

1 B. The payment described in Paragraph 9.A shall be made by
2 certified or bank check or warrant payable to the "Clerk, United
3 States District Court." The check or warrant shall include on its
4 face a statement that it is a payment in Civil Action No. CV 90-
5 3122 AAH (JRx) (C.D. Cal.), and shall be sent to:

6 Office of the Clerk
7 United States District Court for
8 the Central District of California
 312 North Spring Street
 Los Angeles, CA 90012.

9 The Category I entities, as Escrow holder, shall cause copies of
10 the check or warrant and of any transmittal letter accompanying the
11 check or warrant to be sent to the Trustees as provided in
12 Paragraph 37 of this Amended Decree.

13 C. The Registry of the Court shall administer all amounts
14 paid under Paragraph 9.A in an interest bearing joint account
15 ("Registry Account") as provided in the Order Directing the Deposit
16 of Settlement Amount into the Registry of the Court ("Deposit
17 Order") issued by the District Court pursuant to Rule 67 of the
18 Federal Rules of Civil Procedure, 28 U.S.C. § 2041, and Local Rule
19 22 of the Local Rules for the Central District of California. The
20 Deposit Order shall be attached to this Amended Decree and shall be
21 entered by the District Court at the time of entry of this Amended
22 Decree.

23 D. All settlement funds and all interest accrued thereon in
24 the Registry Account shall be held in the name of the "Clerk,
25 United States District Court," for the benefit of the Trustees.
26 All disbursements from the Registry Account shall be made to the
27 Trustees by order of the Court in accordance with the provisions of
28 28 U.S.C. § 2042 and the Local Rules for the Central District of

1 California.

2 10. A. For purposes of this Amended Decree, and without any
3 admission by LACSD, the Parties acknowledge that LACSD has a
4 special interest in the elimination or control of hazardous
5 substance contamination in the marine sediments underlying the
6 waters in and around the White's Point Outfall. For purposes of
7 this Amended Decree, and without any admission by the City of Los
8 Angeles and the City of Long Beach, the Parties likewise
9 acknowledge that the City of Los Angeles and the City of Long Beach
10 have a special interest in the elimination or control of hazardous
11 substance contamination in the Los Angeles-Long Beach Harbors. In
12 recognition of the special interest of LACSD, Los Angeles County
13 and the Cities of Los Angeles and Long Beach, respectively, the
14 Trustees agree that representatives of those entities may
15 participate on an advisory panel to the Trustees in the development
16 of the final restoration plan (if, and when, a final restoration
17 plan is developed), and in that role shall have reasonable
18 opportunity to provide input to the Trustees regarding that plan.
19 The Trustees shall nonetheless have the ultimate responsibility and
20 authority for the adoption, development and implementation of any
21 restoration plan. The Trustees' agreement to the creation of this
22 advisory panel shall not be interpreted to require consultation
23 with that panel regarding development of factual information or
24 legal positions with respect to the conduct of the damage
25 assessment or the litigation of this case or that the panel will
26 have the right to vote on any plan proposals.

27 COVENANTS NOT TO SUE FOR NATURAL RESOURCE DAMAGES

28 11. Except as specifically provided in Paragraphs 12 and 13

1 of this Amended Decree, the United States, and the State, and
2 agencies or instrumentalities thereof, each hereby covenants not to
3 sue or to take any other civil or administrative action against any
4 of the Settling Local Governmental Entities for any and all civil
5 or administrative liability to the United States, the State, and
6 agencies or instrumentalities thereof, for Natural Resource Damages
7 under CERCLA, 42 U.S.C. §§ 9601 et seq., or under any other
8 federal, state or common law. The foregoing covenants not to sue
9 represent a restatement of the covenants currently in effect
10 pursuant to Paragraph 14 of the 1993 Decree. The 1993 Decree
11 covenants shall remain in effect until the Date of Initial Approval
12 of this Amended Decree. Upon the Date of Initial Approval of this
13 Amended Decree, the 1993 Decree covenants shall no longer be in
14 effect and shall be superseded by the covenants set forth in this
15 Paragraph, which shall remain in effect so long as the Settling
16 Local Governmental Entities are fulfilling their obligations under
17 this Amended Decree, and subject to the Parties' rights to void
18 this Amended Decree pursuant to Paragraph 29. The United States,
19 and the State, and agencies or instrumentalities thereof, further
20 agree that since the Category II entities have paid the entire sum
21 required to be paid by them into the Escrow in accordance with
22 Paragraph 8.B of the 1993 Decree all their obligations hereunder
23 with respect to claims for Natural Resource Damages, except as
24 provided in Paragraph 41 of this Amended Decree, have been
25 completely fulfilled, with the Category I entities continuing to be
26 obligated under all provisions of this Amended Decree regarding
27 Natural Resource Damages.

