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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

UNITED STATES OF AMERICA
and STATE OF CALIFORNIA,

Plaintiffs,
v.

MONTROSE CHEMICAL CORP.
OF CALIFORNIA, et al.,

Defendants

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

PARTIAL CONSENT DECREE

(Dual Site Groundwater
Operable Unit –
Chlorobenzene Plume Remedy
Operation and Maintenance)

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I. BACKGROUND

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

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

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

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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 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”) other than JCI Jones Chemicals, Inc. (“Jones”) for the incurrence of
20 response costs caused by the release or threatened release of hazardous
21 substances from the Montrose Plant Property. The Parties (other than Jones)
22 subsequently lodged and the Court entered two separate consent decrees for
23 certain of those costs. Specifically, on June 26, 2002, the Court entered a “Partial
24 Consent Decree (relating to the Neighborhood Areas),” which resolved the
25 liability of all Settling Defendants other than Jones to the United States and
26 DTSC for response costs related to the Neighborhood Areas, as defined in that
27 agreement. On the same day, the Court entered a “Partial Consent Decree
28 (relating to the Current Storm Water Pathway),” which resolved the liability of

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

5 G. This Partial Consent Decree satisfies claims against the-Settling
6 Defendants for certain costs incurred by the United States and DTSC for certain
7 response actions at the Dual Site Groundwater Operable Unit of the Montrose
8 Chemical Corp. and Del Amo Superfund Sites (the “Dual Site”) in Los Angeles
9 County, California, together with accrued interest, as set forth herein. This
10 Partial Consent Decree also provides for the performance of response actions by
11 the Settling Defendants for the Chlorobenzene Plume at the Dual Site consistent
12 with the National Contingency Plan, 40 C.F.R. Part 300 (“NCP”).

13 H. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA,
14 42 U.S.C. § 9621(f)(1)(F), EPA notified DTSC on February 4, 2010, of
15 negotiations with potentially responsible parties (“PRPs”) regarding the remedy
16 for the Dual Site. EPA has provided DTSC with an opportunity to participate in
17 such negotiations and be a party to this Partial Consent Decree.

18 I. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C.
19 § 9622(j)(1), EPA notified the U.S. Department of Commerce, National Oceanic
20 and Atmospheric Administration, and the U.S. Department of the Interior, Fish
21 and Wildlife Service and National Park Service on November 17, 2010, of these
22 negotiations and invited them to participate in the consent decree negotiations.

23 J. Settling Defendants do not admit any liability to Plaintiffs arising
24 out of the transactions or occurrences alleged in the Complaint, nor do they
25 acknowledge that the release or threatened release of hazardous substances at or
26 from the Dual Site constitutes an imminent and substantial endangerment to the
27 public health or welfare or the environment, nor any damage to natural resources.
28

1 K. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed
2 the Montrose Chemical Corp. Superfund Site (the “Site”) on the National
3 Priorities List (“NPL”), set forth at 40 C.F.R. Part 300, Appendix B, by
4 publication in the Federal Register on October 4, 1989, 54 Fed. Reg. 41015. By
5 the same authority, EPA included the Del Amo Superfund Site on the NPL on
6 September 5, 2002. 67 Fed. Reg. 56757.

7 L. In response to a release or a substantial threat of a release of a
8 hazardous substance(s) at or from the Dual Site, Montrose undertook Remedial
9 Investigation (“RI”) activities for the Montrose Chemical Corp. Superfund Site in
10 1986. In 1998, EPA took over the Montrose investigation and completed a
11 Remedial Investigation Report in May 1998, pursuant to 40 C.F.R. § 300.430;
12 and Shell Oil Company (“Shell”) issued a separate Remedial Investigation Report
13 for the adjacent Del Amo Study Area the same month. EPA had already assumed
14 responsibility for the Feasibility Study (“FS”) and issued a Feasibility Study
15 Report for the Dual Site Groundwater Operable Unit in May 1998.

16 M. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA
17 published notice of the completion of the FS and of the proposed plan for the
18 Dual Site in June 1998, in a major local newspaper of general circulation. EPA
19 provided an opportunity for written and oral comments from the public on the
20 proposed plan. A copy of the transcript of the public meeting is available to the
21 public as part of the administrative record upon which the Director of the
22 Superfund Division, as the delegate of the Regional Administrator of EPA
23 Region IX, based the selection of the response action.

24 N. The decision by EPA on the remedy to be implemented at the Dual
25 Site is embodied in a final Record of Decision (“ROD”), executed on March 30,
26 1999, on which the State has given its concurrence. The ROD includes a
27 responsiveness summary to the public comments. Notice of the final plan was
28 published in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b).

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1 The ROD was modified on October 7, 2019 by a memorandum regarding
2 Clarification of Performance Standards Regarding Hydraulic Extraction and
3 Reinjection in Section 13 of the 1999 Superfund Record of Decision: Montrose
4 Chemical and Del Amo Sites, OU 3 (the “Flowrate Memo”). The modification
5 will not have a significant impact on the scope, performance or cost of the
6 remedy.

7 O. After issuance of the ROD, remedial design work began. Initially,
8 EPA undertook a groundwater modeling effort to assess the direction and flow of
9 groundwater in and near the Dual Site. In 2003, EPA issued separate
10 Administrative Orders to Montrose and Shell for the Interim Remedial Design.
11 See In The Matter of the Montrose Chemical Superfund Site and the Del Amo
12 Superfund Site, Los Angeles, California, Groundwater Operable Unit, U.S. EPA
13 Docket Number 2003-06, and In The Matter of the Del Amo Superfund Site and
14 Montrose Chemical Superfund Site, Los Angeles, California, Groundwater
15 Operable Unit, U.S. EPA Docket Number 2003-08. Montrose and Shell
16 complied with those orders. EPA subsequently issued another order to Montrose
17 and Shell, EPA Administrative Order Number 2008-04A (“EPA Order 2008-
18 04A”), requiring completion of certain elements of remedial design. EPA
19 approved the remedial design report for the Chlorobenzene Plume remedy
20 required under EPA Order 2008-04A in September 2012.

21 P. On August 22, 2012, the Court entered a partial consent decree (the
22 “Construction CD”) under CERCLA in this action relating to the Dual Site.
23 Under the Construction CD, Settling Defendants Montrose Chemical Corporation
24 of California, Bayer CropScience Inc., TFCF America, Inc., and Stauffer
25 Management Company LLC (collectively, the “DDT Parties”), are performing a
26 discrete component of the remedy for the Dual Site selected by EPA in the ROD,
27 namely financing and performing construction of the primary groundwater
28 treatment system for the Chlorobenzene Plume of groundwater contamination, as

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1 described in the ROD for the Dual Site. All elements of construction that are set
2 forth in the statement of work attached to the Construction CD will be undertaken
3 pursuant to the Construction CD, rather than this Partial Consent Decree. The
4 DDT Parties will also pay oversight costs incurred by EPA and DTSC pursuant
5 to the terms of the Construction CD. The DDT Parties receive a covenant not to
6 sue from the United States and DTSC in the Construction CD with respect to
7 their performance of their obligations thereunder, fully effective upon completion
8 of the work required by the Construction CD. The DDT Parties currently
9 estimate that the work required by the Construction CD will be fully
10 implemented before the end of 2021.

11 Q. On August 4, 1993, EPA issued General Notice to Settling
12 Defendant Jones, providing notice that EPA considers Jones to be a potentially
13 responsible party with respect to contamination found at the Dual Site. EPA
14 issued Special Notice to Settling Defendant Jones on January 20, 2011, inviting
15 Jones to participate in formal negotiations to facilitate implementation of the
16 remedial action for the Dual Site.

17 R. To facilitate the resolution of this matter and the prompt and early
18 commencement of the remedial action for the Dual Site, EPA, after consultation
19 with the State, has determined that, based on the information currently available,
20 it is appropriate to enter into this Partial Consent Decree, which addresses part of
21 the multi-step remedy selected in the ROD as well as certain response costs
22 incurred by the United States and DTSC. This Partial Consent Decree addresses
23 only the Chlorobenzene Plume and does not address the TCE Plume and Benzene
24 Plume. This Partial Consent Decree is without prejudice to all Parties' rights,
25 claims, and defenses with respect to future response actions related to the TCE
26 Plume and the Benzene Plume. Plaintiffs anticipate that the remedial actions for
27 the TCE Plume and the Benzene Plume, as described in the ROD, will be
28 implemented by other parties under separate enforcement instruments.

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1 S. Based on the information currently available, EPA and DTSC
2 believe that the Work will be properly and promptly conducted by Settling
3 Defendants if conducted in accordance with the requirements of this Partial
4 Consent Decree and its appendices.

5 T. Solely for the purposes of Section 113(j) of CERCLA, 42 U.S.C.
6 § 9613(j), the remedial action set forth in the ROD and the Work to be performed
7 by Settling Defendants shall constitute a response action taken or ordered by the
8 President for which judicial review shall be limited to the administrative record.
9 In accordance with Section 113(j) of CERCLA, otherwise applicable principles
10 of administrative law shall govern whether any supplemental materials may be
11 considered by the Court.

12 U. In addition, the Court has already considered certain issues relating
13 to liability for the groundwater contamination emanating from the Site and issued
14 an Order on Summary Judgment (Order Granting United States' Motion for
15 Partial Summary Judgment, April 24, 2000, as amended by Joint Stipulation and
16 Order, July 18, 2000) (ECF Nos. 1922 and 2100). In these Orders, the Court
17 concluded that Montrose, Atkemix Thirty-Seven, Inc. (corporate predecessor of
18 Settling Defendant Stauffer Management Company LLC), and Aventis
19 CropScience USA, Inc. (corporate predecessor of Settling Defendant Bayer
20 CropScience Inc.) are jointly and severally liable for all costs of removal or
21 remedial action incurred by the United States or DTSC with respect to the former
22 Montrose Plant Property and certain property referred to in the orders as the
23 "Stauffer Property" and currently owned by Settling Defendant Stauffer
24 Management Company LLC. The relevant property is the 13-acre parcel located
25 at 20201 Normandie Avenue in Los Angeles County where Montrose
26 manufactured the pesticide dichlorodiphenyl trichloroethane, or DDT, between
27 1947 and 1982. Montrose and Aventis CropScience USA, Inc. (corporate
28 predecessor of Settling Defendant Bayer CropScience Inc.) were also adjudged

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1 jointly and severally liable for all costs of removal or remedial action incurred by
2 the United States and State of California in responding to releases of hazardous
3 substances to the Palos Verdes Shelf and in the soil and groundwater at and
4 around the Montrose property ([ECF No. 2445](#)). These judgments provided
5 declaratory relief pursuant to Section 113(g)(2)(B) of CERCLA, [42 U.S.C.](#)
6 [§ 9613\(g\)\(2\)\(B\)](#).

7 V. The Parties recognize, and the Court by entering this Partial Consent
8 Decree finds, that this Partial Consent Decree has been negotiated by the Parties
9 in good faith, that implementation of this Partial Consent Decree will expedite
10 the cleanup of the Chlorobenzene Plume and will avoid further prolonged and
11 complicated litigation between the Parties, and that this Partial Consent Decree is
12 fair, reasonable, and in the public interest.

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

14 II. JURISDICTION

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

23 III. PARTIES BOUND

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

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

16 **IV. DEFINITIONS**

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

24 “Benzene Plume” shall mean the portion of the distribution of
25 benzene in groundwater at the Dual Site that is not commingled with
26 chlorobenzene, as defined in the ROD (page 7-11).

27 “CERCLA” shall mean the Comprehensive Environmental
28 Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C.

1 §§ 9601 – 9675.

2 “Chlorobenzene Plume” shall mean the entire distribution of
3 chlorobenzene in groundwater at the Dual Site, and all other contaminants that
4 are commingled with the chlorobenzene, as defined in the ROD (page 7-10).

5 “Construction CD” shall mean the Partial Consent Decree entered by
6 the Court on August 22, 2012 ([ECF No. 2735](#)).

7 “Construction CD Obligations” shall mean all activities and
8 obligations within the definition of “Work” set forth in Paragraph 4 of the
9 Construction CD and all costs required to be paid under the Construction CD.

10 “Containment Zone” shall have the same meaning as set forth in the
11 ROD. See Section 13 of the ROD.

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

18 “DDT Parties” shall mean Settling Defendants Montrose Chemical
19 Corporation of California, Bayer CropScience Inc., TFCF America, Inc.
20 (formerly 21st Century Fox America, Inc.), and Stauffer Management Company
21 LLC.

