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21 UNITED STATES DISTRICT COURT
22 CENTRAL DISTRICT OF CALIFORNIA
23 WESTERN DIVISION

24 UNITED STATES OF AMERICA and
25 STATE OF CALIFORNIA,

26 Plaintiffs,

27 v.

28 MONTROSE CHEMICAL CORP.
29 OF CALIFORNIA, et al.,

30 Defendants.

NO. CV 90-3122-R

PARTIAL CONSENT DECREE WITH
MONTROSE CHEMICAL
CORPORATION OF CALIFORNIA,
AVENTIS CROPSCIENCE USA, INC.,
CHRIS-CRAFT INDUSTRIES, INC.,
AND ATKEMIX THIRTY SEVEN,
INC. (RELATING TO OFFSHORE
MATTERS AND DEPARTMENT OF
JUSTICE COSTS)

31 AND RELATED COUNTER, CROSS,
32 AND THIRD PARTY ACTIONS.

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DEPUTY

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1 CONSENT DECREE

2 This Consent Decree ("Decree") is made and entered into by and among the
3 United States of America ("the United States"), on behalf of the National Oceanic and
4 Atmospheric Administration ("NOAA"), the Department of the Interior ("DOI") and the
5 United States Environmental Protection Agency ("EPA"); and the State Lands
6 Commission, the Department of Fish and Game, the Department of Parks and Recreation,
7 the Department of Toxic Substances Control ("DTSC"), the California Regional Water
8 Quality Control Board, Los Angeles Region ("Regional Board"), the California
9 Hazardous Substance Account as defined in California Health and Safety Code section
10 25330, the California Hazardous Substance Cleanup Fund as defined in California Health
11 and Safety Code section 25385.3 and the California Toxic Substances Control Account as
12 defined in California Health and Safety Code section 25173.6 (hereinafter collectively
13 referred to as the "State"); and Defendants, Counter-claimants, Cross-claimants and
14 Third-party Plaintiffs *Montrose Chemical Corporation of California* ("Montrose"),
15 *Aventis CropScience USA Inc.* (formerly known as *Rhone-Poulenc Inc.*) ("Aventis"),
16 *Chris-Craft Industries, Inc.*, ("Chris-Craft") and *Atkemix Thirty Seven, Inc.* ("Atkemix-
17 37") (collectively, the "DDT Defendants"). This Decree is not intended to affect in any
18 way the United States' and the State's claims against any entity other than the Released
19 Parties (as defined below).

20 INTRODUCTION

21 A. The United States, on behalf of NOAA and DOI in their capacities as
22 natural resource trustees (hereafter the "Federal Trustees"), and on behalf of EPA, and the
23 State, on behalf of the State Lands Commission, the Department of Fish and Game and
24 the Department of Parks and Recreation in their capacities as natural resource trustees
25 (hereafter the "State Trustees") (the Federal Trustees and State Trustees collectively are
26 referred to as "the Trustees"), filed the original complaint in this action on June 18, 1990,
27 under Section 107 of the Comprehensive Environmental Response, Compensation, and
28 Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9607, seeking, inter alia,

1 recovery of damages, including damage assessment costs and related response costs, for
2 injury to, destruction of, and loss of natural resources resulting from releases of hazardous
3 substances, specifically including dichlorodiphenyltrichloroethane and its metabolites
4 (hereafter collectively "DDT"), and polychlorinated biphenyls (hereafter "PCBs"), from
5 facilities in and around Los Angeles, California, into the environment, and for response
6 costs incurred and for declaratory judgment for response costs to be incurred by EPA in
7 connection with releases of hazardous substances into the environment at and from the
8 Montrose Chemical Corporation Plant Property located at 20201 South Normandie
9 Avenue, Los Angeles, California. The original complaint was amended on June 28, 1990,
10 again on August 16, 1991, and again on December 8, 1999 ("Third Amended
11 Complaint").

