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22 UNITED STATES DISTRICT COURT

23 NORTHERN DISTRICT OF CALIFORNIA

24 UNITED STATES OF AMERICA,

25 Plaintiff,

26 v.

27 MONTROSE CHEMICAL CORPORATION
28 OF CALIFORNIA, et al.,

Defendants.

AND RELATED ACTIONS

ORIGINAL
FILED

JUL 19 1996

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

NO. C 84-6273 CW
(Consolidated)

CONSENT DECREE
[MONTROSE GROUP RD/RA]

FILED JUL 19 1996

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DECREE - MONTROSE GROUP

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13 UNITED STATES DISTRICT COURT

14 NORTHERN DISTRICT OF CALIFORNIA

15 UNITED STATES OF AMERICA,)	NO.	—
)		
)		
17 Plaintiff,)	CONSENT DECREE	
)	[MONTROSE GROUP RD/RA]	
18 v.)		
)		
19 MONTROSE CHEMICAL CORPORATION)		
20 OF CALIFORNIA, et al.,)		
)		
21 Defendants.)		
)		
22 AND RELATED ACTIONS)		
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28 DECREE - MONTROSE GROUP

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1 This Consent Decree ("Decree") is made and entered into by and
2 among the United States of America (the "United States"), on
3 behalf of the Environmental Protection Agency, National Oceanic
4 and Atmospheric Administration, the Department of the Interior
5 and the Settling Federal Agencies; and the Settling Defendants.

6 I. BACKGROUND

7 A. The United States, on behalf of the Administrator of the
8 Environmental Protection Agency ("EPA"), the Secretary of
9 Commerce and the Secretary of the Interior, has filed a civil
10 action for recovery of response costs and natural resource
11 damages, and for injunctive and declaratory relief, pursuant to
12 Sections 106 and 107 of the Comprehensive Environmental Response,
13 Compensation, and Liability Act. ("CERCLA"), 42 U.S.C. §§ 9606,
14 9607, with respect to releases of hazardous substances from a
15 former pesticide formulating and packaging facility now known as
16 the United Heckathorn NPL Site in the City of Richmond, County of
17 Contra Costa, State of California.

18 B. Several related actions are pending in this Court
19 arising out of the release or threat of release of hazardous
20 substances from the Site, namely Levin Metals Corporation v.
21 Parr-Richmond Terminal Co. and related actions ("Private Party
22 Litigation"), Case Nos. C 84 6273; C 84 6324; and C 85 4776. The
23 Honorable Claudia Wilken ordered the parties in the Private Party
24 Litigation, and invited EPA, to engage in mediation to attempt to
25 achieve a global settlement. From October 1994 through January
26 1995, EPA and the private litigants participated in alternative
27 dispute resolution mediated by Judge Coleman Fannin (Ret.) and

1 Lester Levy. This mediation process involved sustained, vigorous
2 and substantial negotiation among the parties. As a result of
3 the mediation and subsequent negotiations, the United States has
4 reached four interdependent settlement agreements with regard to
5 the Site (the "Four Decrees"), including this Decree.

6 C. Settlement funds generated from the Four Decrees will
7 fund the Marine Remedial Action and, to the extent funds remain
8 after completion of such work, will reimburse the United States'
9 Past, Interim and Future Response Costs. Certain sums are also
10 being paid to the federal natural resource trustees to compromise
11 disputed claims regarding alleged injuries to natural resources
12 at the Site.

13 D. In accordance with the National Contingency Plan ("NCP")
14 and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F),
15 EPA notified the State of California (the "State") of
16 negotiations with potentially responsible parties regarding the
17 implementation of the remedial design and remedial action for the
18 Site, and EPA has provided the State with an opportunity to
19 participate in such negotiations and be a party to this Consent
20 Decree.

21 E. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C.
22 § 9622(j)(1), EPA notified the federal natural resource trustees,
23 the Department of the Interior and National Oceanic and
24 Atmospheric Administration, (jointly, the "Trustees"), of
25 negotiations with potentially responsible parties regarding the
26 release of hazardous substances that may have resulted in injury
27 to the natural resources under federal trusteeship.

1 F. The defendants that have entered into this Consent Decree
2 ("Settling Defendants") do not admit any liability to the
3 Plaintiff arising out of the transactions or occurrences alleged
4 in the complaint, do not admit that the release or threatened
5 release of hazardous substances at or from the Site constitutes
6 an imminent or substantial endangerment to the public health or
7 welfare or the environment, and do not admit that any injury to
8 natural resources has occurred as a result of such releases at
9 the Site. The United States on behalf of the Settling Federal
10 Agencies does not admit any liability arising out of the
11 transactions or occurrences alleged in any third party complaint
12 asserted by the parties to the Private Party Litigation,
13 including Settling Defendants.

14 G. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA
15 placed the Site on the National Priorities List, set forth at 40
16 C.F.R. Part 300, Appendix B, by publication in the Federal
17 Register on March 14, 1990, 55 Fed. Reg. 9,688.

18 H. In response to a release or a substantial threat of a
19 release of hazardous substances at or from the Site, EPA
20 commenced a Remedial Investigation and Feasibility Study
21 ("RI/FS") for the Site pursuant to 40 C.F.R. § 300.430. EPA
22 completed a Remedial Investigation "RI" Report in February
23 1994, and EPA completed a Feasibility Study ("FS") Report on July
24 5, 1994.

25 I. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA
26 published notice of the completion of the FS and of the proposed
27 plan for remedial action on July 15, 1994, in a major local

1 newspaper of general circulation. EPA provided an opportunity
2 for written and oral comments from the public on the proposed
3 plan for remedial action. A copy of the transcript of the public
4 meeting is available to the public as part of the administrative
5 record upon which the Regional Administrator based the selection
6 of the response action.

7 J. The decision by EPA on the remedial action to be
8 implemented at the Site is embodied in a final Record of Decision
9 ("ROD"), executed on October 26, 1994, on which the State has
10 given its concurrence. The ROD includes a responsiveness summary
11 to the public comments. Notice of the final plan was published
12 in accordance with Section 117(b) of CERCLA.

13 K. Based on the information presently available to it, EPA
14 believes that the Work will be properly and promptly conducted by
15 the Settling Defendants if conducted in accordance with the
16 requirements of this Consent Decree and its appendices.

17 L. Solely for the purposes of Section 113(j) of CERCLA, the
18 Remedial Action selected by the ROD and the Work to be performed
19 by the Settling Defendants shall constitute a response action
20 taken or ordered by the President.

21 M. The Parties recognize, and the Court by entering this
22 Consent Decree finds, that this Consent Decree has been
23 negotiated by the Parties in good faith and implementation of
24 this Consent Decree will expedite the cleanup of the Site and
25 will avoid prolonged and complicated litigation between the
26 Parties, and that this Consent Decree is fair, reasonable, and in
27 the public interest.

1 NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

2 II. JURISDICTION

3 1. This Court has jurisdiction over the subject matter of
4 this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C.
5 §§ 9606, 9607, and 9613(b), and personal jurisdiction over the
6 Settling Defendants. The Parties will not challenge the terms of
7 this Decree, the venue in this District or this Court's
8 jurisdiction to enter and enforce this Decree.

9 III. PARTIES BOUND

10 2. This Consent Decree applies to and is binding upon the
11 United States and upon Settling Defendants and their successors
12 and assigns. Any change in ownership or corporate status of a
13 Settling Defendant including, but not limited to, any transfer of
14 assets or real or personal property, shall in no way alter such
15 Settling Defendant's responsibilities under this Consent Decree.

16 3. Settling Defendants shall provide a copy of this Consent
17 Decree to each contractor hired to perform the Work (as defined
18 below) required by this Consent Decree and to each person
19 representing any Settling Defendant with respect to the Site or
20 the Work and shall condition all contracts entered into hereunder
21 upon performance of the Work in conformity with the terms of this
22 Consent Decree. Settling Defendants or their contractors shall
23 provide written notice of the Consent Decree to all
24 subcontractors hired to perform any portion of the Work required
25 by this Consent Decree. Settling Defendants shall nonetheless be
26 responsible for ensuring that their contractors and
27 subcontractors perform the Work contemplated herein in accordance

1 with this Consent Decree. With regard to the activities
2 undertaken pursuant to this Consent Decree, each contractor and
3 subcontractor shall be deemed to be in a contractual relationship
4 with the Settling Defendants within the meaning of Section
5 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

6 IV. CONDITION PRECEDENT

7 4. This Decree will be effective to bind the Parties only
8 upon entry by this Court of all Four Decrees, which terms were
9 negotiated as described in Paragraph B (Introduction) above and
10 which are contemplated for simultaneous lodging with and entry by
11 the Court.

12 V. DEFINITIONS

13 5. Unless otherwise expressly provided herein, terms used in
14 this Consent Decree which are defined in CERCLA or in regulations
15 promulgated under CERCLA shall have the meaning assigned to them
16 in CERCLA or in such regulations. Whenever terms listed below
17 are used in this Consent Decree or in the appendices attached
18 hereto and incorporated hereunder, the following definitions
19 shall apply:

20 "CERCLA" shall mean the Comprehensive Environmental Response,
21 Compensation, and Liability Act of 1980, as amended, 42 U.S.C.
22 §§ 9601 et seq.

23 "Consent Decree" shall mean this Decree and all appendices
24 attached hereto (listed in Section XXX). In the event of
25 conflict between this Decree and any appendix, this Decree shall
26 control.

27 "Damage Assessment Costs" shall mean NOAA's and DOI's costs

1 incurred in connection with activities and studies performed to
2 determine injury to or loss of natural resources, including lost
3 interim uses, resulting from releases of hazardous substances
4 from the United Heckathorn NPL Site.

5 "Day" shall mean a calendar day unless expressly stated to be
6 a working day. "Working day" shall mean a day other than a
7 Saturday, Sunday, or Federal holiday. In computing any period of
8 time under this Consent Decree, where the last day would fall on
9 a Saturday, Sunday, or Federal holiday, the period shall run
10 until the close of business of the next working day.

11 "DOI" shall mean the United States Department of the Interior
12 and any successor departments, agencies or instrumentalities of
13 the United States.

14 "EPA" shall mean the United States Environmental Protection
15 Agency and any successor departments, agencies or
16 instrumentalities of the United States.

17 "Future Response Costs" shall mean all costs, including, but
18 not limited to, direct and indirect costs, that the United
19 States, excluding the Settling Federal Agencies, incurs after
20 August 15, 1996 in connection with the Site, including, but not
21 limited to, performing marine monitoring for at least five (5)
22 years to determine the effectiveness of the remedy selected in
23 the ROD, reviewing or developing plans, reports and other items
24 pursuant to the Four Decrees, verifying or overseeing the Work or
25 the Levin Group Work, or otherwise implementing, overseeing, or
26 enforcing the Four Decrees, including, but not limited to,
27 payroll costs, contractor costs, travel costs, laboratory costs,

1 the costs incurred pursuant to Sections VIII and IX (including,
2 but not limited to, attorney's fees and any monies paid to secure
3 access and/or to secure institutional controls, including the
4 amount of just compensation), plus Interest on all such costs.

5 "Interest" shall mean interest accruing at the rate specified
6 for interest on investments of the Hazardous Substance Superfund
7 established under Subchapter A of Chapter 98 of Title 26 of the
8 U.S. Code, compounded on October 1 of each year, in accordance
9 with 42 U.S.C. § 9607(a).

10 "Interim Response Costs" shall mean all costs, including, but
11 not limited to, direct and indirect costs paid by the United
12 States in connection with the Site that are not Past or Future
13 Response Costs, plus Interest on all such costs.

14 "Levin Group" shall mean Levin Enterprises, Inc. and Levin
15 Richmond Terminal, Inc.

16 "Marine Remedial Action" shall mean those activities to be
17 undertaken by the Settling Defendants to implement the attached
18 SOW and the final Remedial Design/Remedial Action Work Plan
19 (Appendix C) and other plans approved by EPA.

20 "Marine Response Costs" shall mean all expenses, fees and
21 costs that must be paid by Settling Defendants that are
22 recoverable under Sections 107 and 113 of CERCLA, 42 U.S.C.
23 §§ 9607 and 9613. Examples of "Marine Response Costs" include
24 but are not limited to:

25 - a payment to EPA for Interim Response Costs, as provided in
26 Paragraph 37;

27 - costs to identify and select consultants/contractors to
28 implement the Work required by this Consent Decree;

1 - costs of consultants/contractors to implement the Work
required by this Consent Decree;

2 - costs of consultants/contractors to meet with EPA and or
3 State agencies as required to, inter alia, finalize documents,
4 discuss the Marine Remedial Action, project status and
schedule;

5 - costs of consultants/contractors for development and
6 finalization of documents, work plans, and reports required by
this Consent Decree;

7 - any costs of an escrow agent to administer the United
8 Heckathorn Site Escrow;

9 - fees and taxes that Settling Defendants must pay to remove
10 Waste Material from the Site and dispose of it in a licensed
landfill elsewhere.

11 Marine Response Costs shall not include:

12 - any legal fees incurred by the Settling Defendants;

13 - any costs of the Settling Defendants to communicate between
14 themselves or costs of the Settling Defendants incurred for
internal organizational purposes;

15 - any civil penalties assessed against the Settling
16 Defendants.

