

1 States, and the State, and agencies or instrumentalities thereof,  
2 further agree that since the Category II entities have paid the  
3 entire sum required to be paid by them into the Response Costs  
4 Escrow as specified in Paragraph 14 of the 1993 Decree, including  
5 the Response Costs the Category II entities are required to pay in  
6 accordance with the provisions of this Amended Decree, the  
7 obligations of the Category II entities hereunder with respect to  
8 the Montrose NPL Site, except as provided in Paragraphs 14, 21 and  
9 41 of this Amended Decree, have been completely fulfilled, with the  
10 Category I entities continuing to be obligated under all provisions  
11 of this Amended Decree.

12 18. The covenants set forth in Paragraph 17 pertain only to  
13 matters expressly specified therein, and extend only to the  
14 Settling Local Governmental Entities. Any claim or defense which  
15 the United States or the State has against any other person or  
16 entity not a party to this Amended Decree is expressly reserved.  
17 The United States and the State reserve, and this Amended Decree is  
18 without prejudice to, all other rights and claims against the  
19 Settling Local Governmental Entities, individually or collectively,  
20 with respect to all other matters, including but not limited to,  
21 the following:

22 A. any and all claims against a Settling Local Governmental  
23 Entity based upon or resulting from a failure to meet a requirement  
24 of this Amended Decree;

25 B. claims for criminal liability;

26 C. claims for violations of any other federal law or permit,  
27 including, but not limited to, violations of the Clean Water Act,  
28 33 U.S.C. §§ 1311, et seq., and any NPDES permit issued thereunder,

1 or any other state or local law or permit, including, but not  
2 limited to, the Porter-Cologne Water Quality Control Act,  
3 California Water Code §§ 13000, et seq., but excluding those state  
4 or local laws or permits that the state or local government has  
5 used or could use to compel a response action or to recover  
6 Response Costs at the Montrose NPL Site; and

7 D. the issuance or enforcement of civil or administrative  
8 orders issued pursuant to Sections 104(e) and 106 of CERCLA, 42  
9 U.S.C. §§ 9604(e) and 9606, for information, access or cooperation  
10 with efforts by the United States with regard to response  
11 activities at the Montrose NPL Site, including but not limited to,  
12 the sanitary sewers of the Category I entities downstream of the  
13 former Montrose DDT Plant Property connections, including review of  
14 the design of the project and rerouting of flows to the extent  
15 practicable to dewater the sewer(s) for the response operation in  
16 the sewers; or

17 E. claims arising from the presence of a hazardous substance  
18 at any location outside of the Montrose NPL Site, including, but  
19 not limited to, the proposed Del Amo NPL Site as it may be defined  
20 by EPA.

21 19. A. In addition to the reservations set out in Paragraph  
22 18, the United States and the State reserve, and this Amended  
23 Decree is without prejudice to, the right to institute proceedings  
24 in this action or in a new action seeking to compel the Settling  
25 Local Governmental Entities to take a response action or reimburse  
26 the United States or the State for additional Response Costs if  
27 subsequent to the Date of Execution of this Amended Decree, the  
28 United States or the State:

1           1.     receives, in whole or in part, information unknown  
2 to EPA or DTSC as of the Date of Execution of this Amended Decree,  
3 indicating that one or more of the Settling Local Governmental  
4 Entities released after the Date of Execution of this Amended  
5 Decree one or more hazardous substances that come to be located at  
6 the Montrose NPL Site and that EPA or DTSC determines may be a  
7 threat to human health or the environment, provided that the  
8 foregoing shall not be deemed to apply to a re-exposure or  
9 resuspension on the Palos Verdes shelf of the DDT or PCB-  
10 contaminated sediments currently located there;

11           2.     discovers a condition at the Montrose NPL Site that  
12 EPA or DTSC determines may be a threat to human health or welfare  
13 or the environment, and that was unknown to EPA or DTSC prior to  
14 the Date of Execution of this Amended Decree.