12 B. In the First Claim for Relief of the complaints, the United States and the
13 State assert a claim against ten defendants, including the four DDT Defendants, under
14 Section 107(a)(1-4)(C) of CERCLA, 42 U.S.C. § 9607(a)(1-4)(C), for alleged natural
15 resource damages, including damage assessment costs and related response costs. The
16 complaints allege that the DDT Defendants are and/or were owners and/or operators of
17 the Montrose DDT manufacturing and formulation plant at 20201 Normandie Avenue,
18 Los Angeles, California. The complaints further allege, among other things, that the
19 Montrose Plant discharged wastewater containing hazardous substances, including DDT,
20 into the County Sanitation District No. 2 of Los Angeles County ("LACSD") and the
21 collection system that conveys wastewater to the Joint Water Pollution Control Plant
22 ("JWPCP") through the White's Point Outfall into the San Pedro Channel, that Montrose
23 engaged in direct ocean dumping of DDT-containing wastes, and that DDT discharged
24 into the air from the Montrose Plant Property (as defined herein) was deposited at Los
25 Angeles and Long Beach Harbors and the San Pedro Channel, and that such discharges
26 caused injury to natural resources.

27 C. In the Second Claim for Relief of the complaints, the United States and
28 DTSC assert a claim for recovery of costs incurred and declaratory judgment for costs to

1 be incurred by EPA and DTSC in response to the release or threatened release of
2 hazardous substances into the environment at and/or from the Montrose Plant Property (as
3 defined herein) pursuant to Section 107(a)(1-4)(A) of CERCLA, 42 U.S.C. § 9607(a)(1-
4 4)(A). The Third Amended Complaint specified that the second claim included costs
5 incurred and declaratory judgment for costs to be incurred by EPA and DTSC in
6 connection with, among other things, the White's Point Outfall leading to the San Pedro
7 Channel, the Palos Verdes shelf, the Consolidated Slip, and the ocean dump sites used for
8 disposal of Montrose waste.

9 D. In 1990 and 1991, the DDT Defendants answered the original complaint,
10 counterclaimed against the Plaintiffs, cross-claimed against co-defendant LACSD and
11 filed third party complaints against the City of Los Angeles and approximately 150 other
12 local governmental entities who have since settled with the United States and the State
13 (collectively, the "Settling Local Governmental Entities" or "SLGEs"). The District
14 Court's approval of such settlements is the subject of a pending appeal by the DDT
15 Defendants.

16 E. On April 24, 2000, the Court entered an order granting Plaintiffs' Motion
17 for Partial Summary Judgment holding Montrose, Atkemix-37, and Aventis liable under
18 CERCLA Section 107 for past and future response costs not inconsistent with the
19 National Contingency Plan related to portions of the Onshore Areas (as defined herein).

20 F. On September 20, 2000, the Court entered an order granting Plaintiffs'
21 Motion for Partial Summary Judgment holding Montrose and Aventis liable under
22 CERCLA Section 107 for past and future response costs not inconsistent with the
23 National Contingency Plan related to the Palos Verdes shelf.

24 G. Pursuant to a Partial Consent Decree that was entered by the Court on
25 October 20, 2000, the DDT Defendants have already paid \$5.125 million as
26 reimbursement and settlement of claims for past response costs incurred by the United
27 States and DTSC as defined therein. In addition, Montrose previously paid
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1 \$1,354,612.37 as reimbursement of past response costs incurred by the United States with
2 respect to portions of the Onshore Areas.

3 H. Plaintiffs have previously settled with all other parties, including the
4 SLGEs, CBS Corporation, and Potlatch/Simpson, for natural resource damages and
5 response costs.

