

Monsanto

W. R. COREY - B2SA

DATE December 27, 1971

SUBJECT PCB/PCT IMPLEMENTATION PROGRAM

REFERENCE

TO : C. P. Cunningham

H. S. Bergen
T. L. Gossage - B2SL
E. Greene - C3SA
J. Mason
C. Paton - B2SH
E. J. Putzell - D1F
J. F. Stapleton - C1NA
G. F. Wingard - C3SA

Attached is the worldwide implementation program which we have adopted to conform with the Corporate Management policy with respect to the discontinuation of all sales of PCB's (other than for dielectric use such as in transformers and capacitors) and the discontinuation of all sales of PCT's.

The program for U.S. domestic sales has been completed, time schedules have been established, and all customers have been notified of our decision except for formal notification to PCT customers who will be notified on December 31, 1971.

Programs with respect to export sales of PCB's and PCT's have been finalized and effective dates for all actions are embodied in the attachment.

Plans to implement Monsanto's worldwide policy in the U.K. have been completed and they will be executed as outlined in the attachment.

So far as Japan is concerned, PCB's are manufactured by a joint venture with MMK. The last section of our worldwide plan discusses actions we plan to take in this world area.

You will note all actions are consistent on a worldwide basis but the dates for completion of some of these actions on U.S. export sales and Ex-USA manufacture and sale are slightly different from those of the U.S. This is necessary in order to properly coordinate all of the communication channels involved so that we can properly notify our worldwide customers.

The most significant deviation from our U.S. time schedule pertains to our continued sale of PCB's for dielectric use. We plan to continue sales Ex-USA subject to the same restrictive policies as we have adopted in the U.S.A.

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However, in negotiating hold harmless agreements with foreign subsidiaries of U.S. companies and with other foreign customers it is necessary for us to explore the government regulations which may pertain in foreign countries and, in addition, we must understand the legal aspects of hold harmless agreements executed in foreign countries. For this reason we have established, with your approval, March 31, 1972, as the date by which we will have concluded hold harmless agreements under which we will continue U.S. export sales, as well as sales from our U.K. facility.

I would appreciate your informing me whether you approve of this overall program, and whether you and Monsanto Corporate Management will permit us to have until March 31, 1972, to complete our arrangements for future sales of PCB's as dielectrics Ex-USA.

W. R. COREY

/jff

Attachments.

ok by CPC

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PCB/PCT IMPLEMENTATION PROGRAM

U.S. DOMESTIC PROGRAM

I. Discontinue sales of PCB's for heat transfer applications

A. Formal notification by letter December 15, 1971.

1. Effective on date of letter -- no further sales.
2. Offer consultation by team of engineers on alternatives. Assistance only -- customer to decide which alternate route to take.
3. Offer to provide directions on handling and disposal of spent PCB's.

B. In case of unusual hardship cases where conversion is difficult.

1. Offer consultation by team of engineers on alternative routes.
2. Offer further sales for minimum possible time to effect conversion -- provided --
 - Customer signs hold harmless letter satisfactory to Monsanto, and further provided
 - Customer has, in Monsanto's opinion, sufficient financial responsibility to make such indemnification agreement meaningful.

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C. Team of trained engineers to be directed by Dr. Cumming Paton. They will:

1. Visit customer plants upon request.
2. Discuss possibility of using other Monsanto fluids giving proper warnings as to possible fire hazards.
3. Make customer aware of other possible alternatives but make no recommendations as to their use. In such cases customer will be referred to manufacturer of alternative.
4. Make arrangements with customer for proper handling, packaging and return of spent PCB fluids to Monsanto for incineration.
5. The engineering team's role is solely to consult with and assist customers in making conversion away from PCB's. Any questions with respect to Monsanto management's decision to discontinue sale of PCB fluids for heat transfer use are to be referred to Dr. Paton for proper answer.

II. Further sale and delivery of PCB's for use as dielectric fluids for such as transformers and capacitors will be made in conformance with certain restrictive policies adopted by Monsanto management.

