061332.

1 liver disease and gives a history of Aroclor exposure. I am sure the juries would not pay  
2 a great deal of attention to [maximum allowable concentrates].”<sup>13</sup>

3 55. On November 14, 1955, Monsanto’s Medical Department provided an  
4 opinion that workers should not be allowed to eat lunch in the Aroclor department:

5  
6 It has long been the opinion of the Medical Department that eating  
7 in process departments is a potentially hazardous procedure that  
8 could lead to serious difficulties. While the Aroclors are not  
9 particularly hazardous from our own experience, this is a difficult  
10 problem to define because early literature work claimed that  
11 chlorinated biphenyls were quite toxic materials by ingestion or  
12 inhalation.<sup>14</sup>

13 56. On January 21, 1957, Emmet Kelly reported that after conducting its own  
14 tests, the U.S. Navy decided against using Monsanto’s Aroclors: “No matter how we  
15 discussed the situation, it was impossible to change their thinking that Pydraul 150 is  
16 just too toxic for use in a submarine.”<sup>15</sup>

17 57. In 1966, Kelly reviewed a presentation by Swedish researcher Soren  
18 Jensen, who stated that PCBs “appeared to be the most injurious chlorinated compounds  
19 of all tested.”<sup>16</sup> Jensen refers to a 1939 study associating PCBs with the deaths of three  
20 young workers and concluding that “pregnant women and persons who have at any time  
21 had any liver disease are particularly susceptible.”<sup>17</sup> Kelly does not dispute any of  
22 Jensen’s remarks, noting only, “As far as the section on toxicology is concerned, it is  
23 true that chloracne and liver trouble can result from large doses.”<sup>18</sup>

24 ///

25 ///

26

27 <sup>13</sup> MONS 095196-7.

28 <sup>14</sup> Monsanto Chemical Company, Memorandum to H.B. Patrick, November 14, 1955  
(no Bates number).

<sup>15</sup> MONS 095640.

<sup>16</sup> See JDGFOX00000037-63.

<sup>17</sup> *Id.* at JDGFOX00000039.

<sup>18</sup> *Id.* at JDGFOX00000037.



1                   **C. Monsanto Has Long Known that PCBs Were “Global**  
2                   **Contaminants” Causing Harm to Animals and Fish.**

3           58.       At the same time, Monsanto became aware that PCBs were causing  
4 widespread contamination of the environment, far beyond the areas of its use.<sup>19</sup>

5           59.       Monsanto’s Medical Director reviewed an article by Swedish researcher  
6 Soren Jensen, who reported the detection of PCBs in the tissues of fish and wildlife in  
7 Sweden.<sup>20</sup> The report noted that PCBs were also detected in the air over London and  
8 Hamburg and found in seals caught off the coast of Scotland. Jensen concluded that  
9 PCBs can “be presumed to be widespread throughout the world.”<sup>21</sup>

10          60.       A December 1968 article by Robert Risebrough identified chlorinated  
11 hydrocarbons (which include PCBs) as “the most abundant synthetic pollutants present  
12 in the global environment.”<sup>22</sup> The article reported finding significant concentrations of  
13 PCBs in the bodies and eggs of peregrine falcons and 34 other bird species. The report  
14 linked PCBs to the rapid decline in peregrine falcon populations in the United States.

15          61.       Despite growing evidence of PCBs’ infiltration of every level of the global  
16 ecology, Monsanto remained steadfast in its production of Aroclors and other PCBs.

17          62.       On March 6, 1969, Monsanto employee W. M. Richard wrote a  
18 memorandum discussing Risebrough’s article that criticized PCBs as a “toxic  
19 substance”, “widely spread by air-water; therefore, an uncontrollable pollutant . . .  
20 causing extinction of peregrine falcon . . . [and] endangering man himself.”<sup>23</sup> Richard  
21 explained that Monsanto could take steps to reduce PCB releases from its own plants  
22 but cautioned, “It will be still more difficult to control other end uses such as cutting  
23 \_\_\_\_\_

24 <sup>19</sup> See MONSFOX00003427; MONS 030483-030486; R.W. Risebrough,  
25 Polychlorinated Biphenyls in the Global Ecosystem, *Nature*, Vol. 220 (December 14,  
1968).

26 <sup>20</sup> *New Scientist* (December 15, 1986), MONSFOX00003427.

27 <sup>21</sup> *Id.*

28 <sup>22</sup> R.W. Risebrough, Polychlorinated Biphenyls in the Global Ecosystem, *Nature*, Vol.  
220 (December 14, 1968).

<sup>23</sup> MONS 096509-096511.

