

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

3 ADAM M. KUSHNER  
4 STEVEN O'ROURKE  
Environmental Enforcement Section  
5 Environment & Natural Resources Division  
United States Department of Justice  
6 P.O. Box 7611  
Washington, D.C. 20044  
7 Telephone: (202) 514-4046

8 NORA M. MANELLA  
United States Attorney  
9 LEON W. WEIDMAN  
Assistant United States Attorney  
10 Chief, Civil Division  
LAWRENCE KOLE  
11 Assistant United States Attorney  
300 North Los Angeles Street  
12 Los Angeles, California 90012  
Telephone: (213) 894-0474

13 Attorneys for Plaintiff United States of America  
14 (See next page for names of additional counsel.)

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

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

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

18 UNITED STATES OF AMERICA and )  
STATE OF CALIFORNIA, )  
19 )  
20 Plaintiffs, )  
21 v. )  
22 MONTROSE CHEMICAL CORPORATION )  
OF CALIFORNIA, et al., )  
23 )  
24 Defendants. )  
25 AND RELATED COUNTER, CROSS, )  
AND THIRD PARTY ACTIONS. )  
26 )

NO. CV 90-3122-AAH (JRx)  
AMENDMENT TO THE  
MAY 19, 1992 CONSENT DECREE

27 ... DOCKETED  
28 ... MLD COPY PYS  
... MLD NOTICE PYS  
... N JS-6  
AUG 24 1999

*Ent 90-3122*

FILED  
CLERK, U.S. DISTRICT COURT  
AUG 19 1999  
CENTRAL DISTRICT OF CALIFORNIA  
DEPUTY

ENTERED  
CLERK, U.S. DISTRICT COURT  
AUG 24 1999  
CENTRAL DISTRICT OF CALIFORNIA  
BY DEPUTY

10050

NOV 16 1999  
U.S. DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
LOS ANGELES

673

ENTERED ON ICMS  
AUG 24 1999  
CV

1 DANIEL E. LUNGREN  
Attorney General of the State of California

2 RICHARD M. FRANK  
3 CHARLES GETZ  
Assistant Attorneys General

4 JOHN A. SAURENMAN  
5 CLARA L. SLIFKIN  
BRIAN W. HEMBACHER  
6 Deputy Attorney General  
300 South Spring Street  
7 Los Angeles, California 90013  
Telephone: (213) 897-2702; (213) 897-9442  
8  
Attorneys for Plaintiff State of California  
9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

AMENDMENT TO CONSENT DECREE

This Amendment to the May 19, 1992 Consent Decree ("Amendment") is made and entered into by and among the United States of America ("the United States"), on behalf of the National Oceanic and Atmospheric Administration ("NOAA"), the Department of the Interior ("DOI"), and the United States Environmental Protection Agency ("EPA"), and the State of California, on behalf of the State Lands Commission, the Department of Fish and Game, the Department of Parks and Recreation, the Department of Toxic Substances Control ("DTSC"), and the California Regional Water Quality Control Board, Los Angeles Region ("Regional Board") (the above-referenced federal and state agencies are hereafter collectively referred to as the "Governmental Parties"), Potlatch Corporation ("Potlatch"), Simpson Paper Company ("Simpson"), and Simpson Investment Company.

INTRODUCTION

A. Potlatch or its predecessor owned and operated a paper manufacturing plant in Pomona, California from 1952 until 1979. Simpson purchased the paper plant in 1979 and owned and operated the plant through July 8, 1998. The paper manufacturing plant is neither a part of the Montrose National Priorities List ("NPL") Site as listed on the National Priorities List, nor part of the "Montrose NPL Site" as that term is defined in Paragraph 7.I of the Definition Section of this Amendment. Unless specified otherwise, the term "Montrose NPL Site" when used herein shall be interpreted consistent with the meaning ascribed to it in Paragraph 7.I of this Amendment. At various times

1 during operation of the plant, wastewater has been discharged  
2 from the plant into the County Sanitation District No. 2 of Los  
3 Angeles County ("LACSD") sewer lines through LACSD's Joint Water  
4 Pollution Control Plant ("JWPCP") and White's Point Outfall into  
5 the Pacific Ocean and onto the Palos Verdes shelf (hereinafter  
6 "Palos Verdes shelf" or "Shelf"). The Governmental Parties have  
7 alleged in this action that wastewater discharged from the plant  
8 and eventually onto the Palos Verdes shelf contained hazardous  
9 substances, including polychlorinated biphenyls ("PCBs").

