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**UNITED STATES DISTRICT COURT
 EASTERN DISTRICT OF WASHINGTON**

20 CITY OF SPOKANE, a municipal corporation
 21 located in the County of Spokane, State of
 22 Washington,

Plaintiff,

v.

24 MONSANTO COMPANY,
 25 SOLUTIA INC., and
 26 PHARMACIA CORPORATION, and DOES 1
 through 100,

Defendants.

) CASE NO.

) _____
) **PLAINTIFF'S ORIGINAL**
) **COMPLAINT AND DEMAND**
) **FOR JURY TRIAL**

1 **I. INTRODUCTION**

2 1. Polychlorinated biphenyls (or “PCBs”) are man-made chemical compounds
3 that have become notorious as global environmental contaminants — found in bays,
4 oceans, rivers, streams, soil, and air. As a result, PCBs have been detected in the tissues
5 of all living beings on earth including all forms of marine life, various animals and
6 birds, plants and trees, and humans.
7

8 2. The extent of environmental PCB contamination is troubling because PCBs
9 cause a variety of adverse health effects. In humans, PCB exposure is associated with
10 cancer as well as serious non-cancer health effects, including effects on the immune
11 system, reproductive system, nervous system, endocrine system and other health effects.
12 In addition, PCBs destroy populations of fish, birds, and other animal life.
13

14 3. Monsanto Company was the sole manufacturer of PCBs in the United
15 States from 1935 to 1979, and trademarked the name “Aroclor” for certain PCB
16 compounds. Although Monsanto knew for decades that PCBs were toxic and knew that
17 they were widely contaminating all natural resources and living organisms, Monsanto
18 concealed these facts and continued producing PCBs until Congress enacted the Toxic
19 Substances Control Act (“TSCA”), which banned the manufacture and most uses of
20 PCBs as of January 1, 1979.
21

22 4. PCBs have migrated into the Spokane River by a variety of ways. PCBs
23 were used in many industrial and commercial applications such as paint, caulking,
24 transformers, capacitors, coolants, hydraulic fluids, plasticizers, sealants, inks,
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1 lubricants, and other uses. PCBs regularly leach, leak, off-gas, and escape their
2 intended applications, causing runoff during naturally occurring storm and rain events,
3 after being released into the environment. The runoff originates from multiple sources
4 and industries and enters the Spokane River with stormwater and other runoff.
5

6 5. The natural fate and transport of PCBs results in the gathering and
7 collection in waste and stormwater through no fault of the City of Spokane, which
8 lawfully discharges waste and stormwater into the Spokane River through its two
9 NPDES¹ Permit, issued by the State of Washington Department of Ecology
10 (“Ecology”).
11

12
13 6. A condition of receiving an NPDES Permit from the State of Washington is
14 compliance with the Clean Water Act, which requires dischargers like Spokane to limit
15 their discharge of certain chemicals into impaired bodies of water.
16

17 7. Spokane River (“the River”) is contaminated with PCBs, which have been
18 detected in the River’s water, sediments, fish, and wildlife. The Spokane River is in
19 violation of the water quality standards for the presence of PCBs. The Spokane River is
20 listed on the Washington State Water Quality Assessment list of impaired water bodies,
21 in accordance with section 303(d) of the Clean Water Act.²
22

23
24
25 ¹ National Pollutant Discharge Elimination System.

26 ² Water Quality Improvement Project, Department of Ecology, State of Washington,
27 <http://www.ecy.wa.gov/programs/wq/tmdl/spokaneriver/SpokPCBTMDL.html>
28

1 8. The Spokane River contains elevated levels of PCBs in surface water,
2 sediments, and fish tissue.³

3 9. The Washington State Department of Health and Ecology issued a revised
4 Health Advisory for Spokane River Fish Consumption, and certain segments of the
5 River are designated as “catch and release only.”⁴

7 10. Human consumption of fish from affected areas of the River may be
8 associated with serious health risks. U.S. Environmental Protection Agency (“EPA”)
9 (2000b) has classified PCBs as “probably human carcinogens.” Studies have suggested
10 that PCBs may play a role in inducing breast cancer. Studies have also linked PCBs to
11 increased risk for several other cancers including liver, biliary tract, gall bladder,
12 gastrointestinal tract, pancreas, melanoma, and non-Hodgkin’s lymphoma. PCBs may
13 also cause non-carcinogenic effects, including reproductive effects and developmental
14 effects (primarily to the nervous system). PCBs tend to accumulate in the human body
15 in the liver, adipose tissue (fat), skin, and breast milk. PCBs have also been found in
16 human plasma, follicular fluid, and sperm fluid. Fetuses may be exposed to PCBs in
17 utero, and babies may be exposed to PCBs during breastfeeding. According to U.S.
18 EPA (2000b), [s]ome human studies have also suggested that PCB exposure may cause
19 adverse effects in children and developing fetuses while other studies have not shown
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25
26 ³ *Id.*

27 ⁴ *Id.*

1 effects. Reported effects include lower IQ scores, low birth weight, and lower behavior
2 assessment scores.

3 11. The Washington State Department of Ecology determined that taking steps
4 to reduce PCBs immediately is an effective method for achieving desired water quality
5 goals, and such methods require identifying and reducing PCBs at their sources in the
6 watershed.⁵

7
8
9 12. In 2011, the Spokane River Regional Toxics Task Force (“Task Force”)
10 was established to characterize the sources of toxic chemicals such as PCBs in the
11 Spokane River and identify and implement appropriate actions needed to make
12 measureable progress towards meeting applicable water quality standards for the State
13 of Washington, State of Idaho, and The Spokane Tribe of Indians, and in the interests of
14 public and environmental health.⁶ This Task Force is a collaboration of public and
15 private entities in Washington and Idaho.
16
17

18 13. Spokane’s NPDES Permit currently requires that performance-based PCB
19 limits be established and that Spokane participate in the Task Force.⁷
20

21 14. According to a recent federal case⁸, Spokane will become subject to a
22 TMDL, or Total Maximum Daily Load, which is a maximum amount of a pollutant that
23

24
25 ⁵ *Id.*

26 ⁶ *Id.*

27 ⁷ *Id.*

1 a body of water such as the Spokane River can receive while still meeting water quality
2 standards.

