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

ADAM M. KUSHNER
WILLIAM A. WEINISCHKE
KATHRYN SCHMIDT
STEVEN O'ROURKE
JON A. MUELLER
PHILLIP A. BROOKS
Environmental Enforcement Section
Environment & Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044
Telephone: (202) 514-4046

NORA M. MANELLA
United States Attorney
LEON W. WEIDMAN
Assistant United States Attorney
Chief, Civil Division
KURT ZIMMERMAN
Assistant United States Attorney
Federal Building
300 North Los Angeles Street
Los Angeles, California 90012
Telephone: (213) 894-2408

Attorneys for Plaintiff United States of America

(See next page for names of additional counsel.)

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA and STATE OF CALIFORNIA, Plaintiffs, v. MONTROSE CHEMICAL CORPORATION OF CALIFORNIA, et al., Defendants. AND RELATED COUNTER, CROSS, AND THIRD PARTY ACTIONS.	NO. CV 90-3122-AAH (JRx) AMENDED CONSENT DECREE

DANIEL E. LUNGREN
Attorney General of the State of California

JAN S. STEVENS
CHARLES GETZ
Assistant Attorneys General

JOHN A. SAURENMAN
CLARA L. SLIFKIN
BRIAN W. HEMBACHER
Deputy Attorney General
300 South Spring Street
Los Angeles, California 90013
Telephone: (213) 897-2702; (213) 897-9442

SARA J. RUSSELL
Deputy Attorney General
2101 Webster Street
Oakland, California 94612
Telephone: (510) 286-0845

Attorneys for Plaintiff State of California

AMENDED CONSENT DECREE

This Amended Consent Decree ("Amended Decree") 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 ("State"), on behalf of the State Lands Commission, the Department of Fish & Game, and 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"), Defendant County Sanitation District No. 2 of Los Angeles County ("LACSD"), and the other entities listed in Attachment A hereto, which are hereafter collectively referred to as the "Settling Local Governmental Entities" except where otherwise specifically provided. This Amended Decree is not intended to affect in any way the United States' and the State's claims against any entity other than LACSD and those other entities listed in Attachment A.

INTRODUCTION

The United States, on behalf of NOAA and DOI in their capacities as natural resource trustees (hereafter the "Federal Trustees"), and on behalf of EPA, and the State, on behalf of the State Lands Commission, the Department of Fish & Game and the Department of Parks and Recreation in their capacities as natural resource trustees (hereafter the "State Trustees") (the Federal Trustees and State Trustees collectively are referred to as "the Trustees"), filed the original complaint in this action on June 18, 1990, under Section 107 of the Comprehensive Environmental

Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9607, seeking, inter alia, recovery for damages, including damage assessment costs and related response costs, for injury to, destruction of, and loss of natural resources resulting from releases of hazardous substances, specifically including dichlorodiphenyltrichloroethane and its metabolites (hereafter collectively "DDT"), and polychlorinated biphenyls (hereafter "PCBs"), from facilities in and around Los Angeles, California, into the environment, including the area defined herein as the Montrose Natural Resource Damages Area (the "Montrose NRD Area"), and for response costs incurred and to be incurred by EPA in connection with releases of hazardous substances into the environment from the Montrose Chemical Corporation site located at 20201 South Normandie Avenue, Los Angeles, California. The original complaint was amended on June 28, 1990, and again on August 16, 1991 ("Second Amended Complaint" or "Complaint"). Defendant LACSD filed its answer to the Complaint and counterclaims against the United States and the State on September 30, 1991.

In the First Claim for Relief of the Complaint, plaintiffs asserted a claim against ten defendants, including LACSD, under Section 107(a)(1-4)(C) of CERCLA, 42 U.S.C. § 9607(a)(1-4)(C), for the alleged natural resource damages, including damage assessment costs and related response costs. In the Second Claim for Relief of the Complaint, the United States asserts a claim for recovery of costs incurred and to be incurred by EPA in response to the release or threatened release of hazardous substances into the environment at the Montrose NPL Site, as described in the Complaint, pursuant to Section 107(a)(1-4)(A) of CERCLA, 42 U.S.C. § 9607(a)(1-4)(A).

