

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

THE DISTRICT OF COLUMBIA,)
a municipal corporation,)
441 4th Street NW,)
Washington, D.C. 20001,)

Plaintiff,)

v.)

MONSANTO CO.,)
c/o Corporation Service Company)
251 Little Falls Drive)
Wilmington, Delaware 19808;)

SOLUTIA, INC.,)
c/o United Agent Group Inc.)
3411 Silverside Road Tatnall Building #104)
Wilmington, Delaware 19810; and)

PHARMACIA LLC,)
c/o The Corporation Trust Company)
1209 Orange Street)
Wilmington, Delaware 19801)

Defendants.)

No.: _____

Judge: _____

COMPLAINT WITH JURY DEMAND

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I. INTRODUCTION

1. The District of Columbia, by its Attorney General Karl A. Racine (“Plaintiff” or “D.C.” or the “District”), brings this action against Defendants Monsanto Company (“Monsanto”), Solutia, Inc. (“Solutia”), and Pharmacia LLC (“Pharmacia”) (collectively, “Defendants”) for all damages to the District, including compensatory and punitive, recoverable at law or in equity, and for declaratory and injunctive relief, including civil penalties, to remedy Defendants’ violations of law.

2. Polychlorinated biphenyls (“PCBs”) are toxic and dangerous synthetic organic chemical compounds that were manufactured, marketed, sold, and distributed by Monsanto in the United States from approximately 1929 to 1977. During that period, Monsanto was responsible for the manufacture of 99% or more of all PCBs used or sold within the United States. There are no known natural sources of PCBs in the environment.

3. Because of PCBs’ proven toxicity and persistence in the environment, production and, with limited exceptions, use of PCBs was prohibited in the United States in 1979, when the U.S. Environmental Protection Agency (“EPA”) promulgated final regulations banning PCBs under the Toxic Substances Control Act (“TSCA”), enacted by the U.S. Congress in 1976.

4. At the time it manufactured, marketed, distributed, and sold PCBs—often under the trade name “Aroclor”—Monsanto knew or should have known that PCBs were highly toxic, harmful to human and animal health, and environmentally harmful. Internally, the company acknowledged as early as 1937 that PCBs produce systemic toxic effects upon prolonged exposure. In the 1950s, Monsanto’s Medical Office specifically advised workers not to eat lunch in the PCB department with Monsanto’s medical director openly declaring that, “[w]e know Aroclors are toxic.”

5. Despite its early knowledge of the dangers associated with PCBs, Monsanto embarked on a decades-long campaign of misinformation and deception in order to prolong the manufacture, sale, and use of PCBs in the District and elsewhere.

6. Indeed, internal memos designed to assist Monsanto employees field questions and concerns from customers about PCB toxicity reminded those employees that Monsanto “can’t afford to lose one dollar of business.”

7. Monsanto further vigorously denied in public statements that PCBs are harmful to human and environmental health, despite accumulating a wealth of knowledge contradicting such statements.

8. At least as early as the 1950s, Monsanto knew, or should have known based on its knowledge of the environmental risks associated with related chlorinated hydrocarbons like DDT (which Monsanto also manufactured), that its PCB formulations would inevitably volatilize and leach, leak, and escape their intended applications, contaminating runoff during naturally occurring storm and rain events and entering groundwater, waterways, waterbodies, and other waters, sediment, soils, and plants, as well as fish and other wildlife throughout the District.

9. Monsanto also knew or should have known that PCBs substantially persist in the natural environment rather than break down over time. The environmental persistence of PCBs and their resistance to breaking down is highly correlated with their chlorine content: the higher the chlorine content in a given PCB formulation, the more persistent it is. Monsanto sold many high-chlorination PCB formulations for uncontrolled uses.

10. Monsanto also knew or should have known that PCBs bio-accumulate and bio-magnify in animal tissue, including in fish tissue and human tissue. As a result, as time passes, PCB contamination poses an increasingly hazardous threat to the health of the District’s residents.

11. Nonetheless, Monsanto sold PCBs for a variety of uses, including household uses, without proper warnings or instructions concerning their safe use or disposal. PCBs were sold for use in paints, caulks, inks, dyes, lubricants, sealants, plasticizers, coolants, hydraulic fluids, fireproofing, and industrial electrical equipment such as capacitors and transformers, among other applications. Monsanto also manufactured and sold various products incorporating their PCBs.

12. Monsanto also knew or should have known that PCBs disposed of in landfills and other types of waste facilities regularly leached, leaked, and escaped their disposal sites, entering the District's waters, soils, and wildlife. Despite this knowledge, Monsanto suggested to customers that PCB products should be disposed of in landfills without suggesting or providing for other protections.

13. Monsanto's PCBs now widely contaminate the District's natural resources. Addressing this contamination has (and will continue to) cost the District hundreds of millions of dollars, costs that ought to be borne by Monsanto, not the District and its taxpayers.

14. All of the waterbodies in the District have been identified as "impaired" because the PCBs in those waterbodies exceed the District's Water Quality Standards. None of the District's monitored waters are supporting all of their designated uses, and they generally do not support uses by humans and aquatic life.

15. The District has incurred and will continue to incur significant costs in connection with PCB remediation and removal projects, and restoration of damaged natural resources. For example, the District is the lead agency for the Anacostia River Sediment Project ("ARSP"), which focuses on investigation and clean-up of contamination in Anacostia River sediments. PCBs are the primary contaminant of concern in the ARSP and are the key driver of the project based on the human cancer risks and other health hazards they pose, mainly as a result of ingestion of PCB-

contaminated fish tissue by subsistence and recreational fishermen. The District has completed extensive analyses of available remedial measures and human health risk assessments, at substantial cost, and has begun the process to implement early actions to target “PCB hotspots” in the Anacostia River and surrounding water bodies draining into the Anacostia River.

16. In addition to contamination and impairment of District waters and other natural resources, PCBs also contaminate the District’s public stormwater system. In the course of operating its municipal separate storm sewer system (“MS4”), the District has incurred and continues to incur significant costs investigating, analyzing, monitoring, mitigating, and remediating PCB contamination, including infrastructure improvements (such as installation of sediment traps), development and implementation of Total Maximum Daily Load (“TMDL”) plans targeting PCB reduction, and stormwater management improvements (such as porous pavements, green roofs, and bioretention areas) that capture and reduce PCBs before discharge into surface water bodies.

17. The District is also financing in part the Clean Rivers Project, a massive infrastructure and support program designed to reduce combined sewer overflows (“CSO”) into District waterways from the wastewater treatment system owned and operated by D.C. Water, a quasi-independent authority that provides services to the District of Columbia and parts of Maryland and Virginia. Through this multi-billion dollar public project, more than 13 miles of underground tunnels designed to capture CSO during heavy rains and transport it to a wastewater treatment plant are being constructed. These wastewater improvement expenses are necessary to reduce or prevent PCB discharges into surface water bodies and to protect the D.C. public and D.C. natural resources.

18. The District also has incurred and continues to incur costs to monitor and enforce

compliance with PCB limits and conditions contained in individual Clean Water Act discharge permits issued to industrial dischargers. These limits and conditions were specifically included in discharge permits as a means of ensuring not only that the District's water quality standard for PCBs are met and maintained, but also to assist the District in achieving the TMDL for PCBs in District waters.

19. The District's residents and natural resources, including its water bodies and water systems, have been and continue to be impacted by PCBs manufactured, marketed, distributed, and introduced into commerce by Defendants.

20. In short, the District has incurred and will continue to incur significant costs to reduce or remove Defendants' PCBs from natural resources within the District, District waters, and the water systems operating in and/or by the District.

II. JURISDICTION

21. This Court has jurisdiction over the subject matter of this case pursuant to D.C. Code §§ 11-921 and 1-301-81(a)(1).

22. This Court has personal jurisdiction over Defendants pursuant to D.C. Code § 13-423(a).

23. The natural resources and property that are the subject of this suit all rest within the District.

III. PARTIES

A. PLAINTIFF

24. The District of Columbia is a municipal corporation empowered to sue and be sued, and is the local government for the territory constituting the permanent seat of the federal government.

25. The District is represented by and through its chief legal officer, the Attorney General for the District of Columbia. The Attorney General conducts the District's legal business and is responsible for upholding the public interest. D.C. Code § 1-301.81(a)(1). The Attorney General is also expressly authorized to recover damages to natural resources on behalf of the District as the trustee for natural resources within the District. *See* D.C. Code § 8-634.07.

