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

17 UNITED STATES OF AMERICA
and STATE OF CALIFORNIA,
18 Plaintiffs,
19 v.
20 MONTROSE CHEMICAL CORP.
OF CALIFORNIA, et al.,
21 Defendants
22

Case No. 2:90-cv-03122 DOC
(GJSx)
PARTIAL CONSENT DECREE
(Montrose Superfund Site –
Dense Non-Aqueous Phase
Liquid (DNAPL) Operable Unit)

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I. BACKGROUND

1
2 A. In December 1999, the United States and the State of California
3 (“State”), on behalf of the California Department of Toxic Substances Control
4 (“DTSC”), among other State entities, filed a Third Amended Complaint
5 (“Complaint”) in this matter pursuant to Section 107 of the Comprehensive
6 Environmental Response, Compensation, and Liability Act of 1980, as amended
7 (“CERCLA”), 42 U.S.C. §§ 9601 – 9675, seeking, *inter alia*, recovery of
8 response costs in connection with releases of the pesticide DDT and other
9 hazardous substances into the environment at and from the former manufacturing
10 facility located at 20201 Normandie Avenue in Los Angeles, California
11 (“Montrose Plant Property”), which was operated by Montrose Chemical
12 Corporation of California (“Montrose”). This Partial Consent Decree constitutes
13 partial satisfaction of the claims asserted in the Complaint, as described further
14 below.

15 B. In the First Claim for Relief of the Complaint, the Plaintiffs asserted
16 a claim under Section 107(a)(1-4)(C) of CERCLA, 42 U.S.C. § 9607(a)(1-4)(C),
17 for declaratory relief and recovery of response costs and damages for injury to,
18 destruction of or loss of natural resources under their trusteeships resulting from
19 releases of hazardous substances into the environment in and around Los
20 Angeles, California, including those parts of the San Pedro Channel area in the
21 vicinity of the Palos Verdes Peninsula, the Los Angeles-Long Beach Harbors and
22 the environs of Santa Catalina Island and the Channel Islands. The First Claim
23 was settled in a Partial Consent Decree Relating to Offshore Matters and
24 Department of Justice Costs entered by the Court on March 15, 2001.

25 C. In the Second Claim for Relief of the Complaint, the Plaintiffs
26 asserted a claim for recovery of costs incurred by the United States
27 Environmental Protection Agency (“EPA”) and DTSC in response to the release
28 or threatened release of hazardous substances into the environment at and/or from

1 the Montrose Plant Property pursuant to Section 107(a)(1-4)(A) of CERCLA, 42
2 U.S.C. § 9607(a)(1-4)(A).

3 D. The Complaint specified that the Second Claim included costs
4 related to contamination in ocean sediment at the Palos Verdes Shelf, as well as a
5 number of specified water bodies. This portion of the Second Claim was also
6 settled in the Partial Consent Decree entered on March 15, 2001.

7 E. Pursuant to a Partial Consent Decree for Past Costs, entered by the
8 Court on October 20, 2000, the United States and DTSC recovered \$5,125,000 as
9 reimbursement and settlement of claims for specified past response costs. In
10 addition, Montrose had previously paid \$1,354,612.37 to EPA as reimbursement
11 of past response costs incurred by the United States with respect to portions of
12 the “Onshore Areas,” as defined in the Partial Consent Decree with Montrose
13 Chemical Corporation of California, Aventis CropScience USA, Inc., Chris-Craft
14 Industries, Inc., and Atkemix Thirty Seven, Inc. (Relating to Offshore Matters
15 and Department of Justice Costs), entered by the Court on March 15, 2001.

16 F. Trial in this action commenced on October 17, 2000. On October
17 18, 2000, the Court took under submission the issue of liability of all the
18 defendants who have entered into this Partial Consent Decree (“Settling
19 Defendants”) for the incurrence of response costs caused by the release or
20 threatened release of hazardous substances from the Montrose Plant Property.
21 The Parties subsequently lodged and the Court entered two separate consent
22 decrees for certain of those costs. Specifically, on June 26, 2002, the Court
23 entered a “Partial Consent Decree (relating to the Neighborhood Areas),” which
24 resolved the liability of all Settling Defendants to the United States and DTSC for
25 response costs related to the Neighborhood Areas, as defined in that agreement.
26 On the same day, the Court entered a “Partial Consent Decree (relating to the
27 Current Storm Water Pathway),” which resolved the liability of all Settling
28 Defendants to the United States, DTSC, and the California Regional Water

1 Quality Control Board, Los Angeles Region, for response costs relating to the
2 Current Storm Water Pathway, as defined in that agreement.

3 G. On August 22, 2012, the Court entered a partial consent decree (the
4 “Construction CD”) under CERCLA in this action relating to the Dual Site
5 Groundwater Operable Unit of the Montrose Chemical Corp. and Del Amo
6 Superfund Sites (the “Dual Site”) in Los Angeles County, California. Under the
7 Construction CD, Settling Defendants Montrose Chemical Corporation of
8 California, Bayer CropScience Inc., TFCF America, Inc., and Stauffer
9 Management Company LLC committed to perform a discrete component of the
10 remedy for the Dual Site selected by EPA in the Record of Decision for the Dual
11 Site, namely financing and performing construction of the primary groundwater
12 treatment system for the Chlorobenzene Plume of groundwater contamination, as
13 described in that Record of Decision.

14 H. On August 6, 2020, the Plaintiffs lodged with this Court a “Partial
15 Consent Decree (Dual Site Groundwater Operable Unit – Chlorobenzene Plume
16 Remedy Operation and Maintenance)” (“Partial Groundwater O&M Consent
17 Decree”), which satisfies claims against the Settling Defendants for certain costs
18 incurred by the United States and DTSC for response actions at the Dual Site.
19 The proposed Partial Groundwater O&M Consent Decree also provides for
20 the performance of response actions by the Settling Defendants for the
21 Chlorobenzene Plume at the Dual Site, as defined in that agreement, and requires
22 the Settling Defendants to pay \$4,000,000 to the United States and \$177,265.36
23 to DTSC for certain past response costs at the Dual Site.

24 I. This Partial Consent Decree provides for the performance of certain
25 response actions by Settling Defendants at the Dense Non-Aqueous Phase Liquid
26 Operable Unit (“DNAPL OU”) of the Montrose Chemical Corp. Superfund Site
27 (the “Site”), consistent with the National Contingency Plan (“NCP”). This
28 Partial Consent Decree also satisfies claims against Settling Defendants for

1 certain costs incurred by the United States and DTSC for response actions related
2 to the DNAPL OU at the Site.

3 J. Settling Defendants do not admit any liability to Plaintiffs arising
4 out of the transactions or occurrences alleged in the Complaint, nor do they
5 acknowledge that the release or threatened release of hazardous substances at or
6 from the Site constitutes an imminent and substantial endangerment to the public
7 health or welfare or the environment, nor any damage to natural resources.

8 K. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed
9 the Site on the National Priorities List (“NPL”), set forth at 40 C.F.R. Part 300,
10 Appendix B, by publication in the Federal Register on October 4, 1989, 54 Fed.
11 Reg. 41015.

12 L. In response to a release or a substantial threat of a release of a
13 hazardous substance(s) at or from the Site, Montrose undertook Remedial
14 Investigation (“RI”) activities for the Montrose Chemical Corp. Superfund Site in
15 1986. In 1998, EPA took over the Montrose investigation and completed a
16 Remedial Investigation Report in May 1998, pursuant to 40 C.F.R. § 300.430.

17 M. Montrose undertook DNAPL-related testing at the Site from 2003
18 to 2009, and submitted a draft DNAPL Feasibility Study (“FS”) to EPA on April
19 21, 2009. Montrose revised the FS in response to EPA comments, and submitted
20 a revised DNAPL FS on December 7, 2011. Montrose submitted a final DNAPL
21 FS on September 27, 2013. EPA approved the final DNAPL FS on January 13,
22 2014.

23 N. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA
24 published notice of the completion of the FS and of the proposed plan for
25 remedial action on September 8, 2014, in a major local newspaper of general
26 circulation. EPA provided an opportunity for written and oral comments from
27 the public on the proposed plan for remedial action. A copy of the transcript of
28 the public meeting is available to the public as part of the administrative record

1 upon which the Assistant Director of the Superfund and Emergency Management
2 Division, as the delegatee of the Regional Administrator of EPA Region IX,
3 based the selection of the response action.

4 O. The decision by EPA on the remedial action to be implemented at
5 the DNAPL OU is embodied in a final Record of Decision (“ROD”), executed on
6 September 30, 2020, on which DTSC has given its concurrence. The ROD
7 includes a responsiveness summary to the public comments. Notice of the final
8 plan was published in accordance with Section 117(b) of CERCLA, 42 U.S.C. §
9 9617(b).

10 P. To facilitate the resolution of this matter and the prompt and early
11 commencement of the remedial action for the DNAPL OU at the Site, EPA, after
12 consultation with the State, has determined that, based on the information
13 currently available, it is appropriate to enter into this Partial Consent Decree,
14 which addresses the remedial action selected in the ROD, and provides for
15 payment of certain response costs related to the DNAPL OU. This Partial
16 Consent Decree addresses only the DNAPL OU at the Site.

17 Q. Based on the information currently available, EPA and DTSC
18 believe that the Work will be properly and promptly conducted by Settling
19 Defendants if conducted in accordance with the requirements of this Partial
20 Consent Decree and its appendices.

21 R. Solely for the purposes of Section 113(j) of CERCLA, 42 U.S.C.
22 § 9613(j), the remedial action set forth in the ROD and the Work to be performed
23 by Settling Defendants shall constitute a response action taken or ordered by the
24 President for which judicial review shall be limited to the administrative record.
25 In accordance with Section 113(j) of CERCLA, otherwise applicable principles
26 of administrative law shall govern whether any supplemental materials may be
27 considered by the Court.

28

1 S. In addition, the Court has already considered certain issues relating
2 to liability at the Site and issued an Order on Summary Judgment (Order
3 Granting United States’ Motion for Partial Summary Judgment, April 24, 2000,
4 as amended by Joint Stipulation and Order, July 31, 2000) (ECF Nos. 1922 and
5 2100). In these Orders, the Court concluded that Montrose, Atkemix Thirty-
6 Seven, Inc. (corporate predecessor of Settling Defendant Stauffer Management
7 Company LLC), and Aventis CropScience USA, Inc. (corporate predecessor of
8 Settling Defendant Bayer CropScience Inc.) are jointly and severally liable for all
9 costs of removal or remedial action incurred by the United States or DTSC with
10 respect to the former Montrose Plant Property and certain property referred to in
11 the orders as the “Stauffer Property” and currently owned by Settling Defendant
12 Stauffer Management Company LLC. The relevant property is the 13-acre parcel
13 located at 20201 Normandie Avenue in Los Angeles County where Montrose
14 manufactured the pesticide dichlorodiphenyl trichloroethane, or DDT, between
15 1947 and 1982. Settling Defendants Montrose and Aventis CropScience USA,
16 Inc. (corporate predecessor of Settling Defendant Bayer CropScience Inc.) were
17 also adjudged jointly and severally liable for all costs of removal or remedial
18 action incurred by the United States and State of California in responding to
19 releases of hazardous substances to the Palos Verdes Shelf and in the soil and
20 groundwater at and around the Montrose property (ECF No. 2445). These
21 judgments provided declaratory relief pursuant to Section 113(g)(2)(B) of
22 CERCLA, 42 U.S.C. § 9613(g)(2)(B).

23 T. The Parties recognize, and the Court by entering this Partial Consent
24 Decree finds, that this Partial Consent Decree has been negotiated by the Parties
25 in good faith, that implementation of this Partial Consent Decree will expedite
26 the cleanup of the DNAPL OU and will avoid further prolonged and complicated
27 litigation between the Parties, and that this Partial Consent Decree is fair,
28 reasonable, and in 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 this action
4 pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and
5 9613(b). This Court also has personal jurisdiction over Settling Defendants.
6 Solely for the purposes of this Partial Consent Decree and the underlying
7 Complaint, Settling Defendants waive all objections and defenses that they may
8 have to jurisdiction of the Court or to venue in this District. Settling Defendants
9 shall not challenge the terms of this Partial Consent Decree or this Court's
10 jurisdiction to enter and enforce this Partial Consent Decree.

11 **III. PARTIES BOUND**

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

18 3. Settling Defendants shall provide a copy of this Partial Consent
19 Decree to each contractor hired by Settling Defendants to perform the Work
20 required by this Partial Consent Decree and to each person representing any
21 Settling Defendant with respect to the DNAPL OU or the Work, and shall
22 condition all contracts entered into hereunder upon performance of the Work in
23 conformity with the terms of this Partial Consent Decree. Settling Defendants or
24 their contractors shall provide written notice of this Partial Consent Decree to all
25 subcontractors hired to perform any portion of the Work required by this Partial
26 Consent Decree. Settling Defendants shall nonetheless be responsible for
27 ensuring that their contractors and subcontractors perform the Work in
28 accordance with the terms of this Partial Consent Decree. With regard to the

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

5 IV. DEFINITIONS

6 4. Unless otherwise expressly provided in this Partial Consent Decree,
7 terms used in this Partial Consent Decree that are defined in CERCLA or in
8 regulations promulgated under CERCLA shall have the meaning assigned to
9 them in CERCLA or in such regulations. Whenever terms listed below are used
10 in this Partial Consent Decree or in the appendices attached hereto and
11 incorporated hereunder, the following definitions shall apply solely for purposes
12 of this Partial Consent Decree:

13 “Affected Property” shall mean the 13-acre parcel located at 20201
14 Normandie Avenue in Los Angeles County known as the Montrose Plant Property.

15 “CERCLA” shall mean the Comprehensive Environmental Response,
16 Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 – 9675.

17 “Day” shall mean a calendar day unless expressly stated to be a
18 Working Day. The term “Working Day” shall mean a day other than a Saturday,
19 Sunday, or federal or State holiday. In computing any period of time under this
20 Partial Consent Decree, where the last day would fall on a Saturday, Sunday, or
21 federal or State holiday, the period shall run until the close of business of the next
22 Working Day.

23 “DNAPL OU” shall mean the Dense Non-Aqueous Phase Liquid
24 Operable Unit of the Site.

25 “DTSC” shall mean the California Department of Toxic Substances
26 Control, its officers, employees and representatives, all of its divisions and
27 branches, any predecessor agency in interest, any successor department, agency, or
28 instrumentality, and the Hazardous Substance Account, as defined in California

1 Health and Safety Code § 25330.

2 “DTSC Future Response Costs” shall mean all costs, including, but
3 not limited to, direct and indirect costs, that DTSC incurs in reviewing or
4 developing plans, reports, and other deliverables submitted pursuant to this Partial
5 Consent Decree, in overseeing implementation of the Work, or otherwise
6 implementing, overseeing, or enforcing this Partial Consent Decree, including, but
7 not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the
8 costs incurred pursuant to Sections VII (Remedy Review) and XIII (Emergency
9 Response), and attorney fees (including paying for the services of the California
10 Attorney General’s Office). DTSC Future Response Costs also shall include all
11 DTSC Interim Response Costs, and all Interest on those DTSC Past Response
12 Costs that remain outstanding more than 60 Days from the date of the bill.

13 “DTSC Interim Response Costs” shall mean all costs, including direct
14 and indirect costs, (a) paid by DTSC in connection with the DNAPL OU between
15 July 1, 2020, and the Effective Date, or (b) incurred prior to the Effective Date but
16 paid after that date in connection with the DNAPL OU.

17 “DTSC Past Response Costs” shall mean all costs, including, but not
18 limited to, direct and indirect costs, that DTSC paid at or in connection with the
19 DNAPL OU between July 1, 2017, and June 30, 2020, plus Interest on all such
20 costs which has accrued pursuant to 42 U.S.C. § 9607(a) through such date.

21 “Dual Site” shall mean the Dual Site Groundwater Operable Unit of
22 the Montrose Chemical Corp. and Del Amo Superfund Sites, in Los Angeles
23 County, California.

24 “Effective Date” shall be the date upon which this Partial Consent
25 Decree is entered by the Court as recorded on the Court docket, or, if the Court
26 instead issues an order approving this Partial Consent Decree, the date such order
27 is recorded on the Court docket.

28 “EPA” shall mean the United States Environmental Protection

1 Agency and any successor departments or agencies of the United States.

2 “EPA Future Response Costs” shall mean all costs, including, but not
3 limited to, direct and indirect costs, that the United States incurs in reviewing or
4 developing plans, reports, and other deliverables submitted pursuant to this Partial
5 Consent Decree, in overseeing implementation of the Work, or otherwise
6 implementing, overseeing, or enforcing this Partial Consent Decree, including, but
7 not limited to, payroll costs, contractor costs, travel costs, laboratory costs, Section
8 VII (Remedy Review), Section VIII (Access) (including, but not limited to, the
9 cost of attorney time and any monies paid to secure or enforce access or land,
10 water, or other resource use restrictions and/or to secure, implement, monitor,
11 maintain, or enforce Institutional Controls including, but not limited to, the amount
12 of just compensation), Section XIII (Emergency Response), Paragraph 35 (Funding
13 for Work Takeover), and Section XXVII (Community Relations). EPA Future
14 Response Costs shall also include all EPA Interim Response Costs, and all Interest
15 on those EPA Past Response Costs Settling Defendants have agreed to pay under
16 this Partial Consent Decree that has accrued pursuant to 42 U.S.C. § 9607(a)
17 during the period from May 31, 2020 to the Effective Date.