3 15. A TMDL is intended to protect the beneficial uses that are affected by
4 PCBs, including fish consumption.⁹

6 16. The City of Spokane is a municipality acting for the benefit of the state and
7 the general public in the City of Spokane and others throughout the State of
8 Washington. The City of Spokane has a duty and inherent responsibility to manage its
9 waste and stormwater systems to maintain the clean waterways of the State of
10 Washington.
11

13 17. The Washington State Legislature declares it is “the public policy of the
14 State of Washington to maintain the highest possible standards to insure the purity of all
15 waters of the state consistent with public health and public enjoyment thereof, the
16 propagation and protection of wild life, birds, game, fish and other aquatic life, and the
17 industrial development of the state, and to that end require the use of all known
18 available and reasonable methods by industries and others to prevent and control the
19 pollution of the waters of the state of Washington.”¹⁰
20
21

22 _____
23 ⁸ *Sierra Club v. McLerran*, 2015 U.S. Dist. LEXIS 32152 (W.D. Wash. March 16, 2015)

24 ⁹ United States Environmental Protection Agency,

25 <http://water.epa.gov/lawsregs/lawguidance/cwa/tmdl/overviewoftmdl.cfm>

26 ¹⁰ RCW 90.48.010.
27
28

1 18. To promote the public policy of clean water, “the State of Washington will
2 exercise its powers, as fully and as effectively as possible, to retain and secure high
3 quality for all waters of the state.”¹¹
4

5 Plaintiff CITY OF SPOKANE hereby alleges, upon information and belief, as
6 follows:
7

8 **II. PARTIES**

9 19. The CITY OF SPOKANE (“Spokane” or “Plaintiff”) is a municipal
10 corporation, duly organized and existing by virtue of the laws of the State of
11 Washington.
12

13 20. Spokane brings this suit pursuant to RCW 7.48.010, *et al.* and any other
14 applicable codes or forms of relief available for monetary damages and removal of the
15 public nuisance caused by Monsanto’s PCBs in the Spokane River.
16

17 21. Spokane manages and operates a municipal stormwater system (MS4),
18 which collects and transports stormwater to be discharged into the River. In order to
19 discharge stormwater into the River, Spokane is subject to the Eastern Washington
20 Phase II Municipal Stormwater Permit issued by the State of Washington, Department
21 of Ecology, pursuant to the National Pollutant Discharge Elimination System under the
22 Clean Water Act.
23
24

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26
27 ¹¹ *Id.*
28

1 22. Spokane is also a permittee under an NPDES Permit, for the City of
2 Spokane Riverside Park Water Reclamation Facility and Combined Sewer Overflows
3 (CSOs), which requires certain action to reduce discharge of stormwater containing
4 PCBs, as the River is impaired for PCBs.
5

6 23. Spokane has spent money and will continue to spend money in its effort to
7 reduce PCB discharges into the River.
8

9 24. Spokane expects to spend over one hundred million dollars to prevent
10 PCBs from entering and/or to remove PCBs from its stormwater, thereby reducing the
11 PCBs discharged into the Spokane River.
12

13 25. Defendant Monsanto Company (“Monsanto”) is a Delaware corporation
14 with its principal place of business in St. Louis, Missouri.
15

16 26. Defendant Solutia Inc. (“Solutia”) is a Delaware corporation with its
17 headquarters and principal place of business in St. Louis, Missouri.
18

19 27. Defendant Pharmacia LLC (formerly known as “Pharmacia Corporation”
20 and successor to the original Monsanto Company) is a Delaware LLC with its principal
21 place of business in Peapack, New Jersey. Pharmacia is now a wholly-owned
22 subsidiary of Pfizer, Inc.
23

24 28. The original Monsanto Company (“Old Monsanto”) operated an
25 agricultural products business, a pharmaceutical and nutrition business, and a chemical
26 products business. Old Monsanto began manufacturing PCBs in the 1930s and
27 continued to manufacture commercial PCBs until the late 1970s.
28

1 29. Through a series of transactions beginning in approximately 1997, Old
2 Monsanto's businesses were spun off to form three separate corporations. The
3 corporation now known as Monsanto operates Old Monsanto's agricultural products
4 business. Old Monsanto's chemical products business is now operated by Solutia. Old
5 Monsanto's pharmaceuticals business is now operated by Pharmacia.
6

7 30. Solutia was organized by Old Monsanto to own and operate its chemical
8 manufacturing business. Solutia assumed the operations, assets, and liabilities of Old
9 Monsanto's chemicals business.¹²
10

11 31. Although Solutia assumed and agreed to indemnify Pharmacia (then known
12 as Monsanto Company) for certain liabilities related to the chemicals business,
13 Defendants have entered into agreements to share or apportion liabilities, and/or to
14 indemnify one or more entity, for claims arising from Old Monsanto's chemical
15 business --- including the manufacture and sale of PCBs.¹³
16
17