26. The District has a public interest in its natural resources, including air, soils, and lands, aquatic and submerged lands, waters, aquifers, wildlife, fish, shellfish, biota, and other natural resources, as well as stormwater and other water systems within the District. The protection of these resources and water systems from environmental contamination and degradation, and the District's interest in ensuring the health and well-being of its environment and economy and the free use of its environmental resources by District citizens, is an essential public function and public right to be vindicated by the Attorney General.

B. DEFENDANTS

27. Defendant Monsanto Company is a Delaware corporation with its principal place of business in St. Louis, Missouri. Following a merger transaction that closed in 2018, Monsanto is a wholly-owned subsidiary of Bayer AG.

28. Defendant Solutia, Inc. is a Delaware corporation with its principal place of business in St. Louis, Missouri. Solutia is a wholly-owned subsidiary of Eastman Chemical Company.

29. Defendant Pharmacia LLC, formerly known as Pharmacia Corporation, is the successor to the original Monsanto Company ("Old Monsanto"). Pharmacia LLC is a Delaware company with its principal place of business in Peapack, New Jersey. Pharmacia is a wholly-owned subsidiary of Pfizer, Inc.

30. Old Monsanto operated an agricultural products business, a pharmaceutical and nutrition business, and a chemical products business. Old Monsanto began manufacturing PCBs in 1935 after acquiring Swann Chemical Company, which manufactured PCBs from 1929 to 1935. Old Monsanto continued to manufacture commercial PCBs until the late 1970s.

31. Through a series of transactions beginning in approximately 1997, Old Monsanto's businesses were spun off to form three separate corporations.

32. The corporation now known as Monsanto Company operates Old Monsanto's agricultural products business.

33. Old Monsanto's chemical products business is now operated by Solutia.

34. Old Monsanto's pharmaceuticals business is now operated by Pharmacia.

35. Solutia was organized by Old Monsanto to own and operate its chemical manufacturing business. Solutia assumed the operations, assets, and liabilities of Old Monsanto's chemical business.

36. Although Solutia assumed and agreed to indemnify Pharmacia (then known as Monsanto Company) for certain liabilities related to the chemicals business, Defendants have also entered into agreements to share or apportion liabilities, and/or to indemnify one or more entities, for claims arising from Old Monsanto's chemical business, including the manufacture and sale of PCBs.

37. In 2003, Solutia filed a voluntary petition for reorganization under Chapter 11 of the U.S. Bankruptcy Code. Solutia's reorganization was completed in 2008. In connection with Solutia's Plan of Reorganization, Solutia, Pharmacia, and Monsanto entered into several agreements under which Monsanto continues to manage and assume financial responsibility for certain tort litigation and environmental remediation related to the chemicals business.

38. Eastman Chemical Co. reported in its 2019 Form 10-K that it “has been named as a defendant in several [legacy tort] proceedings, and has submitted the matters to Monsanto, which was acquired by Bayer AG in June 2018, as Legacy Tort Claims [as defined in a settlement agreement with Monsanto arising out of Solutia, Inc.’s bankruptcy proceedings]. To the extent these matters are not within the meaning of Legacy Tort Claims, Solutia could potentially be liable thereunder. In connection with the completion of its acquisition of Solutia, Eastman guaranteed the obligations of Solutia and Eastman was added as an indemnified party under the Monsanto Settlement Agreement.”

39. In its Form 10-K for the period ending August 31, 2017, filed with the U.S. Securities and Exchange Commission (the last such filing before Bayer AG acquired Monsanto), Monsanto represented: “Monsanto is involved in environmental remediation and legal proceedings to which Monsanto is a party in its own name and proceedings to which its former parent, Pharmacia LLC or its former subsidiary, Solutia, Inc. is a party but that Monsanto manages and for which Monsanto is responsible pursuant to certain indemnification agreements. In addition, Monsanto has liabilities established for various product claims. With respect to certain of these proceedings, Monsanto has established a reserve for the estimated liabilities.” The filing specifies that the company held \$277 million in that reserve as of August 31, 2017.

IV. FACTUAL ALLEGATIONS

A. PCBs ARE DANGEROUS CHEMICALS THAT THREATEN HUMAN AND ENVIRONMENTAL HEALTH AND SAFETY

1. Physical and Chemical Properties of PCBs

40. PCBs are a class of synthetic organic chemical compounds in which a minimum of two and a maximum of ten chlorine atoms are attached to the biphenyl molecule.

41. There are no known natural sources of PCBs in the environment.

42. PCBs are either oily liquids or solids, and are colorless to light yellow. They have no known smell or taste.

43. There are 209 distinct PCB compounds (known as congeners) with from 1 to 10 chlorine atoms on a biphenyl molecule. The number and placement of the chlorine atoms on the biphenyl molecule determines how the congener is named and dictates its environmental fate and toxicity.

44. PCBs generally occur as mixtures of congeners. Defendants manufactured PCB mixtures primarily under the “Aroclor” trade name. Aroclors are differentiated principally by the composition of chlorine by weight, so, for example, “Aroclor 1254” means the mixture contains approximately 54% chlorine by weight. Generally, the higher the chlorine content of a PCB mixture, the higher its persistence and toxicity.

45. PCBs do not burn easily, are hydrophobic (i.e., they do not dissolve in water but rather cluster together), and bio-accumulate and bio-magnify in living tissue.

46. PCBs entered the air, water, and soil during their ordinary and prescribed uses. Indeed, PCBs gradually escaped and disbursed from their common applications, *e.g.* in road paint or caulking, into the natural environment due to the chemical compounds’ inherent tendency to volatilize, that is to emit PCB vapors, particularly when exposed to heat (such as when road paint or building materials are exposed to the sun over time). As vapors, PCBs travel through the air, eventually settling in nearby soil, sediment or waterbodies.

47. PCBs also entered the environment from spills or leaks in the ordinary course of business such as through transport of the chemicals, and from leaks or fires in transformers, capacitors, or other products containing PCBs, and from the burning of wastes in some municipal or industrial incinerators.

48. In addition, Defendants prescribed that PCBs and PCB-contaminated wastes should be disposed of in the ordinary course in landfills, from where they easily escaped, leached, and leaked into the surrounding environment.

49. Once in the environment, PCBs do not break down readily and may remain for decades absent remediation.

50. In water, PCBs travel along currents and attach to bottom sediment or particles in the water and evaporate into air or settle into sediment. Sediments contaminated with PCBs also release PCBs into surrounding water. PCBs also contaminate groundwater.

51. As a gas, PCBs can accumulate in the leaves and above-ground parts of plants and food crops.

52. PCBs are taken up into the bodies of small organisms and fish in water. They are also taken up by other animals that eat these aquatic animals as food and eventually humans. PCBs especially accumulate in fish and marine animals, reaching levels that may be many thousands of times higher than in water because PCBs are soluble in lipids including body fat and bioaccumulate and bio-magnify over time in living tissue. Indeed, PCB levels are highest in animals higher up the food chain.

53. PCBs are inert in that they resist both acids and alkalis, and have thermal stability.

2. Health Effects of Exposure to PCBs

54. Humans are exposed to PCBs primarily from eating contaminated food, breathing contaminated air, or drinking or swimming in contaminated water. The major dietary sources of PCBs are fish (especially sportfish caught in contaminated waterbodies), meat, and dairy products. PCBs also collect in milk fat and can enter the bodies of infants through breast-feeding.

55. Fetuses in the womb are also exposed to PCBs through their mothers. Studies show

that babies born to mothers exposed to high concentrations of PCBs in the workplace or from eating PCB-contaminated fish suffer from lower birth weight than other babies. Babies born to women exposed to PCBs before and during pregnancy showed abnormal responses to infant behavioral tests, including motor skills, and experienced short-term memory deficiencies.

56. Many studies have examined how PCBs affect human health. Human health effects associated with PCB exposure include without limitation liver, thyroid, dermal, and ocular changes, immunological alterations, neuro-developmental and neurobehavioral changes, reduced birth weight, reproductive toxicity, and cancer.

57. Liver changes associated with PCB exposure include liver enlargement, microsomal enzyme induction (altered metabolism), increased levels of enzymes indicative of hepatocellular damage and serum and tissue biochemical changes indicative of liver dysfunction, and histopathological changes concerning fat deposition, as well as fibrosis and necrosis.

