

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

HELEN H. KANG
Environmental Enforcement Section
Environment & Natural Resources Division
United States Department of Justice
301 Howard Street, Suite 870
San Francisco, CA 94105
(415) 744-6491

MICHAEL J. YAMAGUCHI
United States Attorney for the
Northern District of California
PATRICK RAMIREZ S. BUPARA
Assistant United States Attorney
450 Golden Gate Avenue
P.O. Box 36055
San Francisco, CA 94102
(415) 436-7200

Attorneys for Plaintiff United States of America

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

MONTROSE CHEMICAL CORPORATION
OF CALIFORNIA, et al.,

Defendants.

AND RELATED ACTIONS

NO. C 84-6273 CW
(Consolidated)

CONSENT DECREE
[Miscellaneous Defendants
Group]

JUL 19 1996

ENTERED IN CIVIL DOCKET

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12 Attorneys for Plaintiff United States of America
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14 UNITED STATES DISTRICT COURT

15 NORTHERN DISTRICT OF CALIFORNIA

16	UNITED STATES OF AMERICA,)	NO.
17)	
18	Plaintiff,)	CONSENT DECREE
19)	[Miscellaneous Defendants
20	v.)	Group]
21)	
22	MONTROSE CHEMICAL CORPORATION)	
23	OF CALIFORNIA, et al.,)	
24)	
25	Defendants.)	
26)	
27	AND RELATED ACTIONS)	
28)	

DECREE - MISCELLANEOUS DEFENDANTS

1 This Consent Decree ("Decree") is made and entered into by
2 and 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 identified in Appendix A hereto.

7 INTRODUCTION

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

19 B. Before the United States filed suit in this matter,
20 several related actions had been pending in this Court arising
21 out of the release or threat of release of hazardous substances
22 from the Site, namely Levin Metals Corporation v. Parr-Richmond
23 Terminal Co. and related actions, Case Nos. C 84 6273; C 84 6324;
24 and C 85 4776 ("Private Party Litigation"). The Honorable
25 Claudia Wilken ordered the parties in the Private Party
26 Litigation, and invited EPA, to engage in mediation to attempt to
27 settle matters. From October 1994 through January 1995, EPA, the

1 Settling Federal Agencies and the private litigants participated
2 in alternative dispute resolution ("ADR") mediated by Judge
3 Coleman Fannin (Ret.) and Lester Levy of J.A.M.S. Endispute, a
4 private firm offering ADR services. This mediation process
5 involved sustained, vigorous and substantial negotiation among
6 the parties. As a result of the mediation and subsequent
7 negotiations, the United States has reached four inter-dependent
8 settlement agreements with regard to the Site ("Four Decrees"),
9 including this Decree.

10 C. The Settling Defendants do not admit any liability to
11 the Plaintiff arising out of the transactions or occurrences
12 alleged in the complaint.

13 D. The United States, on behalf of the Settling Federal
14 Agencies, does not admit any liability arising out of the
15 transactions or occurrences alleged in any claim or counterclaim
16 asserted by the Settling Defendants.

17 E. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605,
18 EPA placed the Site on the National Priorities List, set forth at
19 40 C.F.R. Part 300, Appendix B, by publication in the Federal
20 Register on March 14, 1990, 55 Fed. Reg. 9,688.

21 F. In response to a release or a substantial threat of a
22 release of hazardous substances at or from the Site, EPA
23 commenced on December 5, 1991, a Remedial Investigation and
24 Feasibility Study ("RI/FS") for the Site pursuant to 40 C.F.R.
25 § 300.430.

26 G. EPA completed a Remedial Investigation ("RI") Report in
27 February 1994, and EPA completed a Feasibility Study ("FS")

1 Report on July 5, 1994.

2 H. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617,
3 EPA published notice of the completion of the FS and of the
4 proposed plan for remedial action on July 15, 1994, in a major
5 local newspaper of general circulation. EPA provided an
6 opportunity for written and oral comments from the public on the
7 proposed plan for remedial action. A copy of the transcript of
8 the public meeting is available to the public as part of the
9 administrative record upon which the Regional Administrator based
10 the selection of the response action.

11 I. The decision by EPA on the remedial action to be
12 implemented at the Site is embodied in a Record of Decision
13 ("ROD"), executed on October 26, 1994, to which the State of
14 California ("State") has given its concurrence. The ROD includes
15 a summary of responses to the public comments. Notice of the
16 final plan was published in accordance with Section 117(b) of
17 CERCLA. A copy of the ROD is attached as Appendix E to this
18 Decree.

19 J. Pursuant to consent decrees, the Remedial Action at the
20 Site will be implemented by the Montrose Group and the Levin
21 Group. The United States intends to use certain payments made by
22 Settling Defendants and Settling Federal Agencies pursuant to
23 this Decree first to pay the cost of certain portions of the
24 Remedial Action and for EPA's oversight costs associated with the
25 Remedial Action, and then, to the extent funds remain available,
26 to pay EPA's response costs.

27 K. The Parties recognize, and the Court by entering this

1 Consent Decree finds, that this Consent Decree has been
2 negotiated by the Parties in good faith and implementation of
3 this Consent Decree will expedite the cleanup of the Site and
4 will avoid prolonged and complicated litigation between the
5 Parties, and that this Consent Decree is fair, reasonable, and in
6 the public interest.