15           B.     The Settling Local Governmental Entities reserve their  
16 right to contest any proceeding allowed by Paragraph 18 and  
17 Paragraphs 19.A.1 and 19.A.2 of this Amended Decree and do not by  
18 consenting to this Amended Decree waive any defenses, except as  
19 specified in Paragraph 20.C of this Amended Decree. In the event  
20 that the United States or the State institutes proceedings under  
21 Paragraphs 19.A.1 or 19.A.2 of this Amended Decree, the Settling  
22 Local Governmental Entities reserve the right to assert potential  
23 cross-claims, counterclaims or third party claims against the  
24 United States, the State, or any employee, officer, agency or  
25 instrumentality thereof, relating solely to such claims asserted by  
26 the United States or the State, and the agencies or  
27 instrumentalities thereof, pursuant to Paragraphs 19.A and 19.B.  
28 Nothing in this Amended Decree shall be deemed to constitute

1 preauthorization of a claim within the meaning of Section 111 of  
2 CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

3 COVENANTS BY SETTling LOCAL GOVERNMENTAL ENTITIES

4 20. A. Subject to Paragraphs 12.C and 19.B, each of the  
5 Settling Local Governmental Entities hereby covenants not to sue or  
6 to assert any administrative claim or cause of action of any kind  
7 against the United States, or any employee, officer, agency or  
8 instrumentality thereof, and/or the State, or any employee,  
9 officer, agency or instrumentality thereof (but not including  
10 counties, cities, local governmental entities or sanitation  
11 districts), for any matters relating to Natural Resource Damages,  
12 as defined herein, including, but not limited to the counterclaims  
13 asserted in LACSD's Answer to the Complaint in this action, or  
14 claims arising pursuant to any other federal, state or common law,  
15 including, but not limited to, any direct or indirect claim  
16 pursuant to Section 112 of CERCLA, 42 U.S.C. § 9612, against the  
17 Hazardous Substance Superfund, any claim pursuant to Section 113(f)  
18 of CERCLA, 42 U.S.C. § 9613(f), for contribution, or any claim  
19 pursuant to the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b) and  
20 2671, et seq., or any claim arising from any express or implied  
21 contract pursuant to 28 U.S.C. § 1346(a)(2) or 28 U.S.C.  
22 § 1491(a)(1).

23 B. Subject to Paragraphs 12.C and 19.B, each Settling Local  
24 Governmental Entity hereby covenants not to sue and agrees not to  
25 assert any administrative claim or cause of action of any kind  
26 against the United States, or any employee, officer, agency or  
27 instrumentality thereof, and/or the State, or any employee,  
28 officer, agency or instrumentality thereof (but not including

1 counties, cities, local governmental entities or sanitation  
2 districts) with respect to the Montrose NPL Site, the Montrose NRD  
3 Area, or with respect to this Amended Decree, including but not  
4 limited to (1) any direct or indirect claim for reimbursement from  
5 the Hazardous Substance Superfund established pursuant to 26 U.S.C.  
6 § 9507, under CERCLA Sections 106(b)(2), 111, 112, or 113, 42  
7 U.S.C. §§ 9606(b)(2), 9611, 9612 or 9613, any claim pursuant to the  
8 Federal Tort Claims Act, 28 U.S.C. §§ 1346(b) and 2671 et seq., or  
9 any claim arising from any express or implied contract pursuant to  
10 28 U.S.C. § 1346(a)(2) or 28 U.S.C. § 1491(a)(1), or any claim  
11 pursuant to the California Hazardous Substance Account Act,  
12 California Health and Safety Code §§ 25300 et seq., or under any  
13 other provision of law; (2) any claim related to the Montrose NPL  
14 Site or the Montrose NRD Area under CERCLA Sections 107 or 113, 42  
15 U.S.C. §§ 9607 or 9613, against the United States, including any  
16 department, agency, or instrumentality of the United States and/or  
17 the State, or any employee, officer, agency or instrumentality  
18 thereof (but not including counties, cities, local governmental  
19 entities or sanitation districts); or (3) any claims arising out of  
20 response activities at the Montrose NPL Site. Nothing in this  
21 Amended Decree shall be deemed to constitute preauthorization of a  
22 claim within the meaning of Section 111 of CERCLA, 42 U.S.C.  
23 § 9611, or 40 C.F.R. § 300.700(d).