10 B. The United States, on behalf of NOAA and DOI in  
11 their capacities as natural resource trustees (hereafter the  
12 "Federal Trustees"), and the State of California, on behalf of  
13 the State Lands Commission, the Department of Fish and Game and  
14 the Department of Parks and Recreation in their capacities as  
15 natural resource trustees (hereafter the "State Trustees") (the  
16 Federal and State Trustees collectively are referred to as "the  
17 Trustees"), entered into a Consent Decree ("1992 Decree") with  
18 Potlatch and Simpson. The 1992 Decree was approved and entered  
19 by this Court on May 19, 1992. A copy of the 1992 Decree is  
20 appended hereto as Exhibit "A".

21 C. The 1992 Decree resolved the liability of the  
22 Settling Defendants under the First Claim for Relief of the  
23 Second Amended Complaint (the "Complaint.") The First Claim for  
24 Relief, which was filed on behalf of the Trustees only, seeks  
25 natural resource damages at "the Site," as that term is defined  
26 in Paragraph 7(F) of the 1992 Decree, including related damage  
27 assessment and response costs, pursuant to Section 107(a)(4)(C)  
28 of CERCLA, 42 U.S.C. § 9607(a)(4)(C), for injury to, destruction

1 of, and loss of natural resources resulting from releases of  
2 hazardous substances, including dichloro-diphenyl trichloroethane  
3 and its metabolites (hereinafter collectively "DDT"), and PCBs,  
4 from facilities in and around Los Angeles, California, into the  
5 environment, including the Montrose Natural Resource Damages Area  
6 ("Montrose NRD Area"), as defined herein, which encompasses the  
7 Palos Verdes shelf, against ten defendants, including Potlatch  
8 and Simpson.

9           D. At the time the 1992 Decree was entered, EPA did  
10 not allege liability against the Settling Defendants with respect  
11 to the Second Claim for Relief of the Complaint. As described in  
12 the Complaint, the Second Claim for Relief, which was filed on  
13 behalf of EPA only, seeks recovery of response costs, pursuant to  
14 Section 107(a)(1-4)(A) of CERCLA, 42 U.S.C. § 9607(a)(1-4)(A),  
15 incurred and to be incurred by the United States in response to  
16 releases or threatened releases of hazardous substances into the  
17 environment at and from the Montrose DDT Plant Property.

18           E. The 1992 Decree did not address the Second Claim  
19 for Relief of the Complaint, but Paragraph 15.D of the 1992  
20 Decree expressly reserved the rights of the parties to address  
21 this claim in the future. This Amendment represents the  
22 Governmental Parties' and Settling Defendants' agreement to now  
23 settle all issues between the parties concerning the Second Claim  
24 For Relief.

25           F. EPA is the lead agency with regard to the conduct  
26 of response activities at the Montrose NPL. The State of  
27 California, through DTSC and the Regional Board (as support  
28 agencies), also participates in Montrose NPL Site response

1 activities consistent with Subpart F of CERCLA's National  
2 Contingency Plan, 40 C.F.R. §§ 300.500 - 300.525. While the  
3 State has not filed a claim in the instant action to recover  
4 Response Costs incurred and to be incurred at the Montrose NPL  
5 Site, DTSC and the Regional Board have incurred Response Costs in  
6 connection with the Montrose NPL Site. At the time the 1992  
7 Decree was entered, EPA had not investigated the Palos Verdes  
8 shelf.