17 "Miscellaneous Defendants Group" shall mean that group of
18 defendants which has made certain agreements for payment to the
19 United States, in a related Consent Decree to be lodged
20 simultaneously with this Decree in this matter. The
21 Miscellaneous Defendants Group is specifically identified in
Appendix F hereto.

22 "National Contingency Plan" or "NCP" shall mean the National
23 Oil and Hazardous Substances Pollution Contingency Plan
24 promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605,
25 codified at 40 C.F.R. Part 300, and any amendments thereto.

26 "Natural Resource Damages" shall mean damages, including
27

1 Damage Assessment Costs and lost use value, recoverable under
2 Section 107 of CERCLA, 42 U.S.C. § 9607, for injury to,
3 destruction of, or loss of any and all Natural Resources at the
4 United Heckathorn Site.

5 "Natural Resources" shall have the meaning provided in Section
6 101(16) of CERCLA, 42 U.S.C. § 9601(16).

7 "NOAA" shall mean the National Oceanic and Atmospheric
8 Administration, an agency of the United States Department of
9 Commerce, and any successor departments, agencies or
10 instrumentalities of the United States.

11 "Notice of Completion of Work" shall mean that notice the
12 Settling Defendants shall give in accordance with Paragraph 50.a,
13 when Settling Defendants conclude that the Work has been fully
14 performed.

15 "Other Parties" as used in Paragraph 41 shall mean the Levin,
16 Parr and Miscellaneous Defendants Groups.

17 "Paragraph" shall mean a portion of this Consent Decree
18 identified by an arabic numeral or an upper case letter.

19 "Parr Group" shall mean that group of defendants which has
20 made certain agreements for payment to the United States, in a
21 related Consent Decree to be lodged simultaneously with this
22 Decree in this matter. The Parr Group is specifically identified
23 in Appendix F hereto.

24 "Parties" shall mean the United States and the Settling
25 Defendants.

26 "Past Response Costs" shall mean the costs the United States
27 paid in connection with the Site through April 30, 1994, in the

1 amount of \$2,693,428.22, as reflected in the August 30, 1994 cost
2 summary provided to Settling Defendants, plus all Interest on
3 such costs that has accrued pursuant to 42 U.S.C. § 9607(a)
4 through April 30, 1994.

5 "Performance Standards" shall mean the dredging of young bay
6 mud from the Lauritzen Channel and the Parr Canal in accordance
7 with the terms of this Decree, the Statement of Work and the
8 approved final remedial design (including, but not limited to,
9 the RD/RA Work Plan and the Dredging Plan attached thereto), as
10 verified by the Supervising Contractor and accepted by EPA.

11 "Plaintiff" shall mean the United States.

12 "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42
13 U.S.C. §§ 6901 et seq. (also known as the Resource Conservation
14 and Recovery Act).

15 "Record of Decision" or "ROD" shall mean the EPA Record of
16 Decision relating to the Site signed on October 26, 1994 by the
17 Regional Administrator, EPA Region IX, or her delegate, and all
18 attachments thereto. The ROD is attached as Appendix A.

19 "Remedial Design" shall mean those activities to be undertaken
20 by the Settling Defendants to develop the final plans and
21 specifications for the Remedial Action pursuant to the Remedial
22 Design/Remedial Action Work Plan.

23 "Remedial Design/Remedial Action Work Plan" or "RD/RA" Work
24 Plan shall mean the document attached as Appendix C, which is
25 approved by EPA, and any amendments thereto, developed pursuant
26 to Paragraph 11 that provides for design and implementation of
27 the dredging remedy set forth in the ROD and for achievement of

1 the Performance Standards.

2 "Section" shall mean a portion of this Consent Decree
3 identified by a roman numeral.

4 "Settling Defendants" shall mean Montrose Chemical Corporation
5 of California, Inc., Rhone Poulenc, Inc., Stauffer Management
6 Company and Chris-Craft Industries, Inc.

7 "Settling Federal Agencies" shall mean the General Services
8 Administration and the Agency for International Development, and
9 any successor departments, agencies or instrumentalities of the
10 United States.

11 "Site" or the "United Heckathorn NPL Site" shall mean: the
12 northern half of the Levin Richmond Terminal property bounded by
13 the Lauritzen Channel, Cutting Boulevard, and South Fourth Street
14 in Richmond, California, depicted as a cross-hatched area in the
15 map attached as Appendix D hereto; and the Lauritzen Channel, the
16 Santa Fe Channel, the Parr Canal and the Richmond Inner Harbor
17 Channel, all as depicted in Appendix E hereto.

18 "State" shall mean the State of California.

19 "Statement of Work" or "SOW" shall mean the statement of work
20 for implementation of the Remedial Design and Remedial Action at
21 the Site, as set forth in Appendix B to this Consent Decree and
22 any modifications made in accordance with this Consent Decree.

23 "Supervising Contractor" shall mean the principal contractor
24 retained by the Settling Defendants to supervise and direct the
25 implementation of the Work under this Consent Decree.

26 "United States" shall mean the United States of America,
27 including its agencies, departments and instrumentalities.

1 "Waste Material" shall mean (1) any "hazardous substance"
2 under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any
3 pollutant or contaminant under Section 101(33), 42 U.S.C.
4 § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA,
5 42 U.S.C. § 6903(27); and (4) any "hazardous waste" under 22 Cal.
6 Code of Regulations Section 66600 et seq..

7 "Work" shall mean all activities Settling Defendants are
8 required to perform under this Consent Decree, except those
9 required by Section XXVI (Retention of Records).

10 VI. GENERAL PROVISIONS

11 6. Objectives of the Parties

12 The objectives of the Parties in entering into this Consent
13 Decree are to protect public health or welfare or the environment
14 at the Site by the design and implementation of EPA-selected
15 response actions at the Site by the Settling Defendants; to
16 reimburse response costs of the Plaintiff; to pay Natural
17 Resource Damages to federal natural resource Trustees and to
18 resolve cost recovery claims, contribution claims, counterclaims
19 or claims in recoupment against the United States. Settling
20 Defendants enter into this Consent Decree to compromise disputed
21 claims.

22 7. Commitments by Settling Defendants

23 a. Settling Defendants shall finance and perform the
24 Work consistent with the ROD and in accordance with this Consent
25 Decree, the SOW, and the RD/RA Work Plan, and all other plans,
26 standards, specifications, and schedules set forth herein or
27 developed by Settling Defendants and approved by EPA pursuant to

1 this Consent Decree. Settling Defendants shall also reimburse
2 the United States, excluding the Settling Federal Agencies, for
3 response costs as provided in this Consent Decree.

4 b. The obligations of Settling Defendants to finance and
5 perform the Work and to pay amounts owed the United States under
6 this Consent Decree are joint and several. In the event of the
7 insolvency or other failure of any one or more Settling
8 Defendants to implement the requirements of this Consent Decree,
9 the remaining Settling Defendants shall complete all such
10 requirements.

11 8. Compliance With Applicable Law

12 All activities undertaken by Settling Defendants to implement
13 the SOW pursuant to this Consent Decree shall be performed in
14 accordance with the requirements of all applicable federal and
15 state laws and regulations. Settling Defendants must also comply
16 with all applicable or relevant and appropriate requirements of
17 all Federal and state environmental laws as set forth in the ROD
18 and the SOW. The activities conducted pursuant to this Consent
19 Decree, if approved by EPA, shall be considered to be consistent
20 with the NCP.

21 9. Permits

22 a. As provided in Section 121(e) of CERCLA and Section
23 300.400(e) of the NCP, no permit shall be required for any
24 portion of the Work conducted entirely on-site (i.e., within the
25 areal extent of contamination or in very close proximity to the
26 contamination and necessary for implementation of the Work).
27 Where any portion of the Work that is not on-site requires a

1 federal or state permit or approval, Settling Defendants shall
2 submit timely and complete applications and take all other
3 actions necessary to obtain all such permits or approvals.

4 b. The Settling Defendants may seek relief under the
5 provisions of Section XVIII (Force Majeure) of this Consent
6 Decree for any delay in the performance of the Work resulting
7 from a failure to obtain, or a delay in obtaining, any permit
8 required for the Work.

9 c. This Consent Decree is not, and shall not be
10 construed to be, a permit issued pursuant to any federal or state
11 statute or regulation.

12 VII. PERFORMANCE OF THE WORK BY SETTLING DEFENDANTS

13 10. Selection of Supervising Contractor.

14 a. All aspects of the Work to be performed by Settling
15 Defendants pursuant to Sections VII (Performance of the Work by
16 Settling Defendants), VIII (Remedy Review), and XVI (Emergency
17 Response) of this Consent Decree shall be under the direction and
18 supervision of the Supervising Contractor, the selection of which
19 shall be subject to disapproval by EPA. Settling Defendants
20 have notified EPA in writing that Chemical Waste Management, Inc.
21 is the Supervising Contractor, and EPA has approved of Settling
22 Defendants' proposal. If at any time thereafter, Settling
23 Defendants propose to change a Supervising Contractor, Settling
24 Defendants shall give such notice to EPA and must obtain an
25 authorization to proceed from EPA before the new Supervising
26 Contractor performs, directs, or supervises any Work under this
27 Consent Decree.

1 b. In the event EPA has notified Settling Defendants
2 that it disapproves a proposed Supervising Contractor, Settling
3 Defendants shall submit to EPA a list of contractors, including
4 the qualifications of each contractor, that would be acceptable
5 to them within 10 days of receipt of EPA's disapproval of the
6 contractor previously proposed. Within 10 days thereof, EPA will
7 provide written notice of the names of any contractors that it
8 disapproves and an authorization to proceed with respect to any
9 of the other contractors. Settling Defendants may select any
10 contractor from that list that is not disapproved and shall
11 notify EPA of the name of the contractor selected within 5 days
12 of EPA's authorization to proceed.

13 c. If EPA fails to provide written notice of its
14 authorization to proceed or disapproval as provided in this
15 Paragraph and this failure prevents the Settling Defendants from
16 meeting one or more deadlines in a plan approved by the EPA
17 pursuant to this Consent Decree, Settling Defendants may seek
18 relief under the provisions of Section XVIII (Force Majeure)
19 hereof.

20 11. Remedial Design/Remedial Action Work Plan.

21 a. The RD/RA Work Plan (Appendix C) is incorporated into
22 and is enforceable under this Consent Decree. Within fourteen
23 (14) days after entry of the Four Decrees, Settling Defendants
24 shall submit to EPA a Health and Safety Plan for field activities
25 required by the RD/RA Work Plan which conforms to the applicable
26 Occupational Safety and Health Administration and EPA
27 requirements including, but not limited to, 29 C.F.R. § 1910.120.

1 b. The RD/RA Work Plan includes plans and schedules for
2 implementation of all remedial design and remedial action tasks
3 identified in the SOW, including, but not limited to, plans and
4 schedules for the completion of: (1) a preliminary design
5 submittal; (2) a pre-final/final design submittal; (3) a
6 Construction Quality Assurance Project Plan; (4) the schedule for
7 completion of the Remedial Action; (5) methodology for
8 implementation of the Construction Quality Assurance Project
9 Plan; (6) methods for satisfying all regulatory requirements;
10 (7) methodology for implementation of the Contingency Plan; and
11 (8) procedures and plans for the decontamination of equipment and
12 the disposal of contaminated materials. The RD/RA Work Plan also
13 includes a schedule for implementation of all Marine Remedial
14 Action tasks identified in the final design submittal and
15 identifies the initial formulation of the Settling Defendants'
16 Marine Remedial Action Project Team (including, but not limited
17 to, the Supervising Contractor).

18 c. Upon submittal of the Health and Safety Plan for all
19 field activities to EPA, Settling Defendants shall implement the
20 RD/RA Work Plan. The Settling Defendants shall submit to EPA all
21 plans, submittals and other deliverables required under the
22 approved RD/RA Work Plan in accordance with the approved schedule
23 for review and approval pursuant to Section XI (EPA Approval of
24 Plans and Other Submissions).

25 12. The Settling Defendants shall continue to implement the
26 Marine Remedial Action until the Performance Standards are
27 achieved and for so long thereafter as is otherwise required

1 under this Consent Decree.

2 13. Modification of the SOW or Related Work Plans.

3 a. If EPA determines that modification to the work
4 specified in the SOW and/or in work plans developed pursuant to
5 the SOW is necessary to carry out and maintain the effectiveness
6 of the remedy set forth in the ROD, EPA may require that such
7 modification be incorporated in the SOW and/or such work plans.
8 A modification may only be required pursuant to this Paragraph to
9 the extent that it is consistent with the scope of the remedy
10 selected in the ROD.

11 b. For the purposes of this Paragraph 13 and Paragraph
12 50 of this Decree only, the "scope of the remedy selected in the
13 ROD" is: dredging of young bay mud from the Lauritzen Channel
14 and Parr Canal, with offsite disposal of dredged material and
15 placement of clean fill after dredging.

16 c. If Settling Defendants object to any modification
17 determined by EPA to be necessary pursuant to this Paragraph,
18 they may seek dispute resolution pursuant to Section XIX (Dispute
19 Resolution), Paragraph 63 (Record Review). The SOW and/or
20 related work plans shall be modified in accordance with final
21 resolution of the dispute.