The Second Claim for Relief, brought at the request of and on behalf of EPA, does not allege liability on the part of any of the Settling Local Governmental Entities.

EPA is the lead agency with regard to the conduct of response activities at the Montrose NPL Site. The State, through its support agencies DTSC and the Regional Board, also participates in Montrose NPL Site response activities consistent with Subpart F of CERCLA's National Contingency Plan, 40 C.F.R. §§ 300.500 - 300.525. While the State has not filed a claim in the instant action to recover response costs incurred and to be incurred at the Montrose NPL Site, DTSC and the Regional Board have incurred response costs in connection with the Montrose NPL Site.

The Montrose NPL Site was placed on the National Priorities List of Superfund Sites in October 1989. CERCLA and the National Contingency Plan ("NCP") require that a site investigation gather the data necessary to assess the threat to human health and the environment of actual or threatened releases of hazardous substances from a facility, to include any place where a hazardous substance has come to be located. Consistent with those requirements, EPA's continuing investigation of the Montrose NPL Site indicates that the Montrose NPL Site is contaminated significantly by DDT and other hazardous substances released during the manufacture of DDT, with DDT and those other hazardous substances present at the Montrose NPL Site in soil, groundwater, stormwater channel sediments, and sediments in portions of LACSD's Joint Outfall ("J.O.") "D" and District 5 Interceptor sewer lines. As a result of the ongoing investigation of the Montrose NPL Site, a series of response activities is currently underway, including a

remedial investigation and a feasibility study ("RI/FS") of the DDT contaminated soil and groundwater underlying the Montrose DDT Plant Property and surrounding areas of the Montrose NPL Site, the conduct of a time-critical removal action at the Montrose NPL Site to investigate and remove Montrose DDT from soil in residential areas within four blocks of the Montrose DDT Plant Property, the conduct of an Engineering Evaluation and Cost Analysis ("EE/CA") to investigate the aerial fallout of DDT dust emitted from the former Montrose DDT plant on residential and commercial areas in close proximity to the Montrose DDT Plant Property, and the conduct of a removal action to remove DDT contaminated sediments from the J.O. "D" sewer adjacent to and downstream of the Montrose DDT Plant Property.

In addition, as a result of information developed and assembled, inter alia, in connection with the Trustees' damage assessment relating to DDT and PCB contamination of the offshore area alleged in the First Claim for Relief in this action, EPA has extended its Montrose NPL Site investigation to include that portion of the Montrose NRD Area comprised of the offshore area contaminated by DDT and PCBs released into the LACSD sewer lines and subsequently deposited in the sediments of the Palcs Verdes shelf near the White's Point Outfall. EPA has not, however, extended its investigation of the Montrose NPL Site to include the Los Angeles and the Long Beach Harbors (other than the Consolidated Slip in Los Angeles Harbor).

Certain of the defendants filed cross-complaints and third party complaints alleging that some or all of the Settling Local Governmental Entities named in Attachment A are also liable for

damages and response costs related to the alleged natural resource injuries associated with the Montrose NRD Area and for response costs at the Montrose NPL Site. The bases for liability on the part of the Settling Local Governmental Entities as alleged in the cross-complaints and third party complaints relate primarily to the involvement of those entities in the provision of public services such as the collection, conveyance, treatment, and disposal of wastewater and disposal of residuals; collection and conveyance of stormwater runoff; ownership and operation of portions of the contaminated facilities, including portions of the Montrose NPL Site; and pest and vector control; and their alleged involvement as arrangers for transport, disposal or treatment and/or as transporters of hazardous substances; and their alleged involvement as owner/operators of facilities where hazardous substances have been treated or disposed. These claims have been brought under federal and state law.