22 “DTSC” shall mean the California Department of Toxic Substances
23 Control, its officers, employees and representatives, all of its divisions and
24 branches, any predecessor agency in interest, and the Hazardous Substance
25 Account, as defined in [California Health and Safety Code § 25330](#).

26 “DTSC Future Response Costs” shall mean all costs, including, but
27 not limited to, direct and indirect costs, that DTSC incurs in reviewing or
28 developing plans, reports, and other deliverables submitted pursuant to this

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

10 "DTSC Interim Response Costs" shall mean all costs, including
11 direct and indirect costs, (a) paid by DTSC in connection with the Dual Site
12 between October 1, 2019, and the Effective Date, or (b) incurred prior to the
13 Effective Date but paid after that date in connection with the Dual Site. DTSC
14 Interim Response Costs shall not include, however, DTSC costs paid by the DDT
15 Parties under the Construction CD.

16 "DTSC Past Response Costs" shall mean all costs, including, but
17 not limited to, direct and indirect costs, that DTSC paid at or in connection with
18 the Dual Site between July 1, 2017, and September 30, 2019, plus Interest on all
19 such costs which has accrued pursuant to 42 U.S.C. § 9607(a) through such date.
20 DTSC Past Response Costs paid under this Partial Consent Decree shall not be
21 costs paid by the DDT Parties under the Construction CD.

22 "Dual Site" shall mean the Dual Site Groundwater Operable Unit of
23 the Montrose Chemical Corp. and Del Amo Superfund Sites, in Los Angeles
24 County, California, which is depicted generally on the map attached as Appendix
25 C.

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

1 is recorded on the Court docket.

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

4 “EPA Future Response Costs” shall mean all costs, including, but
5 not limited to, direct and indirect costs, that the United States incurs in reviewing
6 or developing plans, reports, and other deliverables submitted pursuant to this
7 Partial Consent Decree, in overseeing implementation of the Work, or otherwise
8 implementing, overseeing, or enforcing this Partial Consent Decree, including,
9 but not limited to, payroll costs, contractor costs, travel costs, laboratory costs,
10 the costs incurred pursuant to Paragraph 9 (Notice to Successors-in-Title and
11 Transfers of Real Property), Section VII (Remedy Review), Section
12 VIII (Access) (including, but not limited to, the cost of attorney time and any
13 monies paid to secure access including, but not limited to, the amount of just
14 compensation), Section XIII (Emergency Response), Paragraph 36 (Funding for
15 Work Takeover), and Section XXVII (Community Relations). EPA Future
16 Response Costs shall also include all EPA Interim Response Costs, and all
17 Interest on those EPA Past Response Costs Settling Defendants have agreed to
18 pay under this Partial Consent Decree that has accrued pursuant to 42 U.S.C.
19 § 9607(a) during the period from July 31, 2019 to the Effective Date. EPA
20 Future Response Costs shall not include, however, EPA costs payable by the
21 DDT Parties under the Construction CD.

22 “EPA Interim Response Costs” shall mean all costs, including direct
23 and indirect costs, (a) paid by the United States in connection with the
24 Chlorobenzene Plume between July 31, 2019, and the Effective Date, including
25 costs incurred pursuant to EPA’s oversight of EPA Order 2008-04A, or
26 (b) incurred by the United States in connection with the Chlorobenzene Plume
27 prior to the Effective Date but paid after that date. EPA Interim Response Costs
28 shall not include, however, EPA costs payable by the DDT Parties under the

1 Construction CD, and shall not include costs related to the Dense Nonaqueous
2 Phase Liquid (“DNAPL”) Operable Unit of the Site.

3 “EPA Past Response Costs” shall mean all unrecovered costs,
4 including, but not limited to, direct and indirect costs, that the United States paid
5 at or in connection with the Dual Site between October 1, 1999, and July 31,
6 2019, including costs related to EPA Order 2008-04A, plus Interest on all such
7 costs which has accrued pursuant to 42 U.S.C. § 9607(a) through such date. EPA
8 Past Response Costs shall not include, however, EPA costs payable by the DDT
9 Parties under the Construction CD, and shall not include costs related to the
10 DNAPL Operable Unit of the Site.

11 “Flowrate Memo” shall mean the memorandum making non-
12 significant changes to the ROD titled “Clarification of Performance Standards
13 Regarding Hydraulic Extraction and Reinjection in Section 13 of the 1999
14 Superfund Record of Decision: Montrose Chemical and Del Amo Sites, OU 3,”
15 issued on October 7, 2019.

16 “Institutional Controls” or “ICs” shall mean Proprietary Controls
17 and state or local laws, regulations, ordinances, zoning restrictions, or other
18 governmental controls or notices that: (a) limit land, water, or other resource use
19 to minimize the potential for human exposure to Waste Material at or in
20 connection with the Dual Site; (b) limit land, water, or other resource use to
21 implement, ensure non-interference with, or ensure the protectiveness of the
22 remedial action for the Dual Site as set forth in the ROD; and/or (c) provide
23 information intended to modify or guide human behavior at or in connection with
24 the Dual Site.

25 “Interest” shall mean interest at the rate specified for interest on
26 investments of the EPA Hazardous Substance Superfund established by 26
27 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance
28 with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in

1 effect at the time the interest accrues. The rate of interest is subject to change on
2 October 1 of each year.

3 “MACP” shall mean the monitoring and aquifer compliance plan for
4 implementing, maintaining, monitoring, and reporting of performance monitoring
5 sufficient to meet the objectives of the ROD, as required by Section 3.9 of the
6 SOW.

7 “Montrose Onshore Special Account” shall mean the special
8 account, within the EPA Hazardous Substance Superfund, established for the
9 Montrose Chemical Corp. Superfund Site by EPA pursuant to Section 122(b)(3)
10 of CERCLA, [42 U.S.C. § 9622\(b\)\(3\)](#).

11 “National Contingency Plan” or “NCP” shall mean the National Oil
12 and Hazardous Substances Pollution Contingency Plan promulgated pursuant to
13 Section 105 of CERCLA, [42 U.S.C. § 9605](#), codified at 40 C.F.R. Part 300, and
14 any amendments thereto.

15 “Owner Settling Defendant” shall mean Stauffer Management
16 Company LLC.

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

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

23 “Parties” shall mean the United States, DTSC, and Settling
24 Defendants.

25 “Performance Standards” shall mean the cleanup standards and other
26 measures of achievement of the goals of the Remedial Action that are related to
27 the Chlorobenzene Plume, set forth in Section 13 of the ROD, as modified by the
28 Flowrate Memo.

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

3 “Post-Achievement O&M” shall mean all activities required to
4 maintain the effectiveness of the Remedial Action after Performance Standards
5 are met, including, but not limited to, activities required to contain the
6 Chlorobenzene Plume within the Containment Zone indefinitely, as set forth in
7 the RA/OM WP approved by EPA, after reasonable opportunity for review and
8 comment by DTSC, pursuant to Section VI (Performance of the Work by Settling
9 Defendants) and the SOW, as provided in the MACP.

10 “Pre-Achievement O&M” shall mean all operation and maintenance
11 activities required for the Remedial Action to achieve Performance Standards, as
12 provided under the RA/OM WP approved by EPA, after reasonable opportunity
13 for review and comment by DTSC, pursuant to Section VI (Performance of the
14 Work by Settling Defendants) and the SOW, until Performance Standards are
15 met.

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

20 “Remedial Action/Operation and Maintenance Work Plan” or
21 “RA/OM WP” shall mean the document developed pursuant to Section 3.1 of the
22 SOW and Paragraph 12 below and approved by EPA, and any modifications
23 thereto.

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

27 “Record of Decision” or “ROD” shall mean the EPA Record of
28 Decision relating to the Dual Site Groundwater Operable Unit signed on March

30, 1999, by the Regional Administrator, EPA Region IX, or his/her delegate, and all attachments thereto, as modified by the Flowrate Memo. The ROD and the Flowrate Memo are attached as Appendix A.

“Remaining Work” shall mean, collectively, all activities, excluding the Work and the Construction CD Obligations, that will be necessary to implement the remedy selected in the ROD.

“Remedial Action” shall mean all activities Settling Defendants are required to perform under this Partial Consent Decree to implement the relevant portions of the ROD relating to the Chlorobenzene Plume, in accordance with the SOW, the final approved remedial design submission, the approved RA/OM WP, and other plans approved by EPA, including Pre-Achievement O&M, until the Performance Standards are met, and excluding performance of Post-Achievement O&M and the activities required under Section XXIII (Retention of Records).

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

“Settling Defendant,” individually, and “Settling Defendants,” collectively, shall mean TFCF America, Inc., Bayer CropScience Inc., Montrose Chemical Corporation of California (“Montrose”), Stauffer Management Company LLC and/or JCI Jones Chemicals, Inc. (“Jones”).

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

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

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

1 “TCE Plume” shall mean the portion of the distribution of
2 chlorinated solvents – including, but not necessarily limited to, trichloroethene
3 (“TCE”), perchloroethene (“PCE”), dichloroethene (“DCE”) and trichloroethane
4 (“TCA”), and any isomers of these compounds, in groundwater at the Dual Site
5 that is not commingled with the Chlorobenzene Plume, as defined in the ROD
6 (page 7-11).

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

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

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

17 “Work” shall mean all activities and obligations that Settling
18 Defendants are required to perform under this Partial Consent Decree relating to
19 the Chlorobenzene Plume, except the activities required under Section XXIII
20 (Retention of Records).

21 V. GENERAL PROVISIONS

22 5. Objectives of the Parties. The objectives of the Parties in entering
23 into this Partial Consent Decree are to protect public health, welfare, and the
24 environment by providing for the implementation of response actions at the
25 Chlorobenzene Plume by Settling Defendants, the payment by Settling
26 Defendants of EPA and DTSC response costs, and the resolution of certain
27 claims (or, in the case of Jones, the satisfaction of certain potential claims) of
28 Plaintiffs against Settling Defendants, as set forth in Sections XIX and XX

(“Covenants by Plaintiffs” and “Covenants by Settling Defendants”).

6. Commitments by Settling Defendants.

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

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

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

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

7. Compliance with Applicable Law. All activities undertaken by Settling Defendants pursuant to this Partial Consent Decree shall be performed in accordance with the requirements of all applicable federal and California laws

1 and regulations. Settling Defendants must also comply with all applicable or
2 relevant and appropriate requirements of all federal and state environmental laws
3 as set forth in the ROD and the SOW. The activities conducted pursuant to this
4 Partial Consent Decree, if approved by EPA, shall be deemed to be consistent
5 with the NCP.

6 8. Permits.

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

14 b. Where any portion of the Work that is not on-site requires a
15 federal or state permit or approval, Settling Defendants shall submit timely and
16 complete applications and take all other actions necessary to obtain all such
17 permits or approvals. Settling Defendants may seek relief under the provisions of
18 Section XVI (Force Majeure) for any delay in the performance of the Work
19 resulting from a failure to obtain, or a delay in obtaining, any permit or approval
20 referenced in Paragraph 8.a and required for the Work, provided that Settling
21 Defendants have submitted timely and complete applications and taken all other
22 actions necessary to obtain all such permits or approvals.

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

25 9. Notice to Successors-in-Title and Transfers of Real Property.

26 a. For any real property owned or controlled by Owner Settling
27 Defendant located at the Dual Site, Owner Settling Defendant shall, within 15
28 Days after the Effective Date, submit to EPA for review and approval a proposed

1 notice to be filed with the appropriate land records office that provides a
2 description of the real property and provides notice to all successors-in-title that
3 the real property is part of the Dual Site, that EPA has selected a remedy for the
4 Dual Site, and that potentially responsible parties have entered into a Partial
5 Consent Decree requiring implementation of the remedy. The notice also shall
6 identify the United States District Court in which this Partial Consent Decree was
7 filed, the name and civil action number of this case, and the date this Partial
8 Consent Decree was entered by the Court. Owner Settling Defendant shall
9 record the notice within ten Days after EPA's approval of the notice. Owner
10 Settling Defendant shall provide EPA with a certified copy of the recorded notice
11 within ten Days after recording such notice.

12 b. Owner Settling Defendant shall, at least 60 Days prior to any
13 Transfer of any real property located at the Dual Site, give written notice: (1) to
14 the transferee regarding this Partial Consent Decree; and (2) to EPA and DTSC
15 regarding the proposed Transfer, including the name and address of the transferee
16 and the date on which the transferee was notified of this Partial Consent Decree.