18 “EPA Interim Response Costs” shall mean all costs, including direct
19 and indirect costs, (a) paid by the United States in connection with the DNAPL OU
20 between May 31, 2020 and the Effective Date, or (b) incurred by the United States
21 in connection with the DNAPL OU prior to the Effective Date but paid after that
22 date.

23 “EPA Past Response Costs” shall mean all unrecovered costs,
24 including, but not limited to, direct and indirect costs, that the United States paid at
25 or in connection with the DNAPL OU through May 31, 2020, plus Interest on all
26 such costs which has accrued pursuant to 42 U.S.C. § 9607(a) through such date.
27 Rates are available online at [https://www.epa.gov/superfund/superfund-interest-](https://www.epa.gov/superfund/superfund-interest-rates)
28 rates.

1 “Institutional Controls” or “ICs” shall mean Proprietary Controls and
2 state or local laws, regulations, ordinances, zoning restrictions, or other
3 governmental controls or notices that: (a) limit land, water, or other resource use to
4 minimize the potential for human exposure to Waste Material at or in connection
5 with the Site; (b) limit land, water, or other resource use to implement, ensure non-
6 interference with, or ensure the protectiveness of the remedial action for the Site as
7 set forth in the ROD; and/or (c) provide information intended to modify or guide
8 human behavior at or in connection with the Site.

9 “Interest” shall mean interest at the rate specified for interest on
10 investments of the EPA Hazardous Substance Superfund established by 26 U.S.C.
11 § 9507, compounded annually on October 1 of each year, in accordance with 42
12 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the
13 time the interest accrues. The rate of interest is subject to change on October 1 of
14 each year.

15 “Montrose Onshore Special Account” shall mean the special account,
16 within the EPA Hazardous Substance Superfund, established for the Montrose
17 Chemical Corp. Superfund Site by EPA pursuant to Section 122(b)(3) of
18 CERCLA, 42 U.S.C. § 9622(b)(3).

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

23 “Operation and Maintenance” or “O&M” shall mean all activities
24 required to operate, maintain, and monitor the effectiveness of the RA as specified
25 in the SOW or any EPA-approved O&M Plan for the DNAPL OU.

26 “Owner Settling Defendant” shall mean Stauffer Management
27 Company LLC. The clause “Owner Settling Defendant’s Affected Property” shall
28 mean Affected Property owned or controlled by Owner Settling Defendant.

1 “Paragraph” shall mean a portion of this Partial Consent Decree
2 identified by an Arabic numeral or an upper or lower case letter.

3 “Partial Consent Decree” or “Decree” shall mean this Partial Consent
4 Decree and all appendices attached hereto (listed in Section XXVI, Appendices).
5 In the event of conflict between this Partial Consent Decree and any appendix, this
6 Partial Consent Decree shall control.

7 “Parties” shall mean the United States, DTSC, and Settling
8 Defendants.

9 “Performance Standards” shall mean the cleanup standards and other
10 measures of achievement of the goals of the Remedial Action that are related to the
11 DNAPL OU, set forth in the ROD.

12 “Plaintiffs” shall mean the United States and the State, on behalf of
13 DTSC.

14 “Proprietary Controls” shall mean easements or covenants running
15 with the land, including the land use covenant (“LUC”) required under Paragraph
16 19, that (a) limit land, water, or other resource use and/or provide access rights and
17 (b) are created pursuant to common law or statutory law by an instrument that is
18 recorded in the appropriate land records office.

19 “RCRA” shall mean the Solid Waste Disposal Act, as amended, 42
20 U.S.C. §§ 6901 – 6992 (also known as the Resource Conservation and Recovery
21 Act).

22 “Record of Decision” or “ROD” shall mean the EPA Record of
23 Decision relating to the DNAPL OU at the Site signed on September 30, 2020 by
24 the Assistant Director, Superfund and Emergency Management Division, EPA
25 Region IX, and all attachments thereto. The ROD is attached as Appendix A.

26 “Remedial Action” or “RA” shall mean the remedial action selected
27 in the ROD.

28 “Remedial Design” or “RD” shall mean those activities to be

1 undertaken by Settling Defendants to develop final plans and specifications for the
2 RA as stated in the SOW.

3 “Remedial Design, Remedial Action Work Plan” or “RDRAWP”
4 shall mean the document developed pursuant to ¶ 3.1 of the SOW and approved by
5 EPA, and any modifications thereto.

6 “Section” shall mean a portion of this Partial Consent Decree
7 identified by a Roman numeral.

8 “Settling Defendant,” individually, and “Settling Defendants,”
9 collectively, shall mean TFCF America, Inc., Bayer CropScience Inc., Montrose
10 Chemical Corporation of California (“Montrose”), and Stauffer Management
11 Company LLC.

12 “Site” shall mean the Montrose Chemical Corp. Superfund Site,
13 which is depicted generally on the map attached as Appendix C.

14 “SOW” shall mean the statement of work for implementation of the
15 Remedial Design, the Remedial Action, and O&M for the DNAPL OU, as set forth
16 in Appendix B to this Partial Consent Decree, and any modifications made to it in
17 accordance with this Partial Consent Decree.

18 “State” shall mean the State of California and each department,
19 agency and instrumentality of the State of California, including DTSC.

20 “Supervising Contractor” shall mean the principal contractor retained
21 by Settling Defendants to supervise and direct the implementation of the Work
22 under this Partial Consent Decree.

23 “Transfer” shall mean to sell, assign, convey, lease, mortgage, or
24 grant a security interest in, or where used as a noun, a sale, assignment,
25 conveyance, or other disposition of any interest by operation of law or otherwise.

26 “United States” shall mean the United States of America and each
27 department, agency and instrumentality of the United States, including EPA.

28 “Waste Material” shall mean (1) any “hazardous substance” under

1 Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or
2 contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any
3 “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any
4 hazardous substance under California Health and Safety Code § 25316.

5 “Work” shall mean all activities and obligations that Settling
6 Defendants are required to perform under this Partial Consent Decree relating to
7 the DNAPL OU, except the activities required under Section XXIII (Retention of
8 Records).

9 **V. GENERAL PROVISIONS**

10 5. Objectives of the Parties. The objectives of the Parties in entering
11 into this Partial Consent Decree are to protect public health, welfare, and the
12 environment by providing for the implementation of response actions for the
13 DNAPL OU by Settling Defendants, the payment by Settling Defendants of EPA
14 and DTSC response costs, and the resolution of certain claims of Plaintiffs
15 against Settling Defendants, as set forth in Sections XIX and XX (“Covenants by
16 Plaintiffs” and “Covenants by Settling Defendants”).

17 6. Commitments by Settling Defendants.

18 a. Settling Defendants shall finance and perform the Work in
19 accordance with this Partial Consent Decree, the applicable substantive portions
20 of the ROD, the SOW, and all work plans and other plans, standards,
21 specifications, and schedules set forth in this Partial Consent Decree or developed
22 by and/or approved by EPA pursuant to this Partial Consent Decree.

23 b. The obligations of Settling Defendants to finance and perform the
24 Work, including obligations to pay amounts due under this Partial Consent
25 Decree, are joint and several. In the event of the insolvency of any Settling
26 Defendant or the failure by any Settling Defendant to implement any requirement
27 of this Partial Consent Decree, the remaining Settling Defendants shall complete
28 all such requirements.

1 c. Settling Defendants shall pay the United States for EPA Past
2 Response Costs, EPA Interim Response Costs and EPA Future Response Costs,
3 and pay DTSC for DTSC Past Response Costs, DTSC Interim Response Costs
4 and DTSC Future Response Costs, as provided in this Partial Consent Decree.

5 d. Settling Defendants shall finance and perform any periodic
6 review activities required under Section VII of this Partial Consent Decree
7 (Remedy Review) and any additional activities related to the DNAPL OU
8 required pursuant to Section XII (Certification of Completion) in accordance with
9 this Partial Consent Decree, the applicable provisions of the ROD, the SOW, and
10 all work plans and other plans, standards, specifications, and schedules set forth
11 in this Partial Consent Decree or developed by and approved by EPA, after
12 reasonable opportunity for review and comment by DTSC.

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

21 8. Permits.

22 a. As provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e),
23 and Section 300.400(e) of the NCP, no permit shall be required for any portion of
24 the Work conducted entirely on-site (i.e., within the areal extent of contamination
25 or in very close proximity to the contamination and necessary for implementation
26 of the Work). Settling Defendants may seek the assistance of the United States
27 and DTSC with respect to permits proposed by any State, county, municipal, or
28 other governmental body.

1 b. Where any portion of the Work that is not on-site requires a
2 federal or state permit or approval, Settling Defendants shall submit timely and
3 complete applications and take all other actions necessary to obtain all such
4 permits or approvals. Settling Defendants may seek relief under the provisions of
5 Section XVI (Force Majeure) for any delay in the performance of the Work
6 resulting from a failure to obtain, or a delay in obtaining, any permit or approval
7 referenced in Paragraph 8.a and required for the Work, provided that Settling
8 Defendants have submitted timely and complete applications and taken all other
9 actions necessary to obtain all such permits or approvals.

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

12 **VI. PERFORMANCE OF THE WORK BY SETTLING DEFENDANTS**

13 9. Selection of Supervising Contractor.

14 a. All aspects of the Work to be performed by Settling Defendants
15 pursuant to Sections VI (Performance of the Work by Settling Defendants), VII
16 (Remedy Review), VIII (Access), and XIII (Emergency Response) shall be
17 under the direction and supervision of the Supervising Contractor, the selection
18 of which shall be subject to disapproval by EPA after a reasonable opportunity
19 for review and comment by DTSC. Within 30 Days after the lodging of this
20 Partial Consent Decree, Settling Defendants shall notify EPA and DTSC in
21 writing of the name, title, and qualifications of any contractor proposed to be the
22 Supervising Contractor for the Work. With respect to any contractor proposed to
23 be Supervising Contractor, Settling Defendants shall demonstrate that the
24 proposed contractor has a quality assurance system that complies with
25 ANSI/ASQC E4-2004, Quality Systems for Environmental Data and Technology
26 Programs: Requirements with Guidance for Use (American National Standard),
27 by submitting a copy of the proposed contractor's Quality Management Plan
28 ("QMP"). The QMP should be prepared in accordance with "EPA Requirements

1 for Quality Management Plans (QA/R-2)” (EPA/240/B-01/002, March 2001,
2 reissued May 2006) or equivalent documentation as determined by EPA. EPA
3 will issue a notice of disapproval or an authorization to proceed regarding hiring
4 of each proposed contractor. If at any time thereafter, Settling Defendants
5 propose to change the Supervising Contractor, Settling Defendants shall give
6 notice to EPA and DTSC and must obtain an authorization to proceed from EPA,
7 after a reasonable opportunity for review and comment by DTSC, before the new
8 Supervising Contractor performs, directs, or supervises any Work under this
9 Partial Consent Decree.

10 b. If EPA disapproves a proposed Supervising Contractor, EPA will
11 notify Settling Defendants in writing. Settling Defendants shall submit to EPA
12 and DTSC a list of contractors, including the qualifications of each contractor,
13 that would be acceptable to them within 30 Days of receipt of EPA’s disapproval
14 of the contractor previously proposed. EPA will provide written notice of the
15 names of any contractor(s) that it disapproves and an authorization to proceed
16 with respect to any of the other contractors. Settling Defendants may select any
17 contractor from that list that is not disapproved and shall notify EPA and DTSC
18 of the name of the contractor selected within 21 Days of EPA’s authorization to
19 proceed.

20 c. If EPA fails to provide written notice of its authorization to
21 proceed or disapproval as provided in this Paragraph and this failure prevents
22 Settling Defendants from meeting one or more deadlines in a plan approved by
23 EPA pursuant to this Partial Consent Decree, Settling Defendants may seek relief
24 under Section XVI (Force Majeure).

25 10. Performance of Work in Accordance with SOW.

26 a. Settling Defendants shall: (a) develop the RD; (b) perform the RA;
27 and (c) operate, maintain, and monitor the effectiveness of the RA; all in
28 accordance with the SOW and all EPA-approved, conditionally-approved, or

1 modified deliverables as required by the SOW. All deliverables required to be
2 submitted for approval under the CD or SOW shall be subject to approval by EPA,
3 after a reasonable opportunity for review and comment by DTSC, in accordance
4 with ¶ 5.6 (Approval of Deliverables) and Section 7 (State Participation) of the
5 SOW.

6 b. Settling Defendants shall fully implement and comply with the
7 SOW that is attached hereto as Appendix B and incorporated herein by reference.
8 The Work to be performed pursuant to this Partial Consent Decree shall achieve
9 the requirements of, and be performed in a manner consistent with the ROD and
10 this Partial Consent Decree.

11 c. Settling Defendants shall continue to implement the Remedial
12 Action until the Performance Standards are achieved.

13 11. Modification of SOW or Related Work Plans.

14 a. If EPA, following consultation with DTSC, determines that it is
15 necessary to modify the work specified in the SOW and/or in deliverables
16 developed pursuant to the SOW in order to achieve and/or maintain the
17 Performance Standards or to carry out and maintain the effectiveness of the RA,
18 and such modification is consistent with the Scope of the Remedy set forth in ¶ 1.3
19 of the SOW, then EPA may notify Settling Defendants of such modification. If
20 Settling Defendants object to the modification they may, within 30 Days after
21 EPA's notification, seek dispute resolution under Section XVII.

22 b. The SOW and/or related work plans shall be modified: (1) in
23 accordance with the modification issued by EPA; or (2) if Settling Defendants
24 invoke dispute resolution, in accordance with the final resolution of the dispute.
25 The modification shall be incorporated into and enforceable under this Partial
26 Consent Decree, and Settling Defendants shall implement all work required by
27 such modification. Settling Defendants shall incorporate the modification into the
28 deliverable(s) required under the SOW, as appropriate.

1 c. Nothing in this Paragraph shall be construed to limit EPA's
2 authority to require performance of further response actions as otherwise provided
3 in this Partial Consent Decree.

4 12. Nothing in this Partial Consent Decree, the SOW, the final approved
5 remedial design submission, or the RDRAWP constitutes a warranty or
6 representation of any kind by Plaintiffs that compliance with the work
7 requirements set forth in the SOW and the RDRAWP will ensure completion of
8 the Work in compliance with the applicable substantive portions of the ROD.

9 **VII. REMEDY REVIEW**

10 13. Periodic Review. Settling Defendants shall conduct any studies and
11 investigations that EPA requests in order to permit EPA to conduct reviews of
12 whether the Remedial Action is protective of human health and the environment
13 at least every five years as required by Section 121(c) of CERCLA, 42 U.S.C.
14 § 9621(c), and any applicable regulations. EPA may combine the review
15 conducted for the Dual Site with the review required for this Remedial Action.

16 14. EPA Selection of Further Response Actions. If EPA determines at
17 any time that the Remedial Action is not protective of human health and the
18 environment, EPA may, after a reasonable opportunity for review and comment
19 by DTSC, select further response actions for the Site in accordance with the
20 requirements of CERCLA and the NCP.

21 15. Opportunity to Comment. DTSC, Settling Defendants, and, if
22 required by Sections 113(k)(2) or 117 of CERCLA, 42 U.S.C. §§ 9613(k)(2) or
23 9617, the public, will be provided with an opportunity to comment on any further
24 response actions proposed by EPA as a result of the review conducted pursuant to
25 Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and to submit written
26 comments for the record during the comment period.

27
28

VIII. ACCESS

16. If any real property where access or land/water use restrictions are needed to implement the Work is owned or controlled by any of Settling Defendants:

a. Access Requirements. Such Settling Defendants shall, commencing on the date of lodging of this Partial Consent Decree, provide the United States, the State, DTSC, and the other Settling Defendants, and their representatives, contractors, and subcontractors, with access at all reasonable times to the Site, or such other real property, for the purpose of conducting any activity related to the Work including, but not limited to, the following activities:

- (1) Monitoring the Work;
- (2) Verifying any data or information submitted to the United States or DTSC;
- (3) Conducting investigations regarding contamination at or near the Site;
- (4) Obtaining samples;
- (5) Assessing the need for, planning, or implementing the Work or additional response actions at or near the Site;
- (6) Assessing implementation of quality assurance and quality control practices as defined in the approved Quality Assurance Project Plans;
- (7) Implementing the Work pursuant to the conditions set forth in Paragraph 76 (Work Takeover);
- (8) Inspecting and copying non-privileged records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, consistent with Section XXII (Access to Information);

1 (9) Assessing Settling Defendants' compliance with this
2 Partial Consent Decree or any other orders or consent decrees that
3 implement the remedy described in the relevant provisions of the ROD;

4 (10) Determining whether the Site or other real property is
5 being used in a manner that is prohibited or restricted, or that may need to
6 be prohibited or restricted, under this Partial Consent Decree; and

7 (11) Implementing, monitoring, maintaining, reporting on,
8 and enforcing any land, water, or other resource use restrictions and
9 Institutional Controls.