18
19 ¹² See MONSANTO COMPANY'S ANSWER TO THE COMPLAINT AND JURY DEMAND, *Town of*
20 *Lexington v. Pharmacia Corp., Solutia, Inc., and Monsanto Company*, C.A. No. 12-CV-
21 11645, D. Mass. (October 8, 2013); see also Relationships Among Monsanto Company,
22 Pharmacia Corporation, Pfizer Inc., and Solutia Inc.,
23 <http://www.monsanto.com/whoweare/pages/monsanto-relationships-pfizer-solutia.aspx>
24 (last accessed February 20, 2014).
25
26

27 ¹³ See *id.*
28

1 32. In 2003, Solutia filed a voluntary petition for reorganization under Chapter
2 11 of the U.S. Bankruptcy Code. Solutia's reorganization was completed in 2008. In
3 connection with Solutia's Plan of Reorganization, Solutia, Pharmacia and New
4 Monsanto entered into several agreements under which Monsanto continues to manage
5 and assume financial responsibility for certain tort litigation and environmental
6 remediation related to the Chemicals Business.¹⁴
7

8
9 33. Monsanto, Solutia, and Pharmacia are collectively referred to in this
10 Complaint as "Defendants."

11 **III. JURISDICTION AND VENUE**

12
13 34. This Court has jurisdiction pursuant to 28 U.S.C. §1332 because complete
14 diversity exists between Plaintiff and Defendants. The Plaintiff is located in
15 Washington, but no Defendant is a citizen of Washington. Monsanto is a Delaware
16 corporation with its principal place of business in St. Louis, Missouri. Solutia is a
17 Delaware corporation with its principal place of business in St. Louis, Missouri.
18 Pharmacia is a Delaware limited liability company with its principal place of business in
19 Peapack, New Jersey.
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25 ¹⁴ See Monsanto's Form 8-K (March 24, 2008), and Form 10-Q (June 27, 2008),
26 available at <http://www.monsanto.com/investors/pages/sec-filings.aspx> (last accessed
27 February 20, 2014).
28

1 35. Venue is appropriate in this judicial district pursuant to 28 U.S.C. Section
2 1391(a) because a substantial part of the property that is the subject of the action is
3 situated in this judicial district.

4 **IV. FACTUAL ALLEGATIONS**

5 **A. PCBs are Toxic Chemicals that Cause Environmental** 6 **Contamination.**

7
8
9 36. 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.¹⁵

13
14 37. PCBs were generally manufactured as mixtures of congeners. From
15 approximately 1935 to 1979, Monsanto Company was the only manufacturer in the
16 United States that intentionally produced PCBs for commercial use.¹⁶ The most
17 common trade name for PCBs in the United States was “Aroclor,” which was
18 trademarked by Old Monsanto.
19
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21 _____
22 ¹⁵ Table of PCB Congeners, available at
23 <http://www.epa.gov/epawaste/hazard/tsd/pcbs/pubs/congeners.htm> (last accessed
24 February 20, 2014).
25

26 ¹⁶ See 116 Cong. Record 11695, 91st Congress, (April 14, 1970) (“Insofar as the
27 Monsanto Co., the sole manufacturer of PCB’s is concerned”); 121 Cong. Record
28

1 38. Monsanto's commercially-produced PCBs were used in a wide range of
2 industrial applications in the United States including electrical equipment such as
3 transformers, motor start capacitors, and lighting ballasts. In addition, PCBs were
4 incorporated into a variety of products such as caulks, paints, and sealants.
5

6 39. As used in this Complaint, the terms "PCB," "PCBs," "PCB-containing
7 products," and "PCB products" refer to products containing polychlorinated biphenyl
8 congener(s) manufactured for placement into trade or commerce, including any product
9 that forms a component part of or that is subsequently incorporated into another
10 product.
11

12 40. PCBs easily migrate out of their original source material or enclosure and
13 contaminate nearby surfaces, air, water, soil, and other materials. For example, PCB
14 compounds volatilize out of building materials (such as caulk) into surrounding
15 materials such as masonry, wood, drywall, and soil, thereby causing damage to those
16 surrounding materials. PCBs can also escape from totally-enclosed materials (such as
17 light ballasts) and similarly contaminate and damage surrounding materials.
18
19

20 41. PCBs present serious risks to the health of humans, wildlife, and the
21 environment.
22

23
24
25 33879, 94th Congress, (October 23, 1975) ("The sole U.S. producer, Monsanto Co. . . .
26 ."). *See also* MONS 058730-058752 at 058733 (identifying other producers as "all ex-
27 USA."), attached as Exhibit A.
28

1 42. Humans may be exposed to PCBs through ingestion, inhalation, and dermal
2 contact. Individuals may inhale PCBs that are emitted into the air. They may also
3 ingest PCBs that are emitted into air and settle onto surfaces that come into contact with
4 food or drinks. And they may absorb PCBs from physical contact with PCBs or PCB-
5 containing materials.
6

7 43. EPA has determined that Monsanto's PCBs are probable human
8 carcinogens. In 1996, EPA reassessed PCB carcinogenicity, based on data related to
9 Aroclors 1016, 1242, 1254, and 1260.¹⁷ EPA's cancer reassessment was peer reviewed
10 by 15 experts on PCBs, including scientists from government, academia and industry,
11 all of whom agreed that PCBs are probable human carcinogens.
12

13 44. In addition, EPA concluded that PCBs are associated with serious non-
14 cancer health effects. From extensive studies of animals and primates using
15 environmentally relevant doses, EPA found evidence that PCBs exert significant toxic
16 effects, including effects on the immune system, the reproductive system, the nervous
17 system, and the endocrine system.
18

19 45. PCBs affect the immune system by causing a significant decrease in the
20

21
22
23 ¹⁷ EPA, PCBs: Cancer Dose-Response Assessment and Application to Environmental
24 Mixtures, EPA/600/P-96/001F (September 1996), available at
25 <http://www.epa.gov/epawaste/hazard/tsd/pcbs/pubs/pcb.pdf> (last accessed May 5,
26 2014).
27
28