17 c. Owner Settling Defendant may Transfer any real property located
18 at the Dual Site only if: Owner Settling Defendant has obtained an agreement
19 from the transferee, enforceable by Settling Defendants, the State, and the United
20 States, to allow access and restrict land/water use, pursuant to Paragraph 20, and
21 EPA has approved the agreement in writing. If, after a Transfer of the real
22 property, the transferee fails to comply with the agreement provided for in this
23 Paragraph 9.c, Owner Settling Defendant shall take all reasonable steps to obtain
24 the transferee's compliance with such agreement. The United States may seek
25 the transferee's compliance with the agreement and/or assist Owner Settling
26 Defendant in obtaining compliance with the agreement. Settling Defendants
27 shall reimburse the United States under Section XIV (Payments for Response
28 Costs), for all costs incurred, direct or indirect, by the United States regarding

1 obtaining compliance with such agreement, including, but not limited to, the cost
2 of attorney time.

3 d. In the event of any Transfer of real property located at the Dual
4 Site, unless the United States otherwise consents in writing, Settling Defendants
5 shall continue to comply with their obligations under this Partial Consent Decree,
6 including, but not limited to, their obligation to provide and/or secure access.

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

8 10. Selection of Supervising Contractor.

9 a. All aspects of the Work to be performed by Settling Defendants
10 pursuant to Sections VI (Performance of the Work by Settling Defendants), VII
11 (Remedy Review), VIII (Access), and XIII (Emergency Response) shall be under
12 the direction and supervision of the Supervising Contractor, the selection of
13 which shall be subject to disapproval by EPA after a reasonable opportunity for
14 review and comment by DTSC. Within 30 Days after the lodging of this Partial
15 Consent Decree, Settling Defendants shall notify EPA and DTSC in writing of
16 the name, title, and qualifications of any contractor proposed to be the
17 Supervising Contractor for the Work. With respect to any contractor proposed to
18 be Supervising Contractor, Settling Defendants shall demonstrate that the
19 proposed contractor has a quality assurance system that complies with
20 ANSI/ASQC E4-2004, Quality Systems for Environmental Data and Technology
21 Programs: Requirements with Guidance for Use (American National Standard),
22 by submitting a copy of the proposed contractor's Quality Management Plan
23 ("QMP"). The QMP should be prepared in accordance with "EPA Requirements
24 for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001,
25 reissued May 2006) or equivalent documentation as determined by EPA. EPA
26 will issue a notice of disapproval or an authorization to proceed regarding hiring
27 of each proposed contractor. If at any time thereafter, Settling Defendants
28 propose to change the Supervising Contractor, Settling Defendants shall give

1 notice to EPA and DTSC and must obtain an authorization to proceed from EPA,
2 after a reasonable opportunity for review and comment by DTSC, before the new
3 Supervising Contractor performs, directs, or supervises any Work under this
4 Partial Consent Decree.

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

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

20 11. Remedial Design.

21 a. The Parties acknowledge that Montrose has completed the
22 remedial design report for the Chlorobenzene Plume remedy, pursuant to EPA
23 Order 2008-04A.

24 b. Montrose did not undertake design of systems to address the TCE
25 Plume or the Benzene Plume, which are elements of the remedy selected in the
26 ROD. Design of the TCE Plume and Benzene Plume remedy is outside the scope
27 of this Partial Consent Decree.

28 12. Remedial Action.

1 a. Within 30 Days after the Effective Date, Settling Defendants
2 shall submit to EPA and DTSC an RA/OM WP for performance of the Remedial
3 Action at the Chlorobenzene Plume. Remedial Action for the TCE Plume and
4 Benzene Plume is outside the scope of this Partial Consent Decree. The RA/OM
5 WP shall provide for implementation of the SOW and achievement of the
6 Performance Standards, in accordance with this Partial Consent Decree, the
7 relevant portions of the ROD, the SOW, and the final approved remedial design
8 submission. Upon approval by EPA, after reasonable opportunity for review and
9 comment by DTSC, the RA/OM WP shall be incorporated into and enforceable
10 under this Partial Consent Decree.

11 b. Periodic monitoring for the Chlorobenzene Plume remedy shall
12 be conducted as part of this remedy in accordance with the EPA-approved
13 MACP, approved by EPA after reasonable opportunity for review and comment
14 by DTSC.

15 c. In this and every other respect, Settling Defendants shall fully
16 implement and comply with the SOW that is attached hereto as Appendix B and
17 incorporated herein by reference. The Work to be performed pursuant to this
18 Partial Consent Decree shall, at a minimum, achieve the requirements of, and be
19 performed in a manner consistent with, the applicable portions of the ROD and
20 this Partial Consent Decree.

21 13. Settling Defendants shall continue to implement the Remedial
22 Action until the Performance Standards are achieved. Settling Defendants shall
23 implement Post-Achievement O&M for so long thereafter as is required by this
24 Partial Consent Decree.

25 14. Modification of SOW or Related Work Plans.

26 a. If EPA, following consultation with DTSC, determines that it is
27 necessary to modify the work specified in the SOW and/or in work plans
28 developed pursuant to the SOW to achieve and maintain the Performance

Standards or to carry out and maintain the effectiveness of the remedy set forth in the relevant portions of the ROD, and such modification is consistent with the scope of the remedial work set forth in the ROD, then EPA may issue such modification in writing and shall notify Settling Defendants of such modification. For the purposes of this Paragraph and Paragraphs 38 (Completion of the Remedial Action) and 39 (Completion of the Work) only, the “scope of the remedial work set forth in the ROD” is generally composed of the following elements for the Chlorobenzene Plume, as further specified in the ROD:

(1) Where technically practicable, reduce the concentrations of contaminants in groundwater for the Chlorobenzene Plume to in-situ groundwater standards levels, as described in the ROD, Section 13, part 9;

(2) In areas of groundwater where attainment of in-situ groundwater standards levels is not technically practicable, contain contaminants within their lateral extent and depth, as described in the ROD, Section 10.4 and Section 13, parts 5 and 8;

(3) Isolate chlorobenzene non-aqueous phase liquid (“NAPL”) by surrounding it with a zone of groundwater from which dissolved phase contaminants cannot escape, as described in the ROD, Section 13, parts 5 and 8;

(4) Prevent lateral and vertical migration of dissolved contaminants in groundwater at concentrations greater than in-situ groundwater standards to areas where currently they are not present or are below in-situ groundwater standards, as described in the ROD, Section 13, part 10; and

(5) Protect current and future users of groundwater from exposure to Chlorobenzene Plume groundwater contaminants at concentrations above in-situ groundwater standards levels.

1 The “scope of the remedial work set forth in the ROD” shall not include
2 treatment of para-chlorobenzene sulfonic acid (“pCBSA”) below the 25,000 parts
3 per billion (“ppb”) reinjection standard set forth in the ROD or discharge of
4 treated water by means other than aquifer reinjection. If Settling Defendants
5 object to the modification they may, within 45 Days after EPA’s notification,
6 seek dispute resolution under Paragraph 59 (Record Review).

7 b. The SOW and/or related work plans shall be modified: (i) in
8 accordance with the modification issued by EPA; or (ii) if Settling Defendants
9 invoke dispute resolution, in accordance with the final resolution of the dispute.
10 The modification shall be incorporated into and enforceable under this Partial
11 Consent Decree. Settling Defendants shall incorporate the modification into its
12 RA/OM WP under Paragraph 12, as appropriate, and shall implement all work
13 required by such modification.

14 c. Nothing in this Paragraph shall be construed to limit EPA’s
15 authority to require performance of further response actions as provided in other
16 paragraphs of this Partial Consent Decree, including, but not limited to,
17 Paragraph 17.

18 15. Nothing in this Partial Consent Decree, the SOW, EPA Order 2008-
19 04A, the final approved remedial design submission, or the RA/OM WP
20 constitutes a warranty or representation of any kind by Plaintiffs that compliance
21 with the work requirements set forth in the SOW and the RA/OM WP will ensure
22 completion of the Work in compliance with the applicable substantive portions of
23 the ROD.

24 **VII. REMEDY REVIEW**

25 16. Periodic Review. Settling Defendants shall conduct any studies and
26 investigations that EPA requests in order to permit EPA to conduct reviews of
27 whether the Remedial Action is protective of human health and the environment
28 at least every five years as required by Section 121(c) of CERCLA, 42 U.S.C.

§ 9621(c), and any applicable regulations.

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

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

VIII. ACCESS

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

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

- (1) Monitoring the Work or Remaining Work;
- (2) Verifying any data or information submitted to the United States or DTSC;
- (3) Conducting investigations regarding contamination at or near the Dual Site;
- (4) Obtaining samples;

1 (5) Assessing the need for, planning, or implementing the
2 Work or Remaining Work or additional response actions at or near the
3 Dual Site;

4 (6) Assessing implementation of quality assurance and
5 quality control practices as defined in the approved Quality Assurance
6 Project Plans;

7 (7) Implementing the Work pursuant to the conditions set
8 forth in Paragraph 77 (Work Takeover);

9 (8) Inspecting and copying non-privileged records,
10 operating logs, contracts, or other documents maintained or generated by
11 Settling Defendants or their agents, consistent with Section XXII (Access
12 to Information);

13 (9) Assessing Settling Defendants' compliance with this
14 Partial Consent Decree or any other orders or consent decrees that
15 implement the remedy described in the relevant provisions of the ROD;
16 and

17 (10) Determining whether the Dual Site or other real
18 property is being used in a manner that may need to be prohibited or
19 restricted under this Partial Consent Decree.

20 b. Commencing on the date of lodging of this Partial Consent
21 Decree, such Settling Defendants shall not use the Dual Site, or such other real
22 property, in any manner that EPA, after a reasonable opportunity for review and
23 comment by DTSC, determines will pose an unacceptable risk to human health or
24 to the environment due to exposure to Waste Materials or interfere with or
25 adversely affect the implementation, integrity, or protectiveness of the Remedial
26 Action. The restrictions shall include, but not be limited to, the following:
27 prohibiting the use of groundwater in the Containment Zone as a drinking water
28 source and limiting the drilling of new groundwater wells or any other excavation

1 with the potential to penetrate contaminated aquifers.

2 20. If any real property where access is needed to implement the
3 requirements of the relevant provisions of the ROD or this Partial Consent
4 Decree, is owned or controlled by persons other than any Settling Defendant,
5 Settling Defendants shall use best efforts to secure from such persons an
6 agreement to provide access thereto for the United States, the State, DTSC, and
7 Settling Defendants, and their representatives, contractors and subcontractors, to
8 conduct any activity related to its Work for the Dual Site including, but not
9 limited to, the activities listed in Paragraph 19.a.

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

26 22. If EPA, in consultation with DTSC, determines that Institutional
27 Controls in the form of state or local laws, regulations, ordinances, zoning
28 restrictions, or other governmental controls are needed, Settling Defendants shall

1 cooperate with EPA's and DTSC's efforts to secure and ensure compliance with
2 such Institutional Controls.

3 23. 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 Institutional Controls, including enforcement
6 authorities related thereto, under CERCLA, RCRA, and any other applicable
7 federal or California statute or regulations.

8 **IX. EPA APPROVAL OF PLANS, REPORTS, AND OTHER**
9 **DELIVERABLES**

10 24. Initial Submissions.

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

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

23 25. Resubmissions. Upon receipt of a notice of disapproval under
24 Paragraph 24.a.(iii) or (iv), or if required by a notice of approval upon specified
25 conditions under Paragraph 24.a.(ii), Settling Defendants shall, within 21 Days or
26 such longer time as specified by EPA in such notice, correct the deficiencies and
27 resubmit the plan, report, or other deliverable for approval. After review of the
28 resubmitted plan, report, or other deliverable, EPA may, after reasonable

1 opportunity for review and comment by DTSC: (a) approve, in whole or in part,
2 the resubmission; (b) approve the resubmission upon specified conditions; (c)
3 modify the resubmission; (d) disapprove, in whole or in part, the resubmission,
4 requiring Settling Defendants to correct the deficiencies; or (e) any combination
5 of the foregoing.

6 26. Material Defects. If an initially submitted or resubmitted plan,
7 report, or other deliverable contains a material defect, and the plan, report, or
8 other deliverable is disapproved or modified by EPA under Paragraph 24.b.(ii) or
9 25 due to such material defect, then the material defect shall constitute a lack of
10 compliance for purposes of Paragraph 62. The provisions of Section XVII
11 (Dispute Resolution) and Section XVIII (Stipulated Penalties) shall govern the
12 accrual and payment of any stipulated penalties regarding Settling Defendants'
13 submissions under this Section.