1 oils, adhesives, plastics, and NCR paper. In this applications exposure to consumers is  
2 greater and the disposal problem becomes complex.”<sup>24</sup>

3 63. On September 9, 1969, Monsanto employee W.R. Richard wrote an  
4 interoffice memo titled “Defense of Aroclor.”<sup>25</sup> He acknowledged the role of Aroclor in  
5 water pollution: “Aroclor product is refractive, will settle out on solids – sewerage  
6 sludge – river bottoms, and apparently has a long life.” He noted that Aroclors 1254  
7 and 1260 had been found along the Gulf Coast of Florida causing a problem with  
8 shrimp; in San Francisco Bay, where it was reported to thin egg shells in birds; and in  
9 the Great Lakes. Richard advised that the company could not defend itself against all  
10 criticism: “We can’t defend vs. everything. Some animals or fish or insects will be  
11 harmed. Aroclor degradation rate will be slow. Tough to defend against. Higher  
12 chlorination compounds will be worse [than] lower chlorine compounds. Therefore we  
13 will have to restrict uses and clean-up as much as we can, starting immediately.”<sup>26</sup>

14 64. On January 29, 1970, Elmer Wheeler of the Medical Department circulated  
15 laboratory reports discussing results of animal studies. He noted: “Our interpretation is  
16 that the PCB’s are exhibiting a greater degree of toxicity in this chronic study than we  
17 had anticipated. Secondly, although there are variations depending on species of  
18 animals, the PCB’s are about the same as DDT in mammals.”<sup>27</sup>

19 65. Monsanto expressed a desire to keep profiting from PCBs despite the  
20 environmental havoc in a PCB Presentation to Corporate Development Committee. The  
21 report suggests possible reactions to the contamination issue. It considered that doing  
22 nothing was “unacceptable from a legal, moral, and customer public relations and  
23 company policy viewpoint.” But the option of going out of the Aroclor business was  
24  
25

26 <sup>24</sup> *Id.*

27 <sup>25</sup> DSW 014256-014263.

28 <sup>26</sup> *Id.*

<sup>27</sup> MONS 098480.

1 also considered unacceptable: “there is too much customer/market need and selfishly  
2 too much Monsanto profit to go out.”<sup>28</sup>

3 66. The Aroclor Ad Hoc Committee at Monsanto held its first meeting on  
4 September 5, 1969. The committee’s objectives were to continue sales and profits of  
5 Aroclors in light of the fact that PCB “may be a global contaminant.”<sup>29</sup> The meeting  
6 minutes acknowledge that PCB has been found in fish, oysters, shrimp, birds, along  
7 coastlines of industrialized areas such as Great Britain, Sweden, Rhine River, low  
8 countries, Lake Michigan, Pensacola Bay, and in Western wildlife. Moreover, the  
9 committee implicated the normal use of PCB-containing products as the cause of the  
10 problem: “In one application alone (highway paints), one million lbs/year are used.  
11 Through abrasion and leaching we can assume that nearly all of this Aroclor winds up in  
12 the environment.”<sup>30</sup>

13 67. A month later, on October 2, 1969, the Committee reported extensive  
14 environmental contamination. The U.S. Department of Interior, Fish and Wildlife found  
15 PCB residues in dead eagles and marine birds. Similarly, the Bureau of Commercial  
16 Fisheries reported finding PCBs in the river below Monsanto’s Pensacola plant. The  
17 U.S. Food and Drug Administration had discovered PCBs in milk supplies.

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27 <sup>28</sup> MONS 058737.

28 <sup>29</sup> MONS 030483-030486.

<sup>30</sup> MONS 030485.

1 68. The Committee advised that Monsanto could not protect the environment  
2 from Aroclors as “global” contaminants but could protect the continued manufacture  
3 and sale of Aroclors (highlight added):<sup>31</sup>

4 The committee believes there is little probability ~~(to see)~~  
5 that any action that can be taken will prevent the growing  
6 incrimination of specific polychlorinated biphenyls (the  
7 higher chlorinated--e.g. Aroclors 1254 and 1260) as nearly  
8 global environmental contaminants leading to contamination  
of human food (particularly fish), the killing of some  
marine species (shrimp), and the possible extinction of  
several species of fish eating birds.

9 Secondly, the committee believes that there is ~~no possible~~ *practical*  
10 ~~the course of action~~ that can so effectively police the  
11 uses of these products as to prevent environmental con-  
tamination. *in order completely some*

12 There are, however, a number of ~~possible~~ actions which  
13 must be undertaken to prolong the manufacture, sale and  
14 use of these particular Aroclors as well as to protect  
the continued use of other members of the Aroclor series.  
*(Less than 5 chlorines)*

15  
16 69. Monsanto’s desire to protect Aroclor sales rather than the environment is  
17 reflected in the Committee’s stated objectives:

- 18  
19 1. Protect continues sales and profits of Aroclors;  
20 2. Permit continued development of new uses and sales, and  
21 3. Protect the image of the Organic Division and the Corporation as  
members of the business community recognizing their responsibilities to  
prevent and/or con-trol contamination of the global ecosystem.<sup>32</sup>

22 70. In 1969, Monsanto’s internal documents show they knew their products  
23 would contaminate the environment with PCBs, and Monsanto understood the  
24 foreseeable fate and transport, including “water contamination... for a lengthy period by  
25 leaching from the contaminated mud” (highlight added):  
26

27 <sup>31</sup> DSW 014612-014624, at 014615.

28 <sup>32</sup> *Id.*

1 For a clearer understanding of the general problem, -  
2 the situation at Pensacola was reviewed. From a rela-  
3 tively negligible discharge of 1-3 gal/day into a large  
4 river, 1/4 mile downstream levels of 42 ppb in water  
5 and 476 ppm in mud were found. Although use of Aroclor  
6 was halted immediately, we can expect the water contam-  
7 ination to continue for a lengthy period by leaching  
8 from the contaminated mud. No downstream samples have  
9 yet been taken to measure the decrease in contamination  
10 (as of 9/5/69).

