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

14 UNITED STATES DISTRICT COURT

15 NORTHERN DISTRICT OF CALIFORNIA

16 UNITED STATES OF AMERICA,)
)
 17 Plaintiff,)
)
 18 v.)
)
 19 MONTROSE CHEMICAL CORPORATION)
 20 OF CALIFORNIA, et al.,)
)
 21 Defendants.)

NO. C 84-6273 CW
 (Consolidated)

CONSENT DECREE
 [Parr Group]

22 AND RELATED ACTIONS
 23

19 1996

ENTERED IN CIVIL DOCKET

28 DECREE-PARR

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14 UNITED STATES DISTRICT COURT

15 NORTHERN DISTRICT OF CALIFORNIA

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

25
26
27
28 DECREE-PARR

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

6 INTRODUCTION

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

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

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

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

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

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

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

25 G. EPA completed a Remedial Investigation ("RI") Report in
26 February 1994, and EPA completed a Feasibility Study ("FS")
27 Report on July 5, 1994.

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

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

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

26 K. The Parties recognize, and the Court by entering this
27 Consent Decree finds, that this Consent Decree has been

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

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

8 JURISDICTION AND VENUE

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

15 PARTIES BOUND

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

23 CONDITION PRECEDENT

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

1 the Court.

2 DEFINITIONS

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

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

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

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

21 d. "John Parr Cox" shall mean John Parr Cox individually
22 and in, or without regard to, any capacity in which he acted with
23 respect to the Site, whether as corporate officer, director,
24 manager, agent, shareholder, distributee, successor, assignee,
25 operator, trustee or otherwise.

26 e. "Levin Group" shall mean Levin Enterprises, Inc. and
27 Levin Richmond Terminal, Inc., which have agreed, in a related

1 Consent Decree to be lodged simultaneously with this Decree in
2 this matter, to construct a cap around the former Heckathorn
3 plant to prevent erosion, as called for in the ROD.

4 f. "Marine Remedial Action" shall mean those response
5 actions selected in the ROD for the Lauritzen Channel and Parr
6 Canal.

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

12 - payments to EPA for Interim Response Costs, as defined
13 in the Montrose Group Consent Decree

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

16 - costs of consultants/contractors to implement the Marine
17 Remedial Action;

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

22 - costs of consultants/contractors for development and
23 finalization of documents, work plans, and reports
24 required by the Montrose Group Consent Decree;

25 - any costs of an escrow agent to administer the United
26 Heckathorn Site Escrow;

27 - fees and taxes that the Montrose Group must pay to remove

1 Waste Material from the Site and dispose of it in a licensed
2 landfill elsewhere.

3
4 Marine Response Costs shall not include:

- 5 - any legal fees incurred by the Montrose Group;
- 6 - any costs of the Montrose Group to communicate between
7 themselves or costs of the Montrose Group incurred for
8 internal organizational purposes;
- 9 - any civil penalties assessed against the Montrose Group.

10 h. "Montrose Group" shall mean that group of defendants
11 which has agreed, in a related Consent Decree to be lodged
12 simultaneously with this Decree in this matter, to dredge soft
13 bay mud from the Lauritzen Channel and Parr Canal and to dispose
14 of the dredged material offsite, all as called for in the ROD.
15 The Montrose Group is specifically identified in Appendix A
16 hereto.

17 i. "Natural Resource Damages" shall mean damages,
18 including Damage Assessment Costs and lost use value, recoverable
19 under Section 107 of CERCLA, 42 U.S.C. § 9607, for injury to,
20 destruction of, or loss of any and all Natural Resources at the
21 United Heckathorn Site.

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

24 k. "NOAA" shall mean the National Oceanic and Atmospheric
25 Administration, an agency of the United States Department of
26 Commerce, and any successor departments, agencies or
27 instrumentalities of the United States.

1 l. "Parties" shall mean the United States and the Settling
2 Defendants.

3 m. "Remedial Action" shall mean those activities, except
4 for operation and maintenance, to be undertaken, or which have
5 been undertaken, to implement the ROD.

6 n. "Response Costs" shall mean all costs of response as
7 provided in Section 107(a)(1-4)(A) of CERCLA, 42 U.S.C.
8 §§ 9607(a)(1-4)(A), and as defined in Section 101(25) of CERCLA,
9 42 U.S.C. § 9601(25), including oversight costs, that the United
10 States has incurred or will incur with respect to the United
11 Heckathorn NPL Site.

12 o. "Settling Defendants" or the "Parr Group" shall mean
13 Parr-Richmond Terminal Company, Parr Industrial Corporation, and
14 John Parr Cox.

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

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

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

1 instrumentalities.

2 s. "Waste Material" shall mean (1) any "hazardous
3 substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14);
4 (2) any pollutant or contaminant under Section 101(33) of CERCLA,
5 42 U.S.C. § 9601(33); (3) any "solid waste" under Section
6 1004(27) of the Resource Conservation and Recovery Act, 42 U.S.C.
7 § 6903(27); and (4) any "hazardous waste" under 22 Cal. Code of
8 Regulations Section 66600 et seq.

9 SETTLING DEFENDANTS' PAYMENTS INTO THE GROUP ESCROW

10 5. On or before May 31, 1996, Settling Defendants shall
11 establish an escrow account (the "Group Escrow"), bearing
12 interest at commercially reasonable rates. Settling Defendants
13 shall deposit into the Group Escrow \$3,500,000, in settlement of
14 EPA's claims, and \$133,333.33, in settlement of the United
15 States' Natural Resource Damages claims. The allocation to
16 Settling Defendants of \$133,334.33, out of the United States'
17 total Natural Resource Damages recovery of \$400,000 from
18 defendants which are parties to the Four Decrees, was determined
19 solely by potentially responsible parties, including Settling
20 Defendants.

21 6. On May 31, 1996, Settling Defendants shall send to the
22 United States, as provided in Paragraph 33, a copy of the
23 correspondence that establishes and funds the Group Escrow
24 account, including, but not limited to, information containing
25 the identity of the bank and the bank account under which the
26 escrow is established, as well as a bank statement showing the
27 initial balance of the Group Escrow account. Thereafter, if

1 requested to do so by the United States, Settling Defendants
2 shall provide all other documentation concerning the account,
3 including any agreement concerning the determination of interest
4 rates.

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

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

10 PAYMENTS FROM THE GROUP ESCROW

11 9. Within 10 days after entry of this Decree, Settling
12 Defendants shall transfer the funds in the Group Escrow as
13 follows:

14 a. Transfer to an escrow set up by the Montrose Group, in
15 part to pay for the Remedial Action (the "United Heckathorn Site
16 Escrow"), \$3,500,000, plus accrued interest allocable to that
17 amount. Settling Defendants shall send notice that such payment
18 has been made to the United States as specified in Paragraph 33.
19 Within 10 days after entry of this Decree, the United States will
20 provide to James Ratcliff of Thatcher, Albrecht & Ratcliff,
21 acting for Settling Defendants, information about the United
22 Heckathorn Site Escrow to enable Settling Defendants to make the
23 transfer required herein.