10 b. Land, Water, or Other Resource Use Restrictions. The following is
11 a list of land, water, or other resource use restrictions applicable to the Affected
12 Property:

13 (1) Prohibiting the following activities without a specific
14 approval in writing from the CERCLA Lead Agency (as defined in the
15 LUC):

16 (a) Drilling for any water, oil, or gas;

17 (b) Extraction of groundwater for any purpose, except
18 as otherwise permitted by an existing or future CERCLA consent
19 decree, agreement or unilateral order;

20 (c) Any activity that will disturb the soil (e.g.,
21 excavation, grading, removal, trenching, filling, earth movement,
22 mining, or drilling) without either (1) an approved Soil Management
23 Plan (as defined in the LUC) or (2) an approved or ordered remedial
24 work plan pursuant to this Partial Consent Decree or any existing or
25 future CERCLA consent decree, agreement or unilateral order;

26 (d) Any activity that may interfere with, or otherwise
27 affect the integrity or effectiveness of any activity required for the
28

1 Affected Property under either a Proprietary Control or applicable
2 federal, state or local law;

3 (e) Any activity that would interfere with the
4 operation of any response measure(s) or activities at the Affected
5 Property or Site. This includes ensuring that any new structures on
6 the Site will not be constructed in a manner that could interfere with
7 the RA; and

8 (f) Any use or development of the Affected Property
9 that does not preserve the integrity of any onsite or other Site-wide
10 response activities.

11 (2) Prohibiting the following uses for any of the following
12 purposes without a specific approval in writing from the CERCLA Lead
13 Agency (as defined in the LUC):

14 (a) A residence, including any mobile home or
15 factory-built housing, constructed or installed for use as permanently
16 occupied human habitation, other than those used for industrial
17 purposes;

18 (b) A hospital for humans;

19 (c) A public or private school for persons under 21
20 years of age; and

21 (d) A day care center for children.

22 (3) Ensuring that any new structures on the Affected
23 Property will be constructed in a manner that will minimize potential risk of
24 inhalation of contaminants.

25 c. Commencing on the date of lodging of this Partial Consent
26 Decree, such Settling Defendants shall not use the Site, or such other real
27 property, in any manner that EPA, after a reasonable opportunity for review and
28 comment by DTSC, determines will pose an unacceptable risk to human health or

1 to the environment due to exposure to Waste Materials or interfere with or
2 adversely affect the implementation, integrity, or protectiveness of the Remedial
3 Action. The restrictions shall include, but not be limited to, limiting the drilling
4 of new groundwater wells or any other excavation with the potential to penetrate
5 contaminated aquifers.

6 17. If any real property where access is needed to implement the
7 requirements of the relevant provisions of the ROD or this Partial Consent
8 Decree, is owned or controlled by persons other than any Settling Defendant,
9 Settling Defendants shall use best efforts to secure from such persons an
10 agreement to provide access thereto for the United States, the State, DTSC, and
11 Settling Defendants, and their representatives, contractors and subcontractors, to
12 conduct any activity related to its Work for the Site including, but not limited to,
13 the activities listed in Paragraph 16.a.

14 18. For purposes of Paragraph 17, “best efforts” includes the payment of
15 reasonable sums of money to obtain access, except that “best efforts” shall not
16 include payment of money to any party that received from EPA a letter providing
17 special notice of potential liability related to the Montrose Chemical Corp.
18 Superfund Site, the Del Amo Superfund Site, or the Dual Site. If, within 120
19 Days of the Effective Date, Settling Defendants have not obtained agreements to
20 provide access, as required by Paragraph 17, Settling Defendants shall promptly
21 notify the United States and DTSC in writing, and shall include in that
22 notification a summary of the steps that they have taken to attempt to comply
23 with Paragraph 17. The United States and DTSC may, in the manner they deem
24 appropriate, assist Settling Defendants in obtaining access. Settling Defendants
25 shall reimburse the United States and DTSC under Section XIV (Payments for
26 Response Costs), for all costs incurred, direct or indirect, by the United States
27 and DTSC in obtaining such access, including, but not limited to, the cost of
28

1 attorney time and the amount of monetary consideration paid or just
2 compensation.

3 19. Proprietary Controls. Owner Settling Defendant shall, with respect to
4 Owner Settling Defendant's Affected Property, execute and record, in accordance
5 with the procedures of this Paragraph 19, Proprietary Controls that: (i)
6 memorialize a right of access to conduct any activity regarding the Partial
7 Consent Decree, including those activities listed in Paragraph 16.a (Access
8 Requirements); and (ii) memorialize the enforceability of land, water, or other
9 resource use restrictions set forth in Paragraph 16.b (Land, Water, or Other
10 Resource Use Restrictions). Owner Settling Defendant and DTSC will enter into
11 a LUC required by the ROD that includes the following provisions. The LUC
12 shall be substantially in the form attached hereto as Appendix E.

13 a. The LUC must include a designation that EPA is a "third-party
14 beneficiary" with the express right to enforce the environmental restrictions
15 contained therein without acquiring an interest in real property.

16 b. Initial Title Evidence. Owner Settling Defendant shall, within
17 90 Days after the Effective Date:

18 (1) Recorded Title Evidence. Submit to EPA and DTSC title
19 evidence acceptable to EPA and DTSC that: (i) demonstrates that the person
20 or entity that will execute and record the LUC is the owner of such Affected
21 Property; (ii) identifies all recorded matters that affect title to Owner
22 Settling Defendant's Affected Property, including all prior liens, claims,
23 rights (such as easements), mortgages, and other encumbrances (collectively,
24 "Prior Encumbrances"); and (iii) includes complete, legible copies of such
25 Prior Encumbrances; and

26 (2) Non-Recorded Title Evidence. Submit to EPA a report
27 of the results of an investigation, including a physical inspection of Owner
28

1 Settling Defendant's Affected Property, which identifies unrecorded matters
2 that could affect the title, such as unrecorded leases or encroachments.

3 c. Update to Title Evidence and Recording of Proprietary
4 Controls.

5 (1) Owner Settling Defendant shall submit all proposed
6 exhibits for the draft LUC to EPA and DTSC for review and approval within
7 180 Days after the Effective Date. The LUC must be in substantially the
8 form attached hereto as Appendix E.

9 (2) Upon EPA's and DTSC's approval of the proposed LUC,
10 Owner Settling Defendant shall, within 30 Days, update the original
11 evidence of title acceptable to EPA and DTSC under Paragraph 19.b (Initial
12 Title Evidence). Owner Settling Defendant shall secure the immediate
13 recordation of the LUC in the appropriate land records.

14 (3) Owner Settling Defendant shall, within 30 Days after
15 recording the LUC, or such other deadline approved by EPA, provide to the
16 United States and to DTSC: (i) certified copies of the recorded LUC
17 showing the clerk's recording stamps; and (ii) the updated title evidence
18 dated as of the date of recording of the LUC.

19 d. Settling Defendants shall monitor, maintain, enforce, and
20 annually report on all LUCs required under this Partial Consent Decree.

21 e. Owner Settling Defendant shall not Transfer the Affected
22 Property unless it has executed and recorded all LUCs regarding such Affected
23 Property in accordance with this Paragraph.

24 20. If EPA, in consultation with DTSC, determines that Institutional
25 Controls (beyond the LUC) in the form of state or local laws, regulations,
26 ordinances, zoning restrictions, or other governmental controls are needed,
27 Settling Defendants shall cooperate with EPA's and DTSC's efforts to secure and
28 ensure compliance with such Institutional Controls.

1 24. Resubmissions. Upon receipt of a notice of disapproval under
2 Paragraph 23.a.(iii) or (iv), or if required by a notice of approval upon specified
3 conditions under Paragraph 23.a.(ii), Settling Defendants shall, within 21 Days or
4 such longer time as specified by EPA in such notice, correct the deficiencies and
5 resubmit the plan, report, or other deliverable for approval. After review of the
6 resubmitted plan, report, or other deliverable, EPA may, after reasonable
7 opportunity for review and comment by DTSC: (a) approve, in whole or in part,
8 the resubmission; (b) approve the resubmission upon specified conditions; (c)
9 modify the resubmission; (d) disapprove, in whole or in part, the resubmission,
10 requiring Settling Defendants to correct the deficiencies; or (e) any combination
11 of the foregoing.

12 25. Material Defects. If an initially submitted or resubmitted plan,
13 report, or other deliverable contains a material defect, and the plan, report, or
14 other deliverable is disapproved or modified by EPA under Paragraph 23.b.(ii) or
15 24 due to such material defect, then the material defect shall constitute a lack of
16 compliance for purposes of Paragraph 61. The provisions of Section XVII
17 (Dispute Resolution) and Section XVIII (Stipulated Penalties) shall govern the
18 accrual and payment of any stipulated penalties regarding Settling Defendants'
19 submissions under this Section.

20 26. Implementation. Upon approval, approval upon conditions, or
21 modification by EPA under Paragraph 23 or 24, of any plan, report, or other
22 deliverable, or any portion thereof: (a) such plan, report, or other deliverable, or
23 portion thereof, shall be incorporated into and enforceable under this Partial
24 Consent Decree; and (b) Settling Defendants shall take any action required by
25 such plan, report, or other deliverable, or portion thereof, subject only to their
26 right to invoke the Dispute Resolution procedures set forth in Section XVII
27 (Dispute Resolution) with respect to the modifications or conditions made by
28 EPA. The implementation of any non-deficient portion of a plan, report, or other

1 deliverable submitted or resubmitted under Paragraph 23 or 24 shall not relieve
2 Settling Defendants of any liability for stipulated penalties under Section XVIII
3 (Stipulated Penalties).

4 27. Review by DTSC. All plans, reports or other deliverables required
5 to be submitted to, or reviewed by, DTSC pursuant to this Partial Consent Decree
6 shall be sent to DTSC separately and simultaneously at the addresses provided in
7 Section XXIV (Notices and Submissions) of this Partial Consent Decree.

8 **X. PROJECT COORDINATORS**

9 28. Within 30 Days of lodging this Partial Consent Decree, DTSC, EPA,
10 and Settling Defendants will notify all other Parties, in writing, of the name,
11 address, and telephone number of their designated Project Coordinator and
12 Alternate Project Coordinator. If a Project Coordinator or Alternate Project
13 Coordinator initially designated is changed, the identity of the successor will be
14 given to the other Parties at least five Working Days before the change occurs,
15 unless impracticable, but in no event later than the actual day the change is made.
16 Settling Defendants' Project Coordinator shall be subject to disapproval by EPA,
17 after reasonable opportunity for review and comment by DTSC, and shall have
18 the technical expertise sufficient to adequately oversee all aspects of the Work.
19 Project Coordinators shall not be an attorney for any Settling Defendant in this
20 matter. A Project Coordinator may assign another individual, including another
21 contractor, to serve as Settling Defendants' representative for oversight of
22 performance of daily operations during remedial activities.

23 29. Plaintiffs may designate other representatives, including, but not
24 limited to, EPA and State employees, and federal and State contractors and
25 consultants, to observe and monitor the progress of any activity undertaken
26 pursuant to this Partial Consent Decree. EPA's Project Coordinator and
27 Alternate Project Coordinator shall have the authority lawfully vested in a
28 Remedial Project Manager ("RPM") and an On-Scene Coordinator ("OSC") by

1 the NCP, 40 C.F.R. Part 300. EPA's Project Coordinator or Alternate Project
2 Coordinator shall have authority, consistent with the NCP, to halt any Work
3 required by this Partial Consent Decree and to take any necessary response action
4 when he or she determines that conditions at the Site constitute an emergency
5 situation or may present an immediate threat to public health or welfare or the
6 environment due to release or threatened release of Waste Material.

7 30. Settling Defendants' Project Coordinator will meet with EPA's and
8 DTSC's Project Coordinators on a quarterly basis, either in person or by
9 teleconference, as established by EPA's Project Coordinator. One year following
10 the Effective Date, the meetings will take place semi-annually, unless EPA
11 determines that more frequent meetings are necessary.

12 **XI. PERFORMANCE GUARANTEE**

13 31. In order to ensure the full and final completion of the Work, Settling
14 Defendants shall establish and maintain a performance guarantee for the benefit
15 of EPA, initially in the amount of \$25,000,000 (the "Estimated Cost of the
16 Work"). The performance guarantee, which must be satisfactory in form and
17 substance to EPA, shall be in the form of one or more of the following
18 mechanisms (provided that, if Settling Defendants intend to use multiple
19 mechanisms, such multiple mechanisms shall be limited to surety bonds
20 guaranteeing payment, letters of credit, trust funds, and insurance policies):

21 a. A surety bond unconditionally guaranteeing payment and/or
22 performance of the Work that is issued by a surety company among those listed
23 as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S.
24 Department of the Treasury;

25 b. One or more irrevocable letters of credit, payable to or at the
26 direction of EPA, that is issued by one or more financial institution(s) (i) that has
27 the authority to issue letters of credit and (ii) whose letter-of-credit operations are
28 regulated and examined by a federal or state agency;

1 c. A trust fund established for the benefit of EPA that is
2 administered by a trustee (i) that has the authority to act as a trustee and (ii)
3 whose trust operations are regulated and examined by a federal or state agency;

4 d. A policy of insurance that (i) provides EPA with acceptable
5 rights as a beneficiary thereof; and (ii) is issued by an insurance carrier (a) that
6 has the authority to issue insurance policies in the applicable jurisdiction(s) and
7 (b) whose insurance operations are regulated and examined by a federal or state
8 agency;

9 e. A demonstration by one or more Settling Defendants that such
10 Settling Defendant(s) meet(s) the financial test criteria of 40 C.F.R. § 264.143(f)
11 with respect to the Estimated Cost of the Work (plus the amount(s) of any other
12 federal or any state environmental obligations financially assured through the use
13 of a financial test or guarantee), provided that all other requirements of 40 C.F.R.
14 § 264.143(f) are met to EPA’s satisfaction; or

15 f. A written guarantee to fund or perform the Work executed in
16 favor of EPA by one or more of the following: (i) a direct or indirect parent
17 company of a Settling Defendant, or (ii) a company that has a “substantial
18 business relationship” (as defined in 40 C.F.R. § 264.141(h)) with at least one
19 Settling Defendant; provided, however, that any company providing such a
20 guarantee must demonstrate to the satisfaction of EPA that it satisfies the
21 financial test and reporting requirements for owners and operators set forth in
22 subparagraphs (1) through (8) of 40 C.F.R. § 264.143(f) with respect to the
23 Estimated Cost of the particular Work (plus the amount(s) of any other federal or
24 any state environmental obligations financially assured through the use of a
25 financial test or guarantee) that it proposes to guarantee hereunder.

26 32. Settling Defendants have committed to, and EPA has found
27 satisfactory, as an initial performance guarantee, the use of a combination of two
28 separate financial guarantees, each in the amount of \$12,500,000 for a total of

1 \$25,000,000, in the form of either letters of credit or trust funds which conform
2 in form and substance to the instruments set forth in Appendix D. Within 30
3 Days of the Effective Date, Settling Defendants shall submit copies of all
4 executed and/or otherwise finalized instruments or other documents required in
5 order to make the selected performance guarantee(s) legally binding to the EPA
6 Regional Financial Management Officer in accordance with Section XXIV
7 (Notices and Submissions), with a copy to Financial Analyst, 75 Hawthorne
8 Street, San Francisco, California 94105, and to the United States and EPA and
9 DTSC as specified in Section XXIV (Notices and Submissions).

10 33. If, at any time after the Effective Date and before issuance of the
11 Certification of Completion of the Work pursuant to Paragraph 38, Settling
12 Defendants provide a performance guarantee for completion of the Work by
13 means of a demonstration or guarantee pursuant to Paragraph 31.e or 31.f,
14 Settling Defendants shall also comply with the other relevant requirements of
15 40 C.F.R. § 264.143(f) relating to these mechanisms unless otherwise provided in
16 this Partial Consent Decree, including but not limited to: (a) the initial
17 submission of required financial reports and statements from the relevant entity's
18 chief financial officer ("CFO") and independent certified public accountant
19 ("CPA"), in the form prescribed by EPA in its financial test sample CFO letters
20 and CPA reports available under the "Financial Assurance – Settlements" subject
21 list category on the Cleanup Enforcement Model Language and Sample
22 Documents Database at <https://cfpub.epa.gov/compliance/models>; (b) the annual
23 re-submission of such reports and statements within 90 Days after the close of
24 each such entity's fiscal year; and (c) the prompt notification of EPA after each
25 such entity determines that it no longer satisfies the financial test requirements
26 set forth at 40 C.F.R. § 264.143(f)(1) and in any event within 90 Days after the
27 close of any fiscal year in which such entity no longer satisfies such financial test
28 requirements. For purposes of the performance guarantee mechanisms specified

1 in this Section XI, references in 40 C.F.R. Part 264, Subpart H, to “closure,”
2 “post-closure,” and “plugging and abandonment” shall be deemed to include the
3 Work; the terms “current closure cost estimate,” “current post-closure cost
4 estimate,” and “current plugging and abandonment cost estimate” shall be
5 deemed to include the Estimated Cost of the Work; the terms “owner” and
6 “operator” shall be deemed to refer to Settling Defendants making a
7 demonstration under Paragraph 31.e; and the terms “facility” and “hazardous
8 waste facility” shall be deemed to include those facilities or components of the
9 Site located within the area addressed by the Work.