7 THEREFORE, with the consent of the Parties to this Decree,
8 it is ORDERED, ADJUDGED, AND DECREED:

9 JURISDICTION AND VENUE

10 1. This Court has jurisdiction over the subject matter of
11 this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C.
12 §§ 9607 and 9613(b), and personal jurisdiction over the Settling
13 Defendants. The Settling Defendants will not challenge the terms
14 of this Decree, the venue in this District or this Court's
15 jurisdiction to enter and enforce this Decree.

16 PARTIES BOUND

17 2. This Consent Decree is binding upon the United States
18 and upon the Settling Defendants and their successors and
19 assigns. Any change in ownership or corporate or other legal
20 status, including but not limited to any transfer of assets or
21 real or personal property, shall in no way alter the status or
22 responsibilities of the Settling Defendants under this Consent
23 Decree.

24 CONDITION PRECEDENT

25 3. This Decree will be effective to bind the Parties only
26 upon entry by this Court of all Four Decrees, which terms were
27 negotiated as described in Paragraph B (Introduction) above and

1 | which are contemplated for simultaneous lodging with and entry by
2 | the Court.

3 | DEFINITIONS

4 | 4. Unless otherwise expressly provided herein, terms used
5 | in this Consent Decree which are defined in CERCLA or in
6 | regulations promulgated under CERCLA shall have the meaning
7 | assigned to them in CERCLA or in such regulations. Whenever
8 | terms listed below are used in this Consent Decree or in the
9 | appendices attached hereto and incorporated hereunder, the
10 | following definitions shall apply:

11 | a. "Damage Assessment Costs" shall mean NOAA's and DOI's
12 | costs incurred in connection with activities and studies
13 | performed to determine injury to or loss of natural resources,
14 | including lost interim uses, resulting from releases of hazardous
15 | substances from the United Heckathorn NPL Site.

16 | b. "EPA" shall mean the United States Environmental
17 | Protection Agency and any successor departments, agencies or
18 | instrumentalities of the United States.

19 | c. "DOI" shall mean the United States Department of the
20 | Interior and any successor departments, agencies or
21 | instrumentalities of the United States.

22 | d. "Levin Group" shall mean Levin Enterprises, Inc. and
23 | Levin Richmond Terminal, Inc., which have agreed, in a related
24 | Consent Decree to be lodged simultaneously with this Decree in
25 | this matter, to construct a cap around the former Heckathorn
26 | plant to prevent erosion, as called for in the ROD.

27 | e. "Marine Remedial Action" shall mean those response

1 actions selected in the ROD for the Lauritzen Channel and Parr
2 Canal.

3 f. "Marine Response Costs" shall mean all expenses, fees
4 and costs that must be paid by the Montrose Group related to the
5 Marine Remedial Action that are recoverable under Sections 107
6 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613. Examples of
7 "Marine Response Costs" include but are not limited to:

8 - a payment to EPA for Interim Response Costs, as defined in
9 Paragraph 37 of the Montrose Group Consent Decree;

10 - costs to identify and select consultants/contractors to
11 implement the Marine Remedial Action at the Site;

12 - costs of consultants/contractors to implement the Marine
13 Remedial Action;

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

18 - costs of consultants/contractors for development and
19 finalization of documents, work plans, and reports required
20 by the Montrose Group Consent Decree;

21 - any costs of an escrow agent to administer the United
22 Heckathorn Site Escrow;

23 - fees and taxes that the Montrose Group must pay to remove
24 Waste Material from the Site and dispose of it in a licensed
25 landfill elsewhere.

26 Marine Response Costs shall not include:

27 - any legal fees incurred by the Montrose Group;

28 - any costs of the Montrose Group to communicate between
themselves or costs of the Montrose Group incurred for
internal organizational purposes;

- any civil penalties assessed against the Montrose Group.

g. "Montrose Group" shall mean that group of defendants
which has agreed, in a related Consent Decree to be lodged

1 simultaneously with this Decree in this matter, to dredge soft
2 bay mud from the Lauritzen Channel and Parr Canal and to dispose
3 of the dredged material offsite, all as called for in the ROD.
4 The Montrose Group is specifically identified in Appendix B
5 hereto.

6 h. "Natural Resource Damages" shall mean damages,
7 including Damage Assessment Costs and lost use value, recoverable
8 under Section 107 of CERCLA, 42 U.S.C. § 9607, for injury to,
9 destruction of, or loss of any and all Natural Resources at the
10 United Heckathorn Site.

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

13 j. "NOAA" shall mean the National Oceanic and Atmospheric
14 Administration, an agency of the United States Department of
15 Commerce, and any successor departments, agencies or
16 instrumentalities of the United States.

17 k. "Parties" shall mean the United States, including the
18 Settling Federal Agencies, and the Settling Defendants.

19 l. "Remedial Action" shall mean those activities, except
20 for operation and maintenance, to be undertaken, or which have
21 been undertaken, to implement the ROD.