71. Monsanto also knew how PCBs would foreseeably migrate from their  
PCB-containing products and wind up in the environment, as evidenced by internal  
Monsanto documents (highlight added):

11 Our in-plant problems are very small vs. problems of  
12 dealing with environmental contamination by customers.  
13 In one application alone (highway paints), one million  
14 lbs/year are used. Through abrasion and leaching we  
can assume that nearly all of this Aroclor winds up in  
the environment.

72. An interoffice memorandum circulated on February 16, 1970, provided  
talking points for discussions with customers in response to Monsanto's decision to  
eliminate Aroclors 1254 and 1260: "We (your customer and Monsanto) are not  
interested in using a product which may present a problem to our environment."  
Nevertheless, the memo acknowledges that Monsanto "can't afford to lose one dollar of  
business." To that end, it says, "We want to avoid any situation where a customer wants  
to return fluid. . . . We would prefer that the customer use up his current inventory and  
purchase [new products] when available. He will then top off with the new fluid and  
eventually all Aroclor 1254 and Aroclor 1260 will be out of his system. We don't want  
to take fluid back."<sup>33</sup>

33 MONS 100123-100124.

1 73. In 1970, the year after Monsanto formed the Ad Hoc Committee, and  
2 despite Monsanto’s knowledge of the global reach of PCB contamination, PCB  
3 production in the United States peaked at 85 million pounds.

4 74. Growing awareness of the ubiquitous nature of PCBs led the United States  
5 to conduct an investigation of health and environmental effects and contamination of  
6 food and other products. An interdepartmental task force concluded in May 1972 that  
7 PCBs were highly persistent, could bioaccumulate to relatively high levels, and could  
8 have serious adverse health effects on human health.<sup>34</sup>

9 75. After that report, environmental sampling and studies indicated that PCBs  
10 were a “more serious and continuing environmental and health threat than had been  
11 originally realized.”<sup>35</sup> To address these concerns, EPA undertook a study to assess PCB  
12 levels in the environment on a national basis. That study revealed widespread  
13 occurrence of PCBs in bottom sediments in several states, including California; in fish  
14 and birds; in lakes and rivers; in the Atlantic Ocean, the Pacific Ocean, and the Gulf of  
15 Mexico; sewage treatment facilities; in a variety of foods including milk, poultry, eggs,  
16 fish, meat, and grains; and in human tissues, blood, hair, and milk.<sup>36</sup>

17 76. At the same time, Monsanto was promoting the use and sale of Aroclor and  
18 other PCB compounds. In a 1960 brochure, Monsanto promotes the use of Aroclors in  
19 transformers and capacitors, utility transmission lines, home appliances, electric motors,  
20 fluorescent light ballasts, wire or cable coatings, impregnants for insulation, dielectric  
21 sealants, chemical processing vessels, food cookers, potato chip fryers, drying ovens,  
22 thermostats, furnaces, and vacuum diffusion pumps. Aroclors could also be used, the  
23 brochure advertised, as a component of automotive transmission oil; insecticides;  
24 natural waxes used in dental casting, aircraft parts, and jewelry; abrasives; specialized  
25 lubricants; industrial cutting oils; adhesives; moisture-proof coatings; printing inks;

26 \_\_\_\_\_  
27 <sup>34</sup> EPA, Review of PCB Levels in the Environment, EPA-560/7-76-001 (January 1976).

28 <sup>35</sup> *Id.* at 1.

<sup>36</sup> *Id.*, *passim*.

1 papers; mastics; sealant; caulking compounds; tack coatings; plasticizers; resin; asphalt;  
2 paints, varnishes, and lacquers; masonry coatings for swimming pools, stucco homes,  
3 and highway paints; protective and decorative coatings for steel structures, railway tank  
4 and gondola cars; wood and metal maritime equipment; and coatings for chemical  
5 plants, boats, and highway marking.<sup>37</sup>

6 77. A 1961 brochure explains that Monsanto’s Aroclors are being used in  
7 “lacquers for women’s shoes,” as “a wax for the flame proofing of Christmas trees,” as  
8 “floor wax,” as an adhesive for bookbinding, leather, and shoes, and as invisible  
9 marking ink used to make chenille rugs and spreads.<sup>38</sup>

10 78. Thus, by February 1961, at the latest, Monsanto knew that its Aroclors  
11 were being used in a variety of industrial, commercial, household, and consumer goods.  
12 Moreover, Monsanto affirmatively encouraged these uses by encouraging salesmen to  
13 market products for these and other applications.