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

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

11 47. Human and animal studies confirm that PCB exposure causes persistent
12 and significant deficits in neurological development, affecting visual recognition, short-
13 term memory, and learning. Some of these studies were conducted using the types of
14 PCBs most commonly found in human breast milk.
15

16 48. PCBs may also disrupt the normal function of the endocrine system. PCBs
17 have been shown to affect thyroid hormone levels in both animals and humans. In
18 animals, decreased thyroid hormone levels have resulted in developmental deficits,
19 including deficits in hearing. PCB exposure is also been associated with changes in
20 thyroid hormone levels in infants in studies conducted in the Netherlands and Japan.
21

22 49. PCBs are associated with other health effects including elevated blood
23 pressure, serum triglyceride, and serum cholesterol in humans; dermal and ocular effects
24 in monkeys and humans; and liver toxicity in rodents.
25

26 50. Children may be affected to a greater extent than adults. The Agency for
27
28

1 Toxic Substances and Disease Registry explained: “Younger children may be
2 particularly vulnerable to PCBs because, compared to adults, they are growing more
3 rapidly and generally have lower and distinct profiles of biotransformation enzymes, as
4 well as much smaller fat deposits for sequestering the lipophilic PCBs.”¹⁸

5
6 51. PCBs are known to be toxic to a number of aquatic species and wildlife
7 including fish, marine mammals, reptiles, amphibians, and birds. Exposure is
8 associated with death, compromised immune system function, adverse effects on
9 reproduction, development, and endocrine function. PCB exposure affects liver
10 function, the digestive system, and nervous systems and can promote cancer in a
11 number of animal species. The presence of PCBs can cause changes in community and
12 ecosystem structure and function.¹⁹

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21 ¹⁸ Agency for Toxic Substances and Disease Registry, Toxicological Profile for
22 Polychlorinated Biphenyls (PCBs), (November 2000), at 405, available at
23 www.atsdr.cdc.gov (last accessed May 1, 2014).

24 ¹⁹ See EPA, Understanding PCB Risks, available at
25 [http://www.epa.gov/housatonic/understandingpcbriks.html#WildlifeEcologicalRiskAss](http://www.epa.gov/housatonic/understandingpcbriks.html#WildlifeEcologicalRiskAssessment)
26 [essment](http://www.epa.gov/housatonic/understandingpcbriks.html#WildlifeEcologicalRiskAssessment) (last accessed March 5, 2015).
27
28

1 **B. Monsanto Has Long Known of PCBs' Toxicity.**

2 52. Monsanto was well aware of scientific literature published in the 1930s that
3 established that inhalation in industrial settings resulted in toxic systemic effects.²⁰
4

5 53. An October 11, 1937, Monsanto memorandum advises that "Experimental
6 work in animals shows that prolonged exposure to Aroclor vapors evolved at high
7 temperatures or by repeated oral ingestion will lead to systemic toxic effects. Repeated
8 bodily contact with the liquid Aroclors may lead to an acne-form skin eruption."²¹
9

10 54. A September 20, 1955, memo from Emmet Kelly set out Monsanto's
11 position with respect to PCB toxicity: "We know Aroclors are toxic but the actual limit
12 has not been precisely defined. It does not make too much difference, it seems to me,
13 because our main worry is what will happen if an individual develops [*sic*] any type of
14 liver disease and gives a history of Aroclor exposure. I am sure the juries would not pay
15 a great deal of attention to [maximum allowable concentrates]."²²
16
17

18 55. On November 14, 1955, Monsanto's Medical Department provided an
19 opinion that workers should not be allowed to eat lunch in the Aroclor department:
20

21 It has long been the opinion of the Medical Department that eating
22 in process departments is a potentially hazardous procedure that
23 could lead to serious difficulties. While the Aroclors are not
particularly hazardous from our own experience, this is a difficult
problem to define because early literature work claimed that

24
25 ²⁰ See Exhibits B, C, and F

26 ²¹ MONS 061332, attached as Exhibit B.

27 ²² MONS 095196-7, attached as Exhibit C.
28

1 chlorinated²³ biphenyls were quite toxic materials by ingestion or
2 inhalation.

3 56. On January 21, 1957, Emmet Kelly reported that after conducting its own
4 tests, the U.S. Navy decided against using Monsanto's Aroclors: "No matter how we
5 discussed the situation, it was impossible to change their thinking that Pydraul 150 is
6 just too toxic for use in a submarine."²⁴

7 57. In 1966, Kelly reviewed a presentation by Swedish researcher Soren
8 Jensen, who stated that PCBs "appeared to be the most injurious chlorinated compounds
9 of all tested."²⁵ Jensen refers to a 1939 study associating PCBs with the deaths of three
10 young workers and concluding that "pregnant women and persons who have at any time
11 had any liver disease are particularly susceptible."²⁶ Kelly does not dispute any of
12 Jensen's remarks, noting only, "As far as the section on toxicology is concerned, it is
13 true that chloracne and liver trouble can result from large doses."²⁷

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21 ²³ Monsanto Chemical Company, Memorandum to H.B. Patrick, November 14, 1955
22 (no Bates number), attached as Exhibit D.

23 ²⁴ MONS 095640, attached as Exhibit E.

24 ²⁵ See JDGFOX00000037-63, attached as Exhibit F.

25 ²⁶ *Id.* at JDGFOX00000039.

26 ²⁷ *Id.* at JDGFOX00000037.