24 b. Pay \$133,334.33, plus accrued interest allocable to
25 that amount, to DOI. The check shall be made payable to the
26 Secretary of the Interior and delivered to Chief, Division of
27 Finance Division, United States Fish and Wildlife Service, 4401

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

17 FAILURE TO MAKE TIMELY PAYMENTS

18 10. In the event Settling Defendants fail to make timely
19 payments, Settling Defendants shall pay a stipulated penalty as
20 follows:

21 a. For failure to fund the Group Escrow with \$3,500,000
22 (i.e., the EPA settlement) as set forth in Paragraph 5 or for
23 failure to make the transfer of funds as set forth in Paragraph
24 9.a, Settling Defendants shall pay a total of \$25,000 for any
25 delay of up to seven days and \$5,000 each day thereafter.

26 b. Stipulated penalties are due within 30 days following
27 receipt by the Settling Defendants of a written demand by the

1 United States for payment of such stipulated penalties.

2 c. Stipulated penalties shall be paid by certified or
3 cashier's check made payable to "EPA Hazardous Substance
4 Superfund;" shall be mailed to U.S. EPA, Region IX, Attention:
5 Superfund Accounting, P.O. Box 360863M, Pittsburgh, PA 15251;
6 shall indicate that the payment is for stipulated penalties; and
7 shall reference EPA Region 9 and Site/Spill ID #09R3, the DOJ
8 Case Number 90-11-3-598, and the name and address of the party
9 making payment. Copies of any checks paid pursuant to this
10 subparagraph and accompanying transmittal letters shall be sent
11 to the United States as provided in Paragraph 33 (Notice).

12 d. Payment of any stipulated penalty pursuant to this
13 Paragraph shall be in addition to any other remedy or sanction
14 available to the United States for the failure of the Settling
15 Defendants to make timely payment of the settlement amounts.

16 11. If Settling Defendants do not timely pay the amount
17 specified in Paragraph 9.b (Natural Resource Damages), this
18 Consent Decree shall be considered an enforceable judgment, under
19 Rule 69 of the Federal Rules of Civil Procedure and other
20 applicable statutory authority, for purposes of post-judgment
21 collection of the amount due the Trustees, without further order
22 of this Court. Interest shall be assessed at the annual rate
23 established pursuant to 31 U.S.C. § 3717 on the overdue amount
24 from the due date set forth in Paragraph 9 through the date of
25 payment. In addition, in the event the United States takes
26 action to enforce the judgment, Settling Defendants shall
27 reimburse the United States for costs and reasonable attorney's

1 fees incurred in enforcing Settling Defendants' obligation.

2 12. The obligations of Settling Defendants to pay amounts
3 owed the United States under this Consent Decree are joint and
4 several. In the event of the failure of any one or more Settling
5 Defendants to make the payments required under this Consent
6 Decree, the other Settling Defendants shall be responsible for
7 such payments.

8 13. In the event the United States must bring an action to
9 collect any payment required under this Decree, Settling
10 Defendants shall reimburse the United States for all costs of
11 such action, including but not limited to attorney's fees, except
12 as set forth in Paragraph 11.

13 COVENANT NOT TO SUE BY THE UNITED STATES

14 AND RESERVATION OF RIGHTS

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

1 and employees acting in such respective capacities for the
2 Settling Parties, and do not extend to any other person.

3
4 15. Reservation. Notwithstanding any other provision of
5 this Decree, the United States reserves, and this Decree is
6 without prejudice to the right to institute proceedings in this
7 action or in a new action, or to issue an administrative order
8 seeking to compel Settling Defendants to perform response actions
9 relating to the Site or to reimburse the United States for
10 additional response costs if:

11 (i) conditions at the Site, previously unknown to EPA,
12 are discovered, or

13 (ii) information, previously unknown to EPA, is
14 received, in whole or in part,

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

18 16. For purposes of Paragraph 15, the information and the
19 conditions known to EPA shall include only that information and
20 those conditions set forth in (1) the Record of Decision for the
21 Site, (2) the administrative record supporting the Record of
22 Decision, and (3) records relating to the Site, generated or
23 received by EPA after issuance of the Record of Decision, which
24 are in the EPA Site file as of December 31, 1995, as reflected in
25 the Site file index.

26 17. Reservation Concerning Natural Resource Damages.

27 Notwithstanding any other provision of this Decree, the United

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

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

- 24 (i) EPA's past response costs (including, but not
25 limited to, direct and indirect costs) incurred for
26 response actions at the Site, which for the purpose of
27 this calculation shall be in the sum of \$2,693,428.22,

1 as reflected in EPA's cost summary dated August 30,
2 1994;

3
4 (ii) The costs incurred or to be incurred by the Levin
5 Group for constructing, maintaining and overseeing a
6 cap around the former Heckathorn plant to prevent
7 erosion, as called for in the ROD, which for the
8 purpose of this calculation shall be the sum of
9 \$500,000;

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

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

19 19. For purposes of calculating whether the \$12.8 million
20 (or, in the case of John Parr Cox, \$24 million) limit has been
21 reached pursuant to Paragraph 18, the category of costs
22 enumerated therein shall not be reduced even if the costs are not
23 consistent with the NCP or "necessary," within the meaning of
24 Section 107(a)(4)(A-B) of CERCLA, 42 U.S.C. § 9607(a)(4)(A-B).

25 20. Notwithstanding any other provision of this Decree, the
26 United States reserves, and this Decree is without prejudice to,
27 the right to institute proceedings in this action or in a new

1 action, or to issue an administrative order seeking to compel
2 Settling Defendants to perform response actions relating to the
3 Site or to reimburse the United States for response costs,
4 including all past costs unreimbursed by potentially responsible
5 parties at the Site, if EPA determines, through an amendment to
6 the ROD, that the Remedial Action is not protective of human
7 health and the environment and EPA selects further response
8 actions at the Site.

9
10 21. General Reservation of Rights. The covenants not to
11 sue set forth above do not pertain to any matters other than
12 those expressly specified in Paragraph 14. Notwithstanding any
13 other provision of this Decree, the United States reserves, and
14 this Consent Decree is without prejudice to, all rights against
15 Settling Defendants with respect to all other matters, including,
16 but not limited to the following:

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

19 (2) liability arising from the past, present, or
20 future disposal, release, or threat of release of Waste
21 Materials outside of the Site, including liability for
22 damages for injury to, destruction of, or loss of natural
23 resources occurring outside of the Site, and for the costs
24 of any natural resource damage assessments;

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

1 (4) criminal liability; and

2 (5) liability for violations of federal or state law
3 by Settling Defendants which occur during or after
4 implementation of the Remedial Action.

5 COVENANTS BY SETTLING DEFENDANTS

6 22. Each of the Settling Defendants covenants not to sue
7 and agrees not to assert any claims or causes of action against
8 the United States, or any employee, officer, department, agency
9 or instrumentality thereof, with respect to any matters relating
10 to the United Heckathorn NPL Site or this Consent Decree,
11 including but not limited to:

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

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

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

22 The Settling Defendants reserve the right to assert any
23 counterclaims against the United States arising out of any action
24 filed by the United States pursuant to Paragraphs 15, 17, 18 or
25 20.

26 23. Nothing in this Decree shall be deemed to constitute
27 preauthorization of a claim within the meaning of Section 111 of

1 CERCLA, 42 U.S.C. § 9611 or 40 C.F.R. § 300.700(d).

2 EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

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

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

1 not party to this Decree are preserved.

