

## SETTLEMENT AGREEMENT

WHEREAS, Mossville Environmental Action Now, Louisiana Environmental Action Network, and Sierra Club ("Plaintiffs") filed a Complaint on October 22, 2008, against the United States Environmental Protection Agency and Lisa P. Jackson, Administrator of the U.S. Environmental Protection Agency ("Defendants"),<sup>1</sup> alleging that the Defendants failed to promulgate emission standards for major sources of hazardous air pollutant emissions from polyvinyl chloride and copolymers production facilities ("PVC plants") (hereinafter referred to as "PVC standards"), as required under section 112(e)(1)(E) of the Clean Air Act, 42 U.S.C. § 7412(e)(1)(E);

WHEREAS, PVC plants have been found to emit, *inter alia*, vinyl chloride, vinylidene chloride, and vinyl acetate; see 65 Fed. Reg. 76,958, 76,960 (Dec. 8, 2000);

WHEREAS, EPA has previously described the health effects associated with such pollutants, id. at 76,960-61;

WHEREAS, EPA does not admit any allegation of fact or law alleged in Plaintiffs' Complaint;

WHEREAS, EPA and Plaintiffs (collectively, the "Parties") wish to implement this Settlement Agreement ("Agreement") to avoid protracted and costly litigation and to preserve judicial resources;

NOW, THEREFORE, the Parties, intending to be bound by this Agreement, hereby stipulate and agree as follows:

1. Within 10 days after this Agreement is executed by the Parties (i.e. signed), but before finalization pursuant to Paragraph 4 of this Agreement, the Parties shall file a joint motion

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<sup>1</sup> Lisa P. Jackson was substituted for Stephen L. Johnson as Defendant in this matter pursuant to Federal Rule of Civil Procedure 25(d).

with the Court notifying it of this Agreement and requesting that this case be stayed pending implementation of the terms of this Agreement.

2. No later than October 29, 2010, EPA shall sign a proposed rule to establish PVC Standards. Additionally, no later than July 29, 2011, EPA shall sign a final rule establishing PVC Standards. Once the Administrator signs the final PVC Standards, EPA shall provide written notice to Plaintiffs no later than five business days after the signature is obtained.

3. Within 15 business days following signature of such PVC Standards, EPA shall deliver notice of such action to the Office of the Federal Register for prompt publication. Following such delivery to the Office of the Federal Register, EPA shall not take any step (other than as necessary to correct within 10 business days after submission any typographical or other errors in form) to delay or otherwise interfere with publication of such notice in the Federal Register.

4. The Parties agree and acknowledge that before this Agreement is final, EPA must provide notice in the Federal Register and an opportunity for public comment pursuant to Clean Air Act section 113(g), 42 U.S.C. § 7413(g). EPA shall submit said notice of this Agreement to the Federal Register within 15 days after this Agreement is executed by the Parties (i.e., signed). After this Agreement has undergone an opportunity for notice and comment, the Administrator or the Attorney General, as appropriate, shall promptly consider any such written comments in determining whether to withdraw or withhold their consent to the Agreement, in accordance with section 113(g) of the Clean Air Act. If the United States elects not to withdraw or withhold its consent to this Agreement, EPA shall provide written notice to Plaintiffs as expeditiously as possible. This Agreement shall become final on the date that EPA provides such written notice to the Plaintiffs. If EPA does not provide such written notice within 90 days after the notice of the Agreement is published in the Federal Register, Plaintiffs' sole remedy shall be the right to ask the

Court to lift the stay of proceedings, and, after EPA files its Answer, to file an appropriate motion seeking a schedule for EPA's promulgation of PVC Standards. EPA does not waive or limit any defense relating to such litigation. The parties agree that contempt of court is not an available remedy under this Agreement.

5. Plaintiffs shall file a motion for voluntary dismissal of the Complaint with prejudice, subject to the limited provision in Paragraph 6, within 14 days of this Agreement becoming final under Paragraph 4, in accordance with Rule 41(a)(1) of the Federal Rules of Civil Procedure.