22 m. "Response Costs" shall mean all costs of response as
23 provided in Section 107(a)(1-4)(A) of CERCLA, 42 U.S.C.
24 §§ 9607(a)(1-4)(A), and as defined in Section 101(25) of CERCLA,
25 42 U.S.C. § 9601(25), including oversight costs, that the United
26 States has incurred or will incur with respect to the United
27 Heckathorn NPL Site.

n. "Settling Defendants" or the "Miscellaneous Defendants Group" shall mean those entities identified in Appendix A hereto.

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

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

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

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

SETTLING DEFENDANTS' PAYMENTS INTO THE GROUP ESCROW

5. On or before May 31, 1996, Settling Defendants shall establish an escrow account (the "Group Escrow"). Settling Defendants shall deposit into the Group Escrow \$2,680,535.28, in

1 settlement of EPA's claims, and \$102,190.44, in settlement of the
2 United States' Natural Resource Damages claims. The allocation
3 to Settling Defendants of \$102,190.44, out of the United States'
4 total Natural Resource Damages recovery of \$400,000 from
5 defendants which are parties to the Four Decrees, was determined
6 solely by potentially responsible parties, including Settling
7 Defendants.

8 6. On May 31, 1996, Settling Defendants shall send to the
9 United States, as provided in Paragraph 38, a copy of the
10 correspondence that establishes and funds the escrow account,
11 including, but not limited to, information containing the
12 identity of the bank and the bank account under which the escrow
13 is established, as well as a bank statement showing the initial
14 balance of the Group Escrow account. Thereafter, if requested to
15 do so by the United States, Settling Defendants shall provide all
16 other documentation concerning the account, including any
17 agreement concerning the determination of interest rates.

18 7. Settling Defendants shall bear all costs of
19 establishing, administering and terminating the Group Escrow.

20 8. Settling Defendants' failure to establish and fund the
21 Group Escrow by May 31, 1996 shall constitute a material default,
22 for which this Decree may be voidable by the United States.

23 PAYMENTS FROM THE GROUP ESCROW

24 9. Within 10 days after entry of this Decree, Settling
25 Defendants shall transfer the funds in the Group Escrow as
26 follows:
27

1 a. Pay to the EPA Hazardous Substance Superfund
2 \$380,535.28, in reimbursement of Response Costs, by FedWire
3 Electronic Funds Transfer to the U.S. Department of Justice
4 account in accordance with current electronic funds transfer
5 procedures, referencing U.S.A.O. file number 9600022, EPA Region
6 9 and Site/Spill ID #09R3, and DOJ case number 90-11-3-598. This
7 payment shall be made in accordance with instructions provided to
8 the Settling Defendants by the Financial Litigation Unit of the
9 United States Attorney's Office for the Northern District of
10 California, following lodging of this Decree. Settling
11 Defendants shall send notice that such payment has been made to
12 the United States as specified in Paragraph 38 and to David Wood,
13 Chief, Cost Accounting Section, EPA Region 9, 75 Hawthorne
14 Street, San Francisco, CA 94105.

15 b. Transfer to an escrow set up by the Montrose Group, in
16 part to pay for the Remedial Action (the "United Heckathorn Site
17 Escrow"), \$2,300,000, plus accrued interest allocable to the
18 principal amount of \$2,680,535.28, referenced in Paragraph 5 of
19 this Decree. Settling Defendants shall send notice that such
20 payment has been made to the United States as specified in
21 Paragraph 38. Within 10 days after entry of this Decree, the
22 United States will provide to Settling Defendants information
23 about the United Heckathorn Site Escrow to enable Settling
24 Defendants to make the transfer required herein.

25 c. Pay \$15,000.00 to DOI, as reimbursement for Damage
26 Assessment Costs. Payment shall be made by certified check made
27 payable to Secretary of the Interior and delivered to Chief,

1 Division of Finance, U.S. Fish and Wildlife Service, 4401 North
2 Fairfax Drive, Room 380, Arlington, VA 22203. The check shall
3 reflect that it is a payment to the "Natural Resource Damage
4 Assessment and Restoration Fund, Account No. 14X5198 --
5 Assessment Cost Reimbursement" and reference the "Levin
6 Richmond/United Heckathorn Superfund Site."

7 d. Pay \$20,000 to NOAA, as reimbursement for Damage
8 Assessment Costs. Payment shall be made by certified check made
9 payable to NOAA, Department of Commerce. The check shall
10 indicate that the payment is for "reimbursement of damage
11 assessment costs for the United Heckathorn Superfund Site." The
12 check shall be delivered to Chief, Damage Assessment Center, NOS,
13 NOAA, Room 10218, 1305 East West Highway, Silver Spring, MD
14 20910.

15 e. Pay \$67,190.44, plus accrued interest allocable to the
16 principal amount of \$102,190.44 referenced in Paragraph 5 of this
17 Decree, to DOI. The check shall be made payable to the Secretary
18 of the Interior and delivered to Chief, Division of Finance
19 Division, United States Fish and Wildlife Service, 4401 North
20 Fairfax Drive, Room 380, Arlington, VA, 22203 (phone (703) 358-
21 1742). The check shall reflect that it is a payment to the
22 "Natural Resource Damage Assessment and Restoration Fund, Account
23 No. 14X5198" and reference the "Levin Richmond/United Heckathorn
24 Site." DOI will assign these funds a special project number to
25 allow the funds to be maintained as a segregated account within
26 the DOI Natural Resource Damage Assessment and Restoration Fund,
27 Account No. 14X5198 ("Trustees Account"). DOI intends to, in

1 accordance with law, manage and invest funds in the Trustees
2 Account and segregate in the Account any return on investments or
3 interest accrued for use by the natural resource Trustees. DOI
4 will not make any charge against the Account for any investment
5 or management services provided. DOI will hold all funds in the
6 Account, including return on investments or accrued interest,
7 subject to the provisions of this Decree and any agreement DOI
8 and NOAA may reach regarding the use of the funds. DOI's failure
9 to discharge its obligations under this subparagraph e shall not
10 affect the United States' covenants.