22 d. Settling Defendants shall implement any work
23 required by any modifications incorporated in the SOW and/or in
24 work plans developed pursuant to the SOW in accordance with this
25 Paragraph.

26 e. Nothing in this Paragraph shall be construed to
27 limit EPA's authority to order or require performance of further

1 response actions as otherwise provided in this Consent Decree.

2 14. Settling Defendants acknowledge and agree that nothing in
3 this Consent Decree, the SOW, or the Remedial Design or Remedial
4 Action Work Plans constitutes a warranty or representation of any
5 kind by Plaintiff that compliance with the work requirements set
6 forth in the SOW and the Work Plans will achieve the Performance
7 Standards.

8 15. Settling Defendants shall, prior to any off-Site
9 shipment of Waste Material from the Site to an out-of-state waste
10 management facility, provide written notification to the
11 appropriate state environmental official in the receiving
12 facility's state and to the EPA Project Coordinator of such
13 shipment of Waste Material. However, this notification
14 requirement shall not apply to any off-Site shipments when the
15 total volume of all such shipments will not exceed 10 cubic
16 yards.

17 a. The Settling Defendants shall include in the written
18 notification the following information, where available: (1) the
19 name and location of the facility to which the Waste Material is
20 to be shipped; (2) the type and quantity of the Waste Material to
21 be shipped; (3) the expected schedule for the shipment of the
22 Waste Material; and (4) the method of transportation. The
23 Settling Defendants shall notify the state in which the planned
24 receiving facility is located of major changes in the shipment
25 plan, such as a decision to ship the Waste Material to another
26 facility within the same state, or to a facility in another
27 state.

1 b. The identity of the receiving facility and state will
2 be determined by the Settling Defendants following entering into
3 a contract for Marine Remedial Action implementation. The
4 Settling Defendants shall provide the information required by
5 Paragraph 15.a as soon as practicable after the award of the
6 contract and before the Waste Material is actually shipped.

7 VIII. REMEDY REVIEW

8 16. EPA Selection of Further Response Actions. If EPA
9 determines, at any time, that the Remedial Action is not
10 protective of human health and the environment, EPA may select
11 further response actions for the Site in accordance with the
12 requirements of CERCLA and the NCP.

13 17. Opportunity To Comment. Settling Defendants and, if
14 required by Sections 113(k)(2) or 117 of CERCLA, the public, will
15 be provided with an opportunity to comment on any further
16 response actions proposed by EPA as a result of the review
17 conducted pursuant to Section 121(c) of CERCLA and to submit
18 written comments for the record during the comment period.

19 IX. ACCESS

20 18. To the extent that access to offsite property is required
21 for the implementation of the Work, Settling Defendants shall use
22 best efforts to secure from persons who own or control the
23 property access for Settling Defendants, as well as for the
24 United States and its representatives, including, but not limited
25 to, their contractors, as necessary to effectuate this Consent
26 Decree. For purposes of this Paragraph "best efforts" includes
27 the payment of reasonable sums of money in consideration of

1 access. If any access required to complete the Work is not
2 obtained by May 31, 1996, Settling Defendants shall promptly
3 notify the United States in writing, and shall include in that
4 notification a summary of the steps Settling Defendants have
5 taken to attempt to obtain access. The United States may, as it
6 deems appropriate, assist Settling Defendants in obtaining
7 access. Any costs the United States incurs in obtaining access,
8 including attorney's fees, shall be considered oversight costs.

9 19. Notwithstanding any provision of this Consent Decree, the
10 United States retains all of its access authorities and rights,
11 including enforcement authorities related thereto, under CERCLA,
12 RCRA and any other applicable statute or regulations.

13 X. REPORTING REQUIREMENTS

14 20. In addition to any other requirement of this Consent
15 Decree, Settling Defendants shall submit to EPA two (2) copies of
16 written weekly progress reports that: (a) describe the actions
17 which have been taken toward achieving compliance with this
18 Consent Decree during the previous week (b) include a summary of
19 all results of tests and all other data received or generated by
20 Settling Defendants or their contractors or agents in the
21 previous week; (c) identify all work plans, plans and other
22 deliverables required by this Consent Decree completed and
23 submitted during the previous week; (d) describe all actions,
24 including, but not limited to, implementation of work plans,
25 which are scheduled for the next four weeks and provide other
26 information relating to the progress of work, including, but not
27 limited to, critical path diagrams, Gantt charts and Pert charts;

(e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; and (f) include any modifications to the work plans or other schedules that Settling Defendants have proposed to EPA or that have been approved by EPA. Settling Defendants shall submit these progress reports to EPA beginning 10 days after entry of the four Consent Decrees and continuing until the Notice of Completion is provided by the Settling Defendants pursuant to Paragraph 50(a). If requested by EPA, Settling Defendants shall also provide briefings for EPA discussing the progress of the Work.

21. The Settling Defendants shall notify EPA of any change in the schedule described in the monthly progress report for the performance of any activity, including, but not limited to, implementation of work plans, no later than seven days prior to the performance of the activity.

22. Upon the occurrence of any event during performance of the Work that Settling Defendants are required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-know Act ("EPCRA"), Settling Defendants shall within 24 hours of the onset of such event orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is

1 available, the Emergency Response Section, Region IX, United
2 States Environmental Protection Agency. These reporting
3 requirements are in addition to the reporting required by CERCLA
4 Section 103 or EPCRA Section 304.

5 23. Within 20 days of the onset of such an event, Settling
6 Defendants shall furnish to Plaintiff a written report, signed by
7 the Settling Defendants' Project Coordinator, setting forth the
8 events which occurred and the measures taken, and to be taken, in
9 response thereto. Within 30 days of the conclusion of such an
10 event, Settling Defendants shall submit a report setting forth
11 all actions taken in response thereto.

12 24. Settling Defendants shall submit two (2) copies of all
13 plans, reports, and data required by the SOW, the RD/RA Work
14 Plan, or any other approved plans to EPA in accordance with the
15 schedules set forth in such plans.

16 25. All reports and other documents submitted by Settling
17 Defendants to EPA (other than the weekly progress reports
18 referred to above) which purport to document Settling Defendants'
19 compliance with the terms of this Consent Decree shall be signed
20 by an authorized representative of the Settling Defendants.

21 XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

22 26. After review of any plan, report or other item which is
23 required to be submitted for approval pursuant to this Consent
24 Decree, EPA shall: (a) approve, in whole or in part, the
25 submission; (b) approve the submission upon specified conditions;
26 (c) modify the submission to cure the deficiencies; (d)
27 disapprove, in whole or in part, the submission, directing that

1 the Settling Defendants modify the submission; or (e) any
2 combination of the above. However, EPA shall not modify a
3 submission without first providing Settling Defendants at least
4 one notice of deficiency and an opportunity to cure within seven
5 (7) days, except where to do so would cause serious disruption to
6 the Work or where previous submissions have been disapproved due
7 to material defects and the deficiencies in the submission under
8 consideration indicate a bad faith lack of effort to submit an
9 acceptable deliverable.

10 27. In the event of approval, approval upon conditions, or
11 modification by EPA, pursuant to Paragraph 26(a), (b), or (c),
12 Settling Defendants shall proceed to take any action required by
13 the plan, report, or other item, as approved or modified by EPA
14 subject only to their right to invoke the Dispute Resolution
15 procedures set forth in Section XIX (Dispute Resolution) with
16 respect to the modifications or conditions made by EPA. In the
17 event that EPA modifies the submission to cure the deficiencies
18 pursuant to Paragraph 26(c) and the submission has a material
19 defect, EPA retains its right to seek stipulated penalties, as
20 provided in Section XX (Stipulated Penalties).

21 28. a. Upon receipt of a notice of disapproval pursuant to
22 Paragraph 26(d), Settling Defendants shall, within seven (7) days
23 or such other time as specifically provided herein, correct the
24 deficiencies and resubmit the plan, report, or other item for
25 approval. Any stipulated penalties applicable to the submission,
26 as provided in Section XX, shall accrue during the 7-day period
27 or otherwise specified period but shall not be payable unless the

1 resubmission is disapproved or modified due to a material defect
2 as provided in Paragraphs 29 and 30.

3 b. Notwithstanding the receipt of a notice of disapproval
4 pursuant to Paragraph 26(d), Settling Defendants shall proceed,
5 at the direction of EPA, to take any action required by any non-
6 deficient portion of the submission. Implementation of any non-
7 deficient portion of a submission shall not relieve Settling
8 Defendants of any liability for stipulated penalties under
9 Section XX (Stipulated Penalties).

10 29. In the event that a resubmitted plan, report or other
11 item, or portion thereof, is disapproved by EPA, EPA may again
12 require the Settling Defendants to correct the deficiencies, in
13 accordance with the preceding Paragraphs. EPA also retains the
14 right to modify or develop the plan, report or other item.
15 Settling Defendants shall implement any such plan, report, or
16 item as modified or developed by EPA, subject only to their right
17 to invoke the procedures set forth in Section XIX (Dispute
18 Resolution).

19 30. If upon resubmission, a plan, report, or item is
20 disapproved or modified by EPA due to a material defect, Settling
21 Defendants shall be deemed to have failed to submit such plan,
22 report, or item timely and adequately unless the Settling
23 Defendants invoke the dispute resolution procedures set forth in
24 Section XIX (Dispute Resolution) and EPA's action is overturned
25 pursuant to that Section. The provisions of Section XIX (Dispute
26 Resolution) and Section XX (Stipulated Penalties) shall govern
27 the implementation of the Work and accrual and payment of any

1 stipulated penalties during Dispute Resolution. If EPA's
2 disapproval or modification is upheld, stipulated penalties shall
3 accrue for such violation from the date on which the initial
4 submission was originally required, as provided in Section XX.

5 31. All plans, reports, and other items required to be
6 submitted to EPA under this Consent Decree shall, upon approval
7 or modification by EPA, be enforceable under this Consent Decree.
8 In the event EPA approves or modifies a portion of a plan,
9 report, or other item required to be submitted to EPA under this
10 Consent Decree, the approved or modified portion shall be
11 enforceable under this Consent Decree.

12 XII. PROJECT COORDINATORS

13 32. The designated Project Coordinators and Alternate Project
14 Coordinators are as follows:

15 For EPA:

16 Project Coordinator:

17 Andrew Lincoff
18 EPA Region IX
19 75 Hawthorne Street
20 San Francisco, CA 94105
21 (415) 744-2245

22 For Settling Defendants:

23 Project Coordinator:

24 Kerri Mullins
25 Waste Management Industrial Services
26 715 Comstock St.
27 Santa Clara, CA 95054
28 (408) 980-0343

29 If a Project Coordinator or Alternate Project Coordinator
30 initially designated is changed, the identity of the successor

1 will be given to the other Parties at least 5 working days before
2 the changes occur, unless impracticable, but in no event later
3 than the actual day the change is made. The Settling Defendants'
4 Project Coordinator shall be subject to disapproval by EPA and
5 shall have the technical expertise sufficient to adequately
6 oversee all aspects of the Work. The Settling Defendants'
7 Project Coordinator shall not be an attorney for any of the
8 Settling Defendants in this matter. He or she may assign other
9 representatives, including other contractors, to serve as a Site
10 representative for oversight of performance of daily operations
11 during remedial activities.

12 33. EPA may designate other representatives, including, but
13 not limited to, EPA employees, and federal contractors and
14 consultants, to observe and monitor the progress of any activity
15 undertaken pursuant to this Consent Decree. EPA's Project
16 Coordinator and Alternate Project Coordinator shall have the
17 authority lawfully vested in a Remedial Project Manager ("RPM")
18 and an On-Scene Coordinator ("OSC") by the National Contingency
19 Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator
20 or Alternate Project Coordinator shall have authority, consistent
21 with the National Contingency Plan, to halt any Work required by
22 this Consent Decree and to take any necessary response action
23 when s/he determines that conditions at the Site constitute an
24 emergency situation or may present an immediate threat to public
25 health or welfare or the environment due to release or threatened
26 release of Waste Material.

27 XIII. ASSURANCE OF ABILITY TO COMPLETE WORK

1 34. By June 14, 1996, Settling Defendants shall establish and
2 maintain financial security in the amount of \$1 million in one or
3 more of the following forms:

4 (a) A surety bond guaranteeing performance of the Work;

5 (b) One or more irrevocable letters of credit;

6 (c) A trust fund;

7 (d) A guarantee to perform the Work by one or more parent
8 corporations or subsidiaries, or by one or more unrelated
9 corporations that have a substantial business relationship with
10 at least one of the Settling Defendants; or

11 (e) A demonstration that one or more of the Settling
12 Defendants satisfy the requirements of 40 C.F.R. § 264.143(f).