10 34. In the event that EPA determines at any time that a performance
11 guarantee provided by any Settling Defendant pursuant to this Section is
12 inadequate or otherwise no longer satisfies the requirements set forth in this
13 Section, whether due to an increase in the estimated cost of completing the Work
14 or for any other reason, or in the event that any Settling Defendant becomes
15 aware of information indicating that a performance guarantee provided pursuant
16 to this Section is inadequate or otherwise no longer satisfies the requirements set
17 forth in this Section, whether due to an increase in the estimated cost of
18 completing the Work or for any other reason, Settling Defendants, within 30
19 Days of receipt of notice of EPA’s determination or, as the case may be, within
20 30 Days of any Settling Defendant becoming aware of such information, shall
21 obtain and present to EPA for approval a proposal for a revised or alternative
22 form of performance guarantee listed in Paragraph 31 that satisfies all
23 requirements set forth in this Section XI, and shall provide a copy of such
24 proposal to DTSC; provided, however, that if any Settling Defendant cannot
25 obtain such revised or alternative form of performance guarantee within such 30-
26 Day period, and provided further that the Settling Defendant shall have
27 commenced to obtain such revised or alternative form of performance guarantee
28 within such 30-Day period, and thereafter diligently proceeds to obtain the same,

1 EPA shall extend such period for such time as is reasonably necessary for
2 Settling Defendants in the exercise of due diligence to obtain such revised or
3 alternative form of performance guarantee, such additional period not to exceed
4 30 Days. In seeking approval for a revised or alternative form of performance
5 guarantee, Settling Defendants shall follow the procedures set forth in
6 Paragraph 36. Settling Defendants' inability to post a performance guarantee for
7 completion of the Work shall in no way excuse performance of any other
8 requirements of this Partial Consent Decree, including, without limitation, the
9 obligation of Settling Defendants to complete the Work in strict accordance with
10 the terms of this Partial Consent Decree.

11 35. Funding for Work Takeover. The commencement of Work
12 Takeover for any particular Work pursuant to Paragraph 76 shall trigger EPA's
13 right to receive the benefit of any performance guarantee(s) provided pursuant to
14 Paragraphs 31.a, 31.b, 31.c, 31.d, or 31.f, and at such time EPA shall have
15 immediate access to resources guaranteed under any such performance
16 guarantee(s), whether in cash or in kind, as needed to continue and complete the
17 Work assumed by EPA under the Work Takeover. Upon the commencement of
18 any Work Takeover, if (a) for any reason EPA is unable to promptly secure the
19 resources guaranteed under any such performance guarantee(s), whether in cash
20 or in kind, necessary to continue and complete the Work assumed by EPA under
21 the Work Takeover, or (b) in the event that the performance guarantee involves a
22 demonstration of satisfaction of the financial test criteria pursuant to
23 Paragraph 31.e or Paragraph 31.f.(ii), Settling Defendants (or in the case of
24 Paragraph 31.f.(ii), the guarantor) shall immediately upon written demand from
25 EPA deposit into a special account within the EPA Hazardous Substance
26 Superfund or such other account as EPA may specify, in immediately available
27 funds and without setoff, counterclaim, or condition of any kind, a cash amount
28 up to but not exceeding the estimated cost of completing the Work as of such

1 date, as determined by EPA. In addition, if at any time EPA is notified by the
2 issuer of a performance guarantee that such issuer intends to cancel the
3 performance guarantee mechanism it has issued, then, unless Settling Defendants
4 provide a substitute performance guarantee mechanism in accordance with this
5 Section XI no later than 30 Days prior to the impending cancellation date, EPA
6 shall be entitled (as of and after the date that is 30 Days prior to the impending
7 cancellation) to draw fully on the funds guaranteed under the then-existing
8 performance guarantee. Any amounts required to be paid under this Paragraph
9 shall be, as directed by EPA: (i) paid to EPA in order to facilitate the completion
10 of the Work by EPA, DTSC, or by another person; or (ii) deposited into an
11 interest-bearing account, established at a duly chartered bank or trust company
12 that is insured by the FDIC, in order to facilitate the completion of the Work by
13 another person. If payment is made to EPA, EPA may deposit the payment into
14 the EPA Hazardous Substance Superfund or into the Montrose Onshore Special
15 Account within the EPA Hazardous Substance Superfund to be retained and used
16 to conduct or finance response actions or in connection with the Site, or to be
17 transferred by EPA to the EPA Hazardous Substance Superfund. All EPA Work
18 Takeover costs not reimbursed under this Paragraph shall be reimbursed under
19 Section XIV (Payments for Response Costs).

20 36. Modification of Amount and/or Form of Performance Guarantee.

21 a. Reduction of Amount of Performance Guarantee. If Settling
22 Defendants believe that the estimated cost of completing the Work has
23 diminished below the amount set forth in Paragraph 31, Settling Defendants may,
24 on any anniversary of the Effective Date, or at any other time agreed to by EPA,
25 DTSC and Settling Defendants, petition EPA in writing to request a reduction in
26 the amount of the performance guarantee provided pursuant to this Section so
27 that the amount of the performance guarantee is equal to the estimated cost of
28 completing the relevant Work. Settling Defendants shall submit a written

1 proposal for such reduction to EPA, and shall submit a copy of this proposal to
2 DTSC, that shall specify, at a minimum, the estimated cost of completing its
3 Work and the basis upon which such cost was calculated. In seeking approval for
4 a reduction in the amount of the performance guarantee, Settling Defendants shall
5 follow the procedures set forth in Paragraph 36.b.(2) for requesting a revised or
6 alternative form of performance guarantee, except as specifically provided in this
7 Paragraph. If EPA, after a reasonable opportunity for review and comment by
8 DTSC, decides to accept any such proposal for a reduction in the amount of the
9 performance guarantee, either to the amount set forth in a written proposal or to
10 some other amount as selected by EPA, EPA will notify Settling Defendants of
11 such decision in writing. Upon EPA's acceptance of a reduction in the amount of
12 the performance guarantee, the Estimated Cost of the Work shall be deemed to be
13 the estimated cost of completing the Work set forth in EPA's written decision.
14 After receiving EPA's written decision, Settling Defendants may reduce the
15 amount of the performance guarantee in accordance with and to the extent
16 permitted by such written acceptance and shall submit copies of all executed
17 and/or otherwise finalized instruments or other documents required in order to
18 make the selected performance guarantee(s) legally binding in accordance with
19 Paragraph 36.b.(2). In the event of a dispute, Settling Defendants may reduce the
20 amount of the performance guarantee required hereunder only in accordance with
21 a final administrative or judicial decision resolving such dispute pursuant to
22 Section XVII (Dispute Resolution). No change to the form or terms of any
23 performance guarantee provided under this Section, other than a reduction in
24 amount, is authorized except as provided in Paragraphs 34 or 36.b.

25 b. Change of Form of Performance Guarantee.

26 (1) If, after the Effective Date, Settling Defendants desire
27 to change the form or terms of any performance guarantee(s) provided
28 pursuant to this Section, Settling Defendants may, on any anniversary of

1 the Effective Date, or at any other time agreed to by the Parties, petition
2 EPA in writing to request a change in the form or terms of the performance
3 guarantee provided hereunder. The submission of such proposed revised
4 or alternative performance guarantee shall be as provided in Paragraph
5 36.b.(2), and Settling Defendants shall provide a copy of such proposal to
6 DTSC. Any decision made by EPA on a petition submitted under this
7 Paragraph shall be made in EPA's sole and unreviewable discretion, and
8 such decision shall not be subject to challenge by Settling Defendants
9 pursuant to the dispute resolution provisions of this Partial Consent Decree
10 or in any other forum.

11 (2) Settling Defendants shall submit a written proposal for
12 a revised or alternative performance guarantee to EPA, with copies to
13 DTSC, that shall specify, at a minimum, the estimated cost of completing
14 the Work, the basis upon which such cost was calculated, and the proposed
15 revised performance guarantee, including all proposed instruments or other
16 documents required in order to make the proposed performance guarantee
17 legally binding. The proposed revised or alternative performance
18 guarantee must satisfy all requirements set forth or incorporated by
19 reference in this Section. Settling Defendants shall submit such proposed
20 revised or alternative performance guarantee to the EPA Regional
21 Financial Management Officer in accordance with Section XXIV (Notices
22 and Submissions), with a copy to Financial Analyst, 75 Hawthorne Street,
23 San Francisco, California 94105, with copies to DTSC. EPA, after a
24 reasonable opportunity for review and comment by DTSC, will notify
25 Settling Defendants in writing of its decision to accept or reject a revised
26 or alternative performance guarantee submitted pursuant to this Paragraph.
27 Within ten Working Days after receiving a written decision approving the
28 proposed revised or alternative performance guarantee, Settling

1 Defendants shall execute and/or otherwise finalize all instruments or other
2 documents required in order to make the selected performance guarantee(s)
3 legally binding in a form substantially identical to the documents
4 submitted to EPA as part of the proposal, and such performance
5 guarantee(s) shall thereupon be fully effective. Settling Defendants shall
6 submit copies of all executed and/or otherwise finalized instruments or
7 other documents required in order to make the selected performance
8 guarantee(s) legally binding to the EPA Regional Financial Management
9 Officer within 30 Days of receiving a written decision approving the
10 proposed revised or alternative performance guarantee in accordance with
11 Section XXIV (Notices and Submissions), with a copy to Financial
12 Analyst, 75 Hawthorne Street, San Francisco, California 94105; and to the
13 United States, EPA, and DTSC as specified in Section XXIV.

14 c. Release of Performance Guarantee. Settling Defendants shall not
15 release, cancel, or discontinue any performance guarantee provided pursuant to
16 this Section except as provided in this Paragraph. If Settling Defendants receive
17 written notice from EPA in accordance with Paragraph 38 that the Work has been
18 fully and finally completed in accordance with the terms of this Partial Consent
19 Decree, or if EPA otherwise so notifies Settling Defendants in writing, Settling
20 Defendants may thereafter release, cancel, or discontinue the performance
21 guarantee(s) provided pursuant to this Section. In the event of a dispute Settling
22 Defendants may release, cancel, or discontinue the performance guarantee(s)
23 required hereunder only in accordance with a final administrative or judicial
24 decision resolving such dispute pursuant to Section XVII (Dispute Resolution).

25 **XII. CERTIFICATION OF COMPLETION**

26 37. Completion of the Remedial Action.

27 a. Within 90 Days after Settling Defendants conclude that the
28 Remedial Action has been fully performed and the Performance Standards have

1 been achieved, Settling Defendants shall schedule and conduct a pre-certification
2 inspection to be attended by Settling Defendants, EPA, and DTSC. If, after the
3 pre-certification inspection, Settling Defendants still believe that the Remedial
4 Action has been fully performed and the Performance Standards have been
5 achieved, they shall submit a written report requesting certification to EPA for
6 approval, with a copy to DTSC pursuant to Section IX (EPA Approval of Plans,
7 Reports, and Other Deliverables) within 30 Days after the inspection. In the
8 report, a professional engineer registered in California and Settling Defendants'
9 Project Coordinator shall state that the Remedial Action has been completed in
10 full satisfaction of the requirements of this Partial Consent Decree. The written
11 report shall include as-built drawings signed and stamped by a professional
12 engineer registered in California. The report shall be prepared in accordance
13 with Chapter 2 (Remedial Action Completion) of EPA's *Close Out Procedures*
14 *for NPL Sites* guidance (May 2011), as supplemented by *Guidance for*
15 *Management of Superfund Remedies in Post Construction*, OLEM 9200.3-105
16 (Feb. 2017), and any amendments to the guidance. The report shall include a
17 detailed and comprehensive report on the Performance Monitoring and
18 Verification program, including the elements in ¶ 3.1.(I) of the SOW, and
19 containing monitoring data to demonstrate that Performance Standards have been
20 achieved. The report shall contain the following statement, signed by a
21 responsible corporate official of a Settling Defendant or Settling Defendants'
22 Project Coordinator:

23 I certify under penalty of federal and State law that this
24 document and all attachments were prepared under my
25 direction or supervision in accordance with a system
26 designed to assure that qualified personnel properly gather
27 and evaluate the information submitted. Based on my
28 inquiry of the person or persons who manage the system,
or those persons directly responsible for gathering the
information, the information submitted is, to the best of
my knowledge and belief, true, accurate, and complete. I

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am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

b. If, after completion of the pre-certification inspection and receipt and review of the written report, EPA, after reasonable opportunity for review and comment by DTSC, determines that the Remedial Action or any portion thereof has not been completed in accordance with this Partial Consent Decree or that the Performance Standards have not been achieved, EPA will notify Settling Defendants in writing of the activities that must be undertaken by Settling Defendants pursuant to this Partial Consent Decree to complete the Remedial Action and achieve the Performance Standards, provided, however, that EPA may only require Settling Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the Scope of the Remedy, as that term is defined in Paragraph 11.a. EPA will set forth in the notice a schedule for performance of such activities consistent with this Partial Consent Decree and the SOW or require Settling Defendants to submit a schedule to EPA for approval pursuant to Section IX (EPA Approval of Plans, Reports, and Other Deliverables). Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to their right to invoke the dispute resolution procedures set forth in Section XVII (Dispute Resolution).

c. If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion of the Remedial Action and after a reasonable opportunity for review and comment by DTSC, that the Remedial Action has been performed in accordance with this Partial Consent Decree and that the Performance Standards have been achieved, EPA will so certify in writing to Settling Defendants. This certification shall constitute the Certification of Completion of the Remedial Action for purposes of this Partial Consent

1 Decree. Certification of Completion of the Remedial Action shall not affect
2 Settling Defendants' remaining obligations under this Partial Consent Decree.

3 38. Completion of the Work.

4 a. Within 90 Days after Settling Defendants conclude that all the
5 Work, other than any periodic review activities required under Section VII
6 (Remedy Review), has been fully performed and the Performance Standards have
7 been achieved, Settling Defendants shall schedule and conduct a pre-certification
8 inspection to be attended by Settling Defendants, EPA, and DTSC. If, after the
9 pre-certification inspection, Settling Defendants still believe that the Work has
10 been fully performed, Settling Defendants shall submit a written report by a
11 professional engineer registered in California stating that the Work has been
12 completed in full satisfaction of the requirements of this Partial Consent Decree.
13 The report shall contain the following statement, signed by a responsible
14 corporate official of a Settling Defendant or Settling Defendants' Project
15 Coordinator:

16 I certify under penalty of federal and State law that this
17 document and all attachments were prepared under my
18 direction or supervision in accordance with a system
19 designed to assure that qualified personnel properly
20 gather and evaluate the information submitted. Based on
21 my inquiry of the person or persons who manage the
22 system, or those persons directly responsible for
23 gathering the information, the information submitted is,
24 to the best of my knowledge and belief, true, accurate,
25 and complete. I am aware that there are significant
26 penalties for submitting false information, including the
27 possibility of fine and imprisonment for knowing
28 violations.

25 b. If, after review of the written report, EPA, after reasonable
26 opportunity for review and comment by DTSC, determines that any portion of
27 the Work has not been completed in accordance with this Partial Consent Decree,
28 EPA will notify Settling Defendants in writing of the activities that must be

1 undertaken by Settling Defendants pursuant to this Partial Consent Decree to
2 complete the Work, provided, however, that EPA may only require Settling
3 Defendants to perform such activities pursuant to this Paragraph to the extent that
4 such activities are consistent with the Scope of the Remedy, as that term is
5 defined in Paragraph 11.a. EPA will set forth in the notice a schedule for
6 performance of such activities consistent with this Partial Consent Decree and the
7 SOW or require Settling Defendants to submit a schedule to EPA for approval
8 pursuant to Section IX (EPA Approval of Plans, Reports and Other Deliverables).
9 Settling Defendants shall perform all activities described in the notice in
10 accordance with the specifications and schedules established therein, subject to
11 their right to invoke the dispute resolution procedures set forth in Section XVII
12 (Dispute Resolution).

13 c. If EPA concludes, based on the initial or any subsequent request
14 for Certification of Completion of the Work by Settling Defendants and after a
15 reasonable opportunity for review and comment by DTSC, that the Work has
16 been performed in accordance with this Partial Consent Decree, EPA will so
17 notify Settling Defendants in writing.