6 I. Trial in this action between Plaintiffs and the DDT Defendants commenced
7 on October 17, 2000.

8 J. Subject to the reservations and re-openers in this Decree, this Decree finally
9 and fully resolves all present and future liability of the Released Parties to the United
10 States on behalf of the Federal Trustees, and the State on behalf of the State Trustees, for
11 Natural Resource Damages (as defined herein). Subject to the reservations and re-
12 openers in this Decree, this Decree finally and fully resolves all present and future
13 liability of the Released Parties to the United States (including EPA) and DTSC and the
14 Regional Board for Response Costs and for DOJ Costs (as those terms are defined
15 herein). The Released Parties also receive contribution protection for all matters
16 addressed herein.

17 K. This Consent Decree does not resolve the Released Parties' liability to EPA
18 or DTSC for any matter related to the Onshore Areas (except DOJ Costs). EPA has not
19 selected final remedies for portions of the Onshore Areas, including: the neighborhoods,
20 the DNAPL, the storm water pathway, and on-property and near-property soils.

21 L. On August 21, 1997, EPA provided notice of its rulemaking proposing to
22 amend the Montrose Chemical NPL listing to include the effluent-affected DDT and PCB
23 contaminated sediments on the Palos Verdes shelf. See 62 Fed. Reg. 44430, August 21,
24 1997. The DDT Defendants submitted written comments to that proposed rulemaking,
25 through their counsel, on October 16, 1997. The United States believes that the DDT and
26 PCB contaminated sediments are already included as part of the Montrose Chemical NPL
27 Site but has agreed to take no action relying on that position until the above-noted

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1 rulemaking is concluded. No action taken by the United States in that rulemaking shall
2 affect the covenants not to sue contained in this Decree.

3 M. EPA is conducting the Palos Verdes shelf investigation under the authority
4 of CERCLA to determine the nature and extent of contamination of the Palos Verdes
5 shelf, to assess effects of the contamination on the environment and human health, and to
6 determine whether to select response actions, if any, to address the contamination.

7 Subject to the reservations and re-openers in this Decree, this Decree resolves the
8 Released Parties' potential liability for any costs associated with such response actions.

9 N. EPA has investigated a broad range of response alternatives for the Palos
10 Verdes shelf. EPA ultimately decided to focus its investigations on the no action,
11 institutional controls and in-place capping alternatives. In March 2000, EPA proposed
12 an institutional controls program for public comment. EPA is also continuing to evaluate
13 capping as a potential response action for the Palos Verdes shelf. Subject to the
14 reservations and re-openers in this Decree, this Decree resolves the Released Parties'
15 potential liability for any costs associated with such response actions.

16 O. The Trustees will use all damages to (1) reimburse past and future Damage
17 Assessment Costs, and (2) restore, replace, or acquire the equivalent of the injured natural
18 resources and/or the services provided by such resources. The Trustees will use the
19 damages for restoration of injured natural resources, including bald eagles, peregrine
20 falcons and other marine birds, fish and the habitats upon which they depend, as well as
21 providing for implementation of restoration projects intended to compensate the public
22 for lost use of natural resources. The Trustees will undertake a restoration planning
23 process to determine which restoration projects will most effectively restore the injured
24 resources as well as compensate for lost use of those resources. The details for specific
25 projects will be contained in a draft restoration plan. A final restoration plan will be
26 prepared and implemented by the Trustees after providing public notice, opportunity for
27 public input and consideration of public comments.

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1 P. The United States and the State also have agreed on an allocation of the
2 settlement amount between EPA/DTSC Response Costs and the Trustees' damage
3 assessment costs and Natural Resource Damages. The United States and the State have
4 agreed that the DDT Defendants shall pay a total of \$30 million to the Trustees to resolve
5 any potential liability of Released Parties for Natural Resource Damages and shall pay a
6 total of \$43 million to EPA and DTSC to resolve any potential liability of the Released
7 Parties for Response Costs. None of the settlement amount nor any of the interest earned
8 thereon shall be used for or credited to the Onshore Areas. As specified in Paragraph
9 11.C, the United States and the State have agreed that, under certain conditions, \$10
10 million of this \$43 million may be used either (1) by DTSC for response actions or (2) by
11 the Trustees for natural resource restoration.