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

26 28. Review by DTSC. All plans, reports or other deliverables required
27 to be submitted to, or reviewed by, DTSC pursuant to this Partial Consent Decree
28 shall be sent to DTSC separately and simultaneously at the addresses provided in

1 Section XXIV (Notices and Submissions) of this Partial Consent Decree.

2 **X. PROJECT COORDINATORS**

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

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

1 Material.

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

9 **XI. PERFORMANCE GUARANTEE**

10 32. In order to ensure the full and final completion of the Work, Settling
11 Defendants shall establish and maintain a performance guarantee for the benefit
12 of EPA, initially in the amount of \$52,600,000 (the "Estimated Cost of the
13 Work"). The performance guarantee, which must be satisfactory in form and
14 substance to EPA, shall be in the form of one or more of the following
15 mechanisms (provided that, if Settling Defendants intend to use multiple
16 mechanisms, such multiple mechanisms shall be limited to surety bonds
17 guaranteeing payment, letters of credit, trust funds, and insurance policies):

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

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

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

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

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

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

23 33. Settling Defendants have selected, and EPA has found satisfactory,
24 as an initial performance guarantee, two letters of credit, each in the amount of
25 \$26,300,000 for a total of \$52,600,000. The substance of those letters of credit is
26 set forth as Appendix D. Within 30 Days of the Effective Date, Settling
27 Defendants shall submit copies of all executed and/or otherwise finalized
28 instruments or other documents required in order to make the selected

1 performance guarantee(s) legally binding to the EPA Regional Financial
2 Management Officer in accordance with Section XXIV (Notices and
3 Submissions), with a copy to Financial Analyst, 75 Hawthorne Street, San
4 Francisco, California 94105, and to the United States and EPA and DTSC as
5 specified in Section XXIV (Notices and Submissions).

6 34. If, at any time after the Effective Date and before issuance of the
7 Certification of Completion of the Work pursuant to Paragraph 39, Settling
8 Defendants provide a performance guarantee for completion of the Work by
9 means of a demonstration or guarantee pursuant to Paragraph 32.e or 32.f,
10 Settling Defendants shall also comply with the other relevant requirements of
11 40 C.F.R. § 264.143(f) relating to these mechanisms unless otherwise provided in
12 this Partial Consent Decree, including but not limited to: (a) the initial
13 submission of required financial reports and statements from the relevant entity's
14 chief financial officer ("CFO") and independent certified public accountant
15 ("CPA"), in the form prescribed by EPA in its financial test sample CFO letters
16 and CPA reports available under the "Financial Assurance – Settlements" subject
17 list category on the Cleanup Enforcement Model Language and Sample
18 Documents Database at <https://cfpub.epa.gov/compliance/models>; (b) the annual
19 re-submission of such reports and statements within 90 Days after the close of
20 each such entity's fiscal year; and (c) the prompt notification of EPA after each
21 such entity determines that it no longer satisfies the financial test requirements set
22 forth at 40 C.F.R. § 264.143(f)(1) and in any event within 90 Days after the close
23 of any fiscal year in which such entity no longer satisfies such financial test
24 requirements. For purposes of the performance guarantee mechanisms specified
25 in this Section XI, references in 40 C.F.R. Part 264, Subpart H, to "closure,"
26 "post-closure," and "plugging and abandonment" shall be deemed to include the
27 Work; the terms "current closure cost estimate," "current post-closure cost
28 estimate," and "current plugging and abandonment cost estimate" shall be

1 deemed to include the Estimated Cost of the Work; the terms “owner” and
2 “operator” shall be deemed to refer to Settling Defendants making a
3 demonstration under Paragraph 32.e; and the terms “facility” and “hazardous
4 waste facility” shall be deemed to include those facilities or components of the
5 Dual Site located within the area addressed by the Work.

6 35. In the event that EPA determines at any time that a performance
7 guarantee provided by any Settling Defendant pursuant to this Section is
8 inadequate or otherwise no longer satisfies the requirements set forth in this
9 Section, whether due to an increase in the estimated cost of completing the Work
10 or for any other reason, or in the event that any Settling Defendant becomes
11 aware of information indicating that a performance guarantee provided pursuant
12 to this Section is inadequate or otherwise no longer satisfies the requirements set
13 forth in this Section, whether due to an increase in the estimated cost of
14 completing the Work or for any other reason, Settling Defendants, within 30
15 Days of receipt of notice of EPA’s determination or, as the case may be, within
16 30 Days of any Settling Defendant becoming aware of such information, shall
17 obtain and present to EPA for approval a proposal for a revised or alternative
18 form of performance guarantee listed in Paragraph 32 that satisfies all
19 requirements set forth in this Section XI; provided, however, that if any Settling
20 Defendant cannot obtain such revised or alternative form of performance
21 guarantee within such 30-Day period, and provided further that the Settling
22 Defendant shall have commenced to obtain such revised or alternative form of
23 performance guarantee within such 30-Day period, and thereafter diligently
24 proceeds to obtain the same, EPA shall extend such period for such time as is
25 reasonably necessary for Settling Defendants in the exercise of due diligence to
26 obtain such revised or alternative form of performance guarantee, such additional
27 period not to exceed 30 Days. In seeking approval for a revised or alternative
28 form of performance guarantee, Settling Defendants shall follow the procedures

1 set forth in Paragraph 37. Settling Defendants' inability to post a performance
2 guarantee for completion of the Work shall in no way excuse performance of any
3 other requirements of this Partial Consent Decree, including, without limitation,
4 the obligation of Settling Defendants to complete the Work in strict accordance
5 with the terms of this Partial Consent Decree.

6 36. Funding for Work Takeover. The commencement of Work
7 Takeover for any particular Work pursuant to Paragraph 77 shall trigger EPA's
8 right to receive the benefit of any performance guarantee(s) provided pursuant to
9 Paragraphs 32.a, 32.b, 32.c, 32.d, or 32.f, and at such time EPA shall have
10 immediate access to resources guaranteed under any such performance
11 guarantee(s), whether in cash or in kind, as needed to continue and complete the
12 Work assumed by EPA under the Work Takeover. Upon the commencement of
13 any Work Takeover, if (a) for any reason EPA is unable to promptly secure the
14 resources guaranteed under any such performance guarantee(s), whether in cash
15 or in kind, necessary to continue and complete the Work assumed by EPA under
16 the Work Takeover, or (b) in the event that the performance guarantee involves a
17 demonstration of satisfaction of the financial test criteria pursuant to
18 Paragraph 32.e or Paragraph 32.f(ii), Settling Defendants (or in the case of
19 Paragraph 32.f(ii), the guarantor) shall immediately upon written demand from
20 EPA deposit into a special account within the EPA Hazardous Substance
21 Superfund or such other account as EPA may specify, in immediately available
22 funds and without setoff, counterclaim, or condition of any kind, a cash amount
23 up to but not exceeding the estimated cost of completing the Work as of such
24 date, as determined by EPA. In addition, if at any time EPA is notified by the
25 issuer of a performance guarantee that such issuer intends to cancel the
26 performance guarantee mechanism it has issued, then, unless Settling Defendants
27 provide a substitute performance guarantee mechanism in accordance with this
28 Section XI no later than 30 Days prior to the impending cancellation date, EPA

1 shall be entitled (as of and after the date that is 30 Days prior to the impending
2 cancellation) to draw fully on the funds guaranteed under the then-existing
3 performance guarantee. All EPA Work Takeover costs not reimbursed under this
4 Paragraph shall be reimbursed under Section XIV (Payments for Response
5 Costs).

6 37. Modification of Amount and/or Form of Performance Guarantee.

7 a. Reduction of Amount of Performance Guarantee. If Settling
8 Defendants believe that the estimated cost of completing the Work has
9 diminished below the amount set forth in Paragraph 32, Settling Defendants may,
10 on any anniversary of the Effective Date, or at any other time agreed to by EPA,
11 DTSC and Settling Defendants, petition EPA in writing to request a reduction in
12 the amount of the performance guarantee provided pursuant to this Section so
13 that the amount of the performance guarantee is equal to the estimated cost of
14 completing the relevant Work. Settling Defendants shall submit a written
15 proposal for such reduction to EPA that shall specify, at a minimum, the
16 estimated cost of completing its Work and the basis upon which such cost was
17 calculated. In seeking approval for a reduction in the amount of the performance
18 guarantee, Settling Defendants shall follow the procedures set forth in
19 Paragraph 37.b(2) for requesting a revised or alternative form of performance
20 guarantee, except as specifically provided in this Paragraph. If EPA decides to
21 accept any such proposal for a reduction in the amount of the performance
22 guarantee, either to the amount set forth in a written proposal or to some other
23 amount as selected by EPA, EPA will notify Settling Defendants of such decision
24 in writing. Upon EPA's acceptance of a reduction in the amount of the
25 performance guarantee, the Estimated Cost of the Work shall be deemed to be the
26 estimated cost of completing the Work set forth in EPA's written decision. After
27 receiving EPA's written decision, Settling Defendants may reduce the amount of
28 the performance guarantee in accordance with and to the extent permitted by such

1 written acceptance and shall submit copies of all executed and/or otherwise
2 finalized instruments or other documents required in order to make the selected
3 performance guarantee(s) legally binding in accordance with Paragraph 37.b(2).
4 In the event of a dispute, Settling Defendants may reduce the amount of the
5 performance guarantee required hereunder only in accordance with a final
6 administrative or judicial decision resolving such dispute pursuant to Section
7 XVII (Dispute Resolution). No change to the form or terms of any performance
8 guarantee provided under this Section, other than a reduction in amount, is
9 authorized except as provided in Paragraphs 35 or 37.b.

10 b. Change of Form of Performance Guarantee.

11 (1) If, after the Effective Date, Settling Defendants desire
12 to change the form or terms of any performance guarantee(s) provided
13 pursuant to this Section, Settling Defendants may, on any anniversary of
14 the Effective Date, or at any other time agreed to by the Parties, petition
15 EPA in writing to request a change in the form or terms of the performance
16 guarantee provided hereunder. The submission of such proposed revised
17 or alternative performance guarantee shall be as provided in Paragraph
18 37.b(2). Any decision made by EPA on a petition submitted under this
19 Paragraph shall be made in EPA's sole and unreviewable discretion, and
20 such decision shall not be subject to challenge by Settling Defendants
21 pursuant to the dispute resolution provisions of this Partial Consent Decree
22 or in any other forum.

23 (2) Settling Defendants shall submit a written proposal for
24 a revised or alternative performance guarantee to EPA that shall specify, at
25 a minimum, the estimated cost of completing the Work, the basis upon
26 which such cost was calculated, and the proposed revised performance
27 guarantee, including all proposed instruments or other documents required
28 in order to make the proposed performance guarantee legally binding. The

1 proposed revised or alternative performance guarantee must satisfy all
2 requirements set forth or incorporated by reference in this Section.
3 Settling Defendants shall submit such proposed revised or alternative
4 performance guarantee to the EPA Regional Financial Management
5 Officer in accordance with Section XXIV (Notices and Submissions), with
6 a copy to Financial Analyst, 75 Hawthorne Street, San Francisco,
7 California 94105. EPA will notify Settling Defendants in writing of its
8 decision to accept or reject a revised or alternative performance guarantee
9 submitted pursuant to this Paragraph. Within ten Working Days after
10 receiving a written decision approving the proposed revised or alternative
11 performance guarantee, Settling Defendants shall execute and/or otherwise
12 finalize all instruments or other documents required in order to make the
13 selected performance guarantee(s) legally binding in a form substantially
14 identical to the documents submitted to EPA as part of the proposal, and
15 such performance guarantee(s) shall thereupon be fully effective. Settling
16 Defendants shall submit copies of all executed and/or otherwise finalized
17 instruments or other documents required in order to make the selected
18 performance guarantee(s) legally binding to the EPA Regional Financial
19 Management Officer within 30 Days of receiving a written decision
20 approving the proposed revised or alternative performance guarantee in
21 accordance with Section XXIV (Notices and Submissions), with a copy to
22 Financial Analyst, 75 Hawthorne Street, San Francisco, California 94105,
23 and to the United States, EPA, and DTSC as specified in Section XXIV.

24 c. Release of Performance Guarantee. Settling Defendants shall not
25 release, cancel, or discontinue any performance guarantee provided pursuant to
26 this Section except as provided in this Paragraph. If Settling Defendants receive
27 written notice from EPA in accordance with Paragraph 39 that the Work has been
28 fully and finally completed in accordance with the terms of this Partial Consent

Decree, or if EPA otherwise so notifies Settling Defendants in writing, Settling Defendants may thereafter release, cancel, or discontinue the performance guarantee(s) provided pursuant to this Section. In the event of a dispute Settling Defendants may release, cancel, or discontinue the performance guarantee(s) required hereunder only in accordance with a final administrative or judicial decision resolving such dispute pursuant to Section XVII (Dispute Resolution).

