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

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

Case No. 2:90-cv-03122 DOC  
(GJSx)

PARTIAL CONSENT DECREE

(Montrose Superfund Site –  
Historic Stormwater Pathway  
South Operable Unit)

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**TABLE OF CONTENTS**

		<b><u>Page</u></b>
1		
2		
3	I. BACKGROUND.....	1
4	II. JURISDICTION.....	8
5	III. PARTIES BOUND .....	8
6	IV. DEFINITIONS .....	9
7	V. GENERAL PROVISIONS .....	16
8	VI. PERFORMANCE OF THE WORK BY SETTLING	
9	DEFENDANTS.....	18
10	VII. ACCESS.....	24
11	VIII. EPA APPROVAL OF PLANS, REPORTS, AND OTHER	
12	DELIVERABLES .....	27
13	IX. PROJECT COORDINATORS .....	29
14	X. PERFORMANCE GUARANTEE.....	30
15	XI. CERTIFICATION OF COMPLETION .....	38
16	XII. EMERGENCY RESPONSE.....	40
17	XIII. PAYMENTS FOR RESPONSE COSTS .....	41
18	XIV. INDEMNIFICATION AND INSURANCE .....	47
19	XV. FORCE MAJEURE .....	50
20	XVI. DISPUTE RESOLUTION .....	52
21	XVII. STIPULATED PENALTIES .....	57
22	XVIII. COVENANTS BY PLAINTIFFS.....	62
23	XIX. COVENANTS BY SETTLING DEFENDANTS .....	65
24	XX. EFFECT OF SETTLEMENT; CONTRIBUTION .....	69
25	XXI. ACCESS TO INFORMATION .....	71
26	XXII. RETENTION OF RECORDS.....	73
27	XXIII. NOTICES AND SUBMISSIONS.....	74
28		

1 XXIV. RETENTION OF JURISDICTION ..... 77  
2 XXV. APPENDICES..... 77  
3 XXVI. COMMUNITY RELATIONS ..... 78  
4 XXVII. MODIFICATION ..... 78  
5 XXVIII. LODGING AND OPPORTUNITY FOR PUBLIC  
6 COMMENT ..... 79  
7 XXIX. SIGNATORIES/SERVICE..... 79  
8 XXX. FINAL JUDGMENT ..... 80

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
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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 (collectively “Plaintiffs”), filed a Third  
5 Amended Complaint (“Complaint”) in this matter pursuant to Section 107 of the  
6 Comprehensive Environmental Response, Compensation, and Liability Act of  
7 1980, as amended (“CERCLA”), 42 U.S.C. §§ 9601 – 9675, seeking, *inter alia*,  
8 recovery of response costs in connection with releases of the pesticide DDT and  
9 other hazardous substances into the environment at and from the former  
10 manufacturing facility located at 20201 Normandie Avenue in Los Angeles,  
11 California (“Montrose Plant Property”), which was operated by Montrose  
12 Chemical Corporation of California (“Montrose”). This Partial Consent Decree  
13 constitutes partial satisfaction of the claims asserted in the Complaint, as  
14 described further 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

1 Defendants to the United States, DTSC, and the California Regional Water  
2 Quality Control Board, Los Angeles Region, for response costs relating to the  
3 Current Storm Water Pathway, as defined in that agreement.

4 G. On August 23, 2012, the Court entered a partial consent decree (the  
5 “Construction CD”) under CERCLA in this action relating to the Dual Site  
6 Groundwater Operable Unit of the Montrose Chemical Corp. and Del Amo  
7 Superfund Sites (the “Dual Site”) in Los Angeles County, California. Under the  
8 Construction CD, Settling Defendants Montrose Chemical Corporation of  
9 California, Bayer CropScience Inc., TFCF America, Inc., and Stauffer  
10 Management Company LLC committed to perform a discrete component of the  
11 remedy for the Dual Site selected by EPA in the Record of Decision for the Dual  
12 Site, namely financing and performing construction of the primary groundwater  
13 treatment system for the Chlorobenzene Plume of groundwater contamination, as  
14 described in that Record of Decision.

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

25 I. On January 15, 2021, the Plaintiffs lodged with this Court a “Partial  
26 Consent Decree (Dense Non-Aqueous Phase (DNAPL) Operable Unit)”  
27 (“DNAPL Consent Decree”), which provides for the performance of certain

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1 response actions by Settling Defendants at the Dense Non-Aqueous Phase Liquid  
2 Operable Unit (“DNAPL OU”) of the Montrose Chemical Corp. Superfund Site  
3 (the “Site”). The DNAPL Consent Decree also satisfies claims against Settling  
4 Defendants for certain costs incurred by the United States and DTSC for response  
5 actions related to the DNAPL OU at the Site, requiring the Settling Defendants to  
6 pay \$340,000 to the United States and \$61,798.11 to DTSC for certain past  
7 response costs at the DNAPL OU.

8 J. This Partial Consent Decree provides for the performance of certain  
9 response actions by Settling Defendants, namely, the Remedial Investigation  
10 (“RI”) and Feasibility Study (“FS”) (collectively, “RI/FS”) at the Historic  
11 Stormwater Pathway South Operable Unit (“Southern Pathway OU” or “OU6”)  
12 of the Site, consistent with the National Contingency Plan (“NCP”). This Partial  
13 Consent Decree also satisfies claims against Settling Defendants for certain costs  
14 incurred by the United States and DTSC for response actions related to the  
15 Southern Pathway OU at the Site, as well as for certain costs incurred by the  
16 United States at the Site under the “OU-00” accounting code.

17 K. Settling Defendants do not admit any liability to Plaintiffs arising  
18 out of the transactions or occurrences alleged in the Complaint, nor do they  
19 acknowledge that any release or threatened release of hazardous substances at or  
20 from the Site constitutes an imminent and substantial endangerment to the public  
21 health or welfare or the environment, nor any damage to natural resources.

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

26 M. In response to a release or a substantial threat of a release of a  
27 hazardous substance(s) at or from the Site, Montrose undertook certain RI

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1 activities for the Site in 1986. In 1998, EPA took over the Montrose  
2 investigation and completed a Remedial Investigation Report in May 1998,  
3 pursuant to 40 C.F.R. § 300.430.

4 N. In 2005, EPA initiated an investigation in response to hazardous  
5 substances in soils located at 20846 Normandie Avenue (the “ECI Property”),  
6 including dichlorodiphenyltrichloroethane (“DDT”) and other hazardous  
7 substances. Soil sampling at the ECI Property and seven adjacent residences  
8 located at 1144 Torrance Boulevard, 20815 Raymond Avenue, 20821 Raymond  
9 Avenue, 20825 Raymond Avenue, 1156 West 209th Street, 1152 West 209th  
10 Street, and 1146 West 209th Street (the “Residential Properties”), identified  
11 various hazardous substances, including DDT; Plaintiffs allege that these  
12 hazardous substances migrated from the Montrose Plant Property to the Southern  
13 Pathway OU via a historic stormwater pathway (“HSP”) which historically  
14 flowed through what is now the Southern Pathway OU. Settling Defendants  
15 deny that there has been any release of hazardous substances from the Montrose  
16 Plant Property to the Southern Pathway OU; Settling Defendants allege that the  
17 hazardous substances, including DDT, present in the Southern Pathway OU are  
18 from sources other than the Montrose Plant Property. The HSP drained surface  
19 water from the Montrose Plant Property and surrounding areas to the Dominguez  
20 Channel beginning in the 1940s, and was replaced by modern stormwater  
21 infrastructure over time until such work was completed in the early 1970s. The  
22 general location of the HSP, including the Southern Pathway OU, is depicted on  
23 the map attached as Appendix A. As well as the sampling described above at the  
24 ECI Property and the Residential Properties, EPA has completed Human Health  
25 Risk Assessments for the ECI Property and the Residential Properties. To date,  
26 neither EPA nor Settling Defendants have conducted extensive sampling within  
27 OU6 downstream of the sampling described above.

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1 O. To facilitate the resolution of this matter and the prompt and early  
2 commencement of the RI/FS for the Southern Pathway OU at the Site, EPA, after  
3 consultation with DTSC, has determined that, based on the information currently  
4 available, it is appropriate to enter into this Partial Consent Decree, which  
5 addresses the RI/FS for the Southern Pathway OU, and provides for payment of  
6 certain response costs related to the Southern Pathway OU. Aside from the “OU-  
7 00” costs that are described in Paragraph J and fall within the definition of EPA  
8 Past Response Costs, this Partial Consent Decree addresses only the Southern  
9 Pathway OU at the Site.

10 P. Because the RI/FS has yet to be completed, EPA has not yet selected  
11 a remedy for the Southern Pathway OU, nor concluded that an active remedy will  
12 be required. Accordingly, the Work described in this Partial Consent Decree  
13 addresses only the RI/FS at the Southern Pathway OU, and does not address any  
14 ultimate Remedial Design (“RD”) and Remedial Action (“RA”) (collectively,  
15 “RD/RA”) that would be based on the remedy selected by EPA for the Southern  
16 Pathway OU, if any, following completion of the RI/FS. In the event that any  
17 such remedy is selected and memorialized in a Record of Decision, the Parties  
18 intend to discuss a cooperative resolution regarding the performance of such  
19 remedy; however, this Consent Decree does not obligate any Settling Defendant  
20 to agree to perform or fund any portion of the RD/RA for the Southern Pathway  
21 OU, if any is required.

22 Q. Based on the information currently available, EPA and DTSC  
23 believe that the Work will be properly and promptly conducted by Settling  
24 Defendants if conducted in accordance with the requirements of this Partial  
25 Consent Decree and its Appendices.

26 R. Solely for the purposes of Section 113(j) of CERCLA, 42 U.S.C.  
27 § 9613(j), the RI/FS and the Work to be performed by Settling Defendants shall  
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1 constitute a response action taken or ordered by the President for which judicial  
2 review shall be limited to the administrative record. In accordance with Section  
3 113(j) of CERCLA, otherwise applicable principles of administrative law shall  
4 govern whether any supplemental materials may be considered by the Court.

5 S. In addition, the Court has already considered certain issues relating  
6 to liability at the Site and issued an Order on Summary Judgment (Order  
7 Granting United States' Motion for Partial Summary Judgment, April 24, 2000,  
8 as amended by Joint Stipulation and Order, July 31, 2000) (ECF Nos. 1922 and  
9 2100). In these Orders, the Court concluded that Montrose, Atkemix Thirty-  
10 Seven, Inc. (corporate predecessor of Settling Defendant Stauffer Management  
11 Company LLC), and Aventis CropScience USA, Inc. (corporate predecessor of  
12 Settling Defendant Bayer CropScience Inc.) are jointly and severally liable for all  
13 costs of removal or remedial action incurred by the United States or DTSC with  
14 respect to the former Montrose Plant Property and certain property referred to in  
15 the orders as the "Stauffer Property" and currently owned by Settling Defendant  
16 Stauffer Management Company LLC. The relevant property is the 13-acre parcel  
17 located at 20201 Normandie Avenue in Los Angeles County where Montrose  
18 manufactured the pesticide DDT between 1947 and 1982. Settling Defendants  
19 Montrose and Aventis CropScience USA, Inc. (corporate predecessor of Settling  
20 Defendant Bayer CropScience Inc.) were also adjudged jointly and severally  
21 liable for all costs of removal or remedial action incurred by the United States  
22 and the State of California in responding to releases of hazardous substances to  
23 the Palos Verdes Shelf and in the soil and groundwater at and around the  
24 Montrose property (ECF No. 2445). These judgments provided declaratory relief  
25 pursuant to Section 113(g)(2)(B) of CERCLA, 42 U.S.C. § 9613(g)(2)(B). Also  
26 on summary judgment, Settling Defendants were found not liable for any costs of  
27 removal or response action incurred by the United States and the State of

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1 California regarding the 204th Street site (ECF No. 2448).

2 T. Plaintiffs and Chris-Craft Industries, Inc. (a predecessor to Settling  
3 Defendant TFCF America, Inc.) submitted to the Court in 2000 the issue of  
4 Chris-Craft Industries, Inc.'s liability as an operator at the Site. In 2020,  
5 Plaintiffs and Settling Defendant TFCF America, Inc. submitted briefing to  
6 supplement the Court's consideration of the existing case law on this issue. See  
7 ECF Nos. 2878, 2879, 2881, 2882. This issue has not been adjudicated.

8 U. The Parties recognize, and the Court by entering this Partial Consent  
9 Decree finds, that this Partial Consent Decree has been negotiated by the Parties  
10 in good faith, that implementation of this Partial Consent Decree will expedite  
11 the investigation and potential cleanup of releases of hazardous substances in the  
12 Southern Pathway OU and will avoid further prolonged and complicated  
13 litigation between the Parties, and that this Partial Consent Decree is fair,  
14 reasonable, and in the public interest.

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

16 **II. JURISDICTION**

17 1. This Court has jurisdiction over the subject matter of this action  
18 pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and  
19 9613(b). This Court also has personal jurisdiction over Settling Defendants.  
20 Solely for the purposes of this Partial Consent Decree and the underlying  
21 Complaint, Settling Defendants waive all objections and defenses that they may  
22 have to jurisdiction of the Court or to venue in this District. Settling Defendants  
23 shall not challenge the terms of this Partial Consent Decree or this Court's  
24 jurisdiction to enter and enforce this Partial Consent Decree.