6. If EPA fails to take action as set forth in Paragraph 2, or if EPA takes such action but the action is vacated by a court of appeals, the Plaintiffs' sole remedy under this Agreement shall be the right to file a Complaint against the Administrator pursuant to the citizen suit provision of the Clean Air Act, 42 U.S.C. § 7604. Such Complaint would not be barred by the voluntary dismissal of the instant case pursuant to Paragraph 5. EPA does not waive or limit any defense relating to such litigation. The parties agree that contempt of court is not an available remedy under this Agreement.

7. If the Agreement becomes final under Paragraph 4, the United States, on behalf of EPA, shall reimburse Plaintiffs for their litigation costs and attorneys' fees as soon as reasonably practicable after the Agreement becomes final by paying the sum of \$8,000.00 to Plaintiffs in full and complete settlement of Plaintiffs' claims for attorneys' fees and costs in the above-referenced matter. The Parties agree that the amount provided herein constitutes a fair, reasonable, and full and complete settlement of all claims for attorneys' fees and costs under any provision of law that Plaintiffs asserted or could have asserted in connection with this litigation. The payment from the United States shall be made by electronic wire transfer in accordance with instructions provided by

Plaintiffs. In the event that the United States fails to pay the sum specified herein Plaintiffs may file a Complaint seeking to enforce the Parties' Agreement for their costs of litigation (including reasonable attorney fees). The parties agree that in litigation over such fee application the United States reserves any defenses it may have to a fee application.

8. Nothing in this Agreement shall be construed to limit or modify the discretion accorded EPA by the Clean Air Act or by general principles of administrative law. EPA's obligation to perform the actions specified in Paragraphs 2-4 and 7 by the time specified therein does not constitute a limitation or modification of EPA's discretion within the meaning of this paragraph.

9. Except as set forth in this Agreement, the Parties retain all rights, claims, defenses, and discretion they may otherwise have. This 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.

10. The commitments of EPA in this Settlement Agreement are subject to the availability of appropriated funds. No provision of this 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. In the event that sufficient appropriated funding is not available, the sole remedy of the Plaintiffs is set forth in Paragraph 7.

11. Any notices required or provided for by this Agreement shall be made in writing, via facsimile, email, or other means, and sent to the following:

For Plaintiffs:

JAMES S. PEW  
Earthjustice  
1625 Massachusetts Avenue, NW  
Suite 702  
Washington, DC 20036  
email: jpew@earthjustice.org

For Defendant:

STEPHANIE J. TALBERT  
United States Department of Justice  
Environmental Defense Section  
P.O. Box 23986  
Washington, D.C. 20026-3986  
Fax: (202) 514-8865  
email: Stephanie.Talbert@usdoj.gov

MARK KATAOKA  
U.S. Environmental Protection Agency  
Office of General Counsel  
ARN: MC-2344A  
1200 Pennsylvania Ave., N.W.  
Washington, DC 20460  
Fax: (202) 566-0070  
email: kataoka.mark@epa.gov

12. This 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 Agreement.

13. This Agreement may be modified by written stipulation signed by the Parties.

14. It is hereby expressly understood and agreed that this 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 Agreement.

15. The undersigned representatives of each Party certify that they are fully authorized by the Party that they represent to bind that Party to the terms of this Agreement.

JOHN C. CRUDEN  
Acting Assistant Attorney General

  
STEPHANIE J. TALBERT  
United States Department of Justice  
Environment & Natural Resources Division  
Environmental Defense Section  
P.O. Box 23986  
Washington, D.C. 20026-3986

For Defendants

Dated: 10/30/09

  
JAMES S. PEW  
1625 Massachusetts Avenue, NW  
Suite 702  
Washington, DC 20036

For the Plaintiffs

Dated: 9/15/09