58. Thyroid changes associated with PCB exposure include goiter and increased thyroid gland volume, histological changes in the thyroid gland indicative of stimulation of the gland and disruption of the processing of follicular colloid needed for normal production and secretion of thyroid hormone, depressed thyroid hormone levels, and modified (increased or decreased) activity in producing and transferring enzymes necessary for thyroid hormone production. Due to the importance of the thyroid to brain development, PCBs' effects on the thyroid produce neurodevelopmental effects.

59. Dermal changes associated with PCB exposure include skin irritation, chloracne (a dermatological condition starting with formation of keratin plugs and inflammatory folliculitis), and nail and skin pigmentation changes.

60. Ocular changes associated with PCB exposure include hypersecretion of

Meibomian glands, abnormal pigmentation of the conjunctiva, and swollen eyelids.

61. Immunological alterations associated with PCB exposure include decreased antibody levels, changes in T-cell subsets, and increased susceptibility to respiratory tract infections, infectious illnesses, and middle ear infections.

62. Neurological changes associated with PCB exposure include abnormal reflexes and deficits in memory, learning, impulse control, and IQ. Such changes impact infants and children more severely than adults.

63. Reproductive changes associated with PCB exposure include menstrual disturbances in women and effects on sperm morphology and production in men, all of which can result in difficulty conceiving.

64. PCBs are associated with a number of cancers, including cancer of the liver, biliary tract, intestines, and skin (melanoma).

65. Studies of workers routinely exposed to PCBs show that PCB exposure is associated with irritation of the nose and lungs, gastrointestinal discomfort, changes in the blood and liver, and depression and fatigue, as well as cancer of the liver and biliary tract.

66. In 1996, EPA assessed PCB carcinogenicity based on data related to Aroclors 1016, 1242, 1254, and 1260. EPA's cancer assessment was peer-reviewed by 15 experts on PCBs, including scientists from government, academia, and industry. All experts agreed that PCBs are probable human carcinogens.

67. The U.S. Department of Health and Human Services' National Toxicology Program considers PCBs to be "reasonably anticipated" carcinogens.

68. The International Agency for Research on Cancer, an intergovernmental agency forming part of the World Health Organization of the United Nations, concluded in March 2013,

based on the assessments of 26 experts from 12 countries, that PCBs are known human carcinogens.

69. In its formal 2016 report, the IARC stated unequivocally, “There is sufficient evidence in humans for the carcinogenicity of [PCBs]. PCBs cause malignant melanoma. Positive associations have been observed for non-Hodgkin lymphoma and cancer of the breast. ... PCBs are carcinogenic to humans”

3. The Ordinary and Intended Use of PCBs Has Resulted In Widespread PCB Contamination

70. The ordinary and intended application of Monsanto’s commercial and household PCB products (in, for instance, paints, caulks, lubricants, hydraulic and heat-transfer fluids, transistor and capacitor fluids, and so on) has resulted in the release of PCBs into the District’s air, waters, and soils, due principally to the chemical compound’s well-known tendency to volatilize or redistribute itself across different environmental media.

71. PCBs are predominantly redistributed from one environmental medium to another—soil to water, water to air, air to water, sediment to water—so the majority of PCBs in the air, for example, results from volatilization of PCBs from soil and water.

72. PCBs may be released to the atmosphere from landfills and hazardous waste sites, incineration of PCB wastes, or leakage and runoff from older electrical equipment in use.

73. PCBs may also be released to water from spillage of PCB-containing hydraulic fluids, historic disposal with insufficient safeguards, combined sewer overflows or storm water runoff, and from runoff and leachate from PCB-contaminated sewage sludge applied to farmland.

74. PCBs may further be released to soil from leaks and spills, releases from contaminated soils in landfills and hazardous waste sites, deposition of vehicular emissions near roadway soil, and land application of sewage sludge containing PCBs.

75. Due to their uncontrollable environmental circulation, Defendants internally acknowledged that PCBs would inevitably contaminate the environment—even as they continued to increase their production of PCBs and to conceal or deny any association of adverse human health and ecological effects with PCBs.

B. DEFENDANTS KNEW PCBs WERE DANGEROUS CONTAMINANTS AT THE TIME OF MANUFACTURE, MARKETING, SALE, AND DISTRIBUTION

76. Defendants developed an early, sophisticated understanding of PCB toxicity.

77. In 1936, many workers at a New York facility using PCBs operated by Halowax Corporation were afflicted with severe chloracne. Three workers died and autopsies revealed severe liver damage in two of them.

78. Halowax Corporation asked Harvard University researcher Cecil K. Drinker to investigate the issue, and Dr. Drinker’s analysis was presented at a 1937 meeting attended by high-level personnel employed by Old Monsanto.

79. Dr. Drinker’s investigation revealed that rats exposed to PCBs suffered severe liver damage. Dr. Drinker’s results were published in a September 1937 issue of the *Journal of Industrial Hygiene and Toxicology*.

80. That same year, Old Monsanto admitted in an internal report that PCBs produce “systemic toxic effects” as a result of prolonged exposure to PCB vapors or oral ingestion, and that bodily contact with PCBs produces “an acne-form skin eruption.”

81. Old Monsanto subsequently retained Dr. Drinker to conduct further animal studies. In September 1938, Dr. Drinker confirmed liver damage in rats exposed to various formulations of PCB compounds.

82. Other studies also explored and confirmed the toxicity of chlorinated hydrocarbons like PCBs. A 1939 study published in the *Journal of Industrial Hygiene and Toxicology*, for

example, referenced the worker fatalities investigated by Drinker and went on to conclude that pregnant women and persons previously affected by liver disease are particularly susceptible to adverse effects from chlorinated hydrocarbons, such as PCBs.

83. In February 1950, Old Monsanto Medical Director Dr. R. Emmet Kelly acknowledged that when workers fell ill at an Indiana factory that used PCBs in the manufacturing process, he immediately “suspected the possibility that the Aroclor fumes may have caused liver damage.”

84. A 1955 report on the production of Aroclor prepared by Old Monsanto likewise acknowledged that in the “early days of development,” workers at a plant in Anniston, Alabama processing PCBs had developed chloracne and liver problems.

85. In 1955, Dr. Kelly further documented the company’s clear understanding: “We know Aroclors are toxic[.]” Dr. Kelly also appeared to recognize the scope of Old Monsanto’s potential legal liability, explaining that “our main worry is what will happen if an individual develop[s] any type of liver disease and gives a history of Aroclor exposure. I am sure the juries would not pay a great deal of attention to [maximum allowable concentrate levels].”

86. Old Monsanto’s Medical Department prohibited workers from eating lunch in the Aroclor department in November 1955. The Department memorandum explained that “Aroclor vapors and other process vapors could contaminate the lunches unless they were properly protected,” and that “[w]hen working with this material, the chance of contaminating hands and subsequently contaminating the food is a definite possibility.”

87. In January 1957, Dr. Kelly reported that the U.S. Navy had refused to use Monsanto’s PCB products in submarines: “No matter how we discussed the situation, it was impossible to change their thinking that Pydraul 150 [a PCB product marketed by Old Monsanto]

is just too toxic for use in a submarine.”

88. Notably, at the same time it was manufacturing PCBs, Old Monsanto also manufactured – and researched the toxicological profile and environmental effect of – DDT, another now infamous chlorinated hydrocarbon similar to PCBs. By the late 1940s, Old Monsanto had already researched and compiled an extensive toxicological profile of DDT showing that it is extremely toxic to human and environmental health. Indeed, by then, scientific researchers had established that DDT and other chlorinated hydrocarbons are absorbed and stored in fatty tissue of living organisms exposed to them and pass these contaminants on to their offspring. For instance, the *American Journal of Public Health* published a 1950 report warning that “chlorinated hydrocarbons, such as DDT and chlordane, are soluble in fats and are stored in the fatty tissues of the body. These compounds possess a high order of toxicity, and their uncontrolled or unwise use is not desirable.”

89. Extensive scientific research establishing the toxicity and bio-accumulative and bio-persistent nature of DDT and other chlorinated hydrocarbons was published from the 1940s to the 1960s. Old Monsanto produced DDT and was acutely aware of this research. Old Monsanto was also acutely aware of the similarities between DDT and PCBs.

90. In 1966, the *New Scientist* published a short article (“Report of a New Chemical Hazard”), summarizing recent research by Søren Jensen, a Swedish chemist at Stockholm University’s Institution of Analytical Chemistry, which estimated that PCBs may be spreading through environments in high volumes due to their use by manufacturing interests.