14 79. A few years later, in 1970, Monsanto tried to distance itself from the  
15 variety of applications of Aroclors that it proudly espoused a few years before. In a  
16 press release, the company claimed: “What should be emphasized . . . is that PCB was  
17 developed over 40 years ago primarily for use as a coolant in electrical transformers and  
18 capacitors. It is also used in commercial heating and cooling systems. It is not a  
19 ‘household’ item.”<sup>39</sup>

20 **D. Monsanto Concealed the Nature of PCBs from Governmental**  
21 **Entities.**

22 80. While the scientific community and Monsanto knew that PCBs were toxic  
23 and becoming a global contaminant, Monsanto repeatedly misrepresented these facts,  
24 telling governmental entities the exact opposite — that the compounds were not toxic  
25

26 \_\_\_\_\_  
27 <sup>37</sup> The Aroclor Compounds (hand dated May 1960), 0509822- 66.

28 <sup>38</sup> Plasticizer Patter (February 1961), 0627503-21.

<sup>39</sup> See Press release (July 16, 1970), MCL000647-50 at MCL000648.

1 and that the company would not expect to find PCBs in the environment in a widespread  
2 manner.<sup>40</sup>

3 81. In a March 24, 1969 letter to Los Angeles County Air Pollution Control  
4 District, Monsanto advised that the Aroclor compounds “are not particularly toxic by  
5 oral ingestion or skin absorption.”<sup>41</sup> Addressing reports of PCBs found along the West  
6 Coast, Monsanto claimed ignorance as to their origin, explaining that “very little  
7 [Aroclor] would normally be expected either in the air or in the liquid discharges from a  
8 using industry.”<sup>42</sup> A similar letter to the Regional Water Quality Control Board  
9 explained that PCBs are associated with “no special health problems” and “no problems  
10 associated with the environment.”<sup>43</sup>

11 82. In May, 1969, Monsanto employee Elmer Wheeler spoke with a  
12 representative of the National Air Pollution Control Administration, who promised to  
13 relay to Congress the message that Monsanto “cannot conceive how the PCBs can be  
14 getting into the environment in a widespread fashion.”<sup>44</sup>

15 83. Monsanto delivered the same message to the New Jersey Department of  
16 Conservation in July, 1969, claiming first, “Based on available data, manufacturing and  
17 use experience, we do not believe the PCBs to be seriously toxic.”<sup>45</sup> The letter then  
18 reiterates Monsanto’s position regarding environmental contamination: “We are unable  
19 at this time to conceive of how the PCBs can become wide spread in the environment. It  
20 is certain that no applications to our knowledge have been made where the PCBs would  
21 be broadcast in the same fashion as the chlorinated hydrocarbon pesticides have been.”<sup>46</sup>

22

23 <sup>40</sup> See notes 42-46, *infra* (letters to governmental agencies).

24 <sup>41</sup> Letter from Monsanto to Los Angeles County Air Pollution Control District (March  
25 24, 1969).

25 <sup>42</sup> *Id.*

26 <sup>43</sup> Letter from Monsanto to State of California Resources Agency (March 27, 1969).

26 <sup>44</sup> Monsanto Memorandum to W.R. Richard (May 26, 1969).

27 <sup>45</sup> Letter from Monsanto to Department of Conservation and Economic Development  
(July 23, 1969).

28 <sup>46</sup> *Id.*



1                   **E. Monsanto Instructed Customers to Improperly Dispose PCBs**

2           84.       Initially, Monsanto instructed its customers to dispose of PCB containing  
3 wastes in local landfills, knowing that landfills were not suitable for PCB contaminated  
4 waste. Monsanto had determined that the only effective method of disposing of PCBs  
5 was high temperature incineration, which was not commercially available to it or its  
6 customers, and it had constructed an incinerator for the disposal of its *own liquid* PCB  
7 wastes. However, as Monsanto employee William Papageorge explained in his 1975  
8 testimony before the Wisconsin Department of Natural Resources, Monsanto instructed  
9 its customers to dispose of *solid* PCB contaminated wastes in landfills: “lacking that  
10 resource [a commercial incinerator], we have to reluctantly suggest, because we don’t  
11 have a better answer, that they find a well operated, properly operated landfill and  
12 dispose of the material in that fashion.”<sup>47</sup>

13                   **F. Monsanto’s PCBs Create a Continuing Tort**

14           85.       Monsanto’s wrongful conduct has created an environmental problem  
15 whereby PCBs continue to emanate out of products containing Monsanto’s PCBs,  
16 causing new deposits of toxic PCBs into Plaintiffs’ and Class Members’ stormwater  
17 and/or dry-weather runoff systems and into 303(d) impaired water bodies every day.

18           86.       Every day, products containing Monsanto’s PCBs, cause PCB  
19 contamination of Plaintiffs’ and Class Members’ storm water and dry-weather runoff,  
20 creating new, continuous, and ongoing contamination.

21           87.       Monsanto PCBs continue to volatilize, vaporize, leach, and leak from  
22 products containing Monsanto’s PCBs, and their intended applications as described  
23 above on a daily basis. These Monsanto PCB chemicals enter into the environment,  
24 streets, roadways, sidewalks, parks, gutters, water basins, catch basins, debris basins,  
25 open channels, low flow diversions, flood control dams and reservoirs, storm inlets, and  
26

27 \_\_\_\_\_

28 <sup>47</sup> Transcript from Hearing before Wisconsin Department of Natural Resources, 1975.

1 storm drains, and then into the Plaintiffs’ and Class Members’ storm water and dry-  
2 weather runoff on a daily basis.

