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CENTRAL DISTRICT OF CALIFORNIA
DEPUTY

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AUG 24 1999
CENTRAL DISTRICT OF CALIFORNIA

THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FRCP, RULE 77(d).

15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA
17 WESTERN DIVISION

18 UNITED STATES OF AMERICA and)
19 STATE OF CALIFORNIA,)
20 Plaintiffs,)
21 v.)
22 MONTROSE CHEMICAL CORPORATION)
OF CALIFORNIA, et al.,)
23)
24 Defendants.)

NO. CV 90-3122-AAH (JR)x
CONSENT DECREE WITH CBS CORPORATION

25 AND RELATED COUNTER, CROSS,)
26 AND THIRD PARTY ACTIONS.)
27)
28)

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

14 CBS filed its answer to the Complaint, its counterclaims
15 against the State, and cross-claims against co-defendant County
16 Sanitation District No. 2 of Los Angeles County ("LACSD") on
17 September 30, 1991, and third party complaints against the City
18 of Los Angeles and County of Orange as of April 10, 1991.

19 In the First Claim for Relief of the Complaint, plaintiffs
20 asserted a claim against ten defendants, including CBS, under
21 Section 107(a)(1-4)(C) of CERCLA, 42 U.S.C. § 9607(a)(1-4)(C),
22 for the alleged natural resource damages, including damage
23 assessment costs and related response costs. The Complaint
24 alleges that CBS operated a plant located at 18020 South Santa Fe
25 Avenue ("Westinghouse Plant"), in an unincorporated part of Los
26 Angeles County, California, that repaired and serviced electrical
27 equipment (including transformers and capacitors). The Complaint
28 further alleges, on information and belief, that CBS, in the

1 operation of the Westinghouse Plant, discharged wastewater
2 containing hazardous substances, including PCBs, from the
3 Westinghouse Plant into the LACSD collection system that conveys
4 wastewater to the Joint Water Pollution Control Plant ("JWPCP")
5 through the White's Point Outfall into the San Pedro Channel, and
6 that such discharges caused injury to natural resources.

7 In the Second Claim for Relief of the Complaint, the United
8 States asserts a claim for recovery of costs incurred and to be
9 incurred by EPA in response to the release or threatened release
10 of hazardous substances into the environment at and/or from the
11 Montrose DDT Plant Property, as that term is defined and used
12 herein, pursuant to Section 107(a)(1-4)(A) of CERCLA, 42 U.S.C. §
13 9607(a)(1-4)(A). The Second Claim for Relief, brought at the
14 request of and on behalf of EPA, does not allege liability on the
15 part of CBS.

16 EPA is the lead agency with regard to the conduct of
17 response activities at the Montrose NPL Site, as that term is
18 defined and used herein. The State, through its agencies DTSC
19 and the Regional Board, also participates in Montrose NPL Site
20 response activities consistent with Subpart F of CERCLA's
21 National Contingency Plan ("NCP"), 40 C.F.R. §§ 300.500 -
22 300.525, and both DTSC and the Regional Board have incurred
23 response costs in connection therewith.

24 CERCLA and the NCP require that a site investigation gather
25 the data necessary to assess the threat to human health and the
26 environment of actual or threatened releases of hazardous
27 substances from a facility, to include any place where a
28 hazardous substance has come to be located. Consistent with

1 those requirements, EPA's continuing investigation of the
2 Montrose NPL Site indicates that the Montrose NPL Site is
3 contaminated significantly by DDT and other hazardous substances
4 released during the manufacture of DDT, with DDT and those other
5 hazardous substances present at the Montrose NPL Site in soil,
6 groundwater, storm water channel sediments, and sediments in
7 portions of LACSD's Joint Outfall ("J.O.") "D" and District 5
8 Interceptor sewer lines. As a result of the ongoing
9 investigation of the Montrose NPL Site, a series of response
10 activities is currently underway, including a remedial
11 investigation and a feasibility study ("RI/FS") of the DDT
12 contaminated soil and groundwater underlying the Montrose DDT
13 Plant Property and surrounding areas of the Montrose NPL Site,
14 the conduct of a time-critical removal action at the Montrose NPL
15 Site to investigate and remove Montrose DDT from soil in
16 residential areas within four blocks of the Montrose DDT Plant
17 Property, the conduct of an Engineering Evaluation and Cost
18 Analysis ("EE/CA") to investigate the aerial fallout of DDT dust
19 emitted from the former Montrose DDT plant on residential and
20 commercial areas in close proximity to the Montrose DDT Plant
21 Property, and the conduct of a removal action to remove DDT
22 contaminated sediments from the J.O. "D" sewer adjacent to and
23 downstream of the Montrose DDT Plant Property.