24 C. In any subsequent administrative or judicial proceeding  
25 initiated by plaintiffs for Natural Resource Damages, injunctive  
26 relief, recovery of Response Costs, or other appropriate relief  
27 with respect to the Montrose NPL Site, the Settling Local  
28 Governmental Entities shall not assert, and may not maintain, any

1 defense or claim based upon principles of waiver, res judicata,  
2 collateral estoppel, issue preclusion, claim splitting, or other  
3 defense based upon any contention that the claims raised by the  
4 plaintiffs in the subsequent proceeding were or should have been  
5 brought in the instant case; provided, however, that nothing in  
6 this Paragraph 20.C affects the enforceability of plaintiffs'  
7 covenants not to sue set forth in Paragraphs 11 and 17 of this  
8 Amended Decree.

9 PENALTIES FOR LATE PAYMENTS

10 21. A. If the payment required of the Settling Local  
11 Governmental Entities by Paragraph 9 of this Amended Decree is not  
12 made by the date specified in that Paragraph, the Settling Local  
13 Governmental Entities shall be liable, in addition to the payment  
14 specified in Paragraph 9, for the following amounts to the Trustees  
15 for each day of delay in payment:

<u>Days of Delay</u>	<u>Payment Per Day of Delay</u>
17 1-14	\$ 2500/day
18 15-60	\$ 3750/day
19 Beyond 60 Days	\$ 5000/day

20 Payments due under this Paragraph 21.A shall be paid by  
21 certified or bank check or warrant and disbursed to the Trustees,  
22 50% to the United States and 50% to the State, to the addressees  
23 identified in Paragraph 37. Stipulated penalties due under this  
24 Paragraph 21.A are due within thirty (30) days following receipt by  
25 the Settling Local Governmental Entities of a written demand by the  
26 United States or the State for payment of such stipulated  
27 penalties.

28 B. If any payment required of the Settling Local Governmental

1 Entities by Paragraphs 14.B, 14.F, or 14.G of this Amended Decree  
2 is not made by the dates specified in those Paragraphs, the  
3 Settling Local Governmental Entities shall be jointly and severally  
4 liable, in addition to the payments specified in Paragraphs 14.B,  
5 14.F, or 14.G of this Amended Decree, for the following amounts to  
6 the United States and the State for each day of delay in payment:

8	<u>Days of Delay</u>	<u>Payment Per Day of Delay</u>
9	1-14	\$ 2500/day
10	15-60	\$ 3750/day
11	Beyond 60 Days	\$ 5000/day

12  
13 Stipulated penalties are due within thirty (30) days following  
14 receipt by the Settling Local Governmental Entities of a written  
15 demand by the United States or the State for payment of such  
16 stipulated penalties. All payments under this Paragraph 21.B for  
17 stipulated penalties shall be made in accordance with instructions  
18 provided by the United States or the State to the Settling Local  
19 Governmental Entities subsequent to the lodging of this Amended  
20 Decree, with notice to the United States or the State, all as  
21 provided in Paragraph 14.F of this Amended Decree. Payment of any  
22 stipulated penalty pursuant to this Paragraph 21.B shall be in  
23 addition to any other remedy or sanction available to the United  
24 States and the State for the failure of the Settling Local  
25 Governmental Entities to make timely payment under this Paragraph.

26 22. Payments due under Paragraph 21.A shall be in addition to  
27 any other remedies or sanctions that may be available to the United  
28 States and the State on account of the Settling Local Governmental

1 Entities' failure to comply with the terms of this Amended Decree,  
2 provided that a failure by the Settling Local Governmental Entities  
3 to make timely payment as provided in this Amended Decree shall not  
4 constitute a material default unless the delay in payment exceeds  
5 thirty (30) days from the due date provided in this Amended Decree.

