

**Law Offices of Charles M. Tebbutt, P.C.**  
**941 Lawrence Street**  
**Eugene, OR 97401**  
**Ph: 541-344-3505 | Fax: 541-344-3516**

May 27, 2021

---

**THIS IS AN URGENT LEGAL MATTER REQUIRING YOUR  
IMMEDIATE ATTENTION**

*Via Registered Mail, Return Receipt Requested:*

Site Manager  
Montrose Chemical Corp. of California  
20201 S. Normandie Ave.  
Torrance, CA 92502

Patrick Lockwood-Taylor, President  
Bayer Corporation  
100 Bayer Blvd.  
Whippany, NJ 07091

Joe Kelly, President  
Montrose Chemical Corp. of California  
600 Ericksen Ave. NE, Ste 380  
Bainbridge Island, WA 98110

Jim Blome, President  
Bayer CropScience, Inc.  
800 N Lindbergh Blvd.  
St. Louis, MO 63141

CT Corporation System  
Registered Agent  
Montrose Chemical Corp. of California  
818 Seventh Street, Ste 930  
Los Angeles, CA 90017

Corporation Service Company Which Will Do  
Business in California as CSC - Lawyers  
Incorporating Service, Registered Agent  
Bayer Corporation  
2710 Gateway Oaks Drive, Suite 150N  
Sacramento, CA 95833

**NOTICE OF INTENT TO SUE PURSUANT TO THE RESOURCE  
CONSERVATION AND RECOVERY ACT, 42 U.S.C. § 6972(a)(1)(B).**

Dear Site Manager, Joe Kelly, Jim Blome, and Patrick Lockwood-Taylor:

Pursuant to the citizen suit provision of the 1976 Amendments to the Solid Waste Disposal Act (hereinafter referred to as the “Resource Conservation and Recovery Act” or “RCRA”), 42 U.S.C. § 6972(a)(1)(B), the Center for Biological Diversity, a non-profit corporation (the “Notifying Party”), hereby notifies you that on or after the 90th day from the date of your receipt of this notice, Notifying Party intends to initiate a citizen suit in the United States District Court for the Southern District of California against Montrose Chemical Corporation of California and Bayer Corporation (collectively “Montrose”) for the abatement of the imminent and substantial endangerment in connection with the illegal disposal of DDT off the shores of Santa Catalina Island, California.

Montrose Chemical Corporation of California (“MCC”) was the largest manufacturer of dichlorodiphenyltrichloroethane (“DDT”) in the United States from 1947 to 1982. Records indicate that during those years, MCC manufactured approximately

800,000 tons of DDT, an organohalide insecticide that was banned for use in the United States in 1972 due to its adverse impacts on the environment and human health. From 1947 until at least 1961, and likely more recently, MCC disposed of the hazardous waste generated at its Torrance facility by barging barrels of DDT and acid sludge waste to an ocean dumping site, about 16 km off the southern California Coast, between Santa Catalina Island and the Palos Verdes Peninsula.<sup>1</sup> MCC's ocean dumping practices resulted in approximately 2000-3000 barrels per month of acid waste sludge, estimated to contain 5,000-10,000 ppm total DDT each, being barged to the ocean dumpsite and disposed of on the seafloor. Records further indicate that MCC barged and disposed of at least 10,000,000-14,000,000 gallons of DDT and acid sludge waste on the seafloor from 1947-1961.

Scientific studies using underwater vehicles recently discovered the existence of MCC's DDT barrels on the seafloor of the San Pedro Basin.<sup>2</sup> Pictures of the DDT barrels on the ocean floor were provided in the October 26, 2020 LA Times article by Rosanna Xia.<sup>3</sup> According to a technical report prepared for the Los Angeles Regional Water Quality Control Board, the area in and around MCC's ocean dumpsite likely contains 336,000-504,000 barrels of the DDT and acid sludge waste.<sup>4</sup> Just last month, on April 27, 2021, the University of California San Diego's Scripps Institution of Oceanography ("Scripps") confirmed the existence of the "staggering" number of barrels dumped by MCC.<sup>5</sup> The Scripps study mapped just 56 square miles of seafloor near the DDT dumpsite but was able to capture high-resolution images of 27,345 barrel-like objects on the seafloor.

