

DAVID M. LOUIE 2162  
Attorney General of Hawaii

14-043C&E CAB

HEIDI M. RIAN 3473  
WILLIAM F. COOPER 4501  
Deputy Attorneys General  
465 South King Street, Room 200  
Honolulu, Hawaii 96813  
Telephone: 587-3050

Attorneys for Complainant

DEPARTMENT OF HEALTH

STATE OF HAWAII

DEPARTMENT OF HEALTH,	)	DOCKET NO. 13-CA-EO-01
STATE OF HAWAII,	)	
	)	Agricultural Facility
Complainant,	)	
	)	
vs.	)	
	)	
MONSANTO COMPANY,	)	
	)	
Respondent	)	
	)	

---

CONDITIONAL AGREEMENT TO SIGN CONSENT ORDER

Prior to signing the attached proposed Consent Order, the Department of Health ("DOH") and MONSANTO COMPANY, ("Respondent") agree to comply with the public notice and comment provisions of Section 342B-55, Hawaii Revised Statutes ("H.R.S.").

The DOH and Respondent agree to sign the proposed Consent Order as written if no comments are submitted during the public comment period or, if after the DOH's review of the comments submitted, the DOH still concludes that the proposed Consent Order is appropriate. If DOH does not so conclude, the DOH and Respondent will use their best efforts to agree on changes to be

made. If, after a reasonable time, the DOH determines that such efforts will not result in agreement, the DOH shall set a date and time for a hearing on the issues raised by the Notice and Finding of Violation and Order in this matter and shall notify the Respondent of such hearing, pursuant to Chapter 91, H.R.S.

DATED: Honolulu, Hawaii, MAR 27 2014.

DEPARTMENT OF HEALTH  
STATE OF HAWAII

By: A. Christian Wheelen  
A. CHRISTIAN WHELEN, Ph.D.  
Acting Deputy Director  
for Environmental Health

DATED: Honolulu, Hawaii, MAR 27 2014

MONSANTO COMPANY

By: [Signature]  
RAYMOND J. FOSTER  
Molokai Foundation Manager

APPROVED AS TO FORM:

[Signature]  
WILLIAM F. COOPER  
Deputy Attorney General

[Signature]  
LISA WOODS MÜNGER  
Goodsill Anderson Quinn & Stifel  
Attorney for Monsanto Company

DAVID M. LOUIE            2162  
Attorney General of Hawaii

HEIDI M. RIAN            3473  
WILLIAM F. COOPER    4501  
Deputy Attorneys General  
465 South King Street, Room 200  
Honolulu, Hawaii 96813  
Telephone: 587-3050

Attorneys for Complainant

DEPARTMENT OF HEALTH

STATE OF HAWAII

DEPARTMENT OF HEALTH,	)	DOCKET NO. 13-CA-EO-01
STATE OF HAWAII,	)	
	)	Agricultural Facility
Complainant,	)	
	)	
vs.	)	
	)	
MONSANTO COMPANY,	)	
	)	
Respondent	)	
_____	)	

CONSENT ORDER

The Department of Health ("DOH"), State of Hawaii, and MONSANTO COMPANY, ("Respondent") enter into this Consent Order pursuant to Chapter 342B, Hawaii Revised Statutes ("H.R.S."), and Air Pollution Control rules, Chapter 11-60.1, Hawaii Administrative Rules ("H.A.R.").

1. STIPULATED FACTS AND FINDINGS

Respondent is a corporation operating under the laws of the State of Hawaii. Respondent owns the Monsanto Company located at 1351 Maunaloa Highway, Kaunakakai, Hawaii, 96748 ("Facility").

On May 8, 2013, DOH issued Respondent a Notice and Finding of Violation and Order ("NFVO"), under Docket No. 13-CA-EO-01, alleging that Respondent violated Section 11-60.1-33(a), H.A.R., Section 11-60.1-2, H.A.R.; and Section 342B-11, H.R.S.; by causing or permitting visible fugitive dust to become airborne without taking reasonable precautions to prevent it from doing so on November 21, 2012, December 2, 2012, and December 20, 2012.

The DOH assessed an initial penalty of \$3,400.00 for the alleged violations of Section 11-60.1-33(a), H.A.R.

On June 7, 2013 and August 7, 2013, the DOH and Respondent met to discuss the NFVO. During the meeting, Respondent presented additional information regarding the violations cited in the NFVO under Docket No. 13-CA-EO-01.

DOH and Respondent have agreed to settle their disputes without the risks of adverse findings and conclusions, or a final order or judgment after litigation.

## 2. EFFECT OF SETTLEMENT

This Consent Order and any actions taken to comply with its terms are not admissions of violation, fault, or liability by Respondent. This Consent Order settles and resolves all civil liability of Respondent to the DOH for allegedly violating Section 11-60.1-33(a), H.A.R., Section 11-60.1-2, and H.A.R., Section 342B-11, H.R.S., set forth in NFVO Docket No. 13-CA-EO-01 dated May 8, 2013. Under this Consent Order, any and all violations and claims alleged or which could have been alleged by

the DOH in the NFVO shall be discharged, dismissed, waived and released as against Respondent.