18 XIII. EMERGENCY RESPONSE

19 39. If any action or occurrence during the performance of the Work
20 causes or threatens a release of Waste Material from the Site that constitutes an
21 emergency situation or may present an immediate threat to public health or
22 welfare or the environment, Settling Defendants shall, subject to Paragraph 40,
23 immediately take all appropriate action to prevent, abate, or minimize such
24 release or threat of release, in consultation with EPA's Project Coordinator or
25 other available authorized EPA officer and in accordance with all applicable
26 provisions of the Health and Safety Plans, the Contingency Plans, and any other
27 applicable plans or documents developed pursuant to the SOW. Settling
28 Defendants shall also immediately notify the EPA's Project Coordinator, or, if

1 the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If
2 neither of these persons is available, Settling Defendants shall notify the EPA
3 Emergency Response Unit, Region IX. In the event that Settling Defendants fail
4 to take appropriate response action as required by this Section, and EPA or, as
5 appropriate, DTSC takes such action instead, Settling Defendants shall reimburse
6 EPA and DTSC costs of the response action not inconsistent with the NCP
7 pursuant to Section XIV (Payments for Response Costs).

8 40. Subject to Section XIX (Covenants by Plaintiffs), nothing in the
9 preceding Paragraph or in this Partial Consent Decree shall be deemed to limit
10 any authority of the United States, or the State, (a) to take all appropriate action
11 to protect human health and the environment or to prevent, abate, respond to, or
12 minimize an actual or threatened release of Waste Material on, at, or from the
13 Site, or (b) to direct or order such action, or seek an order from the Court, to
14 protect human health and the environment or to prevent, abate, respond to, or
15 minimize an actual or threatened release of Waste Material on, at, or from the
16 Site.

17 **XIV. PAYMENTS FOR RESPONSE COSTS**

18 41. Payment by Settling Defendants for EPA Past Response Costs and
19 DTSC Past Response Costs.

20 a. Within 45 Days of the Effective Date, Settling Defendants shall
21 pay to EPA the amount of \$340,000 in payment for Past Response Costs, in
22 accordance with Paragraphs 44.a and 44.c (Payment Instructions).

23 b. The total amount to be paid by Settling Defendants pursuant to
24 Paragraph 41.a shall be deposited by EPA in the Montrose Onshore Special
25 Account to be retained and used to conduct or finance response actions at or in
26 connection with the Montrose and/or Del Amo Superfund Sites, or to be
27 transferred by EPA to the EPA Hazardous Substance Superfund.

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1 c. Within 45 Days of the Effective Date, but no later than June 30,
2 2021, Settling Defendants shall pay DTSC Past Response Costs in the amount of
3 \$ 61,798.11 by official bank check(s) made payable to the Department of Toxic
4 Substances Control, and annotated with the phrase “400100-DNAPL CD.”
5 Settling Defendants shall send the bank check(s) to Department of Toxic
6 Substances Control, Accounting Office, P.O. Box 806, Sacramento, CA 95812-
7 0806. Hand deliveries, including but not limited to Federal Express and UPS,
8 should be addressed to: Department of Toxic Substances Control, Accounting
9 Office, 1001 I Street, 21st Floor, Sacramento, CA 95814.

10 42. Payments by Settling Defendants for EPA Future Response Costs.
11 Settling Defendants shall pay to EPA all EPA Future Response Costs not
12 inconsistent with the NCP.

13 a. On a periodic basis, generally once per year, EPA will send
14 Settling Defendants a bill requiring payment and enclosing a standard
15 Regionally-prepared cost summary, which provides a statement of direct and
16 indirect costs incurred by EPA and its contractors, and a DOJ case cost summary.
17 Settling Defendants shall make all payments within 30 Days of Settling
18 Defendants’ receipt of each bill requiring payment, except as otherwise provided
19 in Paragraph 45, in accordance with Paragraphs 44.b and 44.c (Payment
20 Instructions).

21 b. The total amount to be paid by Settling Defendants pursuant to
22 Paragraph 42.a shall be deposited by EPA in the Montrose Onshore Special
23 Account to be retained and used to conduct or finance response actions at or in
24 connection with the Montrose and/or Del Amo Superfund Sites, or to be
25 transferred by EPA to the EPA Hazardous Substance Superfund.

26 c. If Settling Defendants so request, EPA and DTSC agree to
27 participate in an oversight kickoff meeting at which EPA, DTSC, and Settling
28 Defendants would discuss performance and oversight expectations. EPA and

1 DTSC further agree to participate in annual discussions of the past year's
2 oversight activities and future work oversight expectations.

3 43. Payments by Settling Defendants for DTSC Future Response Costs.
4 Settling Defendants shall pay to DTSC all DTSC Future Response Costs not
5 inconsistent with the NCP. On a periodic basis, generally quarterly, DTSC will
6 send Settling Defendants a bill requiring payment that includes an invoice and a
7 summary (by activity), which provides a statement of direct and indirect costs
8 incurred by DTSC and its contractors. Upon request by Montrose to the Site's
9 Project Manager, DTSC will provide the daily log(s) associated with an invoice
10 related to this Partial Consent Decree. Settling Defendants shall make all
11 payments within 30 Days of Settling Defendants' receipt of each bill requiring
12 payment. Settling Defendants shall make all payments to DTSC required by this
13 Paragraph by sending the bank check(s) to: Accounting, Department of Toxic
14 Substances Control, 1001 I Street, 21st Floor, P.O. Box 806, Sacramento,
15 California 95812-0806.

16 44. Payment Instructions for Settling Defendants.

17 a. Instructions for EPA Past Response Costs Payments. All
18 payments required, elsewhere in this Partial Consent Decree, to be made in
19 accordance with this Paragraph shall be made in accordance with instructions
20 provided to Settling Defendants by the Financial Litigation Unit ("FLU") of the
21 United States Attorney's Office for the Central District of California after the
22 Effective Date. The payment instructions provided by the Financial Litigation
23 Unit shall include a Consolidated Debt Collection System ("CDCS") number,
24 which shall be used to identify all payments required to be made in accordance
25 with this Partial Consent Decree. The FLU shall provide the payment
26 instructions to:

27 Settling Defendants
28 c/o Montrose Chemical Corporation of California
600 Ericksen Avenue NE, Suite 380

1 Bainbridge Island, WA 98110
2 (206) 780-9840
3 mccc@montrosechemical.com

4 on behalf of Settling Defendants. Settling Defendants may change the individual
5 to receive payment instructions on their behalf by providing written notice of
6 such change in accordance with Section XXIV (Notices and Submissions).

7 b. Instructions for EPA Future Response Costs Payments and
8 Stipulated Penalties. All payments required, elsewhere in this Partial Consent
9 Decree, to be made in accordance with this Paragraph shall be made by Fedwire
10 EFT to:

11 Federal Reserve Bank of New York
12 ABA = 021030004
13 Account = 68010727
14 SWIFT address = FRNYUS33
15 33 Liberty Street
16 New York NY 10045

17 Field Tag 4200 of the Fedwire message should read as follows:
18 “D 68010727 Environmental Protection Agency”

19 When making payments under this Paragraph 44.b, Settling Defendants shall also
20 comply with Paragraph 44.c.

21 c. Instructions for All Payments to EPA. All payments made under
22 Paragraph 44.a or 44.b shall reference the CDCS Number, EPA Site/Spill ID
23 Number 0926 and DOJ Case Number 90-11-3-511. At the time of any payment
24 required to be made in accordance with Paragraphs 42, 44.a, or 44.b, Settling
25 Defendants shall send notice of payment to the United States and to EPA, in
26 accordance with Section XXIV (Notices and Submissions), and to the EPA
27 Cincinnati Finance Office by email at cinwd acctsreceivable@epa.gov, or by
28 mail at 26 Martin Luther King Drive, Cincinnati, Ohio 45268. Such notice shall
also reference the CDCS Number, Site/Spill ID Number, and DOJ Case Number.

45. Settling Defendants may contest any EPA Future Response Costs
billed under Paragraph 42 or DTSC Future Response Costs billed under

1 Paragraph 43 if they determine that EPA or DTSC has made a mathematical error
2 or included a cost item that is not within the definition of EPA or DTSC Future
3 Response Costs, or if they believe EPA or DTSC incurred excess costs as a direct
4 result of an EPA or DTSC action that was inconsistent with a specific provision
5 or provisions of the NCP.

6 a. Such objection shall be made in writing within 45 Days of receipt
7 of the bill and must be sent to the United States (if the United States' accounting
8 is being disputed) or DTSC (if DTSC's accounting is being disputed) pursuant to
9 Section XXIV (Notices and Submissions). Any such objection shall specifically
10 identify the contested EPA or DTSC Future Response Costs and the basis for
11 objection. In the event of an objection, Settling Defendants shall pay all
12 uncontested EPA or DTSC Future Response Costs to the United States or DTSC
13 within 60 Days of Settling Defendants' receipt of the bill requiring payment.

14 b. Simultaneously with sending an objection to the United States or
15 DTSC, Settling Defendants shall establish an interest-bearing escrow account in a
16 federally-insured bank duly chartered in the State of California and remit to that
17 escrow account funds equivalent to the amount of the contested EPA or DTSC
18 Future Response Costs. Settling Defendants shall send to the United States and
19 DTSC, as provided in Section XXIV (Notices and Submissions), a copy of the
20 transmittal letter and check paying the uncontested EPA or DTSC Future
21 Response Costs, and a copy of the correspondence that establishes and funds the
22 escrow account, including, but not limited to, information containing the identity
23 of the bank and bank account under which the escrow account is established as
24 well as a bank statement showing the initial balance of the escrow account.

25 c. Simultaneously with establishment of the escrow account,
26 Settling Defendants shall initiate the Dispute Resolution procedures in Section
27 XVII (Dispute Resolution) (provided, however, that references to "EPA" in such
28 Section shall be read to refer to DTSC for purposes of disputes relating to DTSC

1 Future Response Costs under this Paragraph). If the United States or DTSC
2 prevails in the dispute, Settling Defendants shall pay the sums due (with accrued
3 interest) to the United States or DTSC, as appropriate, within five Days of the
4 resolution of the dispute. If Settling Defendants prevail concerning any aspect of
5 the contested costs, Settling Defendants shall pay that portion of the costs (plus
6 associated accrued interest) for which they did not prevail to the United States or
7 DTSC, as appropriate, within five Days of the resolution of the dispute. Settling
8 Defendants shall be disbursed any balance of the escrow account.

9 d. All payments to the United States under this Paragraph shall be
10 made in accordance with Paragraphs 44.b and 44.c (Payment Instructions for
11 Settling Defendants' Payments to EPA). All payments to DTSC under this
12 Paragraph shall be made in accordance with Paragraph 43 (Payments by Settling
13 Defendants for DTSC Future Response Costs). The dispute resolution procedures
14 set forth in this Paragraph in conjunction with the procedures set forth in Section
15 XVII (Dispute Resolution) shall be the exclusive mechanisms for resolving
16 disputes regarding Settling Defendants' obligations to reimburse the United
17 States and DTSC for their Future Response Costs.

18 46. Interest. In the event that any payment for EPA or DTSC Past
19 Response Costs or for EPA or DTSC Future Response Costs required under this
20 Section is not made by the date required, Settling Defendants shall pay Interest
21 on the unpaid balance. The Interest to be paid on EPA Past Response Costs
22 under this Paragraph shall begin to accrue on the Effective Date. The Interest to
23 be paid on DTSC Past Response Costs outstanding more than 60 Days shall
24 begin to accrue on the date of the bill. The Interest on EPA Future Response
25 Costs or DTSC Future Response Costs shall begin to accrue on the date of the
26 bill. The Interest shall accrue through the date of Settling Defendants' payment.
27 Payments of Interest made under this Paragraph shall be in addition to such other
28 remedies or sanctions available to Plaintiffs by virtue of Settling Defendants'

1 failure to make timely payments under this Section including, but not limited to,
2 payment of stipulated penalties pursuant to Paragraph 61.

3 **XV. INDEMNIFICATION AND INSURANCE**

4 47. Settling Defendants' Indemnification of the United States and DTSC
5 (Negligent or Wrongful Acts or Omissions).

6 a. The United States and DTSC do not assume any liability by
7 entering into this Partial Consent Decree or by virtue of any designation of
8 Settling Defendants as EPA's authorized representatives under Section 104(e) of
9 CERCLA, 42 U.S.C. § 9604(e). Settling Defendants shall indemnify, save and
10 hold harmless the United States, DTSC, and their officials, agents, employees,
11 contractors, subcontractors, or representatives for or from any and all claims or
12 causes of action arising from, or on account of, negligent or other wrongful acts
13 or omissions of Settling Defendants, and each of their officers, directors,
14 employees, agents, contractors, subcontractors, and any persons acting on their
15 behalf or under their control, in carrying out activities pursuant to this Partial
16 Consent Decree, including, but not limited to, any claims arising from any
17 designation of Settling Defendants as EPA's authorized representatives under
18 Section 104(e) of CERCLA. Further, Settling Defendants agree to pay the
19 United States and the State all costs the United States and the State incur
20 including, but not limited to, attorneys' fees and other expenses of litigation and
21 settlement arising from, or on account of, claims made against the United States
22 or the State based on negligent or other wrongful acts or omissions of Settling
23 Defendants, their officers, directors, employees, agents, contractors,
24 subcontractors, and any persons acting on their behalf or under their control, in
25 carrying out activities pursuant to this Partial Consent Decree. Neither the
26 United States nor the State shall be held out as a party to any contract entered into
27 by or on behalf of Settling Defendants in carrying out activities pursuant to this
28

1 Partial Consent Decree. Neither Settling Defendants nor any such contractor
2 shall be considered an agent of the United States or DTSC.

3 b. The United States and DTSC shall give Settling Defendants
4 notice of any claim for which the United States or DTSC plans to seek
5 indemnification pursuant to this Paragraph, and shall consult with Settling
6 Defendants prior to settling such claim.

7 48. Settling Defendants' Indemnification of the United States and DTSC
8 (Contract, Agreement, or Arrangement).

9 a. Settling Defendants covenant not to sue and agree not to assert
10 any claims or causes of action against the United States or DTSC for damages or
11 reimbursement or for set-off of any payments made or to be made to the United
12 States or DTSC, arising from or on account of any contract, agreement, or
13 arrangement between any one or more of Settling Defendants and any person for
14 performance of Work on or relating to the Site, including, but not limited to,
15 claims on account of construction delays. In addition, Settling Defendants shall
16 indemnify and hold harmless the United States and DTSC with respect to any and
17 all claims for damages or reimbursement arising from or on account of any
18 contract, agreement, or arrangement between any one or more of Settling
19 Defendants and any person for performance of Work on or relating to the Site,
20 including, but not limited to, claims on account of construction delays.

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

25 49. If, in the future, a California state agency other than DTSC should
26 assume DTSC's role under this Partial Consent Decree, the Settling Defendants'
27 indemnification of DTSC pursuant to Paragraphs 47 and 48 shall apply to that
28 state agency.

1 obligation under this Partial Consent Decree despite the Settling Defendants’ best
2 efforts to fulfill the obligation. The requirement that Settling Defendants
3 exercise “best efforts to fulfill the obligation” includes using best efforts to
4 anticipate any potential force majeure and best efforts to address the effects of
5 any potential force majeure (1) as it is occurring and (2) following the potential
6 force majeure such that the delay and any adverse effects of the delay are
7 minimized to the greatest extent possible. “Force majeure” does not include
8 financial inability to complete the Work or a failure to achieve the Performance
9 Standards.

10 52. If any event occurs or has occurred that may delay the performance
11 of any obligation under this Partial Consent Decree for which Settling
12 Defendants intend or may intend to assert a claim of force majeure, Settling
13 Defendants shall notify orally EPA’s Project Coordinator or, in his or her
14 absence, EPA’s Alternate Project Coordinator or, in the event both of EPA’s
15 designated representatives are unavailable, the Director of the Superfund and
16 Emergency Management Division, EPA Region IX, within five Days of when
17 Settling Defendants first knew that the event might cause a delay. Within 14
18 Days thereafter, Settling Defendants shall provide in writing to EPA and DTSC
19 an explanation and description of the reasons for the delay; the anticipated
20 duration of the delay; all actions taken or to be taken to prevent or minimize the
21 delay; a schedule for implementation of any measures to be taken to prevent or
22 mitigate the delay or the effect of the delay; Settling Defendants’ rationale for
23 attributing such delay to a force majeure; and a statement as to whether, in the
24 opinion of Settling Defendants, such event may cause or contribute to an
25 endangerment to public health or welfare, or the environment. Settling
26 Defendants shall include with any notice all available documentation supporting
27 their claim that the delay was attributable to a force majeure. Settling Defendants
28 shall be deemed to know of any circumstance of which Settling Defendants, any

1 entity controlled by Settling Defendants, or Settling Defendants' contractors
2 knew or should have known. Failure to comply with the above requirements
3 regarding an event shall preclude Settling Defendants from asserting any claim of
4 force majeure regarding that event, provided, however, that if EPA, despite the
5 late notice, is able to assess to its satisfaction whether the event is a force majeure
6 under Paragraph 51 and whether Settling Defendants have exercised their best
7 efforts under Paragraph 51, EPA may, in its unreviewable discretion, after a
8 reasonable opportunity for review and comment by DTSC, excuse in writing
9 Settling Defendants' failure to submit timely notices under this Paragraph.