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- A. Effective January 15, 1972, Monsanto will sell and deliver PCB's for such use only to manufacturers who have entered into agreement to indemnify and hold harmless Monsanto in the use of these products, consistent with contract provisions.
- B. Acceptance by Monsanto of such an agreement is subject to the customer having the financial responsibility necessary to make the agreement meaningful in Monsanto's opinion, as judged against previously established criteria.
- C. The determination of the customer's satisfactory financial responsibility will be made by a review board consisting of:

Howard S. Bergen - Business Director
John F. Stapleton - Law Department
Donald S. Ellis - Treasury Department
George Wingard - International (where International matters are involved)

This board will use the attached general criteria. In the event the review board is in disagreement on a particular case, further review and decision will be made by:

E. J. Putzell, Jr.
W. R. Corey

in consultation with J. J. Kerley if the latter would appear in order.

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D. All transformer and capacitor customers will be notified of the foregoing restrictive policy on further sales no later than December 31, 1971.

III. Discontinue all sales of PCT's (polychlorinated terphenyls) no later than June 30, 1972. The program calls for 75% of such sales to be terminated by March 31, 1972, with the remainder to be terminated during the second quarter of 1972.

A. Discontinue all sales of PCT's for plasticizer use by March 31, 1972; notification letter to be mailed December 31, 1971. Responsibility for this action is with J. E. Springgate, Business Director.

B. Discontinue all sales of PCT's for use in hydraulic fluids by June 30, 1972. This program will include the substitution of Monsanto phosphate esters and/or phosphate ester-oil blends. Responsibility for this action is with Howard S. Bergen, Business Director.

C. In case of unusual hardship cases where conversion is difficult:

1. Offer further sales for minimum possible time to effect conversion, provided

---customer signs hold harmless letter satisfactory to Monsanto, and further provided

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---customer has, in Monsanto's opinion,
sufficient financial responsibility to
make such indemnification agreement
meaningful.

2. The determination of the customer's satisfactory financial responsibility will be made by the review board established under Paragraph II-C using the attached general criteria.

U.S. EXPORT PROGRAM

Policy with respect to U.S. export sales of PCB's and PCT's will be identical to the policy adopted for U.S. domestic sales. However, timing with respect to these export sales will be as follows:

- I. Discontinue all sales of PCB's for all uses other than as dielectric fluids in such as transformers and capacitors no later than January 31, 1972. Effective date of discontinuance shall be date of letter giving formal notification.
- II. Further sale and delivery of PCB's as dielectric fluids will be made in conformance with the restrictive policies adopted by Monsanto management.

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1. Effective March 31, 1972, Monsanto will sell and deliver PCB's for such use only to manufacturers who have entered into an agreement to indemnify and hold harmless Monsanto in the use of these products consistent with contract provisions.
2. Acceptance by Monsanto of such an agreement is subject to the customer having the financial responsibility necessary to make the agreement meaningful in Monsanto's opinion as judged against previously established criteria.
3. The determination of the customer's ability to satisfactorily meet the financial responsibility will be made by the review board established in "II-C" (under U.S. Domestic Program).

III. Discontinue all sales of PCT's (polychlorinated terphenyls) no later than June 30, 1972. The program calls for 75% of such sales to be terminated by March 31, 1972, with the remainder to be terminated during the second quarter of 1972.

1. Discontinue all sales of PCT's for plasticizer use by March 31, 1972; notification letter to be mailed December 31, 1971. Responsibility for this action is with J. E. Springgate, Business Director, MICC, in conjunction with the International Division.