28

1 RESERVATION OF RIGHTS FOR NATURAL RESOURCE DAMAGES

2 12. A. Notwithstanding any other provision of this Amended
3 Decree, the Trustees reserve the right to institute proceedings
4 against any Settling Local Governmental Entity in this action or in
5 a new action seeking recovery of Natural Resource Damages, as
6 defined herein, based on (1) conditions unknown to the Trustees on
7 the Date of Execution of this Amended Decree that contribute to
8 injury to, destruction of, or loss of natural resources ("Unknown
9 Conditions"); or (2) information received by the Trustees after the
10 Date of Execution of this Amended Decree which indicates there is
11 injury to, destruction of, or loss of natural resources, of a type
12 unknown to the Trustees as of the Date of Execution of this Amended
13 Decree ("New Information").

14 B. An increase solely in the Trustees' assessment of the
15 magnitude of the injury, destruction or loss to natural resources,
16 or in the estimated or actual Natural Resource Damages shall not be
17 considered to be Unknown Conditions or New Information within the
18 meaning of Paragraph 12.A (1) or (2), nor shall a determination by
19 the Trustees that a previously identified natural resource injury
20 was caused by that party's release of a hazardous substance,
21 including hazardous substances other than PCBs or DDT, be
22 considered New Information or Unknown Conditions.

23 C. The Settling Local Governmental Entities reserve their
24 right to contest any proceeding allowed by Paragraphs 12.A and 13
25 of this Amended Decree, and do not by consenting to this Amended
26 Decree waive any defenses, except to the extent specified in
27 Paragraph 20.C of this Amended Decree. In the event that the
28 Trustees institute proceedings under Paragraph 12.A of this Amended

1 Decree, the Settling Local Governmental Entities reserve the right
2 to assert potential cross-claims, counterclaims or third party
3 claims against the United States or the State, or any employee,
4 officer, agency or instrumentality thereof, relating solely to such
5 claims asserted by the Trustees pursuant to Paragraph 12.A.
6 Nothing in this Amended Decree shall be deemed to constitute
7 preauthorization of a claim within the meaning of Section 111 of
8 CERCLA, 42 U.S.C. § 9611.

9 D. In addition to defenses that may be asserted by the
10 Settling Local Governmental Entities pursuant to Paragraph 12.C
11 above, and a defense that a future release of hazardous substances
12 now present in the sediments of the Palos Verdes shelf was the
13 result of conditions or information known to the Trustees on the
14 Date of Execution of this Amended Decree, the Settling Local
15 Governmental Entities will not be liable for Natural Resource
16 Damages arising from a future release of hazardous substances now
17 present in the sediments of the Palos Verdes shelf, to the extent
18 that it is established that the release, the injury to natural
19 resources, and the Natural Resource Damages, resulted from LACSD's
20 institution of full secondary treatment of wastewater flows through
21 the White's Point Outfall.