Upon information and belief, many of the DDT barrels disposed of by MCC were punctured before being dumped while other barrels have been leaking and discharging DDT, DDT metabolites,<sup>6</sup> and related waste byproducts for decades. Recent sampling of the seafloor around MCC's DDT barrels confirms that that barrels are leaking and discharging dangerous pollution into the seafloor sediment and marine water. In fact, one sediment core sample of the San Pedro Basin seafloor near a barrel measured a DDT concentration in excess of the highest concentration of DDT found on the Palos Verdes Shelf Superfund site, demonstrating the barrels on the seafloor are a distinct source of DDT contamination. While the United States has taken action against MCC for the DDT

---

<sup>1</sup> Rosanna Xia, *How the Waters off Catalina became a DDT Dumping Ground*, L.A. TIMES, October 25, 2020, <https://www.latimes.com/projects/la-coast-ddt-dumping-ground/>

<sup>2</sup>Kivenson, V.; Lemkau, K. L.; Pizarro, O.; Yoerger, D. R.; Nelson, R. K.; Carmichael, C.; Paul, B. G.; Reddy, C. M.; Velentine, D. L. *Ocean Dumping of Containerized Water Was a Sloppy Process*, ENVIRONMENTAL SCI. & TECH., 53(6), 2971-2980 (2019).

<sup>3</sup> Xia 2020

<sup>4</sup> Chartrand, A. B.; Moy, S.; Safford, A.N.; Yoshimura, I; Schinazi, L. A. *Ocean Dumping Under Los Angeles Regional Water Quality Control Board Permit: A Review of Past Practices, Potential Adverse Impacts, and Recommendations for Future Actions*; California Regional Water Quality Board, (1985).

<sup>5</sup> Julie Watson, *Scientist: Extent of DDT Dumping in Pacific is "Staggering,"* Associated Press, April 27, 2021, <https://apnews.com/article/health-science-environment-and-nature-business-government-and-politics-4c3fb6b069e44e3421a34280268efd1d>

<sup>6</sup> DDT metabolites include 1,1-dichloro-2,2-bis(*p*-chlorophenyl)ethylene (DDE) and 1,1-dichloro-2,2-bis(*p*-chlorophenyl)ethane (DDD).

contamination and the cleanup on the Palos Verdes Shelf Superfund Site, thus far, no action constituting diligent prosecution under section 6973 of RCRA or section 106 of CERCLA has been taken to remediate the endangerment caused by MCC's unlawful disposal of DDT at the ocean dumpsite.

The lawsuit will allege that Montrose has violated and remains in violation of RCRA by causing or contributing to the past and present handling, storage, treatment, transportation, and/or disposal of solid and hazardous waste that may, and indeed does, present an imminent and substantial endangerment to human health and the environment. The lawsuit will seek mandatory injunctive relief requiring Montrose to comply with RCRA and to abate and/or remediate the source(s) of the endangerment to human health and the environment. As authorized by RCRA, the lawsuit will also seek an order from the Court requiring Montrose to pay Notifying Party's attorneys' and expert witnesses' fees and costs incurred in bringing this action.

### **VIOLATIONS OF THE RESOURCE CONSERVATION AND RECOVERY ACT: IMMINENT AND SUBSTANTIAL ENDANGERMENT TO HUMAN HEALTH AND THE ENVIRONMENT**

RCRA "is a comprehensive environmental statute that governs the treatment, storage, and disposal of solid and hazardous waste." *Mehrig v. KFC W., Inc.*, 516 U.S. 479, 483 (1996). Enacted in 1976, RCRA contains a citizen suit provision allowing affected citizens to bring suit:

against any person, . . . including any past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage, or disposal facility, who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present and imminent and substantial endangerment to health or the environment.