3 88. Monsanto PCBs, emanating from products containing Monsanto’s PCBs,  
4 continue to travel through Plaintiffs’ and Class Members’ storm water and/or dry-  
5 weather runoff on a daily basis and are deposited into 303(d) impaired water bodies on a  
6 daily basis. New PCBs contaminate 303(d) impaired water bodies on a daily basis.

7 89. Monsanto’s PCBs, emanating from products containing Monsanto’s PCBs,  
8 will continue to contaminate Plaintiffs’ and Class Members’ storm water and/or dry-  
9 weather runoff, other properties, and impaired water bodies on a daily basis in the future  
10 and for years to come if no remediation occurs.

11 **V. CLASS ACTION ALLEGATIONS**

12 90. Plaintiffs and Class Members have all suffered injury in fact as a result of  
13 the presence of PCBs in their stormwater and/or dry-weather runoff systems, which was  
14 the result of Defendants’ unlawful conduct.

15 91. Plaintiffs bring this lawsuit on behalf of themselves and all other towns,  
16 cities, counties, and independent port districts that are similarly situated.

17 92. The proposed Class Definition is “As of June 24, 2020 only, but not later,  
18 all NPDES Phase I and II city, town, village, borough, township, and independent port  
19 district MS4 permittees with jurisdictional boundaries within a HUC 12 Watershed that  
20 contains and/or is immediately adjoining a 303(d) water body impaired by PCBs and all  
21 NPDES Phase I and II county MS4 permittees with urbanized boundaries within a HUC  
22 12 Watershed that contains and/or is immediately adjoining a 303(d) water body  
23 impaired by PCBs.”

24 93. Excluded from the putative class are Defendants and their officers,  
25 directors, and employees. Plaintiff reserves the right to modify or amend the Class  
26 definition before the Court determines whether certification is appropriate.

27 94. **Ascertainability.** The members of the Class are readily ascertainable and  
28 have been ascertained by reference to publicly available information. Class Members

1 are identified in accordance with the Class Definition using three publicly maintained  
2 and available databases, as follows: (1) the U.S. EPA 303(d) list of bodies of water  
3 impaired by PCBs; (2) USGS HUC 12 Watersheds; (3) U.S. Census Bureau and/or EPA  
4 information. Class Members are identified as those NPDES Phase I and II city, town,  
5 village, borough, township, and independent port district MS4 permittees with  
6 jurisdictional boundaries within a HUC 12 Watershed that contains and/or is  
7 immediately adjacent to a 303(d) water body impaired by PCBs and all NPDES Phase I  
8 and II county MS4 permittees with urbanized boundaries within a HUC 12 Watershed  
9 that contains and/or is immediately adjoining a 303(d) water body impaired by PCBs, as  
10 of June 24, 2020 only, but not later. All city, town, village, borough, township, and  
11 independent port district MS4 permittees, with jurisdictional boundaries within all  
12 USGS HUC 12 Watersheds that contain all 303(d) bodies of water impaired by PCBs  
13 and all county MS4 permittees with urbanized boundaries within a HUC 12 Watershed  
14 that contains and/or is immediately adjoining a 303(d) water body, as of June 24, 2020  
15 only, but not later, are identified.

16 95. **Numerosity.** The members of the Class are so numerous that their  
17 individual joinder is impracticable. There are 2,528 Class Members geographically  
18 located in 36 states.

19 96. **Existence and predominance of Common Questions of Law and Fact.**  
20 Common questions of law and fact that exist as to all members of the Class predominate  
21 over any questions affecting only individual class members. All members of the Class  
22 have been subject to the same conduct and resulting injuries. Questions of law or fact  
23 which are common to the Class, as set forth in this Complaint, predominate over  
24 questions affecting individual members because class members are similarly situated  
25 victims of Monsanto's common course of conduct. Monsanto's conduct similarly  
26 harmed all Class Members because Monsanto designed, manufactured, promoted, and  
27 sold PCBs that leached, leaked, or escaped from their intended uses and became  
28 collected into and discharged from the Plaintiffs' and Class members' stormwater

1 and/or dry-weather runoff systems. In addition, Monsanto has no defenses specific to  
2 individual Class Members, and its defenses, if any, apply equally to all Class members.

3 The common legal and factual questions include, but are not limited to, the following:

- 4 a. whether PCBs, when used as intended, are unreasonably dangerous;
- 5 b. whether PCBs, when used as intended, contaminate stormwater and/or  
6 dry-weather runoff systems;
- 7 c. whether Monsanto could have reasonably foreseen that its PCBs, when  
8 used as intended, would contaminate stormwater and/or dry-weather  
9 runoff systems;
- 10 d. whether Monsanto could have reasonably foreseen that its PCBs, when  
11 used as intended, would contaminate waterbodies through stormwater;
- 12 e. whether the presence of PCBs in contaminated stormwater and/or dry-  
13 weather runoff systems constitutes a public nuisance;
- 14 f. whether Monsanto owed Class members a duty to ensure that its PCBs,  
15 when used as intended, did not contaminate stormwater and/or dry-  
16 weather runoff systems;
- 17 g. whether Monsanto owed Class members a duty to warn about PCBs,  
18 when used as intended, escaping applications;
- 19 h. whether Monsanto owed Class members a duty to warn about PCBs'  
20 propensity to contaminate through stormwater contribution natural  
21 resources including waterbodies such as lakes, streams, rivers, and bays;
- 22 i. whether Monsanto breached its duties;
- 23 j. whether Monsanto's actions directly and proximately caused Class  
24 members' injuries and damages;
- 25 k. whether Monsanto's conduct supports an award of punitive damages.

