

SETTLEMENT AGREEMENT

WHEREAS, on December 20, 2005, the Public Employees for Environmental Responsibility, Improving Kids' Environment, Project 504, Maine Lead Action Project, Group 14621 Community Associations, Inc., Organization of the New Eastside, Lutheran Metropolitan Ministry, The Lead and Environmental Hazards Association, and Bill Menrath (hereinafter "Plaintiffs") filed a Complaint in the United States District Court for the District of Columbia ("Court") against Stephen L. Johnson in his official capacity as Administrator of the United States Environmental Protection Agency ("EPA" or the "Agency");

WHEREAS, the Complaint is before the Court in *Public Employees for Environmental Responsibility, et al. v. Johnson*, No. 05-cv-02437 (CKK) ("the Litigation");

WHEREAS, the National Association of Home Builders ("NAHB") has been granted the status of an intervenor in the Litigation;

WHEREAS, on January 10, 2006, the Agency published "*Lead; Renovation, Repair, and Painting Program; Proposed Rule*" in the Federal Register. 71 Fed. Reg. 1588 (January 10, 2006) ("RRP Proposal");

WHEREAS, on June 5, 2007, the Agency published "*Lead; Renovation, Repair, and Painting Program; Supplemental Notice of Proposed Rulemaking*" in the Federal Register. 72 Fed. Reg. 31,022 (June 5, 2007) ("COF Proposal");

WHEREAS, EPA and Plaintiffs have agreed, subject to the limitations and conditions set forth herein, to settle this case without protracted litigation and without any adjudication or admission of fact or law;

WHEREAS, settlement of all issues raised in this case is in the public interest;

WHEREAS, the effective date of this Settlement Agreement is January 31, 2008

(“Effective Date”):

NOW THEREFORE, Plaintiffs and EPA agree as follows:

1. The parties to this Settlement Agreement are Plaintiffs and EPA (the “Parties”).
2. This Settlement Agreement applies to, is binding upon, and inures to the benefit of Plaintiffs (and their successors, assigns, and designees) and EPA.
3. Within fourteen (14) days after the Effective Date of this Settlement Agreement, the Parties shall file the joint stipulation of dismissal of this case that is substantially the same as Exhibit A to this Settlement Agreement. This dismissal shall be with prejudice, except that:
 - (a) If EPA fails to fulfill the obligation described in Paragraphs 4 and 5, Plaintiffs, as their sole remedy under this Settlement Agreement, shall be entitled to petition the Court to reopen the Litigation, including in the docket all pleadings filed as of this date. EPA shall not oppose any such petition to re-open the Litigation except on the ground that it has not failed to fulfill the obligation described in Paragraphs 4 and 5.
 - (b) If EPA fails to meet the obligation described in Paragraph 7, Plaintiffs, as their sole remedy under this Settlement Agreement, shall be entitled to petition the Court to reopen the Litigation for the sole purpose of petitioning for an award of attorneys’ fees, costs and expenses. EPA shall not oppose any such petition to re-open the Litigation except on the ground that it has not failed to fulfill the obligation described in Paragraph 7.

If the Court reopens the case for either of these two purposes, the Parties agree that the dismissal of the Litigation pursuant to this Settlement Agreement does not affect the authority of the Court to issue a new final order in the case, including an award of attorneys' fees, costs and expenses, if the Court deems such award to be appropriate, pursuant to TSCA § 20(c)(2), 15 U.S.C.

§ 2619(c)(2), except that Plaintiffs shall not seek and are not entitled to attorney's fees, costs, or expenses incurred before the Effective Date in excess of the amount set forth in Paragraph 7 of this Settlement Agreement. The United States does not waive or limit any defense relating to this litigation if it is reopened. The parties specifically agree that contempt of court is not an available remedy under this Settlement Agreement.

4. On or before March 31, 2008, EPA agrees to sign a final rule taking action on the RRP Proposal, as amended by the COF Proposal ("RRP Final Rule").

5. EPA may extend the date set above in Paragraph 4 by one hundred twenty-two (122) days or less. In order to extend the date set above in Paragraph 4 pursuant to this Paragraph, EPA must provide ten (10) days' notice in writing to Plaintiffs and to NAHB, advising Plaintiffs and NAHB of the new date by which EPA shall meet its obligation under Paragraph 4. This procedure may be used multiple times but in no event may the date set above in Paragraph 4 be extended by means of this paragraph beyond July 31, 2008.

6. Except as provided in Paragraph 3, Plaintiffs' sole remedy concerning any issue relating to the RRP Final Rule is to challenge the RRP Final Rule under Section 19 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2618, or other applicable law, if any. Nothing in this Settlement Agreement shall be construed to limit any legal defenses EPA may have to any such challenge or action.