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

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

15 28. In any subsequent administrative or judicial proceeding
16 initiated by the United States for injunctive relief, recovery of
17 response costs or Natural Resource Damages, or other appropriate
18 relief relating to the Site, Settling Defendants shall not
19 assert, and may not maintain, any defense or claim against the
20 United States based upon the principles of waiver, res judicata,
21 collateral estoppel, issue preclusion, claim-splitting, or other
22 defenses based upon any contention that the claims raised by the
23 United States in the subsequent proceeding were or should have
24 been brought in the instant case; provided, however, that nothing
25 in this Paragraph affects the enforceability of the covenants not
26 to sue set forth in Paragraph 14.

RETENTION OF RECORDS

1
2 29. Until seven years after the issuance of the
3 Certification of Completion of the Remedial Action, each Settling
4 Defendant shall preserve and retain one set of all records and
5 documents (originals or, if originals do not exist, copies) now
6 in its possession or control or which come into its possession or
7 control, that relate in any manner to the performance of the work
8 called for in the ROD or liability of any person for response
9 actions conducted and to be conducted at the Site, regardless of
10 any corporate retention policy to the contrary.

11 30. At the conclusion of this document retention period,
12 each Settling Defendant shall notify the United States at least
13 90 days prior to the destruction of any such records or
14 documents, and upon request by the United States, each Settling
15 Defendant shall make available any such records or documents at a
16 location within Region IX of EPA designated by the United States.
17 Each Settling Defendant may assert that certain documents,
18 records and other information are privileged under attorney
19 client privilege, or any other privilege recognized under state
20 or federal law. In connection with the assertion of any such
21 claim of privilege, the Settling Defendant shall provide the
22 United States with the following: (1) title of document or
23 record; (2) date of document or record; (3) name and position of
24 the author of the document or record; (4) description of the
25 subject of the document or record; and (5) the specific basis for
26 the privilege asserted.

1 Notice to EPA:

2 Regional Counsel
3 Office of Regional Counsel
4 United States EPA
5 Region IX
6 75 Hawthorne Street
7 San Francisco, CA 94105

8 Notice to Settling Defendants:

9 John Parr Cox (for John Parr Cox himself and for Parr-
10 Richmond Terminal Company):
11 655 Sutter Street, Suite 610
12 San Francisco, CA 94102

13 Parr Industrial Corporation:
14 Kenneth E. Keller
15 Bronson, Bronson & McKinnon
16 505 Montgomery Street
17 San Francisco, CA 94111-2514

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

22 EFFECTIVE DATE

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

26 RETENTION OF JURISDICTION

27 34. The Court shall retain jurisdiction of this matter for
28 the purpose of entering such further order, direction, or relief
as may be necessary or appropriate for the construction,
implementation, or enforcement of this Decree.

AUTHORIZED REPRESENTATIVE

35. Each undersigned representative of Settling Defendants
and the Assistant Attorney General, for the United States,

1 certifies that he or she is fully authorized to enter into the
2 terms and conditions of this Decree and to legally execute and
3 bind that Party to this Decree.

4 MODIFICATION

5 36. The terms of this Decree may be modified only by a
6 subsequent written agreement signed by the affected parties and
7 approved by the Court as a modification to this Decree.

8
9 PUBLIC COMMENT

10 37. The Parties agree that this Decree will be subject to a
11 30-day public comment period as provided in 28 C.F.R. § 50.7.
12 The United States reserves the right to withdraw its consent to
13 this Decree if comments received disclose facts or considerations
14 which show that this Decree is inappropriate, improper, or
15 inadequate. The Settling Defendants consent to the entry of this
16 Decree by the Court without further notice.

17 ENTIRE AGREEMENT

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

23 TERMINATION DATE

24 39. Any Settling Defendant may move to terminate this
25 Decree, but only after demonstrating to the Court that all the
26 Settling Defendants have fulfilled all of their obligations under
27 this Decree and after giving the United States 45 days' notice of

1 their intent to so move. Termination of this Decree shall not
2 affect the provisions herein for contribution protection,
3 document retention, the covenants not to sue and reservations of
4 rights, which shall remain in effect as an agreement among the
5 Parties.

6 40. The following Appendices are attached to and
7 incorporated into this Consent Decree:

8 "Appendix A is a complete list of the Montrose Group.

9 "Appendix B" is the map of the land portion of the Site.

10 "Appendix C" is the map of the marine portion of the Site.

11 "Appendix D" is the ROD.

12 COUNTERPARTS

13 41. This Decree may be executed in any number of
14 counterparts, and each executed counterpart shall have the same
15 force and effect as an original instrument.

16 ORDER

17 THE FOREGOING Consent Decree is hereby APPROVED. There
18 being no just reason for delay, this Court expressly directs,
19 pursuant to Rule 54(b), Federal Rules of Civil Procedure, ENTRY
20 OF FINAL JUDGMENT in accordance with the terms of this Consent
21 Decree this _____ DAY of _____, 1996, each party
22 to bear its own costs and attorney's fees, except as specifically
23 provided herein.

24
25 _____
United States District Judge
CLAUDIA WILKEN

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

3 FOR THE UNITED STATES OF AMERICA

4
5
6 Date: June 4, 1996

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

13 Date: _____

Helen H. Kang
14 HELEN H. KANG
15 Environment Enforcement Section
16 Environment and Natural Resources
17 Division

18 Date: _____

S. Randall Humm
19 S. RANDALL HUMM
20 Environmental Defense Section
21 Environment & Natural Resources
22 Division
23 P.O. Box 23986
24 Washington, D.C. 20026-3986
25 (202) 514-3097

26 Date: _____

Michael J. Yamaguchi
27 MICHAEL J. YAMAGUCHI
28 United States Attorney
Northern District of California
PATRICK RAMIREZ S. BUPARA
Assistant United States Attorney

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

3 FOR THE UNITED STATES OF AMERICA

4
5 Date: _____

6 _____
7 KEITH TAKATA
8 Deputy Director for Superfund
9 Region 9
U.S. Environmental Protection
Agency

10 Date: _____

11 _____
12 JOHN J. LYONS
13 Assistant Regional Counsel
14 Region 9
15 U.S. Environmental Protection
16 Agency

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

3 FOR SETTLING DEFENDANTS


4 PARR-RICHMOND TERMINAL COMPANY

5
6 Date: _____

JOHN PARR COX

8
9 PARR INDUSTRIAL CORPORATION

10
11 Date: _____



[NAME, TITLE]
FRED PARR COX
FORMER PRESIDENT

13
14
15 JOHN PARR COX

16
17 Date: _____

JOHN PARR COX

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

3 FOR SETTLING DEFENDANTS
4 PARR-RICHMOND TERMINAL COMPANY

5
6 Date: 5/10/96 *John Parr Cox*
JOHN PARR COX

7
8
9 PARR INDUSTRIAL CORPORATION
10
11 Date: _____
12 [NAME, TITLE]

13
14
15 JOHN PARR COX
16
17 Date: 5/10/96 *John Parr Cox*
18 JOHN PARR COX

SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT (the "Agreement") is made and entered into as of May 3, 1996, by and between Levin Enterprises, Inc. (formerly known as Levin Metals Corporation), Levin Richmond Terminal Corporation, Parr Richmond Terminal Company ("PRTC"), John Parr Cox, Parr Industrial Corporation, Shell Oil Company, Montrose Chemical Corporation of California ("Montrose"), Wilmington Securities, Inc., Olin Corporation (as successor to John Powell & Company, Inc.), Moyer Products, Inc., the Pennsylvania Salt Manufacturing Company, Pennsalt Chemical Corporation, Pennwalt Corporation, Pennsalt International Corporation-Western Hemisphere, Pennwalt International Corporation-Western Hemisphere, Atochem North America, Inc., and Elf Atochem North America, Inc., R.J. Prentiss & Company, Inc., a California corporation, Prentiss Incorporated, The Sherwin-Williams Company, the United States of America, the General Services Administration, the Agency for International Development, Bayer Corporation (formerly known as Miles Inc.), PureGro Company, Chris-Craft Industries, Inc. and Stauffer Chemical Company (all collectively, the "Parties" and individually, each a "Party").