9           G. During the settlement negotiations concerning the  
10 1992 Decree, the Trustees and Potlatch and Simpson recognized  
11 that EPA had undertaken response activities at the Montrose NPL  
12 Site (exclusive of the Palos Verdes shelf), pursuant to its  
13 authority under CERCLA, and that EPA's investigation of the  
14 releases at and from the Montrose DDT Plant Property was  
15 continuing in nature. At that time, EPA's investigation included  
16 the Montrose DDT Plant Property, LACSD's Joint Outfall ("J.O.")  
17 "D" and District 5 Interceptor sewer lines, and the storm water  
18 pathway from the former Montrose DDT Plant Property downstream to  
19 the Consolidated Slip. In addition, the Trustees and Potlatch  
20 and Simpson understood that it was possible that EPA could  
21 initiate an investigation of the Palos Verdes shelf in the  
22 future.

23           H. During the settlement negotiations concerning the  
24 1992 Decree, the Trustees and Potlatch and Simpson further  
25 recognized that EPA had conducted a preliminary evaluation under  
26 CERCLA of the Santa Monica Bay (hereafter referred to as "the  
27 Santa Monica Bay CERCLIS Site"), which included evaluation of  
28 portions of the Site, as defined in Paragraph 7.F of the 1992

1 Decree, such as the Palos Verdes shelf and the Los Angeles and  
2 Long Beach Harbors. Moreover, during settlement negotiations the  
3 Trustees and Potlatch and Simpson were aware that on September  
4 17, 1990, after the filing of this action, EPA had determined  
5 that it would conduct no further investigation or remedial action  
6 under CERCLA regarding the Santa Monica Bay CERCLIS Site. At the  
7 time of settlement negotiations, contamination of the sediments  
8 on the Palos Verdes shelf had been excluded by EPA from its  
9 evaluation of the Santa Monica Bay CERCLIS Site. The Trustees  
10 and Potlatch and Simpson were further aware that the EPA retained  
11 authority to undertake response actions on the Palos Verdes  
12 shelf. Thus, the Trustees and Potlatch and Simpson expressly  
13 stated in the 1992 Decree that EPA's determination to take no  
14 further action with respect to the Santa Monica Bay CERCLIS Site  
15 was subject to reconsideration by EPA. Further, the Governmental  
16 Parties and Potlatch and Simpson agreed that nothing in the 1992  
17 Decree was intended to affect the authority or the jurisdiction  
18 of EPA to take response actions on the Palos Verdes shelf, and  
19 accordingly the 1992 Decree specifically reserved the authority  
20 of EPA to take such actions.

21 I. Utilizing settlement monies that have been paid to  
22 the Trustees under the 1992 Decree by Potlatch and Simpson and  
23 other available funds, the Trustees have performed a natural  
24 resource damage assessment relating to DDT and PCB contamination  
25 of the Montrose NRD Area, with particular focus on the Palos  
26 Verdes shelf and the assessment of injuries to natural resources  
27 related to that contamination. Based upon, inter alia, the  
28 information developed and assembled in connection with the

1 Trustees' damage assessment relating to DDT and PCB contamination  
2 of the offshore area alleged in the First Claim for Relief, EPA  
3 has determined that this contamination may pose a threat to the  
4 public health or welfare or to the environment. EPA, therefore,  
5 has now initiated an investigation of the Palos Verdes shelf  
6 portion of the Montrose NRD Area comprised of the offshore area  
7 contaminated by DDT and PCBs released into the LACSD sewer lines  
8 and subsequently deposited in the sediments on the Palos Verdes  
9 shelf near the White's Point Outfall (hereinafter the "Palos  
10 Verdes Shelf Investigation"). EPA's Palos Verdes Shelf  
11 Investigation includes the effluent-affected DDT and PCB  
12 contaminated sediment described and discussed in Lee, H., The  
13 Distribution and Character of Contaminated Effluent-Affected  
14 Sediment, Palos Verdes Margin, Southern California (October  
15 1994). For purposes of this Amendment, the term "Montrose NPL  
16 Site" has been defined to include the area comprising the Palos  
17 Verdes Shelf Investigation. As of May 18, 1998, EPA had not,  
18 however, extended either its Palos Verdes Shelf Investigation or  
19 its investigation of releases from the Montrose DDT Plant  
20 Property to include the Los Angeles and the Long Beach Harbors  
21 (other than the Consolidated Slip in Los Angeles Harbor). EPA  
22 has lead agency responsibility for all CERCLA response activities  
23 on the Palos Verdes shelf. On July 10, 1996, EPA initiated an  
24 Engineering Evaluation and Cost Analysis ("EE/CA") to address  
25 contaminated sediments on the Palos Verdes shelf. EPA may  
26 determine as a result of the EE/CA that no action or further  
27 action is warranted. Whether or not response activities are  
28 undertaken by EPA with respect to the Palos Verdes shelf, EPA's



