

1 Harbor, or the massive ocean dumping by Montrose of its DDT waste
2 until well after the vast amount of DDT had been discharged by the
3 DDT defendants.

4 Fourth, because the Settling Local Governmental Entities were
5 and are not-for-profit public entities obligated to provide
6 essential public services through the operation of sewer systems
7 and stormwater channels, they are unlike the generator defendants
8 that discharged the DDT and PCBs at issue as part of for-profit
9 enterprises.

10 Fifth, the Settling Local Governmental Entities, in particular
11 LACSD, undertook significant actions to halt the discharge of DDT
12 and PCBs from the Montrose DDT Plant Property, the Westinghouse
13 plant and the Potlatch/Simpson plant. Those actions began with
14 LACSD's early efforts to monitor discharges from its outfalls,
15 efforts to identify the source of DDT that was identified in the
16 effluent, efforts to curtail the Montrose DDT discharge as early as
17 1969, and subsequent efforts to identify and curtail industrial
18 sources of PCBs. LACSD's efforts resulted in large reductions in
19 the amounts of those contaminants in the discharge from the
20 outfalls involved herein, including a massive decline in DDT
21 discharge from the White's Point Outfall after the Montrose DDT
22 Plant Property ceased discharging its process waste to the LACSD
23 sewer. In addition, LACSD has engaged in substantial monitoring on
24 the Palos Verdes shelf and the results of the LACSD monitoring were
25 made available to, and used by, the Trustees to better understand
26 the conditions currently existing on the Palos Verdes shelf.

27 Sixth, the stormwater channels and outfalls owned and/or
28 operated by Settling Local Governmental Entities, other than

1 LACSD's White's Point Outfall, and other activities by Settling
2 Local Governmental Entities are believed to have contributed far
3 lower quantities of DDT and PCBs to the area which is the subject
4 of this action (to the extent that they contributed any DDT or
5 PCBs). In addition, those contributions, if any, are understood to
6 be in areas with a less direct relationship to the areas which are
7 the subject of the plaintiffs' claims.

8 Seventh, the Montrose-affiliated Defendants, as the owners and
9 operators of the plant at which the DDT was manufactured and from
10 which the DDT was released into the environment, not the Settling
11 Local Governmental Entities, bear the overwhelming responsibility
12 for the DDT contamination of the groundwater and soil underlying
13 the Montrose DDT Plant Property, the stormwater channels (including
14 the Kenwood Drain, the Torrance Lateral, and the Dominguez Channel)
15 and the Consolidated Slip, the LACSD sewers, and nearby
16 neighborhoods. Of the Settling Local Governmental Entities only
17 LACSD, the County of Los Angeles, and the City of Los Angeles, as
18 the owners of the sewers, the stormwater channels, and public
19 rights-of-way that are contaminated with Montrose DDT waste, can
20 conceivably have any "factual responsibility" for the cleanup of
21 DDT and other hazardous substances released or dumped by the
22 Montrose-affiliated Defendants, and their responsibility is minimal
23 when compared with that of the Montrose-affiliated Defendants who
24 are responsible for manufacturing and formulating the DDT and
25 releasing it into the environment including the sewers, the
26 stormwater channels and the public rights-of-way.

27 Eighth, the Settling Local Governmental Entities continue to
28 cooperate with plaintiffs in resolving their potential liability

1 relatively early in the suit, and without contested litigation. By
2 agreeing to payment of the settlement amount, the Settling Local
3 Governmental Entities have assumed both the risk that such amount
4 might later prove to be an overestimate and the possibility that
5 such total amount might later prove to have been underestimated.
6 Additionally, plaintiffs have considered of particular significance
7 the continued high degree of cooperation of the Settling Local
8 Governmental Entities with plaintiffs as evidenced by their
9 continued willingness to resolve this lengthy action without
10 further litigation or trial, despite rulings of the District Court
11 that, if affirmed by the Court of Appeals, would have serious
12 adverse effect upon plaintiffs' positions herein.