RECITALS

A. WHEREAS, each of the Parties is a party in the consolidated lawsuit entitled Levin Metals Corporation, et al., v. Parr-Richmond Terminal Company, et al., (and related counterclaims and consolidated actions), pending in the United States District Court for the Northern District of California, Case Nos. C 84 6273 CW, C 84 6324 CW and C 85 4776 CW [Consolidated] (the "Levin Action"), which lawsuit involves a dispute over each of

the Parties' alleged liability under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA") and, except as to the United States, related state law, for any equitable relief, recoverable response costs or other damages allegedly incurred or to be incurred with respect to the United Heckathorn Superfund Site in Richmond, Contra Costa County, California (the "Site").

B. WHEREAS, the United States Environmental Protection Agency (the "EPA") has selected various remedial actions for the Site as embodied in a Record of Decision signed by the Regional Director, EPA Region IX, on October 26, 1994 (the "ROD").

C. WHEREAS, each of the Parties, except Bayer Corporation and Moyer Products, Inc., is or will be a settling defendant under one of a series of Consent Decrees with the United States, dated in May 1996, described more fully in Recitals D-G below, which require the Parties, except Bayer Corporation, to either undertake certain remedial action at the Site or pay certain sums to settle certain disputed claims arising from the Site (collectively, the "Consent Decrees"). Those Parties who are or will be signatories to one of the Consent Decrees will be collectively referred to herein as "Consent Decree Signatories."

D. WHEREAS, each of Montrose Chemical Corporation of California, Stauffer Chemical Company and Chris-Craft Industries, Inc. (collectively referred to herein for purposes of convenience only as the "Montrose Defendants") is or will be a settling defendant under that certain Consent Decree dated in May 1996 (the "Montrose Consent

Decree"), which requires the Montrose Defendants to undertake certain remedial actions at the Site.

E. WHEREAS, each of Levin Enterprises, Inc. and Levin Richmond Terminal Corporation (the "Levin Entities") is or will be a settling defendant under that certain Consent Decree dated in May 1996 (the "Levin Consent Decree"), which requires the Levin Entities to undertake certain remedial actions at the Site.

F. WHEREAS, each of Parr Richmond Terminal Company, John Parr Cox, and Parr Industrial Corporation (the "Parr Entities") is or will be a settling defendant under that certain Consent Decree dated in May 1996 (the "Parr Consent Decree"), which requires the Parr Entities to pay certain sums to settle certain disputed claims arising from the Site.

G. WHEREAS, each of Wilmington Securities, Inc., Shell Oil Company, Olin Corporation (as successor to John Powell & Co., Inc.), the Pennsylvania Salt Manufacturing Company, Pennsalt Chemical Corporation, Pennwalt Corporation, Pennsalt International Corporation-Western Hemisphere, Pennwalt International Corporation-Western Hemisphere, Atochem North America, Inc., Elf Atochem North America, Inc., R.J. Prentiss, Inc., Prentiss Incorporated, PureGro Company, The Sherwin-Williams Company, the United States of America, the General Services Administration, and the Agency for International Development (collectively referred to herein for purposes of convenience only as the "Other Defendants") is or will be a Settling Defendant or Settling Federal Agency under that certain Consent Decree dated in May 1996 (the "Miscellaneous Defendants'

Consent Decree"), which requires the Other Defendants to pay certain sums to settle certain disputed claims arising from the Site.

H. WHEREAS, each of the Parties (other than Bayer Corporation and Moyer Products, Inc.) has entered or will enter into a Consent Decree with the State of California (the "State Decree") to resolve certain disputed claims of the State of California arising from the Site.

I. WHEREAS, each of the Parties desires and intends to effect a final settlement and resolution of all claims and disputes of any kind which were, could have been, or could be raised in the Levin Action except as set forth herein.

J. WHEREAS, each of the Parties understands, acknowledges and agrees that this Agreement constitutes a settlement and compromise of certain disputed claims between and among the Parties.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each of the Parties hereby agrees as follows:

1. Definitions. As used in this Agreement only, the following phrases and words shall have the following meanings:

(a) "Bayer Corporation" means Bayer Corporation, including, without limitation, its parents, successors, predecessors, subsidiaries, divisions, affiliates (including, without limitation, the agents, directors, officers, employees, representatives and attorneys of such subsidiaries, divisions and affiliates), agents, assigns, servants, representatives, principals, shareholders, employees, officers, directors, partners, joint

venturers, attorneys, insurers and all persons acting by, through, under or in concert with any of them, and each of them, provided, however, that "Bayer Corporation" does not include any named party to the Levin Action other than Miles Inc., and Mobay Corporation

(b) "Chris-Craft Industries, Inc." means Chris-Craft Industries, Inc., including, without limitation, its past and present parents, successors, predecessors, subsidiaries, divisions, affiliates (including, without limitation, the agents, directors, officers, employees, representatives and attorneys of such subsidiaries, divisions and affiliates), agents, assigns, servants, representatives, principals, shareholders, employees, officers, directors, partners, joint venturers, attorneys, insurers and all persons acting by, through, under or in concert with any of them, and each of them; provided, however, that "Chris-Craft Industries, Inc." does not include any named party to the Levin Action other than Chris-Craft Industries, Inc.; and provided, however, that "Chris-Craft Industries, Inc." does not include Montrose Chemical Corporation of California or Stauffer Chemical Company.

(c) "Elf Atochem North America, Inc." means Elf Atochem North America, Inc., Atochem North America, Inc., Pennwalt International Corporation-Western Hemisphere, Pennsalt International Corporation-Western Hemisphere, Pennwalt Corporation, Pennsalt Chemical Corporation, and Pennsalt Salt Manufacturing Company, including, without limitation, its past and present parents, successors, predecessors, subsidiaries, divisions, affiliates (including, without limitation, the agents, directors, officers, employees, representatives and attorneys of such subsidiaries, divisions and affiliates), agents, assigns, servants, representatives, principals, shareholders, employees, officers, directors, partners,

joint venturers, attorneys, insurers and all persons acting by, through, under or in concert with any of them, and each of them.

(d) "Final Order" means a judicial order or decision from which no appeal may be taken or as to which the time to take an appeal has expired without appeal being filed.

