

1 G. "Montrose NPL Site" for purposes of this Decree,
2 includes, but is not limited to, the Montrose DDT Plant Property
3 and any other areas impacted by releases of hazardous substances
4 from the Montrose DDT Plant Property as determined by EPA,
5 including but not limited to: the real property located at 1401
6 West Del Amo Boulevard, Los Angeles, California, and owned by
7 Jones Chemicals, Inc.; those portions of the Normandie Avenue
8 Ditch adjacent to and south of 20201 South Normandie Avenue; the
9 Kenwood Drain; the Torrance Lateral; the Dominguez Channel (from
10 Laguna Dominguez to the Consolidated Slip); the portion of the
11 Los Angeles Harbor known as the Consolidated Slip from the mouth
12 of the Dominguez Channel south to, but not including or
13 proceeding beyond, Pier 200B and Pier 200Y; the LACSD's J.O. "D"
14 sewer from manholes D33 to D5 (approximately Francisco Street to
15 234th Street); the District 5 Interceptor sewer from manholes
16 A475 to A442 (approximately Francisco Street to Sepulveda
17 Boulevard); the real property on which the sewer rights-of-way
18 are located for those portions of the District 5 Interceptor and
19 J.O. "D" sewer identified above; the real property burdened by
20 the adjacent railroad right-of-way for those portions of the
21 District 5 Interceptor and J.O. "D" sewer identified above; the
22 "Montrose CERCLA Removal Site" as defined in EPA Region IX's
23 Unilateral Administrative Order 95-18, Findings of Fact at § 3, ¶
24 2, dated June 7, 1995; those areas of the Palos Verdes shelf
25 where effluent-affected DDT- and/or PCB-contaminated sediments
26 have come to be located; and any other areas that are or that EPA
27 determines to be part of the Palos Verdes Shelf Investigation
28 (including any portions of the Santa Monica Bay or Los

1 Angeles/Long Beach Harbors should EPA in the future determine
2 that those areas are part of the Palos Verdes Shelf
3 Investigation).

4 H. "Montrose NRD Area" for purposes of this Decree shall
5 mean the areas in and around the Channel Islands, the Palos
6 Verdes shelf, the San Pedro Channel including Santa Catalina
7 Island, the Los Angeles and Long Beach Harbors as described in
8 the Complaint and as described in the draft Damage Assessment
9 Plan and draft Injury Determination Plan published by the
10 Trustees on February 6, 1990 and March 8, 1991, respectively,
11 Santa Monica Bay, and San Pedro Bay.

12 I. "Parties" shall mean each of the signatories to this
13 Decree.

14 J. "Natural Resource Damages" shall mean damages,
15 including loss of use, restoration costs, resource replacement
16 costs or equivalent resource values, Damage Assessment Costs, and
17 any other costs incurred or to be incurred by the Trustees or any
18 other person pursuant to Trustee approval, authorization or
19 direction, with respect to injury to, destruction of, or loss of
20 any and all natural resources in and around the Montrose NPL Site
21 and the Montrose NRD Area.

22 K. "Response Costs" shall mean for purposes of this Decree
23 all costs of response as provided in Section 107(a)(1-4)(A), (B)
24 and (D) of CERCLA, 42 U.S.C. § 9607(a)(1-4)(A), (B) and (D), and
25 as defined in Section 101(25) of CERCLA, 42 U.S.C. § 9601(25),
26 that the United States (including EPA), or the State (including
27 DTSC or the Regional Board), or any other person have incurred or
28 will incur with respect to the Montrose NPL Site.

1 L. "Westinghouse Plant" for purposes of this Decree shall
2 refer to the real property, buildings, improvements, clarifiers,
3 sumps, drains and any other "facility" as defined in Section
4 101(9) of CERCLA, 42 U.S.C. § 9601(9), located at or beneath
5 18020 So. Santa Fe Avenue, Compton, CA 90221.

6 M. "Date of Lodging of the Decree" shall mean the date that
7 this Decree is filed with the Court for lodging.

8 NATURAL RESOURCE CLAIM PAYMENTS

9 6. A. Within ten (10) business days of the Date of Lodging
10 of the Decree, CBS shall pay to the Trustees a total sum of \$2.25
11 million (the "NRD Settlement Amount") for the promises and
12 undertaking of the United States and the State of California.

13 B. CBS shall make the NRD Settlement Amount payment
14 required by Paragraph 6.A by depositing the NRD Settlement Amount
15 into an escrow account (the "Escrow") bearing interest on
16 commercially reasonable terms, in a federally-chartered bank with
17 an office in the State of California. CBS shall bear all costs
18 of establishing and maintaining the Escrow. CBS shall notify
19 plaintiffs in writing of the creation and funding of the Escrow
20 immediately after the above payment has been made, and provide on
21 request all documentation concerning the account, including any
22 agreements concerning the determination of interest rates.