13 35. If the Settling Defendants seek to demonstrate the
14 ability to complete the Work through a guarantee by a third party
15 pursuant to Paragraph 34(d) of this Consent Decree, Settling
16 Defendants shall demonstrate that the guarantor satisfies the
17 requirements of 40 C.F.R. § 264.143(f). If Settling Defendants
18 seek to demonstrate their ability to complete the Work by means
19 of the financial test or the corporate guarantee pursuant to
20 Paragraph 34(d) or (e), they shall resubmit sworn statements
21 conveying the information required by 40 C.F.R. § 264.143(f)
22 annually, on the anniversary of the effective date of this
23 Consent Decree, until a Certification of Completion is issued.
24 In the event that EPA determines at any time that the form of
25 financial assurances provided pursuant to this Section is
26 inadequate, Settling Defendants shall, within 30 days of receipt
27 of notice of EPA's determination, obtain and present to EPA for

1 approval one of the other forms of financial assurance listed in
2 Paragraph 34 of this Consent Decree. Settling Defendants'
3 inability to demonstrate financial ability to complete the Work
4 shall not excuse performance of any activities required under
5 this Consent Decree.

6 36. Settling Defendants may change the form of financial
7 assurance provided under this Section at any time, upon notice to
8 and approval by EPA, provided that the new form of assurance
9 meets the requirements of this Section. In the event of a
10 dispute, Settling Defendants may change the form of the financial
11 assurance only in accordance with the final administrative or
12 judicial decision resolving the dispute.

13 XIV. REIMBURSEMENT OF RESPONSE COSTS AND ESTABLISHMENT OF, AND
14 USE OF MONIES IN, THE UNITED HECKATHORN SITE ESCROW

15 37. Within 10 days after entry of the last of the Four
16 Decrees, Settling Defendants will cause to be paid, as set out in
17 the Escrow Agreement, to the EPA Hazardous Substance Superfund
18 Account \$75,000, in reimbursement of EPA's Interim Response
19 Costs, by FedWire Electronic Funds Transfer to the U.S.
20 Department of Justice account in accordance with current
21 electronic funds transfer procedures, referencing U.S.A.O. file
22 number 9600022, EPA Region 9 and Site Spill ID #09R3, and DOJ
23 case number 90-11-3-598. Payment shall be made in accordance
24 with instructions provided to the Settling Defendants by the
25 Financial Litigation Unit of the United States Attorney's Office
26 for the Northern District of California, following lodging of
27 this Decree. Settling Defendants shall send notice that such

1 payment has been made to the United States as specified in
2 Section XXVII (Notices and Submissions) and to David Wood, Chief,
3 Cost Accounting, EPA Region 9, 75 Hawthorne Street, San
4 Francisco, CA 94105.

5 38. On or before May 21, 1996, Montrose Chemical Corporation
6 of California shall sign and execute the Escrow Agreement in the
7 same form as set forth in Appendix G, establishing the United
8 Heckathorn Site Escrow (the "Escrow"), and shall provide a copy
9 of the same to EPA within seven (7) business days thereafter.

10 The Escrow shall include three accounts designated the "United
11 Heckathorn Escrow Account," the "Montrose Escrow Account," and
12 the "Shell Escrow Account." The Settling Defendants shall
13 deposit \$2,400,000 into the United Heckathorn Escrow Account
14 within 10 days of the execution of the Escrow Agreement. The
15 funds in the Escrow shall only be used only to pay for the Marine
16 Response Costs, except as otherwise provided in Paragraph 47
17 (Termination of the Escrow) of this Consent Decree.

18 39. Settling Defendants shall be solely responsible for any
19 costs incurred in drafting documentation for the United
20 Heckathorn Site Escrow and negotiating fees with the Escrow
21 Agent.

22 40. On or before June 6, 1996, Montrose Chemical Corporation
23 of California, acting for Settling Defendants, shall provide to
24 the United States copies of a fully executed Escrow Agreement,
25 the correspondence that establishes and funds the Escrow, and a
26 bank statement showing the initial balance of the Escrow Account.
27 Thereafter, if requested to do so by the United States, Settling

1 Defendants shall provide all other documentation concerning the
2 Escrow Account.

3 41. Within 10 days after entry of this Decree, pursuant to
4 other consent decrees negotiated in this action, certain of the
5 Other Parties will have deposited a total of \$6,100,000 into the
6 United Heckathorn Escrow Account. If the full amount of
7 \$6,100,000 is not deposited in the United Heckathorn Escrow
8 Account within 10 days after entry of this Decree, this Consent
9 Decree is voidable at the option of any Settling Defendant.

10 42. Settling Defendants' failure to establish and deposit
11 \$2,400,000 into the United Heckathorn Escrow Account of the
12 United Heckathorn Site Escrow by May 31, 1996 shall constitute a
13 material default, for which this Decree may be voidable by the
14 United States.

15 43. Cost Estimates. Within three (3) days of learning from
16 the Supervising Contractor or from any other source that the
17 Marine Response Costs are expected to exceed each of the
18 following amounts, the Montrose Group shall provide to EPA and
19 Shell Oil Company a complete cost estimate and any explanations
20 thereof, certified by the Supervising Contractor:

21 8.1 million
22 8.6 million
23 9.4 million

24 The certification shall be signed by the Supervising Contractor's
25 authorized employee and shall be in the following form:

26 "To my knowledge and belief, the attached cost estimates
27 are for Marine Response Costs, as defined in the Montrose
28 Group Consent Decree, and is for work that must be
performed to carry out the terms of that Decree and the
RD/RA Work Plan for the Marine Response Action."

1 44. Within 10 days after EPA's receipt of the Supervising
2 Contractor's cost estimate certifying that Marine Response Costs
3 are expected to exceed \$8.1 million, EPA shall, pursuant to the
4 terms of the Miscellaneous Defendants Group Consent Decree to be
5 lodged in this action, obtain \$500,000.00 from Shell Oil Company
6 for deposit into the Shell Escrow Account. If Shell fails to
7 deposit \$500,000 into the Shell Escrow Account in this 10 day
8 period, the Escrow Agent for the United Heckathorn Site Escrow
9 may draw upon the \$500,000 letter of credit established by Shell
10 pursuant to Paragraph 13 of the Miscellaneous Defendants Group
11 Consent Decree.

12 45. After entry of this Decree, the Escrow Agent may disburse
13 the following amounts in the following order to pay for Marine
14 Response Costs in accordance with the Escrow Agreement and this
15 Consent Decree:

16 a. The first \$7,900,000 in Marine Response Costs shall
17 be paid from the United Heckathorn Escrow Account, with the first
18 \$75,000 being paid to the EPA Hazardous Substance Superfund
19 Account pursuant to Paragraph 37.

20 b. The next \$200,000 in Marine Response Costs shall be
21 paid from the Montrose Escrow Account.

22 c. The next \$500,000 in Marine Response Costs shall be
23 paid from the Shell Escrow Account.

24 d. The next \$800,000 in Marine Response Costs shall be
25 paid from the Montrose Escrow Account.

26 e. The next \$1,200,000 in Marine Response Costs shall
27 be paid in equal amounts, dollar for dollar, from the United

1 Heckathorn Escrow Account and the Montrose Escrow Account.

2 46. In the event the Marine Response Costs exceed \$10.6
3 million, Settling Defendants shall be responsible for any and all
4 additional funding required to complete the Work. This Paragraph
5 does not constitute any waiver by any Settling Defendant of its
6 rights to seek contribution from any other party responsible for
7 the Site.

8 47. Termination of the Escrow. The United Heckathorn Site
9 Escrow shall be terminated within 100 days of the issuance of a
10 Certification of Completion. However, if there is a dispute
11 concerning the Marine Response Costs pursuant to Paragraph 49(e)
12 100 days following the issuance of a Certificate of Completion,
13 the United Heckathorn Site Escrow shall be terminated within 10
14 days of the conclusion of the dispute resolution process as set
15 out in Section XIX (Dispute Resolution). Any funds remaining in
16 the Escrow shall be disbursed as follows:

17 a. Any amounts remaining in the United Heckathorn Escrow
18 Account, and any interest earned on amounts held or previously
19 held in the United Heckathorn Escrow Account, to the EPA
20 Hazardous Substance Superfund in reimbursement of Past, Interim
21 and Future Response Costs, by FedWire Electronic Funds Transfer
22 to the U.S. Department of Justice account in accordance with
23 current electronic funds transfer procedures, referencing
24 U.S.A.O. file number 9600022, EPA Region 9 and Site/Spill ID
25 #09R3, and DOJ Case Number 90-11-3-598. The transfer shall be
26 made in accordance with instructions provided to the Settling
27 Defendants by the Financial Litigation Unit of the United States

1 Attorney's Office for the Northern District of California,
2 following termination of the Escrow.

3 b. All sums remaining in the Shell Account, and any
4 interest earned on amounts held or previously held on sums in the
5 Shell Escrow Account, to Shell Oil Company at: Randy Heldt,
6 Esq., Shell Oil Company, One Shell Plaza, P.O. Box 2463, Houston,
7 TX 77252.

8 c. All remaining funds in the Montrose Escrow Account,
9 including any interest earned on sums held or previously held in
10 the Montrose Escrow Account shall be transferred to Montrose
11 Chemical Corporation of California, as provided in the Escrow
12 Agreement.

13 48. Notwithstanding any provision of the Escrow Agreement or
14 nonperformance by any party thereto, the Settling Defendants
15 shall be responsible for complying with this Consent Decree.

16 49. Reconciliation of Costs and Resolution of Disputes.

17 a. Submittal of Documentation. Within 10 days after
18 Notice of Completion is given, Settling Defendants shall submit
19 the following documentation or information ("Marine Response
20 Costs Documentation") to EPA:

21 (i) a certification by an authorized employee of a
22 Settling Defendant stating:

23 "To my knowledge and belief after consulting with the
24 Supervising Contractor, all of the costs referenced in
25 the attached invoices and statements are Marine Response
26 Costs, as defined in the United Heckathorn Consent
27 Decree. The costs have been paid in full from the United
28 Heckathorn Site Escrow";

and

(ii) a complete and itemized description of the nature, location, purpose and scope of all work performed and all of the costs incurred, along with such documentation as may be necessary, to enable EPA to determine that the costs are response costs under the Consent Decree.

Contractor invoices or construction progress payment certificates with sufficient detail may be used to satisfy this requirement.

b. Disbursement of funds from the Escrow to the Supervising Contractor shall not be construed to mean that the costs paid were in fact or law Marine Response Costs. In the interest of completing the Marine Remedial Action as expeditiously as possible, any resolution of disputes regarding this issue shall be postponed until after the Notice of Completion of Marine Remedial Action has been given, as further set forth in Paragraph 49 of this Decree.

c. The United States shall notify Settling Defendants if it has an objection to any amount disbursed from the Escrow, except that the objections shall be limited to the following grounds: (1) the Marine Response Costs Documentation includes a claim or demand for costs that are not response costs as defined by the term "Marine Response Costs" in this Decree; (2) the Marine Response Costs Documentation is insufficient for the determination of whether the costs claimed therein are response costs as defined by the term "Marine Response Costs"; (3) there is inadequate proof of payment of the Marine Response Costs; (4) the certification required by subparagraph a of this Paragraph is false, incorrect, incomplete or absent; or (5) there are

1 accounting errors not previously discovered and corrected in
2 disbursing money from the United Heckathorn Site Escrow.

3 d. Such objection must be made within sixty (60) days
4 after the Marine Response Costs Documentation has been provided
5 to the United States. If, however, the United States provides
6 written notice requesting a ten-day extension within the sixty-
7 day period, such extension shall be deemed to have been given.
8 In that case, any objection shall be made within seventy (70)
9 days after the Marine Response Costs Documentation has been
10 provided. The United States' failure to notify Settling
11 Defendants within the period specified herein shall mean that any
12 and all objections regarding payment of the Marine Remedial
13 Action costs shall be deemed waived.

14 e. The United States and the Settling Defendants shall
15 resolve any disputes concerning the Marine Response Costs
16 pursuant to Section XIX (Dispute Resolution).

17 XV. CERTIFICATION OF COMPLETION

18 50. Completion of the Work

19 a. Notice of Completion. When Settling Defendants
20 conclude that the Marine Remedial Action has been fully performed
21 in accordance with the SOW and this Consent Decree, Settling
22 Defendants shall notify EPA.

23 b. No later than 20 days after Settling Defendants
24 conclude that all phases of the Work have been fully performed,
25 Settling Defendants shall schedule and conduct a pre-
26 certification inspection to be attended by Settling Defendants
27 and EPA. If, after the pre-certification inspection, the

1 Settling Defendants still believe that the Work has been fully
2 performed, Settling Defendants shall submit a written report by
3 the Supervising Contractor stating that the Work has been
4 completed in full satisfaction of the requirements of this
5 Consent Decree. The report shall contain the following
6 statement, signed by a responsible corporate official of a
7 Settling Defendant or the Settling Defendants' Project
8 Coordinator:

9 "To the best of my knowledge, after thorough investigation,
10 I certify that the information contained in or accompanying
11 this submission is true, accurate and complete. I am aware
12 that there are significant penalties for submitting false
information, including the possibility of fine and
imprisonment for knowing violations."