11 PAYMENTS BY SETTling FEDERAL AGENCIES

12 10. As soon as practicable after entry of this Consent
13 Decree, the United States, on behalf of the Settling Federal
14 Agencies, shall cause to be transferred to the United Heckathorn
15 Site Escrow the sum of \$300,000, in settlement of EPA's claims.

16 11. As soon as practicable after entry of this Consent
17 Decree, the United States, on behalf of the Settling Federal
18 Agencies, shall pay \$11,678.17 to DOI, in settlement of the
19 United States' Natural Resource Damages claims. Payment shall be
20 made in the manner specified in Paragraph 9.e. The allocation to
21 Settling Federal Agencies of \$11,678.17, out of the United
22 States' total Natural Resource Damages recovery of \$400,000 from
23 defendants which are parties to the Four Decrees, was determined
24 solely by potentially responsible parties, including Settling
25 Federal Agencies.

26 12. Notwithstanding any other provisions of this Consent
27 Decree, the Parties to this Consent Decree recognize and

1 acknowledge that the payment obligations imposed upon the
2 Settling Federal Agencies by this Consent Decree can only be paid
3 from appropriated funds legally available for such purpose.
4 Nothing in this Consent Decree shall be interpreted or construed
5 as a commitment or requirement that any Settling Federal Agency
6 obligate or pay funds in contravention of the Anti-Deficiency
7 Act, 31 U.S.C. § 1341, or any other applicable provision of law.

8 CONTINGENT PAYMENT BY SHELL OIL CO.

9 13. Within 10 days of receiving written notice from the
10 Montrose Group that Marine Response Costs are expected to exceed
11 \$8.1 million, Shell Oil Company ("Shell") shall deposit an
12 additional \$500,000.00 into the United Heckathorn Site Escrow, to
13 be used only if the total of the following amounts, as calculated
14 by EPA, exceeds \$8.9 million:

15 (i) all Marine Response Costs incurred by the Montrose
16 Group and paid to third parties related to the Marine
17 Remedial Action;

18 (ii) the costs incurred or to be incurred by the Levin
19 Group for constructing, maintaining and overseeing a
20 cap around the former Heckathorn plant property, as
21 called for in the ROD, which for the purpose of this
22 calculation shall be in the sum of \$500,000; and

23 (iii) all Response Costs incurred by EPA in performing
24 marine monitoring to determine the effectiveness of the
25 remedy called for in the ROD or in overseeing the work
26 performed by the Levin Group or the Montrose Group,
27 which for the purpose of this calculation shall be in

1 the sum of \$300,000.
2 If, under the terms of the Montrose Group Consent Decree, this
3 \$500,000 is not fully used for the Marine Remedial Action
4 performed by the Montrose Group, the balance, together with any
5 accrued interest, shall be returned to Shell in accordance with
6 the terms of the Montrose Group Consent Decree.

7 On or before August 1, 1996, Shell shall also establish an
8 irrevocable letter of credit in the amount of \$500,000 that the
9 Escrow Agent for the United Heckathorn Site Escrow may draw upon
10 in the event that Shell fails to deposit \$500,000 in the United
11 Heckathorn Site Escrow within 10 days of receiving notice from
12 the Montrose Group as set out above. Provided that Shell has not
13 previously received such notice from the Montrose Group, Shell
14 may terminate the letter of credit following EPA issuance of a
15 Certification of Completion to the Montrose Group as provided in
16 Paragraph 50(c) of the Montrose Group Consent Decree. Otherwise,
17 Shell may terminate the letter of credit following the
18 termination of the United Heckathorn Site Escrow (as provided in
19 Paragraph 47 of the Montrose Group Consent Decree) or when the
20 Escrow Agent for the United Heckathorn Site Escrow has drawn on
21 the letter of credit up to the limit of the letter of credit,
22 \$500,000.

23 FAILURE TO MAKE TIMELY PAYMENTS

24 14. In the event Settling Defendants fail to make timely
25 payments, Settling Defendants shall pay a stipulated penalty as
26 follows:

27 a. For failure to fund the Group Escrow with \$2,680,535.28

1 (i.e., the EPA settlement) as set forth in Paragraph 5 or for
2 failure to make the transfer of funds as set forth in Paragraph
3 9.b, Settling Defendants shall pay a total of \$25,000 for any
4 delay of up to seven days and \$5,000 each day thereafter.

5 b. For failure to make the transfer of funds as set forth
6 in Paragraph 9.a, Settling Defendants shall pay \$200 for each day
7 of delay.