The federal law claims, brought under CERCLA, are based in part on the Settling Local Governmental Entities' alleged involvement as present and past owners and/or operators of facilities at which hazardous substances were disposed by the generator defendants, as persons who arranged for transport, disposal or treatment of hazardous substances, and as persons who accepted hazardous substances for transport to disposal or treatment facilities. As alleged in the cross-complaints and the third party complaints, the state law claims, brought under statutory and common law, are based in part on the Settling Local Governmental Entities' alleged statutory and common law responsibilities, alleged involvement in releases of various

substances, their relationship to other dischargers, and their alleged responsibility for contamination and conditions in the contaminated areas, including the Montrose NPL Site. A broad range of relief is sought in the cross-complaints and third party complaints, including costs incurred and to be incurred and damages, including natural resource damages relating to the allegations in the First Claim for Relief and to the Montrose NPL Site.

Subsequent to the filing of this action, plaintiffs and the Settling Local Governmental Entities entered into settlement negotiations under the supervision of Special Master Harry V. Peetris pursuant to Pretrial Order No. 1, dated March 18, 1991. Those negotiations occurred over the ensuing seventeen month period and resulted in a consent decree that resolved the liability of all of those entities to plaintiffs for natural resource damages and for response costs at the Montrose NPL Site as defined in the consent decree approved by the District Court on April 26, 1993 (the "1993 Decree"). The District Court approved the 1993 Decree without the Special Master having informed the District Court of the total amount of damages being sought by the Trustees in order to avoid the impairment of the ongoing settlement negotiations with the non-settling defendants.

At the time of the settlement negotiations concerning the 1993 Decree, the signatories to the 1993 Decree (including these Settling Local Governmental Entities) and the other defendants were aware that in addition to response activities undertaken under CERCLA at the Montrose NPL Site, EPA had conducted a preliminary evaluation under CERCLA of contamination in the Santa Monica Bay

(hereafter referred to as "the Santa Monica Bay CERCLIS Site"), which included an evaluation of portions of the Palos Verdes shelf. The signatories to the 1993 Decree further understood that on September 17, 1990, after the filing of this action, EPA determined that it would conduct no further investigation or response activities under CERCLA regarding the Santa Monica Bay CERCLIS Site. The signatories to the 1993 Decree understood that EPA's "no further action" determination was subject to reconsideration by EPA, and that nothing in the 1993 Decree was intended to affect the authority or jurisdiction of EPA to take further action. Moreover, the 1993 Decree specifically reserved the authority of EPA to take further action. The signatories to the 1993 Decree also understood that DDT contamination on the Palos Verdes shelf was excluded from EPA's preliminary evaluation of the Santa Monica Bay CERCLIS Site and was deferred for possible future evaluation as part of the Montrose NPL Site in the event that EPA decided to extend the Montrose NPL Site investigation to the Palos Verdes shelf, which EPA has now done.

In addition, the signatories to the 1993 Decree understood at the time of the negotiation of the 1993 Decree that EPA's investigation of the Montrose NPL Site was continuing. At that time, the signatories to the 1993 Decree understood that the Montrose NPL Site investigation included the LACSD J.O. "D" and District 5 Interceptor sewer lines, but that the investigation had not extended to the Palos Verdes shelf. The signatories to the 1993 Decree further understood that the Montrose NPL Site investigation included the stormwater pathway from the former Montrose DDT Plant Property downstream to the Consolidated Slip,

but not beyond. The signatories to the 1993 Decree also understood that the geographical extent of the Montrose NPL Site investigation was subject to continued re-evaluation by EPA in the course of the continued investigation, and the signatories to the 1993 Decree agreed that nothing in the 1993 Decree was intended to affect the authority or the jurisdiction of EPA to extend the Montrose NPL Site investigation or to take other response activities with respect to the Palos Verdes shelf, and accordingly the 1993 Decree specifically reserved the authority of EPA to take such response activities.