42 U.S.C. § 6972(a)(1)(B). In light of "RCRA's broad language and remedial purpose," courts have given this "endangerment provision" an expansive construction. *Fresh Air for the Eastside, Inc. v. Waste Mgmt. of N.Y., LLC*, 405 F. Supp. 3d 408, 439 (W.D.N.Y. 2019); see also *Simsbury-Avon Pres. Club, Inc. v. Metacon Gun Club, Inc.*, 575 F.3d 199, 210 (2d Cir. 2009); *Davis v. Sun Oil Co.*, 148 F.3d 606, 609 (6th Cir. 1998). Therefore, "if an error is to be made in applying the endangerment standard, the error must be made in favor of protecting public health, welfare and the environment." *Interfaith Cmty. Org. v. Honeywell Int'l, Inc.*, 399 F.3d 248, 259 (3d Cir. 2005) (emphasis added) (citation omitted).

Montrose Chemical Corporation of California ("MCC") and Bayer Corporation ("Bayer") (collectively, "Montrose") have violated and remain in violation of RCRA by contributing to an imminent and substantial endangerment to health and the environment. Notifying Party will allege that MCC and Bayer are both a "person" that is a "past or present owner or operator of a treatment, storage, or disposal facility," relating to the

operation of the Montrose Chemical Plant formerly producing DDT and other toxic substances at the Palos Verdes facility. § 6972(a)(1)(B). The Montrose DDT plant was located on an approximately 13-acre parcel of land located a 20201 South Normandie Avenue, Torrance, CA. From 1947 to 1982 MCC was the operator and manufacturer of DDT and other toxic substances at the Torrance plant. Stauffer Chemical Company, Bayer's predecessor, held legal title to the Montrose DDT plant property from 1943 until 1987, in addition to owning 50% of MCC during the entire period of MCC's operation of the DDT plant. In this case, MCC, as the operator and manufacturer of the DDT plant, is a past generator and past operator of a treatment, storage, or disposal facility, and Bayer, as the successor to Stauffer Chemical Corporation, the DDT plant's owner, is a past owner of a treatment, storage, or disposal facility.

The Notifying Party will further allege in the lawsuit that Montrose "has contributed . . . and is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid and hazardous waste." 42 U.S.C. § 6972(a)(1)(B). RCRA defines "disposal" as used in 42 U.S.C. § 6972(a)(1)(B) as "the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters." 42 U.S.C. § 6903(3). DDT is a listed hazardous waste under RCRA. Records indicate that Montrose controlled the DDT waste disposal process and caused upwards of 500,000 barrels of DDT to be discarded and disposed of in the ocean near Santa Catalina Island, CA. Notifying Party will allege that Montrose discarded its DDT waste barrels, which included other toxic compounds as well, onto the seafloor where they have and continue to spill, leak, and discharge hazardous DDT, DDT metabolites, and other toxic substances into the seafloor sediment, marine water, and surrounding environment.

Sediment core samples taken from the seafloor of the San Pedro Basin near MCC's ocean dumpsite demonstrate that the DDT barrels have been and continue to spill, leak, and discharge DDT and its metabolites, as well as other toxic substances. Sediment data is attached hereto as Exhibit 1. The sediment cores were analyzed at multiple depth ranges corresponding to different eras: the core top (0-2 cm) represents the time after DDT use and disposal ended; the midcore (4-6 cm) represents the peak disposal period corresponding to Montrose's dumping operations; and the downcore (8-10 cm) represents the time period preceding widespread DDT use and disposal. Importantly, substantial DDT concentrations were observed in the surface sediment in cores where the underlying intervals did not contain high DDT concentrations, which is consistent with data from the Southern California Coastal Water Research Project<sup>7</sup> and evidence of a current and ongoing discharge of DDT from the barrels. Furthermore, sediment near the dumped barrels showed concentrations of DDT more elevated, and almost forty times greater, than the highest concentration of DDT found at the Palos Verdes Shelf Superfund site. This not only confirms that the DDT barrels are currently spilling, leaking, and

---

<sup>7</sup> Schiff, K.; Greenstein, D.; Dodder, N.; Gillett, D. J. *Southern California Blight Regional Monitoring*. REG. STUD. MAR. SCI., 4, 34-46 (2016).

discharging DDT hazardous waste, but the DDT barrel disposal site is likely the primary source of DDT contamination in the two basins adjacent to Los Angeles.