8 c. For failure to pay the amounts required by Paragraph
9 13, Shell shall pay a total of \$25,000 for any delay of up to
10 seven days and \$5,000 each day thereafter.

11 d. Stipulated penalties are due within 30 days following
12 receipt by the Settling Defendants of a written demand by the
13 United States for payment of such stipulated penalties.

14 e. Stipulated penalties shall be paid by certified or
15 cashier's check made payable to "EPA Hazardous Substance
16 Superfund;" shall be mailed to U.S. EPA, Region IX, Attention:
17 Superfund Accounting, P.O. Box 360863M, Pittsburgh, PA 15251;
18 shall indicate that the payment is for stipulated penalties; and
19 shall reference the EPA Region and Site/Spill ID #09R3, the DOJ
20 Case Number 90-11-3-598, and the name and address of the party
21 making payment. Copies of any checks paid pursuant to this
22 subparagraph and accompanying transmittal letters shall be sent
23 to the United States as provided in Paragraph 38 (Notice).

24 f. Payment of any stipulated penalty pursuant to this
25 Paragraph shall be in addition to any other remedy or sanction
26 available to the United States for the failure of the Settling
27 Defendants to make timely payment of the settlement amounts.

1 g. Notwithstanding any other provision of this paragraph,
2 the United States may, in its unreviewable discretion, waive any
3 portion of stipulated penalties that have accrued pursuant to
4 this Consent Decree.

5 15. If Settling Defendants do not timely pay the amount
6 specified in Paragraph 9.c-e (Natural Resource Damages), this
7 Consent Decree shall be considered an enforceable judgment, under
8 Rule 69 of the Federal Rules of Civil Procedure and other
9 applicable statutory authority, for purposes of post-judgment
10 collection of the amount due the Trustees, without further order
11 of this Court. Interest shall be assessed at the annual rate
12 established pursuant to 31 U.S.C. § 3717 on the overdue amount
13 from the due date set forth in Paragraph 9 through the date of
14 payment. In addition, in the event the United States takes
15 action to enforce the judgment, defaulting Settling Defendants
16 shall reimburse the United States for costs and reasonable
17 attorney's fees incurred in enforcing Settling Defendants'
18 obligation.

19 16. The obligations of Settling Defendants to pay amounts
20 owed the United States under this Consent Decree are joint and
21 several, with the exception of Shell's obligations set forth in
22 Paragraphs 13 and 14.d, which are those of Shell only. In the
23 event of the failure of any one or more Settling Defendants to
24 make the payments required under this Consent Decree, the other
25 Settling Defendants shall be responsible for such payments.

26 17. In the event the United States must bring an action to
27 collect any payment required under this Decree, defaulting

1 Settling Defendants shall reimburse the United States for all
2 costs of such action, including but not limited to attorney's
3 fees, except as set forth in Paragraph 15.

4 18. In the event one or more Settling Defendants must bring
5 an action against any other Settling Defendant for the latter's
6 failure to make any payment required under this Decree, the
7 latter shall reimburse the Settling Defendants which brought suit
8 for all costs of such action, including but not limited to
9 attorney's fees and for all costs or fees incurred in any action
10 brought by the EPA under this Consent Decree.

11 COVENANT NOT TO SUE OR TAKE ADMINISTRATIVE ACTION

12 BY THE UNITED STATES AND RESERVATION OF RIGHTS

13 19. In consideration of the payments to be made by the
14 Settling Defendants and Settling Federal Agencies under the terms
15 of this Decree and except as specifically provided in Paragraphs
16 20-27 of this Decree, the United States hereby covenants not to
17 sue or take administrative action against any of the Settling
18 Defendants, and the Settling Defendants' past and present
19 officers, directors and employees acting in such respective
20 capacities for the Settling Defendants, and EPA, DOI and NOAA
21 covenant not to take any action against any of the Settling
22 Federal Agencies, pursuant to Sections 106, 107(a) and (f), and
23 113(f) of CERCLA, 42 U.S.C. §§ 9606, 9607(a) and (f), 9613(f),
24 relating to hazardous substances present at the Site. These
25 covenants are conditioned upon the satisfactory performance by
26 Settling Defendants and Settling Federal Agencies of their
27 obligations under this Consent Decree. These covenants do not

1 extend to persons other than Settling Defendants, and the
2 Settling Defendants' past and present officers, directors and
3 employees acting in such respective capacities for the Settling
4 Defendants, and Settling Federal Agencies.

5 20. Reservation. Notwithstanding any other provision of
6 this Decree, the United States reserves, and this Decree is
7 without prejudice to, the right to institute proceedings in this
8 action or in a new action, or to issue an administrative order
9 seeking to compel Settling Defendants, and the United States
10 reserves the right to issue an administrative order seeking to
11 compel Settling Federal Agencies, to perform response actions
12 relating to the Site or to reimburse the United States for
13 additional response costs if:

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

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

18 and these previously unknown conditions or information together
19 with any other relevant information indicate that the Remedial
20 Action is not protective of human health or the environment.

21 21. For purposes of Paragraph 20, the information and the
22 conditions known to EPA shall include only that information and
23 those conditions set forth in (1) the Record of Decision for the
24 Site, (2) the administrative record supporting the Record of
25 Decision, and (3) records relating to the Site, generated or
26 received by EPA after issuance of the Record of Decision, which
27 are in the EPA Site file as of December 31, 1995, as reflected in

1 the Site file index.