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2. Discontinue all sales of PCT's for use in hydraulic fluids by June 30, 1972. This program will include the substitution of Monsanto phosphate esters and/or phosphate ester-oil blends. Responsibility for this action is with Howard S. Bergen, Business Director, MICC, in conjunction with the International Division.
3. In case of unusual hardship cases where conversion is difficult:
 - a) Offer further sales for minimum possible time to effect conversion, provided
 - Customer signs hold harmless letter satisfactory to Monsanto, and further provided
 - Customer has, in Monsanto's opinion, sufficient financial responsibility to make such indemnification agreement meaningful.
 - b) The determination of the customer's satisfactory financial responsibility will be made by the review board established under Paragraph II-C using the attached general criteria.
- IV. It is planned to implement the same policy with respect to sale and delivery of PCB's from the Newport facility

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in the U.K. Since there is no manufacture of PCT's in the U.K., the policy on these products will be controlled by the policy adopted for U.S. domestic and U.S. export sales.

Action on PCB's will be as follows:

1. Discontinue all sales of PCB's for other than dielectric uses by January 31, 1972.
2. Further sale and delivery of PCB's for dielectric uses will be subject to the same restrictive policies adopted for U.S. domestic and U.S. export sales and the effective date for implementation will be March 31, 1972.

V. With respect to Japan, the International Division will work through Dr. John R. Durland to discontinue by January 31, 1972, exports of PCB's from MMK's facility in that country for all uses other than as dielectric fluids.

Exports of PCB's for dielectric uses from Japan will be subject to the same restrictive policies adopted for the U.S. and the U.K. Effective date for implementation will be March 31, 1972.

In addition, Dr. Durland will convey to the MMK Board Monsanto's worldwide policy on PCB's and he

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will keep us informed on MMK's actions on the sale and delivery of PCB's within Japan.

GENERAL

Any exception to this PCB/PCT Implementation Program, whether domestic, U.S. Export, or foreign, shall be made on a case-by-case basis by the Managing Director of MICC and so recorded.

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WESTINGHOUSE - MONSANTO AGREEMENT
Dated January 15, 1972

Monsanto Company ("Monsanto") manufactures certain polychlorinated biphenyl products ("PCB's") which Westinghouse Electric Corporation ("Buyer") desires to purchase. While Buyer desires to purchase PCB's because of certain desirable flame resistant and insulator properties, Buyer acknowledges that it is aware and has been advised by Monsanto that PCB's tend to persist in the environment; that care is required in their handling, possession, use and disposition; that tolerance limits have been or are being established for PCB's in various food products.

Monsanto has therefore adopted certain restrictive policies with respect to its further production, sale and delivery of PCB's, including the receipt of undertakings from its customers as set forth below, and Buyer is willing to agree to such undertakings with respect to sales and/or deliveries of PCB's by Monsanto to Buyer.

Accordingly, Buyer hereby covenants and agrees that, with respect to any and all PCB's sold or delivered by or on behalf of Monsanto to or for the account of Buyer on or after the date hereof, and in consideration of any such sale or delivery, Buyer shall defend, indemnify and hold harmless Monsanto, its present, past and future directors, officers, employees and agents, from and against any and all liabilities, claims, damages, penalties, actions,

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suits, losses, costs and expenses arising out of or in connection with the receipt, purchase, possession, handling, use, sale or disposition of such PCB's by, through or under Buyer, whether alone or in combination with other substances, including, without implied limitation, any contamination of or adverse effect on humans, marine and wildlife, food, animal feed or the environment by reason of such PCB's.

The point at and after which the provisions of this agreement shall apply to PCB's sold or delivered by or on behalf of Monsanto to or for the account of Buyer on or after the date hereof, and the point at which title and risk of loss with respect to such PCB's shall pass from Monsanto to Buyer, shall be the F.O.B. point at the location from which delivery to Buyer is initiated by Monsanto, and shall refer to the point of transfer of possession of the drum, tank car, tank truck, or other container for such PCB's, from Monsanto to Buyer or the first receiving carrier utilized to effect delivery of such PCB's to Buyer.