25 **III. PARTIES BOUND**

26 2. This Partial Consent Decree applies to and is binding upon Plaintiffs  
27 the United States and DTSC, and upon Settling Defendants and their successors  
28

1 and assigns. Any change in ownership or corporate status of a Settling  
2 Defendant including, but not limited to, any transfer of assets or real or personal  
3 property, shall in no way alter Settling Defendants' responsibilities under this  
4 Partial Consent Decree.

5 3. Settling Defendants shall provide a copy of this Partial Consent  
6 Decree to each contractor hired by Settling Defendants to perform the Work  
7 required by this Partial Consent Decree and to each person representing any  
8 Settling Defendant with respect to the Southern Pathway OU or the Work, and  
9 shall condition all contracts entered into hereunder upon performance of the  
10 Work in conformity with the terms of this Partial Consent Decree. Settling  
11 Defendants or their contractors shall provide written notice of this Partial  
12 Consent Decree to all subcontractors hired to perform any portion of the Work  
13 required by this Partial Consent Decree. Settling Defendants shall nonetheless be  
14 responsible for ensuring that their contractors and subcontractors perform the  
15 Work in accordance with the terms of this Partial Consent Decree. With regard  
16 to the activities undertaken pursuant to this Partial Consent Decree, each  
17 contractor and subcontractor shall be deemed to be in a contractual relationship  
18 with Settling Defendants within the meaning of Section 107(b)(3) of CERCLA,  
19 42 U.S.C. § 9607(b)(3).

#### 20 IV. DEFINITIONS

21 4. Unless otherwise expressly provided in this Partial Consent Decree,  
22 terms used in this Partial Consent Decree that are defined in CERCLA or in  
23 regulations promulgated under CERCLA shall have the meaning assigned to  
24 them in CERCLA or in such regulations. Whenever terms listed below are used  
25 in this Partial Consent Decree or in the Appendices attached hereto and  
26 incorporated hereunder, the following definitions shall apply solely for purposes  
27 of this Partial Consent Decree:

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

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

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

11 “DTSC” shall mean the California Department of Toxic Substances  
12 Control, its officers, employees and representatives, all of its divisions and  
13 branches, any predecessor agency in interest, any successor department, agency, or  
14 instrumentality, and the Hazardous Substance Account, as defined in California  
15 Health and Safety Code § 25330.

16 “DTSC Future Response Costs” shall mean all costs, including, but  
17 not limited to, direct and indirect costs, that DTSC incurs in reviewing or  
18 developing plans, reports, and other deliverables submitted pursuant to this Partial  
19 Consent Decree, in overseeing implementation of the Work, or otherwise  
20 implementing, overseeing, or enforcing this Partial Consent Decree, including, but  
21 not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the  
22 costs incurred pursuant to Section XII (Emergency Response), and attorney fees  
23 (including paying for the services of the California Attorney General’s Office).  
24 DTSC Future Response Costs also shall include all DTSC Interim Response Costs,  
25 and all Interest on those DTSC Past Response Costs that remain outstanding more  
26 than 60 Days from the date of the bill.

27 “DTSC Interim Response Costs” shall mean all costs, including direct  
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1 and indirect costs, (a) paid by DTSC in connection with the Southern Pathway OU  
2 between December 16, 2020, and the Effective Date, or (b) incurred prior to the  
3 Effective Date but paid after that date in connection with the Southern Pathway  
4 OU.

5 “DTSC Past Response Costs” shall mean all costs, including, but not  
6 limited to, direct and indirect costs, that DTSC paid at or in connection with the  
7 Southern Pathway OU through December 15, 2020, plus Interest on all such costs  
8 which has accrued pursuant to 42 U.S.C. § 9607(a) through such date.

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

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

16 “EPA” shall mean the United States Environmental Protection  
17 Agency and any successor departments or agencies of the United States.

18 “EPA Future Response Costs” shall mean all costs, including, but not  
19 limited to, direct and indirect costs, that the United States incurs in reviewing or  
20 developing plans, reports, and other deliverables submitted pursuant to this Partial  
21 Consent Decree, in overseeing implementation of the Work, or otherwise  
22 implementing, overseeing, or enforcing this Partial Consent Decree, including, but  
23 not limited to, payroll costs, contractor costs, travel costs, laboratory costs, Section  
24 VII (Access) (including, but not limited to, the cost of attorney time and any  
25 monies paid to secure or enforce access or land, water, or other resource use  
26 restrictions and/or to secure, implement, monitor, maintain, or enforce Institutional  
27 Controls including, but not limited to, the amount of just compensation), Section  
28



1 XII (Emergency Response), Paragraph 29 (Funding for Work Takeover), and  
2 Section XXVI (Community Relations). EPA Future Response Costs shall also  
3 include all EPA Interim Response Costs, and all Interest on those EPA Past  
4 Response Costs Settling Defendants have agreed to pay under this Partial Consent  
5 Decree that has accrued pursuant to 42 U.S.C. § 9607(a) during the period from  
6 December 16, 2020 to the Effective Date.

7 “EPA Interim Response Costs” shall mean all costs, including direct  
8 and indirect costs, (a) paid by the United States in connection with the Southern  
9 Pathway OU between December 16, 2020 and the Effective Date, or (b) incurred  
10 by the United States in connection with the Southern Pathway OU prior to the  
11 Effective Date but paid after that date.

12 “EPA Past Response Costs” shall mean all unrecovered costs,  
13 including, but not limited to, direct and indirect costs, that the United States paid at  
14 or in connection with the Southern Pathway OU through December 15, 2020, as  
15 well as all unrecovered costs, including, but not limited to, direct and indirect  
16 costs, that the United States paid at or in connection with the “OU-00” accounting  
17 code at the Site and not billed to other OUs at the Site or at the Dual Site through  
18 December 15, 2020, plus Interest on all such costs which has accrued pursuant to  
19 42 U.S.C. § 9607(a) through such date. Rates are available online at  
20 <https://www.epa.gov/superfund/superfund-interest-rates>.

21 “Feasibility Study” or “FS” shall mean the Feasibility Study for the  
22 Southern Pathway OU, as described in Section II, ¶¶ 6.1-6.3 of the SOW.

23 “Feasibility Study Report” or “FS Report” shall mean the report  
24 described in Section II, ¶ 6.3 of the SOW.

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

6 “Interest” shall mean interest at the rate specified for interest on  
7 investments of the EPA Hazardous Substance Superfund established by 26 U.S.C.  
8 § 9507, compounded annually on October 1 of each year, in accordance with 42  
9 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the  
10 time the interest accrues. The rate of interest is subject to change on October 1 of  
11 each year.

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

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

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

22 “Partial Consent Decree” or “Decree” shall mean this Partial Consent  
23 Decree and all appendices attached hereto (listed in Section XXV, Appendices). In  
24 the event of conflict between this Partial Consent Decree and any appendix, this  
25 Partial Consent Decree shall control.

26 “Parties” shall mean the United States, DTSC, and Settling  
27 Defendants.

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

3 “Proprietary Controls” shall mean easements or covenants running  
4 with the land that (a) limit land, water, or other resource use and/or provide access  
5 rights and (b) are created pursuant to common law or statutory law by an  
6 instrument that is recorded in the appropriate land records office.

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

10 “Record of Decision” or “ROD” shall mean the Record of Decision  
11 ultimately selected by EPA in the future for the Southern Pathway OU.

12 “Remedial Action” or “RA” shall mean the remedial action selected  
13 in the ROD, if any.

14 “Remedial Design” or “RD” shall mean the remedial design for the  
15 remedial action selected in the ROD, if any.

16 “Remedial Investigation” or “RI” shall mean the Remedial  
17 Investigation for the Southern Pathway OU.

18 “RI/FS” shall mean the combined RI and FS for the Southern Pathway  
19 OU, including the Work and any sampling or analysis performed by or under the  
20 direction of EPA or DTSC pursuant to Paragraphs 10.d.(1), 11.a, or to the SOW,  
21 and any sampling or analysis (including landfill sampling or analysis) performed  
22 by other entities as part of the RI and/or FS in the Southern Pathway OU.

23 “Remedial Investigation / Feasibility Study Work Plan” or “RI/FS  
24 Work Plan” shall mean the document developed pursuant to ¶ 1.2.1 of the SOW  
25 and approved by EPA, and any modifications thereto.

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

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1 “Settling Defendant,” individually, and “Settling Defendants,”  
2 collectively, shall mean TFCF America, Inc., Bayer CropScience Inc., Montrose  
3 Chemical Corporation of California (“Montrose”), and Stauffer Management  
4 Company LLC.

5 “Site” shall mean the Montrose Chemical Corp. Superfund Site,  
6 which is depicted generally on the map attached as Appendix A.

7 “Site Investigation Area” shall mean the area referenced in Paragraph  
8 10, and described in more detail in Section I and Figure 2 of Exhibit C to the SOW.

9 “Southern Pathway OU” or “OU6” shall mean the Historic  
10 Stormwater Pathway – South Operable Unit at the Site. The Southern Pathway  
11 begins south of Torrance Boulevard, and includes portions of the ECI Property, as  
12 well as the back yards of seven residential homes immediately east of the former  
13 ECI Property, the Site Investigation Area, and the segment of the Southern  
14 Pathway between the ECI Property and the Dominguez Channel.

15 “SOW” shall mean the statement of work for implementation of the  
16 RI/FS for the Southern Pathway OU, as set forth in Appendix B to this Partial  
17 Consent Decree, and any modifications made to it in accordance with this Partial  
18 Consent Decree.

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

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

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

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

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

7 “Work” shall mean all activities and obligations that Settling  
8 Defendants are required to perform under this Partial Consent Decree relating to  
9 the Southern Pathway OU, except the activities required under Section XXII  
10 (Retention of Records).

## 11 V. GENERAL PROVISIONS

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

19 6. Commitments by Settling Defendants.

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

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

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

8 d. Settling Defendants shall finance and perform any additional  
9 activities related to the Southern Pathway OU required pursuant to Section XI  
10 (Certification of Completion) in accordance with this Partial Consent Decree, the  
11 SOW, and all work plans and other plans, standards, specifications, and  
12 schedules set forth in this Partial Consent Decree or developed by and approved  
13 by EPA, after reasonable opportunity for review and comment by DTSC.

14 7. Compliance with Applicable Law. All activities undertaken by  
15 Settling Defendants pursuant to this Partial Consent Decree shall be performed in  
16 accordance with the requirements of all applicable federal and California laws  
17 and regulations. The activities conducted pursuant to this Partial Consent  
18 Decree, if approved by EPA, shall be deemed to be consistent with the NCP.

19 8. Permits.

20 a. As provided in Section 121(e) of CERCLA, 42 U.S.C.  
21 § 9621(e), and Section 300.400(e) of the NCP, no permit shall be required for  
22 any portion of the Work conducted entirely on-site (i.e., within the areal extent of  
23 contamination or in very close proximity to the contamination and necessary for  
24 implementation of the Work). Settling Defendants may seek the assistance of the  
25 United States and DTSC with respect to permits proposed by any State, county,  
26 municipal, or other governmental body.

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

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

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

12 9. Selection of Supervising Contractor.

13 a. All aspects of the Work to be performed by Settling  
14 Defendants pursuant to Sections VI (Performance of the Work by Settling  
15 Defendants), VII (Access), and XII (Emergency Response) shall be under the  
16 direction and supervision of the Supervising Contractor, the selection of which  
17 shall be subject to disapproval by EPA after a reasonable opportunity for review  
18 and comment by DTSC. Within 30 Days after the lodging of this Partial Consent  
19 Decree, Settling Defendants shall notify EPA and DTSC in writing of the name,  
20 title, and qualifications of any contractor proposed to be the Supervising  
21 Contractor for the Work. With respect to any contractor proposed to be  
22 Supervising Contractor, Settling Defendants shall demonstrate that the proposed  
23 contractor has a quality assurance system that complies with ANSI/ASQC E4-  
24 2004, Quality Systems for Environmental Data and Technology Programs:  
25 Requirements with Guidance for Use (American National Standard), by  
26 submitting a copy of the proposed contractor's Quality Management Plan  
27 ("QMP"). The QMP should be prepared in accordance with "EPA Requirements  
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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  
11 will notify Settling Defendants in writing. Settling Defendants shall submit to  
12 EPA and DTSC a list of contractors, including the qualifications of each  
13 contractor, that would be acceptable to them within 30 Days of receipt of EPA’s  
14 disapproval of the contractor previously proposed. EPA will provide written  
15 notice of the names of any contractor(s) that it disapproves and an authorization  
16 to proceed with respect to any of the other contractors. Settling Defendants may  
17 select any contractor from that list that is not disapproved and shall notify EPA  
18 and DTSC of the name of the contractor selected within 21 Days of EPA’s  
19 authorization to 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 XV (Force Majeure).

25           10. Performance of Work in Accordance with SOW.