12 Q. This settlement is made in good faith after arm's-length negotiations
13 conducted under the supervision of Special Master John Francis Carroll. The United
14 States, State of California, and DDT Defendants agree, and this Court by entering this
15 Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good
16 faith, that settlement of this matter and entry of this Decree will avoid further complicated
17 litigation between the Parties, is the most appropriate means to resolve the matters
18 covered herein, and is fair, reasonable and in the public interest.

19 **NOW, THEREFORE,** with the consent of the Parties to this Decree, it is hereby
20 **ORDERED, ADJUDGED AND DECREED:**

21 **JURISDICTION AND VENUE**

22 1. This Court has personal jurisdiction over the Parties. This Court has
23 personal jurisdiction over the non-DDT-Defendant Released Parties, which submit to this
24 Court's jurisdiction for purposes related to implementation of this Consent Decree. This
25 Court has jurisdiction over the subject matter of this action and the Parties to this Decree
26 pursuant to 28 U.S.C. §§ 1331, 1345, 1651 and 1367, and Sections 106, 107 and 113(b)
27 of CERCLA, 42 U.S.C. §§ 9606, 9607 and 9613(b), and the principles of supplemental
28 jurisdiction. The Parties and the Released Parties waive all objections and defenses that

1 they may have to jurisdiction of the Court or to venue in this District and to service of
2 process. The Released Parties consent to and shall not challenge entry of this Consent
3 Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

4 **APPLICABILITY OF DECREE**

5 2. The provisions of this Decree, including the covenants not to sue and
6 contribution protection, shall be binding on, apply to, and inure to the benefit of the
7 United States, the State, the DDT Defendants and their successors and assigns, and for the
8 purposes of Paragraphs 8 through 10, 12 through 15, and 27, the Released Parties, their
9 successors and assigns. No change in the ownership or organizational form or status of
10 the Released Parties shall affect their rights or obligations under this Decree.

11 **EFFECT OF SETTLEMENT/ENTRY OF JUDGMENT**

12 3. This Decree was negotiated and executed by the Parties hereto in good faith
13 at arm's length to avoid the continuation of expensive and protracted litigation and is a
14 fair and equitable settlement of claims which were vigorously contested. The DDT
15 Defendants do not admit any of Plaintiffs' allegations or claims set forth herein and deny
16 any liability whatsoever for Plaintiffs' claims against the DDT Defendants set forth in the
17 complaints. The Released Parties do not admit that any area other than the Montrose Plant
18 Property has been impacted by hazardous substance releases from the Montrose Plant
19 Property. This Decree should not constitute or be interpreted, construed or used as
20 evidence of any admission of liability, law or fact. Except as otherwise provided in the
21 Federal Rules of Evidence, this Consent Decree is not admissible in evidence against any
22 Party by any person or entity not a Party to the Decree in any judicial or administrative
23 proceeding.

24 4. Upon approval and entry of this Decree by the Court, this Decree shall
25 constitute a final judgment between and among the United States and the State, and the
26 DDT Defendants regarding the matters addressed and resolved by this Decree.
27
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1 DEFINITIONS

2 5. This Decree incorporates the definitions set forth in Section 101 of
3 CERCLA, 42 U.S.C. § 9601, including but not limited to the definitions of the terms
4 "release" and "response." In addition, whenever the following terms are used in this
5 Decree, they shall have the following meanings:

6 A. "Damage Assessment Costs" shall mean all costs associated with the
7 planning, design, implementation and oversight of the Trustees' damage assessment
8 process, which addresses the extent and quantification of the injury to, destruction of or
9 loss of natural resources and the services provided by these resources resulting from
10 releases of hazardous substances alleged in the First Claim for Relief of the complaints,
11 and with the planning of restoration or replacement of such natural resources and the
12 services provided by those resources, or the planning of the acquisition of equivalent
13 resources or services, and any other costs necessary to carry out the Trustees'
14 responsibilities with respect to those natural resources, including all related enforcement
15 costs, including without limitation all costs and interest thereon identified in the expert
16 reports submitted in this action by Plaintiffs' expert Wiley Wright, C.P.A.