22 13. Notwithstanding any other provision of this Amended
23 Decree, the covenants not to sue in Paragraph 11 shall apply only
24 to matters addressed in Paragraph 11 and specifically shall not
25 apply to the following claims:

26 A. claims based on a failure by the Settling Local
27 Governmental Entities to satisfy the requirements of this Amended
28 Decree;

1 B. claims for criminal liability;

2 C. claims for violations of any other federal, state or
3 local law or permit, including but not limited to violations of the
4 Clean Water Act, 33 U.S.C. §§ 1311, et seq., and any National
5 Pollutant Discharge Elimination System ("NPDES") permit issued
6 thereunder, and the Porter-Cologne Water Quality Control Act,
7 California Water Code §§ 13000, et seq.; and

8 D. claims arising from the past, present, or future
9 disposal, release or threat of release of hazardous substances that
10 do not involve the Montrose NPL Site and/or the Montrose NRD Area.

11 PAYMENTS WITH RESPECT TO RESPONSE ACTIVITIES

12 14. A. The Settling Local Governmental Entities shall pay
13 to the United States and the State a total sum of \$22,000,000 (the
14 "Montrose NPL Site Response Cost Settlement Amount"). The Montrose
15 NPL Site Response Cost Settlement Amount shall be paid through
16 monetary payments in accordance with the terms of Paragraphs 14.B
17 through 14.G below.

18 B. The Settling Local Governmental Entities, through the
19 City of Los Angeles as their agent, shall continue to maintain the
20 escrow account ("Response Costs Escrow") established by those
21 Parties pursuant to the 1993 Decree, including all settlement funds
22 that have been deposited therein, to wit, \$3,500,000, and any
23 interest that has accrued thereon since the date of deposit with
24 said Response Costs Escrow continuing to bear interest on
25 commercially reasonable terms, in a federally-chartered bank with
26 an office in the State of California. The Settling Local
27 Governmental Entities shall pay into the Response Costs Escrow
28 those additional amounts set forth below on the dates indicated

1 below:

2 January 15, 1997: \$5,900,000.00

3 In addition, within ten (10) working days after the Date of Initial
4 Approval of this Amended Decree, the amount of \$12,600,000,
5 together with all interest that has accrued on that amount since
6 the Date of Execution of this Amended Decree in the Escrow
7 maintained pursuant to Paragraph 8.A of this Amended Decree, shall
8 be paid into the Response Costs Escrow.

9 C. The Settling Local Governmental Entities shall bear all
10 costs of establishing the Response Costs Escrow. The City of Los
11 Angeles, acting as agent for the Settling Local Governmental
12 Entities, shall notify EPA and the State immediately after the
13 above payments have been made, and will provide on request all
14 documentation concerning the account, including any agreement
15 concerning the determination of interest rates.

16 D. Subject only to the provisions of Paragraph 14.E, the
17 obligations of the Settling Local Governmental Entities to continue
18 to maintain the Response Costs Escrow and to pay the amounts
19 specified above into the Response Costs Escrow within the specified
20 times are contractual obligations to the United States and the
21 State, effective as of the Date of Execution of this Amended
22 Decree, and those obligations shall be enforceable as a matter of
23 contract law regardless of when or whether this Amended Decree is
24 finally entered by the Court. The consideration for these
25 contractual undertakings by the Settling Local Governmental
26 Entities includes the immediate cessation of litigation activities
27 by the United States and the State against the Settling Local
28 Governmental Entities until a determination is made by the District

1 Court as to the entry of this Amended Decree.

2 E. All settlement funds paid into the Response Costs Escrow
3 shall remain in the Response Costs Escrow and may not be withdrawn
4 except to make the payments required by Paragraphs 14.F and 14.G of
5 this Amended Decree or unless a final judicial determination is
6 made that entry of this Amended Decree shall not be approved, and
7 one of the Parties to this Amended Decree exercises its option
8 pursuant to Paragraph 29 to void the agreement. If that latter
9 event occurs, all sums paid into the Response Costs Escrow and all
10 accrued interest shall be returned to the Settling Local
11 Governmental Entities.