26           a. Settling Defendants shall perform the RI/FS in accordance with  
27 the SOW and all EPA-approved, conditionally-approved, or modified deliverables  
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1 as required by the SOW. All deliverables required to be submitted for approval  
2 under the Partial Consent Decree or SOW shall be subject to approval by EPA,  
3 after a reasonable opportunity for review and comment by DTSC, in accordance  
4 with Task 7 (Deliverables and Communications) of Section II of the SOW.

5           b. Settling Defendants shall fully implement and comply with  
6 the SOW that is attached hereto as Appendix B and incorporated herein by  
7 reference. Settling Defendants shall conduct the RI/FS and prepare all plans  
8 referenced in the SOW, including the RI/FS Work Plan, in accordance with the  
9 provisions of this Partial Consent Decree, the SOW, CERCLA, the NCP, and  
10 EPA guidance, including, but not limited to the “Interim Final Guidance for  
11 Conducting Remedial Investigations and Feasibility Studies under CERCLA”  
12 (“RI/FS Guidance”), OSWER Directive # 9355.3-01 (October 1988), available at  
13 <https://semspub.epa.gov/src/document/11/128301>, “Guidance for Data Useability  
14 in Risk Assessment (Part A), Final,” OSWER Directive # 9285.7-09A, PB 92-  
15 963356 (April 1992), available at  
16 <https://semspub.epa.gov/src/document/11/156756>, and guidance referenced  
17 therein, and guidance referenced in the SOW. The RI shall consist of collecting  
18 data to characterize site conditions, determining the nature and extent of the  
19 contamination at or from the Southern Pathway OU, assessing risk to human  
20 health and the environment in the Southern Pathway OU, and conducting  
21 treatability testing as necessary to evaluate the potential performance and cost of  
22 the treatment technologies that may be considered. The FS shall determine and  
23 evaluate (based on treatability testing, where appropriate) alternatives for  
24 Remedial Action, if any, to prevent, mitigate, or otherwise respond to or remedy  
25 the release or threatened release of hazardous substances, pollutants, or  
26 contaminants at or from the Southern Pathway OU. The alternatives evaluated  
27 must include, but shall not be limited to, the range of alternatives described in the  
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1 NCP, 40 C.F.R. § 300.430(e) and shall include remedial actions that use  
2 permanent solutions and alternative treatment technologies or resource recovery  
3 technologies to the maximum extent practicable. In evaluating the alternatives,  
4 Settling Defendants shall address the factors required to be taken into account by  
5 Section 121 of CERCLA, 42 U.S.C. § 9621, and 40 C.F.R. § 300.430(e).

6 c. Upon receipt of the draft FS Report, after a reasonable  
7 opportunity for review and comment by DTSC, EPA will evaluate, as necessary,  
8 the estimates of the risk to the public and environment that are expected to  
9 remain after a particular remedial alternative has been completed and will  
10 evaluate the cost, implementability, and long-term effectiveness of any proposed  
11 ICs for that alternative.

12 d. Settling Defendants' obligation to perform the RI/FS is subject  
13 to the following additional provisions and limitations, as further described in the  
14 SOW:

15 (1) Settling Defendants will not be required to perform or  
16 pay for landfill sampling as part of the RI. However, if EPA performs any landfill  
17 sampling for the Southern Pathway OU, then Settling Defendants will incorporate  
18 the results of such data into the RI/FS, including incorporation into any relevant  
19 deliverables described in the SOW.

20 (2) The SOW describes the Site Investigation Area in which  
21 sampling shall initially be performed. The SOW also sets forth "Endpoint  
22 Criteria" for DDT and other related contaminants of concern. Pursuant to those  
23 Endpoint Criteria (which are described in Section V of Exhibit C to the SOW),  
24 once all sampling described in Section II of Exhibit C to the SOW has been  
25 completed:

26 (a) If no sample reveals contamination exceeding  
27 those Endpoint Criteria, the RI sampling will be deemed complete, and, as  
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1 provided in the first paragraph of Section III of Exhibit C to the SOW, Settling  
2 Defendants may complete the remainder of the RI/FS, including any risk  
3 assessments required, based upon the sampling done in the Site Investigation Area,  
4 together with the work previously done by EPA and Montrose in the Southern  
5 Pathway OU, including the sampling described in Paragraph N, including the  
6 Human Health Risk Assessments previously performed.

7 (b) If any sample reveals contamination exceeding the  
8 Endpoint Criteria, EPA will, using its best professional judgment and guided by  
9 the purposes of the RI as described in Paragraph 10.b, will determine, based on its  
10 discretion, whether additional sampling is needed within or outside the Site  
11 Investigation Area. If required by EPA, Settling Defendants will perform such  
12 additional sampling, consistent with the limitations in Paragraph 10.d(1), and shall  
13 incorporate such additional sampling into all further deliverables in the RI/FS, as  
14 provided in Sections III and IV of Exhibit C to the SOW and in ¶¶ 7.1-7.3 of the  
15 SOW. Settling Defendants shall also incorporate the work previously done by  
16 EPA and Montrose in the Southern Pathway OU, including the sampling described  
17 in Paragraph N, including the Human Health Risk Assessments previously  
18 performed.

19 11. Modification of the RI/FS Work Plan.

20 a. If at any time during the RI/FS process, Settling Defendants  
21 identify a need for additional data for the RI/FS, Settling Defendants shall submit a  
22 memorandum documenting the need for additional data to EPA's Project  
23 Coordinator within 21 Days after identification. After a reasonable opportunity for  
24 review and comment by DTSC, EPA will determine whether the additional data  
25 will be collected by Settling Defendants for inclusion in the RI/FS, subject to the  
26 limitations in Paragraph 10.d, and whether it will be incorporated into deliverables.

27 b. Paragraph 11.a does not preclude Settling Defendants from  
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1 collecting additional data outside of the RI/FS.

2 c. In the event of unanticipated or changed circumstances in the  
3 Southern Pathway OU, Settling Defendants shall notify EPA's Project Coordinator  
4 by telephone within 24 hours of discovery of the unanticipated or changed  
5 circumstances. In the event that EPA determines that the unanticipated or changed  
6 circumstances warrant changes in the RI/FS Work Plan, EPA shall modify the  
7 RI/FS Work Plan in writing accordingly or direct Settling Defendants to modify  
8 and submit the modified RI/FS Work Plan to EPA for approval. Settling  
9 Defendants shall perform the RI/FS Work Plan as modified.

10 d. EPA may determine that, in addition to tasks defined in the  
11 initially approved RI/FS Work Plan, other additional work may be necessary to  
12 accomplish the objectives of the RI/FS. Subject to the limitations described in  
13 Paragraph 10.d, Settling Defendants shall perform these response actions in  
14 addition to those required by the initially approved RI/FS Work Plan, including  
15 any approved modifications, if EPA determines that such actions are necessary for  
16 a thorough RI/FS.

17 e. Settling Defendants shall confirm their willingness to perform  
18 the additional work in writing to EPA within seven Days after receipt of the EPA  
19 request. If Settling Defendants object to any modification determined by EPA to  
20 be necessary pursuant to this Paragraph, Settling Defendants may seek dispute  
21 resolution pursuant to Section XVI (Dispute Resolution). The SOW and/or the  
22 RI/FS Work Plan shall be modified in accordance with the final resolution of the  
23 dispute.

24 f. Settling Defendants shall complete the additional work  
25 according to the standards, specifications, and schedule set forth or approved by  
26 EPA in a written modification to the RI/FS Work Plan or written RI/FS Work Plan  
27 supplement. EPA reserves the right to conduct the work itself, to seek

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1 reimbursement from Settling Defendants for the costs incurred in performing the  
2 work, and/or to seek any other appropriate relief.

3 g. Nothing in this Paragraph shall be construed to require Settling  
4 Defendants to complete additional Work that would be inconsistent with the  
5 provisions and limitations described in Paragraph 10.d.

6 h. Except to the extent specifically set forth in Paragraph 10.d,  
7 nothing in this Paragraph shall be construed to limit EPA's authority to require  
8 performance of further response actions at the Site.

9 **VII. ACCESS**

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

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

- 18 (1) Monitoring the Work;
- 19 (2) Verifying any data or information submitted to the  
20 United States or DTSC;
- 21 (3) Conducting investigations regarding contamination at  
22 or near the Site;
- 23 (4) Obtaining samples;
- 24 (5) Assessing the need for, planning, or implementing the  
25 Work or additional response actions at or near the Site;
- 26 (6) Assessing implementation of quality assurance and  
27 quality control practices as defined in the approved Quality Assurance Project  
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1 Plans;

2 (7) Implementing the Work pursuant to the conditions set  
3 forth in Paragraph 69 (Work Takeover);

4 (8) Inspecting and copying non-privileged records,  
5 operating logs, contracts, or other documents maintained or generated by Settling  
6 Defendants or their agents, consistent with Section XXI (Access to Information);

7 (9) Assessing Settling Defendants' compliance with this  
8 Partial Consent Decree or with any other orders or consent decrees for the  
9 Southern Pathway OU;

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

13 (11) Implementing, monitoring, maintaining, reporting on,  
14 and enforcing any land, water, or other resource use restrictions and Institutional  
15 Controls.

16 b. Commencing on the date of lodging of this Partial Consent  
17 Decree, such Settling Defendants shall not use the Site, or such other real  
18 property, in any manner that EPA, after a reasonable opportunity for review and  
19 comment by DTSC, determines will pose an unacceptable risk to human health or  
20 to the environment due to exposure to Waste Material or interfere with or  
21 adversely affect the implementation, integrity, or protectiveness of the response  
22 actions for the Southern Pathway OU. The restrictions shall include, but not be  
23 limited to, limiting the drilling of new groundwater wells or any other excavation  
24 with the potential to penetrate contaminated aquifers.

25 13. If any real property where access is needed to implement the  
26 requirements of the relevant provisions of this Partial Consent Decree, including  
27 the SOW, is owned or controlled by persons other than any Settling Defendant,  
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1 Settling Defendants shall use best efforts to secure from such persons an  
2 agreement to provide access thereto for the United States, the State, DTSC, and  
3 Settling Defendants, and their representatives, contractors and subcontractors, to  
4 conduct any activity related to their Work for the Site including, but not limited  
5 to, the activities listed in Paragraph 12.a.

6 14. For purposes of Paragraph 13, “best efforts” includes the payment of  
7 reasonable sums of money to obtain access, except that “best efforts” shall not  
8 include payment of money to any party that received from EPA a letter providing  
9 special notice of potential liability related to the Montrose Chemical Corp.  
10 Superfund Site, the Del Amo Superfund Site, or the Dual Site. If, within 120  
11 Days of the Effective Date, Settling Defendants have not obtained agreements to  
12 provide access, as required by Paragraph 13, Settling Defendants shall promptly  
13 notify the United States and DTSC in writing, and shall include in that  
14 notification a summary of the steps that they have taken to attempt to comply  
15 with Paragraph 13. The United States and DTSC may, in the manner they deem  
16 appropriate, assist Settling Defendants in obtaining access. Settling Defendants  
17 shall reimburse the United States and DTSC under Section XIII (Payments for  
18 Response Costs), for all costs incurred, direct or indirect, by the United States  
19 and DTSC in obtaining such access, including, but not limited to, the cost of  
20 attorney time and the amount of monetary consideration paid or just  
21 compensation.

22 15. If EPA, in consultation with DTSC, determines that Institutional  
23 Controls in the form of state or local laws, regulations, ordinances, zoning  
24 restrictions, or other governmental controls are needed within the geographic area  
25 where Work is being performed, Settling Defendants shall cooperate with EPA’s  
26 and DTSC’s efforts to secure and ensure compliance with such Institutional  
27 Controls. Settling Defendants’ agreement to “cooperate with EPA’s and DTSC’s  
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1 efforts,” as described in the preceding sentence, does not constitute any  
2 agreement to perform or pay for any such Institutional Controls.

3 16. Notwithstanding any provision of this Partial Consent Decree, the  
4 United States and DTSC retain all of their access authorities and rights, as well as  
5 all of their rights to require land, water, or other resource use restrictions and  
6 Institutional Controls, including enforcement authorities related thereto, under  
7 CERCLA, RCRA, and any other applicable federal or California statute or  
8 regulations.

9 **VIII. EPA APPROVAL OF PLANS, REPORTS, AND OTHER**  
10 **DELIVERABLES**

11 17. Initial Submissions.

12 a. After review of any plan, report, or other deliverable that is  
13 required to be submitted for approval pursuant to this Partial Consent Decree,  
14 EPA, after reasonable opportunity for review and comment by DTSC, shall: (i)  
15 approve, in whole or in part, the submission; (ii) approve the submission upon  
16 specified conditions; (iii) disapprove, in whole or in part, the submission; or  
17 (iv) any combination of the foregoing.

18 b. EPA also may modify the initial submission to cure  
19 deficiencies in the submission if: (i) EPA determines that disapproving the  
20 submission and awaiting a resubmission would cause substantial disruption to the  
21 Work; or (ii) previous submission(s) have been disapproved due to material  
22 defects and the deficiencies in the initial submission under consideration indicate  
23 a bad faith lack of effort to submit an acceptable plan, report, or deliverable.