(e) "John Parr Cox" means John Parr Cox individually and in any capacity whatsoever, whether as any present or former corporate officer, director, manager, agent, shareholder, distributee, successor, assignee, operator, trustee or otherwise.

(f) "Levin Enterprises, Inc." means Richard R. Levin and Levin Enterprises, Inc., including, without limitation, its past and present parents, successors, predecessors, subsidiaries, divisions, affiliates (including, without limitation, the agents, directors, officers, employees, representatives and attorneys of such subsidiaries, divisions and affiliates), agents, assigns, servants, representatives, principals, shareholders, employees, officers, directors, partners, joint venturers, attorneys, insurers and all persons acting by, through, under or in concert with any of them, and each of them; provided, however, that "Levin Enterprises, Inc." does not include any named party to the Levin Action other than Levin Enterprises, Inc. and its predecessor Levin Metals Corporation.

(g) "Levin Richmond Terminal Corporation" means Levin Richmond Terminal Corporation, including, without limitation, its past and present parents, successors, predecessors, subsidiaries, divisions, affiliates (including, without limitation, the agents, directors, officers, employees, representatives and attorneys of such subsidiaries, divisions and affiliates), agents, assigns, servants, representatives, principals, shareholders,

employees, officers, directors, partners, joint venturers, attorneys, insurers, and all persons acting by, through, under or in concert with any of them, and each of them); provided, however, that "Levin Richmond Terminal Corporation" does not include any named party to the Levin Action other than Levin Richmond Terminal Corporation.

(h) "Montrose Chemical Corporation of California" means Montrose Chemical Corporation of California, including, without limitation, its past and present parents, successors, predecessors, subsidiaries, divisions, affiliates (including, without limitation, the agents, directors, officers, employees, representatives and attorneys of such subsidiaries, divisions and affiliates), agents, assigns, servants, representatives, principals, shareholders, employees, officers, directors, partners, joint venturers, attorneys, insurers, and all persons acting by, through, under or in concert with any of them, and each of them; provided, however, that "Montrose Chemical Corporation of California" does not include any named party to the Levin Action other than Montrose Chemical Corporation of California; and provided, however, that "Montrose Chemical Corporation of California" does not include Stauffer Chemical Company or Chris-Craft Industries, Inc.

(i) "Moyer Products, Inc." means Moyer Products, Inc. including, without limitation, its past and present parents, successors, predecessors, subsidiaries, divisions, affiliates (including, without limitation, the agents, directors, officers, employees, representatives and attorneys of such subsidiaries, divisions and affiliates), agents, assigns, servants, representatives, principals, shareholders, employees, officers, directors, partners, joint venturers, attorneys, insurers, and all persons acting by, through, under or in concert with any of them, and each of them.

(j) "Olin Corporation" means Olin Corporation, including, without limitation, its past and present parents, successors, predecessors, subsidiaries, divisions, affiliates (including, without limitation, the agents, directors, officers, employees, representatives and attorneys of such subsidiaries, divisions and affiliates), agents, assigns, servants, representatives, principals, shareholders, employees, officers, directors, partners, joint venturers, attorneys, insurers, and all persons acting by, through, under or in concert with any of them, and each of them; provided, however, that "Olin Corporation" does not include any named party to the Levin Action other than Olin Corporation and John Powell & Co., Inc.

(k) "Parr Industrial Corporation" means Parr Industrial Corporation, including, without limitation, its past and present parents, successors, predecessors, subsidiaries, divisions, affiliates (including, without limitation, the agents, directors, officers, employees, representatives and attorneys of such subsidiaries, divisions and affiliates), agents, assigns, servants, representatives, principals, shareholders, employees, officers, directors, partners, joint venturers, attorneys, insurers, and all persons acting by, through, under or in concert with any of them, and each of them; provided, however, that "Parr Industrial Corporation" does not include any named party to the Levin Action other than Parr Industrial Corporation.

(l) "Parr-Richmond Terminal Company" means Parr-Richmond Terminal Company, including, without limitation, its past and present parents, successors, predecessors, subsidiaries, divisions, affiliates (including, without limitation, the agents, directors, officers, employees, representatives and attorneys of such subsidiaries, divisions

and affiliates), agents, assigns, servants, representatives, principals, shareholders, employees, officers, directors, partners, joint venturers, attorneys, insurers, and all persons acting by, through, under or in concert with any of them, and each of them; provided, however, that "Parr Richmond Terminal Company" does not include any named party to the Levin Action other than Parr Richmond Terminal Company.

(m) "Parties" shall mean the signatories to this Settlement Agreement, including the United States.

(n) "Prentiss Incorporated" means Prentiss Incorporated, Prentiss Drug & Chemical Co., Inc., and R.J. Prentiss of New York including, without limitation, its past and present parents, successors, predecessors, subsidiaries, divisions, affiliates (including, without limitation, the agents, directors, officers, employees, representatives and attorneys of such subsidiaries, divisions and affiliates), agents, assigns, servants, representatives, principals, shareholders, employees, officers, directors, partners, joint venturers, attorneys, and all persons acting by, through, under or in concert with any of them, and each of them; provided, however, that "Prentiss Incorporated" does not include any named party to the Levin Action other than Prentiss Incorporated.

(o) "PureGro Company" means PureGro Company including, without limitation, its past and present parents, successors, predecessors, subsidiaries, divisions, affiliates (including, without limitation, the agents, directors, officers, employees, representatives and attorneys of such subsidiaries, divisions and affiliates), agents, assigns, servants, representatives, principals, shareholders, employees, officers, directors, partners,

joint venturers, attorneys, insurers, and all persons acting by, through, under or in concert with any of them, and each of them.

(p) "R.J. Prentiss & Company, Inc., a California corporation" means R.J. Prentiss & Company, Inc., a California corporation, including, without limitation, its past and present parents, successors, predecessors, subsidiaries, divisions, affiliates (including, without limitation, the agents, directors, officers, employees, representatives and attorneys of such subsidiaries, divisions and affiliates), agents, assigns, servants, representatives, principals, shareholders, employees, officers, directors, partners, joint venturers, attorneys, insurers, and all persons acting by, through, under or in concert with any of them, and each of them.

(q) "Shell Oil Company" means Shell Oil Company, including, without limitation, its past and present parents, successors, predecessors, subsidiaries, divisions, affiliates (including, without limitation, the agents, directors, officers, employees, representatives and attorneys of such subsidiaries, divisions and affiliates), agents, assigns, servants, representatives, principals, shareholders, employees, officers, directors, partners, joint venturers, attorneys, insurers, and all persons acting by, through, under or in concert with any of them, and each of them.

(r) "The Sherwin-Williams Company" means The Sherwin-Williams Company, including, without limitation, its past and present parents, successors, predecessors, subsidiaries, divisions, affiliates (including, without limitation, the agents, directors, officers, employees, representatives and attorneys of such subsidiaries, divisions and affiliates), agents, assigns, servants, representatives, principals, shareholders, employees,

officers, directors, partners, joint venturers, attorneys, insurers, and all persons acting by, through, under or in concert with any of them, and each of them.