13 If, after review of the written report, EPA, determines that any
14 portion of the Work has not been completed in accordance with
15 this Consent Decree, EPA will notify Settling Defendants in
16 writing, within thirty (30) days of receiving the written report,
17 of the activities that must be undertaken by Settling Defendants
18 pursuant to this Consent Decree to complete the Work. EPA may
19 only require Settling Defendants to perform such activities
20 pursuant to this Paragraph to the extent that such activities are
21 consistent with the "scope of the remedy selected in the ROD," as
22 that term is defined in Paragraph 13.b. EPA will set forth in
23 the notice a schedule for performance of such activities
24 consistent with the Consent Decree and the SOW or require the
25 Settling Defendants to submit a schedule to EPA for approval
26 pursuant to Section XI (EPA Approval of Plans and Other
27 Submissions). Settling Defendants shall perform all activities

1 described in the notice in accordance with the specifications and
2 schedules established therein, subject to their right to invoke
3 the dispute resolution procedures set forth in Section XIX
4 (Dispute Resolution).

5 c. If EPA concludes, based on the initial or any
6 subsequent request for Certification of Completion by Settling
7 Defendants that the Work has been performed in accordance with
8 this Consent Decree, EPA will so notify the Settling Defendants
9 in writing within thirty days of receiving the written report.

10 XVI. EMERGENCY RESPONSE

11 51. In the event of any action or occurrence during the
12 performance of the Work which causes or threatens a release of
13 Waste Material from the Site that constitutes an emergency
14 situation or may present an immediate threat to public health or
15 welfare or the environment, Settling Defendants shall, subject to
16 Paragraph 52, immediately take all appropriate action to prevent,
17 abate, or minimize such release or threat of release, and shall
18 immediately notify the EPA's Project Coordinator, or, if the
19 Project Coordinator is unavailable, EPA's Alternate Project
20 Coordinator. If neither of these persons is available, the
21 Settling Defendants shall notify the EPA Emergency Response Unit,
22 Region IX. Settling Defendants shall take such actions in
23 consultation with EPA's Project Coordinator or other available
24 authorized EPA officer and in accordance with all applicable
25 provisions of the Health and Safety Plans, the Contingency Plans,
26 and any other applicable plans or documents developed pursuant to
27 the SOW. In the event that Settling Defendants fail to take

1 appropriate action as required by this Section, and EPA takes
2 such action instead, Settling Defendants shall reimburse EPA all
3 costs of the action not inconsistent with the NCP.

4 52. Nothing in the preceding Paragraph, Paragraph 13 or in
5 this Consent Decree shall be deemed to limit any authority of the
6 United States (a) to take all appropriate action to protect human
7 health and the environment or to prevent, abate, respond to, or
8 minimize an actual or threatened release of Waste Material on,
9 at, or from the Site, or (b) to direct or order such action, or
10 seek an order from the Court, to protect human health and the
11 environment or to prevent, abate, respond to, or minimize an
12 actual or threatened release of Waste Material on, at, or from
13 the Site, subject to Section XXII (Covenants Not to Sue by
14 Plaintiff). Nothing in this Paragraph shall be deemed to narrow,
15 abridge or diminish the statutory exemption for liability
16 provided to response action contractors contained in 42 U.S.C. §§
17 9619 (a) (1) and 9607 (d).

18 XVII. INDEMNIFICATION AND INSURANCE

19 53. a. The United States does not assume any liability by
20 entering into this agreement or by virtue of any designation of
21 Settling Defendants as EPA's authorized representatives under
22 Section 104(e) of CERCLA. Settling Defendants shall indemnify,
23 save and hold harmless the United States and its officials,
24 agents, employees, contractors, subcontractors, or
25 representatives for or from any and all claims or causes of
26 action arising from, or on account of, negligent or other
27 wrongful acts or omissions of Settling Defendants, their

1 officers, directors, employees, agents, contractors,
2 subcontractors, and any persons acting on their behalf or under
3 their control, in carrying out activities pursuant to this
4 Consent Decree, including, but not limited to, any claims arising
5 from any designation of Settling Defendants as EPA's authorized
6 representatives under Section 104(e) of CERCLA. Further, the
7 Settling Defendants agree to pay the United States all costs it
8 incurs including, but not limited to, attorneys fees and other
9 expenses of litigation and settlement arising from, or on account
10 of, claims made against the United States based on negligent or
11 other wrongful acts or omissions of Settling Defendants, their
12 officers, directors, employees, agents, contractors,
13 subcontractors, and any persons acting on their behalf or under
14 their control, in carrying out activities pursuant to this
15 Consent Decree. The United States shall not be held out as a
16 party to any contract entered into by or on behalf of Settling
17 Defendants in carrying out activities pursuant to this Consent
18 Decree. Neither the Settling Defendants nor any such contractor
19 shall be considered an agent of the United States.

20 b. The United States shall give Settling Defendants
21 notice of any claim for which the United States plans to seek
22 indemnification pursuant to Paragraph 53.a., and shall consult
23 with Settling Defendants prior to settling such claim.

24 54. Settling Defendants waive all claims against the United
25 States for damages or reimbursement or for set-off of any
26 payments made or to be made to the United States arising from or
27 on account of any contract, agreement, or arrangement between any

1 one or more of Settling Defendants and any person for performance
2 of Work on or relating to the Site, including, but not limited
3 to, claims on account of construction delays. In addition,
4 Settling Defendants shall indemnify and hold harmless the United
5 States with respect to any and all claims for damages or
6 reimbursement arising from or on account of any contract,
7 agreement, or arrangement between any one or more of Settling
8 Defendants and any person for performance of Work on or relating
9 to the Site, including, but not limited to, claims on account of
10 construction delays.

11 55. No later than 15 days before commencing any Work,
12 Settling Defendants shall secure or require their contractors or
13 sub-contractors to secure, and shall maintain or require their
14 contractors or sub-contractors to maintain until the first
15 anniversary of EPA's Certification of Completion of the Marine
16 Remedial Action pursuant to Paragraph 50.b. of Section XV
17 (Certification of Completion) commercial general liability
18 insurance with limits of \$3 million dollars, combined single
19 limit, and automobile liability insurance with limits of \$1
20 million dollars, combined single limit, naming the United States
21 as an additional insured. In addition, for the duration of this
22 Consent Decree, Settling Defendants shall satisfy, or shall
23 ensure that their contractors or subcontractors satisfy, all
24 applicable laws and regulations regarding the provision of
25 worker's compensation insurance for all persons performing the
26 Work on behalf of Settling Defendants in furtherance of this
27 Consent Decree. Prior to commencement of the Work under this

1 Consent Decree, Settling Defendants shall provide to EPA
2 certificates of such insurance and a copy of each insurance
3 policy. If Settling Defendants demonstrate by evidence
4 satisfactory to EPA that any contractor or subcontractor
5 maintains insurance equivalent to that described above, or
6 insurance covering the same risks but in a lesser amount, then,
7 with respect to that contractor or subcontractor, Settling
8 Defendants need provide only that portion of the insurance
9 described above which is not maintained by the contractor or
10 subcontractor.

11 XVIII. FORCE MAJEURE

12 56. "Force majeure," for purposes of this Consent Decree, is
13 defined as any event arising from causes beyond the control of
14 the Settling Defendants, of any entity controlled by Settling
15 Defendants, or of Settling Defendants' contractors or sub-
16 contractors, that delays or prevents the performance of any
17 obligation under this Consent Decree despite Settling Defendants'
18 best efforts to fulfill the obligation. The requirement that the
19 Settling Defendants exercise "best efforts to fulfill the
20 obligation" includes using best efforts to anticipate any
21 potential force majeure event and best efforts to address the
22 effects of any potential force majeure event (1) as it is
23 occurring and (2) following the potential force majeure event,
24 such that the delay is minimized to the greatest extent possible.
25 "Force Majeure" does not include financial inability to complete
26 the Work or a failure to attain the Performance Standards.

27 57. If any event occurs or has occurred that may delay the

1 performance of any obligation under this Consent Decree, whether
2 or not caused by a force majeure event, the Settling Defendants
3 shall notify orally EPA's Project Coordinator or, in his or her
4 absence, EPA's Alternate Project Coordinator or, in the event
5 both of EPA's designated representatives are unavailable, the
6 Director of the Hazardous Waste Management Division, EPA Region
7 IX, within three (3) days of when Settling Defendants first knew
8 that the event might cause a delay. Within ten (10) days
9 thereafter, Settling Defendants shall provide in writing to EPA
10 an explanation and description of the reasons for the delay; the
11 anticipated duration of the delay; all actions taken or to be
12 taken to prevent or minimize the delay; a schedule for
13 implementation of any measures to be taken to prevent or mitigate
14 the delay or the effect of the delay; the Settling Defendants'
15 rationale for attributing such delay to a force majeure event if
16 they intend to assert such a claim; and a statement as to
17 whether, in the opinion of the Settling Defendants, such event
18 may cause or contribute to an endangerment to public health,
19 welfare or the environment. The Settling Defendants shall
20 include with any notice all available documentation supporting
21 their claim that the delay was attributable to a force majeure.
22 Failure to comply with the above requirements shall preclude
23 Settling Defendants from asserting any claim of force majeure for
24 that event for the period of time of such failure to comply, and
25 for any additional delay caused by such failure. Settling
26 Defendants shall be deemed to know of any circumstance of which
27 Settling Defendants, any entity controlled by Settling

1 Defendants, or Settling Defendants' contractors knew or should
2 have known.

3 58. If EPA agrees that the delay or anticipated delay is
4 attributable to a force majeure event, the time for performance
5 of the obligations under this Consent Decree that are affected by
6 the force majeure event will be extended by EPA for such time as
7 is necessary to complete those obligations. An extension of the
8 time for performance of the obligations affected by the force
9 majeure event shall not, of itself, extend the time for
10 performance of any other obligation. If EPA does not agree that
11 the delay or anticipated delay has been or will be caused by a
12 force majeure event, EPA will notify the Settling Defendants in
13 writing of its decision. If EPA agrees that the delay is
14 attributable to a force majeure event, EPA will notify the
15 Settling Defendants in writing of the length of the extension, if
16 any, for performance of the obligations affected by the force
17 majeure event.

18 59. If the Settling Defendants elect to invoke the dispute
19 resolution procedures set forth in Section XIX (Dispute
20 Resolution), they shall do so no later than 15 days after receipt
21 of EPA's notice. In any such proceeding, Settling Defendants
22 shall have the burden of demonstrating by a preponderance of the
23 evidence that the delay or anticipated delay has been or will be
24 caused by a force majeure event, that the duration of the delay
25 or the extension sought was or will be warranted under the
26 circumstances, that best efforts were exercised to avoid and
27 mitigate the effects of the delay, and that Settling Defendants

1 | complied with the requirements of Paragraphs 56 and 57, above.
2 | If Settling Defendants carry this burden, the delay at issue
3 | shall be deemed not to be a violation by Settling Defendants of
4 | the affected obligation of this Consent Decree identified to EPA
5 | and the Court.

6 | XIX. DISPUTE RESOLUTION

7 | 60. Unless otherwise expressly provided for in this Consent
8 | Decree, the dispute resolution procedures of this Section shall
9 | be the exclusive mechanism to resolve disputes arising under or
10 | with respect to this Consent Decree. However, the procedures set
11 | forth in this Section shall not apply to actions by the United
12 | States to enforce obligations of the Settling Defendants that
13 | have not been disputed in accordance with this Section.

14 | 61. Any dispute which arises under or with respect to this
15 | Consent Decree shall in the first instance be the subject of
16 | informal negotiations between the parties to the dispute. The
17 | period for informal negotiations shall not exceed 20 days from
18 | the time the dispute arises, unless it is modified by written
19 | agreement of the parties to the dispute. The dispute shall be
20 | considered to have arisen when one party sends the other parties
21 | a written Notice of Dispute.

22 | 62. a. In the event that the parties cannot resolve a
23 | dispute by informal negotiations, including mediation, under the
24 | preceding Paragraph, then the position advanced by EPA shall be
25 | considered binding unless, within seven (7) days after the
26 | conclusion of the informal negotiation period, Settling
27 | Defendants invoke the formal dispute resolution procedures of

1 this Section by serving on the United States a written Statement
2 of Position on the matter in dispute, including, but not limited
3 to, any factual data, analysis or opinion supporting that
4 position and any supporting documentation relied upon by the
5 Settling Defendants. The Statement of Position shall specify the
6 Settling Defendants' position as to whether formal dispute
7 resolution should proceed under Paragraph 63 or Paragraph 64.

8 b. Within seven (7) days after receipt of Settling
9 Defendants' Statement of Position, EPA will serve on Settling
10 Defendants its Statement of Position, including, but not limited
11 to, any factual data, analysis, or opinion supporting that
12 position and all supporting documentation relied upon by EPA.
13 EPA's Statement of Position shall include a statement as to
14 whether formal dispute resolution should proceed under Paragraph
15 63 or 64. Within five (5) days after receipt of EPA's Statement
16 of Position, Settling Defendants may submit a Reply.

17 c. If there is disagreement between EPA and the Settling
18 Defendants as to whether dispute resolution should proceed under
19 Paragraph 63 or 64, the parties to the dispute shall follow the
20 procedures set forth in the paragraph determined by EPA to be
21 applicable. However, if the Settling Defendants ultimately
22 appeal to the Court to resolve the dispute, the Court shall
23 determine which paragraph is applicable in accordance with the
24 standards of applicability set forth in Paragraphs 63 and 64.