The terms of the 1993 Decree were based on, inter alia, plaintiffs' evaluation of factors including, but not limited to, the nature and extent of the Settling Local Governmental Entities' involvement in causing the alleged contamination; these entities' past efforts to control and address the sources of such contamination; the alleged natural resource damages and estimated cost of restoration activities on the Palos Verdes shelf portion of the Montrose NRD Area, including possible capping, dredging, and treatment of contaminated sediments, and replacement or acquisition of equivalent resources; the contamination at the Montrose NPL Site and estimated cost of response activities at relevant areas of the Montrose NPL Site; past and ongoing efforts of others such as Montrose, in studying contamination at the Montrose NPL Site; and the Settling Local Governmental Entities' cooperation in resolving their liability at a relatively early stage of this litigation.

Pursuant to the terms of the 1993 Decree, the Settling Local Governmental Entities agreed to make payments of $42,200,000 for natural resource damages and $3,500,000 for response costs. To

date, in accordance with the terms and conditions of the 1993 Decree, the Settling Local Governmental Entities have made payments for damages to natural resources and for response costs into escrow accounts established and maintained by LACSD and the City of Los Angeles, respectively, pursuant to the terms and conditions of the 1993 Decree. Under the terms and conditions of the 1993 Decree, the Settling Local Governmental Entities have paid into the escrow account maintained by LACSD the following funds for natural resource damages: i) $1,500,000 pursuant to Paragraph 8.A of the 1993 Decree; ii) $7,800,000 pursuant to Paragraph 8.B of the 1993 Decree; and iii) $10,000,000, $9,000,000, and $8,000,000 in three payments made pursuant to Paragraph 10.A of the 1993 Decree. In addition, under the terms and conditions of the 1993 Decree, the Settling Local Governmental Entities have paid into the escrow account maintained by the City of Los Angeles the total amount of $3,500,000 for response costs pursuant to the terms of Paragraph 17.A of the 1993 Decree.

On March 21, 1995, the Ninth Circuit Court of Appeals reversed the decision of the District Court approving and entering the 1993 Decree, and remanded the cause to the District Court to determine, in light of further information provided by plaintiffs, "the proportional relationship between the $45.7 million to be paid by the settling defendants and the governments' current estimate of total potential damages" and "to evaluate the fairness of that proportional relationship in light of the degree of liability attributed to the settling defendants," and in light of the numerous "other relevant factors" properly considered in the evaluation of a settlement of this type.

On March 22, 1995, the District Court ruled on pre-trial motions previously made by the Montrose-affiliated Defendants and defendant Westinghouse Electric Corporation ("Westinghouse"), holding that the collective liability of the Montrose-affiliated Defendants under the First Claim for Relief is limited to the total of all response costs plus a maximum of $50,000,000 for natural resource damages, and that plaintiffs have the burden of proving that any pre-1980 damages for which plaintiffs seek recovery are indivisible from post-1980 damages. The District Court further ruled that the First Claim for Relief is barred by the applicable statute of limitations and ordered the dismissal of that First Claim as against the Montrose-affiliated Defendants and Westinghouse. The District Court subsequently certified its rulings on the $50,000,000 limitation on damages and on the statute of limitations for interlocutory appeal under 28 U.S.C. § 1292(b). The Court of Appeals thereafter accepted plaintiffs' petitions for appeal of those rulings, and those appeals are presently pending and unresolved.

Notwithstanding the March 21st decision of the Court of Appeals and the March 22nd rulings of the District Court, the Parties hereto remain desirous of resolving all of the contingent liability of the Settling Local Governmental Entities to plaintiffs, DTSC, and the Regional Board with respect to the natural resource damages relating to the Montrose NRD Area and response costs relating to the Montrose NPL Site.

In pursuing such resolution of liability, plaintiffs, DTSC, the Regional Board, and the Settling Local Governmental Entities seek to revise and to amend the 1993 Decree to take account of

developments occurring since the District Court's initial approval of the 1993 Decree. Under the direct supervision of the Special Master, the Parties have reached agreement on the Amended Decree that includes covenants not to sue by the Trustees for natural resource damages for the Montrose NRD Area, and by EPA, DTSC, and the Regional Board for response costs for the Montrose NPL Site, including the offshore areas. In addition, the Settling Local Governmental Entities are provided contribution protection. The basis for this amended agreement is set forth below.