(s) "Stauffer Chemical Company" means Stauffer Chemical Company, Stauffer Management Company and Rhone-Poulenc, Inc., including, without limitation, their past and present parents, successors, predecessors, subsidiaries, divisions, affiliates (including, without limitation, the agents, directors, officers, employees, representatives and attorneys of such subsidiaries, divisions and affiliates), agents, assigns, servants, representatives, principals, shareholders, employees, officers, directors, partners, joint venturers, attorneys, insurers, and all persons acting by, through, under or in concert with any of them, and each of them; provided, however, that "Stauffer Chemical Company" does not include any named party to the Levin Action other than Stauffer Chemical Company; and provided, however, that "Stauffer Chemical Company" does not include Montrose Chemical Corporation of California or Chris-Craft Industries, Inc.

(t) "The United States of America" or "United States" means the United States of America, including all of its departments, agencies, and instrumentalities, including but not limited to the General Services Administration and the Agency for International Development; provided, however, that "the United States of America" or "United States" shall not include the United States Environmental Protection Agency or any federal natural resource trustee, and any successor departments, agencies or instrumentalities of such entities.

(u) "Wilmington Securities, Inc." means Wilmington Securities, Inc., including, without limitation, its past and present parents, successors, predecessors,

subsidiaries, divisions, affiliates (including, without limitation, the agents, directors, officers, employees, representatives and attorneys of such subsidiaries, divisions and affiliates), agents, assigns, servants, representatives, principals, shareholders, employees, officers, directors, partners, joint venturers, attorneys, insurers, and all persons acting by, through, under or in concert with any of them, and each of them. The releases contained herein in favor of Wilmington Securities, Inc. shall include a release in favor of Pittsburgh Coke & Chemical Company, a Delaware corporation, Pittsburgh Coke & Chemical Company, a Pennsylvania corporation, and Pittsburgh Agricultural Chemical Company, a Pennsylvania corporation (collectively, the "Pittsburgh Entities"), as the disputed predecessors-in-interest to Wilmington Securities, Inc. The inclusion of such entities shall not be deemed an admission or concession by Wilmington Securities, Inc. that it is the successor to such entities.

2. Contingency.

(a) This Agreement is contingent upon and shall have no legal effect until and unless each of this Settlement Agreement, the Levin Consent Decree, the Montrose Consent Decree, the Parr Consent Decree, the Miscellaneous Defendants' Consent Decree, and the State Decree is approved and entered as a Final Order by the United States District Court for the Northern District of California (hereinafter the "Court"), and the Pittsburgh Entities have filed a dismissal with prejudice of their claims against all Parties. If for any reason any of the Consent Decree Signatories should fail to execute its respective Consent Decree and, except for Bayer Corporation and Moyer Products, Inc., the State Decree, or the Court should fail to enter a Final Order approving each of this Agreement, the Levin

Consent Decree, the Montrose Consent Decree, the Parr Consent Decree, the Miscellaneous Defendants' Consent Decree and the State Decree, or if a Final Order is entered reversing the Court's approval of any of this Agreement or such Consent Decrees, or if the Pittsburgh Entities fail to file a dismissal with prejudice of their claims against the Parties, the Parties agree that: (a) none of the Parties shall be bound hereunder; (b) none of the Parties shall have any liability to any other Party arising out of or in connection with this Agreement; (c) this Agreement shall have no residual or probative value or effect, and it shall be as if it had never been prepared or executed; and (d) this Agreement or any draft of this Agreement may not be used as evidence in any litigation between or among any of the Parties.

(b) With respect to Moyer Products, Inc., this Agreement is further contingent upon and shall have no legal effect until and unless, on or before May 17, 1995, Moyer Products, Inc. deposits or causes to be deposited \$75,000.00 into the "Group Escrow" as that term is defined in paragraph 5 of the Miscellaneous Defendants' Consent Decree. Moyer Products, Inc.'s promise to deposit \$75,000 may be enforced by any of the Parties hereto.

3. Within ten (10) business days after execution of this Agreement, Levin shall file with the clerk of the Court a Motion for an Order Approving and Confirming Settlement Agreement and Barring All Claims for Contribution and/or Cost Recovery Relating to the Site under CERCLA and any other applicable Federal or State laws, including the California Hazardous Substances Account Act and common law, against any of the Consent Decree Signatories by any third party. The Parties agree to bear their own costs, expenses and attorneys' fees with respect to this motion and any appeal thereof, and shall cooperate in the filing of the motion and any other related proceedings, including any appeal.

Each Party shall have the opportunity to review drafts of any papers to be filed with the Court or any appellate court by any other Party pursuant to this paragraph, except that the United States need not provide an opportunity to review drafts of any papers to be filed with the Court or any appellate court.

4. Mutual Release.

(a) Except as set forth in Paragraph 4(b) and (c), each Party hereby releases and forever discharges every other Party from only any and all claims for any and all liabilities, damages, costs, loss of profits, loss of good will, expenses, legal fees, or alleged CERCLA or California Hazardous Substance Account Act "response costs" of any kind, relating to the United Heckathorn NPL Site, that arose or were or will be incurred or suffered: (i) before and including the date of this Agreement; (ii) as a result of any payments made or incurred under the Miscellaneous Defendants' Consent Decree, the Parr Consent Decree or the Levin Consent Decree; and (iii) as a result of any payments made or incurred by any or all of the Montrose Defendants under the Montrose Consent Decree that do not exceed \$3,300,000.00. No Party releases any other claims that may arise after the date of this Agreement.

(b) Notwithstanding any other provision herein or in the Consent Decrees and only as provided by this Paragraph 4(b): (i) the Montrose Defendants, or any of them, shall have the right to pursue claims pursuant to CERCLA § 113(f)(1), 42 U.S.C. § 9613(f)(1), for any Marine Response Costs, as defined in Paragraph 5 of the Montrose Group RD/RA Consent Decree, actually paid by any or all of the Montrose Defendants, that exceed \$3,300,000.00, against any or all of the other Parties except the Levin Entities, but

only if the total amounts identified in Paragraph 23(i) - (iv) of the Miscellaneous Defendants' Consent Decree exceed \$12.8 million (or, as to claims against John Parr Cox, \$24 million); (ii) any Party so sued shall have the right to file a claim, counterclaim or third party claim against any or all of the other Parties, except the Levin Entities and Moyer Products, Inc., for contribution under CERCLA § 113(f)(1), 42 U.S.C. § 9613(f)(1), for the amount sought by any or all of the Montrose Defendants under any such claims; and (iii) in the event the United States sues or takes administrative action against any other Party to this Agreement, pursuant to any of Paragraphs 80, 81, 83, 84 or 85(2) or (3) of the Montrose Consent Decree, Paragraphs 20, 22, 25, or 26(2) or (3) of the Miscellaneous Defendant's Consent Decree, Paragraphs 78, 79, 81, 82, or 83(2) or (3) of the Levin Consent Decree, or Paragraphs 15, 17, 20, or 21(2) or (3) of the Parr Consent Decree, such Party shall have the right to file a claim, counterclaim, or third party claim against any or all of the other Parties for contribution under CERCLA § 113(f)(1), 42 U.S.C. § 9613(f)(1), for the amount or relief sought by the United States under any such claims. In an action permitted under this Subparagraph 4(b), each Party subject to a contribution claim pursuant to this Subparagraph 4(b) shall have reserved to it all defenses that would be available to it in connection with such a contribution claim save and except the contribution protection under CERCLA § 113(f)(2), 42 U.S.C. § 9613(f)(2), afforded such Party under its respective Consent Decree. For purposes of this Agreement, Bayer Corporation and Moyer Products, Inc. shall be deemed to have contribution protection that is co-extensive with that given to the Settling Defendants under this Agreement.