24 18. Resubmissions. Upon receipt of a notice of disapproval under  
25 Paragraph 17.a.(iii) or (iv), or if required by a notice of approval upon specified  
26 conditions under Paragraph 17.a.(ii), Settling Defendants shall, within 21 Days or  
27 such longer time as specified by EPA in such notice, correct the deficiencies and  
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1 resubmit the plan, report, or other deliverable for approval. After review of the  
2 resubmitted plan, report, or other deliverable, EPA may, after reasonable  
3 opportunity for review and comment by DTSC: (a) approve, in whole or in part,  
4 the resubmission; (b) approve the resubmission upon specified conditions; (c)  
5 modify the resubmission; (d) disapprove, in whole or in part, the resubmission,  
6 requiring Settling Defendants to correct the deficiencies; or (e) any combination  
7 of the foregoing.

8       19. Material Defects. If an initially submitted or resubmitted plan,  
9 report, or other deliverable contains a material defect, and the plan, report, or  
10 other deliverable is disapproved or modified by EPA under Paragraph 17.b.(ii) or  
11 18 due to such material defect, then the material defect shall constitute a lack of  
12 compliance for purposes of Paragraph 54. The provisions of Section XVI  
13 (Dispute Resolution) and Section XVII (Stipulated Penalties) shall govern the  
14 accrual and payment of any stipulated penalties regarding Settling Defendants'  
15 submissions under this Section.

16       20. Implementation. Upon approval, approval upon conditions, or  
17 modification by EPA under Paragraphs 17 or 18, of any plan, report, or other  
18 deliverable, or any portion thereof: (a) such plan, report, or other deliverable, or  
19 portion thereof, shall be incorporated into and enforceable under this Partial  
20 Consent Decree; and (b) Settling Defendants shall take any action required by  
21 such plan, report, or other deliverable, or portion thereof, subject only to their  
22 right to invoke the dispute resolution procedures set forth in Section XVI  
23 (Dispute Resolution) with respect to the modifications or conditions made by  
24 EPA. The implementation of any non-deficient portion of a plan, report, or other  
25 deliverable submitted or resubmitted under Paragraphs 17 or 18 shall not relieve  
26 Settling Defendants of any liability for stipulated penalties under Section XVII  
27 (Stipulated Penalties).

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1 required by this Partial Consent Decree and to take any necessary response action  
2 when he or she determines that conditions at the Site constitute an emergency  
3 situation or may present an immediate threat to public health or welfare or the  
4 environment due to release or threatened release of Waste Material.

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

10 **X. PERFORMANCE GUARANTEE**

11 25. In order to ensure the full and final completion of the Work, Settling  
12 Defendants shall establish and maintain a performance guarantee for the benefit  
13 of EPA, initially in the amount of \$518,000 (the "Estimated Cost of the Work").  
14 The performance guarantee, which must be satisfactory in form and substance to  
15 EPA, shall be in the form of one or more of the following mechanisms (provided  
16 that, if Settling Defendants intend to use multiple mechanisms, such multiple  
17 mechanisms shall be limited to surety bonds guaranteeing payment, letters of  
18 credit, trust funds, and insurance policies):

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

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

27 c. A trust fund established for the benefit of EPA that is  
28

1 administered by a trustee (i) that has the authority to act as a trustee and (ii)  
2 whose trust operations are regulated and examined by a federal or state agency;

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

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

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

25 26. Settling Defendants have selected, and EPA has found satisfactory,  
26 as an initial performance guarantee, the use of a trust fund that conforms in form  
27 and substance to the instrument set forth in Appendix C. Within 30 Days of the  
28

1 Effective Date, Settling Defendants shall submit copies of all executed and/or  
2 otherwise finalized instruments or other documents required in order to make the  
3 selected performance guarantee(s) legally binding to the EPA Regional Financial  
4 Management Officer in accordance with Section XXIII (Notices and  
5 Submissions), with a copy to Financial Analyst, 75 Hawthorne Street, San  
6 Francisco, California 94105, and to the United States and EPA and DTSC as  
7 specified in Section XXIII (Notices and Submissions).

8         27. If, at any time after the Effective Date and before issuance of the  
9 Certification of Completion of the Work pursuant to Paragraph 31, Settling  
10 Defendants provide a performance guarantee for completion of the Work by  
11 means of a demonstration or guarantee pursuant to Paragraph 25.e or 25.f,  
12 Settling Defendants shall also comply with the other relevant requirements of  
13 40 C.F.R. § 264.143(f) relating to these mechanisms unless otherwise provided in  
14 this Partial Consent Decree, including but not limited to: (a) the initial  
15 submission of required financial reports and statements from the relevant entity's  
16 chief financial officer ("CFO") and independent certified public accountant  
17 ("CPA"), in the form prescribed by EPA in its financial test sample CFO letters  
18 and CPA reports available under the "Financial Assurance – Settlements" subject  
19 list category on the Cleanup Enforcement Model Language and Sample  
20 Documents Database at <https://cfpub.epa.gov/compliance/models>; (b) the annual  
21 re-submission of such reports and statements within 90 Days after the close of  
22 each such entity's fiscal year; and (c) the prompt notification of EPA after each  
23 such entity determines that it no longer satisfies the financial test requirements  
24 set forth at 40 C.F.R. § 264.143(f)(1) and in any event within 90 Days after the  
25 close of any fiscal year in which such entity no longer satisfies such financial test  
26 requirements. For purposes of the performance guarantee mechanisms specified  
27 in this Section X (Performance Guarantee), references in 40 C.F.R. Part 264,

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1 Subpart H, to “closure,” “post-closure,” and “plugging and abandonment” shall  
2 be deemed to include the Work; the terms “current closure cost estimate,”  
3 “current post-closure cost estimate,” and “current plugging and abandonment  
4 cost estimate” shall be deemed to include the Estimated Cost of the Work; the  
5 terms “owner” and “operator” shall be deemed to refer to Settling Defendants  
6 making a demonstration under Paragraph 25.e; and the terms “facility” and  
7 “hazardous waste facility” shall be deemed to include those facilities or  
8 components of the Site located within the area addressed by the Work.

9 28. In the event that EPA determines at any time that a performance  
10 guarantee provided by any Settling Defendant pursuant to this Section is  
11 inadequate or otherwise no longer satisfies the requirements set forth in this  
12 Section, whether due to an increase in the estimated cost of completing the Work  
13 or for any other reason, or in the event that any Settling Defendant becomes  
14 aware of information indicating that a performance guarantee provided pursuant  
15 to this Section is inadequate or otherwise no longer satisfies the requirements set  
16 forth in this Section, whether due to an increase in the estimated cost of  
17 completing the Work or for any other reason, Settling Defendants, within 30  
18 Days of receipt of notice of EPA’s determination or, as the case may be, within  
19 30 Days of any Settling Defendant becoming aware of such information, shall  
20 obtain and present to EPA for approval a proposal for a revised or alternative  
21 form of performance guarantee listed in Paragraph 25 that satisfies all  
22 requirements set forth in this Section X (Performance Guarantee), and shall  
23 provide a copy of such proposal to DTSC; provided, however, that if any Settling  
24 Defendant cannot obtain such revised or alternative form of performance  
25 guarantee within such 30-Day period, and provided further that the Settling  
26 Defendant shall have commenced to obtain such revised or alternative form of  
27 performance guarantee within such 30-Day period, and thereafter diligently  
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1 proceeds to obtain the same, EPA shall extend such period for such time as is  
2 reasonably necessary for Settling Defendants in the exercise of due diligence to  
3 obtain such revised or alternative form of performance guarantee, such additional  
4 period not to exceed 30 Days. In seeking approval for a revised or alternative  
5 form of performance guarantee, Settling Defendants shall follow the procedures  
6 set forth in Paragraph 30. Settling Defendants' inability to post a performance  
7 guarantee for completion of the Work shall in no way excuse performance of any  
8 other requirements of this Partial Consent Decree, including, without limitation,  
9 the obligation of Settling Defendants to complete the Work in strict accordance  
10 with the terms of this Partial Consent Decree.

11       29. Funding for Work Takeover. The commencement of Work  
12 Takeover for any particular Work pursuant to Paragraph 69 shall trigger EPA's  
13 right to receive the benefit of any performance guarantee(s) provided pursuant to  
14 Paragraphs 25.a, 25.b, 25.c, 25.d, or 25.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 25.e or Paragraph 25.f.(ii), Settling Defendants (or in the case of  
24 Paragraph 25.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



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

21 30. Modification of Amount and/or Form of Performance Guarantee.

22 a. Reduction of Amount of Performance Guarantee. If Settling  
23 Defendants believe that the estimated cost of completing the Work has  
24 diminished below the amount set forth in Paragraph 25, Settling Defendants may,  
25 on any anniversary of the Effective Date, or at any other time agreed to by EPA,  
26 DTSC and Settling Defendants, petition EPA in writing to request a reduction in  
27 the amount of the performance guarantee provided pursuant to this Section so  
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1 that the amount of the performance guarantee is equal to the estimated cost of  
2 completing the relevant Work. Settling Defendants shall submit a written  
3 proposal for such reduction to EPA, and shall submit a copy of this proposal to  
4 DTSC that shall specify, at a minimum, the estimated cost of completing their  
5 Work and the basis upon which such cost was calculated. In seeking approval for  
6 a reduction in the amount of the performance guarantee, Settling Defendants shall  
7 follow the procedures set forth in Paragraph 30.b.(2) for requesting a revised or  
8 alternative form of performance guarantee, except as specifically provided in this  
9 Paragraph. If EPA, after a reasonable opportunity for review and comment by  
10 DTSC, decides to accept any such proposal for a reduction in the amount of the  
11 performance guarantee, either to the amount set forth in a written proposal or to  
12 some other amount as selected by EPA, EPA will notify Settling Defendants of  
13 such decision in writing. Upon EPA's acceptance of a reduction in the amount of  
14 the performance guarantee, the Estimated Cost of the Work shall be deemed to be  
15 the estimated cost of completing the Work set forth in EPA's written decision.  
16 After receiving EPA's written decision, Settling Defendants may reduce the  
17 amount of the performance guarantee in accordance with and to the extent  
18 permitted by such written acceptance and shall submit copies of all executed  
19 and/or otherwise finalized instruments or other documents required in order to  
20 make the selected performance guarantee(s) legally binding in accordance with  
21 Paragraph 30.b.(2). In the event of a dispute, Settling Defendants may reduce the  
22 amount of the performance guarantee required hereunder only in accordance with  
23 a final administrative or judicial decision resolving such dispute pursuant to  
24 Section XVI (Dispute Resolution). No change to the form or terms of any  
25 performance guarantee provided under this Section, other than a reduction in  
26 amount, is authorized except as provided in Paragraphs 28 or 30.b.

27           b.     Change of Form of Performance Guarantee.

28

1 (1) If, after the Effective Date, Settling Defendants desire  
2 to change the form or terms of any performance guarantee(s) provided pursuant  
3 to this Section, Settling Defendants may, on any anniversary of the Effective  
4 Date, or at any other time agreed to by the Parties, petition EPA in writing to  
5 request a change in the form or terms of the performance guarantee provided  
6 hereunder. The submission of such proposed revised or alternative performance  
7 guarantee shall be as provided in Paragraph 30.b.(2), and Settling Defendants  
8 shall provide a copy of such proposal to DTSC. Any decision made by EPA on a  
9 petition submitted under this Paragraph shall be made in EPA's sole and  
10 unreviewable discretion, and such decision shall not be subject to challenge by  
11 Settling Defendants pursuant to the dispute resolution provisions of this Partial  
12 Consent Decree or in any other forum.

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

28

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

15 c. Release of Performance Guarantee. Settling Defendants shall  
16 not release, cancel, or discontinue any performance guarantee provided pursuant  
17 to this Section except as provided in this Paragraph. If Settling Defendants  
18 receive written notice from EPA in accordance with Paragraph 31 that the Work  
19 has been fully and finally completed in accordance with the terms of this Partial  
20 Consent Decree, or if EPA otherwise so notifies Settling Defendants in writing,  
21 Settling Defendants may thereafter release, cancel, or discontinue the performance  
22 guarantee(s) provided pursuant to this Section. In the event of a dispute Settling  
23 Defendants may release, cancel, or discontinue the performance guarantee(s)  
24 required hereunder only in accordance with a final administrative or judicial  
25 decision resolving such dispute pursuant to Section XVI (Dispute Resolution).

## 26 **XI. CERTIFICATION OF COMPLETION**

27 31. Completion of the Work.