1 **C. Monsanto Has Long Known that PCBs Were “Global Contaminants”**

2 **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.²⁸
5 Monsanto’s Medical Director reviewed an article by Swedish researcher Soren Jensen,
6 who reported the detection of PCBs in the tissues of fish and wildlife in Sweden.²⁹ The
7 report noted that PCBs were also detected in the air over London and Hamburg and
8 found in seals caught off the coast of Scotland. Jensen concluded that PCBs can “be
9 presumed to be widespread throughout the world.”³⁰
10
11

12
13 59. A December 1968 article by Richard Risebrough identified chlorinated
14 hydrocarbons (which include PCBs) as “the most abundant synthetic pollutants present
15 in the global environment.”³¹ The article reported finding significant concentrations of
16 PCBs in the bodies and eggs of peregrine falcons and 34 other bird species. The report
17 linked PCBs to the rapid decline in peregrine falcon populations in the United States.
18

19 ///
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21 _____
22 ²⁸ See Exhibits G, H, and L,

23 ²⁹ New Scientist (December 15, 1986), MONSFOX00003427, attached as Exhibit G.

24 ³⁰ *Id.*

25
26 ³¹ R.W. Risebrough, Polychlorinated Biphenyls in the Global Ecosystem, *Nature*, Vol.
27 220 (December 14, 1968), attached as Exhibit H.
28

1 60. Despite growing evidence of PCBs' infiltration of every level of the global
2 ecology, Monsanto remained steadfast in its production of Aroclors and other PCBs.

3 61. On March 6, 1969, Monsanto employee W. M. Richard wrote a
4 memorandum discussing Risebrough's article that criticized PCBs as a "toxic
5 substance", "widely spread by air-water; therefore, an uncontrollable pollutant . . .
6 causing extinction of peregrine falcon ... [and] endangering man himself."³² Richard
7 explained that Monsanto could take steps to reduce PCB releases from its own plants
8 but cautioned, "It will be still more difficult to control other end uses such as cutting
9 oils, adhesives, plastics, and NCR paper. In this applications exposure to consumers is
10 greater and the disposal problem becomes complex."³³

14 62. On September 9, 1969, Monsanto employee W.R. Richard wrote an
15 interoffice memo titled "Defense of Aroclor."³⁴ He acknowledged the role of Aroclor in
16 water pollution: "Aroclor product is refractive, will settle out on solids – sewerage
17 sludge – river bottoms, and apparently has a long life." He noted that Aroclors 1254
18 and 1260 had been found along the Gulf Coast of Florida causing a problem with
19 shrimp; in San Francisco Bay, where it was reported to thin egg shells in birds; and in
20 the Great Lakes. Richard advised that the company could not defend itself against all
21
22
23

24
25 ³² MONS 096509-096511, attached as Exhibit I.

26 ³³ *Id.*

27 ³⁴ DSW 014256-014263, attached as Exhibit J.
28

1 criticism: “We can’t defend vs. everything. Some animals or fish or insects will be
2 harmed. Aroclor degradation rate will be slow. Tough to defend against. Higher
3 chlorination compounds will be worse [than] lower chlorine compounds. Therefore we
4 will have to restrict uses and clean-up as much as we can, starting immediately.”³⁵

6 63. On January 29, 1970, Elmer Wheeler of the Medical Department circulated
7 laboratory reports discussing results of animal studies. He noted: “Our interpretation is
8 that the PCB’s are exhibiting a greater degree of toxicity in this chronic study than we
9 had anticipated. Secondly, although there are variations depending on species of
10 animals, the PCB’s are about the same as DDT in mammals.”³⁶

13 64. Monsanto expressed a desire to keep profiting from PCBs despite the
14 environmental havoc in a PCB Presentation to Corporate Development Committee. The
15 report suggests possible reactions to the contamination issue. It considered that doing
16 nothing was “unacceptable from a legal, moral, and customer public relations and
17 company policy viewpoint.” But the option of going out of the Aroclor business was
18 also considered unacceptable: “there is too much customer/market need and selfishly
19 too much Monsanto profit to go out.”³⁷

22 ///

24 ³⁵ *Id.*

26 ³⁶ MONS 098480, attached as Exhibit K.

27 ³⁷ Ex. A at 058737.

1 65. The Aroclor Ad Hoc Committee held its first meeting on September 5,
2 1969. The committee's objectives were to continue sales and profits of Aroclors in light
3 of the fact that PCB "may be a global contaminant."³⁸ The meeting minutes
4 acknowledge that PCB has been found in fish, oysters, shrimp, birds, along coastlines of
5 industrialized areas such as Great Britain, Sweden, Rhine River, low countries, Lake
6 Michigan, Pensacola Bay, and in Western wildlife. Moreover, the committee implicated
7 the normal use of PCB-containing products as the cause of the problem: "In one
8 application alone (highway paints), one million lbs/year are used. Through abrasion and
9 leaching we can assume that nearly all of this Aroclor winds up in the environment."³⁹
10
11

12
13 66. 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. The
18 Committee advised that Monsanto could not protect the environment from Aroclors as
19 "global" contaminants but could protect the continued manufacture and sale of
20 Aroclors:
21
22

23 ///
24
25

26 ³⁸ MONS 030483-030486, attached as Exhibit L.

27 ³⁹ *Id.* at 030485.
28

1 There is little probability that any action that can be taken will
 2 prevent the growing incrimination of specific polychlorinated
 3 biphenyls (the higher chlorinated – e.g. Aroclors 1254 and 1260) as
 4 nearly 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.

5 Secondly, the committee believes that there is no practical course
 6 of action that can so effectively police the uses of these products as
 7 to prevent environmental contamination. There are, however a
number of actions which must be undertaken to prolong the
manufacture, sale and use of these particular Aroclors as well as⁴⁰ to
 protect the continued use of other members of the Aroclor series.