91. Søren Jensen had accidentally found enormous quantities of PCB compounds in wildlife while analyzing DDT accumulations. Dr. Jensen presented his findings to the scientific community in 1966, including that PCBs “appear[] to be the most injurious chlorinated compounds

of all tested.” Dr. Jensen reported that the “main characteristic[s]” of PCBs include their “very high stability,” lack of “metaboliz[ation] in living organism[s],” and their non-flammability.

92. Old Monsanto’s Medical Director, Dr. Kelly, was aware of Dr. Jensen’s findings at the time.

93. In December of 1968, *Nature* published an article by Dr. Richard Risebrough of the University of California entitled, “Polychlorinated Biphenyls in the Global Ecosystem.” The article assesses PCB presence in marine wildlife and reports high concentrations of PCBs detected in peregrine falcons and 34 other bird species, drawing an immediate connection between PCBs and the catastrophic decline of peregrine falcon populations in the United States.

94. Old Monsanto personnel took note of Dr. Risebrough’s article, recognizing the public-relations disaster it portended. W.R. Richard, manager of Old Monsanto’s Research and Development of Organics Division, wrote in early 1969 that the article shows not only that PCBs are “toxic substance[s]” but also because they are easily and broadly distributed in air and water, they are “an uncontrollable pollutant ... causing [the] extinction of [the] peregrine falcon ... [and] endangering man himself.”

95. Also in 1969, Dr. Jensen published the formal results of his years-long research of PCBs in the environment. Dr. Jensen’s research demonstrated very high PCB concentrations in Baltic Sea fauna such as white-tailed sea eagles. As a recent commentator observed, summarizing the implications of Dr. Jensen’s results, “PCBs had entered the environment in large quantities for more than 37 years and were bio-accumulating along the food chain.”

96. In September 1969, W.R. Richard wrote a memorandum titled, “Defense of Aroclor.” Richard’s memo notes that critics of PCBs have raised a multitude of different issues with the compounds, so “[w]e can’t defend vs. everything. Some animals or fish or insects will

be harmed. Aroclor degradation will be slow. Tough to defend against. Higher chlorination compounds will be worse [than] lower chlorine compounds. Therefore, we will have to restrict uses and clean-up as much as we can, starting immediately.” In the same document, Richard admitted that PCBs will leak from virtually all applications, including such “closed” applications as air compressor, heat transfer, and capacitor fluids.

97. That same month, Old Monsanto formed what it dubbed the “Aroclor Ad Hoc Committee” to strategize about defending Defendants’ PCB business against growing public outcry and growing evidence of PCBs’ toxicity and environmental harms. The minutes of the Committee’s first meeting observed that PCBs had been found in fish, oysters, shrimp, and birds, along the coasts of industrialized areas including Great Britain, Sweden, the Rhine River, Lake Michigan, Pensacola Bay, and in wildlife throughout the Western hemisphere.

98. The Committee acknowledged that normal and intended uses of PCB-containing products were the cause of the contamination: “In one application alone (highway paints), one million lbs/year are used. Through abrasion and leaching we can assume that nearly all of this Aroclor winds up in the environment.”

99. The Committee worked to formulate a response to growing concerns over PCBs, including those reflected by the U.S. Department of the Interior’s Fish and Wildlife Service (which found PCBs in dead eagles and marine birds), the Bureau of Commercial Fisheries (which found PCBs in the river below Monsanto’s Pensacola plant), and the U.S. Food and Drug Administration (which found PCBs in milk supplies).

100. The Committee’s constitutive agenda was to: “1. Protect continued sales and profits of Aroclors; 2. Permit continued development of new uses and sales; and 3. Protect the image of the Organic Division and the Corporation as members of the business community recognizing their

responsibilities to prevent and/or control contamination of the global ecosystem.”

101. As the minutes reflect, “There is little probability that any action that can be taken will prevent the growing incrimination of specific polychlorinated biphenyls ... as 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.” However, while “there is no practical course of action that can so effectively police the uses of these products as to prevent environmental contamination ... [t]here are ... a number of actions which must be undertaken to prolong the manufacture, sale and use of these particular Aroclors as well as to protect the continued use of other members of the Aroclor series.”

102. In keeping with the corporate strategy reflected in the Aroclor Ad Hoc Committee meeting minutes and elsewhere, Defendants not only continued producing Aroclors through 1969, but increased production that year and in 1970, which were the highest volume production years in the history of PCBs.

103. Defendants likewise vigorously protected their Aroclor brand from regulatory intrusion, falsely telling regulators that Defendants “do not believe PCBs to be seriously toxic,” that Defendants could not “conceive how the PCBs can be getting into the environment in a widespread fashion,” and that, in light of PCBs’ chemical inertness, Defendants “would anticipate no problems associated with the environment from refuse dumps.”

104. Elmer Wheeler, in Old Monsanto’s Medical Department, circulated laboratory reports discussing results of animal studies in January 1970, in which Dr. Wheeler noted that “PCBs are about the same as DDT in mammals[,]” the other toxic chlorinated hydrocarbon about the dangerous characteristics and environmental threats of which Old Monsanto had known for decades.

105. At the same time that it was internally acknowledging that PCBs are “about the same” as DDT, in January 1970, the journal *Environment* published a note authored by Old Monsanto: “Monsanto Statement on PCB.” The company note acknowledged that recent studies, including Dr. Jensen’s studies, indicated PCBs’ widespread presence in the natural environment, and expressed the company’s “concern[] over the situation.”

106. However, the note defended PCBs by deploying a variety of false statements that Old Monsanto used on multiple occasions in the late 1960s and early 1970s to minimize the negative impacts of PCBs.

107. In particular, Old Monsanto claimed that (a) PCBs cannot escape so-called “closed applications” where PCBs are “completely sealed in metal containers”; (b) PCBs cannot escape applications such as adhesives, elastomers, and surface coatings; (c) PCBs are not “to our knowledge” used in “household products”; and (d) it is simply “not true” that PCBs are “highly toxic.” Old Monsanto knew that all of these statements were untrue and would tend to mislead regulators and the public when they published them.

108. Similarly, Old Monsanto falsely asserted in the note that research it conducted into PCB toxicity in fish and mammals and PCB presence in waters and soils provided “[v]ery early results . . . that PCBs are not highly toxic.”

109. Contrary to their published claims, Defendants knew PCBs would leach, leak, off-gas, and escape their ordinary and intended applications, including closed applications.

110. Defendants also knew that the PCBs they produced were used in “household products” and that Defendants aggressively promoted the use of PCBs in “household products.” For example, in a 1960 brochure, Defendants promoted the use of Aroclors in a wide variety of household products including home appliances, food cookers, potato chip fryers, thermostats,

automotive transmission oil, insecticides, waxes used in dental casting, jewelry, lubricants, adhesives, moisture-proof coatings, printing inks, papers, sealants and caulking compounds, tack coatings, asphalt, paints, varnishes, lacquers, masonry coatings for swimming pools, stucco homes, and highway paints, and protective or decorative coatings for a number of other finishes.

111. A 1961 brochure published by Old Monsanto explained that Aroclors are used in “lacquers for women’s shoes,” as a “wax for the flame proofing of Christmas trees,” as “floor wax,” as an adhesive for bookbinding, leather, and shoes, and as invisible marking ink used to make chenille rugs and spreads.

112. Defendants knew PCBs were highly toxic as early as 1937. Defendants also knew well before 1970 that a number of studies, both internal and external, had demonstrated human and animal toxicity and prevalent contamination of waters and soils.

113. In February 1970, Defendants’ high-level personnel circulated a talking-points memorandum to be used in engaging with customers raising concerns over PCB toxicity. Although Old Monsanto had reformulated certain high-chlorine congeners (Aroclor 1254 and 1260) to lower the chlorine content, it instructed employees to resist product returns of the more toxic congeners, explaining that Defendants “can’t afford to lose one dollar of business.” The memo instructed employees to advise customers to use up their existing Aroclor 1254 and 1260 stock before topping up with new fluids: “We don’t want to take fluid back.”

C. DEFENDANTS FAILED TO WARN THE PUBLIC AND THEIR CUSTOMERS ABOUT PCB HAZARDS, AND PROVIDED IMPROPER DISPOSAL INSTRUCTIONS TO CUSTOMERS

114. Despite knowing that PCBs are toxic to human and environmental health, and that PCBs would leach, leak, off-gas, and escape their ordinary and intended applications and from disposal sites—regardless of the nature of the application—to contaminate waters, soils, and air,

Defendants issued no public warning or instruction about PCBs or the health and environmental safety hazards they present. Instead, Defendants expressly denied the harmfulness and environmental toxicity of PCBs.