26 97. **Typicality.** Plaintiffs' claims are typical of the claims of the members of  
27 the Class in that Plaintiffs are members of the Class that Plaintiffs seek to represent.  
28

1 Plaintiffs, like members of the proposed Class, operate stormwater and/or dry weather  
2 runoff systems that are contaminated with PCBs, discharge PCB-contaminated water  
3 into a body of water that has been designated “impaired” due to PCB contamination,  
4 and have incurred costs or will incur costs to reduce the levels of PCBs in those  
5 discharges.

6 98. **Adequacy of Representation.** Plaintiffs will fairly and adequately protect  
7 the interests of the members of the Class. Plaintiffs have retained counsel experienced  
8 in public entity, environmental, mass, and class actions. Plaintiffs have no adverse or  
9 antagonistic interests to those in the Class and will fairly and adequately protect the  
10 interests of the Class. Plaintiffs’ attorneys are aware of no interests adverse or  
11 antagonistic to those of the Plaintiff and proposed Class.

12 99. **Superiority.** A class action is superior to any other theoretically available  
13 method for the fair and efficient adjudication of this controversy. Significant economies  
14 of time, effort, and expense will inure to the benefit of the Court and the parties in  
15 litigation of essentially identical issues on a class-wide rather than a repetitive  
16 individual basis. Individualized litigation would create the danger of inconsistent or  
17 contradictory judgments arising from the same set of facts. Individualized litigation  
18 would also increase the delay and expense to all parties and the court system and the  
19 issues raised by this action. The damages or other financial detriment suffered by  
20 individual Class members may be relatively small compared to the burden and expense  
21 that would be entailed by individual litigation of the claims against the Defendants. By  
22 contrast, the class action device presents far fewer management difficulties, and  
23 provides the benefits of single adjudication, economy of scale, and comprehensive  
24 supervision by a single court. No unusual difficulties are likely to be encountered in the  
25 management of this class action, and concentrating the litigation in this centrally located  
26 forum is particularly convenient to the parties.

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**FIRST CAUSE OF ACTION**

**PUBLIC NUISANCE**

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3 100. Plaintiffs reallege and reaffirm each and every allegation set forth in all  
4 preceding paragraphs as if fully restated in this count.

5 101. Each Plaintiff and Class Member owns and operates a stormwater and/or  
6 dry-weather runoff system that captures, collects, and diverts stormwater and other  
7 runoff into drains, sewers, and other infrastructure. Each Plaintiff and Class Member  
8 holds a permit to discharge that water to receiving waters in accordance with Phase I  
9 and Phase II of the National Pollutant Discharge Elimination System (“NPDES”).

10 102. Each Plaintiff’s and Class Member’s MS4 permit regulates the release of  
11 stormwater and/or dry-weather runoff into a receiving body of water that has been  
12 designated as “impaired” by PCBs in that waterbody.

13 103. Each Plaintiff and Class Member is subject to Clean Water Act  
14 requirements regarding its discharge of PCBs into 303(d) bodies of water.

15 104. Monsanto manufactured, distributed, marketed, and promoted PCBs in a  
16 manner that created or participated in creating a public nuisance that is harmful to health  
17 and obstructs the free use of stormwater and/or dry-weather runoff systems and  
18 impaired waterbodies.

19 105. The presence of PCBs interferes with the comfortable enjoyment of  
20 stormwater and/or dry-weather runoff systems and impaired waterbodies for customary  
21 uses for fishing, swimming, and other water activities.

22 106. The presence of PCBs interferes with the free and beneficial use of  
23 stormwater and/or dry-weather runoff systems and impaired waterbodies for the  
24 promotion of commerce, navigation, and fisheries.

25 107. The presence of PCBs interferes with the free and beneficial use of  
26 stormwater and/or dry-weather runoff systems and impaired waterbodies for ecological  
27 preservation and habitat restoration.

1 108. The presence of PCBs causes significant costs, inconvenience and  
2 annoyance to Plaintiffs and Class Members, who are charged with reducing and  
3 monitoring PCB discharge in order to protect plant and animal life, and the quality of  
4 water in impaired waterbodies.

5 109. The condition affects a substantial number of people who use impaired  
6 waterbodies for commercial and recreational purposes and interferes with the rights of  
7 the public at large to clean and safe resources and environment.

8 110. An ordinary person would be reasonably annoyed or disturbed by the  
9 presence of toxic PCBs that endanger the health of fish, animals, and humans and  
10 degrade water quality and destroy marine and estuarine habitats.

11 111. The seriousness of the environmental and human health risk far outweighs  
12 any social utility of Monsanto's conduct in manufacturing PCBs and concealing the  
13 dangers posed to human health and the environment.