The provisions of this agreement shall not be applicable to any PCB's delivered to Buyer prior to the date hereof; and nothing herein shall create or imply any duty or obligation: (i) of Monsanto to sell or deliver any PCB's to Buyer; or (ii) of Buyer to defend, indemnify or hold harmless Monsanto or any other corporation, or any person, for any damages resulting from the sole negligence of Monsanto ^(in its packaging or shipping of PCB's) in its packaging or shipping of PCB's or from the failure

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of PCB's to comply with the contract specifications applicable to such PCB's. No conditions, understandings or agreements purporting to modify or vary the terms hereof shall be binding unless hereafter made in writing specifically referring to this agreement and signed by the party to be bound and no modification or variance of this agreement shall be effected by the acknowledgment or acceptance of any sale document, purchase order, shipping instruction or other forms containing terms or conditions at variance herewith.

In the event of litigation to which these indemnity provisions shall apply, Monsanto will make available to Buyer such information as Monsanto has (excluding trade secrets or proprietary information of Monsanto, or any other information which Monsanto is not legally free to disclose) which may reasonably be required by Buyer in the defense of such litigation, and otherwise will cooperate with Buyer in connection therewith; provided, however, Buyer shall reimburse Monsanto for all out-of-pocket costs and expenses incurred thereby.

This agreement shall be governed by and be construed according to the laws of the State of Missouri.

All existing contracts for the sale of PCB's by Monsanto to Buyer for delivery in the future are hereby amended to contain the provisions set forth herein.

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*Feb. 13. 1972 -
this attach - information to Buyer on
current.*

JS

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Monsanto Company ("Monsanto") manufactures certain polychlorinated biphenyl products ("PCB's") which Westinghouse Electric Corporation ("Buyer") desires to purchase. While Buyer desires to purchase PCB's because of certain desirable flame resistant and insulator properties, Buyer acknowledges that it is aware and has been advised by Monsanto that PCB's tend to persist in the environment; that care is required in their handling, possession, use and disposition; that tolerance limits have been or are being established for PCB's in various food products.

Monsanto has therefore adopted certain restrictive policies with respect to its further production, sale and delivery of PCB's, including the receipt of undertakings from its customers as set forth below, and Buyer is willing to agree to such undertakings with respect to sales and/or deliveries of PCB's by Monsanto to Buyer.

Accordingly, Buyer hereby covenants and agrees that, with respect to any and all PCB's sold or delivered by or on behalf of Monsanto to Buyer on or after the date hereof, and in consideration of any such sale or delivery, Buyer shall defend, indemnify and hold harmless Monsanto, its present, past and future directors, officers, employees and agents, from and against any and all liabilities, claims, damages, penalties, actions, suits, losses, costs and ex-

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penses arising out of or in connection with the receipt, purchase, possession, handling, use, sale or disposition of such PCB's by, through or under Buyer, whether alone or in combination with other substances, including, without implied limitation, any contamination of or adverse effect on humans, marine and wildlife, food, animal feed or the environment by reason of such PCB's.

All existing contracts for the sale of PCB's by Monsanto to Buyer for delivery in the future are hereby amended to contain the provisions set forth above.

✓
A.M.S.
The provisions of this agreement shall not be applicable to any PCB's delivered to Buyer prior to the date hereof; and nothing herein shall create or imply any duty or obligation: (i) of Monsanto to sell or deliver any PCB's to Buyer; or (ii) of Buyer to defend, indemnify or hold harmless Monsanto or any other corporation, or any person, for ^{damages} ~~any matter~~ resulting from the negligence of Monsanto in its packaging or shipping PCB's or from the failure of PCB's to comply with the contract specifications applicable to such PCB's. No conditions, understandings or agreements purporting to modify or vary the terms hereof shall be binding unless hereafter made in writing specifically referring to this agreement and signed by the party to be bound and no modification or variance of the above undertaking shall be effected by the acknowledgment or acceptance of any sale document, purchase order, shipping instruction or other forms containing terms or conditions at variance herewith.