1 decision with respect to the scope of EPA response activities  
2 will take the place of the physical restoration actions for the  
3 Palos Verdes shelf that the Trustees contemplated at the time the  
4 1992 Decree was entered. EPA has and will use, inter alia, the  
5 results of the studies conducted by the Trustees in evaluating  
6 and determining the appropriate response activities, if any, to  
7 be taken on the Palos Verdes shelf. To avoid unnecessary  
8 duplication of effort, EPA will coordinate all activities  
9 undertaken by federal and state agencies at the Montrose NRD Area  
10 pursuant to its authority under CERCLA.

11 J. The Trustees and Potlatch and Simpson entered into  
12 the 1992 Decree settling the First Claim for Relief against the  
13 Settling Defendants based upon the facts known to the Trustees  
14 and Potlatch and Simpson at that time. Those facts indicated  
15 that the contamination on the Palos Verdes shelf would be  
16 addressed through the authority of the Trustees to collect  
17 natural resource damages rather than through EPA's authority to  
18 undertake response activities. The Governmental Parties'  
19 intentions regarding the manner in which to address, and by whom,  
20 the DDT and PCB contamination on the Palos Verdes shelf have now  
21 changed, requiring amendment of the 1992 Decree.

22 K. The Trustees and Potlatch and Simpson understood  
23 and expressly acknowledged in the 1992 Decree that activities  
24 undertaken by the Trustees to assess natural resource damages and  
25 to restore, replace or acquire equivalent natural resources at  
26 the Montrose NRD Area, as defined herein, may include activities  
27 of a type, i.e., investigation of the level of contamination in  
28 the sediments, and capping of contaminated sediments, that EPA

1 and DTSC might perform or require to be performed under the  
2 authority in Sections 104 and 106 of CERCLA, 42 U.S.C. §§ 9604  
3 and 9606, to remove, arrange for the removal of, and provide for  
4 remedial action relating to hazardous substances. The Trustees  
5 and the Settling Defendants further recognized and expressly  
6 acknowledged in the 1992 Decree that to avoid unnecessary  
7 duplication of effort, the Governmental Parties would coordinate  
8 all activities undertaken by federal and state agencies at the  
9 Montrose NRD Area pursuant to their authority under CERCLA,  
10 including, but not limited to, natural resource damage  
11 assessments, restoration, replacement and acquisition activities,  
12 and response actions.

13           L. Potlatch and Simpson and the Trustees believed at  
14 the time the 1992 Decree was entered, and continue to believe,  
15 that the actions contemplated by the Trustees would eliminate  
16 threats to the environment that could give rise to the need for  
17 involvement by EPA in the future. The Settling Defendants  
18 contend that the elimination of the possibility of future EPA  
19 response activities with respect to the Palos Verdes shelf was a  
20 substantial factor in Potlatch's and Simpson's decision to  
21 resolve the First Claim for Relief and to commit to the payment  
22 obligations agreed upon in the 1992 Decree.

23           M. The 1992 Decree further expressly set forth that  
24 the settlement between the Trustees and the Settling Defendants  
25 was based on factors including, but not limited to, Potlatch's  
26 and Simpson's degree of involvement in the contamination alleged,  
27 the relative volumetric share of contamination contributed by  
28 Potlatch and Simpson, the alleged natural resource damages and

1 estimated cost of restoration activities at the Montrose NRD  
2 Area, including possible capping, dredging, treatment of  
3 contaminated sediments and replacement or acquisition of  
4 equivalent resources, and Potlatch's and Simpson's cooperation in  
5 resolving their liability at an early stage of this litigation.