25 63. Formal dispute resolution for disputes pertaining to the
26 selection or adequacy of any response action and all other
27 disputes that are accorded review on the administrative record

1 under applicable principles of administrative law shall be
2 conducted pursuant to the procedures set forth in this Paragraph.
3 For purposes of this Paragraph, the adequacy of any response
4 action includes, without limitation: (1) the adequacy or
5 appropriateness of plans, procedures to implement plans, or any
6 other items requiring approval by EPA under this Consent Decree;
7 and (2) the adequacy of the performance of response actions taken
8 pursuant to this Consent Decree. Nothing in this Consent Decree
9 shall be construed to allow any dispute by Settling Defendants
10 regarding the validity of the ROD's provisions.

11 a. An administrative record of the dispute shall be
12 maintained by EPA and shall contain all statements of position,
13 including supporting documentation, submitted pursuant to this
14 Section. Where appropriate, EPA may allow submission of
15 supplemental statements of position by the parties to the
16 dispute.

17 b. The Director of the Waste Management Division, EPA
18 Region IX, will issue a final administrative decision resolving
19 the dispute based on the administrative record described in
20 Paragraph 63.a. This decision shall be binding upon the Settling
21 Defendants, subject only to the right to seek judicial review
22 pursuant to Paragraph 63.c. and d.

23 c. Any administrative decision made by EPA pursuant to
24 Paragraph 63.b. shall be reviewable by this Court, provided that
25 a motion for judicial review of the decision is filed by the
26 Settling Defendants with the Court and served on all Parties
27 within 10 days of receipt of EPA's decision. The motion shall

1 include a description of the matter in dispute, the efforts made
2 by the parties to resolve it, the relief requested, and the
3 schedule, if any, within which the dispute must be resolved to
4 ensure orderly implementation of this Consent Decree. The United
5 States may file a response to Settling Defendants' motion.

6 d. In proceedings on any dispute governed by this
7 Paragraph, Settling Defendants shall have the burden of
8 demonstrating that the decision of the Waste Management Division
9 Director is arbitrary and capricious or otherwise not in
10 accordance with law. Judicial review of EPA's decision shall be
11 on the administrative record compiled pursuant to Paragraph 63.a.

12 64. Formal dispute resolution for disputes that neither
13 pertain to the selection or adequacy of any response action nor
14 are otherwise accorded review on the administrative record under
15 applicable principles of administrative law, shall be governed by
16 this Paragraph.

17 a. Following receipt of Settling Defendants' Statement
18 of Position submitted pursuant to Paragraph 62, the Director of
19 the Waste Management Division, EPA Region IX, will issue a final
20 decision resolving the dispute. The Waste Management Division
21 Director's decision shall be binding on the Settling Defendants
22 unless, within 10 days of receipt of the decision, the Settling
23 Defendants file with the Court and serve on the parties a motion
24 for judicial review of the decision setting forth the matter in
25 dispute, the efforts made by the parties to resolve it, the
26 relief requested, and the schedule, if any, within which the
27 dispute must be resolved to ensure orderly implementation of the

1 Consent Decree. The United States may file a response to
2 Settling Defendants' motion.

3 b. Notwithstanding Paragraph M of Section I
4 (Background) of this Consent Decree, judicial review of any
5 dispute governed by this Paragraph shall be governed by
6 applicable principles of law.

7 65. The invocation of formal dispute resolution procedures
8 under this Section shall not extend, postpone or affect in any
9 way any obligation of the Settling Defendants under this Consent
10 Decree, not directly in dispute, unless EPA or the Court agrees
11 otherwise. Stipulated penalties with respect to the disputed
12 matter shall continue to accrue but payment shall be stayed
13 pending resolution of the dispute as provided in Paragraph 74.
14 Notwithstanding the stay of payment, stipulated penalties shall
15 accrue from the first day of noncompliance with any applicable
16 provision of this Consent Decree. In the event that the Settling
17 Defendants do not prevail on the disputed issue, stipulated
18 penalties shall be assessed and paid as provided in Section XX
19 (Stipulated Penalties).

20 XX. STIPULATED PENALTIES

21 66. Settling Defendants shall be liable for stipulated
22 penalties in the amounts set forth in Paragraphs 67 and 68 to the
23 United States for failure to comply with the requirements of this
24 Consent Decree specified below, unless excused under Section
25 XVIII (Force Majeure). "Compliance" by Settling Defendants shall
26 include completion of the activities under this Consent Decree or
27 any work plan or other plan approved under this Consent Decree

1 identified below in accordance with all applicable requirements
2 of law, this Consent Decree, the SOW, and any plans or other
3 documents approved by EPA pursuant to this Consent Decree and
4 within the specified time schedules established by and approved
5 under this Consent Decree.

6 67. a. The following stipulated penalties shall accrue per
7 violation per day for any noncompliance identified in

8 Subparagraph b:

9	<u>Penalty Per Violation</u>	<u>Period of Noncompliance</u>
10	<u>Per Day</u>	
11	\$2,000	1-4 weeks
12	\$5,000	5 weeks and beyond

13 b. Settling Defendants' failure to establish, fund or
14 terminate the United Heckathorn Site Escrow as specified in
15 Paragraphs 38 and 47;

16 Settling Defendants' failure to complete the Work as set
17 out in this Decree and the SOW;

18 Settling Defendants' failure to correct deficiencies and
19 resubmit plans as specified in Paragraph 28; and

20 Settling Defendants' failure to obtain insurance, or
21 ensure that their contractors or sub-contractors obtain
22 insurance, as specified in Paragraph 55.

23 68. The following stipulated penalties shall accrue per
24 violation per day for failure to submit timely or adequate
25 reports or other written documents pursuant to Paragraphs
26 20, 22, 23, 43 and 49, and for failure to pay response costs
27 pursuant to Paragraph 37:

28 Penalty Per Violation

<u>Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1-4 weeks
\$3,000	5-7 weeks
\$5,000	8 weeks and beyond

69. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 86 of Section XXII (Covenants Not to Sue by Plaintiff), Settling Defendants shall be liable for a stipulated penalty in the amount of \$50,000.00.

70. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section XI (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the day after EPA's receipt of such submission until the date that EPA notifies Settling Defendants of any deficiency; (2) with respect to a decision by the Director of the Waste Management Division, EPA Region IX, under Paragraph 63.b. or 64.a. of Section XIX (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Settling Defendants' reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (3) with respect to judicial review by this Court of any dispute under Section XIX (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding

1 such dispute. Nothing herein shall prevent the simultaneous
2 accrual of separate penalties for separate violations of this
3 Consent Decree.

4 71. Following EPA's determination that Settling Defendants
5 have failed to comply with a requirement of this Consent Decree,
6 EPA may give Settling Defendants written notification of the same
7 and describe the noncompliance. EPA may send the Settling
8 Defendants a written demand for the payment of the penalties.
9 However, penalties shall accrue as provided in the preceding
10 Paragraph regardless of whether EPA has notified the Settling
11 Defendants of a violation.

12 72. All penalties accruing under this Section shall be due
13 and payable to the United States within 30 days of the Settling
14 Defendants' receipt from EPA of a demand for payment of the
15 penalties, unless Settling Defendants invoke the Dispute
16 Resolution procedures under Section XIX (Dispute Resolution).
17 All payments to the United States under this Section shall be
18 paid by certified or cashier's check(s) made payable to "EPA
19 Hazardous Substances Superfund;" shall be mailed to U.S. EPA,
20 Region IX, Attention: Superfund Accounting, P.O. Box 360863M,
21 Pittsburgh, PA 15251; shall indicate that the payment is for
22 stipulated penalties; and shall reference EPA Region 9 and
23 Site/Spill ID #09R3, the DOJ case number 90-11-3-598, and the
24 name and address of the party making payment. Copies of check(s)
25 paid pursuant to this Section, and any accompanying transmittal
26 letter(s), shall be sent to the United States as provided in
27 Section XXVII (Notices and Submissions).

1 73. The payment of penalties shall not alter in any way
2 Settling Defendants' obligation to complete the performance of
3 the Work required under this Consent Decree.

4 74. Penalties shall continue to accrue as provided in
5 Paragraph 70 during any dispute resolution period, but need not
6 be paid until the following:

7 a. If the dispute is resolved by agreement or by a
8 decision of EPA that is not appealed to this Court, accrued
9 penalties determined to be owing shall be paid to EPA within 15
10 days of the agreement or the receipt of EPA's decision or order;

11 b. If the dispute is appealed to this Court and the
12 United States prevails in whole or in part, Settling Defendants
13 shall pay all accrued penalties determined by the Court to be
14 owed to EPA within 60 days of receipt of the Court's decision or
15 order, except as provided in Subparagraph c below;

16 c. If the District Court's decision is appealed by any
17 Party, Settling Defendants shall pay all accrued penalties
18 determined by the District Court to be owing to the United States
19 into an interest-bearing escrow account within 60 days of receipt
20 of the Court's decision or order. Penalties shall be paid into
21 this account as they continue to accrue, at least every 60 days.
22 Within 15 days of receipt of the final appellate court decision,
23 the escrow agent shall pay the balance of the account to EPA or
24 to Settling Defendants to the extent that they prevail.

25 75. a. If Settling Defendants fail to pay stipulated
26 penalties when due, the United States may institute proceedings
27 to collect the penalties, as well as interest. Settling

1 Defendants shall pay Interest on the unpaid balance, which shall
2 begin to accrue on the date of demand made pursuant to Paragraph
3 72.

4 b. Nothing in this Consent Decree shall be construed as
5 prohibiting, altering, or in any way limiting the ability of the
6 United States to seek any other remedies or sanctions available
7 by virtue of Settling Defendants' violation of this Decree or of
8 the statutes and regulations upon which it is based, including,
9 but not limited to, penalties pursuant to Section 122(1) of
10 CERCLA. Provided, however, that the United States shall not seek
11 civil penalties pursuant to Section 122(1) of CERCLA for any
12 violation for which a stipulated penalty is provided herein,
13 except in the case of a willful violation of the Consent Decree.

14 76. Notwithstanding any other provision of this Section, the
15 United States may, in its unreviewable discretion, waive any
16 portion of stipulated penalties that have accrued pursuant to
17 this Consent Decree.

18 XXI. PAYMENT OF NATURAL RESOURCE DAMAGES

19 77. Within 10 days after entry of this Decree, Settling
20 Defendants shall pay \$133,333.34 to the United States. The
21 allocation to Settling Defendants of \$133,333.34, out of the
22 United States' total Natural Resource Damages recovery of
23 \$400,000 from defendants which are parties to the Four Decrees,
24 was determined solely by potentially responsible parties,
25 including Settling Defendants. Payment shall be made by check,
26 made payable to the Secretary of the Interior and delivered to
27 Chief, Division of Finance, United States Fish and Wildlife

1 Service, 4401 North Fairfax Drive, Room 380, Arlington, VA, 22203
2 (phone (703) 358-1742). The check shall reflect that it is a
3 payment to the "Natural Resource Damage Assessment and
4 Restoration Fund, Account No. 14X5198" and reference the "Levin
5 Richmond/United Heckathorn Site." DOI will assign these funds a
6 special project number to allow the funds to be maintained as a
7 segregated account within the DOI Natural Resource Damage
8 Assessment and Restoration Fund, Account No. 14X5198 ("Trustees
9 Account"). DOI shall, in accordance with law, manage and invest
10 funds in the Trustees Account and segregate in the Account any
11 return on investments or interest accrued for use by the natural
12 resource Trustees. DOI shall not make any charge against the
13 Account for any investment or management services provided. DOI
14 shall hold all funds in the Account, including return on
15 investments or accrued interest, subject to the provisions of
16 this Decree and any agreement DOI and NOAA may reach regarding
17 the use of the funds.

18 78. If Settling Defendants do not timely pay the amount
19 specified in Paragraph 77, this Consent Decree shall be
20 considered an enforceable judgment, under Federal Rules of Civil
21 Procedure 69 and other applicable statutory authority, for
22 purposes of post-judgment collection of the amount due the
23 Trustees, without further order of this Court. Interest shall be
24 assessed at the annual rate established pursuant to 31 U.S.C.
25 § 3717 on the overdue amount from the due date set forth in
26 Paragraph 77 through the date of payment. In addition, in the
27 event the United States takes action to enforce the judgment,

1 Settling Defendants shall reimburse the United States for costs
2 and reasonable attorney's fees incurred in enforcing Settling
3 Defendants' obligation.

4 XXII. COVENANTS NOT TO SUE BY PLAINTIFF

5 79. In consideration of the payments to be made by the
6 Settling Defendants under the terms of this Decree and except as
7 specifically provided in Paragraphs 80-85 of this Section, the
8 United States hereby covenants not to sue or take administrative
9 action against any of the Settling Defendants, and the Settling
10 Defendants' past and present officers, directors and employees
11 acting in such respective capacities for the Settling Defendants,
12 pursuant to Sections 106, 107(a) and (f), and 113(f) of CERCLA,
13 42 U.S.C. §§ 9606, 9607(a) and (f), 9613(f), relating to
14 hazardous substances present at the Site. Except with respect to
15 future liability, these covenants not to sue shall take effect
16 upon the receipt by the United States of the payments required by
17 Paragraph 77 of Section XXI (Payment of Natural Resource Damages)
18 and the establishment of the Escrow as set forth in Paragraph 38
19 of Section XIV (Establishment of, and Use of Monies in, the
20 United Heckathorn Site Escrow). With respect to future
21 liability, these covenants not to sue shall take effect upon
22 Certification of Completion of the Marine Remedial Action by EPA
23 pursuant to Paragraph 50.b of Section XV (Certification of
24 Completion). These covenants not to sue are conditioned upon the
25 satisfactory performance by Settling Defendants of their
26 obligations under this Consent Decree. These covenants not to
27 sue extend only to the Settling Defendants, and the Settling

1 Defendants' past and present officers, directors and employees
2 acting in such respective capacities for the Settling Defendants,
3 and do not extend to any other person.