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In the event of litigation to which these indemnity provisions shall apply, Monsanto will make available to Buyer such information as Monsanto has (excluding trade secrets or proprietary information of Monsanto, or any other information which Monsanto is not legally free to disclose) which may reasonably be required by Buyer in the defense of such litigation, and otherwise will cooperate with Buyer in connection therewith; provided, however, Buyer shall reimburse Monsanto for all out-of-pocket costs and expenses incurred thereby.

This agreement shall be governed by and be construed according to the laws of the State of Missouri.

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WESTINGHOUSE - MONSANTO AGREEMENT

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Monsanto has therefore adopted certain restrictive policies with respect to its further production, sale and delivery of PCB's, including the receipt of undertakings from its customers as set forth below, and Buyer is willing to agree to such undertakings with respect to sales and/or deliveries of PCB's by Monsanto to Buyer.

Accordingly, Buyer hereby covenants and agrees that, with respect to any and all PCB's sold or delivered by or on behalf of Monsanto to or for the account of Buyer on or after the date hereof, and in consideration of any such sale or delivery, Buyer shall defend, indemnify and hold harmless Monsanto, its present, past and future directors, officers, employees and agents, from and against any and all liabilities, claims, damages, penalties, actions,

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suits, losses, costs and expenses arising out of or in connection with the receipt, purchase, possession, handling, use, sale or disposition of such PCB's by, through or under Buyer, whether alone or in combination with other substances, including, without implied limitation, any contamination of or adverse effect on humans, marine and wildlife, food, animal feed or the environment by reason of such PCB's.

The point at and after which the provisions of this agreement shall apply to PCB's sold or delivered by or on behalf of Monsanto to or for the account of Buyer on or after the date hereof, and the point at which title and risk of loss with respect to such PCB's shall pass from Monsanto to Buyer, shall be the F.O.B. point at the location from which delivery to Buyer is initiated by Monsanto, and shall refer to the point of transfer of possession of the drum, tank car, tank truck, or other container for such PCB's, from Monsanto to Buyer or the first receiving carrier utilized to effect delivery of such PCB's to Buyer.

The provisions of this agreement shall not be applicable to any PCB's delivered to Buyer prior to the date hereof; and nothing herein shall create or imply any duty or obligation: (i) of Monsanto to sell or deliver any PCB's to Buyer; or (ii) of Buyer to defend, indemnify or hold harmless Monsanto or any other corporation, or any person, for any damages resulting from the sole negligence of Monsanto ^(in the absence of negligence by Buyer) in its packaging or shipping of PCB's or from the failure

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of PCB's to comply with the contract specifications applicable to such PCB's. No conditions, understandings or agreements purporting to modify or vary the terms hereof shall be binding unless hereafter made in writing specifically referring to this agreement and signed by the party to be bound and no modification or variance of this agreement shall be effected by the acknowledgment or acceptance of any sale document, purchase order, shipping instruction or other forms containing terms or conditions at variance herewith.

In the event of litigation to which these indemnity provisions shall apply, Monsanto will make available to Buyer such information as Monsanto has (excluding trade secrets or proprietary information of Monsanto, or any other information which Monsanto is not legally free to disclose) which may reasonably be required by Buyer in the defense of such litigation, and otherwise will cooperate with Buyer in connection therewith; provided, however, Buyer shall reimburse Monsanto for all out-of-pocket costs and expenses incurred thereby.

This agreement shall be governed by and be construed according to the laws of the State of Missouri.

All existing contracts for the sale of PCB's by Monsanto to Buyer for delivery in the future are hereby amended to contain the provisions set forth herein.

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WESTINGHOUSE - MONSANTO AGREEMENT

Monsanto Company ("Monsanto") manufactures certain polychlorinated biphenyl products ("PCB's") which Westinghouse Electric Corporation ("Buyer") desires to purchase. While Buyer desires to purchase PCB's because of certain desirable flame resistant and insulator properties, Buyer acknowledges that it is aware and has been advised by Monsanto that PCB's tend to persist in the environment; that care is required in their handling, possession, use and disposition; that tolerance limits have been or are being established for PCB's in various food products.