115. Defendants made no public disclosure of the high risk that PCBs posed to the environment and continued to instruct their customers to dispose of PCB materials and wastes in local landfills.

116. Old Monsanto failed to take adequate precautions in disposing of PCBs and PCB-contaminated waste that it generated. Its staff routinely disposed of PCB wastes in an unsafe manner. For example, the company's sanitation staff handling on-site spills would routinely sweep PCB materials into the drainage system rather than collect it for proper disposal. Moreover, Old Monsanto operated an open outdoor dump site in which it would routinely dispose of PCB wastes, among other things.

117. Old Monsanto executive William Papageorge wrote in a letter dated March 6, 1970 that, "All waste containing PCB's [*sic*] is at present hauled to the dumps the plants have been using for other plant waste. We recognize this is not the ultimate, since PCB's [*sic*] could eventually enter the environment, but we will continue this practice until better methods of disposal are available."

118. Mr. Papageorge further acknowledged in testimony provided in 1975 to the Wisconsin Department of Natural Resources that Old Monsanto generally instructed its customers to dispose of PCB-contaminated wastes in landfills.

D. DEFENDANTS CONCEALED PCBs' TOXICITY FROM PUBLIC ENTITIES

119. As government investigations and formal inquiries into the dangers of PCBs amplified in the late 1960s and early 1970s, Old Monsanto doubled down on its campaign of

misinformation and denial.

120. For example, Howard S. Bergen, from Old Monsanto's Functional Fluids division, sent a letter dated March 27, 1969, to the Regional Water Quality Control Board of the San Francisco Bay Region, in which he claimed that PCBs are associated with "no special health problems," and that due to PCBs' chemical inertness, "we would anticipate no problems associated with the environment from refuse dumps." Both of those statements were false.

121. Dr. Wheeler, Assistant Director of Old Monsanto's Medical Department told a representative of the National Air Pollution Control Administration in May 1969 that Old Monsanto "cannot conceive how the PCBs can be getting into the environment in a widespread fashion." The representative promised to convey this message to Congress.

122. Old Monsanto similarly claimed ignorance of how PCBs could be entering the environment in large quantities to a number of other public entities, regulators, and authorities, including the New Jersey Department of Conservation. In July 1969, the company claimed that, "[b]ased on the available data, manufacturing and use experience, we do not believe PCBs to be seriously toxic," adding that, "we are unable at this time to conceive of how the PCBs can become widespread in the environment. It is certain that no applications to our knowledge have been made where the PCB's would be broadcast in the same fashion as the chlorinated hydrocarbon pesticides have been." Those statements were false.

123. Old Monsanto's Dr. Kelly communicated with the Ohio State Board of Health in March 1970 regarding the detection of PCBs, particularly Aroclor 1254, in samples of milk from at least three herds in Ohio. The Board traced this contamination back to Aroclor-containing paint flaking off and possibly leaching from the interior walls of the silos in which the milk was stored. The Board reported to Old Monsanto that it would have to destroy about 150 tons of milk, valued

at about \$30 per ton. The Board also reported that there may be 50 other silos similarly contaminated in the state that were painted with the same formulation. Dr. Kelly communicated to other Old Monsanto officials:

All in all, this could be quite a serious problem, having legal and publicity overtones. This brings us to a very serious point. When are we going to tell our customers not to use any Aroclor in any paint formulation that contacts food, feed, or water for animals or humans? I think it is very important that this be done.

124. Old Monsanto never heeded Dr. Kelly's admonition to warn consumers of the dangers of similar applications of Aroclors.

125. An internal memorandum prepared by Dr. Kelly dated February 10, 1967, continued to express his concern about PCB contamination: "We are very worried about what is liable to happen in the [United States] when the various technical and lay news media pick up the subject [of PCB contamination]. This is especially critical at this time because air pollution is getting a tremendous amount of publicity in the United States." The memo noted that some of Monsanto's largest PCB customers, such as NCR (National Cash Register), had been pressing Monsanto to furnish more information on PCB safety, but that Monsanto had dodged their inquiries.

126. Old Monsanto's misrepresentations and omissions to public entities and customers were designed to conceal the toxicity and hazardousness of PCBs to humans and the natural environment in order to salvage what Monsanto repeatedly emphasized was "one of Monsanto's most profitable franchises," generating \$22 million in annual revenues and gross annual profits of \$10 million.

127. An internal presentation to the Corporate Development Committee generated in or around 1969 advised against exiting the Aroclor market despite clear knowledge of its dangers because "there is too much customer/market need and selfishly too much Monsanto profit to go

out.” Another internal Monsanto memorandum remarked, “There can not (sic) be too much emphasis given to the threat of curtailment or outright discontinuance of the manufacture and sales of this very profitable series of compounds.”

128. In short, though Old Monsanto had a complete and comprehensive record of all PCB-related scientific research and general reportage during the relevant time period (an August 6, 1971 internal memorandum noted that the company “ha[s] probably the world’s best reference file on the PCB situation”), the company failed to timely alert regulators and the public of the dangers of its PCBs, nor did it take adequate steps to stave off the impending environmental disaster, all to shield its sales, profits, and reputation.

E. THE DISTRICT’S NATURAL RESOURCES HAVE BEEN DAMAGED BY DEFENDANTS’ PCBs

129. The quality of the District’s water resources, including water columns, sediments, and fish and aquatic life, directly and significantly affects the quality of life of the District’s citizens. The District is the public trustee of its natural resources and is responsible for protecting those resources, including water quality, surface and subsurface sediments, the benthic invertebrates living within or on top of the sediment, and the remainder of the animals up the food chain that consume them.

130. Between 1929 and 1977, Defendants sold a large volume of PCBs and PCB-containing products to various customers, including retail and secondary manufacturers, within and near the District.

131. Defendants never advised their customers within the District that their PCB mixtures are toxic to general human and environmental health and that PCBs would leach, leak, off-gas, and escape their ordinary and intended applications and from disposal sites, regardless of the nature of the application, to contaminate the District’s waters, soils, and air. Defendants issued

no public warning or instruction about PCBs or the health and environmental safety hazards they present and indeed denied that such hazards exist. Nor did Defendants warn or instruct their commercial customers not to dispose of PCB materials and wastes in landfills, or to otherwise dispose of such materials in a manner calculated to avoid environmental discharge, leakage, leaching, off-gassing, or other forms of contamination of the District's waters, soils, and air.

132. Instead, when Defendants provided any information concerning the use and disposal of PCBs, Defendants denied toxicity concerns and adverse human and environmental health effects, and advised customers that PCBs were safe for their intended uses and wastes should be deposited in landfills, despite knowing this would result in environmental contamination and human and ecological hazards.

133. Defendants' PCB mixtures and PCB-containing products were used in countless applications within the District and leached, leaked, off-gassed, and escaped their ordinary and intended applications to contaminate the District's waters, soils, and air.

134. The District has already taken significant (and costly) steps to address PCB contamination of surface water bodies and other natural resources, but widespread contamination continues to extensively damage the District's natural resources and poses current and future threats to human health and the well-being of the District's environment and economy.

1. "Impaired" Waterbodies and TMDL Process in the District

135. The District has been addressing the problem of its PCB-impaired waterbodies within the District since 1994 based on each waterbody's failure to meet applicable Water Quality Standards per the Clean Water Act § 303(d) listings.