23 C. The NRD Settlement Amount paid into the Escrow shall
24 remain in the Escrow and may not be withdrawn except to make the
25 payment required by Paragraph 7 of this Decree or unless a final
26 judicial determination by the District Court is made that entry
27 of this Decree will not be approved and all applicable appeal
28 periods have expired without an appeal, or if an appeal is taken,

1 the date on which the District Court spreads the mandate issued
2 by the appellate court not approving the Decree. In the event
3 that final judicial approval is not obtained, the Trustees'
4 settlement amount paid into the Escrow and all accrued interest
5 shall be returned to CBS.

6 7. Within ten (10) business days after Final Approval of
7 this Decree, the NRD Settlement Amount, together with all
8 interest thereon, shall be paid to the Trustees, payment to be
9 made as follows:

10 A. CBS shall cause the NRD Settlement Amount on
11 deposit in the Escrow to be paid into the Registry of the Court,
12 United States District Court for the Central District of
13 California, to be administered by the Registry of the Court for
14 the Trustees. This payment shall be made in the manner specified
15 in Subparagraph 7.B below, and the NRD Settlement Amount and any
16 interest thereon shall be administered and disbursed as provided
17 in Subparagraphs 7.C and 7.D below.

18 B. The payment described in Paragraph 7.A shall be
19 made by certified or bank check or warrant payable to the "Clerk,
20 United States District Court." The check or warrant shall
21 include on its face a statement that it is a payment in Civil
22 Action No. CV 90-3122 AAH (JRx) (C.D. Cal.), and shall be sent
23 to:

24 Office of the Clerk
25 United States District Court for
26 the Central District of California
312 North Spring Street
Los Angeles, CA 90012.

27 CBS, as Escrow holder, shall cause copies of the check or warrant
28 and of any transmittal letter accompanying the check or warrant

1 to be sent to the Trustees as provided in Paragraph 27 of this
2 Decree.

3 C. The Registry of the Court shall administer all
4 amounts paid under Paragraph 7.A in an interest bearing joint
5 account ("Registry Account") as provided in the Order Directing
6 the Deposit of Settlement Amount into the Registry of the Court
7 ("Deposit Order") issued by the District Court pursuant to Rule
8 67 of the Federal Rules of Civil Procedure, 28 U.S.C. § 2041, and
9 Local Rule 22 of the Local Rules for the Central District of
10 California. The Deposit Order shall be attached to this Decree
11 and shall be entered by the District Court at the time of entry
12 of this Decree.

13 D. All settlement funds and all interest accrued
14 thereon in the Registry Account shall be held in the name of the
15 "Clerk, United States District Court," for the benefit of the
16 Trustees. All disbursements from the Registry Account shall be
17 made to the Trustees by order of the Court in accordance with the
18 provisions of 28 U.S.C. § 2042 and the Local Rules for the
19 Central District of California.

20 COVENANTS NOT TO SUE FOR NATURAL RESOURCE DAMAGES

21 8. Except as specifically provided in Paragraphs 9 and 10
22 of this Decree, the United States, the State, and agencies or
23 instrumentalities thereof, each hereby covenants not to sue or to
24 take any other civil or administrative action against CBS for any
25 and all civil or administrative liability to the United States,
26 the State, and agencies or instrumentalities thereof, for Natural
27 Resource Damages under CERCLA, 42 U.S.C. §§ 9601, et seq., or
28 under any other federal, state or common law.

1 RESERVATION OF RIGHTS FOR NATURAL RESOURCE DAMAGES

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

13 B. Each of the following shall not be considered to be
14 Unknown Conditions or New Information within the meaning of
15 Paragraph 9.A (1) or (2): (1) an increase solely in the Trustees'
16 assessment of the magnitude of the injury, destruction or loss to
17 natural resources, or in the estimated or actual Natural Resource
18 Damages; (2) a determination by the Trustees that a previously
19 identified natural resource injury was caused by CBS's alleged
20 release of a hazardous substance, including hazardous substances
21 other than PCBs or DDT; or (3) any Natural Resource Damages
22 arising from any future release of hazardous substances now
23 present in the sediments of the Palos Verdes shelf, to the extent
24 that the release resulted from:

25 (a) LACSD's sampling activities (by coring, trawling or
26 otherwise);

27
28

1 (b) LACSD's institution of full secondary treatment of
2 wastewater at the JWPCP and the discharge of such wastewater
3 through the White's Point Outfall;

4 (c) any response activity or similar activity performed by
5 or at the direction of any Federal or State governmental
6 body or any other person;

7 (d) any act of God; or

8 (e) an earthquake.