XII. CERTIFICATION OF COMPLETION

38. Completion of the Remedial Action.

a. Within 90 Days after Settling Defendants conclude that the Remedial Action has been fully performed and the Performance Standards have been achieved, Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Defendants, EPA, and DTSC. If, after the pre-certification inspection, Settling Defendants still believe that the Remedial Action has been fully performed and the Performance Standards have been achieved, they shall submit a written report requesting certification to EPA for approval, with a copy to DTSC pursuant to Section IX (EPA Approval of Plans, Reports, and Other Deliverables) within 30 Days after the inspection. In the report, a professional engineer registered in California and Settling Defendants' Project Coordinator shall state that the Remedial Action has been completed in full satisfaction of the requirements of this Partial Consent Decree. The written report shall include as-built drawings signed and stamped by a professional engineer registered in California. The report shall be prepared in accordance with Chapter 2 (Remedial Action Completion) of EPA's *Close Out Procedures for NPL Sites* guidance (May 2011), as supplemented by *Guidance for Management of Superfund Remedies in Post Construction*, OLEM 9200.3-105 (Feb. 2017), and any amendments to the guidance. The report shall include a detailed and comprehensive Performance Evaluation and Status Report, including the elements in Section 3.6 of the SOW, and containing monitoring data to

1 demonstrate that Performance Standards have been achieved. The report shall
2 contain the following statement, signed by a responsible corporate official of a
3 Settling Defendant or Settling Defendants' Project Coordinator:

4 I certify under penalty of federal and State law that this document and all
5 attachments were prepared under my direction or supervision in
6 accordance with a system designed to assure that qualified personnel
7 properly gather and evaluate the information submitted. Based on my
8 inquiry of the person or persons who manage the system, or those persons
9 directly responsible for gathering the information, the information
10 submitted is, to the best of my knowledge and belief, true, accurate, and
11 complete. I am aware that there are significant penalties for submitting
12 false information, including the possibility of fine and imprisonment for
13 knowing violations.

14 If, after completion of the pre-certification inspection and receipt and review of
15 the written report, EPA, after reasonable opportunity for review and comment by
16 DTSC, determines that the Remedial Action or any portion thereof has not been
17 completed in accordance with this Partial Consent Decree or that the
18 Performance Standards have not been achieved, EPA will notify Settling
19 Defendants in writing of the activities that must be undertaken by Settling
20 Defendants pursuant to this Partial Consent Decree to complete the Remedial
21 Action and achieve the Performance Standards, provided, however, that EPA
22 may only require Settling Defendants to perform such activities pursuant to this
23 Paragraph to the extent that such activities are consistent with the "scope of the
24 remedial work set forth in the ROD," as that term is defined in Paragraph 14.a.
25 EPA will set forth in the notice a schedule for performance of such activities
26 consistent with this Partial Consent Decree and the SOW or require Settling
27 Defendants to submit a schedule to EPA for approval pursuant to Section IX
28 (EPA Approval of Plans, Reports, and Other Deliverables). Settling Defendants

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1 shall perform all activities described in the notice in accordance with the
2 specifications and schedules established pursuant to this Paragraph, subject to
3 their right to invoke the dispute resolution procedures set forth in Section XVII
4 (Dispute Resolution).

5 b. If EPA concludes, based on the initial or any subsequent report
6 requesting Certification of Completion of the Remedial Action and after a
7 reasonable opportunity for review and comment by DTSC, that the Remedial
8 Action has been performed in accordance with this Partial Consent Decree and
9 that the Performance Standards have been achieved, EPA will so certify in
10 writing to Settling Defendants. This certification shall constitute the Certification
11 of Completion of the Remedial Action for purposes of this Partial Consent
12 Decree. Certification of Completion of the Remedial Action shall not affect
13 Settling Defendants' remaining obligations under this Partial Consent Decree.

14 39. Completion of the Work.

15 a. Within 90 Days after Settling Defendants conclude that all the
16 Work, other than any periodic review activities required under Section VII
17 (Remedy Review), has been fully performed and the Performance Standards have
18 been achieved, Settling Defendants shall schedule and conduct a pre-certification
19 inspection to be attended by Settling Defendants, EPA, and DTSC. If, after the
20 pre-certification inspection, Settling Defendants still believe that the Work has
21 been fully performed, Settling Defendants shall submit a written report by a
22 professional engineer registered in California stating that the Work has been
23 completed in full satisfaction of the requirements of this Partial Consent Decree.
24 The report shall contain the following statement, signed by a responsible
25 corporate official of a Settling Defendant or Settling Defendants' Project
26 Coordinator:

27 I certify under penalty of federal and State law that this document and all
28 attachments were prepared under my direction or supervision in

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1 accordance with a system designed to assure that qualified personnel
2 properly gather and evaluate the information submitted. Based on my
3 inquiry of the person or persons who manage the system, or those persons
4 directly responsible for gathering the information, the information
5 submitted is, to the best of my knowledge and belief, true, accurate, and
6 complete. I am aware that there are significant penalties for submitting
7 false information, including the possibility of fine and imprisonment for
8 knowing violations.

9 If, after review of the written report, EPA, after reasonable opportunity for
10 review and comment by DTSC, determines that any portion of the Work has not
11 been completed in accordance with this Partial Consent Decree, EPA will notify
12 Settling Defendants in writing of the activities that must be undertaken by
13 Settling Defendants pursuant to this Partial Consent Decree to complete the
14 Work, provided, however, that EPA may only require Settling Defendants to
15 perform such activities pursuant to this Paragraph to the extent that such activities
16 are consistent with the “scope of the remedial work set forth in the ROD,” as that
17 term is defined in Paragraph 14.a. EPA will set forth in the notice a schedule for
18 performance of such activities consistent with this Partial Consent Decree and the
19 SOW or require Settling Defendants to submit a schedule to EPA for approval
20 pursuant to Section IX (EPA Approval of Plans, Reports and Other Deliverables).
21 Settling Defendants shall perform all activities described in the notice in
22 accordance with the specifications and schedules established therein, subject to
23 their right to invoke the dispute resolution procedures set forth in Section XVII
24 (Dispute Resolution).

25 b. If EPA concludes, based on the initial or any subsequent request
26 for Certification of Completion of the Work by Settling Defendants and after a
27 reasonable opportunity for review and comment by DTSC, that the Work has
28 been performed in accordance with this Partial Consent Decree, EPA will so

1 notify Settling Defendants in writing.

2 **XIII. EMERGENCY RESPONSE**

3 40. If any action or occurrence during the performance of the Work
4 causes or threatens a release of Waste Material from the Dual Site that constitutes
5 an emergency situation or may present an immediate threat to public health or
6 welfare or the environment, Settling Defendants shall, subject to Paragraph 41,
7 immediately take all appropriate action to prevent, abate, or minimize such
8 release or threat of release, in consultation with EPA's Project Coordinator or
9 other available authorized EPA officer and in accordance with all applicable
10 provisions of the Health and Safety Plans, the Contingency Plans, and any other
11 applicable plans or documents developed pursuant to the SOW. Settling
12 Defendants shall also immediately notify the EPA's Project Coordinator, or, if
13 the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If
14 neither of these persons is available, Settling Defendants shall notify the EPA
15 Emergency Response Unit, Region IX. In the event that Settling Defendants fail
16 to take appropriate response action as required by this Section, and EPA or, as
17 appropriate, DTSC takes such action instead, Settling Defendants shall reimburse
18 EPA and DTSC costs of the response action not inconsistent with the NCP
19 pursuant to Section XIV (Payments for Response Costs).

20 41. Subject to Section XIX (Covenants by Plaintiffs), nothing in the
21 preceding Paragraph or in this Partial Consent Decree shall be deemed to limit
22 any authority of the United States, or the State, (a) to take all appropriate action
23 to protect human health and the environment or to prevent, abate, respond to, or
24 minimize an actual or threatened release of Waste Material on, at, or from the
25 Dual Site, or (b) to direct or order such action, or seek an order from the Court, to
26 protect human health and the environment or to prevent, abate, respond to, or
27 minimize an actual or threatened release of Waste Material on, at, or from the
28 Dual Site.

XIV. PAYMENTS FOR RESPONSE COSTS

42. Payment by Settling Defendants for EPA Past Response Costs and DTSC Past Response Costs.

a. EPA acknowledges a prepayment of EPA Past Response Costs in the amount of \$934,387.36, remitted by Montrose on or about September 23, 2005. The remaining balance of EPA Past Response Costs to be paid by Settling Defendants under this Partial Consent Decree, in the amount of \$4,000,000, shall be paid by Settling Defendants as follows. Within 45 Days of the Effective Date, Settling Defendants shall pay the amount of \$4,000,000, in a single payment, in accordance with Paragraphs 45.a and 45.c (Payment Instructions).

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

c. Within 30 Days of the date of the bill, Settling Defendants shall pay DTSC Past Response Costs in the amount of \$177,265.36 by official bank check(s) made payable to the Department of Toxic Substances Control. Settling Defendants shall write "Site Code 401628" on the check. Settling Defendants shall send the bank check(s) to Accounting, Department of Toxic Substances Control, 1001 I Street, 21st Floor, P.O. Box 806, Sacramento, CA 95812-0806.

43. Payments by Settling Defendants for EPA Future Response Costs.
Settling Defendants shall pay to EPA all EPA Future Response Costs not inconsistent with the NCP.

a. On a periodic basis, generally once per year, EPA will send Settling Defendants a bill requiring payment and enclosing a standard Regionally-prepared cost summary, which provides a statement of direct and

1 indirect costs incurred by EPA and its contractors, and a DOJ case cost summary.
2 Settling Defendants shall make all payments within 30 Days of Settling
3 Defendants' receipt of each bill requiring payment, except as otherwise provided
4 in Paragraph 46, in accordance with Paragraphs 45.b and 45.c (Payment
5 Instructions).

6 b. The total amount to be paid by Settling Defendants pursuant to
7 Paragraph 43.a shall be deposited by EPA in the Montrose Onshore Special
8 Account to be retained and used to conduct or finance response actions at or in
9 connection with the Montrose Chemical Corp. and/or Del Amo Superfund Sites,
10 or to be transferred by EPA to the EPA Hazardous Substance Superfund.

11 c. Within 45 Days of EPA's Certification of Completion of the
12 Work, as set forth at Section XIII of the Construction CD, all remaining property
13 in the Dual Site Trust Fund established in accordance with the Construction CD,
14 less any final trust administration expenses, will be transferred to EPA to credit
15 against oversight costs incurred by EPA at the Dual Site, including EPA Future
16 Response Costs owed under this Partial Consent Decree, in accordance with
17 Section 16(b) of the Dual Site Trust Fund Agreement.

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

23 44. Payments by Settling Defendants for DTSC Future Response Costs.
24 Settling Defendants shall pay to DTSC all DTSC Future Response Costs not
25 inconsistent with the NCP. On a periodic basis, generally quarterly, DTSC will
26 send Settling Defendants a bill requiring payment that includes an invoice and a
27 summary (by activity), which provides a statement of direct and indirect costs
28 incurred by DTSC and its contractors. Upon request by Montrose to the Site's

1 Project Manager, DTSC will provide the daily log(s) associated with an invoice
2 related to this Partial Consent Decree. Settling Defendants shall make all
3 payments within 30 Days of Settling Defendants' receipt of each bill requiring
4 payment. Settling Defendants shall make all payments to DTSC required by this
5 Paragraph by sending the bank check(s) to: Accounting, Department of Toxic
6 Substances Control, 1001 I Street, 21st Floor, P.O. Box 806, Sacramento,
7 California 95812-0806.

8 45. Payment Instructions for Settling Defendants.