17 B. "Date of Entry of this Decree" shall mean the date on which the District
18 Court has approved and entered this Decree as a judgment.

19 C. "Date of Final Approval of this Decree" shall mean the later of (1) the date
20 on which the District Court has approved and entered this Decree as a judgment and all
21 applicable appeal periods have expired without an appeal being filed, or (2) if an appeal is
22 taken, the date on which the District Court's judgment is affirmed and there is no further
23 right to appellate review. However, if no party appears in District Court to oppose entry
24 of this Decree, then the Date of Final Approval of this Decree shall mean the Date of
25 Entry of this Decree.

26 D. "Date of Lodging of this Decree" shall mean the date that this Decree is
27 lodged, or a copy of it is filed, with the Court.

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1 E. "DOJ Costs" means costs incurred by or through the United States
2 Department of Justice ("DOJ") in this action; however, the term "DOJ Costs" does not
3 include 1) any costs incurred to enforce this Decree, 2) any response costs that may be
4 incurred by or through DOJ with respect to Onshore Areas after the Date of Entry of this
5 Decree or 3) any response costs that may be incurred by or through DOJ with respect to
6 proceedings initiated under Paragraphs 9 or 14 of this Decree.

7 F. "Montrose Plant Property" shall mean for purposes of this Decree the
8 thirteen (13) acre parcel at 20201 South Normandie Avenue, Los Angeles, California at
9 which, among other things, Montrose Chemical Corporation of California operated a
10 DDT manufacturing and, later, a formulation plant.

11 G. "Natural Resource Damages" shall mean damages, including loss of use,
12 restoration costs, resource replacement costs or equivalent resource values, Damage
13 Assessment Costs, and any other costs that have been incurred in the past or will be
14 incurred in the future by the Trustees or any other person pursuant to Trustee approval,
15 authorization or direction, with respect to injury to, destruction of, or loss of any and all
16 natural resources in and around the Offshore Areas.

17 H. "Offshore Areas" for purposes of this Decree shall mean all of the
18 following areas to which hazardous substances, including without limitation DDT,
19 originating from the Montrose Plant Property or the Stauffer Dominguez Plant Property
20 have or may come to be located: the areas in and around Santa Catalina and the other
21 Channel Islands, the Palos Verdes shelf including the Palos Verdes Slope, the San Pedro
22 Channel, the White's Point Outfall, the Long Beach Harbor and the Los Angeles Harbor
23 (excluding Consolidated Slip as defined in Paragraph 5.I below), Santa Monica Bay and
24 San Pedro Bay, those offshore areas described in the February 6, 1990 draft Damage
25 Assessment Plan and/or the March 8, 1991 draft Injury Determination Plan published by
26 the Trustees (excluding Consolidated Slip as defined in Paragraph 5.I below), any ocean
27 dumpsites used for disposing of wastes from the Montrose Plant Property and any
28 offshore areas to which hazardous substances, including without limitation DDT, aerially

1 or otherwise originating from the Montrose Plant Property or the Stauffer Dominguez
2 Plant Property have or may come to be located.