(c) Nothing in Paragraph 4(a) or this Paragraph 4(c) shall provide a release to the Levin Entities or to Montrose for claims, causes of action, injuries or damages arising from Montrose's or either of the Levin Entities' breach of the Access Agreement entered into between Montrose and the Levin Entities (the "Access Agreement"). In the event of any conflict between the Access Agreement and this Agreement as between Montrose and the Levin Entities, the Access Agreement shall prevail.

5. Dismissal of Claims. Concurrently with the signing of this Agreement, each Party that has asserted claims in the Levin action will execute a Dismissal of Claims in the form attached hereto as Exhibit A (the "Dismissal"). Within ten business days after Court entry of a Final Order approving the last of each of this Agreement, the Levin Consent Decree, the Montrose Consent Decree, the Parr Consent Decree, the Miscellaneous Defendants' Consent Decree, and the State Decree, the Dismissals shall be filed with the Court. Nothing herein shall require Montrose or PRTC to dismiss claims against the Heckathorn Entities as defined in Paragraph 7 of this Agreement, or require Montrose to dismiss its claims against Watson, Hoffe & Barbieri.

6. Waiver of Any Potential Claims. Without in any way conceding that it is a successor to Pittsburgh Coke & Chemical Company, a Delaware corporation, Pittsburgh Coke & Chemical Company, a Pennsylvania corporation, or Pittsburgh Agricultural Chemical Company, a Pennsylvania corporation (collectively, the "Pittsburgh Entities"), Wilmington Securities, Inc. hereby releases, waives and forever discharges any and all claims, causes of action, or demands for damages, debts, liabilities, accounts, loss of profits, loss of good will, obligations, costs, other expenses or equitable relief of every kind or nature whatsoever, whether now known or unknown, suspected or unsuspected, that

Wilmington Securities, Inc., might be able to assert as the alleged successor to or on behalf of the Pittsburgh Entities against any Party relating to the United Heckathorn NPL Site that arose or were or will be incurred or suffered: (i) before and including the date of this Agreement; (ii) as a result of any payments made or incurred under the Miscellaneous Defendants' Consent Decree, the Parr Consent Decree or the Levin Consent Decree; and (iii) as a result of any payments made or incurred by any or all of the Montrose Defendants under the Montrose Consent Decree that do not exceed \$3,300,000.00. This release does not apply to claims that many arise after the date of this Agreement. Wilmington Securities, Inc. further agrees not to aid, abet, fund, or cooperate with any claim, cause of action or demand filed or otherwise made by any of the Pittsburgh Entities against any Party relating to the United Heckathorn or NPL Site. The release set forth in this Paragraph 6 shall not be construed to limit Wilmington Securities, Inc.'s rights, in its own capacity and not as successor to the Pittsburgh Entities, preserved elsewhere in this Agreement.

7. Assignment of Claims. Each of the Parties, except for Montrose, PRTC, and the United States of America, hereby assigns all of its claims, demands, or causes of action against Heckathorn & Company, a partnership, Heckathorn & Company, Inc., United Heckathorn, Inc., United Chemetrics, Inc., and Chemwest, Inc. (the "Heckathorn Entities") to Montrose and PRTC, to be shared as Montrose and PRTC agree or, in the absence of an agreement, equally between them. Neither Montrose nor PRTC shall bring suit against the Heckathorn Entities or their insurers in the name of any assignor unless the Court in which such action is brought rules that Montrose or PRTC must do so to

maintain suit on such assigned claims, and, in any event, suit shall not be brought in the name of Wilmington Securities, Inc. without written permission not provided herein.

8. Approval of this Agreement and Consent Decrees. Each of the Parties waives all rights and agrees not to challenge or oppose the good faith nature or judicial approval of any of this Agreement, the Montrose Consent Decree, the Levin Consent Decree, the Parr Consent Decree, the Miscellaneous Defendants' Consent Decree, and the State Decree.

9. No Admission Of Liability. Nothing in this Agreement shall be interpreted as an admission of liability by any Party. Rather, the terms of this Agreement represent a compromise of disputed claims.

10. State Decree Indemnification. Each of the Parties (other than Bayer Corporation and Moyer Products, Inc.) is a signatory to the State Decree and is required to pay certain sums in settlement to the California Department of Toxic Substances Control ("DTSC") thereunder. Under the State Decree, except as to the payment by the United States, the DTSC's and California Department of Fish & Game's releases and waivers of claims are conditioned upon payment of such sums. If any Party identified in the State Decree at Paragraph 6.2(a)-(c), fails to pay or ensure payment of the amount it owes under the subparagraph of Paragraph 6.2 of the State Decree in which it is named, then any Party may sue such Party or Parties for (a) specific performance of the obligation to pay settlement funds under the State Decree and (b) any and all damages, including consequential damages, arising from such Party's or Parties' failure to pay settlement funds under the State Decree. In addition, each Party (other than Bayer Corporation and Moyer Products, Inc.) agrees to

indemnify, defend, and hold harmless every other Party against any and all claims identified in Paragraph 7.1 and 8.1 of the State Decree if such Party fails to pay or ensure payment of the amount it owes under the subparagraph of Paragraph 6.2 of the State Decree in which it is named. Each Party (other than Bayer Corporation and Moyer Products, Inc.) agrees that it shall not be a defense against any claim made under this Paragraph that the claimant failed to mitigate damages by paying sums owed by another Party under the State Decree. The Parties recognize that Bayer Corporation and Moyer Products, Inc. will not be and are not parties to the State Decree. The United States is not subject to this Paragraph 10.

11. Authority Of Signatories. The individuals executing this Agreement represent and warrant that they have authority to sign on behalf of their respective Parties.

12. No Third Party Beneficiaries. No third party is intended to be a beneficiary of this Agreement and therefore shall not be entitled to any benefits hereunder.

13. The Parties recognize and acknowledge that nothing in this Agreement shall be interpreted or construed as a commitment or requirement that the United States allocate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. §1341, or any other applicable law.

14. Entire Agreement. Except for the Access Agreement, and any agreement entered into between Wilmington Securities, Inc. and Bayer Corporation arising out of the Levin Action or the United Heckathorn NPL Site (the "Wilmington/Bayer Agreement"), this Agreement constitutes the final, complete and exclusive agreement and understanding between and among the Parties, and supersedes all prior or contemporaneous written and oral agreements. The Parties each acknowledge that there are no representations, warranties, agreements, arrangements or understandings other than as expressly contained in

this Agreement. However, in the event of any conflict between a Wilmington/Bayer Agreement and this Agreement as between Wilmington Securities, Inc. and Bayer Corporation, the Wilmington/Bayer Agreement shall control.

15. Construction. Each Party acknowledges that it and its counsel have reviewed and had the opportunity to revise this Agreement and that the rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendment or exhibits hereto. Each of the Parties agrees that this Agreement has been negotiated at arms-length by parties of equal bargaining power, and each of the Parties declares and is satisfied that it was represented by competent counsel of its own choosing. The Parties further acknowledge that the obligations and releases herein described are in good faith and are reasonable in the context of the matters released.