136. As part of the 303(d) listing process, the District is required to identify specific pollutants affecting water quality, rank each Water Quality Limited Segment (WQLS) in order of

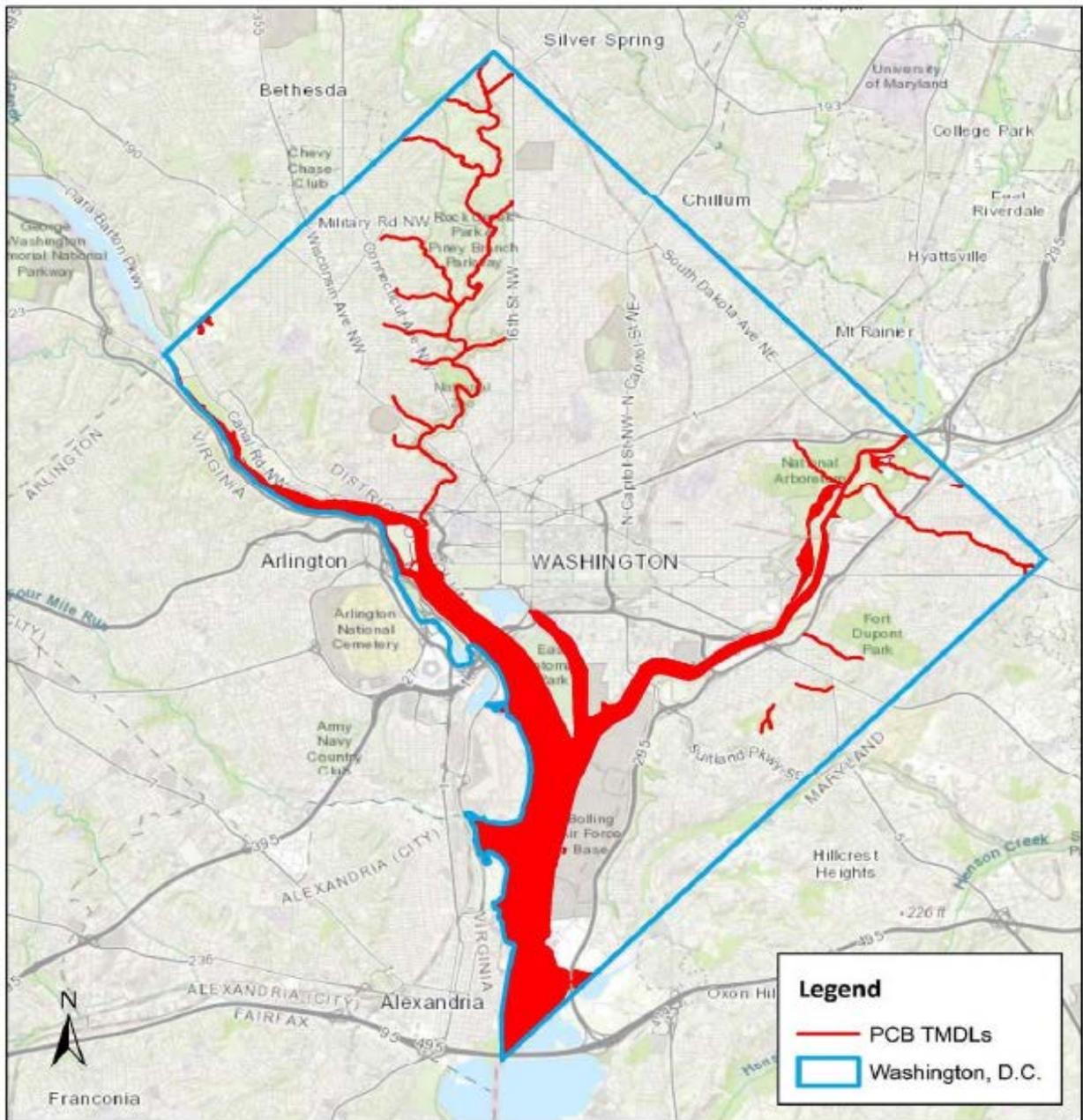
priority, and develop Total Maximum Daily Loads (TMDLs) for those pollutants in each WQLS. Through this process, the District identified the following waters that are currently impaired by excessive levels of PCBs:

- a. Kingman Lake;
- b. Anacostia River;
- c. Potomac River;
- d. Tidal Basin;
- e. Washington Ship Channel;
- f. Rock Creek;
- g. Battery Kemble Creek;
- h. Broad Branch;
- i. Chesapeake & Ohio Canal;
- j. Dalecarlia Tributary;
- k. Dumbarton Oaks;
- l. Fort Dupont;
- m. Foundry Branch;
- n. Fort Chaplin Run;
- o. Fort Davis Tributary;
- p. Fenwick Branch;
- q. Fort Stanton Tributary;
- r. Hickey Run;
- s. Klinge Valley;
- t. Luzon Branch;
- u. Melvin Hazen Valley Branch;
- v. Nash Run;
- w. Normanstone Creek;
- x. Oxon Run;
- y. Pope Branch (Hawes Run);
- z. Pinehurst Branch;
- aa. Portal Branch;
- bb. Piney Branch;
- cc. Soapstone Creek;
- dd. Texas Ave. Tributary;
- ee. Watts Branch.

137. Subsequent to identifying these impaired waterbodies, the District conducted numerous PCB source assessments, dating as far back as 2003, when it established PCB TMDLs for the Anacostia River and its tributaries and Kingman Lake. In conjunction with the District's

TMDL obligations, in 2004, the District established PCB TMDLs for the Potomac River Tributaries, Oxon Run and Oxon Creek. As shown in the following map, to date, PCB-related TMDLs have been established for 29 out of the District's 36 PCB-impaired water bodies.

PCB TMDLs in the District



138. These assessments have also involved several significant studies of PCB mass loading.

139. The District's Water Quality Assessment 2018 Integrated Report, prepared by the District Department of Energy and Environment ("DOEE"), identifies PCBs as impairing all 36 waterbody segments tested within the District. For all of those waterbody segments the Report notes that neither aquatic life nor fish consumption is supported. The Report concludes that "none of the District's monitored waters are supporting all of their designated uses, and they generally do not support uses by humans and aquatic life."

2. Discharge Permits and Compliance

140. In order to achieve the TMDL objectives, the District implemented monitoring, restoration, and regulatory programs to reduce PCB loads from both point sources (such as industrial dischargers of hazardous substances) and non-point sources (i.e. hazardous substances washed into waterbodies through stormwater run-off and the like). Point sources are regulated by discharge permits such as the District's MS4 discharge permit, recently re-issued by U.S. EPA and effective June 22, 2018. This permit requires implementation and refinement of the Consolidated TMDL Implementation Plan and further investigation of PCBs and other toxic constituents "to identify current sources, including a determination of whether or not these toxic contaminants are largely in situ in the sediments of receiving streams rather than in ongoing MS4 discharges."

141. There are approximately 15,700 catch basins and 575 outfalls in the District's MS4 permit area with sediment traps designed to capture PCBs before discharge from the outfalls and the River. The MS4 permit requires the District to annually inspect and clean the sediment traps and outfalls.

142. In total, the District's costs in developing and implementing its TMDL Program for

PCBs and assuring compliance with PCB permit conditions in the District's MS4 NPDES permit has amounted to approximately \$100 million over the last two decades.

143. Moreover, the District incurs costs related to monitoring and enforcing permittees' compliance with their NPDES PCB permit limits or other Clean Water Act obligations. For example, various permittees, including the District's water provider and the Potomac Electric Power Company, have certain PCB effluent monitoring requirements or limitations relative to the established TMDLs. The District's costs incurred in monitoring other permittees' compliance with PCB limits in individual NPDES permits has reached approximately \$10 million and is ongoing.

144. None of these expenditures would have been necessary absent Defendants' sale and dissemination of toxic PCB mixtures (without appropriate safeguards and warnings), which, when used as intended, would inevitably contaminate natural resources and endanger people, animals, and the environment.

3. PCB Fish Advisories in the District

145. The District is responsible for protecting the public health, welfare, and well-being of District residents, and ensuring that the District's environment and economy are not impaired, including subsistence and recreational fishermen interested in consuming fish from the District's waterbodies.

146. The District is home to a substantial population of subsistence and sport fishermen who have been adversely affected by fish consumption advisories resulting from and specific to PCB contamination. The agency advises that eel, carp, and striped bass caught in the Potomac and Anacostia rivers and their tributaries, including Rock Creek, within the District's boundaries not be eaten, and that consumption of sunfish, blue catfish, white perch, largemouth bass, brown bullhead catfish, or channel catfish be severely curtailed.

147. A recent Anacostia River Sediment Project Remedial Investigation Report (“ARSP RI”) completed in conjunction with the ARSP determined that PCBs are the number one contributor of fish tissue cancer risk to humans, and the only contributor of fish tissue non-cancer risk in the Anacostia River, as PCBs contribute more than 90 percent of the noncarcinogenic fish ingestion hazards.

4. Anacostia River Sediment Project

148. The District has taken a leading role in the Anacostia River Sediment Project (ARSP, as defined above). PCBs are driving the remediation of Anacostia River sediment and surrounding surface waters encompassed by the ARSP. The ARSP has resulted in the collection and analysis of hundreds of environmental samples and a recent District proposal to target certain response actions (“Early Actions”) to address PCB hotspots where PCB concentrations are particularly high. In addition, the ARSP has led to PCB source assessments in conjunction with a Remediation Investigation/Feasibility study (“RI/FS”), along with a Human Health Risk Assessment (“HHRA”) and an Ecological Risk Assessment (“ERA”) characterizing, respectively, the risk to human health from exposure to PCBs in the Anacostia River and the harms suffered by environmental receptors as a result of PCBs in the river.