14 112. The Plaintiffs and Class Members have suffered and will continue to suffer  
15 harm that is different from the type of harm suffered by the general public, and the  
16 Plaintiffs have incurred substantial costs deriving from reducing and monitoring PCB  
17 discharges from stormwater and/or dry-weather runoff systems to impaired waterbodies.

18 113. No Plaintiff or Class Member consented to the conduct that resulted in the  
19 contamination of stormwater and/or dry-weather runoff systems and impaired  
20 waterbodies.

21 114. Monsanto's conduct was a substantial factor in causing the harm to the  
22 Plaintiffs and Class Members.

23 115. Monsanto knew or, in the exercise of reasonable care, should have known  
24 that the manufacture and sale of PCBs was causing the type of contamination now  
25 found in stormwater and/or dry-weather runoff systems and impaired waterbodies.  
26 Monsanto knew that PCBs would contaminate water supplies, would degrade marine  
27 habitats, would kill fish species, and would endanger birds and animals. In addition,  
28 Monsanto knew that PCBs are associated with serious illnesses and cancers in humans

1 and that humans may be exposed to PCBs through ingestion and dermal contact. As a  
2 result, it was foreseeable to Monsanto that humans may be exposed to PCBs through  
3 swimming in contaminated waters or by eating fish from those waters. Monsanto thus  
4 knew, or should have known, that PCB contamination would seriously and  
5 unreasonably interfere with the ordinary comfort, use, and enjoyment of any coastal  
6 marine areas.

7 116. As a direct and proximate result of Monsanto's creation of a public  
8 nuisance, Plaintiffs and Class Members have suffered, and continue to suffer, monetary  
9 damages to be proven at trial.

10 117. Monsanto's conduct was malicious, oppressive, wanton, willful,  
11 intentional, and shocks the conscience, warranting punitive and exemplary damages,  
12 because Monsanto callously decided to increase sales and develop new ways to promote  
13 PCBs, knowing PCBs are toxic, cannot be contained, and last for centuries.

14 **SECOND CAUSE OF ACTION**

15 **STRICT LIABILITY- DESIGN DEFECT**

16 118. Plaintiffs and Class Members reallege and reaffirm each and every  
17 allegation set forth in all preceding paragraphs as if fully restated in this count.

18 119. Plaintiffs and Class Members were harmed by Aroclors and other PCB  
19 products ("Monsanto's PCB Products") which were designed, manufactured, sold, and  
20 distributed by Monsanto, and which were defectively designed, did not include  
21 sufficient instructions, and did not include sufficient warning of potential safety hazards.

22 120. The design of Monsanto's PCB products were defective because  
23 Monsanto's PCB Products did not perform as safely as an ordinary consumer would  
24 have expected them to perform.

25 121. Monsanto designed, manufactured, sold, and distributed Monsanto's PCB  
26 Products.

27 122. The design of Monsanto's PCB Products design caused harm to Plaintiffs  
28 and Class Members.



1 123. Monsanto's PCB Products did not perform as safely as an ordinary  
2 consumer would have expected it to perform when used or misused in an intended or  
3 reasonably foreseeable way.

4 124. The design of Monsanto's PCB Products was a substantial factor in causing  
5 harm to Plaintiffs and Class Members.

6 125. The gravity of the environmental harm resulting from the use of  
7 Monsanto's PCB Products was, is, and will be enormous because Monsanto's PCB  
8 Products created a public health hazard.

9 126. The likelihood that this harm would occur was, is, and will be very high  
10 because Monsanto knew and/or should have known Monsanto's PCB Products were  
11 toxic, could not be contained, and do not readily degrade in the environment.

12 127. Monsanto knew or should have known that these products caused harm  
13 even when used as intended.

14 128. In fact, Monsanto foresaw the enormity of the environmental harm but  
15 consciously chose to continue producing PCB Products.

16 129. At the time of manufacture, there were alternative safer designs that were  
17 feasible, more cost effective, and advantageous, including not using PCBs at all in  
18 Monsanto's products.

19 130. Monsanto's conduct lacked any care and was an extreme departure from  
20 what a reasonably careful company would do in the same situation to prevent harm to  
21 others and the environment, and thus Monsanto was grossly negligent.

22 131. Monsanto, its officers, directors, and managing agents, engaged in  
23 despicable conduct and acted or failed to act with malice, oppression, and fraud,  
24 warranting punitive or exemplary damages.

25 **THIRD CAUSE OF ACTION**

26 **STRICT LIABILITY- FAILURE TO WARN**

27 132. Plaintiffs reallege and reaffirm each and every allegation set forth in all  
28 preceding paragraphs as if fully restated in this count.

1 133. Plaintiffs and Class Members were harmed by Aroclor and other PCB  
2 products (“Monsanto’s PCB Products”) which were designed, manufactured, sold, and  
3 distributed by Monsanto, and which were defectively designed, did not include  
4 sufficient instructions, and did not include sufficient warning of potential safety hazards.

5 134. Monsanto’s PCB Products lacked sufficient instructions or warning of  
6 potential environmental hazard and toxicity.

7 135. Monsanto designed, manufactured, sold, and distributed Monsanto’s PCB  
8 Products.