13 The Parties further recognize that the District Court's
14 rulings of March 22, 1995, as they presently stand, both bar and
15 preclude any recovery of damages under the First Claim for Relief
16 and limit the potential amount of such recovery if recovery is not
17 totally barred and precluded. Further, the fact that plaintiffs
18 now have the burden of proving that any pre-1980 damages for which
19 plaintiffs seek recovery are indivisible from post-1980 damages
20 also may limit plaintiffs' ability to recover all damages alleged
21 under the First Claim for Relief.

22 In estimating possible damages and costs for settlement
23 purposes, the Parties recognize that control of the contaminated
24 offshore sediments through response activities by EPA on the Palos
25 Verdes shelf more than likely will be based upon an evaluation of
26 similar approaches, involving similar types of costs, and achieving
27 similar results, as would have been obtained through physical
28 restoration by the Trustees of those same offshore areas of the

1 Montrose NRD Area had that action been taken by the Trustees,
2 except that EPA has greater statutory and administrative
3 flexibility in the manner in which it undertakes response
4 activities. The plaintiffs believe that EPA's flexibility will
5 result in the incurrence of lower expenses for physical activities
6 that are similar to those that the Trustees evaluated. Thus, the
7 Trustees' 1994 estimate for physical restoration activity is not
8 believed to reflect the actual costs to EPA of a response action on
9 the Palos Verdes shelf and the Trustees' estimates may in fact
10 exceed the actual costs of the EPA response action.

11 Based on the above-recited considerations, and without
12 limiting the Governments' position at trial, the Governments'
13 current estimate of total damages and costs for settlement purposes
14 is between \$225 million and \$250 million. For the purposes of
15 settlement, the payment of \$45.7 million by the Settling Local
16 Governmental Entities under this Amended Decree is reasonable. It
17 reflects a proportion of about one-fifth to be paid by the Settling
18 Local Governmental Entities, which is more than reasonable given
19 their limited role, as set forth above, and their cooperation in
20 settlement.

21 The United States and the State also have agreed on the
22 application of the settlement funds between EPA/DTSC response costs
23 relating to the Montrose NPL Site (as defined herein to include the
24 effluent-affected sediments on the Palos Verdes shelf) and the
25 Trustees' damage assessment costs and natural resource damages
26 relating to the Montrose NRD Area. The United States and the State
27 have agreed that the Settling Local Governmental Entities should
28 pay a total of \$23,700,000 to the Trustees for natural resource

1 damages and costs which amounts to approximately one-fifth of the
2 Trustees' total damages and costs as estimated for settlement
3 purposes. Similarly, the United States and the State have agreed
4 that the Settling Local Governmental Entities should pay a total of
5 \$22,000,000 to EPA and DTSC for response costs which also amounts
6 to approximately one-fifth of EPA's and DTSC's total response costs
7 as estimated for settlement purposes.

8 In determining the settlement amount paid for EPA/DTSC
9 response costs and for the Trustees' damage assessment costs and
10 natural resource damages, the United States and the State have
11 considered the current estimates of potential costs and damages and
12 the proportional relationship between the amount to be paid in
13 settlement and potential costs and damages, and the court decisions
14 noted above. In addition, the United States and the State have
15 considered the total amount of available settlement funds, the
16 expenses incurred by the Trustees in connection with the
17 characterization of the effluent-affected DDT and PCB contaminated
18 sediment deposit on the Palos Verdes shelf and the assessment of
19 the contaminated sediments on the environment and the usefulness of
20 much of their work to EPA; EPA's current estimate of the expenses
21 associated with initiating response activity on the Palos Verdes
22 shelf; the Trustees' current estimates of the funds required to
23 initiate scoping studies with respect to the planning of biological
24 restoration programs designed to aid in the recovery of injured
25 trust resources; and the availability of funds from the settlement
26 with Potlatch Corporation and Simpson Paper Company.

27 All claims against the Settling Local Governmental Entities,
28 including claims for costs, damages, contribution, and other

1 claims, are addressed and covered by this Amended Decree. This
2 Amended Decree resolves the Settling Local Governmental Entities'
3 liability to the United States, on behalf of the Federal Trustees,
4 and the State, on behalf of the State Trustees, for natural
5 resource damages alleged in the Complaint with respect to the
6 Montrose NRD Area, and liability to the United States and the State
7 for response costs incurred and to be incurred in connection with
8 the Montrose NPL Site, as defined herein, and provides contribution
9 protection to the Settling Local Governmental Entities for all
10 matters addressed herein. Except where otherwise specifically
11 stated, this Amended Decree is intended to cover all past and
12 future response cost claims which the United States and the State
13 (through its authorized agencies) may have with respect to the
14 Montrose NPL Site against the Settling Local Governmental Entities.