3 I. "Onshore Areas," for purposes of this Consent Decree only, shall mean the
4 Montrose Plant Property and the areas that EPA or DTSC has investigated or may
5 investigate in the future (excluding Offshore Areas, as defined above) because EPA or
6 DTSC believes that hazardous substances may have come to be located there from the
7 Montrose Plant Property, including, without limitation, the following: the real property
8 located at 1401 West Del Amo Blvd., Los Angeles, California and owned by Jones Inc;
9 groundwater contaminated by hazardous substances at or emanating from the Montrose
10 Plant Property; those portions of the Normandie Avenue Ditch adjacent to and south of
11 20201 Normandie Avenue; the Kenwood Drain; the Torrance Lateral; the Dominguez
12 Channel (from Laguna Dominguez to the Consolidated Slip); the LACSD J.O. "D" sewer
13 from manholes D33 to D 5 (approximately Francisco St. to 234th St.); the LACSD District
14 5 Interceptor sewer from manholes A475 to A442 (approximately Francisco St. to
15 Sepulveda Blvd.); the real property on which the sewer rights-of-way are located for
16 those portions of the District 5 Interceptor and J.O. "D" sewer identified above; the real
17 property burdened by the adjacent railroad rights-of-way for those portions of the District
18 5 Interceptor and J.O. "D" sewers identified above; the area bounded by Del Amo Blvd.,
19 Western Ave., Torrance Blvd. and Normandie Ave.; the area bounded by Normandie
20 Ave., Del Amo Blvd., Vermont Ave., and Torrance Blvd; and the portion of the Los
21 Angeles Harbor known as the Consolidated Slip from the mouth of the Dominguez
22 Channel south to but not extending beyond Pier 200B and 200Y.

23 J. "Parties" shall mean the United States, the State, and the DDT Defendants.

24 K. "Released Parties" shall mean the DDT Defendants, their predecessor or
25 successor entities, and direct or indirect parents or subsidiaries, to the extent of any
26 derivative liability attributable to any such entities, and further includes any of such
27 entities' current or former officers, directors, and employees, provided and to the extent
28 that any such individuals were acting within the scope of their duties and in their capacity

1 as officers, directors, or employees; and, for the purposes of Paragraphs 8, 9, 10, and 12,
2 13, 14, 15, and 27, "Released Parties" includes Stauffer Management Company, Imperial
3 Chemical Industries PLC, ICI International Investments, Inc., Zeneca Inc., Zeneca
4 Holdings, Inc., Stauffer Chemical Company (a former corporation organized under the
5 laws of the State of Delaware), Rhodia Inc., Aventis CropScience USA LP, together with
6 their predecessor or successor entities, and direct or indirect parents or subsidiaries, to the
7 extent of any derivative liability attributable to any such entities, and further includes any
8 of such entities' current or former officers, directors, and employees, provided and to the
9 extent that any such individuals were acting within the scope of their duties and in their
10 capacity as officers, directors, or employees.

11 L. "Response Costs" shall mean for purposes of this Decree all costs of
12 response as provided in Section 107(a)(1-4)(A), (B) and (D) of CERCLA, 42 U.S.C. §
13 9607(a)(1-4)(A), (B) and (D), and as defined in Section 101(25) of CERCLA, 42 U.S.C. §
14 9601(25), that the United States (including EPA), or the State (including DTSC or the
15 Regional Board), or any other person have incurred in the past or will incur in the future
16 with respect to the Offshore Areas.

17 M. "Stauffer Dominguez Plant Property" shall mean that real property located
18 at 20720 South Wilmington Avenue, Dominguez, California and formerly occupied by
19 Stauffer Chemical Company.

20 N. "United States" shall mean the United States of America, including its
21 departments, agencies and instrumentalities.

22 **DDT DEFENDANTS' PAYMENT;**

23 **ESTABLISHMENT OF ESCROW ACCOUNT**

24 6 A. The DDT Defendants shall pay to Plaintiffs \$73 million plus any interest
25 earned on that amount in the Escrow (as defined below).