28

1           a.       Within 90 Days after Settling Defendants conclude that all the  
2 Work has been fully performed in compliance with this Partial Consent Decree  
3 and the SOW, Settling Defendants shall schedule and conduct a pre-certification  
4 inspection to be attended by Settling Defendants, EPA, and DTSC. If, after the  
5 pre-certification inspection, Settling Defendants still believe that the Work has  
6 been fully performed, Settling Defendants shall submit a written report by a  
7 professional engineer registered in California stating that the Work has been  
8 completed in full satisfaction of the requirements of this Partial Consent Decree.  
9 The report shall contain the following statement, signed by a responsible  
10 corporate official of a Settling Defendant or Settling Defendants' Project  
11 Coordinator:

12                   I certify under penalty of federal and State law that this  
13 document and all attachments were prepared under my  
14 direction or supervision in accordance with a system  
15 designed to assure that qualified personnel properly  
16 gather and evaluate the information submitted. Based on  
17 my inquiry of the person or persons who manage the  
18 system, or those persons directly responsible for  
19 gathering the information, the information submitted is,  
20 to the best of my knowledge and belief, true, accurate,  
21 and complete. I am aware that there are significant  
22 penalties for submitting false information, including the  
23 possibility of fine and imprisonment for knowing  
24 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  
undertaken by Settling Defendants pursuant to this Partial Consent Decree to  
complete the Work, subject to the limitations in Paragraph 10.d.(1). EPA will set  
forth in the notice a schedule for performance of such activities consistent with

1 this Partial Consent Decree and the SOW or require Settling Defendants to  
2 submit a schedule to EPA for approval pursuant to Section VIII (EPA Approval  
3 of Plans, Reports, and Other Deliverables). Settling Defendants shall perform all  
4 activities described in the notice in accordance with the specifications and  
5 schedules established therein, subject to their right to invoke the dispute  
6 resolution procedures set forth in Section XVI (Dispute Resolution).

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

## 12 XII. EMERGENCY RESPONSE

13 32. If any action or occurrence during the performance of the Work  
14 causes or threatens a release of Waste Material from the Site that constitutes an  
15 emergency situation or may present an immediate threat to public health or  
16 welfare or the environment, Settling Defendants shall, subject to Paragraph 33,  
17 immediately take all appropriate action to prevent, abate, or minimize such  
18 release or threat of release, in consultation with EPA's Project Coordinator or  
19 other available authorized EPA officer and in accordance with all applicable  
20 provisions of the Health and Safety Plans, the Contingency Plans, and any other  
21 applicable plans or documents developed pursuant to the SOW. Settling  
22 Defendants shall also immediately notify the EPA's Project Coordinator, or, if  
23 the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If  
24 neither of these persons is available, Settling Defendants shall notify the EPA  
25 Emergency Response Unit, Region IX. In the event that Settling Defendants fail  
26 to take appropriate response action as required by this Section, and EPA or, as  
27 appropriate, DTSC takes such action instead, Settling Defendants shall reimburse  
28

1 EPA and DTSC costs of the response action not inconsistent with the NCP  
2 pursuant to Section XIII (Payments for Response Costs).

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

12 **XIII. PAYMENTS FOR RESPONSE COSTS**

13 34. Payment by Settling Defendants for EPA Past Response Costs and  
14 DTSC Past Response Costs.

15 a. Within 45 Days of the Effective Date, Settling Defendants  
16 shall pay to EPA the amount of \$3,750,000 in payment for EPA Past Response  
17 Costs, in accordance with Paragraphs 37.a and 37.c (Payment Instructions).

18 b. The total amount to be paid by Settling Defendants pursuant  
19 to Paragraph 34.a shall be deposited by EPA in the Montrose Onshore Special  
20 Account to be retained and used to conduct or finance response actions at or in  
21 connection with the Montrose and/or Del Amo Superfund Sites, or to be  
22 transferred by EPA to the EPA Hazardous Substance Superfund.

23 c. Within 45 Days of the Effective Date, Settling Defendants  
24 shall pay DTSC Past Response Costs in the amount of \$250,000 by official bank  
25 check(s) made payable to the Department of Toxic Substances Control, and  
26 annotated with the phrase "400100 - OU6 RI/FS CD." Settling Defendants shall  
27 send the bank check(s) to Department of Toxic Substances Control, Accounting  
28

1 Office, P.O. Box 806, Sacramento, CA 95812-0806. Hand deliveries, including  
2 but not limited to Federal Express and UPS, should be addressed to: Department  
3 of Toxic Substances Control, Accounting Office, 1001 I Street, 21st Floor,  
4 Sacramento, CA 95814.

5 35. Payments by Settling Defendants for EPA Future Response Costs.

6 Settling Defendants shall pay to EPA all EPA Future Response Costs not  
7 inconsistent with the NCP.

8 a. On a periodic basis, generally once per year, EPA will send  
9 Settling Defendants a bill requiring payment and enclosing a standard  
10 Regionally-prepared cost summary, which provides a statement of direct and  
11 indirect costs incurred by EPA and its contractors, and a DOJ case cost summary.  
12 Settling Defendants shall make all payments within 30 Days of Settling  
13 Defendants' receipt of each bill requiring payment, except as otherwise provided  
14 in Paragraph 38, in accordance with Paragraphs 37.b and 37.c (Payment  
15 Instructions).

16 b. The total amount to be paid by Settling Defendants pursuant  
17 to Paragraph 35.a shall be deposited by EPA in the Montrose Onshore Special  
18 Account to be retained and used to conduct or finance response actions at or in  
19 connection with the Montrose and/or Del Amo Superfund Sites, or to be  
20 transferred by EPA to the EPA Hazardous Substance Superfund.

21 c. If Settling Defendants so request, EPA and DTSC agree to  
22 participate in an oversight kickoff meeting at which EPA, DTSC, and Settling  
23 Defendants would discuss performance and oversight expectations. EPA and  
24 DTSC further agree to participate in annual discussions of the past year's  
25 oversight activities and future work oversight expectations.

26 36. Payments by Settling Defendants for DTSC Future Response Costs.

27 Settling Defendants shall pay to DTSC all DTSC Future Response Costs not  
28



1 inconsistent with the NCP. On a periodic basis, generally quarterly, DTSC will  
2 send Settling Defendants a bill requiring payment that includes an invoice and a  
3 summary (by activity), which provides a statement of direct and indirect costs  
4 incurred by DTSC and its contractors. Upon request by Montrose to the Site's  
5 Project Manager, DTSC will provide the daily log(s) associated with an invoice  
6 related to this Partial Consent Decree. Settling Defendants shall make all  
7 payments within 30 Days of Settling Defendants' receipt of each bill requiring  
8 payment. Settling Defendants shall make all payments to DTSC required by this  
9 Paragraph by sending the bank check(s) to: Accounting, Department of Toxic  
10 Substances Control, 1001 I Street, 21st Floor, P.O. Box 806, Sacramento,  
11 California 95812-0806. The check(s) shall be annotated with the code that  
12 matches the code on the invoice being paid (i.e., "400100 – OU6 RI/FS CD" or  
13 "401950 – OU6 RI/FS CD").

14 37. Payment Instructions for Settling Defendants.

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

25 Settling Defendants  
26 c/o Montrose Chemical Corporation of California  
27 600 Ericksen Avenue NE, Suite 380  
28 Bainbridge Island, WA 98110  
(206) 780-9840

1 mccc@montrosechemical.com  
2 on behalf of Settling Defendants. Settling Defendants may change the individual  
3 to receive payment instructions on their behalf by providing written notice of  
4 such change in accordance with Section XXIII (Notices and Submissions).

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

9 Federal Reserve Bank of New York  
10 ABA = 021030004  
11 Account = 68010727  
12 SWIFT address = FRNYUS33  
13 33 Liberty Street  
14 New York NY 10045  
15 Field Tag 4200 of the Fedwire message should read as follows:  
16 “D 68010727 Environmental Protection Agency”

17 When making payments under this Paragraph 37.b, Settling Defendants shall also  
18 comply with Paragraph 37.c.

19 c. Instructions for All Payments to EPA. All payments made  
20 under Paragraphs 37.a or 37.b shall reference the CDCS Number, EPA Site/Spill  
21 ID Number 0926 and DOJ Case Number 90-11-3-511. At the time of any  
22 payment required to be made in accordance with Paragraphs 35, 37.a, or 37.b,  
23 Settling Defendants shall send notice of payment to the United States and to  
24 EPA, in accordance with Section XXIII (Notices and Submissions), and to the  
25 EPA Cincinnati Finance Office by email at [cinwd\\_acctsreceivable@epa.gov](mailto:cinwd_acctsreceivable@epa.gov), or  
26 by mail at 26 Martin Luther King Drive, Cincinnati, Ohio 45268. Such notice  
27 shall also reference the CDCS Number, Site/Spill ID Number, and DOJ Case  
28 Number.

38. Settling Defendants may contest any EPA Future Response Costs  
billed under Paragraph 35 or DTSC Future Response Costs billed under

1 Paragraph 36 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  
7 receipt of the bill and must be sent to the United States (if the United States'  
8 accounting is being disputed) or DTSC (if DTSC's accounting is being disputed)  
9 pursuant to Section XXIII (Notices and Submissions). Any such objection shall  
10 specifically identify the contested EPA or DTSC Future Response Costs and the  
11 basis for 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  
15 or DTSC, Settling Defendants shall establish an interest-bearing escrow account  
16 in a federally-insured bank duly chartered in the State of California and remit to  
17 that escrow account funds equivalent to the amount of the contested EPA or  
18 DTSC Future Response Costs. Settling Defendants shall send to the United  
19 States and DTSC, as provided in Section XXIII (Notices and Submissions), a  
20 copy of the transmittal letter and check paying the uncontested EPA or DTSC  
21 Future Response Costs, and a copy of the correspondence that establishes and  
22 funds the escrow account, including, but not limited to, information containing  
23 the identity of the bank and bank account under which the escrow account is  
24 established as well as a bank statement showing the initial balance of the escrow  
25 account.

26 c. Simultaneously with establishment of the escrow account,  
27 Settling Defendants shall initiate the dispute resolution procedures in Section  
28

1 XVI (Dispute Resolution) (provided, however, that references to “EPA” in such  
2 Section shall be read to refer to DTSC for purposes of disputes relating to DTSC  
3 Future Response Costs under this Paragraph). If the United States or DTSC  
4 prevails in the dispute, Settling Defendants shall pay the sums due (with accrued  
5 interest) to the United States or DTSC, as appropriate, within five Days of the  
6 resolution of the dispute. If Settling Defendants prevail concerning any aspect of  
7 the contested costs, Settling Defendants shall pay that portion of the costs (plus  
8 associated accrued interest) for which they did not prevail to the United States or  
9 DTSC, as appropriate, within five Days of the resolution of the dispute. Settling  
10 Defendants shall be disbursed any balance of the escrow account.

11 d. All payments to the United States under this Paragraph shall  
12 be made in accordance with Paragraphs 37.b and 37.c (Payment Instructions for  
13 Settling Defendants’ Payments to EPA). All payments to DTSC under this  
14 Paragraph shall be made in accordance with Paragraph 36 (Payments by Settling  
15 Defendants for DTSC Future Response Costs). The dispute resolution  
16 procedures set forth in this Paragraph in conjunction with the procedures set forth  
17 in Section XVI (Dispute Resolution) shall be the exclusive mechanisms for  
18 resolving disputes regarding Settling Defendants’ obligations to reimburse the  
19 United States and DTSC for their Future Response Costs.

20 39. Interest. In the event that any payment for EPA or DTSC Past  
21 Response Costs or for EPA or DTSC Future Response Costs required under this  
22 Section is not made by the date required, Settling Defendants shall pay Interest  
23 on the unpaid balance. The Interest to be paid on EPA Past Response Costs  
24 under this Paragraph shall begin to accrue on the Effective Date. The Interest to  
25 be paid on DTSC Past Response Costs outstanding more than 60 Days shall  
26 begin to accrue on the date of the bill. The Interest on EPA Future Response  
27 Costs or DTSC Future Response Costs shall begin to accrue on the date of the  
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1 bill. The Interest shall accrue through the date of Settling Defendants' payment.  
2 Payments of Interest made under this Paragraph shall be in addition to such other  
3 remedies or sanctions available to Plaintiffs by virtue of Settling Defendants'  
4 failure to make timely payments under this Section including, but not limited to,  
5 payment of stipulated penalties pursuant to Paragraph 54.

6 **XIV. INDEMNIFICATION AND INSURANCE**

7 40. Settling Defendants' Indemnification of the United States and DTSC  
8 (Negligent or Wrongful Acts or Omissions).

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

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

10           41. Settling Defendants' Indemnification of the United States and DTSC  
11 (Contract, Agreement, or Arrangement).

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

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

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1           42. If, in the future, a California state agency other than DTSC should  
2 assume DTSC's role under this Partial Consent Decree, the Settling Defendants'  
3 indemnification of DTSC pursuant to Paragraphs 40 and 41 shall apply to that  
4 state agency.

5           43. No later than 15 Days before commencing any on-site Work,  
6 Settling Defendants shall secure, and shall maintain until Certification of  
7 Completion of the Work, commercial general liability insurance with limits of \$2  
8 million, for any one occurrence, and automobile liability insurance with limits of  
9 \$1 million, combined single limit. These policies shall name the United States  
10 and DTSC as additional insureds with respect to all insured liability arising out of  
11 the activities performed by or on behalf of Settling Defendants pursuant to this  
12 Partial Consent Decree. In addition, for the duration of this Partial Consent  
13 Decree, Settling Defendants shall satisfy, or shall ensure that its contractors or  
14 subcontractors satisfy, all applicable laws and regulations regarding the provision  
15 of worker's compensation insurance for all persons performing Work on behalf  
16 of Settling Defendants in furtherance of this Partial Consent Decree. Prior to  
17 commencement of Work under this Partial Consent Decree, Settling Defendants  
18 shall provide to EPA and DTSC certificates of such insurance and, upon request  
19 by the United States or DTSC, a copy of each insurance policy. Settling  
20 Defendants shall resubmit such certificates and, upon request by the United  
21 States or DTSC, copies of policies each year on the anniversary of the Effective  
22 Date. If Settling Defendants demonstrate by evidence satisfactory to EPA and  
23 DTSC that any contractor or subcontractor maintains insurance equivalent to that  
24 described above, or insurance covering the same risks but in a lesser amount,  
25 then, with respect to that contractor or subcontractor, Settling Defendants need  
26 provide only that portion of the insurance described above that is not maintained  
27 by the contractor or subcontractor.