12 F. Within ten (10) working days after the Date of Final
13 Approval of this Amended Decree, the Settling Local Governmental
14 Entities shall pay to the State from the Response Costs Escrow the
15 sum of \$140,000, together with a pro rata share of all interest
16 that has accrued on that amount since the Date of Execution of this
17 Amended Decree. The payment to the State shall be made by
18 certified check made payable to "Cashier, California Department of
19 Toxic Substances Control," and shall bear on its face this case
20 name and number. Payment shall be mailed to:

21 Department of Toxic Substances Control
22 Accounting/Cashier
23 400 P Street, 4th Floor
P.O. Box 806
Sacramento, CA 95812-0806

24 Notice of said payment shall be given to the State as provided in
25 Paragraph 37 of this Amended Decree.

26 G. The payment to the United States shall be in the sum of
27 \$21,860,000, together with a pro rata share of all interest that
28 has accrued on this amount as specified in this Paragraph 14.G.

1 Within ten (10) working days after the Date of Final Approval of
2 this Amended Decree, the Settling Local Governmental Entities shall
3 make payments to the United States from the Response Costs Escrow
4 as follows: 1) \$2,500,000, together with all interest that has
5 accrued on the \$3,500,000 deposited in the Response Costs Escrow
6 established pursuant to Paragraph 17 of the 1993 Decree, to the
7 "United States Environmental Protection Agency, Montrose Chemical
8 National Priorities List Superfund Site Special Account", 2)
9 \$1,000,000 for past response costs incurred by EPA with respect to
10 the Montrose NPL Site for deposit by EPA in the Hazardous Substance
11 Superfund, and 3) \$3,500,000, together with a pro rata share of
12 interest that has accrued since ten (10) working days after the
13 Date of Initial Approval of this Amended Decree, to the "United
14 States Environmental Protection Agency, Montrose Chemical National
15 Priorities List Superfund Site-Palos Verdes Shelf Operable Unit
16 Special Account".

17 On January 30, 1997, or ten (10) days after the Date of Final
18 Approval of this Amended Decree, whichever is later, the Settling
19 Local Governmental Entities shall pay from the Response Costs
20 Escrow the sum of \$14,860,000, together with all remaining sums
21 that have accrued in the Response Costs Escrow established pursuant
22 to Paragraph 14 of this Amended Decree, to the "United States
23 Environmental Protection Agency, Montrose Chemical National
24 Priorities List Superfund Site-Palos Verdes Shelf Operable Unit
25 Special Account".

26 Payments to the United States shall be made by Electronic
27 Funds Transfer ("EFT" or "wire transfer") in accordance with
28 instructions provided by the United States to the Settling Local

1 Governmental Entities subsequent to the lodging of this Amended
2 Decree. Any EFT received after 11:00 A.M. (Eastern Time) will be
3 credited on the next business day. The Settling Local Governmental
4 Entities shall send notice of the EFT to plaintiffs as provided in
5 Paragraph 37 of this Amended Decree. All payments to the United
6 States under this Paragraph 14.G shall reference the Montrose
7 Chemical Corporation of California Superfund Site, Site # 9T26, DOJ
8 Case # 90-11-3-511, and U.S.A.O. file number 9003085.

9 H. If the United States or the State must bring an action to
10 collect any payment required under this Paragraph 14, the Settling
11 Local Governmental Entities shall reimburse the United States and
12 the State for all costs of such action, including but not limited
13 to attorney's fees.

14 I. EPA commits to expend the settlement funds paid by the
15 Settling Local Governmental Entities to the United States
16 Environmental Protection Agency, Montrose Chemical National
17 Priorities List Superfund Site Special Account on EPA response
18 activities with respect to the Montrose NPL Site, except those
19 areas of the Palos Verdes shelf where effluent-affected DDT- and/or
20 PCB-contaminated sediments have come to be located. All such funds
21 not used in accordance with the provisions of this Paragraph 14.I
22 may be applied to the Hazardous Substance Superfund, but only after
23 the completion of the response activities at the Montrose NPL Site.

24 J. EPA commits to expend the settlement funds paid by the
25 Settling Local Governmental Entities to the United States
26 Environmental Protection Agency, Montrose Chemical National
27 Priorities List Superfund Site - Palos Verdes Shelf Operable Unit
28 Special Account for response activities with respect to the

1 Montrose NPL Site Palos Verdes Shelf Operable Unit. All such funds
2 not used in accordance with the provisions of this Paragraph 14.J
3 may be deposited in the Hazardous Substance Superfund but only
4 after completion of the EPA response activities.