10 53. If EPA, after a reasonable opportunity for review and comment by
11 DTSC, agrees that the delay or anticipated delay is attributable to a force
12 majeure, the time for performance of the obligations under this Partial Consent
13 Decree that are affected by the force majeure will be extended by EPA, after a
14 reasonable opportunity for review and comment by DTSC, for such time as is
15 necessary to complete those obligations. In that case, EPA will notify Settling
16 Defendants in writing of the length of the extension, if any, for performance of
17 the obligations affected by the force majeure. An extension of the time for
18 performance of the obligations affected by the force majeure shall not, of itself,
19 extend the time for performance of any other obligation. If EPA, after a
20 reasonable opportunity for review and comment by DTSC, does not agree that
21 the delay or anticipated delay has been or will be caused by a force majeure, EPA
22 will notify Settling Defendants in writing of its decision.

23 54. If Settling Defendants elect to invoke the dispute resolution
24 procedures set forth in Section XVII (Dispute Resolution), they shall do so no
25 later than 15 Days after receipt of EPA's notice. In any such proceeding, Settling
26 Defendants shall have the burden of demonstrating by a preponderance of the
27 evidence that the delay or anticipated delay has been or will be caused by a force
28 majeure, that the duration of the delay or the extension sought was or will be

1 warranted under the circumstances, that best efforts were exercised to avoid and
2 mitigate the effects of the delay, and that Settling Defendants complied with the
3 requirements of Paragraphs 51 and 52. If Settling Defendants carry this burden,
4 the delay at issue shall be deemed not to be a violation by Settling Defendants of
5 the affected obligation of this Partial Consent Decree identified to EPA and the
6 Court.

7 **XVII. DISPUTE RESOLUTION**

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

14 56. Any dispute that arises under or with respect to this Partial Consent
15 Decree shall in the first instance be the subject of informal negotiations between
16 the parties to the dispute. The period for informal negotiations shall not exceed
17 45 Days from the time the dispute arises, unless it is modified by written
18 agreement of the parties to the dispute. The dispute shall be considered to have
19 arisen when one party sends the other parties a written Notice of Dispute.

20 57. Statements of Position.

21 a. In the event that the parties to the dispute cannot resolve a
22 dispute by informal negotiations under the preceding Paragraph, then the position
23 advanced by EPA shall be considered binding unless, within 14 Days after the
24 conclusion of the informal negotiation period, Settling Defendants invoke the
25 formal dispute resolution procedures of this Section by serving on the United
26 States and the State a written Statement of Position on the matter in dispute,
27 including, but not limited to, any factual data, analysis or opinion supporting that
28 position and any supporting documentation relied upon by Settling Defendants.

1 The Statement of Position shall specify Settling Defendants' position as to
2 whether formal dispute resolution should proceed under Paragraph 58 or
3 Paragraph 59.

4 b. Within 45 Days after receipt of Settling Defendants' Statement of
5 Position, EPA, after consultation with DTSC, will serve on Settling Defendants
6 EPA's Statement of Position, including, but not limited to, any factual data,
7 analysis, or opinion supporting that position and all supporting documentation
8 relied upon by EPA. EPA's Statement of Position shall include a statement as to
9 whether formal dispute resolution should proceed under Paragraph 58 or 59.
10 Within 45 Days after receipt of EPA's Statement of Position, Settling Defendants
11 may submit a Reply.

12 c. If there is disagreement between EPA and Settling Defendants as
13 to whether dispute resolution should proceed under Paragraph 58 or 59, the
14 parties to the dispute shall follow the procedures set forth in the Paragraph
15 determined by EPA to be applicable. However, if Settling Defendants ultimately
16 appeal to the Court to resolve the dispute, the Court shall determine which
17 Paragraph is applicable in accordance with the standards of applicability set forth
18 in Paragraphs 58 and 59.

19 58. Record Review. Formal dispute resolution for disputes pertaining to
20 the selection or adequacy of any response action and all other disputes that are
21 accorded review on the administrative record under applicable principles of
22 administrative law shall be conducted pursuant to the procedures set forth in this
23 Paragraph. For purposes of this Paragraph, the adequacy of any response action
24 includes, without limitation, the adequacy or appropriateness of plans, procedures
25 to implement plans, or any other items requiring approval by EPA under this
26 Partial Consent Decree, and the adequacy of the performance of response actions
27 taken pursuant to this Partial Consent Decree. Nothing in this Partial Consent
28

1 Decree shall be construed to allow any dispute by Settling Defendants regarding
2 the validity of the ROD's provisions.

3 a. An administrative record of the dispute shall be maintained by
4 EPA and shall contain all statements of position, including supporting
5 documentation, submitted pursuant to this Section. Where appropriate, EPA may
6 allow submission of supplemental statements of position by the parties to the
7 dispute.

8 b. The Director of the Superfund and Emergency Management
9 Division, EPA Region IX, will issue a final administrative decision resolving the
10 dispute based on the administrative record described in Paragraph 58.a. This
11 decision shall be binding upon Settling Defendants, subject only to the right to
12 seek judicial review pursuant to Paragraphs 58.c and 58.d.

13 c. Any administrative decision made by EPA pursuant to
14 Paragraph 58.b shall be reviewable by this Court, provided that a motion for
15 judicial review of the decision is filed by Settling Defendants with the Court and
16 served on all Parties within 20 Days of receipt of EPA's decision. The motion
17 shall include a description of the matter in dispute, the efforts made by the parties
18 to resolve it, the relief requested, and the schedule, if any, within which the
19 dispute must be resolved to ensure orderly implementation of this Partial Consent
20 Decree. The United States may file a response to Settling Defendants' motion,
21 and, if permitted by this Court's local rules, Settling Defendants may file a reply.

22 d. In proceedings on any dispute governed by this Paragraph,
23 Settling Defendants shall have the burden of demonstrating that the decision of
24 the Superfund and Emergency Management Division Director is arbitrary and
25 capricious or otherwise not in accordance with law. Judicial review of EPA's
26 decision shall be on the administrative record compiled pursuant to
27 Paragraph 58.a.

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1 59. Formal dispute resolution for disputes that neither pertain to the
2 selection or adequacy of any response action nor are otherwise accorded review
3 on the administrative record under applicable principles of administrative law
4 shall be governed by this Paragraph.

5 a. Following receipt of Settling Defendants' Statement of Position
6 submitted pursuant to Paragraph 57, the Director of the Superfund and
7 Emergency Management Division, EPA Region IX, will issue a final decision
8 resolving the dispute. The Superfund and Emergency Management Division
9 Director's decision shall be binding on Settling Defendants unless, within 20
10 Days of receipt of the decision, Settling Defendants file with the Court and serve
11 on the Parties a motion for judicial review of the decision setting forth the matter
12 in dispute, the efforts made by the parties to resolve it, the relief requested, and
13 the schedule, if any, within which the dispute must be resolved to ensure orderly
14 implementation of this Partial Consent Decree. The United States may file a
15 response to Settling Defendants' motion, and, if permitted by this Court's local
16 rules, Settling Defendants may file a reply.

17 b. If Settling Defendants contest payment of any DTSC Future
18 Response Costs, Settling Defendants shall comply with the procedures set forth
19 in this Subparagraph. Prior to requesting formal dispute resolution pursuant to
20 this Subparagraph, Settling Defendants shall notify DTSC's assigned Project
21 Manager and attempt to informally resolve the dispute with DTSC's Project
22 Manager and branch chief. If the dispute cannot be resolved informally within 20
23 Days, then Settling Defendants shall provide a written request for formal dispute
24 resolution, which shall describe all issues in dispute and shall set forth the
25 reasons for the dispute, both factual and legal. The written request for formal
26 dispute resolution and any supporting documentation shall be sent to:

27 Chief, Collections and Resolutions Unit
28 Department of Toxic Substances Control
 P.O. Box 806

1 Sacramento, California 95812-0806

2 c. Copies of the written request for formal dispute resolution and
3 any supporting documentation shall also be sent to those persons designated by
4 DTSC to receive notices and submissions in Section XXIV (Notices and
5 Submissions) of this Partial Consent Decree. A decision on the billing dispute
6 will be rendered by the Chief, Collections and Resolutions Unit or other DTSC
7 designee. The decision by the Chief, Collections and Resolutions Unit or
8 designee shall be binding on Settling Defendants unless, within 15 Days of the
9 receipt of the decision, Settling Defendants file with the Court and serve on
10 DTSC a motion for judicial review of the decision setting forth the matter in
11 dispute, the efforts made by the parties to resolve it, the relief requested, and the
12 schedule, if any, within which the dispute must be resolved to ensure orderly
13 implementation of this Partial Consent Decree.

14 d. Judicial review of any dispute governed by this Paragraph shall
15 be governed by applicable principles of law.

16 60. The invocation of formal dispute resolution procedures under this
17 Section shall not extend, postpone, or affect in any way any obligation of Settling
18 Defendants under this Partial Consent Decree, not directly in dispute, unless EPA
19 or the Court agrees otherwise. Stipulated penalties with respect to the disputed
20 matter shall continue to accrue but payment shall be stayed pending resolution of
21 the dispute as provided in Paragraph 68. Notwithstanding the stay of payment,
22 stipulated penalties shall accrue from the first day of noncompliance with any
23 applicable provision of this Partial Consent Decree. In the event that Settling
24 Defendants do not prevail on the disputed issue, stipulated penalties shall be
25 assessed and paid as provided in Section XVIII (Stipulated Penalties).

26 **XVIII. STIPULATED PENALTIES**

27 61. Settling Defendants shall be liable for stipulated penalties in the
28 amounts set forth in Paragraphs 62 and 63 to the United States and DTSC, to be

1 split 80%/20%, respectively, for failure to comply with the requirements of this
2 Partial Consent Decree for Settling Defendants specified below, unless excused
3 under Section XVI (Force Majeure). "Compliance" by Settling Defendants shall
4 include completion of all payments and activities required for Settling
5 Defendants under this Partial Consent Decree, or any plan, report, or other
6 deliverable approved under this Partial Consent Decree, in accordance with all
7 applicable requirements of law, this Partial Consent Decree, the SOW, and any
8 plans, reports, or other deliverables approved under this Partial Consent Decree
9 and within the specified time schedules established by and approved under this
10 Partial Consent Decree.

11 62. Stipulated Penalty Amounts – Work (Including Payments and
12 Excluding Plans, Reports, and Other Deliverables).

13 a. The following stipulated penalties shall accrue per violation per
14 Day for any noncompliance identified in Paragraph 62.b:

15	<u>Penalty Per Violation Per</u>	<u>Period of</u>
16	<u>Day</u>	<u>Noncompliance</u>
17	\$500	1st through 14th Day
18	\$1,000	15th through 30th Day
19	\$3,000	31st Day and beyond
20		

21 b. Compliance Milestones. Failure of Settling Defendants to
22 perform any of the following within the specified time schedule provided for in
23 this Partial Consent Decree, the SOW, or its work plans shall result in stipulated
24 penalties in the amounts set forth in Paragraph 62.a:

- 25 (1) Achievement of Performance Standards;
- 26 (2) Provision (by Settling Defendants) of access pursuant
27 to Paragraph 16;

28

1 (3) Timely payment of EPA Past Response Costs and
2 DTSC Past Response Costs;

3 (4) Timely payment of EPA Future Response Costs and
4 DTSC Future Response Costs;

5 (5) Establishment of an escrow account to hold any
6 disputed EPA Future Response Costs or DTSC Future Response Costs
7 under Paragraph 45.b; and

8 (6) Establishment and maintenance of performance
9 guarantee in accordance with Paragraph 31.

10 63. Stipulated Penalty Amounts – Plans, Reports, and other
11 Deliverables. The following stipulated penalties shall accrue per violation per
12 Day for failure to submit timely or adequate reports or other plans or deliverables
13 pursuant to this Partial Consent Decree:

<u>Penalty Per Violation Per</u>	<u>Period of</u>
<u>Day</u>	<u>Noncompliance</u>
\$100	1st through 14th Day
\$500	15th through 30th Day
\$1,000	31st Day and beyond

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20 64. In the event that EPA assumes performance of a portion or all of the
21 Work pursuant to Paragraph 76 (Work Takeover), Settling Defendants shall be
22 liable for a stipulated penalty in the amount of \$1,125,000. Stipulated penalties
23 under this Paragraph are in addition to the remedies available under Paragraphs
24 35 (Funding for Work Takeover) and 76 (Work Takeover).

25 65. All penalties shall begin to accrue on the Day after the complete
26 performance is due or the Day a violation occurs, and shall continue to accrue
27 through the final Day of the correction of the noncompliance or completion of the
28 activity. However, stipulated penalties shall not accrue: (a) with respect to a

1 deficient submission under Section IX (EPA Approval of Plans, Reports, and
2 Other Deliverables), during the period, if any, beginning on the 31st Day after
3 EPA's receipt of such submission until the date that EPA notifies Settling
4 Defendants of any deficiency; (b) with respect to a decision by the Director of the
5 Superfund and Emergency Management Division, EPA Region IX, under
6 Paragraph 58.b or 59.a of Section XVII (Dispute Resolution), during the period,
7 if any, beginning on the 21st Day after the date that the Settling Defendants'
8 reply to EPA's Statement of Position is received until the date that the Director
9 issues a final decision regarding such dispute; or (c) with respect to judicial
10 review by this Court of any dispute under Section XVII (Dispute Resolution),
11 during the period, if any, beginning on the 31st Day after the Court's receipt of
12 the final submission regarding the dispute until the date that the Court issues a
13 final decision regarding such dispute. Nothing in this Partial Consent Decree
14 shall prevent the simultaneous accrual of separate penalties for separate
15 violations of this Partial Consent Decree.

16 66. Following EPA's determination, after consultation with DTSC, that
17 Settling Defendants have failed to comply with any of their obligations under this
18 Partial Consent Decree, EPA may give Settling Defendants written notification of
19 the same and describe the noncompliance. EPA and/or DTSC may send Settling
20 Defendants a written demand for the payment of the penalties. However,
21 penalties shall accrue as provided in the preceding Paragraph regardless of
22 whether EPA has notified Settling Defendants of a violation.

23 67. All penalties accruing under this Section shall be due and payable to
24 the United States and DTSC within 30 Days of Settling Defendants' receipt from
25 EPA of a demand for payment of the penalties, unless Settling Defendants invoke
26 the Dispute Resolution procedures under Section XVII (Dispute Resolution)
27 within the 30-Day period. All payments to the United States under this Section
28 shall indicate that the payment is for stipulated penalties, and shall be made in

1 accordance with Paragraphs 44.b and 44.c, and all payments to DTSC shall be
2 made in accordance with Paragraph 41.a.

3 68. Penalties shall continue to accrue as provided in Paragraph 65
4 during any dispute resolution period, but need not be paid until the following:

5 a. If the dispute is resolved by agreement of the Parties or by a
6 decision of EPA or DTSC that is not appealed to this Court, accrued penalties
7 determined to be owed shall be paid to EPA and DTSC within 15 Days of the
8 agreement or the receipt of EPA's decision or order;

9 b. If the dispute is appealed to this Court and the United States
10 and/or DTSC prevails in whole or in part, Settling Defendants shall pay all
11 accrued penalties determined by the Court to be owed to EPA and DTSC within
12 60 Days of receipt of the Court's decision or order, except as provided in
13 Paragraph 68.c;

14 c. If the District Court's decision is appealed by any Party, Settling
15 Defendants shall pay all accrued penalties determined by the District Court to be
16 owed to the United States and DTSC into an interest-bearing escrow account,
17 established at a duly chartered bank or trust company that is insured by the FDIC,
18 within 60 Days of receipt of the Court's decision or order. Penalties shall be paid
19 into this account as they continue to accrue, at least every 60 Days. Within 15
20 Days of receipt of the final appellate court decision, the escrow agent shall pay
21 the balance of the account to EPA and DTSC or to Settling Defendants to the
22 extent that they prevail.

23 69. If Settling Defendants fail to pay stipulated penalties when due,
24 Settling Defendants shall pay Interest on the unpaid stipulated penalties as
25 follows: (a) if Settling Defendants timely invoked dispute resolution such that the
26 obligation to pay stipulated penalties was stayed pending the outcome of dispute
27 resolution, Interest shall accrue from the date stipulated penalties are due
28 pursuant to Paragraph 68 until the date of payment; and (b) if Settling Defendants

1 fail to timely invoke dispute resolution, Interest shall accrue from the date of
2 demand under Paragraph 67 until the date of payment. If Settling Defendants fail
3 to pay stipulated penalties and Interest when due, the United States or DTSC may
4 institute proceedings to collect the penalties and Interest.

5 70. The payment of penalties and Interest, if any, shall not alter in any
6 way Settling Defendants' obligation to complete the performance of the Work
7 required under this Partial Consent Decree.

8 71. Nothing in this Partial Consent Decree shall be construed as
9 prohibiting, altering, or in any way limiting the ability of the United States or
10 DTSC to seek any other remedies or sanctions available by virtue of Settling
11 Defendants' violation of this Partial Consent Decree or of the statutes and
12 regulations upon which it is based, including, but not limited to, penalties
13 pursuant to Section 122(l) of CERCLA, 42 U.S.C. § 9622(l), or applicable
14 federal or California law, provided, however, that the United States shall not seek
15 civil penalties pursuant to Section 122(l) of CERCLA for any violation for which
16 a stipulated penalty is provided in this Partial Consent Decree, except in the case
17 of a willful violation of this Partial Consent Decree.