8 67. Monsanto's desire to protect Aroclor sales rather than the environment is
 9 reflected in the Committee's stated objectives:

- 11 1. Protect continues sales and profits of Aroclors;
- 12 2. Permit continued development of new uses and sales, and
- 13 3. Protect the image of the Organic Division and the Corporation as members
 14 of the business community recognizing their responsibilities to prevent
 and/or control contamination of the global ecosystem.⁴¹

15 68. An interoffice memorandum circulated on February 16, 1970, provided
 16 talking points for discussions with customers in response to Monsanto's decision to
 17 eliminate Aroclors 1254 and 1260: "We (your customer and Monsanto) are not
 18 interested in using a product which may present a problem to our environment."
 19 Nevertheless, the memo acknowledges that Monsanto "can't afford to lose one dollar of
 20 business." To that end, it says, "We want to avoid any situation where a customer wants
 21 to return fluid. . . . We would prefer that the customer use up his current inventory and
 22
 23
 24

25 _____
 26 ⁴⁰ DSW 014612-014624, at 014615, attached as Exhibit M.

27 ⁴¹ *Id.*

1 purchase [new products] when available. He will then top off with the new fluid and
2 eventually all Aroclor 1254 and Aroclor 1260 will be out of his system. We don't want
3 to take fluid back."⁴²
4

5 69. In 1970, the year after Monsanto formed the "ad hoc" committee, and
6 despite Monsanto's knowledge of the global reach of PCB contamination, PCB
7 production in the United States peaked at 85 million pounds.
8

9 70. Growing awareness of the ubiquitous nature of PCBs led the United States
10 to conduct an investigation of health and environmental effects and contamination of
11 food and other products. An interdepartmental task force concluded in May 1972 that
12 PCBs were highly persistent, could bioaccumulate to relatively high levels, and could
13 have serious adverse health effects on human health.⁴³
14

15 71. After that report, environmental sampling and studies indicated that PCBs
16 were a "more serious and continuing environmental and health threat than had been
17 originally realized."⁴⁴ To address these concerns, EPA undertook a study to assess PCB
18 levels in the environment on a national basis. That study revealed widespread
19 occurrence of PCBs in bottom sediments in several states; in fish and birds; in lakes
20 and rivers; in the Atlantic Ocean, the Pacific Ocean, and the Gulf of Mexico; sewage
21
22
23

24 ⁴² MONS 100123-100124, attached as Exhibit N.
25

26 ⁴³ EPA, Review of PCB Levels in the Environment, EPA-560/7-76-001 (January 1976).
27

28 ⁴⁴ *Id.* at 1.

1 treatment facilities; in a variety of foods including milk, poultry, eggs, fish, meat, and
2 grains; and in human tissues, blood, hair, and milk.⁴⁵

3 72. At the same time, Monsanto was promoting the use and sale of Aroclor and
4 other PCB compounds. In a 1960 brochure, Monsanto promotes the use of Aroclors in
5 transformers and capacitors, utility transmission lines, home appliances, electric motors,
6 fluorescent light ballasts, wire or cable coatings, impregnants for insulation, dielectric
7 sealants, chemical processing vessels, food cookers, potato chip fryers, drying ovens,
8 thermostats, furnaces, and vacuum diffusion pumps. Aroclors could also be used, the
9 brochure advertised, as a component of automotive transmission oil; insecticides;
10 natural waxes used in dental casting, aircraft parts, and jewelry; abrasives; specialized
11 lubricants; industrial cutting oils; adhesives; moisture-proof coatings; printing inks;
12 papers; mastics; sealant; caulking compounds; tack coatings; plasticizers; resin; asphalt;
13 paints, varnishes, and lacquers; masonry coatings for swimming pools, stucco homes,
14 and highway paints; protective and decorative coatings for steel structures, railway tank
15 and gondola cars; wood and metal maritime equipment; and coatings for chemical
16 plants, boats, and highway marking.⁴⁶

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21
22 73. A 1961 brochure explains that Monsanto's Aroclors are being used in
23 "lacquers for women's shoes," as "a wax for the flame proofing of Christmas trees," as
24

25
26 ⁴⁵ *Id.*, *passim*.

27 ⁴⁶ The Aroclor Compounds (hand dated May 1960), 0509822- 66, attached as Exhibit S.
28

1 “floor wax,” as an adhesive for bookbinding, leather, and shoes, and as invisible
2 marking ink used to make chenille rugs and spreads.⁴⁷

3 74. Thus, by February 1961, at the latest, Monsanto knew that its Aroclors
4 were being used in a variety of industrial, commercial, household, and consumer goods.
5 Moreover, Monsanto affirmatively encouraged these uses by encouraging salesmen to
6 market products for these and other applications.
7

8
9 75. A few years later, in 1970, Monsanto tried to distance itself from the
10 variety of applications of Aroclors that it proudly espoused a few years before. In a
11 press release, the company claimed: “ ‘What should be emphasized . . . is that PCB was
12 developed over 40 years ago primarily for use as a coolant in electrical transformers and
13 capacitors. It is also used in commercial heating and cooling systems. It is not a
14 ‘household’ item.’ ”⁴⁸
15

16
17 **D. Monsanto Concealed the Nature of PCBs from Governmental**
18 **Entities.**

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

24
25 ⁴⁷ Plasticizer Patter (February 1961), 0627503-21, attached as Exhibit T.

26 ⁴⁸ See Press release (July 16, 1970), MCL000647-50, attached as Exhibit U, at
27 MCL000648.
28

1 and that the company would not expect to find PCBs in the environment in a widespread
2 manner.⁴⁹

3 77. 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.”⁵⁰ 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.”⁵¹ 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.”⁵²

11 78. In May, 1969, Monsanto employee Elmer Wheeler spoke with a
12 representative of the National Air Pollution Control Administration, who promised to
13

14
15
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17 ///

18 ///

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20
21 ⁴⁹ See Exhibits O-R (letters to governmental agencies).