The Parties have considered again each of the factors, enumerated above, that were considered by them in connection with the settlement reflected by the 1993 Decree. Additionally, the Parties and the Special Master have considered each of the relevant later developments, including the guidance provided by the Ninth Circuit Court of Appeals in United States v. Montrose Chemical Corp., 50 F.3d 741 (9th Cir. 1995), the Trustees' estimates of resource restoration costs and the value of interim lost use of resources as reported in the Fall of 1994, EPA's announcement on July 10, 1996, regarding its projected response activities at the Montrose NPL Site and related adjustments to the Trustees' estimated resource restoration costs and interim lost use claim, plaintiffs' estimate of the potential costs of EPA response action, and an appropriate evaluation in order to estimate costs and damages for settlement purposes for all parties.

As a result, the Parties have determined an appropriate settlement amount, which is set forth in this Amended Decree, based on, inter alia, current estimates of total potential costs and damages. In determining the settlement amount, the Parties have

considered the proportional relationship between the amount to be paid by the Settling Local Governmental Entities and a current estimate of total potential costs and damages based on a scenario that reasonably may be used to estimate costs and damages for settlement purposes. In assessing the proportional relationship, EPA and the Trustees have considered the relative roles of both the Settling Local Governmental Entities and the generator defendants in creating the conditions that gave rise to EPA's claim for response costs and the Trustees' claim for assessment costs and damages.

Plaintiffs' determination of the appropriateness of the settlement amount to be paid by the Settling Local Governmental Entities necessarily considers the fact that the Settling Local Governmental Entities are situated in a manner that is fundamentally different from the generator defendants vis-a-vis the plaintiffs' claims for costs and damages.

First, the generator defendants are the sources of the problem that is the subject of EPA's response activities and the Trustees' restoration program. Plaintiffs' allegations specifically concern the effects of DDT and PCBs. The Montrose-affiliated Defendants (i.e., the DDT defendants) are primarily responsible for the DDT contamination on the Palos Verdes shelf. The PCB defendants were major sources of PCBs. In contrast, the roles of the Settling Local Governmental Entities were substantially different. In general, they were passive conduits of wastewater and stormwater. Thus, any flows of DDT and PCBs that passed through collection system(s) and ocean outfall(s) owned and/or operated by the various Settling Local Governmental Entities to the Palos Verdes shelf are

far less significant to plaintiffs' assessment of relative contribution to plaintiffs' claims for costs and damages. Moreover, the volumes of wastewater and stormwater that flowed through collection system(s) and ocean outfall(s) owned and/or operated by the various Settling Local Governmental Entities is not highly significant to plaintiffs' assessment of relative contribution because it is the DDT and PCBs in the wastewater and/or stormwater that gave rise to this action and not the effects of wastewater or stormwater flow in general.

Second, the amounts of DDT and PCBs discharged by the generator defendants were substantial. In United States v. Montrose Chemical Corp., 793 F. Supp. 237, 240-241 (C.D. Cal. 1992), this Court considered the respective contributions of contaminants to the Palos Verdes shelf of each group of generator defendants and determined that the plaintiffs' settlement methodology was reasonable. The plaintiffs believe that in view of currently available information, the estimates of the contributions of the generator defendants recited in the Court's opinion continue to be reasonable. The Montrose-affiliated Defendants are responsible for the discharge of approximately 5.5 million pounds of DDT, Westinghouse is responsible for the discharge of approximately 38,000 pounds of PCBs, and settling defendants Potlatch Corporation and Simpson Paper Company are responsible for the discharge of approximately 4,500 pounds of PCBs.

Third, the Settling Local Governmental Entities were largely if not completely unaware of the discharge of DDT in the wastewater from the Montrose DDT plant, the runoff of DDT contaminated stormwater from the Montrose DDT Plant Property to the Los Angeles