The effect of this Settlement, and the definitions, obligations, terms, conditions, and/or any and all other aspect(s) of the agreement contained in each and every paragraph of this Consent Order, except the non-admissions language in the immediately preceding paragraph, shall end and shall no longer be binding on any party, once the Consent Order is terminated pursuant to Paragraph 13 of this Consent Order.

### 3. SETTLEMENT AMOUNT

Within thirty (30) days of the effective date of this Consent Order, Respondent shall pay THREE THOUSAND DOLLARS AND NO CENTS (\$3,000.00) by check, payable to the State of Hawaii and sent to the manager of the Clean Air Branch at the address set forth in Paragraph 4 of this Consent Order.

### 4. NOTIFICATION

Whenever, under the terms of this Consent Order, notice or payment is required to be given by one party to another, such notice or payment shall be directed to the individuals specified below, at the address given, unless a party gives notice in writing to the other party that another individual has been designated to receive such communications:

Mr. Nolan S. Hirai, P.E.  
Manager  
Clean Air Branch  
Hawaii State Department of Health  
P.O. Box 3378  
Honolulu, Hawaii 96801  
Telephone: (808) 586-4200  
Telefax: (808) 586-4359

Mr. Raymond J. Foster  
Molokai Foundation Manager  
Monsanto Company  
1351 Maunaloa Highway  
Kaunakakai, Hawaii 96748  
Telephone: (808) 553-5070  
Telefax: (808) 553-5436

5. ACTIONS AGAINST OTHER PARTIES

This Consent Order does not limit or affect the rights of the Respondent or the DOH against any third parties.

6. AUTHORITY OF SIGNATORIES

Each undersigned representative of a party to this Consent Order certifies that he or she has full authority to enter into the terms of this Consent Order and legally to bind the party which he or she represents.

7. BINDING EFFECT

The provisions of this Consent Order shall apply to and be binding upon all parties to this action, their parent, affiliated, and subsidiary companies, and all of their officers, agents, trustees, servants, employees, successors, assignees, and attorneys, until terminated pursuant to Paragraph 13 below.

Respondent shall give notice of this Consent Order to any successors in interest prior to transfer of ownership and to any contractor performing activities contemplated by this Consent Order and shall submit a copy of each such notice to the DOH, until the Consent Order is terminated pursuant to Paragraph 13 below.

8. NO ADMISSION OF LIABILITY

The parties acknowledge that neither this Consent Order, nor the fact of settlement, nor the settlement amount, nor the settlement payment, may be construed as, may be deemed evidence of, or may be used at any time as an admission, concession, presumption, or inference of fault, wrongdoing or liability of any party. This Consent Order is to be construed strictly as a compromise and settlement of all the alleged violations in the NFVO for the purpose of ending past and present controversies, litigation of the contested case, and expenses.

9. ENTIRE AGREEMENT

This Consent Order sets forth the entire agreement between the parties with respect to this matter.

10. EFFECTIVE DATE

This Consent Order shall become effective as soon as it has been signed by all parties.

11. MODIFICATIONS

This Consent Order shall not be modified except in writing, signed by all parties.

12. NO TAX BENEFITS

Respondent shall not deduct any of the penalty amount paid pursuant to this Consent Order from its federal or state taxable income, nor shall Respondent claim any tax credits for said penalty amount.

13. TERMINATION

Upon receipt of the payment required by Paragraph 3 of this Consent Order, the DOH shall issue a letter to Respondent acknowledging the receipt of the payment of the settlement amount, which shall terminate this Consent Order.

14. EFFECT

This Consent Order constitutes the final agreement between the parties and the settlement of Docket No. 13-CA-EO-01, dated May 8, 2013.

15. COSTS

Each party shall bear its own costs and attorneys' fees.

DATED: Honolulu, Hawaii, \_\_\_\_\_.

DEPARTMENT OF HEALTH  
STATE OF HAWAII

By: \_\_\_\_\_

A. Christian Whelen, Ph.D.  
Acting Deputy Director  
for Environmental Health

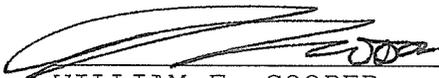
DATED: Honolulu, Hawaii, \_\_\_\_\_.

MONSANTO COMPANY

By: \_\_\_\_\_

RAYMOND J. FOSTER  
Molokai Foundation Manager

APPROVED AS TO FORM:

  
\_\_\_\_\_  
WILLIAM F. COOPER  
Deputy Attorney General

  
\_\_\_\_\_  
LISA WOODS-MUNGER  
Goodsill Anderson Quinn & Stifel  
Attorney for Monsanto Company