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**XV. FORCE MAJEURE**

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2 44. “Force majeure,” for purposes of this Partial Consent Decree, is  
3 defined as any event arising from causes beyond the control of any Settling  
4 Defendant, of any entity controlled by Settling Defendants, or of Settling  
5 Defendants’ contractors, that delays or prevents the performance of any  
6 obligation under this Partial Consent Decree despite the Settling Defendants’ best  
7 efforts to fulfill the obligation. The requirement that Settling Defendants  
8 exercise “best efforts to fulfill the obligation” includes using best efforts to  
9 anticipate any potential force majeure and best efforts to address the effects of  
10 any potential force majeure (1) as it is occurring and (2) following the potential  
11 force majeure such that the delay and any adverse effects of the delay are  
12 minimized to the greatest extent possible. “Force majeure” does not include  
13 financial inability to complete the Work.

14 45. If any event occurs or has occurred that may delay the performance  
15 of any obligation under this Partial Consent Decree for which Settling  
16 Defendants intend or may intend to assert a claim of force majeure, Settling  
17 Defendants shall notify orally EPA’s Project Coordinator or, in his or her  
18 absence, EPA’s Alternate Project Coordinator or, in the event both of EPA’s  
19 designated representatives are unavailable, the Director of the Superfund and  
20 Emergency Management Division, EPA Region IX, within five Days of when  
21 Settling Defendants first knew that the event might cause a delay. Within 14  
22 Days thereafter, Settling Defendants shall provide in writing to EPA and DTSC  
23 an explanation and description of the reasons for the delay; the anticipated  
24 duration of the delay; all actions taken or to be taken to prevent or minimize the  
25 delay; a schedule for implementation of any measures to be taken to prevent or  
26 mitigate the delay or the effect of the delay; Settling Defendants’ rationale for  
27 attributing such delay to a force majeure; and a statement as to whether, in the  
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1 opinion of Settling Defendants, such event may cause or contribute to an  
2 endangerment to public health or welfare, or the environment. Settling  
3 Defendants shall include with any notice all available documentation supporting  
4 their claim that the delay was attributable to a force majeure. Settling Defendants  
5 shall be deemed to know of any circumstance of which Settling Defendants, any  
6 entity controlled by Settling Defendants, or Settling Defendants' contractors  
7 knew or should have known. Failure to comply with the above requirements  
8 regarding an event shall preclude Settling Defendants from asserting any claim of  
9 force majeure regarding that event, provided, however, that if EPA, despite the  
10 late notice, is able to assess to its satisfaction whether the event is a force majeure  
11 under Paragraph 44 and whether Settling Defendants have exercised their best  
12 efforts under Paragraph 44, EPA may, in its unreviewable discretion, after a  
13 reasonable opportunity for review and comment by DTSC, excuse in writing  
14 Settling Defendants' failure to submit timely notices under this Paragraph.

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

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1 dispute by informal negotiations under the preceding Paragraph, then the position  
2 advanced by EPA shall be considered binding unless, within 14 Days after the  
3 conclusion of the informal negotiation period, Settling Defendants invoke the  
4 formal dispute resolution procedures of this Section by serving on the United  
5 States and the State a written Statement of Position on the matter in dispute,  
6 including, but not limited to, any factual data, analysis or opinion supporting that  
7 position and any supporting documentation relied upon by Settling Defendants.  
8 The Statement of Position shall specify Settling Defendants' position as to  
9 whether formal dispute resolution should proceed under Paragraph 51 or  
10 Paragraph 52.

11           b.       Within 45 Days after receipt of Settling Defendants'  
12 Statement of Position, EPA, after consultation with DTSC, will serve on Settling  
13 Defendants EPA's Statement of Position, including, but not limited to, any  
14 factual data, analysis, or opinion supporting that position and all supporting  
15 documentation relied upon by EPA. EPA's Statement of Position shall include a  
16 statement as to whether formal dispute resolution should proceed under  
17 Paragraphs 51 or 52. Within 45 Days after receipt of EPA's Statement of  
18 Position, Settling Defendants may submit a Reply.

19           c.       If there is disagreement between EPA and Settling Defendants  
20 as to whether dispute resolution should proceed under Paragraphs 51 or 52, the  
21 parties to the dispute shall follow the procedures set forth in the Paragraph  
22 determined by EPA to be applicable. However, if Settling Defendants ultimately  
23 appeal to the Court to resolve the dispute, the Court shall determine which  
24 Paragraph is applicable in accordance with the standards of applicability set forth  
25 in Paragraphs 51 and 52.

26           51.   Record Review. Formal dispute resolution for disputes pertaining to  
27 the selection or adequacy of any response action and all other disputes that are  
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1 accorded review on the administrative record under applicable principles of  
2 administrative law shall be conducted pursuant to the procedures set forth in this  
3 Paragraph. For purposes of this Paragraph, the adequacy of any response action  
4 includes, without limitation, the adequacy or appropriateness of plans, procedures  
5 to implement plans, or any other items requiring approval by EPA under this  
6 Partial Consent Decree, and the adequacy of the performance of response actions  
7 taken pursuant to this Partial Consent Decree. Nothing in this Partial Consent  
8 Decree shall be construed to allow any dispute by Settling Defendants regarding  
9 the validity of the ROD's provisions.

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

15           b. The Director of the Superfund and Emergency Management  
16 Division, EPA Region IX, will issue a final administrative decision resolving the  
17 dispute based on the administrative record described in Paragraph 51.a. This  
18 decision shall be binding upon Settling Defendants, subject only to the right to  
19 seek judicial review pursuant to Paragraphs 51.c and 51.d.

20           c. Any administrative decision made by EPA pursuant to  
21 Paragraph 51.b shall be reviewable by this Court, provided that a motion for  
22 judicial review of the decision is filed by Settling Defendants with the Court and  
23 served on all Parties within 20 Days of receipt of EPA's decision. The motion  
24 shall include a description of the matter in dispute, the efforts made by the parties  
25 to resolve it, the relief requested, and the schedule, if any, within which the  
26 dispute must be resolved to ensure orderly implementation of this Partial Consent  
27 Decree. The United States may file a response to Settling Defendants' motion,  
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1 and, if permitted by this Court's local rules, Settling Defendants may file a reply.

2 d. In proceedings on any dispute governed by this Paragraph,  
3 Settling Defendants shall have the burden of demonstrating that the decision of  
4 the Superfund and Emergency Management Division Director is arbitrary and  
5 capricious or otherwise not in accordance with law. Judicial review of EPA's  
6 decision shall be on the administrative record compiled pursuant to  
7 Paragraph 51.a.

8 52. Formal dispute resolution for disputes that neither pertain to the  
9 selection or adequacy of any response action nor are otherwise accorded review  
10 on the administrative record under applicable principles of administrative law  
11 shall be governed by this Paragraph.

12 a. Following receipt of Settling Defendants' Statement of  
13 Position submitted pursuant to Paragraph 50, the Director of the Superfund and  
14 Emergency Management Division, EPA Region IX, will issue a final decision  
15 resolving the dispute. The Superfund and Emergency Management Division  
16 Director's decision shall be binding on Settling Defendants unless, within 20  
17 Days of receipt of the decision, Settling Defendants file with the Court and serve  
18 on the Parties a motion for judicial review of the decision setting forth the matter  
19 in dispute, the efforts made by the parties to resolve it, the relief requested, and  
20 the schedule, if any, within which the dispute must be resolved to ensure orderly  
21 implementation of this Partial Consent Decree. The United States may file a  
22 response to Settling Defendants' motion, and, if permitted by this Court's local  
23 rules, Settling Defendants may file a reply.

24 b. If Settling Defendants contest payment of any DTSC Future  
25 Response Costs, Settling Defendants shall comply with the procedures set forth  
26 in this Subparagraph. Prior to requesting formal dispute resolution pursuant to  
27 this Subparagraph, Settling Defendants shall notify DTSC's assigned Project  
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1 Manager and attempt to informally resolve the dispute with DTSC's Project  
2 Manager and branch chief. If the dispute cannot be resolved informally within  
3 20 Days, then Settling Defendants shall provide a written request for formal  
4 dispute resolution, which shall describe all issues in dispute and shall set forth the  
5 reasons for the dispute, both factual and legal. The written request for formal  
6 dispute resolution and any supporting documentation shall be sent to:

7 Chief, Collections and Resolutions Unit  
8 Department of Toxic Substances Control  
9 P.O. Box 806  
10 Sacramento, California 95812-0806

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

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

25 53. The invocation of formal dispute resolution procedures under this  
26 Section shall not extend, postpone, or affect in any way any obligation of Settling  
27 Defendants under this Partial Consent Decree, not directly in dispute, unless EPA  
28 or the Court agrees otherwise. Stipulated penalties with respect to the disputed



1 matter shall continue to accrue but payment shall be stayed pending resolution of  
2 the dispute as provided in Paragraph 61. Notwithstanding the stay of payment,  
3 stipulated penalties shall accrue from the first day of noncompliance with any  
4 applicable provision of this Partial Consent Decree. In the event that Settling  
5 Defendants do not prevail on the disputed issue, stipulated penalties shall be  
6 assessed and paid as provided in Section XVII (Stipulated Penalties).

7 **XVII. STIPULATED PENALTIES**

8 54. Settling Defendants shall be liable for stipulated penalties in the  
9 amounts set forth in Paragraphs 55 and 56 to the United States and DTSC, to be  
10 split 80%/20%, respectively, for failure to comply with the requirements of this  
11 Partial Consent Decree for Settling Defendants specified below, unless excused  
12 under Section XV (Force Majeure). "Compliance" by Settling Defendants shall  
13 include completion of all payments and activities required for Settling  
14 Defendants under this Partial Consent Decree, or any plan, report, or other  
15 deliverable approved under this Partial Consent Decree, in accordance with all  
16 applicable requirements of law, this Partial Consent Decree, the SOW, and any  
17 plans, reports, or other deliverables approved under this Partial Consent Decree  
18 and within the specified time schedules established by and approved under this  
19 Partial Consent Decree.

20 55. Stipulated Penalty Amounts – Work (Including Payments and  
21 Excluding Plans, Reports, and Other Deliverables).

22 a. The following stipulated penalties shall accrue per violation  
23 per Day for any noncompliance identified in Paragraph 55.b:

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

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\$3,000 31st Day and beyond

b. Compliance Milestones. Failure of Settling Defendants to perform any of the following within the specified time schedule provided for in this Partial Consent Decree, the SOW, or its work plans shall result in stipulated penalties in the amounts set forth in Paragraph 55.a:

(1) Performance of additional work, if requested by EPA pursuant to Paragraph 11.d and subject to the limitations set forth in Paragraph 10.d;

(2) Provision (by Settling Defendants) of access pursuant to Paragraph 12;

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

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

(5) Establishment of an escrow account to hold any disputed EPA Future Response Costs or DTSC Future Response Costs under Paragraph 38.b; and

(6) Establishment and maintenance of performance guarantee in accordance with Paragraph 25.

56. Stipulated Penalty Amounts – Plans, Reports, and other Deliverables. The following stipulated penalties shall accrue per violation per Day for failure to submit timely or adequate reports or other plans or deliverables 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

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\$1,000 31st Day and beyond

57. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 69 (Work Takeover), Settling Defendants shall be liable for a stipulated penalty in the amount of \$300,000. Stipulated penalties under this Paragraph are in addition to the remedies available under Paragraphs 29 (Funding for Work Takeover) and 69 (Work Takeover).

58. All penalties shall begin to accrue on the Day after the complete performance is due or the Day a violation occurs, and shall continue to accrue through the final Day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Section VIII (EPA Approval of Plans, Reports, and Other Deliverables), during the period, if any, beginning on the 31st Day after EPA's receipt of such submission until the date that EPA notifies Settling Defendants of any deficiency; (b) with respect to a decision by the Director of the Superfund and Emergency Management Division, EPA Region IX, under Paragraphs 51.b or 52.a of Section XVI (Dispute Resolution), during the period, if any, beginning on the 21st Day after the date that the Settling Defendants' reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (c) with respect to judicial review by this Court of any dispute under Section XVI (Dispute Resolution), during the period, if any, beginning on the 31st Day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing in this Partial Consent Decree shall prevent the simultaneous accrual of separate penalties for separate violations of this Partial Consent Decree.