Monsanto has therefore adopted certain restrictive policies with respect to its further production, sale and delivery of PCB's, including the receipt of undertakings from its customers as set forth below, and Buyer is willing to agree to such undertakings with respect to sales and/or deliveries of PCB's by Monsanto to Buyer.

Accordingly, Buyer hereby covenants and agrees that, with respect to any and all PCB's sold or delivered by or on behalf of Monsanto to or for the account of Buyer on or after the date hereof, and in consideration of any such sale or delivery, Buyer shall defend, indemnify and hold harmless Monsanto, its present, past and future directors, officers, employees and agents, from and against any and all liabilities, claims, damages, penalties, actions,

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suits, losses, costs and expenses arising out of or in connection with the receipt, purchase, possession, handling, use, sale or disposition of such PCB's by, through or under Buyer, whether alone or in combination with other substances, including, without implied limitation, any contamination of or adverse effect on humans, marine and wildlife, food, animal feed or the environment by reason of such PCB's.

Since it is Monsanto's usual practice to sell products F.O.B. its plant, it is agreed that title and risk of loss of PCB's covered by this agreement shall pass to Buyer upon loading on or into Buyer's or a carrier's tank car, tank truck or other transportation vehicle at Monsanto's plant, and the obligations set forth in this agreement shall attach to such PCB's at that point.

The provisions of this agreement shall not be applicable to any PCB's delivered to Buyer prior to the date hereof; and nothing herein shall create or imply any duty or obligation: (i) of Monsanto to sell or deliver any PCB's to Buyer; or (ii) of Buyer to defend, indemnify or hold harmless Monsanto or any other corporation, or any person, for any damages resulting from the sole negligence of Monsanto in its packaging or shipping of PCB's or from the failure of PCB's to comply with the contract specifications applicable to such PCB's. No conditions, understandings or agreements purporting to modify or vary the terms hereof shall be binding unless hereafter made in writing specifically referring to this agreement and signed

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by the party to be bound and no modification or variance of ⁷⁶⁰the
above undertaking shall be effected by the acknowledgment or
acceptance of any sale document, purchase order, shipping instruc-
tion or other forms containing terms or conditions at variance
herewith.

In the event of litigation to which these indemnity provisions
shall apply, Monsanto will make available to Buyer such information
as Monsanto has (excluding trade secrets or proprietary information
of Monsanto, or any other information which Monsanto is not legally
free to disclose) which may reasonably be required by Buyer in the
defense of such litigation, and otherwise will cooperate with Buyer
in connection therewith; provided, however, Buyer shall reimburse
Monsanto for all out-of-pocket costs and expenses incurred thereby.

This agreement shall be governed by and be construed accord-
ing to the laws of the State of Missouri.

All existing contracts for the sale of PCB's by Monsanto to
Buyer for delivery in the future are hereby amended to contain the
provisions set forth ^{herein}above.

Date _____

DRAFT
1/14/72

Gentlemen:

Attached is a fully signed copy of the agreement whereby your company, _____ has agreed to indemnify Monsanto with respect to PCBs sold or delivered after the date thereon.

It should be emphasized that any PCB purchased by your company should be used only as dielectric fluids in electrical equipment. It is our understanding that this use so confines the PCB as to virtually eliminate the escape of PCB into the environment.

You will appreciate that different companies have made differing comments with respect to the indemnity agreement. This has made the development of a single document, equally acceptable to all companies to which it has been tendered, very difficult. It is not our intention, however, that any company assume indemnity obligations substantially greater or lesser than those of other companies signing the agreement. After the indemnity agreements have been signed by all companies concerned, therefore, you will be offered an opportunity to execute, as a replacement for the attached agreement, any other indemnity agreement which has been accepted by Monsanto and which, in our opinion, differs substantially from the attached.

Yours very truly,

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