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

19 Settling Defendants
20 c/o Montrose Chemical Corporation of California
21 600 Eriksen Avenue NE, Suite 380
22 Bainbridge Island, WA 98110
23 (206) 780-9840
24 mccc@montrosechemical.com

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

28 b. Instructions for EPA Future Response Costs Payments and

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1 Stipulated Penalties. All payments required, elsewhere in this Partial Consent
2 Decree, to be made in accordance with this Paragraph shall be made by Fedwire
3 EFT to:

4 Federal Reserve Bank of New York

5 ABA = 021030004

6 Account = 68010727

7 SWIFT address = FRNYUS33

8 33 Liberty Street

9 New York NY 10045

Field Tag 4200 of the Fedwire message should read as follows:

“D 68010727 Environmental Protection Agency”

10 When making payments under this Paragraph 45.b, Settling Defendants shall also
11 comply with Paragraph 45.c.

12 c. Instructions for All Payments to EPA. All payments made under
13 Paragraph 45.a or 45.b shall reference the CDCS Number, EPA Site/Spill ID
14 Number 0926/0936 and DOJ Case Number 90-11-2-933/3. At the time of any
15 payment required to be made in accordance with Paragraphs 43, 45.a, or 45.b,
16 Settling Defendants shall send notice of payment to the United States and to
17 EPA, in accordance with Section XXIV (Notices and Submissions), and to the
18 EPA Cincinnati Finance Office by email at cinwd_acctsreceivable@epa.gov, or
19 by mail at 26 Martin Luther King Drive, Cincinnati, Ohio 45268. Such notice
20 shall also reference the CDCS Number, Site/Spill ID Number, and DOJ Case
21 Number.

22 46. Settling Defendants may contest any EPA Future Response Costs
23 billed under Paragraph 43 or DTSC Future Response Costs billed under
24 Paragraph 44 if they determine that EPA or DTSC has made a mathematical error
25 or included a cost item that is not within the definition of EPA or DTSC Future
26 Response Costs, or if they believe EPA or DTSC incurred excess costs as a direct
27 result of an EPA or DTSC action that was inconsistent with a specific provision
28 or provisions of the NCP.

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

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

19 c. Simultaneously with establishment of the escrow account,
20 Settling Defendants shall initiate the Dispute Resolution procedures in Section
21 XVII (Dispute Resolution) (provided, however, that references to "EPA" in such
22 Section shall be read to refer to DTSC for purposes of disputes relating to DTSC
23 Future Response Costs under this Paragraph). If the United States or DTSC
24 prevails in the dispute, Settling Defendants shall pay the sums due (with accrued
25 interest) to the United States or DTSC, as appropriate, within five Days of the
26 resolution of the dispute. If Settling Defendants prevail concerning any aspect of
27 the contested costs, Settling Defendants shall pay that portion of the costs (plus
28 associated accrued interest) for which they did not prevail to the United States or

DTSC, as appropriate, within five Days of the resolution of the dispute. Settling Defendants shall be disbursed any balance of the escrow account.

d. All payments to the United States under this Paragraph shall be made in accordance with Paragraphs 45.b and 45.c (Payment Instructions for Settling Defendants' Payments to EPA). All payments to DTSC under this Paragraph shall be made in accordance with Paragraph 44 (Payments by Settling Defendants for DTSC Future Response Costs). The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XVII (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Settling Defendants' obligations to reimburse the United States and DTSC for their Future Response Costs.

47. Interest. In the event that any payment for EPA or DTSC Past Response Costs or for EPA or DTSC Future Response Costs required under this Section is not made by the date required, Settling Defendants shall pay Interest on the unpaid balance. The Interest to be paid on EPA Past Response Costs under this Paragraph shall begin to accrue on the Effective Date. The Interest to be paid on DTSC Past Response Costs outstanding more than 60 Days shall begin to accrue from the date of the bill. The Interest on EPA or DTSC Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of Settling Defendants' payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of Settling Defendants' failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to Paragraph 62.

XV. INDEMNIFICATION AND INSURANCE

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

a. The United States and DTSC do not assume any liability by

entering into this Partial Consent Decree or by virtue of any designation of Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e). Settling Defendants shall indemnify, save and hold harmless the United States, DTSC, and their officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Settling Defendants, and each of their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Partial Consent Decree, including, but not limited to, any claims arising from any designation of Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Further, Settling Defendants agree to pay the United States and the State all costs the United States and the State incur including, but not limited to, attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States or the State based on negligent or other wrongful acts or omissions of Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Partial Consent Decree. Neither the United States nor the State shall be held out as a party to any contract entered into by or on behalf of Settling Defendants in carrying out activities pursuant to this Partial Consent Decree. Neither Settling Defendants nor any such contractor shall be considered an agent of the United States or DTSC.

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

49. Settling Defendants' Indemnification of the United States and DTSC

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1 (Contract, Agreement, or Arrangement).

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

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

18 50. If, in the future, a California state agency other than DTSC should
19 assume the state CERCLA lead role for oversight under this Partial Consent
20 Decree, the Settling Defendants' indemnification of DTSC pursuant to
21 Paragraphs 48 and 49 shall apply to that new lead state agency.

22 51. No later than 15 Days before commencing any on-site Work,
23 Settling Defendants shall secure, and shall maintain until Certification of
24 Completion of the Work, commercial general liability insurance with limits of \$2
25 million, for any one occurrence, and automobile liability insurance with limits of
26 \$1 million, combined single limit. These policies shall name the United States
27 and DTSC as additional insureds with respect to all insured liability arising out of
28 the activities performed by or on behalf of Settling Defendants pursuant to this

1 Partial Consent Decree. In addition, for the duration of this Partial Consent
2 Decree, Settling Defendants shall satisfy, or shall ensure that its contractors or
3 subcontractors satisfy, all applicable laws and regulations regarding the provision
4 of worker's compensation insurance for all persons performing Work on behalf
5 of Settling Defendants in furtherance of this Partial Consent Decree. Prior to
6 commencement of Work under this Partial Consent Decree, Settling Defendants
7 shall provide to EPA and DTSC certificates of such insurance and, upon request
8 by the United States or DTSC, a copy of each insurance policy. Settling
9 Defendants shall resubmit such certificates and, upon request by the United
10 States or DTSC, copies of policies each year on the anniversary of the Effective
11 Date. If Settling Defendants demonstrate by evidence satisfactory to EPA and
12 DTSC that any contractor or subcontractor maintains insurance equivalent to that
13 described above, or insurance covering the same risks but in a lesser amount,
14 then, with respect to that contractor or subcontractor, Settling Defendants need
15 provide only that portion of the insurance described above that is not maintained
16 by the contractor or subcontractor.

17 **XVI. FORCE MAJEURE**

18 52. "Force majeure," for purposes of this Partial Consent Decree, is
19 defined as any event arising from causes beyond the control of any Settling
20 Defendant, of any entity controlled by Settling Defendants, or of Settling
21 Defendants' contractors, that delays or prevents the performance of any
22 obligation under this Partial Consent Decree despite the Settling Defendants' best
23 efforts to fulfill the obligation. The requirement that Settling Defendants exercise
24 "best efforts to fulfill the obligation" includes using best efforts to anticipate any
25 potential force majeure and best efforts to address the effects of any potential
26 force majeure (1) as it is occurring and (2) following the potential force majeure
27 such that the delay and any adverse effects of the delay are minimized to the
28 greatest extent possible. "Force majeure" does not include financial inability to

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1 complete the Work or a failure to achieve the Performance Standards.

2 53. If any event occurs or has occurred that may delay the performance
3 of any obligation under this Partial Consent Decree for which Settling
4 Defendants intend or may intend to assert a claim of force majeure, Settling
5 Defendants shall notify orally EPA's Project Coordinator or, in his or her
6 absence, EPA's Alternate Project Coordinator or, in the event both of EPA's
7 designated representatives are unavailable, the Director of the Superfund and
8 Emergency Management Division, EPA Region IX, within five Days of when
9 Settling Defendants first knew that the event might cause a delay. Within 14
10 Days thereafter, Settling Defendants shall provide in writing to EPA and DTSC
11 an explanation and description of the reasons for the delay; the anticipated
12 duration of the delay; all actions taken or to be taken to prevent or minimize the
13 delay; a schedule for implementation of any measures to be taken to prevent or
14 mitigate the delay or the effect of the delay; Settling Defendants' rationale for
15 attributing such delay to a force majeure; and a statement as to whether, in the
16 opinion of Settling Defendants, such event may cause or contribute to an
17 endangerment to public health or welfare, or the environment. Settling
18 Defendants shall include with any notice all available documentation supporting
19 their claim that the delay was attributable to a force majeure. Settling Defendants
20 shall be deemed to know of any circumstance of which Settling Defendants, any
21 entity controlled by Settling Defendants, or Settling Defendants' contractors
22 knew or should have known. Failure to comply with the above requirements
23 regarding an event shall preclude Settling Defendants from asserting any claim of
24 force majeure regarding that event, provided, however, that if EPA, despite the
25 late notice, is able to assess to its satisfaction whether the event is a force majeure
26 under Paragraph 52 and whether Settling Defendants have exercised their best
27 efforts under Paragraph 52, EPA may, in its unreviewable discretion, excuse in
28 writing Settling Defendants' failure to submit timely notices under this

Paragraph.

54. If EPA agrees that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this Partial Consent Decree that are affected by the force majeure will be extended by EPA for such time as is necessary to complete those obligations. In that case, EPA will notify Settling Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure. An extension of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure, EPA will notify Settling Defendants in writing of its decision.

55. If Settling Defendants elect to invoke the dispute resolution procedures set forth in Section XVII (Dispute Resolution), they shall do so no later than 15 Days after receipt of EPA's notice. In any such proceeding, Settling Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Defendants complied with the requirements of Paragraphs 52 and 53. If Settling Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Settling Defendants of the affected obligation of this Partial Consent Decree identified to EPA and the Court.

XVII.DISPUTE RESOLUTION

56. Unless otherwise expressly provided for in this Partial Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve all disputes arising under or with respect to this Partial Consent Decree. However, the procedures set forth in this Section shall not

1 apply to actions by the United States or the State to enforce obligations of any
2 Settling Defendants that have not been disputed in accordance with this Section.

3 57. Any dispute that arises under or with respect to this Partial Consent
4 Decree shall in the first instance be the subject of informal negotiations between
5 the parties to the dispute. The period for informal negotiations shall not exceed
6 45 Days from the time the dispute arises, unless it is modified by written
7 agreement of the parties to the dispute. The dispute shall be considered to have
8 arisen when one party sends the other parties a written Notice of Dispute.

9 58. Statements of Position.

10 a. In the event that the parties to the dispute cannot resolve a
11 dispute by informal negotiations under the preceding Paragraph, then the position
12 advanced by EPA shall be considered binding unless, within 14 Days after the
13 conclusion of the informal negotiation period, Settling Defendants invoke the
14 formal dispute resolution procedures of this Section by serving on the United
15 States and the State a written Statement of Position on the matter in dispute,
16 including, but not limited to, any factual data, analysis or opinion supporting that
17 position and any supporting documentation relied upon by Settling Defendants.
18 The Statement of Position shall specify Settling Defendants' position as to
19 whether formal dispute resolution should proceed under Paragraph 59 or
20 Paragraph 60.

21 b. Within 45 Days after receipt of Settling Defendants' Statement of
22 Position, EPA will serve on Settling Defendants its Statement of Position,
23 including, but not limited to, any factual data, analysis, or opinion supporting that
24 position and all supporting documentation relied upon by EPA. EPA's Statement
25 of Position shall include a statement as to whether formal dispute resolution
26 should proceed under Paragraph 59 or 60. Within 45 Days after receipt of EPA's
27 Statement of Position, Settling Defendants may submit a reply.

28 c. If there is disagreement between EPA and Settling Defendants as

1 to whether dispute resolution should proceed under Paragraph 59 or 60, the
2 parties to the dispute shall follow the procedures set forth in the Paragraph
3 determined by EPA to be applicable. However, if Settling Defendants ultimately
4 appeal to the Court to resolve the dispute, the Court shall determine which
5 Paragraph is applicable in accordance with the standards of applicability set forth
6 in Paragraphs 59 and 60.

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

18 a. An administrative record of the dispute shall be maintained by
19 EPA and shall contain all statements of position, including supporting
20 documentation, submitted pursuant to this Section. Where appropriate, EPA may
21 allow submission of supplemental statements of position by the parties to the
22 dispute.

23 b. The Director of the Superfund and Emergency Management
24 Division, EPA Region IX, will issue a final administrative decision resolving the
25 dispute based on the administrative record described in Paragraph 59.a. This
26 decision shall be binding upon Settling Defendants, subject only to the right to
27 seek judicial review pursuant to Paragraphs 59.c and 59.d.

28 c. Any administrative decision made by EPA pursuant to

1 Paragraph 59.b shall be reviewable by this Court, provided that a motion for
2 judicial review of the decision is filed by Settling Defendants with the Court and
3 served on all Parties within 20 Days of receipt of EPA's decision. The motion
4 shall include a description of the matter in dispute, the efforts made by the parties
5 to resolve it, the relief requested, and the schedule, if any, within which the
6 dispute must be resolved to ensure orderly implementation of this Partial Consent
7 Decree. The United States may file a response to Settling Defendants' motion,
8 and, if permitted by this Court's local rules, Settling Defendants may file a reply.