2 22. Reservation Concerning Natural Resource Damages.

3 Notwithstanding any other provision of this Decree, the United
4 States, on behalf of its natural resource Trustees, reserves, and
5 this Decree is without prejudice to, the right to bring an action
6 against any Settling Defendant in this action or in a new action
7 to seek recovery of Natural Resource Damages, based on (i)
8 conditions with respect to the Site unknown to the Trustees as of
9 the date this Decree is lodged with the court, that result in or
10 contribute to injury to, destruction of or loss of natural
11 resources; or (ii) information received by the Trustees after the
12 date the Decree is lodged with the court which indicates that
13 there is injury to, destruction of, or loss of natural resources
14 of a type unknown, or a magnitude greater than was known, to the
15 Trustees.

16 23. Dollar Limit. Notwithstanding any other provision of
17 this Decree, the United States reserves, and this Decree is
18 without prejudice to, the right to institute proceedings in this
19 action or in a new action, or to issue an administrative order
20 seeking to compel Settling Defendants, and the United States
21 reserves the right to issue an administrative order seeking to
22 compel the Settling Federal Agencies, to perform response actions
23 relating to the Site or to reimburse the United States for
24 response costs, including all past costs unreimbursed by
25 potentially responsible parties at the Site, if the total of the
26 following costs, as calculated by EPA, exceeds \$12.8 million:

27 (i) EPA's past response costs (including, but not

1 limited to, direct and indirect costs) incurred for
2 response actions at the Site, which for the purpose of
3 this calculation shall be in the sum of \$2,693,428.22,
4 as reflected in EPA's cost summary dated August 30,
5 1994;

6 (ii) The costs incurred or to be incurred by the Levin
7 Group for constructing, maintaining and overseeing a
8 cap around the former Heckathorn plant, as called for
9 in the ROD, which for the purpose of this calculation
10 shall be the sum of \$500,000;

11 (iii) all Marine Response Costs incurred by the
12 Montrose Group and paid to third parties related to the
13 Marine Remedial Action; and

14 (iv) all response costs incurred by EPA in performing
15 marine monitoring to verify the effectiveness of the
16 remedy called for in the ROD or in overseeing the work
17 performed by the Levin Group and the Montrose Group or
18 in overseeing the work performed by the Levin Group or
19 the Montrose Group, which for the purpose of this
20 calculation shall be the sum of \$300,000.

21 24. For purposes of calculating whether the \$8.9 million
22 limit has been reached pursuant to Paragraph 13 or whether the
23 \$12.8 million limit has been reached pursuant to Paragraph 23,
24 the category of costs enumerated therein shall not be reduced
25 even if the costs are not consistent with the NCP or "necessary,"
26 within the meaning of Section 107(a)(4)(A-B) of CERCLA, 42 U.S.C.
27 § 9607(a)(4)(A-B).

1 25. Notwithstanding any other provision of this Decree, the
2 United States reserves, and this Decree is without prejudice to,
3 the right to institute proceedings in this action or in a new
4 action, or to issue an administrative order seeking to compel
5 Settling Defendants, and the United States reserves the right to
6 issue an administrative order seeking to compel the Settling
7 Federal Agencies, to perform response actions relating to the
8 Site or to reimburse the United States for response costs,
9 including all past costs unreimbursed by potentially responsible
10 parties at the Site, if EPA determines, through an amendment to
11 the ROD, that the Remedial Action is not protective of human
12 health and the environment and EPA selects further response
13 actions at the Site.

14 26. General Reservation of Rights. The covenants not to
15 sue or to take administrative action set forth above do not
16 pertain to any matters other than those expressly specified in
17 Paragraph 19. Notwithstanding any other provision of this
18 Decree, the United States reserves, and with respect to Settling
19 Federal Agencies, EPA and federal natural resource Trustees
20 reserve, and this Consent Decree is without prejudice to, all
21 rights against Settling Defendants and Settling Federal Agencies
22 with respect to all other matters, including but not limited to,
23 the following:

24 (1) claims based on a failure by Settling Defendants
25 or Settling Federal Agencies to meet a requirement of this
26 Consent Decree;

27 (2) liability arising from the past, present, or

1 future disposal, release, or threat of release of Waste
2 Materials outside of the Site, including liability for
3 damages for injury to, destruction of, or loss of natural
4 resources occurring outside of the Site, and for the costs
5 of any natural resource damage assessments;

6 (3) liability for future disposal of Waste Material at
7 the Site, other than as provided in the ROD or otherwise
8 ordered by EPA;

9 (4) criminal liability; and

10 (5) liability for violations of federal or state law
11 by Settling Defendants which occur during or after
12 implementation of the Remedial Action at the Site.

13 COVENANTS BY SETTLING DEFENDANTS

14 27. Each of the Settling Defendants covenants not to sue
15 and agrees not to assert any claims or causes of action against
16 the United States, or any employee, officer, department, agency
17 or instrumentality thereof, with respect to any matters relating
18 to the United Heckathorn NPL Site or this Consent Decree,
19 including but not limited to:

20 a. any direct or indirect claim for reimbursement from the
21 Hazardous Substance Superfund (established pursuant to the
22 Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections
23 106(b)(2), 107, 111, 112, 113 or any other provision of law;

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

26 c. any claims arising out of response activities at the
27 Site, including claims based on EPA's selection of response

1 actions, oversight of response activities or approval of plans
2 for such activities.