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

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

21 JURISDICTION AND VENUE

22 1. For purposes of entry and enforcement of this Amended
23 Decree only, the Parties to this Amended Decree agree that the
24 Court has personal jurisdiction over the Parties and has
25 jurisdiction over the subject matter of this action and the Parties
26 to this Amended Decree pursuant to 28 U.S.C. §§ 1331, 1345, and
27 1367, and Sections 106, 107, and 113(b) of CERCLA, 42 U.S.C.
28 §§ 9606, 9607, and 9613(b), and the principles of supplemental

1 jurisdiction. Solely for the purposes of this Amended Decree, the
2 Parties waive all objections and defenses that they may have to
3 jurisdiction of the Court or to venue in this District and to
4 service of process. Nothing herein shall constitute: an admission
5 or a finding that this Court has jurisdiction over the cross-claims
6 or third party complaints against the Settling Local Governmental
7 Entities or over any counterclaims against plaintiffs; an admission
8 or finding that any counterclaim, cross-claim or third party
9 complaint states a claim upon which relief may be granted; or a
10 waiver of any defenses to any such counterclaim, cross-claim or
11 third party complaint.

12 SETTLING LOCAL GOVERNMENTAL ENTITIES

13 2. The Settling Local Governmental Entities that are Parties
14 to this Amended Decree are listed in Attachment A to this Amended
15 Decree and for purposes of implementing Paragraphs 8 through 12
16 herein are further delineated in Attachment B to this Amended
17 Decree as the Category I entities (i.e., LACSD and the various
18 other county sanitation districts of Los Angeles County) and the
19 Category II entities (i.e., the other Settling Local Governmental
20 Entities).

21 APPLICABILITY OF AMENDED DECREE

22 3. The provisions of this Amended Decree, including the
23 covenants not to sue and contribution protection, shall be binding
24 on, apply to, and inure to the benefit of the United States and the
25 State, and to the Settling Local Governmental Entities and their
26 agencies and departments, including those that may be sued
27 independently, both proprietary and non-proprietary, and including
28 their past, present and future officials, directors, employees,

1 predecessors, successors and assigns. No change in the ownership
2 or organizational form or status of any Settling Local Governmental
3 Entity shall affect its rights or obligations under this Amended
4 Decree.

5 EFFECT OF SETTLEMENT/ENTRY OF JUDGMENT

6 4. This Amended Decree was negotiated and executed by the
7 Parties hereto in good faith at arms-length to avoid the
8 continuation of expensive and protracted litigation and is a fair
9 and equitable settlement of claims which were vigorously contested.
10 The execution of this Amended Decree is not, and shall not
11 constitute or be construed as, an admission of liability by any of
12 the Parties to this Amended Decree, nor is it an admission or
13 denial of any of the factual allegations set out in the Complaint,
14 counterclaims, cross-claims, or third party complaints, or an
15 admission of violation of any law, rule, regulation, or policy by
16 any of the Parties to this Amended Decree. Nothing in this Amended
17 Decree is intended to affect the authority or jurisdiction of EPA
18 to take action beyond the boundaries of the Montrose NPL Site.

19 5. Upon approval and entry of this Amended Decree by the
20 Court, this Amended Decree shall constitute a final judgment
21 between and among the United States and the State, and the Settling
22 Local Governmental Entities.

23 DEFINITIONS

24 6. This Amended Decree incorporates the definitions set
25 forth in Section 101 of CERCLA, 42 U.S.C. § 9601. In addition,
26 whenever the following terms are used in this Amended Decree, they
27 shall have the following meanings:

28 A. "Damage Assessment Costs" shall mean all costs associated

1 with the planning, design, implementation and oversight of the
2 Trustees' damage assessment process, which addresses the fact,
3 extent and quantification of the injury to, destruction of or loss
4 of natural resources and the services provided by these resources
5 resulting from releases of hazardous substances alleged in the
6 First Claim for Relief in the Complaint, and with the planning of
7 restoration or replacement of such natural resources and the
8 services provided by those resources, or the planning of the
9 acquisition of equivalent resources or services, and any other
10 costs necessary to carry out the Trustees' responsibilities with
11 respect to those natural resources, including all related
12 enforcement costs.