9 C. CBS reserves its right to contest any claims allowed by
10 Paragraph 9.A of this Decree, and CBS does not by consenting to
11 this Decree waive any defenses to such claims, except that CBS
12 covenants not to assert, and may not maintain, any defense based
13 upon principles of waiver, res judicata, collateral estoppel,
14 issue preclusion, claim splitting, or other defense based upon
15 the contention that the claims that are allowed by Paragraph 9.A
16 of this Decree were or should have been brought in the instant
17 case. In the event that the Trustees institute proceedings under
18 Paragraph 9.A of this Decree, CBS reserves its right to assert
19 potential cross-claims, counterclaims or third party claims
20 against the United States or the State, or any employee, officer,
21 agency or instrumentality thereof, relating to such claims
22 asserted by the Trustees pursuant to Paragraph 9.A. Nothing in
23 this Decree shall be deemed to constitute preauthorization of a
24 claim within the meaning of Section 111 of CERCLA, 42 U.S.C. §
25 9611.

26 D. In addition to defenses that may be asserted by CBS
27 pursuant to Paragraph 9.C above, and a defense that a future
28 release of hazardous substances now present in the sediments of

1 the Palos Verdes shelf was the result of conditions or
2 information known to the Trustees on the Date of Lodging of this
3 Decree, CBS will not be liable for Natural Resource Damages
4 arising from a future release of hazardous substances now present
5 in the sediments of the Palos Verdes shelf, to the extent that
6 the release resulted from: (1) LACSD's sampling activities (by
7 coring, trawling, or otherwise); (2) LACSD's institution of full
8 secondary treatment of wastewater at the JWPCP and the discharge
9 of such wastewater through the White's Point Outfall; (3) any
10 response activity or similar activity performed by or at the
11 direction of any Federal or State governmental body or any other
12 person; (4) any act of God; or (5) an earthquake.

13 10. Notwithstanding any other provision of this Decree, the
14 covenants not to sue in Paragraph 8 shall apply only to matters
15 addressed in Paragraph 8 and specifically shall not apply to the
16 following claims:

17 A. claims based on a failure by CBS to satisfy the
18 requirements of this Decree;

19 B. claims for criminal liability; and

20 C. claims arising from the past, present or future
21 disposal, release or threat of release of hazardous substances
22 that do not involve the Montrose NRD Area and/or the Montrose NPL
23 Site.

24 PAYMENTS WITH RESPECT TO RESPONSE ACTIVITIES

25 11. A. Within ten (10) business days of the Date of
26 Lodging of the Decree, CBS shall pay to the Environmental
27 Protection Agency and the State of California Department of Toxic
28 Substances Control a total sum of \$7.25 million (the "Response

1 Settlement Amount") for the promises and undertaking of the
2 United States and the State of California.

3 B. CBS shall make the Response Settlement Amount payment
4 required by Paragraph 11.A by depositing the Response Settlement
5 Amount into an escrow account (the "Response Costs Escrow")
6 bearing interest on commercially reasonable terms, in a
7 federally-chartered bank with an office in the State of
8 California. CBS shall bear all costs of establishing and
9 maintaining the Response Costs Escrow. CBS shall notify
10 plaintiffs in writing of the creation and funding of the Response
11 Costs Escrow immediately after the above payment has been made,
12 and provide on request all documentation concerning the account,
13 including any agreements concerning the determination of interest
14 rates.

15 C. The Response Settlement Amount paid into the Escrow
16 shall remain in the Response Costs Escrow and may not be
17 withdrawn except to make the payment required by Paragraph 11 of
18 this Decree or unless a final judicial determination by the
19 District Court is made that entry of this Decree will not be
20 approved and all applicable appeal periods have expired without
21 an appeal, or if an appeal is taken, the date on which the
22 District Court spreads the mandate issued by the appellate court
23 not approving the Decree. In the event that final judicial
24 approval is not obtained, the Response Settlement Amount paid
25 into the Response Costs Escrow and all accrued interest shall be
26 returned to CBS.