18 72. Notwithstanding any other provision of this Section, the United
19 States may, in its unreviewable discretion, waive any portion of stipulated
20 penalties that have accrued pursuant to this Partial Consent Decree.

21 **XIX. COVENANTS BY PLAINTIFFS**

22 73. Covenant for Settling Defendants by United States. In consideration
23 of the actions that will be performed and the payments that will be made by
24 Settling Defendants under this Partial Consent Decree, and except as specifically
25 provided in Paragraph 75 (General Reservations of Rights), the United States
26 covenants not to sue or to take administrative action against Settling Defendants
27 pursuant to Sections 106 and 107(a) of CERCLA for the Work, EPA Past
28 Response Costs, or EPA Future Response Costs. These covenants shall take

1 effect upon the receipt by EPA of the payments required by Paragraph 41
2 (Payment by Settling Defendants for EPA Past Response Costs and DTSC Past
3 Response Costs) and any Interest or stipulated penalties due thereon under
4 Paragraph 46 (Interest) or Section XVIII (Stipulated Penalties). These covenants
5 are conditioned upon the satisfactory performance by Settling Defendants of their
6 obligations under this Partial Consent Decree. These covenants extend only to
7 Settling Defendants and their successors and assigns and do not extend to any
8 other person.

9 74. Covenants by DTSC. Except as specifically provided in Paragraph
10 75 (General Reservations of Rights), DTSC covenants not to sue or to take
11 administrative action against Settling Defendants pursuant to Section 107(a) of
12 CERCLA, 42 U.S.C. § 9607(a), and Cal. Health & Safety Code Sections
13 25323.5, 25355.5, and 25360 for the Work, DTSC Past Response Costs, and
14 DTSC Future Response Costs. These covenants shall take effect upon payment
15 to DTSC of all payments required from Settling Defendants by Paragraph 41.c
16 (Payment of DTSC Past Response Costs) and any Interest or stipulated penalties
17 due thereon under Paragraph 46 (Interest) or Section XVIII (Stipulated
18 Penalties). These covenants are conditioned upon the satisfactory performance
19 by Settling Defendants of their obligations under this Partial Consent Decree.
20 These covenants extend only to Settling Defendants and their successors and
21 assigns and do not extend to any other person.

22 75. General Reservations of Rights. The United States and the State
23 reserve, and this Partial Consent Decree is without prejudice to, all rights against
24 Settling Defendants, with respect to all matters not expressly included within
25 Plaintiffs' covenants. Notwithstanding any other provision of this Partial
26 Consent Decree, the United States and the State reserve all rights against Settling
27 Defendants, with respect to:

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- 1 a. liability for failure by Settling Defendants to meet a requirement
- 2 of this Partial Consent Decree;
- 3 b. liability arising from the past, present, or future disposal, release,
- 4 or threat of release of Waste Material outside of the Site;
- 5 c. liability based on the ownership or operation of any portion of the
- 6 Site by Settling Defendants when such ownership or operation commences after
- 7 signature of this Partial Consent Decree;
- 8 d. liability based on Settling Defendants' transportation, treatment,
- 9 storage, or disposal, or the arrangement for the transportation, treatment, storage,
- 10 or disposal of Waste Material at or in connection with the Site, other than as
- 11 provided in the ROD, the Work, or otherwise ordered by EPA, after signature of
- 12 this Partial Consent Decree;
- 13 e. liability for damages for injury to, destruction of, or loss of
- 14 natural resources, and for the costs of any natural resource damage assessments;
- 15 f. criminal liability;
- 16 g. liability for violations of federal or state law which occur during
- 17 or after implementation of the Work;
- 18 h. liability, prior to Certification of Completion of the Work, for
- 19 additional response actions that EPA determines are necessary to achieve and
- 20 maintain the Performance Standards or to carry out and maintain the
- 21 effectiveness of the relevant remedy components set forth in the ROD relating to
- 22 the DNAPL OU, but that cannot be required pursuant to Paragraph 11
- 23 (Modification of SOW or Related Work Plans);
- 24 i. liability for vapor intrusion and for any other operable unit other
- 25 than the DNAPL OU at the Montrose Chemical Corp. Superfund Site or the final
- 26 response action; and
- 27 j. liability for costs incurred or to be incurred by the Agency for
- 28 Toxic Substances and Disease Registry regarding the Site.

1 76. Work Takeover.

2 a. In the event EPA determines that Settling Defendants (1) have
3 ceased implementation of any portion of the Work for which they are
4 responsible, (2) are seriously or repeatedly deficient or late in their performance
5 of the Work, or (3) are implementing the Work in a manner that may cause an
6 endangerment to human health or the environment, EPA may, after consultation
7 with DTSC, issue a written notice (“Work Takeover Notice”) to Settling
8 Defendants. Any Work Takeover Notice issued by EPA will specify the grounds
9 upon which such notice was issued and will provide Settling Defendants a period
10 of 20 Days within which to remedy the circumstances giving rise to EPA’s
11 issuance of such notice.

12 b. If, after expiration of the 20-Day notice period specified in
13 Paragraph 76.a, Settling Defendants have not remedied to EPA’s satisfaction the
14 circumstances giving rise to EPA’s issuance of the relevant Work Takeover
15 Notice, EPA may at any time thereafter assume the performance of all or any
16 portion(s) of the Work as EPA deems necessary (“Work Takeover”). EPA will
17 notify Settling Defendants in writing (which writing may be electronic) if EPA
18 determines that implementation of a Work Takeover is warranted under this
19 Paragraph. Funding of Work Takeover costs is addressed under Paragraph 35.

20 c. Settling Defendants may invoke the procedures set forth in
21 Paragraph 58 (Record Review) to dispute EPA’s implementation of a Work
22 Takeover under Paragraph 76.b. However, notwithstanding Settling Defendants’
23 invocation of such dispute resolution procedures, and during the pendency of any
24 such dispute, EPA may in its sole discretion commence and continue a Work
25 Takeover under Paragraph 76.b until the earlier of (1) the date that the Settling
26 Defendants remedy, to EPA’s satisfaction, the circumstances giving rise to EPA’s
27 issuance of the relevant Work Takeover Notice, or (2) the date that a final

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1 decision is rendered in accordance with Paragraph 58 (Record Review) requiring
2 EPA to terminate such Work Takeover.

3 77. Notwithstanding any other provision of this Partial Consent Decree,
4 the United States and the State retain all authority and reserve all rights to take
5 any and all response actions authorized by law.

6 **XX. COVENANTS BY SETTLING DEFENDANTS**

7 78. Covenant Not to Sue by Settling Defendants. Subject to the
8 reservations in Paragraph 80, Settling Defendants hereby covenant not to sue and
9 agree not to assert any claims or causes of action against the United States or
10 DTSC, or their contractors and employees, with respect to the Work, past
11 response actions regarding the Site, EPA Past Response Costs, EPA Future
12 Response Costs, DTSC Past Response Costs, DTSC Future Response Costs, and
13 this Partial Consent Decree, including, but not limited to:

14 a. any direct or indirect claim for reimbursement from the
15 Hazardous Substance Superfund (established pursuant to the Internal Revenue
16 Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112,
17 113 (42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, 9613) or any other provision of
18 law;

19 b. any claims against the United States, including any department,
20 agency or instrumentality of the United States, or DTSC under CERCLA
21 Sections 107 or 113, 42 U.S.C. §§ 9607 and 9613, RCRA Section 7002(a), 42
22 U.S.C. § 6972(a), or state law regarding the Work, past response actions
23 regarding the Site, EPA Past Response Costs, EPA Future Response Costs,
24 DTSC Past Response Costs, DTSC Future Response Costs, and this Partial
25 Consent Decree; or

26 c. any claims arising out of response actions at or in connection
27 with the Work, past response actions regarding the Site, EPA Past Response
28 Costs, EPA Future Response Costs, DTSC Past Response Costs, DTSC Future

1 Response Costs, and this Partial Consent Decree, including any claim under the
2 United States Constitution, the State Constitution, the Tucker Act, 28 U.S.C.
3 § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at
4 common law.

5 79. Except as provided in Paragraph 89 (Res Judicata and Other
6 Defenses), the covenants in this Section shall not apply if the United States or
7 DTSC brings a cause of action or issues an order pursuant to any of the
8 reservations in Section XIX (Covenants by Plaintiffs), other than in Paragraphs
9 75.a (claims for failure to meet a requirement of the Decree), 75.f (criminal
10 liability), and 75.g (violations of federal/state law during or after implementation
11 of the Work), but only to the extent that Settling Defendants' claims arise from
12 the same response action, response costs, or damages that the United States or
13 DTSC is seeking pursuant to the applicable reservation.

14 80. Settling Defendants' Reservations. Settling Defendants reserve, and
15 this Partial Consent Decree is without prejudice to, claims against the United
16 States, subject to the provisions of Chapter 171 of Title 28 of the United States
17 Code, and brought pursuant to any statute other than CERCLA or RCRA and for
18 which the waiver of sovereign immunity is found in a statute other than
19 CERCLA or RCRA, for money damages for injury or loss of property or
20 personal injury or death caused by the negligent or wrongful act or omission of
21 any employee of the United States, as that term is defined in 28 U.S.C. § 2671,
22 while acting within the scope of his or her office or employment under
23 circumstances where the United States, if a private person, would be liable to the
24 claimant in accordance with the law of the place where the act or omission
25 occurred. However, the foregoing shall not include any claim based on EPA's
26 selection of response actions, or the oversight or approval of Settling Defendants'
27 plans, reports, other deliverables or activities.

28

1 81. Nothing in this Partial Consent Decree shall be deemed to constitute
2 preauthorization of a claim within the meaning of Section 111 of CERCLA, 42
3 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

4 82. Claims Against De Micromis Parties. Settling Defendants agree not
5 to assert any claims and to waive all claims or causes of action (including but not
6 limited to claims or causes of action under Sections 107(a) and 113 of CERCLA)
7 that they may have for all matters relating to the Site against any person where
8 the person's liability to Settling Defendants with respect to the Site is based
9 solely on having arranged for disposal or treatment, or for transport for disposal
10 or treatment, of hazardous substances at the Site, or having accepted for transport
11 for disposal or treatment of hazardous substances at the Site, if all or part of the
12 disposal, treatment, or transport occurred before April 1, 2001, and the total
13 amount of material containing hazardous substances contributed by such person
14 to the Site was less than 110 gallons of liquid materials or 200 pounds of solid
15 materials.

16 83. The waiver in Paragraph 82 (Claims Against De Micromis Parties)
17 shall not apply with respect to any defense, claim, or cause of action that a
18 Settling Defendant may have against any person meeting the criteria in Paragraph
19 82 if such person asserts a claim or cause of action relating to the Site against
20 such Settling Defendant. This waiver also shall not apply to any claim or cause
21 of action against any person meeting the criteria in Paragraph 82 if EPA
22 determines:

23 a. that such person has failed to comply with any EPA requests for
24 information or administrative subpoenas issued pursuant to Section 104(e) or
25 122(e) of CERCLA, 42 U.S.C. § 9604(e) or 9622(e), or Section 3007 of RCRA,
26 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the
27 performance of a response action or natural resource restoration with respect to
28 the Site, or has been convicted of a criminal violation for the conduct to which

1 this waiver would apply and that conviction has not been vitiated on appeal or
2 otherwise; or

3 b. that the materials containing hazardous substances contributed to
4 the Site by such person have contributed significantly, or could contribute
5 significantly, either individually or in the aggregate, to the cost of response action
6 or natural resource restoration at the Site.

7 **XXI. EFFECT OF SETTLEMENT; CONTRIBUTION**

8 84. Nothing in this Partial Consent Decree shall be construed to create
9 any rights in, or grant any cause of action to, any person not a Party to this Partial
10 Consent Decree. Except as provided in Paragraph 82 (Claims Against De
11 Micromis Parties), each of the Parties expressly reserves any and all rights
12 (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C.
13 § 9613), defenses, claims, demands, and causes of action which each of them
14 may have with respect to any matter, transaction, or occurrence relating in any
15 way to the Site against any person not a Party hereto. Nothing in this Partial
16 Consent Decree diminishes the right of the United States or the State, pursuant to
17 Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any
18 such persons to obtain additional response costs or response action and to enter
19 into settlements that give rise to contribution protection pursuant to Section
20 113(f)(2).

21 85. The Parties agree, and by entering this Partial Consent Decree this
22 Court finds, that this Partial Consent Decree constitutes a judicially-approved
23 settlement pursuant to which each Settling Defendant has, as of the Effective
24 Date, resolved liability to the Plaintiffs within the meaning of Section 113(f)(2)
25 of CERCLA, 42 U.S.C. § 9613(f)(2), and that each Settling Defendant is entitled,
26 as of the Effective Date, to protection from contribution actions or claims as
27 provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by
28 law, for “matters addressed” in this Partial Consent Decree. The “matters

1 addressed” in this Partial Consent Decree are the Work, EPA Past Response
2 Costs, EPA Future Response Costs, DTSC Past Response Costs, and DTSC
3 Future Response Costs.

4 86. The Parties further agree, and by entering this Partial Consent
5 Decree this Court finds, that the Complaint filed by the Plaintiffs in this action is
6 a civil action within the meaning of Section 113(f)(1) of CERCLA, 42 U.S.C.
7 § 9613(f)(1), and that this Partial Consent Decree constitutes a judicially-
8 approved settlement pursuant to which each Settling Defendant has, as of the
9 Effective Date, resolved liability to the Plaintiffs within the meaning of Section
10 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

11 87. Each Settling Defendant shall, with respect to any suit or claim
12 brought by it for matters related to this Partial Consent Decree, notify the United
13 States and DTSC in writing no later than 60 Days prior to the initiation of such
14 suit or claim.

15 88. Each Settling Defendant shall, with respect to any suit or claim
16 brought against it for matters related to this Partial Consent Decree, notify in
17 writing the United States and DTSC within ten Days of service of the complaint
18 on such Settling Defendant. In addition, each Settling Defendant shall notify the
19 United States and DTSC within ten Days of service or receipt of any Motion for
20 Summary Judgment and within ten Days of receipt of any order from a court
21 setting a case for trial.

22 89. Res Judicata and Other Defenses. In any subsequent administrative
23 or judicial proceeding initiated by the United States or the State for injunctive
24 relief, recovery of response costs, or other appropriate relief relating to the Site,
25 Settling Defendants shall not assert, and may not maintain, any defense or claim
26 based upon the principles of waiver, res judicata, collateral estoppel, issue
27 preclusion, claim-splitting, or other defenses based upon any contention that the
28 claims raised by the United States or the State in the subsequent proceeding were

1 or should have been brought in the instant case; provided, however, that nothing
2 in this Paragraph affects the enforceability of the covenants not to sue set forth in
3 Section XIX (Covenants by Plaintiffs).

4 **XXII. ACCESS TO INFORMATION**

5 90. Settling Defendants shall provide to EPA and DTSC, upon request,
6 copies of all non-privileged records, reports, documents, and other information
7 (including records, reports, documents, and other information in electronic form)
8 (hereinafter referred to as “Records”) within their possession or control or that of
9 their contractors or agents relating to activities at the Site or to the
10 implementation of this Partial Consent Decree, including, but not limited to,
11 sampling, analysis, chain of custody records, manifests, trucking logs, receipts,
12 reports, sample traffic routing, correspondence, or other documents or
13 information regarding the Work. Settling Defendants shall also make available
14 to EPA and DTSC, for purposes of investigation, information gathering, or
15 testimony, their employees, agents, or representatives with knowledge of relevant
16 facts concerning the performance of the Work.

17 91. Business Confidential and Privileged Documents.

18 a. Settling Defendants may assert business confidentiality claims
19 covering part or all of the Records submitted to Plaintiffs under this Partial
20 Consent Decree to the extent permitted by and in accordance with Section
21 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b).
22 Records determined to be confidential by EPA will be afforded the protection
23 specified in 40 C.F.R. Part 2, Subpart B; records determined to be confidential by
24 DTSC will be afforded the protection specified in the California Public Records
25 Act, California Government Code §§ 6250, *et seq.* If no claim of confidentiality
26 accompanies Records when they are submitted to EPA and DTSC, or if EPA has
27 notified Settling Defendants that the Records are not confidential under the
28 standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, or if

1 DTSC has notified Settling Defendants that the Records are not confidential
2 under the standards of the California Public Records Act, California Government
3 Code §§ 6250, *et seq.*, the public may be given access to such Records without
4 further notice to Settling Defendants.

