

Settlement Agreement

This Agreement is made by and between Sierra Club, Desert Citizens Against Pollution, Downwinders At Risk, Friends of Hudson, Huron Environmental Activist League, Montanans Against Toxic Burning, the Portland Cement Association, the State of New York, the State of Connecticut, the State of Delaware, the State of Illinois, the State of Maryland, the Commonwealth of Massachusetts, the State of Michigan Department of Environmental Quality, the State of New Jersey, and the Commonwealth of Pennsylvania Department of Environmental Protection (collectively "Petitioners") and the U.S. Environmental Protection Agency ("EPA").

WHEREAS, Petitioners have filed petitions for judicial review of the final action entitled "National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry," and published at 71 Fed. Reg. 76,518 (Dec. 20, 2006) ("2006 Rule"), and such petitions are currently pending before the U.S. Court of Appeals for the District of Columbia Circuit in *Portland Cement Association v. EPA*, No. 07-1046, consolidated with Nos. 07-1048, 07-1049, and 07-1052;

WHEREAS, the 2006 Rule establishes requirements for emissions of mercury and total hydrocarbons (as a surrogate for certain organic hazardous air pollutants) from new and existing Portland cement kilns, and does not establish further controls for hydrogen chloride ("HCl") emissions because EPA concluded that present controls on Portland cement kilns' emissions of HCl are already protective of human health with an ample margin of safety;

WHEREAS, contemporaneously with the 2006 Rule, EPA initiated an administrative proceeding to reconsider the requirements for mercury and total hydrocarbons emissions from new kilns;

WHEREAS, in March 2007 EPA granted Sierra Club's administrative petition to reconsider the requirements for mercury and total hydrocarbons, the decision that no further controls for HCl are required, and the decision not to set beyond-the-floor standards for mercury or for total hydrocarbons;

WHEREAS, on April 5, 2007, the Court held the consolidated cases in abeyance pending further order;

WHEREAS, on November 6, 2008, the Court extended the stay, and directed the parties to file motions to govern on January 7, 2009;

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

1. EPA agrees that it will prepare a notice of proposed rulemaking which will address all the issues raised in Sierra Club's petition for reconsideration.
2. EPA agrees that the EPA Administrator will sign the notice of proposed rulemaking described in Paragraph 1 no later than March 31, 2009.
3. After considering any public comments received concerning the proposed rule addressed in Paragraph 1, the EPA Administrator will sign a notice taking final administrative action concerning the notice of proposed rulemaking no later than March 31, 2010.
4. This Agreement constitutes the sole and entire understanding of EPA and Petitioners and no statement, promise or inducement made by any Party to this

Agreement, or any agent of such Parties, that is not set forth in this Agreement shall be valid or binding. The provisions of this Agreement can be modified at any time by written mutual consent of Petitioners and EPA.

5. After this Agreement is executed by counsel for the parties, but before the Agreement is finalized pursuant to Paragraph 10, the Parties shall promptly lodge this Agreement with the Court, along with a motion requesting that the Court enter an order holding this case in abeyance during the period required to effectuate the terms of this Agreement, with status reports no more frequent than every 90 days.

6. If EPA fails to satisfy any provision of this Agreement, any Petitioner may withdraw its consent to any order holding this case in abeyance and move the Court to immediately vacate any such order. The filing of such a motion shall constitute each Petitioner's sole remedy under this Agreement in the event any provision set forth in this Agreement is not met. Any Petitioner exercising its right under this paragraph agrees to give EPA fifteen (15) days written notice prior to filing such a motion. Nothing in this Agreement shall be construed to limit any right that any Petitioner may otherwise have to seek review of any final action pursuant to Section 307(b) of the Clean Air Act.

7. Except as expressly provided in this Settlement Agreement, none of the parties waives or relinquishes any legal rights, claims, or defenses it may have.

8. Nothing in the terms of this Agreement shall be construed to limit or modify the discretion accorded EPA under the Clean Air Act or by general principles of administrative law.

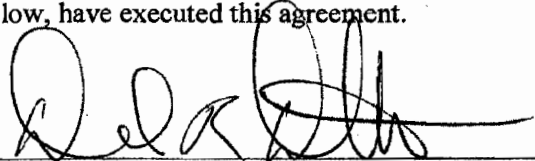
9. The commitments by EPA in this Agreement are subject to the availability of appropriated funds. No provision of this Agreement shall be interpreted as or

constitute a commitment or requirement that EPA obligate, expend, or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable appropriations law or regulation, or otherwise take any action in contravention of those laws or regulations.

10. 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) ("Section 113(g)"). After the Administrator has provided the opportunity for comment on this Agreement as required by Section 113(g), the Administrator and/or the Attorney General, as appropriate, shall promptly consider any such written comments in determining whether to withdraw or withhold his consent to the Agreement, in accordance with Section 113(g). This Agreement shall become final on the date that EPA provides written notice of such finality to Petitioners.

IN WITNESS WHEREOF, EPA and Petitioners, by their duly authorized attorneys, whose signatures appear below, have executed this agreement.

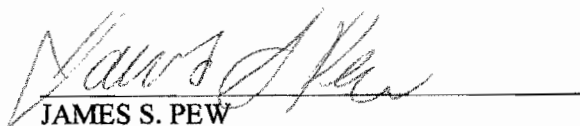
DATE: 1/6/09



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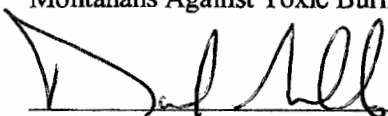


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