9 d. In proceedings on any dispute governed by this Paragraph,
10 Settling Defendants shall have the burden of demonstrating that the decision of
11 the Superfund and Emergency Management Division Director is arbitrary and
12 capricious or otherwise not in accordance with law. Judicial review of EPA's
13 decision shall be on the administrative record compiled pursuant to
14 Paragraph 59.a.

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

19 a. Following receipt of Settling Defendants' Statement of Position
20 submitted pursuant to Paragraph 58, the Director of the Superfund and
21 Emergency Management Division, EPA Region IX, will issue a final decision
22 resolving the dispute. The Superfund and Emergency Management Division
23 Director's decision shall be binding on Settling Defendants unless, within 20
24 Days of receipt of the decision, Settling Defendants file with the Court and serve
25 on the Parties a motion for judicial review of the decision setting forth the matter
26 in dispute, the efforts made by the parties to resolve it, the relief requested, and
27 the schedule, if any, within which the dispute must be resolved to ensure orderly
28 implementation of this Partial Consent Decree. The United States may file a

1 response to Settling Defendants' motion, and, if permitted by this Court's local
2 rules, Settling Defendants may file a reply.

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

13 Chief, Collections and Resolutions Unit
14 Department of Toxic Substances Control
15 P.O. Box 806
16 Sacramento, California 95812-0806

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

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

61. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of Settling Defendants under this Partial Consent Decree, not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 69. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Partial Consent Decree. In the event that Settling Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XVIII (Stipulated Penalties).

XVIII. STIPULATED PENALTIES

62. Settling Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraphs 63 and 64 to the United States and DTSC, to be split 80%/20%, respectively, for failure to comply with the requirements of this Partial Consent Decree for Settling Defendants specified below, unless excused under Section XVI (Force Majeure). “Compliance” by Settling Defendants shall include completion of all payments and activities required for Settling Defendants under this Partial Consent Decree, or any plan, report, or other deliverable approved under this Partial Consent Decree, in accordance with all applicable requirements of law, this Partial Consent Decree, the SOW, and any plans, reports, or other deliverables approved under this Partial Consent Decree and within the specified time schedules established by and approved under this Partial Consent Decree.

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

a. The following stipulated penalties shall accrue per violation per

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Day for any noncompliance identified in Paragraph 63.b:

<u>Penalty Per Violation Per</u>	<u>Period of</u>
<u>Day</u>	<u>Noncompliance</u>
\$500	1st through 14th Day
\$1000	15th through 30th Day
\$3000	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 63.a:

- (1) Achievement of Performance Standards;
- (2) Provision (by Settling Defendants) of access pursuant to Paragraph 19;
- (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 Future Response Costs under Paragraph 46.b; and
- (6) Establishment and maintenance of performance guarantee in accordance with Paragraph 32.

64. 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
\$1000	31st Day and beyond

65. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 77 (Work Takeover), Settling Defendants shall be liable for a stipulated penalty in the amount of \$2,250,000. Stipulated penalties under this Paragraph are in addition to the remedies available under Paragraphs 36 (Funding for Work Takeover) and 77 (Work Takeover).

66. 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 IX (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 Paragraph 59.b or 60.a of Section XVII (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 XVII (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

1 final decision regarding such dispute. Nothing in this Partial Consent Decree
2 shall prevent the simultaneous accrual of separate penalties for separate
3 violations of this Partial Consent Decree.

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

11 68. All penalties accruing under this Section shall be due and payable to
12 the United States and DTSC within 30 Days of Settling Defendants' receipt from
13 EPA of a demand for payment of the penalties, unless Settling Defendants invoke
14 the Dispute Resolution procedures under Section XVII (Dispute Resolution)
15 within the 30-Day period. All payments to the United States under this Section
16 shall indicate that the payment is for stipulated penalties, and shall be made in
17 accordance with Paragraphs 45.b and 45.c, and all payments to DTSC shall be
18 made in accordance with Paragraph 42.c.

19 69. Penalties shall continue to accrue as provided in Paragraph 66
20 during any dispute resolution period, but need not be paid until the following:

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

25 b. If the dispute is appealed to this Court and the United States
26 and/or DTSC prevails in whole or in part, Settling Defendants shall pay all
27 accrued penalties determined by the Court to be owed to EPA and DTSC within
28 60 Days of receipt of the Court's decision or order, except as provided in

Paragraph 69.c;

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

70. If Settling Defendants fail to pay stipulated penalties when due, Settling Defendants shall pay Interest on the unpaid stipulated penalties as follows: (a) if Settling Defendants timely invoked dispute resolution such that the obligation to pay stipulated penalties was stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to Paragraph 69 until the date of payment; and (b) if Settling Defendants fail to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 68 until the date of payment. If Settling Defendants fail to pay stipulated penalties and Interest when due, the United States or DTSC may institute proceedings to collect the penalties and Interest.

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

72. Nothing in this Partial Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States or DTSC to seek any other remedies or sanctions available by virtue of Settling Defendants' violation of this Partial Consent Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA, 42 U.S.C. § 9622(l), or applicable

1 federal or California law, provided, however, that the United States shall not seek
2 civil penalties pursuant to Section 122(l) of CERCLA for any violation for which
3 a stipulated penalty is provided in this Partial Consent Decree, except in the case
4 of a willful violation of this Partial Consent Decree.

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

8 **XIX. COVENANTS BY PLAINTIFFS**

9 74. Covenant for Settling Defendants by United States. In consideration
10 of the actions that will be performed and the payments that will be made by
11 Settling Defendants under this Partial Consent Decree, and except as specifically
12 provided in Paragraph 76 (General Reservations of Rights), the United States
13 covenants not to sue or to take administrative action against Settling Defendants
14 pursuant to Sections 106 and 107(a) of CERCLA for the Work, EPA Past
15 Response Costs, or EPA Future Response Costs. These covenants shall take
16 effect upon the receipt by EPA of the payments required by Paragraph 42
17 (Payment by Settling Defendants for EPA Past Response Costs and DTSC Past
18 Response Costs) and any Interest or stipulated penalties due thereon under
19 Paragraph 47 (Interest) or Section XVIII (Stipulated Penalties). These covenants
20 are conditioned upon the satisfactory performance by Settling Defendants of their
21 obligations under this Partial Consent Decree. These covenants extend only to
22 Settling Defendants and their successors and assigns and do not extend to any
23 other person.

24 75. Covenants by DTSC. Except as specifically provided in Paragraph
25 76 (General Reservations of Rights), DTSC covenants not to sue or to take
26 administrative action against Settling Defendants pursuant to Section 107(a) of
27 CERCLA, 42 U.S.C. §9607(a), and Cal. Health & Safety Code Sections 25323.5,
28 25355.5, and 25360 for the Work, DTSC Past Response Costs, and DTSC Future

1 Response Costs. These covenants shall take effect upon payment to DTSC of all
2 payments required from Settling Defendants by Paragraph 42.c (Payment of
3 DTSC Past Response Costs) and any Interest or stipulated penalties due thereon
4 under Paragraph 47 (Interest) or Section XVIII (Stipulated Penalties). These
5 covenants are conditioned upon the satisfactory performance by Settling
6 Defendants of their obligations under this Partial Consent Decree. These
7 covenants extend only to Settling Defendants and their successors and assigns
8 and do not extend to any other person.

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

15 a. liability for failure by Settling Defendants to meet a requirement
16 of this Partial Consent Decree;

17 b. liability arising from the past, present, or future disposal, release,
18 or threat of release of Waste Material outside of the Dual Site;

19 c. liability based on the ownership or operation of any portion of the
20 Dual Site by Settling Defendants when such ownership or operation commences
21 after signature of this Partial Consent Decree;

22 d. liability based on Settling Defendants' transportation, treatment,
23 storage, or disposal, or the arrangement for the transportation, treatment, storage,
24 or disposal of Waste Material at or in connection with the Dual Site, other than as
25 provided in the ROD, the Work, or otherwise ordered by EPA, after signature of
26 this Partial Consent Decree;

27 e. liability for damages for injury to, destruction of, or loss of
28 natural resources, and for the costs of any natural resource damage assessments;

1 f. criminal liability;

2 g. liability for violations of federal or state law which occur during
3 or after implementation of the Work;

4 h. liability, prior to Certification of Completion of the Work, for
5 additional response actions that EPA determines are necessary to achieve and
6 maintain the Performance Standards or to carry out and maintain the
7 effectiveness of the relevant remedy components set forth in the ROD relating to
8 the Chlorobenzene Plume, but that cannot be required pursuant to Paragraph 14
9 (Modification of SOW or Related Work Plans);

10 i. liability for the Remaining Work, vapor intrusion, DNAPL and
11 for any other operable unit at the Montrose Chemical Corp. Superfund Site or the
12 final response action;

13 j. liability for costs that the United States or DTSC will incur, or
14 have incurred, after July 31, 2019, or September 30, 2019, respectively, regarding
15 the Dual Site but that are not within the definition of EPA Future Response Costs
16 or DTSC Future Response Costs;

17 k. liability for costs incurred or to be incurred by the Agency for
18 Toxic Substances and Disease Registry regarding the Dual Site; and

19 l. liability for claims or defenses as described in Paragraph 81.b.

20 77. Work Takeover.

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

1 remedy the circumstances giving rise to EPA's issuance of such notice.

2 b. If, after expiration of the 20-Day notice period specified in
3 Paragraph 77.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 36.

10 c. Settling Defendants may invoke the procedures set forth in
11 Paragraph 59 (Record Review) to dispute EPA's implementation of a Work
12 Takeover under Paragraph 77.b. However, notwithstanding Settling Defendants'
13 invocation of such dispute resolution procedures, and during the pendency of any
14 such dispute, EPA may in its sole discretion commence and continue a Work
15 Takeover under Paragraph 77.b until the earlier of (1) the date that the Settling
16 Defendants remedy, to EPA's satisfaction, the circumstances giving rise to EPA's
17 issuance of the relevant Work Takeover Notice, or (2) the date that a final
18 decision is rendered in accordance with Paragraph 59 (Record Review) requiring
19 EPA to terminate such Work Takeover.

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

23 **XX. COVENANTS BY SETTLING DEFENDANTS**

24 79. Covenant Not to Sue by Settling Defendants. Subject to the
25 reservations in Paragraph 81, Settling Defendants hereby covenant not to sue and
26 agree not to assert any claims or causes of action against the United States or
27 DTSC, or their contractors and employees, with respect to the Work, past
28 response actions regarding the Dual Site, EPA Past Response Costs, EPA Future

1 Response Costs, DTSC Past Response Costs, DTSC Future Response Costs, and
2 this Partial Consent Decree, including, but not limited to:

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

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

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

22 80. Except as provided in Paragraph 90 (Res Judicata and Other
23 Defenses), the covenants in this Section shall not apply if the United States or
24 DTSC brings a cause of action or issues an order pursuant to any of the
25 reservations in Section XIX (Covenants by Plaintiffs), other than in Paragraphs
26 76.a (claims for failure to meet a requirement of the Decree), 76.f (criminal
27 liability), and 76.g (violations of federal/state law during or after implementation
28 of the Work), but only to the extent that Settling Defendants' claims arise from

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1 the same response action, response costs, or damages that the United States or
2 DTSC is seeking pursuant to the applicable reservation.

3 81. Settling Defendants' Reservations.

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

17 b. Notwithstanding the foregoing, Settling Defendants specifically
18 reserve contribution claims against the General Services Administration under
19 CERCLA, for the equitable allocation of costs of performing the Work that arise
20 out of releases of benzene or other chemicals from or at the Del Amo Superfund
21 Site. In the event that any Settling Defendant should bring contribution claims
22 against the General Services Administration as described above, or claims as
23 described in Paragraph 81.a above, the United States reserves the right to bring
24 claims or counterclaims arising from, or responding to, such claims, and reserves
25 all defenses available to such claims.

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

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

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

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

28 b. that the materials containing hazardous substances contributed to

1 the Dual Site by such person have contributed significantly, or could contribute
2 significantly, either individually or in the aggregate, to the cost of response action
3 or natural resource restoration at the Dual Site.