149. To date, the District has spent nearly \$30 million dollars in conducting an RI/FS and associated studies to support remedial actions and natural resource restoration activities that are designed to make the Anacostia River safe for recreational activities, such as boating, fishing and swimming.

5. Clean Rivers Project

150. The District has also spent and will continue to spend significant sums in connection with ongoing projects to improve the public wastewater system in the District,

including projects designed to reduce PCB discharges from wastewater introduced into surface waterbodies.

151. One such project is the Clean Rivers Project – a massive infrastructure and support program designed to reduce combined sewer overflows (CSO, as defined above) into District waterways. In conjunction with D.C. Water, the District is financing the construction of more than 13 miles of underground tunnels designed to capture CSO during heavy rains and transport it to Blue Plains Wastewater Treatment Plant. Captured wastewater will be treated at Blue Plains and toxic contaminants, such as PCBs, will be removed before the treated water is released to surface waters. These wastewater improvement expenses are necessary to reduce or prevent PCB discharges into surface water bodies.

152. The District bears approximately 46% of financial responsibility for this multi-billion dollar project.

153. As part of the Clean Rivers Project, and its TMDL Programs, the District is also financing the design and implementation of green infrastructural improvements, such as green roofs, pervious pavements, and rain gardens/bio-retention systems intended to capture PCBs in stormwater before they are released to surface waterbodies.

154. These measures are specifically designed to reduce or eliminate PCBs from public water systems and avoid discharging PCBs into surface waterbodies.

V. CAUSES OF ACTION

FIRST CAUSE OF ACTION VIOLATION OF BROWNFIELD REVITALIZATION ACT D.C. Code Ann. §§ 8-631.01, *et seq.*

155. The District realleges and incorporates the allegations set forth in paragraphs 1 through 154 as if fully stated herein.

156. The District of Columbia Brownfield Revitalization Act (DCBRA) was enacted in 2001 to establish a comprehensive program for the cleanup and redevelopment of contaminated properties in the District because “business, land use and waste management practices of the past simply did not protect the environment in the same way we do today.” The statute applies retroactively.

157. Under the DCBRA, “[i]t shall be unlawful to release any hazardous substance in the District.” *See* D.C. Code § 8-632.01.

158. “Release” is defined broadly as “the addition, introduction, leaking, pumping, spilling, emitting, discharging, escaping, dumping, injecting, disposing or leaching of any hazardous substance into the environment, including the abandoning or discarding of barrels, containers, and other closed receptacles containing any hazardous substance.” D.C. Code § 8-631.02(14).

159. “‘Hazardous substance’ means any substance designated as a hazardous substance pursuant to section 101(14) of [CERLCA], or any substance identified as a hazardous substance by the [DOEE] in regulations adopted pursuant to this chapter” and includes PCBs. *See* D.C. Code § 8-631.02.

160. Under DCBRA, any “responsible person” is “strictly liable, jointly and severally,” for abatement costs, costs of remedial cleanup and costs for health or other risk assessments, costs of other response actions, and damages for injury to, destruction of, or loss of natural resources, including assessment costs. D.C. Code § 8-632.01. Civil penalties are also available. D.C. Code § 8-634.01.

161. DCBRA defines a “responsible person” as any person who “[b]y an act or omission, caused or contributed to the contamination of a property if at the time of the act or omission, the

person knew or had reason to know that the act or omission would cause the contamination of the property.” D.C. Code § 8-632.01(c)(5).

162. The term “person” encompasses “corporation[s]” and other business entities, such as Defendants. D.C. Code § 8-631.02(12).

163. Defendants are “responsible persons” under DCBRA because they introduced their PCB mixtures into the District’s environment when they manufactured, distributed, marketed, promoted, and sold PCB mixtures and PCB-containing products in a manner Defendants knew or had reason to know would, and did, cause or contribute to the contamination with PCBs of properties within the District, creating hazards to human and environmental health, including natural resources.

164. As a result of Defendants’ conduct, PCBs were released in the District and properties within the District were contaminated with PCBs.

165. The contamination caused by Defendants was not authorized under the DCBRA or otherwise.

SECOND CAUSE OF ACTION
PUBLIC NUISANCE

166. The District realleges and reaffirms each and every allegation set forth in paragraphs 1 through 154 as if fully restated in this cause of action.

167. Defendants manufactured, distributed, marketed, and promoted commercial PCB formulations in a manner that created or contributed to the creation of a public nuisance that is harmful to health and obstructs the free use and enjoyment of the District’s natural resources, stormwater and other water systems and waters.

168. Defendants intentionally manufactured, marketed, and sold their commercial PCB formulations with the knowledge that PCBs were toxic to human and animal life and would

inevitably enter the environment, including in the District.

169. Defendants knew that their PCB mixtures, as ordinarily used, would likely end up in the District's natural resources, stormwater systems, waterways, water bodies, groundwater, soils, sediments, fish and animal tissues.

170. Defendants' conduct and the presence of its PCBs annoys, injures, and endangers the comfort, repose, health, and safety of others.

171. Defendants' conduct and the presence of its PCBs in the District interfere with and obstruct the public's free use and comfortable enjoyment of the District's natural resources for commerce, navigation, fishing, recreation, and aesthetic enjoyment.

172. The presence of Defendants' PCBs in the District's resources also interferes with the free use of the District's stormwater system and District waters for a healthy and ecologically sound environment.

173. Defendants' conduct and the presence of its PCBs in the District's natural resources, stormwater system and District waters is injurious to human, animal, and environmental health.

174. An ordinary person would be reasonably annoyed or disturbed by the presence of toxic PCBs that endanger the health of fish, animals, and humans and degrade water quality and marine habitats as well as soils and sediments.

175. The seriousness of the environmental and human health risk far outweighs any social utility of Defendants' conduct in manufacturing their commercial PCB mixtures and concealing the dangers posed to human health and the environment.

176. The rights, interests, and inconvenience to the District and general public far outweigh the rights, interests, and inconvenience to Defendants, which profited heavily from the

manufacture, sale, and distribution of its commercial PCB mixtures.

177. Defendants' conduct caused and continues to cause harm to the District.

178. The District has suffered and will continue to suffer damage from Defendants' PCB mixtures.

179. The District is incurring and will continue to incur costs to investigate, monitor, analyze, and remediate PCB contamination in the District's natural resources.

180. The District is incurring and will continue to incur costs to remove Defendants' PCBs that have invaded its MS4 system and wastewater system, and to prevent additional PCBs from entering its water systems.

181. As a result of Defendants' conduct, the District suffers injuries to the public interest and the health and well-being of its environment.

182. Defendants knew or, in the exercise of reasonable care, should have known that the manufacture, sale, use, and/or disposal of their commercial PCB mixtures would cause contamination of the environment, including the District's natural resources and public water systems.

183. Defendants knew that PCBs would contaminate water supplies, degrade fresh water and marine habitats, endanger birds and animals, and contaminate soils, sediments and stormwater and other water systems.

184. In addition, Defendants knew PCBs are associated with serious illnesses and cancers in humans and that humans may be exposed to PCBs through ingestion of fish and/or dermal contact. As a result, it was foreseeable to Defendants that humans would be exposed to PCBs through swimming in contaminated waters, playing on contaminated beaches, and by eating fish and shellfish from contaminated areas.

185. Defendants knew, or should have known, that PCB contamination they introduced or caused would seriously and unreasonably interfere with the ordinary comfort, use, and enjoyment of contaminated waterbodies, including the District's waters.

186. Defendants had a duty to conduct its business, including the manufacture, distribution, sale, and promotion of PCBs without directly or indirectly misrepresenting the dangers of PCBs and in a manner that did not interfere with the District's and its residents' use and enjoyment of their natural resources, including their waterways.

187. Defendants' conduct in manufacturing, distributing, selling, and promoting PCBs, as well as misrepresenting or omitting the dangers those compounds foreseeably posed, constitutes an unreasonable interference with a right common to the general public, i.e., the right to freely use the District's natural resources and public water systems without obstruction and health hazard.