16. Attorneys' Fees. Each Party shall bear its own costs, expenses and attorneys' fees arising out of or connected with the Levin Action and the EPA investigation of the Site through the date of this Agreement, and any negotiation, drafting, implementation, execution and judicial approval of this Agreement.

17. Amendment or Modification. This Agreement may be amended or modified only by written instrument signed by all Parties or their successors in interest and approved by the Court.

18. Inaccuracies. No inaccuracies in the recitals hereof shall in any way affect the validity and/or enforceability of this Agreement.

19. Continuing Jurisdiction. The Parties stipulate and agree that the United States District Court for the Northern District of California shall retain continuing

jurisdiction over this Agreement, and that any action for breach of this Agreement shall be subject to the jurisdiction of and adjudicated by the United States District Court of the Northern District of California.

20. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all such counterparts taken together shall be deemed to constitute one and the same instrument. This Agreement is not and shall not be effective, however, unless and until each Party executes the original or a counterpart.

21. Each of the Parties expressly declares and represents that it has read the Agreement and that it has consulted with its respective counsel regarding the meaning of the terms and conditions contained herein. Each of the Parties further expressly declares and represents that it fully understands the content and effect of this Agreement, that it approves and accepts the terms and conditions contained herein, and that this Agreement is executed freely and voluntarily.

22. Each of the Parties represents, warrants and agrees that, with the exception of the Consent Decrees previously identified in this Agreement and the Access Agreement, no promise or agreement not expressed herein has been made to it, that this Agreement contains the entire Agreement between and among the Parties, that this Agreement supersedes any and all prior agreements or understandings between the Parties and that the terms of this Agreement are contractual and not a mere recital; that in executing this Agreement, no Party is relying on any statement or representation made by any other Party, or the other Party's representatives, concerning the subject matter, basis or effect of

this Agreement other than as set forth herein; and that each Party is relying solely on its own judgment and knowledge.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the date first set forth above.

Levin Enterprises, Inc. (formerly known as Levin Metals, Inc.)

Dated: May __, 1996

By: _____
Name: _____
Its: _____

Levin Richmond Terminal Corporation

Dated: May __, 1996

By: _____
Name: _____
Its: _____

Parr Richmond Terminal Company

Dated: May __, 1996

By: _____
Name: _____
Its: _____

John Parr Cox

Dated: May __, 1996

By: _____
Name: _____

Parr Industrial Corporation

Dated: May __, 1996

By: _____
Name: _____
Its: _____

Shell Oil Company

Dated: May __, 1996

By: _____
Name: _____
Its: _____

Montrose Chemical Corporation of California

Dated: May __, 1996

By: _____
Name: Frank C. Bachman
Its: President

Wilmington Securities, Inc.

Dated: May __, 1996

By: _____
Name: _____
Its: _____

Olin Corporation (as successor to John Powell & Company, Inc.)

Dated: May __, 1996

By: _____
Name: _____
Its: _____

Moyer Products, Inc.

Dated: May __, 1996

By: _____
Name: _____
Its: _____

The Pennsylvania Salt Manufacturing Company;
Pennsalt Chemical Corporation; Pennwalt
Corporation; Pennsalt International Corporation-
Western Hemisphere; Pennwalt International
Corporation-Western Hemisphere; Atochem North
America, Inc.; Elf Atochem North America, Inc.

Dated: May __, 1996

By: _____
Name: _____
Its: _____

R.J. Prentiss & Company, Inc., a California
corporation; Prentiss Incorporated

Dated: May __, 1996

By: _____
Name: _____
Its: _____

PureGro Company

Dated: May __, 1996

By: _____
Name: _____
Its: _____

The Sherwin-Williams Company

Dated: May __, 1996

By: _____
Name: _____
Its: _____

United States of America; General Services
Administration; Agency for International
Development

June
Dated: ~~May~~ *4*, 1996

By: *Lois J. Schiffer*

Lois J. Schiffer
Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 02530

By: _____

S. Randall Humm
Environmental Defense Section
Environment and Natural Resources
Division
U.S. Department of Justice
P.O. Box 23986
Washington, D.C. 20026-3986

Chris-Craft Industries, Inc.

Dated: May __, 1996

By: _____
Name: _____
Its: _____

Stauffer Chemical Company by Stauffer
Management Company

Dated: May __, 1996

By: _____
Name: _____
Its: _____

Bayer Corporation (formerly known as Miles
Inc.)

Dated: May __, 1996

By: _____
Name: _____
Its: _____

1 [Settling Party]
2
3
4
5
6
7
8

9 UNITED STATES DISTRICT COURT

10 FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 LEVIN METALS CORPORATION, et.)
12 al.,)

NOS. C 84 6273 CW
C 84 6324 CW
C 85 4776 CW

13 Plaintiffs,)

[Consolidated]

14 v.)

NOTICE OF DISMISSAL OF ACTION
AS TO CERTAIN DEFENDANTS

15 PARR-RICHMOND TERMINAL)
16 COMPANY, et. al.,)

17 Defendants.)

18 AND RELATED COUNTERCLAIMS)

19)
20 AND RELATED CONSOLIDATED)
21 ACTIONS.)
22)

23
24 NOTICE IS HEREBY GIVEN that pursuant to Rule 41(a) of the Federal
25 Rules of Civil Procedure, [name of Settling Party] hereby dismisses with prejudice all
26 claims asserted in this action (but expressly preserving those claims reserved in the
27 Settlement Agreement dated as of May 3, 1996), against each of the following parties
28 [exclude signatory's name]: Levin Enterprises, Inc. (formerly known as Levin Metals

1 Corporation), Levin Richmond Terminal Corporation, Parr Richmond Terminal Company
2 ("PRTC"), John Parr Cox, Parr Industrial Corporation, Shell Oil Company, Montrose
3 Chemical Corporation of California, Wilmington Securities, Inc., Mobay Corporation (now
4 Bayer Corporation), Olin Corporation (as successor to John Powell and Company, Inc.),
5 Moyer Products, Inc., the Pennsylvania Salt Manufacturing Company, Pennsalt Chemical
6 Corporation, Pennwalt Corporation, Pennsalt International Corporation-Western
7 Hemisphere, Pennwalt International Corporation-Western Hemisphere, Atochem North
8 America, Inc., and Elf Atochem North America, Inc., R.J. Prentiss & Company, Inc., a
9 California corporation, Prentiss Incorporated, The Sherwin-Williams Company, the United
10 States of America, the General Services Administration, the Agency for International
11 Development, Chris-Craft Industries, Inc. and Stauffer Chemical Company.
12

13
14 All claims asserted by [Settling Party] against Heckathorn & Company, a
15 Partnership, Heckathorn & Company, Inc., United Heckathorn Inc., United Chemetrics,
16 Inc., and ChemWest, Inc. have been assigned by [Settling Party] to Montrose Chemical
17 Corporation of California and Parr-Richmond Terminal Company. Nothing herein is
18 intended to or shall be deemed to have dismissed such claims.
19

20
21 Dated: _____, 1996

[SIGNATURE BLOCK]

22
23 By: _____

24
25 IT IS SO ORDERED.

26
27 Dated: _____

The Honorable Claudia Wilken