4 80. United States' Pre-certification Reservations.

5 Notwithstanding any other provision of this Consent Decree, the
6 United States reserves, and this Consent Decree is without
7 prejudice to, the right to institute proceedings in this action
8 or in a new action, or to issue an administrative order, seeking
9 to compel Settling Defendants (1) to perform further response
10 actions relating to the Site, or (2) to reimburse the United
11 States for additional costs of response if, prior to
12 Certification of Completion of the Marine Remedial Action:

13 (i) conditions at the Site, previously unknown to EPA,
14 are discovered, or

15 (ii) information, previously unknown to EPA, is received,
16 in whole or in part,

17 and these previously unknown conditions or information together
18 with any other relevant information indicates that the remedial
19 action(s) selected in the ROD are not protective of human health
20 or the environment.

21 81. United States' Post-certification Reservations.

22 Notwithstanding any other provision of this Consent Decree, the
23 United States reserves, and this Consent Decree is without
24 prejudice to, the right to institute proceedings in this action
25 or in a new action, or to issue an administrative order, seeking
26 to compel Settling Defendants (1) to perform further response
27 actions relating to the Site, or (2) to reimburse the United

1 States for additional costs of response if, subsequent to
2 Certification of Completion of the Marine Remedial Action:

3 (i) conditions at the Site, previously unknown to EPA,
4 are discovered, or

5 (ii) information, previously unknown to EPA, is received,
6 in whole or in part,

7 and these previously unknown conditions or this information
8 together with other relevant information indicate that the
9 remedial action(s) selected in the ROD are not protective of
10 human health or the environment.

11 82. For purposes of Paragraph 80, the information and the
12 conditions known to EPA shall include only that information and
13 those conditions known to EPA as of the date the ROD was signed
14 and set forth in the Record of Decision for the Site and the
15 administrative record supporting the Record of Decision. For
16 purposes of Paragraph 81, the information and the conditions
17 known to EPA shall include only that information and those
18 conditions known to EPA as of the date of Certification of
19 Completion of the Marine Remedial Action and set forth in the
20 ROD, the administrative record supporting the ROD, the post-ROD
21 administrative record, or in any information received by EPA
22 pursuant to the requirements of this Consent Decree prior to
23 Certification of Completion of the Marine Remedial Action.

24 83. Reservation by the Natural Resource Trustees for Unknown
25 Conditions and New Information. Notwithstanding any other
26 provision of this Decree, the United States, on behalf of its
27 natural resource Trustees, reserves, and this Decree is without

1 prejudice to, the right to bring an action against any Settling
2 Defendant in this action or in a new action to seek recovery of
3 Natural Resource Damages, based on (i) conditions with respect to
4 the Site unknown to the Trustees as of the date this Decree is
5 lodged with the court, that result in or contribute to injury to,
6 destruction of or loss of natural resources; or (ii) information
7 received by the Trustees after the date the Decree is lodged with
8 the court which indicates that there is injury to, destruction
9 of, or loss of natural resources of a type unknown, or a
10 magnitude greater than was known, to the Trustees.

11 84. Notwithstanding any other provision of this Decree, the
12 United States reserves, and this Decree is without prejudice to,
13 the right to institute proceedings in this action or in a new
14 action, or to issue an administrative order seeking to compel
15 Settling Defendants to perform response actions relating to the
16 Site or to reimburse the United States for response costs
17 incurred after the effective date of this Decree, if EPA
18 determines, through an amendment to the ROD, that the Marine
19 Remedial Action is not protective of human health and the
20 environment and EPA selects further response actions at the
21 Site.

22 85. General Reservation of Rights. The covenants not to sue
23 set forth above do not pertain to any matters other than those
24 expressly specified in Paragraph 79. Notwithstanding any other
25 provision of this Decree, the United States reserves, and this
26 Consent Decree is without prejudice to, all rights against
27 Settling Defendants with respect to all other matters, including

1 but not limited to, the following:

2 (1) claims based on a failure by Settling Defendants to
3 meet a requirement of this Consent Decree;

4 (2) liability arising from the past, present, or future
5 disposal, release, or threat of release of Waste
6 Materials outside of the Site, including liability for
7 damages for injury to, destruction of, or loss of natural
8 resources occurring outside of the Site, and for the
9 costs of any natural resource damage assessments
10 regarding the same;

11 (3) liability for future disposal of Waste Material at
12 the Site, other than as provided in the ROD, the Work, or
13 otherwise ordered by EPA;

14 (4) criminal liability; and

15 (5) liability for violations by Settling Defendants of
16 federal or state law which occur during or after
17 implementation of the Marine Remedial Action.

18 86. Work Takeover In the event EPA determines that Settling
19 Defendants have ceased implementation of any portion of the Work,
20 are seriously or repeatedly deficient or late in their
21 performance of the Work, or are implementing the Work in a manner
22 which may cause an endangerment to human health or the
23 environment, EPA may assume the performance of all or any
24 portions of the Work as EPA determines necessary. Settling
25 Defendants may invoke the procedures set forth in Section XIX
26 (Dispute Resolution), Paragraph 63, to dispute EPA's
27 determination that takeover of the Work is warranted under this

1 Paragraph. Settling Defendants shall reimburse the United States
2 all costs of Work takeover not inconsistent with the NCP.

3 87. Notwithstanding any other provision of this Consent
4 Decree, the United States retains all authority and reserves all
5 rights to take any and all response actions authorized by law.

6 XXIII. COVENANTS BY SETTLING DEFENDANTS

7 88. Covenant Not to Sue. Subject to the reservations in
8 Paragraph 89 and below, Settling Defendants hereby covenant not
9 to sue and agree not to assert any claims or causes of action
10 against the United States with respect to the Site or this
11 Consent Decree, including, but not limited to:

12 a. any direct or indirect claim for reimbursement from
13 the Hazardous Substance Superfund (established pursuant to the
14 Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections
15 106(b)(2), 107, 111, 112, 113 or any other provision of law;

16 b. any claims against the United States under CERCLA
17 Sections 107 or 113 related to the Site; or

18 c. any claims arising out of response activities at the
19 Site, including claims based on EPA's selection of response
20 actions, oversight of response activities or approval of plans
21 for such activities.

22 The Settling Defendants reserve the right to assert any
23 counterclaims against the United States arising out of any action
24 filed by the United States pursuant to Paragraphs 80, 81, 83, 84,
25 or 85(3).

26 89. The Settling Defendants reserve, and this Consent Decree
27 is without prejudice to, claims against the United States,

1 subject to the provisions of Chapter 171 of Title 28 of the
2 United States Code, for money damages for injury or loss of
3 property or personal injury or death caused by the negligent or
4 wrongful act or omission of any employee of the United States
5 while acting within the scope of his office or employment under
6 circumstances where the United States, if a private person, would
7 be liable to the claimant in accordance with the law of the place
8 where the act or omission occurred. However, any such claim
9 shall not include a claim for any damages caused, in whole or in
10 part, by the act or omission of any person, including any
11 contractor, who is not a federal employee as that term is defined
12 in 28 U.S.C. § 2671; nor shall any such claim include a claim
13 based on EPA's selection of response actions, or the oversight or
14 approval of the Settling Defendants' plans or activities. The
15 foregoing applies only to claims which are brought pursuant to
16 any statute other than CERCLA and for which the waiver of
17 sovereign immunity is found in a statute other than CERCLA.

18 90. Nothing in this Consent Decree shall be deemed to
19 constitute preauthorization of a claim within the meaning of
20 Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R.
21 § 300.700(d).

22 91. The Montrose Group agrees that in this action or in a
23 new action or proceeding seeking to recover the United States'
24 response costs, or to compel the Montrose Group to undertake a
25 response action, or to recover Natural Resource Damages incurred
26 for releases of hazardous substances at or from the Site, the
27 United States may, at its option, use any depositions taken in

1 the Private Party Litigation for any purpose as though the court
2 had found that the conditions set forth in Fed. R. Civ. P.
3 32(a)(3) are satisfied and as though the deponent were then
4 present and testifying.

5 XXIV. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

6 92. Nothing in this Consent Decree shall be construed to
7 create any rights in, or grant any cause of action to, any person
8 not a Party to this Consent Decree. The preceding sentence shall
9 not be construed to waive or nullify any rights that any person
10 not a signatory to this decree may have under applicable law.
11 Each of the Parties expressly reserves any and all rights
12 (including, but not limited to, any right to contribution),
13 defenses, claims, demands, and causes of action which each Party
14 may have with respect to any matter, transaction, or occurrence
15 relating in any way to the Site against any person not a Party
16 hereto.

17 93. The Parties agree, and by entering this Consent Decree
18 this Court finds, that the Settling Defendants and Settling
19 Federal Agencies are entitled, as of the effective date of this
20 Consent Decree, to protection from contribution actions or claims
21 as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2)
22 for matters addressed in this Consent Decree. "Matters addressed
23 in this Decree" shall mean Natural Resource Damages and all
24 response costs incurred or to be incurred by the United States or
25 any other person or entity at the Site, but do not include
26 natural resource damages and response costs incurred or to be
27 incurred in connection with the presence, release or threatened

1 release of a hazardous substance outside the Site.

2 94. The Settling Defendants agree that with respect to any
3 suit or claim for contribution brought by them for matters
4 related to this Consent Decree they will notify the United States
5 in writing no later than 60 days prior to the initiation of such
6 suit or claim.

7 95. The Settling Defendants also agree that with respect to
8 any suit or claim for contribution brought against them for
9 matters related to this Consent Decree they will notify in
10 writing the United States within 10 days of service of the
11 complaint on them. In addition, Settling Defendants shall notify
12 the United States within 10 days of service or receipt of any
13 Motion for Summary Judgment and within 10 days of receipt of any
14 order from a court setting a case for trial.

15 96. In any subsequent administrative or judicial proceeding
16 initiated by the United States for injunctive relief, recovery of
17 response costs, or other appropriate relief relating to the Site,
18 Settling Defendants as against the United States only shall not
19 assert, and may not maintain, any defense or claim based upon the
20 principles of waiver, res judicata, collateral estoppel, issue
21 preclusion, claim-splitting, or other defenses based upon any
22 contention that the claims raised by the United States in the
23 subsequent proceeding were or should have been brought in the
24 instant case; provided, however, that nothing in this Paragraph
25 affects the enforceability of the covenants not to sue set forth
26 in Section XXII (Covenants Not to Sue by Plaintiff).

27 XXV. ACCESS TO INFORMATION

1 97. Settling Defendants shall provide to EPA, upon request,
2 copies of all documents and information within their possession
3 or control or that of their contractors or agents, generated
4 after the effective date of this Consent Decree, relating to
5 activities at the Site or to the implementation of this Consent
6 Decree, including, but not limited to, sampling, analysis, chain
7 of custody records, manifests, trucking logs, receipts, reports,
8 sample traffic routing, correspondence, or other documents or
9 information related to the Work. Settling Defendants shall also
10 make available to EPA, for purposes of investigation, information
11 gathering, or testimony, their employees, agents, or
12 representatives with knowledge of relevant facts concerning the
13 performance of the Work.

14 98. a. Settling Defendants may assert business
15 confidentiality claims covering part or all of the documents or
16 information submitted to Plaintiff under this Consent Decree to
17 the extent permitted by and in accordance with Section 104(e)(7)
18 of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b).
19 Documents or information determined to be confidential by EPA
20 will be afforded the protection specified in 40 C.F.R. Part 2,
21 Subpart B. If no claim of confidentiality accompanies documents
22 or information when they are submitted to EPA, or if EPA has
23 notified Settling Defendants that the documents or information
24 are not confidential under the standards of Section 104(e)(7) of
25 CERCLA, the public may be given access to such documents or
26 information without further notice to Settling Defendants.

27 b. The Settling Defendants may assert that certain documents,

1 records and other information are privileged under the attorney-
2 client privilege or any other privilege recognized by federal
3 law. If the Settling Defendants assert such a privilege in lieu
4 of providing documents, they shall provide the Plaintiff with the
5 following: (1) the title of the document, record, or
6 information; (2) the date of the document, record, or
7 information; (3) the name and title of the author of the
8 document, record, or information; (4) the name and title of each
9 addressee and recipient; (5) a description of the contents of the
10 document, record, or information: and (6) the privilege asserted
11 by Settling Defendants. However, no documents, reports or other
12 information created or generated pursuant to the requirements of
13 the Consent Decree shall be withheld on the grounds that they are
14 privileged.

15 99. No claim of confidentiality shall be made with respect to
16 any data, including, but not limited to, all sampling,
17 analytical, monitoring, hydrogeologic, scientific, chemical, or
18 engineering data, or any other documents or information
19 evidencing conditions at or around the Site.