3 The Settling Defendants reserve the right to assert any
4 counterclaims against the United States arising out of any action
5 filed by the United States pursuant to Paragraphs 20, 22, 23 or
6 25.

7 28. Nothing in this Decree shall be deemed to constitute
8 preauthorization of a claim within the meaning of Section 111 of
9 CERCLA, 42 U.S.C. § 9611 or 40 C.F.R. § 300.700(d).

10 EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

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

22 30. The Parties agree, and by entering this Consent Decree
23 this Court finds, that Settling Defendants and Settling Federal
24 Agencies are entitled, as of the effective date of this Consent
25 Decree, to protection from contribution actions or claims as
26 provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), for
27 matters addressed in this Consent Decree. "Matters addressed in

1 this Decree" shall mean Natural Resource Damages and all response
2 costs incurred or to be incurred by the United States or any
3 other person or entity at the Site, but do not include natural
4 resource damages and response costs incurred or to be incurred in
5 connection with the presence, release or threatened release of a
6 hazardous substance outside the Site. Any rights Settling
7 Defendants or Settling Federal Agencies may have to obtain
8 contribution or otherwise recover costs or damages from persons
9 not party to this Decree are preserved.

10 31. The Settling Defendants agree that, with respect to any
11 suit or claim for contribution brought by them for matters
12 related to this Consent Decree, they will notify the United
13 States in writing no later than 60 days prior to the initiation
14 of such suit or claim.

15 32. The Settling Defendants also agree that, with respect
16 to any suit or claim for contribution brought against them for
17 matters related to this Consent Decree, they will notify the
18 United States in writing within 10 days of service of the
19 complaint on them. In addition, Settling Defendants shall notify
20 the United States within 10 days of service or receipt of any
21 Motion for Summary Judgment and within 10 days of receipt of any
22 order from a court setting a case for trial.

23 33. In any subsequent administrative or judicial proceeding
24 initiated by the United States for injunctive relief, recovery of
25 response costs or Natural Resource Damages, or other appropriate
26 relief relating to the Site, Settling Defendants shall not
27 assert, and may not maintain, any defense or claim against the

1 United States based upon the principles of waiver, res judicata,
2 collateral estoppel, issue preclusion, claim-splitting, or other
3 defenses based upon any contention that the claims raised by the
4 United States in the subsequent proceeding were or should have
5 been brought in the instant case; provided, however, that nothing
6 in this Paragraph affects the enforceability of the covenants not
7 to sue set forth in Paragraph 19.

8 RETENTION OF RECORDS

9 34. Until seven years after the issuance of the
10 Certification of Completion of the Remedial Action, each Settling
11 Defendant shall preserve and retain one set of all records and
12 documents (originals or, if originals do not exist, copies) now
13 in its possession or control or which come into its possession or
14 control, that relate in any manner to activities at the Site or
15 to transactions between Settling Defendants and the pesticide
16 formulators who operated at the Site, including, but not limited
17 to, documents produced by Settling Defendants in the Private
18 Party Litigation, regardless of any corporate retention policy to
19 the contrary.

20 35. At the conclusion of this document retention period,
21 each Settling Defendant shall notify the United States at least
22 90 days prior to the destruction of any such records or
23 documents, and upon request by the United States, each Settling
24 Defendant shall make available any such records or documents at a
25 location within Region IX of EPA designated by the United States.
26 Each Settling Defendant may assert that certain documents,
27 records and other information are privileged under attorney

1 client privilege, or any other privilege recognized under state
2 or federal law. In connection with the assertion of any such
3 claim of privilege, the Settling Defendant shall provide the
4 United States with the following: (1) title of document or
5 record; (2) date of document or record; (3) name and position of
6 the author of the document or record; (4) description of the
7 subject of the document or record; and (5) the specific basis for
8 the privilege asserted.

9 36. Each Settling Defendant hereby certifies individually
10 that, to the best of its knowledge and belief, after thorough
11 inquiry, it has not altered, mutilated, discarded, destroyed or
12 otherwise disposed of any original records, documents or other
13 information (or where originals did not exist, the last copy of
14 such records, documents or other information) relating to its
15 activities at the Site or to transactions between Settling
16 Defendants and the pesticide formulators who operated at the Site
17 since notification of potential liability by the United States
18 and that it has fully complied with any and all EPA requests for
19 information pursuant to Sections 104(e) and 122(e) of CERCLA, 42
20 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of the Resource
21 Conservation and Recovery Act, 42 U.S.C. § 6927.