24 In addition, as a result of information developed and
25 assembled, inter alia, in connection with the Trustees' damage
26 assessment relating to DDT and PCB contamination of the offshore
27 area alleged in the First Claim for Relief in this action, EPA
28 began an investigation of that portion of the Montrose NRD Area

1 comprised of the offshore area contaminated by DDT and PCBs
2 released into the LACSD sewer lines and subsequently deposited in
3 the sediments of the Palos Verdes shelf near the White's Point
4 Outfall ("the Palos Verdes Shelf Investigation"). EPA's Palos
5 Verdes Shelf Investigation includes the effluent-affected DDT and
6 PCB contaminated sediment described and discussed in Lee, H., The
7 Distribution and Character of Contaminated Effluent-Affected
8 Sediment, Palos Verdes Margin, Southern California (October
9 1994). For purposes of this Decree, the term "Montrose NPL Site"
10 has been defined to include the area comprising the Palos Verdes
11 Shelf Investigation. As of May 18, 1998, EPA had not extended
12 either its Palos Verdes Shelf Investigation or its investigation
13 of releases from the Montrose DDT Plant Property to include the
14 Los Angeles and the Long Beach Harbors (other than the
15 Consolidated Slip in Los Angeles Harbor).

16 EPA is conducting the Palos Verdes Shelf Investigation under
17 the authority of CERCLA to determine the nature and extent of
18 contamination of the Palos Verdes shelf, to assess effects of the
19 contamination on the environment and human health, and to
20 determine whether to select response actions, if any, to address
21 the contamination. By its letter of May 27, 1997, EPA invited CBS
22 to participate in the Palos Verdes Shelf Technical Advisory
23 Committee ("TAC"), a group formed to assist EPA in its Palos
24 Verdes Shelf Investigation. EPA has provided to CBS, in the TAC,
25 inter alia, its draft Human Health Risk Assessment ("HHRA") and,
26 in response to EPA's request, CBS has provided EPA with written
27 comments on EPA's HHRA. In discovery, EPA has provided drafts of
28 both its EE/CA and Environmental Risk Assessment ("ERA") with

1 respect to its Palos Verdes Shelf Investigation, and depositions
2 have been taken concerning EPA's Palos Verdes Shelf
3 Investigation, its draft EE/CA and its draft HHRA.

4 EPA has conducted a preliminary evaluation under CERCLA of
5 contamination in the Santa Monica Bay (hereafter referred to as
6 "the Santa Monica Bay CERCLIS Site"), which included an
7 evaluation of portions of the Palos Verdes shelf. On September
8 17, 1990, after the filing of this action, EPA determined that it
9 would conduct no further investigation or response activities
10 under CERCLA regarding the Santa Monica Bay CERCLIS Site. EPA's
11 "no further action" determination may be reconsidered by EPA; DDT
12 contamination on the Palos Verdes shelf was excluded from EPA's
13 preliminary evaluation of the Santa Monica Bay CERCLIS Site.

14 On August 21, 1997, EPA provided notice of its rulemaking
15 proposing to add the contaminated sediments on the sea floor of
16 the Palos Verdes shelf to the Montrose NPL Site. See 62 Fed.
17 Reg. 44430, August 21, 1997. CBS submitted written comments to
18 that proposed rulemaking, through its counsel, on October 16,
19 1997.

20 By its letter of October 17, 1997, EPA notified CBS that it
21 was potentially responsible under CERCLA for response costs and
22 other costs incurred or to be incurred by EPA with respect to the
23 alleged Palos Verdes shelf contamination.

24 Thereafter, on November 21, 1997, plaintiffs filed a Motion
25 for Leave To File and Serve a Third Amended Complaint. By that
26 motion, plaintiffs sought permission to add to the Second Claim
27 for Relief of the Complaint allegations concerning recovery of
28 response costs incurred or to be incurred by EPA in connection

1 with its Palos Verdes Shelf Investigation, to add DTSC as a
2 plaintiff to the Second Claim for Relief, and to add CBS as a
3 defendant to the Second Claim for Relief as so amended. CBS
4 filed its Memorandum in Opposition to Plaintiffs' Motion for
5 Leave To Amend Their Complaint, with supporting papers, on
6 January 20, 1998.

7 Without limiting plaintiffs' position at trial, plaintiffs'
8 current estimate of total damages and costs for settlement
9 purposes with all parties is between \$225 million and \$250
10 million. Plaintiffs' explanation of the bases for their estimate
11 is found in the "Introduction" to the Amended Consent Decree with
12 the Settling Local Governmental Entities, lodged with the Court
13 on March 25, 1997, Plaintiffs' Interrogatory Responses to the
14 Special Master's May 28, 1997 Civil Minute Order, as Corrected on
15 June 3, 1997, dated June 17, 1997, and the transcripts of the
16 Federal Rule of Civil Procedure 30(b)(6) deposition of the
17 plaintiffs ordered by the Court on October 6, 1997. For the
18 purposes of settlement, the payment of \$9.5 million by CBS is
19 reasonable.