6 RETENTION OF RECORDS

7 23. A. Until ten years after the entry of this Amended  
8 Decree, each Settling Local Governmental Entity shall preserve and  
9 retain all records and documents now in its possession or control  
10 or which come into its possession or control, that relate to the  
11 release of any hazardous substance to or from the Montrose NPL  
12 Site, and which have not been determined to be privileged in  
13 accordance with the procedures in Paragraph 23.B of this Amended  
14 Decree. At the conclusion of this document retention period, each  
15 Settling Local Governmental Entity shall notify the United States  
16 and the State at least ninety (90) days prior to the destruction of  
17 any such records or documents, and upon request by the United  
18 States and the State, each Settling Local Governmental Entity shall  
19 make available any such records or documents at a location within  
20 Region IX of EPA designated by the United States and the State.

21 B. With respect to the obligation to retain records and  
22 documents set forth in Paragraph 23.A, each Settling Local  
23 Governmental Entity may assert that certain documents, records and  
24 other information are privileged under attorney client privilege,  
25 or any other privilege recognized under state or federal law. In  
26 connection with the assertion of any such claim of privilege, the  
27 Settling Local Governmental Entity shall provide the United States  
28 and the State with the following: (1) title of document or record;



1 (2) date of document or record; (3) name and position of the author  
2 of the document or record; (4) description of the subject of the  
3 document or record; and (5) the specific basis for the privilege  
4 asserted.

5 DISCLAIMERS

6 24. Nothing in this Amended Decree, or any of its provisions,  
7 or any of the United States' or the State's determinations or  
8 actions taken pursuant to this Amended Decree, is intended to or  
9 shall be interpreted as supporting or opposing County Sanitation  
10 Districts of Orange County's presently pending application for a  
11 renewal of its NPDES permit granting a waiver of secondary  
12 treatment requirements, issued pursuant to Section 301(h) of the  
13 Clean Water Act, as amended, 33 U.S.C. § 1311(h).

14 INDEPENDENT CONTRACTOR

15 25. It is understood and agreed that LACSD, its agents,  
16 officers, employees, and contractors in the performance of the work  
17 and services provided pursuant to Paragraph 15 of this Amended  
18 Decree shall act as independent contractors and not as agents or  
19 employees of EPA.

20 NO WAIVERS OF CONFIDENTIALITY OR PRIVILEGE

21 26. Disclosure, whether oral or written, including provision  
22 of data, reports, documents, and other material and information, by  
23 the United States and the State to LACSD or to any contractor  
24 engaged directly or indirectly by LACSD for work required pursuant  
25 to Paragraph 15 of this Amended Decree is not intended to and shall  
26 not constitute a waiver of any otherwise applicable exemption or  
27 privilege from disclosure under federal or state law. Where the  
28 United States and the State have identified any such information as

1 confidential and/or privileged, LACSD and its contractors shall not  
2 disclose such information, in whatever form, to any other person  
3 without prior written authorization by the United States and the  
4 State. LACSD shall notify the United States and the State  
5 immediately and in writing of any claim by any other person that a  
6 disclosure is required by law or order of a court of competent  
7 jurisdiction and shall provide a reasonable opportunity to the  
8 United States and the State to pursue appropriate remedies.

9 27. LACSD may assert any confidentiality claims available to  
10 LACSD under state or federal law covering part or all of the  
11 information provided to the United States and the State pursuant to  
12 Paragraph 15 of this Amended Decree. If LACSD is requested by the  
13 United States and the State under this Amended Decree to produce a  
14 document obtained from a third party which LACSD is obligated to  
15 protect from disclosure by state or federal law, it shall not  
16 produce such documents until such time as the United States and the  
17 State have taken appropriate measures to allow production.

18 CONFIDENTIAL INFORMATION/OWNERSHIP OF MATERIALS

19 28. All data, reports, studies, and other documents developed  
20 by LACSD directly or by any contractor retained by LACSD for work  
21 required pursuant to Paragraph 15 of this Amended Decree shall be  
22 and remain the property of the United States and the State. All  
23 such materials shall be confidential and shall not be disclosed by  
24 LACSD or its contractors to any person except as authorized in  
25 writing by the United States and the State, or as required by law.