26 B. Within ten (10) business days of the Date of Lodging of this Decree, the
27 DDT Defendants shall create an escrow account (the "Escrow") bearing interest on
28 commercially reasonable terms, in a federally-chartered bank with an office in the State

1 of California, and pay into the Escrow a total sum of \$50 million (the "First Escrowed
2 Settlement Amount"). The DDT Defendants shall bear all costs of establishing and
3 maintaining the Escrow. The DDT Defendants shall notify Plaintiffs in writing of the
4 creation and funding of the Escrow immediately after the above payment has been made,
5 and provide on request all documentation concerning the account, including any
6 agreements concerning the determination of interest rates.

7 C. On or before May 1, 2001, the DDT Defendants shall pay an additional \$23
8 million into the Escrow (the "Second Escrowed Settlement Amount").

9 D. The First and Second Escrowed Settlement Amounts paid into the Escrow shall
10 remain in the Escrow and may not be withdrawn except to make the payments required
11 by Paragraph 7 and/or 11 of this Decree or unless a final judicial determination by the
12 District Court is made that entry of this Decree will not be approved and all applicable
13 appeal periods have expired without an appeal, or if an appeal is taken, the date on which
14 the District Court spreads the mandate issued by the appellate court not approving the
15 Decree. In the event that final judicial approval is not obtained, the settlement amount
16 paid into the Escrow and all accrued interest shall be returned to the DDT Defendants.

17 **NATURAL RESOURCE DAMAGES PAYMENTS**

18 7. A. Within ten (10) business days after the Date of Final Approval of this
19 Decree, or on May 11, 2001, whichever date is later, the DDT Defendants shall make a
20 payment of the sum of \$30 million from the Escrow account together with a proportional
21 share of accrued interest to the Department of the Interior, on behalf of the State Trustees
22 and the Federal Trustees, by Electronic Funds Transfer ("EFT") in accordance with
23 instructions to be provided to the DDT Defendants by the Trustees. Transmittal letters
24 indicating that the EFT and escrow and payment disbursements have occurred shall be
25 sent to the Parties in accordance with Paragraph 29 of this Decree and to:

26 Charles McKinley, Esq.
27 Office of the Solicitor
28 U.S. Department of the Interior
600 Harrison Street, Suite 545
San Francisco, CA 94197-1373

1 and

2 Bruce Nessler
3 DOI Restoration Fund Manager
4 1849 "C" Street, N.W.
5 Mail Stop 4449
6 Washington, D.C. 20240

7 The EFT and transmittal letters shall reflect that the payment is being made to the
8 "Natural Resources Damage Assessment and Restoration Fund, Account No. 14X5198."

9 The Department of the Interior will assign these funds a special project number to allow
10 the funds to be maintained as a segregated account within the Department of the Interior
11 Natural Resource Damage Assessment and Restoration Fund (the "Montrose NRD
12 Account").

13 B. The Department of the Interior shall, in accordance with law, manage and
14 invest funds in the Montrose NRD Account. Any return on investments or interest
15 accrued on the Account shall be used by the Natural Resource Trustees to address injuries
16 to natural resources caused by releases of hazardous substances at or from the Montrose
17 Plant Property. The Department of the Interior shall not make any charge against the
18 Montrose NRD Account for any investment or management services provided.

19 C. The Department of the Interior shall hold all funds in the Montrose NRD
20 Account, including return on investments or accrued interest, subject to the provisions of
21 this Decree and any memorandum of understanding entered into by the Natural Resource
22 Trustees. The Natural Resource Trustees retain the ultimate authority and responsibility
23 to use funds received for Natural Resource Damages in accordance with the provisions of
24 CERCLA, 42 U.S.C. §§ 9601, et seq., this Decree, and other relevant federal and state
25 law governing use of recoveries for Natural Resource Damages to address those injured
26 resources described in the Introduction.

27 **COVENANTS NOT TO SUE FOR NATURAL RESOURCE DAMAGES**

28 8. Except as specifically provided in Paragraphs 9 and 10 of this Decree, the
United States, the State, and agencies or instrumentalities thereof, each hereby covenants
not to sue or to take any other civil or administrative action against the Released Parties

1 for any and all civil or administrative liability to the United States, the State, and agencies
2 or instrumentalities thereof, for Natural Resource Damages under CERCLA, 42 U.S.C. §§
3 9601, et seq., or under any other federal, state or common law.