13 B. "Date of Execution of the 1993 Decree" shall mean
14 November 2, 1992, which is the date by which the 1993 Decree was
15 signed by all of the following: the authorized representatives of
16 each of the Settling Local Governmental Entities, of the State, and
17 of the EPA, and by the Assistant Attorney General of the
18 Environment and Natural Resources Division of the United States
19 Department of Justice.

20 C. "Date of Execution of this Amended Decree" shall mean the
21 date by which this Amended Decree has been signed by all of the
22 following: the authorized representatives of each of the Settling
23 Local Governmental Entities, of the State, and of the EPA, and by
24 the Assistant Attorney General of the Environment and Natural
25 Resources Division of the United States Department of Justice.

26 D. "Date of Initial Approval of this Amended Decree" shall
27 mean the date on which this Amended Decree has been initially
28 approved and signed by the United States District Court.

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

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

18 G. "Montrose-affiliated Defendants" shall mean,
19 collectively, the Montrose Chemical Corporation of California
20 ("Montrose"), Chris-Craft Industries, Inc. ("Chris-Craft"), Rhone-
21 Poulenc Basic Chemicals Co. ("Rhone-Poulenc") now a division of
22 Rhone-Poulenc, Inc., Atkemix Thirty-Seven, Inc. ("Atkemix"),
23 Stauffer Management Company, and ZENECA Holdings Inc. formerly
24 known as ICI American Holdings, Inc. ("ICI").

25 H. "Montrose DDT Plant Property" shall mean for purposes of
26 this Amended Decree the thirteen (13) acre parcel at 20201 South
27 Normandie Ave., Los Angeles, California 90044, which is the site of
28 Montrose Chemical Corporation of California's former DDT production

1 and formulation plant. The Montrose DDT Plant Property is part of
2 the Montrose NPL Site.

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

1 (1) any other location or area designated as a hazardous
2 substance release site pursuant to the California Hazardous
3 Substance Account Act, California Health and Safety Code
4 §§ 25300 et seq., or which is the subject of a cleanup or
5 abatement order pursuant to the Porter-Cologne Water
6 Quality Control Act, California Water Code §§ 13000, et
7 seq., other than the area defined herein as the Montrose
8 NPL Site, at which one or more hazardous substances
9 released from the Montrose DDT Plant Property or from the
10 plant(s) once operated there have come to be located;
11 (2) any other location or area listed on, proposed for or
12 added by EPA to, the National Priorities List (currently
13 found at 40 C.F.R. Part 300, Appendix B), other than the
14 area defined herein as the Montrose NPL Site, at which
15 one or more hazardous substances released from the
16 Montrose DDT Plant Property or from the plant(s) once
17 operated there have come to be located; and
18 (3) the proposed Del Amo NPL Site as it may be defined by
19 EPA.

20 J. "Montrose NRD Area" shall mean for purposes of this
21 Amended Decree the area defined in the 1993 Decree as the Montrose
22 NRD Site and shall mean the area in and around the Channel Islands,
23 the Palos Verdes shelf, the San Pedro Channel including Santa
24 Catalina Island, and the Los Angeles and Long Beach Harbors as
25 described in the Complaint and as described in the draft Damage
26 Assessment Plan and draft Injury Determination Plan published by
27 the Trustees on February 6, 1990 and March 8, 1991, respectively.

28 K "Parties" shall mean each of the signatories to this

1 Amended Decree.

2 L. "Natural Resource Damages" shall mean damages, including
3 loss of use, restoration costs, resource replacement costs or
4 equivalent resource values, and Damage Assessment Costs, and
5 response costs incurred by the Trustees, with respect to injury to,
6 destruction of, or loss of any and all natural resources in and
7 around the Montrose NPL Site and the Montrose NRD Area.