5 b. Settling Defendants may assert that certain Records are
6 privileged under the attorney-client privilege or any other privilege recognized by
7 federal law. If Settling Defendants assert such a privilege in lieu of providing
8 Records, they shall provide Plaintiffs with the following: (1) the title of the
9 Record; (2) the date of the Record; (3) the name, title, affiliation (e.g., company
10 or firm), and address of the author of the Record; (4) the name and title of each
11 addressee and recipient; (5) a description of the contents of the Record; and (6)
12 the privilege asserted by Settling Defendants. If a claim of privilege applies only
13 to a portion of a Record, the Record shall be provided to the United States and
14 the State in redacted form to mask the privileged portion only. Settling
15 Defendants shall retain all Records that they claim to be privileged until the
16 United States or the State has had a reasonable opportunity to dispute the
17 privilege claim and any such dispute has been resolved in Settling Defendants'
18 favor.

19 c. No Records created or generated pursuant to the requirements of
20 this Partial Consent Decree shall be withheld from the United States or DTSC on
21 the grounds that they are privileged or confidential.

22 92. No claim of confidentiality or privilege shall be made with respect
23 to any data, including, but not limited to, all sampling, analytical, monitoring,
24 hydrogeologic, scientific, chemical, or engineering data, or any other documents
25 or information evidencing conditions at or around the Site.

26 93. If relevant to the proceeding, the Parties agree that validated sampling
27 data generated in accordance with the SOW and reviewed and approved by EPA
28

1 shall be admissible as evidence, without objection, in any proceeding under this
2 Partial Consent Decree.

3 94. Notwithstanding any provision of this Partial Consent Decree, the
4 United States and the State retain all of their information gathering and
5 inspection authorities and rights, including enforcement actions related thereto,
6 under CERCLA, RCRA, and any other applicable federal or California statutes or
7 regulations.

8 **XXIII. RETENTION OF RECORDS**

9 95. Until 15 years after Settling Defendants' receipt of EPA's
10 notification pursuant to Paragraph 38.c (Completion of the Work), each Settling
11 Defendant shall preserve and retain all non-identical copies of Records (including
12 Records in electronic form) now in its possession or control or which come into
13 its possession or control that relate in any manner to its liability under CERCLA
14 with respect to the Site, provided, however, that Settling Defendants who are
15 potentially liable as owners or operators of the Site must retain, in addition, all
16 Records that relate to the liability of any other person under CERCLA with
17 respect to the Site. Each Settling Defendant must also retain, and instruct its
18 contractors and agents to preserve, for the same period of time specified above all
19 non-identical copies of the last draft or final version of any Records (including
20 Records in electronic form) now in its possession or control or which come into
21 its possession or control that relate in any manner to the performance of the
22 Work, provided, however, that each Settling Defendant (and its contractors and
23 agents) must retain, in addition, copies of all data generated during the
24 performance of the Work and not contained in the aforementioned Records
25 required to be retained. Each of the above record retention requirements shall
26 apply regardless of any corporate retention policy to the contrary.

27 96. At the conclusion of this record retention period, Settling
28 Defendants shall notify the United States and DTSC at least 90 Days prior to the

1 destruction of any such Records, and, upon request by the United States or the
2 DTSC, Settling Defendants shall deliver any such Records to EPA or DTSC.
3 Settling Defendants may assert that certain Records are privileged under the
4 attorney-client privilege or any other privilege recognized by federal law. If
5 Settling Defendants assert such a privilege, they shall provide Plaintiffs with the
6 following: (a) the title of the Record; (b) the date of the Record; (c) the name,
7 title, affiliation (e.g., company or firm), and address of the author of the Record;
8 (d) the name and title of each addressee and recipient; (e) a description of the
9 subject of the Record; and (f) the privilege asserted by Settling Defendants. If a
10 claim of privilege applies only to a portion of a Record, the Record shall be
11 provided to the United States and the DTSC in redacted form to mask the
12 privileged portion only. Settling Defendants shall retain all Records that they
13 claim to be privileged until the United States or DTSC has had a reasonable
14 opportunity to dispute the privilege claim and any such dispute has been resolved
15 in Settling Defendants' favor.

16 97. Each Settling Defendant certifies individually that, to the best of its
17 knowledge and belief, after thorough inquiry, it has not altered, mutilated,
18 discarded, destroyed or otherwise disposed of any Records (other than identical
19 copies) relating to its potential liability regarding the Site since the earlier of
20 notification of potential liability by the United States or the DTSC or the filing of
21 suit against it regarding the Site and that it has fully complied with any and all
22 EPA requests for information pursuant to Sections 104(e) and 122(e) of
23 CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42
24 U.S.C. § 6927.

25 **XXIV. NOTICES AND SUBMISSIONS**

26 98. Whenever, under the terms of this Partial Consent Decree, written
27 notice is required to be given or a report or other document is required to be sent
28 by one Party to another, it shall be directed to the individuals at the addresses

1 specified below, unless those individuals or their successors give notice of a
2 change to the other Parties in writing or unless otherwise specified in this Partial
3 Consent Decree. All notices and submissions shall be considered effective upon
4 receipt, unless otherwise provided. Written notice as specified in this Section
5 shall constitute complete satisfaction of any written notice requirement of this
6 Partial Consent Decree with respect to the United States, EPA, DTSC, and
7 Settling Defendants, respectively. Notices required to be sent to EPA, and not to
8 the United States, under the terms of this Partial Consent Decree should not be
9 sent to the U.S. Department of Justice.

10 As to the United States: EES Case Management Unit
11 U.S. Department of Justice
12 Environment and Natural Resources
13 Division
14 P.O. Box 7611
Washington, D.C. 20044-7611
eescdcopy.enrd@usdoj.gov
Re: DJ # 90-11-3-511

15 and: Enrique Manzanilla
16 Director, Superfund and Emergency
17 Management Division
18 United States Environmental Protection
Agency
19 Region IX
75 Hawthorne St. (SFD-1)
20 San Francisco, CA 94105
Manzanilla.enrique@epa.gov

21 As to EPA: Yarissa Martinez
22 EPA Project Coordinator
23 United States Environmental Protection
Agency
24 Region IX
600 Wilshire Blvd. Suite 940 (SFD-7-2)
25 Los Angeles, CA 90017
Martinez.yarissa@epa.gov

26
27
28

1 As to the EPA Regional Marie Ortesi
2 Financial Management Officer: United States Environmental Protection
3 Agency
4 Region IX
75 Hawthorne St.
San Francisco, CA 94105

5 As to DTSC: Peter Garcia
6 DTSC Division Chief
7 Site Mitigation and Restoration Program
8 ATTN: Willard Garrett
9 DTSC Project Manager
10 for Site Code 400100-DNAPL
11 Department of Toxic Substances Control
12 5796 Corporate Avenue
13 Cypress, CA 90630
14 Willard.Garrett@dtsc.ca.gov

15 As to Settling Defendants: Joseph C. Kelly
16 Montrose Chemical Corporation of
17 California
18 600 Ericksen Avenue NE, Suite 380
19 Bainbridge Island, WA 98110

20 Kelly E. Richardson
21 Latham & Watkins LLP
22 12670 High Bluff Drive
23 San Diego, CA 92130

24 Charles N. Elmendorf
25 President
26 Stauffer Management Company LLC and as
27 attorney-in-fact for Bayer CropScience Inc.
28 1800 Concord Pike
PO Box 15437
FOP 2-311
Wilmington, DE 19850-5437

Gregg D. Zucker
Foundation Law Group
2049 Century Park East, Suite 2460
Los Angeles, CA 90067

J. Wylie Donald
McCarter & English, LLP
1301 K Street NW, Suite 1000 West
Washington, DC 20005

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Jeffrey A. Taylor
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Litigation Counsel
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Los Angeles, CA 90067

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Palo Alto, CA 94301

Christopher Suh
Principal Counsel
The Walt Disney Company
500 South Buena Vista St, MC 1247
Burbank, CA 91521

Janene Bassett
Assistant General Counsel
The Walt Disney Company
2121 Ave. of the Stars, Suite 700
Los Angeles, CA 90067

XXV. RETENTION OF JURISDICTION

99. This Court retains jurisdiction over both the subject matter of this Partial Consent Decree and Settling Defendants for the duration of the performance of the terms and provisions of this Partial 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 Partial Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XVII (Dispute Resolution).

XXVI. APPENDICES

100. The following appendices are attached to and incorporated into this Partial Consent Decree:

“Appendix A” is the ROD.

“Appendix B” is the SOW.

“Appendix C” is the description and/or map of the Site.

“Appendix D” is the form of the performance guarantee.

“Appendix E” is the form of the LUC.

XXVII. COMMUNITY RELATIONS

101. If requested by EPA or DTSC, Settling Defendants shall participate in community relations activities pursuant to the community relations plan to be developed by EPA. EPA, in consultation with DTSC, will determine the appropriate role for Settling Defendants under the Plan. Settling Defendants shall also cooperate with EPA and DTSC in providing information regarding the Work to the public. As requested by EPA or DTSC, Settling Defendants shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA or DTSC to explain activities at or relating to the Site or the Work. Costs incurred by the United States or DTSC under this Section, including the costs of any technical assistance grant under Section 117(e) of CERCLA, 42 U.S.C.

§ 9617(e), shall be considered EPA Future Response Costs that Settling Defendants shall pay pursuant to Section XIV (Payments for Response Costs).

XXVIII. MODIFICATION

102. Except as provided in Paragraph 11 (Modification of SOW or Related Work Plans), material modifications to this Partial Consent Decree, including the SOW, shall be in writing, signed by the United States, DTSC, and the Settling Defendants, and shall be effective upon approval by the Court.

Except as provided in Paragraph 11 (Modification of SOW or Related Work

1 Plans), schedule modifications and non-material modifications to this Partial
2 Consent Decree, including the SOW, shall be in writing and shall be effective
3 when signed by duly authorized representatives of the United States, DTSC, and
4 Settling Defendants. A modification to the SOW shall be considered material if
5 it implements a ROD amendment that fundamentally alters the basic features of
6 the selected remedy within the meaning of 40 C.F.R. § 300.435(c)(2)(ii). Before
7 providing its approval to any modification to the SOW, the United States will
8 provide DTSC with a reasonable opportunity to review and comment on the
9 proposed modification.

10 103. Nothing in this Partial Consent Decree shall be deemed to alter the
11 Court's power to enforce, supervise or approve modifications to this Partial
12 Consent Decree.

13 **XXIX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

14 104. This Partial Consent Decree shall be lodged with the Court for a
15 period of not less than 30 Days for public notice and comment in accordance with
16 Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7.
17 The United States and DTSC reserve the right to withdraw or withhold their
18 consent if the comments regarding this Partial Consent Decree disclose facts or
19 considerations which indicate that this Partial Consent Decree is inappropriate,
20 improper, or inadequate. Settling Defendants consent to the entry of this Partial
21 Consent Decree without further notice.

22 105. If for any reason the Court should decline to approve this Partial
23 Consent Decree in the form presented, this agreement is voidable at the sole
24 discretion of any Party and the terms of the agreement may not be used as
25 evidence in any litigation between the Parties.

26 **XXX. SIGNATORIES/SERVICE**

27 106. Each undersigned representative of a Settling Defendant to this
28 Partial Consent Decree, for the Environment and Natural Resources Division of

1 the Department of Justice, and for the California Department of Toxic Substances
2 Control certifies that he or she is fully authorized to enter into the terms and
3 conditions of this Partial Consent Decree and to execute and legally bind such
4 Party to this document.

5 107. Each Settling Defendant agrees not to oppose entry of this Partial
6 Consent Decree by this Court or to challenge any provision of this Partial
7 Consent Decree unless the United States has notified Settling Defendants in
8 writing that it no longer supports entry of this Partial Consent Decree.

9 108. This Partial Consent Decree will be filed in *U.S. et al. vs. Montrose*
10 *Chemical Corp. of California et al.*, Case No. 2:90-cv-03122 DOC (GJSx),
11 through the Court's electronic filing service. Settling Defendants agree to accept
12 service in that manner and to waive the formal service requirements set forth in
13 Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of
14 this Court, including, but not limited to, service of a summons. All other court
15 filings will be served through the Court's electronic filing service. Settling
16 Defendants need not file an answer to the Complaint in this action unless or until
17 the Court expressly declines to enter this Partial Consent Decree.

18 **XXXI. FINAL JUDGMENT**

19 109. This Partial Consent Decree and its appendices constitute the final,
20 complete, and exclusive agreement and understanding among the Parties
21 regarding the settlement embodied in this Partial Consent Decree. The Parties
22 acknowledge that there are no representations, agreements or understandings
23 relating to the settlement other than those expressly contained in this Partial
24 Consent Decree.

25 110. Upon entry of this Partial Consent Decree by the Court, this Partial
26 Consent Decree shall constitute a final judgment between and among the United
27 States, the State, and Settling Defendants. The Court finds that there is no just
28

1 reason for delay and therefore enters this judgment as a final judgment under
2 Fed. R. Civ. P. 54 and 58.

3 SO ORDERED THIS __ DAY OF _____, 20__.

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6 HONORABLE DAVID O. CARTER
7 United States District Judge
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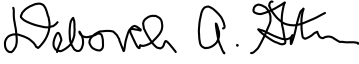
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THE UNDERSIGNED PARTY enters into this Partial Consent Decree in the matter of *United States of America and State of California v. Montrose Chemical Corp. of California, et al.*

FOR THE UNITED STATES OF AMERICA:

BRUCE S. GELBER
Deputy Assistant Attorney General
Environment & Natural Resources Division
United States Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530-0001

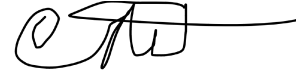
January 15, 2021
Date:



GABRIEL M. ALLEN
Senior Attorney
DEBORAH A. GITIN
Senior Counsel
Environmental Enforcement Section
Environment & Natural Resources Division
United States Department of Justice
450 Golden Gate Ave., Suite 07-6714
San Francisco, CA 94102

1 THE UNDERSIGNED PARTY enters into this Partial Consent Decree in the
2 matter of *United States of America and State of California v. Montrose Chemical*
3 *Corp. of California, et al.*

4
5 **FOR THE ENVIRONMENTAL**
6 **PROTECTION AGENCY:**

7 


8 January 14, 2021

9 _____
Date:

10 ENRIQUE MANZANILLA
11 Director, Superfund and Emergency
12 Management Division
13 U.S. Environmental Protection Agency,
14 Region IX
15 75 Hawthorne Street
16 San Francisco, CA 94105

15 January 14, 2021

16 _____
Date:

17 
18 _____
19 DUSTIN MINOR
20 Assistant Regional Counsel
21 U.S. Environmental Protection Agency,
22 Region IX
23 75 Hawthorne Street
24 San Francisco, CA 94105


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THE UNDERSIGNED PARTY enters into this Partial Consent Decree in the matter of *United States of America and State of California v. Montrose Chemical Corp. of California, et al.*

**FOR THE STATE OF CALIFORNIA
DEPARTMENT OF TOXIC
SUBSTANCES CONTROL:**

01/07/2020
Date:


GRANT COPE
Deputy Director
Site Mitigation and Restoration Program
Department of Toxic Substances Control
P.O. Box 806
1001 I Street, 25th Floor
Sacramento, California 95812-0806

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THE UNDERSIGNED PARTY enters into this Partial Consent Decree in the matter of *United States of America and State of California v. Montrose Chemical Corp. of California, et al.*

FOR MONTROSE CHEMICAL CORPORATION OF CALIFORNIA:

January 14, 2021
Date:

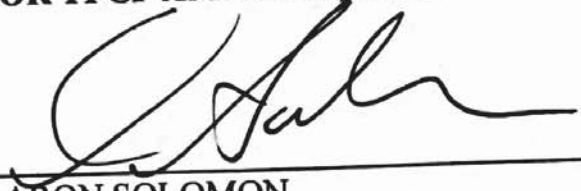
Joseph C. Kelly
JOSEPH C. KELLY
President
6000 Ericksen Avenue NE, Suite 380
Bainbridge Island, WA 98110

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THE UNDERSIGNED PARTY enters into this Partial Consent Decree in the matter of *United States of America and State of California v. Montrose Chemical Corp. of California, et al.*

1/15/2021
Date:

FOR TFCF AMERICA, INC.:



AARON SOLOMON
Assistant Secretary
TFCF America, Inc.
1170 Celebration Blvd., Floor 01
Celebration, FL 34747

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THE UNDERSIGNED PARTY enters into this Partial Consent Decree in the matter of *United States of America and State of California v. Montrose Chemical Corp. of California, et al.*

FOR STAUFFER MANAGEMENT COMPANY LLC:

January 15, 2021

DocuSigned by:
Charles Elmendorf
CFC4CC7EB6A643C...

Date:

CHARLES ELMENDORF
President
1800 Concord Pike
PO Box 15437
FOB 2-311
Wilmington, DE 19850-5437

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THE UNDERSIGNED PARTY enters into this Partial Consent Decree in the matter of *United States of America and State of California v. Montrose Chemical Corp. of California, et al.*

FOR BAYER CROPSCIENCE INC.:

January 15, 2021

DocuSigned by:
Charles Elmendorf
CFC4CC7EB6A643C...

Date:

CHARLES ELMENDORF
President
Stauffer Management Company LLC as
attorney-in-fact for Bayer CropScience Inc.
1800 Concord Pike
PO Box 15437
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Wilmington, DE 19850-5437