27 D. Within ten (10) business days after the Date of Final
28 Approval of this Decree, CBS shall pay to the State from the

1 Response Costs Escrow the sum of \$150,000 together with a pro
2 rata share of all interest that has accrued on that amount since
3 the Date of Lodging of this Decree. The payment to the State
4 shall be made by certified check made payable to "Cashier,
5 California Department of Toxic Substances Control," and shall
6 bear on its face this case name and number. Payment shall be
7 mailed to:

8 Department of Toxic Substances Control
9 Accounting/Cashier
10 400 P Street, 4th Floor
11 P.O. Box 806
12 Sacramento, CA 95812-0806

13 Notice of said payment shall be given to the State as provided in
14 Paragraph 27 of this Decree.

15 E. The payment to the United States shall be in the sum of
16 \$7.1 million together with a pro rata share of all interest that
17 has accrued on this amount. Within ten (10) business days after
18 the Date of Final Approval of this Decree, CBS shall make
19 payments from the Response Costs Escrow as follows: 1) \$7 million
20 together with all interest that has accrued on that amount to
21 the "United States Environmental Protection Agency, Palos Verdes
22 Shelf Special Account;" and 2) \$100,000 for past response costs
23 incurred by EPA with respect to the Montrose NPL Site for deposit
24 in the Hazardous Substance Superfund. Payments to the United
25 States shall be made by Electronic Funds Transfer ("EFT" or "wire
26 transfer") in accordance with instructions provided by the United
27 States to CBS at the time of Lodging of the Decree. Any EFT
28 received after 11:00 A.M. (Eastern Time) will be credited on the
next business day. CBS shall send notice of the EFT to
plaintiffs as provided in Paragraph 27 of this Decree. All

1 payments to the United States under this Paragraph 11.E shall
2 reference the Montrose Chemical Corporation of California
3 Superfund Site, Site # 9T26, DOJ Case # 90-11-3-511, and U.S.A.O.
4 file number 9003085.

5 F. If the United States or the State must bring an action to
6 collect the payments required under this Paragraph 11, CBS shall
7 reimburse the United States and the State for all costs of such
8 action, including but not limited to attorney's fees.

9 COVENANT NOT TO SUE FOR MONTROSE NPL SITE

10 RESPONSE ACTIVITIES AND COSTS AND RESERVATION OF RIGHTS

11 12. Except as specifically provided in Paragraphs 13 and 14
12 of this Decree, the United States, the State, and agencies and
13 instrumentalities thereof, each hereby covenants not to sue or
14 take administrative action against CBS, to compel response
15 activities or to recover Response Costs incurred or to be
16 incurred in the future in connection with the Montrose NPL Site
17 including, but not limited to, costs for studies and evaluations
18 of the area covered by response activities under CERCLA Sections
19 106 and 107, 42 U.S.C. §§ 9606 and 9607, or pursuant to the
20 California Hazardous Substance Account Act, California Health and
21 Safety Code §§ 25300, et seq., or any other state statute or
22 state common law. In addition, the United States, the State, and
23 agencies and instrumentalities thereof, each hereby covenants not
24 to sue or take administrative action against CBS, to compel
25 response activities or to recover Response Costs incurred or to
26 be incurred in the future in connection with the Montrose NPL
27 Site under the Resource Conservation and Recovery Act ("RCRA")
28 Sections 3008(h), 3013 or 7003, 42 U.S.C. §§ 6928(h), 6934 or

1 6973, or California Health and Safety Code § 25187. The State,
2 and agencies and instrumentalities thereof, each hereby further
3 covenants not to sue or take administrative action against CBS,
4 to compel response activities or to recover Response Costs
5 incurred or to be incurred in the future in connection with the
6 Montrose NPL Site under Section 7002 of RCRA, 42 U.S.C. § 6972.

7 13. The covenants set forth in Paragraph 12 pertain only to
8 matters expressly specified therein, and extend only to CBS. Any
9 claim or defense which the United States or the State has against
10 any other person or entity not a party to this Decree is
11 expressly reserved. The United States and the State reserve, and
12 this Decree is without prejudice to, all other rights and claims
13 against CBS with respect to all other matters, including but not
14 limited to, the following:

15 A. any and all claims against CBS based upon or resulting
16 from a failure to meet a requirement of this Decree;

17 B. claims for criminal liability;

18 C. claims for violations of any other federal or state law
19 or permit; or

20 D. claims arising from the presence of a hazardous
21 substance at any location outside of the Montrose NPL Site,
22 including but not limited to the Del Amo NPL Site as it may be
23 defined by EPA.