8 M. "Response Costs" shall mean for purposes of this Amended
9 Decree all costs of response as provided in Section 107(a)(1-4)(A)
10 of CERCLA, 42 U.S.C. § 9607(a)(1-4)(A), and as defined in Section
11 101(25) of CERCLA, 42 U.S.C. § 9601(25), that the United States or
12 the State have incurred or will incur with respect to the Montrose
13 NPL Site.

14 NATURAL RESOURCE CLAIM PAYMENTS

15 7. The Settling Local Governmental Entities shall pay to the
16 Trustees a total sum of \$23,700,000 plus all interest accrued on
17 all funds deposited in the escrow account (the "Escrow")
18 established in accordance with Paragraph 8.A of the 1993 Decree
19 (the "Settlement Amount") for the promises and undertakings of the
20 Trustees herein, with the Settling Local Governmental Entities
21 jointly and severally responsible for this obligation except as
22 hereinafter provided in Paragraphs 8 through 10. The Settlement
23 Amount shall be paid by the disbursement of funds paid into the
24 Escrow established in accordance with Paragraph 8.A of the 1993
25 Decree, and maintained under Paragraph 8.A of this Amended Decree.
26 The provisions of this Amended Decree are not intended to and shall
27 not be interpreted to restrict the ultimate authority and
28 discretion of the Trustees to determine the use of settlement funds

1 received for Natural Resource Damages in accordance with the
2 provisions of CERCLA and regulations issued thereunder. Nor are
3 the provisions of this Amended Decree intended to restrict the
4 right of the Settling Local Governmental Entities to allocate
5 responsibility for payment of the Settlement Amount by agreement
6 among themselves, provided that no such allocation is binding on
7 the Trustees.

8 8. A. The Category I entities shall continue to maintain the
9 Escrow established for the deposit of payments by the Category I
10 and Category II entities pursuant to the 1993 Decree, with said
11 Escrow bearing interest on commercially reasonable terms, in a
12 federally-chartered bank with an office in the State of California.
13 The Category I entities shall bear all costs of maintaining the
14 Escrow. The Category I entities shall notify the Trustees in
15 writing of any payments to or disbursements from the Escrow and
16 provide on request all documentation concerning the account,
17 including any agreements concerning the determination of interest
18 rates.

19 B. Subject only to the provisions of Paragraph 8.C, the
20 obligations of the Category I entities and of the Category II
21 entities establishing and maintaining the Escrow as specified in
22 the 1993 Decree are contractual obligations to the Trustees under
23 the 1993 Decree, and shall remain contractual obligations
24 enforceable under the terms and conditions of this Amended Decree
25 effective as of the Date of Execution of this Amended Decree, and
26 those obligations shall be enforceable as a matter of contract law
27 until such time as this Amended Decree is finally entered by the
28 Court. The consideration for these contractual undertakings by the

1 Category I entities and by the Category II entities includes the
2 immediate cessation of litigation activities by the Trustees
3 against those entities until a determination is made by the
4 District Court as to the entry of this Amended Decree.

5 C. All settlement funds paid into the Escrow shall remain in
6 the Escrow and may not be withdrawn except to make the payment
7 required by Paragraph 9.A of this Amended Decree or as specified in
8 Paragraph 14.F of this Amended Decree or unless a final judicial
9 determination is made that entry of this Amended Decree will not be
10 approved, and one of the Parties to this Amended Decree exercises
11 its option pursuant to Paragraph 29 to void the agreement. If that
12 latter event occurs, all sums paid into the Escrow and all accrued
13 interest shall be returned to the Category I entities and to the
14 appropriate Category II entities.

15 9. Within ten (10) working days after the Date of Final
16 Approval of this Amended Decree, the amount of \$23,700,000,
17 together with all interest that has accrued on all settlement funds
18 in the Escrow since the Date of Execution of the 1993 Decree, and
19 except as otherwise provided in Paragraph 14.B, shall be paid to
20 the Trustees, payment to be made as follows:

21 A. The Category I entities, for themselves and the Category
22 II entities, shall cause that amount to be paid from the Escrow
23 into the Registry of the Court, United States District Court for
24 the Central District of California, to be administered by the
25 Registry of the Court for the Trustees. This payment shall be made
26 in the manner specified in Paragraph 9.B below, and the amount so
27 paid and any interest thereon shall be administered and disbursed
28 as provided in Paragraphs 9.C and 9.D below.