22 NOTICE

23 37. Any notice required hereunder shall be in writing and
24 shall be delivered by hand, facsimile or overnight mail as
25 follows:

26 United States:

27 Chief, Environmental Enforcement Section

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

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

14 EPA:

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

21 Settling Defendants:

22 Elf Atochem North America
23 Andrew C. Peterson. Esq.
24 Morgan, Lewis & Bockius
25 801 South Grand Avenue, Suite 2100
26 Los Angeles, CA 90071-3189

27 Olin Corporation and John Powell & Company
28 Ken Wright, Esq.
29 Morgan, Lewis & Bockius
30 801 South Grand Ave., Suite 2100
31 Los Angeles, CA 90017-3189

32 Prentiss Incorporated, R.J. Prentiss, Inc. of New York and
33 R.J. Prentiss, Inc. of California:
34 Anthony C. Ching, Esq.
35 Graham & James
36 801 South Figueroa St., 14th Fl.
37 Los Angeles, CA 90017-5554

38 Puregro Company:

1 April V. Pearson, Esq.
Unocal Corporation
2 376 S. Valencia Avenue
Brea, CA 92621

3 Shell Oil Company:
4 Randy Heldt, Esq.
Shell Oil Company
5 One Shell Plaza
P.O. Box 2463
6 Houston, TX 77252-2463

7 The Sherwin-Williams Company:
Mark E. Robson, Esq.
8 Littler, Mendelson, Fastiff, Tichy & Mathiason
2175 North California Blvd., Suite 835
9 Walnut Creek, CA 94596

10 Wilmington Securities, Inc.
Richard Patch
11 Coblenz, Cahen, McCabe & Breyer
222 Kearny Street, 7th Floor
12 San Francisco, CA 94108

13 Each Party to this Decree may change the person(s) it has
14 designated to receive notice for that Party, or the addresses for
15 such notice, by filing a written notice of such change with the
16 Court and serving said notice on the Parties.

17
18 EFFECTIVE DATE

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

22 RETENTION OF JURISDICTION

23 39. The Court shall retain jurisdiction of this matter for
24 the purpose of entering such further order, direction, or relief
25 as may be necessary or appropriate for the construction,
26 implementation, or enforcement of this Decree.

1 AUTHORIZED REPRESENTATIVE

2 40. Each undersigned representative of Settling Defendants
3 and the Assistant Attorney General, for the United States,
4 certifies that he or she is fully authorized to enter into the
5 terms and conditions of this Decree and to legally execute and
6 bind that Party to this Decree.

7 MODIFICATION

8 41. The terms of this Decree may be modified only by a
9 subsequent written agreement signed by all of the Parties
10 signatory hereto, and approved by the Court as a modification to
11 this Decree.

12 PUBLIC COMMENT

13 42. The Parties agree that this Decree will be subject to a
14 30-day public comment period as provided in 28 C.F.R. § 50.7.
15 The United States reserves the right to withdraw its consent to
16 this Decree if comments received disclose facts or considerations
17 which show that this Decree is inappropriate, improper, or
18 inadequate. The Settling Defendants consent to the entry of this
19 Decree by the Court without further notice.

20
21 ENTIRE AGREEMENT

22 43. This Consent Decree contains the entire agreement
23 between the United States and Settling Defendants with respect to
24 the Site. Any oral representations or modifications concerning
25 this Decree shall be of no force unless contained in a subsequent
26 modification signed by the Parties.

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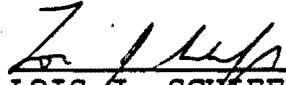
1 Decree this _____ DAY of _____, 1996, each party
2 to bear its own costs and attorney's fees, except as specifically
3 provided herein.

4
5 United States District Judge
6 CLAUDIA WILKEN
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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: Dec 9, 1996


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: _____

HELEN H. KANG
10 Environmental Enforcement Section
11 Environment and Natural Resources
12 Division

13 Date: _____

S. RANDALL HUMM
14 Environmental Defense Section
15 Environment & Natural Resources
16 Division
P.O. Box 23986
Washington, D.C. 20026-3986
(202) 514-3097

17
18
19 Date: _____

MICHAEL J. YAMAGUCHI
20 United States Attorney
21 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
3 California, relating to the United Heckathorn Superfund Site.

4
5
6 FOR THE UNITED STATES OF AMERICA

7 Date: _____

8 KEITH TAKATA
9 Director
10 Hazardous Waste Management Division
11 Region 9
12 U.S. Environmental Protection
13 Agency

14 Date: _____

15 JOHN J. LYONS
16 Assistant Regional Counsel
17 Region 9
18 U.S. Environmental Protection
19 Agency

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

4 FOR SETTLING DEFENDANT

5 ELF ATOCHEM NORTH AMERICA

6 Date: _____

7 FRANK B. FRIEDMAN
8 Senior Vice President
9 Health, Environment and Safety

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

4 FOR SETTLING DEFENDANT

5 OLIN CORPORATION

6 Date: _____

7 [NAME, TITLE] _____
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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 DEFENDANT

4 PRENTISS, INC.

5 Date: _____

6 [NAME, TITLE]
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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 DEFENDANT

4 PUREGRO COMPANY

5
6 Date: _____

[NAME, TITLE]

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 SHELL OIL COMPANY

5
6 Date: _____

[NAME, TITLE]

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 DEFENDANT

4 THE SHERWIN-WILLIAMS COMPANY

5
6 Date: _____

[NAME, TITLE]

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

4 FOR SETTLING DEFENDANT

5 WILMINGTON SECURITIES, INC.

6 Date: _____

[NAME, TITLE]