Finally, Notifying Party will allege in the lawsuit that Montrose's contributions to the past handling, storage, treatment, transportation, and disposal of solid and/or hazardous waste "may present an imminent and substantial endangerment to health or the environment." 42 U.S.C. § 6972(a)(1)(B). Courts have "emphasized the preeminence of the word 'may' in defining the degree of risk needed" to maintain an endangerment claim. *Me. People's All. v. Mallinckrodt, Inc.*, 471 F.3d 277, 288 (1st Cir. 2006). The word "may," combined with the word "endangerment," contemplates only "a threatened or potential harm, and does not require proof of actual harm." *Parker v. Scrap Metal Processors, Inc.*, 386 F.3d 993, 1015 (11th Cir. 2004); *see also Mallinckrodt*, 471 F.3d at 296. The words "imminent" and "substantial" have similarly broad meanings. "Imminence generally has been read to require only that the harm is of a kind that poses a near-term threat; there is no corollary requirement that the harm necessarily will occur or that the actual damage will manifest itself immediately." *Mallinckrodt*, 471 F.3d at 288 (citing *Cox v. City of Dallas*, 256 F.3d 281, 299-300 (5th Cir. 2001)). Finally, an endangerment is "substantial" when "there is reasonable cause for concern that someone or something may be exposed to risk of harm" absent remedial action. *Burlington N. & Santa Fe Ry. Co. v. Grant*, 505 F.3d 1013, 1021 (10th Cir. 2007). Where all elements are present, courts have "broad authority . . . to grant all relief necessary to ensure complete protection of the public health and the environment." *Little Hocking Water Ass'n, Inc. v. E.I. du Pont Nemours & Co.*, 91 F. Supp. 3d 940, 952 (S.D. Ohio 2015) (internal quotations and citation omitted); *see also Meghrig v. KFC W., Inc.*, 516 U.S. 479, 479 (1996).

Here, there is no question that Montrose's disposal of DDT and other toxic substances may, and in fact does, cause an imminent and substantial endangerment to health and the environment. DDT and its metabolites persist for decades in marine sediment and the tissues of living organisms, which in turn leads to bioaccumulation and biomagnification throughout the food chain. EPA accordingly banned DDT in 1972 due to its toxicity and its potential as a human carcinogen. Since then, scientific studies continue to show a range of adverse human health effects from exposure to DDT and DDE, including, but not limited to, breast and other cancers, male infertility, miscarriages and low birth weight, developmental delays, and nervous system and liver damage. Even more concerning, recent studies have shown that DDT has transgenerational effects in progeny and generations never directly exposed to DDT.<sup>8</sup>

DDT's adverse effects on the environment are also well documented. Designed as a pesticide, DDT attacks the central nervous system of insects and other animals, resulting in paralysis or death. Wildlife, however, does not need to be directly exposed to DDT to be at risk of injury or death. Due to its high tendency for biomagnification, DDT (including its metabolites) is often found in the greatest concentrations in animals higher in the food chain. Specifically, birds, such as bald eagles and brown pelicans, that feed on

---

<sup>8</sup> Kabasenche, W.P., Skinner, M.K. DDT, *Epigenetic Harm, and Transgenerational Environmental Justice*. ENV'T'L HEALTH, 13, 62 (2014).

DDT contaminated anchovies and other small fish, are unable to produce strong eggshells, and thereby reproduce. DDT has also been linked to an increase of cancer in California Sea Lions.<sup>9</sup> In vitro studies demonstrate the potential of DDT and its metabolites to serve as endocrine disruptors in whales.<sup>10</sup> Preliminary research suggests that California condors that feed on contaminated marine mammal carcasses also suffer DDT-related effects.