26 VOIDABILITY

27 29. In the event that a final judicial determination is made  
28 by the District Court or, upon appellate review, by a higher court,

1 that the entry of this Amended Decree shall not be approved, this  
2 Amended Decree and the settlement embodied herein shall be voidable  
3 by written notice to the other Parties at the sole discretion of  
4 any party to this Amended Decree. If a party voids this Amended  
5 Decree pursuant to this Paragraph, the terms hereof may not be used  
6 as evidence in any litigation or other proceeding.

7 COMPLIANCE WITH OTHER LAWS

8 30. This Amended Decree shall not be construed in any way to  
9 affect any past, current, or future obligation of the Settling  
10 Local Governmental Entities (individually or collectively) or any  
11 other person or entity to comply with any federal, state or local  
12 law.

13 RETENTION OF JURISDICTION

14 31. The Court shall retain jurisdiction of this matter for  
15 the purpose of entering such further order, direction, or relief as  
16 may be necessary or appropriate for the construction,  
17 implementation, or enforcement of this Amended Decree.

18 AUTHORIZED REPRESENTATIVE

19 32. Each undersigned representative of the Settling Local  
20 Governmental Entities certifies that he or she is fully authorized  
21 to enter into the terms and conditions of this Amended Decree and  
22 to legally execute and bind that party to this Amended Decree.

23 MODIFICATION

24 33. The terms of this Amended Decree may be modified only by  
25 a subsequent written agreement signed by all of the Parties  
26 signatory hereto, and approved by the Court as a modification to  
27 this Amended Decree.

28

1 PUBLIC COMMENT

2 34. The Parties acknowledge that this Amended Decree will be  
3 subject to a 30-day public comment period as provided in 28 C.F.R.  
4 § 50.7. The Parties further acknowledge that this Amended Decree  
5 may be the subject of a public meeting as specified in Section 7003  
6 of RCRA, 42 U.S.C. § 6973. The United States reserves the right to  
7 withdraw its consent to this Amended Decree if comments received  
8 disclose facts or considerations which show that this Amended  
9 Decree is inappropriate, improper, or inadequate. The Settling  
10 Local Governmental Entities consent to the entry of this Amended  
11 Decree by the Court without further notice.

12 PROTECTION AGAINST CLAIMS

13 35. The United States and the State acknowledge and agree  
14 that the payments to be made by the Settling Local Governmental  
15 Entities pursuant to this Amended Decree represent a good faith  
16 settlement and compromise of disputed claims and that the  
17 settlement represents a fair, reasonable, and equitable discharge  
18 for the matters addressed in this Amended Decree. With regard to  
19 any costs, damages, or other claims against the Settling Local  
20 Governmental Entities for matters addressed in this Amended Decree,  
21 the Settling Local Governmental Entities are entitled to, as of the  
22 Date of Initial Approval of this Amended Decree, such protection as  
23 is provided in Section 113(f) of CERCLA, 42 U.S.C. § 9613(f), and  
24 all other provisions of federal or state statute or of common law  
25 which limit or extinguish their liability to persons not party to  
26 this Amended Decree. No contribution protection is provided  
27 pursuant to this Amended Decree for any claim for Response Costs  
28 under CERCLA incurred in connection with the presence, release, or

1 threatened release of a hazardous substance outside the Montrose  
2 NPL Site. Any rights Settling Local Governmental Entities may have  
3 to obtain contribution or otherwise recover costs or damages from  
4 persons not party to this Amended Decree are preserved.

5 36. The Trustees have determined that the payments to be made  
6 pursuant to Paragraphs 7-9 of this Amended Decree are appropriate  
7 actions necessary to protect and restore the natural resources  
8 damaged by the release of DDT, PCBs, and other hazardous substances  
9 alleged in the First Claim for Relief in the Complaint and that the  
10 payments satisfy the requirements of Section 122(j)(2) of CERCLA,  
11 42 U.S.C. § 9622(j)(2).