20 In determining the settlement amount paid for EPA/DTSC
21 response costs and for the Trustees' damage assessment costs and
22 natural resource damages, the United States and the State have
23 considered the current estimates of potential costs and damages
24 and the proportional relationship between the amount to be paid
25 in settlement and potential costs and damages. In addition, the
26 United States and the State have considered the nature of CBS's
27 operations at the Westinghouse Plant, the litigation risks and
28 associated costs from continuing to prosecute this case against

1 CBS, the total amount of available settlement funds from the
2 settlement with Potlatch Corporation and Simpson Paper Company,
3 and from the settlement with the Settling Local Governmental
4 Entities, the expenses incurred by the Trustees in connection
5 with the characterization of the effluent-affected DDT and PCB
6 contaminated sediment deposit on the Palos Verdes shelf and the
7 assessment of the effect of contaminated sediments on the
8 environment and the usefulness of much of their work to EPA;
9 EPA's current estimate of the expenses associated with conducting
10 response activity with respect to the Palos Verdes shelf; and the
11 Trustees' current estimates of the funds required to plan and
12 conduct biological restoration programs designed to aid in the
13 recovery of injured trust resources.

14 In addition to the factors discussed in the preceding
15 paragraph, plaintiffs have also considered the relative
16 volumetric contribution of hazardous substances by CBS and the
17 other defendants to the Palos Verdes shelf. In entering the
18 consent decree relating to defendants Potlatch Corporation and
19 Simpson Paper Company, the District Court quoted the plaintiffs'
20 estimates of the contributions of the generator defendants as
21 follows:

22 Potlatch/Simpson -- 4,500 pounds of PCBs discharged;
23 Westinghouse [CBS]-- 38,000 pounds of PCBs discharged;
24 DDT Defendants -- 5,500,000 pounds of DDT discharged.

25 United States v. Montrose Chemical Corp. of California, 793 F.
26 Supp. 237, 240 (C.D. Cal. 1992). Since 1992, plaintiffs have
27 continued to evaluate the estimates of the volume of PCBs
28 allegedly discharged by CBS. Although plaintiffs and CBS

1 disagree over the actual volume of PCBs allegedly discharged by
2 CBS from the Westinghouse Plant, and there are facts that remain
3 in dispute, plaintiffs currently believe that facts elicited
4 during discovery indicate that the 38,000 pounds originally
5 estimated by plaintiffs is an overestimate of the actual amount
6 of PCBs which CBS discharged. See, e.g., CBS Corporation's
7 Memorandum in Opposition to Plaintiff's Motion for Leave To Amend
8 Their Complaint, dated January 20, 1998, and the exhibits
9 attached thereto, and CBS Corporation's Supplemental Response to
10 Interrogatories Nos. 1-5 in the United States of America's Second
11 Set of Interrogatories to CBS Corporation, dated May 4, 1998.

12 Plaintiffs are currently aware of no facts that indicate
13 that CBS has released any PCBs from the Westinghouse Plant into
14 the Joint Outfall System other than into that portion of the
15 Joint Outfall System known as JO "A" and JO "G". Plaintiffs are
16 also currently aware of no facts that indicate that CBS has
17 released any PCBs from the Westinghouse Plant to the Los Angeles
18 Harbor, the Long Beach Harbor or the Santa Monica Bay, save and
19 except only such PCBs, if any, which were conveyed to the
20 sediments of the Palos Verdes shelf through the Joint Outfall
21 System.

22 The United States and the State also have agreed on the
23 application of the settlement funds between EPA/DTSC response
24 costs relating to the Montrose NPL Site (as defined herein to
25 include the effluent-affected sediments on the Palos Verdes
26 shelf) and the Trustees' damage assessment costs and natural
27 resource damages relating to the Montrose NRD Area. The United
28 States and the State have agreed that CBS should pay a total of

1 \$2.25 million to the Trustees to resolve any alleged liability of
2 CBS for Natural Resource Damages and should pay a total of \$7.25
3 million to EPA and DTSC to resolve any potential liability of CBS
4 for Response Costs.

5 All claims against CBS, including claims for costs, damages,
6 contribution and other claims, are addressed and covered by this
7 Decree. This Decree resolves CBS's liability to the United
8 States, on behalf of the Federal Trustees, and the State, on
9 behalf of the State Trustees, for Natural Resource Damages and
10 liability to the United States (including EPA) and the State
11 (including DTSC and the Regional Board) for Response Costs, and
12 provides contribution protection to CBS for all matters addressed
13 herein. Except where otherwise specifically stated, this Decree
14 is intended to cover all past and future claims for Response
15 Costs which the United States and the State (through its
16 authorized agencies) may have against CBS.