59. Following EPA's determination, after consultation with DTSC, that Settling Defendants have failed to comply with any of their obligations under this

1 Partial Consent Decree, EPA may give Settling Defendants written notification of  
2 the same and describe the noncompliance. EPA and/or DTSC may send Settling  
3 Defendants a written demand for the payment of the penalties. However,  
4 penalties shall accrue as provided in the preceding Paragraph regardless of  
5 whether EPA has notified Settling Defendants of a violation.

6 60. All penalties accruing under this Section shall be due and payable to  
7 the United States and DTSC within 30 Days of Settling Defendants' receipt from  
8 EPA of a demand for payment of the penalties, unless Settling Defendants invoke  
9 the dispute resolution procedures under Section XVI (Dispute Resolution) within  
10 the 30-Day period. All payments to the United States under this Section shall  
11 indicate that the payment is for stipulated penalties, and shall be made in  
12 accordance with Paragraphs 37.b and 37.c, and all payments to DTSC shall be  
13 made in accordance with Paragraph 34.c.

14 61. Penalties shall continue to accrue as provided in Paragraph 58  
15 during any dispute resolution period, but need not be paid until the following:

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

20 b. If the dispute is appealed to this Court and the United States  
21 and/or DTSC prevails in whole or in part, Settling Defendants shall pay all  
22 accrued penalties determined by the Court to be owed to EPA and DTSC within  
23 60 Days of receipt of the Court's decision or order, except as provided in  
24 Paragraph 61.c;

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

7         62. If Settling Defendants fail to pay stipulated penalties when due,  
8 Settling Defendants shall pay Interest on the unpaid stipulated penalties as  
9 follows: (a) if Settling Defendants timely invoked dispute resolution such that the  
10 obligation to pay stipulated penalties was stayed pending the outcome of dispute  
11 resolution, Interest shall accrue from the date stipulated penalties are due  
12 pursuant to Paragraph 61 until the date of payment; and (b) if Settling Defendants  
13 fail to timely invoke dispute resolution, Interest shall accrue from the date of  
14 demand under Paragraph 60 until the date of payment. If Settling Defendants fail  
15 to pay stipulated penalties and Interest when due, the United States or DTSC may  
16 institute proceedings to collect the penalties and Interest.

17         63. The payment of penalties and Interest, if any, shall not alter in any  
18 way Settling Defendants' obligation to complete the performance of the Work  
19 required under this Partial Consent Decree.

20         64. Nothing in this Partial Consent Decree shall be construed as  
21 prohibiting, altering, or in any way limiting the ability of the United States or  
22 DTSC to seek any other remedies or sanctions available by virtue of Settling  
23 Defendants' violation of this Partial Consent Decree or of the statutes and  
24 regulations upon which it is based, including, but not limited to, penalties  
25 pursuant to Section 122(l) of CERCLA, 42 U.S.C. § 9622(l), or applicable  
26 federal or California law, provided, however, that the United States shall not seek  
27 civil penalties pursuant to Section 122(l) of CERCLA for any violation for which  
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1 a stipulated penalty is provided in this Partial Consent Decree, except in the case  
2 of a willful violation of this Partial Consent Decree.

3 65. Notwithstanding any other provision of this Section, the United  
4 States may, in its unreviewable discretion, waive any portion of stipulated  
5 penalties that have accrued pursuant to this Partial Consent Decree.

6 **XVIII. COVENANTS BY PLAINTIFFS**

7 66. Covenant for Settling Defendants by United States. In consideration  
8 of the actions that will be performed and the payments that will be made by  
9 Settling Defendants under this Partial Consent Decree, and except as specifically  
10 provided in Paragraph 68 (General Reservations of Rights), the United States  
11 covenants not to sue or to take administrative action against Settling Defendants  
12 pursuant to Sections 106 and 107(a) of CERCLA for the RI/FS for OU6, EPA  
13 Past Response Costs, or EPA Future Response Costs. These covenants shall take  
14 effect upon the receipt by EPA of the payments required by Paragraph 34  
15 (Payment by Settling Defendants for EPA Past Response Costs and DTSC Past  
16 Response Costs) and any Interest or stipulated penalties due thereon under  
17 Paragraph 39 (Interest) or Section XVII (Stipulated Penalties). These covenants  
18 are conditioned upon the satisfactory performance by Settling Defendants of their  
19 obligations under this Partial Consent Decree. These covenants extend only to  
20 Settling Defendants and their successors and assigns and do not extend to any  
21 other person.

22 67. Covenants by DTSC. Except as specifically provided in Paragraph  
23 68 (General Reservations of Rights), DTSC covenants not to sue or to take  
24 administrative action against Settling Defendants pursuant to Section 107(a) of  
25 CERCLA, 42 U.S.C. § 9607(a), and Cal. Health & Safety Code Sections  
26 25323.5, 25355.5, and 25360 for the RI/FS for OU6, DTSC Past Response Costs,  
27 and DTSC Future Response Costs. These covenants shall take effect upon  
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1 payment to DTSC of all payments required from Settling Defendants by  
2 Paragraph 34.c (Payment of DTSC Past Response Costs) and any Interest or  
3 stipulated penalties due thereon under Paragraph 39 (Interest) or Section XVII  
4 (Stipulated Penalties). These covenants are conditioned upon the satisfactory  
5 performance by Settling Defendants of their obligations under this Partial  
6 Consent Decree. These covenants extend only to Settling Defendants and their  
7 successors and assigns and do not extend to any other person.

8       68. General Reservations of Rights. The United States and the State  
9 reserve, and this Partial Consent Decree is without prejudice to, all rights against  
10 Settling Defendants, with respect to all matters not expressly included within  
11 Plaintiffs' covenants. Notwithstanding any other provision of this Partial  
12 Consent Decree, the United States and the State reserve all rights against Settling  
13 Defendants, with respect to:

- 14           a. liability for failure by Settling Defendants to meet a  
15 requirement of this Partial Consent Decree;
- 16           b. liability arising from the past, present, or future disposal,  
17 release, or threat of release of Waste Material outside of the Site;
- 18           c. liability based on the ownership or operation of any portion of  
19 the Site by Settling Defendants when such ownership or operation commences  
20 after signature of this Partial Consent Decree;
- 21           d. liability based on Settling Defendants' transportation,  
22 treatment, storage, or disposal, or the arrangement for the transportation,  
23 treatment, storage, or disposal of Waste Material at or in connection with the Site,  
24 other than as provided in the Work, or otherwise ordered by EPA, after signature  
25 of this Partial Consent Decree;
- 26           e. liability for damages for injury to, destruction of, or loss of  
27 natural resources, and for the costs of any natural resource damage assessments;
- 28



- 1 f. criminal liability;
- 2 g. liability for violations of federal or state law which occur
- 3 during or after implementation of the Work;
- 4 h. liability for vapor intrusion and for any other operable unit
- 5 other than the Southern Pathway OU at the Montrose Chemical Corp. Superfund
- 6 Site or the final response action;
- 7 i. except as set forth in Paragraph 10.d, liability for performance
- 8 of future response actions in the Southern Pathway OU, including but not limited
- 9 to the RD and/or RA for any remedy selected in the ROD;
- 10 j. liability issues described in Paragraph T;
- 11 k. except as set forth in Paragraph 10.d, liability for costs that
- 12 the United States or DTSC will incur regarding the Site but that are not within the
- 13 definition of EPA Future Response Costs or DTSC Future Response Costs,
- 14 including but not limited to any costs related to the development of the ROD or
- 15 implementation of the RD/RA for the Southern Pathway OU, if any; and
- 16 l. liability for costs incurred or to be incurred by the Agency for
- 17 Toxic Substances and Disease Registry regarding the Site.

18 69. Work Takeover.

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

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1 issuance of such notice.

2           b.     If, after expiration of the 20-Day notice period specified in  
3 Paragraph 69.a, Settling Defendants have not remedied to EPA’s satisfaction the  
4 circumstances giving rise to EPA’s issuance of the relevant Work Takeover  
5 Notice, EPA may at any time thereafter assume the performance of all or any  
6 portion(s) of the Work as EPA deems necessary (“Work Takeover”). EPA will  
7 notify Settling Defendants in writing (which writing may be electronic) if EPA  
8 determines that implementation of a Work Takeover is warranted under this  
9 Paragraph. Funding of Work Takeover costs is addressed under Paragraph 29  
10 (Funding for Work Takeover).

11           c.     Settling Defendants may invoke the procedures set forth in  
12 Paragraph 51 (Record Review) to dispute EPA’s implementation of a Work  
13 Takeover under Paragraph 69.b. However, notwithstanding Settling Defendants’  
14 invocation of such dispute resolution procedures, and during the pendency of any  
15 such dispute, EPA may in its sole discretion commence and continue a Work  
16 Takeover under Paragraph 69.b until the earlier of: (1) the date that the Settling  
17 Defendants remedy, to EPA’s satisfaction, the circumstances giving rise to EPA’s  
18 issuance of the relevant Work Takeover Notice, or (2) the date that a final  
19 decision is rendered in accordance with Paragraph 51 (Record Review) requiring  
20 EPA to terminate such Work Takeover.

21           70.    Notwithstanding any other provision of this Partial Consent Decree,  
22 the United States and the State retain all authority and reserve all rights to take  
23 any and all response actions authorized by law.

24                   **XIX. COVENANTS BY SETTLING DEFENDANTS**

25           71.    Covenant Not to Sue by Settling Defendants. Subject to the  
26 reservations in Paragraph 73, Settling Defendants hereby covenant not to sue and  
27 agree not to assert any claims or causes of action against the United States or  
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1 DTSC, or their contractors and employees, with respect to the RI/FS for OU6,  
2 past response actions regarding the Site, EPA Past Response Costs, EPA Future  
3 Response Costs, DTSC Past Response Costs, DTSC Future Response Costs, and  
4 this Partial Consent Decree, including, but not limited to:

5 a. any direct or indirect claim for reimbursement from the  
6 Hazardous Substance Superfund (established pursuant to the Internal Revenue  
7 Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112,  
8 113 (42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, 9613) or any other provision of  
9 law;

10 b. any claims against the United States, including any  
11 department, agency or instrumentality of the United States, or DTSC under  
12 CERCLA Sections 107 or 113, 42 U.S.C. §§ 9607 and 9613, RCRA Section  
13 7002(a), 42 U.S.C. § 6972(a), or state law regarding the RI/FS for OU6, past  
14 response actions regarding the Site, EPA Past Response Costs, EPA Future  
15 Response Costs, DTSC Past Response Costs, DTSC Future Response Costs, and  
16 this Partial Consent Decree; or

17 c. any claims arising out of response actions at or in connection  
18 with the RI/FS for OU6, past response actions regarding the Site, EPA Past  
19 Response Costs, EPA Future Response Costs, DTSC Past Response Costs, DTSC  
20 Future Response Costs, and this Partial Consent Decree, including any claim  
21 under the United States Constitution, the State Constitution, the Tucker Act, 28  
22 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or  
23 at common law.

24 72. Except as provided in Paragraph 82 (Res Judicata and Other  
25 Defenses), the covenants in this Section shall not apply if the United States or  
26 DTSC brings a cause of action or issues an order pursuant to any of the  
27 reservations in Section XVIII (Covenants by Plaintiffs), other than in Paragraphs  
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1 68.a (claims for failure to meet a requirement of the Decree), 68.f (criminal  
2 liability), and 68.g (violations of federal/state law during or after implementation  
3 of the Work), but only to the extent that Settling Defendants' claims arise from  
4 the same response action, response costs, or damages that the United States or  
5 DTSC is seeking pursuant to the applicable reservation.

6 73. Settling Defendants' Reservations. Settling Defendants reserve, and  
7 this Partial Consent Decree is without prejudice to:

8 a. claims against the United States, subject to the provisions of  
9 Chapter 171 of Title 28 of the United States Code, and brought pursuant to any  
10 statute other than CERCLA or RCRA and for which the waiver of sovereign  
11 immunity is found in a statute other than CERCLA or RCRA, for money damages  
12 for injury or loss of property or personal injury or death caused by the negligent or  
13 wrongful act or omission of any employee of the United States, as that term is  
14 defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or  
15 employment under circumstances where the United States, if a private person,  
16 would be liable to the claimant in accordance with the law of the place where the  
17 act or omission occurred. However, the foregoing shall not include any claim  
18 based on EPA's selection of response actions or the oversight or approval of  
19 Settling Defendants' plans, reports, other deliverables or activities; and

20 b. claims or defenses regarding liability issues described in  
21 Paragraph T.

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

25 75. Claims Against De Micromis Parties. Settling Defendants agree not  
26 to assert any claims and to waive all claims or causes of action (including but not  
27 limited to claims or causes of action under Sections 107(a) and 113 of CERCLA)

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1 that they may have for all matters relating to the Site against any person where  
2 the person's liability to Settling Defendants with respect to the Site is based  
3 solely on having arranged for disposal or treatment, or for transport for disposal  
4 or treatment, of hazardous substances at the Site, or having accepted for transport  
5 for disposal or treatment of hazardous substances at the Site, if all or part of the  
6 disposal, treatment, or transport occurred before April 1, 2001, and the total  
7 amount of material containing hazardous substances contributed by such person  
8 to the Site was less than 110 gallons of liquid materials or 200 pounds of solid  
9 materials.