20 XXVI. RETENTION OF RECORDS

21 100. Until seven years after the Settling Defendants' receipt
22 of EPA's notification pursuant to Paragraph 50.b of Section XV
23 (Certification of Completion of the Work), each Settling
24 Defendant shall preserve and retain all records and documents now
25 in its possession or control or which come into its possession or
26 control that relate in any manner to the performance of the Work
27 or liability of any person for response actions conducted and to

1 be conducted at the Site, regardless of any corporate retention
2 policy to the contrary. Until seven years after the Settling
3 Defendants' receipt of EPA's notification pursuant to Paragraph
4 50.b of Section XV (Certification of Completion), Settling
5 Defendants shall also instruct their contractors and agents to
6 preserve all documents, records, and information of whatever
7 kind, nature or description relating to the performance of the
8 Work.

9 101. At the conclusion of this document retention period,
10 Settling Defendants shall notify the United States at least 90
11 days prior to the destruction of any such records or documents,
12 and, upon request by the United States Settling Defendants shall
13 deliver any such records or documents to EPA. The Settling
14 Defendants may assert that certain documents, records and other
15 information are privileged under the attorney-client privilege or
16 any other privilege recognized by federal law. If the Settling
17 Defendants assert such a privilege, they shall provide the
18 Plaintiffs with the following: (1) the title of the document,
19 record, or information; (2) the date of the document, record, or
20 information; (3) the name and title of the author of the
21 document, record, or information; (4) the name and title of each
22 addressee and recipient; (5) a description of the subject of the
23 document, record, or information; and (6) the privilege asserted
24 by Settling Defendants. However, no documents, reports or other
25 information created or generated pursuant to the requirements of
26 the Consent Decree shall be withheld on the grounds that they are
27 privileged.

1 102. Each Settling Defendant hereby certifies individually
2 that, to the best of its knowledge and belief, after thorough
3 inquiry, it has not altered, mutilated, discarded, destroyed or
4 otherwise disposed of any original records, documents or other
5 information (or where originals did not exist, the last copy of
6 such records, documents or other information) relating to its
7 potential liability regarding the Site since notification of
8 potential liability by the United States or the State or the
9 filing of suit against it regarding the Site and that it has
10 fully complied with any and all EPA requests for information
11 pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C.
12 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. 6927.

13 XXVII. NOTICES AND SUBMISSIONS

14 103. Whenever, under the terms of this Consent Decree,
15 written notice is required to be given or a report or other
16 document is required to be sent by one Party to another, it shall
17 be directed to the individuals at the addresses specified below,
18 unless those individuals or their successors give notice of a
19 change to the other Parties in writing. All notices and
20 submissions shall be considered effective upon receipt, unless
21 otherwise provided. Written notice as specified herein shall
22 constitute complete satisfaction of any written notice
23 requirement of the Consent Decree with respect to the United
24 States, EPA, the State, and the Settling Defendants,
25 respectively.

1 As to the United States:

2 Chief, Environmental Enforcement Section
3 Environment and Natural Resources Division
4 U.S. Department of Justice
5 P.O. Box 7611
6 Ben Franklin Station
7 Washington, D.C. 20044
8 Re: DJ # 90-11-3-598

9 Chief, Environmental Defense Section
10 U.S. Department of Justice
11 Environment and Natural Resources Division
12 Environmental Defense Section
13 P.O. Box 23986
14 Washington, D.C. 20026-20531
15 Re: DJ # 90-11-3-1291

16 As to EPA:

17 Regional Counsel
18 Office of Regional Counsel
19 United States EPA
20 Region IX
21 75 Hawthorne Street
22 San Francisco, CA 94105

23 Director, Waste Management Division
24 United States EPA
25 Region IX
26 75 Hawthorne Street
27 San Francisco, CA 94105

28 Andrew Lincoff
EPA Project Coordinator
United States Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, CA 94105

1 As to the Settling Defendants:

2 Frank C. Bachman, President
3 Montrose Chemical Corporation of California
4 55 Corporate Drive
5 Trumbull, CT 06611

6 Richard W. Raushenbush, Esq.
7 Latham & Watkins
8 505 Montgomery St., Ste. 1900
9 San Francisco, CA 94611-2562

10 David L. Mulliken, Esq.
11 Latham & Watkins
12 701 B Street, Suite 2100
13 San Diego, CA 92101

14 As to Shell Oil Company:

15 Randall Heldt, Esq.
16 Shell Oil Company
17 One Shell Plaza 4888
18 900 Louisiana Avenue
19 Houston, TX 77252-2463

20 XXVIII. EFFECTIVE DATE

21 104. The effective date of this Consent Decree shall be the
22 date upon which this Consent Decree is entered by the Court,
23 except as otherwise provided herein.

24 XXIX. RETENTION OF JURISDICTION

25 105. This Court retains jurisdiction over both the subject
26 matter of this Consent Decree and the Settling Defendants for the
27 duration of the performance of the terms and provisions of this
28 Consent Decree for the purpose of enabling any of the Parties to
apply to the Court at any time for such further order, direction,
and relief as may be necessary or appropriate for the
construction or modification of this Consent Decree, or to
effectuate or enforce compliance with its terms, or to resolve
disputes in accordance with Section XIX (Dispute Resolution)

1 hereof.

2 XXX. APPENDICES

3 106. The following appendices are attached to and
4 incorporated into this Consent Decree:

5 "Appendix A" is the ROD.

6 "Appendix B" is the SOW.

7 "Appendix C" is the approved RD/RA Work Plan.

8 "Appendix D" is the map of the land portion of the Site.

9 "Appendix E" is the map of the marine portion of the Site.

10 "Appendix F" is the complete list of the Parr Group and the
11 Miscellaneous Defendants Group.

12 "Appendix G" is the form of Escrow Agreement.

13 XXXI. MODIFICATION

14 107. Schedules specified in this Consent Decree for
15 completion of the Work may be modified by agreement of EPA and
16 the Settling Defendants. All such modifications shall be made in
17 writing.

18 108. Except as provided in Paragraph 13 ("Modification of the
19 SOW or related Work Plans"), no material modifications shall be
20 made to the SOW without written notification to and written
21 approval of the United States, Settling Defendants, and the
22 Court. Prior to providing its approval to any modification, the
23 United States will provide the State with a reasonable
24 opportunity to review and comment on the proposed modification.
25 Modifications to the SOW that do not materially alter that
26 document may be made by written agreement between EPA, after
27 providing the State with a reasonable opportunity to review and

1 comment on the proposed modification, and the Settling
2 Defendants.

3 109. Nothing in this Decree shall be deemed to alter the
4 Court's power to enforce, supervise or approve modifications to
5 this Consent Decree.

6 XXXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

7 110. This Consent Decree shall be lodged with the Court for a
8 period of not less than thirty (30) days for public notice and
9 comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C.
10 § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves
11 the right to withdraw or withhold its consent if the comments
12 regarding the Consent Decree disclose facts or considerations
13 which indicate that the Consent Decree is inappropriate,
14 improper, or inadequate. Settling Defendants consent to the
15 entry of this Consent Decree without further notice.

16 111. If for any reason the Court should decline to approve
17 this Consent Decree in the form presented, this agreement is
18 voidable at the sole discretion of any Party and the terms of the
19 agreement may not be used as evidence in any litigation between
20 the Parties.

21 XXXIII. SIGNATORIES/SERVICE

22 112. Each undersigned representative of a Settling Defendant
23 to this Consent Decree and the Assistant Attorney General for
24 Environment and Natural Resources of the Department of Justice
25 certifies that he or she is fully authorized to enter into the
26 terms and conditions of this Consent Decree and to execute and
27 legally bind such Party to this document.

1 113. Each Settling Defendant hereby agrees not to oppose
2 entry of this Consent Decree by this Court or to challenge any
3 provision of this Consent Decree unless the United States has
4 notified the Settling Defendants in writing that it no longer
5 supports entry of the Consent Decree; provided, however, that
6 this Consent Decree shall become voidable at the option of any
7 Party if it is not approved by the Court by August 1, 1996.

8 114. Each Settling Defendant shall identify, on the attached
9 signature page, the name, address and telephone number of an
10 agent who is authorized to accept service of process by mail on
11 behalf of that Party with respect to all matters arising under or
12 relating to this Consent Decree. Settling Defendants hereby
13 agree to accept service in that manner and to waive the formal
14 service requirements set forth in Rule 4 of the Federal Rules of
15 Civil Procedure and any applicable local rules of this Court,
16 including, but not limited to, service of a summons.

17 SO ORDERED THIS _____ DAY OF _____, 1996.
18
19

20 United States District Judge
21 CLAUDIA WILKEN
22
23
24
25
26
27

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the
2 matter of United States v. Montrose Chemical Corporation of
California, relating to the United Heckathorn Superfund Site.

3 FOR THE UNITED STATES OF AMERICA

4 Date: June 9, 1996

Lois J. Schiffer
5 LOIS J. SCHIFFER
6 Assistant Attorney General
7 Environment and Natural Resources
8 Division
U.S. Department of Justice
Washington, D.C. 20530

9 Date: _____

S. Randall Humm
10 S. RANDALL HUMM
11 Environmental Defense Section
12 Environment & Natural Resources
13 Division
P.O. Box 23986
14 Washington, D.C. 20026-3986
(202) 514-3097

15 Date: _____

Helen H. Kang
16 HELEN H. KANG
17 Environmental Enforcement Section
18 Environment and Natural Resources
Division

19 Date: _____

Michael J. Yamaguchi
20 MICHAEL J. YAMAGUCHI
21 United States Attorney
Northern District of California
22 PATRICK RAMIREZ S. BUPARA
23 Assistant United States Attorney
24
25
26
27

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the
2 matter of United States v. Montrose Chemical Corporation of
California, relating to the United Heckathorn Superfund Site.

3
4
5 Date: _____

KEITH TAKATA
Director
Hazardous Waste Management Division
Region 9
U.S. Environmental Protection
Agency

6
7
8
9
10 Date: _____

JOHN J. LYONS
Regional Counsel
Region 9
U.S. Environmental Protection
Agency

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the
2 matter of United States v. Montrose Chemical Corporation of
California, relating to the United Heckathorn Superfund Site.

3 FOR SETTLING DEFENDANTS

4 MONTROSE CHEMICAL CORPORATION OF
5 CALIFORNIA

6 Date: 5/9/76


7 FRANK C. BACHMAN
8 PRESIDENT

9 CHRIS-CRAFT INDUSTRIES, INC.

10
11 Date: _____

By: _____

12 Its: _____

13 RHONE-POULENC, INC.

14
15 Date: _____

By: _____

16 Its: _____

17 STAUFFER MANAGEMENT COMPANY

18
19 Date: _____

By: _____

20 Its: _____

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the
2 matter of United States v. Montrose Chemical Corporation of
California, relating to the United Heckathorn Superfund Site.

3 FOR SETTLING DEFENDANTS

4 MONTROSE CHEMICAL CORPORATION OF
5 CALIFORNIA

6 Date: _____

7 FRANK C. BACHMAN
8 PRESIDENT

9 CHRIS-CRAFT INDUSTRIES, INC.

10
11 Date: _____

12 By: _____
13 Its: _____

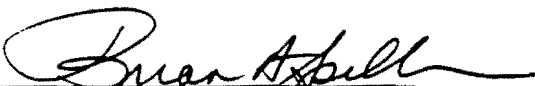
14 RHONE-POULENC, INC.

15 Date: _____

16 By: _____
17 Its: _____

18 STAUFFER MANAGEMENT COMPANY

19 Date: 5-9-96

20 
By: Brian A. Guites
21 Its: President

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the
2 matter of United States v. Montrose Chemical Corporation of
California, relating to the United Heckathorn Superfund Site.

3 FOR SETTLING DEFENDANTS

4 MONTROSE CHEMICAL CORPORATION OF
5 CALIFORNIA

6
7 Date: _____

FRANK C. BACHMAN
PRESIDENT

8
9 CHRIS-CRAFT INDUSTRIES, INC.

10
11 Date: _____

By: _____
Its: _____

12
13 RHONE-POULENC, INC.

14
15 Date: May 9, 1996

16 By: John M. Lateta
17 Its: Senior Corporate Counsel and
Assistant Secretary
18 STAUFFER MANAGEMENT COMPANY

19
20 Date: _____

By: _____
Its: _____

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the
2 matter of United States v. Montrose Chemical Corporation of
California, relating to the United Heckathorn Superfund Site.

3 FOR SETTLING DEFENDANTS

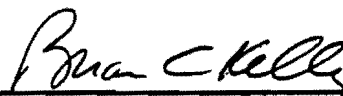
4 MONTROSE CHEMICAL CORPORATION OF
5 CALIFORNIA

6 Date: _____

7 FRANK C. BACHMAN
8 PRESIDENT

9 CHRIS-CRAFT INDUSTRIES, INC.

10
11 Date: May 9, 1996

12 
By: Brian C. Kelly
13 Its: General Counsel and Secretary

14 RHONE-POULENC, INC.

15 Date: _____

16 By: _____
17 Its: _____

18 STAUFFER MANAGEMENT COMPANY

19 Date: _____

20 By: _____
21 Its: _____