5 IN-KIND SERVICES

6 15. A. LACSD agrees to provide in-kind services to EPA in
7 lieu of the cash payments required by Paragraph 14 of this Amended
8 Decree in settlement of the response cost claims of the United
9 States and the State, subject to the conditions set forth in
10 Paragraphs 15.B and 15.C below. Such services shall be valued by
11 mutual agreement of EPA and LACSD. Costs of in-kind services
12 provided by LACSD through contractors shall be approved by EPA,
13 with the concurrence of DTSC , prior to implementation of the
14 contract.

15 B. In the event that LACSD provides in-kind services
16 pursuant to this Amended Decree, such services shall be provided by
17 LACSD as a contractor retained by the EPA and shall total in value
18 not more than \$2,000,000, the services to be valued at the time
19 rendered. EPA shall not request that LACSD provide more than
20 \$1,000,000, in services in any twelve month period after the Date
21 of Initial Approval of this Amended Decree. However, EPA and
22 LACSD, by written agreement, may modify the annual limits
23 established above, or extend the period for provision of services,
24 including provision for long term monitoring projects.

25 C. In requesting the provision of in-kind services pursuant
26 to Paragraph 15.A of this Amended Decree, EPA shall make work
27 assignments to LACSD in writing and shall set forth the scope and
28 specifications of the work required and the date by which LACSD

1 and/or the approved contractors will deliver the work product of
2 the particular assignment. In making assignments, EPA will consult
3 with LACSD, and LACSD can propose modifications to the work
4 assignments. EPA may specify that all or a portion of a particular
5 assignment is to be performed by a contractor, by LACSD or by
6 identified LACSD staff members; provided that, to the extent
7 practicable, the EPA shall accommodate LACSD's reasonable requests
8 regarding the availability of its personnel. All services provided
9 under this Amended Decree by LACSD shall be subject to full
10 oversight and control by EPA. EPA shall have full access to all
11 work in progress required under this agreement, whether by LACSD
12 personnel or by contractors. LACSD shall submit quarterly
13 statements to EPA itemizing the cost of services provided during
14 the preceding quarter, and cumulatively from the Date of Initial
15 Approval of this Amended Decree.

16 16. For purposes of this Amended Decree, and without any
17 admission by LACSD, the Parties acknowledge that LACSD has a
18 special interest in the elimination or control of hazardous
19 substance contamination in the marine sediments underlying the
20 waters in and around the Palos Verdes shelf. For purposes of this
21 Amended Decree, and without any admission by the City of Los
22 Angeles and the City of Long Beach, the Parties acknowledge that
23 the City of Los Angeles and the City of Long Beach have a special
24 interest in the elimination or control of hazardous substance
25 contamination in the Los Angeles-Long Beach area. Plaintiffs
26 maintain that the hazardous substance contamination in the
27 sediments of the Palos Verdes shelf and the Los Angeles-Long Beach
28 Harbors has resulted in substantial injury to resources held in

1 trust by the Trustees and that the elimination or control of the
2 contamination in these sediments would facilitate the recovery of
3 the injured resources. Plaintiffs further maintain that the
4 release or threatened release of these same contaminated sediments
5 may present a significant threat to human health or the
6 environment, and that the reduction or elimination of these threats
7 from the contaminated sediments would provide substantial benefit
8 to the public health, welfare and the environment. EPA is
9 undertaking the investigations required under CERCLA and the NCP to
10 select response activities for the contaminated effluent-affected
11 deposit on the Palos Verdes shelf. EPA, in consultation with DTSC,
12 may determine that one or more activities are necessary or may
13 determine that no action is appropriate. The Settling Local
14 Governmental Entities acknowledge that one of the response
15 activities EPA might undertake with respect to significantly
16 reducing or eliminating the threat presented by the contaminated
17 sediments is to isolate all or a portion of the contaminated
18 sediments on the Palos Verdes shelf thereby significantly reducing
19 or eliminating human exposure to and ecological impact from such
20 contaminants. To the extent that EPA might decide to choose a
21 response activity that isolates the contaminated sediments, the
22 Settling Local Governmental Entities further acknowledge that a
23 possible ready source of clean sediment suitable for isolating the
24 contaminated sediment on the Palos Verdes shelf may be found in the
25 Los Angeles-Long Beach Harbors. To the extent it is consistent
26 with the obligations and responsibilities of EPA under the
27 provisions of CERCLA and the applicable regulations governing use
28 of recoveries, EPA commits to the expenditure of at least