7. EPA agrees to pay to Plaintiffs as full settlement of all claims for attorneys' fees, costs and expenses incurred as of the Effective Date of this Settlement Agreement (including but not limited to any fees and costs incurred by Plaintiffs prior to the filing of this action) the sum of forty thousand dollars (\$40,000) within a reasonable time after the dismissal of the Litigation as provided in Paragraph 3. The Parties agree that, should EPA fail to meet its obligation as described in this Paragraph, Plaintiffs may petition to re-open the case and for an award of attorney's fees as provided in Paragraph 3. If EPA should fail to meet its obligation in Paragraphs 4 and 5, Plaintiffs may petition for an award of additional attorneys' fees, costs, and expenses incurred after the Effective Date of this Settlement Agreement, if any. EPA agrees that the dismissal of the Litigation pursuant to this Settlement Agreement does not affect the authority of the Court to award such fees, if the Court deems such an award to be appropriate pursuant to TSCA § 20(c)(2), 15 U.S.C. § 2619(c)(2), but EPA does not otherwise waive any defense that EPA may have to such a petition.

8. This Settlement Agreement constitutes a full and final resolution of all claims alleged in the Complaint. Plaintiffs agree to release, discharge, and covenant not to assert (by way of the commencement of an action, the joinder of EPA in an existing action or in any other fashion) any and all claims, causes of action, suits or demands of any kind whatsoever in law or in equity which they may have had, or may now or hereafter have, against the United States based upon matters which have been asserted in the Complaint. Nothing in this Paragraph shall preclude Plaintiffs from bringing an action to challenge the Final RRP Rule as provided in Paragraph 6. EPA preserves any and all available defenses to such an action.

9. Nothing in this Settlement Agreement shall be construed to limit or modify the

discretion accorded to EPA by TSCA, or by general principles of administrative law, nor shall it in any way be deemed to limit EPA's discretion in adopting an RRP Final Rule.

10. Nothing in this Settlement Agreement shall be construed to limit or modify EPA's discretion to alter, amend or revise any regulations, guidance, or interpretation EPA may issue in accordance with or on matters related to this Settlement Agreement from time to time or to promulgate or issue superseding regulations, guidance, or interpretations, or to limit any right that Plaintiffs may have to seek judicial review in a subsequent case of any such action by EPA.

11. The Parties recognize that the performance of this Settlement Agreement is subject to fiscal and procurement laws and regulations of the United States, which include, but are not limited to, the Anti-Deficiency Act, 31 U.S.C. §§ 1341, et seq. The possibility exists that circumstances outside the reasonable control of EPA could delay compliance with the schedule established in Paragraphs 4 and 5. Such situations include, but are not limited to, a government shut-down such as occurred in 1995 and 1996, or catastrophic environmental events requiring immediate and/or time-consuming response by EPA. Should a delay occur due to such circumstances, any resulting failure to meet the timetables set forth herein shall not constitute a failure to comply with the terms of this Settlement Agreement, and any deadlines shall be extended one day for each day of the delay. EPA will provide Plaintiffs and NAHB with notice as soon as is reasonably possible under the circumstances in the event that EPA invokes this term of the Settlement Agreement and will provide Plaintiffs and NAHB with an explanation of EPA's basis for invoking the provisions of this Paragraph. The provisions of this Paragraph shall not limit Plaintiffs' right to petition the Court to reopen the Litigation as described in Paragraph 3, except that the Court may take any delays described by this Paragraph into account in determining

whether the conditions stated in Paragraph 3 for reopening the Litigation have been met.

12. Each undersigned representative of the Parties to this Settlement Agreement certifies that he or she is fully authorized by the Party to enter into and execute the terms and conditions of this Settlement Agreement, and to legally bind such Party to this Settlement Agreement. By signature below, Plaintiffs and EPA consent to entry of this Settlement Agreement.

13. The various terms, paragraphs, and sections contained herein shall be deemed separable and severable. If any provision of this Settlement Agreement is deemed invalid or unenforceable, the balance of the Settlement Agreement shall remain in full force and effect.

14. This Settlement Agreement is the entire agreement between Plaintiffs and EPA in this case. All prior conversations, meetings, discussions, drafts and writings of any kind are specifically superseded by this Settlement Agreement.

15. It is hereby expressly understood and agreed that this Settlement Agreement was jointly drafted by Plaintiffs and EPA. Accordingly, the Parties hereby agree that any and all rules of construction to the effect that ambiguity is construed against the drafting Party shall be inapplicable in any dispute concerning the terms, meaning, or interpretation of this Settlement Agreement.

16. This Settlement Agreement may be executed in any number of counterpart originals, each of which shall be deemed to constitute an original agreement, and all of which shall constitute one agreement. The execution of one counterpart by any Party shall have the same force and effect as if that Party had signed all other counterparts.

17. This Settlement Agreement shall not constitute an admission or evidence of any

fact, wrongdoing, misconduct, or liability on the part of the United States, its officers, or any person affiliated with it.

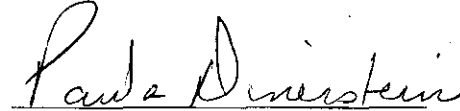
18. No provision of this Settlement Agreement shall be interpreted as or constitute a commitment or requirement that EPA obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or take actions in contravention of the Administrative Procedure Act, 5 U.S.C. §§ 551-559, 701-706, TSCA, or any other law or regulation, either substantive or procedural.

19. This Settlement Agreement shall be governed and construed under the laws of the United States.

20. Nothing in this Settlement Agreement shall be construed to make any other person or entity not executing this Settlement Agreement a third-party beneficiary to this Settlement Agreement.

Date: 1/28/08

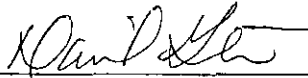
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