4 **RESERVATION OF RIGHTS FOR NATURAL RESOURCE DAMAGES**

5 9. A. Notwithstanding any other provision of this Decree, the Trustees
6 reserve the right to institute proceedings against the Released Parties in this action or in a
7 new action seeking recovery of Natural Resource Damages, based on (1) injury to,
8 destruction of, or loss of natural resources resulting from conditions which were unknown
9 to the Trustees on the Date of Lodging of this Decree ("Unknown Conditions"); or (2)
10 information received by the Trustees after the Date of Lodging of this Decree which
11 indicates there is injury to, destruction of, or loss of natural resources, of a type unknown
12 to the Trustees as of the Date of Lodging of this Decree ("New Information")

13 B. Each of the following shall not be considered to be Unknown Conditions or
14 New Information within the meaning of Paragraph 9.A (1) or (2): (1) an increase solely
15 in the Trustees' assessment of the magnitude of the injury, destruction or loss to natural
16 resources, or in the estimated or actual Natural Resource Damages; (2) a determination by
17 the Trustees that a previously identified natural resource injury was caused by any DDT
18 Defendant's release of a hazardous substance, including hazardous substances other than
19 PCBs or DDT; or (3) any Natural Resource Damages arising from any re-exposure or
20 resuspension on the Offshore Areas of the DDT- or PCB-contaminated sediments
21 currently located there, including but not limited to, such re-exposure or resuspension of
22 sediments resulting from:

- 23 (a) LACSD's sampling activities (by coring, trawling or otherwise);
24 (b) LACSD's institution of full secondary treatment of wastewater at the
25 JWPCP and the discharge of such wastewater through the White's Point
26 Outfall;
27 (c) any response activity or similar activity performed by or at the direction of
28 any Federal or State governmental body or any other person;

1 (d) any act of God; or

2 (e) an earthquake.

3 C. The Released Parties reserve their right to contest any claims allowed by
4 Paragraph 9.A of this Decree, and the Released Parties do not by consenting to this
5 Decree waive any defenses to such claims, except that the Released Parties covenant not
6 to assert, and may not maintain, any defense based upon principles of waiver, res judicata,
7 collateral estoppel, issue preclusion, claim splitting, or other defense based upon the
8 contention that the claims that are allowed by Paragraph 9.A of this Decree were or
9 should have been brought in the instant case. In the event that the Trustees institute
10 proceedings under Paragraph 9.A of this Decree, the Released Parties reserve the right to
11 assert potential cross-claims, counterclaims or third party claims against the United States
12 or the State, or any employee, officer, agency or instrumentality thereof, relating solely to
13 such claims asserted by the Trustees pursuant to Paragraph 9.A. Nothing in this Decree
14 shall be deemed to constitute preauthorization of a claim within the meaning of Section
15 111 of CERCLA, 42 U.S.C. § 9611.

16 D. In addition to defenses that may be asserted by Released Parties pursuant to
17 Paragraph 9.C above, and a defense that a future release of hazardous substances now
18 present in the sediments of the Offshore Areas was the result of conditions or information
19 known to the Trustees on the Date of Lodging of this Decree, the Released Parties will
20 not be liable for Natural Resource Damages arising from a future release of hazardous
21 substances now present in the sediments of the Offshore Areas, including but not limited
22 to any release resulting from: (1) LACSD's sampling activities (by coring, trawling, or
23 otherwise); (2) LACSD's institution of full secondary treatment of wastewater at the
24 JWPCP and the discharge of such wastewater through the White's Point Outfall; (3) any
25 response activity or similar activity performed by or at the direction of any Federal or
26 State governmental body or any other person; (4) any act of God; or (5) an earthquake.

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