17 This settlement is made in good faith after arm's-length
18 negotiations conducted under the supervision of Special Master
19 Harry V. Peetris pursuant to Pretrial Order No. 1. Entry of this
20 Decree is the most appropriate means to resolve the matters
21 covered herein and is fair, reasonable and in the public
22 interest.

23 NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

24 JURISDICTION AND VENUE

25 1. The Parties to this Decree agree that the Court has
26 personal jurisdiction over the Parties and has jurisdiction over
27 the subject matter of this action and the Parties to this Decree
28 pursuant to 28 U.S.C. §§ 1331, 1345 and 1367, and Sections 106,

1 107 and 113(b) of CERCLA, 42 U.S.C. §§ 9606, 9607 and 9613(b),
2 and the principles of supplemental jurisdiction. The Parties
3 waive all objections and defenses that they may have to
4 jurisdiction of the Court or to venue in this District and to
5 service of process.

6 APPLICABILITY OF DECREE

7 2. The provisions of this Decree, including the covenants
8 not to sue and contribution protection, shall be binding on,
9 apply to, and inure to the benefit of the United States and the
10 State, to CBS, including their past, present and future
11 officials, directors, officers, employees, agents, predecessors,
12 successors and assigns. No change in the ownership or
13 organizational form or status of CBS shall affect its rights or
14 obligations under this Decree.

15 EFFECT OF SETTLEMENT/ENTRY OF JUDGMENT

16 3. This Decree was negotiated and executed by the Parties
17 hereto in good faith at arm's length to avoid the continuation of
18 expensive and protracted litigation and is a fair and equitable
19 settlement of claims which were vigorously contested. CBS does
20 not admit any of plaintiffs' statements, allegations or claims
21 set forth herein and denies any liability whatsoever for their
22 claims against CBS set forth in both the Complaint and in the
23 proposed Third Amended Complaint. This Decree should not
24 constitute or be interpreted, construed or used as evidence of
25 any admission of liability, law or fact. Except as otherwise
26 provided in the Federal Rules of Evidence, this Decree is not
27 admissible in evidence against CBS by any person or entity not a
28 party to the Decree in any judicial or administrative proceeding.

1 Nothing in this Decree is intended to affect the authority or
2 jurisdiction of EPA to take action beyond the boundaries of the
3 Montrose NPL Site.

4 4. Upon approval and entry of this Decree by the Court,
5 this Decree shall constitute a final judgment between and among
6 the United States and the State, and CBS.

7 DEFINITIONS

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

13 A. "Damage Assessment Costs" shall mean all costs
14 associated with the planning, design, implementation and
15 oversight of the Trustees' damage assessment process, which
16 addresses the fact, extent and quantification of the injury to,
17 destruction of or loss of natural resources and the services
18 provided by these resources resulting from releases of hazardous
19 substances alleged in the First Claim for Relief in the
20 Complaint, and with the planning of restoration or replacement of
21 such natural resources and the services provided by those
22 resources, or the planning of the acquisition of equivalent
23 resources or services, and any other costs necessary to carry out
24 the Trustees' responsibilities with respect to those natural
25 resources, including all related enforcement costs.

26 B. "Date of Execution of this Decree" shall mean the date
27 by which this Decree has been signed by all of the following:
28 the authorized representative(s) of CBS, of the State, and of the

1 EPA, and by the Assistant Attorney General of the Environment and
2 Natural Resources Division of the United States Department of
3 Justice.

4 C. "Date of Initial Approval of this Decree" shall mean
5 the date on which this Decree has been initially approved and
6 signed by the United States District Court.

7 D. "Date of Final Approval of this Decree" shall mean the
8 later of (1) the date on which the District Court has approved
9 and entered this Decree as a judgment and all applicable appeal
10 periods have expired without an appeal being filed, or (2) if an
11 appeal is taken, the date on which the District Court's judgment
12 is affirmed and there is no further right to appellate review.

13 E. "Joint Outfall System" shall mean that wastewater
14 collection, treatment and disposal facility of certain county
15 sanitation districts of Los Angeles County discharging effluent
16 through the White's Point Outfall and consisting of the Joint
17 Water Pollution Control Plant and the associated sewers, pumping
18 plants, inland water reclamation plants, treatment plants,
19 treatment plant outfall sewers and incidental sanitation works
20 operated pursuant to the 1995 Amended Joint Outfall Agreement by
21 LACSD and as defined therein, including subsequent modifications
22 to that system, as contemplated by that agreement.

23 F. "Montrose DDT Plant Property" shall mean for purposes
24 of this Decree the thirteen (13) acre parcel at 20201 South
25 Normandie Avenue, Los Angeles, California 90044, which is the
26 site of Montrose Chemical Corporation of California's former DDT
27 production and formulation plant.

28