1 \$13,900,000 on the Palos Verdes shelf and at least \$5,000,000 with
2 respect to activities affecting the Los Angeles-Long Beach Harbors.
3 EPA further commits to expend these settlement funds on
4 investigation, design and implementation activities for response
5 activities that involve the elimination or control of contaminated
6 sediments with respect to the Palos Verdes shelf. If EPA, in
7 consultation with DTSC, in applying the provisions of CERCLA and
8 applicable regulations and examining the scientific and engineering
9 objectives of remediation of the Palos Verdes shelf contaminated
10 sediments, and taking into account the available settlement funds,
11 determines to expend settlement funds in a manner different than
12 described in this Paragraph, EPA will provide an explanation of its
13 decision to representatives of LACSD, the City of Los Angeles, and
14 the City of Long Beach. However, the provisions of this Paragraph
15 with respect to the use of settlement funds are not intended to and
16 do not make EPA's decisions with respect to any response activity
17 reviewable in any judicial or administrative proceeding.

18 COVENANT NOT TO SUE FOR MONTROSE NPL SITE RESPONSE

19 ACTIVITIES AND

20 COSTS AND RESERVATION OF RIGHTS

21 17. Except as specifically provided in Paragraphs 18 and 19
22 of this Amended Decree, the United States, the State, and agencies
23 and instrumentalities thereof, each hereby covenants not to sue or
24 take administrative action against any of the Settling Local
25 Governmental Entities, to compel response activities or to recover
26 Response Costs incurred or to be incurred in the future in
27 connection with the Montrose NPL Site including, but not limited
28 to, costs for studies and evaluations of the area covered by

1 response activities under CERCLA Sections 106 and 107, 42 U.S.C.
2 §§ 9606 and 9607, or pursuant to the California Hazardous Substance
3 Account Act, California Health and Safety Code §§ 25300 et seq., or
4 any other state statute or state common law. In addition, the
5 United States, the State, and agencies and instrumentalities
6 thereof, each hereby covenants not to sue or take administrative
7 action against any of the Settling Local Governmental Entities, to
8 compel response activities or to recover Response Costs incurred or
9 to be incurred in the future in connection with the Montrose NPL
10 Site under the Resource Conservation and Recovery Act ("RCRA")
11 Sections 3008(h), 3013, or 7003, 42 U.S.C. §§ 6928(h), 6934 or
12 6973, or California Health and Safety Code § 25187. The State, and
13 agencies and instrumentalities thereof, further covenants not to
14 sue or take administrative action against any of the Settling Local
15 Governmental Entities, to compel response activities or to recover
16 Response Costs incurred or to be incurred in the future in
17 connection with the Montrose NPL Site under RCRA Section 7002, 42
18 U.S.C. § 6972. The foregoing covenants not to sue include a
19 restatement of the covenants currently in effect pursuant to
20 Paragraph 18 of the 1993 Decree. The 1993 Decree covenants shall
21 remain in effect until the Date of Initial Approval of this Amended
22 Decree. Upon the Date of Initial Approval of this Amended Decree,
23 the 1993 Decree covenants shall no longer be in effect and shall be
24 superseded by the covenants set forth in this Paragraph which shall
25 remain in effect so long as the Settling Local Governmental
26 Entities are fulfilling their obligations under this Amended
27 Decree, subject to the Parties' rights to void this Amended Decree
28 pursuant to Paragraph 29 of this Amended Decree. The United