24 14. A. In addition to the reservations set out in
25 Paragraph 13, the United States and the State reserve, and this
26 Decree is without prejudice to, the right to institute
27 proceedings in this action or in a new action seeking to compel
28 CBS to take a response action or reimburse the United States or

1 the State for additional Response Costs if subsequent to the Date
2 of Lodging of this Decree:

3 1. the United States or the State receives, in whole
4 or in part, information unknown to EPA, DTSC or the Regional
5 Board as of the Date of Lodging of this Decree, indicating that
6 after the Date of Lodging of this Decree CBS released one or more
7 hazardous substances that come to be located at the Palos Verdes
8 shelf, and that EPA, DTSC or the Regional Board determines may be
9 a threat to human health or the environment, provided that the
10 foregoing shall not be deemed to apply to any re-exposure or
11 resuspension on the Palos Verdes shelf of the DDT or PCB-
12 contaminated sediments currently located there, including but not
13 limited to, such re-exposure or resuspension of sediments
14 resulting from:

15 (a) LACSD's sampling activities (by coring, trawling or
16 otherwise);

17 (b) LACSD's institution of full secondary treatment of
18 wastewater at the JWPCP and the discharge of such wastewater
19 through the White's Point Outfall;

20 (c) any response activity or similar activity performed by
21 or at the direction of any Federal or State governmental
22 body or any other person;

23 (d) any act of God; or

24 (e) an earthquake.

25 2. the United States or the State discovers a
26 condition at the Montrose NPL Site, that EPA, DTSC or the
27 Regional Board determines may be a threat to human health or
28

1 welfare or the environment, and that was unknown to EPA, DTSC or
2 the Regional Board prior to the Date of Lodging of this Decree.
3 B. CBS reserves its right to contest any claims allowed by
4 Paragraphs 14.A.1 or 14.A.2 of this Decree, and CBS does not by
5 consenting to this Decree waive any defenses to such claims,
6 except that CBS covenants not to assert, and may not maintain,
7 any defense based upon principles of waiver, res judicata,
8 collateral estoppel, issue preclusion, claim splitting or other
9 defense based upon the contention that the claims that are
10 allowed by Paragraphs 14.A.1 or 14.A.2 of this Decree were or
11 should have been brought in the instant case. In the event that
12 the United States or the State institutes proceedings under
13 Paragraphs 14.A.1 or 14.A.2 of this Decree, CBS reserves the
14 right to assert potential cross-claims, counterclaims or third
15 party claims against the United States, the State, or any
16 employee, officer, agency or instrumentality thereof, relating to
17 such claims asserted by the United States or the State, and the
18 agencies or instrumentalities thereof. Nothing in this Decree
19 shall be deemed to constitute preauthorization of a claim within
20 the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40
21 C.F.R. § 300.700(d).

22 COVENANTS BY CBS

23 15. A. Subject to Paragraph 9.C, CBS hereby covenants not
24 to sue or to assert any administrative claim or cause of action
25 of any kind against the United States, or any employee, officer,
26 agency or instrumentality thereof, and/or against the State, or
27 any employee, officer, agency or instrumentality thereof (but not
28 including counties, cities, local governmental entities or

1 sanitation districts), for Natural Resource Damages including,
2 but not limited to, the counterclaims asserted in CBS's Answer to
3 the Complaint in this action, claims arising pursuant to any
4 other federal law, state law or common law, including, but not
5 limited to, any direct or indirect claim pursuant to Section 112
6 of CERCLA, 42 U.S.C. § 9612, against the Hazardous Substance
7 Superfund, any claim pursuant to Section 113(f) of CERCLA, 42
8 U.S.C. § 9613(f), for contribution, any claim pursuant to the
9 Federal Tort Claims Act, 28 U.S.C. §§ 1346(b) and 2671, et seq.,
10 or any claim arising from any express or implied contract
11 pursuant to 28 U.S.C. § 1346(a)(2) or 28 U.S.C. § 1491(a)(1).

12 B. Subject to Paragraph 14.B, CBS hereby covenants not to
13 sue and agrees not to assert any administrative claim or cause of
14 action of any kind against the United States, or any employee,
15 officer, agency or instrumentality thereof, and/or the State, or
16 any employee, officer, agency or instrumentality thereof (but not
17 including counties, cities, local governmental entities or
18 sanitation districts) with respect to the Montrose NPL Site,
19 including but not limited to (1) any direct or indirect claim for
20 reimbursement from the Hazardous Substance Superfund established
21 pursuant to 26 U.S.C. § 9507, under CERCLA Sections 106(b)(2),
22 111, 112 or 113, 42 U.S.C. §§ 9606(b)(2), 9611, 9612 or 9613, any
23 claim pursuant to the Federal Tort Claims Act, 28 U.S.C. §§
24 1346(b) and 2671 et seq., or any claim arising from any express
25 or implied contract pursuant to 28 U.S.C. § 1346(a)(2) or 28
26 U.S.C. § 1491(a)(1), or any claim pursuant to the California
27 Hazardous Substance Account Act, California Health and Safety
28 Code §§ 25300, et seq., or under any other provision of law; (2)