9 136. Monsanto’s PCB Products had potential environmental hazard and toxicity  
10 risks that were known and/or knowable in light of the scientific and medical knowledge  
11 that was generally accepted in the scientific community and/or in light of Monsanto’s  
12 superior knowledge about its products at the time of design, manufacture, sale,  
13 distribution of Monsanto’s PCB Products.

14 137. The potential environmental hazard and toxicity risks presented a  
15 substantial danger when Monsanto’s PCB Products were and are used or misused in an  
16 intended or reasonably foreseeable way.

17 138. Ordinary consumers and third-parties would not have recognized the  
18 potential risks.

19 139. Monsanto failed to adequately warn or instruct of the potential risks.

20 140. Plaintiffs and Class Members were and will be harmed.

21 141. The lack of sufficient instructions or warnings was a substantial factor in  
22 causing Plaintiffs’ and Class Members’ harm.

23 142. Monsanto’s conduct lacked any care and was an extreme departure from  
24 what a reasonably careful company would do in the same situation to prevent harm to  
25 others and the environment, and thus Monsanto was grossly negligent.

26 143. Monsanto, its officers, directors, and managing agents, engaged in  
27 despicable conduct and acted or failed to act with malice, oppression, and fraud,  
28 warranting punitive or exemplary damages.

**FOURTH CAUSE OF ACTION**  
**NEGLIGENCE**

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2  
3 144. Plaintiffs reallege and reaffirm each and every allegation set forth in all  
4 preceding paragraphs as if fully restated in this count.

5 145. Plaintiffs and Class Members were harmed by Aroclor and other PCB  
6 products (“Monsanto’s PCB Products”) which were designed, manufactured, sold, and  
7 distributed by Monsanto, and which were defectively designed, did not include  
8 sufficient instructions, and did not include sufficient warning of potential safety hazards.

9 146. Monsanto was negligent by not using reasonable care to warn or instruct  
10 about Monsanto’s PCB Products’ dangerous condition or about the facts that made  
11 Monsanto’s PCB Products likely to be dangerous.

12 147. Monsanto designed, manufactured, sold, and distributed Monsanto’s PCB  
13 Products.

14 148. Monsanto knew or reasonably should have known that Monsanto’s PCB  
15 Products were dangerous or likely to be dangerous when used or misused in a  
16 reasonably foreseeable manner.

17 149. Monsanto knew or reasonably should have known that users and third  
18 parties would not realize the danger.

19 150. Monsanto failed to adequately warn of the danger or instruct on the safe  
20 use of the Monsanto’s PCB Products and failed to recall the PCB Products.

21 151. A reasonable chemical manufacturer, seller, distributor, under the same or  
22 similar circumstances would have warned of the danger or instructed on the safe use of  
23 the Monsanto’s PCB Products and/or recalled the PCB Products.

24 152. Plaintiffs and Class Members were and will be harmed.

25 153. Monsanto’s failure to warn or instruct was a substantial factor in causing  
26 Plaintiffs’ and Class Members’ harm.

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**FIFTH CAUSE OF ACTION**

**TRESPASS**

154. Plaintiffs reallege and reaffirm each and every allegation set forth in all preceding paragraphs as if fully restated in this count.

155. Each Plaintiff and Class Member owns and/or is trustee of property including stormwater and dry-weather runoff infrastructure, real property, and/or water rights.

156. Monsanto intentionally, recklessly, and negligently caused its PCBs to enter Plaintiffs' and Class Members' property.

157. Neither Plaintiffs nor Class Members gave permission for the entry.

158. Each Plaintiff and Class Member was, is, and will be actually harmed.

159. Monsanto's conduct was a substantial factor in causing Plaintiffs' and Class Members' harm.

160. Monsanto's conduct lacked any care and was an extreme departure from what a reasonably careful company would do in the same situation to prevent harm to others and the environment, and thus Monsanto was grossly negligent.

161. Monsanto, its officers, directors, and managing agents, engaged in despicable conduct and acted or failed to act with malice, oppression, and fraud, warranting punitive or exemplary damages.

**PRAYER FOR RELIEF**

Plaintiffs, individually and on behalf of all other similarly situated, respectfully request the Court grant Plaintiff and each Class Member the following relief against Defendants, jointly and severally, as follows:

1. Certify the Class as requested herein;
2. Appoint Plaintiffs to serve as the Class Representatives;
3. Appoint Scott Summy, John Fiske, and Carla Burke Pickrel as Lead Class Counsel;

1 4. Appoint John Gomez, John Ross Wertz, Richard Gordon, and Martin Wolf as  
2 Co-Class Counsel;

3 5. Any such further relief as may be just and proper.

4 In addition, Plaintiffs and each Class member pray for further judgment against  
5 Defendants, jointly and severally:

6 6. Compensatory damages according to proof;

7 7. Punitive or exemplary damages;

8 8. Costs to abate, abatement, and other injunctive relief;

9 9. Declaratory judgment;

10 10. Attorneys' fees, interest, and costs of suit;

11  
12 **DEMAND FOR JURY TRIAL**

13 Plaintiffs demand a jury trial.

14 Dated: July 8, 2020

15 By: /s/ John P. Fiske  
John P. Fiske

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