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

5 85. Nothing in this Partial Consent Decree shall be construed to create
6 any rights in, or grant any cause of action to, any person not a Party to this Partial
7 Consent Decree. Except as provided in Paragraph 83 (Claims Against De
8 Micromis Parties), each of the Parties expressly reserves any and all rights
9 (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C.
10 § 9613), defenses, claims, demands, and causes of action which each of them
11 may have with respect to any matter, transaction, or occurrence relating in any
12 way to the Dual Site against any person not a Party hereto. Nothing in this
13 Partial Consent Decree diminishes the right of the United States or the State,
14 pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to
15 pursue any such persons to obtain additional response costs or response action
16 and to enter into settlements that give rise to contribution protection pursuant to
17 Section 113(f)(2).

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

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

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

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

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

1 91. As of the Effective Date, this Partial Consent Decree resolves the
2 following disputes brought by Montrose pursuant to Paragraph 62 of the
3 Construction CD: (i) Notice of Dispute dated February 11, 2015; and (ii)
4 Supplemental Notice of Dispute dated December 31, 2018. As of the date of
5 lodging of this Partial Consent Decree, the disputes above are held in abeyance,
6 and any informal negotiation period (as described in the Construction CD) for
7 these disputes is extended from the date of lodging until the Effective Date of this
8 Partial Consent Decree. These disputes shall not be reactivated unless (a) the
9 United States or DTSC withdraws its consent to this Partial Consent Decree
10 pursuant to Paragraph 106 (Section XXIX, Lodging and Opportunity for Public
11 Comment), or (b) the Court disapproves this Partial Consent Decree.

12 **XXII.ACCESS TO INFORMATION**

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

26 93. Business Confidential and Privileged Documents.

27 a. Settling Defendants may assert business confidentiality claims
28 covering part or all of the Records submitted to Plaintiffs under this Partial

1 Consent Decree to the extent permitted by and in accordance with Section
2 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b).
3 Records determined to be confidential by EPA will be afforded the protection
4 specified in 40 C.F.R. Part 2, Subpart B; records determined to be confidential by
5 DTSC will be afforded the protection specified in the California Public Records
6 Act, California Government Code § 6250, *et seq.* If no claim of confidentiality
7 accompanies Records when they are submitted to EPA and DTSC, or if EPA has
8 notified Settling Defendants that the Records are not confidential under the
9 standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, or if
10 DTSC has notified Settling Defendants that the Records are not confidential
11 under the standards of the California Public Records Act, California Government
12 Code § 6250, *et seq.*, the public may be given access to such Records without
13 further notice to Settling Defendants.

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

28 c. No Records created or generated pursuant to the requirements of

1 this Partial Consent Decree shall be withheld from the United States or DTSC on
2 the grounds that they are privileged or confidential.

3 94. No claim of confidentiality or privilege shall be made with respect to
4 any data, including, but not limited to, all sampling, analytical, monitoring,
5 hydrogeologic, scientific, chemical, or engineering data, or any other documents
6 or information evidencing conditions at or around the Dual Site.

7 95. If relevant to the proceeding, the Parties agree that validated sampling
8 data generated in accordance with the SOW and reviewed and approved by EPA
9 shall be admissible as evidence, without objection, in any proceeding under this
10 Partial Consent Decree.

11 96. Notwithstanding any provision of this Partial Consent Decree, the
12 United States and the State retain all of their information gathering and inspection
13 authorities and rights, including enforcement actions related thereto, under
14 CERCLA, RCRA, and any other applicable federal or California statutes or
15 regulations.

16 **XXIII. RETENTION OF RECORDS**

17 97. Until 15 years after Settling Defendants' receipt of EPA's
18 notification pursuant to Paragraph 39.b (Completion of the Work), each Settling
19 Defendant shall preserve and retain all non-identical copies of Records (including
20 Records in electronic form) now in its possession or control or which come into
21 its possession or control that relate in any manner to its liability under CERCLA
22 with respect to the Dual Site, provided, however, that Settling Defendants who
23 are potentially liable as owners or operators of the Dual Site must retain, in
24 addition, all Records that relate to the liability of any other person under
25 CERCLA with respect to the Dual Site. Each Settling Defendant must also
26 retain, and instruct its contractors and agents to preserve, for the same period of
27 time specified above all non-identical copies of the last draft or final version of
28 any Records (including Records in electronic form) now in its possession or

1 control or which come into its possession or control that relate in any manner to
2 the performance of the Work, provided, however, that each Settling Defendant
3 (and its contractors and agents) must retain, in addition, copies of all data
4 generated during the performance of the Work and not contained in the
5 aforementioned Records required to be retained. Each of the above record
6 retention requirements shall apply regardless of any corporate retention policy to
7 the contrary.

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

25 99. Each Settling Defendant certifies individually that, to the best of its
26 knowledge and belief, after thorough inquiry, it has not altered, mutilated,
27 discarded, destroyed or otherwise disposed of any Records (other than identical
28 copies) relating to its potential liability regarding the Dual Site since the earlier of

notification of potential liability by the United States or the State or the filing of suit against it regarding the Dual Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XXIV. NOTICES AND SUBMISSIONS

100. Whenever, under the terms of this Partial Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified in this Section shall constitute complete satisfaction of any written notice requirement of this Partial Consent Decree with respect to the United States, EPA, DTSC, and Settling Defendants, respectively. Notices required to be sent to EPA, and not to the United States, under the terms of this Partial Consent Decree should not be sent to the U.S. Department of Justice.

As to the United States:	EES Case Management Unit U.S. Department of Justice Environment and Natural Resources Division P.O. Box 7611 Washington, D.C. 20044-7611 eescdcopy.enrd@usdoj.gov Re: DJ # 90-11-2-933/3
--------------------------	---

1 and:

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

8 As to EPA:

Yarissa Martinez
EPA Project Coordinator
United States Environmental Protection
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600 Wilshire Blvd. Suite 940 (SFD-7-2)
Los Angeles, CA 90017
Martinez.yarissa@epa.gov

14 As to the EPA Regional
15 Financial Management
16 Officer:

Marie Ortesi
United States Environmental Protection
Agency
Region IX
75 Hawthorne St.
San Francisco, CA 94105

19 As to DTSC:

Peter Garcia
DTSC Division Chief
Site Mitigation and Restoration Program
ATTN: Willard Garrett
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Department of Toxic Substances Control
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As to Settling Defendants:

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18 Los Angeles, CA 90067

19 George J. Gigounas
20 DLA Piper LLP (US)
21 555 Mission Street, Suite 2400
22 San Francisco, CA 94105

23 **XXV. RETENTION OF JURISDICTION**

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

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XXVI. APPENDICES

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

“Appendix A” is Volume One of the ROD (excluding Volume Two, Response Summary) and the Flowrate Memo.

“Appendix B” is the SOW.

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

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

XXVII. COMMUNITY RELATIONS

103. If requested by EPA or DTSC, Settling Defendants shall participate in community relations activities pursuant to the community relations plan (“Plan”) to be developed by EPA. EPA, in consultation with DTSC, will determine the appropriate role for Settling Defendants under the Plan. Settling Defendants shall also cooperate with EPA and DTSC in providing information regarding the Work to the public. As requested by EPA or DTSC, Settling Defendants shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA or DTSC to explain activities at or relating to the Dual Site or the Work. Costs incurred by the United States or DTSC under this Section, including the costs of any technical assistance grant under Section 117(e) of CERCLA, [42 U.S.C. § 9617\(e\)](#), shall be considered EPA Future Response Costs that Settling Defendants shall pay pursuant to Section XIV (Payments for Response Costs).

XXVIII. MODIFICATION

104. Except as provided in Paragraph 14 (Modification of SOW or Related Work Plans), material modifications to this Partial Consent Decree, including the SOW, shall be in writing, signed by the United States, DTSC, and

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1 the Settling Defendants, and shall be effective upon approval by the Court.
2 Except as provided in Paragraph 14 (Modification of SOW or Related Work
3 Plans), schedule modifications and non-material modifications to this Partial
4 Consent Decree, including the SOW, shall be in writing and shall be effective
5 when signed by duly authorized representatives of the United States, DTSC, and
6 Settling Defendants. All modifications to this Partial Consent Decree, other than
7 the SOW, also shall be signed by DTSC, or a duly authorized representative of
8 DTSC, as appropriate. A modification to the SOW shall be considered material
9 if it fundamentally alters the basic features of the selected remedy within the
10 meaning of 40 C.F.R. § 300.435(c)(2)(ii). Before providing its approval to any
11 modification to the SOW, the United States will provide DTSC with a reasonable
12 opportunity to review and comment on the proposed modification.

13 105. Nothing in this Partial Consent Decree shall be deemed to alter the
14 Court's power to enforce, supervise or approve modifications to this Partial
15 Consent Decree.

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

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

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

XXX. SIGNATORIES/SERVICE

108. Each undersigned representative of a Settling Defendant to this Partial Consent Decree, the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice, and the California Department of Toxic Substances Control certifies that he or she is fully authorized to enter into the terms and conditions of this Partial Consent Decree and to execute and legally bind such Party to this document.

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

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

XXXI. FINAL JUDGMENT

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

112. Upon entry of this Partial Consent Decree by the Court, this Partial

United States and State of CA v. Montrose Chemical Corp. of California, et al.
Partial Consent Decree

1 Consent Decree shall constitute a final judgment between and among the United
2 States, the State, and Settling Defendants. The Court finds that there is no just
3 reason for delay and therefore enters this judgment as a final judgment under Fed.
4 R. Civ. P. 54 and 58.

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6 SO ORDERED THIS 12th Day of November 2021.

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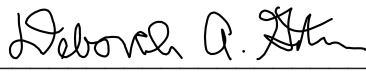
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10 HONORABLE DAVID O. CARTER
11 United States District Judge
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1 THE UNDERSIGNED PARTY enters into this Partial Consent Decree in the
2 matter of *United States of America and State of California v.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

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

7
8 JEFFREY BOSSERT CLARK
9 Assistant Attorney General
10 Environment & Natural Resources Division
11 United States Department of Justice
12 950 Pennsylvania Ave., NW
13 Washington, DC 20530-0001

14
15 August 6, 2020
16 Date:

17 
18 _____
19 GABRIEL M. ALLEN
20 Senior Attorney
21 DEBORAH A. GITIN
22 Senior Counsel
23 Environmental Enforcement Section
24 Environment & Natural Resources Division
25 United States Department of Justice
26 301 Howard St., Suite 1050
27 San Francisco, CA 94105
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
5 **FOR THE ENVIRONMENTAL**
6 **PROTECTION AGENCY:**

7 July 31, 2020



8
9 Date: _____

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

17 July 31, 2020



18
19 Date: _____

20 XIAO ZHANG
21 Assistant Regional Counsel
22 U.S. Environmental Protection Agency,
23 Region IX
24 75 Hawthorne Street
25 San Francisco, CA 94105

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
8 07/31/2020

9 Date:

10 
11 _____
12 GRANT COPE
13 Deputy Director
14 Site Mitigation and Restoration Program
15 Department of Toxic Substances Control
16 P.O. Box 806
17 1001 I Street, 25th Floor
18 Sacramento, California 95812-0806
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United States and State of CA v. Montrose Chemical Corp. of California, et al.
Partial Consent Decree

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 TFCF AMERICA, INC.**

5
6
7
8 6/3/2020
Date:

9 
AARON SOLOMON
Assistant Secretary
TFCF America, Inc.
1170 Celebration Blvd. Floor 01
Celebration, FL 34747

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United States and State of CA v. Montrose Chemical Corp. of California, et al.
Partial Consent Decree

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**

27 May 2020

Date:

DocuSigned by:

Charles Elmendorf

CFC4CC7EB6A643C...

CHARLES ELMENDORF

President

1800 Concord Pike

PO Box 15437

FOB 2-311

Wilmington, DE 19850-5437

United States and State of CA v. Montrose Chemical Corp. of California, et al.
Partial Consent Decree

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

4
5 **FOR BAYER CROPSCIENCE INC.**

6 27 May 2020

7
8 _____
9 Date:

DocuSigned by:
Charles Elmendorf
CEC4CC7EB6A643C
President, Stauffer Management Company LLC
as litigation agent for Bayer CropScience Inc.

10 CHARLES ELMENDORF
11 President
12 1800 Concord Pike
13 PO Box 15437
14 FOB 2-311
15 Wilmington, DE 19850-5437
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United States and State of CA v. Montrose Chemical Corp. of California, et al.
Partial Consent Decree

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 JCI JONES CHEMICALS, INC.

5
6
7 June 3, 2020

8 Date:

9 

10 TIMOTHY J. GAFFNEY

11 Executive Vice President

12 100 Sunny Sol Boulevard

13 Caledonia, NY 14423

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27 *United States and State of CA v. Montrose Chemical Corp. of California, et al.*
28 Partial Consent Decree