10       76. The waiver in Paragraph 75 (Claims Against De Micromis Parties)  
11 shall not apply with respect to any defense, claim, or cause of action that a  
12 Settling Defendant may have against any person meeting the criteria in Paragraph  
13 75 if such person asserts a claim or cause of action relating to the Site against  
14 such Settling Defendant. This waiver also shall not apply to any claim or cause  
15 of action against any person meeting the criteria in Paragraph 75 if EPA  
16 determines:

17           a. that such person has failed to comply with any EPA requests  
18 for information or administrative subpoenas issued pursuant to Section 104(e) or  
19 122(e) of CERCLA, 42 U.S.C. § 9604(e) or 9622(e), or Section 3007 of RCRA,  
20 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the  
21 performance of a response action or natural resource restoration with respect to  
22 the Site, or has been convicted of a criminal violation for the conduct to which  
23 this waiver would apply and that conviction has not been vitiated on appeal or  
24 otherwise; or

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

2 **XX. EFFECT OF SETTLEMENT; CONTRIBUTION**

3 77. Nothing in this Partial Consent Decree shall be construed to create  
4 any rights in, or grant any cause of action to, any person not a Party to this Partial  
5 Consent Decree. Except as provided in Paragraph 75 (Claims Against De  
6 Micromis Parties), each of the Parties expressly reserves any and all rights  
7 (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C.  
8 § 9613), defenses, claims, demands, and causes of action which each of them  
9 may have with respect to any matter, transaction, or occurrence relating in any  
10 way to the Site against any person not a Party hereto. Nothing in this Partial  
11 Consent Decree diminishes the right of the United States or the State, pursuant to  
12 Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any  
13 such persons to obtain additional response costs or response action and to enter  
14 into settlements that give rise to contribution protection pursuant to Section  
15 113(f)(2).

16 78. The Parties agree, and by entering this Partial Consent Decree this  
17 Court finds, that this Partial Consent Decree constitutes a judicially-approved  
18 settlement pursuant to which each Settling Defendant has, as of the Effective  
19 Date, resolved liability to the Plaintiffs within the meaning of Section 113(f)(2)  
20 of CERCLA, 42 U.S.C. § 9613(f)(2), and that each Settling Defendant is entitled,  
21 as of the Effective Date, to protection from contribution actions or claims as  
22 provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by  
23 law, for “matters addressed” in this Partial Consent Decree. The “matters  
24 addressed” in this Partial Consent Decree are the RI/FS for OU6, EPA Past  
25 Response Costs, EPA Future Response Costs, DTSC Past Response Costs, and  
26 DTSC Future Response Costs.

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

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

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

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

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**XXI. ACCESS TO INFORMATION**

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

84. Business Confidential and Privileged Documents.

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

1 Code §§ 6250, *et seq.*, the public may be given access to such Records without  
2 further notice to Settling Defendants.

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

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

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

24           86. If relevant to the proceeding, the Parties agree that validated  
25 sampling data generated in accordance with the SOW and reviewed and approved  
26 by EPA shall be admissible as evidence, without objection, in any proceeding  
27 under this Partial Consent Decree.

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

6 **XXII. RETENTION OF RECORDS**

7 88. Until 15 years after Settling Defendants' receipt of EPA's  
8 notification pursuant to Paragraph 31.c (Completion of the Work), each Settling  
9 Defendant shall preserve and retain all non-identical copies of Records (including  
10 Records in electronic form) now in its possession or control or which come into  
11 its possession or control that relate in any manner to its liability under CERCLA  
12 with respect to the Site, provided, however, that Settling Defendants who are  
13 potentially liable as owners or operators of the Site must retain, in addition, all  
14 Records that relate to the liability of any other person under CERCLA with  
15 respect to the Site. Each Settling Defendant must also retain, and instruct its  
16 contractors and agents to preserve, for the same period of time specified above all  
17 non-identical copies of the last draft or final version of any Records (including  
18 Records in electronic form) now in its possession or control or which come into  
19 its possession or control that relate in any manner to the performance of the  
20 Work, provided, however, that each Settling Defendant (and its contractors and  
21 agents) must retain, in addition, copies of all data generated during the  
22 performance of the Work and not contained in the aforementioned Records  
23 required to be retained. Each of the above record retention requirements shall  
24 apply regardless of any corporate retention policy to the contrary.

25 89. At the conclusion of this record retention period, Settling  
26 Defendants shall notify the United States and DTSC at least 90 Days prior to the  
27 destruction of any such Records, and, upon request by the United States or the  
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1 DTSC, Settling Defendants shall deliver any such Records to EPA or DTSC.  
2 Settling Defendants may assert that certain Records are privileged under the  
3 attorney-client privilege or any other privilege recognized by federal law. If  
4 Settling Defendants assert such a privilege, they shall provide Plaintiffs with the  
5 following: (a) the title of the Record; (b) the date of the Record; (c) the name,  
6 title, affiliation (e.g., company or firm), and address of the author of the Record;  
7 (d) the name and title of each addressee and recipient; (e) a description of the  
8 subject of the Record; and (f) the privilege asserted by Settling Defendants. If a  
9 claim of privilege applies only to a portion of a Record, the Record shall be  
10 provided to the United States and the DTSC in redacted form to mask the  
11 privileged portion only. Settling Defendants shall retain all Records that they  
12 claim to be privileged until the United States or DTSC has had a reasonable  
13 opportunity to dispute the privilege claim and any such dispute has been resolved  
14 in Settling Defendants' favor.

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

### 24 **XXIII. NOTICES AND SUBMISSIONS**

25 91. Whenever, under the terms of this Partial Consent Decree, written  
26 notice is required to be given or a report or other document is required to be sent  
27 by one Party to another, it shall be directed to the individuals at the addresses  
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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  
15 Washington, D.C. 20044-7611  
16 eescdcopy.enrd@usdoj.gov  
17 Re: DJ # 90-11-3-511

16 and: Enrique Manzanilla  
17 Director, Superfund and Emergency  
18 Management Division  
19 United States Environmental Protection  
20 Agency  
21 Region IX  
22 75 Hawthorne St. (SFD-1)  
23 San Francisco, CA 94105  
24 Manzanilla.enrique@epa.gov

23 As to EPA: Michael Schulman  
24 EPA Project Coordinator  
25 United States Environmental Protection  
26 Agency  
27 Region IX  
28 75 Hawthorne St. (SFD-1)  
San Francisco, CA 94105  
Schulman.michael@epa.gov

28 As to the EPA Regional Marie Ortesi

1 Financial Management Officer: United States Environmental Protection  
2 Agency  
3 Region IX  
4 75 Hawthorne St.  
5 San Francisco, CA 94105

6 As to DTSC: Peter Garcia  
7 DTSC Division Chief  
8 Site Mitigation and Restoration Program  
9 ATTN: Willard Garrett  
10 DTSC Project Manager  
11 for Site Code "Montrose OU6 RI/FS CD"  
12 Department of Toxic Substances Control  
13 5796 Corporate Avenue  
14 Cypress, CA 90630  
15 Willard.Garrett@dtsc.ca.gov

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

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

25 Charles N. Elmendorf  
26 President  
27 Stauffer Management Company LLC and as  
28 attorney-in-fact for Bayer CropScience Inc.  
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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Principal Counsel  
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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

**XXIV. RETENTION OF JURISDICTION**

92. 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 XVI (Dispute Resolution).

**XXV. APPENDICES**

93. The following appendices are attached to and incorporated into this



1 Partial Consent Decree:

2 “Appendix A” is the map generally depicting the Site.

3 “Appendix B” is the SOW.

4 “Appendix C” is the form of the performance guarantee.

5 **XXVI. COMMUNITY RELATIONS**

6 94. If requested by EPA or DTSC, Settling Defendants shall participate  
7 in community relations activities pursuant to the community relations plan to be  
8 developed by EPA. EPA, in consultation with DTSC, will determine the  
9 appropriate role for Settling Defendants under the Plan. Settling Defendants  
10 shall also cooperate with EPA and DTSC in providing information regarding the  
11 Work to the public. As requested by EPA or DTSC, Settling Defendants shall  
12 participate in the preparation of such information for dissemination to the public  
13 and in public meetings which may be held or sponsored by EPA or DTSC to  
14 explain activities at or relating to the Site or the Work. Costs incurred by the  
15 United States or DTSC under this Section, including the costs of any technical  
16 assistance grant under Section 117(e) of CERCLA, 42 U.S.C. § 9617(e), shall be  
17 considered EPA Future Response Costs that Settling Defendants shall pay  
18 pursuant to Section XIII (Payments for Response Costs).

19 **XXVII. MODIFICATION**

20 95. Except as provided in Paragraph 11 (Modification of the RI/FS  
21 Work Plan), material modifications to this Partial Consent Decree, including the  
22 SOW, shall be in writing, signed by the United States, DTSC, and the Settling  
23 Defendants, and shall be effective upon approval by the Court. Except as  
24 provided in Paragraph 11 (Modification of the RI/FS Work Plan), schedule  
25 modifications and non-material modifications to this Partial Consent Decree,  
26 including the SOW, shall be in writing and shall be effective when signed by  
27 duly authorized representatives of the United States, DTSC, and Settling  
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1 Defendants. A modification to the SOW shall be considered material if it  
2 fundamentally alters the basic features of the RI/FS for the Southern Pathway  
3 OU. Before providing its approval to any modification to the SOW, the United  
4 States will provide DTSC with a reasonable opportunity to review and comment  
5 on the proposed modification.

6 96. Nothing in this Partial Consent Decree shall be deemed to alter the  
7 Court's power to enforce, supervise or approve modifications to this Partial  
8 Consent Decree.

9 **XXVIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

10 97. This Partial Consent Decree shall be lodged with the Court for a  
11 period of not less than 30 Days for public notice and comment in accordance with  
12 CERCLA and 28 C.F.R. § 50.7. The United States and DTSC reserve the right to  
13 withdraw or withhold their consent if the comments regarding this Partial  
14 Consent Decree disclose facts or considerations which indicate that this Partial  
15 Consent Decree is inappropriate, improper, or inadequate. Settling Defendants  
16 consent to the entry of this Partial Consent Decree without further notice.

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

21 **XXIX. SIGNATORIES/SERVICE**

22 99. Each undersigned representative of a Settling Defendant to this  
23 Partial Consent Decree, of the Environment and Natural Resources Division of  
24 the Department of Justice, and of the California Department of Toxic Substances  
25 Control certifies that he or she is fully authorized to enter into the terms and  
26 conditions of this Partial Consent Decree and to execute and legally bind such  
27 Party to this document.

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

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SO ORDERED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2021.

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HONORABLE DAVID O. CARTER  
United States District Judge

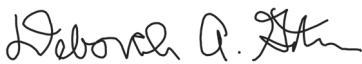
1 THE UNDERSIGNED PARTY enters into this Partial Consent Decree in the  
2 matter of *United States of America and State of California v. Montrose*  
3 *Chemical Corp. of California, et al.*

4 **FOR THE UNITED STATES OF**  
5 **AMERICA:**

6  
7 JEAN E. WILLIAMS  
8 Acting Assistant Attorney General  
9 Environment & Natural Resources Division  
10 United States Department of Justice  
11 950 Pennsylvania Ave., NW  
12 Washington, DC 20530-0001

12 March 10, 2021

13 Date:

12   
13 \_\_\_\_\_  
14 GABRIEL M. ALLEN  
15 Senior Attorney  
16 DEBORAH A. GITIN  
17 Senior Counsel  
18 Environmental Enforcement Section  
19 Environment & Natural Resources Division  
20 United States Department of Justice  
21 450 Golden Gate Ave., Suite 07-6714  
22 San Francisco, CA 94102  
23  
24  
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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 **FOR THE ENVIRONMENTAL**  
5 **PROTECTION AGENCY:**

6 

7 11 March 2021

8 Date:

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

16 

17 March 10, 2021

18 Date:

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  
25  
26  
27  
28

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

7 03/10/2021

8 Date:



9 GRANT COPE  
10 Deputy Director  
11 Site Mitigation and Restoration Program  
12 Department of Toxic Substances Control  
13 P.O. Box 806  
14 1001 I Street, 25th Floor  
15 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:**

March 3, 2021  
Date: \_\_\_\_\_

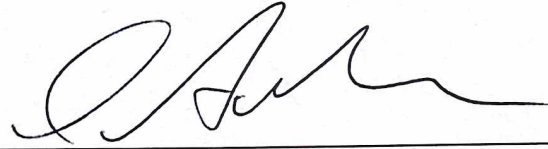
  
\_\_\_\_\_  
JOSEPH C. KELLY  
President  
6000 Ericksen Avenue NE, Suite 380  
Bainbridge Island, WA 98110

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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.*

**FOR TFCF AMERICA, INC.:**

3/12/2021  
Date:



\_\_\_\_\_  
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:**

3/10/21

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.:**

3/10/21  
Date:

  
CHARLES ELMENDORF

President  
Stauffer Management Company LLC and  
attorney-in-fact for Bayer CropScience Inc.  
1800 Concord Pike  
PO Box 15437  
FOB 2-311  
Wilmington, DE 19850-5437