6 N. Pursuant to the requirements of Paragraphs 8  
7 through 12 of the 1992 Decree, Potlatch and Simpson agreed to pay  
8 a total sum of \$12,000,000 in three equal installments to the  
9 Trustees, commencing in 1992, an amount which the Trustees and  
10 Potlatch and Simpson believed, and the Court found, represented  
11 Potlatch's and Simpson's fair share of the cost of assessing the  
12 environmental conditions at the Montrose NRD Area, including the  
13 Palos Verdes shelf, and implementing any of the contemplated  
14 restoration actions. Potlatch and Simpson have made all payments  
15 required by Paragraphs 8 through 12 of the 1992 Decree.

16 O. The Settling Defendants assert that the Trustees'  
17 decision not to proceed with the physical restoration component  
18 of the contemplated natural resource damage restoration  
19 activities and to instead address contamination on the Palos  
20 Verdes shelf through EPA-initiated response activities gives rise  
21 to a claim for rescission of the contractual agreement embodied  
22 in the 1992 Decree and entitles them to a refund of monies  
23 already paid to the Trustees.

24 P. The Plaintiffs reject and dispute the contention  
25 that the Settling Defendants have any claim for rescission.  
26 Plaintiffs assert that in particular, the 1992 Decree did not  
27 compromise or limit in any way the authority of EPA. In  
28 addition, Plaintiffs assert that the 1992 Decree expressly

1 reserves the authority of EPA to take response actions with  
2 respect to the Palos Verdes shelf and to bring suit against  
3 Potlatch and Simpson to recover the resulting response costs or  
4 to compel others to take appropriate response actions.  
5 Plaintiffs further assert that these provisions of the 1992  
6 Decree were vigorously sought by and bargained for by Plaintiffs  
7 as part of the substantial arms-length negotiations with Settling  
8 Defendants embodied in the 1992 Decree.

9           Q. To avoid potential litigation between the Trustees  
10 and the Settling Defendants over their claim for rescission of  
11 the 1992 Decree, fulfill the Governmental Parties' obligation  
12 under the 1992 Decree to give equitable consideration to the  
13 existing settlement, and acknowledge that the physical  
14 restoration actions planned by the Trustees for the Palos Verdes  
15 shelf will now be performed by EPA (should such actions be  
16 performed at all) under its authority to undertake response  
17 activities, the Governmental Parties and the Settling Defendants  
18 agree that: (1) Settling Defendants will not seek return of  
19 monies previously paid to the Trustees pursuant to the 1992  
20 Consent Decree, (2) EPA and DTSC will use the final payment by  
21 Settling Defendants to pay a portion of the response costs  
22 incurred by EPA and DTSC, and (3) the Governmental Parties will  
23 execute this Amendment resolving the Settling Defendants'  
24 potential liability with respect to any claims against the  
25 Settling Defendants with respect to the Montrose NPL Site and the  
26 Montrose NRD Area.

27           R. The Governmental Parties and the Settling  
28 Defendants, with this Amendment, acknowledge that EPA has assumed