22 ⁵⁰ Letter from Monsanto to Los Angeles County Air Pollution Control District (March
23 24, 1969), attached as Exhibit O.

24
25 ⁵¹ *Id.*

26 ⁵² Letter from Monsanto to State of California Resources Agency (March 27, 1969),
27 attached as Exhibit P.
28

1 relay to Congress the message that Monsanto “cannot conceive how the PCBs can be
2 getting into the environment in a widespread fashion.”⁵³

3 79. Monsanto delivered the same message to the New Jersey Department of
4 Conservation in July, 1969, claiming first, “Based on available data, manufacturing and
5 use experience, we do not believe the PCBs to be seriously toxic.”⁵⁴ The letter then
6 reiterates Monsanto’s position regarding environmental contamination: “We are unable
7 at this time to conceive of how the PCBs can become wide spread in the environment. It
8 is certain that no applications to our knowledge have been made where the PCBs would
9 be broadcast in the same fashion as the chlorinated hydrocarbon pesticides have been.”⁵⁵

13 FIRST CAUSE OF ACTION

14 PUBLIC NUISANCE

15 80. Plaintiff realleges and reaffirms each and every allegation set forth in all
16 preceding paragraphs as if fully restated in this cause of action.

17 81. Monsanto manufactured, distributed, marketed, and promoted PCBs in a
18 manner that created or participated in creating a public nuisance that is harmful to health
19 and obstructs the free use of the Spokane River.
20
21

22
23 ⁵³ Monsanto Memorandum to W.R. Richard (May 26, 1969), attached as Exhibit Q.

24 ⁵⁴ Letter from Monsanto to Department of Conservation and Economic Development
25 (July 23, 1969), attached as Exhibit R.

26
27 ⁵⁵ *Id.*

1 82. Monsanto's conduct and the presence of PCBs annoys, injures, and
2 endangers the comfort, repose, health, and safety of others.

3 83. Monsanto's conduct and the presence of PCBs obstructs and tends to
4 obstruct the use of the Spokane River.
5

6 84. Monsanto's conduct and the presence of PCBs in the Spokane River is
7 injurious to health.
8

9 85. Monsanto's conduct and the presence of PCBs interferes with the free use
10 and enjoyment of the Spokane River, including for fishing and recreation.

11 86. Monsanto's conduct and the presence of PCBs in the Spokane River
12 obstructs the free use of the Spokane River so as to essentially interfere with the
13 comfortable enjoyment of the use the Spokane River, a public waterway.
14

15 87. The presence of PCBs interferes with the free use of the River for
16 ecological preservation and habitat restoration.
17

18 88. Pursuant to federal law, court rulings, the Clean Water Act, and NPDES
19 Permit requirements, Spokane may be required to reduce its discharge of PCBs into the
20 River to prevent further contamination of the already impaired water body. Currently,
21 Spokane has incurred costs associated with participating in the Task Force, testing and
22 monitoring PCBs, and other actions to reduce PCB levels in stormwater.
23
24

25 89. Protecting the waters of the state is an exercise of sovereignty consistent
26 with "the public policy of the state of Washington to maintain the highest possible
27 standards to insure the purity of all waters of the state consistent with public health and
28

1 public enjoyment thereof, the propagation and protection of wild life, birds, game, fish
2 and other aquatic life, and the industrial development of the state, and to that end require
3 the use of all known available and reasonable methods by industries and others to
4 prevent and control the pollution of the waters of the state of Washington." RCW
5 90.48.010.
6

7 90. Monsanto's conduct and the presence of PCBs affects equally the rights of
8 an entire community, and Spokane has been harmed in that it is legally required to
9 reduce the discharge of PCBs in the River.
10

11 91. An ordinary person would be reasonably annoyed or disturbed by the
12 presence of toxic PCBs that endanger the health of fish, animals, and humans and
13 degrade water quality and destroy marine habitats.
14

15 92. The seriousness of the environmental and human health risk far outweighs
16 any social utility of Monsanto's conduct in manufacturing PCBs and concealing the
17 dangers posed to human health and the environment.
18

19 93. The rights, interests, and inconvenience to Spokane far outweighs the
20 rights, interests, and inconvenience to Monsanto, which profited heavily from the
21 manufacture of PCBs and which can no longer produce PCBs.
22

23 94. Spokane has suffered and will continue to suffer harm and incur substantial
24 costs in excess of one hundred million dollars (\$100,000,000) to remove CSO and
25 stormwater flows from the Spokane River.
26
27
28

1 95. Monsanto had a duty to cease manufacturing, distributing, selling and
2 promoting PCBs and failed to do so. Monsanto also had a duty to warn about the
3 dangers of PCBs and failed to do so.
4

5 96. Monsanto's conduct caused and continues to cause harm to Spokane.

6 97. Monsanto knew or, in the exercise of reasonable care, should have known
7 that the manufacture and sale of PCBs was causing and would cause the type of
8 contamination now found in the River. Monsanto knew that PCBs would contaminate
9 water supplies, would degrade marine habitats, would kill fish species, and would
10 endanger birds and animals. In addition, Monsanto knew PCBs are associated with
11 serious illnesses and cancers in humans and that humans may be exposed to PCBs
12 through ingestion of fish and/or dermal contact. As a result, it was foreseeable to
13 Monsanto that humans may be exposed to PCBs through swimming in contaminated
14 waters or by eating fish from those waters. Monsanto thus knew, or should have
15 known, that PCB contamination would seriously and unreasonably interfere with the
16 ordinary comfort, use, and enjoyment of any coastal marine areas.
17
18
19
20

21 98. As a direct and proximate result of Monsanto's creation of a public
22 nuisance, Spokane has suffered, and continues to suffer, monetary damages to be proven
23 at trial.
24

25 ///
26 ///
27 ///
28

SECOND CAUSE OF ACTION

PRODUCTS LIABILITY- DEFECTIVE DESIGN

1
2
3 99. Plaintiff realleges and reaffirms each and every allegation set forth in all
4 preceding paragraphs as if fully restated in this cause of action.
5

6 100. Monsanto's PCBs were not reasonably safe as designed at the time the
7 PCBs left Monsanto's control.
8

9 101. PCBs' toxicity and inability to be contained rendered them unreasonably
10 dangerous at all times.