42 U.S.C. § 6972(a) states that the District Courts of the United States shall have jurisdiction to order any person who “has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste” that presents an imminent and substantial endangerment to health or the environment to take such action as may be necessary to cease and correct the pollution and to apply any appropriate civil penalties under 42 U.S.C. § 6928(g). Notifying Party intends to seek legal and equitable relief in their lawsuit, including but not limited to an assessment of past, present, and future response, remediation, removal, and/or clean-up costs against Montrose, as well as attorneys’ and expert witnesses’ fees, and costs, associated with the suit.

### **PARTY GIVING NOTICE**

The names, addresses, and phone numbers of the people giving this Notice of Intent to Sue are:

Center for Biological Diversity  
1212 Broadway #800  
Oakland, CA 94612

The names, addresses, and phone numbers of Counsel for the party giving this Notice of Intent to Sue are:

Charles M. Tebbutt  
Daniel C. Snyder  
B. Parker Jones  
Law Offices of Charles M. Tebbutt, P.C.  
941 Lawrence St.  
Eugene, OR 97401  
Tel: (541) 344-3505  
Fax: (541) 344-3516  
[charlie@tebbuttlaw.com](mailto:charlie@tebbuttlaw.com)

---

<sup>9</sup> Gulland, F.M.D., Hall, A.J., Ylitalo, G.M., Colegrove, K.M., Norris, T., Duignan, P.J., Halaska, B., Whitehouse, K. Lowenstine, L.J., Deming, A.C., Rowles, T.K., *Persistent Contaminants and Herpesvirus OtHV1 are Positively Associated with Cancer in Wild California Sea Lions (Zalophus californianus)*, FRONT. MAR. SCI., 7:602565 (2020).

<sup>10</sup> Lühmann, Katharina *et al.*, *Environmental pollutants modulate transcriptional activity of nuclear receptors of whales in vitro*, 54 ENV'T'L SCI. & TECH. 5629 (2020).

[dan@tebbuttlaw.com](mailto:dan@tebbuttlaw.com)  
[parker@tebbuttlaw.com](mailto:parker@tebbuttlaw.com)

Miyoko Sakashita  
Center for Biological Diversity  
1212 Broadway #800  
Oakland, CA 94612  
Tel: (510)844-7100  
[miyoko@biologicaldiversity.org](mailto:miyoko@biologicaldiversity.org)

### CONCLUSION

We will be available to discuss effective remedies and actions that will assure Montrose's future compliance with the Resource Conservation and Recovery Act and all other applicable state and federal environmental laws. If you wish to avail yourself of this opportunity and avoid the need for adversarial litigation, or if you have any questions regarding this letter, please contact the undersigned. If you are or will be represented by an attorney, please have that attorney contact the undersigned instead.

Sincerely,



Charles M. Tebbutt  
Daniel C. Snyder  
B. Parker Jones  
Law Offices of Charles M. Tebbutt, P.C.

*Via U.S. Mail to the following:*

Gavin Newsom  
California State Office of the Governor  
1303 10<sup>th</sup> Street, Ste 1173  
Sacramento, CA 95814

Jared Blumenfeld, Secretary for  
Environmental Protection  
CalEPA  
P.O. Box 2815  
Sacramento, CA 95812-2815

Merrick Garland, Attorney General  
United States Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530  
*Certified Mail, Return Receipt  
Requested*

Rob Bonta, Attorney General  
California State Office of the Attorney  
General  
1300 "I" Street  
Sacramento, CA 95814-2919

Michael S. Regan, Administrator  
U.S. Environmental Protection Agency  
William Jefferson Clinton Building  
1200 Pennsylvania Ave., NW  
Washington, D.C. 20460

Deborah Jordan, Regional Administrator  
U.S. Environmental Protection Agency,  
Region 9  
75 Hawthorne Street  
San Francisco, CA 94105