1 the lead responsibility for addressing the contaminated sediments  
2 on the Palos Verdes shelf. By this Amendment, the Settling  
3 Defendants have assented to the final payment being reallocated  
4 to pay Response Costs relating to EPA's investigation of, and  
5 potential response activity with respect to, the effluent-  
6 affected sediments on the Palos Verdes shelf instead of damage  
7 assessment costs and natural resource damages relating to the  
8 Montrose NRD Area, even though based on the factors and  
9 considerations recited below the Settling Defendants could have  
10 argued that they were entitled to pay less. The Governmental  
11 Parties current estimate of total damages and costs for  
12 settlement purposes is between \$225 million and \$250 million. By  
13 this Amendment, the Governmental Parties acknowledge and the  
14 Settling Defendants confirm that they understand that any source  
15 control related to the contaminated offshore sediments undertaken  
16 through response activities determined to be necessary by EPA at  
17 the Palos Verdes shelf will more than likely be based upon an  
18 evaluation of similar approaches, involving similar types of  
19 controls and lower costs, and achieving similar results, as would  
20 have been obtained through physical restoration by the Trustees  
21 of those same portions of the Montrose NRD Area had that action  
22 been taken by the Trustees. By this Amendment, the Governmental  
23 Parties' acknowledge and the Settling Defendants confirm that  
24 they understand that EPA has greater statutory and administrative  
25 flexibility than the Trustees in the manner in which it  
26 undertakes response actions. Because some of the monies paid by  
27 the Settling Defendants have been spent on the damage assessment  
28 conducted by the Trustees and therefore benefitted both EPA and

1 the Trustees in determining the nature, extent and effects of the  
2 contamination, the Governmental Parties and the Settling  
3 Defendants have determined that the amount already paid by the  
4 Settling Defendants represents their fair and appropriate share  
5 of the total current estimated costs for remediation/restoration  
6 of the Palos Verdes shelf DDT and PCB contaminated sediments. In  
7 addition, because the amount already paid was based upon, inter  
8 alia, the then current estimates of total natural resource  
9 damages and response costs, which estimates were the most likely  
10 to reflect actual agency actions and which actions are still  
11 likely at the present time, the Governmental Parties and the  
12 Settling Defendants agree that the total amount to be paid by the  
13 Settling Defendants should, in fairness, remain the same. By  
14 agreeing to payment of that amount, the Settling Defendants both  
15 assumed the risk that such total amount might later prove to have  
16 been overestimated and obtained protection against the  
17 possibility that such total amount might later prove to have been  
18 underestimated; and it would be unfair to now re-subject them to  
19 that risk and deny them that protection. In addition, the  
20 greater flexibility afforded to EPA in undertaking response  
21 actions is expected to result in the incurrence of lower Response  
22 Costs associated with actions similar to those initially  
23 considered by the Trustees. Another factor supporting the  
24 fairness of the settlement is the volume of contaminants alleged  
25 to have been released by Potlatch and Simpson compared to the  
26 other generator defendants. Potlatch and Simpson are alleged to  
27 have released approximately 4,500 pounds of PCBs and are one of a  
28 number of PCB dischargers compared to the Montrose-affiliated

1 defendants (Montrose Chemical Corporation of California, Chris-  
2 Craft Industries, Inc., Rhone poulenc Basic Chemicals Co., now a  
3 division of Rhone-Poulenc Inc., ZENECA Holdings, Inc. formerly  
4 known as ICI Americas Holdings, Inc., Atkemix Thirty-Seven, Inc.,  
5 and Stauffer Management Company ) who are responsible for the  
6 vast majority of DDT discharged to the Palos Verdes shelf,  
7 estimated by Plaintiffs to be approximately 5.5 million pounds.  
8 When due weight is given to these factors, and all other relevant  
9 factors, the Governmental Parties and the Settling Defendants  
10 agree there should be no change in the amount of monetary  
11 compensation.

12           S. Settling Parties agree and acknowledge that, with  
13 respect to the geographical area encompassed by the Montrose NPL  
14 Site, entry of this Amendment is in accordance with Plaintiffs'  
15 obligation under the 1992 Decree to consider the settlement  
16 embodied in the 1992 Decree as an equitable factor in evaluating  
17 settlement of response cost claims with respect to the Montrose  
18 NRD Area.

19           T. This Amendment is made in good faith after arms-  
20 length negotiations conducted under the supervision of Special  
21 Master Harry V. Peetris pursuant to Pretrial Order No. 1. Entry  
22 of this Amendment is the most appropriate means to resolve the  
23 matters covered herein and is fair, reasonable, equitable, and in  
24 the public interest.

25           U. The Governmental Parties have determined that the  
26 entry of this Amendment is in the public interest. This  
27 Amendment is not intended to affect in any way the Governmental  
28 Parties' claims against any non-settling defendant.