11 102. Monsanto's PCBs were unsafe as designed to the extent that the United
12 State Congress banned the production and sale of PCBs pursuant to the Toxic
13 Substances Control Act in 1979.
14

15 103. Due to their toxicity and inability to be contained, Monsanto knew its
16 PCBs were not safe at the time the product was manufactured because it was certain that
17 the product would become a global contaminant and cause toxic contamination of
18 waterways and wildlife, such as Spokane's stormwater and the fish in the Spokane
19 River, due to the nature of PCBs.
20
21

22 104. Monsanto knew its PCBs were unsafe to an extent beyond that which
23 would be contemplated by an ordinary person because of the overwhelming seriousness
24 of creating global contamination.
25

26 105. Monsanto manufactured, distributed, sold, and promoted PCBs despite
27 such knowledge in order to maximize its profits despite the known harm.
28

1 106. Monsanto's PCBs caused and continue to cause injury to Spokane.

2 107. Spokane has suffered and will continue to suffer damages.

3 **THIRD CAUSE OF ACTION**

4 **PRODUCTS LIABILITY- FAILURE TO WARN**

5
6 108. Plaintiff realleges and reaffirms each and every allegation set forth in all
7 preceding paragraphs as if fully restated in this count.

8
9 109. Monsanto's PCBs were not reasonably safe because they lacked adequate
10 warnings at the time the PCBs left Monsanto's control.

11 110. At the time Monsanto manufactured, distributed, sold, and promoted its
12 PCBs, Monsanto knew it was a certainty that PCBs would become a global contaminate
13 and contaminate waterways and wildlife such as Spokane's stormwater and fish in the
14 Spokane River.

15
16
17 111. Despite Monsanto's knowledge, Monsanto failed to provide adequate
18 warnings that its PCBs would become a global contaminant and contaminate waterways
19 and wildlife, such as Spokane's stormwater and fish in the Spokane River.

20
21 112. Monsanto could have warned of this certainty but intentionally concealed
22 the certainty of global contamination in order to maximize profits.

23 113. Monsanto learned and concealed the dangers of PCBs after it
24 manufactured, distributed, promoted, and sold PCBs.

25
26 114. Without adequate warnings or instructions, Monsanto's PCBs were unsafe
27 to an extent beyond that which would be contemplated by an ordinary person.
28

1 115. Monsanto knowingly failed to issue warnings or instructions concerning
2 the dangers of PCBs in the manner that a reasonably prudent manufacturer would act in
3 the same or similar circumstances.

4
5 116. Monsanto's PCBs caused and continue to cause injury to Spokane.

6 117. Spokane has suffered and will continue to suffer damages.

7 **FOURTH CAUSE OF ACTION**

8 **NEGLIGENCE**

9
10 118. Plaintiff realleges and reaffirms each and every allegation set forth in all
11 preceding paragraphs as if fully restates in this count.

12
13 119. Monsanto failed to exercise ordinary care because a reasonably careful
14 company that learned of its product's toxicity would not manufacture that product if the
15 product could not be contained during normal production and use or would warn of its
16 toxic properties.

17
18 120. Monsanto failed to exercise ordinary care because a reasonably careful
19 company that learned that its product could not be contained during normal production
20 and use would not continue to manufacture that product or would warn of its dangers.

21
22 121. Monsanto failed to exercise ordinary care because a reasonably careful
23 company would not continue to manufacture PCBs or do so in mass quantities and to
24 the extent that Monsanto manufactured them.

25
26 122. Monsanto was grossly negligent because it failed to exercise even slight
27 care.

28

1 123. Monsanto's negligence caused and continues to cause injury to Spokane.

2 124. Spokane has suffered and will continue to suffer damages.

3 **FIFTH CAUSE OF ACTION**

4 **EQUITABLE INDEMNITY**

5
6 125. Plaintiff realleges and reaffirms each and every allegation set forth in all
7 preceding paragraphs as if fully restated in this count.

8
9 126. Pursuant to federal case law, court rulings, the Clean Water Act, and
10 NPDES Permit requirements, Spokane has been and will continue to be legally
11 obligated to spend money to remove PCBs from wastewater and stormwater before
12 discharging into the Spokane River.

13
14 127. Monsanto is responsible for contaminating the waste and stormwater with
15 PCBs.

16
17 **PRAYER FOR RELIEF**

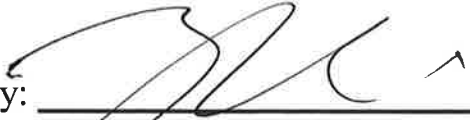
18 Plaintiff prays for judgment against Defendants, jointly and severally, as follows:

- 19
20 1. Compensatory damages according to proof;
21 2. Litigation costs and attorney's fees as provided by law;
22 3. Pre-judgment and post-judgment interest;
23 4. Any other and further relief as the Court deems just, proper, and equitable.

24
25 **DEMAND FOR JURY TRIAL**

26 Plaintiff demands a jury trial.

Dated: July 31, 2015

By: 

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