188. Defendants are under a continuing duty to act to correct and remediate the injuries its conduct has introduced, and to warn the District, its customers, and the public about the human and environmental risks posed by its PCBs, and each day on which they fail to do so constitutes a new injury to the District.

189. As a direct and proximate result of Defendants' creation of a public nuisance, the District has suffered, and continues to suffer, monetary damages, including loss of value and loss of use of the District's natural resources and water systems.

THIRD CAUSE OF ACTION
DESIGN DEFECT

190. District realleges and incorporates the allegations set forth in paragraphs 1 through 154 as if fully stated herein.

191. Defendants' PCBs mixtures and PCB-containing products were not reasonably safe as designed at the time they left Defendants' control.

192. Defendants' PCB mixtures' toxicity, ability to bio-accumulate, inability to be contained, and environmental persistence rendered them unreasonably dangerous at all times.

193. Defendants' PCB mixtures were unsafe as designed, as demonstrated by numerous studies as well as the U.S. Congress' and U.S. EPA's prohibition on the production and sale of PCBs in 1979 pursuant to the TSCA.

194. Defendants knew or should have known their PCB mixtures were not safe and were likely to contaminate natural resources and water systems within the United States, including the District, and cause toxic contamination of the District's natural resources and water systems.

195. Defendants knew or should have known their PCB mixtures were unsafe to an extent beyond that which would be contemplated by an ordinary person because of the information and evidence available to them associating PCB exposure with adverse human and animal health effects as well as the overwhelming seriousness of creating widespread environmental contamination.

196. Defendants manufactured, distributed, marketed, promoted, and sold PCB mixtures despite such knowledge in order to maximize their profits despite the foreseeable and known harms.

197. Practical and feasible alternative designs capable of reducing the District's injuries were commercially feasible. Such alternatives include mineral oils, silicone fluids, vegetable oils, and nonfluid insulating chemicals, as evidenced by the rapid replacement of PCBs by such alternatives upon the prohibition of PCBs, as well as alternative chemical formulations and/or additional chemical processing measures Defendants could have taken to enhance the safety of their PCB mixtures. Alternative chemical formulations that would have reduced the State's injuries include a reduction of chlorine content in all PCB products, which would have materially

decreased the environmental persistence and toxicity of PCBs without eliminating their typical applications or utilities.

198. Defendants' conduct caused the presence of PCBs in the District and subsequent injury to the public interest, including the physical and economic health and well-being of the District's citizens.

199. The District has suffered and will continue to suffer injuries to its natural resources and water systems, and damages to its public treasury as a result of Defendants' conduct and the presence of PCBs within the District.

200. Defendants are under a continuing duty to act to correct and remediate the injuries their conduct has introduced and to warn the District, their customers, and the public about the human and environmental risks posed by its PCBs, and each day on which it fails to do so constitutes a new injury to the District.

201. Defendants are strictly liable for all damages arising out of their defectively designed PCB mixtures.

FOURTH CAUSE OF ACTION
FAILURE TO WARN AND INSTRUCT

202. The District realleges and incorporates the allegations set forth in paragraphs 1 through 154 as if fully stated herein.

203. Defendants' PCB mixtures and PCB-containing products were not reasonably safe at the time they left Defendants' control because they lacked adequate warnings.

204. At the time Defendants manufactured, distributed, marketed, promoted, and sold PCB mixtures, they knew their PCB mixtures were not safe and were likely to contaminate natural resources and water systems within the United States, including the District, and cause toxic contamination of the District's natural resources and water systems.

205. Despite Defendants' knowledge, Defendants failed to provide adequate warnings that their PCB mixtures were toxic and would contaminate the District's natural resources and water systems.

206. Defendants could have warned of this danger but failed to do so and intentionally concealed information in order to maximize profits.

207. In addition, Defendants advised their commercial customers to dispose of PCBs and PCB wastes in landfills when Defendants knew that this method of disposal would lead to contamination of the District's natural resources and water systems.

208. Defendants continued to conceal the dangers of PCBs after they manufactured, distributed, marketed, promoted, and sold PCBs.

209. Without adequate warnings or instructions, Defendants' PCB mixtures were unsafe to an extent beyond that which would be contemplated by an ordinary person.

210. Defendants knowingly failed to issue warnings or instructions concerning the dangers of PCBs, their volatilization risks, and proper disposal techniques, in the manner that a reasonably prudent manufacturer would act in the same or similar circumstances.

211. Defendants' conduct and the presence of PCBs in the District caused and continue to cause injury to the physical and economic health and well-being of the District's citizens.

212. The District has suffered and will continue to suffer injuries to its natural resources and water systems, and damages to its public treasury as a result of Defendants' conduct and the presence of PCBs within the District.

213. Defendants are under a continuing duty to act to correct and remediate the injuries their conduct has introduced and to warn the District, their customers, and the public about the human and environmental risks posed by its PCBs, and each day on which it fails to do so

constitutes a new injury to the District.

214. Defendants are strictly liable for all damages arising out of their failure to provide adequate warnings and instructions.

FIFTH CAUSE OF ACTION
NEGLIGENCE

215. The District realleges and incorporates the allegations set forth in paragraphs 1 through 154 as if fully stated herein.

216. Defendants failed to exercise ordinary care because a reasonably careful company that knew of its products' toxicity, carcinogenicity, harmfulness to humans, and harmfulness to the natural environment would not manufacture or distribute those products, or would warn of their toxic and environmentally hazardous properties, or would take steps to enhance the safety and/or reduce the toxicity and environmental persistence of the products.

217. Defendants failed to exercise ordinary care because a reasonably careful company that knew its products could not be contained during normal production and use would not continue to manufacture or distribute those products or would warn of their dangers.

218. Defendants failed to exercise ordinary care because a reasonably careful company would not continue to manufacture or distribute PCB mixtures in mass quantities and to the extent and in the applications that Defendants manufactured and distributed them.

219. Defendants further were grossly negligent because they failed to exercise even slight care, placing revenue and profit generation above human and environmental health and safety. Indeed, Defendants' conduct was wanton, willful, and showed a reckless disregard or conscious indifference for the rights and safety of the District and its citizens.

220. Defendants owed the District and its citizens a duty of care in the manufacture, distribution, marketing, promotion, and sale of PCB mixtures because it was foreseeable to

Defendants that their PCB mixtures would end up in the District's natural resources, including waterways, waterbodies, aquifers, soils, lands and submerged lands, sediments, fish and animal tissue, above-ground plants and food crops, biota, air, and stormwater and other water systems.

221. Defendants' negligent conduct caused and continues to cause injury to the physical and economic health and well-being of the District's citizens.

222. The District has suffered and will continue to suffer injuries to its natural resources and water systems, and damages to its public treasury as a result of Defendants' negligent conduct.

223. Defendants are under a continuing duty to act to correct and remediate the injuries their conduct has introduced and to warn the District, their customers, and the public about the human and environmental risks posed by its PCBs, and each day on which it fails to do so constitutes a new injury to the District.

SIXTH CAUSE OF ACTION
UNJUST ENRICHMENT

224. The District realleges and incorporates the allegations set forth in paragraphs 1 through 154 as if fully stated herein.

225. The District has incurred and will continue to incur expenses in connection with PCB contamination within the District, including costs to investigate, assess, analyze, monitor, and remediate or restore.

226. Defendants are responsible for the PCB contamination that the District has addressed and will address, and in fairness, Defendants should have paid these costs. It would be unjust for Defendants to retain the benefit of the District's expenditures in connection with PCB contamination within the District.

JURY DEMAND

The District respectfully requests trial by jury on all claims so triable.

PRAYER FOR RELIEF

The District prays for judgment against Defendants, jointly and severally, as follows:

A. Damages for injury to the District’s natural resources, including the economic impact to the State and its residents from loss of ecological services or other injuries resulting from the conduct alleged herein;

B. An award of past, present, and future costs to investigate, assess, analyze, monitor, and remediate the contamination;

C. Civil penalties pursuant to D.C. Code § 8-634.01;

D. Any other damages, including punitive or exemplary damages, as permitted by law;

E. A judicial determination that each Defendant is liable for future costs related to the investigation, remediation and removal of PCBs from, in and around the District;

F. An order requiring Defendants to return all monies by which Defendants were unjustly enriched as a result of the District’s expenditures in connection with PCB contamination within the District;

G. Litigation costs and attorneys’ fees as permitted by law;

H. Pre-judgment and post-judgment interest on all monies awarded, as permitted by law; and

I. Such other and further relief as the Court deems just and proper.

DATED: May 7, 2020

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