12 NOTICE

13 37. Any notice required hereunder shall be in writing and  
14 shall be delivered by hand, facsimile or overnight mail as follows:

15 Notice to the United States and the State:

16 Chief  
17 Environmental Enforcement Section  
18 U.S. Department of Justice  
19 1425 New York Ave, N.W.  
20 Washington, D.C. 20005  
21 Facsimile No. (202) 514-2583

22 Supervising Deputy Attorney General  
23 Land Law Section  
24 Office of the Attorney General  
25 300 South Spring Street  
26 Los Angeles, CA 90013  
27 Facsimile No. (213) 897-2801

28 Notice to Settling Local Governmental Entities shall be provided in  
accordance with the provisions of the Order Re: Discovery  
Coordination and Service List entered June 26, 1992, and any  
amendment thereto.

Each party to this Amended Decree may change the person(s) it  
has designated to receive notice for that party, or the addresses

1 for such notice, by filing a written notice of such change with the  
2 Court and serving said notice on each of the other Parties to this  
3 Amended Decree, or in accordance with the provisions of the Order  
4 Re: Discovery Coordination and Service List entered June 26, 1992,  
5 and any amendment thereto.

6 38. This Amended Decree may be executed in any number of  
7 counterparts, and each executed counterpart shall have the same  
8 force and effect as an original instrument.

9 ENTIRE AGREEMENT

10 39. This Amended Decree constitutes the entire understanding  
11 of the Parties with respect to its subject matter, and upon the  
12 Date of Initial Approval of this Amended Decree shall supersede the  
13 1993 Decree with respect to the rights and obligations of the  
14 Parties.

15 EFFECTIVE AND TERMINATION DATES

16 40. This Amended Decree shall be effective upon the date  
17 which this Amended Decree has been initially approved and signed by  
18 the United States District Court.

19 41. The Court may terminate this Amended Decree upon joint  
20 motion by the Settling Local Governmental Entities, after 45 days  
21 notice, upon fulfillment of the obligations of all of the Settling  
22 Local Governmental Entities under this Amended Decree. Termination  
23 of this Amended Decree and the operation of the provisions of  
24 Paragraphs 11 and 17 with respect to termination of the obligations  
25 of Category II entities shall not affect the provisions herein for  
26 contribution protection, document retention, and the covenants not  
27 to sue and reservations of rights, which shall remain in effect as  
28 an agreement among the Parties.

1 42. By signature below, all Parties consent to this Amended  
2 Decree.

3  
4 ORDER

5 THE FOREGOING Amended Consent Decree among plaintiffs the  
6 United States and the State of California and the Settling Local  
7 Governmental Entities is hereby APPROVED. There being no just  
8 reason for delay, this Court expressly directs, pursuant to Rule  
9 54(b), Federal Rules of Civil Procedure, ENTRY OF FINAL JUDGMENT in  
10 accordance with the terms of this Amended Consent Decree this \_\_\_\_  
11 ~~14~~ DAY of August, 199~~8~~<sup>9</sup>, each party hereto shall bear  
12 its own costs and attorney's fees except as specifically provided  
13 herein.

14  
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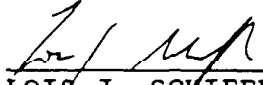
16 A. ANDREW HAUK  
17 Senior United States District Judge  
18 and  
19 Chief Judge Emeritus  
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1 FOR THE UNITED STATES OF AMERICA:

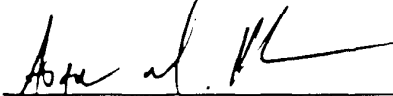
2 WE HEREBY CONSENT to the entry of the Amended Consent Decree  
3 in United States, et al. v. Montrose Chemical Corporation of  
4 California, et al., No. CV 90-3122-AAH (JRx), subject to the public  
5 notice and comment requirements of 28 C.F.R. § 50.7.

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DATE: 2/26/97

  
LOIS J. SCHIFFER  
Assistant Attorney General  
Environment and Natural Resources  
Division  
United States Department of Justice

DATE: 3/18/97

  
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WILLIAM A. WEINISCHKE  
STEVEN O'ROURKE  
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